

# VBM: A Safe Option for Florida Voters

## *The Implications in a Battleground State*

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## Executive Summary

The pandemic has caused changes in elections as voters rely on mail ballots to avoid voting at a precinct or voting center with hundreds of potentially infectious people. In many states, voting laws have changed in anticipation of a record number of mail ballots, although none has joined the five states that have universal vote-by-mail in which every registered voter receives a mail ballot.

President Trump and some other Republicans have been attacking vote-by-mail methods more expansive than the old model of voting by absentee ballot only with a valid excuse. Absentee voting is acceptable, he maintains, but universal vote-by-mail will be rigged to the detriment of Republicans.

Voter fraud is extremely rare, including in Florida, studies show. No evidence exists that vote-by-mail helps the Democratic party. Mail balloting results in higher ballot rejection rates by minorities, young people and first-time voters. The legislature passed bills in 2019 and 2020 to avoid problems evident in 2018 elections.

### Key Findings

- **The 2018 election was one of the closest in Florida history** with three statewide races undergoing recounts and historic voter turnout for a midterm election.
- **Despite allegations of voter fraud and misconduct by elections officials**, the most severe election problems were confined to two Florida counties and were addressed by the removal of each county's Supervisor of Elections.
- **Because Florida's Chief Elections Officer is appointed by the Governor**, partisan concerns were raised when the Republican administration suspended and removed the Supervisors of Elections in two predominantly Democratic counties.
- **The Florida Legislature took action in the 2019 and 2020 legislative sessions** to address the election problems that were identified in the 2018 election, including modifications to the vote-by mail process.
- **The Florida Legislature also adopted measures that some say will negatively impact voters** and would be voters.
- **Mail ballots increasingly are being used** as the primary method of voting in the states.

- **President Trump’s attacks on mail voting** may lead to some Republicans distrusting the mail ballots, decreasing turnout.
- **Voter fraud is extremely rare.** “It is still more likely for an American to be struck by lightning than to commit mail voting fraud.”<sup>1</sup>
- **Vote-by-mail does not help any political party,** numerous studies show. It has increased voter turnout in some states.
- **Minorities, young people and first-time voters** are most likely to have their ballots rejected because of nonmatching signatures or other defects.

### **Policy Options**

- Florida should consider following the lead of five other states and conduct universal vote-by-mail elections while still maintaining the option of limited in-person voting.
- If it does move to primarily vote-by-mail, the state should consider pre-paying the postage for ballot return to increase voter turnout.
- Whether it moves to universal vote-by-mail or not, Florida should consider a biannual voter education program.
- If Florida does not move to vote-by-mail elections, it should consider giving counties that option for local elections.
- Florida should consider giving Supervisors of Election more flexibility over early voting and polling place locations.

## Introduction

As the November 3 election draws near, Covid-19 poses an unprecedented threat to the integrity of voting in Florida and throughout the nation. A growing number of voters prefer casting their ballots by mail, rather than in-person at voting locations, where they may be exposed to infection by others in long lines for voting. In-person voting will be complicated by the difficulty of finding enough poll workers, many of whom are seniors, to work on Election Day amid hundreds of potentially infected voters.

The anticipated voting problems are exacerbated by President Trump and Republican elected officials who cast doubt about the fairness of the election process. The use of vote-by-mail ballots, in particular, has raised the ire of the President.

“Because of MAIL-IN BALLOTS, 2020 will be the most RIGGED Election in our nations history – unless this stupidity is ended,” Trump tweeted on June 22. “[T]hey are using Corvid in order to cheat by using Mail-Ins!<sup>2</sup> He has asserted that mail voting is an existential threat to the Republican party. “MAIL-IN VOTING WILL LEAD TO MASSIVE FRAUD AND ABUSE. IT WILL ALSO LEAD TO THE END OF OUR GREAT REPUBLICAN PARTY. WE CAN NEVER LET THIS TRAGEDY BEFALL OUR NATION.”<sup>3</sup>

More recently, he declared that foreign nations will flood the U.S. with counterfeit ballots. “RIGGED 2020 ELECTION: MILLIONS OF MAIL-IN BALLOTS WILL BE PRINTED BY FOREIGN COUNTRIES, AND OTHERS. IT WILL BE THE SCANDAL OF OUR TIMES!”<sup>4</sup>

These beliefs have placed the President and those who agree with him at odds with many state election officials, including Republicans. The Republican secretary of state in Oregon, one of five states with universal mail voting, has said, “I think after 20 years, we’ve proven that our system is very secure and voters love it. The voters voted it in, they’ve never made an attempt to vote it out.”<sup>5</sup>

At least six Republican senators have voiced support for increased mail voting.<sup>6</sup> Republican campaigns generally have had strong absentee voting operations, and many current Republican candidates are afraid that attacks on universal vote-by-mail will lessen the willingness of Republican voters to use mail ballots, negating what has generally been seen as a Republican advantage.<sup>7</sup>

Trump has said he has no objections to absentee voting used by a narrow group of voters, such as military overseas. Absentee ballots are “a great way to vote for the many senior citizens, military, and others who can’t get to the polls on Election Day,” he said. “These ballots are very different from 100% Mail-In Voting, which is “RIPE for FRAUD” and shouldn’t be allowed!”<sup>8</sup>

His campaign, however, has encouraged the use of mail-in ballots in a California special election in robocalls by Donald Trump, Jr., and Lara Trump. The latter encouraged voters to mail in their ballot because mail voting can be done “safely and securely.”<sup>9</sup> In addition, the Florida Republican Party began using fliers this summer encouraging independents and GOP voters to request mail ballots.<sup>10</sup>

## **The 2018 Florida Election**

The 2018 mid-term election revealed new flaws in Florida’s system of elections. As one of the largest swing states in the country, Florida once again gained national attention due to election problems. Nightly images on the news in November 2018 served as a stark reminder of the state’s past. Forever haunted by the 2000 election and Bush V. Gore, it seems like every election confirms the concerns and feelings of distrust among the public.<sup>11</sup>

