



**SENT VIA E-MAIL**

June 13, 2024

Tamar Hagler  
Voting Section  
Civil Rights Division  
4CON – Room 8.1136  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
tamar.hagler@usdoj.gov

***Re: Protecting Ballot Chain of Custody and Ballot Secrecy in Texas***

Dear Ms. Hagler,

The League of Women Voters of Texas, American Oversight, Campaign Legal Center, and Southern Coalition for Social Justice write to alert the Department of Justice to developments in Texas concerning ballot chain of custody and ballot secrecy. We urge the Department to notify, monitor, and assist Texas election officials in complying with federal law, using all available legal authorities to preserve ballot chain of custody, protect the secret ballot, and prevent voter intimidation in the upcoming November election and beyond.

*The Election Denial Movement Is Undermining Election Administration and Voter Protections, Including Secret Ballots*

In the past few years, democracy in Texas has faced a burgeoning movement that seeks to cast doubt on election results and displace core systems of election administration.<sup>1</sup> These election denial theories have been repeatedly disproven<sup>2</sup>—and yet their proponents press on, with methods that threaten to undermine the election system. Since the 2020 election, the election denial movement in Texas has sought hand counts of ballots, an unnecessary practice that introduces inaccuracy,<sup>3</sup> as well as post-election “audits” that threaten the ballot chain of

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<sup>1</sup> See American Oversight, *Texas’s ‘Forensic Audit’ of the 2020 Election*, AMERICANOVERSIGHT.ORG, <https://www.americanoversight.org/investigation/texass-forensic-audit-of-the-2020-election> (last visited June 13, 2024).

<sup>2</sup> See Texas Secretary of State, *2024 Election Security Update*, SOS.STATE.TX.US, <https://www.sos.state.tx.us/elections/conducting/security-update.shtml> (last visited June 13, 2024).

<sup>3</sup> American Oversight has obtained records that detail pressure to transition to full hand counts on the Texas Secretary of State’s office and in the counties of [Fort Bend](#), [Denton](#), and [Collin](#). [<https://www.americanoversight.org/foia/tx-collin-23-0857>].

custody.<sup>4</sup> Further, and as the focus of our concern in this letter, the movement has filed a flurry of frivolous and invasive public records requests, the substance of which pose serious threats to voter privacy. Just last week Texas officials were required to take emergency action to better protect the secret ballot in Texas, in response to a public records request that threatened to compromise ballot secrecy.<sup>5</sup>

But Texas voters are not without help. Federal law provides a variety of protections from these tactics, including but not limited to the Civil Rights Act of 1960's protection for ballot chain of custody, as well as federal prohibitions on voter intimidation. **We urge the Department of Justice to notify Texas jurisdictions of their duties under federal law, and to monitor developments throughout the state to ensure that Texas elections and voters receive the full protection of all applicable federal laws, including laws against voter intimidation.**

The 2024 election cycle has already experienced challenges in relation to Texas election administration due to the election denial movement. Texas has seen numerous jurisdictions consider or actively engage in hand-counting of all cast ballots, a practice that is known to be slower, more expensive, and less accurate than accepted machine counting practices.<sup>6</sup> Indeed, both jurisdictions that pressed forward with hand counting ballots in the 2024 primary because of election deniers' concerns experienced errors and miscounts from the mistakes that hand-counting introduces.<sup>7</sup> The county elections director in one Texas county that hand counted more than 8,000 ballots in the 2024 primary election described the process as "a circus."<sup>8</sup> Ballot access and custody disputes continue throughout Texas, with public records requests apparently geared toward compromising the secrecy of the ballot being filed and some even being litigated.<sup>9</sup> For example, Texas officials' recent emergency action came in response to a public records request that sought registered voters' identification, voter name, primary address, and location of voting (precinct number or polling place) over twelve years in Tarrant County.<sup>10</sup> We are aware of many jurisdictions throughout Texas where similarly worrying requests have been filed, and would be happy to share them with the Department upon request.

