

# Voting Rights in Texas



An Advisory Memorandum of the  
Texas Advisory Committee to the  
U.S. Commission on Civil Rights

July 2018

## **Advisory Committees to the U.S. Commission on Civil Rights**

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

*Letter of Transmittal*

**Texas Advisory Committee to the  
U.S. Commission on Civil Rights**

The Texas Advisory Committee to the U.S. Commission on Civil Rights (Committee) submits this advisory memorandum regarding potential barriers to voting in the state of Texas that may have a discriminatory impact on voters based on race, color, sex, disability status, and national origin. The Committee submits this advisory memorandum as part of its responsibility to study and report on voting rights concerns and to supplement the U.S. Commission on Civil Rights' 2018 statutory enforcement report. The contents of this advisory memorandum are primarily based on testimony received during a public meeting on March 13, 2018, held in Houston.

This advisory memorandum begins with a brief background of state-specific voting rights issues, identifies primary findings as they emerged from testimony, and recommendations for addressing related civil rights concerns directed to the U.S. Department of Justice, Texas Secretary of State and Elections Division, Texas Legislature, and County Elections Administrators. In recognition of the U.S. Commission on Civil Rights' continued study on this topic and in lieu of providing a detailed discussion of each finding presented, the Committee offers findings and recommendations for addressing voting rights issues in Texas.

**Texas Advisory Committee to the  
U.S. Commission on Civil Rights**

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## Advisory Memorandum

**To:** The U.S. Commission on Civil Rights

**From:** The Texas Advisory Committee to the U.S. Commission on Civil Rights

**Date:** May 30, 2018

**Subject:** Voting Rights in Texas

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On March 13, 2018, the Texas Advisory Committee to the U.S. Commission on Civil Rights (Committee) convened a public meeting to hear testimony regarding potential barriers to voting in the state of Texas that may have a discriminatory impact on voters based on race, color, sex, disability status, and national origin.

The following advisory memorandum results from the testimony provided during the March 13, 2018, meeting of the Committee, as well as related testimony submitted to the Committee in writing during the thirty-day public comment period. It begins with a brief background of state-specific voting rights issues, identifies primary findings as they emerged from this testimony, and recommendations for addressing related civil rights concerns. This memo is intended to focus specifically on potential barriers to voter registration, access to and administration of polling locations, and language access. While other important topics surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion. This memo and the recommendations included within it were adopted by a majority of the Committee on May 30, 2018.

The Committee is comprised of a group of Texans who strove to approach this project from an open-minded and neutral posture. To that end, the Committee went to great lengths to solicit participation from stakeholders representing diverse perspectives, from voting rights advocacy groups to the Office of the Secretary of State. The Committee made many outreach attempts over several months to conservative-leaning lawmakers and advocacy groups, including the Texas Attorney General, Senator Brian Birdwell, Senator Paul Bettencourt, Representative Jodie Laubenberg, Representative Joe Straus, Senator Joan Huffman, True the Vote, and Direct Action Texas, to solicit their participation at the public meeting, through written testimony, and/or by joining a Committee meeting. Regrettably, after multiple attempts by numerous Committee members and U.S. Commission on Civil Rights staff, the views of these stakeholders remain largely absent from this memorandum. A full list of individuals and organizations that were invited, but were unable to participate is attached in Appendix F.

### Background

The Fourteenth and Fifteenth Amendments to the Constitution guarantee citizens the right to

vote free of discrimination. There has, however, been a history of efforts across the U.S. to circumvent this guarantee through a variety of techniques. As a result of these practices, the Voting Rights Act (VRA) passed the U.S. Congress and was signed into law by President Lyndon B. Johnson in 1965.<sup>1</sup> Among its key provisions, the VRA prohibits public officials from imposing voting practices and procedures that “deny or abridge the right to vote of any citizen of the United States to vote on account of race or color.”<sup>2</sup> It also requires that states and counties with a “history of discriminatory voting practices or poor minority voting registration rates” secure “preclearance” – that is, the approval of the U.S. Attorney General or a three-judge panel of the District Court of the District of Columbia – prior to implementing any changes in their current voting laws.<sup>3</sup> With the extension of the VRA in 1975, Congress included protections against voter discrimination toward “language minority citizens” bringing more jurisdictions, including Texas, under its preclearance requirements.<sup>4</sup> In 1982, the VRA was again extended, and amended, to provide that a violation of the VRA’s nondiscrimination section could be established “without having to prove discriminatory purpose.”<sup>5</sup> In other words, regardless of intent, if voting requirements of a particular jurisdiction are found to have a discriminatory impact, they may be found in violation of the VRA.

The VRA’s language minority provision, Section 203, states that counties are required to provide bilingual election information if more than five percent of the population, or 10,000 voting age citizens, belong to a single language minority, have depressed literacy rates, and do not speak English very well.<sup>6</sup> In Texas, there are 88 counties that fall under the provisions of Section 203—the most counties in any state in the nation.<sup>7</sup> Among these counties, Harris County has the most language minority groups in need of election information in the Spanish, Chinese, and Vietnamese languages.<sup>8</sup>

In 1993, Congress enacted the National Voter Registration Act (NVRA), which was designed to further protect voting rights by making it easier to for all Americans to register to vote and to maintain their registration.<sup>9</sup> The NVRA requires states to allow citizens to register to vote at the same time they apply for their driver’s license or seek to renew their license; it also requires a range of social service agencies to offer voter registration in conjunction with their services.<sup>10</sup> The NVRA contains requirements with respect to the administration of voter registration by

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<sup>1</sup> 42 U.S.C. §§ 1973 to 1973aa-6 (1965).

<sup>2</sup> 52 U.S.C. 10301 (2018).

<sup>3</sup> 52 U.S.C. § 10304 (2018).

<sup>4</sup> Voting Rights Act Amendments, Pub. L. 94-73, 89 Stat. 400 (Aug. 6, 1975).

