

The Secret Ballot At Risk: Recommendations for Protecting Democracy

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ABOUT THE ELECTRONIC PRIVACY INFORMATION CENTER

The Electronic Privacy Information Center (EPIC) is a public interest research center in Washington, DC. EPIC was established in 1994 to focus public attention on emerging privacy and civil liberties issues and to protect privacy, freedom of expression, and democratic values in the information age. EPIC maintains one of the most popular privacy web sites in the world - epic.org - and pursues a wide range of program activities including policy research, public education, litigation, publications, and advocacy.

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The Verified Voting Foundation is a non-partisan, non-profit organization working to safeguard elections in the digital age. Verified Voting is a national advocate for resilient and verifiable voting systems and processes, and a comprehensive resource of information on voting system use throughout the country. The organization was founded and is governed by leading technologists, and keeps a tradition of technical attention to voting systems and their accuracy, security and resilience against threats of failure and fraud. Verified Voting advocates for secure, reliable and accessible voting systems and election administration practices.

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The Common Cause Education Fund is the research and public education affiliate of Common Cause, a non-partisan, non-profit advocacy organization founded in 1970 by John Gardner as a vehicle for citizens to make their voices heard in the political process and to hold their elected leaders accountable to the public interest. With a 46-year track record, chapters in 35 states, and nearly 500,000 members and supporters across the country, Common Cause is one of the nation's oldest, largest and most effective grassroots advocacy organizations dedicated to reforming government and strengthening democracy in America. Together, Common Cause and the Common Cause Education Fund work to ensure honest and verifiable elections, curb the political influence of big money, and promote ethical government and the diverse and accessible media that are essential for our democracy.

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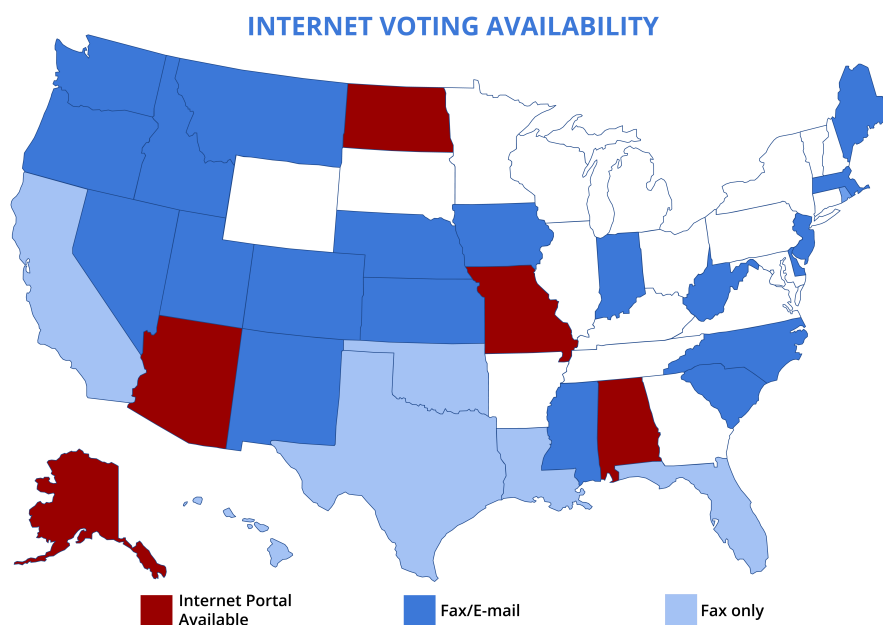
EXECUTIVE SUMMARY AND FINDINGS

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.



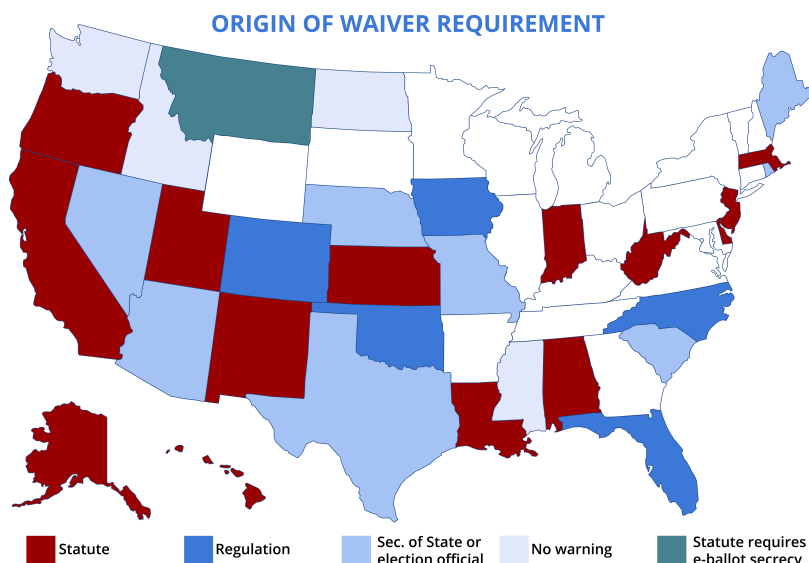
FINDINGS

- 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.

DISCUSSION

HISTORICAL PERSPECTIVE ON THE SECRET BALLOT

Our nation's Founders did not conceive of the idea of the secret ballot. In the colonial era, most elected officials were elected by voice vote or a show of hands.⁷ States gradually incorporated paper ballots into their elections, which voters were responsible for crafting themselves.⁸ Political parties took advantage of the system by producing their own easily identifiable ballots for voters, creating a scheme of vote buying and selling fraught with intimidation and, often, violence.⁹

Some Australian provinces, experiencing similar issues with intimidation and election fraud, adopted a system very similar to our current electoral system. Official ballots listing all candidates from all parties were provided to voters, who filled them out in private, usually in a polling booth.¹⁰ The system became known as the "Australian Ballot."

England adopted the Australian Ballot in 1872.¹¹ In 1888, the Louisville, KY municipal government adopted the first Australian Ballot law in the United States.¹² Only candidates who received their nomination by 50 or more voters were placed on the ballot, which was printed at the expense of the city.¹³ Candidates' names were printed in alphabetical order, without party designations.¹⁴ Later that year, Massachusetts and New York adopted the Australian Ballot system.¹⁵ The system was a success and other states quickly followed, with 90 percent of the states adopting the Australian Ballot system by 1896.

One hundred twenty years later, the concept of the secret ballot remains a cornerstone of our democratic process. In the 1992 case of *Burson v. Freeman*, the Supreme Court described voter privacy as a means of preventing voter fraud while protecting against undue coercion.¹⁶ Upholding a Tennessee statute that prohibited political candidates from campaigning within 100 feet of a polling place entrance, the Court stated:

[A]n examination of the history of election regulation in this country reveals a persistent battle against two evils: voter intimidation and election fraud. After an unsuccessful experiment with an unofficial ballot system, all 50 States, together with numerous other Western democracies, settled on the same solution: a secret ballot secured in part by a restricted zone around the voting compartments. We find that this widespread and timetested consensus demonstrates that some restricted zone is necessary in order to serve the States' compelling interests in preventing voter intimidation and election fraud.¹⁷

And in case upholding the right to speak anonymously, the Supreme Court noted the close tie to the secret ballot, writing:

The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible . . . the Court's reasoning [in an earlier case] embraced a respected tradition of anonymity in the advocacy of political causes. This tradition is perhaps best exemplified by the secret ballot, the hard-won right to vote one's conscience without fear of retaliation.¹⁸

WHY THE SECRET BALLOT IS VITAL FOR DEMOCRACY

The secret ballot reduces the threat 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. The secret ballot is a cornerstone of modern democracies.

Prior to the adoption of the secret ballot in the United States in the late 19th century, coercion was common place. It was particularly strong in the military. According to Jonathan White in “How Lincoln Won the Soldier Vote,” significant pressure was put on military rank and file to vote for Lincoln (though the soldier vote ultimately did not change the result of the election):

Secretary of War Edwin M. Stanton used immense power to bring military voters into line, [...] When Republican Senator Edwin D. Morgan of New York informed Stanton that a number of quartermaster clerks had endorsed Gen. George B. McClellan for president, Stanton dismissed 20 of them. When one of the clerks protested his dismissal, an unsympathetic Stanton replied, “When a young man receives his pay from an administration and spends his evenings denouncing it in offensive terms, he cannot be surprised if the administration prefers a friend on the job.”¹⁹

The establishment of the secret ballot helped prevent that type of coercion in the military. It also changed coercive practices in the workplace.

But has our society evolved so much that we no longer need the secret ballot? The answer is, simply, no. The secret ballot also protects individuals from harassment as a result of their vote. In February 2009, The New York Times reported that “some donors to groups supporting [California’s “Proposition 8” re: same-sex marriage] have received death threats and envelopes containing a powdery white substance, and their businesses have been boycotted.”²⁰ The Times reported that a website called “eightmaps.com” collected names and ZIP codes of people who donated to the ballot measure and overlaid the data on a map, contributing to the harassment and threats of violence.²¹

Further, employer-employee political coercion is alive and well in the United States. A recent article in *The American Prospect* documented a number of instances of political coercion in the workplace, including:

- An Ohio coal mining company required its workers to attend a Presidential candidate’s rally - and did not pay them for their time.
- Executives at Georgia-Pacific, a subsidiary of Koch Industries which employs approximately 35,000 people, distributed a flyer and a letter indicating which candidates the firm endorsed. “The letters warned that workers might ‘suffer the consequences’ if the company’s favored candidates were not elected.”²²

Thanks to the secret ballot, employers cannot lawfully go so far as to “check” on how an employee actually voted. But if ballots were no longer secret, many employees would risk losing their jobs if they voted against the recommendations of management. Our democracy would no longer be free and fair. Our need for privacy protections is just as strong today as it was when the secret ballot was adopted.

STATE LAWS ON BALLOT SECRECY

Forty-four states have a constitutional provision guaranteeing that secrecy in voting shall be preserved (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). Some states, such as Alabama, provide an individual right to a secret

“The right of individuals to vote by secret ballot is fundamental.”
Ala. Const. Art. VIII, § 177

ballot.²³ Others, such as Delaware, require the state legislature to prescribe laws protecting ballot secrecy.²⁴ The six states (and DC) that do not have a constitutional provision regarding ballot secrecy have statutory provisions referencing secrecy in voting (DC, NH, NJ, OK, OR, RI, VT).

Highlighting the importance of ballot secrecy, all 50 states and D.C. have explicit statutory exemptions to ballot secrecy. The Help America Vote Act (HAVA), a federal law enacted in 2002, further established that people with disabilities should be able to vote privately and independently. The Act required that every polling place have a voting system designed to be accessible to people with disabilities to implement this mandate. These exemptions typically address ballot secrecy for disabled voters who request assistance with voting.²⁵ Some states have enacted laws to allow children under a voter’s care to accompany the voter into the voting booth.²⁶ The fact that these exemptions were debated and granted by specific legislative action underscores the sanctity with which the secret ballot has historically been regarded.

“[T]he General Assembly may by law prescribe the means, methods and instruments of voting so as best to secure secrecy and the independence of the voter” Del. Const. art. 5 § 1

In Delaware, Maine, Michigan, Nevada, and New Jersey, violations of ballot secrecy are criminalized. Showing your ballot so as to reveal your vote is a felony in Nevada.²⁷ In Delaware, an election officer found guilty of revealing a voter’s vote is subject to fines of up to \$500 and imprisonment for two to five years.²⁸ In Maine, intentionally or knowingly disclosing the content of a ballot with which

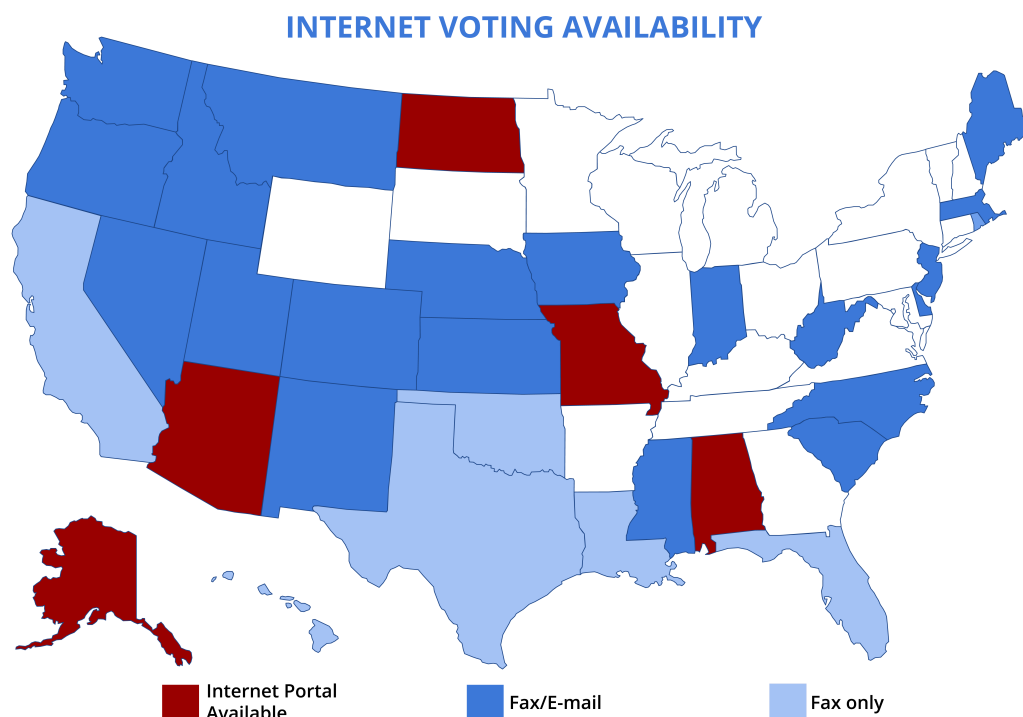
“Voting shall be secret.” Cal. Const. art. 2 § 7

you were entrusted is a misdemeanor, punishable by up to six months incarceration and a \$1,000 fine.²⁹ These laws also highlight the sanctity of the secret ballot in our society and demonstrate internal tension between a state’s guarantee of a secret ballot and that very guarantee’s violation.

SECRET BALLOT UNDER THREAT

Anonymity is a fundamental aspect of voting rights in the United States. Internet voting, however, makes guaranteeing anonymity in the voting process extremely difficult – if not impossible.

Cyber security experts at the Department of Homeland Security and the National Institutes for Standards and Technology have warned against implementation of Internet voting in U.S. public elections because of privacy and security risks.³⁰ Computer scientists have long cautioned that Internet voting “not only entails serious security risks, but also requires voters to relinquish their right to a secret ballot.”³¹ In July 2015, the U.S. Vote Foundation released a study establishing a new reference for security, usability and transparency standards necessary to implement Internet voting in public elections. Developed by the nation’s leading experts in election integrity, election administration, high-assurance systems engineering, and cryptography,³² the study concluded that **not one** of the existing Internet voting systems provides adequate security for public elections or guarantees voter privacy.³³ (For a further discussion of the risks of Internet Voting, see Appendix I).



Despite these security and privacy failings and the strong recognition of the importance of the secret ballot in state constitutions and statutes, state governments are experimenting with Internet voting in public elections. Our state survey found that 32 states and D.C. offer Internet voting to at least some voters, typically military and overseas voters.³⁴

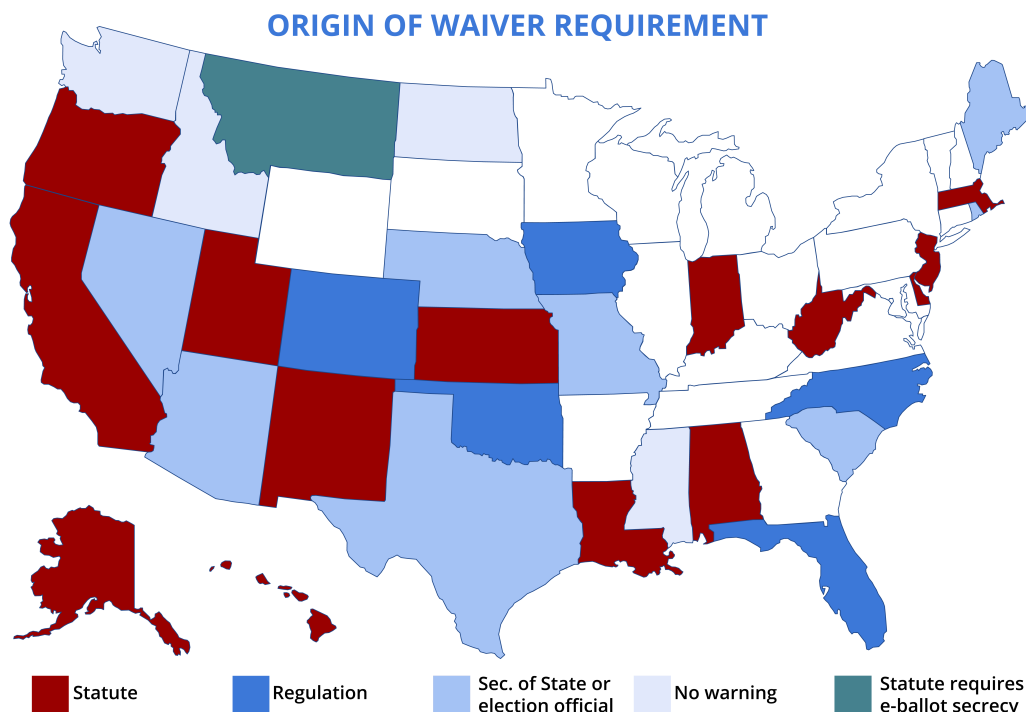
Of the 32 states and D.C. that offer some form of Internet voting, voters in 28 of those states and D.C. are explicitly required by state elections officials to sign a waiver of their right to a secret ballot in order to vote over the Internet. In the five other states, voters are permitted to cast ballots via the

Internet with no warning from elections officials that their ballot may not remain secret. Our state survey found:

- 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 D.C. 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 (ID³⁵, MS, ND, WA); and
- One state has a statutory requirement that that votes cast over the Internet “remain secret” (MT), despite the fact that this is technologically impossible.³⁶

“If the voter wants to submit absentee ballots by fax or electronic mail, the voter must separately sign and date a statement submitted with the electronic mail or the fax transmission that states substantively the following: ‘I understand that by faxing or e-mailing my voted ballot I am voluntarily waiving my right to a secret ballot.’” Ind. Code § 3-11-4-6

This shows that despite having legislated specific ballot secrecy exemptions such as allowing children in the voting booth, the requirement that Internet voters waive their right to a secret ballot was not debated, enacted into statute, or even subjected to the regulatory process in some states.



Alaska is the only state that explicitly allows any absentee voter to vote online. Alaskans can fill out an online ballot through a web-based program, save the file as a PDF, and transmit the voted ballot through a “secure online delivery system.”³⁷ Despite the name, Alaska acknowledges that the system is insecure and may not work, warning that “[w]hen returning the ballot through the secure online delivery system, your [sic] are voluntarily waving your right to a secret ballot and are assuming the risk that a faulty transmission may occur.”³⁸ A similar warning in a physical polling place would be considered unacceptable.

Ballot secrecy waiver statutes have seen limited review in the courts. Moreover, these reviews did not contemplate the use of the Internet to cast ballots. They contemplated analog fax machines or voting by mail. In 2006, California’s statutory requirement that UOCAVA voters who returned their ballots by fax waive their right to a secret ballot was challenged.³⁹ In *Bridgeman v. McPherson*, a group of voters argued that the statutory requirement that special absentee voters sign an oath waiving the right to a secret ballot violated California’s constitutional guarantee that “voting shall be secret.”⁴⁰ A lower court agreed, but the California Court of Appeals overturned their decision, ruling that “the constitutional guarantee of secret ballot must be balanced against the constitutional right of voters to cast a vote,” and that the Legislature’s determination that fax voting was necessary to allow overseas voters to vote in California should be respected.⁴¹ This court decision only contemplated the use of a facsimile transmission over ordinary telephone lines, not Internet fax services. The voters’ privacy would be compromised in the election office only – a retail violation, not the wholesale violations that could occur via the hacking of an Internet voting system.

Conversely, a federal court in Pennsylvania recognized the risk e-mail and fax voting poses to voter privacy in a 2004 case where a late change to the eligibility of third-party presidential candidates meant that some UOCAVA voters received ballots listing candidates no longer eligible for the ballot in Pennsylvania. As a result, the government asked the court to order that UOCAVA voters be permitted to return their ballots by fax or e-mail. The court noted that the director of the Federal Voting Assistance Program “acknowledged that returning ballots via facsimile would necessarily allow any person who handles a faxed ballot to see the voter’s ballot. In this regard, [the director] conceded that such a process would differ from the procedures now in place in Pennsylvania designed to ensure voter secrecy.”⁴² The court refused the government’s request to allow fax and e-mail ballot return, stating:

Fax and electronic mail voting as proposed by the Government are . . . problematic. These methods of voting are not legislatively sanctioned, are incapable of implementation by all counties, and they deprive voters of the right of secrecy. This court was not privileged to hear testimony from any UOCAVA voters, but must seriously question whether any UOCAVA voter would willingly bargain away his or her right to privately cast his or her vote for an amended ballot that deleted Mr. Nader’s name.⁴³

Although Internet voting is currently largely limited to military and overseas voters, it is not difficult to imagine states expanding the availability of Internet voting as Alaska has done despite the fact that the technology does not currently exist to make Internet voting in public elections secure.⁴⁴ The threat to voter privacy and to the integrity of our elections is real.

We recognize that for some military and overseas voters, voting via traditional methods is difficult. In the following section, we offer some recommendations for voters to protect their right to a secret ballot.

SOLUTIONS

The availability of an online system for marking and transmitting votes does not mean that system is secure, nor that votes will be private, including systems offered in states where a waiver of ballot secrecy is not required.

Voters – especially those remote voters most affected by current laws allowing online transmission of votes – can safeguard their privacy and the secrecy of their ballots by marking and returning their votes on a physical ballot, instead of using an online system including fax, email or Internet portal.

Request timely delivery of absentee ballots. Military and overseas voters should request their absentee ballots be sent to them well in advance; requested ballots are sent not less than **45 days prior to Election Day** as prescribed by the Federal Military and Overseas Voter Empowerment (MOVE) Act.

Request blank ballot electronically. Election jurisdictions are bound by the MOVE Act to deliver blank ballots electronically to voters who request it. Especially in areas where postal mail may take longer, voters should request their blank ballot be sent to them via electronic means.

By taking these actions, a voter can receive a blank ballot more than six weeks prior to Election Day. Voters receiving a blank ballot electronically are not compelled to use the Internet to return it.

Mark ballots “offline.” To safeguard the privacy of the vote, the ballot should be marked without requiring a connection to the Internet or a remote server. The ballot should be printed out before marking occurs, or marked on a device that is in “airplane mode” and not connected to the Internet and then printed. As the National Institute of Standards and Technology (NIST), an agency of the U.S. Dept. of Commerce, recommended in a 2011 report, “[t]o protect ballot secrecy, the printable ballot should be constructed using software that runs solely on voters’ computers. At no point should the ballot marking application transmit voter selections to the Web-server.”⁴⁵

If remote accessible ballot marking is needed, jurisdictions should offer systems that meet the principles described in a recent NIST-sponsored report, “Principles for Remote Accessible Ballot Marking Systems.”⁴⁶ This study notes that regardless of the voting system offered, all voters “must be able to mark and review their ballot independently and privately. All the requirements for voter privacy one would expect in a polling place system must be managed across a remote system, without exposing any voter’s PII [personally identifiable information] or allowing voter identity to be linked to ballot choices through electronic transmission.”

The Principles document also notes that the system must “allow voters to accurately and privately record their ballot choices, and must protect the confidentiality and integrity of those choices, and guard against attacks that seek to disrupt, damage or hijack the election process, especially through the features of remote communication.”⁴⁷

Return voted ballot via trackable expedited return service or postal mail. The Department of Defense’s Federal Voting Assistance Program (FVAP) has advised that postal return of voted ballots is the most responsible method of ballot return.⁴⁸

A provision of the MOVE Act made expedited ballot mail available to military voters overseas through the use of a special label, “11-DoD.” A study by the military postal service indicated ballots transmitted through this method were received by local election offices within an average of 5.2 days. Further, ballots sent this way are fully trackable. Voters can track their ballot’s arrival at its destination as if it were express mail or another expedited service; there is no charge for transmitting a ballot this way for military voters.⁴⁹

For postal mail, the USPS has a chart showing the time needed to ensure timely arrival of the voted ballot from APO/FPO locations around the world.⁵⁰

Avoid Online Fax, Email, Internet Portal. While ballot information and blank ballots can be safely distributed online, voters should avoid the Internet for marking and transmitting votes. Such systems do not ensure privacy and secrecy of the ballot, and in most cases the voter is required to sign away the right to a secret ballot, even where such a right is normally protected by state constitution or statute.

Jurisdictions should minimize personal identifying information. Jurisdictions should ensure they are seeking only minimal personally identifiable information (PII) from voters in order for them to participate in the voting process. “The term ‘personally identifiable information’ refers to information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc. alone or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as a date of birth, mother’s maiden name, etc.”⁵¹ Voter authentication should take place upon receipt of the ballot via voter signature and information.

STATE SURVEY

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
Alabama	Ala. Const. Art. VIII, § 177, as amended by Ala. Const. Amend. No. 865. (individual right)	Ala. Code § 17-6-34, § 11-46-114 (every voter has right to secret ballot).	Ala. Code § 17-9-13 (any voter may request assistance)	UOCAVA voters located outside U.S. territorial limits. Ala. Code § 17-11-47	◆		◆	Yes. Ala. Code § 17-11-47(6) (“By faxing a voted ballot, the voter voluntarily waives his or her right to a secret ballot.”)
Alaska	Alaska Const. Art. 5, § 3 (“Secrecy of voting shall be preserved”)	Alaska Stat. § 15.15.060(b) (director of elections may adopt regulations to protect the secrecy of the ballot); Alaska Stat. § 15.20.061(c) (absentee voters shall mark ballot in secret); Alaska Stat. § 15.20.072(d) (special needs voters shall mark ballot in secret); Alaska Stat. § 15.20.081(d) (provisions regarding secrecy for mail-in absentee ballots); Alaska Stat. § 15.15.230 (voter shall mark ballot in private place)	Alaska Stat. § 15.15.240 (disability exemption); Alaska Stat. § 15.20.066 (absentee ballots returned via electronic transmission)	All voters. Alaska Stat. § 15.20.066	◆	◆	◆	Yes. Alaska Stat. § 15.20.066 (electronic absentee ballots must contain statement “I understand that, by using electronic transmission to return my marked ballot, I am voluntarily waiving a portion of my right to a secret ballot to the extent necessary to process my ballot, but expect that my vote will be held as confidential as possible.”)
Arizona	Ariz. Const. art. 7 § 1 (“secrecy in voting shall be preserved”)	Ariz. Rev. Stat. § 16-580(B) (voters shall mark ballot in secret); Ariz. Rev. Stat. § 16-447(C) (voting booths shall be designed to	Ariz. Rev. Stat. § 16-580(G) (any voter may ask for assistance)	UOCAVA voters Ariz. Rev. Stat. § 16-543	◆		◆	Yes, must use FVAP Electronic Transmission cover letter which reads “If a VOTED BALLOT is being faxed or emailed,

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
		enable secret voting); Ariz. Rev. Stat. § 16-424(B)(2) (voting machines shall insure voting in absolute secrecy); Ariz. Rev. Stat. § 16-548 (mail-in ballot secrecy procedures)						sign below: “I understand that by faxing or emailing my voted ballot I am voluntarily waiving my right to a secret ballot”.
Arkansas	Ark. Const. Amend. 50, § 2, Ark. Const. Amend. 81 (all elections shall be by ballot or voting machines which preserve secrecy)	Ark. Code Ann. § 7-5-504 (voting machines must ensure secrecy); Ark Code Ann. § 7-5-607 (polling places must be arranged so as to assure secrecy); Ark. Code Ann. § 7-5-604(a)(1) (electronic vote tabulation systems must enable voters to vote in secrecy)	Ark. Code Ann. § 7-5-310 (privacy for disabled voters)	No Internet voting				
California	Cal. Const. Art. 2, § 7 (“Voting shall be secret”).	Cal. Elec. Code § 14276 (voter shall not show completed ballot to any person); Cal. Elec. Code § 14287 (no personal info on ballot); Cal. Elec. Code §§ 15250.5(c)(2), 15281 (privacy procedures for small precincts); Cal. Elec. Code § 3017(b) (privacy for mail ballots); Cal. Elec. Code § 18564 (interfering or attempts to interfere with secrecy of	Cal Elec. Code § 14282 (those assisting disabled voters shall not divulge any information regarding the marking of the ballot); Cal. Elec. Code § 14222 (childcare exemption)	UOCAVA voters Cal. Elec. Code § 3106	◆			Yes. Cal. Elec. Code § 3106 (UOCAVA voters must sign waiver reading: “I, (name), acknowledge that by returning my voted ballot by facsimile transmission I have waived my right to have my ballot kept secret. Nevertheless, I understand that, as with any vote by mail voter, my signature, whether on this oath of voter form or my

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
		voting is a felony); Cal. Elec. Code § 19283 (ballot marking systems must preserve ballot secrecy); Cal. Elec. Code § 19101 (voting systems must preserve ballot secrecy); Cal. Elec. Code § 3017(b) (elections officials must ensure secrecy of mail-in ballots)						identification envelope, will be permanently separated from my voted ballot to maintain its secrecy at the outset of the tabulation process and thereafter.“)
Colorado	Colo. Const. Art. 7, § 8 (elections shall be by ballot).	Colo. Rev. Stat. § 1-5-407(1.6) (ballot stubs may be used so long as secrecy in voting is protected); Colo. Rev. Stat. § 31-10-911 (secrecy must be preserved when counting mail-in ballots); Colo. Rev. Stat. §§ 1-5-611, 1-5-615 (electronic voting systems must provide for voting in secrecy); Colo. Rev. Stat. § 31-10-1517 (voter shall not show completed ballot to others); Colo. Rev. Stat. § 1-13-712 (misdemeanor offense to to reveal ballot or induce voter to do so); Colo. Rev. Stat. § 31-10-1514 (misdemeanor offense for anyone who assists disabled voter to	Colo. Rev. Stat. §§ 31-10-608, 1-13.5-607 (disability exceptions)	Only UOCAVA voters; voters may only use electronic transmission in circumstances where a more secure method, such as mail, is not available or feasible. Colo. Rev. Stat. § 1-8.3-113	◆	◆		Yes, by regulation. 8 Colo. Code Regs. § 1505-1:16.2.3 (electronic transmission must include self-affirmation, which includes the following statement: “I also understand that by returning my voted ballot by electronic transmission, I am voluntarily waiving my right to a secret ballot and that Colorado law requires that I return this ballot by a more secure method, such as mail, if available and feasible.”)

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
		disclose voter's votes)						
Conn.	Conn. Const. art. 6 § 5, amended by Art. XXIV (1986) ("The right of secret voting shall be preserved")	Conn. Gen. Stat. Ann. § 9-261 (voter shall vote in secret); Conn. Gen. Stat. Ann. § 9-366 (felony offense to interfere with secrecy of voting); Conn. Gen. Stat. Ann. § 9-242 (voting tabulators shall permit voting in absolute secrecy); Conn. Gen. Stat. Ann. § 9-264 (felony offense for anyone who assists disabled voter to disclose voter's votes)	Conn. Gen. Stat. Ann. § 9-264 (disability exception, but assistant must not disclose vote)	No Internet voting				
Delaware	Del. Const. art. 5 § 1 (General Assembly may prescribe means of voting as best to secure secrecy and the independence of the voter).	Del. Code Ann. tit. 15 § 4912(a) (poll opening procedure); Del. Code Ann. tit. 15 § 4943(c) (voters requiring assistance shall vote in secret); Del. Code Ann. tit. 15 § 5001(a)(2), (b) (voting machines shall secure voter secrecy); Del. Code Ann. tit. 15 § 5001A(a)(2), (b) (electronic voting systems shall secure voter secrecy); Del. Code Ann. tit. 15 § 5119 (criminal provisions for disclosing vote of assisted voter); Del. Code Ann. tit. 15 §	Del. Code Ann. tit. 15 § 4943 (disability exception); Del. Code Ann. tit. 15 § 5521(c) (FWAB ballot exception); Del. Code Ann. tit. 15 § 5525(d) (UOCAVA e-voters exception);	UOCAVA voters Del. Code Ann. tit. 15 § 5525	◆	◆		No – does not require voters to sign a waiver, but Del. Code Ann. tit. 15 § 5525(d) reads "A voter who returns a ballot electronically is deemed to have acknowledged that there may be situations where the secrecy of that voter's ballot cannot be guaranteed."

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
		5122 (criminal provisions for election officer who reveals how any elector has voted); Del. Code Ann. tit. 15 § 7578(12) (if less than 5 absentee ballots returned, counting procedure may change to protect secrecy);						
D.C.		D.C. Code § 1-1001.09(a) (voting shall be secret)	D.C. Code § 1-1001.09(f) (voter unable to complete ballot may ask for assistance)	UOCAVA voters. Title 3 DCMR Section 718	◆	◆		Yes. Title 3 DCMR Section 718.9 (“A qualified uniformed services or overseas voter who submits his or her ballot electronically shall provide and sign the following statement on a separate document: ‘I understand that by electronically submitting my voted ballot I am voluntarily waiving my right to a secret ballot.’”)
Florida	Fla. Const. Art. 6 § 1 (elections shall be by secret vote)	Fla. Stat. Ann § 101.041 (voting shall be by secret ballot); Fla. Stat. Ann. § 101.5606 (voting machines must allow voting in secrecy); Fla. Stat. Ann. § 101.5608(2)(a) (voting procedures); Fla. Stat. Ann. § 101.6103 (mail ballot must include	Fla. Stat. Ann. § 101.051 (disability exception)	UOCAVA voters Fla. Stat. Ann. § 101.697	◆			Yes. Fla. Admin. Code Ann. r. 1S-2.030(7) (“If you fax your voted ballot, you will be voluntarily waiving your right to a secret ballot.”)

