



# THE COLORADO VOTING EXPERIENCE

**A Model That Encourages Full Participation**

*How other states can improve access and election administration*

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## Acknowledgments

This report is funded by thousands of people who believe elections should be about the people and making sure as many eligible Americans as possible are voting. With contributions of \$10, \$25, or \$100 and up, our supporters provide 70 percent of the funding at Common Cause and the Common Cause Education Fund. Thank you for your support and for sharing the important work we do together with your networks.

This report is a project of the Common Cause Education Fund and the National Vote at Home Institute.

The Common Cause Education Fund is the research and public education affiliate of Common Cause and its 1.2 million supporters. Founded by John Gardner in 1970 to bring everyday Americans together to exert their power through what he called a citizens lobby. Working together we create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process. Thank you to our partners at the National Vote at Home Institute, the Phillip and Janice Levin Foundation, and to the Democracy Fund, and the Rockefeller Brothers Fund for their ongoing support of our voting work.

The National Vote at Home Institute thanks and acknowledges our generous supporters who are dedicated to our mission to improve the voting experience for all voters across the country. We remain committed to expanding convenient options for voters that are fair, accessible, secure, transparent, efficient and reliable. Thanks also to our Research Director, Gerry Langelier and our Executive Director, Amber McReynolds for their contributions to this report in collaboration with the incredible team at Common Cause Education Fund. Finally, we would like to thank Common Cause for the continued partnership and commitment to empowering voters with choice so that their voices are heard in the political process.

Thanks to Cynthia Williams, Infosheets, for her command of the language and to Kerstin Vogdes Diehn, KV Design, for her creativity, design-eye, and thoughtful collaboration.

## INTRODUCTION

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Imagine the perfect voting experience. You drop by the polling place on the way to work or school. The line is moving quickly, so it doesn't take more than a few minutes to get to the check-in desk. Once there, your registration is rapidly verified, and you're handed a ballot by a friendly face. No one hassles you; no one unfairly questions your eligibility. You step aside to a private booth, fill out the form, and have it easily scanned. You get a receipt — and the cherished "I voted" sticker. The whole transaction takes about five or 10 minutes. Upon leaving the site, you not only experience that frisson that reminds you you're a part of something bigger — civic pride — but also leave there in time to drop off the kids at school and make it to work on time.

Or maybe you skip the drive altogether and mail in your completed ballot after having received it in the mail. Or you thought about your choices for months but voted and returned your ballot in a matter of minutes on Election Day. In many ways, it's a day like any other: you carry on with your duties as you otherwise would. In another way, though, it's a special and unique experience; you participated in an act that for many was hard-fought and hard-won, that is a guaranteed right to you as a citizen, and that helps direct the course of the nation. You voted. And, because of that, you got to be one of the country's critical decision-makers.

It may not yet be the norm, but in Colorado, and in states with more in-person and at-home voting options that resemble the above processes, a comprehensive elections model ensures an experience that benefits both voter and administrator alike. **And it boosts turnout.**

## STATE OF OUR ELECTIONS: WHAT'S WORKING, WHAT'S NOT

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Unfortunately, many don't have the above-described experience. And while enthusiasm for the 2018 midterms reached new heights — turnout exceeded 50%, the highest for a midterm election since World War I<sup>1</sup> — participation in the United States still pales in comparison to that of many established democracies. Indeed, we're ranked 26th for turnout in a lineup of 32 "highly developed, democratic" nations.<sup>2</sup> Since the 1960s, moreover, turnout has barely budged past 60%; the historic 2008 presidential race, resulting in Pres. Barack Obama's election, brought out 62% of all eligible voters.<sup>3</sup> And that was considered a new high.

So what keeps citizens from consistently participating in elections? To be sure, several variables prevent Americans from regularly voting, including disinterest due to a perceived corrupt system; a feeling that one's vote "doesn't count" against special interests; and suppressive measures, such as restrictive photo ID and registration laws. Education level, income, and other factors come into play, too. But when asked about their absence at the polls, registered voters additionally cite **both a lack of time and access** as reasons why they don't show up. For example, in 2016, registered voters listed the following time- and access-related reasons for not voting: "too busy or conflicting schedule" (14% of those polled); "illness or disability" (12%); "other" (11%); "out of town or away from home" (8%); "registration problems" (4%); "transportation problems" (3%); and "inconvenient hours or polling places" (2%).<sup>4</sup>

All told, when including the "other" reasons, the majority of those registered Americans who did not vote in the 2016 presidential election claimed not to have voted because of access or convenience issues. Not because they thought the system was corrupt. In 2018, too, 41% stated they didn't vote in the midterm because of "incon-

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1 Ella Nilsen, "The 2018 Midterms Had the Highest Turnout Since Before World War I," Vox, Dec. 10, 2018, available at <https://www.vox.com/policy-and-politics/2018/12/10/18130492/2018-voter-turnout-political-engagement-trump>

2 Drew DeSilver, "U.S. Trails Most Developed Countries in Voter Turnout," Pew Research Center's FactTank, May 21, 2018, available at <http://www.pewresearch.org/fact-tank/2018/05/21/u-s-voter-turnout-trails-most-developed-countries/>

3 Chris Cillizza, "Here's Why 6 in 10 Eligible Voters Might Not Vote Tomorrow," CNN, Nov. 5, 2018, available at <https://www.cnn.com/2018/11/05/politics/voting-2018-turnout-eligible-voters/index.html>

4 Id.

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*Registered voters additionally cite both a lack of time and access as reasons why they don't show up.*

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venience.”<sup>5</sup> Of course, those who aren't registered — a population that includes an overrepresentation of minority and younger citizens, as well as citizens with low incomes — must first overcome that obstacle and be brought into the system before they can cast ballots. Indeed, in 2018, 30% claimed they didn't vote

because they weren't registered or eligible.<sup>6</sup> States' efforts both to improve registration processes and make voting itself a more accessible, convenient, and quicker process could result in much-improved turnout rates, because these changes address Americans' time and access concerns.

