



Public Information Act Request

Public Information Officer, Elections Division, Texas Secretary of State

Via email: elections@sos.texas.gov

November 28, 2018

Free Speech For People (“FSFP”) and the National Election Defense Coalition (“NEDC”)¹ submit this request under the Texas Public Information Act, Section 552 of the Government Code, for records concerning straight-ticket voting on Hart InterCivic eSlate voting machines used in the 2018 general election.

Background

As was widely reported at the time, many voters using eSlate machines during the 2018 general election discovered that when they selected the straight-ticket voting option, their recorded votes on the summary page showed that they had voted for the candidate for the U.S. Senate from a different political party.² The Director of Elections acknowledged on October 23, 2018, “We have heard from a number of people voting on Hart eSlate machines that when they voted straight ticket, it appeared to them that the machine had changed one or more of their selections to a candidate from a different party. This can be caused by the voter taking keyboard

¹ Free Speech For People is a nonprofit, nonpartisan organization that works to defend the United States Constitution and reclaim democracy for the people through legal advocacy and public education. The National Election Defense Coalition is a national network of recognized experts in cybersecurity and elections administration, bipartisan policymakers, and concerned citizens and movement-builders working to build a bipartisan consensus on the need for reform, while building a comprehensive, cost-effective plan to secure the vote in coming elections.

² See, e.g., Matt Zdun, *Why are some Texans having trouble with voting machines? This is 2002 technology in 2018*, Tex. Tribune, Nov. 1, 2018, <http://bit.ly/2DMk6cB>; Kim Zetter, *Texas Voting Machines Have Been ‘a Known Problem’ for a Decade*, Vice, Oct. 30, 2018, <http://bit.ly/2DRdvOf>; Deanna Paul, *Texans say glitchy voting machines are changing their ballots. The state blames user error.*, Wash. Post, Oct. 29, 2018, <https://wapo.st/2DP4Sn1>.

actions before a page has fully appeared on the eSlate, thereby de-selecting the pre-filled selection of that party's candidate.”³ As the Secretary himself later noted, the eSlate voting machine's display rendering is so slow that a voter must “wait at least 3-5 seconds for all choices to be rendered on the eSlate voting machine” (or longer in some counties) or else risk inadvertently selecting an opposing party's candidate.⁴

Public Information Act Request

We request the following records:

1. All records, documents, calendar entries, notes or records of conversations, or written communications (including email and text messages), from October 1, 2018 to the date of this request, sent or received within the Secretary of State's office, or to or from a person outside that office, that mention (whether as the focus or in passing) any concerns with Hart InterCivic eSlate voting machines in general, and in particular, with design or other issues that could lead to a voter, who had intended to select straight-ticket voting, having his or her vote marked or recorded for a U.S. Senate candidate from a different political party than the voter's straight-ticket party selection.
2. All records, whether organized or aggregated at the level of state, county, precinct, individual voting machine, or otherwise, regarding the number of voters who, under any voting system, specifically selected straight-ticket voting in the 2018 general election.
3. All records, whether organized or aggregated at the level of state, county, precinct, individual voting machine, or otherwise, regarding the number of voters who, under any voting system, specifically selected straight-ticket voting in the 2018 general election *with the specific exception of* the candidate for U.S. Senate.
4. All reports and audit logs generated by Verity Count and related Verity election management systems and/or devices used in conjunction with Hart InterCivic eSlate voting machines.⁵

³ Election Advisory No. 2018-35,

<https://www.sos.texas.gov/elections/laws/advisory2018-35.shtml>.

⁴ *ADVISORY: Secretary Pablos Provides Additional Guidance To Voters, Election Officials Regarding Hart eSlate Electronic Voting Systems In 78 Texas Counties,*

<https://www.sos.texas.gov/about/newsreleases/2018/102718.shtml>.

⁵ According to the U.S. Election Assistance Commission's March 13, 2017 Certificate of Conformance for Hart InterCivic Verity Voting 2.2.1, “Verity Count is an application that tabulates election results and generates reports. Verity Count can also be used to collect and store all election logs from every Verity component/device

We further request that you waive or reduce charges under section 552.267(a) because “waiver or reduction of the charge is in the public interest because providing the copy of the information primarily benefits the general public.” FSFP and NEDC intend to publicize relevant information received in response to this request as broadly as possible in accordance with our core mission. FSFP and NEDC are national non-partisan, non-profit organizations whose supporters around the country engage in education and non-partisan advocacy to protect our democracy. One of our core areas of work is gathering and broadly disseminating information to the public via our websites and social media platforms such as Twitter and Facebook. FSFP also routinely gathers and reviews documents and provides legal analysis to the public as well as members of the press. FSFP and NEDC intend to inform public understanding on the election systems and issues that are the focus of this request by providing public access to any relevant documents provided in response to our request on our websites, www.freespeechforpeople.org and www.electiondefense.org.

Moreover, disclosure would not further any non-public interest: as non-profit organizations, FSFP and NEDC do not have any commercial purposes. We will make any disclosed information available to the public at no cost. Thus, a fee waiver would fulfill the state’s policy of providing “complete information about the affairs of government.”⁶

Please do not hesitate to contact us with any questions regarding this request. Thank you for your consideration and prompt response.

Sincerely,

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used in the election, allowing for complete election audit log reviews.”
<https://go.usa.gov/xP6ue>, at 3.

⁶ Gov’t Code § 552.001.