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Voting in the 2020 Elections

April 20, 2020

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PRESENTS

**“Voting in the 2020 Elections” – April 20, 2020**

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## WARREN M. ANDERSON LEGISLATIVE SEMINAR SERIES

### *Voting in the 2020 Elections*

Online – April 20, 2020

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#### SPEAKER BIOGRAPHIES

**JERRY H. GOLDFEDER**, an election lawyer for thirty-five years, is Special Counsel at Stroock. He is an Adjunct Professor of Election Law at Fordham Law School, where he has taught since 2003, and was voted Adjunct Teacher of the Year in 2015 and 2019. He is the author of the treatise *Goldfeder's Modern Election Law*, now in its fifth edition, and is co-author of the bimonthly *New York Law Journal* column "Government and Election Law." He is also the author of numerous scholarly and popular articles about election law, campaign finance, and the constitutional and statutory issues relating to the nomination and election of the president of the United States. He received a J.D. from Benjamin N. Cardozo School of Law, Yeshiva University; an M.A. in Political Science from the University of California, Los Angeles; and a B.A. from Brooklyn College. He is admitted to practice in the U.S. District Court, Southern District of New York; U.S. District Court, Eastern District of New York; U.S. Court of Appeals, Second Circuit; U.S. Court of Appeals, Eighth Circuit; and the U.S. Supreme Court.

**HILARY JOCHMANS** is President of Jochmans Consulting, a boutique government affairs practice focused on policy areas important to New York, including financial services, technology, economic development, and fashion. She has more than 15 years of political and government experience in Washington and New York. Most recently before founding the company, Hilary was the Director of the New York State Governor's Office in Washington D.C. for both Andrew Cuomo and David Paterson, and the Deputy Director for Eliot Spitzer. Hilary also spent 11 years on Capitol Hill working for Senator Tom Carper of Delaware and for Congressman Gary Ackerman of New York. A native New Yorker, Hilary holds a B.A. from the University of Virginia and a J.D. from the George Washington University Law School. She is admitted to practice in the U.S. Supreme Court and the New York State Bar. Hilary is an active member of the New York State Bar Association where she currently serves as Co-Chair of the Committee on Federal Legislative Priorities.

**JOHN NONNA** is currently serving as the Westchester County Attorney overseeing a law department of sixty attorneys. Previously he served as a litigation partner and practice group leader at several major law firms, most recently Squire Patton Boggs, LLP. He served on the New York State Bar Association's Special Committee on Voter Participation and Committee on the New York State Constitution, and chaired its Committee on Federal Legislative Priorities. He has served as co-chair and pro bono voting rights litigator for the Lawyers Committee on Civil Rights Under Law which

administers a nationwide nonpartisan election protection program. He was also a founding member of the New York Democratic Lawyers Council. He is a fellow of the American College of Trial Lawyers. He graduated from Princeton University and New York University Law School.

**RICHARD RIFKIN, ESQ.**, has worked in New York State Government for 40 years. In addition to serving as Special Counsel to former governor Eliot Spitzer, he served as Deputy Attorney General for the State Counsel Division of the Attorney General's office from 1999–2006. He also worked in the Attorney General's office from 1979–1994, serving as counsel to the Attorney General and First Assistant Attorney General, among other positions. From 1994–1998, Rifkin was the Executive Director of the New York State Ethics Commission. Rifkin received a B.A. from Washington and Jefferson College and an LL.B. from Yale Law School. Since 1984, Rifkin has served as a member of the Chief Administrative Judge's Advisory Committee on Civil Practice, which recommends changes in civil procedure in New York State courts. He was an adjunct professor at Albany Law School teaching government ethics from 2002–2006.

**JENNIFER WILSON** is Deputy Director for the League of Women Voters of New York State. She serves as the League's in-house lobbyist, policy advisor, and communications representative. Since joining the League in 2015, Jennifer has helped advocate for the passage of progressive voting reforms, including early voting, primary consolidation, pre-registration for 16- and 17-year-olds, and voter registration modernization. Her voting rights leadership led her to be named one of *City and State's* "40 Under 40 Rising Stars" in 2017. Jennifer has been featured in the *Times Union*, *Wall Street Journal*, *Politico*, and on *NPR*, as an expert on voting rights and government ethics.

# Issues for the 2020 Elections: An Unprecedented Challenge

John Nonna

April 20, 2020

## 1. Current Situation

a. Governor's Executive Orders issued under Section 29-a of the Executive Law. They are valid for 30 days but can be extended.

i. EO 202.15 (4/9):

1. Election Law Section 8-400 is temporarily suspended and modified to provide that an absentee ballot can be granted based upon temporary illness and shall include the potential for contraction of the COVID19 virus for an election held on or before June 23, 2020

2. Section 8-400 was also modified to allow for electronic application and no requirement for in person signature or appearance to access an absentee ballot.

ii. EO 202.13 (3/29):

1. Postponed circulation filing and collection of any designating petition or independent nominating petitions for any office under Election Law or Education law for any office commencing on March 31st
  2. Postponement of village, school board and library board elections until at least June 1, 2020 and subject to further directive as to the timing location or manner of voting for such elections. (EO 202.5 3/18/20) originally postponed village elections.
- iii. EO 202.12 (3/28/20):
1. Postponement of presidential primary from April 28 to June 23, 2020: same date as other state and federal primary elections
  2. Postponement of certain primary elections: 27<sup>th</sup> Congressional district, 12<sup>th</sup>, 31<sup>st</sup> and 136<sup>th</sup> Assembly Districts and Fiftieth Senate District to June 23.

iv. EO 202.2 (3/14/20) relating to elections prior to April 1, 2020—village elections :

1. Section 8-400 of Election Law is suspended and otherwise altered to provide that due to prevalence and community spread of COVID-19 temporary illness for the purpose of this election shall include the potential for contraction of the COVID-19 virus for any election held on or before April 1, 2020,
2. Allowed electronic application without no requirement for in person signature or appearance to access absentee ballot and modified deadlines to apply and postmarked date
3. Reduced number of signatures on petitions required under Election Law section 6-136.

2. Issues for June Primaries

a. Absentee ballots

- i. New York Constitution Article II section confers upon legislature authority to

provide for, time, and place at which a qualified voter may vote and for the return and canvass of their votes if (1) absent from county of residence or from New York City or (2) may be unable to appear personally because of illness or physical disability.

ii. Section 8-400 of Election Law provides:

1. Absence from County of Residents or New York City;

2. Unable to appear personally at polling place because of "illness or physical disability or duties related to primary care of ill or physically disabled individual or is or will be patient

3. Inmate or patient in VA hospital

4. Detained or confined in jail after conviction provided otherwise qualified to vote in election district of residence

iii. Applications need to be requested by voter

iv. 2010 U.S. Election Assistance Survey:

approximately 3% of New York voters cast absentee ballots.

v. 34 states offer no fault absentee balloting



- vi. Seven states provide for a permanent absentee list; New York limits permanent list to disabled persons
  - vii. Harvesting of absentee ballots.
- b. Polling places
  - i. Early voting
  - ii. Schools
- c. Poll workers
  - i. Vulnerable populations
  - ii. PPE/Masks/Hand sanitizers
  - iii. Recruit college students
- d. Turnout-voter apprehension
- 3. Experience in other jurisdictions
  - a. Wisconsin primary-1.5 million voters cast ballots by mail; 400,000 in person voters
  - b. Vote by mail states—ballots are mailed to voters: Oregon, Colorado , Washington, Utah and Hawaii
    - i. Three states permit counties to opt for voting by mail: California, North Dakota and Nebraska (if less than 10,000 inhabitants).
- 4. 2020 Presidential Election: Where will we be?
  - a. Poll worker training

**b. Voter registration**

**c. Absentee ballots**

**d. Early voting**

**e. Election Day**



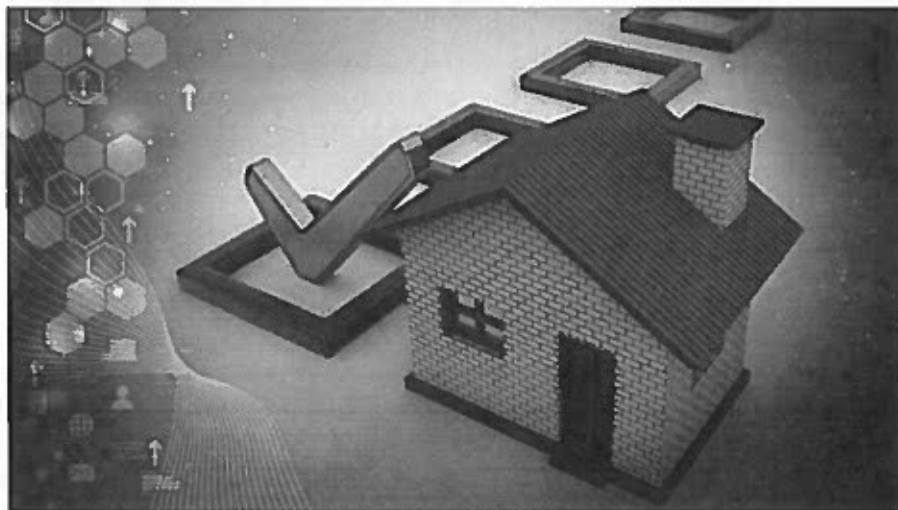
OUR AMERICAN STATES



The NCSL Podcast

# Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options

4/14/2020



Most states offer at least one method for any eligible voter to cast a ballot before Election Day. While some states provide early in-person voting, this webpage addresses absentee voting and all-mail voting.

**Absentee Voting:** All states will mail an absentee ballot to certain voters who request one. In two-thirds of the states, any qualified voter may vote absentee without offering an excuse, and in one-third of the states, an excuse is required. Some states offer a permanent absentee ballot list: once a voter asks to be added to the list, s/he will automatically receive an absentee ballot for all future elections.

**All-Mail Voting:** In a handful of states, a ballot is automatically mailed to every eligible voter (no request or application is necessary). Polling places may also be available for voters who would like to vote in-person. Other states may permit the all-mail option for specific types of elections.

As for early in-person voting, it is available in four-fifths of the states. In these states, any qualified voter may cast a ballot in person during a designated period prior to Election Day. Please see our page on State Laws Governing Early Voting.

**NOTE:** This page should be used for general informational purposes only. It is not intended as a legal advice. Please contact your local election officials for information on voting in your jurisdiction.

## Introduction

When, where and how Americans vote has evolved over the course of the last 250 years. When the United States first came into being, voters would voice their choices on courthouse steps, out loud and very much not in secret. Toward the end of the 19th century, a paper ballot became common and was increasingly cast in private at a neighborhood polling place. Times are changing again. The majority of states now permit voters to cast ballots before Election Day, either in person at designated early voting sites, or via a ballot that has been mailed to the voter's home. In all states, to varying degrees, voting now takes place not just on one day during a certain time period, but over a series of days and weeks before the election, as well.

Some states provide an early, in-person voting period; for information on this option, please see NCSL's webpage State Laws Governing Early Voting.

All states allow voters who have a reason they can't vote on Election Day to request a ballot in advance, and many states allow all voters to request a ballot in advance without requiring a reason. States vary on what extent they offer these options, including some states that deliver ballots to all voters (while maintaining some in-person voting locations for those that prefer to vote in person or may need assistance). This page goes into detail about each of these variations and how absentee/mailed ballots are handled in states.

### A Note on Terminology

A ballot that has been sent to a voter and is voted outside of a polling place or election official's office has traditionally been referred to as an "absentee ballot" and the person who votes that ballot has been called an "absentee voter." This terminology is common in state law and comes from the concept that voters would use this option only when they were "absent" from their neighborhood

polling place on Election Day. As time has gone on and more and more voters request a ballot in advance as their default voting method, and as states have begun offering more opportunities for voters to do so, the terminology has evolved. Some states refer to “advance ballots,” “mailed ballots,” “by-mail ballots,” “mail ballots” or “vote-by-mail ballots.”

In this report NCSL has chosen to use “absentee/mailed ballots” to reflect the traditional terminology and also the evolution of the use of the term. Note that this term refers to ballots that are mailed out to voters by election officials and does not indicate the method voters choose to return the ballot. Often these “absentee/mailed ballots” are returned via methods other than mail, i.e. in person at a voting location or at a secure drop box.

### What Are Some Possible Advantages and Disadvantages to Voting by Mail?

As legislators consider policies that allow more people to “vote at home,” or vote by mail, or vote absentee, they will be weighing advantages and disadvantages.

#### **Advantages**

- **Voter convenience and satisfaction.** Citizens can review their ballots at home and take all the time they need to study the issues. Voters often express enthusiasm for this option. See this survey from Oregon Public Broadcasting on the Beaver State’s all-mail voting system that showed 87% support, for example.
- **Financial savings.** Jurisdictions may save money because moving toward more absentee/mailed ballot voting reduces the need to staff and equip traditional polling places. A 2016 study of Colorado from The Pew Charitable Trusts found costs decreased an average of 40% in five election administration categories across 46 of Colorado’s 64 counties (those with available cost data) after it implemented all-mail ballot elections. (Note: The study examines a number of reforms Colorado enacted in 2013, with all-mail elections being the most significant. Others included instituting same-day registration and shortening the time length for residency in the state for voting purposes.)
- **Turnout.** Some reports indicate that because of convenience, voter turnout increases. See this 2013 report on all-mail ballot elections in Washington and this 2018 report on all-mail ballot elections in Utah. Effects on turnout can be more pronounced for lower turnout elections (local elections, for example) and for low propensity voters (those who are registered but do not vote as frequently). Evidence for increased turnout based on absentee/mailed ballot voting, instead of all-mail ballot elections, is not as clear.

### Disadvantages

- Financial considerations. Sending ballots by mail increases printing costs for an election. There may be up-front costs of changing to different vote-counting equipment, although overall fewer voting machines are required in jurisdictions that have more absentee/mailed ballot voting and count ballots at a centralized location. If a state chooses to pay for return postage for these ballots that could also increase costs.
- An increase in voter "errors" or "residual votes." When marking a ballot outside of an in-person voting location, a voter can potentially mark more selections in a contest than the maximum number allowed (called an overvote) or mark less than the maximum number allowed, including marking nothing for that contest (called an undervote). Political scientists often refer to these overvotes and undervotes as errors or residual votes. Voting equipment at in-person voting locations will notify voters if this happens and allow the voter the opportunity to correct it. When returning an absentee/mailed ballot there is not a similar mechanism to inform voters of errors, so there tend to be more overvotes and undervotes. Damaged absentee/mailed ballots may be harder to correct as well. Procedural choices can mitigate this effect to some extent.
- Tradition. The civic experience of voting with neighbors at a local school, church or other polling place is lost when voting with an absentee/mailed ballot. Some point out that the experience can be shared with family members at home in a way that isn't possible with in-person voting.
- Disparate effect on some populations. Mail delivery is not uniform across the nation. Native Americans on reservations in particular may have difficulty with all-mail elections. Many do not have street addresses, and their P.O. boxes may be shared. Low-income citizens move more frequently and keeping addresses current can pose problems. Literacy can be an issue for some voters, as well, since election materials are often written at a college level. (Literacy can be a problem for voters at traditional polling place locations, too.)
- Opportunities for coercion. If a voter is marking a ballot at home, and not in the presence of election officials, there may be more opportunity for coercion by family members or others.
- Slower result reporting. Ballots may continue to arrive up to and even after Election Day (depending on state law), so it can take days (or longer) after the election before election officials are able to count all ballots. Note that final

results are typically not official until a week or two after the election. During this time, all states are examining provisional ballots and ballots coming from military or overseas voters, as well. Policy choices can mitigate this effect.

## Qualifying for an Absentee Ballot

The concept of voting "absentee" first came about during the Civil War as a way for soldiers to cast ballots back in their home states. The idea of allowing military voters to cast a ballot "in absentia" is still one of the driving factors for states allowing absentee ballots. All states, by federal law, are required to send absentee/mailed ballots to military and overseas voters for federal elections (see the 1986 Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)).

Aside from military and overseas voters, 16 states only permit certain voters to request an absentee ballot by mail when they have an "excuse" for not being able to vote at the polls on Election Day. More details on these states can be found in the table below. Note, however, that many states that require an excuse to obtain an absentee ballot do provide early voting opportunities for voters to cast a ballot in-person before Election Day.

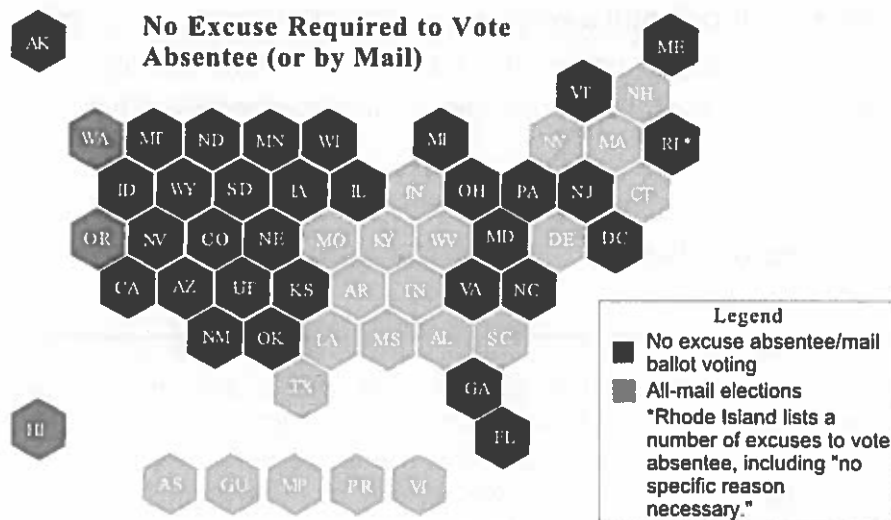
More than two-thirds of the states have "no-excuse absentee" voting, which means any voter can request a mail ballot without providing an excuse, and a few send all voters ballots by mail.

In this section you will find:

- States that do not require an excuse to vote absentee or by mail.
- Excuses to vote absentee in states that do require an excuse.
- Who qualifies for permanent absentee ballot status?
- How and when are voters removed from a permanent absentee list?

### **Which states do not require an excuse to vote absentee or by mail?**

The following 34 states and Washington, D.C., offer "no-excuse" absentee/mailed ballot voting: Alaska, Arizona, California, Colorado\*, District of Columbia, Florida, Georgia, Hawaii\*, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon\*, Pennsylvania, Rhode Island\*\*, South Dakota, Utah\*, Vermont, Virginia, Washington\*, Wisconsin and Wyoming.



\*Designates a state that sends mailed ballots to all eligible voters. Voters don't need to request a mailed ballot but automatically receive one. See the section on all-mail elections below.

**\*\*Rhode Island lists a number of excuses to vote absentee, but also specifies “No specific reason necessary.” Since any Rhode Islander can request an absentee ballot, NCSL has categorized it as no excuse required.**

## What are the excuses to vote absentee in states that require an excuse?

All states permit voters who will be outside of their home county to vote absentee/by mailed ballot, as well as voters with an illness or disability who know ahead of time that they won't be able to make it to the polls. It is also common to provide this option for elderly voters.

Many states also permit voters to request an absentee/mailed ballot in case of an emergency situation, such as an unforeseen illness, confinement to a medical facility or an accident resulting in injury. More details on these situations can be found on NCSL's page on [Absentee Voting in Case of a Personal Emergency](#).

Beyond that, there are a variety of acceptable excuses in states, summarized in the table below.

**Note:** This chart is meant to compare and summarize the acceptable excuses for states that require an excuse to vote absentee. Since it is comparative, it is not comprehensive of all the excuses in a given state. Visit state election webpages for additional information on a given state's requirements

### Excuses to Vote Absentee/By Mailed Ballot



State	Out of County on Election Day	Illness or Disability	Persons Older Than a Certain Age	Work Shift is During all Voting Hours	Student living Outside of County	Election Worker or Poll Watcher	Religious Belief or Practice	ACP* Participant	Incarcerate (but Still Qualified to Vote)
Alabama Ala. Code § 17-11-3	✓	✓		✓	✓	✓			
Arkansas Ark. Code Ann. § 7-5-402	✓	✓							
Connecticut C.G.S.A. § 9-135	✓	✓				✓	✓		
Delaware 15 Del. Code § 5502	✓	✓		✓			✓		
Indiana Ind. Code § 3-11-10-24	✓	✓	65+	✓		✓	✓	✓	
Kentucky Ken. Rev. Stat. § 117.085(1)(a), § 117.077	✓	✓	65+	✓	✓			✓	✓
Louisiana LSA-R.S. 18:1303	✓	✓	65+	✓	✓	✓		✓	✓
Massachusetts M.G.L.A. 54 § 86	✓	✓			✓		✓		
Mississippi Miss. Code Ann. § 23-15-715	✓	✓	65+						
Missouri V.A.M.S. 115.277	✓	✓				✓	✓	✓	✓
New Hampshire N.H. Rev. Stat. § 657:1	✓	✓		✓			✓		
New York § 8-400	✓	✓							✓
South Carolina § 7-15-320	✓	✓	65+	✓	✓	✓			✓
Tennessee T. C. A. § 2-6-201	✓	✓	60+	✓	✓	✓	✓		
Texas V.T.C.A., Election Code § 82.001 et seq.	✓	✓	65+					✓	✓

State	Out of County on Election Day	Illness or Disability	Persons Older Than a Certain Age	Work Shift is During all Voting Hours	Student living Outside of County	Election Worker or Poll Watcher	Religious Belief or Practice	ACP* Participant	Incarcerated (but Still Qualified to Vote)
West Virginia W. Va. Code, § 3-3-1	✓	✓	"Advanced age"	✓	✓			✓	✓

\*ACP stands for Address Confidentiality Program, which protects the information of victims of domestic violence, sexual assault or stalking. (Learn more about ACPs [here](#).)

## Who qualifies for permanent absentee ballot status?

Some states permit voters to join a permanent absentee/mailed ballot voting list. Voters who request to be on this list will automatically receive an absentee/mailed ballot for each election. This option may be offered to all voters, or to a limited number of voters based on certain criteria described below.

A permanent absentee list is sometimes known as a "single sign-up" option, since a voter needs to sign up only once to receive an absentee/mailed ballot for all future elections.

Seven states plus D.C. permit any voter to join a permanent absentee/single sign-up list and will mail that voter an absentee/mailed ballot for each election: Arizona, California, District of Columbia, Hawaii, Montana, Nevada, New Jersey and Utah. (Note: Hawaii and Utah will hold all-mail ballot elections in 2020, and California counties are moving in that direction as well.)

- In Florida, a request for a vote-by-mail, or absentee, ballot remains in effect for all elections through the two-year election cycle (Fla. Stat. §101.62).
- In Michigan, North Dakota (N.D.. Cent. Code §16.1-07-05(1)), Oklahoma (AC 230:30-5-13), South Dakota (S.D.. Codified Laws Ann. §12-19-2) and Vermont (Vt. Stat. Ann. tit. 17, §2532) a request for a vote-by-mail, or absentee, ballot remains in effect through the calendar year.

Ten states permit voters with permanent disabilities to use a "single sign-up" option, and, once on the list, the state sends them absentee/mailed ballots: Alabama, Connecticut, Delaware, Kansas, Louisiana, Mississippi, New York, Tennessee, West Virginia and Wisconsin. Louisiana and Wisconsin also make this option available to senior voters. In some cases, a note from a physician or other indication of a permanent disability may be required.

An additional six states automatically send absentee voter applications to voters on a permanent/single sign-up list. This differs from the category above since voters must return the application before receiving an absentee/mailed ballot:

State	When Is a Voter Removed from the Permanent Absentee List?
Hawaii H.R.S. §15-4 (h)	A voter's permanent absentee voter status shall be terminated if any of the following conditions apply: (1) The voter requests in writing that such status be terminated. (2) The voter dies, loses voting rights, registers to vote in another jurisdiction, or is otherwise disqualified from voting. (3) The voter's absentee ballot, voter notification postcard, or any other election mail is returned to the clerk as undeliverable for any reason. (4) The voter does not return a voter ballot by 6 p.m. on Election Day in both the primary and general election of an election year.
Minnesota Minn. Stat. §203B.04	A voter's permanent absentee status ends and automatic ballot application delivery must be terminated on: (1) The voter's written request. (2) The voter's death. (3) Return of an absentee ballot as undeliverable. (4) A change in the voter's status to "challenged" or "inactive" in the statewide voter registration system.
Montana M.C.A. §13-13-212	An elector may request to be removed from the absentee ballot list for subsequent elections by notifying the election administrator in writing. The election administrator shall biennially mail a forwardable address confirmation form to each elector who is listed in the national change of address system of the U.S. postal service as having changed the elector's address. ... If the form is not completed and returned or if the elector does not respond using the options provided in subsection (4)(b)(v), the election administrator shall remove the elector from the absentee ballot list.
New Jersey N.J.S.A. 19:63-3	A county clerk may not remove a voter's name from the list unless: (i) The voter is no longer listed in the official register. (ii) The voter cancels the voter's absentee status. (iii) The voter's name is removed on the date specified by the voter on the absentee ballot application form. (iv) The county clerk is required to remove the voter's name from the list under Subsection (7)(c). (7)(c) A county clerk shall remove a voter's name from the list if the voter fails to vote in two consecutive regular general elections.

## Requesting an Absentee Ballot



All states provide an absentee/mailed ballot for voters upon request. Some of these states require a voter to have an excuse in order to do so, such as being out of the state on Election Day or having a permanent disability (see section above). Other states permit any voter to request a ballot with no excuse required. A handful of states also send out ballots to all eligible voters.

- Minnesota and Michigan permit any voter to apply to receive an absentee/mailed ballot application for each election.
- Pennsylvania sends an application to all voters on its permanent list at the beginning of each year and, upon submittal of the application, the voter will receive an absentee/mailed ballot for all elections that year.
- Massachusetts and Missouri send permanently disabled voters' absentee/mailed ballot applications each election.
- Alaska (Alaska Admin. Code tit. 6, § 25.650) permits the election supervisor to designate a person as a permanent absentee voter if: the voter resides in a remote area where distance, terrain or other natural conditions deny the voter reasonable access to the polling place; the voter's permanent residence is in an institution serving the aged or persons with disabilities; or the voter is disabled and has been required to be designated as a permanent absentee voter.

### How and when is a voter removed from a permanent absentee ballot list?

Once voters opt in to the list, they are automatically mailed a ballot for subsequent elections. Below is a summary of the ways in which a voter who is on the permanent ballot list can be removed.

State	When Is a Voter Removed from the Permanent Absentee List?
Arizona Ariz. Rev. Stat. §16-544 (H)	After a voter has requested to be included on the permanent early voting list, the voter shall be sent an early ballot by mail automatically for any election at which a voter at that residence address is eligible to vote until any of the following occurs: 1. The voter requests in writing to be removed from the permanent early voting list. 2. The voter's registration or eligibility for registration is moved to inactive status or canceled as otherwise provided by law. 3. The notice sent by the county recorder or other officer in charge of elections is returned undeliverable and the county recorder or officer in charge of elections is unable to contact the voter to determine the voter's continued desire to remain on the list.
California Elect. Code §3206	If the voter fails to return an executed vote-by-mail ballot in four consecutive statewide general elections, the voter's name shall be deleted from the list.
District of Columbia D.C. Mun. Regis. Tit. 3, § 720.4	A duly registered voter's request to permanently receive an absentee ballot shall be honored until: (a) The voter submits a written request to no longer receive absentee ballots. (b) The voter is no longer a qualified elector. (c) Any mail sent to the voter is returned to the board as undeliverable. (d) The voter fails to return a voted absentee ballot for two back-to-back elections in which he or she is eligible to vote.

Most states, except for the all-mail states, require voters to submit an application in order to obtain a delivered ballot. The ways in which voters may request a ballot vary, as do the deadlines for submitting the application to the local election official. Some states regulate who can distribute or collect applications for delivered ballots as well.

Once the application is received, states have a process for verifying that the application did indeed come from the intended voter before sending a ballot to that voter. The timelines for delivering ballots to voters vary, with some states beginning the process of delivering ballots 45 days (or earlier) before an election, and others delivering ballots within a month before the election.

Note: The states that send ballots to all eligible voters, including those that will do so for the first time in 2020 (Colorado, Hawaii, Oregon, Utah and Washington) are not included in this section because an application is not required.

In this section you will find:

- How can voters request an absentee ballot?
- Who can distribute and collect absentee ballot applications?
- What are the deadlines for submitting absentee ballot applications?
- How do election officials verify absentee ballot applications?

## How can voters request an absentee ballot?

The ways in which voters may submit absentee/mailed ballot applications vary among states. All states will permit a voter to submit an application by mail (usually via an approved form) or in person at a local election official's office. Many states require the application or request to be in writing, either via an official application form or by written request in the mail or by email. Some states offer an alternative, though.

Ten states have an online portal that permits voters to request an absentee/mailed ballot: Delaware, D.C., Florida, Louisiana, Maine, Maryland, Minnesota, Oklahoma, Pennsylvania, Vermont and Virginia. Some of these states used legislation to create this option and others did not.

- West Virginia and D.C. allow voters to download an application form and then return it as a scanned document.
- Wisconsin permit voters to send an email with a scan of an absentee ballot request form and proof of ID to their county registrar.
- In Arizona many counties provide an online portal, though it is not available on the state level.
- Arizona, Florida, Maine, Mississippi, Vermont and Wyoming also accept phone requests.

## **Can third party individuals or groups distribute absentee ballot applications and collect complete applications?**

As part of get-out-the-vote efforts or a civic engagement program some organizations like to assist voters in requesting and returning absentee/mailed ballot applications. Some states place restrictions on these activities by prohibiting third-party groups from distributing or collecting absentee/mailed ballot applications, or designate deadlines or turnaround times for groups that do this. These are often meant to encourage third-party groups to submit completed applications in a timely manner to ensure that voters receive absentee/mailed ballots in a timely manner.

The following states and D.C. place no restrictions, or do not specify restrictions, on third-party groups distributing or collecting completed absentee/mailed ballot applications:

- Delaware, District of Columbia, Florida, Idaho, Maryland, Montana, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota and Virginia.

The following states permit third-party groups to distribute and collect completed absentee/mailed ballot applications, but specify deadlines or turnaround times:

- In Arizona, applications collected by third parties must be submitted within six days of receipt, under penalty of \$25 per day for each completed form withheld from submittal. Any person who knowingly fails to submit a completed early ballot request form before the submission deadline for the election immediately following the completion of the form is guilty of a class 6 felony (Ariz. Rev. Stat. § 16-542).
- Any third party may collect absentee/mailed ballot applications in California, but they must be submitted with 72 hours of receipt (Cal. Election Code § 3008).
- In Illinois, applications must be returned to the election authority within seven days of receipt, or within two days of receipt if within two weeks of the election. Failure to turn over an application is a petty offense with a fine of \$100 per application (10 ILCS 5/19-3).
- In Indiana, a person handling another voter's absentee/mailed ballot application must indicate the date received by the voter and deliver it to the county election board within 10 days or by the application deadline (Ind. Code § 3-11-4-2).
- Anyone may distribute and collect advance voting ballots in Kansas but must deliver any application within two days of completion (KSA § 25-1128).

- Anyone may distribute and collect absentee/mailed ballot applications in Minnesota, but they must be returned to the election office within 10 days of completion (MN Stat § 203B.04).
- In New Mexico, third parties may distribute/collect/solicit absentee/mailed ballot applications from voters so long as they are submitted within 48 hours of completion. A person who collects applications for mailed ballots and fails to submit them is guilty of a petty misdemeanor. A person who intentionally alters another voter's completed application is guilty of a fourth-degree felony (N.M. Stat. Ann. § 1-6-4.3).

The following states place restrictions on third-party individuals or groups distributing absentee/mailed ballot applications:

- In Alaska, third-party groups are restricted to supplying only their own affiliated members with an application (Alaska Stat. §15.20.081).
- In Connecticut, third parties must register with the town clerk before distributing five or more applications. Unsolicited application mailings must meet certain criteria. No person shall pay or give any compensation to another person for distribution absentee/mailed ballot applications (Conn Gen Stat § 9-140).
- In Nevada, a person who, six months before an election, intends to distribute more than 500 applications must use the prescribed secretary of state form, identify the person who is distributing the form, provide notice to the count clerk not later than 28 days before distributing such a form, and not mail such a form later than 35 days before the election (Nev. Rev. Stat. §293.3095).

Following are examples of restrictions, rules or penalties on third-party groups collecting absentee/mailed ballot applications:

- In Alaska, an application may not be submitted to any intermediary who could control or delay the submission of the application or gather data on the applicant (Alaska Stat. §15.20.081).
- In Alabama, only the voter may deliver her or his own completed application in person (Ala. Code §17-11-4).
- In Arkansas, only a designated bearer, authorized agent or long-term care facility administrator of a voter may deliver absentee applications in person on behalf of voters (Ark. Code § 7-5-404).
- In Georgia, applications may be submitted by immediate family members only on behalf of a physically disabled voter; proof of relationship must be provided (GA Code § 21-2-381).

- In Mississippi, any person may apply for an absentee ballot on another voter's behalf, but they must sign and print their name and address on the application. Only immediate family members of a voter may make application orally in person. No person may solicit ballot applications or absentee ballots for persons staying in any skilled nursing facility unless they are a family member or designated by the voter (Miss. Code Ann. § 23-15-625).
- In New Hampshire, third parties may distribute and collect absentee applications so long as they use the prescribed form and identify themselves in communication with voter (N.H. Rev. Stat. §657:4).
- Oklahoma prohibits delivering an absentee application for another voter unless the person is an authorized agent of an incapacitated voter (26 Okl. St. Ann. § 14-115.1).
- In South Carolina, only an immediate family member may submit an application on behalf of a voter; a voter must request an application to receive one; and no third-party distribution is allowed (S.C. Code § 7-15-330).
- In Tennessee, only one application may be furnished to a voter by the election commission; it is a class E felony to give an application to any person and a class A misdemeanor to give an unsolicited request for application to any person (Tenn. Code Ann. § 2-6-202).
- In Texas, it is a felony to knowingly submit an application for a ballot by mail without the knowledge and authorization of the voter or alter the information provided by the voter on the application (V.T.C.A., Election Code §84.0041).

### **What are the deadlines for submitting an absentee ballot application?**

In order to have enough time to receive an absentee/mailed ballot application, verify the information and send the ballot out, election officials usually need to receive applications a week or more before the election. Some states have statutory deadlines for absentee ballot applications closer to the election, but if a voter applies so close to the election it's unlikely that this is enough turnaround time to receive the ballot in the mail. In emergency cases, absentee ballots can be requested after these deadlines. See NCSL's webpage, *Absentee Voting in Case of a Personal Emergency*, for details.

NOTE: This table is intended for use by policymakers and is not intended to guide voters. If you need advice on absentee/mailed ballot voting, please contact your election official.



<b>States with statutory absentee ballot application deadlines less than seven days before the election:</b>	<b>States with a statutory application deadline seven days (one week) before the election:</b>	<b>States with statutory application deadlines more than seven days before the election:</b>
Alabama: Five days before the election	Arkansas	Alaska: 10 days before the election
Connecticut: Day before the election	California	Arizona: 11 days before the election
Delaware: Day before the election	District of Columbia	Florida: 10 days before the election
Georgia: Friday before the election	Kansas	Idaho: 11 days before the election
Illinois: Five days before the election	Kentucky	Indiana: 12 days before the election
Louisiana: Four days before the election	Maryland	Iowa: 11 days before the election
Maine: Three business days before the election	Nevada	Missouri: Second Wednesday before the election
Massachusetts: Day before the election	New Jersey	Nebraska: Third Friday before the election
Michigan: Friday before the election	New York	Rhode Island: 21 days before the election (emergency requests are possible within 20 days of the election)
Minnesota: Day before the election	North Carolina	Texas: 11 days before the election
Mississippi: No deadline; at voter's discretion	Pennsylvania	
Montana: Day before the election	Tennessee	
New Hampshire: Day before the election	Virginia	
New Mexico: Thursday before the election		
North Dakota: No deadline; at voter's discretion		
Ohio: Three days before the election		
Oklahoma: Wednesday before the election		

<b>States with statutory absentee ballot application deadlines less than seven days before the election:</b>	<b>States with a statutory application deadline seven days (one week) before the election:</b>	<b>States with statutory application deadlines more than seven days before the election:</b>
South Carolina: Four days before the election		
South Dakota: Day before the election		
Vermont: Day before the election		
West Virginia: Six days before the election		
Wisconsin: Five days before the election		
Wyoming: Day before the election		

Note: The deadlines above are to request a mailed absentee ballot. In some states there are different deadlines to request an in-person absentee ballot. See NCSL's State Laws Governing Early Voting webpage.

