

Testimony of Diego M. Bernal
Texas State Representative, House District 123

Before the House Committee on Oversight and Reform
Subcommittee on Civil Rights and Civil Liberties

“Democracy in Danger: The Assault on Voting Rights in Texas”

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Chairman Raskin, Ranking Member Sessions, and members of the Subcommittee, thank you for extending the invitation to testify about the current efforts by the Texas Legislature to infringe on the rights of Texans to vote.

Introduction

The Texas Legislature is no stranger to pursuing discriminatory policies that target minority communities. Over the past 10 years, the State of Texas has been found to have intentionally discriminated against communities of color 10 times by three federal courts with Republican appointees.^{1,2,3} During the 87th Legislative Session, this discrimination continued in the form of Senate Bill 7. Under the guise of “election integrity” Senate Bill 7 sought to restrict access to the polls even though the Texas Secretary of State’s office testified to the House Committee on Elections that the 2020 election had been “smooth and secure.”⁴ Most notably, this bill would have eliminated *Souls to the Polls*-- a tradition in which Black parishioners go to vote after attending Sunday services-- by eliminating Sunday morning voting. Had it not been for my Democratic colleagues and I, this provision, along with many others, would have passed the Texas House of Representatives on a party-line vote and been signed into law by the Governor.

¹ “Texas NAACP v. Steen (consolidated with Veasey v. Abbott),” The Brennan Center for Justice, (September 21, 2018), <https://www.brennancenter.org/our-work/court-cases/texas-naacp-v-steen-consolidated-veasey-v-abbott>

² “Abbott v. Perez,” The Brennan Center for Justice, (August 2, 2019), <https://www.brennancenter.org/our-work/court-cases/abbott-v-perez>

³ Lois Beckett and Suevon Lee, “Five Ways Courts Say Texas Discriminated Against Black and Latino Voters,” ProPublica, (February 27, 2013), <https://www.propublica.org/article/five-ways-courts-say-texas-discriminated-against-black-and-latino-voters>

⁴ Alexa Ura, “Texas Republicans Begin Pursuing New Voting Restrictions as They Work to Protect Their Hold on Power,” The Texas Tribune (March 22, 2021), <https://www.texastribune.org/2021/03/22/texas-republicans-voting-restrictions/>.

As a direct response to the failure of Senate Bill 7, Governor Greg Abbott called the 87th Texas Legislature back for a Special Session starting July 8, 2021. The new iteration of this “election integrity” legislation, House Bill 3, renews the Texas Legislature’s effort to suppress the votes of people of color.

This bill was filed, heard in Committee, and voted out in just a matter of days. More than 450 members of the public came to Austin, Texas to testify in front of the House Select Committee on Constitutional Rights and Remedies regarding how this legislation would impact their lives: 407 individuals registered opposed, 65 registered in support, and 12 registered neutral.⁵ Testimony resulted in a marathon hearing, with witnesses waiting up to 23 hours to testify.⁶ Much like testimony heard about Senate Bill 7, the vast majority of public testimony on House Bill 3 focused on how this bill would make voting more difficult. Nonetheless, Republicans disregarded the witnesses, refused to accept any Democrat’s amendments, and voted the bill out of Committee 9-5. This forced my colleagues and I to take action once again, utilizing the Texas House quorum rule to defeat the measure, which brings me before you today.

My testimony today will serve to pinpoint some of the discriminatory and problematic portions of House Bill 3 and what the implementation of this bill would look like in many Latino communities across the State of Texas. Specifically, this testimony will discuss the expansion of duties and protections for partisan poll watchers, increased requirements and criminal penalties for voter assistants, the elimination of 24-hour voting and drive-through voting, and portions of the bill that will substantially increase polling place wait times.

Partisan Poll Watchers

Partisan poll watchers have a well-documented history of voter intimidation against Latino communities in Texas and across the country.⁷ Now, House Bill 3 attempts to radically expand the

⁵ Alexa Ura, “Texans Testifying on GOP Voting Bill Faced a 17 Hour-Wait to Be Heard by Lawmakers in the Dead of Night,” *The Texas Tribune* (July 11, 2021), <https://www.texastribune.org/2021/07/10/texas-legislature-gop-voting-bill/>.

⁶ *Ibid.*

⁷ Michelle García, “The Latino Vote and Its Legacy,” *The Texas Observer*, (November 20, 2020), <https://www.texasobserver.org/latino-vote-election/>.

power and reach of partisan poll watchers, a position that largely served to intimidate minority communities, not ensure the safety of our elections.

Poll watchers are defined in Texas Statute as a person appointed “to observe the conduct of an election on behalf of a candidate, a political party, or the proponents or opponents of a measure”⁸ and can represent a specific candidate, political party, or political action committee. One can argue that poll watchers ensure that their particular candidate or viewpoint is not being slighted by the election administration process, but their very existence at a polling place can serve to intimidate potential voters out of casting his or her ballot.

