

Texas Election Protection 2018

How Election Administration Issues Impacted
Hundreds of Thousands of Voters

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About the Texas Civil Rights Project

We are Texas Lawyers for Texas Communities; the Texas Civil Rights Project believes in a state where everyone can live with dignity, justice, and without fear. In its twenty-eight year history, TCRP has brought thousands of strategic lawsuits and spearheaded advocacy to protect and expand voting rights, challenge injustices in our broken criminal justice system, and advance racial and economic justice for historically marginalized communities.

TCRP's Voting Rights Program tackles the systemic issues that suppress democratic participation in Texas — from voter registration to the moment when an individual casts their ballot. Through litigation and advocacy, TCRP fights to turn the tide on the state's abysmal voting rights record by removing barriers to voter registration, supporting grassroots voter mobilization efforts, and opposing new attempts to suppress voting.

About the Authors

Emily Eby is a Staff Attorney with the Texas Civil Rights Project. Her focus at TCRP is on Election Protection and Local Reforms. In law school, she worked on disability rights, as well as advocating for homeless youth in Texas. Emily is passionate about helping every eligible voter cast a ballot that counts and about making the law understandable to people without law degrees.

Beth Harrison Stevens is the Voting Rights Program Director at TCRP. She is responsible for the oversight of TCRP's voting rights litigation and for partnering with local, state-wide, and nation-wide organizations to ensure eligible Texans are able to vote. Beth brings extensive litigation and advocacy experience to this role. She received her BA in History from the University of Texas at Austin and her law degree from SMU Dedman School of Law. She is committed to furthering progressive causes throughout Texas, enjoys volunteering with local non-profits, and is zealous about fighting inequity and injustice.

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Foreword

Voting rights in Texas have been in peril for decades. In particular, keeping people of color, young people, those without means, and those with prior felony convictions from voting has been politically advantageous for those in power in the state. In 2014, a federal court found Texas to have “not only a penchant for discrimination in Texas with respect to voting, but... a recalcitrance that has persisted over generations despite the repeated intervention of the federal government and its courts on behalf of minority citizens.”¹ As minority populations grow in numbers, voter suppression in Texas has mutated and proliferated to keep the electorate static — and thus, older, whiter and richer — at the expense of everyone else.

The population of Texas has been “majority minority” since 2011, when 55.2% of the state was of a race “other than non-Hispanic white.” The trend line favors minority population growth; the Hispanic population in Texas grew by 1.4 million between 2010 and 2017 while the white population grew by only 458,000. In 2011, only 30% of Texas children under 5 were non-Hispanic white. The voter suppression tactics used today to stifle the electorate could have disastrous effects on the Texas of tomorrow, which will be largely comprised of persons of color who will not be adequately represented.

Election administration failures compound the difficulties voters already encounter because of voter suppression tactics in our state. The two cannot be divorced from one another, and, in fact, many times go hand-in-hand. During the 2018 election cycle, Texas saw a myriad of election administration issues — many of which resulted in voter disenfranchisement and most of which could have been prevented. Real change must come to Texas in order to ensure that all eligible Texans are able to cast a vote that counts.

The Texas Election Protection Coalition works year-round to shed light on the issues voters face in the lead up to and during Texas elections. This crucial work, especially during the height of elections, should provide the foundation for all of those interested in free and fair elections in Texas to advocate for change at the state and local level. As you will read in the following pages, much work remains to be done.

Mimi Marziani
President of the
Texas Civil Rights Project



Mimi Marziani has an extensive background in civil rights advocacy and nonprofit management, as well as expertise in election law. Mimi previously directed voting rights programs for multiple political campaigns and committees, also overseeing compliance with election law. In 2014, Mimi led the first coordinated, statewide voter protection program for progressive candidates and groups in Texas.

Before moving to Texas, Mimi spent several years as Counsel for the Democracy Program of the Brennan Center for Justice at NYU School of Law, where she litigated election law cases in federal courts across the country, including before the U.S. Supreme Court. In that role, she worked to promote voting rights and regulate money in politics through legislative counseling, academic research and communications strategies. Mimi teaches “Election Law and Policy” at the University of Texas School of Law and serves on the NYU Board of Trustees.

Election Protection Overview

Nationally, the Lawyers' Committee for Civil Rights Under Law leads election protection initiatives, including in Texas. In 2016, the Texas Civil Rights Project joined forces with the Lawyers' Committee and with dozens of organizations in Texas to establish the Texas Election Protection Coalition. Our efforts include monitoring hotlines to answer voters' questions, providing voter protection field programs, using digital tools to connect with voters, and having legal counsel on hand to fight for voting rights in court.

More than a year before the 2018 general election, Coalition members began meeting regularly to plan a coordinated response to problems at the polls, building from lessons learned in 2016. The Coalition enhanced 2016 Texas-specific training materials and trained hundreds of legal and grassroots volunteers who worked at polling locations, the Texas call center, and local help centers in five areas of the state. Fielding thousands of calls, volunteers resolved voters' concerns, addressed barriers to casting a ballot, and answered routine questions from voters. We also undertook robust public education efforts, including a paid media campaign to promote our Election Protection services.

Members

The Texas Election Protection Coalition works together to ensure that all eligible voters in Texas can cast a ballot that counts. The 2018 Coalition included: American Civil Liberties Union of Texas, Anti-Defamation League, Clean Elections Texas, Common Cause Texas, Common Ground for Texans, Houston in Action, Lawyers' Committee for Civil Rights Under Law, League of Women Voters of Texas, Mexican American Legislative Caucus, Mi Familia Vota, NAACP Legal Defense Fund, NAACP, NALGO, Reed Smith, Seyfarth Shaw, Texas Civil Rights Project staff, Texas Civil Rights Project's Volunteer Attorney Task Force, Voto Latino, and many more. Coalition partners — organizations and individual volunteers alike — were instrumental in protecting the right to vote during the 2018 election.

