CHAPTER VIII

ABSENT VOTING; MAIL VOTING; THE CANVASS; RECOUNTS

Absent Voting.[1] Voting was provided for the soldiers engaged in the Civil War, and this precedent was followed during the Spanish-American War and the World War, but with these war time provisions we shall not be concerned. The first state law authorizing absent voting for the civilian population was enacted in 1896 by Vermont, which provided that voters who were away from their home precinct on the day of the state election could, by presenting a certificate to show that they were qualified, vote at any polling place within the state. Such voters were confined to the state offices in casting their ballots. Kansas followed suit in 1901, and extended the scope of the law ten years later. In 1913 five states enacted absent voting laws, and within a few years others followed in rapid succession. At present only three states—Connecticut, Indiana, and Kentucky—have no absent voting law of any kind. The remaining forty-five states provide absent voting, but the classes of voters who may cast an absent ballot, as well as the procedure which must be followed, vary greatly from state to state. New Jersey repealed its absent voting law for civilians in 1926, after serious complaints of frauds, and Indiana repealed its law in 1927 upon the same grounds. The absent voting law of Kentucky was held to be unconstitutional by the supreme court of the state,[2] and the Pennsylvania law

[1] A systematic and thorough digest of absent voting laws is given by Miss Helen Rocca, Brief digest of laws relating to absentee voting and registration, published by the National League of Women Voters, Washington, D.C., 1928. See also Edward M. Sait, American parties and elections, pp. 552-53; Robert C. Brooks, Political parties and electoral problems, pp. 413-15, and P. Orman Ray, Introduction to political parties and practical politics (third edition), pp. 280-86. The history of the enactment of absent voting laws may be traced in Professor Ray's articles in the *American Political Science Review*, Vol. VIII, pp. 442-45 (1914); Vol. XII, pp. 251-61 (1918); and Vol. XX, pp. 347-49 (1926).

[2] Clark v. Nash, 192 Ky. 594; 234 S.W. 1.

which applied to civilians was similarly held unconstitutional by the supreme court of that state.[3] The Kentucky supreme court found that the absent voting law passed in 1918 was contrary to Section 147 of the state constitution, which declared that "all elections by the people shall be by secret official ballot, furnished by the public authorities to the voters *at the polls*, and marked by each voter in private *at the polls, and then and there deposited.*" Obviously, such a constitutional provision is impossible to reconcile with an absent voting law. The Pennsylvania decision was somewhat more strained. The law was held to be contrary to the state constitutional provision which required the voter to reside in the election district where he offered to vote, and also contrary to the specific provision in the constitution for absent voting for persons in the military service, which was held to exclude persons who were not in the military service under the rule of *inclusion unius est exclusio alterius.* In other states, however, there has been little or no question in regard to the constitutionality of absent voting.

Scope of Legislation. The scope of absent voting laws varies widely in different states. In four states—Maryland, New Jersey, Pennsylvania, and Rhode Island—the law applies only to those who are in the military service during time of war. In a number of other states there are special provisions dealing with voters absent on military duty in time of war. At the other extreme is the majority of the states—twenty-five in number[4]—which extend the privilege to all absentees "unavoidably" or "necessarily" absent, without limiting it as

[3] Lancaster City's Fifth Ward Election, 281 Pa. St. Rep. 131-38 (1925).

[4] The following list has been taken from Rocca, p. 7:

Arizona	Montana	South Dakota
Arkansas	Nebraska	Texas
Florida	Nevada	Utah
Idaho	New Hampshire	Vermont
Maine	New Mexico	Washington
Massachusetts	North Carolina	West Virginia
Minnesota	North Dakota	Wisconsin
Mississippi	Ohio	Wyoming
	Oklahoma	

do some other states to commercial travelers, persons whose occupations require them to be away from home, or other particular classes or conditions. Fourteen states go further and permit persons who are disabled or infirm to cast their ballot without appearing at the polls.[5] Michigan and Virginia extend the privilege to only specified classes, but enumerate such broad classes, as for example, the ninth reason for absence in the Michigan law—"any person necessarily absent while engaged in the pursuit of lawful business *or recreation*"[6] —that no person need be denied the privilege of casting an absent ballot. New York limits the privilege to persons absent because of their duties, occupation, or business, and (except for specified classes) requires the voter to give "a brief description of the duties, occupation or business which requires such absence . . (and) . . the special circumstances by which such absence is required."[7]

The simplest and the best provision defining the scope of an absent voting law is that all persons absent from their home precinct on the day of election, or who expect to be absent, may vote under it. It is unwise to attempt to restrict absent voting to particular favored classes, or occupational groups, or to persons engaged in a business which requires their absence. If there is any point in enacting an absent voting law it is to make it possible for persons who are absent from their homes on the day of election to cast a ballot without the bother and expense of returning. The cause of the absence is immaterial to the state. The voter who is away for pleasure, education, health, or travel is as much entitled to use this method of voting as the voter whose business necessitates his absence. If it is desirable that citizens exercise their

[5] Rocca, p. 7, lists the following:

Arizona	Michigan	South Dakota
California	Nevada	Vermont
Delaware	New Hampshire	Virginia
Idaho	North Carolina	Wisconsin
Iowa	South Carolina	

[6] Election Laws, Sec. 461.

[7] Election Laws, Sec. 117.

rights of the franchise, absent voting should be extended to all alike. Furthermore, provisions in the election laws restricting the use of absent voting laws to persons of particular classes or persons absent upon business are likely to be disregarded except by the conscientious and highly scrupulous voters. In any case, they are practically impossible to administer. The New York law which, in effect, requires the voter to submit a petition for an absent voter's ballot is indefensible, since no satisfactory scrutiny and judgment of such reasons, in the nature of things, can be provided by the election authorities.

Fourteen states extend the privilege of absent voting to persons who are unable to attend the polls because of illness or infirmity. It would appear that there is no sound reason for not so extending the absent voting laws, except, perhaps, the danger of voting frauds. The danger of frauds from this class of voters is surely no greater than from absentees. Voters who are unable to go to the polls because of illness or infirmity, and who desire to exercise the right of franchise, should be afforded an opportunity to vote. If the absent voting law does not apply to such voters, it is not uncommon for the precinct election officers, without legal authority, to make a trip to their bedsides to poll their votes. The better procedure is to take care of such voters under the absent voting provisions.