## OVERVIEW OF ISSUES FROM THE 2018 MIDTERMS

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A look at the 2018 midterm elections demonstrates a need for elections upgrades across the country. While some states have reformed policies and processes to make elections fairer and more efficient, others have actively suppressed voters' access and engaged in poor administration. Counties in handfuls of states used faulty and outdated voting machines, which registered votes incorrectly or broke down altogether, resulting in long lines for remaining voters.<sup>7</sup> Polling places opened late, with no effort, absent litigation, made to extend voting hours to compensate for the loss of time.<sup>8</sup> In one example, leading up to the election, tens of thousands of Georgian voters learned that their voter registration records were held in “pending” status; many others learned when they showed up at the polls that they'd likely been purged from voter rolls when their names couldn't be found in the record.<sup>9</sup>

Texas was a notable example for issues with voting machines. Specifically, numerous callers claimed machines “switched” their votes, resulting in ballots being cast for unintended candidates.<sup>10</sup> This problem was well-known by election officials going into Election Day, yet necessary fixes weren't made in time.<sup>11</sup> Texas isn't the only state using outdated machines that are at least a decade old:<sup>12</sup> Arizona, Georgia, New York, and Pennsylvania also used old machines, some of which malfunctioned during the election.<sup>13</sup>

Long lines and late poll openings were common across the nation, especially in Georgia, Indiana, New York, Pennsylvania, and Texas. Miscalculation of numbers of expected voters, for example, led to polling places with an insufficient number of voter machines and ballots.<sup>14</sup> Malfunctioning machines, too, caused excessively long

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5 Pew Research Center, “Most Voters Have Positive Views of Their Midterm Voting Experiences,” Dec. 17, 2018, available at <http://www.people-press.org/2018/12/17/most-voters-have-positive-views-of-their-midterm-voting-experiences/>

6 Id.

7 Issie Lapowsky, “Voting Machine Meltdowns Are Normal—That's the Problem,” *Wired*, Nov. 6, 2018, available at <https://www.wired.com/story/voting-machine-meltdowns-midterm-elections-2018/>

8 Benjamin Goggin, “Long Lines, Broken Machines, and Gun Scares—Here Are the Reported Problems Voters Are Experiencing During the Midterms,” *Business Insider*, Nov. 6, 2018, available at <https://www.businessinsider.com/voting-problems-by-state-2018-midterm-elections-2018-11#georgia-1>

9 German Lopez, “The Right to Vote Is Under Siege in 2018,” *Vox*, Nov. 6, 2018, available at <https://www.vox.com/policy-and-politics/2018/11/6/18065970/midterm-elections-voting-rights-suppression-2018>

10 Issie Lapowsky, “Voting Machine Meltdowns Are Normal—That's the Problem,” *Wired*, Nov. 6, 2018, available at <https://www.wired.com/story/voting-machine-meltdowns-midterm-elections-2018/>

11 Id.

12 Id.

13 “Election Day Updates: ACLU Concerned by County's Handling of Absentee Ballots,” *Pittsburgh Post-Gazette*, Nov. 6, 2018, available at <http://www.post-gazette.com/news/politics-local/2018/11/06/live-updates-from-the-polls-midterm-election-2018-pittsburgh-pennsylvania/stories/201811060071>

14 Benjamin Goggin, “Long Lines, Broken Machines, and Gun Scares—Here Are the Reported Problems Voters Are Experiencing During the Midterms,” *Business Insider*, November 6, 2018, available at <https://www.businessinsider.com/voting-problems-by-state-2018-midterm-elections-2018-11#georgia-1>

lines: in Georgia, thousands of voters waited upward of four hours to vote; in New York, multiple broken scanners caused numerous delays;<sup>15</sup> and many others who called the Election Protection hotline complained of being in line for double-digit hours.<sup>16</sup> Long lines can also result from polls opening late. In Pennsylvania, at least seven polling places opened late; several opened late in Georgia and Illinois too. Few Americans have several hours available to vote. This is particularly true for the many who live in states that don't guarantee employees time off from work to cast ballots.

Voter registration concerns cropped up all over the country, with many Americans casting provisional ballots because their records couldn't be found at the polls. In particular, Georgians' votes were at risk. Before the midterms, the secretary of state's office placed 53,000 voter registration applications in "pending" status; many of these would have been rejected once processed due to the requirements of an unfair — and illegal — state law. The majority of those voters were people of color, with a full 70% being Black. Georgia's "Exact Match" law — which requires information from voter registration applications to match exactly with state records from the Department of Motor Vehicles and Social Security Administration — led to the placement of records with even slight mismatches (such as the elimination of a hyphen) in the pending bin.<sup>17</sup> This process hurts voters and deprives them of their constitutional right to the franchise, even though county and agency error more often than not is to blame.<sup>18</sup>

Strict voter identification laws, too, kept potentially millions of otherwise eligible voters in a handful of states from the polls. Just days before the 2018 midterm elections, for example, a federal court in North Dakota upheld the state's new photo ID law despite many Native Americans' inability to obtain the required cards due to their living on reservations without specific street addresses.<sup>19</sup>

A number of fixes — upgraded machines, improved voter registration practices, enhanced administration, fairer security measures — could have resulted in an Election Day that made voting easier for both voters and administrators. Many of these fixes, moreover, don't require much financial backing, just will.

## An Elections Paradigm Exists: Colorado's Model

To improve turnout and ensure that citizens regularly participate, states must not only improve administration to avoid the above-referenced headaches from this election but also implement elections reforms that offer voters sufficient choices. The authors of a recent report,<sup>20</sup> for example, note that each state's "cost of voting" impacts turnout, with certain reforms correlating with (and perhaps causing) boosts more than others. States that "receive the lowest COVI [cost of voting index] values generally allow voters to register on Election Day and do not have a strictly enforced photo identification law. On the other hand, states that receive higher values on the COVI commonly have registration deadlines closer to 30 days out and lack convenient early voting procedures."

To effectively encourage civic participation, then, it behooves all states to adopt same-day registration, offer early voting, and eliminate strict photo ID requirements (particularly since there are more effective and fairer ways to

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15 ProPublica, "Breakdown in New York City," Nov. 8, 2018, available at <https://projects.propublica.org/graphics/election-2018-broken-machines>

16 P.R. Lockhart, "Voting Hour in Parts of Georgia Extended After Technical Errors Create Long Lines," Vox, Nov. 6, 2018, available at <https://www.vox.com/policy-and-politics/2018/11/6/18068492/georgia-voting-gwinnett-fulton-county-machine-problems-mid-term-election-extension>; see also Election Protection logs on file with Lawyers' Committee for Civil Rights Under Law.

