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YOUR BALLOT'S IN THE MAIL: VOTE BY MAIL AND ABSENTEE VOTING

Convenience voting, defined as access to voting at a time and place of the voter's choosing, has grown exponentially in the United States within the last two decades. A majority of states now permit "no-fault" or "no excuse" absentee voting, early in person voting, and vote-by-mail (VBM). This report will discuss the advantages and disadvantages of convenience voting in the form of no excuse absentee voting, permanent no excuse absentee voting, and VBM, all of which use the United States Postal Service as a central component. It will also discuss the concerns of proponents and opponents of mail balloting. Finally, it will suggest methods intended to address concerns about mail-in balloting expressed by legislators, administrators, election advocates, and scholars. Early in person voting, which may or may not include use of the mails as a component, is beyond the scope of this report.

As inevitably occurs with any significant change in a fundamental institution, the rapid expansion of voting outside the precinct polling place has been controversial. Proponents maintain that no excuse absentee and VBM systems increase turnout and may even expand political participation in previously under-represented demographic groups. Other supporters point out that convenience voting permits voters to study the ballot and issues more closely and make more informed choices. Opponents decry the greater opportunity for election fraud that may exist in a mail ballot system, fraudulent activities such as vote buying, coercion or undue influence on voters by family or political operatives, and, not least of all, the interception of ballots. Others raise valid concerns about the reliability of mail service in large urban areas.

Many opponents complain that mail-in balloting comes at the cost of losing the communal, civic aspect of voting at a neighborhood polling place. As Norman J. Ornstein of the American Enterprise Institute framed the argument: "[Voting] should be a meaningful experience, where citizens congregate with their neighbors and affirm their joint commitment to society... Reducing the vote to the equivalent of filling out a Publisher's Clearinghouse lottery cheapens the experience."¹ On the other hand, proponents point out that mail-in balloting can be seen "kitchen table voting" which opens opportunities for political discourse among family and friends. The argument that mail-in balloting is detrimental to civic involvement, one researcher contends, "ignores the rich "togetherness" that can be achieved by voting at home," and fails to recognize "that there are positive benefits from the increased deliberative environment of vote by mail."²

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Vote by Mail and Absentee Voting

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Regardless of the relative merits of the arguments for and against mail-in balloting, as far as the voting public is concerned, the train has left the station. Convenience, as history demonstrates, trumps tradition. Still, it may be wise to slow the train down and carefully consider where this particular train may take us. While voters have generally approved of mail-in balloting, states that have adopted some form of mail balloting have encountered significant problems unique to mail-in systems. In addition, the hoped for increase in voter turnout and expanded political participation by under-represented groups has not materialized.

Oregon voters overwhelmingly voice approval of the state's all VBM system. In California, which provides no excuse absentee voting and VBM elections, 46.9 percent of ballots cast in the 2006 Congressional election were absentee ballots.³ In Washington, 89 percent of voters voted by mail in the 2006 general election. Of Washington's 39 counties, 35 vote entirely by mail as of this writing. Of the four counties that maintain poll sites, 77 percent of the ballots in the 2006 General Election were cast by absentee voters.⁴

These usage and approval statistics do not in themselves demonstrate, however, that absentee and by mail voting are without significant problems. All that they reveal is that given the opportunity, a great many voters prefer the ease of mailing in or dropping off their ballot at their convenience to voting at a specified place and time. If, as the high level of voter approval suggests, mail-in balloting in some form is here to stay, the critical question then becomes not whether states should sanction mail-in balloting, (more than half already do) but how can states conduct mail-in ballot elections to ensure ballot integrity and unhindered access for voters, particularly urban, minority, and lower-income populations.⁵ Another crucial question is whether states with more dense, heterogeneous populations should follow Oregon's lead and adopt all VBM systems as opposed to hybrid vote-by-mail systems in which both VBM and traditional place voting are available.

Definitions

For the purposes of this discussion, convenience voting excludes traditional absentee voting in which a voter must be unable to get to the polls on election day because of disability, age or absence in order to be eligible to vote absentee. The categories of voting addressed include: (1) no-excuse absentee voting, in which a voter may request an absentee ballot without stating a reason, (2) permanent no-excuse absentee voting, in which a voter can request to be placed permanently on the absentee list without stating a reason, and (3) VBM systems in which mail ballots replace precinct polling places.

