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by the Honorable Chuck DeVore
with research assistance from
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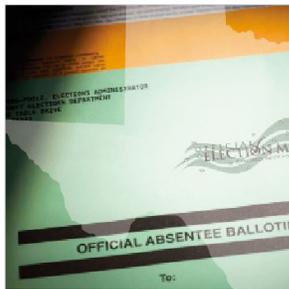


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Mail-In Balloting in Texas: Weaknesses and Recommendations

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Executive Summary

Voting by mail has become increasingly popular in Texas. In 2006, less than 1% of votes were cast by mail, rising to just over 6% by the 2018 general election and the 2020 primary election.

Texas law restricts the use of mail-in ballots to those 65 and older, those with a disability—defined as a “sickness” or a “physical condition” that prevents them from appearing at the polling place without assistance or injury to their health—misdemeanants or people awaiting trial who are in jail and otherwise eligible to vote, and those who will be out of the county on Election Day, such as members of the armed forces and college students ([Paxton, 2020a](#)). But practically speaking, any Texas voter can self-identify as having a “disability” to be able to vote by mail. Texas vote-by-mail requests must be renewed annually.

With Texas election law in mind, it is interesting to note that Texans aged 65 and up have been making increasing use of mail-in ballots in both primary and general elections. **Table 1** shows that voting by this age cohort increased 137% as a share of overall votes from the 2012 presidential primary to the 2020 presidential primary. Of even greater note has been the increase in voting by mail by those under 65, increasing 156% as a share of total votes from the 2012 primary to the 2020 primary. Comparing recent off-year election cycles, the use of mail-in ballots by voters under the age of 65 as a share of total votes increased by 338% from the 2010 general election to the 2018 general election, compared to a 234% increase by those 65 and older.

Mail-in ballots should be treated with the same level of protection as in-person ballots. Further, due to the vulnerability at the county level, the Texas Secretary of State should have a greater role in ensuring the fairness and consistency of the mail-in ballot process. Lastly, penalties for mail-in ballot fraud should be strengthened.

The National Situation

There are two forms of postal voting, absentee and mail-in, though the terms are often used interchangeably. Absentee ballots, as the name suggests, are for voters who are unable to make it to the polls on Election Day. The precedence for this type of voting goes back to the War of 1812 and the Civil War, when large numbers of voters were in uniform, far away from home ([Heidelbaugh, n.d.](#)). Mail-in voting simply replaces the need to go to the voting center for any voter, regardless of whether they will be out of the area on Election Day. In both cases, significant preparation is required by election officials to safeguard the vote, with the effort becoming more extensive with larger shares of the vote by mail.

While Texas has seen a large increase in the use of mail-in ballots, other states have seen far greater use of this method of voting. In California, 65% of ballots cast in the 2018 general election were by mail ([California Secretary of State, 2020](#)). Oregon was the first of five states to conduct all elections by mail, later

Key Points

- Voting by mail has become increasingly popular in Texas. In 2006, less than 1% of votes were cast by mail, rising to just over 6% in 2020.
- Voting by mail lacks the protections that voting in person provides. The ballot can get lost; no voter identification is required; and the ballot is vulnerable to fraud, voter intimidation, or deception.
- Increased use of mail-in balloting will make voters more vulnerable to COVID-19 vs. voting in person as elections workers will go door to door to harvest ballots.
- All mail-in ballot elections take decades of preparation to be conducted safely and effectively but still rely on the U.S. Postal Service to do its job in a timely, accurate manner.

joined by Colorado, Hawaii, Utah, and Washington ([Moreno, 2020](#)).

