



# Efficient, Timely and Reliable

A FRAMEWORK FOR ELECTION LAW IN NEVADA



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# Executive Summary

- Nevada is facing key decisions about its voting rules that need resolution sooner rather than later. Already in the national spotlight for a string of close election results, it has now been named to host a highly visible second-in-the-nation primary in the Democratic presidential calendar. It can ill afford logistical snafus, long reporting delays, or widespread voter dissatisfaction.
- Unfortunately, Nevada has performed poorly compared with most states in the speed with which it reports results. One contributing factor is the state's embrace of "all-mail" voting, usually associated with slower vote counts. By jumping very quickly into this voting format, and introducing numerous other voting changes in recent years, Nevada has multiplied the challenges it faces.
- Fortunately, policy improvements can help and best practices can be identified from successful states across the country, Red and Blue alike. Florida, for example, allows mail voting as a universal option but also reports results quickly. Nevada already follows good practice in some areas but has more to learn.
- Without abandoning vote by mail, several methods are available to obtain faster counts. As with all election rules these involve genuine tradeoffs between legitimate goals. Among possible steps are to discontinue or discourage same-day registration, as Oregon does; require receipt of ballots by Election Day, as 31 states do, and invest between elections in maintaining the most current and accurate voter registration rolls possible, so as to minimize the impact of mismatches found at the last minute.
- Nevada has meanwhile underemphasized ballot security issues that are vital both in reassuring worried voters and in preventing the emergence of bad practice. Its legislature erred in legalizing so-called ballot harvesting and should reverse that misstep. It should make a priority of the security of ballot drop boxes, which can provide a preferred option as compared with mail if voters are given good reason to trust them. Nevada has also made some correct decisions on security, including expanding audits and maintaining membership in the interstate clearinghouse ERIC. But it must do more.
- Another key step, both in improving practical results and in bolstering confidence, is to provide robust support for local election administrators including predictable staff-based funding and training.

**In summary:** States around the country have shown that it's possible to uphold wide voter access and convenience, including mail voting for all who wish, while also championing security. Nevada can too.

# Introduction

Nevada faces a new and formidable challenge: that of succeeding under intense national scrutiny as an early-primary state in presidential election years. In February 2023, the Democratic National Committee revamped its former primary calendar to provide that the 2024 primary season would begin on Feb. 3 in South Carolina, with New Hampshire and Nevada following three days later on Feb. 6<sup>1</sup>. With the world's attention focused on the Nevada outcome, the Silver State cannot afford to have its primary marred by technical foul-ups, poor voter experiences, or slow reporting of results.

Nevada differs from the two other states that will kick off the political season in at least one big way: it's new at this. New Hampshire has been running its early primary since 1920, and South Carolina has been a near competitor since 1980. Both have had a long time to master the game.

Any failure could have repercussions for the state as well as for the campaigns and other participants. As all sides are aware, one reason the DNC pulled the historic Iowa caucuses from the early Democratic calendar was the "fiasco" of the Hawkeye State's performance in February 2020, in which poor planning and technical malfunctions resulted in prolonged reporting delays and uncertainties regarding delegate count in what turned out to be a close contest<sup>2</sup>.

Whether or not the February 2024 primary will result in a close contest is something we cannot know for certain at this point. Either way, Steve Sebelius, lead columnist for the Las Vegas Review-Journal, speaks for many when he wrote: "It's critical Nevada announce its results swiftly."<sup>3</sup>

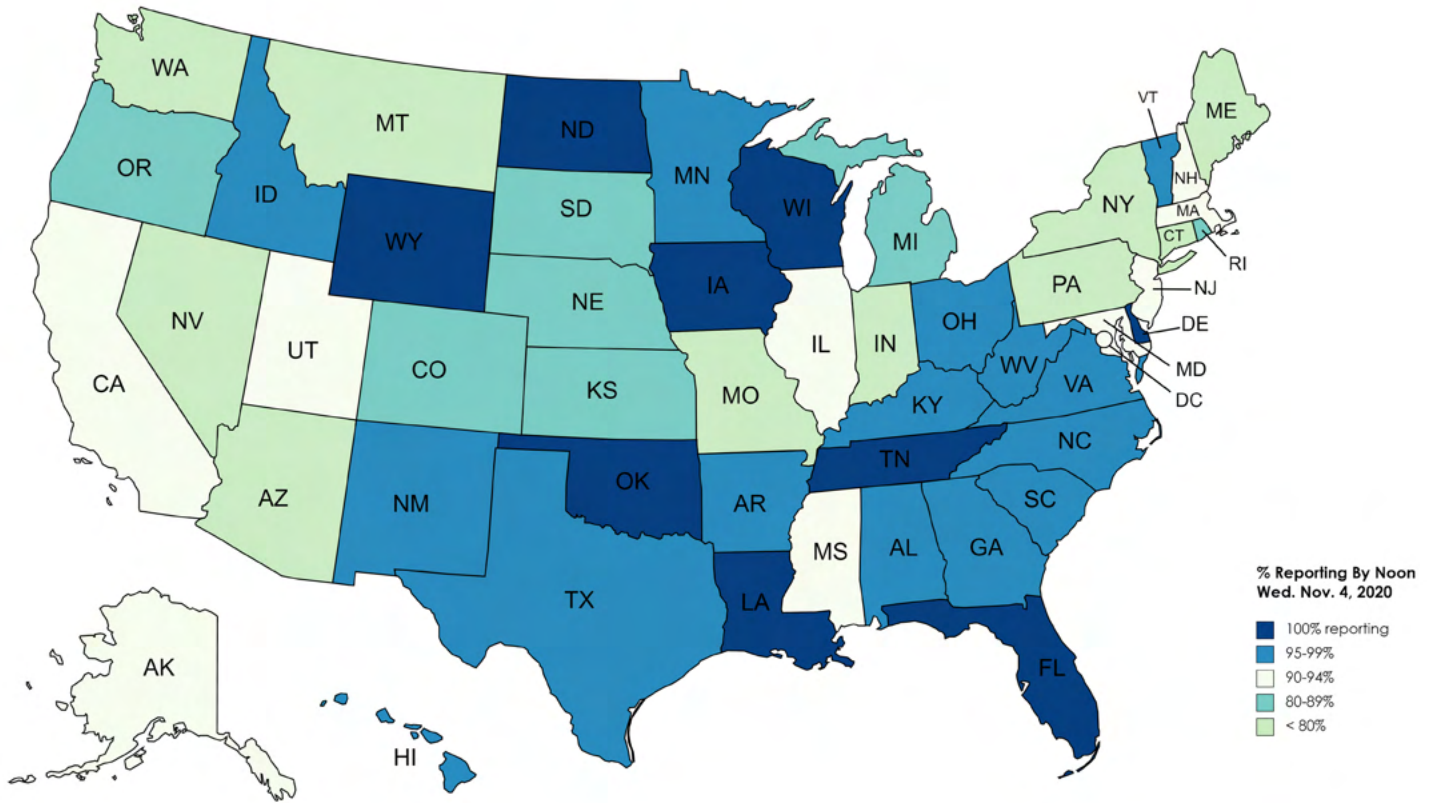
Unfortunately, Nevada is nationally notorious right now as a state with slow tabulation. In a retrospective on the 2020 election, the New York Times compared all 50 states according to what share of the 2020 vote had been tabulated by noon on the day after the election.<sup>4</sup>

It reported that Nevada had counted 85 percent of its vote by that point. That was not the country's slowest performance; 13 states and the District of Columbia were even slower. But it was quite slow by national standards; by that Wednesday noon, 24 of the 50 states were reporting 95 percent of votes and 17 were reporting 98 percent or better. States as varied as Florida, Delaware and Wyoming had scored 100 percent.<sup>5</sup>

While the all-mail states were much slower as a group, Colorado (90 percent) and Oregon (91 percent) at least succeeded in counting significantly faster than Nevada. And although the 2020 contest between Joe Biden and Donald Trump was by no means a photo finish in Nevada, with Biden finishing about two and a half points ahead of Trump, it took a remarkable four days to call the contest – days in which Trump sowed doubt and suspicion that endures to this day.<sup>6</sup>

The midterm elections held in 2022 further tarnished Nevada's reputation on the issue of speedy reporting. Numerous major contests were not called for days, including races for governor, U.S. Senate and U.S. House. The Senate race in particular drew widespread attention because its eventual outcome sealed partisan control of the Senate. Even France's *Le Monde* – published in a country that reports results quickly – got into the act with an article trying to explain to its readers why counting ballots takes so long





**Figure 1: Percent Reporting by Noon on Wednesday, November 4, 2020**

in Nevada.<sup>7</sup>

The 2022 results reflect another fact about Nevada, which is that its competitive partisan balance has lately been giving the state more than its share of tight races. And election problems that may be allowed to slide when contests aren't close, whether they be security issues or difficulty in voting, can quickly turn into bitterly contested matters when advocates who have fallen short by a narrow margin begin looking around for what might have cost them the victory.

Election reform should be – but in Carson City hasn't always been – a bipartisan affair.<sup>8</sup> As a so-called purple state, Nevada badly needs bipartisan buy-in on a combination of practices broadly responsive to the reasonable concerns of both parties. Voter convenience and ballot integrity, reliability and transparency, should not be seen as red or blue, Democratic or Republican causes. That also requires all sides to see that there are going to be inevitable trade-offs between good things, in elections as in the rest of life. The quest is not for perfection, which no system can deliver, but for best practices.





# How we got here

As one of the nation's fastest growing states and also one of its most transient, the Silver State has long faced distinctive challenges in keeping track of voters and communicating with them. Complicating matters, Nevada's election administration up to now has been largely handled by county governments, which in this case means a juxtaposition of two large urban counties, Clark and Washoe, alongside 15 rural counties for whom methods feasible or familiar in Las Vegas or Reno may simply not be available (and vice versa).

Even more than most states, Nevada sharply revamped its electoral methods during and after the COVID-19 pandemic. In 2020 its legislature adopted full vote by mail with mailed ballots, required counties to establish ballot drop boxes, mandated a minimum number of in-person polling places, eased the cure process for rejected ballots and legalized the practice of ballot collection, all at first on an emergency basis that it subsequently made permanent.<sup>9</sup>

The state also implemented two measures adopted shortly before then, automatic voter registration through motor vehicles offices and same-day registration. In large part because of these changes, many progressive election advocacy groups now rank Nevada highly among states exemplifying their preferences. In 2020, one such group's scorecard had Nevada tied with California for fifth highest, citing policies such as automatic voter registration, generous signature cure and a permissive deadline for last-minute postmarks.<sup>10</sup> Nevada is among one of 19 states (plus D.C.) that provide postage-paid envelopes for ballot return and one of fewer than ten with electronic submission for disabled voters. It is also generally permissive on voter ID requirements. Some of these policies were enacted on party lines in the legislature.

As this report will demonstrate, there is no consistent and predictable relation between whether a given reform is seen as "left" or "right" and whether it advances a given goal such as speedy tabulation or accuracy in voter registration. Some policies promoted by progressives such as registration via website and through motor vehicle offices may in fact correlate favorably with those goals. Other policies, however, bring with them trade-offs and tensions that deserve a closer look.



# Awkward Transition to Vote by Mail

Shorthand phrases like “vote by mail,” “all-mail voting” and “voting from home” are not truly accurate. Like other states, Nevada continues to provide traditional in-person voting on Election Day and before that in early voting. Roughly half its voters use those methods, a share that is about the same in urban as in rural counties.<sup>11</sup>

In 2022 the share voting on Election Day in person rebounded from 11 percent to 21 percent, but that rise came at the expense of early in-person voting, which sank from 41 to 28 percent. Meanwhile, those who prefer to vote remotely can use the U.S. Postal Service for return of ballots or can use drop boxes that the counties provide if they prefer that.

