

**HB**

**277**

**HFIN**

**FILE**

# ALASKA STATE LEGISLATURE

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## REPRESENTATIVE BOB BUCH

Representative\_Bob\_Buch@legis.state.ak.us

Date: March 31, 2008

To: Representative Bill Stoltze  
House Finance Committee

From: Representative Bob Buch

Re: HB 277

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Dear Rep Stoltze:

This is to follow up on your questions this morning regarding HB 277, which will create a permanent absentee voting option for Alaskans.

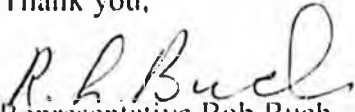
First, in regards to your question about choosing a ballot for the primary election, those procedures are established by statute, and not by regulation. Under the law, no one but the voter themselves is authorized to make a choice of primary ballot. This is not an area that can be changed via regulation. The statutory reference for this provision is AS 15.20.081 (a), which is attached.

Second, you expressed concern about the costs of the bill in general, and the costs of advertising the permanent absentee voting option in particular. Currently, the bill has a zero fiscal note. The Division of Elections expects that the permanent absentee ballot will actually save money, because it will reduce paperwork. As for advertising costs, the Division of Elections has no plans to advertise the permanent absentee voting option, as there is no need to do so. Information about the option will be available on the absentee ballot application form. (There will be a box to check on that form.) There will also be information available on line, and in the election pamphlet, a publication they are already printing.

As for your general concerns about fraud, there have been numerous studies on this very issue in the states where the permanent absentee voting option has been implemented. In every case, there has been no evidence of fraud. In fact, the opposite has been proven. The integrity of the vote is actually increased whenever absentee voting is used.

I hope that this addresses your questions. If you need additional information, don't hesitate to contact me.

Thank you,

  
Representative Bob Buch  
Alaska State Legislature  
House District 27

ballot in the secrecy sleeve, and place the secrecy sleeve in the envelope provided. The voter shall provide the information on the envelope that would be required for absentee voting if the voter voted in person. The voter shall sign the voter's certificate in the presence of the representative. The representative shall sign as attesting official and affix the voter's signature.

(e) The representative shall deliver the ballot and voter certificate to an election official not later than 8:00 p.m. Alaska time on election day.

(f) If a qualified voter's disability precludes the voter from performing any of the requirements of (d) of this section, the representative may perform those requirements except making the voting decision, on the voter's behalf.

(g) The voter's employer, an agent of the voter's employer, or an officer or agent of the voter's union, may not act as a representative for the voter. A candidate for office at an election may not act as a representative for a voter in the election. (§ 50 ch 82 SLA 2000 am; § 4 ch 35 SLA 2001, am; § 11 ch 12 SLA 2006)

**Effect of amendments.** — The 2001 amendment, effective September 27, 2001, in subsection (b), in paragraph (2) deleted subparagraph A which read "The voter shall be accompanied by the representative under AS 15.20.018 (c) and" and deleted the subparagraph B description of (2) in paragraph (2) and substituted (b) after the 15th (a) before an election up to and

including the date of the election" (1) and (2) and the absentee voting station is in operation."

The 2006 amendment, effective April 1, 2006, inserted "identification" near the end of subsection (g).

**Effective dates.** — Section 9, ch 82, SLA 2000 makes this section effective January 1, 2001.

*Sec. 15.20.080. Date of application in person. [Repealed, § 231 ch 109 SLA 1980. For current law, see AS 15.20.061.]*

~~Sec. 15.20.081. General rules for absentee voting. (a) A qualified voter may apply in person, by mail, or by facsimile, scanning, or other electronic transmission to the director for an absentee ballot under this section. Another individual may apply for an absentee ballot on behalf of a qualified voter if that individual is designated to act on behalf of the voter in a written general power of attorney or a written special power of attorney that authorizes the other individual to apply for an absentee ballot on behalf of the voter. The application must include the address or, if the application requests delivery of an absentee ballot by electronic transmission, the telephone electronic transmission number to which the absentee ballot is to be returned, the applicant's full Alaska residence address, and the applicant's signature. However, a person residing outside the United States need not include an Alaska residence address in the application. A person may supply to a voter an absentee ballot application form with a political party or group affiliation indicated only if the voter is already registered as affiliated with the political party or group indicated. Only the voter or the individual designated by the voter in a written power of attorney under this subsection may make the voter's choice on any ballot on an application. A person supplying an absentee ballot application form may not design or mark the application in a manner that suggests choice of one ballot over another ballot that ballot or ballots may be listed on an application as authorized by the division. The application must be made on a form prescribed or approved by the director. The voter or registration official shall submit the application directly to the division of elections. For purposes of this subsection "directly to the division of elections" means that an application may not be submitted to any intermediary that could control or delay the submission of the application to the division or gather data on the applicant from the application form. However, nothing in this subsection is intended to prohibit a voter from giving a completed absentee ballot application to a friend, relative, or associate for transmission to the United States Postal Service or a private commercial delivery service for delivery to the division.~~

(b) An application requesting delivery of an absentee ballot to the applicant by mail must be received by the division of elections not less than 10 days before the election for

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## REPRESENTATIVE BOB BUCH

[Representative\\_Bob\\_Buch@legis.state.ak.us](mailto:Representative_Bob_Buch@legis.state.ak.us)

### HB 277

## **An Act establishing a permanent absentee voting option for qualified voters**

HB 277 will streamline the absentee voting process for Alaskans by giving voters the option to register for permanent absentee voting status for state elections. Once a voter is on the permanent absentee voter roll, they won't have to fill out an absentee request form for each election cycle. Instead, an absentee ballot will be automatically sent to them by the Division of Elections.

HB 277 does not change anyone's voting rights. Voters can still request a one-time absentee ballot, just as they can now. Voters can still vote at their regular voting places if they so choose. HB 277 makes voting more convenient for voters. It also streamlines the administrative process for the Division of Elections.

HB 277 does not change any of the security or evaluation procedures that are already in place in Alaska statutes for handling absentee ballots; all of the provisions currently in place for absentee ballots would apply to permanent absentee ballots. HB 277 includes a provision for removal from the permanent absentee roll if the Division of Elections receives notice that mail sent to the voter's address is undeliverable.