Automatic mandatory recounts in three statewide races in 2018 led to significant problems in two large South Florida counties. After allegations of fraud and vote-stealing,<sup>12</sup> when the legal smoke cleared, the razor-thin races were decided and the blame for the chaos and confusion was placed on mismanagement.<sup>13</sup>

## **Broward County**

Broward County experienced serious problems during the 2018 election that resulted in the removal of the county’s Supervisor of Elections.<sup>14</sup>

Supervisor Brenda Snipes became the second Broward County Supervisor of Elections to lose the position due to being removed by the Governor for poor job performance.<sup>15</sup> Former Governor Jeb Bush removed her predecessor, Miriam Oliphant, in 2003 after the 2002 election in which polls opened late and closed early. Governor Bush named Snipes to replace Oliphant in 2003 and she won election in 2004 and was re-elected every four years after.

According to a report in the South Florida Sun Sentinel,<sup>16</sup> for the 15 years that Brenda Snipes has served as supervisor, elections in Broward County continued to be plagued by problems. Long lines and long vote counts after polls had closed marred elections in 2004, 2006, 2012, 2016 and 2018.

Other election issues in Broward County include:

- A court ruled Supervisor Snipes broke election law when she destroyed ballots from the 2016 election after 12 months instead of 22 months as required by federal law.

- A medical marijuana constitutional amendment was left off some Broward County ballots in 2016.
- Election results in the 2016 primary were posted on the elections office's website before polls closed, another violation of election law.
- Almost 1,000 uncounted ballots were discovered a week after the 2012 election.
- In 2004, some 58,000 mail-in ballots were not delivered to voters, leaving election officials to scramble to send new ones.

In the days following the 2018 election, Supervisor Snipes again became the target of criticism as her office struggled to canvass ballots. On election night, the Broward Supervisor's office failed to report vote totals to the state every 45 minutes as required by law.<sup>17</sup>

Thousands of mail-in ballots arrived on Election Day, dramatically slowing down the process of counting votes.<sup>18</sup> When the elections staff went home early in the morning of November 7, about 38,000 mail ballots had not been tabulated. The slow pace of counting ballots over the next few days led to allegations of ballot stuffing and voter fraud.

On the Thursday after the election, the National Republican Senatorial Committee and the Rick Scott for Senate campaign filed a lawsuit against the Broward elections office demanding to know how many people had voted, how many ballots had been counted and how many ballots remained to be counted.<sup>19</sup>

A Broward County judge ruled in favor of the Scott campaign and gave Supervisor Snipes until 7 p.m. Friday to produce the records. It was Saturday morning, November 10, before the Broward elections office completed the initial vote count.

Supervisor Snipes' handling of the ensuing recount was also problematic and took much longer than most Florida counties. At one point, Supervisor Snipes acknowledged her office had misplaced more than 2,000 ballots included in the original count. The Broward elections office also missed a key deadline for the recount by two minutes, causing the Florida Secretary of State to reject the county's machine-based vote count.

Once the election was finally resolved, there continued to be calls for Supervisor Snipes to be removed from office, even from former Governor Jeb Bush who had appointed her to the office.<sup>20</sup> On November 18, Supervisor Snipes announced she would resign on January 4.

On November 30, Governor and Senator-Elect Rick Scott suspended Supervisor Snipes for malfeasance, incompetence and neglect of duty.<sup>21</sup> Scott appointed his long-time ally Republican Peter Antonacci to be Broward Supervisor, prompting charges that the move was politically motivated in a heavily Democratic county and a mean-spirited attempt to take away Snipes' pension.

The next day, Snipes rescinded her resignation and vowed to fight her suspension. After he assumed office in January, new Governor Ron DeSantis lifted her suspension and accepted her resignation.<sup>22</sup> Snipes then announced she was dropping her lawsuit against former Governor Scott.

On January 24, 2019, new Supervisor of Elections Peter Antonacci released a memo titled "What Went Wrong."<sup>23</sup> The memo described the problems that occurred in Broward County during the 2018 election as "embarrassing" and concluded that, "After observation it became readily apparent that these errors were caused by the simple fact of management deficiencies which led to predictable failures and preventable cost overruns."

The memo blamed "deficient management" which "led to a persistent shortage of staff, a systematic lack of cross-training, planning and budgeting errors." Among other problems, Supervisor Antonacci found that at the time of the 2018 election, the Broward election office had 72 authorized positions, but approximately 15 percent of those positions were vacant. Antonacci pledged to train and maintain staff at authorized levels as well as guarantee that "sufficient voting equipment is operational and ready to deploy."

Supervisor Antonacci now says he has fixed many of the problems the county experienced in 2018 and he is continuing to implement more changes.<sup>24</sup> An audit released in May 2020 found one of the big problems the county faced in 2018 was a 50,000 ballot backlog in the counting of mail-in ballots.<sup>25</sup>

Expecting a surge in mail-in ballot requests for the 2020 August primary and November general election, Supervisor Antonacci has made improvements designed to speed up mail-in ballot processing. In 2018, the county had six high-speed ballot counting machines. It now has twelve, doubling its previous capacity.<sup>26</sup>

Supervisor Antonacci is not running for the office in 2020 and will leave in January 2021. When asked by the Naples Daily News if the office is ready for the 2020 elections, Antonacci replied, "We work on it every day."<sup>27</sup>



## **Palm Beach County**

Another Florida county plagued with a history of voting problems also experienced problems in 2018, leading to the removal of its Supervisor of Elections from office. In January 2019, Palm Beach County's Supervisor Susan Bucher was suspended from office by newly elected Governor Ron DeSantis and replaced by West Palm Beach attorney Wendy Sartory Link.<sup>28</sup>

Palm Beach County's election problems go back to the 2000 presidential election and the 36-day recount that eventually resulted in the election of George W. Bush as president.<sup>29</sup> At that time, the issue in Palm Beach County was ballot design, specifically what became known as the "butterfly ballot."