### *Longstanding Ballot Secrecy Concerns*

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<sup>4</sup> American Oversight has obtained records detailing issues related to ballot chain of custody from the following Texas counties: [Brazos](#), [Harris](#), [Smith](#), [Tarrant](#), and [Travis](#).

<sup>5</sup> Natalia Contreras, *Texas Tells Local Election Officials to Stop Releasing Information That Exposes How Some People Vote*, TEX. TRIBUNE (June 6, 2024), <https://www.texastribune.org/2024/06/06/texas-voting-ballot-secrecy-public-records-elections/>.

<sup>6</sup> Natalia Contreras & Jessica Huseman, 'Are You Kidding Me': Gillespie County Republican Hand Count Stretched Into Early Morning Hours, VOTEBEAT TEXAS (Mar. 6, 2024), <https://www.votebeat.org/texas/2024/03/06/gillespie-county-hand-count-republican-primary-gop/>; see also [American Oversight investigation into hand counts](#) demonstrating activist pushes to switch elections to hand counts in jurisdictions across Texas, including Bexar, Collin, Denton, and Tarrant Counties, *supra* note 3.

<sup>7</sup> See, e.g., Natalia Contreras, *Texas County's GOP Officials Declared Hand Count a Success, But Kept Finding Errors*, VOTEBEAT TEXAS (Mar. 18, 2024), <https://www.votebeat.org/texas/2024/03/18/gillespie-county-texas-republican-primary-hand-count-election-errors-discrepancies/>.

<sup>8</sup> Contreras & Huseman, *supra* note 6.

<sup>9</sup> Records obtained by American Oversight revealed that "election integrity" activists sought to inspect ballots in Brazos and Harris Counties, *supra* note 4.

<sup>10</sup> Contreras, *Texas Tells Local Election Officials to Stop Releasing Information That Exposes How Some People Vote*, *supra* note 5.

But these concerns are not new, and this is not the first time some of us have written to the Department concerning issues relating to Texas ballots.<sup>11</sup> In 2022, Texas Attorney General Ken Paxton issued an advisory opinion that purported to allow access to voted ballots without regard to the 22-month window of ballot custody laid out in 52 U.S.C. § 20701.<sup>12</sup> This opinion upended the office’s longstanding interpretation of Texas law and made no consideration for the myriad of duties election administrators have with respect to ballot chain of custody within the 22-month preservation window required by federal law. This sudden reversal created confusion among voters and election administrators, as well as a new and unexpected vulnerability in Texas’s election system, one that remained until the statutory scheme was amended by the Texas Legislature to clarify the ballot chain of custody and ensure that the integrity of the election results was not threatened.<sup>13</sup> Nonetheless, this legislative fix has not resolved the serious risk to Texas voters’ right to a secret ballot, the integrity of the ballot chain of custody, and the ability of election administrators to comply with 52 U.S.C. § 20701—as recent events have demonstrated.<sup>14</sup>

Concerns for ballot secrecy continue and are well-founded. On May 30, 2024 the Texas Secretary of State’s office announced that in certain instances, the information that has been made publicly available by recent legislative changes can allow individual ballots to be matched to specific voters, and their secret ballot rendered a nullity.<sup>15</sup> This announcement came shortly after a news website posted what it claimed to be the ballot of the former chair of the Texas Republican Party.<sup>16</sup> Christina Adkins, the Secretary of State’s Director of the Election Division, testified to the Texas Senate that “what we have discovered, and I think what a lot of election officials have been very worried about, is that as we’ve increased this level of transparency, it has made this information easier to discover.”<sup>17</sup>

### *Stop-Gap Measures Fail to Protect Voters*

This revelation of ballot secrecy issues prompted a stopgap fix from both the Texas Attorney General and the Secretary of State. In a June 2024 ruling approving redactions of records responsive to a Tarrant County public records request for ballots, the Attorney General’s office restated the long-established principle that in Texas, the “requirement of secrecy is mandatory”

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<sup>11</sup> *Voting Rights Groups Ask U.S. DOJ to Guard Against Unauthorized Ballot Access in Texas*, SOUTHERNCOALITION.ORG, <https://southerncoalition.org/voting-rights-groups-ask-u-s-doj-to-guard-against-unauthorized-ballot-access-in-texas> (last visited June 13, 2024).