HB 277 does not apply to local elections. It only applies only to primary, general and special elections, and any election for which the state has the responsibility for the conduct of the election.

HB 277 has an effective date of January 1, 2009 due to the implementation of a new voter registration system in May of 2009. The new system will be able to handle permanent absentee voting, according to the director of the Division of Elections.

Thank you for your consideration.

The logo for the American Postal Workers Union (APWU) is located in the top left corner. It consists of the letters 'APWU' in a bold, sans-serif font, with a diagonal line striking through the letters from the top left to the bottom right.

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**American Postal Workers Union, AFL-CIO****Midnight Sun Area Local 2756, PO Box 190485, Anchorage, Alaska 99519-0485**

January 18, 2008

Representative Bob Buch  
Alaska State Legislature  
716 West 4<sup>th</sup> Avenue  
Anchorage, Alaska 99501

Dear Bob,

The American Postal Workers Union supports HB 277; we see this bill as a way to simplify the voter process and we believe that a greater return in votes cast would result.

Currently Alaskans can apply for an absentee ballot which is valid for one year. HB 277 would allow voters to receive an absentee ballot in perpetuity or until the voter fails to vote in one election cycle, at which point the voter would revert back to the original voter roll.

Permanent absentee vote by mail increases voter turn out and results in more citizens having a stake in their government, provides greater procedural integrity, favors neither of the major political parties, saves taxpayer money, and enhances the democratic process.

Receiving a ballot in the mail two weeks before an election reminds voters an election is imminent. Vote by mail allows voters to study and research candidates and issues and vote at their convenience instead of within the voting booth.

In Alaska weather conditions may cause voters to miss an election, with vote by mail voters will still be able to cast their votes.

With the transient nature of the state, permanent absentee vote by mail would be beneficial. Alaska has fishermen, miners, slope workers, shift workers and construction workers that would have a better opportunity to cast votes as a result of HB277. HB 277 would also be of benefit to the disabled, seniors and working families who face challenges in casting their vote at the polls.

A University of Oregon study shows that demographically young people aged 26-38 voted 44% more often, homemakers vote 51% more often, disabled and unable to work vote 48% more often, and across all demographics voters vote 29% more often.

In 2004, 40% of New Mexico voters used vote by mail, in 2006, nearly 90% of Washington State voters used vote by mail. Oregon passed vote by mail in 1998 with 69% for the initiative and by 2003 had an approval rate of 81%.

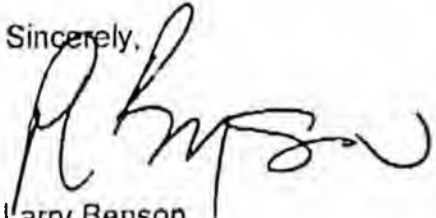
Voting by mail provides a paper trail for each vote cast unlike electronic voting machines which are susceptible to computer hackers and have no such safeguards. Vote by mail provides for accurate cleansing of registration rolls. When the ballot is returned because the voter has moved, their registration can be updated and a new ballot can be mailed to the new address.

County clerks in Oregon report that vote by mail elections cost about 30% less than traditional polling place elections

The sanctity of the ballot is paramount to the process. The United States Postal Service has been delivering vital documents for over two hundred years. The US Postal Service workforce is background checked; drug screened, and held to the US government code of conduct and ethics laws. Additionally the US Postal Service has internal enforcement agencies that work closely with the Federal Bureau of Investigations to protect the public from mail fraud. The US Postal Service is currently the only delivery service to handle absentee ballots and would like to continue as such.

For the above reasons the American Postal Workers Union supports HB 277.

Sincerely,



Larry Benson  
President

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## REPRESENTATIVE BOB BUCH

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### Sectional Analysis of HR 277

#### Section 1

Amends AS 15.07.127 by adding a new subsection (b) that requires the Director of the Division of Elections to make readily identifiable on the Master Register those people who have the status of permanent absentee voter.

#### Section 2

Amends AS 15.07.130 (e) by adding (B) which states that a voter who applies to the Division of Elections for a permanent absentee voter status qualifies as a voter who "appears to vote" under (b) and (d) of this section.

#### Section 3

Amends AS 15.20 by adding a new section (15.20.085) that:

- (a) enables Alaskan voters to apply to the Division of Elections for permanent absentee voting status;
- (b) allows a person to provide a voter with a permanent absentee voting application form with a political party or group affiliation only if that voter is already registered with the political party or group indicated. This paragraph also sets forth requirements that only the voter may mark the application form, indicate their choice of primary ballot and submit the application to the Division of Elections on a form prescribed by the Director of the Division of Elections;
- (c) requires the Division of Elections to send an absentee ballot to each voter designated as a permanent absentee voter for each state primary, general and special election and any other election for which the state has the responsibility for conducting the election;
- (d) requires the Director of the Division of Elections to make change of address forms available for permanent absentee voters;
- (e) allows the Director of the Division of Elections to not send an absentee ballot if the Division has received notice that mail sent to AN address is undeliverable;

(f) allows a permanent absent voter to cast the ballot under AS 15.20.081(d), which lists persons who are authorized to witness the casting of a ballot, and AS 15.20.081(e), which lists the dates by which the ballot must be cast and the means by which it must be returned to the Division of Elections;

(g) requires that ballots voted under this section be reviewed under the procedures that are established for the review of absentee ballots in AS 15.20.201 and AS 15.20.203;

(h) establishes that nothing in this section prohibits a person from voting early, or in person at a precinct, or in person before an absentee voting official, or by electronic submission as provided by AS 15.15.195, AS 15.15.198, AS 15.20.061, AS 15.20.064 and AS 15.20.066..

**Section 4**

Amends AS 15.56.030(a) by making the provisions that govern the unlawful interference with voting in the first degree apply to permanent absentee voting.

**Section 5**

Amends AS 15.56.035(a) by making the provisions that govern the unlawful interference with voting in the second degree apply to permanent absentee voting.

**Section 6**

Authorizes the Director of the Division of Elections to adopt regulations to implement the changes made in this act.