In 2018, Palm Beach County was late in counting the initial vote totals.<sup>30</sup> The problems for Palm Beach County really began when mandatory machine recounts were triggered when three statewide races were decided by less than 0.5 percentage points.<sup>31</sup>

Palm Beach County was the only county in Florida using voting machines made by Sequoia Voting Systems.<sup>32</sup> The machines were purchased in 2007 by Susan Bucher's predecessor. While other counties made technology upgrades over the years, Bucher did not ask Palm Beach County commissioners to approve money for new equipment until May of 2018.<sup>33</sup> Her request was approved, but not in time for the new equipment to be in place for the November election.

When the machine recounts of the three statewide races began, Supervisor Bucher told other election supervisors and state officials that her county's tabulation equipment could only recount one race at a time.<sup>34</sup> On top of that, the Palm Beach County machines broke down halfway through the recount. Palm Beach County was only able to complete a machine recount for the U.S. Senate race before the deadline, so the original vote totals were counted in the races for Governor and Agriculture Commissioner.<sup>35</sup>

Then Secretary of State Ken Detzner ordered a hand recount of votes in the U.S. Senate and Agriculture Commissioner races as required by law because they were within a quarter of a percentage point. Even after the rest of the state had completed the hand recount, Palm Beach County was required by law to keep counting until their hand recount was complete.<sup>36</sup> At the time, Supervisor Bucher warned that "finishing the full recount could optimistically take until December 15 or possibly until the later part of December, very close to Christmas."

On January 17, 2019, Governor DeSantis received a letter from newly appointed Secretary of State Michael Ertel detailing Supervisor Bucher's performance during the 2018 election.<sup>37</sup> Ertel, a former supervisor of elections himself, wrote that Governor DeSantis should use his authority

to “suspend Palm Beach County Supervisor of Elections Susan Bucher, allowing fresh, competent leadership to take the reins of the much-maligned office.”

Ertel criticized Supervisor Bucher for not upgrading the county’s voting equipment, even though funding had been made available by the county. He also criticized her for failing to install Department of Homeland Security-sponsored servers to combat cyber terrorism and for locating a polling place inside a gated community, thus denying some voters the opportunity to cast an Election Day ballot.

Ertel criticized Supervisor Bucher for a lack of transparency in the vote-counting process and noted that a candidate and media outlets filed lawsuits to bring the process into the open. Finally, he noted that Palm Beach County missed recount deadlines and took until 50 days after Election Day to complete the ordered recounts “which other counties had completed in a quarter of the time.” Ertel also announced he was decertifying Palm Beach County’s voting equipment as of June 1, 2019.

On January 18, a day after he received the letter from the Secretary of State, Governor DeSantis issued Executive Order 19-19 suspending Supervisor Bucher and replacing her with Wendy Sartory Link as Palm Beach Supervisor.<sup>38</sup> The Executive Order cites the letter from the Secretary of State and notes many of its criticisms of Supervisor Bucher. It says, “Supervisor Bucher demonstrated on a national stage that she was unable to comply with the laws of the state and her statutory duties as the Supervisor of Elections.”

The order concludes that, “due to her demonstrated misfeasance, incompetence, and neglect of duty, Supervisor Bucher can no longer demonstrate the qualifications necessary to meet her duties in office.”

Susan Bucher could have contested her suspension before the Florida Senate,<sup>39</sup> but in the end she chose to resign in a letter sent to Governor DeSantis on January 25, 2019.<sup>40</sup>

There was partisan pushback around the decision by Republican Governor Ron DeSantis to suspend Bucher, who is a former Democratic member of the Florida House of Representatives.<sup>41</sup> Bucher had been elected three times to the nonpartisan supervisor’s position, winning her last race with 76.7 percent of the vote in 2016.

On the day of Governor DeSantis’ announcement of Bucher’s suspension, there was an outburst of partisan protest.<sup>42</sup> Chairwoman of the Florida Democratic Party Terrie Rizzo, a Palm Beach County resident, accused DeSantis of “gross overreach and a politically motivated move to consolidate power and obstruct the will of the people.”

Democratic Congressman Ted Deutch said, “the focus should have been on getting the vote right, and instead senior officials from the Governor’s Mansion to the Senate spun these conspiracy theories about what might have happened to try to cast doubt on the election. Now the new Governor appears to be using the doubt that was sown in order to take partisan action in order to replace a Democratic officeholder.”<sup>43</sup>

Michael Barnett, Palm Beach County Republican chairman, said he urged DeSantis to suspend Bucher. “It would be problematic to say the least going into the 2020 election with her in charge of the supervisor’s office.”

Republican lawyer Wendy Sartory Link was named by Governor DeSantis to be Bucher’s replacement and she has been working to prepare the county for the 2020 presidential contest.<sup>44</sup> In February 2019, the Palm Beach County Commission approved Supervisor Link’s request for \$15 million in new voting equipment, technology and ballots.<sup>45</sup> The new technology will allow voters to track whether their vote-by-mail ballots arrived at the elections office. Vote-by-mail ballots will also be printed on smaller, thinner paper, reducing by more than a dollar the cost of mailing a ballot.

After her appointment to the position, Supervisor Link is now running to be elected as supervisor. She has changed her party affiliation from Republican to Democrat and in a recent interview with the Sun Sentinel Editorial Board she refuted President Trump’s claims that voting by mail is riddled with fraud.<sup>46</sup> “No, he is not correct,” Supervisor Link said.

## **Florida Election Legislation Post 2018**

Since the 2018 election, the Florida Legislature has adopted two election reform bills addressing the state’s voting problems. Some critics argue that in addition to solving election problems, the bills create new problems for future elections.

### **2019 Legislature**

The 2019 legislature passed House Bill 7066,<sup>47</sup> a major election reform bill. The most controversial part of the bill was not the election administration changes, but the part dealing with the restoration of ex-felon voting rights.