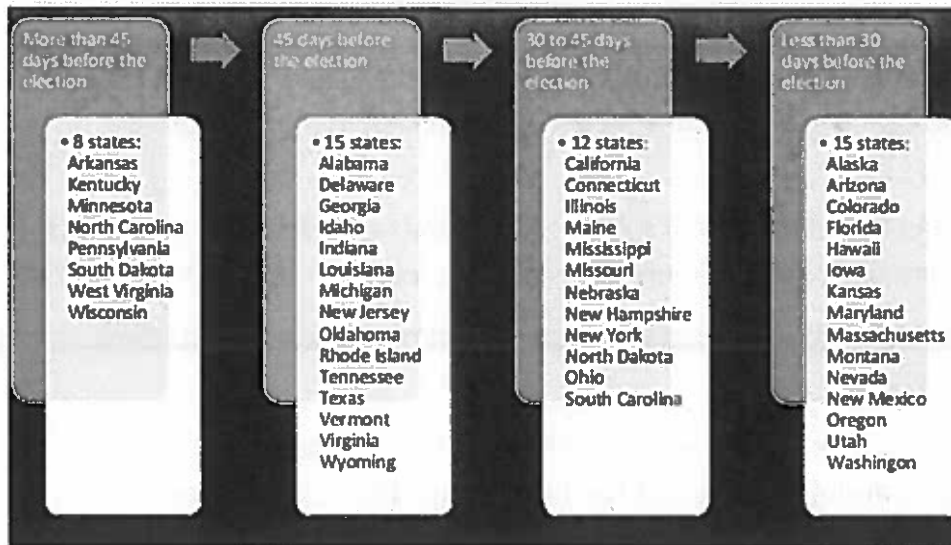
## How do election officials verify applications for absentee ballots?

When election officials receive an application from a voter asking for an absentee/mailed ballot, they verify the identity and information of the voter before sending out the ballot. This is done in a variety of ways, but most commonly by verifying the applicant's information in the statewide voter registration database. States may also conduct signature verification at this stage, to compare the voter's signature on the application with the voter registration signature. This verification step is meant to ensure that it is in fact the voter who is requesting the absentee/mailed ballot.

- Seventeen states compare an applicant's information and eligibility against the voter registration record: Florida, Kentucky, Maine, Maryland, Minnesota, Missouri, Nebraska, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Texas, Virginia, West Virginia and Wyoming.
- Nineteen states conduct signature verification in addition to checking information and eligibility against the voter registration record: Arkansas, Arizona, California, Connecticut, Delaware, Georgia, Idaho, Iowa, Illinois, Indiana, Kansas, Massachusetts, Michigan, Montana, New Hampshire, New Jersey, Pennsylvania, Rhode Island and Tennessee.

- Four states and D.C. have a different way of verifying absentee/mailed ballot applications:
  - Alaska: The ballot is issued upon receipt of application (Alaska Stat. § 15.20.081).
  - District of Columbia: The voter's signature on the application is considered affirmation that the information is correct (D.C. Mun. Regis. Tit. 3, § 720.5).
  - North Dakota: The ballot is issued upon receipt of application (ND Cent. Code 16.1-07-08).
  - South Carolina: The voter signs an oath as part of the application. Any person who fraudulently applies for an absentee ballot is guilty of a misdemeanor (S.C. Code § 7-15-340).
  - Vermont: The application is reviewed to ensure it is valid and complete (17 V.S.A. § 2533).
- Five states require voters to provide identification or take additional steps as part of their application for an absentee/mailed ballot:
  - Alabama: The application must be accompanied by a copy of ID (Ala. Code § 17-9-30).
  - Louisiana: Information and eligibility is checked against voter registration and documentation provided by the applicant as to the reason for the request (LSA-R.S. 18:1307).
  - Mississippi: The application must be notarized. If the voter is temporarily or permanently disabled only the signature of a witness 18 years or older is required (Miss. Code Ann. § 23-15-715).
  - South Dakota: Applicants must either submit a copy of photo ID or sign a notarized oath. Upon receipt of the application, election officials verify that applicant's information and eligibility against the voter registration record (SD Codified Law § 12-19-2).
  - Wisconsin: Ballot application information is verified with enclosed photo identification information (Wis. Stat. § 6.87(1)).

**When are absentee/mailed ballots sent to voters who request them?**



## Returning a Voted Absentee Ballot

All states allow the return of absentee/mailed ballots through the mail. Almost all states also permit voters to return a delivered ballot in person at the office of the local election official (either the county election official or the town/city clerk, depending on who runs elections in the state). In addition, states can permit voters to drop off a voted absentee/mailed ballot at Election Day voting locations, or in secured drop boxes.

In this section you will find:

- Which states permit voters to drop off absentee ballots at voting locations?
- Which states provide ballot drop boxes?
- Who can collect and drop off absentee/mail ballots on behalf of a voter?
- When are the deadlines for absentee ballots to be received by election officials?
- Which states accept postmarks for ballots received after the deadline?
- Which states have systems for voters to track their absentee ballots?
- Which states pay for postage to return an absentee ballot?

### Which states permit voters to drop voted absentee ballots off at voting locations?

Voters may not live close to the county seat or the office of the local election official, so some states, particularly those who have seen an uptick in the use of delivered ballots by voters, provide other locations where a voter can drop off a

ballot. This is particularly convenient for voters who have run out of time to send the ballot by mail and have it reach the election official by the deadline (see more on deadlines below).

- Eleven states and D.C. permit ballots to be dropped off at any in-person voting location in the county: Arizona, California, Colorado, District of Columbia, Hawaii, Kansas, Montana, New Mexico, North Carolina, Oregon, Utah and Washington.
- Two states permit ballots to be dropped off at a polling place, but it must be the voter's assigned precinct polling place on Election Day: New Hampshire and Vermont.

### Which states provide ballot drop boxes?



Ten states provide ballot drop boxes in some or all counties: Arizona, California, Colorado, Kansas, Montana, Nebraska, New Mexico, Oregon, Utah and Washington.

A ballot drop box provides a location where voters can drop off mail ballots in sealed and signed envelopes. The drop boxes may be supervised or unsupervised with security features, such as cameras. Many states that permit or require this option typically set minimum requirements for where ballot drop boxes must be located, how many a county must have, hours they must be available and security standards. For example:

- Arizona: Voters may drop off voted ballots at any polling site within the county during regular hours (A.R.S. § 16-548). A separate, secure early ballot container or alternate ballot box may be provided for this purpose. Election officials will determine the most accessible location for the early ballot container, but it should be placed so voters who wish to drop off voted absentee ballots may do so without interference with voters waiting in line to vote (Election Procedure Manual).
- California: The secretary of state sets guidelines based on best practices for security measures and procedures, including, but not limited to, chain of custody, pick-up times, proper labeling, and security of vote-by-mail ballot drop boxes, that a county elections official may use if he or she establishes one or more vote-by-mail ballot drop-off locations (West's Ann. Cal. Elect. Code § 3025). See 2 CCR § 20130 et seq. for details.
- Colorado: One drop box is required for every 30,000 active registered voters in the county. The drop boxes must be arrayed throughout the county in a manner that provides the greatest convenience to electors (C.R.S.A. §

1-7.5-107). Rules from the secretary of state set minimum security requirements for stand-alone drop boxes (8 CCR 1505-1:7.5).

- Montana: If a county chooses to conduct an all-mail ballot election, the election administrator's office must be a place of deposit where ballots can be returned, and the election administrator may designate one or more other locations for drop off (Mont. Code Ann. 13-19-307).
- New Mexico: Mail ballot envelopes may be returned by depositing the official mailing envelope in a secured container. These containers must have signage and be monitored by video surveillance (N. M. S. A. 1978, § 1-6-9).
- Oregon: At a minimum, official ballot drop sites must be open on Election Day for eight or more hours and must be open until at least 8 p.m. (O.R.S. § 254.470). Each county must have a minimum of two drop sites and at least one drop site for every 30,000 active registered voters in the county, including one within four miles of the main campus of each public university or community college. A drop site can be opened on the first day ballots are mailed, but at a minimum must be open to the public beginning on the Friday preceding the election, during the normal business hours of each location. The following must be considered in placement of the ballot drop box within the drop site building: security, voter convenience, access for the physically disabled, parking, and public perception that drop site is official and secure (Vote by Mail Procedures Manual). Counties must also submit a drop site security plan with the secretary of state elections division (OAR 165-007-0310).
- Washington: The county auditor must establish a minimum of one ballot drop box per 15,000 registered voters in the county and a minimum of one ballot drop box in each city, town, and census-designated place in the county with a post office, and must establish a ballot drop box on a tribal reservation if requested (West's RCWA 29A.40.0001).

### **Who can collect and drop off an absentee/mailed ballot on behalf of a voter?**

Sometimes a voter may be unable to return the ballot in person or get it to a postal facility in time for it to be counted. In these cases, the voter may entrust the voted ballot to someone else—an agent or designee—to return the ballot.

- Twenty-seven states and Washington, D.C., permit an absentee ballot to be returned by a designated agent: Alaska, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Montana, Nebraska,

New Jersey, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Virginia and West Virginia.

- A “designated agent,” in this case, could include a family member, attorney, attendant care provider or anyone who has been designated by the voter. Often the designee must be indicated in writing by the voter.
- Of these states, 12 limit the number of ballots an agent or designee may return: Arkansas, Colorado, Georgia, Louisiana, Maine, Minnesota, Montana, Nebraska, New Jersey, North Dakota, South Dakota and West Virginia.
- Nine states permit an absentee ballot to be returned by the voter’s family member: Arizona, Massachusetts, Michigan, Missouri, Nevada, New Hampshire, New Mexico, North Carolina and Ohio.
- One state specifies that an absentee ballot must be returned by the voter either in person or by mail: Alabama.
- Thirteen states do not address whether an agent or family member may return an absentee ballot on behalf of a voter: Delaware, Hawaii, Idaho, Mississippi, New York, Oklahoma, Rhode Island, Tennessee, Utah, Vermont, Washington, Wisconsin and Wyoming.

Note that interpretations of what this means vary. In some states, this may mean absentee ballot collection is generally accepted, and in others it may mean that this practice is not permitted.

Other restrictions states put on the collection of absentee ballots include:

- In Arizona, it is a felony to knowingly collect voted or unvoted absentee ballots from another person; the law has been struck down, and the Arizona attorney general is seeking an appeal.
- In California, a person designated to return a vote-by-mail ballot shall not receive any form of compensation based on the number of ballots the person returns.
- In North Carolina, it is a felony for any person to take possession of any voter’s absentee ballot for delivery or return, with an exception for a voter’s near relative or verifiable legal guardian.
- In North Dakota, no person may receive compensation, including money, goods or services, for acting as an agent for an elector.
- Texas prohibits the collection and storage of carrier envelopes for absentee ballots at another location for subsequent delivery to the early voting clerk.

- Maine, Maryland, Nebraska, New Jersey, North Dakota and South Carolina all specify that a candidate for office or an individual working for a candidate may not serve as a designated agent.

## **What are the deadlines for absentee ballots to be received by election officials?**

The most common state deadline for election officials to receive absentee/mailed ballots is on Election Day when the polls close. Some states accept ballots received after Election Day if they were postmarked before the election.

- In 42 states plus D.C. the mail ballot deadline for receipt is Election Day.
  - Alaska, Arizona, California, Colorado, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah (ballots can be dropped off on Election Day, but if mailed, they must be postmarked the day before the election or earlier), Vermont, Virginia, Washington, Wisconsin and Wyoming.
- In five states the deadline to turn in a ballot in-person is the day before the election, and the by-mail deadline is Election Day: Alabama, Arkansas, Connecticut, Oklahoma and West Virginia.
- Three additional states have different mail ballot deadlines:
  - Louisiana: The deadline is the day before the election for voters who will be outside of the county on Election Day and voters with disabilities; Election Day for UOCAVA voters and hospitalized voters (LSA-R.S. 18:1311).
  - Mississippi: Ballots must be received the day before the election (Miss. Code Ann. § 23-15-637).
  - North Dakota: Hand-delivered ballots must be received the day before the election and mailed ballots must be postmarked the day before the election and received before the canvass (NDCC 16.1-07-09).

## **Which states accept postmarks for ballots received after the deadline?**

In 16 states election officials can accept and count a mailed ballot if it is received after the deadline but postmarked before the deadline:



- Alabama: Ballot envelopes must be postmarked by the day before the election and received by noon on Election Day. For UOCAVA voters, envelopes must be postmarked on or before Election Day and received within seven days after the election (Ala. Code § 17-11-18).
- Alaska: Ballot envelopes must be postmarked on or before Election Day and received within 10 days after the election. For UOCAVA voters, envelopes must be postmarked on or before Election Day and received within 10 days of a primary or vacancy special election, and within 15 days of a general election or other type of special election. (AS § 15.20.081(e) and (h)).
- California: Ballot envelopes must be postmarked on or before Election Day and received within three days after the election (West's Ann. Cal. Elect. Code § 3020).
- Illinois: Ballot envelopes must be postmarked on or before Election Day and received before the close of the period for counting provisional ballots, 14 days after the election (10 ILCS 5/19-8, 10 ILCS 5/18A-15).
- Iowa: Ballot envelopes must be postmarked by the day before the election and received by noon the Monday following the election (Iowa Code § 53.17(2)).
- Kansas: Ballot envelopes must be postmarked before the close of polls on Election Day and received within three days after the election (K.S.A. 25-1132).
- Maryland: Ballot envelopes must be postmarked on or before Election Day and received before 10 a.m. on the second Friday after the election (MD Code, Election Law, § 9-505, COMAR 33.11.03.08).
- New Jersey: Ballot envelopes must be postmarked on Election Day and received within 48 hours of the polls closing (N.J.S.A. 19:63-22).
- New York: Ballot envelopes must be postmarked the day before the election and received within seven days after the election (McKinney's Election Law § 8-412).
- North Carolina: Ballot envelopes must be postmarked on or before Election Day and received within three days after the election (N.C. Gen. Stat. § 163A-1310). For UOCAVA voters, ballot envelopes must be postmarked on or before Election Day and received the day before the county canvass (N.C.G.S.A. § 163A-1346).
- North Dakota: Ballot envelopes must be postmarked before Election Day and received before the county canvass, six days after the election (NDCC 16.1-07-09, 16.1-11.1-07, 16.1-15-17).

- Ohio: Ballot envelopes must be postmarked the day before Election Day and received within 10 days after the election (R.C. § 3509.05).
- Texas: Ballot envelopes must be postmarked on or before Election Day and received by 5 p.m. the day after the election. A ballot that was cast outside of the U.S. must be postmarked before Election Day and received within five days after the election (Texas Election Code § 86.007).
- Utah: Ballot envelopes that are mailed must be postmarked the day before the election and received before the county canvass, seven to 14 days after the election (Utah Code Ann. § 20A-3-306, § 20A-4-301). Ballots can also be dropped off on Election Day.
- Virginia: Ballot envelopes must be postmarked on or before Election Day and received by noon on the third day after the election (Va. Code Ann. § 24.2-709).
- Washington: Ballot envelopes must be postmarked on or before Election Day (West's RCWA 29A.40.091).
- West Virginia: Ballot envelopes must be postmarked the day before the election and received before the start of the county canvass, five days after the election (W. Va. Code, § 3-3-5, § 3-5-17).

An additional six states accept ballots from military or overseas voters if the envelope is postmarked prior to the deadline:

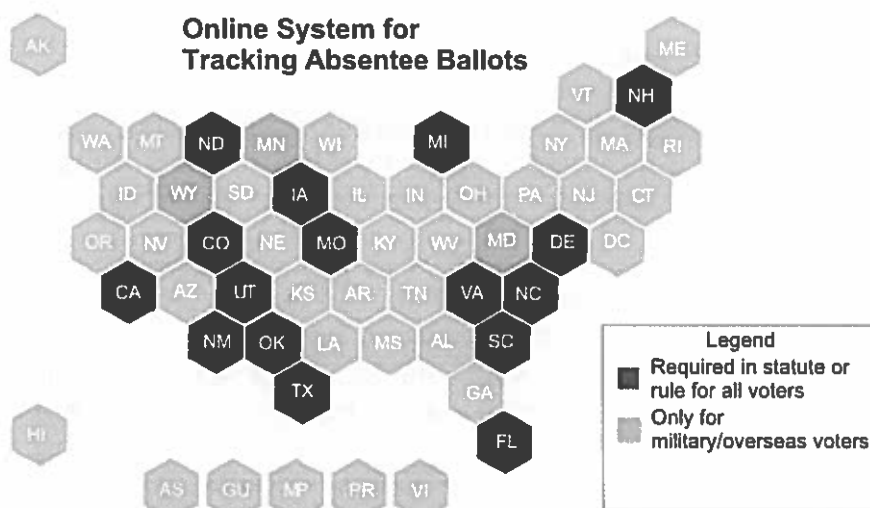
- Arkansas: For qualified electors outside of the U.S., ballot envelopes must be postmarked by Election Day and received by 5 p.m., 10 days after the election (Ark. Code Ann. § 7-5-411).
- Indiana: Ballot envelopes sent by overseas voters must be postmarked by Election Day and received by noon 10 days after the election (IC 3-12-1-17).
- Florida: A vote-by-mail ballot from an overseas voter in any presidential preference primary or general election must be postmarked on or before the election and received within 10 days of the election (Flor. Stat. Ann. § 101.6952 (5)).
- Missouri: A ballot from a military-overseas voter is counted if it is received by noon on the Friday after Election Day. If the voter has declared under penalty of perjury that the ballot was timely submitted, the ballot shall not be rejected on the basis that it has a late postmark, an unreadable postmark, or no postmark (V.A.M.S. 115.920).

- **Pennsylvania:** For military and overseas voters, envelopes must be postmarked by the day before the election and received by 5 p.m. seven days after the election (25 P.S. § 3146.8).
- **South Carolina:** A military or overseas voter must attest under penalty of perjury that the ballot was timely submitted, and the ballot is counted if it is received the day before the county canvass. A ballot may not be rejected on the basis that it has a late postmark, an unreadable postmark, or no postmark (S.C. Code § 7-15-700).

### Which states have systems for voters to track their absentee ballots?

The 2009 Military and Overseas Voter Empowerment Act (MOVE) required states to develop a free access system by which military and overseas voters could determine whether their ballot had reached the election official and if the ballot had been counted. The MOVE Act also gave military and overseas voters additional options for returning ballots. See NCSL's Electronic Ballot Transmission page for additional information.

The MOVE Act didn't necessarily mandate an online tracking system; a phone system would meet the requirement as well. But many states have developed online portals in the last several years. Increasingly, these have been opened up to all absentee/mailed ballot voters to track when their ballot has been sent out by election officials and then when the election official receives the marked ballot back, and whether or not the ballot was counted.



At least 19 states mandate such a system in statute or administrative rule:

- California (Cal. Elect. Code § 3019.7)
- Colorado (C.R.S.A. § 1-7.5-207)

- Delaware (15 Del. Code § 5526)
- Florida (F.S.A. § 101.62)
- Iowa (I.C.A. § 53.17A)
- Maryland (COMAR 33.11.06.03)
- Michigan (M.C.L.A. 168.764c)
- Minnesota (Minnesota Rules, part 8210.0500)
- Missouri\* (V.A.M.S. 115.924)
- New Hampshire (N.H. Rev. Stat. § 657:26)
- New Mexico (N. M. S. A. § 1-6-9)
- North Carolina\* (N.C.G.S.A. § 163A-1348)
- North Dakota (NDCC, 16.1-07-28)
- Oklahoma (26 Okl. St. Ann. § 14-149)
- South Carolina (S.C. Code §7-15-720)
- Texas\* (V.T.C.A., Election Code § 101.108)
- Utah (U.C.A. § 20A-3-304.1)
- Virginia (VA Code Ann. § 24.2-711.1)
- Wyoming\* (WY Rules and Regulations 002.0005.3 § 12)

\*For military and overseas voters only

Other states that maintain webpages for tracking absentee/mailed ballots, even if not required by statute, include: D.C., Kansas, Louisiana, Massachusetts, Montana, Ohio, Oregon, Rhode Island, South Dakota, Tennessee, Vermont, Washington, West Virginia Wisconsin.

There are also options being used in some states that proactively notify voters that their ballot has cleared certain steps of the process. This may be in the form of a text message or an email informing the voter that the ballot has been mailed out, that it was delivered to the voter's home by the U.S. Postal Service, that it was received by the election official, etc.

### **Which states pay for postage to return an absentee ballot?**

In most cases, it is up to the voter to pay for postage to return a mail ballot envelope to the election official. Some see this as a barrier to returning a ballot, or as a type of poll tax. One solution to this is to have ballot drop boxes widely available (see the section on drop boxes above). In states that hold all-mail ballot

elections, returning by drop box or in person is the most common return method. Another option is for election officials to pre-pay postage for voters to return their ballots. See below for states that provide postage for returning a mailed ballot.

It's important to note that the U.S. Postal Service has a policy of prioritizing election mail, especially ballots, and will deliver a ballot envelope even if it does not have sufficient postage. Typically, though, the post office will bill the local election office for the price of postage. If the majority of voters don't affix postage, this could be a significant expense for a local election office.

For military and overseas voters, federal law specifies that ballots can be returned to election officials using a free postage-paid symbol when mailed from a U.S. Post Office, Military Postal Service Agency (APO/FPO) or U.S. Diplomatic Pouch Mail. However, if voters return the ballot through a foreign mail system or via common carrier (such as FedEx, DHL or UPS), they must pay the rate for that service themselves.

For non-military voters returning a mail ballot, the following 16 states have statutes requiring local election officials to provide return postage for mailed ballots. Note that this is typically a business-reply mailing, so that local officials only pay for return postage for the ballots that are actually returned via the U.S. Postal Service.

- Arizona: "The county recorder or other officer in charge of elections shall mail the early ballot and the envelope for its return postage prepaid to the address provided by the requesting elector..." (A.R.S. § 16-542).
- California: "(a) The elections official shall deliver all of the following to each qualified applicant: (2) All supplies necessary for the use and return of the ballot, including an identification envelope with prepaid postage for the return of the vote by mail ballot" (West's Ann. Cal. Elect. Code § 3010).
  - Note: This language was added by AB 216 in 2019. Counties bear the cost but since it is a state-mandated program they could claim reimbursement of those costs from the state general fund.
- Delaware: "(c) Postage for all mailings made pursuant to this subsection shall be prepaid by the Department" (15 Del. Code § 5504) and Instructions for Absentee Voting.
- Hawaii: "The mailed distribution and return of absentee ballots shall be at no cost to the voter. The State and counties shall share in the cost of all postage associated with the distribution and return of absentee" (HRS § 11-182).
- Idaho: "(2) The clerk shall issue a ballot, by mail, to every registered voter in a mail ballot precinct and shall affix postage to the return envelope sufficient to return the ballot" (I.C. § 34-308).

- Note: This applies to mail ballot precincts, which must be designated by the board of county commissioners and have no more than 140 registered electors at the last general election.
- Iowa: "The absentee ballot and affidavit envelope shall be enclosed in or with an unsealed return envelope marked postage paid which bears the same serial number as the affidavit envelope" (I.C.A. § 53.8).
- Kansas: "The county election officer shall provide for the payment of postage for the return of ballot envelopes" (K.S.A. 25-433).
- Minnesota: "Ballot return envelopes, with return postage provided, must be preaddressed to the auditor or clerk and the voter may return the ballot by mail or in person to the office of the auditor or clerk..." (M.S.A. § 203B.07)
- Missouri: "Mailing envelopes for use in returning ballots shall be printed with business reply permits so that any ballot returned by mail does not require postage. All fees and costs for establishing and maintaining the business reply and postage-free mail for all ballots cast shall be paid by the secretary of state through state appropriations" (V.A.M.S. 115.285).
- Nevada: "3. The return envelope sent pursuant to subsection 1 must include postage prepaid by first-class mail if the absent voter is within the boundaries of the United States, its territories or possessions or on a military base" (Nev. Rev. Stat. 293.323).
- New Mexico: "A. The secretary of state shall prescribe the form of, procure and distribute to each county clerk a supply of: (1) official inner envelopes for use in sealing the completed mailed ballot; (2) official mailing envelopes for use in returning the official inner envelope to the county clerk, which shall be postage -paid; provided that only the official mailing envelope for absentee ballots in a political party primary shall contain a designation of party affiliation..." (N. M. Stat. Ann. § 1-6-8).
- Oregon: "(1) Except as provided in subsection (2) of this section, for each election held in this state, electors shall be provided with a return identification envelope that may be returned by business reply mail. The state shall bear the cost of complying with this subsection" (SB 861 in 2019).
- Rhode Island: "(d)(1) Upon the ballots becoming available, the secretary of state shall immediately issue and mail, by first-class mail, postage prepaid, a mail ballot to each eligible voter who has been certified. With respect to voters who have applied for these mail ballots under the provisions of § 17-20-2(1), the

secretary of state shall include with the mail ballots a stamped, return envelope addressed to the board of elections" (R.I. Gen. Laws § 17-20-10).

- Note: According to this press release, postage is being covered by the secretary of state's budget.
- Washington: "(4)...Return envelopes for all election ballots must include prepaid postage" (West's RCWA 29A.40.091)
  - Note: The statutory language above was added by SB 5063 in 2019.
- West Virginia: "(e)(1) Within one day after the official designated to supervise and conduct absentee voting has both the completed application and the ballot, the official shall mail to the voter at the address given on the application the following items as required and as prescribed by the Secretary of State: .... (C) One postage paid envelope, unsealed, designated "Absent Voter's Ballot Envelope No. 2..." (W. Va. Code, § 3-3-5).
- Wisconsin: "(3)(a).... If the ballot is mailed, and the ballot qualifies for mailing free of postage under federal free postage laws, the clerk shall affix the appropriate legend required by U.S. postal regulations. Otherwise, the clerk shall pay the postage required for return when the ballot is mailed from within the United States. If the ballot is not mailed by the absentee elector from within the United States, the absentee elector shall provide return postage" (W.S.A. 6.87).
- Note: New Jersey leaves it up to the discretion of county clerks to provide a postage paid envelope (N.J.S.A. 19:63-12).

## Processing, Verifying, and Counting Absentee Ballots

The time frame of vote counting shifts with an increase in absentee/mailed ballots. Much of the work involved with verifying the identity of a voter can be done ahead of time, and some processing of ballots can occur before the election so that ballots are ready to be counted at the time permitted by statute. Counting typically continues in the days after Election Day as well, so verifying voters and counting ballots occurs during a longer period of time than just one day (Election Day).

In this section you will find:

- How do officials verify voted absentee ballots?
- What happens if there is a missing signature or a signature discrepancy?

- When can election officials begin to process and count absentee ballots?
- How are absentee ballot results reported?

## How do officials verify voted absentee ballots?

Unlike the traditional experience of voting at a physical polling place under the supervision of election officials or volunteer election workers, marking an absentee/mailed ballot occurs in an unsupervised environment, usually at the voter's home. The ballot is then sent through the mail or delivered in person to the election office. Because the voter does not appear in person, election officials use other ways of verifying that the absentee/mailed ballot they are receiving comes from the intended eligible voter.

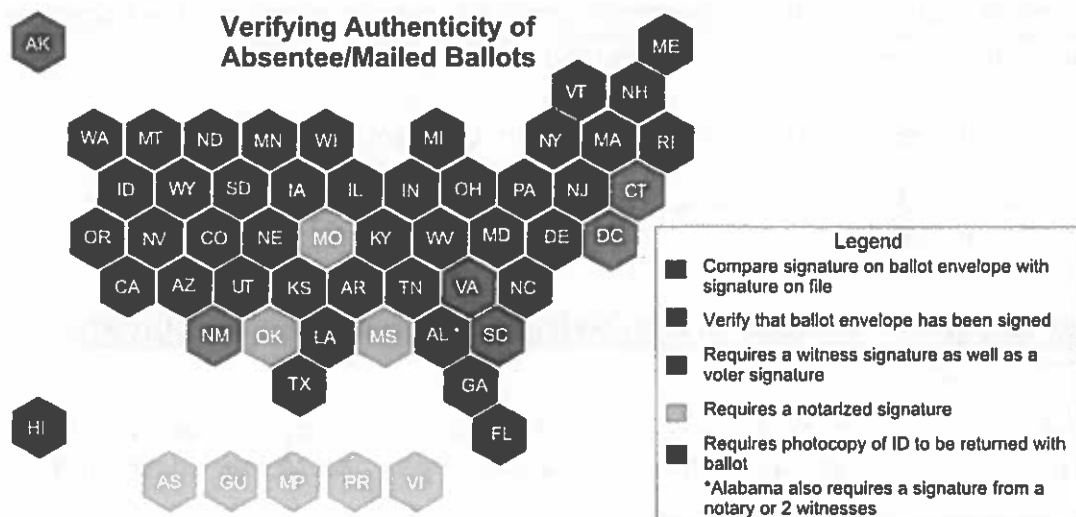
The most common method to verify that absentee/mailed ballots are coming from the intended voter is to conduct signature verification. When voters return an absentee/mailed ballot, they must sign an affidavit on the ballot envelope. When the ballot is returned to the election office, election officials have a process for examining each and every signature and comparing it to other documents in their files that contain the voter signature—usually the voter registration record. See Colorado's Signature Verification Guide for one example of state guidance on how to conduct this verification step.

This process of comparing and matching signatures is done by election officials or temporary election workers, sometimes assisted by technology, and often working in bipartisan teams during this review process. In some states, especially those that send mail ballots to all eligible voters, the individuals verifying signatures undergo training to analyze signatures for potential fraud.

If a discrepancy is found, there may be an opportunity for the voter to come into the election office and "cure" the discrepancy. The election official will contact the voter explaining the problem and asking them to verify their information and that that they did in fact cast the ballot. There is usually a period of time after the election available for voters to take this verification step, but if the voter doesn't do this then the ballot isn't counted.

Some states have other methods for verifying absentee/mailed ballots. They may require absentee/by mail voters to include photocopies of their identification documents or have the absentee/mailed ballot envelope signed by witnesses or notarized.





#### State methods for verifying absentee/mailed ballots:

- Thirty-one states conduct signature verification, comparing the signature on the absentee/mailed ballot envelope with a signature already on file for the voter:
  - Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Washington and West Virginia.
- Six states and D.C. verify that an absentee/mailed ballot envelope has been signed but do not conduct signature verification:
  - Connecticut, District of Columbia, Iowa, Maryland, New Mexico, Vermont and Wyoming.
- Eight states require the signature of a witness in addition to the voter's signature. These states may conduct signature verification as well.
  - Alaska (witness or a notary), Louisiana\*, Minnesota (witness or notary), North Carolina (two witnesses or a notary), Rhode Island\* (two witnesses or a notary), South Carolina\*, Virginia and Wisconsin.
- Three states require the absentee/mailed ballot envelope to be notarized: Mississippi, Missouri and Oklahoma.
- Arkansas requires a copy of the voter's ID be returned with the absentee/mailed ballot.

- Alabama requires both a copy of the voter's ID and signatures from a notary or two witnesses with the absentee/mailed ballot return.

\*Military and overseas voters are exempt from this requirement.

For full 50-state details on how absentee/mailed ballots are verified in states please contact NCSL.

## What happens if there is a missing signature or a signature discrepancy?

It is not uncommon for an absentee/mailed ballot to be returned in an envelope that has a problem, such as a missing signature or a signature that doesn't match.

Some states have a process in statute for voters to "cure" these mistakes in time for the ballot to be counted. These states notify voters that there was a problem—either the ballot envelope was not signed or the signature does not appear to match the one on file—and then provide the voters with a process and time frame to verify that the ballot is indeed theirs. In states that do not have such a process, ballots with missing or mismatched signatures on the envelope are not counted.

Nineteen states require that voters are to be notified when there is a missing signature or signature discrepancy—and given an opportunity to correct it. Details are provided in the table below.



In other states no statutory requirement exists to give voters the opportunity to correct a missing signature or a signature discrepancy. If a signature is missing or does not appear to match the one on file, the ballot is not counted. In some cases, voters may be informed after the election that their ballot was rejected, but they do not have the opportunity to correct it for it to be counted.

- Alabama, Alaska, Arkansas, Connecticut, Delaware, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Mississippi, Missouri, New Hampshire, New Jersey,

New Mexico, New York, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia and Wyoming.

### Statutes Permitting Voters to Correct Signature Discrepancies

State	Notification Process	Correction Process
Arizona Ariz. Rev. Stat. §16-550	Election officials shall make reasonable efforts to contact the voter, advise the voter of the inconsistent signature and allow the voter to correct or the county to confirm the inconsistent signature.	Voters have until the fifth business day after an election to correct a signature.
California CA Elect Code § 3019	Voters of ballots with mismatching signatures are notified a minimum of eight days prior to certification of the election.	Voters have until 5 p.m. two days prior to certification of the election to provide a signature verification statement in person. If a voter fails to sign the absentee ballot envelope, they have until 5 p.m. on the eighth day after the election to submit an unsigned ballot statement.
Colorado Colo. Rev. Stat. §1-7.5-107.3	Voters of ballots with missing/mismatching signatures are notified by mail within three days (or within two days after the election) of any discrepancy.	A confirmation form accompanying the letter must be returned to the county clerk and recorder within eight days after Election Day to count.
Florida Flor. Stat. § 101.68	County election supervisors shall notify any voter whose signature is missing or doesn't match records.	Voters may cure ballots until 5 p.m. on the second day after the election.
Georgia Georgia Code § 21-2-386	If ballot is rejected, voter is promptly notified of rejection.	If before Election Day, a voter may reapply for an absentee ballot or vote provisionally at their local polling place.
Hawaii Haw. Rev. Stat. § 11-106	Local election officials shall make an attempt to notify the voter by first class mail, telephone or electronic mail to inform the voter of the procedure to correct the deficiency.	The voter shall have five business days after the date of the election to cure the deficiency.
Illinois 10 ILCS 5/19-8	Voters are notified by mail of rejected ballot within two days of rejection.	Voters have until 14 days after election to resolve issue with county election authority.
Iowa Iowa Code § 53.18(2)	If a ballot affidavit is incomplete or absent, the commissioner must notify the voter within 24 hours.	A voter may vote a replacement ballot until the day before the election or vote at the voter's precinct polling place.