**Section 7**

Provides for an immediate effective date for section 6, which will allow the Division of Elections to adopt regulations to implement the changes made in this act.

**Section 8**

Provides for a January 1, 2009 effective date for all other provisions of this act.



Project Vote is the leading technical assistance and direct service provider to the voter engagement and civic participation community. Since its founding in 1982, Project Vote has provided professional training, management, evaluation and technical services on a broad continuum of key issues related to voter engagement and voter participation activities in low-income and minority communities.

## YOUR BALLOT'S IN THE MAIL: VOTE BY MAIL AND ABSENTEE VOTING

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Convenience voting, defined as access to voting at a time and place of the voter's choosing, has grown exponentially in the United States within the last two decades. A majority of states now permit "no-fault" or "no excuse" absentee voting, early in person voting, and vote-by-mail (VBM). This report will discuss the advantages and disadvantages of convenience voting in the form of no excuse absentee voting, permanent no excuse absentee voting, and VBM, all of which use the United States Postal Service as a central component. It will also discuss the concerns of proponents and opponents of mail balloting. Finally, it will suggest methods intended to address concerns about mail-in balloting expressed by legislators, administrators, election advocates, and scholars. Early in person voting, which may or may not include use of the mails as a component, is beyond the scope of this report.

As inevitably occurs with any significant change in a fundamental institution, the rapid expansion of voting outside the precinct polling place has been controversial. Proponents maintain that no excuse absentee and VBM systems increase turnout and may even expand political participation in previously under-represented demographic groups. Other supporters point out that convenience voting permits voters to study the ballot and issues more closely and make more informed choices. Opponents decry the greater opportunity for election fraud that may exist in a mail ballot system, fraudulent activities such as vote buying, coercion or undue influence on voters by family or political operatives, and, not least of all, the interception of ballots. Others raise valid concerns about the reliability of mail service in large urban areas.

Many opponents complain that mail-in balloting comes at the cost of losing the communal, civic aspect of voting at a neighborhood polling place. As Norman J. Ornstein of the American Enterprise Institute framed the argument: "[Voting] should be a meaningful experience, where citizens congregate with their neighbors and affirm their joint commitment to society... Reducing the vote to the equivalent of filling out a Publisher's Clearinghouse lottery cheapens the experience." On the other hand, proponents point out that mail-in balloting can be seen "kitchen table voting" which opens opportunities for political discourse among family and friends. The argument that mail-in balloting is detrimental to civic involvement, one researcher contends, "ignores the rich "togetherness" that can be achieved by voting at home," and fails to recognize "that there are positive benefits from the increased deliberative environment of vote by mail."<sup>2</sup>

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### Vote by Mail and Absentee Voting

Issues in Election Administration: Policy Brief Number 13

07.09.07

Regardless of the relative merits of the arguments for and against mail-in balloting, as far as the voting public is concerned, the train has left the station. Convenience, as history demonstrates, trumps tradition. Still, it may be wise to slow the train down and carefully consider where this particular train may take us. While voters have generally approved of mail-in balloting, states that have adopted some form of mail balloting have encountered significant problems unique to mail-in systems. In addition, the hoped for increase in voter turnout and expanded political participation by under-represented groups has not materialized.

Oregon voters overwhelmingly voice approval of the state's all VBM system. In California, which provides no excuse absentee voting and VBM elections, 46.9 percent of ballots cast in the 2006 Congressional election were absentee ballots.<sup>3</sup> In Washington, 89 percent of voters voted by mail in the 2006 general election. Of Washington's 39 counties, 35 vote entirely by mail as of this writing. Of the four counties that maintain poll sites, 77 percent of the ballots in the 2006 General Election were cast by absentee voters.<sup>4</sup>

These usage and approval statistics do not in themselves demonstrate, however, that absentee and by mail voting are without significant problems. All that they reveal is that given the opportunity, a great many voters prefer the ease of mailing in or dropping off their ballot at their convenience to voting at a specified place and time. If, as the high level of voter approval suggests, mail-in balloting in some form is here to stay, the critical question then becomes not whether states should sanction mail-in balloting, (more than half already do) but how can states conduct mail-in ballot elections to ensure ballot integrity and unhindered access for voters, particularly urban, minority, and lower-income populations.<sup>5</sup> Another crucial question is whether states with more dense, heterogeneous populations should follow Oregon's lead and adopt all VBM systems as opposed to hybrid vote-by-mail systems in which both VBM and traditional place voting are available.

### Definitions

For the purposes of this discussion, convenience voting excludes traditional absentee voting in which a voter must be unable to get to the polls on election day because of disability, age or absence in order to be eligible to vote absentee. The categories of voting addressed include: (1) no-excuse absentee voting, in which a voter may request an absentee ballot without stating a reason, (2) permanent no-excuse absentee voting, in which a voter can request to be placed permanently on the absentee list without stating a reason, and (3) VBM systems in which mail ballots replace precinct polling places.

The distinction between no-fault absentee voting (especially no excuse permanent absentee voting) and VBM systems is often blurred, as both use the mail to send and receive ballots. In fact, several states have adopted legislation changing their terminology from absentee voting to more descriptive terms. In Kansas, for example, absentee ballots are now referred to as an "advance" ballots. To distinguish the two concepts, the term VBM as used in this report applies to elections in which all voters in a given jurisdiction receive mail-in ballots without requesting them and cast their votes by mailing or dropping off their ballots.<sup>6</sup>

The first section of the report covers the history of absentee voting, instances of absentee voting fraud and one state's legislative response to the need to increase ballot security. In the second section, we will explore the Oregon experience with a statewide all vote-by-mail elections as well as hybrid vote-by-mail election systems which combine tradition with VBM elections, such as those Washington, Colorado and California. In the last section we will examine the studies on the effect of VBM on voter turnout and expanding the composition of the electorate. We will conclude with a report on the pending legislation to adopt or modify absentee voting and VBM laws.

