October 26, 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 October 10, 2017, the NAACP Legal Defense and Educational Fund, Inc. (“LDF”) sent a letter 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 letter asked that, pursuant to established law, accommodations be made for Texas voters who were affected by Hurricane Harvey. On October 24, 2017, your office provided a response indicating that Texas voters who do not have the necessary identification as a result of a natural disaster would be allowed to vote if they sign an affidavit affirming this fact in compliance with the law. See TEX. ELEC. CODE ANN. § 65.054(b)(2)(C) (the “Natural Disaster Provision”). We thank you for your response and your decision to notify Texans that have been affected by Hurricane Harvey about the Natural Disaster Provision. Our request in response is simple: take the necessary steps to ensure that the protection this Provision contemplates is provided to voters by (1) allowing impacted voters to complete the affidavit at their polling location (rather than at the Registrar’s office); and (2) widely publicizing that the Natural Disaster Provision applies to this election.

First, it is unrealistic to expect a vulnerable population of displaced victims of the hurricane to travel to vote on or before Election Day, and then later return to the Registrar’s office to execute an affidavit. This two-step process will effectively deny victims of natural disaster their right to vote. As we noted in our previous letter, 500,000 vehicles were destroyed in the storm and public transportation systems remain in disarray, which makes traveling anywhere in the hurricane-affected areas difficult. Accordingly, we ask that you provide a process for impacted voters to execute the affidavit at the polling site where they cast a ballot in the presence of a polling official.

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
See, e.g., South Carolina v. United States, 898 F. Supp. 2d 30, 34 (D.D.C. 2012) (upholding South Carolina’s voter ID statute, which provided for an affidavit to be completed at the polling location).

Second, until just yesterday, there was no clear guidance from your office that the Natural Disaster Provision applies to this election, despite our request that such clarification be provided by October 13, 2017, in advance of early voting, which started this week. Having now provided such guidance, it is of paramount importance that your office train poll workers and other officials about the Natural Disaster Provision to ensure that no voter is denied the franchise based on a poll worker’s misunderstanding of the law. As of last week, there was still confusion among local officials as to the applicability of this law. For example, an official in the Harris County Clerk’s Office informed eligible voters that the Natural Disaster Provision does not apply to this upcoming election, and an official who answered your election hotline—the number Texans should be able to call to receive accurate election information—was not familiar with the Provision.

Accordingly, we renew our request that your office enhance its efforts to ensure that Texas citizens know that the Natural Disaster Provision is in force in upcoming elections. It is especially important to keep in mind that many voters are currently displaced in shelters, hotels, and other locations. They are focused on meeting basic needs and unable to check for last minute updates on the http://www.votetexas.gov/harvey/ website. Indeed, information relayed solely via an internet announcement is less likely to reach poor people and people of color. We therefore urge you to broadly publicize that the Natural Disaster Provision applies during early voting and on Election Day through mailings, radio announcements, PSAs, and literature at polling locations and disaster relief sites. If your office does not take these crucial steps, it is likely that voters will remain unaware and that the Provision will be underenforced or enforced arbitrarily.

As early voting has started this week, these efforts are overdue. Any further delay risks denying Texans affected by Harvey their right to vote. As mentioned in our first letter, we would be happy to talk to you about making these accommodations, as well as the trainings and other measures you have instituted to enable every voter to fully and freely exercise the franchise during early voting and on Election Day. Please let us know if we can arrange a call this week to discuss the steps that your office will be taking to ensure that voters impacted by the hurricane are protected in a way that responds to the practical realities of this emergency.
Sincerely,

Janai Nelson
Associate Director-Counsel

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