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Issue Review

Oregon Vote by Mail

The COVID-19 pandemic has threatened the health and safety of voters who must vote in person at polling places as well as election poll workers who serve on the frontlines of our nation's elections. While most state and local jurisdictions have taken steps to protect voters and poll workers by providing sanitation and disinfectant equipment at polling places, supplying workers with personal protection equipment (PPE) and enforcing social distancing protocols, many voters and election poll workers continue to be concerned about the health risks posed by in-person voting. Since the pandemic began, an increasing number of voters in the United States have requested permission to submit an absentee ballot by mail to avoid possible exposure to the coronavirus. Submitting a ballot through the mail or a ballot drop site has become an appealing alternative. In Oregon, it appears to have marginally increased voter turnout. Additionally, depending on how it is implemented, it can be less expensive and protect against voter fraud just as well as in-person voting does. Vote by mail also eliminates the prospect of voter intimidation at physical polling places.

Every state in effect already has some form of vote by mail. The only difference between states that have vote by mail and those that do not is the degree to which voters can vote by mail. As of September 2020, five states conduct their elections entirely by mail: Colorado, Hawaii, Oregon, Utah, and Washington. Oregon was the first state to adopt vote by mail and thus has the most experience with it.

This report outlines the history of vote by mail in Oregon, how the system has evolved over time, and how it works in practice. It also provides information on potential areas for further review and consideration.

History of Vote by Mail

Oregon's vote by mail system is an election process in which voters receive and return their ballots through the mail, as opposed to traditional systems in which voters receive and cast their ballots in person at their local polling place. Oregon's experience with vote by mail began in 1981, when the Legislative Assembly first authorized counties to conduct certain local elections by mail.¹ State laws continued to broaden vote by mail throughout the 1980s and 1990s, culminating in the passage of Ballot Measure 60 (1998), which required all biennial primary and general elections in Oregon to be conducted entirely by mail.² Because Oregon had already begun conducting local, special, and emergency elections by mail, Ballot Measure 60

¹ Oregon Laws 1981, Chapter 805.

² Oregon Laws 1999, Chapter 3, section 1; app. Nov. 3, 1998, eff. Dec. 3, 1998.

effectively required *all* Oregon elections to be conducted entirely by mail. Since 1999, Oregon has conducted all elections by mail, thus making it the first state to adopt an entirely vote by mail system.³

Major Policy Changes

After Oregon voters approved Ballot Measure 60, Oregon stopped using polling places altogether. Since that time, vote by mail in Oregon has continued to evolve, incorporating or adopting various policy changes at both the state and federal level to improve the integrity and efficiency of the system.

In 2002, Congress passed the Help America Vote Act⁴ (HAVA) which made sweeping reforms to the nation's voting processes. HAVA required all states and localities to upgrade voting equipment, make voter registration more accessible, provide better voter education and poll worker training, and reduce fraud by developing a central voter registration system to be managed by each state's chief elections officer. HAVA included provisions for replacing punch card and lever voting systems, creation of centralized voter registration databases, new voter identification requirements, access for people with disabilities, and enhanced voter outreach; the implementation of these provisions was left up to the states. Because Oregon had already adopted vote by mail prior to its passage, HAVA did not meaningfully change the way Oregon conducts elections by mail or the way the state registers voters. However, in accordance with HAVA, Oregon developed a centralized voter registration database in 2005.

The Oregon Secretary of State Elections Division maintains a centralized voter registration database known as the Oregon Centralized Voter Registration (OCVR) system. OCVR is an official database system that includes the names, addresses, identification numbers, political affiliations, and voting histories of all registered voters in Oregon.⁵ Prior to OCVR, all 36 Oregon counties were responsible for collecting and storing its own voter registration information, and because each county stored its data differently there was no way to aggregate voter information at the state level. OCVR solved that problem through its election management functions, including signature verification and ballot preparation, which allowed counties to conduct elections by mail and the state to validate signatures on petitions. To ensure that voter data is secure, OCVR access is restricted to authorized personnel at the Secretary of State and county elections offices.⁶ Any changes made to voter records is documented in an audit trail, which OCVR system administrators can access and review. All OCVR data is also backed up daily and saved in case the system is ever compromised by unauthorized users.

