

Alexander T. Taubes

470 James Street, Suite 007, New Haven, CT 06513 • alextt@gmail.com • (203) 909-0048

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To: Connecticut General Assembly, Government Administration & Elections Committee
GAtestimony@cga.ct.gov

From: Alexander T. Taubes, Esq.

Re: Summary and Comment Regarding LCO #3576, *An Act Concerning Absentee Voting at the 2020 State Election and Election Day Registration*

Dear Government Administration & Elections Committee,

I am a civil rights lawyer living and working in New Haven, Connecticut. I represent voters and candidates in a federal civil rights class action to establish a universal right to vote by absentee ballot in Connecticut in the upcoming November 3, 2020 election. See *Andy Gottlieb, et al. v. Ned Lamont, et al.*, 3:20-cv-00623-JCH (D. Conn. 2020) (Answer from State due August 24, 2020).

LCO #3576 should be passed immediately to guarantee every Connecticut citizen's right to vote in the 2020 election. If anything, it should be made stronger as I will explain below. But first I would like to address counter-arguments that are likely to be raised against this bill, which are wrong-headed.

It might be argued that expanding the eligibility conditions to vote by absentee is somehow prohibited by the State Constitution, which allegedly requires you to maintain restrictions on absentee voting. This is incorrect. Allow me to explain.

Article Sixth, Section 4 of the State Constitution expressly provides that "[l]aws shall be made to support the privilege of free suffrage, prescribing the manner of regulating and conducting meetings of the electors" In the modern era, the Connecticut Supreme Court has interpreted this section to say that "[e]lection laws are the province of the General Assembly," *Lacava v. Carfi*, 140 Conn. 517, 519 (1953), giving you "broad powers," *Mills v. Gaynor*, 136 Conn. 632, 638 (1950) to establish rules surrounding elections.

In this century, the Connecticut Supreme Court has never ruled definitively on absentee voting or early voting. Based on current precedents, I believe this bill is likely to be upheld.

But even if this bill had some conflict with the State Constitution, it must be passed to comply with the federal Constitution. As you all know, your oath of office requires each of you to uphold and protect the Constitution of the State of Connecticut and the Constitution of the United States. When the two conflict, the Constitution of the United States, as it says in Article VI, is the "Supreme Law of the Land." No state law can violate the federal constitution.

Failing to allow absentee ballot voting during the pandemic would violate the Constitution—the Constitution of the United States, and therefore, your oaths of office. That is why we brought our case.

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That is also why the League of Women Voters, the NAACP, and the ACLU have also brought a case. Their case has the same claims as ours, but also says that your failure to act is discrimination against the Black community and violates the Voting Rights Act, too. See *Connecticut State Conference of NAACP Branches, et al. v. Denise Merrill*, 3:20-cv-00909-JBA (D. Conn. 2020) (currently pending). We agree with their claims. If you fail to pass this bill and the lawsuits proceed, the State may be liable for attorney's fees in both lawsuits.

Passing this bill, however, would moot (get rid of) both lawsuits, at least the parts of them about absentee voting. That would vindicate Connecticut voters' rights and save taxpayers money. But to fully vindicate Connecticut voters' rights, we need legislation that ensures that every voter who wants to vote has access to the ballot, and most importantly, we need legislation that ensures that every vote gets counted.

Every vote must count. That is paramount. So **we need legislation that says that all absentee (mail-in) ballots that are postmarked by Election Day (November 3, 2020) will be counted in the election.** Connecticut law is currently among the minority of states that requires the ballots to be *received* on Election Day, *even if* the ballots are mailed before Election Day. This is wrong. Moreover, it could lead to 10-15% of Connecticut voters getting disenfranchised. I am happy to provide more data on this issue to the committee's attention at your request.

Moreover, every voter must have access to the ballot. The fact that Connecticut voters even need to fill out an application in order to be mailed their ballot is in itself an impediment on the right to vote because many voters will fail to fill out that paperwork. Voters are required to fill it out, mail it to their town clerk in time to receive a ballot back in the mail, fill it out, and mail it in or drop it off to cast their vote. Too many steps. Other states, such as Oregon and California, **simply mail every voter a ballot**, instead of leaving it to the voter to request a mail-in ballot with an application. Connecticut should abolish the costly and wasteful process of requiring an application for a mail-in ballot and do the same as other states. **Connecticut should simply mail every voter a ballot.**

Once again, the State Constitution is no obstacle to passing comprehensive legislation that mails every voter a ballot. The State Constitution also does not stop you from passing early voting. The reason is the power given to you by the Constitution of the United States to guarantee the fundamental right to vote in a free and fair election. Indeed, the right to "the political franchise of voting . . . is regarded as a fundamental political right, because [it is] preservative of all rights." *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

This bill should be expanded to apply to all future elections, not just 2020. This bill is a step in the right direction that could easily be strengthened. But at the very least, it should be passed immediately as written. I implore you to do so.

Sincerely yours,
Alexander T. Taubes, Esq.
Civil Rights Attorney in New Haven, Connecticut