<sup>5</sup> Voting Rights Act Amendments, Pub. L. 97-205, 96 Stat. 131 (Jun. 29, 1982).

<sup>6</sup> 52 U.S.C. § 10503 (2018).

<sup>7</sup> Bureau of the Census; Voting Rights Act Amendments of 2006, Determinations Under Section 203, 81 Fed. Reg. 87532 (Dec. 5, 2016); *see also* Appendix A.

<sup>8</sup> *Ibid.*

<sup>9</sup> 52 U.S.C. §§ 20501- 20511 (2018).

<sup>10</sup> 52 U.S. Code § 20506 (2018).

states, requiring states to implement procedures to maintain accurate and current voter registration lists,<sup>11</sup> and mandates the use and acceptance of a standardized voter registration form.<sup>12</sup>

Despite the numerous laws and constitutional amendments established to protect equal access to voting, problems persist. *Shelby County v. Holder*, which was decided on June 25, 2013, by the U.S. Supreme Court, ruled that the formula used to determine which states should be subjected to “preclearance” requirements under the VRA was outdated and thus unconstitutional.<sup>13</sup> This ruling effectively nullified the preclearance requirement, a core component of the VRA, until such time as Congress agrees upon a new formula.

Prior to the *Shelby County v. Holder* decision, Texas was subject to the preclearance restrictions found in Section 5 of the VRA.<sup>14</sup> Since the decision, Texas has made a variety of changes to its voting and elections procedures at multiple levels of government, from the county-level to the Texas Legislature.<sup>15</sup> Several court decisions, discussed below, have held that these changes violate Section 2 of the VRA, by discriminating against racial minorities.<sup>16</sup>

Garnering the most national attention is the Texas voter ID law, or SB 14, which altered the identification requirements for voting. This law requires most voters to present government-issued photo identification when appearing to vote at the polls such as a driver’s license, a personal ID card, U.S. military ID, U.S. citizenship certificate, U.S. passport, or a concealed handgun license.<sup>17</sup> Voters with disabilities and those voters who qualify to vote by mail were exempted from this requirement.<sup>18</sup> Federal preclearance was denied with respect to the Texas voter ID law because it failed to prove the law would not have a discriminatory effect on

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<sup>11</sup> 52 U.S.C. §§ 20507(b) (2018).

<sup>12</sup> 52 U.S.C. §§ 20507(a)(1A-D).

<sup>13</sup> See *Shelby County v. Holder*, 570 U.S. 529, 556-57 (2013).

<sup>14</sup> 40 Fed. Reg. 43746 (Sept. 23, 1975).

<sup>15</sup> Scott Simpson, *The Great Poll Closure*, THE LEADERSHIP CONFERENCE EDUCATION FUND (2016), p.11, available at <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>; Beth Stevens, Mimi Marziani, Cassandra Champion, *Texas Election Protection 2016: An overview of the challenges faced by Texas voters in the presidential election*, TEXAS CIVIL RIGHTS PROJECT (2017), p.10, available at <http://texascivilrightsproject.org/wp-content/uploads/2018/05/EP-Report.pdf>.

<sup>16</sup> Indeed, the Fifth Circuit (*en banc*) struck down the 2011 Texas voter ID law in July 2016, finding that it discriminated against Black and Latino Texans in violation of Section 2 of the VRA. See *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016). While, more recently, the Fifth Circuit upheld a modified version of the ID law passed by the Texas Legislature in 2017, its findings on the discriminatory effect of the original law remain undisturbed. See *Veasey v. Abbott*, 17-40884, 2018 WL 1995517 (5th Cir. Apr. 27, 2018). Moreover, in 2017, a three-judge panel ruled that key portions of the 2013 congressional and state house maps were racially discriminatory in violation of Section 2, and were intentionally designed to suppress the voting rights of Black and Latino Texans in light of the possibility of their growing political power. *Perez v. Abbott*, 267 F. Supp. 3d 750 (W.D. Tex. 2017); *Perez v. Abbott*, 274 F. Supp. 3d 624 (W.D. Tex. 2017).

<sup>17</sup> SB 14 § 1. Tex. Election Code § 63.0101.

<sup>18</sup> SB 14 § 1. Tex. Election Code § 82.002-82.003.

minority voters.<sup>19</sup> However, just days after the *Shelby County v. Holder* decision, the law went into effect<sup>20</sup> and has been embroiled in litigation since. Early court rulings concluded that the law has a discriminatory effect on minorities.<sup>21</sup> However, SB 5, the most recent iteration of the law, was upheld in the U.S. Court of Appeals Fifth Circuit on April 27, 2018.<sup>22</sup>

In a related issue, Texas' congressional and state legislative maps have been the subject of litigation since original passage in 2011. Initially, Texas maps did not receive preclearance under Section 5 of the VRA because the maps abridged minority voting rights by using “deliberate, race-conscious method[s]” to “manipulate” outcomes.<sup>23</sup> In 2013, the Texas Legislature adopted interim maps drawn by a district court in Texas and the U.S. Supreme Court vacated and remanded the D.C. panel's opinion, in light of the *Shelby County v. Holder* decision.<sup>24</sup> Since then, the 2011 and 2013 maps have been litigated before a three-judge district court panel in San Antonio, including claims that the maps violate Section 2 of the VRA and the Equal Protection Clause.<sup>25</sup> Most notably, in 2017, the panel ruled that key portions of the 2013 congressional and state house maps were racially discriminatory and were intentionally designed to suppress the voting rights of Black and Latino Texans in light of the possibility of their growing political power.<sup>26</sup> At the end of the 2017-2018 term, however, the U.S. Supreme Court issued a decision largely rejecting the finding of racial discrimination.<sup>27</sup>

By removing the preclearance requirement and allowing for unmitigated changes, the *Shelby County v. Holder* decision affected local election law and practices in Texas. For example, following *Shelby County*, the city of Pasadena changed how it elected city council members by adopting at-large elections rather than the district election method it previously utilized. In 2017, a court found this change to be intentionally discriminatory against Latino voters, as it illegally diluted their voting strength.<sup>28</sup> Moreover, hundreds of polling locations were closed in Texas before the 2016 presidential election, significantly more both in number and percentage

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<sup>19</sup> *Texas v. Holder*, 888 F. Supp. 2d 113, 143-44 (D.D.C. 2012), *vacated and remanded*, 570 U.S. 928 (2013).