The distinction between no-fault absentee voting (especially no excuse permanent absentee voting) and VBM systems is often blurred, as both use the mail to send and receive ballots. In fact, several states have adopted legislation changing their terminology from absentee voting to more descriptive terms. In Kansas, for example, absentee ballots are now referred to as an "advance" ballots. To distinguish the two concepts, the term VBM as used in this report applies to elections in which all voters in a given jurisdiction receive mail-in ballots without requesting them and cast their votes by mailing or dropping off their ballots.⁶

The first section of the report covers the history of absentee voting, instances of absentee voting fraud and one state's legislative response to the need to increase ballot security. In the second section, we will explore the Oregon experience with a statewide all vote-by-mail elections as well as hybrid vote-by-mail election systems which combine tradition with VBM elections, such as those Washington, Colorado and California. In the last section we will examine the studies on the effect of VBM on voter turnout and expanding the composition of the electorate. We will conclude with a report on the pending legislation to adopt or modify absentee voting and VBM laws.

History of Absentee Balloting

Absentee ballots have a long and controversial history in the United States. As early as the 1700's land owners were permitted to vote by absentee ballot if their homes would be vulnerable to attack by Native Americans in their absence. Nevertheless, absentee balloting was rare before 1860. Only Oregon, interestingly, made it possible in 1857 for all men who were temporarily away from their homes to vote.⁷

During the Civil War, 19 of the 25 Union states and 7 of the 11 Confederate states passed laws permitting soldiers to vote by absentee ballot. This was done by having the soldiers deposit ballots into a box on a specified day in front of officers who were then responsible for sending the ballots to the soldiers' home precincts election authorities in the proper jurisdictions.⁸ Opponents of absentee voting at the time voiced the same primary concern that is raised today, the seemingly greater opportunity for fraud when votes are cast away from the control of a polling place.

After the Civil War ended, many of the military absentee practices were discontinued. In World War I, three million men were inducted into service, adding to the pressure to extend absentee balloting to military personnel. From 1914 to 1917 states with absentee voting laws grew from three to twenty-four of the then 48 states. These events helped to sever the ties between voting and physical presence. The concept of an intent to return to a particular location became, along with physical presence, a determinate of residence for purposes of voting.

The war and the increasing mobility of the United States work force compelled states to address the need for absentee balloting in certain situations. States grappled with absentee balloting provisions for students, persons in custodial confinement such as almshouses and sanatoriums, and people whose work required them to be away from home on Election Day. By 1918, nearly all states had a form of absentee balloting for men in the military. At the end of World War II, more than 20 states permitted absentee balloting for work-related reasons and a few allowed voters who would be absent for any reason to vote by absentee ballot. By 1924, all but three states had enacted some form of absentee voting.⁹

Currently, all states permit absentee balloting. Of the 50 states and the District of Columbia, 29 states permit no-excuse absentee balloting on request.¹⁰ Of these 29 states, eight permit voters to request permanent absentee ballot status, which means that they are placed on a list to receive absentee ballots automatically without having to request them in subsequent elections.¹¹

Election Fraud and Absentee Voting

Although there are many media reports on voter fraud, primarily based upon anecdotal evidence, little scientific or systematic research of the issue has been done.¹² Recent reports indicate that recurrent claims that voter fraud is a pervasive problem are not supported by the evidence.¹³ When fraud is found, however, absentee balloting is often implicated. Generally speaking, instances of absentee fraud arise most often in local county or community elections.

Absentee ballot fraud takes four general forms, (1) forging signatures or signing fictitious names; (2) coercing or influencing a vote; (3) vote buying; and (4) misappropriating absentee ballots. Absentee ballot fraud by members of both major political parties has been substantiated in several high-profile civil and criminal cases.

A 1997 Miami mayoral election was overturned by a Florida appeals court in a highly publicized case upon a finding that absentee ballots cast for Republican incumbent Xavier Suarez were tainted by fraud. The court installed Democratic candidate Joe Carollo as the winner of the mayoral race after throwing out all 4,740 absentee votes.¹⁴ As a result of the investigation, twenty-one Miami residents were accused of acting as false witnesses to absentee ballots.

A former Miami City Commissioner was later charged with covering up fraudulent absentee votes cast in that election by a Miami police officer and his wife, a former city hall secretary. In a similar case, a state judge nullified the results of a 1993 mayoral election in Hialeah and ordered a new vote. In response, Florida's legislature passed a law that prohibits providing or receiving payment for collecting absentee ballots in 1998.

