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Early Voting

by Estelle H. Rogers, Esq.

Voting in the United States has traditionally taken place on one day designated as “Election Day,” at least for federal elections. But, in recent years, many states have expanded opportunities to vote before Election Day, in order to accommodate voters’ schedules and in the hope of increasing turnout by making voting more convenient. Both early voting and “no-excuse” absentee voting offer alternatives that broaden the availability of the ballot to eligible voters.

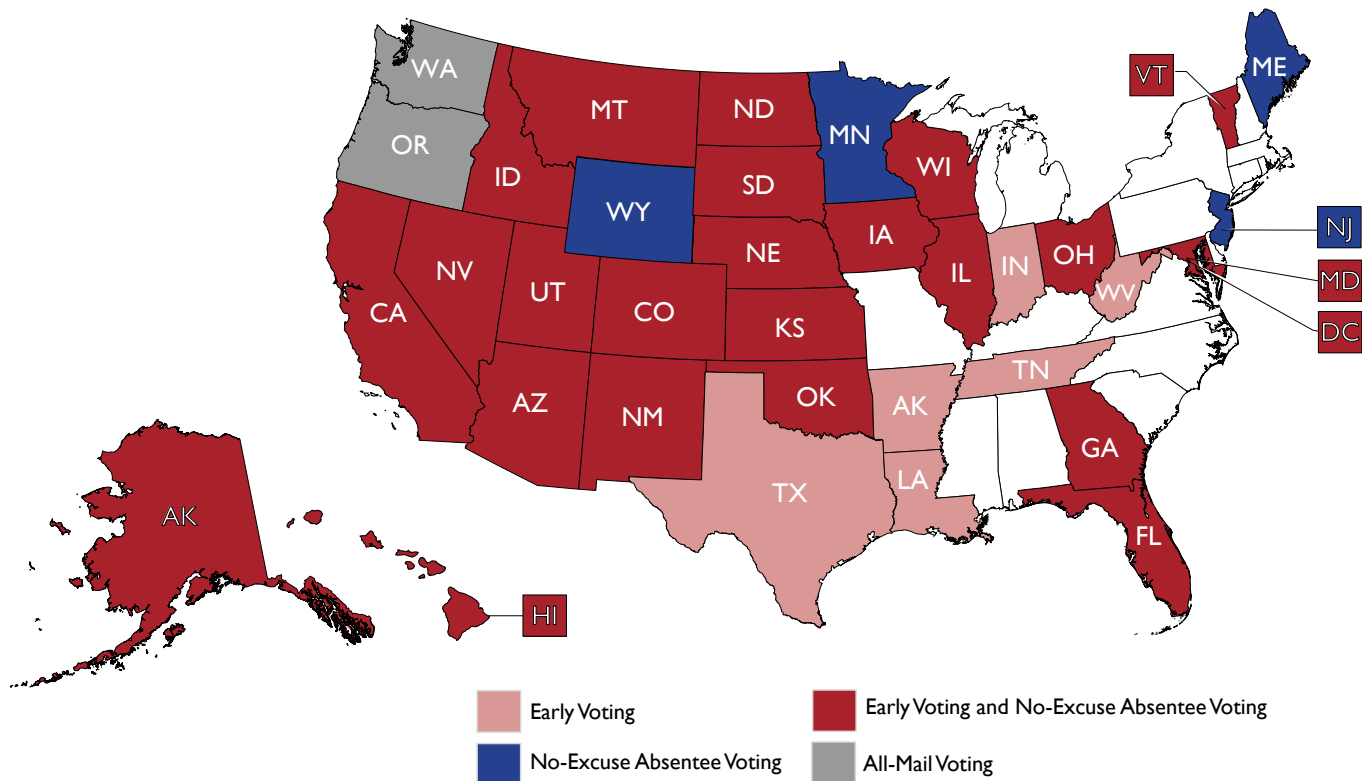
Early voting allows voters to cast their ballots in person, but at alternative times and locations, in addition to Election Day at their traditional polling place. It is one of the fastest growing trends in election administration, now in effect in 30 states and the District of Columbia.¹

In addition, most of the states with early voting also offer no-excuse absentee voting, in which a voter may fill out a ballot and mail or deliver it on or before Election Day—whether or not she has a reason for voting absentee. Many states offer both options, which is the preferred policy choice providing the most flexibility. After all, the two policies meet the needs of different kinds of voters. For example, no-excuse absentee voting will be appropriate for the person who is homebound or finds it difficult to get to the polling place. Early voting better suits the needs of the voter who needs assistance from an election official but finds Election Day Tuesday an inconvenient day on which to vote.

