

Elections

(Corrections in Red)

3/18/2020

What action has the governor taken with regard to the May 2, 2020, election?

Today, the governor issued a [proclamation](#) authorizing (but not requiring) all political subdivisions holding general or special elections on May 2, 2020, to postpone that election to the November 3, 2020, uniform election date. Please be advised that a postponement of your election does not happen automatically; the governing body of the political subdivision **MUST** take an official action for such a change to be effective. City officials should probably make the decision before the start of early voting on April 20, 2020.

At present, it is unclear what would happen to authority that statutorily expires in May. For example, what happens if a street maintenance sales tax reauthorization election is postponed? The League will seek direction from appropriate state offices.

The Elections Division of the Secretary of State's Office has issued [Advisory 2020-12 - Actions for May 2, 2020, Uniform Election Date](#), which provides guidance to political subdivisions seeking to move their May 2, 2020, election date in accordance with the Governor's proclamation. The Elections Division also issued the following:

"We are in the middle of a public health crisis that is rapidly changing. Through this crisis, our primary concern is the health and safety of voters, election workers, and our local election officials. As the situation progresses, we stand ready to provide additional guidance regarding the upcoming elections. In the meantime, please continue to send us your questions so that we can revise and update our materials and guidance as necessary."

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3/20/2020

Has the Secretary of State's Elections Division issued further guidance on a city's option to temporarily move its May election to November?

Yes. The following guidance was issued yesterday afternoon:

1. This is NOT a permanent move. The Governor's proclamation has the effect of postponing an election, but it is not a permanent move. The result is that your current office holders will be holdovers until the next election occurs. Your newly-elected office

holders in November will have a shorter term. Their next election will return back to the May date.

2. Elections that have been properly cancelled because no seats were contested: If your entity cancelled their May 2, 2020, election, your new officers will still be able to take office after the May 2, 2020 election date. If you cancelled part of your election, you will still let the candidates who were declared elected be sworn in and the remainder of your election will occur in November if you choose to postpone your May election. For those officers that took the oath of office after the May 2, 2020 date, you would not have to place their names in the "unopposed candidates declared elected" box on your ballot in November as these candidates will have already taken office.
3. Multi-County Territories: If your entity is in more than one county, you will be required to use each county's polling places for the November 2020 election. You will also be required to share at least one early voting location in accordance with Section 85.010 of the Texas Election Code.
4. Countywide Polling Places (Vote Centers): If your county utilizes countywide polling places for November 2020, then you will be required to use all polling locations within each county that contains territory for your entity.
5. Contracting Issues: If a contract hasn't been executed between the county elections officer and the local political subdivision, the county does NOT have an obligation to contract in May 2020. If a contract has been executed, then both parties would need to consult with their attorney regarding options for modifying the terms of the contract. Additionally, when you contract with your county in November, this allows you to use a joint ballot, shared election workers, and shared voting system equipment. Political subdivisions will most likely not be required to obtain their own separate voting system equipment or epollbooks.

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3/24/2020

Has the Secretary of State's Elections Division issued additional guidance on elections?

Yes, in addition to previously reported information, the Elections Division issued the following guidance today.

Authorized Postponement of May 2, 2020 Election: On March 18, 2020, the Governor issued a [proclamation](#) that authorized local political subdivisions to postpone their elections scheduled on May 2, 2020 to November 3, 2020. There are a few key issues that we [the Elections Division] wanted to address:

1. **Make the decision as quickly as possible** while complying with open meetings laws: While the Governor's proclamation doesn't prescribe a deadline for a local entity to make a decision on

postponement, we STRONGLY advise that the decision be made this week. Election equipment must be programmed and tested and mail ballots must be sent immediately if the election will be taking place May 2, 2020. Delaying the decision could subject your election to a contest if mail ballots are sent out significantly later than the law requires.

2. Shelter-in-Place Orders: As many local political subdivisions are enacting shelter-in-place orders, this has a significant impact on elections. If your entity or your county has issued such an order, you need to move your election; otherwise you are putting your election at risk of an election contest due to voters not being able to exercise their right to vote. Additionally, some political subdivisions have enacted fines for violating their local ordinances; if your order does so and there is no specific exemption for voting or conducting elections, you put your voters at risk of criminal penalty for leaving their homes to vote.

3. Article XI, Section 11, Texas Constitution: If your city is holding a special election to fill a vacancy due to the requirements prescribed in Article XI, Section 11 of the Texas Constitution, the Governor's proclamation does NOT apply to your election. You must hold your election within 120 days of the vacancy occurring. The Governor's proclamation does not suspend this requirement in the Texas Constitution. However, given that many political subdivisions are enacting shelter-in-place orders, it is imperative that some action be taken to move your election dates. If you opt to move your election in response to this public health crisis, and to do so safely would result in ordering the election to occur outside of the constitutionally prescribed 120 day period, you should consult with your attorney regarding [Attorney General Opinion No. JC-0318](#), as you may be required to hold your election on the November 2020 uniform election date.

4. Certain Types of Special Elections: We have heard from a number of entities that have special elections resulting from the expiration of a sales tax that the November 3, 2020, uniform election date occurs after their expiration date. For these elections, we recommend consulting with the Comptroller's office, as they may be able to provide certain assistance with expiring taxes. Additionally, if you need to have an election prior to November 3, 2020, you may have to seek permission from the Governor in accordance with Section 41.0011 of the Texas Election Code to hold your election on a non-uniform election date.

5. Options Other than November 3, 2020: The Governor's proclamation only authorized a move to November 3, 2020. There is no authority for a local political subdivision, on its own order, to move an election to any other date. If an entity would like to move to a date other than November 3, 2020, there are likely only two ways to do so:

-Emergency Election under Section 41.0011(b) of the Texas Election Code: A local political subdivision can request permission from the Governor to allow the political subdivision to order a special election on a non-uniform election date. Please note that this only applies to special elections and not general elections

-Court Order for Non-Uniform Election Date: As there are no other options outside of the Governor's authorization to postpone the election and the option under Section 41.0011 of the Texas Election Code, a political subdivision that wishes to hold its election on a date other than the November 3, 2020 could try to seek court order for an alternative date.

[Editor’s note: the success of either of these two options is very unlikely.]

Thank you all for your continued questions and all of your hard work. Please let us know if you have any additional questions or concerns.

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3/25/2020

Who is eligible to apply to early vote by mail on the grounds of disability?

Section 82.002 of the Texas Election Code provides that 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.” (Note: qualified voters 65 years of age or older are also eligible for early voting by mail pursuant to Election Code Section 82.003.)

Cities holding May elections should expect an increase in the number of applications for ballots by mail on the grounds of disability under Election Code Section 82.002. Under the circumstances, and due to the subjectivity of the standard for disability in the statute, city election officials are encouraged to accept applications for ballots to early vote by mail at face value and process them. The voter, not a city election official, must make a determination as to whether the disability standard applies to them. A voter who submits an application for a ballot by mail must acknowledge on the application that including knowingly false information on the application is a criminal offense. See Tex. Elec. Code § 84.0041.

3/26/2020

If a city moves a sales tax reauthorization election to the November uniform election date, does the dedicated sales tax expire even though the city initially planned to have the voters reauthorize the tax prior to its expiration on the May uniform election date?

The answer depends, in large part, on which dedicated sales tax is being reauthorized, and when the expiration will occur. Sales tax reauthorization elections are required for two types of dedicated city sales taxes: the street maintenance sales tax, and the sales tax for crime control and prevention districts.

For the street maintenance sales tax, state law authorizes the comptroller to delay the expiration date of tax to not later than the last day of the first calendar quarter occurring after the city sends notice to the comptroller of the scheduled expiration. *See* Tex. Tax Code § 327.007(d). Most cities that have their street maintenance sales tax expiring in 2020 have a scheduled expiration

date of September 30, 2020. In accordance with the authority in Section 327.007(d) of the Tax Code, the comptroller has advised that these cities may request that the comptroller delay the expiration of their street maintenance sales tax to December 31, 2020. Doing so would allow the city to hold the reauthorization election on the November uniform election date without having the sales tax expire.

The comptroller's office has advised TML that a city with a September 30, 2020 street maintenance sales tax expiration date that wishes to delay the expiration of the tax must send a copy of the resolution postponing the city's election to November to Taxalloc.RevAcct@cpa.texas.gov. Once received, the comptroller's office will notify the city in writing that the new expiration date of the street maintenance tax is December 31, 2020. This city is also required to submit the November election results to the comptroller's Tax Allocation Section no later than November 20, 2020.

A few Texas cities have street maintenance sales taxes that are set to expire on June 30, 2020, unless reauthorized. The comptroller's authority to delay the expiration date under Tax Code Sec. 327.007(d) only delays the expiration of these cities' street maintenance sales taxes until September, still before the November uniform election date. Consequently, these cities would see their street maintenance sales taxes expire prior to a reauthorization election in November.

In addition to these cities, a small handful of Texas cities have crime control and prevention district sales taxes that will expire in 2020 unless reauthorized. The crime control and prevention district statute does not contain a provision similar to Tax Code Sec. 327.007(d), so the comptroller lacks the same authority to delay the expiration date of the crime control and prevention district sales taxes.

Cities that either have an expiring crime control and prevention district sales tax, or a street maintenance sales tax that expires in June 2020, are encouraged to continue working with their legislative delegations to request the governor to either extend the expiration dates or set a special emergency election for the reauthorization of those sales taxes prior to their expiration. These cities are also encouraged to reach out to Russell Gallahan with the comptroller's office to discuss their options at Russell.Gallahan@cpa.texas.gov.

4/3/2020

Has the Secretary of State issued further guidance relating to elections scheduled for the May uniform date?

Yes. The Secretary of State's Elections Division issued guidance yesterday that interprets the governor's most recent executive order as, for all practical purposes, mandating that May elections be postponed. That guidance is printed verbatim here:

Dear Election Officials:

We have continued to receive questions regarding the recent proclamations by the Governor related to elections and COVID-19. We are providing some additional guidance below.

1. [Executive Order GA 14](#): Governor Abbott’s March 31, 2020 executive order includes, but is not limited to, the following items. It: (1) extends social distancing guidelines through April 30th, (2) defines essential services, and (3) extends school closures across the state through May 4, 2020. If you haven’t already moved your May 2nd election, you must take action to do so immediately! **This most recent executive order will prevent you from securing polling places, recruiting election workers, and allowing voters a safe way to exercise their right to vote. If you don’t move your May 2nd election, you are subjecting voters to health risks and potential criminal violations. Failure to postpone your election will put your election at severe risk for an election contest.** For procedures related to postponing your election, see [Advisory 2020-12](#). (Please note, that while Elections Personnel have been included in the federal government’s advisory on essential critical infrastructure workers, this does not include voters.)

2. Cities impacted by Article XI, Section 11, Texas Constitution:

- a. The Governor’s executive order makes it clear that you must take action to move your election, even if your city is holding a special election to fill a vacancy due to the requirements prescribed in Article XI, Section 11 of the Texas Constitution. While the executive order does not suspend the Texas Constitution’s requirements to hold your election within 120 days of the vacancy, you should consult with your city attorney about the proper way to handle a postponement of this type of election.
- b. If you opt to move your election in response to this public health crisis, and to do so safely would result in the election occurring outside of the constitutionally prescribed 120 day period, please direct your attorney to review Attorney General Opinion No. [JC-0318](#), as you may be required to hold your election on the November 2020 uniform election date.
- c. Runoff Elections being held for Article XI, Section 11, Texas Constitution City Elections - These situations can vary fact specific. We recommend you contact our office for specific guidance on your situation.

3. Special Elections Regarding the Continuation of a Sales Tax: If you have a special election scheduled for May 2, 2020 on the question of the continuation of a sales tax that cannot be rescheduled for November 3, 2020 because the tax will expire before then, please contact the Comptroller’s office regarding the expiration of your sales tax. If you are unable to receive an extension from the Comptroller’s office regarding your sales tax, please contact the SOS for additional assistance.

