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VOTING IN AMERICA: THE POTENTIAL FOR VOTER LIST PURGES TO INTERFERE WITH FREE AND FAIR ACCESS TO THE BALLOT

HEARING

BEFORE THE

SUBCOMMITTEE ON ELECTIONS

OF THE

COMMITTEE ON HOUSE ADMINISTRATION

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

MAY 6, 2021

Printed for the use of the Committee on House Administration



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VOTING IN AMERICA: THE POTENTIAL FOR VOTER LIST PURGES TO INTERFERE WITH FREE AND FAIR ACCESS TO THE BALLOT

THURSDAY, MAY 6, 2021

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ELECTIONS,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:00 p.m., via Webex, Hon. G. K. Butterfield [Chair of the Subcommittee] presiding.

Present: Representatives Butterfield, Aguilar, Leger Fernandez, and Steil.

Also Present: Representatives Lofgren, Scanlon, and Rodney Davis of Illinois, and Loudermilk.

Staff Present: Jamie Fleet, Staff Director; David Tucker, Parliamentarian; Brandon Jacobs, Legislative Clerk; Sean Wright, Senior Elections Counsel; Andrew Kasper, Elections Counsel; Peter Whippy, Communications Director; Natalie Young, Press Secretary; Tim Monahan, Minority Staff Director; Caleb Hays, Minority General Counsel and Deputy Staff Director; Gineen Bresso, Minority Special Counsel; Nick Crocker, Minority Deputy Staff Director; and Mike Cunningham, Minority Policy Staff.

Chairman BUTTERFIELD. The Subcommittee on Elections of the Committee on House Administration will now come to order.

I am pleased that several members have joined us today, and I will recognize each one of them by name, first of all, to say greetings to each one of them, but also to establish a quorum.

We have with us Mr. Aguilar from California; the Ranking Member, Mr. Steil, from Wisconsin; Ms. Leger Fernandez from New Mexico; the Ranking Member of the full Committee, Mr. Davis of Illinois; Ms. Scanlon from Pennsylvania; and, of course, myself. I will declare a quorum to be present.

Let me begin by saying good afternoon to all of you. As we begin today, I want to note that we are holding this hearing in compliance with the regulations for remote committee proceedings pursuant to House Resolution 8.

Generally, we ask Committee members and witnesses to keep their microphones muted when not speaking to limit background noise. Members will need to unmute themselves when seeking recognition or when recognized for their 5 minutes. Witnesses will also need to unmute themselves when recognized for their 5 minutes or when answering a question.

Now, members and witnesses, please, please keep your cameras on at all times even if you need to step away for just a few moments. Please, please do not leave the meeting or turn your camera off. There are good reasons for this rule, and I will insist that we abide by the rule.

I would also like to remind members that the regulations governing remote proceedings require that we cannot participate in more than one committee proceeding at the same time.

And so at this time, I will ask unanimous consent that all members have 5 legislative days in which to revise and extend their remarks and have any written statements be made part of the record.

I hear no objections. Hearing no objections, it is so ordered.

Ladies and gentlemen, this is the second in a series of hearings this Subcommittee will be conducting this calendar year examining voting and election administration in the United States of America. Today we are examining State and local laws and processes governing the removal of registered voters from voting rolls.

Federal law requires that States make a reasonable effort—that is the terminology in the law—States must make a reasonable effort to remove registered voters from their rolls who are ineligible to vote in the State because, for example, they have passed away, they have died, or moved maybe to another State.

But the law also requires that any State statute or any process governing the removal of voters from the voting rolls must be uniform, must be nondiscriminatory, and in compliance with the 1965 Voting Rights Act.

Now, since the Supreme Court's 2013 decision in *Shelby County* v. *Holder*—which we are all familiar with, that case rendered a key provision of the Voting Rights Act to be inoperable—a number of States across the country have moved to aggressively remove voters from their voting rolls.

Recent reports have found that States removed more than 30 million voters from their rolls between 2014 and 2018, just a span of 4 years.

The voter roll purges have been particularly aggressive in States that before *Shelby* had to obtain preclearance under the Voting Rights Act of their voter removal programs from the Department of Justice.

One study that I have read, one study found post-*Shelby County* increases in purge rates are between 1.5 and 4.5 points in States and localities formerly covered by the Voting Rights Act compared to States and localities that had never been covered. That causes me some concern.

Far too often these new aggressive voter roll purge efforts have wrongfully removed voters who were properly registered to vote. Indeed, studies indicate that hundreds of thousands of properly registered voters have been the subject of flawed voter purge efforts. Voters and organizations have spent thousands of hours and millions of dollars to correct these errors.

And so I think we can do better. We must do better. We should be doing all that is in our power to make it easier to vote, not erroneously trying to strip properly registered voters of their right to vote.

The facts and circumstances surrounding several of the voter purges also raise significant questions about whether those voter purge efforts complied with mandates under Federal law that any program providing for the removal of voters from voting lists, they must be uniform and they must be nondiscriminatory.

Several States have engaged in highly public efforts to remove noncitizens from their voting rolls. These efforts, which disproportionately seek to disenfranchise Hispanic and Latino voters, often rely on databases that are known to have inaccurate citizenship information.

Equally troubling is evidence that the databases and processes many States are using to remove voters from their rolls are likely to disproportionately burden minority voters.

Let me put it simply. Longstanding socioeconomic disparities appear to make it more likely that properly registered minority voters are erroneously identified as subject for removal. That troubles me, and it should trouble you.

Also troubling is a growing trend of conservative interest groups filing legal actions seeking to compel States and compel localities to remove voters from their rolls. Many of these actions, which rely on little more than allegations that registration rates are implausibly high, have been targeted. They have been targeted at cities and counties with disproportionately large minority populations.

High voter registration should be a subject of community pride, not an invitation to litigate.

And perhaps most troubling is the raft of bills recently enacted or currently being considered by State legislatures to remove even more voters from the rolls.

These bills, these bills which have their genesis in the baseless allegations of irregularities in the 2020 election, often provide for the removal of voters based on little more than a voter exercising his or her right not to vote in a single election.

The testimony provided today will help us as this Committee seeks to understand what needs to be done to ensure that voter list maintenance efforts are nondiscriminatory and do not erroneously remove properly registered voters, plain and simple.

And so I look forward to hearing from today's witnesses and working with my colleagues on this very, very important issue.

I now would like to recognize the Ranking Member of the Subcommittee, Mr. Steil, for his opening statement.

Mr. Steil.

[The statement of Chairman Butterfield follows:]

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CHAIRPERSON

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BRYAN STEIL, WISCONSIN

TIM MONAHAN
MINORITY STAFF DIRECTOR

The Honorable G.K. Butterfield
Chair, Subcommittee on Elections
Voting in America: The Potential For Voter List Purges To Interfere With Free And Fair Access To The Ballot
May 6, 2021
Opening Statement

This is the second in a series of hearings this Subcommittee will be conducting this year examining voting and election administration in America. Today we are examining state and local laws and processes governing the removal of registered voters from voting rolls.

Federal law requires that states make a "reasonable effort" to remove registered voters from their rolls who are ineligible to vote in the state because, for example, they have died or moved to another state. But, the law also requires that any state statute or process governing the removal of voters from the voting rolls be "uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965."

Since the Supreme Court's 2013 decision in *Shelby County v. Holder*—which rendered a key provision of the Voting Rights Act inoperable—a number of states have moved to aggressively remove voters from their rolls. Recent reports have found that states removed more than 30 million voters from their rolls between 2014 and 2018.

The voter roll purges have been particularly aggressive in states that, before the *Shelby County* decision, had to obtain preclearance of their voter removal programs from the Department of Justice. One study found post-*Shelby County* increases in purge rates of between 1.5 and 4.5 points in states and localities formerly covered by the Voting Rights Act compared to states and localities that had never been covered.

Far too often, these new, aggressive voter roll purge efforts have wrongly removed voters who were properly registered to vote. Indeed, studies indicate that hundreds of thousands of properly registered voters have been the subject of flawed voter purge efforts. Voters and organizations have spent thousands of hours and millions of dollars to correct those errors.

We must do better. We should be doing all that is in our power to make it easier to vote, not erroneously trying to strip properly registered voters of their right to vote.

The facts and circumstances surrounding several of the voter purges also raise significant questions about whether those voter purge efforts complied with mandates under federal law that any program providing for the removal of voters from voting lists be uniform and nondiscriminatory.

Several states have engaged in highly public efforts to remove "non-citizens" from their voting rolls. These efforts, which disproportionately seek to disenfranchise Hispanic and Latino voters, often rely on databases that are known to have inaccurate citizenship information.

Equally troubling is evidence that the databases and processes many states are using to remove voters from their rolls are likely to disproportionately burden minority voters. Put simply, longstanding socioeconomic disparities appear to make it more likely that properly registered minority voters are erroneously identified as subjects for removal.

Also troubling is a growing trend of conservative interest groups filing legal actions seeking to compel states and localities to remove voters from their rolls.

Many of these legal actions, which rely on little more than allegations that registration rates are "implausibly" high, have been targeted at cities and counties with disproportionately large minority populations. High voter registration should be a subject of community pride, not an invitation to litigation.

And perhaps most troubling is the raft of bills recently enacted or currently being considered by state legislatures to remove even more voters from state rolls. These bills, which have their genesis in the baseless allegations of irregularities in the 2020 election, often provide for the removal of voters based on little more than a voter exercising his or her right not to vote in a single election.

The testimony provided today will help guide us as this Committee seeks to understand what needs to be done to ensure that voter list maintenance efforts are nondiscriminatory and do not erroneously remove properly registered voters.

I look forward to hearing from today's witnesses and working with my colleagues on this important issue.

Mr. STEIL. Thank you very much, Chairman.

I can report, in the State of Wisconsin we have a lot of pride because we have one of the highest voter participation rates in the country.

But as we dive into this topic, Federal law requires States to, quote, "conduct a general program that makes a reasonable effort to remove from the official list any voters ineligible by reason of death or change of address."

