



Texas Election Protection 2016

An overview of the challenges faced by Texas voters in the presidential election

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About Texas Civil Rights Project

In its twenty-six year history, the Texas Civil Rights Project 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.

Acknowledgements

The 2016 Texas Election Protection Coalition could not have operated without our national and grassroots partners, as well as hundreds of volunteers from around the state. The Lawyers' Committee for Civil Rights Under Law, which has spearheaded Texas Election Protection since the early 2000s, provided the essential infrastructure to help the Coalition expand and deepen its Texas roots. Maria Peralta, Texas could not have done it without you. The Texas Organizing Project, Common Cause Texas, the J.L. Turner Legal Association, the Dallas Hispanic Bar Association, the Dallas Asian American Bar Association, and the Dallas Muslim Bar Association contributed essential local perspective and energized their volunteers with gusto. To our pro bono legal partners: thank you for using your time and expertise for the benefit of Texas voters. The Coalition's efforts were also aided by the many county election officials and staff of the Elections Division of the Secretary of State's office who responded to our calls and concerns. Generous funding from the State Infrastructure Fund at Neo Philanthropy allowed TCRP to launch its election protection efforts. Their support assisted thousands of Texas voters and, for that, we are eternally grateful. Finally, thank you to all of the voters and callers to the hotline who participated in our democratic process and reported your concerns. Your engagement amplifies the voices of Texas voters who are all too often overlooked.

A huge thank you to all of the TCRP volunteers: Journey Bailey, Ross Benar, Ashley Blinkhorn, Josh Campbell, Leanne Chia, Alfredo De La Cruz, John Espinosa, Caitlyn Fiebrich, Jocelyn Frank, Fidel Garza, Taylor Gutierrez, Lourdes Ibarra, Ashley Jimenez, Katie Leiferman, Brittany McClure, Debra Medellin, Peggy Rodriguez, Herlinda Sanchez, and Toshua Van Zandt, who contributed time and energy to sorting through thousands of Harris County provisional ballots to provide data for this report. Your efforts are commendable and very much appreciated.

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Background

The hostile environment in Texas

Securing the right to vote has long been a struggle in Texas. From 1975 to 2013, the Voting Rights Act was a roadblock to Texas' most blatant attempts to suppress the vote.¹ Since the Supreme Court's decision in *Shelby County v. Holder* gutted Section 5 of the Voting Rights Act (VRA), Texas and other states are no longer required to preclear changes in voting laws with the federal government.² Rather, Texas can now change those laws with impunity and injured parties are forced to bring long, drawn-out lawsuits to demonstrate the discriminatory effect of each new voting law in Texas.³

In the *Shelby County* opinion, Justice Roberts concluded, "Our country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions."⁴ But neither the country, nor Texas, has changed enough to eliminate the conditions the VRA addressed. Sadly, Texas continues to pass legislation with the intent and effect of discriminating against communities of color, with the ultimate result of disenfranchisement. In fact, already in 2017, federal courts in the state have found that Texas intentionally discriminated against Black and Latino voters when it passed the strictest voter ID law in the country and when it gerrymandered several districts in the state in an effort to dilute their voting power.⁵ Texas may eventually have the dubious distinction of being the first state post-*Shelby County* to be "bailed-in" to preclearance requirements under Section 3 of the VRA.⁶

On top of this, it is perhaps no surprise that Texas' archaic voter registration system, which is paper-based and hostile to third-party registration drives, excludes well over four million eligible voters from the democratic process each year.⁷ Texas routinely ranks among the bottom of states for voter turnout. Those shut out of the democratic process are disparately young, poor, and people of color.

The Texas Civil Rights Project (TCRP) launched our new Voting Rights Program in early 2016 to tackle these systemic barriers to fair and accessible elections in Texas.

Pushing back

One of our major projects of 2016 was to spearhead the Texas Election Protection Coalition, working hand-in-hand with grassroots and national partners, including the Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee), the Texas Organizing Project Education Fund (TOP), and Texas Common Cause. Each year, the Lawyers' Committee brings together partners from across the country to

support a national election protection effort, including monitoring hotlines to answer voters' questions, providing voter protection field programs, and using digital tools to connect with voters.⁸ We formed the Texas Election Protection Coalition in order to build upon the national voter protection efforts that the Lawyers' Committee manages so well while providing a distinctly Texas-focused campaign to protect voting rights.

More than six months before the general election, Coalition members began meeting regularly to plan a coordinated response to any reports of problems at the polls. The Coalition created Texas-specific training materials and trained hundreds of legal and grassroots volunteers, many of whom are bilingual, who worked at polling locations and the Texas call center.⁹ Fielding thousands of calls, volunteers resolved voters' concerns, addressed barriers to casting a ballot, and answered routine questions from voters. As described in greater detail below, we also undertook robust public education efforts, including a paid media campaign to explain Texas' voter ID law and promote our Election Protection services.

The Coalition and our volunteers worked tirelessly in 2016. Happily, we saw signs of progress. In Travis County, home to Austin, more than 92% of eligible voters were registered for the presidential election, bringing nationwide recognition.¹⁰ During Early Voting for the Presidential Election, Texas shocked the nation with record-breaking turnout numbers.¹¹ Ultimately, more than 8.9 million Texans cast ballots in 2016, almost 59% of the registered voters in the state.¹² Texas was one of just 21 states where turnout went up in 2016, as compared to 2012.¹³

Moreover, the Texas electorate — which has long been older and whiter than the citizen-age voter population — began to more closely represent the state's demographics. In particular, Texas' Latino population showed new strength. In 2016, the number of eligible Latino voters increased to a projected 5 million, up from 3.2 million in 2000, a 57% increase.¹⁴

Unfortunately, despite these gains in 2016, Texas still had an extremely low percentage of eligible voters actually show up to the polls to vote. In fact, Texas ranked among the worst five states in this regard.¹⁵

Policy changes and continued legal and advocacy efforts will be necessary to keep momentum and change the culture of civic engagement in Texas. TCRP decided to release this report, chronicling the data collected by the Texas Election Protection Coalition during Early Voting and on Election Day, to help move the conversation forward toward real, impactful change. This type of comprehensive election data is hard to come by in Texas and we hope this information will help the public, the press, election officials, and policymakers better recognize the most common barriers to casting a ballot that counts — and start a robust discussion about reform as we look ahead to 2018.

