



THE CANVASS

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Vote-By-Mail: Fiscally Fashionable?

can•vass (n.)
Compilation of election returns and validation of the outcome that forms the basis of the official results by a political subdivision.
—U.S. Election Assistance Commission: *Glossary of Key Election Terminology*

The use of mail-in ballots as a substitute for in-person voting at polling places is getting renewed attention in the current fiscal climate. As election officials are being asked to do more with less, states are expanding the use of all-mail balloting for local elections and are honing in on what works the best. Case in point: in Mendocino County, Calif., a civil grand jury recently recommended to the county board of supervisors to petition the secretary of state for authorization to use a total mail-in ballot system to eliminate polling place costs. The grand jury’s oversight report was compiled after observing the collection and transport of ballots to county elections staff during the November 2009 general election and the June 2010 primary election. In the June primary, the public reported numerous typographical errors and omissions on the pre-election sample ballots, which were mailed out directly by a printing vendor. The report noted:

Considering the high percentage of mail-in ballots being used now (82.6 percent of votes cast), it would be cost-effective to move the County to a total mail-in ballot system. While the grand jury understands that many people enjoy the social aspects of the local polling stations, the harsh reality is that the County budget is in dire straits. There are currently 247 precincts, and only 25 polling stations remain in the county. A mail-in ballot system would reduce payroll cost, rent,

and equipment transportation and maintenance. It would also alleviate ADA access issues to the polling places. This is the general trend in other California counties.

Vote-by-mail is the term used to describe mail-in balloting. In an all-mail election, a state (or sub-unit) does not offer polling places and the election is conducted solely by mail. In 1996, 17 states allowed voting by mail, mostly in local elections. In 2008, 19 states allowed voters, who were registered for no-excuse absentee status, to cast their ballots by mail. As of 2009, 29 states offered some form of no-excuse, absentee voting.

Oregon moved to all-mail elections in 1998. Washington’s Legislature gave counties discretion to conduct all-mail elections in 2005. Of the state’s 39 counties, 38 now vote by mail. Limited all-mail voting is authorized in another 14 states: Alaska, Ariz., Calif., Colo., Fla., Hawaii, Idaho, Mo., Mont., Neb., Nev., N.J., N.M. and N.D.

Cost

Election officials often cite cost savings. In May, the Oregon secretary of state testified before the U.S. Senate that the 1998 general election, the last one using polling sites, cost \$1.81 per voter. The January 2010 special election cost \$1.05 per voter—not accounting for inflation. In 2007, researchers from Reed College, Ore., reported that the state saved approximately 17 percent of the costs of holding elections when it began all-mail elections.

Some officials note that mail-in voting can raise costs, especially when conversion to an all-mail system is scheduled over a short period of time. In large urban, ethnically diverse cities with multilingual and numerous ballot styles, all-mail balloting can require large start-up expenses. In Los Angeles, for example, the city clerk noted in a 2009 report that the city would need to hire 480 new employees to process ballots if it went to all-mail elections, the cost of which would have been prohibitive. Although turnout was

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projected to expand considerably, the clerk referenced several administrative challenges:

Significant investment in staff work and funding for outreach and education programs would be necessary to explain the change in the voting process and to mitigate any potential negative impact... The City Clerk's (Election) VBM section employs roughly 80 temporary full-time staff to run a City-wide municipal election. Based on a 700 percent increase in workload to conduct an all VBM election, VBM staffing would necessarily need to increase exponentially to approximately 560 employees.

Inaccurate voter rolls also can affect cost. Printing and mailing ballots to voters who are no longer eligible or who have moved is an added expense.

Policy Issues

Technology. The development of ballot tracking technology, used in California since 2008, is another reason for increased mail voting. The technology enables absentee voters to verify, online or by phone, that their ballots were received. In May, Iowa launched its own online service for absentee voters to track their ballots like a FedEx package. The IVOTERS system records when the absentee ballot application is mailed out, when it is received, and when it is returned. Poweshiek County Auditor and Commissioner of Elections Diana Dawley notes that, "the expense of copying forms and handling requests is down considerably with more and more people using the Web to gather information and download absentee request forms." A comparable system is now mandated by the federal Military and Overseas Voter Empowerment Act of 2009 and must be in place for the Nov. 2 elections.

