



September 30, 2024

VIA EMAIL

Dear Texas Election Administrators:

Campaign Legal Center (CLC) writes to provide you with information regarding how Texas voter registrars and other officials can properly adjudicate frivolous challenges to voter eligibility under Tex. Elec. Code Ann. §§ 13 and 16 to minimize the burden on election administration and protect the rights of voters, including important guidance on limitations imposed by federal law.¹

CLC is a nonpartisan, nonprofit organization working to protect and strengthen the U.S. democratic process across all levels of government through litigation, policy analysis, and public education. CLC seeks a future in which the American political process is accessible to all citizens, resulting in representative, responsive, and accountable government. Consistent with that mission, we have worked with election officials across the nation to improve their administrative policies, protect the freedom to vote of citizens within their jurisdictions, and strengthen the democratic process.

To that end, CLC is concerned about the potential for mass voter eligibility challenges during the upcoming election, which have become increasingly common throughout the country.² In recent election cycles, partisan actors have relied on faulty databases to bring hundreds of thousands of challenges to voter eligibility across the nation.³ These databases attempt to match voter registration records with publicly available

¹ This letter is not legal advice; it is intended to present a summary of relevant Texas and federal law.

² See, e.g., Nick Corasaniti & Alexandra Berzon, *Trump's Allies Ramp Up Campaign Targeting Voter Rolls*, N.Y. Times (Mar. 3, 2024), <https://www.nytimes.com/2024/03/03/us/politics/trump-voter-rolls.html> (noting the recent wave of voter eligibility challenges in states such as Georgia, Michigan, and Nevada); David Gilbert, *Election Deniers are Ramping Up Efforts to Disenfranchise Voters*, Wired (Jul. 31, 2024), <https://www.wired.com/story/election-deniers-efforts-disenfranchise-voters/>.

³ See Robyn Sanders & Alice Clapman, *Protections Against Mass Challenges*, Brennan Ctr. for Just. (July 17, 2024), <https://www.brennancenter.org/our-work/research-reports/protections-against-mass-challenges-voter-eligibility>. One common database is Eagle AI, which experts have criticized for its frequent identification of eligible voters as ineligible. See Alice Clapman & Andrew Garber, *A New Antidemocracy Tool*, Brennan Ctr. for Just. (Sept. 5, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/new-antidemocracy-tool>.

information, but that information is almost always incomplete or out of date, making the database matches unreliable.⁴ They also often improperly flag registered voters with the same name as ineligible individuals, voters who are temporarily staying in another place but remain qualified at the address at which they are registered, and households where some but not all residents have moved.⁵ As a result, mass challenge lists almost always include significant numbers of eligible voters who should not be removed from the rolls.⁶

As noted in the August 21, 2024 [letter](#) sent by the Texas Civil Rights Project, the Legal Defense Fund, CLC, and other national and Texas-based organizations, mass eligibility challenges organized by partisan actors and submitted with insufficient evidence risk disenfranchising eligible voters and causing unnecessary disruption to the orderly administration of the 2024 elections. We recognize that many election offices have lost their most experienced officials because of threats and volatility in the wake of the 2020 election and that this will be the first presidential election for new staff. We hope this letter will assist you as you provide guidance to your staff and volunteers regarding the rules for voter challenges and their responsibilities in dismissing challenges without cause, allowing your office to ensure a fair and orderly election, safeguard voters from intimidation, and minimize administrative disruption.

To mitigate the potential harms to both voters and election administrators caused by such baseless challenges, CLC provides the election law summary below to support your development of uniform processes for adjudicating voter eligibility challenges, in compliance with the following requirements under Texas and federal law.

I. Voter Challenges in Texas

As you know, Texas law allows individuals to challenge the eligibility of registered voters to remain on the registration rolls under certain circumstances. When submitted without sufficient evidence and adherence to the requirements imposed by state law, challenges to voter eligibility can be weaponized by partisan actors to intimidate voters and impose significant burdens on election officials. Current Texas law includes several protections against baseless challenges, which we have detailed further below.