And so when President Clinton signed the National Voter Registration Act in 1993, he said, quote, "Every year from now on, we are going to have more registered voters and more people voting. We are going to make the system work," end quote. And the NVRA's purpose is to make it easier to register to vote and to ensure that States have accurate voter rolls to support voter confidence in Federal elections.

That is what the Democrat House, Senate, and Democratic President Bill Clinton thought then. Now Democrats suggest that this Democrat-led effort interferes with free and fair access to the ballots. Is this the same Democratic Party that supported the NVRA's reasonable safeguards in 1993?

There is nothing that should be controversial about ensuring people who have died or moved away aren't registered at their old address. A State's refusal to comply with NVRA is expensive, it is wasteful, it creates voter confusion, and it weakens voter confidence in election results.

If we want to actually increase voter participation, I believe we should be fighting for better-run elections so people will hold confidence in the election results. If States mail live ballots to everyone on an outdated list, we might expect multiple ballots to arrive at incorrect addresses. Many of these problems wouldn't happen with proper list maintenance.

Outdated voter rolls may lead to long lines for in-person voting. In 2020, L.A. County voters waited hours because voter check-in equipment was overwhelmed. Turns out L.A. County had over 1.5 million ineligible people on the voter rolls. A suit was filed by a nonpartisan watchdog that alleged L.A. County had 112 percent of its adult citizens registered to vote.

Under pressure, as you may know, California and L.A. County finally agreed to clean up their voter rolls in 2019. And, unfortunately, then California Secretary of State Alex Padilla could not tell this Committee last fall how many ineligible people, those who were deceased or those who moved out of the State, had been removed from California's unmaintained voter rolls. Not a lot of faith that California is in compliance with the NVRA.

Pennsylvania recently was forced to comply with Federal law and remove 21,000 deceased individuals. Michigan, their Secretary of State removed 177,000 ineligible, saying that Michigan was not engaged in "sufficient comprehensive efforts" to maintain its lists.

In my home State of Wisconsin there was a lawsuit recently on this issue of list maintenance. Wisconsin wasn't keeping its voter lists up to date, and over 70,000 individuals are registered even though, by all indications, they have moved.

My State's attorney general, a witness we will hear from today, filed a brief and presented oral arguments in court in support of

keeping these individuals on Wisconsin's voter rolls even though they no longer lived where they were registered. And according to WEC, none of them voted in 2020, further indicating that these individuals moved.

Not that these facts are stopping Democrats from trying to conflate the issue. Speaker PELOSI tweeted about the case and got a "pants on fire" rating from PolitiFact because she claimed 200,000-plus people, quote, "[would] Be prohibited from voting," end quote.

Of course that is not true. Anyone who has moved may register to vote with a new address. And in Wisconsin, folks can even register to vote at the polls on election day.

The point is this. Our goal should always be to ensure every eligible voter can cast their vote and that each voter has confidence in the integrity of our election process and outcomes. The NVRA provides specific instructions for conducting list maintenance and voter fail-safes. No voter may be removed solely for failure to vote no matter how long that has been. No comprehensive list maintenance may be conducted within 90 days of a Federal election.

And, importantly, if a mistake is made, voters can still preserve their vote by casting a provisional ballot and addressing the issue with election officials.

Inaccurate voter lists can significantly increase wait times for in-person voting and have ineligible voters on the voter rolls weaken voter confidence that our elections are run fairly and are run accurately.

I believe we should be working to ensure States comply with Federal law Democrats passed in 1993, not making excuses.

But across the board, I look forward to today's discussion and conversation.

And with that, Mr. Chairman, I will yield back.

[The statement of Mr. Steil follows:]

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The Honorable Brian Steil
Ranking Member, Subcommittee on Elections
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Federal law requires states to "conduct a general program that makes a reasonable effort to remove from the official lists any voters ineligible by ***reason of death*** or ***change of address***." When President Clinton signed the National Voter Registration Act in 1993, he said, "Every year from now on, we're going to have more registered voters and more people voting. We're going to make the system work." The NVRA's purpose is to make it easier to register to vote and to ensure that states have accurate voter rolls to support voter confidence in federal elections. That's what the Democrat House, Senate, and President thought then.

Now, Democrats suggest that this Democrat-led law interferes with free and fair access to the ballot. Is this the same the Democrat Party that supported the NVRA's reasonable safeguards in 1993? There's nothing controversial about ensuring people who have died or moved away aren't registered at their old address.

A state's refusal to comply with the NVRA is expensive and wasteful and creates voter confusion and weakens voter confidence in election results. If we want to increase voter participation, we should fight for better-run elections so people will be confident in the results.

If States mail live ballots to everyone on an outdated list, we might expect multiple ballots to arrive at incorrect addresses. Many of these problems wouldn't happen with proper list maintenance.

Outdated voter rolls may also lead to long lines for in-person voting. In 2020, LA County voters waited hours because voter check-in equipment was overwhelmed. Turns out, LA County had over 1.5 million ineligible people on their voter rolls. A suit filed by a non-partisan watchdog alleged LA County had 112 percent of its adult citizens registered to vote! Under pressure, California and LA County finally agreed to clean up their voter rolls in 2019. Unfortunately, then-California Secretary of State Alex Padilla could not tell this Committee last fall how many ineligible people—those who are deceased or who have moved out of state—have been removed from California's unmaintained voter rolls. Not a lot of faith that California is in compliance with the NVRA.

Pennsylvania was recently forced to comply with federal law and removed 21,000 deceased individuals from its voter rolls. And the Michigan Secretary of State recently

removed 177,000 ineligible people from Michigan's lists, saying that Michigan had not engaged in "sufficient comprehensive efforts" to keep its lists maintained.

In my home state of Wisconsin, there was a lawsuit recently on the issue of list maintenance. Wisconsin wasn't keeping its voter lists up to date, and ***over 70,000 individuals*** were registered even though they had moved. My state's attorney general, a witness today, filed a brief and presented oral argument in court in support of keeping these ineligible people on Wisconsin's voter rolls ***even though*** they no longer lived where they were registered! According to the WEC, none of them voted in 2020, further indicating that they moved.

Not that facts stop Democrats from trying to confuse the issue: Speaker Pelosi tweeted about the case and got a "pants on fire" rating from Politifact because she claimed 200,000-plus people "[would] be prohibited from voting". Of course that's not true. Anyone who has moved may register to vote with their new address. In Wisconsin, folks can even register to vote at the polls on Election Day.

The point is this—Our goal should ***always*** be to ensure **every** eligible voter can cast their vote and that each voter has confidence in the integrity of our elections processes and outcomes. The NVRA provides specific instructions for conducting list maintenance and voter fail-safes. No voter's name may be removed solely for their failure to vote, no matter how long it's been. No comprehensive list maintenance may be conducted within 90 days of a federal election. Importantly, if a mistake is made, any voter can still preserve their vote by casting a provisional ballot and addressing the issue with elections officials.

Inaccurate voter lists can significantly increase wait times for in-person voters, and mailing live ballots to outdated lists weakens voter confidence that our elections are run fairly and accurately. We should be working to ensure states comply with the federal law Democrats passed in 1993, not making excuses.

With that, I yield back the balance of my time.

Chairman BUTTERFIELD. Thank you, Mr. Steil. The gentleman yields back.

In just a moment, I will introduce today's panel. But before I do that, let me just acknowledge the presence of the full Committee Chair, Ms. Lofgren of California, and yield time to her for such statements as she may choose to make.

Ms. Lofgren, thank you for joining us.

The CHAIRPERSON. Thank you so much, Mr. Chairman.

I just wanted to stop by for a minute and thank the members of the Elections Subcommittee for the vigor with which they are approaching the questions of the right to vote in America and thank also our witnesses for appearing today.

Obviously, voting is fundamental for American citizens. It is the whole basis for our country's freedom and what our brave men and women have gone off to fight for over the decades so that we have that precious right. We need to guard that right, and I am confident that the Committee's inquiries will help protect that right.

We all know that the NVRA was passed when the Voting Rights Act was in full swing, before the *Shelby* decision. And so here is the question: Have there been pretextual uses of purges that really are intended to get to the essence of what the Voting Rights Act was originally intended to protect?

I think that the Committee's deep dive, the data that you will get, will inform the Congress and the country as to what steps, if any, we should take relative to the Voting Rights Act and the preservation of the rights of every single American citizen to vote.

So with that, Mr. Chairman, I thank you for letting me sit in and listen and share these words. I commend you for your excellent leadership and every member of this Committee for the work that you are doing. And I yield back with gratitude.

Chairman BUTTERFIELD. Thank you, Madam Chairperson. And thank you so very much for your leadership and all that you do, not just for this Committee but for the Congress. Thank you very much.

Let me also extend an opportunity to the Ranking Member of the full Committee, my dear, dear friend and neighbor from the great State of Illinois, Mr. Davis, for any remarks that he might want to make before we hear from the witnesses.

Mr. DAVIS. Mr. Chair, I am probably going to surprise you, the Chairperson, and the rest of my colleagues today by deciding not to go on a diatribe. I want to hear from our guests today, and I would like to get as quickly into the Q&A as we possibly can.

And don't think this will probably ever happen again in our career together. I am going to yield back the balance of my time.

Chairman BUTTERFIELD. Well, you are very kind, Mr. Davis. We will allow you to accumulate these minutes. How about that?

As a reminder to our witnesses, each of you will be recognized for 5 minutes. There is a timer on your screen. I think you can see it there to the left. There is a timer on your screen. Please be sure you can see the timer and are mindful of the 5-minute time limit.

Your entire written statements will be made part of the record, and the record will remain open for at least 5 days for additional materials to be submitted.

And so today I welcome each of our witnesses. Joining us today are Josh Kaul, who is the Attorney General for the State of Wisconsin. We have Sophia Lin Lakin of the American Civil Liberties Union. We also have Dr. Marc Meredith of the University of Pennsylvania and Kaylan Phillips of the Public Interest Legal Foundation.

Let me be specific about each one.

