



PROTECTING THE VOTE FOR ALL AMERICANS

January 21, 2021

Hon. Barbara Griffin
Chairman, Committee on Election Law
New Hampshire House of Representatives

Dear Chairman Griffin:

Fair Elections Center¹ writes to register its strong opposition to HB 86, which is currently scheduled for a hearing before the Committee on Friday, January 22, 2020. The Center and its predecessor, Fair Elections Legal Network, have been helping Granite Staters exercise their right to vote since 2010. We respectfully request that this letter be entered into the record as written testimony.

The 2020 General Election showed that making it easier to cast a ballot benefits voters of all political persuasions and is not a fundamentally partisan issue. At least 34 states—including New Hampshire—eased voting restrictions for the General Election due to COVID-19.² Two-thirds of the voting-eligible population subsequently voted in the election,³ the highest turnout since 1900,⁴ with New Hampshire seeing a record turnout of over 75 percent.⁵ President Trump won more votes than any other sitting president in U.S. history, while President Biden won

¹ Fair Elections Center is a national, nonpartisan voting rights and election reform 501(c)(3) non-profit organization based in Washington, D.C. Its mission is to use litigation, education, and advocacy to remove barriers to registration and voting, particularly those disenfranchising underrepresented and marginalized communities, and to improve election administration.

² Sarah Swann, *These 34 states are making voting easier, if only for this fall*, THE FULCRUM (Sep. 24, 2020), <https://thefulcrum.us/voting/how-to-vote>.

³ *2020 November General Election Turnout Rates*, U.S. ELECTIONS PROJECT, <http://www.electproject.org/2020g> (last updated Dec. 7, 2020).

⁴ *National General Election VEP Turnout Rates, 1789-Present*, U.S. ELECTIONS PROJECT, <http://www.electproject.org/national-1789-present> (last visited Jan. 15, 2021).

⁵ U.S. Elections Project, *supra* note 2.

more votes than any other presidential candidate.⁶ Both chambers of the New Hampshire legislature changed party hands⁷ and the Republican caucus picked up 16 seats in the 117th United States Congress.⁸ In sum, as one commentator put it, the 2020 General Election dispelled the myth that higher turnout favors one major political party over the other.⁹

At the same time, bad actors have leveled meritless¹⁰ and irresponsible claims of fraud in states like Wisconsin, Georgia, Arizona, Nevada, and Pennsylvania, which have chosen to give voters greater flexibility in casting their ballot, consistent with their powers under the Constitution's Elections Clause.¹¹ Earlier this month, these allegations resulted in a deadly assault on the U.S. Capitol, the very symbol of our nation's democracy. The appropriate response to this attack is to celebrate representative government and fortify our democratic institutions through policies that help all eligible voters participate in the electorate. Unfortunately, HB 86 detracts from this goal and taps into the same unsubstantiated fraud allegations that precipitated the Capitol attack.

Fair Elections Center is particularly concerned about the bill's proposals to limit voting eligibility to students receiving in-state tuition and to rescind election-day registration. The Supreme Court of the United States has already recognized that treating college students differently from other community members based solely on

⁶ See "Compare National Data by Year (Table)," *Presidential General Election Results Comparison – National*, DAVE LEIP'S ATLAS OF PRESIDENTIAL ELECTIONS, <https://uselectionatlas.org/RESULTS/> (last visited Jan. 15, 2021).

⁷ Tim Storey and Wendy Underhill, *2020 Legislative Election Results: It's Status Quo in the States*, NAT'L CONF. OF ST. LEGIS. (Nov. 5, 2020), <https://www.ncsl.org/blog/2020/11/05/2020-legislative-election-results-its-status-quo-in-the-states.aspx>.

⁸ *Party Breakdown, 117th Congress House Lineup*, U.S. HOUSE OF REPRESENTATIVES PRESS GALLERY, <https://pressgallery.house.gov/member-data/party-breakdown> (last visited Jan. 15, 2020); Jennifer E. Manning, CONG. RES. SERV., R45583, MEMBERSHIP OF THE 116TH CONGRESS: A PROFILE 1 (2020).

