

May 27, 2015

*Sent via email and U.S. mail*

The Honorable Carlos H. Cascos  
Secretary of State  
Executive Division, Office of the Secretary of State  
P.O. Box 12697  
Austin, Texas 78711  
[secretary@sos.texas.gov](mailto:secretary@sos.texas.gov)

**Re: Failure to Comply with Voter Registration Obligations at Texas  
Department of Public Safety**

Dear Secretary Cascos,

We write on behalf of several eligible voters in the State of Texas — Mark Berry, De’Andre Carter, Donovan Cooper, Wendy Faems, Richard Gates, Cynthia Hawkins, Benjamin Hernandez, Deidre Miller, Marni Phon, Pedro Rodriguez, and Totysa Watkins — and others similarly situated, to notify you that, based on our investigation, the Texas Department of Public Safety (“DPS”) is not meeting its voter registration obligations under Section 5 of the National Voter Registration Act of 1993 (the “NVRA”) and corresponding state law. As a result, large numbers of eligible Texas voters either did not appear on the voter rolls or appeared with incorrect address information when they attempted to exercise their franchise in 2014 and 2012. A fraction of these voters complained to government officials and, in some cases, had their votes counted. More were disenfranchised.

Under the NVRA, every time an eligible resident obtains, renews, or updates his or her driver’s license with DPS, DPS must simultaneously register that person to vote or update that person’s voter registration file.<sup>1</sup> As set forth below, there is considerable evidence that the State is violating these mandates on an ongoing and continuing basis.

Indeed, the experiences of numerous Texans demonstrate that the State is not properly registering voters when they apply for a driver’s license at DPS offices or when they

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<sup>1</sup> 52 U.S.C. § 20503(a)(1). The only exceptions to this rule are when a voter fails to sign the registration form or states that the change-of-address information is not for registration purposes. The NVRA’s requirements are described in greater detail below.

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submit a renewal or change-of-address form at DPS offices or online. The voters' experiences are consistent with other information described in this letter: (a) data maintained by the Elections Division of the Office of the Secretary of State, which shows that thousands of voters reported DPS voter registration problems between September 2013 and February 2015; (b) correspondence within DPS during and shortly after the 2012 general election, which was provided to us in response to a Public Information Act request; and (c) the findings of a recent report by Battleground Texas titled *Voting in Texas in 2014*.<sup>2</sup> When combined with publicly-available data — including declining rates of voter registration within Texas — the conclusion is clear: DPS' voter registration failures are widespread and systematically undermining the right to vote in Texas.

Continued compliance with the NVRA and corresponding provisions of state law is necessary to ensure that all eligible Texas voters have an equal ability to participate in our democracy. Ultimate responsibility for enforcing the NVRA rests with the Secretary of State as the State's chief election officer.<sup>3</sup> Accordingly, this letter provides formal notice to the State of an NVRA violation under 52 U.S.C. § 20510(b) on behalf of Mark Berry, De'Andre Carter, Donovan Cooper, Wendy Faems, Richard Gates, Cynthia Hawkins, Benjamin Hernandez, Deidre Miller, Marni Phon, Pedro Rodriguez, Totysa Watkins, and similarly situated Texas voters.

One note: Voters continue to contact the undersigned counsel with their problems registering to vote through DPS. As additional voters come forward, they too may decide to share their stories with the State.

## **OVERVIEW OF THE NVRA AND CORRESPONDING STATE LAW**

The NVRA was enacted in 1993 to “establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office.”<sup>4</sup> To achieve this goal, the NVRA imposes certain requirements upon state motor vehicle bureaus. These “Motor Voter” provisions have played a critical role in increasing the number of registered voters nationwide.<sup>5</sup>

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<sup>2</sup> Mimi Marziani & James Slattery, *VOTING IN TEXAS IN 2014*, at 6 (2015), available at <http://join.battlegroundtx.com/Voting-In-2014>.

<sup>3</sup> *Scott v. Schedler*, 771 F.3d 831, 838-9 (5th Cir. 2014) (holding that the chief election officer is responsible for enforcement of the NVRA); see also Tex. Elec. Code Ann. § 31.001(a) (West 2013) (“The secretary of state is the chief election officer of the state.”).

<sup>4</sup> 52 U.S.C. § 20501.

<sup>5</sup> See e.g., B. Drummond Ayres Jr., *Law to Ease Voter Registration Has Added 5 Million to the Rolls*, NEW YORK TIMES, Sept. 3, 1995, <http://www.nytimes.com/1995/09/03/us/law-to-ease-voter-registration-has-added-5-million-to-the-rolls.html>; Ari Berman, *How To Make Voting Easier*, THE

Specifically, every time an eligible resident obtains, renews, or updates his or her driver's license with a state motor vehicle bureau like Texas' DPS, the State must "simultaneously" register that person to vote or update that person's voter registration file (unless he or she fails to sign the registration form or states that the change-of-address information is not for registration purposes).<sup>6</sup> In doing so, with limited exceptions, the State may not "require any information that duplicates information required in the driver's license portion of the form."<sup>7</sup>

