

# Legal Memorandum

No. 51  
April 21, 2010



Published by The Heritage Foundation

## Elections Exclusively by Mail: A Terrible Idea Whose Time Should Never Come

*Hans A. von Spakovsky*

**Abstract:** *Trading the security, integrity, and shared experience of the in-person election process for all-mail elections is a bad idea for a number of reasons. An examination of voter fraud cases over the past two decades reveals that ballots requested and sent through the mail are vote thieves' tool of choice. Despite claims that voting by mail will increase voter turnout, the evidence leads to the exact opposite conclusion. Such elections, while possibly less expensive for election administrators, can be more expensive for candidates, thereby increasing the costs of campaigns for ordinary citizens who want to run for office. Mail elections put voters at the mercy of the postal service: If their ballots are delayed or misdirected, their votes will not count. Also, voters could be casting their ballots without the same access to timely information about candidates. Finally, elections conducted through the mail destroy the communal act of voting in a way that is damaging to America's voting traditions and the inculcation of civic virtues.*

---

Periodically, proposals are made in various states to change America's traditional system of in-person voting to elections that are conducted exclusively through the mail. In fact, on May 22, 2010, the State of Hawaii is holding its first mail-only congressional election to replace a Congressman who resigned.<sup>1</sup> Even many states that have in-person voting are loosening their absentee ballot rules to implement "no-excuse" absentee voting where a voter does not need a reason such as disability or work absence to vote by mail. But mail elections and increased absentee bal-

### Talking Points

- All-mail elections make campaigns even more expensive, thereby making it much harder for challengers to mount successful campaigns against incumbents or other candidates who are wealthy enough to finance their own campaigns.
- In election years where turnout goes up, it does not go up as much in states with convenience voting. In election years where turnout goes down, it decreases even more in states with convenience voting.
- The most effective way to increase turnout in federal elections would be to dismantle the federal campaign finance rules that make it difficult for anyone who is not wealthy to run for Congress.
- Trading the security, integrity, and shared experience of in-person voting for all-mail elections based on the dubious and invalid assumption that such elections will somehow attract nonvoters is probably harmful to a healthy democracy and to America's Election Day traditions that inspire and reward good citizenship.

---

This paper, in its entirety, can be found at:  
<http://report.heritage.org/lm0051>

Produced by the Center for Legal and Judicial Studies

Published by The Heritage Foundation  
214 Massachusetts Avenue, NE  
Washington, DC 20002-4999  
(202) 546-4400 • [heritage.org](http://heritage.org)

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

lotting (especially without a good cause) are a terrible idea for a number of reasons.

The most important argument against mail elections is the fact that an examination of voter fraud cases over the past two decades reveals that absentee ballots (i.e., ballots requested and sent through the mail) are vote thieves' tool of choice. It is often also suggested that voting by mail will increase voter turnout; however, the evidence on turnout and mail elections leads to the exact opposite conclusion.

While such elections may be less expensive for election administrators, they can be more expensive for candidates, thereby increasing the costs of campaigns to the detriment of ordinary citizens who want to run for office and participate in the democratic process. Mail elections put voters at the mercy of the efficiency of the postal service: If their ballots are delayed or misdirected, their votes will not count. Furthermore, mail elections mean that voters could be casting their ballots without the same access to timely information about candidates. Finally, elections conducted through the mail destroy the communal act of voting in a way that is damaging to America's voting traditions and the inculcation of civic virtues.

### Facilitating Voting Fraud

There are numerous examples of voter fraud involving absentee ballots. For instance:

- In Essex County, New Jersey, there is an ongoing investigation of fraudulent absentee ballots in a 2007 state Senate race. Charges have already been filed against five people, including campaign workers who were submit-

---

***Most states are notoriously slow in correcting their voter registration lists, and the number of registered voters in some is greater than their voting-age populations.***

---

ting absentee ballots on behalf of voters who never received or voted the ballots.<sup>2</sup>

- A 2003 mayor's race in East Chicago, Indiana, was overturned by the Indiana Supreme Court because of absentee ballot fraud, as well as other problems such as individuals voting whose registered residences were vacant lots.<sup>3</sup>
- The *Miami Herald* won a Pulitzer Prize for its investigation of a 1997 mayor's race in Miami that was thrown out by the courts because of an estimated 5,000 fraudulent absentee ballots.<sup>4</sup>
- A stolen election in Greene County, Alabama, involving hundreds of fraudulent absentee ballots resulted in 11 people being convicted of voter fraud.<sup>5</sup>

