

THE LEGAL EAGLE

SPECIAL 2020 ELECTION EDITION

A LEGAL NEWSPAPER FOR KIDS
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High-Tech Not Always Best When it Comes to Voting

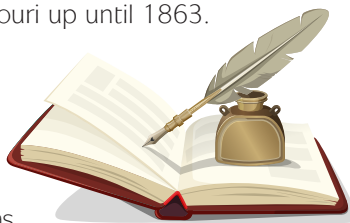
by Phyllis Raybin Emert

Can you imagine voting in 2020 the way people did in some parts of 19th century America? Men (and it was only white men) swore to a judge that they had not voted before and then shouted out their choice to the waiting clerk, who recorded it in a poll book.

According to the University of Iowa, which compiled "A Brief Illustrated History of Voting," voice voting continued to be used in Missouri up until 1863. There was no voter registration, no secret ballot and definitely no voting machines.

Using a machine to vote

The first voting machine was introduced in 1892 in Lockport, NY. By the 1930s, while many rural areas were still using paper ballots, most large cities had



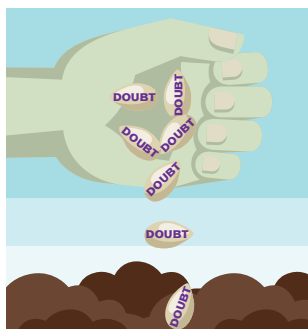
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Sowing Seeds of Doubt to Suppress the Youth Vote

by Jodi L. Miller

There are nearly 17 million students enrolled in colleges and universities across the United States. Some of these students are passionate about political causes and feel strongly about exercising their right to vote.

According to Tufts University's Institute for Democracy and Higher Education, voter turnout among college students doubled in 2018 from what it was in 2014. Still, voter participation among this portion of the **electorate** remains low. That's why when a New Hampshire law threatened to suppress the youth vote, two students from Dartmouth College decided to sue.



Seeds of doubt on college campuses

In July 2018, New Hampshire's governor signed H.B. 1264 into law, which put in question what it means to be a resident of New Hampshire. Prior to the law's passage, New Hampshire was the only state that had no residency requirement in order to vote. As long as you were **domiciled** in the state, you could vote in

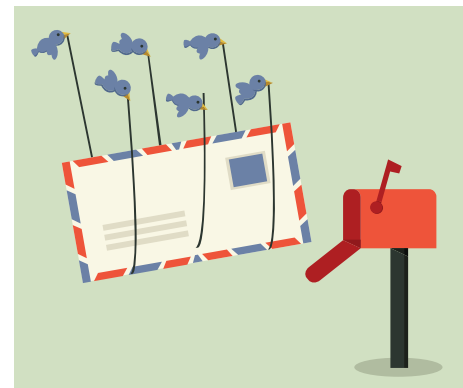
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Mailing in the Votes

by Michael Barbella

Voting in the 2020 presidential election could prove challenging this year as the unrelenting coronavirus pandemic fuels fear of going to the polls in person. In order to allay those fears, as well as address the lack of poll workers who are also afraid of exposure to the virus, many states are doing something they've never done before—encouraging citizens to vote by mail.

Primary season was loaded with virus-induced issues that exposed the nation's overtaxed voting system and stoked fears about a repeat



performance in the General Election on November 3rd. Problems ranged from long lines to vote in-person (Nevada and Wisconsin) to missing absentee ballots (Maryland, Pennsylvania and Washington, D.C.) to staffing shortages (Georgia) to slow tally totals (New York).

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Settling the Question of Faithless Electors

by Maria Wood

On November 3, 2020, Americans will once again cast their ballots in a presidential election. Those ballots will be cast, not directly for a presidential candidate, but for a slate of electors who will gather as part of the Electoral College to cast ballots that represent the will of the people in their state.

But what if those electors ignore the wishes of the voters and vote for the candidate of their choice—one that didn't receive their state's popular vote? That is what is known as a "faithless elector."