<sup>20</sup> “Voter ID Laws Passed Since 2011,” *Brennan Center for Justice*, <https://www.brennancenter.org/analysis/voter-id-laws-passed-2011>.

<sup>21</sup> *Veasey v. Abbott*, 830 F.3d 216, 265 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 612 (2017). *See also* Robert Barnes, *After Losses on Voting Laws and Districting, Texas Turns to Supreme Court*, THE WASHINGTON POST, Aug. 27, 2017, available at [https://www.washingtonpost.com/politics/courts\\_law/after-losses-on-voting-laws-and-districting-texas-turns-to-supreme-court/2017/08/27/cf68fea8-89bc-11e7-a94f-3139abce39f5\\_story.html?utm\\_term=.a629779fdf2d](https://www.washingtonpost.com/politics/courts_law/after-losses-on-voting-laws-and-districting-texas-turns-to-supreme-court/2017/08/27/cf68fea8-89bc-11e7-a94f-3139abce39f5_story.html?utm_term=.a629779fdf2d).

<sup>22</sup> *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 612, 197 L. Ed. 2d 78 (2017).

<sup>23</sup> *Texas v. United States*, 887 F. Supp. 2d 133 (D.D.C. 2012).

<sup>24</sup> *Texas v. United States*, 133 S. Ct. 2885 (2013); *see also Texas v. United States*, 49 F. Supp. 3d 33 (D.D.C. 2014).

<sup>25</sup> *See Perez v. Abbott*, 267 F. Supp. 3d 750 (W.D. Tex. 2017); *Perez v. Abbott*, 274 F. Supp. 3d 624 (W.D. Tex. 2017).

<sup>26</sup> *Perez v. Abbott*, 267 F. Supp. 3d 750 (W.D. Tex. 2017); *Perez v. Abbott*, 274 F. Supp. 3d 624 (W.D. Tex. 2017).

<sup>27</sup> *Abbott v. Perez*, No. 17-586 (2018), [https://www.supremecourt.gov/opinions/17pdf/17-586\\_o7kq.pdf](https://www.supremecourt.gov/opinions/17pdf/17-586_o7kq.pdf).

<sup>28</sup> *Patino v. City of Pasadena* 230 F. Supp. 3d 667 (S.D. Tex. 2017); *see also* Ernest Herrera, Staff Attorney, MALDEF, Public Meeting on Texas Voting Rights: Briefing before the Texas Advisory Committee to the U.S. Commission on Civil Rights, briefing transcript, p. 59-60 (2018), available at <https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155615&cid=276> (hereinafter *Transcript*).

than any other state.<sup>29</sup>

## **Findings**

The section below provides findings received and reflects views of the cited panelists, not necessarily the members of the Committee. While the Committee has not independently verified each assertion, panelists were chosen to testify due to their professional experience, academic credentials, subject matter expertise, and/or firsthand experience with the topics at hand.

### **Findings regarding voter registration:**

1. With only 68 percent of eligible voters actually registered, Texas ranks as the 44<sup>th</sup> worst state for voter registration in the 2016 election.<sup>30</sup> Moreover, as discussed below, the current Texas electorate does not adequately represent the State's citizen voting age population. Instead, those currently registered to vote are more likely to be Anglo (*i.e.*, non-Hispanic Caucasian) and more likely to be older than those who are not on the rolls.
2. Testimony from numerous organizations and individuals indicated that low, disparate registration rates are at least partially due to the State's restrictions on third-party voter registration activities, such as voter registration drives.<sup>31</sup> The following examples demonstrate specific challenges:
  - a. Volunteer Deputy Registrars (VDR) must be separately certified for each county in which they want to register voters.<sup>32</sup> This acts as a deterrent for voter registration and impedes large-scale voter registration efforts, particularly because it is a criminal offense to register a person to vote from a county where one is not deputized.<sup>33</sup>
  - b. The State's VDR training program, in practice, vary greatly among counties.<sup>34</sup> For example, in Harris County, VDR trainings are available in Spanish and English and has yielded in deputizing a high number of VDRs.<sup>35</sup> In Bexar County, one

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<sup>29</sup> Scott Simpson, *The Great Poll Closure*, THE LEADERSHIP CONFERENCE EDUCATION FUND 4 (2016), available at <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>.

<sup>30</sup> Saenz, *Transcript* at 14; Rivera, *Transcript* at 168.

<sup>31</sup> Tex. Elec. Code Ann. § 276.011 (West 2017); see also Tex. H.B. 1735, 85th Leg., R.S. (2017) § 62, amending § 276.011 of the Texas Election Code (noting that in Texas, it is a crime to register another person to vote unless one has been certified as a Volunteer Deputy Registrars (VDR) and adheres to a complicated and burdensome regulatory regime. The laws regarding VDRs and their duties comprise the harshest restrictions on voter registration drives and related community outreach in the nation).

<sup>32</sup> Harris-Bennett, *Transcript* at 143.

<sup>33</sup> Tex. Elec. Code Ann. § 13.044; Harris-Bennett, *Transcript* at 143; Rivera, *Transcript* at 172.

