

MEMORANDUM

TO: Commission on Strengthening Utah's Democracy

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DATE: April 16, 2009

SUBJECT: Elections Summary

I. NOMINATION SYSTEMS

A. Utah Systems

Utah's major political parties select nominees for state office through a "pre-primary convention" system, under which party leaders at a state convention may either select a nominee or choose two candidates that compete for the party nomination in a subsequent primary. The fourth Tuesday in June of each even-numbered year is designated as the day to hold regular primary elections. Under state law, a political party may choose to allow independent voters and other parties' members to vote in its primary election.¹

1. *Republican Party*

The Utah Republican Party holds precinct caucuses during even-numbered years. The caucus elects and sends delegates to the Republican county and state conventions. The number of delegates apportioned to the county and its caucuses for each convention is based on the Republican Party's relative strength in that county.

Either the multiple-ballot or preference-voting method will be used to select party candidates if there are three or more candidates contending for nomination to the same office.² If using the multiple-ballot method, the convention will cast ballots eliminating the lowest vote-getter in each round until only two candidates remain for a given office. If using the preference-voting method, delegates rank candidates on one ballot and the same ballot is counted multiple times dropping the candidate that receives the lowest number of first-place rankings in each round. (The Utah Republican party started using preference voting in 2002, though its use in the United States is rare.³) If a candidate

¹ Utah Code Ann. § 20A-9-403.

² Utah Republican Party Constitution, 2008 Official Version, Article XII; Utah Republican Party Bylaws, Section 7.0.

³ See Bob Bernick, Jr., DESERT NEWS, *Utah GOP Alters Vote Method*, May 8, 2002. The popularity of this system is growing in the United States, which has been dubbed "Instant Runoff Voting" (IRV). States are adopting IRV for overseas voting and many counties, cities, and other governmental divisions have adopted IRV.

obtains more than 60% of the delegate vote, that candidate will be the Republican Party nominee. If neither of the two final candidates receives 60% of the delegate vote, those candidates will participate in a subsequent primary election.⁴

The Republican primary is closed to all but registered Republicans, though unaffiliated voters may vote in the Party's primary election by registering as a Republican at the polls.⁵ The Utah Republican Party held Presidential Primaries in 2000 and 2008.

2. *Democratic Party*

The Utah Democratic Party holds caucuses, conventions, and primaries. County and state delegates are selected at caucus meetings held on the third Tuesday of March in even-numbered years. Each county sends five delegates to the state convention, plus an additional bloc of delegates determined by the number of Democratic voters in the county from the previous election.⁶

After caucuses, delegates gather at county or state nominating conventions to nominate party candidates. Similar to the Republican convention, Democratic Party candidates at the state nominating convention must receive 60% of the vote to become the Party's nominee. If more than two candidates run for the same office, multiple ballots are used. If only two candidates run, and one receives over 57% of the vote, delegates vote on a final ballot to see if a 60% majority can be reached. If a candidate fails to garner 60% of the vote, the Party's nominee is determined through a primary election between the top two convention vote-getters. Unlike its counterpart, Utah's Democratic Party does not use preference voting.⁷

Utah's Democratic Party primaries held for positions other than President are open to voters from any party and to unaffiliated voters. In 1992, the Democratic Party held its first "firehouse" or self-funded Democratic Presidential Primary. Democratic Presidential Primaries have been held each presidential cycle since 2000. Utah Democratic Presidential Primaries are semi-closed in that only Democrats and unaffiliated voters are allowed to vote.⁸

B. Comparative Statistics

- In 7 states, including Utah, conventions play a significant role in nominee selection.
- 5 states, unlike Utah, hold primary elections to select statewide nominees, but allow parties to hold conventions for legislative offices.

⁴ See Utah Republican Party Constitution, 2008 Official Version, Article XII; Utah Republican Party Bylaws, Section 7.0.

⁵ Utah Code Ann. §§ 20A-2-107.5; 20A-9-805. See also Lisa Riley Roche, DESERET NEWS, *Committee Extends Closed Primary Election Provision*, Sept. 19, 2007.

⁶ Utah Democratic Party Constitution, Article II; Utah Democratic Party Bylaws, Article II.

⁷ *Id.*

⁸ *Id.*

- 38 states, unlike Utah, select nominees through a primary election,
- 26 states, including Utah, hold closed or semi-closed primary elections or caucuses.
- 17 states, unlike Utah, hold open or semi-open primaries or caucuses.
- 7 states use miscellaneous types of primaries or caucuses.
- 12 states use runoff primaries when there are three or more candidates and none receive a majority of the vote.

