



Best Practices for Absentee Ballot Cure in Alaska

Building on bipartisan legislation considered in the 2022 Alaska legislative session, various bills introduced in 2023 include proposals that would allow Alaska's absentee voters to cure problems with their absentee ballot. A cure process helps ensure that all valid ballots are counted by notifying voters of mistakes on their absentee ballot envelopes, and giving them a meaningful opportunity to correct those errors.

With a large percentage of the population voting absentee, ensuring those ballots are counted is essential to running an effective election – which is why the policy enjoys broad bipartisan support, and states across the political spectrum are passing legislation creating and improving the cure process.

When it comes to effectiveness, the details of a cure process matter. It is important that Alaska adopt a robust cure process that serves the needs of voters and instills trust in our elections.

Alaska should enact a uniform cure process including these critical elements:

- 1. The cure process must be mandatory and uniform statewide.** Courts have confirmed that once a state gives voters the ability to vote by mail, the U.S. Constitution requires voters be given notice and an opportunity to cure.¹ By failing to provide such notice and opportunity, Alaska is vulnerable to Due Process and Equal Protection challenges.
- 2. Voters must be notified of ballot defects in a timely fashion.** Election officials should be required to provide notification as soon as practicable (ideally, within 24 hours of reviewing the ballot), by mail and all other means available, especially as ballots are returned closer to Election Day. The notice to voters should include clear, plain language instructions on how to cure the identified issue.
- 3. Voters should be able to cure any deficiency that would result in rejection of their ballot.** Election officials should verify absentee ballots upon receipt to identify any issues that could lead to the ballot's rejection, including a missing voter or witness signature, and notify all voters whose ballots contain a deficiency.

¹ Democracy N.C. v. N.C. State Bd. of Elections, 476 F. Supp. 3d 158 (M.D.N.C. 2020); Self Advocacy Sol. N.D. v. Jaeger, 464 F. Supp. 3d 1039 (D.N.D. 2020); Frederick v. Lawson, 2020 U.S. Dist. LEXIS 150995 (S.D. Ind. 2020).

4. Voters should be able to accomplish cure easily and – where possible – remotely.

Cure processes should not include onerous requirements. Ideally, voters should be able to provide necessary cure information in person, online, by mail, email, text, or fax. In the event a voter's ballot is rejected due to a lack of notary or witness signature, voters should be able to cure by appearing in-person with ID, submitting a notarized or witnessed cure certificate, or attaching a copy of their photo ID when returning their cure certificate. Cure certificates and any other necessary forms should be included in notices to voters and be made available on state and county websites.

5. Voters must be given sufficient time to fix issues with their absentee ballot and should not be penalized for returning their ballot closer to the deadline.

Given that many absentee ballots are returned close to Election Day, voters should be afforded an opportunity to cure deficiencies after Election Day. The majority of states with a cure process allow this (including conservative-leaning states like Ohio, Texas, Florida, and Utah), and many states allow voters to cure right up until the final county canvass or certification of returns.

An increasing number of states from across the political spectrum are adopting statewide cure processes

A total of 31 states now have a uniform, statewide cure process in place, including rural western states like Montana, North Dakota, and Utah. In just the past couple of years, 16 states – including Arizona, North Dakota, Texas, Louisiana, and Kentucky – adopted permanent or temporary cure processes.² Even prior to 2020, states like Florida³ and Georgia⁴ were adopting or strengthening their cure processes after it was revealed that thousands of ballots were thrown out in the 2018 election for minor, fixable errors.

Republicans and Democrats overwhelmingly support giving voters an opportunity to cure their ballots

In a national poll conducted in December 2020,⁵ providing voters with notice and opportunity to cure issues with their absentee ballots, as well as allowing officials to process absentee ballots earlier, enjoyed broad support across the political spectrum.

- 92 percent of those polled – including 85 percent of self-identified Republicans – support a cure process whereby voters are notified of issues with their absentee ballot and provided with an opportunity to fix the issue.

² Arizona, Indiana, North Carolina, North Dakota, New Jersey, Illinois, District of Columbia, Kentucky, Louisiana, Maine, Mississippi, New Mexico, New York, Texas, Vermont, and Virginia.

³ 2019 Fla. SB 7066 § 19

⁴ 2019 Ga. HB 316 § 32.

⁵ Global Strategy Group & Voting Rights Lab. (2020). *December 2020 Poll of General Election Voters* [801 voters who voted in the 2020 November general election].

- 82 percent of those polled – including 70 percent of self-identified Republicans – supported early processing of absentee ballots to expedite tabulation and provide a longer period of time for notice and cure of ballot issues.

Cure process is Due Process (and failure to provide it can lead to costly litigation).

The U.S. Supreme Court has determined the right to vote to be a protected liberty interest,⁶ thus entitling voters to due process before that right is curtailed. In 2020, there was a spate of litigation in states that lacked a uniform cure process, and federal courts in North Carolina, North Dakota, and Indiana all held that failure to provide voters with notice and a meaningful opportunity to cure issues with their absentee ballots constitutes a deprivation of those voters' rights to procedural Due Process under the Fourteenth Amendment.⁷ As a result, these states all adopted some form of statewide cure processes for the 2020 presidential election.

In Alaska's 2022 special primary election, more than 7,400 ballots were rejected – a comparatively high 4.5 percent rejection rate – prompting a lawsuit that challenges the failure to give voters a meaningful opportunity to cure minor ballot deficiencies. Lawmakers should codify a uniform cure process to ensure all voters are not denied their constitutional right to Due Process. Both Indiana and North Dakota passed legislation in 2021 to implement a permanent statutory cure process following the court rulings in 2020.⁸

⁶ See *Burdick v. Takushi*, 504 U.S. 428, 433 (1992).

⁷ *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158 (M.D.N.C. 2020); *Self Advocacy Sol. N.D. v. Jaeger*, 464 F. Supp. 3d 1039 (D.N.D. 2020); *Frederick v. Lawson*, 2020 U.S. Dist. LEXIS 150995 (S.D. Ind. 2020).

⁸ 2021 Ind. SB 398; 2021 N. Dak. HB 1253