

# COVID-19 Election Guide<sup>1</sup>

The novel coronavirus (COVID-19) is a global public health crisis. The United States has undertaken unprecedented “social distancing” measures in response, moving colleges and university classes online, closing public K-12 schools, cancelling sporting events, prohibiting people from eating in restaurants and bars, and even shutting down iconic American landmarks from the Las Vegas Strip to Disney World. Many states and localities have also issued “shelter-in-place” orders, significantly limiting the extent to which residents may leave their homes. The virus has also impacted the 2020 primary elections, causing several to be postponed. Understandably, many Americans are already looking ahead to the general election.

This Task Force initially formed last year to be prepared to respond to a wide range of potential threats to a free and fair general presidential election in a cross-partisan, multidisciplinary fashion. The coronavirus now presents one such threat. While we cannot say with absolute certainty what will happen over the next several months as we approach the general election, there is significant reason to be concerned and an imperative to prepare for the worst.<sup>2</sup>

Our overarching goals are to promote safe and secure participation in the 2020 general election, and to ensure its legitimacy. We offer this guide to help state and local policy makers and election officials maximize the opportunity for all eligible voters to cast their votes without undue risk to their own health or to the broader community, and, of course, to have those votes counted. State and local officials must begin planning now if they have not already—it will take months to prepare to mitigate the effects that COVID-19 may have on the general election.<sup>3</sup>

## Our approach—

This guide offers recommendations to help policy makers and election officials conduct a successful 2020 general election despite the many challenges that the coronavirus is likely to pose. This includes:

- Conducting the 2020 general election as scheduled;
- Maximizing voter participation;
- Creating and maintaining strong protections that ensure that each ballot cast by an eligible voter is counted, including protections against mistakes and irregularities; and
- Preserving public confidence in the integrity of the electoral process and the legitimacy of the outcome of the election.

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<sup>1</sup> This guide may be amended or supplemented as circumstances evolve.

<sup>2</sup> We recognize that implementing many of these recommendations will be a significant undertaking for election officials. For more guidance on implementation, see, e.g., the following: Center for Civic Design, [A Tool Kit of Resources for Scaling Up Vote by Mail](#) (Apr. 13, 2020); Verified Voting, [COVID-19 and Trustworthy Elections](#) (Apr. 10, 2020); U.S. Election Assistance Commission, [Voting by Mail/Absentee Voting](#) (including links to a number of separate FAQs); National Vote at Home Institute, [Vote at Home Scale Plan](#) (Mar. 2020); Center for Tech and Civic Live, [Free Vote at Home Webinars for Election Officials](#) (Jan. 6, 2020).

<sup>3</sup> The U.S. Election Assistance Commission recently issued a [Vote by Mail Project Timeline](#) that reinforces the need to begin preparing now.

## General principles—

Any actions taken by state and local governments in response to a public health emergency, including the coronavirus, should be guided by the following basic principles to ensure a free and fair election consistent with preserving public health and to maximize public confidence in the results.

**Government Actions Should Be Grounded in Law.** State and local responses to the emergency should be grounded in existing law to the greatest extent possible, including powers available to officials during bona fide emergencies, and should be conducted in a nondiscriminatory manner. Any new laws or regulations enacted to address the emergency must be consistent with state and federal constitutions.

**Emergency Measures Should Be Justified by Facts.** In an emergency there is a greater than usual risk of misinformation confusing the public and seeding both chaos and distrust. That is all the more reason for state and local government officials to take extra care that the emergency measures they undertake are justified by facts, including, importantly in the case of a public health emergency, sound science.