The working definition of all-mail elections is an election in which the state sends every registered voter a

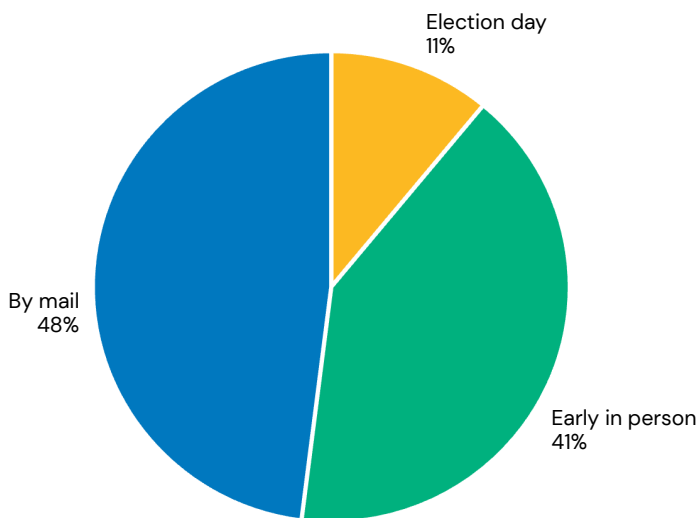


Figure 2: Nevada Vote by Method, 2020

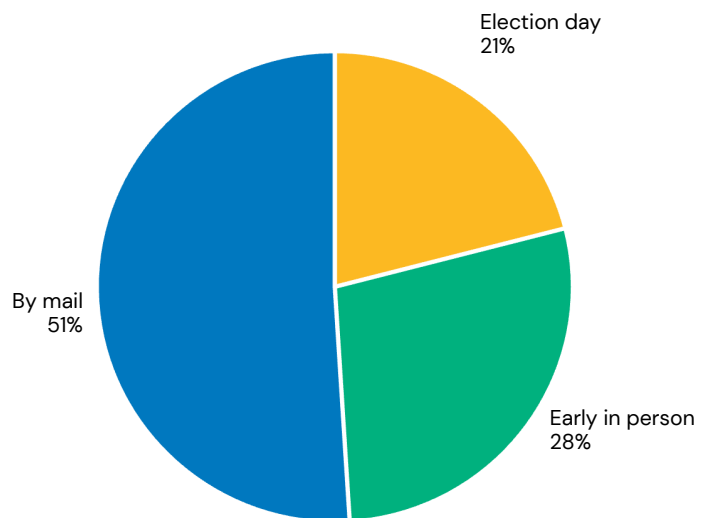
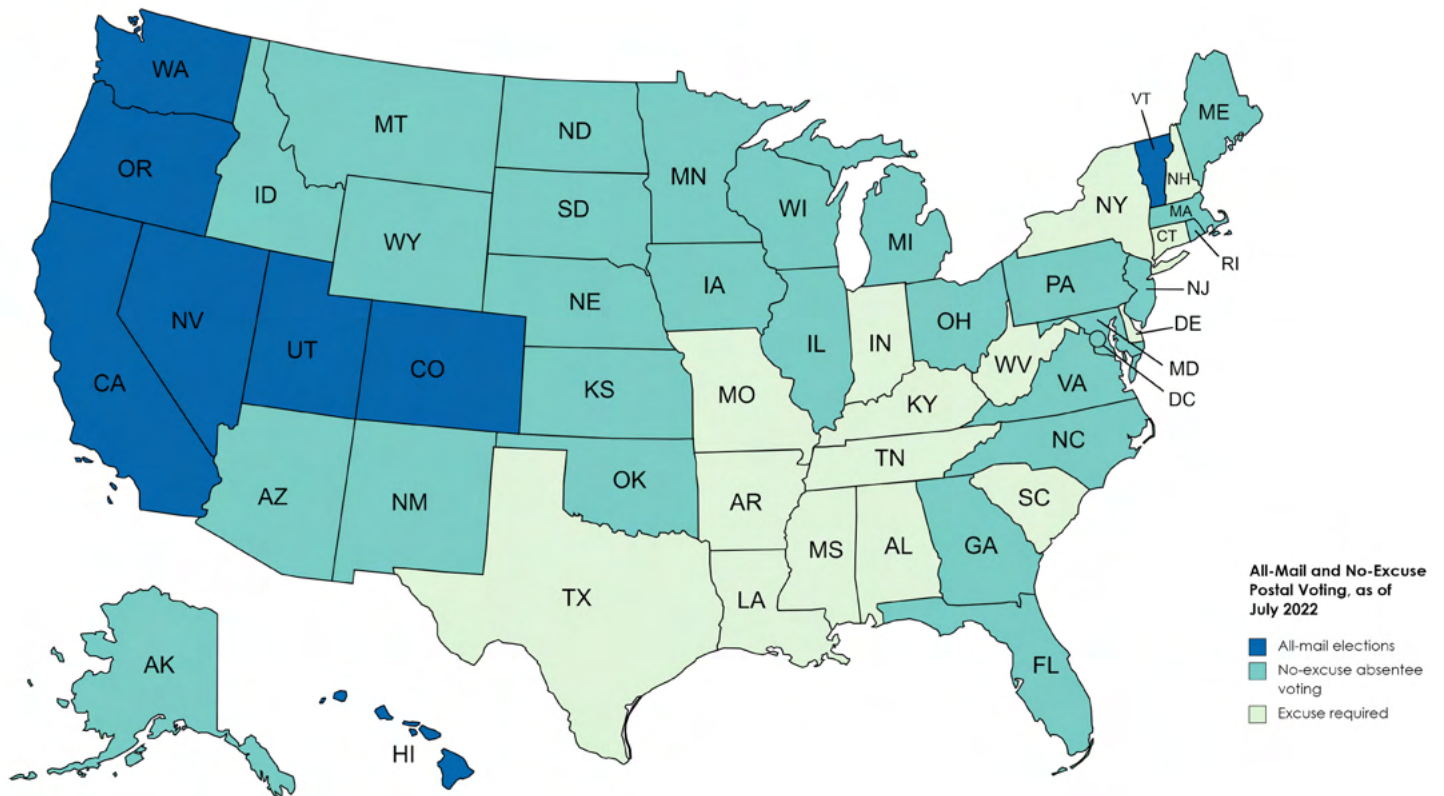


Figure 3: Nevada Vote by Method, 2022



**Figure 4: All Mail and No Excuse Postal Voting, July 2022**

blank ballot in the mail. Since 2020 Nevada has been one of eight states that do this. All these states are in the West except for Vermont (the others are California, Colorado, Hawaii, Oregon, Utah and Washington).

This distinction aside, mass use of mail voting is by no means restricted to these eight states. The pandemic spurred a widespread expansion of so-called no-excuse absentee voting, an important concession to convenience under which voters who want to use a mail ballot can request one without offering any particular excuse such as absence or illness. By now roughly two-thirds of the states (35 plus D.C.) have adopted that policy, including many known as conservative. While the resulting rates of mail voting vary from state to state, they are often high, especially among voters aged 65 and higher and the college educated. In the 2022 midterm election, 33 percent of Americans nationwide voted by mail, down from 46 percent in the pandemic 2020 vote. The practice remained popular even in many states in the Midwest and Northeast (as well as Florida) that did not automatically mail ballots.

Many states that send out ballots in the mail had the luxury of implementing that change by stages over a period of years, by comparison with which Nevada's abrupt adoption was something of an ice-bucket challenge. Oregon went first in 1998, after which it engaged in many rounds of adjustment and troubleshooting as difficulties and special cases emerged. "We took 20 years to get it right," the online

publication Vox quoted a retired Marion County, Ore., clerk as saying as part of an overall positive article on the Oregon experience.<sup>12</sup> Washington followed in 2011, and Colorado in 2013. Utah began allowing counties to opt in to mailing ballots in 2012; the practice caught on first in rural counties and took until 2020 to go statewide.

Utah officials say the extended phase-in gave administrators leeway to solidify vendor relationships, try out the method in smaller-scale runs such as special elections and train personnel in the new ways of doing things. Even if Nevada is now too far down the road to back out, we should appreciate that administrators are being asked to do more faster than was asked of many of their counterparts around the West.

It should also be noted that Nevada is currently in perhaps the most awkward and expensive of the possible positions, in which each of the various voting methods needs to be planned for and staffed with the assumption that it might turn out to be the most popular one next time, perhaps because an influential candidate has urged its use. The 2022 election has already demonstrated a sizable shift in voter behavior in comparison to two years prior. In a state like Colorado, further along in the transition, the established public preference for voting from home allows for easing off on the staffing and volunteer buildup that used to be needed to handle high volumes at the in-person polls.





# Mail Voting Challenges



All voting formats, including mail voting, involve problems and tradeoffs of administrative capacity and security. To pretend that mail voting is the first format in history to be free from such problems and trade-offs is to do it a disservice by diverting attention from the kind of analysis that would promise to improve its performance.

For example, mail voting tends to generate a high rate of ballot rejection, much of which arises from everyday omissions such as voters forgetting to sign or date a ballot, mismarking it or sending it too late. Outgoing blank ballots can get delayed or lost in the mail or go to old addresses or the wrong ballot is sent. Legitimate voter signatures can be rejected as not matching those on file closely enough while illegitimate signatures might be incorrectly matched to those on file. People might forget that they mailed a completed ballot weeks earlier and show up at the polls on Election Day. Some of these mishaps can be rectified by the process known as “cure,” which absorbs staff time.

All the above problems – which constitute the great majority of problems reported with mail voting – arise even if every participant is earnestly trying to follow the law. But bad actors exist too. Perhaps the most common form of voter fraud is for persons with residences in more than one state to try to cast ballots from both, something harder to pull off with in-person voting. Theft of mail is a real problem in parts of the country, and thieves who are after other contents of mail containers have been known to discard or trash the remainder of their haul, ballots and all.

Nor is it easy entirely to dismiss the danger of insider misconduct by rogue persons with access to mail flows, which can include employees of private organizations as well as of the USPS. This need not involve elaborate skullduggery such as the steaming open of envelopes. One widely discussed danger is that a miscreant with access to mail flows will simply sidetrack those sent from a neighborhood known to vote a certain way.

It is dangerous to assume that because abusive practice in mail voting has been rare up to now, it will remain rare forever. Mass experience with mail voting is still relatively new, and much of that experience has been concentrated in a few states like Oregon, Colorado and Utah that benefit from high levels of trust and social capital, an aversion to machine politics and solid records of generally aboveboard election conduct. By contrast, Nevada’s transitory nature and history of machine politics may deprive it of these advantages.

