

Testimony on SB 1

By: Emily Eby, Staff Attorney, Texas Civil Rights Project

Texas Senate State Affairs Committee, July 10, 2021

I am here to oppose SB 1, just as I was here to oppose SB 7 three months ago and SB 9 two years ago. Like those earlier bills, SB 1 hurts Black voters, Latinx voters, voters with disabilities, lower income voters, and elderly voters while masquerading as a bill about “security” and “integrity.”

A few months ago, I testified against banning drive-through voting and 24-hour voting. I am doing so again today. In 2020, drive-through and late night voting both served voters of color, who used them more than white voters did in Harris County. I have attached data to support this in my written testimony. Getting rid of these convenient and secure methods would hurt Black and Latinx voters in Texas. For months now, voting rights advocates have trekked down to Austin to present you with proof that both of these bans hurt people of color. You have failed to present a legitimate reason for eliminating these two forms of voting. If you, as a legislative body, choose to keep these provisions in SB1 after all of that, the people of Texas can only conclude that you either want to discriminate, or you just don’t care if you do.

During the regular session, I also testified against the provisions that empower poll watchers to do whatever they want in the polling place. SB 1 provides slightly more control to poll workers in extreme situations. But the balance of power in SB 1 still favors the whims of partisan poll watchers over the training of poll workers and the safety of voters. I have provided the committee with our report on how this endangers voters, especially Black voters.

SB 1 updates the voter assistant’s oath to make the assistant swear that they did not “encourage” the voter to choose them. Unlike the words “pressure” and “coerce,” the word “encourage” does not have a clear or commonly understood meaning in the law. Voters’ assistants are usually not voting experts. They could break this law simply by saying “Grandma, I’d love to help you vote if you need me,” and they wouldn’t even know.

SB 1 would also codify the failed DPS voter purges from 2019 without making the fixes required in the lawsuit settlement, restrict counties from helping people apply to vote-by-mail, and impose a ballot curing process that is confusingly worded. My written testimony on all of these provisions is attached. I urge you not to pass SB 1 out of this committee. Thank you.



Written Testimony on SB 1

By: Emily Eby, Staff Attorney, Texas Civil Rights Project

Texas Senate State Affairs Committee, July 10, 2021

Due to the time limits of oral testimony, I have attached my full comments on SB 1 below.

Voter purges and investigations (DPS and jury service)

Sections 1.04 and 1.05 seek to codify voter purges and attorney general investigations based on outdated data that has failed to accurately check the rolls in the past. The DPS data described in 1.04 is the same that was used in the 2019 SOS voter purge. This data failed to account for citizens becoming naturalized in the years since they visited DPS. At least 25,000 names on the initial list were incorrectly identified as non-citizens (though the real number could be much higher), and the state ended up paying \$450,000 in legal fees. Why would we put this system into law to use again when we know it doesn't work?

The investigations in 1.05 are similarly unreliable. To send the names of all disqualified jurors to the attorney general for investigation is wasteful at best and unfairly targets citizens at worst. Name matches, clerical errors, and any number of other factors could cause someone to be wrongfully removed from the rolls or even prosecuted under this system. It would be unnecessary and unhelpful.

Ban on drive-through voting

We oppose Section 2.01, which would impose a one-size-fits-all rule from the Capitol here in Austin on all counties in Texas that they cannot conduct what is known as "drive through" voting. Drive through voting was a wildly popular option at some polling places last year, adopted as a vital safety measure during the pandemic, which continues to rage to this very day. It is hard enough to vote in Texas during normal times, but it was especially difficult to vote safely in Texas during the pandemic, given that the state remained one of just six states refusing to expand mail-in voting during the coronavirus pandemic. It is inexcusable, then, that the state might adopt a bill such as this that would make voting even less safe during the very same pandemic that we are still living through, not to mention future crises.

Further, the burden of taking away drive through voting won't fall on all voters equally. Eliminating drive through voting would disproportionately harm communities of color. TCRP conducted an analysis with Targetsmart of the voters who used drive through voting, and found that



drive through voting was more likely to be used by people of color than early voters as a whole. This is unsurprising, given that people of color have been disproportionately more likely to be infected with the coronavirus and die from it than white Texans. As such, taking away drive through voting would in particular have a disparate impact on people of color. We therefore urge the Committee to remove this provision.