**Transparency and Communication Are Critical.** Election officials must be proactive about educating the public as to how they will conduct the election, including any modifications they will make in response to the coronavirus and the factual and legal basis for doing so. That will require frequent communication that is up to date, accurate, and consistent—and available in multiple languages. If it appears that emergency circumstances will require a departure from ordinary election rules, those decisions should be announced as early as possible. Last-minute changes increase the likelihood of mistakes, contribute to voter confusion, and may undermine public confidence in the outcome of the election. In most cases, a state's chief election official (or otherwise the governor) should be primarily responsible for communicating information about election-related modifications to the general public and providing guidance to county and local officials to ensure they do not inadvertently provide incorrect information. County and local officials should not unilaterally make announcements or take actions concerning the election without confirming their accuracy and validity with appropriate state officials.

**Emergency Efforts Should Be Bipartisan.** Emergency response efforts can and should be bipartisan in nature. A bipartisan effort to address the challenges posed by the coronavirus is most likely to be perceived as credible and thus inspire confidence in the changes implemented and the legitimacy of the election. A public health emergency should not be used as an excuse to promote a partisan agenda or to affect in any way the outcome of the election. Any indication of opportunism will only serve to undermine the goal of promoting confidence in the election.

## Recommendations<sup>4</sup>

It is useful to think of every state's elections laws as being divided into two sets of authorities: ordinary provisions that typically govern the conduct of elections, and emergency provisions that modify those rules when emergencies occur. Elections should always be conducted according to ordinary, generally applicable provisions to the greatest extent possible. When emergencies require departures from those rules, they should only go as far as needed to protect the priorities outlined above and should remain in effect no longer than necessary.

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<sup>4</sup> Additional recommendations, including for more comprehensive or longer-term reform, can be found here: Unite America Institute, [Voting at Home: How Democracy Survives a Pandemic](#) (Mar. 2020); Nathaniel Persily & Charles Stewart, III, [Ten Recommendations to Ensure a Healthy and Trustworthy 2020 Election](#), Lawfare (Mar. 19, 2020); Brennan Center for Justice, [Responding to the Coronavirus](#); Bipartisan Policy Center, [Logical Election Policy](#) (Jan. 2020); American Law Institute, *Election Administration: Non-Precinct Voting and Resolution of Ballot-Counting Disputes* (2019).

States should make all plans necessary to complete the presidential election by November 3rd, in accordance with federal law. Importantly, election officials must begin planning *now* to ensure they are in a position to not only exercise their generally applicable authority and discretion as effectively as possible to respond to the coronavirus, but also to invoke emergency powers if the situation warrants.

To the extent that a state's ordinary and emergency election laws are insufficient to allow election officials to respond effectively to the coronavirus or to implement these recommendations in connection with the general election, the state legislature should amend them well in advance of the election to minimize potential legal and constitutional problems. In addition, Congress should make substantial federal funding available to states and localities as soon as possible.

## Ordinary Election Powers

Although state and local law varies by jurisdiction, election officials typically have many alternatives available to them under their ordinary election powers to facilitate voting despite the threat posed by the coronavirus.

### [Absentee or Vote-by-Mail Voting<sup>5</sup>](#)

Even in the best case scenario, absentee voting is likely to increase substantially during this general election. In fact, to relieve pressure on in-person voting resources and to make it safer, anyone who can vote by mail should do so. In the worst case scenario in which in-person voting is extremely difficult because of the public health risks (or legal restrictions like shelter-in-place orders), voting by mail may be the only option for the vast majority of voters. Either way, election officials should begin preparing now to meet these demands.

#### ✔ **Make it easier to obtain absentee ballots—**

- In jurisdictions where election officials are required to receive a request or application from a voter before sending an absentee ballot, election officials should proactively mail request/application forms to all voters within the jurisdiction. The forms should be mailed to the address at which each voter is registered either 45 days prior to Election Day or at the earliest subsequent date permitted by law.
- Election officials should also ensure that downloadable PDF versions of absentee ballot request/application forms are available on their websites, and should also send them to any voter who requests one by telephone or email.
- In addition, where permitted by law and with appropriate procedures in place, election officials should allow voters to submit requests/applications for absentee ballots either in person, by mail, over the phone, or by email or other electronic means (including online where possible).
- Where they have discretion, officials should permit voters to request absentee ballots as close to Election Day as is practicably possible—so long as there is still time for voters to return the ballots by the applicable deadline.