### History of Absentee Balloting

Absentee ballots have a long and controversial history in the United States. As early as the 1700's land owners were permitted to vote by absentee ballot if their homes would be vulnerable to attack by Native Americans in their absence. Nevertheless, absentee balloting was rare before 1860. Only Oregon, interestingly, made it possible in 1857 for all men who were temporarily away from their homes to vote.<sup>7</sup>

During the Civil War, 19 of the 25 Union states and 7 of the 11 Confederate states passed laws permitting soldiers to vote by absentee ballot. This was done by having the soldiers deposit ballots into a box on a specified day in front of officers who were then responsible for sending the ballots to the soldiers' home precincts election authorities in the proper jurisdictions.<sup>8</sup> Opponents of absentee voting at the time voiced the same primary concern that is raised today, the seemingly greater opportunity for fraud when votes are cast away from the control of a polling place.

After the Civil War ended, many of the military absentee practices were discontinued. In World War I, three million men were inducted into service, adding to the pressure to extend absentee balloting to military personnel. From 1914 to 1917 states with absentee voting laws grew from three to twenty-four of the then 48 states. These events helped to sever the ties between voting and physical presence. The concept of an intent to return to a particular location became, along with physical presence, a determinate of residence for purposes of voting.

The war and the increasing mobility of the United States work force compelled states to address the need for absentee balloting in certain situations. States grappled with absentee balloting provisions for students, persons in custodial confinement such as almshouses and sanatoriums, and people whose work required them to be away from home on Election Day. By 1918, nearly all states had a form of absentee balloting for men in the military. At the end of World War II, more than 20 states permitted absentee balloting for work-related reasons and a few allowed voters who would be absent for any reason to vote by absentee ballot. By 1924, all but three states had enacted some form of absentee voting.<sup>9</sup>

Currently, all states permit absentee balloting. Of the 50 states and the District of Columbia, 29 states permit no-excuse absentee balloting on request.<sup>10</sup> Of these 29 states, eight permit voters to request permanent absentee ballot status, which means that they are placed on a list to receive absentee ballots automatically without having to request them in subsequent elections.<sup>11</sup>

### Election Fraud and Absentee Voting

Although there are many media reports on voter fraud, primarily based upon anecdotal evidence, little scientific or systematic research of the issue has been done.<sup>12</sup> Recent reports indicate that recurrent claims that voter fraud is a pervasive problem are not supported by the evidence.<sup>13</sup> When fraud is found, however, absentee balloting is often implicated. Generally speaking, instances of absentee fraud arise most often in local county or community elections.

Absentee ballot fraud takes four general forms, (1) forging signatures or signing fictitious names; (2) coercing or influencing a vote; (3) vote buying; and (4) misappropriating absentee ballots. Absentee ballot fraud by members of both major political parties has been substantiated in several high-profile civil and criminal cases.

A 1997 Miami mayoral election was overturned by a Florida appeals court in a highly publicized case upon a finding that absentee ballots cast for Republican incumbent Xavier Suarez were tainted by fraud. The court installed Democratic candidate Joe Carollo as the winner of the mayoral race after throwing out all 4,740 absentee votes.<sup>14</sup> As a result of the investigation, twenty-one Miami residents were accused of acting as false witnesses to absentee ballots.

A former Miami City Commissioner was later charged with covering up fraudulent absentee votes cast in that election by a Miami police officer and his wife, a former city hall secretary. In a similar case, a state judge nullified the results of a 1993 mayoral election in Hialeah and ordered a new vote. In response, Florida's legislature passed a law that prohibits providing or receiving payment for collecting absentee ballots in 1998.

In a blatant instance of vote buying, Democratic and Republican supporters of candidates in a Dodge County, Georgia sheriff's race were found guilty of paying voters for their absentee ballot votes, each bidding against the other and operating from tables on opposite ends of the courthouse hall.<sup>15</sup> In a more recent case, two defendants in Tallahatchie County, Mississippi were convicted of absentee ballot fraud for providing money and beer to voters to get them to vote by absentee ballot.<sup>16</sup>

In a controversial 2005 Benton Harbor, Michigan, case, an African American community leader, Reverend Edward Pinkney, was accused of fraud for unlawfully possessing absentee ballots and attempting to influence absentee voters with payments in a recall election against a city commissioner. The recall was overturned and the commissioner reinstated. Reverend Pinkney's attorneys argued against Michigan's absentee fraud statute, which makes it a felony to possess absentee ballots regardless of intent. After a first trial ended in a hung jury, Reverend Pinkney was convicted by an all-white jury on March 21, 2007. This case illustrates the need, discussed below, for carefully drafted legislation on improper possession of absentee ballots cast by other voters.

#### Problems in Administration of Absentee Ballots

The 2004 Washington gubernatorial election stands as a case in which the administration and counting of absentee ballots played a large role. The election was the closest governor's race in United States history. After a mandatory recount, the margin between the two candidates was just forty-two votes. The subsequent hand recount requested by the state Democratic Party gave Democratic candidate Christine Gregoire the lead with 129 more votes than Republican Dino Rossi.<sup>17</sup>

Election contest litigation ensued which was ultimately resolved on June 6, 2005 when the case was dismissed. Plaintiffs in the case, *Borders v. King County*, pointed to absentee ballots as one source of the problems.<sup>18</sup> There were discrepancies between the number of voters who were credited as having voted by absentee ballot and the number of absentee ballots counted. Before absentee ballots were sent out, the counties verified that the voters were registered and assigned a ballot identification number. When the ballots were returned this number was to be matched to the voters registration number and the voter "credited" with having voted.

