

The National Vote at Home Institute's

# 2021

## LEGISLATIVE SESSION REPORT

For the better part of the last year, the United States' political ecosystem — its politicians, elected officials, legislatures, courts, and interest groups — has been laser-focused on the nation's election systems. The pandemic presented the largest logistical barrier to democratic participation in modern history. Election policies and election results were litigated in courts across the country, the US Capitol was stormed, and those who work there were threatened as they met to certify November's election results. When many state legislatures convened in January, conversations became just as much a referendum on the emergency policies implemented leading up to November, as they were an opportunity to reform election systems. Both "red" and "blue" states across the country have taken steps forward to strengthen their election systems through pro-voter policies and this trend must continue. The United States is at an inflection point for voting policies. The time has come for ubiquitous pro-voter policies; our democracy depends on them.

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## INTRODUCTION

The 2020 November election revealed the shortcomings in election systems as well as shining moments of innovation, resiliency, and efficiency. Election systems with more flexibility for election officials performed well and required little to no emergency legislation. Similarly, jurisdictions with vote at home systems (those where voters are automatically sent a ballot and have a variety of options for casting a ballot) offered a built-in resiliency that led to better outcomes for voters. The majority of shortcomings were seen in states that relied heavily on limited in-person voting options or required an excuse to use a mail ballot and found themselves forced to adapt. Voters in some of these states saw their options actively restricted as the creative solutions of local election officials ran up against partisan political actors.

At the National Vote at Home Institute, we are constantly striving to help legislators and election officials craft a more perfect election system for their state. In these ideal systems, a few things are always true: voters are at the center of every policy that is implemented, accessibility and security work hand-in-hand, and election officials are protected under the law. These guiding tenets coexist best in a Vote at Home system while saving states time and money. Several states made the leap to a comprehensive Vote at Home system in 2020 and 2021, but there were also huge successes in states that chose to make more incremental changes.

With that in mind, a few trends in election policy across the country caught our eye this year. Most notably the Northeast, a region that has largely lagged behind much of the country when it comes to voting reform, responded to the pandemic with much needed, albeit sometimes temporary, pro-voter policies. For instance, New York, Massachusetts, Connecticut, and Delaware effectively waived the requirement for an excuse to vote a mail ballot for November 2020. New Jersey and Vermont went even further and opted to mail all voters a ballot and saw record-high turnout as a result. These policies are examples of how state policies can create pro-voter environments when the political will exists. There were many other interesting trends across the country that we will dive into further throughout this paper.

## STATE OF PLAY

Before delving into the positive policy changes we saw across the country this legislative session, it's important to acknowledge the obstacles that stood in the way of progress. In nearly every state there are elected officials who are striving to introduce pro-voter legislation but the lack of funding, an abundance of disinformation, and the power of partisanship stand in the way of progress.

Let's start with funding. The steps states have to take to reform their election systems, whether that's investing in technology or reallocating resources, can be expensive in the short term. While Vote at Home policies are **more cost-effective** than systems that rely almost solely on in-person election day voting, start-up costs can deter elected officials from making changes. Certain costs, such as those associated with electronic poll books, require the majority of investment upfront, yet they are a worthwhile expense to ensure the efficiency and security of elections in the digital era. The financial burden of reform is just one of the many reasons some of these costs should be covered by the federal government, but more on that later.

While funding is typically the chief concern in some years, hyperpartisanship was the primary hurdle to progress this cycle. The 2020 election saw the transformation of the historically non-partisan issue of election policy into a political lightning rod. Due to the unchecked spread of baseless conspiracy theories, **large portions of voters** saw their preferred candidates' defeats in certain federal races as an indicator of foul play even after these myths were debunked by investigations, audits, and legal proceedings. Bad actors have spread false statements regarding the security of US elections and the efficacy of many pro-voter policies, despite the lack of evidentiary support. In response, some legislators have attempted (sometimes successfully) to roll back policies that expand access to the ballot. As a result, this session saw the introduction of many bills to eliminate ballot return options, impose burdensome identification requirements, and restrict access to mail ballots. Many of these restrictions make no legitimate claims to increase security, despite the insistence that the changes are due to genuine concern for the security of elections.