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
		secrecy envelope); Fla. Stat. Ann. § 101.6923 (secrecy provisions for absentee ballots)						
Georgia	Ga. Const. Art. 2, § 1, ¶ I (elections shall be by secret ballot)	Ga. Code Ann. § 21-2-70(13) (election officials shall guarantee ballot secrecy); Ga. Code Ann. § 21-2-322 (voting machines); Ga. Code Ann. § 21-2-365 (optical scan voting); Ga. Code Ann. § 21-2-373 (Sec. of State shall provide for ballot secrecy in regulations); Ga. Code Ann. § 21-2-379.1 (direct recording electronic voting systems must permit voting secrecy); Ga. Code Ann. § 21-2-386(5) (absentee ballot counting procedures)	Ga. Code Ann. § 21-2-385.1 (disability exception)	No Internet voting ⁵²				
Hawaii	Haw. Const. Art. 2, § 4 (“Secrecy of voting shall be preserved”)	Haw. Rev. Stat. § 11-4 (rules and regulations must insure secrecy of ballot); Haw. Rev. Stat. § 11-137 (voter secrecy); Haw. Rev. Stat. § 16-2 (voting system requirements);	Haw. Rev. Stat. § 11-139 (disability exception); Haw. Rev. Stat. § 15-5(b) (UOCAVA voters voting by fax)	Only UOCAVA voters who do not receive a mailed ballot within five days of the election. Haw. Rev. Stat. § 15-5(b)	◆			Yes. Haw. Rev. Stat. § 15-5(b) (UOCAVA voters submitting vote by fax must provide waiver of right to secrecy)
Idaho	Idaho Const. Art. VI, § 1 (“An absolutely secret ballot is hereby	Idaho Code Ann. § 34-302 (arrangement of polling place must	Idaho Code Ann. § 34-1108 (disability exception)	In the case of a “national or local	◆	◆		No. ⁵³

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
	guaranteed”)	guarantee right to secret ballot); Idaho Code Ann. § 34-2410 (voting machine specifications)		emergency,” Idaho Sec. of State may allow UOCAVA voters to fax or email ballot. Idaho Code Ann. § 34-201				
Illinois	Ill. Const. Art. 3, § 4 (General Assembly shall insure secrecy of voting)	10 Ill. Comp. Stat. Ann. 5/17-8 (polling place setup); 10 Ill. Comp. Stat. Ann. 5/17-13 (voter secrecy required for disabled voters who cannot access polling place); 10 Ill. Comp. Stat. Ann. 5/19-5, 5/19A-40, 5/20-5 (vote by mail voters, early voters, military voters must state that they marked ballot in secret); 10 Ill. Comp. Stat. Ann. 5/19-13 (hospitalized voters); 10 Ill. Comp. Stat. Ann. 5/19A-60 (pollwatchers permitted provided secrecy of ballot preserved); 10 Ill. Comp. Stat. Ann. 5/24-1, 5/24A-16, 5/24B-16 (voting machines);	10 Ill. Comp. Stat. Ann. 5/17-14 (disability exception)	No Internet voting				

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
Indiana	Ind. Const. Art. 2, § 13 (elections shall be by ballot)	Ind. Code § 3-5-8-2.5 (Absentee Voters Bill of Rights); Ind. Code § 3-11-7-3 (ballot card voting system must enable secret voting); Ind. Code § 3-11-7.5-8 (electronic voting machines must ensure secret voting); Ind. Code § 3-11-10-24(c) (absentee ballot secrecy); Ind. Code § 3-11-11-2(d) (polling place setup); Ind. Code § 3-11-13-8 (voting booths must enable secret voting); Ind. Code § 3-14-3-11 (level 6 felony to interfere with secrecy of voting); Ind. Code § 3-11-14-20 (location of voting system); Ind. Code § 3-14-4-7 (election official disclosing an elector's vote is a level 6 felony); Ind. Code § 3-14-2-16 (level 6 felony to show completed ballot to another person)	Ind. Code § 3-11-9-2 (disability exception)	UOCAVA voters. Ind. Code § 3-11-4-6	◆	◆		Yes. Ind. Code § 3-11-4-6(h). If the voter wants to submit absentee ballots by fax or electronic mail, the voter must separately sign and date a statement submitted with the electronic mail or the fax transmission that states substantively the following: "I understand that by faxing or e-mailing my voted ballot I am voluntarily waiving my right to a secret ballot."
Iowa	Iowa Const. Art. 2, § 6 (as clarified by Op.Atty.Gen.1900-01, p. 53)	Iowa Code Ann. § 49.25 (voting booths must provide secrecy); Iowa Code Ann. § 49.84 (marking of ballot);	Iowa Code Ann. § 49.90 (disability exception)	Military voters, overseas civilian voters in "imminent danger pay	◆	◆		Yes, by regulation. Iowa Admin. Code 721-21.320(4) ("the absentee ballot may be returned via electronic

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
		Iowa Code Ann. § 52.26(a) (optical scan voting systems must provide for voting in secrecy); Iowa Code Ann. § 53.23(5) (absentee ballot secrecy)		areas.” Iowa Admin. Code 721-21.1(13)				transmission only if the voter waives the right to a secret ballot.”)
Kansas	Kan. Const. Art. 4, § 1 (as clarified by <i>Lemons v. Noller</i> , 63 P.2d 177 (1936)).	Kan. Stat. Ann. § 25-4406(h) (electronic voting systems must provide for voting in secrecy)	Kan. Stat. Ann. § 25-2909 (disability exception)	UOCAVA voters. Kan. Stat. Ann. § 25-1216	◆	◆		Yes. Kan. Stat. Ann. § 25-1216 (If the voter chooses to transmit the voted ballot to the county election officer by facsimile, electronic mail or other electronic method authorized by the secretary of state the transmittal shall contain the following statement: “I understand that by faxing, emailing or electronically transmitting my voted ballot I am voluntarily waiving my right to a secret ballot”)
Kentucky	Ky. Const. § 147 (elections shall be by secret ballot)	Ky. Rev. Stat. § 117.125(1) (voting machines must insure secrecy to the voter); Ky. Rev. Stat. § 117.381 (no electronic voting system may be approved unless it provides for voting in secrecy); Ky. Rev. Stat. § 118.025(1) (voting shall	Ky. Rev. Stat. § 117.255 (disability exception)	No Internet voting				

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
		be by secret ballot);						
Louisiana	La. Const. Art. 11, § 2 (voting shall be by secret ballot)	La. Stat. Ann. § 18:564 (assistance in voting); La. Stat. Ann. § 18:1309(E)(3) (secrecy in early voting); La. Stat. Ann. § 18:1355 (voting machines must secure voter secrecy);	La. Rev. Stat. Ann. § 18:106(C) (disability exception)	All absentee voters. La. Stat. Ann. § 18:1303	◆			Yes. La. Stat. Ann. § 18:1308 (“[...] The waiver of the right to a secret ballot shall contain the following statement: “My ballot was transmitted by facsimile to me, and I am voluntarily waiving my right to a secret ballot.”); La. Stat. Ann. § 18:1310(2)
Maine	Me. Const. Art. 2, § 5 (right of secret voting shall be preserved)	Me. Rev. Stat. Ann. tit. 21-A § 671(8) (secrecy at polling place); Me. Rev. Stat. Ann. tit. 21-A § 647(1)(G) (criminal provisions re: disclosing votes); Me. Rev. Stat. Ann. tit. 21-A § Me. Rev. Stat. Ann. tit. 21-A §§ 812, 843 (voting machines must allow secret voting); Me. Rev. Stat. Ann. tit. 21-A § 852(3) (procedure at the polls); Me. Rev. Stat. Ann. tit. 21-A § 860 (criminal provisions re: interfering with secret voting)	Me. Rev. Stat. Ann. tit. 21-A § 672 (disability exception)	UOCAVA voters. Me. Rev. Stat. Ann. tit. 21-A § 783	◆	◆		Yes. ⁵⁴
Maryland	Md. Const., Art. 1, § 1 (“All elections shall be by ballot”)	Md. Code Elec. Law § 9-102(d),(f) (voting systems must protect the secrecy	Md. Code Elec. Law § 10-310(3)-(6) (disability exception)	No Internet voting				

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
		of the ballot); Md. Code Elec. Law § 9-203 (ballot requirements); Md. Code Elec. Law § 11-303(f) (provisional ballot secrecy)						
Mass.	Mass. Const. Amend. Art. 38 (voting machines may be used so long as the right of secret voting is preserved)	Mass. Gen. Laws Ann. ch. 54, § 33 (voting machines); Mass. Gen. Laws Ann. ch. 54, § 76C(f) (provisional ballots secrecy); Mass. Gen. Laws Ann. ch. 54, § 80 (no identifying marks on ballots); Mass. Gen. Laws Ann. ch. 54, § 92 (absentee voter must mark ballot in presence of no other person)	Mass. Gen. Laws Ann. ch. 54, § 79 (disability exception at polls); Mass. Gen. Laws Ann. ch. 54, § 95 (UOCAVA voters); Mass. Gen. Laws Ann. ch. 54, § 98 (disability exception for absentee);	UOCAVA voters. Mass. Gen. Laws Ann. ch. 54, § 95	◆	◆		Yes. Mass. Gen. Laws Ann. ch. 54, § 95 (UOCAVA voters using e-mail or fax must fill out FVAP approved form “voluntarily waiv[ing] the right to a secret ballot.”
Michigan	Mich. Const. Art. 2, § 4 (Legislature shall enact laws to preserve the secrecy of the ballot)	Mich. Comp. Laws Ann. § 168.770A (no regulations which reduce secrecy of the ballot permitted); Mich. Comp. Laws Ann. § 168.772 (voting machines); Mich. Comp. Laws Ann. § 168.786 (voting procedures); Mich. Comp. Laws Ann. § 168.795 (voting machines); Mich. Comp. Laws Ann.	Mich. Comp. Laws Ann. § 168.751 (disability exception)	No Internet voting				

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
		§ 168.795 (electronic voting systems); Mich. Comp. Laws Ann. § 168.932 (criminal violations)						
Minnesota	Minn. Const. Art. 7, § 5 (elections shall be by ballot)	Minn. Stat. § 204C.17 (secrecy of ballot); Minn. Stat. § 204C.18 (no identifying marks on ballot); Minn. Stat. § 202A.18(3) (voting in caucuses must be by secret ballot); Minn. Stat. § 206.64 (voting by electronic system must be secret); Minn. Stat. § 206.80 (electronic voting system must permit secret voting);	Minn. Stat. Ann. § 204C.15 (disability exception)	No Internet voting				
Mississippi	Miss. Const. Art. 12, § 240	Miss. Code Ann. § 23-15-403 (voting machines); Miss. Code Ann. § 23-15-437 (instructing voters); Miss. Code Ann. § 23-15-465 (electronic voting systems); Miss. Code Ann. § 23-15-541 (disabled elector voting from motor vehicle outside polls); Miss. Code Ann. § 23-15-699(5) (absentee ballots);	Miss. Code Ann. § 23-15-549 (disability exception)	UOCAVA voters. Miss. Code Ann. § 23-15-699	◆	◆		No. ⁵⁵
Missouri	Mo. Const. Art. 8, § 3 (all elections by ballot)	Mo. Rev. Stat. § 115.249 (voting machine standards); Mo. Rev. Stat. §	Mo. Rev. Stat. § 115.445 (disability exception)	UOCAVA voters serving in a “hostile zone.”	◆	◆	◆	Yes. ⁵⁶

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
		115.283(1) (absentee ballot secrecy); Mo. Rev. Stat. § 115.291 (absentee ballot procedure); Mo. Rev. Stat. § 115.411 (polling places shall provide for secret voting); Mo. Rev. Stat. § 115.445(2) (no one but voter in booth);		Mo. Rev. Stat § 115.291				
Montana	Mont. Const. Art. 4, § 1 (elections shall be by secret ballot)	Mont. Code Ann. § 13-1-102 (elections shall be by secret ballot); Mont. Code Ann. § 13-17-103 (voting systems must allow voter to vote in secrecy); Mont. Code Ann. § 13-35-201 (secrecy provisions)	Mont. Code Ann. § 13-13-119 (assistant to disabled voter may not disclose vote)	UOCAVA voters. Mont. Code Ann. § 13-21-104	◆	◆		No. Mont. Code Ann. § 13-21-104(2)(e) (“a ballot cast by a covered voter and transmitted electronically will remain secret, as required by Article IV, section 1, of the Montana constitution.”)
Nebraska	Neb. Const. Art. VI, § 6 (secrecy shall be preserved)	Neb. Rev. Stat. § 32-917 (secrecy of spoiled ballots); Neb. Rev. Stat. § 32-1027 (counting early ballots); Neb. Rev. Stat. § 32-1041 (counting procedures); Neb. Rev. Stat. § 32-1527 (misdemeanor to reveal ballot)	Neb. Rev. Stat. § 32-918 (disability exception)	UOCAVA voters with permission from Secretary of State ⁵⁷	◆	◆		Yes, must sign “Early Voter’s Oath: Electronic return of Voted Ballot for Military and Overseas Voters,” which states “I understand that by returning my voted ballot electronically, the privacy of my ballot cannot be guaranteed. Election officials will make every attempt to ensure the security and privacy of my ballot.” ⁵⁸

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
Nevada	Nev. Const. Art. 2, § 5 (elections shall be by ballot)	Nev. Rev. Stat. §§ 293.385, 293.385 (absentee ballots); Nev. Rev. Stat. § 293.730 (criminal provisions); Nev. Rev. Stat. §§ 293.3606, 293C.3606 (clerks must develop procedures to ensure ballot secrecy); Nev. Rev. Stat. § 293.3086 (free access system for provisional voters);	Nev. Rev. Stat. § 293.296 (disability exception)	UOCAVA voters	◆	◆		Yes. No statutory authorization. “I acknowledge that if I return my voted ballot by approved electronic transmission, I have waived my right to have my ballot kept secret.” <i>See</i> https://nvsos.gov/Modules/ShowDocument.aspx?documentid=3489
New Hampshire		N.H. Rev. Stat. § 659:37 (attempting to induce any voter to show how he or she marked their ballot is prohibited); N.H. Rev. Stat. § 659:52 (absentee ballot counting procedure);	N.H. Rev. Stat. § 659:20 (disability exception)	No Internet voting				
New Jersey		N.J. Stat. Ann. § 19:15-26 (voter shall vote in secret); N.J. Stat. Ann. § 19:34-7 (criminal provisions); N.J. Stat. Ann. § 19:34-14 (criminal provisions for election official revealing votes); N.J. Stat. Ann. § 19:53A-3 (voting machine requirements); N.J. Stat. Ann. § 19:53A-6(c) (secrecy while voting);	N.J. Stat. Ann. § 19:50-3 (disability exception)	UOCAVA voters (must also mail hard copy of ballot). N.J. Stat. Ann. § 19:59-14	◆	◆		Yes. N.J. Stat. Ann. § 19:59-14 (A ballot from an overseas voter transmitted by electronic means is valid if it “is accompanied by the following statement, which shall be certified by the voter's signature: “I understand that by transmitting by electronic means a copy of my voted ballot I am voluntarily waiving my right to a secret ballot.”)

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
		N.J. Stat. Ann. § 19:53A-15 (tampering with secrecy of voting); N.J. Stat. Ann. § 19:63-12 (printed voting instructions); N.J. Stat. Ann. § 19:63-13 (mail-in voter certification); N.J. Stat. Ann. § 19:63-16 (absentee ballot procedures);						
New Mexico	N.M. Const. Art. 7, § 1 (Legislature shall enact laws that preserve secrecy of the ballot)	N.M. Stat. Ann. § 1-9-5(D) (sufficient number of voting booths must be provided in order to ensure ballot secrecy); N.M. Stat. Ann. § 1-12-69(G) (any inspection of ballots must be conducted in such a manner as to secure secrecy of the ballot); N.M. Stat. Ann. § 1-6-5.4(A) (SoS must adopt rules protecting the integrity, security, and secrecy of absentee ballots); N.M. Stat. Ann. § 3-8-50(B) (no person shall examine or solicit a person to reveal the contents of a person's paper ballot)	N.M. Stat. Ann. §§ 1-12-15, 3-8-22 (disability exceptions)	UOCAVA voters	◆	◆		Yes. N.M. Stat. Ann. § 1-6B-8 (UOCAVA voter may e-vote if "elector signs an affidavit waiving the right of secrecy of the federal qualified elector's ballot"); SoS website states: "You must sign and transmit a waiver of secrecy form that will be provided by the county clerk" http://www.sos.state.nm.us/Voter_Information/Military_and_Overseas_Voting.aspx
New York	N.Y. Const. Art. 2, § 7 (secrecy in voting shall be preserved)	N.Y. Elec. Law § 7-202(2)(b) (accessible voting machines);	N.Y. Elec. Law § 8-306 (disability exception)	No Internet voting				

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
		N.Y. Elec. Law § 8-300(2) (voting procedures); N.Y. Elec. Law § 8-407(9) (voting privacy for nursing home residents)						
North Carolina	N.C. Const. Art. VI, § 5 (elections shall be by ballot)	N.C. Gen. Stat. § 163-132.5G (in reporting returns, county board shall not compromise secrecy of individual's ballot); N.C. Gen. Stat. § 163-166.2 (arrangement of voting enclosure must ensure secrecy); N.C. Gen. Stat. §§ 163-231, 163-234(5) (secrecy for absentee voters)	N.C. Gen. Stat. Ann. § 163-166.8 (disability exception)	UOCAVA voters (N.C. Gen. Stat. § 163-258.10)	◆	◆		Yes, by regulation. 8 N.C. Admin. Code 12.0104. ("I understand that by using facsimile transmission to return my marked ballot, I am voluntarily waiving a portion of the secrecy of my ballot to the extent necessary to process my ballot, but expect that my vote will be held as confidential as possible.")
North Dakota	N.D. Const. Art. 2, § 1 (Legislature shall provide for secrecy in voting)	N.D. Cent. Code § 16.1-13-29 (election booths); N.D. Cent. Code § 16.1-13-23 (ballot preparation by voter); N.D. Cent. Code § 16.1-07-08 (absentee ballot secrecy); N.D. Cent. Code § 16.1-06-14 (voting machine requirements)	N.D. Cent. Code § 16.1-13-27 (disability exception)	UOCAVA voters	◆		◆	No. ⁵⁹
Ohio	Ohio Const. Art. V, § 2 (elections shall be by ballot)	Ohio Rev. Code Ann. §§ 3506.06(A), 3506.10 (voting machine specifications); Ohio Rev. Code Ann. §	Ohio Rev. Code Ann. § 3505.24 assistance (disability exception)	No Internet voting				

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
		3509.06(E) (counting of ballots); Ohio Rev. Code Ann. § 3599.20 (violation of secret ballot is 5 th degree felony);						
Oklahoma		26 Okla. St. Ann. § 7-120 (secrecy folders); 26 Okla. St. Ann. § 3-122 (voting booths); 26 Okla. St. Ann. § 16-115 (misdemeanor to reveal vote in polling place)	26 Okla. Stat. Ann. § 7-123.3 (disability exception); 26 Okla. St. Ann. § 7-123.1 (assistance if physical inability to enter election enclosure)	UOCAVA voters (26 Okla. Stat. Ann. § 14-118.1)	◆			Yes, by regulation of the State Election Board. Okla. Admin. Code § 230:30-11-6.1 (“A voter who chooses to fax a voted ballot must sign a Secret Ballot Waiver and transmit it with the ballot.”)
Oregon		Ore. Rev. Stat. § 246.560(a)(1) (voting machine may not be approved if it does not ensure secrecy of voting); Ore. Rev. Stat. § 254.472 (county clerk must provide polling location that ensures secrecy); Ore. Rev. Stat. § 260.695(7)-(9) (election officials may not disclose any information that would lead to disclosure of elector’s votes)	Ore. Rev. Stat. § 254.445 (disability exception)	UOCAVA voters (Ore. Rev. Stat. § 253.690)	◆	◆		Yes. Ore. Rev. Stat. § 253.690 (Voters returning ballot by e-mail or fax must include signed waiver stating “I, _____, acknowledge that by casting my voted ballot using a facsimile machine or by electronic mail I have waived my right to a secret ballot.”)
Penn.	Pa. Const. Art. 7, § 4 (all elections shall be by ballot provided that secrecy shall be preserved)	25 Pa. St. Ann. § 3007(i) (voting machines shall allow voting in absolute secrecy); 25 Pa. St. Ann. § 3031.7(1) (electronic	25 Pa. Stat. Ann. § 3058 (disability exception); 25 Pa. Stat. Ann. § 3146.6a (disability exception for absentee voters)	No Internet voting				

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
		voting systems must provide for voting in secrecy); 25 Pa. St. Ann. § 3031.10(b) (preparation of polling places); 25 Pa. St. Ann. § 3031.12(b)(6) (secrecy procedures for electronic voting systems); 25 Pa. Stat. Ann. § 3530 (unlawful assistance in voting)						
Rhode Island		R.I. Gen. Laws § 17-19-3 (voting equipment must enable voter secrecy); R.I. Gen. Laws §§ 17-20-1.1, 17-20-34 (absentee voters entitled to ballot secrecy); R.I. Gen. Laws § 17-20-14.1 (mail ballot secrecy); R.I. Gen. Laws § 17-20-14(a) (voting from hospitals);	R.I. Gen. Laws § 17-19-26.1 (disability exception)	UOCAVA voters (R.I. Stat. § 17-20-6.1)	◆			Yes. Must use FVAP Electronic Transmission cover letter which reads “If a VOTED BALLOT is being faxed or emailed, sign below: “I understand that by faxing or emailing my voted ballot I am voluntarily waiving my right to a secret ballot”. ⁶⁰
South Carolina	S.C. Const. Art. II, § 1 (elections shall be by secret ballot); S.C. Const. Art. II, § 10 (General Assembly shall provide for secrecy in voting)	S.C. Code § 7-13-130 (right to secrecy of ballot); S.C. Code § 7-13-771 (ballot secrecy for handicapped or elderly voters who cannot enter polls); S.C. Code § 7-13-1340(f) (vote recorder or optical scan voting device must	S.C. Code §§ 7-13-770(A), 7-13-780 (disability exception)	UOCAVA voters (http://www.scvotes.org/2008/08/11/military_overseas_citizens)	◆	◆		Yes. ⁶¹

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
		permit secret voting); S.C. Code § 7-13-1380 (secrecy of write-in votes); S.C. Code § 7-13-1640(A)(10) (voting machines must ensure voting in secrecy); S.C. Code § 7-13-1830 (ballot secrecy after asking for assistance); S.C. Code § 7-25-100 (allowing ballot to be seen, removing ballot from voting place, improper assistance, and related offenses)						
South Dakota	S.D. Const. Art. 6, § 28 (individual right); S.D. Const. Art. 7, § 3 (Legislature shall insure secrecy in voting)	S.D. Codified Laws § 12-18-27 (marked ballot not to be shown); S.D. Codified Laws § 12-19-10 (secrecy provisions for absentee ballots)	S.D. Codified Laws § 12-18-25 (disability exception)	No Internet voting				
Tennessee	Tenn. Const. Art. 4, § 4 (elections shall be by ballot)	Tenn. Code Ann. § 2-7-103 (no person may enter voting booth except voter); Tenn. Code Ann. §2-7-114(b)(1) (paper ballot procedures – must be marked in secrecy); Tenn. Code Ann. § 2-9-101(a) (voting machines must ensure voting in absolute secrecy); Tenn. Code Ann. §2-6-	Tenn. Code Ann. §2-7-116 (disability exception)	No Internet voting				

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
		109 (secrecy provisions for early voting); Tenn. Code Ann. § 2-6-309 (secrecy provisions for absentee ballots); Tenn. Code Ann. § 2-19-110 (misdemeanor to wrongfully assist voter or vote contrary to wishes if assisting)						
Texas	Tex. Const. Art. 6, § 4 (elections shall be by ballot)	Tex. Elec. Code § 122.001 (voting system must preserve secrecy of the ballot); Tex. Elec. Code § 125.004 (voting system equipment must be installed in such a way to ensure ballot secrecy); Tex. Elec. Code § 61.012 (each polling place must provide a “practical and effective means for voters with physical disabilities to cast a secret ballot.”); Tex. Elec. Code § 62.0115 (public notice of voters’ rights must include right to “vote in secret and free from intimidation”)	Tex. Elec. Code § 64.031 (disability exception)	Military voters in hostile fire pay / imminent danger pay / combat zone. Tex. Elec. Code § 105.001	◆	*62		Yes. If returning ballot via fax, must use FVAP Electronic Transmission cover letter which reads “If a VOTED BALLOT is being faxed or emailed, sign below: “I understand that by faxing or emailing my voted ballot I am voluntarily waiving my right to a secret ballot”. <i>See</i> http://www.sos.state.tx.us/elections/laws/advisory-2014-17-procedures-fwab.shtml
Utah	Utah Const. Art. 4, § 8 (all elections shall be by secret ballot)	Utah Code Ann. § 20A-3-102 (voting shall be by secret ballot) Utah Code Ann. § 20A-5-302(2)(a)(i) (automated	Utah Code Ann. § 20A-3-108 (disability exception)	UOCAVA voters and voters with disabilities. Utah Code	◆	◆		Yes. Utah Code Ann. § 20A-16-409 (if military-oversees ballot is electronically transmitted, voter must

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
		voting systems must provide for voting in secrecy)		Ann. §§ 20A-6-103, 20A-16-201 ⁶³				sign waiver stating “I understand that by electronically transmitting my voted ballot I am voluntarily waiving my right to a secret ballot.”)
Vermont		Vt. Stat. Ann. tit. 17 § 2504 (voting booths must allow for secrecy while voting); Vt. Stat. Ann. tit. 17 § 2316 (caucuses must be by secret ballot)	Vt. Stat. Ann. tit. 17, § 2541 (disability exception)	No Internet voting				
Virginia	Va. Const. Art. 2, § 3 (secrecy in casting votes shall be maintained)	Va. Code Ann. § 24.2-607(A) (unlawful for any person to prevent voter from casting secret ballot); Va. Code Ann. § 24.2-609 (voting boots must allow for voter to cast vote in secret); Va. Code Ann. § 24.2-629(B)(11) (electronic voting systems may be approved if ensures voting in “absolute secrecy”); Va. Code Ann. § 24.2-638 (voting machines may be moved to assist elderly or disabled voter so long as voter casts ballot in secret); Va. Code Ann. § 24.2-647 (officers giving assistance	Va. Code. Ann § 24.2-649 (old age, disability, and language exception at polls)	No Internet voting				

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
		to voters must leave booth prior to voting); Va. Code Ann. § 24.2-707 (absentee ballot privacy); Va. Code Ann. § 24.2-1006 (misdemeanor to advise voter how to cast ballot after voter has entered polling place)						
Wash.	Wash. Const. Art. 6, § 6 (Legislature shall provide for “such method of voting as will secure to every elector absolute secrecy in preparing and depositing his ballot”)	Wash. Rev. Code Ann. § 29A.04.206 (“right of absolute secrecy of the vote” is a fundamental right); Wash. Rev. Code Ann. § 29A.04.611 (secretary of state must make rules for standards and procedures guaranteeing the secrecy of ballots); Wash. Code Rev. Ann. § 29A.12.080 (voting device may not be approved unless it secures voter secrecy)	Wash. Rev. Code Ann. § 29A.40.160(10) (disability exception); Wash Rev. Code Ann. § 29A.40.091 (UOCAVA voters)	UOCAVA voters. Wash. Rev. Code Ann. § 29A.40.110 (note: all voters vote by mail in WA)	◆	◆		No. ⁶⁴
West Virginia	W. Va. Const. Art. 4, § 2 (elections shall be by ballot, but voter may choose to vote by open, sealed or secret ballot)	W. Va. Code. Ann. § 3-1-4 (voters can elect whether to vote in secret); W. Va. Code Ann. § 3-3-3(f) (secrecy in early voting); W. Va. Code Ann. § 3-4A-9 (electronic voting machine must provide absolute secrecy); W. Va. Code Ann. § 3-	W. Va. Code. Ann. § 3-4A-22 (disability exception); W. Va. Code Ann. § 3-3-5 (UOCAVA exception); W. Va. Code Ann. § 3-3-6 (disabled absentee by mail exception)	UOCAVA voters. W. Va. Code. Ann. § 3-3-5(2)(A)	◆	◆		Yes. W. Va. Code. Ann. § 3-3-5(2)(A) (UOCAVA voters returning ballots electronically must submit waiver of privacy form with ballot)

State	Constitutional provision re: right to secret ballot	Statutory provision re: secret voting	Exceptions to right to secret ballot	Who can e-vote?	Voting methods			Privacy waiver required?
					Fax	Email	Web	
		3B-4(4) (web-based voting pilot program may be approved if allows for secret but verifiable ballots)						
Wisconsin	Wisc. Const. Art. 3, § 3 (all votes shall be by secret ballot)	Wisc. Stat. Ann. § 5.91 (voting equipment must enable secret voting); Wis. Stat. Ann. § 6.87(4)(b) (ballot secrecy for absentee voters)	Wisc. Stat. Ann. § 6.82(2) (disability exception); Wisc. Stat. Ann. § 6.87(5) (disability and language deficiency exception for absentee by mail)	No Internet voting				
Wyoming	Wyo. Const. Art. 6, § 11 (“All voters shall be guaranteed absolute privacy in the preparation of their ballots, and the secrecy of the ballot shall be made compulsory.”)	Wyo. Stat. Ann. § 22-12-103 (supplies shall be furnished to permit secret marking of ballots); Wyo. Stat. Ann. § 22-9-112(b) (absentee secret ballot); Wyo. Stat. Ann. § 22-11-103 (electronic voting systems must provide for voting in secrecy); Wyo. Stat. Ann. § 22-10-101(a)(i) (to be approved, voting machines must require secret voting)	Wyo. Stat. Ann. § 22-13-113(a) (disability or illiteracy exception)	No Internet voting				

APPENDIX 1: THE RISKS OF INTERNET VOTING

It is beyond the scope of this report to prove that Internet voting in U.S. public elections will lead to the loss of voter privacy. The intent is to show that while states are offering this means of voting for discrete classes of voters, they plainly acknowledge that if this means is used, the privacy of voters' ballots cannot be maintained. For many who study these issues, however, privacy and election integrity are linked. Here are some statements on Internet voting by experts in both the public and private sector:

Department of Homeland Security Senior Officials Have Warned Against Internet Voting in U.S. Public Elections (Washington Post)

"We believe that online voting, especially online voting in large scale, introduces great risk into the election system by threatening voters' expectations of confidentiality, accountability and security of their votes and provides an avenue for malicious actors to manipulate the voting results," Neil Jenkins, Chief of Policy and Planning, Office of Cybersecurity and Communications at the Department of Homeland Security.⁶⁵

The Department of Defense does not recommend online voting for military voters.

A Pentagon spokesman stated in April 2015, "[the Department of Defense] does not advocate for the electronic transmission of any voted ballot, whether it be by fax, email or via the Internet."⁶⁶ The Federal Voting Assistance Program (FVAP) advised that postal mail return of a voted ballot, coupled with the electronic transmission of a blank ballot is the "most responsible" method of absentee voting for military and overseas voters, due to unsolved security issues with electronic transmission of voted ballots.⁶⁷

The U.S. government has concluded that secure online return of ballots is not currently feasible.

The National Institute of Standards and Technology (NIST) has documented several security issues with online voting that cannot be mitigated or solved with currently available cyber security safeguards and voting system protocols. In 2011, NIST concluded that until these challenges are overcome, secure Internet voting is not yet feasible.⁶⁸ NIST's findings that online voting could not be done securely led Congress to abandon a Department of Defense Internet voting demonstration project for military and overseas voters.⁶⁹

Additional Resources on Internet Voting:

- 1) The most recent comprehensive report on Internet voting's prospects in the future is "The Future of Voting" published by the US Vote Foundation, incorporating the perspective of election officials and experts in security and other related fields.

<https://www.usvotefoundation.org/E2E-VIV>

- 2) State reports on Internet voting include:

2015 report from Utah: Final Report of the i-Vote Advisory Committee: "Traditional voting systems provide paper trails and chain of commands that would not be readily available to an online system. No current system available addresses these risks."

<https://elections.utah.gov/Media/Default/Documents/Report/iVote%20Report%20Final.pdf>

“Report on Voting by Members of the Military Serving Overseas” by the Secretary of the State of Connecticut in response to legislation in that state, referencing different possible modes of electronic return of voted ballots and the issues with each:

http://www.ct.gov/sots/lib/sots/releases/2014/final_report_of_1.1.14_sots_on_military_overseas_voting_methods.pdf

Washington DC’s Internet voting pilot system was allowed to be tested before deployment. Researchers breached it with relative ease: “Within 36 hours of the system going live, our team had found and exploited a vulnerability that gave us almost total control of the server software, including the ability to change votes and reveal voters’ secret ballot.” [Attacking the Washington, D.C. Internet Voting System](#) (2012)

- 3) Statement from the National Institute of Standards and Technology (NIST) summarizing its findings from various reports: <http://www.nist.gov/itl/vote/uocava.cfm>

Additional NIST research:

NIST, *A Threat Analysis of UOCAVA Voting Systems (Report 7551)*, (December 2008):

“Emails are significantly easier to intercept and modify in transit than other forms of communication.”

<http://www.nist.gov/itl/vote/upload/uocava-threatanalysis-final.pdf>

NIST, *Security Considerations for Remote Electronic UOCAVA Voting (Report 7770)*, (February 2011): “Because of the difficulty of validating and verifying software on remote electronic voting system servers and personal computers, ensuring remote electronic voting systems are auditable largely remains a challenging problem, with no current or proposed technologies offering a viable solution.” <http://www.nist.gov/itl/vote/upload/NISTIR-7770-feb2011-2.pdf>

- 4) The May 2013 **Federal Voting Assistance Program** report to Congress: *2010 Electronic Voting Support Wizard (EVSU)*, stated that postal mail return of a voted ballot “remains the most responsible method of ballot return...”: https://www.fvap.gov/uploads/FVAP/Reports/evsu_report.pdf

See also FVAP, *UOCAVA Voting: Successes and Challenges* (July 2015). It identifies an important list of obstacles to voting for military and other overseas voters.

