

## **Montgomery County Texas Election Issues Report**

This report was prepared by Kristen Plaisance a registered voter of Montgomery County, Texas.

Over the last 15 months I have investigated the election laws, certification procedures and election systems for the State of Texas. This report will not be an attempt to prove that the elections in Montgomery County or Texas have been manipulated or rigged. I am not an IT or Cyber Security expert, nor did I have the funds to employ such an expert. Instead, I will use information that I have obtained through Public Information Act requests, the Texas Secretary of State's website, the Election Assistance Commission website, expert reports, lawsuit records, and the laws governing elections at the Federal and State level to provide evidence that:

- 1) The last 11 Texas Secretaries of State going back to 2004 violated state and federal laws when certifying election systems that were used in Montgomery County and other counties.
- 2) These Secretaries of State knew or should have known in their official capacity that their actions were violating state and federal laws.
- 3) One of these Secretaries of State placed a conditioned certification upon an election system used in Montgomery County because the Secretary knew, and reported, that the system had serious vulnerabilities, but failed to monitor and enforce the conditions of that certification.
- 4) Multiple other Secretaries also failed to monitor and enforce the conditions of that certification.
- 5) The last 2 Secretaries of State failed to enforce the certification requirements of the ePollbooks used in Texas elections. The result is that only 3 of the 6 ePollbooks were legally certified for the 2021 and 2022 election cycles even though all 6 were used in both years.
- 6) The Election Assistance Commission, the federal body responsible for accrediting the Voting System Test Laboratories that certify our election equipment on a federal level, has violated federal laws to accredit these labs and falsified documents to give an appearance of accreditation where none was given.
- 7) The actions and lack of action by these government officials caused Montgomery County and other counties to conduct illegal elections going back to at least 2006 through the runoff election in May of 2022.

- 8) The general election to be held in November of 2022 will also be illegal if these issues are not addressed.
- 9) There is **no** oversight at the federal or state level into the security of our election equipment, there is only an illusion of oversight.
- 10) It will be solely upon the counties to secure our elections in the future.
- 11) The actions and lack of action by these government officials left Montgomery County and other counties' elections vulnerable to manipulation and difficult if not impossible to properly audit.
- 12) There is data driven evidence to suggest that there is at least a possibility if not a probability that these counties' elections were in fact manipulated.

The information I have gathered over the last 15 months has led me to the startling realization that Texas elections are not governed by the rule of law, but by lawlessness. At this point I have no choice but to wonder if this many government officials, at the highest levels of our government, could really be this incompetent or whether this is part of a conspiracy by state and national government officials to create a carefully crafted illusion of safe and secure elections while purposefully leaving them open to manipulation.

Please understand this is not a partisan issue for me. I share the same political party as most of the elected officials that I will discuss in this report.

There will be links throughout this document that will take you directly to the source of the information used to compile this report. If there are any links in this document that do not work, contact me for a hard copy of the document.

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In 2005, the State of Texas accepted approximately \$149 million in HAVA Act of 2002 (HAVA 2002) grant funds. \$1.4 million of those funds were accepted by Montgomery County.

<https://www.sos.state.tx.us/elections/hava/county-distribution.shtml>

While there is language in HAVA 2002 that suggests some of the conditions are voluntary, according to Section 101 and Section 102, acceptance of HAVA grant funds for the purpose of replacing election equipment made adherence to the requirements of the Voting System Standards in Section 301 **mandatory**. [PLAW-107publ252.pdf \(congress.gov\)](#)

Section 101 (42 USC 15301) of HAVA 2002 states “SEC. 101. PAYMENTS TO STATES FOR ACTIVITIES TO IMPROVE ADMINISTRATION OF ELECTIONS. b) USE OF PAYMENT. (1) IN GENERAL. A State **shall** use the funds provided under a payment made under this section to carry out one or more of the following activities: (A) **Complying with the requirements under title III.**”

Section 102 (42 USC 15302) states “SEC. 102. REPLACEMENT OF PUNCH CARD OR LEVER VOTING MACHINES. (2) USE OF FUNDS.—A State **shall use the funds provided under a payment under this section** (either directly or as reimbursement, including as reimbursement for costs incurred on or after January 1, 2001, under multiyear contracts) **to replace punch card voting systems or lever voting systems** (as the case may be) **in qualifying precincts within that State with a voting system** (by purchase, lease, or such other arrangement as may be appropriate) **that** (A) does not use punch cards or levers; (B) is not inconsistent with the requirements of the laws described in section 906; and (C) **meets the requirements of section 301 (42 USC 15481).**

**Title III Section 301** (42 USC 15481) states “SEC. 301. **VOTING SYSTEMS STANDARDS.** (a) **REQUIREMENTS.** Each voting system used in an election for Federal office **shall meet the following requirements...**” Section 301 goes on to list the voting system standards that a voting system must encompass to meet the **requirements** to receive HAVA 2002 grant funds under Section 101 and Section 102.

On July 27, 2004, under the color of law, the Texas Secretary of State’s office “certified” the Hart eSlate Voting System Version 3.3 (Hart 3.3) for use in elections in the State of Texas. This system should NOT

have been certified for use in Texas elections because the system violated federal and state laws.

<https://www.sos.state.tx.us/elections/forms/sysexam/hart.pdf>

An important requirement included in Section 301 (a) 2 (B) of HAVA 2002 discussed above was the requirement that a voting system produce a permanent paper record of the individual ballots to conduct manual audits and recounts.

SEC. 301. (42 USC 15481) VOTING SYSTEMS STANDARDS of HAVA 2002 states that (2) AUDIT CAPACITY.

