FactChecking the Electoral College Debate

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The process of certifying Joe Biden as the 46th president of the United States occurred in the early morning hours of Jan. 7, after being disrupted by rioters and delayed by Republicans who repeated false and misleading claims about the election results.

Six Republican senators and more than 100 GOP House members objected to the election results in Arizona and Pennsylvania in a failed final attempt to keep President Donald Trump in office.

Here we review some of the claims they made during the debate:

- Rep. Paul Gosar of Arizona falsely claimed that "a court found 3% error rate against President Trump" in Arizona's results. Actually, a state trial court found an error rate of 0.55% in the state's largest county, which the state Supreme Court said was not enough to question the results.
- Gosar also baselessly claimed that "over 400,000 mail-in ballots" in Arizona were "switched" from Trump to Biden "or completely erased from President Trump's totals." But there is no evidence to support such a wild claim.
- Rep. Elise Stefanik of New York claimed Pennsylvania's state Supreme Court and secretary of commonwealth "rewrote election law, eliminating signature matching requirements." Actually, the court unanimously ruled that state law doesn't require local election officials to determine the authenticity of signatures on absentee or mail-in ballots.
- Stefanik also said, "In Wisconsin, officials issued illegal rules to circumvent a state law … that required absentee voters to provide photo identification before obtaining a ballot." She's referring to rescinded guidance that some Wisconsin county clerks issued ahead of the state's April primary election — not the November general election.
- Rep. Lee Zeldin took issue with a "Democracy in the Park event" in Wisconsin that he said resulted in "over 17,000 ballots transferred that shouldn't have been." The Wisconsin Supreme Court said the event, which allowed voters to bring completed absentee ballots to parks to be collected by sworn city election inspectors, met the letter of state election laws.

- Republican Rep. Scott Perry of Pennsylvania wrongly said the state Supreme Court had "absolutely no right" to allow the use of unmanned drop boxes where voters could drop off mail-in votes. A federal judge appointed by Trump and the state Supreme Court both ruled in favor of the use of drop boxes.

- Rep. Marjorie Taylor Greene falsely claimed that "all of the cases that have been thrown out have been thrown out on standing, not the evidence of voter fraud." Most didn't allege actual fraud, and several have been dismissed due to lack of evidence.
- Sen. Josh Hawley claimed a law passed in 2019 by the Pennsylvania Legislature violated the state Constitution and said a case challenging it was "dismissed on grounds of … timeliness." He neglected to mention that case sought to overturn the results of the 2020 election and was filed more than a year after the law passed.

False Claims About Arizona Ballot Reviews

During the floor debate on whether to accept Arizona's Electoral College votes, Gosar misleadingly said "we have been told over and over" by the Arizona secretary of state that "the public today has no ability to simply double check the veracity of these results."

In fact, Arizona law requires "a hand count of a sample of ballots to test the accuracy of the vote tabulation equipment, if there is participation from the county political parties," according to the Arizona secretary of state's office. Of the state's 15 counties, 10 performed hand counts; six found no discrepancies and four found errors within the acceptable margin. That included hand recounts in the four largest counties (Maricopa, Pima, Pinal and Yavapai) that represent 85% of the state's population.

Gosar later said "in the only audit done in Arizona" a court found a "3% error rate against President Trump. Vice President Biden's margin of error was one tenth of that, at .03%." He claimed that if that 3% error rate were applied statewide it would have been 90,000 ballots, but "the court stopped the audit and refused to go further."

His claim of a 3% error rate is false, and his assumption of 90,000 additional Trump ballots is grossly exaggerated.

Besides the hand recounts, the only "audit" conducted in Arizona was prompted by a lawsuit filed by state Republican Party Chairwoman Kelli Ward's lawsuit, and in that case the court found an error rate of 0.55% — not 3% — in Maricopa County.

In her lawsuit, Ward challenged mail-in ballots that had been duplicated in the county because voters' first ballots "were too damaged or illegible for the tabulation machines to read, or were otherwise rejected by the machines."

Her lawsuit led to a review of 100 duplicated ballots, followed by a second inspection of 1,526 duplicated ballots.

"Of the 1,626 total, there were nine errors, (1617 correct duplicate ballots) that if correct would have given the Trump Electors an additional seven votes and the Biden Electors an additional two votes," the state Supreme Court said in its Dec. 8 ruling denying Ward's request for an expanded audit. "The trial court concluded the results were '99.45% accurate.'"

