



TEXAS LEGISLATIVE STUDY GROUP

An Official Caucus of the Texas House of Representatives

April 23, 2020

Dear LSG Caucus Members and Supporters,

The term “20/20” has always been associated with good vision. Unfortunately, the year 2020 has too often found us flying blind, reacting too late to chaos and crisis [without a coherent national testing plan](#) to mitigate and isolate COVID-19, [without clear guidance and sufficient protocols to safely and carefully reopen the economy](#), and without a plan to conduct a free and fair 2020 election during a pandemic. Earlier this month, we saw long lines of Wisconsinites forced to put their lives on the line to exercise their right to vote, and now [reports indicate that nineteen of those voters may have contracted COVID-19](#). Yet our own senior U.S. Senator has cavalierly said “[if you can go to the grocery store, you can go to the polls.](#)” showing little concern for the voters and the poll workers that keep our democracy running during this pandemic.

It takes time and significant resources to conduct an election. The July runoffs and November general election are just around the corner, but we still have time to plan for the critical 2020 election. We have many conscientious election officials who are working with limited resources to make sure our elections provide all Texans the opportunity to vote without fear of contracting a deadly virus. **Now is the time to work with our election officials to make every vote counts in a safe and secure election.**

Rep. Garnet F. Coleman
Chair, Legislative Study Group

LSG Report: Plan, Work Now to Conduct a Fair Election During a Pandemic

Voters are concerned about their safety

A poll of 2,394 voters, conducted April 14-16 by the reputable Harris research organization, found that [72% of Americans believe the 2020 election should be conducted by mail ballot](#). It's a safe bet that will not happen given the current partisan alignment, but it does show that voters expect states and localities to make changes to assure safety at the polls, and Democrats are working to secure the additional funding needed to provide safe polling places, additional mail ballots that are expected (even under current law), and finding polling locations that may not be available (schools, churches, e.g.) during a pandemic. According to [Pew Research Center](#), 63% of registered voters have said they would be uncomfortable voting in person. Hispanic voters were the most likely to express discomfort.

Will the pandemic still be a factor by Election Day in November? CDC Director warns that second wave of coronavirus this could be “even more devastating”

On Tuesday, while several Republican-controlled southern states prepared to “open” up even as their COVID-19 cases continued to increase, CDC Director Robert Redfield warned that [a second wave of the new coronavirus may well be far more dire](#) because it is likely to coincide with the start of flu season. **The flu season typically starts in late October and November, around election time.** Redfield said there is a possibility that the assault of the virus “will be even more difficult than the one we just went through.” He said that having two simultaneous respiratory outbreaks would put an unimaginable strain on the health-care system, adding that we need to [massively scale up](#) our ability to identify the infected through testing and find everyone they interact with through contact-tracing to prevent new cases from becoming larger outbreaks. **We must prepare for an election that could be held in this environment.**



Voters in Milwaukee 4-7-2020. Patricia McKnight/Milwaukee Journal Sentinel

Vote by Mail Ballot – A Variety of State Systems

- Five states currently have all-mail elections—Colorado, Hawaii, Oregon, Washington, and Utah.
- Other states, like Arizona, allow voters to choose to vote by mail. California allows counties to opt into a mail ballot system.
- Sixteen states require voters who want to vote by mail to apply and provide a reason.
- [Several states have already delayed their primaries or encouraged voters to cast their ballots by mail, including states run by Republicans.](#) Paul Pate, Iowa’s Republican Secretary of State, urged

Iowans to vote by mail to combat the spread of the COVID-19. Even Georgia Secretary of State, Brad Raffensperger, said he will mail absentee ballot request forms to every voter ahead of the state's May 19 primary, prompting Republican pushback.

The Texas Cases

The Texas Democratic Party and two individual plaintiffs under the age of 65 (later joined by the League of Women Voters Texas and MOVE Texas) have filed cases in both state and federal court. Under Texas law, you can apply to vote by mail if you are any of the following:

- are 65 years or older;
- are disabled;
- will be out of the county on Election Day and during the period for early voting by personal appearance; OR
- confined in jail, but otherwise eligible.

The plaintiffs did not seek to change the law or the entire system of voting in Texas. They simply argued that a person should qualify for a mail ballot under the disability qualification, citing Sec. 82.002 of the Texas Election Code, which states: “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.**”(emphasis added). As we have documented in this report, voters have serious concerns about the possibility of injuring their health if they must stand in long lines to vote in person, concerns that were echoed in court by an epidemiologist and doctor who said voting in person would pose a risk of contracting the coronavirus.

