

# Secrecy Sleeves and the “Naked Ballot” in the 2020 General Election

**March 10, 2021**

***Abstract:***

Less than two months before the 2020 general election, the Pennsylvania Supreme Court ruled that election officials must reject mail-in ballots received without the “secrecy sleeve,” the inner envelope that holds the ballot and protects the voter’s privacy while their personal identifying information and signature is being examined. Philadelphia City Commissioner Lisa Deeley warned that the state supreme court’s ruling could lead to the rejection of around 100,000 additional absentee votes in the 2020 general election—a staggering number that could potentially impact the outcome of the presidential election. Ultimately, perhaps due to greater awareness brought to the issue by Deeley’s warning and public education campaigns, only 7,411 absentee votes were rejected in Pennsylvania for any reason, including for lack of a secrecy sleeve. The following analysis summarizes the secrecy sleeve rules in Pennsylvania and 16 other states that used secrecy sleeves in the 2020 general election, as well as a few states that left the use of secrecy sleeves up to counties. It also examines the impact of those rules on ballot rejection rates in the 2020 general election.

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## I. Introduction

During the 2020 general election, at least 17 states provided absentee voters with a “secrecy sleeve” in addition to an outer return envelope, voter instructions, and the ballot itself. A secrecy sleeve, also referred to as an “inner envelope” or “privacy sleeve,” is a paper envelope (or, in some cases, a folded piece of paper) within which voters place their absentee ballots. The voter puts the ballot into the secrecy sleeve and then places the secrecy sleeve inside an outer envelope, sometimes called the return envelope. The voter then seals the outer envelope, and mails or delivers the ballot envelope to election officials. The intended purpose of the secrecy sleeve is to protect a voter’s privacy by separating the ballot itself from a voter’s identifying information. The voters identifying information and signature are sometimes required to be written on the outside of the outer return envelope and sometimes required to be written on the outside of the secrecy sleeve or on a separate certificate.

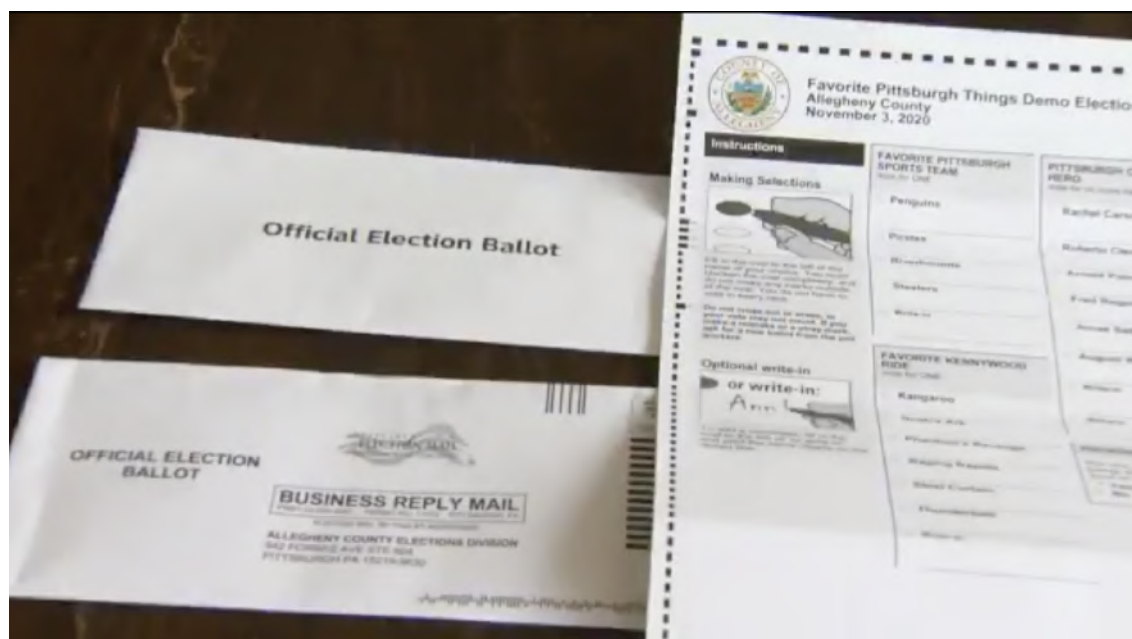
Through the years, some voters unfamiliar with the mail-in ballot process in their states place their completed ballots directly inside the outer envelope, discarding the secrecy sleeve. How election officials process these so-called “naked ballots” is governed by each state’s law and varies from state to state. Of the 17 states that provided all voters with secrecy sleeves in 2020, some of them—including Pennsylvania, Kentucky, New Hampshire, and Ohio—rejected the naked ballots. The votes simply did not count. Other states—such as Florida, Georgia, and Washington—counted the votes even if they were received without a secrecy sleeve. A few states—such as Michigan and Oregon—left the decision up to individual counties as to whether to use secrecy sleeves. This memo outlines the various secrecy sleeve rules and procedures implemented in each state that used them during the 2020 general election, and it assesses how such rules impacted the vote in each such state.

## II. Pennsylvania’s Secrecy Sleeve Requirement

In the June primary election, [most counties](#) in Pennsylvania, including Philadelphia, did *not* reject naked ballots. According to [one estimate](#), rejecting naked ballots statewide would have amounted to over 11,000 fewer votes being counted in the primary election—more than 6% of all absentee votes. The Pennsylvania Supreme Court [ruled](#) on September 17, 2020, that absentee ballots returned without secrecy envelopes would be rejected and, therefore, not counted in the November election.

Four days later, on September 21, Philadelphia City Commissioner Lisa M. Deeley sent a [letter](#) to the state legislature, urging it to take immediate action in response to the court decision.

Describing the secrecy envelope requirement as a “vestige of the past” that served only to “disenfranchise well intentioned Pennsylvania voters,” Deeley noted that secrecy sleeves had lost relevance over time. In a previous era, secrecy sleeves protected the identifying information of voters because absentee ballots were counted in public view at individual polling locations. Today, however, absentee ballots are counted at a central location and through a speedy “industrialized process,” Deeley explained, so the primary purpose of their use has disappeared.



The envelope marked only “Official Election Ballot” is Pennsylvania’s secrecy envelope, and the “Business Reply Mail” is the outer envelope. Ballots were required to be enclosed within both to be counted in the 2020 general election.

In addition, Deeley wrote that removing the secrecy sleeve requirement would save thousands of dollars per year and speed up the counting process. Without any secrecy envelopes, for example, absentee votes could be removed from envelopes at 24,000 ballots an hour (double the current rate) and scanned at 32,000 ballots an hour. At that speed, Deeley wrote, “there is no opportunity to stop, or even slow down, and identify how an individual voted—anonymity is maintained.”

Deeley estimated that, if the Pennsylvania Supreme Court decision were to stand and all absentee ballots arriving without sleeves were rejected, over 100,000 ballots in Pennsylvania could be thrown out during the 2020 general election, based on estimates from previous elections and the massive increase in first-time absentee voters expected in 2020. Notably, the 2016 presidential election in Pennsylvania was decided by just over [44,000 votes](#). It is difficult to


independently estimate the impact of the court decision because many counties (including Philadelphia) [did not keep track](#) of naked ballots during the 2020 primary. However, [Mercer County](#) and [Lawrence County](#) tracked naked ballots and found that 5% of all absentee mail ballots lacked a secrecy envelope. According to Lawrence County's elections director [Ed Allison](#), there were more ballots rejected for being naked ballots than for late receipt during the primary.