Constitutional Amendment 4 was passed by Florida voters in 2018.<sup>48</sup> Amendment 4 sought to restore the voting rights of Floridians with felony convictions after they complete the terms of their sentence including probation and parole. Previously, ex-felons were permanently barred from voting unless the Governor and Cabinet voted to restore their voting rights on a case-by-case basis.<sup>49</sup>

House Bill 7066 specified that for ex-felons to be able to register to vote, they had to complete “all terms of sentence,” including all monetary terms like victim’s restitution and court ordered fines and fees.<sup>50</sup> Immediately after HB 7066 was signed by Governor DeSantis, the American Civil Liberties Union and other voting rights groups announced they were filing a lawsuit challenging the provisions in the bill that addressed Amendment 4.<sup>51</sup>

In late May of 2020, Federal District Judge Robert Hinkle struck down the parts of HB 7066 requiring ex-felons to pay court ordered legal fees before they could be eligible to vote.<sup>52</sup> The state appealed the judge’s decision to the 11<sup>th</sup> Circuit Court of Appeals and on July 1 the court stayed the Hinkle decision and agreed that the full court would hear the case.<sup>53</sup>

Oral arguments have been set for August 11, past the deadline for registration to vote in the August 18 primary election.<sup>54</sup> Whether the estimated 775,000 ex-felons will be able to vote in Florida’s November general election remains in doubt.

House Bill 7066<sup>55</sup> also made multiple changes in the way elections are administered in Florida, including modifications to voting-by-mail (VBM) designed to make VBM more reliable and secure. Those changes include but are not limited to:

- It mandates that voters with disabilities cast a ballot on voting systems that produce a voter verifiable paper output (VVPO) for canvassing and recount purposes and it authorizes the use of such VVPO touchscreen systems by all voters, not just those with disabilities.
- It prohibits voting systems that cannot simultaneously count and sort ballot overvotes and undervotes in multiple races.
- It moves the primary election back from 10 to 11 weeks before the general election to allow more time for overseas general election ballots.
- It extends the cure deadline for defective VBM ballot signatures from 5 p.m. on the day *before* the election to 5 p.m. on the second day *after* the election and it modifies the ballot-envelope voter’s certificate to request additional contact information, including phone and e-mail address (to notify voters if their signature is defective).
- It creates a provisional ballot signature cure process that mirrors the revised VBM process.

- It moves the last day for voters to request VBM ballots from six to 10 days before an election and prohibits supervisors from mailing out such ballots less than eight days prior to the election (previously four days).
- It allows supervisors to mail domestic VBM ballots between 40 and 33 days before an election (previously 35 to 28 days prior).
- It allows a voter to drop off his or her VBM ballot at a secure drop box located at each active early voting site and at the supervisor's main or branch office; allows supervisors to set up drop-boxes at *unused* early voting locations authorized in Florida statutes (i.e. courthouses, county commission buildings) provided that the site is staffed by a supervisor's office employee or law enforcement officer.
- It allows canvassing of VBM ballots to start one week earlier, at 22 days before an election rather than 15 days before the election.
- It moves the deadline for a voter to update his or her signature for purposes of validating a VBM ballot from the beginning of the VBM canvassing period to when the VBM ballot is received.
- It creates a process to use valid provisional and VBM ballot cure affidavits to update voter signatures immediately and provides for post-election notice to electors whose ballots are invalidated due to a signature discrepancy.
- It provides ballot uniformity, requiring ballot instruction either be centered across the top of the ballot or in the leftmost column as long as there are no individual races below the column instructions, in most cases; and requiring all vote targets to be ovals.

## **2020 Legislature**

House Bill 1005<sup>56</sup> was passed in the 2020 Florida legislative session. The law goes into effect in January 2021 and will not apply to the 2020 elections. The bill would allow the use of state-certified, digital-imaging tabulating equipment to conduct recounts.<sup>57</sup> Currently, nine counties in Florida use that equipment to conduct post-certification audits.

Supporters of HB 1005, including the Florida Supervisors of Elections, argue it will make recounts quicker and easier.<sup>58</sup> Recounts were a major problem during the 2018 election, especially in Palm Beach County where the recounts took weeks to complete.<sup>59</sup>

Opponents of the law called on Governor DeSantis to veto HB 1005 because they question the technology used to conduct the recounts.<sup>60</sup> They argued that the law allows the use of digital images of ballots rather than the actual paper ballots and makes the re-tabulation technology susceptible to being “hacked.”

Despite the objections of more than 35 individuals and organizations including the League of Women Voters and Common Cause, HB 1005 was signed into law by Governor DeSantis on June 27.

## **The Pandemic and its Effect on the 2020 Election**

Covid-19 concerns led some states to change voting methods for the primary elections. Those and other changes are the subject of a legal war being conducted by both parties and both campaigns. “Republicans and Democrats are now preparing for a pitched legal battle over which votes will count and when they should be counted,” one report said. The Republican National Committee has dedicated \$20 million to oppose expanded vote-by-mail. The Biden campaign has organized 600 lawyers and 10,000 volunteers for election security.<sup>61</sup>

One academic election expert is following 130 pandemic election lawsuits. A firm that does work for the Democratic party is following 35 voting rights cases.<sup>62</sup> Another count shows that “Candidates, voters, party groups and advocacy groups have filed at least 151 lawsuits related to coronavirus and the election in 41 states through July 15.”<sup>63</sup>

In Florida, a voting lawsuit against the state ended when Democratic and left-leaning groups dropped it after the state agreed to make voter registration and VBM changes. They said they “accepted the state’s pledge to work with county supervisors of elections to educate voters about vote-by-mail and to use the maximum number of early-voting days available.”<sup>64</sup>