(A) IN GENERAL. The voting system shall produce a record with an audit capacity for such system. (B)

MANUAL AUDIT CAPACITY. (i) **The voting system shall produce a permanent paper record** with a

**manual audit capacity** for such system. (ii) **The voting system shall provide the voter with an**

**opportunity to change the ballot or correct any error before the permanent paper record is produced.**

(iii) **The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.**

Hart 3.3, as “certified” by the Secretary of State’s office in 2004, could never meet the voting system standards outlined in section 301 of HAVA 2002 because the system as “certified” by the Secretary of State’s office **did not** include the Voter-Verifiable Paper Audit Trail component that would have provided a permanent paper record of the ballots from which to conduct a manual audit or recount. According to <https://verifiedvoting.org/election-system/hart-intercivic-eslate/> :

“In most jurisdictions, the eSlate is deployed as an electronic-only device, with no paper records of each voter’s choices. In this **paperless configuration**, at the conclusion of each voting session, the voter’s choices are recorded directly in the voting device’s memory. However, a minority of eSlate jurisdictions deploy the voting device with an attached Voter-Verifiable Paper Audit Trail (VVPAT). This enclosed unit, which is installed alongside the eSlate screen, has a spool-to-spool paper record under a clear plastic window, which allows voters to verify their choices on paper before casting the ballot. Once the ballot is cast, the VVPAT advances the paper through the motorized spool until blank paper is displayed to protect the privacy of the voter’s choices. The paper records of all electronic ballots cast are stored in the self-enclosed VVPAT unit, which is retained by election officials in case a post-election audit or recount is necessary.”

Hart 3.3, as “certified” by the Secretary of State’s office in 2004 **did not include** the VVPAT system and is a **paperless** system as defined above that produces only a paper tape of the totals from the election printed. There is no way for a voter to verify that the ballot recorded in the system is the same as what was shown on the screen during voting.

Without a permanent paper record of the ballots cast, it is impossible to conduct a true MANUAL audit of the results of an election, nor conduct a true or accurate recount of any election. Section 301 of HAVA 2002 makes it clear that any system must create a permanent paper record, that the voter has verified, from which to conduct a manual audit or recount.

Additionally, Section 301 specifically refers to a permanent paper record as a ballot. “(ii) **The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.**” and goes on to say, “**The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.**” Hart 3.3, as “certified” by the Secretary of State’s office in 2004, failed to meet the Voting System Standards as set out by Section 301 of HAVA 2002. This violated section 101 and section 102 of HAVA 2002 and therefore the system should have never been “certified” for use in Texas elections without the VVPAT component.

We have already established that adherence to the Voting System Standards outlined in Section 301 of HAVA 2002 is **mandatory** at the federal level. TX ELEC §122.01(3) also makes adherence to the Voting System Standards of Section 301 of HAVA 2002 **mandatory** by state law.

Texas Election Code §122.01(3) states “Sec. 122.001. VOTING SYSTEM STANDARDS. (a) **A voting system may not be used in an election unless the system:**(1) preserves the secrecy of the ballot; (2) is suitable for the purpose for which it is intended;(3) operates safely, efficiently, and accurately and **complies with the voting system standards adopted by the Election Assistance Commission.**”

The failure of Hart 3.3 to comply with the requirements of the Voting System Standards of section 301 is further evidenced by the fact that an Election Assistance Commission (EAC) accredited Voting System Test Laboratory (VSTL) has **never** issued certification for the Hart eSlate Voting System Version 3.3 even

though it has issued numerous certifications for other Hart voting systems. This is a violation of TX Admin §81.61. <https://www.eac.gov/voting-equipment/certified-voting-systems>

TX Admin §81.61 states **“For any voting machine, voting device, voting tabulation device and any software used for each, including the programs and procedures for vote tabulation and testing, or any modification to any of the above, to be certified for use in Texas elections, the system shall have been certified, if applicable, by means of qualification testing by a Nationally Recognized Test Laboratory (NRTL) and shall meet or exceed the minimum requirements set forth in the Performance and Test Standards for Punch Card, Mark Sense, and Direct Recording Electronic Voting Systems, or in any successor voluntary standard document developed and promulgated by the Federal Election Commission. This section applies only to systems and modifications to previously certified systems submitted after the effective date of this rule.”**

According to Section 231 b (1) and 301 (d) of HAVA 2002, as soon as April 29, 2003, and no later than January 1, 2006 the only Nationally Recognized Test Laboratories were VOTING SYSTEM TEST LABORATORIES (VSTL) that were required to be accredited by the Election Assistance Commission (EAC) in compliance with Section 231 a (1) of HAVA 2002.

Section 231 b (1) (42 USC 15371 b (1)) states “(b) LABORATORY ACCREDITATION. (1) RECOMMENDATIONS BY NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—**Not later than 6 months after the Commission first adopts voluntary voting system guidelines** under part 3 of subtitle A, the Director of the National Institute of Standards and Technology shall conduct an evaluation of independent, non-Federal laboratories and shall submit to the Commission a list of those laboratories the Director proposes to be accredited to carry out the testing, certification, decertification, and recertification provided for under this section.

Section 301 (d) (42 USC 15481 (d)) states “(d) EFFECTIVE DATE. **Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006.**

Section 231 a (1) (42 USC 15371 a (1)) states “a) CERTIFICATION AND TESTING. (1) IN GENERAL. **The Commission** (Election Assistance Commission) **shall provide for the testing, certification,**

**decertification, and recertification of voting system hardware and software by accredited laboratories.**

Failure by the Secretaries of State to ensure that Hart 3.3 complied with the certification requirements by an EAC accredited VSTL and the Voting Systems Standards required by Section 301 of HAVA 2002, before it was “certified” by their office, violated Section 101 and Section 102 of HAVA 2002, TX Admin §81.61 and TX ELEC §122.01(3).