In a blatant instance of vote buying, Democratic and Republican supporters of candidates in a Dodge County, Georgia sheriff's race were found guilty of paying voters for their absentee ballot votes, each bidding against the other and operating from tables on opposite ends of the courthouse hall.¹⁵ In a more recent case, two defendants in Tallahatchie County, Mississippi were convicted of absentee ballot fraud for providing money and beer to voters to get them to vote by absentee ballot.¹⁶

In a controversial 2005 Benton Harbor, Michigan, case, an African American community leader, Reverend Edward Pinkney, was accused of fraud for unlawfully possessing absentee ballots and attempting to influence absentee voters with payments in a recall election against a city commissioner. The recall was overturned and the commissioner reinstated. Reverend Pinkney's attorneys argued against Michigan's absentee fraud statute, which makes it a felony to possess absentee ballots regardless of intent. After a first trial ended in a hung jury, Reverend Pinkney was convicted by an all-white jury on March 21, 2007. This case illustrates the need, discussed below, for carefully drafted legislation on improper possession of absentee ballots cast by other voters.

Problems in Administration of Absentee Ballots

The 2004 Washington gubernatorial election stands as a case in which the administration and counting of absentee ballots played a large role. The election was the closest governor's race in United States history. After a mandatory recount, the margin between the two candidates was just forty-two votes. The subsequent hand recount requested by the state Democratic Party gave Democratic candidate Christine Gregoire the lead with 129 more votes than Republican Dino Rossi.¹⁷

Election contest litigation ensued which was ultimately resolved on June 6, 2005 when the case was dismissed. Plaintiffs in the case, *Borders v. King County*, pointed to absentee ballots as one source of the problems.¹⁸ There were discrepancies between the number of voters who were credited as having voted by absentee ballot and the number of absentee ballots counted. Before absentee ballots were sent out, the counties verified that the voters were registered and assigned a ballot identification number. When the ballots were returned this number was to be matched to the voters registration number and the voter "credited" with having voted.

The court in *Borders* found that the fact that voters received the absentee ballots was sufficient evidence that they were registered, the extra step of crediting the votes was not necessary to prove the fact of registration. The counties' failure to carry out the crediting procedure with some of the ballots was evidence of poor administration, but not malfeasance, on the part of officials.¹⁹

The Washington legislature took steps to improve absentee ballot administration, along with other aspects of election administration, with the passage of the Clarifying and Standardizing Various Election Procedures Act, Senate Bill 5743, 2005. The bill enacted the following safeguards for absentee ballots:

- Absentee ballots are to be distinguishable from other ballots;
- Measures preventing election staff from inserting absentee and provisional ballots into mechanical voting machines are to be instituted;

- Election officials must begin processing absentee ballots on receipt;
- Two audits of votes, including absentee votes, are required, one upon certification and one 30 days later.²⁰

VBM Elections Take Hold in Western States and Beyond

In VBM elections, all voters in the jurisdiction receive their ballots through the mail and must return them by mail or by dropping them off at a specified location. California conducted a VBM election for the first time in 1977. Oregon's statewide VBM system, which completely eliminates the use of polling places, is the result of nearly twenty years of testing and gradual expansion of VBM elections in the state.²¹ The process began in 1981 and 1983 with tests of local VBM elections. The legislature then passed a 1993 law that permitted the optional use of VBM for local and special elections. In the same year, the first statewide special VBM election was held. Forty-four percent of voters returned their mail ballots. In 1995, the majority Republican legislature passed a bill that provided for VBM elections in all primaries and general elections. The Democratic governor vetoed the bill on the grounds that VBM needed further study before it should be adopted statewide.

