

Testimony Submitted *by*
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I. INTRODUCTION

It is a great honor to testify before this body, the Subcommittee on Elections for the U.S. House of Representatives.¹ For my testimony this afternoon, I draw heavily from my work as Voting Rights Program Director at the Texas Civil Rights Project (TCRP), and appear on behalf of that organization.

I have been asked to inform this Subcommittee on the impact of Texas Senate Bill 1 on voters during the 2022 Texas Primary Election, specifically the issues and barriers Texas voters experienced during that election, and how we ensure better access to the ballot in the future.

It pains me to say that my colleagues, our partners, and I have observed a severe form of voter suppression and mass disenfranchisement not seen in Texas since the days of Jim Crow as a result of Texas Senate Bill 1. Texas Senate Bill 1's unnecessary and convoluted mail ballot identification provisions resulted in 16 of the top 20 counties in Texas throwing out a staggering 18,000 duly-cast mail ballots.² To put that number in context, during the 2020 Presidential Election, President Biden beat Former President Trump in both Arizona and Georgia by far smaller margins.³ Similarly, Former President Trump beat Former Secretary Clinton during the 2016 Presidential Election in Michigan with far fewer votes.⁴ Stated plainly, the 2022 Texas Primary was not a democratic election.

To make matters worse, community organizations, afraid that their staff, members, and volunteers may face criminal prosecution due to provisions found in Texas Senate Bill 1, were forced to shutter whole programs built to assist voters with English limited proficiency and voters with disabilities. People who would ordinarily work the polls but were afraid of provisions found in Texas Senate Bill 1 that target poll workers may have chosen to stay at home during an already understaffed election.⁵

After decades of anti-voter legislation passed by the Texas legislature, a lack of Federal intervention in response to that legislation, and court cases that weaken the power of existing Federal voting rights law, the addition of Texas Senate Bill 1 to an already anti-voter legal regime has been so

¹ We are Texas lawyers for Texas communities, serving the rising movement for equality and justice in our state. Our 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. Learn more at <https://www.texascivilrightsproject.org>. I am deeply grateful for the work of TCRP's entire team, particularly given the heightened importance of our voting rights efforts this election year. Special thanks to attorneys Zachary Dolling and James Slattery and our Election Protection Campaign Manager Michael Adams for their thorough and thoughtful assistance with preparing this testimony.

² Alexa Ura, *At least 18,000 Texas mail-in votes were rejected in the first election under new GOP voting rules*, Texas Tribune (Mar. 11, 2022), <https://www.texastribune.org/2022/03/11/texas-mail-in-voting-lawsuit/>.

³ Benjamin Swasey and Connie Hanzhang Jin, *Narrow Wins In These Key States Powered Biden To The Presidency*, NPR (Dec. 2, 2020), <https://www.npr.org/2020/12/02/940689086/narrow-wins-in-these-key-states-powered-biden-to-the-presidency>.

⁴ Philip Bump, *Donald Trump will be president thanks to 80,000 people in three states*, Washington Post (Dec. 1, 2016), <https://www.washingtonpost.com/news/the-fix/wp/2016/12/01/donald-trump-will-be-president-thanks-to-80000-people-in-three-states/>.

⁵ Reese Oxner and Uriel J. García, *Many voting locations throughout Texas did not open because of staff shortages*, Texas Tribune (March 1, 2022), <https://www.texastribune.org/2022/03/01/texas-primary-election-voting-location-closures/>.

damaging to Texas voters that we must call into question whether Texas can conduct fair and democratic elections after its implementation.

Unfortunately, what we witnessed during the 2022 Texas Primary demonstrates only the partial impact of Texas Senate Bill 1. We believe Texas voters will face the full brunt of Texas Senate Bill 1 during the 2022 Midterm Election in November as well as during general and local elections in the future.

