

## **Administration of Absentee Ballot Programs**

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## Executive Summary

1. Americans cast their ballots in three main ways: at a traditional neighborhood polling place on election day; early, in person at a government office or voting center; and absentee, which is usually submitted early by mail. The proportion of all ballots cast by the latter two methods continues to rise steadily.
2. The introduction and expanded use of convenience (absentee and early) voting does not seem to have increased voter turnout.
3. Because they generally take place before election day, both absentee and early voting complicate late changes in ballots.
4. Compared with traditional and early voting, absentee voting results in more lost votes. It is more susceptible to two types of problems for voters and officials: errors that result in higher ballot rejection rates and less security in the voting process. To minimize these concerns, we recommend early voting as a preferable way to increase voter convenience.
5. In many cases, absentee-voting rule changes that might reduce one problem arguably exacerbate the other, so there is no clear optimal set of procedures for absentee voting in regard to such matters as submission deadlines or voter validation methods.
6. Some standardization in absentee-voting rules, however, should be relatively uncontroversial. We conclude with several suggestions for best practices. Facilitate fast delivery of absentee requests by offering many means for making requests. Provide postage for returning absentee ballots by mail, and cautiously consider other means for transmitting absentee ballots. Favor traditional election day voting over early voting, and prioritize early voting over absentee voting. Encourage voters to check the status of their absentee ballots before election day. Avoid counting ballots before election day.

## Introduction

Because the U.S. Constitution grants states substantial latitude in how to conduct elections, a wide variety of practices have developed. This diversity is especially clear in regard to absentee voting. The rules governing absentee balloting have generally liberalized over time, contributing to rising usage in recent years, though not all states have followed this pattern. The purpose of this report is to review what is known about absentee voting, identify some key policy choices available to the states, and offer a few tentative recommendations.

The rise of absentee and early voting represents a tremendous change in U.S. election administration, perhaps the biggest since the adoption of the secret ballot and voter registration a century ago. As recently as the 1980s, fewer than 5% of ballots were cast before election day. That number quickly escalated over the next two decades. In the November 2012 election, 31% of all ballots were cast early; of these, 55% were submitted by mail.<sup>1</sup> This exodus from traditional election-day polling places represents a remarkable shift in how American elections are conducted, and the implications of this change are not yet widely recognized or fully understood.

Absentee voting is widespread, popular, and essential for ill, institutionalized, and disabled individuals. It is likely here to stay, but there are some disconcerting implications of so much voting taking place on an absentee basis. In particular, absentee ballots are less secure, more expensive, often confusing, cumbersome to prepare and process, and less likely to be counted. We encourage states to exercise caution before expanding absentee voting. Insofar as they wish to lengthen the voting period, there are reasons to favor early voting. There are, as well, arguments for striving to improve the experience of traditional election-day voting in lieu of expanding election *day* into election *week(s)* in the interest of convenience.

## The Absentee Voting Environment

Absentee voting in the US began when Civil War soldiers in the field were offered a way to vote back home. Absentee voting for civilians arrived at the same time as the secret ballot—around 1900—and was initially limited to those with a prescribed set of reasons for being away from home on election day.<sup>2</sup> Only decades later did states begin loosening the requirements for absentee voting. California led in 1978, and the number of “no-excuse” states tripled between 1980 and 1996.<sup>3</sup> As more states provided the opportunity, the practice gained in popularity, and the national trend has been a steady rise in the proportion of all ballots cast on an absentee basis.

Definitions of terminology are necessary to understand the variety of regimes across the states.<sup>4</sup> By *absentee voting* we mean a system in which a voter may request that a ballot be sent in advance of election day and then may submit that ballot either by mail or in person. Every state has some form of absentee ballot. In 21 states the absentee-ballot request must be accompanied by an excuse, such as being unable to get to the polls due to disability,

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<sup>1</sup> November 2012 Current Population Survey.

<sup>2</sup> John C. Fortier. 2006. *Absentee and Early Voting: Trends, Promises, and Perils*. Washington, DC: AEI Press.

<sup>3</sup> Nathan Cemenska, Jan E. Leighley, Jonathan Nagler, and Daniel P. Tokaji. 2009. “Report on the 1972-2008 Early and Absentee Voting Dataset.” Report to the Pew Charitable Trusts.

<sup>4</sup> For more detail see: Paul Gronke, Eva Galanes-Rosenbaum, Peter A. Miller, and Daniel Toffey. 2008. “Convenience Voting.” *Annual Review of Political Science* 11:437-55. Christopher B. Mann. “Mail Ballots in the United States: Policy Choice and Administrative Challenges.” In *The Measure of American Elections*, ed. Charles Stewart III and Barry C. Burden. Forthcoming at Cambridge University Press.

confinement, or religious obligation.<sup>5</sup> Another 27 states do not require a reason for the request. Eight states also permit voters to join a *permanent absentee* list, negating the need for repeated ballot requests in future elections. At least seven other states offer permanent absentee status selectively, to those with disability or illness. Requests may be submitted in a variety of ways, but absentee ballots themselves must usually be submitted by mail.<sup>6</sup>

Absentee voting differs from true *early voting*, though the two are often jointly classified as alternative forms of *convenience voting*.<sup>7</sup> Early voting allows for in-person voting in advance of election day, usually at central locations or early-vote centers. It differs in timing, but not form, from traditional voting. By contrast, some states now use *vote-by-mail* systems, and have discontinued centralized, in-booth voting entirely. Oregon and Washington began to experiment with vote-by-mail in the late 1980s and then later switched to exclusive by-mail voting—after the passage of a 1998 ballot initiative in Oregon and in most counties of Washington after 1993. A vote-by-mail system automatically distributes ballots by mail to voters, allowing them to return them by mail or drop them off at central locations before or on election day. At least 17 states permit mail voting for local or special elections. While it is sometimes treated as different in kind from absentee voting, in logistical terms, vote-by-mail is essentially absentee voting with automatic permanent absentee status for all voters.<sup>8</sup>

States vary in the deadlines required for absentee ballots to be counted. As of the 2012 election, 33 states required the absentee ballot to *arrive by* election day, 4 states required ballots to *arrive before* election day, and 13 states plus D.C. required that ballots be *postmarked by* election day.<sup>9</sup> In most cases, then, absentee voters make their choices earlier than election-day voters, with the same advantages and disadvantages from voluntarily truncating the campaign season as experienced by early voters.