State mail-in ballot laws fall into three basic categories:

- Full by-mail elections in five states (CA, HI, OR, UT, WA; listed above)
- “No-excuse” mail-in voting (meaning voters can choose to vote by mail by simply requesting to do so and had that ability prior to the COVID crisis) in Alaska, Arizona, California, District of Columbia, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Vermont, Virginia, Wisconsin, and Wyoming
- “Excuse required” for mail-in voting in Alabama, Arkansas, **Connecticut, Delaware, Indiana, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, New Hampshire, New York**, Rhode Island, **South Carolina, Tennessee**, Texas, and West Virginia ([Moreno, 2020](#)). *(States listed in bold expanded the excuse to include all voters in 2020 due to COVID-19 either by executive action, legislation, or a judge’s decision.)*

Further, due to concerns about in-person voting and COVID-19 transmission, California’s Gov. Gavin Newsom announced that the state would send mail-in ballots to every registered voter.

It is important to note that the five states that conduct elections by mail took many years to transition to all-mail elections. Systems and safeguards had to be developed and capacity to verify voter lists and returned ballots had to be built up. Washington state Secretary of State Kim Wyman noted during a congressional testimony that “we have spent decades building in internal controls” such as “a voter ID requirement at the time of voter registration” (a state driver’s license, Washington state ID card, or the last four digits of the voter’s Social Security number), signature verification, and trained personnel ([Davis, 2020, para. 8, 6](#)).

Weaknesses of Mail-In Balloting

With so many states making greater use of the U.S. Postal Service to conduct elections—and even Texans themselves doing so more often in every election cycle—what are the drawbacks of voting by mail?

While potentially convenient for the voter, voting by mail lacks the protections that voting in person provides. The ballot can get lost in the mail. There is no voter identification requirement to vote by mail in Texas. The mail-in ballot application can be completed by others, sometimes with false information. Ballots can be intercepted by political

operators when they arrive in the mail. 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.

Further, in an ironic turn, the push for an all-mail-in election in response to the COVID-19 pandemic threatens to spread the virus, not prevent its transmission. While voters and election workers can take measures to socially distance and protect themselves, voting from home offers no such protections. This is because, if every voter is voting from home, ballot harvesters and campaign activists will have a far greater incentive to go door to door to literally collect votes. Many of these campaign workers will attempt to enter a residence so as to “assist” the voter in marking their ballot. Since such individuals are often financially incentivized to gather as many ballots as they can, and since they rely on face-to-face persuasion or pressure, the very nature of their operations increases the chance of spreading the novel coronavirus as compared to voting in person at the local polling place, either during an expanded period of early voting or on Election Day, while maintaining social distancing protocols. This is to say nothing of the envelopes that will require sealing, with viruses typically remaining active for four hours on paper ([Begley, 2020](#)), and potential virus transmission in saliva.

Recent vote-by-mail miscues around the nation include:

- **North Carolina.** In 2018, Republican congressional candidate Mark Harris saw his 905-vote victory annulled in early 2019, with an election redo ordered due to widespread, illegal use of ballot harvesting ([Featherston, 2020](#); [Gonzales, 2019](#)). North Carolina’s [General Statutes Chapter 163A](#) has restrictions on ballot harvesting similar to those in Texas.
- **Michigan.** In 2020, hundreds of people in Michigan turned over to election authorities mail-in ballots addressed to dead, noncitizen, and underage people after many ballots were sent to the wrong people during the novel coronavirus pandemic and elections ([Olson, 2020](#)).
- **Nevada.** In Clark County, home to Las Vegas, local officials decided to transition to an all-mail election in 2020. Clark County mailed 1,325,934 ballots to registered voters, including voters who never asked for a mail ballot. Roughly 310,000 mail ballots came back. Of those, about 7,000 were outright rejected by election officials. But 223,469 ballots bounced back as undeliverable. Forty-two percent of those bounced back from active registrant addresses, compared to inactive. That’s 93,585 ballots which bounced back as undeliverable to

the address election officials have as the current location of a valid active voter ([Appleton, 2020](#); [Public Interest, 2020](#); [Schoffstall, 2020](#)).