After the resignation of Senator Bob Packwood in 1995 due to a personal scandal, special elections, primary and general, were needed to elect a successor. Because they were special elections, the Secretary of State, a Democrat and a supporter of VBM, was able to exercise the option to use the VBM system. In 1996, Oregon's presidential primary was conducted entirely as a VBM election. In 1997, two statewide special elections were held in by VBM. With these elections as tests of statewide VBM elections, in 1998 Oregon voters passed an initiative providing for all primary and general elections to be conducted by VBM in 1998.²²

Oregon citizens overwhelmingly approve of their VBM system. A survey was conducted five years after the initial implementation of the 1998 VBM law to determine if public opinion on VBM remained high and also to figure the levels of participation among Oregon voters. The survey indicated that about 81 percent of voters preferred VBM. In addition, Oregon's all-mail voting system (no polling place costs) was found to lower election costs. All mail elections cost a third to one half of the cost of polling place elections.²³

VBM has also taken root in other states, primarily, but no longer exclusively, Western states. North Dakota permits the boards of county commissioners to conduct mail ballot elections in primaries. Technically, the system is not an all VBM election because the state law requires voters to make an application for a mail ballot.²⁴ VBM elections have also been conducted in Alaska, California, Colorado, Kansas, Minnesota, Missouri, Montana,²⁵ Nebraska, Nevada, New Mexico, North Dakota, Utah, and Washington.

In Colorado, VBM elections may be conducted at the option of local jurisdictions, although they cannot be used for partisan candidate elections and elections held in conjunction with, or on the same day as, a primary or congressional vacancy election.²⁶ Moving South and North, VBM elections have been held in North Carolina, Florida, and New York. In general, early tests of VBM elections are made in special elections or at the option of local jurisdictions within the states. For example, in California, a state law permits county registrars to designate precincts with less than 250 registered voters as VBM precincts.²⁷ In the state of Washington almost all counties have chosen to adopt all VBM elections, although there is debate within the state on whether to adopt VBM statewide.

The following table provides an overview the adoption of mail-in balloting on a state-by-state basis.

Traditional Absentee		No Fault Absentee		Permanent No Fault Absentee	Vote by Mail + Precinct	All Vote by Mail
Alabama	Mississippi	Alaska	Nevada	Arizona	Minnesota	Oregon
Connecticut	Missouri	Arizona	New Jersey	California	Missouri	
Delaware	New Hampshire	Arkansas	New Mexico	Colorado	New Jersey	
District of Columbia	New York	California	North Carolina	Maine	Colorado	
Illinois	Pennsylvania	Colorado	North Dakota	Montana	Georgia	
Indiana	Rhode Island	Florida	Ohio	Oregon (VBM)	Hawaii	
Kentucky	South Carolina	Georgia	Oklahoma	Utah	Kansas	
Louisiana	Tennessee	Hawaii	Oregon (VBM)	Washington	New Mexico	
Massachusetts	Texas	Idaho	South Dakota		North Dakota	
Michigan	Virginia	Iowa	Utah		California	
Minnesota	West Virginia	Kansas	Vermont		Montana	
		Maine	Washington		Washington	
		Maryland	Wisconsin		Wyoming	
		Montana	Wyoming		Arizona	
		Nebraska			Florida	

Advantages and Disadvantages of VBM Systems

Supporters of VBM systems point to savings in costs, greater counting accuracy, and voter satisfaction. Advocates also believe that VBM will increase overall voter turnout. The greater reliability of VBM systems and Oregon’s reports of the absence of fraud in the state’s all VBM elections are also touted as reasons to consider adopting VBM. Finally, some supporters believe that making voting easier may reduce socio-economic disparities in voter participation.

The lowering of costs, at least in elections that completely eliminate polling places and the resulting costs of staff and location has been clearly demonstrated in Oregon²⁸ and Washington. It remains to be seen if the cost benefits maintain in hybrid vote-by-mail systems in which the state incurs costs associated with operating polling places. As to voter fraud, studies have supported election officials’ claims that Oregon’s VBM system has been free of fraud.²⁹ Oregon, however, has been generally free of election fraud throughout its history. Empirical studies have also confirmed reports that early voting in general, including early-in-person, VBM and absentee balloting, results in a more accurate count.³⁰

This is not to say that VBM does not present an idiosyncratic set of administrative difficulties that can lead to disenfranchisement of voters. Chief among them is the need to rely heavily on the reliability of the United States Postal Service (USPS).

Financial issues and reductions in force have challenged USPS operations. The USPS 2006 Comprehensive Statement on Postal Operations reports that on-time delivery of first class mail has improved since 2000. Despite that improvement, the table below³¹ reveals a 2006 failure rate that cannot be tolerated in delivery of election ballots. In addition, the agency’s performance goals for 2007 are to meet the essentially same unacceptable levels of on-time delivery.

