



# **PROTECTING DEMOCRACY:**

## **Implementing Equal and Safe Access to the Ballot Box During a Global Pandemic**

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**March 23, 2020**

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## Introduction

As the world turns to strategies to stave off the worse effects of the novel coronavirus, now is the time to redouble our commitment to democracy. Access to voting has been far from perfect, however over the past century America has successfully extended the right to vote to all adult citizens. Who we are is defined by this right to vote and now, during this momentous struggle, we must preserve what makes us great: a society of governments of the people, for the people and by the people.

States around the country are pushing back primary and runoff elections in the hope that, if held at a later time, election procedures can return to the old normal.<sup>2</sup> Rather than hope, we recommend taking this opportunity to plan a more accessible, more equitable system of voting that includes measure to protect against fraud and abuse while giving all Americans an equal opportunity to vote, no matter the circumstances. Viral analysis has shown that the spread of COVID-19 may spike a second time months after the initial surge, even accelerating for a second time during November 2020.<sup>3</sup> Even if the viral effects were to subside, the public education of interpersonal contact avoidance will persist in discouraging large-crowd, in-person voting for some time. While some states may delay voting, other states are facing the current pandemic with realistic solutions. Many states are relying on existing, robust vote-by-mail systems to ensure the persistence of a thriving democracy even while citizens heed public health warnings to socially distance from one another. Congress should take action, as part of the relief measures it is considering, to fund and set minimum standards for voting procedures that would apply nationwide. These standards should include (1) universal vote by mail, (2) in-person voting centers designed to limit person to person contact, (3) secure ballot drop-off centers, and (4) reasonable measures to ensure voting security and equity. If the federal government does not act, state and local leaders must do so. Considering the time necessary to erect voting infrastructure which will adequately respond to COVID-19, it is essential to pursue this action immediately. Citizens have already begun acting in defense of their voting rights, preempting the failure of state and federal governments. Arizona is being sued over deadline provision which disenfranchises voters in general, and minority voters at higher rates than white voters.<sup>4</sup> In Texas, Democrats have filed a lawsuit that argues that existing

state law that allows vote-by-email for persons with a disability of injury can be invoked by any eligible voter practicing social distancing.<sup>5</sup> In Wisconsin, a federal case has been filed to extend vote-by-mail.<sup>6</sup> Some states are moving proactively without litigation. Hawaii has cancelled plans for in-person voting for their April 4 primary election and moved to vote-by-mail.<sup>7</sup>

This paper seeks to first iterate the low-health risks and general safety to the public that voting by mail provides. Second, this paper will survey successful vote-by mail techniques utilized by jurisdictions throughout the country to serve as a guide for policymakers in Washington D.C., state capitals, and local communities. In our final section, we conclude with a series of policy recommendations to guide federal and state legislators as they consider more accessible voting systems. As events unfold, and in reviewing new data and research, the UCLA Voting Rights Project (VRP) will add to this analysis and issue revised reports and recommendations.

## Public Health and Safety of Vote -By-Mail

Vote-by-mail is necessary to safeguard public health while also enabling citizens to act on their fundamental right to vote. Traditional polling locations without substantial modifications could pose health and safety risks for the transmission of illnesses, especially during the COVID-19 pandemic. Traditional polling locations make social distancing difficult, as they often feature crowded lines of hundreds (if not thousands) of voters touching the same voting machines, which are rarely sterilized.<sup>8</sup> A study by the US Government found that novel coronavirus (which causes the COVID-19 illness) can remain active on plastic and stainless steel “up to 2–3 days” and that “fomite transmission of HCoV-19 [novel coronavirus] is plausible. . .”<sup>9</sup> This has serious implications for the transmission of COVID-19 from surfaces throughout polling places, including voting machines themselves.

Unlike in-person voting, the risk of transmission of the novel coronavirus or illness by mail “is theoretical and minimal.”<sup>10</sup> The U.S. Postal Services, citing the Centers for Disease Control and Prevention and the World Health Organization stated that “there is currently no evidence that COVID-19 can spread through the mail.”<sup>11</sup> Items shipped through the mail are viewed by experts as being safe from transmitting or carrying viruses.<sup>12</sup> Professor of Medicine at Yale University, Joseph Vinetz, stated that “[i]f somebody were to, say, cough ... on a box or on a letter, the chances of that remaining viable for the period of time it's in transit seems extremely unlikely.”<sup>13</sup> Now more than ever, mail is thereby the best method to safeguard the health of all voters.

