



International Foundation  
for Electoral Systems



# Vote by Mail: International Practice During COVID-19





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# Acronyms

<b>BRM</b>	Business Reply Mail
<b>COVID-19</b>	Coronavirus Disease 2019
<b>EAC</b>	United States Electoral Assistance Commission
<b>EMB</b>	Election Management Body
<b>IFES</b>	International Foundation for Electoral Systems
<b>NCOA</b>	National Change of Address Database
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>ODIHR</b>	OSCE Office for Democratic Institutions and Human Rights
<b>PARS</b>	Postal Automated Redirection System
<b>QR</b>	Quick Response Code
<b>RMS</b>	Results Management System
<b>USPS</b>	United States Postal Service

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# Executive Summary

The COVID-19 pandemic is compelling election administrators in numerous democracies to offer and expand safe alternatives to in-person voting. While significant literature exists on out-of-country and online voting, fewer comparative resources are available on paper-based distance voting. This paper aims to fill that gap, comparing practices in a dozen countries in Europe, Asia and Oceania, as well as across different U.S. states.<sup>1</sup>

Distance voting can but does not necessarily involve the use of the postal service, since distance ballots can be delivered electronically and be returned without using the mail system. A growing number of democracies successfully operate distance voting, but the extent of its use varies. Switzerland, as well as the U.S. states of Oregon, Colorado, Washington, Utah and Hawaii, saw demand for distance voting overtake in-person voting even before the pandemic. Some countries, on the other hand, still reserve distance voting only for expatriates, public servants and voters with disabilities. In the German state of Bavaria, elections were held entirely by mail during COVID-19 peaks to honor election dates. Meanwhile, New Zealand and Australia use only postal voting for referendums and local elections, for a more cost-efficient process during these lower turnout events.

In distance voting, ballots are delivered to the voter's home, and voters can return ballots by mail or in person over the course of several days or weeks, obviating the need to take time off from work or from family obligations to visit a polling station. Distance voting also eliminates travel to and from polling stations and standing in line on Election Day, while affording more leisure and privacy to complete ballots. It can improve election access for many voters with disabilities or those with other impediments to in-person voting.

When the mail system is used for distance voting, the postal service becomes part of the election administration, as it assumes temporary custody of ballot papers. Relinquishing part of the ballot chain-of-custody enjoins election administrators to track outbound and inbound ballots. This entails barcoding of election mail, which is a step still neglected by many postal voting systems, especially outside the U.S. Without barcoding, voters lack access to information on late or lost election mail, and election dispute adjudicators lack access to relevant data on results that could be otherwise used as evidence in an investigation or dispute resolution process.

Most election administrators consulted are not yet systematically compiling statistics on postal ballot loss, leakage or delay. In Switzerland and in the U.S., it is difficult to compile such statistics nationally, because of their decentralized postal vote results management. The United States Postal Service (USPS) provides data on timely delivery of election mail, but not on the status of the 3 to 4 percent of election mail not delivered on time thus far in 2020 – or never delivered at all.<sup>2</sup>

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1 The paper gives some U.S. states outsized attention because of the advancements they have made in postal voting (also known as vote by mail in the U.S.), and because of the imminent U.S. general elections.

2 Off. of Inspector Gen, 2020-255-R20, Processing Readiness of Election and Political Mail During the 2020 General Elections (2020), available at <https://www.uspsoig.gov/sites/default/files/document-library-files/2020/20-225-R20.pdf>.




Most postal services have been shifting resources away from flat mail (as it is displaced by email), to meet increased demand in parcel mail, which steadily grows with online commerce. While in most developed countries postal services still offer sufficient capacity to absorb abrupt surges in election mail, the processing time and postage for flat mail must be expected to increase in the long term.

The most effective distance voting administrations have scaled up operations over several electoral cycles, calibrating and perfecting capacity in increments and also in terms of election integrity safeguards.

But the COVID-19 pandemic has suddenly and exponentially increased the demand for distance voting. If compounded by scarce budget allocations, exponential postal voting demand poses considerable supply chain and risk management challenges for the retooling of smaller and less affluent jurisdictions. Centralization of procurement and absentee results processing, however, can mitigate pandemic-related capacity and budget shortages and improve economies of scale. To mitigate inherent logistics risks, planning for distance voting must be fully integrated into the general election operational plan, calendar and budget.

Regular mail correspondence between election administrators and voters can help keep voter registers current and accurate. Election mail – including ballots, envelopes and other instructions – must be carefully designed and field-tested to avoid voter, postal and election administration errors. Vetting of returned postal votes must avoid disqualifying valid votes on grounds of clerical voter or postal errors or omissions. Legal frameworks must provide for effective voter notification and curing mechanisms for errors and omissions.

 **If carefully planned, designed, funded and implemented, distance voting promises to foster a more inclusive and participatory electoral democracy.”**

If carefully planned, designed, funded and implemented, distance voting promises to foster a more inclusive and participatory electoral democracy. But distance vote results management might stretch stakeholder patience in rapidly scaled-up jurisdictions that have not yet fine-tuned their legal timelines. When rushed, underfunded and discredited, postal voting can lead to human error by election officials and vendors, which in turn can trigger recounts and electoral disputes. Election authorities, voters and politicians should therefore all be cognizant of the risks and rewards associated with rapidly scaling up a complex election service like postal voting during a pandemic.

# Introduction

The COVID-19 pandemic and its airborne transmission require that elections offer safe polling approaches that minimize large gatherings of voters.<sup>3</sup> This imperative has reinvigorated debate around alternative voting methods, including postal voting.

At the time of writing, 46 out-of-country voting frameworks offer postal voting,<sup>4</sup> and an equal number of nations allow postal voting for in-country voters as well, although the two categories do not coincide in all cases.<sup>5</sup> Several countries and 44 U.S. states allow *all* registered voters to vote by mail, regardless of whether they face individual impediments to casting their ballots in person.

Postal voting is just one type of *distance voting*. For the purposes of this paper, distance voting entails the marking and casting of paper ballots in *uncontrolled* environments.<sup>6</sup> Distance voting can, but does not necessarily need to, involve the postal system, since ballots can be delivered electronically, as in India,<sup>7</sup> as well as to Americans abroad, or in many countries to voters with disabilities.<sup>8</sup> Electronically delivered ballots can be printed at home, marked and then be cast in drop boxes or at polling centers, thereby entirely circumventing the postal service. In some countries, ballots can also be uploaded online.<sup>9</sup> In the U.S. state of Colorado, 80 percent of distance ballots are not returned by mail, but are cast into secure drop boxes in person, and this percentage increases with each electoral cycle.

In-country distance voting can generally be grouped into two categories: absentee voting and universal *postal voting*,<sup>10</sup> with the former requiring voters to request absentee ballots, while in the latter, every registered voter automatically receives a ballot at home. Mobile polling stations fall outside this paper's definition of distance voting, since they temporarily transplant a *controlled* environment to a distance voting location. Voting online (e-voting) is considered in a separate International Foundation for Electoral Systems publication<sup>11</sup> and also falls outside this paper's definition of distance voting, as it does not

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3 See Fernanda Buriel, et al., *Safeguarding Health and Elections*, IFES (2020), <https://www.ifes.org/publications/ifes-covid-19-briefing-series-safeguarding-health-and-elections>.

4 *Voting Method: Voting from Abroad Database*, Int'l Inst. Democracy & Electoral Assistance, <https://www.idea.int/data-tools/question-view/130352> (last visited Oct. 7, 2020).

5 *Comparative Data*, ACE Electoral Knowledge Network, <http://aceproject.org/epic-en/> (last visited Oct. 7, 2020).

6 Terminology introduced by the Venice Commission, 5th European Conference of Election Administrators on Distance Voting, Brussels, 2007.

7 *Electronically Transmitted Postal Ballot System*, Drishti (July 22, 2019), <https://www.drishtias.com/daily-updates/daily-news-analysis/electronically-transmitted-postal-ballot-system>.

8 U.S. Dep't Just., Uniformed and Overseas Citizens Absentee Voting Act (Feb. 18, 2020), <https://www.justice.gov/crt/uniformed-and-overseas-citizens-absentee-voting-act>.

9 For instance, for certain classes of voters in New Zealand.

10 Nat'l Conf. State Legis., *Voting Outside the Polling Place: Absentee, All-Mail and Other Voting at Home Options* (Sept. 24, 2020), <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx#collect>.

11 Meredith Applegate, et al., *Considerations on Internet Voting: An Overview for Electoral Decision-Makers*, IFES (2020), <https://www.ifes.org/publications/considerations-internet-voting-overview-electoral-decision-makers>.

generate paper-based audit trails.<sup>12</sup> While ample literature is available on out-of-country voting,<sup>13</sup> this paper offers the first international comparative analysis of paper-based *in-country* distance voting.

Over the past two decades, some countries have gradually introduced and expanded distance voting. Yet, the advent of email and growth in online shopping have compelled both public and private postal services to shift resources toward parcel mail, thereby diminishing postal service capacity to expeditiously handle abrupt surges in flat mail – including election mail. Nevertheless, a growing number of election administrations are seeing distance votes overtake votes cast in person on Election Day, which for an EMB entails juggling two concurrent election operations.

Introducing and scaling up distance voting comports upsides and downsides: Distance voting has stimulated voter participation – especially in low turnout elections and among voter segments least likely to turn out.<sup>14</sup> During the U.S. 2020 presidential primaries, the six states with the highest turnout predominantly offered postal voting to all registered voters.<sup>15</sup> And the introduction of universal postal voting in Switzerland reversed declining turnout in the 1990s.<sup>16</sup>

Distance voting also seems to correlate with more representation of women in U.S. state legislatures, according to research conducted by the National Vote at Home Institute.<sup>17</sup> Postal voting has long been available to voters with disabilities who might otherwise experience inaccessible transportation to the polls and inaccessible polling stations.<sup>18</sup> Indigenous communities, for instance Native Americans living on reservations in the United States, who may not have traditional addresses and live at great distances from the nearest post office or P.O. box, are reportedly finding postal voting a significant challenge.<sup>19</sup> In post-conflict elections, some refugees or internally displaced persons can rely on postal voting, as did for instance Bosnian refugees in Germany in the 1990s. However, postal voting requires knowledge

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12 For instance, in Germany in 2008.

See Bundesgerichtshof [BGH] [Federal Court of Justice] Mar. 3, 2009, 2 BvC 3/07 (Ger.), available at [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2009/03/cs20090303\\_2bvc000307en.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2009/03/cs20090303_2bvc000307en.html).

13 Peter Erben, et al., IFES, Out-of-Country Voting: A Brief Overview (2012), available at <https://www.ifes.org/publications/out-country-voting-brief-overview>; Andrew Ellis, et al., *Voting from Abroad: The International IDEA Handbook*, Int'l Inst. Democracy & Electoral Assistance (2007), available at <https://www.idea.int/publications/catalogue/voting-abroad-international-idea-handbook>.

14 *Research: State Info*, Nat'l Vote at Home Inst., <https://voteathome.org/state-info/> (last visited Oct. 7, 2020).

15 *2020 Primary Turnout as of 7/12: The Top 6 States, and 13 of the Top 15 are Mailed-Out Ballot Centric*, Nat'l Vote at Home Inst. (2020), <http://voteathome.wpengine.com/wp-content/uploads/2020/07/2020-Primary-turnout.pdf>.

16 Bundesamt für Statistik, Schweizerische Eidgenossenschaft, <https://www.bfs.admin.ch/bfs/de/home/statistiken/politik/wahlen/nationalratswahlen/wahlbeteiligung.html#1191469177> (last visited Oct. 7, 2020).

17 Nevada leads the nation, with Colorado, Oregon and Washington the next three states moving toward an equal number of men and women in state chambers. See *When Women Vote – Election Reform as a Roadmap to Equality*, Nat'l Vote at Home Inst., <https://voteathome.org/roadmap-to-equality/> (last visited Oct. 7, 2020).

18 Virginia Atkinson, et al., *Inclusion and Meaningful Political Participation*, Int'l Found. Electoral Sys. (2020), available at <https://www.ifes.org/publications/ifes-covid-19-briefing-series-inclusion-and-meaningful-political-participation>.

19 Native American Rights Fund, *Vote by Mail in Native American Communities*, <https://www.narf.org/vote-by-mail/> (last visited Oct. 9, 2020); Isaiah Murtaugh, “Mail Voting Doesn’t Work for Navajo Nation”: Native American Face Steep Election Hurdles, *Guardian* (Oct. 9, 2020, 8:00 EDT), <https://www.theguardian.com/us-news/2020/oct/09/native-americans-navajo-mail-voting-elections>.

of the number of internally displaced persons, where they are and for what constituencies they are voting, so it can be a complex process in many country contexts.<sup>20</sup>

Yet, in Poland and the U.S., postal voting has also become highly politicized.<sup>21</sup> In a May 2020 poll, three-fifths of Americans approved vote-by-mail, while one quarter opposed it.<sup>22</sup> In other contexts, such as New Zealand, Australia, Canada, Luxembourg, Germany, Austria, South Korea and Switzerland, it remains largely uncontroversial. Electoral officials and other state institutions must still weigh many factors in determining whether to offer alternative voting methods. Last-minute introduction or precipitous scaling up of postal voting can increase electoral integrity risks.

Whether or not a jurisdiction expands distance voting can hinge on partisan perceptions of whose voters it would attract, as well as on the level of trust in the EMB and the postal service. The degree to which jurisdictions embrace distance voting also responds to voter demand, as well as to comparative cost and administrative burden. While initial introduction of postal voting requires capital investment, its long-term operation can yield significant economies of scale. In New Zealand and Australia, for instance, postal voting has reduced per registered voter cost to a third of that for in-person polling.

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20 Aysha Shujaat, et al., *Internally Displaced Persons and Electoral Participation: A Brief Overview*, Int'l Found. Electoral Sys. (2016), <https://www.ifes.org/publications/internally-displaced-persons-and-electoral-participation-brief-overview>.

21 *Indiana Election Commission Stalemates on Vote-by-Mail Issue*, Associated Press (Aug. 14, 2020, 4:30 PM EDT), <https://cbs4indy.com/news/indiana-election-commission-stalemates-on-vote-by-mail-issue/>.

22 Zach Montellaro, *Republicans and Democrats Barrel Towards Collision on Voting by Mail*, Politico (May 13, 2020), <https://www.politico.com/news/2020/05/13/vote-mail-poll-255281>.

# Types of Distance Voting

## Absentee Voting

In *absentee voting*, voters must proactively *apply* to receive ballots by mail, or to download them online. Absentee voting can take many different modalities: Sweden, Norway and Denmark,<sup>23</sup> for instance, send every registered voter a voter card in the mail with which they obtain ballots in controlled polling environments. Only those Scandinavian voters who demonstrate impediments to travel to polling stations receive ballots at home and can return them by courier or proxy. Sweden has used post offices as polling stations for early voting but discontinued the practice in 2004.

Absentee voting (*Briefwahl*, *vote par correspondance*, *postal voting*) can also entitle any registered voter to request a postal ballot without excuse or demonstrated impediment, as is the case for instance in Germany, Luxembourg,<sup>24</sup> the United Kingdom<sup>25</sup> and 44 U.S. states.<sup>26</sup> Or it can require voters to give reasons, such as disability or advanced age. Sweden, Australia, Lithuania<sup>27</sup> and South Korea grant absentee status to voters who lack geographic access to polling stations, while in Japan, only voters with disabilities may vote by mail.<sup>28</sup> In Spain, voters must show notarized medical certificates to qualify for postal voting.<sup>29</sup> In India and Pakistan, only certain public officials may vote by distance.<sup>30</sup>

Other countries frame acceptable excuses more broadly, including religious practice (Australia), being prevented from attending a polling station on Election Day (Austria) or work-related absence from the

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23 Brevstemme til Europa-Parlamentsvalg: Enhver vælger kan brevstemme i enhver commune her i landet, Borger.dk, <https://www.borger.dk/samfund-og-rettigheder/Valgsystemet/Europa-Parlamentsvalg/Brevstemme-til-Europa-Parlamentsvalg> (last visited Oct. 7, 2020).

24 Postal Voting: Legislative Elections, Le Gouvernement Du Grand-Duché de Luxembourg, <https://elections.public.lu/en/systeme-electoral/legislatives-mode-emploi/vote-correspondance.html> (last visited Oct. 7, 2020).

25 With the exception of voters registered in Northern Ireland.

26 Kate Rabinowitz & Brittany Renee Mayes, *At Least 84% of American Voters can Cast Ballots by Mail in the Fall*, Wash. Post (Aug. 20, 2020), <https://www.washingtonpost.com/graphics/2020/politics/vote-by-mail-states/>.

27 Off. Democratic Inst. & Human Rights, Republic of Lithuania: Parliamentary Elections: October 2020 (2020), <https://www.osce.org/files/f/documents/2/f/449398.pdf>.

28 Public Office Election Act Law No. 100 of 1945, amended by Law No. 45 of 2020, art. 47(1) (Japan), available at [https://elaws.e-gov.go.jp/search/elawsSearch/elaws\\_search/lsg0500/detail?law-id=325AC1000000100#510](https://elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0500/detail?law-id=325AC1000000100#510). See also *How Does Voting Work in Japan?*, Quora (2019), <https://www.quora.com/How-does-voting-work-in-Japan?share=1> (last visited Oct. 7, 2020).

29 Sobre actuación notarial en el procedimiento de emisión del por correo (R.D. 557/1993) (Spain), available at [http://www.juntaelectoralcentral.es/cs/jec/normativa/estatal?idLeyJunta=104693&template=Loreg/JEC\\_Contenido](http://www.juntaelectoralcentral.es/cs/jec/normativa/estatal?idLeyJunta=104693&template=Loreg/JEC_Contenido).

