



October 11, 2017

VIA EMAIL

The Honorable Rolando Pablos
Texas Secretary of State
P.O. Box 12887
Austin, Texas 78711-2887

RE: Preventing the Disenfranchisement of Texas Voters After Hurricane Harvey

Dear Mr. Pablos:

On behalf of the Texas State Conference of the NAACP, the Texas Organizing Project Education Fund, the Texas Civil Rights Project, Harris County Commissioner Rodney Ellis, Fort Bend County Commissioner Grady Prestage, and Jefferson County Commissioner Everette Alfred, the NAACP Legal Defense and Educational Fund, Inc. (“LDF”)¹ writes to ask you to prevent the disenfranchisement of eligible voters in Texas who, because of Hurricane Harvey, lack the transportation, documents, and other resources necessary to vote under Texas law. Given that at present more than 834,800 people in Texas have registered for FEMA support, over 60,000 Texans

¹ Since its founding in 1940, LDF has been a pioneer in the struggle to secure and protect the rights of Black people and other people of color in Texas and elsewhere by using legal and legislative advocacy and public education strategies. LDF has been involved in numerous precedent-setting litigations related to securing the rights of people of color in Texas and elsewhere. *See, e.g., Smith v. Allwright*, 321 U.S. 649, 659 (1944) (LDF successfully arguing that denying blacks the right to vote in primary elections violated the Fifteenth Amendment); *Fisher v. University of Texas at Austin*, 136 S. Ct. 2198 (LDF as amicus in the successful defense of affirmative action at the University of Texas-Austin); *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016) (LDF as amicus in the successful defense of one-person-one-vote); *Buck v. Davis*, 137 S. Ct. 759 (2017) (LDF successfully challenging capital sentence where prisoner was prejudiced by defense counsel presenting expert testimony that prisoner was statistically more likely to act violently in the future because he was black); *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc), *cert. denied*, 137 S. Ct. 612 (2017) (LDF successfully challenging Texas’s photo ID law under Section 2 of the Voting Rights Act); *Veasey v. Abbott*, 249 F. Supp. 3d 868 (S.D. Tex. 2017) (finding, on remand, that the photo ID law has a discriminatory purpose).

LDF has been a separate entity from the NAACP, and its state branches, since 1957.

remain displaced,² and approximately 500,000 cars³ have been damaged or destroyed in car-dependent areas, it will be difficult for many voters to get to their assigned polling sites on election day or register to vote by the October 10, 2017 deadline. In addition, due to the devastating impact of the hurricane, many otherwise eligible voters no longer possess the required identification under Texas's voter identification law, which is currently under challenge in federal court in a case that LDF is litigating.⁴ Further, the racially disparate impact of the photo ID law will be exacerbated to the degree Black and Latino Texans are more likely to have lost their IDs in the wake of the hurricane and to lack the ability to access replacement IDs.⁵ In sum, the difficulty of accessing photo or non-photo ID, registering to vote, and traveling to polling locations in the wake of Hurricane Harvey may substantially burden many voters' ability to participate in the political process, especially voters of color. Absent action by your office, such burdens are likely to violate the United States Constitution and Section 2 of the Voting Rights Act of 1965.

The Texas code already recognizes that a natural disaster is an extenuating circumstance necessitating accommodations. TEX. ELEC. CODE ANN. § 65.054(b)(2)(C). It provides that if a "voter does not have any identification meeting the requirements of Section 63.001(b) as a result of a natural disaster that was declared by the president of the United States or the governor" that "caused the destruction of or inability to access the voter's identification," the voter is permitted to vote if he or she executes an affidavit so stating. *Id.* The natural disaster provision applies when there is an official declaration that the natural disaster "occurred not earlier than 45 days before the date the ballot was cast." *Id.*

² Juan A. Lozano, Associated Press, *1 month after Hurricane Harvey hit, over 60,000 Texans are still displaced, living in shelters or hotel rooms paid for by FEMA*, BUS. INSIDER (Oct. 1, 2017), <http://www.businessinsider.com/ap-month-after-harvey-debris-piles-show-recovery-takes-time-2017-10>.

³ Avi Selk, Todd C. Frankel and Peter Holley, *Thousands in Houston are stranded at home. They can't find a car that's not flooded*, WASH. POST (Sept. 4, 2017), <http://www.miamiherald.com/news/nation-world/national/article171184072.html>.

⁴ *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc), *cert. denied*, 137 S. Ct. 612 (2017); *Veasey v. Abbott*, 249 F. Supp. 3d 868 (S.D. Tex. 2017).