# The State of Election Distrust

Courts upheld the conduct of the Nevada 2020 election against challenge.<sup>13</sup> In *Law v. Whitmer*, Carson City District Court Judge James Russell considered the evidence presented and ruled that those challenging the presidential outcome did not prove “that any illegal votes were cast and counted, or legal votes were not counted.”<sup>14</sup> The Supreme Court of Nevada unanimously affirmed that ruling.<sup>15</sup> The same fate befell a pre-election challenge to Clark County methods. “There is no evidence that any vote that should lawfully not be counted has been or will be counted,” Judge James Wilson wrote in that case.<sup>16</sup>

Nevada’s experience, of course, is part of a national pattern that has been particularly heightened in states

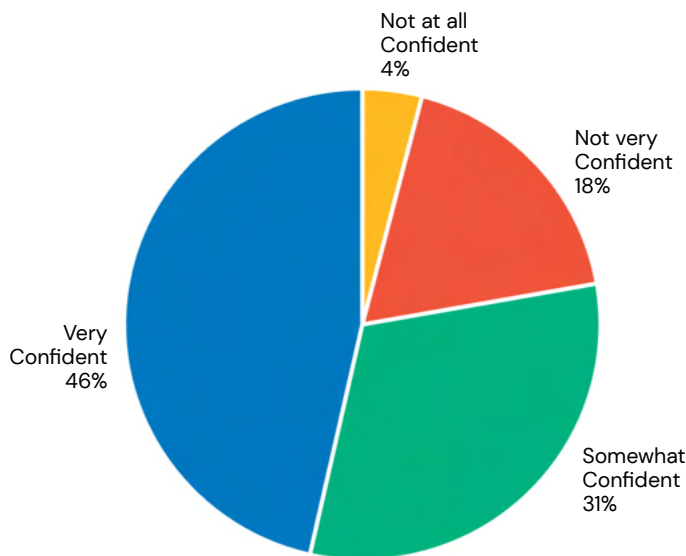


Figure 5: Voter Confidence in Election Results, 2022 Exit Poll

whose vote was relatively close in the 2020 presidential vote. That pattern includes not only sharp distrust of election outcomes but also intense, often acrimonious criticism of the work of election administrators, even on matters formerly seen as uncontroversial.

The suspicion has lingered. A CNN exit poll during the 2022 general election found that while 76 percent of Nevada voters were very confident (46 percent) or somewhat confident (30 percent) that election results in the state were fair and accurate. Another 21 percent were not very confident (17 percent) or not at all confident (4 percent).

It's true those weren't the worst numbers CNN found in its multi-state survey – distrust was a bit higher in Arizona and Pennsylvania -- but for more than one in five Nevadans to be lack confidence in the basic machinery of democratic governance is still an unsettling finding. An April 2022 poll by the Nevada Independent/OH Predictive Insights yielded broadly similar numbers.<sup>17</sup>

Moreover, the fever of election distrust is not naturally confined to voters on any one side of the political spectrum; it has broken out within recent memory among groups of voters on the Democratic and progressive side. Such was the case with the widespread belief that foreign powers had remotely tampered with election machine tallies in 2016, and the earlier belief, propelled by talk shows and even by some elected officials, that misconduct relating to Diebold voting machines had stolen elections for George W. Bush and other Republicans. There was never credible evidence for either claim.

However flimsy its basis, election distrust and suspicion will tend to hurt a community's civic health. It can harm turnout, as voters refrain from participating after being told outcomes are somehow rigged and their votes won't count. It encourages polarization, needless litigation and even talk of violence.

# Public Confidence

An election system needs to both be and appear secure.

These are two different questions. As election administrators will tell you, some of the most important measures to prevent fraud or mistake are things the public will never see. Among less visible security measures are many of a technical nature, such as special ballot papers to foil forgery, highly sensitive scales that can detect whether the number of ballots in a container has changed, and dual-control keys that require two employees to operate.

On the human side, security measures run the gamut from troubleshooting of unusual patterns of ballot return to audits at multiple stages of the election process. Some of these measures will be touched on below, while many others are beyond the scope of this paper. The point of security measures, it is worth emphasizing, is not just to make sure that no unlawful votes are counted, but also to make sure that all lawful votes are. Everyone has a stake in security.

Some steps – video surveillance of lock boxes, for example – very likely boost public confidence even if they play at most a minor role in catching irregularities. We cannot afford to be dismissive about these benefits at a time when we need all the public confidence in elections we can get.

Of course, some election skeptics will not be convinced no matter what preventive steps are in place. In many other instances, however, good practice, including transparency, multiple levels of security defense and communication with the public, does genuinely calm the fears of many members of the public in the experience of many administrators. Different combinations of precautions may work well in different situations and places.









# Secure Voter Registration

Nevada is currently in transition from its historically familiar arrangement of county-led voter registration to a so-called top-down system with extensive statewide direction. Under AB 422, passed during the 2021 legislative session, the state is introducing a system known as VREMS, short for Voter Registration & Elections Management Solution. Among VREMS's functions is to replace individual county-maintained voter registration rolls with a single constantly updated statewide uniform database overseen by the secretary of state.<sup>18</sup>

Whatever the merits of the older system, there is a consensus that the goals outlined in this paper – speed, security and integrity based on clean, accurate voter registration rolls – can at present be achieved only through a system of this sort. In this Nevada is following in the path of both red and blue states that are considered high performers on voting efficiency, such as Minnesota, Nebraska, Vermont and Colorado.<sup>19</sup>

The new system should be much more capable of resolving real-time issues implicating multiple counties, as when people vote soon after moving from one county to another. Even as the program imposes some new requirements on counties, it should relieve them of considerable administrative burdens in running the previous county databases.

**RECOMMENDATION:** For the sake of both accuracy and speed, Nevada should complete the transition envisaged by AB 422, with a particular eye to being ready for the 2024 election cycle.



# Voter Roll Integrity

Among the central responsibilities of electoral authorities in any state is to maintain accurate, up-to-date voter rolls. Rolls with many outdated names or with data entry errors are bad all round: bad for election integrity, bad for public confidence, bad for speed and bad for voter satisfaction. Candidates and parties waste time and money knocking on obsolete doors and mailing to departed voters. Election Day voters wind up being issued provisional ballots because their records haven't gotten updated, absorbing administrators' energy while delaying reporting of the resulting vote. It's even hard for politics-watchers to estimate voter turnout if there isn't an accurate count of lawful voters in hand.

All this is bad enough in a state with conventional voting, but worse in a state that mails ballots to every voter. For starters, printing and postage figure among the main expenses of a mail election, which means a jurisdiction can be out serious money if it mails a large quantity of blank ballots, secured with special identifiers or otherwise, to departed or ineligible voters. More to the point, public confidence in elections suffers a hit every time a Nevada resident observes a paper ballot being delivered in the name of someone who moved out quite a while back. The temptations for misconduct multiply too, from the one-off kind (there's always someone who thinks it's clever to vote their departed roommate's ballot) to the more systematic.

For all these reasons, the stakes have risen sharply in the task of keeping Nevada voter rolls clean and up to date. VREMS promises to help a lot, if deployed properly with the right inputs and focused management attention.

Nevada's practices in removing voters from the rolls for inactivity have come under ill-founded criticism from both sides of the political spectrum. Under Nevada law, as in other states, voters can be removed from the voting rolls for prolonged inactivity, combined with a failure to respond to postcards or other communication. (Given same day registration, the stakes are low for the removed voter, who can simply re-register on the spot.)

Former Nevada Secretary of State Barbara Cegavske came under unfair fire from the left on the grounds that simply to follow the law in this respect was somehow to engage in improper "purging" of inactive voters (it was in fact counties, rather than the secretary's office, doing the removal).<sup>20</sup> More recently, she drew unfair fire from the right based on wild claims that the state had permitted thousands of deceased, noncitizen and nonresident persons to improperly register or remain on the rolls. These claims were to fizzle in embarrassing fashion.<sup>21</sup>

While removal of voters for inactivity is still important, a modern registration system is more proactive about reaching out to acquire data with which to identify obsolete names. While methods differ from state to state, here are some generalizations:



- No single data stream is perfectly accurate or up to date, including well-respected ones such as the Social Security death database or in-state vital statistics. State motor vehicle data is considered one of the better sources, because it can draw on data entered on screen by individuals themselves with a high incentive for accuracy. But it too has some real gaps, since not everyone qualified to vote has a drivers' license or updates their address promptly.
- U.S. Postal Service databases include National Change of Address, or NCOA which households use to notify USPS of their move, and Address Correction Service, or ACS, a USPS service that draws on other changes such as carrier observation. While both these sources can help jurisdictions update their rolls effectively (especially in combination), they too are no perfect fix. NCOA forms don't always correlate with actual move-outs or surrender of legal voter status and typical examples to the contrary include persons who join the military, attend college or simply choose to receive mail at some location other than their residence. In addition, many persons – especially young people – fail to fill out NCOA forms when they do change domicile. It can also be tricky to distinguish individual-level from household-level data since some members of a family may be moving but not others.
- The upshot is that no one source does the job. States need to draw on multiple data sources, and in a way that is persistent and regular, not just when election time is about to roll around. This importantly allows for resolution of confusions or ambiguity over duplicates, inconsistencies, or data entry errors during the quiet season before the election crunch arrives.

For best results, states must then bring together multiple datasets analytically so as to reinforce probable inferences or, as the case may be, expose contradictions or doubtful points. They must then – if they want results – use the information in a proactive way. For example, some states send a notice to both the new and the old address when there is evidence of a move. Vigorous practices of this sort can result in reasonably clean files – but they do take ongoing expense and attention, as compared with a “one and done” least-effort approach.

**RECOMMENDATION:** The office of the Secretary of State, which oversees the new statewide registration database, and lawmakers should cooperate to make clean, accurate voter rolls a top priority. This means investing in multiple frequently refreshed high-quality data sources and proactively reaching out to households and addresses following evidence of moves and other relevant changes. Best practices also change over time and the state should make a point of keeping up.

# Electric Registration Center

Some of the most important data streams in catching moves and duplications are those exchanged with other states. Nevada was one of seven states that jointly launched the Electronic Registration and Information Center, or ERIC, in 2012. Funded and managed cooperatively by its state members, ERIC now includes most of the states, notwithstanding a few departures recently.<sup>22</sup>

Voting experts widely agree that no available alternative set of methods and data sources is as robust as ERIC's, or even comes close.<sup>23</sup> Its core state data exchange function is especially important for Nevada as a state from which and to which residents often make interstate moves. Certified as a data recipient under the USPS's CASS program for address users, ERIC also handles receipt of the National Change of Address data for member states so they don't have to pay for it.

ERIC does charge dues to its members, and there are legitimate differences of opinion regarding some of the demands it places on states (including affirmative steps to reach out to the unregistered) as well as certain governance issues.<sup>24</sup> At the same time ERIC has been the target of claims, often originating from unreliable online sources, that it is some sort of conspiracy to advance one party's interests. That is not so.

Recognizing that there are some legitimate differences among member states over ERIC's policies is a different matter from buying into unfounded fringe theories. For whatever reason, in the spring of 2023 several states that had been seemingly contented ERIC members abruptly pulled out of the consortium. Nevada should not follow them. While it is both legitimate and desirable to speak up within ERIC for principles of sound and impartial governance, the state must not throw away a key tool to advance voting integrity and efficiency.

**RECOMMENDATION:** Nevada should stay in the Electronic Registration and Information Center, and work to improve and refine its capabilities. Legitimate policy differences regarding ERIC's operation, such as the extent to which it should prod states to do outreach to the unregistered, should be addressed by way of advocacy within the organization. Recently membership in ERIC and the information it provides has become controversial, further discretion is advised.

# Ballot Notification and Tracking

Another area in which Nevada is catching up with good practice is in fully embracing ballot tracking and notification. Ballot tracking, much like the tracking of a physical package in shipment, enables voters to go online and follow their ballot from receipt through identity authentication to tabulation. Notification is the same process but with the state initiating contact: authorities collect voters' preferred contact method (text, email, etc.) on a voluntary basis and then send a notification at each significant stage, as well as notifying them at the start that a blank ballot has been sent to them.<sup>25</sup>

VREMS will finally bring this to fruition, and with real-time information. Experience indicates that these services enhance voter satisfaction. But creating happy customers is only the start since the services are also an important security measure. Should someone receive a "we have received your vote" notification who has not in fact voted, he or she can respond accordingly and provide the basis for starting an investigation. Voters can also serve as first line monitors of assorted problems such as mail delays, with a pattern of responses sometimes helpful in troubleshooting what may have gone wrong. And, of course, voters can learn quickly about any problem with their ballot such as a missing date or disputed signature – quickly enough to resolve matters prior to Election Day.