In 2009, Congress passed the Military and Overseas Voter Empowerment (MOVE) Act⁷ as part of the National Defense Authorization Act for Fiscal Year 2010. The MOVE Act, which in turn amended various provisions of the 1986 Uniformed and Overseas Citizens Absentee Voting

³ Aside from becoming the first state to adopt an entirely vote by mail system, Oregon has also achieved other notable electoral firsts. In 1993, for instance, Oregon became the first state to conduct a statewide special election entirely by mail. In 1996, Oregon became the first state to conduct an election for federal office entirely by mail. In 2000, Oregon became the first state to determine and award its electoral votes for president entirely by mail.

⁴ Pub.L. 107-252, 116 Stat. 1666.

⁵ OCVR is governed by a Change Control Board that is composed of 12 state and county officials. The Board advises the Secretary of State on prioritizing enhancements or changes to OCVR.

⁶ OCVR is in the process of implementing a fingerprint-based, two-factor authentication to access the system, which some counties have already adopted. It is expected to be rolled out statewide in 2021.

⁷ Pub.L. 111-84, 123 Stat. 2190.

Act,⁸ is designed to make voting in U.S. elections easier for military service members stationed overseas and citizens living abroad. The law requires states and territories to allow absent uniformed service members and their families and U.S. citizens living abroad to register and vote absentee in federal elections. To comply with the MOVE Act, the Oregon Legislative Assembly passed legislation in 2009 allowing military and overseas voters to return their ballot via fax,⁹ and legislation in 2011 allowing military and overseas voters to return a portable document format (PDF) scanned copy of their ballot via email.¹⁰

Historically, new voters in Oregon registered to vote by filling out a voter registration form and either mailing or submitting it in person to their local elections office. Once elections officials confirmed that the registration was valid, they would enter the information into their local registration system. On March 1, 2010, Oregon became the fourth state to provide online voter registration,¹¹ which today complements the traditional paper registration process. To be eligible to register to vote in Oregon, a person must be a U.S. citizen, a resident of Oregon, at least 16 years of age,¹² and have a valid Oregon driver license, permit, or identification (ID) card. New voters can register to vote using “My Vote,” an online voter registration system run by the Secretary of State. Voters can also use My Vote to check their registration status, view their registration information, update their voter registration, check the status of their ballot, find contact information for their county elections office, and find ballot drop sites. For those who register online, the signature on their Oregon driver license, permit, or ID card serves as the signature for their voter registration card. As with paper registrations, online registrations require voters to swear or affirm that they are qualified electors and have told the truth on their registration. Lying on the registration form is a felony, punishable by five years in prison, a \$125,000 fine, and deportation for undocumented immigrants.¹³

On January 1, 2016, Oregon became the first state to automatically register eligible citizens who are not currently registered to vote when they apply for an original, renewed, or replacement Oregon driver license, permit, or ID card from the Oregon Driver and Motor Vehicle Services Division (DMV). Under the old system, most Oregonians needed to take a separate step to register to vote at the DMV after obtaining or renewing their driver license. The law, colloquially known as the “Oregon Motor Voter” law,¹⁴ which the Legislative Assembly passed in 2015, makes voter registration automatic, shifting from an opt-in to an opt-out process for those with qualifying interactions at the DMV.¹⁵ After eligible voters who are not registered to vote interact with the DMV, they receive a card and a prepaid postage return envelope from the Secretary of State Elections Division explaining their options for registering to vote. With

⁸ Pub.L. 99-410, 100 Stat. 924.

⁹ Oregon Laws 2009, chapter 619.

¹⁰ Oregon Laws 2011, chapter 294.

¹¹ As of September 2020, a total of 40 states, plus the District of Columbia, offer online registration, and one other state (Oklahoma) has passed legislation and is currently phasing in implementation of its online registration.

¹² Newly registered voters who are under the age of 18, however, do not receive a ballot until the first election after their 18th birthday.

