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# Herbert Institute: Elections Project Voter Access and Ballot Security

January 2024

“As a former county commissioner, lieutenant governor, and governor, I’ve worked for over 30-years to maintain the integrity of Utah’s elections. As a fundamental citizen’s right, voting is an essential action to preserve our democratic republic and the freedoms we enjoy.

“The Herbert Institute has reviewed Utah’s elections policies and I support the conclusions of this white paper. We are fortunate to live in a state that we can say with confidence that our votes count, and the process for tabulating ballots is safe and secure.”

– Gary R. Herbert, 17th Governor, Utah




## A CITIZEN’S RIGHT TO VOTE

George Washington said, “A primary object...should be the education of our youth in the science of government. In a republic, what species of knowledge can be equally important? And what duty more pressing...than communicating it to those who are to be the future guardians of the liberties for the country?”<sup>1</sup> Washington understood that the civic health of the United States rests in the peoples’ proper understanding of the purposes of government; it’s participation, offices, and organization is subject to the consent of the people. To follow this admonition, it is the responsibility of each citizen to educate themselves and participate in their civic duty to vote.

In the Constitution of the United States “...the Equal Protection Clause requires all who vote in an election to have an equal vote.” Meanwhile, Article IV, Section 2 of Utah’s constitutions reads,

“Every citizen of the United States, eighteen years of age or over, who makes proper proof of residence in this state for thirty days next preceding any election, or for such other period as required by law, shall be entitled to vote in the election.”<sup>2</sup>

### A Citizen’s Right to Vote

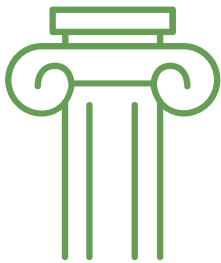


“...it is the responsibility of each citizen to educate themselves and participate in their civic duty to vote.”

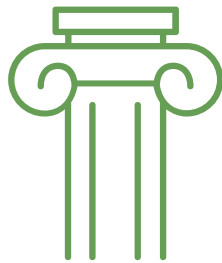
The institution of voting and elections constitutes a fundamental right as a citizen of the United States. However, recent claims suggest that the process for electing our leaders may be compromised, leading some in Utah to question the security of cast ballots. Others have wondered about a citizen’s access to the ballot. This paper summarizes the basic pillars of election administration in Utah and discusses their implications regarding the specter of widespread election fraud in the Beehive State.

There are four pillars contributing to the successful administration of elections in Utah. These pillars include: a citizen’s access to the ballot, tabulating equipment, ballot chain of custody, and individual voter responsibility. These four pillars, when faithfully adhered to and practiced, create a secure, accurate, and credible voting system unlikely to be breached by widespread election fraud.

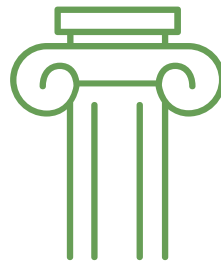
### Access to the Ballot



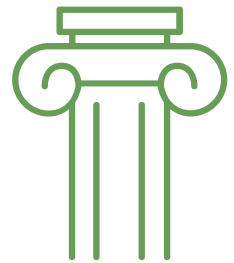
### Tabulating Equipment



### Ballot Chain of Custody



### Voter Responsibility



## VOTER BALLOT ACCESS AND REGISTRATION

Access to the ballot in Utah is administered by a process of voter registration. The process for registering and participating in elections has evolved since statehood.

The 1787 Constitution did not establish federal voting laws. In the Election Clause, Article I, Section 4, the Constitution states, “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” Initially, this gave states near total authority over how elections were conducted, including determinations of who was allowed to vote (e.g., only white male landowners being allowed to vote in some states early on).<sup>3</sup>

In the immediate wake of the Civil War, the Constitution was amended to establish national guidelines regarding suffrage and other aspects that would prove important for elections. The 15th amendment, for instance, passed in 1870, extended voting rights to black men, both born free and former slaves.<sup>4</sup>

Suffrage was expanded again with the adoption of the 19th amendment in 1920, which granted women the right to vote.<sup>5</sup> Thirty-two years later, the Immigration and Nationality Act eliminated many of the barriers that had previously kept many Asian-Americans from becoming citizens, which effectively expanded suffrage rather considerably again.<sup>6</sup> Remaining *de jure*


obstacles preventing citizens from having access to voting were removed in 1965 when President Johnson passed the Voting Rights Act, which outlawed discriminatory practices across all facets of American life, including in elections (for example, some Southern States used literacy tests as a qualification to be allowed to vote).<sup>7</sup>