**RECOMMENDATION:** To keep voters informed of the progress of their ballots, Nevada should finish the job of adopting strong ballot tracking and notification. Both, especially notification, can serve as an added layer of security and can help in troubleshooting delays and other problems that arise.

# Authentication of Mail Ballots

According to the National Conference of State Legislatures, the most common step states take to authenticate mail ballots is signature verification, which Nevada does.<sup>26</sup> Signature matching can be done both by automated machine review and by human “eyeball” methods, and both have resulted in litigation in Nevada.

Republicans and the Trump campaign filed three lawsuits challenging Clark County’s use of Agilis signature-match machines in the 2020 election, two before the election<sup>27</sup> and one after.<sup>28</sup> Judges rejected all three. In the most extensive ruling, written by Carson City District Court Judge James Wilson after consideration of all the evidence presented by the Trump camp, the court gave weight to testimony that the machine used in Nevada used the same signature recognition software technology banks use on check signatures, and that Clark County’s ultimate signature rejection rate came in at almost exactly the same level as that in Washoe County, which used human eyes alone. It also accepted testimony that Clark County’s decision to use a setting slightly more accepting of signatures than the factory setting made little difference as it would have taken a much lower setting than that to change acceptance rates by much. In one of the previous suits, a judge had ruled that the choice of software setting had been within the lawful discretion of Clark County Registrar Joe Gloria.

Human review of signature matches has given rise to litigation, as well. Shortly before the 2022 election, Judge Timothy Williams ruled that Gloria had not violated state law by hiring temporary workers for a ballot signature verification board in numbers that consisted of 23 registered Democrats, 33 independents and eight Republicans.<sup>29</sup>

Signature matching does serve as an important deterrent to would-be forgers, and it is important that mail ballots include voters’ signatures. At the same time, signature matching is far from perfect and can result in disagreements between reviewers which sometimes result in high challenge rates.

Could other methods be added? One of those most often discussed is asking voters to include with their ballot their driver’s license number or the last four digits of their Social Security number. These steps could significantly bolster public confidence in election security. These identifiers are used for mail ballots in Minnesota, rated second highest in the country in the MIT Elections Performance Index, as well as in mid-ranking Georgia and Ohio.<sup>30</sup> Like any other method, they are not perfect; for example, some voters write illegibly, some do not follow instructions, and an alternative ID method must be made available for qualified voters who lack both a drivers’ license and a Social Security number. But overall, there is no indication that the use of card-number identification is unduly burdensome to voters.





**RECOMMENDATION:** Requiring voters to write distinctive number identifiers on the mail ballots, such as drivers' license numbers or the last four digits of their Social Security numbers, appears to have worked well in states where the method is used and need not present an unreasonable burden on voters. In the meantime, Nevada should continue and refine the use of signature matching on mail ballots.



# Secure Drop Boxes

Nevada requires that each polling place and clerk's office maintain a drop box for daytime deposit of ballots. While drop boxes, or as Florida calls them "secure ballot intake stations," have roused intense suspicion among some election critics, they can usefully be seen as one of the more promising areas in which to step up security to reassure the public. For example, video monitoring of drop boxes, which a number of states mandate, appears to make a noticeable difference in public acceptance, though it does not always come cheaply.<sup>31</sup>

One reason to focus strong security attention on drop boxes: they, unlike the postal system, are conducive to being physically outfitted, tended and surveilled with the particular goal of election security in mind. New technologies for monitoring, anti-tampering and secure transfer are developed regularly, in distinct contrast with the relatively static technology of conventional mail (which, to repeat, has never been and will never be optimized for the specific purpose of ballot security). Even mediocre drop box setups start out with real advantages over mail, such as direct transfer by trained election workers to the election office, and given continually improving security options, from sensors to chain of custody protocols and other user-integrity controls, there is no reason to settle for mediocrity.

There is evidence that users in some vote-from-home environments have in fact developed a preference for drop boxes over mail. In Oregon, the state with the longest experience of vote-from-home, ballots dropped off in boxes or at offices substantially outnumber those sent by mail. "According to the Oregon secretary of state's office, from 2012 to 2018, slightly more than 36 percent of ballots were returned by mail; 63 percent of voters put their ballots in drop boxes or returned them directly to county officials," reported Jen Kirby at Vox.<sup>32</sup>

**RECOMMENDATION:** With public confidence in mind, Nevada should invest in best practices of drop box security both in technology and in protocols for employees and volunteers. With proper controls, drop box voting can serve the goals of security and timely receipt more efficiently than does mail voting.

# Nevada's Ballot Harvesting Mistake

In 2020, the Nevada legislature made a mistake that it should correct. It legalized the previously unlawful practice known as ballot harvesting or collection, in which one person gathers ballots from many voters – bundling, you might call it – for submission at a mail or drop box. Legislators cited the emergency conditions of the pandemic, but that rationale was soon dropped in favor of a permanent legalization of the practice for any reason. Lawmakers ignored then-Secretary of State Cegavske when she asked that ballot collectors be required to register with her office as a check on possible abuse.<sup>33</sup>

Many states do make allowance for relatively innocuous instances of ballot collection by providing that it may lawfully be conducted for family members or for persons with specified incapacities. Others accomplish much the same goal by allowing any person to carry up to a small number of ballots (three in Minnesota, six in Montana, ten in Colorado). That disposes of the need to address many side issues, such as how if at all to regulate paid ballot collectors. A common provision requires that ballot envelopes be sealed before being accepted by the collector.

Nevada has one of the most freewheeling laws in the country, allowing unlimited volumes of collection by any “person authorized by the voter.”<sup>34</sup> The Washington Post notes that even California, which legalized the practice in 2016 and soon saw it become highly controversial, “has since made it illegal to get paid per ballot collected and for employers to ask employees to bring their ballots into their workplace.”<sup>35</sup>

That last point highlights one of the first problems with the practice: the person standing there asking you to hand over your ballot may be someone to whom you have a hard time saying no. What if it's a union steward at your workplace, or the political boss of your close-knit community or someone to whom you owe money?

Remarkably, Nevada even passed a provision (Section 730 (e)) that on its face exempts ballot collectors from the otherwise prevailing law making it unlawful for a voter to “show his or her ballot to another person, after voting, so as to reveal any of his or her votes on the ballot.”<sup>36</sup> The risk of intimidation or improper influence is at its worst if the person standing in your doorway can know not only whether and when you voted, but how.

It's worth stepping back to remember a few very basic principles here. The secret ballot, as a 2016 paper put it, is a “cornerstone of modern democracies,” which caught on and became near-universal in the



United States toward the end of the 19th century as part of a vigorous public reaction to the shabby public ethics of the so-called Gilded Age. It was intended to combat what was then a widespread reality of “coercion, vote buying and selling and tampering. For individual voters, it provides the ability to exercise their right to vote without intimidation or retaliation.”<sup>37</sup>

The Supreme Court has likewise cited these concerns in its decisions. In a plurality 1992 opinion Justice Harry Blackmun quoted an early commentator as saying that sources of improper pressure under the old system, in which others might see how you voted, included “employers, party bosses, police officers” and even “saloonkeepers.”<sup>38</sup> If sufficient improper pressure is applied a vote might even be regarded as rendered under duress, traditionally viewed as undercutting the legitimacy of a voting process.

Ballot harvesting scandals in recent years have often involved allegations of misconduct going well beyond the collecting itself:

- Four persons pled guilty in a 2018 scheme involving North Carolina’s Ninth congressional district so extensive that an election board ordered a do-over. (The primary had been decided by 134 votes.) According to an NBC report, some of the workers “said they were directed to collect blank or incomplete ballots, forge signatures on them and even fill in votes for local candidates.”<sup>39</sup>
- Two women, including a former mayor, pled guilty in a 2022 ballot-harvesting scheme in San Luis, Ariz. While investigators had gathered evidence they believe indicated more extensive misconduct, the former mayor agreed in a plea deal only to a low-level charge.<sup>40</sup>
- A council member in Lodi, Cal., was charged after the sheriff’s office said a search warrant of his home found 41 mail-in ballots and further investigation found about 70 persons registered with his address, phone number or email listed as contact. The member denies any illegality and has vowed to fight the charges. Law enforcement sources alleged that he not only was in possession of unfilled ballots but had pressured voters to vote for him and had filled out voters’ ballots himself before giving them back to sign. The member won his most recent election by 282 votes.<sup>41</sup>

One reason ballot harvesting has big implications for voting integrity is that it can allow a political operator who discovers a weak point in election security, such as imperfect authentication of postmarks or signatures, to leverage that finding by systematically funneling many votes through the vulnerability.

Defenders of ballot harvesting argue that it has seldom – yet, at least – been linked to large volumes of improperly cast votes. That is a fair point in reassuring those who worry that the practice may have changed outcomes in presidential general elections. But even vote counts in the dozens or hundreds can affect party primaries, off-year elections and municipal elections, where margins of victory are often far lower than in the big races. In those, even a small harvesting operation might swing an outcome.<sup>42</sup>

The best course for Nevada is to end ballot harvesting rather than try to mend it. Even reasonable-seeming controls, such as requirements that envelopes be sealed before handover and be brought



promptly to a depository, can amount to an honor system if the voters involved do not feel at liberty to blow the whistle on irregularities. If the ballot harvester is intimidating or mendacious, he or she is the wrong person on whom to impose an honor system. Allowing collectors to be paid per ballot, as opposed to (say) by the hour, heightens the incentive to cut ethical corners. Moreover, it is unclear that voters will object to, if they are even aware of, some of the grossly improper practices that harvesting facilitates, such as “helping” the voter by filling in choices that would otherwise be left blank in down-ballot races. Especially in an era in which easy mail voting and widely distributed drop boxes offer many alternatives, the best course is to repeal the 2020 mistake entirely. At most, lawmakers might consider a limited exception allowing carriage for family members or of a low specified number of ballots.

**RECOMMENDATION:** Nevada should restore its longstanding prohibition on ballot collection, perhaps with threshold exceptions permitting only incidental volumes or within-household collection. The practice of filling in vote choices on another person’s ballot should be prohibited, with exceptions only in specified circumstances of physical incapacity. Persons who are not in a household or custodial relationship with a person should also not be permitted to look at how that person voted.

# Audits, Transparency and Public Participation

Audits are an important part of good practice in election security, and Nevada is generally doing well. Audits conducted after an election, but before the certification of results, come in many varieties and include checking that machine outcomes are consistent with paper records. A newer practice known as risk-limiting audits uses statistical sampling techniques to add confidence that the results to be reported are accurate. If the information from the sampled ballots does not provide enough statistical confidence about a reported outcome, further samples are taken until such confidence is reached. Nevada has launched a pilot program for risk-limiting audits and should continue.<sup>43</sup>

When feasible, it can help to invite members of the public to observe both the audit process and many other stages of elections, particularly including ballot handling and tabulation. It does need however to be borne in mind that such observation cannot be allowed to compromise the privacy of individual voters and votes, and that some proprietary aspects of technology cannot be shared.<sup>44</sup>

A time-honored aid to integrity and confidence is more important now than ever: volunteers from both parties or sides should work collaboratively on the process. Key stages, including the handling of ballots should, if possible, be done with opposite sides both present.

