

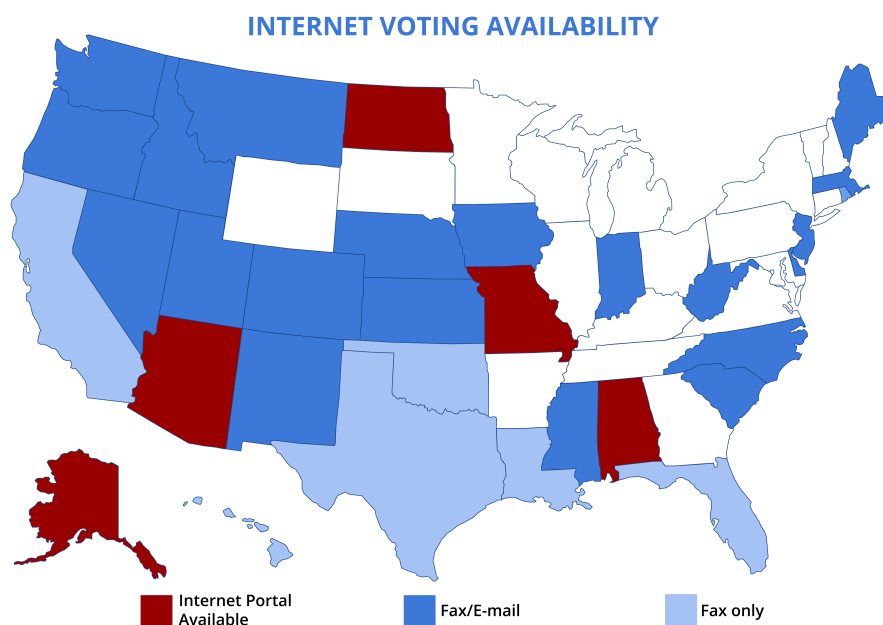
EXECUTIVE SUMMARY AND FINDINGS

The right to cast a secret ballot in a public election is a core value in the United States' system of self-governance. Secrecy and privacy in elections guard against coercion and are essential to integrity in the electoral process. Secrecy of the ballot is guaranteed in state constitutions and statutes nationwide. However, as states permit the marking and transmitting of marked ballots over the Internet, the right to a secret ballot is eroded and the integrity of our elections is put at risk.

Thirty-two states and the District of Columbia allow some form of Internet voting – transmitting votes either via email, electronic fax, or Internet portal – typically for use by overseas and military voters. Because of current technological limitations, and the unique challenges of running public elections, it is impossible to maintain separation of voters’ identities from their votes when Internet voting is used. Most states that offer Internet voting recognize this limitation and require voters to sign a waiver of their right to a secret ballot. The authors believe that Internet voting creates a second-class system for some voters – one in which their votes may not be private and their ballots may be altered without their knowledge.

This report examines state laws regarding the right to a secret ballot and the ways in which states are asking voters to waive that right. We also offer recommendations for how voters and officials can preserve privacy in voting while making use of the Internet and technological advances.

Our findings show that the vast majority of states (44) have constitutional provisions guaranteeing secrecy in voting, while the remaining states have statutory provisions referencing secrecy in voting. Despite that, 32 states allow some voters to transmit their ballots via the Internet which, given the limitations of current technology, eliminates the secrecy of the ballot. Twenty-eight of these states require the voter to sign a waiver of his or her right to a secret ballot. The remainder fail to acknowledge the issue.