In about 15 states, absentee-ballot requests can be made by a third party, that is, someone other than the individual who is entitled to complete and cast the ballot; even more states allow third parties to *return* those ballots.<sup>10</sup> While most states do not provide pre-paid postage for return of absentee ballots, a few do. In some states the postage policy differs by locality. There are many further distinctions across jurisdictions in regard to implementation of absentee voting, including aspects such as how many envelopes are used and how voter identity is established.

Figure 1 shows the percentage of ballots cast as absentees in each state the 2012 election.<sup>11</sup> All-mail Oregon and Washington were high outliers, and there is much variation across the remainder of the country. Many states have absentee rates below 10%, but a few have rates above 30%. There is no typical state when it comes to absentee voting.

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<sup>5</sup> National Conference of State Legislatures. “Absentee and Early Voting.” Updated May 28, 2013. Colorado becomes the third mail balloting state on July 1, 2013. Note that Mann’s chapter reports slightly different numbers.

<sup>6</sup> This report is limited to analysis of domestic civilian ballots. Different rules govern absentee voting by military and overseas civilians.

<sup>7</sup> Media and popular discussion often confuse the issue when they use the shorthand “early voting” to describe any balloting that takes place before election day.

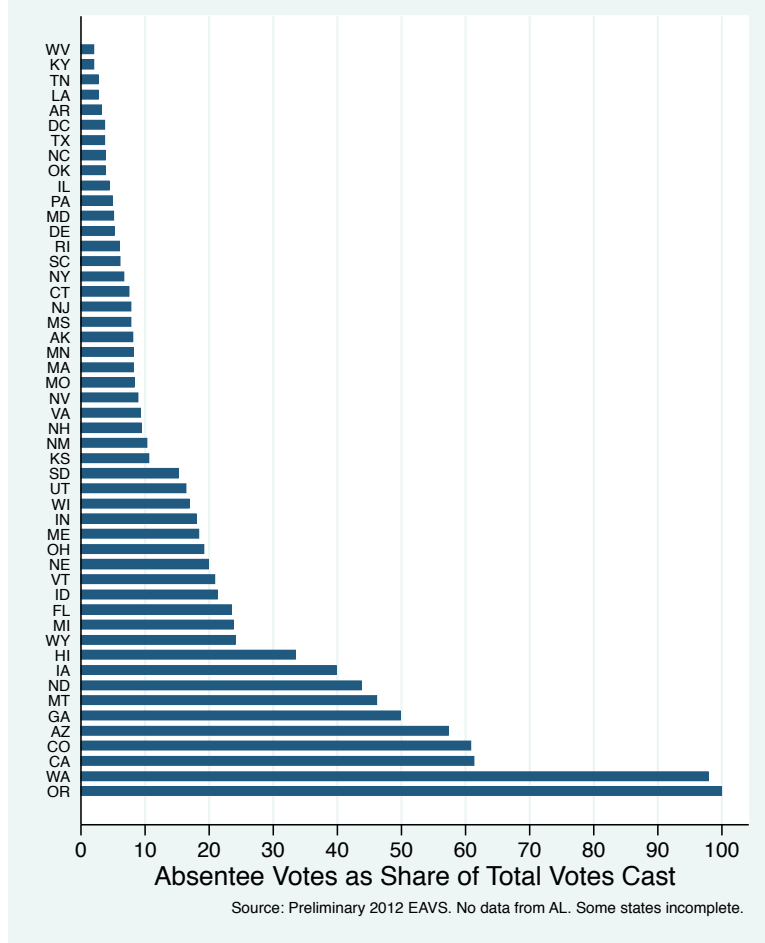
<sup>8</sup> Confusing matters, Oregon and Washington both retain an absentee procedure for domestic civilians even while their normal ballots are now absentee except in name.

<sup>9</sup> See [http://www.longdistancevoter.org/absentee\\_ballot\\_deadlines](http://www.longdistancevoter.org/absentee_ballot_deadlines)

<sup>10</sup> Cemenska et al. 2009.

<sup>11</sup> Mail ballots in Oregon and Washington are treated as absentee ballots for purposes of comparison in the figure.