C. Alternative Approaches

1. *Blanket to Closed Primaries/Caucuses*

Generally speaking, all 50 states' systems fall on a continuum between a blanket primary and a fully closed primary or caucus system. A blanket primary places all candidates, regardless of party affiliation, onto one ballot. This allows voters to choose among all candidates on a ballot without regard to party lines (e.g., a voter may select a Republican candidate for state representative and a Democratic candidate for U.S. Senate). Washington's original blanket primary was held unconstitutional in 2003, but a modified blanket primary, which allowed candidates to affiliate with a party, passed constitutional muster.⁹ Louisiana's system (also known as a Louisiana "Cajun" Primary) is essentially a blanket primary that allows the two top vote-getters to advance to a general election, similar to a runoff election. This primary election system has not been challenged as unconstitutional, and California and Alaska have used the system at different times. In Louisiana, the major political parties have generally chosen not to nominate a single candidate before the run-off, and it is entirely possible that two candidates of the same party could advance to the general election.¹⁰ Cities and counties in Utah use a similar election system.

Closed primary or caucus systems only allow registered members of a party vote in a primary or attend a caucus. Only a few states, such as Nevada, maintain a fully closed system. In the Nevada system, only caucus-goers registered with a party can participate, and absentee ballots are not accepted. Most states either allow voters to change party affiliation to vote in primary elections or permit unaffiliated voters to participate in primaries or caucuses.

2. *Iowa Second Choice System*

An interesting variation on the preferential voting system adopted for Republican conventions in Utah is Iowa's "second choice" system for presidential nominations. Presidential candidates who receive less than 15% of the vote are considered non-viable. Those candidates' supporters can choose not to vote or to cast a ballot for their second choice. Caucus-goers can vote for stronger candidates if it is clear that their first choice cannot win a sufficient number of delegates.

⁹ *Washington State Grange v. Wasington. State Republican Party*, 128 S. Ct. 1184 (2008).

¹⁰ See Joan Biskupic, THE WASHINGTON POST, 'Blanket' Primaries' Effect on Parties Reviewed, Apr. 25, 2000.

D. Pros and Cons

1. Open Primaries

A blanket primary decreases major parties' strength in the election process. That may be a pro or a con, depending on one's perspective. Blanket primaries are more strictly democratic in the traditional sense. However, such a system increases the probability that winners will be elected by a minority of voters and lack credibility. The system also allows top candidates from one party or ideology to split votes allowing less popular candidates to finish better than they could otherwise.

2. Caucuses

Caucuses are designed to allow parties to better control the nomination process. Because party activists dominate caucus systems, candidates who compete in caucuses must court party faithful rather than appeal to a broad cross-section of the population. On the other hand, caucuses generally allow a broader field of candidates to meaningfully participate because campaigning among a small audience of caucus attendees is inexpensive, making money less of a bar to entry.

3. Closed Primaries

A closed primary's benefit is that actual members of the party alone select the party's nominee, which prevents so-called "cross voting"—voting by individuals who intend to vote in an opposing party's primary election so that party's nominee is weaker in the General Election campaign. In addition, this party flip-flopping can theoretically cause greater work for state election officials involved in the registration process because it adds greatly to re-registration of voters. On the other hand, closed primaries prevent many voters from taking part in selecting General Election participants, leaving many feeling disenfranchised.

4. Preferential-Voting Systems

The two most often cited reasons for using preferential voting, or instant runoff voting, as it is often called, is to streamline the balloting process. Only one ballot must be filled out because the same ballot is counted multiple times. This is helpful in circumstances where many candidates are running for the same seat. Also, with preferential or instant runoff voting, the winning candidate will have the meaningful support of a majority of the voters, which increases the candidate's legitimacy. A preferential-voting system is also helpful in preventing an independent or a third-party candidate from "playing spoiler" and throwing the election to a candidate who in fact was not the electorate's overall first choice. More importantly, preferential voting tends to reward civility in the campaigning process because candidates are vying for second- and third-place rankings with voters and not simply trying to secure a majority. The downside is that the process is complex and can have unusual or unpredictable outcomes.

E. Changing Utah's Laws

To change Utah's nomination systems, political parties would need to modify their constitutions and/or bylaws. Utah's laws generally facilitate the party's election procedures, and could be changed through the legislative process.