II. THE 2022 TEXAS PRIMARY ELECTION WAS UNDEMOCRATIC

A. Texas Senate Bill 1's Vote By Mail Identification Provisions Caused Mass Disenfranchisement

Texas Senate Bill 1 requires voters to provide their Texas driver's license, personal identification card, or election identification certificate number on their mail ballot application and their mail ballot return carrier envelope.⁶ If they do not have these identification numbers, they must provide the last four digits of their Social Security number.⁷ And if they have none of the above, they must affirm a statement to that effect.⁸ Whatever number or statement the voter supplies first on the mail ballot application and later on the mail ballot return carrier envelope must "identify the same voter identified on the" voter's registration application, meaning that the number or statement must match the information in the voter's voter registration record. If it does not, at either stage, their materials—whether the mail ballot application or the mail ballot—will be rejected.⁹

Everything that could go wrong with this process went wrong during the 2022 Texas Primary Election, resulting in disenfranchisement of thousands of eligible Texas voters. Some voters understandably overlooked the new identification field. For instance, on the return carrier envelope, the identification field is located under the flap of the envelope, making it difficult for voters to notice the identification field.¹⁰ Other voters filled out the new identification field with a valid number, but they were among the hundreds of thousands of Texas voters whose voter registration record has not been updated by election officials to include all of their valid identification numbers.¹¹ Some voters also used an older version of the mail ballot application form that did not contain the new identification field, thereby also leading to the rejection of their application.¹²

⁶ Tex. Elec. Code §§ 84.002, 86.002.

⁷ Tex. Elec. Code §§ 84.002, 86.002.

⁸ Tex. Elec. Code §§ 84.002, 86.002.

⁹ Tex. Elec. Code §§ 86.001, 87.041; Election Advisory No. 2022-08, *NEW LAW: Senate Bill 1 – Opportunity to Correct Defects on Application for a Ballot by Mail and Carrier Envelope*, Tex. Sec'y of State (Jan. 28, 2022), <https://www.sos.state.tx.us/elections/laws/advisory2022-08.shtml>.

¹⁰ Alexa Ura, *Thousands of Texas mail-in votes still in jeopardy under new GOP voting restrictions*, Texas Tribune (Mar. 2, 2022), <https://www.texastribune.org/2022/03/02/texas-primary-ballot-rejections/>.

¹¹ Alexa Ura, *At least 18,000 Texas mail-in votes were rejected in the first election under new GOP voting rules*, Texas Tribune (Mar. 11, 2022), <https://www.texastribune.org/2022/03/11/texas-mail-in-voting-lawsuit/>.

¹² Alexa Ura, *Hundreds of mail-in ballot applications are being rejected under Texas' new voting rules*, Texas Tribune (Jan. 13, 2022), <https://www.texastribune.org/2022/01/13/texas-voting-mail-rejections/>.

Although Texas Senate Bill 1 also created a process to allow voters to “cure” the rejection of their mail ballots and applications, it proved woefully inadequate in saving many voters from disenfranchisement. If a voter’s mail ballot application is rejected, the county must provide notice of the rejection to the voter and inform them that they may correct or add their identification number via a new website; voters also had the option to cure their mail ballots on that same website.¹³ However, in order to access the website, voters must provide both their driver’s license or personal identification card number, and the last four digits of their Social Security number, which must match information in their voter registration record.¹⁴ But it is the lack of such numbers in their voter registration record that necessitates curing in the first place and thereby effectively blocks them from using the curing website, creating a vicious catch-22 that voters cannot escape.¹⁵

Moreover, Texas Senate Bill 1 created a hopelessly convoluted process for curing mail ballots. If county election officials flag a mail ballot for rejection approximately 14 days before the election, the county must return the envelope to the voter so that the voter can correct the issue and re-submit the ballot by Election Day; if county election officials flagged a mail ballot for rejection after then, the county may (but is not required to) notify the voter of the problem by telephone or email, and inform the voter they may either 1) vote in person or 2) come in person to the clerk’s office within six days after Election Day to correct the problem.¹⁶ But many voters who received their ballot back in the mail likely mistook the returned ballot for junk mail, were confused as to why they received their ballot back, did not realize they had to return their ballot even after correcting their identification number on the curing website, or were unable to return their ballot by Election Day. Many of those voters who did not receive their mail ballot back would have been unable to utilize the options given to them (vote in person or fix the problem in person in the elections office) because they were temporarily away from home or unable to leave their residence due to mobility issues—which, in a deep irony, would have been the reason they were trying to vote by mail to begin with.