In *Chiafalo v. Washington*, the U.S. Supreme Court was asked to decide whether states should be allowed to punish faithless electors. In July 2020, the Court unanimously agreed that states have the power to enforce faithless elector laws, which prohibit Electoral College electors from

supporting a candidate who did not win the majority of votes in their state. The decision was handed down in response to two separate lawsuits from the states of Washington and Colorado.

It's complicated

The Electoral College was established during the Constitutional Convention of 1787. The debate at the time was whether members of Congress should elect the president or whether the people should elect the president directly. In a compromise suggested by Alexander Hamilton, the United States has the Electoral College system, which is still in use today.

The way it works is that each state is awarded a certain number of Electoral College electors. The number is based on a state's total count of representatives and senators in the U.S. Congress. For instance, New Jersey has 14 electors because the state has 12 representatives and two senators. Each political party (Republican and Democrat) at the state level nominates a slate of electors and whichever candidate wins the state's popular vote, that party's electors officially cast the votes in the Electoral College in December.

The laws governing who can be nominated as electors vary from state to state, but they are typically those who are loyal to their political party. Because they are party loyalists, electors rarely break from the popular vote winner in their state. In fact, faithless electors have never had a deciding impact on the outcome of an election.

According to Fairvote.org, a **nonpartisan** organization that advocates for electoral reform, 23,507 electoral votes have been cast over 58 presidential elections. Since 1796, only 90 electors have deviated from casting

a ballot for their state's popular vote choice. In some of those cases, the deviation was because the candidate had died after the election.



In the 2016 presidential election, 10 electors from six states strayed from their designated task, swinging their support to a candidate that wasn't even in the race for the presidency. When several of those faithless electors were punished or replaced, they filed lawsuits that

eventually ended up before the U.S. Supreme Court.

Colorado & Washington lawsuits

In Colorado, one Democratic elector, Michael Baca, replaced the name of the state's presidential winner—Hillary Clinton—writing in John Kasich, the former Ohio governor who had run for the Republican nomination.

Colorado's Secretary of State removed Baca from his post and replaced him with an elector who voted for Clinton. Baca sued the Colorado Department of State, arguing the U.S. Constitution gave him the right to vote his conscience. The U.S. Court of Appeals for the 10th Circuit sided with Baca.

"Electors, once appointed, are free to vote as they choose," Judge Carolyn B. McHugh wrote in the lower court's opinion. "While the Constitution grants states **plenary power** to appoint electors, it does not provide the power to interfere once voting begins..."

Instead of voting for the popular vote winner (again Hillary Clinton) three Democratic electors in Washington State cast their votes for others. Each elector was fined \$1,000. The faithless electors sued, but the Washington State Supreme Court upheld the fines.

Both the Colorado decision and the Washington State decision were



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appealed to the U.S. Supreme Court. Arguing before the Court, Washington’s Solicitor General, Noah Purcell, said the Constitution “gives states the power to appoint electors, and that power has always included the power to set conditions on appointment.” Colorado’s Attorney General Philip Weiser argued that without the power to regulate electors, states wouldn’t have a mechanism to remove an elector who may have been bribed or coerced to vote for a particular candidate.

Harvard Law School Professor Lawrence Lessig, speaking on behalf of the Washington State electors, argued that while states have the right to appoint electors, the Constitution gives electors the right to vote as they choose.

Currently, 32 states and the District of Columbia have faithless elector laws on the books. All require voting for the pledged candidate that won the popular vote in the state. Among those 32 states, five impose a penalty for noncompliance; 16 states and the District of Columbia don’t impose a penalty; and 14 states allow the faithless elector to be replaced.

What the Court decided

Justice Elena Kagan, who wrote the majority opinion for the U.S. Supreme Court, said states can hold electors to their pledge to vote for the candidate they had promised to support. Further, she wrote that states “can demand that the elector actually live up to his pledge, on pain of penalty.”

As Justice Kagan pointed out, the Constitution is “barebones” about electors, noting that the Electoral College is only mentioned twice.

“Those sparse instructions,” Justice Kagan wrote, “took no position on how independent from—or how faithful to—party and popular preferences the electors’ votes should be.” Therefore, the Constitution “doesn’t expressly prohibit states from taking away presidential electors’ voting discretion.”