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<sup>5</sup> Though many jurisdictions distinguish between “absentee” and “vote-by-mail” ballots, in this guide we generally use the term “absentee ballot” to refer to both types of ballots.

- Finally, some states also either permit or require officials to proactively send actual ballots to all registered voters in a jurisdiction.<sup>6</sup>
- ✔ **Qualify COVID-19 for excuse-based absentee voting**— In each jurisdiction with excuse-based absentee voting, if permitted by law, the chief election official should make a public declaration as early as possible specifying that the threat of the coronavirus is deemed a legally sufficient “excuse” to enable absentee voting by all eligible voters within the state, without any requirement of an individualized demonstration of symptoms or risk factors. Alternatively, the chief election official or other appropriate official should consider seeking an opinion from the state attorney general or an advisory opinion from the state supreme court (where available) confirming that the risks posed by the coronavirus qualify as an excuse.
- ✔ **Secure sufficient absentee ballot supplies and equipment**— Election officials should anticipate that a substantial percentage of votes cast in the 2020 general election will be absentee or vote-by-mail ballots.
  - Accordingly, election officials should order sufficient quantities of paper ballots to conduct a 100% mail-based election, if necessary.
  - In ordering ballots, election officials must pay specific attention to ensure that sufficient quantities of materials are available for voters with limited English proficiency, particularly when required by federal or state law.
  - Election officials also will have to allocate more resources toward ballot processing and tallying, including purchasing additional equipment if funding is available, as existing resources may be insufficient to handle such a tremendous influx of additional ballots.
- ✔ **Recruit additional temporary personnel**— Election officials should make a special effort to recruit additional temporary workers to assist with processing absentee ballots, especially from groups that do not face a heightened risk from the coronavirus (e.g., students) and/or who may not be available during typical elections (e.g., teachers or workers who have been laid off). Election officials should reach out through a wide range of channels, including social media, to reach these new potential pools of election workers. Because the effects of the virus cannot be known with certainty and may lead to higher falloff of election personnel, election officials should also recruit many more temporary workers than they think they will need. In particular, areas that already struggle to meet recruitment needs must develop robust plans to recruit poll workers and other personnel beginning immediately.
- ✔ **Improve the processing of absentee ballots**—
  - County and local election officials should make sure they are in a position to confirm the validity of absentee ballots and to process those ballots (which may include scanning the ballots) as early as possible prior to Election Day, in order to avoid longer than needed delays in handling unusually large quantities of absentee ballots after the election.
  - Election officials also should ensure that anyone processing ballots is aware of and trained to implement the jurisdiction’s signature verification rules, including rules related to curing.<sup>7</sup>

<sup>6</sup> The Task Force takes no position on whether proactively sending ballots to all registered voters should be further authorized or undertaken in connection with the 2020 general election.

<sup>7</sup> The Task Force takes no position on the appropriate scope of signature verification rules or policies, or whether changes thereto are appropriate.

- ✔ **Extend the deadline for returning absentee ballots—** To the extent state law grants the chief election official or other state election authority discretion concerning the deadline for receiving absentee ballots, they should interpret the deadline as requiring that absentee ballots be mailed, rather than actually received by election officials, by Election Day (which can be verified by postmarks or alternate forms of tracking).

### In-Person Voting

When it is possible to do so safely—or at least at a risk level comparable to allowing people to shop in grocery stores or attend medical appointments—in-person voting should remain available in accordance with these recommendations. Eliminating in-person voting options would harm eligible voters who cannot easily utilize other methods of voting and may lead to disproportionate burdens on certain historically disenfranchised communities, including Native American voters who lack reliable postal services, some voters with disabilities, and voters with language access needs (for example, Spanish speakers with limited English proficiency).