4. Options Other Than November 3, 2020: The Governor’s proclamation allowing a postponement only authorized a move to November 3, 2020. There is no authority for a local political subdivision, on its own order, to move an election to any other date. If an entity would like to move to a date other than November 3, 2020, there are likely only two ways to do so:

a. **Emergency Election under Section 41.0011(b) of the Texas Election Code:** A local political subdivision can request permission from the Governor to allow the political subdivision to order a special election on a nonuniform election date. Please note that this only applies to special elections and not general elections.

b. **Court Order for Nonuniform Election Date:** As there are no other options outside of the Governor’s authorization to postpone the election and the option under Section 41.0011 of the

Texas Election Code, a political subdivision that wishes to hold its election on a date other than November 3, 2020 could try to seek court order for an alternative date.

5. **Notice Requirements:** Any entities that are exercising the authority to postpone their election date must provide the following notice:
- a. **Notice to Voters:** The entity should post notice on the entity's website and alert any local media organizations regarding this change to their election date.
 - b. **Notice to County Election Officer:** The entity must also provide notice to their county election officer regarding this change, as the county is required to post the entity's notice of election on the county's website no later than the 60th day before the date of the election under Election Code 4.008.
 - c. **Posted Notice at Polling Locations:** If it's possible to post notice at the polling locations that would have been used for the elections, we would recommend doing so. However, your ability to do so may be limited due to the stay-at-home orders that are in place. Please do not put your workers at risk by posting a physical notice. The most important thing is to update local media and update your website.
 - d. **Notice to SOS:** When you take action to postpone your elections, please inform us of the action taken. You may do so at elections@sos.texas.gov.

Please let us know if you have any questions or concerns.

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Has the Secretary of State issued other guidance relating to conducting elections in November?

Yes, the Elections Division has issued what they say will be the [first of several advisory opinions](#) relating to various facets of conducting elections in light of the virus. It includes such items as cleaning voting machines, curbside voting, mail in ballots, etc. City elections personnel should carefully review the advisory.

4/9/2020

Have any cities had success with moving special elections to a non-uniform date?

Yes. But **only** with respect to **special elections**. (The Secretary of State's Elections Division has made clear their position that the governor can't allow the general election for city officers on any date other than the November uniform election date. Moreover, the Elections Division has issued guidance suggesting that cities have no choice but to move their May general election to November.) The problem with special elections is that they don't fall under the governor's order allowing cities to move their general elections to November. That's because the Elections Division concluded that he doesn't have the legal authority to do so. Examples of special elections that have been changed include:

-Local Street Maintenance Sales Tax Reauthorization Election: The governor by [order](#) moved the City of Sundown’s street maintenance sales tax reauthorization election date to July 14, 2020 (the new date for the primary runoff election).

-Crime Control and Prevention District Continuation Election: The governor by [order](#) moved the City of Fort Worth’s Crime Control and Prevention District continuation election to July 14, 2020.

-Constitutional Special Election to Fill a Vacancy: The City of Anna obtained a [court order](#) allowing it to move a special election to fill a vacancy to the November uniform date. Article XI, Section 11, of the Texas Constitution requires a city that has three- or four-year terms to fill a vacancy at an election “called for such purpose within one hundred and twenty (120) days after such vacancy or vacancies occur except that the municipality may provide by charter or charter amendment the procedure for filling a vacancy occurring on its governing body for an unexpired term of 12 months or less.” The court order relieved the city of the requirement to hold the election within 120 days.

-Home Rule Charter Runoff Election: The City of Eagle Pass obtained a [court order](#) moving its charter-based runoff election to a non-uniform date in September. Even so, the city has requested that the governor issue a proclamation as well.

4/13/2020

With cities moving their general election to November, should we be aware of legal issues related to regulating political signs?

Yes. When it comes to regulating political signs, cities always face two critical questions. Does our sign ordinance run afoul of the constitution? Does our sign ordinance conflict with state law?

To insure the city does not abridge the constitutional rights of the sign’s owner, a city should not regulate a political sign based on the content of the speech. See, e.g., *Reed v. Town of Gilbert*, 135 S.Ct. 2218 (2015); *City of Ladue v. Gilleo*, 512 U.S. 43, 58 (1994). Even if content-neutral, a city still needs to examine its sign ordinance to make sure it doesn’t conflict with state laws regarding political signs. See, e.g., Tex. Elec. Code §§ 61.003 (addressing the regulation of posting political signs at a public building used as a polling place); 259.003 (addressing the regulation of political signs by a city).

This is only intended to be a reminder of the legal issues related to political signs, and is not meant to suggest that your city’s sign ordinance may never reach such signs. For instance, political signs are often impacted through a city’s larger regulatory scheme of all temporary signs, residential signs, and signs in the right-of-way.

In sum, cities should use caution and seek the advice of local legal counsel when attempting to regulate political signs.

4/20/2020

Who is eligible to apply to early vote by mail on the grounds of disability?

Section 82.002 of the Texas Election Code provides that 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.” (Note: qualified voters 65 years of age or older are also eligible for early voting by mail pursuant to Election Code Section 82.003.)

Last week, the attorney general issued an “[informal letter of legal advice](#)” indicating his opinion that “fear of contracting COVID-19 unaccompanied by a qualifying sickness or physical condition does not constitute a disability under the Election Code for purposes of receiving a ballot by mail.” In other words, the attorney general’s opinion is that, under state law, an otherwise healthy voter is not eligible to receive a ballot to vote early by mail just because the voter is concerned with possibly contracting COVID-19 by voting in-person at a polling place.

Shortly after the attorney general’s informal guidance was released, Travis County District Judge Tim Sulak took the opposite position. The judge [ordered a temporary injunction](#) preventing the Travis County clerk from rejecting any mail ballot applications received from registered voters who use the disability category of eligibility as a result of the COVID-19 pandemic as the justification for submitting the application. According to the judge, it was reasonable for plaintiffs “to conclude that voting in person while the virus that causes COVID-19 is still in general circulation presents a likelihood of injuring their health, and any voters without established immunity meet the plain language definition of disability thereby entitling them to a mailed ballot under Tex. Elec. Code § 82.002.”

It is possible, if not likely, that the judge’s order will be appealed. But unless and until an appellate court overturns the judge’s determination, the safest approach for future city elections will be for city election officials to accept applications for ballots to early vote by mail at face value and process them. The Secretary of State’s Elections Division will probably issue guidance as well.

5/4/2020

Who is eligible to apply to early vote by mail on the grounds of disability?

On April 20, the League reported the following related to “who is eligible to apply to early vote by mail on the grounds of disability?”

Section 82.002 of the Texas Election Code provides that 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.” (Note: qualified voters 65 years of age or older are also eligible for early voting by mail pursuant to Election Code Section 82.003.)

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Last week, on May 1, the attorney general doubled-down on his advice above when he issued a [memo](#) to “County Judges and County Election Officials” regarding “Ballot by Mail Based on Disability.” His press release stated the following verbatim:

“AG Paxton Advises County Officials to Avoid Misleading the Public on Vote by Mail Laws

Attorney General Ken Paxton today issued a letter to Texas county judges and election officials, providing guidance that, under the Texas Election Code, Texans may not claim disability based on fears of contracting COVID-19 and receive a ballot to vote by mail in upcoming elections. Several county officials throughout the State, including the Harris County judge and clerk, are misleading the public about their ability to vote by mail, telling citizens that in light of COVID-19, anyone can claim a ‘disability’ that makes them eligible for ballot by mail.

Disability, as that term is used in the Texas Election Code’s provisions allowing voting by mail, must involve a ‘sickness or physical condition’ that prevents a voter from voting in person on election day without a likelihood of needing personal assistance or of injuring the voter’s health. A voter ill with COVID-19 and who meets those requirements may apply for a ballot by mail. Fear of contracting COVID-19, however, is a normal emotional reaction to the current pandemic and does not amount to an actual disability that qualifies a voter to receive a ballot by mail.

‘Mail ballots based on disability are specifically reserved for those who are legitimately ill and cannot vote in-person without assistance or jeopardizing their health. The integrity of our democratic election process must be maintained, and law established by our Legislature must be followed consistently,’ said Attorney General Paxton. ‘My office will continue to defend the integrity of Texas’s election laws.’

The lawsuit recently filed in Travis County District Court does not change or suspend the disability requirements required by the Texas Legislature. Pursuant to Texas law, the District Court's order is stayed and has no effect during the ongoing appeal.”

The Secretary of State had previously and informally advised in an email the opposite of what's in the attorney general's memo. The SOS position may change, but the whole issue raises some interesting questions about which attorney to rely on for advice: a city's or the attorney general's office.

Even formal attorney general opinions aren't binding on anyone. Attorneys frequently defer to them because courts sometimes, but not always, use them as guidance. But we aren't aware of any statutory provision providing that an informal memo from the attorney general, whether right or wrong, has any legal weight whatsoever or is binding on anyone in light of ongoing litigation where a judge has already opined on the issue (typically the attorney general refrains from opining on issues that are subject to pending litigation).

As is always the case, city officials should consult with their own attorney for legal advice.

5/11/2020

What is the status of the lawsuits related to elections, specifically voting by mail?

On April 17, Travis County District Judge Tim Sulak [ordered a temporary injunction](#) preventing the Travis County clerk from rejecting any mail ballot applications received from registered voters who use the disability category of eligibility as a result of the COVID-19 pandemic as the justification for submitting the application.

The attorney general immediately appealed the judge's order, in addition to issuing a [memo](#) to county election officials emphasizing that the order has no effect during the appeal. (Note: voting rights activists in Dallas County have formally asked the district attorney to investigate whether the attorney general committed a crime when he issued his memo instructing elections administrators to not provide mail-in ballots to those submitting an application on grounds of disability for fear of contracting COVID-19 by voting in person.) The case was subsequently transferred from the Austin court of appeals to the 14th Court of Appeals in Houston.

On May 11, the attorney general filed a [brief](#) with the court of appeals arguing that the judge's order represented an unlawful expansion of mail-in voting.

In addition to the state lawsuit, the Texas Democratic Party filed [a lawsuit](#) in federal court last month (April 2020) arguing that interpreting existing state statute to limit voting by mail violates federal law and the United States Constitution. A May 15 hearing is scheduled in this federal lawsuit before U.S. District Judge Fred Biery in San Antonio.

Finally, on May 11, a group of voters and civil rights groups filed a new lawsuit in federal district court in San Antonio. The plaintiffs' [complaint for injunctive relief](#) alleges that certain

existing state statutes governing the procedure for voting by mail are unconstitutional. These statutes include: (1) the requirement that voters pay for the postage to return their early voting ballots by mail; (2) the requirement that returned ballots be postmarked no later than 7:00 p.m. on election day and received by the county at the address designated on the ballot carrier envelope no later than 5:00 p.m. on the day after the election to be counted; (3) the requirement that voters submit two matching handwriting samples to have their ballots counted; and (4) the criminalization of a person assisting a voter in returning a marked mail ballot.

The League will continue to report on these developing cases.

5/12/2020

What new action has the governor taken with regard to the July 14 primary runoff election?

Yesterday evening (May 11), the governor issued a [proclamation](#) that doubled the length of the early voting period for the upcoming July 14 primary runoff election, which is the first statewide election to be conducted during the pandemic. This means, for any election ordered or authorized to occur on July 14, early voting by personal appearance shall begin on Monday, June 29, and shall continue through the fourth day before election day, excluding any legal state or federal holidays.

Of interest to the handful of cities that will have special elections on the July 14 date, he further amended their proclamations to conform to the extended early voting schedule.

5/14/2020

What's the latest update regarding voting by mail during the Coronavirus epidemic?