The court in *Borders* found that the fact that voters received the absentee ballots was sufficient evidence that they were registered, the extra step of crediting the votes was not necessary to prove the fact of registration. The counties' failure to carry out the crediting procedure with some of the ballots was evidence of poor administration, but not malfeasance, on the part of officials.<sup>19</sup>

The Washington legislature took steps to improve absentee ballot administration, along with other aspects of election administration, with the passage of the Clarifying and Standardizing Various Election Procedures Act, Senate Bill 5743, 2005. The bill enacted the following safeguards for absentee ballots:

- Absentee ballots are to be distinguishable from other ballots;
- Measures preventing election staff from inserting absentee and provisional ballots into mechanical voting machines are to be instituted;

- Election officials must begin processing absentee ballots on receipt;
- Two audits of votes, including absentee votes, are required, one upon certification and one 30 days later.<sup>20</sup>

### VBM Elections Take Hold in Western States and Beyond

In VBM elections, all voters in the jurisdiction receive their ballots through the mail and must return them by mail or by dropping them off at a specified location. California conducted a VBM election for the first time in 1977. Oregon's statewide VBM system, which completely eliminates the use of polling places, is the result of nearly twenty years of testing and gradual expansion of VBM elections in the state.<sup>21</sup> The process began in 1981 and 1983 with tests of local VBM elections. The legislature then passed a 1993 law that permitted the optional use of VBM for local and special elections. In the same year, the first statewide special VBM election was held. Forty-four percent of voters returned their mail ballots. In 1995, the majority Republican legislature passed a bill that provided for VBM elections in all primaries and general elections. The Democratic governor vetoed the bill on the grounds that VBM needed further study before it should be adopted statewide.

After the resignation of Senator Bob Parkwood in 1995 due to a personal scandal, special elections, primary and general, were needed to elect a successor. Because they were special elections, the Secretary of State, a Democrat and a supporter of VBM, was able to exercise the option to use the VBM system. In 1996, Oregon's presidential primary was conducted entirely as a VBM election. In 1997, two statewide special elections were held in by VBM. With these elections as tests of statewide VBM elections, in 1998 Oregon voters passed an initiative providing for all primary and general elections to be conducted by VBM in 1998.<sup>22</sup>

Oregon citizens overwhelmingly approve of their VBM system. A survey was conducted five years after the initial implementation of the 1998 VBM law to determine if public opinion on VBM remained high and also to figure the levels of participation among Oregon voters. The survey indicated that about 81 percent of voters preferred VBM. In addition, Oregon's all-mail voting system (no polling place costs) was found to lower election costs. All mail elections cost a third to one half of the cost of polling place elections.<sup>23</sup>

VBM has also taken root in other states, primarily, but no longer exclusively, Western states. North Dakota permits the boards of county commissioners to conduct mail ballot elections in primaries. Technically, the system is not an all VBM election because the state law requires voters to make an application for a mail ballot.<sup>24</sup> VBM elections have also been conducted in Alaska, California, Colorado, Kansas, Minnesota, Missouri, Montana,<sup>25</sup> Nebraska, Nevada, New Mexico, North Dakota, Utah, and Washington.

In Colorado, VBM elections may be conducted at the option of local jurisdictions, although they cannot be used for partisan candidate elections and elections held in conjunction with, or on the same day as, a primary or congressional vacancy election.<sup>26</sup> Moving South and North, VBM elections have been held in North Carolina, Florida, and New York. In general, early tests of VBM elections are made in special elections or at the option of local jurisdictions within the states. For example, in California, a state law permits county registrars to designate precincts with less than 250 registered voters as VBM precincts.<sup>27</sup> In the state of Washington almost all counties have chosen to adopt all VBM elections, although there is debate within the state on whether to adopt VBM statewide.

The following table provides an overview the adoption of mail in balloting on a state-by-state basis.

| Traditional Absentee |                | No Fault Absentee |                | Permanent No Fault Absentee | Vote by Mail + Precinct | All Vote by Mail |
|----------------------|----------------|-------------------|----------------|-----------------------------|-------------------------|------------------|
| Alabama              | Mississippi    | Alaska            | Nevada         | Arizona                     | Minnesota               | Oregon           |
| Connecticut          | Missouri       | Arizona           | New Jersey     | California                  | Missouri                |                  |
| Delaware             | New Hampshire  | Arkansas          | New Mexico     | Colorado                    | New Jersey              |                  |
| District of Columbia | New York       | California        | North Carolina | Maine                       | Colorado                |                  |
| Illinois             | Pennsylvania   | Colorado          | North Dakota   | Montana                     | Georgia                 |                  |
| Indiana              | Rhode Island   | Florida           | Ohio           | Oregon (VBM)                | Hawaii                  |                  |
| Kentucky             | South Carolina | Georgia           | Oklahoma       | Utah                        | Kansas                  |                  |
| Louisiana            | Tennessee      | Hawaii            | Oregon (VBM)   | Washington                  | New Mexico              |                  |
| Massachusetts        | Texas          | Idaho             | South Dakota   |                             | North Dakota            |                  |
| Michigan             | Virginia       | Iowa              | Utah           |                             | California              |                  |
| Minnesota            | West Virginia  | Kansas            | Vermont        |                             | Montana                 |                  |
|                      |                | Maine             | Washington     |                             | Washington              |                  |
|                      |                | Maryland          | Wisconsin      |                             | Wyoming                 |                  |
|                      |                | Montana           | Wyoming        |                             | Arizona                 |                  |
|                      |                | Nebraska          |                |                             | Florida                 |                  |

**Advantages and Disadvantages of VBM Systems**

Supporters of VBM systems point to savings in costs, greater counting accuracy, and voter satisfaction. Advocates also believe that VBM will increase overall voter turnout. The greater reliability of VBM systems and Oregon's reports of the absence of fraud in the state's all VBM elections are also touted as reasons to consider adopting VBM. Finally, some supporters believe that making voting easier may reduce socio-economic disparities in voter participation.

The lowering of costs, at least in elections that completely eliminate polling places and the resulting costs of staff and location has been clearly demonstrated in Oregon<sup>28</sup> and Washington. It remains to be seen if the cost benefits maintain in hybrid vote-by-mail systems in which the state incurs costs associated with operating polling places. As to voter fraud, studies have supported election officials' claims that Oregon's VBM system has been free of fraud.<sup>29</sup> Oregon, however, has been generally free of election fraud throughout its history. Empirical studies have also confirmed reports that early voting in general, including early-in-person, VBM and absentee balloting, results in a more accurate count.<sup>30</sup>

This is not to say that VBM does not present an idiosyncratic set of administrative difficulties that can lead to disenfranchisement of voters. Chief among them is the need to rely heavily on the reliability of the United States Postal Service (USPS).