Volunteers

Election Protection efforts consist of two main components: (1) on the ground at polling locations, face-to-face support ("field volunteers"), and (2) over-the-telephone legal support ("help centers"). Recruitment for volunteers saw a significant increase over the numbers of people involved in 2016.

The Coalition recruited and trained 393 field volunteers in 25 counties across Texas and assigned those individuals to be present at polling places in their counties. These field volunteers answered questions at polling places from the first day of Early Voting on October 22 through Election Day on November 6. They wore bright yellow t-shirts, identifying them as non-partisan volunteers.

The Election Protection Hotline went live on September 25 and accepted calls regarding the 2018 election through December 20. In addition to the details of their incident, callers provided a variety of information, including city, county, polling place, race, voting issue type, and how they heard about the hotline. On Election Day, 138 legal volunteers in six different boiler rooms statewide answered the hotline and solved voters' problems.

By the Numbers

In the fall of 2018, our coalition logged 4,529 incidents or questions at the polls. Of those questions, 3,288 were answered by our volunteers on the Election Protection Hotline and 1,241 were answered by our volunteers stationed at polling places across Texas.

Introduction

A wave of renewed civic engagement and democratic participation swept across the country during the 2018 midterm election, and Texas was no exception. The two years leading up to this election were a frenzy of activism,² media coverage,³ political advertising,⁴ and social media activity.⁵ Voter registration surged to 79.36% of the citizen voting age population, the highest percentage in Texas since the 2004 presidential election.⁶ Of those registered in Texas, 53% turned out to vote (up 20% from the 2014 midterms and the highest in a Texas midterm election since 1970).⁷ Texas had the sixth largest turnout increase in the nation, outpacing the nationwide average turnout increase of 13 percentage points.⁸

“...in 2018, election administration failures reported to our Coalition affected, at a minimum, 277,628 voters — a number higher than the margin of victory in Texas’ closely watched Senate race.”

Although Texas’ overall turnout rate was still the eleventh lowest in the nation, these numbers mark a significant improvement from the recent past that we can all celebrate, regardless of party membership or ideology. Texans are energized and eager to participate in our democracy.⁹

Nevertheless, the mechanisms of our democracy failed us. The 2018 Texas midterm election was characterized by reenergized civic engagement without the infrastructure to meet it. In fact, our data indicates that in 2018, election administration failures reported to our Coalition affected, at a minimum, 277,628 voters — a number higher than the margin of victory in Texas’ closely watched Senate race.

The long-standing failures in Texas election administration infrastructure will grow more dire unless state and local governments address the problems as soon as possible. Texas’ election systems cannot handle even the previous baseline of voter turnout, much less the substantial increase we saw in 2018 and will likely see in 2020. Even with the advance notice provided by increased voter registration and higher voter turnout elsewhere in the country, Texas failed to establish the infrastructure necessary to conduct an efficient, fair, and pro-voter election in which voting is easy and reliable for every citizen who wants to cast a ballot.

Problems reported to our team during the 2018 election included:

- Late poll openings
- Long lines at polling places
- Polling place problems on college campuses
- Early registration deadlines
- Noncompliance with the National Voter Registration Act
- Provisional ballot problems
- Voter intimidation
- Voting machine malfunctions

These — and many other issues — plagued Texans over the course of the 2018 midterm election. Voters encountered hurdles to democracy at every step of the voting process, from registration to submitting the ballot. There is an urgent need for Texas to reform its antiquated election infrastructure immediately. Texas is not ready for its next election. Without reform, our state faces the risk of a catastrophic breakdown in future elections, perhaps as soon as 2020.

Impact

Election Administration Failures Had Massive Consequences

Problems reported to our Coalition indicate that at least 277,628 voters were harmed by Texas' election administration failures in the 2018 midterm election. We arrived at this number by using publicly available data to quantify the voters affected by just five of Texas' notable election problems in 2018: voting machine malfunctions, non-compliance with voter registration law, inconvenient polling places, precinct-only voting, and late openings. Our estimates are conservative and derived from data recorded by our team; in reality, these 277,628 voters almost certainly represent just a fraction of the total Texas voters whose votes were either significantly burdened or outright denied.

Voting Machine Malfunctions: One facet of outdated voting technology was widely publicized in the 2018 Texas election: calibration problems with certain Hart eSlate voting machines that switched straight-ticket votes in the Senate race to the candidate from the opposite party. Eighty-two counties in Texas use that brand of machine,¹⁰ and we heard reports of vote-switching from seven of them: Harris, Travis, McLennan, Montgomery, Tarrant, Matagorda, and Fort Bend. In those seven counties alone, 2,830,419 voters cast ballots.¹¹ In 2018, two-thirds of Texans voted straight ticket.¹² Two-thirds of 2,830,419 is 1,885,066, meaning that at least 1,885,066 voters were susceptible to the Hart eSlate machine error in the 2018 election.¹³

To be sure, the best evidence shows that machine malfunction was sporadic, rather than occurring with every vote. In addition, we believe, based on reports we received, that some number of voters caught the error before submission. But, even assuming that 0.001% of voters — a tiny fraction — were ultimately changed, 1,885 voters would have been denied their chosen candidate.

