



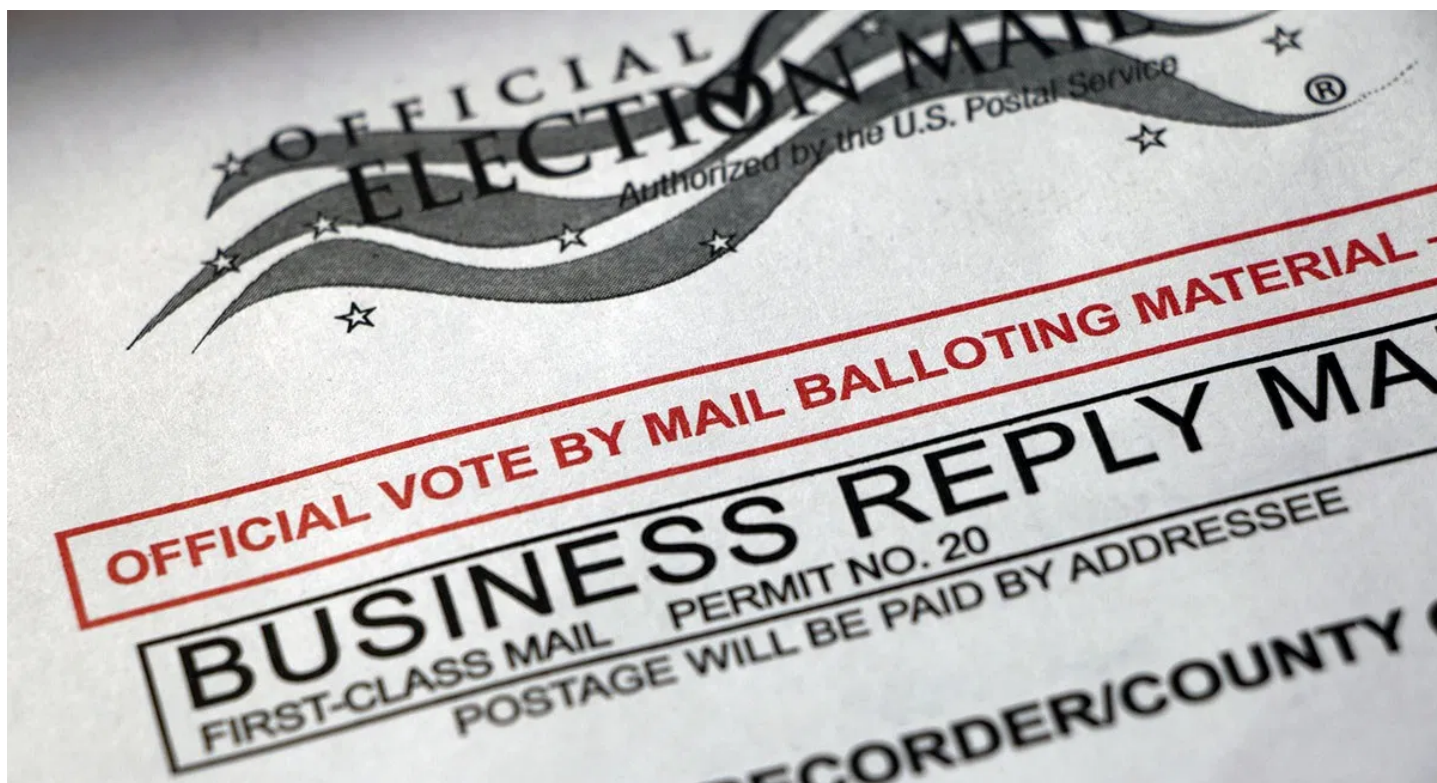
NWSidebar

The Voices of Washington's Legal Community



A Brief Legal History of Washington's Vote-By-Mail System

September
28, 2020



For weeks, the national discourse has been embroiled in battles over the U.S. Postal Service (USPS) and the upcoming general election. Amidst an ongoing health calamity, people in the U.S. and around the world question how America will pull off a national election not so much from the ballot box but from the mailbox.

For folks in Washington, it will be Tuesday.

As one of five states—along with Colorado, Hawaii, Oregon, and Utah—that conduct elections entirely by mail-in voting, Washingtonians haven't *had to go* to a physical polling place since at least 2011. (Each county opens a voting center prior to each primary, special election, and general election, according to the Secretary of State.) Washington was the second state in the country to go all-in on mail-in voting, following the first state, Oregon, which enacted its law in 2000.