30 In Pakistan, advanced postal voting was available in 2018 for people in government service; members of the armed forces, their spouses and children stationed outside the area where they were registered as voters; polling staff and security personnel on election duty; voters with physical disabilities; and prisoners and detainees. See EU Election Observation Mission, Islamic Republic of Pakistan: Final Report (2018), available at [http://www.eods.eu/library/final\\_report\\_pakistan\\_2018\\_english.pdf](http://www.eods.eu/library/final_report_pakistan_2018_english.pdf).

home polling district (Ireland),<sup>31</sup> making such jurisdictions de facto no-excuse regimes. In the U.S., eight states allow all older voters to vote absentee.<sup>32</sup>

Some jurisdictions automatically mail absentee ballot applications to all registered voters, which voters must complete and return to obtain a ballot by mail; there has been some controversy in Iowa about whether such application forms can be prefilled by election administrators.<sup>33</sup> In others, voters must proactively initiate absentee ballot requests. Most distance voting jurisdictions, including Australia,<sup>34</sup> Canada,<sup>35</sup> Germany,<sup>36</sup> Austria,<sup>37</sup> Luxembourg,<sup>38</sup> Poland,<sup>39</sup> U.S. uniformed and out-of-country voters and 17 U.S. states accept absentee ballot requests online, which obviates time-consuming manual data entry by election administrators. Eight other U.S. states accept scanned and signed requests as email attachments,<sup>40</sup> while New Zealand fields absentee ballot requests by phone.

Germany mails QR-coded voter cards to every registered voter before each election, and most counties (*Kreise*) have online portals for absentee ballot request that can read in the QR code to process the application and automatically mark the voter off the register to prevent double voting.

To further simplify the process, the U.S. states of Michigan,<sup>41</sup> Arizona, California, Minnesota, Montana, New Jersey and Washington, D.C., register absentee voters on permanent absentee lists without reasons given, while Australia,<sup>42</sup> Slovenia<sup>43</sup> and four other U.S. states do so based on certain criteria.<sup>44</sup> Permanent absentee voters then automatically receive absentee ballots for future elections. Maintaining permanent absentee voter lists has served as a steppingstone to introduce universal postal voting, once a majority of voters opt into the permanent absentee voter register.

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31 Registering to Vote, Citizens Information, [https://www.citizensinformation.ie/en/government\\_in\\_ireland/elections\\_and\\_referenda/voting/registering\\_to\\_vote.html#l5150c](https://www.citizensinformation.ie/en/government_in_ireland/elections_and_referenda/voting/registering_to_vote.html#l5150c) (last visited Oct. 7, 2020).

32 Nat'l Conf. State Legis., VOPP: Table 2: Excuses to Vote Absentee (Apr. 2, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-2-excuses-to-vote-absentee.aspx>.

33 Rick Hasen, *Judge Blocks Iowa Directive on Absentee Ballot Applications*, Election L. Blog (Oct. 5, 2020), [https://electionlawblog.org/?p=116237&utm\\_source=feedburner&utm\\_medium=email&utm\\_campaign=Feed%3A+electionlawblog%2FuqCP+%28Election+Law%29](https://electionlawblog.org/?p=116237&utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+electionlawblog%2FuqCP+%28Election+Law%29).

34 Austl. Electoral Comm'n, How to Vote by Mail, [https://www.aec.gov.au/About\\_AEC/Publications/easy-read/files/vote-mail-easy-eng.pdf](https://www.aec.gov.au/About_AEC/Publications/easy-read/files/vote-mail-easy-eng.pdf).

35 Elections Can., Apply to Vote by Mail, <https://www.elections.ca/Voting-by-mail> (last visited Oct. 7, 2020).

36 Bündnis 90 Die Grünen, European Election 2019 – Online European Election Tool, <http://network.gruene-washington.de/SitePages/europawahl2019.aspx> (last visited Oct. 7, 2020).

37 Bundesministerium Inneres, Elections, <https://www.bmi.gv.at/412/Briefwahl.aspx> (last visited Oct. 7, 2020).

38 Le Gouvernement Du Grand-Duché de Luxembourg, MyGuichet.lu (last visited Oct. 7, 2020).

39 Via the ePUAP public services platform.

40 Nat'l Conf. State Legis., VOPP: Table 6: States with Web-Based and Online Absentee Ballot Applications (Aug. 8, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-6-states-with-web-based-and-online-absentee-ballot-applications.aspx>.

41 *Residents Can Sign Up for Permanent Absentee Voter List*, Midland Daily News (Apr. 3, 2020, 5:23 PM EDT), <https://www.ourmidland.com/news/article/Residents-can-sign-up-for-nbsp-permanent-absentee-15177915.php>.

42 Austl. Electoral Comm'n, General Postal Voters, [https://www.aec.gov.au/Enrolling\\_to\\_vote/Special\\_Category/general-postal-voters.htm](https://www.aec.gov.au/Enrolling_to_vote/Special_Category/general-postal-voters.htm) (last visited Oct. 7, 2020).

43 Republic of Slovenia, Postal Votes Within Slovenia, <https://www.dvk-rs.si/index.php/en/where-and-how-to-vote/postal-votes-within-slovenia> (last visited Oct. 7, 2020).

44 Nat'l Conf. State Legis., VOPP: Table 3: States With Permanent Absentee Voting for All Voters, Voters With Permanent Disabilities and/or Senior Voters (Apr. 27, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-3-states-with-permanent-absentee-voting-for-all-voters-voters-with-permanent-disabilities-and-or-senior-voters.aspx>.



## Universal Postal Voting

In *universal postal voting*, election administrators mail ballots to every voter included on the general voter register without the need for voters to apply or be included in a separate absentee voter list. Switzerland and the U.S. states of Oregon, Colorado, Washington, Utah and Hawaii permanently operate universal postal voting – making distance voting the rule, rather than the exception.

New Zealand has universalized postal voting for referendums and local elections for more than 20 years<sup>45</sup> – without opening any polling stations.<sup>46</sup> Australia holds plebiscites and most local elections by universal postal voting.<sup>47</sup> The United Kingdom has also piloted universal postal voting and seen temporary increases in turnout.<sup>48</sup> A number of jurisdictions have temporarily instituted universal postal voting during the pandemic, including Bavaria, New Jersey, California, Nevada, Vermont and Washington, D.C.

Universal postal voting is cheaper and simpler than absentee voting, because it entails a maximum of two mail transactions instead of four and operates with reduced in-person polling centers. Universal postal voting, however, relies on up-to-date voter registers, since blank ballots could otherwise be delivered to obsolete voter addresses. The legal frameworks of Austria, Luxembourg and South Korea eliminate this risk by requiring that blank ballots be dispatched by *registered* mail, so that voters must personally sign for receipt – a costly safeguard that not all distance-voting jurisdictions can shoulder.<sup>49</sup> Double voting can be prevented through use of barcoded inner ballot envelopes, so that once a ballot is received by the election authority, the voter is marked off the voter register and thus cannot submit a second ballot or vote in person.

Some countries, including Sweden, Norway and Denmark, allow voters to change their postal vote by voting in person on Election Day, because earlier votes cast in those jurisdictions are repatriated to their polling stations of registration and can thus be canceled during in-person voting. Some U.S. states like Michigan allow voters to cancel and change their absentee vote in person, albeit before and not on Election Day.<sup>50</sup>

In the U.S., the states that operate universal postal voting compare voter affidavit signatures on postal ballot return envelopes with legacy signatures on file to guard against voter impersonation. Some U.S. states that scale up absentee voting will also run signature checks, for instance against the voter signature recorded on the absentee ballot request. However, only five U.S. states have adopted signature-matching guidelines.<sup>51</sup> Universal postal voting administrators also state that their frequent mail interaction with

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45 *Democracy and Governance Support Working Party*, SOLGM, [https://www.solgm.org.nz/Article?Action=View&Article\\_id=133](https://www.solgm.org.nz/Article?Action=View&Article_id=133) (last visited Oct. 7, 2020).

46 *New Zealand: Jacinda Ardern Delays Election over Coronavirus Fears*, BBC (Aug. 17, 2020), <https://www.bbc.com/news/world-asia-53796434> (last visited Oct. 7, 2020).

47 Electoral Commission SA, Postal Voting, <https://www.ecsa.sa.gov.au/voting/postal-voting> (last visited Oct. 7, 2020).

48 Toby S. James *Fewer Costs, More Votes? United Kingdom Innovations in Election Administration 2000–2007 and the Effect on Voter Turnout*, 10 *Election L. J.: Rules, Pol., & Pol'y.* 37, 37–52, available at [doi:10.1089/elj.2009.0059](https://doi.org/10.1089/elj.2009.0059).

49 See e.g., Nationalrats-Wahlordnung (NRWO) 1992 [National Council Election Regulations], Bundesrecht konsolidiert No. 471/1992 § 39 Abs. 5 Z 4.

50 Fox 47 News, *How to Change your Absentee Ballot*, Youtube (Mar. 3, 2020), <https://www.youtube.com/watch?v=uPBqpsdYMbE>.

51 Larry Buchanan & Alicia Parlapiano, *Two of These Mail Ballot Signatures Are by the Same Person. Which Ones?*, N.Y. Times (Oct. 7, 2020), <https://www.nytimes.com/interactive/2020/10/07/upshot/mail-voting-ballots-signature-matching.html>.

voters keeps voter registers current.<sup>52</sup> Nearly all countries studied here, as well as 41 U.S. states, now offer online voter registration, which facilitates continuous updating of registrations by voters.<sup>53</sup>

Figure 1: Absentee Voting Overview

Stage of Distance Voting Evolution	Type of Voters Permitted to Vote Absentee	Country Examples <sup>54</sup>
Out-of-country distance voting only	Expatriates only	Italy, Greece, France, Latvia, Bosnia and Herzegovina, Slovakia, Finland, Portugal
Profession-based in-country absentee voting	Civil servants only	India, Pakistan
Excuse-based in-country absentee voting	Only certain groups, such as older voters and voters with disabilities	Canada, Spain, South Korea, Japan, Sweden, Denmark, Norway, Ireland, Australia, Indiana, Louisiana, Mississippi, Tennessee
No excuse absentee voting	Any registered voter by proactive request	United Kingdom, Germany, Luxembourg, North Carolina, South Carolina, Georgia, Virginia
No excuse absentee voting sending all registered voters a ballot application	Every registered voter receives an application from the EMB	Austria (2016), Arizona, Nebraska, Ohio, Iowa, Minnesota, Wisconsin, Illinois, Maryland, Delaware, Connecticut, Massachusetts, Rhode Island, Maryland
No excuse absentee voting with permanent absentee voter list for specific groups of voters	Permanent absentee voter list maintained for older voters or voters with disabilities	Australia, Slovenia, Connecticut, Kansas, Delaware, Louisiana, Mississippi, Nevada, New York, Tennessee, West Virginia, Wisconsin <sup>55</sup>
No excuse absentee voting with permanent absentee voter list	A permanent absentee voter list is maintained for any voter who seeks permanent absentee status	Minnesota, Montana, New Jersey, California, Arizona
Universal postal voting where countries may choose to mail ballots to all registered voters	All registered voters receive ballots	Poland, New Zealand (2020 parliamentary election) California, Montana, Nebraska, North Dakota
Universal postal voting mailing every registered voter a ballot	Jurisdictions that automatically mail ballots to all registered voters for each election	Switzerland, New Zealand referendums, Australia local elections, Bavaria (2020) Colorado, Utah, Hawaii, Washington, Oregon

52 Alexa Corse, et al., *GOP Seeks to Match Democrats in Mail-In Vote Applications Amid Trump Criticism*, Wall Street Journal (Aug. 23, 2020), <https://www.wsj.com/articles/gop-seeks-to-match-democrats-in-mail-in-vote-applications-amid-trump-criticism-11598101200>.

53 Nat'l Conf. State Legis., *Online Voter Registration* (Aug. 19, 2020), <https://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx>.

54 *How to Vote by Mail in Every State*, Wall Street Journal (Sept. 18, 2020, 3:08 PM ET), <https://www.wsj.com/articles/how-to-vote-by-mail-in-every-state-11597840923>; Kate Rabinowitz & Brittany Renee Mayes.

55 Nat'l Conf. State Legis., *VOPP: Table 3: States With Permanent Absentee Voting for All Voters, Voters With Permanent Disabilities and/or Senior Voters* (Apr. 27, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-3-states-with-permanent-absentee-voting-for-all-voters-voters-with-permanent-disabilities-and-or-senior-voters.aspx>.



# Impact of the Pandemic

Some stakeholders see voter gatherings at polling stations on Election Day as a venerated democratic ritual. However, such agglomeration can be difficult to reconcile with COVID-19 social distancing regulations, especially in indoor polling stations. Moreover, many poll workers are older, and thus part of the COVID-19 risk group, leading to attrition of legacy poll worker rosters. Travel restrictions and voter reluctance to use public transport and to enter crowded indoor premises all limit the ability to vote in person.<sup>56</sup> The pandemic has therefore multiplied demand for distance voting, both in the U.S. and abroad.

The U.S. state of Kentucky, for instance, saw its share of absentee voting skyrocket from previously 2 to 75 percent of votes cast at its 2020 primary.<sup>57</sup> In response to the pandemic, California,<sup>58</sup> Nevada, Washington, D.C., New Jersey<sup>59</sup> and Vermont<sup>60</sup> have decided to mail ballots to every registered voter for the 2020 general elections, while New Zealand, Poland, Nebraska and North Dakota allow individual counties to decide whether to hold elections entirely by mail during the public health crisis.<sup>61</sup> Overall, 18 U.S. states have loosened their requirements for absentee voting, inviting up to 190 million Americans, or 83 percent of the electorate, to vote by distance.<sup>62</sup>

COVID-19 health regulations also forced the German state of Bavaria to opt into universal postal voting for its municipal election run-off – on less than two weeks’ notice. German law requires counting of distance ballots by stand-alone absentee voting subcommittees at district level, rather than at polling stations. The Bavarian results were announced promptly and remain undisputed.

Poland failed to reach political consensus on introducing no-polling-station universal postal voting for its presidential election during the peak of the pandemic. The opposition and the international community resisted the government’s universal postal voting package, since it vested the ministry overseeing the postal service with critical election management powers, thereby sidelining Poland’s independent election commission. Because of the political backlash against postal voting, the election was ultimately postponed and held in person, but saw interest in distance voting significantly increase, especially among

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56 Amber Reynolds, Nat’l Vote at Home Inst., *Vote at Home Scale Plan* (Mar. 2020), [http://voteathome.wpengine.com/wp-content/uploads/2020/07/VAHScale\\_StrategyPlan.pdf](http://voteathome.wpengine.com/wp-content/uploads/2020/07/VAHScale_StrategyPlan.pdf).

57 U.S. Election Assistance Comm’n, *Lessons Learned from the 2020 Primary Elections*, Youtube (July 8, 2020), <https://youtu.be/juOcVyW-Du0>.

58 S.B.450 (Cal. 2015), available at <https://elections.cdn.sos.ca.gov/vca/sb450-chaptered-legislation.pdf>.

59 Tracey Tully, *New Jersey Will Hold Mail-In Election in November, Over Trump’s Objections*, N.Y. Times (Aug. 14, 2020), <https://www.nytimes.com/2020/08/14/nyregion/nj-vote-by-mail-election.html>.

60 Kate Rabinowitz & Brittany Renee Mayes, *At Least 84% of American Voters can Cast Ballots by Mail in the Fall*, Wash. Post (Aug. 20, 2020), [https://www.washingtonpost.com/graphics/2020/politics/vote-by-mail-states/?hpid=hp\\_politics1-8-12\\_mailvote-630am-pol-615p%3Ahomepage%2Fstory-ans&itid=hp\\_politics1-8-12\\_mailvote-630am-pol-615p%3Ahomepage%2Fstory-ans](https://www.washingtonpost.com/graphics/2020/politics/vote-by-mail-states/?hpid=hp_politics1-8-12_mailvote-630am-pol-615p%3Ahomepage%2Fstory-ans&itid=hp_politics1-8-12_mailvote-630am-pol-615p%3Ahomepage%2Fstory-ans).

61 Michelle Ye Hee Lee, *What’s the Difference Between Absentee and Mail-In Voting*, Wash. Post (Aug. 18, 2020), <https://www.washingtonpost.com/politics/2020/08/18/whats-difference-between-absentee-mail-in-voting/>.

62 Kate Rabinowitz & Brittany Renee Mayes, *At Least 84% of American Voters can Cast Ballots by Mail in the Fall*, Wash. Post (Aug. 20, 2020), <https://www.washingtonpost.com/graphics/2020/politics/vote-by-mail-states/>.

out-of-country voters. The Polish experience demonstrates the risks of expanding distance voting in polarized political contexts, especially where the postal service is politically controlled.<sup>63</sup>

A survey conducted by Canada's election commission found that during the pandemic, 22 percent of voters would prefer voting by mail, while 58 percent expressed preference for early in-person voting.<sup>64</sup> Canadian political parties are also interested in postal voting for their internal processes.<sup>65</sup> With its low COVID-19 infection rate, New Zealand opted to postpone its 2020 general election to be held in person, rather than conducting it by postal ballot only.<sup>66</sup> And despite its high infection rate, Italy's 2020 referendum reserved postal voting for overseas citizens, relying on postal services in countries such as Brazil and Argentina to deliver out-of-country ballots to its embassies, while denying in-country voters such safety and convenience.

For the 2020 U.S. primaries, some election administrators lacked sufficient time to efficiently scale up absorption capacity for the exponential surge in absentee voting demand.<sup>67</sup> Moreover, the pandemic caused attrition of older at-risk counting staff, leading to capacity shortages for managing distance voting results. The USPS has also suffered staff shortages because of COVID-19 infections, leading to delays in delivering election mail.