The Pennsylvania Supreme Court decision came down to whether or not the statutory language of Pennsylvania's secrecy envelope provision was mandatory or discretionary. Justice Max Baer, in the [majority opinion](#), concluded that the provision was mandatory: "Whatever the wisdom of the requirement, the command that the mail-in elector utilize the secrecy envelope and leave it unblemished by identifying information is neither ambiguous nor unreasonable." The decision also ruled on a number of other voting-related matters. It allowed ballots to be counted if received up to three days after Election Day (if postmarked by Election Day), permitted the use of ballot drop boxes, and blocked the use of partisan poll watchers from out-of-county. (Pennsylvania Republicans [asked](#) the U.S. Supreme Court to stay the ruling on the deadline extension only, not on the secrecy sleeve ruling; the court [denied](#) the stay request in two brief [orders](#).) The secrecy sleeve decision sparked a flurry of efforts by nonprofit organizations and political campaigns to quickly educate voters, with graphics and videos, that the secrecy envelope was now required.

After Election Day, three additional lawsuits regarding secrecy envelopes in Pennsylvania were filed. Two were election challenges, involving only a very small number of absentee ballots. In the [first](#), filed November 19, 2020, in the Court of Common Pleas of Bucks County, the court interpreted the aforementioned Pennsylvania Supreme Court decision to [hold](#) that 69 absentee ballots with *unsealed* secrecy envelopes at the time of canvassing were *not* "naked ballots." The court [held](#) that, as it could not be determined whether the secrecy envelopes had become unsealed after being submitted by the voter, there was insufficient evidence to determine that the voter had failed to comply with the mandate or that the privacy of those ballots had been violated. The court ruled the 69 ballots could be counted. The Trump campaign appealed the decision, but the Commonwealth Court, on November 25, 2020, [affirmed](#) the decision. In the second lawsuit, the Court of Common Pleas of Westmoreland County, on November 23, 2020, [held](#) that 12 provisional ballots lacking secrecy sleeves must all be rejected by the Westmoreland County Board of Elections. In the third lawsuit, [Metcalf v. Wolf](#), plaintiffs alleged that officials in predominantly Democratic counties weighed absentee and mail-in ballot envelopes to determine whether secrecy envelopes were contained within the outer envelopes, in violation of the Election Code. The Commonwealth Court [dismissed](#) the suit as an improperly-filed election contest.


Ultimately, only 7,411 absentee ballots (or less than 0.3% of absentee votes) were [rejected](#) in Pennsylvania for any reason, including for lack of a secrecy sleeve, during the 2020 general election. Though Deeley's concerns were largely unrealized, the public awareness she brought to the issue by voicing her concerns may have played a significant role in educating the public and preventing a greater number of rejections.


**PENNSYLVANIA VOTERS:**





## You may be naked, but your ballot must not.\*

### How to properly complete your Pennsylvania Mail-in Ballot


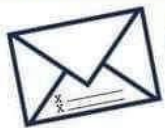
- 

**1** Complete your ballot in blue or black ink.
- 

**2** Insert your completed ballot into the small ballot envelope. If your ballot is not inside the small envelope, it will be considered a "naked ballot" and will **NOT** be counted.  
*(Think of it as underwear for your ballot.)*


- 

**3** Place your sealed ballot envelope into the larger return envelope.  
*(This would be your ballot's pants.)*


- 

**4** Seal the return envelope and sign and date the voter declaration. Your ballot is ready to be mailed.

\*Does not apply for in-person voting.

@joshinphl



### III. The Use of Secrecy Sleeves in Other States

Outside of Pennsylvania, at least 16 states had laws requiring election officials to provide absentee voters with secrecy sleeves in the 2020 general election. These state laws varied widely on whether ballots returned without a secrecy sleeve could be counted or had to be rejected. In most of these states, the decision depended on whether other voter authentication requirements—such as voter signatures—were required to be printed on the secrecy sleeve itself, rather than the outer envelope. In states where the inner envelope doubled as a voter certification document or a place for the voter’s signature, the ballot was generally rejected if it was missing that inner envelope. In states where the inner envelope was used solely to protect the voter’s privacy or for the voter’s convenience, however, “naked ballots” were typically not rejected.

### IV. States That Rejected Naked Ballots

#### A. Kentucky

A Kentucky [statute](#) required that the county clerk send voters two official envelopes for returning their absentee ballots, along with each ballot. One was a white outer envelope, labeled “Absentee Ballot.” It provided space for the voter’s signature, address, precinct number, and witness signatures (required only if the voter signed with a mark instead of a signature). The second was a yellow secrecy envelope. In addition, there was a “detachable flap on the secrecy envelope” that provided space for the same voter information.

In the Kentucky 2020 primary in June, the state [required a voter’s signature](#) on *both* the outer white envelope and the detachable flap of the inner yellow envelope. In July, however, the Kentucky State Board of Elections passed an [emergency regulation](#) applicable to only the 2020 general election that allowed county boards of elections discretion to accept absentee ballots if the voter signed on at least one of the two envelopes. The [emergency regulation](#) noted that one signature could be sufficient for “substantial compliance” with voter verification procedures. The [emergency regulation](#) also included a number of other rules to [allow](#) absentee ballots that would have been rejected in the primary to be accepted in the 2020 general election. That included accepting absentee ballots even if the detachable flap on the inner envelope was detached (but still inside the outer or inner envelope), if the inner envelope was not sealed, or there was no outer envelope at all (only an inner envelope). Kentucky State Board of Elections Executive Director Jared Dearing noted that the emergency regulation helped to standardize

the rules for evaluating absentee ballots, whereas previously there had been more variation at the county level (per phone call with Jared Dearing, 1/08/2021). Some rules, however, did not change: During both the primary and the general election, the state **[rejected absentee ballots missing the inner envelope](#)**.

During the 2020 Kentucky primary, 32,048 absentee ballots were rejected overall, including [nearly 2,000](#) for missing the inner envelope. During the 2020 Kentucky general election, by contrast [fewer than 2,500](#) absentee ballots, or less than 0.4% of the total received, were rejected for *any* reason, including for missing the inner envelope. (The number rejected specifically on account of missing secrecy sleeves, as of the time of writing, was not yet publicly available.) Kentucky State Board of Elections Executive Director Jared Dearing [credited](#) voter education as one factor explaining the significant relative decrease in absentee ballot rejections. In addition to the relaxation of absentee ballot requirements and the standardization of evaluation criteria from the emergency regulation noted above, another factor may have been the implementation of a new absentee ballot cure [process](#). The new process required election officials to inform voters if their absentee ballots were rejected, including rejections for missing the inner envelope. Such voters were given the opportunity to cure the ballot up to six days after Election Day. The new absentee ballot cure process was [recommended](#) by Kentucky Secretary of State Michael Adams in August 2020 and accepted by Kentucky Governor Andy Beshear through [executive order](#) the same day. As a result, at least 3,946 voters were [contacted](#) about curing their ballots for the general election, and more than 1,500 of those successfully cured their ballots. The new absentee ballot cure process, however, was [limited](#) to enforcement in the 2020 general election.