¹³ ORS 260.715(1); 260.993(2). See Oregon Motor Voter Registration Manual, Oregon Secretary of State Elections Division, p. 5 (2017), available at: <https://sos.oregon.gov/voting/documents/oregon-motor-voter-registration-manual-final.pdf>

¹⁴ Oregon Laws 2015, chapter 8.

¹⁵ Oregon Motor Voter was passed in response to the federal National Voter Registration Act (Pub.L. 103-31, 107 Stat. 77), which required DMVs in most states to offer voter registration services. This opt-in model is most commonly administered by DMV employees by asking citizens applying for an original, renewed, or replacement driver license, permit, or ID card if they would like to register to vote.

this card, Oregonians have three options: 1) do nothing and be registered to vote as a non-affiliated voter; 2) choose a political party by returning the card; or 3) use the card to opt-out of voter registration. Once registered, voters automatically receive a ballot and instructions in the mail about two weeks before an election. As a result of Oregon Motor Voter, Oregonians can register to vote in one of four ways: 1) register online using My Vote; 2) register in person at their county elections office; 3) return their voter registration card by mail; or 4) conduct a qualifying interaction with the Oregon DMV.¹⁶

In 2019, the Legislative Assembly passed SB 861¹⁷ which requires the state to pay the postage costs for ballots returned by mail for all elections in Oregon. Beginning January 1, 2020, Oregon voters are mailed a pre-addressed Business Reply Mail (BRM) envelope along with their ballot in each election. When voters cast their ballots by mail, the U.S. Postal Service charges the Elections Division a fee for each BRM envelope it processes. Because counties administer and certify local election results, the Elections Division pays for a USPS BRM account that covers return postage. Voters may also return their ballot to designated ballot drop sites at no additional cost.

How Vote by Mail Works

For all elections, counties must mail ballot packets to all active, registered voters between 14 and 20 days before an election. The packets include a ballot, a secrecy envelope, and a pre-addressed return identification envelope with prepaid postage. Upon receiving their ballot, voters mark their ballot and place it inside an optional secrecy envelope that, in turn, is placed in the return envelope. The ballot itself includes no information identifying the voter. Voters then must sign a ballot declaration on the back of the identification envelope containing their ballot for it to be counted. Voters can either mail their ballot or take it to any authorized drop site in the state before the 8:00 p.m. cutoff on election day. If voters submit their ballots to a ballot drop site in a county other than the one in which they are registered, elections officials will mark the ballots as received 'on time' and forward them on to the county where voters are registered.

Voters are also permitted to vote in person. Oregon law requires county elections offices to maintain voting booths for voters to fill out their ballots if they so choose.¹⁸ In addition, every county elections office has a tablet computer and printer for voters with disabilities to read, fill out, and print an Alternate Format Ballot.¹⁹ Tablets allow voters to make the text bigger, employ a screen reader, and use a touch screen or easy buttons to fill out their ballot. Counties also dispatch voter assistance teams to assist voters with disabilities at their location with registering to vote, filling out their ballot, or returning their ballot. These accommodations are required by the federal Americans with Disabilities Act.²⁰

¹⁶ As of September 2020, there are 2,924,292 registered voters in Oregon. These figures are available at <https://sos.oregon.gov/elections/Documents/registration/2020-september.pdf>

¹⁷ Oregon Laws 2019, chapter 638.

¹⁸ ORS 254.472.

¹⁹ An Alternate Format Ballot (AFB) is a ballot that is accessible to voters with a disability. Voters with a disability can fill out an AFB at home if they have a computer with internet access and a printer, or they can request that their county elections office dispatch a voter assistance team to bring them a computer tablet and printer to fill out an AFB. They can also fill out an AFB at their county elections office with a tablet computer and printer.

²⁰ Pub.L. 101-336, 104 Stat. 327.