II. VOTER REGISTRATION

A. Utah Laws

Registration is required for an individual to vote in Utah.¹¹ An individual is qualified to register to vote if he or she is a United States Citizen, a Utah resident for at least 30 days,¹² and at least 18 years of age on the day of the election.¹³ A qualified individual may register to vote in person at the county clerk's office, at a satellite registration location, or by mailing a Utah Voter Registration Form or National Voter Registration Form to the county clerk's office of the individual's county of residence.¹⁴

1. Registration Deadlines

Voter registration forms must be postmarked at least 30 days before an election in order to vote in the next election, or received in-person at the county clerk's office at least 15 days prior to the election.¹⁵ Persons registering at the county clerk's office in person after 30 days prior to the election but before 15 days prior to the election will not be eligible for early voting.¹⁶

2. Registration Accessibility

The National Voter Registration Act of 1993 ("NVRA"), also known as The Motor Voter Act, requires state governments to make the voter registration process more convenient by providing uniform registration services through driver's license registration centers ("DMV"), disability centers, schools, libraries, and mail-in

¹¹ Utah Code Ann. § 20A-2-102.

¹² Utah Code Ann. § 20A-2-105. Basically speaking, "[a]n applicant is considered a resident of Utah if she has her principal place of residence within Utah and intends to continue to reside within Utah indefinitely." State of Utah Mail-in Voter Registration Form; State of Utah Elections Office website, <http://elections.utah.gov/registering.html>.

¹³ Utah Code Ann. § 20A-2-101. Convicted felons may not register to vote unless voting privileges have been restored. Utah Code Ann. § 20A-2-101.5.

¹⁴ Utah Code Ann. § 20A-2-201-202. *See also* State of Utah Mail-in Voter Registration Form; State of Utah Elections Office website, <http://elections.utah.gov/registering.html>. Incarcerated individuals who have the right to vote may vote in their voting precinct of residence prior to incarceration. Utah Code Ann. § 20A-2-101. An individual must re-register to vote if the individual changes her name, desires to change party affiliation, or moves to a new address. Re-registration simply requires filling out and delivering a new registration form to the appropriate county clerk's office. Utah Code Ann. § 20A-2-107; State of Utah Elections Office website, <http://elections.utah.gov/registering.html>.

¹⁵ Utah Code Ann. §§ 20A-2-102.5; 20A-2-201.

¹⁶ Utah Code Ann. § 20A-2-201. For early voting procedures, *see* Utah Code Ann. § 20A-3-60.

registration. Utah registration forms are also available in a downloadable form on the state's website and in hard copy at State Agency Offices and public colleges and universities. High School seniors also receive a voter registration form that is kept on file by the county clerk until the high school senior turns 18 years old.¹⁷

3. *Computer Based Registration Services*

Utah does not allow online voter registration. Currently, Salt Lake County allows the transfer of voter registration information via the Internet into an electronic "holding table" maintained by the county clerk's office. The form itself must be downloaded, printed, signed, and delivered to the county clerk before registration is complete.¹⁸ The printed form contains a barcode that retrieves the registration information from the holding table and sends it to the registration database. The electronic transfer of information saves time on data input. Utah also offers public access portals including a registration lookup and polling place locator on the Lieutenant Governor's website. Utah keeps a statewide registration database that is intended to reduce fraud. The database is connected to the Department of Corrections for verification of convicted felons, who are ineligible to vote while completing a sentence, probation, or parole.¹⁹

4. *Third-Party Registration Assistance*

Utah currently has no specific restrictions on voter registration assistance offered by civic groups, universities, or any other individuals or organizations.

B. Statistics

- As many as 50 million eligible Americans are not registered to vote.²⁰
- The percentage of registered voters per age group in Utah are as follows:
 - 39.09% of 18-29;
 - 55.33% of 30-44;
 - 68.31% of 45-59; and
 - 76.64% of 60 and above.²¹
- Except for Utah's oldest age group, Utah's voter registration percentage is in Utah is in the bottom 20% of all states in each age group.
- 9 states, unlike Utah, allow election-day registration; 10 states, including Utah, close registration 1-15 days before Election Day (5 of these 10 states' close registration closer to Election Day than Utah); and 31 states close registration 16 days or more before Election Day.²²

¹⁷ Utah Code Ann. § 20A-2-201-205, 302.

¹⁸ See Salt Lake County Voter Registration site at <https://secure.slco.org/cl/voterreg/>.

¹⁹ Utah Code Ann. § 20A-2-109.

²⁰ Should You Register to Vote? – For Dummies at <http://www.dummies.com/how-to/content/should-you-register-to-vote.html>.

²¹ Pew Center on the States, <http://www.pewcenteronthestates.org>.

²² Pew Center on the States, <http://www.pewcenteronthestates.org>.

