

OPINION

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Editorial board

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The election lawsuit Trump should win

In its effort to challenge vote counts in key states, the Trump campaign has filed lots of lawsuits that have little chance of winning. But there is one suit that it should win — not only for the Trump campaign or the 2020 election, but for all elections in the future. It's the court fight over Pennsylvania's election rules, and it involves a fundamental issue that is important to all 50 states.

The first thing to remember is that the Constitution gives state legislatures the authority to make rules governing the conduct of elections for federal offices in their state. In October 2019, the Pennsylvania state legislature passed Act 77, which updated and revised the rules for elections in the state. For the first time ever, it allowed all Pennsylvanians to vote by mail if they chose, without requiring that they show they would be absent from their voting district on Election Day. Remember, this was pre-coronavirus, and Pennsylvania was moving toward greater voting by mail than in the past.

On the question of voting by mail, the legislature made one clear, unambiguous requirement: All mail-in ballots had to be received by 8 p.m. on Election Day. (It let stand an existing law that allowed military and overseas ballots to be received for seven days after Election Day.)

Then, in March of this year, after the arrival of the virus, the legislature revisited the law. It made some changes to accommodate voting in a pandemic. It rescheduled the state's primary election and included measures to help reduce crowding at polling places. But it left untouched the requirement that all mail-in ballots had to be received by 8 p.m. on election night.

That's where things stood as the presidential election approached. Then a number of Democratic groups filed a lawsuit against the secretary of state. The groups said the pandemic required that the deadline for receipt of absentee ballots be extended. The case went to the Pennsylvania State Supreme Court, which has a 5-to-2 Democratic majority. On Sept. 17, the court threw out the legislature's deadline for ballots and created a new one: 5 p.m. on Nov. 6, three days after Election Day. The justices just made it up.

They did not claim that the existing law was unclear. "We are not asked to interpret the statutory language establishing the received-by deadline for mail-in ballots," the majority justices wrote. "Indeed there is no ambiguity regarding the deadline set by the General Assembly."

Nor did they claim that the existing law was unconstitutional. "We are not asked to declare the language facially unconstitutional as there is nothing constitutionally infirm about a deadline of 8 p.m. on Election Day for the receipt of ballots," the justices added. Instead, the justices claimed that an "extraordinary situation" existed. They repeated a lot of the fretting Democrats engaged in earlier this year about the post office. And then they declared coronavirus a "natural disaster," threw out the law, and wrote a new one.

Republicans immediately protested. The Constitution gives the legislature the power to make election law, they argued, and in March the legislature, fully aware of the coronavirus situation, passed a law governing the 2020 election. The court can't just make up a new law. The matter went to the U.S. Supreme Court, which split 4 to 4 on whether it should intervene. (New Justice Amy Coney Barrett was not up on the case.) That meant the court took no action. Pennsylvania would keep accepting ballots for three days after Election Day.

Justice Samuel Alito protested vigorously. "The court's handling of the important constitutional issue raised by this matter has needlessly created conditions that could lead to serious post-election problems," he wrote. But Alito's words went unheeded, and the election went on with the state supreme court's new ballot deadline. The results in Pennsylvania, of course, are very close — it took days to call the race for Joe Biden — and the court-created deadline is part of a confusing and difficult situation. Along with Justices Thomas and Gorsuch, Alito concluded that the Pennsylvania case "has national importance, and there is a strong likelihood that the state supreme court decision violates the federal Constitution."

So now, with the election over, the issue is headed back to the Supreme Court. And putting aside the specifics of the Pennsylvania situation, the matter concerns a hugely important principle, which is the constitutional authority of state legislatures to make election law for their states. Other states with no stake in the Pennsylvania results can see that. On Monday, 10 states — Missouri, Alabama, Arkansas, Florida, Kentucky, Louisiana, Mississippi, South Carolina, South Dakota and Texas — filed an amicus brief upholding the importance of the constitutional rights of state legislatures. "The Pennsylvania supreme court's decision overstepped its constitutional responsibility, encroached on the authority of the Pennsylvania legislature, and violated the plain language of the [Constitution's] Election Clauses," the states, which are all governed by Republicans, wrote.

Who will win? Who knows, but it appears Republicans have a strong case that the Pennsylvania court exceeded its authority. "This is not some constitutional flight of fancy," said John Yoo, the Berkeley professor and a former George W. Bush Justice Department official. "Justice Samuel Alito has already made clear his view that the Pennsylvania Supreme Court has violated the Constitution. ... If the federal Constitution directly grants those powers to the legislature of Pennsylvania, state courts have no authority to alter state election law for federal office, including the presidency."

In the end, the case might have no effect on the presidential election results in Pennsylvania. But that's not the issue at hand. The issue is who writes the election laws in the states — the legislature, or someone else? The Constitution is clear on the matter, and the U.S. Supreme Court needs to decide.

Letters policy

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Include your name, address and phone number for verification or clarification.



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As mental health comes out of shadows, so should insurance

Anyone who has ever tried to navigate the crazy task of selecting an individual health insurance policy knows the fundamental problem is figuring out exactly what you're buying. Then, traversing the dizzying maze of HMOs, doctors, hospitals, co-pays, deductibles, allowable procedures, and coverage eligibility only increases the frustration.

