

September 27, 2022

Marian Brown, Dallas County Sheriff
Dallas County Sheriff's Department
133 N Riverfront Blvd #131
Dallas, TX 75207

Re: In-Person Voting in the Dallas County Jail

Dear Sheriff Brown,

The Dallas Jail Based Voting Coalition writes to respectfully urge the Dallas County Sheriff's Department to facilitate a polling place inside the Dallas County Jail to ensure that jailed, eligible voters are not disenfranchised in the upcoming November election, or any future elections. Dallas should follow in the footsteps of Harris County and other localities in multiple states that successfully provide in-person voting for people in jail—demonstrating it is feasible and the right thing to do.¹

We understand that you have questions about providing in-person voting at the jail, which you expressed in a video statement.² As an initial step, we would like to respond to these concerns by discussing Dallas County's legal obligation to provide in-person voting at the jail and how this can practically be accomplished in November. We hope to meet with you and your department soon to continue this conversation.

Obligation to Provide Access to Voting

In Texas, people who are incarcerated pretrial or for a misdemeanor conviction, and who meet the other eligibility requirements for voting, are eligible to vote and have a fundamental, constitutional right to do so.³ Of the approximately 6,500 people⁴ in the Dallas County Jail, over 70% are detained pretrial,⁵ while others are incarcerated for misdemeanor convictions. These are thousands of potential voters who are eligible and have a legal right to vote.

¹ *For the first time in Texas, inmates now have a polling place of their own at Harris County Jail*, HOUS. CHRON. (Nov. 3, 2021), <https://www.houstonchronicle.com/politics/houston/article/For-the-first-time-in-Texas-inmates-now-have-a-16588331.php>; Nicole D. Porter, *Voting in Jails*, THE SENTENCING PROJECT (2020), <https://www.sentencingproject.org/publications/voting-in-jails/>.

² @SheriffMBrown14, TWITTER (Aug. 25, 2022 11:42 AM), <https://twitter.com/SheriffMBrown14/status/1562842953084973056?s=20&t=XacoHCo0LxGQIA-WT7HSCQ>.

³ See *O'Brien v. Skinner*, 414 U.S. 524, 530-34 (1974); *McDonald v. Bd. of Election Comm'rs of Chicago*, 394 U.S. 802, 809 (1969); see also Tex. Elec. Code Ann. § 11.002(a)(4) (listing eligibility requirements to vote); Tex. Elec. Code Ann. § 82.004(a) (listing qualifications for jail voting).

⁴ *Jail Facts*, DALLAS COUNTY SHERIFF'S DEPARTMENT, <https://www.dallascounty.org/departments/sheriff/jail-facts/>.

⁵ *Dallas County, Texas Adult Criminal Justice Data Sheet*, TEXAS CRIMINAL JUSTICE COALITION (2015), https://www.texascjc.org/system/files/publications/Adult%20Dallas%20County%20Data%20Sheet%202016_0.pdf.

In 1974, the United States Supreme Court recognized incarcerated individuals' right to vote in *O'Brien v. Skinner*, when it explained that the government cannot constitutionally deny jailed, eligible voters access to the ballot.⁶ In a jail, it is precisely because the county has undertaken the “affirmative act of restraining the individual’s freedom to act on his own behalf—through incarceration, institutionalization, or other similar restraint of personal liberty”—that constitutional protections are triggered.⁷

Additionally, the majority of people who are detained are low-income or people of color—imposing further legal obligations. Because people of color are disproportionately incarcerated,⁸ denying ballot access to people in jail disproportionately disenfranchises Dallas County’s voters of color, which may give rise to liability under Section 2 of the Voting Rights Act.⁹ Additionally, because many pretrial detainees are incarcerated solely because they cannot afford to pay bail, there is effectively a poll tax—wherein they must pay bail to vote. As the Supreme Court clearly stated in *Harper v. Virginia State Board of Elections*, “a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard.”¹⁰ Just as it is unconstitutional to bar low-income people from voting with the imposition of a poll tax,¹¹ the imposition of bail cannot function to deny eligible pretrial detainees their right to vote. Dallas County must have a process in place to ensure that the eligible voters it incarcerates have access to the ballot.

