

# LEGISLATORS' GUIDE TO THE 85th LEGISLATURE

S P E C I A L S E S S I O N 2 0 1 7

## Cracking Down on Mail-in Ballot Fraud

### The Issue

Mail-in ballot fraud is “*the tool of choice’ for those who are engaging in election fraud.*”

Once rare and only used when voters knew they were going to be out of town on Election Day, mail-in ballots have become commonplace in Texas and around the nation. The advent of early voting has largely addressed the originating rationale for mail-in ballots. Instead, mail-in ballots are now mostly used for convenience or by people who, due to illness, injury, or disability, find traveling to the polls to be arduous. In Texas, mail-in ballots bypass the state’s voter ID law. Mail-in ballots are vulnerable to electoral fraud when voters, especially the aged and the disabled, are encouraged by paid political operatives to apply for a mail-in ballot and then “assisted” in filling out the ballot and handing it over to the operative for delivery.

Seniors or disabled voters living in their own homes may find it difficult to make it to the polls, whether during early voting or on Election Day. Thus, these voters turn to mail-in ballots. Voter ID is not required before voting from home. Ballot harvesters, otherwise known as *politiqueras*, exploit the proven vulnerabilities of mail-in balloting by approaching seniors to sign up, “helping” them fill in their ballot, and then carrying the ballot to the mail. This mode of fraud appears to be particularly hard to address. The fact is a formal polling facility is the only place where the sanctity of the secret ballot free from coercion can be monitored.

House Bill 658, signed into law in 2017, closes one avenue of mail-in ballot fraud while simultaneously making it easier for voters in nursing homes to participate in elections by allowing residential care facilities with five or more voters to become early voting centers. Some 3,000 assisted living facilities statewide might benefit. However, assisted living centers include memory care facilities, a class of facility that is growing rapidly, where the residents have compromised mental capabilities. Memory care facilities do not yet appear to be a large source of ballot fraud. Research by the Foundation examined voter registration and voting records of 40 facilities that exclusively provide memory care in Texas and found only 19 registered voters at 11 facilities having cast five votes of which three were mail-in ballots in the 2016 general election.

To preserve the integrity of the vote, Texas Election Code restricts candidates, bystanders, sound trucks, election-related badges, and other activities from polling places. Further, it is unlawful to influence voters at the polls. In addition, the Election Code specifies that election judges must be affiliated or aligned with different political parties. Yet voters, often elderly or disabled, receive no such protections when voting by mail. With the use of mail-in ballots growing, why aren’t these votes given the same protections as votes at the precinct polling place? The practice of employing mail-in ballot harvesters, or *politiqueras*, needs to be

ended. Election law prohibits a polling place staffed by paid agents of one candidate or one political party, yet, ballot harvesters are functionally the same in many key respects as election judges.

### The Facts

- Texas first allowed absentee voting in 1917; voting by mail followed.
- In the 2016 general election, 41 percent of registered voters in Texas’ 15 most-populous counties—more than four million voters—had voted by mail-in ballot or by early voting.
- Since the 2004 primary election, of 93 election law violations pursued by the Texas attorney general, almost half were cases of mail-in ballot fraud.
- A non-exhaustive survey of mail-in ballot fraud incidences in Texas includes:
  - ▶ 2016: 700 suspicious mail-in ballots sequestered in a Dallas County voter fraud case.
  - ▶ 2012: six Cameron County mail-in ballot harvesters, known in Texas as *politiqueras*, accused of fraud, guilty pleas for illegally assisting voters follow.
  - ▶ 2010: justice of the peace race in Dallas County.
  - ▶ 2008: illegal vote harvesting in Jim Wells County during the primary.
  - ▶ 2006: Duval County, almost half of the ballots cast in the primary were mail-in.
  - ▶ 1994: two Falfurrias addresses account for more than 120 mail-in ballot requests.

### Recommendations

The Election Code should proscribe the practice of ballot harvesting. As much as is practicable, mail-in ballots should be treated with the same legal protections as ballots cast at a polling location. The chain of custody for mail-in ballots should be limited to ballots in an envelope expressly for the purpose of transmitting a mail-in ballot, sealed, and signed by the registered voter:

- Mailed from an international or out-of-state location.
- Deposited into the U.S. Postal Service by the voter themselves or by an immediate relative.
- Presented by the voter to two people, both election judges, affiliated or aligned with different political parties, and assigned the duty to collect mail-in ballots.

### Resources

*Who’s Counting?: How Fraudsters and Bureaucrats Put Your Vote at Risk*, by Hans von Spakovsky and John Fund, Encounter Books (Aug. 14, 2012).

“[Early voting wraps up in Texas with record turnout](#),” by Taylor Goldenstein, Austin American-Statesman (Nov. 4, 2016).

[“Texas’ controversial voter ID law can’t stop mail-in ballot fraud,”](#) by Nicole Cobler, News21 (Aug. 20, 2016).

[“Prosecutors issue first arrest warrant in West Dallas voter fraud case,”](#) by Naomi Martin and Robert Wilonsky, *Dallas Morning News* (June 2, 2016).

[“Texas may expand ballot access for elderly and voters with disabilities,”](#) by Jim Malewitz, *Texas Tribune* (June 2, 2017).

[“Demand for mail-in ballots in Texas is growing, as are the risks,”](#) by Anna M. Tinsley, *Fort Worth Star-Telegram* (July 9, 2012).  
[Election Code. Title 3. Chapter 32.](#) Subchapter A. Appointment of Election Judges.