<https://www.fvap.gov/info/news/2015/7/29/new-qualitative-research-identifies-voting-barriers>

- 5) The security report on the SERVE online voting system meant to be deployed by the Department of Defense in the 2004 election. The Department of Defense [cancelled](#) the project concluding they could not ensure the legitimacy of the ballots sent over the Internet. The researchers’ conclusions are even more relevant today as they were twelve years ago as the online threat environment has only worsened and the cyber crime marketplace has matured. “Because the danger of successful, large-scale attacks is so great, we reluctantly recommend shutting down the development of SERVE immediately and not attempting

anything like it in the future until both the Internet and the world's home computer infrastructure have been fundamentally redesigned, or some other unforeseen security breakthroughs appear. We want to make clear that in recommending that SERVE be shut down, we mean no criticism of the FVAP, or of Accenture, or any of its personnel or subcontractors. They have been completely aware all along of the security problems we describe here, and we have been impressed with the engineering sophistication and skill they have devoted to attempts to ameliorate or eliminate them. We do not believe that a differently constituted project could do any better job than the current team. The real barrier to success is not a lack of vision, skill, resources, or dedication; it is the fact that, given the current Internet and PC security technology, and the goal of a secure, all-electronic remote voting system, the FVAP has taken on an essentially impossible task. There really is no good way to build such a voting system without a radical change in overall architecture of the Internet and the PC, or some unforeseen security breakthrough. The SERVE project is thus too far ahead of its time, and should wait until there is a much improved security infrastructure to build upon.” <http://www.servesecurityreport.org/>

- 6) A [2011 report](#) obtained by the Electronic Privacy Information Center (EPIC) via a [Freedom of Information Act lawsuit](#) described a study of online voting and electronic ballot delivery systems for wounded warriors. Some participants raised concerns about issues of privacy and security, even though a review of the study’s survey instruments indicates that it is likely participants were not told that voting online was risky to both privacy and security. The study was not comprehensive on these points; observers of the participants using the tested systems were looking for issues like whether the audio interface is audible only to the voter, or whether the device tested issued a receipt that would provide proof to another of how the voter voted. Recommendations included adding “visible security features” like those found on banking websites to allay concerns.
- 7) The U.S. Election Assistance Commission’s Brian Hancock on email return of voted ballots. *“Email is about the least secure method of ballot delivery.”* Internet Voting – Not Ready for Prime Time?” National Conference of State Legislatures, *The Canvass* (Feb 2013) http://www.ncsl.org/Documents/legismgt/elect/Canvass_Feb_2013_no_37.pdf
- 8) Galois proof of concept to hack pdf ballots sent by email. <http://galois.com/blog/2014/11/hacking-internet-voting-via-ballot-tampering/>
- 9) US Association of Computing Machinery (USACM) reports on Internet voting: <http://cacm.acm.org/magazines/2012/10/155536-internet-voting-in-the-us/fulltext> and https://www.verifiedvoting.org/wp-content/uploads/2013/04/IB_Internet_Voting_UOCAVA.pdf
- 10) International reports:

Estonia is often touted as having deployed a secure Internet voting system. Researchers examined the system to assess the security and found exploitable vulnerabilities that could permit state attackers to manipulate the system undetected. <http://estoniaevoting.org>

In New South Wales (NSW), researchers found they could *defeat the online voting system’s*

encryption by intercepting a third party script that was introduced into every voter's browser. They would then be able to intercept and change every vote before sending it. Over 66,000 votes were cast before the vulnerability was patched.

<https://freedom-to-tinker.com/blog/teaguchalderman/ivote-vulnerability/>

Canada's national elections commission has postponed further consideration of Internet voting for the time being, but individual jurisdictions have done some review. Toronto engaged security tests of three different systems and found them all unacceptable.

<https://www.verifiedvoting.org/wp-content/uploads/2014/09/Canada-2014-01543-security-report.pdf>

- 11) Cybersecurity expert Bruce Schneier on election security vulnerabilities and the 2016 election: Bruce Schneier, By November, Russian hackers could target voting machines (July 27, 2016), *available at* <https://www.washingtonpost.com/posteverything/wp/2016/07/27/by-november-russian-hackers-could-target-voting-machines/>.
- 12) David Chaum, *Secret-Ballot Receipts: True Voter-Verifiable Elections* (January 2004), *available at* <https://people.csail.mit.edu/rivest/voting/papers/Chaum-SecretBallotReceiptsTrueVoterVerifiableElections.pdf>.
- 13) Ron Rivest, *Auditability and Verifiability of Elections* (March 2016), *available at* <https://people.csail.mit.edu/rivest/pubs/Riv16x.pdf>.

Additional reports and articles are available at the Verified Voting web page on Internet voting resources at <https://www.verifiedvoting.org/resources/internet-voting/> and at the Electronic Privacy Information Center's page on voter privacy at <https://epic.org/privacy/voting/>.

APPENDIX 2: STATE STATUTORY AND REGULATORY PROVISIONS

ALABAMA

Constitutional provision re: right to secret ballot

Ala. Const. Art. VIII, § 177, as amended by Ala. Const. Amend. No. 865.

The right of individuals to vote by secret ballot is fundamental. Where state or federal law requires elections for public office or public votes on referenda, or designations or authorizations of employee representation, the right of individuals to vote by secret ballot shall be guaranteed.

Statutory provisions re: secret voting

Ala. Code § 17-6-34

Every voter in Alabama shall have the right to vote a secret ballot, and that ballot shall be kept secret and inviolate.

Ala. Code § 11-46-114

(a) Every voter in a municipal election shall have the right to vote a secret ballot, which shall be kept secret and inviolate.

Exceptions to right to secret ballot

Ala. Code § 17-9-13

Any person who wishes assistance in voting may receive assistance from any person the voter chooses except the voter's employer, an agent of the employer, or an officer or agent of the voter's union. The voter is not required to state a reason for requesting assistance.

Privacy waiver required?

Ala. Code § 17-11-47(6)

By faxing a voted ballot, the voter voluntarily waives his or her right to a secret ballot.

ALASKA

Constitutional provision re: right to secret ballot

AK Const. Art. 5, § 3

Secrecy of voting shall be preserved.

Statutory provisions re: secret voting

Alaska Stat. § 15.15.060(b)

To assure administrative economy and to protect the secrecy of the ballot, the director may adopt regulations prescribing (1) the type of polling place for holding the election; (2) the

requirements regarding ballot boxes, voting screens, national flags, and other supplies; and (3) subject to the specifications of (a) of this section, the requirements regarding voting booths.

Alaska Stat. § 15.20.061(c)

On receipt of an absentee ballot in person, the voter shall proceed to mark the ballot in secret, to place the ballot in the secrecy sleeve, to place the secrecy sleeve in the envelope provided, and to sign the voter's certificate on the envelope in the presence of the election official who shall sign as attesting official and date that signature. The election official shall then accept the ballot.

Alaska Stat. § 15.20.072(d)

The representative shall deliver the special needs ballot and other voting materials to the voter as soon as practicable. The voter shall mark the ballot in secret, place the ballot in the secrecy sleeve, and place the secrecy sleeve in the envelope provided.

Alaska Stat. § 15.20.081(d)

Upon receipt of an absentee ballot by mail, the voter, in the presence of a notary public, commissioned officer of the armed forces including the National Guard, district judge or magistrate, United States postal official, registration official, or other person qualified to administer oaths, may proceed to mark the ballot in secret, to place the ballot in the secrecy sleeve, to place the secrecy sleeve in the envelope provided, and to sign the voter's certificate on the envelope in the presence of an official listed in this subsection who shall sign as attesting official and shall date the signature.

Alaska Stat. § 15.15.230

When the voter has qualified to vote, the election official shall give the voter an official ballot. The voter shall retire to a booth or private place to mark the ballot.

Exceptions to right to secret ballot

Alaska Stat. § 15.15.240

A qualified voter needing assistance in voting may request an election official, a person, or not more than two persons of the voter's choice to assist. If the election official is requested, the election official shall assist the voter. If any other person is requested, the person shall state upon oath before the election official that the person will not divulge the vote cast by the person assisted.

Alaska Stat. § 15.20.066

An absentee ballot that is completed and returned by the voter by electronic transmission must (1) contain the following statement: "I understand that, by using electronic transmission to return my marked ballot, I am voluntarily waiving a portion of my right to a secret ballot to the extent necessary to process my ballot, but expect that my vote will be held as confidential as possible," followed by the voter's signature and date of signature [...]

Privacy waiver required?

Alaska Stat. § 15.20.066

An absentee ballot that is completed and returned by the voter by electronic transmission must (1) contain the following statement: “I understand that, by using electronic transmission to return my marked ballot, I am voluntarily waiving a portion of my right to a secret ballot to the extent necessary to process my ballot, but expect that my vote will be held as confidential as possible,” followed by the voter's signature and date of signature [...]

ARIZONA

Constitutional provision re: right to secret ballot

Ariz. Const. Art. 7 § 1

All elections by the people shall be by ballot, or by such other method as may be prescribed by law; Provided, that secrecy in voting shall be preserved.

Statutory provisions re: secret voting

Ariz. Rev. Stat. § 16-580(B)

On receiving a ballot the voter shall promptly and without leaving the voting area retire alone, except as provided in subsection G of this section, to one of the voting booths that is not occupied, prepare the ballot in secret and vote in the manner and substantial form as required by the instruction to voters.

Ariz. Rev. Stat. § 16-447(C)

The board of supervisors or other authority in charge of elections shall have delivered to each polling place a sufficient number of voting booths and voting or marking devices. The voting booths shall be durably constructed and shall be of sufficient size and so designed as to enable the voter to mark the voter's ballot in secrecy.

Ariz. Rev. Stat. § 16-424(B)(2)

A voting machine shall: [...] 2. Insure voting in absolute secrecy.

Ariz. Rev. Stat. § 16-548(A)

The early voter shall make and sign the affidavit and shall then mark his ballot in such a manner that his vote cannot be seen. The early voter shall fold the ballot, if a paper ballot, so as to conceal the vote and deposit the voted ballot in the envelope provided for that purpose, which shall be securely sealed and, together with the affidavit, delivered or mailed to the county recorder or other officer in charge of elections of the political subdivision in which the elector is registered or deposited by the voter or the voter's agent at any polling place in the county. In order to be counted and valid, the ballot must be received by the county recorder or other officer in charge of elections or deposited at any polling place in the county no later than 7:00 p.m. on election day.

Exceptions to right to secret ballot

Ariz. Rev. Stat. § 16-580(G)

Any registered voter, at the voter's option, may be accompanied by a minor who is permitted in the voting booth pursuant to § 16-515, subsection E, be accompanied and assisted by a person of the voter's own choice or be assisted by two election officials, one from each major political party, during any process relating to voting or during the actual process of voting on a paper ballot, machine or electronic voting system. A person who is a candidate for an office in that election other than the office of precinct committeeman is not eligible to assist any voter.

Privacy waiver required?

Yes, must use FVAP Electronic Transmission cover letter which reads “If a VOTED BALLOT is being faxed or emailed, sign below:

“I understand that by faxing or emailing my voted ballot I am voluntarily waiving my right to a secret ballot”. Available at <https://www.fvap.gov/uploads/FVAP/Forms/coversheet.pdf>. If using FWAB, secrecy waiver must be included.

ARKANSAS

Constitutional provision re: right to secret ballot

Ark Const. Amend. 50, § 2

All elections by the people shall be by ballot or by voting machines which insure the secrecy of individual votes.

AR Const. Amend. 81

(a) Intent: The people of Arkansas find and declare that Section 3 of Amendment 50 of the Arkansas Constitution needs to be repealed in order to ensure the secrecy of individual votes by the people of this state. The Arkansas Supreme Court, citing this section, subordinated the secrecy of the ballot to the purity of an election by placing a greater importance on the ability to trace ballots. The people of this state believe that the ability to vote in absolute secrecy is of the utmost importance. Therefore, the people of Arkansas, exercising their reserved powers, guarantee the right to a secret ballot.

Statutory provisions re: secret voting

Ark. Code Ann. § 7-5-504

No make of voting machine shall be approved for use unless it is so constructed that: (1) It will ensure secrecy to the voter in the act of voting; [...]

Ark Code Ann. § 7-5-607

In precincts where an electronic vote tabulating device is used, sufficient space shall be provided for the use of the device, and it shall be arranged in such a manner as to assure secrecy in voting.

Ark. Code Ann. § 7-5-604(a)

Paper ballot voting systems that include electronic vote tabulating devices may be used in elections, provided that the systems shall: (1) Enable the voter to cast a vote in secrecy; [...]

Exceptions to right to secret ballot

Ark. Code Ann. § 7-5-310

(a)(1) Each voter shall be provided the privacy to mark his or her ballot. Privacy shall be provided by the poll workers at each polling site or by the county clerk, if the county clerk conducts early voting, to ensure that a voter desiring privacy is not singled out.

[...]

(b)(1) A voter shall inform the poll workers at the time that the voter presents himself or herself to vote that he or she is unable to mark or cast the ballot without help and needs assistance in casting his or her ballot.

(2) The voter shall be directed to a voting machine equipped for use by persons with disabilities by which he or she may elect to cast his or her ballot without assistance, or the voter may request assistance with either the paper ballot or the voting machine, depending on the voting system in use for the election, by:

(A) Two (2) poll workers; or

(B) A person named by the voter.

(3) If the voter is assisted by two (2) poll workers, one (1) of the poll workers shall observe the voting process and one (1) may assist the voter in marking and casting the ballot according to the wishes of the voter without comment or interpretation.

(4)(A) If the voter is assisted by one (1) person named by the voter, he or she may assist the voter in marking and casting the ballot according to the wishes of the voter without any comment or interpretation.

(B) No person other than the following shall assist more than six (6) voters in marking and casting a ballot at an election:

(i) A poll worker;

(ii) The county clerk during early voting; or

(iii) A deputy county clerk during early voting.

Privacy waiver required?

N/A

Relevant Case Law

Jones v. Glidewell, 53 Ark. 161, 13 S.W. 723 (1890) (“The secrecy of the ballot is a personal privilege, which the voter may waive if it is his wish, but of which he cannot be lawfully deprived.”)

CALIFORNIA

Constitutional provision re: right to secret ballot

Cal. Const. Art. 2, § 7

Voting shall be secret.

Statutory provisions re: secret voting

Cal. Elec. Code § 14276

After his or her ballot is marked, a voter shall not show it to any person in such a way as to reveal its contents.

Cal. Elec. Code § 14287

No voter shall place personal information upon a ballot that identifies the voter. “Personal information” includes all of the following: (a) The signature of the voter. (b) The initials, name, or address of the voter. (c) A voter identification number. (d) A social security number. (e) A driver's license number.

Cal. Elec. Code § 15250.5(c)(2)

To protect a person's right to cast a secret ballot under Section 7 of Article II of the California Constitution, in cases where fewer than 10 voters cast ballots on any single voting machine on which the results are tallied at the precinct, the precinct board shall post only the total number of people who voted on that voting machine, and shall not post the total number of votes cast on each voting machine for each candidate for each office or the total number of votes cast on each voting machine for and against each ballot measure.

Cal. Elec. Code § 15281

The precinct board shall sign and post conspicuously on the outside of the polling place a copy of the result of the votes cast. The copy shall remain posted for at least 48 hours after the official time fixed for the closing of the polls. To protect a person's right to cast a secret ballot under Section 7 of Article II of the California Constitution, in cases where fewer than 10 voters cast ballots and the precinct board tallies the results at the precinct, the precinct board shall post only the total number of people who voted at the precinct.

Cal. Elec. Code § 3017(b)

The elections official shall establish procedures to ensure the secrecy of a ballot returned to a precinct polling place and the security, confidentiality, and integrity of any personal information collected, stored, or otherwise used pursuant to this section.

Cal Elec. Code § 14282

(a) When a voter declares under oath, administered by any member of the precinct board at the time the voter appears at the polling place to vote, that the voter is then unable to mark a ballot, the voter shall receive the assistance of not more than two persons selected by the voter, other than the voter's employer, an agent of the voter's employer, or an officer or agent of the union of which the voter is a member.

(b) No person assisting a voter shall divulge any information regarding the marking of the ballot.

Cal. Elec. Code § 18564

Any person is guilty of a felony, punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years who, before or during an election:

(a) Tamper with, interferes with, or attempts to interfere with, the correct operation of, or willfully damages in order to prevent the use of, any voting machine, voting device, voting system, vote tabulating device, or ballot tally software program source codes.

(b) Interferes or attempts to interfere with the secrecy of voting or ballot tally software program source codes.

Cal. Elec. Code § 19283

(b) Ballot marking system standards adopted by the Secretary of State pursuant to subdivision (a) shall include, but not be limited to, all of the following requirements: [...] (2) The ballot marking system shall preserve the secrecy of the ballot.

Cal. Elec. Code § 19101

(b) Voting system standards adopted by the Secretary of State pursuant to subdivision (a) shall include, but not be limited to, all of the following requirements:[...] (2) The system shall preserve the secrecy of the ballot.

Cal. Elec. Code § 3017

(b) The elections official shall establish procedures to ensure the secrecy of a ballot returned to a precinct polling place and the security, confidentiality, and integrity of any personal information collected, stored, or otherwise used pursuant to this section.

Exceptions to right to secret ballot

Cal Elec. Code § 14282

(a) When a voter declares under oath, administered by any member of the precinct board at the time the voter appears at the polling place to vote, that the voter is then unable to mark a ballot, the voter shall receive the assistance of not more than two persons selected by the

voter, other than the voter's employer, an agent of the voter's employer, or an officer or agent of the union of which the voter is a member.

(b) No person assisting a voter shall divulge any information regarding the marking of the ballot.

Cal. Elec. Code § 14222

Nothing contained in this code shall prevent a voter from being accompanied by a child or children under the age of 18 years while the voter is within the voting booth area if the child is, or children are, under the voter's care.

Privacy waiver required?

Cal. Elec. Code § 3106

(a) A military or overseas voter who is living outside of the territorial limits of the United States or the District of Columbia, or is called for military service within the United States on or after the final date to make application for a vote by mail ballot, may return his or her ballot by facsimile transmission. To be counted, the ballot returned by facsimile transmission shall be received by the voter's elections official no later than the closing of the polls on election day and shall be accompanied by an identification envelope containing all of the information required by Section 3011 and an oath of voter declaration in substantially the following form:

“OATH OF VOTER

I,____, acknowledge that by returning my voted ballot by facsimile transmission I have waived my right to have my ballot kept secret. Nevertheless, I understand that, as with any vote by mail voter, my signature, whether on this oath of voter form or my identification envelope, will be permanently separated from my voted ballot to maintain its secrecy at the outset of the tabulation process and thereafter. [...]”

YOUR BALLOT CANNOT BE COUNTED UNLESS YOU SIGN THE ABOVE OATH AND INCLUDE IT WITH YOUR BALLOT AND IDENTIFICATION ENVELOPE, ALL OF WHICH ARE RETURNED BY FACSIMILE TRANSMISSION.”

(b) Notwithstanding the voter's waiver of the right to a secret ballot, each elections official shall adopt appropriate procedures to protect the secrecy of ballots returned by facsimile transmission.

Relevant Case Law

Bridgeman v. McPherson 45 Cal.Rptr.3d 813, 141 Cal.App.4th 277 (App. 3 Dist. 2006) (Statute requiring UOCAVA to sign waiver of right to a secret ballot did not violate California's constitutional provision that “voting shall be kept secret”; “the constitutional guarantee of secret ballot must be balanced against the constitutional right of voters to cast a vote.”)

COLORADO

Constitutional provision re: right to secret ballot

Colo. Const. Art. 7, § 8

All elections by the people shall be by ballot, and in case paper ballots are required to be used, no ballots shall be marked in any way whereby the ballot can be identified as the ballot of the person casting it. The election officers shall be sworn or affirmed not to inquire or disclose how any elector shall have voted. In all cases of contested election in which paper ballots are required to be used, the ballots cast may be counted and compared with the list of voters, and examined under such safeguards and regulations as may be provided by law. Nothing in this section, however, shall be construed to prevent the use of any machine or mechanical contrivance for the purpose of receiving and registering the votes cast at any election, provided that secrecy in voting is preserved.

Statutory provisions re: secret voting

Colo. Rev. Stat. § 1-5-407(1.6)

A ballot stub may be used, but is not required, for a ballot produced on demand, so long as the quantity of ballots produced for the election can be reconciled by the ballot processing method used by the voting system. Such ballots may contain printed and distinguishing marks, so long as secrecy in voting is protected.

Colo. Rev. Stat. § 31-10-911

The election official in charge of the mail ballot counting center shall take all precautions necessary to ensure the secrecy of the counting procedures, and the election officials or watchers shall not release any information concerning the count until after 7 p.m. on election day.

Colo. Rev. Stat. § 1-5-611

(1) No non-punch card electronic voting system shall be purchased, leased, or used unless it fulfills the following requirements: (a) It provides for voting in secrecy; [...]

Colo. Rev. Stat. § 1-5-615

(1) The secretary of state shall not certify any electronic or electromechanical voting system unless such system: (a) Provides for voting in secrecy; [...]

Colo. Rev. Stat. § 31-10-1517

Except as provided in section 31-10-608 or 31-10-609, no voter shall show his ballot after it is prepared for voting to any person in such a way as to reveal its contents, and no person shall solicit or induce the voter to do so. No voter shall place any mark upon his ballot by means of which it can be identified as the one voted by him, and no other mark shall be placed upon the ballot to identify it after it has been prepared for voting. Any person violating the provisions of this section commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Colo. Rev. Stat. § 1-13-712

- (1) Except as provided in section 1-7-108, no voter shall show his ballot after it is prepared for voting to any person in such a way as to reveal its contents. No voter shall place any mark upon his ballot by means of which it can be identified as the one voted by him, and no other mark shall be placed on the ballot by any person to identify it after it has been prepared for voting.
- (2) No person shall endeavor to induce any voter to show how he marked his ballot.
- (3) No election official, watcher, or person shall reveal to any other person the name of any candidate for whom a voter has voted or communicate to another his opinion, belief, or impression as to how or for whom a voter has voted.
- (4) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in section 1-13-111.

Colo. Rev. Stat. § 31-10-1514

Any election official, watcher, or person who assists an individual with a disability in voting and who reveals how the individual with a disability voted commits a misdemeanor and, upon conviction thereof, shall be punished as provided in section 31-10-1504.

Exceptions to right to secret ballot

Colo. Rev. Stat. § 31-10-608

- (1) If, at any regular or special election, any voter declares under oath to the judges of election of the precinct where he is entitled to vote that, by reason of blindness or other physical disability or inability to read or write, he is unable to prepare his ballot or operate the voting machine without assistance, he is entitled, upon his request, to receive the assistance of any one of the judges of election or, at his option, of any qualified elector of the precinct selected by the disabled voter. No person other than a judge of election in the precinct is permitted to enter the polling booth as an assistant to more than one voter.

Colo. Rev. Stat. § 1-13.5-607

Notwithstanding any provision of section 1-13.5-606 to the contrary, if, at any election, an eligible elector declares under oath to the election judges of the polling place that, by reason of visual impairment or other physical disability or inability to read or write, the elector is unable to prepare his or her ballot or operate the voting machine without assistance, the elector may, upon request, receive the assistance of any one of the election judges or, at the elector's option, any other person selected by the elector requiring assistance. No person, other than an election judge, is permitted to enter a voting booth as an assistant to more than one elector.

Privacy waiver required?

Yes, by regulation. 8 Colo. Code Regs. § 1505-1:16.2.3

The self-affirmation must include the standard oath required by the Uniformed and Overseas Citizen Voting Act (42 U.S.C sec. 1973ff(b)(7) and 1(a)(5)), the elector's name, date of birth, signature, and the following statement: I also understand that by returning my voted ballot by electronic transmission, I am voluntarily waiving my right to a secret ballot and that Colorado law requires that I return this ballot by a more secure method, such as mail, if available and feasible.

CONNECTICUT

Constitutional provision re: right to secret ballot

Conn. Const. Art. 6 § 5

In all elections of officers of the state, or members of the general assembly, the votes of the electors shall be by ballot, either written or printed, except that voting machines or other mechanical devices for voting may be used in all elections in the state, under such regulations as may be prescribed by law. No voting machine or device used at any state or local election shall be equipped with a straight ticket device. The right of secret voting shall be preserved.

Statutory provisions re: secret voting

Conn. Gen. Stat. Ann. § 9-261

The elector shall be permitted into the voting booth area, and shall then register his or her vote in secret.

Conn. Gen. Stat. Ann. § 9-366

Any person who [...]does any act which invades or interferes with the secrecy of the voting or causes the same to be invaded or interfered with, shall be guilty of a class D felony.

Conn. Gen. Stat. Ann. § 9-242

(a) A voting tabulator approved by the Secretary of the State shall be so constructed as to provide facilities for voting for the candidates of at least nine different parties or organizations. It shall permit voting in absolute secrecy.

Conn. Gen. Stat. Ann. § 9-264

Any person accompanying an elector into the voting booth who [...] gives information to any person as to what person or persons such elector voted for, or how such elector voted on any question, shall be guilty of a class D felony.

Exceptions to right to secret ballot

Conn. Gen. Stat. Ann. § 9-264

An elector who requires assistance to vote, by reason of blindness, disability or inability to write or to read the ballot, may be given assistance by a person of the elector's choice, other than (1) the elector's employer, (2) an agent of such employer, (3) an officer or agent of the elector's union, or (4) a candidate for any office on the ballot, unless the elector is a member of the immediate family of such candidate. The person assisting the elector may accompany

the elector into the voting booth. Such person shall register such elector's vote upon the ballot as such elector directs. Any person accompanying an elector into the voting booth who deceives any elector in registering the elector's vote under this section or seeks to influence any elector while in the act of voting, or who registers any vote for any elector or on any question other than as requested by such elector, or who gives information to any person as to what person or persons such elector voted for, or how such elector voted on any question, shall be guilty of a class D felony.

Privacy waiver required?

N/A

DELAWARE

Constitutional provision re: right to secret ballot

Del. Const. art. 5 § 1

[T]he General Assembly may by law prescribe the means, methods and instruments of voting so as best to secure secrecy and the independence of the voter, preserve the freedom and purity of elections and prevent fraud, corruption and intimidation thereat.

Statutory provisions re: secret voting

Del. Code Ann. tit. 15 § 4912(a)

(a) The election officers of each election district shall attend at the polling place three quarters of an hour before the time set for opening of the polls and shall proceed to arrange the furniture, stationery and voting machine for the conduct of the election. If not previously collected, the election officers shall collect from the department of elections a list of voters who have voted by absentee ballot and shall maintain the same at the polling place. The election officers shall cause to be posted conspicuously within the polling place an instruction poster and 2 sample ballots. They shall see that the light for the voting machine is in good order and that it is lighted, if that is necessary, in order that the names upon the ballot shall be clearly visible. They shall inspect the screen, hood or curtain of the machine to make certain that it has not been damaged or tampered with so as in any manner to lessen or endanger the secrecy of voting. They shall see to it that no mirror is placed or allowed to remain in such a position so as to permit a view of any part of the front, sides or top of the voting machine.

Del. Code Ann. tit. 15 § 4943(c)

(c) Whenever a voter requests further instructions in the manner of voting or the operation of the voting machine after having entered the voting machine booth, 2 election officers of opposite political parties shall jointly give such instructions. In doing so, the officers shall take care not to assist the voter in any manner that might influence that voter's vote. After giving instructions, both officers shall retire before the voter begins to register that voter's vote, which the voter shall do in secret at all times.

Del. Code Ann. tit. 15 § 5001(a)(2), (b)

(a) Any voting machine may be adopted, purchased or used which shall be so constructed as to fulfill the following requirements: [...] (2) It shall secure to the voter secrecy in the act of voting for or against as many questions as may be submitted; [...]

(b) Every voting machine shall be furnished with a means of providing sufficient light to enable voters while in the voting booth to read the ballots and suitable for use by the election officers in examining the counters. All **voting** devices used in any election shall provide the **voter** the opportunity to make selections and cast a **ballot** in **secrecy** through placement of the devices in the polling place or through the use of curtains or other devices.

Del. Code Ann. tit. 15 § 5001A(a)(2), (b)

(a) Any electronic voting system may be adopted, purchased or used which shall be so constructed as to fulfill the following requirements: [...] (2) It shall secure to the voter secrecy in the act of voting for or against as many questions as may be submitted; [...]

(b) Every voting device or booth shall be provided with a means of providing sufficient light to enable voters while in the voting booth to read the ballots or ballot labels. All voting devices used in any election shall be provided with side curtains and front shield to insure that no person can see or know for whom any voter has voted or is voting.

Del. Code Ann. tit. 15 § 5119

(a) Whoever, being an elector, feigns a physical defect or disability in order to be permitted to bring into the election room or voting booth another person, shall be fined \$100 and shall be imprisoned not more than 2 years.

(b) Whoever, being an elector selected to assist any person by reason of such person's physical defects, reveals how such elector has voted or what persons were voted for by such elector on any ballot or gives any information concerning the appearance of any ballot voted, shall be fined \$100 and imprisoned not less than 1 nor more than 3 years.

Del. Code Ann. tit. 15 § 5122

Whoever, being an election officer:

(1) Reveals to any person how any elector has voted or what persons were voted for by any elector on any ballot; or

(2) Gives any information concerning the appearance of any ballot voted or envelope used;

shall be fined not more than \$500 and imprisoned not less than 2 nor more than 5 years.

Del. Code Ann. tit. 15 § 7578(12)

At any time between the opening and the closing of the polls on an election day, absentee election judges selected by a municipality's board of elections, shall count absentee ballots at a properly noticed public meeting in the municipality's offices or at the place of the election, at the municipality's discretion, in accordance with the procedures set out below. Anything

herein to the contrary notwithstanding, at the discretion of the municipality, the board of elections may itself act as the absentee election judges.

[...] (12) Anything herein to the contrary notwithstanding, when the number of absentee ballots returned to the municipality is less than 5, the municipality may develop a counting procedure protective of the secrecy of the ballot.

Exceptions to right to secret ballot

Del. Code Ann. tit. 15 § 4943

(a) Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

(b) Any election officer may provide instruction or information for a voter through use of 1 of the sample ballots posted in the voting room.

(c) Whenever a voter requests further instructions in the manner of voting or the operation of the voting machine after having entered the voting machine booth, 2 election officers of opposite political parties shall jointly give such instructions. In doing so, the officers shall take care not to assist the voter in any manner that might influence that voter's vote. After giving instructions, both officers shall retire before the voter begins to register that voter's vote, which the voter shall do in secret at all times.

Del. Code Ann. tit. 15 § 5521(c)

(c) A person eligible to vote by FWAB may return the ballot, eligibility information and signed oath by electronic transmission. Any person returning the FWAB electronically is deemed to have acknowledged that there may be situations where the secrecy of that person's ballot cannot be guaranteed.

Del. Code Ann. tit. 15 § 5525(d)

(d) An applicant who is sent a ballot electronically may return such ballot via postal mail, courier or electronic means in accordance with the instructions sent with the ballot. A voter who returns a ballot electronically is deemed to have acknowledged that there may be situations where the secrecy of that voter's ballot cannot be guaranteed.

Privacy waiver required?

No. Does not require voters to sign a waiver, but Del. Code Ann. tit. 15 § 5525(d) reads "A voter who returns a ballot electronically is deemed to have acknowledged that there may be situations where the secrecy of that voter's ballot cannot be guaranteed."

DISTRICT OF COLUMBIA

Constitutional provision re: right to secret ballot

N/A

Statutory provisions re: secret voting

DC ST § 1-1001.09(a)

Voting in all elections shall be secret.

Exceptions to right to secret ballot

DC ST § 1-1001.09(f) (*Disability exception*)

If a qualified elector is unable to record his or her vote by marking the ballot or operating the voting machine an official of the polling place shall, on the request of the voter, enter the voting booth and comply with the voter's directions with respect to recording his or her vote. Upon the request of any such voter, a second official of the polling place shall also enter the voting booth and witness the recordation of the voter's directions. The official or officials shall in no way influence or attempt to influence the voter's decisions, and shall tell no one how the voter voted. The official in charge of the voting place shall make a return of all such voters, giving their names and disabilities.

Title 3 DCMR Section 718.9

A qualified uniformed services or overseas voter who submits his or her ballot electronically shall provide and sign the following statement on a separate document: "I understand that by electronically submitting my voted ballot I am voluntarily waiving my right to a secret ballot."

Privacy waiver required?

Title 3 DCMR Section 718.9

A qualified uniformed services or overseas voter who submits his or her ballot electronically shall provide and sign the following statement on a separate document: "I understand that by electronically submitting my voted ballot I am voluntarily waiving my right to a secret ballot."

FLORIDA

Constitutional provision re: right to secret ballot

Fla. Const. Art. 6 § 1

All elections by the people shall be by direct and secret vote.

Statutory provisions re: secret voting

Fla. Stat. Ann. § 101.041

In all elections held on any subject which may be submitted to a vote, and for all or any state, county, district, or municipal officers, the voting shall be by secret, official ballot as provided by this code, and no vote shall be received or counted in any election, except as prescribed by this code.

Fla. Stat. Ann. § 101.5606

No electronic or electromechanical voting system shall be approved by the Department of State unless it is so constructed that:

- (1) It permits and requires voting in secrecy. [...]

Fla. Stat. Ann. § 101.5608(2)(a)

After receiving a ballot from an inspector, the elector shall, without leaving the polling place, retire to a booth or compartment and mark the ballot. After marking his or her ballot, the elector shall place the ballot in a secrecy envelope so that the ballot will be deposited in the tabulator without exposing the voter's choices.

Fla. Stat. Ann. § 101.6103

- (1) Except as otherwise provided in subsection (7), the supervisor of elections shall mail all official ballots with a secrecy envelope, a return mailing envelope, and instructions sufficient to describe the voting process to each elector entitled to vote in the election not sooner than the 20th day before the election and not later than the 10th day before the date of the election. All such ballots shall be mailed by first-class mail. Ballots shall be addressed to each elector at the address appearing in the registration records and placed in an envelope which is prominently marked "Do Not Forward."

- (2) Upon receipt of the ballot the elector shall mark the ballot, place it in the secrecy envelope, sign the return mailing envelope supplied with the ballot, and comply with the instructions provided with the ballot. The elector shall mail, deliver, or have delivered the marked ballot so that it reaches the supervisor of elections no later than 7 p.m. on the day of the election. The ballot must be returned in the return mailing envelope. [...]

Fla. Stat. Ann. § 101.6923

[...]

2. Mark your ballot in secret as instructed on the ballot. You must mark your own ballot unless you are unable to do so because of blindness, disability, or inability to read or write.

[...]

4. Place your marked ballot in the enclosed secrecy envelope and seal the envelope.

5. Insert the secrecy envelope into the enclosed envelope bearing the Voter's Certificate. Seal the envelope and completely fill out the Voter's Certificate on the back of the envelope.

