



San Antonio Alamo Area Local Legislative Updates



Letty Alejandro – Legislative Director
LD0195@att.net

Alex Aleman – President, San Antonio Alamo Area Local

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Voting by mail and the next election

According to a recent study by PEW Trusts, more than 20 percent of votes are now cast by mail nationwide — the possibility of a major controversy involving mail ballots is also increasing.

Like other voting methods, voting by mail is not perfect. Sometimes ballots are lost in the mail, or arrive at election centers after the deadline. Mail voting is susceptible to fraud, there can be disagreements over whether a ballot is valid due to a postmark issue, and it may take days or weeks to count all the ballots, which can mean long delays without a clear victor.

A new report by the Bipartisan Policy Center (BPC) entitled “The New Realities of Voting by Mail in 2016” discusses several key issues, such as the challenges facing the Postal Service in delivering and tracking ballots and ensuring that voters know the deadlines for requesting and casting a ballot.

Richard L. Hasen notes in his book *The Voting Wars: From Florida 2000 to the Next Election Meltdown*, hundreds of absentee ballots sent from overseas that failed to comply with state laws were counted anyway, due to intense pressure from Republicans and a decision by Florida Secretary of State Katherine Harris to relax the rules. The flawed votes included ballots without postmarks and even ballots postmarked after the election.

In the 2008 election, Minnesota voters sent Al Franken to the Senate and gave Democrats the 60 votes needed to overcome filibusters. The election was extremely close — the final margin of victory was just a few hundred votes — and absentee ballots were at the center of a dispute that ended up in a court battle that went on for six months.

A preview of things to come can be found in Ohio, where voting laws involving absentee ballots are being hotly contested in the courts. A federal judge threw out provisions in Ohio’s law that had voided absentee and provisional ballots for technical flaws made by otherwise qualified voters. The lawsuit was filed by the Northeast Ohio Coalition for the Homeless and the Democratic Party to challenge technical requirements for Ohio absentee and provisional ballots, arguing that the rules had been applied differently from county to county.

States differ in their deadlines for absentee ballot submission. 37 states require the absentee ballot to arrive on or before Election Day, and 13 states (plus the District of Columbia) require ballots to have been postmarked by Election Day. In four of the swing states — Iowa, North Carolina, Ohio, and Wisconsin — election rules use the postmark as the determining factor for whether or not to accept a ballot. Ballots may arrive after Election Day so long as they have a postmark indicating the ballot was mailed on Election Day or before.

When votes get counted, the postmark can thus be a crucial factor. In 2013, auditors in Iowa looked at rejected ballots from the 2012 election and found hundreds of ballots that were rejected because they did not have postmarks. In the 2015 election, thousands of votes cast by mail were tossed out in Ohio because of no postmark or because the ballot was received after Election Day and did not have either a valid postmark dated by the Monday before Election Day, or any postmark at all.

Getting a ballot postmarked requires extra diligence on the part of the voter. One can't just assume the Postal Service will put a postmark on every ballot. That's because the Postal Service does not postmark all the mail, and, as a general practice, it has been moving away from postmarking in favor of barcoding. The Postal Service says that postal cancellation once served a business function but postmarks are no longer necessary.

According to USPS policies, every post office is supposed to make its local, hand-cancelled postmark available to customers (POM 312.2) on request at the counter. In those states where a postmark is crucial for ballots, it is ultimately up to the voter to ensure that the ballot is properly postmarked. That may mean going to the post office and talking directly to the postal employee at the window, or handing the Service standards ballot to a letter carrier and asking for the postmark. Just assuming that all mail gets a postmarked could mean your vote isn't counted.

Service standards has also become a main area of concern. As part of the Postal Service's Network Rationalization plan, these service standards have been changed twice over the past four years. The Postal Service slowed down the mail for the first time in July 2012, and it did so again in January 2015. November 2016 will be the first national election under the new service standards that add a day or two to the expected time of delivery. Since January 2015, when the second change in service standards took place and processing operations were changed accordingly, the Postal Service has had big problems meeting even the more relaxed standards. In fiscal year 2015, about 93 percent of mail with a 2-day standard was delivered on time, and only about 77 percent of mail with a 3-to-5 day standard was delivered on time. Some mail that should have been delivered in five days or less took six to ten days. Another issue involves how these delivery times are measured. If you drop off your ballot at the post office or put it in a blue collection after the mail has been collected for that day, the ballot will sit an extra day, and that doesn't get factored into the service performance measurement. This is an issue because the Postal Service, in order to cut costs, has also been moving the collection times to earlier in the day. "The impact of this change is slower mail and less processing capacity ahead of Election Day, when ballots must be returned to election offices.

According to the June 9, 2016 issue of Postal Bulletin, the Postal Service says that the changes in service standards will not affect the timely delivery of the mail: "Postal Service representatives are working closely with local and federal election officials to address and alleviate any concerns. The Postal Service is ready and committed to ensuring timely delivery of all election and political campaign mail."

Overall, the Postal Service has relaxed its service standards, adding a day or two to delivery time for most mail; it has changed its operations in ways that have resulted in performance problems meeting these relaxed standards; and in some locations it has moved collection times to earlier in the day. With these changes, the chances that a ballot will arrive late have probably increased since the last election. With more and more votes being handled by the Postal Service, slower mail could turn into a big issue.

