

Theodore Roosevelt American Inn of Court  
February 1, 2022

VOTING RIGHTS ACT – Past, Present and Future  
Presentation Outline

Overview of Program and Voting Rights- Hon. Steven Jaeger	10 minutes
History- Hon. Jerald Carter	10 minutes
Florida- Marshal Schichtman, Esq.	10 minutes
Georgia- Taniesha Allen, Esq.	10 minutes
New Hampshire- John Zenir, Esq.	10 minutes
Texas- Michael Berger, Esq.	10 minutes
Litigation issues-	45 minutes
Frederick K. Brewington, Esq. (30 minutes) and Hon. Dorothy Goosby (15 minutes)	

## Voting Rights Laws- Internet Resources

Brennan Center for Justice – see report - Voting Laws Roundup December 2021

[www.Brennancenter.org](http://www.Brennancenter.org)

Voting Rights Lab – Tracker to explore laws and pending legislation in all 50 states

[www.tracker.votingrightslab.org](http://www.tracker.votingrightslab.org)

Fair Elections Center

[www.fairelectionscenter.org](http://www.fairelectionscenter.org)

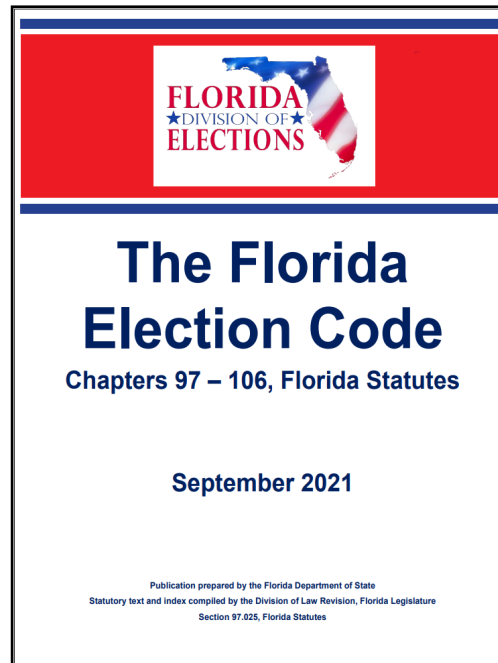
# Florida Voting Rights Developments





# Florida Statutes

- Florida Statutes, Title IX, Electors and Elections, Ch. 97-107
  - (107 is Conventions for Ratifying or Rejecting Proposed Amendments to the Constitution of United States)



# What happened

- After a presidential election that state officials said was smooth and a model for the nation, Florida Republicans sought to rewrite the state's election laws.
- The Legislature passed SB 90 along party lines in April, and Gov. Ron DeSantis signed the bill into law May 6. It took effect immediately.
- The bill restricts ballot drop boxes, bans the collection by individuals of multiple completed ballots and adds requirements to request a mail ballot.

# Color on what happened

- The new law leaves some key voting rights in Florida unchanged, such as allowing voters to cast a ballot by mail without an excuse and keeping at least eight days of early voting. But it restricts other aspects of voting, especially voting by mail, following an election in which Democrats cast more mail ballots than Republicans, a reversal of past trends.



# Changes to the rules about requesting ballots

## FS §101.62

- Voters are limited to requesting ballots only through the next general election, or two years. However, current requests are grandfathered in. Previously, voters were able to request a ballot through the next two general elections — the next four years. 101.62 (1) (a)
- The new law also prohibits election officials from mailing ballots to a voter unless it's requested. That provision is an attempt to prevent what officials in some other states did to mail ballots to all voters due to the pandemic. 101.62 (5) (7) (carve-outs for disabilities, overseas voters, and local referenda)
- Floridians requesting a mail ballot in person or over the telephone must provide their driver's license number, a state-issued ID number or the last four digits of their Social Security number, whichever may be verified in the supervisor's records. Those requesting a mail ballot in writing must provide the same identification and sign their request. 101.62 (1) (b)



# Limits how many ballots one person can possess FS §101.62 (4)

- The law aims to crack down on the practice critics call "ballot harvesting," which involves political operatives collecting voters' completed mail-in ballots and turning them in. That practice has already been illegal in Miami-Dade County for many years.
- The law limits a person to possessing two ballots other than their own, except for immediate family members.

# Bill expands the definition of soliciting voters

## FS §102.031 (4) (b)

- Florida already banned solicitation of voters within a certain distance of polling sites, but the new law expands the ban to include zones around drop boxes and to include "engaging in any activity with the intent to influence or effect of influencing a voter."

# Ballot drop boxes are generally restricted to early voting hours. FS §101.657

- About 1.5 million Floridians used drop boxes during the 2020 general election rather than relying on the mail or facing indoor crowds during the pandemic.
- Except for secure drop boxes at the election supervisor's office, the new law says a box may be used only during a county's early voting hours. That provision means some voters can't use drop boxes for the very reason they'd want to: to drop off a ballot at night.
- The law also requires all drop boxes to be monitored in person by an employee of the supervisor, an added expense for taxpayer-funded election offices. The bill creates a civil penalty of \$25,000 for a supervisor who leaves a drop box open outside of early voting hours. (previously used video surveillance)

# Florida Voter Suppression Bill (Freedom Fighters)

- Harriett Tubman Freedom Fighters v. Lee. 4:21-cv-00242-MW-MAF Northern District of Florida, Tallahassee Division 2021
- Lawsuit brought by the Southern Poverty Law Center and the Fair Elections Center on behalf of the Harriett Tubman Freedom Fighters and other civic organizations challenging a provision of Florida's voter suppression law, Senate Bill 90, that restricts advocacy efforts and voter registration activities of third-party voter registration organizations. The complaint alleges that this provision violates the First and 14th Amendments and asks that the state is estopped from enforcing it. The Republican National Committee (RNC) and National Republican Senatorial Committee (NRSC) intervened in the case. Litigation is ongoing.
- Hearing for Summary Judgment starts on January 31, 2022
- <https://www.democracydocket.com/wp-content/uploads/2021/06/2021-06-14-Harriet-Tubman-Freedom-Fighters-Corp.-v.-Lee-Complaint-watermarked.pdf>

- Harriet Tubman Freedom Fighters v. Lee
- Fair Elections Center and the Southern Poverty Law Center filed a lawsuit challenging two provisions of a 2021 Florida law known as SB 90. Under the first provision, the state forces community organizations to warn voter applicants that the organization “might not” submit their registration on time, even though these organizations and their volunteers make every effort to submit applications on time in compliance with state deadlines. The new requirements make it less likely that potential voter applicants will submit registrations through community groups. The plaintiff challenging these requirements is Harriet Tubman Freedom Fighters, a nonprofit, nonpartisan organization who stands up for the voices of Floridians through their civic engagement activities, including voter registration.

- Under another provision of SB 90, a voter may only receive help in obtaining and returning a mail ballot from a limited list of immediate family members or a person who has helped no more than one other voter to whom the person is not related. This restriction violates Section 208 of the Voting Rights Act, which entitles voters who require assistance in voting by reason of disability or inability to read or write to receive help from almost anyone of the voter's choosing. This rule will make voting especially difficult for voters who do not have immediate family in the state or who reside in care facilities. This claim was brought on behalf of the Florida and Central Florida chapters of Paralyzed Veterans of America and two individual voters. The court dismissed their claim in October 2021 because it determined that the Attorney General and Supervisors of Elections were not proper defendants, but left the door open for the plaintiffs to refile in the future.

- [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0100-0199/0101/0101ContentsIndex.html&StatuteYear=2021&Title=%2D%3E2021%2D%3EChapter%20101](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0101/0101ContentsIndex.html&StatuteYear=2021&Title=%2D%3E2021%2D%3EChapter%20101)



# Georgia Senate Bill 202

- Known as the Election Integrity Act of 2021
- Passed on March 25, 2021
- This bill amends Chapter 2 of Title 21 of the Official Code of Georgia
- Mix feelings about the bill

# Advance Voting

- GA SB 202, §28
- Nearly 2.7million Georgians voted early in the 2020 general elections.
- There will be at least 17 days of early voting starting the Monday that is 22 days before the election until the Friday before an election.
- There will be at least 2 Saturdays of early voting with the option of offering voting on Sundays as well.
  - Previously most of the larger counties offered voting on 2 Saturdays but the new law helps expand access to smaller counties. Before this law, Georgia only require one Saturday of early voting.
- Early voting must be offered from at least 9am to 5pm but counties can choose to open from 7am to 7pm.

# Changes to In-Person Voting

- GA SB 202, §18; GA SB 202, §34
- The new law was implemented to address long lines and reduce provisional voting.
- The law also demands that counties with any precinct with over 2,000 voters in the last election or one that kept voters waiting for over an hour must create additional precinct or add more resources to reduce wait times. GA SB 202, §18.
- If a voter goes to the wrong precinct in his or her county before 5pm, the poll workers will direct that person to the correct site instead of completing a provisional ballot. GA SB 202, §34.
  - After 5pm, a voter at the wrong polling site, will be able to cast a provisional ballot if they are unable to reach the correct site before the polls close. The voter must provide sworn statement that they cannot make it to the right precinct on time.
  - In the 2020 general election, 17,697 provisional ballots were casts and only 11,781 were accepted.

# ID Requirements

- GA SB 202, §25
- Previously a form of identification was required for voting in person only.
- The new law now requires voters who vote by absentee by mail to submit a driver's license number or state ID number.
- If they do not have a driver's license number, they can show a different form of identification or provide the last 4 digits of their social security number.
- This replaces the signature requirement for verifying a person's identification.

# Absentee Voting

- GA SB 202, §25; GA SB 202, §26
- Previously, voters could request a ballot 180 days out from an election. Under the new law, voters must request a ballot 78 days before an election. Ballots must be received by the clerk no later than 11 days prior to the election which is earlier than the previous deadline.
- State officials can no longer send unsolicited ballot request forms to voters. Only voters who request absentee ballots will receive them. GA SB 202, §25.
- Secure drop boxes were first implemented in Georgia during the 2020 election due to the pandemic.
- The new law now mandates at least one drop box per county but restricts where they may be placed and when they may be accessed. GA SB 202, §26.
  - The drop boxes must be located inside the clerk's office or inside a voting location. There can only be one drop box for every 100,000 voters in a county.
  - The drop boxes are only accessible during early voting hours, and then closed when the early voting period ends.
  - In the 2020 elections, the drop boxes were available 24/7.

# Prohibiting Gifts and Restricting Money

- GA SB 202, §33
- Georgia already outlawed campaigns or other groups from distributing or displaying any campaign material within 150 ft or within 25 ft of any voters standing line for a polling site.
- Now the law also bans the distribution of gifts to voters including but not limited to, food and drinks.
- Many voting rights group are against this especially since during the last primary in June, there were hours-long lines in the heat.
- According to officials, the law is meant to prevent groups from using food or drinks to campaign. The law does allow for poll workers to set up self-service water.

# State Election Board

- GA SB 202, §5
- The new law removes the Secretary of State as Chair of the State Election Board.
- The chair and board members will be elected by the General Assembly which gives more republican-controlled state legislature. They will be able to choose 3 of the 5 members of state election board.
- The chair is supposed to be non-partisan.
  - They cannot actively participate in a political party organization.
  - They cannot donate to a political campaign.
  - They cannot run for public office during his or her service and 2 years preceding the term as chair.



# Results

- GA SB 202, §29
- Allows for absentee ballots to be processed, but not tabulating, 15 days before Election Day
- Absentee ballots can be tabulating after 7am on Election Day, but results can't be reported until polls close
- Counties must report returns from absentee ballots by 5pm the day after Election day or else they could face an investigation
- Election officials must post the total numbers of ballots by 10 pm (including election day, early voting and absentee ballots)
- The counties must also certify results in 6 days rather than 10 days.

# Runoff Election

- GA SB 202, §42
- The new law now requires a runoff elections to be held 28 days after the election. Previously it was held 9 weeks after the general election.
- Early voting will be held Monday through Friday and some counites may not offer weekend early voting during runoff elections depending how long it takes to finish the work from the previous election.

# Hotline

- GA SB 202, §4
- The Attorney general can set up a hotline for voters to file complaints and allegations anonymously against voter intimidation or illegal activity.
- The attorney general will review each allegation to determine if it should be prosecuted
- New law allows voters to make unlimited challenges to another voter's qualification to cast a ballot

## **New Hampshire Election Law**

- Absentee voting is premitted but only in limited circumstances. The State constitution actually requires in person voting.
- An absentee ballot will be premitted if the voter has an excuse, such as being out of state on Election Day, disabilities, or mandatory employment.
- The voter requesting an absentee ballot and submitting one, must provide basic identification, such as their name and address.
- The voter is required to request an absentee ballot from the local clerk, which shall be sent to the voter without delay, and the clerk must verify the application.
- Mail in ballots must be received, no later than Election Day.
- Mail in ballots can be provided to the clerk, by the voters “delivery agent”, who can be a relative, care facility administrator, or a person giving assistance to a blind voter.
- All delivery agents of absentee ballots, must complete a form regarding their relationship to the voter and present ID.
- A voter who submitted an absentee ballot can appear in person to vote on Election Day.

### **Voter Registration/Early Voting**

- No provisions for automatic voter registration.
- Same day registration is premitted on Election Day and voter must provide proof of citizenship, age, domicile and photo ID is mandated.
- No early voting.
- There is no specific length of residency required.
- No provisions for online voter registration.
- Voter ID is requested at all polling places, but not required.

- During COVID- alternative ballot drop off locations are available and can be used by Municipalities, and be placed outside of the clerk's offices, so long as they are visible to staff wherever they are accessible.
- On July 2, 2021, New Hampshire Supreme Court struck down a bill. A 2017 law requiring proof of New Hampshire residence.
  - o Saucedo v Gardener, 355 F. Supp. 3d 202 (DNH 2018)
- New Hampshire requirement that a voter signature on a ballot be confirmed as matching the signature on the ballot application was enjoined by US District Court Judge, McCafferty.
- 275 voters had their November 2016 absentee ballots rejected without opportunity to cure. Mrs. Saucedo was one of those voters. She was a blind, 95-year-old woman who required her 86-year-old husband's assistance.
- American Civil Liberties Union sued as a violation of the Constitution and a violation of the Americans with Disabilities Act. The restriction on the voters due process resulted from the fact that election moderators without handwriting expertise, rejected the voters' signature without providing notice to the voter and under the ADA claim, the moderators reviewing the ballot failed to consider that people with disabilities frequently have fluctuating handwriting.
- Judge McCafferty held that the process was fundamentally flawed because it violated the Equal Protection Clause of the 14<sup>th</sup> Amendment, because it did not provide the voter with notice and an opportunity to be heard before the court rejected their ballot.

### Legislation

#### Pending-

- 65 new bills have been introduced in New Hampshire in 2022.
- Enacted an expansion of the use of absentee ballots, permitting voters in jail for misdemeanors, to vote by absentee ballot.
- A very unusual bill has been referred to the election committee on January 5, 2022.

The following has special meaning:

green underline denotes added text

~~red struck-out text denotes deleted text~~

## 2021 TX S 1 b

**Author:** Hughes  
**Version:** Enacted  
**Version Date:** 09/07/2021

S.B. No. 1

### AN ACT

relating to election integrity and security, including by preventing fraud in the conduct of elections in this state; increasing criminal penalties; creating criminal offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

#### ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. SHORT TITLE. This Act may be cited as the Election Integrity Protection Act of 2021.

SECTION 1.02. PURPOSE. The purpose of this Act is to exercise the legislature's constitutional authority under Section 4, Article VI, Texas Constitution, to make all laws necessary to detect and punish fraud.

SECTION 1.03. FINDINGS. The legislature finds that:

- (1) full, free, and fair elections are the underpinnings of a stable constitutional democracy;
- (2) fraud in elections threatens the stability of a constitutional democracy by undermining public confidence in the legitimacy of public officers chosen by election;
- (3) reforms are needed to the election laws of this state to ensure that fraud does not undermine the public confidence in the electoral process;
- (4) the reforms to the election laws of this state made by this Act are not intended to impair the right of free suffrage guaranteed to the people of Texas by the United States and Texas Constitutions, but are enacted solely to prevent fraud in the electoral process and ensure that all legally cast ballots are counted. Integral to the right to vote is the assurance of voter access and the right for all votes legally cast to be counted;
- (5) additionally, preventing a valid vote from being counted violates the basic constitutional rights guaranteed to each citizen by the United States Constitution; and
- (6) providing for voter access and increasing the stability of a constitutional democracy ensures public confidence in the legitimacy of public officers chosen by election.

SECTION 1.04. Chapter 1, Election Code, is amended by adding Section 1.0015 to read as follows:

Sec. 1.0015. LEGISLATIVE INTENT. It is the intent of the legislature that the application of this code and the conduct of elections be uniform and consistent throughout this state to reduce the likelihood of fraud in the conduct of elections, protect the secrecy of the ballot, promote voter access, and ensure that all legally cast ballots are counted.

SECTION 1.05. Section 1.003, Election Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Election officials and other public officials shall strictly construe the provisions of this code to effect the intent of the legislature under Section 1.0015.

SECTION 1.06. Section 1.005, Election Code, is amended by amending Subdivision (4-a) and adding Subdivision (4-b) to read as follows:

(4-a) "Election official" means:

(A) a county clerk;

(B) a permanent or temporary deputy county clerk;

- (C) an elections administrator;
- (D) a permanent or temporary employee of an elections administrator;
- (E) an election judge;
- (F) an alternate election judge;
- (G) an early voting clerk;
- (H) a deputy early voting clerk;
- (I) an election clerk;
- (J) the presiding judge of an early voting ballot board;
- (K) the alternate presiding judge of an early voting ballot board;
- (L) a member of an early voting ballot board;
- (M) the chair of a signature verification committee;
- (N) the vice chair of a signature verification committee;
- (O) a member of a signature verification committee;
- (P) the presiding judge of a central counting station;
- (Q) the alternate presiding judge of a central counting station;
- (R) a central counting station manager;
- (S) a central counting station clerk;
- (T) a tabulation supervisor;
- (U) an assistant to a tabulation supervisor; and
- (V) a chair of a county political party holding a primary election or a runoff primary election.

(4-b) "Federal judge" means:

- (A) a judge, former judge, or retired judge of a United States court of appeals;
- (B) a judge, former judge, or retired judge of a United States district court;
- (C) a judge, former judge, or retired judge of a United States bankruptcy court; or
- (D) a magistrate judge, former magistrate judge, or retired magistrate judge of a United States district court.

SECTION 1.07. Section 1.018, Election Code, is amended to read as follows:

Sec. 1.018. APPLICABILITY OF PENAL CODE. In addition to Section 1.03, Penal Code, and to other titles of the Penal Code that may apply to this code, Titles 2 and Title 4, Penal Code, apply ~~applies~~ to offenses prescribed by this code.

SECTION 1.08. Chapter 1, Election Code, is amended by adding Section 1.022 to read as follows:

Sec. 1.022. REASONABLE ACCOMMODATION OR MODIFICATION. A provision of this code may not be interpreted to prohibit or limit the right of a qualified individual with a disability from requesting a reasonable accommodation or modification to any election standard, practice, or procedure mandated by law or rule that the individual is entitled to request under federal or state law.

## ARTICLE 2. REGISTRATION OF VOTERS

SECTION 2.01. Section 13.002, Election Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) The information required under Subsections (c)(3), (4), (5), (6), and (8) must be supplied by the person desiring to register to vote.

SECTION 2.02. Section 13.007, Election Code, is amended to read as follows:

Sec. 13.007. FALSE STATEMENT ON APPLICATION. (a) A person commits an offense if the person knowingly or intentionally:

- (1) makes a false statement; or
- (2) requests, commands, coerces, or attempts to induce another person to make a false statement on a registration application.



(b) An offense under this section is a Class ~~A~~ B misdemeanor, except that an offense under this section is a state jail felony if the person:

(1) directly or through a third party offers or provides compensation or other benefit to a person for activity described by Subsection (a); or

(2) solicits, receives, or accepts compensation or other benefit for an activity described by Subsection (a).

(c) If conduct that constitutes an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both. For purposes of this code, an offense under this section is considered to be perjury, but may be prosecuted only under this section.

SECTION 2.03. Section 15.021, Election Code, is amended by amending Subsections (b) and (d) and adding Subsections (d-1) and (d-2) to read as follows:

(b) Except as provided by Subsection (d), the ~~The~~ voter shall use the registration certificate or a registration application form as the notice, indicating the correct information in the appropriate space on the certificate or application form unless the voter does not have possession of the certificate or an application form at the time of giving the notice.

(d) A voter ~~who continues to reside in the county in which the voter is registered~~ may correct information under this section by digital transmission of the information under a program administered by the secretary of state and the Department of Information Resources.

(d-1) If the notice indicates that a voter no longer resides in the county in which the voter is registered, the registrar shall forward the notice and the voter's application for registration to the registrar of the county in which the voter resides. The registrars shall coordinate to ensure that the voter's existing registration is canceled immediately after the voter is registered in the county in which the voter resides in accordance with Subsection (d-2).

(d-2) A registrar who receives a voter's notice and application from another registrar under Subsection (d-1) shall treat it as an original application for registration under Section 13.002, and shall register the voter if the voter resides in the county and is otherwise eligible under Section 13.001.

SECTION 2.04. Section 15.028, Election Code, is amended to read as follows:

Sec. 15.028. NOTICE OF UNLAWFUL VOTING OR REGISTRATION TO PROSECUTOR. ~~(a)~~ If the registrar determines that a person who is not eligible to vote registered to vote or a registered voter voted in an election, the registrar shall, within 72 hours not including weekends after making the determination, execute and deliver to the attorney general, the secretary of state, and the county or district attorney having jurisdiction in the territory covered by the election an affidavit stating the relevant facts.

~~(b) If the election covers territory in more than one county, the registrar shall also deliver an affidavit to the attorney general.~~

SECTION 2.05. Section 16.0332, Election Code, is amended by amending Subsection (a) and adding Subsections (a-1), (d), and (e) to read as follows:

(a) After the registrar receives notification a list under Subsection (a-1) of this section, Section 18.068 of this code, or Section 62.113, Government Code, of persons excused or disqualified from jury service because of citizenship status or notification of persons who indicate a lack of citizenship status in connection with a motor vehicle or Department of Public Safety record as provided by Subsection (a-1), the registrar shall deliver to each registered voter whose name appears on the list a written notice requiring the voter to submit to the registrar proof of United States citizenship in the form of a certified copy of the voter's birth certificate, United States passport, or certificate of naturalization or any other form prescribed by the secretary of state. The notice shall be delivered by forwardable mail to the mailing address on the voter's registration application and to any new address of the voter known to the registrar.

(a-1) The secretary of state shall enter into an agreement with the Department of Public Safety under which information in the existing statewide computerized voter registration list is compared against information in the database of the Department of Public Safety on a monthly basis to verify the accuracy of citizenship status information previously provided on voter registration applications. In comparing information under this subsection, the secretary of state shall consider only a voter's information in the database of the Department of Public Safety that was derived from documents presented by the voter to the department after the person's current voter registration became effective, and may not consider information derived from documents presented by the voter to the department before the person's current voter registration became effective.

(d) The secretary of state shall prescribe rules for the administration of this section.

(e) Not later than December 31 of each year, the secretary of state shall provide a report to the legislature of the number of voter registrations canceled under this section during the calendar year.

SECTION 2.06. Section 18.065, Election Code, is amended by adding Subsections (e), (f), (g), (h), and (i) to read as follows:

(e) If the secretary of state determines that a voter registrar is not in substantial compliance with a requirement imposed on the registrar by a provision or rule described in Subsection (a), the secretary of state shall:

(1) for the first violation, require the registrar to attend a training course under Subsection (h);

(2) for the second violation, audit the voter registration list for the county in which the registrar serves to determine the actions needed to achieve substantial compliance under Subsection (a) and provide the results of the audit to the registrar; or

(3) for a third or subsequent violation, if the secretary of state determines that the registrar has not performed any overt actions in pursuance of compliance with the actions identified under Subdivision (2) as necessary for the registrar to achieve substantial compliance under Subsection (a) within 14 days of receiving the results of the audit conducted under that subsection, inform the attorney general that the county which the registrar serves may be subject to a civil penalty under Subsection (f).

(f) A county is liable to this state for a civil penalty of \$1,000 for each day after the 14th day following the receipt of the results of the audit conducted under Subsection (e)(2) that the county's voter registrar fails to take overt action to comply with the actions identified under that subsection as necessary for the registrar to achieve substantial compliance under Subsection (a). The attorney general may bring an action to recover a civil penalty imposed under this section.

(g) A civil penalty collected by the attorney general under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(h) The secretary of state shall develop and implement a training course for registrars on substantial compliance with Sections 15.083, 16.032, and 18.061 and with rules implementing the statewide computerized voter registration list.

(i) The secretary of state shall adopt rules and prescribe procedures for the implementation of this section.

SECTION 2.07. Section 18.068, Election Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The secretary of state shall quarterly compare the information received under Section 16.001 of this code and ~~Sections~~ ~~Section~~ 62.113 ~~and 62.114~~, Government Code, to the statewide computerized voter registration list. If the secretary determines that a voter on the registration list is deceased or has been excused or disqualified from jury service because the voter is not a citizen or a resident of the county in which the voter is registered to vote, the secretary shall send notice of the determination to the voter registrar of the counties considered appropriate by the secretary.

(a-1) The secretary of state is not required to send notice under Subsection (a) for a voter who is subject to an exemption from jury service under Section 62.106, Government Code, if that exemption is the only reason the voter is excused from jury service.

SECTION 2.08. Section 31.006, Election Code, is amended to read as follows:

Sec. 31.006. REFERRAL ~~OF COMPLAINT~~ TO ATTORNEY GENERAL. (a) If, after receiving or discovering information indicating that a complaint alleging criminal conduct in connection with an election has occurred, the secretary of state determines that there is reasonable cause to suspect that ~~the alleged~~ criminal conduct occurred, the secretary shall promptly refer the information ~~complaint~~ to the attorney general. The secretary shall deliver to the attorney general all pertinent documents and information in the secretary's possession.

(b) The documents and information submitted under Subsection (a) are not considered public information until:

(1) the secretary of state makes a determination that the information ~~complaint~~ received does not warrant an investigation; or

(2) if referred to the attorney general, the attorney general has completed the investigation or has made a determination that the information ~~complaint~~ referred does not warrant an investigation.

SECTION 2.09. Subchapter B, Chapter 87, Election Code, is amended by adding Section 87.028 to read as follows:

Sec. 87.028. ACCESS TO INFORMATION. (a) On request, a county election official shall provide to a member of an early voting ballot board all available information necessary to fulfilling the functions of the board, including any information from the statewide computerized voter registration list under Section 18.061.

(b) On request, a county election official shall provide to a member of a signature verification committee all available information necessary to fulfilling the functions of the committee, including any information from the statewide computerized voter registration list under Section 18.061.

(c) The secretary of state shall adopt rules as necessary to prevent a member of an early voting ballot board or signature verification committee from retaining or sharing personally identifiable information from the statewide computerized voter registration list under Section 18.061 obtained under this section for any reason unrelated to the official's official duties.

SECTION 2.10. Section 62.113(b), Government Code, is amended to read as follows:

(b) On the third business day of each month, the clerk shall send a copy of the list of persons excused or disqualified because of citizenship in the previous month to:

(1) the voter registrar of the county;

(2) the secretary of state; and

(3) the county or district attorney, ~~as applicable~~, for an investigation of whether the person committed an offense under Section 13.007, Election Code, or other law.

SECTION 2.11. Sections 62.114(b) and (c), Government Code, are amended to read as follows:

(b) On the third business day of each month, the clerk shall send ~~to the voter registrar of the county~~ a copy of the list of persons excused or disqualified in the previous month because the persons do not reside in the county to:

(1) the voter registrar of the county; and

(2) the secretary of state.

(c) A list compiled under this section may not be used for a purpose other than a purpose described by Subsection (b) or Section 15.081 or 18.068, Election Code.

### ARTICLE 3. CONDUCT AND SECURITY OF ELECTIONS

SECTION 3.01. Section 2.053(a), Election Code, is amended to read as follows:

(a) On receipt of the certification, the governing body of the political subdivision by order or ordinance ~~shall~~ **may** declare each unopposed candidate elected to the office. If no election is to be held on election day by the political subdivision, a copy of the order or ordinance shall be posted on election day at each polling place used or that would have been used in the election.

SECTION 3.02. Section 2.056(c), Election Code, is amended to read as follows:

(c) A certifying authority ~~shall~~ **may** declare a candidate elected to an office of the state or county government if, were the election held, only the votes cast for that candidate in the election for that office may be counted.

SECTION 3.03. Sections 43.007(c) and (d), Election Code, are amended to read as follows:

(c) In conducting the program, the secretary of state shall provide for an audit of the voting system equipment ~~direct recording electronic voting units~~ before and after the election, and during the election to the extent such an audit is practicable.

(d) The secretary of state shall select to participate in the program each county that:

(1) has held a public hearing under Subsection (b);

(2) has submitted documentation listing the steps taken to solicit input on participating in the program by organizations or persons who represent the interests of voters;

(3) has implemented a computerized voter registration list that allows an election officer at the polling place to verify that a voter has not previously voted in the election;

(4) uses direct recording electronic voting machines, ballot marking devices, or hand-marked scannable paper ballots that are printed and scanned at the polling place or any other type of voting system equipment that the secretary of state determines is capable of processing votes for each type of ballot to be voted in the county; and

(5) is determined by the secretary of state to have the appropriate technological capabilities.

SECTION 3.04. Section 43.031(b), Election Code, is amended to read as follows:

(b) Each polling place shall be located inside a building. No voter may cast a vote from inside a motor vehicle unless the voter meets the requirements of Section 64.009.

SECTION 3.05. Section 52.092(a), Election Code, is amended to read as follows:

(a) Except as provided by Section 2.053(c) or 2.056(e), for ~~For~~ an election at which offices regularly filled at the general election for state and county officers are to appear on the ballot, the offices shall be listed in the following order:

(1) offices of the federal government;

(2) offices of the state government:

(A) statewide offices;

(B) district offices;

(3) offices of the county government:

(A) county offices;

(B) precinct offices.

SECTION 3.06. Section 61.002, Election Code, is amended to read as follows:

Sec. 61.002. OPENING AND CLOSING POLLING PLACE FOR VOTING. (a) Immediately before opening the polls for voting on the first day of early voting and on election day, the presiding election judge or alternate election judge shall confirm that each voting machine has any public counter reset to zero and shall print the tape that shows the counter was set to zero for each candidate or measure on the ballot.

(b) At the official time for opening the polls for voting, an election officer shall open the polling place entrance and admit the voters.

(c) Immediately after closing the polls for voting on election day, the presiding election judge or alternate election judge shall print the tape to show the number of votes cast for each candidate or ballot measure for each voting machine.

(d) Each election judge or alternate election judge present shall sign a tape printed under this section.

SECTION 3.07. Section 64.007(c), Election Code, is amended to read as follows:

(c) An election officer shall maintain a register of spoiled ballots at the polling place. An election officer shall enter on the register the name of each voter who returns a spoiled ballot and the spoiled ballot's number. The secretary of state shall create and promulgate a form to be used for this purpose.

SECTION 3.08. Subchapter A, Chapter 66, Election Code, is amended by adding Section 66.004 to read as follows:

Sec. 66.004. POLLING PLACE CHECKLISTS. The secretary of state shall adopt rules and create a checklist or similar guidelines to assist the presiding judge of a polling place in processing forms and conducting procedures required by this code at the opening and closing of the polling place.

SECTION 3.09. Section 85.005, Election Code, is amended to read as follows:

Sec. 85.005. REGULAR DAYS AND HOURS FOR VOTING. (a) Except as provided by Subsection (c), in an election in which a county clerk ~~or city secretary~~ is the early voting clerk under Section 83.002 ~~or 83.005~~, early voting by personal appearance at the main early voting polling place shall be conducted on each weekday of the weekdays of the early voting period that is not a legal state holiday and for a period of at least nine hours, except that voting may not be conducted earlier than 6 a.m. or later than 10 p.m. during the hours that the county clerk's or city secretary's main business office is regularly open for business.

(b) In an election to which Subsection (a) does not apply, early voting by personal appearance at the main early voting polling place shall be conducted at least nine ~~eight~~ hours each weekday of the early voting period that is not a legal state holiday unless the territory covered by the election has fewer than 1,000 registered voters. In that case, the voting shall be conducted at least four ~~three~~ hours each day. The authority ordering the election, or the county clerk if that person is the early voting clerk, shall determine which hours the voting is to be conducted.

(c) In a county with a population of 55,000 ~~400,000~~ or more, the voting in a primary election or the general election for state and county officers shall be conducted at the main early voting polling place for at least 12 hours on each weekday of the last week of the early voting period, and the voting in a special election ordered by the governor shall be conducted at the main early voting polling place for at least 12 hours on each of the last two days of the early voting period. Voting under this subsection may not be conducted earlier than 6 a.m. or later than 10 p.m. Voting shall be conducted in accordance with this subsection in those elections in a county with a population under 55,000 ~~400,000~~ on receipt by the early voting clerk of a written request for the extended hours submitted by at least 15 registered voters of the county. The request must be submitted in time to enable compliance with Section 85.067.

(d) A voter who has not voted before the scheduled time for closing a polling place is entitled to vote after that time if the voter is in line at the polling place by closing time. The secretary of state shall promulgate any materials and provide any training to presiding judges necessary to properly process voters under this subsection ~~In an election ordered by a city, early voting by personal appearance at the main early voting polling place shall be conducted for at least 12 hours:~~

~~(1) on one weekday, if the early voting period consists of less than six weekdays; or~~

~~(2) on two weekdays, if the early voting period consists of six or more weekdays.~~

SECTION 3.10. Sections 85.006(b) and (e), Election Code, are amended to read as follows:

(b) In an election in which a county clerk ~~or city secretary~~ is the early voting clerk under Section 83.002 ~~or 83.005~~, only the early voting clerk may order voting on a Saturday or Sunday. The clerk must do so by written order.

(e) In a primary election or the general election for state and county officers in a county with a population of 55,000 ~~400,000~~ or more, the early voting clerk shall order voting by personal appearance ~~voting~~ at the main early voting polling place to be conducted on the last Saturday of the early voting period for at least 12 hours, except that voting may not be conducted earlier than 6 a.m. or later than 10 p.m., on the last Saturday and on the last Sunday of the early voting period for at least six ~~five~~ hours, except that voting may not be conducted earlier than 9 a.m. or later than 10 p.m. on the last Sunday of the early voting period. The early voting clerk shall order voting to be conducted at those times in those elections in a county with a population under 55,000 ~~400,000~~ on receipt of a written request for those hours submitted by at least 15 registered voters of the county. The request must be submitted in time to enable compliance with Section 85.007. This subsection supersedes any provision of this subchapter to the extent of any conflict.

SECTION 3.11. Section 85.010(a-1), Election Code, is amended to read as follows:

(a-1) In this section, "eligible county polling place" means an early voting polling place, ~~other than a polling place established under Section 85.062(e),~~ established by a county.