The agreement also included a pledge by the state to encourage supervisors of elections to use drop boxes for returning mail ballots, offer Spanish-language vote-by-mail requests and increase efforts to educate voters about registration and mail voting.<sup>65</sup> In addition, election officials must reach out to potential voters to help them understand VBM to avoid disproportionate rejection of ballots cast by minorities unfamiliar with mail voting. The voter outreach in part will use databases of the Electronic Registration Information Center (ERIC) to crosscheck voter registration records.<sup>66</sup>

Other requests in the suit, including requiring elections officials to cover voting costs for mail-in ballots, had been rejected when the federal judge assigned the case refused to order changes immediately.<sup>67</sup>

## **Vote-by-Mail**

States adopt and administer their own election laws, and they vary considerably. Traditional Election Day voting at polling places is at one end of the range of possibilities and all-mail voting at the other end, with absentee voting in the middle.<sup>68</sup>

Although absentee voting and early voting laws differ in the states and sometimes are the source of controversy, this analysis focuses on mail balloting, the current flashpoint in partisan maneuvering. Five states currently conduct all elections by mail – Oregon, Utah, Washington, Colorado and Hawaii. At least 21 other states conduct some local elections by mail.<sup>69</sup> Of all states, 29 are “no-excuse” states, where voters can vote by mail for any reason. Sixteen are “excuse-only” states, where voters must specify a reason why they cannot go to the polls.<sup>70</sup>

Florida is a “no-excuse” state. Since 2002 Florida voters have been able to request a mail ballot for any reason. In 2016, the Florida Legislature replaced the term “absentee ballot” to vote-by-mail ballot to reflect the fact that no excuse is required to vote by mail.<sup>71,72</sup>

All-mail elections are like absentee voting for everyone, although voters aren’t required to cite a reason for voting by mail. Such elections are referred to as “vote by mail” (VBM) or universal mail voting. Under those systems, all qualified voters are mailed a ballot to complete, enclose in a mailing envelope, sign an affidavit on the outside of the envelope and either mail the ballot or drop it at an election office. In all-mail elections, voters can still vote in person at a vote center during an early voting period or on Election Day itself.<sup>73</sup>

Most states verify absentee and mail-in ballots by comparing the signature of the voter on the ballot envelope with the signature on file. Eight states require a witness signature and three require a notarized signature. Eight states check to make sure that ballot envelopes are signed. Two states require that a photocopy of an ID is returned with the ballot.<sup>74</sup>

Voting by mail has accelerated in recent years and grew even more in this year’s primaries as coronavirus concerns raised voters’ fears of voting in a fixed-location vote precinct or center. In spring 2020 presidential primaries, more than half of votes were cast by mail in nine states. Florida was close behind, with 45 percent of votes cast by mail,<sup>75</sup> significantly higher than the roughly 30 percent who voted by mail in the 2016 and 2018 general elections.<sup>76</sup>

## **The Effects of Mail Voting**

The Covid-19 pandemic has resulted in many calls for states to revise election rules to assure voting rights for everyone and to avoid problems evident in both mail and in-person voting in the Spring 2020 primary elections. Some states without long familiarity in vote-by-mail experienced

problems in both administration of the election and voters' failure to understand and comply with VBM requirements.

- For example, in New York, all absentee ballots had not been counted more than three weeks after its June primary election, due to a large increase in the number of voters voting by mail.<sup>77</sup>
- In Maryland's presidential primary, mail ballots were delivered late due to errors and inconsistencies in the information on the ballots. All voters were expecting to be mailed a ballot, but five percent never arrived.<sup>78</sup> In-person voting also had problems; too few vote centers led to dozens of voters waiting in line two hours after polls were scheduled to close because social distancing requirements slowed balloting.<sup>79</sup> Similar problems occurred in Georgia and Wisconsin, where about 14,000 absentee voters never received ballots.<sup>80</sup> Wisconsin also rejected more than 14,000 absentee ballots because they lacked witness signatures.<sup>81</sup>
- Florida also had problems in its March presidential primary. More than 18,000 who voted by mail did not have their votes counted, according to an analysis by national elections experts and academics. Those uncounted ballots made up only 1.3 percent of total mail ballots cast – a small number, but enough to make a difference in tight races to which Florida has become accustomed. Supervisors of elections indicated that mail ballots arriving late and ballot defects, such as lack of a signature or signature mismatch, were responsible for many of the uncounted mail ballots. Black and Hispanic voters, younger voters and first-time voters all had higher uncounted rates than all voters.<sup>82</sup>

It is clear that mail ballots are rejected at a higher rate than votes in person. A study by the U.S. Election Assistance Commission found that about one percent of the 33 million mail ballots in 2016 were not counted. Rejection rates were somewhat lower in states with experience in mail elections, but even they rejected about 0.90 percent of ballots.<sup>83</sup>

Problems in primary elections and an expected explosion in the number of mail ballots lead to fears that hundreds of thousands of people could have their votes rejected in the general election.<sup>84</sup>

### **Vote-by-Mail Does Not Help Any Political Party**

Some Republicans oppose vote-by-mail because they say it benefits Democrats, although there is no evidence that it is true. They may take their cue from President Trump, who complained after the 2016 election that he lost the popular vote only because of massive fraud. He convened a commission on voting integrity that collapsed in part because state election officials of both



parties objected to the premise of large-scale voter fraud. “They can go jump in the Gulf of Mexico,” said the Republican secretary of state in Mississippi, asserting “our state's right to protect the privacy of our citizens by conducting our own electoral processes.”<sup>85</sup>

Democrats counter that GOP opposition to universal VBM is part of a longtime Republican strategy to suppress votes by Democrats, particularly minorities, the poor and the young. Their tactics include making voter registration more difficult, requiring a voter ID to vote, purging voter lists and limiting early voting.

