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Fortifying Tomorrow's Elections

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Harvard Law is preparing a cohort of election lawyers to fight for Democrat candidates.

Editors' Note

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Before the Donald Trump-inspired challenges of the 2020

presidential election, Democrats and liberals alleged fraud and formally contested the results of the 2000, 2004, and 2016 Republican-won presidential elections. Those earlier challenges spurred the creation of a network of election litigators on the left — what J. Christian Adams, a conservative ex-Justice Department attorney pitted against them, calls a “linear build-out” of “some 30 groups” responsible for a lot of sudden changes in election law last year amid the pandemic.

For the closely fought 2020 presidential election, 29 largely Democrat-controlled states and the District of Columbia loosened voting laws, most expanding access to mail voting, according to the liberal Brennan Center for Justice. In response, after former President Trump’s efforts to contest his narrow loss, 19 largely conservative states tightened their voting laws, the Brennan Center reports. The latest changes have provoked a wave of litigation, overwhelmingly from the left.

Now Harvard Law School, in seeming recognition of the power of this “lawfare” strategy, is gearing up for a future where elections are regularly decided not at the ballot box – but in the courts. Two programs at Harvard Law show close ties between the school, the Democratic Party, and liberal activist groups with an interest in fighting elections through the judicial system.

Adams, whose nonprofit Public Interest Legal Foundation describes itself as “dedicated to election integrity,” says: “This is just the next phase: ‘Let’s set up an elite training academy.’ This is their Naval Academy of election litigators.”

Reporting the launch of the Election Law Clinic in April, Harvard Law Today said participating students will get course credit for working on political campaigns, as well as “hands-on litigation and

advocacy work across a range of election law areas, with an initial focus on redistricting and voter suppression cases. Clinic offerings include federal and state litigation projects, as well as some advocacy opportunities.”

In an interview with RealClearInvestigations, Ruth Greenwood, the clinic’s new director, said its creation was driven by student demand: “As more people graduate and devote their careers to election law, it made sense for this premier law school to ensure that it has graduates ready to hit the ground running as election lawyers from day one.”

Greenwood stressed that she believes “elections should be decided by the voters, not their lawyers.” But other legal academics worry about what the advent of Harvard’s Election Law Clinic will mean. Glenn Reynolds, the libertarian University of Tennessee law professor known for his Instapundit blog, tells RealClearInvestigations that if institutions such as Harvard start turning out significantly more students with expertise in election law, those lawyers will create a demand for their expertise and election litigation.

“That’s just how the law works,” he says.

The backgrounds of those staffing the putatively nonpartisan Election Law Clinic show a distinct progressive tilt. Greenwood is a former fellow of the Democratic National Committee’s Voting Rights Institute and also worked at the Campaign Legal Center, which receives its funding from major liberal groups such as ActBlue, the Southern Poverty Law Center, the Ford Foundation, and George Soros’ Open Society Foundations.

Greenwood is a proponent of congressional Democrats’ landmark proposed voting legislation, H.R. 1. She speaks glowingly of the bill

as “the biggest step the federal government has taken to protect the right to vote since the passage of the Voting Rights Act in 1965. H.R. 1 not only includes bans on partisan gerrymandering and practices that suppress the vote, but also introduces better campaign finance regulations and ethics protections.”

Republicans fiercely oppose the bill on constitutional grounds — that it would put local elections under national control — as well as practical ones, in that Democrats in control at the national level could dispense with GOP-backed voting requirements.

Adams has called H.R. 1 a “partisan weapon masquerading as a civil rights law.” Even left-wing groups such as the ACLU have opposed the legislation, seeing its campaign finance and disclosure regulations as violating the First Amendment.

Theresa Lee, the Election Law Clinic’s litigation director, was formerly the senior staff attorney in the ACLU Voting Rights Project. The clinic also touts instructor Daniel Hessel, who has “litigated election law cases with the Campaign Legal Center and environmental cases with the Natural Resources Defense Council.”

