

Early voting is traditionally defined as a process by which voters cast their ballots before Election Day at precinct-like polling stations throughout a jurisdiction. It requires no excuse from voters and is “virtually like voting on Election Day.” The use of early voting has expanded throughout the country over the past several election cycles. Texas has been administering early voting for more than 20 years, making it a good choice for a case study into the alternative early voting method.

Texas began to implement early voting in 1987, although the process was somewhat different from the early voting of today. At that time, absentee voting was expanded to provide the opportunity to all voters to cast a ballot before Election Day. Counties were required to offer “absentee voting in-person” to all voters at any one of their permanent election office branch locations. In 1991, Texas State law was changed to provide a minimum standard for the number of early voting locations incorporated within each county. The law also permitted the creation of temporary branch locations for the express purpose of conducting early voting.<sup>3</sup>

In Texas, registered voters may vote at any early voting location within their county between 4 and 17 days before Election Day. If the 17th day before a Federal general election falls on a weekend, Texas State law requires that the start of early voting occur on the first business day thereafter for an overall early voting period of 12 days.<sup>4</sup>

Early voting procedures are similar to those already conducted on Election Day. Officials’ clear procedures and forward planning has led to the success of early voting as supported by data showing an increasing proportion of voters that chooses to vote early. This section will provide information about the evolution of early voting in Texas by detailing the legislative history, reviewing the logistical issues surrounding the implementation

<sup>3</sup>*United States. Cong. House. Committee on Energy and Commerce. Subcommittee on Elections. Alternative Ballot Techniques. Hearing, 22 Sept. 1994. 103rd Cong., 2nd sess. Washington: GPO, 1994.*

<sup>4</sup>*Ibid.*

<b>State Name:</b>	<b>Texas</b>
<b>Chief Election Official:</b>	<b>Hon. Roger Williams Texas Sec. of State Elections Division P.O. Box 12060 Austin, TX 78711-2060</b>
<b>Total Number of Registered Voters:</b>	<b>13,074,279 (in 2006)</b>
<b>Alternative Voting Method Used:</b>	<b>Early Voting</b>
<b>Implemented:</b>	<b>1987</b>

of early voting, and examining the overall effect of early voting in the State of Texas.

A thorough study about how early voting is administered in Texas from the perspective of election officials has not occurred to date. With the limited amount of source material available, this case study was conducted using statutory references, personal interviews, and published statistics from the Texas Secretary of State’s office.

## Implementation and Effect

Although voter participation data suggest that early voting does not increase overall turnout, election officials interviewed have seen clear benefits. An increasing percentage of voters take advantage of early voting with each successive Federal election. For local election officials, the lighter volume of voters on Election Day equates to shorter lines, fewer complaints, and a more efficient Election Day environment.

No empirical studies are available regarding election officials’ attitudes about early voting, but anecdotal evidence from throughout Texas suggests that it was greeted with general reluctance, which was to be expected with any unfunded mandate. More than 20 years after

implementation, however, local election officials have fully incorporated any extra costs associated with early voting into their budgets and reported that they favor the alternative voting method.

Since its inception in 1987, early voting in Texas has undergone significant changes to address matters pertaining to equal protection, accessibility, and inconsistencies within the Texas Election Code (TEC). All these changes put early voting practices and procedures on par with those used on Election Day.

## Legislative History

### 1987

Texas House bill 612 is enacted, which creates “no-excuse” voting by personal appearance. Voters no longer need to provide a reason if they wish to vote in person before Election Day. Only a limited number of early voting locations are established, however, usually in the permanent branch offices of the county election official. Moreover, the State and local officials do not lead an aggressive public education effort to inform voters of the new alternative voting method. Local election officials are especially nervous about paying for the new form of voting for which the State provides no funding.

### 1988

The Committee on Elections of the Texas House of Representatives reviews the implementation of expanded absentee voting. It seems as if the new option is well received by both the general public and the local election officials implementing and administering it. Included in the committee’s report are the following findings:

- The success of the expanded in-person absentee voting program is reflected in an increase in the number of absentee votes cast,

<sup>5</sup>*Texas. Committee on Elections, Texas House of Representatives. Interim Report to the 71st Texas Legislature. Austin: The Committee [1988]. pp. 3-6.*

## Major Milestones in the Evolution of Early Voting in the State of Texas

**1988:** The State of Texas permits no-excuse, in-person absentee voting.

**1991:** Requirements mandate early voting locations in counties with a population of at least 100,000 residents, expanded hours—including on weekends—for early voting, procedures, and noticing requirements. State law recognizes early voting as a distinct form of voting.

