

Voter Fraud

The Issue

Voter fraud, intimidation, and abuse can take multiple forms. Mail-in ballots are especially vulnerable due to a broken chain of custody and lack of in-person supervision present in a polling station. Yet, in-person voting can also be susceptible to intimidation and influence or to paid actors collecting voters and instructing them how to vote for compensation, as well as collecting or “harvesting” ballots. Both in-person voting and vote by mail can be exploited by unscrupulous candidates and tend to be given little credence as a problem that needs sufficient legal sanctions to address. The resources dedicated to protecting our most fundamental right as citizens—voting—should be adequately provisioned within the state and should give the offices of the attorney general and the secretary of state tools to enforce proper sanctions against the organizations and people who benefit from illegal actions.

Inaccurate rolls containing deceased voters, noncitizens, felons, and old registrations give illegal actors opportunities to exploit applications for ballot by mail or mail-in ballots. Ballot interception or identity theft should be addressed by an appropriate level of criminal penalty that considers *mens rea* as well as the organizer or wholesale organizers of voter fraud, ballot harvesting, or voter information fraud while offering consideration for the voter who may, in fact, be a victim. Similarly, those who deliberately seek to intimidate or misinform voters should be held to appropriate criminal penalties, as outlined in **Table 1**.

Several bills in the Texas 84th, 85th, and 86th legislatures sought to create enhanced penalties for the abuse of mail-in ballots and old registrations. In the special session of the 85th Legislature, SB 5 increased penalties for mail-in ballot fraud and vote harvesting. Yet, vote harvesters and mail-in ballot fraud have continued to affect Texas elections. The need to increase criminal penalties for vote harvesters is becoming more apparent.

Section 64.012 of the Texas Election Code defines illegal voting. A person commits an offense if the person:

- Votes or attempts to vote in an election in which the person knows the person is not eligible to vote;

- Knowingly votes or attempts to vote more than once in an election;
- Knowingly votes or attempts to vote with a ballot belonging to another person, or by impersonating another person; or
- Knowingly marks or attempts to mark any portion of another person’s ballot without the consent of that person, or without specific direction from that person as to how to mark the ballot.

An offense under this section is a felony of the second degree unless the person is convicted of an attempt. In that case, the offense is a state jail felony.

News reports, vote fraud prosecutions, and the Foundation’s data suggest that illegal voting, false registrations from noncitizens voting, and the threat from mail-in ballots are present and creating a massive problem for our elections:

- A Mexican national in Harris County stole the identity of a U.S. citizen and illegally voted in multiple elections, including the 2016 general election.
- During the COVID-19 pandemic, Harris County decided to mail an absentee ballot to every voter 65 or over regardless of their voting intentions, leaving ballots open to the possibility of interception or accidental duplicate voting.
- Texas Attorney General Ken Paxton warned that fear of the coronavirus is not a valid reason to claim a disability for the mail-in ballot, while Travis County saw a 1700% increase in requests for mail-in ballots for the July 2020 run-off elections.
- Assistant Attorney General Jonathan White explained that mail-in ballot fraud is still a very real problem with regards to election fraud despite past legislation helping to make conditions better.
- In Mission, Texas, in 2018, a mayoral campaign was prosecuted for bribery, absentee ballot harvesting, and manipulation, and the election was declared void.

Table 1:
Criminal Penalties for Voter Fraud

Type of Fraud	Texas Statute Section	Punishment Classification
Duplicate Voting	Election Code § 64.012 (2017)	Second degree felony
False Registration	Penal Code § 37.02 (1994)	Class A misdemeanor
Illegal Assistance at the Polls	Election Code § 276.013 (2017)	Class A misdemeanor
Fraudulent Marking of Ballots	Election Code § 64.012 (2017)	Second degree felony
Ineligible Voting	Election Code § 64.012 (2017)	Second degree felony

- In Kaufman County, Texas, in 2018, the results of a Republican primary were thrown out due to allegations of vote harvesting and illegal assistance in voting.

The Facts

- Voter fraud can take many forms, from voter intimidation or abuse to vote harvesting to duplicate voting to illegal assistance at the polls.
- In 2017, the Legislature tightened mail-in ballot rules and increased criminal penalties for ballot fraud following concerns regarding illegal ballot harvesting.
- Current penalties for voter fraud do not appear to deter fraud as cases of voter fraud are regularly reported.
- Prosecutors often encounter difficulty bringing cases to trial and need clear language regarding areas such as disability definition on mail-in ballots, *mens rea* provisions on willfully misinforming a voter in an organized fashion, or compensating someone for “harvesting” or collecting ballots.

Recommendations

- Increase criminal penalties for persons committing voter-assistance fraud; prohibit certain persons from providing voter assistance.
- Elevate penalties to criminal level, making knowing or willing attempts to intimidate or coerce a voter into marking an application for ballot by mail or mail-in ballot (as well as voting at the polls) punishable by an appropriate level of felony with proper consideration of *mens rea*.
- Elevate penalties similarly for paid actions related to knowing or willing ballot harvesting, voter intimidation or coercion, and/or misinformation of a voter.

Resources

- [“Mail Ballots Are ‘The Wild West of Voter Fraud’”](#) by Erin Anderson, *Texas Scorecard* (March 26, 2018).
- [“Judge Orders New Election in Contested Kaufman Primary”](#) by Erin Anderson, *Texas Scorecard* (April 13, 2018).
- [“Data Mining for Potential Voter Fraud: Findings and Recommendations,”](#) Simpatico Software Systems (Accessed July 15, 2020).
- [“Nearly 400K Vote-by-Mail Applications Sent to Harris Co. Seniors Ahead of Election”](#) by Shelley Childers, *ABC 13 Eyewitness News* (June 11, 2020).
- [“Travis County Has Seen Huge Increase in Requests for Mail-in Ballots, Per County Clerk”](#) by Daniel Friend, *The Texan* (May 29, 2020).
- [“Jail Sentence, Deportation for Non-Citizen Charged With Voter Impersonation and Texas Voter Fraud,”](#) *Corridor News* (Sept. 14, 2018).
- [“Judge’s Ruling in Mission Election Trial”](#) by Jolanie Martinez, *Local 23 KVEO Valley Central* (Oct. 5, 2018).
- [“Do Non-Citizens Vote in U.S. Elections?”](#) by Jesse T. Richman, Gulshan A. Chattha, and David C. Earnest, Old Dominion University (2014).