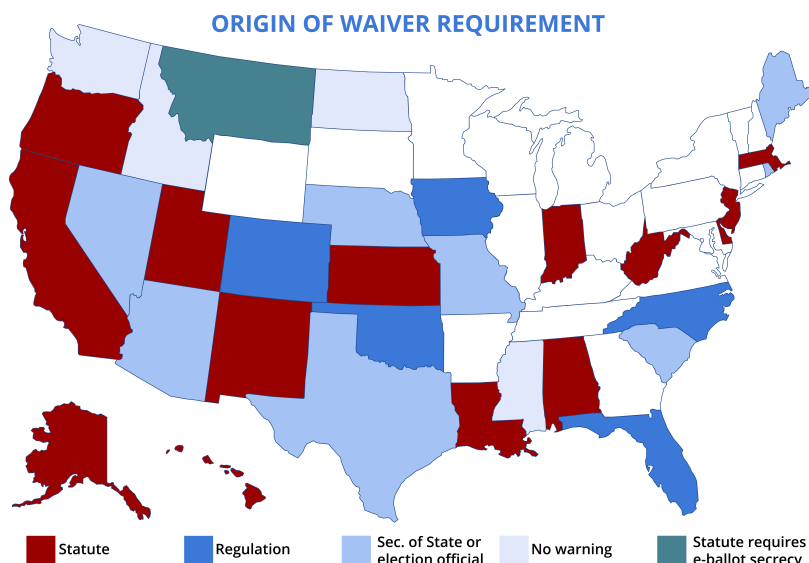
FINDINGS

- Forty-four states have a constitutional provision guaranteeing secrecy in voting (AK, AL, AR, AZ, CA, CO, CT, DE, FL, GA, HI, IA, ID, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, MT, NC, ND, NE, NM, NV, NY, OH, PA, SC, SD, TN, TX, UT, VA, WA, WI, WV, WY).
- The six remaining states, and the District of Columbia, have statutory provisions referencing secrecy in voting (DC, NH, NJ, OK, OR, RI, VT).
- All 50 states and the District of Columbia have legislated specific exemptions to secret voting, mostly to allow voters with disabilities to request assistance in the voting booth, should they wish it. This narrowly tailored exception demonstrates the priority state legislators have placed on ballot secrecy.
- Thirty-two states and the District of Columbia offer some form of Internet voting (e-mail, electronic fax, or online portal) to at least some subset of voters. For most states this exception extends only to overseas and military voters. (AL, AZ, CA, CO, DC, DE, FL, HI, IA, ID¹, IN, KS, LA, MA, ME, MO, MS, MT, NC, ND, NE, NJ, NM, NV, OK, OR, RI, SC, TX, UT, WA, WV). In Alaska, all absentee voters can vote via the Internet. In Utah, voters with disabilities are also allowed to use the system.
- Of those states:

- Fourteen states require a voter casting a ballot over the Internet to waive his or her right to a secret ballot, and that requirement is in statute (AK, AL, CA, DE, HI, IN, KS, LA, MA, NJ, NM, OR, UT, WV);

- Six states and DC require a voter casting a ballot over the Internet to waive his or her right to a secret ballot, and that requirement is through a regulation (CO, DC, FL, IA, NC, OK);

- Eight states require a voter casting a ballot over the Internet to waive his or her right to a secret ballot, and that requirement comes from the Secretary of State or state elections officials (but not via regulation) (AZ, ME, MO, NE, NV, RI, SC, TX);
- Four of the states offering Internet voting do not give voters any warning regarding ballot secrecy and Internet voting (ID², MS, ND, WA); and
- One state has a statutory requirement that votes cast over the Internet “remain secret” as required by the state constitution (MT), despite the fact that this is technologically impossible.³



The authors support the use of the Internet for a variety of positive purposes in elections. The Internet can support voter registration.⁴ Voters can track ballots, obtain information about polling places, wait times, candidates and issues, and much more. The Internet can also be used to seek and receive a digital **blank** ballot that can then be printed out and returned via postal mail. The transfer of blank ballots *to* voters is reasonable and does not risk voters' privacy or election integrity; indeed, a key provision of the Military and Overseas Voter Empowerment (MOVE) Act of 2009 was to require all states to allow voters to request and receive blank ballots via electronic means.⁵ We recognize that in some situations, it is challenging to return a ballot via postal mail. The MOVE Act was passed largely to address that issue. It is important that *all* voters – including overseas and military voters – should have access to traditional absentee mail-in ballots. These ballots do not require a privacy waiver.

Our concern lies with the transmission of marked ballots via the Internet. Internet voting will erode voter privacy and threaten election integrity. We need look no further than the warning all Alaska voters receive if they use the online voting system to cast their absentee ballots. Alaska acknowledges that the system is insecure and may not work, warning voters that “[w]hen returning the ballot through the secure online delivery system, your [sic] are voluntarily waving [sic] your right to a secret ballot and are assuming the risk that a faulty transmission may occur.”⁶ A similar warning on a physical polling place voting system would be considered unacceptable. For some overseas and military voters Internet voting may seem more convenient, but until technology advances to a point where it can be done securely, the risks are overwhelming and it should not be an option. Our elections are too important to gamble on.

We hope that this report will illuminate the issue of the erosion of the secret ballot, and highlight solutions for states that wish to offer alternative voting options to its citizens.