Josh Kaul is the 45th Attorney General of the State of Wisconsin, having grown up in Oshkosh and Fond du Lac, Wisconsin.

General Kaul—I keep wanting to call it differently—but Kaul is the State's chief legal officer and is responsible for representing the State in all legal matters.

General Kaul's top priorities are protecting public safety, fighting for clean and safe drinking water and against climate change, and protecting the rights of Wisconsinites.

Prior to serving as attorney general, he litigated numerous cases under the 1965 Voting Rights Act, including Wisconsin, my home State of North Carolina, Ohio, and Virginia. He also served as Federal prosecutor in Baltimore, Maryland.

Next witness, Sophia Lin Lakin, is the Deputy Director of the ACLU's Voting Rights Project and assists in the planning, strategy, and supervision of the ACLU's voting rights litigation nationwide.

She has an active docket protecting voting rights and combating voter suppression across the country and has led or worked on successful challenges to discriminatory voting laws in several States, including Georgia, Indiana, Kansas, Missouri, North Carolina, Pennsylvania, Texas, and Virginia.

Among other notable cases, she was lead counsel in cases successfully challenging a series of Indiana voter purge statutes.

She is a frequent commentator on voting rights issues, presenting at conferences and conducting voting rights trainings nationwide.

Next is Dr. Marc Meredith. Marc is an Associate Professor with the University of Pennsylvania, Department of Political Science. His research examines the political economy of American elections with a particular focus on the application of causal inference methods. His substantive research interests include election administration, election law, political campaigns, and voter decisionmaking.

His research has been published in numerous leading journals, including the American Political Science Review, the American Journal of Political Science, the Journal of Politics, the Quarterly Journal of Political Science, and the Proceedings of the National Academy of Sciences.

Kaylan Phillips. Kaylan is a litigation counsel with the Public Interest Legal Foundation. Ms. Phillips has extensive experience at every level of litigation in State and Federal court, including our U.S. Supreme Court. She also has experience representing clients before Federal and State administrative agencies.

Before joining the Public Interest Legal Foundation, she was an associate at the Bopp Law Firm where her Federal practice focused on election law.

Ms. Phillips has also authored numerous amicus curiae briefs on key election law issues, such as, "One Person, One Vote."

I now would like to recognize each one of our witnesses, and I will do them one at a time, starting with Attorney General Kaul.

You are now recognized for five minutes.

STATEMENTS OF THE HONORABLE JOSHUA L. KAUL, ATTORNEY GENERAL, STATE OF WISCONSIN; MS. SOPHIA LIN LAKIN, DEPUTY DIRECTOR, VOTING RIGHTS PROJECT, ACLU; DR. MARC MEREDITH, ASSOCIATE PROFESSOR, UNIVERSITY OF PENNSYLVANIA; AND MS. KAYLAN PHILLIPS, LITIGATION COUNSEL, PUBLIC INTEREST LEGAL FOUNDATION

STATEMENT OF JOSHUA L. KAUL

Mr. KAUL. Thank you to the Chair and Ranking Member of the Subcommittee, the Chair and Ranking Member of the full Committee, and also to the other Members of Congress who are here.

I would like to start today by talking about Wisconsin's experience with ERIC data.

Pursuant to legislation passed in 2015, the State of Wisconsin joined the Electronic Registration Information Center, Inc., which is known as ERIC.

Through ERIC, States and the District of Columbia share data with the goal of using that data to assist them in identifying eligible voters who aren't registered and voter registrations that are no longer valid. ERIC uses data from States' voter files as well as data from other sources, such as the U.S. Postal Service.

Now, in 2017 Wisconsin for the first time received a so-called ERIC "movers report," a report that identifies people who possibly have moved. That data has been received every other year, so we also received it in 2019.

Based on the 2017 data, Wisconsin sent approximately 340,000 potential movers postcards, and it gave them 30 days to respond in order for them to remain active on the voter rolls.

Over 6,000 voters responded and kept their voter registrations active at the address at which they were registered. The other voters who received those postcards were deactivated.

Now, according to a memo from the staff at the Wisconsin Elections Commission, that is our State-wide body that oversees elections in Wisconsin, that deactivation created some problems in the 2018 spring primary. And according to the Elections Commission memo, there were some voters who had not moved but hadn't returned their postcards who were left off the poll books.

So the Wisconsin Elections Commission followed up with some of the affected voters, and overall, based on their followups and having identified situations where voters appeared to have moved but didn't, they reactivated over 12,000 voters to the rolls between January and March of 2018.

In addition to that, there are three municipalities, the city of Milwaukee, the city of Green Bay, and the Village of Hobart, that reached out and had their voters reactivated.

So ultimately what the Elections Commission did was create a Supplemental Movers Poll List so that when voters showed up at the polls they could confirm that they had not, in fact, moved and

could thereby avoid re-registering. And over time, more than 6,000 voters ultimately re-registered that way.

In 2019, the Elections Commission used a different approach with the movers data it received. There it sent out letters in October of 2019 to approximately 230,000 people and asked them to confirm that they still resided at their registration address. The letters indicated that voting would keep those voters active, and they didn't say anything about deactivating voters.

The next month, however, in November 2019, a group known as WILL, the Wisconsin Institute for Law & Liberty, filed suit on behalf of three registered voters and taxpayers in Wisconsin arguing that the voters who hadn't responded to those notices within 30 days should be deactivated. They made an argument under Wisconsin State law that that deactivation was warranted.

Initially, a circuit court judge granted their request and issued an order requiring the Elections Commission to comply with the provisions of State law, in its words, and deactivate the registrations of the electors who had failed to apply for continuation of their registration within 30 days of the date the notice was mailed under that provision.

That decision was subsequently reversed in a 3–0 court of appeals decision. And the case then went up to our State supreme court, and, as Ranking Member Steil mentioned, I personally argued that case before our State supreme court.

Our court is generally regarded as having a 4–3 conservative majority. But despite that, the court ruled 5–2 to affirm the court of appeals decision that those voters did not need to be deactivated.

So there are a couple points I will just note briefly in my closing seconds.

One is, there were thousands of voters who were identified in the movers data who ultimately either responded to the mailing or reactivated their registrations at the polls. That comparison to the number of in-person voter fraud cases is dramatic.

I see that my time is up.

[The statement of Mr. Kaul follows:]

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PREPARED TESTIMONY OF
WISCONSIN ATTORNEY GENERAL JOSH KAUL
United States House of Representatives
Committee on House Administration
Subcommittee on Elections
Thursday, May 6, 2021

Chairperson Butterfield and Members of the Subcommittee on Elections:

Thank you for inviting me to testify before this subcommittee.

Pursuant to legislation passed in 2015, the State of Wisconsin joined the Electronic Registration Information Center, Inc. ("ERIC"). Wis. Stat. § 6.36(1)(ae). Through ERIC, states and the District of Columbia share data with the goal of using that data to assist them in identifying eligible voters who are not registered and voter registrations that are no longer valid. ERIC uses data from states' voter files, as well as data from other sources, including the U.S. Postal Service.

Every other year, ERIC sends Wisconsin a report that identifies voters who may have moved. Wisconsin first received a so-called "movers report" in 2017. Based on that report, the Wisconsin Elections Commission ("WEC") sent postcards to approximately 340,000 potential "movers" and gave them 30 days to respond in order for their registration to remain active. Over 6,000 voters responded and thereby kept their voter registrations active at the address at which they were registered, while the other voters' registrations were deactivated. Memorandum from Meagan Wolfe, Interim Adm'r, WEC, to Members, WEC 3-4 (for Mar. 11, 2019 meeting) (regarding assessment of Wisconsin's Electronic Registration Information Center (ERIC) participation).

According to a memo from WEC staff, "[t]he deactivation of these movers caused some problems for the 2018 Spring Primary, as some voters who had not moved, but had not returned the postcard, were left off the poll book. In other words, while available data from the DMV implied many had moved, some of the voters, in fact, had not moved." *Id.* at 3. The memo explains that, "[a]fter talking to affected voters, WEC staff identified several additional situations where voters appeared to have moved

but did not. . . . Overall, 12,133 [voters] were proactively reactivated by staff or were stopped from being deactivated due to these data discrepancies between January and March of 2018." *Id.* at 4. In addition, three municipalities—the City of Milwaukee, the City of Green Bay, and the Village of Hobart—had all of their voters on the movers list reactivated. *See id.* at 4-5.

A Supplemental Movers Poll List was created, and "[d]eactivated voters flagged as in-state movers were included on the Supplemental Movers Poll List instead of the regular poll book, beginning with the 2018 Spring Election." *Id.* at 4. Voters who signed this poll list and thereby confirmed the continued validity of the address on their deactivated voter registration were able to re-activate their registration without submitting a new voter registration, and over 6,000 voters ultimately used this method to continue their registrations. *See id.*; Memorandum from Meagan Wolfe, Adm'r, WEC, to Members, WEC 1 (for June 11, 2019 meeting) (regarding Wisconsin's Electronic Registration Information Center (ERIC) mover analysis).

WEC employed a different approach with the 2019 movers data it received from ERIC. In letters sent in October of that year to approximately 230,000 people, WEC asked those individuals to confirm if they still resided at their registration address and indicated that voting would result in a voter's registration status remaining active. The letters said nothing about deactivating these voters. In November 2019, however, three registered Wisconsin electors and taxpayers, represented by the conservative Wisconsin Institute for Law & Liberty ("WILL"), filed suit and sought the deactivation of the voter registrations of movers who had not responded to these letters within 30 days.

Under Wis. Stat. § 6.50(3), "Upon receipt of reliable information that a registered elector has changed his or her residence to a location outside of the municipality, the municipal clerk or board of election commissioners shall notify the elector . . . . If the elector no longer resides in the municipality or fails to apply for continuation of registration within 30 days of the date the notice is mailed, the clerk or board of election commissioners shall change the elector's registration from eligible to ineligible status." And, in December 2019, the circuit court in which the case brought by WILL was filed issued an order stating that "Defendant Wisconsin Election Commission is hereby ordered to comply with the provisions of § 6.50(3) and deactivate the registrations of those electors who have failed to apply for continuation

of their registration within 30 days of the data the notice was mailed under that provision."