Nothing in the Election Code grants the Secretary of State the authority to ignore or suspend specific sections of the Election Code or other state and federal laws. These Secretaries’ actions violate the Separation of Powers clause of Art. 2, Sec. 1 of the Texas Constitution. Further, because the Secretary is causing counties to violate Tex. Elec. Code 122.01(3), this is a violation of the Suspension of Laws provision in Art. 1, Sec. 28 of the Texas Constitution. The Constitution provides that only the Legislature can suspend laws - not the Secretary, a member of the Executive Branch. These actions by the Secretary are contrary to the Legislature's intent that the Election Code be interpreted and applied uniformly across this State for voting systems. See Tex. Elec. Code § 122.032. By suspending laws and authorizing exceptions to Tex. Elec. Code § 122.01 (3), and other statutes, the Secretary is failing to perform his ministerial duty. Surely the Legislatures did not intend for any of these provisions to be waived, ignored, or violated. If any government official can simply ignore or modify laws as they wish, would that not render the legislature an invalid and useless branch of government?

On or around November 2005, Montgomery County purchased Hart 3.3. This system was not certified by an EAC accredited VSTL nor did it comply with the requirements of the Voting System Standards required by the acceptance of HAVA 2002 grant funds. This system should have never been “certified” by the Secretary of State’s office because it violated State Election Code §122.01(3), TX Admin §81.61, and HAVA 2002 Section 101, Section 102, Section 231 and Section 301.

Hart 3.3 was “decertified” for use in the State of Texas by the Secretary of State’s office on October 1, 2007.

On April 30, 2009, under the color of law, the Secretary of State’s office “certified” Hart eSlate Voting System Version 6.2.1. (Hart 6.2.1) for use in Texas elections.

Hart 6.2.1 was not an entire new system, but a modification to Hart 3.3. As such, this new system required both federal certification through an EAC accredited VSTL and state certification through the Secretary of State's Office.

Hart 6.2.1. failed to meet the Voting System Standards of Section 301 of HAVA 2002 and was **never** certified by an EAC accredited VSTL, again violating State Election Code §122.01(3), TX Admin §81.61, and HAVA 2002 Section 101, Section 102, Section 231 and Section 301.

During the Secretary of State's "certification" process of Hart 6.2.1 it appears that at least one examiner, an **attorney**, recognized that a certification of this equipment required at least a "review" by the Election Assistance Commission. Paul Miles, **Staff Attorney**, Voting System Examiner, stated in his recommendation letter dated March 7, 2008, "Under current examination standards, **all changes to a voting system require review both at the federal level, now through the Elections Assistance Commission ("EAC")** and at the state level by the Secretary of State." Hart 6.2.1 **never** received a "review" by the EAC, much less the certification required by TX Admin §81.61.

[https://www.sos.state.tx.us/elections/forms/sysexam/052506\\_hart\\_pm.pdf](https://www.sos.state.tx.us/elections/forms/sysexam/052506_hart_pm.pdf)

Like its predecessor Hart 3.3, Hart 6.2.1 could never meet the certification requirements of the EAC nor the requirements of the Voting System Standards outlined in HAVA 2002 because the system, as "certified" by the Secretary of State's office in 2009, did not include the Voter-Verifiable Paper Audit Trail component that would have provided a permanent paper record of the ballots from which to conduct a manual audit or recount. This again violated Section 101, Section 102 and Section 301 of the HAVA act of 2002 and TX ELEC §122.01(3). I will not outline each of those arguments again here but assert each of those arguments as it pertains to Hart 6.2.1 as if I did.

The "certification" letter issued by the Secretary of State's office on April 30, 2009, for Hart 6.2.1 states: "Is capable of providing records from which the operation of the system may be audited". Ensuring a system provides a record from which to audit the "operation of a system" is not the same thing as a voter verified, permanent paper record of the ballots capable of producing a manual audit or recount of the election. The wording of Section 301 of HAVA 2002 makes it clear that the system must produce a permanent paper record of the ballots to meet the certification requirements and not just be capable of

providing records from which the “operation of the system” may be audited.

<https://www.sos.state.tx.us/elections/forms/sysexam/hart621cert.pdf>

The “certification” letter also states that “The Verified Ballot Option (“VBO”) was presented and reviewed during the exam. Due to the lack of state and federal legislation that requires the use of a Voter Verified Paper Audit Trail (“VVPAT”), the lack of state standards, and concerns about secrecy of the ballot, the optional VBO is not approved for use in Texas elections at this time.” While there may be no legislation that specifically mentions a “voter verified paper audit trail”, I argue that federal legislation through HAVA 2002 Section 101, Section 102 and Section 301 and state legislation through TX ELEC §122.01(3) require that an election system must produce a permanent paper record of the ballots so that a manual audit or recount of the elections may be conducted. With Hart 6.2.1, the only way to meet this requirement was with their VVPAT system which **was not** included as part of the “certified” election system approved by the Secretary of State’s office. I maintain that this was a direct violation of both the state and federal laws I have outlined.

The failure of Hart 6.2.1 to comply with the requirements of the Voting System Standards of HAVA 2002 section 301 is further evidenced by the fact that an EAC accredited VSTL has **never** issued certification for Hart 6.2.1 even though it has issued numerous certifications for other Hart voting systems.

<https://www.eac.gov/voting-equipment/certified-voting-systems>

Failure by the Secretary of State to ensure that Hart 6.2.1 complied with the certification requirements by an EAC accredited VSTL and the Voting Systems Standards required by Section 301 of HAVA 2002, before it was “certified” by their office, violated Section 101 and Section 102 of HAVA 2002, TX Admin §81.61 and TX ELEC §122.01(3).

Again, nothing in the Election Code grants the Secretary of State the authority to ignore or suspend specific sections of the Election Code or other state and federal laws.

On July 15, 2009, Montgomery County purchased Hart 6.2.1. This system was not certified by an EAC accredited VSTL nor did it comply with the requirements of the Voting System Standards required by the acceptance of HAVA 2002 grant funds. This system should have never been “certified” by the Secretary of State’s office because it violated State and federal laws.