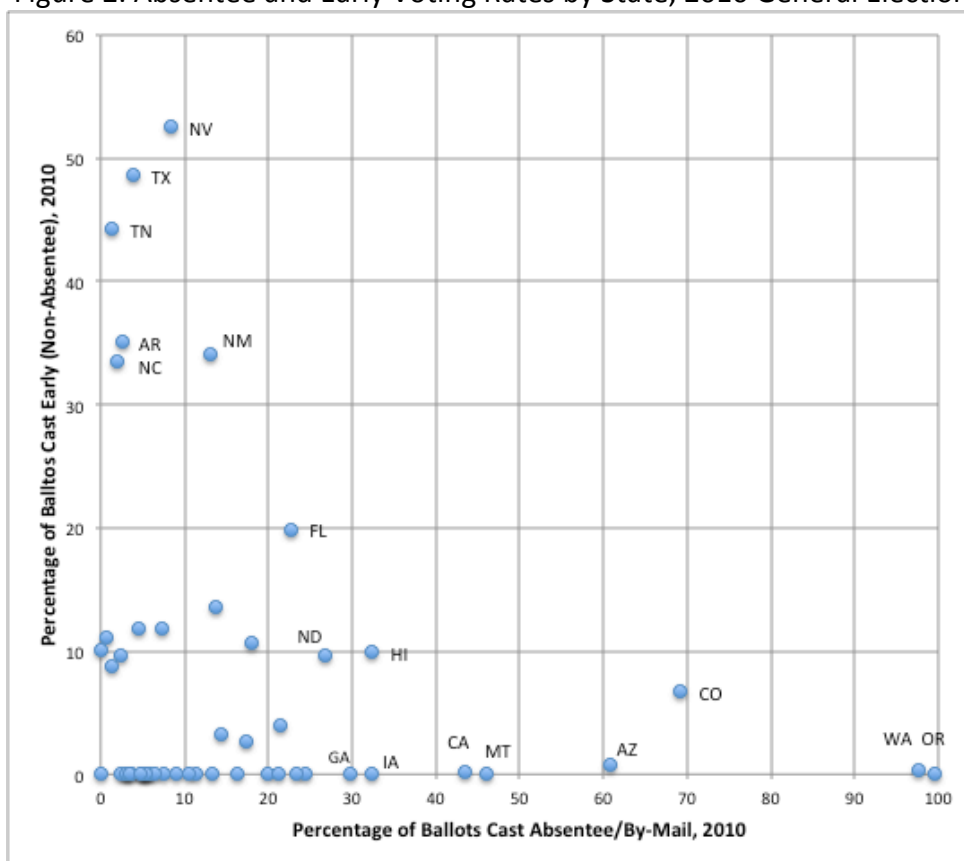
Figure 1. State Absentee Balloting Rates in the 2012 Election



States with comparatively low levels of absentee voting include some that do not permit early, in-person voting and thus see nearly all ballots cast in the traditional fashion on election day (e.g. New Jersey, Pennsylvania) and others that have relatively high rates of early voting (e.g. Arkansas, Tennessee). States such as Florida and North Dakota have fairly high levels of both absentee and early voting.<sup>12</sup> To clarify these distinctions, Figure 2 shows what proportion of ballots were cast early, but not absentee, and absentee (by domestic civilians only) for each state in the 2010 midterm election. There is some re-ordering of the states experiencing the highest levels of absentee voting, but the pattern is similar to that in the presidential-election year of 2012. About half the states had rates near 10% (or lower) both years. Clearly, many states have resisted the trend of liberalizing use of absentee balloting, even while others have gone all in for convenience. Potential voters in different states thus encounter quite different voting options. In many states, voting still means turning up at a neighborhood polling place on election day for almost everyone. In other states, many voters have never seen a polling place.

<sup>12</sup> States have tended to expand either absentee or early voting rather than both, but there are exceptions. See Charles Stewart III. 2011. “Adding Up the Costs and Benefits of Voting by Mail.” *Election Law Journal* 10:297-301.

Figure 2. Absentee and Early Voting Rates by State, 2010 General Election



Source: 2010 EAVS. Absentee rates cover domestic civilian voters only. The data shown in figures 1 and 2 do not always match official reports from Secretaries of State, and are not definitive, given the difficulty of standardizing definitions across the diverse state systems. Some of the early-voting rates of 0 for 2010 reflect missing data.

The effects of absentee (and early) voting on overall voter turnout resist easy description. Some studies find modest positive effects of absentee voting availability on voter participation, but others find no relationship or even negative effects.<sup>13</sup> Although absentee balloting is often promoted on the basis that it increases participation levels, there is no consensus that it delivers on that promise.

<sup>13</sup> Paul Gronke and Peter Miller. 2012. "Voting by Mail and Turnout in Oregon: Revisiting Southwell and Burchett." *American Politics Research* 40: 976-997. Jan E. Leighley and Jonathan Nagler. 2009. "The Effects of Non-Precinct Voting Reforms on Turnout." Report to the Pew Charitable Trusts. Jeffrey A. Dubin and Gretchen A. Kalsow. 1996. "Comparing Absentee and Precinct Voters: A View over Time." *Political Behavior* 18:369-92. Barry C. Burden, David T. Canon, Kenneth R. Mayer, and Donald P. Moynihan. Forthcoming. "Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform." *American Journal of Political Science*. Adam J. Berinsky. 2005. "The Perverse Consequences of Electoral Reform in the United States." *American Politics Research* 33:471-91. J. Eric Oliver. 1996. "The Effects of Eligibility Restrictions and Party Activity on Absentee Voting and Overall Turnout." *American Journal of Political Science* 40:498-513. Mary Fitzgerald. 2005. "Greater Convenience but not Greater Turnout: The Impact of Alternative Voting Methods on Electoral Participation in the United States." *American Politics Research* 33:842-67.

## Challenges and Concerns for Voters and Administrators

In the remainder of this report we highlight some important concerns about absentee voting for both voters and election administrators. We do not, at this stage, try to estimate the prevalence of any of these problems. Hence, this is a list of “possible problems” rather than “common problems” or “problems, in order of seriousness.”