Other provisions of the emergency regulation further supported the absentee ballot curing process in the 2020 general election. For instance, the regulation allowed for an online portal for voters to request absentee ballots. Once the voter requested an absentee ballot, state election officials printed the labels and affixed them to the outer and inner envelopes before mailing the ballot packet to the voter. The labels included an intelligent barcode that identified the voter, the voter's address, and the voter's precinct number (per phone call with Kentucky State Board of Elections Executive Director Jared Dearing, 1/08/2021). The intelligent bar codes both relieved voters of the burden of filling out their own address and precinct numbers on the envelopes and also allowed voters and election officials to track the status of the voter's absentee ballot (per phone call with Dearing, 1/08/2021).



**Inner envelope**

**15,075 ballots rejected**  
47% of rejections

**Rules for Nov.**

Reason for Rejection	Count	Percentage	Rule
Because one or both signatures were missing	4,079	13%	Reject
Late	3,865	12%	Accept if detached
Flap missing or detached	3,413	11%	Accept
Inner envelope not sealed	1,963	5%	Reject
No inner envelope	1,113	3%	Accept
No outer envelope			

**THIS ENVELOPE MUST BE SEALED. DO NOT DETACH FLAP FROM ENVELOPE.**

**Inner envelope (Yellow)**

FOLLOWING TO BE TYPED BY CLERK BEFORE MAILING

VOTER'S NAME \_\_\_\_\_

VOTING ADDRESS \_\_\_\_\_

PRECINCT NUMBER \_\_\_\_\_

**KRS 17.995(5)** Any person who signs a name other than his own on an application for an absentee ballot or on the verification form for the ballot or on an emergency absentee ballot affidavit, or any person who votes an absentee ballot other than the one (1) issued to his name, or any person who applies for the ballot for the use of anyone other than himself or the person designated by the provisions of this chapter, or any person who makes a false statement on an application for an absentee ballot or on an emergency absentee ballot affidavit shall be guilty of a Class D felony.

**X** VOTER MUST SIGN (or "mark") HERE  
TWO WITNESSES MUST SIGN IF "MARK" IS USED.

WITNESS \_\_\_\_\_ WITNESS \_\_\_\_\_

**OATH FOR VOTER NOT CERTIFIED AS REQUIRING ASSISTANCE ON A PERMANENT BASIS**  
Complete the following only if you require assistance to vote.  
(Voter certified as requiring assistance on a permanent basis need not sign this oath form, but person assisting voter must sign below.)  
I hereby state, under oath (or affirmation), that I am a qualified voter in the precinct listed above and that the reason I require assistance in voting is:  
☐ Blindness ☐ Physical disability  
☐ Inability to read English

Signature or "Mark" of Voter \_\_\_\_\_  
Two witnesses must sign if "mark" is used.

WITNESS \_\_\_\_\_ WITNESS \_\_\_\_\_

**OATH FOR PERSON ASSISTING VOTER**  
I hereby state, under oath (or affirmation), that I will mark the ballot in accordance with the directions of the voter requiring assistance. I further state that I am not the voter's employer, an agent of that employer, or an officer or agent with that voter's votes.

Signature of Assisting Voter \_\_\_\_\_

**Outer envelope**

**OFFICIAL ELECTION MAIL**

**OFFICIAL ABSENTEE BALLOT MATERIAL**

**VOTER MUST SIGN HERE**  
TWO WITNESSES MUST SIGN IF "MARK" IS USED.

WITNESS \_\_\_\_\_ WITNESS \_\_\_\_\_

VOTER'S NAME \_\_\_\_\_

VOTING ADDRESS \_\_\_\_\_

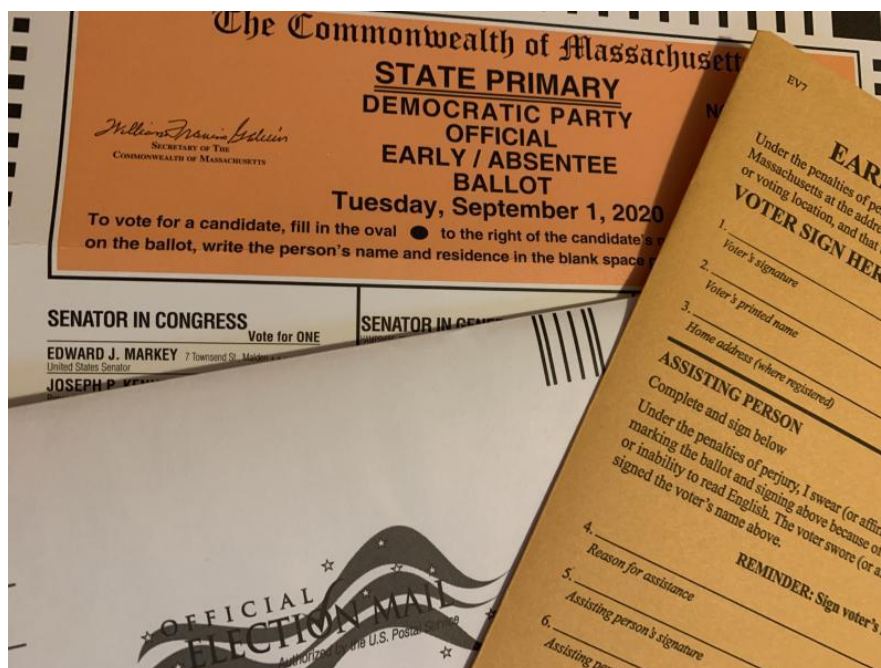
PRECINCT NUMBER \_\_\_\_\_

**NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES**

07-0803 KRS17.995(7)

## B. Massachusetts

In the 2020 general election, Massachusetts' absentee ballot packets [included](#) the ballot, [instructions](#), an outer white envelope, and an inner yellow secrecy envelope (marked "Early Ballot Envelope"). With the Massachusetts scheme, the voter's signature was required on an affidavit on the inner secrecy envelope. Under state law, absentee ballots submitted without the signed secrecy envelopes were [considered](#) "naked ballots" and were not counted. Massachusetts' relevant [statute](#) provided that the secretary of state (or "secretary of the commonwealth," as Massachusetts' official is called) would prepare absentee ballots with "[e]nvelopes of sufficient size to contain the ballots." These envelopes must also [bear](#) the voter's affidavit of compliance. The [statute](#) also required that, when examining received absentee ballots, election officials use the signature on the "inner envelope" to verify the voter's signature. If an election official rejected a voter's absentee ballot, they were required to [notify](#) the voter "as soon as possible."