<sup>34</sup> See Mimi Marziani & Robert Landicho, *What Starts in Texas Doesn't Always Stay in Texas: Why Texas's Systematic Elimination of Grassroots Voter Registration Drives Could Spread*, THE AMERICAN CONSTITUTION SOCIETY 8 (2018), [https://www.acslaw.org/sites/default/files/What\\_Happens\\_In\\_Texas.pdf](https://www.acslaw.org/sites/default/files/What_Happens_In_Texas.pdf).

<sup>35</sup> Rave, *Transcript* at 25; Harris-Bennett, *Transcript* at 120-121.



training is offered one day per month and only during business hours.<sup>36</sup> Additionally, the law dictates that VDR certifications expire every two years, meaning the entire certification and training process must be repeated at the beginning of every odd year, regardless of how recently a volunteer was trained.<sup>37</sup>

- c. There are severe criminal penalties associated with failure to comply with VDR requirements, including not submitting completed registration application forms within 5 days of their collection or accidentally registering a voter who lives in another county where the VDR is not deputized.<sup>38</sup>
  - d. Despite the NVRA's requirement that registration forms be accepted by mail, VDR rules require in-person submission.<sup>39</sup>
  - e. While the law requires that VDRs issue a receipt every time they complete a VDR transaction, there are no standardized procedures for doing so. As a result, each county has a separate receipt process and, typically, a separate voter registration form that it requires. This adds to the complication of conducting large-scale registration drives and prevents the use of the federal form prescribed by the NVRA.
  - f. One result of the burdensome requirements is low numbers of VDRs to support Texas' growing population. For example, in Bexar County for the 2016 election, there were approximately 1,000 VDRs registering voters in a city with a population of more than 1.5 million people.<sup>40</sup>
3. While the number of eligible Latino voters in Texas has grown dramatically in the last four decades, from 1.5 million people in 1980 to 5.2 million in 2016,<sup>41</sup> Latinos are less likely to be registered to vote in comparison to other voter groups.<sup>42</sup> Testimony indicated the following barriers to registration that may have a disparate impact on Latino voters:

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<sup>36</sup> Rivera, *Transcript* at 171-172; Stevens, *Transcript* at 216.

<sup>37</sup> Tex. Elec. Code § 13.031; *see also* Rivera, *Transcript* at 172.

<sup>38</sup> Tex. Elec. Code § 13.042 (noting that failure to return applications by 5:00 p.m. on the 5th consecutive day will result in a Class C misdemeanor if unintentional and a Class A misdemeanor if intentional); Tex. Elec. Code Ann. § 13.043(a)-(b) (West 2017) (noting that in 2017, Texas passed a law that further increases criminal penalties for certain violations of the VDR law); Rivera, *Transcript* at 173; Stevens, *Transcript* at 217.

<sup>39</sup> Tex. Elec. Code § 13.042 (c).

<sup>40</sup> Rivera, *Transcript* at 172.

<sup>41</sup> Saenz, *Transcript* at 12-13; *see also* Appendix E.

<sup>42</sup> Herrera, *Transcript* at 89.

- a. While voter registration materials are provided in Spanish by the Secretary of State, not all counties are making these readily available to the public or VDRs.<sup>43</sup>
  - b. VDR training is not always provided in Spanish, even in counties that are bound by Section 203 requirements, such as Harris County which implemented its first Spanish VDR training in 2017 despite having Section 203 requirements.<sup>44</sup>
  - c. Low registration rates among Latinos have been associated with mistrust and fear due to public discourse concerning voter fraud and immigration.<sup>45</sup>
  - d. Low Latino registration may be associated with apathy as a result of not having adequate representation among elected representatives. For instance, more than 1.3 million Latinos in Texas live in cities or counties with no Latino representation on their city council or commissioners' courts.<sup>46</sup>
4. There is widespread confusion and misinformation among citizens about voter registration.
- a. Information regarding registration deadlines are 30 days before Election Day, are too often not clearly available on county websites.<sup>47</sup>
  - b. Citizens moving from one county to another is a common reason that individuals fail to meet registration requirements. Voters do not realize they need to update their registration information after they move – sometimes, voters do not realize they now reside in a different county given that most Texas metropolitan areas span more than one county.<sup>48</sup>
  - c. Registration forms are not readily accessible or available for certain populations including individuals with a disability, the elderly, and individuals with limited English proficiency.<sup>49</sup>

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<sup>43</sup> Keith Ingram, Elections Division Director, Office of the Secretary of State, Written Statement Submitted to the Texas Advisory Committee to the U.S. Commission on Civil Rights, p. 1 (2018), *available at* <https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155615&cid=276> (hereinafter *Written Testimony*); Herrera, *Transcript* at 65.

<sup>44</sup> Harris-Bennett, *Transcript* at 122.

<sup>45</sup> Herrera, *Transcript* at 89; Jackson, *Transcript* at 79-80.

<sup>46</sup> *Ibid* at 61; Duarte, *Transcript* at 102; Jeremy Schwartz & Dan Hill, "Silent Majority: Texas Booming Hispanic Population Deeply Underrepresented in Local Politics," *Statesman*, Oct. 21, 2016, *available at* <https://consulmex.sre.gob.mx/austin/images/Prensa/2016/Silent-Majority.pdf>.

<sup>47</sup> Haltom, *Transcript* at 152; Weatherby, *Transcript* at 184; Herrera, *Transcript* at 64.

<sup>48</sup> Haltom, *Transcript* at 151-152; Jackson, *Transcript* at 49-50.

<sup>49</sup> Herrera, *Transcript* at 63; Vattamala, *Transcript* at 74; Broadway, *Transcript* at 108; Harris-Bennett, *Transcript* at 139; Gulamali, *Transcript* at 182.