The attorney general issued the following press release yesterday (May 13):

“AG Paxton Asks Texas Supreme Court to Order Election Officials Who Urged Voters to Submit Unlawful Mail-in Ballot Applications to Follow Texas Law:

Attorney General Ken Paxton today [filed a petition](#) with the Texas Supreme Court, requesting that the court compel the early-voting clerks for Dallas, Cameron, El Paso, Harris and Travis Counties to follow Texas law on mail-in ballots. Texas law generally requires in-person voting, and allows mail balloting for certain limited groups, including those who are disabled. In violation of that requirement, officials in those counties are encouraging voters without actual disabilities to claim “disability” on their mail-in ballot applications.

‘Each misapplication of Texas election law damages the integrity of our elections and increases the risk of voter fraud. In-person voting is the surest way to prevent voter fraud and guarantee that every voter is who they claim to be and has a fair opportunity to cast their vote,’ said Attorney General Paxton. ‘It is unfortunate that certain county election officials have refused to perform their duties and have instead unlawfully gone beyond the Legislature’s determination of

who is eligible to vote by mail. My office will continue to defend the integrity of Texas's election laws.'

'Disability,' as that term is used in the Texas Election Code's provisions allowing voting by mail, means a 'sickness or physical condition' that prevents a voter from voting in person on election day without a likelihood of needing personal assistance or of injuring the voter's health. A voter ill with COVID-19 and who meets those requirements may apply for a ballot by mail. Fear of contracting COVID-19, however, is a non-physical reaction to the current pandemic and does not amount to a sickness or physical condition that qualifies a voter to receive a ballot by mail."

The above is reprinted verbatim from the attorney general's press release, and it isn't necessarily a statement of the law as confirmed by an appellate court. Here's how we got to this point:

-A district court judge [ordered a temporary injunction](#) preventing the Travis County clerk from rejecting any mail ballot applications received from registered voters who use the disability category of eligibility as a result of the COVID-19 pandemic as the justification for submitting the application.

-The attorney general immediately appealed the judge's order, in addition to issuing a [memo](#) to county election officials emphasizing that the order has no effect during the appeal.

-The case was subsequently transferred from the Austin court of appeals to the 14th Court of Appeals in Houston, and the attorney general filed a [brief](#) with the court of appeals arguing that the judge's order represented an unlawful expansion of mail-in voting.

-In addition to the state lawsuits above, the Texas Democratic Party filed [a lawsuit](#) in federal court last April arguing that interpreting existing state statute to limit voting by mail violates federal law and the United States Constitution.

-Also, a group of voters and civil rights groups filed a new lawsuit in federal district court in San Antonio. -The plaintiffs' [complaint for injunctive relief](#) alleges that certain existing state statutes governing the procedure for voting by mail are unconstitutional.

-The governor issued a [proclamation](#) that doubled the length of the early voting period for the upcoming July 14 primary runoff election, which is the first statewide election to be conducted during the pandemic.

That brings us to yesterday and to the new attorney general lawsuit, filed directly with the Texas Supreme Court to bypass the typical judicial process, which is the subject of the press release above.

The League will continue to report on these developing cases. (Please note that the state court systems' website was hacked and is currently unavailable, which means finding court filings is difficult and some links may be temporarily disabled.)

5/15/2020

What is the latest regarding the attorney general's lawsuit to stop mail-in ballots for those fearful of contracting COVID-19 at the polls?

[Yesterday's \(May 14\) update](#) provided a detailed rundown of the lawsuits related to mail in ballots. Today (May 15), the attorney general issued the following press release:

“AG Paxton Asks Texas Supreme Court to Stay Order Expanding Mail-In Voting:

Attorney General Ken Paxton today asked the Texas Supreme Court [to immediately stay an order](#) by the Court of Appeals for the Fourteenth Judicial District, which reinstated a Travis County District Court order allowing anyone in Travis County to vote by mail using special protections intended to aid only those with true disabilities or sicknesses. The Fourteenth Court correctly concluded that the trial court's order was superseded, but it incorrectly allowed the order to go into effect anyway.

Attorney General Paxton also [filed a petition](#) asking the Texas Supreme Court to uphold the State's automatic right, guaranteed by the Legislature, to stay temporary injunctions from lower courts upon filing an appeal.”

The cases referred to in the press release are both in state court. The request for stay was filed in the pending Houston court of appeals case styled as *State of Texas v. Texas Democratic Party*. The petition was filed with the Texas Supreme Court in the attorney general's pending motion for writ of mandamus styled *In Re State of Texas*. As mentioned in previous updates, the state court websites were hacked, which means we can't link to them at this time.

5/18/2020

What's the latest in the mail-in ballot controversy?

Last Friday (May 15), the Texas Supreme Court ordered a temporary hold on the expansion of voting by mail-in ballot during the virus emergency. The [court's order](#) adds to a confusing melee of legal challenges in both state and federal court. How does the latest order fit into the state court scheme?

- A district court judge [ordered a temporary injunction](#) preventing the Travis County clerk from rejecting any mail ballot applications received from registered voters who use the disability category of eligibility as a result of the COVID-19 pandemic as the justification for submitting the application.
- The attorney general immediately appealed the judge's order, in addition to issuing a [memo](#) to county election officials emphasizing that the order has no effect during the appeal.
- The case was subsequently transferred from the Austin court of appeals to the 14th Court of Appeals in Houston, and the attorney general filed a [brief](#) with the court of appeals arguing that the judge's order represented an unlawful expansion of mail-in voting.
- The 14th Court of Appeals upheld the trial court's temporary injunction.
- The attorney general appealed the 14th court's opinion to the Texas Supreme Court, which [temporarily overturned the opinion](#) and stayed any restriction on prosecution of voters who improperly request mail in ballots.

The stay is based on the case that was appealed up through the system. The attorney general also filed a separate petition directly with the Texas Supreme Court, but the court hasn't acted on that yet.

5/19/2020

Has the Secretary of State's Elections Division issued information related to the November election?

Yes. The division released [Advisory 2020-17 – November 3, 2020 Election Law Calendar](#). According to the division:

“This calendar contains the relevant dates and deadlines associated with that election. The calendar has also been modified to account for deadlines that may have shifted as a result of the postponement of the primary runoff election to July 14, 2020. There are also entries related to the postponement of May 2, 2020 elections to November 3, 2020. The ‘Dear Voter’ letter for this election will be posted to our website this week.

Please note that our office will release an updated July 14, 2020, Election Law Calendar that reflects the extension of the early voting period this week as well. We have also updated the ‘Dear Voter’ letter to reflect the changed dates. That revised letter has been posted to our website. Here is the updated link to the [English version](#) and the [Spanish version](#).

This advisory and other resources are located on your [Conducting Your Elections](#) pages.”

5/20/2020

What's the latest in the mail-in ballot controversy?

In addition to the pending state court lawsuits we've reported on previously, the Texas Democratic Party and others sued the governor, attorney general, secretary of state, and Travis and Bexar Counties in federal court seeking to allow mail-in ballots for those afraid of contracting the virus.

The attorney general argued that the federal judge should wait to rule until the outcome of the state court proceedings, but the judge disagreed. He waxed poetic in a 74-page [order](#) that essentially allows any voter to do so by mail-in ballot. For example, the judge wrote that “the Court finds the Grim Reaper's scepter of pandemic disease and death is far more serious than an unsupported fear of voter fraud in this sui generis [unique] experience...Indeed, if vote by mail fraud is real, logic dictates that all voting should be in person [instead of the current law allowing those over 65 or with a disability to do so].”

The attorney general issued the following statement in support of his [immediately-filed appeal](#): “Mail-in ballots are vulnerable to fraud,” said Attorney General Paxton. “Two-thirds of all election fraud cases prosecuted by my office involve mail ballot fraud, also known as ‘vote harvesting.’ Allowing widespread mail-in ballots will lead to greater fraud and disenfranchise

lawful voters. Governor Abbott already has made a temporary order expanding the early voting period for the July elections. In addition, local election officials have many other mechanisms available to them to ensure safe and fair elections, including sanitizing voting machines and areas and implementing social distancing.”

5/22/2020

What’s the latest in the mail-in ballot controversy?

In the pending federal court lawsuit we’ve reported on previously, a three-judge panel of the U.S. Court of Appeals for the Fifth Circuit granted a [temporary administrative stay](#) of the decision by the federal district court in San Antonio. The district court had issued a ruling allowing anyone in Texas to vote by mail. Presumably, the plaintiffs will ask all the judges on the court to review the decision and/or appeal to the U.S. Supreme Court.

5/27/2020

Has the Secretary of State issued guidance for voters to use at the upcoming July 14 election date?

Yes. Yesterday (May 26), the Secretary of State issued “[minimum recommended health protocols](#)” for elections, including a “suggestion” that:

“Voters who exhibit any...symptoms associated with COVID-19 when they arrive at a polling location may want to consider utilizing curbside voting, to the extent they meet the eligibility requirements, which is available at all polling locations. These voters should contact their county election office with questions about the curbside voting process in their county and the eligibility requirements.”

In addition, the suggestions include – among many other things – the following:

- Voters should bring their own hand sanitizer to the polls.
- Upon entering a polling place, wash or disinfect hands. Wash or disinfect hands after any interaction with election workers, poll watchers, or other individuals at the polling place and after using voting system equipment or marking a ballot.
- Voters should consider bringing their own marking instruments such as a pen, pencil with eraser, or stylus to use when checking-in to vote and for marking their ballot. Voters should contact their county election office to determine what type of marking devices are appropriate to use for the ballots in their county.
- Voters should bring their own hand sanitizer into the polling location and should use hand sanitizer to disinfect their hands after leaving the polling location.
- Consistent with the actions taken by many individuals across the state, consider wearing cloth face coverings (over the nose and mouth) when entering the polling place, or when within six feet of another person who is not a member of the individual’s household. If available, individuals should consider wearing non-medical grade face masks.

5/28/2020

What happened yesterday (May 27) with regard to the vote by mail litigation in state court?

The Texas Supreme Court issued an [opinion](#) in the case of *In Re State of Texas*. The attorney general filed the lawsuit directly with the Supreme Court, claiming that the fear of contracting COVID-19 is not a “disability” that would allow a voter to qualify for a mail-in ballot. The court agreed with the attorney general, but declined to issue the “writ of mandamus” he requested:

“We agree with the State that a voter’s lack of immunity to COVID-19, without more, is not a “disability” as defined by the Election Code. But the State acknowledges that election officials have no responsibility to question or investigate a ballot application that is valid on its face. The decision to apply to vote by mail based on a disability is the voter’s, subject to a correct understanding of the statutory definition of “disability.” Because we are confident that the Clerks and all election officials will comply with the law in good faith, we deny the State’s petition for writ of mandamus.”

A writ of mandamus is simply a written order to act in a certain way. The attorney general asked that the court issue the writ to five county clerks and election administrators to stop them from “misinforming the public to the contrary and improperly approving applications for mail-in ballots.” The court refused to do so, but it did opine that fear of contracting the virus, by itself, isn’t enough for a voter to request a mail-in ballot.

Texas voters can ask for mail-in ballots only if they are 65 years or older, have a disability or illness, will be out of the county during the election period, or are confined in jail. Texas election law defines disability as a “sickness or physical condition” that prevents a voter from appearing in person without the risk of “injuring the voter’s health.”

A separate federal court lawsuit on the issue is still pending. It’s probable that the issue will find itself before the U.S. Supreme Court.

5/29/2020

Has the governor said anything recently regarding early voting for the November election?

Yes. According to a May 28 article in [The Texas Tribune](#):

“Gov. Greg Abbott said Thursday he will extend the early voting period for an unspecified amount of time during the November election as concerns continue to persist around in-person voting during the coronavirus pandemic.

Abbott has already doubled the time period for the primary runoff election July 14, calling it necessary so that ‘election officials can implement appropriate social distancing and safe hygiene practices.’

In a TV interview Thursday afternoon, Abbott was asked if he believes Texas voters will be able to cast their ballots safely not only this summer but also in the fall.