Implementing absentee voting creates some challenges unique to voting in advance of election day. It also exacerbates or modifies some other difficulties already present for traditional election-day voting. Despite the great variation across the states in how absentee voting is conducted, there are essential features of the process that create challenges for administrators or potential worries for voters:

- Requesting, receiving, and returning ballots in advance, from afar, increases the possibility of loss or delay.
- Voter validation, however done, must take place at the time of request for the absentee ballot and at time of receipt of the ballot, increasing the transaction time/costs and possibilities for error by administrators.
- Because the voter is (generally) not present at the time the ballot is processed by officials, mistakes or ambiguities about intent and eligibility cannot usually be communicated to the voter or remedied. Protecting the anonymity of vote choices requires somewhat complicated, error-producing procedures such as use of multiple envelopes. Such protection is imperfect.
- The absentee request and the ballot must be prepared far enough in advance of election day to permit dissemination and return (often by ordinary mail), pushing forward deadlines.
- Because absentee ballots are counted later than traditional ballots in many states, they contribute to delays in the resolution of elections and may contribute to public suspicions about election integrity. The late arrival of absentee ballots interacts with the other concerns to make legal disputes both before and after the election more likely.

### *Issues of Security and Voter Access*

As in other areas of election administration, the election official faces a tension between maintaining the security of the voting process and ensuring voter access. Put more simply, the administrator’s problem is one of balancing the competing goals of minimizing fraud and avoiding the erroneous rejection of valid votes.

Vote fraud, like election crimes more generally, is thought by most observers to be fairly rare, but also potentially difficult to detect. To the degree it occurs, the absence of secrecy and the added difficulty of verifying the identity of the voter make absentee voting a natural locus of such activity.<sup>14</sup> Bailey catalogued nine federal election fraud court cases from 2000-2005, at least

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<sup>14</sup> Adam Liptak. “Error and Fraud at Issue as Absentee Voting Rises.” *New York Times*, October 6, 2012. U.S. Election Assistance Commission. “Election Crimes: An Initial Review and Recommendations for Future Study.” December 2006. Washington, DC.

five of which involved absentee ballots.<sup>15</sup> Alvarez and Boehmke found few fraud cases involving absentee ballots in the 1994-2003 period in California (13/1285) but a comparatively higher fraction in Georgia between 1999-2003 (100/273).<sup>16</sup> A comprehensive analysis by an investigative journalism program found 491 alleged cases of absentee ballot fraud since 2000. Of these, only 103 were accusations against voters (rather than campaign representatives and election officials) and relatively few resulted in convictions.<sup>17</sup> However, in a 2012 survey, among respondents in the nine states with more than 30% absentee ballot usage shown in Figure 1, 12% answered that “people [in your county or city] voting an absentee ballot intended for another person” is “very common” and another 20% thought it happens occasionally. Only 25% thought it never happens, so where absentee voting is common, the public, rightly or wrongly, holds some suspicions about the integrity of the process.<sup>18</sup>

Identity-related fraud would include multiple voting by individuals appearing on registration lists multiple times and usurpation of ballots by individuals other than the registered voter whose ballot is being cast. Absentee voting makes both easier. By contrast, voting by ineligible individuals, such as non-citizens or felons whose right to vote has not been restored, is not necessarily any easier via absentee ballots. Someone in possession of an absentee ballot can also easily complete it in the presence of another interested party in exchange for payment, or can sign the ballot and turn it over to another person for completion. In short, facilitating large-scale absentee voting jeopardizes the secrecy that was deliberately brought into the American electoral arena in the late Nineteenth Century to curtail intimidation of voters and fraud.

Measures intended to reduce the possibility of fraud and/or to protect the anonymity of the vote generally make voting more difficult and lead to a higher rate of rejected ballots. States vary considerably in the details of how absentee ballots are cast. Examples of stages in the validation process include matching names, addresses, and signatures from registration forms and absentee envelopes, verifying that witnesses are valid (e.g. also registered voters from the same state or notaries public), confirming that the individual did not also cast an in-person ballot and did not die in between completing the ballot and election day, and receiving the ballot on time (e.g. with a postmark no later than some date or having been delivered by a particular time and date). Optimal procedures would minimize rejection of valid votes because of official errors, such as ruling that two slightly different signatures do not match or simply overlooking a name listed in the registration rolls. Ultimately, discretion is inevitable.

It is difficult to study variation in how such rules are enforced. Only in recounts of extremely close elections is there generally such close scrutiny that variation becomes salient and well documented. One observer of the recount of the 2008 Minnesota U.S. Senate election pitting Norm Coleman against Al Franken conclude that, “There was one standard state law, one set of rules, but there were many ways that election officials from Ada to Zumbrota executed that

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<sup>15</sup> Delia Bailey. 2008. “Caught in the Act: Recent Federal Election Fraud Cases.” In *Election Fraud: Detecting and Deterring Electoral Manipulation* (R. Michael Alvarez, Thad E. Hall, and Susan D. Hyde, eds.) Washington, DC: Brookings, 89-98.

<sup>16</sup> R. Michael Alvarez and Frederick J. Boehmke. 2008. “Correlates of Fraud: Studying State Election Fraud Allegations.” Alvarez et al., eds, 99-111.

<sup>17</sup> <http://votingrights.news21.com/interactive/election-fraud-database/>. See also Lorraine C. Minnite. 2010. *The Myth of Voter Fraud*. Ithaca, NY: Cornell University Press.

