



September 10, 2018

VIA EMAIL & USPS MAIL

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

RE: Voter Eligibility Challenges in Texas

Dear Mr. Pablos:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”), Texas Civil Rights Project (“TCRP”), Texas State Conference of the NAACP (“Texas NAACP”), and the Anti-Defamation League of South Texas, Texoma, and Austin write to request that the office of Texas’s Secretary of State provide notice to each of the voter registrars and any other relevant election officials in Texas’s 254 counties. The educational purpose of the notice would be twofold. *First*, the notice would include information about the significant showing that an individual must make to challenge a voter’s eligibility, including based on residence, namely that the challenger must have personal knowledge of the information provided to the voter registrar. *Second*, the notice would outline and explain the procedures that Texas officials are obliged to take surrounding such challenges.

As you know, certain procedures for registering to vote and challenging a voter’s eligibility to vote are found in Texas’s Election Code, including chapters 13-16.¹ For voter application requirements, Texas law requires an applicant to identify their address *or*, if their residence has no

¹ These sections are available at <https://statutes.capitol.texas.gov/Docs/EL/htm/EL.13.htm#13.072>; <https://statutes.capitol.texas.gov/Docs/EL/htm/EL.14.htm#14.023>; <https://statutes.capitol.texas.gov/Docs/EL/htm/EL.15.htm#15.051>; <https://statutes.capitol.texas.gov/Docs/EL/htm/EL.16.htm>

address, the address at which they receive mail and a description of where they reside. Concerning the scope of an individual's right to challenge based on residency, Texas law delineates at least two requirements to sustain a challenge. *First*, "a registered voter may challenge the registration of another voter of the same county at a hearing before the registrar." *Second*, the challenger "must file with the registrar a sworn statement" that, among other things, "states a specific qualification for registration that the challenged voter has not met *based on the personal knowledge* of the voter desiring to challenge the registration" (emphasis added). Indeed, a challenger must have *personal knowledge*, for example that a voter is not a current resident of the county where she is registered or has a current address that is different from that indicated on the registration records. This requirement is an important deterrent mechanism to prevent people from unnecessarily burdening and harassing fellow Texas residents.

The Election Code also stipulates procedures that Texas officials are obliged to follow when reviewing these types of challenges. Under these sections, "the registrar shall promptly deliver to the voter whose registration is challenged a confirmation notice." This notice provides the voter with the opportunity to confirm their residence for voting purposes. But if a voter does not submit the notice within the 30-day timeframe of it being mailed to their last known address by forwardable mail, then the "registrar shall enter the voter's name on the suspense list," also understood as inactive status. During that 30-day timeframe, the registrar may investigate the challenge and the voter's eligibility to participate in elections in that county. If a registrar believes that a voter is ineligible, the registrar must notify a voter by forwardable mail that their status is being investigated and provide information about the voter's opportunity to confirm their eligibility.

Critically, a registrar may not send a confirmation notice resulting from a challenge based on residency that is filed within 75 days before a general election for state and county officers until after those elections have taken place. At this point, we certainly are within 75 days of the November 6, 2018 general election. Moreover, if a voter does not timely respond to the confirmation notice and is put on the suspension/inactive list, the voter may still vote in any scheduled elections. Equally important, their eligibility applies through the next two general elections for state and county offices, after providing the requested information to the registrar in writing or when they vote. And under certain circumstances, a voter's registration ultimately may not be canceled after being placed on the suspension/inactive list unless a voter has been given notice and an opportunity to dispute it.

To sum up, state and federal laws provide several procedural protections before a registrar can put a voter on a suspension/inactive list. The challenger must make the substantial showing that he or she has *personal knowledge of a voter's ineligibility* under oath. Even with this affirmation, officials must both afford voters an opportunity at an appropriate time to confirm their eligibility, and ensure that voters have the opportunity to vote in the next two federal elections before they can be removed from a voter registration list. These procedural protections underscore the importance of protecting the right to vote. Accordingly, your office, and the other elections

officials throughout the state must operate with the mindset that voting is a “fundamental political right” that is “preservative of all rights” and must be protected.²

