



Sent Via Email

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Re: Request for Texas Attorney General Statement Against Voter Intimidation

Dear Office of the Texas Attorney General,

On behalf of the Legal Defense Fund, the Texas Civil Rights Project and the ACLU of Texas, we urge Attorney General Paxton to issue a statement condemning voter intimidation and affirming your commitment to ensuring that voters will be free to vote without fear this November. In light of evidence of intimidation in recent elections, and reports indicating organized efforts to intimidate and harass Texas voters during this November's election, it is critically important that your office issue a statement to warn bad actors that voter intimidation will not be tolerated.

1. Voters in Texas Are Subject to Threats of Voter Intimidation.

Sixty percent of Texas voters believe it is "likely" that there will be political violence in this year's election, making it more important now than ever before for state leadership to assure Texas voters that they will make every effort to ensure voter safety.¹ There have been concerning reports of voter intimidation in Texas that raise red flags for the potential for further voter intimidation at the polls during the general election. Texas House Bill 5190 makes it easier to access the voting records of individuals, including how someone voted and their polling location, adding fuel to efforts to intimidate voters.² Christina Adkins, the

¹ Michael Adkinson, *Most Texas Voters Say Political Violence "Likely" Over 2024 Election, Poll Finds*, CBS Austin (Feb. 21, 2024), <https://m.cbsaustin.com/news/local/most-texas-voters-say-political-violence-likely-over-2024-election-poll-finds>.

² Natalia Contreras, *Top Texas Election Official Acknowledges Threats to Ballot Secrecy*, Tex. Trib. (May 30, 2024), <https://www.texastribune.org/2024/05/30/texas-ballot-secrecy-election-audits/>.

election division director for the Texas Secretary of State's Office, noted this concern in testimony to state lawmakers: "I think what a lot of election officials as a community have been very worried about, is that as we've increased this level of transparency, it has made this information easier to discover," she said.³ This comes at a time when only sixty percent of U.S. adults (seventy-seven percent of Democrats; forty-seven percent of Republicans) think the 2024 presidential election will be conducted fairly.⁴ And sixty percent of Texas voters believe it is "likely" that there will be political violence in this year's election, making it more important now than ever that state leadership assures Texas voters they have their backs.⁵

These threats are not new: During the 2020 and 2022 elections, voters and election officials were targeted by disturbing incidents of voter intimidation. In October 2020, at least 40 vehicles encircled a Biden-Harris Campaign bus, intimidating passengers with the goal of preventing them from engaging with prospective voters, with the ringleader recently held liable under the Ku Klux Klan Act for conspiring to do so.⁶ In 2022, the Texas Civil Rights Project received a report that a Travis County party leader knocked doors to falsely accuse voters of illegally voting by mail.⁷ Additionally, the project reported that Tarrant County voters received letters warning of a voter integrity investigation.⁸

These threats are especially concerning given the significant evidence of ongoing activity among extremist, antigovernment, and white supremacist organizations in Texas. The Southern Poverty Law Center is currently tracking 97 hate and antigovernment groups

³ *Id.*

⁴ See Hannah Hartig, *Many Americans Are Confident the 2024 Election Will be Conducted Fairly, but Wide Partisan Differences Remain*, Pew Rsch. Ctr. (Aug. 1, 2024), <https://www.pewresearch.org/short-reads/2024/08/01/many-americans-are-confident-the-2024-election-will-be-conducted-fairly-but-wide-partisan-differences-remain/>.

⁵ Michael Adkinson, *Most Texas Voters Say Political Violence "Likely" Over 2024 Election, Poll Finds*, CBS Austin (Feb. 21, 2024), <https://m.cbsaustin.com/news/local/most-texas-voters-say-political-violence-likely-over-2024-election-poll-finds>.

⁶ See Compl. ¶¶ 1-7, *Cervini v. Cisneros*, No. 1:21-CV-00565-RP, 2022 WL 867034 (W.D. Tex. filed June 24, 2024); Bayliss Wagner, *'Trump Train' trial: Texas jury finds San Antonio man violated Klan Act; 5 defendants cleared*, Austin-American Statesman (Sept. 23, 2024), <https://www.statesman.com/story/news/politics/courts/2024/09/23/texas-jury-trial-verdict-trump-train-organizers-wendy-davis-biden-harris-bus/75296175007/>.