SECTION 3.12. Section 85.061(a), Election Code, is amended to read as follows:

(a) In a countywide election in which the county clerk is the early voting clerk under Section 83.002, an early voting polling place shall be located inside ~~at~~ each branch office that is regularly maintained for conducting general clerical functions of the county clerk, except as provided by Subsection (b). If a suitable room is unavailable inside the branch office, the polling place may be located in another room inside the same building as the branch office.

SECTION 3.13. Section 85.062, Election Code, is amended by amending Subsection (b) and adding Subsection (f-1) to read as follows:

(b) A polling place established under this section may be located, subject to Subsection (d), at any place in the territory served by the early voting clerk and may be located inside in any building stationary structure as directed by the authority establishing the branch office. The polling place may not be located in a movable structure in the general election for state and county officers, general primary election, or runoff primary election. Ropes or other suitable objects may be used at the polling place to ensure compliance with Section 62.004. Persons who are not expressly permitted by law to be in a polling place shall be excluded from the polling place to the extent practicable.

(f-1) Notwithstanding any other provision of this section concerning the location of temporary branch polling places, in an election in which countywide polling places are used, the commissioners court of a county shall employ the same methodology it uses to determine the location of countywide polling places to determine the location of temporary branch polling places.

SECTION 3.14. Section 87.002, Election Code, is amended to read as follows:

Sec. 87.002. COMPOSITION OF BOARD. (a) The early voting ballot board consists of a presiding judge, an alternate presiding judge, and at least one two other member members.

(b) Except as provided by Subsection (d), the presiding judge and the alternate presiding judge are is appointed in the same manner as a presiding election judge and alternate presiding election judge, respectively. Except as provided by Subsection (c), each the other member is members are appointed by the presiding judge in the same manner as the precinct election clerks.

(c) In the general election for state and county officers, each county chair of a political party with nominees on the general election ballot shall submit to the county election board a list of names of persons eligible to serve on the early voting ballot board in order of the county chair's preference. The county election board shall appoint at least one person from each list to serve as a member of the early voting ballot board. The same number of members must be appointed from each list. The county election board shall appoint persons as members of the early voting ballot board in the order of preference indicated on each list.

(d) In addition to the members appointed under Subsection (c), the county election board shall appoint as the presiding judge the highest-ranked person on from the list provided under that subsection by the political party whose nominee for governor received the most votes in the county in the most recent gubernatorial general election and as the alternate presiding judge the highest-ranked person on the list provided under that subsection by the political party whose nominee for governor received the second most votes in the county in the most recent gubernatorial general election.

SECTION 3.15. Section 124.002, Election Code, is amended by adding Subsection (c) to read as follows:

(c) Voting system ballots may not be arranged in a manner that allows a political party's candidates to be selected in one motion or gesture.

SECTION 3.16. Sections 127.006(a) and (c), Election Code, are amended to read as follows:

(a) The Both the manager, and the presiding judge, and the alternate presiding judge may appoint clerks to serve at the central counting station.

(c) A clerk appointed by the manager serves under the manager and shall perform the functions directed by the manager. A clerk appointed by the presiding judge or the alternate presiding judge serves under the presiding judge and shall perform the functions directed by the presiding judge.

SECTION 3.17. Subchapter A, Chapter 127, Election Code, is amended by adding Section 127.009 to read as follows:

Sec. 127.009. ELECTRONIC DEVICES IN CENTRAL COUNTING STATION. (a) A counting station manager and the presiding judge of the counting station shall develop a protocol under which any electronic device inside a central counting station that is necessary to count votes is equipped with software that tracks all input and activity on the electronic device.

(b) The counting station manager and the presiding judge of the counting station shall ensure that the input and activity tracked by the software is delivered to the secretary of state not later than the fifth day after vote counting is complete.

(c) This section applies only to a central counting station located in a county with a population of 250,000 or more.

SECTION 3.18. Section 127.1232, Election Code, is amended to read as follows:

Sec. 127.1232. SECURITY OF VOTED BALLOTS. (a) The general custodian of election records shall post a licensed peace officer guard to ensure the security of ballot boxes containing voted ballots throughout the period of tabulation at the central counting station.

(b) The general custodian of election records in a county with a population of 100,000 or more shall implement a video surveillance system that retains a record of all areas containing voted ballots:

(1) from the time the voted ballots are delivered to the central counting station until the canvass of precinct election returns; and

(2) from the time the voted ballots are delivered to the signature verification committee or early voting ballot board until the canvass of precinct election returns.

(c) A video from a system implemented under Subsection (b) shall be made available to the public by a livestream.



(d) The video recorded is an election record under Section 1.012 and shall be retained by the general custodian of election records until the end of the calendar year in which an election is held or until an election contest filed in the county has been resolved, whichever is later.

SECTION 3.19. Chapter 127, Election Code, as effective September 1, 2021, is amended by adding Subchapter J to read as follows:

#### SUBCHAPTER J. RANDOMIZED AUDITS

Sec. 127.351. RANDOMIZED COUNTY AUDITS. (a) Immediately after the uniform election date in November of an even-numbered year, the secretary of state shall conduct an audit of the elections held in four counties during the previous two years.

(b) The secretary of state shall select the counties to be audited under Subsection (a) at random, except that:

(1) two of the counties selected must have a total population of less than 300,000;

(2) two of the counties selected must have a total population of 300,000 or more; and

(3) a county selected in the most recent audit cycle may not be selected in the current audit cycle.

(c) A county selected to be audited may not pay the cost of performing an audit under this section.

(d) The secretary of state shall adopt rules as necessary to implement this section.

#### ARTICLE 4. ELECTION OFFICERS AND OBSERVERS

SECTION 4.01. Section 32.075, Election Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) A presiding judge may not have a watcher duly accepted for service under Subchapter A, Chapter 33, removed from the polling place for violating a provision of this code or any other provision of law relating to the conduct of elections, other than a violation of the Penal Code, unless the violation was observed by an election judge or clerk.

(h) Notwithstanding Subsection (g), a presiding judge may call a law enforcement officer to request that a poll watcher be removed if the poll watcher commits a breach of the peace or a violation of law.

SECTION 4.02. Subchapter A, Chapter 33, Election Code, is amended by adding Section 33.0015 to read as follows:

Sec. 33.0015. CHAPTER PURPOSE AND WATCHER DUTY. The purpose of this chapter is to preserve the integrity of the ballot box in accordance with Section 4, Article VI, Texas Constitution, by providing for the appointment of watchers. It is the intent of the legislature that watchers duly accepted for service under this chapter be allowed to observe and report on irregularities in the conduct of any election, but may not interfere in the orderly conduct of an election. To effect that purpose, a watcher appointed under this chapter shall observe without obstructing the conduct of an election and call to the attention of an election officer any observed or suspected irregularity or violation of law in the conduct of the election.

SECTION 4.03. Subchapter A, Chapter 33, Election Code, is amended by adding Section 33.0016 to read as follows:

Sec. 33.0016. REFERENCES TO EARLY VOTING BALLOT BOARD IN THIS CHAPTER. A reference in this chapter to an early voting ballot board includes a signature verification committee.

SECTION 4.04. Subchapter A, Chapter 33, Election Code, is amended by adding Section 33.008 to read as follows:

Sec. 33.008. TRAINING PROGRAM. The secretary of state shall develop and maintain a training program for watchers. The training program must:

(1) be available:

(A) entirely via the Internet; and

(B) at any time, without a requirement for prior registration; and

(2) provide a watcher who completes the training with a certificate of completion.

SECTION 4.05. Section 33.031, Election Code, is amended by adding Subsection (b) to read as follows:

(b) In addition to the requirements of Subsection (a), to be eligible to serve as a watcher, a person must complete training under Section 33.008.

SECTION 4.06. Section 33.051, Election Code, is amended by amending Subsections (a), (b), (d), and (e) and adding Subsections (a-1), (g), and (h) to read as follows:

(a) A watcher appointed to serve at a precinct polling place, a meeting place for an early voting ballot board, or a central counting station must deliver the following materials ~~a certificate of appointment~~ to the presiding judge at the time the watcher reports for service:

(1) a certificate of appointment; and

(2) a certificate of completion from training completed by the watcher under Section 33.008.

(a-1) A watcher appointed to serve at an early voting polling place must deliver the certificates under Subsection (a) a certificate of appointment to the early voting clerk or deputy clerk in charge of the polling place when the watcher first reports for service.

(b) The officer presented with a watcher's certificates ~~certificate of appointment~~ shall require the watcher to countersign the certificate of appointment to ensure that the watcher is the same person who signed the certificate of appointment. Except as provided by Subsection (c), a watcher who presents himself or herself at the proper time with the certificates required under Subsection (a) a certificate of appointment shall be accepted for service unless the person is ineligible to serve or the number of appointees to which the appointing authority is entitled have already been accepted.

(d) The certificates ~~certificate~~ of a watcher serving at an early voting polling place shall be retained at the polling place until voting at the polling place is concluded. At each subsequent time that the watcher reports for service, the watcher shall inform the clerk or deputy in charge. The officer may require the watcher to sign the watcher's name in the officer's presence, for comparison with the signature on the certificate of appointment, if the officer is uncertain of the watcher's identity.

(e) If a watcher is not accepted for service, the certificates ~~certificate of appointment~~ shall be returned to the watcher with a signed statement of the reason for the rejection.

(g) An election officer commits an offense if the officer intentionally or knowingly refuses to accept a watcher for service when acceptance of the watcher is required by this section. An offense under this subsection is a Class A misdemeanor.

(h) Before accepting a watcher, the officer presented with a watcher's certificate of appointment shall require the watcher to take the following oath, administered by the officer: "I swear (or affirm) that I will not disrupt the voting process or harass voters in the discharge of my duties."

SECTION 4.07. Section 33.056, Election Code, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) Except as provided by Section 33.057, a watcher is entitled to observe any activity conducted at the location at which the watcher is serving. A watcher is entitled to sit or stand ~~conveniently~~ near enough to see and hear the election officers conducting the observed activity, except as otherwise prohibited by this chapter.

(e) Except as provided by Section 33.057(b), a watcher may not be denied free movement where election activity is occurring within the location at which the watcher is serving.

(f) In this code, a watcher who is entitled to "observe" an election activity is entitled to sit or stand near enough to see and hear the activity.

SECTION 4.08. Subchapter C, Chapter 33, Election Code, is amended by adding Section 33.0605 to read as follows:

Sec. 33.0605. OBSERVING DATA STORAGE SEALING AND TRANSFER. (a) A watcher appointed to serve at a polling place in an election who is available at the time of the action may observe all election activities relating to closing the polling place, including the sealing and transfer of a memory card, flash drive, hard drive, data storage device, or other medium now existing or later developed used by the voting system equipment.

(b) Notwithstanding any other provision of this code, a watcher duly accepted for service at a polling location is entitled to follow the transfer of election materials from the polling place at which the watcher was accepted to a regional tabulating center, the central counting station, or any other location designated to process election materials. The authority responsible for administering a regional tabulating center or another location where election materials are processed must accept duly appointed watchers for service in the same manner a watcher is accepted for service under Section 33.051 and must accept the same number of watchers that may serve under Section 33.007(a).

SECTION 4.09. Section 33.061(a), Election Code, is amended to read as follows:

(a) A person commits an offense if the person serves in an official capacity at a location at which the presence of watchers is authorized and knowingly prevents a watcher from observing an activity or procedure the person knows the watcher is entitled to observe, including by taking any action to obstruct the view of a watcher or distance the watcher from the activity or procedure to be observed in a manner that would make observation not reasonably effective.

SECTION 4.10. Subchapter C, Chapter 33, Election Code, is amended by adding Section 33.063 to read as follows:

Sec. 33.063. RELIEF. The appointing authority for a watcher who believes that the watcher was unlawfully prevented or obstructed from the performance of the watcher's duties may seek:

(1) injunctive relief under Section 273.081, including issuance of temporary orders;

(2) a writ of mandamus under Section 161.009 or 273.061; and

(3) any other remedy available under law.

SECTION 4.11. Section 34.005, Election Code, is amended to read as follows:

Sec. 34.005. ACTION BY SECRETARY OF STATE. (a) The secretary of state may refer a reported violation of law for appropriate action to the attorney general, if the attorney general has jurisdiction, or to a prosecuting attorney having jurisdiction.



(b) If the secretary of state believes that a state inspector was unlawfully prevented or obstructed from the performance of the inspector's duties, the secretary of state may seek:

- (1) injunctive relief under Section 273.081, including issuance of temporary orders;
- (2) a writ of mandamus under Section 161.009 or 273.061; and
- (3) any other remedy available under law.

SECTION 4.12. Section 86.006, Election Code, is amended by amending Subsection (a) and adding Subsection (a-2) to read as follows:

(a) A marked ballot voted under this chapter must be returned to the early voting clerk in the official carrier envelope. The carrier envelope may be delivered in another envelope and must be transported and delivered only by:

- (1) mail;
- (2) common or contract carrier; or
- (3) subject to Subsections ~~Subsection~~ (a-1) and (a-2), in-person delivery by the voter who voted the ballot.

(a-2) An in-person delivery of a marked ballot voted under this chapter must be received by an election official at the time of delivery. The receiving official shall record the voter's name, signature, and type of identification provided under Section 63.0101 on a roster prescribed by the secretary of state. The receiving official shall attest on the roster that the delivery complies with this section.

SECTION 4.13. Chapter 121, Election Code, is amended by adding Section 121.004 to read as follows:

Sec. 121.004. COMMUNICATIONS WITH VOTING SYSTEMS VENDOR PUBLIC INFORMATION. (a) Except as provided by Subsection (b), a written letter, e-mail, or other communication, including a communication made confidential by other law, between a public official and a voting systems vendor:

- (1) is not confidential;
- (2) is public information for purposes of Chapter 552, Government Code; and
- (3) is not subject to an exception to disclosure provided by Chapter 552, Government Code, other than Sections 552.110 and 552.1101, Government Code.

(b) A written letter, e-mail, or other communication between a public official and a voting systems vendor is excepted from disclosure under Chapter 552, Government Code, if the communication discloses information, data, or records relating to the security of elections critical infrastructure.

SECTION 4.14. Section 127.1301, Election Code, is amended to read as follows:

Sec. 127.1301. ~~TALLYING, TABULATING, AND REPORTING~~ CENTRALLY COUNTED OPTICAL SCAN ~~BALLOTS~~ ~~BALLOT~~ ~~UNDervOTES AND OvervOTES~~. (a) In an election using centrally counted optical scan ballots, the undervotes and overvotes on those ballots shall be tallied, tabulated, and reported by race and by election precinct in the form and manner prescribed by the secretary of state.

(b) An authority operating a central counting station under this chapter may not purchase or use a centrally counted optical ballot scan system that uses a data storage disc on which information, once written, is capable of being modified.

(c) An authority that purchases system components in order to comply with this section is eligible to have 100 percent of the cost of those system components reimbursed.

(d) Subsection (b) applies starting on the earlier of:

- (1) the date on which the state certifies the first centrally counted optical ballot scan system under this section; or
- (2) September 1, 2026.
- (e) This subsection and Subsection (d) expire October 1, 2026.

SECTION 4.15. Section 127.131, Election Code, is amended by adding Subsection (f) to read as follows:

(f) The presiding judge of the central counting station shall provide and attest to a written reconciliation of votes and voters at the close of tabulation for election day and again after the central counting station meets for the last time to process late-arriving ballots by mail and provisional ballots. The secretary of state shall create and promulgate rules and a form to facilitate compliance with this subsection. The form shall be posted on a website maintained by the county along with election returns and results.

SECTION 4.16. Section 129.023, Election Code, is amended by adding Subsections (b-2) and (c-1) to read as follows:

(b-2) If the test is being conducted for an election in which a county election board has been established under Section 51.002, the general custodian of election records shall notify each member of the board of the test at least 48 hours before the date of the test. If the county election board chooses to witness the test, each member shall sign the statement required by Subsection (e)(1).

(c-1) A test conducted under this section must also require the general custodian of election records to demonstrate, using a representative sample of voting system equipment, that the source code of the equipment has not been altered.

## ARTICLE 5. VOTING BY MAIL

SECTION 5.01. Section 84.001(b), Election Code, is amended to read as follows:

(b) Subject to Section 1.011, an ~~An~~ application must be submitted in writing and signed by the applicant using ink on paper. An electronic signature or photocopied signature is not permitted.

SECTION 5.02. Section 84.002, Election Code, as effective September 1, 2021, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

(a) An early voting ballot application must include:

(1) the applicant's name and the address at which the applicant is registered to vote;

(1-a) the following information:

(A) the number of the applicant's driver's license, election identification certificate, or personal identification card issued by the Department of Public Safety;

(B) if the applicant has not been issued a number described by Paragraph (A), the last four digits of the applicant's social security number; or

(C) a statement by the applicant that the applicant has not been issued a number described by Paragraph (A) or (B);

(2) for an application for a ballot to be voted by mail on the ground of absence from the county of residence, the address outside the applicant's county of residence to which the ballot is to be mailed;

(3) for an application for a ballot to be voted by mail on the ground of age or disability, the address of the hospital, nursing home or other long-term care facility, or retirement center, or of a person related to the applicant within the second degree by affinity or the third degree by consanguinity, as determined under Chapter 573, Government Code, if the applicant is living at that address and that address is different from the address at which the applicant is registered to vote;

(4) for an application for a ballot to be voted by mail on the ground of confinement in jail, the address of the jail or of a person related to the applicant within the degree described by Subdivision (3);

(5) for an application for a ballot to be voted by mail on any ground, an indication of each election for which the applicant is applying for a ballot;

(6) an indication of the ground of eligibility for early voting; and

(7) for an application for a ballot to be voted by mail on the ground of involuntary civil commitment, the address of the facility operated by or under contract with the Texas Civil Commitment Office or of a person related to the applicant within the degree of consanguinity described by Subdivision (3).

(b-1) A person may use the number of a driver's license, election identification certificate, or personal identification card that has expired for the purpose of fulfilling the requirement under Subsection (a)(1-a) if the license or identification is otherwise valid.

SECTION 5.03. Section 84.011(a), Election Code, as effective September 1, 2021, is amended to read as follows:

(a) The officially prescribed application form for an early voting ballot must include:

(1) immediately preceding the signature space the statement: "I certify that the information given in this application is true, and I understand that giving false information in this application is a crime.";

(2) a statement informing the applicant of the offenses prescribed by Sections 84.003 and 84.004;

(3) spaces for entering an applicant's voter registration number and county election precinct of registration, with a statement informing the applicant that failure to furnish that information does not invalidate the application;

(3-a) a space for entering the information required under Section 84.002(a)(1-a); and

(4) on an application for a ballot to be voted by mail:

(A) a space for an applicant applying on the ground of absence from the county of residence to indicate the date on or after which the applicant can receive mail at the address outside the county;

(B) a space for indicating the fact that an applicant whose application is signed by a witness cannot make the applicant's mark and a space for indicating the relationship or lack of relationship of the witness to the applicant;

(C) a space for entering an applicant's telephone number, with a statement informing the applicant that failure to furnish that information does not invalidate the application;

(D) a space or box for an applicant applying on the ground of age or disability to indicate that the address to which the ballot is to be mailed is the address of a facility or relative described by Section 84.002(a)(3), if applicable;

(E) a space or box for an applicant applying on the ground of confinement in jail or involuntary civil commitment to indicate that the address to which the ballot is to be mailed is the address of a relative described by Section 84.002(a)(4) or (7), if applicable;

(F) a space for an applicant applying on the ground of age or disability to indicate if the application is an application under Section 86.0015;

(G) spaces for entering the signature, printed name, and residence address of any person assisting the applicant;

(H) a statement informing the applicant of the condition prescribed by Section 81.005; and

(I) a statement informing the applicant of the requirement prescribed by Section 86.003(c).

SECTION 5.04. Subchapter A, Chapter 84, Election Code, is amended by adding Section 84.0111 to read as follows:

Sec. 84.0111. DISTRIBUTION OF APPLICATION FORM. (a) Except as provided by Subsection (c) or as otherwise authorized by this code, an officer or employee of this state or of a political subdivision of this state may not distribute an application form for an early voting ballot to a person who did not request an application under Section 84.001.

(b) An officer or employee of this state or of a political subdivision of this state may not use public funds to facilitate the distribution by another person of an application form for an early voting ballot to a person who did not request an application under Section 84.001.

(c) A political party or a candidate for office may distribute an application form for an early voting ballot to a person who did not request an application under Section 84.001.

SECTION 5.05. Section 84.032(c), Election Code, is amended to read as follows:

(c) An applicant may submit a request after the close of early voting by personal appearance by appearing in person and:

(1) returning the ballot to be voted by mail to the early voting clerk; or

(2) executing an affidavit that the applicant:

(A) has not received the ballot to be voted by mail; ~~or~~

(B) never requested a ballot to be voted by mail; or

(C) received notice of a defect under Section 87.0271(b) or (c) or 87.0411(b) or (c).

SECTION 5.06. Section 84.035, Election Code, is amended to read as follows:

Sec. 84.035. BALLOT SENT TO APPLICANT. (a) If the early voting clerk cancels an application by an applicant to whom an early voting ballot has been sent, the clerk shall:

(1) remove the applicant's name from the early voting roster; and

(2) make any other entries in the records and take any other action necessary to prevent the ballot from being counted if returned.

(b) An election judge may permit a person to whom an early voting ballot has been sent who cancels the person's application for a ballot to be voted by mail in accordance with Section 84.032 but fails to return the ballot to be voted by mail to the early voting clerk, deputy early voting clerk, or presiding judge as provided by that section to vote only a provisional ballot under Section 63.011.

SECTION 5.07. Section 86.001, Election Code, is amended by adding Subsections (f), (f-1), and (f-2) to read as follows:

(f) If the information required under Section 84.002(a)(1-a) included on the application does not identify the same voter identified on the applicant's application for voter registration under Section 13.002(c)(8), the clerk shall reject the application.

(f-1) If an application is rejected under Subsection (f), the clerk shall provide notice of the rejection in accordance with Subsection (c). The notice must include information regarding the ability to correct or add information required under Section 84.002(a)(1-a) through the online tool described by Section 86.015(c).

(f-2) If an applicant corrects an application for a ballot to be voted by mail online and that application subsequently identifies the same voter identified on the applicant's application for voter registration, the clerk shall provide a ballot to the applicant as provided by this chapter.

SECTION 5.08. Section 86.002, Election Code, is amended by adding Subsections (g), (h), and (i) to read as follows:

(g) The carrier envelope must include a space that is hidden from view when the envelope is sealed for the voter to enter the following information:

(1) the number of the voter's driver's license, election identification certificate, or personal identification card issued by the Department of Public Safety;

(2) if the voter has not been issued a number described by Subdivision (1), the last four digits of the voter's social security number;  
or

(3) a statement by the applicant that the applicant has not been issued a number described by Subdivision (1) or (2).

(h) A person may use the number of a driver's license, election identification certificate, or personal identification card that has expired for purposes of Subsection (g) if the license or identification is otherwise valid.

(i) No record associating an individual voter with a ballot may be created.

SECTION 5.09. Section 86.011(c), Election Code, is amended to read as follows:

(c) If the return is not timely, the clerk shall enter the time of receipt on the carrier envelope and retain it in a locked container for the period for preserving the precinct election records. The clerk shall destroy the unopened envelope and its contents after the preservation period.

SECTION 5.10. Section 86.015(c), Election Code, as effective September 1, 2021, is amended to read as follows:

(c) An online tool used under this section must:

(1) for each election, record:

(A) each application for a ballot to be voted by mail received by the clerk; and

(B) each carrier envelope sent to a voter by the clerk;

(2) for each carrier envelope, record or assign a serially numbered and sequentially issued barcode or tracking number that is unique to each envelope; ~~and~~

(3) update the applicable Internet website as soon as practicable after each of the following events occurs:

(A) receipt by the early voting clerk of the person's application for a ballot to be voted by mail;

(B) acceptance or rejection by the early voting clerk of the person's application for a ballot to be voted by mail;

(C) placement in the mail by the early voting clerk of the person's official ballot;

(D) receipt by the early voting clerk of the person's marked ballot; and

(E) acceptance or rejection by the early voting ballot board of a person's marked ballot; and

(4) allow a voter to add or correct information required under Section 84.002(a)(1-a) or Section 86.002(g).

SECTION 5.11. Sections 87.027(d), (e), and (i), Election Code, are amended to read as follows:

(d) The early voting clerk shall determine the number of members who are to compose the signature verification committee and shall state that number in the order calling for the committee's appointment. A committee must consist of not fewer than five members. In an election in which party alignment is indicated on the ballot, each county chair of a political party with a nominee or aligned candidate on the ballot shall submit to the appointing authority a list of names of persons eligible to serve on the signature verification committee in order of the county chair's preference. The authority shall appoint at least two persons from each list in the order of preference indicated on each list to serve as members of the committee. The same number of members must be appointed from each list. The authority shall appoint as the chair of the committee the highest-ranked person on ~~from~~ the list provided by the political party whose nominee for governor received the most votes in the county in the most recent gubernatorial general election. The authority shall appoint as vice chair of the committee the highest-ranked person on the list provided by the political party whose nominee for governor received the second most votes in the county in the most recent gubernatorial general election. A vacancy on the committee shall be filled by appointment from the original list or from a new list submitted by the appropriate county chair.

(e) To be eligible to serve on a signature verification committee, a person must be eligible under Subchapter C, Chapter 32, for service as a presiding election judge, except that the person must be a qualified voter:

(1) of the county, in a countywide election ordered by the governor or a county authority or in a primary election;

(2) of the part of the county in which the election is held, for an election ordered by the governor or a county authority that does not cover the entire county of the person's residence; or

(3) of the political subdivision, in an election ordered by an authority of a political subdivision other than a county.

(i) The signature verification committee shall compare the signature on each carrier envelope certificate, except those signed for a voter by a witness, with the signature on the voter's ballot application to determine whether the signatures are those of the voter. The committee may also compare the signatures with any known signature ~~two or more signatures~~ of the voter ~~made within the preceding six years and~~ on file with the county clerk or voter registrar to determine whether the signatures are those of the voter. Except as provided by Subsection (l), a determination under this subsection that the signatures are not those of the voter must be made by a majority vote of the committee's membership. The committee shall place the jacket envelopes, carrier envelopes, and applications of voters whose signatures are not those of the voter in separate containers from those of voters whose signatures are those of the voter. The committee chair shall deliver the sorted materials to the early voting ballot board at the time specified by the board's presiding judge.

SECTION 5.12. Subchapter B, Chapter 87, Election Code, is amended by adding Section 87.0271 to read as follows:

Sec. 87.0271. OPPORTUNITY TO CORRECT DEFECT: SIGNATURE VERIFICATION COMMITTEE. (a) This section applies to an early voting ballot voted by mail:

- (1) for which the voter did not sign the carrier envelope certificate;
- (2) for which it cannot immediately be determined whether the signature on the carrier envelope certificate is that of the voter;
- (3) missing any required statement of residence;
- (4) missing information or containing incorrect information required under Section 84.002(a)(1-a) or Section 86.002; or
- (5) containing incomplete information with respect to a witness.

(b) Not later than the second business day after a signature verification committee discovers a defect described by Subsection (a) and before the committee decides whether to accept or reject a timely delivered ballot under Section 87.027, the committee shall:

- (1) determine if it would be possible for the voter to correct the defect and return the carrier envelope before the time the polls are required to close on election day; and
- (2) return the carrier envelope to the voter by mail, if the committee determines that it would be possible for the voter to correct the defect and return the carrier envelope before the time the polls are required to close on election day.

(c) If the signature verification committee determines under Subsection (b)(1) that it would not be possible for the voter to correct the defect and return the carrier envelope before the time the polls are required to close on election day, the committee may notify the voter of the defect by telephone or e-mail and inform the voter that the voter may request to have the voter's application to vote by mail canceled in the manner described by Section 84.032 or come to the early voting clerk's office in person not later than the sixth day after election day to correct the defect.

(d) If the signature verification committee takes an action described by Subsection (b) or (c), the committee must take either action described by that subsection with respect to each ballot in the election to which this section applies.

(e) A poll watcher is entitled to observe an action taken under Subsection (b) or (c).

(f) The secretary of state may prescribe any procedures necessary to implement this section.

(g) Notwithstanding any other law, a ballot may not be finally rejected for a reason listed in Section 87.041(b)(1), (2), or (6) before the seventh day after election day.

SECTION 5.13. Section 87.041, Election Code, is amended by amending Subsections (b) and (e) and adding Subsection (d-1) to read as follows:

(b) A ballot may be accepted only if:

- (1) the carrier envelope certificate is properly executed;
- (2) neither the voter's signature on the ballot application nor the signature on the carrier envelope certificate is determined to have been executed by a person other than the voter, unless signed by a witness;
- (3) the voter's ballot application states a legal ground for early voting by mail;
- (4) the voter is registered to vote, if registration is required by law;
- (5) the address to which the ballot was mailed to the voter, as indicated by the application, was outside the voter's county of residence, if the ground for early voting is absence from the county of residence;
- (6) for a voter to whom a statement of residence form was required to be sent under Section 86.002(a), the statement of residence is returned in the carrier envelope and indicates that the voter satisfies the residence requirements prescribed by Section 63.0011; ~~and~~
- (7) the address to which the ballot was mailed to the voter is an address that is otherwise required by Sections 84.002 and 86.003; and

(8) the information required under Section 86.002(g) provided by the voter identifies the same voter identified on the voter's application for voter registration under Section 13.002(c)(8).

(d-1) If a voter provides the information required under Section 86.002(g) and it identifies the same voter identified on the voter's application for voter registration under Section 13.002(c)(8), the signature on the ballot application and on the carrier envelope certificate shall be rebuttably presumed to be the signatures of the voter.

(e) In making the determination under Subsection (b)(2), to determine whether the signatures are those of the voter, the board may also compare the signatures with any known signature ~~two or more signatures~~ of the voter ~~made within the preceding six years and~~ on file with the county clerk or voter registrar ~~to determine whether the signatures are those of the voter.~~

SECTION 5.14. Subchapter C, Chapter 87, Election Code, is amended by adding Section 87.0411 to read as follows:



Sec. 87.0411. OPPORTUNITY TO CORRECT DEFECT: EARLY VOTING BALLOT BOARD. (a) This section applies to an early voting ballot voted by mail:

- (1) for which the voter did not sign the carrier envelope certificate;
- (2) for which it cannot immediately be determined whether the signature on the carrier envelope certificate is that of the voter;
- (3) missing any required statement of residence;
- (4) missing information or containing incorrect information required under Section 84.002(a)(1-a) or Section 86.002; or
- (5) containing incomplete information with respect to a witness.

(b) Not later than the second business day after an early voting ballot board discovers a defect described by Subsection (a) and before the board decides whether to accept or reject a timely delivered ballot under Section 87.041, the board shall:

- (1) determine if it would be possible for the voter to correct the defect and return the carrier envelope before the time the polls are required to close on election day; and
- (2) return the carrier envelope to the voter by mail, if the board determines that it would be possible for the voter to correct the defect and return the carrier envelope before the time the polls are required to close on election day.

(c) If the early voting ballot board determines under Subsection (b)(1) that it would not be possible for the voter to correct the defect and return the carrier envelope before the time the polls are required to close on election day, the board may notify the voter of the defect by telephone or e-mail and inform the voter that the voter may request to have the voter's application to vote by mail canceled in the manner described by Section 84.032 or come to the early voting clerk's office in person not later than the sixth day after election day to correct the defect.

(d) If the early voting ballot board takes an action described by Subsection (b) or (c), the board must take either action described by that subsection with respect to each ballot in the election to which this section applies.

(e) A poll watcher is entitled to observe an action taken under Subsection (b) or (c).

(f) The secretary of state may prescribe any procedures necessary to implement this section.

(g) Notwithstanding any other law, a ballot may not be finally rejected for a reason listed in Section 87.041(b)(1), (2), or (6) before the seventh day after election day.

SECTION 5.15. Section 87.0431(b), Election Code, is amended to read as follows:

(b) The early voting clerk shall, not later than the 30th day after election day, deliver notice to the attorney general, including certified copies of the carrier envelope and corresponding ballot application, of any ballot rejected because:

- (1) the voter was deceased;
- (2) the voter already voted in person in the same election;
- (3) the signatures on the carrier envelope and ballot application were not executed by the same person;
- (4) the carrier envelope certificate lacked a witness signature; ~~or~~
- (5) the carrier envelope certificate was improperly executed by an assistant; or

(6) the early voting ballot board or the signature verification committee determined that another violation of the Election Code occurred.

SECTION 5.16. Sections 87.062(a) and (c), Election Code, are amended to read as follows:

(a) On the direction of the presiding judge, the early voting ballot board, in accordance with Section 85.032(b), shall open the ~~containers~~ container for the early voting ballots that are to be counted by the board, remove the contents from ~~each~~ the container, and remove any ballots enclosed in ballot envelopes from their envelopes.

(c) Ballots voted by mail shall be tabulated and stored separately from the ballots voted by personal appearance and shall be separately reported on the returns ~~The results of all early voting ballots counted by the board under this subchapter shall be included in the same return.~~

SECTION 5.17. Section 87.103, Election Code, is amended to read as follows:

Sec. 87.103. COUNTING BALLOTS AND PREPARING RETURNS. (a) The early voting electronic system ballots counted at a central counting station, the ballots cast at precinct polling places, and the ballots voted by mail shall be tabulated separately ~~from the ballots cast at precinct polling places~~ and shall be separately reported on the returns.

(b) The early voting returns prepared at the central counting station must include any early voting results obtained by the early voting ballot board under Subchapter ~~Subchapters D and E.~~

SECTION 5.18. Section 87.126, Election Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Electronic records made under this section shall record both sides of any application, envelope, or ballot recorded, and all such records shall be provided to the early voting ballot board, the signature verification committee, or both.

SECTION 5.19. Subchapter G, Chapter 87, Election Code, is amended by adding Section 87.128 to read as follows:

Sec. 87.128. NOTES. (a) Each member of an early voting ballot board and each member of a signature verification committee is entitled to take any notes reasonably necessary to perform the member's duties under this chapter.

(b) Notes taken under this section may not contain personally identifiable information.

(c) Each member who takes notes under this section shall sign the notes and deliver them to the presiding judge or committee chair, as applicable, for delivery to the custodian of election records.

(d) Notes collected under this section shall be preserved in the same manner as precinct election records under Section 66.058.

## ARTICLE 6. ASSISTANCE OF VOTERS

SECTION 6.01. Section 64.009, Election Code, is amended by amending Subsection (b) and adding Subsections (e), (f), (f-1), (g), and (h) to read as follows:

(b) The regular voting procedures, except those in Subchapter B, may be modified by the election officer to the extent necessary to conduct voting under this section.

(e) Except as provided by Section 33.057, a poll watcher is entitled to observe any activity conducted under this section.

(f) A person who simultaneously assists seven or more voters voting under this section by providing the voters with transportation to the polling place must complete and sign a form, provided by an election officer, that contains the person's name and address and whether the person is providing assistance solely under this section or under both this section and Subchapter B.

(f-1) Subsection (f) does not apply if the person is related to each voter within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code.

(g) A form completed under Subsection (f) shall be delivered to the secretary of state as soon as practicable. The secretary shall retain a form delivered under this section for the period for preserving the precinct election records and shall make the form available to the attorney general for inspection upon request.

(h) The secretary of state shall prescribe the form described by Subsection (f).

