



Written by [Kelly Holt](#) on October 24, 2016

Published in the October 24, 2016 issue of [the New American](#) magazine. Vol. 32, No. 20

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## Aiding Election Tampering

**When Laura Pressley lost a race for the Austin City Council despite strong poll numbers, she suspected vote fraud. When she tried to investigate, she was stymied at every turn.**



In an outlandish election season almost asking for selling show tickets and popcorn, it's appropriate to spend time considering our country's voting methods — including how secure vote results are from tampering. Should we be concerned? Yes. The following story illustrates one reason why.

A local election in a lowly 2014 Texas municipal race wasn't expected to be other than business as usual. That was before Austinite Laura Pressley lost her second run for a City Council seat and discovered apparent election voting machine corruption, and responded with a lawsuit. Pressley is hoping the outcome will turn state electronic voting on its electronic ear. And more. If her claim is proven legitimate, it could give impetus to the popular idea of a return to paper ballot voting.

The idea of potential electronic system corruption may "not be as farfetched as you might think," recently posited Pam Fessler of NPR. In an August 1 report, Fessler noted incidences of serious voting system irregularities in Indiana, Arizona, and Florida.

Pressley's assertion about her election result boils down to this: Travis County (Austin) failed to retain two of the three official election records needed to validate the electronic results, and the third was corrupted, resulting in an inability to conduct a legal recount. Or at least that's how it started out. What was promised to voters 15 years ago — improved integrity and paper backups — didn't happen.

And Pressley is no slouch when it comes to knowing what she's doing. This native Texan holds a Ph.D. in physical chemistry from the University of Texas, and worked in the semiconductor industry as an engineer and business manager.

She holds four patents in semiconductor device development and yield enhancement, and has authored many peer-reviewed scientific articles related to semiconductor device technology. As such, she's worked with the Texas Legislature on science and technology issues. Here's what happened in her election.

She ran for a 2012 seat on Austin's City Council, bagging 45 percent of the vote, telling *The New American*, "I hoped to bring a measure of fiscal conservatism to the Council, implement a leaner budget, and bring technical expertise to deliberations. No sitting council member understood technical issues, but I do. The city needed that expertise and perspective.... I understand budgets, and who doesn't want their city government to be more efficient?"

But she lost. Confident she'd do better two years later, she ran again in 2014, opposing newcomer Greg



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Casar. The upshot was a runoff — and another defeat. Because election-night results weren't consistent with polls, she donned her engineer hat, and started doing the math. She compared the number of early voters with the number of early ballots, and they didn't match. And they didn't match in almost every precinct. She also found statistical repetitive mathematical patterns in the results, calling them into question. It was more than just a bit suspect.

But before asking for a recount, Pressley read the entire election code, then submitted a formal recount request to the city secretary, asking specifically for a manual recount of Ballot Images (BI), allowed by Texas statute.

Chief among Pressley's concerns were the inconsistencies — specifically, more votes were cast than the number of voters reported by the county records. Texans remembering the Box 13 affair — in which Congressman Lyndon Baines Johnson won a South Texas primary with a stuffed ballot box — might be groaning at that. Coupled with the mathematical analysis, her suspicion grew that something was amiss.

What was to become a complicated account began when Pressley appeared for the scheduled physical recount, and was informed by Travis County Clerk Dana DeBeauvoir that the requested Ballot Images, one of three election records required by law for validating results, weren't available.

## **Ballot Images**

Critical to understanding this case is to understand these election records, specifically Ballot Images and Results/Tally Tapes, as defined by Texas Election Code.

To begin, a legal BI is an exact representation of an exact ballot. The code requires that ballots “shall be numbered consecutively” (serial numbers are also *required* by the Texas Constitution); “the nature of the election and the date of the election shall be printed at the top of the ballot”; and “A square for voting shall be printed to the left of each candidate's name” along with the time a ballot is cast.

Results/Tally Tapes are also required of election judges at the polls on election night. They reflect just that; a tally of election results — candidates' names, number of votes cast, and names of voters at that location. Election judges are legally required to sign the tapes and put them in Report Envelopes — it's considered a misdemeanor to not turn it in to county officers. But Pressley would later learn that a letter, generated by the Office of the Texas Secretary of State (SOS), instructed election judges to waive this portion of election law.