Financial issues and reductions in force have challenged USPS operations. The USPS 2006 Comprehensive Statement on Postal Operations reports that on-time delivery of first class mail has improved since 2000. Despite that improvement, the table below<sup>31</sup> reveals a 2006 failure rate that cannot be tolerated in delivery of election ballots. In addition, the agency's performance goals for 2007 are to meet the essentially same unacceptable levels of on-time delivery.

Timely delivery is just one of the concerns raised by reliance on the mail for delivery of ballots. Misdelivery of mail is also a significant problem. A recent report by the Hawaii League of Women Voters echoes concerns over the reliability of postal service. The report points to the experience in Clark County, Nevada, where 10% of the ballots were undeliverable in a



VBM primary for the Republican Party. A letter from the Clark County Registrar of Voters to a Nevada official describes the problems encountered by administrators:

"There were no indications of fraudulent voting. However, ballots were delivered all over the County to former residents who did not fill out a change of address with the post office when they vacated their address of record; new residents automatically received the old residents' ballots. In addition, most of the people voting early and in the office on Election Day did so because they never received their ballots in the mail. Many of these voters' addresses were correct: the post office simply failed to properly deliver the ballot.

First class mail on-time delivery rates

|  |     |
|--|-----|
| <b>Overnight First-Class Mail On-Time</b><br>(External First-Class Measurement System) | 95% |
| <b>2-Day First-Class Mail On-Time</b><br>(External First-Class Measurement System)     | 91% |
| <b>3-Day First-Class Mail On-Time</b><br>(External First-Class Measurement System)     | 90% |

To whom were these ballots delivered? In numerous instances, some members of a household received their ballots while other members did not."<sup>32</sup>

U.S. Postal Service officials relate that Chicago has the worst mail delivery of any major U.S. city. Most problems involve late or incorrectly delivered mail. One Chicagoan complained of receiving mail belonging to suburban residents. An elected official was outraged by the fact an alderman report that he sent in January did not reach citizens until February.<sup>33</sup>

Even in less densely populated Oregon urban areas, delivery problems plague election administrators. Six percent of Multnomah County's VBM ballots were undeliverable in the 2004 Presidential election. In Benton County, over 7 percent of ballots were undeliverable.<sup>34</sup>

Additionally, there are unique problems associated with the misdelivery of mail in large multi-unit residential buildings, which are commonly found in urban areas and on college campuses.

The USPS report and anecdotal experience from urban areas provide evidence in support of the concerns cited by individuals and groups that express caution about rushing to adopt all VBM systems. Concerns about the reliability of the mail service and about the use of VBM elections in an increasingly mobile society must be addressed as part of any careful assessment of the feasibility of using the VBM format in any jurisdiction.

The interaction of VBM elections with existing state laws is another important factor to consider when drafting legislation adopting VBM systems. Denver, Colorado provides a case in point in which existing state law and VBM combine to limit access to the polls. Denver officials will not be mailing ballots to approximately 117,000 voters in a May 2007 VBM election because the voters have been placed on an "inactive" list. According to state law,<sup>35</sup> if a voter does not vote in just one general election her status is changed to "inactive." In order to receive a mail ballot, inactive voters have to respond to a notice postcard confirming their residence or go to the county clerk's office to vote in person. Denver Secretary of State Mike Coffman supports the law and cautions against changing it, maintaining that the law is necessary to keep voter registration lists up to date.<sup>36</sup>

**Effect of VBM and Absentee Voting on Voter Turnout and Participation**

When VBM was introduced in Oregon and other states, there was an expectation that it would significantly increase voter turnout and expand political participation by under-represented groups. Political scientists have studied the effects of mail-in ballot reforms with a primary focus on overall voter turnout and participation by under-represented groups. The following is a brief summary of some of the key studies, their methodologies and conclusions.

Priscilla L. Southwell, "Five Years Later: A Re-assessment of Oregon's Vote by Mail Electoral Process," Department of Political Science, University of Oregon, 2003.

This 2003 study is based on interviews of Oregon voters five years after the state began using an all VBM election system. Its function was to determine if voter opinion of VBM remained high and to assess the effect of VBM on voter turnout. The methodology used was to review data from the 2003 Oregon Annual Social Indicators Survey, which consisted of a random-digit-dialing survey of 1037 individuals in Oregon. Respondents were asked about their preferences in relation to VBM and about their voting behavior.<sup>37</sup>

The study found that while 81% of the respondents preferred VBM elections, the majority (66.6%) reported that their voting frequency had not increased since VBM was implemented. A majority of all subcategories preferred VBM over precinct elections. Certain subgroups of the population, including women, the disabled, retirees and younger voters reported that they voted more often as a result of VBM, but the differences had a weak statistical significance. About 4 percent said they actually voted less often. The study concluded that neither political party "had much to lose or gain" from VBM.

Paul Gronke, Eva Galanes-Rosebaum, and Peter Miller, "Early Voting and Turnout," Early Voting Information Center (EVIC) at Reed College, 2007

This study reviewed existing research on the effect of early voting measure on voter turnout and presents the results of their own research model. The authors examined early-in-person voting, no-excuse absentee balloting, and VBM elections.

Their review of earlier literature on the subject concluded that the general consensus was that early voting methods increased turnout to a modest degree. Results varied from 10 percent in an Oregon study<sup>38</sup> to Professor Gronke's earlier research finding that VBM increased turnout by 4.7 percent in Oregon in presidential elections only.

Although the literature concluded that VBM had a positive effect on turnout, there was a consensus among social scientists that this was not achieved by recruiting new voters, but by retaining already active voters.

The consensus of the findings also supported assertions that VBM reduced costs and resulted in a more accurate count. Oregon, for example, saved an estimated 17% of the costs of elections by adopting a statewide VBM system.

The authors caution that earlier studies were based on limited historical data and were limited to Western states that differed geographically and demographically from their Midwest and Northeastern counterparts. Oregon, the leader in adopting VBM, was the primary subject of studies, followed by other Western states including Washington and California. The study notes that higher numbers of early voters are generally found in rural populations and among those voters that have long commutes. That finding tallies with another study on geographical effects on voter turnout, which concluded that suburban voters were impacted by distance.<sup>39</sup> Earlier reports, of necessity, do not consider political and administrative differences between elections since they were limited to a relatively few number of VBM elections in relatively few jurisdictions.