Non-Compliance with Voter Registration

Law: The National Voter Registration Act ("NVRA"), a 1993 federal law, requires that the Department of Public Safety ("DPS") offer simultaneous voter registration with all driver's license transactions.¹⁴ Despite the fact that at least 1.5 million Texans go online each year to update their driver's license, the state does not offer simultaneous voter registration with those online transactions. In Harris County alone, at least 106 voters had their provisional ballots rejected because they mistakenly thought they had registered with DPS online (as they should be able to). That is 0.009% of the total votes in Harris County, and assuming the same proportion of voters were rejected statewide because they mistakenly thought they too had registered with DPS online, an estimated 753 voters were disenfranchised because Texas refuses to comply with the NVRA, with more than 1.5 million voters affected.

"An estimated 753 voters were disenfranchised because Texas refuses to comply with the NVRA, with more than 1.5 million voters affected."

Inconvenient Polling Places: Our election protection team heard dozens of reports of polling places moving, closing, or placed in inconvenient areas. One frequent complaint was the lack of polling places on college campuses. College students spend a great deal of time on campus, and less than half of them bring cars to school.¹⁵ Students at Prairie View A&M told the Secretary of State that “students with no means of transportation had to walk more than a mile” to their polling place, then they had to “wait in line near a busy roadway.”¹⁶

“10,831 eligible voters cast ballots that did not count simply because the voter was in the wrong place on Election Day.”

Texas has 22 universities with student body populations over 10,000, but only seven of those universities had polling places in the 2018 election,¹⁷ many of which were either only available during Early Voting or only available on Election Day. The enrollment of those 22 colleges is 569,162 students.¹⁸ If we subtract the seven universities that already have polling places for part of the voting period,¹⁹ we are left with 278,228 students.²⁰ The average rate of international student enrollment at Texas colleges is 5.6%, so we can assume that only 94.4% of those are eligible to vote.²¹ That leaves **262,647 eligible college students** who lacked an accessible place to vote. In other words, if all 22 of Texas colleges over 10,000 enrolled were to have a polling place open through Early Voting and on Election Day, 262,647 more students would have the opportunity to vote in the place where they live, work, study, and socialize.²²

Precinct-Only Voting: Counties that require people to vote in their particular precinct reject hundreds of ballots simply because the voter showed up in the wrong neighborhood. We looked at the provisional ballot data from the five counties with the biggest turnout: Harris, Dallas, Tarrant, Bexar, and Travis. In those counties, 4,608 provisional ballots were invalidated simply because the voter was in the wrong precinct. In those counties, a total of 3,561,704 votes were cast. The 2018 turnout in Texas was 8,371,655.²³ If the proportion of provisional ballots rejected for precinct reasons to total votes cast is the same across the whole state, about 10,831 eligible voters cast ballots that did not count simply because the voter was in the wrong place on Election Day.

Late Openings: Texas law requires polling places to be open from 7:00 AM to 7:00 PM.²⁴ When a polling place remains closed after 7:00 AM, it exacerbates the lines for the morning rush; many people decide to leave instead of voting.²⁵ Harris County data shows that 354,000 voters cast ballots there on Election Day in 2018.²⁶ There were 1,012 polling places in Harris County on Election Day.²⁷ Each polling place serves a different number of people, but on average, 350 people voted at each location on November 6. The US Election Assistance Commission says that 24% of Election Day voters arrive at the polls before 9:00 AM.²⁸ Therefore, an estimated 84 people voted at each Harris County polling place before 9:00 AM on Election Day.²⁹ At least 18 polling places in Harris County either opened late or were so plagued by machine errors that they might as well have opened late on Election Day. **By these numbers, at least 1,512 voters had their voting rights curtailed by late openings in Harris County alone.**

In sum, Texas’ failure to conduct elections properly under the law and based on the needs of Texas’ voting population impacted at least 277,628 Texans in the 2018 midterm election, based on estimates from just five types of problems reported to our team. This is tens of thousands of votes more than the margin of victory in the widely watched Texas Senate race, where Senator Ted Cruz beat former Representative Beto O’Rourke by just 223,000 votes.³⁰

Issues by the Numbers

By Issue ³¹	
Polling place issues	2026
Registration issues	818
Voter ID	386
Regular ballots	325
Provisional ballot issues	276
Intimidation, challenges, and electioneering	225
Disability or language accessibility	197
General info	161
Voting machine breakdowns	152
Arrest or conviction	13

By County (sorted largest to smallest)	
Harris	1687
Dallas	1528
Tarrant	299
Bexar	329
Travis	942
Collin	112
Hidalgo	98
El Paso	104
Denton	84
Fort Bend	228
Montgomery	46
Williamson	137
Cameron	17
Nueces	32
Brazoria	44

By Race & Ethnicity	
Hispanic or Latino	875
White	627
Black or African American	438
Asian	61
American Indian or Alaska Native	13
Middle Eastern or North African	11
Native Hawaiian or Pacific Islander	2
Unreported	1261

Patterns and Incidents

From the thousands of calls to our Election Protection hotline, we observed patterns in the voting issues reported. Some election administration failures are highly localized, while others are common to areas across Texas. What follows is a summary of the most common issues, as well as the personal stories of just a few of the 4,529 Texas voters who contacted us for help.

Polling place issues

We received 2,026 calls from voters asking questions about their polling places. These reports included benign questions such as seeking information about where to vote, as well as more systemic problems such as reports of late poll openings, reports of long lines, and issues with polling places on college campuses.

