

THE UCLA VOTING RIGHTS PROJECT¹

Analysis of H.R.1 and the immediate need for expanded access to vote-by-mail

A Joint Project with the Union of Concerned Scientists and The University of New Mexico Center for Social Policy

There is a compelling need to reassess the safety and efficacy of our voting practices in the setting of the COVID-19 pandemic. Our government must ensure that every state protects the right to vote, and does not force some citizens to weigh their health against casting their ballot. We call on the federal government and all 50 states to make mail ballots available to all citizens, with proper safeguards and security measures, and to follow the lead of Democratic and Republican Secretary's of State who currently implement vote-by-mail in a safe, secure and equitable manner.

H.R. 1 Analysis

H.R. 1, the first bill proposed by the 116th Congress, makes some strides in expanding access to the voting franchise. While its provisions mandate broad election reform, Section 1621—Voting by Mail falls short of providing fair and equitable access to vote-by-mail. States require some flexibility if they are to successfully execute a majority vote-by-mail election in November 2020. It is necessary, however, to establish minimum Federal standards for any vote-by-mail program in order to prevent widespread voter disenfranchisement. American History is replete with examples of state and local jurisdictions intentionally limiting the franchise. Federal standards can mitigate the impact of election law circumvention undertaken to discriminate or committed as a result of lack of guidance, competency, or resources.

If Section 1621 is to be included in a COVID-19 Congressional response bill, improvements must be made to ensure that voters, and especially voters of color, are not disenfranchised. These revisions include providing voters multiple ways to request and obtain a vote-by-mail ballot, clearer standards for signature verification, alternate methods for voter identity verification, more robust curing requirements, and funding by the federal government for printing and prepaid ballot postage. The following is a point-by-point analysis of the vote-by-mail provisions in H.R. 1.

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I. What H.R. 1 Does Well and Must Be Included in New Legislation

SEC. 301—Promoting Ability of Voters to Vote By Mail: H.R. 1 is successful in expanding access to mail ballots to all eligible voters. 17 states currently require that voters provide an excuse in order to vote absentee. States place either age, sickness, or other conditions or restrictions on voters as a prerequisite for obtaining an absentee ballot, limiting who can vote through mail. The uncertainty of how these restrictions work in a pandemic is already sowing voter and election administration confusion. H.R.1 removes those barriers and clarifies availability of mail voting by disallowing states from imposing on voters conditions or requirements for eligibility to receive a mail ballot.

SEC. 1012—Automatic Voter Registration: H.R.1 requires the modernization of voter registration for all states, enabling all eligible citizens to register to vote through an accurate, cost-effective and secure procedure, that is available during the pandemic.

SEC. 1052—Election Day as Federal Holiday: This valuable provision will help boost voter turnout, especially for the historically disenfranchised.

SEC. 1051 & SEC. 1621(3)—Reporting for State Accountability: H.R. 1 requires states to submit to Congress reports tracking voter registration every year. After a Federal election, states must also submit to Congress data on ballot invalidation and curing attempts. These two reporting provisions establish a clear avenue for state accountability. Sunlight is said to be the best disinfectant but our current system allows states to manipulate and/or hide important voter data.

SEC. 1402—Felon Enfranchisement: This provision ensures that felons who have already served their time will not have their right to vote abridged.

SEC. 1502—Paper Ballot and Manual Counting Requirements: H.R.1 requires that voting systems include a voter-verified paper ballot, that voters have an opportunity to correct ballot errors, and that such ballots are suitable for use in risk-limiting audits. All of these requirements contribute to the integrity of elections, and are facilitated through the adoption of vote-by-mail systems.

II. Areas for Improvement to Ensure Equal Access to Voting

This section details the areas where H.R. 1, Section 1621 requires modification to guarantee fair and safe access to the ballot in November 2020.