## Existing Infrastructure

Many states already have a robust vote-by-mail infrastructure in place. Nearly half of states have provisions allowing certain elections to be conducted primarily by mail-delivered ballots, and several states allow it for all elections. Six states conduct all elections by mail; four states permit counties to opt into conducting all elections by mail; eight states permit some elections to be conducted by mail; five states permit certain jurisdictions or portions of a jurisdiction to be designated as all-mail based on population; 33 states and Washington, D.C., offer “no-excuse” absentee/mailed ballot voting, meaning any voter can receive an absentee ballot if they request one;<sup>14</sup> and all of the remaining states allow limited

absentee/mailed ballot voting for at least some voters (See Appendix I for more information). Historically, the implementation of vote by mail takes place in stages; states begin with providing all-mail elections in certain circumstances, adding additional opportunities for voting by mail as citizens become more familiar with vote by mail procedures. Six states are far along in this process: Colorado, Oregon, Washington, Hawaii, Utah, and California. While only some counties in California and Utah now implement vote by mail for all elections, all counties in both states are expected to implement vote by mail in 2020. These six states would require only minor tweaks to existing voting measures to implement universal vote-by-mail.

Other states have already begun to experiment with phasing in vote by mail but they will now need to move swiftly given the exigent circumstances of the pandemic. Nebraska implemented vote by mail in four counties in 2018,<sup>15</sup> while New Mexico did so in a single county that same year.<sup>16</sup> In Rhode Island, Secretary of State Nellie M. Gorbea has been working with the state's Board of Elections to try to make the April 28, 2020 primary predominantly a vote-by-mail election by automatically sending applications to all of the state's 788,000 registered voters. In New York, Douglas A. Kellner, co-chairman of the State Board of Elections, has reported that officials are considering expanding mail-in options for the April 28, 2020 primary election. In Connecticut, Secretary of State Denise Merrill asked Governor Ned Lamont to issue an executive order permitting anyone to obtain an absentee ballot in the state's primary on April 28, 2020. Those ballots are currently available only if you are ill.

In sum, over 23 percent of voters had cast their ballots by mail in the 2016 general election. Nevertheless, a majority of states still need to implement major changes to their election systems to provide all eligible Americans the opportunity to vote by mail.<sup>17</sup>

## The Benefits of Vote by Mail

Vote by mail provides important benefits even in the absence of a pandemic. It promotes voter convenience, as citizens can vote at home without time pressure, as well as political discussion.<sup>20</sup> Vote by mail also may result in



financial savings, as jurisdictions no longer need to meet traditional staffing and equipment needs.<sup>19</sup> Vote by mail may also increase voter turnout,<sup>20</sup> especially among among minorities<sup>21</sup> and the differently abled.<sup>22</sup> Decreases in voter participation associated with vote by mail schemes can also be mitigated with adequate voter communication.<sup>23</sup> Vote by mail schemes are also more secure from digital hacking efforts. While “there [is] basically no such thing as a hacker-proof electronic voting machine,”<sup>24</sup> the paper record of mail voting plus the elimination of thousands of electronic vote recording machines, substantially lowers the opportunity for hacking. Research indicates that voters approve of vote at home measures.<sup>25</sup> Indeed, the voter has the ability to keep their own record of their voted ballot, something usually lacking from in-person voting schemes. Such personal records could help detect fraud and abuse in close elections during judicially managed election contests.

### Areas for Improving Vote-by-Mail

All voting methodologies involve potential drawbacks. In person voting through direct-recording electronic (DRE) machines, especially those without paper records, are susceptible to some degree to electronic manipulation. Further, not all citizens interact well with the electronic voting machine, thus sometimes frustrating vote choice. The point is not that in-person voting is unacceptable, only that in-person voting potentially suffers from more issues than does vote-by-mail. Fortunately, vote-by-mail systems can be designed to deal with many of the election security complaints. When implementing vote by mail schemes, it is important to remain attentive to potential issues, and to actively mitigate the effect that transitioning to mail voting can have.

**Disparate impact** - vote-by-mail schemes could potentially have a disparate impact on the indigent, the impoverished, and communities of color- especially Native Americans. Many Native American reservation residents do not have street addresses, and their P.O. boxes may be shared.<sup>26</sup> Other minorities are “less likely to have permanent addresses than nonminority citizens, more apt to live in areas with inconsistent mail delivery, and more prone not to return mail they receive.”<sup>27</sup> Thus vote-by-mail needs to be cognizant of potential differential access and implement procedures to ensure all citizens have access to a mail ballot.