Turnout. At best, political scientists are divided on whether vote-by-mail has any significant effect on turnout. The 2005 report of the bipartisan Commission on Federal Election Reform noted, "While vote-by-mail appears to increase turnout for local elections, there is no evidence that it significantly expands participation in federal elections." The Oregon secretary of state recently testified that voter turnout has increased there by 6 percent since all-mail elections began in 2000. Another study conducted in five California counties reached a different conclusion: When required to vote by mail, citizens are 13.2 percent less likely to vote. The study found that vote-by-mail does not make a "non-voter" a voter—it only makes voting easier for those who would vote anyway. In part, the California study attributes this decline in turnout to communications challenges in reaching ethnic minorities—as evidenced by a strong



decline in voting with mail only ballots. There are 25 counties in California subject to Section 203 of the Voting Rights Act that requires election materials in a language other than English. Of those, four were analyzed, including: Alameda (Chinese, Spanish), Fresno (Spanish), San Mateo (Chinese, Spanish), and Santa Clara (Spanish, Chinese, Filipino, Vietnamese).

The nonpartisan Center for the Study of the American Electorate also has found declines in turnout associated with all-mail voting. In the high-turnout 2008 election, 12 states had turnout declines, when compared with 2004. Oregon had the third largest decrease in turnout of any state (minus 3.8 percent). South Dakota, which has no-excuse absentee voting, had the fourth largest decrease in turnout (minus 3.5 percent).

Convenience. Some election officials prefer mail elections because they do not involve extensive poll worker training and the ballot supply and equipment challenges required for Election Day voting. One downside is that because last-minute, mailed or dropped-off ballots can take longer to process, the reporting of election results can take longer.

Fraud and Privacy. The 2005 Commission on Federal Election Reform cautioned that "vote-by-mail raises concerns about privacy, as citizens voting at home may come under pressure to vote for certain candidates, and it increases the risk of fraud." How ballots are returned, and, by whom (drop off locations, caregivers, postal contractors, etc.) are critical issues that states must consider in considering the implications of all-mail voting. While states such as Oregon have appeared to avoid serious fraud problems with signature verification, others with more mobile populations or a history of fraud are at greater risk. In May 2010, a West Virginia county commissioner noted that at least 11 absentee ballots cast in the Democratic primary election contained the names of dead voters. The U.S. Attorney's office, the FBI, officials with the secretary of state's office and postal inspectors are conducting an investigation.

Legislation. In both 2009 and 2010, at least eight states considered bills to adopt all-mail balloting for certain (special, primary or vacancy) elections. In Hawaii and Washington, the bills failed. In Washington, House Bill 1572 passed the House but was amended in the Senate and failed to receive final consideration in the House before the session ended. In Hawaii, Senate Bill 88 failed to reach committee consideration. By contrast, in 2009, Colorado passed House Bill 105 authorizing county election officials to conduct any primary election by all-mail ballot. Additionally, at least eight states this year are considering pilot programs to expand vote by mail. In April, the California Assembly passed HB 1681, a bill to institute an all-mail pilot program for all local elections in Yolo County.

The bipartisan Military and Overseas Voter Empowerment Act requires state chief election officials to develop a free access system by which each uniformed or overseas voter can track absentee ballot receipt. And 29 states now offer no-excuse absentee voting. All of this has contributed to congressional interest in federalizing mail-in balloting law. Several congressional bills would extend vote-by-mail or mandate no-excuse absentee voting. The Universal Right to Vote by Mail Act of 2009 (H.R. 1604/S.3299) , as amended, was favorably reported out of the Committee on House Administration on June 10, 2009, and placed on the calendar. The Absentee Ballot Track, Receive, and Confirm Act (HR. 2510) would direct the Election Assistance Commission to reimburse states for the costs incurred in establishing an absentee ballot tracking program for federal elections. Companion Senate bills were introduced on May 4, 2010. The Senate Rules Committee held hearings on both bills on May 5, but has not taken further action. The Canvass will continue to report on any breaking news concerning state or federal vote-by-mail legislation.

