

Standards for Voting by Mail

BACKGROUND AND ASSUMPTIONS:

There is a nationally funded push to mandate states to adopt all or mostly mail voting in the remaining 2020 primaries and the November 3, 2020, General Election ostensibly related to the COVID-19 virus and attendant health concerns.

The concept of all-mail voting did not arise solely in response to the coronavirus. Proponents of all mail voting have organized nationwide for years before the onset of COVID-19. This paper does not address the motivations of the all-mail voting coalition.

However, because of the emerging push for mail voting, including multiple lawsuits across the country trying to force states to adopt all-mail voting systems, the National Task Force on Voting by Mail was established to review and promulgate proposed standards that should be established in any mail voting system.

HISTORICAL FINDINGS:

1. Voting by-mail compromises the secret ballot and states must take steps to protect every voter's right to cast a secret ballot, free of intimidation and undue influence.

Voting by-mail compromises the secret ballot process, which has been a hallmark of U.S. elections for over 100 years. Voters are vulnerable to intimidation and pressure tactics by individuals involved in campaigns because mail ballots are cast outside the supervision of election officials and the observation of poll watchers. Powerful special interests have greater ability to threaten and intimidate and, indeed, steal the ballots of the most vulnerable in our society.

In states that allow voters to designate a "mailing" address on their registration forms, there are serious issues that have arisen with regard to activist and political organizations being designated as the location for receiving ballots – which creates the opportunity for the organization – not the voter – to cast the ballot.

2. Mailed ballots are historically vulnerable to intimidation, manipulation, fraud, and chaos.

In-person voting is more secure because only the voter ever has possession of the ballot once presented to the voter and it is monitored in the polling place by election officials present to protect the process and the voter from manipulation and intimidation. When mail ballots are sent out, they are voted behind closed doors with no neutral officials to protect the process. This leads to undesirable opportunities to influence vulnerable voters.

"Absentee ballots remain the largest source of potential voter fraud." That was the conclusion of a 2005 bipartisan report of the Commission on Federal Election Reform, chaired by former President Jimmy Carter and former Secretary of State James Baker III. Vote by-mail ballots have been termed "the tool of choice" of vote thieves and others who are willing to compromise the election process. Moving elections behind closed doors and beyond the oversight of election officials creates massive opportunities for fraud, theft, vote manipulation/alteration and voter intimidation.

In 1997, the Miami-Dade Mayor was removed from office when a mail fraud ballot scheme that used operatives to vote and collect ballots was uncovered. <https://www.sun-sentinel.com/news/fl-xpm-1998-10-29-9810280191-story.html>. Miami is not the only

place this occurs. Elections have been overturned in Mississippi, Texas and elsewhere because of the illegal voting of mail ballots by notaries and ballot harvesters.

3. Voting by-mail prolongs processing, counting and delays determination of election results beyond current statutory deadlines for certification.

California conducted a mail-in primary in 2020 and it was a mess. Mail votes were being counted for days, and even weeks after Election Day.

<https://timesofsandiego.com/politics/2020/03/07/california-primary-far-from-over-with-3-million-plus-ballots-still-to-count/>

Other states have had similar problems. "Vote Counting Drags Through 3rd Day After State (PA) Primary".

<https://www.usnews.com/news/best-states/pennsylvania/articles/2020-06-04/vote-counting-drags-into-3rd-day-after-pennsylvania-primary>

In Nevada, batches of mail ballots were found in hallways and trash cans in apartment buildings.

<https://thefederalistpapers.org/us/ex-nevada-ag-tells-ballots-piled-apartments-trash-cans-hallways-mail-voting>

This is unacceptable. States should have put into place the necessary resources for ensuring compliance with statutory requirements for timely certification of election results. 2020 has the added issue of the presidential election and the Electoral College deadlines.

4. Extra precautions must be added to mail voting procedures to guard against fraud and ballot theft.

It is important that any mail ballot plan include a mechanism to verify the identity of the person casting the ballot. For example, the Virginia Republican Party has asked a federal court to require the last four digits of the voter's Social Security number to accompany any mail ballot.

5. Ballots cast by-mail are fraught with massive errors and non-delivery.

Twenty-eight million mail ballots were never returned and counted in the last four federal elections according to data published by the Federal Election Assistance Commission. The ballots were cataloged as "status unknown" by state election officials.

6. Where voter rolls are not well maintained, ballots are mailed to ineligible addressees and voters are often mailed more than one ballot. State voter rolls are error-prone and filled with duplicated, deceased, relocated and other ineligible registrations.