The absent voting laws ordinarily apply to all elections held within the state—general, special, primary, state, and local—but in a few states the statutes limit their application to certain elections. In Massachusetts, for example, the law applies only to biennial state elections and does not apply to municipal or other local elections; while in New Hampshire the act applies only to the election of presidential electors. The South Carolina law applies only to primary elections, and four states—Delaware, Kansas, New York, and Utah—limit absent voting to the general elections. There would seem to be no rhyme or reason for limiting the application of absent voting provisions to particular elections.

Procedure. There are many variations in the provisions governing the steps which the voter must take to cast an absent ballot. In all except a few states, to secure an official ballot of his home district, an elector must make application to the local officer in charge of elections in the city or county of his residence prior to the election. In view of the length of the ballot and the importance attached to official ballots as a means of preventing frauds and securing secrecy, this requirement is easily understood. But, on the other hand, a few states—Kansas, Missouri, Florida, Oklahoma, and Oregon—provide that the voter absent from his precinct may appear at any polling place within the state and, upon presenting a certificate of registration or taking a required oath of his qualifications, be permitted to vote. These two methods require detailed analysis and comment.

The first method requires the voter to anticipate his absence and to take the necessary steps to secure a ballot prior to the day of election; the second permits him to cast his ballot at any polling place on the day of the election. Inasmuch as the second method is the less important of the two and is used in only a few states, it may be more convenient to describe it in detail before taking up the first method.

Of the five states which permit the voter to cast his ballot in the precinct where he happens to be on the day of the election, two states—Oregon and Florida—also provide that he may apply to the election officer of his home county or city ahead of time to secure an official ballot of his home precinct. These two states, therefore, use both methods. Missouri and Kansas also provide that any person in the federal service or the national militia may write to his home election office to secure an official ballot, to be voted and returned similarly. It will be seen that only the state of Oklahoma uses the "voting in another precinct" method exclusively.

In Oregon, Florida, and Oklahoma the voter who appears at the polling place of a precinct other than his residence and applies to cast an absent ballot must present a certificate of his

registration.[8] In Oregon and Florida he must apply to his home registrar prior to the election in order to secure this certificate, but in Oklahoma such certificate is a part of the registration system, and all registered voters are provided with them. In Florida, Missouri, Oklahoma, and Oregon the voter may not cast an absent voting ballot at any precinct within the county of his residence. This limitation is designed to compel the absent voter who is only a short distance from his home polling place to return to vote.

The absent voter is required also to subscribe to an affidavit covering his qualifications to vote and the fact of his absence, giving his name and address. He is given an official ballot of the precinct where he applies to vote, but is permitted to write in the names of local candidates of his own county or other local districts, whose names do not appear upon the official ballot which he receives. The ballot and the affidavit are placed in a suitable envelope, sealed, and returned to the election officer of the city or county to be forwarded to the canvassing board of the home county or city of the voter, where the ballot is counted and added to the returns of his home precinct when the official canvass is made.

This method of absent voting has the merit of permitting the voter to vote wherever he is on the day of election, provided he is within the state. In states where the voter is required to secure an official ballot from his home precinct and return it before the election, the number of voters who avail themselves of absent voting is disappointingly small. If the voter could simply go to the nearest polling place on the day of the election and then and there cast his ballot, without any other formalities, doubtless many more would avail themselves of the privilege. But, it should be noted, in Oregon and Florida the voter must present a certificate of registration in order to vote in another precinct than that of his residence. This, to be sure, tends to limit the number of persons who use

[8] Oregon Election Laws, Sec. 4069; Florida Election Laws, Sec. 430; Oklahoma, State Code, Sec. 6190.

the system. Otherwise this method of absent voting involves a minimum of bother and red tape and a nominal expense.

On the other hand, certain valid objections may be made to this system. In many elections the ballot is so long that the voter casting a ballot of another county will be unable to remember the names of the candidates (or perhaps will not even know their names) for the local officers in his own county, and consequently will be unable to vote for them. The requirement that he write in the names of the local candidates for whom he desires to vote may serve to identify his ballot. Another criticism is that it does not apply to voters who are beyond the state lines. Perhaps there are as many absent voters beyond the boundaries of the state as within the state. Another objection is that this method places more clerical work upon the precinct election officers, who, in important elections, may not be able to perform adequately the work which they already have to do.

We now turn to the other and usual procedure of absent voting—that in which the voter applies for and secures a copy of the official ballot of his home precinct before the day of the election. Here we find two important variations: first, the voter who anticipates that he will be absent on the day of election is permitted to apply to the local officer in charge of elections for an absent ballot prior to the day of the election, and then and there to mark it and deliver it to the election officer; and second, the voter who is away may mail a written application to the local election officer for an official ballot and the necessary instructions and forms. Both procedures are useful and should be authorized by law. The voter who is present at his legal residence within a few days prior to the election may find it much more convenient to apply in person for an absent ballot, mark it in the presence of the election officer, and complete the whole operation at one time, than to have the ballot mailed to him. On the other hand, if provision is not made for the voter to apply by mail for an absent vot-

er's ballot, many voters will be unable to use the privilege of absent voting without making a trip to their homes. The voter may find himself several hundred miles from his legal residence shortly before the election, and if he is required by state law to make an application in person before the local election officer of his home, the procedure will be of no avail. Obviously, if it is desired to extend the absent voting privilege to a maximum number of voters, they should be permitted to secure an absent ballot either by applying in person before they go away, or by sending in a written application.

The application for an absent voter's ballot is customarily made to the local officer in charge of elections—the city or county clerk, auditor, board of elections, or other office. In some states application is made to the county clerk, auditor, or other county officer in charge of printing the ballots for county, state, or national elections, and to the city clerk for municipal elections. In large cities or other communities where a board of elections handles all elections, applications are made to that office. The better procedure is for all applications for absent ballots to be made to the office in charge of registration of voters, for such office can readily determine whether the applicant is registered, and, in states where the registration record contains the signature of the voters, the signature of the applicant may be compared with that on the registration record. This is a desirable check. For the sake of simplicity it is desirable to have one office take care of applications for absent voter's ballots for all elections.

