

THE MOST POWERFUL INSTRUMENT

Voting by Mail in Texas





The Texas Interfaith Center for Public Policy is a faith-based, 501(c)(3) non-profit organization providing theologically grounded public policy analysis to people of faith and other Texans. The Center is the research and education partner of Texas Impact, the state's oldest and largest interfaith legislative network. Texas Impact was established by Texas religious leaders in 1973 to be a voice in the Texas legislative process for the shared religious social concerns of Texas' faith communities. Texas Impact is supported by more than two dozen Christian, Jewish and Muslim denominational bodies, as well as hundreds of local congregations, ministerial alliances and interfaith networks, and thousands of people of faith throughout Texas.

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VOTING BY MAIL IN TEXAS A Primer for Voters and Volunteers

Expanding the use of voting-by-mail (VBM) is essential for a safe and fair election in 2020. Between the new health and safety measures being implemented to reduce the spread of COVID-19 and a poll-worker shortage resulting from concerns about contracting the virus, long lines are expected on Election Day. Long waits disenfranchise voters with job or child care responsibilities. If more people vote by mail, that means fewer voters in line at in-person polling locations, reducing the risk of disenfranchisement and infection for those who must vote in person.

Although Texas has not expanded access to mail-in voting, voting-by-mail could nevertheless increase dramatically if adopted by the millions of voters who are already eligible. In Texas, between six and eight percent of the electorate currently uses a mail-in ballot.¹ However, more than 22 percent of the electorate was age 65 or older in 2016.² If just those aged 65 and older voted by mail in 2020, the proportion of voters utilizing VBM would increase from roughly 1 in 14 voters to 1 in 4—even excluding all other categories of voters eligible to vote by mail.

¹ Lewis v. Hughs, 5:20-cv-00577, Western District of Texas, San Antonio Division, (plaintiffs' brief at p.22); see also <https://fivethirtyeight.com/features/there-is-no-evidence-that-voting-by-mail-gives-one-party-an-advantage/>
² <https://www.tribtalk.org/2018/10/12/texas-no-country-for-young-voters/>

A BRIEF HISTORY OF VBM



Americans have been voting by mail for more than 150 years. In 1864, President Abraham Lincoln wanted to let Union soldiers vote from the battlefield.³ Meanwhile, Democrats feared that the “soldier vote” would favor Lincoln and tried to discredit absentee balloting by claiming the practice would propagate fraud.

Election laws are enacted and administered by the states, meaning President Lincoln couldn’t enact an absentee system, but he “lobbied” state legislatures to do so. Most Republican-led states allowed soldiers to vote absentee, while most Democrat-controlled states did not. Altogether, about 150,000 Union soldiers voted absentee in 1864—the first widespread use of absentee voting in American history.

By World War II, every state let soldiers vote remotely. Some 3.2 million soldiers

cast absentee ballots in the 1944 presidential election, accounting for nearly seven percent of the votes cast in that election. As in the Civil War, the challenging party—in this case, the Republicans—voiced concerns about fraud to mask their fear that the soldier vote would favor the incumbent, Franklin Delano Roosevelt.⁴ And, as in the Civil War, the concerns were unfounded.

No proven instances of widespread voter fraud occurred during the Civil War or any subsequent war. Historically, the argument that voting by mail increases fraud has been an expression of a fear that the absentee votes will favor one party over another.⁵ No matter which party raises concern about absentee voting and fraud, this alarm has been and remains a red herring. Absentee voting has never been shown to facilitate widespread voter fraud—not in the Civil War, nor in any war or conflict since.



Photo credit: Library of Congress

³ <https://www.military.com/military-life/how-absentee-voting-us-troops-won-civil-war-and-ended-slavery.html>

⁴ <https://www.nbcnews.com/politics/2020-election/how-do-you-know-voting-mail-works-u-s-military-n1186926>

⁵ <https://www.nbcnews.com/politics/2020-election/how-do-you-know-voting-mail-works-u-s-military-n1186926>

In 1986, the Uniformed and Overseas Citizens Absentee Voting Act required all states to send absentee/mailed ballots to military and overseas voters for federal elections.⁶ In 2009, Congress updated this law with the Military and Overseas Voter Empowerment (MOVE) Act, which allows all U.S. Uniformed Services and merchant marines, their family members, and U.S. citizens residing outside the country to receive a ballot by email for any election involving a federal candidate or issue.⁷ In 2015, Texas expanded the use of email ballots for military and overseas voters to include state and local elections as well.⁸

Fears that VBM will provide a partisan advantage have persisted in this century, but they continue to be unsupported by data. Five states—Colorado, Hawaii, Oregon, Washington, and Utah—currently conduct their elections almost entirely by mail. More than 90 percent of ballots cast in these states are mail-in ballots, yet the states’ political orientations are diverse. National commentators consider Colorado a “swing” state, Utah a “red” state, and the others three “blue” states. Importantly, a review of the election cycles during which those states began their phased expansions of VBM reveals no change in the states’ partisan makeup that can be attributed to the change in the method of voting. Political scientists affirm that as VBM grew in prominence, both parties enjoyed a small but equal increase in turnout.⁹