Necessity of In-Person Voting

Despite your claim that people in the Dallas County Jail already vote by mail, voting by mail on its own is insufficient to provide people in jail with the opportunity to vote. Dallas County can only meet its obligation to provide access to voting in jail if it provides adequate mail-in voting *and* in-person voting.

Under state law, people who enter the jail within eleven days of an election are entirely unable to vote by mail. The County Clerk’s Office must receive an application for a ballot by mail at least eleven days before an election.¹² Thus, people entering jail after this deadline need access to voting in person; otherwise, they will be completely disenfranchised. On average, over a hundred people enter the jail daily.¹³ This means that, on average, more than 1,100 people will enter the

⁶ See *O'Brien v. Skinner*, 414 U.S. 524, 534–35 (1974).

⁷ *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 200 (1989).

⁸ *Texas Profile*, PRISON POLICY INITIATIVE, <https://www.prisonpolicy.org/profiles/TX.html>.

⁹ See 52 U.S.C. § 10301.

¹⁰ *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666 (1966).

¹¹ See U.S. Const. amend. XXIV.

¹² See Tex. Elec. Code § 84.007(c).

¹³ *Jail Population Management*, Dallas County (accessed on Sept. 9, 2022), <https://www.dallascounty.org/departments/criminal-justice/jail-population.php> (reporting under “AIS Book ins” that 48,186 people were booked in Dallas County Jail in 2021, for an average of 132 people a day).

jail in the eleven days before each Election Day and will lack any way to vote. As the Supreme Court observed, when a government “is both physically preventing [voters] from going to the polls and denying them alternative means of casting their ballots,” it is “an absolute denial of the franchise.”¹⁴ Because people entering jail within eleven days of an election cannot vote by mail, Dallas County Jail must provide them with the opportunity to vote in person.

Additionally, while we agree that voting by mail is crucial for those in the jail before the deadline to request a ballot, we are concerned that Dallas County Jail is not currently providing them with an adequate opportunity to vote by mail. Data from the Dallas County Elections Department indicates that only 36 mail-in ballots were completed for November elections from 2016 to 2021—and no ballots were requested or voted at all in 2017, 2018, 2019, or 2021.¹⁵ These numbers are concerningly low and are significantly lower than the number of mail-in ballots cast from the Harris County Jail.¹⁶ We encourage the Dallas County Jail to improve its procedures and broaden access to mail-in voting, and we are willing to collaborate with the jail on these improvements. However, in-person voting is even more necessary because this data indicates that people in the jail effectively have no access to *any* method of voting.

Moreover, restrictions in Senate Bill 1, passed during the 2021 legislative session, made mail-in voting significantly less accessible and less reliable for Texas voters—including those in jail. Pursuant to Senate Bill 1, voters must provide an identification number on their mail-in ballot application and on the ballot carrier envelope used to return their voted ballot. Over 12% of mail-in ballots were rejected statewide during the March 2022 elections due to complications related to these new requirements, a significant increase from years prior.¹⁷ People in jail are even less likely to have access to an identification number required for mail-in voting and likely

¹⁴ *O’Brien v. Skinner*, 414 U.S. at 533.

¹⁵ The number of mail-in ballots that were voted each year in November elections from the Dallas County Jail is as follows:

2016: 2
2017: 0
2018: 0
2019: 0
2020: 34
2021: 0

¹⁶ For example, in the March 2020 primary election, 112 mail-in ballots were voted from the Harris County Jail, and in the July 2020 runoff election 116 mail-in ballots were voted from the jail. Michael Barajas, *In Harris County, a Group is Working to Expand Voting Access in Jail*, TEX. OBSERVER (Aug. 6, 2020), <https://www.texasobserver.org/harris-county-jail-voting/>.

Following improved procedures in the Harris County Jail, these numbers increased in the November 2021 constitutional election to “several hundred” people who voted by mail. Jasper Scherer, *For the first time in Texas, inmates now have a polling place of their own at Harris County Jail*, HOUS. CHRON. (Nov. 3, 2021), <https://www.houstonchronicle.com/politics/houston/article/For-the-first-time-in-Texas-inmates-now-have-a-16588331.php>.