- ✔ **Recruit additional poll workers—** Additional poll workers will be needed to assist with in-person voting as well as ballot processing. As noted above, election officials should develop robust recruitment plans immediately, placing particular emphasis on groups that do not face heightened risks from the coronavirus. Election officials should also be prepared for higher-than-usual falloff rates if poll workers become ill or decide at the last minute that the risks of serving on Election Day are too great.
- ✔ **Maximize early voting—** To the extent state law grants election officials discretion over the number of days during which to hold early voting, they should choose to provide as many opportunities as possible, spreading it out over as many days as permitted, including weekends. By maximizing the number of days on which early voting is available, election officials can reduce the number of people in a polling place at any one time, thereby reducing the likelihood of coronavirus transmission.
- ✔ **Keep polling places open as long as possible—** To the extent state law grants election officials discretion over the opening and closing times of polls, either during early voting or on Election Day, they should allow polling places to remain open for as long as possible. Again, by maximizing the amount of time available to vote, election officials can reduce the number of people at a polling place at any one time, thereby reducing the likelihood of coronavirus transmission.
- ✔ **Locate polling places safely—**
  - Polling places should not be located in areas within the jurisdiction, if any, in which unusually or disproportionately high numbers of coronavirus infections have been reported.
  - Nor should they be located in high-risk facilities, such as senior care or retirement facilities.
  - In addition, the laws of many states allow polling places to be relocated if they become inaccessible. The chief election official for each state should exercise his or her discretion to declare that an unusually high prevalence of coronavirus infections within an area or other risk factors render polling places located there “inaccessible.” In order to do this effectively, the chief election official should remain in close contact with the director of the state health department to receive updated information concerning the location of coronavirus infections within the state, and notify county or municipal election officials for any such areas.
  - As part of planning the location of polling places, officials should seek input from affected communities, such as African American, Latino, Asian, and Native American voters, language minority voters, voters with disabilities, and students.
- ✔ **Maximize the number of polling places—** If possible, county and local election officials should exercise their discretion to maximize the number of polling places within their respective jurisdictions. The coronavirus poses

the greatest risk of contagion in crowds. A greater number of polling places means fewer voters are assigned to each polling place, reducing the likely size of any crowds or number of people standing in line. Among other ways, election officials might achieve this goal by declining to consolidate polling places that received low numbers of in-person votes in previous elections, dispersing polling places to the greatest extent possible, or assigning the smallest legally permissible number of voters or precincts to each polling place.

- ✔ **Consider utilizing other voting locations**— Whether to use voting “supercenters” or other non-precinct voting locations will depend not only on state law, but on whether available facilities can be used safely, including to allow for more distance between voting machines/booths, poll workers, voters, etc. (e.g., because of the size and set-up of the facility). Larger facilities may offer a good addition or alternative to smaller polling places.
- ✔ **Take necessary public health measures**— If permitted by state and federal law (including privacy laws), and consistent with anti-discrimination and equal protection principles, the chief election official for each state should ask the director of the state health department to prohibit any person known to be infected with the coronavirus from entering a polling place. Depending on state law, any such person should immediately be provided with either the appropriate absentee ballot or an absentee ballot request form/application.
- ✔ **Sanitize polling places**— Election officials should ensure that each polling place is well-stocked with antibacterial, antimicrobial cleaning supplies, which should be used, among other things, to disinfect voting machines and voting equipment (including pens and touchpads) between each and every use. Each poll worker should be provided with sufficient personal protective equipment (consistent with public health guidance at the time). Hand sanitizer should also be made available—and voters should be encouraged to use it—upon entering and exiting the polling place. For more information, the CDC has issued [Recommendations for Election Polling Locations](#), and the U.S. Election Assistance Commission has [Coronavirus \(COVID-19\) Resources](#) available.
- ✔ **Limit voter proximity in polling places**— Polling place officials should promote social distancing by limiting voters’ proximity to each other and to other people, including poll workers.
  - For example, polling place officials might place a piece of masking tape on the ground approximately six feet from each polling place official’s desk to indicate where voters should stand when checking in and interacting with them. They should also place additional pieces of tape at approximately six-foot intervals to mark where voters should wait in line.
  - Voters should be encouraged to line up outside of the polling place, if possible, rather than congregating within indoor locations.
  - Close interactions between voters and poll workers should be avoided or limited to the greatest extent possible.
- ✔ **Establish voluntary high-risk zones**— When the size and set-up of polling places allow, officials should consider creating “high-risk” zones for voters who self-identify as immune-compromised or having other risk factors to line up, check in, and vote at a distance from other voters.
- ✔ **Expand curbside or drive-up voting**— In states that allow elderly voters, voters with disabilities, or other voters to take advantage of curbside or drive-up voting, election officials should provide these opportunities to the greatest extent possible. If necessary, and if permitted by state law, the governor or chief election official should declare—or seek a legal opinion from the state attorney general or an advisory opinion from the state supreme court (where available)—that legal provisions allowing for curbside voting apply to all elderly voters due to the heightened risks they face as a result of the coronavirus.