Two states, Oregon and Washington, conduct their elections entirely by mail over a period of weeks.

The idea that Election Day can only be the first Tuesday after the first Monday in November seems to be a thing of the past. The busy and complicated lives of American voters have demanded other choices.

Early and Absentee Voting, 2013



Advantages

Reducing Pressure on Election Day

Spreading out an election over multiple days has been shown to reduce wait times on Election Day itself.² As we saw on Election Day 2012, long lines forced waits of four hours or more in some jurisdictions.

Florida, which reduced its early voting days and hours between the presidential elections of 2008 and 2012, was an excellent case in point. Wait times were clocked at up to six hours in Miami-Dade County.³ (It should also be noted that lines were even more dramatic in some locations in Florida on Election Day itself, possibly because would-be early voters decided to wait.⁴) In Suburban Atlanta, wait times were about two hours even two Saturdays before Election Day.⁵

In addition to the obvious burden on voters, poll workers and election officials are stressed by overcrowded polling places as well. They too welcome the distribution of the electorate over a longer period.

Impact on Turnout

Early voting has been the subject of numerous academic studies over the past decade.⁶ Until 2008, the consensus among academics was that it had little to no impact on the big election picture, in terms of either overall turnout numbers or the racial composition of the electorate. The consensus was that early voting merely distributed the same voters over a longer period of time.

The 2008 election, however, marked a turning point in the impact of early voting.⁷ The trend continued in the 2012 presidential election. In Florida, about 50 percent of 2012 ballots were cast early; and African-American usage of early voting has exceeded White usage in four of the last five federal elections.⁸

In general, the growing popularity of early voting, and its impact on the racial composition of the electorate, has been most dramatic in the South. According to Current Population Survey (U.S. Census) data, African

Americans in the South voted early in-person in the 2008 presidential election at nearly three times the rate of 2004, and in the 2010 midterm elections at twice the rate of 2006.⁹ Three times as many Georgians and twice as many North Carolinians voted prior to Election Day in 2008 compared to 2004.¹⁰

Similarly, data from the 2012 Cooperative Congressional Election Survey (CCES)¹¹ show that African Americans are continuing to use early in-person voting in the South at rates comparable to those of the 2008 presidential election. African Americans voted early in-person at a rate of 41.0%, compared with 34.8% of southern White voters. No other region of the U.S. showed such high rates for African American early voting.¹²

Sweeping conclusions about the impact of early voting on overall turnout, however, are harder to draw.¹³ Both 2008 and 2012 were relatively high-turnout elections, and academic work is lacking on what, if any, effect the growth of early voting regimes had in those years. Nonetheless, it can only be a positive development that all voters, and particularly voters in traditionally underrepresented populations, are taking advantage of the many voting options that are offered to them.

Broad Approval of Voters and Election Officials

Early voting has been embraced by both voters and election administrators. In the 2012 election, early voting and absentee voting together accounted for 30 percent or more of all votes cast in 21 of the states. (At this writing, 23 states and the District of Columbia have both early voting and no-excuse absentee voting. These states span the political spectrum.) After the well-publicized long lines of 2012, legislators in 20 states proposed early voting or expansions of early voting programs already in effect, and many election officials have supported them. Unfortunately, only Maryland and Florida enacted early voting expansions (though Florida's was actually a partial restoration of early voting to its 2011 level), and Minnesota now has no-excuse absentee voting. New Jersey passed an early voting bill for the first time, but it was vetoed by Governor Chris Christie. Nebraska and North Carolina actually reduced their early voting days.¹⁴ Several federal

bills, which would impose a minimum early voting period for federal election, have also been introduced in the 113th Congress, but have not progressed.¹⁵

Concerns

Locating Early Voting Sites

Since early voting sites are generally more limited in number than traditional polling places, it is especially important that they be distributed equitably, taking account of past and projected turnout figures, public transportation access, and language and literacy characteristics of the community (related to likely time needed per voter), among other factors. In Ohio, early voting is only available at one location per county, the county's board of elections office. Given the increasing popularity of early voting, it is no wonder that lines in Cleveland snaked around the block the weekend before Election Day.¹⁶ In some states and counties, placement of early voting sites is explicitly linked to population, which seems even-handed, but in some cases does not factor in voting population or other relevant demographic considerations, such as transportation, language proficiency, and others.

Ensuring an Adequate Early Voting Period

Equally significant is the schedule of early voting days and hours. Early voting periods range from three days in Oklahoma to 45 days in Vermont.¹⁷ They average about 19 days. Different policy considerations support different points on this spectrum. First, there should be enough days to offer a meaningful alternative for voters without unduly long waits—especially where there are very limited numbers of polling places. On the other hand, when early voting starts too far in advance of Election Day, there is a legitimate concern that those who vote especially early may miss crucial debates or political developments toward the end of the campaign period that might have entered into their decisions had they not already voted.

