



October 30, 2018

**VIA EMAIL & CERTIFIED MAIL**

The Honorable Rolando B. Pablos  
Texas Secretary of State  
P.O. Box 12887  
Austin, Texas 78711-2887  
secretary@sos.texas.gov

**Re: Reported Problems with Hart eSlate Electronic Voting Machines**

Dear Secretary Pablos:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) and Texas State Conference of the NAACP (“Texas NAACP”)<sup>1</sup> write to express our significant concern about reports of irregularities caused by Hart eSlate electronic voting machines in Texas, and to urge you to take immediate action to ensure that these machines have not been compromised in any way—whether as a result of a malfunction or of malicious interference—so that no voter’s “opportunity to participate in the political processes and to elect candidates of their choice” is denied or abridged during the early voting period or on Election Day in Texas.<sup>2</sup> Your office’s actions to date, as discussed below, are insufficient to allay our concerns.

In the past week, we have received reports from individuals and voter advocacy groups that some Texas voters attempting to cast a straight-ticket ballot for the Democratic Party on Hart eSlate machines have seen their selection for U.S. Senator switch at the last moment to the candidate for the Republican Party.<sup>3</sup> We have not received reports that this is happening to Texas

---

<sup>1</sup> An appendix to this letter includes a brief description of the work of LDF and the Texas NAACP.

<sup>2</sup> *Thornburg v. Gingles*, 478 U.S. 30, 44 (1986).

<sup>3</sup> *See, e.g.*, Texas Civil Rights Project, Texas Civil Rights Project asks Secretary of State to take action on voting machines (Oct 27, 2018), <https://texascivilrightsproject.org/release-texas-civil-rights-project-asks-secretary-of-state-to-take-action-on-voting-machines/>.

voters attempting to cast a straight-ticket ballot for the Republican Party on these machines. But our request that your office do more on this issue is non-partisan and will protect all voters.

We understand that Hart machines are in use in 82 of Texas's 254 counties,<sup>4</sup> and problems have been reported in at least nine of those counties.<sup>5</sup> These accounts are troublingly reminiscent of similar reports involving the position at the top of the ballot (involving vote-switching impacting both major political parties) in at least the 2008, 2012, and 2016 elections.<sup>6</sup> Issues such as these might be written off as human error, which is the position that your office and the company that supplies these machines reportedly has taken.<sup>7</sup> But the high incidence of reported irregularities and the wide range of affected counties cast doubt on this explanation. Moreover, as a joint report published after the 2016 election by the Central Intelligence Agency, the Federal Bureau of Investigation, and the National Security Agency makes clear, present conditions represent a "new normal" in which electronic meddling by hostile foreign powers cannot be assumed away.<sup>8</sup> The U.S. Intelligence Community has assessed with "a high degree of confidence"<sup>9</sup> that the Russian government operated an influence campaign during the 2016 presidential election that was intended both to assist the campaign of President Donald Trump and "to undermine public faith in the US democratic process."<sup>10</sup> In addition, the highest-ranking intelligence officials in the Trump administration have recently confirmed that the threat of Russian interference with American voting systems during the 2018 midterm election is both "real" and "continuing."<sup>11</sup> As you are likely aware, electronic voting machines that do not produce a paper receipt, including the model

---

<sup>4</sup> Tex. Sec'y of State, *Voting Systems by County* (Oct. 1, 2018), <https://www.sos.state.tx.us/elections/forms/sysexam/voting-sys-bycounty.pdf>.

<sup>5</sup> To date, LDF has received direct or indirect reports of vote switching problems in Coryell, Fort Bend, Galveston, Harris, McLennan, Montgomery, Nagadoches, Tarrant, and Travis counties.

<sup>6</sup> See, e.g., Taylor Hatmaker, *Texas has a long history of problems with Hart eSlate voting machines* (Oct. 26, 2018), <https://techcrunch.com/2018/10/26/texas-voting-machines-changing-votes-hart-eslate/>; Zachary Roth, *Election 2016: Tracking Reports of Voting Problems Across the United States*, NBC News (Nov. 7, 2016, 2:51 PM), <https://www.nbcnews.com/storyline/2016-election-day/election-2016-tracking-reports-voting-problems-across-united-states-n673236>.