**1993:** Early voting legislation becomes effective statewide; all counties must establish temporary (early voting) branch locations beginning up to 20 days before an election.

**1997:** The Texas Legislature further defines the quantity and distribution of early voting locations in counties with populations of more than 120,000 and less than 400,000. The early voting period is shortened to 17 days before an election.

**2003:** All counties are required to begin early voting 17 days before an election.

which encourages the creation of more in-person absentee voting locations.

- The concerns about the ability of voters to cast more than one ballot during the early voting period appear unfounded; no data suggest that multiple voting occurs.<sup>5</sup>

These findings prove to be an impetus for subsequent changes to the TEC. One improvement is the adoption of technology and procedures—such as real-time connectivity between early voting sites and the central office poll book—meant to mitigate the threat of multiple voting.

## 1991

On May 26, 1991, Governor Ann Richards signs Senate bill 1234, which revolutionizes voting in Texas. The law amends the TEC to identify “early voting” as a separate and distinct voting method apart from “absentee voting.” Among the substantive changes are rules that require the following:

- Clerks’ offices must remain open on Election Day.
- Counties with more than 100,000 residents must establish temporary branch early voting locations, open early voting polling places 12 hours each day during the final week of early voting, and observe extended hours during the last weekend of early voting.
- Electioneering must take place outside larger boundaries near early voting locations to put procedures in line with Election Day electioneering.
- Clerks’ offices must establish uniform voting hours for all early voting locations.<sup>6</sup>

The 1991 legislation calls for an early voting period beginning 20 days before the election. Subsequent amendments narrow the early voting period to provide greater uniformity in the voting process. Today, the current period of early voting begins on the 17th day before a general election or the first business day thereafter if the 17th day before the election falls on the weekend.

## Establishing Early Voting Locations

Early voting sites are not chosen at random. State law defines the formula for establishing early voting locations for State and Federal elections as follows:

<sup>6</sup>*Texas. Committee on Elections, Texas House of Representatives. Interim Report 1992. Austin: The Committee [1992]. pp. 5-8.*

<sup>7</sup>*Tex. Elec. Code Ann. § 85.062 (2003).*

<sup>8</sup>*Ibid.*

- Counties with populations of less than 100,000 are required to maintain early voting locations at the main office of the county election official and any permanent branch locations.
- Counties with populations between 100,000 and 120,000 are required to maintain one early voting location within each County Commissioner District if the county receives a request from within a particular precinct by 15 or more registered voters.
- Counties with populations between 120,000 and 400,000 are required to maintain one early voting location within each County Commissioner District plus a main early voting location (minimum of five locations).
- Counties with populations of more than 400,000 are required to maintain one early voting location within each State Representative District plus the main early voting location.
- The total number of permanent branch and temporary branch early voting locations in one County Commissioner District may not exceed twice the number of permanent and temporary polling places open at that time in another County Commissioner District.<sup>7</sup>

The County Commissioners Court, the governing body of each county, is the ultimate authority for the placement and use of early voting locations throughout the county. All decisions about the placement of early voting locations must be official actions of the court, which are posted on the agenda of their regular meetings. Furthermore, there are statutory requirements to ensure that the placement of early voting sites is fair and politically neutral.<sup>8</sup>

The current statutory requirement for the relatively equal distribution of early voting locations among County Commissioner Districts (not to exceed a ratio of 2:1) provides a valuable tool for maintaining a minimum level of equality in service because each County Commissioner District is required by law to have roughly the same population.

Although each county must achieve minimum compliance with the law, many pursue additional alternative methods allowable under the TEC. Some

counties have established “mobile early voting” locations. These locations are open for limited durations and are intended to serve particular areas. All mobile locations are subject to the same noticing requirements and procedures as stationary early voting buildings.<sup>9</sup>

## Costs

Texas has not conducted a statewide review of the costs associated with early voting. Tarrant County, however, the third largest county in the State and home to the city of Fort Worth, estimates that the direct costs associated with conducting early voting during the Presidential election in November 2004 amounted to \$524,320; more than 57 percent of that expenditure is attributable to payroll and the hiring of additional clerks.