### Other Opportunities to Vote

- ✓ **Accommodate medically confined voters**— In many jurisdictions, state law establishes special voting opportunities for people who are confined to hospitals, assisted living facilities, nursing homes, or other such places for the elderly or infirm. To the extent resources allow, county and local election officials should proactively contact each such facility within their respective jurisdictions to inform facility administrators of the special voting alternatives permitted by state law and proactively provide opportunities to schedule them. In many jurisdictions, this may entail election officials traveling to the facilities to bring ballots to the confined voters and physically assisting them in completing the ballots (while taking necessary precautions), if they are unable to do so on their own due to age, illness, or disability.
- ✓ **Allow varied means of returning ballots**— To the extent permitted by law, election officials should exercise discretion to allow voters to return absentee ballots in multiple ways, including to drop boxes and designated vote centers. In addition, in many places, state law allows other members of a voter's household to return the voter's ballot.<sup>8</sup>
- ✓ **Accommodate emergency personnel**— Many states also have special voting-related provisions for law enforcement, medical, military, or other personnel responding to declared emergencies. County and local election officials should be aware of these statutes and designate particular workers to be responsible for facilitating voting by members of these emergency response groups.
- ✓ **Prepare for increased provisional voting**— It is likely that polling places will be asked to accept more provisional ballots than is typical, whether due to voter confusion over polling locations or other reasons. Accordingly, election officials should ensure that poll workers are sufficiently well trained in applicable rules and procedures, and have the supplies needed.

### Emergency Election Powers

Most states have laws in place that specifically address election-related emergencies and the authorities available to state officials. It may become necessary for state officials to invoke those authorities. However, any departure from the ordinary rules governing the electoral process must be made only pursuant to clear legal authority and for nonpartisan reasons. To minimize either the occurrence or appearance of partisan manipulation, state emergency contingency plans should provide objective criteria to guide officials' exercise of discretion. Any decision to invoke emergency authorities must be based on the best information available at the time and grounded in scientifically valid principles concerning the nature of the threat.

- ✓ **Provide advance guidance on emergency authorities**— Well in advance of the election, the chief election official in each state should disseminate guidance to county and local election officials to clarify:
  - I. who has authority to approve modifications to, or deviations from, standard election rules, requirements, and procedures;
  - II. what types of deviations may be authorized;
  - III. when such deviations may occur; and
  - IV. what types of election modifications or deviations are prohibited.

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<sup>8</sup> The Task Force takes no position on whether broader ballot collection efforts should be authorized or undertaken in connection with the 2020 general election.