State	Notification Process	Correction Process
Massachusetts Mass. Gen. Laws ch 54 § 94)	Prior to Election Day, the voter is notified and, if sufficient time allows, sent a new ballot if an affidavit signature is absent or the ballot is rejected for other reasons.	Voter can submit a new absentee ballot.
Michigan Mich. Comp. Laws § 168.765b	If a ballot affidavit is found in error, the voter is contacted and provided opportunity to visit the clerk's office or request a replacement ballot should time allow.	Voter can request a replacement absentee ballot.
Minnesota Minn. Stat. § 203B.121	If a ballot is rejected more than five days before Election Day a replacement ballot is mailed; if rejected within five days, election officials must contact the voter via telephone or email to provide options for voting a replacement ballot.	Voter can request a replacement absentee ballot.
Montana Mont. Code § 13-13-241 § 13-13-245	Election administrators shall notify voters of missing or mismatched signatures.	Voters have until 8 p.m. on Election Day to cure their ballot.
Nevada Nev. Rev. Stat. 293.325	Local election officials shall notify voters of missing or mismatched signatures.	Voters have until the seventh day after the election to resolve the issue.
Ohio Ohio Rev Code § 3509.06	Notice is mailed to voters whose ballots were rejected.	Voters have until the seventh day after the election to resolve issue.
Oregon Ore. Rev. Stat. § 254.431	County clerks notify voters by mail of any signature absence or discrepancy.	Voters must complete and return the certified statement accompanying the notice by the 14th day after the election for their ballot to count.
Rhode Island RI Gen L § 17-2-26	Local board of canvassers is responsible for notifying voters by mail, email or phone.	Voters have until seven days after Election Day to correct a deficiency.
Utah Utah Code Ann. § 20A-3-308(7)	Election officials notify voters of ballot rejection in one to two business days if rejected before Election Day; seven days if rejected on Election Day; and seven days if rejected between Election Day and the end of official canvas.	Voters must sign a new affidavit statement provided by the clerk's office and return by 5 p.m. the day before the official canvass (7-14 days after Election Day).

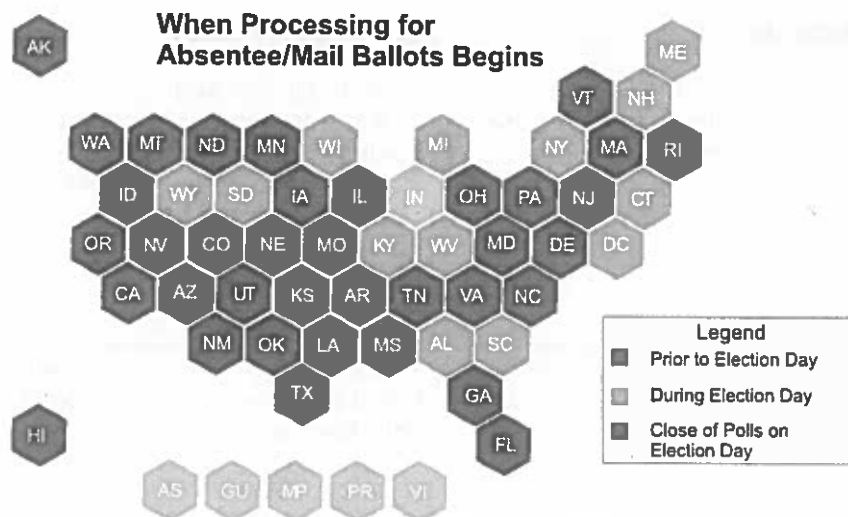
State	Notification Process	Correction Process
Washington Wash. Admin. Code 434-261-050	Voters notified by mail of rejected ballots due to missing/mismatching signature statements.	Voter must sign and return a curing statement before election certification (21 days after Election Day). Three days before certification, county auditors must attempt to contact by phone any voters with outstanding ballots to be cured.
Wisconsin Wis. Stat. § 6.87(9)	Municipal clerks return any deficient absentee ballot envelopes with a new envelope to the voter.	A voter may provide a corrected signature envelope until close of polls Election Day.

## When can election officials begin to process and count absentee ballots?

In many states, processing of absentee/mailed ballots can begin before they are actually counted. "Processing" means different things in different states, but typically the first step is comparing the affidavit signature on the outside of the return envelope against the voter's signature on record to ensure a match. See the section above on verifying signatures for additional details on this process.

In some states, once the signature is verified the envelope can then be opened and the ballot prepared for tabulation. In essence, states that begin processing before Election Day can "tee up" absentee/mailed ballots so that they are ready to be counted as soon as the law allows. This permits election officials to do a lot of the work ahead of time to speed up the counting and reporting process on Election Day: confirming the affidavit signature; removing the ballot from the secrecy envelope; flattening and stacking the ballots—even potentially running them through the scanner, but not hitting the "tally" button to actually obtain results. Most states require confidentiality of results if they are known ahead of time or require election officials to process only to a certain point ahead of time. Ask your state election officials for details on their practice.

Ask the Elections Team for a more detailed table on when states permit absentee ballots processing and counting to begin. In summary:



- Thirty-two states permit election officials to begin processing absentee/mailed ballot envelopes prior to the election. This looks a little different in each state, but the first step is to verify signatures on the absentee ballot and the timeframes listed below are when election officials can begin this process in each state. In some states listed below additional processing, such as removing the ballots from envelopes and readying them for counting, may also be permitted prior to Election Day.
  - Alaska: seven days before the election.
  - Arizona: upon receipt of returned absentee/mailed ballot.
  - Arkansas: seven days before the election.
  - California: 29 days before, 10 days before, or the day before the election depending on whether a jurisdiction is all-mail and has the necessary computer capability.
  - Colorado: upon receipt of returned absentee/mailed ballot.
  - Delaware: Friday before the election.
  - Florida: 22 days before the election.
  - Georgia: upon receipt of returned absentee/mailed ballot.
  - Hawaii: upon receipt of returned absentee/mailed ballot.
  - Idaho: upon receipt of returned absentee/mailed ballot.
  - Illinois: upon receipt of returned absentee/mailed ballot.
  - Iowa: day before the election.
  - Kansas: before Election Day; exact timing not specified.

- Louisiana: before Election Day; exact timing not specified.
  - Minnesota: upon receipt of returned absentee/mailed ballot.
  - Missouri: five days before the election.
  - Montana: upon receipt of returned absentee/mailed ballot.
  - Nebraska: second Monday before the election.
  - Nevada: upon receipt of returned absentee/mailed ballot.
  - New Jersey: upon receipt of returned absentee/mailed ballot.
  - New Mexico: any time after mailed ballots have been sent until the fifth day before the election.
  - North Carolina: two weeks before the election.
  - North Dakota: day before the election.
  - Ohio: before Election Day; exact timing not specified.
  - Oklahoma: before Election Day; exact timing not specified.
  - Oregon: upon receipt of returned absentee/mailed ballot.
  - Rhode Island: 14 days before the election.
  - Tennessee: upon receipt of returned absentee/mailed ballot.
  - Texas: upon receipt of returned absentee/mailed ballot.
  - Utah: before Election Day; exact timing not specified.
  - Vermont: day before the election.
  - Virginia: before Election Day; exact timing not specified.
  - Washington: upon receipt of returned absentee/mailed ballot.
- Eleven states and D.C. permit election officials to begin processing absentee/mailed ballots on Election Day, but prior to the closing of the polls:
    - Alabama: noon on Election Day.
    - Connecticut: on Election Day at the discretion of local registrar of voters.
    - District of Columbia: Signatures are verified and the secrecy envelope removed prior to tabulation, but exact timing is not specified.
    - Kentucky: 8 a.m. on Election Day.
    - Maine: before the polls close if notice of processing times is posted at least seven days before the election.

- Michigan: on Election Day before the polls close at the jurisdiction's discretion.
  - New Hampshire: 1 p.m. on Election Day, or no earlier than two hours after the opening of the polls if posted and announced ahead of time.
  - New York: on Election Day; exact time not specified.
  - South Carolina: 9 a.m. on Election Day.
  - South Dakota: Processing occurs at precinct polling places on Election Day if the election board is not otherwise involved in official duties.
  - West Virginia: on Election Day; exact time not specified.
  - Wisconsin: on Election Day after the polls open.
  - Wyoming: processing occurs at precinct polling places on Election Day as time permits
- Four states do not permit the processing of absentee/mailed ballots until after the polls close on Election Day:
    - Massachusetts: after the polls close.
    - Mississippi: after the polls close.
    - Pennsylvania: after the polls close.
    - Maryland: processing and counting of absentee/mailed ballots occurs after the election

In most states that begin processing absentee/mailed ballots prior to Election Day there is a requirement that the act of totaling votes and reporting contest results cannot begin until after the polls close. There may be procedures and functional aspects of voting equipment that allow ballots to be "counted" without obtaining a final tally or result. For example:

- In Colorado election officials at the mail ballot counting place may receive and prepare mail ballots delivered and turned over to them by the designated election official for tabulation. Counting of the mail ballots may begin fifteen days prior to the election and continue until counting is completed. The election official in charge of the mail ballot counting place shall take all precautions necessary to ensure the secrecy of the counting procedures, and no information concerning the count shall be released by the election officials or watchers until after 7 p.m. on Election Day (Colo. Rev. Stat. § 1-7.5-107.5).



- In Delaware tallies may begin on the Friday before the election but results of absentee ballots shall not be extracted or reported until polls close on Election Day (15 Del. C. § 5510).
- In New Mexico absentee ballots are inserted into vote counting machines to be registered and retained before Election Day, but all votes are counted and canvassed following the closing of the polls. It is unlawful for a person to disclose the results of a count or tally prior to the closing of the polls or the deadline for receiving mailed ballots (N. M. S. A. § 1-6-14).
- In Ohio processing may begin before the time for counting ballots. Processing means examining the envelope, opening valid envelopes, preparing and sorting the ballot and scanning the ballot using automatic tabulating equipment if the equipment used permits an absentee voter's ballot to be scanned without tabulating or counting the votes on the ballots scanned. The count or any portion of the count of absentee voter's ballots may not be disclosed prior to the closing of the polls (Ohio Rev. Code § 3509.06).
- In Virginia ballots may be inserted into ballot counting machines prior to the closing of the polls, but no ballot count totals by the machines shall be initiated prior to the closing of the polls. If absentee ballots are counted by hand, tallying may begin after time after 3:00 pm. the day of the election. No counts of such tallies shall be determined or transmitted until after the closing of the polls (VA Code Ann. § 24.2-709.1).

## How are absentee ballot results reported?

States differ on how and when results of absentee/mailed ballots are reported. Most states report these ballots at the precinct level so that it's possible to see voter turnout by precinct regardless of how the ballot was voted (in person or by absentee/mailed ballot). Since absentee/mailed ballots are accepted up to and including Election Day in most cases, it can take until days after an election before all ballots are counted.

In many states, especially those that handle large volumes of absentee/mailed ballots, counting is done at a central location. The most common way to report absentee/mailed ballot results is to add the tabulated votes from absentee ballots to the total tabulated at each precinct and report precinct results with both the absentee and Election Day votes included.

Some states handle this process differently, though. Some states send absentee ballots to precinct polling places on Election Day to be counted by the precinct-level scanners/tabulators. Others establish separate "absentee ballot precincts" that combine all mailed ballots from throughout the jurisdiction into one

reporting unit, regardless of what precinct the voter is in. That approach loses the precinct-level data that is useful to candidates for campaigning and to election officials to allocate resources.

For example:

- In Alabama, absentee ballots are delivered to precinct polling places where they are counted and otherwise handled as if the voter were present and voting in person (Code of Ala. §17-11-10).
- In Iowa, each county establishes a special “absentee ballot and special voters precinct.” Results from the special precinct are reported separately. For general elections, results are also reported by the resident precinct of voters. For all other elections absentee results may be reported as a single precinct (Iowa Code §53.23).
- In Minnesota, for state primary and general elections, absentee vote totals are added to the returns for the appropriate precinct. For other elections, vote totals may be added to the precinct or reported as a separate total (Minn. Stat. Ann. §203B.121).
- In Nevada, the returns of absentee ballots must be reported separately from the regular votes of the precinct, unless reporting the returns separately would violate the secrecy of a voter's ballot (Nev. Stat. §293.385).
- In South Carolina, an absentee voting precinct is established in each county to tabulate and report absentee ballots (S.C. Code § 7-15-420).
- In South Dakota, each county establishes an absentee ballot precinct and absentee ballots are counted in that precinct, unless a precinct has 10 or fewer absentee ballots cast at the time the polls open on Election Day in which case absentee ballots in that precinct are counted at the polling place. Tally sheets include a space for results by precinct (SDCL § 12-19-37, ARSD 5:02:14:04).
- In Virginia, counties may establish one or more absentee voter precincts (VA Code Ann. § 24.2-712).
- In West Virginia, absentee ballots are delivered to polling places to be counted (W. Va. Code, § 3-3-8).
- In Wyoming, absentee ballots are delivered to polling places for counting unless the county adopts an alternate procedure to count them centrally. The number of electors voting in person and by absentee ballot by precinct at the election is reported (Wyo. Stat. § 22-16-103).

## All-Mail Elections (aka Vote-by-Mail or Vote-at-Home Elections)

### What are all-mail ballot elections?

Five states currently conduct all elections entirely by mail: Colorado, Hawaii, Oregon, Washington and Utah. Three states--California, Nebraska and North Dakota allow counties to determine if an election will be held entirely by mail, with many but not all counties choosing to do so. At least 17 states have provisions allowing certain elections to be conducted entirely by mail. For these elections, all registered voters are sent a ballot in the mail. The voter marks the ballot, puts it in a secrecy envelope or sleeve and then into a separate mailing envelope, signs an affidavit on the exterior of the mailing envelope, and returns the package via mail or by dropping it off.

Ballots are mailed out well ahead of Election Day, and thus voters have an "election period," not just a single day, to vote. All-mail elections can be thought of as absentee voting for everyone. This system is also referred to as "vote by mail."

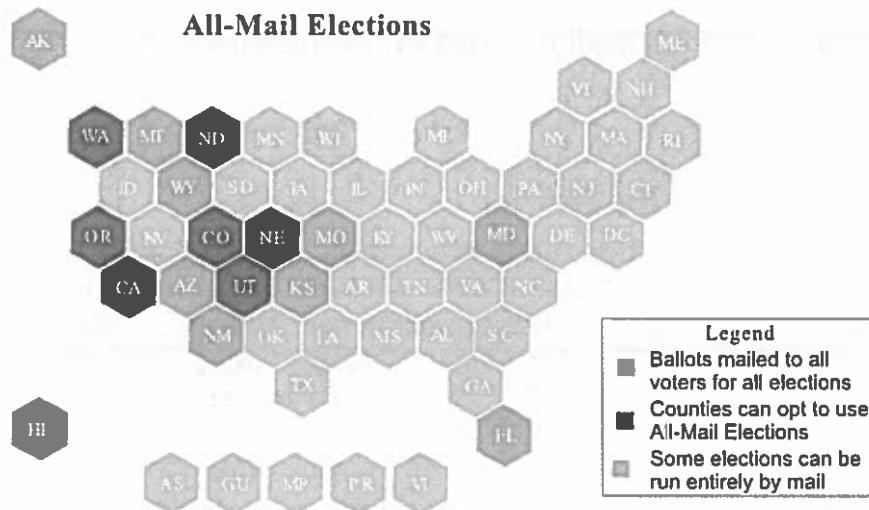
While "all-mail elections" means that every registered voter receives a ballot by mail, this does not preclude in-person voting opportunities on and/or before Election Day. For example, despite the fact that all registered voters in Colorado are mailed a ballot, voters can choose to cast a ballot at an in-person vote center during the early voting period or on Election Day (or drop off or mail their ballot back).

Five states—Colorado, Hawaii, Oregon, Utah and Washington—send mailed ballots to all eligible voters. In California, some counties are currently permitted to conduct all-mail elections, and in 2020 more than 50% of the state's voting population live in counties that will do so. After 2020, the option will be available to all counties in the state. Utah permits individual counties to determine if they would like to conduct all-mail elections and all counties are expected to do so in 2020.

Other states permit all-mail elections in certain circumstances, such as for special elections, municipal elections, when there is a smaller voting population in a given district, or at the discretion of the county clerk. See below for state-by-state statutes.

Generally, states begin with providing all-mail elections only in certain circumstances, and then add additional opportunities as citizens become familiar with procedures. Oregon's vote-by-mail timeline includes four times that the legislature acted prior to the 1998 citizens' vote that made Oregon the first all-mail election state.

### Which states have statutory provisions for all-mail ballot elections?



- States that conduct all elections by mail:
  - Colorado (enacted by HB 1303 in 2013; first implemented statewide in 2014; CRS §1-5-401).
  - Hawaii (enacted by HB 1248 in 2019; first implemented statewide in 2020; Hawaii Stat. §11-101).
  - Oregon (enacted by citizens' initiative in 1998; first implemented statewide in 2000; ORS §254.465).
  - Utah: (HB 172 in 2012 permitted jurisdictions to choose to conduct elections entirely by mail; first implemented by all jurisdictions in the state in 2019; Utah Code Ann. §20A-3a-302).
  - Washington (enacted by HB 5124 in 2011; first implemented statewide in 2012; Rev. Code of Wash. 29A.40.010).

### Adoption of All-Mail Ballot Elections

State	Year Enacted	Bill #	Year Implemented	Citation
Colorado	2013	HB1303	2014	CRS §1-5-401
Hawaii	2019	HB 1248	2020	Hawaii Stat. §11-101
Oregon	1998	Citizen's initiative	2000	ORS §254.465
Utah	2012 (permitted counties)	HB 172	2019 (first year all counties used it)	Utah Code Ann. §20A-3a-302
Washington	2011	HB 5124	2012	Rev. Code of Wash. 29A.40.010

- States that permit counties to opt into conducting all elections by mail:
  - California: After/on Jan. 1, 2018, 14 counties may conduct all-mail elections. After Jan. 1, 2020, any county may conduct any election as an all-mail election following statutory guidelines (Cal. Elect. Cde §§4005-4008). When there are 250 or fewer voters registered to vote in a precinct (Cal. Elect. Code §3005); local, special or consolidated elections that meet certain criteria (Cal. Elect. Code §4000). See information from the California secretary of state on the Voter's Choice Act for a list of counties that have currently opted for this option.
  - Nebraska: Any county of less than 10,000 inhabitants may apply to the secretary of state to mail ballots for all elections in lieu of establishing polling places (Neb. Rev. Stat. §32-960). Special ballot measure elections that meet certain criteria, held by a political subdivision (Neb. Rev. Stat. §32-952).
  - North Dakota: Counties may conduct any election by mail. Applications for mailed ballots are sent to each individual listed on the central voter file (note that North Dakota does not require voter registration ahead of the election) and there must be one or more polling places in the county for voting in the usual manner (ND Cent. Code §16.1-11.1-01 et seq.).
- States that permit some elections to be conducted by mail:
  - Alaska: Elections that are not held on the same day as a general, party primary or municipal election (Alaska Stat. §15.20.800).
  - Arizona: A city, town, school district or special district may conduct elections by mail (Ariz. Rev. Stat. Ann. §16-409, §16-558).
  - Florida: Referendum elections at the county, city, school district or special district level (Fla. Stat. §101.6102).
  - Kansas: Nonpartisan elections at which no candidate is elected, retained or recalled and which is not held on the same date as another election (Kan. Stat. Ann. §25-432).
  - Maryland: Special elections not held concurrently with a regularly scheduled primary or general election (Md. Election Code §9-501).
  - Missouri: Nonpartisan issue elections at which no candidate is elected, retained or recalled and in which all qualified voters of one political subdivision are the only voters eligible to vote (Mo. Rev. Stat. §115.652 et seq.).
  - Montana: Any election other than a regularly scheduled federal, state, or county election; a special federal or state election, unless authorized by the

legislature; or a regularly scheduled or special election when another election in the political subdivision is taking place at the polls on the same day (MCA 13-19-101 et seq.).

- New Mexico: Special elections, except those to fill a vacancy in the office of U.S. Representative, shall be conducted by mail (N.M. Stat. §1-24-3).
- Wyoming: Counties may decide to conduct special elections not held in conjunction with a primary, general or statewide special election entirely by mail (Wyo. Stat. 22-29-115)

In addition to the all-mail elections mentioned above, five states permit certain jurisdictions (or portions of a jurisdiction) to be designated as all-mail based on population:

- Idaho: A precinct which contains no more than 140 registered electors at the last general election may be designated by the board of county commissioners a mail ballot precinct no later than April 1 in an even-numbered year (Idaho Code §34-308).
- Minnesota: Elections conducted by a municipality having fewer than 400 registered voters on June 1 of an election year and not located in a metropolitan county (Minn. Stat. §204B.45).
- Nevada: Whenever there were not more than 20 voters registered in a precinct for the last preceding general election (Nev. Rev. Stat. §293.213).
- New Jersey: A municipality with a population of 500 or fewer persons, according to the latest federal decennial census, may conduct all elections by mail (NJRS §19.62-1).
- New Mexico: A county may designate a precinct as a mail ballot election precinct if it has fewer than 100 voters and the nearest polling place for an adjoining precinct is more than 20 miles driving distance from the precinct boundary in question (N. M. Stat. Ann. § 1-6-22.1).

### Security Features of Voting by Absentee/Mailed Ballots

As the trend toward states permitting or even encouraging more people to vote from home (by absentee/mailed ballots, or going to all-mailed elections) has accelerated, a key question from legislators has been, how secure can we make our system?

In several ways, absentee/mailed ballots are as secure or more secure than traditional methods of voting:

- Absentee/mailed ballots are hand-marked paper ballots. Paper ballots that have been hand-marked by voters are considered by most to be the gold standard of election security. Absentee/mailed ballots provide a paper trail that can be examined if there is any suspicion of meddling, and the marks of voters can be examined one by one if need be. Paper ballots allow for post-election audits and cutting edge election security methods such as risk-limiting audits (RLA), which more states are adopting. An RLA compares a random sample of ballots against the vote tally to ensure the outcome of the election is correct. It requires a robust ballot accounting process to ensure a trustworthy paper trail.
- The identity of every absentee/mailed ballot voter can be verified through signature verification. In a sense, a signature is a form of biometric identification, i.e. it is unique to a particular voter. By having a voter sign an affidavit on an absentee/ballot envelope the voter is affirming that the ballot enclosed is their ballot. Election officials can verify the signature as well. When combined with an effective "cure process," or opportunity for a voter to fix a mismatched or missing signature, signature verification is an effective way to verify a voter's identity. See above for more details on how signature verification works.
- In most states, absentee/mailed ballots are examined and processed in advance of Election Day, spreading out the workload and providing more time for scrutiny and to "get it right." If there is a cybersecurity incident that affects the election, there are longer lines at polling locations than anticipated, voting machines break down, election workers don't show up, etc., voters may find it difficult to cast their votes.

Even though voting is not occurring in a supervised environment, a number of features can be prescribed to enhance security of the election when voting by absentee/mailed ballot.

- Systems that allow a state to keep address information up-to-date for voters is the first step in ensuring the security of absentee/mailed ballots. If voters can easily keep their addresses up-to-date then their absentee/mailed ballot is more likely to get to them. Policies to make registration updates convenient for voters and to ensure robust voter list maintenance procedures can help keep voter information current. The act of sending out absentee/mailed ballots also allows election officials to ensure they have up-to-date addresses for voters, and states that send out more absentee/mailed ballots have seen an added benefit of "cleaner" voter lists, i.e. voter address information is kept up to date.
- Bipartisan teams have long provided a measure of security. Teams of election workers from different political parties can be deployed to retrieve ballots from

the U.S. Postal Service or from drop boxes; verify signatures; open envelopes and separate the ballot from the envelope; prepare the ballots for scanning; and participate in the vote counting process.

- Established “chain of custody” procedures that account for all steps in the process of moving and processing ballots are useful. This is true for every aspect of election administration, but particularly true for ballots that are submitted throughout an election period and not just on Election Day.
- Because voted mailed ballots are stored for some length of time before the election is complete, physical security is essential, too. Security cameras, locks that need a bipartisan team to open, and logs of all activities relating to ballot handling can be part of this effort. See NCSL’s Elections Security webpage for more.
- Ballot tracking can help. Ballot tracking provides voters an opportunity to track their ballots through the process, just as packages can be tracked through FedEx or other carriers. In the case of Denver elections, texts can be sent to voters who sign up for the service so they know when their ballot has been mailed to them, when it has been received back at the election office, and when it has been approved for tallying. In other jurisdictions, voters can electronically query their local election office to ensure that a ballot is on the way. Voters can then ask for another ballot to be sent (and the first one is canceled by the election official to ensure the voter does not vote twice) if there is reason to believe a ballot has been lost.
- Security mechanisms to prevent double-voting can be required. For instance, ballot envelopes are barcoded for individual voters, allowing election officials to be sure that they are only accepting one ballot per voter.
- Ballot collection laws that specify how many voted ballots can be collected by any individual are intended to reduce fraud. This can also be mitigated by providing voters with ample opportunities to return their own ballots. And laws requiring signature verification rather than a witness or a notary signature can also reduce opportunities for coercion.
- Ensuring that there are meaningful penalties for tampering with or otherwise hindering the delivery of absentee/mailed ballots, and that voters are sufficiently informed of these penalties, is another way to enhance security.



## Policy Decision Points

For legislators who are considering changes to their states' election models, they're probably looking for options that may increase turnout, lower costs, and be even more secure as the present system. They're likely to also want to understand the perspective of their state's election officials, and the role of state control vis a vis local control. These are likely to be the top-level considerations, regardless of the nature of a proposed change.

Regarding potential shifts to more absentee/mailed ballot/outside-a-polling place voting, legislators will first want to know where their state is currently. There is a continuum of states, some that require an excuse for voters to vote absentee all the way to states that send ballots to all voters. States generally move one step at a time.

For legislators who want to consider increasing the share of their state's votes that are likely to be cast as absentee/mailed ballots, here is a short list of considerations, all of which are addressed elsewhere in this webpage. States can:

- Remove requirements for an affidavit or witness signature on absentee ballot requests, and instead beef up signature verification.
- Create a permanent (or single-sign-on) absentee list so voters who prefer to receive ballots for all elections through the mail can easily do so.
- Permit or require a state-level online portal through which a voter can request a ballot.
- Consider whether guidance for third-party groups that are interested in distributing applications for absentee/mailed ballots would be useful to ensure that they are handled in a timely manner.
- Decide if ballots must be received by the close of polls on Election Day, or if they will be counted even if they arrive after. Late-arriving ballots can slow down election results reporting.
- Permit ballots to be processed—but not counted—prior to Election Day. By doing so, counting is faster, and results can be released faster as well. The more absentee/mailed ballots there are, the more crucial this factor becomes.
- Provide a notification process for voters if there is something wrong with their ballot envelope, and give them a chance to correct, or "cure," the ballot before the election is certified. Otherwise, the number of uncounted ballots will be higher for absentee/mailed ballots than for in-person ballots. The cure process can extend a few days after Election Day so voters who submit a ballot at the last minute with a signature issue can ensure their vote is counted.

- Require that results of all ballots—those voted in a polling place as well as those voted at home—are reported at the precinct level, because elected officials benefit from knowing the where their support is coming from and where they may need to beef up their constituent connections.
- Provide a variety of options for voters to return ballots and sufficient in-person locations for voters who need assistance or would prefer to vote in-person. Options for returning ballots can include these in-person locations as well as secure drop boxes throughout a jurisdiction. Having some or all of the drop boxes available around the clock (with security cameras) is useful.
- Decide whether to provide prepaid return postage, as a couple of states have done. Note that providing secure drop boxes throughout the jurisdiction reduces the number of voted ballots that are mailed, and thus reduces the cost of providing prepaid envelopes.
- Ensure that there are sufficient opportunities for voters to update their address and robust voter list maintenance procedures. See NCSL's webpage on Voter List Accuracy for additional information.
- Require reporting for every election the number of mailed-out ballots requested, the number sent out and the number returned. This will allow policymakers to track the popularity of this voting method over time and to allocate resources appropriately.

Please feel free to contact NCSL's elections team for any level of assistance or data that may prove helpful.

## Resources

- Vote at Home's Reference Library
- Vote at Home's Policy and Research Guide
- NCSL's State Laws Governing Early Voting page
- NCSL's Absentee Voting in Case of a Personal Emergency
- NCSL's The Canvass article, Trends in Ballot Collecting
- NCSL's State Laws Governing Early Voting
- FVAP's Absentee and Early Voting Myths and Realities Fact Sheet
- The Early Voting Information Center (EVIC) based at Reed College
- NCSL's The Canvass: March 2020

NCSL acknowledges and thanks Vote at Home (VAH) for its support for this project.

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# **The Constitution of the State of New York**

## **ARTICLE II**

### **SUFFRAGE**

#### **[Qualifications of voters]**

Section 1. Every citizen shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to the vote of the people provided that such citizen is eighteen years of age or over and shall have been a resident of this state, and of the county, city, or village for thirty days next preceding an election. (Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 2, 1943; November 6, 1945; November 6, 1961; November 8, 1966; November 7, 1995.)

#### **[Absentee voting]**

§2. The legislature may, by general law, provide a manner in which, and the time and place at which, qualified voters who, on the occurrence of any election, may be absent from the county of their residence or, if residents of the city of New York, from the city, and qualified voters who, on the occurrence of any election, may be unable to appear personally at the polling place because of illness or physical disability, may vote and for the return and canvass of their votes. (Formerly §1-a. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 4, 1947; November 8, 1955; November 5, 1963.)

#### **[Persons excluded from the right of suffrage]**

§3. No person who shall receive, accept, or offer to receive, or pay, offer or promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, shall vote at such election; and upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his or her vote, shall swear or affirm before such officers that he or she has not received or offered, does not expect to receive, has not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at such election, and has not made any promise to influence the giving or withholding of any such vote, nor made or become directly or indirectly interested in any bet or wager depending upon the result of such election. The legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime. (Formerly §2. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 6, 2001.)

#### **[Certain occupations and conditions not to affect residence]**

§4. For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his or her presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this state, or of the United States, or of the high

seas; nor while a student of any seminary of learning; nor while kept at any almshouse, or other asylum, or institution wholly or partly supported at public expense or by charity; nor while confined in any public prison. (Formerly §3. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 6, 2001.)

**[Registration and election laws to be passed]**

§5. Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established, and for the registration of voters; which registration shall be completed at least ten days before each election. Such registration shall not be required for town and village elections except by express provision of law. (Formerly §4. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 6, 1951; further amended by vote of the people November 8, 1955; November 8, 1966; November 7, 1995.)

**[Permanent registration]**

§6. The legislature may provide by law for a system or systems of registration whereby upon personal application a voter may be registered and his or her registration continued so long as he or she shall remain qualified to vote from an address within the jurisdiction of the board with which such voter is registered. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 7, 1995; November 6, 2001.)

**[Manner of voting; identification of voters]**

§7. All elections by the citizens, except for such town officers as may by law be directed to be otherwise chosen, shall be by ballot, or by such other method as may be prescribed by law, provided that secrecy in voting be preserved. The legislature shall provide for identification of voters through their signatures in all cases where personal registration is required and shall also provide for the signatures, at the time of voting, of all persons voting in person by ballot or voting machine, whether or not they have registered in person, save only in cases of illiteracy or physical disability. (Formerly §5. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

**[Bi-partisan registration and election boards]**

§8. All laws creating, regulating or affecting boards or officers charged with the duty of qualifying voters, or of distributing ballots to voters, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next preceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed or elected in such manner, and upon the nomination of such representatives of said parties respectively, as the legislature may direct. Existing laws on this subject shall continue until the legislature shall otherwise provide. This section shall not apply to town, or village elections. (Formerly §6. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 7, 1995.)

**[Presidential elections; special voting procedures authorized]**

§9. Notwithstanding the residence requirements imposed by section one of this article, the legislature may, by general law, provide special procedures whereby every person who shall have moved from another state to this state or from one county, city or village within this state to another county, city or village within this state and who shall have been an inhabitant of this state in any event for ninety days next preceding an election at which electors are to be chosen for the office of president and vice president of the United States shall be entitled to vote in this state solely for such electors, provided such person is otherwise qualified to vote in this state and is not able to qualify to vote for such electors in any other state. The legislature may also, by general law, prescribe special procedures whereby every person who is registered and would be qualified to vote in this state but for his or her removal from this state to another state within one year next preceding such election shall be entitled to vote in this state solely for such electors, provided such person is not able to qualify to vote for such electors in any other state. (New. Added by vote of the people November 5, 1963; amended by vote of the people November 6, 2001.)

[Preamble Table of Contents Article 1 - Bill of Rights Article 2 - Suffrage Article 3 - Legislature Article 4 - Executive Article 5 - Officers and Civil Departments Article 6 - Judiciary Article 7 - State Finances Article 8 - Local Finances Article 9 - Local Governments Article 10 - Corporations Article 11 - Education Article 12 - Defense Article 13 - Public Officers Article 14 - Conservation Article 15 - Canals Article 16 - Taxation Article 17 - Social Welfare Article 18 - Housing Article 19 - Amendments Article 20 - Take Effect](#)



## THE LEAGUE OF WOMEN VOTERS *of New York State*

The League of Women Voters of New York State  
62 Grand Street, Albany, New York 12207  
Phone: 518-465-4162 Fax: 518-465-0812  
www.lwvny.org E-Mail: lwvny@lwvny.org

### *Summary of Executive Order Changes Postponing Spring Elections*

Governor Cuomo has introduced two Executive Orders to postpone spring elections because of the outbreak of COVID-19 in New York State.

The Executive Orders are available to read on the Governor's website

1. <https://www.governor.ny.gov/news/no-20212-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>
2. [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO\\_202.13.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.13.pdf)

Here are some common questions that have been raised regarding the postponement of elections.

#### **Which elections have been postponed?**

The Executive Order consolidates the April 28<sup>th</sup> presidential primary and special election with the June 23<sup>rd</sup> state and congressional primary.

School board and village elections have also been postponed but these elections have not been scheduled. The Executive Order states that these elections must occur after June 1<sup>st</sup>.

We will continue to keep voters updated about election date changes in New York State.

#### **Did the registration dates change?**

May 29 is the last day to postmark a registration form for the June primary; it must be received by the board of elections by June 3.

May 29 is the last day to register in person at your county board of elections.

For a voter who just want to vote in one of the Special Elections happening in NYC, or elsewhere, the deadline is June 13<sup>th</sup>.

#### **Did absentee voting change?**

The dates to apply for an absentee ballot have been changed to coincide with the dates of the June 23<sup>rd</sup> primary but the rules around voting via absentee have not changed.

June 16 is the last day to postmark application for the primary ballot. (Absentee ballot applications are available here: <https://www.elections.ny.gov/VotingAbsentee.html>)

June 22 is the last day to apply in person for primary ballot at your county board of elections.

June 22 is the last day to postmark ballot, it must be received by the county board of elections no later than June 30<sup>th</sup>.

June 23 is the last day to deliver primary ballot in person to county board, by close of polls.



Voters must select one of the following reasons for requesting to vote be absentee:

- absence from county or New York City on election day
- temporary illness or physical disability (any voter can check this option to qualify to vote via absentee for any election before June 23<sup>rd</sup>)
- permanent illness or physical disability
- duties related to primary care of one or more individuals who are ill or physically disabled
- resident or patient of a Veterans Health Administration Hospital
- detention in jail/prison, awaiting trial, awaiting action by a grand jury, or in prison for a conviction of a crime or offense which was not a felony

Your absentee ballot materials will be sent to you at least 32 days before federal, state, county, city or town elections in which you are eligible to vote. If you applied after this date, your ballot will be sent immediately after your completed and signed application is received and processed by your local board of elections.

**What if I already voted via absentee for the special elections and presidential primary?**

At this time the Executive Order does not address that question. Election officials are predicting that all absentee ballots will be preserved and counted in June, but we will have to wait for more guidance on this question.

## **Frequently Asked Questions (FAQs) on Primary and Spring Elections Postponement as of March 31, 2020**

Governor Cuomo has introduced two Executive Orders to postpone spring elections because of the outbreak of COVID-19 in New York State.

The Executive Orders are available to read on the Governor's website

1. <https://www.governor.ny.gov/news/no-20212-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>
2. [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO\\_202.13.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.13.pdf)

Here are some common questions that have been raised regarding the postponement of elections.

### **Which elections have been postponed?**

The Executive Order consolidates the April 28<sup>th</sup> presidential primary and special elections ( 27th Congressional District, 12th Assembly District, 31st Assembly District, 136th Assembly District, and 50th Senate District) with the June 23<sup>rd</sup> state and congressional primary.

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June 22 is the last day to postmark ballot, it must be received by the county board of elections no later than June 30<sup>th</sup>.

