



The Protect -
Democracy
Project

ACLU
Texas



October 21, 2019

Kendall County, Texas
Staci Decker
221 Fawn Valley, Ste. 100
Boerne, TX 78006
(830) 331-8701
(830) 331-8295
staci.decker@co.kendall.tx.us

Re: Ensuring that every Texas voter can cast a secure, auditable, & verifiable vote

Dear Ms. Decker,

Our groups share a goal of ensuring that every eligible Texas voter is able to cast an effective vote. To that end, we are reaching out to urge you to take steps to initiate a process to implement a secure and reliable voting system in Kendall County. If you have already taken those steps, we commend you and would like to hear about them.

As you may know, the ES&S iVotronic paperless voting machines that the County currently uses for Election Day voting are insecure, unreliable, and not auditable. Decades of independent research and widespread bipartisan consensus confirm this. We would like to work with you to ensure that Kendall County adopts secure, verifiable, and auditable voting systems at the earliest possible date—preferably by the 2020 elections—and that this initiative becomes a priority for your office. To that end, we have set out below some information and resources to explain the urgency of ensuring that all Kendall County voters have access to a secure and reliable voting system as soon as possible.

1. Kendall County's Voting System Suffers from Serious Deficiencies

The Voting System is Aging, Insecure, and Cannot be Audited

Experts agree that outdated voting technology poses serious risks of leaving votes uncounted due to hacking or mechanical breakdown.¹ Direct Recording Electronic (DRE) systems, which cast

¹ See, e.g., National Academies of Sciences, Engineering, and Medicine, et al. *Securing the Vote: Protecting American Democracy* (National Academies Press, 2018), <https://www.nap.edu/download/25120#> (“NAS Report”); Lawrence Norden and Christopher Famighetti, “America’s Voting Machines at Risk” 13, Brennan Center for Justice

and count ballots digitally, are doubly dangerous: they are more likely to fail (because they offer pathways that malicious hackers can exploit and rely on obsolete technology that is increasingly likely to malfunction), and they produce no record outside their software that can be used to catch mistakes through audits or recounts.

Outdated voting technology such as paperless DRE machines is not good enough for Texas voters and should be phased out. Last year, the Senate Intelligence Committee found that DRE machines, like the iVotronic, “are at highest risk for security flaws” and urged their replacement.² Similarly, the National Academy of Science convened a group of leading national experts to assess the needs of U.S. election systems to operate reliably in the current threat environment. Their report concluded that “[v]oting machines that do not provide the capacity for independent auditing . . . should be removed from service as soon as possible.” Their consensus was that “[e]lections should be conducted with human-readable paper ballots.”³ And leading computer scientists and cybersecurity experts at Texas’s most preeminent institutions have delivered the same message loudly and clearly: “paper records (collected in a secure, private way) are indispensable to a secure elections system.”⁴

None of this is breaking news. Texas’s insecure voting machines have been covered in *Texas Monthly*,⁵ *Vice Magazine*,⁶ and *Politico*.⁷ But the iVotronic machines used in Kendall County are particularly outdated, insecure, and susceptible to error. For over a decade, computer science experts have sounded repeated alarms over the iVotronic’s security. Beginning in 2007, independent researchers identified serious flaws in the iVotronic’s hardware (the machines themselves) and software (the programs running on the machines) that create the kind of

at New York University School of Law (2015), available at <https://www.brennancenter.org/publication/americas-voting-machines-risk>.

² Staff of S. Select Comm. on Intelligence, 115th Cong., *Russian Targeting of Election Infrastructure During the 2016 Election: Summary of Initial Findings and Recommendations*, at 4 (2018), available at <https://www.burr.senate.gov/imo/media/doc/RussRptInstlmt1-%20ElecSec%20Findings,Recs2.pdf>. The same committee reaffirmed that finding in a report issued earlier this year: “Aging voting equipment, particularly voting machines that had no paper record of votes, were vulnerable to exploitation by a committed adversary.” S. Select Comm. on Intelligence, 116th Cong., “Russian Active Measures Campaigns and Interference in the 2016 U.S. Election, Volume 1: Russian Efforts Against Election Infrastructure,” at 4 (2019) (“SSCI Report”), available at <https://info.publicintelligence.net/SSCI-RussianAttacksElectionInfrastructure.pdf>.

³ NAS Report at 80.

⁴ Letter to Secretary Pablos and Director Ingraham from Texas Computer Scientists and Cybersecurity Experts (May 10, 2018), available at <https://www.cs.rice.edu/~dwallach/voting-experts-letter-may-2018.pdf> (and attached).