To a lesser extent, states where elected officials are more receptive to pro-voter legislation have created their own obstacles to reform this session. Inaction and stagnation have plagued many traditionally "blue" states for decades and have resulted in older and inefficient election systems that are in dire need of reform. The lack of infrastructure in states like New York makes a positive change that much harder. Additionally, states like Maryland had opportunities to pass pro-voter policies this year but failed to do so in the eleventh hour. Given the political will present in these states, these policies should not have been difficult to pass.

Legislating is difficult and, even if you set aside the influence of money, politics, and conspiracy theories, procedural and logistical hurdles stand in the way of timely progress. For example, many states require constitutional amendments to change voting policies, specifically policies pertaining to who can request and receive a mail ballot. Constitutional amendments take more time to pass as they often require multiple votes by the legislature and a direct vote by the people. Quite a few important constitutional amendments were introduced in recent years that can not possibly be finalized until 2023 or 2024. States also often lack the infrastructure to implement certain modernizations, making policies that require technological advancements a non-starter until the infrastructure is updated. While it's possible to overcome this (and many states do!) it can be a bigger ask of states to make multiple changes at once.

## POLICY BREAKDOWN

Now that the scene has been set, hopefully, you have a better understanding of the political atmosphere that legislators faced when they reported to their respective capitals this session. Most commonly, NVAHI observed policy introduced on the following topics: Vote at Home, "excuse" requirements, early voting, permanent absentee/mail ballot lists, list maintenance, and online absentee/mail ballot request systems.

## VOTE AT HOME

In November 2020, four states plus the District of Columbia mailed a ballot to every eligible voter as a temporary or emergency measure. In the 2021 legislative session, two of those states, Nevada and Vermont, voted to make that policy permanent, while one state, California, voted to extend that policy for two more years. While no two Vote at Home systems are identical, they all include certain key features that center voter access, voter choice, and election security.

Nevada's [AB321](#) and Vermont's [S15](#) are two of the pieces of legislation that we are most proud of this year. Nevada's new law mails a ballot to all eligible voters for both primary and general elections. To do this effectively, the law also includes the supportive provisions needed to ensure that a Vote at Home system functions well, including a cure process, preprocessing, and varied methods of ballot return. Moreover, AB321 outlines guidelines for in-person voting on election day and during an early voting period to ensure that voters have access to the ballot, no matter their preferred voting method. Vermont's new law mails a ballot to all eligible voters during statewide general elections and also includes the supportive policies found in Nevada's new law to address timelines, ballot return options, and in-person voting.

Thanks to the Vote at Home policies passed this year,

**13,464,829**

more voters will have full access to a comprehensive Vote at Home system for the next election and

**2,318,984**

more voters now live in a permanent Vote at Home state.

## **NO-EXCUSE MAIL BALLOTS**

The first step to an accessible election system is ensuring that all voters can choose the voting method that works best for them, but not all states meet this basic threshold. The Northeast and the South have lagged behind the West in recent years in that many states in both regions still require voters to provide an excuse to request and receive a mail ballot.

In the 2020 election, all states in the Northeast that still required an excuse to vote a mail ballot effectively suspended the requirement, citing the COVID-19 pandemic. For many of those states, 2020 was the kick they needed to take action in 2021 to begin removing those excuse provisions for good. However, unlike other policy points, mail ballot accessibility is often something that is outlined in a state's constitution. As mentioned earlier, amending a state constitution is a much longer process than passing a typical bill, so while states have taken huge leaps forward this year, the effects may not be seen until 2024 or beyond.

This year, Connecticut, Massachusetts, New York, and Delaware all introduced or took action on constitutional amendments, with varying degrees of success. Sitting at the top is New York, having passed the legislative requirements for a constitutional amendment to permanently allow voters to vote by mail without an excuse which will now go to a direct vote of the people in the 2021 election. Connecticut also passed its constitutional amendment, but because it failed to receive a three-fourths majority in both chambers of the legislature, it must be passed again by the legislature in 2023 before it will go on the ballot to be voted on by the people in 2024.