17 Miriam Valverde, "Georgia's 'Exact Match' Law and the Abrams-Kemp Governor's Election, Explained," Vox, Oct. 19, 2018, available at <https://www.politifact.com/georgia/article/2018/oct/19/georgias-exact-match-law-and-its-impact-voters-gov/>

18 Id.

19 Maggie Astor, "North Dakota Voter ID Law Stands After Last-Ditch Lawsuit," *New York Times*, Nov. 1, 2018, available at <https://www.nytimes.com/2018/11/01/us/politics/north-dakota-voter-id-tribe.html>

20 Quan Li, Michael J. Pomantell, and Scot Schraufnagel, "Cost of Voting in the American States," *Election Law Journal: Rules, Politics, and Policy*, Vol. 17, No. 3, Sept. 18, 2018, available at <https://newsroom.niu.edu/2018/09/25/new-study-scrutinizes-time-and-effort-it-takes-to-vote-in-each-state/>

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ensure elections security and since impersonation at the polls is exceedingly rare). Colorado, in addition to offering a more comprehensive package of reforms, implements such tools. Consequently, the low cost of voting in the state makes participation that much likelier. Indeed, it regularly boasts some of the country's highest turnout.

reform package. Since then, it has adopted additional measures that further benefit voters. Here's what the state now offers:

In 2013, just two federal election cycles ago, Colorado passed the country's most comprehensive elections

- Mailed ballots to all registered voters to enable an efficient vote-at-home process, without requiring voters to make the request before each election;
- Opportunity to submit completed ballots through the mail at secure 24/7 drop boxes or to conveniently located vote centers or other drop box locations;
- Availability of in-person voting at strategically placed vote centers (with a minimum number of locations to be met by each county) during an early voting period and on Election Day;
- Proactive address updates with the use of the National Change of Address database (run by the U.S. Postal Service);
- Same-day registration at all vote centers and, starting in 2017, automatic voter registration through motor vehicle offices;
- Elimination of voter registration deadlines and precinct residency requirements;
- Fair security measures in lieu of a strict photo ID law; and
- Use of paper ballots and implementation of risk-limiting audits to ensure the outcome of election properly captures the will of the voters.

## **Extensive Reform Passed in 2013: A True Group Effort Pulled It Off**

The state passed the Colorado Voter Access and Modernized Elections Act of 2013 (COVAME), establishing one of the most comprehensive voting packages in the country and laying the groundwork for additional reforms to come. A unique situation emerged when a broad coalition of election administrators, voting rights advocates, good government reform groups (including Common Cause), accessibility advocates, and others worked together to consider the details of the reform and advance the bill through the legislative process. It's safe to say that no one faction got everything it wanted out of the bill — rarely does that happen when hashing out legislation that has a prayer of getting passed. But the bill as a whole captured many strong reforms that all groups agreed would benefit voters, administrators, and the state.

Almost any voting rights advocate will tell you, "Get the election officials on board if you want to pass elections reform." That's exactly what this cohort did, leading to a successful outcome. Most election officials in Colorado wanted an all-mail delivery system (working off the state's enactment in 2008 of permanent mail-in voter status); knowing this desire was vital to drafting the bill's language and, thus, ensuring key support that would influence legislators. Indeed, the day before the bill was introduced, the Colorado County Clerks Association, which is 65% Republican, voted to support the bill, which had been largely drafted by a few key election officials (including Amber McReynolds, Hillary Hall, Pam Anderson, Sheila Reiner, and Tiffany Parker), Common Cause (including Elena Nunez and Jenny Flanagan), America Votes, State Voices, and the American Federation of State, County and Municipal Employees.<sup>21</sup>

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<sup>21</sup> AFSME memo on COVAME at p. 2, on file with Common Cause.

COVAME included, in addition to a preference for a strong vote-by-mail package, registration and other voting reforms. Including vote-by-mail (or vote-at-home) provisions in the legislation was a no-brainer for the election officials and groups: In 2006, 39% of voters used vote-by-mail; in 2008, 64% did; in 2010, 67% did, and in 2012, 72% did.<sup>22</sup> But the addition of same-day registration — a reform permitting eligible voters to both register and vote on either Election Day or during an early voting period — was initially less welcome among some election officials. Advocates considered its addition non-negotiable; they knew this reform could enhance turnout by upward of 10 percentage points and provide a critical safeguard for eligible voters who needed to register to vote or update their voter registration.<sup>23</sup> Partisan backlash, however, threatened its inclusion. That’s why it was important for advocates to agree to vote-by-mail as the bill’s backbone. The reform was effective in the state; the election officials, as administrators, liked it; and thus legislators would insist on it.<sup>24</sup> Once vote-by-mail became the bill’s centerpiece, voter registration reform became more palatable. Plus, lawmakers had been more focused on registration reforms, given litigation regarding Colorado’s treatment of voters with “inactive failed to vote” status — a battle ultimately between Denver and the secretary of state’s office, which Denver ultimately won.<sup>25</sup> Removing this “inactive” status and restoring voters to “active” status in the Statewide Colorado Registration and Election program (SCORE) database, so that they could regularly receive mail-in ballots even if they’d missed an election, made good sense in light of the lawsuit. It also helped pave the way for inclusion of same-day registration.

Advocates were pleased at the prospect of a holistic approach to legislation that modernized both how Coloradans could register to vote and cast their ballots. The reform package included voter registration reform, in-person voting options, and a vote-by-mail provision. The package deal afforded much greater election access for all eligible voters. When adopting elections reforms, it’s almost inevitable, especially in the current political climate, for some legislators (typically Republicans) to additionally demand inclusion of a voter ID requirement. These requirements range from fair proposals (such as West Virginia’s law, which permits a voter either to show a utility bill or to sign an affidavit attesting to lack of ID) to suppressive, discriminatory, and racist ones (such as the one introduced by North Carolina legislators in 2013 that, “with almost surgical precision,” aimed to suppress Black voters).<sup>26</sup> In Colorado, legislators earlier insisted on an ID measure, but a much less onerous requirement had been adopted. (The dearth of in-person voter fraud cautions against implementation of photo ID laws, especially since approximately 11% of the American population simply does not have access to the IDs required or to the documentation required for obtaining them. That said, states can still establish security measures that give election officials and voters peace of mind without compromising access.) For example, under COVAME, all counties would have real-time access to the statewide voter database (SCORE) during the early voting period and on Election Day, giving election officials access to information on who voted when.

The bill’s language was by no means deemed fully acceptable to all legislators or those in power. For example, “an activist Secretary of State railed against the bill and rallied Republican legislators, who attempted to filibuster it in committee and on the floor with more than 24 hours of debate in both chambers.”<sup>27</sup> As a result, several amendments were made. But the meat of the package — strong, sensible reform — stayed put.

When it comes to election administration, the Colorado story demonstrates that advocates, legislators, and election officials should work together on pro-voter reforms<sup>28</sup> — those that ensure eligible Americans’ ballots are

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22 Id. at p. 3.