The voter who desires to secure an absent voter's ballot is required in practically every state to submit an affidavit, signed and sworn to before an officer authorized to administer oaths, or executed in person before the local election office. He is required to secure an affidavit form, which ordinarily necessitates a letter to the election officer of his home city or county. When the voter receives the affidavit form he is required to subscribe to it before an officer authorized to administer oaths and to forward it to his home election office, in order to

receive a ballot and the necessary instructions and forms. The voter then must appear again before a notary and in his presence, but in such manner that the secrecy of the ballot is preserved, mark the ballot and subscribe to a second affidavit covering his absence and his qualifications as a voter. Then he must forward this by mail (in some states by registered mail) to his home election office, and if it reaches there in time it will be counted. This ordinarily requires five letters; three by the voter and two by the election office. It is no wonder that few voters avail themselves of the privilege of casting an absent voter's ballot.

In many states the law requires the absent voter's ballot to reach the election office several days prior to the election, though in other states it will be counted if it reaches the election office by noon of the day of the election, and in California, where the absent voters' ballots are counted by the canvassing board, the ballot will be counted if it is mailed on the day of the election and is received by the election office within fifteen days thereafter. The ballots are usually returned to the election office, but in Minnesota they are mailed directly to the precinct officers. The city clerk notifies the postmaster of the location of the polling places, and the postmaster holds the ballots until the day of the election and delivers them directly to each precinct. The absent voter in Minnesota is required to pay a fee of thirty-five cents for the privilege, and the county auditor sends him an envelope with postage attached, including special delivery postage, so that the ballot may be delivered by special messenger to the polling place.[9] In a few states the absent voters' ballots are required to be sent by registered mail, but this is not ordinarily the case.

The absent voters' ballots may be counted either by the precinct officers or by the canvassing board. If counted by the precinct officers, the ballots must be received in time to be turned over to them, or to be delivered to them on the day of the election. One advantage of this method is that the bal-

[9] Election Laws, Secs. 501, 505.

lots thus received are deposited in the ballot box with the other ballots and thus lose their identity, preserving the secrecy of the ballot. Another advantage is that they are passed upon by the precinct election officers, who may from personal knowledge judge whether the voter is qualified to cast his ballot, and thereby detect and refuse to cast the ballots of spurious voters. A third advantage is that the election is over when the polls close, and all of the votes are counted. The principal disadvantage of this method is that some voters may be unable to mail their ballots early enough to arrive in time to be delivered to the precinct officers. Where voting machines are used, many of the arguments for counting by the precinct officers do not apply. The absent voters' ballots are cast and counted separately, ordinarily, and added to the returns taken from the counters on the machine. This procedure is usually prescribed by law, though in some precincts the officers "ring up" the absent voters' ballots upon the machine. When the ballot of an absent voter is cast in the precinct, his name is announced and his vote may be challenged just as that of voters who appear at the polls. In the case of a challenge, the election officers interrogate the challenger and decide the case, or, if authorized by state law, they may place the ballot aside to be passed upon by the election office after investigation. Obviously the precinct election officers, without the presence of the voter himself to defend his right, cannot pass upon challenges at all satisfactorily. It is quite unusual for the vote of an absent voter to be challenged.

When the small number of absent ballots cast is taken into account, it would appear to be the better procedure to have these few ballots counted by a special counting board under the jurisdiction of the canvassing board. This permits absent voters to vote as late as the day of election. If the signature of the absent voter is compared with that on his registration, this will serve to identify him and prevent frauds. If there is reason to fear frauds through the absent voting provisions, a list of persons who have applied for an absent voter's ballot

within each precinct may be sent to the precinct officers, and posted at the polls, so that challenges may be made. The challenges should be investigated before the absent voters' ballots are counted. The form used for ordinary challenges could be employed here.[10]

The extent of the use of absent voting is decidedly disappointing to its proponents. Although statistics are limited, owing to the failure of most election offices to keep a record of the number of absent votes cast, such as are available indicate that absent ballots constitute usually less than one-half of one per cent of the total vote cast. The number, indeed, is so small that many election officers question the wisdom of its continuance. In a number of states (for example, Georgia, Illinois, Washington, and others) absent voting is very limited in application or the procedure is difficult to comply with and the number using this method of voting is almost negligible. Such statistics as the writer has been able to gather upon the use of absent voting are given in a series of tables below. Estimates have been secured in many other cities, but these appear, in comparison with actual statistics, to be uniformly high, and consequently are not reproduced here. The record of New York City for the period, 1921-30 is here presented:[11]

Absent Voting in New York City

Year	Total vote general election	Absent vote	Per cent of total vote
1921	1,262,340	188	.015
1922	1,179,842	329	.028
1923	1,105,016	126	.011
1924	1,500,006	773	.051
1925	1,234,119	237	.019
1926	1,276,916	384	.030
1927	1,152,239	141	.012
1928	1,973,752	1,927	.097
1929	1,464,689	258	.018
1930	1,443,997	284	.019
Totals	13,592,916	4,647	.034

[10] See above, Chap. VI.
[11] Taken from the annual reports of the Board of Elections.

It is almost incredible that so few voters in New York take advantage of the absent voting provisions. The statistics show that there is a very appreciable increase in the percentage of absent ballots cast in presidential years, but even in the banner year of 1928 there was less than one-tenth of one per cent of the total vote cast through absent voting. During the ten-year period only 4647 absent votes were cast, or an average of 464 annually. This number, in proportion to the total vote cast, which averaged 1,359,291 annually, is surprisingly small. For every vote cast by an absentee, 2921 votes were cast in the regular manner. Accurate statistics were not procurable for other cities in New York State. The estimates for Onondaga county (of which Syracuse is the county seat) for 1928 general election was two hundred, out of a total vote cast of 108,678, or less than two-tenths of one per cent of the total vote.