The court of appeals subsequently reversed, holding that "the plain language of § 6.50(3) neither refers to the Commission nor places any duties on the Commission." *Zignego v. Wis. Elections Comm'n*, 2020 WI App 17, ¶ 3, 391 Wis. 2d 441, 391 Wis. 2d 441, 91 N.W.2d 284. And, in a 5-2 decision, the Wisconsin Supreme Court affirmed the court of appeals. *Zignego v. Wis. Elections Comm'n*, 2021 WI 32. According to the state supreme court, the plaintiffs' "primary argument" for deactivation of voters "disregard[ed] nearly every foundational principle of statutory interpretation." *Id.* ¶ 27.

Notably, according to data from WEC, of the approximately 230,000 people who were sent the 2019 mailing, as of January 25, 2021, 16,698 voters—approximately 7.2%—affirmed that they had not, in fact, moved. Memorandum from Meagan Wolfe, Adm'r, WEC, to Members, WEC 3-4 (for Feb. 3, 2019 meeting) (regarding Election Registration Information Center (ERIC) movers list update). Further, an analysis utilizing the Supplemental Movers Poll List that was used in the wake of the 2017 mailing concluded that "at least 9000 registrants . . . went out to vote in 2018 at the address of registration flagged by ERIC as out of date." Gregory A. Huber et al., *The Racial Burden of Voter List Maintenance Errors: Evidence from Wisconsin's Supplemental Movers Poll Books*, Science Advances, Feb. 2021, at 7. The analysis found "that the burden of incorrect removal falls more heavily on minority registrants" and "that the lower bound on the false mover error rate is more than twice as large for black registrants as it is for white registrants." *Id.*

In short, the available evidence from Wisconsin shows that thousands of individuals identified by ERIC movers data as having possibly moved have not in fact moved and that minority voters are disproportionately likely to be incorrectly identified as having possibly moved.

Chairman BUTTERFIELD. All right. The gentleman's time has expired.

Ms. Lakin, you are now recognized for five minutes.

STATEMENT OF SOPHIA LIN LAKIN

Ms. LAKIN. Chair Butterfield, Ranking Member Steil, and members of the Subcommittee and the full Committee, thank you for the opportunity to testify today. My name is Sophia Lakin, and I am the Deputy Director of the ACLU Voting Rights Project.

Everyone agrees that voter list maintenance, when done responsibly, is appropriate and necessary. But proper list maintenance entails not only removing ineligible registrants, but also taking care that eligible voters are not erroneously purged.

Unfortunately, States and counties around the country have engaged in overzealous, sloppy, and/or poorly timed purge practices that have wrongly removed and ultimately disenfranchised eligible voters.

Examples of court challenges to improper purges are described in my written testimony, but I would like to highlight just a few here today.

Proponents of more aggressive purging often propose targeting ineligible voters for removal by comparing State voter roll lists to various databases, like other States' voter registration lists. But these databases are often incomplete or out of date and the protocols used to identify potential ineligible voters deeply flawed.

As a result, eligible voters are often improperly flagged for purging, and the results of these distorted comparisons are frequently used irresponsibly to support false or exaggerated assertions about the integrity of our voter rolls.

Texas provides a prime example. In 2019, Texas Attorney General Ken Paxton tweeted, in capital letters, "VOTER FRAUD ALERT," claiming that almost 100,000 registrants in Texas were noncitizens based on a voter roll comparison to driver's license records.

But that was false. Within a week, it was clear that many of these voters were actually naturalized citizens who had already confirmed their citizenship.

In Harris County alone, this translated to about 18,000 of the 30,000 voters flagged there, and an audit of 150 randomly chosen names from the remaining 12,000 revealed no noncitizens.

The impact of this purge of naturalized citizens was of profound concern, not least because over 80 percent of Texas' naturalized citizens are Black or of Latino or Asian origin.

Civil rights organizations, including the ACLU, sued, and the case was settled with Texas ending this deeply flawed effort. But the settlement came only after the court found that Texas, quote, "created a mess," which, quote, "exemplified the power of the government to strike fear and intimidate the least powerful among us." Texas taxpayers ended up on the hook for $450,000 in costs and attorney's fees.

The potential for disenfranchisement as a result of these inaccurate purges is real. Too frequently, voters discover they are no longer on the rolls only when they show up at the polls and it is too late to fix the error.

This was the case with our Ohio client, Navy veteran Larry Harmon, who voted in the 2008 election, but like millions of Americans around the country, opted not to vote in the 2010 midterms.

When Mr. Harmon tried to vote in the 2015 Ohio State elections, he arrived at the polls only to discover that his registration had been canceled even though he had continuously lived and filed taxes at the same address for 17 years.

Litigation is not adequate on its own to prevent disenfranchisement. These cases are costly and slow, and even if one practice is blocked another can spring up in its place.

Take Indiana. In 2017, Indiana adopted a purge program that required the immediate purge of voters flagged as having moved out of the State using the highly inaccurate and now defunct Interstate Voter Registration Crosscheck program.

Studies have shown that the Crosscheck system incorrectly flagged people more than 99 percent of the time. But under the Indiana program, targeted voters would get no notice or opportunity to correct the record before they were removed.

When it comes to accurate rolls, ensuring that voters have adequate notice and sufficient time to correct the record if they are wrongly purged is critical.

Federal courts blocked the State from implementing the new requirement, but just a few months later Indiana enacted a new law with the very same problem.

Even the demise of Crosscheck was not a deterrent. Indiana just created its own version, the Indiana Data Enhancement Association.

This latest iteration of Indiana's purge program was again blocked, but Indiana appealed the ruling and the appeal was argued this past April, nearly 4 years after the case was first brought.

The United States continues to lag behind other developed democracies when it comes to voter participation in our elections. We should be working together to increase this participation and remove obstacles, including practices that wrongly remove voters.

Thank you.

[The statement of Ms. Lakin follows:]



WRITTEN STATEMENT OF
SOPHIA LIN LAKIN
DEPUTY DIRECTOR, VOTING RIGHTS PROJECT
AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

Voting in America: The Potential for Voter List Purges to Interfere with Free and Fair Access to the Ballot

Submitted to the Subcommittee on Elections of the U.S. House Committee on House Administration

Hearing on May 6, 2021

Submitted on May 4, 2021

Introduction

Chairman Butterfield, Ranking Member Steil, and Members of the Committee, thank you for the opportunity to testify before you today.

The ACLU Voting Rights Project was established in 1965—the same year that the historic Voting Rights Act (VRA) was enacted—and has litigated more than 300 cases since that time. Its mission is to build and defend an accessible, inclusive, and equitable democracy free from racial discrimination. The Voting Rights Project's recent docket has included more than 30 lawsuits last year alone to protect voters during the 2020 election; a pair of recent cases in the Supreme Court challenging the last administration's discriminatory census policies: *Department of Commerce v. New York* (successfully challenging an attempt to add a citizenship question to the 2020 Census), and *Trump v. New York* (challenging the exclusion of undocumented immigrants from the population count used to apportion the House of Representatives); challenges to voter purges and documentary proof of citizenship laws; and challenges to other new legislation restricting voting rights in states like Georgia.

In my capacity as Deputy Directory of the ACLU Voting Rights Project, I assist in the planning, strategy, and supervision of the ACLU's voting rights litigation nationwide, which focuses on ensuring that all Americans have access to the franchise, and that everyone is equally represented in our political processes. In that capacity, I recently argued before the U.S. Court of Appeals for the Seventh Circuit in *Common Cause Indiana v. Sullivan*, a case challenging an Indiana voter purge program that would permit Indiana elections officials to purge voters based on third party data without hearing directly from the voter or first providing notice and waiting period as required under the National Voter Registration Act (NVRA). I have also litigated other challenges to improper voter purges, including *MOVE Texas v. Whitley* and *Husted v. A. Philip Randolph Institute*.

Everyone agrees that voter list maintenance—when done responsibly—is appropriate and necessary for election administration. Proper list maintenance, however, entails not only removing ineligible registrants, but also ensuring that eligible voters are not erroneously purged from the rolls. Inaccurate and selective purge programs may result in "persons who are legitimately registered" not being included on the rolls,[1] which not only risks disenfranchisement, but also "unnecessarily places additional burdens on the registration system because persons who [were] legitimately registered must be processed all over again."[2] A voter's name is on the voter roll "only because a voter took the trouble to put it there."[3] "[I]n a representative democracy, in which the voice of the people is essential to the legitimacy of our governing institutions," states should not "undo that work without good reason."[4]

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[1] S. Rep. No. 103-6 (1993), at 18.

[2] *Id.*

[3] *Common Cause Ind. v. Lawson*, 937 F.3d 944, 962 (7th Cir. 2019).

[4] *Id.*

Unfortunately, states and counties around the country have sometimes engaged in overzealous, sloppy, and/or poorly-timed list maintenance practices that have resulted in the erroneous removal of eligible voters from the rolls. Voter purge programs have also been abused "to keep certain groups of citizens from voting,"[5] and there is a "long history of such list cleaning mechanisms which have been used to violate the basic rights of citizens."[6] Some of these troubling purge practices are based on unreliable data and/or procedures or dubious proxies that disproportionately sweep in, and ultimately disenfranchise, voters of color. Oftentimes, such purges have occurred too close to an election to permit corrective action, with voters arriving at the polls only to discover they have been removed from the rolls and unable to cast a ballot that will count.

To protect voters from these improper purge practices, litigation is sometimes necessary to block abuses and enforce federal laws that govern how purges are conducted. These cases are costly and slow, frequently involving multiple rounds of appeals and taking several years to conclude. The *Common Cause Indiana v. Sullivan* case, for example, is currently on its second appeal and quickly approaching is fourth year.