An Overview of Texas Election Protection

By the numbers

The Coalition logged 4,075 incidents from Texas during the 2016 election season, representing thousands of voters who were directly aided by our efforts.

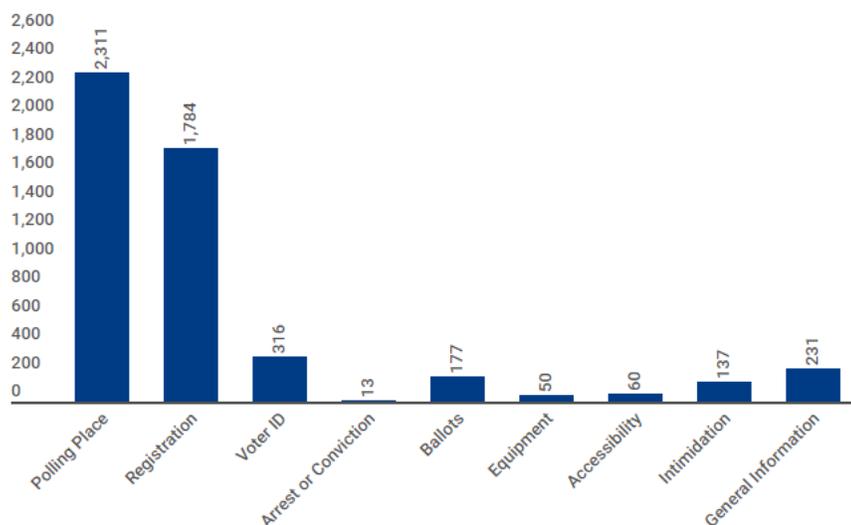
Each incident was logged in a shared database, collected in one of two ways: as a call to one of our three voter hotlines,¹⁶ or as a question directed to one of our field volunteers in Dallas or Houston. Once contacted, we recorded as many details about the incident as possible, including: date and time, voter’s address, voter’s polling location, voting issue type, a detailed narrative of the incident in question, the resolution to the incident, and, when possible, the voter’s race.

In writing this report, we undertook a comprehensive review of the database. Then, we further reviewed each incident, taking care to characterize the nature of each voter contact as fairly as possible.¹⁷

The charts below show a breakdown of reports received by category and in each of the state’s largest counties. Sections below provide a more detailed analysis of several of the most common issues.

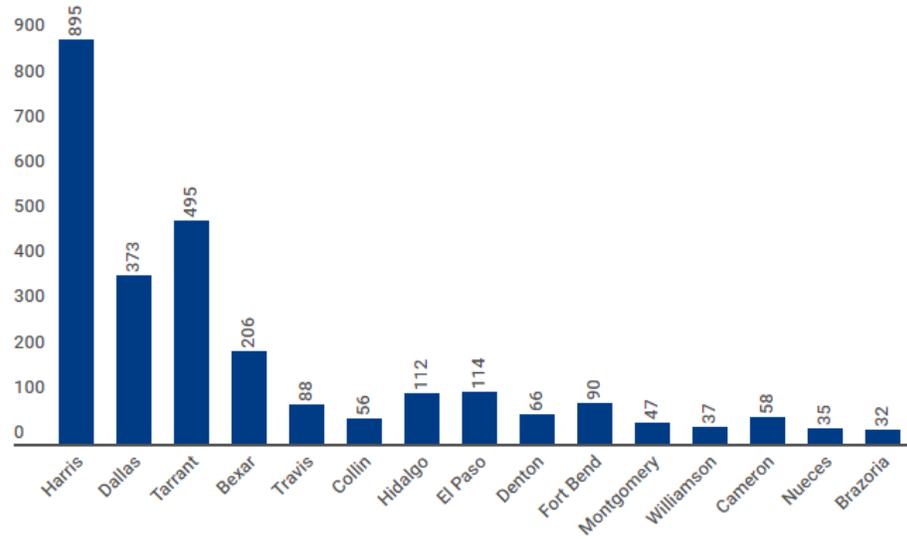
Volunteers were trained to code each call with one of nine designations. Each designation reflects a particular issue a voter might encounter at the polls. For instance, “Polling Place” is used when a voter encountered an issue, such as the polling place was moved by local officials with no indication of the new location, or they inquired about their polling location. “Arrest or Conviction” was used to reference when an individual had a question or concern about their eligibility to vote based on a prior conviction or arrest.¹⁸

Figure 1. Number of incidents logged by type



The Coalition logged 4,075 incidents in Texas during the 2016 election season

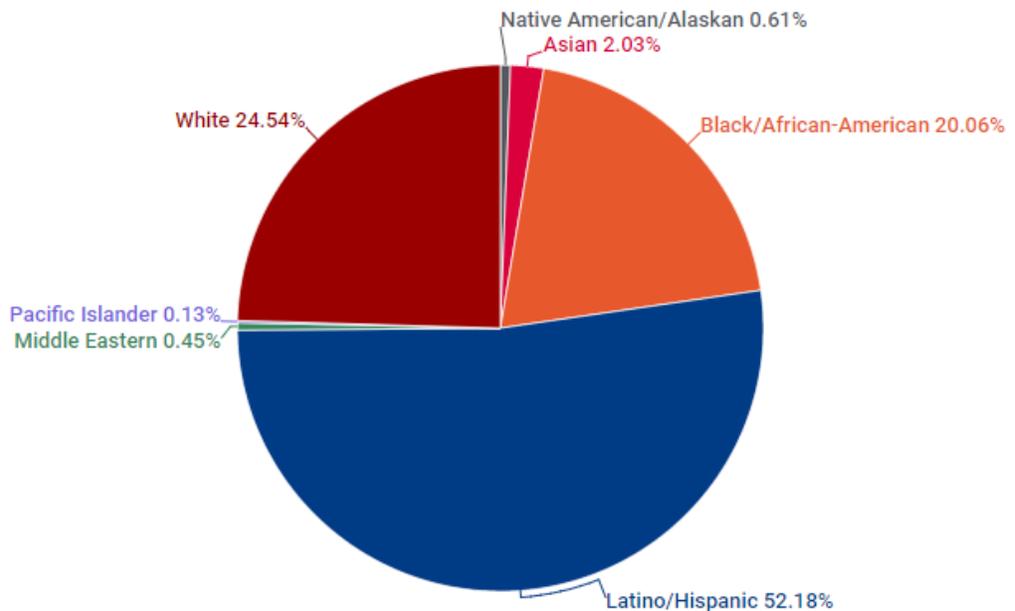
Figure 2. Number of incidents logged in each of the 15 most populous counties in Texas



The Coalition logged 4,075 incidents in Texas during the 2016 election season

We paid special attention to the race and ethnicity of voters who contacted the Coalition. Between historic disenfranchisement and potential language barriers, we wanted to ensure that Black and Latino voters had access to resources that would guarantee their equal opportunity to cast a ballot that counts. Although not all voters disclosed their race or ethnicity to volunteers, those who did helped demonstrate that our hotline provided significant support to communities of color and language minorities.¹⁹

Figure 3. Reported incidents by race or ethnicity as a percent



Of the total incidents logged, 3,101 voters gave us their race or ethnic background

Image 1. Screenshot of the television ad created by TCRP and the Lawyers' Committee



Public Education Efforts

Working closely with our Coalition partners, TCRP launched a public education campaign in the fall of 2016 to explain Texas' voter ID law and promote the Election Protection hotlines.