[...]

6. Unless you meet one of the exemptions in Item 7., you must make a copy of one of the following forms of identification:

- a. Identification which must include your name and photograph: United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; or public assistance identification; or
- b. Identification which shows your name and current residence address: current utility bill, bank statement, government check, paycheck, or government document (excluding voter identification card).

[...]

8. Place the envelope bearing the Voter's Certificate into the mailing envelope addressed to the supervisor. Insert a copy of your identification in the mailing envelope. **DO NOT PUT YOUR IDENTIFICATION INSIDE THE SECRECY ENVELOPE WITH THE BALLOT OR INSIDE THE ENVELOPE WHICH BEARS THE VOTER'S CERTIFICATE OR YOUR BALLOT WILL NOT COUNT.**

Exceptions to right to secret ballot

Fla. Stat. Ann. § 101.051

(1) Any elector applying to vote in any election who requires assistance to vote by reason of blindness, disability, or inability to read or write may request the assistance of two election officials or some other person of the elector's own choice, other than the elector's employer, an agent of the employer, or an officer or agent of his or her union, to assist the elector in casting his or her vote. Any such elector, before retiring to the voting booth, may have one of such persons read over to him or her, without suggestion or interference, the titles of the offices to be filled and the candidates therefor and the issues on the ballot. After the elector requests the aid of the two election officials or the person of the elector's choice, they shall retire to the voting booth for the purpose of casting the elector's vote according to the elector's choice.

(2) It is unlawful for any person to be in the voting booth with any elector except as provided in subsection (1). A person at a polling place or early voting site, or within 100 feet of the entrance of a polling place or early voting site, may not solicit any elector in an effort to provide assistance to vote pursuant to subsection (1). Any person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any elector applying to cast an absentee ballot in the office of the supervisor, in any election, who requires assistance to vote by reason of blindness, disability, or inability to read or write may request the assistance of some person of his or her own choice, other than the elector's employer, an agent of the employer, or an officer or agent of his or her union, in casting his or her absentee ballot.

(4) If an elector needs assistance in voting pursuant to the provisions of this section, the clerk or one of the inspectors shall require the elector requesting assistance in voting to take the following oath:

DECLARATION TO SECURE ASSISTANCE

[...]

(6) The supervisor of elections shall deliver a sufficient number of these forms to each precinct, along with other election paraphernalia.

Privacy waiver required?

Fla. Admin. Code Ann. r. 1S-2.030(7)

Ballot Instructions. The instructions to be sent with the absentee ballot to all absent stateside uniformed services and overseas voters shall substantially contain the following statements:

[...] (f) If you are an overseas voter, you have the option to fax your absentee ballot and Voter's Certificate. Fax your voted ballot and signed and dated certificate to the Supervisor of Elections at (fax phone number) or to a fax number provided by the Federal Voting Assistance Program (FVAP) of the Department of Defense. If faxing your ballot and certificate to FVAP, ensure FVAP has sufficient time to get the ballot and certificate to the Supervisor of Elections by the 7:00 p.m. or 10-day deadline, whichever is applicable. If you fax your voted ballot, you will be voluntarily waiving your right to a secret ballot. [...]

Relevant Case law

Boardman v. Esteva, 323 So.2d 259 (1975), certiorari denied 96 S.Ct. 2162 (citing *McDonald v. Miller*, 90 So.2d 124 (Fla.1956)) (“[T]he privilege of secrecy is personal to the voter, and if he so desires may waive it.” By voting absentee, the elector waives secrecy of the ballot.)

GEORGIA

Constitutional provision re: right to secret ballot

Ga. Const. Art. 2, § 1, ¶ I

Elections by the people shall be by secret ballot and shall be conducted in accordance with procedures provided by law.

Statutory provisions re: secret voting

Ga. Code Ann. § 21-2-70(13)

Each superintendent within his or her county or municipality shall exercise all the powers granted to him or her by this chapter and shall perform all the duties imposed upon him or her by this chapter, which shall include the following:

[...] (13) To conduct all elections in such manner as to guarantee the secrecy of the ballot and to perform such other duties as may be prescribed by law; [...]

Ga. Code Ann. § 21-2-322

No voting machine shall be adopted or used unless it shall, at the time, satisfy the following requirements:

[...] (9) It shall permit and require voting in absolute secrecy and shall be so constructed that no person can see or know for whom any other elector has voted or is voting, save an elector whom he or she has assisted or is assisting in voting, as prescribed by law; [...]

Ga. Code Ann. § 21-2-365

No optical scanning voting system shall be adopted or used unless it shall, at the time, satisfy the following requirements:

[...](6) It shall permit voting in absolute secrecy so that no person can see or know for whom any other elector has voted or is voting, save an elector whom he or she has assisted or is assisting in voting, as prescribed by law; [...]

Ga. Code Ann. § 21-2-373

In elections, electors shall be permitted to cast write-in votes. The design of the ballot shall permit the superintendents, in counting the write-in votes, to determine readily whether an elector has cast any write-in vote not authorized by law. The Secretary of State, in specifying the form of the ballot, and the State Election Board, in promulgating rules and regulations respecting the conduct of elections, shall provide for ballot secrecy in connection with write-in votes.

Ga. Code Ann. § 21-2-379.1

No direct recording electronic voting system shall be adopted or used unless it shall, at the time, satisfy the following requirements:

[...] (6) It shall permit voting in absolute secrecy so that no person can see or know for whom any other elector has voted or is voting, save an elector whom he or she has assisted or is assisting in voting, as prescribed by law; [...]

Ga. Code Ann. § 21-2-386(5)

(5) The process for opening the inner envelopes of and tabulating absentee ballots on the day of a primary, election, or runoff as provided in this subsection shall be a confidential process to maintain the secrecy of all ballots and to protect the disclosure of any balloting information before 7:00 P.M. on election day. No absentee ballots shall be tabulated before 7:00 A.M. on the day of a primary, election, or runoff.

Exceptions to right to secret ballot

Ga. Code Ann. § 21-2-385.1

During the period of advance voting established pursuant to subsection (d) of Code Section 21-2-385, each elector who is 75 years of age or older or who is disabled and requires assistance in casting an absentee ballot in person at the registrar's office, absentee ballot clerk's office, or other locations as provided for in Code Section 21-2-382 shall, upon request to a designated office employee or other individual, be authorized to vote immediately at the next available voting compartment or booth without having to wait in line if such location utilizes direct recording electronic voting systems or be authorized to go to the head of any

line necessary to cast a written absentee ballot. Notice of the provisions of this Code section shall be prominently displayed in the registrar's office or absentee ballot clerk's office.

Privacy waiver required?

N/A

HAWAII

Constitutional provision re: right to secret ballot

Haw. Const. Art. 2, § 4

The legislature shall provide for the registration of voters and for absentee voting and shall prescribe the method of voting at all elections. Secrecy of voting shall be preserved; provided that no person shall be required to declare a party preference or nonpartisanship as a condition of voting in any primary or special primary election. Secrecy of voting and choice of political party affiliation or nonpartisanship shall be preserved.

Statutory provisions re: secret voting

Haw. Rev. Stat. § 11-4

[...] In making, amending, and repealing rules and regulations for voters who cannot vote at the polls in person and all other voters, the chief election officer shall provide for voting by such persons in such manner as to insure secrecy of the ballot and to preclude tampering with the ballots of these voters and other election frauds. Such rules and regulations, when adopted in conformity with chapter 91 and upon approval by the governor, shall have the force and effect of law.

Haw. Rev. Stat. § 11-137

No person shall look at or ask to see the contents of the ballot or the choice of party or nonpartisan ballot of any voter, except as provided in section 11-139 and 11-132, nor shall any person within the polling place attempt to influence a voter in regard to whom the voter shall vote for. When a voter is in the voting booth for the purpose of voting, no other person, except as provided in section 11-139 and 11-132, shall be allowed to enter the booth or to be in a position from which the person can observe how the voter votes.

No person shall take a ballot out of the polling place except as provided in sections 11-135 and 11-139. After voting the voter shall leave the voting booth and deliver the voter's ballot to the precinct official in charge of the ballot boxes. The precinct official shall make certain that the precinct official has received the correct ballot and no other and then shall deposit the ballot into the ballot box. No person shall look at or ask to see the contents of the unvoted ballots. If any person having received a ballot leaves the polling place without first delivering the ballot to the precinct official as provided above, or wilfully exhibits the person's ballot or the person's unvoted ballots in a special primary or primary election, except as provided in section 11-139 and 11-132, after the ballot has been marked, the person shall forfeit the person's right to vote, and the chairperson of the precinct officials shall cause a record to be made of the proceeding.

Haw. Rev. Stat. § 16-2

All voting systems adopted under this chapter by the chief election officer or the legislature shall satisfy the following requirements:

- (1) It shall secure to the voter secrecy in the act of voting; [...]

Exceptions to right to secret ballot

Haw. Rev. Stat. § 11-139

(a) Except as otherwise provided, any voter who requires assistance to vote at a polling place or by absentee ballot may be given assistance by a person of the voter's choice. If the voter requires assistance at a polling place, the voter may choose to receive the assistance of two precinct officials who are not of the same political party. Additionally, a voter needing assistance at a polling place may choose to be handed a ballot outside the polling place but within one hundred feet thereof or within the polling place parking lot by the precinct officials and in their presence but in a secret manner, mark and return the same to the precinct officials. The voter's employer or agent of that employer, agent of the voter's labor union, or a candidate for any office that is listed on the ballot shall not provide assistance. Written or oral instructions delivered via telephone, electronic means, or mail shall not be deemed assistance prohibited by this section provided the voter's employer or agent of that employer, agent of the voter's labor union, or a candidate for any office listed on the ballot is not physically present with the voter when the instructions are delivered.

(b) If assistance is provided pursuant to subsection (a), the precinct officials providing assistance shall enter in writing in the record book the following:

- (1) The voter's name;
- (2) The fact that the voter cannot read the names on the ballot, if that is the reason for requiring assistance, and otherwise, the specific physical disability which requires the voter to receive assistance; and
- (3) The name or names of the person or persons furnishing the assistance.

(c) Violation of this section by an employer or agent of that employer, agent of the voter's labor union, or a candidate shall constitute election fraud as provided under section 19-3.

Haw. Rev. Stat. § 15-5(b)

(b) If mailed absentee ballots are not received by the voter within five days of an election, a covered voter under chapter 15D may request that absentee ballots be forwarded by facsimile. Upon receipt of such a request and confirmation that proper application was made, the clerk may transmit appropriate ballots by facsimile together with a form requiring the affirmations and information required by section 15-6, and a form containing a waiver of the right to secrecy, as provided by section 11-137. The voter may return the voted ballots and executed forms by facsimile or mail; provided that they are received by the issuing clerk no later than the close of polls on election day. Upon receipt, the clerk shall verify compliance with the requirements of section 15-9(c), and prepare the ballots for counting pursuant to section 15-10.

Privacy waiver required?

Yes. Haw. Rev. Stat. § 15-5(b)

(b) If mailed absentee ballots are not received by the voter within five days of an election, a covered voter under chapter 15D may request that absentee ballots be forwarded by facsimile. Upon receipt of such a request and confirmation that proper application was made, the clerk may transmit appropriate ballots by facsimile together with a form requiring the affirmations and information required by section 15-6, and a form containing a waiver of the right to secrecy, as provided by section 11-137. The voter may return the voted ballots and executed forms by facsimile or mail; provided that they are received by the issuing clerk no later than the close of polls on election day. Upon receipt, the clerk shall verify compliance with the requirements of section 15-9(c), and prepare the ballots for counting pursuant to section 15-10.

IDAHO

Constitutional provision re: right to secret ballot

Idaho Const. Art. VI, § 1

All elections by the people must be by ballot. An absolutely secret ballot is hereby guaranteed, and it shall be the duty of the legislature to enact such laws as shall carry this section into effect.

Statutory provisions re: secret voting

Idaho Code Ann. § 34-302

The board shall, not less than thirty (30) days before any election, designate a suitable polling place for each election precinct. Insofar as possible, the board shall designate the same polling place for the general election which it designated for the primary election. The physical arrangements of the polling place shall be sufficient to guarantee all voters the right to cast a secret ballot. All polling places designated as provided herein, shall conform to the accessibility standards adopted by the secretary of state pursuant to the "Voting Accessibility for the Elderly and Handicapped Act," P.L. 98-4351. The expense of providing such polling places shall be a public charge and paid out of the county treasury.

Idaho Code Ann. § 34-2410

(1) No voting machine or vote tally system shall be approved by the secretary of state unless it is constructed so that it:

(a) Secures to the voter secrecy in the act of voting. [...]

Exceptions to right to secret ballot

Idaho Code Ann. § 34-1108

(1) If any registered elector is unable, due to physical or other disability, to enter the polling place, he may be handed a ballot outside the polling place but within forty (40) feet thereof by one (1) of the election clerks, and in his presence but in a secret manner, mark and return the same to such election officer who shall proceed as provided by law to record the ballot.

(2) If any registered elector, who is unable by reason of physical or other disability to record his vote by personally marking his ballot and who desires to vote, then and in that case such elector shall be given assistance by the person of his choice or by one (1) of the election clerks. Such clerk or selected person shall mark the ballot in the manner directed by the elector and fold it properly and present it to the elector before leaving the voting compartment or area provided for such purpose. The elector shall then present it to the judge of election in the manner provided above.

Privacy waiver required?

No.⁷⁰

ILLINOIS

Constitutional provision re: right to secret ballot

Ill. Const. Art. 3, § 4

The General Assembly by law shall define permanent residence for voting purposes, insure secrecy of voting and the integrity of the election process, and facilitate registration and voting by all qualified persons. Laws governing voter registration and conduct of elections shall be general and uniform.

Statutory provisions re: secret voting

10 Ill. Comp. Stat. Ann. 5/17-8

[...] Where electronic voting systems are used, a booth with a self-contained electronic voting device may be used. Each such booth shall have 3 sides enclosed and shall be equipped with a curtain for closing the front of the booth. The curtain must extend to within 2 feet of the floor. Each side shall be of such a height, in no event less than 5 feet, one inch, as to insure the secrecy of the voter. Each booth shall be at least 32 inches square, provided, however, that where a booth is no more than 23 inches wide and the sides of such booth extend from a point below the device to a height of 5 feet, one inch, at the front of the booth, and such booth insures that voters may prepare their ballots in secrecy, such booth may be used. If an election authority provides each polling place with stickers or emblems to be given to voters indicating that the person has voted, no person who has voted shall be denied such sticker or emblem.

10 Ill. Comp. Stat. Ann. 5/17-13

(b) Any voter with a temporary or permanent disability who, because of structural features of the building in which the polling place is located, is unable to access or enter the polling place, may request that 2 judges of election of opposite party affiliation deliver a ballot to him or her at the point where he or she is unable to continue forward motion toward the polling place; but, in no case, shall a ballot be delivered to the voter beyond 50 feet of the entrance to the building in which the polling place is located. Such request shall be made to the election authority not later than the close of business at the election authority's office on the day before the election and on a form prescribed by the State Board of Elections. The election authority shall notify the judges of election for the appropriate precinct polling places of such requests.

Weather permitting, 2 judges of election shall deliver to the voter with a disability the ballot which he or she is entitled to vote, a portable voting booth or other enclosure that will allow such voter to mark his or her ballot in secrecy, and a marking device.

10 Comp. Stat. Ann. 5/19-5

§ 19-5. It shall be the duty of the election authority to fold the ballot or ballots in the manner specified by the statute for folding ballots prior to their deposit in the ballot box, and to enclose such ballot or ballots in an envelope unsealed to be furnished by him, which envelope shall bear upon the face thereof the name, official title and post office address of the election authority, and upon the other side a printed certification in substantially the following form:

I state that I am a resident of the precinct of the (1) *township of (2) *City of or (3) *.... ward in the city of residing at in such city or town in the county of and State of Illinois, that I have lived at such address for months last past; and that I am lawfully entitled to vote in such precinct at the election to be held on

*fill in either (1), (2) or (3).

I further state that I personally marked the enclosed ballot in secret.

Under penalties of perjury as provided by law pursuant to Section 29-10 of The Election Code, the undersigned certifies that the statements set forth in this certification are true and correct.

If the ballot is to go to an elector who is physically incapacitated and needs assistance marking the ballot, the envelope shall bear upon the back thereof a certification in substantially the following form:

I state that I am a resident of the precinct of the (1) *township of (2) *City of or (3) *.... ward in the city of residing at in such city or town in the county of and State of Illinois, that I have lived at such address for months last past; that I am lawfully entitled to vote in such precinct at the election to be held on; that I am physically incapable of personally marking the ballot for such election.

*fill in either (1), (2) or (3).

I further state that I marked the enclosed ballot in secret with the assistance of

(Individual rendering assistance)

(Residence Address)

Under penalties of perjury as provided by law pursuant to Section 29-10 of The Election Code, the undersigned certifies that the statements set forth in this certification are true and correct.

In the case of a voter with a physical incapacity, marking a ballot in secret includes marking a ballot with the assistance of another individual, other than a candidate whose name appears on the ballot (unless the voter is the spouse or a parent, child, brother, or sister of the candidate), the voter's employer, an agent of that employer, or an officer or agent of the voter's union, when the voter's physical incapacity necessitates such assistance.

In the case of a physically incapacitated voter, marking a ballot in secret includes marking a ballot with the assistance of another individual, other than a candidate whose name appears on the ballot (unless the voter is the spouse or a parent, child, brother, or sister of the candidate), the voter's employer, an agent of that employer, or an officer or agent of the voter's union, when the voter's physical incapacity necessitates such assistance.

Provided, that if the ballot enclosed is to be voted at a primary election, the certification shall designate the name of the political party with which the voter is affiliated.

In addition to the above, the election authority shall provide printed slips giving full instructions regarding the manner of marking and returning the ballot in order that the same may be counted, and shall furnish one of such printed slips to each of such applicants at the same time the ballot is delivered to him. Such instructions shall include the following statement: "In signing the certification on the vote by mail ballot envelope, you are attesting that you personally marked this vote by mail ballot in secret. If you are physically unable to mark the ballot, a friend or relative may assist you after completing the enclosed affidavit. Federal and State laws prohibit a candidate whose name appears on the ballot (unless you are the spouse or a parent, child, brother, or sister of the candidate), your employer, your employer's agent or an officer or agent of your union from assisting voters with physical disabilities." [...]

10 Ill. Comp. Stat. Ann. 5/19-13

Any qualified voter who has been admitted to a hospital, nursing home, or rehabilitation center due to an illness or physical injury not more than 14 days before an election shall be entitled to personal delivery of a vote by mail ballot in the hospital, nursing home, or rehabilitation center subject to the following conditions:

[...]

(2) The voter's physician completes a Certificate of Attending Physician in a form substantially as follows: [...]

Upon receipt of the vote by mail ballot, the admitted voter shall mark the ballot in secret and subscribe to the certifications on the vote by mail ballot return envelope. After depositing the ballot in the return envelope and securely sealing the envelope, such voter shall give the envelope to the precinct voter or the relative who shall deliver it to the election authority in sufficient time for the ballot to be delivered by the election authority to the election authority's central ballot counting location before 7 p.m. on election day. [...]

10 Ill. Comp. Stat. Ann. 5/19A-60

Pollwatchers shall be permitted to observe all proceedings and view all reasonably requested records relating to the conduct of the early voting, provided the secrecy of the ballot is not impinged [...]

10 Ill. Comp. Stat. Ann. 5/24-1

The election authority in all jurisdictions when voting machines are used shall, except as otherwise provided in this Code, provide a voting machine or voting machines for any or all of the election precincts or election districts, as the case may be, for which the election authority is by law charged with the duty of conducting an election or elections. A voting machine or machines sufficient in number to provide a machine for each 400 voters or fraction thereof shall be supplied for use at all elections. However, no such voting machine shall be used, purchased, or adopted, and no person or entity may have a written contract, including a contract contingent upon certification of the voting machines, to sell, lease, or loan voting machines to an election authority, until the board of voting machine commissioners hereinafter provided for, or a majority thereof, shall have made and filed a report certifying that they have examined such machine; that it affords each elector an opportunity to vote in absolute secrecy; [...]

10 Ill. Comp. Stat. Ann. 5/24A-16

The State Board of Elections shall approve all voting systems provided by this Article.

No voting system shall be approved unless it fulfills the following requirements:

- (1) It enables a voter to vote in absolute secrecy; [...]

Exceptions to right to secret ballot

10 Ill. Comp. Stat. Ann. 5/17-14

Any voter who declares upon oath, properly witnessed and with his or her signature or mark affixed, that he or she requires assistance to vote by reason of blindness, physical disability or inability to read, write or speak the English language shall, upon request, be assisted in marking his or her ballot, by 2 judges of election of different political parties, to be selected by all judges of election of each precinct at the opening of the polls or by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union. A voter who presents an Illinois Person with a Disability Identification Card, issued to that person under the provisions of the Illinois Identification Card Act,¹ indicating that such voter has a Class 1A or Class 2 disability under the provisions of Section 4A of the Illinois Identification Card Act,² or a voter who declares upon oath, properly witnessed, that by reason of any physical disability he is unable to mark his ballot shall, upon request, be assisted in marking his ballot by 2 of the election officers of different parties as provided above in this Section or by a person of the voter's choice other than the voter's employer or agent of that employer or officer or agent of the voter's union. Such voter shall state specifically the reason why he cannot vote without assistance and, in the case of a voter with a physical disability, what his physical disability is. Prior to entering the voting booth, the person providing the assistance, if other than 2 judges of election, shall be presented with written instructions on how assistance shall be provided. This instruction shall be

prescribed by the State Board of Elections and shall include the penalties for attempting to influence the voter's choice of candidates, party, or votes in relation to any question on the ballot and for not marking the ballot as directed by the voter. Additionally, the person providing the assistance shall sign an oath, swearing not to influence the voter's choice of candidates, party, or votes in relation to any question on the ballot and to cast the ballot as directed by the voter. The oath shall be prescribed by the State Board of Elections and shall include the penalty for violating this Section. In the voting booth, such person shall mark the ballot as directed by the voter, and shall thereafter give no information regarding the same. The judges of election shall enter upon the poll lists or official poll record after the name of any elector who received such assistance in marking his ballot a memorandum of the fact and if the disability is permanent. Intoxication shall not be regarded as a physical disability, and no intoxicated person shall be entitled to assistance in marking his ballot.

No person shall secure or attempt to secure assistance in voting who is not blind, a person with a physical disability, or illiterate as herein provided, nor shall any person knowingly assist a voter in voting contrary to the provisions of this Section.

Privacy waiver required?

N/A

INDIANA

Constitutional provision re: right to secret ballot

Ind. Const. Art. 2, § 13

All elections by the People shall be by ballot; and all elections by the General Assembly, or by either branch thereof, shall be viva voce.

Statutory provisions re: secret voting

Ind. Code § 3-5-8-2.5

(a) The election division shall prescribe a statement known as the “Absentee Voter's Bill of Rights”.

(b) The Absentee Voter's Bill of Rights must be in a form prescribed by the election division and include the following:

(1) A statement summarizing the rights and responsibilities of the voter when casting and returning the absentee ballot.

(2) A summary of Indiana and federal laws concerning providing assistance to the voter, completion of the ballot in secret, intimidation of voters, and the return of the absentee ballot to the county election board.

(3) Information concerning how to report violations of the absentee ballot and election laws.

Ind. Code § 3-11-7-3

A ballot card voting system must enable a voter to cast a vote in secrecy for all offices and public questions for which the voter is entitled to vote.

Ind. Code § 3-11-7.5-8

An electronic voting system must ensure secrecy to a voter in the act of voting.

Ind. Code § 3-11-10-24(c)

(c) If a voter receives an absentee ballot by mail, the voter shall personally mark the ballot in secret and seal the marked ballot inside the envelope provided by the county election board for that purpose. [...]

Ind. Code § 3-11-11-2(d)

(d) The voting booths or compartments must be of a size and design to permit a voter to mark ballots in secret.

Ind. Code § 3-11-13-8

Unless the marking devices enable the voter to mark a ballot card in secret, a sufficient number of voting booths for each precinct shall be provided. The booths must be of a size and design so as to enable a voter to mark a ballot card in secret.

Ind. Code § 3-14-3-11

A person who recklessly:

- (1) tampers with or damages a marking device, ballot, or other record or equipment used in an election;
- (2) interferes with the correct operation of such a device or equipment; or
- (3) interferes with the secrecy of voting;

commits a Level 6 felony.

Ind. Code § 3-11-14-20

The exterior of an electronic voting system and each area of the polls must be in plain view of the precinct election board. Each system shall be placed so that a person voting on the opposite side of the railing or a person on the outside of the polls cannot see or determine how a voter votes. The inspector, judges, and poll clerks may not remain or allow any other person to remain in a position or near a position that would permit them to see or ascertain how a voter votes.

Ind. Code § 3-14-4-7

A member of a precinct election board or a person otherwise entitled to the inspection of the ballots who knowingly:

- (1) reveals to another person how a voter has voted; or
- (2) gives information concerning the appearance of any ballot voted;

commits a Level 6 felony.

Ind. Code § 3-14-2-16

A person who knowingly does any of the following commits a Level 6 felony:

[...] (2) Except when receiving assistance under IC 3-11-9, shows a ballot after it is marked to another person in such a way as to reveal the contents of it or the name of a candidate for whom the person has voted. [...]

Exceptions to right to secret ballot

Ind. Code § 3-11-9-2

(a) A voter who:

- (1) is a voter with disabilities; or
- (2) is unable to read or write English;

may request assistance in voting before entering the voting booth and designate a person (other than the voter's employer, an officer of the voter's union, or an agent of the voter's employer or union) to assist the voter in voting at an election, as required by 52 U.S.C. 10508.

(b) The person designated must execute a sworn affidavit on a form provided by the absentee voter board or the precinct election board stating that, to the best of the designated person's knowledge, the voter:

- (1) is a voter with disabilities or is unable to read or write English; and
- (2) has requested the designated person to assist the voter in voting under this section.

(c) The person designated may then accompany the voter into the voting booth and assist the voter in marking the voter's paper ballot or ballot card or in registering the voter's vote on the electronic voting system.

Privacy waiver required?

Ind. Code § 3-11-4-6(h)

[...] If the voter wants to submit absentee ballots by fax or electronic mail, the voter must separately sign and date a statement submitted with the electronic mail or the fax

transmission that states substantively the following: “I understand that by faxing or e-mailing my voted ballot I am voluntarily waiving my right to a secret ballot.”.

IOWA

Constitutional provision re: right to secret ballot

Iowa Const. Art. 2, § 6

All elections by the people shall be by ballot.

Clarifying note: two subsequent Attorney General opinions clarified that this Constitutional provision refers to a secret ballot:

- A system which preserves secrecy of ballot or vote fulfills the constitutional requirements of election by “ballot”. Op.Atty.Gen.1900-01, p. 53.
- The use of a voting machine which preserves the secrecy of the ballot and carries out intention of Constitution in this respect does not violate this section or any other constitutional provision. Op.Atty.Gen.1902, p. 52.

Statutory provisions re: secret voting

Iowa Code Ann. § 49.25

[...] 3. The commissioner shall furnish to each precinct the necessary ballot boxes, suitably equipped with seals or locks and keys, and voting booths. The voting booths shall provide for voting in secrecy. At least one voting booth in each precinct shall be accessible to persons with disabilities. Ballot boxes shall be locked or sealed before the polls open and shall remain locked or sealed until the polls are closed, except to provide necessary service to malfunctioning automatic tabulating equipment. If a ballot box is opened prior to the closing of the polls, two precinct election officials not of the same party shall be present and observe the ballot box being opened.

4. Secrecy folders or sleeves shall be provided for use at any precinct where ballots are used which cannot be folded to obscure the marks made by the voters.

Iowa Code Ann. § 49.84

1. a. After receiving the ballot, the voter shall immediately go to the next available voting booth and without delay mark the ballot. All voters shall vote in booths.
 - b. Before leaving the voting booth, the voter may enclose the ballot in a secrecy folder to conceal the marks on the ballot.
 - c. If the precinct has automatic tabulating equipment that will not permit more than one ballot to be inserted at a time, the voter may insert the ballot into the tabulating device; otherwise, the election official shall place the ballot in the ballot box. An identifying mark or symbol shall not be endorsed on the voter's ballot.
2. This section does not prohibit a voter from taking minor children into the voting booth with the voter.

Iowa Code Ann. § 52.26(a)

Provide for voting in secrecy, except as to persons entitled by sections 49.90 and 49.91 to assistance. The state board of examiners for voting systems shall determine whether the systems' voting booths provide for voting in secrecy.

Iowa Code Ann. § 53.23(5)

5. The special precinct election board shall preserve the secrecy of all absentee and provisional ballots. After the affidavits on the envelopes have been reviewed and the qualifications of the persons casting the ballots have been determined, those that have been accepted for counting shall be opened. The ballots shall be removed from the affidavit envelopes or return envelopes marked with the affidavit, as applicable, without being unfolded or examined, and then shall be thoroughly intermingled, after which they shall be unfolded and tabulated. If secrecy folders or envelopes are used with provisional paper ballots, the ballots shall be removed from the secrecy folders after the ballots have been intermingled.

Exceptions to right to secret ballot

Iowa Code Ann. § 49.90

Any voter who may declare upon oath that the voter is blind, cannot read the English language, or is, by reason of any physical disability other than intoxication, unable to cast a vote without assistance, shall, upon request, be assisted by the two officers as provided in section 49.89, or alternatively by any other person the voter may select in casting the vote. The officers, or the person selected by the voter, shall cast the vote of the voter requiring assistance, and shall thereafter give no information regarding the vote cast. If any elector because of a disability cannot enter the building where the polling place for the elector's precinct of residence is located, the two officers shall take a paper ballot to the vehicle occupied by the elector with a disability and allow the elector to cast the ballot in the vehicle. Ballots cast by voters with disabilities shall be deposited in the regular ballot box, or inserted in the tabulating device, and counted in the usual manner.

Privacy waiver required?

Yes, by regulation. Iowa Admin. Code 721-21.320(4)(a)

Electronic transmission of a voted absentee ballot from the voter to the commissioner is permitted only for UOCAVA voters who are located in an area designated as an imminent danger pay area or for active members of the army, navy, marine corps, merchant marine, coast guard, air force or Iowa national guard who are located outside the United States or any of its territories, as provided in subrule 21.1(13). In addition, the absentee ballot may be returned via electronic transmission only if the voter waives the right to a secret ballot. In addition to signing the affidavit required by Iowa Code section 53.13, the voter shall sign a statement in substantially the following form: "I understand that by returning this ballot by electronic transmission, my voted ballot will not be secret. I hereby waive my right to a secret ballot."

KANSAS

Constitutional provision re: right to secret ballot

Kan. Const. Art. 4, § 1

All elections by the people shall be by ballot or voting device, or both, as the legislature shall by law provide.

Clarifying notes: Two Kansas cases clarifying that Kan. Const. Art. 4, § 1 guarantees the right to a secret ballot:

- Voters are guaranteed right to secret ballot under State Constitution. K.S.A. Const. Art. 4, § 1. *Sanyer v. Chapman*, 240 Kan. 409, 729 P.2d 1220 (1986).
- Constitutional right to vote in secret, as implied from provision requiring elections by ballot, may be waived by voter where waiver is not prohibited by statutory enactment. Const. art. 4, § 1; art. 5, § 4. *Lemons v. Noller*, 144 Kan. 813, 63 P.2d 177 (1936).

Statutory provisions re: secret voting

Kan. Stat. Ann. § 25-4406(h)

Electronic or electromechanical voting systems approved by the secretary of state: [...]

(h) shall provide for voting in absolute secrecy, except as to persons who request assistance due to temporary illness or disability or a lack of proficiency in reading the English language; [...]

Exceptions to right to secret ballot

Kan. Stat. Ann. § 25-2909

(a) Any voter unable to mark such person's ballot by reason of temporary illness, disability or lack of proficiency in reading the English language or any voter 65 or more years of age may request assistance in voting.

(b) Upon request as provided in subsection (a), the voter shall be accompanied to the voting booth by a person chosen by the voter or, if no person is chosen, by two members of the election board of different political parties, who shall mark the ballot as such voter directs.

(c) A voter with a disability shall be permitted to vote as provided by law for provisional voters.

(d) A voter with a disability may request that such person's ballot be brought to the entrance to such voting place, or outside the voting place at a location within a radius of 250 feet from the entrance thereof, for the purpose of allowing such voter to vote. Two members of the election board of different political parties shall take a ballot to the voter so requesting and shall remain with such voter while such person votes. In voting places where paper ballots are used, such board members shall deposit such voter's ballot in the ballot box. In voting places where voting machines are used, such voter shall vote on an electronic voting machine or advance voting ballot. Any such ballot, together with objected to and provisional ballots, shall be packaged in accordance with K.S.A. 25-3008, and amendments thereto.

(e) “Disability,” with respect to an individual, means:

- (1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (2) a record of such an impairment; or
- (3) being regarded as having such an impairment.

Intoxication shall not be regarded as a disability.

Privacy waiver required?

Kan. Stat. Ann. § 25-1216

If the voter chooses to transmit the voted ballot to the county election officer by facsimile, electronic mail or other electronic method authorized by the secretary of state the transmittal shall contain the following statement: “I understand that by faxing, emailing or electronically transmitting my voted ballot I am voluntarily waiving my right to a secret ballot.” This statement shall be followed by the voter's signature and the date.

Relevant Caselaw

Lemons v. Noller, 144 Kan. 813, 63 P.2d 177 (1936) (“Constitutional right to vote in secret, as implied from provision requiring elections by ballot, may be waived by voter where waiver is not prohibited by statutory enactment.”)

Sanyer v. Chapman, 240 Kan. 409, 729 P.2d 1220 (1986) (Potential for loss of secrecy resulting from voting by mail are outweighed by compelling state interest in increased participation in election process, therefore mail ballot voting held constitutional.)

KENTUCKY

Constitutional provision re: right to secret ballot

Ky. Const § 147

In all elections by persons in a representative capacity, the voting shall be viva voce and made a matter of record; but all elections by the people shall be by secret official ballot, furnished by public authority to the voters at the polls, and marked by each voter in private at the polls, and then and there deposited, or any person absent from the county of his legal residence, or from the state, may be permitted to vote in a manner provided by law.