- Thirty-two states, including Utah, offer online voter registration lookups that allow voters check their registration status.²³

C. Alternative Approaches

1. *Election-day or Same-day Registration*

Eight states—Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, Wisconsin and Wyoming—have election-day registration where voters may register and vote on Election Day.²⁴ In North Carolina, voters may concurrently register and vote during an approximately two-week early voting period. Ohio’s Secretary of State also instituted a same-day early registration/absentee voting option during the 2008 campaign after the U.S. District Court and the Ohio Supreme Court ruled that Ohio voters do not have to wait 30 days after registering before they can cast absentee ballots.²⁵ Several other states have similar early registration/absentee ballot voting. North Dakota has no voter registration requirement at all. Those states with the highest turnout and registration rates are the states with the shortest deadlines.²⁶ In this year’s legislative cycle, 16 states have legislation pending that would implement election-day registration. New Hampshire, on the other hand, has a bill pending that would repeal its existing election-day registration program.²⁷

2. *Online Registration*

Arizona and Washington are the first two states to allow online voter registration. Arizona has allowed online registration for seven years and 60% of all registration occurs online in Arizona.²⁸ A bill passed by the Oregon House of Representatives in late March, if signed into law, will make Oregon the third state to allow online voter registration.²⁹ As mentioned above, Salt Lake County allows voter registration data to be transferred online. Salt Lake County, however, ultimately requires receipt of the voter registration form before registration is complete.

²³ *Id.*

²⁴ Connecticut also has election-day registration, but only for casting votes for the Presidency. Several other states have considered legislation for same-day voter registration including New Mexico, Maryland, and Hawaii.

²⁵ Celeste Headlee, NATIONAL PUBLIC RADIO, *In Ohio, Voter Registration Conflict Is Brewing*, Sept. 30, 2008 at <http://www.npr.org/templates/story/story.php?storyId=95>; Stephen Majors, ASSOCIATED PRESS, *Top Ohio Court Throws Out Voter Registration Claim*, Oct. 21, 2008, at http://www.ohio.com/news/break_news/31957174.html.

²⁶ Pew Center on the States, <http://www.pewcenteronthestates.org>; Progressive States Network at <http://www.progressivestates.org/node/21866>.

²⁷ National Conference of State Legislators, *The Canvass: States and Election Reform* at <http://www.ncsl.org/programs/legismgt/elect/2009ElectionsLegislation.htm>.

²⁸ National Association of Secretaries of State, *Fact Sheet: State Online Tools & Resources for Voters* at <http://www.nass.org>.

²⁹ STATESMAN JOURNAL, *Status Report for Key Bills*, Apr. 5, 2009 at www.community.statesmanjournal.com.

3. *Automatic Registration*

Minnesota, New York, and California are considering bills that would make registration to vote automatic for any person who fills out a driver's license form or a state income tax form.³⁰

4. *Third-Party Voter Registration Drives*

Voter registration organizations came under a great deal of scrutiny during the 2008 presidential elections due to allegations of voter registration fraud leveled at the Association of Community Organizations for Reform Now (ACORN) and other voter registration organizations. California, Colorado, Florida, Georgia, Maryland, Missouri, New Mexico, Ohio, and Washington have each enacted laws that restrict voter registration drives. Restrictions include strict deadlines on voter registration drives, such as New Mexico's requirement that drive organizers submit completed registration forms within 48 hours after completion. Ohio and Colorado require individuals to pre-register with the state and disclose personal information before helping their neighbors register to vote. In most states, these laws are enforced by criminal penalties, including jail time, or by steep fines.³¹ Organizations such as the Brennan Center for Justice are litigating on behalf of voter-registration organizations to overturn these laws on constitutional grounds.³²

D. Pros and Cons

1. *Election-day/Same-day Registration*

Proponents argue that election-day and same-day registration laws make the registration process more convenient, and thereby increase voter turnout. Critics, on the other hand, argue that these laws increase the potential for voting fraud. Furthermore, some critics argue that those who are not willing to set aside time to register before Election Day are not sufficiently interested or informed.

2. *Online Registration*

Online registration increases citizens' accessibility to the voter registration system. The easier the registration process, conventional wisdom would dictate, the higher the number of people who will register. Many states, including Utah, are considering online options, but states remain concerned over privacy, security, and fraud.

³⁰ Fair Vote; Right to Vote Initiative, *FairVote's State Voter Registration Agenda*, at <http://www.fairvote.org/?page=2477>.

³¹ Florida law, for instance, holds individual volunteers and the groups for which they work jointly liable for \$250 for each form returned more than 10 days after completion, \$500 for each form received after the state voter registration deadline, and \$5000 for each form not submitted.

³² Policy Brief on Restrictions on Voter Registration Drives, Analysis at www.brennancenter.org

3. *Automatic Registration*

European nations, among others, use automatic voter registration in conjunction with tax and DMV forms to ensure that voter rolls are more complete. This method cost-efficiently maximizes the number of voters who register. However, critics also argue that automatic registration clogs voter rolls with outdated, incorrect, and unreliable data. Proponents, on the other hand, assert that the ongoing nature of tax filings and auto registrations actually updates and cleans up voter rolls. Proponents also point out that most states already have integrated databases to match voter rolls with Departments of Corrections, making it a natural step to integrate databases with DMVs and tax departments.