When Pressley asked why Ballot Images weren't available, DeBeauvoir told her that the Hart InterCivic voting machines (machines of choice in nearly 100 Texas counties, including Travis) cannot produce a legal BI, but instead a “cast vote record” (CVR), claiming they're the same thing. Having read the code, Pressley knew what a BI is, and that it's required that machines retain it, and that it's not a CVR. A CVR is simply a datasheet, absent all the legally required information just named, particularly the constitutionally required serial number. A CVR could effectively be sourced from anywhere, with no legal authentication — having no unique serial numbers or data to distinguish it from any other data.

According to the statute, counties are required to produce and keep Ballot Images, but Pressley has yet to discover a county that can produce them. Remember, electronic recounts have to be done with a printed BI. And she already knew that the Results/Tally Tapes hadn't been printed in Travis County, either.



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And we haven't even talked about Audit Logs (AL), the most important thing of all. An Audit Log is a time/date stamp of every activity occurring on a computer — in this case, the tally computer at the central counting station in a county office. All precinct memory cards converge at this computer — it tabulates votes.

So Pressley asked to see the source of the Cast Vote Records, but was refused access to the information by the election director on site. She registered her protest, but agreed to a conditional recount. That the recount records didn't meet legal requirements (Pressley claims no legal BI existed), that the county hadn't printed Results Tapes (the backup records), and that she was denied access to source information all formed the basis of her later decision to officially file suit. After all, the only legal ballots (paper) showed an exact tie.

She explained, "The electronic vote showed a skewed result in my contest, and according to the county election officers, the machines couldn't produce a legal ballot image for a recount. So, we concluded the electronic equipment wasn't able to adhere to state law. Since the paper ballots were the only ones meeting legal requirements, the paper-ballot tie called for a recertification and a new election, which we asked for."

After the filing of *Pressley v. Casar* in January 2015, a discovery hearing followed in March in the 201st Judicial District Court of Travis County. Casar requested the case be ruled a "frivolous lawsuit," and the judge agreed to consider the request. Yet information necessary for proving Pressley's case was placed off-limits to her. The judge restricted the types of evidence she'd be permitted to access for building her case, specifically, voting machine software, memory cards and programs, or e-mail messages relating to the election.

But the information she did acquire in discovery revealed some irregularities: First, election envelopes were printed with an instruction to election judges not to print the required Results/Tally tapes.

And remember the Audit Logs? The county, as an informal third party to the suit, was ordered to produce them (from the main tabulating computer), along with the voter lists, copies of envelopes, and other election records. Included were records showing that memory cards were incorrectly handled, along with evidence of extended log-ons, and a copy of the letter from the Elections Division of the SOS office, instructing Travis County not to print the Tally Tapes for the general election. However, County Clerk DeBeauvoir claimed that the waiver from the Elections Division applied to the run-off, effectively waiving state law.

Part of what Pressley hadn't known initially was later revealed in a detailed examination of those Audit Logs. Memory card corruptions had occurred nine different times on election night at the tally computer during vote tabulation. The tabulation was corrupted. According to an expert witness, corruption errors damage the credibility of the vote counting process.

Pressley states, "No ballot tabulation process should ever register a corruption error, let alone be out of public view, yet machines are taken away, cards are taken off site, etc., as we found in my case from the audit log."

"We were prohibited from accessing the software to understand why the memory cards were corrupted. As far as we know, this is the first time anyone has ever acquired an Audit Log. In Texas, they can't be obtained without a lawsuit. Without them, challengers won't have a way to know card corruption is occurring. At best, it's inaccurate. At worst, it's evidence of election corruption or vote-



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flipping.”

In May 2015, the judge granted Casar’s request for a “No Evidence Summary Judgment” (NESJ — the requested “frivolous lawsuit” ruling), declaring there wasn’t enough evidence to merit a trial, instead of ordering the new election Pressley expected.

Pressley notes, “We were penalized for not having enough evidence, and were prohibited from getting it!”

“Not only that, we were told if we refrained from appealing the ruling, my opponent wouldn’t pursue sanctions!” But appeal she did, and sanctions for \$90,000 were handed to her and her attorney — essentially awards for Casar’s attorney fees.

The following month, the appeal process found Team Pressley in the State of Texas Third Court of Appeals. Appealing Casar’s motion for an NESJ, Pressley presented the discovery evidence (Audit Logs, poll-watchers affidavits stating tapes weren’t printed, envelope copies, and the expert witness declaration stating that Ballot Images and Cast Vote Records aren’t the same nor could the vote tabulation process be trusted).