Texas law reinforces the NVRA's mandates. Under the Texas Election Code, DPS "shall provide," to every individual obtaining or renewing a driver's license, "an opportunity to complete a voter registration application form," and DPS must use "a form and procedure that combines the department's application form for a license or card with an officially prescribed voter registration application form."<sup>8</sup> If the transaction is by mail, DPS must affirmatively "deliver to the applicant by mail a voter registration application form."<sup>9</sup> DPS must also provide a "change of address form and procedure that combines department and voter registration functions," so that when an individual submits a change of address, that "serves as a change of address for voter registration" as well, unless the individual indicates otherwise.<sup>10</sup> Finally, if driver's

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NATION, May 20, 2013, <http://www.thenation.com/blog/174431/how-make-voting-easier> (discussing how over 140 million people have registered to vote through procedures put in place by the NVRA).

<sup>6</sup> 52 U.S.C. § 20503(a)(1). The law further provides, in relevant part,

Each State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application. . . . Any change of address form submitted in accordance with State law for purposes of a State motor vehicle driver's license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes.

*Id.* at § 20504(a)(1)-(2). These provisions apply not only to driver's licenses, but also to "any personal identification document issued by a State motor vehicle authority." *Id.* § 20502(3). In this letter, the term "driver's license" encompasses personal identification cards issued by DPS as well as driver's licenses.

<sup>7</sup> *Id.* at § 20504(a)(2).

<sup>8</sup> Tex. Elec. Code Ann. § 20.063(a) (West 2013); *id.* at § 20.062(a).

<sup>9</sup> *Id.* at § 20.063(b).

<sup>10</sup> *Id.* at § 20.063(c); *id.* § 20.062(a).

license or address information is missing from a voter's registration application, DPS employees have a duty to correct the voter's application.<sup>11</sup>

### **FAILURE TO PROPERLY REGISTER VOTERS AT DPS OFFICES**

Available evidence indicates that Texas is systemically failing to register Texas voters when they submit a driver's license application, renewal application or change-of-address form in person at DPS offices.

#### ***The Experiences of Individual Voters***

Several individual voters have already contacted the undersigned counsel about DPS' failure to properly register them to vote after they attempted to register at DPS offices across Texas:<sup>12</sup>

- **De'Andre Carter:** Mr. Carter moved to Dallas County in May of 2013 after graduating from Texas A&M University in College Station. He renewed his driver's license at a Dallas DPS location in July of 2014, and recalls checking the "yes" box to register to vote in Dallas. Mr. Carter received a new license in the mail a few weeks later, but did not receive a new voter registration card. In preparation for Election Day in November 2014, Mr. Carter called Dallas County to confirm his polling location, but was told that he was still registered in College Station. Upon explaining his attempt to register at DPS, he was told by election officials that the DPS system "was not caught up." Mr. Carter was told that he could cast a provisional ballot, and later went to a polling location and did so; he does not recall being advised to take any further action to ensure that his vote was counted. Ultimately, Mr. Carter received a letter in the mail advising him that his vote was not counted. He later received a voter registration card listing his current Dallas address.
- **Donovan Cooper:** Mr. Cooper and his wife moved to Dallas County from California in the summer of 2014. They went to the Dallas County DPS location in Grand Prairie in July to obtain Texas drivers' licenses and to register to vote. Mrs. Cooper was told that she needed to obtain additional documentation before she was able to complete her application, which she did two weeks later at another DPS location. Mr. Cooper was able to complete his application that day, and recalls checking the "yes" box to indicate that he

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<sup>11</sup> See *id.* at § 20.063(d).

<sup>12</sup> The voters included in this letter are, disproportionately, residents of Dallas County. This is a result of our early outreach to affected voters in Dallas County after obtaining their mailing addresses from the Dallas County Elections Administration. There is no evidence that problems occur disproportionately at Dallas County DPS offices. Instead, the Secretary of State's data (described below) shows that problems occur at DPS locations across Texas.

wanted to register to vote. Thereafter, Mrs. Cooper received a voter registration card in the mail; Mr. Cooper did not. They attempted to vote together on Election Day and — while his wife was allowed to cast a ballot — Mr. Cooper was only allowed to cast a provisional ballot. He later received notice that his provisional ballot was counted, and then received two voter registration cards in the mail.