A. Accessing Mail Ballots

H.R. 1 provides that “[i]f an individual in a State is eligible to cast a vote in an election for Federal office, the State may not impose any additional conditions or requirements on the eligibility of the individual to cast the vote in such election by absentee ballot by mail...” This provision removes the requirement that voters in 17 states provide a qualified excuse, as outlined by each state's respective absentee voter law, and in effect allows all eligible voters to access mail ballots. While this provision makes it more likely that more voters can vote by mail during the COVID-19 crisis, the following improvements would further expand use of voting by mail while also improving the integrity of the count:

- Require that all registered voters be automatically mailed an absentee ballot in times of emergency.
- Require that ballots automatically be mailed to voters designated as permanent absentee status prior to every election.
- H.R. 1 does not require states to allow voters to request vote-by-mail applications. Voters must be able to request absentee ballots through a variety of means, including through a phone request to the county clerk or registrar, mail application, website, email, in-person, or via text message. Additionally, states must provide at least one alternative to in-person application for an absentee ballot.
- H.R. 1 does not provide a provision that would extend the deadline to submit a mailed ballot during times of emergency. Voters who requested absentee ballots but did not receive their ballots until after election day must have an opportunity to have their votes counted. As the situation in Wisconsin continues to unfold, it is clear that many eligible voters who requested a mail-in ballot did not receive these ballots by election day, and many are unable to vote in person, leaving these voters disenfranchised. As a remedy, states should be required to accept mail-in ballots that are either post marked on election day or are received at least 7 days after election day.

B. Signature Matching

Similar to the language in the March 23rd House Bill, H.R. 1 mandates voter identity verification through a signature matching provision, precluding alternatives for identity verification for mailed ballots. Research by expert Daniel Smith, PhD. (University of Florida) indicates that data analysis show that mandatory signature matching is likely to have a disproportionate effect on

the young, elderly, disabled, minorities, and those who speak English as a second language.² A person's signature may vary between signings for a variety of reasons, both intentional and unintentional, and naturally changes over time. Additionally, there is little uniformity in the methods used by county election officials across the country and even within the same state to evaluate signatures, meaning these standards remain opaque to the very voters who will have their signatures evaluated.³ Despite the limitations of signature matching, the only alternative for voter identity verification provided by H.R. 1 is the use of biometric information. By the language of H.R. 1 itself, these biometric standards will take time to develop with the National Institute of Standards and Election Assistance Commission. Not only is there little to no time to develop these standards, but gathering biometric information would likely require voters to risk contracting the novel coronavirus.

To reduce the burdens on certain voters due to signature verification requirements, an improvement on H.R. 1 must include:

- Clear language requiring states to offer an alternative method for identity verification if a signature provided by a voter is deemed by election administrators not to match the voter's signature on record.
- Alternative methods for identity verification include allowing voters to submit:
 - The last four digits of their social security number;
 - Voter's bank or utility statements;
 - Drivers' license number;
 - Passport number;
 - Digital photograph matching a photograph on file with a state government agency;
 - A sworn statement attesting under penalty of perjury to the voter's identity.
- At minimum, require states to use one of the above alternative methods for identity verification to verify a ballot after making a determination that there is a discrepancy between the signature on the ballot and the signature on file.

In addition to the signature verification requirement, H.R. 1 mandates certain conditions for making a determination that a signature discrepancy exists. Election officials judging signatures must receive training in procedures used to verify signatures, and two election officials must make the non-matching determination. This provision is important in ensuring that there is some procedural uniformity in ballot processing between states. The provision also directly targets the issue of lack of training of election officials in signature verification. This provision, however, can be stronger by inclusion of the following:

² Daniel Smith, *Analysis of Absentee ("Vote-By-Mail") Ballots Cast in Florida*, Election Smith, (Sept. 13, 2016), <https://electionsmith.files.wordpress.com/2016/10/smith-coie-jenner-report-dnc-fdp.pdf>.

³ *Id.*

- Requiring the implementation of additional statewide standards for signature verification in addition to the two federally mandated standards. Additional standards will aid election administrators in verifying signatures while also attempting to remove some of the arbitrariness in the process. These standards must be developed to resolve questions regarding stylistic variations in signatures and what threshold number of variations is required to conclude that the signature on the mail-in ballot carrier envelope, the mail-in ballot application, or previous documents requires the ballot to be rejected.⁴
- Requiring publication for the general public of each local or statewide official's standards for signature verification two weeks before ballots are mailed.⁵
- Requiring documentation and public advertisement of each election official's successful completion of signature verification training 14 days before ballots are mailed.
- Permit ballots wrongfully rejected for signature match to be included in judicially managed election contests
- After election review of rejected signatures that are confirmed from the correct, eligible voter for revision of the signature match standards in use