23 Demos, “What Is Same Day Registration? Where Is It Available?” 2014, available at <https://www.demos.org/sites/default/files/publications/SameDayRegistration-2015.pdf>

24 Ibid. at p. 9.

25 Ibid. at p. 3.

26 *North Carolina State Conference of NAACP v. McCrory*, 831 F. 3d 204 (4th Circuit 2016).

27 Ibid. at p. 2.

28 The Colorado elections package was the product of discussion by and input from a broad coalition that included the bipartisan Colorado Clerk and Records Association, some individual clerks and election directors from larger counties (notably Denver’s Amber McReynolds and others), election advocates, and civic engagement groups (Common Cause, League of Women Voters, New Era Colorado, Disability Law Colorado, Mi Familia Vota, and others).

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counted — not on policies that benefit one political ideology over another. Pro-voter reforms, it must be noted, don't help one party at the other's expense. Rather, they collectively prompt the kind of turnout that we haven't yet seen on a national scale. And importantly, they help create an election system and process that ensures equal opportunity to all voters, regardless of their political persuasion.

## THE COLORADO ELECTIONS PACKAGE

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Each piece of the package enhances the election experience for voters in Colorado. Here's what Colorado now offers its citizens:

### *a. Colorado's voting system ensures security and accuracy without compromising fairness*

Computer break-ins into 21 state registration systems leading up to the 2016 presidential election justifiably raised concerns about the security of our registration and voting systems.<sup>29</sup> So did speculation that Georgia's registration system had been compromised right before the 2018 midterms. In addition to fears that state elections databases are susceptible to foreign interference, breakdowns of voter machines and technology — resulting from age rather than ill intentions — demonstrate that there's a desperate need to update systems. Indeed, as we saw in the most recent midterm elections, machines in Georgia, Florida, and Texas systematically broke down (requiring replacement) or regularly glitched, switching voters' selections in error. When making necessary overhauls, it's essential that states take on processes that ensure election integrity without compromising voter access. Colorado implements several measures to ensure that votes are counted as cast, that all eligible citizens have access to the ballot, and that election results are accurate.

### Colorado Uses Updated Machines and Technology

To ensure all ballots are counted, a state needs an up-to-date voting system that is easy to use, accurate, and verifiable (for those instances when things do go wrong). Colorado uses updated, pre-tested machines that rely on paper ballots, which can be audited post-election to ensure the election outcomes are accurate. Cyber-precautions are also taken to prevent potential hacks leading up to and on Election Day. Since “[one] out of every [three] American adults thinks a foreign country is likely to change vote tallies,”<sup>30</sup> it behooves all state election administrators to demonstrate they've taken steps to ensure that no such interference can take place — and that, in the rare event that it does, the state can easily and quickly identify the hack and then remedy it.

- Colorado has **updated voting systems** in almost every county,<sup>31</sup> requires each machine to be **tested** by a federally accredited laboratory,<sup>32</sup> and mandates that all votes be cast on **paper ballots**,<sup>33</sup> thereby providing a

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29 Joseph Tanfani, “Russians Targeted Election Systems in 21 States, but Didn't Change Any Results, Officials Say,” *Los Angeles Times*, June 21, 2017, available at <https://www.latimes.com/politics/washington/la-na-essential-washington-updates-russians-targeted-election-systems-in-1498059012-htmlstory.html>

30 Miles Parks, “NPR/Marist Poll: 1 in 3 Americans Thinks a Foreign Country Will Change Midterm Votes,” NPR, Sept. 17, 2018, available at <https://www.npr.org/2018/09/17/647420970/npr-marist-poll-1-in-3-americans-think-foreign-country-will-change-midterm-votes>

31 Derek Hawkins, “The Cybersecurity 202: How Colorado Became the Safest State to Cast a Vote,” *Washington Post*, May 10, 2018, available at [https://www.washingtonpost.com/news/powerpost/paloma/the-cybersecurity-202/2018/05/10/the-cybersecurity-202-how-colorado-became-the-safest-state-to-cast-a-vote/5af317c930fb042db5797427/?noredirect=on&utm\\_term=.74b171d4d697](https://www.washingtonpost.com/news/powerpost/paloma/the-cybersecurity-202/2018/05/10/the-cybersecurity-202-how-colorado-became-the-safest-state-to-cast-a-vote/5af317c930fb042db5797427/?noredirect=on&utm_term=.74b171d4d697)

32 National Conference of State Legislatures, “Voting System Standards, Testing and Certification,” Aug. 6, 2018, available at <http://www.ncsl.org/research/elections-and-campaigns/voting-system-standards-testing-and-certification.aspx>

33 Co. Rev. Stat. § 31-10-902 (2016).

paper trail in the event of a glitch or hack and enabling audits and/or recounts, if necessary.

- Logging into the Colorado’s voter registration system requires **two-factor authentication**,<sup>34</sup> which protects the system’s security from potential outside interference. Requiring an employee with access to the state’s elections database to enter specific information in addition to a password makes good sense: “Humans are horrific at creating passwords, which is why ‘password’ is the most commonly used password,” says Joseph Lorenzo Hall, the chief technologist at the Center for Democracy and Technology in Washington, D.C., who has pushed for security fixes in the voting process. “This means increasingly we need something other than passwords to secure access to our accounts, especially email, which tends to undergird all our other accounts.”<sup>35</sup>
- Colorado’s elections office, moreover, uses software to **track social media**<sup>36</sup> — including Facebook, Twitter, and Instagram — leading up to an election, with the aim of countering any false or misleading information. The secretary of state’s office has more internet technology staff than it does election-related staff.<sup>37</sup> Not every U.S. chief election official’s office can hire in this way, but they can all certainly adopt security measures and practices used by Colorado.

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## Colorado Verifies Voter Eligibility Without Compromising Access

Thirty-four states currently require voters to show some form of identification before casting a vote.<sup>38</sup> The most onerous of these laws demand that citizens produce a photo ID, which a sizable percentage of the would-be electorate simply does not have and may not have access to, given the financial costs of obtaining the necessary documentation. We know that voter fraud — the in-person kind that a photo ID law purports to cure — simply does not occur on a scale necessitating restrictive laws, particularly when the enactment of such laws would result in large-scale disenfranchisement, especially among individuals with low incomes, people of color, and out-of-state students. That said, states generally want to demonstrate to their residents that their election system is safe and secure. To that end, it’s fair to take certain security measures, as long as they’re fair and in no way restrict eligible voters from casting their ballots.