Yet, provision of distance voting options remains imperative for at-risk voters, as long as the pandemic persists. Moreover, once a majority of voters successfully vote by distance, universalization often follows and stays, such as in Switzerland, New Zealand, Oregon, Colorado, Washington, Utah and Hawaii. Distance voting is popular, because voters can mark ballots at home without having to travel to and stand in line at polling stations. Oregon's all-mail voting system, for instance, received an 87 percent approval rating.<sup>68</sup>

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63 Vasil Vashchanka, *Political Manoeuvres and Legal Conundrums Amid the COVID-19 Pandemic: the 2020 Presidential Election in Poland*, Int'l Insti. Democracy & Electoral Assistance (2020), available at <https://www.idea.int/sites/default/files/political-manoeuvres-and-legal-conundrums-2020-presidential-election-poland.pdf>.

64 *Canada Expects Huge Jump in Mail Ballots in a Pandemic Vote*, AP News (Aug. 27 2020), <https://ap-news.com/97af1b12dd9c24268218e8e13eb92b90>.

65 Canada's Conservative Party decided to hold its 2020 party-internal elections entirely by mail. See Jim Morris, *Canada's Conservatives Vote Wholly by Mail for a New Leader*, ABC News (Aug. 22, 2020), <https://abc-news.go.com/International/wireStory/canadas-conservatives-vote-wholly-mail-leader-72541949>.

66 *New Zealand: Jacinda Ardern Delays Election Over Coronavirus Fears*, BBC (Aug. 17, 2020), <https://www.bbc.com/news/world-asia-53796434>.

67 Pam Fessler & Elena Moore, *More Than 550,00 Primary Absentee Ballots Rejected In 2020, Far Outpacing 2016*, NPR (Aug. 22, 2020), <https://www.npr.org/2020/08/22/904693468/more-than-550-000-primary-absentee-ballots-rejected-in-2020-far-outpacing-2016>.

68 Nat'l Vote at Home Inst., Research: State Info, <https://www.voteathome.org/wp-content/uploads/2018/12/Oregon-Public-Broadcasting-Statewide-Survey-October-2016-2.pdf> (last visited Oct. 9, 2020).

# Distance Voting Challenges

## Ensuring an Accurate Voter Register

As with other forms of voting, the integrity of the election process depends on the accuracy of the voter register. In New Zealand for instance, a significant number of voters were disenfranchised in 2016, because they had not updated their voter address changes prior to the dispatch of referendum ballots.<sup>69</sup> In Switzerland, out-of-country voters, but not in-country voters, are deactivated if election mail is returned three times.

In the U.S., the process for election administrators to update voter addresses and to deactivate or remove voters varies state by state. Georgia, for example, sent absentee ballot request forms to all registered voters for the 2020 presidential primary election, and mailed follow-up letters to those voters whose request forms were returned as undeliverable.<sup>70</sup> If Maryland election officials receive information indicating that a voter has moved within the state, they will mail a forwardable address confirmation notice. If the voter fails to return the confirmation notice, the voter will be marked “inactive.” Voters will be returned to the active registration list if they interact within two general elections.<sup>71</sup>

Between 90 and 120 days before each general election, New Mexico sends a preaddressed postcard with prepaid postage to any voter identified as having a change of address based on National Change of Address (NCOA) data, or who has had nonforwardable mail returned to county or state election officials. These voters are all marked “inactive” in the voter file. If the voter returns the postcard indicating a new address in the county, the registration record is updated and reactivated. If the voter does not return the notice, or if it returns as undeliverable, and the voter does not vote in the next two general elections, the record can be removed.<sup>72</sup>

U.S. states that maintain permanent absentee voter lists use different triggers for deactivating or removing

### The U.S. Postal Service

While some international postal services have recently been privatized, for instance those of Denmark, Sweden, Germany, Switzerland and Austria, the USPS remains a self-funding government agency. Like many of its international peers, USPS is gradually transitioning its business model from letter carrier to last-mile parcel delivery. In terms of postal capacity to handle election mail, the USPS inspector general claims that if every registered voter received and returned a ballot by mail in the November 2020 general elections, it would represent less than 1.4 percent of the USPS’ average monthly volume.<sup>73</sup>

69 Electoral Commission, Report of the Electoral Commission on the First and Second Referendums on the New Zealand Flag (May 26, 2016), <https://elections.nz/assets/2015-and-2016-flag-referendums/report-on-the-2015-and-2016-flag-referendums.pdf>.

70 Jim Denery, *Thousands of Georgia Voters Will Soon be Marked as Inactive*, Governing (Aug. 21, 2020), <https://www.governing.com/next/Thousands-of-Georgia-Voters-Will-Soon-Be-Marked-As-Inactive.html>.

71 Nat’l Conf. State Legis., Voter List Accuracy (Mar. 30, 2020), <https://www.ncsl.org/research/elections-and-campaigns/voter-list-accuracy.aspx#removing%20names>.

72 N.M.Stat. Ann. §1-428 et seq.; N.M. Stat Ann. §§1-4-33 –38; N.M. Code R. §1.10.35.9.

73 Off. of Inspector Gen., 20-255-R20, Processing Readiness of Election and Political Mail During the 2020 General Elections (2020), available at <https://www.uspsog.gov/sites/default/files/document-library-files/2020/20-225-R20.pdf>.

voters.<sup>74</sup> While the USPS makes the NCOA database available to all states, only 36 have so far chosen to use it.<sup>75</sup> And while election administrators for New Zealand's referendums and Bavaria's pandemic run-off election did not open any polling stations, U.S. universal postal voting jurisdictions operate limited numbers of polling centers to accommodate late and same-day voter registration.

## Relying on the Postal Service for Polling

In many countries, the postal service predates democracy. In Italy, the postal service originated in 1290,<sup>76</sup> in Germany in 1490 and in Poland in 1558. In the U.S., the postal service is the oldest federal government agency, predating the Declaration of Independence. Postal services can offer critical and affordable conduits for election administrators to reach voters not only abroad, but also in remote corners of the national territory. Entrusting blank and marked ballot papers to the postal service, however, constitutes a delegation of an EMB's duty of care. Some national electoral frameworks therefore expressly empower EMBs to delegate chain-of-custody responsibilities, as in Australia<sup>77</sup> and New Zealand.<sup>78</sup>

Other legal frameworks presume that if the postal service's public service mandate and laws make tampering with the mail a punishable offense, ballots can be sent through the mail. Some frameworks, however, remain unclear on whether ballot custody can be outsourced also to private vendors,<sup>79</sup> including courier services,<sup>80</sup> which, for example, Italy uses for some out-of-country voters. Other provisions may exclude private vendors; for example, the use of private couriers would fail the statutory postmark requirements of 19 U.S. states.<sup>81</sup>

## Ensuring Independent and Impartial Delivery

The United Nations Human Rights Committee suggests that "An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible" with the International Covenant on Civil and Political Rights.<sup>82</sup> While many democracies enshrine independent election management

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74 Nat'l Conf. State Legis., VOPP: Table 4: State Laws On Removing Voters from Permanent Absentee Lists (Apr. 20, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-4-state-laws-on-removing-voters-from-permanent-absentee-lists.aspx>.

75 Alison Durkee, *Postal Service Didn't Update 1.8 Million Addresses While Mail-In Voting Was Underway*, Forbes (Sept. 28, 2020), <https://www.forbes.com/sites/alisondurkee/2020/09/28/postal-service-didnt-update-18-million-addresses-while-mail-in-voting-was-underway/#1b3490e434cc>.

76 *Thurn and Taxis Postal System: European History*, Britannica, <https://www.britannica.com/topic/Thurn-and-Taxis-postal-system> (last visited Oct. 7, 2020).

77 Article 4, Definitions: Courier service means a service that provides for the collection, at the request of a person using the service, of an article from a place specified by or on behalf of that person and the delivery of the article to another place so specified, being a service approved by an Australian electoral officer or the electoral commissioner. See *Commonwealth Electoral Act 1918* (Austl.), available at <https://www.legislation.gov.au/Details/C2019C00103>.

78 Referenda (Postal Voting) Act 2000, s. 12 (N.Z.).

79 Jacob Bogage & Colby Itkowitz, *FedEx and UPS are Wary of Delivering Ballots for the November 2020 Election*, Wash. Post (Aug. 15, 2020), <https://www.washingtonpost.com/business/2020/08/15/postal-service-ballots-fedex-ups/>.

80 *Id.*

81 Nat'l Conf. State Legis., VOPP: Table 11 Receipt and Postmark Deadline for Absentee Ballots (Sept. 29, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-11-receipt-and-postmark-deadlines-for-absentee-ballots.aspx>.

82 UN Human Rights Committee (HRC) CCPR General Comment No. 25: Article 25 (Participation in the Right to Vote), *The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, 12 July 1996, CCPR/C/21/Rev.1/Add/7, available at <https://www.refworld.org/docid/453883fc22.html>.

or oversight bodies in their constitutions, several also entrench the autonomy of the postal service therein. The Bolivian constitution even makes access to the postal service a fundamental right.<sup>83</sup> Many constitutions expressly vest control over the postal service in the legislature, such as Australia,<sup>84</sup> Canada,<sup>85</sup> Ethiopia,<sup>86</sup> Germany,<sup>87</sup> Austria, Kenya,<sup>88</sup> Micronesia,<sup>89</sup> Palau,<sup>90</sup> Taiwan<sup>91</sup> and the U.S. No framework examined here, however, renders the postal service expressly and directly accountable to relevant election administrators for the handling of election mail.

Some constitutions shield the postal service from privatization, for instance those of Uruguay,<sup>92</sup> Bulgaria<sup>93</sup> and Equatorial Guinea.<sup>94</sup> Despite its postal service privatization, the German constitution guarantees adequate and appropriate postal services, and the consent of the Bundesrat is required regarding fees or basic principles for the use of postal facilities.<sup>95</sup> The Swiss constitution similarly provides adequate, universal and reasonably priced provision of postal and telecommunications services in all regions of the country.<sup>96</sup>

Postage price controls have recently sparked controversy in the U.S., while the appointment of a new postmaster general has ushered in service changes that some stakeholders see as partisan interference in electoral processes.<sup>97</sup> Congressional oversight in the U.S. has compelled the new postmaster general to commit to prioritizing election mail.<sup>98</sup> The impartiality of the USPS has also been questioned on grounds of partisan candidate endorsements by postal worker unions.<sup>99</sup> The threat of postal worker strikes imperiled election mail delivery in the United Kingdom in 2019 and politicized the Royal Mail

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83 Bolivian Const., art. 20(I) (2009), available at [https://www.constituteproject.org/constitution/Bolivia\\_2009.pdf](https://www.constituteproject.org/constitution/Bolivia_2009.pdf) ("Every person has the right to universal and equitable access to basic services of potable water, sewer systems, electricity, gas services in their domicile, postal, and telecommunications services.").

84 *Australian Constitution*, art. 51 ("The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: (...) postal, telegraphic, telephonic, and other like services.").

85 Constitution Act, 1982, art. 91, *being* Schedule B to the Canada Act, 1982, c 11 (Can.).

86 Ethiopian Const., art. 55 (1994).

87 Grundgesetz [GG] [Basic Law], art. 73(1), translation at [http://www.gesetze-im-internet.de/englisch\\_gg/englisch\\_gg.html#p0338](http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0338).

88 Constitution, Fourth Schedule (2010) (Kenya).

89 Constitution, art. IX(2) (Micr.).

90 Constitution, art. IX(5) (Palau).

91 Constitution, art. 107 (Taiwan).

92 Transitional Provisions E (Uru.).

93 Constitution, art. 18(4) (Bulg.) ("A state monopoly shall be establishable by law over railway transport, the national postal and telecommunications networks, the use of nuclear energy, the manufacturing of radioactive products, armaments and explosive and powerful toxic substances.").

94 Constitution, art. 29(1) (Eq. Guinea) ("The following are resources and services reserved to the public sector: (...) c. The mail services, telecommunications and transportation.").

95 Grundgesetz [GG] [Basic Law], arts. 80 & 87F, translation at [http://www.gesetze-im-internet.de/englisch\\_gg/englisch\\_gg.html#p0338](http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0338).

96 Bundesverfassung [BV] [Constitution] Apr. 19, 1999, art. 92 (Switz.).

97 *What the Postal Service Crisis Means for the November Election*, Brennan Center for Just. (Aug. 19, 2020), <https://www.brennancenter.org/our-work/research-reports/what-postal-service-crisis-means-november-election>.

98 Cristina Marcos & Maggie Miller, *DeJoy Defends Postal Service Changes at Combative House Hearing*, The Hill (Aug. 24, 2020, 4:48 PM EDT), <https://thehill.com/homenews/house/513430-dejoy-defends-postal-service-changes-at-combative-house-hearing>.

99 Sahil Kapur, *Postal Carriers Union Endorses Biden Warns that "Survival" of USPS is at Stake*, NBC News (Aug. 14, 2020, 1:08 PM EDT), <https://www.nbcnews.com/politics/2020-election/postal-workers-union-endorses-biden-warns-survival-usps-stake-n1236768>.



there.<sup>100</sup> France maintains postal voting out of country, but replaced it in country with proxy voting in 1975, partially because the postal service and its unions were not perceived as politically impartial.<sup>101</sup>

## Cost and Speed of Mail Service

When election administrators use the postal service, they have a number of service options to dispatch and repatriate sensitive election material to and from voters. In some countries, the law defines those options, while in other instances the EMB will decide the service option to use, often predicated on election timelines and/or cost implications. Late decisions to introduce or expand existing postal voting can drastically impact election costs, forcing the EMB to use express delivery services rather than regular mail.

Conversely, when planned well in advance, distance voting can reduce costs as compared to in-person polling station voting, especially once a jurisdiction shifts to universal postal voting.<sup>102</sup> Operating in-person and distance voting elections concurrently at the same scale, however, can be more costly than operating one of the two at reduced scale.

New Zealand holds elections predominantly in person, while it conducts standalone referendums by universal postal vote with the same voter register, allowing direct cost comparison. Its 2013 single-round referendum cost 9 million New Zealand dollars,<sup>103</sup> or less than NZ\$3 per registered voter, which compares favorably with the cost of NZ\$8.18 per registered voter for the last parliamentary elections. Australia made the same experience with its postal-vote-only “Marriage Equality Plebiscite,” which cost 80 million Australian dollars<sup>104</sup> and thus compares favorably to the cost of AU\$227 million of its last general elections.<sup>105</sup> In 2014, Pew research on Colorado showed \$6 savings per voter through introducing universal postal voting. Other jurisdictions are reporting savings of \$2 to \$5 per voter per

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100 Bill Gardner & Gordon Rayner, *Postal Union Accused of Plot to Wreck General Election with “Politically Calculated” Strike*, The Telegraph (Nov. 5, 2019), <https://www.telegraph.co.uk/politics/2019/11/05/postal-strike-union-accused-plot-wreck-general-election-politically/>.

101 *Pour réduire la fraude électorale, le vote par correspondance est supprimé*, Le Monde (Nov. 13, 1975, 12:00 AM), [https://www.lemonde.fr/archives/article/1975/11/13/pour-reduire-la-fraude-electorale-le-vote-par-correspondance-est-supprime\\_2584876\\_1819218.html](https://www.lemonde.fr/archives/article/1975/11/13/pour-reduire-la-fraude-electorale-le-vote-par-correspondance-est-supprime_2584876_1819218.html).

102 Colorado Voting Reforms: Early Results: 2013 Election Overhaul has Yielded Greater Efficiency and a Better Experience for Citizens, Pew (Mar. 22, 2016), <https://www.pewtrusts.org/en/research-and-analysis/is-sue-briefs/2016/03/colorado-voting-reforms-early-results>.

103 Resounding Vote Against Asset Sales in Referendum, New Zealand Herald (Dec. 13, 2013), [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11172228](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11172228).

104 Austl. Bureau of Statistics, Report on the Conduct of the Australian Marriage Law Postal Survey 2017 (2017), [https://web.archive.org/web/20180201110900/http://www.abs.gov.au/ausstats/abs@.nsf/6630eff-525d4cdc1ca25763e0075754f77cbde85f96095fa4ca25822400162fc2/\\$FILE/Report%20on%20the%20conduct%20of%20the%20Australian%20Marriage%20Law%20Postal%20Survey%202017.pdf](https://web.archive.org/web/20180201110900/http://www.abs.gov.au/ausstats/abs@.nsf/6630eff-525d4cdc1ca25763e0075754f77cbde85f96095fa4ca25822400162fc2/$FILE/Report%20on%20the%20conduct%20of%20the%20Australian%20Marriage%20Law%20Postal%20Survey%202017.pdf).

105 Heath Pickering, *Election Could Cost \$227 Million*, Univ. Melbourne, [https://electionwatch.unimelb.edu.au/australia-2016/articles/2016-federal-election-to-cost-\\$227-million](https://electionwatch.unimelb.edu.au/australia-2016/articles/2016-federal-election-to-cost-$227-million) (last visited Oct. 7, 2020).

election. Orange County, California, expects to save \$29 million by moving to universal postal voting in 2020.<sup>106</sup>

Postage expenditure decreases with the number of secure drop boxes available to voters, since postal services invoice prepaid return postage only for those election mail items it actually processes for return. Postage cost also varies with ballot size and weight. Absentee voting countries and jurisdictions that accept absentee ballot requests online also save on print, processing and postage costs when compared to those that mail out absentee ballot applications and require them to be mailed back. Online absentee ballot request portals also expedite data entry and allow automation of ballot dispatch. Most international postal voting frameworks studied here allow online absentee ballot requests, including Australia, Canada, Germany, Austria, Luxembourg and Poland.