⁵ Michael Agresta, *Can Hackers Mess with Texas’s Elections?*, *Texas Monthly* (Oct. 10, 2018), available at <https://www.texasmonthly.com/politics/can-hackers-mess-texas-elections/>

⁶ Kim Zetter, *Texas’s Voting Machines Have Been ‘a Known Problem’ for a Decade*, *Vice Magazine* (Oct. 30, 2018), available at https://www.vice.com/en_us/article/negayg/texas-voting-machines-have-been-a-known-problem-for-a-decade.

⁷ Eric Geller, *How an Election Security Push is Running Aground in Texas*, *Politico* (Aug. 5, 2019), available at <https://www.politico.com/story/2019/08/05/election-security-texas-1445537>

vulnerability that sophisticated hackers can but exploit in a manner that would cause widespread disruption.⁸ They concluded that “[i]nserting malicious code at any step in this process could result in a virus spreading to all other components, completely compromising the election.”⁹ In other words, the iVotronic machines have “fundament, pervasive deficiencies”—and should not be used. This research has been replicated and reinforced many times, including as recently as 2017.¹⁰

Using machines that are at or near their manufacturer-recommended lifespan only makes matters worse. Aging equipment increases the cybersecurity risk because older systems fall well behind the current state of the art in cybersecurity measures, and software or the operating system used to run the systems may no longer be receiving security updates.¹¹

The Shortcomings of Kendall County’s Voting System Are Exacerbated by the Threats Facing U.S. Elections in 2020

Election security is a national security issue—and there is widespread, bipartisan agreement that U.S. elections are at risk. The U.S. Director of National Intelligence recently appointed an election threats executive, explaining that election security is “a top priority for the intelligence community—which must bring the strongest level of support to this critical issue.”¹² The FBI agrees, and has said that “the threat from nation-state actors remains a persistent concern.”¹³ And on September 24, 2019, a leading cyber threat intelligence organization issued a report warning: “It is unequivocally clear . . . that the Russians invested a significant amount of money and effort

⁸ EVEREST: EVALUATION AND VALIDATION OF ELECTION-RELATED EQUIPMENT, STANDARDS AND TESTING (Dec. 7, 2007), available at <https://www.eac.gov/assets/1/28/EVEREST.pdf>. The researchers put the iVotronic’s deficiencies into four categories: (i) “Ineffective access control,” (ii) “Critical errors in input processing,” (iii) “Ineffective protection of firmware and software,” and (iv) “Ineffective cryptography and data authentication.” *Id.* at 49.

⁹ *Id.* at 98.

¹⁰ Florida State University, *Software Review and Security Analysis of the ES&S iVotronic 8.0.1.2 Voting Machine Firmware*, prepared for Florida Department of State, (Jan. 23, 2007), available at <https://people.eecs.berkeley.edu/~daw/papers/sarasota07.pdf>; South Carolina General Assembly Legislative Audit Council, *A Review of Voting Machines in South Carolina* (2013), available at <https://www.scvotes.org/files/A%20Review%20of%20Voting%20Machines%20in%20SC%20%28Summary%29.pdf>; Matt Blaze *et al.*, *DEFCON 25 Voting Machine Hacking Village: Report on Cyber Vulnerabilities in U.S. Election Equipment, Databases, and Infrastructure*, DEFCON (Sept. 2017), available at <https://www.defcon.org/images/defcon-25/DEF%20CON%2025%20voting%20village%20report.pdf>.

¹¹ See NAS Report at 92.

¹² Ken Dilanian, *U.S. Spy Chief Creates New Head of Election Security for Intelligence Agencies*, NBC (July 19, 2019), available at <https://www.nbcnews.com/politics/national-security/u-s-spy-chief-creates-new-head-election-security-intelligence-n1031841>.

¹³ Josh Lederman & Mike Memoli, *2020 Campaigns Get Trump Administration Help on Cybersecurity, Counterintelligence*, NBC (Sept. 23, 2019), available at <https://www.nbcnews.com/politics/2020-election/2020-campaigns-get-trump-administration-help-cybersecurity-counterintelligence-n1057366>.

in the first half of this year to build large-scale espionage capabilities. Given the timing, the unique operational security design, and sheer volume of resource investment seen, . . . we may see such an attack carried out near the 2020 U.S. Elections.”¹⁴

This threat environment adds stress to outdated voting systems where none is needed: systems must accurately count *every* valid ballot while sophisticated adversaries seek to undermine them. And, voting systems with longstanding and well-studied vulnerabilities, like the iVotronic, face greater risks than other systems.