- ✔ **Develop contingency plans**— Every state and county should establish and publicize a contingency plan addressing the various steps that will be taken in response to emergencies that impact an impending or ongoing election, including the coronavirus, based on the authorities state law grants them under such circumstances. Election officials at all levels should ensure they have the resources and personnel necessary to implement such emergency plans, if required.
- ✔ **Do not allow internet voting**— Unless expressly authorized by state law, election officials should not allow Internet- or fax-based voting for domestic voters (i.e., people not covered by the Uniformed and Overseas Citizen Absentee Voting Act) as a response to an election emergency. Specifically, election officials should neither email blank absentee ballots to voters, nor allow voters to submit completed absentee ballots by email or fax. However, to the extent allowed by law, election officials should consider allowing requests/applications for absentee ballots to be made by phone, email, and other electronic means (with appropriate procedures in place).
- ✔ **Waive notary and witness requirements**— To the extent election emergency statutes allow, election officials should exercise their discretion to waive any requirements that either absentee request/application forms or absentee ballots themselves be notarized or witnessed.
- ✔ **Relocate polling places**— Even if polling places have not been sited as recommended above, officials in many states have the authority to order relocation during emergencies.
- ✔ **Extend canvassing and certification deadlines**— To the extent they have discretion under emergency laws, chief election officials or other state election authorities should also consider extending canvassing and certification deadlines to account for the additional time it will take to process and count mail ballots, while still ensuring that these steps (and any subsequent steps or processes) are completed within the timeframe required by federal law.

For more information on election-related emergency authorities, see resources available from the [National Association of Secretaries of State](#) and the [National Conference of State Legislatures](#).

## Broader Gubernatorial Emergency Powers

In addition to election-specific emergency powers, many state governors have general (and sometimes quite broad) emergency powers available during a declared public health emergency—including, in some cases, the ability to waive, change, or suspend state laws and regulations. See, e.g., Gregory Sunshine et al., [An Assessment of State Laws Providing Gubernatorial Authority to Remove Legal Barriers to Emergency Response](#), Health Security (Nov. 2, 2019); Michael T. Morley, [Election Emergencies: Voting in the Wake of Natural Disasters and Terrorist Attacks](#), 67 Emory L.J. 545, 609–10 & n.423–24 (2018). Most governors' emergency powers also include the authority to activate state emergency response plans, reallocate funds to facilitate emergency response, and streamline state administrative procedures, including procurement requirements.

Governors may use these sweeping authorities to ensure that the 2020 general election occurs as scheduled and that voters have a full and adequate opportunity to participate. They must nevertheless be cautious in how they exercise this discretion. Among other things, where permissible, governors should consider using these powers to allow the state to take any of the steps recommended above that are not otherwise permitted by state law. Governors should not attempt to authorize ad hoc methods of Internet- or fax-based voting beyond the limits of state law; eliminate important protections for the integrity of the electoral process; or change mandates concerning the composition of local election boards or polling place teams that ensure partisan balance.



## Voter Registration

Increases in voting by mail make it all the more important that voter registration data be kept up to date. In addition, options like same-day voter registration may become ineffective if in-person voting is not safe or reasonably available. Accordingly, state and local officials should consider options for expanding voter registration opportunities.

## Public Communications

Communication with voters and the general public is a critical element of navigating any form of election emergency.

- ✓ **Keep voters informed**— Officials should make sure that voters are informed of any changes to their rights or to election procedures or processes as early as possible, as frequently as possible, and in as many forms as possible (e.g., newspapers, television news, social media, government websites, etc.). Information should also be made available in multiple languages. Among other things:
  - Voters should be encouraged to verify and/or update their registration information.
  - Voters need to know when and where early voting is available. And voters should be encouraged to vote on days or at times that are typically less busy in order to avoid crowds.
  - Voters should be encouraged to submit absentee ballot request/application forms where necessary. They should also be informed of any deadlines or other time constraints that may apply to both requesting and returning absentee ballots.
  - Voters should be informed when rules related to things like notary and witness requirements are waived.
  - Voters should know their options for returning absentee ballots. Election officials should publicize these alternatives on their websites and in public communications concerning the election—particularly in the week before Election Day when it may be too late to have a blank absentee ballot mailed to a voter and then completed and returned by the voter on time.
  - Polling place locations should be decided and publicized early, with as much notice to voters as possible, including in an individualized manner (i.e., with notice tailored to registered voters by precinct). When emergency relocations are necessary, voters should be informed as soon as possible.