Ban on extended hours

We oppose Section 2.06, which would have a discriminatory impact on historically marginalized groups. Limiting voting hours would disproportionately harm communities of color, who tend to have less flexible work schedules. Attached to this testimony are three charts showing, by significant margins, that the voters who used the extended voting hours and drive thru voting in Harris County were more likely to be people of color than early voters as a whole were.

Imposing early voting only after 6am and before 9pm takes away from local officials the authority to set early voting times that fit the needs of their communities. Indeed, local officials often allow polls to remain open past 9pm because extended hours voting is vital for shift workers, first responders, folks with irregular schedules, and voters with substantial family responsibilities that make voting during “regular” hours exceptionally difficult.

When *Texas Monthly* interviewed voters in Harris County who were participating in its 24 hour voting program, they found a number of voters overjoyed to have this option because they would’ve 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.

Further, the burden of taking away extended hours voting won’t fall on all voters equally. Limiting voting hours would disproportionately harm communities of color, who tend to have less flexible work schedules. TCRP 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. As such, taking away the discretion of local election officials to set voting hours that make sense for their communities would in particular have a disparate impact on people of color. We therefore urge the Committee to remove these provisions.

Restrictions on removing poll watchers

We oppose Sections 3.01 through 3.05, which gives new and unprecedented power to partisan poll watchers. There are many possible reasons to remove poll watchers from polling places beyond committing violations of the Election Code or Penal Code, such as looking over voters’



shoulders as they vote or other, more subtle forms of intimidating voters. Poll watchers have done all of those things in Texas in the last two years, and all of these invasions are allowed—in fact, they are protected—by these provisions.

Restrictions on sending out VBM apps

Sections 4.02 and 4.05 are overbroad, and would prevent widely accepted, noncontroversial means of distributing mail-in ballot applications. They might keep counties from sending applications to registered voters who we know for certain are eligible, like voters who are over 65. Preventing proactive distribution of ballot applications will not improve election security. It is already illegal to request an absentee ballot if you are not eligible for one. It is a state jail felony to “knowingly provide[] false information on an application for ballot by mail.” Many counties offer information on eligibility with the application. The application itself requires you to state your reason for voting by mail. Voters who don’t have one of the four approved reasons still may not vote by mail. The only difference between this provision and the existing law is that fewer eligible voters can get applications.

This bill also disadvantages voters who do not have printers. Voters can request that their county mail them an absentee ballot, but if the deadline is coming up quick, the surest way to get the application in is to print it out yourself at home. Printers and ink are expensive, which harms lower-income voters. Printers can be hard to set up and operate, which harms older voters and voters with visual or motor disabilities, both of whom are eligible to vote by mail. If the county can proactively provide a voter with an application, no printer is necessary.

Opportunity to cure VBM ballots

Every major election, Texas counties reject thousands of mail-in ballots solely on the basis of mismatched signatures — including at least 1,873 mail-in ballots rejected during the 2018 General Election. The current process for signature verification under Texas law authorizes untrained local election officials to arbitrarily and subjectively reject mail-in ballots if officials believe, based on their own layman analysis, that the signature on a ballot is not the voter’s signature. No advance notice is given to voters before their vote is rejected, and the decision to reject a mail-in ballot is final.

To make matters worse, once a ballot is rejected, there is no way for a voter to save themselves from disenfranchisement even if they somehow find out about the rejection before Election Day and can vote in-person. According to the SOS, they are not allowed to cancel that rejected ballot and cast a ballot that counts at the polls. My organization is currently engaged in litigation challenging this arbitrary process as a violation of the Equal Protection and Due Process Clauses of the U.S. Constitution, as well as the Americans with Disabilities Act and the Rehabilitation Act of 1973.



