

Analysis of SB 17-071

By Kristine McLaughlin

Senate Bill 17-071 proposes limiting the number of polling stations that can be open in the early stage of early voting during presidential elections in counties with over 25,000 active voters. The bill's sponsor, Senator Jack Tate, has argued that this will do nothing more than save the taxpayers around \$600,000 every four years because, since Colorado began sending mail-in-ballots to every registered voter in 2016, these early voting stations have increased voter turnout. It is true that early voting stations have not increased voter turnout in federal elections. However, even if it doesn't increase voter turnout, it is important that government continue to expand voting accessibility because it reduces the risk of corruption.

In the testimony that the Senate State Veterans and Military Affairs Committee heard on February 22nd, six people testified against the bill, arguing that there is a positive externality associated with a higher voter turnout. This is flawed for two reasons. The first is that the ability to vote early is not actually correlated with an increase in voter turnout. In fact, in 2013, *The American Journal of Political Science* published an article that found that for every ten days that a state allowed early voting that state saw a 1% decrease in voter turnout.¹ (The article does states that the reason for this is unclear and it is possible that early voting could increase voter turnout under specific conditions.)

The second problem is that it is questionable whether or not higher voter turnout really does have a positive externality. In "Is Mandatory Voting Better than Voluntary Voting" economists Stefan Krasa and Mattias Polborn argued that it does². When you choose to incur the cost, in time and effort, of voting, you affect not just yourself but everyone in your society. If you vote for a candidate who is supported by more than 50% of all citizens, call her¹ candidate

¹ Pronouns were determined with a coin flip

A, then, at a basic level, you impose a negative externality on all candidate B supporters and a positive externality on all candidate A supporters. Since we know that there are more candidate A supporters, Krassa and Polborn argue you impose a net positive externality by voting for her. Moreover, since we do know that there are more candidate A supporters, increasing voter turnout evenly across all demographics will also have a net positive externality.

However, this conclusion is predicated on two assumptions that do not always hold and cannot be tested. The first is that everyone gains equal value from their candidate winning. If candidate B supporters get significantly more out of him winning than candidate A supporters lose, then higher voter turnout has a net negative externality. The second assumption is that everyone supports the candidate who is in their best long run interest. If candidate A supporters would actually benefit more from candidate B winning then, once again, higher voter turnout has a net negative externality.

It is impossible to determine whether or not these conditions are met in any given election cycle. In this country we cannot and should not charge a citizen to vote. Therefore we have an insurmountable insincere preference revelation problem when trying to determine how much someone values their candidate winning. If we simply ask people to rank how much value they would get out of their candidate winning, they would have incentive to lie because it might encourage others to vote for her. Similarly, we have no objective way to determine which candidate would practically be better for any individual outside of their stated preference. Thus we cannot conclusively determine whether or not high voter turnout has a negative or positive externality.

However, while higher voter turnouts may or may not benefit society, higher voting accessibility does. Drawing on the work of Immanuel Kant, Steven Pinker in *The Better Angels of our Nature* listed democracy (effectively the increase in voting accessibility from a initial level

of 0%) as one of five developments throughout human history that drastically lowered violence rates. Kant's work primarily considered how democracy discourages war and political violence, because politicians in support of these policies are often removed. Pinker went on to claim that democracy decreases violence by encouraging the formation of cities and capitalist systems, along with several other factors. He continued to argue that this effect grew stronger within democracies as they expanded voting accessibility, in granting racial minorities and women access to the polls³.

Furthermore, he notes that democracies that severely limit voting accessibility (what he refers to as anocracies because they are hybrid of democracy and autocracy) are oftentimes more violent than autocracies. Anocracies in Russia and parts of sub-Saharan Africa and Latin America are the most crime prone regions in the world today⁴. Lower crime rates benefit everyone and if voting accessibility has half of the effect on crime rates that Pinker found, then limiting voting accessibility would have drastic negative externalities.

Senator Tate, who introduced Senate Bill 17-071, argued in his testimony on February 22nd that the bill does not limit voting accessibility because since Colorado began sending all registered voters a mail in ballot in 2016, "people prefer to use drop boxes⁵." This is plausible. However, the risks of reducing the number of early voting stations outweigh the benefits.

The only benefit to the bill is the estimated \$661,500 in savings every four years. That's about 2.5% of the state budget last year and assumes that closing early voting centers would not require hiring more election judges to operate the centers that are not affected.

Since voter turnout is an indicator of voting accessibility you might be inclined to think that the 1% decrease in voter turnout per ten days of early voting is an indicator that early voting hinders voting accessibility. However, the authors of *The American Journal of Political Science's* article, did not find any evidence that the early voting centers hindered anyone's actual ability to

vote on election day. Rather, they suggested that they decreased individual motivation to vote because they encourage procrastination and take away from the excitement of election day. So the benefit is still only \$661,500 every four years.

There are two risks to voter accessibility associated with passing this bill. The first is that by encouraging the switch to mail in ballots, the bill inadvertently endangers voter privacy. The US does have a history of voter intimidation. It was especially common in the 19th century when newspapers would print pre-filled ballots that employers, or others in positions of authority, would distribute to those under them and when many cities still held elections by a public show of hands. This practice ended, and thus voting accessibility expanded, as cities and states adopted the Secret Ballot, also known as the Australian Ballot, which were printed by the government, listed every candidate as an option, were distributed only at a secure polling place, and were filled out anonymously⁶.

