



A voter drops a ballot off during early voting Monday in Athens, Ga. [JOHN BAZEMORE/THE ASSOCIATED PRESS]

# Analysis of ballot fraud catalog reveals no threat

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Leila and Gary Blake didn't want to miss elk hunting season, or the chance to vote in the 2000 election. So the Wyoming couple requested absentee ballots.

But the Blakes had recently moved five miles down the road, crossing a town line. When they mailed their votes using the old address, they were criminally charged in a misdemeanor case settled with \$700 in fines and a few months'

probation. Two decades later, the Blakes are still listed as absentee ballot fraudsters in the Heritage Foundation's Election Fraud Database.

Far from being proof of organized, large-scale vote-by-mail fraud, the Heritage database presents misleading and incomplete information that overstates the number of alleged fraud instances and includes cases where no crime was committed, an investigation by USA TODAY, Columbia Journalism Investigations and the PBS series, FRONTLINE found.

Although the list has been used to warn against a major threat of fraud, a deep look at the cases in the list shows that the vast majority put just a few

votes at stake.

The database is the result of a years-long passion project by Hans von Spakovsky, a former member of the U.S. Department of Justice during the George W. Bush administration and a senior legal fellow with the Heritage Foundation, a conservative think tank. The entire Election Fraud Database contains 1,298 entries of what the think tank describes as "proven instances of voter fraud." It has been amplified by conservative media stars and was submitted to the White House document archives as part of a failed effort to prove that voter fraud ran rampant during the 2016 election.

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# BALLOTS

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But the Blakes' address violation is typical of the kind of absentee ballot cases in the database. It appears along with widows and widowers who voted for a deceased loved one, voters confused by recent changes to the law and people never convicted of a crime.

The Heritage database does not include a single example of a concerted effort to use absentee ballot fraud to steal a major election, much less a presidential election, as President Donald Trump has suggested could happen this year. Though Trump has repeatedly claimed that absentee ballot fraud is widespread, only 207 of the entries in the Heritage database are listed under the fraudulent absentee ballot category. Not only is that a small slice of the overall Heritage database, it represents an even smaller portion of the number of local, state and national elections held since 1970, which is as far back as the database goes.

To examine the facts behind the rhetoric, reporters looked at each case in Heritage's online category of "Fraudulent use of absentee ballots," comparing them with state investigations, court documents and news clips. Roughly one in 10 cases involves a civil penalty and no criminal charge. Some of the cases, such as the one involving the Blakes, do not match the online definition of absentee fraud as stated by the Heritage Foundation itself. Four cases did not involve absentee ballots at all, including a 1996 murder-for-hire case that included a person persuaded to illegally vote using a wrong address.

In a written response for this story, von Spakovsky — the manager of the Heritage Foundation's Election Law Reform Initiative — called the database "factual, backed up by proof of convictions or findings by courts or government bodies in the form of reports from reputable news sources and/or court records."

He acknowledges that the database is elastic enough to pull in civil cases, as well as criminal cases closed with no conviction. "Some suffered civil sanctions. Others suffered administrative rebukes," von Spakovsky said. In the case of criminal convictions, the database "does not discriminate between serious and minor cases." Charges listed in the description "add the necessary context," he wrote.

Even with such a broad definition, the Brennan Center for Justice in its 2017 examination of the full database found scant evidence supporting claims of significant, proven fraud. It did conclude the cases added up to "a molecular fraction" of votes cast nationwide. Von Spakovsky has countered

that the database is a sampling of cases that have publicly surfaced.

"We simply report cases of which we become aware," he said.

But if the Heritage database is a sample, it points to a larger universe of cases that are just as overwhelming.

"It illustrates that almost all of the voting fraud allegations tend to be small scale, individual acts that are not calculated to change election outcomes," said Rick Hasen, election law author and professor of law and political science at the University of California, Irvine.

To be sure, there are exceptions. In North Carolina, a Republican political consultant was indicted and the results of a 2018 congressional race overturned based on an absentee ballot operation. "But by and large the allegations are penny-ante," Hasen said. "Some are not crimes at all."