Ballots must either be received by the county through the mail or deposited into any ballot drop site in the state by 8:00 p.m. Pacific Time on election day. The postmark date does not count. Once the ballot is received, county elections officials sort the ballots either by precinct or batch. The signature on the back of the identification (return) envelope is compared to the signature on file on the voter's registration card in order to prove their identity.²¹ If a signature does not match, the ballot is initially rejected and set aside for additional processing (see below). Counties will only count ballots after signatures have been verified. All 36 counties count ballots in secure rooms with 24-hour video surveillance and space for election observers.²²

Prior to elections, county elections offices test the logic and accuracy of their vote counting equipment. Counties also conduct logic and accuracy tests after elections to ensure that their equipment's programming has not been altered.²³ Counties use optical scan voting systems to read marked ballots and tally the results.²⁴ The scanners also generate and store an image of each ballot. All tabulated and scanned images are kept in a secure database that is not accessible via the Internet. All voting equipment in Oregon must be tested by a federally accredited voting system test laboratory before it is used in an election.²⁵ Some counties are also in the process of implementing "Albert sensors," which is an intrusion detection software that provides enhanced monitoring capabilities and network security alerts when malware and advanced persistent threats are detected on county elections networks. The U.S. Department of Homeland Security recently conducted a security assessment of the elections offices in all 36 Oregon counties, including physical security testing and cyber network penetration testing.²⁶

County elections officials do not release preliminary results until 8:00 p.m. on election day. Counties certify their election results to the Secretary of State no more than 20 days after election day. The Secretary of State likewise certifies the election results statewide no more than 30 days after election day.

There are two distinct processes that counties follow when rejecting ballots. The first process occurs when a ballot does not have a signature. If voters submit their ballot and the return envelope has no signature, within one business day those voters are mailed a Certified Voter Statement (along with a return envelope) asking them to provide a signed statement that they cast the unsigned ballot. In order to have their ballot accepted, voters must submit the statement by the 14th day after the election. The second process occurs when a ballot has a signature but it does not match the one on file. If county officials are unable to match the signature on the return envelope to the signature on file, the county mails a letter to the voter (along with a return envelope) which includes a new voter registration card for the voter to provide an updated signature. Voters must return their updated signature by the 14th day after

²¹ Staff at county elections offices undergo extensive training in handwriting analysis prior to examining ballot declaration signatures.

²² Oregon Secretary of State, *Voters' Pamphlet, November 3, 2020 General Election*, p. 9.

²³ See note 23.

²⁴ Some examples of the optical scan voting systems that Oregon counties use include Clear Ballot, Hart InterCivic, and Election Systems & Software (ES&S).

²⁵ See note 23. See also National Conference of State Legislatures, *Voting System Standards, Testing and Certification*, Aug. 6, 2018, available at: www.ncsl.org/research/elections-and-campaigns/voting-system-standards-testing-and-certification.aspx

²⁶ Oregon Secretary of State Elections Division, *Election Security Report*, Sept. 2019, p. 2, available at: <https://sos.oregon.gov/elections/Documents/election-security-report-2019.pdf>

the election in order to have their ballot accepted. If voters do not respond to this letter, they are inactivated on the voter rolls.

The Secretary of State Elections Division created the My Vote application to allow Oregon registered voters to track their ballot from anywhere in the world. While My Vote was designed to assist military and overseas voters with tracking their ballot mail date, the mailing address, and the date of receipt at the county elections office, all registered voters in Oregon can now use it.

In addition to My Vote, 10 counties in Oregon – Benton, Clackamas, Harney, Hood River, Jackson, Linn, Lincoln, Marion, Multnomah, and Yamhill – began piloting the “Ballottrax” alert system in 2015 and 2016 with funds initially received from the state. Ballottrax is similar to My Vote in that it allows participating voters to see whether their ballots have been mailed, received, and accepted, or are under review in their county elections office. Unlike My Vote, however, Ballottrax sends text, email, or voice alert messages to participating voters reminding them to vote and return their ballots. As of September 2020, only Multnomah and Marion Counties continue to use Ballottrax.

