



Vote by Mail – Issue Brief

Vote by Mail, also known as **Absentee Voting**, allows voters to request to receive their ballots by mail, which allows the voter to cast their ballot remotely rather than needing to go to the polls to vote. A voter can return the ballot by mail or by dropping it off at a polling location or drop box on or before election day.

Brief History: Absentee voting took off during the Civil War, although even then it was very limited.¹ Absentee voting was used primarily by Union states to give deployed soldiers a chance to participate in the election. 150,000 Union soldiers cast their ballot by mail in the 1864 election,² and the practice has since been commonplace for military voters in U.S. elections. Up until the 1970s, absentee voting was rarely used by non-military voters, with roughly 5% of voters utilizing this method to vote.³ In the late 1970s and 1980s, states began to expand absentee voting by allowing voters to request to vote by mail for any reason, rather than requiring an excuse. Absentee voting is currently utilized by over 25% of voters.⁴

While federal law requires every state to have some capacity for absentee voting,⁵ states vary on the degree to which they offer mail voting.⁶

- **16 states** require voters to give a qualifying excuse – e.g. illness, disability, traveling out of state – to vote by mail.⁷
- **34 states and Washington, DC** do not require voters to give an excuse to qualify for a mail ballot.
- **5 states** – Colorado, Hawaii, Oregon, Utah, and Washington – conduct elections entirely by mail.

¹ *Voting by Mail and Absentee Voting*, MIT Election Data and Science Lab, available at: <https://electionlab.mit.edu/research/voting-mail-and-absentee-voting>.

² *How do you know voting by mail works? The U.S. military's done it since the Civil War.*, NBC News (Apr. 19, 2020), available at: <https://www.nbcnews.com/politics/2020-election/how-do-you-know-voting-mail-works-u-s-military-n1186926>.

³ John C. Fortier, *Absentee and Early Voting: Trends, Promises, and Perils*, AEI Press (2006).

⁴ *Election Administration and Voting Survey*, U.S. Election Assistance Commission (2018), available at: https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf.

⁵ See *The Uniformed and Overseas Citizens Absentee Voting Act*, U.S. Dept. of Justice Civil Rights Division, available at: <https://www.justice.gov/crt/uniformed-and-overseas-citizens-absentee-voting-act>.

⁶ *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options*, National Conference of State Legislatures (2020), available at: <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

⁷ This number is changing due to state response to the COVID-19 pandemic. For instance, New Hampshire, among others, recently removed its excuse requirement for voters to obtain an absentee ballot as a means to offer voters an alternative to voting in person. See Nathaniel Rakich, *3 States Have Made it Easier to Vote by Mail in November. Trump Isn't Happy.*, FiveThirtyEight (May 27, 2020), available at: <https://fivethirtyeight.com/features/3-states-have-made-it-easier-to-vote-by-mail-in-november-trump-isnt-happy/>.



Talking Points

Public Sentiment: Americans on both sides of the aisle aren't sold on voting by mail. While 71% of Americans support early “no-excuse” voting by mail as an option available to voters, 65% oppose voting by mail being the only method of casting their ballots.⁸ In the 2018, nearly 56% of voters cast their ballots in-person on Election Day and another 17% cast their ballot early in-person, while only 26% of voters voted by mail.⁹ Further, voters who prefer mail voting are disproportionately older and white; black and Hispanic voters, prefer to vote in person at rates twice that of whites.¹⁰

Cost: Many tout mail voting as being more economical than in-person voting. While mail voting removes the cost of securing polling centers, staff, and certain materials, these savings are offset by the increased cost of acquiring new and expensive voting equipment to process mail ballots and the cost of printing and sending ballots, envelopes, and instructions to voters.

Time to Implement: Any transition to increase voting by mail takes significant time. Washington, which switched to all-mail elections in 2011, is still troubleshooting issues that come with high volumes of mail ballots almost a decade later.¹¹

Administrative Errors: Nationwide, over 430,000 mail ballots were rejected in 2018 because of mail delays, minor technical defects, and voter errors – things that do not occur with in-person voting.¹² Mail ballots are three times as likely to be rejected for various reasons than ballots cast in person.¹³

Security: Every state has different laws surrounding mail voting, and often states lack important security measures that allow mail voting to be conducted with honesty, fairness, and integrity.

- **Verification and Certification.** States vary dramatically concerning the safeguards in place to verify and certify ballots. Because a voter does not appear in-person, the need to verify whether the mail ballot is actually the voter's is paramount before certifying the ballot. This includes signature verification, requiring an affidavit, witness attestation, notary, etc. However, many states are lacking these safeguards to ensure the integrity of mail ballots.
- **Voter List Maintenance.** Not only do rigorous voter list maintenance laws help prevent administrative errors, but they also ensure that the voter's information is up to date. This allows the correct ballot to be

⁸ See *Elections in America: Concerns Over Security, Divisions Over Expanding Access to Voting*, Pew Research Center (Oct. 29, 2018), available at: <https://www.people-press.org/2018/10/29/elections-in-america-concerns-over-security-divisions-over-expanding-access-to-voting/>.

⁹ See *supra* note 4.

¹⁰ David Becker, *Mail-in Ballots to Avoid Coronavirus? Yes, but Here's how to Minimize Chaos and Unfairness.*, the Washington Post (Mar. 18, 2020), available at: <https://www.washingtonpost.com/opinions/2020/03/18/mail-in-ballots-avoid-coronavirus-yes-heres-how-minimize-chaos-unfairness/>.