Jack M. Beermann, a professor at Boston University School of Law and an expert on state and local government,

explains the Court is saying that since the U.S. Constitution gives states the power to appoint, they also have the right to set the condition for that appointment.

“Because the selection is up to the states, any sort of supervision is also a matter for the states,” Professor Beermann says.

In a statement released after the Court’s decision, Professor Lessig said, “When we launched these cases, we did it because, regardless of the outcome, it was critical to resolve this question before it created a constitutional crisis. Obviously, we don’t believe the Court has interpreted the Constitution correctly. But we are happy that we have achieved our primary objective—this uncertainty has been removed.”

Hamilton electors

Before the Court’s clarification on the matter, there had been an argument, promoted by legal scholars, that Electoral College electors are free agents. The reasoning is attributed to Alexander Hamilton, who wasn’t a fan of letting the people vote directly for president. Hamilton felt the masses would be susceptible to electing a president with “the talents for low intrigue and the little arts of popularity,” meaning he thought the average citizen might fall for a politician’s empty promises.


In the Federalist Papers, a series of essays written in support of the ratification of the U.S. Constitution, Hamilton wrote, “A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations.”

Hamilton’s words have been interpreted to mean electors are free to vote as they desire and are not bound to a state’s popular vote.

Justice Kagan addressed the “free agent claim,” writing, “In practice electors are not free agents; they are to vote for the candidate whom the state’s voters have chosen.”

Boost to popular vote movement?

Professor Beermann says the recent Supreme Court ruling could provide a boost to a movement that would elect the president via national popular vote. The National Popular Vote Interstate Compact (NPVIC) is an initiative to support the presidential candidate who garners the most votes nationwide.

If the NPVIC succeeds, Professor Beermann notes that some states will be giving their electoral votes to a candidate who gets fewer votes. While he says that seems odd, he points out that the recent ruling seems to leave these matters up to the states and also notes that “[presidential] elections happen state by state rather than one big national election.” 

DISCUSSION QUESTIONS



1. How do you feel about the way we elect the president? Should we stick with the Electoral College or elect via national popular vote? Is there a better way to elect a president?
2. The U.S. Supreme Court ruled that states have the right to punish or remove faithless electors. What do you think should happen to faithless electors if they don’t represent the popular vote of their state?
3. According to the article, Alexander Hamilton’s writings were interpreted to mean that electors could vote their conscious (see second paragraph under **Hamilton electors** subhead for quote). How do you interpret his words? Was he saying that electors could vote their conscious if in disagreement with the will of the people? Explain your answer.

New Hampshire. That meant that New Hampshire's 90,000 college students, some of whom are from out-of-state, were not required to establish residency in New Hampshire in order to vote.

College students are allowed to register to vote in the town where they are attending college or they may remain registered in their hometown and vote via absentee ballot. Franita Tolson, a professor at the University of Southern California Gould School of Law and an election law expert, explains that each state has its own requirements for establishing residency. However, if a student wishes to register to vote in the town where they attend school, students are allowed to do so using their school address, including if they live in a dorm room.

H.B. 1264 redefined the meaning of domiciled to have the same significance as residency with the same requirements. That meant that it triggered certain residency requirements including obtaining a New Hampshire driver's license and registering a car if you want to drive in the state. These requirements effectively created a **poll tax** in order to vote. Obtaining a driver's license in New Hampshire can cost as much as \$50 and car registration can be upwards of \$300. New Hampshire's legislature claimed that the law was passed to bring the state in line with every other state in the union and also to combat voter fraud, despite no evidence to suggest that voter fraud is a massive problem in the state or anywhere else in the nation.

The federal lawsuit, filed by the American Civil Liberties Union (ACLU) on behalf of the Dartmouth students, claimed the new requirements would scare away out-of-state students from voting

on Election Day. Many out-of-state students choose to register to vote in the town where they attend college because the laws, whether state or local, have an effect on them.

In newspaper reports, Maggie Flaherty, one of the Dartmouth students who brought the lawsuit, noted that she spends more time during the year at college in New

Hampshire than in her home state of California.

"New Hampshire politics affect our health care, the environment and the air we breathe, and so I feel it's really important to vote where we live," Flaherty told Dartmouth's student newspaper.