Given the controversy on the subject, newer arrivals to Washington (more than half of residents moved here from out of state, according to the U.S. Census) might be inclined to think that the local switch to mail-in voting was also a point of conflict. They'd mostly be wrong.

According to officials NWSidebar contacted with the Washington Secretary of State's Office, the Office of Attorney General (AGO), and more, Washington's switch to mailed ballots was not subject to any legal challenges after passing.

"In the period immediately before voting by mail, the percentage of votes cast by mail was steadily rising anyway," Jeffrey Even, deputy solicitor general with the AGO and a former attorney with the Secretary of State, said in an email response. "There weren't any problems with it, so there was nothing to challenge."

Voting by mail in Washington got rolling in 1983, according to the Secretary of State "[Washington Vote-By-Mail \(VBM\) Fact Sheet](#)." Prior to then, voters with disabilities or who were 65 or older were eligible for permanent absentee ballots, and other voters could request absentee ballots before each election. In 1983, the state allowed for special elections to be conducted by mail ballot. In 2005, the vote-by-mail system Washingtonians know began to take root in a larger way. The Legislature established vote-by mail in all elections, but left it to counties to decide whether to do so. Soon, every county had switched to all-mail voting but for one: Pierce County.

In 2011, the Washington Legislature passed [Senate Bill 5124](#), replacing existing election law with one major caveat that all counties would conduct elections by mail, effectively choosing for Pierce County. Then-Rep. Sam Hunt, told [The Olympian](#) at the time, "It will give us one uniform voting system in the state." Hunt, now a state senator, pushed that legislation for the previous three years, which stalled mainly due to opposition from Pierce County legislators, he said. However, he couldn't recall significant backlash.

"It was more of a political challenge of [voters saying] 'I want to go to the polls; I want to take my kids to vote; I want to see my neighbors ...,'" Hunt said.

It's worth noting that the bill squeaked by both houses 26-23 in the Senate and 52-43.

Asked about the current political climate, and whether he had any advice for other states now careening toward November while attempting to pull together mail-in voting in time for voters worried about the health risks of voting in person, Hunt was skeptical. Washington's mail-in voting system works and works well, he said, although it required new statewide systems to get here.

Between 2004 and 2010 in Washington, there were seven documented cases of vote-by-mail fraud, according to a [Brookings Institution review of voter-fraud data](#) compiled by the Heritage Foundation, which the Washington AGO cited in a lawsuit against the U.S. Postal Service—more on that in a bit. Most attempted cases of fraud were identified and stopped, Hunt said, such as a person who unsuccessfully registered their dog to vote. Additionally, "We regularly run the death rolls past the voter registration rolls to make sure we eliminate that."

Hunt credits the relatively clean record to Washington's statewide voter database, which compares a voter's signature against others on file, such as a driver's license: "It made us develop a statewide voter registration database, became very sophisticated in using the signatures."

In fact, when Washington shifted to mail-in voting, a familiar name who was then-King County Councilmember Bob Ferguson told the [Seattle Times](#), "My view was, we should do one system and do it well, extremely well," he said. "I'm not suggesting that voting by mail was a cure-all, but it was certainly a key element in a series of reforms that have turned around the department."

Fast forward to this year, now Attorney General Ferguson is leading a coalition of 14 states, including Washington, in a lawsuit against the White House and USPS over changes at the Postal Service that allegedly hamper states' "sovereign powers to conduct elections by mail, in whole or in part, during the COVID-19 pandemic," according to [the lawsuit](#) filed in the U.S. District Court for the Eastern District of Washington.

On Sept. 17, Washington Eastern District Court Judge Stanley A. Bastian granted Ferguson's office's requested order for preliminary injunction for the USPS "to immediately halt drastic operational changes," according to an AGO [press release](#).

More Answers

Still have questions about voting by mail in Washington? Check out the [Washington Secretary of State voting by mail FAQ](#).

The order prohibits the USPS from implementing or enforcing policy changes announced in July 2020 “that have slowed mail delivery,” deviating from the office’s policy of treating election mail as first class postage, removing or decommissioning mail-sorting machines, reducing post office hours, or closing mail-processing facilities; and making any “change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis.”

The injunction will remain in effect until a final judgment is entered or until further order of the court.

About the Author



Colin Rigley. Colin worked as a print news journalist and editor in California, as well as a content strategist in the Puget Sound area, before joining WSBA as the communications specialist two years ago. He can be reached at colinr@wsba.org.

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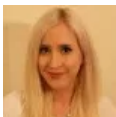
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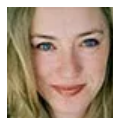
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