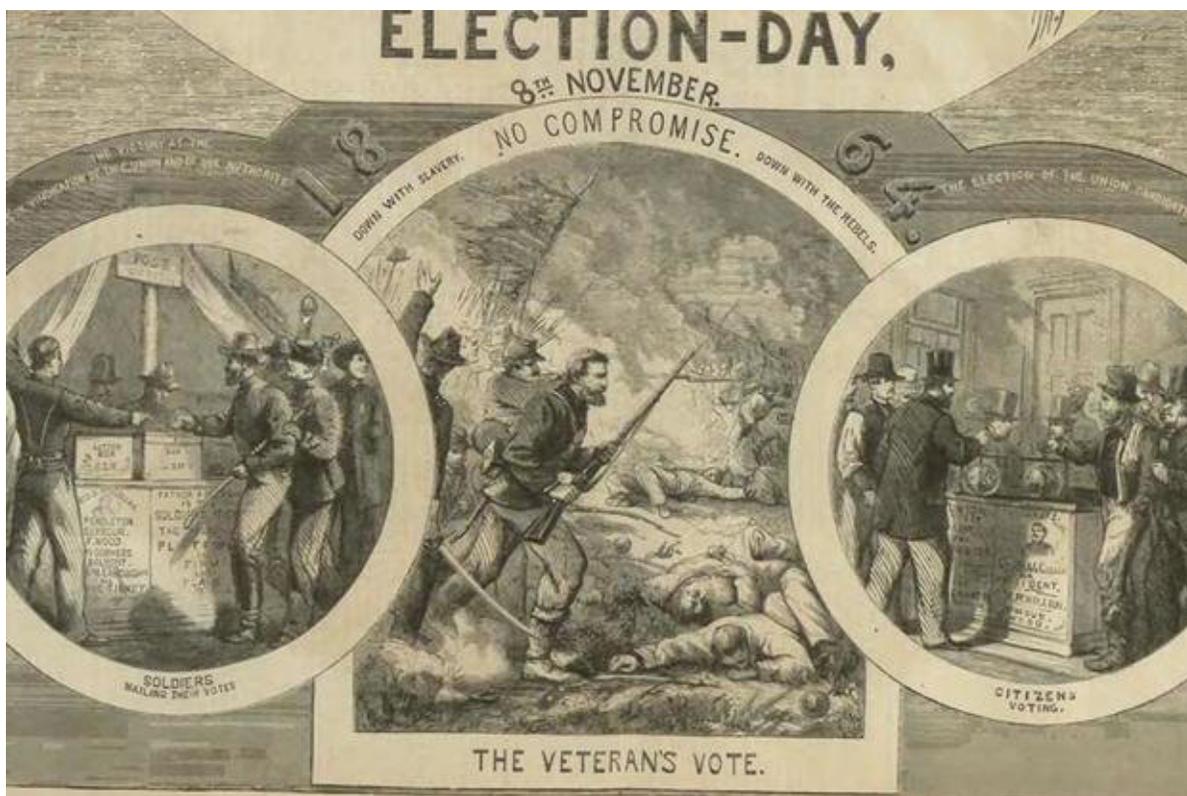


Photo credit: Library of Congress

⁶ <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>

⁷ Tex. Election Code §101.104 (Vernon 2020) (includes primaries and elections to fill a vacancy in the Legislature under certain circumstances; see also Tex. HB. 2778, 84th R.S. (2015)(allowing balloting materials to be sent by email for any election in which a federal postcard applicant voter was eligible to vote; see also House Research Organization, Bill Analysis, Tex. H.B. 2778, 84th Leg., R.S. (2015).

⁸ Tex. Election Code §101.104 (Vernon 2020); Tex. H.B. 2778, 84th R.S. (2015).

⁹ <https://siepr.stanford.edu/research/publications/neutral-partisan-effects-vote-mail-evidence-county-level-roll-outs>; see also <https://fivethirtyeight.com/features/there-is-no-evidence-that-voting-by-mail-gives-one-party-an-advantage/>

¹⁰ *In RE State of Texas*, No. 20-0394, slip. op. at 17 (Tex. May 20, 2020), available at <https://www.txcourts.gov/media/1446711/200394.pdf>

ORIGINS OF ABSENTEE BALLOTING IN TEXAS

As Chief Justice Nathan Hecht of the Texas Supreme Court wrote in 2020, “the [Texas] Legislature has been both engaged and cautious in allowing voting by mail.”¹⁰ During the First World War, when many states expanded absentee voting for soldiers overseas, Texas took a more incremental approach.¹¹ In the Texas Legislature’s Regular Session in 1917, three bills were filed that would have expanded absentee voting, but none passed. Two of those, which would have authorized VBM outright, stayed in the dustbin, but a third—the more incremental SB 33—was resurrected and passed during the first Special Session that year.¹² ¹³ SB 33 allowed a voter who expected to be absent from his county on Election Day to go to the county clerk between three and ten days prior to the election, present a poll tax certificate, mark a ballot, pay for postage, and have the completed ballot mailed to the presiding judge. On Election Day, between the hours of 2:00 and 3:00 p.m., the judge would: open the absentee ballots; publicly announce the names of the voters; ask if there were any challenges to the legality of the ballots; and decide the outcome of any challenges.



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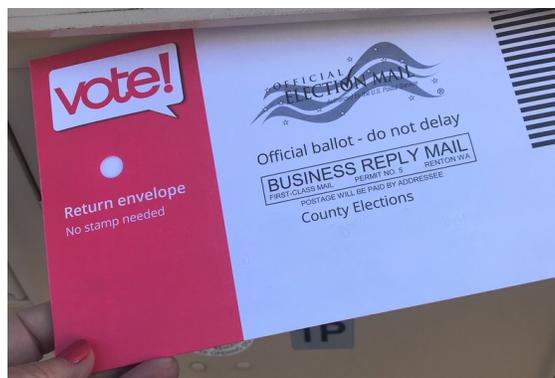


Photo © Michele Kemper | Dreamstime.com

This 1917 legislation instituted a hybrid of in-person and mail-based absentee voting. Subsequent legislation would move absentee voting more and more in the direction of VBM. In 1921, the Legislature passed HB 364, which allowed the voter to make an affidavit before a notary public 10 to 20 days before Election Day. The notary would request a ballot from the county clerk by mail, and the county clerk would then mail a ballot to the voter, wherever the voter was. The voter would then take the ballot back to the notary, mark the ballot in the notary’s presence under oath, and the notary would mail it back to the county clerk.¹⁴ The 1921 legislation provided the absentee voter much more flexibility. The absentee voter had more time and could be located anywhere with a notary. While the legislation applied only to primaries—the only races that mattered in 1920’s Texas—the Legislature expanded absentee voting to all elections the next session in 1923.¹⁵ By 1933, elected officials were confident of the integrity of absentee voting by mail and eliminated the need for a notary.¹⁶

¹¹ <https://www.nbcnews.com/politics/2020-election/how-do-you-know-voting-mail-works-u-s-military-n1186926>

¹² Tex. H.B. 77, 35th R.S. (1917) (absentee voting in a primary), Tex. H.B. 746, 35th R.S. (1917) (vote by mail), and Tex. S.B. 411, 35th R.S. (1917) (vote by mail).

¹³ Tex. S.B. 33, 1 C.S. (1917); see also Act of May 26, 1917, 35th Leg. 1st C.S., ch. 40, § 1, 1917 Tex. Gen. Laws 62, 63–6

¹⁴ Tex. H.B. 364, 37th R.S. (1921); see also Act of Mar. 12, 1921, 37th Leg., R.S., ch. 113, § 1, 1921 Tex. Gen. Laws 217, 218.

¹⁵ Tex. S.B. 136, 38th R.S. (1923); see also Act of 1923, 38th Leg., R.S., ch. 149, Tex. Gen. Laws

¹⁶ Tex. S.B. 93, 43d R.S. (1933); See also Act of Jan. 30, 1933, 43rd Leg., R.S., ch. 4, § 1, 1933 Tex. Gen. Laws 5, 5–6.

In 1935, absentee voting was expanded to include those with a “sickness or physical disability [that] cannot appear at the polling place” on Election Day.¹⁷ In 1963, the definition of “disability” was expanded to include “expected or likely confinement for childbirth.”¹⁸ In 1969, “religious belief” was added as an excuse for absentee voting.¹⁹ In 1975, absentee voting was expanded to voters 65 years of age or older and non-felons confined in jail.²⁰ Finally, in 1981, the requirement for a physician’s certificate accompanying an application to vote absentee based on a “disability” was dropped.²¹

A RECENT HISTORY OF VBM IN TEXAS

Texas pioneered early in-person voting in the late 1980s. In 1986, one Texas lawmaker was irked by having to claim that he “expected to be absent on election day” in order to vote an absentee ballot by personal appearance.²² The following session, State Senator Chet Edwards filed a bill to eliminate the need for an excuse for personal appearance absentee voting.²³ It passed with little fanfare. County clerks were mandated to provide in-person absentee voting at the county clerk’s office from the 20th day through the fourth day before an election.²⁴ And thus, early voting was born.