TCRP and the Lawyers' Committee launched a paid media campaign that ran from November 1, 2016 to November 8, 2016, after voting was already underway, utilizing the Texas Association of Broadcasters' Public Education Partnership program for nonprofit and government agencies. The campaign included English- and Spanish-language radio and TV spots in all Texas media markets and targeted digital video ads. The public campaign delivered more than 1.5 million impressions to both general and targeted Hispanic and African-American audiences across the state.²⁰

In addition to the paid campaign, TCRP bolstered the reach of our educational efforts through our in-house communications team. Through releasing ten press advisories and hosting a press call with almost 50 national and statewide press participants, the Coalition's work was highlighted by at least 900 in-state media sources from October 24, 2016, the first day of Early Voting, through Election Day. Our social media efforts reached over two million people with information and resources about Election Protection.

The Problems Texans Faced at the Polls: A Closer Look

Within each category, there were a wide variety of incidents reported to the Coalition. The majority of voters who contacted the hotline or our volunteers simply sought answers to routine questions such as confirming their polling location or voter registration status, but others expressed more serious concerns. As the Coalition identified problematic trends or issues requiring immediate response, team members were able to escalate the calls to reach our legal boiler rooms, located in Houston and Dallas, as well as to TCRP attorneys across the state. Then we were able to intervene in real time. Below are examples of some of the most pressing issues Coalition members handled in 2016.

Problems with voter registration

Texas' archaic and outdated voter registration system creates barriers to casting a ballot well before a voter ever arrives at the polls. The notable increases in voter registration in Texas in 2016 came in spite of this system.²¹ Moreover, even with the progress made, we estimate that 4.4 million eligible Texans were excluded from the 2016 presidential election.²² That's more than the population of 25 states and Washington, D.C.

Figure 4. Number of eligible Texans excluded from the 2016 presidential election vs. population of 25 states and the District of Columbia

Eligible Texans excluded from the 2016 presidential election 4,400,000	Oklahoma 3,850,568	Mississippi 2,991,207	Nevada 2,790,136	New Mexico 2,085,287	Nebraska 1,868,516	West Virginia 1,854,304	
	Kentucky 4,395,295	Connecticut 3,596,080	Arkansas 2,959,373	Idaho 1,612,136	New Hampshire 1,323,459	Rhode Island 1,051,511	Montana 1,015,165
Utah 2,900,872			Hawaii 1,404,054				
Oregon 3,930,065	Iowa 3,090,416	Kansas 2,893,957	Maine 1,328,302	South Dakota 844,877	North Dakota 723,393	Vermont 626,630	
				Alaska 735,132	District of Columbia 646,449	Wyoming 582,658	

Background on Texas' voter registration issues

Helping Texans register to vote is an endeavor fraught with peril.

In Texas, it is a misdemeanor offense to help register someone to vote without becoming a certified Volunteer Deputy Registrar (VDR). Meaning, average Texas voters cannot help their fellow Texans register to vote unless they are formally trained through a time consuming process. Furthermore, even certified VDRs are only allowed to register folks in the county in which they were trained — it is illegal to help someone from outside of that specific county to register to vote. This greatly hinders voter registration drive efforts, which disproportionately affects racial minorities and young people.²³ As well-known author and journalist Ari Berman has concluded, “Texas’ Voter-Registration laws are straight out of the Jim Crow Playbook.”²⁴

Texas does not comply with federal and state voter registration laws.

“Motor Voter” Law:

The Department of Public Safety (DPS) and the Secretary of State refuse to comply with a decades-old federal law (the National Voter Registration Act (NVRA) or “motor voter law”) aimed at increasing the number of people on the voter registration rolls. The law requires driver license entities to provide voter registration services to individuals who transact with those entities. Texas wholly fails to comply with this law for online transactions with DPS. This failure alone affects over a million potential voters each year.²⁵

In early 2016, TCRP and pro bono counsel filed a lawsuit in an effort to force the state into compliance. Recently, in an early-in-the-case victory for the plaintiffs and other Texas voters, the Court denied the state’s motion to dismiss the case, finding that the state’s current procedures are “inconsistent with the plain language of the NVRA,” and refusing to adopt “circular and self-defeating” interpretations of the NVRA offered by the state.²⁶

High School Voter Registration Law:

Even where the rare Texas law to increase voter participation exists, it is routinely ignored. Under state law, Texas public and private high schools must offer voter registration opportunities to eligible students twice per year. Analysis provided by the Lawyers’ Committee and TCRP demonstrates less than 15% of high schools requested voter registration forms for use in 2016. Failing to comply with this law exacerbates the challenges of helping young people register to vote and motivating them to participate in the electoral process. TCRP continues to work with a network of partners and school officials at the local and state level to make progress on this front.

Not surprisingly, 43.8 percent of the total calls to the hotline involved voter registration inquiries. The majority of calls were from voters attempting to confirm their registration status. However, nearly 400 inquiries were from voters who were unnecessarily confused because they had trouble determining their registration status or had missed the voter registration deadline. Noteworthy examples include:

- ▶ Hundreds of callers could not be found on Texas’ voter rolls due to slight discrepancies in names or addresses. In many instances, the voters had to call the county directly to determine whether they were registered, adding an extra step to the voting process.

- ▶ Dozens of Texans called for help because they believed they were registered, but when they arrived at the polls, they were turned away because they were not on the rolls. Issues contributing to this problem included:
 - Voters registered to vote at DPS but showed up as not registered on the rolls; and
 - Voters registered to vote just prior to the voter registration deadline but the “effective registration date” was for a date later than Election Day.