Nicholas Stephanopoulos, an attorney who “provides strategic advice for clinic cases [and] helps to litigate some of these matters,” wrote a piece this year for Democracy Docket, the organization run by Marc Elias, a top election lawyer for the Democratic Party. In it, Stephanopoulos argues that Congress should refuse to seat a candidate who benefits from voter suppression (or gerrymandering) under Article I, Section 5 of the Constitution. And he defines voter suppression as “policies that make it hard for people to register and vote.”

Elias promoted the piece in the run-up to his ultimately unsuccessful effort to prevent Mariannette Miller-Meeks from assuming the

... to prevent incumbent James Hahn from assuming the vacant seat in Iowa's 2nd Congressional District after her narrow win over Democrat Rita Hart.

Elias, who worked for the 2016 Hillary Clinton presidential campaign and Democratic National Committee, is perhaps best known for commissioning opposition research firm Fusion GPS to produce the fraudulent Steele dossier while Elias was at Democrat law firm Perkins Coie. Elias left Perkins Coie in August, shortly before his partner, Michael Sussmann, was indicted on charges of lying to the FBI in concealing his affiliation with the Clinton campaign and DNC while dishing dirt about alleged Trump-Russia collusion.

Harvard Law's ties to partisan electioneering don't end with the Election Law Clinic. It also boasts the Democracy and the Rule of Law Clinic, started in 2016. Students receive course credit for "an externship with Protect Democracy, a nonpartisan nonprofit founded by former White House and Department of Justice attorneys and dedicated to preventing our democracy from declining into a more authoritarian form of government." According to the news outlet The Independent, the group, which got its name from a line in President Obama's farewell speech, was founded by Obama administration lawyers to oppose then-President Trump.

If its mission doesn't conflict with its description as a "nonpartisan nonprofit" organization, Protect Democracy's structure might. Protect Democracy consists of two organizations under the same umbrella. While the Protect Democracy Project is a nonpartisan organization with a 501(c)(3) tax status, its partner organization United to Protect Democracy is a 501(c)(4) partisan entity. Both groups are listed at the same address a few blocks from the White House. Despite the 70 employees listed on their website, the address isn't an office – it's a mailbox service that hosts hundreds of

organizations.

This arrangement of a partisan organization and nonprofit partner typically raises questions about the extent to which the organization and funding of both groups is fungible. The work of the purportedly nonpartisan Protect Democracy Project suggests a strong political agenda. In 2019, it gave a \$300,000 grant to Whistleblower Aid. That organization supported Eric Ciaramella, the intelligence community official whose name was suppressed by congressional Democrats, as well as major and social media, before and after it was disclosed by RealClearInvestigations. Ciaramella leveled the complaint that led to Trump's first impeachment.

The work of Protect Democracy came into sharp relief this year when *Time* magazine published a "secret history of the 2020 election" detailing how "a well-funded cabal of powerful people, ranging across industries and ideologies, working together behind the scenes to influence perceptions, change rules and laws, steer media coverage and control the flow of information," coordinated to deliver a Biden presidential victory. The article asserted that this cabal was "not rigging the election; they were fortifying it."

According to *Time*, Protect Democracy played a major role in this effort that united CEOs, liberal activists, and labor unions, including running a public relations campaign aimed at downplaying fears about the pandemic-driven mass increase in mail-in ballots, and assuring voters that a prolonged ballot-counting process wasn't a sign of problems.

The percentage of Americans who voted by mail more than doubled between the 2016 and 2020 elections, according to MIT's Election Lab, a triumph for Protect Democracy and mail voting's Democrat supporters. "I'm fairly convinced at this point that the Democratic strategy and the Democratic advantage in mail-in voting is just

strategy and the Democratic advantage in vote-by-mail was just crucially and critically important to Biden's win," Tom Bonier, CEO of TargetSmart, a Democratic data firm, told The Guardian.

Although Republican lawmakers were deeply skeptical of the practices that accompanied this surge in voting by mail, they were largely unsuccessful in stopping them. Those procedures include dropping signature matching requirements to verify ballots, allowing third parties to collect and return mail ballots (known as "ballot harvesting") and allowing mail-in ballots to be counted after Election Day.

Protect Democracy's putatively nonpartisan arm, the Protect Democracy Project, owns a software company, VoteShield, that monitors voter databases.