June 23 is the last day to deliver primary ballot in person to county board, by close of polls.

Voters must select one of the following reasons for requesting to vote be absentee:

- absence from county or New York City on election day
- temporary illness or physical disability
- permanent illness or physical disability

- duties related to primary care of one or more individuals who are ill or physically disabled
- resident or patient of a Veterans Health Administration Hospital
- detention in jail/prison, awaiting trial, awaiting action by a grand jury, or in prison for a conviction of a crime or offense which was not a felony

Your absentee ballot materials will be sent to you at least 32 days before federal, state, county, city or town elections in which you are eligible to vote. If you applied after this date, your ballot will be sent immediately after your completed and signed application is received and processed by your local board of elections.

**What if I already voted via absentee for the special elections and presidential primary?**

At this time the Executive Order does not address that question. Election officials are predicting that all absentee ballots will be preserved and counted in June, but we will have to wait for more guidance on this question.



## THE LEAGUE OF WOMEN VOTERS *of New York State*

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### ***FAQs About Voting Via Absentee Ballot in NYS***

**On April 9, Governor Cuomo passed an Executive Order to allow all voters to apply to vote via absentee ballot for any election held on or before June 23.**

**You can read the full Executive Order here:** <https://www.governor.ny.gov/news/no-20215-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

#### **How can I apply to vote absentee in New York State?**

In NYS, you must first request an absentee ballot application and then a ballot will be mailed to you. You then complete and mail the ballot to your county Board of Elections

#### **Where do I get an absentee ballot application?**

Voters can access an absentee ballot application from the State Board of Elections' and New York City Board of Elections' websites here:

English: <https://www.elections.ny.gov/NYSBOE/download/voting/AbsenteeBallot-English.pdf>

Spanish: <https://www.elections.ny.gov/NYSBOE/download/voting/AbsenteeBallot-Spanish.pdf>

Chinese: <https://vote.nyc/sites/default/files/pdf/forms/absenteevoting/abschinese.pdf>

Korean: <https://vote.nyc/sites/default/files/pdf/forms/absenteevoting/abskorean.pdf>

Bengali: <https://vote.nyc/sites/default/files/pdf/forms/absenteevoting/absbengali.pdf>

Under #1 on the application, voters can select “temporary illness or physical disability” as their reason for requesting to vote by absentee ballot. Governor Cuomo's order expanded the definition of “temporary illness” to include the risk of contracting the coronavirus. The form can be printed, completed, signed, and mailed back to your county Board of Elections. You can find contact information for your county Board of Elections here: <https://www.elections.ny.gov/CountyBoards.html>

Voters can also submit email applications to their county Board of Elections. Individuals can have an application attached to their email or provide to the Board with written information necessary to identify themselves. Prior to issuing the absentee ballot, the county board will complete a review process to identify the voter and the reason for the ballot. Absentee ballots will be sent to the voter's residence address unless otherwise requested by the voter.

#### **What if I don't have access to the internet, computer or a printer?**

Voters who do not have internet access or a printer can call their Board of Elections and request that they mail them a paper application.

Voters who do not have access to a printer, but do have computer access, can request an absentee ballot electronically by submitting an absentee ballot application by FAX or email. Voters can also request an absentee ballot by sending an email to their county Board of Elections (call your local BOE to learn what information is required.) This will allow the Board to complete the review process and identify the individual as a qualified and registered voter prior to issuing the absentee ballot.

Call your county Board of Elections (find your county BOE phone number at: <https://www.elections.ny.gov/CountyBoards.html>) to find out their procedure for applying for an absentee ballot electronically.

### **How will I receive my absentee ballot?**

Absentee ballots will be sent to the voter's residence address unless otherwise requested by the voter. Delivery of absentee ballots to voters still remains the same, via mail or in person. There is no change in the return methods. The ballot must still be sent back by mail or returned in person by a specific deadline (see below.)

### **What will I receive with the absentee ballot?**

After applying for an absentee ballot, you will receive:

1. Absentee Ballot: must be filled out (no signature here) and inserted into:
2. Ballot Envelope: Must be sealed, then signed and dated and inserted into:
3. Pre-addressed Return Envelope: Must add your own postage

### **When will the absentee ballot be mailed to me?**

Your absentee ballot materials will be sent to you at least 32 days before federal, state, county, city or town elections in which you are eligible to vote. If you applied after this date, your ballot will be sent immediately after your completed application is received and processed by your local Board of Elections. Complete the ballot, **SIGN THE ENVELOPE PROVIDED**, and mail to your county Board of Elections. The voter's signature on the return envelope will be used to validate the ballot.

### **Will I need to stamp the return envelope or is postage provided?**

You will need to put a stamp on the return envelope when you mail your ballot to the county Board of Elections. You must use the return envelope provided with the ballot, **sign the back of the envelope** and provide postage. *Postage probably is more than just one stamp.* Voters should check with their county Board of Elections' website or call them to inquire as to the postage required. As more details emerge, we will share on this website.

### **What if I am not at my normal voting address during the election?**

Voters can request their ballot be sent to an alternative address on their absentee ballot application. Voters who are currently forwarding their mail to another address should contact their county Board of Elections to ensure that they are still on their voter rolls.

### **What if I have a disability that does not allow me to read or sign the application or ballot?**

You may sign the absentee ballot application yourself, or you may make your mark and have your mark witnessed in the spaces provided on the bottom of the application. Please note that a power of attorney or printed name stamp is not allowed for any voting purpose. For more information about voting absentee with a disability, please contact your county Board of Elections.

### **What is the deadline to apply to vote by absentee ballot? And to submit the absentee ballot?**

- June 16 is the last day to postmark application for the primary ballot.
- June 22 is the last day to apply in person for primary ballot at your county Board of Elections.
- June 22 is the last day to postmark ballot and it must be received by the county Board of Elections no later than June 30.
- June 23 is the last day to deliver primary ballot in person to county Board of Elections' office by close of polls.

# STATE OF NEW YORK

7596

## IN SENATE

January 29, 2020

Introduced by Sen. MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Elections

AN ACT to amend the election law, in relation to authorizing electronic absentee ballot applications and absentee ballot submissions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (c) of subdivision 2 of section 8-400 of the  
2 election law, as amended by chapter 321 of the laws of 1988, is amended  
3 to read as follows:

4 (c) All applications requesting that a ballot be delivered to the  
5 voter or an agent by mail must be mailed to the board of elections not  
6 later than the seventh day before the election for which a ballot is  
7 first requested or, for applications requesting in-person delivery of  
8 the ballot to the voter or an agent at the board of elections, must be  
9 delivered to such board not later than the day before such election. In  
10 addition to postal or personal delivery of the application to the board  
11 of elections, the board of elections shall accept delivery of absentee  
12 ballot applications from persons residing in a country other than the  
13 United States while maintaining eligibility to vote in elections in New  
14 York: (i) by telephone facsimile transmission to a phone number which  
15 shall be designated by the board of elections; (ii) as an attachment to  
16 an electronic mail transmission sent to an electronic mail address which  
17 shall be designated by the board of elections; and (iii) through an  
18 online electronic absentee ballot application filing system which shall  
19 be established by the state board of elections and which shall transmit  
20 each application to the appropriate board of elections for processing.  
21 The website for each board of elections shall advertise the email  
22 address and telephone facsimile number required by this section and  
23 shall provide a link to the online electronic filing system established  
24 pursuant to this section. An application delivered to the board of  
25 elections by electronic means shall be an original application without  
26 necessity for a subsequent conforming paper submission and shall be  
27 deemed filed when received by the board of elections, except if received  
28 by electronic means after business hours or extended hours as designated

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD14830-01-0

1 by this chapter, such application shall be deemed received as of the  
2 next day on which the board is open to receive absentee ballot applica-  
3 tions. Nothing in this section shall be construed to prevent the appli-  
4 cation of the electronic signature provisions of the state technology  
5 law with respect to applications for an absentee ballot.

6 § 2. Section 8-410 of the election law, as amended by chapter 352 of  
7 the laws of 1986, is amended to read as follows:

8 § 8-410. Absentee voting; method of. 1. Marking of the ballot. The  
9 absentee voter shall mark an absentee ballot as provided for paper  
10 ballots or ballots prepared for counting by ballot counting machines. He  
11 or she shall make no mark or writing whatsoever upon the ballot, except  
12 as above prescribed, and shall see that it bears no such mark or writ-  
13 ing. He or she shall make no mark or writing whatsoever on the outside  
14 of the ballot.

15 2. Submission of the ballot; by mail. After marking the ballot or  
16 ballots he or she shall fold each such ballot and enclose them in the  
17 envelope and seal the envelope. He or she shall then take and subscribe  
18 the oath on the envelope, with blanks properly filled in. The envelope,  
19 containing the ballot or ballots, shall then be mailed or delivered to  
20 the board of elections of the county or city of his or her residence.

21 3. Submission of the ballot; by electronic mail. He or she shall then  
22 take and subscribe the oath in the email, with blanks properly filled  
23 in. He or she shall then return the ballot or ballots via electronic  
24 mail to the state board of elections using the electronic absentee  
25 ballot transmittal system.

26 § 3. The election law is amended by adding a new section 8-414 to read  
27 as follows:

28 § 8-414. Absentee voters; electronic absentee ballot transmittal  
29 system. 1. The state board of elections shall establish and maintain an  
30 electronic absentee ballot transmittal system through which applicants  
31 may return a marked absentee ballot via electronic mail. The state  
32 board of elections shall deliver such marked ballots to the applicable  
33 board of elections of each county or the city of New York for filing,  
34 processing and verification consistent with this chapter. In accordance  
35 with technical specifications provided by the state board of elections,  
36 each board of elections shall maintain a system capable of receiving and  
37 processing marked absentee ballot information, including digital signa-  
38 tures, from the electronic voter registration transmittal system estab-  
39 lished by the state board of elections. Notwithstanding any other incon-  
40 sistent provision of this chapter, ballots filed using such system shall  
41 be considered filed with the applicable board of elections on the calen-  
42 dar date such application or ballot is initially transmitted by the  
43 voter through the electronic absentee ballot transmittal system.

44 2. The electronic absentee ballot transmittal system shall only be  
45 available for persons residing in a country other than the United States  
46 while maintaining eligibility to vote in elections in New York.

47 § 4. Section 11-203 of the election law, as added by chapter 104 of  
48 the laws of 2010, is amended to read as follows:

49 § 11-203. Special federal voters; designation of means of transmission  
50 by special federal voters. [~~1.~~] A special federal voter may designate a  
51 preference to receive a voter registration application, a special feder-  
52 al ballot application or a special federal ballot by mail, facsimile  
53 transmission or electronic mail. Such designation shall remain in effect  
54 until revoked or changed by the special federal voter. If a special  
55 federal voter does not designate a preference, the board of elections  
56 shall transmit the voter registration application, special federal



1 ballot application or special federal ballot by mail. If a special  
2 federal voter designates a preference for facsimile transmission or  
3 electronic mail but does not provide the necessary facsimile number or  
4 e-mail address, the board of elections shall transmit the voter regis-  
5 tration application, special federal ballot application or special  
6 federal ballot by mail and request the omitted information. All communi-  
7 cations to the special federal voter shall include the mailing address  
8 of the board of elections.

9 ~~[2. Irrespective of the preferred method of transmission designated by~~  
10 ~~a special federal voter, a special federal voter's original completed~~  
11 ~~voter registration application, special federal ballot application and~~  
12 ~~special federal ballot must be returned by mail or in person notwith-~~  
13 ~~standing that a prior copy was sent to the board of elections by facsim-~~  
14 ~~ile transmission or electronic mail.]~~

15 § 5. This act shall take effect on the first of January next succeed-  
16 ing the date on which it shall have become a law.

# STATE OF NEW YORK

7979

## IN SENATE

March 6, 2020

Introduced by Sen. MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Elections

AN ACT to amend the election law, in relation to improving the issuing of absentee ballots

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraphs (c) and (d) of subdivision 2 of section 8-400 of  
2 the election law, paragraph (c) as amended by chapter 321 of the laws of  
3 1988 and paragraph (d) as separately amended by chapters 97 and 104 of  
4 the laws of 2010, are amended to read as follows:

5 (c) All applications must be [~~mailed to~~] received by the board of  
6 elections not later than the [~~seventh~~] day before the election for which  
7 a ballot is first requested [~~or delivered to such board not later than~~  
8 ~~the day before such election~~].

9 (d) The board of elections shall mail an absentee ballot to every  
10 qualified voter otherwise eligible for such a ballot, who requests such  
11 an absentee ballot from such board of elections in writing [~~in~~], which  
12 shall include a letter, telefax or other written instrument containing a  
13 signature of the voter, indicating the address, phone number and the  
14 telefax number from which the writing is sent or other written instru-  
15 ment, which is signed by the voter and received by the board of  
16 elections not earlier than the thirtieth day, if said absentee ballots  
17 have been prepared or immediately upon their receipt by the board of  
18 elections, nor later than the [~~seventh~~] day before the election for  
19 which the ballot is first requested and which states the address where  
20 the voter is registered and the address to which the ballot is to be  
21 mailed; provided, however, a military voter may request a military  
22 ballot or voter registration application or an absentee ballot applica-  
23 tion in a letter as provided in subdivision three of section 10-106 of  
24 this chapter; and provided further, a special federal voter may request  
25 a special federal ballot or voter registration application or an absen-  
26 tee ballot application in a letter as provided in paragraph d of subdivi-  
27 sion one of section 11-202 of this chapter. The board of elections  
28 shall enclose with such ballot a form of application for absentee ballot  
29 if the applicant is registered with such board of elections.

30 § 2. This act shall take effect immediately.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[~~-~~] is old law to be omitted.

LBD15605-01-0

# STATE OF NEW YORK

8004

## IN SENATE

March 9, 2020

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Elections

AN ACT to amend the election law, in relation to absentee ballots

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 8-406 of the election law, as amended by chapter  
2 296 of the laws of 1988, is amended to read as follows:

3 § 8-406. Absentee ballots, delivery of. If the board shall find that  
4 the applicant is a qualified voter of the election district containing  
5 his residence as stated in his statement and that his statement is  
6 sufficient, it shall, as soon as practicable after it shall have deter-  
7 mined his right thereto, mail to him at an address designated by him, or  
8 deliver to him, or to any person designated for such purpose in writing  
9 by him, at the office of the board, such an absentee voter's ballot or  
10 set of ballots and ~~an~~ a return postage guaranteed envelope therefor.  
11 If the ballot or ballots are to be sent outside of the United States to  
12 a country other than Canada or Mexico, such ballot or ballots shall be  
13 sent by air mail. However, if an applicant who is eligible for an absen-  
14 tee ballot is a resident of a facility operated or licensed by, or under  
15 the jurisdiction of, the department of mental hygiene, or a resident of  
16 a facility defined as a nursing home or residential health care facility  
17 pursuant to subdivisions two and three of section two thousand eight  
18 hundred one of the public health law, or a resident of a hospital or  
19 other facility operated by the Veteran's Administration of the United  
20 States, such absentee ballot need not be so mailed or delivered to any  
21 such applicant but, may be delivered to the voter in the manner  
22 prescribed by section 8-407 of this ~~chapter~~ title if such facility is  
23 located in the county or city in which such voter is eligible to vote.

24 § 2. This act shall take effect immediately.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[~~-~~] is old law to be omitted.

LBD00718-01-9

# STATE OF NEW YORK

8015--A

## IN SENATE

March 9, 2020

Introduced by Sens. BIAGGI, GOUNARDES, HARCKHAM, HOYLMAN, KAMINSKY, KAPLAN, KRUEGER, MAYER, METZGER, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Elections -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the election law, in relation to absentee voting

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 1 of section 8-400 of the election law, as  
2 amended by chapter 63 of the laws of 2010, paragraph (c) as amended by  
3 chapter 375 of the laws of 2015, is amended to read as follows:

4 1. A qualified voter may vote as an absentee voter under this chapter  
5 if, on the occurrence of any village election conducted by the board of  
6 elections, primary election, special election, general election or New  
7 York city community school board district or city of Buffalo school  
8 district election, he or she expects to be:

9 (a) absent from the county of his or her residence, or, if a resident  
10 of the city of New York absent from said city; or

11 (b) unable to appear personally at the polling place of the election  
12 district in which he or she is a qualified voter because of illness or  
13 physical disability or duties related to the primary care of one or more  
14 individuals who are ill or physically disabled, or because he or she  
15 will be or is a patient in a hospital. For purposes of this paragraph,  
16 the term "illness" shall include the spread or potential spread of any  
17 communicable disease, at a time of declaration of a state of emergency  
18 within the jurisdiction where the election is taking place; or

19 (c) a resident or patient of a veterans health administration hospi-  
20 tal; or

21 (d) absent from his or her voting residence because he or she is  
22 detained in jail awaiting action by a grand jury or awaiting trial, or  
23 confined in jail or prison after a conviction for an offense other than  
24 a felony, provided that he or she is qualified to vote in the election  
25 district of his or her residence.

26 § 2. This act shall take effect immediately.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD15746-04-0

# STATE OF NEW YORK

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8106

## IN SENATE

March 23, 2020

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Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Elections

AN ACT to extend absentee voting to all residents for all primaries or special elections occurring before June 24, 2020

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Notwithstanding section 8-400 of the election law or any  
2 other provision to the contrary, a qualified voter may vote as an absen-  
3 tee voter in any primary or special election that occurs before June 24,  
4 2020 provided that all other applicable provisions under title 4 of  
5 article 8 of the election law are adhered to.  
6 § 2. This act shall take effect immediately.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD15963-01-0

# STATE OF NEW YORK

8130

## IN SENATE

March 24, 2020

Introduced by Sen. MYRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Elections

AN ACT to amend the election law, in relation to voting

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraphs (c) and (d) of subdivision 2 of section 8-400 of  
2 the election law, paragraph (c) as amended by chapter 321 of the laws of  
3 1988, and paragraph (d) as separately amended by chapters 97 and 104 of  
4 the laws of 2010, are amended to read as follows:

5 (c) All applications must be mailed or delivered to the board of  
6 elections not later than [~~the seventh day~~] two days before the election  
7 for which a ballot is first requested or delivered to such board not  
8 later than the day before such election.

9 (d) The board of elections shall mail an absentee ballot to every  
10 qualified voter otherwise eligible for such a ballot, who requests such  
11 an absentee ballot from such board of elections in writing in a letter,  
12 electronic mail, telefax indicating the address, phone number and the  
13 telefax number from which the writing is sent or other written instru-  
14 ment, which is [~~signed by the voter and~~] received by the board of  
15 elections not earlier than the thirtieth day nor later than [~~the seventh~~  
16 ~~day~~] two days before the election for which the ballot is first  
17 requested and which states the address where the voter is registered and  
18 the address to which the ballot is to be mailed; provided, however, a  
19 military voter may request a military ballot or voter registration  
20 application or an absentee ballot application in a letter as provided in  
21 subdivision three of section 10-106 of this chapter; and provided  
22 further, a special federal voter may request a special federal ballot or  
23 voter registration application or an absentee ballot application in a  
24 letter as provided in paragraph d of subdivision one of section 11-202  
25 of this chapter. The board of elections shall enclose with such ballot a  
26 form of application for absentee ballot if the applicant is registered  
27 with such board of elections.

28 § 2. This act shall take effect immediately.

EXPLANATION--Matter in italics (underscoring) is new; matter in brackets  
[~~-~~] is old law to be omitted.

LBD15910-03-0



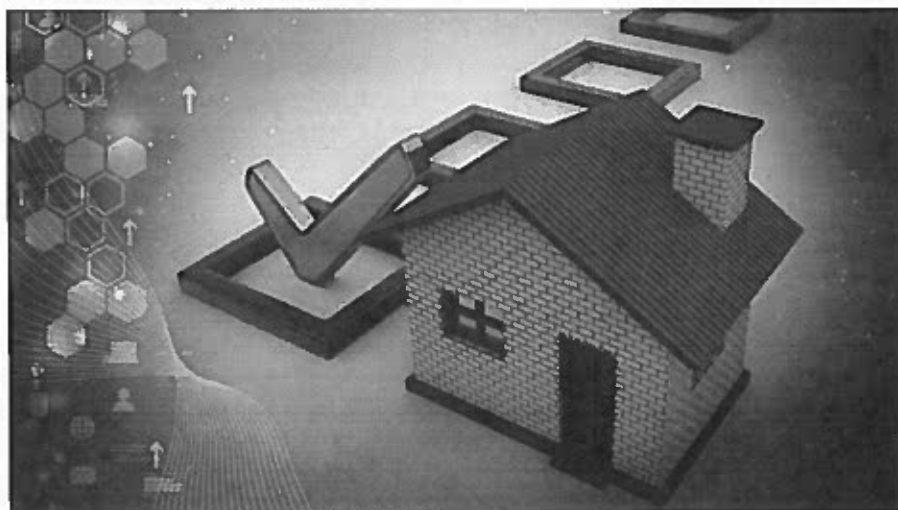
OUR AMERICAN STATES



The NCSL Podcast

# Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options

4/14/2020



Most states offer at least one method for any eligible voter to cast a ballot before Election Day. While some states provide early in-person voting, this webpage addresses absentee voting and all-mail voting.

**Absentee Voting:** All states will mail an absentee ballot to certain voters who request one. In two-thirds of the states, any qualified voter may vote absentee without offering an excuse, and in one-third of the states, an excuse is required. Some states offer a permanent absentee ballot list: once a voter asks to be added to the list, s/he will automatically receive an absentee ballot for all future elections.

**All-Mail Voting:** In a handful of states, a ballot is automatically mailed to every eligible voter (no request or application is necessary). Polling places may also be available for voters who would like to vote in-person. Other states may permit the all-mail option for specific types of elections.

As for early in-person voting, it is available in four-fifths of the states. In these states, any qualified voter may cast a ballot in person during a designated period prior to Election Day. Please see our page on State Laws Governing Early Voting.

**NOTE:** This page should be used for general informational purposes only. It is not intended as a legal advice. Please contact your local election officials for information on voting in your jurisdiction.

## Introduction

When, where and how Americans vote has evolved over the course of the last 250 years. When the United States first came into being, voters would voice their choices on courthouse steps, out loud and very much not in secret. Toward the end of the 19th century, a paper ballot became common and was increasingly cast in private at a neighborhood polling place. Times are changing again. The majority of states now permit voters to cast ballots before Election Day, either in person at designated early voting sites, or via a ballot that has been mailed to the voter's home. In all states, to varying degrees, voting now takes place not just on one day during a certain time period, but over a series of days and weeks before the election, as well.

Some states provide an early, in-person voting period; for information on this option, please see NCSL's webpage State Laws Governing Early Voting.

All states allow voters who have a reason they can't vote on Election Day to request a ballot in advance, and many states allow all voters to request a ballot in advance without requiring a reason. States vary on what extent they offer these options, including some states that deliver ballots to all voters (while maintaining some in-person voting locations for those that prefer to vote in person or may need assistance). This page goes into detail about each of these variations and how absentee/mailed ballots are handled in states.

### A Note on Terminology

A ballot that has been sent to a voter and is voted outside of a polling place or election official's office has traditionally been referred to as an "absentee ballot" and the person who votes that ballot has been called an "absentee voter." This terminology is common in state law and comes from the concept that voters would use this option only when they were "absent" from their neighborhood



polling place on Election Day. As time has gone on and more and more voters request a ballot in advance as their default voting method, and as states have begun offering more opportunities for voters to do so, the terminology has evolved. Some states refer to "advance ballots," "mailed ballots," "by-mail ballots," "mail ballots" or "vote-by-mail ballots."

In this report NCSL has chosen to use "absentee/mailed ballots" to reflect the traditional terminology and also the evolution of the use of the term. Note that this term refers to ballots that are mailed out to voters by election officials and does not indicate the method voters choose to return the ballot. Often these "absentee/mailed ballots" are returned via methods other than mail, i.e. in person at a voting location or at a secure drop box.

## What Are Some Possible Advantages and Disadvantages to Voting by Mail?

As legislators consider policies that allow more people to "vote at home," or vote by mail, or vote absentee, they will be weighing advantages and disadvantages.

### Advantages

- Voter convenience and satisfaction. Citizens can review their ballots at home and take all the time they need to study the issues. Voters often express enthusiasm for this option. See this survey from Oregon Public Broadcasting on the Beaver State's all-mail voting system that showed 87% support, for example.
- Financial savings. Jurisdictions may save money because moving toward more absentee/mailed ballot voting reduces the need to staff and equip traditional polling places. A 2016 study of Colorado from The Pew Charitable Trusts found costs decreased an average of 40% in five election administration categories across 46 of Colorado's 64 counties (those with available cost data) after it implemented all-mail ballot elections. (Note: The study examines a number of reforms Colorado enacted in 2013, with all-mail elections being the most significant. Others included instituting same-day registration and shortening the time length for residency in the state for voting purposes.)
- Turnout. Some reports indicate that because of convenience, voter turnout increases. See this 2013 report on all-mail ballot elections in Washington and this 2018 report on all-mail ballot elections in Utah. Effects on turnout can be more pronounced for lower turnout elections (local elections, for example) and for low propensity voters (those who are registered but do not vote as frequently). Evidence for increased turnout based on absentee/mailed ballot voting, instead of all-mail ballot elections, is not as clear.

## Disadvantages

- Financial considerations. Sending ballots by mail increases printing costs for an election. There may be up-front costs of changing to different vote-counting equipment, although overall fewer voting machines are required in jurisdictions that have more absentee/mailed ballot voting and count ballots at a centralized location. If a state chooses to pay for return postage for these ballots that could also increase costs.
- An increase in voter "errors" or "residual votes." When marking a ballot outside of an in-person voting location, a voter can potentially mark more selections in a contest than the maximum number allowed (called an overvote) or mark less than the maximum number allowed, including marking nothing for that contest (called an undervote). Political scientists often refer to these overvotes and undervotes as errors or residual votes. Voting equipment at in-person voting locations will notify voters if this happens and allow the voter the opportunity to correct it. When returning an absentee/mailed ballot there is not a similar mechanism to inform voters of errors, so there tend to be more overvotes and undervotes. Damaged absentee/mailed ballots may be harder to correct as well. Procedural choices can mitigate this effect to some extent.
- Tradition. The civic experience of voting with neighbors at a local school, church or other polling place is lost when voting with an absentee/mailed ballot. Some point out that the experience can be shared with family members at home in a way that isn't possible with in-person voting.
- Disparate effect on some populations. Mail delivery is not uniform across the nation. Native Americans on reservations in particular may have difficulty with all-mail elections. Many do not have street addresses, and their P.O. boxes may be shared. Low-income citizens move more frequently and keeping addresses current can pose problems. Literacy can be an issue for some voters, as well, since election materials are often written at a college level. (Literacy can be a problem for voters at traditional polling place locations, too.)
- Opportunities for coercion. If a voter is marking a ballot at home, and not in the presence of election officials, there may be more opportunity for coercion by family members or others.
- Slower result reporting. Ballots may continue to arrive up to and even after Election Day (depending on state law), so it can take days (or longer) after the election before election officials are able to count all ballots. Note that final

results are typically not official until a week or two after the election. During this time, all states are examining provisional ballots and ballots coming from military or overseas voters, as well. Policy choices can mitigate this effect.

## Qualifying for an Absentee Ballot

The concept of voting "absentee" first came about during the Civil War as a way for soldiers to cast ballots back in their home states. The idea of allowing military voters to cast a ballot "in absentia" is still one of the driving factors for states allowing absentee ballots. All states, by federal law, are required to send absentee/mailed ballots to military and overseas voters for federal elections (see the 1986 Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)).

Aside from military and overseas voters, 16 states only permit certain voters to request an absentee ballot by mail when they have an "excuse" for not being able to vote at the polls on Election Day. More details on these states can be found in the table below. Note, however, that many states that require an excuse to obtain an absentee ballot do provide early voting opportunities for voters to cast a ballot in-person before Election Day.

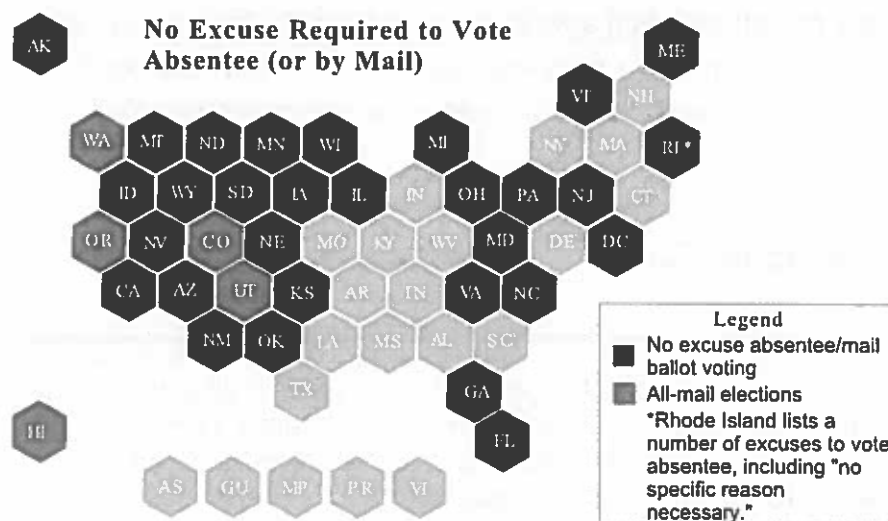
More than two-thirds of the states have "no-excuse absentee" voting, which means any voter can request a mail ballot without providing an excuse, and a few send all voters ballots by mail.

In this section you will find:

- States that do not require an excuse to vote absentee or by mail.
- Excuses to vote absentee in states that do require an excuse.
- Who qualifies for permanent absentee ballot status?
- How and when are voters removed from a permanent absentee list?

### **Which states do not require an excuse to vote absentee or by mail?**

The following 34 states and Washington, D.C., offer "no-excuse" absentee/mailed ballot voting: Alaska, Arizona, California, Colorado\*, District of Columbia, Florida, Georgia, Hawaii\*, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon\*, Pennsylvania, Rhode Island\*\*, South Dakota, Utah\*, Vermont, Virginia, Washington\*, Wisconsin and Wyoming.



\*Designates a state that sends mailed ballots to all eligible voters. Voters don't need to request a mailed ballot but automatically receive one. See the section on all-mail elections below.

\*\*Rhode Island lists a number of excuses to vote absentee, but also specifies "No specific reason necessary." Since any Rhode Islander can request an absentee ballot, NCSL has categorized it as no excuse required.

## What are the excuses to vote absentee in states that require an excuse?

All states permit voters who will be outside of their home county to vote absentee/by mailed ballot, as well as voters with an illness or disability who know ahead of time that they won't be able to make it to the polls. It is also common to provide this option for elderly voters.

Many states also permit voters to request an absentee/mailed ballot in case of an emergency situation, such as an unforeseen illness, confinement to a medical facility or an accident resulting in injury. More details on these situations can be found on NCSL's page on Absentee Voting in Case of a Personal Emergency.

Beyond that, there are a variety of acceptable excuses in states, summarized in the table below.

Note: This chart is meant to compare and summarize the acceptable excuses for states that require an excuse to vote absentee. Since it is comparative, it is not comprehensive of all the excuses in a given state. Visit state election webpages for additional information on a given state's requirements

### Excuses to Vote Absentee/By Mailed Ballot

State	Out of County on Election Day	Illness or Disability	Persons Older Than a Certain Age	Work Shift is During all Voting Hours	Student living Outside of County	Election Worker or Poll Watcher	Religious Belief or Practice	ACP* Participant	Incarcerate (but Still Qualified to Vote)
Alabama Ala. Code § 17-11-3	✓	✓		✓	✓	✓			
Arkansas Ark. Code Ann. § 7-5-402	✓	✓							
Connecticut C.G.S.A. § 9-135	✓	✓				✓	✓		
Delaware 15 Del. Code § 5502	✓	✓		✓			✓		
Indiana Ind. Code § 3-11-10-24	✓	✓	65+	✓		✓	✓	✓	
Kentucky Ken. Rev. Stat. § 117.085(1)(a), § 117.077	✓	✓	65+	✓	✓			✓	✓
Louisiana LSA-R.S. 18:1303	✓	✓	65+	✓	✓	✓		✓	✓
Massachusetts M.G.L.A. 54 § 86	✓	✓			✓		✓		
Mississippi Miss. Code Ann. § 23-15-715	✓	✓	65+						
Missouri V.A.M.S. 115.277	✓	✓				✓	✓	✓	✓
New Hampshire N.H. Rev. Stat. § 657:1	✓	✓		✓			✓		
New York § 8-400	✓	✓							✓
South Carolina § 7-15-320	✓	✓	65+	✓	✓	✓			✓
Tennessee T. C. A. § 2-6-201	✓	✓	60+	✓	✓	✓	✓		
Texas V.T.C.A., Election Code § 82.001 et seq.	✓	✓	65+					✓	✓

State	Out of County on Election Day	Illness or Disability	Persons Older Than a Certain Age	Work Shift is During all Voting Hours	Student living Outside of County	Election Worker or Poll Watcher	Religious Belief or Practice	ACP* Participant	Incarcerate (but Still Qualified to Vote)
West Virginia W. Va. Code, § 3-3-1	✓	✓	"Advanced age"	✓	✓			✓	✓

\*ACP stands for Address Confidentiality Program, which protects the information of victims of domestic violence, sexual assault or stalking. (Learn more about ACPs here.)

## Who qualifies for permanent absentee ballot status?

Some states permit voters to join a permanent absentee/mailed ballot voting list. Voters who request to be on this list will automatically receive an absentee/mailed ballot for each election. This option may be offered to all voters, or to a limited number of voters based on certain criteria described below.

A permanent absentee list is sometimes known as a "single sign-up" option, since a voter needs to sign up only once to receive an absentee/mailed ballot for all future elections.

Seven states plus D.C. permit any voter to join a permanent absentee/single sign-up list and will mail that voter an absentee/mailed ballot for each election: Arizona, California, District of Columbia, Hawaii, Montana, Nevada, New Jersey and Utah. (Note: Hawaii and Utah will hold all-mail ballot elections in 2020, and California counties are moving in that direction as well.)

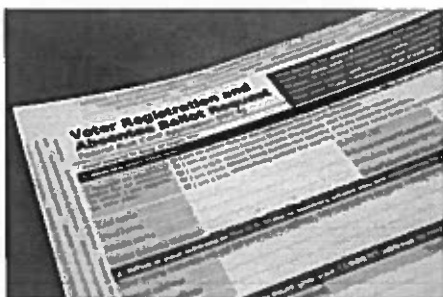
- In Florida, a request for a vote-by-mail, or absentee, ballot remains in effect for all elections through the two-year election cycle (Fla. Stat. §101.62).
- In Michigan, North Dakota (N.D.. Cent. Code §16.1-07-05(1)) , Oklahoma (AC 230:30-5-13), South Dakota (S.D.. Codified Laws Ann. §12-19-2) and Vermont (Vt. Stat. Ann. tit. 17, §2532) a request for a vote-by-mail, or absentee, ballot remains in effect through the calendar year.

Ten states permit voters with permanent disabilities to use a "single sign-up" option, and, once on the list, the state sends them absentee/mailed ballots: Alabama, Connecticut, Delaware, Kansas, Louisiana, Mississippi, New York, Tennessee, West Virginia and Wisconsin. Louisiana and Wisconsin also make this option available to senior voters. In some cases, a note from a physician or other indication of a permanent disability may be required.