5. State voter registration procedures are not compliant with the National Voter Registration Act (NVRA).
  - a. Texas Department of Public Safety (DPS) allows online renewal and modification of driver's licenses but does not also allow users to register to vote or update their registration online, potentially affecting at least 1.5 million eligible voters who use DPS' online driver's license services each year.<sup>50</sup> A federal judge recently ruled that this practice violates the NVRA and the Equal Protection Clause of the U.S. Constitution.<sup>51</sup>
  - b. As the U.S. Commission on Civil Rights noted in a past report,<sup>52</sup> the processes on the Texas DPS website are misleading and confusing. Individuals wishing to update their registration when they update their driver's license information must actually take additional steps offline to successfully register. There is confusion on what steps are necessary, and thousands of individuals who think they have registered discover on election day they are not on the registration rolls.<sup>53</sup>
6. There are specific barriers to registration for young voters. For example:
  - a. Texas law mandates that all high schools, both public and private, must offer voter registration to eligible students at least twice a year through a designated High School Deputy Registrar.<sup>54</sup> Testimony from several stakeholders indicated this law was not being enforced by the Secretary of State's office and thus not being implemented in a uniform manner across the State, with most schools not in compliance.<sup>55</sup> The result is that too few of the roughly 330,000 young people who graduate from Texas public schools each year are getting registered to vote.<sup>56</sup>
  - b. The widespread noncompliance with the State's high school voter registration mandate is due to lack of knowledge and confusion about requirements and

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<sup>50</sup> Stevens, *Transcript* at 215.

<sup>51</sup> See *Stringer v. Pablos*, 274 F. Supp. 3d 588 (W.D. Tex. 2017); see also Stevens, *Transcript* at 215.

<sup>52</sup> U.S. Commission on Civil Rights, *Increasing Compliance with Section 7 of the National Voter Registration Act*, (May 7, 2016), at 59, 79, <http://www.usccr.gov/pubs/NVRA-09-07-16.pdf>.

<sup>53</sup> Weatherby, *Transcript* at 187; Rivera, *Transcript* at 175; Stevens, *Transcript* at 215; Stevens, *Written Statement* at 2-3.

<sup>54</sup> Tex. Elec. Code § 13.046.

<sup>55</sup> Saenz, *Transcript* at 19; Rivera, *Transcript* at 171; Saldivar, *Transcript* at 103; Duarte, *Transcript* at 116; Stevens, *Written Testimony* at 7-8.

<sup>56</sup> Stevens, *Transcript* at 216; see also Beth Stevens, Brendan Downes, Mimi Marziani, Cassandra Champion, "The High School Vote: How Texas fails to engage the next generation of voters," Texas Civil Rights Project, 2017, <http://texascivilrightsproject.org/wp-content/uploads/2018/02/HSVR-Report.pdf>.

procedures.<sup>57</sup> This is likely confounded by the strict VDR rules, which govern voter registration drives within high schools that are conducted by anyone other than the school's designated High School Deputy Registrar.

- c. For the 2016 general election, only 48 percent of Texans ages 18 to 24 were registered to vote, while 78 percent of Texans over the age of 65 were registered. This is 7 percentage points lower than the national average rate for eligible voters ages 18-24.<sup>58</sup>

### **Findings regarding access to and administration of polling places:**

1. College students face barriers to accessing polling locations because there is a shortage of polling locations accessible or convenient to college campuses.<sup>59</sup>
2. Testimony indicated that polling places are sometimes located in intimidating locations such as a sheriff's office or other law enforcement offices that may discourage marginalized communities from voting.<sup>60</sup>
3. Testimony indicated that polling locations and voting procedures in Texas have changed significantly following the *Shelby County v. Holder* decision and may have disenfranchised certain voters. The following examples demonstrate these changes:
  - a. Texas Election Code, now the only law governing polling place changes in Texas, requires just a 72-hour notice of polling location changes; in recent elections, last-minute changes have greatly increased confusion on where voters are required to vote.<sup>61</sup>
  - b. Hundreds of polling locations were closed in Texas before the 2016 presidential election, significantly more both in number and percentage than any other state, with the highest volume of closures in counties that have a history of VRA violations while still under preclearance.<sup>62</sup>

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<sup>57</sup> Stephanow, *Transcript* at 147; Carlos Duarte, *Transcript* at 103.

<sup>58</sup> Jay Jennings and Emily Einsohn Bhandar, "2018 Texas Civic Health Index," *Annette Strauss Institute for Civic Life*, 2018, p. 5, [https://moody.utexas.edu/sites/default/files/2018-Texas\\_Civic\\_Health\\_Index.pdf](https://moody.utexas.edu/sites/default/files/2018-Texas_Civic_Health_Index.pdf).

<sup>59</sup> Jackson, *Transcript* at 53.

<sup>60</sup> Bledsoe, *Transcript* at 90.

<sup>61</sup> Tex Elec. Code § 43.06; Rave, *Transcript* at 26.

<sup>62</sup> Rave, *Transcript* at 26; Scott Simpson, "The Great Poll Closure," *The Leadership Conference Education Fund* November 2016, p. 11, <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>. (noting 403 total poll closures. Texas has five of the top ten counties with poll closures in the nation and seven of the top ten counties for percentage of polls closed).

- c. Polling relocations that were denied under VRA preclearance requirements were then implemented after the *Shelby County v. Holder* decision and were found by the Department of Justice to be discriminatory for African American and Latino voters.<sup>63</sup>
4. Testimony indicated considerable confusion regarding elections administration, including confusion about the voter ID law and provisional ballot procedures.
    - a. In the 2016 election, there was widespread confusion surrounding voter ID requirements. Voters without proper ID were not consistently informed about the “reasonable impediment” exception to the ID law, or offered provisional ballots; as a result, some were improperly turned away by misinformed poll workers.<sup>64</sup>
    - b. Voters who cast a provisional ballot were not always given proper instructions on how to cure their ballot following the election.<sup>65</sup>
    - c. In the new version of the ID law, passed by the Texas Legislature in 2017, there are intimidating criminal sanctions associated with incorrectly executing the affidavit necessary to claim the “reasonable impediment” exception to the ID law and stakeholders are concerned that this will deter voters who in fact fall under the ID law’s exception from casting a ballot.<sup>66</sup> Without sufficient poll worker training on the ID procedures, this may disenfranchise voters.
  5. Poll workers are not given adequate training and have significant discretion that can have discriminatory consequences.
    - a. Poll workers are not given adequate training on how to address the needs of individuals with disabilities.<sup>67</sup>
    - b. Instances of discrimination, disparate treatment, and hostility at polling locations were reported by several stakeholders and appear often to be the result of poll worker discretion or misinformation.<sup>68</sup>