¹⁷ Alexa Ura, *More than 12% of mail-in ballots were rejected in Texas under new GOP voting rules, final tally shows*, TEX. TRIBUNE (Apr. 6, 2022), <https://www.texastribune.org/2022/04/06/texas-mail-in-ballot-rejection-voting/>.

face more difficulties correcting mail-in ballot issues. People in jail also do not have the option to cancel their mail ballot and vote in person when they encounter serious obstacles to voting by mail. While we encourage the Dallas Jail to provide increased access to voting by mail, these new obstacles make it even more urgent to also provide incarcerated voters with access to in-person voting.

Implementation Logistics

Next, we acknowledge that providing voting access in the Dallas County Jail will no doubt require some resources from your department and staff. However, this resource allocation is critical to protecting the constitutional right to vote for people in jail.

Although you have expressed concern about limited resources, people who have been jailed cannot have their fundamental rights taken away simply because it requires additional resources from the jail. Instead, the Dallas County Jail has an affirmative obligation to provide people who are incarcerated with access to voting. Other county officials have indicated their support for having a voting location in the jail. We would love to work with your office to alleviate any resource burden and determine the most efficient way to provide in-person voting at the jail. For example, the Dallas County Elections Administrator has already expressed willingness to assist your department in implementing necessary voting procedures at the jail for the upcoming November election and going forward.

You have also expressed concern about providing a separate, publicly accessible voting location at the Dallas County Jail. However, the Harris County Jail has successfully provided a publicly accessible voting location on its premises since 2021. An additional polling place has benefits such as providing jail employees with a convenient voting location on the jail premises. The Dallas County Elections Administrator should provide workers and resources to facilitate voting at the jail, just as it does at all polling places across the county, and has indicated his willingness to do so. We encourage discussions with the Elections Administrator to determine how to implement this polling location most conveniently for your department and staff, while providing people in jail with access to their fundamental right to vote.

Individuals in jail must overcome steep hurdles to vote: they must know there is an election, seek out the information and resources they need to cast a ballot, and find a way to both obtain and return the relevant paperwork before election deadlines. At minimum, the Dallas County Jail must overcome the above logistical concerns and provide a polling location to meet its obligation to make voting accessible for these incarcerated voters it serves.

Conclusion and Next Steps

Voters in jail face extraordinary hurdles to accessing their constitutional right to vote, and voters of color and low-income voters are disproportionately disenfranchised. Dallas County has the

opportunity to become a national leader in combating a long, grievously overlooked civil rights issue: jail-based disenfranchisement.

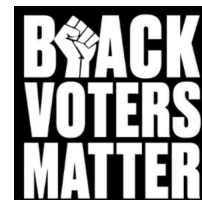
County sheriffs play an integral and crucial role in providing adequate access to voting in jails. In Harris County, Sheriff Ed Gonzalez was a valuable partner and leader in bringing in-person voting access to the jail, and we agree with his observation that “many individuals come [to jail] for a number of different reasons . . . [b]ut it doesn’t remove the right to vote.”¹⁸ We would like to build a similar working relationship with your department to replicate these successful efforts in Dallas County.

We respectfully request that you recognize that detained individuals have a right to vote and provide them access to in-person voting at the Dallas County Jail. We would also like to request a meeting with you in order to discuss this issue further, along with staff from the Dallas County Elections Department, in order to jointly troubleshoot any pending questions. As the November elections are quickly approaching, we are hopeful that you will engage in timely conversations with us and county election officials about these plans, and work with us to provide full voting access to the people in your custody at the Dallas County Jail in November.

Thank you for joining us in this effort to end jail disenfranchisement. Please do not hesitate to reach out if you have questions. We look forward to hearing from you.

Sincerely,

MOVE Texas
Texas Organizing Project
Workers Defense Project
Workers Defense Action Fund
Texas Rising
Black Voters Matter
Texas Civil Rights Project
American Civil Liberties Union of Texas
Texas Poor People's Campaign



¹⁸ *For the first time in Texas, inmates now have a polling place of their own at Harris County Jail*, HOUS. CHRON. (Nov. 3, 2021), <https://www.houstonchronicle.com/politics/houston/article/For-the-first-time-in-Texas-inmates-now-have-a-16588331.php>.

