

# Problems with Absentee Voting (Vote-by-Mail) & Suggested Solution

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**SUMMARY:** Vote-by-mail has serious security risks that cannot be overcome through legislation. We cannot verify that we live in a democracy if we vote by mail since it is inherently insecure. The argument that vote-by-mail increases turnout is false according to academic studies, and election security cannot be sacrificed for convenience and cost. A far safer alternative is to vote at the precinct on paper with a hand-count audit before the ballots leave the poll site. To at least remove the portion of the security problems inherent in the transportation of the ballots, voters who are unable to vote at the polls on election day can vote early in person at the county site(s). Mail-in voting should be a last resort reserved only for people who verify under penalty of perjury that they are physically unable to vote at their local precinct on election day nor at the county early voting location(s).

## **I. PROBLEMS WITH VOTE-BY-MAIL / ABSENTEE VOTING**

### **1. Forces us to trust county election officials without sufficient public oversight.**

- a. Impractical for members of the public to observe all aspects of vote-by-mail/absentee process.
  - i. Starts approx. 45 days before election.
  - ii. Continues approx. 28 days after election (post-election canvass).
  - iii. Multiple locations to oversee: county election offices and storage warehouses/facilities, subcontractors (printers, mail houses), post office and its subcontractors. Example: Fairfax (in Marin County) Nov. 2005 Town Council race. Mail house mailed absentee ballots out late, reducing absentee turnout and possibly impacting election result.
  - iv. Public can't physically ensure that all ballots coming in are legitimate, not forged by election officials who "stuffed the ballot box" or otherwise tampered with the ballots, central count scanners, or central tabulator.
- b. Marin County Registrar of Voters, Elaine Ginnold, acknowledged the only ones who could rig an election are the local election officials, although she says they wouldn't do that.
- c. While we hope we can trust most local election officials most of the time, it would be naïve to think we can trust all of them all of the time. A single rigged county can throw an election. Problem of consolidated power without adequate public oversight. Even New York University's Brennan Center recommends decentralized programming and voting system administration. They note that unnecessary centralized control provides many opportunities to implement attacks at multiple locations.
- d. A total of 1,213 public officials had been federally charged with corruption in 2004, 1,020 of them had been convicted of corruption, and 419 cases remained pending. Source: The Department of Justice in its *Report to Congress on the Activities and Operations of the Public Integrity for 2004*.
- e. **Local election officials can see and/or print absentee vote totals to-date before Election Day.** Very risky to give them this power.

- f. Example: Ever since the arrival of Brad Nelson as the Director of Elections in Pima County, Arizona in 2003, someone at the Elections Department has been printing summary reports of mail-in ballots counts up to a week or more before the election. This is strictly illegal under Arizona law. Researchers have looked at the Nov. 2004 election results from this county and found them to be very suspicious. In a May 16, 2006 Regional Transportation Authority election, audit logs show someone viewed the absentee summary report and backed up the data at night, then the next morning they backed up the data and viewed the totals again. It is possible that the person took the data home overnight and manipulated the database, then saved the fraudulent data the next morning. During the September 12, 2006 primary election, someone peeked at and printed the data during the day on Sep. 9, then later that night the Republican party sent out “robocalls” to a subset of Pima County voters against a Democratic state senate contender. Source: *Election Wars in Pima County, Arizona: A Microcosm of Nationwide Election Theft?* See also *Kimble: Does the RTA Vote Really Add Up?*, 6-7-07, Tucson Citizen, <http://www.tucsoncitizen.com/daily/opinion/53903>.
  - g. Another example: The Public Monitor appointed by Cuyahoga County’s (Cleveland) Board of Elections has issued a report that identifies significant security breaches and “points of possible legal non-compliance” by the Board and its staff in their conduct of the November 2006 elections. The report identifies several areas of non-compliant procedures associated with the tabulation of results and technical security which could have compromised the security of the election totals. Analysis of the election tabulation system log indicated that reports may have been printed summarizing the absentee ballot totals prior to Election Day. Printing vote totals before the end of Election Day would violate a State directive issued in response to a court order specifying that “at no time, any person has any access to the count or any portion of the count before the polling places close”. The report notes “This concern is especially acute where the proportion of the votes cast by absentee ballot is extremely high, such as was the case in the November, 2006 election in which nearly 25% of votes were cast via absentee ballot.” Source: *Public Monitor Reports Serious, Possibly Illegal, Security Breaches During Ohio Mid-term Elections*, by VoteTrustUSA - February 23, 2007.
  - h. In 2004, more than half a million absentee ballots were rejected on trivial technical grounds. In swing states, absentee ballot shredding was pandemic. <http://www.yesmagazine.org/article.asp?ID=1511>.
  - i. Fewer than half of the overseas military voters who requested ballots in the 2006 congressional elections had their votes successfully cast or counted. Source: The U.S. Election Assistance Commission annual conference on ways to improve and troubleshoot the absentee voting process, 9-24-07. <http://www.eac.gov/News/press/docs/eac-releases-2006-military-and-overseas-citizens-voting-report/>
  - j. Black Box Voting advises against absentee voting, noting there are more breaks in the chain of custody and fewer procedural checks and balances. <http://www.bbforums.org/forums/messages/73/55275.html>
- 2. Violates secrecy of the ballot. Susceptible to coerced voting, voter fraud, and selling votes.**  
Examples:
- a. In 1998, former congressman Austin Murphy of Pennsylvania, a Democrat, was convicted of absentee-ballot fraud in a nursing home, where residents’ failing mental capacities make them an easy mark. “In this area there’s a pattern of nursing home