- **New Jersey.** A 2020 election for city council in Paterson, New Jersey, had 19% of vote-by-mail ballots disqualified, with reports of 800 ballots being incorrectly bundled at mailboxes and 2,300 signatures not matching ([Hemingway, 2020](#)).
- **New Jersey.** During the coronavirus-related all mail-in ballot election in New Jersey, some 10% of ballots in a Montclair election were rejected due to irregularities ([Hackett, 2020](#)).
- **New Jersey.** In 2020, in Mercer County, New Jersey, tens of mail-in ballots were returned due to postal workers' confusion over bar code scanning ([Kausche, 2020](#)).
- **New York.** In 2020, 84,108 mail-in ballots, 21% of the total of more than 403,000, were disqualified in the Democratic presidential primary vote in New York City ([Colton, 2020](#)).
- **Texas.** A Mission, Texas, mayoral race in 2018 was overturned as a mayoral campaign attempted to bribe and manipulate mail-in ballots ([Martinez, 2018](#)).
- **Texas.** Harris County, Texas, mailed mail-in ballot applications to deceased persons, including one who had been dead for 10 years, ahead of the July 2020 run-offs ([Rajkovic, 2020](#)).
- **Wisconsin.** A third-party post carrier misplaced about 750 mail-in ballots in July in Appleton and Oshkosh, Wisconsin, which did not arrive on election day, in addition to a further 2,700 mail-in ballots in Milwaukee not being delivered due to a state computer glitch ([DuPont, 2020](#)).
- **West Virginia.** A mail carrier in Pendleton County, West Virginia, was charged with attempted election fraud for having changed voters' party affiliations on a mail-in ballot application for the March primaries in 2020 ([WHSV Newsroom, 2020](#)).

In 2018, during the March primary in Texas's Rio Grande Valley, Starr County District Attorney Omar Escobar became aware of a large number of applications to vote by mail that were made by voters claiming a disability. In this case, illegal vote harvesters were to blame. They had filled out the vote-by-mail application for the voters and had checked the "disability" boxes. Some of the vote harvesters were subsequently arrested and charged with election fraud ([Garcia, 2018](#)).

Table 1

Use of Mail-In Ballots by Age Group in Texas

Votes	2010 Primary	2012 Primary	2014 Primary	2016 Primary	2018 Primary	2020 Primary
By Mail 18-64	2,333	2,136	2,045	6,448	4,910	11,054
By Mail 65+	24,123	51,747	108,955	115,552	226,090	247,946
By Mail Total	26,456	53,883	111,000	122,000	231,000	259,000
Total Votes	2,165,090	2,039,641	1,824,565	4,272,383	2,592,487	4,120,000

Share of Votes by Mail

By Mail 18-64	0.1%	0.1%	0.1%	0.2%	0.2%	0.3%
By Mail 65+	1.1%	2.5%	6.0%	2.7%	8.7%	6.0%
By Mail Total	1.2%	2.6%	6.1%	2.9%	8.9%	6.3%

Votes	2010 General	2012 General	2014 General	2016 General	2018 General
By Mail 18-64	6,709	36,268	7,686	77,580	59,099
By Mail 65+	68,155	167,732	239,314	356,420	457,901
By Mail Total	74,864	204,000	247,000	434,000	517,000
Total Votes	4,130,000	6,920,000	4,350,000	8,610,000	8,300,000

Share of Votes by Mail

By Mail 18-64	0.2%	0.5%	0.2%	0.9%	0.7%
By Mail 65+	1.7%	2.4%	5.5%	4.1%	5.5%
By Mail Total	1.8%	2.9%	5.7%	5.0%	6.2%

Note. Data derived from a proprietary commercial database.

In many instances though, county district attorneys either lack the resources or the will to prosecute election fraud. Thus, the state attorney general's office must pursue charges against those who would attempt to win an election by cheating. In past years, the Texas attorney general's office had one lawyer assigned to election integrity. In the 2020 cycle, Texas Attorney General Ken Paxton is expected to assign five prosecutors to increase the chances that those who willfully violate Texas's election laws face consequences.