‘We do, and for this reason, and that is ... Texas has always had early voting, and what I did for the July time period and what we will do again for the November time period is we will extend the early voting period,’ Abbott said in the interview with KCBD in Lubbock. ‘And what that does — it allows more people to go vote early in settings that are not highly congregated. As a result, you can go vote without having to worry about a whole bunch of people being around you that you could contract COVID-19 from. That makes voting a lot safer [of a] setting than it would otherwise be with the shortened early voting time period.’”

6/3/2020

Has the Texas attorney general taken further action with regard to mail-in ballots?

Yes, he issued the following press release:

“Attorney General Ken Paxton today led a 16-state coalition that sent a [letter](#) to Senate Majority Leader Mitch McConnell and Senate Minority Leader Charles Schumer, warning that certain provisions in the proposed Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES Act) interfere with state elections by transforming them in a way that benefits vote harvesters and can lead to massive disenfranchisement of lawful, qualified voters. The HEROES Act, if passed, would invade states’ ability to set their own election laws and dramatically undermine election integrity.

‘As federal and state legislators of both parties have correctly observed for decades, mail-in ballots are particularly vulnerable to fraud and protections against that risk are necessary. In contrast, the HEROES Act effectively bulldozes state election laws that were specifically designed to reduce and ultimately eliminate voter fraud,’ said Attorney General Paxton. ‘State election officials have many options available to safely and securely hold elections without risking widespread mail-ballot fraud. The federal government should leave these decisions to states.’

The American Coronavirus/COVID-19 Election Safety and Security Act (ACCESS Act), which is buried within the HEROES Act, requires states to provide mail-in ballots for all registered voters, allows individuals to apply for a ballot online, and allows voters to register to vote as late as election day itself. The Act also unlawfully prohibits states from requiring identification, notarization, or witness signatures as conditions of providing an absentee ballot to a voter and creates an overly-elaborate process for states to reject an unlawful or illegitimate mail-in ballot.

Texas was joined by Alabama, Alaska, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Missouri, Nebraska, Oklahoma, North Dakota, South Carolina, and South Dakota.”

The [HEROES Act \(HR 6800\)](#) is the bill passed by the U.S. House of Representatives on May 26. It has been characterized as the House Democrats “opener for negotiations” in the

Senate. The Act is a \$3 trillion measure whose centerpiece is a \$1 trillion proposal for direct aid to states and local government entities of all population sizes. However, it does contain provisions related to the conduct of elections, such as those beginning on page 1,473. The HEROES Act has not passed the Senate, and any future stimulus bill probably won't look much like it.

6/4/2020

What's the latest in the mail-in ballot controversy?

The ping-pong match of court battles over the use of mail-in ballots by those who fear contracting COVID-19 at the polls continues. The U.S. Court of Appeals for the Fifth Circuit issued an [opinion](#) that, for now, essentially precludes a voter from voting by mail based on that fear.

The federal court controversy began when the Texas Democratic Party and others sued the governor, attorney general, secretary of state, and Travis and Bexar Counties in federal court seeking to allow mail-in ballots for those afraid of contracting the virus.

The federal district court judge issued a [74-page order](#) that would have allowed any voter to vote by mail-in ballot. The attorney general [immediately appealed](#). The U.S. Court of Appeals for the Fifth Circuit granted a [temporary stay](#) of the district judge's ruling.

Today, that same appeals court issued the opinion ordering that the stay continue permanently, pending further appeals.

Presumably, the Democratic Party will eventually appeal to the U.S. Supreme Court.

6/8/2020

Has the Secretary of State's Elections Division provided further updates on the mail ballot lawsuits?

Yes, last Friday (June 5), the Elections Division sent the following "SOS Update" to elections officials by email:

Dear Election Officials:

As you know, there is active litigation in federal and state court involving eligibility to vote by mail in Texas elections. We are writing to provide you an update on these proceedings, which do not alter the established standards in the Texas Election Code for voting by mail.

On May 27, 2020, the Texas Supreme Court issued an [order](#) stating that "a voter's lack of immunity to COVID-19, without more, is not a 'disability'" under Section 82.002 of the Texas Election Code. Therefore, such a lack of immunity does not, by itself, render a voter eligible to vote by mail within the meaning of Section 82.002(a).

In the federal litigation, the U.S. District Court for the Western District of Texas entered a preliminary injunction on May 19, 2020, providing that “[a]ny eligible Texas voter who seeks to vote by mail in order to avoid transmission of COVID-19 can apply for, receive, and cast an absentee ballot in upcoming elections during the pendency of pandemic circumstances.” The next day, following an immediate appeal by the State, the U.S. Court of Appeals for the Fifth Circuit entered a temporary administrative stay of the injunction.

On June 4, 2020, the Fifth Circuit issued an [opinion](#) staying the district court’s injunction pending the State’s appeal. As a result, the May 19 preliminary injunction is not operative at this time.

The Texas Supreme Court and Fifth Circuit rulings confirm the established criteria for vote-by-mail eligibility in Texas. As the Texas Supreme Court recognized, the Legislature has allowed voting by mail in “specific, defined categories,” namely those voters who (1) will be absent from their county of residence during an election period; (2) have a disability that prevents them from appearing at the polling place; (3) are sixty-five years of age or older; (4) are confined in jail; or (5) participate in the address confidentiality program. (Sections 82.001-.004, .007). As noted above, pursuant to the Texas Supreme Court’s ruling, a lack of immunity to COVID-19, without more, does not qualify as a “disability” under Section 82.002.

These rulings also make clear that your obligations in processing mail-in ballot applications remain as set forth in the Texas Election Code. The early voting clerk must “review each application for a ballot to be voted by mail.” (Section 86.001(a)). If an applicant is “entitled to vote an early voting ballot by mail,” the clerk must provide the voter a ballot. (Section 86.001(b)). If an applicant is “not entitled to vote by mail,” the clerk must reject the application. (Section 86.001(c)). The Texas Supreme Court expressed confidence that “all election officials will comply with the law in good faith” and follow the guidance provided in its ruling.

We will keep you apprised of developments in the ballot-by-mail litigation and continue to provide guidance on your questions about specific mail-in ballot applications.

Keith Ingram
Director, Elections Division
Office of the Secretary of State
800-252-VOTE (8683)
www.sos.state.tx.us/elections/index.shtml

6/15/2020

Has the Texas attorney general issued even more warnings to voting officials related to voting by mail?

Yes, last week the attorney general issued the following warning to county officials. We’ve included it here because a handful of cities will have special elections this summer. It’s also a preview of what city election officials may be dealing with in November.

“AG Paxton Warns County Officials to Avoid Misleading the Public on Vote by Mail Laws

Following recent decisions by the Texas Supreme Court and the U.S. Court of Appeals for Fifth Circuit, Attorney General Ken Paxton today issued another [guidance letter](#) to Texas county judges and election officials, warning that Texans may not claim disability based on fears of contracting COVID-19 to obtain a mail-in ballot. Due to inaccurate statements by public officials and private groups, Attorney General Paxton issued his [first guidance letter](#) on May 1.

‘As the Texas Supreme Court held, mail ballots based on disability are specifically reserved for those who are legitimately ill and cannot vote in-person without assistance or jeopardizing their health. The Texas Election Code is lawful, constitutional, and correctly protects our elections from fraud and voters from disenfranchisement,’ said Attorney General Paxton. ‘It is vital that we work together to preserve the integrity of our democratic election process and consistently follow the law established by our legislature.’

Today’s letter follows a [Texas Supreme Court decision](#) that held that a voter may not claim ‘disability’ for the purpose of casting a ballot by mail merely because the voter lacks immunity to COVID-19.

Additionally, the [U.S. Court of Appeals for the Fifth Circuit](#) found that Texas is likely to win arguments that the Election Code’s ballot-by-mail provisions are consistent with the Equal Protection Clause and the Twenty-Sixth Amendment to the U.S. Constitution. Following these rulings, the Texas Democratic Party and other groups filed a motion to dismiss their state court lawsuit this week.”

Is a city required to use county election precincts for its election on the November uniform election date?

Yes. Election Code Section 42.0621 requires all political subdivisions, including cities, to use county election precincts for elections held on the November uniform election date. Even though many cities’ elections this November were originally scheduled for May 2020 before they were delayed due to public health concerns, the statutory requirement to use county election precincts still applies to *any* election of a political subdivision held on the November date. This includes an election postponed from May. This position is supported by the Secretary of State’s Elections Division in [Election Advisory No. 2020-12](#).

In most cases, cities will already be using county election precincts in November pursuant to their election contracts with the county. In the governor’s [initial proclamation](#) authorizing political subdivisions to move their elections to November, the governor expressly requires county election officials to contract to furnish election services to cities that moved their elections from May, should the city request the county to do so.

City officials in cities holding elections this November should work closely with county election officials to make sure voters know that some traditional city polling places used in May might not be available for the November election.

6/16/2020

What's the latest development in the mail-in ballot controversy?

Today (6/16), the Texas Democratic Party appealed a U.S. Court of Appeals for the Fifth Circuit's opinion to the U.S. Supreme Court. The Fifth Circuit opinion prevents Texas voters who are afraid of contracting COVID-19 at the polling place from voting by mail solely for that reason. Democrats are arguing to the Supreme Court that the state statute governing voting by mail violates the U.S. Constitution's prohibition on discriminatory voting restrictions based on age because it allows older voters to vote by mail, while prohibiting younger ones from doing so.

6/19/2020

Has the Secretary of State's Elections Division issued guidance related to in-person voting for the upcoming elections?

Yes. Yesterday (6/18), the division released [Election Advisory 2020-19](#) relating to voting in-person during COVID-19. According to the SOS, the new advisory is "intended to supplement our office's guidance in [Election Advisory No. 2020-14](#) (issued on April 6, 2020) and the [recommended health protocols](#) for Texas election officials and voters in response to COVID-19 (issued on May 26, 2020)." Among other things, the new advisory addresses some of the public health and safety issues that might arise checking in voters, inside the polling place, and with regard to voting equipment.

Additionally, and of particular interest to some cities, the guidance provides that a city that owns or operates a public building that is closed due to COVID-19 may still need to make the building available for use as a polling place:

"Pursuant to Section 43.031 of the Code, each polling place shall be located inside a building and that building shall be a public building, if practicable. A public building is defined as any "building owned or controlled by the state or a political subdivision," including cities and schools. (Section 43.031(a)). **Section 43.031(c) requires an entity that owns or controls a public building to make the building available for use as a polling place in any election that covers territory in which the building is located.** If an entity that owns or operates a public building is closed due to concerns or orders relating to COVID-19, the entity still may need to make its building available for use as a polling place."

Interested city officials and employees, especially those responsible for conducting city elections, are encouraged to read the advisory in preparation for the upcoming election season.

6/19/2020

What is the latest with regard to voting by mail?

Last Friday (June 26), the U.S. Supreme Court [refused to hear an appeal](#) that could have expanded voting by mail in Texas.

The Texas Democratic Party had appealed a U.S. Court of Appeals for the Fifth Circuit's opinion to the Supreme Court. The Fifth Circuit opinion prevents Texas voters who are afraid of contracting COVID-19 at the polling place from voting by mail solely for that reason. Supporters of voting by mail argued to the Supreme Court that the state statute governing voting by mail violates the U.S. Constitution's prohibition on discriminatory voting restrictions based on age because it allows older voters to vote by mail, while prohibiting younger ones from doing so.

Justice Sotomayor included the following statement in the court's refusal:

"This application raises weighty but seemingly novel questions regarding the Twenty-Sixth Amendment. I do not disagree with the decision to refrain from addressing them for the first time here, in the context of an emergency application to vacate a stay of an injunction. But I hope that the Court of Appeals will consider the merits of the legal issues in this case well in advance of the November election."