<sup>18</sup> 2012 Survey of the Performance of American Elections, question 29. Note that perceptions of “People pretending to be someone else when going to vote” in the seven of these states that also have traditional voting (i.e. excluding Washington and Oregon) are only slightly better, with 11% having chosen “very common,” 16% “occasionally,” 18% “infrequently,” 36% “never” and 20% “don’t know.”



standard.”<sup>19</sup> In that instance, the Minnesota Supreme Court’s solution for dealing with absentee ballots that were initially rejected for unclear reasons was to permit counting of those votes that both campaigns and local officials agreed had been improperly rejected, even though “improper rejection of an absentee ballot envelope is not within the scope of errors subject to correction.”<sup>20</sup> Generally, the implementation standard that the exact law should always be followed has strong appeal on equal-treatment and rule-of-law grounds, but may be naïve, and is sometimes rejected as a normative goal by judges and analysts if there is evidence of disparate impact of procedural requirements on, say, racial groups. In short, absentee ballots add significantly complexity and ambiguity into the recount process.

Confusion is heightened when an absentee voter shows up at an election-day polling place to vote. To ensure that the voter does not cast two ballots, but is also not erroneously prevented from voting at all, many states provide these voters with provisional ballots. In these cases it is often difficult to separate intentional voting crimes from mistakes or confusion, and implementation of provisional-ballot programs poses its own difficulties, discussed in a separate white paper. Here we merely point out that legal disputes about how to treat these provisional ballots is a symptom of the absentee ballot process.

Absentee voting separates the voter from the casting of her ballot, which can be problematic. First, the anonymity of the ballot may be lost. In most states a poll worker or election official is responsible for opening absentee ballots and depositing them in the voting machine. It is thus impossible to ensure complete privacy of the vote choices for an individual absentee voter. Ballots are sometimes unable to be fed into tabulation machines, because they have been bent or incorrectly completed, leaving the voter’s intent unclear. For a traditional voter these problems are easily remedied by a poll worker providing a replacement ballot or offering guidance on how to complete the ballot. When a voter “overvotes” by choosing too many options for a given contest or “undervotes” by skipping some contests, many jurisdictions now use machines that automatically alert the election-day voter. For an absent voter, such correction cannot take place.

States and localities differ significantly in why and how often they reject absentee ballots. Figure 3 shows the rates of absentee ballot rejection from the 2012 election.<sup>21</sup> In most states less than 2% of absentee ballots go uncounted. But in a few states one in 20 or even one in 10 absentee ballots is rejected. Generally speaking, states with higher rates of absentee ballot usage have lower rejection rates. According to the EAVS, nationwide the top reason for rejecting these ballots was a missed deadline (approximately 35% of all rejected absentees). Next most common was a missing voter signature (21%), followed by a non-matching voter signature (10%), a missing witness signature (8%), duplication (i.e. also having voted in person) (5%), and a host of less common reasons such as voter death and unsealed envelopes. Whereas a non-matching signature and double voting are potentially serious concerns, they are not especially common. The top problems are in fact bureaucratic complications that might be mitigated with more information or a simpler process.

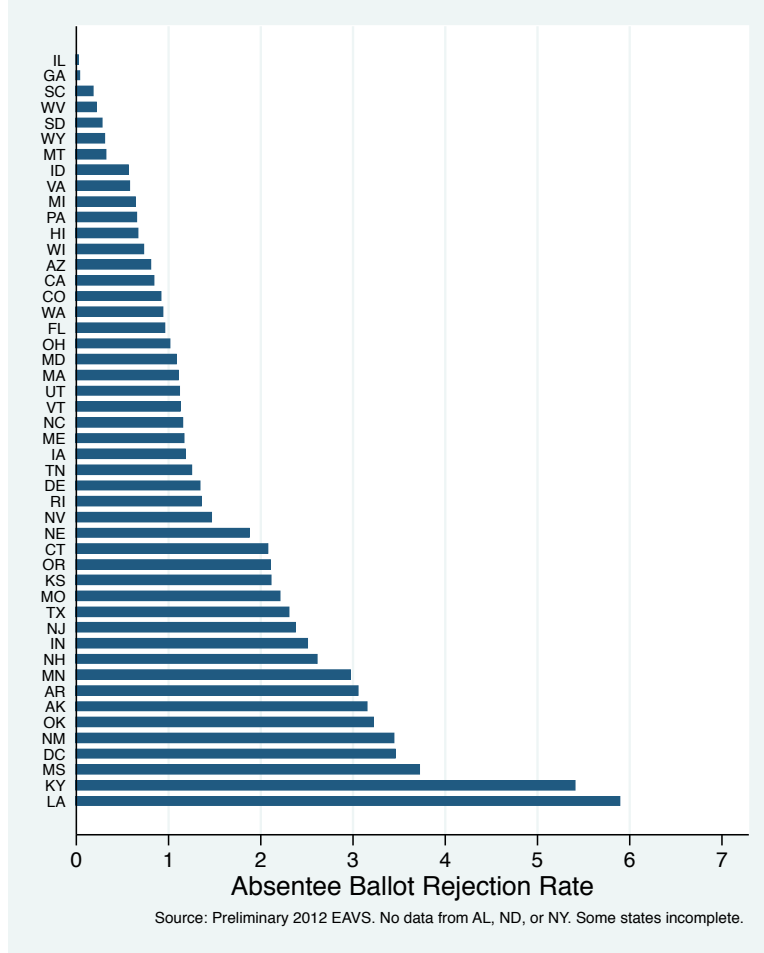
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<sup>19</sup> Jay Weiner. 2010. *This is Not Florida: How Al Franken Won the Minnesota Senate Recount*. Minneapolis/London: University of Minnesota Press, 25.

<sup>20</sup> Norm Coleman, et al., *Petitioners vs. Mark Ritchie, Minnesota Secretary of State, et al., Respondents*, A08-2169.