4. *Third-Party Registration Drives*

Critics of third-party registration drives level fraud allegations against ACORN and other organizations that register people to vote. Others say, however, that third-party organizations make it easy to register, and without these organizations, many Americans would simply forego the process. Restrictive laws, it is argued, disproportionately affect and marginalize poor and disenfranchised. Proponents of third-party restrictions argue that the restrictions do not prevent voter drives; they simply make voter drives more responsible and more accountable.

E. Changing Utah Law

The Utah Code must be amended to change Utah's voter registration requirements and procedures.

III. VOTING SYSTEMS AND ACCESSIBILITY

A. Utah's Current Law

1. Absentee and Early Voting

Absentee and early voting programs allow voters alternatives if, for one reason or another, they cannot vote on Election Day. Utah does not require voters to provide an excuse to vote early or to vote via absentee ballot. Utah's early voting model is probably more accessible than most other states in the country, and Utah saw the largest percentage increase of *early* voters of any state from 2004 to 2008.³³

Utah law allows any registered voter to vote via absentee ballot.³⁴ To vote by absentee ballot, a registered voter may either file an absentee ballot application or vote

³³ See The Early Voting Information Center, Absentee and Early Voting Laws, *available at* <http://earlyvoting.net/states/abslaws.php>; Commission on Strengthening Utah's Democracy: Where Does Utah Stand in Relation to Other States; The Secretary of State's Guidebook to the Early Voting Obstacle Course, *available at* <http://earlyvoting.net> ("Guidebook to Early Voting").

³⁴ Utah Code Ann. § 20A-3-301

in-person at the appropriate election officer's office. Typically, voters must file the application for an absentee ballot no later than the Friday before Election Day. Overseas applicants, however, must file their applications no later than 20 days before Election Day.³⁵

Any registered voter may vote early as well.³⁶ Utah offered early voting for the first time during a presidential election cycle in 2008, although early voting is only allowed for individuals who register 30 or more days before Election Day.³⁷ Early voting begins 14 days before Election Day and continues either until the Friday before the election (when the election is on Tuesday), or two regular business days before the election (when the election is on any day other than Tuesday).³⁸ Each registered voter who arrives at the polls before the polls' scheduled closing time must be allowed to vote.³⁹

2. *Military Voting*

A 2009 study found that Utah did “not provide enough time to vote for military personnel stationed overseas.”⁴⁰ Utah currently does not offer ballots or registration to be transmitted electronically, which means voters and election administrators must rely on mail.

As the first step in the military voting process, military voters must request an absentee ballot, which can be done electronically.⁴¹ (Military voters may register to vote by completing a registration form and voting certificate printed on the back of the absentee ballot envelope.⁴²) Second, the county clerk mails the ballot after the request is received. Ballots must be mailed no later than 30 days before the election, which is 15 days fewer than the 45-day deadline recommended by the 2009 study.⁴³ Third, the military voter must mail the ballot so it is postmarked before Election Day and received before noon of the day of the official canvass of the election.⁴⁴ However, if a military voter is in a hostile fire zone or other area where the mail service is unreliable and not

³⁵ Utah Code Ann. § 20A-3-304

³⁶ Utah Code Ann. § 20A-3-601.

³⁷ Pew Center on the States, <http://www.pewcenteronthestates.org>.

³⁸ *Id.*; The days and hours that the polls need to be open and location of polls are subject to the guidelines set out in Utah Code Ann. §§ 20A-3-601 - 603.

³⁹ Utah Code Ann. § 20A-3-602. The election officer must give notice of early voting dates, times, and locations of early voting through publishing the notice in one issue of a newspaper of general circulation in the county at least five calendar days before the date early voting begins and posting the notice at each early voting polling place at least five calendar days before the date early voting begins. Utah Elec. Code § 20A-3-604.

⁴⁰ No Time to Vote, Challenged Facing America's Oversea Military Voters, *available at* http://www.pewcenteronthestates.org/report_detail.aspx?id=47952 (“No Time to Vote”).

⁴¹ Utah Elec. Code § 20A-3-406; No Time to Vote *available at* http://www.pewcenteronthestates.org/report_detail.aspx?id=47952.

⁴² Utah Code Ann. § 20A-3-405.

⁴³ Utah Absentee Voting Guide, *available at* www.fvap.gov/overseas-citizens/request-registration-absentee-ballot/states/ut/index.html.

