



January 29, 2020

Hon. Wanda Vázquez Garced
Governor of the Commonwealth of Puerto Rico
La Fortaleza
San Juan, Puerto Rico

Re: Veto of Senate Project 1314, “Puerto Rico Electoral Code of 2019”

Dear Governor Vázquez Garced,

We write today on behalf of the ACLU of Puerto Rico and the American Civil Liberties Union (ACLU), to ask that you veto Senate Project 1314, the “Puerto Rico Electoral Code of 2019,” which shifts all of Puerto Rico’s voting systems to internet-based platforms by 2028. This measure is misguided, dangerous, and will needlessly expose Puerto Rico’s voting system to hacking and disruption. In Puerto Rico’s currently charged climate, such disruption will only result in greater public mistrust of key democratic institutions. A veto is imperative.

There is no secure way to hold elections online. Expert and political consensus confirms that vulnerabilities inherent to internet voting put voters’ rights and election security at serious risk. In 2018, the National Academy of Sciences concluded that “the Internet . . . should not be used for the return of marked ballots. . . . [a]s no known technology guarantees the[ir] secrecy, security, and verifiability.”¹ In 2019, a select committee of the U.S. Senate agreed, and said in its report on Russian election interference that “no system of online voting has yet established itself as secure.”² And recently, the federal Election Assistance

¹ National Academies of Sciences, Engineering, and Medicine, et al., *Securing the Vote: Protecting American Democracy* at 9 (National Academies Press, 2018), https://www.nap.edu/login.php?record_id=25120&page=https%3A%2F%2Fwww.nap.edu%2Fdownload%2F25120.

² S. Select Comm. on Intelligence, 116th Cong., “Russian Active Measures Campaigns and Interference in the 2016 U.S. Election, Vol. 1: Russian Efforts Against Election Infrastructure,” at 4 (2019), https://www.intelligence.senate.gov/sites/default/files/documents/Report_Volume1.pdf.

Commission proposed guidelines prohibiting voting systems from connecting to the internet or using online wireless technology such as Wi-Fi or Bluetooth.³

Against this consensus, S.P. 1314 directs the Elections Commission (“Comisión Estatal de Elecciones”) to implement an internet voting “pilot program” as soon as this year’s general election; extend it islandwide by 2022; and finalize it by 2028 with the goal of making internet voting the “only mechanism available to vote.” These ill-advised measures will expose Puerto Rico’s voting system to hacking and other online threats. They will make Puerto Rico a true outlier: no major U.S. jurisdiction comes even close to trusting its entire electoral infrastructure, on which millions of votes will be cast, to vulnerable, unproven technology. Puerto Rico should not be a laboratory for untested voting systems.

Most troublingly, S.P.1314 will impermissibly burden the voting rights of Puerto Rico voters. Certainly, it will jeopardize the right of vulnerable communities who may lack access to technological systems—such as homeless or incarcerated persons⁴—to even vote. But it will further affect *all* electors, because the constitutional right to vote is not satisfied once a voter casts their ballot. The right to choose includes the right to have a ballot *counted*.⁵ S.P. 1314 and internet voting will compromise that right by denying voters the chance to cast a vote that will surely count towards an election’s outcome, since there is no way to guarantee that a vote cast online will be tallied free from outside interference.

Recently, federal courts have applied related principles to hold that states may not uncritically depend on technology known to jeopardize voters’ rights when they establish their voting systems. In *Curling v. Raffensberger*, plaintiffs challenged Georgia’s continued use of electronic voting machines with well-known hardware and software vulnerabilities, which they claimed violated their right to vote under the First and Fourteenth Amendments to the U.S. Constitution.⁶ In August 2019, a federal judge concluded that Georgia’s use of older-model voting machines likely deprived plaintiffs of their rights to cast votes securely and in a manner that

³ See Eric Geller, *New federal guidelines could ban internet in voting machines*, Politico (Oct. 30, 2019), <https://www.politico.com/news/2019/10/30/new-voting-machine-rules-061966>.

⁴ See Law No. 3 (Sept. 8, 1980), 16 L.P.R.A. § 3240, *et seq.* (recognizing right of prisoners housed in penal facilities to vote as absentee electors in Puerto Rico elections).

⁵ See *United States v. Classic*, 313 U.S. 299, 315 (1941).

⁶ No. 1:17-cv-2989, 2019 WL 3822123 (N.D. Ga. Aug. 15, 2019).

ensures that their voices are heard.⁷ The court prohibited the state from using certain vulnerable machines and ordered it to transition to new systems by 2020.⁸

By adopting vulnerable online voting platforms, S.P. 1314 will compromise voters' rights to an even greater degree than unreliable voting machines ever could. Cases involving electronic machines have commonly focused on the ease with which polling hardware might be subject to unlawful tampering, and whether or not machines provide a verifiable paper record of a voter's choice. But those machines seldom, if ever, interface with the internet, precisely because more severe and harder to remedy "vulnerabilities introduced by internet voting could *destroy* elections."⁹

Finally, even setting aside these grievous election security concerns, S.P. 1314's timing is particularly troubling given Puerto Rico's recent history and ongoing civic crises. Hurricane María and recent earthquakes along the southern coast have made clear that the island's infrastructure—particularly, electrical power systems essential to internet access—remains precarious; it would be reckless to trust all voting systems to its well-being.

We are encouraged by your recent statements that you will not take action on S.P. 1314 unless there is consensus in its favor or if it threatens to destabilize the electoral process. S.P. 1314 will, in fact, sow instability in Puerto Rico's electoral processes; a veto is the only responsible option. We—as well as leading cybersecurity organizations and experts—are available to serve as resources in your consideration of our request, and welcome the opportunity to discuss these issues with you further. We can be reached at the contact information below.

⁷ *Id.* at *54.

⁸ *Id.*

⁹ Rachel Goodman & J. Alex Halderman, *Internet Voting Is Happening Now: And it could destroy our elections*, Slate (Jan. 15, 2020) (emphasis added), <https://slate.com/technology/2020/01/internet-voting-could-destroy-our-elections.html>.

Sincerely,



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