



TEXAS LEGISLATIVE STUDY GROUP

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LSG Policy Report: Stop the War on Democracy

March 25, 2021

LSG Colleagues and Supporters,

This is the next in a series of LSG policy papers regarding important issues we will be considering this session. We hope you find this information regarding voting rights useful for you and your staff.

Rep. Garnet F. Coleman, Chair

“This act flows from a clear and simple wrong. Its only purpose is to right that wrong. Millions of Americans are denied the right to vote because of their color. This law will ensure them the right to vote. The wrong is one which no American, in his heart, can justify. The right is one which no American, true to our principles, can deny.”

President Lyndon Johnson, August 6, 1965, [on signing the Voting Rights Act](#)

LSG Policy Report: Stop the War on Democracy

The right to vote is the bedrock of Democracy. It is foundational. Without it, democracy dies. The right to vote no longer applies to just a few privileged Americans. For generations, women and people of color marched, fought, and died to secure the vote and a voice in our democracy. Texas has long been known for having extremely restrictive voting laws, and vote suppression legislation is near the top of the state leadership’s to-do list this session, providing a stark reminder that we must always remain vigilant to protect our right to vote.

“The Most Secure Election in American History”

On April 23, 2020, [the LSG issued a comprehensive report](#) that outlined ways to conduct a free, fair, and safe election during the pandemic. Across the state and nation, election officials from both major political parties developed common sense, innovative ways to make sure voters could safely and securely cast their ballots. Thanks to their leadership in the face of threats and baseless accusations, and the tireless efforts of election workers and volunteers, the 2020 election broke turnout records. And despite a chorus of unfounded claims of voter fraud, scores of post-election recounts and court cases found no evidence of systematic voting irregularities.

Here in Texas, 11.2 million voters - 66% of registered voters – cast ballots, a significant increase from the 59% of voters who cast ballots in 2016. Although Texas turnout still lags behind most states, the 2020 election showed that more Texans will turn out – even during a pandemic - when voting is accessible, and democracy is on the ballot.

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"The November 3rd election was the most secure in American history. There is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised."

[Christopher Krebs](#), Director of the Cybersecurity and Infrastructure Security Agency, lifelong Republican and Trump appointee

"The election in Texas last year was a success. In spite of all the circumstances, Texas had an election that was smooth and secure."

[Keith Ingram](#), Director of the Elections Division at the Texas Secretary of State's Office, testifying before the Texas House Elections Committee, March 4, 2021

Texas Attorney General Ken Paxton's Office spent nearly twice as much time working on voter fraud cases this year as it did in 2018 — [logging more than 22,000 staff hours — yet resolved just 16 prosecutions](#), half as many as two years ago.

Governor Abbott himself said at a recent news conference that [he was not aware of any Texas election outcomes](#) last year that had been altered by illegal voting.

Trumping Up Fraud Accusations to Suppress the Vote is Nothing New in Texas

Voter fraud is unacceptable. However, there is a big difference between preventing voter fraud by practicing proven methods of fraud prevention and exaggerating the extent of voter fraud as a pretext for supporting vote suppression legislation and tactics. Two Texas examples clearly illustrate the difference.

Abbott's Voter Fraud "Epidemic"

In 2006, a detailed and well-documented [Lone Star Project report](#) revealed that Attorney General Greg Abbott had used federal crime-fighting grant funds to launch an effort to fight what he called "an epidemic of voter fraud." Ultimately, that epidemic led to only 40 ballots in question, only one of which - out of four million votes - had been cast by a person other than the voter.

Almost all the individuals that were indicted were seniors and people of color, which was no surprise given the content of the voter fraud training packet designed by the Attorney General's office to "educate" election officials on how to identify potential voter fraud. The training materials contained obvious "cues" implying that people of color should be scrutinized more closely than other voters. The most obvious examples in the packet are shown below and include the use of a "sickle cell" stamp as part of a warning to "Examine Documents for Fraud" and a photograph of Black voters standing in line waiting to vote. The training document did not include any other specific examples of potentially fraudulent documents or photographs of White voters.