The Texas attorney general released this statement:

"I applaud the Supreme Court for following the law and refusing to order mail-in balloting that the Texas Legislature has forbidden. Universal mail-in ballots, which are notoriously vulnerable to fraud, would only lead to greater election fraud and disenfranchise lawful voters," said Attorney General Paxton. "State election officials have many options available to safely and securely hold elections without risking widespread fraud. My office will continue to fight for safe, free and fair elections."

7/14/2020

What's the latest issue to crop up in relation to the postponed city general elections?

State Representative Mayes Middleton [filed a request for an attorney general opinion](#). The request relates to the filing period for candidates for that new November election date. It provides that:

"The Governor, through his emergency orders, allowed certain jurisdictions to move elections with a date set for May to the November uniform date. He was silent in his orders, however, on the filing period. The Secretary of State and several jurisdictions claim that the filing deadline remains closed.

However, a plain reading and strict construction of the filing period statutes require the filing period to remain open, or re-open and then close in accordance with a November 3, 2020 election day. Implementation of the filing period deadline must be confined to Texas Election Code statutes.

Therefore, my questions to you are:

First, if an eligible candidate seeks a place on the ballot for a May election moved to November, but has not filed previously, are they afforded an opportunity to do so?

Second, can a jurisdiction deny them a place on the ballot if they now file within the statutorily prescribed timeframe, but did not previously do so?

I can imagine several candidates would be interested in filing to give voters more choices (especially considering the events that have taken place across this State over the past few months). In fairness to them, and to not give those who previously filed any more of an advantage, I would ask that the response to this request be expedited.”

The Secretary of State’s Election Division issued an election advisory related to cities that postponed their elections. The guidance states that “By postponing their election date, the political subdivision is preserving all candidate filings and ballot order actions that have already been taken. The postponement does not have the effect of reopening candidate filings.” League attorneys have no reasons to question that advice.

7/15/2020

What’s the latest issue to crop up in relation to voting by mail?

According to [KXAN News in Austin](#), two Austin residents who recently tested positive for the Coronavirus asked a state district judge Tuesday afternoon (July 14) to allow them to get around a state rule requiring a doctor’s signature for emergency mail-in ballots.

In a [lawsuit filed in state district court](#) in Travis County, a couple argued that the state’s criteria for applying for an emergency ballot imposes an undue burden on the right to vote. Unlike applications received before the deadline to vote by mail, voters submitting applications for emergency ballots must submit certification from a doctor that the voter has developed an illness that would keep them from being able to vote in person.

The application cutoff for voters seeking to vote by mail in the runoff was July 2. According to KXAN, that’s the same day that one of the plaintiffs learned she had tested positive for the virus. Her husband was tested soon after and learned his results on July 9. They are both under medical orders to self-quarantine and are symptomatic.

The couple did not learn about the requirements for obtaining an emergency mail-in ballot until the day before election day. They’ve since attempted to contact their doctor’s office to obtain the certification they need but haven’t heard back, the lawsuit reads.

The lawsuit, filed by the Texas Civil Rights Project against Travis County Clerk Dana DeBeauvoir, seeks a temporary restraining order requiring DeBeauvoir to accept a late mail ballot application without requiring a physician’s signoff.

7/21/2020

Has the League taken any action in relation to the attorney general opinion request regarding re-opening the filing period for the postponed city general elections?

Yes. The League filed [comments](#) on the request. State Representative Mayes Middleton [asked the following](#) in relation to city elections that were postponed from May until November due to the Coronavirus:

“First, if an eligible candidate seeks a place on the ballot for a May election moved to November, but has not filed previously, are they afforded an opportunity to do so? Second, can a jurisdiction deny them a place on the ballot if they now file within the statutorily prescribed timeframe, but did not previously do so?”

In response to Mr. Middleton’s request, TML urged the attorney general to give deference to the governor’s order, the Secretary of State Elections Division’s guidance, and a city’s continuity of government and interest in protection of the public fisc. In these unprecedented times, many cities took the extraordinary action to postpone their general election for officers from May to November. That action took place after the expiration of the period to file an application for a place on the ballot for the May election, and the Secretary of State’s Elections Division advised (and the governor presumably agreed) that, while the election itself was moved, the filing period for the election had already concluded.

The bottom line is that the governor has taken decisive and appropriate action to protect Texans’ voting rights and their safety, and he is supported by the state’s elections experts. The logistical, procedural, and financial problems that could be caused by an opinion to re-open the otherwise closed filing deadline cannot be overstated. Thus, the answers to the questions posed in RQ-0363-KP are, according to TML: (1) no; and (2) yes.

It is believed that the Attorney General may act quickly on the opinion request, so cities interested in filing their own comments should act this week.

[7/22/2020](#)

Has another lawsuit been filed related to voting rights during the pandemic?

Yes. According to [The Texas Tribune](#), “two civil rights groups and two Texas voters are asking a federal judge to require substantial changes to polling place procedures, including an across-the-board mask mandate and expanded curbside voting.”

In a wide-ranging [federal lawsuit filed Thursday](#) in San Antonio, Mi Familia Vota, the Texas NAACP, and the voters claim the state’s current polling place procedures — including rules for early voting, the likelihood of long lines, and the governor’s decision to not require voters to wear masks — place an unconstitutional burden on voters while the virus remains in circulation.

That burden will be particularly high for Black and Latino voters whose communities have been disproportionately affected by the virus, the lawsuit argues.

[7/28/2020](#)

Did the governor take additional action in relation to the November 2020 election?

Yes, the governor extended the early voting period. Yesterday (July 27), the governor issued the following press release to that effect:

“Governor Greg Abbott today issued a [Proclamation](#) extending the early voting period for the November 3rd Election by nearly a week. Under this proclamation, early voting by personal appearance will begin on Tuesday, October 13, 2020, and continue through Friday, October 30, 2020. The proclamation also expands the period in which marked mail-in ballots may be delivered in person to the early voting clerk’s office, allowing such delivery prior to as well as on Election Day.

‘As we respond to COVID-19, the State of Texas is focused on strategies that preserve Texans’ ability to vote in a way that also mitigates the spread of the virus,’ said Governor Abbott. ‘By extending the early voting period and expanding the period in which mail-in ballots can be hand-delivered, Texans will have greater flexibility to cast their ballots, while at the same time protecting themselves and others from COVID-19.’”

Did the Secretary of State’s Elections Division following up the governor’s proclamation extending the early voting period with further guidance?

Yes, the Elections Division issued “MASS EMAIL (CSO- 3332) - Proclamation regarding Early Voting for November 3, 2020 Election.” It provides as follows:

“Dear Election Officials:

Yesterday, Governor Greg Abbott issued a [proclamation](#) suspending Section 85.001(a) of the Texas Election Code to expand the early voting period for the November 3, 2020 elections. Pursuant to the Governor’s proclamation, the early voting period for any election authorized to occur on November 3, 2020 will begin on Tuesday, October 13, 2020 and last through Friday, October 30, 2020. As the proclamation recognizes, this expansion will allow for increased in-person voting opportunities for the November 3, 2020 elections while maintaining appropriate social distancing standards in response to the COVID-19 disaster. Additionally, the proclamation suspends a portion of Section 86.006(a-1) to allow a voter to hand deliver their marked mail ballot to the early voting clerk’s office before election day.

In connection with the Governor’s proclamation, we would like to provide additional guidance on several items:

-Extended Early Voting Days and Hours: As a reminder, in addition to the increased number of early voting days pursuant to the Governor’s proclamation, the Texas Election Code allows you flexibility to offer voters extended early voting hours. Specifically, you can provide extended hours beyond the minimum number of hours required for weekdays during early voting, as set forth in Section 85.005, in order to allow persons more opportunities to vote after work. You can also provide for more than the minimum of weekend hours, if petitioned for additional weekend voting, as detailed in Section 85.006.

-Expansion of In-Person Delivery for Mail Ballots: We will be providing more detailed guidance about procedures related to this part of the Governor’s proclamation as well as providing updated forms.

-Updated Resources: As a result of the Governor’s proclamation, there are a number of SOS resources that will be updated. Here is a list of resources that you can expect updates to this week: (1) November 3, 2020 Election Law Calendar; (2) Important Election Dates; (3) “Dear Voter” Letter; (4) Information about Returning Your Carrier Envelope (Carrier Insert) (Form 5-22a); (5) Information about Returning Your Carrier Envelope (FPCA Carrier Insert) (Form 5-35); (6) Roster for Voters Hand-Delivering Carrier Envelope (Form 5-11a); (7) Ballot Envelope (Form 5-21f) (will provide language for sticker if envelopes already printed); and (8) Selected VoteTexas.gov pages.

As the updates become available, we will be notifying you via email and/or web updates.

Please let us know if you have any questions or concerns.

Thank you,
Christina Worrell Adkins
Legal Director – Elections Division
Office of the Texas Secretary of State
1.800.252.VOTE (8683)
elections@sos.texas.gov | www.sos.texas.gov”

8/5/2020

Has the Secretary of State’s Elections Division issued additional guidance for the November election?

Yes. Last Monday (August 3), the Elections Division sent mass email advisory CSO-3449, “Methods of Filing for Candidate Applications.” Please note the email relates only to cities that normally conduct their elections in November (according to previous SOS guidance, the filing period is closed for cities that temporarily moved their May election to November). Here’s the text of the email:

“Dear Election Officials:

Many cities, school and other local political subdivisions are in their candidate filing period for the November 3, 2020 elections. We’ve received a number of questions about authorized methods of filing for candidate applications. Below is an explanation of the different filing methods.

Filing Method of Candidate Application - A candidate application may be filed in person, by mail, by fax, or by email:

-Filing in Person: The Elections Division recommends that political subdivisions take steps to have someone available for at least a few hours most days during the candidate filing period to accept filings, and that political subdivisions post a schedule on their websites and on the bulletin boards where notices of meetings are posted of the days and times when someone will be available to accept filings. The Elections Division also strongly recommends having someone available at the place of business on the filing deadline, especially from 2:00 p.m. to 5:00 p.m., if you are otherwise closed.

-Filing by Mail: An application submitted by mail is considered to be filed at the time of its receipt by the appropriate filing authority. (Secs. 143.007(b); 144.005(b)).

-Filing by Fax or Email: A signed, sworn, scanned candidate application (and petition, if applicable) may be submitted by fax or email if there is no filing fee. The SOS recommends that the filing authority establish a dedicated fax number or email address for the submission of candidate applications. This fax number or email address should be posted on the [Notice of Deadline to File Applications for Place on the Ballot](#) or wherever information about filing candidate applications is posted. Please be advised that an application must be notarized prior to filing via fax or email.

Please let us know if you have any questions or concerns.

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www.sos.texas.gov”

8/7/2020

What additional information has the Secretary of State sent out regarding postponed elections?

Today (August 7), the Secretary of State’s Elections Division issued the following related to election forms for postponed elections:

“Dear Election Officials and Vendors:

As part of the July 27, 2020 [proclamation](#) issued by Governor Abbott suspending certain provisions of the Texas Election Code, a number of forms had to be updated. The following forms have been updated to reflect the changes related to the Governor’s proclamation. These forms will be [posted to the SOS website](#). Please note, these revisions only apply to the November 3, 2020 elections. If you have already printed your forms or you have old stock that you planned on using, you may modify the form to include the changed language with a sticker. I’ve attached the documents as Word versions in case you need to make modifications related to the

forms. Please remember that modifications to official forms need to be approved by the Secretary of State's office.

- “Dear Voter” Letter ([English/Spanish](#))
- [Information about Returning Your Carrier Envelope](#) (Carrier Insert) (Form 5-22b)
- [Information about Returning Your Carrier Envelope](#) (FPCA Carrier Insert) (Form 5-35)
- [Roster for Voters Hand-Delivering Carrier Envelope](#) (Form 5-11a)
- [Ballot Envelope](#) (Form 5-21f, [Word](#)) (will provide language for sticker if envelopes already printed)

Additionally, the updated November 3, 2020 calendar should be released next week. Please let us know if you have any additional questions or concerns.