During the Massachusetts 2020 primary, 17,872 absentee and early ballots were [rejected overall](#) (1.7%), including about 8,000 that were rejected for lateness and about 3,000 that were rejected because they were missing necessary voter information. During the 2020 general election, [20,036](#) absentee and early ballots were rejected (or about .8%). Of absentee ballots only, Massachusetts [rejected](#) 3.3% (or 5,152 ballots) in the 2016 general election compared with only .6% (or 13,718 ballots) in the 2020 general election. In October 2020, a research and consulting firm (Nielsen Norman Group) analyzed the user experience with the Massachusetts absentee ballot package and [advised](#) that ballot rejections could be reduced with design changes. It recommended making the signature line on the secrecy envelope more visible, adding pictures to the instructions that come with the absentee ballot, and clearly indicating in the instructions that absentee ballots received without the secrecy envelope will be rejected.

### C. New Hampshire

New Hampshire absentee ballots contained an [inner affidavit envelope](#) that required a signature. A **missing inner envelope, or an inner envelope without a signature, resulted in the [rejection](#) of a voter's absentee ballot.**

New Hampshire's relevant [statute](#) provided that the secretary of state would prepare absentee ballots, along with affidavit envelopes large enough to contain the ballots. The affidavits printed on these envelopes would certify that the person submitting the ballot was a New Hampshire voter who was unable to vote in person for that election. The affidavit left spaces blank for the

voter (or the person assisting the voter) to print their name, city or town, and ward, and to include a signature.

A related [statute](#) provided that “[t]he voter shall execute the affidavit on the envelope...shall enclose and seal the inner envelope with the affidavit in an outer envelope...[and] shall then endorse on the outer envelope the voter’s name, address, and voting place.” New Hampshire statutes also expressly mandated that inner envelopes be provided to voters and that these envelopes be signed and included with the ballot. Thus, New Hampshire’s inner envelopes served not only as secrecy sleeves but also as affidavits, increasing their importance.

**TOWN OF**

**Absentee from City or Town.** A person voting by absentee ballot because of absence from the city or town in which he or she is entitled to vote shall fill out and sign the following certificate: I do hereby certify under the penalties for voting fraud set forth below that I am a voter in the city or town of \_\_\_\_\_ New Hampshire, in ward \_\_\_\_\_ that I will be unable to appear at any time during polling hours at my polling place because I will be working on election day or I am voting on the Monday immediately prior to the election, the National Weather Service has issued a winter storm warning, blizzard warning, or ice storm warning, and I am elderly or infirm, have a physical disability, or have to care for children or infirm adults, or I will be otherwise absent on election day from said city or town and will be unable to vote in person.

**Absentee Because of Religious Observance or Physical Disability.** A person voting by absentee ballot because of religious observance or physical disability shall fill out and sign the following certificate: I do hereby certify under the penalties for voting fraud set forth below that I am a voter in the city or town of \_\_\_\_\_ New Hampshire in ward \_\_\_\_\_ that I will be observing a religious commitment which prevents me from voting in person or that on account of physical disability I am unable to vote in person.

Signature \_\_\_\_\_ Print Name \_\_\_\_\_

**Print Name**  
If a person assisting a disabled or blind voter shall make and sign a statement on this envelope in the space provided acknowledging the assistance.  
I attest that I assisted the applicant in executing this form because he/she has a disability.

Signature \_\_\_\_\_ Print Name \_\_\_\_\_

In accordance with RSA 659:24, the penalty for knowingly or purposely providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

Form A 1/2019

**Affidavit Envelope:** Please sign one of the two affidavits that best suits your situation. If you received assistance in completing your ballot, your assistant must sign as well. Seal your ballot in this envelope. (No other documents should be enclosed in this envelope).

**Return Envelope:** Seal your Affidavit Envelope in this envelope to return. If you have any documents which need to be returned with your ballot, those are sealed in this envelope as well. Don't forget your postage!

Name \_\_\_\_\_  
Voting Address \_\_\_\_\_ Ward \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
FORM P

ENCLOSED IS THE BALLOT OF AN ABSENTEE VOTER.

TO: TOWN OR CITY CLERK OF \_\_\_\_\_ CITY CLERK  
51 No. Park St.  
Lebanon, NH 03766

New Hampshire election policies implemented in 2020 may have limited the number of absentee ballots rejected due to missing inner affidavit envelopes. Returning a ballot without the inner affidavit envelope [was](#) the second most frequent reason for rejected absentee ballots in the New Hampshire 2020 primary on September 8. Out of 1,343 rejected ballots, those missing inner envelopes amounted to only 337 rejected votes, or less than 0.04% of absentee ballots received. The relatively small number was due in part to “partial pre-processing procedures” [implemented](#) for the first time in New Hampshire in 2020. Partial pre-processing allowed election officials to open the outer envelopes when absentee votes arrived and determine whether the inner envelope was included and signed. The partial pre-processing was intended to create opportunities for voters to be notified of and correct absentee ballot errors. New Hampshire Assistant Secretary of State and Elections Legal Counsel Bud Fitch [recommended](#) that New Hampshire election officials also employ these same partial

pre-processing procedures in the 2020 general election, and at least some jurisdictions did so. As of early January 2021, based on early reports and surveys from local New Hampshire officials, Fitch estimated that more than 63% of New Hampshire voters lived in cities and towns that conducted partial pre-processing during the 2020 general election (per email from Fitch, 01/05/21).

## D. New Jersey

In New Jersey, each absentee ballot package [contained](#) an outer envelope, an inner envelope (with a certificate attached to the flap that required a signature), a page with general information, and the ballot itself. Although each county designed its ballot differently, every county included an inner envelope with a certificate that required a signature. Because the inner envelope was needed for signature verification, **a missing inner envelope would result in ballot rejection.**

A large number of absentee ballots were rejected in New Jersey's primary and general elections, likely attributable to the extraordinary expansion of the use of mail ballots in the state and high number of first time mail voters (a group [more likely to make mistakes](#)). In the July 7, 2020, primary, [almost 88%](#) of the approximately 1.47 million New Jerseyans who voted did so using a mail-in ballot—a massive increase due to the coronavirus pandemic and an [executive order](#) requiring that absentee ballots be mailed to all registered voters. In the general election, the percentage of vote by mail [increased](#) from 7% in the 2016 presidential election to 86% in 2020 presidential election.

During the 2020 primary, [8,055 absentee ballots](#) were rejected because of missing or unsigned inner envelope certificates. During the 2020 general election, [19,475 absentee ballots](#) were rejected because of missing or unsigned inner envelope certificates. That increase—though more than double—was less than the increase in the total number of absentee ballots cast, which more than tripled, from [1.28 million](#) in the primary to [4.4 million](#) in the general election. Notably, the total number of ballot rejections increased by less than two-thirds, from [40,845](#) in the primary to [66,506](#) in the general. Even so, after the high absentee ballot rejection rate in the state primary, New Jersey lawmakers [passed](#) the Ballot Cure Act on August 28, 2020, in an effort to reduce absentee ballot rejections based on voter error. Under the Act, New Jersey election officials were required [to alert](#) voters within 48 hours, if they forgot to sign the inner envelope certificate, and then instructed the voter on how to certify the ballot and get it counted.

