

# Voting by Mail: Issues and Resources

By Virginia A. Neisler

**A**s the world navigates the worst pandemic in living memory, America has been faced with the prospect of holding a federal presidential election amid a public health crisis. In the spring of 2020, when the coronavirus began to spread rapidly in the United States, election officials in many states opted to extend absentee voting deadlines or postpone elections altogether to reduce the risk of disease transmission.<sup>1</sup> In anticipation of a resurgence of COVID-19 in the fall, the scheduled November election has caused concern for many officials who have searched for potential solutions to make the upcoming presidential election safer.<sup>2</sup>

One solution being implemented is the expanded use of absentee ballots or vote by mail (VBM).<sup>3</sup> Some believe VBM is necessary to decrease risk for voters and poll workers so they are not forced to sacrifice a fundamental right of democratic society for safety.<sup>4</sup> Others believe VBM will lead to widespread voter fraud, undermining the legitimacy of an election and the institution of democracy itself.<sup>5</sup> One of the most high-profile critics of VBM is President Trump, who has tweeted criticisms of the institution generally and of Michigan's recent encouragement of VBM specifically.<sup>6</sup> With so much controversy surrounding VBM, this article addresses some of the most common concerns within historical context and provides resources for learning more about the VBM process across the country.

## VBM in the United States

The concept of casting a vote without ever visiting a polling place on Election Day is not a new one. Absentee ballots in the United States were first issued during the Civil War to enable soldiers to vote in their

home jurisdictions.<sup>7</sup> Over time, absentee ballots have been made available to civilian voters at home and abroad. Today, federal law requires all states to send ballots to military personnel and citizens overseas.<sup>8</sup> At the state level, 16 states require voters to provide a reason for requesting an absentee ballot, approving only those who are unable to vote because of issues like illness/disability, incarceration, work schedule, religious beliefs/practices, etc.<sup>9</sup> Twenty-nine states, including Michigan, allow voters to request an absentee ballot without providing a reason.<sup>10</sup> The remaining five states—Colorado, Hawaii, Oregon, Utah, and Washington—primarily conduct elections by mail and automatically send ballots to every registered voter.<sup>11</sup>

## Michigan's recent actions

Controversy recently arose when Michigan Secretary of State Jocelyn Benson mailed applications for absentee ballots to all 7.7 million registered voters in the state to encourage use of absentee ballots in the face of the COVID-19 pandemic.<sup>12</sup> That action drew public criticism from President Trump, who dubbed the move “illegal” and Benson “rogue.”<sup>13</sup> Benson has broad delegated authority to administer elections, but a 2007 Michigan Court of Appeals case provides a possible source of opposition.<sup>14</sup> In that case, the Court held that local city clerks did not have the power to provide applications for absentee ballots lacking a written or verbal request.<sup>15</sup> The Court made it clear that municipal officers only possess those powers that have been expressly granted by the legislature, and found that the statute governing absentee ballot administration does not implicitly empower city clerks to mail unsolicited applications for absentee

ballots.<sup>16</sup> This ruling may be used to challenge the secretary of state's recent actions. However, since the secretary of state possesses comparatively broad delegated power to administer elections, the outcome of a challenge is uncertain.

Regardless of the outcome, a statewide ballot proposal amended the state constitution to make it possible for Michiganders to request an absentee ballot without providing an excuse.<sup>17</sup> This means that every Michigander has a constitutional right to cast an absentee ballot regardless of their reason for doing so.

## VBM benefits a particular political party/demographic

Much of the empirical research examining the real-world effects of VBM adoption, partial and total, shows that there are modest increases in voter turnout when compared to in-person voting.<sup>18</sup> Few studies have been able to disaggregate the data to show effects in politically significant demographic groups, but those that have attempted to do so show a slightly greater increase in turnout among the youth and racial minorities when compared to other demographic groups.<sup>19</sup> The authors of *Compositional Effects of Vote by Mail Elections on Voter Turnout* note that even with those slightly greater gains, youth and racial minorities continue to be underrepresented compared with their older, white counterparts.<sup>20</sup> Another demographic group that is slightly more likely to vote if VBM is permitted or required are rural voters.<sup>21</sup>

But increased turnout does not appear to give an advantage to any political party. Recent research comparing data collected from 1996 to 2018 from three states confirmed previous findings that no political party gained

an advantage from the implementation of VBM.<sup>22</sup> Recently, some have suggested that the increasingly partisan rhetoric surrounding VBM may have some impact on voter behavior in the 2020 election related to use of absentee ballots, but it is difficult to predict what that might be.<sup>23</sup>

### VBM leads to increased voter fraud

Risk of fraud has been a major concern since absentee ballots were first introduced in the United States.<sup>24</sup> Widespread problems with vote fraud led to the adoption of secret ballots and limits on third-party collection of ballots in the late nineteenth century.<sup>25</sup> A 2005 report from the bipartisan Commission on Federal Election Reform noted that “[a]bsentee ballots remain the largest source of potential voter fraud.”<sup>26</sup> A 2012 report notes that VBM creates risks that simply do not exist with any form of in-person voting.<sup>27</sup> Both reports reflect the consensus that the risks of voter fraud are higher with VBM.