Texas law does not allow for challenges to a voter's eligibility at polling locations during early in-person voting or on Election Day; private individuals and county voter registrars may only challenge another person's eligibility to vote in limited circumstances outside of the voting period.⁷

A. Challenges by voter registrars

When an individual applies to register to vote, the county voter registrar may challenge the applicant's application for registration within two days of initially determining that the application is complete and indicates that the applicant is

⁴ See Sanders & Clapman, *supra* note 3.

⁵ See *id.*

⁶ See *id.*

⁷ Tex. Elec. Code Ann. §§ 12.001, 13.074-.077, 16.091-.095.

eligible to register.⁸ The registrar may make such a challenge only if the “registrar has reason to believe the applicant is not eligible for registration or the application was submitted in an unauthorized manner.”⁹

Within two days of challenging the voter’s application, the registrar must provide written notice of the challenge to the challenged voter. The notice must include the date of the challenge, “a statement of the grounds for the challenge[,]” and “a brief explanation of the applicant’s right to a hearing on the challenge and the right to appeal the registrar’s decision.”¹⁰ The voter may then request a hearing on the challenge within ten days of the challenge being filed, which the registrar must schedule within ten days of the request.¹¹ The challenged voter may either appear at the hearing to present evidence or offer evidence in an affidavit submitted prior to the hearing.¹² “Promptly” after any hearing and after “considering the evidence or argument,” the registrar must “determine the challenge and issue a decision in writing.”¹³ If the registrar concludes that the applicant is eligible, they must approve the application and notify the challenged applicant of their eligibility to vote.¹⁴ The registrar may only deny the application if the registrar determines the applicant is ineligible after a hearing on the evidence.¹⁵ The registrar must retain a copy of the decision and deliver a copy to the applicant.¹⁶

B. Challenges by private parties

Texas law limits challenges by private parties to those made by a voter who is registered in the same county as the challenged voter.¹⁷ The challenger must file a sworn statement identifying the challenged voter and “stat[ing] a specific qualification for registration that the challenged voter has not met based on the [challenger’s] personal knowledge[.]”¹⁸ As explained in more detail in our previous [letter](#), **personal knowledge requires that the challenger have concrete, firsthand information about the challenged voter.**

If the challenge is based on the challenged voter’s residence, the registrar must mail that voter a confirmation notice, “unless the residential address provided in the challenge for the voter is different from the voter’s current residential address indicated on the registration records.”¹⁹ The voter must then reply to that notice to

⁸ *Id.* §§ 12.001, 13.074-.077, 16.091-.095.

⁹ *Id.* § 13.074(a), (c).

¹⁰ *Id.* § 13.075.

¹¹ *Id.* §§ 13.076-.077. The hearing may be scheduled later than the ten-day deadline at request of the challenged applicant. *Id.* § 13.077(b).

¹² *Id.* § 13.077(c).

¹³ *Id.* § 13.079(a).

¹⁴ *Id.* § 13.079(b)-(d).

¹⁵ *Id.* § 13.079.

¹⁶ *Id.*

¹⁷ *Id.* § 16.091.

¹⁸ *Id.* § 16.092.

¹⁹ *Id.* § 16.0921.

confirm their eligibility.²⁰ If the voter fails to respond to the notice, only then does the registrar enter the voter’s name on the “suspense list.”²¹ The voter will then need to provide a statement of residence before voting in a subsequent election.²²

To ensure voters are not improperly removed in the critical period leading up to an election, Texas law strictly regulates when registrars may act upon challenges to residency. **In the 2024 General Election, the registrar is prohibited from acting on any residency challenges filed after August 22, 2024, unless the challenged voter registered after that date.**²³

If the challenge is based on a ground other than residence, “the registrar shall schedule a hearing on the challenge” to occur within 20 days of the challenge’s filing.²⁴ The parties may present evidence in person at the hearing or may submit affidavits.²⁵ As with a challenge by the registrar, the registrar must “determine the challenge and issue a decision in writing” “promptly” after any hearing and after “considering the evidence or argument.”²⁶ If the registrar concludes that the “voter’s registration should not be canceled,” the voter must remain registered and be permitted to vote a regular ballot in the subsequent election.²⁷ The challenged voter’s registration may only be cancelled if, after a hearing on the evidence, the registrar determines the challenged voter is ineligible.²⁸ Upon making this determination, “the registrar shall cancel the registration on the 31st day after the date the registrar’s decision is issued.”²⁹