After requesting that the NESJ and the sanctions be overturned, Pressley asked for a ruling defining a legal Ballot Image. Such a ruling is crucial to her case, and the future of vote integrity in Texas. If, as she claims, the BI and what currently passes for one (CVR) are decided to be two different things, then the codified Texas statute should stand. Then, the only available legal BIs in her race, the absentee voting paper records that showed a tie, form the basis for her new-election request.

If a legal BI can’t be retained by the machine, as required by law, Pressley questions why the process that produced the problem in the first place should be repeated in a new election. Her solution? A paper ballot election.

And finally, she pled that the SOS Elections Division be prompted to cease issuing waivers to law (that Tally Tapes needn’t be printed) in Travis County and to require tape printing.

In the meantime, three judges assigned to consider the appeal demanded an oral argument, indicating they questioned the “frivolous lawsuit” decision. After presenting said argument in April 2016, the parties await a ruling. Since the case involves a challenged election, the appeal is automatically accelerated. If challenged election claims are found to be legitimate, the “winner” holds the seat illegally, so since terms of office are finite, quick decisions are merited.

Along the way, Pressley was invited by a friend to speak about the case at his county’s Tea Party club, then began receiving invitations from Democrat, Tea Party, Libertarian, and Republican clubs, and retiree, environmental, and other groups all over the state. She adds, “It’s a non-partisan issue — everyone’s interested in election integrity.”

But as she began telling the story, she learned that irregularities weren’t restricted to Travis County. Although Travis is the only county germane to the suit, the implications are important statewide. Election judges, voters, precinct chairs, campaign workers, and others stepped up to say they weren’t producing the tapes either, because they’d also received the SOS letter! Some judges, not seeing the waiver themselves, were told by county election officers not to print tapes. Some, without seeing the waiver, had simply chosen not to print tapes; one precinct election judge even reported that machines in his county aren’t programmed to do so.



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Other election workers told Pressley, “We can’t even produce a Ballot Image from that machine!” Candidates reported they hadn’t asked for recounts because no one was keeping BIs to count. Several sensed something was wrong but didn’t pursue it, or know how.

The question now became even bigger. The waivers of law had come directly from the secretary of state’s office (accountable to the attorney general’s and governor’s offices). And contradicting state law, counties were told that the legally required Ballot Images weren’t necessary. Pressley posits the SOS is waiving law, violating its own election handbook by not enforcing the uniform code required by the statute, and that neither paperless voting machine system used in Texas can produce a BI as defined by Texas’ voting code on election day. When questioned by TNA about how the voting machines were used, neither manufacturer of these systems used in Texas would comment.

However, an answer came from one Frank Dobrovolny, an attorney in Cherokee County who already had concerns of his own. He also has an innate distrust of the electronic system, and when he heard Pressley’s presentation, he decided not to remain passive. Questioning how safe elections are, he reviewed the Texas Election Code, specifically the portion requiring electronic systems to include “ballot image storage, and result tabulation.” To Dobrovolny, this says what it means, and means what it says, and it facilitates recounts.

Taking it upon himself to research the matter, he found on the U.S. Patent Office website the patent for Hart InterCivic, a system used in Texas, which claims the ability to produce the Ballot Images. Dobrovolny queried Pete Lichtenheld, Hart’s V.P. of operations, “Why don’t your machines store ballot images in accordance with State law and why do you believe a CVR is a suitable substitute for a ballot image?”

The V.P. responded that his company has “no legal duty to provide an image of what the voter sees,” and that “a Cast Vote Record is the same thing as a ballot image.”

Dobrovolny continued, “He wouldn’t confirm or deny the capability of his company’s machines to do what its patents claim they can do. I’m left with this question: “If Hart InterCivic possesses the patented technology to store ‘a direct representation of the voter’s selection as displayed to the voter as a redundant image of the ballot’ and if our laws require the machines to do so, then why are they providing machines all over Texas that are failing to do so?”

Alicia Pierce in the State Elections Division told TNA that the SOS has discretion to alter procedure whenever a county asks for modification, without violating state statute. And she reiterated DeBeauvoir’s claim that “Cast Vote Record” and “Ballot Image” are interchangeable terms, therefore, interchangeable records. She supplied TNA with portions of the code that she claimed permit procedural discretion, but none of the statutes apply to the specific serial numbers absent from the Cast Vote Records. This is critical — ballot serial numbers are required by the Texas Constitution. That cannot be changed without a vote by the people.