Having less success thus far is Massachusetts, which introduced a constitutional amendment to remove the absentee ballot excuse requirement. The legislature was in recess for the summer, so we will have to wait until the fall for further updates on whether it will be passed by both chambers. In the meantime, Massachusetts passed a bill to extend no-excuse access to mail ballots through December 15. Finally, Delaware brought its constitutional amendment (known as a joint amendment) to the floor for a vote in the House, but the resolution failed. We are hopeful that Delaware will continue its work to expand access to mail ballots to all voters next session and are encouraged by the important steps New York, Connecticut, and Massachusetts have taken this year to make voting more accessible.

## EARLY VOTING

The best election systems allow voters to choose which voting method works best for them, and that is why here at NVAHI we are so supportive of robust in-person early voting options. Early voting was an incredibly popular vote method in 2020 and in addition to expanding hours, states also created innovative options for voters such as 24/7 early voting in Texas or drive-up voting in Vermont. These changes paved the way to the expansion or introduction of early voting options in permanent legislation in 2021.



The number of voters who voted early grew by more than 17 million voters in 2020, or

Most notably, Connecticut passed a constitutional amendment to allow early voting by such a large margin that it will go to a direct vote by the people next year for Connecticut voters to decide on. Early voting is a great example of a policy that is popular on both sides of the aisle and can be an area of common ground for legislators. New Jersey is another example of a state that had no formal early voting system in 2020. This year, the legislature passed and the governor signed [S3203](#) to establish an early voting period and mandate the creation of county-wide early voting locations based on population for all elections.

Like New Jersey, Kentucky also did not have a robust early voting system before 2020 but found great success with vote centers, or locations where any voter in the county can vote, during the November election. During this session the legislature passed [HB574](#), a large election omnibus bill, with bipartisan support. This bill established an in-person early voting period open to all voters, which is particularly important in Kentucky given that the state still requires an excuse to request an absentee ballot.

While states like Connecticut, New Jersey, and Kentucky took steps to roll out largely new early voting systems, other states like Maryland saw the 2021 session as an opportunity to improve pre-existing systems. Maryland passed [HB206](#) this session, which expanded early voting hours in the state. Similarly, Louisiana passed [HB286](#), which adds four more days of early voting for presidential elections for a new total of 11 days of early voting.

## PERMANENT ABSENTEE LIST

As mail ballots become a more popular form of voting, election officials generally begin to observe that a large portion of those requesting mail ballots are repeat requesters. Because of this, many states have created a permanent absentee list, also known as a single sign-up option, to allow voters to sign up to receive a ballot for future elections indefinitely. This is a great choice to ensure that voters don't have to jump through unnecessary hoops to receive a ballot and that election officials can save money by cutting out the processing of multiple absentee requests for a single individual.

Three states passed bills to create permanent absentee lists this year: Illinois ([SB825](#)), Virginia ([HB1888](#)), and Maryland ([HB1048](#)). Notably, in Virginia those who signed up to receive absentee ballots for all elections in 2020 will be automatically put on the new, truly permanent list to receive one in the future unless they choose to opt-out. In Maryland, voters will be able to check a box to be added to the permanent list on all absentee ballot application forms. These two policies, an opt-in system and allowing voters to join the list when applying for an absentee ballot, help ensure the efficiency of a permanent list for both voters and election officials.

## LIST MAINTENANCE

In addition to passing policies that increase options for voters, states were also focused this year on ensuring data integrity and election security. Two of NVAHI's most effective recommendations to states are joining ERIC and utilizing NCOA data. ERIC, the Electronic Registration Information Center, can be used to cross-check voter registration information across states. NCOA, or National Change of Address, data is helpful to ensure that voter address information, and thus registration information, is up to date.

This session, Hawaii passed [SB548](#) which requires the state to update its information with NCOA data. While Hawaii's legislation requires the use of NCOA data, bills that merely open the door for a state to use these services can be just as important. Take for example Oklahoma, which passed [SB710](#) this year and allows the State Board of Elections to join ERIC, but does not mandate it. While these steps may seem small in comparison to large technology updates or sweeping policy reform, they are just as vital to the integrity of a healthy election system.