We now know that Texas Senate Bill 1’s new vote by mail identification requirement resulted in a level of mass disenfranchisement unlike anything we have seen in Texas since the days of Jim

¹³ Tex. Elec. Code §§ 86.001, 86.015.

¹⁴ Tex. Elec. Code § 86.015.

¹⁵ Alexa Ura, *At least 18,000 Texas mail-in votes were rejected in the first election under new GOP voting rules*, Texas Tribune (Mar. 11, 2022), <https://www.texastribune.org/2022/03/11/texas-mail-in-voting-lawsuit/>.

¹⁶ Tex. Elec. Code §§ 87.0271, 87.0411; Election Advisory No. 2022-08, *NEW LAW: Senate Bill 1 – Opportunity to Correct Defects on Application for a Ballot by Mail and Carrier Envelope*, Tex. Sec’y of State (Jan. 28, 2022) (“When the [signature verification committee or early voting ballot board] is determining whether there is adequate time to return a defective carrier envelope to the voter by mail, we strongly recommend that it takes into account postal delivery time frames. According to the United States Postal Service (USPS), first-class delivery can take up to five business days. Because a defective carrier envelope needs to be returned to the voter, and then mailed back to the early voting clerk, the [Texas Secretary of State] recommends that the [signature verification committee or early voting ballot board] implement a policy to provide notification of a defect by phone or email to all voters whose ballots are reviewed by the [signature verification committee or early voting ballot board] on or after the 14th day before election day (approximately 10 business days).”), <https://www.sos.state.tx.us/elections/laws/advisory2022-08.shtml>.

Crow. Whereas in past elections approximately 1-2% of mail ballots in Texas were rejected,¹⁷ counties reported rejection rates of between 6-22% in the 2022 Texas Primary:

<u>County</u>	<u>Vote by mail rejection rate in 2022 Texas Primary</u>
Bexar ¹⁸	22% (approximately 4,000 ballots)
Collin ¹⁹	13.7% (828 ballots)
Dallas ²⁰	6.5% (694 ballots)
El Paso ²¹	16% (725 ballots)
Harris ²²	19% (6,919 ballots)
Hays ²³	8.2% (208 ballots)
Hidalgo ²⁴	19.4% (526 ballots)
Travis ²⁵	8% (approximately 900 ballots)
Williamson ²⁶	11.5% (521 ballots)

¹⁷ Alexa Ura, *At least 18,000 Texas mail-in votes were rejected in the first election under new GOP voting rules*, Texas Tribune (Mar. 11, 2022), <https://www.texastribune.org/2022/03/11/texas-mail-in-voting-lawsuit/>.

¹⁸ *Id.*

¹⁹ Matt Shuham and Kate Riga, *It's Official: Texas Republicans' New Voting Law Disenfranchised Thousands Of Otherwise Eligible Voters*, Talking Points Memo (Mar. 10, 2022), <https://talkingpointsmemo.com/news/texas-voting-law-sb1-primary-election>.

²⁰ Alexa Ura, *At least 18,000 Texas mail-in votes were rejected in the first election under new GOP voting rules*, Texas Tribune (Mar. 11, 2022), <https://www.texastribune.org/2022/03/11/texas-mail-in-voting-lawsuit/>.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Ashley Lopez, *It's official: Texas' new voting law led to higher rejection rates for mail-in ballots in Central Texas*, KUT.org (Mar. 10, 2022), <https://www.kut.org/politics/2022-03-10/its-official-texas-new-voting-law-led-to-higher-rejection-rates-for-mail-in-ballots-in-central-texas>

²⁶ Alexa Ura, *At least 18,000 Texas mail-in votes were rejected in the first election under new GOP voting rules*, Texas Tribune (Mar. 11, 2022), <https://www.texastribune.org/2022/03/11/texas-mail-in-voting-lawsuit/>.