Further, the previous election system used by Montgomery County, Hart 3.3, was decertified by the Secretary of State's office on October 1, 2007. The contract to purchase new equipment, Hart 6.2.1, provided by Montgomery County through a Public Information Act request, shows a date of purchase as July 15, 2009. The date of purchase was July of 2009, but there is no indication as to when the new equipment was placed into service. This indicates an approximate 2-year gap (from 2007, when Version 3.3 was decertified, until 2009, when Version 6.2.1 was purchased) in which Montgomery County used an election system that did not even have an appearance of certification from the Texas Secretary of State's office, much less actually meet the legal requirements of the State of Texas or HAVA 2002. This affected local, state, and national elections held on November 6, 2007, March 4, 2008, April 8, 2008, May 10, 2008, June 21, 2008, November 4, 2008, and May 9, 2009, and depending on when the new equipment was placed into service, the elections of November 3, 2009, March 2, 2010, April 13, 2010, May 8, 2010, June 26, 2010, and November 2, 2010, may also have been affected. Did the Secretary of State's office notify Montgomery County that their equipment was decertified? They certainly failed to stop Montgomery County from using this decertified equipment.

Also, in the Secretary of State's certification letter of Hart 6.2.1, the Secretary of State's office identified 2 security concerns in the system. 1) examiners discovered that if existing security protocols are not followed, then it is theoretically possible to access the operating system and run or delete other programs while Tally is tabulating results and 2) examiners expressed concern that Version 6.2.1 does not have a secure OS configuration. See the examiners reports here:

[https://www.sos.state.tx.us/elections/laws/jan2008\\_hart.shtml](https://www.sos.state.tx.us/elections/laws/jan2008_hart.shtml)

Based on these security concerns the Secretary of State's office **conditioned "certification"** of Hart 6.2.1 **on the following procedures being employed** by each county (political subdivision) using this system:

- 1) Two-person access for all Version 6.2.1 computers and servers is required: one person to log on to start the Windows 2000 OS and a second person to log on to start the specific application (e.g., BOSS, Tally, Ballot Now, eCM Manager).
- 2) A two-person control team must be present any time the Tally application is open.
- 3) Version 6.2.1 Application Logs and Windows 2000 Audit Logs, which track user log-ons and log-on attempts, must be regularly reviewed by the local election officer. The Office of the

Secretary of State may inspect these logs or may require the logs to be copied and mailed to this office.

4) Hart **Windows 2000 "Hardened" Operating System** Security Settings is **required**. Hart Windows 2000 "Hardened" Operating System Security Settings presents a table of Win2K system settings installed to achieve the "hardened" configuration. The format of the settings closely approximates that used in the applicable NIST checklist.

5) **Each political subdivision** which adopts Version 6.2.1 **must file an initial written confirmation with the Office of the Secretary of State that they are in compliance with Condition Numbers 1 through 4, above, and subsequent to the initial confirmation filing, must file annual, updated confirmations.**

See the conditioned certification letter here:

<https://www.sos.state.tx.us/elections/forms/sysexam/hart621cert.pdf>

Although the Secretary of State placed some conditions on the certification of this vulnerable system a very important condition recommended by Stephen Berger (Berger) was ignored. In his report (Berger Report) dated March 3, 2008, Berger asserts on pages 1 and 2 of his report that **"All files installed with the system must be filed with the NIST (National Institute of Standards and Technology) and NSRL (National Software Reference Library). Pre and post election checks to confirm that software has not been changed or tampered with are recommended. To do this local jurisdictions must have HASH codes of all static files. The Hart software makes "broad use of Windows resources, including hundreds of DLLs and other executable files". Each of those files represents a potential vulnerability, an opportunity to introduce malicious code into the system.** For that very reason **it is essential** that the information be available to **verify these files both in the certification process and pre and post election.** Being able to confirm that the software certified at the national and state level is identical to that installed and used in elections is **one of the most significant improvements to total election system security that can be made.** Implementing such checks requires not modification or recertification of a voting system, unlike many changes. **The tools to verify HASH codes are readily available and do not require extensive training to use. It is hard to imagine why a change that is this beneficial is being resisted."** <https://www.sos.state.tx.us/elections/forms/sysexam/stephenberger621.pdf>

Who was Berger referring to that was resisting the implementation of what he called “**one of the most significant improvements to total election system security that can be made**”? Why did the Secretary of State not demand this essential, and easy to conduct, security measure to protect our sacred votes?

To clarify why the HASH codes are so important Berger goes on in his report to say “**Further, safeguards are needed to assure that only the approved update is installed on systems. The current practice potentially allows additional software to be installed under the guise that it is part of the operating system update.**” And that, “It has been reported in reviews of this system in other states **that it is possible to bypass the Hart software security settings.** This item was discussed in the California evaluation of the Hart 6.2.1 system.” HASH code validation practices would have mitigated these risks.

The most alarming statement in the Berger report is a quote from a California expert report that states: “Some of the findings from previous studies on precinct count optical scanners were replicated on the eScan, and they **allowed the Red Team to maliciously alter vote totals with the potential to affect the outcome of an election.** These attacks were low-tech and required tools that could be found in a typical office.”

I found the California report that Berger referenced in his report online by searching the quote in his report above. The California report is even more concerning than the Berger report.