SAL GENTILE

While exasperating for almost everyone who has chosen a health care plan, this lack of transparency, compounded by high costs, is especially irritating for three specific groups of individuals: those searching for affordable mental health care coverage; the growing number of "gig" workers, and younger individuals under 30 who typically forego purchasing health insurance. Each of these segments has their own challenges that have been exacerbated by COVID-19. But the good news is innovators in health insurance are helping the industry provide individuals with practical solutions at reasonable prices.

Our atypical and somewhat whimsical name, "Friday," for a health insurance company elicits a lot of questions. Yet the answer is simple. We believe health insurance should not be complicated or expensive. Simple, consistent, and dependable plans should offer the peace of mind to live every day with that

positive "Friday feeling."

Of significance is the fact that coverage for mental health care has for too long been prohibitively expensive with limited access to practitioners. It's time that changed. The pandemic has exacerbated mental health stresses. Yet the truth is, those struggles were there before COVID, and the health insurance industry has been slow to respond to provide affordable coverage.

That is compounded by the fact that the U.S. has been slow to recognize that just about everyone struggles with mental health issues at one time or another. Nevada is no exception. According to Mental Health America, Nevada ranks 49th out of 51 states in access to mental health care, and nearly 11 percent of adult Nevadans with mental illness are uninsured. In 2020, 63.9 percent of adult Nevadans with mental illness went untreated. And almost a quarter (22.3 percent) of all US adults with a mental illness reported that they were not able to receive the treatment they needed while 59 percent of youth with major depression do not receive any mental health treatment.

This lack of treatment is deplorable especially given the fact that the 2008 Mental Health Parity and Addiction Equity Act and the Affordable Care Act required large group health plans and small group and individual plans to provide

coverage for mental health care at levels comparable to medical services.

And that's why Friday Health Plans is especially proud to offer health plans options with unlimited \$0 mental health benefits. Mental health is as important as physical health, and we believe it's high time insurance companies acknowledged that with plans that increase access to mental health care.

There's no denying that change is slow in the health insurance industry. But things are changing. Fortunately, Nevada Health Link, as a state-based exchange, is one of the more progressive health insurance exchanges that is bringing in new carriers and plans to provide Nevadans with even more options while offering subsidies to help offset costs.

And one more tip. Not all health insurance plans are created equal. That's why shopping for insurance on Nevada Health Link, which offers only plans that are compliant with the Affordable Care Act, ensures you are getting a quality plan.

Regardless of what health insurance plan you buy, just buy one, no matter your age or income. While not sexy, health insurance provides peace of mind, protects you from financial disaster if you fall ill or get injured, and increases your access to a higher quality of care. Everyone deserves to have all that.

Focusing on real priorities

The morning after Election Day, the Supreme Court heard a case on foster care and adoption that puts a heck of a lot in perspective. I listened with some frustration and bewilderment as a few of the justices talked with some hostility about the idea that Catholic Social Services in Philadelphia would dare to expect to be able to contract with the city to certify and provide ongoing support for foster and adoptive families.

There are children in the city of Philadelphia who need homes, and there are people certified by Catholic Social Services with the ability and desire to help these children. How dare the city of Philadelphia get in the way of that?

While everyone has been stuck on the presidential election drama, understandably, I fear we miss the most important things. Most of the headlines that covered the Philadelphia case set it up as a conflict between LGBTQ rights and the Catholic Church. Here's how Becket Fund for Religious Liberty lawyer Lori Windham put it during an exchange with Justice Brett Kavanaugh: "(Catholic

Social Services) is not going to prevent any same-sex couple from being able to foster in Philadelphia. There are many other agencies out there. They're merely asking to be able to step aside and recuse if that situation ... were ever to arise. ... This is a system that has worked effectively and worked well for many years."

That, of course, brings to mind the ridiculous fight that the Obama administration waged against the Little Sisters of the Poor, who wound up before the U.S. Supreme Court not once, but twice, as their religious liberty rights were attacked. Who would expect Catholic nuns to cover contraception and abortion-inducing drugs in their employees' health insurance? This is what religious liberty is all about.

Speaking Wednesday about being a president for all the people was certainly the right thing for Joe Biden to say. But I have my concerns, to say the least. His partner on the ticket, Kamala Harris, has said that membership in the Knights of Columbus renders judicial candidates questionable. Given it's a fraternal organization, that was mercifully one strike against Supreme Court Justice Amy Coney Barrett that didn't make the Democrats' list of objections.

Speaking of the Knights of Columbus, one of my dearest friends in the world, Andrew T. Walther, a former vice president for communications and strategic planning for the Knights, has died. He will be mourned and missed. He worked tirelessly to advance the work of the Knights of Columbus in the service of God. He cared especially about protecting religious minorities in the Middle East and elsewhere. But the fact of the matter is he was a man who lived everyday virtue courageously.

If we're going to heal under one president or another, there needs to be some buy-in from the American people. Do we still understand that the purpose of the presidency isn't to punish our political opponents? Do we understand, too, that politics isn't meant to be a religious substitute? There's a blind, dangerous fervor I see on the streets and on social media. My solace comes from people actually praying to God for peace and wisdom.

And the message of the Knights of Columbus and the life of Andrew Walther is that real religious freedom and a robust civil society are essential. Anything else will drive us crazy — as we see in our politics and in much else.



KATHRYN JEAN LOPEZ