Timely delivery is just one of the concerns raised by reliance on the mail for delivery of ballots. Misdelivery of mail is also a significant problem. A recent report by the Hawaii League of Women Voters echoes concerns over the reliability of postal service. The report points to the experience in Clark County, Nevada, where 10% of the ballots were undeliverable in a

VBM primary for the Republican Party. A letter from the Clark County Registrar of Voters to a Nevada official describes the problems encountered by administrators:

“There were no indications of fraudulent voting. However, ballots were delivered all over the County to former residents who did not fill out a change of address with the post office when they vacated their address of record: new residents automatically received the old residents’ ballots. In addition, most of the people voting early and in the office on Election Day did so because they never received their ballots in the mail. Many of these voters’ addresses were correct: the post office simply failed to properly deliver the ballot.

First class mail on-time delivery rates

Overnight First-Class Mail On-Time (External First-Class Measurement System)	95%
2-Day First-Class Mail On-Time (External First-Class Measurement System)	91%
3-Day First-Class Mail On-Time (External First-Class Measurement System)	90%

To whom were these ballots delivered? In numerous instances, some members of a household received their ballots while other members did not.”³²

U.S. Postal Service officials relate that Chicago has the worst mail delivery of any major U.S. city. Most problems involve late or incorrectly delivered mail. One Chicagoan complained of receiving mail belonging to suburban residents. An elected official was outraged by the fact an alderman report that he sent in January did not reach citizens until February.³³

Even in less densely populated Oregon urban areas, delivery problems plague election administrators. Six percent of Multnomah County’s VBM ballots were undeliverable in the 2004 Presidential election. In Benton County, over 7 percent of ballots were undeliverable.³⁴

Additionally, there are unique problems associated with the misdelivery of mail in large multi-unit residential buildings, which are commonly found in urban areas and on college campuses.

The USPS report and anecdotal experience from urban areas provide evidence in support of the concerns cited by individuals and groups that express caution about rushing to adopt all VBM systems. Concerns about the reliability of the mail service and about the use of VBM elections in an increasingly mobile society must be addressed as part of any careful assessment of the feasibility of using the VBM format in any jurisdiction.

The interaction of VBM elections with existing state laws is another important factor to consider when drafting legislation adopting VBM systems. Denver, Colorado provides a case in point in which existing state law and VBM combine to limit access to the polls. Denver officials will not be mailing ballots to approximately 117,000 voters in a May 2007 VBM election because the voters have been placed on an “inactive” list. According to state law,³⁵ if a voter does not vote in just one general election her status is changed to “inactive.” In order to receive a mail ballot, inactive voters have to respond to a notice postcard confirming their residence or go to the county clerk’s office to vote in person. Denver Secretary of State Mike Coffman supports the law and cautions against changing it, maintaining that the law is necessary to keep voter registration lists up to date.³⁶

Effect of VBM and Absentee Voting on Voter Turnout and Participation

When VBM was introduced in Oregon and other states, there was an expectation that it would significantly increase voter turnout and expand political participation by under-represented groups. Political scientists have studied the effects of mail-in ballot reforms with a primary focus on overall voter turnout and participation by under-represented groups. The following is a brief summary of some of the key studies, their methodologies and conclusions.

Priscilla L. Southwell, “Five Years Later: A Re-assessment of Oregon’s Vote by Mail Electoral Process,” Department of Political Science, University of Oregon, 2003.

This 2003 study is based on interviews of Oregon voters five years after the state began using an all VBM election system. Its function was to determine if voter opinion of VBM remained high and to assess the effect of VBM on voter turnout. The methodology used was to review data from the 2003 Oregon Annual Social Indicators Survey, which consisted of a random-digit-dialing survey of 1037 individuals in Oregon. Respondents were asked about their preferences in relation to VBM and about their voting behavior.³⁷

The study found that while 81% of the respondents preferred VBM elections, the majority (66.6%) reported that their voting frequency had not increased since VBM was implemented. A majority of all subcategories preferred VBM over precinct elections. Certain subgroups of the population, including women, the disabled, retirees and younger voters reported that they voted more often as a result of VBM, but the differences had a weak statistical significance. About 4 percent said they actually voted less often. The study concluded that neither political party “had much to lose or gain” from VBM.