My written statement today will focus on a sampling of recent court challenges to improper voter list purge practices that result in wrongful purges of eligible voters, especially Black, Latinx, and other historically disenfranchised voters.[7] I also describe unsuccessful efforts by "voter integrity" activists to use exaggerated claims about voter roll accuracy and unverified and unreliable data to force state and local elections officials to more aggressively purge their rolls.

I. Challenges to Improper Voter Purges

Voting rights advocates like the ACLU have challenged a number of state and local purge practices in court to protect duly registered voters from wrongful purges—and ensure that they have both the time and adequate notice to correct the record if they are erroneously targeted for removal. A sampling of the kinds of improper purges and related court challenges are described below.

A. The Error-Ridden Interstate Voter Registration Crosscheck System

Advocates of more aggressive purging of voter rolls sometimes propose comparing registration lists among states in an attempt to identify voters who may have moved and/or who may be registered in more than one state. Examining state data with address information to find people who have moved can be a useful practice, if it is done accurately and with proper safeguards in place to ensure voters have an opportunity to correct the record. However, voter

[5] H.R. Rep. No. 103-9 (1993), at 2.

[6] S. Rep. No. 103-6 (1993), at 18.

[7] This written statement incorporates the written testimony of Dale Ho, Director, Voting Rights Project, American Civil Liberties Union, before the House Committee on Administration on October 17, 2019 and October 25, 2017. I am also indebted to my ACLU Voting Rights Project colleagues Samantha Osaki, Brett Schratz, and Adriel Cepeda Derieux who contributed to the preparation of this statement.

roll comparisons can too frequently erroneously identify a voter for removal, and thus alone should not—and cannot under the National Voter Registration Act (NVRA)—be the basis for purging a voter from the rolls. Nevertheless, states have sought to use unreliable voter roll comparisons as a basis to purge voters immediately—without notice or with limited, ineffectual notice.

The Interstate Voter Registration Crosscheck (Crosscheck) system was likely the most well-known of the error-ridden multi-state voter registration list comparison programs. The Crosscheck program, which was administered by the Kansas Secretary of State, has been on hold since a 2019 settlement of a case brought by the ACLU of Kansas "on behalf of 945 voters whose partial Social Security numbers were exposed by Florida officials through" a public records request; it has not been used since a Homeland Security audit discovered security vulnerabilities in 2017.[8] Copycat programs, like the new Indiana Data Enhancement Association (IDEA),[9] however, have cropped up and pose similar concerns.

Crosscheck purported to compare voter registration rolls in multiple states, in order to identify possible instances of double registration or double voting. In 2017—the last time Crosscheck was used—Crosscheck had approximately 30 member states.[10] These states uploaded basic voter data from their voter registration databases to a server run by the Kansas Secretary of State, which then ran a comparison of the data across the member states in an attempt to find voters who may be registered in more than one state.[11]

The Crosscheck system was highly inaccurate. The Crosscheck user manual specifically states that "a significant number of apparent double votes are false positives and not double votes."[12] That is an understatement. A study by a team of researchers at Stanford, Harvard, the University of Pennsylvania, and Microsoft found that using Crosscheck to purge the voter rolls in one state "could impede approximately 300 legitimate votes for each double vote prevented."[13] In other words, the system incorrectly flags people as potential double voters ("matches") more than 99% of the time because of false positives resulting from poor matching protocols.

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[8] Roxana Hegeman, Multistate Voter Database Suspended in Lawsuit Settlement, The Associated Press (Dec. 10, 2019), https://apnews.com/article/2c82eb782e578bbb81c121ec453fbee8.

[9] *See H'rg before the Ind. House Comm. on Elections & Apportionment,* Ind. Gen. Assembly (Feb. 20, 2020) http://iga.in.gov/information/archives/2020/video/committee_elections_and_apportionment_0500/ (Ind. State Sen. Walker describing IDEA, created at the same time Indiana withdrew from the Crosscheck program in 2020, as "a voter list maintenance crosscheck database, model[ed]" on "existing products and former systems"); *Common Cause Ind. v. Lawson*, 481 F. Supp. 3d 799, 807 (S.D. Ind. 2020) ("IDEA is functionally identical to Crosscheck in that it receives member states' voter lists and returns purported matches.").

[10] Rep. Keith Esau, Kansas, *Interstate Voter Registration Crosscheck Program* at 10 (June 15, 2017), http://www.ncsl.org/Portals/1/Documents/Elections/Kansas_VR_Crosscheck_Program.pdf.

[11] *Id.*

[12] *Interstate Voter Registration Data Crosscheck 2017 Participation Guide* ("Interstate Crosscheck 2017 Participation Guide") at 4, Kan. Sec'y of State (Jan. 2017).

[13] Sharad Goel et al., *One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections*, 114 Am. Pol. Sci. Rev. 456, 456–57, 467 (2020), *available at* https://scholar.harvard.edu/files/morse/files/1p1v.pdf.

Part of the problem with Crosscheck was that it treated registrations as a "match" using just three data points: first name, last name, and date of birth.[14] But these Crosscheck matches—and matches from similar database comparison using these data points to identify voters for removal—are highly unreliable, because of data entry errors and the fact that many voters share names and birthdates.[15] Among some minority populations, first-name naming conventions are more commonly used, and many individuals born around the same historical periods are given the same name. Many often share the same or similar last names. Latinx voters, for example, are more likely than white voters to have one of the most common 100 surnames in the country.[16] Indeed, existing studies show that incorrect matches using such a methodology are disproportionately concentrated among minority voters. Crosscheck flagged one in six Latinx Americans, one in seven Asian Americans, and one in nine African Americans as potential double registrants.[17] A match methodology using only first name, last name and date of birth is thus more likely to produce matches among such minority populations.[18]

Despite these issues, all of these "matches" are then provided to each member state as apparent duplicate registrations[19]—even where other voter registration data compiled by Crosscheck, such as middle names and Social Security numbers, make clear that the "matched" registration records *do not correspond to the same person*.[20] And even in the supposed cases of double votes that are not the result of false positive matches, former Kansas state elections director admitted in an email that most of these cases are the result not of fraud but of data entry errors: "[i]n a majority of cases of apparent double votes, in the end they do not turn out to be real double votes due to poll worker errors, mis-assignment of voter history, voters signing the wrong lines in poll books, etc."[21]

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[14] Interstate Crosscheck 2017 Participation Guide at 3.

[15] The Birthday Paradox is a well-known phenomenon of probability theory. In a random group of 23 people, thereis a 50 percent chance that two people have the same birthday; with 70 people, there's a 99.9 percent chance that two share a birthday. *See Bring Science Home, Probability and the Birthday Paradox*, Scientific American (March 29, 2012), https://www.scientificamerican.com/article/bring-science-home-probability-birthday-paradox/.

[16] Kevin Morris & Myrna Pérez, *Purges: A Growing Threat to the Right to Vote*, Brennan Ctr. for Justice at 7 (July 20, 2018), *available at* https://www.brennancenter.org/our-work/research-reports/purges-growing-threat-right-vote.

[17] *See* Greg Palast, *The GOP's Stealth War Against Voters*, Rolling Stone (Aug. 24, 2016), https://www.rollingstone.com/politics/politics-features/the-gops-stealth-war-against-voters-247905/.

[18] *See* Myrna Pérez, *Voter Purges*, Brennan Ctr. for Justice, at 23 (2008), http://www.brennancenter.org/sites/default/files/legacy/publications/Voter.Purges.f.pdf.

[19] Justin Levitt, *Ada County Wrongly Strips More Than 750 Voter Registrations*, Election L. Blog (Sep. 1, 2014), https://electionlawblog.org/?p=64832.

[20] *See, e.g.*, Expert Rep. of Michael McDonald, *Common Cause Ind. v. Lawson*, 481 F. Supp. 3d 799 (S.D. Ind. 2020) (No. 17-cv-3936), ECF No. 74-22 at 7.

[21] Ari Berman, *Trump Election Commissioner's Voter Database Is a Ripe Target for Hackers: Kris Kobach Calls the Program a Model for The Country. It Has Major Security Problems*, Mother Jones (Oct. 23, 2017), http://www.motherjones.com/politics/2017/10/trump-election-commissioners-voter-database-is-a-ripe-target-for-hackers/.

Nevertheless, proponents of Crosscheck and copycat practices frequently tout these higher numbers of "potential" matches. For example, a presentation to the National Conference of State Legislatures by former Kansas State Representative Keith Esau stated that Crosscheck found over 5 million "potential" double registrants in 2016,[22] without acknowledging the extremely high rate of false positives generated by the system. There is no purpose for that omission other than to create the false impression that the problem of double registration is far worse than it actually is.

Despite the evidence of Crosscheck's high rate of false positives,[23] the State of Indiana decided to double down on the use of Crosscheck data to *require* the purge of a voter identified as a match to an individual with a later out-of-state registration *immediately*—without any notice or opportunity to correct the record, as required by the NVRA. [24] The ACLU, ACLU of Indiana, and Demos challenged this new requirement in Indiana on behalf of Common Cause Indiana,[25] along with the Brennan Center for Justice on behalf of the League of Women Voters of Indiana and the Indiana State Conference of the NAACP.[26] The controversial purge practice risked erroneously purging thousands of duly registered Indiana voters with no reason to think that they needed to do anything more to vote than show up at the polls to cast their ballot.[27]

Federal courts preliminarily blocked the new requirement from being implemented.[28] Under the NVRA, the Seventh Circuit observed states cannot rely on "indirect information from third-party database[s]" like Crosscheck to purge voters.[29] Each state has a "duty [] to reach out to its electorate" and "must receive a direct request from" a voter or must provide notice and opportunity to correct the record as required by the NVRA before purging that voter because they may have moved.[30] As the Court stated, "[w]e live in a representative democracy, in which

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[22] *See* Esau, *supra* note 10 at 16.