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<sup>63</sup> Bledsoe, *Transcript* at 86; Rave, *Transcript* at 27; Scott Simpson, “The Great Poll Closure,” *The Leadership Conference Education Fund* November 2016, p. 11, <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>. (noting the city of Galveston closed 16 percent of its polling locations with a plan that was rejected under VRA preclearance before *Shelby County v. Holder* due to discriminatory repercussions).

<sup>64</sup> Herrera, *Transcript* at 62; Harris-Bennett, *Transcript* at 124; Haltom, *Transcript* at 156; Rivera, *Transcript* at 203.

<sup>65</sup> Harris-Bennett, *Transcript* at 129.

<sup>66</sup> Bledsoe, *Transcript* at 90; Haltom, *Transcript* at 157.

<sup>67</sup> Broadway, *Transcript* at 112; Garrison, *Transcript* at 191.

<sup>68</sup> Bledsoe, *Transcript* at 86; Jackson, *Transcript* at 88; Saldivar, *Transcript* at 105.

- c. There is little to no recourse or accountability for mistakes made or discriminatory conduct by poll workers.<sup>69</sup> Although the Texas Secretary of State and most counties offer some avenue for complaint,<sup>70</sup> testimony suggested that the current procedures are unresponsive and difficult to navigate.<sup>71</sup>
  - d. There is currently no easily accessible way to gather statewide data about how many Texans experienced problems at the polls and were unable to cast a regular ballot, because there are no statewide records of provisional ballots cast. In addition, there is no mechanism for tracking how many people were turned away without being offered a provisional ballot.<sup>72</sup>
6. According to testimony, many polling locations may not be in compliance with the Americans with Disabilities Act (ADA) and may disenfranchise voters with disabilities. For example:
- a. Many polling locations are inaccessible because of parking lots that are not stable, firm, level, and slip resistant; an insufficient number of reserved parking spaces; and/or unstable or nonexistent ramps.<sup>73</sup>
  - b. Few counties in Texas are effectively implementing curbside voting, which creates a significant barrier for voters with limited mobility.<sup>74</sup>
  - c. Adaptive voting equipment that is required under the ADA is frequently not present at polling locations.<sup>75</sup>
  - d. When adaptive voting equipment is present at polling locations, it is frequently not set-up properly or no poll workers have been trained how to operate it.<sup>76</sup>

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<sup>69</sup> Gulamali, *Transcript* at 180; Rivera, *Transcript* at 169; Haltom, *Transcript* at 154.

<sup>70</sup> Harris-Bennett, *Transcript* at 124; *See also* the Texas Secretary of State's election complaint form: <http://www.sos.texas.gov/elections/forms/complaintform-sos.pdf>.

<sup>71</sup> Gulamali, *Transcript* at 204.

<sup>72</sup> Haltom, *Transcript* at 154.

<sup>73</sup> Broadway, *Transcript* at 112; United States Access Board, Chapter 3: Building Blocks, <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards/chapter-3-building-blocks#302%20Floor%20or%20Ground%20Surfaces> (noting that over 500 parking lots were composed of material that does not meet ADA standards such as gravel or grass). The ADA Accessibility Guidelines state that both parking spaces and access aisles must comply with § 302 requirements that floor and ground surfaces is "stable, firm, and slip resistant." ADA Accessibility Guidelines, Ch. 3 § 302.1. Additionally, access aisles must be level with their parking spaces. ADA Accessibility Guidelines, Ch. 5 § 502.4.

<sup>74</sup> Garrison, *Transcript* at 191; Craft, *Transcript* at 211.

<sup>75</sup> Garrison, *Transcript* at 191.

<sup>76</sup> *Ibid.*

## **Findings regarding language access:**

1. There are widespread inadequacies in providing language assistance at polling locations.
  - a. Numerous counties appear to be failing to comply with the requirements of Section 203 of the VRA, such as failing to provide the mandated ballots or translators.<sup>77</sup>
  - b. There is widespread confusion based on the terminology voters must use to receive language assistance by an individual of their choice. Semantic differences can determine if a voter will receive the language assistance they prefer or be denied.<sup>78</sup> For example, voters who referred to their “assister” as an “interpreter” have been denied language assistance due to the Texas Election Code’s requirement that all interpreters be registered to vote in the county in which they are assisting a voter.<sup>79</sup> While recent litigation has resolved this issue as a matter of law, testimony indicates that confusion at the local level is likely to persist without adequate training.

## **Recommendations**

Among their duties, advisory committees of the Commission are authorized to advise federal agencies (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws; and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.<sup>80</sup> In keeping with these responsibilities, and in consideration of the testimony heard on this topic, the Texas Advisory Committee respectfully submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to the U.S. Department of Justice to:
  - a. Enforce and monitor the requirements of the Voting Rights Act, particularly Section 203.
  - b. Enforce the National Voter Registration Act.

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<sup>77</sup> Vattamala, *Transcript* at 74.

<sup>78</sup> *Ibid.* at 74-76.

<sup>79</sup> *OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017); Asian American Legal Defense and Education Fund has recently litigated this issue in Texas. The court ruled that Texas Election Code requiring interpreters to be registered in that county is in violation of the Voting Rights Act.

<sup>80</sup> 45 C.F.R. § 703.2 (a).