The ACLU challenged the law on multiple constitutional grounds, claiming it placed a severe burden on students' right to vote without a compelling state interest, which violates the First and 14th amendments. In addition, the lawsuit claimed the law violates the 24th Amendment, which prohibits poll taxes and, because it has the effect of restricting young voters, the law also violates the 26th Amendment, which lowered the voting age to 18.

"College students have a **statutory** right to vote in New Hampshire," Henry Klementowicz, the ACLU lawyer that took the case, told Dartmouth's student newspaper. "Where people choose to register to vote is a personal choice that shouldn't be subject to the payment of large fees to the Department of Motor Vehicles."

What the students said

Flaherty said, "It's not that they're taking away our right to vote, it's that they're making it more difficult and confusing for us to vote."

Miles Brown, who runs the campus voter drive at Dartmouth, told the

local television station, "I think they're definitely trying to take advantage of college-age students, who, if they have to put in a ton of effort to figure out how to vote, will be less likely to."

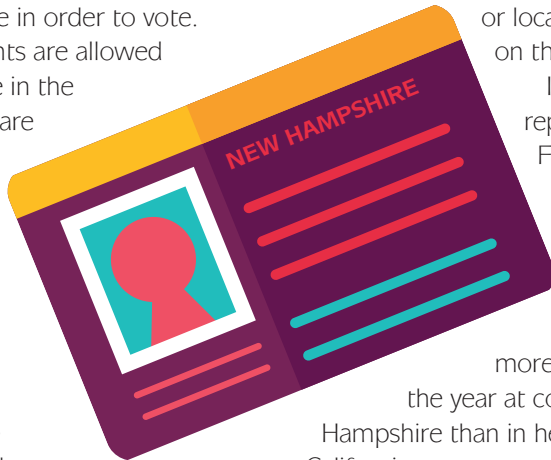
In the end, the lawsuit was withdrawn after the New Hampshire Supreme Court clarified that the change in the definition of residency contained in the law does not affect voting. "Election laws do not establish motor vehicle or driving privileges and obligations, nor do the motor vehicle laws establish voting eligibility," the court's decision stated.

"This technical, state law decision does not change the fact that if you live in New Hampshire, you can vote in New Hampshire and does not address the constitutionality of the law," Klementowicz said in a statement. "It is also important to note that you do not need a New Hampshire driver's license to vote in the state. We have said since the beginning that driver's licensing and voting should not be linked, and after this decision, we have come to the decision that it is no longer necessary to pursue this case any further."

Betsy McClain, the town clerk in Hanover, NH where Dartmouth is located, told NBC News, "It's the confusion that is disturbing. We can clarify it for people who present themselves, but maybe this confusion has dissuaded people."

Over the years, other states, including Arizona, Florida, Wisconsin and Texas, have attempted to suppress the youth vote in their college towns as well. As for the confusion that the New Hampshire law caused and the possibility that it will suppress the state's college-age voters in November, Professor Tolson maintains "there is nothing new under the sun" when it comes to voter suppression.


"Sowing confusion is a well-worn and time-honored method of voter suppression," Professor Tolson says. "For two centuries, elections have been won and lost by misrepresenting the requirements to vote, who can vote,



Sowing Seeds CONTINUED FROM PAGE 4

and when the election is.”

Professor Tolson notes that the U.S. Constitution does not contain an affirmative right to vote. In other words, there is language in the Constitution about who cannot be denied the right but it doesn't mention an explicit right to vote. That's why she favors a constitutional amendment that would explicitly protect the right to vote for everyone.

“A constitutional amendment would strengthen the right to vote, requiring courts to strictly scrutinize any restrictions on the right and thereby making suppression harder,” Professor Tolson says. 

DISCUSSION QUESTIONS



1. What are the pros and cons of voting in the jurisdiction where you live versus where you attend college? Which option would you choose and why?
2. The article mentions the attempt to suppress the youth vote in a number of states. Why do you think some states make an effort to suppress that voting block?
3. Poll taxes, adopted in the late 1800s in many Southern states as a way to impede former slaves from voting, create a financial barrier in order to vote. If you couldn't afford the tax, you couldn't vote. What do you think about this?
4. Do you think there should be a constitutional amendment that would protect everyone's right to vote? What are the benefits of such an amendment? What are the disadvantages of an amendment like this?