Late poll openings: There were scattered accounts of late polling place openings across the state on the morning of November 6. Reports were concentrated in Harris County, where voters and field workers identified 18 polling places across Harris County either opening late or with severe malfunctions at 7:00 AM that crippled operations.³² Indeed, one volunteer reported that two of the four clerks at one polling location arrived to work late, causing delays. Then, evidently because the workers also missed their training, they were unable to get two of the ten voting machines up and running once the polling place opened. At another location, a volunteer reported that there were 50 people in line at 7:00 AM with only one of the polling place's 16 machines working.

“...18 polling places across Harris County either opening late or with severe malfunctions...”

Ultimately, TCRP and the Texas Organizing Project sued Harris County to keep nine late-opening polling places open³³ for the twelve hours required by the Texas Election Code.³⁴ Judge Fredericka Phillips granted a temporary restraining order to keep nine Harris County polling places open until 8:00 PM on Election Day.³⁵ The Harris County Clerk — who has since been voted out of office — insisted that the late openings of those nine polling places were “typical of start-up issues on Election Day.”³⁶ Michelle Tremillo, the executive director of TOP, summarized it much better: “While it may not have been the county’s intention, the impact of their failure is, in effect, a form of voter suppression... These nine polling locations predominantly serve communities of color. If even one person lost their chance to vote, it is one person too many.”³⁷

Long lines: From our reports, long lines seemed to be everywhere in the 2018 midterm election. During Early Voting, we received reports from voters waiting 40 minutes to an hour in San Antonio, an hour in Burnet, an hour in LaPorte, two hours in Austin, two and a half hours in Houston, and three hours in Corpus Christi. On Election Day, we saw waits of 40 minutes in San Antonio, 45 minutes in Arlington, an hour in Dallas, an hour in Waco, and an hour and 15 minutes in Austin.

We received a call from a disabled voter who physically could not wait in a long line. Waco voters called to report machine failures causing long lines in the heart of the African-American neighborhood. A student at the University of Texas called to tell us that students were stuck in long lines on campus.

Polling place problems on college campuses: We received several reports from college students experiencing severe election administration failures, particularly at Texas State University in Hays County and at Prairie View A&M in Waller County. Texas State students were originally allocated only three days of Early Voting on campus, despite long lines consisting of hundreds of students waiting an hour and a half to vote each day.³⁸ TCRP and our partners at MOVE Texas and the League of Women Voters of Hays County threatened to sue the county for violating the Constitution and the Texas Election Code.³⁹ More than 1,000 Hays County residents reached out to the Hays County Commissioners Court about this issue as well.⁴⁰ We succeeded in winning two more Early Voting days on campus and a polling place on campus on Election Day.⁴¹

Students at Prairie View A&M, a historically black college, have despicably been subjected to voter suppression tactics for years.⁴² Problems ensued once again when the Waller County Elections Administrator told thousands of students who lived on campus at Prairie View A&M to register at an address in an incorrect precinct.⁴³ Then, in 2018, the Waller County Elections Administrator tried to require that every one of these students fill out a change-of-address form in order to cast a ballot that would count.⁴⁴ As a result of public outcry, the Texas Secretary of State's office ultimately overruled the county, holding that "no change of address form or statement of residence will be required prior to [the students] voting."⁴⁵

Why Do Long Lines Matter?

Low-income Americans often cannot afford to wait in long lines at the polls. Fees to vote and poll taxes are prohibited under the 24th Amendment, so voters cannot literally be charged at the polls. But a voter is not making money during the time that they are waiting in line to vote. For the financially secure, that is usually fine. But a voter who constantly works to make ends meet is effectively losing money while they wait. If that voter has children, they may be paying for childcare while they wait to vote. For fifteen minutes, that might not be a big deal. But as fifteen minutes drags into one hour or two, the number of voters who can afford the wait gets lower and lower, until only the wealthy are left to cast a ballot.

Registration issues

We received 818 calls about voter registration. The bulk of these questions were from people asking if they were registered and people who poll workers told that they were not registered.

Early Registration Deadlines: Around 800 Texans called us with questions about their registration. Several of these questions involved Texas' strict registration deadline, which requires that paper-based forms be submitted 30 days before Election Day. For instance, a woman in Dallas called the hotline wanting to register to vote on the day before the deadline, but she had no way to reach a printer or scanner before the form was due. A man in Houston completed his parole — therefore becoming eligible to vote again — after the registration deadline and called our hotline to ask if he could still register. Unfortunately, he could not. We heard from others who were registered in the past but learned from poll workers that they'd been purged from the voter rolls, including a woman who had voted in 2008, and a woman who was interested in participating again for the first time since high school.

Across the state, election officials were burdened by the current registration system. A record 15,793,257 voters were registered for the 2018 election cycle, up from 15,101,087 in the 2016 presidential elections.⁴⁶ This surge overwhelmed county infrastructures across Texas. Dallas County officials “took until more than a week after the Oct. 9 deadline to process them all.”⁴⁷ Travis County officials were “inundated with tens of thousands of paper applications.”⁴⁸ Bexar County officials worried about “trying to register people literally two days before Election Day.”⁴⁹ Voter registration on a massive scale should be a cause for celebration at registrars’ offices; instead, election officials rushed to “manually enter each new voter’s information” into their systems in time for Early Voting, sometimes even forced to make guesses based on voters’ illegible handwriting.⁵⁰

Noncompliance with National Voter Registration Act (“NVRA”): For more than three years,⁵¹ TCRP has been litigating against Texas for its refusal to offer simultaneous voter registration when voters update their driver’s licenses online, which is required by the NVRA.⁵² In Harris County alone, at least 106 voters had their provisional ballots rejected because they thought they had registered with DPS online. This is just a fraction of those affected: At least 1.5 million Texans interact with the online driver’s license system every year but are not offered a quick, seamless opportunity to register to vote with that transaction.⁵³

Why is it so hard to register to vote in Texas?