Rather than limiting poll watcher duties to silent observation of the electoral process and reporting irregularities,⁹ House Bill 3 increases the ability of poll watchers to move freely around a location where election activity is happening and to be close enough to “see and hear” that activity.¹⁰ This means that, although the current statute does not allow a poll watcher to speak to voters or interfere with the work of election officials, under House Bill 3 poll watchers would be able to be closer to voters than currently allowed. Arguably, this creates a conflict between a voter’s right to a secret ballot and a poll watcher’s right to “observe election activity.” Furthermore, if they are prevented from performing their duty as a poll watcher by an elections official for any reason, House Bill 3 would allow a poll watcher to sue for injunctive relief, a writ of mandamus, and “any other remedy available under law” in order to stop an election official from impeding the watchers’ access to polling sites and records.¹¹ This threat of litigation puts the election judge at a disadvantage, with little to no legal protection themselves, when they are considering taking corrective action against a disruptive partisan poll watcher.

Most disturbingly, House Bill 3 affords partisan poll watchers a two-strike, “free felony” removal policy. Under this provision, a poll watcher can violate “a provision of [the Election] code, the

⁸ Texas Election Code Sec. 33.001

⁹ Texas Election Code, Section 33, Subchapter C

¹⁰ House Bill 3, Article 4, Section 4.04: Currently, partisan poll watchers are entitled to be “conveniently” near election officers while observing, but this would specify that watchers may be “near enough to see and hear” the activity they’re trying to observe, except where otherwise prohibited.

¹¹ House Bill 3, Article 4, Section 4.07: Allowing campaigns/ballot measures to seek injunctive relief, a writ of mandamus, or “any other remedy available under law” when they “believe []” that one of their watchers was “unlawfully prevented or obstructed from the performance of” their duties.

Penal Code, or any other provision of law relating to the conduct of elections,”¹² and simply receive a warning from an election judge. *They are still allowed to remain in the polling place.* At this point the election judge has no authority to remove them. Only after a second violation, witnessed by the election judge themselves, can they remove a poll watcher from duty.¹³

Although the election judge has the ability to call the police if the partisan poll watcher disturbs the peace or breaks the law, waiting for law enforcement to arrive is time consuming and could bring the polling place to a halt, if not slow voting down significantly.

In practice, this would allow a partisan poll watcher to harass or try to intimidate, among other things, a voter by continually questioning that voter’s eligibility. If an election officer witnesses this occurring, the most they can do under code is give the poll watcher a warning (or call and wait for the police to arrive, assess the situation, etc.). This allows the poll watcher to stay in the polling place until they commit another offence witnessed by an election judge. Only then does the election judge have the authority to remove the partisan poll watcher.

Voter Assistance

Currently, Texas statute allows for certain individuals¹⁴ to receive assistance casting their ballot, however House Bill 3 makes the act of assisting a voter more cumbersome and creates unnecessary confusion when determining if an individual can serve as a voter’s assistant. In the Latino community, one-in-ten U.S. born Latino adults need some language assistance¹⁵ and slightly more than half of naturalized U.S. citizens who are Latino also need language assistance.¹⁶ For individuals who need assistance voting, the person most likely to provide assistance is going to be someone the voter knows such as a family member, close friend, or neighbor.

¹² House Bill 3, Article 4, Section 4.01

¹³ House Bill 3, Article 4, Section 4.01

¹⁴ Per Texas Election Code Sec. 64.031, an individual must have a physical disability that renders the voter unable to write or see or they must have an inability to read the language in which the ballot is written.

¹⁵ Jens Manuel Krogstad et al., “English Proficiency on the Rise Among Latinos,” Pew Research Center (May 12, 2015), <https://www.pewresearch.org/hispanic/2015/05/12/english-proficiency-on-the-rise-among-latinos/>.

¹⁶ Camille Ryan, “Language Use in the United States: 2011 - American Community Survey Reports,” United States Department of Commerce (August 2013), <https://www2.census.gov/library/publications/2013/acs/acs-22/acs-22.pdf>.

The revised oath under House Bill 3 would add “under the penalty of perjury,” (punishable by a state jail felony¹⁷) and require the assistant to attest that the voter had “represented to [them that] they are eligible to receive assistance.” Previously the assistant was able to answer questions to help the voter understand the ballot, navigate the polling place, and understand the voting process, but House Bill 3 essentially limits the interactions to pure translation or physically helping the voter mark their ballots¹⁸.

Additionally, the assistant must affirm that they did not “pressure or coerce the voter into choosing [them] to provide assistance.”¹⁹ This new requirement will both cause many potential assistants, especially family and friends, to question whether they violated the terms of the oath through everyday words of encouragement or pleas to participate, and simply walk away. Even worse, they run the risk that a politically motivated prosecutor will disagree with the assistant's affirmation, wrongly conclude that their assistance was provided subject to “pressure or coercion,” and prosecute assistants merely for helping another person to vote.