Class of mail service chosen can further impact overall cost. The U.S. National Voter Registration Act of 1993 requires the USPS to charge state and local election offices the same postage as nonprofit mailers. In the past, USPS treated election mail like first-class mail, but a recent USPS letter sent to election officials around the country suggests that election mail will now be treated like regular nonprofit mail – typically three to 10 days for delivery – and that it may take as long as 15 days.<sup>107</sup> USPS also weighs non-first-class election mail, which can hold up processing.<sup>108</sup> Many states already use first-class service to send ballots to voters, but some states moved to standard mail for the outbound trip as their vote-by-mail populations burgeoned.<sup>109</sup> As of now, USPS still does not delay delivery of ballots addressed to an election office due to insufficient postage.<sup>110</sup> Overall, USPS performance has slowed in 2020, and done so geographically unevenly, which could attract charges of partisan bias.<sup>111</sup>

No other country's election management discussed in this paper pays postage as low as U.S. marketing mail rates to dispatch ballots to voters. Some election laws even specify what class of mail services must be used to dispatch outbound blank ballots: Austria, Luxembourg and South Korea,<sup>112</sup> for instance, require

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106 Jordan Graham, *Orange County Will Switch to Vote Centers in 2020, a Move Aimed at Boosting Turnout and Cutting Costs*, Orange County Register (June 28, 2019, 2:30 PM), <https://www.ocregister.com/2019/02/26/orange-county-will-switch-to-vote-centers-in-2020-a-move-aimed-at-boosting-turn-out-and-cutting-costs/>; Labor costs were reduced by the elimination of traditional assigned, in-person polling places. A separate Pew study highlighted the problems faced in recruiting and training poll workers nationally. Colorado's shift to voting centers has sharply reduced its number of polling locations and poll workers. Colorado reduced its poll workers from 16,000 to fewer than 4,000 and the number of locations from more than 1,800 to just 300 across its 64 counties. Although rental costs increased, believed attributable to the need for internet connections in vote centers to allow poll workers access to the state's registration database in real time, cost reductions in other categories more than offset this increase. Capital equipment costs decreased significantly, primarily with the reduced need for voting machines at traditional polling locations. Colorado spent about one-tenth of what it would have cost on a new voting system post-implementation. Postage cost varies with ballot size.

107 Ruth Y. Goldway, *I Was a Postal Service Regulator for 18 Years. Don't Panic.*, N.Y. Times (Aug. 18, 2020), <https://www.nytimes.com/2020/08/18/opinion/usps-vote-by-mail.html>.

108 U.S. Election Assistance Comm'n, *Lessons Learned from the 2020 Primary Elections*, Youtube (July 8, 2020), <https://youtu.be/juOcVyW-Du0>.

109 Luke Broadwater & Hailey Fuchs, *A New Clash Over Mail Voting: The Cost of the Postage*, N.Y. Times (Aug. 11, 2020), <https://www.nytimes.com/2020/08/11/us/politics/post-office-mail-in-voting.html>.

110 Off. of Inspector Gen., 20-255-R20, *Processing Readiness of Election and Political Mail During the 2020 General Elections* (2020), available at <https://www.uspsaig.gov/sites/default/files/document-library-files/2020/20-225-R20.pdf>.

111 Emily Badger, et al., *Is the Mail Getting Slower? Our Tracker Says Yes*, N.Y. Times (Oct. 5, 2020), <https://www.nytimes.com/interactive/2020/09/14/upshot/is-the-mail-getting-slower-tracker.html?action=click&module=Top%20Stories&pgtype=Homepage>.

112 Public Officials Election Act, Act No. 103033, Mar. 17, 2010, art. 37(1) & 154(4) (S. Kor.).

blank ballots to be posted by registered mail to avoid stray ballots, while in Bosnia and Herzegovina, out-of-country voters must return completed ballots by registered mail.<sup>113</sup>

Some U.S. state laws also stipulate the type of mail service to be used, such as Florida's Election Code, notably *nonforwardable, return-if-undeliverable mail*<sup>114</sup> – a choice that can create problems for voters who have recently moved, but have not yet amended their voter registration address, because USPS redirects only parcels to forwarding addresses pursuant to the postal automated redirection system PARS<sup>115</sup> database (NCOA), but not flat mail.<sup>116</sup> Nonforwardable mail became an issue in New Zealand's 2016 flag referendum, when tens of thousands of voters who had recently moved, but had not updated their voter registration, did not receive their ballots. The election commission had not sent a precursor mailer before dispatching actual ballots.<sup>117</sup>

Many laws examined for this paper require prepaid ballot return postage, including those of Austria, Germany, Luxembourg, Switzerland, South Korea,<sup>118</sup> the United Kingdom<sup>119</sup> and New Zealand. In the U.S., currently 17 states legally require local election officials to provide return postage for mailed ballots, typically through business reply mail (BRM).<sup>120</sup> New Jersey allows county clerks to decide whether to prepay return postage, which can lead to unequal treatment of voters within a state.<sup>121</sup> Earmarked funding to federally reimburse counties and states for election mail postage had been tabled since 2009, but it has never passed both houses of the U.S. Congress.<sup>122</sup> Private sponsors stepped in to underwrite the cost of scaling up postal voting in the U.S.<sup>123</sup> Denying prepaid postage could incentivize distance voters to use secure drop boxes to avoid buying stamps, but providing greater numbers of drop boxes in turn requires election administrators to make capital investments and raises their operational costs.

## Ballot Chain of Custody

When compared to in-person voting at polling stations, distance voting requires special safeguards to allow election administrators to account for and to reconcile the number of blank ballots released through the post office with the number of returned votes. In traditional polling station settings, polling staff physically reconcile the number of voters marked off the polling station voter list against the

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113 Office Democratic Inst. & Human Rights, Bosnia and Herzegovina: General Elections 7 October 2018 (2018), available at [https://www.osce.org/files/BiH%202018%20General%20-%20final%20report%20with%20MM\\_upd.pdf](https://www.osce.org/files/BiH%202018%20General%20-%20final%20report%20with%20MM_upd.pdf).

114 Fla. Stat. § 101.62.

115 U.S. Postal Service, What's PARS?, [https://link.usps.com/tips\\_of\\_the\\_day/whats-pars/](https://link.usps.com/tips_of_the_day/whats-pars/) (last visited Oct. 7, 2020).

116 *Id.*

117 Electoral Commission, Report of the Electoral Commission on the First and Second Referendums on the New Zealand Flag (May 26, 2016), <https://elections.nz/assets/2015-and-2016-flag-referendums/report-on-the-2015-and-2016-flag-referendums.pdf>.

118 Public Officials Election Act, Act No. 103033, Mar. 17, 2010, art. 28(1) (S. Kor.).

119 The Representation of the People (England and Wales) Regulations 2001, 2001 No. 341, Part V (79(1) (Eng. & Wales)).

120 Nat'l Conf. State Legis., VOPP: Table 12: States With Postage-Paid Election Mail (Sept. 14, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-12-states-with-postage-paid-election-mail.aspx>.

121 N.J. Stat. Ann. §19:63-12.

122 National Disaster and Emergency Ballot Act (NEBA) of 2020, <https://www.wyden.senate.gov/imo/media/doc/Natural%20Disaster%20and%20Emergency%20Ballot%20Act%20of%202020%20One%20Pager.pdf> (last visited Oct. 7, 2020).

123 Jesse McKinley & Luis Ferré-Sadurní, N.Y. Voting Officials Need Money. They Were Told to Go to Zuckerberg, N.Y. Times (Oct. 2, 2020), <https://www.nytimes.com/2020/10/02/nyregion/voting-absentee-ballots-ny.html>.



number of ballots cast, spoiled, invalidated or unused. Conversely, in distance voting contexts, the election administration relinquishes custody of blank ballots to the post office, which in turn delivers them to voters, who handle them in uncontrolled environments prior to returning the completed ballots to the election authority using various options. This requires election administrators to track ballots outside their custody.

Distance voting will inherently produce discrepancies between the number of ballots provided to voters through the mail and the number of votes cast, but this is not necessarily indicative of wrongdoing. Discrepancies manifest for two reasons: 1) Voters who request and receive ballots may ultimately choose not to vote; and 2) blank or marked ballots can be misdirected during the outbound or inbound mail stream, if they are lost, stolen, damaged or delayed in the mail system (thereby “leaking” from the postal/voter chain of custody). The latter phenomenon has the potential to erode public confidence in an election’s integrity, unless properly explained by the EMB – even if the number of such unaccounted ballots is lower than the margin of victory.

Most election administrators consulted for this study are not yet systematically compiling statistics on postal ballot loss, leakage or delay. In Switzerland and the U.S. for instance, it is especially difficult to compile such statistics nationally, because postal vote results management is devolved to cantons or counties, not all of which account, for instance, for undeliverable or late-returned ballots. The USPS provides data on timely delivery of election mail, but not on the status or whereabouts of the 3 to 4 percent of election mail not delivered on time thus far in 2020, or not delivered at all.<sup>124</sup>

It has been estimated that more than 28 million ballots remain unaccounted for over the past four U.S. federal election cycles; this figure would include abstentions.<sup>125</sup> No counts of voter claims for lost or delayed ballots are required by legislation in the U.S. at the federal level. New Zealand, however, has compiled useful statistics of such claims during its 2016 referendum, which highlighted the need to update voter addresses prior to dispatching blank ballots.<sup>126</sup>

Election mail loss and misdirection also occurs elsewhere: Canada’s formatting of voter card mailers has created problems with automated processing, for example, delaying the sorting and delivery of 500,000 voter cards in Ontario Province in 2018.<sup>127</sup> In Germany in 2009, Deutsche Post AG sorting facilities left behind several hundred postal votes for the European Parliament elections.<sup>128</sup> And in 2018, a local election had to be rerun in Sweden after the privatized Postnord misplaced an outcome-determinative

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124 Off. of Inspector Gen., 20-255-R20, Processing Readiness of Election and Political Mail During the 2020 General Elections (2020), available at <https://www.uspsoig.gov/sites/default/files/document-library-files/2020/20-225-R20.pdf>.

125 Mark Hemingway, *28 Million Mail-In Ballots Went Missing in Last Four Elections*, RealClear Politics (Apr. 24, 2020), [https://www.realclearpolitics.com/articles/2020/04/24/28\\_million\\_mail-in\\_ballots\\_went\\_missing\\_in\\_last\\_four\\_elections\\_143033.html#!](https://www.realclearpolitics.com/articles/2020/04/24/28_million_mail-in_ballots_went_missing_in_last_four_elections_143033.html#!).

126 Electoral Commission, Report of the Electoral Commission on the First and Second Referendums on the New Zealand Flag (May 26, 2016), <https://elections.nz/assets/2015-and-2016-flag-referendums/report-on-the-2015-and-2016-flag-referendums.pdf>.

127 Adrian Ghobrial & Dilshad Burman, *Canada Post Confirms “Processing Issue” Led to Delay in Voter Card Delivery*, CityNews (May 30, 2018, 6:42 PM EDT), <https://toronto.citynews.ca/2018/05/30/canada-post-voter-card-delivery-delay/>.

128 *Post vergisst 800 Stimmen der Europawahl*, Berliner Morgenpost (June 19, 2009, 7:43 PM), [http://www.morgenpost.de/berlin/article1116191/Post\\_vergisst\\_800\\_Stimmen\\_der\\_Europawahl.html](http://www.morgenpost.de/berlin/article1116191/Post_vergisst_800_Stimmen_der_Europawahl.html).

## Use of Ballot Drop Boxes in the United States as of October 2020

Drop boxes directly link the ballot chain of custody between voters and the election administration. In the U.S., about half the states offer drop boxes, but [only eight state laws](#) currently govern how drop boxes should operate. In [California](#), outdoor drop boxes must be secured by a lock, which only election officials and the designated ballot retriever can unlock. In the 10 days leading up to the election, ballots must be retrieved every 24 hours. In [Colorado](#), drop boxes are sturdy, metallic, weather resistant and bolted to the ground. According to [Colorado law](#), drop boxes must be kept under 24-hour video surveillance, and they are emptied every 24 hours by a team of bipartisan election judges.

[Wisconsin](#) plans to double its fleet of drop boxes for the general elections, and Maricopa County in Arizona indicated that its drop boxes would be staffed full time. An ongoing [lawsuit](#) alleges that Pennsylvania did not properly monitor its drop boxes during the presidential primary and asked a federal court to ban the use of drop boxes or allow poll watchers to guard the boxes. In early September, the [Pennsylvania legislature](#) proposed prohibiting drop boxes. In Texas and [Ohio](#), the secretary of state has barred localities from operating more than one drop box per county. Conversely, lawsuits in [New York and Maine](#) attempt to compel provision of drop boxes. [Maryland](#) has more than tripled its number of planned drop boxes compared with the June primary, up from 75 statewide to 270. In August 2020, [Virginia](#) voted to install drop boxes. Meanwhile, election administrators and nongovernmental organizations are installing [GPS drop box locators](#) online.

pouch with 145 ballots. The affected county later failed to recover the rerun cost from Postnord, since it was not privy to the contract between the national election commission and Postnord.<sup>129</sup>

When compared to casting ballots in controlled polling stations, distance voting's greatest vulnerability lies in entrusting marked ballots to the postal service for delivery to the election administration for validation and counting. All distance voting jurisdictions examined here therefore provide for alternatives to handing over marked ballots to the postal service.<sup>130</sup> Absentee ballots can often be cast in person at early voting centers or election administration offices, either by voters personally, or by a proxy – before and on Election Day. In the U.S., some jurisdictions offer drive-through curbside postal ballot sites as well.<sup>131</sup> In Germany and Switzerland, county offices maintain drop boxes.<sup>132</sup> As far back as 2002, more than 42 percent of German absentee voters personally cast their ballots in municipal drop boxes, and only 52 percent mailed them back,<sup>133</sup> while in Colorado, more than 80 percent of voters use drop

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129 *Kräver desed av Valmyndigheten om skadeståndskrav mot Postnord*, Falun (May 13, 2020), <https://www.falun.se/kommun--demokrati/kommun--demokrati/2020-05-13-kraver-besked-av-valmyndigheten-om-skadestandskrav-mot-postnord.html>.

130 U.S. Election Assistance Comm'n, Interview 1: Preliminary Planning for Increase Vote by Mail Capacity, <https://www.eac.gov/videos/interview-1-preliminary-planning-increased-vote-mail-capacity> (last visited Oct. 7, 2020).

131 Nick Corasaniti, et al., *Postal Crisis Has States Looking for Alternatives to Mail-In Ballots*, N.Y. Times (Sept. 23, 2020), <https://www.nytimes.com/2020/08/17/us/politics/postal-service-voting.html>.

132 During the Bavarian municipal elections runoff, staff forgot to empty a county drop box, so that the count had to be postponed by one day. *Wirren der Stichwahl in Bayern: Spaenle feiertwohl doch noch Comeback – Gemeinde übersieht 340 Wahlbriefe*, Wa.de (Apr. 1, 2020, 5:42), <https://www.wa.de/politik/stichwahl-ergebnisse-bayern-2020-kommunalwahl-ingolstadt-nuernberg-augsburg-buergermeister-corona-zr-13631865.html>.

133 Frank Bettschneider, et al., *Die Bundestagswahl 2002: Analysen der Wahlergebnisse und des Wahlkampfes*, Band 10 der Schriftenreihe des Arbeitskreises „Wahlen und Politische Einstellungen“ der Deutschen Vereinigung für Politische Wissenschaft (2004) (ISBN 3810041238).

boxes. In Austria, New Zealand and Australia,<sup>134</sup> absentee ballots can be cast on Election Day at any polling station across the nation. Only election administration personnel empty drop boxes, often in the presence of party agents, who conversely have no access to the postal chain of ballot custody.

## Debates Around Ballot Collection

The question of whether absentee voters must personally mail or drop off their absentee ballots remains controversial in some settings. Third parties returning ballots in bulk on behalf of voters is known as ballot collection or *ballot harvesting*, which some stakeholders fear can open the door to undue voter influence, including breaches of voting secrecy.<sup>135</sup>

In 2020, for example, the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) criticized Poland's discarded draft postal voting bill, since it allowed a completed ballot to be returned by a person other than the voter without limit on the number of voted ballots a person could return. The OSCE/ODIHR found that this could lead to a practice of agents collecting completed ballots on behalf of a candidate or facilitate schemes to influence voter choices, including family voting, or intentional spoiling of ballots.<sup>136</sup>

In a few U.S. states, such as Alabama, the voter must personally return the ballot. Ten states allow family members to return a ballot for a voter, and 26 states allow the voter to designate any person to return their ballot for them. Thirteen states are silent on the issue. Among the 26 states that let voters designate anyone to return their ballot, 12 limit the number of ballots any one person can collect and return.

California legalized ballot harvesting in 2018,<sup>137</sup> while in Montana, a court issued a restraining order against the ban on ballot harvesting, because of hardship on Native Americans in returning ballots from remote parts of reservations.<sup>138</sup> In New Jersey, no one can "harvest" more than three ballots. In 2018, an election was annulled in North Carolina, because a candidate was involved in returning manipulated absentee ballots. Eight individuals were indicted for forging ballot-witnessing signatures.<sup>139</sup> Recently, an Oregon civil society organization collected 97 ballots to drop off but misplaced them temporarily and then did not get them to the election office until the day after the election. While the court found it was an honest mistake, the initial fine was \$1,000 per ballot.<sup>140</sup>

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134 *Commonwealth Electoral Act 1918*, art. 194 (Austl.), available at <https://www.legislation.gov.au/Details/C2019C00103>.

135 Gregory S. Schneider, *Virginia General Assembly Votes to Expand Access to Absentee Voting, Create Ballot Drop Boxes*, Wash. Post (Aug. 28, 2020), [https://www.washingtonpost.com/local/virginia-politics/virginia-voting-ballot-drop-boxes/2020/08/28/2a50f55a-e7cf-11ea-97e0-94d2e46e759b\\_story.html](https://www.washingtonpost.com/local/virginia-politics/virginia-voting-ballot-drop-boxes/2020/08/28/2a50f55a-e7cf-11ea-97e0-94d2e46e759b_story.html).

136 Organization for Security & Co-operation in Europe, *Opinion on the Draft Act on Special Rules for Conducting the General Election of the President of the Republic of Poland Ordered in 2020* (Senate Paper No. 99) (Apr. 27, 2020), <https://www.osce.org/odihr/elections/poland/450856>.