We are recently aware that an individual, who has zealously worked to limit, rather than expand the franchise, has challenged approximately 4,000 registered voters in Harris County.³ Approximately half (1,700) of those registered voters, many of whom reside in the Third Ward of Harris County, which is a historically Black community in Houston, received confirmation notices, indicating that their voter registration was suspended/inactive. These registered voters were erroneously placed on this suspension list purportedly due to a computer glitch, but the entire course of events was precipitated by the challenger’s unsupported belief that those voters are ineligible to vote purportedly because their names are associated with, for example, P.O. Box addresses.⁴ Other challenges in Harris County reportedly related to individuals who had registered to vote using as their addresses facilities—even churches—used by homeless people, people with substance abuse and mental health challenges, as well as college dorms.⁵ This is the case even though Texas has encouraged individuals to list shelters as their addresses for voting purposes.⁶ Harris County officials have determined that these challenges were “not in compliance with the law” and not based on personal knowledge.⁷ Indeed, what *personal knowledge* could this challenger possibly have had about the residences of these *thousands of voters*? This challenger, however, reportedly swore that these voters were attempting to “circumvent the intent of the Texas Election Code.”⁸ That large of an assertion is clearly suspect, when one takes into consideration

² *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

³ Zach Despart, *Harris County mistakenly suspends voter registrations after GOP challenge*, Houston Chronicle (Aug. 28, 2018), <https://m.chron.com/news/houston-texas/houston/article/Harris-County-mistakenly-suspends-voter-13175685.php>

⁴ *Id.*; see also Jef Rouner, *Voter Suspensions After Republican Challenge Campaign*, Houston Press (Aug. 20, 2018), <https://www.houstonpress.com/news/third-ward-voter-rights-under-challenge-after-republican-initiative-10775764>; Isiah Carey, *Third Ward residents get letters challenging voting rights*, Fox26 (Aug. 20, 2018), <http://www.fox26houston.com/news/the-isiah-factor/third-ward-residents-get-letters-challenging-voting-rights>; Jef Rouner, *Republican Party’s Challenge Scheme Includes Handpicking Ballot Review Board Members*, Houston Press (Aug. 25, 2018), <https://www.houstonpress.com/news/republican-official-outlines-voter-challenge-scheme-10791617>

⁵ Jef Rouner, *Republican Voter Registration Challenge Has Several of Houston’s Homeless Shelters on It*, Houston Press (Aug. 28, 2018), <https://www.houstonpress.com/news/houston-homeless-have-voting-status-challenged-10798033>

⁶ *Id.*

⁷ Video of August 28, 2018 Commissioner’s Court, Item II – Emergency/supplemental items Adjournment, <http://harriscountytexas.swagit.com/play/08282018-892> (minute mark at 3:54-4:40).

⁸ Jef Rouner, *Republican Voter Registration Challenge Has Several of Houston’s Homeless Shelters on It*, Houston Press (Aug. 28, 2018), <https://www.houstonpress.com/news/houston-homeless-have-voting-status-challenged-10798033>

the personal knowledge requirement. We request that your office publicly disavow these generalized, unsubstantiated, and targeted challenges as anti-democratic, voter suppression tactics.

Indeed, we would be remiss if we did not acknowledge what we understand to be the history of the challenge laws upon which such zealots rely. The relevant sections of the Texas Elections Code on challenges may originally have been enacted in 1966—just one year after the passage of the Voting Rights Act of 1965—during a special session of the Texas Legislature that was called to abolish the now-infamous and unconstitutional poll tax.⁹ To be clear, it is our understanding that these challenge laws did not exist prior to 1966. The timing of their enactments unfortunately would be consistent with an all-to-familiar reality throughout the history of voting rights in Texas specifically and our country generally: as our most vulnerable populations to discrimination like racial minorities won their voting rights, including with the passage of the Voting Rights Act of 1965, officials immediately adapted by implementing new, but no less, nefarious schemes to disenfranchise them.

Fortunately, there are legal protections to such voter suppression stratagems.¹⁰ Among them are Section 2 of the Voting Rights Act, which prohibits voting standards, practices, or procedures, including challenges to voter eligibility and voter purges, that were either enacted with a racially discriminatory intent, or that have racially discriminatory results.¹¹ One of the chief purposes of Section 2 is to prohibit practices that directly deny the exercise of the right to vote, as may be the case with voter eligibility challenges and purges. In addition, the Fourteenth and Fifteenth Amendments of the U.S. Constitution provide for the fundamental right to vote and prohibit voting practices adopted with a discriminatory purpose.¹² The Supreme Court has recognized too that any attempt to justify voting practices as guided by partisan interests, when they harm racial minorities along the way, can be circumscribed by our constitution.¹³ Further, the National Voter Registration Act (“NVRA”) was passed by Congress in 1993 “to establish procedures that will increase the number of eligible citizens who register to vote in elections for

⁹ See, e.g., Committee report for Senate Bill 1 (1966) (on file with LDF); see also Video of August 28, 2018 Commissioner’s Court, Item II – Emergency/supplemental items Adjournment, <http://harriscountytexas.gov/play/08282018-892> (minute mark at 7:14-7:42).