"Inaccurate, Costly, and Inefficient: Evidence That America's Voter Registration System Needs an Upgrade"

<https://www.pewtrusts.org/en/research-and-analysis/reports/2012/02/14/inaccurate-costly-and-inefficient-evidence-that-americas-voter-registration-system-needs-an-upgrade>

This is a compelling reason for the millions of unaccounted-for mail ballots in federal elections. Despite the requirements under the Help America Vote Act of 2002 and the National Voter Registration Act of 1993 to maintain accurate voter rolls, there is indeed a national crisis in terms of voter roll list maintenance.

FOUR KEY PRINCIPLES FOR MAIL VOTING

- *No Automatic Mailing of Ballots*
- *Safeguard Return of Ballots*
- *Counting Must Be Secure, Transparent & Expeditious*
- *Preserve In-Person Voting*

STANDARDS FOR VOTING BY MAIL

I. STATES MUST NOT AUTOMATICALLY SEND BALLOTS TO ALL PERSONS ON THE VOTER ROLLS

STEP ONE: Clean the voter rolls of the dead, non-citizen, and relocated registrants.

- State voter rolls are notoriously inaccurate and out-of-date, with multiple registrations by the same individual, registrants who have died, moved, or are not U.S. citizens, and registrations lacking full address data or registered at vacant lots, commercial buildings, and other non-residential locations. Hundreds of thousands of voter registration records are inaccurate and outdated. Even more belong to deceased registrants or are duplicate registrations. One registrant near Pittsburgh had seven active registrations. Georgia removed 62,773 duplicate registrations in 2018 alone.
- Voter rolls must be thoroughly reviewed to ensure they are up-to-date and accurate, including verification through other state and federal databases, state social service agencies, tax authorities, DMVs, corrections departments, the Social Security Administration and the U.S. Dept. of Homeland Security.
- The cleaning of voter rolls must be completed by August 5, 2020, under federal law.

Because of these problems, automatically mailing a ballot to all registered voters is an open invitation to fraud because the ballots are necessarily sent to voters who have moved, died, or are otherwise inactive.

STEP TWO: Applications for mail ballots – *not* the ballots themselves - should only be sent *after* voter roll list maintenance has been completed, to ensure that voters

who have moved, died or become inactive under state law have been removed from the voter rolls.

- States that have automatically sent mail ballots to every registered voter have experienced serious issues with the return of mail ballots.
<https://calmatters.org/blogs/california-election-2020/2020/03/voting-california-dropped-out-candidates-super-tuesday/>
- If states either voluntarily or via court order expand their mail voting systems in 2020, all mail ballot applications should be sent by First Class mail to the active voters. It should never be an automatic, unrequested mail ballot.
- In states with “no fault” voting by-mail, election officials should inform voters that they can request vote by-mail ballots on a temporary or permanent basis. This “opt-in” scenario will help ensure that mail ballots are sent only to current, active registrants.
- By sending the Mail Ballot Request form via First Class mail, election officials will be able to take advantage of the US Postal Services Address Correction Services, providing valuable updates related to the accuracy of the voter registration list.
https://pe.usps.com/archive/html/dm_marchive20030810/F030.htm
- Voters should be required to request a mail ballot via a printed form that requires authentication of identity in one or more ways: by enclosing a photocopy of a driver’s license or other government-issued identification or a verifiable signature of the voter that can then be authenticated by election officials upon receipt of the application for a mail ballot.
- Some jurisdictions are instituting an online system for applying for mailed

ballots which should be secured by including the requisite procedures for proof of identity.

- Election officials should review each returned mail ballot request form to verify the identity and citizenship of the requestor, either by reviewing the photocopies of identifying documents or matching the signature of the requestor to the signature on the voter registration form.
- Any e-signing system should follow the same protocols established by the state for other e-signing verification of identity.
- Election officials should establish a procedure whereby citizens and campaign representatives have access to the signature matching or identity document verification process, either while it is being performed by the officials or via separate monitoring systems for citizen access.
- States should adopt a process for challenging a ballot request, and for confirming the identity of the requestor.
- States should establish procedures for notice to the requestor of potential invalidation, so voters can confirm authenticity to avoid disqualifying valid requests and ballots.
- States should require the mail ballot request form to be accompanied by a photocopy of the voter registration card, or another form of identification of the voter such as an ID or the serial number of a driver's license or state ID card. This ensures that the ballot request is from a living person, registered in the jurisdiction.
- States should require voters to be registered *prior* to Election Day with sufficient time for election officials to

validate and verify the identity, residence, and citizenship status of registrants.

- Access to printing by-mail ballots at home should be strictly limited to disabled and overseas military voters with proper authentication requirements.
- By-mail ballots should be printed on a different color paper than in-person poll ballots. This will help officials track ballots that might be deposited in Election Day ballot boxes.
- Where voters live in elder care facilities, election officials should develop a process whereby a bipartisan team of election officials deliver and receive applications (and ballots).
- Particular attention must be paid to mail ballot applications in these facilities to protect these elderly voters from intimidation and fraud.

