Trump lashes out after Supreme Court blocks mail-in ballot rules

Patrick Martin
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Monday's Supreme Court ruling, striking down President Donald Trump's March 31 executive order to curtail the use of mail-in ballots in the midterm election, provoked a furious response from the White House. In a lengthy social media post Tuesday, Trump was especially bitter towards the three justices he had nominated during his first term, who were part of the majority against him, saying they were "not the people I interviewed."

The 7-2 ruling saw all three of Trump's appointees—Neil Gorsuch, Brett Kavanaugh and Amy Coney Barrett—join Chief Justice John Roberts and the three justices appointed by Democratic presidents, Sonia Sotomayor, Elena Kagan and Ketanji Brown Jackson.

Kavanaugh filed a concurring opinion for himself alone, indicating that there was some possibility of the White House prevailing in the case, but that it was too close to the election to make the changes in mail-ballot procedures that Trump ordered last March.

The only remarkable aspect of the court's ruling was that there was even a single vote, much less two, for Trump's attempted takeover of election procedures, given that the Constitution clearly assigns the administration of elections to the states, with Congress setting certain ground rules, and no role for the president.

Under the executive order, Trump would do an end run around the Constitution by using the Postal Service, which would refuse to deliver mail ballots to voters in states that did not provide the Trump administration with voter data, and would not accept envelopes containing mail ballots that lacked barcodes approved in advance by USPS.

The assertion by Trump's Department of Justice that the president could use his authority over the US Postal Service to force states to conform to his wishes on mail voting was a brazen assertion of unlimited presidential power with no basis either in law, the Constitution or US political traditions. But nonetheless, the two most right-wing justices, Samuel Alito and Clarence Thomas, sided with Trump and issued an eight-page dissent.

The majority of the justices did not issue an opinion to explain their one-paragraph ruling upholding a lower-court order blocking Trump's executive order. They merely stated that the White House was unlikely to prevail on the merits of the case, and so denied the appeal to overturn the injunction issued by District Judge Indira Talwani, in Boston, which had been upheld by the First Circuit Court of Appeals.

California and 22 other states, all with Democratic governors, attorneys general or secretaries of state, filed suit in Massachusetts to block the new rules, both on constitutional and practical grounds. In California, for example, the most populous state, 80 percent of votes are cast by mail. To comply with the new Trump rules, the state would have to supply new barcodes identifying 23 million voters to the Postal Service and have them approved in time to print envelopes and send them out.

Seven other states, in addition to California, conduct elections mainly through mail ballots: Colorado, Hawaii, Nevada, Oregon, Utah, Vermont and Washington.

According to a filing by the League of Women Voters and other voting rights groups,

> The Rule would disrupt the administration of mail voting mid-election and disenfranchise eligible voters nationwide, including voters in all-mail states like Colorado and Utah and elderly, rural, and disabled voters who must vote by mail.

The Trump administration was also appealing a separate injunction issued by District Judge Carl Nichols, a Trump appointee for the Washington D.C. district. Nichols ruled Sunday that the Postal Service had no authorization from Congress to establish rules for mail-in ballots. "Nothing in the Postal Reorganization Act authorizes the Postal Service to impose new election procedures on state election officials, to create a data collection system for mail-in and absentee voters, or to refuse the transmission of lawful mail because it fails to meet these data collection requirements," he wrote.

In his 24-page opinion, Nichols wrote that the Trump administration had not identified any "evidence that there will be significant fraud in the upcoming elections" if he halted the rule. If the rule were left in place, he added, there was

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“increased risk that a significant number of otherwise appropriate absentee or mail-in ballots will ultimately not be counted in the upcoming elections … The public has a strong interest in ensuring that doesn’t happen.”

The executive order has been challenged in court by two dozen states and dozens of civil liberties and voting rights groups, but the main delay has come from the US Postal Service itself, which did not issue its final rules until late August, and still has not brought online the internet portal through which states were ordered by Trump to submit lists of registered voters.

Trump denounced the ruling in apocalyptic terms, repeating his lies about the 2020 elections and the supposed influx of “illegal alien” voting which he blamed for his defeat that year. “The Court’s inability and unwillingness to do the right thing for our Country will go down, in a very negative way, in the annals of History,” Trump wrote. “This Supreme Court is bullied and cajoled by the Radical Left into making decisions that have set America back at least a hundred years.”

Besides the ruling on mail ballots, which he claimed provided “an open field” to “cheating by the Radical Left,” Trump referred to the court decision striking down a major portion of his unilateral tariffs, claiming this was “costing the United States Trillions of Dollars with shockingly bad rulings that are of such magnitude that it won’t be easily possible for our Country to recover or heal.”

While leading Democrats hailed the Supreme Court ruling, other efforts to manipulate the election and intimidate voters are still proceeding, with no effort by the Democrats to mobilize any popular opposition. The supposed opposition party is relying entirely on lawsuits brought in courts packed with right-wing judges, topped by a Supreme Court with a 6-3 ultra-right majority.

The Justice Department is suing 30 states demanding they turn over voter rolls, including driver’s license numbers and partial Social Security numbers, to the Department of Homeland Security, which would supposedly check for non-citizens.

The DOJ has reportedly lost 23 of the 30 suits at the district court level, but 16 of these defeats are now on appeal. Seven cases are still pending in district courts. The DOJ has not won a single court order at any level in support of its demands.

Trump’s executive order also mandated the DHS to create lists of eligible citizen voters, screening them against its database of “illegal aliens,” which is notoriously inaccurate. A legal challenge to that part of the executive order is still pending before the Supreme Court.

The high court also blocked a brazen effort by the Republican-controlled state government in Missouri to eliminate one of the two Democratic-held congressional seats in the state (out of eight total). The state legislature adopted a gerrymander late last year that would effectively eliminate the Kansas City-based seat of black Democrat Emanuel Cleaver, splitting the state’s largest city among three other districts where Republican votes in rural areas would outweigh the urban vote.

When voting rights groups collected enough signatures to force a statewide referendum vote on the gerrymander, the Republican secretary of state delayed acting on the petition until the last possible day and then ruled that state voters had no right to decide on district lines. The Missouri state Supreme Court struck down this action last month, ruling that the gerrymandered district lines were a proper subject for a referendum, and that the old district lines should be used for the November midterm elections.

The Missouri state government appealed this decision to the US Supreme Court, but Justice Kavanaugh, who oversees appeals from that region, declined to hear the case. Four justices must support hearing such an appeal for it to go forward.

This series of court setbacks means that to enforce restrictions on voting, Trump would have to rely on brute force, through the deployment of federal agents or troops at polling stations and ballot counting centers. Federal law forbids the dispatch of “any troops or armed men” to the polls except for those who are casting their own votes, but there is no reason to believe that the president who instigated the attack on the Capitol on January 6, 2021 will observe such restrictions.

Top Trump aides such as Homeland Security Secretary Markwayne Mullin, FBI Director Kash Patel and White House “border czar” Tom Homan have all denied that there are any plans to send large numbers of immigration or FBI agents to the polls on November 3. Chairman of the Joint Chiefs of Staff General Dan Caine likewise denied any plans to deploy uniformed military personnel on Election Day.

But Trump himself has left open the possibility. Speaking on the podcast of ultra-right broadcaster Wayne Allyn Root on August 11, he responded to an appeal by the host that he declare a national security emergency for the midterm elections and impose restrictions on voting with the remark “Let me just say that stranger things have happened, OK? I’ll leave it at that.”

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