**Screening out rightful ballots** - during receipt and processing, vote by mail may screen out rightful ballots. “[T]ens of thousands of these mail-in ballots are likely to be rejected – and the voter might never know, or know why.”<sup>28</sup> Vote by mail measures often use signature matching as a way to authenticate ballots. When there is a mismatch between a signature on a voters’ registration and their ballot, the ballot may be deemed invalid. Dr. Daniel Smith of the University of Florida, a leading expert on vote-by-mail, has studied absentee ballot rejection rates and concluded that county-level rejection rates vary considerably suggesting local county administrators are using different criteria for what constitutes a problematic ballot.<sup>29</sup> Further, registered voters who were Black, Hispanic or Democrat experienced higher rejection rates of their ballots in the state of Florida.<sup>30</sup> Beyond Florida, the signature matching process has been used by states to restrict and discriminate, resulting in the rejection of thousands of ballots. For example, during the 2018 midterm elections, Georgia election officials discarded hundreds of absentee ballots.<sup>31</sup> “Of those discarded ballots, more than one-third came from the racially diverse Gwinnett County, where more than half of the rejected ballots belonged to African American or Asian American voters.”<sup>32</sup> As states implement vote-by-mail, it is important that signature matching processes are not overly restrictive, and leave ample opportunity for voters to correct or “cure” their ballot. States should also adopt alternatives to signature verification. When executed carefully, vote-by-mail methods can improve enfranchisement over in-person voting.

**Language accessibility** - vote-by-mail requires careful attention to the language accessibility of ballots. Under the Department of Justice’s guidelines for implementation of the Section 203 of the Voting Rights Act regarding language minority groups, materials provided by mail generally to residents must be provided in the applicable minority language.<sup>33</sup> If not, “the Attorney General will determine whether an effective targeting system has been developed.”<sup>34</sup> Applicable remedies sufficient to comply with Section 203 compliance should include “mailing of materials in the minority language to persons who are likely to need them or to residents of neighborhoods in which such a need is likely to exist, supplemented by a notice of the availability of minority language materials in the general mailing (in English and in the applicable minority language) and by other publicity

regarding the availability of such materials.”<sup>35</sup> Compliance with these measures will help ensure that mail ballots are comprehensible for all voters.

**Trust of mail delivery** - Decades ago, one question that came up when states transitioned to vote-my-mail was inevitably: will my ballot get “lost in the mail?” Since then, states have implemented extensive safe guards, tracking procedures and security measures to ensure all ballots are delivered safely and in states such as Oregon and Washington confidence in their voting systems are very high. Although the fear of mail accuracy is likely less of a concern for voters who are fearful of leaving their homes for risk of contracting or spreading the coronavirus, in more normal times many voters distrust the mail system. These concerns can be alleviated by setting a deadline for a postmark of ballots instead of requiring the ballot to be delivered by a certain date, by providing community drop-off locations which allow for no-contact ballot drop off for citizens, and other measures outlined below.

**Delays** - vote-by-mail elections may slow down the vote counting process, as we have seen in California and Washington this year. This is especially the case if all recommended security measures are implemented. Slower and more precise processing and counting of ballots, however, is not problematic for democracy. Indeed, most states do not certify “official” election results for three weeks after election day. States with large volumes of vote-by-mail are still able to process millions of voted ballots on election night and post tallies of the ballots on hand, providing clear indications of the voters' will on election night.<sup>36</sup> Just as voters have gotten used to election results within hours of polls closing, they too will become accustomed to a longer wait. There is every reason to believe that public observation of a longer, deliberative, not in the middle of the night, tabulation process will engender more, not less, trust in the accuracy of election outcomes.

## Policy Recommendations: Implementing Universal Vote by Mail

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States which do not already do so should prepare to send mail ballots to all eligible voters. In doing so, they should comply with the following best practices:

### 1. Voter Registration and Access to Mail Ballots

- a. Increase access to voter registration. Send all voting-eligible citizens a voter registration form or allow online voter registration.
- b. States that still require an excuse to request an absentee ballot should immediately pass legislation to allow any voter, without regard to age or need, to sign-up to receive a mail ballot in any election.
- c. Allow voters to sign up as permanent absentee voters so that they can remain signed up for future elections. Voters who are designated as permanent absentee status should automatically receive a ballot in the mail prior to every election.