II. SYSTEMS FOR RETURNING MAIL BALLOTS MUST PROTECT AGAINST DELAY, MISDELIVERY, FRAUD, THEFT, AND/OR INTIMIDATION OF VOTERS.

A. Election officials should work closely with the US Postal Service in the jurisdictions where requests and ballots are mailed to develop prompt delivery of ballot request forms and mail ballots.

- Election officials should meet with local and state postal authorities to establish protocols and systems for the prompt delivery of ballot request forms and mail ballots. For example, California has instituted an app called "Where's My Ballot?", which allows voters to track their ballots as they travel from county to voter and back to county.
- The closing of mail processing centers across the country has resulted in millions of mail ballots being lost,

thrown away, misdelivered, or completely undelivered.

- Where mail ballots are returned to designated locations, drop off locations should have 24/7 video monitoring to protect against theft and fraud.

B. Only voters or express designees such as immediate family members should be allowed to return mailed ballots, with strong oversight of those assisting with ballots cast by infirmed and elderly voters.

- States should prohibit all third parties, not related to the voter and/or not specifically designated as a legal guardian or other legal representative of the voter, from delivering a mail ballot to the election office. Third parties should be required to write their names, signatures, and relationship to the voters on the outside delivery envelope or the ballot will be disqualified.
- States should specifically ban “ballot harvesting”, and should disallow the collection of groups of mail ballots by third parties, with particularly stiff penalties for violation of this provision by party activists, candidates, advocacy groups and political consultants, all of whom have a stake in the outcome of the election.
- In cases of infirmed voters in nursing homes or hospitals, where visitation may be limited due to COVID-19, states should issue guidelines for allowing facility staff to assist voters with the receipt, voting and return of their ballots, but with protections against undue pressure, intimidation or misappropriation of ballots by anyone assisting the infirmed voter. Online training of facility staff designated to assist voters, and requiring more than one staff person per voter, and verified

certification of compliance with state law are recommended.

- Election officials should establish legal standards for those allowed to “witness” the signature or “mark” of a disabled voter. Witnesses should be required to print their names, signatures, and relationship to the voters on the outside delivery envelope or the ballot will be disqualified. Officials should track the number of ballots with witness signatures, who is acting as witnesses, etc.
- Voters should be given notice of when vote by-mail ballots are rejected and given an opportunity to fix any problems.

III. PROCESSING AND COUNTING MAILED BALLOTS MUST BE UNDERTAKEN WITH SUFFICIENT PERSONNEL AND TRANSPARENCY TO ENSURE EXPEDITIOUS VERIFICATION OF AUTHENTICITY OF RETURNED MAIL BALLOTS AND PROMPT COUNTING ONLY AFTER POLLS ARE CLOSED ON ELECTION DAY.

A. Election officials must develop detailed, uniform standards and systems for verifying identity of voters of mailed ballots, similar to the verification of the mail ballot applications: photocopies of voter identity and/or signature verification to authenticate returned mail ballots prior to Election Day.

- Mail ballot verification should commence before Election Day, in order that the mail ballots are ready for counting immediately after the close of polling on Election Day.
- When processing returned mail ballots, states must have strong authentication standards, including review of identification documents accompanying the mailed ballot and /or allowing election officials and observers to compare signatures on the ballot

envelopes with voter registration signatures.

- Electronic signatures, such as those generated by the DMV, should not be accepted as official signatures, because they are too imprecise and easily duplicated.
- Mailed ballots themselves should not be tabulated until after the polls have closed on Election Day.
- Voting registers should be updated daily to indicate the voters who have returned and had their mail ballots verified as authentic, as a precaution against double voting *and* as a means of identifying stolen or fraudulent mailed ballots.
- The list of voters who have returned authenticated mail ballots should be published and updated daily.
- Authentication procedures should include notice to a voter of a potential invalidation and opportunity to confirm authenticity / identity prior to Election Day.
- Election officials should keep and report statistics on the number of rejected by-mail ballots, reasons for rejection, etc.

B. Counting Mail Ballots Should Be Undertaken with Heightened Security and Attention to Potential for Scams and Fraud.

- Mail ballots authenticated prior to Election Day should only be counted after the close of the polls on Election Day.
- Election Officials should ensure there is transparency and opportunity for citizen review of authentication of voter identity and marking names of voters who have returned authenticated mail ballots. This does NOT mean counting

mailed ballots before polls close on Election Day.