Paul Gronke, Eva Galanes-Rosebaum, and Peter Miller, “Early Voting and Turnout,” Early Voting Information Center (EVIC) at Reed College, 2007

This study reviewed existing research on the effect of early voting measure on voter turnout and presents the results of their own research model. The authors examined early-in-person voting, no-excuse absentee balloting, and VBM elections.

Their review of earlier literature on the subject concluded that the general consensus was that early voting methods increased turnout to a modest degree. Results varied from 10 percent in an Oregon study³⁸ to Professor Gronke’s earlier research finding that VBM increased turnout by 4.7 percent in Oregon in presidential elections only.

Although the literature concluded that VBM had a positive effect on turnout, there was a consensus among social scientists that this was not achieved by recruiting new voters, but by retaining already active voters.

The consensus of the findings also supported assertions that VBM reduced costs and resulted in a more accurate count. Oregon, for example, saved an estimated 17% of the costs of elections by adopting a statewide VBM system.

The authors caution that earlier studies were based on limited historical data and were limited to Western states that differed geographically and demographically from their Midwest and Northeastern counterparts. Oregon, the leader in adopting VBM, was the primary subject of studies, followed by other Western states including Washington and California. The study notes that higher numbers of early voters are generally found in rural populations and among those voters that have long commutes. That finding tallies with another study on geographical effects on voter turnout, which concluded that suburban voters were impacted by distance.³⁹ Earlier reports, of necessity, do not consider political and administrative differences between elections since they were limited to a relatively few number of VBM elections in relatively few jurisdictions.

The methodology used in this study differed from earlier studies in that the authors estimated a model of early voting and turnout from 1980 to 2004. Starting with a turnout model and a data set produced in ballot initiative studies in 2001 and 2005, they added a series of variables based on early voting categories. The results supported previous studies finding that VBM increased turnout, but demonstrated that the increase in turnout was not only less than previously reported but that it was only shown in presidential elections in Oregon.

Despite the negligible increase in voter turnout, the authors note that the number of early voters is increasing annually. They also conclude that it “is no longer a question of whether early voting is a smart reform; the question now is what sort of early voting to allow and how to adjust to its impact.”

Thad Kousser, University of California, San Diego; Megan Mullin, Temple University, Will Vote-by-Mail Elections Increase Participation? Evidence from California Counties, Project Sponsored by the John Randolph Haynes and Dora Haynes Foundation, 2007.

The above study’s findings that VBM increased turnout to some degree are based primarily on reports of the Oregon experience. The reports contrast with a 2007 California study. In this study, the authors were able to take advantage of a California law that permits county registrars to designate any precinct with less than 250 voters as a mandatory VBM precinct. All precincts in the state’s two smallest counties contained fewer than 250 voters and all were designated as VBM precincts. The study matched pairs of precincts, one VBM and one traditional, according to demographics and compared turnout in each matched pair, then averaged those differences across the number of treated precincts. This report differs from previous studies in that it was not based on self-reports or upon comparison of elections in precincts with different demographics or political elements. The demographics and the election characteristics were the same for each matched pair.

The goal of the study was to determine the effect of VBM on turnout compared to the matched polling place precincts. The authors concluded that VBM not only failed to increase turnout, it had a small negative effect. There was a statistically significant 2.6 percent reduction in the turnout for VBM precincts compared with similar polling place precincts in the 2000 general election and a 2.87 percent decrease in the 2002 general election.

Priscilla L. Southwell; Justin Burchett: “Does changing the rules change the players? The effect of all-mail elections on the composition of the electorate?” *Social Science Quarterly*, 2000, vol. 81, no. 3, pp. 837-845

Turning from the issue of overall turnout in VBM elections to their effect on the composition of the electorate we find fewer studies. This 2000 Oregon study examined the issue using the 1996 special election to replace Senator Bob Packwood after he resigned under a cloud of scandal. The authors conclude that this method of voting may increase turnout by retaining likely voters. They found that VBM voters in Oregon differed only slightly from voters who went to the polls in previous elections--they were older, more urban, and less partisan. VBM voters were as informed and educated as polling place voters. Additionally, VBM voters were demographically similar to registered non-voters but were better educated and politically informed. The conclusion was that in some manner, VBM elections provided a method of converting peripheral voters into core voters even in low-stimulus contests.⁴⁰

Adam J. Berinsky, *The Perverse Consequences of Electoral Reform in the United States*. *American Politics Research*, Vol. 33 No. 4, July 2005 471-491

This study ventures beyond a finding that VBM does nothing to expand political participation and posits the theory that reforms designed to make it easier to vote may actually increase existing socio-economic and demographic bias. The author bases his premise on results of studies showing that voting levels under early voting systems, including VBM and liberal absentee voting, are only effective at retaining habitual voters, not at recruiting new voters. Voters that moved in and out of the electorate, it was posited, were more likely to vote, i.e. stay in the electorate, if opportunities to vote were made more convenient, but registered non-voters were not more likely to begin voting. The author argues that, as a result, reforms that make voting easier simply magnify the existing socioeconomic bias.