The “Top Two” Primary Debate Continues

On June 8, 54 percent of California’s voters approved Proposition 14 to convert the state’s partially closed primary to a model patterned after Washington’s top-two primary. It was referred to the ballot by the Legislature. Under the current, partially closed primary system, separate ballots are prepared for each political party. Voters select candidates from their own party’s ballot, and the winning candidates go on the general election ballot. Parties determine whether unaffiliated voters may participate in their primary contests. California is one of 14 states that scheduled a partially closed primary in 2010.

Under Proposition 14, California will start using a top-two primary on Jan. 1, 2011. In a top-two primary, all candidates, regardless of their party affiliation, appear on a single, consolidated ballot. Candidates have the option to add their party preference to their name on the ballot, or may decline to state a party preference. Voters may then vote for any candidate, regardless of the voter’s and candidate’s political party affiliation. The two candidates receiving the most votes advance to the general election. It is possible that both candidates may be of the same party and the new California law does not allow write-in votes. Partially closed primaries will continue for presidential candidates and party organization offices. Along with Washington, Louisiana also currently uses this type of primary in partisan legislative elections.

The top-two legislative referendum was sponsored by former senator and newly appointed Lieutenant Governor Abel Maldonado. California’s Democratic legislative majority backed the referendum as a concession for then-senator Maldonado’s vote in support of Governor Schwarzenegger’s 2009 budget compromise. The governor campaigned heavily for Proposition 14, with key support from an atypical coalition of reform activists and business groups. U.S. House Speaker Pelosi, a California Democrat, urged Californians to reject the measure as did leaders of the state’s two major parties. She argued that the measure would distort the political process. Californians rejected a similar proposition in 2004.

Supporters of Proposition 14 argued that the top-two will help moderate candidates with cross-over appeal, like Governor Schwarzenegger, who would otherwise have a hard time making it onto the general election ballot. In the 2003 recall election that catapulted him into the governor’s mansion, the candidates all ran in the same election regardless of their political party.



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Thus, in the top two, all candidates need to appeal to the entire electorate from the start of their campaigns. In strong Democratic or Republican districts, two candidates from the same party are likely to face off in the general election. In this way, the top-two actually operates entirely differently from a primary.

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The U.S. Election Assistance Commission defines a primary as: “An election held to determine which candidate will represent a political party for a given office in the general election.” The top-two is more analogous to a general election than a primary because the parties are effectively removed from being able to *nominate* their standard bearers. Moreover, the general election operates much like a runoff election between two candidates, who may often be from the same party. Opponents also maintain that the top-two severely discriminates against minority party ballot access. In many districts that are skewed to one major party, it will be very difficult for a minor candidate to advance to the general election. On these grounds, the California Green Party is expected to challenge Proposition 14 in federal court.

At the same time, in Washington, the major parties have brought a post-implementation challenge to that state’s top-two primary, arguing that the policy of letting candidates express a “party preference” rather than a party affiliation confuses vot-

ers and denies their associational rights to nominate candidates while controlling the use of their name. Minor parties have also joined the litigation, alleging violations of the U.S. Constitution’s Equal Protection Clause in regard to ballot access. This November the U.S. District Court in Seattle is scheduled to hear trial arguments in the case.

Recently, two other states have examined proposals involving the top-two. In 2008, voters in Oregon rejected a ballot initiative similar to Proposition 14 by a nearly 2:1 margin. In Louisiana this year, however, the legislature recently approved and the governor signed House Bill 292 to expand its top-two “Cajun” primary to include congressional elections.

The only other state that has a track record with the top-two is Nebraska. As the nation’s only unicameral legislature, Nebraska holds a top-two primary for its non-partisan senate races. Conversely, in congressional races, Nebraskans vote in a partially closed primary in which unaffiliated voters may request either a Democratic or Republican primary ballot. The Democratic and Republican parties are the only statewide recognized parties.