To meet this threat, jurisdictions should administer elections on modern systems using paper ballots. At least 122 Texas counties will use paper systems this November;¹⁵ and 40 out of 50 states will use *only* paper systems by November 2020.¹⁶

2. The U.S. Constitution Requires Voting Systems that Ensure that Every Voter Can Cast an Effective Vote

The only way to make sure all Texans’ votes are counted is to have a record of every vote that cannot be altered by machine failure or hacking. Every voter deserves a voting system that meets independently developed best practices.¹⁷ Most importantly, whatever machines Kendall County adopts should provide voters with the means and opportunity to verify human-readable marks on paper that correctly represent their intended selections, before casting their ballot.

Not doing so impermissibly burdens the voting rights of Kendall County voters. The constitutional right to vote is not satisfied by simply allowing a voter to place a ballot in a ballot box or enter selections on a touchscreen. “[I]ncluded within the right to choose . . . is the right of qualified voters within a state to cast their ballots *and have them counted*.”¹⁸ In that manner, the federal Constitution guarantees each voter the right to cast an *effective vote*—a ballot that is counted correctly towards the outcome of the election. Moreover, it also prohibits states from subjecting voters to arbitrary disparities in the effectiveness of their votes.¹⁹

¹⁴ Check Point Research, *Mapping the Connections Inside Russia’s EPT Ecosystem* (Sept. 24, 2019), available at <https://research.checkpoint.com/russianaptecosecosystem/>.

¹⁵ John Dabkovich, *Travis Co. Hopes Paper will Protect Votes From Hackers*, KXAN (Oct. 2, 2019), available at <https://www.kxan.com/news/local/travis-county/travis-co-hopes-paper-will-protect-votes-from-hackers/>.

¹⁶ Verified Voting, *The Verifier - Polling Place Equipment - November 2020*, available at <https://www.verifiedvoting.org/verifier/> (last accessed Oct. 4, 2019).

¹⁷ See, e.g., Verified Voting, *Principles for New Voting Systems*, available at <https://www.verifiedvoting.org/voting-system-principles/>.

¹⁸ *United States v. Classic*, 313 U.S. 299, 315 (1941); see also *United States v. Saylor*, 322 U.S. 385, 387–88 (1944) (emphasis added).

¹⁹ See *Bush v. Gore*, 531 U.S. 98, 104–05 (2000) (“Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over another.”).

A federal district court in Georgia recently applied these principles to rule that plaintiffs challenging the use of iVotronics in their state will likely succeed in their case. The plaintiffs in *Curling v. Raffensberger*²⁰ challenged Georgia’s use of iVotronic voting machines on the grounds that it violated the constitutional rights of Georgia voters. Because the iVotronic suffers from significant security flaws due to vulnerabilities in its hardware and software,²¹ the plaintiffs in *Curling* claim that Georgia’s continued use of the iVotronic system violates their right to vote under the First and Fourteenth Amendments.²² In August, a federal judge concluded that Georgia’s use of the iVotronic system does likely “burden[] and deprive[] [Plaintiffs] of their rights to cast secure votes that are reliably counted, as guaranteed under the First and Fourteenth Amendments of the United States Constitution.”²³ In doing so, the court highlighted its prior conclusion that Georgia’s “continued reliance on the use of DRE machines in public elections likely results in ‘a debasement or dilution of the weight of [Plaintiffs’] vote[s],’ even if such conduct does not completely deny Plaintiffs the right to vote.”²⁴

The right to vote, the cornerstone of our democratic system of government, depends on a system of election administration that provides *all* eligible voters an effective opportunity to participate—not just those who happen to live in a jurisdiction that uses an adequate voting system. At minimum, this means ensuring that the machinery of democracy has the capacity to record and count each vote consistently, fairly, effectively, and accurately. And that means ensuring that there is a paper record of every vote.

3. Implementing a New Voting System by the 2020 Election is Still a Practical Option

In light of the urgency of ensuring that all Kendall County voters have access to a secure and reliable voting system, we urge you to consider taking immediate steps to implement a reliable voting system, if you have not already done so. That system should make use of paper ballots—just as the systems in 122 Texas counties will by this November. Though we recognize that budget constraints, funding, and the need for preliminary approvals from County Commissioners or other officials are all serious factors, we respectfully ask that you assess the possibility of updating your voting systems by Election Day 2020. From our standpoint, this is a difficult but not an impossible task: many Texas counties have recently and smoothly transitioned to paper-based systems.²⁵ In fact, the state of Virginia moved many of its precincts from paperless DRE

²⁰ *Curling v. Raffensberger*, No. 1:17-CV-2989-AT, 2019 WL 3822123 (N.D. Ga. Aug. 15, 2019) (attached).