Thank you,
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8/10/2020

What additional information has the Secretary of State sent out regarding postponed elections?

The Secretary of State's Elections Division sent “MASS EMAIL (CSO-3331) - Early Voting Requirements for November 3, 2020” today (August 10):

“Dear Election Officials:

On July 27, 2020, Governor Greg Abbott issued a [proclamation](#) suspending Section 85.001(a) of the Texas Election Code to expand the early voting period for the November 3, 2020 elections. We've received a number of questions related to this issue. We would like to clarify several things about the early voting requirements.

1. Early Voting Period: The early voting period will begin on Tuesday, October 13, 2020 and end on Friday, October 30, 2020.

2. Hour Requirements when the County or City is the Early Voting Clerk: Per Section 85.005(a) of the Election Code, early voting by personal appearance shall be conducted on the weekdays of the early voting period and during the hours that the early voting clerk's main business office is regularly open for business. The early voting clerk can order additional hours beyond the minimum requirements.

a. **Hour Requirements when the County or City is NOT the early voting Clerk:** Early voting by personal appearance must be conducted at the main early voting polling place for at least 8 hours each weekday of the early voting period that is not a legal state holiday. If the territory has fewer than 1,000 registered voters, voting shall be conducted at least three hours each day. (Sec. 85.005(b)).

3. **Extended Hour Requirements for County Early Voting Clerks**

a. **Extended Hours for Counties (not cities) with a population of 100,000 or greater:** Early voting in the general election for state and county officers must be conducted at the main early voting location for at least 12 hours on each weekday of the last week of the early voting period. (Sec. 85.005(c)). The requirement to conduct Saturday and Sunday voting at the main early voting location triggers Saturday/Sunday voting at any mandatory temporary branches in the county election established under Section 85.064(d).

b. **Extended Hours for Counties (not cities) with a population under 100,000:** If the county early voting clerk receives a [written request \(PDF\)](#) by at least 15 registered voters of the county for extended hours, early voting in a general election for state and county officers must be conducted at the main early voting location for at least 12 hours on each weekday of the last week of the early voting period. (Sec. 85.005(c)). The written request must be submitted in time to enable compliance with Section 85.067. (Secs. 85.005(c), 85.067(c)). For November, this deadline is October 20, 2020.

c. **Extended Hours for Cities (even when the county is serving as the early voting clerk):** Per Section 85.005(d), early voting by personal appearance shall be conducted for at least 12 hours on two weekdays. If the county is conducting an election on the city's behalf either as part of a contract for election services or a joint election agreement, the county must comply with this extended hour requirement.

4. **Weekend Hours when the County is the Early Voting Clerk:** The county election officer may [order](#) early voting on any Saturday or Sunday during the early voting period and may determine the hours for such Saturday or Sunday early voting. [Notice of Saturday or Sunday early voting \(PDF\)](#) must be posted continuously for at least 72 hours immediately preceding the first hour that voting will be conducted. (Sec. 85.007(c)). The notice shall be posted on the bulletin board used for posting notice of meetings of the commissioners court, as well as on the political subdivision's website, if maintained. (Secs. 85.007(c), 85.007(d)).

a. **Extended Hours for Counties with a population of 100,000 or greater:** Early voting in the general election for state and county officers must be conducted at the main early voting location for (1) at least 12 hours on the last Saturday of the early voting period, AND (2) at least 5 hours on the last Sunday of the early voting period. (Sec. 85.006(e)).

b. **Extended Hours for Counties with a population under 100,000:** If the early voting clerk receives a [written request \(PDF\)](#) by at least 15 registered voters of the county, early voting in a general election for state and county officers must be conducted at the main early voting location for (1) at least 12 hours on the last Saturday of the early voting period, and (2) at least 5 hours on the last Sunday of the early voting period. (Sec. 85.006(e)). The request for Saturday and Sunday hours must be received in time for the early voting clerk to comply with the 72-hour posting requirement before the start of early voting. (Secs. 85.006(e), 85.007(c)). For November, this deadline is October 20, 2020.

5. Weekend Hours when the County is NOT the early voting clerk: The authority ordering an election may order early voting at the main early voting location on any Saturday or Sunday during the early voting period. The authority ordering early voting may also determine the hours of weekend voting. Voting on **ANY** Saturday or Sunday **must** be included in the order and notice of election. The order and notice must include the dates and hours of Saturday or Sunday voting. (Secs. 85.006, 85.007). The election notice must be posted on the political subdivision's website, if maintained. (Sec. 85.007). The political subdivision **must** have early voting on Saturday or Sunday if a [written request \(PDF\)](#) is received from at least 15 registered voters of the political subdivision in time to comply with the posting requirement. (Sec. 85.006(d)). **The request must be submitted in time to be included in the order and notice of election.** (Secs. 85.006, 85.007). **NOTE:** If you contract with the county for a unified joint early voting schedule, you must follow the county's schedule; when their rules change their schedule, your schedule will change.

6. Temporary Branch Locations: Temporary branch polling places must remain open for each weekday of the early voting period that the main early voting polling place will be open. The temporary branch polling places must be open at least eight hours each day, unless the city or county is not serving as the early voting clerk and the territory holding the election has less than 1,000 registered voters, in which case the temporary branch polling places must be open for at least three hours each day. (Secs. 85.062, 85.064). For additional information regarding temporary branch locations, please review our [Advisory No. 2019-20](#).

7. Amending the Election Order: We recommend amending the election order to reflect the changes to the early voting period. This amendment does not need to occur by August 17, 2020 since early voting will occur on the dates dictated by the Governor's Proclamation regardless of what the order states. This action would be taken by the authority who originally ordered the election.

Thank you for the questions you have been sending us. We will be sending out a separate email regarding the hand delivery of mail ballots. Please let us know if you have any additional questions or concerns.

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8/20/2020

What's the latest with regard to the November election and the use of mail-in ballots?

The Texas Tribune ran an [in-depth article](#) today about the challenges elections officials are facing this fall.

8/24/2020

What’s the latest from the Secretary of State’s Elections Division with regard to the November election?

The Elections Division issued Mass Email Advisory (CS0-3295) - Advisories 2020-23 and 2020-24:

“Dear Election Officials

Our office has released the following two advisories that are attached to this email:

[-2020-23 – Ballot Corrections](#)

[-2020-24 – Election Procedures for Entities who Postponed their Election to November 3, 2020](#)

We have also provided two additional documents related to Advisory 2020-24:

-The first [document](#) includes sample language that can be used for some of the letters you may be sending out related to pending ballot requests and/or mailed ballots from elections postponed from May 2020 to November 2020.

-The second [document](#) is a special cancellation form that can be used for certain mail ballot voters that have already returned their voted mail ballots for elections that were postponed from May 2020 to November 2020.

When posted these advisories will be located on your [Conducting Elections](#) pages.

Thank you all for your hard work. Please let us know if you have any questions or concerns.

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8/25/2020

Has another lawsuit been filed related to voting during the pandemic?

Yes. According to the [Austin American-Statesman](#), a group of citizens and Republican candidates filed [a lawsuit](#) in Travis County District Court against the Texas Secretary of State for enforcing the governor’s [July 27, 2020 Proclamation](#) expanding early voting. Although the only named defendant is the Texas Secretary of State, the lawsuit repeatedly claims the governor is acting in violation of state law.

The petition claims that [Government Code Chapter 418](#) (The Texas Disaster Act) is unconstitutional because it allows the governor to suspend statutes. According to the lawsuit, only the legislature has the authority to suspend Texas statutes under [Article I, § 28 of the Texas Constitution](#). If this claim is successful, it could further affect cities – beyond expanding the early voting dates for their November elections – because Chapter 418 also gives mayors some disaster-related authority.

The plaintiffs argue that the expansion of early voting violates their liberties, specifically their due process rights. In their own words: “Plaintiffs are deprived of liberty and their liberty interest in having their respective representatives, i.e., the Texas Legislature, debate, vote and be heard on any amendment to the Texas Election Code or suspension of the Texas Election Code by Governor Abbott and the enforcement of Governor Abbott’s July 27, 2020 Order by the [governor].”

The lawsuit claims that Governor Abbott’s various orders will forever weaken the plaintiffs’ liberties. Concerned with the precedent of the governor’s orders, the lawsuit ponders what will happen when the virus mutates or we’re in another pandemic: “Viruses mutate, so there may be a different coronavirus strain, or some other contagion, next year. Like the flu vaccine, this year’s coronavirus vaccine may not protect against next year’s strain. Will we allow a Governor to unilaterally suspend laws, bypass the Texas Legislature and trample on the Texas constitution?”

The lawsuit ultimately asks for a temporary restraining order and permanent injunction against enforcement of the expanded early voting for the upcoming election. The League will continue to report on future developments in the case.

9/1/2020

What’s the latest with mail-in ballots during the pandemic?

According to [The Texas Tribune](#), the Texas attorney general, acting at the request of the [secretary of state](#), sued Harris County yesterday (August 31) after it refused to drop plans to send applications for mail-in ballots for the November general election to more than two million registered voters.

“That fight had focused on which voters are eligible to cast an absentee ballot, but it has now expanded to include a disagreement between the state and its most populous county over who can even receive the application to request a mail-in ballot.

Until now, the local election officials, including county clerks, actually responsible for carrying out elections had mostly been spectators as Texas’ Republican leadership fought off efforts by state Democrats and civil rights groups to expand voting by mail during the pandemic. Monday’s action marks the most prominent intervention by the state in local election practices.

There is no state law that specifically prohibits election officials from sending out mail-in ballot applications to all voters. Instead, Paxton argues that county clerks are only ‘expressly empowered’ by the Texas Election Code to send out applications to voters who request them,

‘but there is no statute empowering County Clerks to send applications to vote by mail to voters who have not requested such an application.’”

The following is from an attorney general press release regarding his lawsuit:

“Attorney General Ken Paxton today [filed a lawsuit](#) against Harris County Clerk Chris Hollins for sending unsolicited mail-in ballot applications to over two million Harris County registered voters in blatant violation of Texas election laws. Under Texas election law, mail-in ballots are reserved for a few limited categories of qualified voters who are age 65 and older and voters who are disabled. Earlier this year, the [Texas Supreme Court ruled](#) that fear of contracting COVID-19 does not qualify as a ‘disability’ and mail-in ballots must be preserved for qualifying groups. The Harris County Clerk’s proposed mass mailing would sow confusion because applications would go to all registered voters, regardless of whether they legally qualify to vote a mail ballot and regardless of whether they even want to vote by mail. Texas law requires the clerk to send applications to voters who specifically request them.”

9/3/2020

What’s the latest with regard to mail-in ballots in Harris County?

According to [The Texas Tribune](#), the Texas Supreme Court has temporarily blocked Harris County from sending mail-in ballot applications to all of its voters for the November election.

“The decision Wednesday came in response to a [lawsuit filed](#) days ago by Republicans in the state’s largest county. Attorney General Ken Paxton has since launched his own legal challenge to the plan.

Harris County Clerk Chris Hollins announced last month that the county would send applications to its more than 2.4 million registered voters, an effort to make it easier to participate in the election during the coronavirus pandemic. After being sued by Paxton, Hollins said he would only send applications to voters 65 and older, who are eligible to vote by mail under state law, pending the litigation. A spokesperson said Wednesday that those plans haven't changed.

In June, ahead of the July primary runoff, Hollins’ office sent out roughly 380,000 mail-in ballot applications to voters over 65, a spokesperson said. This time, it will send around 295,000.”

9/10/2020

What’s the latest in the long list of voting rights lawsuits?

Two judges issued orders in two separate lawsuits on Tuesday (September 8), but only one of them was originally-filed due to the pandemic. According to [The Texas Tribune](#), a federal judge [dismissed](#) the *Mi Familia Vote v. Greg Abbott* lawsuit based on the separation of powers doctrine. In this pandemic-related [lawsuit](#), on which we first reported in July, the plaintiffs are voters who claimed the state’s current polling place procedures – including rules for early voting,

the likelihood of long lines, and the governor’s decision to not require voters to wear masks – place unconstitutional burdens on voters during the pandemic.