SECTION 6.02. Section 64.031, Election Code, is amended to read as follows:

Sec. 64.031. ELIGIBILITY FOR ASSISTANCE. A voter is eligible to receive assistance in marking or reading the ballot, as provided by this subchapter, if the voter cannot prepare or read the ballot because of:

- (1) a physical disability that renders the voter unable to write or see; or
- (2) an inability to read the language in which the ballot is written.

SECTION 6.03. Subchapter B, Chapter 64, Election Code, is amended by adding Section 64.0322 to read as follows:

Sec. 64.0322. SUBMISSION OF FORM BY ASSISTANT. (a) A person, other than an election officer, who assists a voter in accordance with this chapter is required to complete a form stating:

(1) the name and address of the person assisting the voter;

(2) the relationship to the voter of the person assisting the voter; and

(3) whether the person assisting the voter received or accepted any form of compensation or other benefit from a candidate, campaign, or political committee.

(b) The secretary of state shall prescribe the form required by this section. The form must be incorporated into the official carrier envelope if the voter is voting an early voting ballot by mail and receives assistance under Section 86.010, or must be submitted to an election officer at the time the voter casts a ballot if the voter is voting at a polling place or under Section 64.009.

SECTION 6.04. Section 64.034, Election Code, is amended to read as follows:

Sec. 64.034. OATH. A person, other than an election officer, selected to provide assistance to a voter must take the following oath, administered by an election officer at the polling place, before providing assistance:

"I swear (or affirm) under penalty of perjury that the voter I am assisting represented to me they are eligible to receive assistance; I will not suggest, by word, sign, or gesture, how the voter should vote; I will confine my assistance to reading the ballot to the voter, directing the voter to read the ballot, marking the voter's ballot, or directing the voter to mark the ballot; ~~answering the voter's questions, to stating propositions on the ballot, and to naming candidates and, if listed, their political parties;~~ I will prepare the voter's ballot as the voter directs; I did not pressure or coerce the voter into choosing me to provide assistance; ~~and~~ I am not the voter's employer, an agent

of the voter's employer, or an officer or agent of a labor union to which the voter belongs; I will not communicate information about how the voter has voted to another person; and I understand that if assistance is provided to a voter who is not eligible for assistance, the voter's ballot may not be counted."

SECTION 6.05. Sections 86.010(e), (h), and (i), Election Code, are amended to read as follows:

(e) A person who assists a voter to prepare a ballot to be voted by mail shall enter on the official carrier envelope of the voter:

(1) the person's signature, printed name, and residence address;

(2) the relationship of the person providing the assistance to the voter; and

(3) whether the person received or accepted any form of compensation or other benefit from a candidate, campaign, or political committee in exchange for providing assistance on the official carrier envelope of the voter.

(h) Subsection (f) does not apply:

(1) to a violation of Subsection (c), if the person is related to the voter within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, or was physically living in the same dwelling as the voter at the time of the event; or

(2) to a violation of Subsection (e), if the person is related to the voter within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code.

(i) An offense under this section for a violation of Subsection (c) is increased to the next higher category of offense if it is shown on the trial of an offense under this section that:

(1) the defendant was previously convicted of an offense under this code;

(2) the offense involved a voter 65 years of age or older; or

(3) the defendant committed another offense under this section in the same election.

SECTION 6.06. Section 86.0105, Election Code, is amended by amending Subsections (a), (c), and (e) and adding Subsection (f) to read as follows:

(a) A person commits an offense if the person:

(1) compensates or offers to compensate another person for assisting voters as provided by Section 86.010; ~~as part of any performance-based compensation scheme based on the number of voters assisted or in which another person is presented with a quota of voters to be assisted as provided by Section 86.010; or~~

(2) solicits, receives, or ~~engages in another practice that causes another person's compensation from or employment status with the person to be dependent on the number of voters assisted as provided by Section 86.010; or~~

~~(3) with knowledge that accepting compensation for such activity is illegal;~~ accepts compensation for an activity described by Subdivision (1) ~~or (2).~~

(c) An offense under this section is a state jail felony ~~if it is shown on the trial of an offense under this section that the defendant was previously convicted two or more times under this section.~~

(e) For purposes of this section, compensation means an economic benefit as defined by Section 38.01, Penal Code ~~any form of monetary payment, goods, services, benefits, or promises or offers of employment, or any other form of consideration offered to another person in exchange for assisting voters.~~

(f) This section does not apply if the person assisting a voter is an attendant or caregiver previously known to the voter.

SECTION 6.07. Section 86.013(b), Election Code, is amended to read as follows:

(b) Spaces must appear on the reverse side of the official carrier envelope for:

(1) indicating the identity and date of the election; ~~and~~

(2) entering the signature, printed name, and residence address of a person other than the voter who deposits the carrier envelope in the mail or with a common or contract carrier; and

(3) indicating the relationship of that person to the voter.

SECTION 6.08. (a) The secretary of state shall conduct a study regarding the implementation of educational programs, including the production and publication on the secretary of state's Internet website of instructional videos, to help voters with disabilities understand how to use voting systems used in this state.

(b) Not later than December 1, 2022, the secretary of state shall submit to the standing committees of the legislature with jurisdiction over elections a report on the study required by this section.



(c) The secretary of state, using existing resources, may contract with a qualified vendor to conduct the study required by this section.

(d) This section expires December 1, 2023.

## ARTICLE 7. FRAUD AND OTHER UNLAWFUL PRACTICES

SECTION 7.01. Chapter 63, Election Code, is amended by adding Section 63.0111 to read as follows:

Sec. 63.0111. OFFENSES RELATED TO PROVISIONAL VOTING. (a) An election judge commits an offense if the judge knowingly provides a voter with a form for an affidavit required by Section 63.001 if the form contains information that the judge entered on the form knowing it was false.

(b) An offense under this section is a state jail felony.

SECTION 7.02. Sections 276.004(a) and (b), Election Code, are amended to read as follows:

(a) A person commits an offense if, with respect to another person over whom the person has authority in the scope of employment, the person knowingly:

(1) refuses to permit the other person to be absent from work on election day or while early voting is in progress for the purpose of attending the polls to vote; or

(2) subjects or threatens to subject the other person to a penalty for attending the polls on election day or while early voting is in progress to vote.

(b) It is an exception to the application of this section that the person's conduct occurs in connection with an election in which the polls are open on election day or while early voting is in progress for voting for two consecutive hours outside of the voter's working hours.

SECTION 7.03. Sections 276.013(a) and (b), Election Code, are amended to read as follows:

(a) A person commits an offense if the person knowingly or intentionally makes any effort to:

(1) influence the independent exercise of the vote of another in the presence of the ballot or during the voting process, including by altering the ballot of another or by otherwise causing a ballot to not reflect the intent of the voter;

(2) cause a voter to become registered, a ballot to be obtained, or a vote to be cast under false pretenses; ~~or~~

(3) cause any false or intentionally misleading statement, representation, or information to be provided:

(A) to an election official; or

(B) on an application for ballot by mail, carrier envelope, or any other official election-related form or document;

(4) prevent a voter from casting a legal ballot in an election in which the voter is eligible to vote;

(5) provide false information to a voter with the intent of preventing the voter from voting in an election in which the voter is eligible to vote;

(6) cause the ballot not to reflect the intent of the voter;

(7) cause a ballot to be voted for another person that the person knows to be deceased or otherwise knows not to be a qualified or registered voter;

(8) cause or enable a vote to be cast more than once in the same election; or

(9) discard or destroy a voter's completed ballot without the voter's consent.

(b) An offense under this section is a Class A misdemeanor, unless:

(1) the person committed the offense while acting in the person's capacity as an elected official, in which case the offense is a state jail felony; or

(2) the person is convicted of an attempt, in which case the offense is a Class B ~~A~~ misdemeanor.

SECTION 7.04. Chapter 276, Election Code, is amended by adding Sections 276.015, 276.016, 276.017, 276.018, and 276.019 to read as follows:

Sec. 276.015. VOTE HARVESTING. (a) In this section:

(1) "Benefit" means anything reasonably regarded as a gain or advantage, including a promise or offer of employment, a political favor, or an official act of discretion, whether to a person or another party whose welfare is of interest to the person.

(2) "Vote harvesting services" means in-person interaction with one or more voters, in the physical presence of an official ballot or a ballot voted by mail, intended to deliver votes for a specific candidate or measure.

(b) A person commits an offense if the person, directly or through a third party, knowingly provides or offers to provide vote harvesting services in exchange for compensation or other benefit.

(c) A person commits an offense if the person, directly or through a third party, knowingly provides or offers to provide compensation or other benefit to another person in exchange for vote harvesting services.

(d) A person commits an offense if the person knowingly collects or possesses a mail ballot or official carrier envelope in connection with vote harvesting services.

(e) This section does not apply to:

(1) an activity not performed in exchange for compensation or a benefit;

(2) interactions that do not occur in the presence of the ballot or during the voting process;

(3) interactions that do not directly involve an official ballot or ballot by mail;

(4) interactions that are not conducted in-person with a voter; or

(5) activity that is not designed to deliver votes for or against a specific candidate or measure.

(f) An offense under this section is a felony of the third degree.

(g) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

(h) Records necessary to investigate an offense under this section or any other section of this code shall be provided by an election officer in an unredacted form to a law enforcement officer upon request. Records obtained under this subsection are not subject to public disclosure.

Sec. 276.016. UNLAWFUL SOLICITATION AND DISTRIBUTION OF APPLICATION TO VOTE BY MAIL. (a) A public official or election official commits an offense if the official, while acting in an official capacity, knowingly:

(1) solicits the submission of an application to vote by mail from a person who did not request an application;

(2) distributes an application to vote by mail to a person who did not request the application unless the distribution is expressly authorized by another provision of this code;

(3) authorizes or approves the expenditure of public funds to facilitate third-party distribution of an application to vote by mail to a person who did not request the application; or

(4) completes any portion of an application to vote by mail and distributes the application to an applicant.

(b) An offense under this section is a state jail felony.

(c) Subsection (a)(2) does not apply if the public official or election official engaged in the conduct described by Subsection (a)(2) by providing access to an application to vote by mail from a publicly accessible Internet website.

(d) Subsection (a)(4) does not apply if the public official or election official engaged in the conduct described by Subsection (a)(4) while lawfully assisting the applicant under Section 84.003.

(e) Subsection (a) does not apply if the public official or election official:

(1) provided general information about voting by mail, the vote by mail process, or the timelines associated with voting to a person or the public; or

(2) engaged in the conduct described by Subsection (a) while acting in the official's capacity as a candidate for a public elective office.

(f) The remedy provided under this chapter is cumulative, and does not restrict any other remedies provided by this code or by law. A violation of this section is subject to injunctive relief or mandamus as provided by this code.

Sec. 276.017. UNLAWFUL DISTRIBUTION OF EARLY VOTING BALLOTS AND BALLOTING MATERIALS. (a) The early voting clerk or other election official commits an offense if the clerk or official knowingly mails or otherwise provides an early voting ballot by mail or other early voting by mail ballot materials to a person who the clerk or official knows did not submit an application for a ballot to be voted by mail under Section 84.001.

(b) An offense under this section is a Class A misdemeanor.

Sec. 276.018. PERJURY IN CONNECTION WITH CERTAIN ELECTION PROCEDURES. (a) A person commits an offense if, with the intent to deceive, the person knowingly or intentionally makes a false statement or swears to the truth of a false statement:

(1) on a voter registration application; or

(2) previously made while making an oath, declaration, or affidavit described by this code.

(b) An offense under this section is a state jail felony.

Sec. 276.019. UNLAWFUL ALTERING OF ELECTION PROCEDURES. A public official or election official may not create, alter, modify, waive, or suspend any election standard, practice, or procedure mandated by law or rule in a manner not expressly authorized by this code.

## ARTICLE 8. ENFORCEMENT

SECTION 8.01. Subchapter E, Chapter 31, Election Code, is amended by adding Sections 31.128, 31.129, and 31.130 to read as follows:

Sec. 31.128. RESTRICTION ON ELIGIBILITY. (a) In this section, "election official" does not include a chair of a county political party holding a primary election or a runoff primary election.

(b) A person may not serve as an election official if the person has been finally convicted of an offense under this code.

Sec. 31.129. CIVIL PENALTY. (a) In this section, "election official" has the meaning assigned by Section 31.128.

(b) An election official may be liable to this state for a civil penalty if the official:

(1) is employed by or is an officer of this state or a political subdivision of this state; and

(2) violates a provision of this code.

(c) A civil penalty imposed under this section may include termination of the person's employment and loss of the person's employment benefits.

Sec. 31.130. SUIT AGAINST ELECTION OFFICER. An action, including an action for a writ of mandamus, alleging that an election officer violated a provision of this code while acting in the officer's official capacity may only be brought against the officer in the officer's official capacity.

SECTION 8.02. Sections 232.008(b), (c), and (d), Election Code, are amended to read as follows:

(b) Except as provided by Subsection (c), a contestant must file the petition not later than the later of the ~~45th~~ ~~30th~~ day after the date the election records are publicly available under Section 1.012 or the official result of the contested election is determined.

(c) A contestant must file the petition not later than the later of the ~~15th~~ ~~10th~~ day after the date the election records are publicly available under Section 1.012 or the official result is determined in a contest of:

(1) a primary or runoff primary election; or

(2) a general or special election for which a runoff is necessary according to the official result or will be necessary if the contestant prevails.

(d) A contestant must deliver, electronically or otherwise, a copy of the petition to the secretary of state by the same deadline prescribed for the filing of the petition.

SECTION 8.03. Title 14, Election Code, is amended by adding Subtitle D to read as follows:

### SUBTITLE D. OTHER ELECTION LAWSUITS

#### CHAPTER 247. LAWSUIT ALLEGING IMPROPER ELECTION ACTIVITIES

Sec. 247.001. PETITION ALLEGING FRAUD. This chapter applies to a civil suit in which a candidate in an election alleges in the petition that an opposing candidate, an agent of the opposing candidate, or a person acting on behalf of the opposing candidate with the candidate's knowledge violated any of the following sections of this code:

(1) Section 13.007;

(2) Section 64.012;

(3) Section 64.036;

(4) Section 84.003;

(5) Section 84.0041;

(6) Section 86.0051;

(7) Section 86.006;

(8) Section 86.010;

(9) Section 276.013; and

(10) Section 276.015.

Sec. 247.002. PROCEDURE. A candidate in an election may file a petition for an action under this chapter in any county where a defendant resided at the time of the election. If the election is for a statewide office, the candidate may also file the petition in a district court in Travis County.

Sec. 247.003. FILING PERIOD FOR PETITION. A candidate in an election may file a petition for an action under this chapter not earlier than the day after the date the election is certified and not later than the 45th day after the later of that date or the date election records are made publicly available under Section 1.012.

Sec. 247.004. DAMAGES. (a) If it is shown by a preponderance of the evidence that a defendant, an agent of the defendant, or a person acting on behalf of the defendant with the defendant's knowledge committed one or more violations of a section described by Section 247.001, the defendant is liable to the plaintiff for damages in an amount of \$1,000 for each violation.

(b) Notwithstanding Section 41.004, Civil Practice and Remedies Code, a court shall award damages under Subsection (a) to the plaintiff irrespective of whether the plaintiff is awarded actual damages.

Sec. 247.005. ATTORNEY'S FEES. In an action under this chapter, the court may award reasonable attorney's fees to the prevailing party.

SECTION 8.04. Section 273.061, Election Code, is amended to read as follows:

Sec. 273.061. JURISDICTION. (a) The supreme court or a court of appeals may issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election or a political party convention, regardless of whether the person responsible for performing the duty is a public officer.

(b) The court of criminal appeals may issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the provision, sequestration, transfer, or impoundment of evidence in or records relating to a criminal investigation conducted under this code or conducted in connection with the conduct of an election or political party convention. If a writ of mandamus is issued under this subsection, it shall include an order requiring the provision, sequestration, transfer, or impoundment of the evidence or record.

SECTION 8.05. Subchapter D, Chapter 22, Government Code, is amended by adding Sections 22.304 and 22.305 to read as follows:

Sec. 22.304. COURT SITTING IN PANELS FOR CERTAIN ELECTION PROCEEDINGS; CRIMINAL OFFENSE. (a) In this section, "public official" means any person elected, selected, appointed, employed, or otherwise designated as an officer, employee, or agent of this state, a government agency, a political subdivision, or any other public body established by state law.

(b) Notwithstanding any other law or rule, a court proceeding entitled to priority under Section 22.305 and filed in a court of appeals shall be docketed by the clerk of the court and assigned to a panel of three justices determined using an automated assignment system.

(c) A person, including a public official, commits an offense if the person communicates with a court clerk with the intention of influencing or attempting to influence the composition of a three-justice panel assigned a specific proceeding under this section.

(d) An offense under this section is a Class A misdemeanor.

Sec. 22.305. PRIORITY OF CERTAIN ELECTION PROCEEDINGS. (a) The supreme court or a court of appeals shall prioritize over any other proceeding pending or filed in the court a proceeding for injunctive relief or for a writ of mandamus under Chapter 273, Election Code, pending or filed in the court on or after the 70th day before a general or special election.

(b) If granted, oral argument for a proceeding described by Subsection (a) may be given in person or through electronic means.

SECTION 8.06. Section 23.101, Government Code, is amended by amending Subsection (a) and adding Subsections (b-1) and (b-2) to read as follows:

(a) Except as provided by Subsection (b-1), the ~~the~~ trial courts of this state shall regularly and frequently set hearings and trials of pending matters, giving preference to hearings and trials of the following:

(1) temporary injunctions;

(2) criminal actions, with the following actions given preference over other criminal actions:

(A) criminal actions against defendants who are detained in jail pending trial;

(B) criminal actions involving a charge that a person committed an act of family violence, as defined by Section 71.004, Family Code;

(C) an offense under:

(i) Section 21.02 or 21.11, Penal Code;

(ii) Chapter 22, Penal Code, if the victim of the alleged offense is younger than 17 years of age;

(iii) Section 25.02, Penal Code, if the victim of the alleged offense is younger than 17 years of age;

(iv) Section 25.06, Penal Code;

(v) Section 43.25, Penal Code; or

(vi) Section 20A.02(a)(7), 20A.02(a)(8), or 20A.03, Penal Code;

(D) an offense described by Article 62.001(6)(C) or (D), Code of Criminal Procedure; and

(E) criminal actions against persons who are detained as provided by Section 51.12, Family Code, after transfer for prosecution in criminal court under Section 54.02, Family Code;

(3) election contests and suits under the Election Code;

(4) orders for the protection of the family under Subtitle B, Title 4, Family Code;

(5) appeals of final rulings and decisions of the division of workers' compensation of the Texas Department of Insurance regarding workers' compensation claims and claims under the Federal Employers' Liability Act and the Jones Act;

(6) appeals of final orders of the commissioner of the General Land Office under Section 51.3021, Natural Resources Code;

(7) actions in which the claimant has been diagnosed with malignant mesothelioma, other malignant asbestos-related cancer, malignant silica-related cancer, or acute silicosis; and

(8) appeals brought under Section 42.01 or 42.015, Tax Code, of orders of appraisal review boards of appraisal districts established for counties with a population of less than 175,000.

(b-1) Except for a criminal case in which the death penalty has been or may be assessed or when it would otherwise interfere with a constitutional right, the trial courts of this state shall prioritize over any other proceeding pending or filed in the court a proceeding for injunctive relief under Chapter 273, Election Code, pending or filed in the court on or after the 70th day before a general or special election.

(b-2) A hearing in a proceeding described by Subsection (b-1) may be held in person or through electronic means, as determined by the court.

SECTION 8.07. Chapter 23, Government Code, is amended by adding Subchapter D to read as follows:

#### SUBCHAPTER D. GENERAL PROVISIONS

Sec. 23.301. ASSIGNMENT OF CERTAIN ELECTION PROCEEDINGS; CRIMINAL OFFENSE. (a) Notwithstanding any other law or rule, the clerk of a district court in which a proceeding entitled to priority under Section 23.101(b-1) is filed shall docket the proceeding and, if more than one district court in the county has jurisdiction over the proceeding, randomly assign the proceeding to a district court using an automated assignment system.

(b) Notwithstanding any other law or rule, the clerk of a county court or statutory county court in which a proceeding entitled to priority under Section 23.101(b-1) is filed shall docket the proceeding and, if more than one court in the county has jurisdiction over the proceeding, randomly assign the proceeding to a court using an automated assignment system.

(c) A person, including a public official, commits an offense if the person communicates with a county or district clerk with the intention of influencing or attempting to influence the court or judge assigned to a proceeding under this section.

(d) An offense under this section is a Class A misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the person committed the offense while acting in the person's official capacity as an election official.

(e) If a district or county clerk does not comply with this section, a person may seek from the supreme court or a court of appeals a writ of mandamus as provided by Section 273.061, Election Code, to compel compliance with this section.

Sec. 23.302. DEADLINES IN CERTAIN ELECTION PROCEEDINGS. (a) Not later than 24 hours after the proceeding is filed, a judge to whom a case is assigned under Section 23.301(b) who wishes to be recused from the proceeding must, before recusal:

(1) hear an application for any emergency temporary relief sought;

(2) grant or deny any emergency temporary relief sought; and

(3) set a scheduling order that provides:

(A) a date for a hearing on any injunction sought not later than five days after the date on which the proceeding was filed; and

(B) discovery and deposition deadlines before the expiration of any emergency relief order entered.

(b) The presiding judge of an administrative region shall assign a new judge to a proceeding assigned under Section 23.301(b) not later than 12 hours after the original judge assigned to the proceeding is recused under Subsection (a).

(c) A final order in a proceeding filed under Section 273.081, Election Code, shall be submitted in writing to the parties not later than 24 hours after the judge makes a final determination in the proceeding.

(d) If a district judge does not comply with this section, a person may seek from the supreme court, the court of criminal appeals, or a court of appeals a writ of mandamus as provided by Section 273.061, Election Code, to compel compliance with this section.

(e) Notwithstanding Section 23.101(b-1), a proceeding relating to a permanent injunction being sought in connection to a challenge under Section 141.034, Election Code, may be heard after the primary election has been canvassed.

## ARTICLE 9. INELIGIBLE VOTERS AND RELATED REFORMS

SECTION 9.01. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.0194 to read as follows:

Art. 42.0194. FINDING REGARDING FELONY CONVICTION. In the trial of a felony offense, if the defendant is adjudged guilty of the offense, the court shall:

(1) make an affirmative finding that the person has been found guilty of a felony and enter the affirmative finding in the judgment of the case; and

(2) instruct the defendant regarding how the felony conviction will impact the defendant's right to vote in this state.

SECTION 9.02. Article 42.01, Code of Criminal Procedure, as effective September 1, 2021, is amended by adding Section 16 to read as follows:

Sec. 16. In addition to the information described by Section 1, the judgment should reflect the affirmative finding and instruction entered pursuant to Article 42.0194.

SECTION 9.03. Section 64.012, Election Code, is amended by amending Subsections (a) and (b) and adding Subsections (c) and (d) to read as follows:

(a) A person commits an offense if the person knowingly or intentionally:

(1) votes or attempts to vote in an election in which the person knows the person is not eligible to vote;

(2) ~~knowingly~~ votes or attempts to vote more than once in an election;

(3) ~~knowingly~~ votes or attempts to vote a ballot belonging to another person, or by impersonating another person; ~~or~~

(4) ~~knowingly~~ marks or attempts to mark any portion of another person's ballot without the consent of that person, or without specific direction from that person how to mark the ballot; or

(5) votes or attempts to vote in an election in this state after voting in another state in an election in which a federal office appears on the ballot and the election day for both states is the same day.

(b) An offense under this section is a Class A misdemeanor ~~felony of the second degree unless the person is convicted of an attempt. In that case, the offense is a state jail felony.~~

(c) A person may not be convicted solely upon the fact that the person signed a provisional ballot affidavit under Section 63.011 unless corroborated by other evidence that the person knowingly committed the offense.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

SECTION 9.04. The change in law made by this article in adding Section 64.012(c), Election Code, applies to an offense committed before, on, or after the effective date of this Act, except that a final conviction for an offense under that section that exists on the effective date of this Act remains unaffected by this article.

## ARTICLE 10. REPEALER; SEVERABILITY; TRANSITION; EFFECTIVE DATE

SECTION 10.01. The following provisions of the Election Code are repealed:

(1) Section 85.062(e);

(2) Section 86.0105(b); and

(3) Section 127.201(f).

SECTION 10.02. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 10.03. (a) Except as otherwise provided by this Act, the changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

(b) The changes in law made by this Act apply only to an election ordered on or after the effective date of this Act. An election ordered before the effective date of this Act is governed by the law in effect when the election was ordered, and the former law is continued in effect for that purpose.

(c) The changes in law made by this Act apply only to an application to vote an early voting ballot by mail submitted on or after the effective date of this Act. An application to vote an early voting ballot by mail submitted before the effective date of this Act is governed by the law in effect when the application was submitted, and the former law is continued in effect for that purpose.

(d) The changes in law made by this Act apply only to an application for voter registration submitted on or after the effective date of this Act.

(e) Chapter 247, Election Code, as added by this Act, applies only to a cause of action for which the associated election occurred after the effective date of this Act.

SECTION 10.04. This Act takes effect on the 91st day after the last day of the legislative session.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF TEXAS and JOHN SCOTT, in his official  
capacity as Texas Secretary of State,

Defendants.

Civil Action No. 5:21-cv-1085

**COMPLAINT**

The United States of America, plaintiff herein, alleges:

1. In August 2021, Texas enacted Senate Bill 1 (“SB 1”), omnibus legislation that restricts eligible voters’ ability to cast a ballot and have that ballot counted in several respects. *See Election Integrity Protection Act of 2021, S.B. 1, 87th Legis., 2d Spec. Sess. (Tex. 2021).*

2. In this action, the United States challenges provisions of SB 1 that deny eligible voters meaningful assistance in the voting booth and require rejection of mail ballot materials for immaterial errors or omissions. These provisions violate Section 208 of the Voting Rights Act, 52 U.S.C. § 10508, and Section 101 of the Civil Rights Act of 1964, 52 U.S.C. § 10101.

3. The challenged provisions will disenfranchise eligible Texas citizens who seek to exercise their right to vote, including voters with limited English proficiency, voters with disabilities, elderly voters, members of the military deployed away from home, and American citizens residing outside of the country. These vulnerable voters already confront barriers to the ballot box, and SB 1 will exacerbate the challenges they face in exercising their fundamental right to vote.



4. Before SB 1, the State of Texas already imposed some of the strictest limitations in the nation on the right of certain citizens to voting assistance. SB 1 further, and impermissibly, restricts the core right to meaningful assistance in the voting booth. Prohibiting assistors from answering voters' questions, responding to requests to clarify ballot translations, and confirming that voters with visual impairments have marked a ballot as intended will curtail fundamental voting rights without advancing any legitimate state interest.

5. Before SB 1, the State of Texas already limited mail voting to a small subset of the electorate, even in the midst of a global pandemic. SB 1 will disenfranchise some eligible mail voters based on paperwork errors or omissions immaterial to their qualifications to vote. Conditioning the right to cast a mail ballot on a voter's ability to recall and recite the identification number provided on an application for voter registration months or years before will curtail fundamental voting rights without advancing any legitimate state interest.

6. The Attorney General files this action pursuant to Sections 11(a), 12(d), and 208 of the Voting Rights Act of 1965, as amended, 52 U.S.C. §§ 10307(a), 10308(d), 10508; Section 101 of the Civil Rights Act of 1964, as amended, 52 U.S.C. § 10101(a)(2)(B); and Section 131 of the Civil Rights Act of 1957, as amended, 52 U.S.C. § 10101(c), to enforce voting rights guaranteed by the Fourteenth and Fifteenth Amendments to the United States Constitution.

7. Section 208 of the Voting Rights Act guarantees that voters who require assistance to vote by reason of blindness, disability, or inability to read or write may receive assistance by a person of the voter's choice.

8. Section 101 of the Civil Rights Act of 1964 ensures that voters will not be deprived of the right to vote because of an error or omission on a paper or record that is not material to the voter's qualifications under State law to vote in an election.

## **JURISDICTION AND VENUE**

9. This Court has original jurisdiction of this action under 28 U.S.C. §§ 1331, 1345, and 2201(a) and 52 U.S.C. §§ 10101(d) and 10308(f).

10. Venue is proper in this Court under 28 U.S.C. §§ 124(d)(4) and 1391(b).

## **PARTIES**

11. The Voting Rights Act authorizes the Attorney General to file a civil action on behalf of the United States of America seeking injunctive, preventive, and permanent relief for violations of Section 208 of the Act, 52 U.S.C. §§ 10307(a), 10308(d), and the Civil Rights Act of 1957 authorizes the Attorney General to file a civil action on behalf of the United States of America seeking injunctive, preventive, and permanent relief for violations of Section 101 of the Civil Rights Act of 1964, 52 U.S.C. § 10101(c).

12. Defendant the State of Texas is one of the states of the United States of America.

13. Defendant John Scott is the Texas Secretary of State. The Texas Secretary of State is the State's chief election officer. The Office of the Texas Secretary of State is responsible for coordinating implementation of SB 1. Secretary Scott is sued in his official capacity.

## **ALLEGATIONS**

### **The State of Texas**

14. The State of Texas's history of official voting-related discrimination against its disfavored citizens is longstanding and well-documented. *See, e.g., LULAC v. Perry*, 548 U.S. 399, 439-40 (2006); *Bush v. Vera*, 517 U.S. 952, 981-82 (1996) (plurality opinion); *White v. Regester*, 412 U.S. 755, 767-70 (1973). Federal intervention has been necessary to eliminate numerous devices intentionally used to restrict minority voting in Texas. *See, e.g., White*, 412

U.S. at 768 (poll tax); *Terry v. Adams*, 345 U.S. 461 (1953) (private primary); *Smith v. Allwright*, 321 U.S. 649 (1944) (white primary); *Nixon v. Herndon*, 273 U.S. 536 (1927) (exclusion of minorities). In recent years, courts have found Texas’s redistricting plans and voter identification requirements to discriminate against minority voters. *See Abbott v. Perez*, 138 S. Ct. 2305, 2316-17, 2334-35 (2018); *Veasey v. Abbott*, 830 F.3d 216, 243-65 (5th Cir. 2016) (en banc).

15. There is a history of discrimination against voters with disabilities in Texas. *See Lightbourn v. Cnty. of El Paso*, 118 F.3d 421, 424 (5th Cir. 1997); Office of the Texas Secretary of State, *Election Law Opinion DAD-27* (1982) (describing arbitrary application of prohibition against “idiots and lunatics” exercising the right to vote); *see also* 42 U.S.C. § 12101(a)(2)-(3).

16. According to the 2020 Census, Texas has a total population of 29,145,505, with a Hispanic/Latino population of 11,441,717 (39.3%), a non-Hispanic Black/African American population of 3,629,872 (12.5%), and a non-Hispanic Asian American population of 1,717,386 (5.9%).

17. According to the 2020 Census, Texas has a voting-age population (VAP) of 21,866,700, with a Hispanic/Latino VAP of 7,907,319 (36.2%), a non-Hispanic Black/African American VAP of 2,661,244 (12.2%), and a non-Hispanic Asian American VAP of 1,289,444 (5.9%).

18. The 2015-2019 American Community Survey (ACS) estimated that the citizen voting age population (CVAP) of Texas was 18,181,330, with a Hispanic/Latino CVAP of 5,429,160 (29.9%), a non-Hispanic Black/African American CVAP of 2,383,950 (13.1%), and a non-Hispanic Asian American CVAP of 674,830 (3.7%).

19. Between 2010 and 2020, the population of Texas increased by 3,999,944, according to U.S. Census data. The Hispanic/Latino population increased by 1,980,796, accounting for 49.5% of overall growth; the non-Hispanic Black/African American population increased by 654,133, accounting for 16.4% of overall growth; and the non-Hispanic Asian American population increased by 689,430, accounting for 17.2% of overall growth. By contrast, the non-Hispanic White population increased by 187,252, accounting for only 4.7% of overall growth.

20. As of November 2020, 24.0% of registered voters in Texas had Spanish surnames.

21. The 2015-2019 ACS estimated that among Texans age 5 or older, 3,049,758 persons speak Spanish at home and also speak English less than very well (11.6%), and that another 557,497 persons speak another language at home and also speak English less than very well (2.1%). This includes nearly 125,000 Vietnamese speakers, over 90,000 speakers of eight Indic languages, over 80,000 Mandarin or Cantonese speakers, over 30,000 Arabic speakers, nearly 30,000 Korean speakers, over 22,000 Tagalog speakers, over 17,000 French or Cajun speakers, nearly 13,000 speakers of Persian languages, over 10,000 Khmer speakers, and nearly 700 speakers of Native American languages.

22. In Texas, nearly all counties provide ballots only in English and Spanish, with Spanish ballots required by federal and state laws, including Section 203 of the Voting Rights Act, 52 U.S.C. § 10503. Two counties in Texas are covered by Section 203 for the Chinese or Vietnamese languages and two counties are covered for American Indian languages. Even where ballots are translated, many minority language voters still need assistance in the voting booth to understand the ballot and effectively exercise their right to vote. This is all the more

true of voters whose principal language is not subject to federal or state requirements to provide language minority ballots in a particular jurisdiction.

23. The 2019 CDC Behavioral Risk Factor Surveillance System survey estimated that 28% of adults in Texas have a disability. According to the CDC survey, approximately 14% of adults in Texas experience mobility disabilities, 11% experience cognition disabilities, and 6% experience vision disabilities.

24. In 2016, the Texas Workforce Investment Council used 2014 survey data to estimate that 3,101,039 Texas residents have self-reported disabilities. According to the Texas report, among Texas residents age 16 and older, an estimated 1,735,723 have self-reported ambulatory difficulty, 1,045,447 have self-reported cognitive difficulty, and 649,589 have self-reported vision difficulty.

#### **Senate Bill 1**

25. Following the November 2020 election, Texas Elections Director Keith Ingram declared that, “in spite of all the circumstances, Texas had an election that was smooth and secure.” Ingram also noted that “Texans can be justifiably proud of the hard work and creativity shown by local county election officials.” David Martin Davies, *Texas Matters: The Future Is the Past When Voting in Texas*, Tex. Pub. Radio, Mar. 6, 2021.

26. In 2020, voter turnout in Texas surged to 67% of registered voters, the highest turnout rate since 1992. But despite this progress, Texas remains 43rd among the 50 states in voter turnout as a share of voting-age citizens.

27. Between 2015 and April 2021, the Office of the Texas Attorney General convicted only 16 defendants for election-related offenses, even after increases in funding to a dedicated Election Integrity Division.

28. Between 2015 and April 2021, Texas voters cast 40,257,541 ballots in federal elections alone.

29. Despite the “smooth and secure” 2020 election, *see supra* ¶ 25, and the few successful prosecutions for election crimes in recent years, on February 9, 2021, Texas Governor Greg Abbott declared “election integrity” to be an emergency item for the regular session of the Eighty-Seventh Texas Legislature.

30. In March 2021, Texas legislators introduced Senate Bill 7 and House Bill 6, both omnibus election bills. These two bills eventually merged into a negotiated version of Senate Bill 7. However, members of the Texas House prevented passage of Senate Bill 7 by leaving the floor and precluding a quorum until the close of the regular legislative session.