Statutory provisions re: secret voting

Ky. Rev. Stat. § 117.125(1)

No make of voting machine shall be approved for use unless it is so constructed that:

- (1) It will insure secrecy to the voter in the act of voting. [...]

Ky. Rev. Stat. § 117.381

No electronic voting system shall, upon any examination or reexamination, be approved by the State Board of Elections unless it shall be established that such system, at the time of examination or reexamination:

- (1) Provides for voting in secrecy;

Ky. Rev. Stat. § 118.025(1)

- (1) Except as otherwise provided by law, voting in all elections shall be by secret ballot on voting machines.

Exceptions to right to secret ballot

Ky. Rev. Stat. § 117.255

- (1) The voter shall be instructed by the officers of election, with the aid of the instruction cards and the model, in the use of the machine, if the voter so requests.
- (2) Except for those voters who have been certified as requiring assistance on a permanent basis, no voter shall be permitted to receive any assistance in voting at the polls unless he makes and signs an oath that, because of blindness, other physical disability, or an inability to read English, he is unable to vote without assistance. The oath shall be upon a voter assistance form prescribed by the State Board of Elections. Any person assisting a voter shall complete the voter assistance form.
- (3) Upon making and filing the oath with the precinct clerk, the voter requiring assistance shall retire to the voting machine or ballot completion area with the precinct judges, and one (1) of the judges shall, in the presence of the other judge and the voter, operate the machine or complete the ballot as the voter directs. A voter requiring assistance in voting may, if he prefers, be assisted by a person of his own choice who is not an election officer, except that the voter's employer, an agent of the voter's employer, or an officer or agent of the voter's union shall not assist a voter.
- (4) The precinct election clerk shall swear a person assisting a voter in voting to operate the voting machine or complete the ballot in accordance with the directions of the voter, and the person sworn shall enter the voting booth or ballot completion area and operate the machine or complete the ballot for the voter as the voter directs.
- (5) A voter who requires voting assistance on a permanent basis because of blindness or other physical disability may apply to the county board of elections for certification. Application may be made when registering to vote or completing the voter assistance form by indicating that the reason for obtaining assistance is permanent. The county board of elections shall determine whether the applicant requires assistance on a permanent basis. The county board of elections shall notify the county clerk of persons certified as requiring permanent voting assistance and the county clerk shall enter the certification on the voter's registration record. The State Board of Elections shall indicate on the precinct roster of voters those voters who are certified to receive assistance permanently without signing the voter assistance form at the precinct.

(6) “Voting booth” or “ballot completion area” means an area in which a voter casts his vote or completes his ballot which is designed to insure the secrecy of the vote. No voter shall be assisted under this subsection unless the judges and the sheriff of election are satisfied of the truth of the facts stated in the oath. The voter shall state in his oath the specific reason that requires him to receive assistance.

(7) No voter shall be permitted to occupy the voting machine more than two (2) minutes if other voters are waiting to use it, except that those voters who because of a disability need extra time to cast a ballot shall be given a reasonable amount of time to vote.

(8) In primary elections, before a voter is permitted to use the voting machine, a judge of the election shall adjust the machine so that the voter will only be able to vote for the persons for whom the voter is qualified to vote.

(9) If the machine is so constructed as to require adjustment after one person has voted before another person may vote, the judges of election shall adjust it after each person has voted.

(10) The election officers shall constantly maintain a watch in order to prevent any person from voting more than once.

(11) If supplemental paper ballots have been approved, as provided in KRS 118.215, the voter shall vote his ballot in privacy in a booth provided for that purpose by the county clerk. If the voter spoils his ballot, he shall return the spoiled paper ballot to an election official who shall stamp the ballot “Spoiled,” initial and place the spoiled ballot in an envelope provided for that purpose. The voter shall be issued a second supplemental paper ballot. Upon completion of voting, the voter shall remove the numbered stub from the ballot, hand the stub to an election official and deposit the voted ballot in the locked ballot box in the presence of precinct election officials.

(12) The election sheriff shall be responsible for reporting violations of this section.

Privacy waiver required?

N/A

LOUISIANA

Constitutional provision re: right to secret ballot

La. Const. Art. 11, § 2

In all elections by the people, voting shall be by secret ballot. The legislature shall provide a method for absentee voting. Proxy voting is prohibited. Ballots shall be counted publicly and preserved inviolate as provided by law until any election contests have been settled. In all elections by persons in a representative capacity, voting shall be viva-voce.

Statutory provisions re: secret voting

La. Stat. Ann. § 18:564(C)

Procedure when voter receives assistance. The person or commissioners assisting the voter shall enter the voting machine with the voter and assist him in voting. No other person shall enter the voting machine or assist the voter in voting. No person selected by the voter to assist him shall reveal the name of any person for whom the voter has voted, any proposition upon which he voted, or anything that took place while the voter was being assisted. When a precinct is equipped with a voting machine which provides an audio ballot, the commissioner shall offer the option of voting using the audio ballot to a visually impaired voter or a voter who is unable to read. If the voter elects to vote using such method, the commissioner shall assist the visually impaired voter or the voter who is unable to read with the headset and instruct the voter and the person selected to assist the voter on the use of the audio ballot.

La. Stat. Ann. § 18:1309(E)(3)

(3) The [early] voter then shall be allowed to cast his vote in an area and in a manner that protects the secrecy of his vote.

La. Stat. Ann. § 18:1355

Each voting machine used in an election shall be so constructed and equipped as to:

(1) Secure to the voter secrecy in the act of voting. [...]

Exceptions to right to secret ballot

La. Rev. Stat. Ann. § 18:106(C)

C. (1) If subsequent to registration a voter acquires a physical disability and needs assistance in voting, he shall notify the appropriate registrar in person or by mail and shall furnish the registrar proof of disability.

(2) For purposes of this Subsection proof of disability means one of the following:

(a) A certificate of a medical doctor or optometrist certifying to the irremediable nature of the physical disability.

(b) A copy of a current mobility impairment identification card bearing a photograph of the voter and the international symbol of accessibility issued by the secretary of the Department of Public Safety and Corrections as authorized by R.S. 47:463.4.

(c) A copy of current documentation showing eligibility for social security disability benefits, veteran's disability benefits, paratransit services, benefits from the office for citizens with developmental disabilities, or benefits from Louisiana Rehabilitation Services.

(3) If notifying the registrar by mail, in addition to notice and proof of disability, the voter shall furnish the registrar a copy of his Louisiana driver's license, his Louisiana special identification card issued pursuant to R.S. 40:1321, or other generally recognized picture identification card that contains the name and signature of the voter, or a form on which the person has listed the names and addresses of at least two persons residing in his precinct who could make oath, if required, to the effect that the person is physically disabled. If he is

unable to sign his name to the notice sent by mail, he shall sign it with his mark witnessed by the signatures of two witnesses.

(4) The failure of a voter to comply with this Subsection, or the furnishing of notice and proof during the time that the registration records are closed, shall not deprive the voter of his right to vote and to receive assistance in voting if he complies with the requirements of the laws governing the conduct of elections with respect to assistance to voters in casting their votes.

Privacy waiver required?

La. Stat. Ann. § 18:1308

If the voter feels he will not have time to vote timely by mail, the voter may request that the registrar transmit to him by facsimile a ballot, or a second ballot, as the case may be, along with a certificate and waiver of the right to a secret ballot, [...] The waiver of the right to a secret ballot shall contain the following statement: “My ballot was transmitted by facsimile to me, and I am voluntarily waiving my right to a secret ballot.”

La. Stat. Ann. § 18:1310(2)

(2) When a member of the United States Service or a person residing outside the United States who is registered to vote receives the absentee voting materials by electronic transmission, he first shall print all documents and fill in all blanks on the certificate and the waiver of the right to a secret ballot for each ballot mailing. The voter then shall mark the ballot or ballots according to the printed instructions on its face. The voter shall then place the voted ballot or ballots, completed certificate, and waiver of the right to a secret ballot for each ballot mailing in a separate envelope, seal the envelope, mark “Absentee Ballot Enclosed” on the envelope, and mail the envelope and its contents to the registrar of voters.

MAINE

Constitutional provision re: right to secret ballot

Maine Const. Art. 2, § 5

Voting machines, or other mechanical devices for voting, may be used at all elections under such regulations as may be prescribed by law, provided, however, the right of secret voting shall be preserved.

Statutory provisions re: secret voting

Me. Rev. Stat. Ann. tit. 21-A § 671(8)

Secrecy preserved. The warden at each voting place may not remain or allow any other person to remain where the warden or that person can see how a voter votes, except that a proper official may remain when the official's assistance has been requested by a voter.

Me. Rev. Stat. Ann. tit. 21-A § 647(1)(G)

1. Class E crime. A person commits a Class E crime if that person:

- A. Knowingly removes a ballot from a voting place on election day except as authorized by this Title;
- B. Interferes with a voter attempting to cast a vote;
- B-1. Interferes with a voter in marking that voter's ballot;
- B-2. Attempts to influence a voter in marking that voter's ballot;
- C. Assists or offers to assist another person at the voting place in marking that other person's ballot, unless the person has been requested to do so by the warden or ward clerk; or
- [...]
- G. Having been entrusted with another voter's marked ballot, intentionally or knowingly discloses the content of that ballot to another person.

Me. Rev. Stat. Ann. tit. 21-A § 812

A voting machine used in the conduct of state elections must meet the following requirements.

- 1. Secrecy. It must be constructed so that each voter may vote in secrecy. [...]

Me. Rev. Stat. Ann. tit. 21-A § 843

An electronic tabulating system purchased or rented by a municipality must meet the following requirements.

- 1. Secrecy. It must be used so that each voter may vote in secrecy. [...]

Me. Rev. Stat. Ann. tit. 21-A § 852(3)

3. Depositing ballots in electronic voting device. After the voter has marked the ballot, the voter may place the ballot inside the secrecy envelope provided to maintain the voter's confidentiality and deposit the ballot in the electronic tabulating device. A voter may request the assistance of an election official if the voter has difficulty placing the ballot into the electronic tabulating device.

Me. Rev. Stat. Ann. tit. 21-A § 860

1. Tampering with voting device. Before, during or after an election, a person may not intentionally or knowingly:

- A. Tamper with or injure a voting device, ballot or other record or equipment used in the election or interfere with the correct operation of such a device or equipment or the secrecy of voting; or

- B. Attempt to interfere with the correct operation of a voting device or equipment or the secrecy of voting.

- 2. Penalty. A person who violates subsection 1 commits a Class B crime.

Exceptions to right to secret ballot

Me. Rev. Stat. Ann. tit. 21-A § 672

A voter who is unable to read or mark the ballot because of physical disability, illiteracy or religious faith may request another person, other than the voter's employer or agent of that employer or officer or agent of the voter's union, to assist the voter in reading the ballot or marking the ballot according to the voter's wishes. When assisting a voter, the aide may not tell the voter how to make the voter's choices or otherwise influence the voter in violation of section 682.

Privacy waiver required?

Yes.⁷¹

MARYLAND

Constitutional provision re: right to secret ballot

Md. Const., Art. 1, § 1

All elections shall be by ballot.

Statutory provisions re: secret voting

Md. Code Elec. Law § 9-102(d),(f)

(d) The State Board may not certify a voting system unless the State Board determines that:

(1) the voting system will:

(i) protect the secrecy of the ballot;

[...]

(f) A voting system selected, certified, and implemented under this section shall: [...]

(2) ensure the independent, private casting, inspection, verification, and correction of secret ballots by voters with disabilities in an accessible media by both visual and nonvisual means, including synchronized audio output and enhanced visual display; [...]

Md. Code Elec. Law, § 9-203

Each ballot shall: [...] (4) protect the secrecy of each voter's choices; [...]

Md. Code Elec. Law § 11-303(f)

(f)(1) The State Board shall ensure the establishment of a system that any individual who casts a provisional ballot may access without cost to discover whether the ballot was counted and, if not counted, the reason it was not.

(2) The system established under paragraph (1) of this subsection shall ensure the confidentiality of the individual who accesses the system and the secrecy of each ballot.

Exceptions to right to secret ballot

Md. Code Elec. Law § 10-310(3)-(6)

- (3)(i) Except as provided in subparagraph (ii) of this paragraph, a voter who requires assistance in marking or preparing the ballot because of a physical disability or an inability to read the English language may choose any individual to assist the voter.
- (ii) A voter may not choose the voter's employer or agent of that employer or an officer or agent of the voter's union to assist the voter in marking the ballot.
- (4) If the voter requires the assistance of another in voting but declines to select an individual to assist, an election judge, in the presence of another election judge that represents another political party, shall assist the voter in the manner prescribed by the voter.
- (5) An individual assisting a voter may not suggest in any way how the voter should vote for a particular ticket, candidate, or position on a question.
- (6) If a voter requires assistance under paragraph (4) or (5) of this subsection, the election judge shall record, on a form prescribed by the State Board, the name of the voter who required assistance and the name of the individual providing assistance to the voter.

Privacy waiver required?

N/A

MASSACHUSETTS

Constitutional provision re: right to secret ballot

Mass. Const. Amend. Art. 38

Voting machines or other mechanical devices for voting may be used at all elections under such regulations as may be prescribed by law: provided, however, that the right of secret voting shall be preserved.

Statutory provisions re: secret voting

Mass. Gen. Laws Ann. ch. 54, § 33

Voting machines shall furnish convenient, simple and satisfactory means of voting at primaries and elections and of ascertaining and recording the true result thereof with facility and accuracy, special regard being given to the prevention and detection of double voting at primaries and elections and of voting for candidates of more than one political party at a primary; but no machine shall be approved which does not secure to the voter as much secrecy in voting as is afforded by the use of the official ballot. [...]

Mass. Gen. Laws Ann. ch. 54, § 76C(f)

(f) The city or town clerk shall count all eligible provisional ballots. A provisional ballot cast by an individual whose voter information is verified before 5:00 p.m. on the third day after a presidential or state primary or the twelfth day after a state election shall be removed from

its provisional ballot envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other ballot.

Mass. Gen. Laws Ann. ch. 54, § 80

Except as authorized by this chapter, no voter, election officer or other person shall place on a ballot any mark by which it may be identified; nor shall any person place a mark against any name upon a ballot not cast by himself; nor shall any election officer engaged in counting ballots, except the election officer or officers actually entering the count of ballots cast on tally sheets, hold in either hand during the counting of ballots a pen, pencil or other marking device. Election officers shall use only red pencils or red ink in recording or tabulating the vote in election precincts.

Mass. Gen. Laws Ann. ch. 54, § 92

A voter who has received an official absent voting ballot shall mark it in the presence of no other person, except as provided in section ninety-eight.

Exceptions to right to secret ballot

Mass. Gen. Laws Ann. ch. 54, § 79

A voter who states to the presiding officer that from blindness or other physical disability or inability to read or to read in the English language he is unable to prepare his ballot or register his vote upon a voting machine shall be assisted in such marking or registering by any person whom he may designate.

Mass. Gen. Laws Ann. ch. 54, § 95

[...] An absent voter who because of blindness or other physical disability or inability to read or read in the English language is unable to prepare his ballot may at his discretion be assisted in marking it by any person whom he may designate. Such designated person shall add in writing a statement that the voter is unable to write, the reason therefor, and shall sign the voter's name on the inner envelope.

Mass. Gen. Laws Ann. ch. 54, § 98

An absent voter who because of blindness or other physical disability or inability to read or read in the English language is unable to prepare his ballot may at his discretion be assisted in marking it by any person whom he may designate. Such designated person shall add in writing a statement that the voter is unable to write, the reason therefor, and shall sign the voter's name on the inner envelope.

Privacy waiver required?

Mass. Gen. Laws Ann. ch. 54, § 95

[...] Absent uniformed services voters and overseas voters may mail, email or send by facsimile, a completed federal write-in absentee ballot directly to local election officials or use transmission services provided and administered through the Federal Voting Assistance Program, or any successor program. Email or facsimile transmissions of a federal write-in

absentee ballot shall include a completed form approved by the Federal Voting Assistance Program, or any successor program, declaring that the voter voluntarily waives the right to a secret ballot. Failure to include such form shall not invalidate the ballot.

Relevant Case Law

McCavitt v. Registrars of Voters of Brockton, 434 N.E.2d 620 (1982) (“Since ballot secrecy safeguards society's interest in the integrity of elections, we hold that the right to a secret ballot is not an individual right which may be waived by a good faith voter.” Therefore, good-faith absentee voters may not be asked to reveal their vote.)

MICHIGAN

Constitutional provision re: right to secret ballot

Mich. Const. Art. 2, § 4

[...] The legislature shall enact laws to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting. [...]

Statutory provisions re: secret voting

Mich. Comp. Laws Ann. § 168.770A

Until the secretary of state implements the uniform voting system, the secretary of state may permit the use of any type of voting device for election purposes in any election upon petition for use of the device by the legislative body of the political subdivision desiring to use any new device. Permission granted by the secretary of state shall be valid for 1 election only. Local legislative body includes school boards. Upon authorizing the use of the device, the secretary of state shall prepare detailed rules as to election procedures when the device is used. The rules may include prescribing the counting of votes and the making of returns by persons other than precinct election inspectors. No rule shall be made which provides for reducing the secrecy of the ballot. In partisan general elections, candidates shall be listed under a party heading. Rules promulgated shall be consistent with the election law.

Mich. Comp. Laws Ann. § 168.772

A voting machine to be purchased as provided in section 771 of this act¹ must be so constructed as to provide facilities for voting for the candidates of at least 7 different parties or organizations, and must permit all voters to vote for any person for any office, whether or not nominated as a candidate by any party or organization, and must permit voting in secrecy. [...]

Mich. Comp. Laws Ann. § 168.786

Only 1 voter at a time shall be permitted to pass within the guard rail to vote. The operating of the voting machine by the elector while voting shall be secret and obscure, from all other persons, except as provided by this act in cases of assisted electors or a minor child accompanying an elector in the booth or voting compartment under section 736a. [...]

Mich. Comp. Laws Ann. § 168.795

(1) An electronic voting system acquired or used under sections 794 to 799a1 shall meet all of the following requirements:

(a) Provide for voting in secrecy, except in the case of voters who receive assistance as provided by this act.

Mich. Comp. Laws Ann. § 168.932

A person who violates 1 or more of the following subdivisions is guilty of a felony:

(a) A person shall not attempt, by means of bribery, menace, or other corrupt means or device, either directly or indirectly, to influence an elector in giving his or her vote, or to deter the elector from, or interrupt the elector in giving his or her vote at any election held in this state.

(b) A person not duly authorized by law shall not, during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained, break open or violate the seals or locks of any ballot box or voting machine used or in use at that election. A person shall not willfully damage or destroy any ballot box or voting machine. A person shall not obtain undue possession of that ballot box or voting machine. A person shall not conceal, withhold, or destroy a ballot box or voting machine, or fraudulently or forcibly add to or diminish the number of ballots legally deposited in the box or the totals on the voting machine. A person shall not aid or abet in any act prohibited by this subdivision.

(c) An inspector of election, clerk, or other officer or person having custody of any record, election list of voters, affidavit, return, statement of votes, certificates, poll book, or of any paper, document, or vote of any description, which pursuant to this act is directed to be made, filed, or preserved, shall not willfully destroy, mutilate, deface, falsify, or fraudulently remove or secrete any or all of those items, in whole or in part, or fraudulently make any entry, erasure, or alteration on any or all of those items, or permit any other person to do so.

(d) A person shall neither disclose to any other person the name of any candidate voted for by any elector, the contents of whose ballots were seen by the person, nor in any manner obstruct or attempt to obstruct any elector in the exercise of his or her duties as an elector under this act.

(e) A person who is not involved in the counting of ballots as provided by law and who has possession of an absent voter ballot mailed or delivered to another person shall not do any of the following:

(i) Open the envelope containing the ballot.

(ii) Make any marking on the ballot.

(iii) Alter the ballot in any way.

(iv) Substitute another ballot for the absent voter ballot that the person possesses.

(f) A person other than an absent voter; a person whose job it is to handle mail before, during, or after being transported by a public postal service, express mail service, parcel post service, or common carrier, but only during the normal course of his or her employment; a clerk or assistant of the clerk; a member of the immediate family of the absent voter including father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent, or grandchild; or a person residing in the absent voter's household shall not do any of the following:

(i) Possess an absent voter ballot mailed or delivered to another person, regardless of whether the ballot has been voted.

(ii) Return, solicit to return, or agree to return an absent voter ballot to the clerk of a city, township, village, or school district.

(g) A person who assists an absent voter who is disabled or otherwise unable to mark the ballot shall only render his or her assistance by showing the absent voter how to vote the ballot as the absent voter desires or by marking the ballot as directed by the absent voter. A person who assists an absent voter who is disabled or otherwise unable to mark the ballot shall not suggest or in any manner attempt to influence the absent voter on how he or she should vote or allow any other person to do so.

(h) A person present while an absent voter is voting an absent voter ballot shall not suggest or in any manner attempt to influence the absent voter on how he or she should vote.

(i) A person shall not plan or organize a meeting at which absent voter ballots are to be voted.

Exceptions to right to secret ballot

Mich. Comp. Laws Ann. § 168.751

When at an election an elector shall state that the elector cannot mark his or her ballot, the elector shall be assisted in the marking of his or her ballot by 2 inspectors of election. If an elector is so disabled on account of blindness, the elector may be assisted in the marking of his or her ballot by a member of his or her immediate family or by a person over 18 years of age designated by the blind person.

Privacy waiver required?

N/A

MINNESOTA

Constitutional provision re: right to secret ballot

Minn. Const. Art. 7, § 5

All elections shall be by ballot except for such town officers as may be directed by law to be otherwise chosen.

- Clarified by *Brisbin v. Cleary*, 26 Minn. 107, 1 N.W. 825 (1879) (“voting by ballot signifies a mode of designating an elector's choice of a person for an office by the

deposit of a ticket, bearing the name of such person, in a receptacle provided for the purpose, in such a way as to secure to the elector the privilege of complete and inviolable secrecy in regard to the person voted for. This privilege of secrecy may properly be regarded as the distinguishing feature of ballot voting as compared with open voting, as, for instance, voting viva voce.”)

Statutory provisions re: secret voting

Minn. Stat. § 204C.17

Except as authorized by section 204C.15, a voter shall not reveal to anyone in the polling place the name of any candidate for whom the voter intends to vote or has voted. A voter shall not ask for or receive assistance in the marking of a ballot from anyone within the polling place except as authorized by section 204C.15. If a voter, after marking a ballot, shows it to anyone except as authorized by law, the election judges shall refuse to deposit the ballot in any ballot box and shall place it among the spoiled ballots. Unless the showing of the ballot was clearly intentional, the voter shall receive another ballot as provided in section 204C.13, subdivision 3, clause (d).

Minn. Stat. § 204C.18

Subdivision 1. Party preferences; protection of secrecy. The election judges shall make no entry or notation in the election register or anywhere else showing the political party to which a voter belongs or for which political party the voter voted. No election judge shall knowingly permit anyone in the polling place to make such an entry or notation.

Subd. 2. Ballots; identifying marks; penalty. No voter, election judge, or other individual shall place at any time a mark as a means of identification upon any ballot handed to or cast by a voter or upon spoiled or discarded ballots, except the initials authorized by section 204C.09. A violation of this subdivision is a gross misdemeanor.

Minn. Stat. § 202A.18(3)

Subd. 3. Secret ballot. All voting shall be by secret ballot.

Minn. Stat. § 206.64

Subdivision 1. General provisions for electronic system voting. Each electronic voting system booth must be placed and protected so that it is accessible to only one voter at a time and is in full view of all the election judges and challengers at the polling place. The election judges shall admit one individual at a time to each booth after determining that the individual is eligible to vote. Voting by electronic voting system must be secret, except for voters who request assistance. A voter may remain inside the voting booth for the time reasonably required for the voter to complete the ballot. A voter who refuses to leave the voting booth after a reasonable amount of time, but not less than three minutes, must be removed by the election judges.

Minn. Stat. § 206.80

(a) An electronic voting system may not be employed unless it:

(1) permits every voter to vote in secret; [...]

Exceptions to right to secret ballot

Minn. Stat. Ann. § 204C.15

Subdivision 1. Physical assistance in marking ballots. A voter who claims a need for assistance because of inability to read English or physical inability to mark a ballot may obtain the aid of two election judges who are members of different major political parties. The election judges shall mark the ballots as directed by the voter and in as secret a manner as circumstances permit. A voter in need of assistance may alternatively obtain the assistance of any individual the voter chooses. Only the following persons may not provide assistance to a voter: the voter's employer, an agent of the voter's employer, an officer or agent of the voter's union, or a candidate for election. The person who assists the voter shall, unaccompanied by an election judge, retire with that voter to a booth and mark the ballot as directed by the voter. No person who assists another voter as provided in the preceding sentence shall mark the ballots of more than three voters at one election. Before the ballots are deposited, the voter may show them privately to an election judge to ascertain that they are marked as the voter directed. An election judge or other individual assisting a voter shall not in any manner request, persuade, induce, or attempt to persuade or induce the voter to vote for any particular political party or candidate. The election judges or other individuals who assist the voter shall not reveal to anyone the name of any candidate for whom the voter has voted or anything that took place while assisting the voter.

Subd. 2. Outside the polling place. An individual who is unable to enter a polling place where paper ballots or an electronic voting system are used may register and vote without leaving a motor vehicle. Two election judges who are members of different major political parties shall assist the voter to register and to complete a voter's certificate and shall provide the necessary ballots. The voter may request additional assistance in marking ballots as provided in subdivision 1.

Subd. 2a. Repealed by Laws 2001, 1st Sp., c. 10, art. 18, § 44, eff. Jan. 1, 2002.

Subd. 3. Voting lines. In all polling places two election judges shall assist a disabled voter to enter the polling place and go through the registration and voting lines. The voter may also request the assistance of election judges or any other individual in marking ballots, as provided in subdivision 1.

Privacy waiver required?

N/A

MISSISSIPPI

Constitutional provision re: right to secret ballot

Miss. Const. Art. 12, § 240

All elections by the people shall be by ballot.

Statutory provisions re: secret voting

Miss. Code Ann. § 23-15-403

The board of supervisors of any county in the State of Mississippi and the governing authorities of any municipality in the State of Mississippi are hereby authorized and empowered, in their discretion, to purchase or rent any voting machine or machines which shall be so constructed as to fulfill the following requirements: It shall secure to the voter secrecy in the act of voting;

Miss. Code Ann. § 23-15-437

For the instruction of voters on any election days, there shall, so far as practicable, be provided for each polling place a mechanically operated model of a portion of the face of the machine. Such model, if furnished, shall, during the election, be located on the clerk's table, or in some other place which the voters must pass to reach the machine, and each voter shall, before entering the machine, be instructed regarding its operation and such instruction illustrated on the model, and the voter given opportunity to personally operate the model. The voter's attention shall also be called to the diagram of the face of the machine so that the voter can become familiar with the location of the questions and the names of the offices and candidates. In case any voter, after entering the voting machine, shall ask for further instructions concerning the manner of voting, two (2) election officers may, if necessary, enter the booth and give him such instructions, but no manager or person assisting a voter shall, in any manner request, suggest or seek to persuade or induce any such voter to vote any particular ticket, or for any particular ticket, or for any particular candidate, or for or against any particular ticket, or for or against any particular candidate, or for or against any particular amendment, question or proposition. After giving such instructions and before such voter shall have registered his vote, the officers or person assisting him shall retire and such voter shall then register his vote in secret as he may desire.

Miss. Code Ann. § 23-15-465

No electronic voting system, consisting of a marking or voting device in combination with automatic tabulating equipment, shall be acquired or used in accordance with Sections 23-15-461 through 23-15-485 unless it shall:

(a) Provide for voting in secrecy when used with voting booths;

Miss. Code Ann. § 23-15-699(5)

(5) Access to voted absentee ballots before they are placed in an absentee ballot envelope shall be strictly limited to election officials who must process the ballot and any election official who views the ballots before they are placed in the envelope shall have the duty to protect the secrecy of the ballot choices; however, the failure of an election official to comply with this subsection shall not invalidate the ballot.

Exceptions to right to secret ballot

Miss. Code Ann. § 23-15-549

Any voter who declares to the managers of the election that he requires assistance to vote by reason of blindness, disability or inability to read or write may be given assistance by a person of the voter's choice other than the voter's employer, or agent of that employer, or officer or agent of the voter's union.

Privacy waiver required?

No.⁷²

MISSOURI

Constitutional provision re: right to secret ballot

Mo. Const. Art. 8, § 3

All elections by the people shall be by ballot or by any mechanical method prescribed by law. All election officers shall be sworn or affirmed not to disclose how any voter voted; provided, that in cases of contested elections, grand jury investigations and in the trial of all civil or criminal cases in which the violation of any law relating to elections, including nominating elections, is under investigation or at issue, such officers may be required to testify and the ballots cast may be opened, examined, counted, and received as evidence.

Statutory provisions re: secret voting

Mo. Rev. Stat. § 115.249

No voting machine shall be used unless it:

(1) Permits voting in absolute secrecy; [...]

Mo. Rev. Stat. § 115.283(1)

Each ballot envelope shall bear a statement on which the voter shall state the voter's name, the voter's voting address, the voter's mailing address and the voter's reason for voting an absentee ballot. If the reason for the voter voting absentee is due to the reasons established under subdivision (6) of subsection 1 of section 115.277, the voter shall state the voter's identification information provided by the address confidentiality program in lieu of the applicant's name, voting address, and mailing address. On the form, the voter shall also state under penalties of perjury that the voter is qualified to vote in the election, that the voter has not previously voted and will not vote again in the election, that the voter has personally marked the voter's ballot in secret or supervised the marking of the voter's ballot if the voter is unable to mark it, that the ballot has been placed in the ballot envelope and sealed by the voter or under the voter's supervision if the voter is unable to seal it, and that all information contained in the statement is true. In addition, any person providing assistance to the absentee voter shall include a statement on the envelope identifying the person providing assistance under penalties of perjury. Persons authorized to vote only for federal and statewide officers shall also state their former Missouri residence.

Mo. Rev. Stat. § 115.291

1. Upon receiving an absentee ballot in person or by mail, the voter shall mark the ballot in secret, place the ballot in the ballot envelope, seal the envelope and fill out the statement on the ballot envelope. [...]

Mo. Rev. Stat. § 115.411

For each polling place in its jurisdiction, the election authority shall provide a sufficient number of voting booths, equipped and supplied so voters can vote conveniently and in secret.

Mo. Rev. Stat. § 115.445(2)

If any voter, after entering a voting booth, asks for further instructions concerning the manner of voting, two election judges of different political parties shall give such instructions. Such judges shall not enter the voting booth unless it is impossible to give the instructions otherwise. After giving the instructions, the judges shall leave the area and take all necessary measures to insure that the voter casts his vote in secret.

Exceptions to right to secret ballot

Mo. Rev. Stat. § 115.445

1. Except as provided in subsections 2 and 3 of this section, no one other than the voter shall be permitted in any voting booth or permitted to be in any position where he may see how a voter is voting.

2. If any voter, after entering a voting booth, asks for further instructions concerning the manner of voting, two election judges of different political parties shall give such instructions. Such judges shall not enter the voting booth unless it is impossible to give the instructions otherwise. After giving the instructions, the judges shall leave the area and take all necessary measures to insure that the voter casts his vote in secret.

3. If any voter declares under oath to the election judges that he cannot read or write, is blind or has any other physical disability and cannot vote his ballot, he may be assisted by the election judges or by any person of his own choice other than a judge. If the voter asks for the assistance of election judges, two judges of different political parties shall go to the voting booth and cast his vote as he directs. If the voter asks for the assistance of someone other than election judges, the assistant shall go to the voting booth with the voter and cast his vote as he directs. No person, other than election judges and members of such voters' immediate families, shall assist more than one voter at one election.

4. A child under the age of eighteen shall be allowed to accompany his or her parent, grandparent, or guardian into a voting booth.

Privacy waiver required?

Yes.⁷³

MONTANA

Constitutional provision re: right to secret ballot

Mont. Const. Art. 4, § 1

All elections by the people shall be by secret ballot.

Statutory provisions re: secret voting

Mont. Code Ann. § 13-1-102

All elections shall be by secret ballot.

Mont. Code Ann. § 13-17-103

A voting system may not be approved under 13-17-101 unless the voting system: (a) allows an elector to vote in secrecy; [...]

Mont. Code Ann. § 13-35-201

(1) An elector may not show the contents of the elector's ballot to anyone after it is marked. An elector may not place any mark upon the ballot by which it may be identified as the one voted by the elector.

(2) An elector may not receive a ballot from any person other than an election judge and may not vote any ballot except one received from an election judge. A person other than an election judge may not deliver a ballot to an elector.

(3) A person may not solicit an elector to show the elector's ballot after it is marked.

(4) An elector who does not vote a ballot delivered to the elector shall, before leaving the polling place, return the ballot to an election judge.

Exceptions to right to secret ballot

Mont. Code Ann. § 13-13-119

No elector other than the elector who requires assistance may divulge to anyone within the polling place the name of any candidate for whom the elector intends to vote or may ask or receive the assistance of any individual within the polling place in the preparation of the elector's ballot.

Privacy waiver required?

No. Mont. Code Ann. § 13-21-104(2)(e)

(e) a ballot cast by a covered voter and transmitted electronically will remain secret, as required by Article IV, section 1, of the Montana constitution. This subsection (2)(e) does not prohibit the adoption of rules establishing administrative procedures on how electronically transmitted votes must be transcribed to an official ballot. However, the rules must be designed to protect the accuracy, integrity, and secrecy of the process.

NEBRASKA

Constitutional provision re: right to secret ballot

Neb. Const. Art. VI, § 6

All votes shall be by ballot or by other means authorized by the Legislature whereby the vote and the secrecy of the elector's vote will be preserved.

Statutory provisions re: secret voting

Neb. Rev. Stat. § 32-917

Any registered voter who spoils his or her ballot may receive another ballot after returning the spoiled ballot. No registered voter shall receive more than four ballots in all. The registered voter shall write invalid or void on the spoiled ballot and return it to the judges of election. The judges of election shall maintain the secrecy of the spoiled ballots and shall cause the spoiled ballots to be made up in a sealed packet. The judges of election shall endorse the packet with the words Spoiled Ballots and the designation of the precinct. The judges of election shall sign such endorsement label and shall return the packet to the election commissioner or county clerk with a statement by the judges of election showing the number of ballots spoiled.