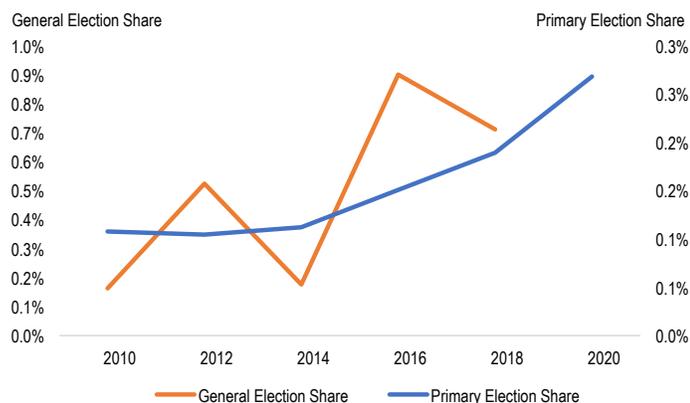
A Statistical Analysis of Vote by Mail in Texas

Table 1 illustrates the growth in voting by mail in Texas from the 2010 elections to the 2020 primary, showing those voters aged 18-64 and 65+ who voted by mail, the total votes cast by mail, as well as the total votes in that election. It also displays the growing share of the total votes cast by voters using mail-in ballots. It shows that the use of mail-in ballots by voters under the age of 65 as a share of total votes increased by 338% from the 2010 general election to the 2018 general election, compared to a 234% increase by those 65 and older.

Figure 1 shows the growth in the use of mail-in ballots in Texas. As mail-in ballots become more widespread, the threat to free and fair elections is increasing due to the greater potential for fraud. Mail-in ballot fraud is common enough in some parts of Texas that they have a local name for those who broker election victories: *politiqueros*. Unlike in North Carolina, there are rarely consequences for ballot harvesters or the campaigns that hire them in the Lone Star State as local prosecutors have largely ignored the crimes while the state attorney general's office has to target its limited resources in a state of 30 million people.

To be clear, campaigns do have a legitimate reason to turn out their voters. Hiring people or engaging volunteers to

Figure 1
Mail-In Ballots from Voters Ages 18 to 64 as a Share of the Total Vote



Note. Data from the Texas Secretary of State.

help and encourage people to vote, whether early and in person, by mail, or on Election Day, is a critical part of a winning strategy.

But ballot harvesters can be aggressive, cut corners, and guarantee votes for the politician or group that hired them by taking physical possession of ballots and voting in place of the legal voter. And in Texas, vote harvesting is illegal, at least to the extent that state law prohibits a voter's absentee ballot from being completed and mailed by someone other than a close relative.

The practice is more widespread and problematic than most people believe.

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 election cycle, tightened mail-in ballot rules and increased criminal penalties for ballot fraud ([Malewitz, 2017](#)).

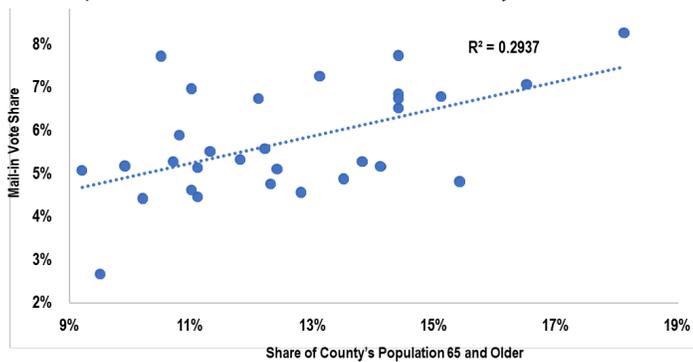
Instructively, as Texas tightened its mail-in ballot laws in 2017, California weakened them by the same measure. This unleashed a massive deployment of ballot harvesters on a statewide and partisan scale, resulting in the largest historical victories for California's Democrats since the blowout Watergate aftermath elections in 1974 ([Wildermuth, 2018](#)). Further, California changed its law in 2016 with [AB 1921](#) to allow for monetary compensation of ballot collection and collection of more than one ballot, creating definite incentives for abuse.