137 Mark Hemingway, *28 Million Mail-In Ballots Went Missing in Last Four Elections*, RealClear Politics (Apr. 24, 2020), [https://www.realclearpolitics.com/articles/2020/04/24/28\\_million\\_mail-in\\_ballots\\_went\\_missing\\_in\\_last\\_four\\_elections\\_143033.html#!](https://www.realclearpolitics.com/articles/2020/04/24/28_million_mail-in_ballots_went_missing_in_last_four_elections_143033.html#!).

138 Nat'l Conf. State Legis., *Moving to All-Mail Elections: Promises and Challenges*, Youtube (May 21, 2020), <https://www.youtube.com/watch?v=IfC5RCDsj2o> (referring to statement made by Charles Stewart).

139 Richard Gonzales, *North Carolina GOP Operative Faces New Felony Charges That Allege Ballot Fraud*, NPR (July 20, 2019, 10:29 PM ET), <https://www.npr.org/2019/07/30/746800630/north-carolina-gop-operative-faces-new-felony-charges-that-allege-ballot-fraud>.

140 Rob Schofield, *National Absentee Ballot Expert: Five Things NC Needs to Fix*, The Progressive Pulse (Mar. 5, 2019), <http://pulse.ncpolicywatch.org/2019/03/05/absentee-ballot-expert-five-things-nc-needs-to-fix/>.

New Zealand allows voters to designate any registered voter to return their ballot on their behalf.<sup>141</sup> The United Kingdom<sup>142</sup> and Switzerland<sup>143</sup> do not require designees to be registered voters, but Switzerland sanctions systemic organized ballot harvesting.<sup>144</sup> Voters can nevertheless entrust their distance ballot to a member of their household. Sweden allows voters to delegate vote casting to a circumscribed class of individuals, without limiting the number of ballots such designee can cast.<sup>145</sup>

Australia introduced criminal penalties for not posting election mail entrusted to a third party,<sup>146</sup> as well as for inducing another person to “hand over to the person a postal ballot paper on which a vote has been recorded.”<sup>147</sup> However, “if the person (the elector) cannot read or is so disabled as to be unable to vote without assistance, another person chosen by the elector may, according to the directions of the elector, post the ballot on their behalf.”<sup>148</sup>

The United Kingdom Law Commission has debated regulating ballot harvesting, but ultimately concluded that it is “entirely legitimate for political parties to encourage electors to vote, be it in person or by post, and that allowing political parties to handle application forms drives up election turnout.” It was suggested by the Electoral Commission that legislation should create an offense of taking an elector’s uncompleted postal ballot pack from them, and that it should more clearly define an existing offense of opening or altering the contents of a completed postal ballot pack.<sup>149</sup> As of writing, voters must show ID when dropping ballots in the drop box.<sup>150</sup>

A legal requirement that only the voter may cast the ballot in drop boxes is met by the practical impossibility of controlling who drops absentee ballots into postal service sidewalk mailboxes. Older voters, voters who are sick and voters with disabilities should also be allowed to entrust their marked and sealed absentee ballots to third parties to mail or drop with the election administration.

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141 Referenda (Postal Voting) Act 2000, arts. 38–40 (N.Z.) Articles 38-40, New Zealand Referendum (Postal Voting) Act 2000; <http://www.legislation.govt.nz/act/public/2000/0048/latest/DLM73881.html>.

142 U.K Election Commission, Voting by Post, <https://www.electoralcommission.org.uk/i-am-a/voter/voting-person-post-or-proxy/voting-post> (last visited Oct. 7, 2020).

143 Bundesgesetz ueber die Ausuebung Politischer Rechte, art. 5(6) (Switz.), <https://www.admin.ch/opc/de/classified-compilation/19760323/201511010000/161.1.pdf>.

144 Artikel 282bis des Schweizerisches Strafgesetzbuch (StGB) ist das *planmässige* Einsammlung von Wahl- oder Stimmzetteln widerrechtlich. Erforderlich ist ein planmässiges Handeln, d.h. ein Verhalten, das sich auf eine grössere Zahl von Wahl- oder Stimmzetteln bezieht.

145 *Voting by Proxy*, Valmyndigheten (Feb. 17, 2020), <https://www.val.se/servicelankar/other-languages/english-engelska/to-vote/voting-by-proxy.html>.

146 *Commonwealth Electoral Act 1918*, s. 198 (Austl.), available at <https://www.legislation.gov.au/Details/C2019C00103>.

147 *Commonwealth Electoral Act 1918*, s. 194(1) (Austl.), available at <https://www.legislation.gov.au/Details/C2019C00103>.

148 *Commonwealth Electoral Act 1918*, s. 194(1) (Austl.), available at <https://www.legislation.gov.au/Details/C2019C00103>.

149 Securing the Ballot: Report of Sir Eric Pickles’ Review into Electoral Fraud (2016), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/545416/eric\\_pickles\\_report\\_electoral\\_fraud.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/545416/eric_pickles_report_electoral_fraud.pdf).

150 Meryl Korfield & Felicia Sonmez, *Texas Governor’s Limit on Drop-Off sites for Mail-In Ballots Criticized as Voter Suppression*, Wash. Post (Oct. 1 2020), <https://www.washingtonpost.com/politics/2020/10/01/texas-voting-abbott/>.

# Operationalizing Distance Voting

Operational planning for distance voting is as involved as for in-person voting. Sufficient lead time for voter education, procurement, testing, training and staffing is key to successfully introducing and widely implementing distance voting.

## Pre-Election Considerations

### Electoral and Postal Coordination

In distance voting that utilizes the postal service, election administrations and postal services share logistics and operations. The New Zealand election commission, for instance, convenes a joint task force with the postal service for the planning of its universal postal voting referendums the year before polling. Colorado publishes its USPS-approved universal postal voting calendar online.<sup>151</sup>

Highly decentralized election administrations face steep planning complexities: In decentralized systems, such as Austria, Germany, Switzerland or the U.S., a mosaic of local or regional election and postal managers plan often heterogeneous operations for their respective jurisdictions. The USPS reported 39,000 meetings with the approximately 8,880 county clerks and secretaries of state in 2020 alone. Congressional hearings revealed that the USPS does not develop a holistic nationwide operational plan for the general elections.<sup>152</sup> Conversely, New Zealand responded to this year's expected pandemic-induced surge in postal voting by centralizing not only dispatch, but also results management of returning postal votes.

Theoretically, postal voting spreads out Election Day over several weeks, which can ease operationalization and allow correction of errors by the election authority.<sup>153</sup> Gradually and organically grown distance voting administrations have scaled up postal voting operations over several electoral cycles, calibrating capacity in small increments. But the pandemic's sudden and exponential growth in distance voting demand, compounded by scarce budget allocations, raises considerable supply chain concerns for the retooling of smaller jurisdictions.

Traditional in-person voting relies on large numbers of polling stations, as well as recruitment and training of hundreds of thousands of short-term poll workers. In contrast, distance voting requires much fewer staff – but for longer periods. Distance voting may also require less but heavier and more expensive equipment. If used, envelope slicers, optical signature scanners and high-speed ballot sorters and counters can cost up to \$475,000 each.<sup>154</sup> Finding sufficient funds and lengthy procurement processes can challenge election administrators. Counties that already use optical scan ballot counters

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151 Colo. Sec. State, 2020 Election Calendar (Sept. 15, 2020), <https://www.sos.state.co.us/pubs/elections/calendars/2020ElectionCalendar.pdf> (last visited Oct. 7, 2020).

152 Nicolas Wu, *Postmaster General DeJoy Says He Will Stop Postal Service Changes Until After November Election*, USA Today (Aug. 19, 2020), <https://www.msn.com/en-us/news/politics/postmaster-general-dejoy-says-he-will-stop-usps-changes-until-after-november-election/ar-BB186R0U>.

153 Nat'l Conf. State Legis., *Let's Talk About Voting Outside the Polling Places*, Youtube (June 2, 2020), <https://www.youtube.com/watch?v=jUrAdipXb4I&feature=youtu.be>.

154 Andrew Taylor & Christina A. Cassidy, *Ready or Not: Election Costs Soar in Prep for Virus Voting*, AP News (July 13, 2020), <https://apnews.com/e45861c909404e1f5e65a23d8db1b546>.



for in-person votes must ascertain whether their ballot size and weight capacity align with USPS election mail standards.<sup>155</sup>

Even those countries or states that plan to roll out their full pre-pandemic polling station footprint on Election Day – like Maryland in the U.S. – will still face distance voting demand far above that of the primaries. Counties in several states have hence opted to centralize printing and dispatching election mail at the state level, but most of the 8,880 U.S. counties must locally process returning paper-based absentee ballot applications, as well as returning postal ballots.<sup>156</sup> Centralization could help counties overcome time and budget crunches, as well as pandemic-related staff shortages.<sup>157</sup>

During the first COVID-19 peak, Bavaria held its municipal election run-off by universal postal voting on two weeks' notice but drew on statewide strategic stockpiles of envelopes. Elections were managed at the county level, and only some counties barcoded election mail. Bavaria did not match return ballot signatures against preexisting databases either, as most U.S. states will, so that the Bavarian implementation forfeited good postal voting practice for the sake of expedience and COVID-19 safety.

In the U.S., any tasks that postal voting automation already expedites in some states with a longer history of extensive distance voting might have to be performed manually in states or counties that have more limited legacy infrastructure for distance voting. Lack of automation in turn increases the need for scarce human resources and related human error rates – or bias – which could create critical bottlenecks in answering absentee ballot requests and in receiving and processing returning distance ballots.<sup>158</sup>

## Election Mail Barcoding and Tracking

Election mail barcoding establishes audit trails that can expose mail-stream bottlenecks or biases in mail processing, as well as extract statistics on delayed, lost or misdirected election mail.<sup>159</sup> As of August 2020, New Zealand and South Korea,<sup>160</sup> as well as Iowa, Kentucky, Michigan and Wisconsin,<sup>161</sup> legally require use of intelligent mail barcoding for election mail. Since 2016, USPS service type identifiers, a form of intelligent mail barcoding, can pull election mail out from the routine mail stream to prioritize it.<sup>162</sup>

Postal barcoding should not be confused with EMB-designed inner envelope barcoding or QR coding, which allows election administrators to mark returning ballots off the register to prevent double voting. Intelligent mail barcoding can provide information on the whereabouts of election mail while in postal custody, while election management barcodes or QR codes track when election mail leaves and reenters

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155 Vote At Home, Orange County, CA Mailed Ballot Processing, Youtube (Mar. 14. 2020), <https://youtu.be/puwnzsjlBK4>.

156 <https://www.ohiosos.gov/globalassets/media-center/news/2020/2020-09-01.pdf>.

157 Kate Brumback, *Georgia Board Approves Online Absentee Ballot Request Portal*, AP News (Aug. 10, 2020), <https://apnews.com/14015584f36f0820dda49dd44d693b1b>.

158 The National Vote at Home Institute therefore offers an operational resource allocation simulator. See *Election Officials Operation Toolkit*, Nat'l Vote at Home Inst., <https://voteathome.org/elections-officials-operational-toolkit/> (last visited Oct. 7, 2020).

159 <https://postalpro.usps.com/mailing/service-type-identifiers>

160 Public Officials Election Act, Act No. 103033, Mar. 17, 2010, art. 154 (S. Kor.).

161 Elise Viebeck, *More Than 500,000 Mail-In Ballots Were Rejected in the Primaries. That Could Make the Difference in Battleground States This Fall.*, Wash. Post (Aug. 23, 2020), [https://www.washingtonpost.com/politics/rejected-mail-ballots/2020/08/23/397fbc92-db3d-11ea-809e-b8be57ba616e\\_story.html](https://www.washingtonpost.com/politics/rejected-mail-ballots/2020/08/23/397fbc92-db3d-11ea-809e-b8be57ba616e_story.html).

162 Watch Now: Free Vote at Home Webinars for Election Officials, Ctr. Tech & Civic Life (Jan. 6, 2020), <https://www.techandcivicle.org/vote-at-home/#> (last visited Oct. 7, 2020).

EMB custody and whether a returning ballot is accepted in terms of signature match or witnessing requirements.

Election management barcodes or QR codes can throw off postal service barcode readers, so they should not be applied to outer envelopes.<sup>163</sup> While Deutsche Post AG charges 1 euro extra for barcoding,<sup>164</sup> the USPS includes encoding with no extra charge for prepaid BRM,<sup>165</sup> as well as for qualified BRM, which generates voter addresses with ZIP+4 postal codes.<sup>166</sup> Barcoding even reduces postage for outbound ballots or ballot applications, if dispatched as bulk or mass marketing mail.<sup>167</sup>

Based on data analyzed from the U.S. 2018 general election season, about 31.1 million ballots were cast by mail, but only 4.1 million (13 percent) election mail pieces used barcodes.<sup>168</sup> Conversely, U.S. military votes are end-to-end traceable through Department of Defense Label 11 up to the point of election office acceptance, so that voters can trace dispatched and returning ballots from the local election administration to the relevant military base post office and back.

In August 2020, the USPS inspector general found that some election boards have chosen to continue using excess stock of ballot envelopes without barcodes and that some lack the funding for integrating the use of barcodes in their mailing processes. The USPS inspector general recommended mandatory mail piece tracking for all election mail.<sup>169</sup> For the 2020 general elections, 45 U.S. states offer some form of ballot tracking.<sup>170</sup>

## Election Mail Design

Election mail must be carefully designed as it has implications for both cost and timeliness of mail processing and effective tracking. The design may also impact the rate of missing voter signatures or postmarks, which determine ballot validity. The USPS, as well as Austrian,<sup>171</sup> German<sup>172</sup> and British<sup>173</sup> postal services, appoints election mail focal points to advise election administrators on effective mail design. The USPS provides exhaustive online guidance on election mail design, such as *Kit 660*, which advises on automation and postage compliance.<sup>174</sup>

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163 U.S. Election Assistance Comm'n, *Interview 2: Preliminary Planning for Increasing Vote by Mail Capacity*, Youtube (Mar. 31. 2020), <https://youtu.be/H9TeKknZt80>.

164 Sendungsverfolgung: Wo ist meine Post?, Deutsche Post DHL Group, <https://www.deutschepost.de/de/s/sendungsverfolgung.html> (last visited Oct. 7, 2020).

165 Business Reply Mail, USPS Postal Explorer, <https://pe.usps.com/MailpieceDesign/Index-?ViewName=BRMIntroduction> (last visited Oct. 7, 2020).

166 United States Postal Service, How Do I Get Started with BRM/QBRM?, [https://about.usps.com/kits/kit600/kit600\\_online\\_019.htm](https://about.usps.com/kits/kit600/kit600_online_019.htm) (last visited Oct. 7, 2020).

167 Scott Hochberg, *Intelligent Mail Barcoding for USPS Bulk Mailing*, Postage Saver, <https://savepostage.com/bulkmail101/barcoding.html> (last visited Oct. 7, 2020).

168 Off. of Inspector Gen., 20-255-R20, Processing Readiness of Election and Political Mail During the 2020 General Elections (2020), available at <https://www.uspsoig.gov/sites/default/files/document-library-files/2020/20-225-R20.pdf>.

169 *Id.*

170 *Plan Your Vote*, ABC News, <https://www.nbcnews.com/specials/plan-your-vote-state-by-state-guide-voting-by-mail-early-in-person-voting-election/> (last visited Oct. 7, 2020).

171 Briefwahl zue Wien-Wahl 2020, Briefwahl, <https://www.post.at/p/c/briefwahl> (last visited Oct. 7, 2020).

172 Wahlen, Deutsche Post DHL Group, <https://www.deutschepost.de/de/w/wahlen.html> (last visited Oct. 7, 2020).

173 Postal Voting: Rely on Royal Mail for Postal Voting Services, Royal Mail, <https://www.royalmail.com/corporate/electoral-services/postal-voting> (last visited Oct. 7, 2020).

174 United States Postal Service, Kit 600, 2020 Official Election Mail (Jan. 2020), <https://about.usps.com/kits/kit600/welcome.htm> (last visited Oct. 7, 2020).

Distance voters mark ballots in the privacy of their home, without poll worker guidance. Rates of under- and over-votes have thus perhaps been higher in distance voting than in in-person polling station voting. Bullet-point format voter instructions and clear ballot design can help reduce rates of invalid ballots and ensure that voters understand double envelope requirements – without clear instructions, voters may return “naked ballots” without the required inner secrecy envelopes.<sup>175</sup> Differently color-coding absentee ballot request envelopes from return ballot envelopes can prevent inadvertent, premature opening of the latter by election staff, as occurred in Pennsylvania.<sup>176</sup>

Downloadable PDF ballots and inner and outer envelopes also merit careful design considerations. Braille or large print can ease ballot marking and returning for voters with disabilities. Return envelopes should inform voters about secure drop box locations and opening hours, and election mail formats should allow automated postmarking and avoid envelope indicia that can prevent postmarking. Voters should also be instructed not to seal the envelope using saliva, but rather moisten the adhesive section using a damp napkin. Drop boxes can be labeled to remind voters to sign, date and have their ballot witnessed according to relevant regulations.

The USPS inspector general has recommended adopting a nationally uniform election mail piece design.<sup>177</sup> New Zealand follows unique election mail piece design and its experience shows that uniform design can avoid election mail loss and delay in the postal chain, since each mail piece conforms to postal service sorting and postmarking equipment standards. Absentee ballots can also be disqualified if envelopes are damaged or opened. In Austria, a presidential election had to be postponed because self-adhesive envelopes came undone,<sup>178</sup> while in Switzerland, an overly transparent envelope model had to be replaced.

## Voting Periods and Cutoff Dates

While distance voting grants voters more time to complete ballots, it must ultimately be framed by cutoff dates, establishing when voters must request absentee ballots, when they must drop them in drop boxes or with the postal service, and when returning ballots must be postmarked and/or received by the election administration. Voters must have sufficient notice of these dates, and the postal service must have sufficient time to deliver election mail within those timeframes.