Neb. Rev. Stat. § 32-1027

[...] (5) In opening the identification envelope or the return envelope to determine if registration applications, oaths, or identification documents have been enclosed by the voters from whom they are required, the counting board shall make a good faith effort to ensure that the ballot remains folded and that the secrecy of the vote is preserved. [...]

Neb. Rev. Stat. § 32-1041

The election commissioner or county clerk may use optical-scan ballots or voting systems approved by the Secretary of State to allow registered voters to cast their votes at any election. The election commissioner or county clerk may use vote counting devices and voting systems approved by the Secretary of State for tabulating the votes cast at any election. Vote counting devices shall include electronic counting devices such as optical scanners. Any new voting or counting system shall be approved by the Secretary of State prior to use by an election commissioner or county clerk. Notwithstanding any other provision of the Election Act, the Secretary of State may adopt and promulgate rules and regulations to establish different procedures and locations for voting and counting votes pursuant to the use of any new voting or counting system. The procedures shall be designed to preserve the safety and confidentiality of each vote cast and the secrecy and security of the counting process, to establish security provisions for the prevention of fraud, and to ensure that the election is conducted in a fair manner.

Neb. Rev. Stat. § 32-1527

(4) No person shall show his or her ballot after it is marked to any person in such a way as to reveal the contents thereof or the name of the candidate or candidates for whom he or she has marked his or her vote, and no person shall solicit a voter to show the same.

[...]

(6) Any person violating this section shall be guilty of a Class V misdemeanor.

Exceptions to right to secret ballot

Neb. Rev. Stat. § 32-918

(1) If a registered voter declares to the judge of election that he or she cannot read or that he or she suffers blindness or other physical disability or handicap such that the registered voter requires assistance in the marking of his or her ballot, (a) the registered voter may be assisted in marking his or her ballot by a relative or friend of his or her selection or (b) one judge of election and one clerk of election of different political parties may take the ballot or ballots from the polling place to a convenient place within the building or to the registered voter's automobile if the automobile is within one block of the polling place and the disabled or handicapped person may cast his or her ballot in the general presence of the judge and clerk. If a registered voter declares to the judge of election that he or she needs assistance in the operation of a voting device, a judge or clerk of election may assist the voter in operating the device.

(2) The judge and clerk shall give no information regarding the casting of the ballot. Any registered voter receiving assistance in voting the ballot from a judge and clerk shall declare to the judge and clerk the name of the candidates and the measures for which he or she desires to vote, and the judge and clerk shall cast his or her ballot only as he or she so requests. No person other than the registered voter who is receiving assistance shall divulge to anyone within the polling place the name of any candidate for whom he or she intends to vote or ask or receive assistance within the polling place in the preparation of his or her ballot.

(3) The judges of election shall enter Assistance Rendered upon the precinct sign-in register near the name of any registered voter who receives such assistance in casting his or her ballot and shall include the name of such person rendering assistance to the registered voter. The person rendering assistance shall sign an oath before a judge of election substantially as follows:, hereby swears that he or she is a friend or relative of, a disabled registered voter who requested assistance in casting the ballot, that he or she did enter the voting booth or aid such voter outside of the voting booth and marked the ballot according to the intentions and desires of the registered voter, that he or she has kept the ballot at all times in his or her possession, and that the ballot was duly delivered to the judge of election on this day of 20

Privacy waiver required?

Yes. No statute authorizing.⁷⁴

NEVADA

Constitutional provision re: right to secret ballot

Nev. Const. Art. 2, § 5

All elections by the people shall be by ballot, and all elections by the Legislature, or by either branch thereof shall be “Viva-Voce”.

Statutory provisions re: secret voting

Nev. Rev. Stat. §§ 293.385, 293.385

If paper ballots are used, the results of the absent ballot vote in each precinct must be certified and submitted to the county clerk who shall have the results added to the regular votes of the precinct. The returns of absent ballots must be reported separately from the regular votes of the precinct, unless reporting the returns separately would violate the secrecy of a voter's ballot. The [county or city] clerks shall develop a procedure to ensure that each ballot is kept secret.

Nev. Rev. Stat. § 293.730

1. A person shall not:

- (a) Remain in or outside of any polling place so as to interfere with the conduct of the election.
- (b) Except an election board officer, receive from any voter a ballot prepared by the voter.
- (c) Remove a ballot from any polling place before the closing of the polls.
- (d) Apply for or receive a ballot at any election precinct or district other than the one at which the person is entitled to vote.
- (e) Show his or her ballot to any person, after voting, so as to reveal any of the names voted for.
- (f) Inside a polling place, ask another person for whom he or she intends to vote.
- (g) Except an election board officer, deliver a ballot to a voter.
- (h) Except an election board officer in the course of the election board officer's official duties, inside a polling place, ask another person his or her name, address or political affiliation.

2. A voter shall not:

- (a) Receive a ballot from any person other than an election board officer.
- (b) Deliver to an election board or to any member thereof any ballot other than the one received.
- (c) Place any mark upon his or her ballot by which it may afterward be identified as the one voted by the person.

3. Any person who violates any provision of this section is guilty of a category E felony and shall be punished as provided in NRS 193.130.

Nev. Rev. Stat. §§ 293.3606, 293C.3606

[...] 3. The returns for early voting may be reported separately from the regular votes of the precinct, unless reporting the returns separately would violate the secrecy of the voter's ballot.

4. The [city or county] clerk shall develop a procedure to ensure that each ballot is kept secret. [...]

Nev. Rev. Stat. § 293.3086

1. The Secretary of State shall establish a free access system such as a toll-free telephone number or an Internet website to inform a person who cast a provisional ballot whether the person's vote was counted and, if the vote was not counted, the reason why the vote was not counted.

2. The free access system must ensure secrecy of the ballot while protecting the confidentiality and integrity of personal information contained therein.

3. Access to information concerning a provisional ballot must be restricted to the person who cast the provisional ballot.

Exceptions to right to secret ballot

Nev. Rev. Stat. § 293.296

1. Any registered voter who by reason of a physical disability or an inability to read or write English is unable to mark a ballot or use any voting device without assistance is entitled to assistance from a consenting person of his or her own choice, except:

(a) The voter's employer or an agent of the voter's employer; or

(b) An officer or agent of the voter's labor organization.

2. A person providing assistance pursuant to this section to a voter in casting a vote shall not disclose any information with respect to the casting of that ballot.

3. The right to assistance in casting a ballot may not be denied or impaired when the need for assistance is apparent or is known to the election board or any member thereof or when the registered voter requests such assistance in any manner.

4. In addition to complying with the requirements of this section, the county clerk and election board officer shall, upon the request of a registered voter with a physical disability, make reasonable accommodations to allow the voter to vote at his or her polling place.

Privacy waiver required?

Yes. No statutory authorization.

UOCAVA Declaration reads: "I acknowledge that if I return my voted ballot by approved electronic transmission, I have waived my right to have my ballot kept secret. Nevertheless, I

understand that, as with any absent voter, my signatures will be permanently separated from my voted ballot to maintain its secrecy at the outset of the tabulation process and thereafter.” See <https://nvsos.gov/Modules/ShowDocument.aspx?documentid=3489>

NEW HAMPSHIRE

Constitutional provision re: right to secret ballot

N/A

Statutory provisions re: secret voting

N.H. Rev. Stat. § 659:37

No person shall interfere or attempt to interfere with any voter when such voter is in the space within the guardrail or endeavor to induce any voter before voting to show how he marks or has marked his ballot. Whoever knowingly violates this section shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.

N.H. Rev. Stat. § 659:52

If the absentee ballot is not challenged, the moderator shall, after announcing the name of the voter, open the envelope containing the ballot so the affidavit is not destroyed. The moderator shall then take the ballot out of the envelope without unfolding the ballot or without permitting the ballot to be examined, and he or she shall preserve the affidavit with the ballots cast at the election as provided in RSA 659:101. The moderator shall then have a checkmark placed beside the name of the absentee voter on the checklist and write therewith the letters “A.V.” in red ink and shall then deposit the ballot in the ballot box.

Exceptions to right to secret ballot

N.H. Rev. Stat. § 659:20

Any voter who declares to the moderator under oath that said voter needs assistance marking his or her ballot shall, upon the voter's choice and request after the moderator has informed the voter of the accessible voting options that are available at the polling place, receive the assistance of one or both of the inspectors of election detailed for that purpose by the moderator or of a person of the voter's choice provided that the person is not the voter's employer or union official. Such person so assisting shall be sworn, shall mark the ballot as directed by said voter, and shall thereafter give no information regarding the same. Such person so assisting shall leave the space within the guardrail with the voter.

Privacy waiver required?

N/A

NEW JERSEY

Constitutional provision re: right to secret ballot

N/A

Statutory provisions re: secret voting

N.J. Stat. Ann. § 19:15-26

Every voter to whom a ballot is given shall thereupon retire into the polling booth. Not more than one voter, except as hereinafter provided, shall be permitted to enter or be in the same booth, at one time. The voter shall prepare his ballot in the booth secretly and screened from the observation of others.

Any person or voter who shall violate the provisions of this section shall be deemed guilty of a disorderly persons offense.

N.J. Stat. Ann. § 19:34-7

No person shall within the polling room mark his ballot in a place other than in the polling booth or show his ballot, nor shall anyone request such person to show his ballot during the preparation thereof, nor shall any other person inspect such ballot during the preparation thereof or after it is prepared for voting in such a way as to reveal the contents, nor shall any person within the polling place or within a hundred feet thereof, loiter, electioneer, or solicit any voter.

No voter, at any election where official ballots are used, shall knowingly vote or offer to vote any ballot except an official ballot as by this Title required.

No person shall on any pretext carry any official ballot from the polling room on any election day except such persons as may by this Title be authorized to do so.

Any person violating any of the provisions of this section shall be guilty of a crime of the fourth degree.

N.J. Stat. Ann. § 19:34-14

If a member of any district board has knowledge how any person has voted and shall reveal such knowledge to any other person, or shall fraudulently or corruptly disclose what other candidates were voted for on any ballot bearing a name not printed thereon, or fraudulently or corruptly gives any information concerning the appearance of any ballot voted, he shall be guilty of a crime of the third degree.

N.J. Stat. Ann. § 19:53A-3

Every electronic voting system, consisting of a voting device in combination with automatic tabulating equipment, acquired or used in accordance with this act, shall:

a. Provide for voting in secrecy, except in the case of voters who have received assistance as provided by law; [...]

N.J. Stat. Ann. § 19:53A-6(c)

c. Unless the voting device enables the voter to mark his choices in secret, the board of elections shall provide a sufficient number of voting booths for each voting district, which shall be of a size and design so as to enable the voter to mark his ballot in secret.

N.J. Stat. Ann. § 19:53A-15

a. Any person who before, during or after an election tampers with or willfully injures any voting device, ballot cards, or other records or equipment used in the election, or interferes or attempts to interfere with the correct operation of such device or equipment or the secrecy of voting, is guilty of a crime of the third degree.

b. The penal laws and election laws relating to misconduct at elections apply to elections conducted with voting devices and automatic tabulating equipment.

N.J. Stat. Ann. § 19:63-12

Each county clerk shall send, with each mail-in ballot, printed directions for the preparation and transmitting of the ballots as required by this act. The directions shall be printed in such manner and form as the Secretary of State shall require, together with two envelopes of such sizes that one will contain the other.

The outer envelope shall be addressed to the county board of elections of the county in which is located the home address of the person to whom the mail-in ballot is sent, as certified by the county clerk. At the discretion of the county clerk, the outer envelope may be a postage paid return envelope. On the outside and front of each outer envelope, there shall be printed or stamped the following:

[...] A PERSON MAY BE FINED AND IMPRISONED AND MAY ALSO LOSE THE RIGHT TO VOTE UNTIL RESTORED BY LAW if that person attempts to vote fraudulently by mail-in ballot, prevents the voting of a legal voter, certifies falsely any information, interferes with a person's secrecy of voting, tampers with ballots or election documents or helps another person to do so.

N.J. Stat. Ann. § 19:63-13

a. On the margin of the flap on the inner envelopes to be sent to mail-in voters there shall be printed a certificate in the following form:

CERTIFICATE OF MAIL-IN VOTER

I, ,

whose home address is

(print your name clearly)

(street address or R.D. number) (municipality)

....., DO HEREBY CERTIFY,

Subject to the penalties for fraudulent voting, that I am the person who applied for the enclosed ballot. I MARKED AND SEALED THIS BALLOT AND CERTIFICATE IN SECRET. However, a family member may assist me in doing so.

(signature of voter)

Any person providing assistance shall complete the following:

I do hereby certify that I am the person who provided assistance to this voter and declare that I will maintain the secrecy of this ballot.

(signature of person providing assistance)

(printed name of person providing assistance)

(address of person providing assistance) [...]

N.J. Stat. Ann. § 19:63-16

[...] b. No mail-in voter shall permit any person in any way, except as provided by this act, to unseal, mark or inspect the voter's ballot, interfere with the secrecy of the voter's vote, complete or sign the certificate, or seal the inner or outer envelope, nor shall any person do so.

c. A mail-in voter shall be entitled to assistance from a family member in performing any of the actions provided for in this section. The family member or other person providing such assistance shall certify that he or she assisted the voter and will maintain the secrecy of the vote by both printing and signing his or her name in the space provided on the certificate. In no event may a candidate for election provide such assistance, nor may any person, at the time of providing such assistance, campaign or electioneer on behalf of any candidate. [...]

Exceptions to right to secret ballot

N.J. Stat. Ann. § 19:50-3

For instructing the voters on any election day there shall, so far as practicable, be provided by the county board of elections or the superintendent of elections or the municipal clerk, as the case may be, having custody of voting machines, for each polling place a mechanically operated model of a portion of the face of the machine. Such model, if furnished, shall, during the election, be located on the district election officers' table or in some other place which the voters must pass to reach the machine, and each voter shall, before entering the voting machine booth, be instructed regarding the operation of the machine and such instruction illustrated on the model, and the voter given opportunity to personally operate the model. The voter's attention shall also be called to the diagram of the face of the machine so that the voter can become familiar with the location of the questions and the names of the officers and candidates. If any voter, before entering the voting machine booth, declares under oath, and establishes to the satisfaction of a majority of all the members of the district board that by reason of an inability to read or write, blindness or other physical disability he is unable to cast his vote without assistance, he shall have the assistance of two members of the board of opposite political faith, to be assigned by the board. Such members shall retire with such voter to the booth and assist him. The member acting as clerk of the district board shall make an entry on a disability certificate for assistance, which entry shall be on the form of an oath inserted in the front of the duplicate registry binders at each election.

In every instance when such oath is administered to a voter as herein provided, it shall state briefly what facts were sworn to and the names of the members of the board who aided such voter shall be signed on the form. Any members of the district board shall be eligible to assist any such voter, but no other person except as hereinafter provided shall be allowed to assist him. No member of the board shall reveal the name of any person for whom such voter has voted or anything that took place while he was being assisted.

Such voter, if blind, disabled or unable to read or write, may, in lieu of the assistance of the board as above provided, have assistance of some person of his own selection. Such person shall retire with such voter to the booth and assist him in voting. The name and address of such person shall be recorded as above. In such case, no other person than the one so selected by the voter shall be allowed to assist such voter. No person so selected shall reveal the name of any person for whom such voter has voted or anything that took place while he was being assisted.

The disability certificates shall be numbered serially 1 to 20. The commissioner of registration shall furnish sufficient disability certificates for assistance for each election district in his county which shall be inserted in the front of the duplicate registry binders.

Privacy waiver required?

N.J. Stat. Ann. § 19:59-14

Notwithstanding any law, rule or regulation to the contrary, a copy of a voted overseas ballot or of a voted federal write-in absentee ballot which is transmitted by electronic means to the appropriate county board of elections in this State shall be considered valid and counted if it: [...] c. is accompanied by the following statement, which shall be certified by the voter's signature: "I understand that by transmitting by electronic means a copy of my voted ballot I am voluntarily waiving my right to a secret ballot. At the same time, I pledge to place the original voted ballot in a secure envelope, together with any other required certification, and send the documents immediately by air mail to the appropriate county board of elections."

Relevant Case Law

Hopper v. Stack, 69 N.J.L. 562 (1903) ("The right to vote a secret ballot is neither a natural right nor a constitutional right; hence a legislative provision that, if challenged, a voter shall make affidavit that, at the last general election at which he voted, he voted for a majority of the candidates of the party with which he is proposing to act, violates no constitutional right of such voter").

NEW MEXICO

Constitutional provision re: right to secret ballot

N.M. Const. Art. 7, § 1

The legislature shall enact such laws as will secure the secrecy of the ballot and the purity of elections and guard against the abuse of elective franchise.

Statutory provisions re: secret voting

N.M. Stat. Ann. § 1-9-5(D)

The county clerk shall ensure that an adequate number of voting booths are provided to ensure that voters in each polling location may cast their ballots in secret.

N.M. Stat. Ann. § 1-12-69(G)

Paper ballots marked by voters, their digitized equivalents and records related to voting are exempt from the Inspection of Public Records Act until forty-five days following any recount, contest or other judicial inquiry or until forty-five days after adjournment of the state or county canvassing board, whichever is later. Any inspection of paper ballots marked by voters, their digitized equivalents or records related to voting shall be conducted in such a manner as to secure the secrecy of the ballot.

N.M. Stat. Ann. § 1-6-5.4(A)

The secretary of state shall adopt rules for protecting the integrity, security and secrecy of the absentee ballots; procedures for voting by absentee ballot; separation of absentee ballots voted on electronic voting machines twenty days before the election from those received through the mail; disposition of absentee ballots rejected by a voting machine; and handling of, registering, counting and canvassing of absentee ballots.

N.M. Stat. Ann. § 3-8-50(B)

Only an election judge shall receive a ballot from a person voting. No person shall examine or solicit a person to reveal or show the contents of the person's paper ballot.

Exceptions to right to secret ballot

N.M. Stat. Ann. § 1-12-15

A. In any election, if a voter who has requested assistance in marking the ballot is blind, has a physical disability, has an inability to read or write or is a member of a language minority who has requested assistance pursuant to Subsection D of Section 1-12-12 NMSA 1978, the voter may be accompanied into the voting booth only by a person of the voter's own choice other than the voter's employer or an agent of that employer, an officer or agent of the voter's union or a candidate whose name appears on the ballot in this election.

B. The name of the person providing assistance to a voter pursuant to this section shall be recorded on the signature roster.

C. A person who provides assistance to a voter when the person knows the voter does not require assistance pursuant to Section 1-12-12 NMSA 1978 is guilty of a misdemeanor.

N.M. Stat. Ann. § 3-88-22

A. A voter may request assistance in voting only if the voter is:

- (1) visually impaired;
- (2) a person with a physical disability;

(3) unable to read or write;

(4) a member of a language minority who is unable to read well enough to exercise the elective franchise; or

(5) not able to operate a voting machine or mark a ballot without assistance.

B. When a voter who is eligible for assistance requires assistance in marking a ballot or recording a vote on a voting machine, the voter shall announce this fact before receiving the ballot or before entering the voting machine.

C. The voter's request for assistance shall be noted next to the voter's name in the signature roster and shall be initialed by the presiding judge.

D. After noting the voter's request for assistance in the signature roster, the voter shall be allowed to receive assistance in marking a ballot or recording a vote on a voting machine. The name of the person providing assistance to a voter pursuant to this section shall be recorded on the signature roster.

E. A person who swears falsely in order to secure assistance with voting is guilty of perjury.

F. If a voter who has requested assistance in marking a ballot has a visual impairment or physical disability, is unable to read or write or is a member of a language minority who has requested assistance, the voter may be accompanied into the voting machine by a person of the voter's own choice; provided that the person shall not be the voter's employer, an agent of that employer, an officer or agent of the voter's union or a candidate whose name appears on the ballot in the election. A member of the precinct board may assist a voter, if requested to do so by that voter.

G. A person who accompanies the voter into the voting booth or voting machine may assist the voter in marking a ballot or recording a vote on the voting machine. A member of the precinct board who assists a voter shall not disclose the name of any candidate or questions for whom any voter voted.

H. Oral assistance shall be made available to assist language minority voters who cannot read sufficiently well to exercise the elective franchise. As used in this subsection, "language minority" means a person who is Native American or of Spanish heritage, and "inability to read well enough to exercise the elective franchise" means inability to read the languages in which the ballot is printed or the inability to understand instructions for operating the voting machine.

I. The position of election translator is created. The election translator shall be an additional member of the regular precinct board, unless oral assistance to language minorities can otherwise be rendered by a member of the regular precinct board. The election translator shall be appointed by the municipal clerk in the same manner as other precinct board members are appointed, except that the municipal clerk in appointing Native American election translators shall seek the advice of the pueblo or tribal officials residing in that

municipality. The election translator shall take the oath required of precinct board members and shall meet the same qualifications as other precinct board members.

J. Each municipal clerk shall compile and maintain a list of standby election translators to serve in those precincts on election day when the appointed election translator is unavailable for such service.

Privacy waiver required?

N.M. Stat. Ann. § 1-6B-8

A. A military-overseas ballot shall be considered timely if it is received by the appropriate clerk no later than the closing of the polls on election day.

B. A federal qualified elector may transmit, and the appropriate clerk shall accept, a military-overseas ballot by facsimile transmission, electronic mail delivery or other equivalent electronic delivery available to the appropriate clerk when the military-overseas ballot is sent directly by the voter to that clerk; provided that, when sending a military-overseas ballot utilizing any method described in this subsection:

(1) the federal qualified elector signs an affidavit waiving the right of secrecy of the federal qualified elector's ballot;

(2) the federal qualified elector transmits the affidavit with the military-overseas ballot; and

(3) the appropriate clerk places the received ballot in a holding envelope provided by the secretary of state for this purpose and delivers the ballot to the absent precinct board.

SoS website states:

“You must sign and transmit a waiver of secrecy form that will be provided by the county clerk” http://www.sos.state.nm.us/Voter_Information/Military_and_Overseas_Voting.aspx

NEW YORK

Constitutional provision re: right to secret ballot

N.Y. Const. Art. 2, § 7

All elections by the citizens, except for such town officers as may by law be directed to be otherwise chosen, shall be by ballot, or by such other method as may be prescribed by law, provided that secrecy in voting be preserved.

Statutory provisions re: secret voting

N.Y. Elec. Law § 7-202(2)(b)

2. The state board of elections shall approve, for use at each polling place at least one voting machine or system at such polling place which, in addition to meeting the requirements in subdivision one of this section, shall:

a. be equipped with a voting device with tactile discernible controls designed to meet the needs of voters with limited reach and limited hand dexterity;

b. be equipped with an audio voting feature that communicates the complete content of the ballot in a voice which permits a voter who is blind or visually impaired to cast a secret ballot using voice-only or tactile discernible controls

N.Y. Elec. Law § 8-300(2)

2. The operating of the ballot scanner by the voter while voting or the use of a privacy booth or ballot marking device for marking a ballot shall be secret and obscured from all other persons except as provided by this chapter in cases of voting by assisted voters or in cases of children under the age of sixteen accompanying their voting parents or guardians.

N.Y. Elec. Law § 8-407(9)

1. The board of elections of a county or city in which there is located at least one facility operated or licensed, or under the jurisdiction of, the department of mental hygiene, or a facility defined as a nursing home or residential health care facility pursuant to subdivisions two and three of section two thousand eight hundred one of the public health law or an adult care facility subject to the provisions of title two of article seven of the social services law, or a hospital or other facility operated by the Veteran's Administration of the United States shall provide that residents of each such facility for which such board has received twenty-five or more applications for absentee ballots from voters who are eligible to vote by absentee ballot in such city or county at such election, may vote by absentee ballot only in the manner provided for in this section. Such board may, in its discretion, provide that the procedure described in this subdivision shall be applicable to all such facilities in such county or city without regard to the number of absentee ballot applications received from the residents of any such facility. [...]

9. The board of inspectors shall arrange the portable voting booth or booths provided and effect such safeguards as may be necessary to provide secrecy for the votes cast by such residents. [...]

Exceptions to right to secret ballot

N.Y. Elec. Law § 8-306

1. A voter who states under oath to the board of inspectors that he requires assistance may be assisted in the manner and subject to the conditions and requirements provided for in this section.

2. A board of inspectors of election shall assist any voter:

(a) who informs such board, under oath, that he cannot read and therefore requires assistance, or

(b) who cannot even with the aid of glasses see the names printed on the official ballot, or

(c) who is so physically handicapped that he cannot do what is needed at that election to turn down the levers or use a write-in slot on a voting machine, or mark a paper ballot, or

(d) who, unless aided by another person, cannot enter a voting booth.

3. Any voter who requires assistance to vote by reason of blindness, disability or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of the employer or officer or agent of the voter's union. A voter entitled to assistance in voting who does not select a particular person may be assisted by two election inspectors not of the same political faith. The inspectors or person assisting a voter shall enter the voting machine or booth with him, help him in the preparation of his ballot and, if necessary, in the return of the voted ballot to the inspectors for deposit in the ballot box. The inspectors shall enter in the remarks space on the registration poll card of an assisted voter, or next to the name of such voter on the computer generated registration list, the name of each officer or person rendering such assistance.

4. An election officer or other person assisting a voter shall not in any manner request or seek to persuade or induce the assisted voter to vote any particular ticket, or for any particular candidate, or for or against any particular ballot proposal, and shall not keep or make any memorandum or entry of anything occurring within the voting booth and shall not, directly or indirectly, reveal to any other person the name of any candidate voted for by such voter, or which ticket he has voted, except when required pursuant to law to give testimony as to such matter in a judicial proceeding.

5. A person other than an inspector, who assists a voter in voting, shall make an oath before entering the booth that he "will not in any manner request, or seek to persuade or induce the voter to vote any particular ticket or for any particular candidate, and that he will not keep or make any memorandum or entry of anything occurring within the booth, and that he will not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, or which ticket he had voted, or anything occurring within the voting booth, except when required pursuant to law to give testimony as to such a matter in a judicial proceeding."

6. If a voter makes any false representation to obtain assistance in voting, he shall be punishable therefor as prescribed by law.

7. For the instruction of voters, there may be so far as practicable, in each polling place, a mechanically operated model of a portion of the face of the voting machine. Such model, if furnished, shall be located during the election on the inspectors' table or in some other place which the voters must pass to reach the machine. Each voter, before entering the machine, shall, upon request, be instructed regarding its operation and such instruction illustrated on the model and the voter given opportunity personally to operate the model. The voter's attention shall also be called to the facsimile ballot so that the voter can become familiar with the location of the ballot proposals, if any, and the location of the respective offices to be filled at the election. If any voter, after entering the voting machine booth and before the closing of such booth, shall ask for further instructions concerning the manner of voting, two inspectors of opposite political faith shall give such instructions to him. No inspector or

other election officer or other person instructing a voter, shall, in any manner, request, suggest or seek to persuade or induce any such voter to vote any particular ticket, or for any particular candidate or for or against any particular ballot proposal. After giving such instructions, the inspectors shall retire and such voter shall then close the booth and vote as in the case of an unassisted voter.

8. In no event shall an inspector or any other person enter a voting machine or booth for the purpose of giving instructions to a voter, after the voter has closed such booth, except as permitted herein.

9. Any voter requesting a sample ballot shall be furnished one if available and he may take it away from the polling place.

Privacy waiver required?

N/A

NORTH CAROLINA

Constitutional provision re: right to secret ballot

N.C. Const. Art. VI, § 5

All elections by the people shall be by ballot.

Note: *Withers v. Board of Com'rs of Harnett County*, 146 S.E. 225 (1929) (Secrecy of voting is implied by provision for elections by ballot.)

Statutory provisions re: secret voting

N.C. Gen. Stat. § 163-132.5G

[...] The county board shall not be required to report returns by voting tabulation district for voters who voted other than at their precinct voting place on election day until 60 days after the election. **In reporting returns, the county board shall not compromise the secrecy of an individual's ballot.** [...]

N.C. Gen. Stat. § 163-166.2

Each voting enclosure shall contain at a minimum:

(1) A sufficient number of private spaces for all voters to mark their official ballots in secrecy. [...]

N.C. Gen. Stat. § 163-231

(a) Procedure for Voting Absentee Ballots.--In the presence of two persons who are at least 18 years of age, and who are not disqualified by G.S. 163-226.3(a)(4) or G.S. 163-237(b1), the voter shall do all of the following:

(1) Mark the voter's ballots, or cause them to be marked by that person in the voter's presence according to the voter's instruction.

[...]

The persons in whose presence the ballot is marked shall at all times respect the secrecy of the ballot and the privacy of the absentee voter, unless the voter requests assistance and that person is otherwise authorized by law to give assistance. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the county board of elections which issued the ballots.

N.C. Gen. Stat. § 163-234(5)

As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated "Pollbook of Absentee Voters" the name of the absentee voter, or if the pollbook is computer-generated, the board shall check off the name. Preserving secrecy, the ballots shall be placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot. The "Pollbook of Absentee Voters" shall also contain the names of all persons who voted under G.S. 163-227.2, but those names may be printed by computer for inclusion in the pollbook.

Exceptions to right to secret ballot

N.C. Gen. Stat. Ann. § 163-166.8

(a) Any registered voter qualified to vote in the election shall be entitled to assistance with entering and exiting the voting booth and in preparing ballots in accordance with the following rules:

(1) Any voter is entitled to assistance from the voter's spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild, as chosen by the voter.

(2) A voter in any of the following four categories is entitled to assistance from a person of the voter's choice, other than the voter's employer or agent of that employer or an officer or agent of the voter's union:

a. A voter who, on account of physical disability, is unable to enter the voting booth without assistance.

b. A voter who, on account of physical disability, is unable to mark a ballot without assistance.

c. A voter who, on account of illiteracy, is unable to mark a ballot without assistance.

d. A voter who, on account of blindness, is unable to enter the voting booth or mark a ballot without assistance.

(b) A qualified voter seeking assistance in an election shall, upon arriving at the voting place, request permission from the chief judge to have assistance, stating the reasons. If the chief judge determines that such assistance is appropriate, the chief judge shall ask the voter to

point out and identify the person the voter desires to provide such assistance. If the identified person meets the criteria in subsection (a) of this section, the chief judge shall request the person indicated to render the assistance. The chief judge, one of the judges, or one of the assistants may provide aid to the voter if so requested, if the election official is not prohibited by subdivision (a)(2) of this section. Under no circumstances shall any precinct official be assigned to assist a voter qualified for assistance, who was not specified by the voter.

(c) A person rendering assistance to a voter in an election shall be admitted to the voting booth with the voter being assisted. The State Board of Elections shall promulgate rules governing voter assistance, and those rules shall adhere to the following guidelines:

(1) The person rendering assistance shall not in any manner seek to persuade or induce any voter to cast any vote in any particular way.

(2) The person rendering assistance shall not make or keep any memorandum of anything which occurs within the voting booth.

(3) The person rendering assistance shall not, directly or indirectly, reveal to any person how the assisted voter marked ballots, unless the person rendering assistance is called upon to testify in a judicial proceeding for a violation of the election laws.

Privacy waiver required?

8 N.C. Admin. Code 12.0104

[...] (c) An absentee ballot that is completed and returned by the voter by facsimile transmission must:

(1) Contain the following statement: "I understand that by using facsimile transmission to return my marked ballot, I am voluntarily waiving a portion of the secrecy of my ballot to the extent necessary to process my ballot, but expect that my vote will be held as confidential as possible. At the same time, I pledge to place the original voted ballot in a secure envelope, together with any other required materials and send the documents immediately by air mail or place them in delivery to the appropriate county board of elections." This must be followed by the voter's signature and date of signature [...]

NORTH DAKOTA

Constitutional provision re: right to secret ballot

N.D. Const. Art. 2, § 1

The legislative assembly shall provide by law for secrecy in voting, for absentee voting, for administration of elections and for the nomination of candidates.

Statutory provisions re: secret voting

N.D. Cent. Code § 16.1-13-29

The inspector of elections shall provide a sufficient number of voting booths or compartments in the inspector's polling place, which must be designed to enable the elector to mark, or in the case of direct-recording electronic voting system devices, enter by touchscreen or other data entry device, the elector's ballot screened from observation. The number of booths or compartments in precincts may not be less than one for each one hundred fifty electors or fraction thereof in the precinct. The expense of providing the booths or compartments must be paid in the same manner as other election expenses. One electronic voting system device must be provided in each precinct.

N.D. Cent. Code § 16.1-13-23

Upon receipt of a ballot within the provided secrecy sleeve, the elector, forthwith and without leaving the polling place, shall retire alone to one of the voting booths or compartments to prepare the elector's ballot by darkening the oval opposite the name of each individual for whom the elector wishes to vote. In the case of a ballot containing a constitutional amendment, an initiated or referred measure, or any other question to be submitted to a vote of the people, the elector shall darken the oval opposite the word or words expressing the elector's wish. After preparing the ballot, the elector shall place the ballot back in the provided secrecy sleeve so it is concealed and so the endorsement of the inspector or election judge may be seen. The elector then shall deposit the ballot in the optical scanning device and wait to determine if the ballot is deposited into the ballot box or if the optical scanning device has indicated a possibility for a second-chance voting condition. If a second-chance voting condition is indicated, a voter may spoil and receive up to two additional ballots. The voter's third ballot must be cast as is and may not be returned to the voter even if errors exist causing certain votes not to be counted.

N.D. Cent. Code § 16.1-07-08

1. Upon receipt of an application for an official ballot properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been prepared, the county auditor, city auditor, or business manager of the school district, as the case may be, shall send to the absent voter by mail, at the expense of the political subdivision conducting the election, one official ballot, or personally deliver the ballot to the applicant or the applicant's agent, which agent may not, at that time, be a candidate for any office to be voted upon by the absent voter. The agent shall sign the agent's name before receiving the ballot and deposit with the auditor or business manager of the school district, as the case may be, authorization in writing from the applicant to receive the ballot or according to requirements set forth for signature by mark. The auditor or business manager of the school district, as the case may be, may not provide an absent voter's ballot to a person acting as an agent who cannot provide a signed, written authorization from an applicant. No person may receive compensation, including money, goods, or services, for acting as an agent for an elector, nor may a person act as an agent for more than four electors in any one election. A voter voting by absentee ballot may not require the political subdivision providing the ballot to bear the expense of the return postage for an absentee ballot.

2. If there is more than one ballot to be voted by an elector of the precinct, one of each kind must be included and a secrecy envelope and a return envelope must be enclosed with the

ballot or ballots. The front of the return envelope must bear the official title and post-office address of the officer supplying the voter with the ballot and upon the other side a printed voter's affidavit in substantially the following form:

[...]