In 1991, the Texas Legislature passed a major expansion of what would come to be called “retail voting.” With SB 1234, counties became authorized to create early voting polling places at locations other than the clerk’s office, and the terminology for this changed from “absentee voting” to “early voting,” now that any voter could cast a ballot early by personal appearance. Known as “retail voting” at the time, many polling stations were located in shopping malls and grocery stores for convenience.²⁵



While the effect of SB 1234 was to encourage in-person absentee voting, the legislative record shows that this change was only meant to expand the franchise by making voting more convenient—not to diminish a 50-year-old reliance on mail-in ballots for absentee voting. Other than a name change, the mail-in option was left largely intact, as many voters were used to—and military and overseas voters relied on—the mail-in system.

¹⁷ Tex. H.B. 49, 44th R.S. (1935); see also Act of May 17, 1935, 44th Leg., R.S., ch. 300, § 1, 1935 Tex. Gen. Laws 700, 700.

¹⁸ Act of May 24, 1963, 58th Leg., R.S., ch. 424, § 14, 1963 Tex. Gen. Laws 1017, 1034.

¹⁹ Tex. S.B. 264, 61st R.S. (1969); Act of Mar. 27, 1969, 61st Leg., R.S., ch. 82, §1, 1969 Tex. Gen. Laws 202, 203.

²⁰ Act of May 30, 1975, 64th Leg., R.S., ch. 682, § 5, 1975 Tex. Gen. Laws 2080, 2082.

²¹ Tex. H.B. 531, 67th R.S. (1981); see also Act of May 26, 1981, 67th Leg., R.S., ch. 301, § 1, 1981 Tex. Gen. Laws 854, 855.

²² Alternative Ballot Techniques: Hearing Before the Subcommittee on Elections of the Committee on House Administration, U.S. House of Representatives, One Hundred Third Congress, Second Session, p. 7 (September 22, 1994).

²³ Hearing before the House Committee on Administration's Subcommittee on Elections, 110th Congress, First Session, (October 22, 2007)(statement of Warren Harrison)(available online at <https://www.govinfo.gov/content/pkg/CHRG-110hhrg40618/html/CHRG-110hhrg40618.htm> ; and <http://www.gpoaccess.gov/congress/house/administration/index.html>

²⁴ Alternative Ballot Techniques: Hearing Before the Subcommittee on Elections of the Committee on House Administration, U.S. House of Representatives, One Hundred Third Congress, Second Session, p. 7 (September 22, 1994).

²⁵ Tex. S.B. 1234, 72nd R.S. (1991); see also Act of May 21, 1991, 72nd Leg., R.S., ch. 1234, § 1.02, Tex. Gen. Laws 831, 831.

²⁶ Tex. S.B. 264, 61st R.S. (1969); Act of Mar. 27, 1969, 61st Leg., R.S., ch. 82, §1, 1969 Tex. Gen. Laws 202, 203.

One noteworthy change SB 1234 made to the mail-in system, however, was the elimination of one criteria for eligibility which would have been particularly useful for increasing the use of vote-by-mail in the pandemic of 2020. In 1969, the legislature made “religious belief” one of the permissible reasons a person could vote absentee.²⁶ SB 1234 struck that excuse. Currently, seven of the 16 states that require an excuse to vote by mail have a religious exemption.²⁷ In 1991, however, the Democratically-controlled legislature eliminated the provision to “prevent fraud,” making the judgment that there was no religion that would prevent a believer from accessing an in-person polling location during the 15 available days.²⁸



Texas’s early-voting program became a model for many other states.³⁰ According to the National Conference of State Legislatures, all but nine states now allow some form of early voting.³¹ However, not every state that votes early opted for in-person early voting. Other states expanded early voting by mail. Now with the threat of COVID-19, states that enacted an early voting by mail arguably are better positioned than those that opted for an early in-person system.

Currently, only five states conduct all elections almost entirely by mail. Twenty-one other states utilize an “automatic” VBM in smaller elections—like school board contests—wherein the state automatically sends a ballot to all registered voters.³² In 28 states, all voters have the right to VBM if they choose without providing any reason or excuse.³³ Sixteen states, including Texas, require an excuse. Seven of those 16 states—Connecticut, Delaware, Indiana, Missouri, New Hampshire, and Tennessee—allow a religious belief or practice to qualify as an excuse.³⁴

In a hearing about the religious exemption to in-person voting, the Secretary of State testified before the Senate State Affairs Subcommittee on Elections and Ethics that:

“there have been allegations that are made almost yearly in regard to the use of mail-in ballots perpetrating fraud...We have removed religious reasons in this bill, and the reason is that with the extended voting hours, there is absolutely no religion that I can find anywhere that could not vote in one of the 15 or so days that you have to vote in, and the only reason that I can see that a person would put down religious reasons, it’d be hard to prove but ... you’ve got to be doing something else.”²⁹

²⁷ <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>

²⁸ Hearing on Tex. S.B. 1234 Before the Senate Subcommittee on Elections and Ethics of the Committee on State Affairs, 72d R.S. (1991) (testimony of Secretary of State)(available online at https://tsl.access.preservica.com/uncategorized/IO_a0d04614-69db-4ca1-bb54-b5ca972eb57b/).

²⁹ Hearing on Tex. S.B. 1234 Before the Senate Subcommittee on Elections and Ethics of the Committee on State Affairs, 72d R.S. (1991) (testimony of Secretary of State)(available online at https://tsl.access.preservica.com/uncategorized/IO_a0d04614-69db-4ca1-bb54-b5ca972eb57b/).

³⁰ Alternative Ballot Techniques: Hearing Before the Subcommittee on Elections of the Committee on House Administration, U.S. House of Representatives, One Hundred Third Congress, Second Session, p. 7 (September 22, 1994).

³¹ <https://www.ncsl.org/research/elections-and-campaigns/early-voting-in-state-elections.aspx>

³² <https://www.ncsl.org/research/elections-and-campaigns/all-mail-elections.aspx>

³³ <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>

³⁴ <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>

STATE STATUTES ON ALL-MAIL ELECTIONS

States that conduct all elections by mail:

- **Colorado**
- **Hawaii**
- **Oregon**
- **Utah**
- **Washington**

States that permit counties to opt into conducting all elections by mail:

- **California:** Any county may conduct any election as an all-mail election following statutory guidelines.
- **Nebraska:** Any county of less than 10,000 inhabitants may apply to the secretary of state to mail ballots for all elections in lieu of establishing polling places.
- **North Dakota:** Counties may conduct any election by mail. Applications for mailed ballots are sent to each individual listed on the central voter file (note that North Dakota does not require voter registration ahead of the election) and there must be one or more polling places in the county for voting in the usual manner.

States that permit some elections to be conducted by mail:

- **Alaska:** Elections that are not held on the same day as a general, party primary or municipal election.
- **Arizona:** A city, town, school district or special district may conduct elections by mail.
- **Florida:** Referendum elections at the

county, city, school district or special district level.

