



An election worker assists a Brownsville voter in curbside voting. Credit: Brownsville Herald/Miguel Roberts

CURBSIDE VOTING AND DISABILITY ACCESS IN THE 2020 GENERAL ELECTION

**BY WAJIHA RIZVI FOR TCRP
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**TEXAS
CIVIL RIGHTS
PROJECT**

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Introduction

We are Texas Lawyers for Texas Communities: the Texas Civil Rights Project (TCRP) believes in a state where everyone can live with dignity, justice, and without fear. In its thirty-year history, TCRP has brought thousands of strategic lawsuits and spearheaded advocacy to protect and expand voting rights, challenge injustices in our broken criminal justice system, and advance racial and economic justice for historically marginalized communities.

TCRP's 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. Through litigation and advocacy, TCRP fights to turn the tide on the state's abysmal voting rights record by removing barriers to voter registration, supporting grassroots voter mobilization efforts, and opposing new attempts to suppress voting.

As a critical part of that work, we participate in the Texas Election Protection Coalition, which includes dozens of nonpartisan organizations working together to ensure that every eligible voter in Texas can cast a ballot that is fairly and accurately counted. Via phone calls to the national 866-OUR-VOTE voter protection hotline, reports from thousands of volunteer poll monitors across the state, and posts from voters on social media, we work to empower voters with the information they need to vote and help them to overcome problems that arise during the voting process. In the 2020 General Election, the Coalition fielded nearly 10,000 reports from voters with questions they had about voting and issues they encountered when exercising this most fundamental right.

This report is one of a series that TCRP is publishing that will analyze trends that affected Texas voters during the 2020 election. We hope that these reports will aid advocates, researchers, and policy makers in their ongoing work to improve our state's democracy; increase public awareness of our election administration systems and build public support for pro-voter reforms; and ultimately lead to greater access to voting for all Texans, especially communities who have traditionally been excluded from the franchise, such as people of color and people with disabilities.

About the Author

Wajiha Rizvi is a daughter of Pakistani immigrants, an attorney, and a social justice advocate based in Austin, Texas. Her work aims to uplift the stories of those in historically marginalized communities. Wajiha graduated from the University of Texas School of Law in 2011 and over the course of her career has worked on voting rights, regulatory law, racial equity, refugee advocacy, and promoting civic engagement in the Muslim community.

Curbside Voting and Access for Voters with Disabilities in the 2020 General Election

On November 3, 2020, an Election Protection poll monitor was volunteering at a majority Latinx elementary school in San Antonio, when he noticed a voter in a wheelchair who was unable to access the polling place because there were no ramps or curb cuts that would allow them physical entry to the polling place. For such voters, Texas law guarantees them the right to vote “curbside,” meaning that a poll worker must bring a ballot or voting machine out to the voter, but there were no signs at this polling place informing the voter of their option to vote curbside.

In this instance, the volunteer went inside to alert a poll worker about the possible need for curbside voting. But what if a poll monitor had not been around to empower this voter with information about curbside voting, and alert poll workers to facilitate the curbside voting process? How many stories of voters with disabilities who were disenfranchised by inadequate access have gone unheard? And how can it be a coincidence that this happened in an overwhelmingly Hispanic area, a community that like many others has been subject to voter suppression through much of American history?

What is Curbside Voting?

Curbside voting is mandated in the Texas Election Code (TEC), which requires all polling places in Texas to offer voting at the curb or the polling place entrance to voters who 1) are physically unable to enter the polling place without personal assistance, or 2) are likely to injure their health by entering the polling place.¹ The Americans with Disability Act (ADA) also requires that public entities ensure that people with disabilities can access and use voting facilities and state-mandated services, like curbside voting.² Poll workers cannot challenge a voter's eligibility for curbside and they cannot discourage the use of this procedure by, for instance, instructing voters to go to another polling place or failing to answer curbside requests by phone.

The TEC and ADA accessibility provisions stand for the proposition that every voter should be able to make their voice heard in our democracy regardless of their current physical condition or disability status. An equitable society is built upon the fundamental principle that all are provided opportunities for civic engagement. If ours is to be a just democracy built upon this fundamental concept, then Texas must ensure that voters with disabilities have equal access to cast their ballots.

The Proverbial Tree in the Forest: If You Don't Have Signs, Did You Really Offer Curbside?

Meaningful compliance with the TEC and the ADA requires that every polling place offer visible signage with instructions about curbside voting. Many voters in Texas are unaware that curbside voting must be offered at every polling place. If there are no signs providing proper notification and instructions, voters with disabilities will not necessarily know to request it. Lack of proper signage is tantamount to not offering curbside at all, forcing many voters to make an impossible choice between abandoning their right to vote and injuring themselves while attempting to vote inside the polling place. Since over 25% of adult Texans have disabilities, the potential for disenfranchisement is staggering in the absence of full compliance.³ Further, the burden does not fall on all Texans equally, disproportionately impacting voters of color and marginalized communities most of all.