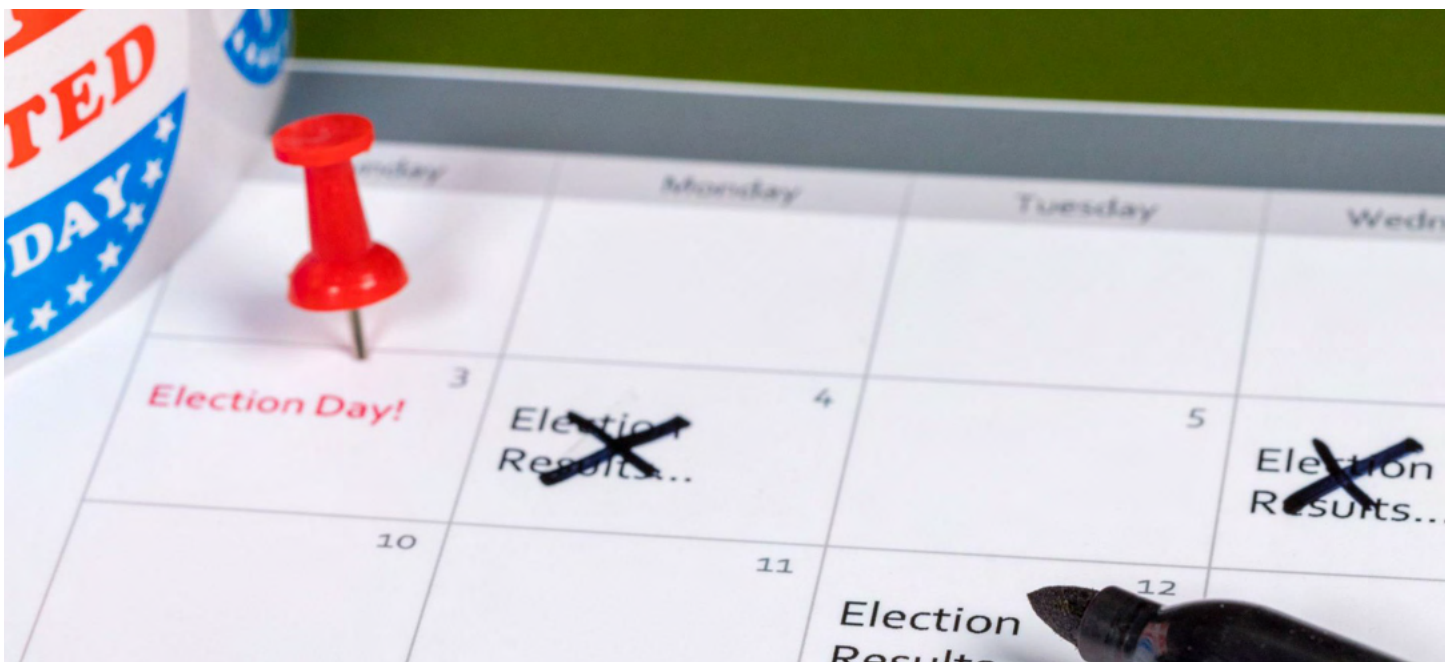
Election administrators have often recounted instances in which initially suspicious constituents regained some measure of trust after being allowed to tour election offices to view equipment and methods, ask questions and assist in oversight and security measures at election time.

**RECOMMENDATION:** Nevada should continue and refine its successful use of pre-certification audits, both of a conventional sort and of the kinds of statistically based audits known as risk-limiting. Consistent with data security and voter privacy, Nevada should continue and expand efforts to invite citizen observers and participants into election processing.

# Speed of Reporting Results

Speedy reporting of election results is considered a hallmark of good election practice worldwide; it's not just some quirk of Red-Blue politics in America. Candidates and many others want to know who won so that they can begin planning for matters of governance. Should there be later political stages to navigate – a recount, or later rounds in a primary season – the relevant parties can embark on this process once they have accurate information. Without quick results, as we have recently witnessed, the atmosphere is conducive to rumor and misinformation. Slow reporting of results comes at a real cost.

With the right laws and procedures, there's no reason an all-mail state can't count votes reasonably quickly after the polls close. At present, however, the eight states in this category mostly take a relaxed approach in their methods, often sacrificing speedy tabulation in hopes of eking out a bit of extra convenience or flexibility for last-minute voters. Voter interactions that could have been accomplished earlier instead contribute to a last-minute crunch, in which they are most likely to distract from smooth operation and perhaps contribute to hasty errors. If Nevada wants to return prompt results while giving election staff and volunteers the best chance to do their jobs well, it must break from this pattern.



# Speed: Pre-Processing

Nevada is already on the right track as to several important issues. In particular, its law allows counties to pre-process ballots. Pre-processing includes such steps as reading bar codes, reviewing dates and signatures, identifying ballots that may be in some way defective or open to challenge, such as those with a missing date or doubtful signature, and opening the process of giving voters the chance to cure the fault.<sup>45</sup> Along with about half the states, Nevada allows for mail ballots to be inserted in a tabulator before Election Day – everything short of the final step of running an actual count of the resulting votes.

While these procedures are invaluable for improving the speed of the process, they do have one obvious danger. Pre-processing needs to be secure from the danger that anyone will get – or worse yet, leak – an advance peek at results. Legal penalties for conducting premature tabulation and especially for improper early disclosure of results must be set high enough to deter misconduct. In many cases technology can assist with the needed assurances, as with time-lock capabilities that prevent use of tabulators in such a way as to display any results before the time of poll closing.

In Florida, according to one report, “Votes processed before the election must be reported within 30 minutes once polls close.” Where feasible, deadlines for required reporting can help counteract suspicions that authorities are holding back returns for tactical or improper reasons.

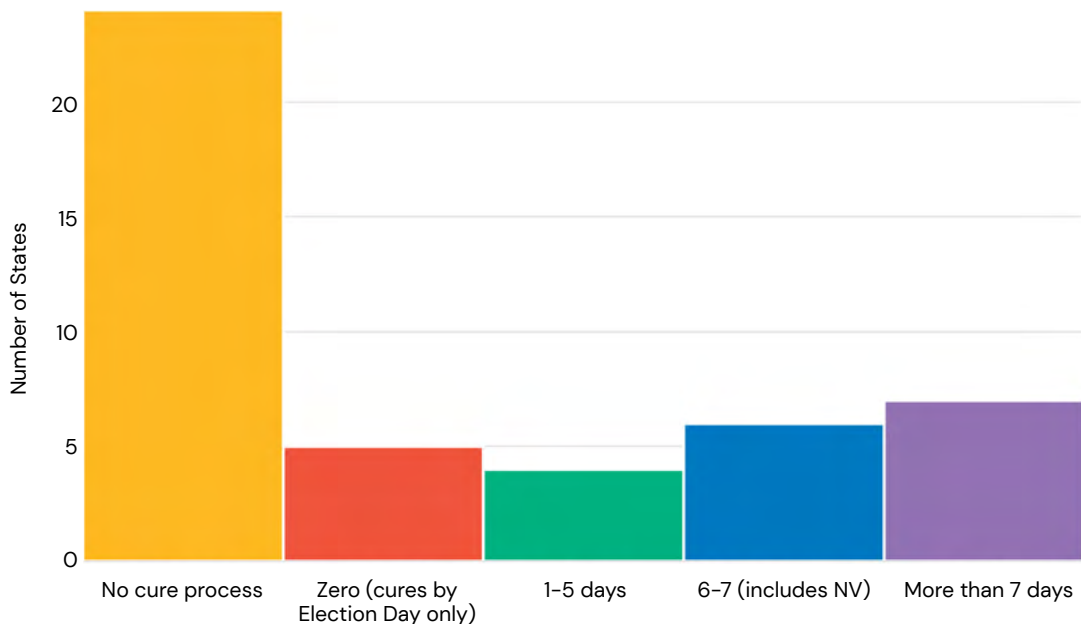
**RECOMMENDATION:** Pre-processing of mail votes in Nevada, especially later stages in which ballots are placed in tabulators, is vital but needs to be subject to strict security controls.



# Curing and Provisional Votes

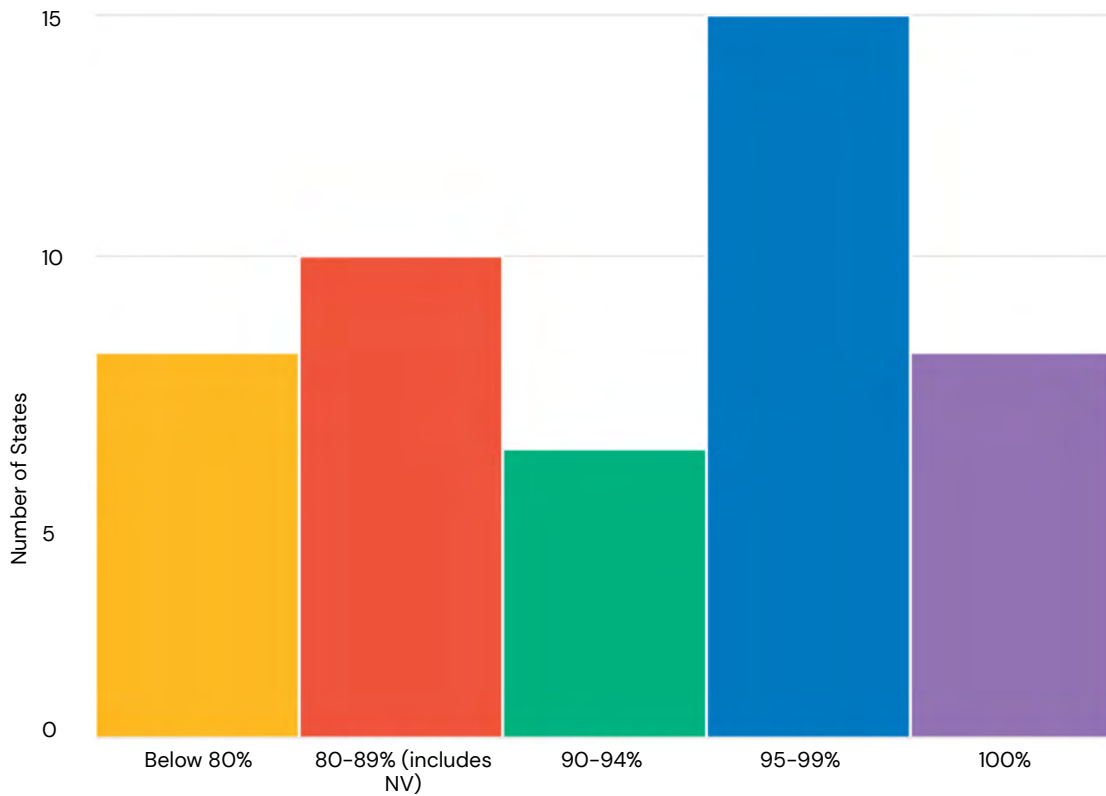
Practices on curing defective votes and on sorting out provisional votes vary greatly between states and can significantly influence delay. About half the states including Nevada provide that voters whose ballot is rejected for reasons such as a missing date or signature must be given a chance to cure the flaw and validate the ballot. (Others take the view that the voter whose mail ballot is rejected has an adequate remedy in being entitled to come to the polls and vote on Election Day.) Nevada is around the middle of the pack for the number of days it permits voters to complete their cure (by the sixth day after the election). This is a possible area for tightening. Florida allows until the second day after the election, while states like Montana and Vermont require a cure by the close of Election Day.

Nevada ends early in-person voting on the Friday before the election. This is typical practice for



**Figure 6: Post-Election Days Allowed for Ballot Cure**

conventional-voting states but is conservative by the standards of all-mail states, which often let early in-person voting run until Election Day. The Nevada practice is probably to be preferred since it releases staff for other tasks as the busiest period starts and will allow cures from the early voting period to be resolved a little earlier.