- **Kansas:** Nonpartisan elections at which no candidate is elected, retained or recalled and which is not held on the same date as another election.
- **Maryland:** Special elections not held concurrently with a regularly scheduled primary or general election.
- **Missouri:** Nonpartisan issue elections at which no candidate is elected, retained or recalled and in which all qualified voters of one political subdivision are the only voters eligible to vote.
- **Montana:** Any election other than a regularly scheduled federal, state, or county election; a special federal or state election, unless authorized by the legislature; or a regularly scheduled or special election when another election in the political subdivision is taking place at the polls on the same day.
- **Wyoming:** Counties may decide to conduct special elections not held in conjunction with a primary, general or statewide special election entirely by mail.

States that permit certain jurisdictions or portions of a jurisdiction to be designated as all-mail based on population:

- **Idaho:** A precinct which contains no more than 140 registered electors at the last general election may be designated by the board of county commissioners a mail ballot precinct no later than April 1 in an even-

ADVANTAGES AND DISADVANTAGES OF VBM

numbered year.

- **Minnesota:** Elections conducted by a municipality having fewer than 400 registered voters on June 1 of an election year and not located in a metropolitan county.
- **Nevada:** Whenever there were not more than 20 voters registered in a precinct for the last preceding general election.
- **New Jersey:** A municipality with a population of 500 or fewer persons, according to the latest federal decennial census, may conduct all elections by mail.
- **New Mexico:** A county may designate a precinct as a mail ballot election precinct if it has fewer than 100 voters and the nearest polling place for an adjoining precinct is more than 20 miles driving distance from the precinct boundary in question.³⁵



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Voting by mail is just one method of administering an election, and every method has advantages and disadvantages. Benefits of VBM are the existence of a paper trail, the ability to audit results, and impermeability to computer hacking. The only machines VBM requires are for tabulation, so that any technological breakdowns merely delay the reporting of the results rather than affecting or preventing the actual casting of votes. VBM means that voters with child care or work-related scheduling issues won't be disenfranchised by faulty machines, long lines, insufficient polling locations, or a lack of election workers.

VBM has some disadvantages, however. Ballots can be lost or damaged during mailing. Voter error is more likely when a person is applying for, marking, or mailing a ballot. Electronic machines at in-person polling places can prompt a voter to revisit a skipped race or prevent accidental errors like marking two candidates in the same race, which VBM cannot. Privacy laws preventing unlawful influence can't be enforced in a voter's home the way they can at a polling place. And finally, mailed ballots take longer to tabulate than electronic ones.

³⁵ <https://www.ncsl.org/research/elections-and-campaigns/all-mail-elections.aspx>

CHALLENGES CAUSED BY COVID-19

States that currently conduct elections predominantly by mail were able to phase in VBM over several election cycles, giving voters, administrators, and elected officials time to respond to complications as they arose.³⁶ Abrupt adoption of VBM as a response to COVID-19 will not allow that luxury, whether that adoption is at the administrative or individual level. Even states that do not expand who is eligible to vote by mail can expect many former in-person voters to opt for mail-in ballots in 2020. In Wisconsin, for example, the number of mail-in ballots requested for the spring election of 2020 spiked to 1.2 million up from the 250,000 requested for the spring election of 2016, an increase of 380 percent.³⁷

This year's election will demand as many polling locations and staff as previous cycles, but election workers will need to be trained for, and locations conducive to, new social distancing procedures. Additionally, more election workers and tabulation machines will be required to process the surge of mail-in ballots expected to be applied for, sent out, returned, and tabulated.

Election budgets are also a concern. In the long run, VBM makes elections significantly less expensive to administer, but the transition away from in-person voting has start-up costs.³⁸



Photo © Joaquin Corbalan | Dreamstime.com



³⁶ <https://sos.oregon.gov/elections/Documents/statistics/vote-by-mail-timeline.pdf>

³⁷ <https://www.nytimes.com/2020/04/09/us/politics/wisconsin-election-absentee-coronavirus.html>

³⁸ <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>

RECOMMENDATIONS



Texas should use bar codes and track ballots like UPS or Amazon tracks packages. Texas already tracks ballots for military and overseas voters. Domestic voters ought to be able to go online and see if their application has been received or approved, and if a ballot has been sent, arrived, accepted, or rejected by the county.

Texas should eliminate the need for an excuse to vote by mail. Even before the pandemic began, a majority of other states—34—did not require voters to provide an excuse to vote by mail.³⁹ Since the pandemic, that number has grown to 41 states that allow voters to request absentee ballots without an excuse.⁴⁰ Texas should join them.

Texas should switch its ballot receipt deadline to a postmark date. While election results might be delayed, county election officials already have to convene the sixth day after an election to count military and overseas ballots. The foundational principle of “one person one vote” should not privilege

one voter’s franchise over another based on geography.

Voters should have an opportunity to cure if a ballot is rejected. In nineteen other states, voters are not disenfranchised by untrained signature verification committees. Rather, if due to a questionable or missing signature or a technical error, voters should be able to come to the county clerk’s office to prove their identity or correct the error.

Texas or Congress should pay the postage on Applications for Ballot by Mail and on the official ballot. The federal government pays the postage for military and overseas voters. Texas pays the postage for voter registration.⁴¹ With the prevalence of online bill paying, many households no longer have stamps. Additionally, a trip to the post office to purchase stamps increases the health risk for both the voter and postal worker in a pandemic. Finally, for many American citizens, the price of stamps is a burden as we endure economic hardship not seen since the Great Depression.

³⁹ Tex. Election Code §86.001(e) (Vernon 2020).

⁴⁰ Tex. Election Code §82.003 (Vernon 2020).

⁴¹ Tex. Election Code §82.002 (Vernon 2020).

Safer Voting 2020

How Congregations Can Help Seniors and Members with Disabilities Register to Vote by Mail

In normal election years, older members of our communities provide essential assistance as poll workers and judges. But with COVID-19 posing a special threat to seniors, many volunteers have had to forego their service, and many more are rightly concerned about the dangers of voting in person. That makes 2020 an ideal time for your congregation or group to help seniors and anyone with a disability apply to vote by mail.

The application process itself is not arduous, but it does have to be completed correctly and on time. There are potential pitfalls, but none that can't be overcome with good planning.

University Presbyterian Church in Austin, Texas, created a process to notify eligible members of their congregation and help them register. Based on their experiences, Texas Impact recommends the following process for any congregation or group working to help its own vulnerable members vote safely:

Form your team.

You'll need a handful of dedicated democracy-lovers to make this happen.

Build your list.

Identify members of your congregation who are age 65 or older or who are homebound. Create a spreadsheet with their names, addresses, email addresses, and/or phone numbers--whatever contact details you have. Reach out to ask if they want to receive an application to vote by mail along with a pre-addressed, pre-stamped envelope to mail it in. Create other avenues to find participants, too, like making an announcement during virtual service and putting a notice in the newsletter.

Make your packets.

Download and print vote-by-mail applications from the Secretary of State website, remembering that some households will have multiple applicants. Print envelopes and address them to the correct county election clerk for each household. (Most will go to Travis County, but not all.) Stamp the envelopes. Enclose instructions and a note of encouragement. Put all these components in a plastic bag for contact-free delivery.

