

I Do Everything Online. Why Can't I vote?

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For me, it seems like it was no more than two years ago that I was casting my ballot for the 2020 general election. And yet, come November, another ballot will be cast for president.

I grew up in a state with prolific absentee voting¹ and had never been to a poll until I moved to Ohio at twenty-five, where absentee voting is exceedingly rare. The norm for me to be able to vote from the comfort of my own home (sometimes even in bed), be able to research all of the candidates, propositions, and bonds. But not all states promote absentee voting in this way. Fourteen states currently require that voters have an excuse in order to receive an absentee ballot.² Additionally, there are states, such as Ohio, that require a written, rather than online, application be filled out in order to receive an absentee ballot.³

Voting restrictions increased after the 2020 election, leading to increased voting barriers across the U.S. New laws included more stringent identification requirements and restrictions on mail-in voting.⁴ It seems counterintuitive that states are making it more difficult for voters to vote while voter-turnout rates are so low; voter turnout rates do not even crack fifty percent of the voting age population.⁵ The overtness of voter turnout's importance is undeniable. The more of a population that participates in an election, the more accurate the representation the results are of the populous.

Research to increase voter turnout is a popular topic. Maybe voting is too difficult, and that is why turnout is so low? But then how do we make voting easier? Policies such as enacting automatic voting registration, expanding early voting, and increasing polling locations to reduce wait times on Election Day have all been suggested.⁶ But even with these policies, states like California still have lower voter turnout compared to the rest of the states.⁷

One solution that comes to mind is allowing people to vote online. On the surface it makes sense. Some of our most important, sensitive things are done online. In 2022 it was reported that nearly eighty percent of Americans prefer to do their banking in some sort of mobile fashion.⁸ So why is security so big of an issue in voting?

¹ *Historical Vote-By-Mail (Absentee) Ballot Use in California*, CAL. SEC'Y OF STATE, <https://www.sos.ca.gov/elections/historical-absentee> (last visited Mar. 22, 2024) (California has had regularly high absentee voting rates).

² *Availability of No-Excuse Absentee Voting*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/democracy-maps/absentee_requirements (Mar. 18, 2024).

³ *Absentee Voting*, OHIO SEC'Y OF STATE, <https://www.ohiosos.gov/elections/voters/absentee-voting/> (last visited Mar. 22, 2024).

⁴ Julia Harte & Clare Trainor, *Where Voting Has Become More Difficult*, REUTERS (Nov. 1, 2022), <https://www.reuters.com/graphics/USA-ELECTION/VOTING-RESTRICTIONS/zvnbdjkbvl/index.html>.

⁵ *Historical Reported Voting Rates*, U.S. CENSUS BUREAU <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/voting-historical-time-series.html> (last visited Mar. 22, 2024) (accessed "Table A-1. Reporting Voting and Registration by Race, Hispanic Origin, Sex and Age Groups: November 1964 to 2022").

⁶ *Voting Report*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/issues/ensure-every-american-can-vote/voting-reform> (last visited Mar. 22, 2024).

⁷ Rhodes Cook, *Where People Voted in 2022 – and Where They Didn't*, UVA CT'R FOR POL. (Jul. 20, 2023), <https://centerforpolitics.org/crystalball/articles/where-people-voted-in-2022-and-where-they-didnt/>.

⁸ Jenn Underwood & Elizabeth Aldrich, *U.S. Consumer Banking Statistics 2024*, FORBES (Jan. 31, 2024), <https://www.forbes.com/advisor/banking/banking-trends-and-statistics/>.