Last Friday, State District Judge Tim Sulak agreed with the plaintiffs and [issued an order to allow voters to request a mail-in ballot during the COVID-19 pandemic](#) by citing the disability qualification allowed in the Texas election code. The state immediately appealed, but Attorney General Ken Paxton took an unusually defiant step of sending out a threatening “informal letter of advice” stating that an individual’s fear of contracting the virus was not enough to meet the definition of disability to qualify for a mail ballot and that those who advise voters to apply for a mail ballot based on that fear could be criminally prosecuted.

The federal case will be heard in Judge Fred Biery’s court in San Antonio, and it is based on the 26th amendment, which prevents the federal government, as well as all state and local governments, from using age as a justification for denying the right to vote to any citizen of the United States who is at least 18 years of age, citing the dangers presented to those under 65 who cannot vote by mail during this pandemic.

Mail ballot states utilize successful safeguards against fraud

President Trump has called mail ballots rife with fraud and says expanding the use of mail ballots will prevent Republicans from ever winning an election. Both claims are untrue, according to officials in four of the five completely vote-by-mail states—two Republican and two Democrat—point out that they [have protections in place to verify ballots to protect against fraud](#), including:

- ballot signature comparisons that compare the voter's signature with others on file, such as a voter registration form or a driver's license.
- ballots are sent out with unique bar codes linked to the voter and the ballot, to prevent a voter from casting more than one ballot.
- the use of secure drop boxes at voting centers.
- tracking systems so voters can keep tabs on their ballots.

Colorado Secretary of State Jena Griswold also noted that paper mail ballots cannot be hacked like a ballot cast and counted electronically. In Colorado, after the 2018 election, officials referred only 62 ballots—or 0.0027% of the more than 2.5 million ballots cast—to the state's attorney general for investigation. Utah Director of Elections Justin Lee told Roll Call that, “there's just no real indication of any kind of widespread or systematic voter fraud.”

Notorious vote suppressor Hans Von Spakovsky, from the Heritage Foundation, is a leader of the anti-mail ballot forces, but Heritage's own [election fraud database](#), has documented only 206 cases of fraudulent use of absentee ballots out of billions of ballots cast since 1991. [More than a billion ballots were cast in November elections alone in just the last eight years.](#) For the [five states](#) that conduct elections entirely by mail, the database has no such cases in Hawaii and Utah, two in Oregon, five in Colorado, and six in Washington. Ironically, the most recent, high-profile example of mail ballot fraud occurred in North Carolina's 9th District, where the 2018 election results [were thrown out](#) after a Republican political consultant was accused of tampering with absentee ballots.

No partisan advantage in mail ballot states

For a long time now, both parties have run mail ballot programs as part of their GOTV efforts. Contrary to the President's unique insight, researchers at Stanford University have found that expanding vote by mail provides neither party a partisan advantage. In examining voter data in three states with staggered rollouts of vote-by-mail programs—California, Utah, and Washington—the researchers found that [the introduction of mail-in voting did not affect, on average, the share of voter turnout for either Republicans or Democrats.](#)

The researchers examined voter data from 1998 through the 2018 midterm elections, making their study the largest, most up-to-date analysis yet of partisan effects of voting by mail. By analyzing the research over time, researchers reduced the impact of any one election and found that **the change in share of voters who are registered as Democrats—which some Republicans fear could increase with vote-by-mail elections—ranges from -0.1 to 0.3 percentage points.**

Researchers also found that expanding vote-by-mail does not appear to increase the vote share for candidates of either political party. Taken together, the researchers say their findings essentially dispel concerns that mail-in voting would cause a major electoral shift toward one party. The study also found that voter turnout overall modestly increased by two percentage points.

We have much more to do than mail ballots

Neither Texas lawsuits seeking additional mail ballot voting **attempts to change state law, in large part because certain populations that may find it difficult to vote by mail** due to changing

addresses frequently (renters, seasonal workers), language barriers, cultural tradition, or lack of information due to having no access to the internet. Furthermore, a realistic assessment finds the odds do not favor the adoption of nationwide all-mail balloting or expansion of mail balloting in Texas, but **there are other election issues that we must address during this pandemic.**

The Republicans in control in Texas have a long history of vote suppression, [and they have made their intentions clear](#). We have endured phony voter fraud task forces that targeted people of color, repeated voter ID fights, intentionally discriminatory redistricting plans, and the gutting of the Voting Rights Act, but we must persist.