⁴⁴ Utah Code Ann. §§ 20A-3-407 - 408

sufficient to accommodate timely mailing, he/she can electronically transmit his/her application.⁴⁵

3. *Identification Requirements*

On March 20, 2009, Governor Huntsman signed into law H.B. 126, Voter Identification for Elections. The 2009 state law goes beyond the federal HAVA statute, which requires photo identification at the polls only for first-time voters who do not provide verification with registration form. Now, all voters must provide identification at polling places. The bill cuts the number of accepted forms of identification from 25 to 6. The bill also allows voters who forget their identification to cast a provisional ballot, giving them five days to show the county clerk their driver's license or other accepted form of identification.⁴⁶

B. Comparative Statistics⁴⁷

- 32 states allow no-excuse pre-Election Day in-person voting like Utah, however, many have longer open voting periods than Utah
- 14 states and the District of Columbia require an excuse for in-person absentee voting.
- 4 states do not allow early voting or in-person absentee voting.
- 1 state conducts all voting by mail.
- 28 states, like Utah, all no-excuse absentee voting.
- 22 states and the District of Columbia require an excuse for absentee voting.
- 15 other jurisdictions were found, along with Utah, to not provide military personnel enough time to vote.
- 38 of 51 jurisdictions, unlike Utah, allow overseas military voters to electronically submit registration requests.
- 32 of 51 jurisdictions, unlike Utah, electronically transmit blank ballots to overseas military voters.
- 19 of 51 jurisdictions, unlike Utah, allow overseas military voters to electronically submit completed ballots.
- 29 of the 51 jurisdictions, unlike Utah, provide a minimum of 45 days transit time for ballots.
- 22 states currently have the minimum Help America Vote Act identification requirements; 19 states require ID for all voters; 3 states require all voters show photo ID; 4 states request all voters show photo ID; 2 states require ID of all first-time voters.⁴⁸

⁴⁵ Utah Code Ann. § 20A-3-408.5

⁴⁶ H.B. 126 Voter Identification for Elections 2009 available at <http://le.utah.gov/~2009/htmldoc/hbillhtm/HB0126S02.htm>.

⁴⁷ See The Early Voting Information Center, Absentee and Early Voting Laws, *available at* <http://earlyvoting.net/states/abslaws.php> (“State Absentee and Early Voting Laws”).

⁴⁸ *Id.* Many of the 50 states are currently changing or considering changes to voter identification laws.

C. Alternative Approaches

1. *Longer Early Voting Period*

Many states open polls much earlier than Utah. For example, Ohio's Secretary of State permits early voting 35 days prior to Election Day, and polls in Wyoming and Iowa open 40 days prior to Election Day.⁴⁹

2. *Excuse Required for Early or Absentee Voting*

Several states still require voters to provide an excuse before voting early or voting on an absentee ballot. For example, Alabama requires one of the following excuses for a person to vote by absentee ballot: (1) the person will be out of the county or the state, or the municipality for municipal elections, on Election Day; (2) the person has any physical illness or infirmity that prevents his or her attendance at the polls; (3) the person works on a shift that has at least 10 hours that coincide with the hours the polls are open; the person is enrolled as a student at an educational institution located outside the county of his or her personal residence; (4) the person is a member of, or spouse or dependent of a member of, the Armed Forces of the United States; or (5) the person has been appointed as an election officer or named as a poll watcher at a polling place other than his or her regular polling place.⁵⁰

3. *No Early Voting*

States such as Washington and Rhode Island do not have early voting or in-person absentee voting.⁵¹

4. *Convenience Voting Measures*

Some states and countries have looked to alternative methods to make voting more convenient. For example, municipalities in California and Oregon offer drive-thru voting. Additionally, all of Oregon's state-level voting is done by mail. Estonia offers online voting. The United Kingdom allows for proxy voting. Colorado has multi-precinct voting centers near transportation and employment hubs.

5. *Electronic Registration/Voting for Military Personnel*

Currently, 16 states complete the entire military-voting process electronically, from voter registrations and ballot requests, to receiving and returning ballots. For example, Montana allows election administrators to register individuals to vote, give

⁴⁹ See The Early Voting Information Center, Absentee and Early Voting Laws, available at <http://earlyvoting.net/states/abslaws.php> ("State Absentee and Early Voting Laws").

⁵⁰ See Ala. Code § 17-11-3.