<https://votingsystems.cdn.sos.ca.gov/oversight/ttbr/red-hart-final.pdf>

In addition to the alarming quote above, the Executive Summary of the report states: “As tested, **the Red Team found vulnerabilities** in the Hart InterCivic System 6.2.1, which – in the absence of procedural mitigation strategies – **could be exploited to compromise the accuracy, secrecy, and availability of the voting systems and their auditing mechanisms.**”

On page 11 of the report the red team outlines again how an insecure operating system could pose a potential threat. “The Red Team was able to locate an undisclosed user name and password for the Hart ODBC databases. **This is an attack vector that could provide unauthorized access to Hart EMS databases** if an attacker were to penetrate the system on which the Hart software was running. The Red Team was also able to manually bypass the Hart software security settings that automatically define a Hart-defined environment. This allowed the team to run the Hart software in a standard Windows

desktop environment. **The Red Team did not have time to craft an exploit that would leverage this unauthorized runtime environment, but it may prove to be a vector for future attacks.”**

The report also states that “The Red Team, working in close conjunction with the 2007 TTBR Hart Source Code Team, **discovered that the Hart EMS software implicitly trusts all communication coming from devices appearing to be Hart-branded and neither authenticates the devices nor performs adequate input validation on data transmitted to it by the devices. This allows for the possibility that a compromised device, such as an eScan that had been tampered with at a polling station, could infect the EMS systems.** In particular, the Source Code Team discovered a weakness in the code that would allow an eScan to perform a buffer overflow attack and execute arbitrary code on the computer running SERVO.”

**“The Red Team located a vector for overwriting the eScan executable. Although the team did not have enough time to craft an exploit for altering vote totals, given more time, the team is confident that eScan vote tallying could be modified maliciously.”**

**“The Red Team implemented an attack devised by the 2007 TTBR Hart Source Code Team that was able to extract election-sensitive information from the eScan and issue administrative commands to the eScan. The leaked information would allow an attacker the ability to execute further attacks, while administrative commands issued to the eScan could erase electronic vote totals and audit records from an eScan while putting it out of service for the remainder of the Election Day. For more details on these attacks, please see the 2007 TTBR Hart Source Code Team report.”**

**“Additionally, the team expanded on previous findings that the MBB in the JBC is vulnerable to tampering during an election. Extracting the MBB from within the JBC during an election and tampering with it without detection would probably require poll worker access, but the team was able to prove that this access would be sufficient to alter vote totals – and in such a manner that it would not be detected in the course of normal operation, though a very thorough audit might reveal it.”**

On page 14 of the report under Attack Scenario 2 we get confirmation that the only way to truly have an accurate audit or manual recount is with the Hart Verified Voter Paper Audit Trail (VVPAT) that was not

included in as part of the “certifications” of the Hart 3.3 or 6.2.1 systems. “Attack Scenario 2 In this scenario, a malicious poll worker finds an opportunity after the close of polls to alter the contents of the MBB using his personal laptop. The attacker identifies ballots containing votes for a candidate he doesn’t want to win the election and overwrites those ballots with records containing votes for a candidate he does want to be successful. After tampering with the MBB, the attacker replaces it in the expected chain of custody. **The technological safeguards for detecting this tampering are insufficient and can, by default, go unobserved. This results in altered vote totals that can only be detected in the event of a manual recount of eSlate VVPAT records.**”

I will not go over the entire California report because it is lengthy and contains a lot of alarming information that should be fully understood about this election system. You should take the time to read the entire California report at the link above.

Another expert report prepared by Joseph Hall found that “Unfortunately, **the eCM Manager, a key security-related application, does not generate any audit logs.**” He describes the eCM Manager as “The eCM is a USB device manufactured by SpyruS, Inc. and provided by Hart. **It is used to secure access to the Windows-based machines running the Hart EMS.**”

[https://josephhall.org/papers/hart\\_doc\\_final.pdf](https://josephhall.org/papers/hart_doc_final.pdf)

To be clear, Hart 6.2.1 is an election system that has shown to have **serious windows operating system vulnerabilities** and **the device used to secure the access to that windows-based system produces no audit logs.** Why?

There is also an expert report out of Ohio that comes to the same conclusions about the security of the Hart voting systems. I will not rehash these issues again, but you should read their full report.

[https://www.usenix.org/legacy/events/evt08/tech/full\\_papers/butler/butler\\_html/index.html](https://www.usenix.org/legacy/events/evt08/tech/full_papers/butler/butler_html/index.html)

Berger recommended that this system **NOT be certified** and repeatedly states throughout his report that there are serious concerns with the security of this voting system and that those concerns should be addressed, and the system should be reevaluated to ensure they were addressed before the system was certified for use in Texas.

In the interest of security for our most sacred right to vote, this system should have been denied certification until these serious issues were addressed by Hart, and once addressed should have been required to be fully reevaluated to ensure that the issues were resolved. This specifically should have been done **legally** by having the system certified by a Voting System Test Laboratory accredited through the Election Assistance Commission before being reevaluated by the Secretary of State. Instead, the Secretary of State “certified” this system with the conditions outlined above but excluded **“one of the most significant improvements to total election system security that can be made”**. Why?

Not only have multiple Secretaries of State knowingly “certified”, or failed to decertify, an insecure election system, they have also failed to monitor and enforce the conditions **they** placed upon the certification of the equipment.

According to information received through a Public Information Act request sent to the County, and a meeting with the Elections Administrator Suzie Harvey, Montgomery County has been using Windows 7 operating system with the Hart eSlate Voting System Version 6.2.1 since 2013 and **not** the **required** Windows 2000 “hardened” Operating System.

A change in the type of operating system used with an election system would have **required** a new certification, especially when the operating system used was clearly spelled out in the certification process as vital to the security of the system. In fact, according to the Berger Report “Operating systems have many configuration options and depending on the options selected can range from relatively secure to very vulnerable. **For this reason, the VSS (Voting System Standards) 2002 and the VVSG (Voluntary Voting System Guidelines) 2005 require that the vendor specify the operating system configuration and that the security of the recommended be evaluated by the ITA, now VSTL (Voting System Test Laboratories).** The configuration of the operating system is a critical element to the overall system security. **If the configuration of the operating system is not controlled many other security safeguards are of little value.** **The configuration of the operating system is a foundational piece essential to the overall security of the operating system. This fact is recognized and results in multiple requirements in the VSS 2002.** This annex is provided to support the recommendation that an operating system configuration be submitted by Hart InterCivic for review and approval.” He goes on to say **“Voting system applications use many operating system functions. Changes to the operating system should only be made after approval by the Texas Director of Elections after appropriate review.”**

**No new certification has been issued for an update to this election system with the Windows 7 operating system as required.**

Further, a Public Information Act request sent to the Secretary of State's office seeking to obtain the annual filings by Montgomery County for years 2018, 2019, 2020 and 2021, that were **required** by the Secretary of State to maintain "certification" of this election system, returned **no** results. To be clear, in at least the last 4 years, the Secretary of State's office received **none** of the filings from Montgomery County that were **required** to obtain at least the appearance of certification of the election system they were using. Montgomery County has used equipment that would have been considered uncertified even by the terms of the Secretary of State's "certification" letter since at least 2018. I have submitted a Public Information Act request to the Secretary of State's office to obtain the required filings for years 2009-2017 but have not yet received an answer to that request.