The failure of the citizens of New York to take advantage of the absent voting provisions may be explained in part by the limiting features in the state law. Voters whose duty, business, or occupation requires them to be absent from their home county may cast an absent ballot, but they are required to make an affidavit of application, not earlier than thirty or later than seventeen days before the election, and to state upon the application the reason for their absence. The requirement of filing an application for the ballot at least seventeen days before the election is unusually rigorous. The voter who is absent may have to write to the election office to secure the affidavit blank prior to that time, which consumes time. The practical effect is that the person who desires to cast an absent ballot must attend to the matter from three to four weeks before the election. Obviously, the average voter will not be very much concerned about the election that far ahead of time and will neglect to attend to the matter. Then, many other voters who are absent on the day of the election do not foresee their absence that far in the future. The requirement of a statement of reasons for absence may also serve to deter applications.

The annual reports of the New York City Board of Elections indicate not only the total number of absent votes cast, but also the number of persons who applied for absent ballots and the number who failed to comply with certain requirements of the law and consequently failed to cast a valid absent ballot. The statistics for 1929 are given below as typical:[12]

	Number	Per cent
Number of persons who applied for absent ballots	405	100.00
Number of applications rejected for lateness or other reasons	60	14.8
Number of ballots received too late	17	4.2
Number of ballots returned as undeliverable	9	2.2
Number of ballots returned by electors intending to vote personally	2	.5
Number of ballots rejected because of failure to take the required oath	3	.7
Number of ballots not returned	56	13.8
Number of ballots cast	258	63.8

The statistics on absent voting in Detroit for some recent elections are given below:[13]

Absent Voting in Detroit

Year	Election	Total vote	Absent vote	Per cent of total vote
1928	General election	369,473	2,349	.64
1929	Spring primary	94,599	137	.14
1929	Spring election	128,907	346	.27
1929	November election	255,482	468	.18

While the amount of absent voting in proportion to the total vote cast is much higher in Detroit than in New York, nevertheless the highest percentage indicated is slightly over one-half of one per cent, and for most elections it is about one-fourth of one per cent of the total vote. This small absent vote cannot be explained by the state provisions governing absent voting in Michigan, which are about the most liberal in the country. Any person who is unable to attend the polls by

[12] Annual Report, p. 21.
[13] Taken from the records of the election office.

reason of illness or physical disability or absence may vote an absent ballot, and the only time requirement is that the ballot shall be received by the city, township, or village clerk before the close of the polls. Application for an absent voter's ballot may be made in person or in writing. The affidavit of the elector applying for an absent voter's ballot and also the affidavit which accompanies the marked ballot may be witnessed by two citizens in lieu of the usual requirement that they shall be taken before a notary or a person authorized to administer oaths. From every point of view the Michigan law is liberal, yet the number of electors who make use of the absent voting provisions is small.

The statistics of absent voting for the general November elections in Omaha, 1922-28, are given in the following table:[14]

Absent Voting in Omaha

Year	Total vote	Absent vote	Per cent of total vote
1922	51,054	247	.47
1924	66,723	765	1.11
1926	53,430	352	.66
1928	91,126	1,667	1.83

It should be noted that the above statistics are confined to the general fall elections of even-numbered years. The percentage of voters who use the absent voting procedure at local and primary elections, judging from the statistics in other jurisdictions, is much lower than that for the principal elections. The legal provisions governing absent voting in Nebraska are liberal, and there are no onerous restrictions as to the time for the return of the ballots.

Miscellaneous statistics are available for other cities for certain years. The number of absent ballots cast in Boston in 1928 was 860, out of a total vote of 279,938, or less than one-third of one per cent of the total vote. The number cast

[14] Secured from the office records of the election commissioner.

in a municipal election in Minneapolis in 1929, with a total vote of 112,607, was 492, or less than one-half of one per cent of the total vote. St. Louis reported an absent vote of 312 out of a total vote of 339,272 at the 1928 general election, or less than one-tenth of one per cent of the total vote.

Several years ago Professor James K. Pollock compiled statistics upon absent voting for the State of Ohio, securing returns from county election boards for over eighty per cent of the precincts of the state. The table below indicates his findings upon the extent of absent voting in the state, for the period 1920-24, the statistics covering those counties reported on:[15]

Absent Voting in Ohio

Year	August Primary			November Election		
	Total vote	Absent vote	Per cent	Total vote	Absent vote	Per cent
1920	111,515	1,040	.93	1,636,620	14,766	.89
1922	286,713	3,787	1.32	1,352,149	14,363	1.05
1924	331,143	5,118	1.54	1,893,779	23,224	1.22

These statistics show a much higher percentage of absent voting than for other jurisdictions listed above. One suspects that many of the election boards, not having on hand accurate statistics, reported estimates which were greater than the actual absent vote.[16]

The statistics indicate very strikingly the limited use of absent voting. Taken by and large, it appears reasonably accurate to say that less than one-half of one per cent of the total vote is cast in this manner. It should not be supposed, however, that this limited use of absent voting indicates that it

[15] James K. Pollock, "Absent voting with particular reference to Ohio's experience," *National Municipal Review*, Vol. XV, pp. 282-92 (May 1926).

[16] The writer was unable to secure accurate statistics from the election offices of Cleveland and Cincinnati, but was told that the absent vote cast in Cuyahoga County in the general election of 1929 was 532. The total vote for the county for this election was approximately 200,000, which would make the absent vote about one-fourth of one per cent.

is unsuccessful or unwise. The extent of the use, however, does not justify an expensive procedure. The small amount of absent voting indicates that the existing laws provide a procedure which is too cumbersome, and some states restrict the privilege unwisely. While only a relatively few voters may exercise the privilege, it may be very important for those particular voters and may relieve them of an arduous and expensive trip. In 1928 Mr. Hoover was forced to make a trip across the continent in order to vote, because at that time the California law made it impossible for him to use the absentee procedure. If the absent voting provisions are liberalized it is to be expected that greater use will be made of this form of voting in the future.