Overall, Congress and state legislatures have made voter registration more accessible in recent decades. In 1971, for example, 26th amendment to the U.S. Constitution was adopted, which lowered the minimum voting age to 18 years old, nationally.<sup>8</sup> In 1986, the Uniformed and Overseas Citizens Absentee Voting Act was passed, which granted US military, uniformed services, merchant marines, and other US citizens living abroad the right and means to register and vote.<sup>9</sup>

Many national voter registration requirements were established with Congress's passing of The National Voter Registration Act of 1993 (NVRA).<sup>10</sup> The NVRA ultimately enhances voter access by allowing US citizens to register at motor vehicle agencies, by mail-in applications, and at certain state and local offices which offer assistance for everyone, including those with disabilities.<sup>10</sup> Further national standards for registration were set in 2002 with the passage of the Help America Vote Act (HAVA), which set mandates on certifying the integrity and accuracy of voting machine software and hardware. Moreover, HAVA created the Election Assistance Commission (EAC), a resource providing information relating to the testing, certification, and decertification of voting systems and equipment.<sup>11</sup>

When one looks from state to state across the country, there are various ways voters are given access to registration. Depending

### Voter Ballot Access and Registration



Utah ranks 5th in the United States for voter access and registration

on the state, citizens can register prior to election day online, by mail, in-person, and through pre-registration. Pre-registration laws, available in a minority of states, allow voters as young as 16 or 17 (depending on the state) to register and automatically certifies them upon their 18th birthday.<sup>12</sup> Other states allow citizens who will turn 18 shortly before or on the day of election to pre-register to vote.<sup>13</sup>

In Utah, registration laws are relatively undemanding, as residency requirements are minimal and residents (provided that they are U.S. citizens) are able to register via all four pathways mentioned above.<sup>14</sup> Moreover, Utahans can register to vote online and by mail up to eleven days prior to election day and can continue to register to vote up to and including election day.

As of November 2022, 69.1% of voting-age citizens in the US were registered to vote.<sup>15</sup> By comparison, 2023 data shows that about 77.8% of the voting-age population of Utah are registered to vote.<sup>16</sup> Utah ranks 5th in the United States for voter access and registration using the most recent data available.<sup>17</sup> Compared to the country as a whole, Utah currently exceeds the national voter registration standard by 8.7 percentage points, with 77.8% of its population registered compared to the current US national standard of 69.1%.

Lt. Governor of Utah Diedre Henderson on voter access:

“Arbitrarily restricting access to the ballot is a violation of people’s constitutional right. I don’t think it’s the proper role of government to arbitrarily make things difficult for people.”<sup>18</sup>



Diedre Henderson, Utah Lt. Governor <sup>19</sup>

## VOTE BY MAIL

Vote by mail (VBM) has a long history in the United States, beginning in the late 19th century. Utah’s modern VBM system was adopted in 2004.<sup>20</sup> Since then, VBM has been the primary way voters cast ballots in Utah.<sup>21</sup> Unlike some states that abruptly adopted vote by mail systems during the 2020 election as a means of more safely facilitating voting during the COVID-19 pandemic, Utah has had decades of experience and legislative oversight using VBM in state and municipal elections. In 2020, Utah passed legislation that changed the default voting method to VBM, automatically sending them a ballot unless otherwise requested.<sup>22</sup> This allows for residents to have easier access to voting, allowing them to complete the ballot at their convenience.

**Vote by Mail**




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Utah has been at the forefront of VBM both in state and federal elections. In the 2016 presidential election 25% of votes cast used VBM, and in 2020, 99% of votes were cast using VBM in non-presidential or municipal elections.<sup>23</sup> Such a high percentage is attributed to widespread use of VBM during the Covid-19 pandemic. Overall, Utah is a leading VBM state as well as a leader in terms of voter turnout.<sup>24</sup>

Director of Elections Ryan Cowley on casting votes:

**“The machines [are] tested before they [are] put out . . . all of the voters, they’re given three opportunities to verify their selection, before their vote is cast.”<sup>23</sup>**




Ryan Cowley, Director of Utah Elections <sup>24</sup>

## CASTING AND COUNTING VOTES

The process for casting and tracking votes has adapted to the higher volume of ballots cast and the need for faster result tabulation. Population growth generally results in more voters. Accounting for the increase in ballot numbers and the need to quickly publish results, voting machines have become an essential element for operating elections in the United States. The speed, accuracy, and cost benefits provided by voting machines have made them a popular resource among elected officials across the country and in Utah.<sup>25</sup>

**Casting and Counting Votes**



Accounting for the increase in ballot numbers and the need to quickly publish results, voting machines have become an essential element for operating elections in the United States.