[23] Unsurprisingly, states and counties that used information from Crosscheck in order to purge their voter rolls ended up wrongfully purging legitimately registered voters. For example, in 2014, Ada County Idaho ended up having to reinstate more than 750 voters wrongfully removed from the rolls based on faulty information from the Crosscheck. Levitt, *supra* note 19. Before Crosscheck's demise, numerous states, including Florida, Oregon, and Washington dropped out of the program due to the unacceptably high risk of false positives. *See* Christopher Ingraham, *This Anti-Voter-Fraud Program Gets It Wrong Over 99 Percent of The Time. The GOP Wants To Take It Nationwide.*, Wash. Post (July 20, 2017), https://www.washingtonpost.com/news/wonk/wp/2017/07/20/this-anti-voter-fraud-program-gets-it-wrong-over-99-of-the-time-the-gop-wants-to-take-it-nationwide/?utm_term=.5afbd53a75c7; Jon Greenberg & Amy Sherman, *Florida No Longer Part of Controversial National Voter Data Project*, Miami Herald: Naked Politics (Apr. 11, 2014), http://miamiherald.typepad.com/nakedpolitics/2014/04/florida-no-longer-part-of-controversial-national-voter-data-project.html.

[24] 52 U.S.C. § 20507(d).

[25] *See* Compl., *Common Cause Ind. v. Lawson*, 481 F. Supp. 3d 799 (S.D. Ind. 2020) (No. 17-cv-3936), ECF No. 1.

[26] *See* Compl., *Ind. State Conf. of NAACP v. Lawson*, 326 F. Supp. 3d 646 (S.D. Ind. 2018) (No. 17-cv-2897), ECF No. 1.

[27] *See Ind. State Conf. of NAACP*, 326 F. Supp. 3d at 664.

[28] *Common Cause Ind. v. Lawson*, 481 F. Supp. 3d 799 (S.D. Ind. 2020); *Common Cause Ind. v. Lawson*, 937 F.3d 944 (7th Cir. 2019).

[29] *Common Cause Ind.*, 937 F.3d at 961.

[30] *Id.* at 961–62.

the voice of the people is essential to the legitimacy of our governing institutions."[31] A voter's name is on the voter roll "only because a voter took the trouble to put it there," and "[l]aws such as the NVRA ensure that states do not undo that work without good reason."[32]

But Indiana has remained undeterred. On March 20, 2020—just a few short months after the Seventh Circuit's ruling—Indiana enacted a *new* law that again permits elections officials to remove voters based on third-party information alone—without hearing directly from the voter or following the NVRA-mandated notice and waiting process—*just as the Seventh Circuit forbade*. This was no accident. While the law was being considered, voting rights advocates—including Common Cause Indiana, the League of Women Voters of Indiana, and the Indiana State Conference of the NAACP—repeatedly pointed out that the new law perpetuated the very same practice of purging voters without hearing from them directly as the law that had just been blocked.[33] And one of the Co-Directors of the Indiana Elections Division told legislators that the federal courts would have "serious issues" with the new law.[34]

The demise of Crosscheck also proved to be no obstacle: the new law officially withdrew Indiana from the now-defunct Crosscheck,[35] but replaced it with a doppelganger: the Indiana Data Enhancement Association ("IDEA"). IDEA is "functionally identical to Crosscheck."[36]

This latest iteration of Indiana's effort to improperly purge voters using third-party information was permanently blocked by a federal district court.[37] Indiana, however, appealed the ruling—pushing this litigation quickly into its fourth year. The State claims for the purposes of winning their appeal that the new law could be interpreted in a way that complies with federal law—*i.e.*, as requiring direct contact with the voter or the NVRA notice process before a voter may be purged.[38] But troublingly, the State has continuously refused to commit itself to implementing the purge procedure this way in practice, studiously failing to issue any administrative rule or guidance, affidavit, or stipulation that would bind them.[39] As the federal district court recognized in blocking the improper purge procedures, without an enforceable court order, nothing is preventing Indiana elections officials from using the new law to purge

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[31] *Id.* at 962.

[32] *Id.*

[33] Aff. of Julia Vaughn, *Ind. State Conf. of NAACP*, 326 F. Supp. 3d, No. 17-cv-2897, ECF No. 137-12; Julia Vaughn, *Op-Ed: Indiana Senate Doubles Down on Attempt to Purge Voters Without Notice*, Indy Star (Feb. 16, 2020), https://www.indystar.com/story/opinion/2020/02/16/op-ed-indiana-senate-again-tries-purge-voters-without-notice/4764155002/.

[34] *See supra* note 9 (Ind. Elections Div. Co-Dir. Bradley King admitting "certainly the Seventh Circuit has indicated serious issues with" with Indiana's new law).

[35] *See* Ind. Code § 3-7-38.2-5.1(a)–(b) (2020).

[36] *Common Cause Indiana v. Lawson*, 481 F. Supp. 3d at 807.

[37] *See* Final J., *Common Cause Ind. v. Lawson*, 937 F.3d 944 (7th Cir. 2019) (Nos. 18-2491 & 18-2492), ECF No. 43.

[38] Br. of Defs.-Appellants at 20–28, *League of Women Voters Ind. v. Lawson*, Nos. 20-2815 & 20-2816 (7th Cir. Dec. 4, 2020).

[39] Br. of Pls.-Appellees at 29–32, *League of Women Voters Ind. v. Lawson*, Nos. 20-2815 & 20-2816 (7th Cir. Jan. 19, 2021).

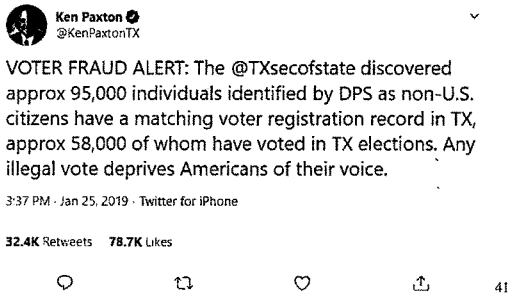
voters based on third party data from IDEA, without hearing directly from the voter or providing the requisite notice. The appeal was argued before the Seventh Circuit on April 22, 2021 and remains pending.

B. Driver's License Databases

Proponents of more active list-maintenance practices also often suggest comparing state voter rolls to the state department of motor vehicle records to identify registrants who are noncitizens, as driver's license applicants frequently submit legal documents that indicate their citizenship status. In theory, accurate matching techniques that compare such driver's license records to voter files could be used to identify noncitizens who are on the rolls. In practice, however, our experience has been that comparisons between DMV data and voter registration lists have produced far more false positives than actual evidence of noncitizen registration, due to poor matching techniques and out-of-date information that can discriminate against naturalized citizens, who in turn are frequently voters of color. For example, over 87% of Texas's naturalized citizens are Black or of Latinx or Asian origin.[40]

A wildly flawed and discriminatory voter purge effort that Texas sought to undertake in 2019—seemingly in service of a false narrative of a supposed epidemic of noncitzen voting in the state—provides a prime example.

In January of 2019, the Attorney General of Texas, Ken Paxton, tweeted alarming news: a "VOTER FRAUD ALERT," claiming that nearly 100,000 registered voters in Texas had supposedly been identified as noncitizens, via a comparison to data held by the Texas Department of Public Safety, which maintains the state's driver's license records:



[40] Decl. of Dr. Daniel Smith at 7, tbl.1, *MOVE Tex. Civic Fund v. Whitley*, No. 3:19-cv-00041 (S.D. Tex. Feb. 6, 2019), ECF No. 10-5.

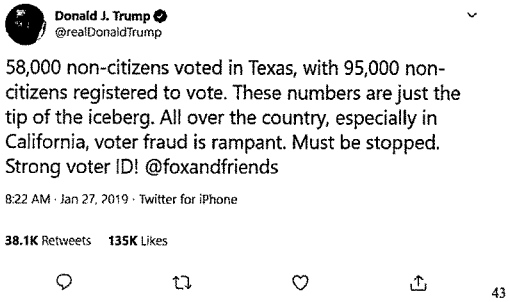
[41] Ken Paxton, Twitter, Jan. 25, 2019, *available at* https://twitter.com/kenpaxtontx/status/1088898595653386240?lang=en.

Texas Governor Greg Abbott followed up by thanking Attorney General Paxton and the Texas Secretary of State for "uncovering and investigating this illegal vote registration":



[42]

Not to be outdone, then-President Trump was soon in on the act, claiming that 58,000 noncitizens had voted in Texas:



[43]

But there was one problem: all of this was false. As reported by the *Texas Tribune*, within a week, after the list of supposed noncitizens who had registered to vote was disseminated to Texas counties, "the number of registered voters flagged by the state began to plummet" on just a cursory inspection, as many of the flagged registrants were *naturalized citizens* who had *already* confirmed their citizenship: "[i]n Harris County alone, the state's flub translated to

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[42] Greg Abbott, Twitter, Jan. 25, 2019, *available at* https://twitter.com/gregabbott_tx/status/1088918898643271680?lang=en.

[43] Donald J. Trump, Twitter, Jan. 27, 2019, *available at* https://twitter.com/realDonaldTrump/status/1089513936435716096.

about 18,000 voters [out of approximately 30,000 flagged in the county] — about 60 percent of the original list — whose citizenship status shouldn't have been questioned."[44] After culling hundreds of duplicates from its list, Harris County was left with about 12,000 potential noncitizen registrants, but "[a]n audit of 150 names chosen at random yielded no noncitizens, so officials there declined to take further action."[45]

The ACLU and the ACLU of Texas, along with a coalition of other civil rights organizations, including MALDEF, the Texas Civil Rights Project and the Campaign Legal Center, filed various lawsuits to stop the purging of voters based on the inaccurate match process. Just "[t]hree months after first questioning the citizenship status of almost 100,000 registered voters, the Texas Secretary of State [] agreed to end a review of the voter rolls for supposed noncitizens that was flawed from the start."[46] The settlement came only after a federal district court found that the Secretary of State had "created [a] mess," and that Texas had engaged in "ham-handed and threatening correspondence" with voters who had been flagged, which, in the court's view, "exemplifie[d] the power of government to strike fear and anxiety and to intimidate the least powerful among us."[47] "The state [ended up] on the hook for $450,000 in costs and attorney fees for the plaintiffs' lawyers."[48]

Secretary of State David Whitley ended up departing from office in disgrace.[49] But Texas Attorney General Paxton, Governor Abbott, and former-President Trump have never retracted their false statements on Twitter about a supposed epidemic of noncitizen voter registration in Texas.