31. On July 7, 2021, Governor Abbott called a special session of the Texas Legislature to address “Legislation strengthening the integrity of elections in Texas,” among other subjects. Members of the Texas House left the state prior to the opening of legislative business, and the Texas House did not achieve a quorum during this session.

32. On August 5, 2021, Governor Abbott called a second special session of the Texas Legislature, again to address “Legislation strengthening the integrity of elections in Texas,” among other subjects. Following the return of several legislators midway through the session, the Texas House reached a quorum.

33. On August 31, 2021, the Texas House and Texas Senate passed the final version of SB 1. Across ten articles, SB 1 addresses diverse subjects including voter registration, polling place procedures, poll watchers, voting by mail, voter assistance, and election crimes.

34. Governor Abbott signed SB 1 into law on September 7, 2021.

35. SB 1 will go into effect on December 2, 2021.

### **Voter Assistance in Texas Prior to SB 1**

36. Texas law divides voter assistance into two categories, which the Election Code labels “interpretation” and “assistance.” Interpreters facilitate communication between a voter and a poll worker when the poll worker “does not understand the language used by a voter.” Tex. Elec. Code § 61.032. Assistors aid “in marking the ballot . . . if the voter cannot prepare the ballot because of a physical disability that renders the voter unable to write or see or an inability to read the language in which the ballot is written.” Tex. Elec. Code § 64.031. Thus, for voters with limited English proficiency, assistance may include ballot translation. *See* Tex. Elec. Code § 61.034.

37. Before SB 1 was enacted, Texas law provided that assistance “include[d],” but was not expressly limited to, “reading the ballot to the voter; directing the voter to read the ballot; marking the voter’s ballot; or directing the voter to mark the ballot.” Tex. Elec. Code § 64.0321.

38. Before SB 1 was enacted, Texas law required individuals who provide voter assistance to take the following oath:

I swear (or affirm) that I will not suggest, by word, sign, or gesture, how the voter should vote; I will confine my assistance to answering the voter’s questions, to stating propositions on the ballot, and to naming candidates and, if listed, their political parties; I will prepare the voter’s ballot as the voter directs; and I am not the voter’s employer, an agent of the voter’s employer, or an officer or agent of a labor union to which the voter belongs.

Texas Election Code § 64.034.

39. Before SB 1 was enacted, guidance for election administrators in Texas directed assistors to be “be prepared to read or explain all ballot choices or questions in a language the voter understands.” Disability Rights Texas, *Texas Election Administrators Guide to Working with Voters with Disabilities* 16 (Mar. 2013). Texas distributed this guidance on the Secretary of

State’s website from October 2014 until May 2021. *See, e.g.,* Tex. Sec’y of State, *Annual Seminar Presentation Files* (May 19, 2021),

<https://web.archive.org/web/20210519114519/https://www.sos.state.tx.us/elections/laws/seminars/speakers/index.shtml>.

40. Before SB 1 was enacted, Texas poll worker training materials directed election officials to “[r]ely on the voter as the ‘expert’” and to “ask them what you can do to best assist them.” Disability Rights Texas, *Voters with Disabilities: Poll Worker Training* 10 (Oct. 2013); *see also* Tex. Sec’y of State, *Training Your Workers* 18 (Aug. 2021) (directing local officials to train poll workers to contact Disability Rights Texas for assistance regarding voters with disabilities).

#### **Voter Assistance Requirements of SB 1**

41. SB 1 revises and expands the required oath for individuals who provide voter assistance. In full, the revised oath states:

I swear (or affirm) under penalty of perjury that the voter I am assisting represented to me they are eligible to receive assistance; I will not suggest, by word, sign, or gesture, how the voter should vote; I will confine my assistance to reading the ballot to the voter, directing the voter to read the ballot, marking the voter’s ballot, or directing the voter to mark the ballot; I will prepare the voter’s ballot as the voter directs; I did not pressure or coerce the voter into choosing me to provide assistance; I am not the voter’s employer, an agent of the voter’s employer, or an officer or agent of a labor union to which the voter belongs; I will not communicate information about how the voter has voted to another person; and I understand that if assistance is provided to a voter who is not eligible for assistance, the voter’s ballot may not be counted.

SB 1 § 6.04 (to be codified at Tex. Elec. Code § 64.034).

42. Thus, SB 1 incorporates six new or revised requirements in the assistor’s oath.

- Assistors must acknowledge that their oath is under penalty of perjury;
- Assistors must state that a voter has affirmatively represented to the assistor that the voter



is eligible to receive assistance;

- Assistors must not answer a voter's questions;
- Assistors must not pressure or coerce a voter into choosing the assistor to provide assistance;
- Assistors must not communicate information about how a voter has voted to another person; and
- Assistors must acknowledge that the ballot of a voter who receives assistance may not be counted if the voter was not in fact eligible for assistance.

43. The Office of the Texas Secretary of State has not issued guidance concerning implementation of the revised oath for individuals who provide voter assistance.

44. By requiring individuals who provide voter assistance to take the revised oath, SB 1 constrains assistance to “reading the ballot to the voter, directing the voter to read the ballot, marking the voter's ballot, or directing the voter to mark the ballot.”

45. By requiring individuals who provide voter assistance to take the revised oath, SB 1 prohibits assistors from answering a voter's questions, explaining the voting process, paraphrasing complex language, and providing other forms of voting assistance that some qualified voters require to cast an informed and effective vote. Witnesses testifying against SB 1 and predecessor bills stressed the need for such assistance, including at the August 9, 2021, hearing of the Texas Senate Hearing on State Affairs and the August 23, 2021, hearing of the Texas House Select Committee on Constitutional Rights and Remedies.

#### **Mail Voting in Texas Prior to SB 1**

46. Under Texas law, a “qualified voter” is an individual who is 18 years of age or older, is a United States citizen, is a resident of the state, has not been adjudged mentally

incompetent, has not been convicted of a felony (unless they have completed their term of sentence or received a pardon), and is registered to vote. Tex. Elec. Code § 11.002.

47. Texas law authorizes six categories of qualified voters to cast ballots by mail: those who expect to be absent during the entire voting period (including the period for in-person early voting), those with a disability, those who will be 65 or older on Election Day, those confined in jail, those who are involuntarily committed, and certified participants in Texas's address confidentiality program. Tex. Elec. Code §§ 82.001-.004, .007-.008.

48. Under current law, unchanged by SB 1, a Texas voter may request a mail ballot by submitting an application that is "in writing and signed by the applicant." Tex. Elec. Code § 84.001.

49. Under current law, unchanged by SB 1, if an application does not "fully comply with the applicable requirements," the early voting clerk must mail the applicant a new application form as well as a written notice identifying the defect and explaining how it can be corrected. Tex. Elec. Code § 86.008.

50. Before SB 1 was enacted, Texas law provided that an application for a mail ballot had to include only "the applicant's name and the address at which the applicant is registered to vote," information demonstrating eligibility for a mail ballot, an indication of the election for which the voter requests a mail ballot, and a mailing address (if different from the address of registration). Tex. Elec. Code § 84.002.

51. Before SB 1 was enacted, Texas law provided that the mail ballot application contained elements sufficient to identify a registered voter and establish that the voter is qualified to cast a mail ballot under Texas law. *See* Tex. Sec'y of State, *Application for Ballot by Mail* (Dec. 2017),

<https://web.archive.org/web/20210731234716/https://webservices.sos.state.tx.us/forms/5-15f.pdf>. Thus, Texas did not require an identification document number or partial social security number to establish qualifications to vote in an election or to cast a mail ballot.

52. Under current law, unchanged by SB 1, if a voter provides a different last name on a mail ballot application from the last name on the voter’s application for voter registration, election officials must still process the application and provide mail ballot materials, so long as officials can confirm that the applicant is a registered voter in the jurisdiction. *See* Tex. Sec’y of State, *Early Voting by Mail* 31 (2021).

53. Under current law, unchanged by SB 1, if a voter provides a residence address on a mail ballot application that differs from the address at which the voter is registered, election officials must still process the application and provide mail ballot materials, along with a statement of residence that the voter may use to confirm their residential address, so long as the new address is within the jurisdiction of the same voter registrar. *See* Tex. Sec’y of State, *Early Voting by Mail* 30 (2021).

54. Before SB 1 was enacted, Texas law provided that errors, omissions, and discrepancies concerning additional requested information did not result in rejection of a mail ballot application. Thus, under current law, unchanged by SB 1, if a mail ballot application “does not include the applicant’s correct voter registration number or county election precinct of residence,” the early voting clerk must “enter the appropriate information on the application before providing a ballot to the applicant.” Tex. Elec. Code § 86.001; *see also* Tex. Elec. Code § 84.014 (addressing inconsistencies between “information maintained by the voter registrar” and “a date of birth, driver’s license number, or social security number” on a mail ballot application).

55. Under current law, unchanged by SB 1, upon completing a mail ballot, a Texas “voter must place it in the official ballot envelope and then seal the ballot envelope, place the ballot envelope in the official carrier envelope and then seal the carrier envelope, and sign the certificate on the carrier envelope.” Tex. Elec. Code § 86.005.

56. Under current law, unchanged by SB 1, if an early voting clerk finds that the carrier envelope does not comply with legal requirements, the clerk may either return the carrier envelope to the voter so that the voter can correct the defect before the ballot receipt deadline or advise the voter that they may appear in person to correct the defect or cancel their application, allowing the voter to vote on Election Day. Tex. Elec. Code § 86.011.

57. Under current law, unchanged by SB 1, a timely mail ballot submitted by a registered voter may be rejected if (1) the carrier envelope was not properly executed, (2) the voter’s signature on their application or carrier envelope was determined to have been executed by a person other than the voter or a witness, or (3) the voter failed to meet the requirements to vote by mail. Tex. Elec. Code §§ 87.027, 87.041(b). Thus, Texas law already establishes security measures for mail ballots.

#### **Mail Voting Requirements of SB 1**

58. SB 1 establishes new identification number requirements for both mail ballot applications and mail ballot carrier envelopes.

59. Under SB 1, a voter must provide “the number of the applicant’s [Texas] driver’s license, election identification certificate, or a personal identification card issued by the Department of Public Safety” on both the mail ballot application and the ballot carrier envelope, even if the underlying identification is no longer valid. SB 1 § 5.02 (to be codified at Tex. Elec. Code § 84.002); SB 1 § 5.08 (to be codified at Tex. Elec. Code § 86.002). If a voter has never

been issued such a number, the voter must either provide the last four digits of their social security number or state that they have never been issued a Texas identification document number or social security number. SB 1 § 5.02 (to be codified at Tex. Elec. Code § 84.002); SB 1 § 5.08 (to be codified at Tex. Elec. Code § 86.002).

60. Under SB 1, early voting clerks “shall reject” a mail ballot application that includes an identification document number or social security number that “does not identify the same voter identified on the applicant’s application for voter registration.” SB 1 § 5.07 (to be codified at Tex. Elec. Code § 86.001).

61. Under SB 1, a mail ballot “may be accepted only if” the identification document number or social security number provided on the carrier envelope “identifies the same voter identified on the voter’s application for voter registration.” SB 1 § 5.13 (to be codified at Tex. Elec. Code § 87.041).

62. Under SB 1, upon identification of a defect arising from the identification number provided on a ballot carrier envelope, election officials must either return the carrier envelope to the voter (if enough time remains to correct the error) or provide the voter with alternative cure instructions. SB 1 § 5.10 (to be codified at Tex. Elec. Code § 86.015); SB 1 § 5.12 (to be codified at Tex. Elec. Code § 87.0271); SB 1 § 5.14 (to be codified at Tex. Elec. Code § 87.0411).

63. By requiring rejection of mail ballot materials that do not contain identification numbers that identify the same voter identified on the voter’s application for voter registration, SB 1 mandates rejection of written materials requisite to voting based on errors or omissions that are not material to determining a voter’s qualification to vote or vote by mail. In turn, the rejection of ballot applications and ballot carrier envelopes based on these immaterial errors or

omissions will disenfranchise eligible voters.

64. Some qualified Texas voters will not be able to provide the identification number required by SB 1. For example, voters who have lost a driver's license or disposed of an expired identification card nonetheless have been issued a Texas identification document number for purposes of SB 1. But they may not have available records of that number. Moreover, such voters cannot provide a partial social security number in lieu of their unknown identification document number.

65. Some qualified voters who attempt to comply with SB 1 will provide an identification document number that is not in the Texas Election Administration Management (TEAM) database. This includes some voters who obtained their current form of Texas identification only after registering to vote and some voters who registered to vote before January 1, 2004, when Texas first allowed registrants to provide an identification document number. Tex. H.B. 1549, 78th Legis. § 1 (2003); *see also* Tex. Elec. Code § 13.002(c)(8)(A). Because these voters' identification document numbers will not identify the same voter identified on the voter's application for voter registration, SB 1 appears to require rejection of their mail ballot materials.

### **FIRST CAUSE OF ACTION**

66. The United States realleges and incorporates by reference the allegations set forth above.

67. Section 208 of the Voting Rights Act establishes that "[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 52 U.S.C. § 10508.

68. Section 6.04 of SB 1 prohibits a voter's assistor of choice from providing federally protected assistance by limiting permissible actions to "reading the ballot to the voter, directing the voter to read the ballot, marking the voter's ballot, or directing the voter to mark the ballot."

69. Section 6.04 of SB 1 violates Section 208 of the Voting Rights Act, 52 U.S.C. § 10508, by prohibiting eligible voters' assistants of choice from providing necessary and effective forms of assistance.

70. Unless enjoined by order of this Court, Defendants will continue to violate Section 208 by implementing and enforcing Section 6.04 of SB 1.

## **SECOND CAUSE OF ACTION**

71. The United States realleges and incorporates by reference the allegations set forth above.

72. Section 101 of the Civil Rights Act of 1964 prohibits any person "acting under color of law" from "deny[ing] the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election." 52 U.S.C. § 10101(a)(2)(B).

73. Section 5.07 and Section 5.13 of SB 1 require election officials to reject mail ballot materials if a voter fails to include a driver's license number, election identification certificate number, personal identification certificate number, or partial social security number that identifies the same voter identified on the voter's application for voter registration, unless the voter has certified that he or she has not been issued such a number.

74. Driver's license numbers, election identification certificate numbers, personal identification certificate numbers, and partial social security numbers are not material to determining whether a voter meets State law qualifications to vote or to cast a mail ballot. *See* Tex. Elec. Code §§ 11.001(a), 82.001-.004, 82.007-.008.

75. Section 5.07 and Section 5.13 of SB 1 violate Section 101 by requiring rejection of mail ballot materials—thereby denying the right to vote—because of errors or omissions not material in determining whether such individuals are qualified to vote.

76. Unless enjoined by order of this Court, Defendants will continue to violate Section 101 by implementing and enforcing Section 5.07 and Section 5.13 of SB 1.

#### **PRAYER FOR RELIEF**

WHEREFORE, the United States prays that the Court enter an order:

(1) Declaring that Section 6.04 of Senate Bill 1 violates Section 208 of the Voting Rights Act, 52 U.S.C. § 10508;

(2) Declaring that Section 5.07 and 5.13 of Senate Bill 1 violate Section 101 of the Civil Rights Act of 1964, 52 U.S.C. § 10101(a)(2)(B);

(3) Enjoining Defendants, their agents and successors in office, and all persons acting in concert with them from enforcing the requirements of Section 6.04 of Senate Bill 1 that violate Section 208 of the Voting Rights Act;

(4) Enjoining Defendants, their agents and successors in office, and all persons acting in concert with them from enforcing the requirements of Sections 5.07 and 5.13 of Senate Bill 1 that violate Section 101 of the Civil Rights Act of 1964;



(5) Granting such additional relief as the interests of justice may require.

Date: November 4, 2021

KRISTEN CLARKE  
Assistant Attorney General  
Civil Rights Division

PAMELA S. KARLAN  
Principal Deputy Assistant Attorney General  
Civil Rights Division

/s/ Daniel J. Freeman  
T. CHRISTIAN HERREN, JR.  
RICHARD A. DELLHEIM  
DANIEL J. FREEMAN  
DANA PAIKOWSKY  
MICHAEL E. STEWART  
JENNIFER YUN  
Attorneys, Voting Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF TEXAS and JOHN SCOTT, in his  
official capacity as Texas Secretary of State,

Defendants.

Civil Action No. 3:21-cv-299

**COMPLAINT**

The United States of America, plaintiff herein, alleges:

1. The 2020 Census confirmed that Texas is one of the most diverse states in the nation. Anglos—*i.e.*, non-Latino White Texans—are now less than 40 percent of the State’s population, and Latinos soon will be the State’s largest population group. Between 2010 and 2020, Texas grew by nearly 4 million residents, and the minority population represents 95% of that growth.

2. Soon after the release of 2020 Census data, the Texas Legislature enacted redistricting plans for the Texas Congressional delegation and the Texas House through an extraordinarily rapid and opaque legislative process.

3. The Legislature refused to recognize the State’s growing minority electorate. Although the Texas Congressional delegation expanded from 36 to 38 seats, Texas designed the two new seats to have Anglo voting majorities. Texas also intentionally eliminated a Latino electoral opportunity in Congressional District 23, a West Texas district where courts had identified Voting Rights Act violations during the previous two redistricting cycles. It failed to

draw a seat encompassing the growing Latino electorate in Harris County. And it surgically excised minority communities from the core of the Dallas-Fort Worth Metroplex (DFW) by attaching them to heavily Anglo rural counties, some more than a hundred miles away, placing them in a congressional district where they would lack equal electoral opportunity.

4. Texas also eliminated Latino electoral opportunities in the State House plan through manipulation or outright elimination of districts where Latino communities previously had elected their preferred candidates. In the San Antonio region and in South Texas, Texas replaced Latinos in House Districts 118 and 31 with high-turnout Anglo voters, eliminating minority electoral opportunities. And in El Paso and West Texas, the State eliminated a Latino opportunity district entirely—reducing the number of districts in which Latinos make up a citizen voting-age population majority from six to five—by overpopulating and packing majority-Latino districts and under-populating nearby majority-Anglo districts.

5. This is not the first time Texas has acted to minimize the voting rights of its minority citizens. Decade after decade, Texas has enacted redistricting plans that violate the Voting Rights Act.

6. In enacting its 2021 Congressional and House plans, the State has again diluted the voting strength of minority Texans and continued its refusal to comply with the Voting Rights Act, absent intervention by the Attorney General or the federal courts.

7. The Attorney General files this action pursuant to Sections 2 and 12(d) of the Voting Rights Act of 1965, as amended, 52 U.S.C. §§ 10301 and 10308(d), to enforce voting rights guaranteed by the Fourteenth and Fifteenth Amendments to the United States Constitution.

8. Section 2 of the Voting Rights Act prohibits enforcement of any voting qualification, prerequisite to voting, standard, practice, or procedure that either has a purpose of

denying or abridging the right to vote on account of race, color, or membership in a language minority group or results in the denial or abridgment of the right to vote on account of race, color, or language minority status. The districting decisions described in this complaint violate Section 2.

### **JURISDICTION AND VENUE**

9. This Court has original jurisdiction of this action under 28 U.S.C. §§ 1331, 1345, and 2201(a) and 52 U.S.C. § 10308(f).

10. Venue is proper in this Court under 28 U.S.C. §§ 124(d)(3) and 1391(b).

### **PARTIES**

11. The Voting Rights Act authorizes the Attorney General to file a civil action on behalf of the United States of America seeking injunctive, preventive, and permanent relief for violations of Section 2 of the Act, 52 U.S.C. § 10308(d).

12. Defendant the State of Texas is one of the states of the United States of America.

13. Defendant John Scott is the Texas Secretary of State. The Texas Secretary of State is the State's chief election officer. The Office of the Texas Secretary of State is responsible for maintaining uniform application, operation, and interpretation of all state election laws. Secretary Scott's relevant duties include, but are not limited to, preparing detailed and comprehensive written directives and instructions and distributing these materials to the appropriate state and local authorities having duties in the administration of state election laws. Secretary Scott also is empowered to order a person performing official functions in the administration of any part of the electoral processes to correct any conduct that impedes the free exercise of a citizen's voting rights. Secretary Scott is sued in his official capacity.

## ALLEGATIONS

### The State of Texas

14. According to the 2020 Census, Texas has a total population of 29,145,505, with a Hispanic/Latino population of 11,441,717 (39.3%), a non-Hispanic Black/African American population of 3,629,872 (12.4%), and a non-Hispanic Asian American population of 1,717,386 (5.9%).

15. According to the 2020 Census, Texas has a voting-age population (VAP) of 21,866,700, with a Hispanic/Latino VAP of 7,907,319 (36.2%), a non-Hispanic Black/African American VAP of 2,661,244 (12.2%), and a non-Hispanic Asian American VAP of 1,289,444 (5.9%).

16. The 2015-2019 American Community Survey (ACS) estimated that the citizen voting age population (CVAP) of Texas was 18,181,330, with a Hispanic/Latino CVAP of 5,429,160 (29.9%), a non-Hispanic Black/African American CVAP of 2,383,950 (13.1%), and a non-Hispanic Asian American CVAP of 674,830 (3.7%).

17. Applying 2015-2019 ACS localized adult citizenship rates to 2020 Census data provides a more contemporaneous CVAP estimate of 19,053,145, with a Hispanic/Latino CVAP of 5,758,435 (30.2%), a non-Hispanic Black/African American CVAP of 2,543,628 (13.4%), and a non-Hispanic Asian American CVAP of 845,903 (4.4%). Although Texas has used a different methodology to estimate CVAP, its method creates a substantial time lag in dynamic statistics, counts “some people who live outside the district . . . in the district estimates,” and excludes “some people who live in the district . . . in the district estimates.” Tex. Legis. Council, *Estimating Citizen Voting Age Population Data (CVAP)* 1 (2013).

18. Between 2010 and 2020, the population of Texas increased by 3,999,944, according to U.S. Census data. The Hispanic/Latino population increased by 1,980,796, accounting for 49.5% of overall growth; the non-Hispanic Black/African American population increased by 654,133, accounting for 16.4% of overall growth; and the non-Hispanic Asian American population increased by 689,430, accounting for 17.2% of overall growth. By contrast, the non-Hispanic White population increased by 187,252, accounting for only 4.7% of overall growth.

### **Redistricting in Texas**

19. In every redistricting cycle since 1970, courts have found that one or more of Texas's statewide redistricting plans violated the United States Constitution or the Voting Rights Act.<sup>1</sup> Moreover, after each decennial census during the period when Texas was required to obtain preclearance of redistricting plans under Section 5 of the Voting Rights Act, 52 U.S.C. § 10304, the State enacted redistricting plans for the Texas House that violated Section 5. Following the 1980 Census and 1990 Census, Texas also submitted plans for the Texas Senate or the Texas Congressional delegation that violated Section 5. And during the 38 years that Texas was covered by Section 5 of the Voting Rights Act, the Attorney General issued another 50 objection letters regarding local districting or redistricting plans.

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<sup>1</sup> See *Texas v. United States*, 887 F. Supp. 2d 133 (D.D.C. 2012) (three-judge court), *vacated*, 570 U.S. 928 (2013); *LULAC v. Perry*, 548 U.S. 399 (2006); *Balderas v. Texas*, No. 6:01-cv-158, 2001 WL 36403750 (E.D. Tex. Nov. 14, 2001) (three-judge court) (per curiam); *Bush v. Vera*, 517 U.S. 952 (1996); *Terrazas v. Slagle*, 789 F. Supp. 828 (W.D. Tex. 1991) (three-judge court), *aff'd sub nom. Richards v. Terrazas*, 505 U.S. 1214 (1992); *Upham v. Seamon*, 456 U.S. 37 (1982); *Terrazas v. Clements*, 537 F. Supp. 514 (N.D. Tex. 1982) (three-judge court) (per curiam); *McDaniel v. Sanchez*, 452 U.S. 130 (1981); *White v. Regester*, 412 U.S. 755 (1973); *White v. Weiser*, 412 U.S. 783 (1973).

20. The State of Texas’s lengthy history of discrimination in redistricting has continued unabated into the twenty-first century, as the Supreme Court recognized when holding that the State’s 2003 Congressional redistricting plan “undermined the progress of a racial group that has been subject to significant voting-related discrimination.” *LULAC v. Perry*, 548 U.S. 399, 438-40 (2006); *see also Bush v. Vera*, 517 U.S. 952, 981-82 (1996) (plurality opinion); *White v. Regester*, 412 U.S. 755, 767-70 (1973).

21. During the last redistricting cycle, a three-judge court in Washington, D.C. found that Texas failed to prove that its 2011 Congressional and House plans would not effect a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise and failed to prove that its 2011 Congressional and Senate plans were not enacted with discriminatory intent, although this decision was vacated after the Supreme Court’s decision in *Shelby County v. Holder*, 570 U.S. 529 (2013). *See Texas v. United States*, 887 F. Supp. 2d 133, 154 (D.D.C. 2012) (three-judge court), *vacated*, 570 U.S. 928 (2013). A second three-judge court in San Antonio then affirmatively found that the 2011 Congressional and House plans had been enacted with discriminatory intent and that the 2013 House plan contained an unconstitutional racial gerrymander. *See Abbott v. Perez*, 138 S. Ct. 2305, 2334-35 (2018) (2013 House); *Perez v. Abbott*, 253 F. Supp. 3d 864 (W.D. Tex. 2017) (three-judge court) (2011 Congress); *Perez v. Abbott*, 250 F. Supp. 3d 123 (W.D. Tex. 2017) (three-judge court) (2011 House); *see also Abbott*, 138 S. Ct. at 2317 (declining to address 2011 plans).

### **2021 Redistricting in Texas**

22. On September 7, 2021, Texas Governor Greg Abbott announced a special legislative session to begin on September 20, for the purpose of drawing statewide redistricting plans.

23. Once the special session began, redistricting plans and amendments moved at a rapid pace with little transparency and limited opportunities for witness testimony.

24. Minority legislators frequently decried the compressed timeline, changes made without traditional deference to local delegations, the inability to invite expert testimony, the minimal opportunities for public input, and an overall disregard for massive minority population growth in Texas over the last decade.

25. Governor Abbott signed both Senate Bill 6, the 2021 Congressional Plan, and House Bill 1, the 2021 House Plan, on October 25, 2021.

### **Congressional Redistricting Process**

26. The Congressional redistricting process was truncated because of the special session. Only three weeks passed between the unveiling of the initial proposal and the final passage of the conference committee map.

27. Prior to the start of the special session and the release of the Census data used for redistricting, the House Redistricting Committee, chaired by Representative Todd Hunter, and the Senate Redistricting Committee, chaired by Senator Joan Huffman, each held five hearings to gather public testimony, including permitting the submission of written comments and alternative redistricting plans through an online portal.

28. On September 27, 2021, Senator Huffman released the initial statewide Congressional proposal.

29. The initial proposal had been drawn based in part on direction from Republican members of the Texas Congressional delegation. As a result, while most Anglo members of the Texas delegation had an opportunity to provide input on their districts, only one Latino member



of the delegation and no Black members of the delegation had an opportunity to provide input concerning their districts.

30. Upon information and belief, individuals outside of the Texas legislature drew the initial proposal, and the outside software used to draw this initial plan did not include the home addresses of incumbent members. This resulted in the pairing of two of the four Black Members of Congress from Texas in the initial statewide proposal.

31. The Senate Special Committee on Redistricting held only two public hearings on the Congressional plan, on September 30 and October 4, 2021. The full Senate passed the Congressional plan on October 8, 2021. The House received the bill the very same day.

32. Senator Huffman stated that the redistricting plans complied with the Voting Rights Act, but she declined to explain the substantive basis for that conclusion.

33. Although House Redistricting Chair Hunter initially told members of the House Redistricting Committee that the Texas House would generate its own statewide Congressional plan, the Redistricting Committee instead took up the plan already passed by the Senate. The Texas House officially took up the map passed by the Texas Senate on the same day as floor consideration of the Texas House redistricting plan, limiting the opportunity for legislators to analyze the Congressional plan and generate proposed amendments.

34. On October 13, 2021, the House Redistricting Committee held its only public hearing on the Congressional plan. The public was provided with only 24 hours' notice of the hearing, and witnesses were given just 12 hours to register to testify virtually. The House Redistricting Committee voted the Congressional plan out of committee without adopting any amendments.

35. The full Texas House considered the Congressional plan on October 16, 2021. Although the House adopted several amendments, it rejected any proposals that would have provided for additional minority electoral opportunity. The Texas House passed the amended Congressional plan early in the morning on October 17, 2021.

36. The Senate did not concur with the House amendments, and the House and Senate appointed a conference committee immediately. The conference committee reported out the final Congressional plan later that day, on October 17, 2021.

37. The full House and Senate passed the conference committee's plan the next day, on October 18, 2021.

38. Governor Abbott signed the final Congressional plan into law on October 25, 2021.

#### **Texas Congressional District 23 (West Texas)**

39. Using many of the same techniques applied in adopting the redistricting plans in 2011 and 2003, Texas intentionally reconfigured the 2021 version of District 23 to eliminate a Latino electoral opportunity. District 23 in both the 2011 and 2003 Congressional plans violated the Voting Rights Act. By eliminating a Latino electoral opportunity for the third time in three decades, Texas has demonstrated a recalcitrant refusal to recognize the rights of Latino voters in this region.

40. In 2006, the Supreme Court addressed a Section 2 challenge to the 2003 configuration of District 23. In doing so, the Court stated that the State's actions bore "the mark of intentional discrimination that could give rise to an equal protection violation." *LULAC v. Perry*, 548 U.S. at 440.

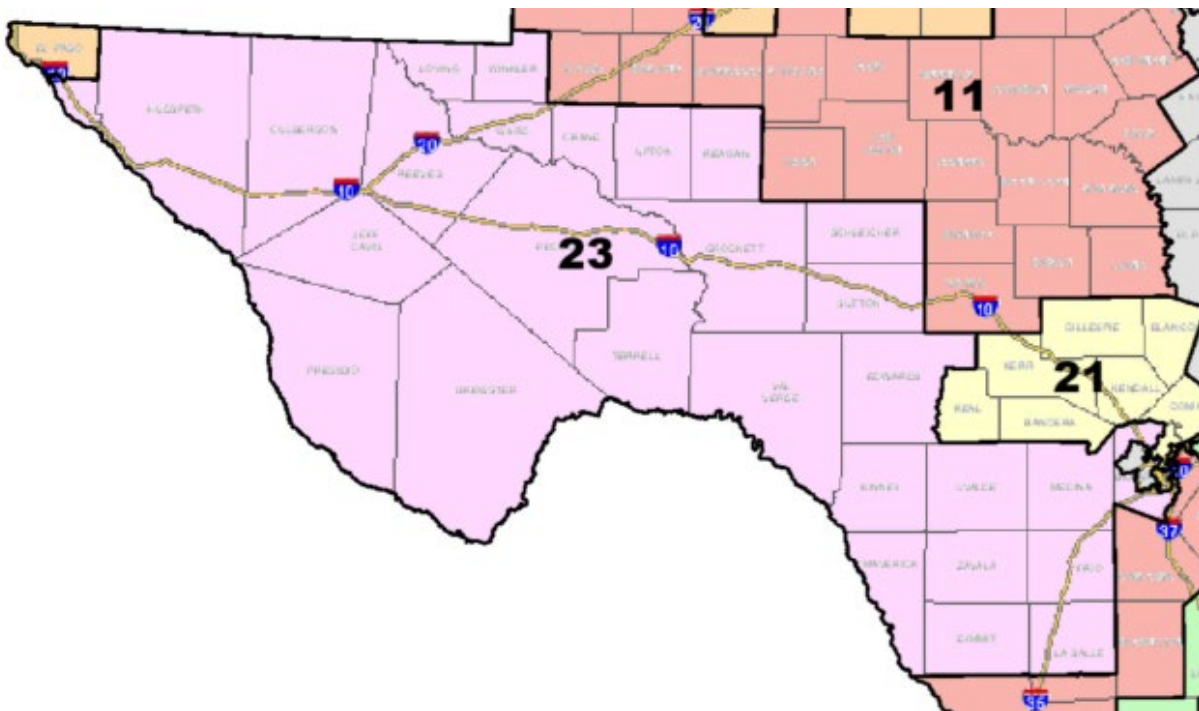
41. In 2012, a three-judge Court in Washington, D.C. found that although the version

of District 23 created in 2006 as a remedy after *LULAC v. Perry* had provided Latino voters with the ability to elect their preferred candidates, the 2011 Congressional plan “took that ability away.” *Texas*, 887 F. Supp. 2d at 154. A three-judge court in Texas subsequently found that the 2011 Congressional plan’s “manipulation of Latino voter turnout and cohesion in [District] 23 denied Latino voters equal opportunity and had the intent and effect of diluting Latino voter opportunity.” *Perez*, 253 F. Supp. 3d at 908.

42. Under the current Congressional plan, adopted in 2013, District 23 encompasses 26 whole counties in West Texas and portions of La Salle, Bexar, and El Paso Counties.

Figure 1 depicts current District 23.

**Figure 1: Current Congressional District 23 (Adopted 2013)**



43. This current configuration of District 23 is based on an interim remedy for a “not insubstantial” retrogression claim under Section 5 that was then pending before the U.S. District Court for the District of Columbia. *Perez v. Perry*, 891 F. Supp. 2d 808, 826-27 (W.D. Tex.

2012) (three-judge court).

44. 2020 Census data and 2015-2019 ACS citizenship data indicate that District 23 in the 2013 Congressional Plan has a Latino CVAP concentration of 62.1% (63.2% by Texas's estimate). In 2020, Spanish Surname Voter Registration (SSVR) in the district was 54.1%, and Spanish Surname Turnout (SSTO) was 47.8%.<sup>2</sup>

45. Under the current configuration of District 23, elections in this district have been close, with the winner receiving either a plurality or narrow majority of the vote.

46. A cohesive majority of Latino voters in current District 23 have preferred Latino Democrats in most primary and general elections. Nonetheless, voters in District 23 last elected a Latino Democrat in 2012. In the 2020 general election, voters in District 23 elected Tony Gonzales, a Latino Republican, with 50.6% of the vote. Latino voters in District 23 offered cohesive support to Gonzales' opponent, Democrat Gina Ortiz Jones (API).

47. In the enacted 2021 Congressional plan, District 23 includes the same 26 whole counties found in the current configuration, as well as all of La Salle County, a sparsely populated county between Laredo and San Antonio. However, the enacted 2021 version of District 23 contains very different portions of Bexar County and El Paso County than the 2013 version. It is from these counties that the new district draws most of its population. Figure 2 depicts enacted District 23.

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<sup>2</sup> SSVR denotes the percentage of registered voters with a last name on the State's Spanish surname list, in November 2020 unless otherwise noted. Unless otherwise noted, SSTO denotes the percentage of voters who cast a ballot in the November 2020 general election whose last name appears on the State's Spanish surname list.



50. In enacted 2021 District 23, bloc voting by Anglo voters will enable them to usually defeat Latino voters' preferred candidates.

51. As in 2011, the enacted Congressional plan deliberately makes District 23 more Anglo and more Republican, thereby eliminating the opportunity for minority voters to elect their preferred candidates. After Governor Abbott signed the enacted Congressional plan into law, Adam Kincaid, the executive director of the National Republican Redistricting Trust, told the *New York Times* that the "competitive Republican seats are off the board."