But just because a law was passed in Texas does not mean the practice of illegal ballot harvesting has ended or has even been curtailed.

The 2018 general election in Texas was highly competitive, shaped largely by the most costly U.S. Senate race in American history between incumbent Senator Ted Cruz and then-U.S. Representative Robert (Beto) O'Rourke ([Wallace, 2018](#)). Thus, typical electoral losses for the party controlling the White House were amplified by a larger-than-usual turnout. In the aftermath, Republicans lost two congressional seats, two state Senate seats, and 11 state House seats and had very close calls in many others.

Analyzing turnout and mail-in ballot data from the 2018 election sheds light on the extent to which mail-in ballots might have played a leading role in the competitive electoral landscape. **Figure 2** shows there is a modest positive relationship between the share of a county's population aged 65 and up and the use of mail-in ballots with an R^2 of 0.2937 as would be expected with Texas election law granting those 65 and older the ability to ask for mail-in ballots.

Figure 2
By Mail Share of Votes in the 2018 General Election in Texas's 30 Most-Populous Counties and the Share of County 65+



Note. Data from Texas Secretary of State and the U.S. Census Bureau

As previously mentioned, Texas has restrictions on mail-in balloting, limiting it to people aged 65 or older, the disabled, and people who will be out of their home county during the election. According to the Centers for Disease Control and Prevention, 1.2% of adults ages 18 to 44 find it difficult to climb 10 steps without resting compared to 20.1% of those 75 and older ([Centers for Disease Control, 2018a](#)). A broader definition of disability that includes the six domains of functioning (seeing, hearing, mobility, communication, cognition, self-care) indicates that 5.5% of adults ages 18 to 64 have a lot of difficulty or cannot do at all one or more of the six domains of functioning, compared to 20.6% of those ages 65 and older. ([Centers for Disease Control, 2018b](#)). As a result, the share of mail-in ballots cast in each county should largely track the share of that county's population 65 and above. But this is not entirely the case. For instance, the author, using the regression formula illustrated in **Figure 2**, was able to calculate an age-adjusted mail-in vote expectation for each county, accounting for a county's share of population 65 and older who are automatically eligible to vote by mail. Thus, in Harris County, about 31,000 more votes were cast by mail than would be expected based simply on the age of voters in the county. This amounted to 2.6% of the countywide turnout.

Using the same methodology, in Hays County, just to the south of Austin, some 1,300 additional mail-in ballots were cast above what statistics would predict based on the age profile of the county—about 1.6% of votes in that county.

Table 2 examines the most competitive congressional and state legislative races across the 30 most-populous Texas counties in the 2018 general election and comparing that to the age-adjusted use of mail-in ballots, the share of ballots cast by early voting, and the voter turnout in a county shows correlations that most campaign veterans would expect.

Turnout was highly significant to counties with competitive races, early in-person voting as a share of turnout was significant, and mail-in balloting after accounting for the share of 65 and older voters was as well, though a bit less so.

The statistical evidence tying mail-in balloting to competitive Texas races in 2018 suggests that campaign operatives might have been testing out tactics—some potentially illegal—to boost the mail-in vote. This appears to be the case when comparing the average age of those under age 65 using mail-in ballots between the 2016 General Election and the 2018 General Election.

In 2016, the average age of those voting by mail under the age of 65 was 42. The numeric mid-point between 18 and 64 is 41. The average age of Texans 18-64 is 39.2 years old. Given that older Texas residents are more likely to be citizens ([Ballotpedia, 2020](#)) and are more likely to register to vote as well as to have a disability qualifying them to request a mail-in ballot, it's reasonable to expect that the average age of those using mail-in ballots who are younger than 65 would be older than 39, so 2016's average of 42 is nominal.