Cost of Vote by Mail

Under Oregon law, counties pay all election costs through the imposition and collection of local property taxes.²⁷ Prior to the adoption of Ballot Measure 60 in 1998, Oregon conducted traditional polling place elections for all biennial primaries and general elections. Prior to 1999, counties operated polling places for voters to cast their ballots, which required counties to staff those polling places with election poll workers. But once Oregon switched to an entirely vote by mail system, the need for traditional election poll workers was greatly diminished. In fact, under vote by mail, Oregon counties employ only a fraction of the election poll workers that they used to require in traditional polling place elections. The reduced number of election poll workers accounts for most of the cost savings of Oregon’s vote by mail system, since poll workers’ salaries accounted for most of the cost of operating polling places.²⁸ The establishment of an online voter registration system also reduced the administrative costs of elections, including per-registration costs, resulting in cost-savings in processing registrations.

For example, the May 1998 Primary Election was a polling place election with an extraordinarily high rate of absentee ballots submitted by mail. Counties needed to pay both the costs of providing fully staffed polling places on election day and processing a high number of absentee ballots. County officials estimated that an election conducted entirely by mail would cost about half the amount of a polling place election with a high rate of absentee voting. If the costs of the May 1998 primary are compared with the costs of the May 2000 primary in isolation, vote by mail costs substantially less than in-person voting with a high rate of absentee voting. The

²⁷ Counties can charge special districts and school districts for conducting elections (or their proportionate share of the election costs) by seeking reimbursement for their expenses. Counties are generally not able to charge cities and the state for their election costs. The two exceptions are for special elections and recall elections, for which counties can seek reimbursement from cities and the state. Otherwise, the state and cities do not incur any direct administrative costs to conduct elections in Oregon.

²⁸ County officials hire election poll workers to prepare ballots to be counted; assist with data entry and operation of tally equipment and automatic sorting machines; provide customer service at the county elections office, voters’ residences, and at public community events; deliver ballots to the elections office from official ballot drop sites; monitor observers of the election process; review ballot images and determine how to count votes not clearly marked; and perform other various duties as necessary.

May 1998 primary cost \$3.4 million, whereas the May 2000 primary cost \$2.8 million. This resulted in a savings of nearly \$600,000 (17%) to the counties. The May 2000 primary was also more cost-effective both in terms of cost per voter and the cost per ballot: The May 1998 election cost was \$1.78 per voter and \$5.10 per ballot, whereas the May 2000 primary was \$1.55 per voter and \$3.03 per ballot.

There are similar savings when comparing the costs of the 1998 general election with the 2018 general election, i.e., comparing the costs of the last polling place general election with the costs of the most recent general election conducted by mail. The 1998 general election cost Oregon counties almost \$3.6 million, whereas the 2018 general election cost the counties approximately \$4.5 million. Adjusted for inflation using the Consumer Price Index for All Urban Consumers,²⁹ the 1998 general election would have cost approximately \$5.5 million in November 2018. In other words, the 2018 general election would have cost about \$1 million less, a savings of 18%.

There are a couple of points to note. First, the Secretary of State Elections Division publishes the costs of each statewide election by aggregating the election cost reported by all 36 counties in Oregon. While these figures are calculated down to the penny, counties do not have a consistent method for reporting their election costs and some may have changed how they calculate these costs over time. A fair comparison of the direct costs of vote by mail elections and polling place elections is not possible at present. Second, these cost figures do not factor in prepaid postage for ballots. Beginning January 1, 2020, the state began to pay the postage costs for ballots returned by mail for all elections in Oregon. Currently, it is unclear how much prepaid postage for ballots will cost the state since it will vary depending on voter turnout; how many voters return their ballots by mail, as opposed to ballot drop sites; how many elections are held each year or biennium; and the size of the ballots. With that said, the Legislative Fiscal Office (LFO) estimates that prepaid postage for ballots will cost the state anywhere from \$1.6 million to \$3.1 million General Fund in the 2019-21 biennium. Because prepaid postage for ballots is expected to increase the costs of Oregon's elections, the Legislature included a General Fund appropriation of \$1.7 million to the Oregon Secretary of State in SB 861 (2019),³⁰ as well as a special purpose appropriation of \$1.1 million in HB 5050 (2019),³¹ should the costs of prepaid postage exceed budgeted election expenditures.

