FAIR ELECTIONS CENTER

Registering and Voting in the Era of COVID-19

Policy proposals for safeguarding voter registration, mail voting, and in-person voting for the Fall 2020 elections

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Summary:

Effective Vote by Mail involves much more than simply allowing all voters to cast ballots they mail in. An effective vote-by-mail program requires changes at all stages of the voting process, beginning with voter registration and including pre-vote processing of ballots, voting, and post-vote processing and counting.

Best Practices for Socially-Distanced Voter Registration

Typically, voter registration before a presidential election includes on-the-ground efforts, particularly those focused on young people, low income citizens, and people of color. These traditional efforts will be severely dampened by social distancing and stay-at-home requirements necessary to prevent the spread of COVID-19. As a result, election officials and activists must think creatively about ways to help people register to vote. While digital organizing plays an important role, online voter registration in nearly all states requires users to have a state driver license or ID in order to register fully electronically. Between stay-at-home orders and office closures, many individuals cannot currently obtain a state ID even if they wanted to, while others may not need a driver's license or have the documents or funds to obtain one. As a result, to make registration universally available during this time, the following modifications should be made:

- Require election officials to send a mailing to obtain the voter's "wet" signature by mailing them a postcard, or obtain an electronic image of a signature via email, scanned PDF forms, or digital signatures on Docusign or other authenticated digital signature platforms. Procedures should take into account any signature-matching laws in effect in the state which would lead to a ballot being invalidated if signature capture quality is inadequate and it does not match for that reason.

- Expand online voter registration where possible to accept electronic signatures, such as the system currently in use in Pennsylvania, which allows voters to upload a signature or use a tablet to sign the application.

- Allow statewide registration updates through Election Day, or at a minimum, through the deadline to request a mail-in/absentee ballot, in order to correct outdated addresses.

- Conduct forwardable mail outreach to inactive voters to encourage them to update their registrations, while observing federal law's 90-day moratorium on systematic removals of voters from the rolls.

- Election officials should establish hotlines for potential voters who are unable to register online, allowing them to email, call, or text election officials to obtain postage-paid voter registration forms so that they can mail them from their homes. A similar process could be used for mail ballot applications if the jurisdiction does not send them to all voters (see below).

- Because traditional means of access to voter registration forms have been disrupted, postage-paid voter registration forms should be placed in essential businesses such as grocery stores, hospitals, and gas stations.

- As an extension of their Higher Education Act requirements, community colleges and universities should send paper voter registration forms to students even if not on-campus. Whether federal forms or state forms should be sent may depend on the institution and the number of in-state students enrolled at the institution.

- Organizers and civic engagement groups should develop and build relationships with potential voters through phone and text before asking them to register to vote, and then provide paper forms to voters who cannot use online platforms to complete the process.

- Election officials should make large quantities of voter registration applications available to civic and community organizations (as required in NVRA states) so they can distribute them, by mail or drop-off, to increase access for populations with limited access to reliable internet or postal service.

- Adopt or expand opportunities to register up through and including Election Day as an ultimate "Fail-Safe" option for eligible voters who don't have timely options to meet traditional registration deadlines.

- States with restrictions that burden collecting forms from voters, or distributing pre-filled forms to them, should reduce such restrictions to make it easier for civic organizations to assist voters.

These are not normal times and administrative barriers that in normal times are minor issues can become insurmountable hurdles. Voters who are staying at home may not have access to printers and are not traveling back and forth to government offices. Those without driver's licenses may not be able to access online request tools in their state. Best practices for mail balloting must consider voters' ability to practically obtain, cast and return a ballot in this environment.

Best Practices for Mail Voting

- Ensure that every voter is able to vote a mail-in ballot without an excuse.

- Make it easier to receive a mail-in ballot, which consists of two basic options, once all voters are eligible to receive one:

  o Mail a ballot to all registered voters whose mailings have not previously been returned as undeliverable, as long as there is a way for the voter to still vote in person if they prefer.

  OR

  o Send a mail-in ballot request form to all registered voters in the jurisdiction.

- Make it easier to cast a mail-in ballot:

  o Eliminate witness requirements and other practices that are fundamentally incompatible with social distancing and shelter-at-home orders.

  o Educate residents on what election officials are doing to protect voters during the pandemic and provide paper copies of accompanying forms, such as blank voter registration forms and request forms for mail-in absentee ballots.

  o Utilize an accessible system to mark ballots online before printing and submitting them in paper form, in order to allow voters with disabilities to vote independently by mail.

- Make it easier to return a voted mail-in ballot:

  o Because the U.S. Postal Service and elections officials will be strained to the maximum and voters will experience delays in receiving their ballots in the mail, deem mail-in ballots timely returned if they are postmarked on Election Day and received in hand within a week of Election Day.

- However, bearing in mind that not all mail receives a postmark and some mail arrives with illegible postmarks, states should set uniform standards that deem as timely returned mail ballots that have USPS barcodes that can be scanned to determine that a ballot was sent by Election Day, and presume that any mail ballot received within three days of Election Day without a postmark or an illegible postmark was sent on or before Election Day. (States may wish to consider typical mail delivery length to choose a different appropriate window for their state.)

- Utilize systems, such as bar code scanning, for election officials and voters to track mail-in ballots at each stage of the process.

- Ensure that postage is prepaid and that ballots are correctly addressed to the local election office.

- The COVID-19 crisis increases the potential for errors caused by expanding the scope of mail voting in a short period of time. Do not reject mail-in ballots for technicalities and give voters opportunities to cure technical violations. Give the benefit of the doubt to voters by:

  - Instructing local elections officials to presume that the signature is valid, and a voter's signature is only considered questionable if it differs in multiple, significant and obvious respects from the signature on file. Slight dissimilarities should be resolved in favor of the voter whenever possible.