⁹ David Weigel, *The Trailer: Democrats won the White House and lost a myth about turnout*, WASHINGTON POST (Nov. 8, 2020), <https://www.washingtonpost.com/politics/2020/11/08/trailer-democrats-won-white-house-lost-myth-about-turnout/>.

¹⁰ See, e.g., Rebecca Davis O'Brien, *Trump Lawyers Face Rebukes Over Election-Fraud Claims*, WALL STREET JOURNAL (Jan. 12, 2021), <https://www.wsj.com/articles/trump-lawyers-face-rebukes-over-election-fraud-claims-11610458283>; Michael Balsamo, *Disputing Trump, Barr says no widespread election fraud*, AP NEWS (Dec. 1, 2020), <https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d>; see also Amber McReynolds and Charles Stewart III, *Let's put the vote-by-mail 'fraud' myth to rest*, THE HILL (Apr. 28, 2020), <https://thehill.com/opinion/campaign/494189-lets-put-the-vote-by-mail-fraud-myth-to-rest>; Wendy R. Weiser and Harold Ekeh, *The False Narrative of Vote-by-Mail Fraud*, BRENNAN CTR. FOR JUSTICE (Apr. 10, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>.

¹¹ U.S. Const. art. I, § 4, cl. 1.

student status violates the Twenty-Sixth Amendment.¹² It has also invalidated voting residency requirements that punish people for exercising their constitutional right to interstate travel.¹³ And while the courts are likely to strike down any such restriction, it would nonetheless do incredible damage to Granite Staters in the interim by preventing thousands of eligible voters from registering and wasting taxpayer money on avoidable litigation.

With respect to same-day registration, a recent study found that “election day registration has a consistently positive and statistically significant association with turnout.”¹⁴ By contrast, evidence suggests that voter turnout is lower in states with more restrictive voting laws.¹⁵ According to another report, in 2016, New Hampshire ranked 40th in terms of how easily its citizens can exercise their right to vote,¹⁶ compared to 1996, when it ranked 4th, making it one of the easiest states in which to vote that year.¹⁷ Removing election-day registration would only continue this trend, and possibly reduce New Hampshire’s historically high voter turnout. It would also subject New Hampshire to the National Voter Registration Act, thereby requiring the state to adopt registration by mail and at the Division of Motor Vehicles and other public agencies, and depriving the state of the independence it has long enjoyed in regulating its elections.

Thank you for allowing Fair Elections Center to share its expertise on this matter and to express its opposition to HB 86. Should you have any questions, I can be reached at caguilera@fairelectionscenter.org or (202) 331-0114.

Sincerely,

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¹² *Symm v. United States*, 439 U.S. 1105 (1979).

¹³ *Dunn v. Blumstein*, 405 U.S. 330 (1972).

¹⁴ Jennifer Darrah-Okike et al, *The Suppressive Impacts of Voter Identification Requirements*, SOCIOLOGICAL PERSPECTIVES 13 (Dec. 28, 2020), available at <https://journals.sagepub.com/doi/10.1177/0731121420966620#articleShareContainer>.

¹⁵ Quan Li et al, *Cost of Voting in the American States*, 17 ELECTION L. J. 234, 234 (2018), available at <https://www.liebertpub.com/doi/pdf/10.1089/elj.2017.0478>.

¹⁶ See *id.* at 241 (Fig. 1); see also *New study scrutinizes time and effort it takes to vote in each state*, NO. ILL. UNIV. (Sept. 25, 2018), <https://newsroom.niu.edu/2018/09/25/new-study-scrutinizes-time-and-effort-it-takes-to-vote-in-each-state/>.

¹⁷ Li et al, *supra* note 15, at 242 (Fig. 2); No. Ill. Univ., *supra* note 11.