C. The Department of Homeland Security Systematic Alien Verification for Entitlements (SAVE) Database

Another database sometimes referenced as a source of citizenship information is the Department of Homeland Security's Systematic Alien Verification for Entitlements ("SAVE") database. The SAVE system is used to verify immigration status when an individual interacts

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[44] Alex Ura, *'Someone Did Not Do Their Due Diligence': How An Attempt To Review Texas' Voter Rolls Turned Into A Debacle*, Tex. Trib. (Feb. 1, 2019), https://www.texastribune.org/2019/02/01/texas-citizenship-voter-roll-review-how-it-turned-boondoggle/.

[45] Niraj Chokshi, *Federal Judge Halts 'Ham-Handed' Texas Voter Purge*, N.Y. Times (Feb. 28, 2019), https://www.nytimes.com/2019/02/28/us/texas-voter-rolls.html.

[46] Alex Ura, *Texas Will End Its Botched Voter Citizenship Review and Rescind Its List of Flagged Voters*, Tex. Trib. (April 26, 2019), https://www.texastribune.org/2019/04/26/texas-voting-rights-groups-win-settlement-secretary-of-state/.

[47] Order Denying Mot. to Dismiss at 1, 4, *Tex. League of United Latin Am. Citizens v. Whitley*, No. 5:19-cv-00074-FB (W.D. Tex. Feb. 27, 2019), ECF No. 61.

[48] Ura, *supra* note 46.

[49] Alex Ura, *Texas Secretary Of State David Whitley Departs As Legislative Session Ends*, Tex. Trib. (May 27, 2019), *available at* https://www.texastribune.org/2019/05/27/texas-secretary-state-david-whitley-forced-leave-office/.

with the state, for example, while applying for a driver's license.[50] SAVE relies on records from various agency databases, all of which feed into a central system run by the United States Citizenship and Immigration Services (USCIS),[51] to confirm that immigration information provided by an individual is correct at the time it is provided.

It is critically important to recognize what SAVE is *not*. SAVE "does not include a comprehensive and definitive listing of U.S. citizens."[52] Even for those noncitizens that are listed in the SAVE database, moreover, the program's data are not systematically updated to reflect changes in immigration status.[53] SAVE thus offers nothing more than a collection of snapshots of various individuals' respective statuses in the US immigration system at certain moments in time—and those statuses can, and often do, change.

For this reason, DHS has cautioned against relying heavily on SAVE data to verify citizenship and confirm voter eligibility.[54] As with comparisons to the DMV database, improper use of SAVE data for voter purges could, for example, disenfranchise eligible citizens[55] who have become naturalized citizens since their entry in the SAVE database. Individuals with the same birthdate and name as noncitizens in the SAVE system are also vulnerable to wrongful purging.[56] In other words, using the SAVE database for voter registration may result in the purging of legitimate voters due to out-of-date information or mistaken identity. Indeed, several states that have attempted to use SAVE for voter registration purposes have seen those efforts declared unlawful by courts.

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[50] Off. of Inspector Gen., Dep't of Homeland Sec., OIG-12-125, U.S. Citizenship and Immigr. Servs. Systematic Alien Verification for Entitlements Program Issues 4 (Sept. 2012), http://www.oig.dhs.gov/assets/Mgmt/2012/OIG_12-125_Sep12.pdf.

[51] *See id.*

[52] *See* Ltr. from Thomas E. Perez to Ken Detzner, Fla. Sec'y of State, dated June 11, 2012 at 3, https://assets.documentcloud.org/documents/805150/us-dep-of-justice-save-letter-1.pdf.

[53] Immigr. Policy Council, Fact Sheet, *Using the Systematic Alien Verification for Entitlements (SAVE) Program for Voter Eligibility Verification* at 3, Am. Immigr. Council (Aug. 2012), https://www.americanimmigrationcouncil.org/sites/default/files/research/usingthesaveprogramsforvotereligibilityverification.pdf.

[54] Amy Sherman, *Trump's Commission Vice Chair Kris Kobach Says Immigration Data Not Bounced Against Voter Rolls*, PolitiFact (May 23, 2017), http://www.politifact.com/florida/statements/2017/may/23/kris-kobach/trumps-election-commission-chair-kris-kobach-says-/. *See also* Mem., Dep't of Homeland Sec., Agreement Between the Dep't of Homeland Sec., U.S. Citizenship and Immigr. Services, and Fla. Dep't of State/Div. of Elections State or Loc. Gov't Agency, 12 (Aug. 14, 2012), https://www.documentcloud.org/documents/805148-moa-dhs-fl-1.html.

[55] In 2015, over 730,000 people became naturalized U.S. citizens. *See* Dep't of Homeland Sec. Off. of Immigr. Stat., *Table 20. Petitions for Naturalized Filed, Persons Naturalized, And Petitions For Naturalization Denied: Fiscal Years 1907-2015* (Dec. 15, 2016), https://www.dhs.gov/immigration-statistics/yearbook/2015/table20.

[56] When Colorado used SAVE data to identify noncitizen voters in 2012, the State sent citizenship confirmation letters to 3,903 registered voters confirming immigration status. Further checks found that 141 of the 3,903 individuals were noncitizens – or .004 percent of all Colorado voters – and 35 of those 141 had voted. However, the number may be fewer than 35, as the Denver Clerk's Office subsequently found documentation validating the citizenship of 8 of the 35 individuals in question. *Voter fraud probe fizzles*, The Associated Press, Tampa Bay Online (Sep. 25, 2012), http://www.tbo.com/news/voter-fraud-probe-fizzles-511998.

a. Florida

Florida's experience provides a cautionary tale. In 2012, Florida officials launched an aggressive campaign to purge purported noncitizens from the state's voter rolls. As part of these efforts, the state filed a lawsuit against the federal government to obtain access to the SAVE database. That effort was met with serious objections from the Department of Justice, which, among other things, warned that information in the SAVE database was often out-of-date, and would often not account for the fact that many individuals listed as noncitizens in SAVE have since that time naturalized.[57] In ultimately agreeing to grant Florida access to SAVE, DHS warned about potential inaccuracies in SAVE, and attached a Fact Sheet stating that "[t]he inability of the SAVE Program to verify [an individual's] citizenship does not necessarily mean that [the individual is] not a citizen of the United States and [is] ineligible to vote."[58]

In its efforts to identify noncitizens, Florida officials initially stated that "nearly 200,000 registered voters may not be U.S. citizens."[59] Upon review, however, that number shrank dramatically, with the Secretary of State's office sending a list of 2,700 possible non-citizens on the voter rolls to county election supervisors for verification,[60] instructing local officials to notify all individuals identified by the State as possible noncitizens, and to require them to provide proof of citizenship within 30 days or be removed from the voting rolls.

But even the 2,700 figure quickly collapsed under scrutiny. After diverting resources away from improving election administration and lawful voter registration, officials determined the number of ineligible voters was not 2,700, but actually less than one-tenth of that number (or fewer than 200 people[61]). Reports vary, but PolitiFact was ultimately able to confirm that a total of only 85 noncitizens were removed from the rolls as a result of these efforts,[62] in a state of more than 11 million voters at the time[63] (or about 0.00077% of the registered voters in the State). The upshot is that thousands of U.S. citizens were wrongfully designated as noncitizens and threatened with removal from the rolls. One such voter was Brooklyn-born Bill Internicola, a World War II veteran who fought at the Battle of the Bulge.[64] An analysis conducted by the

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[57] *See United States v. Florida*, 870 F. Supp. 2d 1346, 1347-8 (N.D. Fla. 2012). (Noting the state's original plan to use DHS data to remove noncitizens from voter rolls had "major flaws," including wrongful purging of voters due to a "lag between naturalization" and updated individual immigration status in the database.)

[58] *See* DHS Mem. of Agreement, *supra* note 54.

[59] Gary Fineout, *Nearly 200,000 Florida Voters May Not be Citizens*, NBC Miami (May 11, 2012), http://www.nbcmiami.com/news/local/Nearly-200000-Florida-Voters-May-Not-Be-Citizens-151212725.html

[60] *See* Rachel Weiner, *Florida's Voter Purge Explained*, Wash. Post (June 18, 2012), https://www.washingtonpost.com/blogs/the-fix/post/floridas-voter-purge-explained/2012/06/18/gJQAhvcNlV_blog.html?utm_term=.f9e1842173a2.

[61] *See id.*

[62] *See* Amy Sherman, *Homeland Security Warned That The SAVE Database Is Not Foolproof Way to Verify the Voter Rolls, LWV says*, PolitiFact: Fla. (Oct. 30, 2013), http://www.politifact.com/florida/statements/2013/oct/30/league-women-voters-florida/league-women-voters-says-homeland-security-warned-/.

[63] *See* Weiner, *supra* note 60.

[64] Marc Caputo, *How Rick Scott's Noncitizen Voter Purge Started Small and Then Blew Up*, Miami Herald (June 12, 2012), http://www.miamiherald.com/news/politics-government/article1940542.html.

Miami Herald indicated that 87% of those identified by the state as noncitizens on the rolls were minorities and 58% were Hispanic.[65]

Litigation ensued over Florida's attempts to use SAVE. The U.S. Court of Appeals for the Eleventh Circuit,[66] after noting that the SAVE database matching results were "far from perfect,"[67] held that voters in Florida "face a realistic danger of being [wrongfully] identified in the Secretary's removal programs because of their names or status as naturalized citizens," given the "foreseeable risk of false positives and mismatches based on user errors, problems with the data-matching process, flaws in the underlying databases, and similarities in names and birthdates."[68] The State was ultimately ordered to discontinue its purge based on the use of SAVE data.

b. Iowa

Iowa's experience was similar. In 2013, then-Iowa Secretary of State Matt Schultz announced that his office had reached an agreement with DHS to access the SAVE database, with the intention of comparing SAVE information to Iowa voter registration records.[69] Secretary of State Schultz's plans for a voter purge based on SAVE data were challenged by the ACLU of Iowa and the League of United Latin American Citizens in Iowa state court, arguing that the purge "exceeded his statutory authority" and created "a substantial risk of erroneously depriving qualified voters in Iowa [of] their fundamental right to vote."[70] The court ultimately agreed, blocking the purge, and finding that it "would chill the right to vote and cause irreparable harm."[71] The office of the Iowa Secretary of State eventually abandoned an appeal of that ruling,[72] effectively conceding that Iowa's efforts to use SAVE data to purge the voter rolls were unlawful and ending those efforts.