<sup>21</sup> This is computed by dividing the number of rejected absentee ballots by the number submitted by voters for counting. Technically it represents the weighted average of localities in a state. Other calculations produce slightly different estimates. See Mann chapter or the Pew Charitable Trust’s Election Performance Index ([pewstates.org/epi](http://pewstates.org/epi)).

Figure 3. State Absentee Ballot Rejection Rates in the 2012 Election



Large majorities of absentee voters report that they had no problems casting their ballots. At the same time, most are also unaware of whether their ballots were ultimately counted or rejected. Voters will not necessarily know if their absentee ballot went astray, unless the error occurs in the initial phases (i.e., a request is lost or the ballot is lost on its way to the voter). In the 2012 SPAE, about 10% of respondents claimed not to have voted. Of these, about 6% said that a “major” factor in their abstention was “I requested but did not receive an absentee ballot.” Another 5% said that an unmet absentee-ballot request was a “minor” factor.<sup>22</sup> A best practice recommended by a recent Pew study calls for states to provide lookup tools for voters to check on the status of absentee and provisional ballots. In 2010 roughly 29 states permitted voters to do this; it is unclear to what degree this tool was advertised to voters.<sup>23</sup>

At least some voters do seem to be aware that absentee ballots face more opportunities for rejection. In 2012, for example, the percentage of voters saying they were “very confident”

<sup>22</sup> 2012 SPAE, question 2. Note that all SPAE respondents are chosen for interview because they say they are registered to vote, hence the high turnout rate.

<sup>23</sup> Pew Charitable Trusts. 2011. “Being Online Is Still Not Enough: Reviews and Recommendations for State Election Officials.” <http://www.pewstates.org/research/reports/being-online-is-still-not-enough-85899376525>

that their ballots would be counted as they intended was 64% of for those who voted on election day or early in-person but only 55% for absentee voters.<sup>24</sup>

Such concerns are sensible in light of the multiple actions the voter and election officials must undertake for an absentee ballot to be cast. A voter usually has to request the absentee ballot and then, after receiving it, entrust it to the U.S. Postal Service for delivery. A local election official must process the request, send out the ballot, and then process the ballot when it returns, assuming it was delivered promptly. Ramsey County Election Manager Joe Mansky reported to the Minnesota state legislature that absentee ballots requires 22 steps to process and costs \$7.28 per voter whereas early voting has only 9 steps and costs \$3.80 per transaction.<sup>25</sup> University of Florida Professor Daniel Smith has documented how the more complicated absentee voting process in Florida contributed to higher ballot rejection rates and longer lines in the 2012 election.<sup>26</sup>

Postage costs for returning absentee ballots can be onerous, ambiguous, and unclear to voters, and expensive for states that provide them. An alternative to offsetting postage costs would be exploiting technology to bypass physical mail. We would caution against large-scale switching to online submission without careful study. Technological advances may ultimately make the multi-stage swapping of paper by mail obsolete, but vote security is too important to make hasty use of technologies that open up entirely new challenges and potential problems. Early moves towards touch-screen voting included some missteps that hampered post-election audits using “paper trails.”<sup>27</sup> Online distribution and submission of ballots would be seem to be subject to numerous potentially grave problems.

Absentee ballots can also lengthen the amount of time it takes to count and certify the vote. Some states permit counting of absentee ballots as they arrive rather than waiting until election day or later.<sup>28</sup> The desire to “get a jump” on the counting is understandable, but is also raises concerns about information from early counts affecting how subsequent voters act. And even if states with advance counting, late-arriving ballots create problems. After election day 2012, several races in Arizona had yet to be called for two weeks after election day because administrators lacked time to go through the many steps required to process all of the mail ballots delivered too late to be counted ahead of time.<sup>29</sup> Much of the delay in Arizona was also caused by the processing of provisional ballots given to election-day voters who had previously signed up for the state’s permanent absentee list.<sup>30</sup> Vote counting in California was delayed for similar reasons. In San Diego County counting and certifying took weeks. With late-arriving mail ballots the county registrar “must confirm each voter’s registration status, compare each voter’s signature on the envelope with the signature on the registration form to verify that the

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<sup>24</sup> 2012 SPAE, question 25. Lower confidence among absentee voters holds even after accounting for other factors such as education, age, race, and sex. See R. Michael Alvarez, Thad E. Hall, Morgan Llewellyn. 2008. “Are Americans Confident Their Ballots Are Counted?” *Journal of Politics* 70:754-66.

<sup>25</sup> James Nord, “Most States Have Both Early and No-Excuse Absentee Balloting, but Not Minnesota,” *MinnPost*, June 17, 2013.

<sup>26</sup> <http://electionsmith.wordpress.com/2012/11/06/the-functional-differences-between-early-voting-and-in-person-absentee-ballots-in-florida/>

<sup>27</sup> See, e.g., Paul S. Herrnson. 2008. “Paper Trails, Cryptography and Other Approaches to Vote Verification.” *Albany Law Journal of Science and Technology* 18(3): 657-664.

<sup>28</sup> National Association of Secretaries of State Survey, August 2012.

<sup>29</sup> Bob Christie. “Ariz. Secretary of State Proposes Vote-Counting Overhaul.” *Associated Press*. November 18, 2012.

<sup>30</sup> Michelle Ye Hee Lee. “Arizona Counties Eye Early-Voting List Overhaul.” *Arizona Republic*. January 13, 2013.

voter was he or she said, and verify that the voter did not cast a ballot elsewhere.”<sup>31</sup> In a close election, the processing of absentee (and provisional) ballots becomes a prime target for litigation from the candidates, political parties, and other groups.