### 2. Envelope and Ballot

- a. Require uniformity in envelope and ballot design. All jurisdictions in the state should implement the same envelope and ballot design to insure visibility and readability.<sup>37</sup> States or counties can contract with a vendor to mail all ballots to all voters; it is more efficient for a vendor to work with the state to get the voter file than many individual localities. Centralized print operations could be established within a state without using a third-party vendor, which might be especially important if COVID-19 overwhelms local printers.
- b. These ballots should include a paid postage for return. Paid postage could be covered by federal funds if the federal government created an indicia for all domestic ballots. This way, postage for outbound and inbound mail ballots would be billed directly to the federal government. Otherwise, states should cover the cost of postage.
- c. Standardize return addresses within each county. Every ballot in the state should have one return address.<sup>40</sup>
- d. Implement a unique barcode on each ballot and envelope to allow voters to track the status of their ballot.
- e. In elections held during a presidential or gubernatorial emergency or disaster declaration, voters should be permitted to access a secure website, login, and print their ballot and ballot envelopes from home. Effective voter verification systems should be provided (discussed below) which allow the voter to provide photographs, personal ID numbers and/or other information known only to the voter to confirm they are the person who voted on their ballot.

### 3. Mail-In Submission or Ballot Drop-off

- a.** States should establish a strong working relationship with the US Postal Service. Formulate a schedule, review postal regulations, utilize intelligent mail barcodes, coordinate ballot tracking measures, and leverage cost efficiency with high-volume rates.
- b.** States should implement secure drop boxes in both (1) current planned polling locations; and (2) new drop box locations. Placing ballot drop-off boxes in planned polling locations will minimize voter confusion. Additional drop-off boxes throughout jurisdictions will maximize access.
- c.** Ballot drop-off boxes should be:
  - i.** Visible, with large signage.
  - ii.** In ADA accessible areas.
  - iii.** In or near public buildings such as schools, public works, municipal meeting areas, malls, public parks, and other highly frequented areas.
  - iv.** Drop-boxes should be locked or sealed with a tamper-evident seal. Unstaffed drop-boxes should be securely fastened to an immovable object. Staffed drop-boxes should be fastened to an immovable object, placed behind a counter, or otherwise safeguarded. If possible, drop-boxes should be monitored by video surveillance.<sup>38</sup>

### 4. Modify in-person polling places

- a.** During times of national or statewide emergency or natural disaster declaration, any in-person polling locations must meet the following requirements to maintain social distance between voters and help minimize crowds:<sup>39</sup>
  - i.** Remove any long-term care or senior living facilities as planned polling places;
  - ii.** Be situated in larger rooms with space for distancing, such as school gymnasiums;
  - iii.** Have clearly demarcated standing areas providing for 6+ feet of space between voters and workers;
  - iv.** Endeavor to hire more election officials to administer day-of election procedures;
  - v.** Maximize the number of polling machines, and allocate limited polling machines strategically to areas most likely to experience voter build-up;
  - vi.** Offer gloves to voters;

- ## Creation of a Real-Time Ballot Tracking System

- ## 6. Create a Fail-Safe for Signature Matching of Vote-by-Mail Ballots

- UCLA Latino Policy and Politics Initiative**







## A Workable Minimum: Necessary Alternatives

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Anything short of the above best practices must at least meet minimum measures to accommodate COVID-19 and comply with the right to vote guarantees of the 14th and 15th Amendments. This includes the following measures:

1. States must establish “no excuse” absentee ballots, allowing any registered voter to request an absentee without requiring that the voter state a reason for his/her desire to vote absentee.
2. States must provide paid postage on all vote by mail ballot envelopes.
3. States must send vote-by-mail applications to all registered voters or provide applications online or via phone or email.
4. Each budget year, states should designate existing state and local employees as emergency election workers who are provided regular training and are on standby to be re-assigned as election staff during a presidential or gubernatorial emergency or disaster declaration.
5. All states must establish a fair ballot verification process using both signature matching systems and another alternative process.
6. States must provide an allowance of in-person curing by voters 14 days after an election at multiple municipal buildings throughout each county.
7. The state must provide mail-in ballot drop-off locations at minimum all planned polling sites for the 2020 General Election.

## Conclusion

Given the urgency and importance of the fair and safe administration of the 2020 general election, states and Congress must act immediately to address the significant and novel challenges posed by COVID-19. The standards outlined herein covered four significant measures that states can begin implementing immediately: (1) universal vote by mail, (2) in-person voting centers designed to limit person to person contact, (3) secure ballot drop-off centers, and (4) reasonable measures to ensure voting security and equity. Any delay in the coming weeks could lead to substantial difficulties and dire consequences for the administration of the 2020 general election. UCLA VRP will continue to monitor the situation and remains available as a resource for leaders seeking to respond fairly, safely, and constitutionally to the unfolding crisis.



