

Ballot Collection

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Ballot collection is the practice of allowing trusted third-party individuals to gather and submit completed ballots on another voter’s behalf. Ballot collection allows voters to overcome the challenges they may face in returning ballots in person due to disability or other reason that makes it difficult for them to return the ballot through the mail or to an election office. The [pandemic](#) has heightened the importance of ballot collection as a record number of people will vote absentee and many will be unable or unwilling to leave their house to return their ballots on their own.

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Introduction

In an election where a record number of voters will be voting by absentee ballot, every aspect of the mail balloting process has garnered renewed attention and importance. The stereotypical image of mail balloting involves voters depositing their own ballots into mailboxes or delivering them to polling places or election offices. However, many voters, in this election as in previous ones, are giving their ballots to third parties who deliver them on their behalf. The pandemic has increased the salience and importance of the rules concerning third-party ballot collection, given that many people are unable or unwilling to leave their houses to deposit their ballots themselves.

This report examines the different state statutory requirements concerning ballot collection or what is sometimes pejoratively called, “ballot harvesting.” The topic has led to a polarized debate familiar to the larger fights over voter access and election integrity, as partisans argue about whether breaking the chain of custody of ballot delivery risks election fraud. This policy debate has also spilled over into the courtroom as several states are currently experiencing litigation on the topic of ballot collection.

State rules on ballot collection

While specific ballot collection measures vary significantly by state, those measures tend to revolve around two questions: (1) Who can assist voters by collecting and returning their ballots; and (2) How many voters can a third-party help via ballot collection. We also note additional miscellaneous restrictions some states have placed on ballot collection. It is important to emphasize, however, that each state’s regulations often include exclusions or exceptions to the general regulations discussed below. For in-depth state-specific regulations, please refer to this [table](#).

A. Who can assist with ballot collection?

Ballot collection rules vary by state. Four states (Alabama, Nevada, Oklahoma, and Pennsylvania) ban ballot collection by third parties, allowing no one but voters, themselves, to drop off their ballot. Eleven states (Alaska, Arizona, Georgia, Massachusetts, Michigan, Missouri, New Hampshire, New Mexico, North Carolina, Ohio, and Texas) allow a family member, friend, caregiver, or member of the voter’s household—some allow all four—to drop off mail-in ballots on behalf of the voter.

Seven states (California, Colorado, Connecticut, Indiana, Maine, Oregon, and Tennessee) permit additional third-parties, outside of immediate family members or caregivers, to assist with ballot collection. For instance, [Indiana](#) permits a designated attorney to collect a voter's ballot, and [Connecticut](#) permits police officers to collect ballots. [California](#) goes even further and lets voters "designate another person to return the ballot." In other words, California does not require a ballot collector to have any specific relationship to the voter.

Some states impose additional restrictions on who can assist with ballot collection. For instance, two states (Florida and Virginia) and Washington, D.C. only allow third-party ballot collection in emergency or extenuating circumstances, such as disability, illness, or accident. It is unclear, however, if having concerns about contracting the coronavirus is a valid excuse for third-party ballot collection in these two states. Three states (California, North Dakota, and Maine) explicitly prohibit compensation for delivering a ballot on behalf of a voter.

Finally, thirteen states (Delaware, Idaho, Hawaii, Kentucky, Mississippi, New York, Rhode Island, Utah, Vermont, Washington, Wisconsin, Wyoming, and West Virginia) do not explicitly specify. In other words, third-party ballot collection is neither explicitly prohibited nor explicitly protected by state regulations.

B. Limits on the number of ballots collected

In addition to regulations concerning who can deliver a ballot on a voter's behalf, many states restrict how many ballots an individual may deliver, notarize, or authorize on behalf of a voter. Eleven states (Arkansas, Colorado, Georgia, Louisiana, Maine, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, and West Virginia) explicitly limit the total number of ballots an individual may deliver, notarize, or authorize on behalf of voters. Limits on third-party collection of voted ballots range from no more than one ballot, as in [Louisiana](#), to no more than ten ballots, as in [Colorado](#) and [Georgia](#). Limits on notarization range from three ballots, as in [New Jersey](#), to 20 ballots, as in [Oklahoma](#). However, the remaining states do not specify or restrict the number of ballots a third party may deliver, notarize, or authorize on behalf of voters.

C. Ballot collection measures to address fraud

Finally, some states impose additional restrictions on ballot collection to reduce the likelihood of voting fraud, such as the type that occurs when a person collects ballots but then fails to deliver them. For instance, in [Oregon](#), third-party ballot collection is prohibited within 100 feet of any building that is officially designated for ballot drop-off. Third-party ballot collectors are also prohibited from establishing a location to collect voted ballots unless the third-party ballot collectors display a sign

stating: “NOT AN OFFICIAL BALLOT DROP SITE.” These measures are designed to prevent voters from mistakenly believing that they are dropping their ballots off at an official voting location.