- ▶ Twenty-four would-be voters called to report that they attempted to register specifically at DPS while obtaining, renewing, or changing the address on their driver’s license, but could not find themselves on the Secretary of State’s list of registered voters.

The voter registration issues encountered by Texas voters during the 2016 election highlight the need for modernization of Texas’ voter registration laws, which TCRP promotes through legal advocacy in and out of the courtroom.

Confusion over Photo ID

When Texas implemented its restrictive voter ID law in 2013, an estimated 600,000 registered Texans immediately became unable to vote because they lacked sufficient ID.²⁷ In July of 2016, the Court of Appeals for the Fifth Circuit held that the law discriminated against Black and Latino voters, and on August 10, 2016, less than two months before Election Day, the court issued an order with the new requirements for voter ID.²⁸ Although the new rules were a vast improvement over the voter ID law as enacted, the change in requirements so close to the election left many voters and election officials confused about what requirements were necessary in order to vote during the 2016 general election. This confusion was exacerbated by local and state officials’ delay in providing accurate information to voters, including allowing polling locations to post inaccurate signage regarding the voter ID required to cast a ballot.²⁹

Unsurprisingly, as soon as Early Voting began, there were rampant reports of confusion concerning the recent court-ordered changes to Texas’ strict photo ID requirement.³⁰ Nearly 13 percent of problems reported to the Coalition involved photo ID, with 123 reports during Early Voting and 186 on Election Day.

“ In the first two days of voting, reports indicated that multiple polling locations in several counties...were posting misleading or inaccurate information suggesting that a photo ID was still necessary to vote, without exception. ”

In the first two days of Early Voting, reports indicated that multiple polling locations in several counties —including Bexar, Dallas, Denton, El Paso, Hays, McLennan, and Travis Counties, at a minimum — were posting misleading or inaccurate information suggesting that a photo ID was still necessary to vote, without exception. In fact, the new rules create a clear safety net: any voter who lacks one of the seven accepted IDs and cannot reasonably obtain one may instead sign a declaration and show a non-photo ID, like a utility bill or bank statement, before voting.³¹ Whether intentional or an oversight due to the last-minute changes to the law, the inaccurate signage was cause for concern and required immediate action to eliminate additional confusion.

TCRP sent a letter to the Secretary of State demanding that he take immediate steps to ensure accurate information about the required photo IDs was provided to voters.³² The Secretary of State responded by promptly sending an email to county officials regarding the correct voter ID requirements.³³

Ultimately, the majority of incidents reported to the Coalition related to the photo ID law were from voters who overheard poll workers telling voters that a photo ID would be required to vote. While a voter is required to show an accepted photo ID if he or she possess one, this blanket statement is overly simplified. Several voters contacted the Coalition to express concern that this these types of statements could dissuade those who were uninformed about the latest change in the law.

The inaccurate signage and misinformation combined with apparent failures in poll worker training resulted in at least several cases where voters were almost wrongly turned away. Here are some of the stories we heard:

- ▶ In Harris County, a man who did not possess a photo ID brought his voter registration card and a utility bill to the polls. Poll workers initially turned this man away without the opportunity to sign a reasonable impediment declaration, but an Election Protection volunteer accompanied the voter back to the polls, where he was able to cast a ballot.
- ▶ In Dallas County, a veteran was nearly turned away at the polls for attempting to use his Veterans Affairs ID, despite the Veterans Affairs ID being one of the accepted forms of identification. After he insisted, the poll workers allowed him to vote.
- ▶ At least one election judge in Travis County flouted the new ID requirements when he/she required voters to cast a provisional ballot when the voter lacked photo ID and requested a reasonable impediment form, creating long lines and delays.

The court's recent finding that the state intentionally discriminated against minority voters when it enacted the voter ID law and current efforts by the state to attach felony criminal liability to mistakes in signing a reasonable impediment declaration demonstrate that the fight to ensure access to the polls for all eligible voters is far from over.³⁴

Changes in polling locations

As noted above, since the gutting of Section 5 of the Voting Rights Act in 2013, Texas counties are no longer required to seek federal preclearance before making changes to election laws. The 2016 election was the first presidential election without the full protection of the Voting Rights Act. According to a report by the Leadership Conference on Civil and Human Rights, Texas has closed over 403 polling locations — more than any other state — since the removal of preclearance.³⁵ This left a shortage of polling locations on Election Day.³⁶

Moreover, without the protections of the Voting Rights Act, polling locations are subject to change up to 72 hours before the polls open on Election Day, under Texas state law.³⁷ The Texas Election Code requires that notice be posted on the county website and, if the location has changed since the preceding election, election officials should post a notice at the previous location, if possible.³⁸

The Coalition received calls indicating some counties did not adequately comply with notice requirements. Common sense dictates that eliminating long-standing polling locations, especially at the last minute, disproportionately affects elderly and low-income voters who have been voting at the same location for many years, do not have access to the internet, and/or lack easy access to transportation to the new location. Notably, polling location issues increased from 19% of calls in 2012 to 57% of calls from voters in 2016, providing further evidence that lack of preclearance for changes in voting laws in a post-*Shelby County* Texas has had drastic effects.

The following calls came in on Election Day morning when confused voters arrived to a polling place, only to discover it was empty and locked.

- ▶ One Election Protection volunteer was assigned to visit Cypress Falls High School in Harris County first thing in the morning on November 8, 2016. This location was listed as an Election Day polling location as of the last week of October 2016. When he arrived, there was no sign of election workers, but also no sign directing voters elsewhere. The Coalition determined the location had been moved and we posted a sign directing voters to the new location.
- ▶ Five Harris County voters contacted the hotline to report that Election Day polling locations were moved with little or no notice. In some instances, the only notice was a piece of paper posted on a wall or a tree stating that the station was closed without offering any other information. Most of the calls came from predominately black areas of Houston, the nation's fourth-largest city.

Post-*Shelby County*, Texas is empowered to close or change polling locations without concern for the effects on voters. The Coalition's efforts to combat confusion and prevent eligible voters from disenfranchisement because of polling location issues will continue as we look ahead to elections in 2018.