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<p style="text-align: center;">EXAMINE DOCUMENTS FOR FRAUD</p> <ul style="list-style-type: none"> Obvious signs of tampering Same handwriting on forms/ different from signature Unique stamps <div style="text-align: center;">  </div>	<p style="text-align: center;">EARLY VOTING In Person</p> <p style="text-align: center; font-weight: bold;">ALL LAWS APPLY</p> <div style="text-align: center;">  </div>
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Voter ID and Gutting the Voting Rights Act

In 2007 and 2009, Texas Voter ID proposals were defeated. In 2011, one of the most restrictive Voter ID laws in the nation was passed, but the Department of Justice (DOJ) determined that the law was discriminatory and did not grant it preclearance under Section 5 of the Voting Rights Act (VRA). On June 25, 2013, the Supreme Court gutted the Section 5 preclearance provision of the [Voting Rights Act](#) in [Shelby County v. Holder](#), clearing the way for the implementation of the Texas Voter ID law. However, just two weeks before early voting was set to begin in the 2014 general election, a federal judge ruled the law unconstitutional, only to have the Supreme Court rule 10 days later that the strict Voter ID law could be used in the 2014 election. In 2017, the legislature passed Senate Bill 5, which was designed to “soften” the law, but U.S. District Judge Nelva Gonzales Ramos [tossed Senate Bill 5](#), ruling that the state's new voter ID law failed to fix the intentional discrimination against minority voters found by the DOJ in the original 2011 ID law. Finally, in September of 2017, a three-judge panel of the 5th Circuit Court of Appeals ruled that the revised Voter ID law could be used in the 2018 elections.

The decade-long trail of the Texas Voter ID law illustrates how state leadership will use every available means to suppress the vote under the guise of “voter integrity” and “voter fraud.” It also underscores the damage done by gutting the preclearance provision of the VRA, which required states with a history of voter suppression to seek approval from a 3-judge panel in the United States District of Columbia Court or the United States Attorney General, before changing state election laws or election decisions like the closing of polling places. For example, following the *Shelby* decision, [analysis shows](#) that between 2012 and 2018 in Texas, the 50 counties that gained the most Black and Latinx residents closed 542 polling sites, in contrast to only 34 closures that gained the fewest Black and Latinx residents.

Repairing the VRA

Two pieces of federal legislation could fully restore the VRA, including H.R. 1, the [Free the People Act](#), and H.R. 4, the John Lewis Voting Rights Act, which would restore the strong VRA anti-discrimination provisions. H.R.1 was approved by the U.S. House on March 4. H.R. 4 was approved by the House last year but has not yet been approved by the current Congress. This legislation would provide the most robust set of reforms since the passage

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of the Voting Rights Act. The hurdle facing these reforms is the Senate and its filibuster rule, which Mitch McConnell bypassed to get judicial appointments approved. Of course, should this legislation pass, we can expect AG Paxton to lead a charge against it.

Majority of Texans Want Convenient Voting, Not Voting Restrictions

State leaders are pushing to restrict voting, even though most Texans want more time to vote early and do not approve of threatening voters or those who assist them with felony charges for violations, [according to a poll](#) conducted from March 7 to March 9 by Chris Perkins of Ragnar Research, a firm that has polled for Republicans over the last decade. The poll had a margin of error of +/- 3%.

Gov. Greg Abbott and Lt. Gov. Dan Patrick have highlighted combating voter fraud as a top priority this session, but the poll found that:

- 66 percent of Texans said they don't believe significant fraud occurred in the 2020 presidential election. Republican officeholders largely held their own in Texas last year even as Joe Biden fared better than any Democratic presidential candidate in decades.
- Overwhelmingly, 97 percent of Texans said they had a good experience with the election, which raises questions about why they would restrict ballot access.
- Fewer than 1 in 5 Texas Republicans voted on Election Day, and 64 percent of all Republican votes were cast early and nearly one-quarter by mail, which raises questions about why they would seek early voting and vote by mail restrictions.

State Leaders Follow National Vote Suppression Agenda, Not Fellow Texans

For decades, the extension of the Voting Rights Act was routinely approved by bipartisan congressional majorities. Since the *Shelby* decision, state legislation to restrict access to the ballot has grown like weeds, an agenda amplified by former President Trump and the "big lie" followers who refuse to accept the outcome of the most secure election in our Nation's history. Governor Abbott, Attorney General Paxton, and others are not alone as followers of this agenda. In Texas, these bills include, but are not limited to, provisions that would:

- Ban county officials from sending unsolicited applications for mail-in voting to eligible registered voters. Something that is commonly done in both Republican and Democratic states.
- Give the attorney general broad authority to investigate and prosecute participants in get-out-the-vote campaigns.
- Require those seeking to vote by mail because of a disability to spend their time and money to prove, with documents that can include a doctor's affidavit or social security statement, that they have a disability that prevents them from voting in person.
- Require every polling place in a county to have "approximately the same number of voting machines," whether the precinct has 300 or 3,000 voters.
- Mandate that polls must only be open from 7 a.m. to 7 p.m., blocking extended hours and 24-hour polling places that make it easier for shift workers to vote.
- Consolidate power within the Secretary of State's office for management of voter registration lists and voter purges while limiting local control over election hours and early voting.