The methodology used in this study differed from earlier studies in that the authors estimated a model of early voting and turnout from 1980 to 2004. Starting with a turnout model and a data set produced in ballot initiative studies in 2001 and 2005, they added a series of variables based on early voting categories. The results supported previous studies finding that VBM increased turnout, but demonstrated that the increase in turnout was not only less than previously reported but that it was only shown in presidential elections in Oregon.

Despite the negligible increase in voter turnout, the authors note that the number of early voters is increasing annually. They also conclude that it "is no longer a question of whether early voting is a smart reform; the question now is what sort of early voting to allow and how to adjust to its impact."

**Thad Kousser, University of California, San Diego; Megan Mullin, Temple University, Will Vote-by-Mail Elections Increase Participation? Evidence from California Counties, Project Sponsored by the John Randolph Haynes and Dora Haynes Foundation, 2007.**

The above study's findings that VBM increased turnout to some degree are based primarily on reports of the Oregon experience. The reports contrast with a 2007 California study. In this study, the authors were able to take advantage of a California law that permits county registrars to designate any precinct with less than 250 voters as a mandatory VBM precinct. All precincts in the state's two smallest counties contained fewer than 250 voters and all were designated as VBM precincts. The study matched pairs of precincts, one VBM and one traditional, according to demographics and compared turnout in each matched pair, then averaged those differences across the number of treated precincts. This report differs from previous studies in that it was not based on self-reports or upon comparison of elections in precincts with different demographics or political elements. The demographics and the election characteristics were the same for each matched pair.

The goal of the study was to determine the effect of VBM on turnout compared to the matched polling place precincts. The authors concluded that VBM not only failed to increase turnout, it had a small negative effect. There was a statistically significant 2.6 percent reduction in the turnout for VBM precincts compared with similar polling place precincts in the 2000 general election and a 2.87 percent decrease in the 2002 general election.

**Priscilla L. Southwell; Justin Burchett: "Does changing the rules change the players? The effect of all-mail elections on the composition of the electorate?" *Social Science Quarterly*, 2000, vol. 81, no. 3, pp. 837-845**

Turning from the issue of overall turnout in VBM elections to their effect on the composition of the electorate we find fewer studies. This 2000 Oregon study examined the issue using the 1996 special election to replace Senator Bob Packwood after he resigned under a cloud of scandal. The authors conclude that this method of voting may increase turnout by retaining likely voters. They found that VBM voters in Oregon differed only slightly from voters who went to the polls in previous elections---they were older, more urban, and less partisan. VBM voters were as informed and educated as polling place voters. Additionally, VBM voters were demographically similar to registered non-voters but were better educated and politically informed. The conclusion was that in some manner, VBM elections provided a method of converting peripheral voters into core voters even in low-stimulus contests.<sup>40</sup>

**Adam J. Berinsky, *The Perverse Consequences of Electoral Reform in the United States*. *American Politics Research*, Vol. 33 No. 4, July 2005 471-491**

This study ventures beyond a finding that VBM does nothing to expand political participation and posits the theory that reforms designed to make it easier to vote may actually increase existing socio-economic and demographic bias. The author bases his premise on results of studies showing that voting levels under early voting systems, including VBM and liberal absentee voting, are only effective at retaining habitual voters, not at recruiting new voters. Voters that moved in and out of the electorate, it was posited, were more likely to vote, i.e. stay in the electorate, if opportunities to vote were made more convenient, but registered non-voters were not more likely to begin voting. The author argues that, as a result, reforms that make voting easier simply magnify the existing socioeconomic bias.

The methodologies used by the studies cited to support this theory were varied, including cross-sectional designs, exit polls, validated voting records, and telephone surveys. They all concluded that voters who take advantage of early voting methods tend to be more politically involved, better educated and better paid than those who did not. Thus, the writer concludes, "voting reforms do not correct the biases in the electorate, and in some cases, reforms may even worsen these biases."

It is important to note in reading this study that none of the research cited gave direct empirical evidence that early voting reform had in fact changed the composition of electorate as a whole.

While research studies are effective in clarifying the effect of VBM on turnout and participation, they have not yet been able to control for all relevant factors, such as the demographics of the population under study, the level of interest in a particular election, the relative effectiveness of political campaigns on voter turnout and other factors. The data on VBM and no-fault absentee voting to date has been significantly limited as to time and place. Until more comprehensive data is available, it can not definitively be said that voter turnout may change under mail ballot election systems or that the reforms will exacerbate biases in the composition of the electorate.

One way in which VBM and other forms of early voting may ultimately increase turnout and expand the electorate is through the use of early Get-Out-the-Vote campaigns directed at voters who have received mail ballots. An experienced campaign consultant advises that "reaching people who vote by mail should be a more urgent concern than reaching people who vote early in person."<sup>1</sup>

By obtaining lists of voters who have received mail-in ballots, political campaigns have more time and a greater opportunity to interest, inform and persuade voters to cast their ballots. At least one study has indicated that get out the vote campaigns targeted at early voters do have a positive effect on turnout. As one researcher concluded, "...scholars have ignored the important role of partisan campaign mobilization in linking early voting reform to overall turnout levels. That is, we find that early voting is associated with greater turnout when party elites use early voting as part of their campaign strategy."