In short: it is hard because the state has made it hard.

Texas is one of only ten states with a deadline for registration as far in advance of Election Day as allowed under federal law: 30 days.⁵⁴ Of those ten, only four do not allow voters to register online: Arkansas, Michigan, Mississippi, and Texas.⁵⁵ Other states allow voters to register much closer to the election, including seventeen states (and the District of Columbia) where voters can register on Election Day.⁵⁶

Texas also criminalizes voter registration drives: it is illegal to register your neighbor to vote without advance permission from the state. Then, once someone is approved as a “volunteer deputy registrar,” oversights may land them in jail. A voter registrar who picks up a completed voter registration form in a county in which she has not been deputized—whether intentionally or accidentally—commits a misdemeanor crime punishable by a \$500 fine.⁵⁷ A voter registrar’s certification can be rescinded for failure to submit an application to “adequate review,” a term which is left to the discretion of each county registrar.⁵⁸ In 2017, the Texas legislature raised the stakes for voter registration organizations by making it a state jail felony for three or more persons to violate Volunteer Deputy Registrar (“VDR”) laws together, raising the criminal penalties to “one category higher” than those spelled out in the Election Code.⁵⁹ These laws imperil volunteer registrars and make pro-voter registration groups vulnerable to accusations, prosecutions, and even raids by agents in bulletproof vests.⁶⁰

Provisional ballot problems

In 2018, 276 voters called our hotline with questions about voting provisionally. We requested data from the five counties with the highest overall turnout in Texas and quantified the reasons that provisional ballots were rejected. This data is not aggregated by the state, so there is not an accessible way to study provisional ballot trends statewide. We do not know how many total voters saw their provisional ballots rejected in Texas.

Two trends jump out:

First, we saw a fundamental lack of understanding from voters and poll workers as to what provisional ballots are, and what they are supposed to do. When a voter's eligibility is uncertain, provisional ballots are supposed to serve as a way of preserving their vote while the registrar checks on their eligibility.⁶¹ However, many voters do not know the difference between a provisional ballot and a regular ballot until they receive a letter notifying them that their vote either was or was not counted.⁶² In 2018, the five counties with the highest turnout in Texas (Harris, Dallas, Tarrant, Bexar, and Travis) rejected 15,506 provisional ballots.

Consider these examples: a Beaumont voter called our hotline, concerned after hearing that provisional ballots were not being counted. We received a report from a Dallas voter whose poll worker told her the “dirty little secret” that “they don’t count the provisional ballots” so there’s “no point” in casting one. When this interaction attracted the attention of other voters, the poll worker insisted that provisional ballots were thrown in the trash. A voter in Arlington was actively encouraged not to cast a provisional ballot, and heard the poll worker say the same to the person in line behind her. A poll worker in Sulphur Springs told voters that she did not even have any provisional ballots because she was not provided them by her county registrar.

Second, other strict features of Texas election law caused provisional ballots to be rejected at high rates. For instance, under Texas law, if a properly registered voter shows up to vote at the wrong precinct and casts a provisional ballot, that voter's vote is not counted in the correct precinct. This confusion impacts a huge percentage of voters in Texas. In Harris County alone, 47% of rejected ballots were cast in the wrong precinct, more than any other reason for ballot rejection. In total, in the five counties we surveyed, 4,608 provisional ballots were invalidated because they were cast in the wrong precinct.

All Five Counties Provisional Ballots		
Accepted	4729	
Rejected	15506	
Reason invalidated	Number invalidated	Percent of total invalidated
Not a registered voter	9608	61.96%
Registration not effective in time	733	4.73%
Registered in other precinct	4608	29.72%
Voter purged or inactive	175	1.13%
Insufficient ID provided	235	1.52%
Other	147	0.95%

Harris County Provisional Ballots		
Accepted	1367	
Rejected	5744	
Reason invalidated	Number invalidated	Percent of total invalidated
Voter did not satisfy identification or affidavit requirements within 6 days of election day.	123	2.14%
Not a registered voter	2629	45.77%
Registration not effective in time for this election	428	7.45%
Registered to vote, erroneously listed in wrong precinct	8	0.14%
Registered to vote in a different precinct within the county	3	0.05%
Voter erroneously removed from list	1	0.02%
Voter is not registered to vote in this political subdivision.	1	0.02%
Registered in other precinct	2696	46.94%
Other	87	1.51%

Dallas County Provisional Ballots		
Accepted	545	
Rejected	2249	
Reason invalidated	Number invalidated	Percent of total invalidated
Not signed	1	0.04%
No ID provided	3	0.13%
Incomplete	1	0.04%
Ineligibility	3	0.13%
Not registered	1592	70.79%
Other	58	2.58%
Registered less than	86	3.82%
Registered in another county	11	0.49%
Voted early in person	16	0.71%
Voted in wrong precinct	478	21.25%

Tarrant County Provisional Ballots		
Accepted	521	
Rejected	3800	
Reason invalidated	Number invalidated	Percent of total invalidated
No ID provided	25	0.66%
Incomplete	1	0.03%
Not registered	2914	76.68%
Other - rejected	21	0.55%
Voted in wrong precinct	839	22.08%

Bexar County Provisional Ballots

Accepted	90
Rejected	767

Reason invalidated	Number invalidated	Percent of total invalidated
Not signed	32	4.17%
No ID provided	7	0.91%
Incomplete	8	1.04%
Not registered	203	26.47%
Other	6	0.78%
Registered less than 30 days before election	59	7.69%
Registered in another county	183	23.86%
Registration cancelled	47	6.13%
Voted early in person	8	1.04%
Voted in wrong precinct	214	27.90%