- Unlike states with strict photo ID measures, Colorado imposes a **much less onerous identification requirement**. The dearth of in-person voter fraud, as verified by several studies, simply doesn’t justify imposing an ID that roughly 11% of the population does not possess.<sup>39</sup> Consequently, Colorado election officials accept, in addition to driver’s licenses, various forms of identification, including:<sup>40</sup> student IDs; Medicaid cards; tribal IDs;

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34 Derek Hawkins, “The Cybersecurity 202: How Colorado Became the Safest State to Cast a Vote,” *Washington Post*, May 10, 2018, available at [https://www.washingtonpost.com/news/powerpost/paloma/the-cybersecurity-202/2018/05/10/the-cybersecurity-202-how-colorado-became-the-safest-state-to-cast-a-vote/5af317c930fb042db5797427/?utm\\_term=.9384ea61607e](https://www.washingtonpost.com/news/powerpost/paloma/the-cybersecurity-202/2018/05/10/the-cybersecurity-202-how-colorado-became-the-safest-state-to-cast-a-vote/5af317c930fb042db5797427/?utm_term=.9384ea61607e)

35 Jack Gillum and Jessica Huseman, “The Overlooked Weak Link in Election Security,” *ProPublica*, Sept. 14, 2018, <https://www.propublica.org/article/the-overlooked-weak-link-in-election-security>

36 “Homeland Security Head: Colorado Tops U.S. in Vote Security,” *Associated Press*, Sept. 6, 2018, available at <https://www.usnews.com/news/best-states/colorado/articles/2018-09-07/homeland-security-head-colorado-tops-us-in-vote-security>

37 *Id.*

38 National Conference of State Legislatures, “Voter Identification Requirements – Voter ID Laws,” Oct. 31, 2018, available at <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>

39 Jennifer L. Clark, “Separating Fact from Fiction on Voter ID Statistics,” *Brennan Center for Justice*, Nov. 25, 2014, available at <https://www.brennancenter.org/blog/separating-fact-fiction-voter-id-statistics>

40 See the Colorado secretary of state’s office website at <https://www.sos.state.co.us/pubs/elections/vote/acceptableFormsOfID.html>

and documentary proof, such as utility bills, bank statements, and paychecks that include the voter's name and address.<sup>41</sup> (First-time registrants who register without showing identification, and who vote by mail, must en-

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*We know that voter fraud — the in-person kind that a photo ID law purports to cure — simply does not occur on a scale necessitating restrictive laws, particularly when the enactment of such laws would result in large-scale disenfranchisement, especially among individuals with low incomes, people of color, and out-of-state students.*

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close a photocopy of their ID or documentary proof.<sup>42</sup>) Those who don't have any of those forms of ID may vote via a provisional ballot, which *will be counted* as long as the individual is eligible to vote.<sup>43</sup> In those instances, the election official must advise the voter that, for the ballot to be counted, the voter must present one of the acceptable forms of ID to the appropriate elections office within eight days of the election.<sup>44</sup> In a previous report,<sup>45</sup> Common Cause graded Colorado's voter ID law as "satisfactory," given the several options provided for voters. For an ideal law, we recommend that states, if they do pass voter ID requirements, permit citizens the opportunity to sign an affidavit testifying to their identity and eligibility without having to show

a photo ID, given that some might not have the required documentation on hand or transportation access to deliver it to election officials after polls close.

- Every vote center in Colorado must have real-time access to **SCORE**, the statewide elections database. To register a new voter, issue a replacement ballot, or permit someone to vote in-person, election officials must access the database, thereby ensuring that every voter is accounted for.
- **Signature verification** of all vote-at-home ballots (each voter must sign the ballot's envelope affirming, under penalty of perjury, that the voter is an eligible elector, that this is their signature, and that they will not cast another ballot in the instant election) against on-file signatures is conducted first by a computer device or trained election judge and then, in the event of a discrepancy, by a bipartisan team of judges. If a signature can't be verified by the teams, then the individual is permitted ample opportunity — eight days — to address the problem.<sup>46</sup> (The voter is sent a form, which they must complete and send, alongside submission of a copy of one of the above-referenced pieces of identification, within eight days.) The list of voters whose signatures are missing or discrepant is public information and thus available to civic engagement groups and political parties who can then reach out to voters to encourage them to address the issues.

While fraud conducted through vote-at-home (or vote-by-mail) ballots is exceedingly rare,<sup>47</sup> during the 2018 midterms, allegations were made that party-affiliated election fraud took place in North Carolina. Several voters there claimed that a Republican operative had paid them to collect and return to that operative absentee ballots, an illegal action.<sup>48</sup> (It's possible these operatives trashed completed ballots and/or filled them in themselves.) Use of signature verification helps ensure that only registered voters have their ballots counted, particularly in instances where, as we saw in North Carolina, partisan players collected blank ballots

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41 Co. Rev. Stat. 1-1-1-04 (2016).

42 Co. Rev. Stat. 1-8.5-106 (2016).

43 Id.

44 Co. Rev. Stat. 1-8.5-105(3)(a); Colorado Secretary of State Rule 17.2.7.

45 Common Cause, "Protecting the Vote in 2016: A Review of 11 Swing States," Oct. 1, 2016, available at <https://www.commoncause.org/resource/protecting-the-vote-in-2016/>

46 Co. Rev. Stat. 1-7.5-107.3 (2016).

47 See Brennan Center for Justice, "Debunking the Voter Fraud Myth," Jan. 31, 2017, available at <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>

48 See Molly E. Reynolds, "Understanding the Election Scandal in North Carolina's 9th District," Brookings Institute, Dec. 7, 2018, available at <https://www.brookings.edu/blog/fixgov/2018/12/07/understanding-the-election-scandal-in-north-carolinas-9th-district/>

and then completed them on their own. Signature verification, in those instances, would have detected and blocked the false submissions.

