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October 26, 2018

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

Via email: secretary@sos.texas.gov

Dear Secretary Pablos,

I am writing to you to express deep concern about an issue affecting voters who use the Hart eSlate voting machines--that votes on the machines “switch” from the chosen candidate to the opposition candidate. *At a minimum, 5.1 million Texas voters in 6 of the largest counties in Texas may be affected by this issue. I request that you take immediate action to inform the public of the issue and require counties to proactively assist voters.*

When voters select the option to vote straight ticket using Hart eSlate machines, many discover that the machine has recorded a vote for at least one candidate of a different party, most commonly in the U.S. Senate race. As long as they have not cast their ballot yet, they are permitted to change their selection before submitting their vote. Voters in at least six different counties (Harris, Montgomery, Fort Bend, Travis, Tarrant, and McLennan) have reported first hand accounts of this issue to us and many others have expressed concern that their ballots may not have been cast as intended. This issue has created a growing apprehension across the state, to the point that we are also receiving numerous reports from voters in counties that use non-Hart eSlate voting machines but are nevertheless worried that their votes were also affected.

So far, the only action you have taken to address this widespread and growing issue is to release an election advisory to county election officials informing them of the issue, and further reminding them that “voters should always carefully check their review screen before casting their ballots. If a voter has any problems, they should notify a poll worker immediately so the issues can be addressed and reported.” Your advisory also highlights a notice that poll workers can post at polling locations to remind voters to review their summary screen before casting their ballot.

This is woefully inadequate. The scale of this issue -- in terms of numbers and geographic breadth -- cry out for a statewide response from the only official capable of such action. We ask that, pursuant to your authority under TEC § 122.001(c), you devise a system to more proactively inform voters at polling places about this potential problem (e.g. having a poll worker remind the voter to double-check their selections before casting their vote), how to avoid it, and that voters can ask for help any time from poll workers. Additional possible solutions to consider may include 1) an investigation into whether specific machines at polling locations are to blame, 2) sending additional technical assistance to counties and affected polling places, and/or 3) conducting an audit of or replacing problematic machines.

Your office must also substantially increase outreach efforts across the state to communicate more clearly to the public 1) the reason some voters are facing this issue, 2) the need for voters to check their ballot choices before submitting their ballot, and 3) that voters should immediately ask for help from a poll worker if they encounter any issue.

Informing county election officials--and not the public at large--has simply not been effective in reducing the instances or apprehension surrounding this issue. Posting one sign about the problem at polling places, where voters are already inundated with other election-related notices, is hardly likely to grab their attention. Instead, your silence has allowed conspiracy theories that the election is being “rigged” to dangerously fester. Further, statewide leadership on this extremely important, systemic issue is vital to ensuring that voters are not treated “fundamentally unfairly” nor differently based on where they live or the equipment they are required to use. Such unfair and disparate treatment is a clear violation of the U.S. Constitution’s Due Process and Equal Protection Clauses. *See League of Women Voters of Ohio v. Brunner*, 548 F.3d 463 (6th Cir. 2008).

Finally, it is important to recognize that this is not an isolated problem, but a symptom of wider flaws in Texas’s election infrastructure. Texas voters should not be subjected to election technology dating to the turn of the century. We are also receiving reports that some registered voters are not appearing on the rolls, highlighting the need for reform of our antiquated voter registration system. Further, voters are discovering that their electronically submitted requests for mail ballots are not being honored--because of the state’s shortsighted elimination of purely electronic application for ballot by mail option in 2017. As the state reviews the lessons of this election season, the Hart eSlate machine issue reinforces the dire need for the state to update its voting systems and bring them fully into the 21st Century.

Please advise by tomorrow, Saturday, October 27, 2018, whether you intend to take the steps we have outlined above, and any additional steps you intend to take on this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Stevens".

Beth Stevens
Voting Rights Legal Director
Texas Civil Rights Project

cc: Keith Ingram
Director of Elections

Via email: kingram@sos.texas.gov