52. Also as in 2011, Texas made District 23 less of an electoral opportunity for minority-preferred candidates by consciously replacing many of the district's active Latino voters with low-turnout Latino citizens, in an effort to strengthen the voting power of Anglo citizens while preserving the superficial appearance of Latino control. Although the enacted 2021 Congressional plan reduces District 23's Latino CVAP by 9.3%, the plan reduces District 23's SSTO by 10.3%. The average SSTO for the precincts that Texas removed from District 23 is 59.9%, while the average SSTO for the precincts that the State added to the district is 33.8%.

53. And as in 2011, Texas again relied on split precincts when crafting the new 2021 District 23. The State nearly quadrupled the number of split precincts in the district, from four in the 2013 Congressional plan to 15 in the 2021 Congressional plan. More importantly, the borders of District 23 split precincts in a manner that removed approximately half of Latino CVAP from District 23 but removed only around one-third of Anglo CVAP from District 23. While accurate racial data is available below the precinct level, accurate political data is not, suggesting that many precinct splits have a racial basis.

54. During the redistricting process, Latino legislators advocated in both the Texas House and the Texas Senate for District 23 to remain a Latino opportunity district. Legislators

specifically warned that failure to do so would raise an inference of intentional discrimination, in light of the lengthy history of Voting Rights Act litigation in this region. One legislator even pointed out to his colleagues that the proposed configuration of District 23 combined areas with low Latino participation rates and areas with high Anglo turnout. The Texas Legislature rejected the relevant amendments.

55. Rather than intentionally eliminating a Latino opportunity district, lawmakers could have drawn District 23 as an effective Latino district. The Latino population in West Texas is sufficiently large and geographically compact to constitute a majority in an additional single-member district that would provide Latino voters with an electoral opportunity.

#### **Texas Congressional Districts in the Dallas-Fort Worth Metroplex**

56. The enacted Congressional plan intentionally discriminates against minority voters in DFW by excising rapidly changing communities from DFW-based districts and attaching them instead through a narrow strip to several heavily Anglo counties. By cracking minority communities and submerging urban minority voters among rural Anglos, the Congressional map effectively turns back a decade of rapid Latino population growth and preserves Anglo control of most remaining districts, particularly District 24.

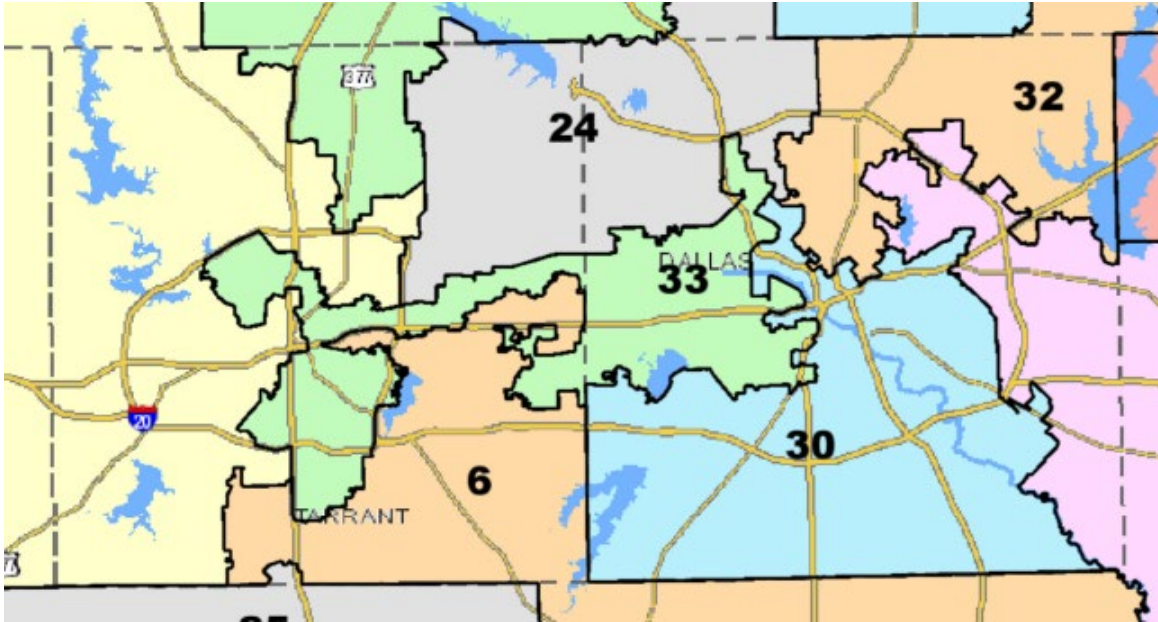
57. Between the 2010 Census and the 2020 Census, Dallas County's population increased by over 245,000 residents. The Latino population increased by 151,895, making up over 60% of that growth, such that Latinos now comprise roughly 41% of Dallas County's population and 37% of County VAP. The Black population of Dallas County increased by 53,226, consistent with the overall growth rate, such that African Americans continue to comprise 22% of Dallas County's population and VAP. At the same time, the Anglo population of Dallas County decreased by 59,706. As a result, the Anglo population share of Dallas County

decreased from 33% to 28%, and Anglo VAP share decreased from 38% to 32%.

58. Between the 2010 Census and the 2020 Census, Tarrant County's population increased by over 300,000 residents. The Latino population increased by 137,930, making up 46% of that growth, such that Latinos now comprise 29% of Tarrant County's population and 26% of County VAP. The Black population of Tarrant County increased by 105,101, making up 35% of that growth, such that African Americans now comprise 18% of Tarrant County's population and 17% of County VAP. At the same time, the Anglo population of Tarrant County decreased by 32,251. As a result, the Anglo population share of Tarrant County decreased from 52% to 43%, and Anglo VAP share decreased from 57% to 47%.

59. In the current (2013) Congressional plan, nine districts are located at least partially in Dallas or Tarrant Counties: Districts 5, 6, 12, 24, 25, 26, 30, 32, and 33. No district has a Black or Latino eligible voter majority. However, Black eligible voters make up a near-majority in District 30, located in south Dallas County, and Latino eligible voters make up a near-majority in District 33, which extends across Dallas and Tarrant Counties. Both Districts 30 and 33 in the 2013 Congressional plan provide minority voters with electoral opportunities. Districts 5, 6, 12, 24, 25, 26, and 32 are primarily Anglo. Figure 3 depicts the current Congressional Districts in DFW.



**Figure 3: DFW Current Congressional Plan (Adopted 2013)**

60. A three-judge court in Texas established the layout of current District 33 to address intentional discrimination in the 2011 Congressional plan. Following a full trial, the Court found that the State had “acted at least in part with a racially discriminatory motive in enact[ing] [the 2011] Congressional plan” with regard to the districts in DFW in particular.” *Perez*, 253 F. Supp. 3d at 962. This finding rested in part on the deliberate assignment of dense Latino neighborhoods to a “lightning bolt” extension into Tarrant County from a heavily Anglo district based in Denton County, a district where Latino voters would not have the opportunity to elect their preferred candidates. *Id.* at 934-38, 947, 953-55.

61. 2020 Census data and 2015-2019 ACS citizenship data indicate that District 30 in the 2013 Congressional plan has a Black CVAP of 49.3% (51.9% by Texas’s estimate). Latino CVAP in District 30 is also 24.4% (23.0% by Texas’s estimate). Voters in District 30 consistently have elected Representative Eddie Bernice Johnson (B) since 1992.

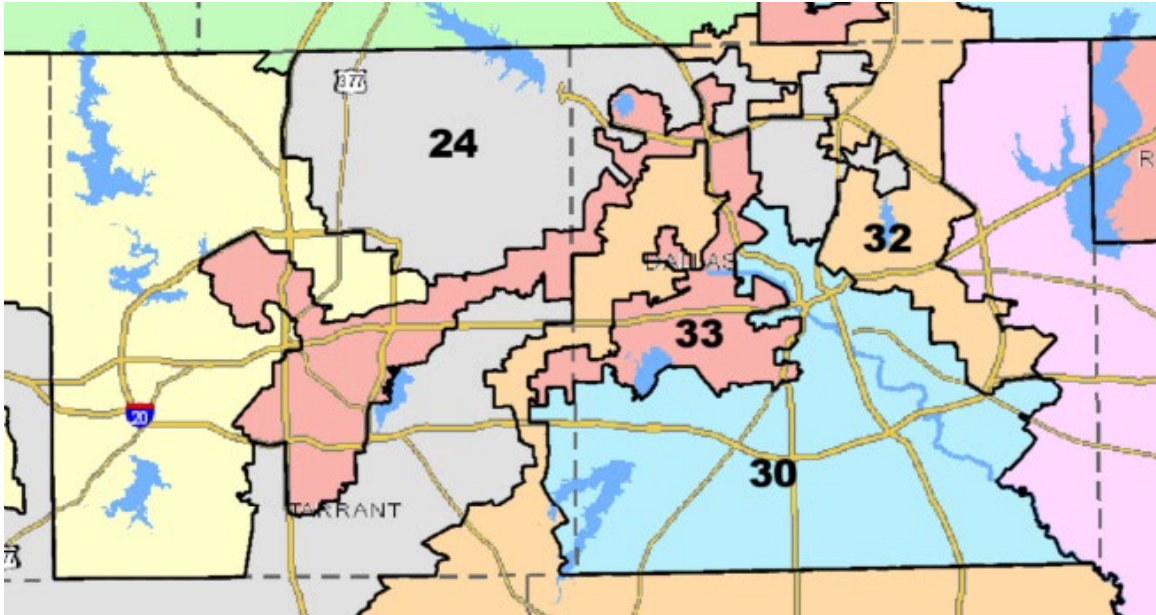
62. 2020 Census data and 2015-2019 ACS citizenship data indicate that District 33 in the 2013 Congressional plan has a Latino CVAP of 47.8% (48.0% by Texas’s estimate). Black

CVAP in District 33 is also 24.2% (23.8% by Texas’s estimate). In 2020, SSVR in this district was 41.5%, and SSTO was 38.9%. District 33 voters have elected Marc Veasey (B) across the last decade.

63. Districts 5, 6, 12, 24, 25, 26, and 32—the Anglo-controlled districts—in the 2013 Congressional plan have Latino CVAP concentrations of 17.6%, 18.3%, 16.8%, 16.2%, 15.5%, 14.5%, and 16.3%, respectively (15.8%, 16.8%, 16.0%, 15.7%, 14.8%, 13.3% and 15.4% by Texas’s estimate). Black CVAP concentrations in those districts are 16.4%, 22.0%, 10.3%, 13.6%, 7.2%, 9.6%, and 14.2%, respectively (16.5%, 20.9%, 8.9%, 12.8%, 7.2%, 8.5%, and 13.5% by Texas’s estimate). In 2020, voters in these districts elected Representatives Lance Gooden (A), J.K. “Jake” Ellzey (A), Kay Granger (A), Beth Van Duyne (A), Roger Williams (A), Michael Burgess (A), and Colin Allred (B).

64. District 24, a suburban district straddling Dallas, Denton, and Tarrant Counties, saw a particularly close election in 2020 between an Anglo candidate, Beth Van Duyne, and a Black-Latina candidate, Candace Valenzuela. Though the district had reliably elected Anglo candidates over the last decade, the 2020 race was hotly contested and deemed a toss-up in the days leading up to the election. Ultimately, Van Duyne defeated Valenzuela but only by a razor-thin margin—less than two percentage points.

65. The enacted 2021 Congressional plan reconfigures the districts based in DFW, using configurations similar to the “lightning bolt” found to be intentionally discriminatory in the 2011 Congressional plan. Figure 2 depicts the enacted 2021 Congressional plan for DFW. (The unnumbered orange district is District 6.)

**Figure 4: DFW Enacted Congressional Plan (Adopted 2021)**

66. In the enacted 2021 Congressional Plan, Districts 30 and 33—the two minority opportunity districts—have Black CVAP concentrations of 46.7% and 26.8%, respectively (49.0% and 27.1% by Texas’s estimate). These districts also have Latino CVAP concentrations of 21.9% and 41.2%, respectively (20.4% and 41.7% by Texas’s estimate).

67. In the enacted 2021 Congressional Plan, Districts 5, 6, 12, 24, 25, 26, and 32—the Anglo-controlled districts—have Latino CVAP concentrations of 18.4%, 21.9%, 17.6%, 12.5%, 15.4%, 13.4%, and 21.0%, respectively (16.5%, 20.8%, 16.5%, 11.7%, 14.3%, 12.5%, and 20.2%, by Texas’s estimate). Black CVAP concentrations in those districts are 14.7%, 15.3%, 11.7%, 7.0%, 11.7%, 9.4%, and 22.3%, respectively (14.1%, 14.6%, 10.5%, 6.0%, 11.1%, 8.3%, and 22.5%, by Texas’s estimate). Table 2 sets out the demographic changes in DFW Congressional districts in full.

**Table 2: DFW Congressional District Comparison**

<b>District</b>	<b>Latino CVAP</b>		<b>Black CVAP</b>	
	2013 Plan	2021 Plan	2013 Plan	2021 Plan
<b>5</b>	17.6	18.4	16.4	14.7
<b>6</b>	16.8	20.8	20.9	14.6
<b>12</b>	16.0	16.5	8.9	10.5
<b>24</b>	15.7	11.7	12.8	6.0
<b>25</b>	14.8	14.3	7.2	11.1
<b>26</b>	14.5	13.4	9.6	9.4
<b>30</b>	23.0	20.4	51.9	49.0
<b>32</b>	15.4	20.2	13.5	22.5
<b>33</b>	48.0	41.7	23.8	27.1

68. Among numerous changes in DFW, the enacted 2021 Congressional plan reduces the presence of District 24 in northwest Dallas County, moving the district out of most of the City of Irving. This is notable because the incumbent, Beth Van Duyne, is a former Mayor of Irving. However, Irving changed dramatically between the 2010 Census and the 2020 Census, shifting from majority Anglo in 2010 to barely one-fifth Anglo in 2020. Thus, removing most of Irving removed a substantial minority community from District 24, a community that had threatened the electoral prospects of the Anglo incumbent.

69. Only 19 precincts in current District 24, under the 2013 Congressional Plan, have a Latino CVAP concentration over 40%. The enacted 2021 Congressional plan removes all but two of these precincts from District 24. As a result, the district's Latino CVAP decreased by approximately 23%. Moreover, the two precincts left in District 24 in the 2021 Congressional plan with substantial Latino CVAP have near-zero Latino electoral participation.

70. For District 24 to lose most of Irving, neighboring District 33 had to move north. However, simply moving the border of District 33 north would have left the district with substantial excess population. Therefore, the enacted 2021 Congressional plan inserts an extension of District 6 into the middle of the Dallas portion of District 33 to take in that excess

population.

71. The District 6 appendage resembles a seahorse in Dallas County, and it incorporates several diverse neighborhoods. Much of the seahorse configuration overlaps with current House District 105, which elected Anglos in 2012, 2014, and 2016, before electing Representative Thresa “Terry” Meza (L) in 2018 and 2020. This shift is particularly notable, given that a three-judge court in Texas found that House District 105 had originally been drawn based on race in 2011 to dilute Latino voting strength by maximizing the Anglo population of the district. *See Perez*, 250 F. Supp. 3d at 169-71. The remainder of District 6 in the enacted 2021 Congressional plan includes seven rural majority-Anglo counties outside of Dallas County and Tarrant County. Nonetheless, due in part to the addition of this appendage, the enacted 2021 Congressional plan increases the Latino CVAP share of District 6 by roughly 20%.

72. The enacted 2021 Congressional plan maintains Districts 30 and 33 as minority opportunity districts but deliberately prevents minority voters from impacting elections in District 24.

73. Latino voters in DFW, including Latino voters in enacted 2021 Congressional District 24, are cohesive in the most relevant elections.

74. Black voters in DFW, including Black voters in enacted 2021 Congressional District 24, are cohesive in the most relevant elections.

75. In enacted 2021 Congressional District 24, bloc voting by Anglo voters will enable them usually to defeat Latino and Black voters’ preferred candidates.

#### **Texas Congressional Districts in Harris County**

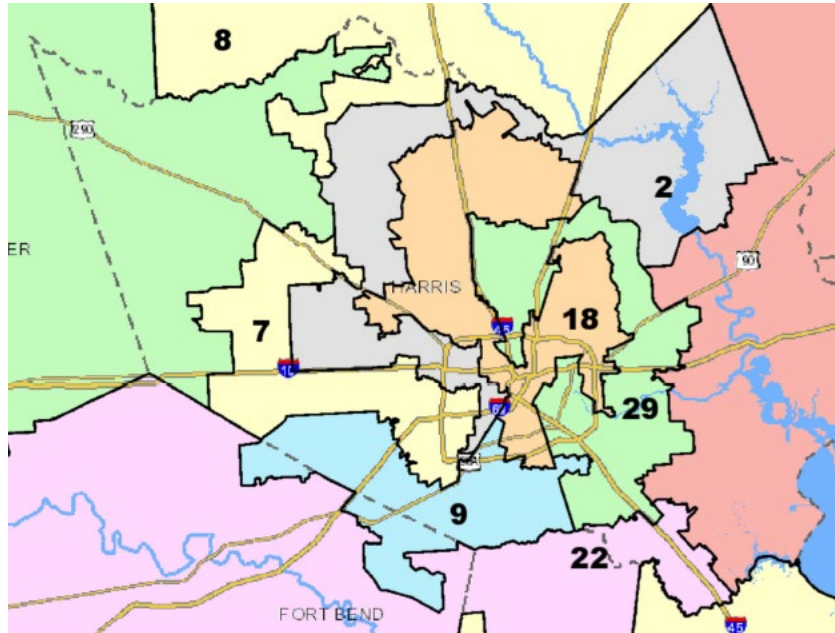
76. The enacted 2021 Congressional plan situates one of the two new Texas Congressional districts in Harris County, in and around Houston, due to massive population

growth in the area. Most of that population growth occurred within the Latino community, but Texas crafted the new 38th Congressional district to give Harris County's shrinking Anglo population control of yet another Congressional seat. Creating an additional Anglo seat dilutes Latino voting strength in Harris County, particularly because the population growth occurred primarily in the Latino community.

77. Between the 2010 Census and the 2020 Census, Harris County's population increased by nearly 640,000. The Latino population increased by 363,169, making up the majority of that growth, such that Latinos now comprise 43% of Harris County's population and 40% of County VAP. At the same time, the Anglo population of Harris County decreased by 40,053. As a result, Anglo population share decreased from 33% to 28%, and Anglo VAP share decreased from 37% to 31%.

78. In the current 2013 Congressional plan, nine districts are located at least partially in Harris County: Districts 2, 7, 8, 9, 10, 18, 22, 29, and 36. District 29, in eastern greater Houston, is the only one in which a majority of eligible voters are Latino, and this district provides Latino voters with an opportunity to elect their preferred representatives. District 9, in southwestern greater Houston, and District 18, in central Houston and the surrounding areas, provide Black voters with electoral opportunities. Districts 2, 7, 8, 10, 22, and 36 are primarily Anglo. Figure 5 depicts the current congressional districts in Harris County. (The unnumbered green district is District 10, and the unnumbered red district is District 36.)



**Figure 5: Current Harris County Congressional Districts (Adopted 2013)**

79. 2020 Census data and 2015-2019 ACS citizenship data indicate that District 29 in the 2013 Congressional plan 2013 has a Latino CVAP majority of 64.4% (65.1% by Texas's estimate) and provides Latino voters with electoral opportunity. In 2020, SSVR in this district was 58.8%, and SSTO was 55.8%. District 29 voters elected Representative Sylvia Garcia (L) by wide margins over her general election opponents in 2018 and 2020. Voters in this district had elected Representative Gene Green (A) for over two decades, until his decision not to run for reelection in 2018.

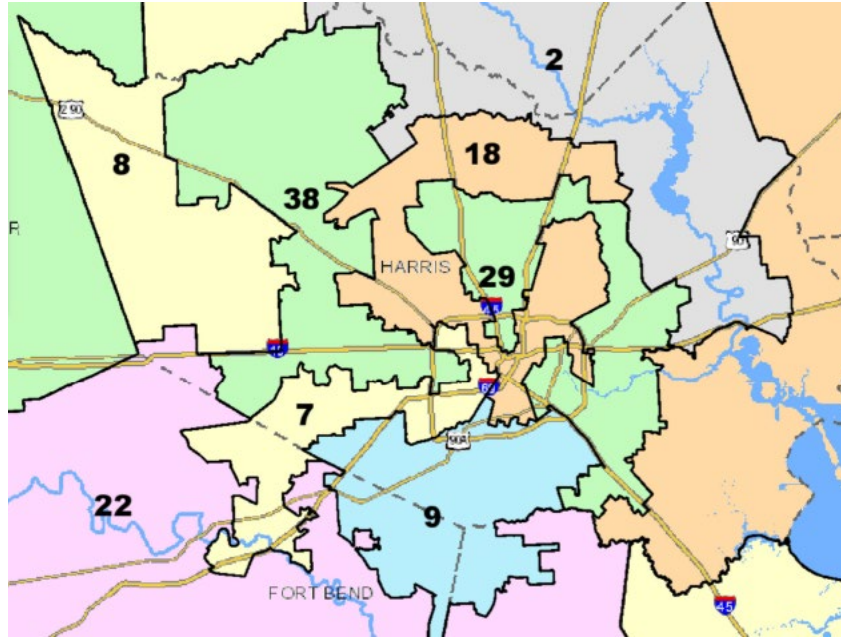
80. Districts 9 and 18—the two Black opportunity districts—in the 2013 Congressional plan have Latino CVAP concentrations of 27% and 28.3%, respectively (25.8% and 27.6% by Texas's estimate). 2020 SSVR in these districts was 19.5% and 21.2%, and 2020 SSTO was 18.1% and 19.6%, respectively. Districts 9 and 18 also have Black CVAP concentrations of 45.3% and 42.9%, respectively (46.6% and 44.0% by Texas's estimate).

Voters in District 18 have elected Representative Sheila Jackson Lee (B) for over 25 years, and voters in District 9 have elected Representative Al Green (B) for the past 16 years.

81. Districts 2, 7, 8, 10, 22, and 36—the Anglo-controlled districts—in the 2013 Congressional plan have Latino CVAP concentrations of 24%, 22.6%, 16.3%, 21.0%, 21.4%, and 19.6%, respectively (22.2%, 21.2%, 14.3%, 19.2%, 21.2%, and 18.1%, by Texas’s estimate). In 2020, SSVR in these districts was 17.4%, 15.5%, 10.8%, 14.5%, 16.2%, and 13.8%, and SSTO was 15.7%, 13.9%, 9.1%, 13.0%, 14.4%, and 11.8%, respectively. In 2020, voters in these districts elected Representatives Dan Crenshaw (A), Lizzie Fletcher (A), Kevin Brady (A), Michael McCaul (A), Troy Nehls (A), and Brian Babin (A).

82. The enacted 2021 Congressional plan creates a new District 38 in outlying northern and western Harris County, areas in which a majority of eligible voters are Anglo, while maintaining Anglo eligible voter majorities in Districts 2 and 8 and preserving substantial Anglo pluralities in Districts 7, 22, and 36. Figure 6 depicts the enacted 2021 Congressional District plan for Harris County. (The unnumbered orange district is District 36.)



**Figure 6: Enacted Harris County Congressional Districts (Adopted 2021)**

83. The enacted 2021 Congressional plan prevents the emergence of a second Latino opportunity district by establishing roughly 18% to 21% Latino CVAP concentrations in each Anglo-controlled district, often by combining portions of Harris County with other more heavily Anglo counties. The enacted Congressional plan also maintains roughly 25% to 28% Latino CVAP concentrations in the two Black opportunity districts, while also packing District 29 by adding Latino population to a district that already allowed Latino voters to elect their preferred candidates to Congress.

84. In the enacted 2021 Congressional plan, 2020 Census data and 2015-2019 ACS citizenship data indicate that the new Congressional district, District 38, has a Latino CVAP concentration of 18.9% (17.7% by Texas's estimate). 2020 SSVR and SSTO in the district were 13.2% and 12.1%, respectively.

85. In the enacted 2021 Congressional plan, Districts 2, 7, 8, 22, and 36—the existing Anglo-controlled districts—have Latino CVAP concentrations of 21.7%, 20.8%, 22.4%, 23.1%,

and 22.0%, respectively (19.2%, 19.8, 20.7%, 23.2%, and 20.7% by Texas’s estimate). In 2020, SSVR in these districts was 14.8%, 14.3%, 16.0%, 17.1%, and 16.2%, and SSTO was 13.3%, 13.1%, 14.1%, 14.5%, and 14.2%, respectively. District 10 in the enacted plan no longer enters Harris County.

86. In the enacted 2021 Congressional Plan, Districts 9 and 18—the two Black opportunity districts—have Latino CVAP concentrations of 25.8% and 28.5% respectively (24.4% and 27.9% by Texas’s estimate). 2020 SSVR in these districts was 19.0% and 21.5%, and 2020 SSTO was 17.1% and 19.9%, respectively. Districts 9 and 18 also have Black CVAP concentrations of 45.4% and 40.3%, respectively (46.8% and 40.9% by Texas’s estimate).

87. In the enacted 2021 Congressional Plan, District 29 has a Latino CVAP concentration of 62.0% (62.2% by Texas’s estimate). 2020 SSVR in this district was 56.2%, and 2020 SSTO was 53.1%. Table 3 sets out the Latino demographic changes in Harris County Congressional districts.

**Table 3: Harris County Congressional District Comparison**

District	Latino CVAP		SSVR	
	2013 Plan	2021 Plan	2013 Plan	2021 Plan
<b>2</b>	22.2	19.2	17.4	14.8
<b>7</b>	21.2	19.8	15.5	14.3
<b>8</b>	14.3	20.7	10.8	16.0
<b>9</b>	25.8	24.4	19.5	19.0
<b>10</b>	21.0	n/a	14.5	n/a
<b>18</b>	27.6	27.9	21.2	21.5
<b>22</b>	21.4	23.1	16.2	17.1
<b>29</b>	65.1	62.2	58.8	56.2
<b>36</b>	19.6	22.0	13.8	16.2
<b>38</b>		17.7		13.2

88. Enacted District 38 does not provide an opportunity for Latino voters to elect representatives of their choice.

89. The creation of another Latino electoral opportunity Congressional district in Harris County was discussed during the legislative redistricting process. Indeed, minority legislators introduced alternative plans with the stated goal of creating a new Latino opportunity district in Harris County, without undermining minority electoral opportunities elsewhere in the Houston area. The Texas House and the Texas Senate declined to adopt these amendments.

90. Senator Huffman, the Chair of the Senate Special Committee on Redistricting, publicly stated that, after discussion with the Office of the Texas Attorney General, “we saw no strong basis in evidence that a new minority opportunity district should be drawn in the new maps.” However, she did not provide the relevant analysis to other members of the Senate.

91. The Latino community in Harris County is sufficiently large and geographically compact to constitute a majority in a second single-member district that would provide Latino voters with an electoral opportunity, without undermining existing opportunity districts. Specifically, a second Latino opportunity district can be crafted in southeastern Harris County, composed of parts of current Districts 2, 29, and 36.

92. In the past decade, multiple courts have found that voting is racially polarized in Harris County. *See, e.g. Rodriguez v. Harris Cnty.*, 964 F. Supp. 2d 686, 754-75 (S.D. Tex. 2013).

93. Latino voters in Harris County, including Latino voters in enacted District 38, are cohesive in the most relevant elections.

94. In enacted 2021 District 38, bloc voting by Anglo voters will enable them usually to defeat Latino voters’ preferred candidates.

## **2021 Texas House Redistricting Process**

95. Following Texas House tradition, House Redistricting Committee Chair Hunter solicited proposed maps from members, beginning on September 9, 2021. This included both requests for individual proposed districts and requests for “consent plans,” on which all members of a county delegation had agreed, to be dropped into a statewide proposal. By tradition, the Texas House typically defers to consent redistricting plans submitted by a complete county delegation.

96. Chair Hunter unveiled a statewide proposed House plan on September 30, 2021.

97. The House Redistricting Committee held its sole hearing on the House plan on October 4, 2021. When laying out his proposal, Chair Hunter repeatedly asserted that the Committee should rely on minority VAP, rather than CVAP, which he claimed “leave[s] out important information.” This ignored decades of Voting Rights Act precedent.

98. During the October 4 hearing, Chair Hunter also acknowledged that he had hired Adam Foltz, a Wisconsin-based redistricting operative, to draw maps and placed him on the payroll of the nonpartisan Texas Legislative Council, rather than on the House Redistricting Committee. This effectively hid Foltz’s role from other members of the Redistricting Committee until the *Texas Tribune* published a story on September 29.

99. The House Redistricting Committee adopted only two substantial changes to the statewide House proposal, neither of which improved electoral opportunities for minority voters.

100. Consideration of the House redistricting plan on the Texas House floor began on October 12 and concluded with a final vote after 3 a.m. on October 13. Overall, less than two weeks passed between introduction of the statewide proposal and the final substantive consideration.

101. During floor debate, the House rejected numerous amendments proposed by minority members to increase minority voters' electoral opportunities and influence. On the other hand, floor amendments substantially altered several majority-minority districts, against the wishes of most members of the local delegations.

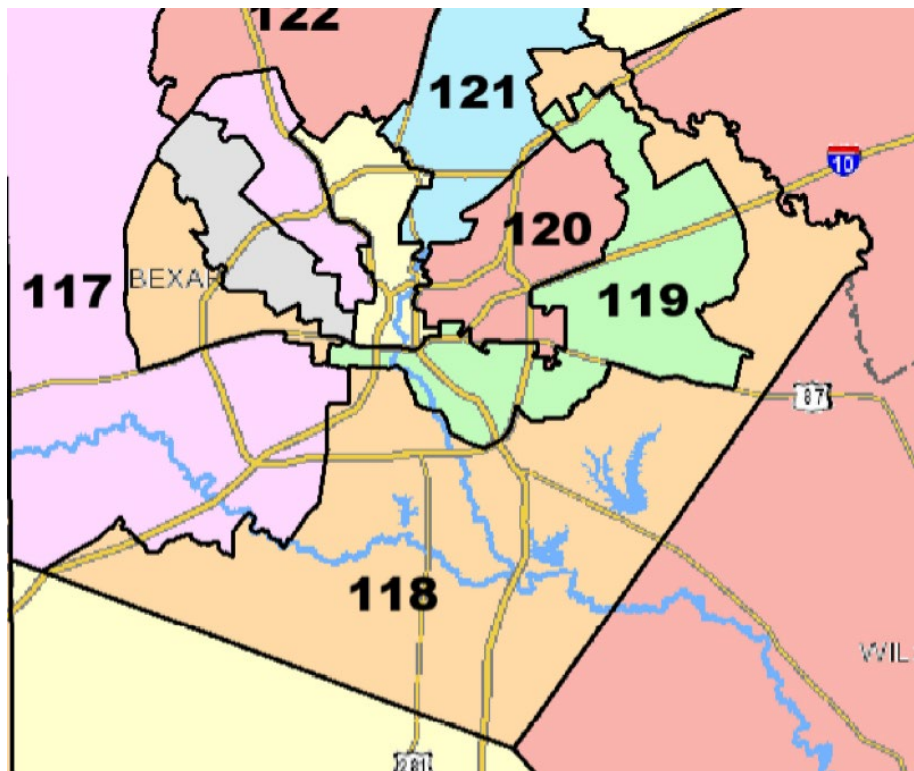
102. Of particular note, Representative Jacey Jetton of Fort Bend County carried an amendment to districts in Bexar County, although during debate he was unable to provide substantive details regarding the proposal. The Bexar County delegation had agreed to a consent redistricting plan for Bexar County, and the Jetton Amendment substantially altered that plan. The House approved the Amendment over the objection of most of the Bexar County delegation and established the final configuration of District 118.

103. The Texas Senate passed the Texas House plan without amendment, and the Texas Legislature sent House Bill 1, the 2021 House Plan, to Governor Abbott on October 18, 2021. Governor Abbott signed House Bill 1 into law on October 25, 2021.

#### **Texas House District 118 (Bexar County)**

104. The enacted House plan eliminates Latino voters' opportunity to elect representatives of their choice in District 118, a Bexar County district in and around the City of San Antonio. The enacted plan substantially reduces Latino population share to the point that the district no longer has a majority 2020 SSVR or SSTO, thereby enabling Anglo voters to defeat Latino voters' preferred candidates, even in high turnout general elections.

105. In the current (2013) House plan, District 118 includes dense neighborhoods within Loop 410, southern San Antonio, outlying communities in southern Bexar County, and a small portion of eastern and northeastern Bexar County, including Randolph Air Force Base. Figure 7 depicts current House District 118.

**Figure 7: Current House District 118 (Adopted 2013)**

106. 2020 Census data and 2015-2019 ACS citizenship data indicate that the 2013 version of District 118 has a Latino CVAP concentration of 68.1% (68.2% by Texas’s estimate). In 2020, SSVR in District 118 was 59.5%, and SСТО was 55.7%.

107. District 118 consistently elected Latino Democrats in regular elections through the past decade. In the 2020 general election, voters in District 118 reelected Representative Leo Pacheco with 56.8% of the 58,558 votes cast. However, in August 2021, Representative Pacheco resigned to take a full-time college teaching position.

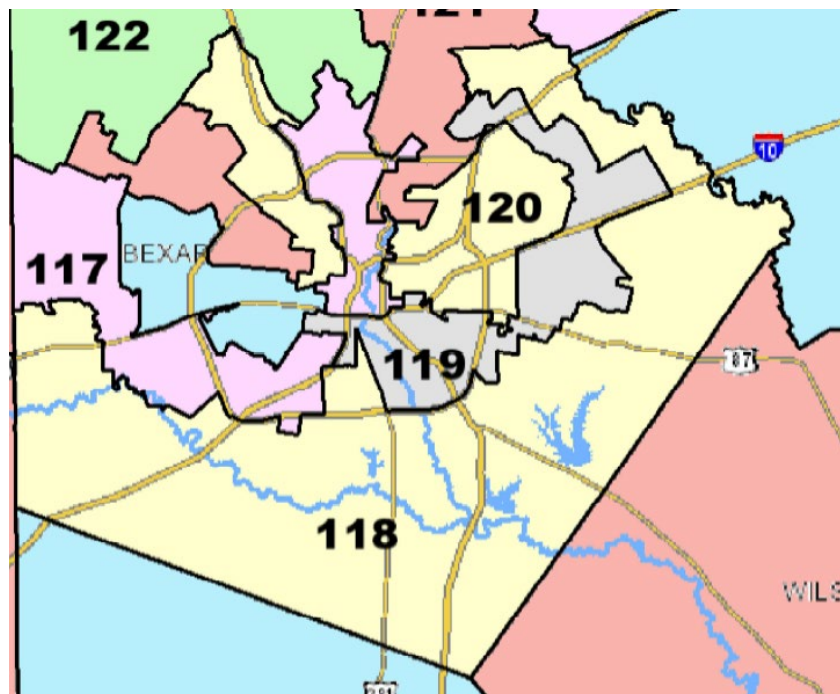
108. In low turnout special elections in 2016 and 2021, voters in District 118 elected a Latino Republican, John Lujan, who was not the Latino candidate of choice. In January 2016, Lujan won a special election with 52.4% of only 3,589 votes cast, and his same Democratic opponent defeated him in the 2016 general election. Lujan won again in a November 2021

special election, this time with 51.2% of the 11,569 votes cast, and he currently represents the district.