One of the principal objections to the use of absent voting is the alleged danger of voting frauds. The writer has been told of voting frauds practiced through absent voting in a number of states with defective laws on the subject. In one Southern state he was told of a wholesale theft of an election during the World War, when ballots were supposedly sent away to the soldiers in camp and later duly returned to the proper officers, but were actually fraudulently marked and returned by corrupt political workers who secured a list of the registered voters away at camp. The writer was also told of one case where an enterprising politician ascertained the names of all married women in the county who were expecting childbirth and sent in marked ballots for them. In other states it was pointed out to the writer that political workers who desire to secure one or more official ballots to use on the day of the election to work the "endless ballot chain" could do so by having persons apply for an absent ballot. Serious objections were raised to absent voting in New Jersey on the score that it permitted frauds, and led eventually to its repeal in 1926.

These alleged frauds, however, are isolated and exceptional cases, made possible by defective provisions in the state laws. The small number of votes cast by absent voting

indicates that it does not occasion serious frauds. A signed affidavit is always required to accompany an absent voter's ballot. This constitutes considerable protection against frauds, especially when it is required that this signature be compared with that on the registration record. The registration records of many states do not include the signatures of the voters, however, and this protective measure is not available. Indeed, many precincts, particularly in rural sections, have no registration of voters. But even so, the affidavit of the voter affords a real protection against frauds. Where the signature is compared with that on the registration record, the danger of impersonation is practically eliminated.

Another danger incident to the use of absent voting is that the ballot mailed to an alleged absent voter may be used to start the "endless chain" ballot at the polls. This danger is not serious, and may be readily avoided by using a special ballot for absent voters, or by serially numbering the ballots given out at the polls. It is safe to say that this form of ballot fraud is rarely carried on through securing unused absent ballots.

Summary. The principles which should govern a sound absent voting law may be summarized as follows:

1. The privilege should be extended to all persons who for any reason whatever are absent, or expect to be absent, from their precincts on the day of election, and a reasonable distance away. It should apply also to persons who are unable to attend the polls because of illness or infirmity.

2. Absent voting laws should apply to all elections: general, primary, state, local, and special.

3. The procedure for casting an absent voter's ballot should be simplified so that greater numbers of voters may make use of the privilege. The provisions which will accomplish this end are as follows:

a. Voters should be permitted to apply in writing for an absent voter's ballot, without the use of any particular form

or affidavit. The signature of the voter when he makes written application is sufficient, particularly in view of the fact that he is required to file an affidavit with his ballot.

b. Voters who expect to be absent on election day should also be permitted to apply in person to their home election offices before they go away, and to secure and vote an absent voter's ballot.

c. Time restrictions for making application for an absent voter's ballot, and for delivery of the ballot after it has been marked should be removed, provided that the ballot is mailed on or before the day of the election and before the hour for closing the polls.

4. The state laws which permit the absent elector to cast a ballot by applying at any polling place in the state are unsuited to the long ballot, and are unnecessary with a simplified procedure for securing an absent voter's ballot from the home election office.

5. Ballots cast by electors should be counted and canvassed under the direction of the official canvassing board of the city or county prior to the official canvass.

6. If the registration records contain the signature of the voter, this should be compared with the signature on the affidavit accompanying the ballot before the latter is accepted and counted. This would provide an effective safeguard against fraudulent voting.

7. The vote of an absent elector should be challengeable. The election office should investigate the case and decide upon the challenge at the time that the official canvass is made. The voter should be notified in writing and be permitted to appear to defend his right to vote, or to submit in writing a statement concerning his qualifications to vote, which statement should be considered as evidence in the case. In states where there is danger of frauds certain further precautions may be taken.

8. The limited use of absent voting indicates that the expense attached to it should be reduced to a minimum. State

laws should permit the use of a special ballot for absent voters, with a single ballot for the entire city, or for all the precincts in a ward, thereby reducing the printing cost.

Mail Voting. Related somewhat to absent voting is the proposal to permit all voters to cast their ballots at home and to mail them to the election authorities. This is usually called "mail" or "home voting." It has been proposed to the Wisconsin legislature for several years, receiving considerable support, including that of two members of the Milwaukee board of elections. The proposal in more detail is that the election office should mail to every voter an official ballot and an envelope in which to return it; that the voter should mark the ballot at his home and return it to the election office through the mail, signing a statement on a perforated stub of the envelope to the effect that the ballot had been marked secretly, and without coercion, intimidation, or corrupt influence. The election office would file these ballots as they are received, sorting them by precincts or other divisions. On the day of the election the envelopes would be examined and the signatures compared with those on the registration record. If the results of this examination were satisfactory, the signature stub would be removed and filed as a poll list, and the ballot deposited in the ballot box, thus losing its identity. After all the ballots had been passed upon in this way, the count would be conducted in the usual manner, but by the counting clerks employed by the election office.

The arguments for home voting are that it would greatly increase the vote cast, make possible a more careful consideration of the ballot by the voter, perhaps in consultation with other members of his family, reduce the cost, avoid the loss of time on the part of the voters, and avoid the necessity for making election day a legal holiday. The principal argument against mail voting is that bribery and intimidation would be practiced upon a large scale, especially in cities, that the secrecy of the ballot would be destroyed, and that

the history of elections in this country and elsewhere shows clearly the need for a secret ballot, marked and cast at a public polling place.

Mail voting resembles the method of voting used in this country prior to the adoption of the Australian ballot. Although the voter was required to come to the polls to deposit his ballot, he brought it with him already marked. Under that system bribery, intimidation, corruption, and party machine domination were rampant.[17] If the safeguards of secrecy were removed at this time, there is nothing to indicate that we might not have a return to such a system. While it is probably true that home voting would work out quite satisfactorily in some communities, there would be grave danger of a return to the former vicious practices in the poorer districts of our large cities, particularly the machine controlled wards. Bribery is feasible only when the briber is sure of getting the votes for which he has paid. It would be entirely reasonable to expect a return of bribery if a scheme of mail voting were adopted. The amount of intimidation now exercised by the precinct captain in many sections of large cities is very great; with mail voting it would be enormously increased. The overbearing and dominant precinct captain would insist upon seeing how each voter under obligation to him had marked his ballot, and the voter would have no protection against such tactics.