In addition to the oath required to assist a voter, under House Bill 3, an individual wishing to assist a voter must complete a new form, previously not required by the Texas Election Code, stating their name, address, relationship to the voter, and whether they received any “form of compensation or other benefit” from a candidate, campaign, or political committee.²⁰ It is unclear where this form goes, who has access to it, or if the assistant’s identifying information is protected.

In many cases, these provisions will deter people from assisting voters and force the voter to leave without casting a ballot. **In practice**, this could look like an elderly Spanish-speaker who goes to the polls to vote because her neighbor knocked on her door, asked her if she had voted yet, and then offered to drive her to the polls and act as her interpreter. Once they arrive, the neighbor, in taking the assistant’s oath, must swear under penalty of perjury that he did not “pressure or coerce” his elderly neighbor to come and vote. In his mind, he wonders if approaching her at home counts as “pressure.” Did his offers to interpret for her or drive her to the polls constitute “pressure?” The

¹⁷ House Bill 3, Article 7, Section 7.04

¹⁸ House Bill 3, Article 6, Section 6.03

¹⁹ *Ibid.*

²⁰ House Bill 3, Article 6, Section 6.02

uncertainty that the new oath creates for these two ultimately results in a situation where the assistant decides they cannot help and/or the elderly voter leaves the polls without casting a ballot in order to save her neighbor from legal issues.

24-Hour and Drive-Through Voting

House Bill 3 takes aim at two specific provisions implemented in response to the COVID-19 pandemic for the 2020 election to make voting safer and more convenient for Texans: drive-through and 24-hour voting. Both options are explicitly outlawed by House Bill 3.

Drive-through voting was first tested in Harris County as an attempt to protect voters against the pandemic. While curbside voting is currently available under a specific section of the Election Code for disabled Texans for whom standing in line or walking into a polling place presents a physical challenge, a separate section of the Texas Election Code also allows counties to establish polling places more broadly within “structure[s],” such as the drive-through tents that Harris County set up during the 2020 election.²¹ In Harris County, drive-through early voting was a huge success with Latino voters-- 23% of the voters taking advantage of the service were Latino.²² In total, 10% of Harris County’s early votes were cast at one of ten drive-through sites.²³ Three separate legal battles attempted to discount nearly 127,000 drive-through Harris county early votes and the practice was upheld all three times-- twice by the Republican-controlled Texas Supreme Court.²⁴ At no point did the practice of drive-through voting reveal wide-spread voter fraud, or voter fraud in any form. Drive-through voting was a convenient, safe option for Harris County residents-- most especially Black and Latino Texans, who we know were the hardest hit by the pandemic-- to cast their ballots during COVID. Ultimately, eliminating drive-through voting limits a voter’s options to cast their ballot.

²¹ Current statute permits curbside voting: “If a voter is physically unable to enter the polling place without personal assistance or likelihood of injuring the voter's health, on the voter's request, an election officer shall deliver a ballot to the voter at the polling place entrance or curb.” (*Texas Election Code Sec. 64.009*). The basis for drive through early voting was that code does not mandate a permanent building for early voting sites, just election day.

²² From Harris County Early Voting Rosters; Targets mart for race/ethnicity modeling

²³ Jolie McCullough, “Nearly 127,000 Harris County Drive-through Votes Appear Safe after Federal Judge Rejects GOP-Led Texas Lawsuit,” *The Texas Tribune* (November 2, 2020), <https://www.texastribune.org/2020/11/02/texas-drive-through-votes-harris-county>.

²⁴ *Ibid.*

In practice, this could look like a single mom of three young children voting early on her Saturday off of work. Without childcare, she opts to drive-through vote. The hour spent in line is easier in a van, where her children are able to be kept occupied and cool in the air conditioning. Her ballot is counted and is as secure as it would be if she had opted to vote inside a polling place. The only difference is that she had the option to vote in a way that is most convenient for her.

24-hour voting is another COVID-era voting option outlawed by House Bill 3. Restricting early voting hours takes away the authority of local officials to set early voting times that fit the needs of their communities. Under current statute, local officials are given the flexibility to operate at the times that best fit their community's needs. Having the ability to extend voting hours allows these local officials to accommodate shift workers, first responders, those with irregular schedules, and voters with substantial family responsibilities that make voting during "regular" hours exceptionally difficult.