¹¹ Donna Gordon Blankinship, *Washington's Successful Vote-by-Mail System Wasn't Built Overnight*, Crosscut (Apr. 15, 2020), available at: <https://crosscut.com/2020/04/washingtons-successful-vote-mail-system-wasnt-built-overnight>.

¹² See *supra* note 4.

¹³ Enrijeta Shino et. al, *Here's the Problem with Mail-in Ballots: They Might not be Counted.*, the Washington Post (May 21, 2020), available at: <https://www.washingtonpost.com/politics/2020/05/21/heres-problem-with-mail-in-ballots-they-might-not-be-counted/>.



delivered to the correct voter at the correct address and further prevents ballots from being sent to voters who have moved, died, or are inactive.

- **Ballot Tracking.** Thirty-two states and D.C. allow voters to track their ballot throughout the mailing process to make sure their ballot is returned and counted. Tracking systems for ballots prevent bad actors from intercepting these ballots and allow voters to make sure their vote is counted.
- **Chain of Custody.** It is vital to have strict chain of custody regulations in place for mail voting since mail ballots travel outside of the supervision of election officials. Without proper chain of custody procedures, ballots may be lost, stolen, or intercepted. This further includes the need for bipartisan supervision during the ballot counting process to foster integrity.
- **Ballot Storage.** Because mail ballots are often returned before Election Day, meaningful security measures must be put into place to make sure these ballots are physically protected and stored safely. This includes the need for personnel and security cameras at polling locations and drop boxes.
- **Ballot Collection.** States also vary dramatically on who may return the ballot for the voter. Implementing laws that limit who may return the voter's ballot is essential to an honest election.
- **Penalties for Malfeasance.** Sharp penalties for tampering, hindering, or influencing the fate of mail ballots go a long way to prevent fraud and malfeasance by bad actors.

Coercion: Voting by mail creates greater opportunity for bad actors to influence how electors cast their vote because the “secrecy of the ballot box” does not exist like it does at a polling location. Voters might feel pressured to cast their ballot a certain way if someone is counseling them on how and if they should vote. This potential influence is not present when voters are casting their ballots in person.

Ballot Harvesting: Currently, ten states have laws limiting who can return a mail ballot on behalf of a voter. Laws that limit ballot harvesting are vital to the integrity of the election – they ensure the voter is not coerced into voting or influenced to vote in any particular way.¹⁴ Further, limiting ballot harvesting does well to make sure third parties don't favor ballots from one set of voters over another, returning some ballots and “losing” others. The fairness of mail voting is in jeopardy in the 13 states that are silent as to who may return a mail ballot for a voter. This is also true in the 27 states and D.C. that allow for any designated agent to return a mail ballot for a voter, only 12 of which limit the number of ballots an agent may return. Under these rules, a Trump-supporting ballot harvester can “accidentally” lose the ballots of voters with a Joe Biden sign in their window. Further, ballot harvesters could also spread COVID-19 as they visit many houses to collect ballots, sometimes even entering houses to assist voters in filling out their ballots.

Voter Errors: Voters who cast their ballot by mail do so away from the assistance of election officials; therefore, there exists increased opportunity for voters who vote by mail to make errors that are fatal to their ballots being counted. At least 30% of the mail ballots rejected in 2018 were disqualified due to an error on the voter's part, such as the voter's signature not matching, there being no signature, or other failed procedure.¹⁵ These errors do not occur when voters cast their ballot in-person. Further, mail ballots from younger, minority, and first-time voters are most likely to be thrown out.¹⁶ Because these ballots are delivered through the postal system, it can be a challenge for voters to quickly “cure” or correct their ballot for it to be counted.

¹⁴ See *supra* note 6.

¹⁵ See *supra* note 4.

¹⁶ See *supra* note 13.



Voter Disenfranchisement: The mail ballots of minorities are twice as likely to be rejected than mail ballots of non-minorities.¹⁷ Further, a lack of uniformity in the mail delivery infrastructure across jurisdictions means that sending and returning mail ballots may be more difficult for voters in rural areas or for voters on Native American reservations to receive and return their ballots on time.

Delayed Election Results: The more voters opt to vote by mail, the more difficult it becomes for election officials to deliver timely results. For states with a significant population of electors voting by mail, it can take days and even weeks after Election Day to certify election results. Delayed election results undermine voter confidence in the integrity of the election, especially when the leading candidate on Election Night loses days after the polls are closed.

Voter Confidence: When voters cast their ballot by mail, they are less confident that their votes are counted and counted correctly as opposed to voting in-person.¹⁸ Over a quarter of people who vote by mail return their ballots by hand rather than trusting the mail system to return their ballots. Further, only 11% of black voters cast their ballot by mail in the 2018 election, which is half the percentage of whites.¹⁹ The distrust minorities have toward voting by mail is important to note. Lastly, half of Americans believe that mail voting leads to greater fraud.²⁰

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¹⁷ John Witesides, *Black Voters Don't Trust Mail Ballots. That's a Problem for Democrats*, Reuters (May 29, 2020), available at: <https://www.reuters.com/article/us-health-coronavirus-usa-election-insig/black-voters-dont-trust-mail-ballots-thats-a-problem-for-democrats-idUSKBN2351G0>.

¹⁸ Charles Stewart, 2016 Survey of the Performance of American Elections: Final Report, at 4, available at <https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/Y38VIQ>.

¹⁹ See *supra* note 17.

²⁰ Mohamed Younis, *Most Americans Favor Voting by Mail as Option in November*, Gallup (May 12, 2020), available at: <https://news.gallup.com/poll/310586/americans-favor-voting-mail-option-november.aspx>.