## Small number of votes at stake

Following unsubstantiated claims that "millions and millions" of fraudulent votes cast in the 2016 election had cost him the popular vote, Trump in 2017 created the Presidential Advisory Commission on Election Integrity to investigate stories of voter fraud.

Joining the panel was Von Spakovsky, who submitted the Heritage database almost immediately into the commission's official documents. The task force disbanded seven months after its first meeting with no report substantiating fraud.

A review of the absentee cases in the Heritage Foundation database helps explain why the panel came up short, and why such fraud is not a reasonable threat to undermine the 2020 general election.

In multiple instances, only one or two votes were involved. In other cases, no fraudulent votes were involved but are still included in the database because people ran afoul of rules on helping others fill out ballots or ballot requests. For example, a nursing home worker was civilly fined \$100 because she did not sign her name and address as an "assistant" on ballots she helped four elderly patients fill out.

Overall, the total number of absentee cases in the Heritage Foundation database is 153, with 207 entries in the category because multiple people are sometimes listed for the same case. Of those cases, 39 of them — involving 66 people — represent cases in which there seemed to be an organized attempt to tip an election, based on reporting and the group's own description.

But the details of the cases compiled in the database undermine the claim that voter fraud is a threat to election integrity.

In Seattle, an elderly

widow and a widower appeared in court the same day, having voted for their recently deceased spouses — two of 15 in the database where an individual cast the ballot of a recently deceased parent, wife or husband. "The motivation in these cases was not to throw an election," the prosecutor of the Seattle case told the Seattle Post-Intelligencer. "The defendants are good and honorable people."

## 'It wasn't anything big to begin with'

The Heritage voter fraud database correctly notes that Miguel Hernandez was arrested as part of a larger voting fraud investigation in the Dallas area.

Hernandez, who pleaded guilty to improperly returning a marked ballot in a city council election, had knocked on voters' doors, volunteered to request absentee ballots on their behalf, signed the requests under a forged name and then collected ballots for mailing.

But Heritage did not include the fact that the investigation went nowhere. Voters told prosecutors their mailed votes were accurately recorded.

"It did not materialize into anything bigger simply because it wasn't anything big to begin with," said Andy Chatham, a former Dallas County assistant district attorney who helped prosecute Hernandez. "This was not a voter fraud case."

The legend of Hernandez's activities grew even more when U.S. Attorney General William Barr recently held Hernandez out as an example of fraud. "We indicted someone in Texas, 1,700 ballots collected, he — from people who could vote, he made them out and voted for the person he wanted to."

The Department of Justice had not indicted

Hernandez. A spokeswoman told reporters Barr had been given inaccurate information.

## Fraud exists; system to catch it works

While fewer and farther between, legitimate absentee fraud is also reflected in the database. Ben Cooper and 13 other individuals faced 243 felony charges in 2006 in what was described as Virginia's worst election fraud in half a century. The mayor of tiny Appalachia, Cooper and his associates stole absentee ballots and bribed voters with booze, cigarettes and pork rinds so that they could repeatedly vote for themselves.

But the case is an example of just how difficult it is to organize and execute absentee fraud on a scale significant enough to swing an election while also avoiding detection. Heritage's compilation of known absentee cases show the schemes repeatedly occurred in local races, frequently in smaller towns where political infighting can be fierce and fraudsters easily identified. Just one voter who told her story to The Roanoke Times unraveled Cooper's ring.

"There have been some ham-handed attempts in small scale fraud, but I would be very surprised to see large scale efforts that go undetected," Hasen said. "It is very hard to fly under the radar."

*This story is part of an ongoing investigation by Columbia Journalism Investigations, the PBS series FRONTLINE and USA TODAY NETWORK reporters that examines allegations of voter disenfranchisement and how the pandemic could impact turnout. It includes the film Whose Vote Counts, which is now streaming at pbs.org/frontline, in the PBS Video App and on YouTube.*

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