**FOR YOUR VOTE TO COUNT,**  
YOU MUST SEAL YOUR BALLOT IN THIS ENVELOPE AND  
COMPLETE & SIGN THIS CERTIFICATE

PRIMARY ELECTION  
ROXBURY TOWNSHIP - 04 - 02

ID: 128221  
Reg/RemdRes/ANN

**CERTIFICATE OF MAIL-IN VOTER**

I, the undersigned, whose name, address and municipality appear on this certificate, DO HEREBY CERTIFY, subject to the penalties for fraudulent voting, that I am the person who applied for the enclosed ballot for the Primary Election. I MARKED AND SEALED THIS BALLOT AND CERTIFICATE IN SECRET. However, a family member may assist me in doing so.

I marked this ballot for the Democrat political party.  
(Name of party)

**Sign Name Here**  
as it appears in the Poll Book X  
(Signature or mark of Voter)

PRIMARY ELECTION  
ROXBURY TOWNSHIP - 04 - 02

**DO NOT DETACH**

Democrat

New Jersey law [required](#) that county clerks send with each mail ballot two envelopes “of such sizes that one will contain the other.” New Jersey’s inner envelope included the voter certificate on a flap attached. Finally, a reminder was printed on the outer envelope, which stated, in relevant part, “for your vote to count, you must: 1) Vote your ballot and place it in the inner envelope with the attached certificate, 2) Seal the envelope, 3) Place the envelope into the larger envelope addressed to the board of elections and seal that envelope.” Thus, the plain language of the statute could be interpreted to suggest that returned ballots that do not include the certificate that is attached to the inner envelope will be rejected. For at least the 2020 primary and general elections, however, commissioners with the Union County Board of Elections voted to accept absentee ballots that were not in the inner envelope as long as a certification was still included (per email from the administrator of the Union County Board of Elections, 12/15/20).

## E. New York

New York’s absentee ballots contain an inner envelope (called the “ballot envelope” or “oath envelope”) on which was printed the voter affirmation requiring a signature. According to [Oswego](#) and [Cattaraugus](#) counties, election officials said that, “unless the oath is signed and the ballot is enclosed in the secrecy envelope, your ballot will not be counted.” As such, **ballots in New York were rejected if they were missing the inner envelope or corresponding signature.** During New York’s 2020 primary, election officials rejected [over 84,000 ballots](#) in New York City alone, due to a combination of missing signatures, mismatched signatures, and absentee ballots arriving without postmarks. However, subsequent [state law changes](#) and [an agreement](#) between New York and the League of Women Voters gave voters the opportunity to



correct technical errors or other problems during New York's 2020 general election voting. The [recent state law changes](#), for instance, required local boards of elections to notify voters as soon as possible if their absentee ballot had deficiencies, including an unsealed or missing inner envelope that would need to be cured in order for the vote to count. In addition, for New York's 2020 general election voting, voters who [received](#) notice of such a deficiency between the dates of October 27 and November 3 (Election Day) had seven days to cure the deficiency, and voters whose absentee ballots were received on or after November 3 had five days to cure their absentee ballots, following notice of such deficiency.

New York's [election code](#) explained that, "[t]he board of elections shall furnish with each absentee ballot an inner affirmation envelope." One side of the inner envelope had spaces printed for the voter's name, address, district, and other identifying information. The reverse side of the inner envelope displayed the voter affirmation, declaring that the voter met all requirements and qualifications. The affirmation included room for the date, the voter's signature, and the signature of a witness (if the voter did not sign their name). The inner envelope additionally included instructions for the voter regarding the marking, mailing, and deadlines for the return of the ballot by various methods.

**036160**

**OFFICIAL ABSENTEE BALLOT**

General Election November 3, 2020  
District: City of Rye ED 7  
Ballot: \_\_\_\_\_

VOTER ID: \_\_\_\_\_  
COUNTY: WESTCHESTER

**General Election November 3, 2020**  
**SIGNATURE REQUIRED (SEE OTHER SIDE)**

**Board of Elections use only / Para uso exclusivo de la junta electoral**

**OFFICIAL ABSENTEE BALLOT FOR GENERAL (OR PRIMARY OR SPECIAL) ELECTION** \_\_\_\_\_, 20\_\_\_\_

Name of voter \_\_\_\_\_  
Residence (street and number if any) \_\_\_\_\_  
City/town of \_\_\_\_\_ (village, if any) \_\_\_\_\_  
County of \_\_\_\_\_  
Assembly district \_\_\_\_\_  
Legislative district (as applicable) \_\_\_\_\_  
Ward (as applicable) \_\_\_\_\_  
Election district \_\_\_\_\_  
Party enrollment (in case of primary election) \_\_\_\_\_  
Inspector (D) \_\_\_\_\_ Inspector (R) \_\_\_\_\_

**Instructions to voter:**

1. First mark your ballot, then fold it and place it in this envelope, and then seal this envelope.
2. Sign and date the statement on the reverse side of this envelope. Your signature will be compared to the signature on file with the board of elections to verify your identity.
3. Place this envelope in the return envelope.
4. Your ballot can be returned to any Early Voting or Election Day poll site, or to your local Board of Elections by 9:00 pm on Election Day, if delivered in person, or be postmarked by Election Day and received not later than seven days following the election.

If you have an application for an absentee ballot, do not place it in this envelope. Instead, place it in the return envelope along with this sealed envelope.

**Ballot envelope**  
**Sobre de boleta electoral**

**Instrucciones para el votante:**

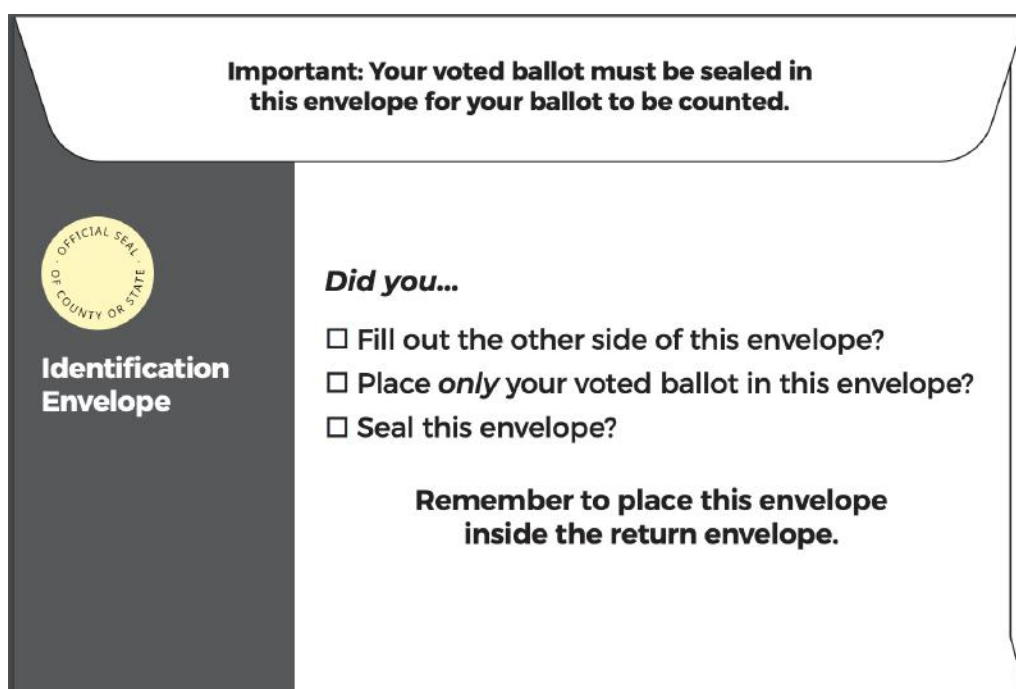
1. Primero, marque su boleta electoral, luego, dóblela y ubíquela en este sobre y selle el sobre.
2. Firme y feche la declaración en el reverso de este sobre. Su firma se comparará con la firma archivada en la junta electoral para verificar su identidad.
3. Ubique este sobre en el sobre de devolución.
4. Su boleta puede devolverse a cualquier centro de votación del Día de la Elección o Votación Anticipada, o a la Junta Electoral local antes de las 9:00 pm del Día de la Elección, si se entrega en persona, o llevar el matasello del Día de la Elección y recibirla a más tardar siete días después la elección.