- **Cynthia Hawkins:** After moving to Bexar County from another Texas county, Ms. Hawkins went to DPS' Leon Valley location on September 9, 2014 to renew her license and change her address. The clerk asked her if she also wanted to register to vote, and she said "yes." There was no further discussion about voter registration during the encounter, and Ms. Hawkins assumed that she was in fact registered at her current address. On October 31, 2014, the last day of early voting, Ms. Hawkins attempted to vote at the Tobin Library around 4:30 PM. The election worker with whom she spoke told her that she was not registered in Bexar County and thus was only eligible to cast a limited ballot, which was only available in downtown San Antonio at the main early voting location. By that time of day, however, it was too late for Ms. Hawkins to travel downtown. Because Ms. Hawkins underwent a scheduled surgery on Election Day, she was unable to vote at all in the November 4, 2014 election.
- **Richard Gates:** Mr. Gates moved to Collin County from Massachusetts in July of 2014. He and his husband registered their cars and applied for new drivers' licenses at the Garland DPS location shortly after moving. Both Mr. Gates and his husband indicated that they wanted to register to vote during the driver's license application process. A month or so later, Mr. Gates' husband received his voter registration card in the mail; Mr. Gates did not receive one. They went to the Haggard Library during the early voting period and — while his husband was able to vote — Mr. Gates was told that he was not registered. Eventually, he was offered a provisional ballot. Mr. Gates declined to vote a provisional ballot at that time in order to investigate his registration status. He contacted the Secretary of State's office to discuss his attempt to vote, but was told to contact DPS about the matter; DPS, in turn, told him to contact the Secretary of State. He then went to the Davis Library location later in the early-voting period and, after again confirming that he was not listed as a registered voter in the database, he cast a provisional ballot. Mr. Gates later received a letter indicating that his provisional ballot was counted, as well as two registration cards, one effective as of August 21, 2014 and another effective as of December 3, 2014.
- **Deidre Miller:** Ms. Miller moved to Dallas County from Florida in 2014, and went to a Dallas DPS location to obtain a driver's license, register her car, and register to vote in September of 2014. Ms. Miller never received a voter registration card in the mail, but her husband, who had gone to DPS separately, received one a few weeks after he registered at the another DPS location. Ms.

Miller and her husband attempted to vote on October 31, 2014 and — while her husband was able to cast a ballot — she was told that her name was not on the rolls. She cast a provisional ballot, but does not know whether it was counted.

- **Marni Phon:** Ms. Phon and her husband moved to Tarrant County in the summer of 2014 from Cincinnati, Ohio, and went to the Brentwood Stair Road DPS location to obtain drivers' licenses on August 20, 2014. They were seated next to each other and went through the process side-by-side, both checking the "yes" box to indicate that they wanted to register to vote. Ms. Phon's husband received a registration card in the mail some time later, but Ms. Phon did not. Ms. Phon attempted to vote at Tanglewood Elementary School on Election Day — where her husband had successfully cast a ballot earlier — but was told by an election worker that her name was not on the rolls. After explaining the foregoing, the election worker told her that "this happens a lot." Ms. Phon cast a provisional ballot, but was told conflicting things by the election workers about whether any follow-up steps were necessary in order for her vote to be counted. Because Ms. Phon was traveling out of town, she was unable to take any additional steps, and does not know if her vote was counted.

#### ***Other Evidence Confirms Widespread Registration Problems***

These voters' experiences are not unique. Between September 2013 and February 2015, the Secretary of State's Elections Division confirmed over 1,700 incidents reported by voters who checked "yes" on their drivers' license applications at DPS, indicating they wanted to register to vote at that time, but did not appear on the voter rolls.<sup>13</sup> Indeed, during the 12-day early voting period of the November 2012 general election, DPS personnel reported that:

DPS has received an approximate average of 100 complaints per day.  
Staff estimates that about half have been customer error, and about

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<sup>13</sup> Email from Keith Ingram, Dir., Elections Div., to Mimi Marziani, Legal Dir., Battleground Texas (Dec. 9, 2014 2:30 PM) (on file with Battleground Texas); Letter from Lindsey Wolf, General Counsel, Office of the Sec'y of State, to Mimi Marziani, Legal Dir., Battleground Texas (March 2, 2015) & Attachment (on file with Battleground Texas). In the December 9, 2014 email, Mr. Ingram provided the following explanation of this data:

The SOS and DPS have created a web portal where counties can upload information from voters who tell the county that they attempted to register to vote at DPS. DPS then researches the information and returns an answer. If the voter did request voter registration and the record was not transmitted by the DPS clerk, then the record is transmitted and the registration is made effective on the date that the voter was at the DPS.

half have been an error on the part of the Customer Service Representative.<sup>14</sup>

Similarly, in October and November of 2014, Battleground Texas received dozens of calls to its public hotline from voters who attempted to register or to update voter registration information at a DPS office and yet did not appear on the voter rolls.<sup>15</sup> Moreover, as part of a coordinated voter protection effort during the 2014 election, Battleground Texas trained and placed volunteer poll watchers at over 200 polling places on Election Day. As described in *Voting in Texas in 2014*, several poll watcher volunteers witnessed pervasive problems with the voter rolls that were linked to DPS. To illustrate:<sup>16</sup>

- After observing voting at one polling location, one volunteer noted that: “DPS’s failure to update address changes impacted 10-12 voters.”
- Another observed a voter who claimed to have registered at DPS but was not on the rolls, and then reported: “Judge called elections office and confirmed he was not registered. Per other worker this is a common problem with people who register at [DPS].”
- A third reported that: “a fair number of folks seem to have had problems who claimed to have registered through DPS when getting new or renewing license[.]”

Moreover, for the reasons set forth below, we believe that the reports received by the Elections Division, DPS and Battleground Texas represent just a fraction of the total voters affected by DPS’ failure to properly process voter registrations.