Laura Pressley isn’t the only Texan with a beef about this. For some time, Texas State Senator Bob Hall has had misgivings about the potential for fraud presented by electronic voting. He remembered first seeing an electronic machine and immediately thinking it was an opportunity for anyone who knew what he was doing to manipulate results. He’d read reports of irregularities and speculated his fears could be real.

So he’d invited Keith Ingram from the Elections Division, the author of the waiver letter, to his office to



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address those concerns. Ingram showed up but left without satisfying Hall's questions. In fact, the senator told TNA that Ingram had issued multiple waiver letters over the years, regarding different aspects of the voting statutes. Specifically, Hall learned that, when Texas first changed precinct voting to countywide, Ingram had waived the Tally Tape requirement, claiming it would "take too long" for election judges to produce them. Hall rightly concludes that important checks and balances were removed from the process.

He recounts he's been asked, "'Where's evidence of fraud?' Of course, there isn't any! It can't be gotten! The system's designed to prohibit getting evidence, by preventing access. There's simply no way to document what has happened in a machine — in other words, no paper trail. Electrons have no memory, no history, no identity so they can't tell what happened. Bottom line? You *cannot* validate a machine without a paper trail or be confident the results are what voters intended."

Karen Renick, founder and co-director of VoteRescue, a non-partisan election integrity group based in Austin, goes even further, saying electronic voting without paper backups amounts to "secret vote counting."

Hall has authored several bills for introduction in Texas' biennial legislative session in January, addressing the early voting, precinct versus countywide voting, and required paper backup. He'd like to see tabulation results produced right at the precinct level, with witnesses. In order to do all that, the equipment must be capable of providing a paper trail. And he'd like to see significant felony penalties for violators.

"I know the system will never be perfect. For instance, a system could be programmed to deliver a majority vote to a pre-determined candidate without any anomalies showing up in the total count. Because the program destroys itself, there is no way to validate what happened. We can do better."

He concludes, "The elections division of the SOS has been given authority to issue waivers concerning specific peculiarities with the machines. But it was never intended to restructure the checks and balances written into the Texas statute!"

And Pressley explains this concept in her suit, "The SOS shall not make any claim or waiver that violates the State Constitution" — of which the election code is a part.

She adds, "These computerized voting machines were introduced in Texas around 2001 along with a slew of laws, and promises of impeccable computer security and paper back up records. 'Trust us,' we were told. Well, what happened over the next 15 years was something very different from what Texas voters were promised.... All counties across the state are subject to the same legal requirements and election laws — right? Depends who's watching the store. Fast forward, in 2016 we are far from the legislative intent of honest, verifiable and true elections in Texas."

The result? No paper backup. The consequence? No checks and balances occur. What this says to Pressley is that votes don't count in Texas.

But Texas is a Red State, so the Republican State Convention made additions to the platform: support for enforcement of tape printing in all counties, support for all means of protecting election integrity, including optional use of paper ballots, and opposition to countywide polling locations, due to heightened fraud potential. Skeptics note that the party routinely ignores its own platform, though.

The result of this precedent-setting case will be case law, possibly marking a paradigm shift for future



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candidates considering recounts.

As for Dr. Pressley? A favorable ruling will provide the basis for her case to go to trial, and evidence not yet in play can be presented, specifically, the corrupted cards, which throw suspicion everywhere. If it goes south, she could appeal to the Texas Supreme Court, arguing the constitutionality of counting legally accepted documents vs. counting documents not meeting legal standards. At best, she'll get a new election.

Pressley's case epitomizes folks' concerns about electronic voting. While this year's November election seems to be especially important, we posit that your locals are no less so. And the ubiquitous electronic voting process can be fraught with land mines. That this case has developed at all is significant, especially the subsequent revelation that state officials are ignoring written law.

Dobrovolny wraps it up nicely: "A Cast Vote Record is a firewall breach. We can't look at how voters voted, only at how HartIntercivic *says* they voted. It lacks much of what our Constitution requires of a ballot and violates election code, which is unacceptable. And we've contracted out our ability to authenticate ballots to private corporations. We must have complete control over the authentication of every ballot, and be jealous guardians of each and every right including the right to vote. We should ensure that the right to vote includes the right *and duty* to authenticate every ballot, ourselves, at the local level. We should never allow third parties to interpret for us the selections made by voters."

Responsibility ultimately lies with the voter. Knowing candidates and issues isn't enough; know the process. TNA has also long been an advocate of constitutionally educated voters. Had Laura Pressley not known, or learned, the Texas Constitution and the election code, this story would be quite different.



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