¹⁰ For an overview of various successful lawsuits precipitated by challenges to voter eligibility and purges, see, e.g., Jo Becker, *GOP Challenging Voter Registrations: Civil Rights Groups Accuse Republicans of Trying to Disenfranchise Minorities*, Washington Post (Oct. 29, 2004), <http://www.washingtonpost.com/wp-dyn/articles/A7422-2004Oct28.html?noredirect=on>

¹¹ See 52 U.S.C. § 10301.

¹² U.S. Const. amends. XIV & XV.

¹³ *Cooper v. Harris*, 137 S. Ct 1455, 1473 n.7 (2017) (“the sorting of voters on the grounds of their race remains suspect even if race is meant to function as a proxy for other (including political) characteristics”) (citing to *Miller v. Johnson*, 515 U. S. 900, 914 (1995)).

Federal office.”¹⁴ The NVRA also establishes procedures by which officials can maintain their voter rolls. Finally, the Ku Klux Klan Act of 1871 and Section 11(b) of the Voting Rights Act of 1965, having renewed applicability in this twenty-first century, provide protections against attempts to intimidate voters in registering to vote or voting.¹⁵

Our democracy requires a free and open access to the sacred right to vote. Any effort to infringe of that right undermines the legitimacy of our political system and will not be tolerated in Texas or elsewhere. Therefore, we urge your office in advance of this election season to protect against voter eligibility challenges lacking in integrity, personal knowledge, and designed and conducted to suppress voting rights.

We welcome the opportunity to discuss our concerns further. If you have any questions, please contact Leah Aden at 212-965-7715 or Beth Stevens at 361.437.9081.

Sincerely,



Leah C. Aden, Deputy Director of Litigation
Janai Nelson, Associate Director-Counsel
Sam Spital, Director of Litigation
Cara McClellan, Skadden Fellow
NAACP LDF
40 Rector St. 5th Fl.
New York, NY 10006
(212) 965-7715
laden@naacpldf.org

¹⁴ 52 U.S.C. § 20504.

¹⁵ 42 U.S.C. § 1985(3) (The Ku Klux Klan Act provides that “if two or more persons conspire” to prevent someone from voting “by force, intimidation, or threat,” then the victims of voter intimidation can sue the conspirators); 52 U.S.C. § 10307(b) (2012) (Section 11(b) of the Voting Rights Act provides that “[n]o 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, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote”); *see also* Memorandum Opinion & Order, *League of United Latin American Citizens-Richmond Region Council 4614 v. Public Interest Legal Foundation*, ECF No. 63, No. 1:18-cv-00423 (E.D. Va. Aug. 13, 2018), available at: <https://www.southerncoalition.org/wp-content/uploads/2017/01/LULAC-MTD-Order.pdf>

Ltr. to TX SOS Pablos
9/10/18

Beth Stevens, *Voting Rights Director*
Texas Civil Rights Project
1405 Montopolis Drive
Austin, Texas 78741
beth@texascivilrightsproject.org

Rachel Bresner
Anti-Defamation League
Jean & Jerry Moore Southwest Civil Rights Counsel
On behalf of ADL South Texas, ADL Texoma, and
ADL Austin
RBresner@adl.org

Gary Bledsoe
POTTER BLEDSOE, LLP
316 W. 12th Street, Suite 307
Austin, Texas 78701
On behalf of Texas NAACP
garybledsoe@sbcglobal.net

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 and legislative 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 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 the Voting Rights Act). LDF has been a separate entity from the NAACP, and it state branches, since 1957.

Texas lawyers for Texas communities, the **Texas Civil Rights Project (TCRP)** serves the movement for equality and justice in and out of the courts. In our 28-year history, TCRP has brought thousands of strategic lawsuits to protect and expand voting rights, reform our broken criminal justice system, and advance racial and economic justice. We use legal advocacy and litigation to protect and advance the civil rights of everyone in Texas, particularly our State's most vulnerable populations, and to effect positive and lasting change to law and policy. We believe that by serving the rising social justice movement in Texas with legal representation and creative strategies, we can work with our allies to give voice to and build power within historically excluded and under-represented communities.

The Southwest Regional office, Central Texas Regional office, and North Texas/Oklahoma Regional office of the **Anti-Defamation League (ADL)** handle complaints of discrimination, racism and anti-Semitism, monitor extremists and domestic terrorists, and work with many in the community, including law enforcement, to fight hatred in all its forms. The banner programs of these offices include No Place for Hate®, fighting hatred and encouraging diversity in schools K-12, and Community of Respect®, encouraging respect and inclusion in all other areas of the community, such as businesses and community organizations. ADL's well-established Coalition for Mutual Respect program has led the community in creating avenues of interfaith understanding and dialogue for nearly 15 years.

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

Ltr. to TX SOS Pablos
9/10/18

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.