Pre-electoral timelines differ between absentee voting and universal postal voting, because the former can entail two postal round trips (one for requesting absentee ballots), whereas universal postal voting requires only one. Universal postal voting regimes can hence initiate the process later than absentee voting regimes. Nine of the 10 U.S. states that deploy universal postal voting for the November general election begin sending out blank ballots only in October.

Conversely, paper-based absentee ballot request states, such as Ohio, must send out absentee ballot

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175 Michael Tenenbaum, *Pennsylvania’s “Naked Ballot” Ruling Will “Cause Electoral Chaos,”* Philly Commissioner Warns, Philly Voice (Sept. 21, 2020), <https://www.phillyvoice.com/naked-ballots-pennsylvania-2020-election-mail-in-absentee-trump-biden/>.

176 Carrie Johnson, *Feds, In Unusual Statement, Announce They’re Investigating a Few Discarded Ballots*, NPR (Sept. 24, 2020, 4:32 PM ET), <https://www.npr.org/2020/09/24/916633925/feds-in-unusual-statement-announce-theyre-investigating-discarded-pa-ballots>.

177 Off. of Inspector Gen., 20-255-R20, Processing Readiness of Election and Political Mail During the 2020 General Elections (2020), available at <https://www.uspsaig.gov/sites/default/files/document-library-files/2020/20-225-R20.pdf>.

178 Österreich-Wahlverschiebung: Entscheidung wird um 11:00 Uhr bekannt gegeben, EPOCH Times (Sept. 12, 2016), <https://www.epochtimes.de/politik/europa/oesterreich-wahlverschiebung-entscheidung-wird-um-1100-uhr-bekannt-gegeben-a1356830.html>.



request forms much earlier to allow time for manually processing returning requests. States with online absentee ballot request portals can kick off the dispatch process as late as universal postal voting jurisdictions, and thus have more time for planning and procurement, unless they must process a parallel stream of mail-based absentee ballot requests.<sup>179</sup>

In the U.S., postal service reform has delayed mail delivery by as much as a week, and a recent decision to decommission 10 percent of the Postal Service’s flat-mail sorting machines sparked widespread concern that the slowdowns will worsen. USPS thus recommends that election offices send ballots to voters at least 15 days prior to an election to ensure time for the ballot to reach the voter and for the voter to complete and return the ballot.<sup>180</sup>

But state legislatures are unlikely to amend ballot request deadlines set by statute, as USPS suggests.<sup>181</sup> In 35 U.S. states, voters can request ballots so close to Election Day that it may not be feasible for their ballots to be mailed to them and sent back to election officials by mail in time to be counted. In 2018, Missouri moved up its deadline for requesting an absentee ballot to provide additional time for ballots to be delivered and returned.<sup>182</sup> Election administrators are calling on absentee voters to request and return their ballots as early as possible, so as to flatten the curve on mail demand and on county capacity to process returning marked absentee ballots. During the 2018 midterm elections, ballot returns spiked around Election Day in many states.<sup>183</sup>

Figure 2: Examples of Deadlines for Absentee Ballot Paper Requests

Jurisdiction	Deadline Before Election Day to Request Absentee Ballot
New Zealand <sup>184</sup>	24 hours
Montana, South Dakota, New Hampshire, Montana, Wyoming, Minnesota, Mississippi <sup>185</sup>	24 hours
Germany <sup>186</sup>	2 days

179 Larry Bunchanan, et al., *Will You Have Enough Time to Vote by Mail in Your State?*, N.Y. Times (Aug. 31, 2020), <https://www.nytimes.com/interactive/2020/08/31/us/politics/vote-by-mail-deadlines.html>.

180 Off. of Inspector Gen., 20-255-R20, Processing Readiness of Election and Political Mail During the 2020 General Elections (2020), available at <https://www.uspsog.gov/sites/default/files/document-library-files/2020/20-225-R20.pdf>.

181 Mail delays have also raised concerns about the potential for thousands of ballots to be rejected if they arrive late. Many of the 10,000 ballots disqualified in Michigan’s Aug. 4 primary were discarded for that reason. As a result, Benson is pushing for a law change to allow ballots to be counted so long as they are postmarked by Election Day.

182 Erin Cox, et al., *Postal Service Warns 46 States that Their Ballots Could be Disenfranchised by Delayed Mail Ballots*, Wash. Post (Aug. 14, 2020), [https://www.washingtonpost.com/local/md-politics/usps-states-delayed-mail-in-ballots/2020/08/14/64bf3c3c-dcc7-11ea-8051-d5f887d73381\\_story.html](https://www.washingtonpost.com/local/md-politics/usps-states-delayed-mail-in-ballots/2020/08/14/64bf3c3c-dcc7-11ea-8051-d5f887d73381_story.html).

183 Larry Bunchanan, et al., *Will You Have Enough Time to Vote by Mail in Your State?*, N.Y. Times (Aug. 31, 2020), <https://www.nytimes.com/interactive/2020/08/31/us/politics/vote-by-mail-deadlines.html>.

184 New Zealand Electoral Commission, *Can’t Get a Voting Place?*, <https://vote.nz/voting/get-help-to-vote/cant-get-to-a-voting-place/> (last visited Oct. 7, 2020).

185 Larry Bunchanan, et al., *Will You Have Enough Time to Vote by Mail in Your State?*, N.Y. Times (Aug. 31, 2020), <https://www.nytimes.com/interactive/2020/08/31/us/politics/vote-by-mail-deadlines.html>.

186 Der Bundeswahlleiter, *Bundestagswahl 2017: Briefwahl*, <https://www.bundeswahlleiter.de/bundestagswahlen/2017/informationen-waehler/briefwahl.html#c2f34a75-e764-4947-ae36-ba7ae474dcaa> (last visited Oct. 7, 2020).

Australia <sup>187</sup>	3 days
Austria <sup>188</sup>	4 days
Canada	5 days
South Korea <sup>189</sup>	10 days
Denmark and Poland	12 days
United Kingdom <sup>190</sup>	16 days
Ireland <sup>191</sup>	22 days
Luxembourg <sup>192</sup>	25 days
Kentucky <sup>193</sup>	25 days

Dispatch of outbound ballots distinguishes universal postal voting from absentee voting in the sense that in the former, ballots are sent to all voters simultaneously, ensuring equal treatment. In contrast, in absentee voting, ballots are sent out incrementally upon voter requests. For example, Florida state law provides that “the supervisor shall mail vote-by-mail ballots within 2 business days after receiving a request for such a ballot.”<sup>194</sup> Like universal postal voting, permanent absentee voter lists better guarantee equal treatment. Australian law, for instance, instructs that, “As soon as ballot papers for an election for a Division are available, the Electoral Commissioner must send or arrange for the delivery of postal voting papers to each registered general postal voter.”<sup>195</sup>

New Zealand seems to leave much greater discretion to election administrators in terms of whose absentee ballot request to answer within what timeframe: “The Returning Officer may dispatch voting papers at any time after the start of the voting period but not later than midnight on the day before the voting period ends.”<sup>196</sup> New Zealand’s framework, however, successfully addresses the issue of very late absentee ballot requests by requiring voters to collect late requested ballots in person. Votes can also be cast at the point of pick-up.

## Postmarking Election Mail

In some jurisdictions, postmarks can determine the validity of returned ballots. Absentee ballot-return cutoff regimes split into two categories: one in which solely the date of receipt matters and the other in which both the postmark date and the receipt date are considered.

187 Commonwealth Electoral Act 1918, s. 184 (Austl.), available at <https://www.legislation.gov.au/Details/C2019C00103>.

188 Wiener Gemeinderats – und Bezirksvertretungswahlen 2020: Beantragung einer Wahlkarte für österreichische StaatsbürgerInnen, Stadt Wien, <https://www.wien.gv.at/amtshelfer/dokumente/verwaltung/wahl/antraege/wahlkartenantrag.html> (last visited Oct. 7, 2020).

189 Public Officials Election Act, Act No. 103033, Mar. 17, 2010, art. 218-13 (S. Kor.), available at [https://www.nec.go.kr/engvote\\_2013/05\\_resourcecenter/02\\_01.jsp](https://www.nec.go.kr/engvote_2013/05_resourcecenter/02_01.jsp).

190 Register to Vote, U.K. Gov’t, <https://www.gov.uk/register-to-vote> (last visited Oct. 7, 2020).

191 Registering to Vote, Citizens Information, [https://www.citizensinformation.ie/en/government\\_in\\_ireland/elections\\_and\\_referenda/voting/registering\\_to\\_vote.html#l5150c](https://www.citizensinformation.ie/en/government_in_ireland/elections_and_referenda/voting/registering_to_vote.html#l5150c) (last visited Oct. 7, 2020).

192 Postal Voting, Le Gouvernement du Grand-Duché de Luxembourg, <https://elections.public.lu/en/systeme-electoral/legislatives-mode-emploi/vote-correspondance.html> (last visited Oct. 7, 2020).

193 Larry Bunchanan, et al., *Will You Have Enough Time to Vote by Mail in Your State?*, N.Y. Times (Aug. 31, 2020), <https://www.nytimes.com/interactive/2020/08/31/us/politics/vote-by-mail-deadlines.html>.

194 Fla. Stat. § 101.62-4(b), available at [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=0100-0199/0101/Sections/0101.62.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0101/Sections/0101.62.html).

195 Commonwealth Electoral Act 1918, s. 186 (Austl.), available at <https://www.legislation.gov.au/Details/C2019C00103>.

196 <http://www.legislation.govt.nz/act/public/2000/0048/latest/whole.html#DLM74580>.

Choice of cutoff regimes must consider where and when returning absentee ballots are prescreened and counted. New Zealand, for instance, subscribes to the latter approach, allowing ballots postmarked two days before Election Day, as long as they arrive within four days of Election Day.<sup>197</sup> In Switzerland, Poland, Canada, Luxembourg, Germany and Austria, postmarks play no role in ballot return cutoffs, but election administration agreements with respective postal services stipulate that all street post office mail boxes must be emptied countrywide the day before Election Day, so that postal ballots dropped in the mail on that day are guaranteed delivery for counting on Election Day.

The “postmarked by” approach can be intuitive for voters, since it aligns the mail-in deadline with Election Day and also gives voters extra time to return their ballots, which also facilitates voter information.<sup>198</sup> In the U.S., 17 states accept ballots postmarked the day before, or on Election Day itself, even when those ballots arrive after Election Day.<sup>199</sup> Washington state accepts such ballots up until 20 days, California 17 days and Illinois 14 days after Election Day. Analysis from 2018 shows, however, that those states receive the bulk of returning ballots before and on Election Day, and only marginal numbers thereafter.<sup>200</sup>

U.S. states with strict “receipt by Election Day” cutoffs see higher percentages of ballots disqualified: Many of the 10,000 ballots invalidated in Michigan’s August 4 primary were discarded because of delays. As a result, the election administration there advocates to allow counting ballots so long as they are postmarked by Election Day.<sup>201</sup> In just one county in Pennsylvania, 6,000 voters were not mailed their primary ballots until the day before the election, giving them little time to get their ballots delivered by Election Day.<sup>202</sup> Minnesota and Pennsylvania have therefore agreed to count ballots postmarked by Election Day.<sup>203</sup>

“Postmarked-by” systems in the U.S., however, incur a major vulnerability: USPS does not postmark all returning ballots. Some returning ballots, for example, may bypass regional sorting facilities that postmark envelopes.<sup>204</sup> In August 2020, the USPS inspector general noted that while postmarks are not required on all mailings and are intended to be a revenue protection mechanism to prevent the reuse of postage, the USPS has directed personnel to postmark all ballots. However, some ballots do not receive a postmark due to: (1) envelopes sticking together when processed on a machine; (2) manual mail processing; or (3) personnel unaware that all return ballots, even those in prepaid reply envelopes, need to be postmarked.

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197 Referenda (Postal Voting) Act 2000, art. 40 (N.Z.).

198 Chicago Elections, *How to Vote by Mail*, Youtube (Feb. 17, 2020), <https://youtu.be/7PhUM7FW4qM>.

199 Nat’l Conf. State Legis., VOPP: Table 1: Receipt and Postmark Deadlines for Absentee Ballots (Sept. 29, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-11-receipt-and-postmark-deadlines-for-absentee-ballots.aspx>.

200 Larry Bunchanan, et al., *Will You Have Enough Time to Vote by Mail in Your State?*, N.Y. Times (Aug. 31, 2020), <https://www.nytimes.com/interactive/2020/08/31/us/politics/vote-by-mail-deadlines.html>.

201 Mail delays have also raised concerns about the potential for thousands of ballots to be rejected if they arrive late. Many of the 10,000 ballots disqualified in Michigan’s Aug. 4 primary were discarded for that reason. As a result, Benson is pushing for a law change to allow ballots to be counted so long as they are postmarked by Election Day.

202 Wendy R. Weiser, *To Protect Democracy, Expand Vote by Mail*, Brennan Center for Justice (June 30, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/protect-democracy-expand-vote-mail>.

203 Elise Viebeck, *More Than 500,000 Mail-In Ballots Were Rejected in the Primaries. That Could Make the Difference in Battleground States this Fall.*, Wash. Post (Aug. 23, 2020), [https://www.washingtonpost.com/politics/rejected-mail-ballots/2020/08/23/397f9e92-db3d-11ea-809e-b8be57ba616e\\_story.html?hpid=hp\\_hp-banner-main\\_electionballots-620pm%3Ahomepage%2Fstory-ans](https://www.washingtonpost.com/politics/rejected-mail-ballots/2020/08/23/397f9e92-db3d-11ea-809e-b8be57ba616e_story.html?hpid=hp_hp-banner-main_electionballots-620pm%3Ahomepage%2Fstory-ans).

204 U.S. Election Assistance Comm’n, Interview 2: Preliminary Planning for Increasing Vote by Mail Capacity, <https://www.eac.gov/videos/interview-2-preliminary-planning-increasing-vote-mail-capacity-0> (last visited Oct. 7, 2020).

A number of state laws<sup>205</sup> accept scan data from intelligent mail barcodes in lieu of missing or unreadable postmarks, while others accept the date the voter indicated for his or her affidavit signature.<sup>206</sup> The Virginia Board of Elections approved a regulation allowing absentee ballots to be counted even if the postmark is missing or defective, as long as they arrive by noon on Nov. 6. A similar rule drew a legal challenge this month after it was enacted in Nevada.<sup>207</sup>

## Ensuring Access for Voters with Disabilities

To uphold the universal franchise, EMBs should ensure all voters have access to participate with equal ease and safety in the electoral process. People with disabilities should have the option to either vote in person or via an alternative method. Alternative measures such as postal voting should not be used as an excuse not to make polling stations accessible.

Distance voting per se offers convenience for many, but not all persons with disabilities, especially in terms of voting secrecy.<sup>208</sup> Some voters with physical disabilities find postal voting more accessible, especially if such voters are allowed to have their marked ballot delivered by a trusted third party.<sup>209</sup> Ballots that can be delivered electronically also benefit voters with visual disabilities, as they can use their own assistive technology to mark the ballot independently.

Devices that allow persons with disabilities to mark their ballot without assistance remain essential to protect voting secrecy, including in distance voting arrangements. Postal ballots that can be delivered and marked online are more accessible, as people who are blind or have low vision can use their own screen reading software or other assistive technology to read and mark the ballot. Paper postal ballots are inaccessible to persons with visual disabilities, who are more likely to prefer alternatives such as tactile ballot guides, electronic ballot marking or phone dictation.<sup>210</sup>

Persons with disabilities can request absentee voting in all 50 states in the U.S., and seven states and Washington, D.C., offer permanent absentee status, meaning persons with disabilities do not have to apply for an absentee ballot for each election.<sup>211</sup> A growing number of states also provide targeted measures to facilitate postal voting by persons with disabilities. Some measures expanding distance

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205 Including Kansas, Virginia, Washington, and California.

206 Jada Yuan, *A Month Later this New York City Primary is Still a Trainwreck and a Warning to Us All*, Wash. Post (July 25, 2020, 6:38 PM ET), [https://www.washingtonpost.com/politics/rejected-mail-ballots/2020/08/23/397f9e92-db3d-11ea-809e-b8be57ba616e\\_story.html](https://www.washingtonpost.com/politics/rejected-mail-ballots/2020/08/23/397f9e92-db3d-11ea-809e-b8be57ba616e_story.html).

207 Elise Viebeck, *More Than 500,000 Mail-In Ballots Were Rejected in the Primaries. That Could Make the Difference in Battleground States This Fall.*, Wash. Post (Aug. 23, 2020), [https://www.washingtonpost.com/politics/rejected-mail-ballots/2020/08/23/397f9e92-db3d-11ea-809e-b8be57ba616e\\_story.html](https://www.washingtonpost.com/politics/rejected-mail-ballots/2020/08/23/397f9e92-db3d-11ea-809e-b8be57ba616e_story.html).

208 Sabrina Gonzalez, *Vote by Mail is One of Many Ways to Ensure the Disability Community is Included in the Next Election*, Ctr. Am. Progress (May 19, 2020), <https://www.americanprogress.org/issues/disability/news/2020/05/19/485218/vote-mail-one-many-ways-ensure-disability-community-included-next-election/>.

209 Presidential Comm'n Election Admin, *Reducing Obstacles to Voting for People with Disabilities* (June 22, 2013), [http://web.mit.edu/supportthevoter/www/files/2013/08/Disability-and-Voting-White-Paper-for-Presidential-Commission-Schur.docx\\_.pdf](http://web.mit.edu/supportthevoter/www/files/2013/08/Disability-and-Voting-White-Paper-for-Presidential-Commission-Schur.docx_.pdf).

210 Peter Erben, et al., IFES, *Out-of-Country Voting: A Brief Overview*, (2012), available at <https://www.ifes.org/publications/out-country-voting-brief-overview>.