In filing an appeal to the U.S. Supreme Court, Ward noted that there was a 2% error rate against Trump in the first review of 100 ballots. The suit said one vote was "erroneously 'flipped' from Trump to Biden, and the other [was] simply uncounted." That may be what Gosar meant when he spoke of a 3% error rate, but his office did not respond to our request for information.

Even so, the error rate dropped to 0.55% when the county agreed to review more duplicated ballots.

In its opinion, the state Supreme Court said that extrapolating the 0.55% error rate to all 27,869 duplicated ballots in the county would result in a net increase of only 153 votes, which is not sufficient "to call the election results into question."

C. Murphy Hebert, a spokeswoman for the Arizona secretary of state, said she is "not aware of other 'audits'" in Arizona.

Baseless Claim of 'Altered, Switched' or 'Erased' Trump Ballots

Gosar also baselessly said that "over 400,000 mail-in ballots [in Arizona] were altered, switched from President Trump to Vice President Biden or completely erased from President Trump's totals." But there is no evidence to support such a wild claim.

As we mentioned earlier, the state conducted hand counts of sample ballots to make sure the machines are tabulating the ballots correctly. Under state law, representatives of both parties "randomly pick either 2% or at least two vote centers or precinct, whichever is greater, to compare a manual count of ballots done by volunteers to the count completed by tabulation machines," as explained in a story by ABC15 in Phoenix.

In a Dec. 21 ruling, state Superior Court Judge John Hannah dismissed a state GOP lawsuit demanding that the state's largest county redo its hand count, noting that the "hand counts verified that the machines had counted the votes flawlessly" in Maricopa County, where about 61% of the state's population lives. Hannah called the lawsuit "meritless," saying it "offered only suspicion of wrongdoing."

And, as we noted earlier, a review of duplicated ballots in the county found an error rate of just 0.55% — which the state Supreme Court opinion said was not enough to affect the results. Biden won the state by less than 11,000 votes.

Hebert, the spokesperson for the Arizona secretary of state, said she wasn't sure how Gosar arrived at his figure of 400,000 missing Trump votes.

It's worth noting, though, that Gosar has made a similar claim with an even higher number. In a Dec. 17 tweet, Gosar claimed: "Over 700,000 votes stolen from @realDonaldTrump and given to Biden." Twitter labeled that tweet "disputed." Gosar linked to a video that baselessly claimed it provided evidence of "790,175 laundered votes."

But, as *Arizona Republic* columnist Laurie Roberts noted, "If Trump really got another 790,175 votes, that would mean he won a whopping 72% of Arizona's vote while Biden got a piddling 26%."

Signature Matching in Pennsylvania

Stefanik said, "In Pennsylvania, the state Supreme Court and secretary of state unilaterally and unconstitutionally rewrote election law, eliminating signature matching requirements."

That's not so; the court unanimously ruled that the Pennsylvania Election Code never required signature matching for absentee or mail-in ballots in the first place.

In an Oct. 23 opinion, the court upheld September guidance, issued by Pennsylvania Secretary of the Commonwealth Kathy Boockvar, saying that local election officials couldn't disqualify such ballots based solely on a signature analysis.

"We conclude that the Election Code does not authorize or require county election boards to reject absentee or mail-in ballots during the canvassing process based on an analysis of a voter's signature," Justice Debra Todd wrote in the opinion, which was cosigned by five of the other six justices. The other justice, Sallie Updyke Mundy, one of two Republicans on the court, concurred in the ruling.

It was the second time a court had rejected the Trump campaign's claims that, to prevent fraud, state law required efforts to check that signatures on returned ballots matched signatures on voter rolls.

In its analysis, the state Supreme Court noted that state election law "enumerates only three duties of the county boards of elections during the pre-canvassing and canvassing process," none of which included a stipulation permitting or mandating signature matching.

"Intervenors would have us interpret the Election Code, which now does not provide for time-of-canvassing ballot challenges, and which never allowed for signature challenges, as both requiring signature comparisons at canvassing, and allowing for challenges on that basis. We reject this invitation," the court said.

Absentee Ballot Rules in Wisconsin

Stefanik also claimed, "In Wisconsin, officials issued illegal rules to circumvent a state law – passed by the Legislature as the Constitution requires – that required absentee voters to provide photo identification before obtaining a ballot."

That's misleading. The guidance was issued during the primary election — not the general — and it was quickly overruled by a state court. Wisconsin state law already says absentee voters don't have to provide a photo ID when requesting a ballot if the individual affirms that he or she is "indefinitely confined because of age, physical illness or infirmity or is disabled for an indefinite period."