C. Appeal

A challenged voter may appeal an adverse decision by the registrar to the county’s district court within 30 days.³⁰ Any cancellation of the voter’s registration is stayed pending the appeal, meaning that the challenged voter must remain on the voter

²⁰ In their response, the voter must submit a written, signed statement that contains “(1) all of the information that a person must include in an application to register to vote[;] . . . (2) a sworn affirmation of the voter’s current residence[;] . . . and (3) if the voter’s residence address is a commercial post office box or similar location that does not correspond to a residence, evidence of the voter’s residence address.” *Id.* § 15.053.

²¹ *Id.* § 16.0921(b).

²² *See id.* §§ 15.052(a)(1), 63.0011.

²³ *Id.* § 16.0921(c) (prohibiting the registrar from acting on residency challenges filed within seventy-five days of a general election until after that election, unless the challenged voter registered after the seventy-fifth day before Election Day).

²⁴ *Id.* § 16.093. The parties can agree to a later hearing. *Id.* § 16.093(b). The registrar must deliver a written notice of a hearing to the parties no later than the “15th day before the date of the hearing.” *Id.* § 16.094.

²⁵ *Id.* § 16.093(c).

²⁶ *Id.* § 16.095.

²⁷ *See id.*

²⁸ *See id.*

²⁹ *Id.* § 16.095.

³⁰ *See id.* §§ 17.001-.003, .006. The private party who challenged a voter may also appeal a denial of the challenge within 30 days of the decision. *Id.* Untimely appeals by challengers should be summarily rejected. *Id.*

registration roll until the appeal is complete.³¹ The challenged voter is entitled to a trial in a reviewing court.³² The decision of the trial court is final and not subject to appeal.³³

II. Other Legal Requirements

As you know, both federal and Texas law provide robust protection against voter intimidation and other forms of infringement on the fundamental right to vote. The process for responding to voter challenges—especially those conducted in bulk—must therefore comply with all federal and state laws, as well as the U.S. Constitution. As such, all Texas election officials have the responsibility to protect Texas voters from baseless and discriminatory challenges and ensure that the adjudication of all voter challenges complies with both state and federal law.

A. Racially Discriminatory Challenges

Organized challengers frequently target voters from historically disenfranchised communities in an attempt to intimidate or deter members of those communities from voting.³⁴ Sustaining such discriminatory challenges could violate the U.S. Constitution and federal law. Taken together, the Equal Protection Clause of the Fourteenth Amendment³⁵ and Section 2 of the Voting Rights Act³⁶ prohibit the use of voting practices that result in citizens being denied equal access to the democratic process on account of “race, color, or membership in a language minority group.”³⁷ Because these are often the exact groups targeted by mass challenges, local election officials should consider carefully whether granting mass challenges brought before them would have the effect of unlawfully disadvantaging voters because of their race.

B. Voter Intimidation

Baseless mass challenges to voter eligibility could constitute voter intimidation, because such challenges are often made in bad faith to deter eligible citizens—including members of historically disenfranchised groups—from voting. Such voter intimidation is illegal under both federal and Texas law.

Federal law provides that anyone who “intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote” in a federal election has committed a federal crime.³⁸ Additionally, several federal statutes impose civil liability for voter

³¹ *Id.* § 17.005.

³² *Id.* §17.007.

³³ *Id.* §§ 17.007-.008. The reviewing court must conduct a de novo trial on the facts. *Id.*

³⁴ *See, e.g.,* Nicolas Riley, *Voter Challenges*, Brennan Ctr. for Just. at 11-12 (2012), https://www.brennancenter.org/sites/default/files/legacy/publications/Voter_Challengers.pdf.

³⁵ U.S. Const. amend. XIV.

³⁶ 52 U.S.C. § 10301.

³⁷ *See Guidance Under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, for Redistricting and Methods of Electing Government Bodies*, U.S. Dept. of Justice (Sept. 1, 2021), <https://www.justice.gov/opa/press-release/file/1429486/download>.