- Only mailed ballots bearing official notations, with USPS postmarks, and received by the end of Election Day should be accepted and counted.
- Election officials should take steps to ensure that mail ballot return carriers are clearly denoted as official to avoid treatment by USPS workers as junk or bulk mail.
- Officials should keep and report statistics of mail ballots rejected due to late postmark, no postmark, inability to verify identity, or other reasons for rejection.
- A “signature” only, with no postmark, is insufficient to guard against schemes to flood election officials with potentially fraudulent mail ballots at the last minute with no means of authenticating the ballot or the date of casting the ballot.
- Election officials should ensure that mailed ballots are properly postmarked by the USPS in their jurisdiction.
- Election officials should coordinate with state and local prosecutors to ensure that law enforcement is ready to move quickly to enforce state laws against voter intimidation and other election crimes given the vulnerability of mail ballots.
- Counting of the authenticated mail ballots must take place promptly upon the close of the polls, and systems must be put in place to avoid prolonged processing and counting, ‘finding’ stacks of mailed ballots days or weeks after an election, and other shenanigans that have occurred all too frequently in recent years.
- States should adopt systems for safeguarding the authenticated ballots

and for the expeditious counting of the ballots to ensure compliance with state laws governing certification of election results.

IV. ANY MAIL VOTING SYSTEM SHOULD ALWAYS INCLUDE PROCEDURES FOR IN-PERSON VOTING ON ELECTION DAY. ONLINE VOTING IS AN EVEN WORSE IDEA.

- Despite the push from advocates of all-mail voting, states should preserve the tradition that many citizens still cherish: casting their ballots on one state or national Election Day.
- Safe distancing within polling places, enhanced disinfection of locations and voting machines and materials, and other health and safety measures can create conditions for safe in-person elections and ameliorate the concerns of voters and poll workers.
- Disabled voters, such as the blind, rely on special equipment to vote at the polls on Election Day. Mail ballots may impede their ability to participate in the process.
- In addition to printing by-mail ballots on different color paper than in-person ballots, officials should establish procedures to prevent persons inserting by-mail ballots without a signed envelope into Election Day ballot boxes. Loose by-mail ballots found in ballot boxes should be disqualified.
- Election Day rosters at polling places should indicate whether a voter has been mailed a ballot.

- Workers at in-person voting sites should be adequately trained in provisional voting procedures. Those who were mailed ballots but come to vote in person should be required to surrender their mailed ballots before voting in person at the polling place. If the voter does not surrender the mailed ballot, he/she should be allowed to cast a provisional ballot. Polling sites should be well stocked with provisional voting supplies.
- Provisional ballots of such voters should only be processed and counted if it is confirmed that the voter did not previously submit a by-mail ballot.
- Election officials should retain opened, empty by-mail envelopes and make them available for later inspection.

The systemic challenges of by-mail voting pale in comparison to the potential for massive fraud in the proposals for online voting.

- There are no commercially available systems anywhere to safely institute online voting.
- A just released study from Massachusetts Institute of Technology confirms that 'online voting' is susceptible to wholesale fraud and hacking.
<http://news.mit.edu/2020/voting-voatz-app-hack-issues-0213>

Task Force Founders and Members

Members of the Task Force are acting in their individual capacities and not on behalf of the organizations where they work; the titles are for identification purposes only.

Mr. J. Christian Adams, Esq., President & General Counsel, Public Interest Legal Foundation

Mr. Robert Alt, President & CEO, The Buckeye Institute

Mr. Charles H. Bell, Jr., Esq., Senior Partner, Bell, McAndrews & Hiltachk, LLP

The Honorable J. Kenneth Blackwell, Ohio Secretary of State (1999-2007)

The Honorable Shawna LM Bolick, Member of Arizona House of Representatives

Mr. Francisco R. Canseco, Esq., Director, Election Integrity Project, Texas Public Policy Foundation

Mr. William Davis, Esq., Partner, Foley & Lardner, LLP

The Hon. Chuck DeVore, Vice President of National Initiatives, Texas Public Policy

Dr. John C. Eastman, Esq., Director, The Claremont Institute's Center for Constitutional Jurisprudence

Mr. John Fund, National-Affairs Journalist and Author

Mr. Scott Gessler, Esq., Former Colorado Secretary of State

Mr. Richard P. (Pete) Hutchison, Esq., President, Landmark Legal Foundation

The Honorable Mark Koran, State Senator for Minnesota

Mr. Christopher M. Marston, Partner, Dunlap, Bennett & Ludwig

The Honorable John H. Merrill, Alabama Secretary of State

Ms. Cleta Mitchell, Esq., Partner, Foley & Lardner, LLP, Chairman, Public Interest Legal Foundation

Mr. David A. Norcross, Esq., Former Chairman of Republican National Lawyers Association, and General Counsel Republican National Committee

Ms. Linda Paine, President & Co-Founder, Election Integrity Project California

Mr. Hans von Spakovsky, Esq., Manager, Election Law Reform Initiative and Senior Fellow, The Heritage Foundation