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Elections, Judiciary and Jurisprudence

Texas election law moves through federal courts, awaits final decision

Oct 9— As the November general election approaches, federal courts continue to consider challenges to [SB 1](#) by Hughes (87th Legislature, Second Called Session), known as the Election Integrity Protection Act, nearly three years after its highly-contested passage.

On September 28, 2024, as part of the federal court case, [LUPE v. Abbott](#), challenging SB 1, a U.S. District Court struck down a provision of the bill that makes it a third-degree felony to exchange vote harvesting services for compensation. The bill defines vote harvesting services as “in-person interaction with one or more voters, in the physical presence of an official ballot or a ballot voted by mail, intended to deliver votes for a specific candidate or measure.” On October 1, Attorney General Ken Paxton and several other involved parties appealed the partial decision to the U.S. Fifth Circuit Court of Appeals. The Fifth Circuit Court granted a temporary stay of the District Court’s decision, allowing the Attorney General to investigate vote harvesting cases until October 10.

SB 1 took effect December 2, 2021, and modifies statutes on voter registration, the conduct and security of elections, poll watchers and election officers, early voting by mail, voter assistance, election fraud and voter interference offenses, election-related court proceedings, and ineligible voters, among other provisions. Barring certain partial decisions on the bill, most of SB 1’s provisions are currently in effect.

With the backdrop of the COVID-19 pandemic and the 2020 presidential election that brought a variety of voting policies into question, the 87th Texas Legislature convened in 2021 with election integrity on Gov. Greg Abbott’s list of emergency items. During the 87th regular session, bills similar to SB 1, such as [SB 7](#) by Hughes and its companion bill, [HB 6](#) by Cain, were the focus of significant debate. Supporters of the bills argued that

these changes would help provide uniformity in Texas elections and restore the confidence of voters in election integrity by empowering poll watchers to oversee election conduct without fear of being unfairly removed, adding safeguards for the lawful assistance of a voter, and strengthening the consequences for violations of election law. Critics worried that the bills would exacerbate an already restrictive elections system by creating overly harsh penalties, restricting convenient voting options that facilitate voter turnout, and creating opportunities for partisan poll watchers to intimidate voters.

In an effort to prevent passage, enough Democratic representatives left the state to break quorum during the First Called Session. In Texas, 100 members of the 150-seat House must be present to conduct official business, and lawmakers could not pass SB 1 by Hughes until a quorum was reestablished. SB 1 was ultimately passed by lawmakers during the Second Called Session.

On September 3, 2021, nonprofit advocacy group La Unión del Pueblo Entero (LUPE) and other adversaries of the bill preemptively filed a federal lawsuit challenging SB 1. The plaintiffs argued that the bill “restricts voter assistance, enables partisan poll watchers to intimidate voters and poll workers, and threatens to criminalize community-based voter engagement activities and election administration conduct that are otherwise protected by the United States Constitution, federal election law, and the Texas Election Code.”

In [LUPE v. Abbott](#), the federal Western District of Texas Court found violations of the Civil Rights Act, Voting Rights Act, and U.S. Constitution in certain provisions of SB 1 that limit mail-in ballots and voter assistance. One such provision required clerks to reject mail-in ballot applications and completed ballots if they did not include a voter identification number matching

the one used on an individual's original registration application. In December 2023, the defendants appealed the partial decision to the Fifth Circuit Court of Appeals. The case remains pending while various challenges are still being considered.

Another federal lawsuit against SB 1, [Longoria v. Paxton](#), was filed on December 10, 2021. The Harris County Elections Administrator at the time and one of the county's volunteer deputy registrars complained that the bill violated the First Amendment primarily because of its anti-solicitation offense, which makes it a crime for election and public officials to encourage voters to vote by mail. After the district court judge blocked enforcement of this provision, Attorney General Paxton appealed to the Fifth Circuit Court. Ultimately, the Fifth Circuit dismissed certain claims, after the Texas Supreme Court advised that the volunteer deputy registrar was not a public official impacted by SB 1's anti-solicitation provision and did not have standing to bring the case. Additionally, the Fifth Circuit received guidance from the Texas Supreme Court that the Attorney General could not enforce certain civil penalties against election officers as established under SB 1. The plaintiffs dismissed their remaining claims, concluding the case and leaving SB 1 intact.

Other Texas election bills also have recently been challenged in the federal courts. [Vote.org v. Callanen](#) challenged a provision of [HB 3107](#) by Clardy (87R) that requires individuals who submit their ballots electronically or through fax to provide a "wet signature" signed with pen and paper. Following the appeal of the original district court's decision that blocked the wet signature law, the Fifth Circuit Court of Appeals reversed the decision in December 2023, leaving the law on the books.

[Texas State LULAC v. Elfant](#) challenged [SB 1111](#) by Bettencourt (87R), which prohibits establishing residence "for the purpose of influencing the outcome of a certain election." Following the appeal of the original court's decision in August 2022, the Fifth Circuit Court of Appeals determined that the plaintiffs did not have standing to bring the suit, ultimately reinstating SB 1111. In February 2023, the plaintiffs asked the U.S. Supreme Court to review the Fifth Circuit's decision, and in October 2023, the Supreme Court denied the petition.

— Abigail Jablon