

BRENNAN CENTER  
FOR JUSTICE  
TWENTY YEARS

*at New York University School of Law*

## Texas Denies Voters Effect of Court Ruling Striking Down Discriminatory Law

By Jennifer L. Clark

Yesterday, the Brennan Center, along with other plaintiffs challenging Texas's strict photo ID law SB 14, [filed a motion](#) urging the Supreme Court not to hear an appeal of the case. Even though the full Fifth Circuit Court of Appeals ruled this summer that the law discriminates against African-American and Latino Texans in violation of the Voting Rights Act, Texas continues to defend it, at most recent count having spent [over \\$3.5 million](#) in litigation costs.

In addition to fighting tirelessly in court for its right to enforce a racially discriminatory law, Texas utterly failed this November to follow through on the court-ordered remedy stemming from the Fifth Circuit's ruling that SB 14 could not stand as written. The trial court, as it was ordered to do by the Fifth Circuit, instituted a remedy that would have made it possible for voters who did not have the required ID, and would have faced a reasonable burden to getting one, to vote a ballot that counted. The trial court's remedy expanded from 60 days to four years the length of time an SB 14-approved ID can be expired and still be accepted at the polls, allowed voters with an obstacle to obtaining such ID to vote a regular ballot after showing one of a much larger number of readily-available documents, such as a utility bill, and signing a formal statement explaining their obstacle (such as job commitments or transportation issues).

This November, then, was supposed to be the first time in three years that Texans with an obstacle to getting photo ID could cast a ballot that counts. However, the numerous complaints that the Brennan Center and our allies [heard from Texans](#) throughout early voting and on Election Day made clear that there was widespread noncompliance with the court-ordered remedy throughout early voting and on Election Day, and misinformation and confusion reigned in too many counties. We heard that election officials were misinforming voters on the ID law and the court-ordered alternate options, even turning some voters away without letting them cast a ballot, and that polling places were distributing misinformation to voters by way of outdated flyers, inaccurate handouts, and posters displaying old voter ID requirements. In Bexar County, a majority-Hispanic county that is one of the largest in the state, the inaccurate voter education information was so bad that [a court order was required](#) to fix it.

Hundreds of these reports came from voters calling the non-partisan [866-OUR-VOTE](#) Election Protection hotline, some came through state-based groups looking to assist voters, and still others came from voters emailing or calling the Brennan Center directly because they were looking for someone to help them navigate this mess. In all of these instances, these reports were unsolicited — they happened only when voters had the time to reach out to seek help and knew where to go to get such help. Therefore, they likely understate the full scope of the problem by a substantial degree: a

countless number of other would-be voters surely lacked the time or resources to take on the burden of getting help sorting through the confusion and bad information.

The problems voters reached out to us with broke down into two main issues. First, misinformation distributed by poll workers and other election officials. And, second, voters' general lack of understanding about what the ID law required, uncertainty about whether they possessed a form of identification acceptable for voting, and confusion about what to do if they did not. All of these problems reflect the failure of the state to give full effect to the Fifth Circuit ruling and trial court remedy, and make clear that voters in Texas were not given the relief on Election Day that they were due.

Below is a non-exhaustive, representative sample of the kinds of complaints, questions, and concerns we, along with our allies, received from Texans throughout early voting and on Election Day. These reports, many of which were pulled from Election Protection's OUR VOTE LIVE data system, which understate the full scope of the problem, came from voters in over 20 counties, which combined represent more than 60 percent of the state's eligible voting population. Problems were reported in 8 of Texas's 10 most populous counties.

### **Misinformation Through Official Channels**

The sheer amount of misinformation that election officials gave to voters at the polls demonstrated that Texas did not offer voters the meaningful opportunity to cast a ballot that the appellate court decision and the trial court remedy required. Texas failed to ensure that the court-ordered remedy was complied with at numerous polling places throughout the state.

#### *Inaccurate Information and Instructions from Poll Workers*

For the voter, the polling site and the people who work there almost entirely determine the voting experience. Poll workers are given the full authority of the state on Election Day, and when they are misinformed about a law, it has a direct effect on democracy. In too many instances this election season, Texas lets its poll workers get it wrong, to the detriment of the voters.

Consider complaints below from numerous voters across more than a dozen counties (with especially high volume from Harris County and Denton County, home to more than 5.3 million eligible voters) that election officials were inaccurately or misleadingly conveying and enforcing the voter ID law and the court-ordered alternative options for those who qualify. In addition to the issues outlined below, multiple reports from around the state indicated that, because poll workers had not been adequately trained on the process for those with an obstacle to getting ID, they incorrectly directed voters to the alternate process when the voter had SB 14 ID in their possession, but had not brought it to the polls.

#### **Bexar County**

- During early voting, an election judge challenged a voter's stated obstacle to obtaining SB 14 ID, which is expressly prohibited under the court's order.
- During early voting, poll workers at multiple polling sites told voters they needed photo ID to vote, without reference to the alternate options available to those who qualify.

Brazos County

- On Election Day, poll workers were unfamiliar with the alternate options available to those who qualify and turned away at least one voter without photo ID.

Denton County

- During early voting, election officials at multiple polling sites told voters they needed photo ID to vote, without reference to the alternate options available to those who qualify.
- During early voting, election officials at multiple polling sites told voters that the alternate options were not available to voters who had obtained SB 14 ID but lost it, despite the fact that “lost or stolen photo ID” was specifically listed in the court order as a qualifying reason for using the alternate options.
- On Election Day, poll workers turned away voters whose address on their ID did not match the address on their voter registration record, despite the fact that both the law and the court order specifically provide that these addresses need not match.

