



Texas Public Policy Foundation  
**LEGISLATOR'S GUIDE  
TO THE ISSUES  
2021-2022**

## Mail-In Ballots

### The Issue

In the wake of the COVID-19 pandemic, there were calls in Texas and in Congress to dramatically expand mail-in balloting on the claim that traditional voting in person represented a threat to health. However, calls to expand mail-in voting predated the viral outbreak and were largely made by the same people and groups.

Texas voters have been increasingly using mail-in ballots, with absentee votes totaling 0.9% of votes in 2006 and then rising steadily to 6.3% in the 2018 general election and about the same in the March 3, 2020, primary with 6.4% of Democratic voters using mail-in ballots, while Republicans cast 5.4% of the vote by mail.

Voting by mail, while sometimes convenient for the voter, lacks the protections that voting in person provides. The ballot can get lost in the mail. The mail-in ballot application can be completed by others, sometimes with false information. When they arrive in the mail, ballots can be intercepted by political operators. Mail-in ballots can be sent to people who have died or moved away. And, in some cases, large-scale fraud can take place where, through nominal gifts of food or alcohol, voter intimidation, or deception, a professional ballot harvester can simply substitute his vote for the voter's and turn in the ballot. Lastly, a mail-in ballot is subject to being invalidated by election personnel during the vote tabulation process.

Texas asks voters to show identification when they show up to vote. But voting by mail requires no such check. Further, Texas election officials cannot question a voter who claims a disability to vote by mail. But law enforcement can pursue charges against those who lie on the vote-by-mail application, whether they are illegal ballot harvesters or individual voters.

In many instances though, county district attorneys either lack the resources or the will to prosecute election fraud. Thus, the Office of the Attorney General must pursue charges against those who would attempt to win an election by cheating.

In the 2017 special session of the Texas Legislature, lawmakers were concerned enough by illegal ballot harvesting that they passed [SB 5](#). The law, in effect for the 2018 and subsequent election cycles, tightened mail-in ballot rules and increased criminal penalties for ballot fraud.

But a statistical analysis of the 2018 general election suggests that an unusually large share of mail-in votes were cast by young adults who voted from their home address, meaning they, or a third party, checked the "disability" box in their mail-in ballot request. The enhanced penalties passed in 2017 may not be serving as a deterrent.

During the increased national discussion about mail-in balloting in 2020, advocates asserted that mail-in balloting was safe and secure and free of fraud. However, at the same time these

claims were being made, there were numerous stories around the nation indicating otherwise:

- In 2020, in Patterson, New Jersey, numerous residents complained they never received a vote-by-mail ballot but were listed as having voted—someone voted in their name. There were reports of postal workers leaving ballots in bundles in building lobbies and more than 300 ballots found in a single mailbox in the wrong city.
- In 2020, in Las Vegas, Nevada, with an all-mail vote for the June 9 primary, the county election department sent mail-in ballots to inactive voters, with ballots piling up in apartment complexes and community bulletin boards.
- In 2020, in Pendleton County, West Virginia, a postal carrier was charged with attempted election fraud for altering eight mail-in requests.
- In 2018, in Harris County, Texas, allegations were reported of the illegal harvesting of 400 votes at convalescent homes (under investigation by the Texas attorney general as of June 2020).
- In 2018, in Starr County, Texas, a large number of mail-in ballot applications by people under 65 with the disability box checked were found, with ballot harvesters later arrested and accused of falsely checking the disability box on voters who were not disabled and without their knowledge.
- In 2018, in North Carolina, eight people were indicted on a ballot-harvesting scheme to forge mail-in ballots to benefit Republican congressional candidate Mark Harris who won by 900 votes. His election was later overturned, and a new election was called.
- In 2017, in Edinburg, Texas, a vote-harvesting scheme occurred in a municipal election, involving voters registering at an apartment complex owned by a candidate for mayor. Trial was pending as of June 2020.
- In 2016, in Ellis County and Weslaco, Texas, three people were convicted of manufacturing 36 mail-in ballots.
- In 2016, in San Pedro, California, more than 80 unused ballots were found outside an apartment-building mailbox, all addressed to the same 89-year-old neighbor but each with a different name.

### The Facts

- The push for mail-in ballots did not appear as a result of the COVID-19 pandemic but prior to it.
- Texans have been increasingly voting by mail.

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- In 2017, the Legislature tightened mail-in ballot rules and increased criminal penalties for ballot fraud following concerns regarding illegal ballot harvesting.
- Cases of mail-in ballot fraud and irregularities, in Texas and elsewhere in the country, abound.

### **Recommendations**

- As much as is practicable, mail-in ballots should be treated with the same legal protections as ballots cast at a polling location, including requiring some form of voter identification verification on the envelope, such as a driver's license number or the last 4 digits of the Social Security number.
- Penalties for marking false information for more than one mail-in ballot application ought to be enhanced.
- A clear definition of a "disability" that makes it difficult for a voter to access a polling place should be crafted and stated on the mail-in ballot application.

### **Resources**

- "[Election Results](#)," Texas Secretary of State.
- "[Election Integrity](#)," Attorney General of Texas.
- "[Authorities Accuse Edinburg Mayor, Wife of Running Vote-Harvesting Scheme](#)" by Renzo Downey, *Austin American-Statesman* (April 25, 2019).
- "[True Confessions of Texas Vote Harvesters](#)," *RealClear Investigations* (Feb. 19, 2019).