“Traditionally it's always been Republicans suppressing votes in places,” a high-ranking member of the Trump Administration and campaign said to a group of Republican officials in leaked audio.<sup>86</sup> That view is a continuation of decades-long admissions by Republicans that they benefit from obstacles to easy, widespread voting. “I don’t want everybody to vote,” a Republican activist who created conservative think tanks said in 1980.<sup>87</sup> “As a matter of fact, our leverage in the elections quite candidly goes up as the voting populace goes down.”

An election scholar at the conservative Hoover Institution writes that “The hard truth is that there has been a rising tide of voter suppression in recent U.S. elections. These actions—such as overeager purging of electoral registers and reducing early voting—have the appearance of enforcing abstract principles of electoral integrity but the clear effect (and apparent intent) of disproportionately disenfranchising racial minorities.”<sup>88</sup>

The President views vote-by-mail as harmful to Republicans. Speaking of Democratic proposals in the coronavirus stimulus package, he said, “They had things, levels of voting that if you’d ever agreed to it, you’d never have a Republican elected in this country again.”<sup>89</sup> The President himself has voted by mail in years past.<sup>90</sup>

But Republican officials view “with growing alarm” the President’s attacks on mail voting as detrimental to his campaign and Republican down-ballot candidates. The attacks “are already corroding the views of GOP voters, who may ultimately choose not to vote at all if they can't make it to the polls come November.”<sup>91</sup> His attacks, therefore, may do more harm to his re-election than any fraud.

Some Democrats believe it is their party that is hurt with VBM. “There is justified concern that Democratic-leaning voters may be disadvantaged through vote-by-mail systems,” said an Obama campaigner who founded a company working on VBM systems.<sup>92</sup>

However, numerous studies have found that VBM benefits neither political party.

- A June study published in the Proceedings of the National Academy of Scientists said, “We find that universal vote-by-mail does not affect either party’s share of turnout or either party’s vote share.... Our results imply that the partisan outcomes of vote-by-mail elections closely resemble in-person elections, at least in normal times.” The researchers added a caveat that an election during the pandemic may be different, based on whether either Democrats or Republicans are more deterred from voting due to coronavirus concerns.
- In academic literature “evidence so far on which party benefits [has] been inconclusive,” an elections expert has said.<sup>93</sup>
- Findings in studies of all-mail elections in two states in 2014 and 2016 found mixed effects. In Colorado in 2014, Republicans were found to have increased their predicted vote more than did Democrats. In 2016 in Utah, Democrats received a slight advantage. And a study in North Carolina of the 2016 election found that Republicans rather than Democrats were more likely to vote by mail.<sup>94</sup>
- On the whole, “there is no evidence that voting by mail gives one party an advantage.”<sup>95</sup>

### **Voter Turnout Increases with Mail Balloting**

- Studies have concluded that states with VBM have seen “a modest increase” in voter turnout.<sup>96</sup>
- A study in Washington State concluded that all-mail elections increased turnout by two to four percentage points. VBM increased turnout particularly for groups who were not regular voters more than for frequent voters.<sup>97</sup>
- The beginning of VBM in Utah in some counties in the 2016 general election was responsible for increasing turnout by five to seven percent, a study of turnout in VBM counties and non-vote-by-mail counties concluded. The turnout increases were highest for low-propensity voters, including young voters.<sup>98</sup>

### **The Baringer, Herron, Smith Report on Florida VBM**

Given the effect the coronavirus pandemic will have on the 2020 Florida election, a report released earlier in the year provides relevant context for the expected increase in voting by mail (VBM). The report is titled “Voting by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of the Coronavirus.”<sup>99</sup> Its authors are Anna Baringer, Professor Michael C. Herron and Professor Daniel A. Smith.

The report recognizes that voting-by-mail is more attractive due to the coronavirus and the need for social distancing, but it concludes that VBM is “not a panacea for election administration.”

The report examines the 8.2 million ballots cast in the 2018 General Election including 2.6 million VBM ballots, of which 1.2 percent were not counted by local election officials.

The report finds that younger voters and voters needing assistance because of a disability are disproportionately likely to have their VBM ballots rejected. It also finds a disproportionately high VBM ballot rejection rate for voters who reside in Florida but have an out-of-state mailing address.

Lastly, the report found “significant variation in the rejection rates of VBM ballots cast across Florida’s 67 counties.” The report notes that Florida has uniform standards for determining whether the signature on a VBM return envelope is valid or not. The report suggests the variation in ballot rejection rates across counties is due to “a non-uniformity in the way local election officials verify these ballots.”

## **The Question of Fraud: “Exceedingly Rare”**

One of President Trump’s claims of widespread fraud:

There is NO WAY (ZERO!) that Mail-In Ballots will be anything less than substantially fraudulent. Mail boxes will be robbed, ballots will be forged & even illegally printed out & fraudulently signed. The Governor of California is sending Ballots to millions of people, anyone living in the state, no matter who they are or how they got there, will get one. That will be followed up with professionals telling all of these people, many of whom have never even thought of voting before, how, and for whom, to vote. This will be a Rigged Election. No way!<sup>100</sup>

Virtually every credible source, including Republicans, refutes Trump’s warnings about widespread voter fraud. Mail balloting may be slightly more susceptible to fraud than in-person voting,<sup>101</sup> but in any case fraud is “exceedingly rare.”<sup>102</sup> “[I]t is still more likely for an American to be struck by lightning than to commit mail voting fraud.”<sup>103</sup>

Among studies about mail voter fraud:

- “[A] Washington Post analysis of data collected by three vote-by-mail states with help from the nonprofit Electronic Registration Information Center (ERIC) found that officials identified just 372 possible cases of double voting or voting on behalf of deceased people

out of about 14.6 million votes cast by mail in the 2016 and 2018 general elections, or 0.0025 percent.”<sup>104</sup>

- “The now-disbanded voting integrity commission launched by the Trump administration uncovered no evidence to support claims of widespread voter fraud.”<sup>105</sup>
- A study of “all known voter fraud cases identified 491 cases of absentee ballot fraud from 2000 to 2012,” out of billions of votes cast.<sup>106</sup>