The most recent data available are from the May 2020 primary. According to the Elections Division, \$480,840 has been spent from the state's Business Reply Mail postage account so far this year, which is mostly attributable to the May 2020 primary. Among the ballots cast in the May 2020 primary, 40% were returned by ballot drop site and 60% were returned by mail. Ballots have historically been returned at 60% by ballot drop site and 40% by mail. If this trend continues, the state could see an increase in election costs since prepaid postage may encourage more ballots being returned by mail.

²⁹ Bureau of Labor Statistics, United States Dept. of Labor, Consumer Price Index for All Urban Consumers (CPI-U) U.S. city average series for all items, not seasonally adjusted.

³⁰ Oregon Laws 2019, chapter 638, section 6.

³¹ Oregon Laws 2019, chapter 644, section 122.

Voter Turnout Rates

Prior to the passage of Ballot Measure 60, proponents of vote by mail argued that conducting all Oregon elections entirely by mail would increase voter turnout. Between 1981 and 1998, Oregon had a patchwork vote by mail process, one in which some elections were conducted by mail and some at polling places. Since 1999, Oregon has conducted all of its elections by mail.

To answer the question of whether Oregon's vote by mail system increases voter turnout, LFO looked at voter turnout data from 1992 to 2018.³² LFO specifically compared the average voter turnout of registered voters in polling place elections from 1992 to 1998 with the average voter turnout of registered voters in vote by mail elections (excluding special and emergency elections) from 1993 to 2018. Comparing these figures, vote by mail did increase voter turnout; however, the amount of the increase depends on how the results are calculated.

LFO first compared the average voter turnout of registered voters in all polling place elections with the average of all vote by mail elections between 1992 and 2018. Turnout in polling place elections averaged 54.1% from 1992 to 1998, whereas turnout in vote by mail elections averaged 56.2% from 1993 to 2018. Judging from these aggregate figures alone, vote by mail appears to have marginally increased voter turnout by slightly more than 2% on average when compared to polling place elections.

It should be noted that not all elections are the same. Voter turnout changes from year to year and from election to election. In assessing whether vote by mail has more than a marginal impact on voter turnout, it is important to distinguish and categorize elections both by election type and by year. In other words, polling place primaries should be compared to vote by mail primaries, polling place general elections should be compared to vote by mail general elections, mid-term elections should be compared to other mid-term elections, and so on.

It is also worth noting that Oregon Motor Voter likely impacts the percentage of registered voters that turnout to vote. At present, the state does not have any data on the number of people registered through Motor Voter that have actually voted since the law went into effect. Prior to Motor Voter, Oregonians who wanted to register to vote needed to take affirmative steps to do so, whereas Motor Voter automatically registers new voters after a qualifying interaction with the Oregon DMV, regardless of whether they are interested in registering to vote. That is, Motor Voter may have registered people to vote that otherwise would not have done so under the traditional registration process.

There is insufficient information to review the impact of the expansion of voter registration rolls generated by the Motor Voter system on voter participation rates. The Center for American Progress (CAP) conducted a preliminary analysis that assessed the impact of Motor Voter in the 2016 general election.³³ The CAP report found that more than 272,000 new voters were added to the voter rolls in 2016, and more than 98,000 of them voted in the 2016 general election. The report also found that more than 116,000 of those registered by Motor Voter in 2016 were unlikely to have otherwise registered to vote; 40,000 of the 116,000 registered went on to vote in the 2016 general election.

³² Oregon Secretary of State Elections Division, *Cost and Participation - Statewide Elections* (2019).

³³ Gronke, Griffin, et al., The Center for American Progress, *Who Votes with Automatic Voter Registration? Impact Analysis of Oregon's First-In-The-Nation Program* (2017), available at: www.americanprogress.org/issues/democracy/reports/2017/06/07/433677/votes-automatic-voter-registration

The following table shows the voter turnout in Oregon elections before and after the implementation of vote by mail by comparing data in polling place elections from 1992 to 1998 with vote by mail elections from 2000 to 2018.

