



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 5, 2018

Hon. Bryan Hughes, Chair  
Senate Select Committee on Election Integrity  
P.O. Box 12068  
Capitol Station  
Austin, TX 78711

Re: Issues Related to Interim Charges on Election Integrity

Dear Chairman Hughes:

In recent years, election fraud has garnered increased attention and concern from policymakers in Texas. In the past regular and special legislative sessions, the Texas Legislature addressed issues related to the state's voter ID law and mail ballot fraud. These actions were a response to the growing concern that the integrity of the election process in Texas is not as strong as it ought to be, and is therefore susceptible to fraud, manipulation, and subversion of the democratic process. Media reports of illegal voting and the widespread practice of seeding and harvesting mail ballots, together with recent prosecutions and investigations conducted by this office, have confirmed that the threat to election integrity in Texas is real, and the need to provide additional safeguards is increasing.

As you examine the interim charges on election integrity between now and the 86<sup>th</sup> Legislative Session in 2019, it may be useful to consider investigating three policy areas related to election law and activities associated with the election process.

**Examining the Integrity of Texas Voter Rolls**

In 2017, the Criminal Prosecutions Division of the OAG conducted a successful felony prosecution in Tarrant County of a noncitizen who had been voting illegally in the DFW area for over ten years. This case highlighted the lack of safeguards in the system to detect ineligible voters, like non-citizens. In response, the OAG conducted a brief investigative survey of four counties, and found that over the previous 24 months, 165 unlawfully registered non-citizen voters had been removed from the voter rolls through a process under Election Code Section 18.068. More concerning, this group of 165 non-citizens had cast 100 illegal votes in Texas elections prior to identifying themselves as non-citizens at jury duty and being removed from the voter rolls.

The OAG is unable to determine the scope of non-citizen voting across Texas, from the non-citizen jury duty numbers alone, but it appears to be a significant problem, nonetheless. The OAG has also found that the process for removing ineligible voters who self-report as non-citizens at jury duty is not being followed correctly, or even at all, in various counties. Investigations into the scope of ineligible voting across the State are ongoing.

Areas of consideration for this Committee include:

- Authorizing and/or requiring the Secretary of State (“SOS”), Department of Public Safety (“DPS”), and OAG to work together and in cooperation with federal agencies to proactively identify noncitizens on Texas voter rolls.
- Requiring notice to the SOS, OAG, and local prosecutors when a noncitizen with a voting history is removed from the voter rolls due to a notification from the jury duty system.
- Participating in low cost partnerships with other states to compare voter rolls to eliminate double voting.
- Increasing the penalty for false statements made on voter registration applications (currently a Class B misdemeanor), and an increase in the statute of limitations for offenses under the Election Code.
- Creating a duty for elections officials to report fraudulent registration and voting activity to the OAG and local prosecutors.

### **Review of Laws Governing Mail Ballot Security**

During the last special session, the Legislature passed SB 5 that created the offense of election fraud, provided enhanced penalties for vote harvesting offenses, and created procedures increasing mail ballot security. Additional measures the Legislature may want to consider include:

- Reviewing signature review procedures for mail ballot applications.
- Evaluating the Wisconsin approach to absentee voting, which includes a photo ID requirement and a special process for voting in nursing homes.
- Examining widespread abuse of voting assistance procedures to coerce and influence voters.
- Providing a civil remedy to victims of mail ballot fraud, thus creating a low-cost non-governmental enforcement alternative for costly vote harvesting investigations.
- Enhancing election integrity training for election officials, to educate them on changes in the law and to promote consistency and uniformity in integrity procedures and fraud reporting.

The OAG appreciates this Legislature's efforts to date to safeguard the election process in Texas. This office remains committed to working with you to ensure that elections in Texas are conducted fairly, accurately, and with integrity for decades to come.

Sincerely,



Brantley Starr  
Deputy First Assistant Attorney General



Jonathan White  
Assistant Attorney General  
Criminal Prosecutions Division