Travis County Provisional Ballots

Accepted	2206
Rejected	2946

Reason invalidated	Number invalidated	Percent of total invalidated
Moved/active in another county	52	1.77%
Already voted	5	0.17%
Ballot by mail not canceled	11	0.37%
Not registered	2270	77.05%
Online reg/DPS online not valid	19	0.64%
Updated DPS in person/by mail	14	0.48%
Couldn't reach call center	3	0.10%
Voter cancelled, purged, or inactive	124	4.21%
Computer problem	8	0.27%
Registration not effective in time	160	5.43%
Failed to present ID	77	2.61%
No ballot style	20	0.68%
Unknown	2	0.07%
Voter not on list, registered in another precinct	163	5.53%
Voter on list, but registered address outside the political subdivision	24	0.81%

Intimidation, Challenges, and Electioneering

Voter Intimidation: Voter intimidation has been a problem as long as voting has existed, but each election year provides new and shocking ways that private citizens, candidates, and law enforcement officials attempt to intimidate voters. We received 225 reports of voter intimidation during this election, many of which affected entire neighborhoods or polling places.

- In these midterms, voter intimidation began long before Early Voting. In August, a man in Harris County named Alan Vera allegedly attempted to disenfranchise some of his fellow Houstonians by delivering over 4,000 voter challenges to the voter registrar's office.⁶³ State law requires a challenger to have "personal knowledge that the registration is inaccurate," which Vera apparently did not have for all of the voters he challenged.⁶⁴
- In late October, voters with political yard signs in the Dallas area received anonymous mailers featuring photographs of aborted fetuses. A couple in Richardson woke up one morning to find that their political signs had been set on fire right outside their daughter's bedroom window. Others in Dallas County experienced the exact same type of vandalism to the same yard signs, suggesting a possible pattern or scheme. On Election Day, harassers waited outside polling places to scare Texans from casting their votes. We received reports of a man in Richardson who stood outside a polling place and yelled bizarre insults at minority women, calling them "bipolar" and "alligators who live in the swamp." We also received reports of a man at the same polling place harassing voters of color while wearing a shirt that read "whites only."
- Still more voter intimidation came from law enforcement officials at polling places on Election Day. Police officers and sheriffs are legally allowed to be at polling places, but they have a responsibility to be cognizant of their presence and the effect that it may have on voters. We received reports of several who lacked such self-awareness. Armed officers — some with visible weapons — stood outside polling places in Denton County, Bexar County, Montgomery County, and Dallas County (where police cars were taking up two parking spots in the small lot where voters were supposed to park).

'In August, a man in Harris County named Alan Vera allegedly attempted to disenfranchise some of his fellow Houstonians by delivering over 4,000 voter challenges to the voter registrar's office.'