211 Nat'l Conf. State Legis., *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options* (Sept. 24, 2020), <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

voting during the pandemic have sunset clauses, so that their benefit to voters with disabilities could lapse.<sup>212</sup>

Colorado<sup>213</sup> and Utah,<sup>214</sup> both universal postal voting states, enacted legislation that allows counties to opt in to a pilot program to let voters with disabilities submit absentee ballots electronically, while Delaware and West Virginia allow voters to save a copy of the vote using such technology. Voting Works launched such open source pilots in Mississippi and Wisconsin.<sup>215</sup> Michigan, California, Minnesota, Nevada and Oregon allow the use of signature stamps, which can help a person with a disability that impacts motor skills.<sup>216</sup> A Virginia consent decree requires that the local registrar send voters with visual disabilities return envelopes with tactile markings so they are better able to insert the ballot into the envelop unaided, and instructs registrars not to reject ballots if the voter's signature or address is written in the wrong spot.<sup>217</sup>

Luxembourg dispatches tactile postal ballot guides,<sup>218</sup> while Australia and New Zealand allow casting votes by telephone dictation.<sup>219</sup> Australia allows voters with disabilities to appoint a proxy to complete postal votes for them, a measure that can imperil voting secrecy.<sup>220</sup> In New Zealand, 131 voters cast their vote using the dictation service for the first referendum and 214 for the second referendum in 2016.<sup>221</sup> In 2016-17, some states in Germany<sup>222</sup> and Austria<sup>223</sup> began dispatching absentee ballots to voters with intellectual or psychosocial disabilities under guardianship, allowing them to sign voter affidavits themselves.

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212 Virginia Atkinson & Rebecca Aaberg, *How to Ensure People with Disabilities are Included in Political Life During COVID-19*, Int'l Found. Electoral Sys. (July 14, 2020), <https://www.ifes.org/news/how-ensure-people-disabilities-are-included-political-life-during-covid-19>.

213 Colo. Sec. State, Accessible Voting, <https://www.sos.state.co.us/pubs/elections/accessibleVoting.html> (last visited Oct. 7, 2020).

214 Utah State Legis., S.B. 245 Internet Voting Pilot Project Amendments, <http://le.utah.gov/~2014/bills/static/SB0245.html> (last visited Oct. 7, 2020).

215 U.S. Election Assistance Comm'n, Moderated Discussion III: Vote-by-Mail and Electronic Ballot Delivery System, <https://www.eac.gov/videos/moderated-discussion-iii-vote-mail-and-electronic-ballot-delivery-system> (last visited Oct. 7, 2020).

216 Nat'l Conf. State Legis., NCSL's the Cavass (May 2014), <https://www.ncsl.org/research/elections-and-campaigns/state-and-election-reform-the-cavass-may-2014.aspx>.

217 Meagan Flynn, *Blind People are Suing Over Their Voting Options. In Virginia, Their Action Brought Results*, Wash. Post (Sept. 1, 2020, 6:00 AM ET), [https://www.washingtonpost.com/local/virginia-politics/blind-voters-mail-in/2020/08/31/ced3b49a-eb9f-11ea-99a1-71343d03bc29\\_story.html](https://www.washingtonpost.com/local/virginia-politics/blind-voters-mail-in/2020/08/31/ced3b49a-eb9f-11ea-99a1-71343d03bc29_story.html).

218 <https://guichet.public.lu/en/citoyens/citoyennete/elections/referendum/vote-correspondance.html>.

219 <https://www.aec.gov.au/media/media-releases/2019/05-07.htm>.

220 See Commonwealth Electoral Act 1918 (Austl.), available at <https://www.legislation.gov.au/Details/C2019C00103>.

221 Electoral Commission, Report of the Electoral Commission on the First and Second Referendums on the New Zealand Flag (May 26, 2016), <https://elections.nz/assets/2015-and-2016-flag-referendums/report-on-the-2015-and-2016-flag-referendums.pdf>.

222 Wahlbenachrichtigung für geistig Behinderte, Volksstimme.de (Mar. 11, 2016), <https://www.volksstimme.de/lokal/stendal/20160311/landtag-wahlbenachrichtigung-fuer-geistig-behinderte>.

223 Gerichtl Erwachsenenvertretung in Österreich (Oct. 6, 2017), <https://sachwalterschaftsmisbrauch.blogspot.com/2017/10/vom-wahlrecht-der-mundel.html>.



# Post-Election Considerations

## Results Operations

Inbound absentee ballot processes cover steps from the time ballots are returned to election administrators or delivered by mail to the counting facility until the ballots are permanently sealed in storage containers for the retention period following the end of the count and proclamation of results. This includes ballot receiving, logging, verification, unsealing, preparation, scanning, tabulation, archiving and post-election auditing.

One of the most important components of the inbound ballot process is having a system to track ballots as they move from one processing area to another to account for any changes in the overall quantity of ballots. In the U.S., for example, due to the pandemic, one of the most challenging aspects of results management system planning has been estimating how many absentee ballots will be returned and when – especially in states that had moderate or low absentee voter rates before the pandemic.

The U.S. Election Assistance Commission (EAC) recommends simulating and timing each step of the process, as well as cross-training signature verifiers, ballot scanners and bipartisan adjudication teams. Having enough space to physically separate process areas affords greater control of and security for the process, as well as facilitates social distancing. No election mail items should be discarded until after the challenge period has elapsed.<sup>224</sup> A popular initiative in Switzerland in 2011 had to be rerun, because two counties in Berne prematurely shredded ballots. South Korean law requires closed-circuit TV surveillance of all facilities housing returned absentee ballots.<sup>225</sup>

## Processing Returned Ballots

The 1993 National Voter Registration Act compels 44 U.S. states to maintain statewide voter registers for federal elections and, as of this year, 40 states offer online voter registration.<sup>226</sup> Voter register consolidation in turn allows centralization of certain aspects of absentee results management systems (RMS). While some states have centralized printing and dispatch of absentee mail pieces, returning ballots will still be mailed to county offices, which will pre-canvass and tabulate returned absentee votes.<sup>227</sup> The EAC therefore suggests that counties set up state or regional RMS centers, consolidating inbound processes of several counties in one shared location – whenever state law allows it.<sup>228</sup>

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224 Cybersecurity and Infrastructure Security Agency (CISA) Elections Infrastructure Government Coordinating Council and Sector Coordinating Council's Joint COVID Working Group, Inbound Ballot Process, [https://www.eac.gov/sites/default/files/electionofficials/vbm/Inbound\\_Ballot\\_Process.pdf](https://www.eac.gov/sites/default/files/electionofficials/vbm/Inbound_Ballot_Process.pdf) (last visited Oct. 7, 2020).

225 Public Officials Election Act, Act No. 103033, Mar. 17, 2010, s. 158-176 (S. Kor.), available at [https://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=38405&lang=ENG](https://elaw.klri.re.kr/eng_service/lawView.do?hseq=38405&lang=ENG).

226 Nat'l Conf. State Legis., Online Voter Registration (Aug. 19, 2020), <https://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx>.

227 R.I. Sec. State, Election in Rhode Island, <https://vote.sos.ri.gov/Elections/Administration> (last visited Oct. 7, 2020).

228 Cybersecurity and Infrastructure Security Agency (CISA) Elections Infrastructure Government Coordinating Council and Sector Coordinating Council's Joint COVID Working Group, Inbound Ballot Process, [https://www.eac.gov/sites/default/files/electionofficials/vbm/Inbound\\_Ballot\\_Process.pdf](https://www.eac.gov/sites/default/files/electionofficials/vbm/Inbound_Ballot_Process.pdf) (last visited Oct. 7, 2020).

The steep increase in absentee ballot demand induced by the pandemic may require concentration of absentee ballot pre-canvassing and counting at locations where envelope slicers, optical signature scanners and high-speed counting equipment is available.<sup>229</sup> Absentee vote RMS consolidation may also be unavoidable, because of potential pandemic workforce shortages at the county level. Georgia has deployed a statewide single vendor system, harmonizing its absentee ballot and envelope design and formatting, and is thus well positioned to consolidate its absentee vote RMS with shared infrastructure.<sup>230</sup>

The New Zealand election commission has also fully centralized results management for postal referendums in one single location, and processed results with 210 temporary counting staff for 1.6 million votes in the 2016 flag referendum run-off. During the pandemic, New Zealand will centralize its RMS for its 2020 parliamentary elections postal vote. Doing so will entail tabulating postal votes for its 71 single-member constituencies centrally, to then marry them at the constituency level with in-person voting results.

In Switzerland, counting of postal ballots takes place on Election Day, disqualifying arriving ballots by mail thereafter. Federal law makes no mention of postmark dates as validity criteria, and cantons have discretion to require voter signatures. The workload of vetting ballot validity hence varies by canton. Despite Switzerland's 90 percent participation in postal voting, early counting has not been considered, so that several cantons have massively scaled up counting staff on Election Day, while others rely on optical scanners for counting.<sup>231</sup>

German federal law requires formation of standalone committees solely in charge of pre-canvassing and counting absentee votes at county level.<sup>232</sup> The Bavarian all-mail municipal election run-off therefore saw results announced the day after Election Day (without signature matching). Austria also processes absentee votes at the county level. The OSCE/ODIHR election expert team observed in Austria that district electoral boards formed separate absentee counting task forces, which hand-counted approximately 2,000 votes per hour.<sup>233</sup>

South Korean law requires that the ballot boxes used for early voting and the ballot boxes used for safekeeping of returned postal ballots be kept separate and sealed.<sup>234</sup> In Sweden, Luxembourg, Poland, Denmark and Norway, absentee and early ballots are sent to the polling stations to which relevant voters have been assigned. These ballots are cast in the same ballot box as the Election Day in-person ballots – and are indistinguishable from the in-person ballots – and counted together.

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229 Preparing for Election Day: Deadline for Running a Safe Election, Brennan Ctr. Just. (May 11, 2020), <https://www.brennancenter.org/our-work/research-reports/preparing-election-day-deadlines-running-safe-election>.

230 Amber Reynolds, Nat'l Vote at Home Inst., Vote at Home Scale Plan (Mar. 2020), [http://voteathome.wpengine.com/wp-content/uploads/2020/07/VAHScale\\_StrategyPlan.pdf](http://voteathome.wpengine.com/wp-content/uploads/2020/07/VAHScale_StrategyPlan.pdf).

231 Telephone Interview with Raphaël Leuenberger, Bundeskanzlei (2020). See also Bundeskanzlei BK, Nationalratswahlen 2019, <https://www.bk.admin.ch/bk/de/home/politische-rechte/nationalratswahlen/nationalratswahlen-2019.html> (last visited Oct. 7, 2020).

232 Bundeswahlgesetz § 36 (Germ.), available at [http://www.gesetze-im-internet.de/bwahlg/\\_36.html](http://www.gesetze-im-internet.de/bwahlg/_36.html).

233 OSCE Off. Democratic Inst. & Human Rights, Austria, Presidential Election, 24 April 2016: Needs Assessment Mission Report (Mar. 17, 2016), <https://www.osce.org/office-for-democratic-institutions-and-human-rights/elections/austria/228466>.

234 Public Officials Election Act, Act No. 103033, Mar. 17, 2010, s. 151(3) (S. Kor.), available at [https://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=38405&lang=ENG](https://elaw.klri.re.kr/eng_service/lawView.do?hseq=38405&lang=ENG).

## Determining Ballot Validity

When abruptly scaled up, postal voting can incur higher rates of invalid votes than in-person polling station voting – especially when introducing requirements for voter signature matching,<sup>235</sup> voter signature notarization, witnessing, use of secrecy envelopes, filling in digits of voter social security numbers, photocopies of voter ID and/or dating of voter signatures.<sup>236</sup> Of the international postal voting frameworks examined here, only Australia and Sweden still require witness signatures, and their strict scrutiny has led to delays in results management.<sup>237</sup> In Australia, however, the witness signature can be substituted with a photocopy of the voter's passport.<sup>238</sup> Australia also requires voters to set up a confidential answer to a security question when applying for postal ballots, which the voter must confirm on the return ballot.

In the U.S., safeguards against impostor voting are given greater importance than elsewhere: In Wisconsin, 23,000 primary ballots were disqualified, mainly because the witness address was missing.<sup>239</sup> North Carolina reduced its witness requirement from two to one for the general election,<sup>240</sup> while Rhode Island suspended its witness requirement for the June primary because of worries that it would expose voters to the virus, but its legislature could not reach agreement on a bill that would extend that accommodation to the November elections.<sup>241</sup> North Carolina, Alabama and Rhode Island require notarization as an alternative to two witness signatures, whereas Mississippi, Oklahoma and Missouri require notarization in any case, except for voters with permanent disabilities.<sup>242</sup>

## Ascertaining Voting Secrecy

The Universal Declaration of Human Rights enshrines that “the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting

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235 No international postal voting jurisdictions studied here required identification documentation, but four U.S. states still do. See Nat'l Conf. State Legis., VOPP: Table 14: How States Verify Voted Absentee Ballots (Apr. 17, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-14-how-states-verify-voted-absentee.aspx>.

236 Austria abrogated the requirement in 2008, New Zealand and Switzerland require no witnessing, but 11 U.S. states still impose witnessing or notarization. See *id.*

237 Austl. Electoral Comm'n, How to Vote by Mail, [https://www.aec.gov.au/About\\_AEC/Publications/easy-read/files/vote-mail-easy-eng.pdf](https://www.aec.gov.au/About_AEC/Publications/easy-read/files/vote-mail-easy-eng.pdf).

238 *Commonwealth Electoral Act 1918*, s. 194 1A (Austl.), available at <https://www.legislation.gov.au/Details/C2019C00103>.

239 Tom Scheck, et al., *How Wisconsin's 23,00 Rejected Absentee Ballots Could Spell trouble for the November Election*, Wisconsin Watch (July 23, 2020), <https://www.wisconsinwatch.org/2020/07/wisconsin-rejected-absentee-ballots-2020-election/>.

240 *North Carolina Senate Passes Bill to Make Mail-In Absentee Voting Easier During Fall 2020 Election*, Assoc. Press (June 11, 2020, 12:08 PM EDT), <https://www.wxii12.com/article/north-carolina-election-senate-bill-mail-in-absentee-voting/32830528>.

241 Republican National Committee v. Common Cause, 2020 WL 4680151 (U.S. Aug. 13, 2020); Robert Barnes, *Supreme denies GOP Request, Allows R.I. Pandemic-Related Relief on Mail-In Ballots*, Wash. Post (Aug. 13, 2020), [https://www.washingtonpost.com/politics/courts\\_law/supreme-court-denies-gop-request-allows-ri-pandemic-related-relief-on-mail-in-ballots/2020/08/13/47a99480-dd7b-11ea-b205-ff838e15a9a6\\_story.html](https://www.washingtonpost.com/politics/courts_law/supreme-court-denies-gop-request-allows-ri-pandemic-related-relief-on-mail-in-ballots/2020/08/13/47a99480-dd7b-11ea-b205-ff838e15a9a6_story.html), [https://www.supremecourt.gov/orders/courtorders/070220zr\\_n7io.pdf](https://www.supremecourt.gov/orders/courtorders/070220zr_n7io.pdf).

242 Nat'l Conf. State Legis., VOPP: Table 14: How States Verify Voted Absentee Ballots (Apr. 17, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-14-how-states-verify-voted-absentee.aspx>.



procedures.”<sup>243</sup> Two different rationales hence justify requiring voters to sign their return postal ballots: 1) to have the voter attest by affidavit that the ballot was marked secretly (or at least freely); and 2) to allow the election administration to identify who completed the ballot by way of the voter’s signature to prevent impostor voting.

Italy and New Zealand require no voter signature for returning postal votes for referendums. In Germany and Austria, only the presence of signatures is checked, but signatures are not matched against signatures on file, probably because those jurisdictions emphasize attestation of voting secrecy, rather than ascertaining voter identity. In the U.S., voters in some states do not attest to having voted in secret, for instance in New York, but affidavits instead merely state that the voter has personally completed the ballot.

Signatures can be checked either on absentee ballot *applications* – as in 17 U.S. states<sup>244</sup> – or on actual ballot envelopes,<sup>245</sup> or on both, whereby the ballot signature can be compared against the application signature. Alabama and Arkansas require voters to include a photocopy of their ID with the return ballot, which should in theory obviate signature matching.

To prevent impostor voting off of diverted postal ballots, states that have mailed ballots to every registered voter in the past have automated their signature-matching capacity. Depending on tolerance calibration, electronic signature matchers have been clearing 30 to 40 percent of initial scans, so that bipartisan panels must still arbitrate a majority of signatures, which can be an adversarial and time-consuming process. States that mail absentee ballots only to voters who expressly request them should in theory incur lesser need to conduct identity checks on return ballots, except for those states that maintain permanent absentee voter lists and therefore mail ballots to all voters on the permanent list.<sup>246</sup>

In Georgia, controversy arose over the exact match standard, which disqualified ballots where voters used their middle initial to sign as opposed to full middle name.<sup>247</sup> In Indiana, a federal judge ruled that election officials couldn’t reject ballots for dissimilar signatures without notifying voters.<sup>248</sup> Accepted

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243 Universal Declaration of Human Rights, art. 21(3), available at <https://www.un.org/en/universal-declaration-human-rights/index.html>.

244 Nat’l Conf. State Legis., VOPP: Table 8: How States Verify Absentee Ballot Applications (Apr. 29, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-8-how-states-verify-absentee-ballot-applications.aspx>.

245 Nat’l Conf. State Legis., VOPP: Table 14: How States Verify Voted Absentee Ballots (Apr. 17, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-14-how-states-verify-voted-absentee.aspx>.