The system used in Colorado, moreover, is much fairer to voters than those used by other states and counties, such as Georgia’s Gwinnett County, which outright rejects ballots that don’t initially match with other signatures on file. (Thanks to litigation brought by several organizations, that practice was stopped for the 2018 midterms, given that “allowing nonexpert election officials to judge the validity of signatures without giving voters the chance to contest the decisions amounted to unconstitutional voter suppression.”<sup>49</sup>) Unlike in many jurisdictions across the states, Colorado election officials are trained on signature-matching, in some instances by the Federal Bureau of Investigation. In Colorado, mail ballots are first run through signature-verification software, which successfully matches signatures with those captured by other agencies 30%-45% of the time. A trained bipartisan team reviews the remainder, and for those ballots that they can’t verify, a second team is called in. Signatures disputed after this process prompt officials to immediately notify the voter, who then has eight days to address the problem.<sup>50</sup>

## Colorado Ensures That Election Outcomes Are Accurate

As of 2017, Colorado was the first state to require mandatory **risk-limiting post-election audits**. A risk-limiting audit is a post-election review that provides strong statistical evidence that the reported outcome is correct and provides a high probability of discovering and correcting a wrong outcome. Audits are like recounts insofar as the ballots are reviewed separately from the voting system’s software. But unlike recounts, they don’t just occur when purported losing candidates request them or when the election results in a tie or razor-thin difference. Instead, they’re conducted as a matter of routine after each election to ensure accuracy. The “risk limit” of the audit is the largest chance that the audit yields strong evidence of a correct outcome when the reported outcome is, in fact, wrong.

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Risk-limiting audits conclude in one of two ways: The audit either (a) stops when it finds strong evidence that the reported outcome is correct or (b) fails to find strong evidence that the outcome is correct and evolves into a full hand count of the ballots.<sup>51</sup> Use of these audits helps ensure that the election has suffered no foul play. As former Colorado Secretary of State Wayne Williams says, the state conducts them “[s]o we can tell you that nobody in Russia, nobody in China, nobody anywhere else in the world can change a ballot in Colorado.”<sup>52</sup>

In the 2018 midterms, Colorado conducted statewide risk-limiting audits for both the primary and general elections using open-source software, meaning that the software’s source code could be inspected, modified, or enhanced by anyone publicly, thereby ensuring transparency without sacrificing security.<sup>53</sup> (The auditing software is open-source but the election machinery and software are not.)

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49 Amy Gardner, “Judge Tells Georgia Officials to Stop Tossing Absentee Ballots Over Signatures,” *Washington Post*, Oct. 24, 2018, available at [https://www.washingtonpost.com/politics/judge-orders-ga-officials-to-stop-tossing-absentee-ballots-over-signatures/2018/10/24/9c5a5b06-d7bd-11e8-a10f-b51546b10756\\_story.html?utm\\_term=.17afab3776d](https://www.washingtonpost.com/politics/judge-orders-ga-officials-to-stop-tossing-absentee-ballots-over-signatures/2018/10/24/9c5a5b06-d7bd-11e8-a10f-b51546b10756_story.html?utm_term=.17afab3776d)

50 Suzie Armitage, “Handwriting Disputes Cause Headaches for Some Absentee Voters,” ProPublica, Nov. 5, 2018, available at <https://www.propublica.org/article/handwriting-disputes-cause-headaches-for-some-absentee-voters>

51 See Denver\*TV, “Protecting Your Vote: Inside a Risk Limiting Audit with Denver Elections Division,” YouTube, Sept. 26, 2018, available at <https://youtube.com/watch?v=0KgSKh4utNo>; Dwight Shellman and Jennifer Morrell, “Colorado’s Implementation of Risk-Limiting Audits,” U.S. Election Assistance Commission, Oct. 30, 2017, <https://www.eac.gov/colorados-implementation-of-risk-limiting-audits/>

52 “Homeland Security Head: Colorado Tops U.S. in Vote Security,” Associated Press, Sept. 6, 2018, available at <https://www.usnews.com/news/best-states/colorado/articles/2018-09-07/homeland-security-head-colorado-tops-us-in-vote-security>

53 See the Colorado Risk-Limiting Audit Project at <http://bcn.boulder.co.us/~neal/elections/corla/>

### *b. Colorado's model provides voters with convenient options*

Not all voters find themselves in the same situation: many have longer hours of work or school requirements and need to vote relatively quickly; others have disabilities or limited English proficiency, requiring additional assistance. Still others enjoy the tradition of going in-person to physically hand in their ballots, and some need to be registered for the first time or need to update an address. To ensure that all needs are met, and all eligible voices are heard, Colorado provides several options for both registration and voting, including several strategically placed vote centers, where assistance is available.

## **Colorado Facilitates Voting from Home**

With passage of COVAME, Colorado made a county-by-county practice of vote-at-home statewide. Now, every registered voter automatically receives, without having to request, a ballot through the mail via the U.S. Postal Service. Ballots are automatically mailed to active voters between 18 and 22 days before the election. Voters who register to vote seven days before Election Day will also receive their ballot in the mail. Those who register closer to Election Day are instructed to vote in-person at a vote center. Voters have ample time to make their selections, giving them the opportunity to research issues and candidates, and they may vote wherever they choose.

We know this reform not only provides convenience to many who want to avoid heading to the polls on Election-Day but also has the capacity to enhance participation.

Since Colorado switched from a polling place model in 2012 – albeit with very heavy “absentee” use – to a 100% mailed-out ballot model for the 2014 election, it was possible to analyze the impact on voter engagement and turnout between those two elections. (Voters, of course, could still visit vote centers in person.) Research conducted by Pantheon Analytics showed a 3.3 percentage point overall increase in turnout due to the move to mailed-out ballots, after adjusting for all other variables. Even more interesting was the startling increase in participation by otherwise low-propensity voters. Voters who were expected to vote at a 10% rate turned out at a 30% rate once they had a ballot in their hands. (Separate research conducted by the Pew Charitable Trusts found that Colorado saved \$6 per voter by having made the transition to 100% mailed-out ballots in the 2014 election.)

Since then, more confirming data has been gathered from jurisdictions that were not quite as “absentee-centric” as Colorado was before their switch. Utah passed legislation in 2012 allowing individual counties to choose a model of 100% mailed-out ballots for elections. In 2014, the first counties did so, and by 2016, a majority had. However, there were still enough counties using primarily polling places to allow for an A vs. B analysis in the 2016 general election. After adjusting for all other variables, Pantheon Analytics found that the “vote at home” group saw a 5-7 percentage point increase in turnout versus the polling place counties. That rise was more pronounced among younger voters, with a 10 percentage point increase among 25- to 34-year-olds. The research team even investigated voting patterns in a two-mile band on either side of county boundaries to tease out likely homogeneous populations, separated only by voting methodology. The difference in turnout was confirmed in that focused view. There was even one subdivision, with a county line running down the middle of it, that saw a 12 percentage point increase in turnout on the vote-at-home side. Now 27 of 29 Utah counties, covering over 98% of the state’s electorate, are on the 100% mailed-out ballot system.

Separately, Pantheon Analytics used the Utah 2016 elections database to investigate the theory that vote-at-home systems allow voters to spend more time on their ballots, resulting in more down-ballot engagement. That proved to be true; 5.5% more votes were cast for state house candidates in the vote-at-home counties compared to the polling place locales, after adjusting for other variables.