Mailing CONTINUED FROM PAGE 1

Voting by mail already an option

All states allow some type of mail-in voting with the request of an absentee ballot. Some states require voters to provide a valid “excuse” for requesting an absentee ballot. Valid excuses for requesting an absentee ballot can include military deployment or having a physical disability, and many states also afford the elderly the option as well. Other states are known as “no excuse” states, meaning eligible voters don't have to provide an excuse as to why they would like to vote by mail.

Since the pandemic, many states have expanded the excuses for voting by mail to include fear of the coronavirus. At press time, nearly 180 million eligible voters will be able to cast a mail-in ballot in the 2020 election. That number includes 21 million voters living in states where the excuses for voting by mail were expanded to include the coronavirus. Eight states, however, do not accept fear of contracting the disease as an excuse to vote by mail. For those voters, in-person voting remains their only way to cast a ballot unless they can provide an excuse that their state will accept.

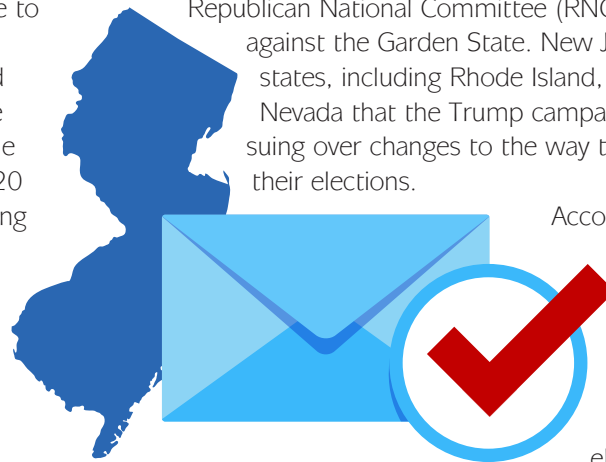
Five states—Colorado, Hawaii, Oregon, Utah and Washington—have automatic mail-in ballot systems, meaning every eligible voter receives a mail-in ballot by default.

Voting in the Garden State

New Jersey became a “no excuse” state in 2005. For the 2020 election, however, all voters will be voting by mail. In order to protect public health due to the coronavirus, on August 14, 2020, Governor Phil Murphy issued Executive Order 177, which states that all of New Jersey's 6.2 million

eligible voters will receive a vote-by-mail ballot. Voters can either mail their ballot or drop it off at a designated drop box. Voters will still be able to vote at a polling place on Election Day, but they will fill out a **provisional ballot** rather than casting their vote via a voting machine. That is to ensure there are no double votes counted.

Soon after Governor Murphy issued the executive order, President Donald Trump's campaign, along with the Republican National Committee (RNC), announced litigation against the Garden State. New Jersey is one of several states, including Rhode Island, Pennsylvania and Nevada that the Trump campaign and the RNC are suing over changes to the way they are conducting their elections.



According to Lisa Chapland, the New Jersey State Bar Association's Director of Government Affairs and an attorney experienced in election law, the lawsuit challenges the

constitutionality of the order. Essentially, the Trump campaign and RNC are alleging that the Governor does not have the right to mandate universal vote by mail in the state, asserting that changes in voting rest with the Legislature, not the Governor.

President Trump continues to claim that voting by mail leads to voter fraud. All the lawsuits brought against states challenging vote by mail cite voter fraud as a legal argument.

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The lawsuit, Chapland explains, is really about reversing universal vote by mail and would not force people to vote in person. If the order was invalidated, Chapland says voters who want to vote by mail would have to submit an application to do so unless the voter has already opted to permanently vote by mail.

"It remains to be seen when and how these issues will be reviewed not just throughout the country, but by the U.S. Supreme Court," Chapland says.

Voter fraud?