An additional six states automatically send absentee voter applications to voters on a permanent/single sign-up list. This differs from the category above since voters must return the application before receiving an absentee/mailed ballot:

State	When Is a Voter Removed from the Permanent Absentee List?
Hawaii H.R.S. §15-4 (h)	A voter's permanent absentee voter status shall be terminated if any of the following conditions apply: (1) The voter requests in writing that such status be terminated. (2) The voter dies, loses voting rights, registers to vote in another jurisdiction, or is otherwise disqualified from voting. (3) The voter's absentee ballot, voter notification postcard, or any other election mail is returned to the clerk as undeliverable for any reason. (4) The voter does not return a voter ballot by 6 p.m. on Election Day in both the primary and general election of an election year.
Minnesota Minn. Stat. §203B.04	A voter's permanent absentee status ends and automatic ballot application delivery must be terminated on: (1) The voter's written request. (2) The voter's death. (3) Return of an absentee ballot as undeliverable. (4) A change in the voter's status to "challenged" or "inactive" in the statewide voter registration system.
Montana M.C.A. §13-13-212	An elector may request to be removed from the absentee ballot list for subsequent elections by notifying the election administrator in writing. The election administrator shall biennially mail a forwardable address confirmation form to each elector who is listed in the national change of address system of the U.S. postal service as having changed the elector's address. ... If the form is not completed and returned or if the elector does not respond using the options provided in subsection (4)(b)(v), the election administrator shall remove the elector from the absentee ballot list.
New Jersey N.J.S.A. 19:63-3	A county clerk may not remove a voter's name from the list unless: (i) The voter is no longer listed in the official register. (ii) The voter cancels the voter's absentee status. (iii) The voter's name is removed on the date specified by the voter on the absentee ballot application form. (iv) The county clerk is required to remove the voter's name from the list under Subsection (7)(c). (7)(c) A county clerk shall remove a voter's name from the list if the voter fails to vote in two consecutive regular general elections.

## Requesting an Absentee Ballot



All states provide an absentee/mailed ballot for voters upon request. Some of these states require a voter to have an excuse in order to do so, such as being out of the state on Election Day or having a permanent disability (see section above). Other states permit any voter to request a ballot with no excuse required. A handful of states also send out ballots to all eligible voters.

- Minnesota and Michigan permit any voter to apply to receive an absentee/mailed ballot application for each election.
- Pennsylvania sends an application to all voters on its permanent list at the beginning of each year and, upon submittal of the application, the voter will receive an absentee/mailed ballot for all elections that year.
- Massachusetts and Missouri send permanently disabled voters' absentee/mailed ballot applications each election.
- Alaska (Alaska Admin. Code tit. 6, § 25.650) permits the election supervisor to designate a person as a permanent absentee voter if: the voter resides in a remote area where distance, terrain or other natural conditions deny the voter reasonable access to the polling place; the voter's permanent residence is in an institution serving the aged or persons with disabilities; or the voter is disabled and has been required to be designated as a permanent absentee voter.

### How and when is a voter removed from a permanent absentee ballot list?

Once voters opt in to the list, they are automatically mailed a ballot for subsequent elections. Below is a summary of the ways in which a voter who is on the permanent ballot list can be removed.

State	When Is a Voter Removed from the Permanent Absentee List?
Arizona Ariz. Rev. Stat. §16-544 (H)	After a voter has requested to be included on the permanent early voting list, the voter shall be sent an early ballot by mail automatically for any election at which a voter at that residence address is eligible to vote until any of the following occurs: 1. The voter requests in writing to be removed from the permanent early voting list. 2. The voter's registration or eligibility for registration is moved to inactive status or canceled as otherwise provided by law. 3. The notice sent by the county recorder or other officer in charge of elections is returned undeliverable and the county recorder or officer in charge of elections is unable to contact the voter to determine the voter's continued desire to remain on the list.
California Elect. Code §3206	If the voter fails to return an executed vote-by-mail ballot in four consecutive statewide general elections, the voter's name shall be deleted from the list.
District of Columbia D.C. Mun. Regis. Tit. 3, § 720.4	A duly registered voter's request to permanently receive an absentee ballot shall be honored until: (a) The voter submits a written request to no longer receive absentee ballots. (b) The voter is no longer a qualified elector. (c) Any mail sent to the voter is returned to the board as undeliverable. (d) The voter fails to return a voted absentee ballot for two back-to-back elections in which he or she is eligible to vote.



Most states, except for the all-mail states, require voters to submit an application in order to obtain a delivered ballot. The ways in which voters may request a ballot vary, as do the deadlines for submitting the application to the local election official. Some states regulate who can distribute or collect applications for delivered ballots as well.

Once the application is received, states have a process for verifying that the application did indeed come from the intended voter before sending a ballot to that voter. The timelines for delivering ballots to voters vary, with some states beginning the process of delivering ballots 45 days (or earlier) before an election, and others delivering ballots within a month before the election.

Note: The states that send ballots to all eligible voters, including those that will do so for the first time in 2020 (Colorado, Hawaii, Oregon, Utah and Washington) are not included in this section because an application is not required.

In this section you will find:

- How can voters request an absentee ballot?
- Who can distribute and collect absentee ballot applications?
- What are the deadlines for submitting absentee ballot applications?
- How do election officials verify absentee ballot applications?

## **How can voters request an absentee ballot?**

The ways in which voters may submit absentee/mailed ballot applications vary among states. All states will permit a voter to submit an application by mail (usually via an approved form) or in person at a local election official's office. Many states require the application or request to be in writing, either via an official application form or by written request in the mail or by email. Some states offer an alternative, though.

Ten states have an online portal that permits voters to request an absentee/mailed ballot: Delaware, D.C., Florida, Louisiana, Maine, Maryland, Minnesota, Oklahoma, Pennsylvania, Vermont and Virginia. Some of these states used legislation to create this option and others did not.

- West Virginia and D.C. allow voters to download an application form and then return it as a scanned document.
- Wisconsin permit voters to send an email with a scan of an absentee ballot request form and proof of ID to their county registrar.
- In Arizona many counties provide an online portal, though it is not available on the state level.
- Arizona, Florida, Maine, Mississippi, Vermont and Wyoming also accept phone requests.

## **Can third party individuals or groups distribute absentee ballot applications and collect complete applications?**

As part of get-out-the-vote efforts or a civic engagement program some organizations like to assist voters in requesting and returning absentee/mailed ballot applications. Some states place restrictions on these activities by prohibiting third-party groups from distributing or collecting absentee/mailed ballot applications, or designate deadlines or turnaround times for groups that do this. These are often meant to encourage third-party groups to submit completed applications in a timely manner to ensure that voters receive absentee/mailed ballots in a timely manner.

The following states and D.C. place no restrictions, or do not specify restrictions, on third-party groups distributing or collecting completed absentee/mailed ballot applications:

- Delaware, District of Columbia, Florida, Idaho, Maryland, Montana, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota and Virginia.

The following states permit third-party groups to distribute and collect completed absentee/mailed ballot applications, but specify deadlines or turnaround times:

- In Arizona, applications collected by third parties must be submitted within six days of receipt, under penalty of \$25 per day for each completed form withheld from submittal. Any person who knowingly fails to submit a completed early ballot request form before the submission deadline for the election immediately following the completion of the form is guilty of a class 6 felony (Ariz. Rev. Stat. § 16-542).
- Any third party may collect absentee/mailed ballot applications in California, but they must be submitted with 72 hours of receipt (Cal. Election Code § 3008).
- In Illinois, applications must be returned to the election authority within seven days of receipt, or within two days of receipt if within two weeks of the election. Failure to turn over an application is a petty offense with a fine of \$100 per application (10 ILCS 5/19-3).
- In Indiana, a person handling another voter's absentee/mailed ballot application must indicate the date received by the voter and deliver it to the county election board within 10 days or by the application deadline (Ind. Code § 3-11-4-2).
- Anyone may distribute and collect advance voting ballots in Kansas but must deliver any application within two days of completion (KSA § 25-1128).

- Anyone may distribute and collect absentee/mailed ballot applications in Minnesota, but they must be returned to the election office within 10 days of completion (MN Stat § 203B.04).
- In New Mexico, third parties may distribute/collect/solicit absentee/mailed ballot applications from voters so long as they are submitted within 48 hours of completion. A person who collects applications for mailed ballots and fails to submit them is guilty of a petty misdemeanor. A person who intentionally alters another voter's completed application is guilty of a fourth-degree felony (N.M. Stat. Ann. § 1-6-4.3).

The following states place restrictions on third-party individuals or groups distributing absentee/mailed ballot applications:

- In Alaska, third-party groups are restricted to supplying only their own affiliated members with an application (Alaska Stat. §15.20.081).
- In Connecticut, third parties must register with the town clerk before distributing five or more applications. Unsolicited application mailings must meet certain criteria. No person shall pay or give any compensation to another person for distribution absentee/mailed ballot applications (Conn Gen Stat § 9-140).
- In Nevada, a person who, six months before an election, intends to distribute more than 500 applications must use the prescribed secretary of state form, identify the person who is distributing the form, provide notice to the count clerk not later than 28 days before distributing such a form, and not mail such a form later than 35 days before the election (Nev. Rev. Stat. §293.3095).

Following are examples of restrictions, rules or penalties on third-party groups collecting absentee/mailed ballot applications:

- In Alaska, an application may not be submitted to any intermediary who could control or delay the submission of the application or gather data on the applicant (Alaska Stat. §15.20.081).
- In Alabama, only the voter may deliver her or his own completed application in person (Ala. Code §17-11-4).
- In Arkansas, only a designated bearer, authorized agent or long-term care facility administrator of a voter may deliver absentee applications in person on behalf of voters (Ark. Code § 7-5-404).
- In Georgia, applications may be submitted by immediate family members only on behalf of a physically disabled voter; proof of relationship must be provided (GA Code § 21-2-381).

- In Mississippi, any person may apply for an absentee ballot on another voter's behalf, but they must sign and print their name and address on the application. Only immediate family members of a voter may make application orally in person. No person may solicit ballot applications or absentee ballots for persons staying in any skilled nursing facility unless they are a family member or designated by the voter (Miss. Code Ann. § 23-15-625).
- In New Hampshire, third parties may distribute and collect absentee applications so long as they use the prescribed form and identify themselves in communication with voter (N.H. Rev. Stat. §657:4).
- Oklahoma prohibits delivering an absentee application for another voter unless the person is an authorized agent of an incapacitated voter (26 Okl. St. Ann. § 14-115.1).
- In South Carolina, only an immediate family member may submit an application on behalf of a voter; a voter must request an application to receive one; and no third-party distribution is allowed (S.C. Code § 7-15-330).
- In Tennessee, only one application may be furnished to a voter by the election commission; it is a class E felony to give an application to any person and a class A misdemeanor to give an unsolicited request for application to any person (Tenn. Code Ann. § 2-6-202).
- In Texas, it is a felony to knowingly submit an application for a ballot by mail without the knowledge and authorization of the voter or alter the information provided by the voter on the application (V.T.C.A., Election Code §84.0041).

## **What are the deadlines for submitting an absentee ballot application?**

In order to have enough time to receive an absentee/mailed ballot application, verify the information and send the ballot out, election officials usually need to receive applications a week or more before the election. Some states have statutory deadlines for absentee ballot applications closer to the election, but if a voter applies so close to the election it's unlikely that this is enough turnaround time to receive the ballot in the mail. In emergency cases, absentee ballots can be requested after these deadlines. See NCSL's webpage, [Absentee Voting in Case of a Personal Emergency](#), for details.

NOTE: This table is intended for use by policymakers and is not intended to guide voters. If you need advice on absentee/mailed ballot voting, please contact your election official.

<b>States with statutory absentee ballot application deadlines less than seven days before the election:</b>	<b>States with a statutory application deadline seven days (one week) before the election:</b>	<b>States with statutory application deadlines more than seven days before the election:</b>
Alabama: Five days before the election	Arkansas	Alaska: 10 days before the election
Connecticut: Day before the election	California	Arizona: 11 days before the election
Delaware: Day before the election	District of Columbia	Florida: 10 days before the election
Georgia: Friday before the election	Kansas	Idaho: 11 days before the election
Illinois: Five days before the election	Kentucky	Indiana: 12 days before the election
Louisiana: Four days before the election	Maryland	Iowa: 11 days before the election
Maine: Three business days before the election	Nevada	Missouri: Second Wednesday before the election
Massachusetts: Day before the election	New Jersey	Nebraska: Third Friday before the election
Michigan: Friday before the election	New York	Rhode Island: 21 days before the election (emergency requests are possible within 20 days of the election)
Minnesota: Day before the election	North Carolina	Texas: 11 days before the election
Mississippi: No deadline; at voter's discretion	Pennsylvania	
Montana: Day before the election	Tennessee	
New Hampshire: Day before the election	Virginia	
New Mexico: Thursday before the election		
North Dakota: No deadline; at voter's discretion		
Ohio: Three days before the election		
Oklahoma: Wednesday before the election		

<b>States with statutory absentee ballot application deadlines less than seven days before the election:</b>	<b>States with a statutory application deadline seven days (one week) before the election:</b>	<b>States with statutory application deadlines more than seven days before the election:</b>
South Carolina: Four days before the election		
South Dakota: Day before the election		
Vermont: Day before the election		
West Virginia: Six days before the election		
Wisconsin: Five days before the election		
Wyoming: Day before the election		

Note: The deadlines above are to request a mailed absentee ballot. In some states there are different deadlines to request an in-person absentee ballot. See NCSL's State Laws Governing Early Voting webpage.

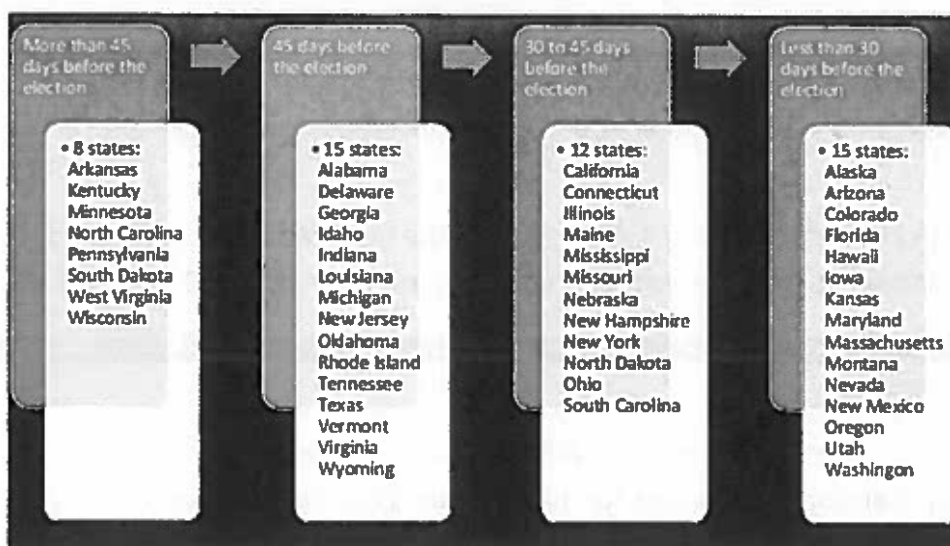
## How do election officials verify applications for absentee ballots?

When election officials receive an application from a voter asking for an absentee/mailed ballot, they verify the identity and information of the voter before sending out the ballot. This is done in a variety of ways, but most commonly by verifying the applicant's information in the statewide voter registration database. States may also conduct signature verification at this stage, to compare the voter's signature on the application with the voter registration signature. This verification step is meant to ensure that it is in fact the voter who is requesting the absentee/mailed ballot.

- Seventeen states compare an applicant's information and eligibility against the voter registration record: Florida, Kentucky, Maine, Maryland, Minnesota, Missouri, Nebraska, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Texas, Virginia, West Virginia and Wyoming.
- Nineteen states conduct signature verification in addition to checking information and eligibility against the voter registration record: Arkansas, Arizona, California, Connecticut, Delaware, Georgia, Idaho, Iowa, Illinois, Indiana, Kansas, Massachusetts, Michigan, Montana, New Hampshire, New Jersey, Pennsylvania, Rhode Island and Tennessee.

- Four states and D.C. have a different way of verifying absentee/mailed ballot applications:
  - Alaska: The ballot is issued upon receipt of application (Alaska Stat. § 15.20.081).
  - District of Columbia: The voter's signature on the application is considered affirmation that the information is correct (D.C. Mun. Regis. Tit. 3, § 720.5).
  - North Dakota: The ballot is issued upon receipt of application (ND Cent. Code 16.1-07-08).
  - South Carolina: The voter signs an oath as part of the application. Any person who fraudulently applies for an absentee ballot is guilty of a misdemeanor (S.C. Code § 7-15-340).
  - Vermont: The application is reviewed to ensure it is valid and complete (17 V.S.A. § 2533).
  
- Five states require voters to provide identification or take additional steps as part of their application for an absentee/mailed ballot:
  - Alabama: The application must be accompanied by a copy of ID (Ala. Code § 17-9-30).
  - Louisiana: Information and eligibility is checked against voter registration and documentation provided by the applicant as to the reason for the request (LSA-R.S. 18:1307).
  - Mississippi: The application must be notarized. If the voter is temporarily or permanently disabled only the signature of a witness 18 years or older is required (Miss. Code Ann. § 23-15-715).
  - South Dakota: Applicants must either submit a copy of photo ID or sign a notarized oath. Upon receipt of the application, election officials verify that applicant's information and eligibility against the voter registration record (SD Codified Law § 12-19-2).
  - Wisconsin: Ballot application information is verified with enclosed photo identification information (Wis. Stat. § 6.87(1)).

**When are absentee/mailed ballots sent to voters who request them?**



## Returning a Voted Absentee Ballot

All states allow the return of absentee/mailed ballots through the mail. Almost all states also permit voters to return a delivered ballot in person at the office of the local election official (either the county election official or the town/city clerk, depending on who runs elections in the state). In addition, states can permit voters to drop off a voted absentee/mailed ballot at Election Day voting locations, or in secured drop boxes.

In this section you will find:

- Which states permit voters to drop off absentee ballots at voting locations?
- Which states provide ballot drop boxes?
- Who can collect and drop off absentee/mail ballots on behalf of a voter?
- When are the deadlines for absentee ballots to be received by election officials?
- Which states accept postmarks for ballots received after the deadline?
- Which states have systems for voters to track their absentee ballots?
- Which states pay for postage to return an absentee ballot?

### Which states permit voters to drop voted absentee ballots off at voting locations?

Voters may not live close to the county seat or the office of the local election official, so some states, particularly those who have seen an uptick in the use of delivered ballots by voters, provide other locations where a voter can drop off a



ballot. This is particularly convenient for voters who have run out of time to send the ballot by mail and have it reach the election official by the deadline (see more on deadlines below).

- Eleven states and D.C. permit ballots to be dropped off at any in-person voting location in the county: Arizona, California, Colorado, District of Columbia, Hawaii, Kansas, Montana, New Mexico, North Carolina, Oregon, Utah and Washington.
- Two states permit ballots to be dropped off at a polling place, but it must be the voter's assigned precinct polling place on Election Day: New Hampshire and Vermont.

## Which states provide ballot drop boxes?



Ten states provide ballot drop boxes in some or all counties: Arizona, California, Colorado, Kansas, Montana, Nebraska, New Mexico, Oregon, Utah and Washington.

A ballot drop box provides a location where voters can drop off mail ballots in sealed and signed envelopes. The drop boxes may be supervised or unsupervised with security features, such as cameras. Many states that permit or require this option typically set minimum requirements for where ballot drop boxes must be located, how many a county must have, hours they must be available and security standards. For example:

- Arizona: Voters may drop off voted ballots at any polling site within the county during regular hours (A.R.S. § 16-548). A separate, secure early ballot container or alternate ballot box may be provided for this purpose. Election officials will determine the most accessible location for the early ballot container, but it should be placed so voters who wish to drop off voted absentee ballots may do so without interference with voters waiting in line to vote (Election Procedure Manual).
- California: The secretary of state sets guidelines based on best practices for security measures and procedures, including, but not limited to, chain of custody, pick-up times, proper labeling, and security of vote-by-mail ballot drop boxes, that a county elections official may use if he or she establishes one or more vote-by-mail ballot drop-off locations (West's Ann. Cal. Elect. Code § 3025). See 2 CCR § 20130 et seq. for details.
- Colorado: One drop box is required for every 30,000 active registered voters in the county. The drop boxes must be arrayed throughout the county in a manner that provides the greatest convenience to electors (C.R.S.A. §

1-7.5-107). Rules from the secretary of state set minimum security requirements for stand-alone drop boxes (8 CCR 1505-1:7.5).

- Montana: If a county chooses to conduct an all-mail ballot election, the election administrator's office must be a place of deposit where ballots can be returned, and the election administrator may designate one or more other locations for drop off (Mont. Code Ann. 13-19-307).
- New Mexico: Mail ballot envelopes may be returned by depositing the official mailing envelope in a secured container. These containers must have signage and be monitored by video surveillance (N. M. S. A. 1978, § 1-6-9).
- Oregon: At a minimum, official ballot drop sites must be open on Election Day for eight or more hours and must be open until at least 8 p.m. (O.R.S. § 254.470). Each county must have a minimum of two drop sites and at least one drop site for every 30,000 active registered voters in the county, including one within four miles of the main campus of each public university or community college. A drop site can be opened on the first day ballots are mailed, but at a minimum must be open to the public beginning on the Friday preceding the election, during the normal business hours of each location. The following must be considered in placement of the ballot drop box within the drop site building: security, voter convenience, access for the physically disabled, parking, and public perception that drop site is official and secure (Vote by Mail Procedures Manual). Counties must also submit a drop site security plan with the secretary of state elections division (OAR 165-007-0310).
- Washington: The county auditor must establish a minimum of one ballot drop box per 15,000 registered voters in the county and a minimum of one ballot drop box in each city, town, and census-designated place in the county with a post office, and must establish a ballot drop box on a tribal reservation if requested (West's RCWA 29A.40.0001).

### **Who can collect and drop off an absentee/mailed ballot on behalf of a voter?**

Sometimes a voter may be unable to return the ballot in person or get it to a postal facility in time for it to be counted. In these cases, the voter may entrust the voted ballot to someone else—an agent or designee—to return the ballot.

- Twenty-seven states and Washington, D.C., permit an absentee ballot to be returned by a designated agent: Alaska, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Montana, Nebraska,

New Jersey, North Dakota, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Virginia and West Virginia.

- A “designated agent,” in this case, could include a family member, attorney, attendant care provider or anyone who has been designated by the voter. Often the designee must be indicated in writing by the voter.
- Of these states, 12 limit the number of ballots an agent or designee may return: Arkansas, Colorado, Georgia, Louisiana, Maine, Minnesota, Montana, Nebraska, New Jersey, North Dakota, South Dakota and West Virginia.
- Nine states permit an absentee ballot to be returned by the voter’s family member: Arizona, Massachusetts, Michigan, Missouri, Nevada, New Hampshire, New Mexico, North Carolina and Ohio.
- One state specifies that an absentee ballot must be returned by the voter either in person or by mail: Alabama.
- Thirteen states do not address whether an agent or family member may return an absentee ballot on behalf of a voter: Delaware, Hawaii, Idaho, Mississippi, New York, Oklahoma, Rhode Island, Tennessee, Utah, Vermont, Washington, Wisconsin and Wyoming.

Note that interpretations of what this means vary. In some states, this may mean absentee ballot collection is generally accepted, and in others it may mean that this practice is not permitted.

Other restrictions states put on the collection of absentee ballots include:

- In Arizona, it is a felony to knowingly collect voted or unvoted absentee ballots from another person; the law has been struck down, and the Arizona attorney general is seeking an appeal.
- In California, a person designated to return a vote-by-mail ballot shall not receive any form of compensation based on the number of ballots the person returns.
- In North Carolina, it is a felony for any person to take possession of any voter’s absentee ballot for delivery or return, with an exception for a voter’s near relative or verifiable legal guardian.
- In North Dakota, no person may receive compensation, including money, goods or services, for acting as an agent for an elector.
- Texas prohibits the collection and storage of carrier envelopes for absentee ballots at another location for subsequent delivery to the early voting clerk.

- Maine, Maryland, Nebraska, New Jersey, North Dakota and South Carolina all specify that a candidate for office or an individual working for a candidate may not serve as a designated agent.

## **What are the deadlines for absentee ballots to be received by election officials?**

The most common state deadline for election officials to receive absentee/mailed ballots is on Election Day when the polls close. Some states accept ballots received after Election Day if they were postmarked before the election.

- In 42 states plus D.C. the mail ballot deadline for receipt is Election Day.
  - Alaska, Arizona, California, Colorado, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah (ballots can be dropped off on Election Day, but if mailed, they must be postmarked the day before the election or earlier), Vermont, Virginia, Washington, Wisconsin and Wyoming.
- In five states the deadline to turn in a ballot in-person is the day before the election, and the by-mail deadline is Election Day: Alabama, Arkansas, Connecticut, Oklahoma and West Virginia.
- Three additional states have different mail ballot deadlines:
  - Louisiana: The deadline is the day before the election for voters who will be outside of the county on Election Day and voters with disabilities; Election Day for UOCAVA voters and hospitalized voters (LSA-R.S. 18:1311).
  - Mississippi: Ballots must be received the day before the election (Miss. Code Ann. § 23-15-637).
  - North Dakota: Hand-delivered ballots must be received the day before the election and mailed ballots must be postmarked the day before the election and received before the canvass (NDCC 16.1-07-09).

## **Which states accept postmarks for ballots received after the deadline?**

In 16 states election officials can accept and count a mailed ballot if it is received after the deadline but postmarked before the deadline:

- Alabama: Ballot envelopes must be postmarked by the day before the election and received by noon on Election Day. For UOCAVA voters, envelopes must be postmarked on or before Election Day and received within seven days after the election (Ala. Code § 17-11-18).
- Alaska: Ballot envelopes must be postmarked on or before Election Day and received within 10 days after the election. For UOCAVA voters, envelopes must be postmarked on or before Election Day and received within 10 days of a primary or vacancy special election, and within 15 days of a general election or other type of special election. (AS § 15.20.081(e) and (h)).
- California: Ballot envelopes must be postmarked on or before Election Day and received within three days after the election (West's Ann. Cal. Elect. Code § 3020).
- Illinois: Ballot envelopes must be postmarked on or before Election Day and received before the close of the period for counting provisional ballots, 14 days after the election (10 ILCS 5/19-8, 10 ILCS 5/18A-15).
- Iowa: Ballot envelopes must be postmarked by the day before the election and received by noon the Monday following the election (Iowa Code § 53.17(2)).
- Kansas: Ballot envelopes must be postmarked before the close of polls on Election Day and received within three days after the election (K.S.A. 25-1132).
- Maryland: Ballot envelopes must be postmarked on or before Election Day and received before 10 a.m. on the second Friday after the election (MD Code, Election Law, § 9-505, COMAR 33.11.03.08).
- New Jersey: Ballot envelopes must be postmarked on Election Day and received within 48 hours of the polls closing (N.J.S.A. 19:63-22).
- New York: Ballot envelopes must be postmarked the day before the election and received within seven days after the election (McKinney's Election Law § 8-412).
- North Carolina: Ballot envelopes must be postmarked on or before Election Day and received within three days after the election (N.C. Gen. Stat. § 163A-1310). For UOCAVA voters, ballot envelopes must be postmarked on or before Election Day and received the day before the county canvass (N.C.G.S.A. § 163A-1346).
- North Dakota: Ballot envelopes must be postmarked before Election Day and received before the county canvass, six days after the election (NDCC 16.1-07-09, 16.1-11.1-07, 16.1-15-17).

- Ohio: Ballot envelopes must be postmarked the day before Election Day and received within 10 days after the election (R.C. § 3509.05).
- Texas: Ballot envelopes must be postmarked on or before Election Day and received by 5 p.m. the day after the election. A ballot that was cast outside of the U.S. must be postmarked before Election Day and received within five days after the election (Texas Election Code § 86.007).
- Utah: Ballot envelopes that are mailed must be postmarked the day before the election and received before the county canvass, seven to 14 days after the election (Utah Code Ann. § 20A-3-306, § 20A-4-301). Ballots can also be dropped off on Election Day.
- Virginia: Ballot envelopes must be postmarked on or before Election Day and received by noon on the third day after the election (Va. Code Ann. § 24.2-709).
- Washington: Ballot envelopes must be postmarked on or before Election Day (West's RCWA 29A.40.091).
- West Virginia: Ballot envelopes must be postmarked the day before the election and received before the start of the county canvass, five days after the election (W. Va. Code, § 3-3-5, § 3-5-17).

An additional six states accept ballots from military or overseas voters if the envelope is postmarked prior to the deadline:

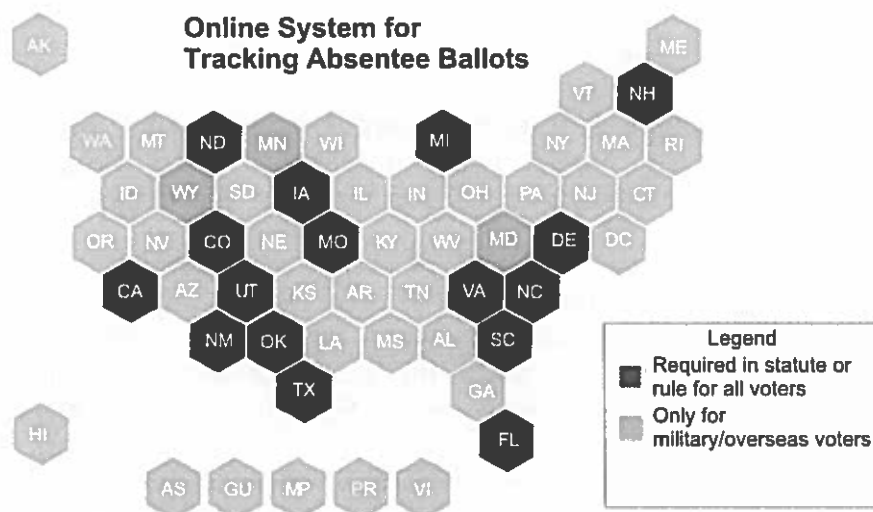
- Arkansas: For qualified electors outside of the U.S., ballot envelopes must be postmarked by Election Day and received by 5 p.m., 10 days after the election (Ark. Code Ann. § 7-5-411).
- Indiana: Ballot envelopes sent by overseas voters must be postmarked by Election Day and received by noon 10 days after the election (IC 3-12-1-17).
- Florida: A vote-by-mail ballot from an overseas voter in any presidential preference primary or general election must be postmarked on or before the election and received within 10 days of the election (Flor. Stat. Ann. § 101.6952 (5)).
- Missouri: A ballot from a military-overseas voter is counted if it is received by noon on the Friday after Election Day. If the voter has declared under penalty of perjury that the ballot was timely submitted, the ballot shall not be rejected on the basis that it has a late postmark, an unreadable postmark, or no postmark (V.A.M.S. 115.920).

- **Pennsylvania:** For military and overseas voters, envelopes must be postmarked by the day before the election and received by 5 p.m. seven days after the election (25 P.S. § 3146.8).
- **South Carolina:** A military or overseas voter must attest under penalty of perjury that the ballot was timely submitted, and the ballot is counted if it is received the day before the county canvass. A ballot may not be rejected on the basis that it has a late postmark, an unreadable postmark, or no postmark (S.C. Code § 7-15-700).

## Which states have systems for voters to track their absentee ballots?

The 2009 Military and Overseas Voter Empowerment Act (MOVE) required states to develop a free access system by which military and overseas voters could determine whether their ballot had reached the election official and if the ballot had been counted. The MOVE Act also gave military and overseas voters additional options for returning ballots. See NCSL's Electronic Ballot Transmission page for additional information.

The MOVE Act didn't necessarily mandate an online tracking system; a phone system would meet the requirement as well. But many states have developed online portals in the last several years. Increasingly, these have been opened up to all absentee/mailed ballot voters to track when their ballot has been sent out by election officials and then when the election official receives the marked ballot back, and whether or not the ballot was counted.



At least 19 states mandate such a system in statute or administrative rule:

- California (Cal. Elect. Code § 3019.7)
- Colorado (C.R.S.A. § 1-7.5-207)

- Delaware (15 Del. Code § 5526)
- Florida (F.S.A. § 101.62)
- Iowa (I.C.A. § 53.17A)
- Maryland (COMAR 33.11.06.03)
- Michigan (M.C.L.A. 168.764c)
- Minnesota (Minnesota Rules, part 8210.0500)
- Missouri\* (V.A.M.S. 115.924)
- New Hampshire (N.H. Rev. Stat. § 657:26)
- New Mexico (N. M. S. A. § 1-6-9)
- North Carolina\* (N.C.G.S.A. § 163A-1348)
- North Dakota (NDCC, 16.1-07-28)
- Oklahoma (26 Okl. St. Ann. § 14-149)
- South Carolina (S.C. Code §7-15-720)
- Texas\* (V.T.C.A., Election Code § 101.108)
- Utah (U.C.A. § 20A-3-304.1)
- Virginia (VA Code Ann. § 24.2-711.1)
- Wyoming\* (WY Rules and Regulations 002.0005.3 § 12)

\*For military and overseas voters only

Other states that maintain webpages for tracking absentee/mailed ballots, even if not required by statute, include: D.C., Kansas, Louisiana, Massachusetts, Montana, Ohio, Oregon, Rhode Island, South Dakota, Tennessee, Vermont, Washington, West Virginia Wisconsin.

There are also options being used in some states that proactively notify voters that their ballot has cleared certain steps of the process. This may be in the form of a text message or an email informing the voter that the ballot has been mailed out, that it was delivered to the voter's home by the U.S. Postal Service, that it was received by the election official, etc.

### **Which states pay for postage to return an absentee ballot?**

In most cases, it is up to the voter to pay for postage to return a mail ballot envelope to the election official. Some see this as a barrier to returning a ballot, or as a type of poll tax. One solution to this is to have ballot drop boxes widely available (see the section on drop boxes above). In states that hold all-mail ballot



elections, returning by drop box or in person is the most common return method. Another option is for election officials to pre-pay postage for voters to return their ballots. See below for states that provide postage for returning a mailed ballot.

It's important to note that the U.S. Postal Service has a policy of prioritizing election mail, especially ballots, and will deliver a ballot envelope even if it does not have sufficient postage. Typically, though, the post office will bill the local election office for the price of postage. If the majority of voters don't affix postage, this could be a significant expense for a local election office.

For military and overseas voters, federal law specifies that ballots can be returned to election officials using a free postage-paid symbol when mailed from a U.S. Post Office, Military Postal Service Agency (APO/FPO) or U.S. Diplomatic Pouch Mail. However, if voters return the ballot through a foreign mail system or via common carrier (such as FedEx, DHL or UPS), they must pay the rate for that service themselves.

For non-military voters returning a mail ballot, the following 16 states have statutes requiring local election officials to provide return postage for mailed ballots. Note that this is typically a business-reply mailing, so that local officials only pay for return postage for the ballots that are actually returned via the U.S. Postal Service.

- Arizona: "The county recorder or other officer in charge of elections shall mail the early ballot and the envelope for its return postage prepaid to the address provided by the requesting elector..." (A.R.S. § 16-542).
- California: "(a) The elections official shall deliver all of the following to each qualified applicant: (2) All supplies necessary for the use and return of the ballot, including an identification envelope with prepaid postage for the return of the vote by mail ballot" (West's Ann. Cal. Elect. Code § 3010).
  - Note: This language was added by AB 216 in 2019. Counties bear the cost but since it is a state-mandated program they could claim reimbursement of those costs from the state general fund.
- Delaware: "(c) Postage for all mailings made pursuant to this subsection shall be prepaid by the Department" (15 Del. Code § 5504) and Instructions for Absentee Voting.
- Hawaii: "The mailed distribution and return of absentee ballots shall be at no cost to the voter. The State and counties shall share in the cost of all postage associated with the distribution and return of absentee" (HRS § 11-182).
- Idaho: "(2) The clerk shall issue a ballot, by mail, to every registered voter in a mail ballot precinct and shall affix postage to the return envelope sufficient to return the ballot" (I.C. § 34-308).