If a state switches to all-mail elections (as Oregon has) in which the state mails ballots to all registered voters, such ballots will unquestionably be sent to the addresses of registered voters who are dead or who no longer live at their registered addresses. Most states are notoriously slow in correcting their voter registration lists, and the number of registered voters in some, as shown by Census data, is greater than their voting-age populations. When the U.S. Supreme Court upheld Indiana's voter identification law, it pointed out that "as of 2004 Indiana's voter rolls were inflated by as much as 41.4 percent."<sup>6</sup>

- 
1. *Salvage the Special Election*, HONOLULU STAR BULL., Dec. 16, 2009; *Special Election Offers 3 Distinct Candidates*, HONOLULU STAR BULL., March 24, 2010. Portions of this memorandum were previously published in the *Hawaii Reporter* on January 14, 2010.
  2. Ted Sherman, *Essex County Freeholder Samuel Gonzalez Charged with Election Fraud in Wife's Senate Campaign*, STAR-LEDGER, Dec. 1, 2009.
  3. *Pabey v. Patrick*, 816 N.E.2d 1138 (Ind. 2004).
  4. John Fund, *STEALING ELECTIONS: HOW VOTER FRAUD THREATENS OUR DEMOCRACY* 47–50 (2004).
  5. Hans A. von Spakovsky, *Absentee Ballot Fraud: A Stolen Election in Greene County, Alabama*, HERITAGE FOUNDATION LEGAL MEMO No. 31, Sept. 5, 2008; see also *Where There's Smoke, There's Fire: 100,000 Stolen Votes in Chicago*, HERITAGE FOUNDATION LEGAL MEMO No. 23, April 16, 2008.
  6. *Crawford v. Marion County Election Bd.*, 128 S.Ct. 1610, 1617 (2008).

Thus, there will be thousands of blank absentee ballots arriving in the mail that individuals will use to cast bogus ballots. For example, in 2000, a survey of just one county in Oregon reported that about 5 percent of residents admitted that other people marked their ballots and 2.4 percent admitted that other people signed their ballot envelopes. The professor who conducted the study suspected that the real numbers were higher since most people are reluctant to admit being a party to a crime.<sup>7</sup>

When the author of this paper attended a meeting of the Board of Advisors of the U.S. Election Assistance Commission in Oregon several years ago, an Oregon election official gave a presentation on how “secure” their voting system was. As he was speaking, an election official from another state leaned over and told the author that his sister-in-law, who lived in Oregon, had admitted to him that she had voted three times in the last election. She voted her husband’s ballot, her own ballot, and a third ballot that had been mailed to her house in her maiden name.

Mailed-in votes are often cast in unmonitored settings where no election officials or independent observers are present to ensure that the registered voter is actually the person voting and that there is no illegal coercion or payment for a vote. As a result, the secret ballot is under siege; it is too easy for wrongdoers to request absentee ballots in the names of registered voters, particularly poor residents and senior citizens, and then either intimidate them into voting a certain way or fraudulently completing their ballots for them. Such intimidation is much more difficult to achieve when individuals vote in a polling place by casting a secret ballot under the supervision and observation of election officials and poll watchers.

### **A Great Way to Decrease Turnout**

Similarly, the idea that turnout will increase if voting is switched to mail elections is a fallacy. The nonpartisan Center for the Study of the American

Electorate has conducted a number of studies on “convenience” voting methods such as mail voting and “no excuse” absentee voting. These studies, including a review of the November 2008 election, show that convenience voting “does not help turnout and may hurt.”<sup>8</sup> For example:

- Of the 12 states that had turnout declines in the 2008 election—a presidential election year that saw the highest overall general election turnout since 1960—10 offered some form of convenience voting such as mail elections.
- Oregon, which has all-mail voting, had the third largest decrease in turnout of any state.
- South Dakota, which has “no excuse” absentee balloting, had the fifth largest decrease in turnout.<sup>9</sup>

Nor was this phenomenon limited to the 2008 election. States that have adopted forms of convenience voting like mail elections generally perform worse in terms of aggregate voter turnout than states that do not have such forms of voting. In election years where turnout goes up, turnout does not go up as much in states with convenience voting. In election years where turnout goes down, it decreases even more in states with convenience voting.