109. The House Redistricting Committee plan in 2021 left District 118 largely intact, reflecting the agreed-upon plan of the Bexar County delegation. However, Representative Jetton of Fort Bend County offered an amendment on the House floor that reconfigured District 118. Despite the objection of most members of the Bexar County delegation, the House adopted the Jetton Amendment, which established the final configuration of District 118.

110. In the enacted 2021 House plan, District 118 loses much of its territory inside Loop 410, including nearly all of the dense Latino neighborhoods north of SW Military Drive. To replace this lost population, the enacted plan adds large portions of southwest Bexar County and increases the portion of the district on the eastern and northeastern boundary of Bexar County, particularly around Randolph Air Force Base. Figure 8 depicts enacted House District 118.

**Figure 8: Enacted House District 118 (Adopted 2021)**





111. 2020 Census data and 2015-2019 ACS citizenship data indicate that enacted 2021 District 118 has a Latino CVAP concentration of 57.5%, a reduction of 10.6 percentage points from the current plan. Texas's estimate indicates that District 118 in the enacted 2021 House plan has a Latino CVAP concentration of 56.4%, a reduction of 11.8 percentage points from the current plan. In 2020, SSVR in enacted 2021 District 118 was 47.6%, and SSTO was 43.9%. Thus, the enacted 2021 House plan reduces SSVR in District 118 by 11.9 percentage points and reduces SSTO in District 118 by 11.8 percentage points, eliminating the Latino voting majority. Table 4 sets out these changes in full.

**Table 4: House District 118 Comparison**

Latino CVAP		SSVR		SSTO	
2013 Plan	2021 Plan	2013 Plan	2021 Plan	2013 Plan	2021 Plan
68.1	57.5	59.5	47.6	55.7	43.9

112. Enacted 2021 District 118 no longer provides an opportunity for Latino voters to elect representatives of their choice.

113. The elimination of a Latino electoral opportunity in the 2021 version of District 118 was easily avoidable. The House Redistricting Committee's statewide map preserved the Latino electoral opportunity in District 118, without undermining minority electoral opportunities elsewhere in Bexar County.

114. District 118 in the statewide plan passed by the Texas House Redistricting Committee (H2176) can serve as an illustrative district demonstrating that the Latino community in southern Bexar County is sufficiently large and geographically compact to constitute a majority in an additional single-member district that would provide Latino voters with an electoral opportunity.



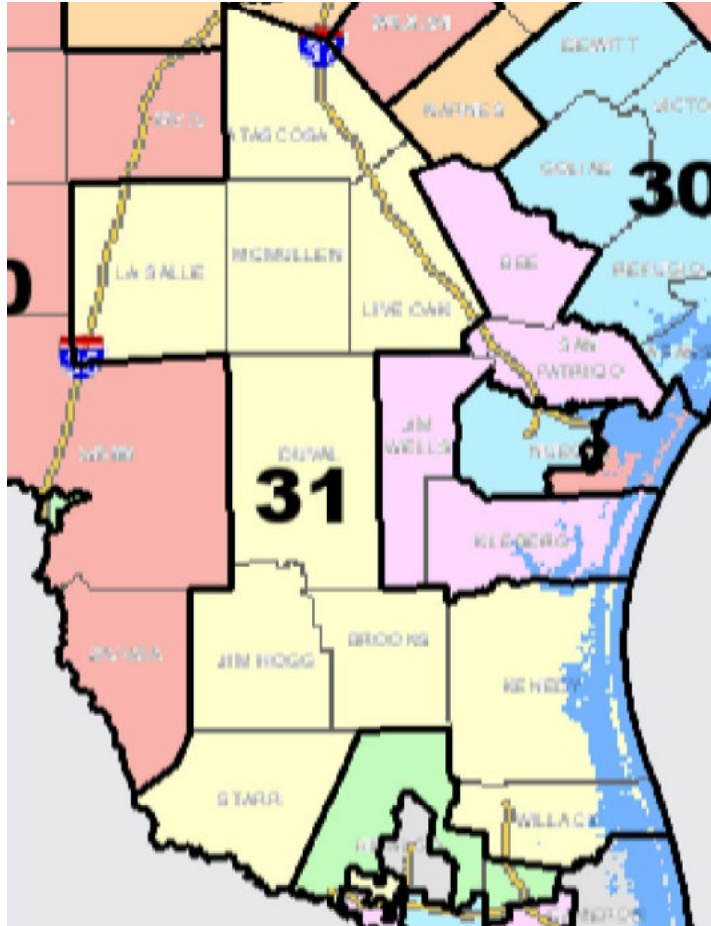
115. Latino voters in District 118 under both the current 2013 House plan and the enacted 2021 House plan are cohesive in the most relevant elections in the last decade.

116. In District 118 under the enacted 2021 House plan, bloc voting by Anglo voters will enable them usually to defeat Latino voters' preferred candidates.

**Texas House District 31 (South Texas)**

117. The enacted 2021 House plan also eliminates Latino voters' opportunity to elect representatives of their choice in District 31, a South Texas district stretching from the Rio Grande to the San Antonio region. The enacted 2021 plan substantially reduces Latino population share and takes advantage of extreme Anglo bloc voting to overwhelm the working-class Latino electorate. Although Latino voters in District 31 reelected their preferred candidate by a comfortable margin in 2020, the incumbent switched parties shortly after Governor Abbott signed the House plan into law.

118. In the current 2013 House plan, District 31 encompasses ten sparsely populated South Texas counties. Figure 9 depicts current House District 31.

**Figure 9: Current House District 31 (Adopted 2013)**

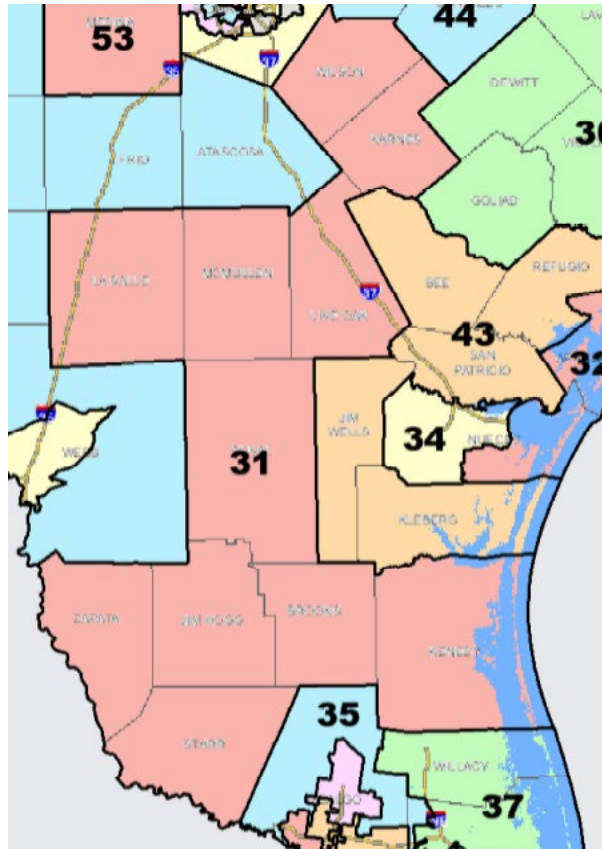
119. 2020 Census data and 2015-2019 ACS citizenship data indicate that District 31 in the 2013 House plan has a Latino CVAP concentration of 75.4% (77.2% by Texas's estimate). In 2020, SSVR in District 31 was 74.1%, and SSTO was 68.7%.

120. Representative Ryan Guillen has represented House District 31 since 2003. In the 2020 general election, voters in District 31 reelected Guillen with over 58% of the vote.

121. Representative Guillen served on the House Redistricting Committee, but he did not appear to have had significant input into the composition of his district. District 31 did not change from the statewide initial proposal to the final enacted plan.

122. In the enacted 2021 House plan, District 31 includes 11 counties, extending further north than in the current configuration. Figure 10 depicts enacted 2021 House District 31.

**Figure 10: Enacted House District 31 (Adopted 2021)**



123. 2020 Census data and 2015-2019 ACS citizenship data indicate that enacted 2021 District 31 has a Latino CVAP concentration of 64.5%, a reduction of 10.9 percentage points from the current plan. Texas's estimate indicates that 2021 District 31 has a Latino CVAP concentration of 66.6%, a reduction of 10.6 percentage points from the current plan. In 2020, SSVR in enacted 2021 District 31 was 63.9%, and SSTO was 56.3%. Thus, the enacted 2021 House plan reduces SSVR in District 31 by 10.2 percentage points and reduces SSTO in District 31 by 12.4 percentage points. Table 5 sets out these changes in full.

**Table 5: House District 31 Comparison**

<b>Latino CVAP</b>		<b>SSVR</b>		<b>SSTO</b>	
2013 Plan	2021 Plan	2013 Plan	2021 Plan	2013 Plan	2021 Plan
75.4	64.5	74.1	63.9	68.7	56.3

124. Enacted 2021 District 31 no longer provides an opportunity for Latino voters to elect representatives of their choice.

125. Soon after passage of the 2021 House plan, political observers identified the district as substantially less favorable to Representative Guillen. Although voters in District 31 had elected Guillen as a Democrat for nearly two decades, less than a month after enactment of the 2021 House plan, Guillen switched parties from Democratic to Republican.

126. The elimination of a Latino electoral opportunity in the 2021 version of District 31 was easily avoidable. For example, by moving Jim Wells County and Kleberg County from District 43 to District 31 and moving Wilson County and Karnes County from District 31 to District 43, it would be possible to reduce overall population deviations in the two districts, improve compactness, and restore Latino voting strength in District 31.

127. An illustrative district composed of the following eleven whole counties would establish that the Latino community in South Texas is sufficiently large and geographically compact to constitute a majority in an additional single-member district that would provide Latino voters with an electoral opportunity: Brooks, Duval, Kenedy, Jim Hogg, Jim Wells, Kleberg, La Salle, Live Oak, McMullen, Starr, and Zapata.

128. Latino voters in District 31 are cohesive in the most relevant elections, including elections for House District 31.

129. In District 31 under the enacted 2021 House plan, extreme bloc voting by Anglo voters will enable them usually to defeat Latino voters' preferred candidates, despite Latino voters making up a majority of the electorate.

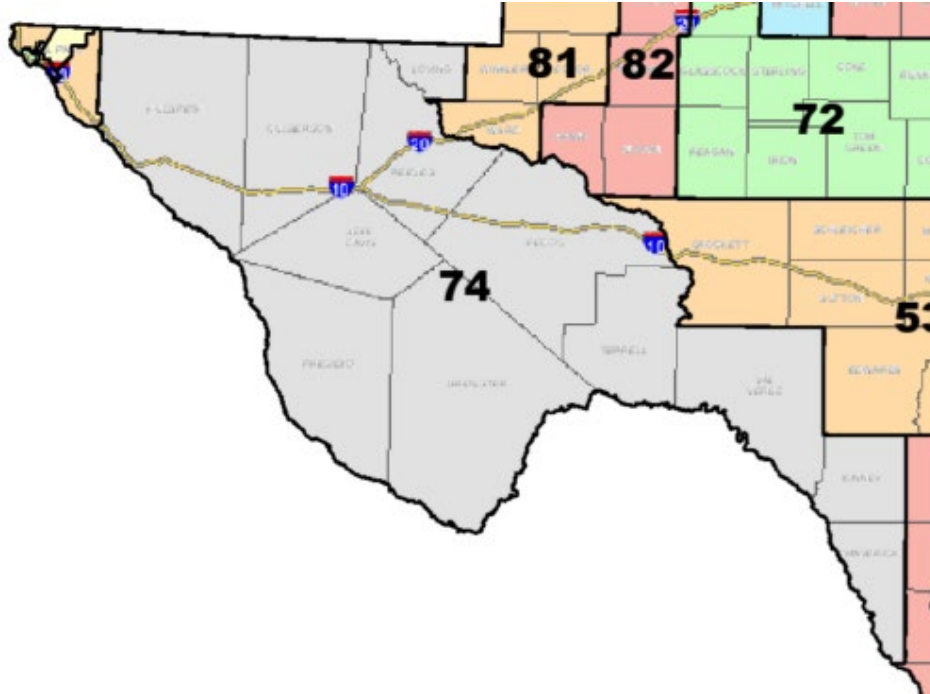
130. Latino voters in South Texas bear the effects of discrimination to an even greater degree than do minority voters in some other parts of the State, which hinders their ability to participate effectively in the political process despite population majorities. For example, the estimated average per capita income for Latino residents of Starr County—the most populous border county in District 31—is only \$14,126, according to 2015-2019 ACS data. In Wilson County, a majority-Anglo County added to District 31 by the enacted House plan, the estimated average per capita income for Anglo residents is \$37,788, according to the same data.

#### **Texas House Districts in El Paso and West Texas**

131. The enacted 2021 House plan entirely removes District 76 from El Paso County, eliminating an effective Latino opportunity district and pairing two Latina incumbents. This allowed the House plan to substantially overpopulate heavily Latino districts in El Paso County and West Texas and substantially underpopulate heavily Anglo districts in West Texas and the Panhandle, protecting Anglo voting strength and Anglo incumbents in a slow-growth region.

132. Under the current 2013 House plan, El Paso County and West Texas are divided into six heavily Latino districts.

133. Under the current 2013 House plan, five districts are contained entirely within El Paso County (Districts 75, 76, 77, 78, and 79), and a sixth, District 74, is spread across twelve counties. Figure 11 depicts the current 2013 House districts in El Paso County and West Texas.

**Figure 11: Current El Paso and West Texas House Districts (Adopted 2013)**

134. 2020 Census data and 2015-2019 ACS citizenship data indicate that Districts 74, 75, 76, 77, 78, and 79 in the 2013 House plan have Latino CVAP concentrations of 74.5%, 87.7%, 86.7%, 74.3%, 66.5%, and 78.5%, respectively (74.5%, 89.4%, 85.8%, 73.3%, 65.4%, and 79.2% by Texas’s estimate). In 2020, SSVR in these districts was 67.7%, 76.6%, 79.7%, 62.4%, 53.2%, and 69.5%, and 2020 SSTO was 62.9%, 75.9%, 80.1%, 60.7%, 52.7%, and 70.6%.

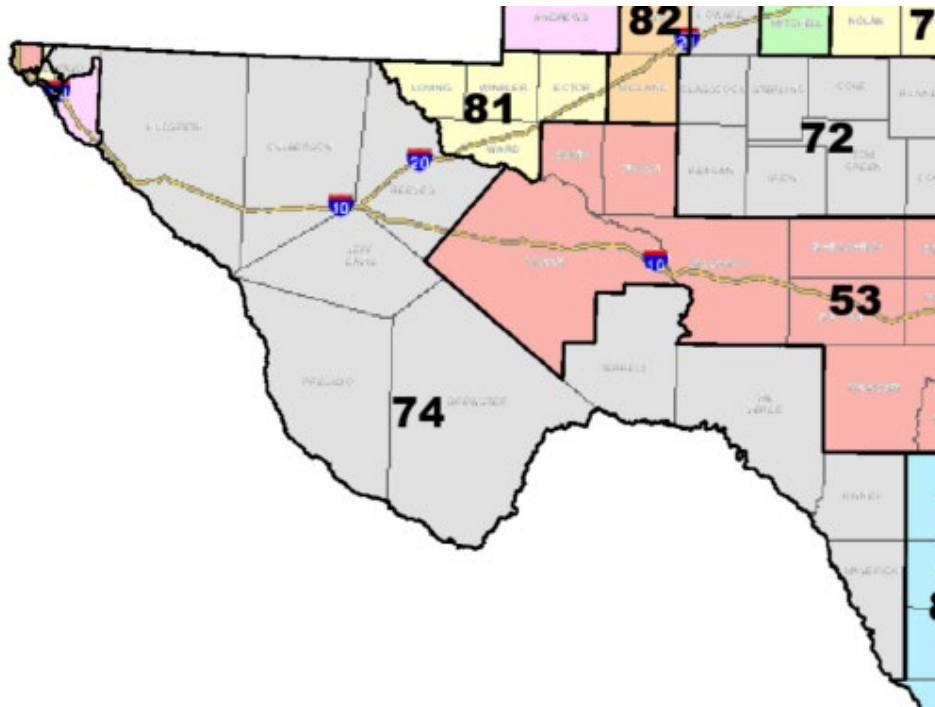
135. In 2020, voters in these districts elected Eddie Morales (L), Mary González (L), Claudia Ordaz Perez (L), Evelina “Lina” Ortega (L), Joe Moody (L), and Art Fierro (L).

136. Few elections for the Texas House have been contested in these districts.

137. In the current 2013 House plan, each of these districts provided Latino voters with the opportunity to elect their preferred representatives to the Texas House.

138. In the enacted 2021 House plan, Districts 74, 75, 77, 78, and 79 include a portion of El Paso County. District 76 has been removed entirely from the region. Figure 12 depicts the enacted 2021 House districts in El Paso County and West Texas.

**Figure 12: Enacted El Paso and West Texas House Districts (Adopted 2021)**



139. In the enacted 2021 House plan, the five remaining districts in El Paso and West Texas are uniformly overpopulated, by an average of 4.25% above the ideal population. District 77 is overpopulated by 4.95% above the ideal, and District 78 is overpopulated by 4.88% above the ideal.

140. Because the enacted 2021 House Plan overpopulated the El Paso and West Texas districts, it is possible to uniformly underpopulate heavily Anglo districts in West Texas and the Panhandle. Specifically, Districts 69, 71, 72, 82, 83, 84, 86, 87, and 88 are underpopulated by an average of 3.75% below the ideal population. District 69 is underpopulated by 4.52% below the

ideal, and District 86 is underpopulated by 4.63% below the ideal. Both are less than 25% Latino CVAP.

141. By removing District 76 from El Paso County, the enacted 2021 House plan pairs Representative Claudia Ordaz Perez of District 76 and Representative Lina Ortega of District 77.

142. By moving District 74 into El Paso County, the enacted 2021 House plan pairs sizeable Latino communities in El Paso and Eagle Pass, which are nearly 500 miles apart.

143. In the enacted 2021 House plan, 2020 Census data and 2015-2019 ACS citizenship data indicate that Districts 74, 75, 77, 78, and 79 have Latino CVAP concentrations of 75.6%, 87.9%, 86.0%, 67.4%, and 76.6%, respectively (77.4%, 89.8%, 85.6%, 66.4%, and 75.1% by Texas's estimate). In 2020, SSVR in these districts was 68.2%, 76.9%, 76.6%, 53.9%, and 67.4%, and 2020 SSTO was 65.2%, 76.0%, 75.9%, 52.8%, and 69.0%, respectively. Table 6 sets out those changes in full.

**Table 6: El Paso and West Texas House District Comparison**

District	Latino CVAP		SSVR	
	2013 Plan	2021 Plan	2013 Plan	2021 Plan
<b>74</b>	74.5	75.6	67.7	68.2
<b>75</b>	87.7	87.9	76.6	76.9
<b>76</b>	86.7	n/a	79.7	n/a
<b>77</b>	74.3	86.0	62.4	76.6
<b>78</b>	66.5	67.4	53.2	53.9
<b>79</b>	78.5	76.6	69.5	67.4

144. Latino voters in El Paso and West Texas are cohesive in the most relevant elections in the past decade.

145. Latino voters in this region outside of Districts 74, 75, 77, 78, and 79 in the enacted 2021 House plan—most notably in Districts 53 and 81—will not be able to elect their preferred candidates due to Anglo bloc voting.



146. The elimination of District 76 as a Latino electoral opportunity district in the enacted 2021 House plan could have been avoided. The Latino community in El Paso and West Texas is sufficiently large and geographically compact to allow for six districts with Latino CVAP majorities that would provide an electoral opportunity to Latino voters. In one such configuration, District 75 would include a portion of El Paso County and areas to the east, whereas District 74 would extend farther north from the border, while still maintaining an adequate Latino population share to provide an electoral opportunity.

**Additional Facts Relevant to Inquiry into Discriminatory Purpose and Totality of Circumstances**

147. Texas has a long history of official discrimination touching on the right to vote. Beyond redistricting, as described in Paragraphs 19-21, *supra*, federal intervention has been necessary to eliminate numerous other procedures or devices intentionally used to restrict minority voting in Texas. *See, e.g., White*, 412 U.S. at 768 (poll tax); *Terry v. Adams*, 345 U.S. 461 (1953) (private primary); *Smith v. Allwright*, 321 U.S. 649 (1944) (white primary); *Nixon v. Herndon*, 273 U.S. 536 (1927) (exclusion of minorities). In recent years, courts have found that Texas's voter identification requirements discriminated against minority voters. *See, e.g., Veasey v. Abbott*, 830 F.3d 216, 243-65 (5th Cir. 2016) (en banc).

148. Voting in Texas continues to be racially polarized throughout much of the State. By one recent estimate, Anglo voters and Latino voters in Texas differ in their support for statewide candidates by 30-40 percentage points. *See, e.g., Veasey*, 830 F.3d at 258. This perpetuates a longstanding pattern of statewide polarization previously recognized by the Supreme Court. *See LULAC*, 548 U.S. at 427.

149. Based on 2020 Census data and 2015-2019 ACS citizenship data, proportional representation for Latino voters in Texas would be 11 Congressional seats and 45 Texas House

seats. Under the enacted 2021 plans, Latino voters have the opportunity to elect their preferred candidates in 7 Congressional seats and 29 Texas House seats. Latino voters also have the opportunity to contribute to the election of preferred candidates in coalition with other minority voters in one Congressional seat and 5 Texas House seats.

150. Based on 2020 Census data and 2015-2019 ACS citizenship data, proportional representation for Black voters in Texas would be 5 Congressional seats and 20 Texas House seats. Under the enacted plans, Black voters have the opportunity to elect their preferred candidates in roughly 3 Congressional seats and 13 Texas House seats. Black voters also have the opportunity to contribute to the election of preferred candidates in coalition with other minority voters in one Congressional seat and 5 Texas House seats.

151. Latinos and African Americans are underrepresented as elected officials in Texas, including in the Texas delegation to the U.S. House of Representatives and the Texas House. Over sixty percent of Texas Legislators in the 87th Legislature are Anglo, even though Anglos make up only 40% of Texas's population, 43% of the State's VAP, and a bare majority of Texas's CVAP.

152. According to the Census Bureau Current Population Survey, only 63% of eligible Latino Texans and 70% of eligible Black Texans were registered to vote in the 2020 Presidential election, as compared to over 78% of eligible Anglo Texans. Overall, according to the Current Population Survey, only 53% of eligible Latino Texans and 61% of Black Texans voted in the 2020 Presidential elections, as compared to 72% of eligible Anglo Texans.

153. As of November 2020, only 24% of registered voters in Texas had Spanish surnames (as defined by the State), substantially less than the Latino CVAP share.

154. Significant socioeconomic disparities exist between Anglo and Latino residents of Texas. These disparities hinder the ability of Latino residents to participate effectively in the political process.

155. According to ACS data, Latinos and Blacks in Texas experience poverty at roughly twice the rate of Anglos, and the Anglo median household income is over one and one-half times Latino and Black median household levels. Latinos and Blacks in Texas are also far more likely than Anglos to be unemployed and to lack a high school diploma.

156. In the third quarter of 2021, the unemployment rate for Black Texas residents was 9.2%, more than double the 4.1% unemployment rate for Anglo Texans. The unemployment rate for Latino Texans was 7.0%, again nearly twice as high as the rate for Anglo Texans.

157. Minority Texans also lack health insurance at substantially higher rates than do Anglo Texas, with over a quarter of Latino Texans uninsured.

158. In areas including education, employment, and housing, Texas and jurisdictions across the State similarly have engaged in widespread official discrimination. *See, e.g.*, Consent Decree, *United States v. City of Austin*, No. 1:14-cv-533 (W.D. Tex. June 9, 2014), ECF No. 3-4 (employment); *United States v. Texas*, 601 F.3d 354, 373-74 (5th Cir. 2010) (education); *Dews v. Town of Sunnyvale*, 109 F. Supp. 2d 526, 571-73 (N.D. Tex. 2000) (housing).

159. Some Texas Congressional and legislative districts are geographically enormous, which impedes the ability of minority voters to participate in the political process.

160. Some political campaigns in Texas have been characterized by racial appeals.

#### **CAUSE OF ACTION**

161. The United States realleges and incorporates by reference the allegations set forth above.

162. Section 2 of the Voting Rights Act establishes that “[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race[,] color, [or membership in a language minority group].” 52 U.S.C. § 10301(a).

163. A violation of Section 2 “is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by [Section 2] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 52 U.S.C. § 10301(b).

164. The 2021 Congressional Plan has the purpose of denying or abridging the right to vote on account of race, color, or membership in a language minority group in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

165. The 2021 Congressional Plan results in a denial or abridgement of the right of citizens of the United States to vote on account of race, color, or membership in a language minority group, in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

166. The 2021 House Plan results in a denial or abridgement of the right of citizens of the United States to vote on account of race, color, or membership in a language minority group, in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

167. Unless enjoined by order of this Court, Defendants will continue to violate Section 2 by administering, implementing, and conducting elections for the Texas Congressional delegation and the Texas House using the 2021 Congressional Plan and the 2021 House Plan.

**PRAYER FOR RELIEF**

WHEREFORE, the United States prays that the Court enter an order:

(1) Declaring that the 2021 Congressional Plan has the purpose of denying or abridging the right to vote on account of race, color, or membership in a language minority group in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301;

(2) Declaring that the 2021 Congressional Plan results in a denial or abridgement of the right of any citizen of the United States to vote on account of race, color, or membership in a language minority group, in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301;

(3) Declaring that the 2021 House Plan results in a denial or abridgement of the right of any citizen of the United States to vote on account of race, color, or membership in a language minority group, in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301;

(4) Enjoining Defendants, their agents and successors in office, and all persons acting in concert with them from administering, implementing, or conducting any future elections for the Texas Congressional Delegation under the 2021 Congressional Plan and for the Texas House and the 2021 House Plan;

(5) Establishing interim redistricting plans for the Texas Congressional Delegation and the Texas House that remedy unlawful components of the 2021 Congressional Plan and 2021 House Plan;

(6) Ordering Defendants to devise and implement permanent redistricting plans for the Texas Congressional Delegation and the Texas House that comply with Section 2 of the Voting Rights Act;

(7) Directing Defendants, their agents and successors in office, and all persons acting in concert with them to take appropriate action to ensure uniform compliance with this Court's

order by state and local authorities administering the State's electoral processes; and

(8) Granting such additional relief as the interests of justice may require.

Date: December 6, 2021

PAMELA S. KARLAN  
Principal Deputy Assistant Attorney General  
Civil Rights Division

/s/ Daniel J. Freeman  
T. CHRISTIAN HERREN, JR.  
TIMOTHY F. MELLETT  
DANIEL J. FREEMAN  
JANIE ALLISON (JAYE) SITTON  
JACKI L. ANDERSON  
JASMIN LOTT  
Attorneys, Voting Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

# Texas Voting Rights Developments

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Michael A. Berger, Esq.

February 1, 2022



FORCHELLI  
DEEGAN  
TERRANA

# 2020 General Election Audit

- On December 31, 2021, the Texas Secretary of State released Phase 1 Progress Report on the Full Forensic Audit of the 2020 General Election.
- The preliminary results revealed:
  - A total of 509 potential instances of voters casting ballots in both Texas and another state;
  - A total of 67 potential votes cast in the names of deceased individuals; and
  - A total of 11,737 potential non-US citizens were registered to vote in Texas

<https://www.sos.state.tx.us/elections/forms/phase1-progress-report.pdf>



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# SB1 – Election Integrity Protection Act of 2021

- Timeline
  - August 12, 2021: Bill passed Texas Senate
  - August 27, 2021: Bill passed Texas House
  - September 7, 2021: Bill signed by Governor Greg Abbott
  - December 2, 2021: Effective
- Purpose
  - To exercise the legislature's constitutional authority under Section 4, Article VI of the Texas Constitution to make all laws necessary to detect and punish fraud.

# SB1 – Election Integrity Protection Act of 2021

- SECTION 1.03. FINDINGS.

The legislature finds that:

- (1) full, free, and fair elections are the underpinnings of a stable constitutional democracy;
- (2) fraud in elections threatens the stability of a constitutional democracy by undermining public confidence in the legitimacy of public officers chosen by election;
- (3) reforms are needed to the election laws of this state to ensure that fraud does not undermine the public confidence in the electoral process;

# SB1 – Election Integrity Protection Act of 2021

- SECTION 1.03. FINDINGS (cont'd.)

(4) the reforms to the election laws of this state made by this Act are not intended to impair the right of free suffrage guaranteed to the people of Texas by the United States and Texas Constitutions, but are enacted solely to prevent fraud in the electoral process and ensure that all legally cast ballots are counted. Integral to the right to vote is the assurance of voter access and the right for all votes legally cast to be counted;

(5) additionally, preventing a valid vote from being counted violates the basic constitutional rights guaranteed to each citizen by the United States Constitution; and

(6) providing for voter access and increasing the stability of a constitutional democracy ensures public confidence in the legitimacy of public officers chosen by election.

# Amendments to Absentee Ballot: Voter ID

- Election Code § 84.002
  - An early voting ballot application must include the applicant's name and the address where the applicant is registered to vote
- SB1 Amendment to § 84.002:
  - An early voting ballot application must also include:
    - The number of the applicant's driver's license, election identification certificate, or personal identification card issued by the Department of Public Safety;
    - If the applicant does not have the foregoing, the last 4 digits of the applicant's social security number; or
    - A statement by the applicant that the applicant has not been issued a number described above

# Amendment to Assistance of Voters

- Election Code § 64.034
  - An individual providing assistance to a voter must take an oath affirming that the individual will confine assistance to:
    - Reading the ballot to the voter;
    - Directing the voter to read the ballot;
    - Marking the voter's ballot; or
    - Directing the voter to mark the ballot.
  - The oath is under the penalty of perjury
  - The voter must represent they are eligible to receive assistance
  - The person providing assistance will not communicate information about how the individual voted
  - If the voter is not eligible for assistance, the vote will not be counted

# Additional Amendments to the Election Code

- § 85.005 & 85.006
  - Expands the hours for early voting during the week and on weekends
- § 127.1232
  - Implements video surveillance system to record all areas containing voted ballots and providing a live stream to the public
- Chapter 33
  - Sets forth the requirements for poll watchers and expanding the authority and discretion of poll watchers

# Additional Amendments to the Election Code

- Adding § 84.0111
  - Permits a political party or candidate for office to distribute an application form for an early voting ballot to a person who did not request an application in accordance with the requirements of § 84.001
- Adding § 87.0271
  - Sets forth the process by which early voting ballots by mail can be corrected if a defect is present on the ballot
- Amending §§ 86.062 and 87.103
  - Ballots voted by mail shall be stored and tabulated separately from votes cast by personal appearance.

# Additional Amendments to the Election Code

- Chapter 276
  - Prohibition on vote harvesting (§ 276.015)
  - Prohibition on soliciting and distributing applications to vote by mail to a person who did not request an application (§ 276.016)
  - Prohibition on distributing early voting ballots and materials to an individual who did not submit an application (§ 276.017)



# U.S. Department of Justice Lawsuits

- *United States of America v. State of Texas et al.*, Case No. 5:21-cv-01085
  - Filed November 4, 2021 in Western District of Texas, San Antonio Division
  - Alleges SB 1 restricts eligible voters' ability to cast a ballot and have that ballot counted in violation of the Voting Rights Act and Civil Rights Act
  - Challenges 2 specific provisions of SB 1
    - Voter assistance requirements
    - Identification requirements for mail-in voting

# U.S. Department of Justice Lawsuits

- *United States of America v. State of Texas et al.*, Case No. 3:21-cv-00299
  - Filed December 6, 2021 in Western District of Texas, El Paso Division
  - Alleges Texas violated the Voting Rights Act by enacting redistricting plans that dilute the voting strength of minority Texans
  - DOJ identifies several districts where the Texas legislature allegedly reconfigured districts to intentionally eliminate Latino and Black electoral opportunities

# Michael A. Berger, ESQ.

[mberger@Forchellilaw.com](mailto:mberger@Forchellilaw.com)

516.248.1700

Michael A. Berger is an associate in the Firm's Employment & Labor and Veterinary practice groups. He concentrates his practice on counseling and defending employers on various employment and labor law issues, including wage and hour, discrimination and retaliation.

In the Veterinary practice group, he represents both veterinary consolidators and individual practitioners in employment related matters, such as drafting Employee Handbooks, employment policies, and negotiating employment and severance agreements on behalf of both veterinarians and executives. Additionally, he counsels veterinarians on numerous compliance and regulatory issues, including the specific laws of states throughout the country.

Mr. Berger is admitted in New York, New Jersey and the U.S. District Courts for the Southern, Eastern and Western Districts of New York.

Immediately prior to joining our Firm, Mr. Berger was an associate at a Long Island-based labor law firm. Prior to that, he was an associate at a New York City firm.

Mr. Berger served as a legal fellow to the Hon. Sandra L. Sgroi, Appellate Division, Second Department; a volunteer at Nassau/Suffolk Law Services: Volunteer Lawyers Project; a legal intern at the Law Reform Advocacy Clinic at his law school and at the New York State Office of the Attorney General; and as a law clerk to the Hon. Joseph A. Zayas, Supreme Court of the State of New York, Criminal Term.

Mr. Berger earned his J.D. from the Maurice A. Deane School of Law at Hofstra University, where he was a Book Review Editor for the *Journal of International Business and Law*. In 2013, he published a Note and Book Review. Mr. Berger received his B.A. from the University of Pittsburgh, College of Arts & Sciences.





## FIRM OVERVIEW

Forchelli Deegan Terrana LLP represents a broad range of clients, including national, regional and local businesses, public, private and family-owned companies, major real estate developers, property owners and operators, contractors, banks, municipalities, educational institutions, not-for-profits, foundations, and individuals. Personal attention and quality representation that is both practical and cost-effective are hallmarks of the firm.

With over 60 attorneys, the firm provides legal services in nearly 20 different practice areas, with the talent, skill and experience necessary to meet the legal needs of virtually any client. Our attorneys are supported by a dedicated team of paralegals, law clerks, administrative and support staff, and cutting-edge office and communications technology.

Headquartered in Uniondale, NY, in one of Long Island's premier office buildings, the Firm is conveniently located for clients in Nassau and Suffolk Counties, as well as those in New York City.

# The Theodore Roosevelt American Inn of Court



**February 1, 2022**

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In August of 1988, plaintiffs **Dorothy Goosby and Samuel Prioleau** brought a class action alleging that the at-large voting method adopted for the election of members to the Town Board violated their rights under the First, Thirteenth, Fourteenth and Fifteenth Amendments of the United States Constitution and section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973. The district court certified a class that included "**[a]ll present and/or potentially eligible Black voters residing in the Town of Hempstead.**" The plaintiffs alleged that the at-large method diluted and submerged their voting strength into the white majority, thereby effectively ensuring that they would not be fairly represented on the Town Board.