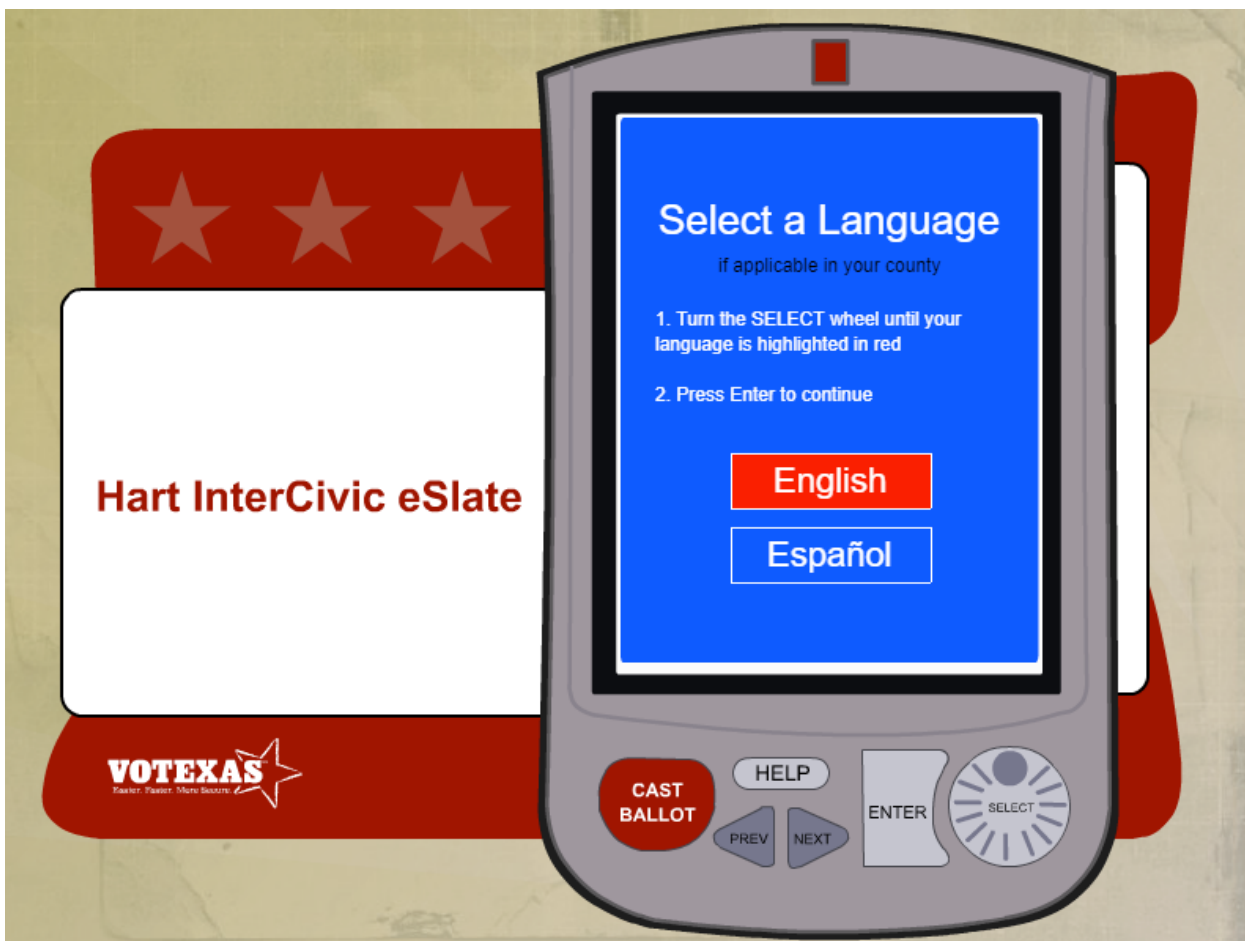
Equipment

Voting Machine Malfunctions: Texas suffers from outdated voting technology, frustrating state officials and voters alike. We received calls from 152 voters reporting broken down machines.

The most high-profile voting issue in Texas was the Hart eSlate voting machine malfunction that switched straight-party votes in the Texas Senate race.⁶⁵ TCRP received 21 reports from voters in seven counties who picked one party's straight ticket option, then saw their Senate race vote switched to the other party's Senate candidate on the final screen.⁶⁶ After widespread news reports of this issue, the Texas Director of Elections released a memo attributing the problem to user error, saying that the votes were switched by "the voter taking keyboard actions before a page has fully appeared on the eSlate, thereby de-selecting the pre-filled selection of that party's candidate."⁶⁷ Rice University computer science expert Dan Wallach disagreed, tracing the glitch to "a common type of software bug that the maker of the equipment could have fixed a decade ago and didn't, despite previous voter complaint."⁶⁸

Whether the problem was machine error or user error, Hart eSlate machines are hopelessly outdated. A 2008 survey of 1500 voters found that the Hart eSlate ranked lowest of six common voting machines for “ease of use.”⁶⁹ Hart eSlate machines did not make sense to voters in 2008, and technology has advanced by leaps and bounds since then; these machines were outdated and confusing a year before iPhones had map functionality and two years before the release of the iPad.⁷⁰ One reporter likened eSlate machines to “giant PalmPilots” (a design from 1997)⁷¹ that are “manipulated using a selection wheel and an ENTER button”⁷² like click-wheel iPods (a design from 2004).⁷³

In September 2015, the Brennan Center for Justice published a report warning that voting machines in 43 states were “perilously close to or exceed[ing]” their lifespans.⁷⁴ In 2018, that number was still 41.⁷⁵ Texas is one of those states.⁷⁶ Machine problems plagued Texas in 2016, but the legislature still did not allocate funds to update the machines.⁷⁷ There hasn’t been a significant infusion of federal funds since 2002, and Texas legislators seem uninterested in chipping in state funds for the purchase, to say the least.⁷⁸ During a committee hearing on a bill that would allocate state money to update voting machines, one representative asked witnesses to keep their testimony short because “a college basketball championship game had just tipped off.”⁷⁹ Our machines must be prioritized, updated, and consistently maintained if Texas wishes to hold free and fair elections.



Simulated eSlate voting machine with an interactive online application provided by VoteTexas.org and available at this link: <https://www.votetexas.gov/votingmachine/eSlate.html>

Solutions

Texas elections need a lot of work. There are myriad steps that Texas could take, at the state and county levels, to bring Texas up to speed with the rest of the nation in registration, administration, and participation. Here, we highlight three commonsense solutions that would go a long way towards addressing problems highlighted in this report: online voter registration, mandatory countywide polling places, and improved poll worker recruitment, training, and compensation.

“Online voter registration would ease the burden on county election officials who are currently saddled with a paper-based voter registration system.”

Online voter registration (“OVR”) is a common sense, cost savings tool already utilized by 38 other states and District of Columbia. OVR access for Texas would ease the burden on county election officials who are currently saddled with a paper-based voter registration system that is inefficient, antiquated, and vulnerable to mistakes. Between 2008 and 2012, OVR saved Arizona’s Maricopa County nearly \$1.4 million. Cost savings of this extent can ease the resource burden on local elected officials. OVR also increases the accuracy of voter rolls by allowing voters to input their own data accurately, rather than relying on county election officials and their staff for electronic data entry of information from a paper application. Voters get an online receipt so that they know their registration application has been received, and in some states, they are even notified in real time if they were already on the state’s voter rolls.

As noted above, precinct-based voting locations resulted in thousands of non-counted votes in four of the five counties with the largest voter turnout. A straightforward solution to preventing wasted votes of this sort is **mandatory countywide polling places**, which would allow voters to vote on Election Day at any polling location within their county. Currently, many counties across the state, including densely populated counties like Dallas, Tarrant, and Bexar, require voters to vote at their assigned precinct polling location on Election Day. This can be confusing for voters since they are able to vote at any polling location across their county during the full two weeks of Early Voting. Further, many voters work far away from or are otherwise away from their precinct polling location on Election Day. A move to mandatory countywide polling places would better accommodate voters’ lifestyles by allowing them to vote closer to home, work, school, a friend’s house, their child’s daycare, or wherever else works for their lifestyle.⁸⁰ Indeed, for all of these reasons, Harris county recently agreed with the recommendation offered by the Texas Civil Rights Project and others and will soon implement countywide polling places.