⁵ See Teresa Mathew, *Vulnerable Communities Lose Critical Documentation in Natural Disasters' Wake*, CITY LAB (Sept. 1, 2017), <https://www.citylab.com/equity/2017/09/how-id-laws-disenfranchise-voters-in-the-wake-of-a-hurricane/538512/>.

Governor Abbott issued a disaster proclamation on August 23, 2017, and extended the proclamation on September 20, 2017 for another 30 days, certifying that Hurricane Harvey created an imminent disaster for 60 counties in Texas.⁶ Thus, the natural disaster provision is applicable through December 4, 2017, and the November 7 election falls within the applicable 45-day window. TEX. ELEC. CODE ANN. § 65.0541. It is imperative that your office inform election officials directly and Texans through public announcements and notice that the natural disaster provision extends through December 4, encompassing the November 7 election and any other elections within that time period, and permits Texas voters to vote without identification if the Hurricane caused the destruction of or inability to access their identification.

In addition, we urge you to allow voters to vote in locations other than their assigned voting locations, an accommodation that already exists during early voting. TEX. ELEC. CODE ANN. § 81.001. We also ask that you extend the deadline for Texans from affected areas to register to vote and to update their registrations to reflect new addresses. Such accommodations are not unprecedented. Indeed, states often adopt accommodations to their normal voting procedures in the face of a natural disaster. In 2006, for example, the state of Louisiana took special action to accommodate displaced voters after Hurricanes Katrina and Rita.⁷

A refusal to take these simple steps to protect the fundamental right to vote under these circumstances would be arbitrary and unnecessary and would likely not survive a constitutional challenge.⁸ When considering challenges to state election laws that burden the fundamental right to vote, courts must “weigh ‘the character and magnitude of the asserted injury to the rights ... that the plaintiff seeks to vindicate’ against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which

⁶ Proclamation, Governor Abbott Extends Disaster Declaration for Texas Counties Impacted by Hurricane Harvey (Sept. 20, 2017), <https://gov.texas.gov/news/post/governor-abbott-extends-disaster-declaration-for-texas-counties-impacted-by>.

⁷ See LA. REV. STAT. ANN. § 18:115 (2012); LA. REV. STAT. ANN. § 18:401.4 (provisions expired July 16, 2006) (allowing early voting); LA. REV. STAT. ANN. § 18:1308.3 (2012) (allowing special provisions for displaced voters).

⁸ See *Bullock v. Carter*, 405 U.S. 134, 141 (1972) (in regulating elections, state’s “power must be exercised in a manner consistent with the Equal Protection Clause.”).

those interests make it necessary to burden the plaintiff's rights.”⁹ Here, the potential injury would be substantial. A large number of voters will likely be disenfranchised given the barriers to transportation in the wake of the hurricane. In addition, no countervailing state interest justifies denying these accommodations. As noted, another provision of Texas elections law already recognizes the need to make special accommodations in the wake of a natural disaster, and voters are already permitted to vote outside their assigned polling place during early voting. Under these circumstances, a decision not to take simple steps to accommodate eligible Texas residents cannot be justified.¹⁰

In sum, we ask that you (1) inform election officials and voters that the natural disaster provision extends through December 4, encompassing the November 7 election and any other elections within that time period, (2) provide Texans from affected areas more time to register and to update their registrations, and (3) allow voters to vote in locations other than their assigned voting locations. These measures are necessary to prevent the disfranchisement of otherwise eligible Texas voters, which would violate the Fourteenth and Fifteenth Amendments, and Section 2 of the Voting Rights Act. In addition to these steps, we encourage you to reach out to county election officials in advance of Election Day to ensure that every poll worker and all Election Day personnel are properly trained on the relevant laws governing this election including the Reasonable Impediment provision imposed by court order dated August 10, 2016.¹¹ We welcome the opportunity to talk with you or a representative from your office about making these accommodations, as well as the trainings and other measures you may have instituted to ensure that every voter can fully and freely exercise the franchise on Election Day

Please respond *in writing* on or before October 13, 2017. If you have any questions, please contact us at 212-965-2200.

Sincerely yours,



Janai Nelson
Associate Director-Counsel

⁹ *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

¹⁰ See *Georgia Coal. for the Peoples' Agenda, Inc. v. Deal*, 214 F. Supp. 3d 1344, 1345–46 (S.D. Ga. 2016) (extending the voter registration deadline for one week after Hurricane Matthews in response to constitutional and statutory challenges under the National Voter Registration Act).

¹¹ *Veasey v. Abbott*, Order Regarding Agreed Interim Plan for Elections, No. 2:13--cv-00193, Doc. 895, (S.D. Tex. Aug. 10, 2016), https://www.brennancenter.org/sites/default/files/legal-work/2016.08.10_Order-InterimPlan.pdf.



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