There are nine different types of voting machines in use across the US today. These machines use optical scanners, direct recording electronic systems, ballot marking devices, hybrid voting systems, punch card voting system, mechanical lever voting systems, hand counted paper ballots, electronic poll books, and

remote ballot marking systems.<sup>26</sup> However, it is widely recognized that voter verification and paper ballots are the most secure voting method because voters can easily verify that their ballot reflects their choice accurately.<sup>27</sup>

Utah uses Direct-Record Electronic (DRE) and Optical Scan (OS) voting machines which are considered secure voting systems by The United States Election Assistance Commission.<sup>28</sup> Voters interact directly with DRE systems to cast votes, and optical scan systems read the paper ballots that voters submit. Utah requires that all voting machines and replacement parts be certified by the United States Election Assistance Commission (EAC).<sup>29</sup> The standards outlined by the EAC measure a machine's ability to correctly record the voter's intent, as indicated on a ballot.<sup>30</sup> In addition to the security measures provided by EAC certification, Utah requires each machine to pass an accuracy test before use in each election. These tests use a collection of sample ballots with a known vote distribution. Voting machines process these test ballots, and the results are compared, by an election officer,

to the known distribution of votes. Machines cannot be used in an election until they successfully record test ballots with no errors.<sup>31</sup>

Utah's EAC machines are never connected to the internet.<sup>32</sup> This makes it impossible to access them remotely and manipulate election results. Election workers receive special training and swear oaths to process the ballots with integrity and are the only people given access to these machines. These practices put Utah in compliance with the best practices recommended by US EAC on keeping elections accessible and secure around the country.<sup>33</sup>


## BALLOT SECURITY / CHAIN OF CUSTODY

How ballots are handled and transported from polling sites to the tabulating location, a process known as the "chain of custody," is essential to the security of elections in the United States.<sup>34</sup> Without proper documentation of the chain of custody, elections would lose transparency and trustworthiness, but, thankfully, Utah's Chain of Custody (UCA) requires that election officials document the chain of custody for all voting materials and equipment.<sup>35</sup> Utah follows federal chain of custody procedures, as well as its own that provide strict guidelines for ballot chain of custody in elections to ensure integrity and security.

The UCA contains several provisions related to the security of ballots. To verify that voting equipment follows the chain of custody as outlined in state law requires that all voting systems used in Utah be certified by the Lt. Governor.<sup>36</sup> Additionally, the director of elections within the Lt. Governor's office sets rules regarding ballot security, including the custody, documentation, handling, processing, and tabulation of ballots.<sup>37</sup> Records of voting material and equipment that are transferred are required to be publicly available for inspection which ensures transparency.


Additionally, the Utah Lt. Governor's Office has issued administrative rules for the chain of custody in elections in compliance with federal regulation,<sup>38</sup> and HAVA established minimum standards for election administration – requiring that each state maintain a statewide database of registered voters, that all voting systems be auditable, and provide a paper record of each vote cast.<sup>39</sup> Meanwhile, Utah Code 20A-5-902 includes requirements for the secure storage and transfer of voting equipment and materials.<sup>35</sup>

**Ballot Security / Chain of Custody**

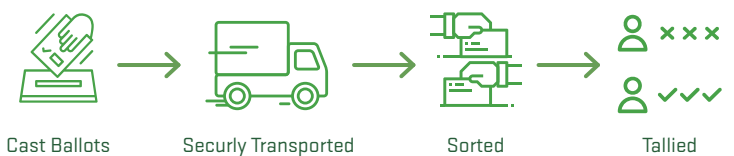


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**Utah's Chain of Custody (UCA)**



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# VOTER RESPONSIBILITY

First and foremost, each voter holds a level of personal responsibility in the security of the election by providing correct information.<sup>40</sup> A crucial aspect of this responsibility is that voters take care to correctly sign their ballot. As with many other facets of American elections, voter responsibilities vary from state to state due to differing procedures. That said, national guidelines via HAVA are in place to better guarantee a sound voting experience and system.<sup>41</sup>

With plenty of the responsibilities regarding voting and ballots falling to voters, many have worries concerning the voting process. We address six common questions asked by voters about what they can do to ensure their ballot is tabulated and their vote counts:

**Voter Responsibility**



First and foremost, each voter holds a level of personal responsibility in the security of the election by providing correct information.<sup>40</sup>