**First**, the incidents highlighted above capture only those voters who contacted Battleground Texas, DPS or election officials *and* specifically complained about voter registration problems at DPS. Countless other instances may have occurred when

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<sup>14</sup> Email from Gretchen Essell to Marguerite Buster, Customer Relations Coordinator, DPS Driver License Div. (Nov. 5, 2012, 10:19 AM), pg. 13 of document entitled “DPS Internal Communication – not voter specific” (on file with Battleground Texas); *accord* Email from Tony Rodriguez, copying Marguerite Buster, Customer Relations Coordinator, DPS Driver License Div. (Nov. 5, 2012, 10:40 AM), pg. 14 of document entitled “DPS Internal Communication – not voter specific” (on file with Battleground Texas) (“HQ has been working for over a week with the Secretary of State’s office to validate these registrations and we are finding that more than 50% of the errors are on the part of the CSRs entering information incorrectly.”).

<sup>15</sup> Marziani & Slattery, *supra* note 2, at 6.

<sup>16</sup> Examples are taken from *Voting in Texas in 2014*. *See id.* at 7.

voters attempted to vote, but are not captured in these data sets for at least the following reasons:

- The voter did not lodge a complaint or complained to a different entity after experiencing the registration problem.
- The voter attempted to complain to DPS, but the complaint was disregarded. An email from the Elections Divisions to county registrars in October of 2012 states that DPS will *not* investigate a voter's registration status at the request of the voter himself or herself. Instead, DPS policy is that "[t]he request can only come from an official of the county."<sup>17</sup>
- The voter complained to a county election official, but did not specifically report an interaction with DPS.
- The voter complained to a county official *and* reported an interaction with DPS, but that complaint is nonetheless not captured in the Elections Division's data. The data provided by the Elections Division comes from just 123 of the state's 264 counties, strongly suggesting that the data set is incomplete.<sup>18</sup>

**Second**, provisional voting data from the five largest counties in Texas shows that 3,820 voters cast provisional ballots during the 2014 general election that were rejected because those voters did not appear on the voter rolls.<sup>19</sup> DPS may very well be to blame for a significant portion of these omissions. And, of course, provisional ballot data does not capture any voter who checked his or her registration status online<sup>20</sup> and then did not attempt to vote after failing to find his or her name on the rolls due to DPS error.

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<sup>17</sup> Email from Tony Rodriguez to Marguerite Buster, Customer Relations Coordinator, DPS Driver License Div. (forwarding Email from Judy Knapek, Election Specialist, McLennan County, to Ruth Ladd) (quoting Betsy Schonohoff, Voter Registration Dir., Elections Div.) (Oct. 25, 2012, 1:54 AM), pgs. 7–8 of document entitled "DPS Internal Communication – not voter specific" (on file with Battleground Texas).

<sup>18</sup> See Email from Keith Ingram to Mimi Marziani, *supra* note 13. The largest counties excluded from the Elections Division's data are El Paso, Bell, Webb, Randall, and Ector.

<sup>19</sup> Marziani & Slattery, *supra* note 2, at 4-5. Notably, Battleground Texas reported that it "received repeated anecdotal reports of voters being turned away without being offered a provisional ballot during the 2014 election, indicating that compliance with the provisional balloting laws may fluctuate from polling place to polling place." *Id.* at 4 (citation omitted). Accordingly, the provisional voting data may actually represent only a portion of the total voters who showed up at the polls but were not on the voter rolls.

<sup>20</sup> The Secretary of State maintains an online portal for voters to view their registration information at <https://team1.sos.state.tx.us/voterws/viw/faces/SearchSelectionVoter.jsp>.

*Third*, similar issues with DPS voter registration were publicly reported during the 2012 election cycle.<sup>21</sup> An investigation of voter registration rates by the *Houston Chronicle*, for instance, found “unexplained dips in so-called ‘motor voter’ registrations” and that “several local election officials and volunteers told the *Chronicle* that Houston area voters have long complained about motor voter problems — sometimes discovered only after a would-be motor voter arrives at the polls.”<sup>22</sup>

In addition, the Secretary of State’s Office sent at least two mass communications to election officials during the 2012 general election cycle concerning DPS voter registration problems. One, according to the *Houston Chronicle*, warned of interruptions in the system to transfer registration information electronically from DPS during the first week of early voting, and was sent after voters “complained about issues with their attempts to register at DPS offices in Tarrant and Harris counties.”<sup>23</sup>

Then, at the end of the early voting period, on November 2, 2012, the Elections Division sent an email with the subject line “MASS E-MAIL ADVISORY — (VR/EA) Confirming Provisional Voters with DPS (604).” Noting that “[m]any of you are working with your local DPS offices in order to resolve a voter’s registration status,” the Elections Division stated that county officials could submit voter registration inquiries to DPS by facsimile.<sup>24</sup> But, the Division warned, DPS’ ability to actually investigate reported problems “will depend largely on the volume they receive and the timing in which they are received.”<sup>25</sup> DPS internal correspondence from that same day confirms that some voters, despite complaining and casting a provisional ballot, would not even have their complaint investigated:

SOS (Betsy Schonoff) [sic] is going to send an email to all of the voter registrars to instruct them that they must have their requests for verification for the provisional ballots to us by noon on Thursday,

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<sup>21</sup> Lise Olsen, ‘Motor Voters’ Missing on Rolls, HOUS. CHRON., Oct. 28, 2012, <http://www.chron.com/news/houston-texas/houston/article/Motor-voters-missing-on-rolls-3987151.php> (last updated Oct. 28, 2012, 11:01 PM); see also Jessie Degollado, *Veteran Reports Difficulty with Voter Registration*, KSAT.COM, Nov. 6, 2012, <http://www.ksat.com/content/pns/ksat/news/2012/11/06/veteran-reports-difficulty-with-voter-registration0.html> (last updated Jan. 22, 2014, 4:05 PM); Michael Handley, *Broken Texas Motor Voter Registration Process*, DEMOCRATIC BLOG NEWS (Nov. 3, 2012, 1:00 PM), <http://collindemsnews.blogspot.com/2012/11/broken-texas-motor-voter-registration.html>.

<sup>22</sup> Olsen, *supra* note 21.

<sup>23</sup> *Id.*

<sup>24</sup> Email from Betsy Schonhoff, Voter Registration Dir., Elections Div., to VRTeam, re: “MASS E-MAIL ADVISORY - (VR/EA) Confirming Provisional Voters with DPS (604)” (Nov. 2, 2012, 6:50 PM) (on file with Battleground Texas).

<sup>25</sup> *Id.*

[November 8]. We will do our best to process all of them and return them by midnight on Friday, but she is telling them there is no guarantee. If we don't get them all done, then we don't and she said there is nothing we can do at that point.<sup>26</sup>

Indeed, subsequent correspondence indicates that the complaints of at least 302 voters were received by DPS after the deadline — which was just days after Election Day — and were subsequently disregarded.<sup>27</sup>

**Finally**, publicly available data indicates two worrisome registration trends in Texas, which may be attributable, at least in part, to DPS' failure to comply with the NVRA.

To start, recent data from the Elections Assistance Commission (“EAC”) shows that Texas rejected voter registration applications from DPS offices at a much greater rate than the national average. The invalidity rate for applications from DPS was 4.2% during the 2012 election cycle — more than twice the national average and more than 9 times the median state's invalidity rate.<sup>28</sup> This statistic underscores that there are serious flaws in DPS registration processes, particularly given that DPS staff are obligated by law to correct errors on voters' registration forms.<sup>29</sup>

In addition, data from the EAC and from the Secretary of State shows that voter registration as a percentage of the total voting age population has been on the decline

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<sup>26</sup> Email from Marguerite Buster, Customer Relations Coordinator, DPS Driver License Div., to Margaret Spinks, Manager, DPS Driver License Div. (Nov. 2, 2012, 4:30 PM), pg. 12 of document entitled “DPS Internal Communication – not voter specific” (on file with Battleground Texas). This email incorrectly states that the deadline for voter registrars was noon on Thursday, November 11, 2012. This date never existed, and subsequent correspondence makes clear that Ms. Buster was actually referring to Thursday, November 8, 2012.

<sup>27</sup> Email from Margaret Spinks, Manager, DPS Driver License Div., to Marguerite Buster, Customer Relations Coordinator, DPS Driver License Div. (Nov. 15, 2012, 4:15 PM), pgs. 15-18 of document entitled “DPS Internal Communication – not voter specific” (on file with Battleground Texas).

<sup>28</sup> See U.S. E.A.C., THE IMPACT OF THE NATIONAL VOTER REGISTRATION ACT OF 1993 ON THE ADMINISTRATION OF ELECTIONS FOR FEDERAL OFFICE 2011–2012, at 41 tbl.2a, 55, tbl.2d (2013), available at [http://www.eac.gov/assets/1/Documents/EAC\\_NVRA%20Report\\_lowres.pdf](http://www.eac.gov/assets/1/Documents/EAC_NVRA%20Report_lowres.pdf) (hereinafter “EAC 2012 REPORT”). This report contains data on the total number of registration applications received at each state's motor vehicle offices and the number of invalid and/or rejected registration applications received at these offices, which we used to calculate and compare invalidity rates.

<sup>29</sup> Tex. Elec. Code Ann. § 20.063(d) (West 2013).

since 2000.<sup>30</sup> Similarly, EAC data estimates a decline in voter registration as a percentage of the total *citizen* voting age population. Indeed, EAC data shows that the percentage of the citizen voting age population that is registered to vote in Texas fell almost 7% between 2008 and 2012 — declining from 89.0% in 2008 to 82.9% in 2012.<sup>31</sup>

## FAILURE TO CREDIT ONLINE TRANSACTIONS

Applications submitted to DPS online to renew a driver’s license or to update the address associated with a driver’s license are governed by the same Motor Voter provisions of the NVRA, which apply to “[e]ach State motor vehicle driver’s license application (including *any* renewal application)” and “[a]ny change of address form submitted . . . for purposes of a State motor vehicle driver’s license”<sup>32</sup> and which prohibit requiring duplicative information.<sup>33</sup> As defined by the *Oxford Dictionary*, the term “each” is “[u]sed to refer to every one of two or more . . . things”; similarly, the term “any” is “[u]sed to refer to one or some of a thing or number of things, no matter how much or many.”<sup>34</sup> Accordingly, *every* time an individual submits a renewal application or change-of-address form online to DPS, that information must simultaneously be used to update the voter rolls.