**Figure 7: Percentage Reporting by Noon After Election Day**

**RECOMMENDATION:** Nevada should consider shortening the allowed period for ballot cures and should resist efforts to extend the duration of early in-person voting to a point later than the current Friday before Election Day. As discussed in other sections, it should aim to reduce the volume of ballots open to question by vigorous updating and cleaning of voter registration rolls.

# Cutoff for Ballot Receipt

Many voters value the double convenience of being able to hold off on a decision until Election Day, but then use a ballot filled out at home rather than the voting equipment at a polling place. As we've seen, this particular combination of conveniences is in tension with the interests of the wider public, both in quickly resolving who won and in allocating staff and volunteer time most effectively. The common interest is best served when people who strongly wish to vote by mail refrain from waiting until the last minute, and people who do wait until the last minute vote in person using standard voting equipment.

For that reason, democracies around the world, as well as U.S. states, typically draw up rules that reflect the trade-offs. For example, 30 states require mail ballots to be received by election authorities (not merely postmarked) by or before Election Day. They include not just conservative states but some of the most progressive, including Colorado, Connecticut, Hawaii, Minnesota, Rhode Island and Vermont.<sup>46</sup> Nevada should do likewise.<sup>47</sup>

Given mail lags, a firm deadline gives voters clear motivation not to slice the timing too thin. Florida election officials advise that "you should allow at least one week for your ballot to reach our office." Oregon has conducted a public education campaign urging voters not to wait until the very last minute to post mail ballots. Again, late deciders should be encouraged to vote in person or at least use a drop box.

**RECOMMENDATION:** Nevada should adopt a deadline for mail ballots based on actual receipt, not just postmark, by Election Day. It should consider a voter education campaign encouraging mail voters not to hold back their ballots until the last minute and to consider using lock boxes or in-person voting if they have waited that long.

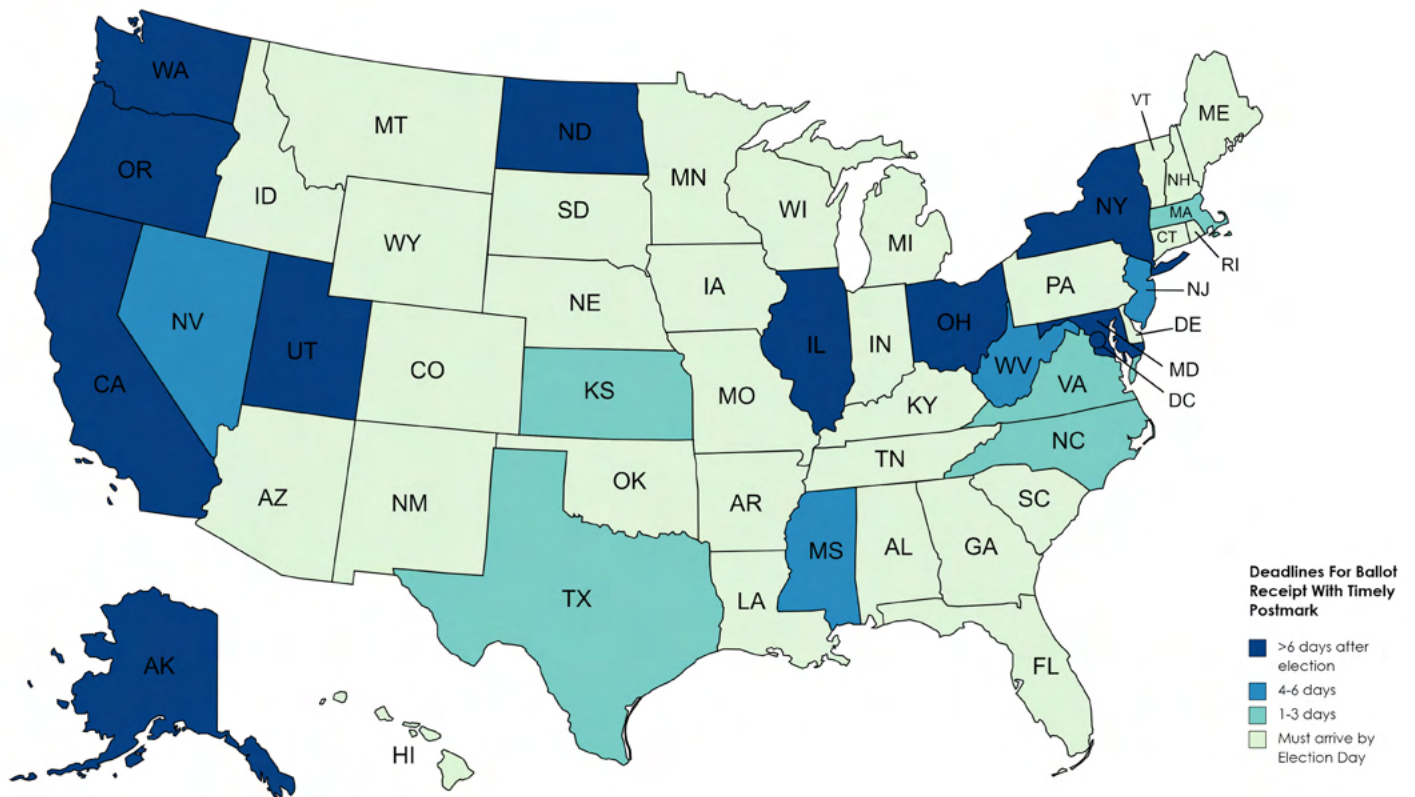


Figure 8: Deadline for Ballot Receipt with Timely Postmark

# Same-Day Registration

In 2019 Nevada adopted same-day registration, or SDR, a policy in effect in about half the states under which a previously unregistered voter can show up, register and cast a provisional ballot on voting day. All ballots cast using SDR are provisional and are subject to cross-checks to make sure the voter is as he or she seems and has not (for example) voted in some other county. That inevitably slows things down.

Oregon, which has the longest-running all-mail system and is often seen as the most successful example, does not have same-day registration. The rationale for SDR is also lower in states that, like Nevada, already conduct extensive and often automatic online registration. Outreach programs encouraging the unregistered to register are yet another reason to expect that few voters will be at actual hardship from a requirement to make sure they are registered ahead of time. (You can check your registration status online.) For Nevada to retreat from same-day registration would signal a powerful commitment to speedy tabulation.<sup>48</sup>

**RECOMMENDATION:** Retreating from same-day registration would be among the most powerful ways to signal a commitment to speedy tabulation. If Nevada does retain SDR, it should search for ways to persuade voters not to use that service by taking the few minutes needed (in most cases) to register before the last possible moment.



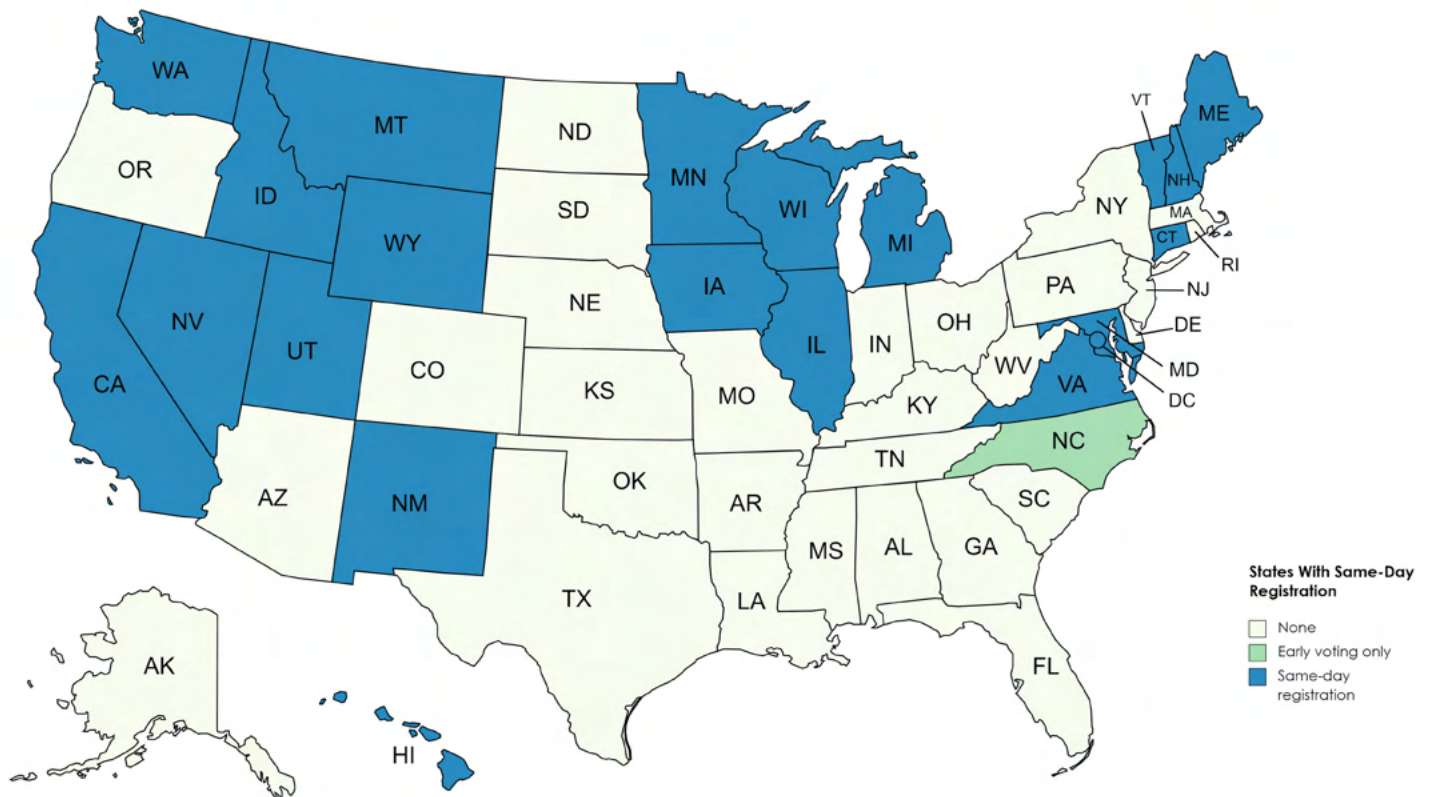


Figure 9: States with Same-Day Registration

# Building Capacity

In the end, it is not equipment or rules that make elections run. It is people. Secretary of State Cisco Aguilar is right when he says the state's biggest election challenge is to build a robust, institutionally knowledgeable elections workforce. That means making the job desirable and respected. As he says, it requires "making sure we have people wanting to work in election departments, people wanting to work at the polls."<sup>49</sup>

It's especially important to build human capacity because the responsibilities of elections personnel are becoming more numerous and challenging. Among this paper's recommendations, wider public engagement and transparency, ballot notification and follow-up, and greater public education are among those likely to place new demands on administrators.

Experience in Florida and many other states indicates that strong training programs for elections personnel are important, as well. Volunteers necessarily make judgments on the fly when novel situations come up during the crunch, and proper training can help them make decisions that are both sound and consistent with the rule book.<sup>50</sup>

Security dangers can come from within or without. High professional standards of management in an election agency can also serve as control mechanisms to help detect or prevent fraud or bad practice that may arise within election administration itself at the hands of unethical or highly disgruntled individuals.

In recent years, election offices have developed some new sources of funding, especially federal, but in formats that are less than optimal. The typical pattern has been for money to arrive in special one-time packets earmarked for perceived crises – first cybersecurity, then COVID response. While these here-today-gone-tomorrow money drops may have been useful, they do not help address shortfalls in basic staffing levels needed to cover the office's essential and ongoing responsibilities. State and local government must provide enough funding to make sure those responsibilities can be covered. Because these functions are fundamental to the functioning of a democratic republic, they should be prioritized in budget decisions above most other functions.