However, in the 2018 general election, featuring the most expensive U.S. Senate race in American history as well as numerous highly competitive partisan races for Congress and the state Legislature, the average age of those under 65 who used a mail-in ballot plummeted from 42 to 36. Given Texas's legal restrictions on voting by mail, it is not likely that this large drop in the average age of those voting by mail was entirely composed of those voting out of their home county (mostly due to being away at college or in the military) or, rarely, voting from jail. Rather, this drop in the average age was likely due to a larger share of those voters claiming a disability or those assisting them with the mail-in ballot application checking the "disability" box for

Table 2
A Regression Analysis Looking at the 30 Largest Counties in Texas Against 3 Variables

Regression Statistics	
Adjusted R Square	0.241
ANOVA	
	Significance F
Regression	0.017
	P-value
Intercept	0.013
Age-adjusted use of mail-in ballots	0.084
Early in-person voting	0.066
County registered voter turnout	0.047

Note. Data from the Texas Secretary of State and the author's own calculations derived from a proprietary commercial database.

them. This was seen during the 2020 primary election season when candidates of both major parties, one in San Antonio, who mailed out mail-in ballot applications with the disability box prechecked, and one in Sugar Land where a candidate told voters they were cleared to use mail-in ballots if they were afraid of catching the novel coronavirus ([Eastman, 2020](#); [Svitek, 2020](#)).

Prior to the onset of the novel coronavirus, the Lone Star State was on track to see a record number of mailed-in ballots in the 2020 general election. Per the author's calculations, if 9.8 million people vote, some 734,000 mail-in ballots would have been likely, with 20% of those cast by voters younger than 65. COVID-19 makes both the total number of mail-in ballots likely to be greater as well as with a higher share of people voting by mail under the age of 65, most of whom will likely claim a "disability"—or have a disability claimed on their behalf by campaign workers—so as to vote by mail. That means an unprecedented 128,000 or more people may vote from home after claiming their "disability" makes it too difficult for them to get to the polls.

A further analysis of these under-65 by-mail voters voting from home shows that many are college age, with about half being first-time voters. In other words, it is statistically improbable that most of them are, in fact, disabled. Thus, about 1.3% of the vote cast in Texas in 2020 could be by people who are not eligible to vote by mail according to Texas law. And this analysis was done before the advent of the COVID-19 pandemic. In all likelihood, the actual use of mail-in ballots in the 2020 general election will be far greater.

Recommendations

Lawsuits regarding voting following concerns over COVID-19 in the 2020 election cycle have generated decisions in the Texas Supreme Court and the U.S. Court of Appeals for Fifth Circuit ([Ura, 2020](#); [Cain, 2020](#)), leading to Attorney General Ken Paxton issuing yet another guidance

letter to Texas county judges and election officials ([Paxton, 2020b](#)). Attorney General Paxton's letter warned county officials that voters cannot claim a disability based on fears of contracting a virus, contrary to claims made by elected officials and activist groups such as Travis County Clerk Dana DeBeauvoir who said, "Choosing to vote by mail is entirely the prerogative and the right of the voter. People can take their health history into consideration and if they believe voting in person is likely to injure their health they can vote by mail" ([Martin, 2020](#)). Ideally, a clear definition of a "disability" that makes it difficult to access a polling place should be crafted by the Legislature and stated on the mail-in ballot application with penalties specified for abuse.

To improve safeguards for mail-in ballots, they 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 or their legal representative.

In addition, consideration should be given for the Texas Secretary of State to conduct all vote-by-mail operations or to specify and oversee the standardization of the process, including the verification of signatures on mail-in ballot applications and ballot transmittal envelopes. If the Legislature deems it impracticable to empower the Secretary of State to centrally manage the mail-in ballot process, then it should provide that mail-in ballots be counted and stored separately from the rest of the in-person vote until the election is properly certified.

Further, penalties for marking false information for more than one mail-in ballot application ought to be enhanced.

Mail-in ballots provide an avenue to participate in elections that might otherwise be difficult or impossible for some voters. However, they do not provide the same safeguards, either for the voter or the election process itself, and are therefore less than ideal compared to in-person voting.

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