administrators frequently forging ballots under residents' names," said Sean Cavanagh, a former Democratic county supervisor from the area. Source: *Absent Without Leave*, Wall Street Journal, 10-30-06, <http://www.opinionjournal.com/diary/?id=110009167&ojrss=wsj>.

- b. In East Chicago's Ind.'s 2003 mayoral race, challenger George Pabey defeated Robert Patrick, the eight-term incumbent, among Election Day voters but lost by 278 votes after some 2,000 absentee votes were tabulated. Investigators for Mr. Pabey turned up repeated instances of coercion and vote-buying. Source: *Absent Without Leave*, Wall Street Journal, 10-30-06.
  - c. Jeffrey Garfield, executive director of Connecticut's Election Enforcement Commission, notes that absentee ballot fraud has been a persistent problem in his state for years and in Hartford alone has resulted in the arrest of at least eight city politicians. Source: *Absent Without Leave*, Wall Street Journal, 10-30-06.
  - d. Employers could pressure vulnerable employees (immigrants, low-income, non-English speakers, and others) to vote a certain way or lose their job.
  - e. Local labor union leaders could exert undue pressure to vote a certain way.
- 3. The 2001 National Commission on Federal Election Reform, a bipartisan group co-chaired by Gerald Ford and Jimmy Carter, concluded that absentee ballots do not satisfy five essential criteria for sound and honest elections, including:**
- a. Assure the privacy of the secret ballot and protection against coerced voting.
  - b. Verify that only duly registered voters cast ballots.
  - c. Safeguard ballots against loss or alteration.
    - i. Example: Prior to the November 7, 2006 election, a political consultant found tens of thousands of campaign fliers in a dumpster behind a Fremont post office. The post office admitted that nothing was wrong with some of the fliers and that they should have been delivered. Source: *Political Fliers Found in Fremont Dumpster Back in Mail*, 11-3-06, <http://www.nbc11.com/news/10233320/detail.html>.
- 4. Many other problems exist.**
- a. For example, vote-by-mail does not pass the "hostile government" test. That is, since the voter's signature or other identification accompanies his ballot (on the envelope or elsewhere), a hostile government can link the voter with how he voted and subject voters to persecution. In December 2006 President Bush issued a signing statement authorizing the executive branch to open mail in "exigent circumstances." See <http://www.whitehouse.gov/news/releases/2006/12/20061220-6.html>. According to information acquired by the Assassination Archives and Research Center, for about 20 years, agencies of the U.S. government ran operations which opened the mail of some American citizens. See <http://www.aarclibrary.org/publib/church/reports/vol4/contents.htm>.
  - b. The problems outlined in this white paper and more are described in more detail in *Why Mail Ballots Are a Bad Idea* by Charles E. Corry, Ph.D., <http://www.ejfi.org/Voting/Voting-77.htm>.
  - c. Even if you tried to legislate remedies to the many problems associated with vote-by-mail, enforcement is uneven and not always available. Better to adopt a voting system

that: 1) is inherently as secure as possible by design, and 2) results in the least possible impact if fraud occurs.