According to Suzie Harvey, she has been the Elections Administrator of Montgomery County since 2011. She stated that she has never seen the conditioned certification letter from the Secretary of State's website and has therefore never filed an annual report related to the conditioned certification. She further stated that she has never received any communication from the Secretary of State's Office, in her 11 years, notifying her that she was out of compliance with those requirements even though she receives many communications from their office detailing requirements.

As of today, July 2, 2022, this conditioned certification letter is still displayed on the Secretary of State's website under elections > voting systems > certification information by vendor > Hart Intercivic, Inc > Hart System 6.2.1 > Certified 4/30/2009. The term "hidden in plain sight" comes to mind.

<https://www.sos.state.tx.us/elections/forms/sysexam/hart621cert.pdf>

The Secretaries of State holding office from 2009 to today had the legal authority and the ethical duty under TX ELE §31.005 to monitor and ensure receipt of the annual reports **required** for "certification" of Hart eSlate Voting System 6.2.1, and that all of the other 4 conditions for "certification" were met as they were well aware that this system was vulnerable to manipulation.

According to Election Code Sec. 31.005. PROTECTION OF VOTING RIGHTS; ENFORCEMENT. (a) **The secretary of state may take appropriate action to protect the voting rights of the citizens of this state from abuse by the authorities administering the state's electoral processes.**

(b) **The secretary of state may order a person performing official functions in the administration of any part of the electoral processes to correct offending conduct** if the secretary determines that the person is exercising the powers vested in that person in a manner that:

(1) **impedes the free exercise of a citizen's voting rights; or**

(2) unless acting under an order of a court of competent jurisdiction, delays or cancels an election that the person does not have specific statutory authority to delay or cancel.

(c) **If a person described by Subsection (b) fails to comply with an order from the secretary of state under this section, the secretary may seek enforcement of the order by a temporary restraining order, or a writ of injunction or mandamus obtained through the attorney general.**

As evidenced by the fact that Suzie Harvey claims to have never seen this conditioned certification document and that Montgomery County was still using this uncertified election equipment as recently as the runoff election held on March 24, 2022, **the Secretaries of State have failed to protect the voting rights of the People of Montgomery County** violating TX ELE §31.005.

These Secretaries of State also failed to act to secure the votes of the people of Montgomery County by acting under the color of law and “certifying”, and then failing to decertify, election systems that violated section 101, section 102, section 231 and section 301 of HAVA 2002, TX Admin §81.61 and TX ELEC §122.01(3) and by failing to do the minimal amount of due diligence and make sure that even their own **requirements** for “certification” were being enforced.

The Secretaries of State violated the UNIFORMITY code, TX ELE§ 31.003, as the people of Montgomery County and other counties were forced to vote on vulnerable equipment that was never certified by an EAC accredited VSTL, did not meet the Voting System Standards of HAVA 2002, and was even uncertified by the standards set by their own certification requirements, while other counties had systems that met those requirements and were not as potentially vulnerable to outside manipulation.

Election Code Sec. 31.003. UNIFORMITY. The secretary of state **shall** obtain and maintain uniformity in the application, operation, and interpretation of this code and of the election laws outside this code. In

performing this duty, the secretary **shall prepare detailed and comprehensive written directives and instructions relating to and based on this code and the election laws outside this code. The secretary shall distribute these materials to the appropriate state and local authorities having duties in the administration of these laws.**

The Secretaries of State since 2009 failed to prepare detailed and comprehensive written directives and instructions and distribute them to the county election officials and further failed to ensure these vital tasks were performed.

For the same reasons that the Secretaries of State violated the Uniformity Code TX ELE§ 31.003 they also violated the equal protection right clauses of Article 1 Section 3 of the Constitution of the State of Texas and Amendment 14 Section 1 of the Constitution of the United States.

**I contend that due to these actions, and lack of actions, by the Secretaries of State, the elections in Montgomery County have been illegal, unreliable, and therefore uncertifiable since at least January 1, 2006.**

There are currently 35 counties in the state of Texas, in addition to Montgomery County, that are also conducting illegal and uncertifiable elections due to the illegal “certification” of Hart eSlate Voting System 6.2.1 by the Secretary of State in 2009. Archer, Brown, Burleson, Burnet, Cass, Coke, Comanche, Crosby, Dawson, Delta, Duval, Ector, Falls, Fannin, Foard, Gray, Grimes, Harrison, Hudspeth, Jefferson, Jim Hogg, Karnes, Kenedy, Kimble, LaSalle, Lipscomb, Marion, Matagorda, McLennan, Menard, Schackelford, Wichita, Wilbarger, Willacy and Wood counties all use the Hart eSlate Voting System 6.2.1 according to the most recent data obtained from the Secretary of State website.

<https://www.sos.state.tx.us/elections/forms/sysexam/voting-sys-bycounty.pdf>

At the time of this report, I do not know the date of purchase or implementation of this equipment in these counties, nor do I know if any of these counties have complied with the “certification” requirements set by the Secretary of State. I have filed a Public Information Act request with the Secretary of State’s office to obtain the annual reports for these counties for the last 4 years but have not yet received an answer to that request.