Si tiene una solicitud para boleta electoral en ausencia, no la coloque en este sobre. Colóquela en el sobre de devolución junto con este sobre sellado.



## F. Ohio

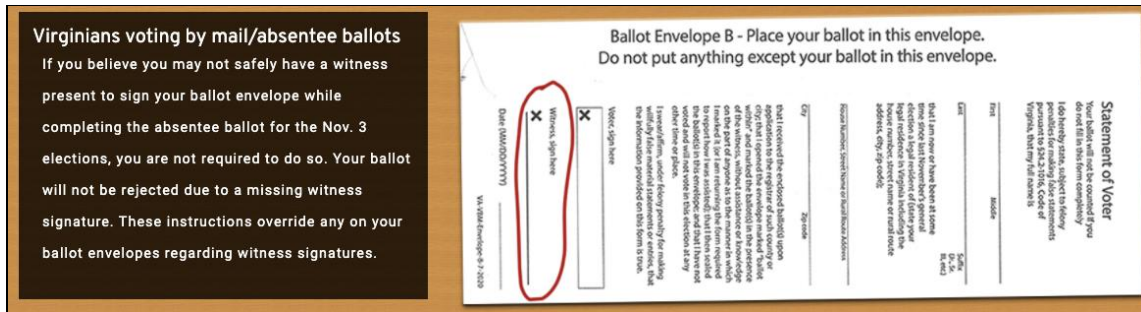
The Ohio absentee ballot package contained an inner [absentee ballot “identification envelope”](#) that was required for signature verification purposes. Therefore, **absentee ballots received without inner envelopes were rejected in Ohio**. During the 2020 primary, of the 21,154 ballots that were rejected in the state, nearly 4,000 of them were [rejected](#) because they were returned without the identification envelope or without sufficient information on the inner envelope. During the 2020 general election, the number of absentee ballots cast was over 90 percent more than the number cast in the primary, but only 9,205 absentee ballots were [rejected](#) in the state for all reasons combined.



Under Ohio law, the director of elections was [required](#) to send with each absentee ballot, an inner “Identification Envelope” and an outer return envelope that bore the post office address of the director. Printed on the inner envelope was the “Identification Envelope Statement of Voter,” which included spaces for the voter’s name, address, and other identifying information, as well as a declaration of the veracity of the information provided and space for the voter’s signature. Failure to include the identification envelope within the return envelope would mean the absence of this required information and declaration.

## G. Virginia

The 2020 Virginia absentee ballot contained an [inner envelope](#) that included space for the required voter signature. Thus, **a missing inner envelope resulted in a ballot's rejection**.



According to the Virginia [election code](#), absentee voters had to be sent a ballot, an inner envelope “for resealing the marked ballot,” and an outer return envelope. The side flap of the inner envelope displayed the “Statement of Voter,” which contains the standard oath for absentee voters. The statute says that “[w]hen this statement has been properly completed and signed by the registered voter and witnessed, his ballot shall not be subject to challenge[.]” But in the 2020 primary and general elections, Virginia did [not reject votes](#) for *lack* of a witness signature. In accordance with [rulings](#) by the U.S. District Court for the Western District of Virginia, the state waived the witness requirement during the pandemic for voters who feared exposure to the coronavirus, pursuant to a consent decree.

## V. States That Included Secrecy Sleeves But Accepted Naked Ballots

### A. Alaska

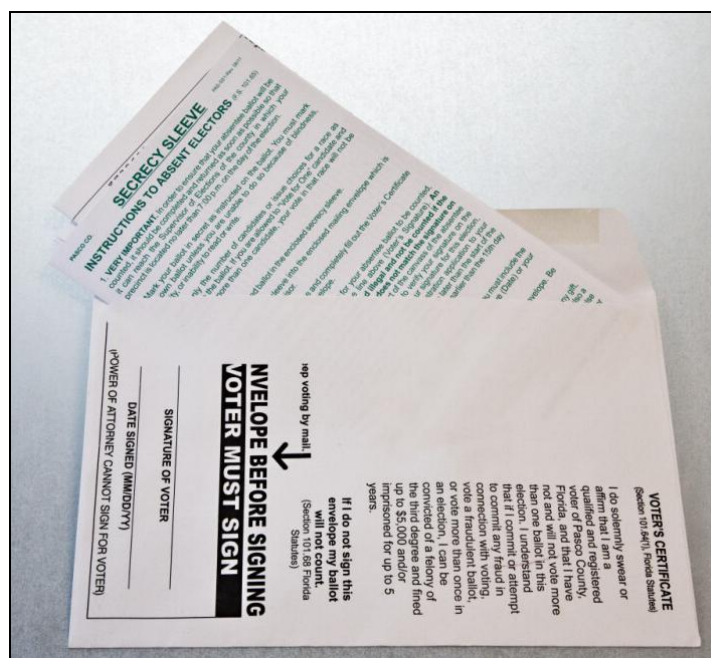
During the 2020 primaries in Alaska, election officials [rejected](#) a total of 1,240 absentee ballots, primarily due to a missing (or improper) signature from a voter or witness or because the ballot envelope was postmarked after Election Day. During the 2020 general election, the state [rejected](#) a total of only 569 absentee ballots. [State law](#) called for a secrecy sleeve to be provided to absentee voters, but it did not indicate that a ballot must be rejected if it was missing the secrecy sleeve when submitted. Before the 2020 general election, a representative from the Alaska Division of Elections for the Municipality of Anchorage [stated](#) that **election officials**

would not reject ballots submitted without secrecy sleeves, which was also its policy for the 2020 primary. Thus, at least in Anchorage, failure to use the secrecy sleeve did not result in rejection of the vote.

[Alaska law](#) required that the election director “shall provide a secrecy sleeve in which the voter shall initially place the marked ballot, and shall provide an envelope with the prescribed voter’s certificate on it, in which the secrecy sleeve with ballot enclosed shall be placed.” This statute placed requirements on both the election official and the voter to make use of the secrecy sleeve. However, the space for the voter’s signature, witness signature, and voter declaration appeared on the outer mailing envelope, not on the secrecy sleeve.