Comparison of Voter Turnout in Oregon			
Type of Election	Polling Place Elections (1992 to 1998)	Vote-by-Mail Elections (2000 to 2018)	
Primary and General Elections (combined)	55.5%	60.5%	
General Elections	70.4%	76.1%	
Presidential Election Years	77.4%	82.5%	
Midterm Election Years	63.6%	69.7%	
Primary Elections	39.6%	43.9%	
Presidential Election Year Primaries	42.8%	49.8%	
Midterm Election Year Primaries	36.5%	38.5%	

Excludes special and emergency elections

Based on these data, Oregon’s vote by mail system appears to have marginally increased voter turnout 2-5%, depending on the type of election.

Voter Fraud in Vote by Mail Elections

Oregon’s vote by mail system has a complaint-driven process with respect to election law violations, including voter fraud.³⁴ Anyone can report a potential election law violation. Such complaints must be submitted to the Secretary of State, unless the complaint involves the Secretary of State (or a candidate for that office). The Secretary of State investigates the complaint and, if it is determined that the complaint could involve criminal conduct, it is referred to the Attorney General and Oregon Department of Justice for prosecution.³⁵ If the election law complaint involves the Attorney General (or a candidate for that office), the Secretary of State will appoint another prosecutor to investigate and potentially prosecute the matter. The Department of Justice Criminal Justice Division can also initiate an investigation if the complaint is against the Secretary of State (or a candidate for that office), or if the conduct at issue involves other related crimes such as identity theft.

After a case is referred to or initiated by the Criminal Justice Division, the Division reviews the complaint to evaluate the probability that a criminal investigation will lead to sufficient evidence to warrant criminal charges. If there is a basis to open an investigation, the matter is assigned to a special agent and an assistant attorney general. If the investigation yields sufficient evidence to initiate a prosecution, the Division pursues charges in the appropriate

³⁴ The criminal penalties for election law violations are codified at ORS 260.993. Specific election law violations are codified in parts of ORS Chapter 247 and Chapter 260. *See, e.g.*, ORS 247.171, 247.420, and 260.315 to 260.715.

³⁵ The Oregon Attorney General has jurisdiction to prosecute all criminal election law offenses under Oregon law. *See* ORS 260.345(4).

state circuit court with jurisdiction. This includes charging, negotiation, and resolution through a plea and sentencing, or going to trial.

Between the years 2000 and 2019, Oregonians cast approximately 60.9 million ballots in statewide and special elections. The Oregon Department of Justice estimates that the Criminal Justice Division (and the Civil Enforcement Division) obtained 38 criminal convictions relating to voter fraud during that period.³⁶ The most prevalent forms of voter fraud, according to the Division, are duplicate voting (e.g., a person who votes in more than one state in the same election) and ballot forgery (e.g., a member of a household who fills out the ballots of other household members and fraudulently signs their names). In other words, the Division obtained 38 criminal convictions for voter fraud out of the 60.9 million ballots in Oregon elections cast over a 19-year period. That amounts to a rate of .00006%. These figures demonstrate that voter fraud is exceedingly rare in Oregon, and is no more widespread in vote by mail elections than it is polling place elections. In June 2020, the Heritage Foundation reviewed all voter fraud cases it could find over a 36-year period.³⁷ Heritage found 1,285 cases of voter fraud out of more than 1.8 billion ballots cast in all 50 states from 1982 to 2018.³⁸ That amounts to a rate of .00007%.

There are numerous processes built into Oregon's vote by mail system to ensure integrity, including unique barcodes to track ballots, signature verification to prove voters' identities, and election security plans filed by county elections offices. Vote by mail also leaves a paper trail that can be audited. In fact, two academic studies have concluded that the election results in vote by mail elections are generally *more accurate* than the election results in polling place elections.³⁹

Oregon counties are required by law to audit random election results in every election, conducting either risk-limiting audits before they certify the results or post-election audits after they certify the results. Counties are also required by law to retain counted, duplicated, rejected, and defective ballots containing candidates for federal office for two years after the election; retain counted, duplicated, rejected, and defective ballots for all other elections not containing federal candidates for 90 days after the last day to contest the election results; and retain all returned signed envelopes for two years after the election, regardless of whether the election contained candidates for federal office.⁴⁰ Prior to their scheduled destruction, ballots and envelopes are available for public inspection at any time during the mandatory retention period. They are stored in secure facilities at county elections offices, and anyone wanting to inspect them is permitted to do so. Research as shown that Oregon continues to be mostly free

³⁶ According to the Criminal Justice Division, most of those of 38 criminal convictions occurred in the last three years. A possible explanation for why convictions increased in recent years is because Oregon began partnering with other states in 2016 to share voter information in order to identify individuals who voted in multiple states in the same election.