## ONLINE ABSENTEE REQUEST

While on the topic of technology, it's important to remember that a policy is often only as good as its implementation. In the case of absentee ballot requests, a state can open up mail ballots to all voters, but if the state makes it difficult for voters to request ballots, the policy will never produce the change or growth in the electorate that it is capable of. That's why online absentee ballot request portals are so key to voters accessing mail ballots.

This year, Kentucky and New York both passed bills that will establish or make permanent online mail ballot request options for voters. This is a policy that has support on both sides of the aisle. There's little doubt as to why: online mail ballot requests dramatically reduce the cost and time required to process mail ballot requests while also increasing voter access, serving voters who do not have access to a printer or are up against the mail ballot request deadline, and cannot return their application in person.

## STATE PROFILES

Election policy does not have to and should not be partisan. The positive trends across the country demonstrate how change is happening everywhere, from traditionally "blue" states on the eastern seaboard to deep "red" states in the south.

However, when we tell the story of the 2021 legislative session through the lens of different policies, we lose the nuance of what is required to take a state from point A to point B. Vermont and Nevada both went through a long and arduous process to create a comprehensive Vote at Home system that mails a ballot to each eligible voter and we at NVAHI can assure you it was not as simple as legislators just writing a bill and putting it to a vote. Ultimately, both states were ready to make the leap and ensured that they would be successful by coupling proactively mailing ballots with other key policies, and incorporating the voices of experts and local elections officials in the process.

**States that switched to sending all voters a ballot saw more than 70% larger growth in turnout from 2016 than states that did not send all voters a ballot**

## VERMONT

Vermont is a great example of how a comprehensive, efficient, and secure election system can be updated quickly without cutting corners. The Green Mountain State passed S15 this past session, an election omnibus bill that most notably requires mail ballots to be sent to eligible voters for all general elections. Prior to 2020, few would have considered Vermont the kind of state that would be looking to make the jump to a Vote at Home system in 2021.



**Turnout increased 21.83% in Vermont in 2020, when all eligible voters were mailed a ballot**

The November 2020 election proved to be a good opportunity for Vermont to test out a Vote at Home system. The election went incredibly well thanks to the hard work of Vermont's election officials. They implemented innovative policies such as drive-through voting and ensured all voters could make their voices heard at the ballot box. While we are certain nobody would claim that the process was truly seamless, the hard work of Vermont's clerks and elections department was outstanding and they, along with legislators, were able to use 2020 as a chance to identify areas where policy could be improved, come time to pass legislation.

The most powerful changemakers came from within the state, and ideally, new voting policies should have the support of those who will have to implement them. Will Senning, the Director of Elections, and Chris Winters, the Deputy Secretary of State who both work under Vermont Secretary of State Jim Condos, threw their support behind S15 and worked closely with legislators and local clerks to ensure that the policies being crafted would work for everyone.

S15 ultimately included a preprocessing timeline that works for both clerks and voters, a cure process that ensures ballots are not unnecessarily rejected, and a variety of ballot return options for voters, including drop boxes. All of these policies fit together to create a system that operates smoothly; ballot drop boxes ensure that voters can get their ballot returned in plenty of time, which when coupled with a sufficient preprocessing window gives clerks enough time to process ballots, allowing for adequate time to notify voters if there is a problem with the ballot so that the voter can remedy it.

S15 is a strong bill that works for Vermonters. S15 requires that mail ballots be sent to all eligible voters for general elections and was coupled with additional legislation that leaves the door open for a local option for municipal elections. Importantly, there is the political will to expand Vote at Home to more elections in the future, namely, there is support from Republican Governor Phil Scott. Scott went so far as to make a statement when signing S15, **stating** "For greater consistency and to expand access further, I am asking the General Assembly to extend the provisions of this bill to primary elections, local elections and school budget votes when they return to session in January."

**Sometimes a couple years of tinkering is exactly what a state needs to guarantee a smooth rollout and Vermont is a prime example of this.**



## NEVADA

Similar to Vermont, Nevada mailed a ballot to all eligible voters for the November 2020 election, and passed legislation ([AB321](#)) this past session to make that change permanent. AB321 also makes preprocessing permanent and adjusts timelines for postmark acceptance, ballot curing, and canvassing in a way that works with the new system.