Does the top two actually foster more competitive elections? In short, the jury is still out. However, Peter Callaghan, a longtime reporter for the *The News Tribune* (Takoma) maintains that the top two has resulted in an increase in the number of contested primaries in both legislative and congressional races since the state switched from an open primary in 2008.

Will the top-two gain more adherents in the next decade? California’s upcoming debut of the top-two and the effects it has on policy and politics may hold the answer. Read more about Proposition 14 at ncsl.org.

What They’re Saying



❖ According to a *Press Enterprise* story ... that ran on June 15, 2010, “a miscommunication between Riverside County and the U.S. Postal Service may have led to as many as 12,500 ballots arriving too late to be legally counted.” Along with many Riverside County residents, we are deeply troubled by the high number of discarded ballots as well as the potential impact the incident may have on disenfranchising voters. In light of these concerns, we respectfully request that you provide responses no later than 30 calendar days after receipt of this letter,...

—Letter from U.S. Congressional Representatives Calvert, Lewis, Issa and Bono-Mack to the U.S. Postmaster General, June 24, 2010, regarding 12,500 ballots at a Moreno Valley, Calif. post office that were never delivered before the polls closed for the June 8 primary election.

❖ Moderates are the first to be swept overboard in wave elections, when primaries become ideological litmus tests and when most swing districts and states fall to the surging party in the general election. The

decline of moderates makes both parties’ caucuses more homogeneous and thus contributes to the dysfunction of Congress ... Sadly, in too many congressional conversations, there’s no one around anymore to warn, “This is a really stupid idea!”

—Charlie Cook in the *Cook Report*, June 26, 2010, *National Journal.com*.

❖ Hoosier commonsense prevails again. One of the key tools we have put in place to improve elections and protect the strength of our republic—our Photo ID requirement at the polls—has once again been upheld. It is overwhelmingly supported by voters and taxpayers ... Protecting the votes of honest people from being diluted by those who have no respect for the franchise is the right thing to do.

—Todd Rokita, Indiana Secretary of State, on the Indiana Supreme Court decision upholding the state’s photo ID requirement, June 30, 2010.

Worth Noting

AEI-Brookings Election Reform Project Releases Final Report: “Hope and Experience”

Launched in June 2005, the AEI-Brookings Election Reform Project undertook to “fill a critical niche in the vast array of organizations and individuals working to improve election administration.” It examined the effects of the Florida electoral crisis and the first-ever federally funded response through the 2002 Help America Vote Act (HAVA). Released on June 29, the new report summarizes the project’s findings about the current state of election reform, and suggests that future reform is more likely to be state and locally driven. A couple of the key observations of the report include:

- ❖ **The Help America Vote Act**, with all of its limitations, was a high water mark for election reform in Congress. ... The bill, however, was a product of its time, written in the aftermath of the 2000 election debacle. And having passed such legislation, a common refrain on Capitol Hill is that the act needs time to work before another effort can take place. ... But the broader policy changes are likely to occur in state legislatures or in the offices of election administrators.
- ❖ **Early Voting:** In 2000, approximately 4 percent of votes were cast early in-person; in 2008 that number jumped to roughly 13 percent.
- ❖ **The American electoral system** is in many respects an outlier among the world’s democracies. ... In the realm of election administration, two characteristics stand out: the highly decentralized nature of the system and the oversight and control of the election system by partisan elected officials.

View the full report online, available in PDF format, at the Election Reform Project page.

Connecticut Enacts MOVE Act Compliance Bill

On June 21, the Connecticut General Assembly enacted Senate Bill 501, which brings the state into full compliance with the federal Military and Overseas Empowerment Act. The governor signed the legislation on June 22. SB 501 will significantly reduce the processing time for overseas military personnel and their civilian counterparts who wish to vote in the November 2010 election. The new law allows for electronic transfer of absentee ballots and applications to troops overseas, either by fax, e-mail or Internet. Prior to this change, Connecticut statutes required town clerks to issue absentee ballots to a voter either in person or by mail. As a result, the process of voting took on average 57 days for members of the military serving abroad and overseas citizens. The new law also protects against voter fraud by requiring each military and overseas citizen to send in a signed affidavit with his or her ballot. Finally, SB 501 authorizes U.S. citizens age 18 and older, born outside the United States to parents or guardians who were Connecticut residents immediately prior to leaving the country, to register and vote in federal elections.