Tarrant County establishes 28 early voting locations for the duration of the early voting period and an additional 9 locations of limited duration. Because of its large population, Tarrant County is required to conduct early voting for a period of 12 hours per day (Monday through Friday) during the last week of early voting. During the 2004 general election, the county’s 307,246 early votes cast averaged a cost of \$1.70 per early voter according to interviews with the Tarrant County Elections Administrator.

In Harris County, the State’s largest county, with 1.9 million registered voters, the cost per early voter in the 2004 Presidential election was \$1.14. Total costs associated with the 32 early voting locations in Harris County totaled \$471,073, and an estimated 72 percent of that amount was for personnel expenses, according to interviews with the Harris County Clerk.

Other costs associated with early voting include telecommunication line installations, site rental fees, and transportation fees to transport voting equipment to and from early voting locations. The cost per early voter varies from election to election based on the level of turnout during early voting.

## Personnel Costs

Payroll expenses account for a substantial percentage of the money required to conduct early voting in Tarrant and Harris Counties. To conduct “Election Day” over an extended period, local election officials must hire temporary employees, who are paid at a higher pay rate than that of standard Election Day poll workers.

In 2007, supervisors at an early voting location in Harris County earned \$8.49 per hour, while election clerks earned \$7.92 per hour. Election Day poll workers in Harris County earned \$7.50 and \$6.00 per hour, respectively, for the equivalent positions.

## Technology Costs

With many early voting locations open and processing voters simultaneously, counties use modems and other telecommunication devices that provide real-time connectivity to the elections office to prevent multiple voting. The need for this technology was first identified when Texas expanded no-excuse absentee voting. At that time, the Texas Legislature wanted to ensure that voters could cast only one ballot during each election.

Early voting requires using off-the-shelf or internally developed election management software. The software offers a user-friendly interface for processing voters by election clerks while verifying a voter’s registration status. The voter is then given credit for voting. After given credit, the individual is unable to vote in another early voting location or on Election Day. Should this connectivity be lost for some reason during voting, emergency procedures are in place to verify voters via telephone so that no voters are turned away from an early voting location. The increased telecommunication requirement adds to the costs associated with early voting—approximately \$4,600 in Harris County, for example.

<sup>9</sup>*Tex. Elec. Code Ann. § 85.067 (2003).*

## Administrative Challenges

The public expects reliable early voting each election, and local election officials continue to improve administrative practices and procedures to meet those expectations.

Counties are considering ways to inform the public during early voting about which sites are experiencing long lines and how best to redirect voters to alternate locations. Officials continue to examine the potential for more early voting locations and how best to rapidly verify a voter's eligibility, because the ability to process voters quickly is critical to the success of early voting in any jurisdiction.

Harris County has started using Geographic Information System software to analyze voter trends within service areas, identify gaps in service coverage, and anticipate the potential effect of moving early voting locations.

## Voter Turnout

The Texas Legislature initially justified its approval of early voting with a supposition that providing greater ease and flexibility might yield higher turnout. Early voting is certainly more convenient for voters; sites are open for many more hours during the course of the election cycle than they would be if voting occurred only on Election Day. The voter makes the decision of when and where to vote based on his or her schedule. Early voting, however, appears to serve only as an alternative voting method for active voters who would have otherwise voted on Election Day. Overall turnout as a percentage of registered voters has not increased, so little evidence supports the

<sup>10</sup>The National Voter Registration Act of 1993, also known as Motor Voter, went into effect on January 1, 1995. Although the law improved access to voter registration and information, it made it more difficult for jurisdictions to remove voters from the voter registration list. With the added difficulty of removing voters from the list, it is not surprising that the turnout of registered voters has declined in certain elections since 1995.