In this regard, the State’s policies and practices openly violate the NVRA. A holder of a Texas driver’s license can renew that license or update the address information on that

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<sup>30</sup> EAC 2012 REPORT, *supra* note 28, at 27 tbl. 1a; TEX. SEC’Y OF STATE, *Turnout and Voter Registration Figures*, <http://www.sos.state.tx.us/elections/historical/70-92.shtml> (last visited April 14, 2015).

<sup>31</sup> Compare EAC 2012 REPORT, *supra* note 28, at 37 tbl.1d with U.S. E.A.C., THE IMPACT OF THE NATIONAL VOTER REGISTRATION ACT OF 1993 ON THE ADMINISTRATION OF ELECTIONS FOR FEDERAL OFFICE, at 35 tbl.1d (2009), available at <http://www.eac.gov/assets/1/AssetManager/The%20Impact%20of%20the%20National%20Voter%20Registration%20Act%20on%20Federal%20Elections%202007-2008.pdf>.

<sup>32</sup> 52 U.S.C. §§ 20504(a)(1) & (d) (emphasis added). See also U.S. Dep’t of Justice, *The National Voter Registration Act of 1993: Questions and Answers*, [http://www.justice.gov/crt/about/vot/nvra/nvra\\_faq.php](http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php) (last visited April 24, 2015) (“[T]o the extent that the State provides for remote applications for driver’s licenses, driver’s license renewals, or driver’s license changes of address, via mail, telephone, or internet or other means, then provision must be made to include the required voter registration opportunity as well”); *Schedler*, 771 F.3d at 834, 837, 841 (holding that plaintiffs lacked standing to pursue NVRA claim regarding remote transactions without vacating the District Court’s conclusion that the NVRA applies to both in-person and online transactions); *Georgia State Conference of N.A.A.C.P. v. Kemp*, 841 F. Supp. 2d 1320, 1332 (N.D. Ga. 2012) (denying portion of motion to dismiss that was based on assertion that remote public assistance transactions, e.g., internet, phone, and mail applications, are not covered by NVRA).

<sup>33</sup> 52 U.S.C. § 20504(a)(2) (emphasis added).

<sup>34</sup> Definitions available through the search function of Oxford Dictionaries: English, <http://www.oxforddictionaries.com/us> (last visited April 30, 2015).

license at <https://txapps.texas.gov/tolapp/txdl/>. But, when a voter checks “yes” under the line stating “I want to register to vote” on Step 5 of the process, the voter’s registration files are not simultaneously updated. Instead, the voter is told:

Selecting “Yes” does not register you to vote. A link to the Secretary of State Voter website (where a voter application may be downloaded or requested) will be available on your receipt page.<sup>35</sup>

The Secretary of State’s *32nd Annual Election Law Seminar Handbook* confirms that “[i]f the [DPS] transaction was made online, then the person is not registered to vote.”<sup>36</sup> While the Secretary maintains that, “[b]y selecting ‘yes’ when updating information through DPS online renewal [the voter] is merely requesting a link to a voter registration application on the individual’s receipt page,”<sup>37</sup> this position cannot be reconciled with the NVRA’s clear language. Nor can this approach constitute a single “change of address form and procedure that combines department and voter registration functions” as required by the Texas Election Code.<sup>38</sup>

Even though the State does not use online change-of-address transactions with DPS to properly register voters at their new addresses, that information does affect the voter rolls. Online change-of-address updates are apparently used by counties to *remove* voters from the rolls in their previous county of residence.<sup>39</sup> In other words, the State not only fails to update registration records for a voter who changes her address online with DPS — even though the State has the technical ability to do so — it may cause that voter to be purged from the rolls altogether. This perverse result cannot be reconciled with the NVRA’s goal of increasing the number of eligible citizens on the voter rolls.

The State cannot abrogate its voter registration responsibilities by simply notifying voters that new information from online transactions is not being credited. But, even if it could, the notice being provided is insufficient.<sup>40</sup>

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<sup>35</sup> See App’x A, which shows an image of the screen visible to voters at Step 5 in the change-of-address process.

<sup>36</sup> SEC’Y OF STATE, 32ND ANNUAL ELECTION LAW SEMINAR HANDBOOK 1207 (2014) (PDF version on file with Battleground Texas).

<sup>37</sup> *Id.* at 1208.

<sup>38</sup> Tex. Elec. Code Ann. § 20.062(b) (West 2013).