## Appendix

### STATE VOTE-BY-MAIL PRACTICES<sup>47</sup>

#### 1. All Elections Conducted by Mail

STATE	MEASURE
<b>Colorado</b> (CRS §1-5-401)	All elections shall be conducted by mail.
<b>Hawaii</b> (Hawaii Stat. §11-101)	Beginning with the 2020 primary election, all elections shall be conducted by mail.
<b>Oregon</b> (ORS §254.465)	All elections conducted by mail.
<b>Washington</b> (Rev. Code of Wash. 29A.40.010)	All elections conducted by mail.

#### 2. Permit Counties to Opt into Conducting All Elections by Mail

STATE	MEASURE
<b>California</b> (Cal. Elec. Code §§4005-4008, §3005, §4000)	After/on January 1, 2018, fourteen counties may conduct all-mail elections. After January 1, 2020, any county may conduct any election as an all-mail election following statutory guidelines.
<b>Utah</b> (Utah Code Ann. §20A-3-302)	Jurisdictions may decide to conduct elections entirely by mail. Beginning in 2020, all counties will conduct all-mail ballot elections.
<b>Nebraska</b> (Neb. Rev. Stat. §32-960, §32-952)	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. Special ballot measure elections that meet certain criteria may also be held by mail.
<b>North Dakota</b> (ND Cent. Code §16.1-11.1-01 et seq.)	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.



## 3. Some Elections Conducted by Mail

STATE	MEASURE
<b>Alaska</b> (Alaska Stat. §15.20.800)	Elections that are not held on the same day as a general, party primary or municipal election may be conducted by mail.
<b>Arizona</b> (Ariz. Rev. Stat. Ann. §16-409, §16-558)	A city, town, school district or special district may conduct elections by mail.
<b>Florida</b> (Fla. Stat. §101.6102)	Referendum elections at the county, city, school district or special district level may be conducted by mail.
<b>Kansas</b> (Kan. Stat. Ann. §25-432)	Nonpartisan elections at which no candidate is elected, retained or recalled and which is not held on the same date as another election may be conducted by mail.
<b>Maryland</b> (Md. Election Code §9-501)	Special elections not held concurrently with a regularly scheduled primary or general election may be conducted by mail.
<b>Missouri</b> (Mo. Rev. Stat. §115.652 et seq.)	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 may be conducted by mail.
<b>Montana</b> (MCA 13-19-101 et seq.)	Elections that may be conducted by mail are: 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.
<b>Wyoming</b> (Wyo. Stat. 22-29-115)	Counties may decide to conduct special elections not held in conjunction with a primary, general or statewide special election entirely by mail.

#### 4. Allow Jurisdictions/Portions of Jurisdictions to be Designated All-Mail Based on Population

STATE	MEASURE
<b>Idaho</b> (Idaho Code §34-308)	A precinct which contains no more than 140 registered electors at the last general election may be designated by the Board of County Commissioners as a mail ballot precinct no later than April 1 in an even-numbered year.
<b>Minnesota</b> (Minn. Stat. §204B.45)	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 may conduct all-mail elections.
<b>Nevada</b> (Nev. Rev. Stat. §293.213)	Whenever there were not more than 20 voters registered in a precinct for the last preceding general election, that precinct may conduct all-mail elections.
<b>New Jersey</b> (NJRS §19.62-1)	A municipality with a population of 500 or fewer persons, according to the latest federal decennial census, may conduct all elections by mail.
<b>New Mexico</b> (N. M. Stat. Ann. § 1-6-22.1)	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.

## End Notes

<sup>1</sup> UCLA Voting Rights Project is directed by Matt Barreto, Ph.D., Professor of Political Science and Chicana/o Studies and Chad Dunn, J.D., Director of Litigation, Luskin School of Public Affairs. This report is authored by Matt Barreto, Chad Dunn, Vivian Alejandre, Michael Cohen, Tye Rush, and Sonni Waknin.

<sup>2</sup> Geoff Mulvihill, *Switching Remaining Primaries to Vote-By-Mail Not So Easy*, ASS. PRESS. (March 18, 2020), <https://apnews.com/6455b0c73c96966d5ee1ff8c76cbe279>.

<sup>3</sup> This study was analyzing COVID-19 in the United Kingdom, but since the United States and United Kingdom are taking relatively similar steps in social distancing, that the assumptions made in this study can also be applied with caution to the United States. Neil M. Ferguson, et. al., *Impact of Non-Pharmaceutical Interventions (NPIs) to reduce COVID-10 Mortality and Healthcare Demand*, Imperial College (Mar. 16, 2020), <https://www.imperial.ac.uk/media/imperial-college/medicine/sph/ide/gida-fellowships/Imperial-College-COVID19-NPI-modelling-16-03-2020.pdf>.