[The Joint Center for Political and Economic Studies](#), America's Black Think Tank, recently held an online policy briefing that addressed numerous issues that require action as we approach an election during a pandemic. The discussion was thorough and insightful and can be viewed by clicking the link above. Here is a list of the most critical issues addressed.

- The need for additional federal appointed funding in the next stimulus package. Congress' Phase 3 coronavirus package passed three weeks ago, allocated \$400 million to election security grants, which can be used broadly, including to expand vote-by-mail options and early voting, as well as to clean polling facilities and conduct public education campaigns. However, according to the Brennan Center for Justice, [another \\$1.6 billion will be needed](#) just to address the issues caused by the pandemic, which were on full display in the recent Wisconsin primary;
- An expansion of vote-by-mail in every state of the country by November; and
- Elimination of all barriers that prevent voter accessibility and safety.

Several other priorities and policy ideas were discussed, including, to name just a few:

- Keeping polling places available in every community. In Milwaukee, in the recent primary, only 5 polling sites were open instead of the usual 120, as poll workers were afraid of exposure to the coronavirus.
- Providing a wide array of voting options, such as on-site voting that is safe and secure.
- Expanded early voting, absentee voting, same-day voter registration, curbside voting, absentee ballot drop-off, absentee mail-in voting, online registration, and prepaid postage.
- Expanding voter education to ensure every citizen has the knowledge they need to exercise their voting rights and access information.
- Creating safeguards against voting barriers and intimidation; and (unfair rejection of absentee ballots, election fraud, intimidation).
- Exploring innovative ways to reach young voters.

[The Brennan Center for Justice has also itemized a detailed and comprehensive of matters we must address now](#), and many of which are things that require funding that is needed for Congress to properly conduct the 2020 election. The key recommendations fall into five categories, and we encourage you to click the link above to review the detailed recommendations as well.

- polling place modification and preparation.

- expanded early voting.
- a universal vote-by-mail option.
- voter registration modification and preparation, including expanded online registration; and
- voter education and manipulation prevention.

Opportunities for Advocacy

The Democratic members of the Texas House Committee on Elections have sent a letter to Chairwoman Stephanie Click (R-Fort Worth) that addresses some of the many issues listed above, including:

- Request that the Secretary of State creates a vote by mail process in compliance with Judge Sulak's order to protect voters from the transmission of the coronavirus while voting.
- Request the SOS to implement curbside voting while advising counties that all polling places equipped to process voters as they drive up to a designated area without having individuals go inside to request curbside voting.
- Request the SOS to advise counties on, and assist them with, obtaining sufficient protective supplies to ensure public safety, including sanitizer, gloves, approved face masks, and disinfectant spray.
- SOS should instruct counties to have at least one staff member regularly collect voter registration cards and process them promptly during the pandemic.
- SOS should guide counties on hiring backup election workers to fill in for election workers who do not show up, and on how to protect election workers from contracting COVID-
- SOS should provide best practices and other necessary support to assist counties in relocating polling places away from high-risk populations (such as nursing homes and senior citizen centers) and selecting polling places that enable COVID-19 preventative measures (such as sufficient social distancing among voters, election workers, and members of the public).
- The federal government has allocated \$400 million to the Election Assistance Committee for the 2020 federal election cycle. The Secretary of State should apply for these funds to be used for the considerations listed above.

In addition to these matters enumerated by our colleagues on the Elections Committee, we should consider:

- Both Brennan Center and Joint Center suggest that each state and/or local government establish an election pandemic task force to determine how best to implement relevant policy recommendations in their state.
- State and local officials should consider appropriate adjustments to ensure that election officials have the authority needed to accomplish safety modifications.
- In the absence of Section 5 of the Voting Rights Act, care must be taken to ensure that changes are nondiscriminatory and do not negatively impact access for communities of color.
- Contacting our members of Congress to provide support for appropriating the additional \$1.6 billion needed to carry out this pandemic election safely. These funds are needed to modify polling locations, secure alternative poll locations should some not be available or be ill-suited for safety modifications.

- Working with local officeholders and election officials to secure accessible community poll locations and additional poll workers to make sure polling locations are available on election day.
- Work with local officials to ensure the distribution of voting machines and poll workers is equitable for all communities to prevent the problems that arose during the primary election.