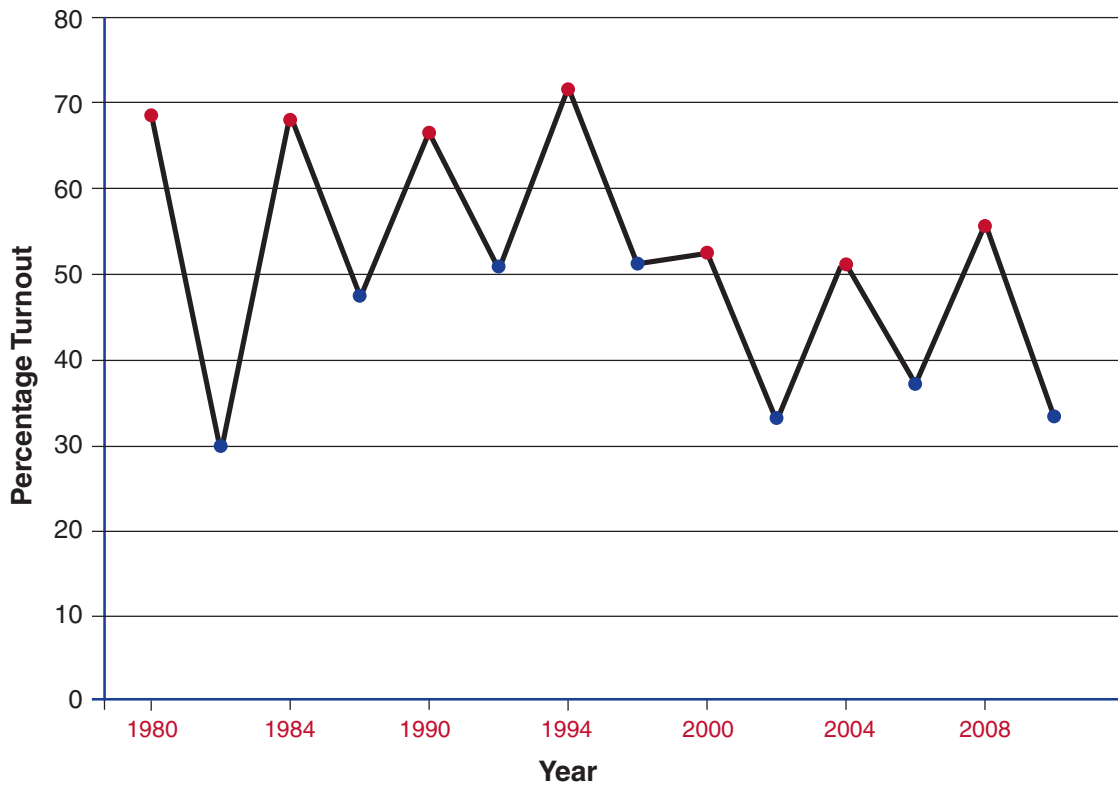
supposition that large proportions of previously nonvoting individuals are now participating because of the convenience provided by early voting. It is possible, though, that convenience is keeping some voters in the process that might otherwise have stopped voting without the alternative voting option.

Figure 1 illustrates the traditional ebb and flow of turnout associated with Federal elections. Presidential election years are usually the highest turnout elections. In Texas, the most noticeable trend in the data is the dropoff that occurred between the 1992 and 1996 Presidential elections—from a high of more than 70 percent in 1992 to 53 percent in 1996.<sup>10</sup> Although 2004 showed a slight increase in turnout, the overall trend since early voting began reveals no dramatic increase in turnout. Instead, it has remained relatively stable at slightly more than 50 percent during recent Presidential election cycles.

Figure 2 illustrates the increasing proportion of overall voting in Texas that occurs during early voting. Although the level of overall turnout has remained the same, the percentage of those voters choosing to vote early continues to grow when similar elections are compared. In 2004, the proportion of early voters of overall turnout was more than 50 percent for the first time. One trend of particular note is the double-digit increase in the percentage of early voters from 2000 to 2004. Future elections will reveal whether the trend continues.