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The Voter Fraud Myth Has Consequences, and May Backfire

The latest “voter integrity” agenda contains false echoes from a discriminatory past. The 2019 Census estimates found that [86%](#) of Texas’s rapid population growth is being driven by increases in [Hispanic](#), Black, and Asian populations. These populations account for the largest percentage of [multigenerational](#) families, a population that is more likely to be mistakenly flagged for potential voter fraud, the very kind of thing that resulted in haphazard and [illegal purges](#) of voter rolls by the Secretary of State in 2019. The illegal purge of votes removed nearly 100,000 people from the voter rolls and led to the resignation of the Governor’s appointed Secretary of State. This session, every policy change must be examined for effects that [strategically target](#) Texans of color.

Vote by Mail myths are even harder to understand. In 2016, when Trump won the Presidential election, [41%](#) of the Republicans returned vote-by-mail ballots versus 26% of Democrats. However, his vociferous anti-mail ballot rhetoric likely hurt his re-election campaign. Here’s what we know about Vote by Mail.

- Five states currently have all-mail elections—Colorado, Hawaii, Oregon, Washington, and Utah.
- Other states, like Arizona, allow voters to choose to vote by mail. California allows counties to opt into a mail ballot system.
- Sixteen states require voters who want to vote by mail to apply and provide a reason.
- Some of these states are under Republican control and some are under Democrats, but they all have secure systems free from partisan bias.

In Colorado, after the 2018 election, officials referred only 62 ballots of the more than 2.5 million ballots cast to the state’s attorney general for investigation. Utah Director of Elections, Republican Justin Lee, citing state security efforts, says “there’s just [no real indication of any kind of widespread or systematic voter fraud.](#)” The Heritage Foundation opposes vote by mail expansion, but Heritage’s own election fraud database has documented only 206 cases of fraudulent use of absentee ballots out of billions of ballots cast since 1991. In the 2018 general election, among the five states that conduct elections entirely by mail, the database has no such cases in Hawaii and Utah, two in Oregon, five in Colorado, and six in Washington. Thanks to security measures like bar code tracking of mail ballots, fraud is minuscule.

Finally, researchers at Stanford University found that [expanding vote by mail provides neither party a partisan advantage.](#) In examining voter data in three states with staggered rollouts of vote-by-mail programs—California, Utah, and Washington—the researchers found that the introduction of mail-in voting did not affect, on average, the share of voter turnout for either Republicans or Democrats. The researchers examined voter data from 1998 through the 2018 midterm elections, making their study the largest, most up-to-date analysis yet of partisan effects of voting by mail.

What’s Really Behind the Vote Suppression Agenda?

Last week, the Dallas Morning News published an editorial titled [“Republicans Call it Voter Integrity. We See Barriers at the Ballot Box.”](#) The editorial addresses proposed legislation, one proposal at a time, dissecting the rhetoric behind each bill.

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In a recent Supreme Court hearing, the Arizona Republican Party went all the way to the Supreme Court to defend voting policies that the 9th U.S. Circuit Court of Appeals found discriminated against Latinx, Native American, and Black voters. At the hearing, Michael Carvin, a lawyer for the Arizona GOP, was being questioned by Justice Amy Coney Barrett on why the GOP did not want to count votes cast in the wrong precinct on Election Day. “Because it puts us at a competitive disadvantage relative to Democrats,” Carvin replied. “Politics is a zero-sum game.”

If that answer is not clear enough, consider what Arizona GOP State Rep. John Kavanaugh said in remarks about proposed restrictions to Arizona’s vote-by-mail system. “Democrats value as many people as possible voting, and they’re willing to risk fraud. Republicans are more concerned about fraud, so we don’t mind putting security measures in that won’t let everybody vote — but [everybody shouldn’t be voting](#). Quantity is important, but we have to look at the quality of votes, as well.”

The echoes of Jim Crow are loud and clear.

Making Voting Accessible to All Texans

This session, LSG members have filed the kind of election legislation that most Texans support - legislation that would make voting more convenient and secure. Although such legislation may be difficult to pass, these proposals are worthy of serious consideration.

Voter Registration

Modern, electronic voter registration is more secure and less expensive than the out-of-date [paper and ink method](#) of registering voters. Online voter registration [costs states between \\$0.50 and \\$2.34 less per electronic transaction compared with paper](#). While some 40 states already utilize online voter registration, Texas resisted even legally required, limited online voter registration until September 2020, after a judge ruled that Texas was [not in compliance](#) with the Motor Voter provision of the Voting Rights Act. Even though the technology and pipelines for data information have been created, Texas has still not enacted online voter registration other than the Motor Voter process.