Additionally, through this research process, I found a lawsuit titled **Singer v. Hart Intercivic, Inc.** (Hart). This suit was brought by William R. Singer (Singer), a technician that was an employee for Hart. Singer alleges in his suit that **Hart lied to election officials about the accuracy, testing, reliability, and security of its voting machines.** The whistleblower says the company did so because it was eager to **obtain some of the approximately \$4 billion in federal funds** that Congress allocated to states in 2002 to purchase new voting equipment under the Help America Vote Act (aka HAVA). And alleges that **the company made misstatements to conceal the voting machines' frailties and vulnerabilities, routinely failed to adequately test its software and created a "dummy" machine to obtain system certification in at least one state that was different hardware and software than what was actually sold.** This again shows why HASH validation is so important. Why was Stephen Berger's professional recommendation resisted? You should read this entire lawsuit brought by Singer.

<https://www.courtlistener.com/docket/4884368/1/singer-v-hart-intercivic-inc/>

I also found two affidavits of testimony that are part of other lawsuits filed in reference to election systems. One affidavit was written by Terpsehore Maras, a government contractor turned whistleblower, and the other is written by J. Alex Halderman, a Professor of Computer Science and Engineering and the Director of the Center for Computer Security and Society at the University of Michigan. These affidavits contain information that is vital to understand about election systems if we are to secure elections in our county, state, and nation. Together these affidavits provide crucial information about the vulnerabilities these systems face. This may help county officials to fully understand and mitigate some of these risks. You should read both affidavits.

<https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:7227595c-7933-4a8e-a7b0-5531c64e115e>  
and <https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:6f4fb041-80f3-4d81-b8f0-90186eba09de>

I also found some interesting articles that suggest Hart had previous ties to Smartmatic through Sequoia <https://www.computerworld.com/article/2536520/report--e-voting-firms-in-hostile-takeover-tussle.html> and that there are at least some inappropriate relationships between politicians and Hart Intercivic <https://www.forbes.com/sites/rickungar/2012/10/20/romney-family-investment-ties-to-voting-machine-company-that-could-decide-the-election-causes-concern/?sh=56932bee1afa>.

I also discovered data driven evidence that suggests manipulation of the election process in Montgomery County and other Texas counties is at least a possibility, if not a probability.

Captain Seth Keshel (Keshel) looks at analytical data obtained from the US Census, voter registration trends and election outcomes to determine the probability of manipulation or fraud in a given area. In this Substack article, Keshel explains the election trends in Texas and how the data indicates that someone is manipulating the election outcomes in suburban areas like Montgomery County to “blot out” or “cancel out” votes to keep certain incumbents in power and build a narrative that Texas is turning blue. <https://skeshel.substack.com/p/texas-will-be-blue-by-2032-and-the?s=w>

In this article there is a “heat map” prepared by Keshel that shows the counties and how they rank. Red – Rampant Fraud, Yellow – Likely/Suspect Fraud, and Green – Clean/Low Fraud. Montgomery County is ranked in Red indicating there is a high possibility of fraud or manipulation.

<https://www.thegatewaypundit.com/2021/07/keshel-clements-biden-estimated-675000-fraudulent-votes-texas-2020-actual-vote-likely-55-43-trump-win/>

The most interesting information that Keshel has published on his Telegram channel is this report dated June 17, 2021, titled *Discussion of Election Fraud in Texas 2020 Presidential Election*. On page 5 of this report is another type of “heat map” showing where the counties in Texas are trending blue/democrat. In this report there is a particular map featuring an overlay of Xs showing which of those counties use Hart voting systems. **100% of the counties in Texas using Hart voting systems are showing higher increases of democrat votes.** What is the mathematical probability that every single one of the counties using Hart equipment is trending bluer than the rest of the counties? Why are Hart counties showing such an increase in democrat votes compared to other counties? If the possible manipulation of our elections has nothing to do with our election systems, how would you explain the statistical improbability that this report shows?

<https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:01e8501c-9a90-4e07-8ea1-b6e98b11bc4c>

On April 1, 2021, under the color of law, the Secretary of State’s office “certified” the Hart Verity Voting System Version 2.5 for use in elections in the State of Texas.

While Hart Verity Voting System Version 2.5 has an illusion of certification by an EAC accredited VSTL, that certification is fraudulent because the Voting System Test Laboratory (VSTL), SLI Compliance, that approved the certification is not an accredited laboratory in accordance with the Voting System Test

Laboratory Program Manual ver. 2.0 effective May 31, 2015, page 38, Sec 3.6.1.

[https://www.eac.gov/sites/default/files/eac\\_assets/1/28/Cert.Manual.4.1.15.FINAL.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/28/Cert.Manual.4.1.15.FINAL.pdf)

There is a detailed report about the accreditation issues with the VSTLs below, but I will summarize the issues here. SLI Compliance (SLI) is not an accredited VSTL because the accreditation certificate for SLI was not signed by the Chair of the Election Assistance Commission as required by the Voting System Test Laboratory Program Manual ver. 2.0 effective May 31, 2015. Also, the term of the certification cannot exceed 2 years and the certification for SLI Compliance exceeded 2 years. Further, there was no quorum at the time of accreditation as is also required.

Further, the EAC provided a letter dated January 21, 2021, stating that proper certification for SLI was delayed due to Covid-19 and that SLI would retain their accreditation until the issue was resolved. However, the recertification for SLI was due in **2017, prior to Covid-19**. The Covid excuse falls flat and crosses over to dishonesty. You should read the entire report here:

<https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:f24ab2f8-8da3-4738-9999-b307e75f70e4>

On October 26, 2021, Montgomery County purchased Hart Verity Voting System Version 2.5 (Hart 2.5). This system was not legally certified by an EAC accredited VSTL and should have never been “certified” by the Secretary of State’s office because it violated TX Admin §81.61.