The Department of Justice has issued guidance on ADA compliance in administering curbside voting, including instructions and signage necessary for disability access to be effective, a method for the voter to announce their arrival, and a portable voting system that is accessible.⁴ The Texas Secretary of State has also provided counties with options for curbside signage in English and Spanish, contemplating different methods for notifying poll workers that a voter is outside the polling place ready to vote curbside.⁵

As documented by the Texas Civil Rights Project and our partners in the nonpartisan Election Protection Coalition, curbside voting issues ran rampant across Texas during early voting and on Election Day in the 2020 General Election. Out of nearly 10,000 total reports regarding voting made to the Texas Election Protection Coalition in the 2020 General Election, the highest number of curbside voting issues were reported in Harris, Bexar, Travis, Dallas, Tarrant, Hays, Galveston, and Hidalgo Counties (as shown in the Table below). Many of these reports came from polling places in communities of color, especially Black communities, further exacerbating the voter suppression these communities face.

County	Number of EP Reports Related to Curbside Voting
Harris	33
Bexar	27
Travis	26
Dallas	22
Tarrant	10
Hays	8
Galveston	7
Hidalgo	5

The predominant issue we encountered was a lack of curbside signage at polling locations, effectively resulting in curbside only being offered to voters who knew it was required and figured out how to notify poll workers of their presence. Some polling places had curbside notices posted inside the polling locations, rendering them useless to voters outside. Many of the signage reports came from poll monitors, or TCRP or coalition partner staff members, who knew that curbside should be offered and reported the lack of signs to the 866-OUR-VOTE Election Protection Hotline. Reports of a lack of signage were made in counties including Tarrant, Galveston, Dallas, and Bexar Counties. In Bexar County, we received a report of elderly voters using the assistance of walkers and canes waiting in long lines in the heat, with at least one voter passing out in line.

Other reports to us concerned county and poll worker failures to adequately respond to curbside requests. In Tarrant County, election officials failed to offer curbside due to rain. In Dallas County, at a community college with a majority Black and brown student population, slow response times for poll workers arriving at the curbside area resulted in voters leaving without casting their ballots. We also saw long wait times for responses to curbside requests in Hidalgo County.

Elsewhere, we received reports of poll workers sending curbside voters to other locations or informing them to vote another day during the early voting period because they were too busy. In Hays County, poll workers discouraged voters with disabilities from using curbside voting by telling voters that they could not accommodate it. In Bexar County, blind voters were turned away from a polling location due to a lack of accommodations and, as mentioned above, at least one polling location in Bexar County lacked ramps and curb cuts for voters in wheelchairs.

Our Response

The Election Protection Team responded to curbside issues by first contacting county elections officials to make them aware of the situation and request a prompt resolution. In response to a lack of visible signage, TCRP staff and volunteers called county officials to notify them and ask the county to put signs up in conspicuous places at the affected polling locations.

Bexar County, however, refused to post signage at polling places. When Election Protection volunteers contacted the county elections office to resolve the issue, volunteers were explicitly told that if they wanted signs, they would need to put them up themselves. In response, TCRP and the Coalition of Texans with Disabilities sent a demand letter to Bexar County for immediate compliance with the ADA, the TEC, and Secretary of State guidance.⁶ TCRP sent similar letters to other counties where a lack of signage became a recurring issue, such as Dallas, Galveston, Tarrant, and Hays Counties. TCRP attorneys also contacted the Secretary of State's office to discuss the systemic curbside signage issues. The Secretary of State's office agreed to contact those counties with widespread curbside inadequacies to remind them to post the approved signage.

In response to the Bexar County Election Administrator shifting the burden of posting signs to those who were reporting the issue, TCRP's Election Protection Team coordinated an effort to mobilize volunteers and staff to post curbside signs in Spanish and English at over 20 early voting polling places in Bexar County. Because of the Bexar County Election Administrator's inaction in response to TCRP and the Coalition of Texans with Disabilities' outreach, TCRP sought a temporary restraining order (TRO) against the county for its continued failure to put up curbside signage, and satisfy the need for county action at more than 300 election-day polling places. The TRO was granted, and the judge ordered Bexar County to post curbside voting informational signs in conspicuous places at every early voting polling location, as well as signs in English and Spanish at each of its 302 polling places on Election Day.⁷



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Finally, in light of the pervasive problems with curbside voting access, TCRP sought to empower voters by publishing educational articles on curbside voting and video content on social media, heightening awareness of curbside voting and how to request it.⁸

Recommendations

There are a number of steps that state and county officials can take to provide more effective curbside voting and access to polling places for voters with disabilities:

1. During the 2021 Texas Legislative Session, the Legislature should amend the TEC to affirmatively require conspicuous curbside signage at each polling place. Further, access to curbside voting should be expanded to include those who are accompanying a curbside voter to the polls, along with caregivers of young children or elderly parents who would also benefit from being able to vote outside. Further, given the advisory issued by the Secretary of State in 2020 that encourages poll workers to inform voters with COVID-19 of their option to vote curbside,⁹ legislators should enact legislation to clarify that any voter with a contagious illness can avail themselves of curbside voting in order to make polling places safer for everyone.
2. Election workers should post effective and visible signage at every early voting and Election Day polling location. Signs should be at least 16 x 20 inches and posted in Spanish, English, as well as other commonly spoken languages in the county. Signs should remain in place until polls close on the last day of early voting for early voting polling places and until polls close on Election Day for Election Day polling places.
3. County election offices should ensure that they hire enough poll workers so that each polling location can simultaneously accommodate curbside voting outside while also facilitating voting inside the polling place. Counties should also create a curbside hotline (in English, Spanish, and other common languages in the community) dedicated to improving poll worker response times and providing information about curbside voting and disability access generally. This hotline should be advertised to voters in advance of the election, so that voters know of its existence. Note that the hotline is no substitute for providing a method for voters to announce their arrival at the curbside directly to poll workers, such as a bell or buzzer system at the polling location.

4. County election officials should regularly review poll worker training materials to ensure that they adequately prepare poll workers to offer curbside voting, and hold poll workers accountable when they fail to do so. In selecting polling places, counties must ensure that they are all physically accessible and have no architectural barriers that limit mobility.
5. The Secretary of State should substantially increase the support it provides counties on curbside voting, with a focus on helping them conduct more community outreach (especially in communities of color, which are disproportionately impacted by this issue) and improve voter awareness of curbside voting. The Secretary of State should also hold county officials to account when they fail to comply with the TEC, the ADA, and the Secretary's own guidance regarding curbside voting, and provide more resources to small and rural counties that may need more assistance to achieve full compliance.

What Texas Voters Had to Say

"I loved this option [of curbside voting]. Since C-19 in March, as a long hauler, my ability to walk/stand for long periods of time without hard shortness of breath is still terrible. I felt like a normal person doing a normal thing."

"Yesterday I reported a place in Austin that only had information about curbside voting INSIDE the building. I left a message and the return message said they must have information outside of the building. It can be anything-- handwritten, whatever, but it must be outside of the building. I went back to the polling place today and there was signage outside at a designated parking spot."

ENDNOTES

1 Tex. Elec. Code Ann. § 64.009.

2 Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12165.

3 See Disability & Health U.S. State Profile Data for Texas (Adults 18+ years of age), U.S. Centers for Disease Control and Prevention, available at <https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/texas.html>.

4 "In order to be effective, however, the curbside voting system must include: (1) signage informing voters of the possibility of voting curbside, the location of the curbside voting, and how a voter is supposed to notify the official that she is waiting curbside; (2) a location that allows the curbside voter to obtain information from candidates and others campaigning outside the polling place; (3) a method for the voter with a disability to announce her arrival at the curbside (a temporary doorbell or buzzer system would be sufficient, but not a telephone system requiring the use of a cell phone or a call ahead notification); (4) a prompt response from election officials to acknowledge their awareness of the voter; (5) timely delivery of the same information that is provided to voters inside the polling place; and (6) a portable voting system that is accessible and allows the voter to cast her ballot privately and independently." The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities, U.S. Department of Justice, available at https://www.ada.gov/ada_voting/ada_voting_ta.htm.

5 COVID-19 Resources for Election Officials, Texas Secretary of State, available at <https://www.sos.texas.gov/elections/covid/index.shtml>.

6 Letter to Jacque Callanen, Bexar County Elections Administrator (Oct. 21, 2020), available at <https://txcivilrights.org/wp-content/uploads/2020/10/Letter-to-Bexar-Curbside-Signage-Notice-10-21-2020-merged-Attachments.pdf>.

7 Coalition of Texans with Disabilities v. Jacque Callanen, No. 2020-CI-21014 (45th Dist. Ct., Bexar County, Tex Order on Application for Temporary Restraining Order, Cause No. 2020-CI-21014, Oct. 30, 2020), available at https://txcivilrights.org/wp-content/uploads/2020/10/2020_10_30_10_56_17.pdf.

8 Ash Hall, How to do Curbside Voting in Texas, TCRP Mag (Oct. 19, 2020), available at <https://news.txcivilrights.org/2020/10/19/how-to-do-curbside-voting-in-texas/?fbclid=IwAR2eUKjbCtrdZq6leMmgQEGy7XVXpn8myldTIOY2f2SixW0oH5Jl6XFlbJY>.

9 Ruth R. Hughes, Election Advisory No. 2020-19, Texas Secretary of State (June 18, 2020), available at <https://www.sos.texas.gov/elections/laws/advisory2020-19.shtml>.



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