Some states also adopt measures to ensure that ballot collectors do not fraudulently obtain or tamper with voters’ ballots. For example, thirteen states (Arkansas, Illinois, Iowa, Kansas, Louisiana, Maryland, Minnesota, Montana, Nebraska, New Jersey, North Dakota, South Carolina, and South Dakota) require authorization—often by voter signature—to collect and drop ballots off on behalf of the voter. [South Dakota](#) takes a different approach, whereby ballot collectors must directly notify the election supervisor of each precinct of each voter from whom they collect a ballot. [Nebraska](#) prohibits a candidate or anyone serving on a candidate’s campaign committee from serving as a ballot collector, unless they are a member of the voter’s family. This ostensibly reduces the likelihood that a ballot collector would be incentivized to tamper with the ballot.

Some states attach crimes to aspects of ballot collection in order to deter voter fraud. For instance, in four states (Arizona, North Carolina, Oklahoma, and Texas), an unauthorized third-party who delivers a ballot on behalf of a voter commits a felony. [Texas](#) explicitly makes it a felony to collect ballots “with intent to defraud the voter or the election authority.”

The debate over ballot collection or “harvesting”

As with so many issues concerning mail balloting, the different policies surrounding collection and return of mail ballots have become topics of polarized debate. Those who see third party assistance as helpful in granting greater accessibility to voters often refer to the practice as “community ballot collection.” Those opposed to the practice call it “ballot harvesting.” As the parties’ position in litigation attests, Democrats this cycle have generally been in favor of the practice, while Republicans have been against it.

Supporters maintain that the practice is critical for voters who have difficulty returning their ballots in person or through the mail. Particularly for voters in [rural areas](#) or [Native Americans living on reservations](#), the nearest USPS mailbox or election-related drop box may be far away from their residence. For those who lack cars and do not have regular postal service to their residence, having a third party collect and return their ballots may be critical in getting them to the election official in time to be counted.

[Opponents of ballot collection](#) contend that it presents a risk of voter fraud or intimidation. Once the ballot leaves the voter’s hand the voter has no control over what the third party might do with the ballot—revote it, tamper with it, destroy it, or fail to deliver it on time. Critics point, for example, to a 2018 [high-profile ballot collection](#) violation in North Carolina’s Ninth Congressional District,

where a campaign consultant [improperly handled](#) absentee ballots by having people other than the voters vote the ballots or sign as witnesses for voters they never met. In [Alabama](#), during the 2016 district election, multiple individuals were also found guilty of tampering with absentee ballots. Namely, they falsified absentee ballots and failed to serve as witnesses for absentee ballots that they turned in on behalf of voters. More recently, at the end of September, ballot collection critics [cited](#) a video of a man driving around Minneapolis claiming that he had hundreds of absentee ballots and that he was paid by Representative Ilhan Omar to harvest those ballots. Those claims are currently being investigated. With respect to voter intimidation, opponents of ballot collection [cite instances](#) where third-party ballot collectors have “strong-armed” voters, pressuring them to complete and hand over their absentee ballots.

The controversy over ballot collection recently flared up in California. On October 12, the Republican Party [set up](#) unofficial drop boxes, labeled as “secure ballot dropoff location[s]” and “approved and bought by the GOP,” across the state. The California Republican Party argues that these drop boxes are the same as in-person ballot collection and ultimately comply with California’s permissive ballot collection law, which permits anyone to collect and submit another voter’s ballot. Meanwhile, opponents argue that these drop boxes constitute improper and fraudulent solicitation of votes. The California Secretary of State, Alex Padilla, sent a cease-and-desist letter to the California Republican Party and stated that he would pursue legal action if the Republican Party does not comply by October 15.

Ballot collection in the courts

Ballot collection has not only been a contentious talking point, but it also has led to litigation over the legality and constitutionality of various ballot collection statutes. The cases have come from different parties in different states, with the [Republican](#) and [Democratic](#) Parties often intervening. They ground their claims on a variety of state and federal statutes, and as such, we should not be surprised that they have not reached consistent outcomes.

A. Challenges to restrictions on ballot collection

Plaintiffs challenging ballot collection restrictions have raised the following claims:

- **Plaintiffs claim that ballot collection restrictions violate the right of free speech and association.** Plaintiffs raise claims under both the First Amendment and various state constitutional provisions. In particular, they argue that collecting ballots, like urging citizens to register and distributing voter registration forms, constitutes protected political speech.