**Manage expectations**— To help ensure public confidence in electoral outcomes, states must communicate clearly—well in advance of the November election—that potentially days-long delays in reporting vote totals should be expected given the processing time associated with the higher volume of absentee voting. And officials should take special care in reporting results on and after Election Day. As results from localities are reported after the polls close, in addition to publicizing information about vote tallies and the percentage of precincts reporting, election officials should also repeatedly emphasize—particularly to the news media—the number of absentee and provisional ballots they have received, and the number of absentee ballots yet to be processed and/or counted.

## **About the National Task Force on Election Crises**

*The National Task Force on Election Crises is a diverse, cross-partisan group of more than 50 experts in election law, election administration, national security, cybersecurity, voting rights, civil rights, technology, media, public health, and emergency response. The mission of the nonpartisan National Task Force on Election Crises is to ensure a free and fair 2020 presidential election by recommending responses to a range of potential election crises. The Task Force does not advocate for any electoral outcome except an election that is free and fair. The recommendations of the Task Force are the result of thoughtful consideration and input from all of the members and therefore do not fully reflect any individual Task Force member's point of view—they are collective recommendations for action. More information about the Task Force, including its members, is available at <https://www.electiontaskforce.org/>.*



**Additional Requirements for Absentee Voting:**<sup>9</sup>

- **A number of states impose witness and/or notary requirements:**
  - ✓ *States in this category: AK, AL, LA, MS, MO, NC, OK, RI, SC, VA, WI*
  - ✓ *States in this category that require that absentee ballot applications and/or absentee ballot envelopes to be notarized: MS, MO, OK*
  
- **A few states require that a copy of a photo ID be included with absentee ballot applications or absentee ballots:**
  - ✓ *States in this category: AL, AR, WI*
  - ✓ *South Dakota requires that absentee ballot applications either be notarized or accompanied by a copy of photo ID*

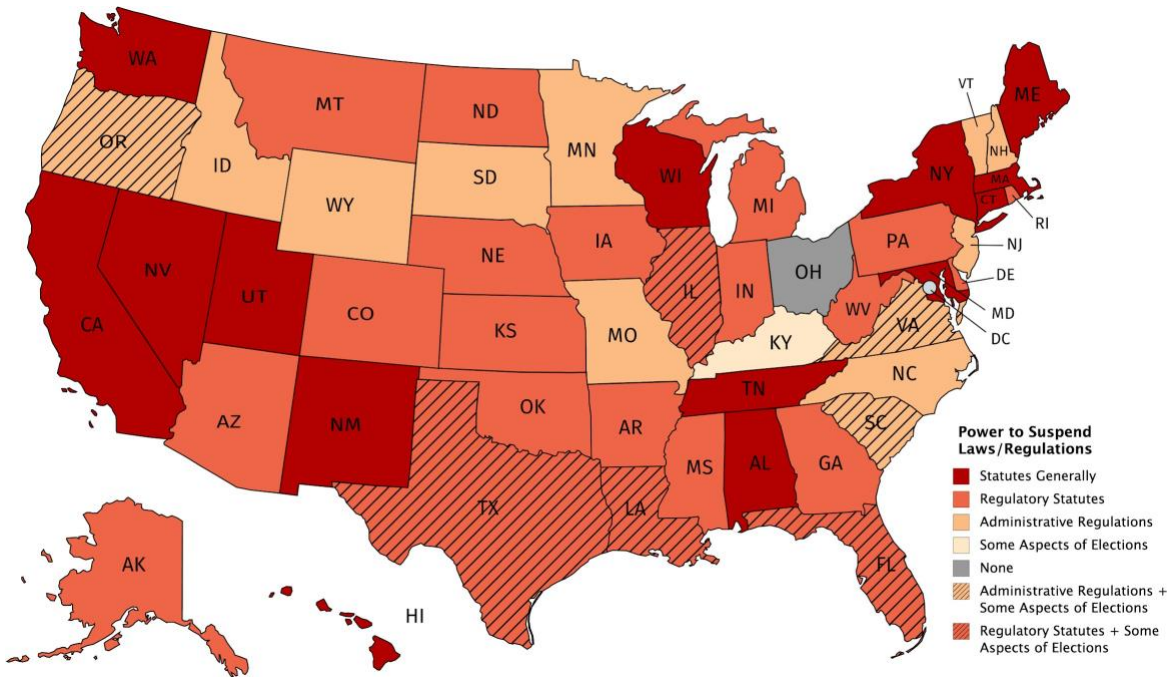
**Temporary Changes Due to COVID-19:** See [We Can Vote](#) by the Center for Secure and Modern Elections for frequently updated state-by-state voting information, including temporary changes as a result of the coronavirus.