The district court concluded that the at-large system employed for Town Board elections "operated to invidiously exclude blacks from political life in violation of Section 2 [of the Voting Rights Act of 1965]." The court then ordered the Town to submit "a remedial plan that divides the Town into six single-member districts."



In May of 1997, the Town Board submitted two redistricting proposals. The Town Board's favored plan was a two-district system, with one single-member district encompassing the majority of the Town's black population and approximately one-sixth of the Town's total population, and a second five-member district including the remaining five-sixths of the Town's population. The Town Board's alternative plan consisted of six single-member districts, one of which was the same majority black district advanced under the first plan.

The district court determined that the two-district plan violated the Equal Protection Clause of the Fourteenth Amendment because it was a race-based plan that was not narrowly tailored to remedy the section 2 violation. See *Goosby v. Town Bd. of the Town of Hempstead*, 981 F.Supp. 751, 761 (E.D.N.Y.1997) ("*Goosby II*"). The court found that the six-district plan, however, was not predominantly motivated by race and that even if it were, it was narrowly tailored to remedy the section 2 violation. The district court ordered that the six-district plan be implemented by the Town Board



Council  
Dorothy I.

50  
Annive

of the Greensboro  
Woolworth Lunch  
"Sit-ins"



On February 1, 1960, four students from the College of North Carolina began a lunch counter sit-in at the Woolworth store. The Greensboro Four, Franklin McCain, David Johnson, William Pritchard, and the late Robert Moses, led about 60 people who sat at the counter for 18 months.

*Join us for a program, March 10th*

*Video presentation: Mr. Robert Pritchard*

*The evening commemorating the 50th Anniversary to the Greensboro Sit-ins, Wednesday, March 10th*

*"Sitting Down To Stand Up"*

*Students of Branch 1000 Elementary School*

*Principal Jean Rogers*

*Arranged by Mrs. Virginia Brown*

*Mrs. Phyllis McNeill*

*to support the sit-in and bring the school into the 21st century.*



# What is Redistricting?

***Redistricting is the process of redrawing legislative districts.***

If you live in the United States, you live in a district.

All representatives to the U.S. House of Representatives, state legislatures, and many local offices are elected from districts.

# What Are Districts?

*Districts* are geographic areas within which eligible residents vote to elect their representatives. For example, everyone in the United States lives in a congressional district. Your congressional district does not overlap with another congressional district. This ensures that everyone has only one member of congress who represents them.



# What Are Single-Member and Multi-Member Districts?

In *single-member* districts, like those for the U.S. House, voters elect only one candidate to represent their district.

In *multi-member* districts, voters can elect two or more candidates.

# Why Do Redistricting?

Redistricting is the redrawing of legislative districts. By federal law, redistricting must occur following a census for two reasons. First, new districts must be drawn when a state gains or loses congressional districts as a result of the apportionment of congressional districts to the states. Second, even if the number of districts does not change, governments must redraw districts so that the districts have equal populations.



The census, apportionment, and congressional redistricting are interrelated processes that occur every decade. The U.S. Constitution provides that a decennial census determines the distribution of U.S. House seats across states. Dividing House seats across states is known as apportionment (or reapportionment). Each state must receive one House seat and additional seats are distributed proportionally based on state population size. States then engage in redistricting, creating or redrawing geographic subdivisions with relatively equal-sized populations for each House district.

**United States Constitution- Article I,  
Section. 2 [Slaves count as 3/5 persons]**

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons [i.e., slaves].

**The Three-Fifths Compromise** was a compromise reached among state delegates during the 1787 United States Constitutional Convention. Whether and, if so, how slaves would be counted when determining a state's total population for legislative representation and taxing purposes was important, as this population number would then be used to determine the number of seats that the state would have in the United States House of Representatives for the next ten years.

*-Madison, James (1902) The Writings of James Madison, vol. 3, 1787: The Journal of the Constitutional Convention, Part I (edited by G. Hunt), p. 143*

# WHAT HAPPENED TO THIS LANGUAGE?

**NOTE:** The part of Article 1 Section 2 Clause 3 relating to the mode of apportionment of representatives among the several States has been affected by [14th Amendment](#) Section 2, and as to taxes on incomes without apportionment by [16th Amendment](#).

The Three-Fifths Clause was reached as a compromise. It established that  $3/5$  of slaves would count towards a state's population for purposes of representation in Congress. The Fourteenth Amendment laid out, in no uncertain terms, that this would no longer be the case. Freed slaves really were citizens now and, as a result, would be 100% counted as part of a state's population. It stipulated, however, that if black men over the age of 21 were denied the right to vote, the state's amount of representatives would be reduced as punishment. Unfortunately, this was not really enforced, and Jim Crow laws denying African-Americans the right to vote continued.

# How Do We Do Redistricting?

[Article 1, Section 4](#) of the U.S. Constitution states, "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Place of Chusing Senators."

1. The procedures vary among the states, and can even vary within the same state for congressional and state legislative redistricting. States generally use one of two methods. States that use the regular legislative process, the same for any bill.

2. States that use a commission somewhere in the process. These commissions come in three flavors:

1. The commission as the sole redistricting authority
2. The commission in an advisory role to the legislature, offering redistricting plans that the legislature may adopt through the legislative process.
3. The commission as a backup to the legislative process, if legislative gridlock occurs.

○ **“The right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).**



# **Voting Rights Act**

Section Two of the VRA, as amended, establishes the following:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b).

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

A plaintiff is required to satisfy three “preconditions”: (1) the minority group must be sufficiently large and geographically compact to constitute a majority in a single-member district; (2) it must be politically cohesive; and (3) the white majority must vote sufficiently as a bloc to enable it, in the absence of special circumstances, to defeat the minority's preferred candidate. *Thornburg v. Gingles*, 478 U.S. 30, 106 S. Ct. 2752, 92 L. Ed. 2d 25 (1986)

Plaintiffs brought an action in order to dismantle Islip's current at-large scheme for electing members to the Town Board and replace it with single-member districts, which would give members of Islip's Latino community an equal opportunity to elect a candidate of their choice to the Town Board who will be responsive to their needs and concerns and serve their community.

# Individual Plaintiffs



Ana Flores



Rene Flores



Maria Magdalena  
Hernandez



Magali Roman

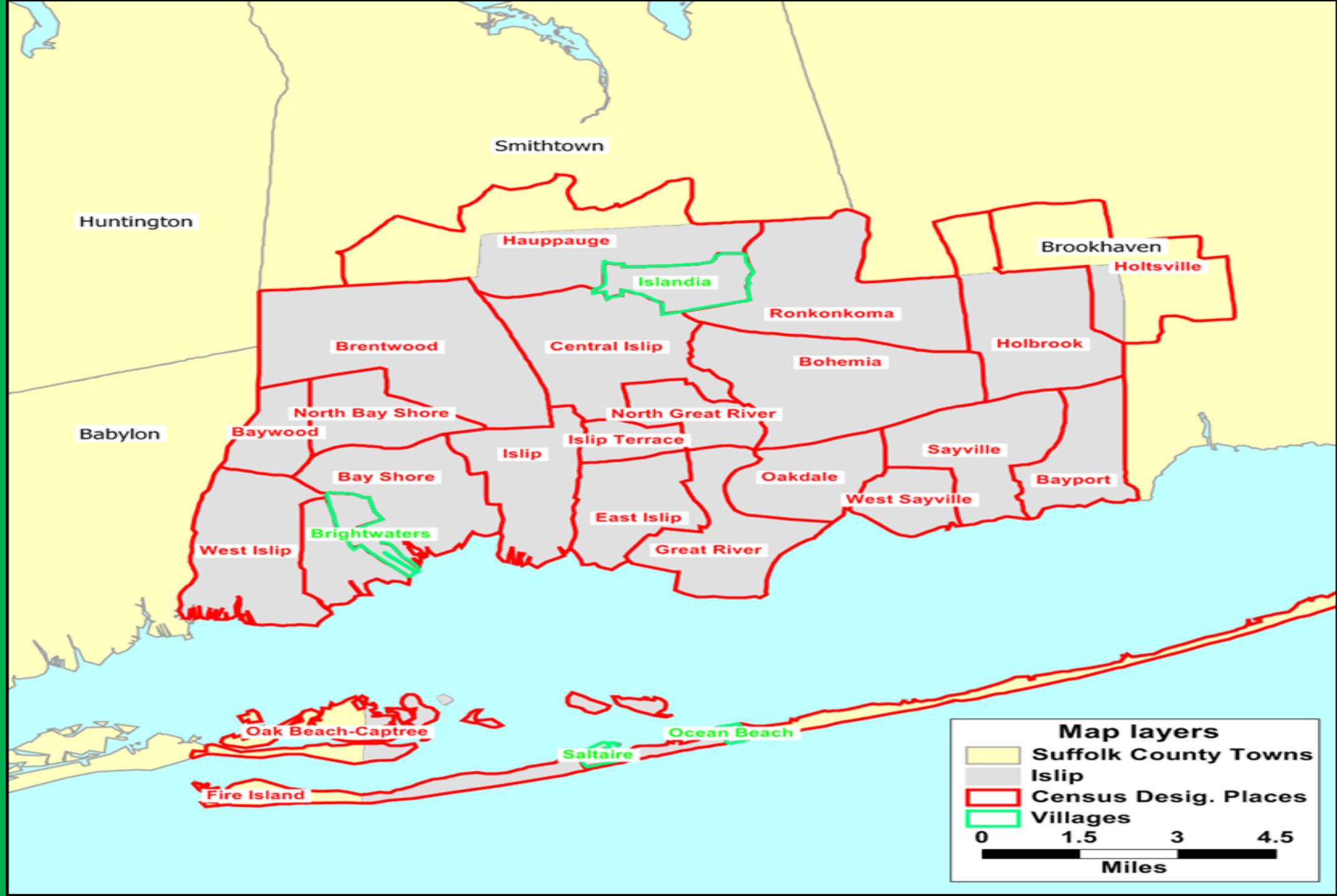
**The Town of Islip is one of ten towns in Suffolk County, New York, and is considered a “first class town,” a distinction reserved for larger towns and suburban communities, under New York Town Law.**



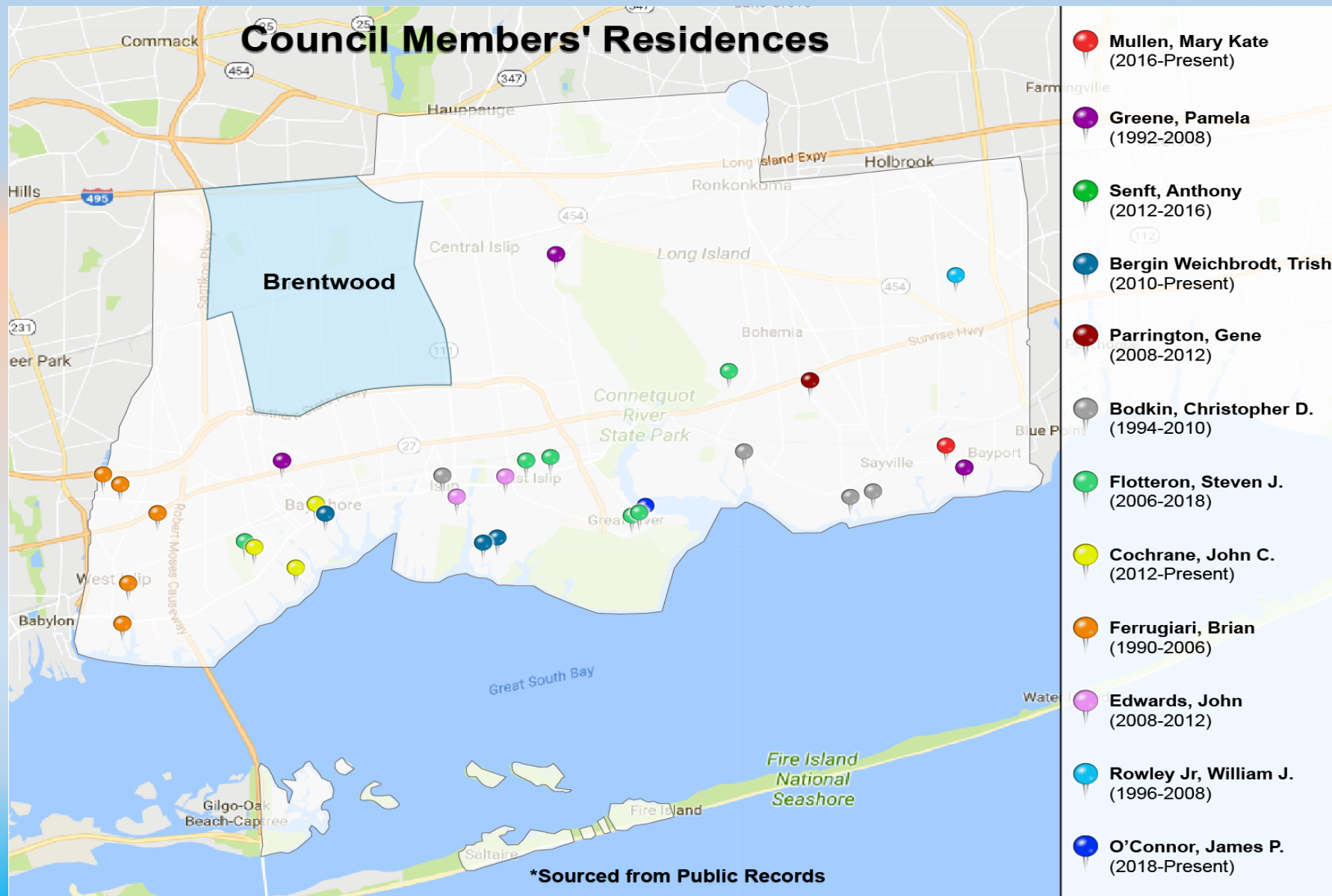


**Islip contains four incorporated villages and all or part of twenty-four unincorporated hamlets, as well as several other small communities. Several of these villages and hamlets, such as Brentwood, Central Islip, and North Bay Shore, are predominantly minority and Latino communities.**



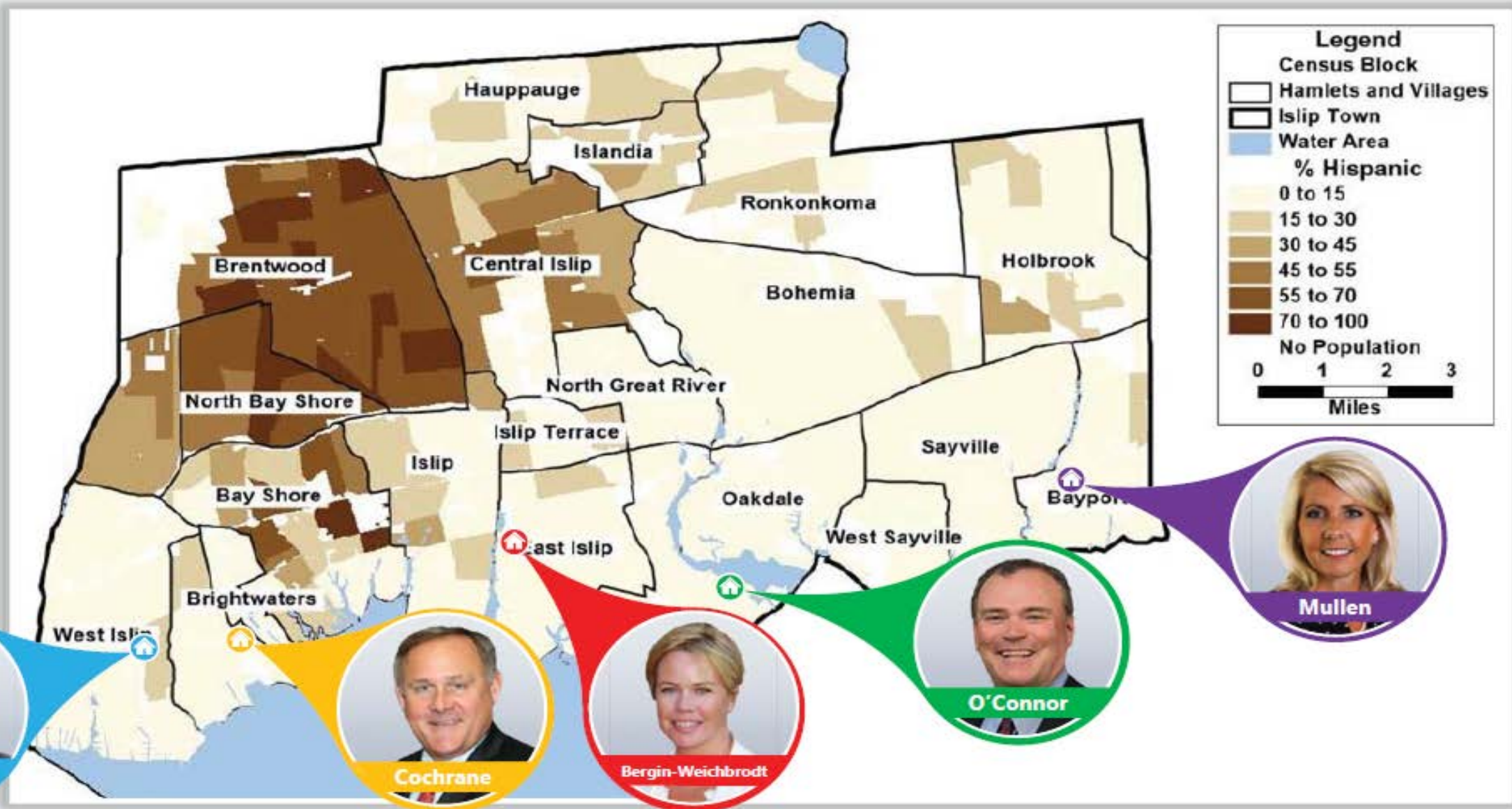


As illustrated in the map below, over the last three decades, none of the 30 residences belonging to members of Town Board has been located in Brentwood.



**-Each of the current Town Board members and where they live is indicated on this map. The stark and revealing reality of this fact is made clear in looking at this map.**

# Current Islip Town Board Members





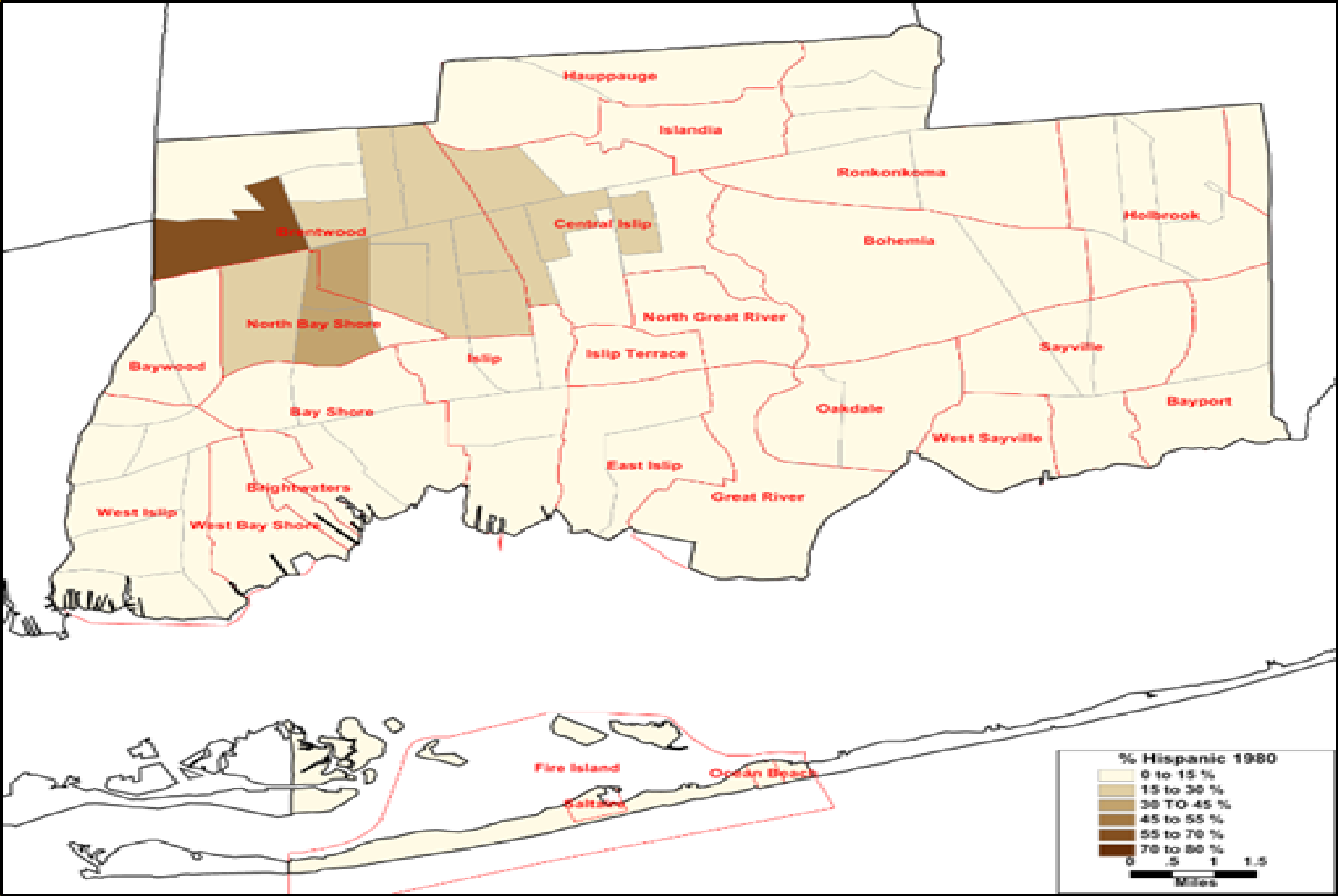
# Race and Politics in Islip



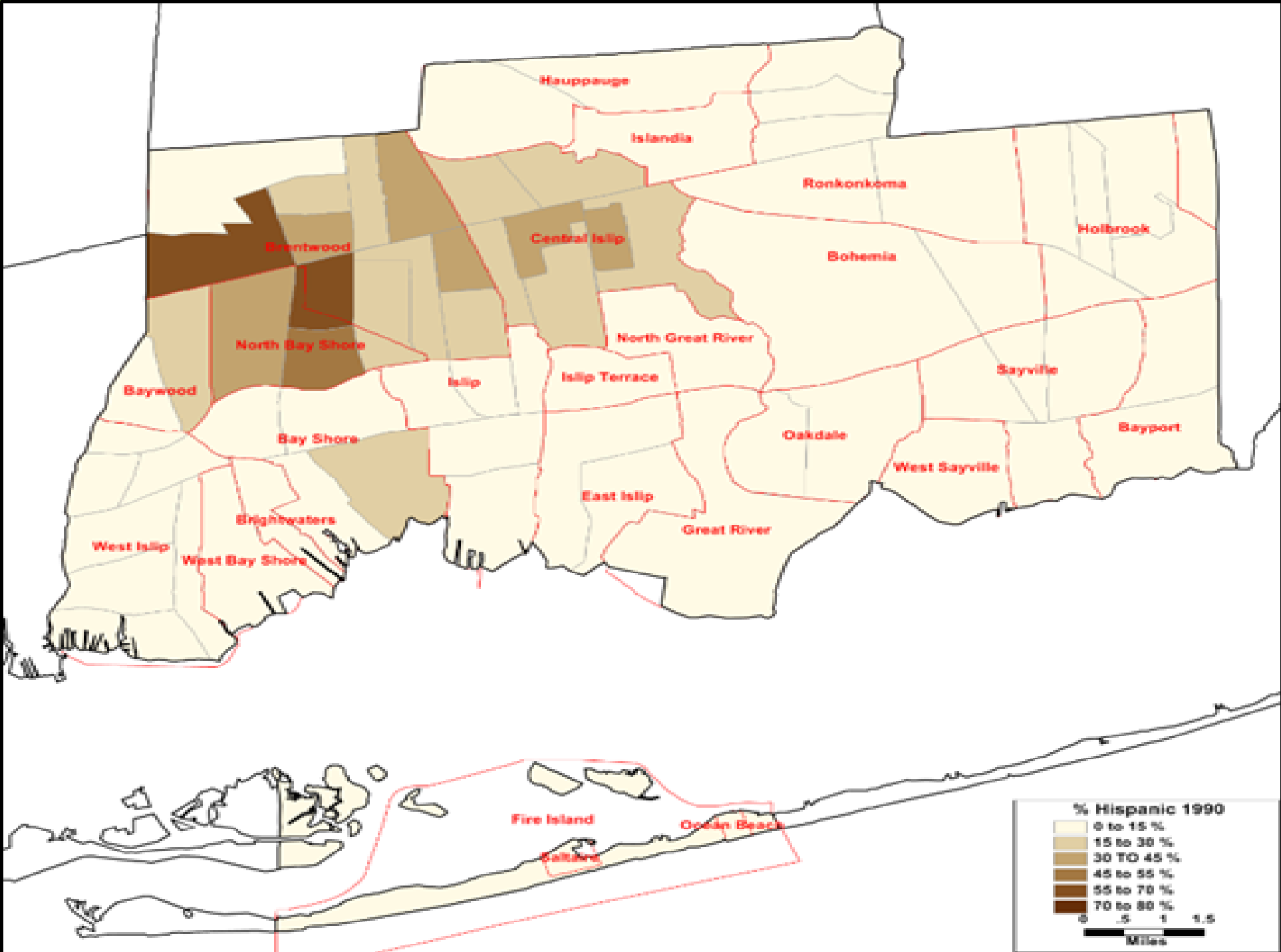
Dr. Michael  
McDonald

“Under conditions of polarized voting, and more especially conditions involving enhancing factors such as a designated post, a small council size, and off-year timing, at-large elections can silence minority voices. **Those conditions are present in Islip, and so is the silence of Latino voters choice of representative voices on the Town Council.**”

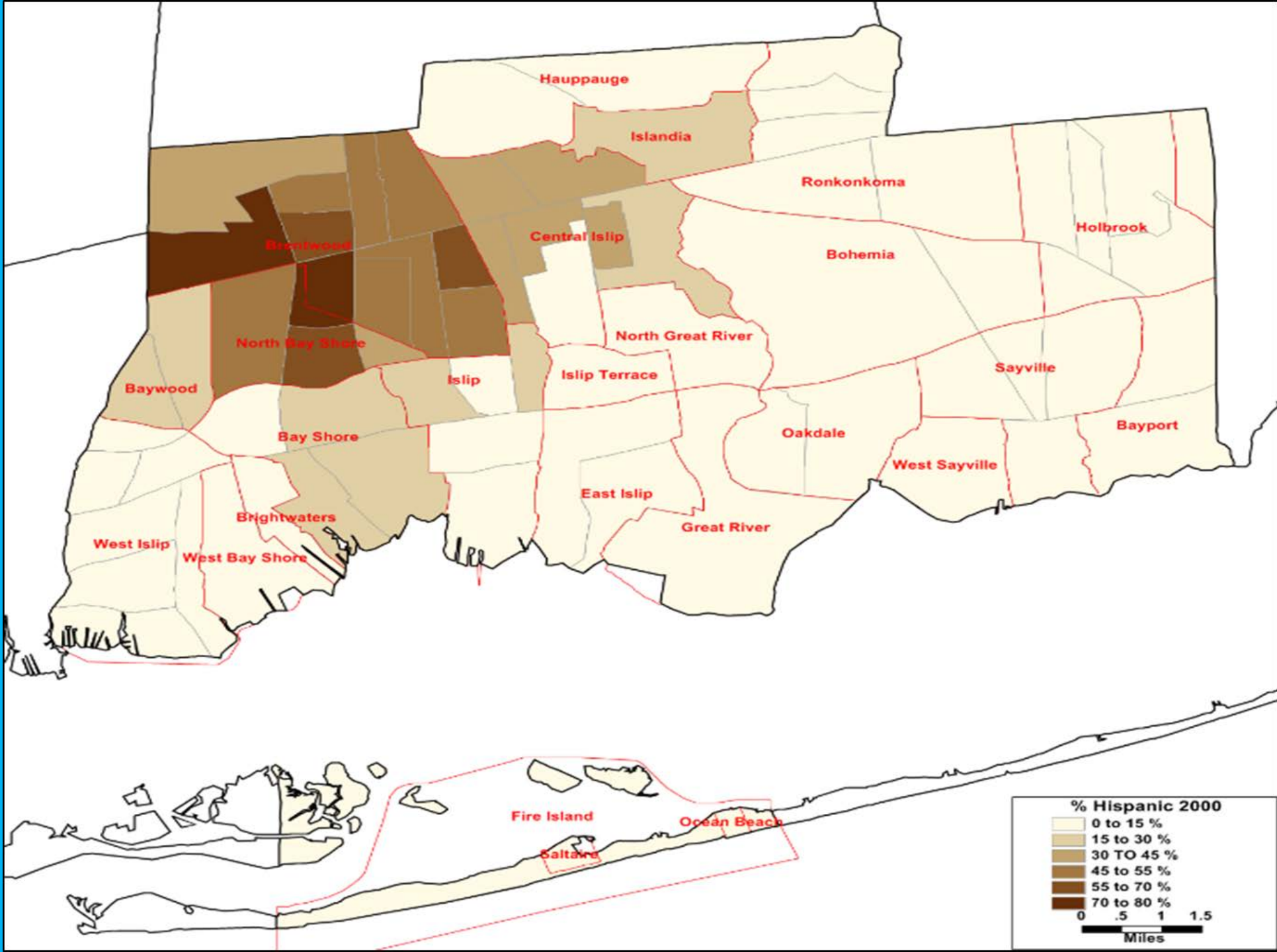
# Percent Hispanic by Tract in Islip: 1980



1990

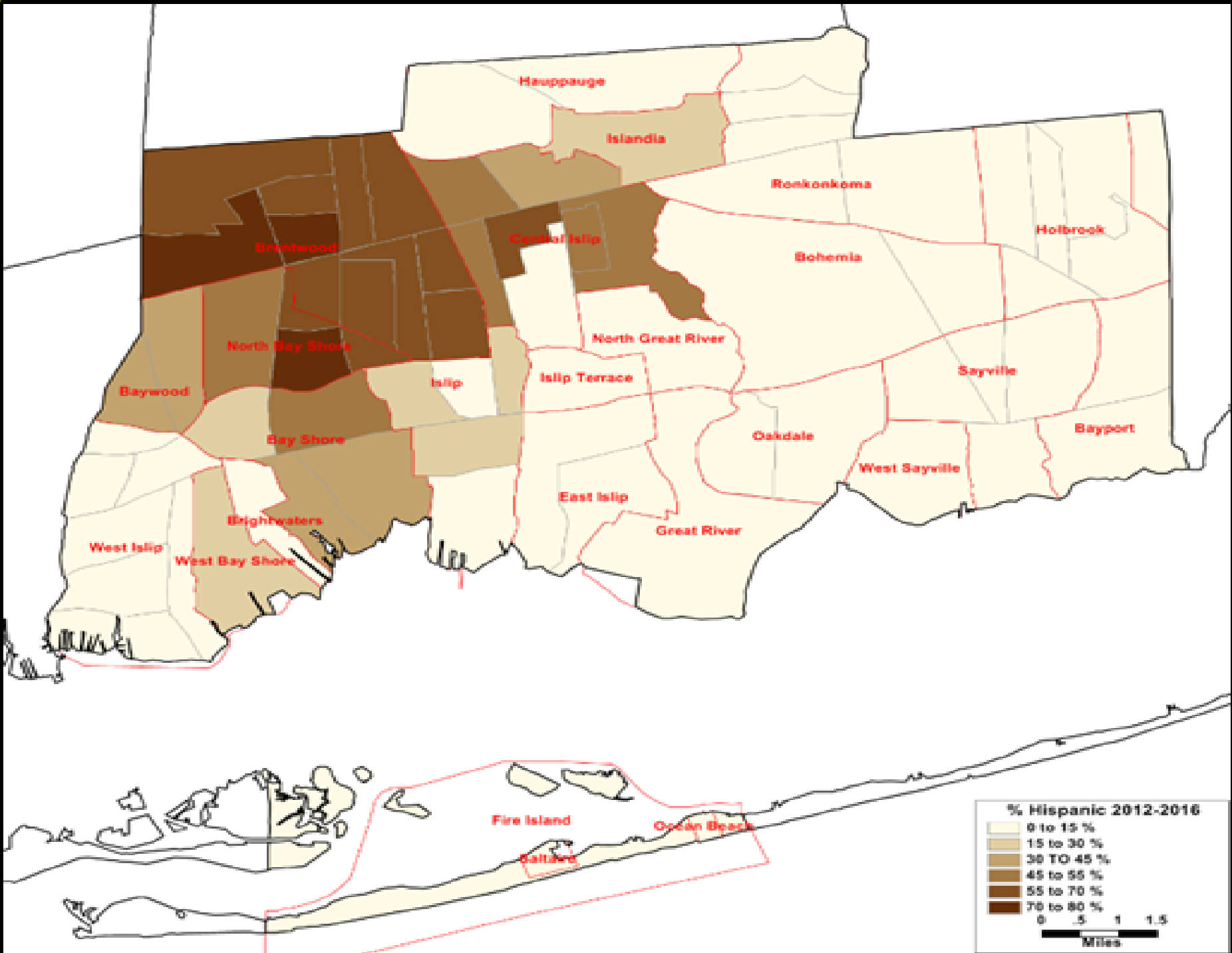


2000





2016-2012



From 2006 through 2016, Islip has gained an estimated 35,000 Latino individuals, while the Town lost an estimated 28,000 non-Latino white individuals. During that same time period, Islip has gained an estimated 10,000 Latino citizens of voting age and lost approximately 14,000 non-Latino white citizens of voting age population. The growth in the Latino community as a whole, as well as growth in Latino citizens of voting age, has been steady and significant.

**Islip has used the system of government set forth in N.Y. Town Law § 20 since Islip became a first class town in 1958.**

**-Before now, there has  
never been a non-white  
Town Board member in  
Islip's history.**

# Islip Town Board Members Since 2005



Pamela  
Greene



William  
Rowley



Christopher  
Bodkin



Steven  
Flotteron



Phil  
Nolan



John  
Edwards



Eugene  
Parrington



Trish Bergin-  
Weichbrodt



Tom  
Croci



John  
Cochrane Jr.