## **II. ISSUES DRIVING VOTE-BY-MAIL**

### **1. Turnout does NOT increase with mail-in voting.**

- a. Forced mail voting: 1) decreases voter turnout for general elections by 2.6-2.9%; 2) increases voter turnout for special elections and primaries by an average of 7.9%; and 3) voters using mail ballots are more likely to skip down ticket races. Source: The academic study *Will Vote-by-Mail Elections Increase Participation? Evidence from California Counties*, <http://weber.ucsd.edu/~tkousser/Will%20Vote-by-Mail%20Elections%20Increase%20Turnout.pdf>.
- b. “Academic studies all show that easy absentee voting decreases or has no effect on turnout,” said Curtis Gans, the director of the Committee for the Study of the American Electorate, with the 2004 election a slight exception. This is because “you are diffusing the mobilizing focus away from a single day and having to mobilize voters over a period of time.” Mr. Gans notes that the people who really are helped by absentee voting are those who cast ballots anyway. Source: *Absent Without Leave*, Wall Street Journal, 10-30-06.
- c. The Task Force on the Federal Election System (part of the 2001 Ford-Carter Commission report) found that unrestricted absentee voting by and large has not boosted voter turnout, or if it has only by a small amount and it’s unclear if the gains will endure.

### **2. Even if turnout was greater, it cannot be justified if security is reduced.**

### **3. Cost-savings evidence is mixed.**

- a. The Task Force on the Federal Election System (part of the 2001 Ford-Carter Commission report) found mixed results on cost-savings. A 1994 FEC study of early voting in Texas found that early voting actually increased election costs in the largest counties, which offered extended hours and satellite locations, but maintained or decreased costs in counties that did not have to make such accommodations. A 1987 FEC report notes that per-vote processing costs for absentee ballots are several times the expense for ballots cast at the polls.

### **4. Even if costs are lower, it cannot be justified if security is reduced.**

### **5. Costs can be reduced by:**

- a. Stop using taxpayer money to encourage vote-by-mail/absentee voting.
- b. Return to precinct-based voting, with vote-by-mail only an option for those who verify under penalty of perjury they are physically unable to go to the poll site on election day or to early voting locations. (Do away with no-excuse absentee voting.)

### **6. Security cannot be sacrificed for convenience and cost.**

### **7. Difficulty recruiting pollworkers can be overcome through successful efforts such as Pollworkers for Democracy and by recruiting more split-shift poll workers.**

### **8. Make election day a national holiday.**

- a. Move an existing holiday (Veteran’s Day or Memorial Day) to election day.

### **9. Oregon vote-by-mail experience does not justify use in California.**

- a. Election integrity advocates in Oregon say their vote-by-mail system has not been tested against a hand-audit of the ballots to verify there is no tampering. (HB 3270 was recently introduced in the Oregon House to institute a verification procedure involving a manually counted random sample of the paper ballots to compare with the machine-tallied results. Source: *Why we need HB 3270 to verify elections in Oregon*, Statesman Journal, 4-3-07.)
- b. Election integrity advocates in Oregon also say vote-by-mail is not appropriate for places with Jim Crow issues or a history of election fraud, nor in large states.

**10. City/County Clerks have shown they are willing to sacrifice election security for cost and convenience.**

- a. One major constituency promoting vote-by-mail is local election officials (city and county clerks/ROVs). However, they also opposed a voter verified paper trail for paperless touchscreen voting machines, showing they are willing to sacrifice election security for cost and convenience.