It's true that on March 25, Dane County Clerk Scott McDonell and Milwaukee County Clerk George Christenson advised eligible Wisconsin voters that, for the April 7 primary elections, they could claim to be indefinitely confined because of state-issued stay-at-home orders due to the coronavirus pandemic. Doing so, the clerks said, would allow those people — stuck at home and unable to provide a photo ID — to skip that step in the ballot application process.

But on March 29, the Wisconsin Elections Commission issued its own guidance, clarifying that, "Indefinitely confined status shall not be used by electors simply as a means to avoid the photo ID requirement without regard to whether they are indefinitely confined because of age, physical illness, infirmity or disability."

Then, in a March 31 decision, the Wisconsin Supreme Court ruled that McDonell had given "legally incorrect" information to voters and ordered McDonell to "refrain from posting advice" that was "inconsistent" with the Wisconsin Elections Commission's own guidance.

That also led to Christenson issuing revised guidance that month that said, "It is very important to note that 'indefinite confinement' based only upon the Governor's Safer at Home Emergency Order cannot be used to legally avoid the photo ID requirement."

'Democracy in the Park'

Presenting what he said were facts and evidence that courts circumvented state election laws, Zeldin cited this as one example: "The Democracy in the Park event in Wisconsin had over 17,000 ballots transferred that shouldn't have been."

Zeldin added: "These are all facts."

That's actually an opinion, and one not shared by the Wisconsin Supreme Court.

Zeldin is referring to two events held in Madison, Wisconsin, one in September and one in October, called "Democracy in the Park" in which people were allowed to bring completed absentee ballots to parks to be collected by sworn city election inspectors. The inspectors also could serve as witnesses if a voter brought an unsealed, blank ballot.

In a lawsuit, the Trump campaign contended the 17,271 absentee ballots collected at these events amounted to illegal early in-person voting.

The Wisconsin Supreme Court disagreed. Wisconsin Supreme Court Justice Brian Hagedorn, a conservative, sided with three liberal justices in a 4-3 decision opposing the Trump campaign's efforts to strike those votes.

In his written opinion for the majority, Hagedorn wrote that given the park events were all publicly announced, the time to contest them was before the election. The court stated it was "patently unreasonable" for the campaign to file the lawsuit *after* the election, and for those votes to be thrown out given that "thousands of voters relied on the representations of their election officials that these events complied with the law."

Furthermore, Hagedorn stated, the events complied with Wisconsin election law, which requires voters to return absentee ballots by mail or "in person, to the municipal clerk issuing the ballot or ballots."

"A sworn city election inspector sent by the clerk to collect ballots would seem to be an authorized representative as provided in the definition" of the statute, Hagedorn wrote.

People who brought completed absentee ballots to the parks had to have previously requested them. No absentee ballots or ballot applications were distributed at the events.

Pennsylvania Drop Boxes

Perry wrongly said the state Supreme Court had "absolutely no right" to allow the use of unmanned drop boxes where voters could drop off mail-in votes. A federal judge appointed by Trump rejected a lawsuit from the Trump campaign that sought to prevent the use of drop boxes.

> ***Perry, Jan. 6****: The Supreme Court authorized the use of drop boxes, where ballot harvesting could occur. The legislature never authorized that form of voting, and the court had absolutely no right to do so.*

In September, the Pennsylvania Supreme Court ruled that the state's election code permitted the use of drop boxes for submission of mail-in ballots. The court ruled that the competing interpretations of whether the state's election code allowed drop boxes were both reasonable, rendering the code "ambiguous." It ultimately determined that the law "favors the fundamental right to vote and enfranchises, rather than disenfranchises, the electorate" and that "the Election Code should be interpreted to allow county boards of election to accept hand–delivered mail–in ballots at locations other than their office addresses including drop–boxes."

The following month a federal judge knocked down the Trump campaign's effort to bar the use of drop boxes.

The opinion was written by U.S. District Judge J. Nicholas Ranjan, a Trump appointee.

The Trump campaign argued that drop boxes would lead to the potential for the counting of "fraudulent or otherwise ineligible ballots" in the presidential election.

But Ranjan said the Trump campaign had not presented enough evidence that potential voter fraud was a likely problem. "While Plaintiffs may not need to prove actual voter fraud, they must at least prove that such fraud is 'certainly impending,'" Ranjan wrote. "They haven't met that burden."

In his comments on the House floor, Perry raised the specter of "ballot harvesting" which refers to third parties collecting and delivering ballots, and which is not permitted in Pennsylvania. But no evidence has emerged to date that that was a problem at any drop boxes in the state.