If the absent voter is unable to sign the voter's name, the voter shall mark (X) or use the applicant's signature stamp on the affidavit in the presence of a disinterested individual. The disinterested individual shall print the name of the individual marking the X or using the signature stamp below the X or signature stamp and shall sign the disinterested individual's own name following the printed name together with the notation "witness to the mark".

3. Each individual requesting an absent voter's ballot under this chapter must be provided a set of instructions, prescribed by the secretary of state, sufficient to describe the process of voting by absent voter's ballot. The voting instructions must contain a statement informing the individual that the individual is entitled to complete the absent voter's ballot in secrecy.

4. Each individual requesting an absent voter's ballot under this chapter who cannot read the English language or who because of blindness or other disability is unable to mark the voter's ballot, upon request, may receive the assistance of any individual of the voter's choice, other than the voter's employer, an officer or agent of the voter's union, a candidate running in that election, or a relative of a candidate as described in subsection 2 of section 16.1-05-02, in marking the voter's ballot.

N.D. Cent. Code § 16.1-06-14

Any electronic voting system used in an election in this state must:

[...] 4. Permit and require voting in absolute secrecy, and must be so constructed and controlled that no person can see or know for whom any other elector has voted or is voting, except a voter whom the person has assisted or is assisting in voting, as prescribed by law, and that no person may see or know the number of votes registered for any candidate or tamper with any mechanism. [...]

Exceptions to right to secret ballot

N.D. Cent. Code § 16.1-13-27

Any elector may receive the assistance of any person of the elector's choice, other than the elector's employer, officer or agent of the elector's union, a candidate running in that election, or a relative of a candidate as provided in subsection 2 of section 16.1-05-02, in marking the elector's ballot. If the elector requests the assistance of a member of the election board, however, the elector shall receive the assistance of both election judges in the marking of the elector's ballot. No one assisting any elector in marking a ballot under this chapter may give information regarding the ballot. No elector, other than one who requests assistance, may divulge to anyone within the polling place the name of any candidate for whom the elector intends to vote, nor ask, nor receive the assistance of any person within the polling place to mark the elector's ballot. Parking facilities at polling places must be accessible to the elderly and the physically disabled and must be clearly marked.

Privacy waiver required?

No.⁷⁵

OHIO

Constitutional provision re: right to secret ballot

Oh. Const. Art. V, § 2

All elections shall be by ballot.

Note: This constitutional requirement does not invalidate use of voting machines. The term “ballot” designates a method of conducting elections which will insure secrecy as distinguished from open or viva voce voting. *State ex rel. Automatic Registering Mach. Co. v. Green* 121 Ohio St. 301, 168 N.E. 131 (Ohio 1929).

Statutory provisions re: secret voting

Ohio Rev. Code Ann. § 3506.06(A)

No marking device shall be approved by the board of voting machine examiners or certified by the secretary of state, or be purchased, rented, or otherwise acquired, or used, unless it fulfills the following requirements:

(A) It shall permit and require voting in absolute secrecy, and shall be so constructed that no person can see or know for whom any other elector has voted or is voting, except an elector who is assisting a voter as prescribed by section 3505.24 of the Revised Code.

Ohio Rev. Code Ann. § 3506.10

No voting machine shall be approved by the board of voting machine examiners or certified by the secretary of state, or be purchased, rented, or otherwise acquired, or used, except when specifically allowed for experimental use, as provided in section 3506.04 of the Revised Code, unless it fulfills the following requirements:

(A) It shall permit and require voting in absolute secrecy, and shall be so constructed that no person can see or know for whom any other elector has voted or is voting, except an elector who is assisting a voter as prescribed by section 3505.24 of the Revised Code.

Ohio Rev. Code Ann. § 3509.06(E)

(E) Special election officials, employees or members of the board of elections, or observers shall not disclose the count or any portion of the count of absent voter's ballots prior to the time of the closing of the polling places. **No person shall recklessly disclose the count or any portion of the count of absent voter's ballots in such a manner as to jeopardize the secrecy of any individual ballot.**

Ohio Rev. Code Ann. § 3599.20

No person shall attempt to induce an elector to show how the elector marked the elector's ballot at an election; or, being an elector, allow the elector's ballot to be seen by another, except as provided by section 3505.24 of the Revised Code, with the apparent intention of letting it be known how the elector is about to vote; or make a false statement as to the elector's ability to mark the ballot; or knowingly mark the ballot so it may be identified after it has been cast; or attempt to interfere with an elector in the voting booth when marking the elector's ballot; or knowingly destroy or mutilate a lawful ballot; or remove from the polling place or be found in unlawful possession of a lawful ballot outside the enclosure provided for voting; or knowingly hinder or delay the delivery of a lawful ballot to a person entitled to receive it; or give to an elector a ballot printed or written contrary to law; or forge or falsely make an official indorsement on a ballot.

Whoever violates this section is guilty of a felony of the fifth degree.

Exceptions to right to secret ballot

Ohio Rev. Code Ann. § 3505.24

Notwithstanding any provision of the Revised Code to the contrary, any elector who does both of the following may be accompanied in the voting booth and aided by any person of the elector's choice, other than the elector's employer, an agent of the elector's employer, or an officer or agent of the elector's union, if any:

(A) Appears to vote on the day of an election or appears at the office of the board of elections to cast absent voter's ballots in person; and

(B) Declares to the presiding judge of elections or to the election official who is accepting applications to cast absent voter's ballots in person that the elector is unable to mark the elector's ballot by reason of blindness, disability, or illiteracy.

The elector also may request and receive assistance in the marking of the elector's ballot from two election officials of different political parties. Any person providing assistance in the marking of an elector's ballot under this section shall thereafter provide no information in regard to the marking of that ballot.

Any election official may require a declaration of inability to be made by the elector under oath before the election official. Assistance shall not be rendered for causes other than those specified in this section, and no candidate whose name appears on the ballot shall assist any person in marking that person's ballot.

Privacy waiver required?

N/A

OKLAHOMA

Constitutional provision re: right to secret ballot

N/A

Statutory provisions re: secret voting

26 Okl. St. Ann. § 7-120

Before leaving the voting booth, the voter may insert the ballot into a secrecy folder in such a manner that the voter's votes cannot be seen. The voter then shall insert the ballot in the voting device. The voter thereupon shall immediately leave the polling place.

26 Okl. St. Ann. § 3-122

The secretary of the county election board shall cause at least two voting booths to be provided in each precinct. Said booths shall contain a counter or shelf and shall be constructed in such a manner that a member of the precinct election board can determine whether more than one person is in the booth, but in such a manner as to insure secrecy by the voter in marking his ballots.

26 Okl St. Ann. § 16-115

Any person who, within the election enclosure, discloses to any other person how he voted shall be deemed guilty of a misdemeanor.

Exceptions to right to secret ballot

26 Okla. Stat. Ann. § 7-123.3

Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union. The Secretary of the State Election Board shall prescribe procedures to be used that require such voters to swear or affirm that such assistance is required and that require the person providing such assistance to swear or affirm that the voter's ballots are being voted in accordance with the voter's wishes.

26 Okl. St. Ann. § 7-123.1

When any voter states that he is able to reach the location of the polling place, but because of a physical disability or infirmity other than visual is unable to enter the election enclosure, the inspector shall administer an oath to said voter in which said voter shall swear to or affirm the fact of such disability or infirmity. Should a voter so qualify himself, it shall be the duty of two (2) members of the precinct election board, of different political parties, to give said voter such assistance as he needs in voting. **Such assistance shall afford as much privacy to the voter in marking his ballots as is practical.** The precinct election board members assisting in such voting shall make a written record of the circumstances involved.

Privacy waiver required?

State Election Board. Okla. Admin. Code § 230:30-11-6.1(b)

(b) A uniformed services or overseas voter described in (a) of this section may fax a copy of the voted ballot either to the State Election Board or to the County Election Board that issued the ballot in addition to mailing the original ballot to the issuing County Election Board. A fax cover sheet for this purpose may be downloaded and printed from the Federal Voting Assistance Program (FVAP) website: www.fvap.gov. Uniformed services voters may obtain copies of the fax cover sheet from the Voting Service Officers in their units. Overseas

voters may obtain the cover sheet at United States embassies, consulates, and military installations. **A voter who chooses to fax a voted ballot must sign a Secret Ballot Waiver and transmit it with the ballot.** All faxed ballots must be received by the State Election Board or by the County Election Board no later than 7 p.m. (United States Central Time Zone) on the date of the election in order for the ballot to be counted. In the event that a voter's regular ballot is received by mail at the County Election Board prior to 7 p.m. on election day, only the voter's regular ballot shall be counted. The voter shall follow these instructions to fax a voted ballot to the State Election Board or to the County Election Board.

OREGON

Constitutional provision re: right to secret ballot

N/A

Statutory provisions re: secret voting

Ore. Rev. Stat. § 246.560(a)(1)

(1) A voting machine may not be approved by the Secretary of State unless the voting machine is constructed so that it:

(a) Secures to the elector secrecy of voting. [...]

Ore. Rev. Stat. § 254.472

The county clerk shall provide, at any location where ballots are issued, at least three suitable compartments, shelves or tables at which electors may mark their ballots. The arrangement of the compartments, shelves or tables shall ensure that the elector may conveniently mark the ballot with absolute secrecy. The compartments, shelves or tables shall be available during the entire time that ballots may be issued.

Ore. Rev. Stat. § 260.695(7)-(9)

(7) An elections official, other than in the performance of duties, may not disclose to any person any information by which it can be ascertained for whom any elector has voted.

(8) A person, except an elections official in performance of duties, may not do anything to a ballot to permit identification of the person who voted.

(9) An elector may not willfully leave at any place designated for the deposit of ballots under ORS 254.470 or at any location described in ORS 254.472 or 254.474 anything that will show how the elector's ballot was marked.

Exceptions to right to secret ballot

Ore. Rev. Stat. § 254.445

(1) If an elector is within the county and, because of a physical disability or an inability to read or write, is unable to mark the ballot, the elector may request and shall receive the assistance of two persons of different parties provided by the clerk or of some other person

chosen by the elector in marking the ballot. The persons assisting the elector shall ascertain the wishes of the elector and assist the elector in voting the ballot accordingly, and thereafter may give no information regarding the vote.

(2) A person may not assist an elector under subsection (1) of this section if the person:

(a) Is an employer of the elector or an agent of the employer; or

(b) Is an officer or agent of the union of which the elector is a member.

(3) In preparing the ballot, an elector may use or copy a sample ballot, which may be marked in advance to assist the elector in marking the official ballot.

Privacy waiver required?

Ore. Rev. Stat. § 253.690

Each elector who casts a ballot under this section shall complete and submit a waiver described in this subsection. The elector shall attest to the information supplied on the waiver by signing the completed waiver. The Secretary of State by rule shall design the form of the waiver, which shall include all of the following:

(a) Space for the elector to provide the elector's full name, residence or mailing address, an electronic mail address, phone or facsimile number where the elector may be contacted and any other necessary information.

(b) A waiver in substantially the following form:

I, _____, acknowledge that by casting my voted ballot using a facsimile machine or by electronic mail I have waived my right to a secret ballot.

PENNSYLVANIA

Constitutional provision re: right to secret ballot

Pa. Const. Art. 7, § 4

All elections by the citizens shall be by ballot or by such other method as may be prescribed by law: Provided, That secrecy in voting be preserved.

25 Pa. Stat. Ann. § 3530

Any elector at any primary or election who shall allow his ballot or the face of the voting machine voted by him to be seen by any person with the apparent intention of letting it be known how he is about to vote; or in districts in which ballots are used, shall cast or attempt to cast any other than the official ballot which has been given to him by the proper election officer; or who, without having made the declaration under oath or affirmation required by section 1218 of this act, or when the disability which he declared before any registration commission no longer exists, shall permit another to accompany him into the voting compartment or voting machine booth, or to mark his ballot or prepare the voting machine for voting by him; or who shall mark his ballot or prepare the voting machine for voting

while another is unlawfully present in the voting machine compartment or voting machine booth with him; or who shall state falsely to any election officer that because of illiteracy he is unable to read the names on the ballot or ballot labels or that by reason of physical disability he cannot see or mark the ballot or enter the voting compartment without assistance or that he cannot see or operate the voting machine or enter the voting machine booth without assistance; or who shall state, as his reason for requiring assistance, a disability from which he does not suffer; or any person who shall go into the voting compartment or voting machine booth with another while voting or be present therein while another is voting, or mark the ballot of another or prepare the voting machine for voting with another, except in strict accordance with the provisions of this act; or any person who shall interfere with any elector when inside the enclosed space or when marking his ballot, or preparing the voting machine for voting, or who shall endeavor to induce any elector before depositing his ballot to show how he marks or has marked his ballot; or any person giving assistance who shall attempt to influence the vote of the elector whom he is assisting or who shall mark a ballot or prepare a voting machine for voting in any other way than that requested by the voter whom he is assisting, or who shall disclose to anyone the contents of any ballot which has been marked or any voting machine which has been prepared for voting with his assistance, except when required to do so in any legal proceeding, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand (\$1,000) dollars, or to undergo an imprisonment of not more than one (1) year, or both, in the discretion of the court.

Statutory provisions re: secret voting

25 Pa. St. Ann. § 3007(i)

No voting machine shall, upon any examination or reexamination, be approved by the Secretary of the Commonwealth, or by any examiner appointed by him, unless it shall, at the time, satisfy the following requirements: [...]

(i) It shall permit and require voting in absolute secrecy, and shall be so constructed that no person can see or know for whom any other elector has voted or is voting, save a voter whom he has assisted or is assisting in voting, as prescribed by law. [...]

25 Pa. St. Ann. § 3031.7(1)

No electronic voting system shall, upon any examination or reexamination, be approved by the Secretary of the Commonwealth, or by any examiner appointed by him, unless it shall be established that such system, at the time of such examination or reexamination:

(1) Provides for voting in absolute secrecy and prevents any person from seeing or knowing for whom any voter, except one who has received or is receiving assistance as prescribed by law, has voted or is voting.

25 Pa. St. Ann. § 3031.10(b)

(b) Unless the voting device itself enables the voter to register his vote in secret, the county board of elections shall provide voting booths for each election district, which shall be of a size and design which shall enable the voter to register his vote in secret. The county board

shall determine the number of voting devices and voting booths to be provided in each such district in order to satisfy the minimum capacity standards prescribed by the Secretary of the Commonwealth.

25 Pa. St. Ann. § 3031.12(b)(6)

(b) In an election district which uses an electronic voting system which utilizes paper ballots or ballot cards to register the votes, the following procedures will be applicable for the conduct of the election at the election district: [...]

(6) Following the completion of his vote, the voter shall leave the voting booth and return the ballot to the election officer by a means designed to insure its secrecy; upon removal of the stub of the ballot by the election officer, the voter shall insert the ballot into the district automatic tabulating equipment or, in the event district tabulation is not provided for by the voting system or such district tabulation equipment is inoperative for any reason, into a secure ballot box. No ballot card from which the stub has been detached shall be accepted by the election officer in charge of such equipment or ballot box, but it shall be marked "spoiled" and shall be placed in the envelope marked "Spoiled Ballots."

Exceptions to right to secret ballot

25 Pa. Stat. Ann. § 3058

(a) No voter shall be permitted to receive any assistance in voting at any primary or election, unless there is recorded upon his registration card his declaration that, by reason of blindness, disability, or inability to read or write, he is unable to read the names on the ballot or on the voting machine labels, or that he has a physical disability which renders him unable to see or mark the ballot or operate the voting machine, or to enter the voting compartment or voting machine booth without assistance, the exact nature of such condition being recorded on such registration card, and unless the election officers are satisfied that he still suffers from the same condition.

(b) Any elector who is entitled to receive assistance in voting under the provisions of this section shall be permitted by the judge of election to select a person of the elector's choice to enter the voting compartment or voting machine booth with him to assist him in voting, such assistance to be rendered inside the voting compartment or voting machine booth except that the judge of election, the elector's employer or an agent of the employer or an officer or agent of the elector's union shall not be eligible to assist the elector.

(c) In every case of assistance under the provisions of this section, the judge of election shall forthwith enter in writing in a book to be furnished by the county board of elections, to be known as the record of assisted voters--(1) the voter's name; (2) a statement of the facts which entitle him to receive assistance; and (3) the name of the person furnishing the assistance. The record of assisted voters shall be returned by the judge of election to the county board of elections with the other papers, as hereinafter provided, and said county board shall permit the same to be examined only upon the written order of a judge of the court of common pleas: Provided, however, That such record shall be subject to subpoena to the same extent to which other election records may be subpoenaed: And provided

further, That the county election board shall permit any registration commission to examine any records of assisted voters without a court order, in order that the registration commission may ascertain whether electors, who have declared, at the time of registration, their need for assistance, actually did receive assistance when voting at any election.

25 Pa. Stat. Ann. § 3146.6a

[...] Upon receipt of the official absentee ballot, such elector requiring assistance may select a person to assist him in voting, such assistance to be rendered in secret: Provided, however, That the person rendering assistance may not be the elector's employer or an agent of the employer or an officer or agent of the elector's union. The person rendering the assistance in voting shall complete, date and sign the declaration in such form approved by the Secretary of the Commonwealth, or substantially in the form as set forth below, that the person has caused the elector's ballot to be marked in accordance with such elector's desires and instruction. Such declaration form shall be returned to the county board of elections in the mailing envelope addressed to the county board of elections within which the small "official absentee ballot" is returned.

Declaration of Person Rendering Assistance

I, (Name of Person rendering assistance), hereby declare that I have witnessed the aforesaid elector's signature or mark and that I have caused the aforesaid elector's ballot to be marked in accordance with the desires and instructions of the aforesaid elector.

(Signature of Person Rendering Assistance)

(Address)

Privacy waiver required?

Okla. Admin. Code § 230:30-11-6.1(b)

[...] A voter who chooses to fax a voted ballot must sign a Secret Ballot Waiver and transmit it with the ballot. [...]

RHODE ISLAND

Constitutional provision re: right to secret ballot

N/A

Statutory provisions re: secret voting

R.I. Gen. Laws § 17-19-3

(a) The office of secretary of state shall develop, from time to time, and, in coordination with the general assembly for the purpose of funding procurement, submit specifications to the department of administration that the department of administration shall utilize in procuring voting equipment, voting systems, and services related thereto in accordance with this chapter and chapter 2 of title 37 of the general laws. These specifications and requests for proposals for the options of purchasing, leasing to own, or renting precinct count voting systems that utilize technologies, methods, and equipment considered reasonable best

practices for the state and in compliance with all laws, and for a full-service contract for such voting systems, shall be constructed and shall operate in a manner that meets the following minimum requirements:

(1) It shall enable the voter to:

(i) Mark his or her ballot and cast his or her vote in secrecy;

[...]

R.I. Gen. Laws § 17-20-1.1

Those electors who are unable to vote in person at the polls for the reasons set forth in § 17-20-2 are entitled to vote in a manner which reasonably guarantees the secrecy of their ballots. The procedures set forth in this chapter are designed to promote the effective exercise of their rights while safeguarding those voters who utilize the mail ballot process from harassment, intimidation, and invasion of privacy. The procedures are intended to prevent misuse of the electoral system by persons who are not eligible to vote by mail ballot. The provisions of this chapter shall be interpreted to effectuate the policies set forth in this section.

R.I. Gen. Laws § 17-20-34

This chapter shall be construed liberally to effect the purposes of maintaining the integrity and the secrecy of the mail ballot by assuring that only electors eligible to vote by mail ballot are allowed to utilize that method of voting, by assuring that the procedures set forth in this chapter controlling the application and balloting processes are strictly enforced, and by safeguarding the mail ballot voter from harassment, intimidation, and invasion of privacy.

R.I. Gen. Laws § 17-20-14.1

Each local board shall be authorized to appoint one or more bipartisan pairs of supervisors in the manner that other bipartisan pairs of supervisors are appointed for each election, whose duty it shall be to attend each person who makes an application for a mail ballot under §§ 17-20-2.1 and 17-20-2.2, who does not fall under the provisions of § 17-20-14, and who requests that a bipartisan pair of supervisors be sent by the board of canvassers to that person's place of residence for the purpose of supervising or assisting the mail voter in casting his or her vote. The bipartisan pairs of supervisors shall supervise the casting of votes by persons using the mail ballot at a place that preserves their secrecy and shall take acknowledgments or serve as witnesses, and jointly provide assistance, if requested, to assure proper marking, sealing, and mailing of ballots as voted. The failure or neglect of any local board to appoint these bipartisan pairs, or the failure or neglect of any pair to attend any place at which a mail voter's ballot may be used, or the marking, sealing, or mailing of ballots in the absence of any pair, shall not invalidate any ballot.

R.I. Gen. Laws § 17-20-14(a)

(a) The state board of elections shall appoint as many bipartisan pairs of supervisors as are necessary whose duty it shall be to attend each hospital, rest home, nursing home and convalescent home, or similar types of personal care facility in the state within twenty (20) days prior to the election. They shall supervise the casting of votes by persons using mail ballots at a place that preserves their secrecy and shall take acknowledgments or serve as witnesses, and jointly provide assistance, if requested, to assure proper marking, sealing, and mailing of ballots as voted.

Exceptions to right to secret ballot

R.I. Gen. Laws § 17-19-26.1

(a) Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer, or an officer or agent of the voter's union.

(b) Every voter who requires assistance pursuant to this section, and every person furnishing assistance to a voter pursuant to this section, shall make and file with the warden an affidavit in substantially the following form:

AFFIDAVIT OF VOTER REQUIRING ASSISTANCE

[...]

(d) Every person who makes a false affidavit under this section shall be guilty of a felony.

(e) Under the penalty prescribed by law, the “assistant” is prohibited from marking a vote on the computer ballot, unless otherwise requested by the voter who, due to a physical disability, is unable to mark his or her ballot.

(f) No person may approach a voter and ask if he or she needs assistance, once the voter is within the voting place or waiting in line to vote or within fifty (50) feet of the entrance or entrances to the building as prescribed in § 17-19-49.

Privacy waiver required?

Yes. Must use FVAP Electronic Transmission cover letter which reads “If a VOTED BALLOT is being faxed or emailed, sign below:

“I understand that by faxing or emailing my voted ballot I am voluntarily waiving my right to a secret ballot”.⁷⁶

SOUTH CAROLINA

Constitutional provision re: right to secret ballot

S.C. Const. Art. II, § 1

All elections by the people shall be by secret ballot, but the ballots shall not be counted in secret. The right of suffrage, as regulated in this Constitution, shall be protected by laws regulating elections and prohibiting, under adequate penalties, all undue influence from power, bribery, tumult, or improper conduct.

S.C. Const. Art. II, § 10

The General Assembly shall provide for the nomination of candidates, regulate the time, place and manner of elections, provide for the administration of elections and for absentee voting, insure secrecy of voting, establish procedures for contested elections, and enact other provisions necessary to the fulfillment and integrity of the election process.

Statutory provisions re: secret voting

S.C. Code § 7-13-130

[...]The right to vote of each person so entitled and the secrecy of the ballot shall be preserved at all times.

S.C. Code § 7-13-771

(A) Any elector who, because of physical handicap or age, cannot enter the polling place in the precinct in which he is registered to vote, or is unable to stand in line to vote, may vote outside that polling place in the closest available parking area utilizing the vehicle in which he has been driven, or has driven to the polls.

[...]

(C) No person other than the voter is permitted in the vehicle in which the voter is casting his ballot unless the voter is entitled to assistance as provided in § 7-13-770.

(D) After the voter has voted his ballot, he must fold it so that the secrecy of the ballot is preserved and return it to the managers waiting outside the vehicle. The managers shall carry the ballot to the ballot box, taking care not to violate the secrecy of the ballot, and after detaching the stub, deposit the ballot in the ballot box.

S.C. Code § 7-13-1340(f)

A vote recorder or optical scan voting device must not be adopted or used unless it:

[...] (f) permits voting in absolute secrecy, so that a person shall not see or know for whom any other elector has voted or is voting, except an elector whom the person has assisted or is assisting in voting, as prescribed by law; [...]

S.C. Code § 7-13-1380

Electors shall be permitted to cast write-in votes. The design of the ballot card shall permit the managers in counting the write-in votes to determine readily whether an elector has cast any write-in vote not authorized by law. The State Election Commission in specifying the form of the ballot shall provide for ballot secrecy in connection with write-in votes.

S.C. Code § 7-13-1640(A)(10)

(A) Any kind or type of voting machine may be approved by the State Board of Voting Machine Commissioners which is so constructed as to fulfill the following requirements. It shall:

[...]

(10) ensure voting in absolute secrecy.

[...]

S.C. Code § 7-13-1830

In case any voter, after entering the voting machine, shall ask for further instructions concerning the manner of voting, two of the managers shall give such instructions to him, but no manager or other election officer shall in any manner request or seek to persuade or induce any such voter to vote any particular ticket or for or against any particular candidate or for or against any particular amendment, question or proposition. After giving such instructions the managers shall, before the voter has voted, retire and such voter shall cast his ballot in secret.

S.C. Code § 7-25-100

(A) It is unlawful in any election for a voter to:

- (1) allow his ballot to be seen by a person, except as provided by law;
- (2) take, remove, or attempt to take or remove a ballot from the polling place before the close of the polls;
- (3) place a mark upon his ballot by which it may be identified;

[...]

(B) It is unlawful for a person to:

- (1) interfere with a voter who is inside of the polling place or is marking his ballot;
- (2) unduly influence or attempt to influence unduly a voter in the preparation of his ballot;
- (3) endeavor to induce a voter to show how he marks or has marked his ballot; or
- (4) aid or attempt to aid a voter by means of any mechanical device in marking his ballot.

(C) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than one year.

Exceptions to right to secret ballot

S.C. Code § 7-13-770(A)

(A) A person other than a voter preparing his ballot is not allowed within the guard rail, except as provided in this section. A voter who requires assistance to vote by reason of blindness, disability, or inability to read or write shall make the fact known to the managers.

The chairman of the managers shall appoint one of the managers and a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union to assist the voter in preparing his ballot. After the voter's ballot has been prepared, the person chosen by the voter to assist him immediately shall leave the vicinity of the guard rail. Instead of the above assistance, a person may have a member of his family or, in the case of a blind voter, a person of his choosing render him assistance in voting without the presence of a manager. The term "family" means spouse, father, mother, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, aunt, uncle, niece, or nephew.

Privacy waiver required?

Yes.⁷⁷

SOUTH DAKOTA

Constitutional provision re: right to secret ballot

S.D. Const. Art. 6, § 28

The rights of individuals to vote by secret ballot is fundamental. If any state or federal law requires or permits an election for public office, for any initiative or referendum, or for any designation or authorization of employee representation, the right of any individual to vote by secret ballot shall be guaranteed.

S.D. Const. Art. 7, § 3

The Legislature shall by law define residence for voting purposes, insure secrecy in voting and provide for the registration of voters, absentee voting, the administration of elections, the nomination of candidates and the voting rights of those serving in the armed forces.

Statutory provisions re: secret voting

S.D. Codified Laws § 12-18-27

No person may show a ballot after it is marked to any person in such a way as to reveal the contents of the ballot, or the name of any candidate for whom the person has marked a vote. Nor may any person solicit the voter to show the voter's ballot. Immediately after marking the ballot the voter shall fold and refold the ballot, if necessary, leaving the official stamp exposed.

S.D. Codified Laws § 12-19-10

The board shall then open the envelope without opening, unfolding or examining the ballots the envelope may contain, stamp the ballots with the official stamp, and deposit the ballots with the other ballots cast at the election. [...] No person may, prior to the counting of the votes, open, unfold or examine any ballot, or make any communication to any person concerning the markings or contents of the ballot. A violation of the preceding sentence is a Class 2 misdemeanor.

Exceptions to right to secret ballot

S.D. Codified Laws § 12-18-25 (Disability exception)

Any voter who by reason of physical disability or illiteracy is unable to read or mark a ballot may receive the assistance of any person whom such voter may select.

Privacy waiver required?

N/A

TENNESSEE

Constitutional provision re: right to secret ballot

Tenn. Const. Art. 4, § 4

In all elections to be made by the General Assembly, the members thereof shall vote viva voce, and their votes shall be entered on the journal. All other elections shall be by ballot.

Note: The primary object of the constitutional provision that voting shall be by ballot is to insure secrecy to the voter. *Mooney v. Phillips*, 118 S.W.2d 224 (1938)

Statutory provisions re: secret voting

Tenn. Code Ann. § 2-7-103

No person may be admitted to a polling place while the procedures required by this chapter are being carried out except election officials, voters, persons properly assisting voters, the press, poll watchers appointed under § 2-7-104 and others bearing written authorization from the county election commission.

Candidates may be present after the polls close.

No police or other law enforcement officer may come nearer to the entrance to a polling place than ten feet (10') or enter the polling place except at the request of the officer of elections or the county election commission or to make an arrest or to vote.

No person may go into a voting machine or a voting booth while it is occupied by a voter except as expressly authorized by this title.

In addition to persons authorized to be admitted to the polling place in subsection (a), a child under seventeen (17) years of age may accompany the child's parent or legal guardian into the polling place. Such child may also enter the voting machine or voting booth with such parent or guardian to observe the voting process.

Tenn. Code Ann. §2-7-114(b)(1)

The voter shall then go to a place where the voter may mark the ballot in complete secrecy and privacy and shall prepare the ballot by making in the appropriate place a cross (X) or other mark opposite the name of the candidate of the voter's choice for each office to be filled, or by filling in the name of the candidate of the voter's choice in the blank space provided, and by making a cross (X) or other mark opposite the answer the voter desires to give on each question. Before leaving the place of secrecy and privacy, the voter shall fold the ballot so that the votes cannot be seen but so that the information printed on the back of the ballot and the numbered stub are plainly visible.

Tenn. Code Ann. §2-9-101(a)

A voting machine to be used in Tennessee must provide facilities for voting for candidates at both primary and general elections, at nonpartisan elections or at a combination of a nonpartisan and partisan primary or general election. It must permit a voter to vote for any person for any office, whether or not nominated as a candidate by a political party. It must ensure voting in absolute secrecy.

Tenn. Code Ann. § 2-6-109

(b) The voter shall show the unmarked ballot to the early voting official, mark the ballot in secret at the place provided in the commission office, either fold the ballot or place it in a secrecy sleeve provided by the election commission in order to preserve the secrecy of the ballot, and return to the early voting official [...](e) The county election commission must provide a place where the voter may mark the ballot in complete secrecy and privacy.

Tenn. Code Ann. § 2-6-309

The absentee ballot envelope shall [...] (b) have also a detachable flap which shall contain the words “Do Not Detach” and an affidavit in substantially the following form:

VOTER'S AFFIDAVIT

State of

County of

I, _____, do solemnly swear that I am a resident of Precinct _____, Ward or District _____ of _____ County, State of Tennessee, and am a registered voter in the _____ election to be held on the _____ day of _____, 20____.

I further swear that this envelope contains the absentee ballot marked by me in secret indicating my choice at that election, and that I am not registered in any other state or county for this election and I am otherwise entitled to vote absentee in this election.

Signature of Affiant

CERTIFICATE OF ATTESTING OFFICIAL

Sworn to and subscribed before me this _____ day of _____, 20____. I hereby certify that the affiant whose name appears above exhibited the enclosed absentee ballot to me unmarked, marked the ballot in secret (with assistance) and enclosed and sealed it in this envelope without anyone (other than the assistant) seeing how the affiant voted, and the affiant was not solicited or advised by me to vote for or against any candidate or issue in the election.

Tenn. Code Ann. § 2-19-110

A person commits a Class A misdemeanor if such person assists any person in voting except as permitted by this title, or if such person knowingly casts any vote or consents to the casting of any vote contrary to the desire of the voter while otherwise lawfully assisting the voter in casting such person's vote or if, being an election official or other person otherwise

lawfully assisting a voter, such person influences or attempts to influence the voter in casting such person's vote.

Exceptions to right to secret ballot

Tenn. Code Ann. § 2-7-116 Disability exception)

Disabled, illiterate, blind voters: (a)(1): A voter who claims, by reason of illiteracy or physical disability other than blindness, to be unable to mark the ballot to vote as the voter wishes and who, in the judgment of the officer of elections, is so disabled or illiterate, [or] (b)(1): A voter who claims, by reason of blindness, to be unable to mark the ballot to vote as the voter wishes and who, in the judgment of the officer of elections, is blind, may: (A) Where voting machines are used, have the ballot marked on a voting machine or on a paper ballot subject to the provisions of § 2-7-117 by any person of the voter's selection, or by one of the judges of the voter's choice in the presence of either a judge of a different political party or, if such judge is not available, an election official of a different political party; or

(B) Where voting machines are not used, have the ballot marked by any person of the voter's selection or by one of the judges of the voter's choice in the presence of either a judge of a different political party or, if such judge is not available, an election official of a different political party.

Privacy waiver required?

N/A

TEXAS

Constitutional provision re: right to secret ballot

Texas Const. Art. 6, § 4

In all elections by the people, the vote shall be by ballot, and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot box; and the Legislature shall provide by law for the registration of all voters.

Statutory provisions re: secret voting

Tex. Election Code § 122.001

(a) A voting system may not be used in an election unless the system: (1) preserves the secrecy of the ballot...

Tex. Elec. Code § 125.004

Voting system equipment shall be installed at the polling place so that a voter can operate the equipment without violating the secrecy of the ballot.

Tex. Elec. Code § 61.012

(a) each polling place must provide at least one voting station that: [...] provides a practical and effective means for voters with physical disabilities to cast a secret ballot.

Tex. Elec. Code § 62.0115

- (a) The secretary of state shall adopt rules providing for publicizing voters' rights as prescribed by this section. [...]
- (b) Except as revised by the secretary of state under Subsection (d), the notice must state that a voter has the right to: [...]
- (2) vote in secret and free from intimidation;

Exceptions to right to secret ballot

Tex. Elec. Code § 64.031

A voter is eligible to receive assistance in marking the ballot, as provided by this subchapter, if the voter cannot prepare the ballot because of: (1) a physical disability that renders the voter unable to write or see; or (2) an inability to read the language in which the ballot is written.

Privacy waiver required?