⁵¹ See State Absentee and Early Voting Laws available at <http://earlyvoting.net/states/abslaws.php> ("State Absentee and Early Voting Laws").

notice of registration, receive absentee ballot requests, transmit absentee ballots, and receive absentee ballots via fax or internet.⁵²

6. *Younger Voters*

Although constitutional challenges have been made, 11 states, including Maryland, currently permit a 17-year-old to vote in primary elections if he or she will turn 18 by the date of the general election. Nine other states are considering legislation to allow this same privilege. Arizona and California might allow 16 year-olds to pre-register, but not vote until they turn 18. This would be similar to Utah's program of pre-registering high school seniors 17 years old or older. Illinois is considering lowering the voting age to 17 for state elections, and Michigan may lower it to 16 for certain elections.⁵³

7. *Identification Restrictions*

After the 11th Circuit Court of Appeals overturned a ruling halting the practice, Florida reemployed a "no match, no vote" law that requires verification of a driver's license number or the last four digits of a social security number before a voter is registered.⁵⁴ Potential voters whose driver's license numbers and social security numbers do not match may submit a provisional ballot. The voter must verify identity to officials within 2 days for the provisional ballot to be counted.⁵⁵

Some states are moving beyond the federal HAVA requirements that only oblige first-time voters to show identification at the polls. A little over a year ago, the U.S. Supreme Court upheld the constitutionality of Indiana's voter identification law that is considered the strictest in the nation. Both Indiana and Georgia require a government-issued photo ID at polling stations. Several voter identification bills are pending in state legislatures across the country this year.⁵⁶

Arizona passed a 2004 law that requires proof of citizenship in order to vote. This bill came about as part of a citizen initiative designed to decrease illegal immigration. During 2007 and 2008, 21 states considered adding such requirements, but none of those bills passed. This year, 21 bills are pending in 9 states on the same issue. The Georgia Senate recently passed legislation and sent it to the statehouse that would require proof of citizenship to register.⁵⁷

⁵² See Mont. Code Ann. §13-21-207.

⁵³ National Conference of State Legislators, *The Canvass: States and Election Reform* at <http://www.ncsl.org/programs/legismgt/elect/2009ElectionsLegislation.htm>.

⁵⁴ *Florida NAACP v. Browning*, 522 F.3d 1153 (11th Cir. 2008).

⁵⁵ See Mary Klas, MIAMI HERALD, *'No Match, No Vote' Law to be Enforced*, at <http://www.miamiherald.com/news/florida/story/679629.html>.

⁵⁶ See John Fund, WALL STREET JOURNAL/OPINION JOURNAL, *A Victory Against Voter Fraud*, Apr. 29, 2008 at <http://online.wsj.com/article/SB120943129695651437.html>.

⁵⁷ See National Conference of State Legislators, *The Canvass: States and Election Reform* at <http://www.ncsl.org/programs/legismgt/elect/2009ElectionsLegislation.htm>.

D. Pro and Cons

1. *Early Voting*

Early-voting advocates say that early voting increases voter satisfaction and allows for flexibility. There is also anecdotal evidence of shorter lines on Election Day. Additionally, early voting may increase turnout in non-federal elections. Other positives are that it gives additional flexibility and time to handle registration problems and make “real time” adjustments to voter demand and reduce polling place problems. On the other hand, early voting usually has more administrative costs associated with it and more labor to run the polls is needed. Moreover, there is no evidence that turnout increases in federal elections, and the election process is dragged out over weeks or months.⁵⁸

2. *Modifying Voting Procedures for Military Personnel*

Allowing electronic transmission of registration and ballots saves tremendous time and effort for military voters. Transmission can be up to an average of 40 days faster, leaving the military voter ample time to complete and return an absentee ballot. However, with electronic transmission also come potential fraud, security, and privacy issues. Moreover, not all military personnel have access to fax or email.

For those military personnel that do not vote online, Utah could either send out ballots earlier or increase the amount of time given to military voters to complete the process. The latter step would give some breathing room to military voters to return ballots to the states. It could, however, hold up election results until all ballots are received and counted.⁵⁹

3. *Younger Voters*

Allowing individuals to vote in primary elections if they turn 18 years old before the primary election is a reform intended to engage younger individuals in the election process. Many would argue that younger voters that take the time to vote need to be encouraged, and no better encouragement exists than allowing them to fully participate in the process. The process is laborious, as it requires changing state constitutions in most states. Also, the federal constitution sets the minimum age for voting in federal elections, and perhaps there should be unanimity on such a fundamental question.

4. *Identification and Citizenship Restrictions*

Critics of identification requirements, proof-of-citizenship requirements, and no-match-no-vote rules argue that these restrictions create unnecessary barriers to voting. Critics state that such restrictions disproportionately affect minorities and the poor; indeed, some supporters liken the restriction to poll taxes.⁶⁰ Voter-identification

⁵⁸ No Time to Vote available at http://www.pewcenteronthestates.org/report_detail.aspx?id=47952.

⁵⁹ No Time to Vote available at http://www.pewcenteronthestates.org/report_detail.aspx?id=47952.