<sup>12</sup> *Id.* (citing Texas Attorney General, Advisory Opinion No. KP-0411, available at <https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2022/kp-0411.pdf>).

<sup>13</sup> Tex. H.B. 5180, 88th Leg., R.S. (2023), amending Tex. Elec. Code Sec. 1.012 (Public Inspection of Election Records), available at <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/HB05180F.pdf>.

<sup>14</sup> Natalia Contreras, Karen Brooks Harper & William Melhado, *How Texas’ push for election transparency undermines the secret ballot*, VOTE BEAT TEXAS (May 29, 2024), <https://www.votebeat.org/texas/2024/05/29/election-transparency-push-compromises-secret-ballot-anonymity/>.

<sup>15</sup> Natalia Contreras, *Top Texas election official acknowledges concerns about threats to ballot secrecy*, VOTE BEAT TEXAS (May 30, 2024), <https://www.votebeat.org/texas/2024/05/30/christina-adkins-senate-testimony-about-ballot-transparency/>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

for cast ballots.<sup>18</sup> The Secretary of State issued an Election Advisory shortly thereafter with “emergency guidance on possible redactions [of voted ballots] that may be necessary to protect a voter’s right to a secret ballot.”<sup>19</sup> The Advisory noted that “[i]n all circumstances, an election official must be sure to maintain the security and integrity of the ballots and the public’s right to review records, as well as the voter’s constitutional right to a secret ballot.”<sup>20</sup>

But we remain concerned that Texas officials will not take all necessary steps to protect voters and ensure full compliance with federal law. The Office of the Attorney General claimed that its recent legal ruling is merely “reiterating” past guidance and that the ruling “yet again reminded county officials” of Texans’ right to a secret ballot—deflecting responsibility by asserting that county officials “have been repeatedly guided” “to maintain ballot secrecy.”<sup>21</sup> This posture entirely ignores that it was the Attorney General’s unprecedented opinion on ballot access in 2022 that produced this issue in the first place, and takes no responsibility for creating an environment of fear in Texas elections, where voters cannot be sure that their ballots will remain secret, nor that conspiratorial activists will cease their ongoing weaponization of public records to access voter information, as they have done and have threatened to escalate as the election grows closer.<sup>22</sup> Simply put, the recent legal opinion is too little, too late—and there is no indication that the Attorney General and other Texas officials will take all necessary actions at the state level to create an environment in which voters can be assured of ballot secrecy and protected from voter intimidation.

These developments have produced an untenable status quo, where Texans now have doubts as to whether their own vote is secret. Texans should not have to fear that their right to a secret ballot can be compromised, nor should they have to fear any other adverse consequences flowing from the compromise of that right—such as exposure of the ballot being wielded to threaten or intimidate them and their loved ones. The undersigned are gravely concerned that these issues, just under five months from the November general election and its ensuing canvass and certification process, will only grow worse in the weeks and months to come. The Department should not only be aware of these mounting threats in Texas, but should be ready to intervene to backstop voter and election protections in Texas with the guarantees provided by federal law.

*The Department Should Enforce Federal Election Protection Laws to Protect Ballot Secrecy and Custody in Texas*

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<sup>18</sup> Letter from Justin H. Mille, Asst. Att’y Gen., Open Recs. Div., to Hannah Bell, Asst. Crim. Dist. Att’y, Tarrant County, at 2 (June 5, 2024), available at

[https://www.texasattorneygeneral.gov/sites/default/files/images/press/Tarrant%20County%20Ballot%20Privacy%20Ruling.pdf?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www.texasattorneygeneral.gov/sites/default/files/images/press/Tarrant%20County%20Ballot%20Privacy%20Ruling.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=).