“ Election Day polling locations were moved with little or no notice. In some instances, the only notice was a piece of paper posted on a wall or a tree stating that the station was closed without offering any other information. Most of the calls came from predominately black areas of Houston, the nation’s fourth-largest city. ”

Long lines

Long lines were reported in multiple locations in Texas throughout the 2016 election season. For instance, during Early Voting, wait times exceeding an hour were reported in Bexar, Harris, Nueces, and Denton counties²⁹ and on Election Day long wait times were reported in Bexar, Brazoria, Dallas, Denton, Fort Bend, Harris, McLennan, Tarrant, and Travis counties. Incredibly, on Election Day, voters at Prairie View A&M University, a historically black university northwest of Houston with a horrible history of voter suppression by local officials, had to wait in excess of three hours in order to cast a ballot.⁴⁰

The causes for long wait times in 2016, and the reactions from poll workers, were troubling.

- ▶ Many voters reported wait times in excess of one hour noting that there were too few poll workers to process voters or that multiple machines were either inoperable or not being utilized.
- ▶ In Harris County, a voter reported that poll workers were dividing voters in line alphabetically, which caused delays. Sometimes one line would be very short while the others were very long, but no alternatives were provided.
- ▶ In Denton County, a voter reported that on Election Day in a majority minority district, voters were forced to wait in a long line in the rain because of equipment problems.

A long wait time at the polls is not just an inconvenience to voters, it is “an indication of the underlying health of our democracy,” according to Harvard University political scientist Stephen Pettigrew.⁴¹ Research demonstrates that long lines disproportionately disenfranchise working-class adults, low-income parents, and people of color because the cost of waiting tends to be more burdensome for these populations.⁴² Unsurprisingly, these communities, especially communities of color, generally have longer wait times at their polling stations, with voters of color across the country waiting up to twice as long as white voters just to cast a ballot.⁴³

“ Incredibly, on Election Day, voters at Prairie View A&M University, a historically black university northwest of Houston with a horrible history of voter suppression by local officials, had to wait in excess of three hours in order to cast a ballot. ”

These findings are in line with the incidents reported above, and are particularly alarming in Texas because the recent photo ID law has disproportionately disenfranchised these same groups of voters.⁴⁴

People who experience long polling lines are significantly less likely to vote in subsequent elections,⁴⁵ because voters’ negative experiences dramatically raise the barriers to civic participation. With Texas’ already rock-bottom participation rates, we must reduce wait times in 2018.

Voter Intimidation

Sadly, there were scattered reports of voter intimidation across Texas on Election Day. Unfortunately, this is not a new experience—voter intimidation has a troubling history in the United States and in Texas in particular.⁴⁶

- ▶ In Spring, Texas, an armed man intimidated voters with a sign that read “Faggots Vote Democrat.” He was eventually handcuffed after he crossed the 100-foot line over which campaigning is prohibited.
- ▶ Over 10 callers reported feeling similarly intimidated when fellow voters wore candidate T-shirts and hung out near the polling line making loud and aggressive comments against opposing candidates.
- ▶ In Fort Bend, Texas, a voter felt intimidated because a policeman wore a weapon on his hip.
- ▶ Police officers reportedly engaged in intimidating behavior, such as pacing up and down voter lines or taking notes about voters in multiple counties including Denton and Navarro.
- ▶ In Bexar County, two uniformed San Antonio Police Department officers were stationed at a polling location, which at least one voter felt was intimidating.

It is clear voter intimidation tactics are alive, well, and succeeding in Texas. This, coupled with Texas’ outdated voting laws, contribute to the non-voting culture in Texas.

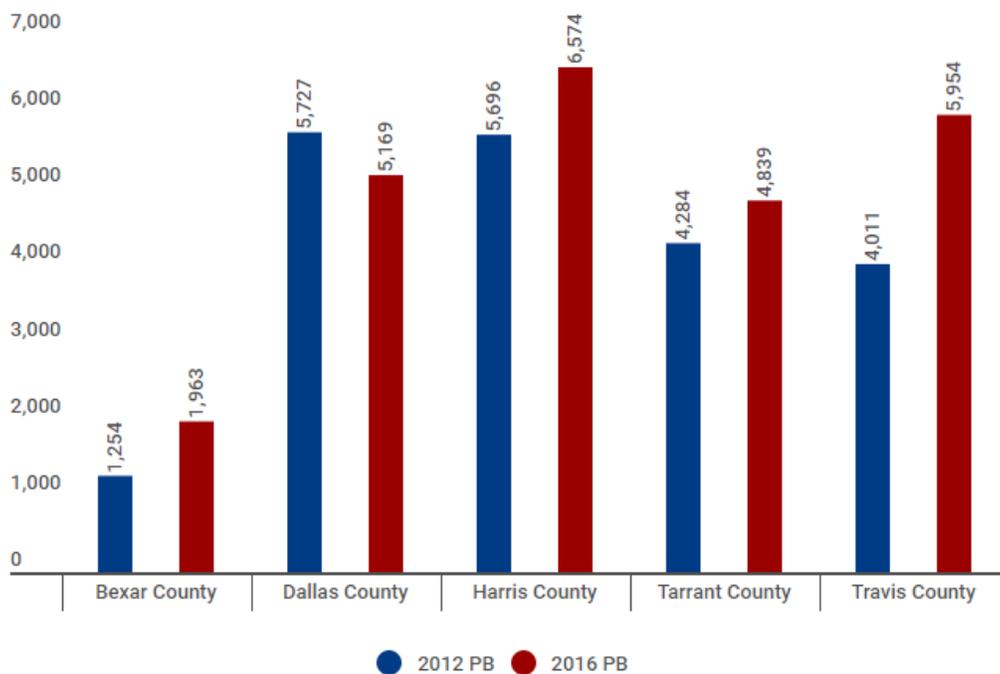
Provisional Ballot practices summary

Since 2002, federal law has required that whenever a voter’s eligibility cannot be determined at the polls, election officials must issue a provisional ballot to record the voter’s preferences until the voter’s eligibility can be determined after the election. Thus, once a provisional ballot is cast, election officials investigate and determine whether that vote should be counted. Since provisional balloting practices are largely governed by state law, it is not uncommon to see disparities between states in the rates of issuing and counting provisional ballots. But within a state, rates should be consistent, because — of course — state law should be applied in a consistent manner.

Even though provisional ballots provide a helpful window into problems voters experience at the polls, the Secretary of State’s office does not provide any public compilation or analysis of this data. To gain a more complete understanding of voters’ experiences in the 2016 election, TCRP requested provisional ballot data directly from several of the largest Texas counties and compared that data against similar information from the 2012 election.