The mail-in-ballot is the only remaining way to vote in the US that cannot be classified as a secret ballot because they are distributed outside the polling place and there is no way to ensure privacy. Thus, the mail-in-ballot system should not be allowed to replace physical polling centers. Mail-in-ballots serve an essential function in expanding voting accessibility to Americans traveling outside of their residential area and the disabled but they are not a perfect substitute to polling centers. Norman Ornstein, of the American Enterprise Institute, went as far as to argue that no state should allow for no-excuse by mail voting precisely because of the privacy issue. He also argues that there is no benefit given that there is no evidence to suggest that it increases turnout in state and federal elections⁷. As with, early voting, it may be the case that mail in ballots do not affect voter turnout but still increases voting availability and thus still have a net positive effect. Still, these concerns about mail-in voting are reason enough not to accept it as an alternative to polling places.

The second risk is that by opening some voting centers later than others, the bill could make it easier to discriminate against potential voters based on their geographic location or age. Under current law, all voting centers are open for the same number of days. Senate Bill 17-071 would not just limit the total number of hours that early voting centers are open, it would keep some centers open for longer than others. This could be abused to target certain regions for partisan reasons. In fact, Amendment L.031, which was added by democrats, requires that voting centers on college campuses, areas that lean democratic, remain open.

However, if the bill is passed, this amendment may help correct a bias against young voters present in unamended version of the bill. The bill hinders the efforts of get-out-the-vote organizations like the ones that testified against the bill, Mi Familia Vota and New Era Colorado, by making it harder to quickly relay information about when polls are open. Though it is difficult to quantify, this would likely be the result of requiring some polling centers to be open on different dates. Get-out-the-vote organizations have a disproportional impact on younger voters, who tend to be democratic, because it is more likely that they are unfamiliar with the voting process.

It may be unlikely that the US returns to it 19th century levels of voter intimidation. Still, secret ballots are our only protection against it. It may be unlikely that anyone could use this bill to discriminate against certain voters to the extent that it would impact the results of an election. Maybe the government should actively encourage people to vote and maybe it shouldn't but it is essential that the government continue to provide everyone with the opportunity to vote. Not just because that is a formational principle of our society because history has shown it to be the best propeller of human rights.

Endnotes

1. Burden, Barry C., David T. Canon, Kenneth R. Mayer, and Donald P. Moynihan. "Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform." *American Journal of Political Science*. September 09, 2013. Accessed April 06, 2017.
<http://onlinelibrary.wiley.com/doi/10.1111/ajps.12063/full>.
2. Krasa, Stefan, and Mattias K. Polborn. "Is Mandatory Voting Better than Voluntary Voting?" *SSRN Electronic Journal*, May 22, 2008. Accessed April 6, 2017.
<https://pdfs.semanticscholar.org/0a3a/1751cfa2f773a499cca2f9859dd6d060863f.pdf>.
3. Pinker, Steven. *The Better Angels of Our Nature: why violence has declined*. Kindle. NY, NY: Penguin Books, 2012.
4. Pinker, Steven. *The Better Angels of Our Nature: why violence has declined*. Kindle. NY, NY: Penguin Books, 2012.

Kindle Location 2150
5. SENATE STATE, VETERANS, & MILITARY AFFAIRS COMMITTEE Wednesday, February 22, 2017 01:30 PM SCR 357, 1st testimony (testimony of Jack Tate).
6. Evans, Eldon Cobb. *History of the Australian ballot system in the United States*. Place of publication not identified: Proquest Information And, 2005.
7. "Early Voting Necessary, but Toxic in Large Doses." *The Economist*. September 22, 2004. Accessed April 06, 2017. <http://www.economist.com/node/3219156>.

Works Cited

- Burden, Barry C., David T. Canon, Kenneth R. Mayer, and Donald P. Moynihan. "Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform." *American Journal of Political Science*. September 09, 2013. Accessed April 06, 2017.
<http://onlinelibrary.wiley.com/doi/10.1111/ajps.12063/full>.
- "Early Voting Necessary, but Toxic in Large Doses." *The Economist*. September 22, 2004. Accessed April 06, 2017. <http://www.economist.com/node/3219156>.

Evans, Eldon Cobb. History of the Australian ballot system in the United States. Place of publication not identified: Proquest Information And, 2005.

Krasa, Stefan, and Mattias K. Polborn. "Is Mandatory Voting Better than Voluntary Voting?" SSRN Electronic Journal, May 22, 2008. Accessed April 6, 2017.
<https://pdfs.semanticscholar.org/0a3a/1751cfa2f773a499cca2f9859dd6d060863f.pdf>.

Pinker, Steven. The Better Angels of Our Nature: why violence has declined. Kindle. NY, NY: Penguin Books, 2012.
Kindle Location 2150

SENATE STATE, VETERANS, & MILITARY AFFAIRS COMMITTEE Wednesday, February 22, 2017 01:30 PM SCR 357, 1st testimony (testimony of Jack Tate).