Turnout increased 14.94% in Nevada in 2020, when all eligible voters were mailed a ballot

Nevada found a great deal of success with mailing ballots to every voter in 2020. Given Nevada's mix of urban and rural areas, flexibility in voting options for all voters was crucial. AB321 allows rural voters to benefit from not having to travel too far to cast a ballot while maintaining options for all voters. Vote at Home systems also work well for Native American populations, particularly when supported with comprehensive ballot return plans, which AB321 includes.

2020 was the right time for Nevada to implement a Vote at Home system given the success they found in November and the fact that Nevada passed legislation this year to move from a caucus system to a primary system for future elections. When signing the bill, Governor Sisolak [praised](#) AB321 for expanding access to the ballot. Speaker Frierson, the bill's sponsor, [emphasized](#) that the bill's actions are new for voters in the Silver State, rather "these are all options and individual liberties that Nevadans have come to enjoy."

## MARYLAND

While Maryland also mailed ballots to eligible voters for an election in 2020 (though unlike Vermont and Nevada, it was only for the primary election), the state opted to create a permanent absentee ballot list for voters in the 2021 session, rather than pass policy that would mandate mailing a ballot to all voters in future elections.

Permanent lists are a great way to eliminate hurdles for voters while conserving the time and energy of election officials. The policy has also been praised for its ability to increase equity and access to the ballot for all voters. Joanne Antoine, the executive director of Common Cause Maryland [noted](#) that the permanent list "...is going to make it easier for the voters who vote by mail regularly." She elaborated that "That varies from voters with disabilities to others who just like the convenience."

In addition to creating a permanent absentee list, HB1048 outlines requirements for ballot drop boxes and expands the hours of early voting across the state. All three of these measures will serve Maryland voters well and will be particularly useful if Maryland decides to mail all eligible voters a ballot at some point.

While there was a lot of success this past session, Maryland also experienced some hiccups along the way. HB759, a bill that would have created a study on implementing risk-limiting audits, was passed by both chambers but was never scheduled for a conference committee. Risk-limiting audits are a helpful security measure that can confirm to a higher degree the accuracy of election results. HB1047 met the same fate. If passed, the bill would have established preprocessing, ballot tracking, and a cure process. While the policies mentioned certainly should have garnered bipartisan support in both houses, ultimately, Maryland's work this legislative session still expanded access to mail ballots, increased return options, and strengthened in-person early voting.



The mail ballot share of the vote was nearly 7 times higher in Maryland in 2020 compared to 2016

## THE TAKEAWAY

As federal negotiations continue and members of Congress revisit the voting legislation following President Biden's call for a renewed effort on voting policies, all eyes are still turned on election policy. Undoubtedly, voting rights will also factor into the 2022 midterm elections as states put their new policies into action. While many states have taken steps backward, so much progress has been made in the 2021 session thus far. From expanding access to mail ballots to ensuring that voters have robust in-person voting options, both "red" and "blue" states across the country have taken important steps forward to strengthen their election systems.

**44 bills were enacted in 2021 that expanded access to mail ballots**

In addition to focusing on continuing the progress that has started, NVAHI will continue to work to dismantle the obstacles that stand in the way of pro-voter policies. Congress proposed federal election administration legislation. As of publication, the newly proposed Freedom to Vote Act will fund key elements of elections and create a national standard that will ensure that every voter can make their voice heard at the ballot box. Moreover, we must continue to combat disinformation and misinformation and emphasize that voting policy should not become beholden to politics. A voter's ability to cast a ballot should not be dependent upon the political makeup of their state. When elected officials on both sides of the aisle work together, they can overcome many of the procedural hurdles that stand in the way of progress.

The moment to improve our voting laws is now: the health and stability of our democracy depends on it. We at NVAHI applaud the hard work of all those who have helped craft more perfect election systems this year and we will never stop fighting beside the public officials and voters alike who make our democracy a reality.