  - Requiring a beyond-a-reasonable doubt standard for a ballot to be rejected due to a purported signature mismatch (i.e., it must be beyond a reasonable doubt that the person who signed the absentee ballot certificate envelope is not the registered voter).

  - Establishing an effective cure process for any potential signature mismatch where signature matches are the means of reviewing the ballot, including expedient notification by any means available, such as phone or email, in addition to mailings. To facilitate follow-up, requests for mail ballots should give voters the option to provide email addresses and phone numbers.

- Utilize secure drop boxes where voters can deposit completed mail-in ballots until the close of polls on Election Day.

  - Drop boxes can help voters and election officials avoid delays in receipt of ballots and any postmark-related issues. There are a number of places that election officials might consider placing drop boxes, including at, but not limited to, essential businesses like grocery stores, near USPS drop boxes, election offices, and early voting and Election Day polling sites.

  - Criteria for placement of dropboxes should include measures to ensure equitable allocation across jurisdictions, including in people of color communities and low-income communities.

  - Officials concerned about the security and costs of such drop boxes, and issues like chain of custody, might consider using them in conjunction with a barcoding system for tracking and counting ballots. Such a system will ensure that the only ballots counted are those requested and cast by registered voters.

- As more voters engage with the mail-in voting process, potentially for the first time, states should have uniform rules regarding the ability of voters to deliver a completed mail ballot to any voting site and have it deemed timely returned, as well as rules that account for problems voters encounter in receiving or returning their ballots by:

- o   Allowing voters to receive and complete a regular ballot if they either surrender their mail ballot at the appropriate voting site for spoiling; or, if ballots are not yet canvassed, allow voters to sign an affidavit that they have not received or have not returned a ballot.

- o   Clarifying rules for voters to obtain a replacement ballot if theirs is lost while tracking these ballots to ensure this process is not abused.

Best Practices for Ensuring Language Access

- •   Include members of language minority communities in discussions of plans and changes to pre-pandemic voting procedures.

- •   Counties should provide multilingual information about the changes to election procedures, at a minimum, in all languages required by Section 203 of the Voting Rights Act. Information should be placed in minority-language media.

- •   Offer language assistance remotely in an accessible manner. Remote assistors should have all ballot styles available to them to provide accurate and comprehensive assistance.

Best Practices for In-Person Voting Changes

While it is important to promote absentee vote-by-mail to the greatest extent practical for the Fall, a major concern should be a reduction of in-person voting options forced by a lack of poll workers. In order to ensure full access to voting, adequate in-person polling sites need to be available, including during early voting. This would avoid long waiting periods and transportation challenges particularly in areas and for populations where the use of mail is less effective.

- •   Maintain in-person voting in places that can be cleaned and sanitized so that voters who cannot vote by mail have the option to safely vote in person. Follow CDC Guidelines to maintain safe voting environments for voters and poll workers.

- •   Establish/allow two weeks, including weekends, of early in-person voting to spread out voting throughout the election period, in order to reduce crowds and maintain social distancing at voting sites and to reduce the administrative burden of processing an unprecedented number of absentee ballots at election offices

- •   Be vigilant that special practices such as precinct consolidation do not disproportionately affect voters of color, students, and other voters who lack transportation, are new to the process, or already find it difficult to participate.

- •   Use expanded options other than in-person voting to reduce in-person voting volume, thereby increasing the ability to maintain safe polling places for those that need or desire in-person voting options, such as:

- o   Groups more likely to experience barriers to casting mail-in ballots. Those include people of color and low income voters, who move more frequently than the general population and who disproportionately experience more problems with reliable mail delivery, and are more likely to rely on voting in person, including on same-day registration in states that offer it. It also includes reservation-based and rural Native peoples who often lack standardized mail addresses recognized by the U.S. Postal service, must travel long

distances to access postal boxes to receive and mail their ballots, and who often lack access to reliable transportation. There should be secure drop boxes at Tribal-designated buildings as well as other areas on reservations, as well as allowing ballots to be distributed and collected by tribal leaders.

o   Voters with disabilities who need access to polling places and the ability to use accessible voting machines.

■   Mail ballots cannot be accessibly voted and reviewed fully independently by blind or visually impaired voters. Even if ballots can be received and marked electronically, once printed they cannot be reviewed independently.

■   Machines equipped with touchscreens and other accessibility features provide voters with options to vote independently when they cannot use a pen and paper ballot.

•   Consult with health professionals and technology experts, including voting equipment vendors, about sanitizing equipment, pens, screens, doors, and other surfaces. Note that it is critical that sanitizing not impede the function of election equipment.

•   Recruit poll workers in groups at lower risk for serious complications, and increase pay in consideration of the increased difficulty of recruiting and retaining poll workers.

•   Given the disruptive effective of the crisis, count provisional ballots cast in a precinct other than the one in which the voter was registered for any race in which the voter was eligible to vote.

Key Reminders:

•   Policy changes to deadlines for ballot receipt, along with increased volume of mail ballots, may require changes to state deadlines and processes for canvassing of ballots and certification of results. The election calendar should be considered holistically when making these changes.

•   For voting changes to be equitable, election officials must include language and disability access in their contingency and emergency planning. It is important that jurisdictions not make adjustments for only some voters due to COVID-19; otherwise, traditionally marginalized voters will become even more alienated from the process.

For more information:

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Fair Elections Center is a national nonpartisan voting rights and election reform 501c3 organization whose mission is to use litigation and advocacy to remove barriers to registration and voting, and to improve election administration.

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