Complicating further the challenge of building a competent and ethical elections workforce, experienced election officials in Nevada and other states have been quitting, frequently citing acrimony among the reasons. To quote a Reuters report: "Ten of Nevada's 17 counties, including Washoe, have seen their

top election official resign, retire or decline to seek re-election since the 2020 vote, which the state government calls a drastic exodus. Four of the officials told Reuters that harassment or sustained efforts to challenge the 2020 election results were among their reasons for leaving.<sup>51</sup> Joe Gloria recently stepped down as Clark County Registrar of Voters, and noted that he and his staff have experienced persistent threats and harassment, although he said he was leaving for other reasons.<sup>52</sup> Gloria said he wound up bringing in breakfast and lunch for his workers during the election and ballot counting because they were so frequently harassed on the streets and in the election department parking lot. Online publication Bolts reported that as of Feb. 23 of this year, “about 40 percent of county clerks in the state are either brand new to their offices or, having taken over mid-term for a departed clerk, are serving their first complete terms. Some have never worked in elections before.”<sup>53</sup>

It is entirely unacceptable for election workers to not feel safe going to work or in going about their daily life. What to do about it can be a complicated matter, inasmuch as the First Amendment will typically protect even bitter criticism by private citizens so long as it does not cross a line into threat, incitement or other areas of legal exception. The legislature should make sure investigators and prosecution offices are adequately funded to act against forms of harassment that do overstep First Amendment protection and Nevada law. It should also (of course) deter and punish violence or its threat.

**RECOMMENDATION:** The state should commit to boosting the capability of election offices at both state and county levels, including training of personnel and volunteers and support of personnel salaries needed to meet responsibilities. Law enforcement should take seriously threats to election officials, bearing in mind that criticism by itself may be protected free speech.

# Conclusion

The paper has reviewed the wide variety of ways these issues are handled in other states, often with outstanding success amid bipartisan support. All methods involve trade-offs, so that no one single value (such as ease and convenience of voting or saving of money or administrators' time) can be allowed to swallow up every other value. A healthy voting system would provide robust integrity and authentication, would yield a substantially complete count quickly, would offer convenient options to most ordinary voters and would not saddle administrators with unduly onerous tasks. Those goals are achievable if Nevada adopts sound election laws.

# About the Author

Walter Olson is senior fellow at the Cato Institute and the author of four books about the American legal system. A frequent writer on topics of election law, he was appointed by former Maryland Gov. Larry Hogan as co-chair of a series of redistricting commissions meant to end the practice of gerrymandering in his state.

# About the Data

Sources of data used in charts and maps includes the National Conference of State Legislatures (states with mail voting, same-day registration, ballot receipt deadlines, deadlines for ballot cures); reporting by Alicia Parlapiano and Lazaro Gamio for the New York Times, Nov. 9, 2022 (percentages of the 50 states following the 2020 general election), "Silver State General Election Results 2022," Office of the Nevada Secretary of State, visited May 8, 2023 (2020 and 2022 Nevada turnout by voting method)

In some instances the data does not fit neatly into the categories. On ballot cures, for example, Pennsylvania follows a policy of county option whether to use them, and Texas sets separate deadlines for by-mail curing (by Election Day) and in-person curing (more lenient).

Some data is based on most recent available national surveys (often mid-2022) and may not reflect laws changed since then. For purposes of comparability general election data is often used; those interested in primary elections should note that patterns are often different there. For example, New Hampshire counted comparatively slowly after the 2020 general election but had achieved a faster count after the Democratic primary held in February of that year.



# Endnotes

<sup>1</sup> Katie Glueck, “Democrats Overhaul Party’s Primary Calendar, Upending a Political Tradition,” *New York Times*, Feb. 4, 2023, <https://www.nytimes.com/2023/02/04/us/politics/democrats-vote-primary-calendar.html>

<sup>2</sup> Reid J. Epstein, Sydney Ember, Trip Gabriel and Mike Baker, “How the Iowa Caucuses Became an Epic Fiasco for Democrats,” *New York Times*, Feb. 9, 2020, <https://www.nytimes.com/2020/02/09/us/politics/iowa-democratic-caucuses.html>

<sup>3</sup> Steve Sebelius, “3 ideas for the 2023 Legislature,” *Las Vegas Review-Journal*, Jan. 28, 2023, <https://www.reviewjournal.com/opinion/opinion-columns/steve-sebelius/steve-sebelius-3-ideas-for-the-2023-legislature-2720053/>

<sup>4</sup> Alicia Parlapiano and Lazaro Gamio, “It Took Two Weeks to Call Every State in 2020. This Is When to Expect Results This Year,” *New York Times*, Nov. 9, 2022, <https://www.nytimes.com/interactive/2022/11/07/us/elections/election-results-time.html>

<sup>5</sup> It should be noted that while New Hampshire was among states slow to report in the 2020 general election, it set a much speedier pace in the Democratic primary held in February. According to press reports, about 90 percent of New Hampshire precincts were reporting by 11:22 p.m. on primary election evening. See Sarah Frostenson, “New Hampshire Primary: That’s a Wrap,” *Five Thirty-Eight*, Feb. 11, 2020, <https://fivethirtyeight.com/live-blog/new-hampshire-primary-2020/260356/>

<sup>6</sup> Carly Olson, “Why does it take so long to count votes in Nevada?” *New York Times*, Nov. 10, 2022, <https://www.nytimes.com/2022/11/10/us/elections/nevada-vote-count.html>; see also Ezra Marcus, “How to pass time waiting for Nevada to finish counting? These people made memes,” *New York Times*, Nov. 6, 2020, <https://www.nytimes.com/2020/11/06/us/politics/how-to-pass-time-waiting-for-nevada-to-finish-counting-these-people-made-memes.html>

<sup>7</sup> “US midterms: Why Nevada election results are taking

days,” *Le Monde*, Nov. 11, 2022, [https://www.lemonde.fr/en/international/article/2022/11/11/us-midterms-why-nevada-election-results-are-taking-days\\_6003795\\_4.html](https://www.lemonde.fr/en/international/article/2022/11/11/us-midterms-why-nevada-election-results-are-taking-days_6003795_4.html)

<sup>8</sup> On the advantages of bipartisan enactment in making election process more durable, see Carrie Levine, “Don’t look now, but Democrats and Republicans are crafting election law together,” *VoteBeat*, Mar. 20, 2023, <https://www.votebeat.org/2023/3/20/23644958/politicized-elections-partisan-divide-bipartisan-compromise>

<sup>9</sup> James DeHaven, “Nevada Legislature OKs election bill expanding mail-in voting, ballot collection procedures,” *Reno Gazette-Journal*, Aug. 2, 2020, <https://www.rgj.com/story/news/politics/2020/08/02/nevada-legislature-passes-mail-ballot-vote-measure/5568282002/>; text of AB 4, <https://www.leg.state.nv.us/Session/32nd2020Special/Bills/AB/AB4.pdf>; James DeHaven, “First hearing set to debate Democrats’ bill to make mail-in voting permanent in Nevada,” *Reno Gazette-Journal*, Mar. 31, 2021, <https://www.rgj.com/story/news/politics/2021/03/31/nevada-lawmakers-push-make-mail-voting-permanent/4827282001/>

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<sup>11</sup> Turnout numbers by voting method: Office of the Nevada Secretary of State, <https://silverstateelection.nv.gov/vote-turnout>, visited April 25, 2023.

<sup>12</sup> Jen Kirby, “Oregon already votes by mail. Here’s what it can teach us in 2020,” *Vox*, Sept. 28, 2020, <https://www.vox.com/21401321/oregon-vote-by-mail-2020-presidential-election>

<sup>13</sup> For an overview of litigation relating to the 2020

presidential election in Nevada, see [https://en.wikipedia.org/wiki/Post-election\\_lawsuits\\_related\\_to\\_the\\_2020\\_United\\_States\\_presidential\\_election\\_from\\_Nevada](https://en.wikipedia.org/wiki/Post-election_lawsuits_related_to_the_2020_United_States_presidential_election_from_Nevada)

<sup>14</sup> Riley Snyder, "Judge rejects Trump campaign lawsuit seeking to block state's presidential election results, says no evidence election was affected by fraud," Nevada Independent, <https://thenevadaindependent.com/article/judge-rejects-trump-campaign-lawsuit-seeking-to-block-states-presidential-election-results>; Riley Snyder, "Why Trump's lawsuit seeking to overturn Nevada's presidential race sputtered in court," Nevada Independent, Dec. 13, 2020, <https://thenevadaindependent.com/article/why-trumps-lawsuit-seeking-to-overturn-nevadas-presidential-race-sputtered-in-court>. See also discussion of signature verification, below.

<sup>15</sup> Ken Ritter, "Nevada Supreme Court unanimously dismisses Trump lawsuit to overturn Nevada election result," Associated Press/Reno Gazette-Journal, <https://www.rgj.com/story/news/politics/2020/12/07/trump-camp-asks-nevada-supreme-court-nullify-biden-win/6484050002/>

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<sup>17</sup> See "2022 Exit Polls: Nevada," CNN, <https://www.cnn.com/election/2022/exit-polls/nevada/senate/O>; Sean Golonka and Tabitha Mueller, "Poll: Sisolak leads likely GOP governor opponents, but favorability remains underwater," Nevada Independent, Apr. 19, 2022, <https://thenevadaindependent.com/article/poll-sisolak-leads-likely-gop-governor-opponents-but-favorability-remains-underwater>

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Feb. 24, 2022, <https://www.nvsos.gov/sos/home/showpublisheddocument/10326/638073109065370000>

<sup>19</sup> See U.S. Election Assistance Commission, "Statewide Voter Registration Systems," Aug. 13, 2017, <https://www.eac.gov/statewide-voter-registration-systems> (four states mentioned are among 38 states that had adopted statewide registration databases by then); MIT Elections Performance Index 2020, <https://elections.mit.edu/#/data/map> (four states mentioned all scored in top ten for election performance).