Commonly asked questions:	Provided answer:
How do I know that my ballot did not get lost in the mail?	Ballots in Utah typically arrive at least two weeks prior to the election day. Voters are responsible for contacting the elections office if their ballot does not arrive on time.
What can I do to make sure my ballot is counted?	Voters are responsible to carefully mark, sign, and return ballots on time. By completing all these steps, ballots can be tabulated, and processed accurately and efficiently. <sup>42</sup>
How do I know my ballot was received by the elections office?	Utah advises voters to check the status of their ballots online or to sign up for notifications when their ballots are mailed, received, and counted. <sup>43</sup>
There is so much information on the Internet, how do I know who to trust?	State websites work to provide accurate information for voters. <sup>44</sup> Utah election experts warn voters to only believe information from verified social media accounts. <sup>45</sup>
How do I know my ballot was counted correctly?	Voting machines are tested to ensure accuracy as well as randomly selected ballots are audited to verify machines are tabulating the voters' intent accurately. <sup>42</sup>
How can I see that I am registered to vote and know that my information is correct?	Online voter registration is accessible at <a href="https://vote.utah.gov/">https://vote.utah.gov/</a> . <sup>43</sup> Voters are responsible for registering and updating their registration, which increases voter engagement and improves the accuracy of elections. <sup>45</sup>

Many acts and laws that have been passed to make the election process simpler and more secure. Every law about elections improves upon all four “pillars,” voter access to registration, election equipment, chain of custody, and voter responsibility. Though each pillar has its own domain within elections they are connected and require each other to function.


Voter access to the ballot begins with registering to vote. Election equipment provides registered voters with a system of voting that helps elections personnel accurately and securely tally each vote. The chain of custody guarantees the safety and security of transferred materials for accurate and secure tabulation of all ballots. Voter responsibility ensures that registered citizens have the resources and instructions necessary to vote correctly. Together, these four pillars support elections in Utah and throughout the United States. Though the process for voting and electing public officials is far from perfect, the Herbert Institute believes that citizens of Utah who want to vote are granted access to the ballot and that once cast their votes are safe and secure.

Utah has become a leading example to other states in elections. Utah’s VBM policies combine all four pillars into a viable election system that contributes to one of the highest voter turnout rates in the country. Continual legislative oversight has led VBM to become the dominant and simplest way to vote in Utah. Furthermore, VBM allows Utah elections to remain secure by using paper ballots and voter verification. To ensure that VBM ballots are valid, Utah requires that signatures be verified. To verify signatures, the reverse of ballot envelopes holds an affidavit that must be signed by the voter. As each ballot is accounted for, the signature is compared to the signature on the voter’s registration record, or signatures on previously submitted ballots. If the signature does not match, election officers contact the voter and conduct an inquiry. If the origin of the ballot cannot be verified, the ballot is disallowed.<sup>46</sup>

Ballot harvesting, in recent years, has become a topic concerning voters. Ballot harvesting is when voters’ mail-in ballots are collected and turned in by a third party.<sup>47</sup> Security concerns about election fairness and honesty include worries over a lack of oversight, ballot secrecy, undue influence, and disruption of chain of custody.<sup>48</sup> Ballot harvesting, for many years, was considered prohibited by lawmakers despite the lack of a clear law and penalties establishing it as illegal.<sup>49</sup> In the 2020 sixth special session held by the Utah Legislature, for all elections, provisions regarding ballot harvesting were modified.<sup>50</sup> Proposed during the session was H.B. 6009 (Elections Amendments), which made ballot harvesting a class A misdemeanor and provided narrow exceptions on ballot drop-offs for household members and those with disabilities.<sup>51</sup>

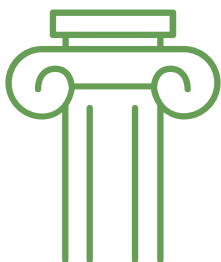
Based upon our review of Utah’s election laws and procedures, the Herbert Institute holds utmost confidence in the security of Utah elections. To be clear, this report is not a comprehensive audit and review of each county. Instead, it is an assessment of Utah’s laws and procedures regarding elections and from it we conclude that these laws and procedures make it highly unlikely that any appreciable level of election fraud could go undetected.

**Conclusion**

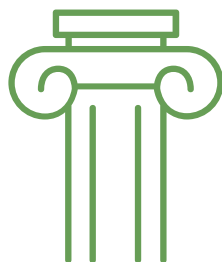


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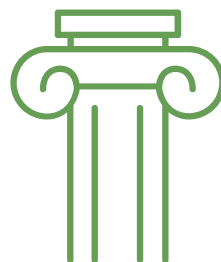
**Access to the Ballot**



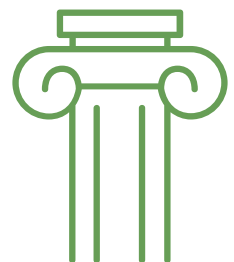
**Tabulating Equipment**



**Ballot Chain of Custody**



**Voter Responsibility**



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