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<sup>9</sup> For more detailed information, see National Conference of State Legislatures, [Verification of Absentee Ballots](#) (Jan. 21, 2020).

## APPENDIX B: GOVERNORS' EMERGENCY POWERS BY STATE

The extent of governors' emergency powers during an election (and generally) varies considerably from state to state.



According to the [National Conference of State Legislatures](#):

- ✓ In at least 14 states (Alabama, California, Connecticut, Hawaii, Maine, Maryland, Massachusetts, Nevada<sup>10</sup>, New Mexico, New York, Tennessee, Utah, Washington<sup>11</sup>, Wisconsin<sup>12</sup>) the legislature has granted the governor power to suspend statutes.

<sup>10</sup> During a state of emergency, Nevada law gives the governor the power “[t]o perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population.” Nev. Rev. Stat. Ann. § 414.070(7). Although this section does not explicitly grant the governor authority to suspend a statute, it is possible the governor could do so if the safety of the civilian population depends on suspending a statute.

<sup>11</sup> In a state of emergency, the governor can issue orders suspending statutes relating to certain categories of regulations, but none pertaining to elections.

<sup>12</sup> The Wisconsin Supreme Court’s recent decision in *Wisconsin Legislature v. Evers*, No. 2020AP608-OA (Apr. 6, 2020), calls this conclusion into question. NCSL’s analysis is based on Wis. Stat. § 323.14(4), which addresses the powers of “local units of government” in an emergency, but does not explicitly give the governor the power to suspend statutes. In the *Evers* case, the court specifically found that another related part of Wisconsin law, Wis. Stat. § 323.12, does *not* give the governor the power to suspend statutes and overturned an executive order postponing the state’s primary election on that basis. The court did not analyze Wis. Stat. § 323.14, but also did not recognize it as a potential source of gubernatorial authority.

- ♥ In 22 more states (Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Montana, Nebraska, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Texas, West Virginia) the governor may suspend regulatory statutes, which may include statutes related to elections.
- ♥ In 12 states (Idaho, Minnesota, Missouri, New Hampshire, New Jersey<sup>13</sup>, North Carolina, Oregon, South Carolina, South Dakota, Vermont, Virginia, Wyoming) the governor can suspend regulations created by administrative agencies.
- ♥ Kentucky has granted its governor emergency power over some aspect of an election. Seven other states (Florida, Illinois, Louisiana, Oregon, South Carolina, Texas, Virginia) have granted their governor emergency power over some aspect of an election but also fall into other categories.
- ♥ Ohio is the only state that does not grant its governor emergency power that could fall into one of the categories above. However, the governor is required to work with the state emergency management agency to control an emergency. ORC Ann. 5502.22.

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<sup>13</sup>In a state of emergency, the governor may assume control of emergency management operations if the emergency is beyond the capabilities of local authorities. N.J. Stat. § App.A:9-51(a). This statute does not fall perfectly in the category allowing for a governor to suspend regulations, but local emergency responses—which the governor can assume control over—are likely governed by regulation.