

CENTERING ON CORONAVIRUS

VOTING DURING A PANDEMIC

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Centering on Coronavirus: Voting During a Pandemic

The outbreak of COVID-19 across the U.S. has touched every facet of our society, and our democracy has been no exception. The pandemic poses unique challenges with respect to the 2020 election, and several states have already rescheduled spring primaries for the summer. State election officials are weighing not only the public health concerns of in-person voting but also the possibility of voter disenfranchisement for those who would inevitably choose to stay home. Uncertainty surrounding the duration of the outbreak also raises concerns about voter safety for the general election in November.

This issue brief from The New Center discusses various state decisions, the state-specific provisions governing the postponement of elections, implications for the general election, and how a combination of drastically expanding mail-in voting alongside in-person voting may offer the best option to conduct a fair, secure, and inclusive 2020 election.

Which states have postponed their primaries?

Since President Trump's declaration of a national emergency over the coronavirus on March 13, Connecticut, Delaware, Georgia, Indiana, Kentucky, Louisiana, Maryland, New York, Ohio, Pennsylvania, Puerto Rico, Rhode Island, and West Virginia have postponed their primaries. Alaska, Hawaii, and Wyoming have replaced in-person primary voting with comprehensive mail-in systems. Ohio has postponed its primary and switched to a nearly all-mail election, with in-person voting allowed only for people with disabilities and those without mailing addresses.

Despite the national emergency, three states, Arizona, Florida, and Illinois held their primaries on March 17 as scheduled. Wisconsin will hold its primary as scheduled on April 7, but on March 27, Governor Tony Evers requested that the state send absentee ballots to all 3.3 million voters—a task some state legislators and election clerks claim to be logistically impossible within such a short time frame. Several groups have filed lawsuits seeking to postpone the election and extend the deadline for absentee voting.

What legal provisions govern the postponement of a primary election?

The process involved in delaying a primary election varies by state, and some states are better prepared than others to modify their elections in emergency situations. A handful of states have statutes that allow for the postponement of an election in case of an emergency, and most of these statutes grant unilateral decision making power to the governor.

Other states, such as Pennsylvania, do not have legislation on the books explicitly addressing election postponement. And state law sets Pennsylvania's primary election date for the fourth Tuesday in April in a presidential election year. Postponement of the Pennsylvania primary required the passage of a bill to amend the election code, and this would also be the case for any other primary with a date set by law.



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A similar lack of clear guidelines for postponing elections caused confusion in Ohio and shed light on the importance of emergency contingency plans. The Ohio Democratic primary was scheduled for Tuesday, March 17. On Monday the 16th, Governor Mike DeWine expressed his desire to delay the in-person election and extend absentee voting due to the coronavirus outbreak. Without the authority to unilaterally postpone an election, he promised to support a lawsuit asking the Franklin County Court of Common Pleas to exercise its power to do so. Judge Richard A. Frye rejected the lawsuit, claiming that the last-minute postponement would set a “terrible” precedent.

Shortly after, DeWine’s chief health adviser declared a public health emergency and ordered the polls to close. This prompted a lawsuit from the Ohio Democratic Party. “Nothing in Ohio law provides that Respondent Secretary has the power to set the date of Ohio’s 2020 presidential primary election,” says the lawsuit. “Instead, the legal authority to set the date of Ohio’s 2020 presidential primary election rests with the Ohio General Assembly.” The Ohio Supreme Court denied this legal challenge. In addition to officially postponing the election to April 28, Ohio has also decided that the rescheduled primary will be conducted almost exclusively by mail.

If the outbreak extends through the fall, can the November general election be postponed?

The general election could theoretically be postponed, but several obstacles make this scenario highly unlikely. The Presidential Election Day Act, passed in 1845, sets Election Day as “the Tuesday next after the first Monday in the month of November.” Therefore, postponing election day would require Congress to pass legislation that would be signed by the president and upheld in the courts.

In the unlikely case that this would happen, any flexibility in determining the length of the election delay would be limited by the Constitution. The 20th Amendment states that “The terms of the President and the Vice President shall end at noon on the 20th day of January... of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.”

What about mail-in voting for the general election?

While postponing the general election is effectively out of the question, voting by mail is one potential solution that could allow elections to continue while also prioritizing public health. While states do not have the power to change the date of their general elections, they do have broad jurisdiction to decide how to conduct them. Several states have expanded absentee voting options to some degree or adopted universal mail-in primaries, which can serve as “test runs” for expansive mail-in voting in the general election. And five states, Colorado, Hawaii, Oregon, Washington, and Utah, automatically mail ballots to all registered voters for all elections. An additional 28 states offer “no-excuse” absentee voting, which means voters may vote by mail for any reason if they request a ballot in advance. The remaining 17 states offer absentee voting to those with valid excuses. Voters with injuries or illnesses qualify, as do those who will be out of the country on election day.

For the states that do not automatically mail ballots to all voters, uncertainty surrounding the outbreak’s timeline has led state and local election boards to mobilize in preparation for a surge in demand for general election absentee ballots. But some leaders have hesitated to support the changes that would be involved. Democrats have traditionally been eager proponents of expanded absentee voting, which Republicans have dismissed as partisan power grabs. However, evidence does not support the belief that mail-in voting offers an unfair advantage to Democrats. In the 2016 presidential election, the rates of mail-in voting for Democrats and Republicans were about the same. If the coronavirus outbreak necessitates a nationwide move to mail-in voting, state election officials will have to weigh several logistical and substantive concerns:

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Costs and Logistical Hurdles

The Brennan Center estimates that it would cost about \$1.4 billion to implement nationwide mail-in voting for the general election. This estimate includes the cost of postage, ballot printing, and other equipment necessary for the transition. Maintaining in-person elections, bolstering online voter registration, and educating the public on these new measures would increase the overall cost of adequate general election preparation to about \$2 billion. The \$2 trillion coronavirus relief package includes a fraction of this estimated cost—\$400 million—to help the states expand mail-in voting and make other election preparations.

