

# All-Mail Elections Could be a Legal Quagmire

In the midst of the pandemic, the call has gone out from politicians of both parties to enact all-mail balloting for the 2020 elections. With Hawaii's move to all-mail elections this year, [five states](#) now mail ballots to all registered voters.

Politicians are working hard to assuage concerns over the possibility of election fraud, with [Sen. Mitt Romney of Utah saying](#), "In my state, I'll bet 90 percent of us vote by mail. It works very, very well and it's a very Republican state."

Among others, [President Donald Trump has expressed grave concern](#) about the possibility of increased voter fraud and other issues related to mail-in ballots. The White House website currently hosts a copy of a Heritage Foundation report chronicling "[A Sampling of Election Fraud Cases From Across the Country.](#)"

Regardless of one's position on the possibility of fraud and the advisability of mail-in elections, a few recent developments reveal that instituting such a process in time for November's election is rather difficult.

In California, Gov. Gavin Newsom's attempt to enact all-mail elections via an executive order is the subject of an ongoing legal battle. On June 12, [a Sutter County judge](#) granted two GOP legislators' request to issue a temporary restraint against the executive order. That restraining order was stayed by the Court of Appeals [on June 17](#). The passage of a law by California's Democrat-controlled legislature mirroring Newsom's executive order may eventually make the case moot, but the question of the legality of executive-mandated all mail-in elections remains in contention.

Meanwhile more practical implications of the mail-in balloting process cast a negative light on the desirability of such an election.

Last month in New Jersey, election officials rejected [9.6 percent of all ballots](#) sent in for the state's municipal, school board, and special elections. Nearly 10 percent of the state's residents attempting to vote ended up having no say in their representatives! Reasons for the rejection of ballots included signatures on the ballot not matching the one on file, ballots arriving too late, or the absence of a required certificate.

Nearly 140 million Americans successfully cast a ballot in the 2016 presidential election. Imagine if we discounted 9.6 percent of those ballots, or even just half of that value.

Meanwhile, our federal government is not even able to ensure that the coronavirus stimulus payments went to people who are actually, you know... *alive*. Nearly 1.1 million deceased individuals received those \$1,200 checks, [reports The Washington Post](#). Even the *Post*, who had reported on the issue before, called the full scope of the problem "astonishing." The U.S. Government Accountability Office unearthed this massive \$1.4 billion error as part of its comprehensive report on Congress' \$3 trillion coronavirus relief package.

Are we going to be sending ballots to 1.1 million deceased Americans in the same way that we hand out \$1,200 checks? Will our governmental officials' cavalier attitudes towards taxpayers' hard-earned money be extended to the integrity of the United States' elections?

Even if there are no other problems, the delays in counting mail-in ballots have already [overwhelmed election officials in both Kentucky and New York](#), while in person voting proceeded quite smoothly. The counting of mail-in and absentee ballots in a normal election year often causes the results of close

elections to be in doubt for days, [if not months](#).

Imagine the legal battles of counting ballots across the United States and trying to figure out how the electoral college shakes out in the 2020 presidential election. Imagine a situation where in July 2021, the results of the presidential election are still to be determined.

What would happen to the continuity of government? President Trump's re-election would be unconfirmable, while former Vice President Biden would be twiddling his thumbs waiting to see if he was the true winner, or vice versa. In such a situation, a peaceful and orderly transition of power is hard to imagine, and the United States could be left without executive leadership for half a year or more.

And if you thought the legal battle over the results of the elections would be a mess, wait until the Supreme Court has to figure out if Nancy Pelosi or whoever succeeds her as Speaker of the House should serve as president until such time as the 2020 election results are certified.

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