- Note: This applies to mail ballot precincts, which must be designated by the board of county commissioners and have no more than 140 registered electors at the last general election.
- Iowa: "The absentee ballot and affidavit envelope shall be enclosed in or with an unsealed return envelope marked postage paid which bears the same serial number as the affidavit envelope" (I.C.A. § 53.8).
- Kansas: "The county election officer shall provide for the payment of postage for the return of ballot envelopes" (K.S.A. 25-433).
- Minnesota: "Ballot return envelopes, with return postage provided, must be preaddressed to the auditor or clerk and the voter may return the ballot by mail or in person to the office of the auditor or clerk..." (M.S.A. § 203B.07)
- Missouri: "Mailing envelopes for use in returning ballots shall be printed with business reply permits so that any ballot returned by mail does not require postage. All fees and costs for establishing and maintaining the business reply and postage-free mail for all ballots cast shall be paid by the secretary of state through state appropriations" (V.A.M.S. 115.285).
- Nevada: "3. The return envelope sent pursuant to subsection 1 must include postage prepaid by first-class mail if the absent voter is within the boundaries of the United States, its territories or possessions or on a military base" (Nev. Rev. Stat. 293.323).
- New Mexico: "A. The secretary of state shall prescribe the form of, procure and distribute to each county clerk a supply of: (1) official inner envelopes for use in sealing the completed mailed ballot; (2) official mailing envelopes for use in returning the official inner envelope to the county clerk, which shall be postage -paid; provided that only the official mailing envelope for absentee ballots in a political party primary shall contain a designation of party affiliation..." (N. M. Stat. Ann. § 1-6-8).
- Oregon: "(1) Except as provided in subsection (2) of this section, for each election held in this state, electors shall be provided with a return identification envelope that may be returned by business reply mail. The state shall bear the cost of complying with this subsection" (SB 861 in 2019).
- Rhode Island: "(d)(1) Upon the ballots becoming available, the secretary of state shall immediately issue and mail, by first-class mail, postage prepaid, a mail ballot to each eligible voter who has been certified. With respect to voters who have applied for these mail ballots under the provisions of § 17-20-2(1), the

secretary of state shall include with the mail ballots a stamped, return envelope addressed to the board of elections" (R.I. Gen. Laws § 17-20-10).

- Note: According to this press release, postage is being covered by the secretary of state's budget.
- Washington: "(4)....Return envelopes for all election ballots must include prepaid postage" (West's RCWA 29A.40.091)
  - Note: The statutory language above was added by SB 5063 in 2019.
- West Virginia: "(e)(1) Within one day after the official designated to supervise and conduct absentee voting has both the completed application and the ballot, the official shall mail to the voter at the address given on the application the following items as required and as prescribed by the Secretary of State: .... (C) One postage paid envelope, unsealed, designated "Absent Voter's Ballot Envelope No. 2..." (W. Va. Code, § 3-3-5).
- Wisconsin: "(3)(a).... If the ballot is mailed, and the ballot qualifies for mailing free of postage under federal free postage laws, the clerk shall affix the appropriate legend required by U.S. postal regulations. Otherwise, the clerk shall pay the postage required for return when the ballot is mailed from within the United States. If the ballot is not mailed by the absentee elector from within the United States, the absentee elector shall provide return postage" (W.S.A. 6.87).
- Note: New Jersey leaves it up to the discretion of county clerks to provide a postage paid envelope (N.J.S.A. 19:63-12).

## Processing, Verifying, and Counting Absentee Ballots

The time frame of vote counting shifts with an increase in absentee/mailed ballots. Much of the work involved with verifying the identity of a voter can be done ahead of time, and some processing of ballots can occur before the election so that ballots are ready to be counted at the time permitted by statute. Counting typically continues in the days after Election Day as well, so verifying voters and counting ballots occurs during a longer period of time than just one day (Election Day).

In this section you will find:

- How do officials verify voted absentee ballots?
- What happens if there is a missing signature or a signature discrepancy?

- When can election officials begin to process and count absentee ballots?
- How are absentee ballot results reported?

## How do officials verify voted absentee ballots?

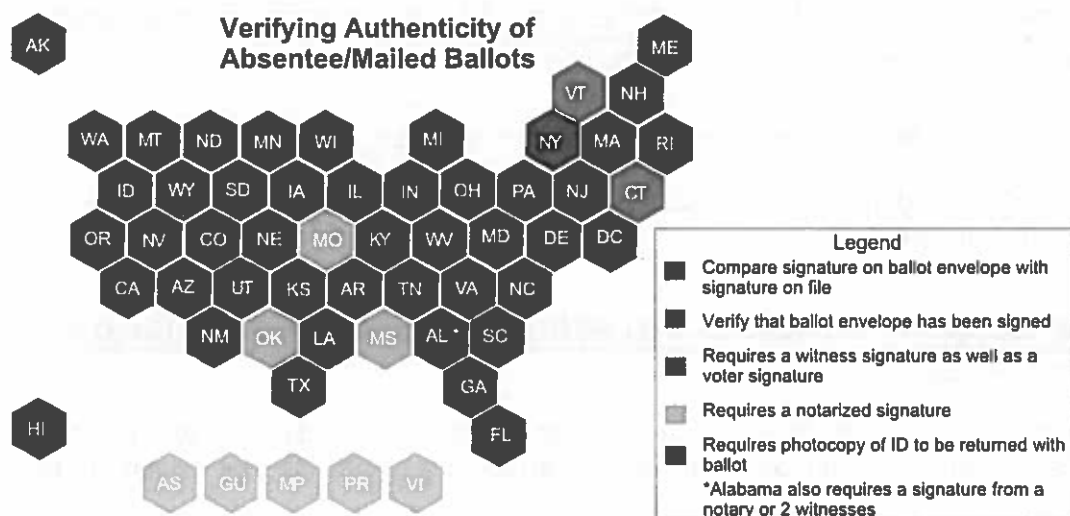
Unlike the traditional experience of voting at a physical polling place under the supervision of election officials or volunteer election workers, marking an absentee/mailed ballot occurs in an unsupervised environment, usually at the voter's home. The ballot is then sent through the mail or delivered in person to the election office. Because the voter does not appear in person, election officials use other ways of verifying that the absentee/mailed ballot they are receiving comes from the intended eligible voter.

The most common method to verify that absentee/mailed ballots are coming from the intended voter is to conduct signature verification. When voters return an absentee/mailed ballot, they must sign an affidavit on the ballot envelope. When the ballot is returned to the election office, election officials have a process for examining each and every signature and comparing it to other documents in their files that contain the voter signature—usually the voter registration record. See Colorado's Signature Verification Guide for one example of state guidance on how to conduct this verification step.

This process of comparing and matching signatures is done by election officials or temporary election workers, sometimes assisted by technology, and often working in bipartisan teams during this review process. In some states, especially those that send mail ballots to all eligible voters, the individuals verifying signatures undergo training to analyze signatures for potential fraud.

If a discrepancy is found, there may be an opportunity for the voter to come into the election office and "cure" the discrepancy. The election official will contact the voter explaining the problem and asking them to verify their information and that that they did in fact cast the ballot. There is usually a period of time after the election available for voters to take this verification step, but if the voter doesn't do this then the ballot isn't counted.

Some states have other methods for verifying absentee/mailed ballots. They may require absentee/by mail voters to include photocopies of their identification documents or have the absentee/mailed ballot envelope signed by witnesses or notarized.



#### State methods for verifying absentee/mailed ballots:

- Thirty-one states conduct signature verification, comparing the signature on the absentee/mailed ballot envelope with a signature already on file for the voter:
  - Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Maine, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Washington and West Virginia.
- Six states and D.C. verify that an absentee/mailed ballot envelope has been signed but do not conduct signature verification:
  - Connecticut, District of Columbia, Iowa, Maryland, New Mexico, Vermont and Wyoming.
- Eight states require the signature of a witness in addition to the voter's signature. These states may conduct signature verification as well.
  - Alaska (witness or a notary), Louisiana\*, Minnesota (witness or notary), North Carolina (two witnesses or a notary), Rhode Island\* (two witnesses or a notary), South Carolina\*, Virginia and Wisconsin.
- Three states require the absentee/mailed ballot envelope to be notarized: Mississippi, Missouri and Oklahoma.
- Arkansas requires a copy of the voter's ID be returned with the absentee/mailed ballot.

- Alabama requires both a copy of the voter's ID and signatures from a notary or two witnesses with the absentee/mailed ballot return.

\*Military and overseas voters are exempt from this requirement.

For full 50-state details on how absentee/mailed ballots are verified in states please contact NCSL.

## What happens if there is a missing signature or a signature discrepancy?

It is not uncommon for an absentee/mailed ballot to be returned in an envelope that has a problem, such as a missing signature or a signature that doesn't match.

Some states have a process in statute for voters to "cure" these mistakes in time for the ballot to be counted. These states notify voters that there was a problem—either the ballot envelope was not signed or the signature does not appear to match the one on file—and then provide the voters with a process and time frame to verify that the ballot is indeed theirs. In states that do not have such a process, ballots with missing or mismatched signatures on the envelope are not counted.

Nineteen states require that voters are to be notified when there is a missing signature or signature discrepancy—and given an opportunity to correct it. Details are provided in the table below.



In other states no statutory requirement exists to give voters the opportunity to correct a missing signature or a signature discrepancy. If a signature is missing or does not appear to match the one on file, the ballot is not counted. In some cases, voters may be informed after the election that their ballot was rejected, but they do not have the opportunity to correct it for it to be counted.

- Alabama, Alaska, Arkansas, Connecticut, Delaware, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Mississippi, Missouri, New Hampshire, New Jersey,

New Mexico, New York, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia and Wyoming.

### Statutes Permitting Voters to Correct Signature Discrepancies

State	Notification Process	Correction Process
<b>Arizona</b> Ariz. Rev. Stat. §16-550	Election officials shall make reasonable efforts to contact the voter, advise the voter of the inconsistent signature and allow the voter to correct or the county to confirm the inconsistent signature.	Voters have until the fifth business day after an election to correct a signature.
<b>California</b> CA Elect Code § 3019	Voters of ballots with mismatching signatures are notified a minimum of eight days prior to certification of the election.	Voters have until 5 p.m. two days prior to certification of the election to provide a signature verification statement in person. If a voter fails to sign the absentee ballot envelope, they have until 5 p.m. on the eighth day after the election to submit an unsigned ballot statement.
<b>Colorado</b> Colo. Rev. Stat. §1-7.5-107.3	Voters of ballots with missing/mismatching signatures are notified by mail within three days (or within two days after the election) of any discrepancy.	A confirmation form accompanying the letter must be returned to the county clerk and recorder within eight days after Election Day to count.
<b>Florida</b> Flor. Stat. § 101.68	County election supervisors shall notify any voter whose signature is missing or doesn't match records.	Voters may cure ballots until 5 p.m. on the second day after the election.
<b>Georgia</b> Georgia Code § 21-2-386	If ballot is rejected, voter is promptly notified of rejection.	If before Election Day, a voter may reapply for an absentee ballot or vote provisionally at their local polling place.
<b>Hawaii</b> Haw. Rev. Stat. § 11-106	Local election officials shall make an attempt to notify the voter by first class mail, telephone or electronic mail to inform the voter of the procedure to correct the deficiency.	The voter shall have five business days after the date of the election to cure the deficiency.
<b>Illinois</b> 10 ILCS 5/19-8	Voters are notified by mail of rejected ballot within two days of rejection.	Voters have until 14 days after election to resolve issue with county election authority.
<b>Iowa</b> Iowa Code § 53.18(2)	If a ballot affidavit is incomplete or absent, the commissioner must notify the voter within 24 hours.	A voter may vote a replacement ballot until the day before the election or vote at the voter's precinct polling place.

State	Notification Process	Correction Process
Massachusetts Mass. Gen. Laws ch 54 § 94)	Prior to Election Day, the voter is notified and, if sufficient time allows, sent a new ballot if an affidavit signature is absent or the ballot is rejected for other reasons.	Voter can submit a new absentee ballot.
Michigan Mich. Comp. Laws § 168.765b	If a ballot affidavit is found in error, the voter is contacted and provided opportunity to visit the clerk's office or request a replacement ballot should time allow.	Voter can request a replacement absentee ballot.
Minnesota Minn. Stat. § 203B.121	If a ballot is rejected more than five days before Election Day a replacement ballot is mailed; if rejected within five days, election officials must contact the voter via telephone or email to provide options for voting a replacement ballot.	Voter can request a replacement absentee ballot.
Montana Mont. Code § 13-13-241 § 13-13-245	Election administrators shall notify voters of missing or mismatched signatures.	Voters have until 8 p.m. on Election Day to cure their ballot.
Nevada Nev. Rev. Stat. 293.325	Local election officials shall notify voters of missing or mismatched signatures.	Voters have until the seventh day after the election to resolve the issue.
Ohio Ohio Rev Code § 3509.06	Notice is mailed to voters whose ballots were rejected.	Voters have until the seventh day after the election to resolve issue.
Oregon Ore. Rev. Stat. § 254.431	County clerks notify voters by mail of any signature absence or discrepancy.	Voters must complete and return the certified statement accompanying the notice by the 14th day after the election for their ballot to count.
Rhode Island RI Gen L § 17-2-26	Local board of canvassers is responsible for notifying voters by mail, email or phone.	Voters have until seven days after Election Day to correct a deficiency.
Utah Utah Code Ann. § 20A-3-308(7)	Election officials notify voters of ballot rejection in one to two business days if rejected before Election Day; seven days if rejected on Election Day; and seven days if rejected between Election Day and the end of official canvas.	Voters must sign a new affidavit statement provided by the clerk's office and return by 5 p.m. the day before the official canvass (7-14 days after Election Day).



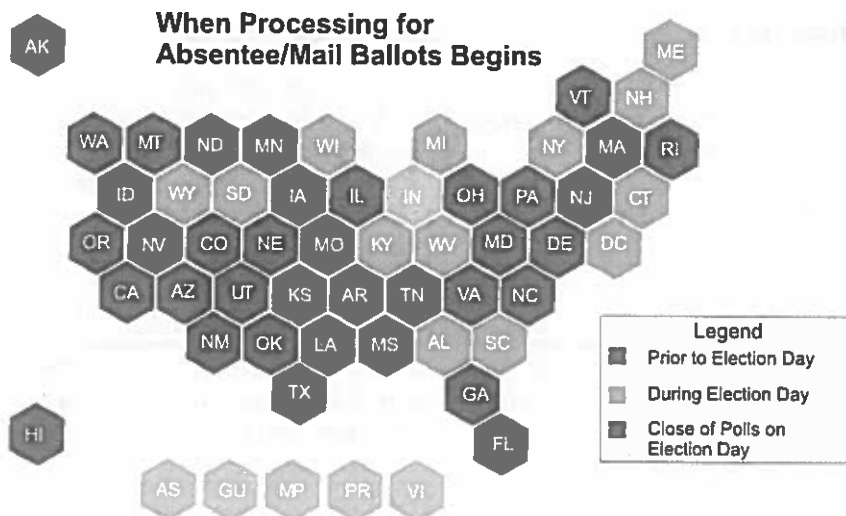
State	Notification Process	Correction Process
Washington Wash. Admin. Code 434-261-050	Voters notified by mail of rejected ballots due to missing/mismatching signature statements.	Voter must sign and return a curing statement before election certification (21 days after Election Day). Three days before certification, county auditors must attempt to contact by phone any voters with outstanding ballots to be cured.
Wisconsin Wis. Stat. § 6.87(9)	Municipal clerks return any deficient absentee ballot envelopes with a new envelope to the voter.	A voter may provide a corrected signature envelope until close of polls Election Day.

### When can election officials begin to process and count absentee ballots?

In many states, processing of absentee/mailed ballots can begin before they are actually counted. "Processing" means different things in different states, but typically the first step is comparing the affidavit signature on the outside of the return envelope against the voter's signature on record to ensure a match. See the section above on verifying signatures for additional details on this process.

In some states, once the signature is verified the envelope can then be opened and the ballot prepared for tabulation. In essence, states that begin processing before Election Day can "tee up" absentee/mailed ballots so that they are ready to be counted as soon as the law allows. This permits election officials to do a lot of the work ahead of time to speed up the counting and reporting process on Election Day: confirming the affidavit signature; removing the ballot from the secrecy envelope; flattening and stacking the ballots—even potentially running them through the scanner, but not hitting the "tally" button to actually obtain results. Most states require confidentiality of results if they are known ahead of time or require election officials to process only to a certain point ahead of time. Ask your state election officials for details on their practice.

Ask the Elections Team for a more detailed table on when states permit absentee ballots processing and counting to begin. In summary:



- Thirty-two states permit election officials to begin processing absentee/mailed ballot envelopes prior to the election. This looks a little different in each state, but the first step is to verify signatures on the absentee ballot and the timeframes listed below are when election officials can begin this process in each state. In some states listed below additional processing, such as removing the ballots from envelopes and readying them for counting, may also be permitted prior to Election Day.
  - Alaska: seven days before the election.
  - Arizona: upon receipt of returned absentee/mailed ballot.
  - Arkansas: seven days before the election.
  - California: 29 days before, 10 days before, or the day before the election depending on whether a jurisdiction is all-mail and has the necessary computer capability.
  - Colorado: upon receipt of returned absentee/mailed ballot.
  - Delaware: Friday before the election.
  - Florida: 22 days before the election.
  - Georgia: upon receipt of returned absentee/mailed ballot.
  - Hawaii: upon receipt of returned absentee/mailed ballot.
  - Idaho: upon receipt of returned absentee/mailed ballot.
  - Illinois: upon receipt of returned absentee/mailed ballot.
  - Iowa: day before the election.
  - Kansas: before Election Day; exact timing not specified.

- Louisiana: before Election Day; exact timing not specified.
  - Minnesota: upon receipt of returned absentee/mailed ballot.
  - Missouri: five days before the election.
  - Montana: upon receipt of returned absentee/mailed ballot.
  - Nebraska: second Monday before the election.
  - Nevada: upon receipt of returned absentee/mailed ballot.
  - New Jersey: upon receipt of returned absentee/mailed ballot.
  - New Mexico: any time after mailed ballots have been sent until the fifth day before the election.
  - North Carolina: two weeks before the election.
  - North Dakota: day before the election.
  - Ohio: before Election Day; exact timing not specified.
  - Oklahoma: before Election Day; exact timing not specified.
  - Oregon: upon receipt of returned absentee/mailed ballot.
  - Rhode Island: 14 days before the election.
  - Tennessee: upon receipt of returned absentee/mailed ballot.
  - Texas: upon receipt of returned absentee/mailed ballot.
  - Utah: before Election Day; exact timing not specified.
  - Vermont: day before the election.
  - Virginia: before Election Day; exact timing not specified.
  - Washington: upon receipt of returned absentee/mailed ballot.
- Eleven states and D.C. permit election officials to begin processing absentee/mailed ballots on Election Day, but prior to the closing of the polls:
    - Alabama: noon on Election Day.
    - Connecticut: on Election Day at the discretion of local registrar of voters.
    - District of Columbia: Signatures are verified and the secrecy envelope removed prior to tabulation, but exact timing is not specified.
    - Kentucky: 8 a.m. on Election Day.
    - Maine: before the polls close if notice of processing times is posted at least seven days before the election.

- Michigan: on Election Day before the polls close at the jurisdiction's discretion.
  - New Hampshire: 1 p.m. on Election Day, or no earlier than two hours after the opening of the polls if posted and announced ahead of time.
  - New York: on Election Day; exact time not specified.
  - South Carolina: 9 a.m. on Election Day.
  - South Dakota: Processing occurs at precinct polling places on Election Day if the election board is not otherwise involved in official duties.
  - West Virginia: on Election Day; exact time not specified.
  - Wisconsin: on Election Day after the polls open.
  - Wyoming: processing occurs at precinct polling places on Election Day as time permits
- Four states do not permit the processing of absentee/mailed ballots until after the polls close on Election Day:
    - Massachusetts: after the polls close.
    - Mississippi: after the polls close.
    - Pennsylvania: after the polls close.
    - Maryland: processing and counting of absentee/mailed ballots occurs after the election

In most states that begin processing absentee/mailed ballots prior to Election Day there is a requirement that the act of totaling votes and reporting contest results cannot begin until after the polls close. There may be procedures and functional aspects of voting equipment that allow ballots to be "counted" without obtaining a final tally or result. For example:

- In Colorado election officials at the mail ballot counting place may receive and prepare mail ballots delivered and turned over to them by the designated election official for tabulation. Counting of the mail ballots may begin fifteen days prior to the election and continue until counting is completed. The election official in charge of the mail ballot counting place shall take all precautions necessary to ensure the secrecy of the counting procedures, and no information concerning the count shall be released by the election officials or watchers until after 7 p.m. on Election Day (Colo. Rev. Stat. § 1-7.5-107.5).

- In Delaware tallies may begin on the Friday before the election but results of absentee ballots shall not be extracted or reported until polls close on Election Day (15 Del. C. § 5510).
- In New Mexico absentee ballots are inserted into vote counting machines to be registered and retained before Election Day, but all votes are counted and canvassed following the closing of the polls. It is unlawful for a person to disclose the results of a count or tally prior to the closing of the polls or the deadline for receiving mailed ballots (N. M. S. A. § 1-6-14).
- In Ohio processing may begin before the time for counting ballots. Processing means examining the envelope, opening valid envelopes, preparing and sorting the ballot and scanning the ballot using automatic tabulating equipment if the equipment used permits an absentee voter's ballot to be scanned without tabulating or counting the votes on the ballots scanned. The count or any portion of the count of absentee voter's ballots may not be disclosed prior to the closing of the polls (Ohio Rev. Code § 3509.06).
- In Virginia ballots may be inserted into ballot counting machines prior to the closing of the polls, but no ballot count totals by the machines shall be initiated prior to the closing of the polls. If absentee ballots are counted by hand, tallying may begin after time after 3:00 pm. the day of the election. No counts of such tallies shall be determined or transmitted until after the closing of the polls (VA Code Ann. § 24.2-709.1).

## How are absentee ballot results reported?

States differ on how and when results of absentee/mailed ballots are reported. Most states report these ballots at the precinct level so that it's possible to see voter turnout by precinct regardless of how the ballot was voted (in person or by absentee/mailed ballot). Since absentee/mailed ballots are accepted up to and including Election Day in most cases, it can take until days after an election before all ballots are counted.

In many states, especially those that handle large volumes of absentee/mailed ballots, counting is done at a central location. The most common way to report absentee/mailed ballot results is to add the tabulated votes from absentee ballots to the total tabulated at each precinct and report precinct results with both the absentee and Election Day votes included.

Some states handle this process differently, though. Some states send absentee ballots to precinct polling places on Election Day to be counted by the precinct-level scanners/tabulators. Others establish separate "absentee ballot precincts" that combine all mailed ballots from throughout the jurisdiction into one

reporting unit, regardless of what precinct the voter is in. That approach loses the precinct-level data that is useful to candidates for campaigning and to election officials to allocate resources.

For example:

- In Alabama, absentee ballots are delivered to precinct polling places where they are counted and otherwise handled as if the voter were present and voting in person (Code of Ala. §17-11-10).
- In Iowa, each county establishes a special "absentee ballot and special voters precinct." Results from the special precinct are reported separately. For general elections, results are also reported by the resident precinct of voters. For all other elections absentee results may be reported as a single precinct (Iowa Code §53.23).
- In Minnesota, for state primary and general elections, absentee vote totals are added to the returns for the appropriate precinct. For other elections, vote totals may be added to the precinct or reported as a separate total (Minn. Stat. Ann. §203B.121).
- In Nevada, the returns of absentee ballots must be reported separately from the regular votes of the precinct, unless reporting the returns separately would violate the secrecy of a voter's ballot (Nev. Stat. §293.385).
- In South Carolina, an absentee voting precinct is established in each county to tabulate and report absentee ballots (S.C. Code § 7-15-420).
- In South Dakota, each county establishes an absentee ballot precinct and absentee ballots are counted in that precinct, unless a precinct has 10 or fewer absentee ballots cast at the time the polls open on Election Day in which case absentee ballots in that precinct are counted at the polling place. Tally sheets include a space for results by precinct (SDCL § 12-19-37, ARSD 5:02:14:04).
- In Virginia, counties may establish one or more absentee voter precincts (VA Code Ann. § 24.2-712).
- In West Virginia, absentee ballots are delivered to polling places to be counted (W. Va. Code, § 3-3-8).
- In Wyoming, absentee ballots are delivered to polling places for counting unless the county adopts an alternate procedure to count them centrally. The number of electors voting in person and by absentee ballot by precinct at the election is reported (Wyo. Stat. § 22-16-103).

## All-Mail Elections (aka Vote-by-Mail or Vote-at-Home Elections)

### What are all-mail ballot elections?

Five states currently conduct all elections entirely by mail: Colorado, Hawaii, Oregon, Washington and Utah. Three states--California, Nebraska and North Dakota allow counties to determine if an election will be held entirely by mail, with many but not all counties choosing to do so. At least 17 states have provisions allowing certain elections to be conducted entirely by mail. For these elections, all registered voters are sent a ballot in the mail. The voter marks the ballot, puts it in a secrecy envelope or sleeve and then into a separate mailing envelope, signs an affidavit on the exterior of the mailing envelope, and returns the package via mail or by dropping it off.

Ballots are mailed out well ahead of Election Day, and thus voters have an "election period," not just a single day, to vote. All-mail elections can be thought of as absentee voting for everyone. This system is also referred to as "vote by mail."

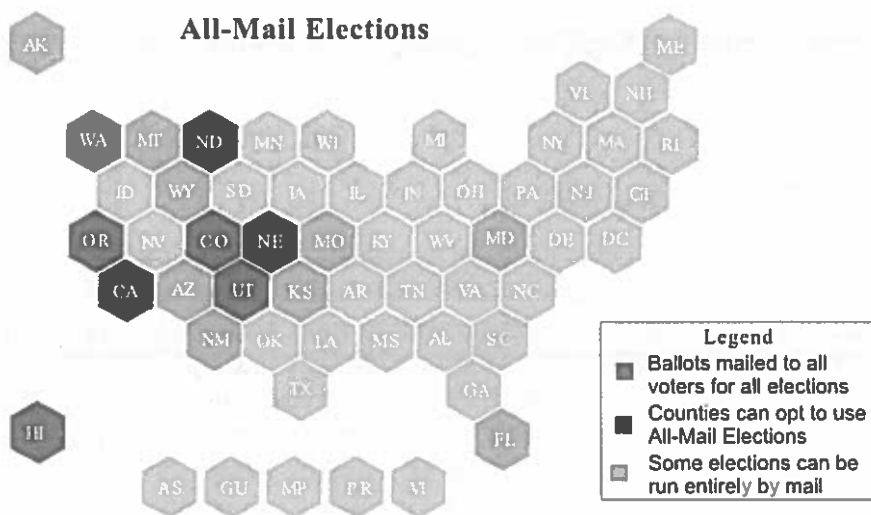
While "all-mail elections" means that every registered voter receives a ballot by mail, this does not preclude in-person voting opportunities on and/or before Election Day. For example, despite the fact that all registered voters in Colorado are mailed a ballot, voters can choose to cast a ballot at an in-person vote center during the early voting period or on Election Day (or drop off or mail their ballot back).

Five states—Colorado, Hawaii, Oregon, Utah and Washington—send mailed ballots to all eligible voters. In California, some counties are currently permitted to conduct all-mail elections, and in 2020 more than 50% of the state's voting population live in counties that will do so. After 2020, the option will be available to all counties in the state. Utah permits individual counties to determine if they would like to conduct all-mail elections and all counties are expected to do so in 2020.

Other states permit all-mail elections in certain circumstances, such as for special elections, municipal elections, when there is a smaller voting population in a given district, or at the discretion of the county clerk. See below for state-by-state statutes.

Generally, states begin with providing all-mail elections only in certain circumstances, and then add additional opportunities as citizens become familiar with procedures. Oregon's vote-by-mail timeline includes four times that the legislature acted prior to the 1998 citizens' vote that made Oregon the first all-mail election state.

### Which states have statutory provisions for all-mail ballot elections?



- States that conduct all elections by mail:
  - Colorado (enacted by HB 1303 in 2013; first implemented statewide in 2014; CRS §1-5-401).
  - Hawaii (enacted by HB 1248 in 2019; first implemented statewide in 2020; Hawaii Stat. §11-101).
  - Oregon (enacted by citizens' initiative in 1998; first implemented statewide in 2000; ORS §254.465).
  - Utah: (HB 172 in 2012 permitted jurisdictions to choose to conduct elections entirely by mail; first implemented by all jurisdictions in the state in 2019; Utah Code Ann. §20A-3a-302).
  - Washington (enacted by HB 5124 in 2011; first implemented statewide in 2012; Rev. Code of Wash. 29A.40.010).

## Adoption of All-Mail Ballot Elections

State	Year Enacted	Bill #	Year Implemented	Citation
Colorado	2013	HB1303	2014	CRS §1-5-401
Hawaii	2019	HB 1248	2020	Hawaii Stat. §11-101
Oregon	1998	Citizen's initiative	2000	ORS §254.465
Utah	2012 (permitted counties)	HB 172	2019 (first year all counties used it)	Utah Code Ann. §20A-3a-302
Washington	2011	HB 5124	2012	Rev. Code of Wash. 29A.40.010



- States that permit counties to opt into conducting all elections by mail:
  - California: After/on Jan. 1, 2018, 14 counties may conduct all-mail elections. After Jan. 1, 2020, any county may conduct any election as an all-mail election following statutory guidelines (Cal. Elect. Cde §§4005-4008). When there are 250 or fewer voters registered to vote in a precinct (Cal. Elect. Code §3005); local, special or consolidated elections that meet certain criteria (Cal. Elect. Code §4000). See information from the California secretary of state on the Voter's Choice Act for a list of counties that have currently opted for this option.
  - Nebraska: Any county of less than 10,000 inhabitants may apply to the secretary of state to mail ballots for all elections in lieu of establishing polling places (Neb. Rev. Stat. §32-960). Special ballot measure elections that meet certain criteria, held by a political subdivision (Neb. Rev. Stat. §32-952).
  - North Dakota: Counties may conduct any election by mail. Applications for mailed ballots are sent to each individual listed on the central voter file (note that North Dakota does not require voter registration ahead of the election) and there must be one or more polling places in the county for voting in the usual manner (ND Cent. Code §16.1-11.1-01 et seq.).
- States that permit some elections to be conducted by mail:
  - Alaska: Elections that are not held on the same day as a general, party primary or municipal election (Alaska Stat. §15.20.800).
  - Arizona: A city, town, school district or special district may conduct elections by mail (Ariz. Rev. Stat. Ann. §16-409, §16-558).
  - Florida: Referendum elections at the county, city, school district or special district level (Fla. Stat. §101.6102).
  - Kansas: Nonpartisan elections at which no candidate is elected, retained or recalled and which is not held on the same date as another election (Kan. Stat. Ann. §25-432).
  - Maryland: Special elections not held concurrently with a regularly scheduled primary or general election (Md. Election Code §9-501).
  - Missouri: Nonpartisan issue elections at which no candidate is elected, retained or recalled and in which all qualified voters of one political subdivision are the only voters eligible to vote (Mo. Rev. Stat. §115.652 et seq.).
  - Montana: Any election other than a regularly scheduled federal, state, or county election; a special federal or state election, unless authorized by the

legislature; or a regularly scheduled or special election when another election in the political subdivision is taking place at the polls on the same day (MCA 13-19-101 et seq.).

- New Mexico: Special elections, except those to fill a vacancy in the office of U.S. Representative, shall be conducted by mail (N.M. Stat. §1-24-3).
- Wyoming: Counties may decide to conduct special elections not held in conjunction with a primary, general or statewide special election entirely by mail (Wyo. Stat. 22-29-115)

In addition to the all-mail elections mentioned above, five states permit certain jurisdictions (or portions of a jurisdiction) to be designated as all-mail based on population:

- Idaho: A precinct which contains no more than 140 registered electors at the last general election may be designated by the board of county commissioners a mail ballot precinct no later than April 1 in an even-numbered year (Idaho Code §34-308).
- Minnesota: Elections conducted by a municipality having fewer than 400 registered voters on June 1 of an election year and not located in a metropolitan county (Minn. Stat. §204B.45).
- Nevada: Whenever there were not more than 20 voters registered in a precinct for the last preceding general election (Nev. Rev. Stat. §293.213).
- New Jersey: A municipality with a population of 500 or fewer persons, according to the latest federal decennial census, may conduct all elections by mail (NJRS §19.62-1).
- New Mexico: A county may designate a precinct as a mail ballot election precinct if it has fewer than 100 voters and the nearest polling place for an adjoining precinct is more than 20 miles driving distance from the precinct boundary in question (N. M. Stat. Ann. § 1-6-22.1).

### Security Features of Voting by Absentee/Mailed Ballots

As the trend toward states permitting or even encouraging more people to vote from home (by absentee/mailed ballots, or going to all-mailed elections) has accelerated, a key question from legislators has been, how secure can we make our system?

In several ways, absentee/mailed ballots are as secure or more secure than traditional methods of voting:

- Absentee/mailed ballots are hand-marked paper ballots. Paper ballots that have been hand-marked by voters are considered by most to be the gold standard of election security. Absentee/mailed ballots provide a paper trail that can be examined if there is any suspicion of meddling, and the marks of voters can be examined one by one if need be. Paper ballots allow for post-election audits and cutting edge election security methods such as risk-limiting audits (RLA), which more states are adopting. An RLA compares a random sample of ballots against the vote tally to ensure the outcome of the election is correct. It requires a robust ballot accounting process to ensure a trustworthy paper trail.
- The identity of every absentee/mailed ballot voter can be verified through signature verification. In a sense, a signature is a form of biometric identification, i.e. it is unique to a particular voter. By having a voter sign an affidavit on an absentee/ballot envelope the voter is affirming that the ballot enclosed is their ballot. Election officials can verify the signature as well. When combined with an effective "cure process," or opportunity for a voter to fix a mismatched or missing signature, signature verification is an effective way to verify a voter's identity. See above for more details on how signature verification works.
- In most states, absentee/mailed ballots are examined and processed in advance of Election Day, spreading out the workload and providing more time for scrutiny and to "get it right." If there is a cybersecurity incident that affects the election, there are longer lines at polling locations than anticipated, voting machines break down, election workers don't show up, etc., voters may find it difficult to cast their votes.

Even though voting is not occurring in a supervised environment, a number of features can be prescribed to enhance security of the election when voting by absentee/mailed ballot.

- Systems that allow a state to keep address information up-to-date for voters is the first step in ensuring the security of absentee/mailed ballots. If voters can easily keep their addresses up-to-date then their absentee/mailed ballot is more likely to get to them. Policies to make registration updates convenient for voters and to ensure robust voter list maintenance procedures can help keep voter information current. The act of sending out absentee/mailed ballots also allows election officials to ensure they have up-to-date addresses for voters, and states that send out more absentee/mailed ballots have seen an added benefit of "cleaner" voter lists, i.e. voter address information is kept up to date.
- Bipartisan teams have long provided a measure of security. Teams of election workers from different political parties can be deployed to retrieve ballots from

the U.S. Postal Service or from drop boxes; verify signatures; open envelopes and separate the ballot from the envelope; prepare the ballots for scanning; and participate in the vote counting process.

- Established “chain of custody” procedures that account for all steps in the process of moving and processing ballots are useful. This is true for every aspect of election administration, but particularly true for ballots that are submitted throughout an election period and not just on Election Day.
- Because voted mailed ballots are stored for some length of time before the election is complete, physical security is essential, too. Security cameras, locks that need a bipartisan team to open, and logs of all activities relating to ballot handling can be part of this effort. See NCSL’s Elections Security webpage for more.
- Ballot tracking can help. Ballot tracking provides voters an opportunity to track their ballots through the process, just as packages can be tracked through FedEx or other carriers. In the case of Denver elections, texts can be sent to voters who sign up for the service so they know when their ballot has been mailed to them, when it has been received back at the election office, and when it has been approved for tallying. In other jurisdictions, voters can electronically query their local election office to ensure that a ballot is on the way. Voters can then ask for another ballot to be sent (and the first one is canceled by the election official to ensure the voter does not vote twice) if there is reason to believe a ballot has been lost.
- Security mechanisms to prevent double-voting can be required. For instance, ballot envelopes are barcoded for individual voters, allowing election officials to be sure that they are only accepting one ballot per voter.
- Ballot collection laws that specify how many voted ballots can be collected by any individual are intended to reduce fraud. This can also be mitigated by providing voters with ample opportunities to return their own ballots. And laws requiring signature verification rather than a witness or a notary signature can also reduce opportunities for coercion.
- Ensuring that there are meaningful penalties for tampering with or otherwise hindering the delivery of absentee/mailed ballots, and that voters are sufficiently informed of these penalties, is another way to enhance security.