An event occurred several years ago in the election of state's attorney in Chicago, which illustrates convincingly the need of a secret ballot. Robert T. Crowe was a candidate for re-election. A secret poll of the bar association indicated a heavy majority for his opponent, John A. Swanson. Just before the election, Crowe published a list of attorneys who had signed a statement endorsing his candidacy. The list contained the names of over two thousand Chicago attorneys, many of whom were known to their friends to be opposed to Crowe. The explanation is obvious. These attorneys did not dare refuse to sign the endorsement when they were

[17] See Seymour and Frary, How the world votes.

asked to do so by Crowe workers, for fear of reprisals. If attorneys can be intimidated in this way, it is readily apparent that the voters in machine controlled districts of large cities would be easily controlled without the protection of a secret ballot. Nor would the intimidation and corrupt influence be confined to such districts.

The evidence is quite strong that even in the most respectable districts there is considerable danger of corrupt influence in hotly contested elections, when the conflicting forces are determined to win at all costs. One could well imagine the pressure which under a system of home voting would be brought to bear upon voters in a hotly contested election, say, when different religious groups were battling with one another, or when some question like public ownership or prohibition was at stake. Home voting would lay open the election process so widely to intimidation and corrupt influence that such practices would be inevitable, and having once been started, they would become a tradition.

It is argued by the proponents of this form of voting that the severe penalty against election frauds would protect the voter against bribery and intimidation. This is utterly unconvincing. Bribery, corruption, and other election frauds have not been stopped or seriously deterred in this country by penal provisions. These election frauds are usually carried out by a political machine which can offer security against the criminal provisions of the law. Conviction for election frauds is so rare that the criminal provisions in the statutes do not insure honest elections.

It is contended also that the natural pride of the great majority of voters will prevent them from being corruptly influenced. Custom and traditions are more powerful factors than pride and conscience in such matters. The wholesale corruption of voters, both in this country and in England in the past, under an election system which made it possible, indicates that when once such practices are established they are looked upon as a matter of course, and do not incur so-

cial disapprobation. We cannot look to the pride and good conscience of the mass of voters to protect us against such practices.

The proponents of home voting assert also that this method of voting will greatly increase the total vote cast, and even though there is a small amount of dishonest voting, corrupt influence, and bribery, it will be offset by the larger vote cast which will be honest. This argument hinges, to be sure, upon the assumption that a larger vote will actually be polled under the use of home voting. There is no proof that such will be the case. The extremely limited use of absent voting would tend to disprove this. A large percentage of the absent ballots mailed out are never returned. The experience which private organizations have had with mail voting does not warrant any optimistic prophecies that mail voting will greatly increase the vote cast.[18]

The argument has been advanced that even though it be granted that home voting is unsuitable for some of the large cities with strong party machines, this should not prevent experimentation with it in other communities and its adoption in case it proves to be satisfactory. It would, indeed, be foolish to shape our election laws and practice to meet the requirements of a few of the largest cities. It is possible that home voting might work quite satisfactorily in some communities where the dangers of bribery and intimidation were slight. This form of voting would seem to be particularly suited to sparsely settled rural districts, where the holding of elections at official polling places is both expensive and troublesome to the voters. On the whole, however, it must be said that the danger of bribery and corrupt influence of voters is not confined to a few large cities, and consequently the adoption of mail voting would appear to be dangerous in almost any community.

To summarize, mail voting does not offer any great

[18] No particular investigation has been made on the point.

promise of improvement in election administration; it is by no means certain that it would increase the vote cast, and it might have just the opposite effect; it would be contrary to the election experience of this and other countries in that it would nullify many of the protective features of the Australian ballot and would incur the danger of a repetition of the bribery, coercion, and corrupt influence which once existed widely. It is undoubtedly true that home voting would be a convenience to many voters, and would afford the members of the family an opportunity to discuss their votes together and to mark the ballot with greater deliberation and care, but this advantage could be secured by mailing to each voter a sample ballot, preferably reduced in size, which the voter could study and mark, taking it with him to the polls.[19]

Canvass of Elections. The official canvass of elections is usually made by the board of elections in the city or county, by a special canvassing board, or by the city council or the board of county commissioners. In jurisdictions where a single officer has charge of elections, it is not uncommon for the state law to require him to select some other officer or member of the opposing party to serve with him as a canvassing board. The work of the official canvass is purely clerical routine, the canvassing board having little or no discretion. In case of any errors, incomplete returns, or apparent frauds, the board, as a general rule, can only summon the precinct officers to come in and correct the returns. The canvassing board is not authorized to examine the ballots or to go behind the election returns filed by the precinct officers. It is not ordinarily empowered to reject the return of any precinct. There is no need for a canvassing board. A single officer may do the work just as well. Any arbitrary action on his part may be rectified by a court action. As a matter of fact, the actual clerical work is done by clerks in the election office.

[19] See above, Chap. V.

The clerical work involved in tabulating the returns from the individual precincts is relatively small, as is evidenced by the fact that the newspapers tabulate the results unofficially as rapidly as the returns are received. In some election offices, however, the work of the official canvass is made an excuse to employ party workers and is stretched out for several days at considerable expense.[20] Such action indicates quite well that the office has no regard whatever for economy, and is motivated by the worst type of political considerations. The election offices which are capably conducted rarely require more than two days to complete the official canvass.

One other factor in the official canvass is the danger that the precinct returns may be tampered with prior to the official canvass. This is by no means uncommon in close elections. The writer has been told in several communities of the alteration of election returns in order to change the result of an election.[21] The provision for a canvassing board in the place

[20] In Jefferson County, Kentucky (of which Louisville is the county seat), the cost of the official canvass for the November election of 1928 was $5,078, and for the corresponding election in 1929, $6,290, while the cost of the precinct officers in the 1928 election was only $9,517. There were 722 precincts in the county making the cost of the canvass $8.71 per precinct in 1929. In the 1929 canvass the chief tabulator was paid $500, an assistant tabulator, $350, sixteen tabulators at $200, and so on. This, of course, was an inexcusable waste of public money. Several years ago the writer witnessed the canvass of an election in Chicago, and was amazed at the large corps of official tabulators, working at snail pace.