⁷ David Martin Davies, *Texas Civil Rights Project Reports Multiple Instances of Harassment and Intimidation at the Polls*, Tex. Pub. Radio (Nov. 4, 2022), <https://www.tpr.org/government-politics/2022-11-04/texas-civil-rights-project-reports-multiple-instances-of-harassment-and-intimidation-at-the-polls>.

⁸ *Id.*

in Texas,⁹ and the Anti-Defamation League has identified 1,921 instances of white supremacist propaganda and 54 white supremacist events held in Texas since 2020.¹⁰

Moreover, recent years have been marked by increasing threats to election officials and a high turnover rate for election officials in Texas. In November 2020, people threatened the Tarrant County Elections Administrator with calls to “hunt him down” and “hand him.”¹¹ His address was posted online, and he felt forced to install security cameras around his home simply for doing his job as Elections Administrator.¹² In 2022, the U.S. Department of Justice investigated more than 1,000 harassing and threatening messages directed at election workers nationwide, roughly 100 of which rose to the level of potential prosecution.¹³ Protecting the safety and security of election workers is fundamental to the integrity of our election process.

2. Voter Intimidation is a Serious Crime.

Voter intimidation is a serious crime under both federal law and Texas law. Federal law provides that:

Whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for [federal office] . . . shall be fined under this title or imprisoned not more than one year, or both.

18 U.S.C. § 594. Similarly, Texas law provides that:

(a) A person commits an offense if by means of coercion he:

...

(2) influences or attempts to influence a voter not to vote or to vote in a particular manner.

⁹ See *Hate Map*, S. Poverty L. Ctr., <https://www.splcenter.org/hate-map> (last visited Sept. 18, 2024).

¹⁰ See *ADL H.E.A.T. Map*, Anti-Defamation League, <https://www.adl.org/resources/tools-to-track-hate/heat-map> (last visited Sept. 18, 2024).

¹¹ Letter from Heider Garcia, Tarrant Cnty. Elections Adm’r, to the U.S. Senate Judiciary Comm. (Aug. 3, 2022), <https://www.judiciary.senate.gov/committee-activity/hearings/08/03/2022/protecting-our-democracys-frontline-workers>.

¹² *Id.*; Garcia then quit, partially as a result of this harassment. See Neil Vigdor, *After Threats and Clashes With Republicans, Another Texas Election Official Quits*, N.Y. Times (April 18, 2023), <https://www.nytimes.com/2023/04/18/us/politics/trump-supporters-election-official-threats.html>.

¹³ Marina Villeneuve, *Justice Department Details Threats Against Election Workers*, Assoc. Press (Aug. 3, 2022), <https://apnews.com/article/2022-midterm-elections-violence-presidential-judiciary-5125682e179ac1234a97756a644e353c>.

Tex. Pen. Code § 36.03(a)(2).

(a) A person commits an offense if, during the voting period and within 100 feet of an outside door through which a voter may enter the building in which a polling place is located, the person:

(1) loiters; or

(2) electioneers for or against any candidate, measure, or political party.

Tex. Elec. Code § 61.003; *see also* Tex. Elec. Code § 276.001 (“harms or threatens to harm the voter by an unlawful act” in retaliation for voting).

In addition, any individuals or organizations engaging in voter intimidation are subject to civil liability under numerous federal statutes. *First*, Section 11(b) of the Voting Rights Act of 1965 provides that “no person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote[.]” 52 U.S.C. § 10307. *Second*, Section 131(b) of the Civil Rights Act of 1957 provides that “[n]o person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote[.]” 52 U.S.C. § 10101(b). *Third*, Section 2 of the Enforcement Act of 1871 (the “KKK Act”) bars any conspiracy “to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote . . . from giving his support” or “to injure any citizen in person or property on account of such support.” 42 U.S.C. § 1985(3).

Under § 11(b) of the Voting Rights Act, intimidating conduct is based on an objective assessment of the conduct’s effect and does not require specific intent on the part of the individual engaging in the conduct to engage in unlawful intimidation.¹⁴

Texas’s Director of Elections, in advisories to state election officials before the March and May 2024 elections, emphasized the applicable state laws to common issues at poll sites.¹⁵ The advisory noted laws against electioneering, and potential voter intimidation, including prohibitions on sound amplification devices within 1,000 feet of poll sites and

¹⁴ See Ben Cady & Tom Glazer, *Voters Strike Back: Litigating Against Modern Voter Intimidation*, 39 N.Y.U. Rev. L. & Soc. Change 173, 204 (2015) (explaining that “Section 11(b) [of the Voting Rights Act] does not require a plaintiff to make any showing with regard to the defendant’s intent.”).