To bolster the voter fraud claim, the Trump campaign lawsuits reference the May 12 municipal race in Paterson, NJ, where nearly one-fifth of mail-in ballots were rejected and four people, including one of the winners, were charged with election fraud. The problems associated with Paterson's election, the lawsuits claim, prove that mail-in voting will lead to widespread voter fraud.

While what happened in Paterson seems to support Trump's argument, election law experts say it actually demonstrates the rarity of election fraud and the kinds of safeguards that have been put in place to protect ballot integrity.

"What happened in Paterson is terrible," Ben Dworkin, head of the Rowan Institute for Public Policy and Citizenship, told News 12 New Jersey in mid-July. "But I think it's also an example of the system working. These people were caught. They're going to be tried. This is the way the system is supposed to work."

Multiple analyses and investigations have uncovered almost no evidence linking mail-in voting to widespread fraud. In fact, a *Washington Post* analysis of vote-by-mail data from Colorado, Oregon and Washington State found an extremely small number of bogus ballots in the trio's 2016 and 2018 general elections. The newspaper identified 372 possible double votes or voting on behalf of deceased individuals out of 14.6 million total votes, which works out to 0.0025 percent.

Richard J. Perr, an adjunct law professor at Rutgers Law School—Camden, says the U.S. election system is not perfect.

"You can commit voter fraud even with an in-person voting process," Perr says. "Are there high incidents of it? No. There is no empirical evidence of high voter fraud in mail-in voting. There are anecdotal stories, but it's not widespread."

Darrell West, vice president of Governance Studies at the Brookings Institution, a nonprofit public policy organization based in Washington, D.C., cautions that tampering with mail ballots is a serious offense and people can go to jail for violations.

"There is little evidence of widespread voting fraud for mail ballots," West says. "There have been a few instances and the offenders get prosecuted."

Julie Anderson, an auditor from Washington State, told *The Washington Post* that there are security measures in place to catch voter fraud attempts, which include each envelope having a unique bar code. She likened cheaters to someone who buys a movie ticket online and makes copies to give to his friends.

"When the attendant scans your bar code, that's it," Anderson said. "All the tickets you gave your friends—they're out of luck."

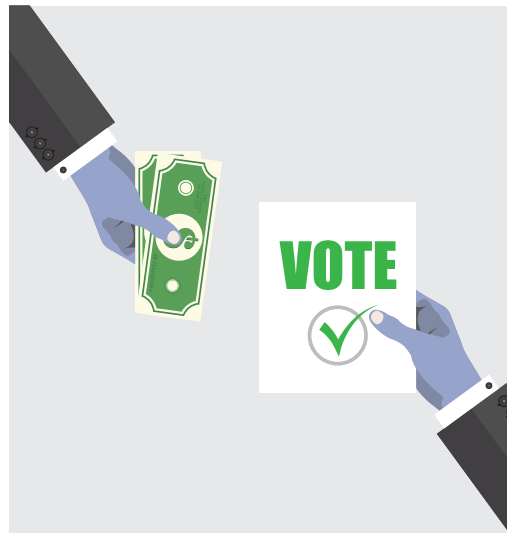
What's needed for success?

When voting by mail, election experts agree that there needs to be a way to "cure" the ballots, meaning voters should be afforded a way to correct inadvertent errors. During the 2020 presidential primaries, more than 500,000 mail-in

ballots across the nation were rejected due in part to voter error.

In August 2020, Governor Murphy signed New Jersey's Ballot Cure Act into law. According to Chapland, the most important part of the bill is the inclusion of an online tracking system to track whether your ballot was rejected.

"If the ballot is rejected, the voter will be notified within 24 hours of the decision to reject the ballot and issued a 'Cure Letter' to explain the reasoning for such rejection and a pre-printed 'Cure Form' to permit the voter to cure the deficiency," Chapland says.



Why not everyone?

With coronavirus cases continuing to escalate across the country, an increasing number of Americans support expanding access to mail-in voting. Implementing such a system nationwide, however, would be challenging because each state conducts elections differently and has its own rules. As Perr points out, the presidential election is "really 51 separate elections."

"The U.S. Constitution spells out that each state governs its own election process," Perr says. "It's unlikely that Congress is going to change the Constitution to have a uniform system."