The results are striking. The overall number of provisional ballots used in Texas increased during the 2016 Presidential Election as compared to 2012.⁴⁷ In the five largest counties, four issued significantly more provisional ballots in 2016 than during the 2012 presidential election.

Figure 5. Number of provisional ballots used in Texas’ most populous counties for the 2012 and 2016 presidential elections



This increase cannot be explained by population growth alone. The total provisional ballot increase, from 2012 to 2016, was over 14 percent. The rate of Texas population growth, by contrast, was an estimated eight percent for the same four-year span.⁴⁸

The charts below detail the reasons why provisional ballots (abbreviated as “PB”) were cast and whether they were counted in the largest counties in 2012 and in 2016.

Table 1. Provisional ballot rejections for the 2012 presidential election in Texas’ five most populous counties

County	Total Voters	Total PB Rejected for Registration Problems	Percentage of PB Rejected for Registration Problems	Total PB Rejected for Lack of Acceptable ID	Percentage of PB Rejected for Lack of Acceptable ID	Total PB Rejected for Wrong Precinct	Percentage of PB Rejected for Wrong Precinct
Bexar	520,288	775	61.8%	2	.16%	161	12.84%
Dallas	714,387	3275	57.19%	59*	1.03%	738	12.87%
Harris	1,204,167	3585	77.73%	0	0%	1080	23.41%
Tarrant	618,738	2904	67.55%	4	.09%	1914	44.52%
Travis	391,708	2875	66.88%	--**	--**	884	20.56%

* This number is unusually high and warrants further investigation given that Texas’ strict voter ID law was not in effect at the time.

** For the 2012 election, Travis county did not disaggregate data on PB rejected for lack of acceptable ID.

NOTE: Some provisional ballots were rejected for multiple reasons and distinct reasons have been counted in each applicable column.

Table 2. Provisional ballot rejections for the 2016 presidential election in Texas’ five most populous counties

County	Total Voters	Total PB Rejected for Registration Problems	Percentage of PB Rejected for Registration Problems	Total PB Rejected for Lack of Acceptable ID	Percentage of PB Rejected for Lack of Acceptable ID	Total PB Rejected for Wrong Precinct	Percentage of PB Rejected for Wrong Precinct
Bexar	598,691	1326	67.55%	15	.76%	401	20.43%
Dallas	770,590	2301	44.52%	18	.35%	416	8.05%
Harris	1,338,898	3948	75.14%	172	3.27%	1313	25%
Tarrant	682,740	3570	73.78%	48	.99%	680	14.05%
Travis	477,588	4287	72%	45	.76%	0	0.0%

NOTE: Some provisional ballots were rejected for multiple reasons and distinct reasons have been counted in each applicable column.

While a comprehensive analysis of this data is outside the scope of this report, a couple of trends are clear:

- ▶ Importantly and as expected, since shifting from Election Day mandatory polling locations to vote centers (where voters may vote at any polling place), Travis County no longer rejects provisional ballots based on use of the incorrect precinct.
- ▶ There was an overall increase in registration-related rejections of provisional ballots.
- ▶ There was a sizeable increase in rejections of provisional ballots based on lack of acceptable voter ID.
- ▶ There was an increase in polling place rejections in Harris County.

In addition to this data, the Election Protection Coalition received a total of 84 reports related to provisional ballot concerns. Two reports are of particular interest.

- ▶ In Harris County, an Election Protection volunteer witnessed that multiple voters were redirected to Walker Elementary School after being turned away from various locations for being at the wrong polling place. The election judge at Walker Elementary School reported that they were issuing a high number of provisional ballots for this reason. Election judges at original locations were contacted, and confirmed they would take voters inside to confirm the voters' correct polling location before sending them elsewhere, as required by state standards.
- ▶ Also in Harris County, an election judge at Chancellor Elementary School reported issuing a higher number of provisional ballots than in past years, but was unsure of the reason. She proactively called the Secretary of State's office to confirm that voters were not on the rolls before issuing provisional ballots.

Clearly, there is much more to understand about provisional ballot practices in Texas. We anticipate further investigation of this topic, and will do our best to continue to reduce the number of provisional ballots that are rejected.

TCRP's Plans to Take Back the Vote

As evidenced by the numerous examples above, Texans encountered many barriers to voting in 2016. TCRP will continue its efforts to combat those barriers through litigation, advocacy, and additional election protection, both in and out of the courtroom.⁴⁹

Training for grassroots organizing groups

Today, with systemic registration failures at institutions like DPS, and laws that criminalize voter registration drives, Texas excludes millions of eligible voters. As noted voting rights author Ari Berman recently reported, the results are plain: National groups have “been forced to abandon Texas” and local groups must overcome “draconian” legal obstacles and all-too-frequent investigations by governmental officials. Indeed, the following are examples of these hurdles:

- ▶ After a civic engagement group called Houston Votes submitted 25,000 voter-registration applications in 2010, mostly from low-income people of color, activists accused the group of voter fraud. Then—Attorney General Greg Abbott, now the state’s governor, sent agents in bulletproof vests to raid the group’s office and destroy its computers and records. Charges were never filed, but Houston Votes was forced to shut down.⁵⁰
- ▶ In 2014, the grassroots organizing group Battleground Texas was twice targeted by James O’Keefe, a conservative political activist, — once, with the public endorsement of Harris County Clerk Stan Stanart. O’Keefe disguised himself as a Battleground volunteer while surreptitiously filming actual volunteers providing voter registration services. A criminal complaint, based on O’Keefe’s video, was filed against Battleground Texas, alleging violations of Texas election law. The court dismissed the complaint, after special prosecutors determined the video made by O’Keefe was, “little more than a canard and political disinformation.”⁵¹

In the works at TCRP is a project designed to educate leaders of community groups about Texas’ voter registration laws and the groups’ First Amendment rights to participate in civic engagement activities. Our aim is that, once community groups are fully informed of their rights, they can take proper precautions to run effective voter registration efforts while guarding against private or public harassment. Importantly, the training materials we will provide will include general “Know Your Rights” handouts, in English and Spanish, for organizational leaders to share with their staff and volunteers.

Preparing for broadening the Coalition's efforts in 2018

In 2016, the Coalition focused its field work (volunteers at polling locations) in Harris and Dallas counties, while the hotlines were open to voters across the entire state. In 2018, TCRP and its partners hope to have a larger footprint, training even more legal volunteers to cover a larger swath of Texas and coordinating with even more grassroots partners on the ground. Ultimately, our aim is to expand our ability to provide real-time solutions to thousands of voters across the state, while also expanding the election data we collect and analyze.