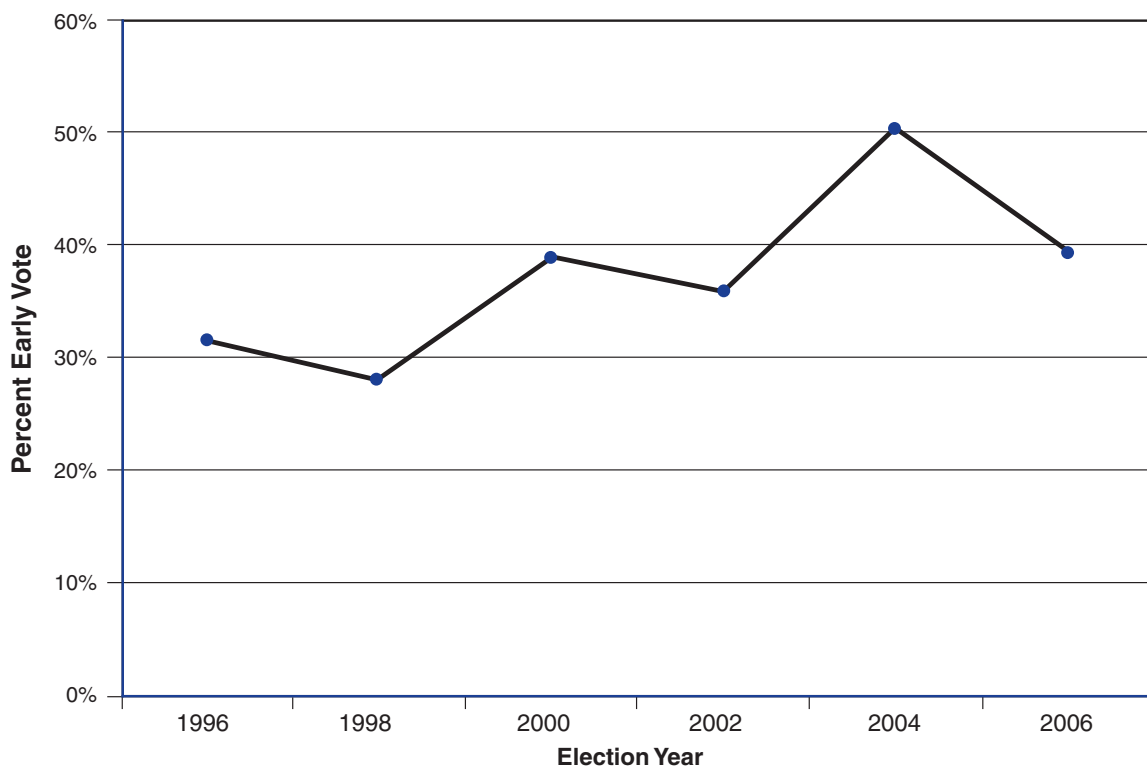
Figure 3 shows the daily turnout for the 15 most populous counties in Texas in the 2-week early voting period before Election Day. During the first week, early voting is limited to the 8-hour workday. During the second week of early voting, hours are extended to 12 hours per day in each of the 15 counties. The data show that for both the 2004 and 2006 general elections, a dramatic increase in turnout correlates with the expanded service hours during the second week of early voting. Local election officials should consider these data when implementing an early voting process. If 2 weeks of early voting proves too expensive, the same convenience voting effect may still be achieved in 1 week of early voting, because it appears that most voters decide to vote as close as possible to Election Day.

**Figure 1. Overall Turnout (RV) for Federal General Elections (1980–2006)**



*Source: Texas Secretary of State, Elections Division, Election Results Archive, 2006.*

**Figure 2. Early Voting as a Percentage of Overall Turnout**



*Source: Texas Secretary of State, Elections Division, Election Results Archive, 2006.*

## Legal Challenges

Texas won its first early voting legal battle when the 5th U.S. Circuit Court of Appeals ruled that “because the election of federal officials in Texas is not decided until Texas voters go to the polls on federal election day, we conclude that the Texas early-voting scheme is not inconsistent with federal election laws.”<sup>11</sup>

In 2003, the Mexican American Legal Defense and Education Fund (MALDEF) sued Bexar County (TX) election officials.<sup>12</sup> The election involved in this dispute was the Texas State Constitutional Amendment election scheduled for September 13, 2003. Because of low turnout expectations for this election, the number of early voting locations was decreased from the number used on a typical Federal Election Day. MALDEF claimed that the reduction of early voting locations happened in particular demographic areas that would be more likely to deny equal access for voters of some minority groups. The U.S. District Court ruled that the county had not properly secured preclearance through the U.S. Department of Justice under Section 5 of the Federal Voting Rights Act, which is required in some jurisdictions

*\*Day 6 represents a Saturday—the first voting day with 12 hours of voting. Day 7 represents a Sunday, with limited voting hours in many counties, which results in far fewer votes than the immediately preceding and succeeding days of early voting. Days 8–12 represent the second week of early voting, with 12 hours of voting each day.*

<sup>11</sup>*The Voting Integrity Project, Inc. et al v. Elton Bomer*, 199 F.3d 773 (5th Cir. 2000).