[21] A striking illustration is afforded by the vote on the state reapportionment initiative measure in the State of Washington in 1930. Owing to the failure of the state legislature to redistrict the state as required by the constitution from 1900 to 1930, according larger representation to the populous counties along the Puget Sound, an initiative measure providing for a redistricting was placed upon the ballot. It was favored by six counties which would have their representation increased, and opposed by the remaining thirty-three counties which would suffer a loss of representation, or remain unaffected by the measure. The early reports indicated that the measure had passed by a majority of over five thousand votes, but this was reduced by the official returns to a majority of only several hundred votes. Every county opposed to the bill sent in an official return with a larger vote against the bill than the unofficial returns indicated, and every county in favor of the bill reported a larger majority for it than the unofficial returns had indicated. It is very striking that the alterations from the unofficial returns were in accordance with the wishes of the election offices of the respective counties. The backers of the bill went to great

of a single officer does not help matters, for the alterations of the returns is made prior to the official canvass. The only feasible safeguard is to make public a duplicate copy of the official returns, thereby removing the possibility of alteration of the returns. This can be done by providing that a carbon copy of the official return shall be turned over to the police department for the use of the press, or by providing that a duplicate copy shall be mailed directly by the precinct officers to the secretary of state, where it may be consulted in case any question arises. The former practice, coupled with the provision that the police department should retain such returns for public examination for a period of thirty days, would seem to be more useful and expedient.

Recounts. Provision is made in most states whereby any candidate or group of citizens interested in the vote upon a referendum question may secure a recount of the votes, in case they believe that the official returns are erroneous or fraudulent. The provisions governing recounts are of great significance. An easy and cheap recount is one of the most salutary provisions safeguarding the purity of elections. If, on the other hand, the precinct election officers can be sure that there will be no recount, they may falsify the returns with impunity, or even neglect to count the ballots altogether. The possibility of a recount makes the precinct officers careful of their work.

The state laws governing recounts may be divided into two classes: first, those which permit the candidate to secure a recount as a matter of right, without proof of misconduct or errors; and second, those which require proof of misconduct or errors on the part of the election officers before the ballot box may be opened and the ballots recounted. Most of the

lengths to prevent the returns from being altered sufficiently to change the results of the election, and had to threaten a court action to get the returns from one of the counties opposed to the measure, which, it was alleged, was holding out so that the officers would know exactly how many votes were needed to defeat the bill.

states fortunately are in the former class, but inasmuch as this classification is based upon court decisions rather than statutory provisions, no attempt will be made here to list the states in each class. Usually there is little opportunity for proving fraud without opening the ballot box; the proof is in the ballots themselves. If the ballots cannot be scrutinized until fraud or error has been proved, then, of course, it is ordinarily impossible to do anything about it. Much of the evidence upon which interested parties may have cause to be suspicious of the returns of particular precincts is in the nature of rumors, and, before an unfriendly judge, will be ruled as insufficient grounds for a recount. The requirement of proof of fraud before the ballots may be recounted provides an open invitation to falsification of the returns and affords relative security to the election thieves.

The only explanation which may be offered in defense of the laws which make it difficult to secure a recount is the feeling that it is desirable to settle an election at once, and to avoid expensive and wearisome election contests, which may tend to discredit the integrity of the ballot box. It is well known that errors, particularly with paper ballots, are inevitable. If an election is close and recounts are easily secured, the defeated candidate will reason that the results may be changed by a recount, and demand one. He may do this even when he has no evidence of misconduct on the part of the precinct officers, but merely with the thought that there may be enough errors to change the result. Many prominent election officers believe that safeguards should be provided to avoid useless recounts. It would appear that a compromise might be reached between these two extremes, and a recount procedure adopted which will be neither too difficult nor too easy, which will always make it possible for a recount to be had, but which will also place some responsibility upon the candidate or the persons asking the recount. The solution is obvious. Any candidate or group of persons interested in the outcome of a proposition vote should always be able to secure

a recount, but, in order to avoid useless recounts, should be required to pay the cost.

In most states the candidate or person desiring a recount is required to submit a petition to a court of proper jurisdiction, setting forth the grounds for the recount or contest of the election. It would seem that the better procedure would be to permit the recount petition to be submitted directly to the office in charge of elections.[22] There are two reasons for this procedure in preference to a judicial hearing; namely, first, there should be no discretion vested in the officer to whom the petition is submitted, and second, the election authorities should have charge of the recount.

Let us examine these considerations in detail. It is a well accepted rule of law that a court will not take jurisdiction over a matter in which it is given no discretion. If the state law made it mandatory that a recount be ordered upon the submitting of a petition therefor, accompanied by the required deposit, the courts would refuse to take jurisdiction in the matter. It is also apparent that the recount should be conducted by the regular election authorities in the interest of securing a prompt, economical, and correct count. The election office is organized to conduct the work and understands the provisions of the state law in regard to conducting a count or recount. If the recount is made by other persons under jurisdiction of the court (which, to be sure, is unusual), the count will be more expensive because it will be conducted with greater formality than is necessary. Placing the matter directly in the hands of the election office will strengthen its control over the precinct officers, which at best is very weak.

It is customary to require that any person desiring to contest an election or to secure a recount shall file a petition within a specified time after the completion of the official canvass. The contestant is given thirty days following the of-

[22] This is the law in Wisconsin, Election Laws, Sec. 6.66; and in Michigan, Election Laws, Sec. 523.

ficial canvass in a number of states,[23] but Wisconsin requires that the petition for a recount be filed within three days.[24] A reasonable length of time should be allowed in which to file a petition for a recount. Three days is too short. It is suggested that six days should be permitted after the completion of the official canvass for the filing of a petition for a recount before the election office, and that thereafter within thirty days any candidate or interested party should be permitted to file a contest of the election before the courts.