³⁸ 18 U.S.C. § 594.

intimidation. Section 11(b) of the Voting Rights Act makes it unlawful to “intimidate, threaten, or coerce” another person, or attempt to do so, “for voting or attempting to vote” or “for urging or aiding any person to vote or attempt to vote.”³⁹ In 2016, a federal court determined that voter challenges that intentionally target geographic areas with a large percentage of racial or ethnic minorities and that had the purpose or effect of deterring qualified members of those minority groups from voting violated a court order in a case involving claims under Section 11(b).⁴⁰ Further, the U.S. Department of Justice has cautioned that challenges made with the intention of or that have the effect of intimidating a reasonable voter can violate Section 11(b).⁴¹ And the Ku Klux Klan Act of 1871 makes it unlawful for “two or more persons to conspire to prevent by force, intimidation, or threat,” any voter from casting a ballot for the candidate of their choice.⁴²

Similarly, Texas law criminalizes influencing or threatening to influence a voter not to vote or to vote in a particular way.⁴³ Texas law further criminalizes harming or threatening to harm a voter because the voter voted for or against a candidate or measure, or the voter refused to reveal how they voted.⁴⁴ Indicating to a voter in a polling place by word, sign, or gesture how the voter should or should not vote is also prohibited.⁴⁵

Texas law empowers the presiding judge of each precinct to preserve order, prevent breaches of the peace, and prevent violations of the election code.⁴⁶ They may issue arrest warrants to fulfill those duties.⁴⁷ The presiding judge of a polling place may remove poll watchers for violating the state’s Penal Code. Additionally, the judge may remove a poll watcher for violating the Election Code or another provision of law provided that the judge or an election worker observed the conduct constituting the violation.⁴⁸ The judge may call a law enforcement officer to remove a poll watcher but should use reasonable judgment in deciding whether doing so would be necessary.⁴⁹ Presiding judges and election workers should exercise caution in assessing whether to expel a poll watcher, as they are subject to criminal penalties for unlawfully obstructing a watcher.⁵⁰

To that end, each presiding judge and local board of election inspectors should review their duties and responsibilities to maintain a peaceful and orderly polling place and be prepared to remove any challengers who fail to abide by Texas law. Presiding

³⁹ 52 U.S.C. § 10307(b).

⁴⁰ See *Democratic Nat’l Comm. v. Republican Nat’l Comm.*, No. CV 81-03876, 2016 WL 6584915, at *2 (D.N.J. Nov. 5, 2016).

⁴¹ See *Voter Registration List Maintenance: Guidance under Section 8 of the National Voter Registration Act*, 52 U.S.C. § 20507, U.S. Dept. of Justice at 3 (Sept. 2024), <https://www.justice.gov/crt/media/1366561/dl> [hereinafter “DOJ Guidance”].

⁴² 42 U.S.C. § 1985(3).

⁴³ Tex. Pen. Code § 36.03(a)(2).

⁴⁴ Tex. Elec. Code § 276.001.

⁴⁵ *Id.* § 61.008.

⁴⁶ *Id.* § 32.075(a).

⁴⁷ *Id.* § 32.075(c).

⁴⁸ *Id.* § 32.075(g).

⁴⁹ *Id.* § 32.075(h).

⁵⁰ *Id.* § 33.061.

judges and boards of election inspectors should also not hesitate to refer incidents of voter intimidation, including repeated impermissible voter challenges orchestrated by partisan outside groups, to the Texas Attorney General’s Office⁵¹ and U.S. Department of Justice (DOJ).⁵²

C. Uniform and Nondiscriminatory Standards

The U.S. Constitution and federal law require that each state and political subdivision use uniform, nondiscriminatory standards and processes for evaluating voter eligibility challenges.⁵³ Under the U.S. Constitution, counties in the same state are prohibited from “us[ing] varying standards to determine what [i]s a legal vote” when processing ballots in presidential elections.⁵⁴ Similarly, the National Voter Registration Act (NVRA) mandates that any voter registration list maintenance activity be “uniform, nondiscriminatory, and in compliance with the Voting Rights Act[.]”⁵⁵ including “any list maintenance activity based on third party submissions.”⁵⁶ The U.S. Department of Justice has advised that numerous list maintenance methods commonly used in mass voter eligibility challenges might violate the NVRA, including “comparing voter files to outdated or inaccurate records or databases, taking action that erroneously affects a particular class of voters (such as newly naturalized citizens), or matching records based solely on first name, last name, and date of birth.”⁵⁷