And we know that this explosion in the number of rejected mail ballots is a direct result of Texas Senate Bill 1’s new vote by mail identification requirement, as demonstrated by the fact that in a number of counties nearly every single rejected ballot was tossed out for failing to satisfy Texas Senate Bill 1’s mandate:

<u>County</u>	<u>Percentage of rejected mail ballots thrown out for failing to satisfy Texas Senate Bill 1’s new vote by mail identification requirement</u>
Dallas ²⁷	98%
El Paso ²⁸	94%
Harris ²⁹	99.6%
Hays ³⁰	99.5%
Williamson ³¹	73%

Beyond a surge in mail ballot rejections, the rates of rejection varied significantly across the state, making it clear that whether you were disenfranchised by Texas Senate Bill 1 depended in part on where you lived. For instance, as the Associated Press reported,

According to the county reports, in the five counties won by Trump that had the most mail-in voters, a combined 4,216 mailed ballots were rejected or still pending after the day of the election, a rate of 21% of the total. In the counties won by Biden with the most mail-in voters, which include most of Texas’ biggest cities, a combined 11,190 votes were similarly rejected or pending, which amounted to 13%.³²

B. Texas Senate Bill 1’s Assistance Provisions Have Shuttered Voter Assistance Programs

Texas Senate Bill 1 severely limits the types of assistance voters with limited English proficiency and voters with disabilities may receive, even in comparison to the Texas Election Code’s

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Associated Press, *Texas flagged 27,000 mail ballots for rejection in primary*, NBCNews.com (Mar. 10, 2022), <https://www.nbcnews.com/politics/2022-election/texas-flagged-27000-mail-ballots-rejection-primary-rcna19507>.

prior limitations. It also subjects voter-assistors, who are frequently volunteers from the community helping others engage in their civic duty to vote, to potential criminal liability for minor slip ups. It does so by creating new processes that carry the potential for criminal liability as well as criminalizing previously permitted actions.

Prior to Texas Senate Bill 1, the Texas Election Code explicitly permitted voter-assistors to answer the voter's questions, state propositions on the ballot, and to identify candidates and candidates' political parties. Texas Senate Bill 1 rewrites the oath to eliminate these options, instead requiring assistors to now swear under penalty of perjury that they will take no action to assist the voter beyond "reading the ballot to the voter, directing the voter to read the ballot, marking the voter's ballot, or directing the voter to mark the ballot."³³ The assistor must now also swear under penalty of perjury that the voter represented to them that the voter was eligible to receive assistance, that they did not "pressure or coerce" the voter into choosing them for assistance, and that the assistor will not communicate any information about how the voter voted. Texas Senate Bill 1 additionally creates a requirement that assistors now fill out a form stating their name and address, their relationship to the voter, and whether they received any form of "compensation" or "other benefit."³⁴ Finally, Texas Senate Bill 1 punishes, as a state jail felony, the solicitation, receipt, or acceptance of any form of "compensation" for assisting voters during the vote by mail process.³⁵ Compensation is defined by reference to the Texas Penal Code's definition of "economic benefit," which is broadly defined as "anything reasonably regarded as an economic gain or advantage."³⁶

It is easy to predict the outcome these provisions: disenfranchisement. First, Texas Senate Bill 1's addition of criminal liability at numerous steps in the voting-assistance process, including for something as simple as an assistor making a mistake in a clerical document listing their address, chills the willingness of volunteer community members and others to act as assistors. Ironically, beyond the flat out burden of extra time spent added by these provisions, those assistors who dedicate the most time to helping others vote face the greatest risk of an inadvertent mistake leading to criminal sanctions. And what if a particularly active assistor encourages a voter to seek assistance—will they have violated the oath provision not to "pressure" the voter into using them as an assistor? What if a voter wants to buy the person who assisted them a coffee, as a thank you? Does that qualify as illegal "compensation" for voter assistance? The threat of criminal sanction and the confusion as to what innocent actions may or may not elicit prosecution limits the pool of generally available assistors and will, in some cases, also prevent voters from being able to select the assistor of their choice.