Policy makers should also ensure that voting hours are available beyond the normal workday so that those with

family responsibilities or inflexible work schedules will be able to avail themselves of this voting opportunity. Weekend days have also proven particularly popular, and the Sunday before Election Day has spawned a “souls to the polls” campaign by many African-American churches, in which buses take parishioners directly from church to early voting sites. Typically, the early voting period ends shortly before Election Day: on the Thursday before the election in three states, the Friday before in nine states, the Saturday before in five states, and the Monday before Election Day in 11 states.¹⁸

Providing Convenient Alternatives for Voters

Research indicates that early voting combined with Same Day Registration optimizes turnout—and obviously increases the ease for the voter.¹⁹ Not only does she have a choice of days, but also, if she has neglected to register or update her information before the deadline, she can do that paperwork and then vote, all in one trip. This particularly helps people who change residence close to an election. In addition, many jurisdictions (aside from Oregon and Washington, which offer voting by mail exclusively) are experimenting with mail ballots for selected elections. Finally, “no excuse” absentee voting provides, in effect, an early voting period with a mail-in ballot.

What the Critics Say

As in most debates regarding election reforms, the opponents of early voting cite fraud and cost as the reasons to defeat it—or roll it back. Neither of these is a compelling argument, however. There is absolutely no evidence that early voting promotes fraud of any kind—not impersonation fraud and not double voting. And as election data management systems continue to be technologically upgraded so that they are universally available to polling places in real time, the less of a concern this will be. The system will clearly indicate that the person has already voted if she were to show up on Election Day and try to vote again. In fact, many if not most jurisdictions that offer early voting end it on the Sunday before Election Day, or even earlier, so that they can use the Monday to update records to reflect who has already voted.

On the subject of cost, it is undeniable that more days of voting require more staff, but the convenience to the voters, the greater turnout potential, and the reduction of stress on election officials on Election Day are well worth the greater costs. In addition, the increased efficiencies of updating and improving voter lists in person (and in a more leisurely environment) will benefit election officials for multiple election cycles to come.

Finally, it appears clear that the arguments against early voting are not really about early voting at all. Any innovation that makes voting easier in general, or more available to previously disenfranchised or under-enfranchised populations in particular, has engendered the ire of one segment of the “political class” that will use any specious or fanciful argument to defeat it. The rest of us, who believe that voting is a right that belongs to all eligible citizens, must marshal the facts and fight back.

Notes

1. Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, and Wisconsin.
2. Michael P. McDonald, *The Return of the Voter: Voter Turnout in the 2008 Presidential Election*, *The Forum*, vol. 6, no. 4 (2008), 6, available at: <http://www.clas.ufl.edu/users/sccraig/readings/mcdonald.forum.2008.pdf>
3. "'Nightmare': Long lines, mail ballot glitches mark South Florida early voting," *Miami Herald*, October 31, 2012, available at: <http://www.miamiherald.com/2012/10/31/3076721/long-lines-delayed-absentee-ballots.html>
4. Seven counties in Florida (Miami-Dade, Orange, Lee, Volusia, Pasco, St. Lucie, and Collier) reported having at least one precinct that closed after midnight. Michael C. Herron and Daniel A. Smith, *Congestion at the Polls: A Study of Florida Precincts in the 2012 General Election*, (Advancement Project, Washington, DC, 2013) 16, available at http://b3cdn.net/advancement/f5d1203189ce2aabfc_14m6vzttt.pdf
5. "Georgians brave chilly weather; long lines for early voting," WCBS-TV, October 27, 2012, available at: <http://www.wsbtv.com/news/news/local/early-voting-of-fered-throughout-ga-saturday/nSpy8/>
6. A collection of this academic work can be found on the website of the Early Voting Information Center at Reed College: <http://earlyvoting.net>
7. "2008 Election and Voting Survey," Election Assistance Commission, November 2009; Paul Gronke and Charles Stewart III (hereinafter "Gronke-Stewart"), *Early Voting in Florida*, MIT Political Science Department Working Paper No. 2013-12, electronic copy available at <http://ssrn.com/abstract=2247144>, 6-7
8. See United States Elections Project, 2012 Early Voting Statistics, available at http://elections.gmu.edu/early_vote_2012.html
9. Gronke-Stewart, note 7, *supra*, at 6.
10. McDonald, note 2, *supra*, at 5.
11. CCES data are available at: <http://projects.iq.harvard.edu/cces/data>
12. Gronke-Stewart, note 7, *supra*, at 6-7.
13. References to many of the academic studies can be found in *The Effect of Early Voting on Voter Turnout in Florida Elections, 2010 Update* (The Florida Senate, Committee on Ethics and Elections, Interim Report 2011-118, October 2010), available at: <http://www.flsenate.gov/Committees/InterimReports/2011/2011-118ee.pdf>
14. *PSN 2013 Election Reform Roundup* (Progressive States Network, New York, NY, 2013), available at: <http://progressivestates.org/news/blog/psn-2013-election-reform-roundup-wins-and-losses-in-the-fight-democracy>
15. See, e.g., Voter Empowerment Act of 2013, H.R. 12/S. 123; SIMPLE Voting Act of 2013, H.R. 50; Value Our Time Elections Act, H.R. 289; Clean and Fair Elections Act, S. 9.
16. "Cleveland Early Voting Lines Run for Blocks in the Cold," *Huffington Post*, November 4, 2012, available at: http://www.huffingtonpost.com/2012/11/04/cleveland-early-voting_n_2073553.htm
17. *Absentee and Early Voting* (National Conference of State Legislatures, Denver, CO, updated May 28, 2013), available at: <http://www.ncsl.org/legislatures-elections/elections/absentee-and-early-voting.aspx>
18. *Id.*
19. Barry C. Burden, David T. Canon, Kenneth R. Mayer, Donald P. Moynihan, *The Effects and Costs of Early Voting, Election Day Registration, and Same Day Registration in the 2008 Elections*, Report presented to the Pew Charitable Trusts (2010), available at <http://www.electionadmin.wisc.edu/pewreportfinal.pdf>