"VoteShield analyzes public voter files regularly, comparing each review to historical trends," notes a fact sheet from the company. "It then uses statistics to detect potential anomalies and reports those potential anomalies to the public officials responsible for administering elections. The analyses are made available to state and local election officials free of charge."

VoteShield's website promotes this monitoring as a defense against state voter databases being hacked by Russians. Its website quotes testimony from Obama administration officials to the Senate's Select Committee on Intelligence in that panel's investigation of "Russian Active Measures Campaigns and Interference in the 2016 U.S. Election."

The media and partisan amplification of these warnings resulted in a widely believed conspiracy theory that "Russia tampered with vote tallies in order to get Donald Trump elected." An Economist/YouGov poll in 2018 found that 67% of Democrats believed this was

“definitely true” or “probably true,” even though there is no evidence the Russians altered any votes.

VoteShield’s website states, “We support election administrators of all parties in maintaining complete and accurate voter files” and touts a “collaborative partnership” with Iowa’s Republican Secretary of State Paul Pate. Pate, who was the first secretary of state to use VoteShield, tells RealClearInvestigations the Iowa voter database being used by VoteShield “is public information,” but adds that “it has to be used for genuine bona fide political research.” Pate’s office has been collaborating with VoteShield since 2018. Earlier this year, Pate, who served as president of the National Association of Secretaries of State (NASS) from 2019-2020, nominated his office’s collaboration with VoteShield for a NASS IDEAS (Innovation, Dedication, Excellence & Achievement in Service) Award.

VoteShield’s website claims it is monitoring voter databases in 23 states.

RealClearInvestigations spoke to an official in the secretary of state’s office of one of the states VoteShield claims to monitor, who asked not to be named. The official said the state had been approached by VoteShield but was surprised to see it on VoteShield’s website, since it had never come to any arrangement with VoteShield. “We do not have any kind of official agreement with these guys to utilize their stuff. ... The only thing that we came to an agreement on is, well, you guys can use whatever publicly available data we have, and said, ‘If you see something, fine,’ but they never provided anything that has been of use to us ever.”

This official also added the state’s election security team looked at the company and determined it was “super liberal.” The team was worried collaborating with VoteShield could undermine public confidence that the state’s elections were being administered in a

CONFIDENCE THAT THE STATE'S ELECTIONS WERE BEING ADMINISTERED IN A nonpartisan fashion.

Jason Snead, the executive director of the Honest Elections Project and former senior policy analyst at the conservative Heritage Foundation, notes that this kind of security software analyzing state voter databases isn't unprecedented. Thirty-one states and the District of Columbia participate in the Electronic Registration Information Center (ERIC), which aims to improve the accuracy of America's voter rolls. But ERIC is administered by state election officials – it's not a private entity, nor one sitting under an entity linked to a partisan partner.

VoteShield's website lists information about its privacy policies and security practices, and in response to a query the company confirmed, "VoteShield does not have access to any voter data that is not publicly available" and that it "holds no government contracts."

Adams notes that the growing number of election litigators and monitors on the left presents challenges to the work that he does; he acknowledges that his Public Interest Legal Foundation settled a lawsuit brought against it by Protect Democracy in 2019 after erroneously naming Virginia voters it said were noncitizens. But he argues that there are far fewer organizations on the right able to hold the left accountable when mistakes are made or election laws abused.

Now that Harvard Law is jumping into the fray, Adams foresees more politicized election lawfare. He points to an article he wrote in 2015 – two years before the creation of Protect Democracy – headlined "Does Harvard Teach Law Anymore?" That year Harvard Law added courses in legislation, regulation, and international and comparative law to its core curriculum even though those were politically charged fields of law not widely practiced. Six years ago,

Adams asked a question he says is now more relevant than ever.

“The course catalog at Harvard reveals a great divide emerging in American legal education,” he wrote. “Is law school about learning to practice law, or fundamental transformation?”

Mark Hemingway was a Senior Writer for The Weekly Standard. Prior to joining The Weekly Standard, he worked at The Washington Examiner, National Review, Market News International, and USA Today.