<sup>7</sup> See Keith Ingram, Director of Elections, *Election Advisory No. 2018-35: Voting on Hart eSlate Machines*, (October 23, 2018), <https://www.sos.state.tx.us/elections/laws/advisory2018-35.shtml>; Brianna Stone, *Company blames Texas voters' problems on user error, saying its machines don't flip straight-ticket ballots*, Dallas News (Oct. 27, 2018), <https://www.dallasnews.com/news/2018-elections/2018/10/26/companyblames-texas-voters-problems-user-errorsaying-machines-dont-flip-straight-ticket-ballots>

<sup>8</sup> Dir. of Nat'l Intelligence, *Intelligence Community Assessment: Assessing Russian Activities and Intentions in Recent US Elections* 5 (Jan. 6, 2017), [https://www.dni.gov/files/documents/ICA\\_2017\\_01.pdf](https://www.dni.gov/files/documents/ICA_2017_01.pdf).

<sup>9</sup> *Id.* at ii.

<sup>10</sup> *Id.*

<sup>11</sup> Michael D. Shear & Michael Wines, *Russian Threat 'Is Real,' Trump Officials Say, Vowing to Protect U.S. Elections*, N.Y. Times (Aug. 2, 2018), <https://www.nytimes.com/2018/08/02/us/politics/russia-election-security-midterm.html>.

of Hart eSlate machines currently deployed in Texas,<sup>12</sup> are particularly susceptible to malicious interference and nearly impossible to audit *after* an election, once votes have been cast and election results have been called.<sup>13</sup>

In light of these grave concerns, the advisory published by the Elections Division of your office on October 23, 2018,<sup>14</sup> does not go far enough to protect the right of qualified voters in the State of Texas “to cast their ballots and have them counted.”<sup>15</sup> As the chief election officer in Texas,<sup>16</sup> you have broad authority to “inspect at any time, including the day of an election, a voting system or the voting system equipment used in an election.”<sup>17</sup> You are required by statute “to ensure the orderly and proper administration of elections using direct recording electronic voting machines.”<sup>18</sup> In addition, you are the Texas official chiefly responsible for enforcing the constitutional mandate that the fundamental right to vote must not be “destroyed by alteration of ballots.”<sup>19</sup> Yet your efforts thus far have been insufficient to cure the problem.

We are not the only advocates that have urged your office to do more during this electoral season. For example, the Texas Civil Rights Project has urged your office to “(1) [d]evelop a system to more proactively inform voters at polling places about this potential [vote-switching] problem” and (2) “[s]ubstantially increase outreach efforts across the state to communicate more clearly to the public the reason some voters are facing this issue; the need for voters to check their ballot choices before submitting their ballot; and that voters should immediately ask for help from a poll worker if they encounter any issue.”<sup>20</sup>

For all these reasons, we urge you to also immediately assemble an emergency task force of examiners, in accordance with your responsibilities and powers under the Texas Election Code, to inspect and audit a representative sample of the Hart eSlate machines currently in operation in

---

<sup>12</sup> See Verified Voting, *Hart Intercivic eSlate*, <https://www.verifiedvoting.org/resources/voting-equipment/hart-intercivic/eslate/> (last visited Oct. 28, 2018).

<sup>13</sup> Christina A. Cassidy, *Lack of paper trail a concern amid fears of election hacking*, A.P. (May 17, 2018), <https://www.apnews.com/df09d5b175d040159995197784efcc60>.

<sup>14</sup> See Keith Ingram, Director of Elections, *Election Advisory No. 2018-35: Voting on Hart eSlate Machines*, (October 23, 2018), <https://www.sos.state.tx.us/elections/laws/advisory2018-35.shtml>.

<sup>15</sup> *United States v. Classic*, 313 U.S. 299, 315 (1941).

<sup>16</sup> Tex. Elec. Code § 31.001.

<sup>17</sup> Tex. Elec. Code § 122.002; *see id.* at § 122.038(b) (“The secretary may examine the system or equipment to aid in determining whether it satisfies the requirements for approval.”); § 122.091(a) (“The secretary of state may reexamine a voting system or voting system equipment . . . at any time after the system or equipment is approved . . .”); *see also id.* at § 122.0911.