¹⁵ Election Advisory No. 2024-09 from Christina Worrell Adkins to All Election Offs., Tex. Sec’y of State’s Off. (Apr. 19, 2024), <https://www.sos.state.tx.us/elections/laws/advisory2024-09.shtml>; Election Advisory No. 2024-06 from Christina Worrell Adkins to All Election Officials, Tex. Sec’y of State’s Off. (Feb. 16, 2024), <https://www.sos.texas.gov/elections/laws/advisory2024-06.shtml>.

firearms inside poll sites.¹⁶ We recommend that you follow your fellow state agencies, and sister state attorneys general, in issuing guidance against voter intimidation.

3. In Past Election Cycles, Numerous State Attorneys General Have Issued Statements Addressing Voter Intimidation.

In previous Presidential election cycles, attorneys general from across the country and across the political spectrum have issued statements addressing voter intimidation. For example, heading into the 2020 Presidential Election, Florida Attorney General Ashley Moody, in response to an inquiry from LDF and other civil rights groups, issued the following statement:

The Attorney General condemns hate, and any and all acts of voter intimidation. Violence and threats cannot be tolerated in our elections process. Voters must be allowed to exercise their right to vote without fear or intimidation and law enforcement must stand ready to assist if these acts occur.¹⁷

And in 2022, then Arizona Attorney General Mark Brnovich issued a similar statement ahead of the midterm elections:

Any form of voter intimidation is absolutely unacceptable and will not be tolerated ... Regardless of intent, this type of misguided behavior is contrary to both the laws and values of our state.¹⁸

This year, Georgia's Secretary of State already has "condemned all acts of political intimidation" in a January statement:

It is deeply troubling to see a rise in swatting and other physical threats. We expect heightened tensions as we head into a major presidential election. We expect American citizens to engage in the democratic process- not resort to cowardly acts of intimidation. We're committed to upholding our democratic

¹⁶ *Id.*; see also Tex. Pen. Code § 46.03(a)(2); Tex. Elec. Code § 61.003; Tex. Elec. Code § 61.004.

¹⁷ Issac Morgan, *Civil Rights Groups Wait for Response from Attorney General Ashley Moody on Voter Intimidation Issues*, Fla. Phoenix (Oct. 30, 2020), <https://floridaphoenix.com/2020/10/30/civil-rights-groups-wait-for-response-from-attorney-general-ashley-moody-on-voter-intimidation-issues/>.

¹⁸ Ariz. Att'y Gen., *Attorney General Brnovich Stands Up to Protect Arizona Voters* (Oct. 26, 2022), <https://www.azag.gov/press-release/attorney-general-brnovich-stands-protect-arizona-voters>;

principles and fighting for an environment in which citizens can freely and safely participate.¹⁹

These are just a few examples of many such statements that have been issued in recent years by states and jurisdictions such as Colorado, Wisconsin, Maine, Massachusetts, Michigan, Vermont, Virginia, and the District of Columbia.²⁰

4. We Urge You to Issue a Statement Affirming that Voter Intimidation is a Serious Crime.

We urge you to issue a public statement affirming that voter intimidation is a serious crime under both federal and Texas law and warn potential bad actors that there are severe penalties if they intimidate voters.

Your public statement on this issue will not only have an important deterrent effect on potential bad actors, but it will also give voter across Texas comfort that they will be able to safely head to the polls to cast their ballots free from voter intimidation.

¹⁹ Ga. Sec’y of State, *Secretary Raffensperger Reaffirms Stand against Political Intimidation, Calls on General Assembly to Pass Language of HB 790* (Jan. 4, 2024), <https://sos.ga.gov/news/secretary-raffensperger-reaffirms-stand-against-political-intimidation-calls-general-assembly/>;