New Online Voter Registration Assistant Available

The Department of Defense’s Federal Voting Assistance Program recently announced the launch of a new online voter registration assistant. The wizard-like assistant was developed to help more than 6 million military, their voting-age dependents, and overseas civilians register and request absentee ballots for the 2010 mid-term elections. It is now available at www.fvap.gov under “Quick Links” and is being introduced to voters at military installations, U.S. embassies and consulates during Armed Forces Week (June 28—July 7). The online assistant guides users through voter registration, avoiding the confusion of navigating state-by-state instructions to fill out the registration forms. At the end of the process, the assistant provides the completed form for signature and the appropriate address and delivery information for their voting district (mail, fax or e-mail).

“The new online assistant will make the registration and absentee ballot application process quick, easy, and seamless,” said Bob Carey, Federal Voting Assistance Program director. “You may be absent on Election

Day, but you can be accounted for. I encourage voters to visit fvap.gov, fill out your online registration and absentee ballot application, and send it back in July so that your election official has time to process it and send back your absentee ballot in time for the November general election.”

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This just in ... In a 4-1 decision, the Supreme Court of Indiana has upheld the state's photo ID requirement, saying that the General Assembly has the regulatory authority to require voters to show a photo ID card at the polls.

The state's voter identification law (P.L. 109-105) passed in 2005 and requires that in-person voters present a valid photo ID before casting a ballot. The law withstood a federal challenge in the 2008 case of *Crawford v. Marion County Election Board* when the U.S. Supreme Court declared it constitutional in a 6-3 decision.

The court concluded that exceptions for absentee voters and residents of nursing homes represented a minor and insubstantial disparity that is permissible under the state's Privileges and Immunities clause.

After the U.S. Supreme Court upheld the law, the League of Women Voters filed suit in June 2008 seeking a judicial declaration that Indiana's Voter ID law violated the state's constitution. The state trial court dismissed the lawsuit in favor of Indiana and the League appealed. The Indiana Court of Appeals declared the law violated the constitution's Equal Privileges and Immunities Clause because it did not require photo ID from voters who 1) used absentee ballots, or, 2) voted in-person as residents of state-licensed nursing facilities. The Indiana Supreme Court took up the case and temporarily preserved the law pending its review.

Justice Brent Dickson wrote in the majority opinion that the legislature has the authority to establish reasonable and uniform requirements for voter identification:

Neither of the constitutional provisions the plaintiffs invoke prevents the legislature from promulgating a new way for voters to identify themselves. It is within the power of the legislature to require voters to identify themselves at the polls using a photo ID. ... No individual voter has alleged that the Voter ID Law has prevented him or her from voting or inhibited his or her ability to vote in any way. Our decision today does not prevent any such voter from challenging the Law in the future.

The court found the law's requirement that an in-person voter present a government-issued photo ID card to be merely *regulatory* in nature. Citing Justice Stevens' lead opinion in *Crawford*, the majority held that, considering the statute's broad application to all voters, "it imposes only a limited burden on voters' rights." The court concluded that exceptions for absentee voters and residents of nursing homes represented a minor and insubstantial disparity that is permissible under the state's Privileges and Immunities clause:

Given the scope of the undertaking embraced in the Voter ID Law's efforts in enhancing the integrity of the electoral process and its attempt to tailor its operation to a significant variety of circumstances, we conclude that the possible absence of precise congruity in application to all voters represents a legitimate exercise of legislative discretion warranting our deference.

Justice Theodore Boehm dissented from the ruling, saying that voting changes such as the ID law should require a state constitutional amendment because the requirement imposes conditions on voting not authorized by the constitution's registration provisions. For more information on voter ID visit nctl.org.

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