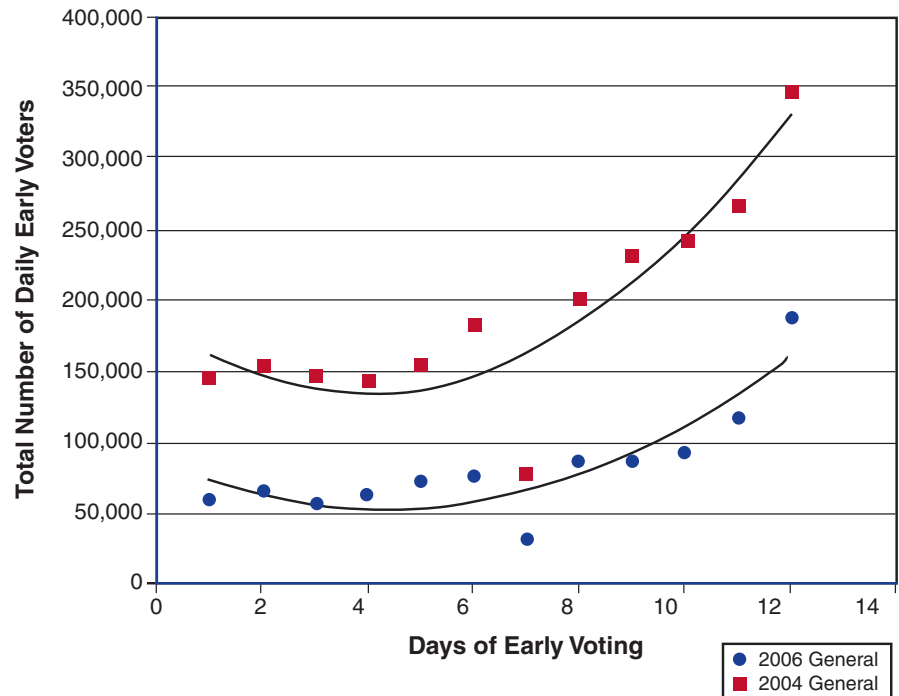
<sup>12</sup>*Miguel Hernandez Chapter of the Am. GI Forum v. Bexar County*, No. SA-03CA-816-RF (W.D. Tex. August 28, 2003).

<sup>13</sup>*Ibid.*

<sup>14</sup>*Ibid.*

<sup>15</sup>42 U.S.C. § 1973c (2006).

**Figure 3. Daily Distribution of Early Voters 2006 versus 2004 General Elections\***



Source: Texas Secretary of State, Elections Division, Election Results Archive, 2006.

before changing an election practice.<sup>13</sup> In addition, the overall distribution and existing levels of access of early voting locations were deemed insufficient. Bexar County was required to establish an additional six early voting locations.<sup>14</sup>

In an effort to alleviate questions of equal access, the TEC now defines certain noticing provisions to registered voters regarding the schedule and locations for early voting. Any changes to early voting schedules or early voting locations must be submitted for Section 5 preclearance through the U.S. Department of Justice, as required by the Federal Voting Rights Act.<sup>15</sup>

## Conclusion

The success of early voting in Texas can be attributed to its statutory foundation, distinct rules that establish minimum service requirements for voters, and defined operating procedures for local election officials. Key portions in the TEC and best practices used by election officials include the following:

- Clear rules for the uniform application of early voting hours and dates.
- Unambiguous minimum and maximum requirements for the quantity and distribution of early voting locations to ensure equal access within a county.
- Noticing provisions that inform the voting public about early voting locations, dates, and times and also inform them of any changes.
- Detailed procedures for processing voters during the early voting period.
- Technology that permits real-time connectivity for verifying early voters.

As the popularity of early voting increases, so does the number of challenges for election officials. They

must periodically reassess early voting service areas within their jurisdictions. As demand for early voting in one area increases, officials must respond by identifying and planning for new early voting locations as needed.

Despite the fact that early voting has not increased overall turnout in Texas, as was originally hoped, it has been embraced by both the public and election officials. Voters have the flexibility of choosing a convenient time and place to cast their ballots—something they may be unable or unwilling to do on Election Day—and long lines at polling places and resulting consequences become less likely for local election officials on Election Day. Continued increases in the proportion of the electorate choosing to use early voting signal that the alternative voting method has become an integral part of the election process by voters in Texas.