<sup>39</sup> See Tex. Elec. Code Ann. § 16.031 (West 2013).

<sup>40</sup> Notably, the portion of the DPS webpage that provides answers to frequent inquires about the online change-of-address process does not indicate that voter registration files are not simultaneously updated. See generally DPS, Driver License Div., Driver License Renewal and Change of Address, [https://txapps.texas.gov/tolapp/txdl/faq.dl?locale=en\\_US#question13](https://txapps.texas.gov/tolapp/txdl/faq.dl?locale=en_US#question13), attached as App’x B.

Several individual voters have shared their own experience seeking to change their address for both driver's license and voter registration purposes through DPS' website with the undersigned counsel:

- **Mark Berry:** Mr. Berry moved from Missouri to Dallas County on March 1, 2014. Shortly thereafter he bought a new vehicle and registered it at the dealership. He later applied for his driver's license in person at a DPS location, and recalls registering to vote at that time. Approximately one month later, Mr. Berry bought a house in Irving and changed his address online using DPS' website. He received a new license in the mail listing his Irving address, and believed that his voter registration was updated as well. When he attempted to vote in Irving on Election Day, however, the election worker told him that he was not registered at his current address. Mr. Berry cast a provisional ballot and later received a letter confirming that his vote was not counted.
- **Wendy Faems:** Ms. Faems moved from Collin County to Dallas County on February 14, 2014. She changed her driver's license address online shortly thereafter, and assumed that doing so updated her address for voter registration purposes as well. She attempted to vote on Election Day at W.T. White High School, but was told that her name was not on the rolls in Dallas County, and that she was still on the rolls in Collin County. Ms. Faems drove to Collin County and attempted to vote there, but was turned away and told to return to Dallas County to cast a ballot. She returned to the first polling location in Dallas County and cast a provisional ballot. Ms. Faems later received notice that her vote was not counted.
- **Benjamin Hernandez:** Mr. Hernandez moved to Dallas County from Ector County in February 2013. That month, he changed his address and attempted to update his voter registration online through DPS' website. Mr. Hernandez received a new driver's license in the mail, but did not receive a voter registration card. On Election Day 2014, Mr. Hernandez attempted to vote in Dallas County, but was told that his name was not on the rolls. He cast a provisional ballot, but later received notice that his vote was not counted.
- **Totysa Watkins:** Ms. Watkins moved from Denton County to Dallas County in 2011, and changed her address and attempted to update her voter registration online through the DPS website after moving. In September 2013 she moved within Irving, and once again changed her driver's license address and attempted to update her voter registration online through DPS. Ms. Watkins attempted to vote on Election Day in 2014, but was told by an election worker that she was not registered in Dallas County. She cast a provisional ballot. A few weeks later she received a notice indicating that her vote was not counted, and later received two new voter registration cards.

Critically, none of these voters were informed that completing DPS' online change-of-address form could remove their names from the rolls in their former county of residence. Instead, each believed that he or she was properly registered because he or she completed an online transaction with DPS. These voters only learned of DPS' failure to register them to vote or to update their voter registration files when they arrived at the polls.

The Elections Division has received more than 1,800 reports from individuals who completed an online transaction with DPS and mistakenly believed that the voter rolls were updated too. These voters complained to election officials when they attempted to vote but none of their votes were ultimately counted.<sup>41</sup> Plus, for the reasons outlined above, these 1,800 voters represent just a fraction of the total voters statewide who were disenfranchised on these grounds.

Furthermore, although the Elections Division and DPS have been aware of “the confusion” caused by the online policies since at least 2012,<sup>42</sup> no significant reforms have been made. Emails between the Election Division and DPS acknowledge widespread confusion among voters in 2012, but — rather than credit online transactions as required by the NVRA or, at the very least, clarify the notice given on the DPS website — officials chose simply to link “directly to the voter application page instead of the general SOS page” when a voter completes an online renewal or change-of-address transaction.<sup>43</sup> Clearly, this “solution” has been woefully inadequate.

#### **FAILURE TO TREAT VOTER REGISTRATION AS DEFAULT CHOICE**

Pursuant to current policy, a Texas voter must specifically check “yes” when completing their driver's license application in order for their application to simultaneously serve as their voter registration.<sup>44</sup> If a voter leaves that portion of the form blank, or checks both “yes” and “no,” that voter will not be registered.<sup>45</sup>

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<sup>41</sup> See Email from Keith Ingram to Mimi Marziani, *supra* note 13.

<sup>42</sup> Email from Margaret Spinks to Marguerite Buster, *supra* note 27 (forwarding email from Betsy Schonhoff, Voter Registration Dir., Elections Div., to Marguerite Buster, Customer Relations Coordinator, DPS Driver License Div.) (Nov. 14, 2012, 4:32 PM), pgs. 17-18 of document entitled “DPS Internal Communication – not voter specific” (on file with Battleground Texas).

<sup>43</sup> Email from Marguerite Buster, Customer Relations Coordinator, DPS Driver License Div., to Michael Terry (Feb. 25, 2013, 11:27 AM), pgs. 21-23 of document entitled “DPS Internal Communication – not voter specific” (on file with Battleground Texas).