Anthony  
Senft



Mary Kate  
Mullen



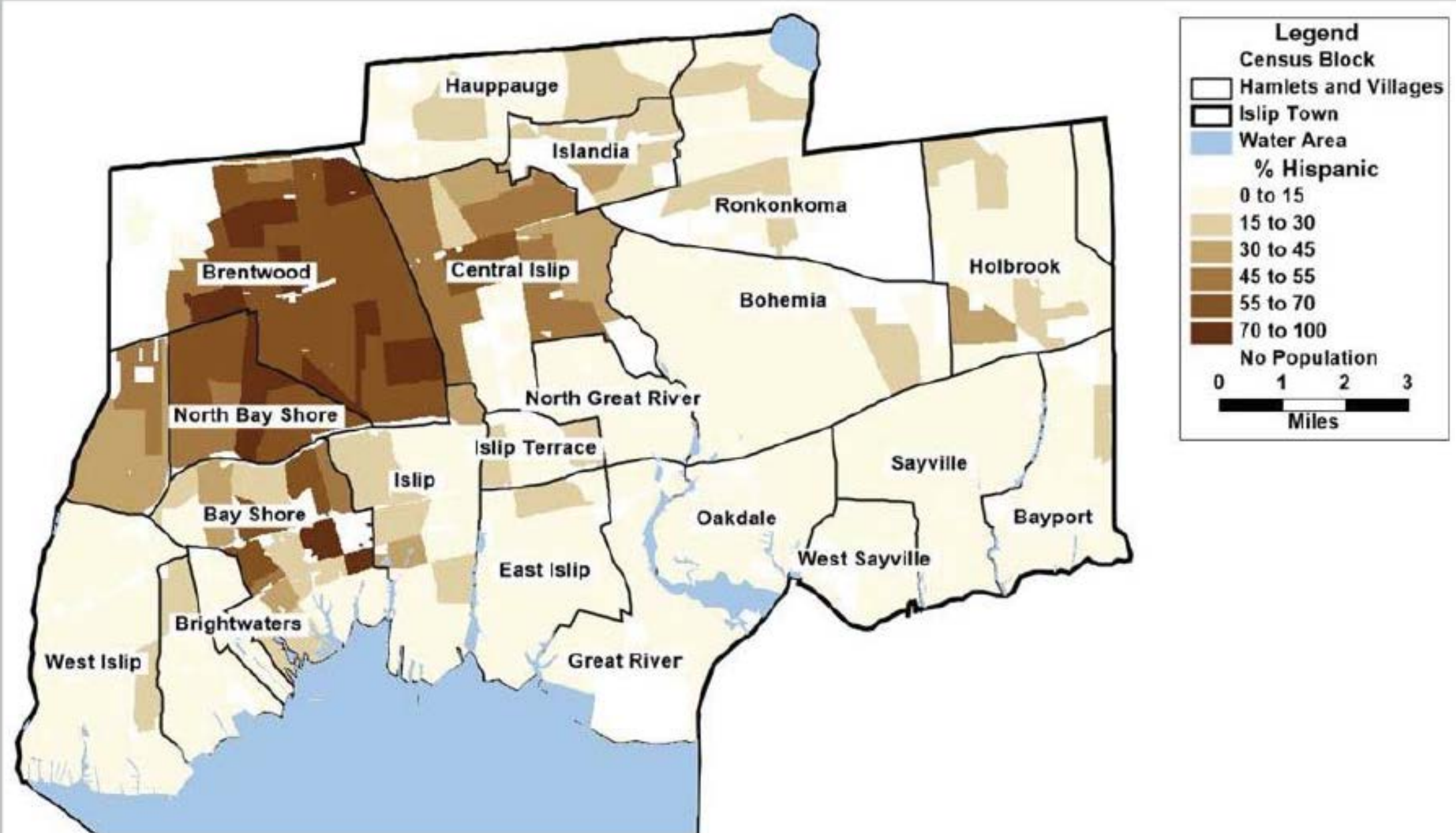
Angie  
Carpenter



Jim  
O'Connor

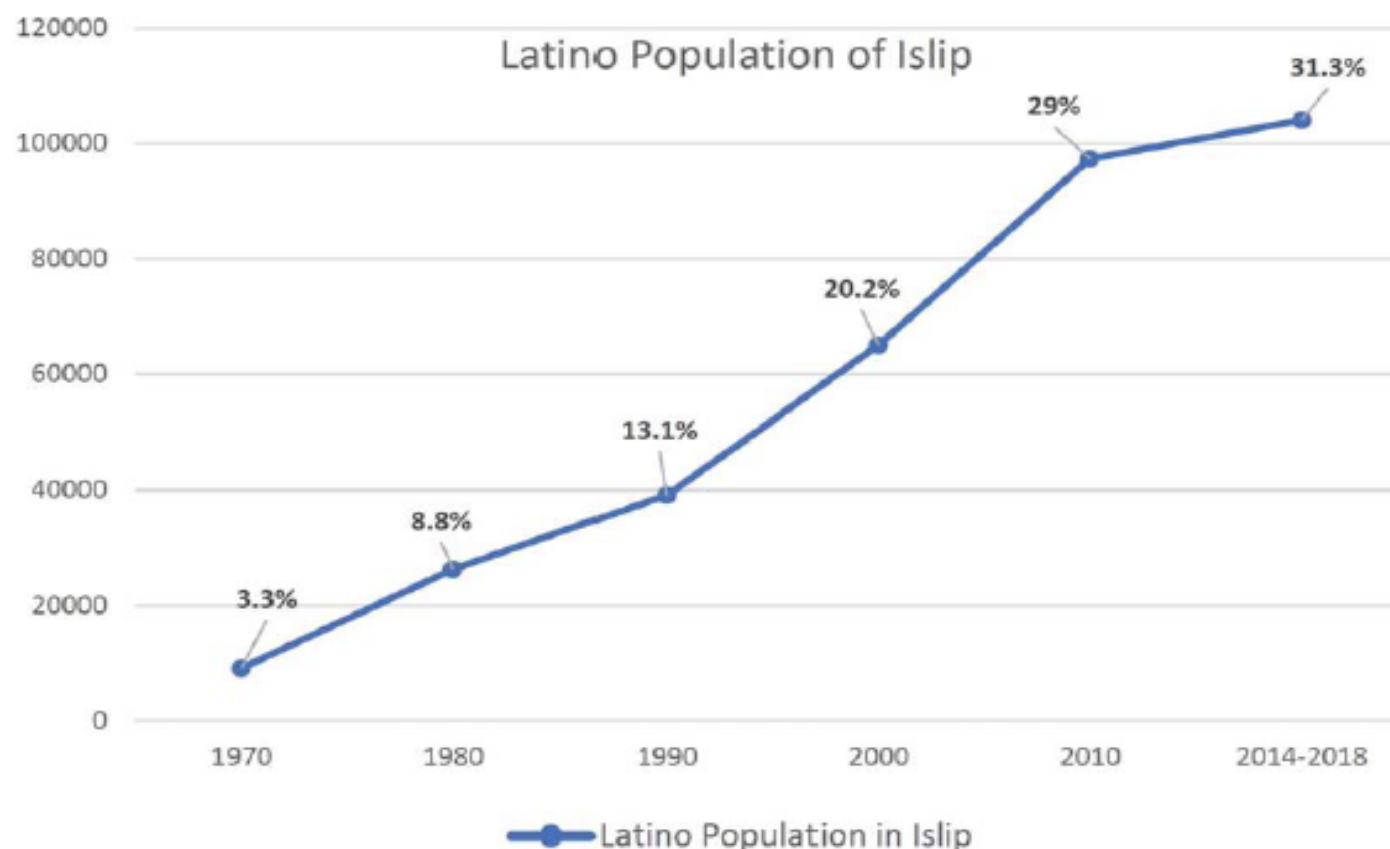


# The Latino Population of Islip



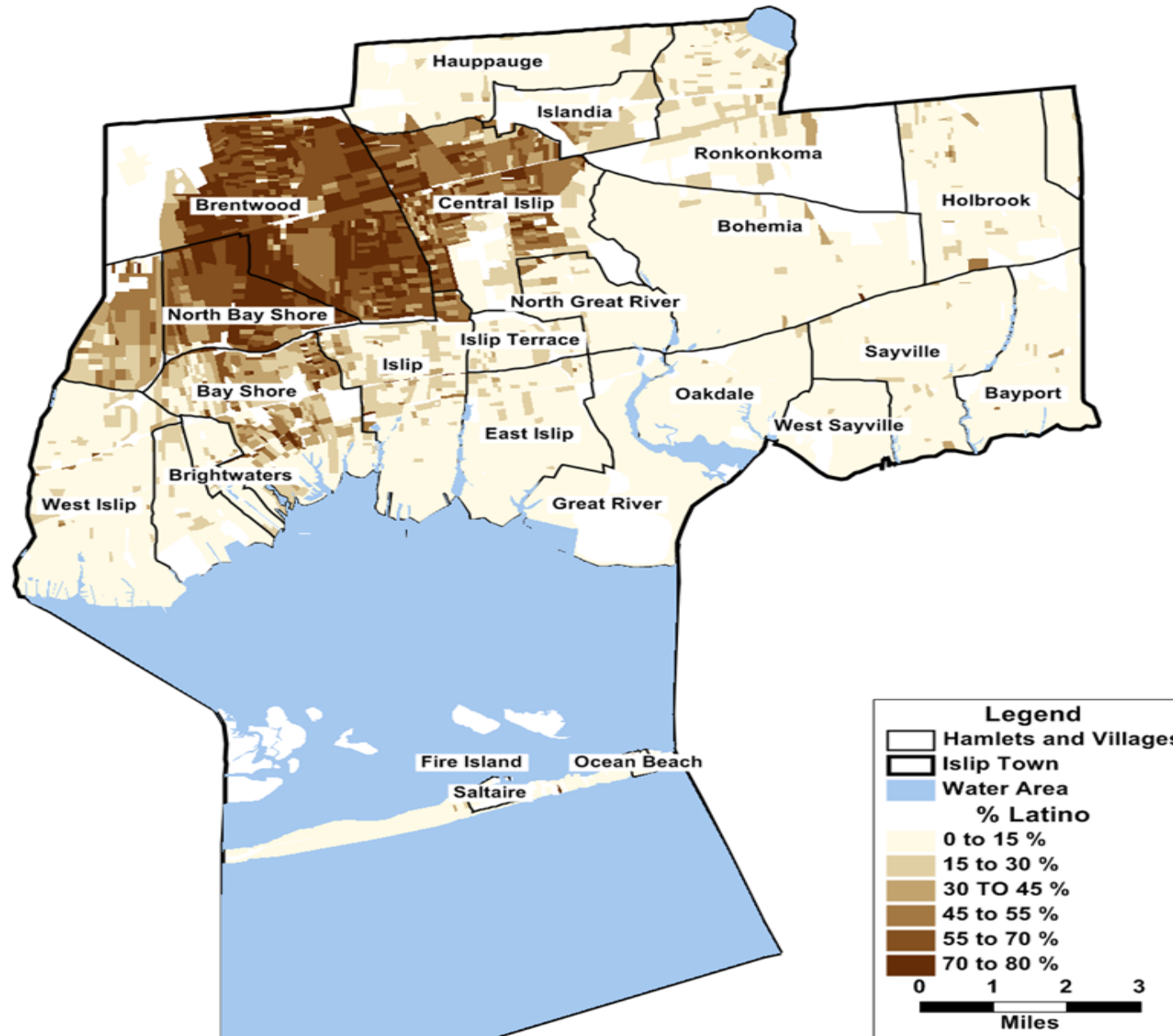
# Latino Population Growth 1970 – Present

*Figure 1: Latino Population Growth, Town of Islip, 1970 to 2014-2018<sup>20</sup>*



<sup>20</sup> Sources for Figure 1: U.S. Census Bureau, *1970 Census of Population*, Vol. 1: Characteristics of the Population, Part 34: New York (Washington, DC: U.S. Government Printing Office, 1973); U.S. Census Bureau, *1980 Census of Population*, Vol. 1: Characteristics of the Population, Part 34: New York (Washington, DC: U.S. Government Printing Office, 1982); U.S. Census Bureau, *1990 Census of Population, Social and Economic Characteristics, New York*. CP-2-34 (Washington, DC: U.S. Government Printing Office, 1992), Table 7; U.S. Census Bureau, *Profile of General Demographic Characteristics 2000*, Summary File 1 (SF-1); U.S. Census Bureau, *Profile of General Population and Housing Characteristics 2010: Demographic Profile Data*; U.S. Census Bureau, *American Community Survey*, 5-Year Estimates, 2014-2018, Table DP05.

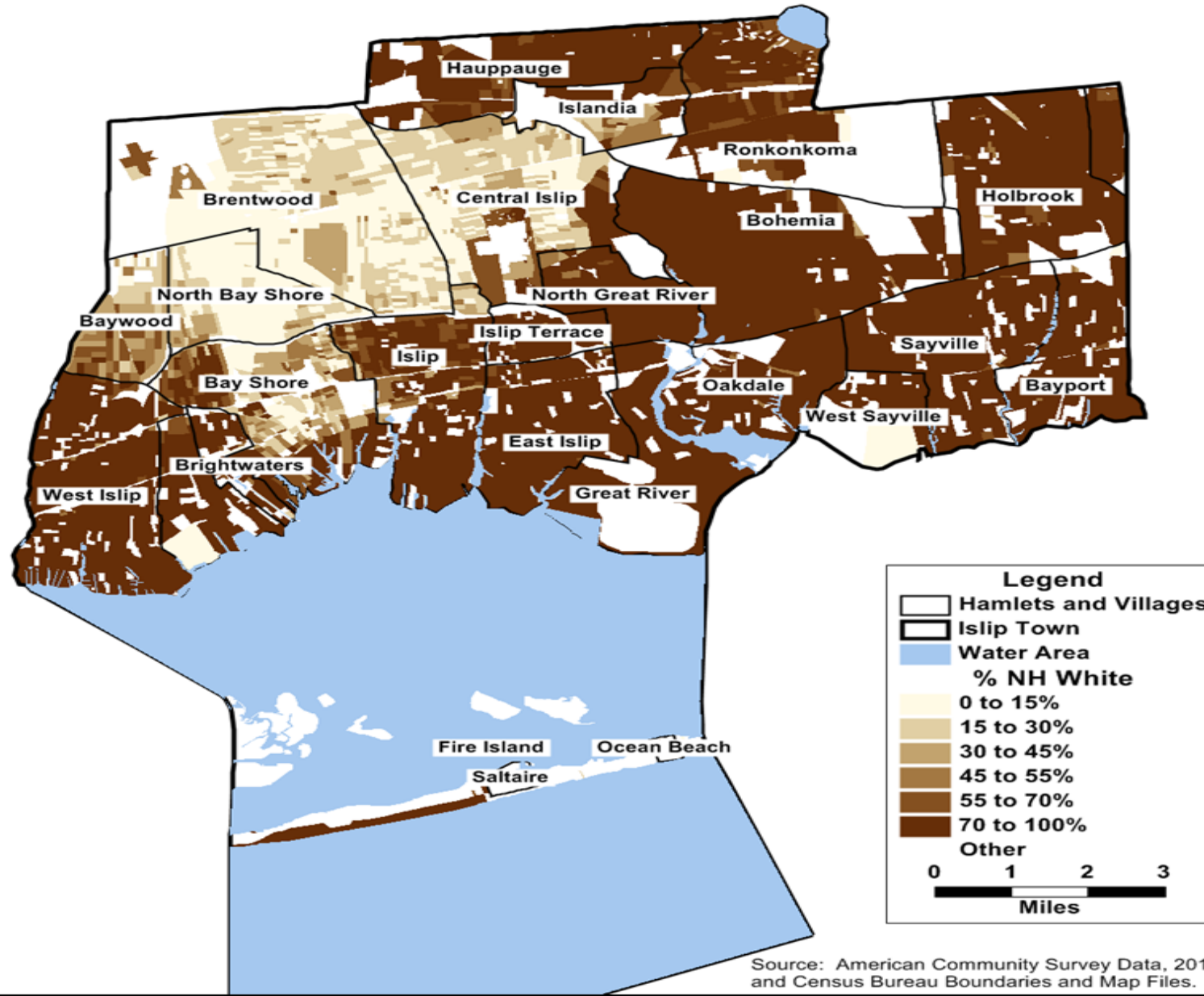
Map 4. Percent Latino Population in Islip Town and CDPs and Villages



Source: American Community Survey Data, 2012-2016  
and Census Bureau Boundaries and Map Files.



Map 6. Percent Non-Hispanic White Population in Islip Town and CDPs and Villages



Source: American Community Survey Data, 2012-2016 and Census Bureau Boundaries and Map Files.

Under the **totality of the circumstances**, “(1) the political processes for nomination and election (2) are not equally open to participation by members of the protected class (3) because the class members have less opportunity than others to participate and elect their representatives of choice.” *Goosby v. Town Bd. of Town of Hempstead*, 180 F.3d 476, 491 (2d Cir. 1999). ***In other words, a court must determine whether the minority group’s political power is actually diluted.*** *Johnson v. De Grandy*, 512 U.S. 997, 1013, 114 S. Ct. 2647, 2658, 129 L. Ed. 2d 775 (1994).

# Student Population in School Districts

*Table 4: Student Population in School Districts Serving the Town of Islip, 2017<sup>208</sup>*

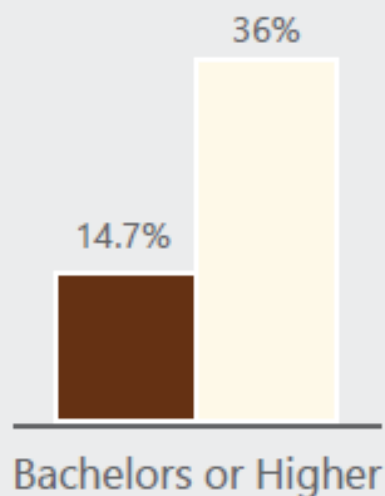
	Latino	White	Black	Other
Brentwood	84.3%	3.5%	9.4%	2.8%
Central Islip	76.3%	4.8%	16.6%	2.3%
Bay Shore	44.6%	29.2%	19.0%	7.2%
Islip	25.9%	61.1%	5.4%	7.6%
Fire Island	25.0%	60.0%	0	15.0%
East Islip	18.0%	74.0%	2.6%	5.4%
Sachem	14.8%	74.2%	2.7%	8.3%
Connetquot	13.6%	76.8%	2.2%	7.4%
West Islip	11.2%	84.2%	0.3%	4.3%
Hauppauge	9.5%	75.5%	3.4%	11.6%
Bayport/Blue Point	6.9%	87.4%	1.2%	4.5%
Sayville	6.6%	88.5%	0.6%	4.3%

<sup>208</sup> Data calculated from New York State Education Department (NYSED), *Data for School Districts*, <https://data.nysed.gov/lists.php?type=district> (reported as of June 30, 2017). Other includes Asian and Native Hawaiian or Other Pacific Islander, Native American, and Multiracial. Note that Fire Island Union Free School District, which spans the Towns of Brookhaven and Islip, has only 20 students from grades K-6. Fire Island students from grades 7-12 attend schools in either Islip or Bay Shore. See Fire Island Free Union School District webpage, <http://www.fi.k12.ny.us/district/history>.

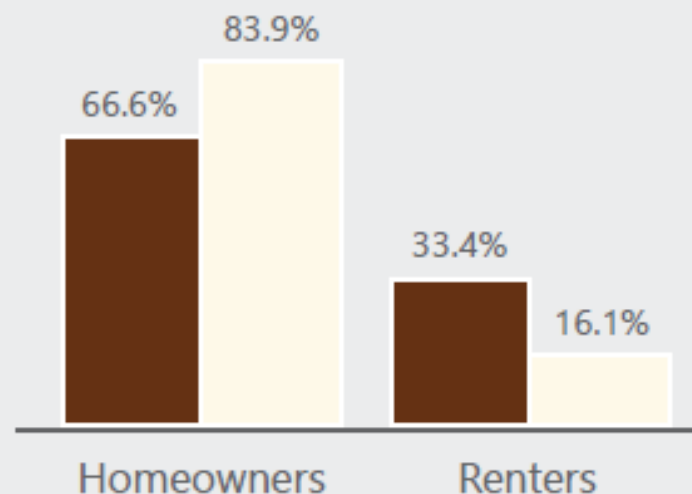
# Disparities Between Latinos and Whites in Islip



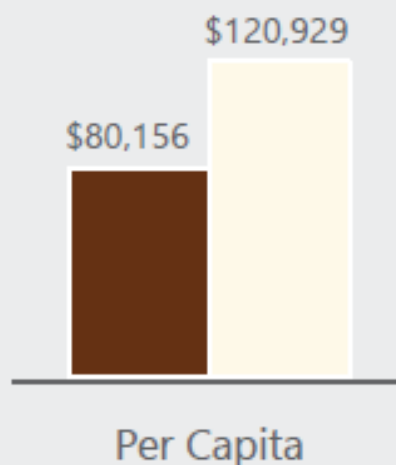
## Educational Attainment



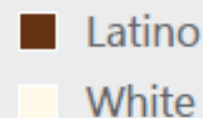
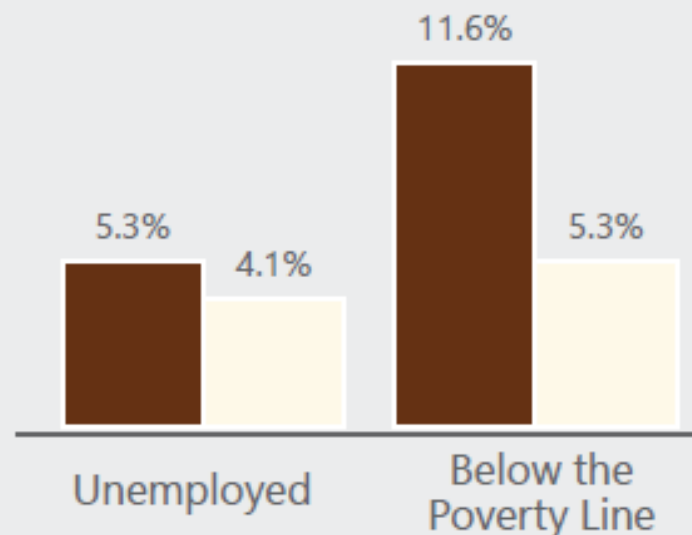
## Housing Tenure

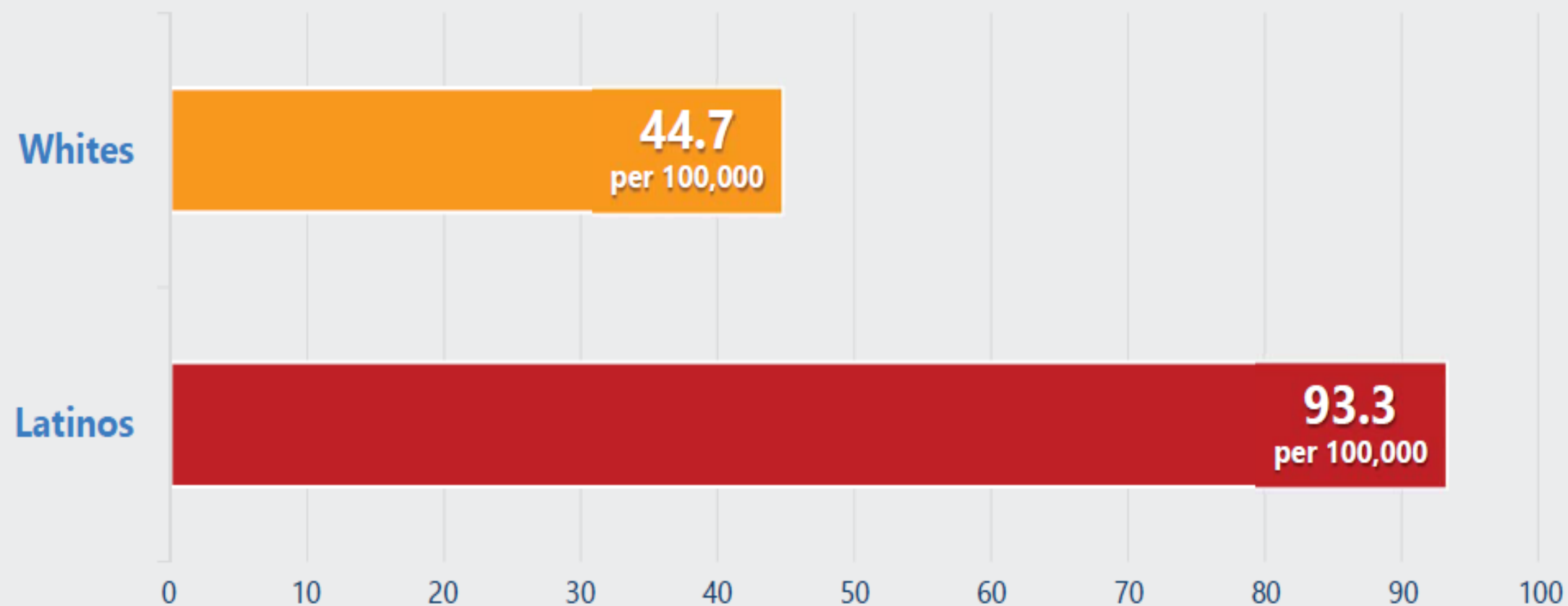


## Income Disparities



## Unemployment & Poverty





- <sup>11</sup> New York State Department of Health, *Fatalities by Race/Ethnicity: Age Adjusted Rate of Fatality COVID-19 Cases per 100,000 by Race/Ethnicity Group, Suffolk County*, <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID19TrackerFatalityDetail?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n> (hereafter, NYSDH, *Fatalities by Race/Ethnicity*). This data is updated daily. For this report, I rely on the data published as of approximately 7:15pm on May 14, 2020.
- <sup>12</sup> The NYSDH reports age-adjusted rates as its top-line measure of group differentials in COVID-19 fatalities. It also reports the crude (non-age-adjusted) fatality rates. The crude COVID-19 fatality rate in Suffolk County is 58 per 100,000 residents for Latinos and 73 per 100,000 residents for whites. It is standard to adjust fatality rates by age because of the different age distribution of groups being compared. NYSDH explains its methodology for age adjustment at <https://www.health.ny.gov/statistics/cancer/registry/age.htm> (accessed 05/14/20).

# THE HORROR OF THE ROBERTO CLEMENTE PARK

The dumping of *40,000 tons of toxic debris in Roberto Clemente Park, located in Brentwood*, is “a shining example of neglect at its worst.”. Then-Parks Commissioner Joe Montuori and his Executive Secretary were both arrested and pled guilty for crimes concerning the dumping scandal, and elected Town officials neglectfully failed to prevent it from occurring. Town officials did not promptly communicate to residents that the dumping had occurred or that the toxic waste posed health risks.



On January 19, 2018, shortly after President Trump reportedly referred to El Salvador, Haiti, and other African Nations as “shithole countries,” Islip Councilwoman Trish Bergin Weichbrodt posted on her Facebook page that she was **“looking at warm getaways for [her] kids['] February break. I’m wondering about El Salvador, Haiti or Somalia #recommendations?”**

*Protesters call for Islip councilwoman to step down over Facebook post, News12 Long Island (Jan. 23, 2018), <http://longisland.news12.com/story/37333018/protesters-call-for-islip-councilwoman-to-step-down-over-facebook-post>.*

# Racial Appeals in Islip

Plaintiff's Exhibit  
PX-012

## It's time for Republican Steve Flotteron to be our Suffolk County Legislator!

- ▶ **Steve Flotteron Supports...**  
Federal Task Force actions to fight MS-13 and other Gangs throughout Suffolk County.
- ▶ **Steve Flotteron Supports...**  
Tougher sentences for drug dealers to combat the Heroin epidemic and protect our families.
- ▶ **Steve Flotteron Supports...**  
Tighter control of our borders to stop the flow of Heroin and Gang members (MS-13) into our neighborhoods.



**Elect Republican Steve Flotteron on Nov.7**



**Under the Democrats Control, Suffolk County has been a "Sanctuary County" and suffered the most MS-13 Gang Killings and highest Opioid Death Rate in New York State!**



“

**The right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.**

”

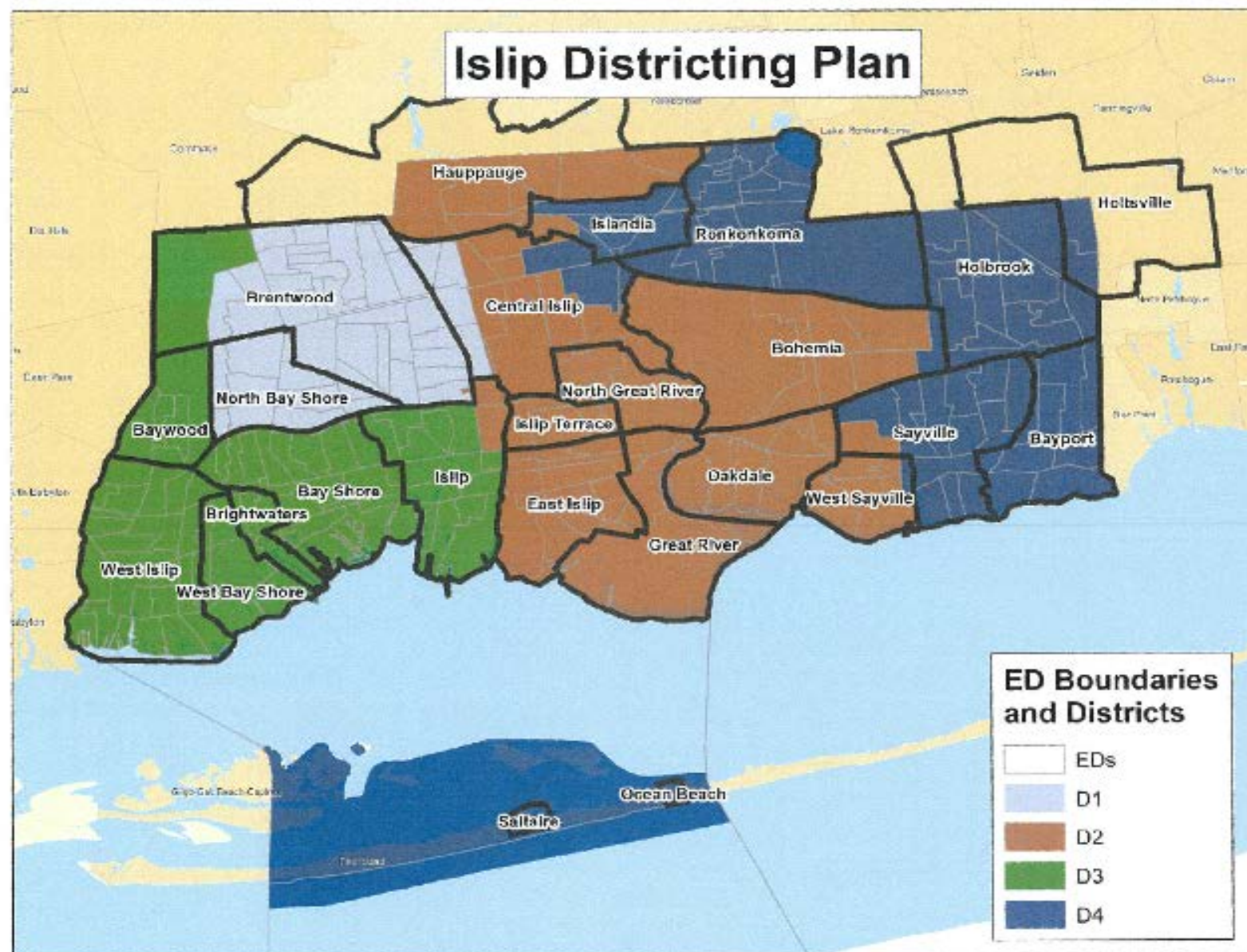
*Reynolds v. Sims*, 377 U.S. 533, 556 (1964)

# **Long Island Latinos Win Major Settlement in Federal Voting Rights Case**

*Settlement with Town of Islip*

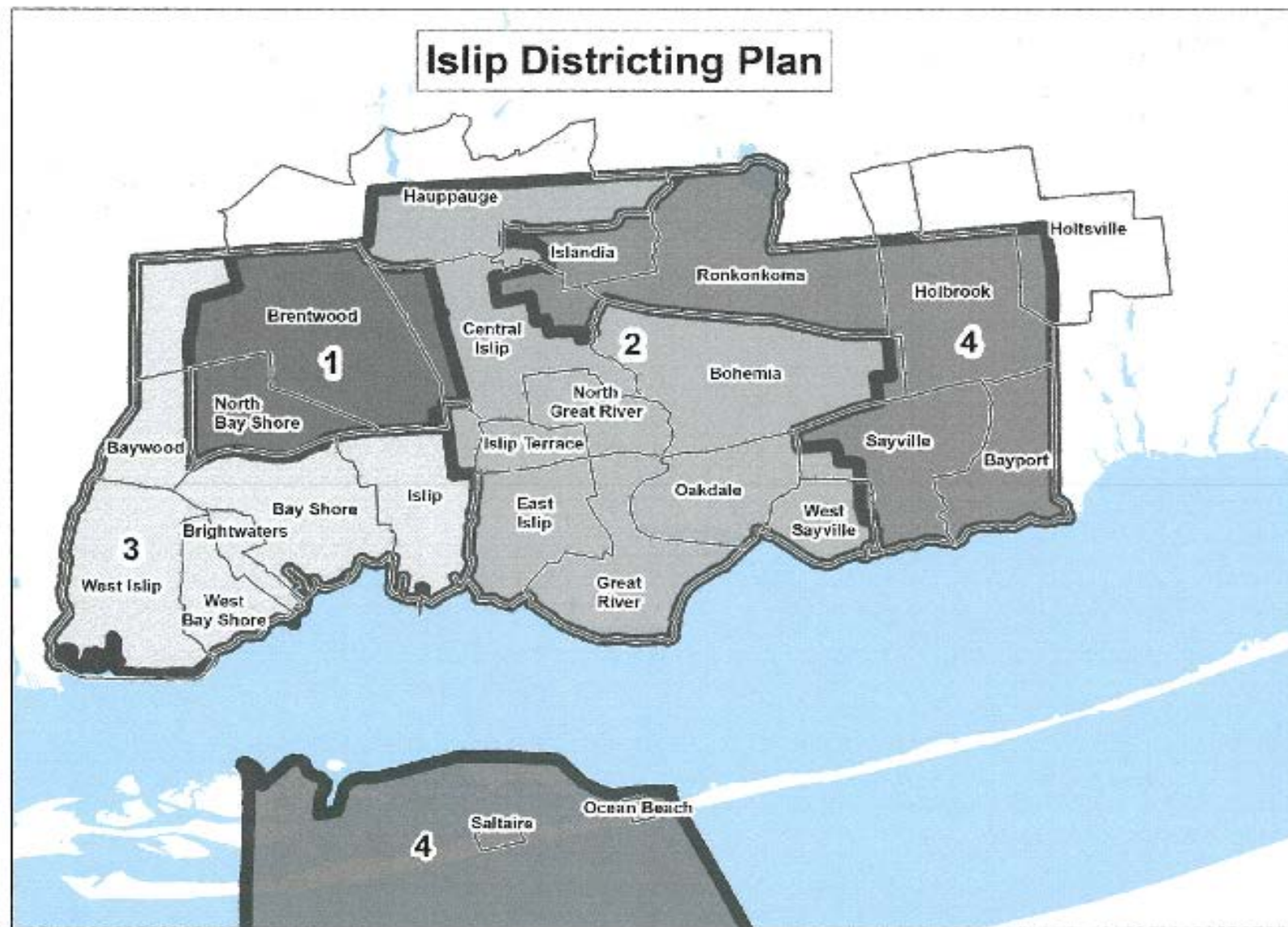
*Guarantees Representation Moving*

*Forward For the Islip Latino Community*





[Version of Map for Printing in Black and White]



# Jorge Guadron, Islip Councilman, 1st District