²⁰ See Colo. Att’y Gen., *Attorney General Phil Weiser Reissues Public Advisories on Voter Intimidation and Election Worker Safety* (Oct. 13, 2022), <https://coag.gov/press-releases/10-13-22/>; Colo. Dep’t of L., *Public Advisory on Voter Intimidation Crimes and Poll Center Security* (Oct. 13, 2022), <https://coag.gov/app/uploads/2022/10/Public-Advisory-Voter-Intimidation-10-13-2022.pdf>; Duaa Israr, *Wisconsin Attorney General Josh Kaul Issues Warnings About Voter Intimidation*, News8000 (Oct. 6, 2022), <https://www.news8000.com/wisconsin-attorney-general-josh-kaul-issues-warnings-about-voter-intimidation/>; Conrad Swanson, *Colorado AG Says He Will Prosecute Voter Intimidation During November Election*, Denver Post (Oct. 3, 2020), <https://www.denverpost.com/2020/10/03/colorado-election-phil-weiser-trump-voter-fraud-intimidation/>; Me. Off. of the Att’y Gen., *Office of the Attorney General Election Advisory* (Oct. 8, 2020), <https://www.maine.gov/ag/news/article.shtml?id=3436656>; Commonwealth of Mass. Off. of the Att’y Gen., *Massachusetts Attorney General Advisory on Poll Monitoring and Voter Intimidation* (Sept. 17, 2020), <https://www.mass.gov/doc/ago-advisory-on-poll-monitoring-and-voter-intimidation-english/download>; Neil Vigdor, *Michigan Charges Two Right-Wing Operatives with Felonies Over Voter Suppression Scheme*, N.Y. Times (Oct. 1, 2020), <https://www.nytimes.com/2020/10/01/us/elections/jacob-wohl-jack-burkman-michigan-felony.html>; Sam Metz, *Nevada Attorney General Vows to Take on Voter Intimidation*, Nev. Appeal (Oct. 2, 2020), <https://www.nevadaappeal.com/news/nevada-attorney-general-vows-to-take-on-voter-intimidation/>; State of Vt. Off. of the Att’y. Gen., *Vermont AGO Guidance Regarding Voter Intimidation and Harassment* (Oct. 5, 2020), <https://ago.vermont.gov/wp-content/uploads/2020/10/AGO-Guidance-10.5.20.pdf>; Commonwealth of Va. Off. of the Att’y Gen., *Attorney General Herring Reiterates Protections Against Voter Intimidation and Outlines Guidance for Poll Watchers* (Sept. 30, 2020), <https://www.oag.state.va.us/media-center/news-releases/1840-september-30-2020-herring-reiterates-protections-against-voter-intimidation-and-outlines-guidance-for-poll-watchers>; Darcy Spencer, *DC Attorney General Says His Office is Ready to Fight Voter Intimidation*, NBC4 Wash. (Oct. 11, 2020), <https://www.nbcwashington.com/news/local/dc-attorney-general-says-his-office-is-ready-to-fight-voter-intimidation/2441466/>; Sarah Thomsen, *Wisconsin Attorney General Talks Voter Intimidation, Security Ahead of Election*, WBAY (Oct. 19, 2020), <https://www.wbay.com/2020/10/19/wisconsin-attorney-general-talks-voter-intimidation-security-ahead-of-election/>.

We ask that you respond in writing by October 14, 2024, to inform us of the steps you will take to address the issues in this letter and whether we can provide any support or assistance to you. We also ask that you identify the name and contact information for a member of your staff who we can contact directly about specific instances of voter intimidation in Texas. Please feel free to contact us directly at cdas@naacpldf.org and vgenecin@naacpldf.org.

Sincerely,

/s/

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Legal Defense Fund (“LDF”)

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that prohibit voter discrimination, intimidation, and suppression and increase access to the electoral process.

Texas Civil Rights Project (“TCRP”)

The Texas Civil Rights Project is boldly serving the movement for equality and justice in and out of the courts. We use our tools of litigation and legal advocacy to protect and advance the civil rights of everyone in Texas, and we partner with communities across the state to serve the rising movement for social justice. We undertake our work with a vision of a Texas in which all communities can thrive with dignity, justice and without fear.

American Civil Liberties Union of Texas (“ACLU Texas”)

The ACLU of Texas works with communities, at the State Capitol, and in the courts to protect and advance civil rights and civil liberties for every Texan, no exceptions. We advocate for fair electoral maps that don't dilute the voting power of communities of color. We represent people caught up in the legal system because of harsh penalties for, at worst, honest mistakes while voting. We work with partners to run the largest non-partisan poll-monitoring program in the state. We join millions of Texans in the fight to ensure that someday, every Texan's voice will be heard.