[Automatic voter registration](#) would allow residents who interact with state systems, like the DMV or statewide social service agencies, to be automatically registered to vote, update information, or opt-out. Nineteen states, including Georgia, currently offer some form of automatic voter registration. Texas could also expand voter registration by implementing [same day](#) registration. This process would use the same verification technology as online registration with an added step of verifying proof of residency through photo identification (ID) or utility bill. [Results](#) show that the 21 states that allow same-day voter registration have higher voter turnout.

Vote-by-Mail Security

Policy changes adopted by other states require [adequate](#) and secure [ballot dropbox](#) access for mail-in-ballot return and absentee ballot drop-off to be conveniently located across counties, especially in large counties.

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- Rep. Bobby Guerra
- Rep. Ryan Guillen
- Rep. Ana Hernandez
- Rep. Abel Herrero
- Rep. Gina Hinojosa
- Rep. Donna Howard
- Rep. Celia Israel
- Rep. Ann Johnson
- Rep. Jarvis Johnson
- Rep. Julie Johnson
- Rep. Tracy King
- Rep. Oscar Longoria
- Rep. Ray Lopez
- Rep. Eddie Lucio III
- Rep. Armando Martinez
- Rep. Trey Martinez Fischer
- Rep. Terry Meza
- Rep. Ina Minjarez
- Rep. Joseph Moody
- Rep. Christina Morales
- Rep. Eddie Morales
- Rep. Penny Morales Shaw
- Rep. Sergio Muñoz Jr.
- Rep. Victoria Neave
- Rep. Claudia Ordaz Perez
- Rep. Evelina Ortega
- Rep. Leo Pacheco
- Rep. Mary Ann Perez
- Rep. Ana-Maria Ramos
- Rep. Richard Peña Raymond
- Rep. Ron Reynolds
- Rep. Eddie Rodriguez
- Rep. Ramon Romero
- Rep. Toni Rose
- Rep. Jon Rosenthal
- Rep. Carl Sherman
- Rep. James Talarico
- Rep. Shawn Thierry
- Rep. Senfronia Thompson
- Rep. Chris Turner
- Rep. John Turner
- Rep. Hubert Vo
- Rep. Armando Walle
- Rep. Gene Wu
- Rep. Erin Zwiener
- Sen. Sarah Eckhardt
- Sen. Royce West
- Sen. John Whitmire
- Sen. Judith Zaffirini

Ballot tracking is an easy way to ensure that ballots by mail are being received and completed by the registered voter and a way for the voter to feel secure that their ballot has been received and counted in the correct county. In the 2020 election cycle, a handful of counties applied ballot trackers with success. Additionally, Texas has [ballot tracking programs](#) for overseas military personnel that have been in place since 2016 and could expand to track every mail ballot.

Protect Access to Early Voting

During early voting last November, **9.7 million** people, or **57.3%** of registered voters, [cast their ballots](#) early in Texas, surpassing the total number of votes cast in the 2016 Presidential Election.

Early voting is a popular and essential tool to ensure everyone has access to a polling site at a convenient time and location. Lengthening secure early voting periods to [three weeks](#) would ensure that all Texans have adequate time to vote. [Extended](#) evening voting schedules allow voters who may have non-traditional working hours additional flexibility to vote. Harris county offered several 24-hour polling locations that brought over [10,000 voters](#) in one night.

Voting Infrastructure

Purchasing new voting machines that procure paper receipts would allow voters to confirm votes for post-election [audits](#). This approach ensures voters that their ballot was counted and logged correctly. Failures of 20-year old polling technology resulted in long [wait times](#), primarily in neighborhoods of color, on Super Tuesday in 2020. Robust poll worker training and recruitment will ensure that no polling location closes due to [staffing shortages](#) and that poll workers are fully prepared. Further infrastructure improvement can be made in [curbside voting](#), a critical mechanism for those with disabilities, children, and compromised immune systems to vote.

Voter ID

[Texas' voter ID laws](#) are a direct result of partisan rhetoric intended to suppress the vote of the Latinx population. Expanding the list of acceptable voter identification to include more government-issued IDs is needed.

Prison Gerrymandering

[Prison gerrymandering](#) accounts for a significantly higher ratio of voting disenfranchisement than mail ballot fraud. In Texas, those within the carceral system are not counted in the census as residents in their home-jurisdictions. Instead, they are counted as residents of the prison or jail. This causes voter disenfranchisement when those incarcerated are released and move back home where they have not been counted.

The Legislative Study Group (LSG) is a bipartisan caucus in the Texas House of Representatives that is committed to developing sound public policy that benefits all Texans. Founded in 1993, the LSG has worked through thirteen regular sessions and numerous more special sessions of the Texas Legislature, becoming one of the leading policy shops in the Texas Capitol. Printed in house.