The methodologies used by the studies cited to support this theory were varied, including cross-sectional designs, exit polls, validated voting records, and telephone surveys. They all concluded that voters who take advantage of early voting methods tend to be more politically involved, better educated and better paid than those who did not. Thus, the writer concludes, “voting reforms do not correct the biases in the electorate, and in some cases, reforms may even worsen these biases.”

It is important to note in reading this study that none of the research cited gave direct empirical evidence that early voting reform had in fact changed the composition of electorate as a whole.

While research studies are effective in clarifying the effect of VBM on turnout and participation, they have not yet been able to control for all relevant factors, such as the demographics of the population under study, the level of interest in a particular election, the relative effectiveness of political campaigns on voter turnout and other factors. The data on VBM and no-fault absentee voting to date has been significantly limited as to time and place. Until more comprehensive data is available, it can not definitively be said that voter turnout may change under mail ballot election systems or that the reforms will exacerbate biases in the composition of the electorate.

One way in which VBM and other forms of early voting may ultimately increase turnout and expand the electorate is through the use of early Get-Out-the Vote campaigns directed at voters who have received mail ballots. An experienced campaign consultant advises that “reaching people who vote by mail should be a more urgent concern than reaching people who vote early in person.”⁴¹

By obtaining lists of voters who have received mail-in ballots, political campaigns have more time and a greater opportunity to interest, inform and persuade voters to cast their ballots. At least one study has indicated that get out the vote campaigns targeted at early voters do have a positive effect on turnout. As one researcher concluded, “...scholars have ignored the important role of partisan campaign mobilization in linking early voting reform to overall turnout levels. That is, we find that early voting is associated with greater turnout when party elites use early voting as part of their campaign strategy.”

Recommendations

Jurisdictions that have adopted VBM and absentee balloting by mail have employed various methods to ensure that each ballot gets to the right voter; that they are cast by that voter and that they are returned and accurately counted. For example, one extremely important element of protecting against voter fraud in mail-in elections is comparing signatures on the ballot with the voters' signatures on file. Other recommended steps to improve absentee ballot and VBM include:

1. Include a space for the voter's signature; and compare the voter's signature with the signature on file;
2. Use distinguishable absentee or mail ballots, by using a different through color or through other means;
3. Permit election officials to began tabulating votes as soon as ballots are received to avoid delay in the election canvass;
4. Ensure that mail ballots can not be forwarded;⁴²
5. Regulate “electioneering” in the presence of people who have mail ballots on their person;⁴³

6. Establish close working relationships with the United States Postal Service and university or school administrations to co-ordinate efforts and efficiently provide for accurate and timely delivery of mail;⁴⁴
7. Regulate who may take custody of a completed mail ballot;
8. Impose significant sanctions for misappropriation of a ballot, falsifying a signature or a voter's choice on a ballot, or failing to deliver a ballot lawfully entrusted to an agent'
9. Regulate delivery of mail-in or absentee ballots by partisan organizations. While it is important not to restrict family members and agents from returning a limited number of ballots, control of large numbers of completed ballots by third parties can lead to vote buying and misappropriation of ballots in local elections;
10. Require a minimum of two reconciliation audits;
11. Provide public access to lists of voters who have returned their ballots to facilitate Get-Out-the-Vote efforts.

Conclusion

The results of VBM and no-fault absentee election reforms have been mixed, but public acceptance of the changes is high. In view of voter enthusiasm for the reforms, it is likely the trend toward mail-in voting as an option will continue. We have seen that the effects of these reforms on turnout, however, have been minimal at best and the desired effect of expanding the composition of the electorate has not been realized. While the administrative costs are lowered significantly in all VBM elections, the cost reductions in hybrid elections are less significant. Lastly, the problems with mail delivery are likely to continue for absentee voters and VBM voters alike.