⁶⁰ See Kate Brumback, ASSOCIATED PRESS, *Critics: Proposed Ga. Law Amounts to a Poll Tax*, Mar. 13, 2009 at <http://www.google.com/hostednews/ap/article/ALeqM5iEnp4spyi->

supporters tout the identification laws' reduction of voter fraud. Moreover, supporters point to the voter turnout increases in both Indiana and Georgia, two states adopting strict laws. Proponents also argue that increases were higher in those two states than in similarly situated states, and voter participation among minority groups, particularly black voters, increased dramatically in 2008.⁶¹

E. How to Amend Utah Law

The Utah Code must be amended to change Utah's voting, absentee-ballot, and military-voting laws. Changing Utah's legal voting age, however, would necessitate a constitutional amendment.

IV. ELECTORAL COLLEGE

A. Utah's Current Law

The Electoral College is the constitutionally-created method to formally elect the President and Vice President. In nearly all states there is a winner-take-all system, where all of the state's electors vote for the candidate who wins the state's popular vote. No federal law binds electors to vote the way they pledged, but many states, including Utah, bind electors. If an elector votes differently than pledged, that electors vote is not counted and the elector may be replaced as a delegate.⁶²

B. Comparative Statistics⁶³

- 21 states differ from Utah by not binding electors to vote for the winner of the popular vote.
- 2 states, Nebraska and Maine, require some electors to vote for the winner of a congressional district's popular vote.

C. Examples of Alternative Approaches

1. *Not Binding Electors*⁶⁴

As noted above, 21 states do not bind their electors. Idaho, for example, has no statutory provision that binds electors.⁶⁵

3kxjlf7J7tVMkM0lywD96T9EB04; Jay Root, ASSOCIATED PRESS, *Impassioned testimony over voter ID*, April 6, 2009, 3:10PM at <http://www.chron.com/disp/story.mpl/ap/tx/6361262.html>.

⁶¹See Hans Von Sparkovsky, WALL STREET JOURNAL/OPINION JOURNAL, *Voter ID Was a Success in November*, Jan. 20, 2009 at <http://online.wsj.com/article/SB123327839569631609.html>.

⁶² Utah Code Ann. §§ 20A-13-1301, 1304.

⁶³ Fair Vote Presidential Elections Reform Program at <http://www.fairvote.org/?page=964>.

⁶⁴ See States That Bind Electors, *available at* www.fairvote.org/?page=967, attached hereto as Appendix.

⁶⁵See Idaho Code Ann. §§ 34-1501 through 34-1507

2. *Congressional District's Popular Vote*

Maine and Nebraska both use an alternative method of distributing their electoral votes, called the Congressional District Method. Currently, these are the only two states that diverge from the traditional winner-take-all method of electoral vote allocation.⁶⁶ Since electors are awarded to each state based on the number of U.S. House seats plus the number of U.S. Senate seats, the Congressional District Method allocates one electoral vote to each congressional district. The winner of each district is awarded one electoral vote, and the winner of the state-wide vote is then awarded the state's remaining two electoral votes.⁶⁷

3. *Pro and Cons*

Many constitutional scholars agree that electors are free agents and laws binding them to vote as they pledged would be held unconstitutional if challenged. If electors are not bound, however, there is the possibility that electors will vote against their constituencies without any formal consequences.

The Congressional District Method gives the minority party's presidential nominee the chance to win electoral votes, especially in a state like Utah. Proponents argue that the Congressional District Method allows certain regions of a state to garner attention from presidential candidates during the general election that they would not otherwise receive; much the way the Omaha, Nebraska metropolitan area received increased attention from Barack Obama and John McCain in 2008. Proponents also contend that the Congressional District Method is more true to the one-man, one-vote concept than the winner-take-all method. On the other hand, the Congressional District Method dilutes the power of states without many electoral votes even more than if all electors voted for the same candidate.

D. How to Amend Utah Law

Utah's laws governing the Electoral College could be changed simply by amending the Utah Code.

⁶⁶ Fair Vote Presidential Elections Reform Program at <http://www.fairvote.org/?page=968>.

⁶⁷ *Id.* "This method has been used in Maine since 1972 and Nebraska since 1996, though since both states have adopted this modification, the statewide winners have consistently swept all of the state's districts as well. Consequently, neither state has ever split its electoral votes." *Id.*

V. APPENDIX OF CITED MATERIALS

Exhibit A

Utah Election Code - Relevant Provisions

Exhibit B

Utah Republican Party Constitution and Bylaws

Exhibit C

Utah Democratic Party Constitution and Bylaws

Exhibit D

Utah Voter Registration Form

Exhibit E

H.B. 126 Voter Identification for Elections 2009