With absentee ballots “lost” votes are an acute concern. The complicated pipeline is inefficient and provides many opportunities for ballots to “leak” from the system, a concern for both voters and administrators. Charles Stewart contends that there are twice as many opportunities for lost ballots compared to voting in person. He also estimates in one election that 21% of all ballot requests were lost somewhere along the way.<sup>32</sup> Presumably submitted absentee ballots are also lost, further increasing the number. And absentee ballots have a higher “residual vote” rate, meaning that they are counted as valid ballots less frequently. A study of California’s recent election shows that the benefits of improving voting technology have been entirely offset by losses induced by the rise in absentee voting.<sup>33</sup> The treatment of ballots might also be uneven across groups. Absentee ballots submitted by language minority voters and by those on the permanent absentee list were less likely to be counted.<sup>34</sup>

Handling of absentee ballots by third-party actors, a practice permitted in some states, raises additional concerns about chain of custody and fidelity to a voter’s wishes. For good reason, the Baker-Carter Commission on Federal Election Reform recommended that states prohibit a third party (other than an approved family member) from handling absentee ballots.<sup>35</sup> When a friend, neighbor, administrator, representative from a campaign or party, or even a stranger offers to assist with the absentee-ballot process, the voter’s sovereignty may be jeopardized. Unlike in-person voting, this happens outside the supervision of election officials. A malicious intervener might try to coerce the voter, alter her vote, or fail to deliver a ballot request or the ballot itself. Even a well-meaning assistant complicates absentee voting by adding another step and another set of hands to the process, increasing the likelihood of a ballot being damaged or lost. The “permanent absentee” system presents a unique concern in lower turnout midterm election when many ballots are sent automatically but relatively few are returned, leaving a large number of floating ballots ripe for abuse.<sup>36</sup>

### *Issues Related to Timing*

A distinct set of concerns arises when problems with ballots are discovered after they have been printed. The simplest cases stem from simple printing or design errors. These are potentially a problem for any ballot, whether absentee or not. An added concern for administrators where absentee- and/or early- voting is permitted is that the dates for finalizing ballots are pushed forward. Because absentee voting normally involves extra paraphernalia, such as a security envelope, there are also slightly higher odds of some mistake that slows or complicates processing. In the raft of news stories about printing mistakes in the November 2012

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<sup>31</sup> “Editorial: News Flash – County Elections Finally Over.” *San Diego Union-Tribune*. December 7, 2012.

<sup>32</sup> Charles Stewart III. 2010. “Losing Votes by Mail.” *New York University Journal of Legislation and Public Policy* 13:573-602.

<sup>33</sup> R. Michael Alvarez, Dustin Beckett, and Charles Stewart III. Forthcoming. “Voting Technology, Vote-by-Mail, and Residual Votes in California, 1990-2010.” *Political Research Quarterly*.

<sup>34</sup> R. Michael Alvarez, Thad E. Hall, and Betsy Sinclair. 2008. “Whose Absentee Votes are Returned and Counted: The Variety and Use of Absentee Ballots in California.” *Electoral Studies* 27:673-83.

<sup>35</sup> [http://www1.american.edu/ia/cfer/report/CFER\\_summary.pdf](http://www1.american.edu/ia/cfer/report/CFER_summary.pdf)

<sup>36</sup> See Mann chapter.

election season were accounts of problems with absentee ballots in Florida, Ohio, Utah, and Washington.<sup>37</sup>

More serious still are changes made necessary by late-breaking events. A study of mail voting in the 2008 California presidential primary found that many absentee votes were cast for candidates who withdrew before primary election day and presumably would have gone to vote for candidates who were still in the race had the ballots been cast later.<sup>38</sup> In October 2002, incumbent Minnesota Senator and candidate Paul Wellstone died in a plane crash. Less than two weeks before election day, the Democratic-Farmer-Labor (DFL) Party selected former Vice President Walter Mondale to replace Wellstone, and officials began to prepare supplemental ballots showing Mondale's name instead of Wellstone's. However, thousands of voters had, at that point, already cast absentee ballots showing Wellstone as the DFL nominee for that office. Minnesota law forbade officials from issuing replacement ballots to those who had already submitted their ballots. In *Erlandson v. Kiffmeyer* the state Supreme Court subsequently struck down those statutory provisions, while nonetheless reiterating that absentee voting is a privilege rather than a right. In legal terms, that means that statutes such as those intended to prevent fraud enjoy "rational basis" deference rather than being subject to "strict scrutiny."<sup>39</sup>

One could argue that everyone who completes a ballot early should always know that regret is a potential risk. In that view, late changes in the options are different in degree, but not kind, from any late developments that might alter candidates' respective appeals.

One more example of ballot issues illustrates how early voting can add to the challenges of remedying problems. In October of 2008, a Cook County Circuit judge found the wording of a ballot item on whether or not to hold a constitutional convention in Illinois was "misleading," and "inaccurate."<sup>40</sup> While his initial decision seemed to suggest that all ballots should be reprinted with different wording, the judge subsequently permitted a compromise wherein a separate supplement was distributed along with the ballot showing the defective item. The state's resistance to reprinting was based in part on cost, but another factor was the fact that by the time the wording was deemed inappropriate some absentee ballots had already been distributed.

## Conclusions

Absentee voting is an essential civic lifeline for the elderly and disabled communities. It is also necessary for diplomats, civilians living abroad, and many active-duty military voters.