Advocating for common sense reforms

There is no silver bullet to change the culture of voting in Texas. But as voting rights advocates look to 2018, there are concrete steps we can take to increase participation. Most obviously, Texas needs to modernize its archaic voter registration laws; committing to comply with already-existing laws regarding voter registration would be a huge step in the right direction. At the county level, moving to Election Day vote centers like Travis County, while maintaining or increasing the number of polling locations in convenient locations, is another common sense reform. We must also reject the notion that long lines are an inevitable part of the system and work to reduce wait times. We will need to think seriously about polling place efficiency, and invest in often over-looked aspects of election administration like voting technology and poll worker training. Lastly, providing robust education efforts to ensure Texas voters understand the current requirements to vote is essential to make the process easier and fairer for individuals across the state.

TCRP hopes that elected officials and grassroots advocates will use this report to improve the experience of voting in Texas. We look forward to working with you to do so.

Endnotes

- 1 See Ari Berman, *The Lost Promise of the Voting Rights Act*, THE ATLANTIC (Aug. 15, 2015), <https://www.theatlantic.com/politics/archive/2015/08/give-us-the-ballot-expanding-the-voting-rights-act/399128/>.
- 2 See Adam Liptak, *Supreme Court Invalidates Key Part of Voting Rights Act*, THE NEW YORK TIMES (June 25, 2013), <http://www.nytimes.com/2013/06/26/us/supreme-court-ruling.html>.
- 3 *Id.*
- 4 *Shelby Cnty, Ala. v. Holder*, 133 S. Ct. 2612 (2013).
- 5 See Jim Malewitz, *Texas Intentionally Discriminated with 2011 Voter ID Law, Judge Rules (Again)*, THE TEXAS TRIBUNE (Apr. 10, 2017), <https://www.texastribune.org/2017/04/10/texas-intentionally-discriminated-2011-voter-id-law-judge-rules-again/>; Lindsay Gibbs, *District Court Rules Texas Gerrymandering Unconstitutional due to 'Intentional Discrimination'*, THINK PROGRESS (Mar. 11, 2017), <https://thinkprogress.org/texas-gerrymandering-unconstitutional-intentional-discrimination-59085abc17a0>.
- 6 Ross Ramsey, *Analysis: Texas Could Find Itself Back in the Voting Rights Penalty Box*, THE TEXAS TRIBUNE (Mar. 15, 2017), <https://www.texastribune.org/2017/03/15/analysis-texas-could-find-itself-back-voting-rights-penalty-box/>.
- 7 As of 2016, there were approximately 17.52 million citizen, voting age Texans, and 15.02 million on the voter registration rolls, leaving a gap of roughly 2.50 million voters. *Texas Has a Record-Breaking 15 Million Registered Voters*, TEX. SECY OF STATE (Oct. 13, 2016), available at <http://www.sos.state.tx.us/about/newsreleases/2016/101316.shtml>; Gustavo Lopez & Renee Stepler, *Latinos in the 2016 Election: Texas*, PEW RESEARCH CENTER (Jan. 19, 2016), available at <http://www.pewhispanic.org/fact-sheets/2016-state-election-fact-sheets/latinos-in-the-2016-election-texas/>; *Turnout and Voter Registration Figures (1970-current)*, TEX. SECY OF STATE, available at <http://www.sos.state.tx.us/elections/historical/70-92.shtml>. In addition, respected research from the Pew Charitable Trust indicates that, nationally, one in eight voter registrations is inaccurate or invalid, meaning that 1.88 million existing registration records are likely unreliable. *Inaccurate, Costly, and Inefficient: Evidence That America's Voter Registration System Needs an Upgrade*, PEW CTR. ON THE STATES (Feb. 2012), available at http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2012/pewup-gradingvoterregistrationpdf.pdf. Given Texas' refusal to adopt online voter registration, failure to adhere with the "motor voter" mandates of the National Voter Registration Act (NVRA) and its crackdown on voter registration drives, Texas' rolls are at least as bad as the national average -- and probably worse.
- 8 *Election Protection-You Have the Right to Vote* (2008-2017), LAWYERS' COMM. FOR CIVIL RIGHTS UNDER LAW, <http://www.866ourvote.org/about>.
- 9 TCRP trained ninety-nine legal volunteers for election protection. That number does not include all of the volunteers trained by TCRP's Coalition partners.
- 10 See Joshua Kleinstreuer, *Travis County Tops 92% Voter Registration, Sets New Record*, TWCNEWS (Nov. 3, 2016), <http://www.twcnews.com/tx/austin/news/2016/11/3/travis-county-tops-92--voter-registration--sets-new-record.html>.
- 11 Bobby Blanchard, *Early Voting is Breaking Records in Texas' 10 Biggest Counties*, THE TEXAS TRIBUNE (Oct. 25, 2016), <https://www.texastribune.org/2016/10/25/early-voting-breaking-records-texas-10-biggest-counties/>.
- 12 Brandon Gray, *Record Turnout for Texas Voters, Central Texas Most Active for Political Advertising*, KCEN (Nov. 9, 2016), <http://www.kcentv.com/news/local/record-turnout-for-texas-voters-central-texas-most-active-for-political-advertising/350542906>.
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- 14 *Millennials Make Up Almost Half of Latino Eligible Voters in 2016*, PEW RESEARCH CTR. (Jan. 19, 2016), available at <http://www.pewhispanic.org/2016/01/19/looking-forward-to-2016-the-changing-latino-electorate/>.
- 15 *America Goes to the Polls, A Report on Voter Turnout, Executive Summary*, NONPROFIT VOTE, available at <http://www.nonprofitvote.org/america-goes-to-the-polls-2016/exec-summary/>.
- 16 The Lawyers' Committee organizes with other groups to provide election protection hotlines, including (1) an English language hotline: 866-OUR-VOTE (led by the Lawyers' Committee for Civil Rights Under Law); (2) a Spanish language hotline: 888-VE-Y-VOTA (led by the NALEO Educational Fund); and (3) an Asian language hotline: 888-API-VOTE (led by APIAVote & Asian Americans Advancing Justice-AAJC).
- 17 Although this report provides an important look at issues encountered by Texas voters during the 2016 election, it is not a comprehensive review of all voting issues in Texas. Since much of the data was provided by voters' and volunteers' descriptions, it almost certainly does not encompass the issues so many others encountered.
- 18 Since hundreds to thousands of voters may use a single polling location, an issue encountered in just one polling location could create a harmful effect for hundreds, if not thousands, of voters.
- 19 Importantly, the hotline provides assistance to Texas voters in multiple language. See *Supra* note 16.
- 20 Voter ID Education Campaign Summary, Texas Association of Broadcasters, (Dec. 15, 2016)(on file with authors).
- 21 See Mimi Marziani, *Texas still has a long way to get it right on voter registration*, TRIBTALK: A PUBLICATION OF THE TEXAS TRIBUNE (Oct. 25, 2016), <https://www.tribtalk.org/2016/10/25/texas-still-has-a-long-way-to-get-it-right-on-voter-registration/>.
- 22 See *supra* note 7.
- 23 As we know from other states, racial minorities and young people are much more likely to take advantage and register during coordinated drives. See Wendy R. Weiser, *Voter Suppression: How Bad? (Pretty Bad)*, THE AMERICAN PROSPECT (Oct. 1, 2014), <http://prospect.org/article/22-states-wave-new-voting-restrictions-threatens-shift-outcomes-tight-races>.
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- 25 *Stringer v. Pablos*, Gipson Dep. 141:8-14, Mar. 7, 2017 (on file with authors).
- 26 *Stringer v. Pablos*, Order dated Mar. 31, 2017, 14-15.