**III. SOLUTION**

**1. Reduce the trend toward vote-by-mail and improve checks and balances as follows:**

- a. The primary voting method should be the most secure voting method: voting at the local precinct on election day with the provisions outlined below. This method lends itself to public oversight during all phases, including set-up and the closing of the polls.
  - i. Marin County has established written procedures for deployment and chain of custody of ballots and voting equipment for poll site voting. All counties should be required to prepare such procedures (if not already mandatory.)
  - ii. Ballots should be hand-cast on paper and optically scanned. This method is preferable to touchscreens (DREs) for many reasons, including but not limited to: 1) studies show that most voters who use touchscreens don't check the paper trail to confirm accuracy, and that; 2) voters who do check the paper trail from the touchscreens miss most inaccuracies; 3) touchscreens can result in longer wait times to vote; 4) power outages or malfunctioning machines could halt voting on touchscreens; and 5) optical scan systems are cheaper than touchscreens.
  - iii. A mandatory hand-audit of randomly selected ballots should take place at the poll site after polls close and before the ballots leave the poll site. The percentage of ballots to be counted for each race will vary, depending on the random sample size needed to achieve at least 99% accuracy for the race.
  - iv. A hand-audit would not necessarily be prohibitively time-consuming. (In Marin County it took an average of about 7.3 minutes per 100 ballots to hand-count one race.) High school students could be recruited to assist with the hand-count if necessary.
  - v. Retain the existing mandatory 1% (or more) post-election hand-count of randomly selected precincts at the county site. This would serve as a check and balance against the poll site hand-audit, and would include early voting, mail-in/absentee, and provisional ballots that are not included in the poll site hand-audit.
  - vi. It's worth noting that Bev Harris of Black Box Voting has said that paper ballots, hand-counted in public view have perhaps five or six "attack vectors," whereas elections conducted with electronic equipment have about 50 or 60. See <http://coalition4visibleballots.homestead.com/index.html>.

- b. Voters unable to vote at the polls on election day can vote early in person at the county early voting site(s). This option should be reserved for voters who verify under penalty of perjury they are physically unable to vote at their local precinct on election day. Early voting sites should be as secure as possible, with public oversight allowed during all phases and written procedures specifying strict chain-of-custody and other security measures.
- c. Mail-in voting should be a last resort reserved only for people who verify under penalty of perjury that they are physically unable to vote at their local precinct on election day nor at the county's early voting site(s).
- d. Suspend the use of tax dollars to promote vote-by-mail.
- e. Require that all mail-in ballots and their corresponding tallies be kept, tabulated, and reported by precinct separately from ballots cast at the precinct. Similarly, ballots cast during early voting should also be kept, tabulated, and reported separately. This would enable the public to analyze the results by voting method to check for anomalies suggesting error or fraud.
- f. Enact other measures to better secure mail-in voting. Examples:
  - i. Ban data storage devices, such as USB devices, CDs, disks, and other media, from the central count room where absentee ballots are scanned.
  - ii. Post signage to indicate ban on data storage devices and other rules.
  - iii. 24-hour videocameras in central count location and all places where absentee ballots are stored and handled/processed. Each 24-hour videotape must be stored as a permanent record and made publicly accessible immediately upon request at no charge.
  - iv. Two-person rule (two people must be present at all times in the central count room and anywhere absentee ballots are located), and separation of duties.
  - v. Mandate that audit logs be printed out daily and made publicly accessible starting when absentee ballots can first be scanned. (Note: I believe the audit logs can be tampered with, however, so they might not be reliable to prevent fraud.)
  - vi. Restrict access to the central count room, and have a sign-in and sign-out sheet.
  - vii. Allow full public observation of the central counting room, and turn computer screens so they are visible to the public and close enough for the public to read.
  - viii. Require written procedures and consequences if they are not followed.
  - ix. Allow members of the public to videotape all stages of processing absentee ballots, with provisions for securing the privacy of signatures / voter identity.
  - x. Outlaw the viewing or printing of absentee summary reports prior to 8:00 p.m. on election night. Better yet, utilize equipment or methods that do not have this capability.