Among Republicans rejecting allegations of massive voter fraud is Tom Ridge, a Republican congressman, governor and the first Secretary of Homeland Security. “The one thing we do know is that there is no historical anecdote that speaks to the massive fraud and massive abuse of the system that the President has complained about,” he said.<sup>107</sup>

While vote-by-mail fraud is rare, three high-profile cases in recent years involved Republicans. The most recent involved a mail carrier in West Virginia who changed the registration from Democrat to Republican of five voters, resulting in Democratic voters receiving ballots for the Republican primary.<sup>108</sup> In 2018, the results of a congressional race in North Carolina were overturned after a Republican operative was charged with felonies for absentee ballot tampering.<sup>109</sup> And in 2016, a Trump supporter was charged for sending in two absentee ballots.<sup>110</sup>

One cybersecurity expert employed by the Department of Homeland Security said mail ballots may actually improve the integrity of the 2020 election because they leave a paper trail that can be audited.<sup>111</sup>

States employ a variety of tools to guard against voter fraud. They crossmatch signatures on mail ballots with signatures on file from registration; use the databases of the Electronic Registration Information Center (ERIC) to find any ballot duplications and use ballot tracking with a bar code.

## **Five States with Universal Vote-by-Mail**

### **Colorado**

- History

In 2013, the Colorado Legislature adopted a major election reform package called the Colorado Voter Access and Modernized Elections Act.<sup>112</sup> The law requires all voters in Colorado be

mailed a vote-by-mail ballot no sooner than 22 days and no later than 18 days before an election.<sup>113</sup> While it continues to offer an in-person voting option at strategically placed vote centers, Colorado has primarily relied on vote-by-mail from the 2014 election to the present.

- **Method of Ballot Verification**

Each voter must sign the ballot's envelope affirming, under penalty of perjury, that the voter is an eligible elector, that this is their signature and that they will not cast another ballot in the election. The signature is then compared against on-file signatures by computer (signature verification software) or a trained election official. If the signature is not verified, it goes next to a trained bipartisan team of judges. If the signature is still not verified, the voter is given eight days to complete a form and provide a copy of a valid identification.<sup>114</sup>

- **Turnout**

Registered voter turnout in the 2018 midterm election was 64.9 percent with over 2.5 million voting in the general election. That was a 10 percent increase over turnout in the 2014 election. In her 2018 election report, Colorado's Secretary of State reports Colorado has over 90 percent of its eligible voters registered to vote, the highest of any state in the country.<sup>115</sup>

- **Problems Reported**

While Colorado experienced "relatively minor" problems in the 2018 election,<sup>116</sup> it is widely recognized for having among the most secure elections in the country.<sup>117</sup> Secretary of State Jena Griswold was quoted in a report as saying that in 2018 only .0025 percent of the more than 2.5 million ballots cast were deemed "suspect" and referred for investigation. She said suspect ballots are "really rare."<sup>118</sup>

## **Hawaii**

- **History**

Hawaii moved to all vote-by-mail elections after a 2019 report found the state had the lowest turnout in the country in the 2018 midterm election.<sup>119</sup> Hawaii's state legislature passed the VBM bill and it was signed into law by Governor David Ige.<sup>120</sup> All voters will receive ballots through the mail and they will be able to mail them back postage-free or drop them off at an election center that will also offer disabled voting and general walk-in voting. VBM was used for the first time in Hawaii's 2020 presidential primary election which ended on May 22.

- **Method of Ballot Verification**

Hawaii voters received a mailing from the Office of Elections in April 2020 asking them to provide a copy of their signature. Voters were informed that if their signature on their ballot envelope is missing or doesn't match the signature on record, they will be notified and will have up to five days after the election to correct it and have their ballot counted.<sup>121</sup>

- **Turnout**

Hawaii's voter turnout in 2018 was 52.7 percent.<sup>122</sup> That election took place before VBM was implemented. In a recent report, Janet Mason with the League of Women Voters of Hawaii was quoted predicting VBM would increase voter turnout in the state by two to five percent.<sup>123</sup>

- **Problems Reported**

Since the 2020 election will be the first real test of Hawaii's new vote-by-mail system, any problems that arise will be watched closely. Leading up to the election, concerns have been raised about the security of the election.<sup>124</sup> In past elections Hawaii has experienced problems typical of states that rely heavily on in-person voting, including long lines at the polls and broken voting machines.<sup>125</sup>

## **Utah**

- **History**

Plagued with declining voter turnout, Utah officials convened a state commission in 2009 to explore vote-by-mail. Subsequent changes to voter registration and absentee balloting procedures had only small impacts on turnout. In 2012, legislation sponsored by a Republican state senator allowed counties to voluntarily conduct elections by mail. In each subsequent election cycle, more counties adopted vote-by-mail. Now the 2020 general election will be the first presidential election in which all voters in all counties will be sent vote-by-mail ballots.<sup>126</sup> In 2012, in comparison, only about 10 percent of registered voters had voted by mail, and use of absentee ballots remained low in the 2014 and 2016 elections.<sup>127</sup>

- **Method of Ballot Verification**

Utah uses a signature verification system done manually by election officials that can be supplemented with bank-grade verification systems.<sup>128</sup> Signatures are maintained on file in the election officer's office, and that signature is compared with the signature on the affidavit in the

return envelope. If poll workers reject a ballot because of signature-matching concerns, the individual is contacted and provided a chance to submit a correctly completed affidavit.<sup>129</sup>

- Turnout

Voter turnout in the 2018 midterm election hit a 50-year-high. More than 75 percent of active registered voters cast ballots,<sup>130</sup> compared to about one-third of voters in the 2014 midterms and in other midterm elections going back to 2006.<sup>131</sup>

- Problems Reported

For years, Utah officials have declared that vote-by-mail has created no additional voter fraud. The only problem Utah has seen is with “presumably well-intentioned parents of missionaries for The Church of Jesus Christ of Latter-Day Saints trying to vote ballots for their children – which was caught by verifying signatures.”<sup>132</sup>