<sup>4</sup> See *Voto Latino Found. v. Hobbs*, No. CV-19-05685-PHX-DWL, 2020 WL 1236352 (D. Ariz. Mar. 13, 2020). More information on *Voto Latino v. Hobbs* can be found here: <https://www.democracymocket.com/arizona>.

<sup>5</sup> See Plaintiffs' Original Petition and Application for Temporary Injunction, Permanent Injunction and Declaratory Judgement, *Tx.Dem. Party et al. v. Hughs and Debeauvoir* (Tex. App. Mar. 20, 2020).

<sup>6</sup> <https://www.nytimes.com/2020/03/18/us/politics/wisconsin-primary-voting-coronavirus.html>

<sup>7</sup> Kevin Dayton, *Hawaii Democrats cancel walk-in presidential voting that was planned for April 4*, HONOLULU STAR ADVERTISER (Mar. 20, 2020), <https://www.staradvertiser.com/2020/03/20/hawaii-news/hawaii-democrats-cancel-walk-in-presidential-voting-that-was-planned-for-april-4>.

<sup>8</sup> Typically, in-person voting machines are made of a combination of metal, plastic, and other hard surfaces and [v]iruses generally remain active longer on stainless steel, plastic and similar hard surfaces than on fabric and other soft surfaces." James M. Steckelberg, *How Long Do Cold and Flu Viruses Stay Alive After Infected People Cough or Sneeze?*, MAYO CLINIC (Feb. 05, 2020), <https://www.mayoclinic.org/diseases-conditions/flu/expert-answers/infectious-disease/faq-20057907>.

<sup>9</sup> Neeltje van Doremalen, et. al., *Aerosol and Surface Stability of HCoV-19 (SARS-CoV-2) compared to SARS-CoV-1*, March 13, 2020, <https://www.medrxiv.org/content/10.1101/2020.03.09.20033217v1.full.pdf>.

<sup>10</sup> N'dea Yancey-Bragg, *Coronavirus Can Live on Surfaces for Days, But It Can't Travel Through the Mail, Experts Say*, USA TODAY (Mar. 21, 2020), <https://www.usatoday.com/story/news/nation/2020/03/21/can-coronavirus-travel-through-mail-experts-say-no/2862947001>.

<sup>11</sup> Kate Gibson, *Can the Coronavirus Spread Through the Mail?*, CBS NEWS (Mar. 18, 2020), <https://www.cbsnews.com/news/coronavirus-can-it-spread-through-the-mail-package-delivery>.

<sup>12</sup> Q & A on Coronaviruses (COVID-19), WORLD HEALTH ORG., <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses> (last visited Mar. 22, 2020). See also N'dea Yancey-Bragg, *Coronavirus Can Live on Surfaces for Days. But It Can't Travel Through the Mail, Experts Say*, USA TODAY (Mar. 21, 2020), <https://www.usatoday.com/story/news/nation/2020/03/21/can-coronavirus-travel-through-mail-experts-say-no/2862947001/>. ("[T]here is currently no evidence to support the transmission of COVID-19 with imported goods.")

<sup>13</sup> N'dea Yancey-Bragg, *Coronavirus Can Live in the Air for Hours and on Surfaces for Days, Study Finds*, USA TODAY (Mar. 18, 2020), <https://www.usatoday.com/story/news/health/2020/03/18/heres-how-long-coronavirus-can-live-surfaces-and-air-study/2863287001/>.

<sup>14</sup> See Appendix for full list of states. 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. *Voting Outside the Polling Place: Absentee, All-Mail and Other Voting at Home Options*, NAT. CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx> (last visited Mar. 22, 2020).

<sup>15</sup> Editorial Staff, *Editorial: Nebraska Leaders Should Explore Further Options for Voting by Mail*, OMAHA WORLD-HERALD (Oct. 27, 2018), [https://www.omaha.com/opinion/editorial-nebraska-leaders-should-explore-further-options-for-voting-by/article\\_56a87ed0-ba7e-54ab-8704-lbc703a168f3.html](https://www.omaha.com/opinion/editorial-nebraska-leaders-should-explore-further-options-for-voting-by/article_56a87ed0-ba7e-54ab-8704-lbc703a168f3.html).

<sup>16</sup> Blake Gumprecht, *Las Cruces Voters Approve All Four GO Bond Measures*, LAS CRUCES SUN NEWS (Aug. 21, 2018), <https://www.lcsun-news.com/story/news/2018/08/21/las-cruces-voters-approve-all-four-go-bond-measures-special-election/1059601002/>.