While the purchase of this equipment has not yet affected the elections in Montgomery County, because the equipment has not yet been placed in service, this new equipment will affect the legality of future elections. According to Suzie Harvey this is likely to happen as soon as the federal general election of November 2022.

Further, according to a document titled Texas Certification Procedures for Electronic Pollbooks which can be found here: <https://www.sos.texas.gov/elections/laws/certification-pollbooks.shtml> “Election Code 31.014 requires an electronic pollbook system that is used in Texas elections to be certified annually by the Secretary of State’s Office. Accordingly, vendors will need to seek recertification of their system on an annual basis which will become effective on January 1 of the year in which the system will be used.”

Through a Public Information Act request sent to the Secretary of State's office on March 18, 2022, as of April 19, 2022, the office had no document relating to the certification of Montgomery County's Electronic Pollbook, as an Electronic Pollbook vendor, for the election year 2022 in violation of Election Code 31.014.

When I spoke with Suzie Harvey on June 29, 2022, she stated that her office had applied for the recertification of their Electronic Pollbook last year, as required, but had not received a copy of their certification letter until a couple of weeks ago. This would have been well after 3 elections had already taken place in Montgomery County in 2022. This certification is **required** to be obtained in the year prior to elections.

In fact, in the state of Texas for the years 2021 and 2022 the Secretary of State's office could only provide certification documentation for 3 of the 6 electronic pollbook vendors in violation of Election Code 31.014. This will affect the legality of elections for constitutional amendments, primary elections, special elections, and upcoming federal general elections.

I will repeat again that there is **NO** oversight at the state or federal level into the security, accountability and transparency of our election systems and processes. These vital systems and processes are rife with vulnerabilities and purposeful lawlessness. It will be upon the People and the County Officials to demand and implement security in our elections.

Would you accept such lawlessness if it was surrounding your banking system? Would you accept the FDIC issuing fraudulent insurance certifications for your bank? Would you accept your bank using vulnerable, uncertified banking systems and software? Would you place your money in a bank if their certification was signed by an office worker instead of the proper signing authority?

I contend to you that our votes are more valuable than money. Our right to choose our elected officials is the very right that guarantees all other rights protected by US and State Constitutions. It is the very right that determines if we live in freedom or tyranny. If we can have NO confidence that our government representatives are **true and legitimate elected representatives** of the People, we have taxation without **just** representation. That is involuntary servitude.

The news media and government officials are constantly squawking that they have seen no evidence of election fraud. They carefully craft an illusion that you must prove that someone rigged or manipulated the outcome of an election to prove election fraud, but is that true?

Black's Law Dictionary 4<sup>th</sup> edition defines Fraud as:

***FRAUD.*** *An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right; a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury.*

Read the definition again. Now, according to the legal definition of FRAUD, answer these questions:

- 1) Did the many Secretaries of State commit fraud when they passed off legally uncertifiable equipment as certified?
- 2) Did they commit fraud when they knew Hart 6.2.1 was insecure and vulnerable to manipulation but passed it off to the counties as safe and secure by implying to the county authorities it was legally certified?
- 3) Did they commit fraud, by concealment of that which should have been disclosed, when they failed to properly notify county officials that their equipment was vulnerable to manipulation and that there were steps they needed to take to mitigate that risk?
- 4) Did Hart Intercivic, Inc. commit fraud by; lying to election officials about the accuracy, testing, reliability, and security of its voting machines, making misstatements to conceal the voting machines' frailties and vulnerabilities, failing to adequately test its software, and creating a "dummy" machine to obtain system certification; all in order to obtain federal funds?
- 5) Did the Election Assistance Commission commit fraud when they failed to notify the state's Secretaries of State that the accreditation for both Voting System Test Laboratories had expired in 2017 and 2018?
- 6) Did they Commit fraud when writing a letter stating that the lapse in accreditation was due to Covid-19 when the pandemic did not start until 2 years after the accreditations lapsed?
- 7) Did these groups together defraud the People of their sacred right to vote in a secure election by creating a carefully crafted narrative of secure elections while they knew they were vulnerable to manipulation?

I contend to you that election fraud started well before the 2020 election in the State of Texas.

***“An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right”***

With all I have discovered I certainly feel defrauded of my most valuable legal right to choose my government representatives in an honest and secure election. I have no confidence that when I go to the ballot box that my voice will be heard or that my vote will be properly counted.

During a recent meeting with the Montgomery County Elections Administrator, Suzie Harvey, and Montgomery County Republican Party Chairman, Brian Christ (Christ), Christ stated that he wanted to “look forward” to the implementation of Montgomery County’s new election equipment Hart Verity 2.5. He seemed unconcerned about the evidence of fraud perpetrated at the highest levels of our government, or by Hart Intercivic, Inc., surrounding our elections equipment. He tried to assure me that this new equipment was going to be secure. The only reason he has provided so far for his confidence is the fact that the equipment is new technology. I truly wish I could understand and share his hope.

As far as I am concerned the company that manufactured both our old and new equipment, Hart Intercivic, Inc., cannot be relied upon for honesty or security. The federal agency responsible for certifying our election equipment at the national level, the Election Assistance Commission, cannot be relied upon for honesty and security. The state agency responsible for certifying our election equipment at the state level, the Secretary of State’s Office, cannot be relied upon for honesty and security. How can we trust that this new equipment will provide secure and accurate results? As of right now, I cannot help but view this new equipment as the fruit of a poisoned vine.

In keeping with his “forward looking” position, Brian Christ has asked that I prepare a detailed report with any issues I may find about the security of the Hart Verity Voting 2.5 system. Currently, that report is incomplete because my focus has been on the equipment we are still using. I will update this report or create a new report once that investigation is complete.

If you have any questions about this report, please feel free to contact me with the information provided on page 2.