## Oregon

- History

In 1981, the Oregon Legislature approved a test of vote by mail for local elections. VBM was made permanent in 1987, and most counties used it for local elections. In 1996 Oregon became the first state to conduct a general election completely by mail. In a 1998 special election, Oregon was the first state to have more ballots cast by mail than at a polling place. In the 1998 general election, Oregon voters approved a proposal to expand VBM to primary and general elections.<sup>133</sup>

- Method of Ballot Verification

Registered voters receive a ballot two to three weeks before an election, complete it and insert it into a return envelope signed by the voter. Ballots can be challenged if they are returned without a signature or if the signature on the return envelope does not match the signature in voter registration records. Upon challenge, the county clerk mails a notice to the challenged voter, who must provide evidence to disprove the challenge by the 14<sup>th</sup> day after the election.<sup>134</sup>

- Turnout

Turnout of registered voters was 68 percent in 2018, 80 percent in 2016, 71 percent in 2014 and 83 percent in 2012.<sup>135</sup>

## Problems Reported

Ten people in Oregon have been convicted in voter fraud cases stemming from the 2016 election out of 2,051,448 votes cast in the election. Most involved people who cast a ballot in two different states.<sup>136</sup> A conservative think tank found 15 cases of voter fraud in Oregon since 2000.<sup>137</sup> In 2018 a group picked up ballots for voters, a legal practice, but did not deliver them until the day after the election.<sup>138</sup>

In the 2020 primary election, some voters and a conservative website claimed that hundreds of Republicans' voter registration were changed from Republican to no party affiliation, and as a result they could not vote in Republican primary elections. Upon investigation, the Republican secretary of state attributed the problem to voters not selecting a party when they were registered through the state's motor voter law.<sup>139</sup>

## Washington

- History

In 2011, the Washington Legislature voted to institute a vote-by-mail system statewide.<sup>140</sup> All voters in the state are mailed a ballot at least 18 days before an election. The marked ballot is put in a security sleeve and then into an envelope which the voter signs. The ballot envelopes have prepaid postage and are returned by mail or at ballot drop boxes. Washington has used VBM in every election beginning in 2012.

- Method of Ballot Verification

Signatures on the ballots are checked against voter registration records. Voters are notified if the signature is missing or does not match the voter registration record. Voters can also check their ballot status online to ensure the ballot has been received and processed.

- Turnout

In the first general election (2012) after Washington went to all VBM voting, turnout was 81 percent.<sup>141</sup> In the 2014 midterm election, turnout was 54 percent. In the 2016 general election, turnout was 78 percent. In the 2018 midterm, turnout was 71 percent. In a list of pros and cons on the Secretary of State's website it lists "higher turnout" as one of the pros.<sup>142</sup>



- **Problems Reported**

Washington’s Secretary of State Kim Wyman is adamant that vote-by-mail elections in her state are safe and reliable.<sup>143</sup> She told the New York Times that all methods of voting have the potential for fraud, but that “her experience in Washington was that mail ballot fraud was low.”<sup>144</sup> She points to the 2018 election where her office found 142 cases of suspected improper voting out of 3.1 million ballots that were cast.<sup>145</sup> She credits the diligence of her office for “constantly checking voter registration lists.”

## **Voter Opinion About Mail Voting**

A series of five national polls in April and May all showed that a great majority of Americans would support mail voting as an alternative to in-person voting on Election Day if coronavirus remains a significant threat to public health.

- A USA/Suffolk poll found that 65 percent of respondents endorsed mail-in voting as an alternative, while 32 percent said they oppose it.<sup>146</sup>
- A Fox News poll found that 63 percent of voters favored allowing all U.S. citizens to vote by mail, with 30 percent in opposition.<sup>147</sup>
- In an NBC/Wall Street Journal poll, 67 percent favored letting all voters vote by mail in November. Fifty-eight percent said all-mail voting should be made permanent.<sup>148</sup>
- Seventy percent in a Pew Research Center supported absentee voting as an option and 52 percent favored conducting all elections by mail.<sup>149</sup>
- Sixty percent in an Associated Press-NORC Center for Public Affairs survey favored allowing people to vote by mail-in ballot instead of in-person without requiring a reason. Forty-eight percent supported voting entirely by mail.<sup>150</sup>

In each of the polls, Democratic support for mail voting was far greater than support by Republicans.

## **Conclusion**

The 2018 election was one of the closest in Florida history with three statewide races undergoing recounts and historic voter turnout for a midterm election. Despite allegations of voter fraud and misconduct by elections officials, the most severe election problems were confined to two Florida counties and were addressed by the removal of each county's Supervisor of Elections.

The Florida Legislature acted in the 2019 and 2020 legislative sessions to address the election problems that were identified in the 2018 election, including modifications to the vote-by-mail process.

Mail ballots increasingly are being used as the primary method of voting in the states and may well be the future of elections in the United States. President Trump's attacks on mail voting may lead to some Republicans distrusting the mail ballots, decreasing turnout.

Vote-by-mail does not help any political party, numerous studies show. It has increased voter turnout in some states. Minorities, young people and first-time voters are most likely to have their ballots rejected because of nonmatching signatures or other defects. Florida has modified its vote-by-mail procedures in recent years, adopting best practices to make the process more reliable.

## **Policy Options**

- Florida should consider following the lead of five other states and conduct universal vote-by-mail elections while still maintaining the option of limited in-person voting.
- If it does move to primarily vote-by-mail, the state should consider pre-paying the postage for ballot return to increase voter turnout.
- Whether it moves to universal vote-by-mail or not, Florida should consider a bi-annual voter education program.
- If Florida does not move to vote-by-mail elections, it should consider giving counties that option for local elections.
- Florida should consider giving Supervisors of Election more flexibility over early voting and polling place locations.

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