Deliver.

Hand-deliver as many packets as possible and mail the rest.

Check in.

Call or email potential applicants two weeks after packet delivery to ask if they've received ballots, remind them of the application deadline, and collect any feedback.

Check in again.

Follow-up is important, but use it sparingly. During an election season, voters are bombarded with phone

calls, so be judicious about additional outreach. Your group might want to save their second phone call to remind voters of an imminent deadline to mail their ballots, or you may want to call earlier, hoping to help voters who are confused or have questions. Use email instead of calling whenever possible.

Keep notes.

Maintain meticulous but strictly guarded records of the project, including number of times and ways each individual was contacted, any feedback, and whether they successfully voted. (Only after the election will voters be able to see whether their vote was received and counted.) Note that none of this includes the content of their vote.

Take stock.

Send out a simple survey to voter participants to assess their experiences. Additionally, have each team member write a reflection on the project--such as things they wish they'd known, resources it would have been nice to have, and what they would have done differently or earlier--and include it with the records. Hitches and glitches, successes and failures can all be useful to create a better process the second time around.

Take a victory lap!

Making democracy work takes all of us. Helping your congregation's vulnerable members vote safely is a doable—and vital—way you can help the system work better for everyone.

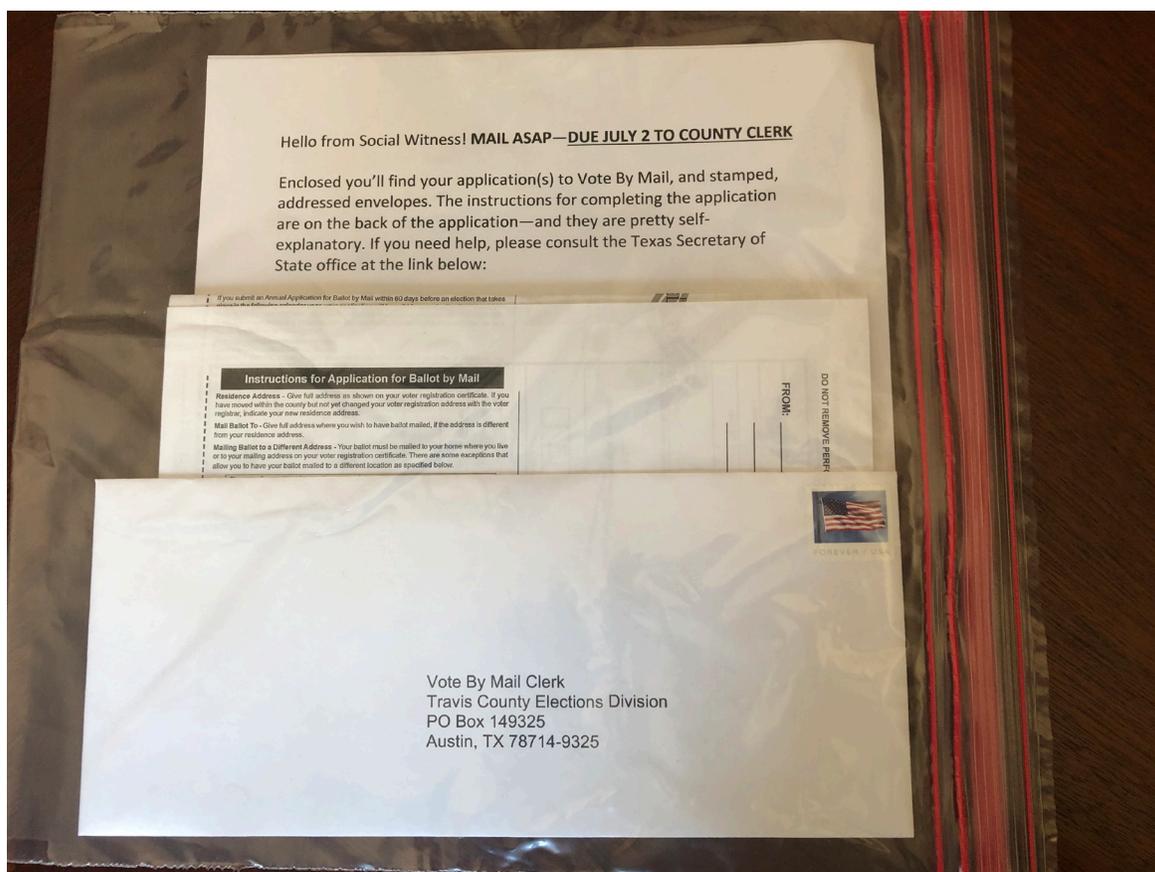


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TEXAS LAW AND VBM

A Guide for Voters

A voter wishing to vote by mail must be registered, eligible, apply for, and cast a ballot.

⁴² An application to vote by mail will be verified against the county's voter rolls before a ballot is issued.

1. Eligibility

In Texas, five categories of registered voters are eligible to vote by mail. Registered voters who are:

- 1) **65 years or older;**⁴³
- 2) **Disabled;**⁴⁴
- 3) **Confined in jail, but otherwise eligible;**⁴⁵
- 4) **Out of the county during early voting and election day;**⁴⁶ and
- 5) **participating in a witness protection program.**⁴⁷

The precise language defining these categories may be found in the Texas Election Code Sections 82.001-82.004.

Who qualifies as “disabled” has been the subject of extensive litigation. The statute reads, “a qualified voter is eligible for early voting by mail if the voter has a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter’s health.” Few specifics exist as to what “physical conditions” qualify.

The potential to contract COVID-19 during in-person voting has created new questions about who qualifies under the category of disability.

Regarding this, the Texas Supreme Court has said:

“[A] voter can take into consideration aspects of his health and his history that are physical conditions in deciding whether, under the circumstances, to apply to vote by mail because of disability. We disagree that lack of immunity, by itself, is one of them. As we have said, the decision to apply to vote by mail based on a disability is the voter’s... [T]he Election Code does not require election clerks to ‘investigate each applicant’s disability.’ Indeed, the Legislature rejected the requirement of a physician’s proof of disability for mail-in voting applications when it amended the Election Code in 1981... The elected officials have placed in the hands of the voter the determination of whether in-person voting will cause a likelihood of injury due to a physical condition.”⁴⁸

2. Applying

The fastest way to obtain an application to vote by mail is to download it, fill it out, affix a stamp, and mail it to the Early Voting Clerk in the county of the voter’s residence. Another option is for the voter to request the Secretary of State mail one to the voter’s address. However, the voter should pay attention to deadlines and allow at least three weeks for the application to arrive. An individual voter may request up to five applications. A third option for the voter is to contact the county election official. However, the voter will have to call or correspond by email, allow three weeks for delivery, and local practices may vary regarding the number of applications an individual may receive.

The application for a ballot by mail must be received—not postmarked—by the county

⁴² Tex. Election Code §82.004 (Vernon 2020).

⁴³ Tex. Election Code §82.001 (Vernon 2020).