Looking beyond the individual state level, Northern Illinois University conducted a study of the “cost” to cast a vote across all 50 states as of 2016, measuring 33 variables. It ranked Colorado in second place, with 100% vote-at-home Oregon in the top spot. The National Vote at Home Institute conducted research into the 2018

primaries, discovering that high vote-at-home states (either 100% mailed-out ballots or a majority of votes cast from mailed-out ballots) had a median 15% higher turnout rate than the remaining polling place states. And, finally, in the 2018 midterms, data from the U.S. Elections Project showed that the three 100% vote-at-home states (Colorado, Oregon, and Washington) had an average of over 60% of their voting-eligible population cast ballots, versus under 50% for the remaining states.

So, while this report focuses on Colorado, there is ample evidence that Colorado's innovations in voter engagement can be and are being replicated elsewhere.

## Colorado Offers In-Person Voting and Drop-Off Options

Colorado provides convenient options to submit completed ballots, including 24-hour drop-off boxes, and drive-through drop-off locations, or mailing via — as mentioned above — the U.S. Postal Service. Most voters choose to drop off their voted ballots as opposed to mailing them back.

While the vast majority of Colorado voters choose to return their mail ballots (either in person at a designated location or via the U.S. Postal Service), Colorado's reform package also maintains in-person voting locations. These locations, known as Voter Service and Polling Centers (or vote centers), provide comprehensive services to voters. Unlike in other states that use precinct polling places — where voters must go to their designated location if they want to vote — in Colorado, at any location in the county, voters can register to vote, update their voter registration, return their mail ballots, obtain replacement ballots, or vote in person. In addition, Denver now has a Mobile Vote Center that is deployed to provide additional voting access in locations that do not have a traditional vote center. For voters who do not receive their mail ballots, require assistance, or simply prefer to vote in person, the Colorado model maintains an in-person option with its adoption of vote centers.

## To Ensure Eligible Voters Are in the System, Colorado Offers Several Registration Options

Colorado provides ample opportunities before Election Day for eligible voters to register through **pre-registration**<sup>54</sup> (for 16-year-olds), **online voter registration**,<sup>55</sup> and **automatic voter registration**<sup>56</sup> at motor vehicle offices, resulting in a registration rate of 90.05<sup>57</sup> of all eligible voters. That's the highest overall registration rate of any state to date, and that may at least partly explain why Colorado had the second-highest turnout (after Minnesota) for the 2018 midterm election.<sup>58</sup> After all, registration is the gatekeeper to voting. And automatic voter registration, in addition to other registration reforms, has the capacity to boost both registration and turnout rates. In Oregon, for example, 43%<sup>59</sup> of those who were automatically registered turned out to vote — and that was just after the first year of implementation. Once registered, by whatever means, eligible citizens get placed “on the map,” so to speak, and are much likelier to be contacted by political campaigns. Once contacted about an upcoming race — whether by a campaign, election official, or family member, or by the arrival of a ballot in their mailboxes — would-be voters are much likelier to show up and participate.<sup>60</sup>

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54 See Co. Rev. Stat. § 1-2-101(2)(a)(I) (2016).

55 See Co. Rev. Stat. § 1-2-201(3)(b)(III) (2016).

56 See Brennan Center for Justice, “VRM in the States: Colorado,” March 16, 2018, available at <https://www.brennancenter.org/analysis/vrm-states-colorado>.

57 See Election Performance Index for 2016, available at <https://elections.mit.edu/#state-CO>

58 United States Elections Project, “2018 November General Election Turnout Rates,” Dec. 14, 2018, available at <http://www.electproject.org/2018g>

59 Niraj Chokshi, “Automatic Voter Registration a ‘Success’ in Oregon,” *New York Times*, Dec. 2, 2016, available at <https://www.nytimes.com/2016/12/02/us/politics/oregon-voter-registration.html>

60 Tova Wang, “Election Reforms and Voter Turnout among Low Propensity Voting Groups,” April 8, 2015 (on file with Common Cause).

- During a two-week period leading up to the day before the election, and on Election Day itself, eligible voters may both register and vote using **same-day registration**<sup>61</sup> at any number of strategically placed vote centers. Same-day registration is one of the most effective elections reforms in the country; states with it boast turnout that is typically 10 percentage points higher than those without it.<sup>62</sup>
- By utilizing proactive **address updates** through the National Change of Address database,<sup>63</sup> Colorado ensures that election officials have the most accurate address information for voters and that ballots are delivered to the correct address, which reduces the number of undeliverable ballots.
- Additionally, as part of the **Electronic Registration Information Center (ERIC)**, Colorado safely exchanges voter registration information with other participating states to keep its rolls updated without purging valid registrants who still live in-state. Unlike the Interstate Voter Registration Crosscheck program, housed in Kansas, ERIC ensures that states accurately identify matches — lining up, say, the same Roger S. Green who once lived in Alabama and now lives in Connecticut — before initiating removal of their voter registration records affiliated with previous residences and offering registration in the new ones. ERIC does this through requiring states to match several data points — first name, last name, middle initial, date of birth, addresses, last four digits of social security numbers (protected with a cryptographic one-way hash) — rather than just first names, last names, and date of birth.<sup>64</sup> Kansas’ crosscheck program, on the other hand, is unreliable and results in illegal purges from voter registration rolls: researchers at Harvard University and Stanford University found that using the Kansas program “makes it 99 percent more likely that a legitimate voter get[s] purged from the rolls than an illegitimate one.”<sup>65</sup> Plus, data stored through the Interstate Voter Registration Crosscheck program is unencrypted, leaving it vulnerable to potential hacks and misuse. Colorado withdrew from that program in 2019.

*c. Colorado’s model is good for voters and administrators*

The new elections package not only provides voters with additional convenience and options for obtaining and casting ballots but also eases administration for election workers:

- Thanks in large part to implementation of same-day registration, Colorado drastically **reduced its use of provisional ballots** by 98%, from 39,361 in 2010 to a mere 981 in 2014, and only 423 in 2018, the first election following enactment of the comprehensive elections package.<sup>66</sup>
- Colorado’s vote-at-home option makes the entire process more convenient for voters: two-thirds of voters in 2014 chose to drop off their completed ballots in person, and 80% dropped off their ballots within **10 minutes**.<sup>67</sup>
- Voters in Colorado **like the process**: 95% of those who used mail-in ballots were satisfied with the service, as were 96% of those who voted in person.<sup>68</sup> Happier voters is an indication both that the election has been administrated properly and that administrators, in turn, will most likely have a better experience, too.