West agrees and says there cannot be a national vote-by-mail system unless every state opts to make it so.


"That is not likely to happen given the differences between the states," West says. "But it is conceivable that two-thirds will allow some form of mail voting so that many people will have the option. And with the likely continuation of the coronavirus, a lot of voters will avail themselves of that option in order to protect their health."

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One thing that voters nationwide will need to have this year is patience. With so many voting by mail, the results may not be known as rapidly as the country is used to.

Chapland notes in New Jersey's 2016 General Election, approximately 340,000 people cast their ballots by mail, which were counted by Election Day. The highest voter turnout in a presidential election in New Jersey was 73 percent in 2008. Assuming a 73 percent turnout this year, there could be as many as 4.5 million ballots to count.

"By simple math, if the counties were able to count 340,000 ballots by Election Day in 2016, the counties would need an additional 14 days to count 4.5 million ballots," Chapland says. "So we would be looking at results probably closer to mid to late December." 

DISCUSSION QUESTIONS



1. How do you feel about universal mail-in voting? Should it be available to voters nationwide? Why or why not?
2. Do you think fear of contracting the coronavirus is a legitimate reason for requesting an absentee ballot? Why or why not?
3. How do you feel about the possibility of not knowing the results of the election until all the votes are counted? What do you think the consequences of not knowing for weeks might be?

High Tech CONTINUED FROM PAGE 1

adopted what was known as lever voting machines, where you pulled a lever for your preferred candidate and your vote was recorded secretly.

The National Conference of State Legislatures (NCSL), a **nonpartisan** association for public officials, notes that jurisdictions across the country mainly use two types of voting technology—optical (or digital) scanners that count paper ballots or Direct-Recording Electronic (DRE) machines.

With optical scanners, the voter marks a ballot by hand and then it is scanned for tabulation at the polling place or at a central location. When using a DRE voting machine, voters touch a screen and their vote is recorded into the machine's computer memory. Some of these machines are equipped with the ability to print a paper trail, while others are not.

Back to basics

In April 2020, a **bipartisan** report from the U.S. Senate Intelligence Committee confirmed that Russia interfered with the 2016 presidential election by spreading propaganda to undermine faith in the democratic process. A similar report released in July 2019, revealed that Russia targeted election systems in all 50 states although there is no evidence that any votes were altered.

Even with all the technology available in 2020, security experts agree that the most secure voting mechanism is paper ballots. The Verified Voting Foundation, an educational nonprofit organization in Philadelphia, is dedicated to safeguarding elections in the digital age.

"Unfortunately, no voting machine is completely tamper-proof from hacking," Corrie Emerson, Verified Voting's communications officer, says. "The most secure way to vote is using paper ballots, which are usually counted by a scanner."

The Brennan Center for Justice at New York University Law School, a nonpartisan law and public policy institute, issued a 2019 report, titled "Voting Machines at Risk: Where We Stand Today." The report declared an urgent need "to replace antiquated voting equipment." The authors of the report noted that "older systems are more likely to fail" and are "increasingly difficult to maintain," which can lead to long lines at the polls.

In 2018, Congress passed the Help America Vote Act (HAVA), which made \$380 million available to states. This money helped states and localities strengthen election cyber security and replace the oldest and most vulnerable machines. According to the Brennan Center report, however, that money

"only scratches the surface" of what is needed. Even after the distribution of HAVA money, the Brennan Center reported that nearly two dozen states don't have "adequate funds" to replace their voting equipment before the 2020 election.

The report also revealed that many voting machines are "reaching the end of their lifespan" and are more open to cyber attacks. Nearly a dozen states, including New Jersey, still use paperless electronic machines in some counties and towns. These older machines do not leave paper trails or any backup of a person's vote.

The Verified Voting Foundation advocates for having emergency paper ballots on hand in polling places on Election Day if technology fails so that people will still be able to cast their votes.

"Paper ballots also give election officials a way to double check after Election Day that the computers counted the ballots correctly in post-election audits," Emerson says.

She explains that a post-election audit occurs after the unofficial results are counted and before the results are certified.