Yes. If returning ballot via fax, must use FVAP Electronic Transmission cover letter which reads “If a VOTED BALLOT is being faxed or emailed, sign below: “I understand that by faxing or emailing my voted ballot I am voluntarily waiving my right to a secret ballot”. *See* <http://www.sos.state.tx.us/elections/laws/advisory-2014-17-procedures-fwab.shtml>

UTAH

Constitutional provision re: right to secret ballot

Utah Const. Art. 4, § 8

- (1) All elections, including elections under state or federal law for public office, on an initiative or referendum, or to designate or authorize employee representation or individual representation, shall be by secret ballot.
- (2) Nothing in this section may be construed to prevent the use of any machine or mechanical contrivance for the purpose of receiving and registering the votes cast at any election, as long as secrecy in voting is preserved.

Statutory provisions re: secret voting

Utah Code Ann. § 20A-3-102

All voting at each regular and municipal general election, at each statewide or local special election, at each primary election, at each local district election, and at each bond election shall be by secret ballot.

Utah Code Ann. § 20A-5-302(2)(a)(i)

Each automated voting system shall:

(i) provide for voting in secrecy, except in the case of voters who have received assistance as authorized by Section 20A-3-108;

Exceptions to right to secret ballot

Utah Code Ann. § 20A-3-108

1) Any voter who has a disability, or is blind, unable to read or write, unable to read or write the English language, or is physically unable to enter a polling place, may be given assistance by a person of the voter's choice [...] (3) The person providing assistance may not request, persuade, or otherwise induce the voter to vote for or vote against any particular candidate or issue or release any information regarding the voter's selection.

Privacy waiver required?

Utah Code Ann. § 20A-16-409

A military-overseas ballot shall include or be accompanied by:

- (1) a declaration signed by a covered voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury under the laws of the United States or Title 76, Chapter 8, Part 5, Falsification in Official Matters; and
- (2) the following statement if the military-overseas ballot is electronically transmitted: “I understand that by electronically transmitting my voted ballot I am voluntarily waiving my right to a secret ballot. Signature of voter _____ Date _____”.

VERMONT

Constitutional provision re: right to secret ballot

N/A

Statutory provisions re: secret voting

Vt. Stat. Ann. tit. 17 § 2504

At each polling place, there shall be a sufficient number, as determined by the board of civil authority, of voting booths. Each booth shall be of sturdy construction and shall allow a voter to mark his or her ballot conveniently without having his or her choices observed by any other person.

Vt. Stat. Ann. tit. 17 § 2316

At every caucus or meeting of a political committee, if there is a contest for nomination, recommendation, or election to any office or position, the vote shall be taken by secret written ballot.

Exceptions to right to secret ballot

Vt. Stat. Ann. tit. 17, § 2541(b)

When an early or absentee voter is blind or is physically unable to go to the polls to vote in person or to mark his or her ballots, they may be marked by one of the officers who delivers

the ballots, in the presence of the other officer. A person who gives assistance to a voter in the marking or registering of ballots shall not in any way divulge any information regarding the choice of the voter or the manner in which the voter's ballot was cast.

Privacy waiver required?

N/A

VIRGINIA

Constitutional provision re: right to secret ballot

Va. Const. Art. 2, § 3

In elections by the people, the following safeguards shall be maintained. Voting shall be by ballot or by machines for receiving, recording, and counting votes cast. No ballot or list of candidates upon any voting machine shall bear any distinguishing mark or symbol, other than words identifying political party affiliation; and their form, including the offices to be filled and the listing of candidates or nominees, shall be as uniform as is practicable throughout the Commonwealth or smaller governmental unit in which the election is held.

In elections other than primary elections, provision shall be made whereby votes may be cast for persons other than the listed candidates or nominees. Secrecy in casting votes shall be maintained, except as provision may be made for assistance to handicapped voters, but the ballot box or voting machine shall be kept in public view and shall not be opened, nor the ballots canvassed nor the votes counted, in secret. Votes may be cast in person or by absentee ballot as provided by law.

Statutory provisions re: secret voting

Va. Code Ann. § 24.2-607

A. It shall be unlawful for any person to hinder, intimidate, or interfere with any qualified voter so as to prevent the voter from casting a secret ballot. The officers of election may order a person violating this subsection to cease such action. If such person does not promptly desist, the officers of election, or a majority of them, may order the arrest of such person by any person authorized by law to make arrests, and, by their warrant, may commit him to the county or city jail, as the case may be, for a period not exceeding twenty-four hours. Any person violating this subsection shall be guilty of a Class 1 misdemeanor.

Va. Code Ann. § 24.2-609

Each electoral board shall provide at each polling place in its county or city one or more voting booths. At least one booth shall be an enclosure which permits the voter to vote by printed ballot in secret and is equipped with a writing surface, operative writing implements, and adequate lighting. Enclosures for voting equipment shall provide for voting in secret and be adequately lighted. "Voting booth" includes enclosures for voting printed ballots and for voting equipment.

Va. Code Ann. § 24.2-629

B. The Board may approve any kind of electronic voting system that meets the following requirements: [...]

11. It shall ensure voting in absolute secrecy. Ballot scanner machines shall provide for the secrecy of the ballot and a method to conceal the voted ballot.

Va. Code Ann. § 24.2-638

[...]No voting or counting machines shall be removed from the plain view of the officers of election or from the polling place at any time during the election and through the determination of the vote as provided in § 24.2-657. However, an electronic voting machine that is so constructed as to be easily portable may be taken outside the polling place pursuant to subsection A of § 24.2-649 and to assist a voter age 65 or older or physically disabled so long as: (i) [...] (ii) the voter casts his ballot in a secret manner unless the voter requests assistance pursuant to § 24.2-649; and (iii) [...]

The equipment shall be placed at least four feet from any table where an officer of election is working or seated. The officers of election shall not themselves be, or permit any other person to be, in any position or near any position that will permit them to observe how a voter votes or has voted.

Va. Code Ann. § 24.2-647

[...]If any voter, after entering the voting booth, asks for further instructions concerning the manner of voting, two of the officers from different political parties shall give such instructions to him, but no officer shall in any manner request or seek to persuade or induce any such voter to vote for or against any particular ticket, candidate, or question. After giving such instructions and before the voter votes, the officers shall leave the voting booth, and the voter shall cast his ballot in secret.

Va. Code Ann. § 24.2-707

On receipt of a mailed absentee ballot, the voter shall, in the presence of a witness, (i) open the sealed envelope marked “ballot within” and (ii) mark and refold the ballot, as provided in §§ 24.2-644 and 24.2-646 without assistance and without making known how he marked the ballot, except as provided by § 24.2-704.

Va. Code Ann. § 24.2-1006

Except as provided by § 24.2-649, no person shall directly or indirectly advise or assist any voter as to how he shall cast his ballot after the voter has entered the prohibited area at the polls as designated in § 24.2-604. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

Exceptions to right to secret ballot

Va. Code Ann. § 24.2-649

A. Any voter age 65 or older or physically disabled may request and then shall be handed a printed ballot by an officer of election outside the polling place but within 150 feet of the

entrance to the polling place. The voter shall mark the printed ballot in the officer's presence but in a secret manner and, obscuring his vote, return the ballot to the officer. The officer shall immediately return to the polling place and shall deposit a paper ballot in the ballot container in accordance with § 24.2-646 or a machine-readable ballot in the ballot scanner machine in accordance with the instructions of the State Board.

Any county or city that has acquired an electronic voting machine that is so constructed as to be easily portable may use the voting machine in lieu of a printed ballot for the voter requiring assistance pursuant to this subsection. However, the electronic voting machine may be used in lieu of a printed ballot only so long as: (i) [...] and (ii) the voter casts his ballot in a secret manner unless the voter requests assistance pursuant to this section. [...]

B. Any qualified voter who requires assistance to vote by reason of physical disability or inability to read or write may, if he so requests, be assisted in voting. If he is blind, he may designate an officer of election or any other person to assist him. If he is unable to read and write or disabled for any cause other than blindness, he may designate an officer of election or some other person to assist him other than the voter's employer or agent of that employer, or officer or agent of the voter's union.

The officer of election or other person so designated shall not enter the booth with the voter unless (i) the voter signs a request stating that he requires assistance by reason of physical disability or inability to read or write and (ii) the officer of election or other person signs a statement that he is not the voter's employer or an agent of that employer, or an officer or agent of the voter's union, and that he will act in accordance with the requirements of this section. The request and statement shall be on a single form furnished by the State Board. If the voter is unable to sign the request, his own mark acknowledged by him before an officer of election shall be sufficient signature, provided no mark shall be required of a voter who is blind. An officer of election shall advise the voter and person assisting the voter of the requirements of this section and record the name of the voter and the name and address of the person assisting him.

The officer of election or other person so designated shall assist the qualified voter in the preparation of his ballot in accordance with his instructions and without soliciting his vote or in any manner attempting to influence his vote and shall not in any manner divulge or indicate, by signs or otherwise, how the voter voted on any office or question. If a printed ballot is used, the officer or other person so designated shall deposit the ballot in the ballot container in accordance with § 24.2-646 or in the ballot scanner machine in accordance with the instructions of the State Board.

[...]

D. A person who willfully violates subsection B or C is guilty of a Class 1 misdemeanor. In addition, the provisions of § 24.2-1016 and its felony penalties for false statements shall be applicable to any request or statement signed pursuant to this section, and the provisions of §§ 24.2-704 and 24.2-1012 and the felony penalties for violations of the law related to providing assistance to absentee voters shall be applicable in such cases.

E. In any precinct in which an electronic voting machine is available that provides an audio ballot, the officers of election shall notify a voter requiring assistance pursuant to this section that such machine is available for him to use to vote in privacy without assistance and the officers of election shall instruct the voter on the use of the voting machine. Nothing in this section shall be construed to require a voter to use the machine unassisted.

Privacy waiver required?

N/A

WASHINGTON

Constitutional provision re: right to secret ballot

Wa. Const. Art. 6, § 6

All elections shall be by ballot. The legislature shall provide for such method of voting as will secure to every elector absolute secrecy in preparing and depositing his ballot.

Statutory provisions re: secret voting

Wash Rev. Code Ann. § 29A.04.206

The rights of Washington voters are protected by its constitution and laws and include the following fundamental rights:

[...] (2) The right of absolute secrecy of the vote. No voter may be required to disclose political faith or adherence in order to vote; [...]

Wash. Rev. Code Ann. § 29A.04.611

The secretary of state as chief election officer shall make reasonable rules in accordance with chapter 34.05 RCW not inconsistent with the federal and state election laws to effectuate any provision of this title and to facilitate the execution of its provisions in an orderly, timely, and uniform manner relating to any federal, state, county, city, town, and district elections. To that end the secretary shall assist local election officers by devising uniform forms and procedures.

In addition to the rule-making authority granted otherwise by this section, the secretary of state shall make rules governing the following provisions: [...]

(11) Procedures to ensure the secrecy of a voter's ballot when a small number of ballots are counted; [...]

(34) Standards and procedures to guarantee the secrecy of ballots; [...]

(39) The aggregation of precinct results if reporting the results of a single precinct could jeopardize the secrecy of a person's ballot;

Wash Code Rev. Ann. § 29A.12.080

No voting device shall be approved by the secretary of state unless it:

(1) Secures to the voter secrecy in the act of voting; [...]

Exceptions to right to secret ballot

Wash Rev. Code Ann. § 29A.40.160(10)

If any voter states that he or she is unable to cast his or her votes due to a disability, the voter may designate a person of his or her choice, or two election officers, to enter the voting booth and record the votes as he or she directs.

Privacy waiver required?

No.⁷⁸

WEST VIRGINIA

Constitutional provision re: right to secret ballot

W. Va. Const. Art. 4, § 2

In all elections by the people, the mode of voting shall be by ballot; but the voter shall be left free to vote by either open, sealed or secret ballot, as he may elect.

Statutory provisions re: secret voting

W. Va Code Ann. § 3-1-4

In all elections the mode of voting shall be by ballot, but the voter shall be left free to vote by either open, sealed, or secret ballot, as he may elect. [...]

W. Va. Code Ann. § 3-3-3(f)

The voter shall enter the voting booth alone and there mark the ballot: Provided, That the voter may have assistance in voting according to the provisions of section four of this article. After the voter has voted the ballot or ballots, the absentee voter shall: Place the ballot or ballots in the gray secrecy envelope and return the ballot or ballots to the official designated to supervise and conduct the absentee voting: Provided, however, That in direct recording election systems, once the voter has cast his or her ballot, the voter shall exit the polling place.

W. Va. Code Ann. § 3-4A-9

An electronic voting system of particular make and design may not be approved by the State Election Commission or be purchased, leased or used by any county commission unless it meets the following requirements:

- (1) It secures or ensures the voter absolute secrecy in the act of voting or, at the voter's election, provides for open voting;
- (2) It is constructed to ensure that, except in instances of open voting as provided in this section, the contents of a marked ballot may not be seen or known by anyone other than the voter who has voted or is voting;

W. Va. Code Ann. § 3-3B-4(4)

THE SECRET BALLOT AT RISK:

RECOMMENDATIONS FOR PROTECTING DEMOCRACY

Provisions of sections eight and nine, article four-a, chapter three of this code notwithstanding, a voting system may be approved by the Secretary of State for use in the pilot program authorized by this article if it meets the following minimum requirements: [...]

(4) Secret But Verifiable Ballots. System implements secret balloting, while allowing independent third-party monitors to verify that the ballots counted are the same as the ballots cast.

Exceptions to right to secret ballot

W. Va. Code Ann. § 3-4A-22

(a) Any duly registered voter who requires assistance to vote by reason of blindness, disability, advanced age or inability to read and write may be given assistance by one of the following means:

(1) By a person of the voter's choice: Provided, That the assistance may not be given by the voter's present or former employer or agent of that employer or by an officer or agent of a labor union of which the voter is a past or present member or a candidate on the ballot or official write-in candidate; or

(2) If no person of the voter's choice be present at the polling place, the voter may request assistance from the poll clerks or ballot commissioners present at the polling place, whereupon assistance may be given by any two of the election officers of opposite political party affiliation to whom the voter shall thereupon declare his or her choice of candidates and his or her position on public questions appearing on the ballot. The election officers, in the presence of the voter and in the presence of each other, shall thereupon cause the voter's declared choices to be recorded on the ballot or a vote recording device, as may be appropriate, as votes.

(b) A person other than an election officer who assists a voter in voting under the provisions of this section shall sign a written oath or affirmation before assisting the voter, stating that he or she will not override the actual preference of the voter being assisted or mislead the voter into voting for someone other than the candidate of the voter's choice. The person assisting the voter shall also swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation.

W. Va. Code Ann. § 3-3-5

(e)(2) If the voter is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. § 1973, et seq., the official designated to supervise and conduct absentee voting shall transmit the ballot to the voter via mail, or electronically as requested by the voter. If the voter does not designate a preference for transmittal, the clerk may select either method of transmittal for the ballot. If the ballot is transmitted electronically pursuant to this subdivision, the official designated to supervise and conduct absentee voting shall also transmit electronically:

(A) A waiver of privacy form, to be promulgated by the Secretary of State;

(B) Instructions for voting absentee utilizing a federally approved system for voting by mail or electronically;

(C) Notice that a list of write-in candidates is available upon request; and

(D) Statement of the voter affirming the voter's current name and address and whether or not he or she received assistance in voting.

(f) The voter shall mark the ballot alone: Provided, That the voter may have assistance in voting according to the provisions of section six of this article.

(1) After the voter has voted the ballot or ballots to be returned by mail, the voter shall:

(A) Place the ballot or ballots in envelope no. 1 and seal that envelope;

(B) Place the sealed envelope no. 1 in envelope no. 2 and seal that envelope;

(C) Complete and sign the forms on envelope no. 2; and

(D) Return that envelope to the official designated to supervise and conduct absentee voting.

(2) If the ballot was transmitted electronically as provided in subdivision (2), subsection (e) of this section, the voter shall return the ballot in the same manner the ballot was received, or the voter may return the ballot by United States mail, along with a signed privacy waiver form.

W. Va. Code Ann. § 3-3-6

[...]The person providing assistance in voting an absent voter's ballot by mail shall make an affidavit on a form as may be prescribed by the secretary of state, that he will not in any manner request, or seek to persuade, or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question, and that he will not keep or make any memorandum or entry of anything occurring within the voting booth or compartment, and that he will not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, or which ticket he had voted, or how he had voted on any public question, or anything occurring within the voting booth or compartment or voting machine booth, except when required pursuant to law to give testimony as to such matter in a judicial proceeding. [...]

Privacy waiver required?

W. Va. Code. Ann. § 3-3-5(2)(A)

(2) If the voter is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. § 1973, et seq., the official designated to supervise and conduct absentee voting shall transmit the ballot to the voter via mail, or electronically as requested by the voter. If the voter does not designate a preference for transmittal, the clerk may select either method of transmittal for the ballot. If the ballot is transmitted electronically pursuant to this

subdivision, the official designated to supervise and conduct absentee voting shall also transmit electronically:

(A) A waiver of privacy form, to be promulgated by the Secretary of State; [...]

See also Statement from SoS: “Emailing and faxing a ballot require the voter to waive their privacy, meaning an election worker at the county clerk’s office will be able to see their ballot.”

<http://www.sos.wv.gov/news/topics/elections-candidates/Pages/TennantWestVirginiasMilitaryVeteransandOverseas.aspx>

WISCONSIN

Constitutional provision re: right to secret ballot

Wisc. Const. Art. 3, § 3

All votes shall be by secret ballot.

Statutory provisions re: secret voting

Wisc. Stat. Ann. § 5.91

No ballot, voting device, automatic tabulating equipment or related equipment and materials to be used in an electronic voting system may be utilized in this state unless it is approved by the commission. The commission may revoke its approval of any ballot, device, equipment or materials at any time for cause. No such ballot, voting device, automatic tabulating equipment or related equipment or material may be approved unless it fulfills the following requirements:

(1) It enables an elector to vote in secrecy and to select the party for which an elector will vote in secrecy at a partisan primary election. [...]

Wis. Stat. Ann. § 6.87(4)(b)

[...] The absent elector, in the presence of the witness, shall mark the ballot in a manner that will not disclose how the elector's vote is cast. The elector shall then, still in the presence of the witness, fold the ballots so each is separate and so that the elector conceals the markings thereon and deposit them in the proper envelope. [...]

Exceptions to right to secret ballot

Wisc. Stat. Ann. § 6.82(2)

Aid in marking ballot. (a) If an elector declares to the presiding election official that he or she cannot read or write, or has difficulty in reading, writing or understanding English or that due to disability is unable to mark a ballot or depress a button or lever on a voting machine, the elector shall be informed by the officials that he or she may have assistance. When assistance is requested, the elector may select any individual to assist in casting his or her vote. The selected individual rendering assistance may not be the elector's employer or an agent of that employer or an officer or agent of a labor organization which represents the elector. The selected individual shall certify on the back of the ballot that it was marked with

his or her assistance. Where voting machines are used, certification shall be made on the registration list.

(b) The individual chosen shall enter the voting booth or machine with the elector and shall read the names of all candidates on the ballot for each office, and ask, "For which one do you vote?". The ballot shall be marked or the lever or button depressed according to the elector's expressed preference. The individual selected to assist may not disclose to anyone how the elector voted.

Wis. Stat. Ann. § 6.87(4)(b)

(5) If the absent elector declares that he or she is unable to read, has difficulty in reading, writing or understanding English or due to disability is unable to mark his or her ballot, the elector may select any individual, except the elector's employer or an agent of that employer or an officer or agent of a labor organization which represents the elector, to assist in marking the ballot, and the assistant shall then sign his or her name to a certification on the back of the ballot, as provided under s. 5.55.

Privacy waiver required?

N/A

WYOMING

Constitutional provision re: right to secret ballot

Wyo. Const. Art. 6, § 11

All elections shall be by ballot. The legislature shall provide by law that the names of all candidates for the same office, to be voted for at any election, shall be printed on the same ballot, at public expense, and on election day be delivered to the voters within the polling place by sworn public officials, and only such ballots so delivered shall be received and counted. But no voter shall be deprived the privilege of writing upon the ballot used the name of any other candidate. All voters shall be guaranteed absolute privacy in the preparation of their ballots, and the secrecy of the ballot shall be made compulsory.

Statutory provisions re: secret voting

Wyo. Stat. Ann. § 22-12-103

The county clerk in all elections shall furnish each polling place with sufficient booths, paper ballots or voting machines and supplies to permit convenient and secret marking of ballots.

Wyo. Stat. Ann. § 22-9-112(b)

For all electors, as specified in W.S. 22-9-105, the following shall be printed on the reverse side of the outer envelope in red ink:

INSTRUCTIONS

This is your absentee ballot. To vote, mark the ballot in secret, then sign the affidavit on the back of the inner ballot envelope and mail or deliver the inner ballot envelope to the county clerk.

Wyo. Stat. Ann. § 22-11-103

(a) Every electronic voting system adopted for use in Wyoming shall:

(i) Provide for voting in secrecy; [...]

Wyo. Stat. Ann. § 22-10-101(a)(i)

(a) To be approved for use in Wyoming a voting machine shall:

(i) Require secret voting, except for electors receiving assistance as provided by law;

Exceptions to right to secret ballot

Wyo. Stat. Ann. § 22-13-113(a)

Not more than one (1) person may occupy a voting booth at any time, except that any elector who requires assistance to vote because of blindness, disability or inability to read or write may be given assistance by a person of the elector's choice, other than the elector's employer or an agent of that employer or an officer or agent of the elector's union.

Privacy waiver required?

N/A

ENDNOTES

¹ In the case of a “national or local emergency,” Idaho Sec. of State may allow UOCAVA voters to fax or email ballot. Idaho Code Ann. § 34-201. The provision has never been invoked.

² Internet voting in Idaho only available in emergency situations. *See* note 1.

³ *See* U.S. Vote Foundation, The Future of Voting: End-to-End Verifiable Internet Voting - Specification and Feasibility Study (July 2015), *available at* <https://www.usvotefoundation.org/E2E-VIV>.

⁴ Voter registration, unlike voting, is not done anonymously. Much voter registration information is public, and there are fail safes that enable voters to determine if their registration has changed. Safeguarding systems and data is appropriate, but substantially easier to do with voter registration than with votes.

⁵ 52 U.S.C.A. § 20302.

⁶ State of Alaska Division of Elections, *Absentee Voting by Electronic Transmission*, http://www.elections.alaska.gov/vi_bb_by_fax.php.

⁷ *Burson v. Freeman*, 504 U.S. 191, 201 (1992) (*citing* E. Evans, A History of the Australian Ballot System in the United States (1917)).

⁸ *Id.* (*citing* S. Albright, The American Ballot (1942)).

⁹ *Id.*

¹⁰ *Id.* at 202 (*citing* J. Wigmore, The Australian Ballot System as Embodied in the Legislation of Various Countries (1889)).

¹¹ *Id.*

¹² E. Evans, A History of the Australian Ballot System in the United States, 19 (1917)

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* (*citing* Annals of the American Academy of Political and Social Sciences, pp. 735-36.)

¹⁶ *Burson*, 504 U.S. 191 (1992).

¹⁷ *Id.* at 206.

¹⁸ *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 341-43 (1995); *see also* Brief of Amici Curiae Electronic Privacy Information Center (EPIC) and Legal Scholars and Technical Experts in Support of the Petitioners, *Doe v. Reed*, 561 US 186 (2010) (No. 09-559), *available at* https://epic.org/privacy/reed/EPIC_amicus_Reed.pdf (arguing that revealing the names of those who sign petitions would subject signatories to the risk of retribution, that signing petitions constitutes anonymous speech, and that signing petitions is similar to casting a vote and should be protected accordingly); *and* Brief of Amici Curiae Electronic Privacy Information Center, *Cranford v. Marion County Election Board*, 128 S. Ct. 1610 (2008), *available at*

http://www.epic.org/privacy/voting/crawford/epic_sc_111307.pdf (opposing voter photo-ID requirements as infringing on citizens' right to cast a secret ballot).

¹⁹ Jonathan W. White, Opinion, *How Lincoln Won the Soldier Vote*, N.Y. Times (Nov. 7, 2014), <http://opinionator.blogs.nytimes.com/2014/11/07/how-lincoln-won-the-soldier-vote/>.

²⁰ Brad Stone, *Prop 8 Donor Website Shows Disclosure Law is a 2-Edged Sword*, The New York Times, Feb. 7, 2009, <http://www.nytimes.com/2009/02/08/business/08stream.html>.

²¹ *Id.*; see also Brief of Amici Curiae Electronic Privacy Information Center (EPIC) and Legal Scholars and Technical Experts in Support of the Petitioners, *Doe v. Reed*, *supra* note 18.

²² Alexander Hertel-Fernandez, *Employer Political Coercion: A Growing Threat*, American Prospect (Nov. 23, 2015), <http://prospect.org/article/employer-political-coercion-growing-threat>.

²³ See e.g. Ala. Const. Art. VIII, § 177, as amended by Ala. Const. Amend. No. 865.

²⁴ See e.g. Del. Const. art. 5 § 1.

²⁵ See e.g. Ala. Code § 17-9-13, Ark. Code Ann. § 7-5-310, Ind. Code § 3-11-9-2, Nev. Rev. Stat. § 293.296.

²⁶ See e.g. Cal. Elec. Code § 14222, Mo. Rev. Stat. § 115.445, N.Y. Elec. Law § 8-300(2).

²⁷ Nev. Rev. Stat. § 293.730.

²⁸ Del. Code Ann. tit. 15 § 5122.

²⁹ Me. Rev. Stat. Ann. tit. 21-A § 647(1)(G).

³⁰ Sari Horwitz, *More than 30 states offer online voting, but experts warn it isn't secure*, Wash. Post (May 17, 2016), available at <https://www.washingtonpost.com/news/post-nation/wp/2016/05/17/more-than-30-states-offer-online-voting-but-experts-warn-it-isnt-secure/>; see also National Institute of Standards and Technology (NIST), *Security Considerations for Remote Electronic UOCAVA Voting* (February 2011), available at <http://www.nist.gov/itl/vote/upload/NISTIR-7700-feb2011.pdf>; and Federal Voting Assistance Program, *2010 Electronic Voting Support Wizard (EVSU) Technology Pilot Program Report to Congress* (May 2013), available at http://www.fvap.gov/uploads/FVAP/Reports/evsu_report.pdf.

³¹ Douglas W. Jones and Barbara Simons, *Broken Ballots: Will Your Vote Count?* 291 (2012) *Accord* Verified Voting, Computer Technologists' Statement on Internet Voting (September 2012), available at <http://www.verifiedvoting.org/wp-content/uploads/2012/09/InternetVotingStatement.pdf>; see also Peter G. Neumann, *Security Criteria for Electronic Voting* (1993), available at <http://www.csl.sri.com/users/neumann/ncs93.html>.

³² The report's authors included Ron Rivest, Turing prize winner and professor of computer science at MIT, Barbara Simons, past president of the Association of Computing Machinery and researcher at IBM, Joseph Kiniry, lead investigator for security research firm Galois, and Josh Benaloh, senior cryptographer at Microsoft.

³³ U.S. Vote Foundation, The Future of Voting: End-to-End Verifiable Internet Voting - Specification and Feasibility Study, *supra* note 3.

³⁴ AK, AL, AZ, CA, CO, DC, DE, FL, HI, IA, ID, IN, KS, LA, MA, ME, MO, MS, MT, NC, ND, NE, NJ, NM, NV, OK, OR, RI, SC, TX, UT, WA, and WV all offer some form of Internet voting.

³⁵ Internet voting in Idaho only available in emergency situations. *See* note 1.

³⁶ U.S. Vote Foundation, The Future of Voting: End-to-End Verifiable Internet Voting - Specification and Feasibility Study, *supra* note 3.

³⁷ State of Alaska Division of Elections, *supra* note 6.

³⁸ *Id.*

³⁹ *See Bridgeman v. McPherson*, 45 Cal.Rptr.3d 813 (2006).

⁴⁰ *Id.* at 814.

⁴¹ *Id.*

⁴² *United States v. Pennsylvania*, 2004 WL 2384999 (M.D. Pa. 2004).

⁴³ *Id.*

⁴⁴ U.S. Vote Foundation, The Future of Voting: End-to-End Verifiable Internet Voting - Specification and Feasibility Study, *supra* note 3.

⁴⁵ National Institute of Standards and Technology (NIST), *Security Best Practices for the Electronic Transmission of Election Materials for UOCAVA Voters* (September 2011), *available at* <http://www.nist.gov/itl/vote/upload/nistir7711-Sept2011.pdf>.

⁴⁶ Sharon Laskowski et al., Remote Ballot Marking Systems: Designing for usability, accessibility, and security (February 10, 2016), *available at* <http://civicdesign.org/wp-content/uploads/2015/09/Principles-for-remote-ballot-marking-systems-16-0210.pdf>.

⁴⁷ *Id.*

⁴⁸ Department of Defense Federal Voting Assistance Program, 2010 Electronic Voting Support Wizard Technology Pilot Program: Report to Congress (May 2013), *available at* https://www.fvap.gov/uploads/FVAP/Reports/evsw_report.pdf.

⁴⁹ Military Postal Service Agency, The 2010 Analysis of the Military Postal System Compliance with the MOVE Act (August 2013), *available at* https://www.supportthevoter.gov/files/2013/08/Military-Postal-Service-Agency-2010_After_Action_Report.pdf.

⁵⁰ *See* United States Postal Service, Military Postal Service Agency 2016 Strategic Postal Voting Action Plan (2016), *available at* <https://www.usps.com/election-mail/2016-americans-overseas-ballot-mailing-deadlines.pdf>.

⁵¹ Office of Management and Budget, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, M- 07-16 (May 22, 2007), *available at* <https://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf>.

⁵² Ga. Code Ann. § 21-2-387, enacted in 2010, requires the Secretary of State to “develop and implement a pilot program for the electronic transmission, receipt, and counting of absentee ballots by persons who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act.” No such pilot program has yet been implemented.

⁵³ Phone Interview with Betsie Kimbrough, State Election Director, Idaho Sec’y of State’s Office (July 5, 2016) (on file with Electronic Privacy Information Center) [hereinafter *Betsie Kimbrough Interview*].

⁵⁴ Phone Interview with Melissa Packard, Director of Elections, Maine Sec’y of State’s Office (July 5, 2016) (on file with Electronic Privacy Information Center) [hereinafter *Melissa Packard Interview*].

⁵⁵ Phone Interview with Kimberly Turner, Assistant Secretary of State, Miss. Sec’y of State’s Office (July 25, 2016) (on file with Verified Voting) [hereinafter *Kimberly Turner Interview*].

⁵⁶ E-mail Interview with Chrissy Peters, Elections Division, Mo. Secretary of State’s Office (July 20, 2016) (on file with Electronic Privacy Information Center) [hereinafter *Chrissy Peters Interview*].

⁵⁷ E-mail Interview with Ann Kontor, Elections Specialist, Neb. Sec’y of State’s Office (April 12, 2016) (on file with Electronic Privacy Information Center) [hereinafter *Ann Kontor Interview*].

⁵⁸ *Id.* (PDF on file with the Electronic Privacy Information Center).

⁵⁹ Phone Interview with Lee Ann Oliver, N.D. Sec’y of State’s Office (July 25, 2016) (on file with Verified Voting) [hereinafter *Lee Ann Oliver Interview*].

⁶⁰ E-mail Interview with Gregory M. McBurney, Deputy Director of Elections, R.I. Sec’y of State’s Office (April 14, 2016) (on file with Electronic Privacy Information Center) [hereinafter *Gregory McBurney Interview*].

⁶¹ Phone and E-mail Interview with Chris Whitmire, Director of Public Information & Training, S.C. State Election Commission (July 5, 2016) (on file with Electronic Privacy Information Center) [hereinafter *Chris Whitmire Interview*].

⁶² Texas Elec. Code § 105.004 requires the Texas Secretary of State to implement a pilot program “to allow a person who is casting an early voting ballot by mail to return the ballot by e-mail if the person is a member of the armed forces of the United States who is on active duty overseas and eligible for hostile fire pay.”

⁶³ Utah provides UOCAVA voters and voters with disabilities with an electronic ballot marking tool. <https://utah.everyonecounts.com/>

⁶⁴ Phone interview with Stuart Holmes, Election Information Systems Supervisor, Wa. Sec’y of State’s Office (July 25, 2016) (on file with Verified Voting) [hereinafter *Stuart Holmes Interview*].

⁶⁵ Sari Horwitz, *More than 30 states offer online voting, but experts warn it isn't secure*, Wash. Post (May 17, 2016), available at <https://www.washingtonpost.com/news/post-nation/wp/2016/05/17/more-than-30-states-offer-online-voting-but-experts-warn-it-isnt-secure/>.

⁶⁶ Greg Gordon, *As states warm to online voting, experts warn of trouble ahead*, McClatchy DC (April 16, 2015), available at <http://www.mcclatchydc.com/news/politics-government/election/article24783181.html>.

⁶⁷ Federal Voting Assistance Program, *2010 Electronic Voting Support Wizard (EVSZ) Technology Pilot Program Report to Congress* (May 2013), available at http://www.fvap.gov/uploads/FVAP/Reports/evsw_report.pdf.

⁶⁸ National Institute of Standards and Technology (NIST), *Security Considerations for Remote Electronic UOCAVA Voting* (February 2011), available at <http://www.nist.gov/itl/vote/upload/NISTIR-7700-feb2011.pdf>.

⁶⁹ A 2011 report obtained by the Electronic Privacy Information Center (EPIC) via a Freedom of Information Act lawsuit described a study of online voting and electronic ballot delivery systems for wounded warriors. Some participants raised concerns about issues of privacy and security, even though a review of the study's survey instruments indicates that it is likely participants were not told that voting online was risky to both privacy and security. The study was not comprehensive on these points; observers of the participants using the tested systems were looking for issues like whether the audio interface is audible only to the voter, or whether the device tested issued a receipt that would provide proof to another of how the voter voted. Recommendations included adding "visible security features" like those found on banking websites to allay concerns.

⁷⁰ *Betsie Kimbrough Interview*, *supra* note 53.

⁷¹ *Melissa Packard Interview*, *supra* note 54.

⁷² *Kimberly Turner Interview*, *supra* note 55.

⁷³ *Chrissy Peters Interview*, *supra* note 56.

⁷⁴ *Ann Kontor Interview*, *supra* note 57.

⁷⁵ *Lee Ann Oliver Interview*, *supra* note 59.

⁷⁶ *Gregory McBurney Interview*, *supra* note 60.

⁷⁷ *Chris Whitmire Interview*, *supra* note 61.

⁷⁸ *Stuart Holmes Interview*, *supra* note 64.