- Defendants respond that there is nothing inherently expressive or communicative about receiving a voter's completed ballot and delivering it to the proper location.
- **Plaintiffs claim that ballot collection restrictions violate equal protection under the Fourteenth Amendment.** Plaintiffs argue that these restrictions deny equal protection because they disparately treat and impact voters of different social, racial, and economic backgrounds.
 - Defendants respond that ballot collection restrictions must be evaluated under a “rational basis” review standard, whereby the restrictions should only be struck down as a violation of equal protection if they are not rationally related to a legitimate governmental purpose. Here, defendants argue that ballot collection restrictions *are* rationally related to the government’s interest in preserving the integrity of elections and preventing voter fraud.
- **Plaintiffs claim that ballot collection restrictions violate various federal statutes.** For instance, plaintiffs argue that ballot collection prohibitions violate Title II of the Americans with Disabilities Act and § 504 of the Rehabilitation Act because they discriminate against and fail to provide reasonable accommodations to persons with disabilities. Litigants also argue that restrictions violate the Voting Rights Act because they fail to provide sufficient voting assistance.
 - Defendants argue that ballot collection prohibitions do not unduly burden the right to vote under the meaning of federal statutes because these prohibitions are, at most, minimally burdensome. Defendants emphasize that alternative ways to submit ballots, including vote-by-mail, ballot drop-boxes, and more lenient ballot collection measures, already make voting widely accessible.

B. Challenges to permissive ballot collection rules

Plaintiffs challenging permissive ballot collection laws have raised the following claims:

- **Plaintiffs claim that permissive ballot collection laws violate the fundamental right to vote.** In particular, plaintiffs raise these claims under the First and Fourteenth Amendments and under various state constitutional provisions. Plaintiffs argue that permitting ballot collection will enable voter-dilution disenfranchisement and direct disenfranchisement via “ballot harvesting.”

- Because plaintiffs are often seeking preliminary injunctions against these permissive ballot collection laws, defendants emphasize that plaintiffs need to show a substantial likelihood of irreparable harm if the preliminary injunction is not granted. Defendants argue that plaintiffs have no basis for concluding that any alleged fraud or irreparable harm is likely to occur and that, therefore, plaintiffs fail to meet their burden of proof for the preliminary injunction.
- **Plaintiffs claim that permissive ballot collection laws violate equal protection under the Fourteenth Amendment.** In states that permit ballot collection to specific cohorts of voters such as senior citizens, plaintiffs argue that the state must grant the right to vote on equal terms, cannot value one person’s vote over that of another, and therefore does not have the constitutional power to enact its ballot collection laws.
 - Defendants respond that these permissive ballot collection laws should receive “rational basis” review. Defendants argue that state legislatures have a rational basis to adopt these measures as a means of enfranchising voters who might have justifiable health concerns if they vote at in-person polling locations. They argue that state legislatures have the right to strike the appropriate balance between election integrity concerns, public health concerns, and voter access concerns.

Court dispositions

A. Courts that have ruled in favor of ballot collection

- [*Cook County Republican Party v. Pritzker*](#) - An Illinois federal court upheld a ballot collection law, finding that the law would not lead to voter fraud as plaintiffs claimed it would.
- [*Driscoll v. Stapleton*](#) - The Montana Supreme Court in late September ruled in favor of ballot collection proponents, granting a preliminary injunction against Montana’s ballot collection restrictions. The court found no evidence “of voter fraud or ballot coercion, generally or as related to ballot-collection efforts.”
- [*Western Native Voice v. Stapleton*](#) - A Montana state court ruled in favor of various Native American tribes seeking a permanent injunction against a state law that prohibits ballot collection if the ballot collector does not fall into one of six categories of exemption and that prohibits a ballot collector from collecting more than six ballots. The court held that the law unduly burdened the Native American tribes.

- [*Michigan Alliance for Retired Americans v. Benson*](#) - A Michigan state court ruled in favor of plaintiffs seeking a preliminary injunction on a law restricting ballot collection to specific third parties like family members and clerks. The court observed that “in ordinary times, the [ballot collection prohibition] likely poses no constitutional issue. These are not, however, ordinary times.” For the upcoming election, Michigan voters can now select any individual they choose to render assistance in returning their ballots.
- [*Democratic Congressional Campaign Committee v. Simon*](#) - A Minnesota state court granted a preliminary injunction against a state law restricting third-party ballot collectors to three ballots each. The court found that the law would likely impose an unconstitutional burden on the right to vote and the right to free speech.
- [*Election Integrity Project of Nevada v. State of Nevada*](#) - Plaintiffs, opponents of ballot collection, sought a preliminary injunction against a new Nevada law that repealed a criminal prohibition against “ballot harvesting” and replaced it with new provisions that “fail to adequately deter voter intimidation.” The court denied the preliminary injunction, finding that the plaintiffs had only put forward “unfounded speculations regarding voter fraud.”