"An audit will be able to provide assurance that votes were counted correctly, and if not, that the votes need

to be counted again,” Emerson says. “This is really important, because our democracy relies on you showing up to vote and trusting that your vote counts.”

Why not online voting?

If you’ve ever purchased anything online, you know it’s usually quick and easy. So why not vote online too? While Internet voting might seem convenient, Emerson points out that it is actually very different from other ways we use the Internet.

“No one should ever be able to find out how you voted,” Emerson says. “With Internet voting, you would be able to trace the votes back to the person who voted through their IP address or even their email address.”

Emerson also points out that similar to online banking, shopping and other Internet transactions, there is a high risk of hacking and no reliable way to recover the data.

“Paper ballots, combined with other election security best practices, provide physical evidence that the ‘winners’ won and the ‘losers’ lost,” Emerson says.

Chaos in Georgia

In what is hopefully not an omen of things to come in November, Georgia had a chaotic 2020 presidential primary when its newly-purchased voting machines broke down.

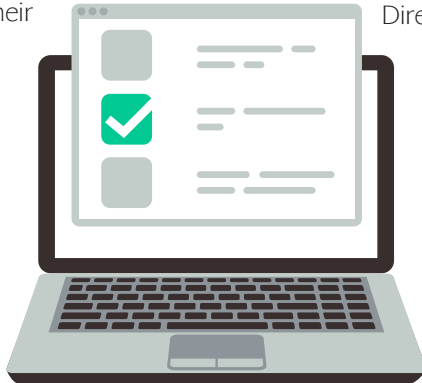
The State of Georgia spent \$107 million on 30,000 new high-tech touchscreen voting machines after widespread claims of voter suppression in the state’s 2018 governor’s election. In that election, after a prolonged recount, Stacey Abrams lost to Brian

Kemp by less than two percent of the vote. Making matters more problematic, Kemp was the state’s secretary of state at

the time and in that position he was in charge of running the election.

Georgia’s statewide presidential primary, held on June 9, 2020, was marred by a failure of all three technological components—the electronic poll books that checked in voters, the touch-screen voting machines and the ballot scanners. All broke down, creating long lines and frustration for Georgia voters.

The coronavirus pandemic did not help matters as the state was short about 250 poll workers, but according to the American Civil Liberties Union of Georgia, the state was “ill-prepared for this year’s election” before the pandemic hit.




ACLU-GA Executive Director Andrea Young told *The New York Times*, “They were issuing brand-new machines on a massive scale and that’s never been done before. You need to put in more resources, more training for poll workers, for citizens.”

Marilyn Marks, a voting rights advocate with the Coalition for Good Governance, agreed and told *The New York Times* switching systems during a presidential election year was like “Walmart deciding that they wanted to change out their point-of-sale system on Black Friday.”

Georgia’s secretary of state blamed county officials for the voting problems, but security experts faulted human error, complex machinery, not enough poll workers and inadequate tech support. Glitches with voting machines on Election Day can be a problem for many reasons, including causing voters to leave in frustration before casting a ballot.

In Georgia, most voters stuck it out with some waiting for longer than three hours. One Georgia voter, who suffers from bronchitis and asthma and had

not received the absentee ballot she requested, told *The New York Times*, “I refuse not to be heard and so I am standing in line.” 

DISCUSSION QUESTIONS



1. We live in a technological age. What do you think of the fact that security experts agree that paper ballots are the best way to provide a secure election?
2. Is there a better method of voting that you can think of that would address the issues that our current voting system has? What might be the pros and cons of changing the entire voting system?
3. If you had to wait in a long line to vote would you leave or wait as long as it took to cast your ballot? Why or why not?

GLOSSARY

appealed — when a decision from a lower court is reviewed by a higher court.

bipartisan — supported by two political parties.

domiciled — reside in.

electorate — everyone in a country or area who are entitled to vote.

nonpartisan — not adhering to any established political group or party.

plenary power — complete and absolute power to take action on a particular issue.

poll tax — a voting fee, typically used to deprive African Americans of the right to vote.

provisional ballot — used to record a vote by a voter whose eligibility is questioned. Those questions must be resolved before the vote can count.

statutory — required or permitted by law or statute.