<sup>17</sup> AMBER McREYNOLDS, NATIONAL VOTE AT HOME INSTITUTE, *VOTE AT HOME SCALE PLAN* (2020), [https://www.voteathome.org/wp-content/uploads/2020/03/VAHScale\\_StrategyPlan.pdf](https://www.voteathome.org/wp-content/uploads/2020/03/VAHScale_StrategyPlan.pdf).

<sup>18</sup> Sean Richey, *Who Votes Alone? The Impact of Voting by Mail on Political Discussion*, 40 AUSTR. J. POL. SCI. 435 (2005).

<sup>19</sup> David Roberts, *The Simple Voting Reform That Works Wherever it's Tried*, VOX (March 24, 2018), <https://www.vox.com/policy-and-politics/2018/5/23/17383400/vote-by-mail-home-california-alaska-nebraska>. See also *Colorado Voting Reforms: Early Results*, PEW CHARITABLE TRUST, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/03/colorado-voting-reforms-early-results> (last visited Mar. 21, 2020) (Costs decreased by an average of 40 percent in five election administration-related categories. The 46 (of 64) counties with data available spent about \$9.56 per vote in the 2014 general election, compared with nearly \$16 in 2008).

<sup>20</sup> Alan S. Gerber, Gregory A. Huber, & Seth J. Hill, *Identifying the Effects of All-Mail Elections on Turnout: Staggered Reform in the Evergreen State*, POL. SCI. RES. & METHODS, 1 (2013), <https://www.cambridge.org/core/journals/political-science-research-and-methods/article/identifying-the-effect-of-allmail-elections-on-turnout-staggered-reform-in-the-evergreen-state/3725E51B9B7F331D7DC9B49130D7F7D>; GEORGE PILLSBURY ET AL., NONPROFIT VOTE AND ELECTIONS PROJECT, *AMERICA GOES TO THE POLLS 2018* (2019), <https://www.voteathome.org/wp-content/uploads/2019/03/america-goes-polls-2018.pdf> (Nonprofit Vote provided comprehensive research into the 2018 elections showing the three reforms that had the most positive impact on voter engagement. They were: VAH, Same Day Registration, and Automatic Voter Registration).

<sup>21</sup> Vote by mail facilitates participation by Latino and Black voters. See Priscilla L. Southwell, *A Panacea for Latino and Black voters? Elevated Turnout in Vote by Mail Elections*, 47 Soc. Sci. J. 819 (2010).

<sup>22</sup> Arlene Kanter and Rebecca Russo, *The Right of People with Disabilities to Exercise Their Right to Vote Under the Help America Vote Act*, 30 MENTAL AND PHYSICAL DISABILITY L. REP. 852 (2006).

<sup>23</sup> (How Does Vote)

<sup>24</sup> David Roberts, *The Simple Voting Reform That Works Wherever it's Tried*, Vox (March 24, 2018), <https://www.vox.com/policy-and-politics/2018/5/23/17383400/vote-by-mail-home-california-alaska-nebraska>.

<sup>25</sup> 2016 General Election Survey, DHM RESEARCH, <https://www.voteathome.org/wp-content/uploads/2018/12/Oregon-Public-Broadcasting-Statewide-Survey-October-2016-2.pdf> (last visited Mar. 22, 2020).

<sup>26</sup> *Brakebill v. Jaeger*, 905 F.3d 553, 557 (8th Cir. 2018); see also Declaration of Matthew A. Barreto, Ph.D., *Brakebill, et al. v. Jaeger*, 905 F.3d 553(8th Cir. 2018) (No. 18-1725).

<sup>27</sup> Nicholas O. Stephanopoulos, *Disparate Impact, Unified Law*, 128 Yale L. J. 1566, 1644–45 (2019).

<sup>28</sup> See Pam Fessler, *Want Your Absentee Vote to Count? Don't Make These Mistakes*, NPR (Oct. 22, 2014, 4:31 PM), <https://www.npr.org/2014/10/22/358108606/want-your-absentee-vote-to-count-dont-make-these-mistakes>.

<sup>29</sup> Daniel Smith, *Analysis of Absentee ("Vote-By-Mail") Ballots Cast in Florida* (Sept. 13, 2016), <https://electionsmith.files.wordpress.com/2016/10/smith-coie-jenner-report-dnc-fdp.pdf>.