Trump Cases Lacked Evidence, or Even Claims, of Fraud

In objecting to Pennsylvania's electoral votes, Greene falsely claimed: "I'd like to point out that all of the cases that have been thrown out have been thrown out on standing, not the evidence of voter fraud." Several of the Trump campaign's legal challenges have been dismissed by judges for a lack of any evidence of voter fraud.

For example, in one case seeking to nullifying about 2,000 absentee ballots in Pennsylvania, Bucks County Court of Common Pleas Judge Robert Baldi, a Republican, wrote in his order: "It must be noted that the parties specifically stipulated in their comprehensive stipulation of facts that there exists no evidence of any fraud, misconduct, or any impropriety with respect to the challenged ballots. There is nothing in the record and nothing alleged that would lead to the conclusion that any of the challenged ballots were submitted by someone not qualified or entitled to vote in this election."

In five other cases in Pennsylvania, Philadelphia Court of Common Pleas Judge James Crumish denied the suits, writing in each of the five orders that the campaign made "meritless" arguments and "concedes that all ballots by a qualified elector in this category were timely received."

In yet another Pennsylvania case, Judge Stephanos Bibas, a Trump appointee on the Third Circuit Court of Appeals, wrote: "Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here." The court had unanimously upheld a lower court's dismissal of the case.

In late December, the *New York Times* analyzed 59 court losses the Trump campaign suffered among 60 lawsuits and found that most — two-thirds — didn't actually claim there had been voter fraud. About 12 cases that did allege fraud had "their days in court," the *Times* wrote, "and consistently collapsed under scrutiny."

In dismissing a Nevada case, District Court Judge James T. Russell wrote in a lengthy dissection of the lawsuit's claims that the campaign "did not prove under any standard of proof that illegal votes were cast and counted."

Some courts have dismissed cases because the plaintiffs lacked standing, meaning a right to sue. For instance, the U.S. Supreme Court cited standing in rejecting the state of Texas' attempt to sue four swing states Biden had won. But Greene is wrong to claim "all of the cases … have been thrown out on standing."

Pennsylvania Objection: No Claim of Fraud

Hawley prefaced an objection about a Pennsylvania voting law by saying it was "quite apart from allegations of any fraud." Instead, Hawley misleadingly described an expansion of mail-in voting in the state, passed with Republican support in 2019.

Hawley, Jan. 6: *Last year, Pennsylvania elected officials passed a whole new law that allows universal mail-in balloting and did it irregardless of what the Pennsylvania Constitution said. ... And then when Pennsylvania citizens tried to go and be heard on this subject before the Pennsylvania Supreme Court, they were dismissed on grounds of procedure, timeliness, in violation of that Supreme Court's own precedent.*

The state law in question, Act 77, was passed with bipartisan support and signed into law by Gov. Tom Wolf on Oct. 31, 2019. The law, which went into effect for the primary elections in 2020, expanded mail-in voting in the state, allowing for the first time no-excuse mail-in voting, which means registered voters can request a mail-in ballot without providing a reason for wanting or needing one. A total of 34 states plus Washington, D.C., allow no-excuse mail-in or absentee voting.

Hawley is right that the state Supreme Court dismissed a case challenging the constitutionality of the law because the Republican plaintiffs, including U.S. Rep. Mike Kelly, had waited too long to bring the suit — but he neglected to mention they waited more than a year and only filed the suit after Trump had lost the election. In the suit, the plaintiffs had asked for the invalidation of mail-in ballots cast under the statute. In dismissing the case in late November, the court wrote that the plaintiffs showed a "complete failure to act with due diligence in commencing their facial constitutional challenge, which was ascertainable upon Act 77's enactment."

In a concurring statement, Justice David N. Wecht wrote: "It is not our role to lend legitimacy to such transparent and untimely efforts to subvert the will of Pennsylvania voters. Courts should not decide elections when the will of the voters is clear."

The U.S. Supreme Court declined a request to intervene in the case.

As for the Pennsylvania Constitution, it says: "All elections by the citizens shall be by ballot or by such other method as may be prescribed by law." Kelly's case argued that expanding mail-in voting in the state could only be done through a constitutional amendment, not legislation. It cited another section in the state Constitution on absentee voting, which says the Legislature "shall, by general law, provide a manner" for absentee voting for qualified voters who may be "absent from the municipality of their residence" or who have other reasons they can't vote at their polling place, such as illness, disability or religious observances.

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