According to the dismissal order, “the Elections Clause of the Constitution specifically commits the administration and management of federal legislative elections to the Texas legislative branch.” Even so, the order states that “the requests for relief do not appear unreasonable and can easily be implemented to ensure all citizens in the State of Texas feel safe and are provided the opportunity to cast their vote in the 2020 election.”

Also on Tuesday, a different federal judge in a separate lawsuit penned a 103-page [memorandum opinion and order](#). (Editor’s note: Reading a 103-page court document is like something else that proverbially tends to roll downhill. So thanks to our newest TML attorney for taking on that task!) The order in *Richardson v. Texas Secretary of State* concludes that the state’s process for determining whether there is a mismatch between a voter’s signature on their ballot envelope, and the signature the voter used on their application to vote by mail “plainly violates certain voters’ constitutional rights.” This order will impact mail-in ballots in the upcoming election, which are expected to greatly increase because of Coronavirus.

According to [The Texas Tribune](#), two voters filed the lawsuit last year after local election officials rejected their mail-in ballots because the election officials decided the signatures on the envelopes in which their ballots were returned did not match. In the lawsuit, the plaintiffs claimed that at least 1,873 mail-in ballots were rejected based on mismatched signatures during the state’s 2018 general election, and at least 1,567 were rejected in 2016.

To ensure the issue is addressed prior to the November election, the judge ordered the Texas secretary of state to inform local election officials within 10 days of the order that it is unconstitutional to reject a ballot based on a “perceived signature mismatch” without first notifying the voter about the mismatch and giving the voter a “meaningful opportunity” to correct the issue. The secretary of state’s Elections Division attorneys, who are doing an amazing job in a tough situation, will likely issue guidance soon.

Don’t forget that we created a [web page](#) with all of the virus-related lawsuits.

9/14/2020

What’s the latest decision in the long list of voting rights lawsuits related to the pandemic?

It’s getting hard to keep up, but at least three cases have new developments.

Last Thursday (September 10), the U.S. Court of Appeals for the Fifth Circuit [rejected](#) a claim that Texas’ vote-by-mail conditions for younger voters are unconstitutional. In *Texas Democratic Party v. Greg Abbott*, the court held that a Texas statute allowing mail-in voting for those over 65, but placing additional conditions on younger voters (such as being absent from the county on election day or having a qualifying disability), doesn’t violate the Twenty-Sixth Amendment. (The amendment prohibits the government from denying or abridging the right to

vote because of age.) The Fifth Circuit sent the case back to the district court to make further rulings on the plaintiffs' other claim, an equal protection challenge.

According to the opinion, "an election law abridges a person's right to vote for the purposes of the Twenty-Sixth Amendment only if it makes voting more difficult for that person than it was before the law was enacted or enforced. . . . On the other hand, a law that makes it easier for others to vote does not abridge any person's right to vote for the purposes of the Twenty-Sixth Amendment. . . . [T]he right to vote under the Twenty-Sixth Amendment is not abridged unless the challenged law creates a barrier to voting that makes it more difficult for the challenger to exercise her right to vote relative to the status quo, or unless the status quo itself is unconstitutional."

In *State of Texas v. Chris Hollins*, the attorney general attempted to block the Harris County Clerk from sending every registered voter in the county a mail-in ballot application. According to [The Texas Tribune](#), the judge [didn't think](#) the plan would confuse voters. On September 11, the attorney general [appealed](#) the ruling.

Finally, we reported last week on *Richardson v. Texas Secretary of State*. The trial judge in that case held that the state's process for determining whether there is a mismatch between a voter's signature on their ballot envelope, and the signature on their application to vote by mail, "plainly violates certain voters' constitutional rights." The attorney general has appealed this decision as well, and the court of appeals [stayed enforcement](#) of the ruling pending the outcome of the appeal.

The League will continue to report on developments in these and other cases. Don't forget: We created a [web page](#) with the status of all of the virus-related lawsuits.

9/16/2020

Is there yet another update on vote by mail litigation?

Yes. The litigation over mail-in ballots in Harris County is proceeding at a frenzied pace as we approach the November election. We most recently reported just two days ago (on September 14) on *State of Texas v. Chris Hollins*. This is the lawsuit in which the attorney general is trying to block the Harris County Clerk from sending a mail-in ballot application to every registered voter in the county. The trial judge sided with the clerk, stating that he didn't think the plan would confuse voters. On September 11, the attorney general asked a Houston court of appeals to overturn the decision, but the court refused. He then appealed to the Texas Supreme Court.

[According to The Texas Tribune](#), "the Supreme Court granted the Texas attorney general's request to halt the county's effort...The all-Republican court told Harris County to hold off on sending any unsolicited applications for mail-in ballots 'until further order' and while the case makes its way through the appeals process."

The attorney general issued the following press release after the order:

“Attorney General Ken Paxton today lauded the Texas Supreme Court for preventing Harris County Clerk Chris Hollins from sending over two million unsolicited mail-in ballot applications to all registered voters in Harris County. The court entered its [order](#) in response to a filing made earlier today by Attorney General Paxton on behalf of the State of Texas seeking emergency relief to prevent Hollins from sending the applications before the State’s lawsuit against Hollins is resolved.

“I strongly commend the Texas Supreme Court for stopping the Harris County Clerk from sending millions of mail-in ballot applications, which would create voter confusion and jeopardize the integrity and security of our elections,” said Attorney General Paxton. “The Harris County Clerk knowingly chose to violate Texas election law and undermine election security. I thank the court for preventing the clerk from proceeding with his unlawful plans while this case continues.”

9/21/2020

Is there yet another update in the Harris County mail-in ballot lawsuit?

Of course, it’s been one more day. Last Friday (September 18), a three-judge panel of Houston’s Fourteenth Court of Appeals issued its opinion in [State of Texas v. Chris Hollins](#). (It’s hard to keep up – the controversy here is to whom the Harris County clerk can send mail in ballot applications. He wants to mail one to every registered voter, and the attorney general argues that he can’t. Keep in mind that this is the *application* for a ballot, not the ballot itself.) The panel rejected the attorney general’s argument that Hollins can’t send out the ballots, but the Texas Supreme Court has said he can’t send anything until it can hear the case.

The attorney general issued a press release following the decision:

“Attorney General Ken Paxton today [announced](#) that he would seek full review in the Texas Supreme Court of Harris County Clerk Chris Hollins’ unlawful plan to send every voter in Harris County an application to vote by mail. The Supreme Court temporarily blocked Hollins’s plan earlier this week, ordering Hollins not to send any unsolicited applications to vote by mail until the Supreme Court’s review is complete. Hollins may not, under the Supreme Court’s order, send any application to vote by mail until the Supreme Court authorizes him to do so following full review.”

The Texas Supreme Court will make the ultimate decision.

9/24/2020

What are the details of the most recent election lawsuit filed with the Texas Supreme Court?

If you didn’t already know it was election season, the growing number of election-related lawsuits should be a dead giveaway. Add a global pandemic to highly contentious state house

elections (and a somewhat high-profile presidential election), and you've got a recipe for lots of litigation.

Yesterday, several Republican state officials—including the chairman of the state party, the sitting agriculture commissioner, and multiple state senators and representatives—[filed a lawsuit](#) with the Texas Supreme Court claiming that Governor Abbott lacks the authority to expand the early voting period and the window for a voter to deliver a ballot voted by mail. (Note: At the time this update is being published, it [appears as though](#) the Texas Supreme Court rejected the plaintiffs' petition because it was improperly filed. The petition's deficiencies will presumably be remedied in the near future.) Remember that back in July, Governor Abbott issued [a proclamation](#) pursuant to his disaster authority that both extended the early voting period by a week and expanded the period in which marked mail-in ballots may be delivered in person to the early voting clerk's office to allow for delivery before Election Day. The stated purpose of those extensions was to give Texas voters "greater flexibility to cast their ballots, while at the same time protecting themselves and others from COVID-19."

The plaintiffs in the lawsuit argue that Governor Abbott must consult the Texas Legislature in order to make changes to the early voting process: "If ever a special session was justified, now is the time. Abbott's Executive Orders are unprecedented and have had life and death implications, destroyed small businesses and family's livelihoods, have had a crippling effect on every single community, and now have the ability to impact local, state and national elections."

As always, the League will monitor the litigation and provide updates as they become available.

[9/29/2020](#)

What is the latest in the lawsuit to limit the governor's authority to expand early voting and the delivery of mail-in ballots for the upcoming November election?

Last Wednesday (September 23), several state officials filed a lawsuit challenging the governor's authority to issue a [July 27 proclamation](#) extending the early voting period for the November election by a week and expanding the timeframe in which marked mail-in ballots may be delivered in person to the early voting clerk's office. Technically speaking, the state officials asked the Texas Supreme Court for a "writ of mandamus" to prevent the secretary of state from implementing the governor's allegedly unlawful proclamation.

Yesterday (September 28), the attorney general and solicitor general [filed their response](#) to the mandamus petition on behalf of the secretary of state. In addition to a procedural argument about the state officials' standing to file the lawsuit, the attorney general and solicitor general argue that the Supreme Court should deny the petition because the secretary of state doesn't enforce the proclamation or relevant sections of the Texas Election Code, and therefore there is no ministerial duty that the secretary of state could perform to remedy the alleged injury. Further, even if there were something the secretary of state could do about the governor's proclamation, the Texas Disaster Act delegates reasonable legislative authority to the governor, and the proclamation represents the proper exercise of that authority.

Any other election lawsuit updates?

Sure, why not? Although it doesn't pertain directly to cities because it deals with straight-ticket voting for partisan elections this November, it is worth mentioning the recent [back and forth on the issue](#). On Friday (September 25), a federal district judge in Laredo struck down a state law that passed in 2017 and was slated to go into effect for the first time this November that would eliminate the long-standing ability of Texas voters to vote a straight-ticket based on party affiliation. According to the judge, the elimination of straight-ticket voting would "cause important delays at polling places, place Texan voters at increased risk of catching a deadly virus, and discourage voters, particularly those most vulnerable to the disease or under significant economic pressure, from exercising their rights on election day."

Yesterday (September 28), the Fifth Circuit Court of Appeals put a temporary hold on the lower court's reinstatement of straight-ticket voting while it takes up the case on appeal. So at this moment there is no straight-ticket voting in the November election, as we await final word from the Fifth Circuit Court of Appeals.

10/1/2020

What action did the governor take today relating to the November 2020 election?

Today (October 1), the governor issued a [new proclamation](#) modifying a [July 27th proclamation](#) that is the subject of [ongoing litigation](#). The new proclamation provides that any person seeking to deliver a marked mail ballot in-person must, beginning on October 2, 2020, deliver the mail ballot at a single early voting clerk's office location as designated by the early voting clerk. The proclamation effectively shuts down any satellite offices where voters could previously deliver marked mail ballots in-person.

Here's the governor's press release:

"Governor Greg Abbott today issued a proclamation enhancing ballot security protocols for the in-person delivery of marked mail ballots for the November 3rd Election. Under this proclamation, beginning on October 2, 2020, mail ballots that are delivered in person by voters who are eligible to vote by mail must be delivered to a single early voting clerk's office location as publicly designated by a county's early voting clerk. The proclamation also requires early voting clerks to allow poll watchers to observe any activity conducted at the early voting clerk's office location related to the in-person delivery of a marked mail ballot. This proclamation amends a July 27th proclamation that extended the period in which marked mail-in ballots may be delivered in person.

'The State of Texas has a duty to voters to maintain the integrity of our elections,' said Governor Abbott. 'As we work to preserve Texans' ability to vote during the COVID-19 pandemic, we must take extra care to strengthen ballot security protocols throughout the state. These enhanced security protocols will ensure greater transparency and will help stop attempts at illegal voting.'"