## B. Florida

Each absentee ballot in Florida contained a ballot, a secrecy sleeve with instructions for the absentee voter, and a return envelope. **However, if a voter forgot to include the secrecy sleeve with the ballot, the vote was still counted**, according to [election officials](#). Nevertheless, around [18,000 absentee ballots were rejected during the 2020 presidential primary](#) due to missing signatures and mismatched signatures, among other reasons.



Florida’s [election code](#) provided secrecy sleeve instructions for both election officials and voters. It stated, in relevant part, that election supervisors “shall enclose with each vote-by-mail ballot two envelopes: a secrecy envelope, into which the absent elector shall enclose his or her

marked ballot; and a mailing envelope, into which the absent elector shall then place the secrecy envelope.” The voter’s certificate must be printed on the back of the mailing envelope, with the line for the voter’s signature crossing the seal of the envelope. The secrecy envelope itself displayed a printed warning that the ballot would not be counted if it was not received by the supervisor of elections by 7 p.m. on Election Day.

## C. Georgia

In 2020, Georgia absentee ballot packages [contained](#) the ballot, instructions, an outer envelope, and a “privacy sleeve” in the form of a white piece of paper. An August 21, 2020, [order](#) from the U.S. District Court for the Northern District of Georgia, Atlanta Division, noted that “the ballot design was changed for the 2020 primary election to eliminate the secrecy envelope....Instead, the 2020 primary ballot included a ‘privacy sleeve,’ a change that was made to ‘allow faster processing of returned ballots by election officials.’” This change [remained in effect](#) during the 2020 general election. **Officials said that returning the absentee ballot inside the privacy sleeve was [entirely optional](#).** Note, however, that the Georgia Secretary of State’s office [mistakenly included](#) in its instructions that absentee ballots would include an inner “envelope,” rather than a folded white sheet of paper that now served as the privacy sleeve.

Georgia’s [election code](#) detailed the requirements of voters with respect to the secrecy envelope. It stated that “the elector shall vote his or her absentee ballot, then fold the ballot and enclose and securely seal the same in the envelope on which is printed ‘Official Absentee Ballot.’ This envelope shall then be placed in the second one, on which is printed the form of the oath of the elector; the name and oath of the person assisting, if any; and other required identifying information.” Nevertheless, as noted above, officials treated use of the inner envelope (which in 2020 consisted of a folded piece of paper) as optional and did not reject the ballots of voters who failed to use it.

## D. Hawaii

In Hawaii for the 2020 general election, each [absentee ballot package](#) delivered to the voter included a return envelope, a yellow secret sleeve, general information, and the ballot itself. **Ballots were [still counted](#), even if the voter forgot to use the secrecy sleeve.**



Hawaii's absentee voting [statute](#) explicitly required that the clerk provide absentee voters with "ballots, ballot envelopes, and a return envelope that shall contain a statement to be subscribed to by the voter." The statement affirmed that the intended voter was the person voting and had to be signed for the ballot to be counted.

## E. Minnesota

Minnesota's [election code](#) required that "a return envelope, a ballot envelope, and a copy of the directions for casting an absentee ballot" be provided to each absentee voter. The statute also detailed the design of the envelopes, requiring that the "return envelope shall be of sufficient size to conveniently enclose and contain the ballot envelope and a folded voter registration application." According to officials in Hennepin and St. Louis counties, **a missing "ballot envelope" (or secrecy sleeve) was not a criterion for rejection.** These two counties also used a separate "signature envelope" (in addition to the return envelope and the ballot envelope) that was required for signature verification; but, regardless, it appeared that the state did not reject ballots for lacking only the secrecy envelope.

The state [statute](#) provided counties two options for the placement of the voter information. Either (i) the return envelope must be large enough "to contain an additional envelope, that when sealed, conceals the signature, identification, and other information" of the voter, or, (ii)

the return envelope must include “an additional flap that when sealed, conceals the signature, identification, and other information” of the voter.” This language left open the possibility that the inner envelope need not necessarily be the vehicle for providing identifying voter information. Finally, the certificate of eligibility to vote by absentee ballot, which had spaces for both the voter and a witness to sign, was printed on the back of the outer return envelope, rather than the inner envelope.

**Highlights and “X”s**

In addition to drawing an “X” through the witness section on applicable ballots, officials in St. Louis County, Minn., are highlighting important sections that voters sometimes miss.

**Signature Envelope**  
 Voter must complete this section please print clearly

Voter name \_\_\_\_\_

Voter MN address \_\_\_\_\_ MN

ID number (MN driver's license #, MN ID card #, or last four digits of SSN) \_\_\_\_\_

☐ I do not have a MN-issued driver's license, MN-issued ID card, or a Social Security Number.

I certify that on Election Day I will meet all the legal requirements to vote.

Voter Signature **X** \_\_\_\_\_

**Witness must complete this section**

Witness name \_\_\_\_\_

MN street address \_\_\_\_\_ MN

(or title, if an official or notary) \_\_\_\_\_

City \_\_\_\_\_

I certify that:

- the voter showed me the blank ballot before voting;
- the voter marked the ballot privately or, if physically unable to mark the ballot, the ballot was marked as directed by the voter;
- the voter enclosed and sealed the ballot in the ballot envelope; and
- I am or have been registered to vote in Minnesota, or am a notary, or am authorized to give oaths.

Witness Signature **X** \_\_\_\_\_

If notary, must affix stamp

**For Official Use Only**  
☐ Accepted ☐ Rejected (reason) \_\_\_\_\_

PRER Signature Envelope—Registered

## F. North Dakota

The [North Dakota Century Code](#) stated simply that “a secrecy envelope and a return envelope must be enclosed with the ballot” sent to absentee voters. The voter affidavit, and spaces for the voter’s signature and identifying information, were displayed on the back side of the outer return envelope, not the secrecy envelope. Burleigh County Election Manager Erika White [said](#) that, “There’s nothing in law that states we need [the secrecy envelope] coming back, and we see ballots all the time where we just have the ballot inside of this envelope, and that’s fine, we accept that. It’s really up to the voter if they want to use the secrecy sleeve.” An election specialist in the office of North Dakota Secretary of State Lee Ann Oliver confirmed **that absentee ballots lacking secrecy sleeves were still counted in North Dakota in the 2020**



**general election** (per email received by Jesse Lazarus from Election Specialist in the Office of the North Dakota Secretary of State Lee Ann Oliver, 1/4/21).