B. Courts that have ruled against ballot collection

- [*New Georgia Project v. Raffensperger*](#) - A Georgia federal district court denied relief to plaintiffs seeking a preliminary injunction on a state law restricting ballot collection to the voter’s family members. The court found that Georgia’s interest in protecting election integrity outweighed the plaintiffs’ burden.
- [*Crossey v. Boockvar*](#) - The Pennsylvania Supreme Court held that “it has long been the law of this Commonwealth . . . that third-person delivery of absentee ballots is not permitted.”
- [*Democratic Congressional Campaign Committee v. Ziriak*](#) - An Oklahoma federal court found that the state’s ballot assistance law, which makes it a felony offense to assist more than 10 voters in returning sealed absentee ballots, constitutes “no more than a minimal burden on a voter’s right to vote” and do not “prohibit or criminalize the plaintiffs’ speech, voter education efforts or publications, or efforts to get out their members’ votes.”
- [*Middleton v. Andino*](#) - A South Carolina federal court upheld a law restricting ballot collection to the voter’s immediate family, holding that the law is “rationally related to the government’s interest in preserving the integrity of elections and preventing voter fraud.”

- [*American Federation of Teachers v. Gardner*](#) - A New Hampshire state court denied relief to plaintiffs seeking a preliminary injunction on the state’s ballot collection measure, which restricts ballot collection to family members and caretakers. The court held that “the practice of collecting and delivering absentee ballots is not expressive conduct implicating the First Amendment.”
- [*Alliance for Retired Americans v. Dunlap*](#) - A Maine state court denied the plaintiff’s request for a preliminary injunction against Maine’s ban on compensation for ballot collection and Maine’s requirement that some voters have witnesses if they wish to take advantage of ballot collection. In upholding these restrictions on ballot collection, the court found that voters have “numerous alternatives available” to returning their ballots.
- [*Nielsen v. DeSantis*](#) - Florida voting groups sued the governor, challenging the prohibition on the use of paid organizers to assist voters with ballot collection. The Florida federal court denied the plaintiffs’ preliminary injunction because they would not suffer irreparable harm before the impending trial. On the eve before trial, the plaintiffs [dropped the lawsuit](#) in exchange for assurances that Florida will ensure that voters understand mail-in-voting options.

C. Pending decisions

- [*Arizona Republican Party v. Democratic National Committee*](#) - Individual voters in Arizona, along with the DNC, sued the Arizona secretary of state challenging Arizona state law H.B. 2023, which imposed criminal penalties for assisting with ballot collection. A federal judge [upheld](#) the law after a 2017 trial, saying that the law was, at most, minimally burdensome. In January, a divided Ninth Circuit, sitting *en banc* in [*Democratic National Committee v. Hobbs*](#), reversed, ruling that the law was enacted with discriminatory intent, impacting thousands of Native American, Hispanic, and Black voters who had relied on third-party collection. The Arizona Republican Party filed a petition for certiorari to the U.S. Supreme Court on April 27, and the Supreme Court [granted certiorari](#) on October 2 for a [consolidated group](#) of Arizona voting rights cases.
- [*American Women v. State of Missouri*](#) - At the end of August, plaintiffs filed a [complaint](#) in Missouri state court alleging that the state’s “Ballot Collection Ban,” which entirely prohibits individuals from helping voters return their completed ballots, is unconstitutional.
- [*Republican National Committee v. Secretary of State*](#) - At the end of September, plaintiffs sued the Secretary of State in Michigan state court, seeking declaratory relief that Michigan’s ballot collection restrictions are valid and enforceable. The [complaint](#) acknowledges that the law was enjoined by the court in *Michigan Alliance for Retired Americans v. Benson* (described above),

but argues that a declaration of enforceability is needed to prevent fraud, ballot tampering, and voter intimidation.

Conclusion

The debate over access and integrity in mail balloting has often focused on the practices relating to third-party ballot collection. The political parties have fixed their positions on the relevant issues, both in their litigation posture and in their public criticism or support for the practice. As we approach Election Day, we should expect concerns surrounding the chain of custody of mail ballots to be a battleground for criticism of the mail balloting process. Court resolution of pre-election litigation to clarify the applicable rules will be helpful in limiting the impact such disagreements might have once the ballots have been cast.