Appendix: Early Voting Laws

State	Early Vote Begins	Early Vote Ends	Citations
Alaska	15 days before election	On Election Day	<i>Absentee Early and In-Person Voting</i> , State of Alaska Div. of Elec., http://www.elections.alaska.gov/vi_ea_ev_ip_about.php (last visited June 27, 2013).
Arizona	26 days before election	Friday before election	ARIZ. REV. STAT. ANN. §16-542 (2011).
Arkansas	15 days before primary or general election	Monday before election	<i>Voting in Ark</i> , Ark. Sec'y of State, http://www.sos.arkansas.gov/elections/Pages/votingInArkansas.aspx (last visited June 27, 2013).
California	29 days before election	7 days before election	CAL. ELEC. Code § 3001 (West 2008).
Colorado	15 days before a general election; 10 days before a primary election	On Election Day	COLO. REV. STAT. ANN. §1-8-202 (West 2013).
District of Columbia	15 days before election	Day before the election	D.C. MUN. REGS. Tit. 3, §717
Florida	10 days before election	3rd day before election	FLA. STAT. ANN. §101.657 (West 2013). <i>Early Voting</i> , Fla. Div. of Elec., http://election.dos.state.fl.us/voting/early.shtml (last visited June 27, 2013).
Georgia	Monday before election	Friday before election	GA. CODE ANN. § 21-2-385 (West 2011). <i>Voting Information</i> , Ga. Sec'y of State, http://sos.georgia.gov/elections/voting_information.htm#Absentee_Voting (last visited June 27, 2013).
Hawaii	No later than 10 business days, including Sat.	Not stated	HAW. REV. STAT. §15-7 (West 2008).
Idaho	When ballots available	Friday before election	IDAHO CODE ANN. §34-1002 (West).
Illinois	15 days before election	3rd day before election	10 ILL. COMP. STAT. ANN. 5/19A-15 (West 2013). <i>Early Voting</i> , Jesse White Sec'y of State, http://www.elections.il.gov/Downloads/ElectionInformation/PDF/EarlyVoting.pdf (last visited June 27, 2013).
Indiana	28 days before election, or if the close of the voter registration date is transferred from 29 days before the election to a later date, the elector may vote on the first day following the day on which the registration period closes	Noon on Election Day	IND. CODE ANN. § 3-11-10-26 (West 2013). <i>Absentee Voting</i> , Ind. Sec'y of State Connie Lawson, http://www.in.gov/sos/elections/2402.htm (last visited June 27, 2013).
Iowa	Not more than 40 days before election and when ballots available	Day before, or until 11 a.m. on Election Day if the polls open at noon	IOWA CODE ANN. §53.10 (West 2008). <i>Absentee Voting in Person</i> , Iowa Sec'y of State Matt Schultz, http://sos.iowa.gov/elections/electioninfo/absenteeinperson.html (last visited June 27, 2013).
Kansas	Tuesday before election, to 20 days, by county	Day before the election at noon	KAN. STAT. ANN. § 25-1122 (West 2012). <i>Advanced Voting</i> , State of Kan. Office of the Sec'y of State, http://www.kssos.org/elections/elections_registration_voting.html (last visited June 27, 2013).
Louisiana	14 days before election	7 days before election	LA. REV. STAT. ANN. §18:1309 (2013).
Maryland	2nd Thursday before election	Thursday before Election	MD. CODE ANN., ELEC. LAW §10-301.1 (West 2013). <i>Voting</i> , Md. State Bd. Of Elec., http://www.elections.state.md.us/voting/ (last visited June 27, 2013).