Is there going to be straight-ticket voting this November?

No. Last week a federal district judge in Laredo struck down a state law that passed in 2017 and was slated to go into effect for the first time this November that would eliminate the long-standing ability of Texas voters to vote a straight-ticket based on party affiliation. On Monday (September 28), the Fifth Circuit Court of Appeals put a temporary hold on the lower court's reinstatement of straight-ticket voting.

Well, it didn't take long for the Fifth Circuit to make a more formal determination for the November elections. Yesterday (September 30), a three-judge panel of the Fifth Circuit overruled the district judge's preliminary injunction, meaning that there will be no option for straight-ticket voting in Texas this November. In the [opinion](#), the panel emphasized the value of preserving the status quo on the eve of an election. To do otherwise, according to the panel, would jeopardize the work election officials have already completed, including the mailing of thousands of ballots without straight-ticket voting and the programming of voting machines. The court will take up the case again after the November election.

10/5/2020

What is the status of Governor Abbott's recent proclamation relating to the delivery of mail ballots in-person?

Given the number of legal battles involving voting during the pandemic, it should come as no surprise that within 24 hours of the governor's [October 1 proclamation](#) restricting where mail ballots can be delivered in-person, [two separate](#) lawsuits were filed against him in federal district court. Both lawsuits contend that the governor's proclamation limiting the delivery of completed mail-in ballots to one designated location in the county is an unconstitutional burden on the fundamental right to vote and is discriminatory.

With early voting set to begin on October 13, these lawsuits are expected to be resolved quickly. Stay tuned.

10/7/2020

Will early voting still begin on October 13?

Yes. Today (October 7), the Texas Supreme Court [rejected the argument](#) of several state officials that Governor Abbott lacked the authority to expand the early voting period and the window for a voter to deliver a ballot voted by mail. In the opinion, Chief Justice Hecht acknowledged that voting is already underway across the state and that "[t]o disrupt the long-planned election procedures as relators would have us do would threaten voter confusion."

In a [separate opinion](#) issued today, the Texas Supreme Court held that the Harris County Clerk lacked the authority to proactively send out applications for mail-in ballots to all registered voters in Harris County.

10/8/2020

Has the secretary of state issued new election-related guidance?

Yes. Yesterday (October 7), the Elections Division issued the following “MASS EMAIL - (CSO-3279) Notice Requirements:”

“We have received a number of questions related to Notice Requirements. We would like to provide some additional information below:

Notice Requirements: The authority responsible for providing notice is prescribed under Section 4.002 of the Texas Election Code. For political subdivisions (not counties), the presiding officer of the governing body that ordered the election is responsible for giving notice. The methods of giving notice are prescribed under Section 4.003. For more information about notice requirements, please see [Note 9](#) on our November 3, 2020 Election Law Calendar.

Contracting with a County Election Officer: If you are contracting with a county election officer, you may in your contract have the county publish your Notice of Election for you. Subject to Sections 31.096 (nontransferable functions) and 31.097 (early voting deputies), in a contract for election services, the county election officer may perform any or all of the corresponding duties and functions that the officer performs in connection with a county election. You must provide the county with all information required for the Notice of Election.

Countywide Polling Places: If your county is a part of the countywide polling place program and you are publishing your Notice of Election in the newspaper on your own, it may be difficult to list all county election polling places in your local notice. In this circumstance, we recommend that you list the county polling places located within your territory. You should also include the website address that contains the full listing of countywide polling places. In addition, your notice should include language that directs voters to this website to see the full available list of polling places.

Thank you,
Christina Worrell Adkins
Legal Director – Elections Division
Office of the Texas Secretary of State
1.800.252.VOTE (8683)
elections@sos.texas.gov
www.sos.texas.gov”

10/12/2020

On the eve of early voting, can you summarize what’s going on with the election?

Sure! For starters, expanded early voting still starts tomorrow thanks to the [Governor’s July 27, 2020 Proclamation](#) and [Texas Supreme Court’s ruling](#) last week. Early voting for the November 3rd election takes place **October 13** through October 30 this year.

Election officials may not send mail-in ballot applications to all qualified voters according to the [Texas Supreme Court](#). Only qualified voters with disabilities and those over 65 years of age may vote by mail. Those individuals voting by mail-in ballot can (1) mail their ballot in the US mail or (2) drop off their ballots at a single location per county because of the [Governor's October 1, 2020 Proclamation](#).

These issues remain pending in various courts and the odds of the courts making a final determination affecting this election seem unlikely:

- Challenge to the Governor's proclamation that each county may only have one ballot drop-off location
- Challenge that the Texas law about mail-in ballots violates younger voters' rights under the Constitution
- Challenge to the procedures for rejecting a mail-in ballot based on the signature

The Secretary of State has been an excellent resource by providing [election advisories](#) to help local officials navigate the challenges of the pandemic.

Finally, if a city got permission from the Comptroller's office to extend the expiration of its street maintenance sales tax by moving its election to November 3, the city must report the results of the election to the Comptroller's office by November 20, 2020.

Also remember, we compile all of the relevant election-related COVID updates [here](#) and the virus-related lawsuits [here](#).

Is there news about yet another election-related lawsuit?

Of course there is. The Ping-Pong matches continue! Just between the last Update and this one, a federal district court ruled that Texas counties can provide multiple mail ballot drop off boxes. Immediately following the ruling, the attorney general filed for and received stay from the U.S. Court of Appeals for the Fifth Circuit to stop the use of multiple drop boxes.

According to an October 10 article in [The Texas Tribune](#),

“Attorney General Ken Paxton filed an emergency stay Saturday, seeking to halt a federal judge's ruling from Friday night that said Texas counties can have multiple absentee ballot drop-off locations. U.S. District Judge Robert Pitman's ruling blocked Gov. Greg Abbott's recent order that sought to limit counties to just one such location.”

The attorney general issued the following press release to accompany his appeal that would seem to make it harder for older, sick, disabled, and other Texans to legitimately vote by mail:

“Attorney General Ken Paxton today filed [an emergency motion for stay](#) pending appeal in the U.S. Court of Appeals for the Fifth Circuit to block an unlawful district court order that creates confusion on the eve of an election and threatens the integrity of the election. On October 1, Governor Abbott issued a proclamation allowing voters who are eligible to vote by mail to hand-

deliver their marked ballots to a designated county office at any time over the course of several weeks leading up to Election Day. The proclamation enhances ballot security by requiring those eligible voters who choose to hand-deliver their ballots to go to a single early voting clerk's office as publicly designated by a county's early voting clerk. However, yesterday, a district court issued an injunction overriding Governor Abbott's decision and requiring county officials to accept hand-delivery of mail-in ballots at any county annex or satellite office, not just a single designated office, even though these annexes and satellite offices have variable security measures and inconsistent practices to ensure the integrity of each ballot delivered."

Then, according to a [Tribune article](#) on the following day (October 11):

"Texas counties are currently blocked from setting up multiple drop-off locations for absentee ballots heading into the Nov. 3 general election due to a temporary order from the 5th U.S. Circuit Court of Appeals. That order came hours after top Texas officials on Saturday again sought to limit drop-off locations some voters use during the coronavirus pandemic."

The attorney general issued another press release following the Fifth Circuit stay:

"Attorney General Ken Paxton gave this statement after the United States Fifth Circuit Court of Appeals granted a temporary stay, halting a district court order that purported to override Governor Greg Abbott's proclamation regarding mail-in ballots and threatens election integrity: 'I commend the Fifth Circuit for temporarily staying the district court's unlawful injunction while it considers our request for a full stay pending appeal. This ensures that the Governor's Proclamation remains in effect.'"

[10/20/2020](#)

What's the latest update on election-related litigation?

Yesterday (October 19), the Fifth Circuit Court of Appeals [overturned](#) a federal district judge's determination that election officials were required to give voters a chance to rectify any signature discrepancies between the ballot application and the ballot envelope. The court of appeals held that the lower court took it upon itself to "rewrite the Legislature's mail-in ballot signature-verification and voter-notification procedures" in a way that could compromise the integrity of the election. Ultimately the court of appeals concluded that "Texas's important interest in preventing voter fraud in its mail-in ballot system is sufficient to justify its reasonable restrictions on the right to vote."

[10/22/2020](#)

Where can city officials go for guidance on how to conduct elections during a pandemic?

As a reminder, the Texas Secretary of State has been an excellent resource to Texas cities by providing [election advisories](#) to help local officials navigate the challenges of the pandemic.

[10/28/2020](#)

Are voters required to wear masks when voting in person?

Well, we thought we knew the answer to that question...until yesterday. Yesterday (October 27), a federal district judge invalidated an exemption to Governor Abbott's statewide mask mandate for voters. The governor's face covering mandate issued back on July 2, 2020, [GA-29](#), requires every person in Texas to wear face coverings under certain circumstances, and with certain exceptions. One of the exceptions to the mask requirement is for "any person who is voting, assisting a voter, serving as a poll watcher, or actively administering an election, but wearing a face covering is strongly encouraged." In other words, voters were not required to wear masks while voting, although doing so was highly recommended.

Yesterday, Federal District Judge Jason Pulliam of San Antonio issued a [memorandum opinion](#) voiding and invalidating the mask-mandate exemption for voting. The legal reasoning behind the opinion is that the mask mandate exemption for voting violates the Section 2 of the federal Voting Rights Act, which prohibits voting practices that discriminate on the basis of race, color, or membership in a certain language minority group. According to the opinion, the plaintiffs challenging the exemption hold a substantial likelihood of success on the Voting Rights Act claim due, in part, to data showing that minority groups experience greater risk of contraction and severity of COVID-19, and that risk can be mitigated by wearing masks at the polling place.

Where does all of this leave us? As of the time this email goes out, voters, poll watchers, and election workers in Texas are now legally required to wear masks due to this decision. Both the governor and secretary of state have [reportedly](#) already appealed the decision to the Fifth Circuit Court of Appeals, so the situation remains quite fluid at this stage.

What's the latest on the legal challenge to the governor's limitation on where mail-in ballots may be delivered in person?

Following in the footsteps of the federal Fifth Circuit Court of Appeals, yesterday (October 27) the Texas Supreme Court [upheld](#) Governor Abbott's October 1 [proclamation](#) restricting the delivery of mail-in ballots prior to election day to "a single early voting clerk's office location that is publicly designated by the early voting clerk for the return of marked mail ballots." According to the opinion, "[t]he Governor's October Proclamation provides Texas voters more ways to vote in the November 3 election than does the Election Code. It does not disenfranchise anyone. The plaintiffs have not established a probable right to an injunction blocking the October Proclamation."

10/29/2020

Are voters required to wear masks when voting in person?

Yesterday (October 28), we informed our members that a federal district judge out of San Antonio [issued an opinion](#) voiding and invalidating an exemption to Governor Abbott's statewide mask mandate for "any person who is voting, assisting a voter, serving as a poll watcher, or actively administering an election..." Perhaps not surprisingly, later in the day the

Fifth Circuit Court of Appeals [granted](#) the governor and secretary of state's request to "stay" the federal judge's opinion, effectively blocking the lower court's determination.

All of this means we are right back to where we started regarding masks at the polls, presumably for the duration of the November voting cycle. The governor's statewide mask mandate, [GA-29](#), does not require voters and other election administrators to wear masks at a polling place, though doing so is strongly encouraged.

11/2/2020

Once elections are over, is there any new state guidance about post-election procedures in light of Coronavirus (such as swearing-in procedures)?

Yes, on Friday October 30th, the Secretary of State's office issued new election [guidance](#), 2020-33, which includes helpful analysis of swearing-in and other pandemic related issues (see Section IV of the guidance).

Do we have to meet in person to swear in newly-elected city officials?

The guidance mentioned in the previous answer suggests that swearing in by a teleconferenced open meeting is possible provided certain procedures (outlined in the guidance) are followed.