However, proponents of VBM argue that while the risks are higher, there is no actual evidence, beyond anecdotal, of a widespread fraud problem.<sup>28</sup> By the most recent count, there have been only 143 criminal convictions for vote fraud involving the use of absentee ballots in the past 20 years, amounting to about .00006 percent of all votes cast.<sup>29</sup> Additionally, today’s VBM states have adopted an array of protections designed to mitigate the risks associated with mail-in ballots, including signature comparison and ballot tracking.<sup>30</sup> These states report extremely low incidents of fraud.<sup>31</sup>

### VBM is a panacea for pandemic election administration

The expanded use of VBM in the November 2020 election may be a foregone conclusion. States, including Georgia, Michigan, and Pennsylvania, are actively encouraging absentee voting as a means of making elections safe in the event of a COVID-19 surge in November.<sup>32</sup> These efforts have borne fruit. Pennsylvania, for instance, has already received 1.8 million absentee ballot applications for the upcoming election.<sup>33</sup>

But Pennsylvania’s experience in processing hundreds of thousands of absentee ballots for its primary election in early June demonstrates the necessity of planning for this “new normal.” Difficulties in processing an unusually high number of absentee ballots for its primary—causing a delay of several weeks—demonstrate the need to redistribute resources to absentee processing and prepare for a possible delay in the election results as ballots are counted.<sup>34</sup> Care must be taken to ensure that voting remains accessible to disabled voters.<sup>35</sup> Researchers also warn of the possibility of more rejected and lost ballots.<sup>36</sup> For the November 2020 election, all states encouraging VBM will need to take heed of past warnings and prepare for a drastically different election cycle.

### Additional reading

#### Election management and general absentee voting information

- **National Conference of State Legislatures, *Voting Outside the Polling Place Report***  
<<https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>>  
<<https://perma.cc/2V9X-K39Z>>

This interactive web report provides an overview of all 50 states’ absentee and all-mail voting policies and procedures. The report outlines the advantages and disadvantages of the practices and covers how states handle aspects of administration such as qualifying for absentee ballots, applying for and returning ballots, and processing of ballots upon return.

- **U.S. Election Assistance Commission, *Voting by Mail/Absentee Voting***  
<<https://www.eac.gov/election-officials/voting-by-mail-absentee-voting>>  
<<https://perma.cc/JHB7-6ATA>>

This website provides state and local administrators with “COVID-19 specific resources and other resources to help election officials identify procedures, strategies, and policies for ensuring mail ballots get cast and counted, and all election-related materials that help citizens cast these ballots are delivered in a timely manner.”

- **MIT Election Data & Science Lab, *Voting by mail and absentee voting***  
<<https://electionlab.mit.edu/research/voting-mail-and-absentee-voting>>  
<<https://perma.cc/XR2U-9VG5>>

Data scientists at MIT examine voting by mail’s history, administration, and known issues.

#### Voter fraud

- **The Heritage Foundation, *Election Fraud Database***  
<<https://www.heritage.org/voterfraud>>  
<<https://perma.cc/SGA7-VS7X>>

The Heritage Foundation keeps an interactive database of fraud cases in recent years. Cases are taken from as far back as 1946 and include every proven instance of fraud as well as its conclusion. This database is not comprehensive, but is the most frequently cited source for proof of voter fraud in the United States.

- **Merbahni, *Heritage Fraud Database: An Assessment*, Brennan Center for Justice (September 8, 2017)**  
<<https://www.brennancenter.org/our-work/research-reports/heritage-fraud-database-assessment>>  
<<https://perma.cc/NA4E-DX6E>>

The Brennan Center for Justice research team critically analyzes the Heritage Foundation’s database, looking at the cases included and categorization and characterization of those cases.

#### Vote-by-mail

- **The Voting Technology Project: *Looking Back, Looking Ahead, The CalTech/MIT Voting Technology Project (July 2016)***  
<<https://electionupdates.caltech.edu/2016/07/21/vtp-report-the-voting-technology-project-looking-back-looking-ahead/>>  
<<https://perma.cc/769D-683Y>>

This report from CalTech/MIT examines the efforts of the Voting Technology Project, established “in December 2000 to prevent recurrence of the problems that threatened the 2000 US Presidential Election.”

- **Bergman & Yates, *Changing Election Methods: How Does Mandated Vote-By-Mail Affect Individual Registrants?*, 10 Election L J: Rules, Politics, and Policy 115 (June 2011)** <<https://doi.org/10.1089/elj.2010.0079>> [<https://perma.cc/U9ZM-Y9E2>]

This digital version of a published article contains an overview of VBM literature and research. ■



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## ENDNOTES

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