



TRANSMITTAL BY FACSIMILE AND EMAIL

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November 4, 2014

Nandita Berry,
Texas Secretary of State,
P.O. Box 12060
Austin, Texas, 78711-2060

Dear Secretary Berry,

RE: Election Administration Issues

The right to vote is a core tenet of our citizenship. As Chief Justice John G. Roberts Jr. explains, “There is no right more basic in our democracy than the right to participate in electing our political leaders.” *McCutcheon v. FEC*, 134 S. Ct. 1434, 1440-41 (2014). This protection is enshrined in the 15th Amendment, which prohibits states from denying the right to vote based on race, and in several state constitutions.

During this election, however, we have seen evidence of barriers to voting in Texas that need to be addressed. For example, a Texas election judge turned away a 93-year-old veteran who was registered to vote but had an expired license.¹ Additionally, Dallas and Denton County election websites were down during Election Day, making it harder for voters to find their polling place.² Additionally, there are reports of Houston-area voters being confused about which precinct to vote in and long lines that are the result of polling places opening late.³

These examples of eligible voters being denied the ability to vote, failing voter information websites, and precinct confusion makes it clear that voters in Texas are not freely able to exercise this most cherished right. We call upon the secretary of state’s office and the county boards of elections to investigate and address these issues immediately to ensure that Texans can exercise their legal right to vote.

Texas’ courts have long upheld the importance of an unabridged right to vote for eligible Texans. As described by the Texas Supreme Court, “The right to vote is fundamental, as it preserves all other rights. *Andrade v. NAACP of Austin*, 345 S.W.3d 1 (Tex. 2011) (citing *Yick Wo v. Hopkins*, 118 U.S. 356, 370, (1886)).

These barriers to voting, however, are the consequences of recent changes in election administration, such as strict and costly ID requirements, limits on early voting, and manipulation of the registration process. As the Presidential Commission on Election Administration noted, there are problems with voter registration, access to the polls, polling place management, and voting technology that need to be addressed.⁴

The same concern extends to casting provisional ballots, which become even more relevant as these suppressive laws are implemented. As the Center for American Progress found, counties with a higher percentage of minorities cast provisional ballots at a higher rate than in counties with lower percentage of minorities in 16 states.⁵ Together, these new restrictions on voting and the likelihood of communities with a higher percentage of minority voters casting provisional ballots may increase disenfranchisement among communities of color during this year's election.

To ensure that Texans can exercise their legal right to vote, immediate action must be taken to address these concerns.

Sincerely,

Michele L. Jawando

¹ Emily Atkin, "Texas Election Judge Had to Turn Away 93-Year-Old Veteran Due to Strict Voter ID Law," ThinkProgress, October 27, 2014, available at <http://thinkprogress.org/election/2014/10/27/3584645/texas-voter-id-pollworkers/>.

² Robert Wilonsky, "Dallas County, Denton County's elections website aren't loading this morning (again)," Dallas Morning News Trail Blazers Blog, November 4, 2014, available at <http://trailblazersblog.dallasnews.com/2014/11/dallas-county-denton-countys-elections-website-arent-loading-this-morning-again.html/>.

³ Alice Ollstein, "Texas Voting Restrictions Sow Confusion At the Polls," ThinkProgress, November 4, 2014, available at <http://thinkprogress.org/lbupdate/3588799/texas-voting-restrictions-sow-confusion-at-the-polls/#lbu-1415132321>.

⁴ Nathaniel Persily and others, "The American Voting Experience: Report And Recommendations Of The Presidential Commission On Election Administration" (Presidential Commission On Election Administration, 2014), available at <https://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>.

⁵ Joshua Field, Charles Posner, and Anna Chu, "Uncounted Votes, the Racially Discriminatory Effect of Provisional Ballots" (Washington: Center for American Progress, 2014), available at <http://cdn.americanprogress.org/wp-content/uploads/2014/10/ProvisionalBallots-report.pdf>.