⁴⁴ <https://www.txcourts.gov/media/1446714/200394c3.pdf>

⁴⁵ *In RE State of Texas*, No. 20-0394, slip. op. at 22-24 (Tex. May 20, 2020), available at <https://www.txcourts.gov/media/1446711/200394.pdf>

⁴⁶ Tex. Election Code §84.007(c) (Vernon 2020).

⁴⁷ Tex. Election Code §84.008 (Vernon 2020).

⁴⁸ Tex. Election Code §86.001 & 86.008 (Vernon 2020).

⁴⁹ <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx#systems>

election office no later than the 11th day before election day, which is October 23, 2020, for the upcoming general election.⁴⁹ A voter can also personally deliver an application to the early voting clerk if early voting has not yet begun and the deadline to apply is worryingly close.⁵⁰ For the July 14 Primary Runoff, the Governor extended early voting by one week. This led to the unusual situation where after June 29, 2020, a person could not hand deliver an application to the county, but could still mail it in and hope it was received by July 2. In previous election cycles, a person could fax or email a scanned application to vote. However, during the special session after the 85th Legislature, lawmakers passed SB 5, which effectively disallowed faxed or emailed voting applications.

Voter error on applications to vote by mail are common. If information provided on the application conflicts with the voter's current registration, the application will be denied. State law requires that the county contact the applicant and state a reason for the rejection, which may allow a defective application to be cured, but there also may not be time for this if the correspondence is close to the deadline.⁵¹ In such a situation, a voter should go in-person to the polls during early voting or Election Day.

Another common problem that arose in the July Primary Runoff was that a voter would apply to be an annual voter and wish to vote in the primary, but forget to mark the party primary of the voter's choice. In such situations, the county would not know to send a primary ballot. Additional confusion occurred in Travis County where a special election for a state senate seat was concurrently occurring. Voters in Travis

County would realize their mistake when a ballot arrived with only the special election race on the ballot and not the runoff races. In such a situation, a voter should take the mail-in ballot to their polling location during early voting or Election Day, and tell the election worker that the voter wishes to "surrender" the mail-in ballot and vote in-person. The election worker will have the voter fill out a form cancelling the mail-in ballot, and set the voter up to cast a ballot in-person.

Ballot Tracking

On occasion, an error can take place in the mailing process, such as the county failing to receive the application or failing to send a ballot, or the U.S. postal service failing to deliver the ballot to the voter. Texas does not track ballots sent by mail to domestic voters. The federal 2009 Military and Overseas Voter Empowerment Act required states to develop a free access system so military and overseas voters could determine whether their ballot had reached the election official and if it had been counted. States are allowed to choose whether to create an online tracking system or provide a phone system. Thirty-two states developed online systems. Texas created an online system, but unlike fifteen⁵² other states that made it available for all mail-in ballots, Texas's system is for military and overseas voters only.⁵³

Texas law lacks a satisfying remedy in these instances. If there is ample time, a voter can call the county and ask about the status of their application. Such a call might clarify if the application was received or a ballot was sent. Nevertheless, county employees are busy during election season and could be overwhelmed with the volume of such calls. In a worst-case scenario where the application has been received and a ballot sent by the county, but the ballot never arrives at the voter's house, then the voter should go in-person to the polling place with proper voter identification and vote provisionally. When voting provisionally, a voter must fill out a sworn affidavit explaining the circumstances.⁵⁴ Notably, this differs from a situation where a ballot arrives at the voter's house late, which is covered in Section Three.

⁵⁰ Tex. Election Code §101.108 (Vernon 2020); see also <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>;

⁵¹ Tex. Election Code §84.032(c) (Vernon 2020).

⁵² Tex. Election Code §86.005(c) (Vernon 2020).

⁵³ <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>

⁵⁴ <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-12-states-with-postage-paid-election-mail.aspx>

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A Guide for Voters (cont.)

3. Casting a Ballot

After the county election administrator verifies the information on the application against voter rolls, a ballot will be mailed to the voter.

To cast a ballot by mail, the voter must:

- Mark the ballot;
- Place the ballot in the ballot envelope for secrecy;
- Seal the ballot envelope;
- Place the ballot envelope in the carrier envelope;
- Seal the carrier envelope;
- Sign the back of the carrier envelope;
- Affix postage; and
- Drop the stamped carrier envelope in the mail.

Once the carrier envelope is sealed and signed, it may not be reopened. Once sealed, the voter must also sign the back of the carrier envelope. **Reopening or failing to sign the carrier envelope will invalidate the ballot.**⁵⁵ While 19 states require voters to be notified and given an opportunity to cure mistakes on mail-in ballots, Texas is not one of them.⁵⁶ Also, in Texas, postage for a mail-in ballot is not paid as it is for voters in 17 other states and for non-domestic voters in every state.⁵⁷ One solution to not paying postage is to make drop boxes widely available. However, Texas requires a mail-in ballot be dropped off in person with the early voting clerk on Election Day.



Photo © Laura Gangi | Dreamstime.com

Sometimes, a voter may receive a mail-in ballot late, meaning close enough to the legal deadlines that a voter is concerned that the postal service will not deliver a ballot to the county in time. **Legally, in Texas, carrier envelopes must be postmarked on or before election day and received by 5:00 p.m. the day after the election.**⁵⁸ **Practically, however, a ballot mailed on election day is unlikely to be received in time to be counted.** Even before the pandemic, the U.S. Postal Service recommended that voters mail their ballots at least a week before ballots are due because of increased mail demands around the time of an election.⁵⁹ Additionally, in mid-April, nearly 500 postal workers have tested positive for COVID-19, more than 6,000 are in self-quarantine due to exposure, and the federal government has not acted to shore up the postal service's decades-long budget struggles. In Wisconsin's primary in April, 108,000 mail-in ballots were received by elections

⁵⁵ Tex. Election Code §86.007 (Vernon 2020).

⁵⁶ <https://www.snopes.com/fact-check/mail-in-ballot-deadline/>

⁵⁷ Lewis v. Hughs, 5:20-cv-00577, Western District of Texas, San Antonio Division, (plaintiffs' brief at p.27).

⁵⁸ <https://www.washingtonpost.com/business/2020/07/14/postal-service-trump-dejoy-delay-mail/>

⁵⁹ Tex. Election Code §86.006 (Vernon 2020).

⁶⁰ Tex. Election Code §86.001(g) (Vernon 2020).

⁶¹ Tex. Election Code §122.001 (Vernon 2020).

⁶² Tex. Election Code §127.007 (Vernon 2020).

officials after Election Day.⁶⁰ Additionally, in July, reports surfaced that the Trump Administration is making operational changes to the postal service which would slow mail delivery.⁶¹ If a voter receives a ballot late, then a voter should drop off the mail-in ballot in-person with the early voting clerk—remembering to bring proper voter ID—on Election Day. The early voting clerk’s address is printed on the carrier envelope.⁶²

A voter may also surrender the mail-in ballot and vote in-person at their precinct or county-wide vote center, depending on their county. However, if at all possible, the voter should hand-deliver the sealed carrier envelope to the early-voting clerk. When a ballot by mail has been issued, the county has recorded it in their voter registration list.⁶³ Surrendering the mail-in ballot to the election judge to vote in person will require the election judge to go through several time-consuming steps to cancel the mail-in ballot and get the voter set up to vote in-person. With all the new procedures required at polling places for election judges to keep the public safe due to COVID-19, it would be very helpful to election administrators and other voters for a mail-in ballot to be dropped off with the county’s early voting clerk instead.

