November 11, 2018

Bexar County Judge Nelson Wolff

Commissioner Sergio “Chico” Rodriguez

Commissioner Paul Elizondo

Commissioner Kevin A. Wolff

Commissioner Tommy Calvert

Paul Elizondo Tower

101 W. Nueva, 10th Floor

San Antonio, TX 78205-3482

We write to express serious concerns about the Bexar County Elections Department’s decision not to make public information about provisional, vote-by-mail, military, and overseas voters in the November 6, 2018 general election in Texas’s 23rd congressional district. In the interest of ensuring that every eligible voter can exercise their fundamental right to cast their ballot, we strongly urge Bexar County officials to comply with public records requests under the Texas Public Information Act, codified at Tex. Gov’t Code § 552.001 *et seq.*

On November 6, 2018, voters in Texas’s 23rd congressional district cast their ballots in a very close election between Gina Ortiz Jones and Congressman Will Hurd. As of this writing, the election remains unresolved and the candidates are separated by just half of a percentage point.

Immediately after the election, the Executive Director for the Texas Democratic Party sent to election administrators in every county within the district public records requests asking officials to make available the names and numbers of people who cast provisional, vote-by-mail, military, and overseas ballots in the race. Additionally, members of the community personally visited numerous offices in the district—including in Bexar County—and asked election administrators to comply with the public records request.

Elections officials in Bexar County have not complied with the Texas Democratic Party’s public records request, and Bexar County has yet to furnish the names of the people who cast provisional, vote-by-mail, military, and overseas ballots in the district. Bexar County’s decision not to do so is compounded by misleading and problematic statements made by the county’s elections administrator. Before a public hearing of Judge Wolff and county commissioners, the elections administrator stated that no list of provisional voters existed in the county.[[1]](#footnote-1) Yet, in accordance with state law, voter registrars in each county must obtain from each precinct a list of provisional voters.[[2]](#footnote-2) And it is our understanding that other counties maintain such lists. Thus, if Bexar County does not currently have in its possession lists of provisional voters, it suggests that Bexar County may not be in compliance with state law.

Furthermore, during the public hearing, the elections administrator indicated—without objection from members of the county commissioner court—that the only way a provisional ballot would count is if there was an issue with lack of acceptable identification at the polls and the voter then brought in photo identification.[[3]](#footnote-3) This is patently false. Under state law, voters may cast provisional ballots for several reasons—and many should be counted.[[4]](#footnote-4) A registered voter whose name does not show up on the rolls must cast a provisional ballot.[[5]](#footnote-5) Moreover, a voter who applies to vote by mail but decides to vote in person—without first canceling the vote-by-mail ballot—must also cast a provisional ballot.[[6]](#footnote-6)

If Bexar County makes publicly available the names of persons casting provisional, vote-by-mail, military, and absentee ballots, it will facilitate opportunities to inform eligible voters of their rights and ensure that they have ample opportunity to cure their ballots or otherwise ensure they are counted.

The suggestion that Bexar County is prohibited from disclosing the names of provisional voters is neither in keeping with precedent nor practice. It is our understanding that, in Texas’s 23rd congressional district, many counties (such as El Paso and Maverick) have *already* responded to the public records requests, furnishing the names of hundreds of people who cast provisional and vote-by-mail ballots in the general election. This has allowed members of the community to adequately notify these voters of what they can do to cure their respective ballots.

Ultimately, we are interested in one thing and one thing only: that every eligible voter in Bexar County and across Texas has the unfettered opportunity to cast their ballot. Given that the deadline for voters to cure deficient provisional ballots is this coming Tuesday, November 13, 2018 at 5:00pm, it is essential that Bexar County immediately makes this information available.

If Bexar County’s county judge and commissioners court are interested in ensuring that everyone can exercise their fundamental right to vote, then we know they will make publicly available the names of these voters.

Sincerely,

Former HUD Secretary and Former San Antonio Mayor Julián Castro

Congressman Joaquín Castro

State Senator José Menéndez

State Representative Diego Bernal

State Representative-Elect Trey Martinez Fischer

State Representative Ina Minjarez

State Representative Justin Rodriguez

San Antonio City Councilman Rey Saldaña

1. *See* Bexar Cty. Commrs. Ct., November 9, 2018, <https://bexarcountytx.swagit.com/play/11092018-745>. [↑](#footnote-ref-1)
2. *See* Tex. Admin. Code § 81.174(d)(1). [↑](#footnote-ref-2)
3. *See supra* note 1. [↑](#footnote-ref-3)
4. *See* Tex. Elec. Code § 63.011; Tex. Admin. Code § 81.172(a). [↑](#footnote-ref-4)
5. *See generally* Tex. Admin. Code § 81.172(2). [↑](#footnote-ref-5)
6. *Id.* § 81.172(6). [↑](#footnote-ref-6)