### Recommendations

Jurisdictions that have adopted VBM and absentee balloting by mail have employed various methods to ensure that each ballot gets to the right voter, that they are cast by that voter and that they are returned and accurately counted. For example, one extremely important element of protecting against voter fraud in mail-in elections is comparing signatures on the ballot with the voters' signatures on file. Other recommended steps to improve absentee ballot and VBM include:

1. Include a space for the voter's signature; and compare the voter's signature with the signature on file;
2. Use distinguishable absentee or mail ballots, by using a different through color or through other means;
3. Permit election officials to begin tabulating votes as soon as ballots are received to avoid delay in the election canvass;
4. Ensure that mail ballots can not be forwarded;<sup>2</sup>
5. Regulate "electioneering" in the presence of people who have mail ballots on their person.<sup>3</sup>

6. Establish close working relationships with the United States Postal Service and university or school administrations to co-ordinate efforts and efficiently provide for accurate and timely delivery of mail;<sup>14</sup>
7. Regulate who may take custody of a completed mail ballot;
8. Impose significant sanctions for misappropriation of a ballot, falsifying a signature or a voter's choice on a ballot, or failing to deliver a ballot lawfully entrusted to an agent;
9. Regulate delivery of mail-in or absentee ballots by partisan organizations. While it is important not to restrict family members and agents from returning a limited number of ballots, control of large numbers of completed ballots by third parties can lead to vote buying and misappropriation of ballots in local elections;
10. Require a minimum of two reconciliation audits;
11. Provide public access to lists of voters who have returned their ballots to facilitate Get-Out-the-Vote efforts.

### Conclusion

The results of VBM and no-fault absentee election reforms have been mixed, but public acceptance of the changes is high. In view of voter enthusiasm for the reforms, it is likely the trend toward mail-in voting as an option will continue. We have seen that the effects of these reforms on turnout, however, have been minimal at best and the desired effect of expanding the composition of the electorate has not been realized. While the administrative costs are lowered significantly in all VBM elections, the cost reductions in hybrid elections are less significant. Lastly, the problems with mail delivery are likely to continue for absentee voters and VBM voters alike.

Jurisdictions contemplating the adoption of VBM in particular must approach the decision with caution. The system should not be adopted simply in an attempt to increase voter turn-out or expand political participation. It would be prudent for states to appoint a study commission consisting of election administrators, the state's chief election official, and community organizations before making a decision to adopt VBM elections. Initial trials of VBM are best implemented in small, local elections before they are attempted on a larger scale.

In short, go slow on VBM and mail-in balloting reforms. While convenient, they may create more problems than they are intended to resolve.

### Endnotes

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<sup>2</sup> Sean Richey, "The Impact of Voting by Mail on Political Discussion," *Australian Journal of Political Science*, Vol. 40, No. 3, September, pp. 435-442, 2005.

<sup>3</sup> "Historical Absentee Ballot Use in California," California Secretary of State website: [www.ss.ca.gov/elections/hist\\_absentee.htm](http://www.ss.ca.gov/elections/hist_absentee.htm)

<sup>4</sup> Washington Secretary of State website: [www.seestate.wa.gov](http://www.seestate.wa.gov)

<sup>5</sup> A similar conclusion is suggested by Paul Gronke, Eva Calanes-Rosenbaum, and Peter A. Miller in "Early Voting and Turnout," *Early Voting Information Center*, Reed College, 2007.

<sup>6</sup> Beinsky, Adam J., Massachusetts Institute of Technology, "The Perverse Consequences of Electoral Reform in the United States," *American Politics Research*, Vol. 33, No. 4, July 2005, 471-491.

<sup>7</sup> Keyssar, Alexander, *The Right to Vote: the Contested History of Democracy in the United States*, pp. 104, 147, 150-151. New York: Basic Books, c2000.

<sup>8</sup> See generally Ornstein, *Supra*, n. 1, p. 492-500.

<sup>9</sup> Keyssar, *Supra*, n. 7.

<sup>10</sup> In Georgia, a voter may cast an absentee ballot by mail without an excuse, but a voter may not vote an absentee ballot in person without a reason such as disability or actual absence. Georgia Secretary of State website: [www.sos.state.ga.us/elections/elections/voter\\_information/absentee.htm](http://www.sos.state.ga.us/elections/elections/voter_information/absentee.htm)

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- <sup>2</sup> Minnite, Lorraine C., Ph.D., Barnard College, Columbia University, "Politics of Voter Fraud," Project Vote, 2007.
- <sup>3</sup> "In 5-Year Effort, Scant Evidence of Voter Fraud," *New York Times*, April 12, 2007.
- <sup>4</sup> *The Miami Herald*, page 1A, March 12, 1998.
- <sup>5</sup> *Slate*, February 22, 2006, citing *United States v. McCranie*, 703 F.2d 1213, 1218 (10th Cir. 1983).
- <sup>6</sup> Press release, Mississippi Office of the Attorney General, December 9, 2003.
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- <sup>8</sup> Election Law @ Montz, Major Cases Archive. *Borders v. King County*, Superior Court for the State of Washington, Chelan County, Case No. 05-2-00027-3, last visited July 8, 2007. <http://montzlaw.osu.edu/electionlaw/litigation/archives.php>
- <sup>9</sup> Wang, *Supra* n. 17
- <sup>10</sup> *Id.* pp. 387, 388
- <sup>11</sup> See generally, Southwell, Priscilla L., Burchett, Justin, "Vote-By-Mail in the State of Oregon," *Willamette Law Review* 345 Spring 1998
- <sup>12</sup> Oregon Secretary of State website, [www.sos.state.or.us/elections/vbm/history.html](http://www.sos.state.or.us/elections/vbm/history.html).
- <sup>13</sup> Southwell, Priscilla L., "Five Years Later: A Re-Assessment of Oregon's VBM electoral Process," *University of Oregon, Department of Science*, Eugene, OR, 2003.
- <sup>14</sup> N.D.S. 16-1-11.1-01
- <sup>15</sup> Referred to as a "mail ballot" election, Montana Code sec. 13-19-104
- <sup>16</sup> Colorado Code sec. 1-7-5-104
- <sup>17</sup> California Elections Code sec. 3005
- <sup>18</sup> Southwell, *Supra* n. 23
- <sup>19</sup> Gronke, *Supra*, Gronke, n. 5.
- <sup>20</sup> *Id.*
- <sup>21</sup> United States Postal Service 2006 Comprehensive Statement on Postal Operations, p. 61
- <sup>22</sup> Clark County's Experience With The 3/26/96 Presidential Preference Primary, April 30, 1996 letter to Robert Erickson, Nevada Legislative Counsel Bureau, from Kathryn Furguson, Registrar of Voters
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- <sup>31</sup> "Early Voting and Campaigns," *Campaigns and Elections*, July 2004
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