4. Counting Ballots

Exactly how votes are tabulated varies by county. However, the state does supervise and set standards for voting systems, and each voting system permitted by state law is governed under Title 8 of the Election Code.⁶⁴ For example, for the March 3, 2020, primary, Travis County used an

electronic voting system and a central counting station. Under state law, Travis County submitted a written plan to the Secretary of State.⁶⁵ Those plans are public information and must be made available to the public upon request by 5:00 p.m. on the fifth day before the date of the election.

Mail-in ballots are part of the early vote total, and counties integrate the delivery and processing of mail-in ballots into their overall plan for processing all early votes.⁶⁶ Variations on the timing of delivery and processing also depend on the size of the county.⁶⁷ Texas counties range in population from 103 people to more than 4.7 million people.⁶⁸

While the Election Code provides flexibility, some things are uniform across the state. Each county has an early voting clerk, a county election board, and an early voting ballot board.⁶⁹ A county election board consists of the county judge, the county clerk, the voter registrar, the sheriff, and the county chair of each political party required to nominate candidates by primary election. The county clerk chairs the county election board.⁷⁰ In a general election, the county election board appoints the early voting ballot board from a list provided by the county chair of each political party with nominees on the ballot. By law, the county election board shall appoint at least one person from each list, and the same number of members must be appointed from each list.⁷¹ Each member of the early voting ballot board must be a qualified voter in the county.⁷²

The early voting ballot board is an important link in the chain of custody. Each member swears an oath never to be alone with a

⁶³ Tex. Election Code §67.017 (Vernon 2020).

⁶⁴ See Tex. Election Code §§87.021–87.0241 (Vernon 2020) (variations by county on delivering paper and electronic materials to the early voting ballot board).

⁶⁵ <https://demographics.texas.gov/Data/TPEPP/Estimates/>

⁶⁶ Tex. Election Code §87.001 (Vernon 2020).

⁶⁷ Tex. Election Code §51.002 (Vernon 2020).

⁶⁸ Tex. Election Code §87.002 (Vernon 2020).

⁶⁹ Tex. Election Code §87.003 (Vernon 2020).

⁷⁰ Tex. Election Code §87.006 (Vernon 2020).

⁷¹ Tex. Election Code §87.026 (Vernon 2020).

⁷² Tex. Election Code §87.003 (Vernon 2020).

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ballot and to work in a buddy system with a member of a different political party.⁷³ Unless expressly authorized by the Election Code, no one is permitted in the meeting place of the early voting ballot board except members of the board.⁷⁴ Each member wears special identification.⁷⁵ Early voting ballot boxes have two locks and different keys.⁷⁶ One key is kept by the early voting clerk⁷⁷ and the other is kept by the custodian of keys⁷⁸ until the time arrives to give that key to the presiding judge.⁷⁹ The ballot boxes are also sealed to detect any unauthorized opening of the box, the ballot slot can be sealed to prevent any unauthorized deposit in the box, and the seals have serial numbers for each election.⁸⁰

One of the primary features of Texas mail-in ballots is signature verification. The early voting ballot board determines a signature's validity unless the early voting clerk decides

a signature verification committee is necessary in any election, or 15 registered voters in the county during a general election request the appointment of a signature verification committee.^{81 82} If a signature verification committee is ordered in a general election, then the county election board—the county judge, county clerk, voter registrar, sheriff, and county chair of each political party—appoint the committee.⁸³ A signature verification committee must consist of at least 5 members. When a signature verification committee is larger than 12, it may divide into subcommittees. Those members must be registered voters in the county.⁸⁴

A signature verification committee compares the signature on the carrier envelope with the signature on the voter's ballot application. The committee may also compare the signatures with any two or more signatures of the voter made within the preceding six years and on file with the county clerk or voter registrar. The committee decides if the signature is not that of the voter's by majority vote, or a majority vote of the subcommittee.^{85 86}

The carrier envelopes and applications of voters whose signatures were rejected are placed into separate containers and delivered to the early voting ballot board.⁸⁷ If a signature verification committee has verified a signature, the early voting ballot board may not review that decision. However, when a signature verification committee has rejected a signature, the early voting ballot board may overrule the committee by a majority vote.⁸⁸



73 Tex. Election Code §§85.032 & 87.025 (Vernon 2020).
74 Tex. Election Code §§85.032(c) & 87.021 (Vernon 2020).
75 Tex. Election Code §85.032(c) (Vernon 2020).
76 Tex. Election Code §§85.032(d) & 87.063 (Vernon 2020).
77 Tex. Election Code §85.032(b)(Vernon 2020).
78 Tex. Election Code §87.027(a)(Vernon 2020)(added to the code by Tex. S.B. 85, 69 R.S. (1985)), see also <https://lrl.texas.gov/legis/billsearch/text.cfm?legSession=69-0&bill-typeDetail=SB&billNumberDetail=85&billSuffixDetail=>

79 Tex. Election Code §87.027(a-1) (Vernon 2020).
80 Tex. Election Code §87.027(b) (Vernon 2020).
81 Tex. Election Code §87.027(d) and (l) (Vernon 2020).
82 Tex. Election Code §87.027(i) (Vernon 2020).
83 Tex. Election Code §87.027(l) (Vernon 2020).
84 Tex. Election Code §87.027(i) (Vernon 2020).
85 Tex. Election Code §87.027(j) (Vernon 2020).
86 Tex. Election Code §§87.043 and 87.044 (Vernon 2020).
87 Tex. Election Code §87.0431 (Vernon 2020).
88 Tex. Election Code §87.127(a) (Vernon 2020).

The early voting ballot board places the carrier envelope containing the rejected ballot and the application for a ballot by mail into envelopes that are sealed, and keeps a record of the number of rejected ballots in each envelope.⁸⁹ Those sealed rejected-ballot envelopes are delivered to the general custodian of election records. While Texas law requires that a county inform the voter if a ballot was rejected, there is no opportunity to cure or appeal.⁹⁰ In theory, a voter could persuade their county election officer to petition a district court if the county election officer determines a ballot was incorrectly rejected or accepted by the early voting ballot board before the time set for convening the canvassing authority.⁹¹ In reality, a canvassing authority conducts a local canvass between the third and 11th days after an election,⁹² and a voter does not have to be made aware that their ballot was rejected until the 10th day after an election—plus however long it takes the U.S. Postal Service to deliver that notice.⁹³

Signature verification is criticized—and the subject of litigation—because it disproportionately affects many of the disabled and elderly voters that mail-in voting is meant to enfranchise. Additionally, people commonly break their dominant hand, change their name, lose their eyesight, or develop health conditions like a tremor that affect their ability to write their signature. Members of a signature verification committee are not trained, nor have expertise, in handwriting analysis. Reports and litigation briefs suggest that signature verification committees in other states disproportionately



struggle to verify signatures from voters with racially or ethnically identifiable names.⁹⁴

Once the signature is verified and meets all the legal requirements, the early voting ballot board opens the carrier envelope, and depending on the county, places the ballot envelope in the ballot box with the other early voting by personal appearance ballots or a separate container that goes to a counting station.⁹⁵ Then, at the appropriate time depending on the county, the early voting ballot board opens the box, removes the contents, opens the ballot envelopes, and then tabulates the results.⁹⁶

The security of mail-in balloting varies by state. Some of the states that are the most secure employ chain of custody procedures, bipartisan teams to handle ballots, security cameras, activity logs, bar codes, ballot tracking, and meaningful penalties. Texas employs chain of custody procedures, bipartisan teams, and has meaningful criminal penalties. According to

⁸⁹ Tex. Election Code §67.003 (Vernon 2020).

