

Testimony of S. David Fineman before the House Committee on Oversight and Reform

September 11, 2020

My name is David Fineman.

I am a practicing attorney from Philadelphia, Pennsylvania. From 1995 to 2005, I served on the Board of Governors of the United States Postal Service and was its Chairman from 2003 to 2005. I served on the Board during the administrations of both President Bill Clinton and President George W. Bush. I also serve as the Board Chair of the Fair Elections Center, a non-partisan voting rights and election reform organization.

In looking at the questions raised by recent actions affecting the postal service, I think it's valuable to review some USPS history.

In 1970 the cabinet-level Post Office Department was replaced with a new federal agency, the United States Postal Service, an independent establishment of the Executive Branch, and the result of the Postal Reorganization Act signed by President Nixon in August, 1970. Prior to 1970 the Post Office was run by political appointees, traditionally headed by principal political associates of the President. Most of the high-level positions were political appointees of the Postmaster General in consultation with the President, including Postmasters of various municipalities. The letter carriers, as well as the clerks working in the distribution centers, and in the Post Office were not represented by any recognized union.

In 1970, a wildcat strike, starting in New York, and then spreading to other large cities, took place as workers demanded higher wages, better working conditions, and recognition of the Unions. This resulted in President Nixon calling up the National Guard to deliver the mail.

Seeing the turmoil Lawrence O' Brien, a former Postmaster General under President Kennedy and Winton Blount the Postmaster General under President Nixon, came to understand that the Post Office could not be operated in the Executive Branch of government but needed to be independent of politics.

This resulted in the formation of the Board of Governors of the USPS, whose nine-member Board, [five of one Party and four of another] was nominated by the President and confirmed by the United States Senate. The Board would select the Postmaster General and in consultation with the Postmaster General, would select the Deputy Postmaster General. These 11 members would constitute the Board of Governors who were charged with setting policy for the USPS.

I was nominated to serve on the Board of Governors by President Clinton in 1995, and then confirmed by the Senate in the same year. I served on the Board until 2005, and was Chairman from 2003 to 2005, during the administration of President Bush. **Never was there any interference in the business of the USPS by the President or the Executive Branch of the government. Further, never did the President or any person from the Executive Branch make a recommendation to hire a particular person to serve as Postmaster General.**

Beginning sometime around 1997, the USPS began to lobby Congress to change the 1971 law to allow it to act more like a business and to change the rate-making process. This resulted in legislation in 2006 under which the USPS currently operates. The USPS attempted to convince Congress that it had the expertise to create its own operating schedules, etc. Congress then pushed back and enacted section 3661, which stated that “When the Postal Service determines that there should be a change in the nature of postal services which will **generally** affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Regulatory Commission requesting an advisory opinion on the change. (emphasis added)

Therefore, the changes enacted by the current Postmaster General as reported in the press “generally affect service” either “on a nationwide or “substantially” nationwide basis. If so, USPS *must* obtain the advisory opinion.

It should be emphasized that the opinion is merely “advisory.” Therefore, USPS can totally disregard the opinion. However, it allows the public an opportunity to view the changes and provide comment. It also allows the PRC to lend its expertise to the changes, in the hope that that if there is going to be change, the PRC’s expertise will be helpful in making the changes originally proposed.

The Post Office is enshrined in the Constitution because the Founders recognized it as essential to facilitate communication between the people and to connect the communities of our young democracy. In those two hundred plus years since, it has become one of our nation’s most effective services, a crucial lifeline that touches nearly all Americans. The government delivers pension and unemployment checks, as well as tax refunds. And millions of Americans rely on it to deliver essential items such as prescription drugs. A growing number of states use it to safely and reliably deliver ballots during their elections. USPS has done a very good job helping to facilitate one of the most important activities in our democracy. Given the concerns over the Covid 19 pandemic, many more states are offering this option of mail-in ballots. These necessary expanded efforts have the same safeguard that have always protected the integrity of absentee and mail ballots, including the more than 20 million cast in the last Presidential election. I might add that all existing evidence indicates that the prevalence of voter fraud via vote-by-mail is somewhere between negligible and nonexistent.

Personally, I'm committed to ensure every American citizen who wants to vote has ample ways to do so, especially this year with the pandemic. Concern over voting rights led me to join the Board of the Fair Elections Center, a nonpartisan, national voting rights and election reform organization that works to make elections safe and fair for all voters. I am extremely concerned by the actions in the past few weeks by the Postmaster General to remove sorting machines and drop boxes as the nation prepares for an unprecedented election during a health crisis. These recent cutbacks in sorting capability and the forced reduction of extra delivery trips seriously threatens voters’ ability to have their votes counted.

A properly run postal service, as the Founders recognized, is a key to our democracy. We must keep it that way.

Thank you.