<sup>18</sup> Tex. Elec. Code § 129.002.

<sup>19</sup> *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

<sup>20</sup> Ltr. from Beth Stevens, Voting Rights Legal Director, Texas Civil Rights Project to The Honorable Rolando Rios, Texas Secretary of State (Oct. 26), <https://texascivilrightsproject.org/wp-content/uploads/2018/10/TCRP-Letter-to-SOS-10.26.18.pdf>

at least the counties of Coryell, Fort Bend, Galveston, Harris, McLennan, Montgomery, Nagadoches, Tarrant, and Travis, as well as any other counties where similar issues have been reported to your office or in the media to date. At minimum, this task force should be comprised of an equal number of members from the major political parties, as well as organizations that advocate on behalf of Texas voters like the Texas NAACP and Texas Civil Rights Project.

Our democracy requires free, open, and effective access to the sacred right to vote. Any vulnerability in the equipment by which Texas voters exercise that right threatens the legitimacy of our political system and must not be tolerated in Texas or elsewhere. Therefore, we urge you to take action immediately to ensure that neither electronic malfunctions nor any form of malicious interference thwarts the ability of Texas voters to participate effectively in this election.

LDF and the Texas NAACP welcome the opportunity to meet and discuss our concerns further. If you have any questions, please contact Sherrilyn Ifill via Leah Aden at 212-965-7715.

Sincerely,



---

Sherrilyn Ifill, President & Director-Counsel  
Janai S. Nelson, Associate Director-Counsel  
Samuel Spital, Director of Litigation  
Leah C. Aden, Deputy Director of Litigation  
Steven Lance, YLS Public Interest Fellow  
NAACP LEGAL DEFENSE  
& EDUCATIONAL FUND, INC.  
40 Rector, 5th Fl.  
New York, NY 10006  
212.965.7715  
laden@naacpldf.org

Gary Bledsoe, President  
TEXAS STATE CONFERENCE OF THE NAACP  
P.O. Box 380777  
Duncanville, TX 75238  
garybledsoe@sbcglobal.net

CC (*by email*): Bradford Berry, General Counsel, NAACP  
Robert Notzon, Legal Redress Chair, Texas NAACP  
Jesse Gaines, Legal Redress Chair, NAACP  
Bob Lydia, 1st Vice President, Texas NAACP (via Gary Bledsoe)  
Aubrey Hooper, 2nd Vice President, Texas NAACP (via Gary Bledsoe)  
Linda Lydia, Secretary, Texas NAACP  
Lawrence Myers, Assistant Secretary, Texas NAACP (via Gary Bledsoe)  
TaNeika Driver-Moultrie, Treasurer, Texas NAACP  
Terry Mustapfer, Assistant Treasurer, Texas NAACP

Keith Ingram, Director of Elections, Texas Secretary of State's Office

## Appendix

Since its founding in 1940, the **NAACP Legal Defense & Educational Fund, Inc. (“LDF”)** has been a pioneer in the struggle to secure and protect the civil rights of Black people and other people of color in Texas and elsewhere by using legal, advocacy, and public education strategies. LDF has been involved in much of the precedent-setting litigation related to securing the civil rights of people of color in Texas and elsewhere. *See, e.g., Fisher v. University of Texas at Austin*, 136 S. Ct. 2198 (2016) (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 the one-person-one-vote principle); *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 a Black person); *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 the Voting Rights Act). LDF has been a separate entity from the NAACP, and its state branches, since 1957.

The **Texas State Conference of the NAACP (“Texas NAACP”)** is the oldest and one of the largest and most significant non-profit civil rights’ organizations in the State of Texas that promotes and protects the rights of Black Americans and other people of color. With over 70 adult branches across Texas and dozens more youth units, it has thousands of members who reside in every region of the state. Since its inception, the organization has been involved in numerous voting rights cases and legislative efforts in Texas to ensure that all Texans have equal and unfettered access to their right to vote, including preventing the impermissible purging of voters from rolls.