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- 27 Ed Pilkington, *Texas Rushes Ahead with Voter ID Law after Supreme Court Decision*, THE GUARDIAN (June 25, 2013), <https://www.theguardian.com/world/2013/jun/25/texas-voter-id-supreme-court-decision>; *Veasey v. Perry*, 71 F. Supp. 3d 627, 633 (S.D. Tex. 2014), *aff'd in part, vacated in part, remanded sub nom. Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015), *on reh'g en banc*, 830 F.3d 216 (5th Cir. 2016), and *aff'd in part, vacated in part, rev'd in part sub nom. Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).
- 28 *Veasey v. Abbott*, 830 F.3d 216, 265 (5th Cir. 2016), (en banc); Order Regarding Agreed Interim Plan for Elections, Aug. 10, 2016.
- 29 See John Salazar, *Incorrect Signs About ID Law Greet Voters Around Bexar County*, SPECTRUM NEWS SAN ANTONIO (Oct. 25, 2016), <http://www.twcnews.com/tx/san-antonio/news/2016/10/25/incorrect-signs-about-id-law-greet-voters-around-bexar-county.html>.
- 30 Andrew Schneider, *Confusion Over Voter ID Spreads as Early Voting Continues*, HOUSTON PUB MEDIA (Oct. 27, 2016), <https://www.houstonpublicmedia.org/articles/news/2016/10/27/175203/confusion-over-voter-id-spreads-as-early-voting-continues/>.
- 31 *Veasey v. Abbott*, Order Regarding Agreed Interim Plan for Elections, dated Aug. 10, 2016, 1-2.
- 32 Letter from Mimi Marziani to Carlos H. Cascos, Tex. Sec. of State, (Oct. 25, 2016)(on file with authors).
- 33 Alex Samuels and Jim Malewitz, *Texas Civil Rights Advocates Air Concerns about Voter ID Issues*, THE TEXAS TRIBUNE (Oct. 28, 2016), <https://www.texastribune.org/2016/10/28/early-voting-issues-texas/>.
- 34 Mark Joseph Stern, *Federal Judge: Texas Designed Its Voter ID Law to Discriminate Against Minorities*, SLATE (Apr. 11, 2017), http://www.slate.com/blogs/the_slate_est/2017/04/11/federal_judge_rules_texas_voter_id_law_intentionally_discriminates_against.html; Jim Malewitz, *Texas Republicans Pitch New Voter ID Law*, THE TEXAS TRIBUNE (Feb. 21, 2017), <https://www.texastribune.org/2017/02/21/texas-republicans-pitch-new-voter-id-law/>.
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- 37 Tex. Elec. Code § 43.061(b)(2).
- 38 Tex. Elec. Code §§ 43.061(b)(2), 43.062.
- 39 See Jim Malewitz, *In Some Texas Counties, Long Lines Complicate Early Voting*, THE TEXAS TRIBUNE (Oct. 24, 2016), <https://www.texastribune.org/2016/10/24/some-texas-counties-long-lines-complicate-early-vo/>.
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- 41 See Emily Badger, *Why Long Voting Lines Could Have Long-Term Consequences*, N.Y. TIMES (Nov. 8, 2016), <http://www.nytimes.com/2016/11/09/upshot/why-long-voting-lines-today-could-have-long-term-consequences.html>.
- 42 Christopher Famighetti, *Long Voting Lines: Explained*, Brennan Center for Justice (Nov. 4, 2016), <https://www.brennancenter.org/analysis/long-voting-lines-explained>.
- 43 Badger, *supra* note 41.
- 44 *Veasey*, 830 F.3d at 265.
- 45 Badger, *supra* note 41.
- 46 See generally Ben Cady & Tom Glazer, *Voters Strike Back: Litigating Against Modern Voter Intimidation*, N.Y.U. REV. L. & SOC. CHANGE, available at <https://socialchangenyu.com/volume-39-issue-2/voters-strike-back-litigating-against-modern-voter-intimidation/>.
- 47 Federal law requires election workers to provide every voter whose eligibility cannot be determined at the polls the opportunity to cast a provisional ballot. No voter should be turned away without the chance to vote provisionally.
- 48 Compare Texas Department of State Health Services estimates for Texas population in 2012 and projection for 2016; <https://www.dshs.texas.gov/chs/popdat/ST2012e.shtm> and <https://www.dshs.texas.gov/chs/popdat/ST2016p.shtm>.
- 49 What is not described in-depth in this report are the thousands of callers who had questions about the voting process and how to navigate it. We also cannot accurately capture the many voters who did not have the knowledge or agency to contact Election Protection. From voter registration procedures to the increased use of Vote Centers to the still-changing landscape of voter ID requirements, this State can and must do a better job of educating its residents and modernizing the voting process so that voting becomes easier, not harder.
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- 51 *supra* Note 24; John W. Gonzalez, *Court Rejects Complaint Against Battleground Texas*, SAN ANTONIO EXPRESS-NEWS (Apr. 7, 2014), <http://www.expressnews.com/news/local/politics/article/Court-rejects-complaint-against-Battleground-Texas-5383666.php>.



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