246 To conduct not only signature checking, but also matching, election administrators need database(s) of digitized legacy signatures, high-speed scanners and matching software. Colorado achieved this in five months in 2013. It can help to rely on more than one reference signature, because voter age and health conditions, including strokes, fractures or Parkinson’s disease, can all alter signatures. In practice, longstanding universal postal voting states (e.g., Colorado, Oregon, Washington, California, Montana and Utah) experience no systemic signature verification issues. Nat’l Conf. State Legis., *Let’s Talk About Voting Outside the Polling Place*, Youtube (June 2, 2020), <https://www.youtube.com/watch?v=jUrAdipXb4I&feature=youtu.be>.

247 Ted Enamorado, *Georgia’s “Exact Match” Law Could Potentially Harm Many Eligible Voters*, Wash. Post (Oct. 20, 2018, 7:00 EDT), <https://www.washingtonpost.com/news/monkey-cage/wp/2018/10/20/georgias-exact-match-law-could-disenfranchise-3031802-eligible-voters-my-research-finds/>.

248 Elise Viebeck, *More Than 500,000 Mail-In Ballots Were Rejected in the Primaries. That Could Make the Difference in Battleground States This Fall.*, Wash. Post (Aug. 23, 2020), [https://www.washingtonpost.com/politics/rejected-mail-ballots/2020/08/23/397fbe92-db3d-11ea-809e-b8be57ba616e\\_story.html](https://www.washingtonpost.com/politics/rejected-mail-ballots/2020/08/23/397fbe92-db3d-11ea-809e-b8be57ba616e_story.html).

signature standards are not settled law in all states, which could trigger protected post-electoral litigation.<sup>249</sup>

As of September 2020, at least 19 states require that voters be notified when their ballot misses the signature or displays a signature discrepancy – and be given an opportunity to correct it.<sup>250</sup> The opportunity to “cure” may hinge on how early an absentee vote is returned, whether the respective state allows for early pre-canvassing and on the legal deadline for curing. Some counties have developed curing systems that allow voters to opt into text message or email notifications, as well as to cure through electronic affidavits affirming signature authenticity.<sup>251</sup> In Pasco County, Florida, Ballot Scout allows voters to opt into text message or email notifications – including for curing prompts.<sup>252</sup> Wisconsin law requires that “municipal clerks return any deficient absentee ballot envelopes with a new envelope to the voter.”<sup>253</sup> In Denver, voters can see problems with signature verification on Ballot TRACE, even before being officially notified.<sup>254</sup> Ohio now asks voters to include their email and/or telephone information for error-curing notifications.<sup>255</sup>

South Korean law also requires the election administration to notify overseas postal voters by email to rectify omissions on absentee ballots.<sup>256</sup> The EAC provides guidance on designing effective curing mechanisms.<sup>257</sup> Placing voter signature fields on the flap side of the outer ballot return envelope allows pre-screening for missing or mismatching signatures without unsealing the ballot, thereby facilitating voter notification, while also giving voters stronger visual cues to sign the envelope.<sup>258</sup>

## Results Timelines

When postal votes overtake the number of votes cast in person, the pacing of results announcement hinges on when election administrators can begin processing returned postal votes. New Zealand is able to announce postal vote results on Election Day, because it allows checking signatures on sealed postal ballots before Election Day even though the actual count only occurs on Election Day itself.

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249 Lila Carpenter, *Signature Match Laws Disproportionately Impact Voters Already on the Margins*, ACLU (Nov. 2, 2018, 2:45 PM), <https://www.aclu.org/blog/voting-rights/signature-match-laws-disproportionately-impact-voters-already-margins>.

250 Nat'l Conf. State Legis., VOPP: Table 15: States That Permit Voters to Correct Signature Discrepancies (Sept. 21, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-15-states-that-permit-voters-to-correct-signature-discrepancies.aspx>.

251 Online Election Options for Homeowner Associations and Condo Communities, Community Financials, <https://communityfinancials.com/online-election-options-for-homeowner-associations-and-condo-communities/> (last visited, Oct. 7, 2020).

252 Pasco County Supervisor of Elections, <https://www.pascovotes.com/> (last visited Oct. 7, 2020).

253 Wis. Stat. § 6.87(9).

254 Michael R. Blood, *California Rejected 100K Mail-In Ballots Because of Mistakes*, AP News (July 13, 2020), <https://apnews.com/a45421048cd89938df7c882891a97db5>.

255 Secretary of State's Absentee Ballot Request Forms Begin Arriving in Mailboxes, Ohio Sec. State (Sept. 1, 2020), <https://www.ohiosos.gov/media-center/press-releases/2020/2020-09-01/>.

256 Public Officials Election Act, Act No. 103033, Mar. 17, 2010, art. 218-4(5) (S. Kor.), available at [https://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=38405&lang=ENG](https://elaw.klri.re.kr/eng_service/lawView.do?hseq=38405&lang=ENG).

257 Cybersecurity and Infrastructure Security Agency (CISA) Elections Infrastructure Government Coordinating Council Michael R. Blood, *California Rejected 100K Mail-In Ballots Because of Mistakes*, AP News (July 13, 2020), <https://apnews.com/a45421048cd89938df7c882891a97db5>, and Sector Coordinating Council's Joint COVID Working Group, Signature Verification Process, [https://www.eac.gov/sites/default/files/election-officials/vbm/Signature\\_Verification\\_Cure\\_Process.pdf](https://www.eac.gov/sites/default/files/election-officials/vbm/Signature_Verification_Cure_Process.pdf) (last visited Oct. 7, 2020).

258 Larry Buchanan & Alicia Parlapiano, *Can the Ballots Thrown Out in the Primaries be Saved in November*, N.Y. Times (Sept. 23, 2020), <https://www.nytimes.com/interactive/2020/09/23/upshot/mail-ballots-states-disqualification.html>.

In Norway, early votes, cast with voter cards received by mail, are counted first and announced when polls close on Election Day.<sup>259</sup>

Conversely, Austria bars pre-canvassing and counting of absentee ballots until the day after Election Day, which was not consistently respected in 2016,<sup>260</sup> so that the Constitutional Court decided to annul the presidential election run-off wholesale.<sup>261</sup> Austria allows voters to cast marked and sealed absentee ballots in person at any polling station on Election Day, as does New Zealand. For constituency-based elections, those votes must be laboriously repatriated to the voter's home constituency before counting.

Currently 22 U.S. states allow pre-screening upon absentee ballot receipt, while 14 states allow pre-screening only on or after Election Day. Other states allow pre-screening during a statutory period before Election Day.<sup>262</sup> Georgia opted to allow pre-screening of incoming absentee ballots up to two weeks before Election Day,<sup>263</sup> while Florida begins 22 days, Colorado 15 days and Oregon seven days before Election Day. Early pre-canvassing states have rigorous oversight – in some cases making it a crime to divulge results. Michigan<sup>264</sup> and Pennsylvania<sup>265</sup> lawmakers are considering amendments to allow early pre-canvassing, but not early counting of absentee ballots.

## Election Dispute Resolution

Unlike distance e-voting solutions, postal voting generates an auditable paper trail, making recounts an electoral dispute remedy of first resort. Mishandling of absentee ballots has triggered reruns in Austria,<sup>266</sup> Sweden<sup>267</sup> and Switzerland,<sup>268</sup> because the extent of irregularities found exceeded the margin of votes deciding the respective elections and referendum initiative. As is the case in the U.S., all three

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259 David Nikel, *Norway Elections: Labour Plunged into Crisis as Greens, Centre Party Make Gains*, Forbes (Sept. 9, 2019, 3:40 EDT), <https://www.forbes.com/sites/davidnikel/2019/09/09/norway-elections-labour-plunged-into-crisis-as-greens-centre-party-make-gains/#7402f9ca4279>.

260 Verfassungsgerichtshof [VfGH] [Constitutional Court], July 1, 2016, W I 6/2016-125 (Austria), available at [https://www.vfgh.gv.at/downloads/VfGH\\_W\\_I\\_6-2016\\_EN\\_2.pdf](https://www.vfgh.gv.at/downloads/VfGH_W_I_6-2016_EN_2.pdf).

261 Amber Phillips, *The Likelier Problem with Mail Voting Delaying Elections Isn't Fraud. It's Confusion.*, Wash. Post (Aug. 4, 2020), <https://www.washingtonpost.com/politics/2020/08/04/likelier-problem-with-mail-voting-delaying-election-results-isnt-fraud-its-confusion/>.

262 Nat'l Conf. State Legis., VOPP: Table 16:When Absentee/Mail Ballot Processing and Counting Can Begin (Oct. 1, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-16-when-absentee-mail-ballot-processing-and-counting-can-begin.aspx>.

263 Kate Brumback, *Georgia Board Approves Online Absentee Ballot Request Portal*, AP News (Aug. 10, 2020), <https://apnews.com/14015584f36f0820dda49dd44d693b1b>.

264 Michigan Legis., S.B. 757 (2020), [https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_www.legislature.mi.gov\\_-28S-28jnzmoj2yuy4g2ltcn40501ks-29-29\\_mileg.aspx-3Fpage-3DgetObject-26objectname-3D2020-2DSB-2D0757&d=DwMFaQ&c=tq9bLrSQ8zlr87VusnUS9yAL0Jw\\_xnDiPuZjNR4E-DIQ&r=AZX64lAtuYjmb1KL3l689B5qeuj33GP1ffbmv3mM-yw&m=r9VH89yGHFY\\_hbp1Ma5k6t1dLHVkp\\_gHL-QM45b3-5g&s=sNU2Pk8b9OxUXS47Gb73A0-W6gitfVnZrM4pyiceFB4&e=](https://urldefense.proofpoint.com/v2/url?u=http-3A__www.legislature.mi.gov_-28S-28jnzmoj2yuy4g2ltcn40501ks-29-29_mileg.aspx-3Fpage-3DgetObject-26objectname-3D2020-2DSB-2D0757&d=DwMFaQ&c=tq9bLrSQ8zlr87VusnUS9yAL0Jw_xnDiPuZjNR4E-DIQ&r=AZX64lAtuYjmb1KL3l689B5qeuj33GP1ffbmv3mM-yw&m=r9VH89yGHFY_hbp1Ma5k6t1dLHVkp_gHL-QM45b3-5g&s=sNU2Pk8b9OxUXS47Gb73A0-W6gitfVnZrM4pyiceFB4&e=).

265 Josh Silver, *The Solution in Plain Sight that States must Choose this November*, CNN (Sept. 2, 2020), <https://edition.cnn.com/2020/09/02/opinions/us-election-2020-absentee-ballot-counting-silver/index.html>.

266 Verfassungsgerichtshof [VfGH] [Constitutional Court], July 1, 2016, W I 6/2016-125 (Austria), available at [https://www.vfgh.gv.at/downloads/VfGH\\_W\\_I\\_6-2016\\_EN\\_2.pdf](https://www.vfgh.gv.at/downloads/VfGH_W_I_6-2016_EN_2.pdf).

267 *Kräver desed av Valmyndigheten om skadeståndskrav mot Postnord*, Falun (May 13, 2020), <https://www.falun.se/kommun--demokrati/kommun--demokrati/2020-05-13-kraver-besked-av-valmyndigheten-om-skadestandskrav-mot-postnord.html>.

268 *Stimmzettel Fehlen – Nachzählung über Motorfahrzeugsteuern ist gefährdet*, BZ Lokales (Aug. 5, 2011, 20:36), <https://www.bernerzeitung.ch/region/kanton-bern/stimmzettel-fehlen--nachzaehlung-ueber-motor-fahrzeugsteuern-ist-gefaehrdet/story/26152979>.

jurisdictions offer parallel in-person and absentee voting on an optional basis, which makes it virtually impossible to sever one from the other to conduct only a partial rerun of mail-in but not in-person votes, if necessary. As absentee ballot irregularities were found to be outcome determinative, a full rerun was found necessary in all three of those cases.

In the U.S., 43 states and Washington, D.C., permit a losing candidate, a voter, a group of voters or other concerned parties to petition for a recount.<sup>269</sup> In a few states, the vote totals for the top two candidates must be within a specified margin to allow the losing candidate to request a recount. Legislation does not expressly state whether the right to a recount encompasses the right to revisit already vetted voter signatures.<sup>270</sup> Once the vote is removed from the signature envelope, the two can no longer be linked, so that reevaluating signature matches and recounting votes are separate processes, and hence also separate remedies aggrieved parties must seek at different stages of the election dispute resolution sequence.<sup>271</sup>

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269 Arizona, Connecticut, Florida, Hawaii, Mississippi, South Carolina and Tennessee do not; New York only permits recounts for village elections.

270 Nat'l Conf. State Legis., Automatic Recounts (Jan. 30, 2020), available at <https://www.ncsl.org/research/elections-and-campaigns/automatic-recount-thresholds.aspx>.

271 In the U.S. context, a tight result in more than one swing state could set off concurrent litigation from both parties, which could exhaust the less than five-week period until safe harbor day on December 8. Senate legislation was hence tabled to move safe harbor day to Jan. 1, giving states 3 1/2 more weeks to count. The Electoral College would then meet Jan. 2 instead of Dec. 14, still in time to provide their results to Congress to ratify the outcome on Jan. 6 as scheduled. See Peter Baker, et al., *The Voting Will End Nov. 3. The Legal Battle Probably Won't.*, N.Y. Times (Aug. 8, 2020), <https://www.nytimes.com/2020/08/08/us/politics/voting-nov-3-election.html>.

# Recommendations

Distance voting has stimulated election participation in a number of contexts. But distance voting can take several different forms, and each one presents challenges for electoral authorities to overcome.

The overview presented here finds that distance voting challenges with the potential to impact election outcomes tend to relate to malpractice or maladministration, rather than to deliberate fraud.<sup>272</sup> In the U.S. 2016 and 2018 elections, for example, the nonprofit Electronic Registration Information Center found only 372 possible cases of double voting or voting in the name of deceased people out of about 14.6 million votes cast by mail, or 0.0025 percent of the votes.<sup>273</sup> Although such vulnerability theoretically persists, at such negligible scale it could impact the outcome of only the closest of races, which would likely be subject to mandatory recount. Because postal voting generates auditable paper trails, attempts at fraud are therefore highly detectable.

Spoilers can undermine postal voting, however, through systemic manipulation, for example by defunding or interfering with the work of the post office. An overly restrictive interpretation of the complex rules and procedures governing distance voting can also have the effect of denying voters their right to have their votes counted.

The recommendations below therefore seek to address challenges related to potential maladministration as postal voting's greatest and most likely vulnerability, both in the mail stream and during election mail production and results processing. Recommendations apply equally to both international and U.S. distance voting regimes. They are addressed to both legislators and election administrators.

## Management and Planning Considerations

- Beyond emergencies such as COVID-19, introduce distance voting gradually to maximize stakeholder buy-in and to minimize risk of human error.
- Coordinate the work of EMBs, the postal service and third-party vendors in a task force to steer the implementation of distance voting and ensure timely notice of election mail volume and drop-off dates to the postal service.
- Test election mail piece design and processing equipment with voters, the postal service and election workers.
- Discontinue witnessing and notarization requirements to prevent unnecessary risk of COVID-19 transmission and to safeguard voting secrecy.

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272 Elaine Kamarck & Christine Stenglein, *Low Rates of Fraud in Vote-by-Mail States Show the Benefits Outweigh the Risks*, Brookings (June 2, 2020), <https://www.brookings.edu/blog/fixgov/2020/06/02/low-rates-of-fraud-in-vote-by-mail-states-show-the-benefits-outweigh-the-risks/>.

273 Matt Zapatosky, Barr Claims Man Collected 1,700 Ballots and Filled Them Out as He Pleased. Prosecutors Says That's Not What Happened, Wash. Post (Sept. 3, 2020, 7:50 PM), [https://www.washingtonpost.com/national-security/barr-claims-a-man-collected-1700-ballots-and-filled-them-out-as-he-pleased-prosecutors-say-thats-not-what-happened/2020/09/03/923aafac-ee2e-11ea-ab4e-581edb849379\\_story.html](https://www.washingtonpost.com/national-security/barr-claims-a-man-collected-1700-ballots-and-filled-them-out-as-he-pleased-prosecutors-say-thats-not-what-happened/2020/09/03/923aafac-ee2e-11ea-ab4e-581edb849379_story.html).

## Operational Considerations

- Accept absentee ballot requests online to avoid loss or delays in the mail stream, as well as to reduce printing and postage cost, operational timelines and administrative burden.
- Provide voter education on how to request and mark postal ballots in accessible formats, such as sign language, braille, easy-to-read and minority languages.
- To reduce voter errors, ensure that ballot design is intuitive. Include signature prompts on the flap of the return envelope, in voter information campaigns, and on ballot drop boxes to reduce signature omission rates. Visually distinguish absentee ballot request return envelopes from actual ballot return envelopes.
- Include information on return envelopes that informs voters about secure drop box locations and their opening hours.

## Integrity Considerations

- Issue a PIN to voters when they request absentee status online, in lieu of or as an alternative to ballot signature requirements.
- When using universal postal voting or permanent absentee voter registers, dispatch advance voter information mailers prior to sending live ballots to deactivate undeliverable addresses and/or make election mail forwardable by the postal service.
- When using the postal service for distance voting, apply intelligent mail barcodes to allow tracking of election mail and extraction of relevant statistics.
- Time-stamp returning election mail and keep it under seamless video surveillance.
- Ensure that validity criteria for return postal ballots do not provide opportunities to invalidate legitimate votes on grounds of technicalities.
- Allow impartial arbitration of absentee ballot validity in advance of Election Day to avoid results management bottlenecks.
- Ensure timely voter notification and swift curing opportunities for ballots with clerical errors or omissions through text message or email affidavits.



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Dr. Manuel Wally has over 15 years of professional experience in civil society, democratic accountability and elections in over 50 countries across six continents. Wally has authored methodological studies for the European Union (EU) Parliament and other EU institutions, and he has served as the lead author of the International Institute for Democracy and Electoral Assistance handbook on *International Obligations for Elections*.

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