<sup>30</sup> "ACLU Report Finds Varying Rates of Rejected Vote-by-Mail Ballots Across Florida Counties." <https://www.aclufl.org/en/press-releases/aclu-report-finds-varying-rates-rejected-vote-mail-ballots-across-florida-counties>

<sup>31</sup> Danielle Root, *Voter Suppression During the 2018 Midterm Election*, CENTER FOR AMERICAN PROGRESS (Nov. 20, 2018, 9:03 AM), <https://www.americanprogress.org/issues/democracy/reports/2018/11/20/461296/voter-suppression-2018-midterm-elections/>

<sup>32</sup> *Id.*

<sup>33</sup> 28 C.F.R. Ch. 1, §55.18(a).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> It is only in cases of very close elections that the media may not be able to "call the election" on election night, which does not hamper democracy at all. For example, in California's March 3<sup>rd</sup> election around 70% of votes were cast by mail and over 1 million were still left to be counted on election night, but Senator Sanders had amassed a large lead and the media was easily able to declare Sanders the winner on election night. One week later, in Washington state, Sanders and Vice President Biden were separated by less than 2% of the vote on election night. Rightfully so, the media did not declare a winner until more ballots had been processed and counted.

<sup>37</sup> The Center for Civic Design has a recommended template based on usability testing and states like California and Michigan have already adopted this as a statewide template. These templates are available at <https://civicedesign.org>.

<sup>38</sup> Cal. Elec. Code 40059(a)(B).

<sup>39</sup> This is particularly important because the CDC has recently recommended canceling gatherings of 50 people or more for eight weeks. *Get Your Mass Gatherings or Large Community Events Ready*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html> (last visited Mar. 22, 2020).

<sup>40</sup> This is already implemented by grocery stores in the US and Europe. Denise Lavoie *Stores Set Up Senior Shopping Hours Amid Coronavirus Fears*, A.P. (Mar. 20, 2020, 4:48 AM), <https://www.usnews.com/news/business/articles/2020-03-20/stores-set-up-senior-shopping-hours-amid-coronavirus-fears>.

<sup>41</sup> Counties such as Denver and Boulder utilize a program called Ballot TRACE, which enables election officials and voters to track their ballots from the printer, to the county's mail facility, to a local postal carrier, and back again through the mail to the respective election division. Additionally, voters in counties that use Ballot TRACE can choose to receive messages about their ballot's status through email or text message. DENVER GOV., [HTTPS://WWW.DENVERGOV.ORG/CONTENT/DENVERGOV/EN/DENVER-ELECTIONS-DIVISION/VOTER-ELECTION-INFORMATION/BALLOT-LIFE-CYCLE.HTML](https://www.denvergov.org/content/denvergov/en/denver-elections-division/voter-election-information/ballot-life-cycle.html) (last visited Mar. 22, 2020). Washington state created an online system that enables voters to enter their first and last names and date of birth to track their ballot. See WASH. SEC. OF STATE, (last visited Mar. 22, 2020). [r.votewa.gov/WhereToVote.aspx](http://r.votewa.gov/WhereToVote.aspx) (last visited Mar. 22, 2020).

<sup>42</sup> Colorado's Secretary of State publishes a Signature Verification Guide. See CO. SEC. OF STATE, <https://www.sos.state.co.us/pubs/elections/docs/SignatureVerificationGuide.pdf> (last visited Mar. 22, 2020).

<sup>43</sup> *Democratic Exec. Comm. of Fla. v. Detzner*, 347 F. Supp. 3d 1017, 1022 (N.D. Fla. 2018) ("The precise issue in this case is whether Florida's law that allows county election officials to reject vote-by-mail and provisional ballots for mismatched signatures—with no standards, an illusory process to cure, and no process to challenge the rejection—passes constitutional muster. The answer is simple. It does not.")

<sup>44</sup> *Verification of Absentee Ballots*, NAT. CONF. OF STATE LEGISLATURES, [https://www.ncsl.org/research/elections-and-campaigns/verification-of-absentee-ballots.aspx?fbclid=IwAR2CrOiMIEUJC4gPz\\_nJCtObO9pO8Zlo2nk\\_yOqfnBu2\\_Aml7ggIKsu84dM](https://www.ncsl.org/research/elections-and-campaigns/verification-of-absentee-ballots.aspx?fbclid=IwAR2CrOiMIEUJC4gPz_nJCtObO9pO8Zlo2nk_yOqfnBu2_Aml7ggIKsu84dM) (last visited Mar. 22, 2020).

<sup>45</sup> See Appendix for the text of these three statutes.

<sup>46</sup> ELIZABETH BERGMAN ET AL., *HOW DOES VOTE BY MAIL AFFECT VOTERS? A NATURAL EXPERIMENT EXAMINING INDIVIDUAL-LEVEL TURNOUT* (2020).



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