- c. Further investigate the findings within this memorandum over which it has jurisdiction and take appropriate action.
2. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to the Texas Secretary of State and its Elections Division to:
  - a. Increase accountability for poll workers and polling place administration, including verifiable paper trails and a more accessible and responsive complaint system. Specifically, all complaints should be compiled by the Secretary of State annually and made easily available to the public through a database on its website.
  - b. Implement more accessible registration forms by including forms in all Section 203 covered languages spoken in each county, in Braille, and in large print.
  - c. Ease the certification requirements for Volunteer Deputy Registrars by clarifying existing interpretations of the law and allowing Volunteer Deputy Registrar certification in one county to be accepted in all counties; standardizing training opportunities statewide, including by establishing, at minimum, weekly Volunteer Deputy Registrar training sessions in all counties with a population over 250,000; and requiring the standardized use of statewide registration forms and receipt systems.
  - d. Establish best practices and minimum standards for counties' election administration. These should include standardized information to be included on county websites, encouragement of voting centers, better training for poll workers (including training on the use of provisional ballots), and improved implementation of curbside voting and other ADA accommodations.
  - e. Increase the public education campaign regarding voter ID requirements and further encourage efforts in raising public awareness by partnering with community groups. This includes information on what ID is required to vote, as well as the "reasonable impediment" exception to the ID law.
  - f. Improve procedures for voting by mail for the elderly and disabled by making request forms and ballots easier to understand and more accessible.
  - g. Establish more uniform and consistent standards for poll worker training, including better training on meeting ADA requirements, how to issue provisional ballots, and how to implement language assistance requirements.



- h. Create a mechanism to track and enforce the high school voter registration law, including providing clearer information about its requirements and best practices.<sup>81</sup>
  - i. Implement a mechanism to better track provisional ballot use across the State. Statistics on issuance of provisional ballots and whether they were accepted or rejected should be compiled by the Secretary of State annually and made easily available to the public through a database on its website.
  - j. Establish early voting and Election Day polling places on all college and university campuses with an enrollment of at least 5,000 students.
  - k. Take measures to guard against acts of discrimination and intimidation at the polling place, including by implementing diversity and inclusion training into the standard poll worker training.
3. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to the Texas Legislature to:
- a. Implement a secure online voter registration system to make voter registration easier and more accessible and to better comply with the National Voter Registration Act.
  - b. Create a bipartisan commission to study voter registration and election administration and make recommendations to the Texas Legislature as to how to make voter registration and voting secure, easy and equally accessible for all eligible Texas voters.
  - c. Lessen legal repercussions and penalties for Volunteer Deputy Registrars in a manner that encourages voter registration efforts.
  - d. Improve Volunteer Deputy Registrar procedures and better comply with the National Voter Registration Act by allowing more time to return completed forms and the ability to return completed forms by mail.
  - e. Require use of Election Day voting centers in all counties with a population over 250,000.

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<sup>81</sup> Harris-Bennett, *Transcript* at 121; Duarte, *Transcript* at 103.

- f. Amend existing law to set an extended notice period for polling place changes of no less than 30 days.
4. The U.S. Commission on Civil Rights should send this advisory memorandum and issue recommendations to Texas County Elections Administrators to:
  - a. Establish more uniform and consistent standards for poll worker training including better training on meeting ADA requirements, how to issue provisional ballots, and how to implement language assistance procedures.
  - b. Strengthen implementation and enforcement of Section 203 of the VRA in the 88 counties that require it.<sup>82</sup>
  - c. Track compliance and progress of high school voter registration efforts by providing high school-specific Volunteer Deputy Registrar numbers and increasing outreach efforts to high schools.<sup>83</sup> The Committee recognizes that enforcement is the responsibility of the Secretary of State, but county administrators can play an integral part by coordinating enforcement and facilitating partnerships with local school districts.
  - d. Provide improved and more convenient trainings for Volunteer Deputy Registrars including greater availability of trainings, trainings in more languages, online training, and reciprocity agreements with adjacent counties.
  - e. Ensure more awareness of voter ID requirements through public awareness campaigns, partnerships with local organizations and businesses, and displaying clearer signage at polling locations.
  - f. Take measures to guard against acts of discrimination and intimidation at the polling place, including implementing diversity and inclusion training into the standard poll worker training.

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<sup>82</sup> See Appendix A for specific counties.

<sup>83</sup> Thomas, *Transcript* at 138.

## **Appendix**

- A. Federal Register Notice for Voting Rights Act Amendments of 2006, Determinations Under Section 203 – Texas Counties Subject to Section 203 Compliance
- B. Briefing Agenda & Minutes
- C. Briefing Transcript
- D. Written Testimony
- E. Presentation Slides by Rogelio Saenz
- F. List of Individuals and Organizations Invited, But Were Unable to Participate in March 13, 2018, Briefing

**Appendix A**

Texas Counties Subject to Section 203 Compliance

|    | <b>County</b> | <b>Language Minority Group</b> |
|----|---------------|--------------------------------|
| 1  | Andrews       | Hispanic                       |
| 2  | Atascosa      | Hispanic                       |
| 3  | Bailey        | Hispanic                       |
| 4  | Bee           | Hispanic                       |
| 5  | Bexar         | Hispanic                       |
| 6  | Brooks        | Hispanic                       |
| 7  | Caldwell      | Hispanic                       |
| 8  | Calhoun       | Hispanic                       |
| 9  | Cameron       | Hispanic                       |
| 10 | Castro        | Hispanic                       |
| 11 | Cochran       | Hispanic                       |
| 12 | Crane         | Hispanic                       |
| 13 | Crockett      | Hispanic                       |
| 14 | Crosby        | Hispanic                       |
| 15 | Culberson     | Hispanic                       |
| 16 | Dallam        | Hispanic                       |
| 17 | Dallas        | Hispanic                       |
| 18 | Dawson        | Hispanic                       |
| 19 | Deaf Smith    | Hispanic                       |
| 20 | Dimmit        | Hispanic                       |
| 21 | Duval         | Hispanic                       |
| 22 | Ector         | Hispanic                       |
| 23 | Edwards       | Hispanic                       |
| 24 | El Paso       | American Indian (Pueblo)       |
|    |               | Hispanic                       |
| 25 | Floyd         | Hispanic                       |
| 26 | Fort Bend     | Hispanic                       |
| 27 | Frio          | Hispanic                       |
| 28 | Gaines        | Hispanic                       |
| 29 | Garza         | Hispanic                       |
| 30 | Glasscock     | Hispanic                       |