C. Curing Provision

Similar to the March 23rd House bill, H.R. 1 includes a requirement that states notify voters of ballot rejection and provide an opportunity for the voter to cure any discrepancies that exist between the signature on their ballot and their signature on record. H.R.1 rightfully characterizes this measure as a due process requirement; curing provisions must be clear and provide meaningful opportunities for voters to correct their ballots in order to pass Constitutional muster.⁶ The curing provision in H.R.1 fails to include a clear and manageable mechanism for voters to correct their ballots.

H.R. 1's curing language must be improved with the following measures:

- Extending the curing provision to all discrepancies, instead of only signature discrepancies.
- If an absentee ballot is missing a signature or has a signature discrepancy, the envelope must remain sealed to protect the voting preference of the voter.
- Providing for a 21-day time period after election day for voters to cure their ballots. An extension of the 7-day period to 21 days ensures that ballots mailed or submitted on the day of the election can be corrected. A 7-day window, especially when coupled with delays in mail or vote counting, may preclude voters otherwise entitled to correct their ballot under law from having their vote counted.

⁴ See Colorado Secretary of State, Signature Verification Guide (Sept. 13, 2019), <https://www.sos.state.co.us/pubs/elections/docs/SignatureVerificationGuide.pdf> (last visited April 7, 2020).

⁵ *Id.*

⁶ Democratic Exec. Comm. of Fla. v. Detzner, 347 F. supp. 3d 1017,1022 (N.D. Fla 2018).

- Election officials must allow an individual to cure discrepancies with their ballot through all of the following methods: telephone, e-mail, through a website or other online method, and in-person. In-person curing should be a last resort, and other methods must provide a meaningful opportunity to cure from the safety of a voter's home.
- The good-faith efforts by election officials to notify a voter of a discrepancy required by H.R. 1 must be documented by the county clerk/registrar's office and reported to the state's Secretary of State office. The method of notification must also be documented.

D. Postage

H.R. 1 requires states to provide prepaid return postage on any ballot for Federal office that is cast by mail. This provision, while necessary, must be adequately funded by the Federal government. At minimum, appropriate funding for sending ballots by mail and pre-paid postage return is estimated to cost between \$413 million and \$593 million.⁷ The UCLA Voting Rights Project believes that sufficient funding for the 50 states and D.C. for all of the costs needed for full implementation of vote-by-mail during the COVID-19 pandemic is \$4 billion.

E. Ballot Drop-Off and Tracking

H.R. 1 requires that “[t]he State shall permit an individual to whom a ballot in an election was provided under this section to cast the ballot on the date of election by delivering the ballot on that date to a polling place.” It is likely that traditional polling locations in November will be eliminated due to social distancing requirements and public health concerns. For example, Milwaukee, Wisconsin had only 5 in-person polling locations during the 2020 primary, as opposed to the typical 180.⁸ Using Wisconsin as a guide of what is to come, many voters may not have the ability to submit their ballots through this method in November 2020.

In order to strengthen voter's ability to submit their mail ballots on election day, the bill should include the following language:

- States are required to implement secure ballot drop boxes in both (1) current planned polling locations and (2) new drop box locations. At minimum, states should provide mail-in ballot drop-off locations at all planned polling sites for the 2020 General Election.
- Ballot drop off locations must be placed in planned polling locations to ensure that there are ample opportunities for voters to be notified of the location of drop off locations and

⁷ Larence Norden, et al., Estimated Costs of COVID-19 Election Resiliency Measures, Brennan Center (March 19, 2020), <https://www.brennancenter.org/our-work/research-reports/estimated-costs-covid-19-election-resiliency-measures>.

⁸ Astead W. Herndon, *They Turned Out to Vote in Wisconsin During a Health Crisis. Here's Why.*, N.Y. Times (April 7, 2020), <https://www.nytimes.com/2020/04/07/us/politics/wisconsin-democratic-voters.html>.

to submit their ballots, especially in the event that in-person voting is limited or cancelled.