Appendix: Early Voting Laws (cont.)

State	Early Vote Begins	Early Vote Ends	Citations
Montana	30 days before and when ballots available	On Election Day	<i>Elections Frequently Asked Questions</i> , Linda McCulloch Mont. Sec'y of State, http://sos.mt.gov/elections/FAQ/index.asp#MailBallotElections (last visited June 27, 2013).
Montana	30 days before and when ballots available	On Election Day	<i>Elections Frequently Asked Questions</i> , Linda McCulloch Mont. Sec'y of State, http://sos.mt.gov/elections/FAQ/index.asp#MailBallotElections (last visited June 27, 2013).
Nebraska	30 days before election	On Election Day.	NEB. REV. STAT. § 32-808 (West 2013). Legis. B. 271, 103rd Leg., 1st Sess. (Neb. 2013).
Nevada	3rd Saturday before election	Friday before election	NEV. REV. STAT. ANN. § 293.3568 (West 2011).
New Mexico	3rd Saturday before election	Saturday before election	N.M. STAT. ANN. §§ 1-6-5.7 (West 2011). <i>Absentee and Early Voting</i> , N.M. Sec'y of State, http://www.sos.state.nm.us/Voter_Information/Absentee_and_Early_Voting.aspx (last visited June 27, 2013).
North Carolina	3rd Thursday before (will change to 2nd Thursday as of Jan 1, 2014)	Saturday before election	N.C. GEN. STAT. ANN. § 163-227.2 (West 2009). <i>One-stop Absentee Voting</i> , N.C. State Bd. of Elec., Http://www.ncsbe.gov/content.aspx?id=135 (last visited October 30, 2013)
North Dakota	15 days before election	Day before election	N.D. CENT. CODE ANN. § 16.1-07-15 (West 2013).
Ohio	35 days before election	On Election Day	OHIO REV. CODE ANN. § 3509.01 (West 2013). See <i>Obama for America v. Husted</i> , 888 F. Supp. 2d 897, 910 (S.D. Ohio 2012). <i>Frequently Asked Questions About Voting Absentee</i> , Jon Husted Ohio Sec'y of State, http://www.sos.state.oh.us/SOS/elections/Voters/FAQ/AbsenteeFAQs.aspx (last visited June 27, 2013).
Oklahoma	Friday, Saturday, and Monday before election	Monday before election	OKLA. STAT. ANN. Tit. 26, § 14-115.4 (West 2013).
South Dakota	As soon as ballots are ready	Day before the election	S.C. CODE ANN. § 12-19-2.1 (West 2013).
Tennessee	20 days before election	5 days before election	TENN. CODE ANN. § 2-6-102 (West 2012). <i>Early Voting</i> , Tenn. Sec'y of State, http://www.tennessee.gov/sos/election/earlyvoting.htm (last visited June 27, 2013)
Texas	17 days before, unless that date falls on a weekend, then early voting starts the following Monday. If election is held in May, early voting will start the 12th day before the election	4 days before	TEX. ELEC. CODE ANN. § 85.001 (West 2009).
Utah	14 days before election	Friday before the election if the election is on a Tuesday	UTAH CODE ANN. § 20A-3-601 (West 2013).
Vermont	45 days before primary or general election	On Election Day	<i>Voting by Early or Absentee Ballot</i> , Vt. Sec'y of State, http://vermont-elections.org/elections/absentee_overview.html (last visited June 27, 2013).
West Virginia	13 days before election	3 days before election	W.VA. CODE ANN. § 3-3-3 (West 2011). <i>Early Voting</i> , W.Va. Sec'y of State, http://www.sos.wv.gov/elections/voterinformation/voting/Pages/Early.aspx (last visited June 27, 2013).
Wisconsin	2 weeks before election	Friday before election	WIS. STAT. ANN. § 6.86 (West 2012). <i>Absentee Voting</i> , Wis. Gen. Accountability Bd., http://gab.wi.gov/elections-voting/voters/absentee (last visited June 27, 2013).

About the Author

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