This bill would improve the situation these voters face by providing some mechanism for voters to be informed of a problem with the signature on their mail-in ballot and correct it. It however doesn't go far enough to truly solve this problem. The current version of HB 3 allows voters to cure for the most part only in person, since most mail-in ballots are reviewed close to, on, or even after Election Day. All mail-in voters should be able to choose whether to cure their ballot by mail, phone, email, fax, or in person, regardless of when their mail-in ballot is reviewed. A large subset of mail-in voters are away from home and can't return in person to correct the error. Also, many voters can't cure in-person because of age, disability, or confinement in jail.

This bill also fails to make mail-in ballot curing mandatory for counties. This omission will result in uneven enforcement from county to county. Some properly registered Texans will get a chance to vote, while other identically positioned Texans across the county line will not.

Curbside voting provisions

Section 5.01 would discourage people from assisting voters with disabilities by imposing onerous requirements on any non-relative who drives three or more voters to the polls. Those would-be helpers must provide their name and address, even if they are an Uber or bus driver simply doing their job. This section also allows poll watchers to observe curbside voting conduct, presumably even getting inside the car without the driver's permission if they so choose! These conditions impede on the privacy of drivers, some of whom do not even intend to vote, and make voter assistance less likely.

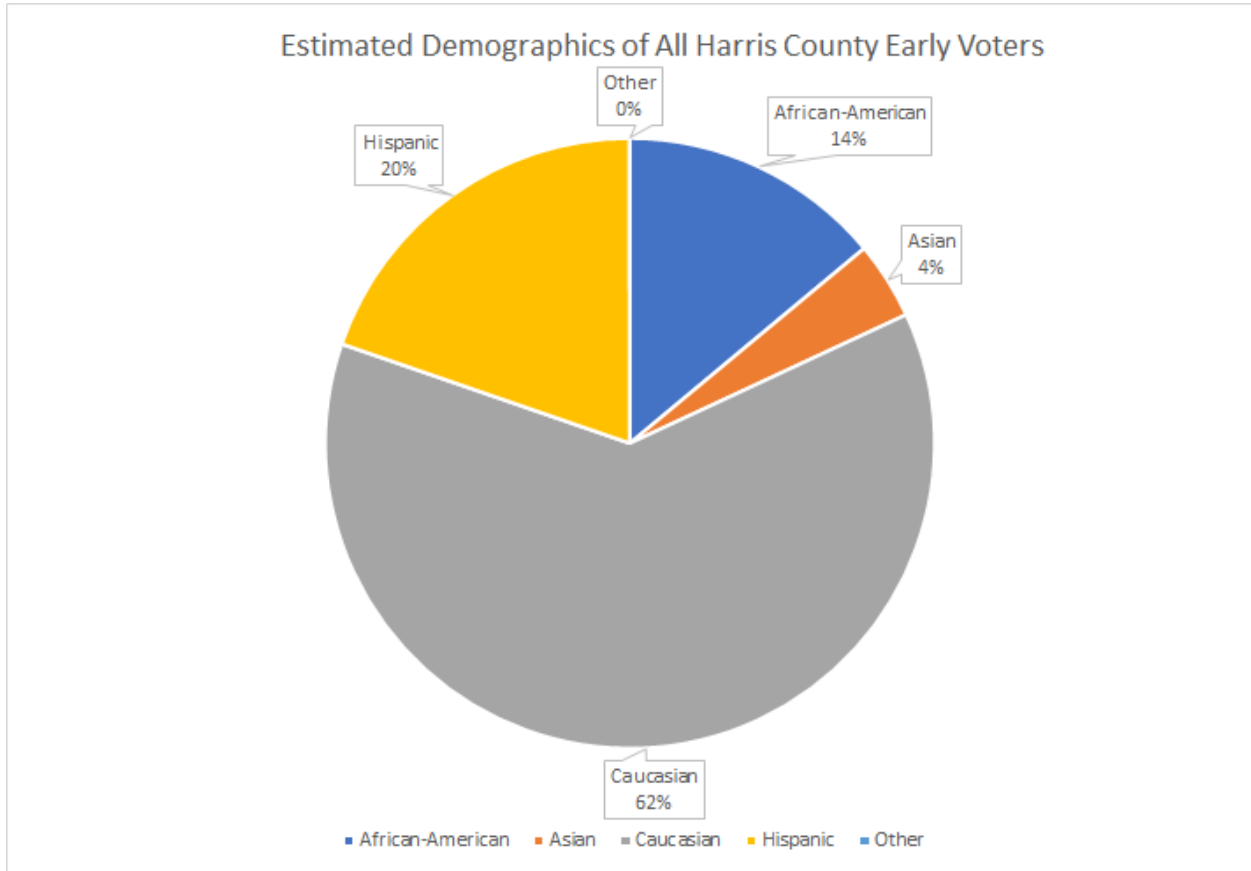
Changes to assistants' oath

Section 5.04 updates the voter assistant's oath, making the assistant swear that they did not "encourage" the voter to choose them as an assistant. Unlike the words "pressure" and "coerce," the word "encourage" does not have a clear or commonly understood meaning. Voters' assistants are not typically county employees or voting experts. They could break this law simply by offering help without pressure, and not even know.



TEXAS CIVIL RIGHTS PROJECT

Chart 1 of 3

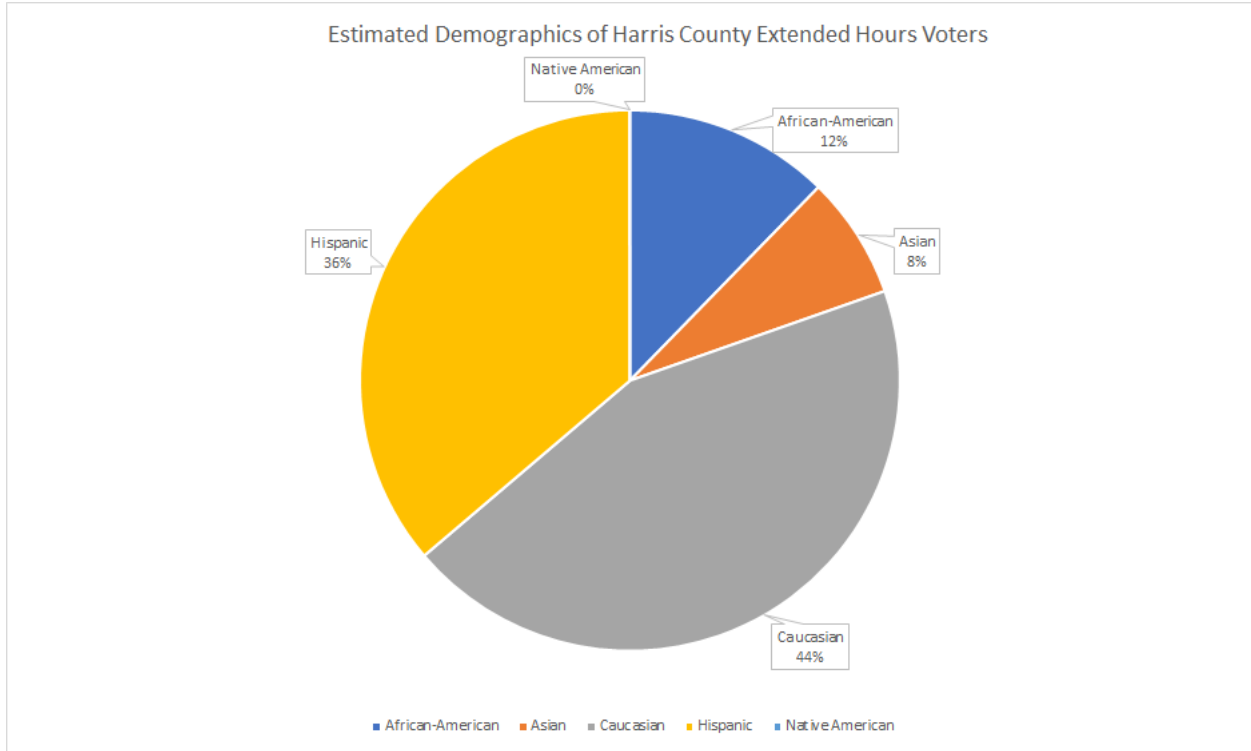


Source: Harris County Early Voting Rosters; Targetsmart for race/ethnicity modeling