Jurisdictions contemplating the adoption of VBM in particular must approach the decision with caution. The system should not be adopted simply in an attempt to increase voter turn-out or expand political participation. It would be prudent for states to appoint a study commission consisting of election administrators, the state's chief election official, and community organizations before making a decision to adopt VBM elections. Initial trials of VBM are best implemented in small, local elections before they are attempted on a larger scale.

In short, go slow on VBM and mail-in balloting reforms. While convenient, they may create more problems than they are intended to resolve.

Endnotes

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- ² Sean Richey, "The Impact of Voting by Mail on Political Discussion," Australian Journal of Political Science, Vol. 40, No. 3, September, pp. 435-442. 2005.
- ³ "Historical Absentee Ballot Use in California." California Secretary of State website: www.ss.ca.gov/elections/hist_absentee.htm
- ⁴ Washington Secretary of State website: www.secstate.wa.gov
- ⁵ A similar conclusion is reached by Paul Gronke, Eva Galanes-Rosenbaum, and Peter A. Miller in "Early Voting and Turnout," Early Voting Information Center, Reed College. 2007.
- ⁶ Berinsky, Adam J., Massachusetts Institute of Technology, "The Perverse Consequences of Electoral Reform in the United States," American Politics Research, Vol. 33 No. 4, July 2005 471-491
- ⁷ Keyssar, Alexander, The Right to Vote: the Contested History of Democracy in the United States, pp. 104, 147, 150-151. New York : Basic Books, c2000.
- ⁸ See generally Ornstein, Supra, n. 1, p. 492-500.
- ⁹ Keyssar, Supra, n. 7.
- ¹⁰ In Georgia, a voter may cast an absentee ballot by mail without an excuse, but a voter may not vote an absentee ballot in person without a reason such as disability or actual absence. Georgia Secretary of State website: www.sos.state.ga.us/elections/elections/voter_information/absentee.htm

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- ¹² Minnite, Lorraine C., Ph.D., Barnard College, Columbia University, "Politics of Voter Fraud," Project Vote, 2007.
- ¹³ "In 5-Year Effort, Scant Evidence of Voter Fraud," New York Times, April 12, 2007.
- ¹⁴ The Miami Herald, page 1A, March 12, 1998.
- ¹⁵ Slate: February 22, 2006, citing *United States v. McCranie*, 703 F.2d 1213, 1218 (10th Cir. 1983).
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- ¹⁹ Wang, *Supra* n. 17.
- ²⁰ *Id.* pp. 387, 388.
- ²¹ See generally, Southwell, Priscilla L., Burchett, Justin, "Vote-By-Mail in the State of Oregon," *Williamette Law Review*. 345. Spring 1998.
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- ²³ Southwell, Priscilla L. "Five Years Later: A Re-Assessment of Oregon's VBM electoral Process," University of Oregon, Department of Science. Eugene, OR. 2003.
- ²⁴ N.D.S. 16.1-11.1-01.
- ²⁵ Referred to as a "mail ballot" election, Montana Code sec. 13-19-104.
- ²⁶ Colorado Code sec. 1-7.5-104
- ²⁷ California Elections Code sec. 3005.
- ²⁸ Southwell, *Supra* n. 23.
- ²⁹ Gronke, *Supra*, Gronke, n. 5,
- ³⁰ *Id.*
- ³¹ United States Postal Service 2006 Comprehensive Statement on Postal Operations, p. 61.
- ³² Clark County's Experience With The 3/26/96 Presidential Preference Primary, April 30, 1996 letter to Robert Erickson, Nevada Legislative Counsel Bureau, from Kathryn Furguson, Registrar of Voters.
- ³³ Corley, Cheryl. "Chicago Cited for Failure to Deliver the Mail." NPR News. 17 April 2007. www.npr.org/templates/story/story.php?storyId=9615598.
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- ³⁵ C.R.S. 1-2-605(2).
- ³⁶ Letter from Secretary of State Mike Coffman to the Denver delegation to the Colorado General Assembly, April 7, 2007.
- ³⁷ Southwell, *Supra*, 2003, n. 23.
- ³⁸ Southwell, Priscilla L. and Burchett, Justin. "The Effect of All-Mail Elections on Voter Turnout." *American Politics Quarterly* 28:72-9. 2000.
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