²¹ *Id.* at *2-3.

²² *Id.* at *1.

²³ *Id.* at *54.

²⁴ *Id.* at *54 (quoting *Bush v. Gore*, 531 U.S. 98 at 105 (alterations in original)).

²⁵ At least 15 Texas counties have purchased and/or deployed paper-based systems since the beginning of 2018, including Washington, Cooke, Caldwell, Atacosta, Rusk, Starr, Bastrop, Orange, Rockwall, Bowie, Johnson, Ellis,

voting machines to a paper-based systems in just 3 months.²⁶ In Pennsylvania, following a February 2018 directive²⁷ ordering that all new systems employ a paper vote record, approximately 75% of counties have deployed new systems (with the remaining counties set to transition by the April 2020 primary). And in South Carolina, which completed an RFP for a new, statewide system in July of *this year*, new machines have already been delivered to various counties.²⁸

All signs suggest that help is coming—Congress is on track to appropriate substantial funding to upgrade states’ voting systems.²⁹ A bipartisan coalition recognizes the importance of ensuring that all voters have access to reliable voting systems. But ultimately, county officials bear responsibility for making sure every voter can cast a ballot that will be counted.

We thank you for your attention to this important matter, and welcome the opportunity to discuss this further. We—and the computer and cybersecurity experts who have spoken out on the need to secure Texas’s infrastructure—are available to serve as resources to Kendall County or to answer any questions about steps it can take to ensure that its voters have secure, reliable, and auditable systems at the earliest possible date. We can be reached at the contact information below.

Smith, Bell, and Washington Counties. In addition, Dallas, Tarrant, Bexar, and Collin Counties—four of the largest counties in Texas—will be deploying paper-based systems beginning in November 2019.

²⁶ See Byron Tau, *Virginia Ends Use of Touch-Screen Voting Machines*, Wall Street Journal (Sept. 11, 2017), available at <https://www.wsj.com/articles/virginia-ends-use-of-touchscreen-voting-machines-1505167555>.

²⁷ *Wolf Administration Directs that New Voting Systems in the Commonwealth Provide Paper Record* (Feb. 9, 2018), available at <https://www.media.pa.gov/Pages/State-Details.aspx?newsid=261>.

²⁸ See Kayland Hagwood, *New Voting Machines Unveiled in Sumter County*, WLTX19 (Oct. 4, 2019), available at <https://www.wltx.com/article/news/local/street-squad/sumter/new-voting-machines-unveiled-in-sumter-county/101-850a4196-afb9-4133-ae31-9bee5d9b22cd>.

²⁹ Carl Hulse, *After Resisting, McConnell and Senate G.O.P Back Election Security Funding*, NYT (Sept. 19, 2019), available at <https://www.nytimes.com/2019/09/19/us/politics/mcconnell-election-security.html?module=inline>. Although a federal appropriation for voting systems is not yet final, the House of Representatives recently appropriated \$600 million for states to upgrade voting systems, and the Senate is on track to appropriate \$250 million. In all likelihood, this year Congress will approve an amount between those figures for states to use in replacing and upgrading voting systems.

Most sincerely,



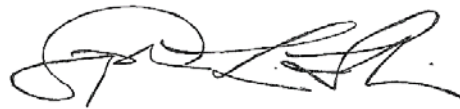
Jamila Benkato
Protect Democracy



Edgar Saldivar
Andre Segura
ACLU Foundation of Texas, Inc.



Adrian Shelley, Director
Public Citizen – Texas



Sophia Lin Lakin
Adriel I. Cepeda Derieux
American Civil Liberties Union

Attachments:

1. *Curling v. Raffensberger*, No. 1:17-CV-2989-AT, 2019 WL 3822123 (Preliminary Injunction Order) (N.D. Ga. Aug. 15, 2019).
2. Letter to Secretary Pablos and Director Ingraham from Texas Computer Scientists and Cybersecurity Experts (May 10, 2018), *also available at* <https://www.cs.rice.edu/~dwallach/voting-experts-letter-may-2018.pdf>.