TEXAS CIVIL RIGHTS PROJECT

Chart 2 of 3

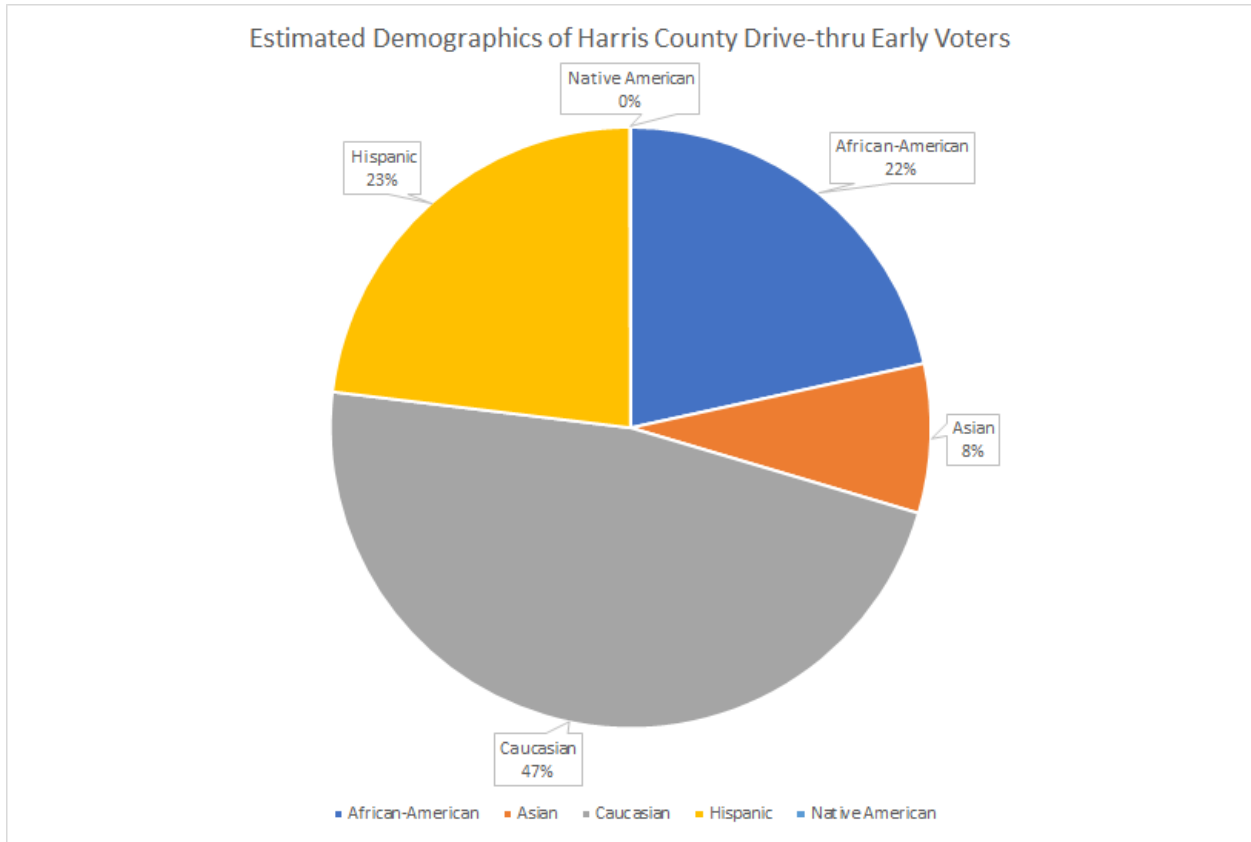


Source: Harris County Early Voting Rosters; Targetsmart for race/ethnicity modeling



TEXAS CIVIL RIGHTS PROJECT

Chart 3 of 3



Source: Harris County Early Voting Rosters; Targetsmart for race/ethnicity modeling