Voting and banking have different security issues. While both transactions need to be the securest possible, voting also has an anonymity aspect that banking does not. Banking works best when each party is known. This allows for confirmation of the transaction. However, anonymity in ballot casting is a core tenet to democracy.⁹ Anonymity in democratic politics plays a variety of roles: in voting, campaign funding, political discussion, and masked collective action.¹⁰ Un-anonymized, or open, voting allows voters to “make their voices heard without fear of coercion or intimidation.”¹¹ When no one knows who you voted for, there is no fear that you may not get a job for political differences, or there is no concern that access to further elections may be limited. Some states have proposed changing the anonymity of polls. Arizona had a law introduced in its legislature that proposed to publish voters’ ballots and personal information online before election results are finalized.¹²

Despite these apprehensions around online voting, some Americans already vote online.¹³ As of September 2023, thirty-three states and one U.S. territory allow some portion of their voters, either overseas military or voters with disabilities, to vote online.¹⁴ The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986, allows military service members who are overseas to cast online ballots.¹⁵ Some states also allow voters with a disability to vote online.¹⁶ These advances are a combination of states passing their own statutes to allow online voting for voters with disabilities, and those voters also bringing suit. In North Carolina in 2021¹⁷, and Indiana in 2023¹⁸, voters with disabilities filed suit arguing that “traditional absentee or vote-by-mail systems [do not] allow voters with disabilities the same rights to voting as other citizens.”¹⁹

Despite some states letting a portion of their voters cast ballots online, the cybersecurity community is still not convinced the systems are secure.²⁰ In 2022, UC Berkeley Center for Security in Politics Working Group published findings related to the feasibility of implementing

⁹ See Hans Asenbaum, *Anonymity and Democracy: Absence as Presence in the Public Sphere*, 112(39) AM. POL. SCI. REV. 733 (2018).

¹⁰ *Id.* at 462.

¹¹ Mathew Tate-Smith, *Voters Have the Right to a Secret Ballot*, Campaign Legal Ctr. (Mar. 14, 2023), <https://campaignlegal.org/update/voters-have-right-secret-ballot>.

¹² Miles Parks, *Voting Online Is Very Risky. But Hundreds of Thousands of People Are Already Doing It*, NPR (Sept. 8, 2023), <https://www.npr.org/2023/09/07/1192723913/internet-voting-explainer>.

¹³ Tate-Smith, *supra* note 11.

¹⁴ Parks, *supra* note 12.

¹⁵ Mia Logan, *These States Allow Online Voting for Citizens. Does Yours?*, eBallot (May 18, 2020), <https://www.eballot.com/blog/these-states-allow-online-voting-for-their-citizens-is-your-state-one-of-them>.

¹⁶ Parks, *supra* note 12.

¹⁷ *Federal Judge Orders North Carolina to Provide Accessible Absentee Voting*, DISABILITY RIGHTS ADVOCATES (Jun. 17, 2021), <https://dralegal.org/press/federal-judge-orders-north-carolina-to-provide-accessible-absentee-voting/>.

¹⁸ *Settlement Will Allow For Independent Absentee Voting Options for Hoosiers with Print Disabilities*, THE IND.LAW. (Feb. 3, 2023), <https://www.theindianalawyer.com/articles/settlement-will-allow-for-independent-absentee-voting-options-for-hoosiers-with-print-disabilities>.

¹⁹ Parks, *supra* note 12.

²⁰ *Id.*

standards that ensure secure online voting as well as return of ballots.²¹ Cybersecurity is just not at a state where online ballot-casting could be supported.²²

Other apprehensions exist regarding online voting. One, experts believe that introducing increased online voting would sew distrust in a system that many people are already wary of. The 2020 presidential election was fraught with claims of voter fraud from both sides of the aisle. Additionally, there is also concern that if any issues do arise due to online voting, the issues will be big and maybe irreparable. When there are fraudulent bank transfers, it is possible that the money can be recovered, or legal actions can be brought. However, solutions to incorrect electronic ballot collection are not as clear. Finally, the issue of implementation arises. Currently, states are left to their own accord to design elections. Would there need to be a standardized portal that all states adopt or could each state design their own system?

All these issues considered, despite the excitement around the prospect of being able to vote on our phones, there are likely to be a few more election cycles before it becomes a reality.

²¹ See R. Michael Alvarez et al., Working Group Statement on Developing Standards for Internet Ballot Return, Univ. of Cal., Berkeley Ctr. for Sec. in Pol. (Dec. 2022), <https://csp.berkeley.edu/wp-content/uploads/2022/12/Working-Group-Statement-on-Internet-Ballot-Return.pdf>.

²² *Id.*