Furthermore, H.R. 1 lacks any requirements that voters be able to track their ballots. Ballot tracking is an important measure to build accountability into vote-by-mail schemes and bolster trust in voting by mail. To take advantage of these effects, the bill should:

- Include language requiring states to create a real-time ballot tracking system, allowing voters to track their ballot from the time it is sent to the time it is scanned and finally accepted.
- Ballot tracking should be available online⁹ and through the respective county registrar or clerk's office. Other tracking options should include tracking via text, email, and phone.

F. Reporting Provision

H.R. 1 requires that each state's chief election official submit to Congress a report that contains the number of ballots invalidated due to a discrepancy, description of attempts to contact voters to provide curing notice, and a description of the curing process developed by the state. The bill should also require states to make publicly available the mail status, usage rates, and denial rates of all mail ballots on or before the canvass. Research suggests that this information can facilitate improvement in verification and reduce the number of rejected ballots¹⁰

To facilitate real-time reporting, states must be allowed to process ballots as they are received, rather than being forced to wait until Election Day. Furthermore, each state should create a uniform reporting database, made publicly available on each state's Secretary of State website, through which the state publishes the mail status, usage rates, and denial rates of all mail ballots on or before the canvass.

⁹ 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. Denver Gov., <https://www.denvergov.org/content/denvergov/en/denver-elections-divison/voter-election-information/ballot-life-cycle.html> (last visited Apr. 7, 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 (last visited Mar. 22, 2020).

¹⁰ Christopher Mann, "Mail Ballots in the United States: Policy Changes and Administrative Challenges" in *The Measure of American Elections*, Barry C. Burden and Charles Stewart III, eds. Cambridge Univ. Press, 2014.

III. Critical Takeaways & Must-Haves

Voting by Mail must be included in a COVID-19 Congressional response bill and the following improvements should be made to H.R. 1's existing Section 1621:

- 1. Expand options for vote-by-mail applications through email, website, or phone**
- 2. Appropriate adequate funding for prepaid ballot postage**
- 3. Provide alternative voter identity verification methods**
- 4. Set safe and manageable mail-in ballot curing procedures**
- 5. Require adequate ballot drop-off locations and ballot tracking**

The provisions of H.R. 1 alone would advance voting rights protections in the United States. During a global pandemic, however, the measures in H.R. 1, Section 1621 do not go far enough to ensure that every eligible voter is able to access the ballot box during the 2020 General Election. The recommended changes to the bill's language listed above will directly meet the challenges presented by the novel coronavirus pandemic and must be included in any response bill passed regarding voting by mail.

About this Research

The UCLA Voting Rights Project (VRP) is the marquee advocacy project of the UCLA Latino Policy and Politics Initiative (LPPI) at the University of California, Los Angeles and is focused on voting rights litigation, research, policy and training. The UCLA Voting Rights Project addresses monumental and overlooked gaps in the field of voting rights – how to train young lawyers and researchers, support the development of new legal and methodological theories for voting rights cases, and how to advance policy work to ensure there is a new generation of leaders who are pursuing efforts to guarantee all citizens have equal and fair access to our democracy. The project was founded by Chad W. Dunn, J.D. and Matt Barreto, Ph.D. The UCLA Voting Rights Project is located within the Luskin School of Public Affairs and works in coordination with the Division of Social Sciences.

To learn more about the UCLA Voting Rights Project, visit <https://latino.ucla.edu/votingrights>

The UCLA Voting Rights Project has partnered with Dr. Michael Latner and Dr. Gabriel Sanchez on this report. Michael Latner is Kendall Science Fellow at the Union of Concerned Scientists' Center for Science and Democracy, and Professor of Political Science at California Polytechnic State University. He is a contributing author to *Electoral Integrity in America: Securing Democracy* (Oxford Univ Press) and co-author of *Gerrymandering in America: The House of Representatives, The Supreme Court and the Future of Popular Sovereignty* (Cambridge Univ Press). Gabriel Sanchez is a Professor of Political Science at the University of New Mexico and also serves as the Executive Director of the UNM Center for Social Policy and formerly directed the Robert Wood Johnson Center for Health Policy. He is one of the leading national experts on Latino voting rights and has authored expert witness reports for voting rights litigation, and through his capacity with RWJ Center has published numerous articles on Latino access to health services.