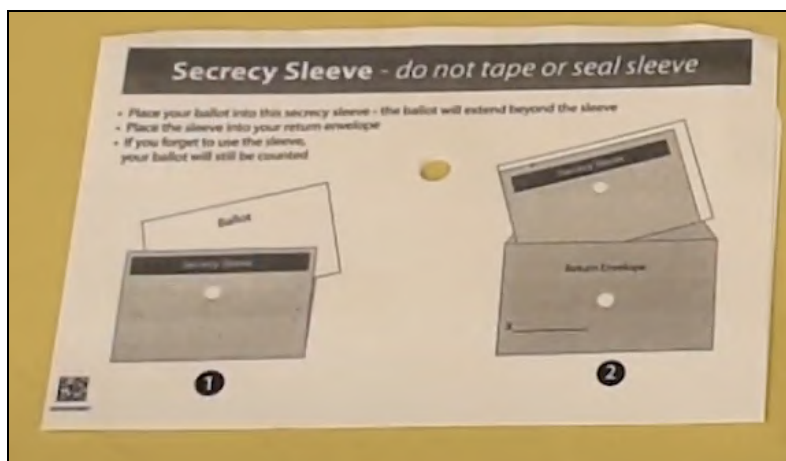
## G. Texas

Texas provided two envelopes, an inner “ballot envelope” and an outer “carrier envelope” that included voter information, such as [a signature](#). The Texas [election code](#) provided that, “[a]fter marking the ballot, the voter must place it in the official [inner] ballot envelope and then seal the [inner] ballot envelope, place the [inner] ballot envelope in the official [outer] carrier envelope and then seal the [outer] carrier envelope, and sign the certificate on the [outer] carrier envelope.” It also expressly states that, “Failure to use the [inner] official ballot envelope does not affect the validity of the ballot” (emphasis added). Further, the 2020 Texas Handbook for Election Judges and Clerks [stated](#) that a “ballot is considered valid even if it is not enclosed in a ballot secrecy envelope.” **Thus, ballots were still counted if the voter forgot to include the inner envelope.**

The inner ballot envelope was required only to display instructions for marking and returning the ballot, the deadline for doing so, limitations on assistance to the voter, and criminal penalties for unlawful assistance. The outer [carrier envelope](#), by contrast, had to include space for the voter to identify the relevant election and personal identifying information, as well as the voter certificate and signature, along with other specified textual material and the oath of any person assisting the voter.

## H. Washington State

Washington State’s absentee ballots were sent with secrecy sleeves but, in at least [one county](#), the secrecy sleeve specifically stated: “If you forget to use the sleeve, your ballot will still be counted.” Therefore, **it appeared that ballots received without secrecy sleeves would not be rejected.** Additionally, the official [website](#) of the secretary of state stated: “Your elections department will securely process your ballot if your security envelope is unsealed.”



Washington's [election code](#) required that absentee voters be provided with “a security envelope in which to conceal the ballot after voting,” along with a larger return envelope. The code further mandated that the voter swear to and sign a provided declaration but stated simply that the “ballot materials must provide space for the voter to sign the declaration,” without specifying on which envelope or other ballot materials the oath should be printed.

## I. West Virginia

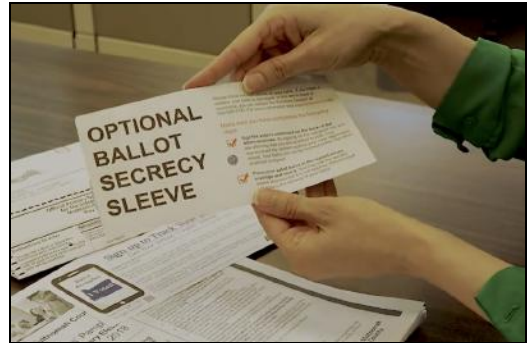
West Virginia absentee ballots were sent with inner and outer envelopes, but the state did not specify whether ballots returned without inner envelopes would be rejected. The state's [election code](#) required election officials to provide absentee voters with two envelopes—one marked “Absent Voter’s Ballot Envelope No. 1” and the other marked “Absent Voter’s Ballot Envelope No. 2.” The voter had to place their ballot into the envelope marked “No. 1” and seal it and then place this sealed envelope into the envelope marked “No. 2.” Finally, the forms on the outer envelope (No. 2) had to be completed and signed before the envelope was returned. Therefore, while the voter certification was on the outer, rather than the inner envelope, the code did contemplate the voter using both envelopes.

Absentee ballot [instructions](#) advised voters to fold a completed ballot, put it in “envelope #1” and seal that inner envelope before placing the inner envelope into “envelope #2,” which then had to be sealed and signed. Election officials at the county clerk’s office in Kanawha County said that **ballots would not be rejected if the voter failed to use the inner envelope.**

## VI. States That Allowed But Did Not Require Counties To Use Secrecy Sleeves

### A. Montana, Oregon and Michigan

A few states allowed for, but did not require, counties to provide secrecy sleeves to absentee voters. For example, under [Montana law](#), “[i]f a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot” and the ballot will still be counted.



Similarly, Michigan law provided that each absentee ballot sent to the voter should [include](#) instructions to direct the voter to first vote and then “place the ballot in the secrecy envelope, if any.” The instructions further [indicated](#) that, if a secrecy envelope was not provided, the voter should “refold the ballot to conceal [their] vote.” Michigan’s election code [instructed](#) election officials responsible for opening absentee ballot return envelopes to take any absentee ballots they found that were not already contained within a secrecy envelope and “immediately insert that absent voter ballot into an absent voter ballot secrecy envelope.” In other words, absentee ballots were not rejected because the voter did not use the secrecy envelope. Indeed, a spokesperson for the Michigan Secretary of State Tracy Wimmer [confirmed](#) that, if election workers opened a return envelope and found a naked absentee ballot without a secrecy envelope, they would simply place the absentee ballot into a new secrecy envelope and “proceed as normal.”

In [Oregon](#), the [default rule](#) was to provide voters with a secrecy envelope. However, counties could apply to the secretary of state to use a different procedure for maintaining privacy, and the [state](#) assured voters that “[t]he county elections office will maintain the privacy of your ballot if you forget the optional secrecy envelope or sleeve and your ballot will still count.”

## VII. Conclusion

Of the 17 states that required election officials to provide absentee voters with secrecy sleeves, seven states rejected ballots received without the secrecy sleeve. In most of these states, the voter’s signature, certification, or other required identifying information was required to be

written on the secrecy sleeve, so the rejection of the ballot was largely driven by the missing voter information. Just five states—Florida, Georgia, Hawaii, Texas, and Washington—made it clear that they would count “naked ballots,” or ballots received without a secrecy sleeve, statewide, in the general election of 2020. And large counties in several other states—including Alaska, Minnesota, North Dakota, and West Virginia—also confirmed that ballots would not be rejected for lack of a secrecy sleeve. In most of these states, the required voter information was on the outer envelope, not on the secrecy sleeve. In other jurisdictions, however, the rules were not so clear, and voters risked their ballot being rejected and their vote not counted if they forgot to use the inner envelope.

To avoid rejected votes for failure to include the inner envelope, policymakers, election officials, political parties, and nonprofits in 2020 employed several successful strategies. In Pennsylvania, the publicity around litigation and awareness campaigns appeared to have helped educate the public about the importance of including the secrecy sleeve, reducing voter error. In other states, such as Kentucky, ballot-curing processes appeared to have lowered overall absentee ballot rejection rates, including from failure to include the secrecy envelope.

For policymakers and election officials seeking to reduce rejection rates based on inadvertent failure of the voter to include the inner secrecy envelope, moving the location of required voter information or certification from the inner envelope to the outer envelope, as was the case in Alaska, North Dakota, and Texas, could make it easier for legislatures and election officials to accept ballots where the voter forgets to use the inner envelope. And as Philadelphia’s City Commissioner Lisa M. Deeley cautioned in her [letter](#) to the Pennsylvania state legislature, it is worth examining whether the use of secrecy envelopes continues to serve the original purpose for which they were adopted, or whether modern vote-counting procedures obviate their necessity.