## Policy Decision Points

For legislators who are considering changes to their states' election models, they're probably looking for options that may increase turnout, lower costs, and be even more secure as the present system. They're likely to also want to understand the perspective of their state's election officials, and the role of state control vis a vis local control. These are likely to be the top-level considerations, regardless of the nature of a proposed change.

Regarding potential shifts to more absentee/mailed ballot/outside-a-polling place voting, legislators will first want to know where their state is currently. There is a continuum of states, some that require an excuse for voters to vote absentee all the way to states that send ballots to all voters. States generally move one step at a time.

For legislators who want to consider increasing the share of their state's votes that are likely to be cast as absentee/mailed ballots, here is a short list of considerations, all of which are addressed elsewhere in this webpage. States can:

- Remove requirements for an affidavit or witness signature on absentee ballot requests, and instead beef up signature verification.
- Create a permanent (or single-sign-on) absentee list so voters who prefer to receive ballots for all elections through the mail can easily do so.
- Permit or require a state-level online portal through which a voter can request a ballot.
- Consider whether guidance for third-party groups that are interested in distributing applications for absentee/mailed ballots would be useful to ensure that they are handled in a timely manner.
- Decide if ballots must be received by the close of polls on Election Day, or if they will be counted even if they arrive after. Late-arriving ballots can slow down election results reporting.
- Permit ballots to be processed—but not counted—prior to Election Day. By doing so, counting is faster, and results can be released faster as well. The more absentee/mailed ballots there are, the more crucial this factor becomes.
- Provide a notification process for voters if there is something wrong with their ballot envelope, and give them a chance to correct, or "cure," the ballot before the election is certified. Otherwise, the number of uncounted ballots will be higher for absentee/mailed ballots than for in-person ballots. The cure process can extend a few days after Election Day so voters who submit a ballot at the last minute with a signature issue can ensure their vote is counted.

- Require that results of all ballots—those voted in a polling place as well as those voted at home—are reported at the precinct level, because elected officials benefit from knowing the where their support is coming from and where they may need to beef up their constituent connections.
- Provide a variety of options for voters to return ballots and sufficient in-person locations for voters who need assistance or would prefer to vote in-person. Options for returning ballots can include these in-person locations as well as secure drop boxes throughout a jurisdiction. Having some or all of the drop boxes available around the clock (with security cameras) is useful.
- Decide whether to provide prepaid return postage, as a couple of states have done. Note that providing secure drop boxes throughout the jurisdiction reduces the number of voted ballots that are mailed, and thus reduces the cost of providing prepaid envelopes.
- Ensure that there are sufficient opportunities for voters to update their address and robust voter list maintenance procedures. See NCSL's webpage on Voter List Accuracy for additional information.
- Require reporting for every election the number of mailed-out ballots requested, the number sent out and the number returned. This will allow policymakers to track the popularity of this voting method over time and to allocate resources appropriately.

Please feel free to contact NCSL's elections team for any level of assistance or data that may prove helpful.

## Resources

- Vote at Home's Reference Library
- Vote at Home's Policy and Research Guide
- NCSL's State Laws Governing Early Voting page
- NCSL's Absentee Voting in Case of a Personal Emergency
- NCSL's The Canvass article, Trends in Ballot Collecting
- NCSL's State Laws Governing Early Voting
- FVAP's Absentee and Early Voting Myths and Realities Fact Sheet
- The Early Voting Information Center (EVIC) based at Reed College
- NCSL's The Canvass: March 2020

NCSL acknowledges and thanks Vote at Home (VAH) for its support for this project.

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Per Curiam

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## SUPREME COURT OF THE UNITED STATES

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No. 19A1016

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REPUBLICAN NATIONAL COMMITTEE, ET AL. *v.*  
DEMOCRATIC NATIONAL COMMITTEE, ET AL.

ON APPLICATION FOR STAY

[April 6, 2020]

PER CURIAM.

The application for stay presented to JUSTICE KAVANAUGH and by him referred to the Court is granted. The District Court’s order granting a preliminary injunction is stayed to the extent it requires the State to count absentee ballots postmarked after April 7, 2020.

Wisconsin has decided to proceed with the elections scheduled for Tuesday, April 7. The wisdom of that decision is not the question before the Court. The question before the Court is a narrow, technical question about the absentee ballot process. In this Court, all agree that the deadline for the municipal clerks to receive absentee ballots has been extended from Tuesday, April 7, to Monday, April 13. That extension, which is not challenged in this Court, has afforded Wisconsin voters several extra days in which to mail their absentee ballots. The sole question before the Court is whether absentee ballots now must be mailed and postmarked by election day, Tuesday, April 7, as state law would necessarily require, or instead may be mailed and postmarked after election day, so long as they are received by Monday, April 13. Importantly, in their preliminary injunction motions, the plaintiffs did not ask that the District

Court allow ballots mailed and postmarked after election day, April 7, to be counted. That is a critical point in the case. Nonetheless, five days before the scheduled election, the District Court unilaterally ordered that absentee ballots mailed and postmarked after election day, April 7, still be counted so long as they are received by April 13. Extending the date by which ballots may be cast by voters—not just received by the municipal clerks but cast by voters—for an additional six days after the scheduled election day fundamentally alters the nature of the election. And again, the plaintiffs themselves did not even ask for that relief in their preliminary injunction motions. Our point is not that the argument is necessarily forfeited, but is that the plaintiffs themselves did not see the need to ask for such relief. By changing the election rules so close to the election date and by affording relief that the plaintiffs themselves did not ask for in their preliminary injunction motions, the District Court contravened this Court’s precedents and erred by ordering such relief. This Court has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election. See *Purcell v. Gonzalez*, 549 U. S. 1 (2006) (*per curiam*); *Frank v. Walker*, 574 U. S. 929 (2014); *Veasey v. Perry*, 574 U. S. \_\_ (2014).

The unusual nature of the District Court’s order allowing ballots to be mailed and postmarked after election day is perhaps best demonstrated by the fact that the District Court had to issue a subsequent order enjoining the public release of any election results for six days after election day. In doing so, the District Court in essence enjoined non-parties to this lawsuit. It is highly questionable, moreover, that this attempt to suppress disclosure of the election results for six days after election day would work. And if any information were released during that time, that would gravely affect the integrity of the election process. The District Court’s order suppressing disclosure of election results showcases the unusual nature of the District Court’s order

Per Curiam

allowing absentee ballots mailed and postmarked after election day to be counted. And all of that further underscores the wisdom of the *Purcell* principle, which seeks to avoid this kind of judicially created confusion.

The dissent is quite wrong on several points. First, the dissent entirely disregards the critical point that the plaintiffs themselves did not ask for this additional relief in their preliminary injunction motions. Second, the dissent contends that this Court should not intervene at this late date. The Court would prefer not to do so, but when a lower court intervenes and alters the election rules so close to the election date, our precedents indicate that this Court, as appropriate, should correct that error. Third, the dissent refers to voters who have not yet received their absentee ballots. But even in an ordinary election, voters who request an absentee ballot at the deadline for requesting ballots (which was this past Friday in this case) will usually receive their ballots on the day before or day of the election, which in this case would be today or tomorrow. The plaintiffs put forward no probative evidence in the District Court that these voters here would be in a substantially different position from late-requesting voters in other Wisconsin elections with respect to the timing of their receipt of absentee ballots. In that regard, it bears mention that absentee voting has been underway for many weeks, and 1.2 million Wisconsin voters have requested and have been sent their absentee ballots, which is about five times the number of absentee ballots requested in the 2016 spring election. Fourth, the dissent's rhetoric is entirely misplaced and completely overlooks the fact that the deadline for receiving ballots was already extended to accommodate Wisconsin voters, from April 7 to April 13. Again, that extension has the effect of extending the date for a voter to mail the ballot from, in effect, Saturday, April 4, to Tuesday, April 7. That extension was designed to ensure that the voters of Wisconsin can cast their ballots and have their votes count. That

is the relief that the plaintiffs actually requested in their preliminary injunction motions. The District Court on its own ordered yet an additional extension, which would allow voters to mail their ballots after election day, which is extraordinary relief and would fundamentally alter the nature of the election by allowing voting for six additional days after the election.

Therefore, subject to any further alterations that the State may make to state law, in order to be counted in this election a voter's absentee ballot must be either (i) post-marked by election day, April 7, 2020, and received by April 13, 2020, at 4:00 p.m., or (ii) hand-delivered as provided under state law by April 7, 2020, at 8:00 p.m.

The Court's decision on the narrow question before the Court should not be viewed as expressing an opinion on the broader question of whether to hold the election, or whether other reforms or modifications in election procedures in light of COVID-19 are appropriate. That point cannot be stressed enough.

The stay is granted pending final disposition of the appeal by the United States Court of Appeals for the Seventh Circuit and the timely filing and disposition of a petition for a writ of certiorari. Should the petition for a writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for a writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

*It is so ordered.*

GINSBURG, J., dissenting

**SUPREME COURT OF THE UNITED STATES**

No. 19A1016

REPUBLICAN NATIONAL COMMITTEE, ET AL. *v.*  
DEMOCRATIC NATIONAL COMMITTEE, ET AL.

ON APPLICATION FOR STAY

[April 6, 2020]

JUSTICE GINSBURG, with whom JUSTICE BREYER, JUSTICE SOTOMAYOR, and JUSTICE KAGAN join, dissenting.

The District Court, acting in view of the dramatically evolving COVID–19 pandemic, entered a preliminary injunction to safeguard the availability of absentee voting in Wisconsin’s spring election. This Court now intervenes at the eleventh hour to prevent voters who have timely requested absentee ballots from casting their votes. I would not disturb the District Court’s disposition, which the Seventh Circuit allowed to stand.

I  
A

Wisconsin’s spring election is scheduled for tomorrow, Tuesday, April 7, 2020. At issue are the presidential primaries, a seat on the Wisconsin Supreme Court, three seats on the Wisconsin Court of Appeals, over 100 other judgeships, over 500 school board seats, and several thousand other positions. *Democratic National Committee v. Bostelmann*, \_\_ F. Supp. 3d \_\_, \_\_, 2020 WL 1638374, \*3 (WD Wis., Apr. 2, 2020).

In the weeks leading up to the election, the COVID–19 pandemic has become a “public health crisis.” *Id.*, at \_\_, 2020 WL 1638374, \*1. As of April 2, Wisconsin had 1,550 confirmed cases of COVID–19 and 24 deaths attributable to the disease, “with evidence of increasing community

spread.” *Id.*, at \_\_\_, 2020 WL 1638374, \*3. On March 24, the Governor ordered Wisconsinites to stay at home until April 24 to slow the spread of the disease. *Ibid.*

Because gathering at the polling place now poses dire health risks, an unprecedented number of Wisconsin voters—at the encouragement of public officials—have turned to voting absentee. *Id.*, at \_\_\_, 2020 WL 1638374, \*4. About one million more voters have requested absentee ballots in this election than in 2016. *Ibid.* Accommodating the surge of absentee ballot requests has heavily burdened election officials, resulting in a severe backlog of ballots requested but not promptly mailed to voters. *Id.*, at \_\_\_–\_\_\_, 2020 WL 1638374, \*4–\*5.

## B

Several weeks ago, plaintiffs—comprising individual Wisconsin voters, community organizations, and the state and national Democratic parties—filed three lawsuits against members of the Wisconsin Elections Commission in the United States District Court for the Western District of Wisconsin.<sup>1</sup> The District Court consolidated the suits on March 28. The plaintiffs sought several forms of relief, all aimed at easing the effects of the COVID–19 pandemic on the upcoming election.

After holding an evidentiary hearing, the District Court issued a preliminary injunction on April 2. As relevant here, the court concluded that the existing deadlines for absentee voting would unconstitutionally burden Wisconsin citizens’ right to vote. See *Burdick v. Takushi*, 504 U. S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U. S. 780, 789 (1983). To alleviate that burden, the court entered a two-fold remedy. First, the District Court extended the deadline for voters to request absentee ballots from April 2 to April

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<sup>1</sup>The state and national Republican parties intervened as defendants. The District Court denied intervention by the state legislature, which the Seventh Circuit later allowed.

GINSBURG, J., dissenting

3. Second, the District Court extended the deadline for election officials to receive completed absentee ballots. Previously, Wisconsin law required that absentee ballots be received by 8 p.m. on election day, April 7; under the preliminary injunction, the ballots would be accepted until 4 p.m. on April 13, regardless of the postmark date. The District Court also enjoined members of the Elections Commission and election inspectors from releasing any report of polling results before the new absentee-voting deadline, April 13.

Although the members of the Wisconsin Elections Commission did not challenge the preliminary injunction, the intervening defendants applied to the Seventh Circuit for a partial stay. Of the twofold remedy just described, the stay applicants challenged only the second aspect, the extension of the deadline for returning absentee ballots. On April 3, the Seventh Circuit declined to modify the absentee-ballot deadline. The same applicants then sought a partial stay in this Court, which the Court today grants.

## II

### A

The Court's order requires absentee voters to postmark their ballots by election day, April 7—*i.e.*, tomorrow—even if they did not receive their ballots by that date. That is a novel requirement. Recall that absentee ballots were originally due back to election officials on April 7, which the District Court extended to April 13. Neither of those deadlines carried a postmark-by requirement.

While I do not doubt the good faith of my colleagues, the Court's order, I fear, will result in massive disenfranchisement. A voter cannot deliver for postmarking a ballot she has not received. Yet tens of thousands of voters who timely requested ballots are unlikely to receive them by April 7, the Court's postmark deadline. Rising concern about the COVID-19 pandemic has caused a late surge in absentee-

ballot requests. \_\_\_ F. Supp. 3d, at \_\_\_—\_\_\_, 2020 WL 1638374, \*4–\*5. The Court’s suggestion that the current situation is not “substantially different” from “an ordinary election” boggles the mind. *Ante*, at 3. Some 150,000 requests for absentee ballots have been processed since Thursday, state records indicate.<sup>2</sup> The surge in absentee-ballot requests has overwhelmed election officials, who face a huge backlog in sending ballots. \_\_\_ F. Supp. 3d, at \_\_\_, \_\_\_, \_\_\_—\_\_\_, \_\_\_—\_\_\_, 2020 WL 1638374, \*1, \*5, \*9–\*10, \*17–\*18. As of Sunday morning, 12,000 ballots reportedly had not yet been mailed out.<sup>3</sup> It takes days for a mailed ballot to reach its recipient—the postal service recommends budgeting a week—even without accounting for pandemic-induced mail delays. *Id.*, at \_\_\_, 2020 WL 1638374, \*5. It is therefore likely that ballots mailed in recent days will not reach voters by tomorrow; for ballots not yet mailed, late arrival is all but certain.<sup>4</sup> Under the District Court’s order, an absentee voter who receives a ballot after tomorrow could still have voted, as long as she delivered it to election

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<sup>2</sup>See Wisconsin Elections Commission, Absentee Ballot Report, Apr. 2, 2020, <https://elections.wi.gov/node/6806>; Wisconsin Elections Commission, Absentee Ballot Report, Apr. 3, 2020, <https://elections.wi.gov/node/6808>; Wisconsin Elections Commission, Absentee Ballot Report, Apr. 4, 2020, <https://elections.wi.gov/node/6814>; Wisconsin Elections Commission, Absentee Ballot Report, Apr. 5, 2020, <https://elections.wi.gov/node/6815>.

<sup>3</sup>See Wisconsin Elections Commission, Absentee Ballot Report, Apr. 5, 2020, <https://elections.wi.gov/index.php/node/6815>.

<sup>4</sup>See, e.g., Tr. 18–19 (Apr. 1, 2020) (testimony that mail delivery “can take up to a week” or longer, threatening “the opportunity for the voter to receive [the absentee] ballot by mail”); *id.*, at 35 (testimony that the “transaction time from the time the clerk puts [an absentee ballot] in the mail to the voter receiving it could take up to a week”); *id.*, at 40 (testimony agreeing that “there will be some people who request . . . [an] absentee ballot [on April 2] who will not be receiving it in time to put it in the mail by April 7th”); Brief for City of Green Bay as *Amicus Curiae* in No. 3:20–cv–00249 (WD Wis.), p. 5 (“[D]elays at the post office are . . . affecting the speed with which voters receive their ballots . . .”).



GINSBURG, J., dissenting

officials by April 13. Now, under this Court’s order, tens of thousands of absentee voters, unlikely to receive their ballots in time to cast them, will be left quite literally without a vote.

This Court’s intervention is thus ill advised, especially so at this late hour. See *Purcell v. Gonzalez*, 549 U. S. 1, 4–5 (2006) (*per curiam*). Election officials have spent the past few days establishing procedures and informing voters in accordance with the District Court’s deadline. For this Court to upend the process—a day before the April 7 postmark deadline—is sure to confound election officials and voters.

## B

What concerns could justify consequences so grave? The Court’s order first suggests a problem of forfeiture, noting that the plaintiffs’ written preliminary-injunction motions did not ask that ballots postmarked after April 7 be counted. But unheeded by the Court, although initially silent, the plaintiffs specifically requested that remedy at the preliminary-injunction hearing in view of the ever-increasing demand for absentee ballots. See Tr. 102–103 (Apr. 1, 2020).

Second, the Court’s order cites *Purcell*, apparently skeptical of the District Court’s intervention shortly before an election. Nevermind that the District Court was reacting to a grave, rapidly developing public health crisis. If proximity to the election counseled hesitation when the District Court acted several days ago, this Court’s intervention today—even closer to the election—is all the more inappropriate.

Third, the Court notes that the District Court’s order allowed absentee voters to cast ballots after election day. If a voter already in line by the poll’s closing time can still vote, why should Wisconsin’s absentee voters, already in line to receive ballots, be denied the franchise? According to the

stay applicants, election-distorting gamesmanship might occur if ballots could be cast after initial results are published. But obviating that harm, the District Court enjoined the publication of election results before April 13, the deadline for returning absentee ballots, and the Wisconsin Elections Commission directed election officials not to publish results before that date.<sup>5</sup>

The concerns advanced by the Court and the applicants pale in comparison to the risk that tens of thousands of voters will be disenfranchised. Ensuring an opportunity for the people of Wisconsin to exercise their votes should be our paramount concern.

\* \* \*

The majority of this Court declares that this case presents a “narrow, technical question.” *Ante*, at 1. That is wrong. The question here is whether tens of thousands of Wisconsin citizens can vote safely in the midst of a pandemic. Under the District Court’s order, they would be able to do so. Even if they receive their absentee ballot in the days immediately following election day, they could return it. With the majority’s stay in place, that will not be possible. Either they will have to brave the polls, endangering their own and others’ safety. Or they will lose their right to vote, through no fault of their own. That is a matter of utmost importance—to the constitutional rights of Wisconsin’s citizens, the integrity of the State’s election process, and in this most extraordinary time, the health of the Nation.

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<sup>5</sup>Memorandum from M. Wolfe, Administrator of the Wisconsin Elections Commission, to Wisconsin Municipal Clerks et al. (Apr. 3, 2020), <https://elections.wi.gov/sites/elections.wi.gov/files/2020-04/Clerk%20comm%20re.%20court%20decisions%204.3.pdf>.

Nos. 19-465, 19-518

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IN THE  
*Supreme Court of the United States*

PETER BRET CHIAFALO, LEVI JENNET GUERRA, AND  
ESTHER VIRGINIA JOHN,

*Petitioners,*

v.

STATE OF WASHINGTON,

*Respondent.*

COLORADO DEPARTMENT OF STATE,

*Petitioner,*

v.

MICHEAL BACA, POLLY BACA, AND ROBERT NEMANICH,

*Respondents.*

On Writs of Certiorari to the  
Supreme Court of Washington and the  
U.S. Court of Appeals for the Tenth Circuit

**BRIEF OF JERRY H. GOLDFEDER AS *AMICUS*  
*CURIAE* IN SUPPORT OF PETITIONERS IN  
*CHIAFALO* AND RESPONDENTS IN *BACA***

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**INTEREST OF AMICUS CURIAE<sup>1</sup>**

Jerry H. Goldfeder has practiced election law for many years, representing candidates for federal, state and local office. He has taught the subject as an Adjunct Professor at the Fordham Law School from 2003 through the present, and at the University of Pennsylvania Law School from 2009 through 2019. He is the author of *Goldfeder's Modern Election Law* (NY Legal Publishing Corp., 5th Ed., 2018), and is the co-author of the New York Law Journal's regular column, *Government and Election Law*. After the terrorist attack on the United States on September 11, 2001, he wrote a seminal law review article on whether terrorism could disrupt a presidential election, and subsequently has written articles in a variety of popular publications on the potential disruption of elections by natural disasters or terrorism.

**SUMMARY OF THE ARGUMENT**

The issue of whether a presidential elector has discretion to cast a vote for whomever he or she chooses has absorbed a narrow swath of academics for years. *See, e.g.*, AFTER THE PEOPLE VOTE (John Fortier, Ed., 3d ed., 2004). Indeed, even when Congress

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<sup>1</sup> Consistent with Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person or entity other than *amicus* or his law firm made a monetary contribution to its preparation or submission. *Amicus* is a salaried special counsel of the undersigned law firm, which encourages its attorneys to teach, write and lecture on subjects of interest to the bench and bar. The within brief constitutes the *amicus's* argument, not his law firm's; and Fordham Law School and the University of Pennsylvania Law School are referred to only for identification purposes, and are not signatories to this brief. The parties consented to this filing; their letters of consent are on file with the Clerk of this Court pursuant to Rule 37.3(a).



vigorously debated the issue during the tally of the 1968 electoral college votes, it failed to capture the public’s attention in any meaningful way, and Congress counted the allegedly “faithless” electoral votes. *See* 115 CONG. REC. 148, 170-71, 203-04, 246 (1969). Only after the 2016 election, when a handful of electors chose to vote independently did the question receive public attention in a somewhat sustained way. Tom Marshall, *The Final Vote for President: Learning About the Electoral College*, N.Y. TIMES, Dec. 8, 2016. It was the actions of these electors that ultimately led this Court to address the issue in the consolidated cases.

The merits of whether there is a constitutional right of electors to exercise discretion when casting their ballots, or if a state may limit such choice, is addressed in the main briefs. Here, the focus is upon the *necessity* of an elector to be able to cast a free choice.

While this argument is not explicitly addressed by the Founders, it is consistent with their emphasis on electors employing appropriate “discernment” in casting a judicious ballot. *See* THE FEDERALIST NO. 68 (A. Hamilton). In short, to fulfill the Founders’ contemplated plan for electing a president, exigent circumstances that disrupt an election or dramatically change the political circumstances after election day<sup>2</sup> *require* electors to be able to exercise their discretion.

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<sup>2</sup> The use of the term “election day” herein is to be understood colloquially, *i.e.*, the “Tuesday after the first Monday in November.” 3 U.S.C.A. § 1. The day on which the electors meet in their respective states to actually cast ballots for president

**ARGUMENT****I. UNPLANNED EXIGENCIES IN ELECTIONS: NATURAL DISASTERS AND TERRORISM REQUIRE ELECTOR DISCRETION.**

On February 18, 1952, a severe blizzard hit Lewiston, Maine on the morning of a municipal election. Although the record is ambiguous as to what protocols were followed to postpone the election, Mother Nature effectively made the call. *State v. Marcotte*, 89 A.2d 308 (Me. 1952). On election day thirteen years later, in Washington County, Pennsylvania, the Monongahela River flooded, causing electric outages. The local election judge suspended voting in eleven precincts of the county for two weeks, as other voters continued to cast ballots throughout the state. *In re General Election – 1985*, 531 A.2d 836 (Pa. 1987). On the morning of September 11, 2001, New York City and other local jurisdictions in that state were conducting political party primary elections. Interrupted by the attack on the United States, the election was suspended throughout New York by the Governor exercising his plenary power. The legislature convened several days later to address when and how to proceed. Guided by no precedent or specific statute, it permitted those who had voted in person to vote again, while denying mail-in voters the opportunity to do so. Adam Nagourney, *AFTER THE ATTACKS: THE ELECTION; Primary Rescheduled for Sept. 25, With Runoff, if Necessary, Set for Oct. 11*, N.Y. TIMES, Sept. 14, 2001.

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occurs on the “first Monday after the second Wednesday in December.” 3 U.S.C.A. § 7.

These are just a few examples of interrupted elections, instructive as to how state or local officials have responded. *See generally* Jerry H. Goldfeder, *Could Terrorists Derail a Presidential Election?*, 32 FORDHAM URB. L. J. 523 (2005).

On the other hand, a presidential election has never been suspended. The closest threat in modern time was in 2012, when Superstorm Sandy pummeled parts of New York City and New Jersey one week before election day, causing severe flooding and power outages and destroying thousands of homes. No national plan was in place, and the governors of New York and New Jersey were thus compelled to improvise, allowing provisional ballots to be cast at any polling site and New Jersey residents to vote by internet and fax. *See* Jerry H. Goldfeder, *In Case of Election Crisis, Congress Needs to Be Prepared*, U.S. NEWS & WORLD REPORT, Oct. 15, 2008; Andrew Cohen, *Could a Hurricane Like Sandy Postpone the Presidential Election?*, THE ATLANTIC, OCT. 29, 2012. For the most part, the presidential election proceeded normally, and the disruption did not alter the expected outcome in either New York or New Jersey.

But it could have. If a storm – or earthquake, terrorist attack or significant health epidemic – occurred on or immediately prior to election day, and its locus was in a population area that ordinarily provides an electoral tipping point in a state, statewide results could be skewed. Of course, any of these disruptions could occur at any time, with no warning, and practically anywhere in the country. For example, one normally thinks of California as the epicenter of earthquakes, but there are fault lines under states on the east coast, which have also experienced various

levels of quakes. See Jeremy Bogaisky, *Yes, Virginia: There Are Earthquakes on the East Coast*, FORBES.COM (Aug. 23, 2011).<sup>3</sup> One also generally thinks of hurricanes as striking the southeastern seaboard during the summer and early fall, but hurricanes and violent storms like Sandy are likely as not to occur throughout the eastern United States on election day or during early voting. Snowstorms, too, have been known to cripple parts of the U.S. during elections See, e.g., Brad Maushart, *1936: Worst weather for election in Cincinnati history*, WCPO.COM (Nov. 8, 2016).<sup>4</sup>

Health issues such as the current coronavirus could also lead to large scale disruptions, preventing significant numbers of voters from casting ballots – and these, too, can occur anywhere in the United States.

After 9/11, the House of Representatives chose to weigh in on a potential disruption caused by terrorists, resolving that a presidential election should “never” be postponed. By a whopping vote of 419-2, the House resolved that

postponing an election in the aftermath of a terrorist attack would demonstrate weakness, not strength, and would be interpreted as a victory for the terrorists....

H.R. 728, 108<sup>th</sup> Cong. (2004). The House’s sentiment, while understandable, was ostrich-like. Especially in

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<sup>3</sup> Available at <http://www.forbes.com/sites/jeremybogaisky/2016/08/23/yes-virginia-there-are-earthquakes-on-the-east-coast/#271973114e20>.

<sup>4</sup> Available at <http://www.wcpo.com/weather/1936-worst-election-day-weather-for-cincinnati>.

light of the fact that a presidential election is actually fifty-one separate jurisdictions casting ballots for electors based upon their own respective laws and regulations with precious few constitutional or statutory guidelines, it would have been prudent for the House – or, for that matter, the executive branch – to acknowledge that terrorism, or a weather or health disaster on or right before a presidential election, requires a planned response.

Indeed, neither 9/11, nor Sandy or the current coronavirus pandemic has thus far led to detailed and comprehensive contingency plans by Congress or the states.

To underscore the point that disruption of voting on or immediately before election day could have a consequential impact on a presidential election, the following hypothetical scenarios should be considered:

- A late-in-the-season hurricane ravages southern Florida, destroying dozens of condo communities of elderly voters in Broward and Miami-Dade counties, and effectively shutting down most of their polling sites.
- A fierce blizzard sweeps across the Midwest, including parts of Missouri, Illinois, Indiana and Ohio, making it impossible for tens of thousands of voters in these states to travel to the polls.
- A health crisis leads to a quarantine of thousands of residents of Birmingham, Montgomery, Chattanooga, Tallahassee, and Charleston, preventing them from voting, either early or on election day.

If the affected voters in any of these scenarios are unable to cast their ballots and the unaffected residents of a state are able to do so, the results of these states' totals might be skewed in an unpredictable way. Put another way, "blue states" could turn "red," or vice-versa. Several questions thus suggest themselves:

- Who has the authority to decide whether a state's vote for presidential electors should proceed or be suspended as a result of its having experienced a serious disruption?
- Can a state order the vote to proceed in the unaffected areas of the state, resulting in a final tally that excludes voters from the affected areas?
- Given the changed circumstances caused by the disruption, can a state permit those who voted by mail or during early voting cast a new ballot on a subsequent day?

These questions are governed by the laws of the affected states. U.S. Const., Art. I, § 4.

The only federal guidance is that if a state "has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law," it may appoint electors "in such a manner as the legislature of such State may direct." 3 U.S.C.A. § 2. Thus, an affected state may select electors either by permitting unaffected voters to cast ballots on election day with or without allowing affected voters to do so subsequently; or cancelling the vote altogether and permitting the governor or legislature to choose electors with no voter participation. In short, the procedure may be different than contemplated by

existing state law, and electors chosen by such *ad hoc* determinations may view their role differently than conventionally-chosen electors. And if the disruption crosses state lines, each state may respond to the emergency differently.

Irrespective of how they were selected, electors chosen after an electoral disruption may view the political landscape differently than prior to the exigent events, and thus must have the ability to exercise discretion when casting their vote.

## **II. UNPLANNED EXIGENCIES AFTER ELECTION DAY ALSO REQUIRE ELECTOR DISCRETION.**

Electors may also feel duty-bound to cast discretionary ballots if any such natural disaster or terrorist attack occurs *after* election day and before the electors meet approximately six weeks later.

Of course, it need not be such a calamitous event that compels an elector to exercise his or her discretion. It could be as simple as a presidential candidate dying. In 1872, Horace Greeley died after election day (but before the electors met to vote). Three of the 66 electors pledged to Greeley voted for him anyway; 63 voted for other candidates. *Atlas of U.S. Presidential Elections* available at <https://uselectionatlas.org/RESULTS/index.html>. Greeley had lost the election to Ulysses Grant, so his electors' votes did not change the outcome, but the example is instructive.

Short of a candidate's death, information about a presidential candidate may come to light compelling electors to choose a candidate other than the one to

whom they had pledged support. Two hypothetical scenarios come to mind:

- President Dwight D. Eisenhower is incapacitated by a massive heart attack after the election of 1956 instead of a year earlier.
- After the election of 1960, leaked medical records demonstrate that John Kennedy has serious illnesses that are likely to impair his ability to govern.

These scenarios may not be as compelling as the death of a candidate, but they represent serious circumstances akin to a natural disaster or terrorist attack that could very well give a pledged elector serious food-for-thought about who should be president. The point is that electors may be required to use their discretion in casting their vote, just as they were compelled to do so after Horace Greeley died.

Unlike so-called faithless electors throughout American history who made political choices to vote for candidates other than those to whom they had been pledged (*see* FairVote, *Faithless Electors*, available at [https://www.fairvote.org/faithless\\_electors](https://www.fairvote.org/faithless_electors)), death, a natural disaster or pandemic would undoubtedly compel electors to feel the necessity of exercising discretion on grounds relating to the stability of the country.

In an increasingly dangerous and fragile world, electors may be presumed to care deeply about the republic, its leadership and their historic role in electing the president. Whether they must exercise discretion out of absolute necessity or because they have reached a judgment that objectively serious



circumstances compel them to vote their conscience, elector discretion is an essential component when faced with unforeseen or threatening events.

Such discretion is consistent with the wisdom and discernment required of electors as contemplated by our Founders. THE FEDERALIST NO. 68 (A. Hamilton).

### CONCLUSION

In light of exigent circumstances electors may face when casting ballots for president of the United States, this Court is respectfully urged to affirm in *Colorado Department of State v. Baca* and reverse in *Chiafalo v. State of Washington*.

Respectfully submitted,

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March 9, 2020

U.S. HOUSE OF REPRESENTATIVES  
**COMMITTEE ON RULES**  
OFFICE OF THE MAJORITY



**Majority Staff Report Examining  
Voting Options During the  
COVID-19 Pandemic**

**MARCH 23, 2020**

This report was compiled by the majority staff and has not been officially adopted by the Committee on Rules.

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## I. INTRODUCTION

This is a moment of national emergency. One that comes with a unique set of challenges. Americans are being asked to stay home. Americans are being asked to socially distance themselves from their neighbors, colleagues, friends, and even family. Yet others are being asked to put themselves at risk to take care of the sick, protect their communities, and keep the supply chains running. Likewise, Congress must be prepared to do the urgent work of responding to the massive challenges we face as a country. That work must proceed thoughtfully, while keeping public safety at the forefront and at the same time preserving the integrity of the institution.

Since the onset of the COVID-19 pandemic, the Rules Committee has heard from Members who want to come back to Washington and vote on critical legislation, and Members who want to implement remote voting due to concerns Congress will be unable to pass legislation while also protecting the health of Members, staff, and the public. While these concerns are completely valid, implementing remote voting would raise serious security, logistical, and constitutional challenges.

Security and reliability are hallmarks of the current system and any divergence from current practices must retain the same level of integrity. Although off-the-shelf products exist to allow a Member to videoconference their vote, for example, they have not been tested under the sort of pressure they would face from enemy states or other bad actors trying to force the system offline or prevent individual Members from accessing it. Such a system has to be extensively tested, not used for the first time on must-pass legislation.

A rule change of this magnitude would also be one of the biggest rule changes in the last century, in one of the most critical institutions in our country. It would require major changes to foundational House rules surrounding deliberation, voting, and attendance, which would almost certainly cause unintended consequences if not done with adequate forethought and discussion.<sup>1</sup> Remote voting is also a novel method of voting with no parliamentary history or basis. Some may argue that it runs counter to the Constitution's references to the House meeting to conduct business in the chamber. While arguments can be made in favor of its constitutionality, to avoid a court challenge, it is inadvisable to use unprecedented parliamentary procedures on critical legislation.

It may be prudent to consider the feasibility of remote voting for certain emergency situations, but that decision should be a multi-committee effort with substantial study and

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<sup>1</sup> For a list of House rules impacted by remote voting, please see Appendix I. In particular, rules XX (Voting and Quorum Calls) and XXI (Committee of the Whole) would require modification throughout.

development. This change cannot be implemented overnight, and likely cannot be accomplished in time to address the current crisis. Without complete consensus, which we do not currently have, it would also require us to come back to Washington to vote to change House rules to allow for remote voting. However, there are several other routes the House may take in order to pass legislation addressing COVID-19.

## II. OPTIONS UNDER EXISTING RULES

### *A. Unanimous Consent and Voice Votes*

By far the best option is to **use the existing House rules and current practices**. During the 1918 Influenza Pandemic, the House did not adopt a method of remote voting – e.g. by telegraph or correspondence. Instead they eventually utilized a unanimous consent agreement to pass critical legislation despite not having a physical quorum present, recognizing the importance of conducting business in the chamber at a time of national crisis.<sup>2</sup>

Likewise, today, the House could pass legislation by **unanimous consent**, which does not require a quorum; or by a **voice vote**, where the House presumes a quorum is present unless a point of order is made. Members could submit a statement for the Congressional Record stating how they would have voted had there been a recorded vote. Congress could even vote on a symbolic resolution supporting the legislation after the crisis passes and Members return to Washington.