<sup>19</sup> Texas Secretary of State, Election Advisory No. 2024-20, Emergency Guidance on Voter Privacy, at 2 (June 6, 2024), available at

[https://content.govdelivery.com/attachments/TXSOS/2024/06/06/file\\_attachments/2900828/ADV2024-20%20-%20Emergency%20Guidance%20on%20Voter%20Privacy.pdf](https://content.govdelivery.com/attachments/TXSOS/2024/06/06/file_attachments/2900828/ADV2024-20%20-%20Emergency%20Guidance%20on%20Voter%20Privacy.pdf).

<sup>20</sup> *Id.* at 3.

<sup>21</sup> Press Release, Attorney General of Texas, Attorney General Ken Paxton Reminds Governmental Entities that Personally Identifiable Information on Ballots Must Be Redacted (June 6, 2024), available at

<https://texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-reminds-governmental-entities-personally-identifiable-information>.

<sup>22</sup> See, e.g., Contreras, Brooks Harper & Melhado, *How Texas’ push for election transparency undermines the secret ballot*, *supra* note 15.

We urge the Department to ensure the enforcement of federal legal provisions directly relevant to the issues of ballot secrecy and chain of custody in Texas. First, the requirements of Title III of the Civil Rights Act of 1960, codified at 52 U.S.C. § 20701, are clear and unambiguous: every voted ballot in a federal election shall be retained and preserved for 22 months following such an election. These preserved ballots must be retained in their original format, and any person “who willfully steals, destroys, conceals, mutilates, or alters” any such record is in violation of federal law.<sup>23</sup> This statute serves an obvious and important purpose: ensuring that the results of any federal election are verified and verifiable, that the right to a secret ballot is protected, and that the records necessary to confirm election results remain intact and unaltered.

Despite last year’s legislative clarifications, Texas ballot chain of custody procedures remain in tension with 52 U.S.C. § 20701. The amendments made by H.B. 5180 ensure only that ballots remain unaltered for 60 days before opening them up to public records requests; this leaves over 20 months in which Texas law could be misconstrued to violate federal law. We urge the Department to ensure that any interpretation of H.B. 5180 that allows for the “theft, destruction, concealment, mutilation, or alteration” of voted ballots in contravention of federal law will not be countenanced.

There are also robust federal prohibitions on conspiracy against rights (under 18 U.S.C. §§ 241 & 242)<sup>24</sup> and voter intimidation (under 52 U.S.C. § 20511(1) and 18 U.S.C. § 594)<sup>25</sup> that are potentially relevant and applicable to Texas ballot custody and secrecy issues. These statutes have long been interpreted and enforced to secure the right to vote. The Department should ensure that public records requests are not used to intimidate voters in Texas, including by violating the right to a secret ballot, as doing so may violate this plethora of federal protections.

We will remain in touch should we become aware of additional reports of violations of the proper ballot chain of custody and efforts to compromise ballot secrecy, as well as endeavors at intimidation or subversion that stem from such efforts. We are happy to discuss or offer further clarification at the Department’s request.

Respectfully,

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League of Women Voters of Texas

Caren E. Short  
Director, Legal & Research  
League of Women Voters of the United States

Chioma Chukwu  
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<sup>23</sup> 52 U.S.C. § 20702 (2024).

<sup>24</sup> See U.S. DEP’T OF JUST., Federal Prosecution of Election Offenses 33–37 (Richard C. Pilger, et al. eds., 8<sup>th</sup> ed. 2017), available at <https://www.justice.gov/criminal/file/1029066/dl?inline>.

<sup>25</sup> *Id.* at 49–58.