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<sup>37</sup> Andy Reid. 2012. "Printing Error Mars Palm Beach County Absentee Ballots." *Sun Sentinel*, October 11, 2012 (retrieved June 20, 2013 from [http://articles.sun-sentinel.com/2012-10-11/news/fl-ballots-problem-palm-20121011\\_1\\_absentee-ballots-absentee-voters-elections-supervisor-susan-bucher](http://articles.sun-sentinel.com/2012-10-11/news/fl-ballots-problem-palm-20121011_1_absentee-ballots-absentee-voters-elections-supervisor-susan-bucher)). Joe Pagonakis. 2012. "45,000 Cuyahoga County Mail-In Ballots Could Cause Some Confusion; Print Shop Error To Blame." *NewsNet5.com* (retrieved June 20, 2013 from <http://www.newsnet5.com/dpp/money/consumer/troubleshooter/cuyahoga-county-mail-in-ballot-causes-some-confusion-print-shop-error-to-blame>). Dennis Romboy. 2012. "Printing Error Slows Utah County Absentee Ballot Scanning." *Deseret News*, Tuesday October 30, 2012 (retrieved June 20, 2013, from <http://www.deseretnews.com/article/865565685/Printing-error-slows-Utah-County-absentee-ballot-scanning.html?pg=all>). Kim Bradford. 2012. "New Ballots Going to 1,422 Pierce County Voters After Printing Error." *News Tribune*, October 22, 2012 (retrieved June 20, 2013 from <http://www.thenewtribune.com/2012/10/22/2341246/new-ballots-going-to-1422-pierce.html>).

<sup>38</sup> Marc Meredith and Neil Malhotra. 2011. "Convenience Voting Can Affect Election Outcomes." *Election Law Journal* 10:227-53.

<sup>39</sup> Elizabeth M. Brama. 2003. "*Erlandson v. Kiffmeyer*: Minnesota's Absentee Voting Laws Following the Sudden Death of Incumbent Candidate Paul Wellstone." *William Mitchell Law Review* 30:397-425.

<sup>40</sup> See *Chicago Bar Association v. White*, No. 1-08-2741. 898 N.E.2d 1101 (2008).

These communities are discussed in separate reports to the Commission. We would not deny of these populations the opportunity to vote absentee. State should continue to facilitate absentee voting for those who need it.

For voters outside the special populations mentioned above, we encourage the promotion of in-person voting, whether through early voting or traditional election-day polling places. These options provide lower cost, less confusion and litigation, more security, and fewer lost and rejected votes. As Mann’s analysis summarizes, “The increase in mail ballot related problems will continue until mail ballot usage becomes large enough to motivate” change in administration, yet “permanent vote-by-mail and postal voting...should not be seen as a panacea. There is no guarantee that other states will match this performance if they adopt these mail voting systems.”<sup>41</sup>

It would be helpful for states to coordinate on a common set of rules for when absentee ballots are due, but most aspects of voting in America’s robustly federal environment will remain under control of states and localities, making standardization unlikely.

Many of the key choices about how to implement absentee voting involve tradeoffs of the sort we sketched above. There are compelling arguments for giving priority to either of the goals: preventing fraud or assisting voters. Later deadlines for submission can reduce rejection rates, but at the cost of slowing the final tabulation and declaration of winners. Permanent absentee status can streamline the process, reducing stages when errors can arise, but it also creates the worrisome norm of many “live” unwanted ballots being in circulation. We thus regard many of the debates about how best to design absentee-voting systems as ongoing, and do not pretend to have adjudicated on which features are optimal.

The important point is this: compared to early voting, absentee balloting has the potential to make the problems of both security and access more acute, increasing the chances for both election crimes and false rejection of valid votes. Recognizing this concern, we conclude with a short list of recommendations that should generate little controversy.

- Because missed deadlines appear to be a major factor in rejection of absentee ballots, expediting the process should be a priority. Of the three stages in the absentee process – ballot requests, ballot distribution, and ballot return – the first seems the safest and most promising for using technology to simplify and speed up the process. Requests for absentee ballots should be accepted by a variety of means including mail, phone, fax, electronic mail, and Internet web sites. States that do not do so should consider providing pre-paid postage so that voters may return absentee ballots by mail without additional personal expense. The potential for online submission of absentee ballots should be studied, but also approached with caution.
- Without endorsing excuse-only absentee voting, we reiterate that early voting involves fewer risks and is a preferable system for the general voting population. Early voting shares those special challenges associated with altering the timing of election day, but avoids concerns originating in the potential losses of secrecy and anonymity from absentee voting. Early voting is no panacea—with a small number of centralized voting locations, it can be difficult to make voting equally easy for all, and the convenience level is generally lower than that of absentee voting. But, like

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<sup>41</sup> Mann chapter in Stewart and Burden book manuscript.

- election-day voting, it keeps the voter with his ballot, thus minimizing confusion, error, some forms of fraud, and legal disputes after election day.
- States should facilitate and encourage after-the-fact checking by absentee voters to determine whether their ballots were accepted and counted. Even if the information is made available only after the election, so that it would not allow for foiled voters to try to correct errors, better information about rejection can serve to educate voters about the procedures and to make obvious some of the costs in reduced likelihood of being counted that accompany the benefit of convenience.
  - Some states permit tallying of absentee ballots in advance of election day while forbidding any release of the vote totals. As the number of absentee ballots grows, this choice is an understandable means to reduce the waiting time for announcing results after voting is concluded. However, this practice is risky and we urge officials not to count any ballots until election-day voting is concluded. Even simple early turnout rates are already much discussed in reference to guesses about which campaigns are doing better at getting out the (early) vote.