|    |            |                               |
|----|------------|-------------------------------|
| 31 | Hale       | Hispanic                      |
| 32 | Hansford   | Hispanic                      |
| 33 | Harris     | Chinese <sup>84</sup>         |
|    |            | Vietnamese                    |
|    |            | Hispanic                      |
| 35 | Hockley    | Hispanic                      |
| 36 | Hudspeth   | Hispanic                      |
| 37 | Jeff Davis | Hispanic                      |
| 38 | Jim Hogg   | Hispanic                      |
| 39 | Jim Wells  | Hispanic                      |
| 40 | Jones      | Hispanic                      |
| 41 | Karnes     | Hispanic                      |
| 42 | Kenedy     | Hispanic                      |
| 43 | Kinney     | Hispanic                      |
| 44 | Kleberg    | Hispanic                      |
| 45 | Knox       | Hispanic                      |
| 46 | La Salle   | Hispanic                      |
| 47 | Lamb       | Hispanic                      |
| 48 | Live Oak   | Hispanic                      |
| 49 | Lynn       | Hispanic                      |
| 50 | Martin     | Hispanic                      |
| 51 | Matagorda  | Hispanic                      |
| 52 | Maverick   | American Indian <sup>85</sup> |
|    |            | Hispanic                      |
| 53 | McMullen   | Hispanic                      |
| 54 | Medina     | Hispanic                      |
| 55 | Menard     | Hispanic                      |
| 56 | Midland    | Hispanic                      |
| 57 | Moore      | Hispanic                      |
| 58 | Nolan      | Hispanic                      |
| 59 | Nueces     | Hispanic                      |
| 60 | Ochiltree  | Hispanic                      |
| 61 | Parmer     | Hispanic                      |
| 62 | Pecos      | Hispanic                      |

<sup>84</sup> Including Taiwanese

<sup>85</sup> All other American Indian Tribes

|    |              |            |
|----|--------------|------------|
| 63 | Presidio     | Hispanic   |
| 64 | Reagan       | Hispanic   |
| 65 | Reeves       | Hispanic   |
| 66 | Refugio      | Hispanic   |
| 67 | San Patricio | Hispanic   |
| 68 | Schleicher   | Hispanic   |
| 69 | Scurry       | Hispanic   |
| 70 | Sherman      | Hispanic   |
| 71 | Starr        | Hispanic   |
| 72 | Sterling     | Hispanic   |
| 73 | Sutton       | Hispanic   |
| 74 | Swisher      | Hispanic   |
| 75 | Tarrant      | Hispanic   |
|    |              | Vietnamese |
| 76 | Terry        | Hispanic   |
| 77 | Titus        | Hispanic   |
| 78 | Travis       | Hispanic   |
| 79 | Upton        | Hispanic   |
| 80 | Uvalde       | Hispanic   |
| 81 | Val Verde    | Hispanic   |
| 82 | Ward         | Hispanic   |
| 83 | Webb         | Hispanic   |
| 84 | Willacy      | Hispanic   |
| 85 | Winkler      | Hispanic   |
| 86 | Yoakum       | Hispanic   |
| 87 | Zapata       | Hispanic   |
| 88 | Zavala       | Hispanic   |

|    |          |          |
|----|----------|----------|
| 63 | Presidio | Hispanic |
| 64 | Reagan   | Hispanic |

## **Appendix B**

Briefing Agenda and Minutes

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155615&cid=276>

## **Appendix C**

Briefing Transcript

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155615&cid=276>

## **Appendix D**

Written Testimony

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155615&cid=276>

## **Appendix E**

Presentation Slides by Rogelio Saenz

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155615&cid=276>

## **Appendix F**

List of Individuals and Organizations Invited, But Were Unable to Participate in March 13, 2018, Briefing

- Aaron Harris, Direct Action Texas
- Ana Hernandez, Texas House of Representatives
- Brian Birdwell, Texas Senate
- Casey Thomas, City of Dallas City Council
- Catherine Engelbrecht, True the Vote
- Celia Israel, Texas House of Representatives
- Chad Dunn, Brazil & Dunn
- Daron Shaw, University of Texas at Austin
- Derrick Osobase, Communication Workers of America
- Diana McRae, Walker County
- Direct Action Texas
- Drew Galloway, MOVE San Antonio
- Empower Texans
- Franklin Jones, Texas Southern University
- Grace Chimene, League of Women Voters
- Grant Hayden, Southern Methodist University
- Joan Huffman, Texas Senate
- Jodie Laubenberg, Texas House of Representatives
- Joe Straus, Texas House of Representatives
- John Alford, Rice University
- Joseph Fishkin, University of Texas Law
- Ken Paxton, Texas Attorney General
- Marc Veasey, U.S. House of Representatives
- Michael Adams, Texas Southern University
- Nina Perales, Mexican American Legal Defense & Educational Fund
- Paul Bettencourt, Texas Senate
- Rodney Ellis, Harris County Commissioner
- Ross Ramsey, Texas Tribune
- Senfronia Thompson, Texas House of Representatives
- Stan Stanart, Harris County Clerk
- Texas Organizing Project
- Tom Brunell, University of Texas Dallas
- True the Vote