³⁷ The Heritage Foundation, *Database Swells to 1,285 Proven Cases of Voter Fraud in America*, May 10, 2020, available at: www.heritage.org/election-integrity/commentary/database-swells-1285-proven-cases-voter-fraud-america

³⁸ However, only 309 of those 1,285 cases involved absentee ballots, mail-in ballots, or duplicate voting.

³⁹ Dr. Paul Gronke, Director, Center for Democracy and Election Management, American University, *Ballot Integrity and Voting by Mail: The Oregon Experience*, page 2, June 15 (2005) at <https://people.reed.edu/~gronkep/docs/Carter%20Baker%20Report-publicrelease.pdf>

⁴⁰ OAR 166-150-0035(14).

from concerns of undue influence and voter fraud that have been associated with other absentee-based voting systems.⁴¹

Potential Areas for Review

While vote by mail in Oregon is an established system, there are potential areas for review and consideration, including:

Same-day voter registration: As of June 30, 2019, 21 states plus the District of Columbia have adopted same-day voter registration which allows any qualified resident of the state to register to vote and cast a ballot on election day. Oregon used to have same-day voter registration, but voters repealed it in 1986 through an initiative petition that amended the Oregon Constitution (Ballot Measure 13).⁴² Today, new voters must register to vote no less than 21 days before election day in order to vote in that election.

Seven-day processing requirement: Oregon law prohibits counties from processing ballots more than seven days prior to election day. An analysis of the consequences, both positive and negative, of modifying this timeframe should be conducted prior to any change.

Signature verification process: Oregon voters prove their identity through signature verification of voter registration cards. However, the capture quality of the signatures obtained from the Oregon DMV is sometimes not clear, which can lead to signature mismatches in instances where the voters' signature has changed.

Accommodations for voters: All Oregon voters must submit a paper ballot. However, some voters may have challenges that make it difficult for them to submit their ballot through the mail or a ballot drop site. There may be electronic options to assist such voters.

Ballot submissions: Under Oregon law, ballots must be received by county elections office by 8:00 p.m. on election day. The postmark on the return envelope does not matter. Because counties do not certify election results until 20 days after the election, there is sufficient time to count ballots postmarked on election day, even if not received on time.

Oregon Centralized Voter Registration (OCVR) technology: OCVR was developed in 2005 to comply with federal law. Modernizing OCVR to be able to produce better statistical information – such as the frequency and range of new registrations, the number of address changes, the frequency of registration removals, the frequency of cross-country moves, the rates of undeliverable mail ballots, and the rates of ballot returns – would increase the ability to develop forensic tools to identify statistical anomalies.

⁴¹ See note 40. Dr. Paul Gronke, at p. 1-2.

⁴² Oregon voters repealed same-day registration after followers of the Bhagwan Shree Rajneesh (the Rajneeshees) bused in thousands of homeless people from all over the country into rural Wasco County to register them to vote in the 1984 general election. The Rajneeshees wanted to increase their constituency as a voting bloc in an attempt to win two of the three seats on the Wasco County Commission. At the advice of then-Secretary of State Norma Paulus, then-Wasco County Clerk Sue Proffitt imposed a blanket rejection of all new voter registration applications before the election and held registration eligibility hearings for all new voters, both of which were upheld in federal court. See *The New York Times*, *Around the Nation: Oregon County's Rules on New Voters Upheld*, Nov. 1, 1984. Two years later, Oregon voters amended the Oregon Constitution, requiring new voters to register at least 21 days before an election. See Oregon Constitution, Article II, section 2(1)(c).