The best fix for issues like late openings, intimidation, and confusion around provisional ballot laws is **professionalizing poll worker recruitment, training, and compensation**. Poll workers are paid minimum wage or just above it, so there is little incentive for most people to leave work for a day to run the polls. A survey of local election administrators identified poll worker shortages as one of their leading concerns. Those who can work the polls often cannot attend training. A poll worker’s familiarity and skill with check-in and voting equipment determine line length and, in some cases, even who gets to cast a ballot. With a team of highly trained and well-paid poll workers, plus substitutes to open polls if the original team does not, there is no reason for a polling place in Texas to not open promptly at 7:00 AM. The positive impact of professionalizing poll worker recruitment, training, and compensation cannot be overstated.

Future Plans

The state of elections in Texas is unacceptable. The Texas Election Protection Coalition is broadening efforts to extend our reach across the state. And we'd like your help! Read more, below, for ways to work with us to reclaim our Texas democracy for the people.

Expanding Texas Election Protection Efforts in advance of the 2020 Election:

As mentioned above, we saw massive engagement from Texas volunteers: 393 field volunteers across 25 Texas counties, and 138 legal volunteers in six boiler rooms statewide. They handled over 4500 issues from voters, ranging from the easiest polling place lookups to the most complex registration issues and beyond, all while encouraging voters to go in — on occasion, to go back in — and assert their rights at the polls. But still, there is room for a wider impact in 2020. Texas has 254 counties and we had a field presence in 25 of those counties, including the largest in population. We must expand our field efforts into new counties, where experience tells us voters are just as likely to be as impacted by issues at the polls as people in the larger counties where we already have a strong election protection field presence. Further, a more robust response during Early Voting is absolutely critical as voting patterns are trending in the direction of more voters utilizing the option of Early Voting during the two-week period leading up to Election Day.

As we look ahead to the primary and general elections next year, and prepare for similarly large levels of engagement, we know that we need to expand our services to voters. To that end, we are working with our Election Protection Coalition partners to bolster our presence in the state, strengthening the armor we are building around Texans' access to democracy. The impact of providing on-the-ground support at polling locations cannot be overstated. Real time, face-to-face discussions about issues impacting a voters' rights are extremely powerful and we aim to provide that service to more people. To that end, the Coalition aims to have a presence in each Texas county during the 2020 election. Additionally, we intend to explore technological advances to meet voters where they are — which is often on a social media or texting platform that is not conducive to telephone calls. This expanded access to election protection — both on the ground and through technology enhancements — requires additional resources and support from the Coalition, volunteers, and monetary contributors alike. We hope you'll link up with the Coalition.

If any part of this report speaks to you, don't hesitate: join us! Our 2018 volunteer network was made up of attorneys and non-attorneys, working folks and stay-at-home parents, college students and retirees. People of different races and ethnicities, high schoolers, persons with disabilities, bilingual people, and law students were all critical in helping voters at their polling places across the state. No specific knowledge, qualification, or skill is required; all you need is a commitment to non-partisan voter protection. If you fit that description, visit www.texascivilrightsproject.org/local-democracy to find out more about our plans for future elections and to sign up to be a part of them.

Monitoring State Legislative Action: TCRP is keeping a close eye on the 2019 Texas Legislative session. As anticipated, legislators have filed dozens of bills that relate to issues raised in this report.. Some are worrisome, such as bills aimed to curb registration by imposing onerous requirements like proof of citizenship to register. Others plan to make it harder to participate at your polling place by slashing the number of Early Voting days or requiring the residence on a voter's drivers license to match their current residence, unduly burdening poorer and younger voters who are more likely to move often. One of the more egregious bills would limit primary voting to those who have been an official member of that party for a full year, imposing criminal penalties for violations.

Some Texas legislators, however, seek to improve the voting experience rather than further complicating it. A handful of bills would implement online voter registration in Texas, expanding the franchise to millions of Texans and joining the 38 other states and District of Columbia that already offer online voter registration. Other bills would bolster the Texas high school voter registration program, create same-day or automatic voter registration in Texas, and expand the types of ID a voter can present at the polls. Still other bills present interesting ideas for oversight of the upcoming cycle of redistricting, a huge voting rights issue that often slips under the radar.

Following the legislative session, TCRP will release resources regarding bill passage and movement during the sometimes-turbulent six month session. We will pay particular attention to the best pro-voter policies and the worst anti-voter ones that were advanced during the session, in hopes of moving all of us toward continued reform.

Encouraging Local Pro-Voter Reforms: The last piece of our future plans connects to our vision of localized, specific election reform: a new campaign to promote pro-voter reforms in counties. Voters all across Texas face hurdles to the franchise, but a voter in Southeast Texas experiences completely different challenges than a voter in North Texas does. To that end, we will spend the next few months publishing local reports for different regions in Texas, including Houston, Dallas-Fort Worth, and San Antonio. Each report will identify three to five key reforms for each county based upon input from community leaders, grassroots organizing groups and local decision-makers, from data gathered through the 2018 Texas Election Protection Coalition effort, and from research into existing county practices. Look for those blueprints — as well as an updated High School Voter Registration report — in the coming months, as we seek to improve the voting experience for Texas voters in 2020.

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⁸⁰ Under current Texas law, areas that move toward countywide polling are allowed to cut up to 35% of their polling places in their first year and up to 50% in subsequent years. There is legitimate concern that the move toward countywide polling places will result in the closure of polling places in neighborhoods with large minority populations. We must remain vigilant in ensuring that polling places remain available.



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