Advantages: Unanimous consent agreements and voice votes are longstanding practices that have stood the test of time, and successful use of them is not out of the realm of possibility given the fact that any critical legislation would have to have broad bipartisan support to reach the President’s desk and receive a signature. Their use would also ensure that Members do not have to travel back to Washington in order to vote, potentially keeping Members and staff from exposing themselves and the public to the virus.

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<sup>2</sup> History, Art & Archives – U.S. House: “less than 50 Members were in attendance. But, in a remarkable step, those present had agreed to a ‘*modus vivendi*’—as Speaker Clark explained from the rostrum—to consider the PHS bill under a unanimous consent agreement that would only work if no one ask for a quorum call.”

<https://history.house.gov/Blog/2018/December/12-14-Flu/>

Disadvantages: A single Member could object to a unanimous consent agreement, or make a point of order that a quorum is not present and call for the yeas and nays after a voice vote. While this is clearly the best option before us, it may be the most difficult to use.

### ***B. Recorded Votes***

Should travel become necessary, the House could pass legislation by a **recorded vote** but limit Member and staff exposure by holding votes open longer than normal and having Members vote in shifts, sanitizing voting stations between uses, and controlling how many people are in the chamber and their proximity to each other.

Advantages: This would allow Members to record their votes, and unanimous support would not be required.

Disadvantages: If there are large numbers of absences due to Members being under quarantine or unable to travel, the voting membership may not reflect the current majority/minority ratio. In other words, the minority party could have a majority of the votes, which would not reflect the outcome of the latest election.

### ***C. Paired Voting***

The House could **utilize a “paired voting” process**, or another process that formalizes Members recording how they would have voted. House rules currently permit paired voting. A pair was an informal agreement between Members on opposite sides not to vote on a specific question or for a stipulated time during their anticipated absence from the House. Since the pairing Members were on opposite sides, their absences did not affect the result of the vote. Pairs were not counted in vote totals, but their names were recorded in the Congressional Record, allowing Members to indicate their position when absent. The rules were changed during the 106<sup>th</sup> Congress to now only allow for “live pair” voting where one Member votes present and the other is absent. Previous to this change the rules allowed for a pairing of Members who were both absent (known as a “specific pair”). Pairing was a common practice when travel to and from Washington, D.C. was difficult, and Members were absent for extended periods of time.

Advantages: Paired voting sets up a more formal structure than simply telling Members to insert how they would have voted in the Congressional Record, even though it is in essence the same outcome. It could give Members in “pairs” peace of mind that their absence will not change the outcome of the vote. It would not require a change to House rules, only a change to current practice.

Disadvantages: It is complicated to explain and requires coordination by the cloakrooms in order to pair Members. It also does not solve the quorum problem, so

it would need to be combined with utilizing the provisional quorum process (below) if over half the body is absent.

#### ***D. Provisional Quorum***

If over 215 Members are quarantined or otherwise unable to travel to Washington, the House could **reset the necessary quorum to a provisional amount**. A House rule<sup>3</sup> adopted three years after the attacks of September 11<sup>th</sup>, 2001, allows the House to use a provisional quorum based on the number of Members able to return to the Capitol if, post-catastrophe, a traditional quorum cannot be achieved after 96 hours of attempts due to a “natural disaster, attack, contagion, or a similar calamity rendering Representatives incapable of attending the proceedings of the House.” This rule was put in place after years of study by the Rules Committee and outside experts.

Advantages: It would provide a backstop for the quorum problem, ensuring that Congress is able to act on critical legislation in the face of mass vacancies even if the majority of Members are unable to attend a session.

Disadvantages: Several Democrats questioned the constitutionality of this provision when it was adopted in 2005. While there are strong arguments in favor of its constitutionality, this process has never been used. As is the case with any recorded vote with mass vacancies, the voting provisional membership may not reflect the current majority/minority ratio.

### **III. POTENTIAL RULE CHANGES**

While passing legislation without a recorded vote is the easiest path procedurally and the best option for Member and public safety, it may not be possible since any single Member can prevent it. If universal agreement is not reached, a time-limited change like enhanced unanimous consent or proxy voting could be adopted to help the House function.

Remote voting – in addition to facing logistical and security challenges – is untested constitutionally and there is no precedent for its use in Congress. Using this process to pass legislation could run the risk of legislation being challenged in court, for example by an outside group opposing the legislation. Although there are potentially winning arguments to be made regarding constitutionality, any challenge could delay implementation of critical legislation. Remote voting would almost certainly require

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<sup>3</sup> Clause 5(c) of rule XX

hundreds of Members to return to Washington to vote on the rule change. The same could be the case for proxy voting, however, proxy voting has precedent in the House and Senate, and would not face many of the technology and security problems faced by remote voting.

### ***A. Enhanced Unanimous Consent***

The House could adopt a resolution stating that, for a prescribed period of time, **the number of Members required to object to a unanimous consent request is increased** to a specific number.

Advantages: This would prevent a single Member or small cohort of Members from derailing critical legislation that is broadly supported by Members of the House. The House's current guidelines requiring clearance by both leaderships would likely need to remain in place.

Disadvantages: Members who frequently disagree with the majority of the House might object to this change; therefore, it could require a recorded vote to adopt it.

### ***B. Proxy Voting on the Floor***

There is currently no perfect solution to allow absent Members to vote on the floor. However, proxy voting is likely the best of the options available under the circumstances. The House could **implement proxy voting**, in which an absent Member gives a present Member their proxy to cast an actual vote for them, for a prescribed period of time. Legislatures in Oklahoma and Pennsylvania are implementing proxy voting for the duration of the COVID-19 pandemic, but in the House it could raise some of the same constitutional questions as remote voting – namely, whether a Member must be physically present in the chamber to vote. However, many scholars argue that the House has the right to determine its own rules, and that the courts would be unlikely to question the process the House used to pass a bill, if the House determined that it was within the bounds of the House rules. And unlike remote voting, proxy voting has a basis in parliamentary tradition<sup>4</sup> and is not accompanied by the same security and technology concerns.

If the House adopts a novel voting practice such as proxy voting, a process should be put in place by which the Sergeant at Arms certifies that an emergency situation exists before

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<sup>4</sup> While proxy voting on the Floor would be unprecedented, there is precedent for it in House committees where the practice was in place until the 104th Congress when it was disallowed as part of then-Speaker Newt Gingrich's slate of changes to the House rules. Proxy voting also has precedent in the Senate where it is still used in committee.



proxy voting could be used. Various decisions would have to be made on how proxy voting would function procedurally. In practice, absent Members could potentially communicate their vote to their Regional Whips or to a Member of Leadership, and could certify with the Clerk which Member is serving as their proxy. For extra transparency, the Clerk could call the roll, with the Member serving as proxy announcing that they are a proxy and verbally casting a vote for the absent Member.

Advantages: Proxy voting would give Members the option of casting their votes on legislation without traveling to Washington, which could help limit the spread of COVID-19. These votes would count toward the vote total. Of course, Members who can reach the Capitol and wish to vote in person on the floor would still be able to.

Disadvantages: Proxy voting would require a change to House rules, which would have to be adopted on a record vote if universal agreement could not be reached to utilize unanimous consent or a voice vote.

### ***C. Remote Voting***

The House could implement a system by which **Members could cast their votes remotely** for a prescribed period of time.

Advantages: Members who are unable to travel to Washington due to the COVID-19 pandemic would be able to cast votes on legislation from their home or district office.

Disadvantages: Significant security and logistical concerns surround remote voting, and opponents of the legislation could raise constitutional questions surrounding the process. Allowing remote voting would require major changes to the House rules for this purpose – and much smaller changes have taken years of study and consideration to implement. The House and outside experts studied the continuity of Congress following the attacks of September 11<sup>th</sup>, 2001, and it took years of careful deliberation to agree to change the quorum rule for catastrophic circumstances. While remote voting deserves similarly thoughtful study, to create a secure, reliable, and user-friendly system while in the midst of a crisis is not realistic.

For a more in-depth examination of the challenges surrounding implementation of remote voting, please see the following sections.

#### IV. SECURITY OF REMOTE VOTING

The electronic voting system on the House floor is a closed system with no access to the internet, and it took almost 100 years and over 50 bills and resolutions to finally put it in place in 1970.<sup>5</sup> The House regularly tests and reviews this system to ensure the security and integrity of votes. In order to allow Members to vote remotely from all over the country, a new electronic system would have to be put in place, raising several security concerns: foreign and domestic cyber-attacks, interference by third parties, and challenges authenticating Members' identities as they cast votes remotely.

In the age of the internet, foreign and domestic cyber threats are a near certainty for any system Congress would implement to allow remote voting or participation. The Pentagon has already reported that cyber-attacks on the Department of Defense's networks have increased as more employees telework and take precautions to slow the spread of COVID-19.<sup>6</sup> The Department of Health and Human Services suffered an attack on its own computer systems – part of a campaign to spread disinformation to undermine the department's response to the pandemic.<sup>7</sup>

In the wake of the 2016 election interference and potential 2020 election interference, implementing a secure method for voting would be critical and require an expert staff dedicated to ensuring there are no foreign or domestic attacks threatening the integrity of a vote by any Member, or threatening the system's functionality as a whole. Even with such a staff, we may not be able to thwart a cyber-attack that could prevent Congress from acting or delegitimize any vote Members take.

Cyber interference is not the only risk associated with remote voting. The House chamber provides Members with a central location to deliberate and vote without being subject to the influence or interference of third parties. If voting were decentralized away from one secure chamber, there would be no way to ensure Members casting votes remotely are doing so without undue interference by a bad actor. This would require the availability of secure voting locations in every state for Members to cast their votes. Such infrastructure

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<sup>5</sup> History, Art & Archives – US House: “Between 1886 and 1970, more than 50 bills and resolutions related to electronic or mechanical voting were introduced in the House, but most never made it out of committee. Ultimately, the Legislative Reorganization Act of 1970 amended House rules to allow votes to be taken electronically and authorized funding to build an electronic voting system.” <https://history.house.gov/Exhibitions-and-Publications/Electronic-Technology/Electronic-Voting/>

<sup>6</sup> Defense One – 3/16/2020: Attacks on DOD Networks Soar as Telework Inflicts 'Unprecedented' Loads <https://www.defenseone.com/threats/2020/03/attacks-dod-networks-spike-telework-brings-unprecedented-loads/163812/>

<sup>7</sup> Bloomberg – 3/16/2020: Cyber-Attack Hits U.S. Health Agency Amid Covid-19 Outbreak <https://www.bloomberg.com/news/articles/2020-03-16/u-s-health-agency-suffers-cyber-attack-during-covid-19-response>

may already exist, but this raises logistical concerns for staffing and maintaining these locations in times of crisis.

Finally, remote voting systems come with challenges in authenticating Members' identities as they cast their votes. Currently, Members may use their Member ID cards to cast their votes on the House floor. This is an in-person verification of a Member's identity. Entrance into the chamber is regulated by the Sergeant at Arms. Remote voting raises serious concerns for the potential for another person accessing a Member's system and voting on their behalf, including "deepfakes" in a video-based system. One method of authentication could be biometric, such as fingerprint scanners, eye scanners, or facial recognition. However, this technology would take time to put into place.

One possible way to improve the security of a remote voting system would be to use a system similar to that used by Executive Branch officials who need to access classified information while traveling. In these cases, they go to a secure federal building or military facility and use their existing secure communications infrastructure. However, use of a classified system could conflict with ensuring transparency.

## **V. LOGISTICS SURROUNDING REMOTE VOTING**

There are countless logistical challenges associated with remote voting that would need to be addressed, some with solutions that could fundamentally change the operations and public's perception of the House of Representatives.

### Iowa Caucuses Case Study

The 2020 Iowa Caucuses provide an instructive example of the dangers of placing matters of immense importance in the hands of untested technology: the app that the Iowa Democratic Party commissioned to count and report results was not properly tested at a statewide scale, and the results of the elections are still disputed over six weeks later.

According to the *New York Times*, the app was quickly put together in the two months leading up to the Caucus date. This resulted in inconsistencies in the reporting of three sets of results due to human error while using the app. A computer science and law professor at Georgetown University said that any technology should be tested and retested by the broader cybersecurity community before being publicly introduced. The

app was not created with transparency or shared with the Iowa precincts, and was not vetted by the Department of Homeland Security.<sup>8</sup>

Additionally, on February 27<sup>th</sup>, 24 days after the Iowa Caucuses on February 3<sup>rd</sup>, the Associated Press reviewed updated results released by the Iowa Democratic Party and declared that it would not call a winner, given the remaining concerns surrounding whether the results as reported by the party are fully accurate.<sup>9</sup>

### House Floor Case Study

A disputed House vote in 2007 provides an example of factors such as technology failure and human error that can cause Members – and the public – to lose confidence in a voting system even when everyone is voting in the same room. In August 2007, an inconsistency between the Electronic Voting System’s display and the Chair’s announcement of a vote total led to a disputed vote and resulted in the creation of the Select Committee on the Voting Irregularities of August 2, 2007. The Committee was charged with investigating the circumstances surrounding a record vote<sup>10</sup> requested by Rep. Lewis (R-CA) on a motion to recommit. The confusion surrounding the vote was due to an inconsistency between the Chair’s announcement of the vote total and the vote total that was displayed on the Electronic Voting System’s summary board. The Select Committee found<sup>11</sup> that there was human error at play in a premature announcement of the total by the Chair and a cascading series of errors, including a failure to process “well card votes” submitted by the Minority and Majority Leaders. In addition, the Select Committee found that there was a failure in the Electronic Voting System, which prevented the House from immediately moving onto the next vote. All of this undermined many Members’ confidence in the integrity of the vote. This error – which spurred the creation of an investigative committee – occurred during an in-person vote on well-tested equipment. One can imagine the complications that could arise if multiple new electronic devices were introduced to the live voting environment without proper testing.

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<sup>8</sup> <https://www.nytimes.com/2020/02/03/us/politics/iowa-caucus-app.html?>

<sup>9</sup> <https://apnews.com/fc6777e93b8c50b2fd20e0d31fcc43b3>

<sup>10</sup> Roll Call vote 814, 110<sup>th</sup> Congress

<sup>11</sup> House Report 110-885

Logistical challenges that would face any House remote voting system include, but are not limited to:

*Technology Hardware & Software* – Any remote voting system would rely on every Member having reliable, connected technology, knowledge of how to use that technology, and access to round-the-clock technical support. Right now, Members and staff use many varying platforms with varying degrees of reliability, support, and general understanding of the technology. Additionally, if the secure remote system were ever compromised there would need to be a back-up system in place, in particular given that remote voting is being contemplated by some for must-pass legislation.

*Connectivity* – Every participant would need access to secure connectivity with the capacity to transmit potentially large amounts of data (in the case of a video system) quickly, consistently, and securely. Power grid security to ensure connectivity is also a vulnerability. While such a system is possible in theory, it would be difficult to implement with 100% consistency using existing equipment. Additionally, in a crisis, travel is often restricted. Many Members could be unable to access the system if away from their connected hardware or be unwilling to remain with or retain the necessary hardware in light of a crisis or evacuation.

*Transparency* – Congress has a fundamental responsibility to be transparent to the public with their actions and deliberations. Some level of significant transparency would have to be maintained in any forum establishing remote deliberation or legislative activity let alone voting, especially with outstanding questions about the legitimacy of such a practice.

*Staff Support* – On the floor, Members frequently ask questions of staff or other Members about a vote. There would be far less opportunity for assistance when a Member isn't in the chamber, or to correct mistakes in real time.

*Vote Timing* – Currently, a vote cannot be closed if a Member is in the chamber and attempting to vote. With a remote voting system, the chair would be unable to determine if a Member is trying to change their vote, is logging on late and about to vote, or is experiencing connectivity issues while attempting to vote.

## **VI. REMOTE VOTING AND THE HOUSE RULES**

Providing for remote voting would require significant changes to multiple core House rules—it would not be possible to simply add a clause allowing Members to vote from elsewhere. Alterations much smaller than the ones contemplated have taken years of deliberation and debate. Rules that would require significant changes include, among others:

- Rule XX (“Voting and Quorum Calls”) to address issues including how quorums are determined, how the House can compel attendance of non-appearing Members, and how “rising” would work remotely.
- Rule XVIII (Committee of the Whole) to include similarly widespread modifications to function.
- Rule III, clause 1 (“Voting”) to remove the in-person requirement.
- The application of “unanimous consent” as it has been understood since its roots in the Parliamentary system, to address non-present Members wishing to object.

A longer list of major rules that would be impacted is included in Appendix I.

## **VII. CONSTITUTIONALITY OF REMOTE VOTING**

The constitutionality of remote voting is an untested principle. As a threshold question, this uncertainty should give the House pause from transitioning wholesale to any remote voting or “virtual presence” scheme of conducting business. If challenged, remote voting would be a novel question for a court and there is no guarantee of a favorable ruling affirming its constitutionality. Engaging in an untested practice, especially when considering complex and critical legislation in response to an historic pandemic, presents risks.

Article I of the Constitution mentions in various places the need to bring Members together to conduct business. The Constitution speaks of “meeting” (Art. I, Sec. 4, Cl. 2), “assembling” (Art. I, Sec. 3, Cl. 2), and “attendance” (Art. I, Sec. 5, Cl. 1) in describing how Congress would conduct its business. Yet, the Constitution also explicitly provides each house with the ability to make its own rules (Art. I, Sec. 5, Cl. 2).

Given this uncertainty and the risk of pursuing a novel mode of voting on legislation, working within the current rules and practices of the House – such as passing legislation via unanimous consent or voice vote – is preferable. However, should the situation deteriorate in such a way that remote voting becomes necessary, any changes to current House rules must be as analogous to the current in-person voting practices as possible and must have appropriate safeguards in place to ensure transparency, fairness, and legitimacy.

## **VIII. HISTORY**

After the terrorist attacks of September 11<sup>th</sup>, 2001, Congress spent substantial time reviewing the possibilities of establishing a remote voting system for the House of

Representatives. This effort, led by Rep. Baird (D-WA), was eventually dissolved without successfully implementing a comprehensive solution. There was not enough Congressional or public support to make the difficult decisions and investments needed to address challenging questions that were identified.

However, a number of other changes were examined, and some were adopted – largely focused on the post-catastrophe challenges of establishing a quorum and filling vacancies in the House.

### ***A. Rules Committee Action***

Several changes to the House rules have been adopted since 9/11 to help the House continue its work in the face of an emergency. The most notable change was the adoption of clause 5(c) of rule XX in 2005, which allows the House to reset the necessary quorum to a provisional amount if, post-catastrophe, a traditional quorum can't be achieved after 96 hours of attempts due to a “natural disaster, attack, contagion, or a similar calamity rendering Representatives incapable of attending the proceedings of the House.” If travel were to become impossible, this provision could be triggered to permit proceedings with only those Members who are able to return to the Capitol.

This provision, the constitutionality of which remains untested, did not happen overnight. It followed a years-long effort by the Committee on Rules from 2002-2005 to improve the continuity of Congress. In addition to examining changes to rule XX, the Committee on Rules spent significant time considering alternate scenarios, including holding a full committee hearing in 2004 specifically to discuss proposed changes. Witnesses included the Parliamentarian, two Deputy Parliamentarians, and the Attending Physician. The hearing built on work by a bipartisan task force formed in 2002 to examine the issue of continuity, chaired by Reps. Christopher Cox (R-CA, then-chair of the Republican Policy Committee) and Martin Frost (D-TX, then-chair of the Democratic Caucus). Please see Appendix II for a summary of the hearing's findings.

Then-Chairman Dreier (R-CA) also introduced, and the House adopted, a concurrent resolution in 2003 to establish a joint committee to review House and Senate rules to assure the continuity of Congress. It did not receive Senate action. Following the Rules Committee hearing on the topic, Chairman Dreier co-authored legislation in 2004 requiring expedited special elections to fill mass vacancies, which passed the House 306-97. Similar legislation was subsequently enacted into law in the 109<sup>th</sup> Congress.

Other changes to the House rules regarding the continuity of Congress include a rule requiring the Speaker to designate in writing a list of Members who would serve as Speaker pro-tempore in the event of the Speaker's death or disability; a rule authorizing the Speaker and the chair of the Committee of the Whole to declare an emergency recess when notified of an imminent threat to the House's safety; and a rule authorizing the



Speaker to convene the House in a place other than the Hall of the House. Please see Appendix II for a more comprehensive list of changes to the House rules and statute to assist with the continuity of Congress.

### ***B. Continuity of Government Commission***

The events of 9/11 also prompted experts outside the chamber to look seriously at how best to ensure the continuity of Congress. The American Enterprise Institute and the Brookings Institution formed the Continuity of Government Commission, spearheaded by Norm Ornstein and Thomas Mann. The Commission's 2003 report focused on the potential problem of filling mass vacancies in Congress, as House Members in particular must be elected and Congress would be unable to function without a quorum. Even if the House could operate with a handful of Members, the Commission pointed out that it could be seen as illegitimate or could be unbalanced if the majority of Members were from a single party or region. The Commission concluded that the vacancies issue could only be addressed with a constitutional amendment. For a complete summary of the Commission's findings, please see Appendix III.



## APPENDIX I

### RULES IMPACTED BY POTENTIAL INCLUSION OF REMOTE VOTING

*Below is a list of House rules that would require modification in order to permit remote voting — it does not include changes to cross-references nor the (much longer) list of rules that would need to change to allow greater remote participation beyond voting.*

*Note that this list is likely not comprehensive.*

#### House Proceedings

- Rule XX throughout (Voting and Quorum Calls)
- Rule XVIII throughout (Committee of the Whole procedures)
- Clause 1 of rule I (to address whether a Member can demand a Journal vote remotely)
- Clause 6 of rule I (reference to voting procedures under rule XX)
- Clause 8(b)(3) of rule I (due to potential arguments that the office of Speaker is vacant due to “physical inability”)
- Clause 12(c) of rule I (if an impairment to the place of convening needs to be first established)
- Clause 1 of rule III (to remove the in-person voting/attendance requirement)
- Clause 6(a)(1) of rule XIII (to permit 2/3rds votes for same-day rule, remotely)
- Clause 1 of rule XV (to permit 2/3rds votes for suspensions, remotely)
- Clause 5 of rule XV (quorum required to dispense with call of the Private Calendar)

#### Committee Proceedings

- Clause 2(f) of rule XI (to specify that remote voting does not constitute proxy voting)
- Clause 2(g) of rule XI (to not require permitting physical attendance of the public)
- Clause 2(h) of rule XI (to adjust quorum-taking procedures)
- Clause 2(k)(5) of rule XI (to permit non-physically present Members to assert defamatory testimony is being given)
- Clause 2(m) of rule XI (to explicitly permit subpoena proceedings remotely)

## APPENDIX II

### SUMMARY OF POST-9/11 ACTIONS BY THE RULES COMMITTEE ON THE CONTINUITY OF CONGRESS

#### Rules Hearing: Incapacitations and the Quorum (2004)

– *Barriers to Changing the Quorum:*

- The Constitution requires the presence of a majority of the House to do business. However, the Constitution leaves it to the House to determine what is business. **Clause 7(a) of rule XX** states that the mere conduct of debate, where the Chair has *not* put the pending proposition to a vote is not “business”, thus does not require a quorum.
- The Supreme Court upheld in *United States v. Ballin* that the authority of the House to transact business is “created by the mere presence of a majority.” Since 1890, the point of order regarding lack of quorum has been that a quorum is not present, not that a quorum has not voted.
- In 1906, consistent with *Ballin*, Speaker Cannon held that once the House is organized for a Congress “a quorum consists of a majority of those Members chosen, sworn, and living, whose membership has not been terminated by resignation or by the action of the House.”
- Neither the Constitution nor the *Ballin* decision contemplate any notion of “virtual presence.” The founders provided for Houses of Congress that “assemble” and “meet” and forge bicameral consent to adjourn for any extended period or to meet elsewhere. They provided for Houses of Congress that keep a journal, adjourn day to day, and easily admit votes by the yeas and nays. Even if the House chooses to approve journals less frequently than every day, the availability of daily votes by the yeas and nays on adjourning, alone, should rule out any notion that the founders contemplated any 18<sup>th</sup>-century analog to the “virtual presence” that today might be achieved by proxy or by teleconferencing or by discounting incapacitated Members.

– *Idea Proposed:*

- If the House were to devise a plan to recalculate its number for the purpose of computing a quorum, under specified catastrophic circumstances, departed from the current living-and-sworn standard, we could change the measuring device to “physical attendance.”

### Cox-Frost Task Force on the Continuity of Legislative Operations (2002)

- In the 107<sup>th</sup> Congress, Reps. Cox and Frost created a bipartisan task force. Their work was conducted privately in order for Members to freely and openly discuss their own possible demise and a plan for the continuity of Congress.
- Chairman Dreier issued a statement that said the three major categories of the Continuity of Congress are 1) vacancies, 2) mass incapacitation, and 3) administrative questions.
- Chairman Dreier also stated that the House voted to work with the Senate in a bipartisan manner to see where they could agree on continuity issues, but the Senate declined to work with the House.
- As a result of the Commission, Chairman Dreier co-authored with Rep. Sensenbrenner (R-WI) H.R. 2844, the Continuity in Representation Act of 2004.<sup>12</sup> It passed 306-97. The legislation requires the states to conduct expedited special elections to fill vacancies created by the deaths of large numbers of Members. It was not voted on by the Senate.
- In the April 2004 Rules hearing, Dreier referenced a discussion draft developed by majority staff. Dreier says in summary that the draft does not define incapacitation itself; rather, it addresses the question for the House: how will the House be able to act if there are large numbers of Members incapacitated?<sup>13</sup> The discussion draft suggests that the inability of Members to respond to multiple and lengthy calls of the House when coupled with measures designed to confirm to the Speaker that a catastrophe has occurred, may allow for a House to proceed with a provisional quorum. This temporary, provisional quorum, existing only in a time of catastrophe, would consist of a majority of those able to respond to the calls of the House. A similar idea was instituted in the Rules Package for the next Congress.

### Rules Changes Regarding the Continuity of Congress

- **Rule I, clause 8(b)(3):** Requires the Speaker to designate in writing a number of Members who would serve as Speaker pro tempore in the event of the Speaker's death or disability, until a successor Speaker or Speaker pro tempore could be elected by the House. Soon after a new Congress convenes, the Speaker's list is

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<sup>12</sup> <https://www.congress.gov/bill/108th-congress/house-bill/2844/text>

<sup>13</sup> [https://archives-democrats-rules.house.gov/archives/incap\\_CDD\\_open.htm](https://archives-democrats-rules.house.gov/archives/incap_CDD_open.htm)

delivered to the Clerk, and the delivery is announced on the House floor. See “Recall Designee” and “Announcement by the Speaker Pro Tempore” *Congressional Record, daily edition, Jan. 6, 2009, p. H24.*

- **Rule I, clause 12(b)(1):** [H. Res. 6](#) in the 110<sup>th</sup> Congress authorized the chair of the Committee of the Whole, when notified of an imminent threat to the House's safety, to declare an emergency recess subject to the call of the chair. The change eliminated potential confusion over whether the Committee of the Whole would need to rise (to return to the House sitting as the House) so that the Speaker could declare an emergency recess.
  - *Amended Rule I, clause 12, from the 108<sup>th</sup> Congress (2003-2004), which simply granted the Speaker and chair of the Committee of the Whole emergency recess authority subject to the call of the Chair.*
- **Rule I, clause 12(d):** In the 114<sup>th</sup> Congress, [H. Res. 5](#) provided the Speaker with authority to reconvene the House during an adjournment or recess of less than three days at a time other than the appointed time and to notify Members. The Speaker was directed to consult the Minority Leader, to decide when the public interest warranted, and to act within the limits of Article I of the Constitution. This change included in House rules separate orders from the 112<sup>th</sup> and 113<sup>th</sup> Congresses. The rule change also allowed the Speaker to name designees to exercise the reconvening authorities listed in this new subparagraph and two existing subparagraphs of Rule I.
  - *In the 115<sup>th</sup> Congress, [H. Res. 5](#) contained a technical, one-word change to the rule allowing the Speaker to convene the House in the District of Columbia at a place other than the Hall of the House in the Capitol "if" rather than "whenever" it was in the public interest.*
  - *Amended Rule I, clause 12 from the 108<sup>th</sup> Congress (2003-2004) that declared that the Speaker was authorized to convene the House in a place at the seat of government other than the Hall of the House, when warranted, by the public interest.*
  - *During the 108<sup>th</sup> Congress, both chambers agreed to H. Con. Res. 1, regarding consent to assemble outside the seat of government. The measure authorized the Speaker of the House and the Majority Leader of the Senate, or their respective designees, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, to convene the House and Senate at a place outside the District of Columbia whenever, in their opinion, the public interest warranted it.*

- **Rule II, clause 2:** The 115<sup>th</sup> Congress rules resolution [H. Res. 5](#) clarified that an acting Speaker pro tempore would hold priority over the Clerk of the House in preserving order and decorum pending the election of a new Speaker.
- **Rule XX, clause 5(c):** In the 113<sup>th</sup> Congress, [H. Res. 5](#) allowed the designees of the Majority leader or Minority leader to consult with the Speaker in the event of catastrophic quorum failure report, rather than solely the two leaders. In practice, the Speaker or Speaker pro tempore now typically announces a revised whole number of the House in light of changes in the membership of the House, but the question of whether a provisional quorum is constitutional has not been addressed.
  - *Amended Rule XX, clause 5, from the 109<sup>th</sup> Congress (2005-2006) which originally established a provisional quorum after catastrophic circumstances, formally codifying longstanding House practice that a quorum is a majority of the Members elected, sworn, and living.*
  - *In 1906, under Speaker Cannon, the House established the precedent that “a quorum consists of a majority of those Members chosen, sworn, and living, whose membership has not been terminated by resignation or by the action of the House.” Hind’s Precedents of the House of Representatives of the United States, vol. IV (Washington: GPO, 1907), p. 64.*

### Statutory Action

- In addition to rules changes, during the 109<sup>th</sup> Congress, legislation (2 U.S.C. 8(b)) was enacted to require states to hold special House elections when extraordinary circumstances cause mass vacancies in the House. The act provides that extraordinary circumstances exist following an announcement by the Speaker of the House that vacancies in the chamber have exceeded 100 seats. States in which a vacancy exists in its House representation are then required to hold a special election within 49 days, subject to some exceptions. States are required to (1) make a determination of the candidates who will run in the special election not later than 10 days after the vacancy announcement by the political parties authorized by state law to nominate candidates, or by any other method the state considers appropriate; (2) ensure to the greatest extent practicable that absentee ballots for the election are transmitted to absent uniformed services voters and overseas voters not later than 15 days after the Speaker announces that the vacancy exists; and (3) accept and process any otherwise valid ballot or other election material from an absent uniformed services voter or an overseas voter, as long as the ballot or other material is received by the appropriate state election official not later than 45 days after the state transmits the ballot to the voter. 2 *United States Code 8(b)*.

## APPENDIX III

### SUMMARY OF THE FIRST REPORT OF THE CONTINUITY OF GOVERNMENT COMMISSION

#### The Problem of Mass Vacancies/Incapacitated Members

- With 535 Members, Congress would struggle to fill a potential large number of vacancies. Due to quorum requirements, if fewer than 218 Members of the House were alive, Congress could not function until the vacancies were filled. Therefore, Congress couldn't do things like elect a new Speaker, confirm a new appointment of a President, Vice President, etc.
- The Commission believed that in the current system, it would take over four months to reconstitute full membership in the House because the Constitution says that the House can only fill vacancies by Special Election and not by appointment.
  - There are a limited number of ballot printing companies and, if many special elections needed to be held at once, ballot printing could be a barrier.
  - Confusion and chaos after an attack or major event could also play a role in delaying a special election to occur.
- For the Senate, the 17<sup>th</sup> Amendment to the Constitution states that a state can designate a person to appoint a temporary Senator when there is a vacancy. Most states have given that power to their Governor.
- There is no way to fill what is, in effect, a temporary vacancy.
- The Commission believed that mass incapacitation is worse than mass vacancies in three ways:
  - Mass incapacitation affects both the House and Senate.
  - The temporary vacancies caused by incapacitation would not be filled for an indefinite amount of time— only until the Member recovers, resigns, dies, or the term of office ends.
  - Mass incapacitation makes it virtually certain that Congress would be unable to reach its quorum requirement under its most lenient interpretation.

#### Quorum Requirements

- Defined by precedent, the quorum requirement in the House is that of Members who are “chosen, sworn, and living.”
- Defined by precedent, the quorum requirement in the Senate is “a majority of the Senators duly chosen and sworn.”

- Therefore, the current definition would allow the House to operate with a handful of Members. The Commission believes that there are several problems with that, most importantly it would question the legitimacy of government after a catastrophe. *Other problems the Commission states are listed below.*
  - An attack could wipe out most of one party while not affecting another, leaving Congress politically imbalanced in comparison to the country.
  - The commission questioned whether a Congress with just a handful of Members would be considered legitimate once the vacancies were eventually filled.
  - A lenient quorum requirement might result in a small number of Members acting as the whole Congress and calling into question the legitimacy of congressional actions.
  - There is currently no plan or rule for Members who are incapacitated.

#### Ideas to Solve the Problem of Mass Vacancies

- *Constitutional Amendment:* The Commission believed that there is no way to quickly fill mass vacancies without a constitutional amendment.
  - Their recommendation was “a constitutional amendment to give Congress the power to provide by legislation for the appointment of temporary replacements to fill vacant seats in the House of Representatives after a catastrophic attack and to temporarily fill seats in the House of Representatives and Senate that are held by incapacitated Members.”
- *Location of Congress:*
  - Rules originally enacted in the 108<sup>th</sup> Congress allow the Speaker to reconvene the Congress to another location and provide for successors to do the same.

#### Why Changes to House Rules Alone Cannot Fill Vacancies

- The Commission believed that an approach to appoint Members through a change in House rules would be unconstitutional.
- The House could provide a rule that its current Members supply a list of successors who would serve as temporary replacements for the Members in case of catastrophic attack. An appointed person (e.g. the Governor) could choose the successor from that list. [Advocates for this plan cite *U.S. v. Ballin*.]
- The courts were clear that the House rules could not violate constitutional restraints.

- “The House could no more provide for the filling of vacancies by method other than special elections than it could decide by House rules that less than a two-thirds vote is needed to override a presidential veto or pass a constitutional amendment.”

#### Argument Against Temporary Appointments in the House

- Temporary appointments could change the party make-up of Congress.
- People should be able to choose their representatives in the People’s House.
  - “While the elected character of the House is extremely important, the principle that all the people should be equally represented is essential to its democratic character.”
- Even if a Governor or other appointee appoints a temporary replacement, they could appoint people solely from their political party, which could differ greatly from the original delegation’s composition.
- The commission questioned if there should be two separate protocols on filling vacancies, one for ordinary circumstances and one for emergency circumstances.

#### Commission Report Development

- The commission consulted with current and former Members of Congress, legal and constitutional scholars. In addition, the commission held two public meetings where they heard testimony from expert witnesses.



# Voting in the 2020 Elections

April 20, 2020

## Additional Resources

Jerry H. Goldfeder, *Could Terrorists Derail a Presidential Election?*, 32 Fordham Urb. L.J. 523 (2005), available at: <https://ir.lawnet.fordham.edu/ulj/vol32/iss3/4>

### **Wisconsin Election Fight Heralds a National Battle Over Virus-Era Voting**

*By:* By Astead W. Herndon and Jim Rutenberg

*New York Times*

<https://www.nytimes.com/2020/04/07/us/politics/wisconsin-primary-election.html?action=click&module=Top%20Stories&pgtype=Homepage>

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