61 See Co. Rev. Stat. § 1-2-201(3)(b)(V) (2016) and 1-2-217.7 (2016).

62 Demos, “What Is Same Day Registration? Where Is It Available?” March 18, 2014, available at <https://www.demos.org/publication/what-same-day-registration-where-it-available>

63 National Change of Address, <http://www.nationalchangeofaddress.com/>

64 Electronic Registration Information Center, <https://www.ericstates.org/faq>

65 Russ Feingold, “The Crosscheck Voter Database Is a Security Threat,” *The Nation*, Feb. 2, 2018, available at <https://www.thenation.com/article/the-crosscheck-voter-database-is-a-security-threat/>

66 Pew Trusts, “Colorado Voting Reforms: Early Results,” March 22, 2016, available at <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/03/colorado-voting-reforms-early-results>

67 Id.

68 Id.

*d. Colorado's model reduces the likelihood of litigation against the state*

During this past midterm alone, states and counties saw an uptick in litigation both leading up to and after Election Day. Several lawsuits were filed in Florida and Georgia alone for implementation of unfair (and illegal) state laws and poor administrative practices. Instituting strong reforms that help the state comport with federal law and eliminate the possibility of discrimination against voters is a no-brainer.

## **A MODEL WITH ENHANCED OPTIONS LEADS TO BETTER ENGAGEMENT**

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Even before passing the COVAME, Colorado consistently boasted turnout rates higher than those of most states. In the first election following the law's implementation, the state saw additional increases: a boost of 3 percentage points from 51.7% in the 2010 midterm election to 54.7% in 2014. Colorado benefited from another modest turnout rate increase in the following presidential race: 72.1% in 2016, compared with 71.1% in 2012. To be sure, Colorado slipped from being the state with the third highest turnout in 2012 to the one with the fourth highest turnout in 2016, but the 2012 presidential election was unique for several reasons, prompting voters throughout the states to show up for the very first time.

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*There's good reason to believe that the elections package will continue to boost turnout and ease administration. As noted above, academics' ranking of the state as second in the nation for having the lowest cost-of-voting index poises it for improved turnout with each successive election, potentially placing it as first in the country or neck-at-neck with Oregon sometime soon.*

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Implementation of reform in Colorado is still relatively nascent, but there's good reason to believe that the elections package will continue to boost turnout and ease administration. As noted above, academics' ranking of the state as second in the nation for having the lowest cost-of-voting index poises it for improved turnout with each successive election, potentially placing it as first in the country or neck-at-neck with Oregon sometime soon. This rise in rank is possible because, since the publication of the academics' ranking, Colorado has administratively adopted automatic voter registration, a reform that was already in place in Oregon at the time of their findings. Automatic voter registration, as was seen in Oregon during the 2016 election, resulted in the registration of approximately 250,000 new voters, with close to 100,000 of those showing up at the polls.

## **THE COLORADO MODEL: IT CAN WORK ACROSS THE STATES**

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To be sure, election administration is about continuous improvement, and other states are considering the lessons learned in Colorado and adjusting provisions to meet their needs.

In California, the recently piloted Voter's Choice Act (VCA) offers counties an alternative election model similar to COVAME. The VCA is an opt-in election model that allows counties to operate countywide vote centers instead of traditional polling places, with the requirement that all registered voters are mailed a vote-by-mail ballot<sup>69</sup> and drop boxes are installed for voters to drop off ballots. The VCA was piloted in five counties in 2018, and at

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<sup>69</sup> All counties but one, Los Angeles County, are required to send vote-by-mail ballots to all registered voters under the VCA. The bill included a carveout for Los Angeles County, as there are over 4 million registered voters in the county and vote-by-mail participation rates are significantly lower than other counties. Los Angeles County currently is not required to send all vote-by-mail until 2024, four years after initial implementation.

least five additional counties have committed to implementing it during the March 2020 presidential primary election. The following are some suggestions gleaned from the 2018 pilot:

- Engage communities during the transition from polling places to vote centers. Ask for and incorporate community feedback on vote center locations. Community feedback can be facilitated by holding public meetings (which also serve as an opportunity for public education) and through online platforms where members of the public can submit suggestions or comments on vote center locations.
- Some best practices on selecting vote center locations include (a) selecting places that voters are already familiar with, such as libraries and community centers; (b) making sure that the centers are fully accessible (i.e., that they can accommodate wheelchairs, and have on-site ramps and clear paths of travel); and (c) offering pop-up voting when necessary to “bring voting opportunities to people, rather than having [them come to you].”<sup>70</sup> In addition, consider factors that determine the demand for and convenience of vote centers, including (a) public transit routes and traffic patterns, (b) communities with low vote-by-mail usage and low rates of vehicle ownership, and (c) populations of eligible but unregistered voters. These factors are required considerations under the VCA.
- Place signage at old polling places to inform voters about the new election model and where the closest vote center is located.
- Allow curbside drop-off for those using drop boxes, and keep them open for 24-hour periods.<sup>71</sup>
- Consider the volume and flow of voters when designing a vote center. Plan the vote center operation for maximum efficiency based on the size of the jurisdiction and number of voters you expect. Some practices that helped minimize crowds and bottlenecks include (a) designating a line monitor to greet and direct voters upon arrival; (b) placing ballot drop-offs outside or at the entrance of a vote center so vote-by-mail voters dropping off their ballots don’t wait in line; and (c) offering signage inside the vote center, including where to access same-day registration.

As other states adopt these voter-centric models, additional best practices are sure to surface.

## CONCLUSION

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Voter enthusiasm in the 2018 midterms reached new heights – citizens turned out in higher numbers than they had nearly one hundred years ago. That’s an exciting piece of news, but it’s no assurance that we’ll match those levels of participation for the next presidential election, or the next midterm, or subsequent elections. Sustained voter participation in this country requires a concerted effort. Politicians must prove their worth, parties may have to reinvent themselves, GOTV efforts need to build up. And each state’s election system must meet voters’ needs, while being easy to administer. Colorado has helped lead the way, other states are following suit, and still others have work to do. If this country wants to, once again, become a beacon of democracy, it must do all it can to ensure participation. Each state has the power to do that.

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70 Kiyana Asemanfar, “Best Election Practices: Creating Voter-Centric Elections,” Common Cause California, July 2018, p. 17, available at <http://www.commoncause.org/california/wp-content/uploads/sites/29/2018/07/Best-Election-Practices-2018.pdf>

71 Id. at pp. 13-14.





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