Second, Texas Senate Bill 1's narrow view of the type of assistance that voters with limited English proficiency or voters with disabilities may need ignores reality. Under Texas Senate Bill 1, assistors cannot answer a voter's questions or provide virtually any other sort of information or assistance the voter might require, such as how to operate a voting machine, what a particular instruction means, or whether a translation is correct. For those not proficient in English, Texas Senate Bill 1 prohibits assistors from translating directional signage and helping the voter communicate with

³³ Tex. Elec. Code § 64.034.

³⁴ Tex. Elec. Code §§ 64.0322, 86.010.

³⁵ Tex. Elec. Code § 86.0105.

³⁶ Tex. Penal Code § 38.01.

poll workers. For voters with visual impairments, Texas Senate Bill 1 prohibits assistors from the simple act of helping the voter navigate the polling place. For those with disabilities that limit movement, Texas Senate Bill 1 prohibits assistors from helping them putting their ballot into a Scantron machine. These examples are illustrative but non-exhaustive, because Texas Senate Bill 1 bars almost all acts of assistance.

We saw these realities play out, across party lines, in the 2022 Texas Primary Election. Take for example one of our partners and clients in our ongoing litigation,³⁷ the greater Houston branch of the Organization for Chinese Americans (OCA-GH). OCA-GH is a primarily volunteer-driven, membership-based civil rights organization of community advocates dedicated to advancing the social, political, and economic well-being of Americans of Asian and Pacific Island descent (“AAPI”). A significant portion of the OCA-GH membership, as well as the community it serves—the people of Harris County, which is the largest county in Texas—lack the ability to read English-language election materials, and require assistance to vote effectively. As part of its overall mission, OCA-GH normally exerts substantial organizing effort and resources towards providing its members and the greater Houston AAPI community with voter-assistors who read and speak languages other than English. Yet during the 2022 Texas Primary, and due to the new criminal sanctions and burdens levied by Texas Senate Bill 1, OCA-GH was forced to completely shutter whole voter assistance programs. As a result, OCA-GH reported complaints and frustration from non-English speaking members of the AAPI community at both Democratic and Republican primary polling locations.

III. RECOMMENDATIONS ON HOW TO PROMOTE AND INGRAIN DEMOCRACY IN TEXAS

Since the 2022 Texas Primary was a low turnout election, Texans have not yet experienced the full impact of Texas Senate Bill 1. Texans should brace for the full force of Texas Senate Bill 1 during the 2022 Midterm Election in November. Federal action prior to that time is crucial, given the surge in turnout expected during general elections, the rampant polarization and voter intimidation that Texans now also expect during general elections, the increased threats from local and state officials to prosecute regular voting and voter assistance behavior further criminalized by Texas Senate Bill 1, and no signs that the Texas legislature, the Texas Secretary of State, the Texas Attorney General, or the Texas Governor have any plans to fix the core issues with Texas Senate Bill 1. Congress can and should intervene by using its authority under the Elections Clause of the United States Constitution to strike down Texas Senate Bill 1’s most egregious provisions. With such a dire situation in Texas, Congress must set aside political infighting to save Texas’ democracy. Congress must act now.

³⁷ The Texas Civil Rights Project, among others, is currently representing a variety of organizations in challenging these and other provisions of Texas Senate Bill 1 in federal court. *See generally* LUPE *et al. v. Abbott et al.*, 5:21-cv-00844-XR, W.D. Tex. (2021).