The provisions for filing a petition should permit the amendment of the petition while the recount is in progress, and should also permit other candidates for the office recounted, or other interested citizens (in the case of the recount of a proposition vote) to file a petition and to amend their petitions while the recount is in progress. It often happens that while a recount is in progress further irregularities in other precincts are brought to light. On the other hand, it is not uncommon after the recount of a few precincts for the petitioner to decide to drop the recount. This should be permitted. In Wisconsin the results of some elections have been altered by a recount of a few precincts. In these cases the contesting candidate petitioned for a recount of the precincts in which his opponent polled the largest majority. When the recount was conducted it usually happened that a number of ballots were thrown out on technicalities, such as the failure of precinct officers to initial the ballots, and since only the precincts which gave heavy majorities to the winning candidate were recounted, the vote of such candidate has at times been reduced enough to change the election. Obviously a recount of the entire district, or of an equal number of precincts in which the contesting candidate polled a heavy vote, would offset these changes, but owing to the provision in the state law requiring a recount petition to be filed within three days, the other candidate has sometimes found

[23] California, for example.—Sec. 1115, Election Laws.
[24] Election Laws, Sec. 6.66.

that the time had passed before he realized what was taking place. This situation should be rectified by the provisions suggested above.

In a few states the person petitioning for a recount is required to put up a deposit to pay for the cost. The amount required varies from state to state. Wisconsin requires two dollars per precinct, while Michigan requires ten dollars per township or ward, but limits the total deposit required to one hundred dollars.[25] The more common provision is that the costs shall be allocated by the court ordering the recount. Usually under the latter provision the contesting persons are required to bear the costs unless the results are altered. A fee of one hundred dollars will not go far in payment of the cost of the recount in a large city. The better practice is to provide a flat fee per precinct. In view of the fact that a recount usually involves only a single office, two dollars per precinct, as provided in Wisconsin, should be sufficient to cover the cost. If the cost is actually greater than this amount, it should be borne by the government, under the theory that recounts maintain the purity of the election. If, however, the results of the election are changed, the fee paid by the contestant should be returned to him, and if the cost of the recount is less than the amount deposited, the surplus amount should be returned. Similarly, if the petitioner withdraws his petition, he should be charged for only those precincts actually recounted. If he amends his petition, however, he should be required to post the fee for all new precincts requested to be recounted. In no event should the candidate elected according to the original returns be required to pay the cost of the recount, except for such precincts as he himself may petition to be recounted.

The method to be used in conducting the recount is not prescribed by statutes, except as to a very few details. The officers in charge of the conduct of the recount are directed by law to open the ballots and to proceed to recount them

[25] Election Laws, Sec. 524. A larger deposit is required for a statewide recount.

for the offices concerned. It is customary, however, for a notice to be served upon the candidates concerned before the recount is started, so that they may be present or be represented by watchers. In a number of states the law requires the re-sealing of the ballot boxes after the recount. The detailed conduct of a recount might well be covered by the instructions and regulations issued by a state office in charge of elections.

Certain elections require particular examination with respect to recounts. Obviously, the recount of a state election is quite different from that of a local election. A state-wide recount is expensive and presents certain administrative difficulties. In some states the defeated candidate may file with the secretary of state or some other state officer a petition to have the vote throughout the state recounted. If the recount is conducted by state officers, it requires the sending of the ballots from all of the counties to the state capitol, and involves a large amount of clerical work and delay. The better practice, it would seem, would be to require the candidate for a state office to file a recount petition in each county he wishes recounted, prior to the submission of the election returns to the state canvassing board. This would avoid the expense of a state-wide recount, limiting it to those counties and to those precincts which the contesting candidate had some reason to request to be recounted.

It is quite common for legislative bodies, such as the city council or the state legislature, to conduct its own hearings and make its own recounts in the case of contested elections. Needless to say, this practice, wherever followed, is unsatisfactory. The legislative body is not equipped, nor has it the time to bother with such recounts. It may be appropriate for the legislative body to pass upon the qualifications of persons whom it admits to its membership, but it is not appropriate for it to try election contests or to conduct recounts. These are matters which should be passed upon by the election authorities and the courts. Recounts should normally

be conducted by the election authorities, and charges of frauds, violation of corrupt practices acts, lack of qualifications, and the like should be passed upon by the courts in contested election litigation. The courts, however, should have the power to order recounts of the ballots, which should be in addition to the provisions for a recount upon petition to the election authorities. If any candidate distrust the election office, he should be permitted to appeal directly to the courts for a recount. He should be permitted also to appeal to the courts for a recount after the time has elapsed to secure a recount by petitioning the election office. The time permitted for a petition to the election office must necessarily be short, otherwise the official declaration of the result of the election and the filing of the returns with the state office will be delayed too long. In view of the fact that malpractices may be brought to light after this time has elapsed, a way should be left open for a somewhat longer period for the candidate to secure a recount upon offering reasonable proof to support his petition.

Where voting machines are used the conduct of the recount consists merely in unlocking the counting compartment of the machines and taking off the totals for the offices concerned. This may be done quickly and inexpensively. The only difficulty involved is due to the fact that the machines are frequently stored at different parts of the city, and in some cities are left at the polling places from one election to the next. Where voting machines are used, however, recounts are seldom requested, owing to the fact that the candidates feel confident that a recount will not alter the results.

An easy, certain, inexpensive, and prompt recount procedure is essential to a sound administration of elections. It constitutes a valuable protective feature against election frauds and errors. The precinct election officers should always feel that a recount is not unlikely. This will serve to make them more careful of the accuracy of their work. A recount is, in effect, an inspection, a check upon the work of

the precinct officers, and from every consideration is salutary. The state election laws should provide that any candidate may secure a recount as a matter of right by filing a petition therefor with the local election office, accompanied by a deposit of a fee of, say, two dollars per precinct to be recounted, and should be permitted to amend his petition while the recount is in progress. Other candidates should be accorded the same privilege. The fee should be returned to the candidate in case the result of the election is changed and the petitioning candidate is thereby elected. This recount procedure should be in addition to the existing provisions for a recount through a court order, which should be continued as a supplementary method. The state laws and judicial decisions which require proof of fraud, misconduct, or errors on the part of the precinct officers before a recount may be secured, are unwise. The proof often lies in the ballot box itself. This rule of law serves in most cases to prevent a recount, regardless of how suspicious the circumstances may be surrounding the election.