In practice, removing access to 24-hour voting most affects voters with demanding, hourly jobs or work in the gig economy. When *Texas Monthly* interviewed voters in Harris County who were participating in its 24 hour voting program, they found a number of voters who would have found it nearly impossible to vote otherwise, including an engineer who works in the Houston Ship Channel for an oil field services company; an employee of Metro, Harris County's public transportation agency; a construction project manager; "[a]n overworked Amazon delivery driver"; "[a] middle-aged teacher, still wearing her business-casual work attire"; and an H-E-B employee.²⁵ These are the people whose votes would be most affected by House Bill 3.

Limiting voting hours would disproportionately harm communities of color, who tend to have less flexible work schedules. The Texas Civil Rights Project conducted an analysis, with Targetsmart, of the voters who used extended hours voting and found that extended voting hours were more likely to be used by people of color than early voters as a whole.²⁶ Taking away the discretion of

²⁵ Peter Holley, "Meet the Harris County Voters Who Showed Up After Midnight to Cast a Ballot," *Texas Monthly* (Oct. 30, 2020), <https://www.texasmonthly.com/news-politics/harris-county-24-hour-voting/>.

²⁶ James Slattery, Texas Civil Rights Project Testimony on House Bill 4322, Texas House Committee on Elections, April 21, 2021

local election officials to set voting hours that make sense for their communities would particularly hurt people of color who vote in Texas.

Increased Wait Times

In 2014, the Presidential Commission on Election Administration, after an intensive six month process of public hearings and consultation with elections experts, concluded that “no voter should have to wait more than half an hour to have an opportunity to vote,”²⁷ but during the 2020 General Election, 23% of individuals voting early and 14% of individuals voting on election day, waited for longer than 30 minutes.²⁸ Nationally, Latino and Black Voters are more likely to wait longer than white voters with Latino voters waiting, on average, 46% longer.²⁹

Instead of working to increase voter access or allow jurisdictions to respond to the unique needs of their electorate, a number of provisions in House Bill 3 will increase wait times at polling places by:

- Creating an environment where partisan poll watchers can not only break both Election and Criminal law (and remain in the polling place), but can do so twice before the poll watcher can be removed by the elections judge;³⁰
- Adding a voter assistant’s form, and increasing the scrutiny and length of the assistant oath could create slowdowns, questions, and fears for individuals wishing to assist a voter;³¹ and
- Outlawing drive-through³² and 24-hour voting,³³ meaning that even in the midst of severe heat or increased pandemic precautions, individuals will generally be required to physically enter a polling place, adding to whatever line may already exist, to vote.

²⁷ Presidential Commission on Election Administration, “The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration”, United States Election Assistance Commission, (January 2014), https://www.eac.gov/sites/default/files/eac_assets/1/6/Amer-Voting-Exper-final-draft-01-09-14-508.pdf

²⁸ Charles Stewart III, “how we Voted in 2020: A First Look at the Survey of the Performance of American Elections.”, MIT Election Data and Science Lab, (December 15, 2020), <http://electionlab.mit.edu/sites/default/files/2020-12/How-we-voted-in-2020-v01.pdf>

²⁹ Hannah Klain et al., “Waiting to Vote,” The Brennan Center for Justice, (June 3, 2020), <https://www.brennancenter.org/our-work/research-reports/waiting-vote>

³⁰ House Bill 3, Article 4

³¹ House Bill 3, Article 6, Section 6.02 and 6.03 and Article 7, Section 7.04

³² House Bill 3, Article 3, Sections 3.04 and 3.12

³³ House Bill 3, Article 3, Sections 3.08 and 3.09

Unfortunately, it is a fact that longer wait lines result in less individuals voting and, nationwide, average wait times are longer in precincts with a higher percentage of minority voters, renters, and lower incomes.³⁴ Lines disenfranchise voters; data from the 2016 Presidential Election suggests that more than 560,000 Americans did not vote because of issues relating to polling place management, including long lines³⁵. Instead of working to ensure that lines at polling places in Texas' Black and Latino communities give all those who want to vote the ability to vote, House Bill 3 would enact provisions that increase lines at all polling locations, causing slowdowns for all Texans.

Conclusion

Census data shows that the Hispanic and Latino community is the fastest-growing demographic in Texas.³⁶ As such we are a vitally important voting-bloc and will decide the future of the State's politics. Latinos are not a monolith. To reflect the diversity of our electorate, it is vital that we have a responsive elections system that can adjust to the needs of the community casting their ballots. More options, not less.

Thank you, members, for your time today.

³⁴ Matthew Weil et al., "The 2018 Voting Experience: Polling Place Lines," The Bipartisan Policy Center (November 4, 2019), <https://bipartisanpolicy.org/report/the-2018-voting-experience/>.

³⁵ *Ibid.*

³⁶ Alexa Ura & Anna Novak, "Texas' Hispanic population grew by 2 million in the past decade, on pace to be largest share of state by 2021," Texas Tribune (June 25, 2020) <https://www.texastribune.org/2020/06/25/texas-hispanic-population-grows-2-million/>