Expanding mail-in voting cannot happen overnight. States that wish to make significant changes to their voting systems have a short window of time to do so before the November elections. And the more ballots states need to mail, the more time they will typically need. They will also need to hire and train new workers, verify voter mailing addresses, print ballots, mail them well in advance of the voting deadline, use signature-matching technology to validate them once they return, build in time to rectify any issues that may arise with signature matching, and count the votes. It will be up to each state to balance public health, election security, and feasibility when determining how to prepare for the general election.

Voter Access

While mail-in voting facilitates participation for many, it creates barriers for others when it is the only option. Many voters are comfortable with the civic experience of casting a ballot at a local polling place and might choose not to vote at all if absentee voting is the only option. Postal delivery is less convenient for voters who live in certain rural areas or who rely on P.O. boxes that are not necessarily nearby. And many Native Americans on reservations do not receive mail at all. For non-English speakers, translated instructions on a mailed ballot might not be as useful as a bilingual poll worker who can answer specific questions in person.

Security Considerations

While voter fraud is rare, mail-in voting is more prone to it than other voting methods. For example, “ballot harvesting” scandals involve the altering of absentee ballots by volunteers or other political operatives who are tasked with collecting and submitting these ballots on behalf of voters. States scrambling to expand their mail-in voting systems might be more prone to these issues than others with robust mail-in voting systems that have been developed over the course of several years.

Certain precautions can help prevent this type of fraud by making it more convenient for voters to deliver ballots on their own. Tammy Patrick, a former county election official who is now a senior adviser at the nonprofit Democracy Fund, suggests that states offer prepaid return postage, accept ballots postmarked as late as election day, and designate convenient drop-off locations for voters who prefer to deliver their ballots in person.

“If you do these things, no one needs to pick up your ballot—it’s convenient for voters to maintain power and authority over their own ballot. Not doing these things risks a situation where a voter has waited until the last day, and someone shows up at their door offering to take their ballot and they see it as their last opportunity. That could be someone with good intentions or not,” Patrick told ProPublica.

Another security issue that could be amplified with the adoption of universal mail-in voting is voter coercion, which occurs when family members or others exert pressure on voters to vote a certain way. While all voters can be susceptible to coercion, absentee voters are especially prone—the kitchen table does not provide the same degree of freedom to vote independently as the voting booth does. But the same measures that would help prevent ballot tampering by making the process more seamless might also be useful in thwarting coercion efforts. For example, averting family scrutiny becomes easier when you have the option to return your ballot in a prepaid envelope and avoid having to provide postage from home.

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Expansive mail-in voting systems and secure elections are not mutually exclusive as long as voters have plenty of options and privacy is prioritized. [Colorado](#), which has one of the most secure mail-in voting systems in the country, maintains the option to vote in-person. An in-person vote voids that voter's mailed ballot.

Suggested Best Practices for States

When it comes to elections, there is no one-size-fits-all reform that would work for all 50 states. Many states did make changes to their primaries that prioritize both the health of the public and the integrity of the election. Even without postponement as an option for the general election in November, states still have the opportunity to make meaningful changes if they act quickly. To the extent that it is feasible, each state should consider the possibility that the coronavirus outbreak will continue through the fall and make in-person voting too dangerous.

Expand mail-in voting options

States should mobilize to change their voting procedures in a way that offers mail-in voting to as many eligible voters as possible. States that currently require an excuse to vote absentee should eliminate these requirements and allow any voter to request an absentee ballot online. States that already offer “no-excuse” absentee voting should move in the direction of the few states that automatically send ballots to all eligible voters.

Enact measures to secure mail-in elections

States should work to implement identity verification measures, such as signature-matching technology, for their mail-in ballots while also planning to rectify inevitable technical issues that might incorrectly invalidate some ballots. To combat ballot tampering as well as the increased likelihood of voter coercion that expanded absentee voting can bring, states should enact precautionary measures that promote and facilitate ballot delivery by the voters themselves rather than a third party. These include offering prepaid postage, accepting ballots postmarked as late as election day, and setting convenient drop-off locations for in-person delivery. Removing any opportunity for a third party to intercept the ballots or observe the votes of others can help preserve election integrity. Exceptions for elderly or disabled voters in need of assistance are often appropriate, but third-party assistance in these cases should require some extra form of authentication.

Maintain the option to vote in person

While states should encourage as much absentee voting as possible to protect the health of their voters and poll workers, they should also retain the option to vote in person to give everyone a fair chance to participate. While health concerns about crowds at the polls are valid, expanded absentee voting should reduce the number of voters who show up. To reduce crowds even further, states should consider adding new polling locations if possible.

Retaining an in-person voting option would expand voter access and serve as another layer of protection against fraud or coercion. With this option, a voter who is not satisfied with the absentee ballot they submitted can invalidate it by going to the polls on election day and casting a new one. A system of expanded mail-in voting alongside traditional, in-person voting is likely the best way to promote both public health and participation in the democratic process amid this unprecedented public health crisis.

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ABOUT CENTERING ON CORONAVIRUS

Centering on Coronavirus is a new policy series from The New Center that provides insights and analyses of how COVID-19 is progressing, how it is impacting our health system, economy and workers, and the extraordinary human, policy, and technological resources that are being mobilized to fight it.

ABOUT THE NEW CENTER

American politics is broken, with the far left and far right making it increasingly impossible to govern. This will not change until a vibrant center emerges with an agenda that appeals to the vast majority of the American people. This is the mission of The New Center, which aims to establish the ideas and the community to create a powerful political center in today's America.

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