---

***States that have adopted forms of convenience voting like mail elections generally perform worse in terms of aggregate voter turnout than states that do not have such forms of voting.***

---

There seem to be multiple reasons for this correlation between turnout and “convenience.” The primary reason, however, is that get-out-the-vote (GOTV) efforts by campaigns during the last few days before an election tend to get diffused over a much longer period of time when all or most of the voting is done by mail over several weeks. So GOTV efforts are not as effective in getting people to vote.

7. A “Modern” Democracy that Can’t Count Votes, L.A. TIMES, Dec. 11, 2000.

8. Press release, Ctr. for the Study of the American Electorate, American Univ., African-Americans, Anger, Fear and Youth Propel Turnout to Highest Level Since 1960 (December 17, 2008) at 4.

9. *Id.*

## More Expensive, Less Information, and Impersonal

There are several other reasons why all-mail elections are not a good idea.

First, they make campaigns even more expensive. Most campaigns and candidates spend the bulk of their funds in the last few days before election day—the time when voters are paying attention—on direct mail, advertising, phone banking,

---

***All-mail elections make campaigns even more expensive. This increased cost barrier makes it even more difficult for average citizens to participate in the political process as candidates.***

---

and get-out-the-vote efforts. With all-mail elections, such efforts have to be stretched out over a much longer period of time, making it much more expensive for challengers to mount successful campaigns against incumbents or against other candidates who are wealthy enough to finance their own campaigns. This increased cost barrier makes it even more difficult for average citizens to participate in the political process as candidates.

Second, voters who cast their ballots over several weeks are not voting with the same information base. If important events unfold just before election day, such as previously unknown information being revealed about a candidate or a news event that is important to a voter's choice, or even the death of a candidate, voters who cast their ballots by mail weeks earlier cannot change their vote: They have no ability to retrieve their ballot and make a different choice.

Third, all-mail elections also make voters dependent on the delivery efficiency of the U.S. Postal Service (USPS). The estimated USPS delivery time for standard mail is two to nine days, and delivery is not guaranteed. The delivery time for the more expensive first-class mail is two to three days, and it is also not trackable.<sup>10</sup> Thus, individual voters

who mail back their completed ballots before election day still may not have their ballot counted if the ballot is delivered too late or delivered to the wrong address. Even a small percentage of misdirected or late-delivered mail could affect the outcome of a close election—a problem that does not exist with in-person voting.

Fourth, and perhaps most important, voting by mail eliminates the shared “communal” act that inspires patriotism and civic pride and is a powerful demonstration to this nation's children of the importance of voting. If Americans want to perpetuate those sentiments in future generations, they should not trivialize important election-day rituals by equating them with junk mail. Many Americans remember the excitement of going with their parents to the polls, seeing their neighbors, and “helping” their parents vote. Proponents of all-mail elections want to end that collective experience and, with it, the best reinforcement of the importance of voting that Americans have.

---

***Voting by mail eliminates the shared “communal” act that inspires patriotism and civic pride.***

---

Finally, the idea that voters do not vote because of supposed barriers to voting or because it is too difficult to get to a polling place is simply wrong; there is no evidence that supports such claims. In fact, most of the studies examining voter behavior have concluded that the biggest reason that people do not vote is that they are simply not interested in the candidates or do not think that whoever is elected in a particular race will make any difference in their lives or their careers.<sup>11</sup> People who are interested in voting will get to the polls, and those who cannot vote in person because they are sick or out of town will go to the trouble to request an absentee ballot. But most people who are not interested in a particular election are not suddenly going to decide to vote because they can vote by mail.

---

10. See United States Postal Serv. Frequently Asked Questions, <http://faq.usps.com> (last visited Apr. 7, 2010).

11. See, e.g., Jack C. Doppelt & Ellen Shearer, NONVOTERS—AMERICA'S NO-SHOWS (1999).

## A Different Approach

The most effective way to increase turnout in federal elections would be to dismantle the federal campaign finance rules that make it difficult for anyone who is not wealthy to run for Congress. Removing the barriers created by these laws would encourage more dynamic, interesting, and principled candidates who, in turn, would attract the interest of voters.

However, trading the security, integrity, and shared experience of the in-person election process

for all-mail elections based on the dubious and invalid assumption that such elections will somehow attract nonvoters is a trade that is more than dubious. It is probably harmful to a healthy democracy and to America's Election Day traditions that inspire and reward good citizenship.

—*Hans A. von Spakovsky is a Senior Legal Fellow and Manager of the Civil Justice Reform Initiative in the Center for Legal and Judicial Studies at the Heritage Foundation and a former Commissioner on the Federal Election Commission.*