⁹⁰ Tex. Election Code §87.0431 (Vernon 2020).

⁹¹ *Lewis v. Hughs*, 5:20-cv-00577, Western District of Texas, San Antonio Division, (plaintiffs' initial complaint at p.33); see also the ACLU of Florida's report available online at [aclu_florida_report_on_vote-by-mail_ballots_in_the_2018.pdf](https://aclu-florida.org/wp-content/uploads/2018/12/aclu-florida-report-on-vote-by-mail-ballots-in-the-2018.pdf)

⁹² Tex. Election Code §§87.041, 87.042(b)&(c) (Vernon 2020).

⁹³ Tex. Election Code §§87.061–87.104 (Vernon 2020).

⁹⁴ <https://www.texasattorneygeneral.gov/initiatives/election-integrity>

⁹⁵ <https://www.texasattorneygeneral.gov/initiatives/election-integrity>

⁹⁶ <https://lawyerscommittee.org/tennessee-must-ease-excuse-requirement-for-absentee-ballot-during-pandemic/>

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the Texas Attorney General, Texas has over 100 different criminal offenses in the Election Code.⁹⁷ The Texas Attorney General has concurrent prosecution authority with local elected prosecutors over the election laws. Since 2004, the Attorney General's Office has prosecuted 457 cases.⁹⁸ Security cameras, activity logs, and bar codes are not required by statute, but may be used in some counties. Texas does not employ ballot tracking, except for military and overseas voters.

Critics of voting by mail rarely question the integrity of the process once the ballot arrives at the county election office. There are so many eyes on the process from unrelated people that tampering with an election result is practically impossible. One vulnerability is for politically motivated disenfranchisement due to racial bias with the signature verification committee or the early voting ballot board. However, most of the allegations from the critics fixate on voter assistance and increasingly on the application process itself.⁹⁹

A Guide for Volunteers

1. Assisting with the Application

In Texas, assisting a voter with an application for vote by mail carries very little legal risk so long as you are truthful and have the authorization of the voter.¹⁰⁰ If a voter asks whether they

qualify as disabled, then the safest and most truthful answer is "I do not know. Read the law for yourself at Section 82.002, Election Code and decide if it applies to your private medical history."

2. Assisting with the Ballot

There is nothing wrong with encouraging a person to vote. Recently, however, those wishing to discredit voting by mail often employ the ambiguous term "ballot harvesting." "Ballot harvesting" is a pejorative term meant to falsely equate illegal and illegitimate ballot tampering with legal and legitimate voter assistance.¹⁰¹ There are a number of laws meant to protect the elderly and disabled from ballot tampering.

Voter assistance for in-person voting is regulated under Sections 64.031 thru 64.037 of the Texas Election Code. A person can assist an elderly or disabled person with a ballot by mail just like a person would assist a voter at an in-person polling place. With mail-in ballots, tampering most often occurs at two different points in the process: filling out the ballot and



⁹⁷ Tex. Election Code §84.0041 (Vernon 2020).

⁹⁸ <https://www.brennancenter.org/our-work/research-reports/dirty-tricks-eight-falsehoods-could-undermine-2020-election>

⁹⁹ Tex. Election Code §86.006(f) (Vernon 2020).

¹⁰⁰ Tex. Election Code 86.006 (a-1) (Vernon 2020).

ensuring the carrier envelope makes it to the mailbox. To protect the elderly and disabled, Texas Election Code Section 86.010 and Section 86.0051 requires the assister to also sign the relevant sections of the voter's carrier envelope disclosing the assistance. Finally, volunteers may not deliver mail-in ballots to the early voting clerk's office so they do not get lost in the mail. It is a criminal offense to possess a ballot that belongs to another person.¹⁰² The actual voter must appear in-person, on Election Day, and with proper voter ID.¹⁰³

Additionally, the Legislature has passed legislation to prevent unsavory practices. While it has long been illegal to possess a ballot that belongs to another, some exceptions apply for family, those that live in the same dwelling, and lawful voter assistance, which includes following the proper procedures to witness a signature and deposit the envelope in the mailbox.¹⁰⁴ In 2011, it was alleged that "ballot harvesters" knew not to carry 20 or more carrier envelopes at one time in order to avoid enhanced felony charges.¹⁰⁵ Whether this allegation was true or not, the Legislature passed HB 2449 to allow the aggregation of separate misdemeanor offenses into one felony offense. In 2013, it was alleged that "in certain localities, individuals receive compensation for harvesting mail-in ballots."¹⁰⁶ In response, the Legislature passed HB 148 prohibiting compensation for assisting with filling out the ballot or mailing the carrier envelope.¹⁰⁷ Finally, SB 5 was passed in the special session of the 85th Legislature in 2017, which empowered the Attorney General to prosecute a broad, new criminal statute for "election fraud"; enhanced a number of criminal

penalties related to mail-in ballots; expanded the ability for an early-voting ballot board to reject a ballot on signature verification grounds; and required counties to notify the attorney general of all rejected ballots.

Despite all this legislative attention, in reality voter fraud is essentially a non-issue. None of the five states that hold their elections primarily by mail have had any voter fraud of any significance that would threaten the integrity of an election since making the switch. Oregon—one of those five states—has sent out more than 100 million mail-in ballots since 2000, and has documented only a dozen cases of fraud.¹⁰⁸



¹⁰¹ Tex. Election Code 86.006(f)(1-6) (Vernon 2020).

¹⁰² House Comm. on Elections, Bill Analysis, Tex. H.B. 2449, 82d R.S. (2011).

¹⁰³ House Comm. on Elections, Bill Analysis, Tex. H.B. 148, 83d R.S. (2013).

¹⁰⁴ Tex. Election Code §§86.0052 & 86.0105 (Vernon 2020); see also Tex. H.B. 148, 83d R.S. (2013).

¹⁰⁵ <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>

¹⁰⁶ <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-1-states-with-no-excuse-absentee-voting.aspx>

¹⁰⁷ <https://fivethirtyeight.com/features/americans-support-voting-by-mail-but-not-all-of-them-want-to-or-can/>

¹⁰⁸ <https://webservices.sos.state.tx.us/vrrequest/index.asp>

The vote is the most powerful instrument ever devised
by man for breaking down injustice.

—LYNDON BAINES JOHNSON,
AUGUST 6, 1965

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