Grimes County

- On Election Day, poll workers turned away a voter who had lost her photo ID but brought her voter registration card and her water bill.

Harris County

- During early voting, poll workers at least 17 polling sites told voters they needed photo ID to vote, without reference to the alternate options available to those who qualify.
- During early voting, election officials at multiple polling sites turned away voters without photo ID.
- During early voting, an election official told voters that the Fifth Circuit’s opinion — finding that Texas’s law was racially discriminatory and could not stand as written — was not yet in effect.
- During early voting, poll workers told voters that an expired driver’s license could not serve as acceptable ID under the law.
- On Election Day, poll workers at numerous polling sites told voters they needed photo ID to vote, without reference to the alternate options available to those who qualify.

Hays County

- During early voting, poll workers at multiple polling sites told voters they needed photo ID to vote, without reference to the alternate options available to those who qualify.

Lamar County

- During early voting, poll workers told voters that without photo ID, their only option was to cast a provisional ballot.

Maverick County

- During early voting, poll workers required a Latino voter to provide ID, a voter registration card, and a social security number before allowing that voter to cast a ballot.

McLennan County

- During early voting, poll workers challenged the right of a voter without photo ID to vote, and election officials were heard instructing poll workers to challenge all voters without photo ID.

Midland County

- During early voting, poll workers told voters they needed photo ID to vote, without reference to the alternate options available to those who qualify.

Montgomery County

- On Election Day, poll workers told voters they needed photo ID to vote, without reference to the alternate options available to those who qualify.

Tarrant County

- During early voting, poll workers demanded photo ID from all voters, without reference to the alternate options available to those who qualify.

Travis County

- During early voting, poll workers at multiple polling sites told voters they needed photo ID to vote, without reference to the alternate options available to those who qualify.

*Inaccurate Education Materials at Polling Sites*

Voters rely on the official public education materials available at their polling place, such as posters and handouts, to obtain accurate information about the voting process. This year, such information was especially critical for voters without ready access to digital media, as much of the state's education outreach took that form. The proliferation of official but wholly inaccurate materials at polling sites meant that voters in Texas were denied the full relief the court victories should have guaranteed.

Consider complaints below from numerous voters from 15 different counties that polling sites were supplying inaccurate voter education materials. The primary complaint was voting sites supplying voters with outdated materials that made no mention whatsoever of the court-ordered alternative options and which incorrectly stated that SB 14 ID could be expired no longer than 60 days to be used for voting, when the court's order allows the use of SB 14 ID expired up to four years. As noted above, Bexar County was a frequently complained-of offender, and citizens there had to go to court to get the misinformation removed.

Angelina County

- During early voting, inaccurate voter education materials were supplied.

Bell County

- During early voting, inaccurate voter education materials were supplied.

Bexar County

- During early voting, inaccurate voter education materials were supplied at over a dozen polling sites. The problems were sufficiently pervasive that a lawsuit was filed, with a court [ordering the county](#) to correct the misinformation.

Brazoria County

- During early voting, inaccurate voter education materials were supplied.

Collin County

- During early voting, inaccurate voter education materials were supplied at multiple polling sites.

Dallas County

- During early voting, inaccurate voter education materials were supplied at multiple polling sites.

Denton County

- During early voting, inaccurate voter education materials were supplied at multiple polling sites.

El Paso County

- During early voting, inaccurate voter education materials were supplied.

Galveston County

- During early voting, inaccurate voter education materials were supplied at multiple polling sites.

Harris County

- During early voting, inaccurate voter education materials were supplied at multiple polling sites.
- On Election Day, inaccurate voter education materials were supplied.

Hays County

- During early voting, inaccurate voter education materials were supplied.

McLennan County

- During early voting, inaccurate voter education materials were supplied.

Montgomery County

- During early voting, inaccurate voter education materials were supplied.

Tarrant County

- During early voting, inaccurate voter education materials were supplied.
- On Election Day, inaccurate voter education materials were supplied.

Travis County

- During early voting, inaccurate voter education materials were supplied.

Voter Confusion and Lack of Information About the ID Law

In addition to calls relaying problems and concerns, [Election Protection](#) also heard from many voters across the state who were confused about what is required at the polls under the state's ID regime, reflecting Texas's inability or unwillingness to inform voters about the remedy. These questions in many ways reflected the same kind of misinformation being spread at polling places: voters did not know that SB 14 ID could be expired up to four years, did not know what to do if they lacked SB 14 ID, and generally lacked knowledge on what the law required.

Also troubling are the many voters with similar confusions or misunderstanding who *didn't* lodge complaints, and who may have stayed home or encountered problems at the polls as a result of the lack of information. [Research has already proven](#) that one negative consequence of Texas's strict photo ID law is that voters who are not sufficiently informed of the requirements stay home because they think they don't have the necessary ID, even though they may in fact have it.

- Multiple voters did not know SB 14 IDs could be expired up to four years and still be acceptable for voting. One would-be voter with such an ID didn't learn this until *after* the polls closed.
- A number of voters had valid driver's licenses from other states, but did not know whether they were acceptable for voting under SB 14.
- Many voters mistakenly thought an ID could not be used for voting if the address on it did not match the address on the voter rolls.
- A notable number of voters called Election Protection because they lacked photo ID and had not yet been educated on their options voting.
- A significant number of the calls that Election Protection received from Texas overall came from voters who did not know what forms of identification were accepted at the polls.

Ultimately, voters paid the price for the state's unwillingness to adequately fulfill the requirements of the Fifth Circuit's ruling and the district court's remedial order.