<sup>20</sup> Hugh Jackson, "Purges are all the rage — but not in Nevada, Secretary of State says," Nevada Current, Oct. 15, 2018, <https://www.nevadacurrent.com/blog/purges-are-all-the-rage-but-not-in-nevada-secretary-of-state-says/>; Henry Redman, "How the practice of maintaining voter lists became so polarized," Nevada Current, Oct. 8, 2020, <https://www.nevadacurrent.com/2020/10/08/how-the-practice-of-maintaining-voter-lists-become-so-polarized/>. The federal National Voter Registration Act of 1993 (NVRA) regulates states' practices in removing voters from the rolls for inactivity, evidence of address changes or other reasons. See discussion of NVRA's Section 8 at U.S. Department of Justice, <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra>

<sup>21</sup> Riley Snyder, "Cegavske: No 'evidentiary support' among NV GOP claims that 2020 election was plagued by widespread fraud," Nevada Independent, Apr. 21, 2021, <https://thenevadaindependent.com/article/cegavske-no-evidentiary-support-among-nv-gop-claims-that-2020-election-was-plagued-by-widespread-fraud>; see also Sean Golonka, "Republican plans to mass challenge voter registrations fall flat in Nevada," Nevada Independent, Oct. 30, 2022, <https://thenevadaindependent.com/article/republican-plans-to-mass-challenge-voter-registrations-fall-flat-in-nevada>

<sup>22</sup> Zach Montellaro and Gary Fineout, "Interstate voter list org starts to crack as Florida, other GOP states quit," Politico, Mar. 6, 2023; <https://www.politico.com/news/2023/03/06/voter-list-florida-republican-states-00085750>

<sup>23</sup> Brad Raffensperger, "Don't Throw Away a Key Voting-Integrity Tool," National Review, Apr. 20, 2023, <https://www.nationalreview.com/2023/04/dont-throw-away-a-key-voting-integrity-tool/>; Jessica Huseman, "These state officials praised ERIC for years before suddenly pulling out of the program," VoteBeat, Apr. 11, 2023, <https://www.votebeat.org/2023/4/11/23679463/eric-electronic-registration-information-center-gateway-pundit-voter-fraud>

<sup>24</sup> Derek Muller, "Some thoughts on L'affaire ERIC," Election Law Blog, Mar. 20, 2023, <https://electionlawblog>.

org/?p=135203

<sup>25</sup> For an example in another state, see Anya van Wagtendonk, "Proposal would send text message receipts to absentee voters," Wisconsin Public Radio, Feb. 1, 2023, <https://www.wpr.org/node/2062096>

<sup>26</sup> National Conference of State Legislatures, "How States Verify Voted Absentee/Mail Ballots," updated as of Mar. 15, 2022, <https://www.ncsl.org/elections-and-campaigns/table-14-how-states-verify-voted-absentee-mail-ballots>

<sup>27</sup> Riley Snyder, "Judge rejects Trump campaign effort to slow down, amend Clark County mail ballot counting and processing system," Nevada Independent, Nov. 2, 2020, <https://thenevadaindependent.com/article/judge-rejects-trump-campaign-effort-to-slow-down-amend-clark-county-mail-ballot-counting-and-processing-system>; Judge Wilson's order, <https://www.documentcloud.org/documents/20401447-wilson-order-clark-county-lawsuit>. A few days later a separate challenge was filed in federal court; Judge Andrew Gordon denied a motion to stop Clark County from using its signature verification machine. Joyce Lupiani, Jordan Gartner and Jeremy Chen, "Judge rejects lawsuit in Nevada over voter fraud, verified signature issues," KTNV, Nov. 6, 2020, <https://www.ktnv.com/news/political/elections-local/telephonic-hearing-scheduled-for-lawsuit-involving-clark-county-voter-jill-stokke>. See also Vanessa Murphy, "I-Team: Signature verification plays important part in mail-in voting," KLAS/8NewsNow, Oct. 13, 2020, <https://www.8newsnow.com/news/local-news/i-team-signature-verification-plays-important-part-in-mail-in-voting/> (more background on signature verification)

<sup>28</sup> Riley Snyder, "Judge rejects Trump campaign lawsuit seeking to block state's presidential election results, says no evidence election was affected by fraud," Nevada Independent, Dec. 4, 2020, <https://www.documentcloud.org/documents/20420186-order-granting-motion-to-dismiss-statement-of-contest-1>. An interesting sidelight is that the Agilis machine in fact was incapable of processing 70 percent of the Clark County ballots, which as a result went to the human signature review team. The reason (Wilson opinion, pp. 5-6) is that many of the signatures collected at the Department of Motor Vehicles end were of a dot-per-inch resolution too low to be accepted by the Agilis software. Presumably, this disconnect between DMV output and needed input will be addressed in future.

<sup>29</sup> Ken Ritter, "Republicans take Las Vegas-area poll

worker dispute to court," Associated Press, Oct. 31, 2022, <https://apnews.com/article/las-vegas-nevada-voter-registration-government-and-politics-16f13a9929c873c9a2421645cb9c670a>; Colton Lochhead, "County won't be forced to hire more Republicans for signature verification," Las Vegas Review Journal, Nov. 3, 2022, <https://www.reviewjournal.com/news/politics-and-government/clark-county/county-wont-be-forced-to-hire-more-republicans-for-signature-verification-2669479/>

<sup>30</sup> See <https://elections.mit.edu/#/data/map>

<sup>31</sup> Cindy St. Clair and Daniella Rivera, "Do costly election security measures hit the mark? KSL investigates," KSL-TV, Oct. 25, 2022, <https://ksltv.com/509646/do-costly-election-security-measures-hit-the-mark-ksl-investigates/> (advantages of video in bolstering public confidence, disadvantages in expense and logistical difficulties)

<sup>32</sup> Jen Kirby, "Oregon already votes by mail. Here's what it can teach us in 2020," Vox, Sept. 28, 2020, <https://www.vox.com/21401321/oregon-vote-by-mail-2020-presidential-election>

<sup>33</sup> On the political history in Nevada, see Mark Robison, "Ask the RGJ: Is it legal to have someone else submit your Nevada election ballot?" Reno Gazette Journal, Oct. 13, 2022, <https://www.rgj.com/story/news/politics/elections/2022/10/14/legal-have-someone-else-submit-harvest-nevada-election-ballot/10470388002/>

<sup>34</sup> NV Rev Stat § 293.269923 (2022), <https://www.leg.state.nv.us/Division/Legal/LawLibrary/NRS/NRS-293.html#NRS293Sec269923>. See also NV Rev Stat § 293.730 (background prohibitions), <https://www.leg.state.nv.us/Division/Legal/LawLibrary/NRS/NRS-293.html#NRS293Sec730>

<sup>35</sup> Amber Phillips, "What is ballot 'harvesting,' and why is Trump so against it?," Washington Post, May 26, 2020, <https://www.washingtonpost.com/politics/2020/05/26/what-is-ballot-harvesting-why-is-trump-so-against-it/>

<sup>36</sup> NV Rev Stat § 293.730 <https://www.leg.state.nv.us/Division/Legal/LawLibrary/NRS/NRS-293.html#NRS293Sec730>

<sup>37</sup> Caitriona Fitzgerald, Pamela Smith and Susannah Goodman, "The Secret Ballot At Risk: Recommendations for Protecting Democracy," <https://secretballotatrisk.org/Secret-Ballot-At-Risk.pdf> (raising concerns about Internet voting). The report was supported by philanthropies including the MacArthur Foundation and the Rockefeller Brothers Fund.

<sup>38</sup> See *Burson v. Freeman*, 504 U.S. 191 (1992), upholding a Tennessee law on keeping distance from polls.

<sup>39</sup> Gary D. Robertson, “Four plead guilty in ballot fraud that canceled a congressional election in NC in 2018,” Associated Press/Fayetteville Observer, Oct. 1, 2022, <https://www.fayobserver.com/story/news/2022/10/01/four-plead-guilty-to-committing-election-fraud-in-nc-in-2016-and-2018/69530605007/>

<sup>40</sup> Bob Christie, “Arizona woman admits guilt in ballot collection scheme,” Associated Press, <https://apnews.com/article/arizona-government-and-politics-conspiracy-election-2020-presidential-elections-4a22fd2a2b4851a62fff4f7bd8a1be50>; Ray Stern, “What we know about San Luis, Arizona, election fraud case exploited by conspiracists,” Arizona Republic, Sept. 1, 2022, <https://www.azcentral.com/story/news/politics/arizona/2022/09/01/san-luis-arizona-ballot-harvesting-case-exploited-conspiracists/7956031001/>

<sup>41</sup> “Lodi councilman arrested in connection with voter fraud during 2020 election,” KRON7/Bay City News, Feb. 17, 2023, <https://www.kron4.com/news/bay-area/lodi-councilman-arrested-in-connection-with-voter-fraud-during-2020-election/>; Lodi News, Mar. 18, 2023, [https://www.lodinews.com/news/article\\_d4a7cfe4-c52e-11ed-bd55-3b5e4223ffa6.html](https://www.lodinews.com/news/article_d4a7cfe4-c52e-11ed-bd55-3b5e4223ffa6.html)

<sup>42</sup> See Shelby Fleshood, “Ballot Harvesting an Invitation to Undermine Election Integrity,” Nevada Policy Research Institute, Jun. 6, 2022, <https://www.npri.org/ballot-harvesting-an-invitation-to-undermine-election-integrity/>

<sup>43</sup> The National Conference of State Legislatures (NCSL) surveys both kinds of audits at its website. See <https://www.ncsl.org/elections-and-campaigns/post-election-audits> and <https://www.ncsl.org/elections-and-campaigns/risk-limiting-audits>

<sup>44</sup> For examples of information relating to security that are exempt from disclosure under the laws of Washington state, see RCW 42.56.420, <https://app.leg.wa.gov/RCW/default.aspx?cite=42.56.420>. For some parallel sections of Nevada law, see NV Rev Stat § 293.870 <https://www.leg.state.nv.us/Division/Legal/LawLibrary/NRS/NRS-293.html#NRS293Sec870> (cybersecurity), and NV Rev Stat § 293.900 through NV Rev Stat § 293.900, <https://www.leg.state.nv.us/Division/Legal/LawLibrary/NRS/NRS-293.html#NRS293Sec900> (information about certain persons)

<sup>45</sup> Grace Gordon, Oliver Hymen-Metzger, Christopher Thomas and Kylee Zabel, “Ballot Pre-processing Policies Explained,” Bipartisan Policy Center, Sept. 7, 2022, <https://bipartisanpolicy.org/explainer/ballot-pre-processing-explained/>

<sup>46</sup> See “Receipt and postmark deadlines for absentee and mail ballots,” National Conference of State Legislatures, <https://www.ncsl.org/elections-and-campaigns/table-11-receipt-and-postmark-deadlines-for-absentee-mail-ballots>

<sup>47</sup> Compare Steve Sebelius, “3 ideas for the 2023 Legislature,” Las Vegas Review-Journal, Jan. 28, 2023 (“Instead, the Legislature should require that mail ballots go out a week earlier, and be due by the Tuesday before Election Day.”) <https://www.reviewjournal.com/opinion/opinion-columns/steve-sebelius/steve-sebelius-3-ideas-for-the-2023-legislature-2720053/>

<sup>48</sup> See also Kevin Dietrich, “Same-Day Registration: Convenience Over Confidence?,” Nevada Policy Research Institute, May 2, 2022, <https://www.npri.org/same-day-registration-convenience-over-confidence/> (citing other concerns about same-day registration)

<sup>49</sup> Alex Burness, “They Don’t Trust Us’: Nevada Election Workers Still Face Pressure and Harassment,” Bolts, Feb. 7, 2023, <https://boltsmag.org/nevada-election-workers-harassment-secretary-of-state/>

<sup>50</sup> See also National Conference of State Legislatures, “Election Administration at State and Local Levels,” under “Professionalization of Election Administration” heading, <https://www.ncsl.org/elections-and-campaigns/election-administration-at-state-and-local-levels>

<sup>51</sup> Linda So, Joseph Tanfani and Jason Szep, “A Reuters special report: Pro-Trump conspiracy theorists hound election officials out of office,” Reuters, Oct. 19, 2022, <https://www.reuters.com/investigates/special-report/usa-election-nevada-washoe/>

<sup>52</sup> Gabe Stern, “‘We know where you live’: Outgoing elections head in Nevada’s Clark County details threats,” Associated Press/Reno Gazette-Journal, Dec. 6, 2022, <https://www.rgj.com/story/news/politics/elections/2022/12/06/outgoing-elections-head-clark-county-nevada-joe-gloria-threats-trump-voter-voting-fraud-claims/69706997007/>; Paul Boger, “‘I Just Tried to Stay Focused,’” Nevada Public Radio, Jan. 10, 2023, <https://knpr.org/desert-companion/2023-01-10/i-just-tried-to-stay-focused>

<sup>53</sup> Alex Burness, “They Don’t Trust Us’: Nevada Election Workers Still Face Pressure and Harassment,” Bolts, Feb. 7, 2023, <https://boltsmag.org/nevada-election-workers-harassment-secretary-of-state/>





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