The NVRA further mandates that election officials may not “systematically remove” ineligible voters from voter registration rolls within 90 days preceding an election for federal office.⁵⁸ As to the U.S. Department of Justice has explained, this restriction “applies to list maintenance programs based on third-party challenges derived from any large, computerized data-matching process.”⁵⁹

Local election officials should work to eliminate any meaningful divergence among them in the standards and processes used to evaluate voter challenges in different municipalities and replace them with uniform standards and processes. By doing so, Texas voter challenge processes can avoid the “arbitrary and disparate treatment” of challenged ballots that violates the U.S. Constitution.⁶⁰

⁵¹ The Texas Attorney General’s Office can be reached at 512-463-2100.

⁵² The DOJ Civil Rights Division Voting Section can be reached at 800-253-3931, and voter intimidation reports can be submitted online at <https://civilrights.justice.gov/report>. More information on DOJ’s resources to protect voting access can be found at <https://www.justice.gov/opa/pr/justicedepartment-releases-information-efforts-protect-right-vote>.

⁵³ *See Bush v. Gore*, 531 U.S. 98, 104 (2000) (finding that the lack of uniform standards across counties for when to count a ballot violates the Constitution’s Equal Protection Clause).

⁵⁴ *Id.* at 107.

⁵⁵ 52 U.S.C. § 20507(b).

⁵⁶ DOJ Guidance at 3.

⁵⁷ *Id.*

⁵⁸ 52 U.S.C. § 20507(b)(1).

⁵⁹ DOJ Guidance at 4.

⁶⁰ *Bush*, 531 U.S. at 104-05.

D. Removals Based on Change of Address

The NVRA strictly regulates the process for removing a registered voter from the voter registration rolls based on suspected change of address, including when removals are triggered by mass voter eligibility challenges.⁶¹ Election officials may only remove a voter from the list of registered voters based on change in residence when: (1) the voter confirms in writing that they have moved outside of the jurisdiction; or (2) election officials have satisfied the process outlined in Section 8(d)(2) of the NVRA.⁶² The United States Department of Justice has cautioned that “[a] third-party submission—such as a submission of another individual’s information via an online portal or a challenge based solely on public database information—is not confirmation by the registrant of a change of address.”⁶³ Consequently, **removing individuals from the list of registered voters due to suspected change of address on the basis of mass voter eligibility challenges alone likely violates the NVRA.**⁶⁴ As detailed in the August 21, 2024, letter, Texas law also prohibits removals based on such challenges absent *personal knowledge* by the challenger—first-hand information or experience, not guessing, speculation, or reliance on information from third parties.

* * *

By ensuring compliance with the processes, requirements, and limitations of Texas’s voter challenge laws, you can mitigate the potential harm and disruption caused by frivolous voter eligibility challenges. Our hope is that this summary of the relevant law will help you to prepare proactively to develop written procedures and policies for adjudicating such challenges and train your staff, volunteers, and election inspectors on the requirements of Texas and federal law applicable to voter eligibility challenges.

Please do not hesitate to reach out with any questions. We stand ready to assist you in upholding federal and state law and protecting Texans’ freedom to vote.

Sincerely,

Jonathan Diaz
Director, Voting Advocacy and
Partnerships
Campaign Legal Center
1101 14th St NW, Ste. 400
Washington, DC 20005
jdiaz@campaignlegalcenter.org

⁶¹ See 52 U.S.C. § 20507(b); DOJ Guidance at 4-6.

⁶² See 52 U.S.C. § 20507(b)-(d); DOJ Guidance at 4. The DOJ Guidance also provides detailed information on the requirements of Section 8(d)(2). Election officials may only remove a voter under Section 8(d)(2) of the NVRA if that voter: (1) does not vote in any election between the date the notice was sent and the second general election following the notice; and (2) does not respond to the notice. 52 U.S.C. § 20507(d)(2).

⁶³ DOJ Guidance at 4.

⁶⁴ *Id.* at 4-5.