<sup>44</sup> See 32ND ANNUAL ELECTION LAW SEMINAR HANDBOOK, *supra* note 36, at 1213.

<sup>45</sup> *Id.*

This practice cannot be reconciled with the clear language of the NVRA, which mandates that every driver's license application "shall serve as an application for voter registration with respect to elections for Federal office *unless the applicant fails to sign the voter registration application.*"<sup>46</sup> This language, combined with the NVRA's purpose, mandates that the State treat voter registration as the default practice for driver's license applicants. The State cannot instead force voters to opt in.

The Elections Division has identified over 70 voters who believed they had successfully registered while obtaining a driver's license, but who were, in fact, never registered because they either left that portion of the form blank or checked "yes" and "no."<sup>47</sup>

One voter has already come forward with his own experience:

- **Pedro Rodriguez:** Mr. Rodriguez moved to Williamson County from Bexar County in 2013. He changed his address in person at DPS, and believed that he was updating his voter registration information at that time as well. But when Mr. Rodriguez attempted to vote on Election Day in 2014, he was told that he was not on the rolls. Mr. Rodriguez cast a provisional ballot, but received a letter notifying him that his ballot was not counted; later, he received a voter registration card. The data provided to Battleground Texas from the Elections Division shows that Mr. Rodriguez unwittingly checked both the "yes" and the "no" box on the voter registration portion of the driver's license application.

\*\*\*\*\*

In sum, every time an eligible resident obtains, renews, or updates his or her driver's license with DPS, DPS must simultaneously register that person to vote or update that person's voter registration file.<sup>48</sup> Unfortunately, as described above, the State is not complying with these mandates.

We trust that you share our concerns regarding voter registration practices at DPS and will take immediate steps to address the problems highlighted above. The undersigned counsel are willing to meet with the Secretary of State's office to assist in your development of a comprehensive plan for full compliance. If, however, the State fails to take steps to remedy its violations of Section 5 of the NVRA, we are prepared to pursue litigation as permitted by 52 U.S.C. § 20510(b).

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<sup>46</sup> 52 U.S.C. § 20504(a)(1).

<sup>47</sup> See Email from Keith Ingram to Mimi Marziani, *supra* note 13.

<sup>48</sup> 52 U.S.C. § 20503(a)(1).

Hon. Carlos Cascos  
May 27, 2015  
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We look forward to your response.

Very truly yours,



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cc: Steven McCraw, Director, Texas Department of Public Safety  
Keith Ingram, Director, Elections Division, Office of the Secretary of State

*Appendices*

# Appendix A



Texas Department of Public Safety  
Driver License Division

## Driver License Renewal and Change of Address



### Select Options

Name:

Your DL Number

Your DL Class: C

Complete the information below, then select 'Continue'.

### Options

- I want to donate \$1.00 to the Glenda Dawson-Donate Life Texas Registry as part of my driver license transaction [?](#)
- I want to be an organ donor. You must select the box to receive the donor symbol on your new card, even if you've selected it before.

I want to register to vote

Required. Selecting "Yes" **does not** register you to vote. A link to the Secretary of State Voter website (where a voter application may be downloaded or requested) will be available on your receipt page.

- Yes  
 No

[Continue](#)

### Information

#### Steps to Complete

1. Welcome
2. Login
3. Select Services
4. Enter Address
5. Select Options
6. Review Order
7. Submit Payment
8. Receipt

[Frequently Asked Questions](#)  
[Where's My License or ID?](#)  
[Log Out](#)

### Help

For technical assistance with this application, please call 1-877-452-9060 or send an email to [Texas.gov Help](#).

### Resources

- [Texas Department of Public Safety](#)

### Texas.gov

[Texas.gov Policies](#)  
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## Appendix B

## How does the online change of address work?

### Step 1: Log In

Log in by entering your

1. Driver license or ID card number,
2. Date of birth,
3. Last four digits of Social Security number, and
4. Audit number (see driver license samples for location of audit number).

### Step 2: Select Your Services

You may be eligible to

1. Renew,
2. Change your address, or
3. Renew **and** change your address.

### Step 3: Select Optional Items and Complete Affirmations

Optional Items

1. Donations to Blindness Education, Screening, and Treatment (BEST) program and the Glenda Dawson-Donate Life Texas Registry
2. Register to vote

Affirmations

1. U.S. citizenship – you must be a U.S. citizen to renew or change your address online
2. Vision and physical/mental condition – you must not have had any changes to your vision or health that affect your ability to drive safely (if renewing a driver license)

### Step 4: Review Order and Make Payment

Review order information, make changes if necessary, and submit payment information.

Your new driver license or ID card will be mailed to you in two to three weeks. If you renewed or changed the address for a driver license, you need to print your temporary driver license (valid for 45 days) from the receipt page.

### Step 5: Invalidate Old Driver License/ID

Texas law says you cannot have more than one valid driver license or ID card. After receiving your new driver license or ID, invalidate your old card by cutting it up.

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