D. Mass Voter Challenges

State "challenger laws"—laws that allow private citizens to challenge the eligibility of prospective voters on or before Election Day—have also been used to force states to remove voters from the rolls *en masse*. These "challenge" laws have been used to target voters along

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[65] *58 Percent of Voters Targeted in Noncitizen Hunt Are Hispanic. Whites, GOP Least Likely To Face Purge*, Miami Herald (May 13, 2012), http://miamiherald.typepad.com/nakedpolitics/2012/05/58-percent-of-voters-targeted-in-noncitizen-hunt-are-hispanic-whites-gop-least-likely-to-face-purge.html.

[66] *Arcia v. Florida Sec'y of State*, 772 F.3d 1335 (11th Cir. 2014).

[67] *Id.* at 1339.

[68] *Id.* at 1342.

[69] *Iowa Voting Records To Be Compared To Federal Database*, KCCI Des Moines (Aug. 14, 2013), http://www.kcci.com/article/iowa-voting-records-to-be-compared-to-federal-database/6882792.

[70] First Am. Pet. ¶¶ 22–23, *ACLU of Iowa v. Schultz*, No. CV 9311, (Dist. Ct. Polk Cnty. Aug. 8, 2012), http://moritzlaw.osu.edu/electionlaw/litigation/documents/2012-08-08firstamdendedpetitionforjudicialreview.pdf.

[71] *Id.*, Order on Mot. for Review on the Merits at 5 (Dist. Ct. Polk Cnty. Nov. 12, 2013), http://moritzlaw.osu.edu/electionlaw/litigation/documents/RulingforMotionforReview11-12-13.pdf.

[72] Jason Noble, *Controversial Iowa Voter Rules Will Not Take Effect*, Des Moines Reg. (Mar. 13, 2015), http://www.desmoinesregister.com/story/news/politics/2015/03/13/voter-registration-lawsuit-resolved-rules-invalidated/70280104/.

race, class, and disability lines.[73] Mass challenges are tantamount to a systemic purge, but can be exploited to avoid the federal rules governing purge programs, such as the prohibition of systematic removals of voter registrations within 90 days of a federal general election.[74] Many state laws fail to protect individuals from frivolous, baseless challenges to their voting eligibility,[75] rendering those laws subject to abuse by "self-appointed voter fraud vigilantes."[76] In the most egregious cases, several voter challengers have taken it upon themselves to deprive or attempt to deprive thousands of their voting rights.

A 2016 case out of North Carolina is illustrative. In the months and weeks preceding the November 2016 election, the boards of elections of three North Carolina counties canceled thousands of voter registrations based solely on challengers' evidence that mail sent to those addresses had been returned as undeliverable.[77] Voters were not provided notice. In one of those counties, "voters who were purged were disproportionately African American."[78]

Voting rights organizations sued. In a hearing in the case, the federal district judge stated that she was "horrified" by the "insane" process by which voters could be removed from the rolls without their knowledge. She went on to say that the mass challenges at issue "sound[ed[like something that was put together in 1901."[79] Recognizing that mass challenges are essentially systematic voter purges and as such require the same protections for voters, the federal court ultimately barred the state from removing voters based on these challenges unless the voter is given notice and a waiting period, and unless the removals happen at least 90 days before federal elections as mandated by the NVRA.[80]

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[73] Nicolas Riley, *Voter Challengers*, Brennan Ctr. For Justice at 2 (Aug 2012) (Challenger laws were "historically enacted and used to suppress newly enfranchised groups, like African Americans and women," and continue to be used to target "voters of color, student voters, and voters with disabilities."), *available at* https://www.brennancenter.org/sites/default/files/publications/Purges_Growing_Threat_2018.pdf.

[74] 52 U.S.C. § 20507(c)(2)(A).

[75] *Id.* at 16 (noting that as of 2012, only seven states had threshold standards that individuals had to meet before lodging a challenge against voters).

[76] Jonathan Brater, *In Victory for Voting Rights, Judge Permanently Blocks North Carolina Purge Loophole*, Brennan Ctr. for Justice (Aug. 9, 2018) https://www.brennancenter.org/our-work/analysis-opinion/victory-voting-rights-judge-permanently-blocks-north-carolina-purge.

[77] *N.C. State Conf. of NAACP v. Bipartisan Bd. of Elections & Ethics Enf't*, No. 1:16CV1274, 2018 WL 3748172, at *1, *6 (M.D.N.C. Aug. 7, 2018).

[78] *Voting Rights Victory Federal Court Grants Permanent Injunction Blocking Mass Voter Purges*, NAACP, https://mailchi.mp/1295a3b0a1e9/ecological-justice-organizing-tour-august-12-13-sponsored-by-the-nc-poor-peoples-campaign-32677 (last visited May 3, 2021).

[79] Mark Joseph Stern, *North Carolina Is Engaging in "Insane" Jim Crow-Style Voter Suppression, Says Federal Judge*, Slate (Nov. 3, 2016), https://slate.com/news-and-politics/2016/11/federal-judge-slams-north-carolina-voter-purge.html

[80] *N.C. State Conf. of NAACP*, 2018 WL 3748172, at *2.

E. Voter Inactivity

Some states have purge practices that target voters for purging solely because they have skipped voting in several consecutive elections. These programs use voter activity as a proxy for identifying voters who may have moved. As with database matching or voter registration list comparisons, however, infrequent voting is a highly imperfect proxy for voter eligibility and the inevitable result is erroneous purges of voters who haven't moved, who remain eligible to vote, but who may end up being disenfranchised. All too frequently those voters are individuals who are already marginalized, including voters of color, low-income voters, voters with disabilities, and the homeless.[81]

In 2016, Demos and the ACLU challenged Ohio's practice of targeting voters for removal if they failed to vote during a two-year period, based on the presumption that failing to participate in a single federal election constitutes evidence that a voter may have moved. This is highly questionable proposition. In fact, more than half of registered voters typically fail to vote in midterm elections.[82] Our client in the case, Navy veteran Larry Harmon, voted in the 2008 election, but like millions of Americans around the country, he opted not to vote in the 2010 midterms.[83] When Mr. Harmon tried to vote in the 2015 Ohio state elections, he arrived at the polls only to discover that his registration had been canceled pursuant to Ohio's purge process, even though he had continuously lived and filed taxes at the same address for 17 years.[84] Over the years, thousands of Ohio voters found themselves similarly kicked off the rolls when it was already too late.

Ohio's process also disproportionately affected minority, low-income, disabled and veteran voters.[85] Indeed, a 2016 analysis found that, in Ohio's three largest counties, residents of predominantly Black neighborhoods were about twice as likely to be purged under Ohio's program.[86]

Nevertheless, the U.S. Supreme Court, in a 5-4 ruling, ultimately upheld the Ohio purge practice, concluding that it was permitted under the NVRA.[87] The Court, however, also made

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[81] *See Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1864 (2018) (Sotomayor, J., dissenting); *see also* Paul Smith, *"Use It or Lose it": The Problem of Purges from the Registration Rolls of Voters Who Don't Vote Regularly*, A.B.A. (Feb 10, 2020), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-rights/-use-it-or-lose-it---the-problem-of-purges-from-the-registration0/.

[82] U.S. Elections Project, *1980–2014 November General Election*, https://docs.google.com/spreadsheets/d/1or-N33CpOZYQ1UfZo0h8yGPSyz0Db-xjmZOXg3VJi-Q/edit#gid=1670431880 (last visited May 3, 2020).

[83] Harmon Decl. at ¶ 6, *A. Philip Randolph Institute v. Husted*, No. 2:16-cv-303, 2016 WL 3542450, (S.D. Ohio 2016), ECF No. 9-4.

[84] *Id.* at ¶¶ 7–12.

[85] *Husted*, 138 S. Ct. at 1864 (Sotomayor, J., dissenting).

[86] Andy Sullivan & Grant Smith, *Use It or Lose It: Occasional Ohio Voters May Be Shut Out in November*, Reuters (June 2, 2016), https://www.reuters.com/article/us-usa-votingrights-ohio-insight/use-it-or-lose-it-occasional-ohio-voters-may-be-shut-out-in-november-idUSKCN0YO19D.

[87] *Husted*, 138 S. Ct. 1833.

unmistakably clear that states cannot purge registered voters without first providing notice and an opportunity to stay on the rolls.[88]

There is no question that the ruling is a setback for voting rights. The NVRA's restrictions on voter purge practices were created "against the backdrop of substantial efforts by States to disenfranchise low-income and minority voters," including purges based on a voter's failure to vote.[89] As Justice Sotomayor wrote in her dissent from the ruling, the Court's decision "ultimately sanction[s] the very purging" of minority and low-income voter that Congress sought to prevent in enacting the NVRA.[90]

II. Unsuccessful Efforts to Force More Aggressive Purges

Despite the poor track record of aggressive list-maintenance programs, proponents of more aggressive voter purges claim that such voter purges are necessary because the voter rolls are "bloated" with the names of voters who have moved, died, or who are otherwise ineligible to remain on the rolls. In fact, activist groups have taken these claims to court and sued state and local jurisdictions—often jurisdictions that have disproportionately large minority populations—to force them to undertake more aggressive purges. Far from justifying the need for more voter purging, however, these cases demonstrate that claims of "bloated" and inaccurate rolls are too frequently overblown and based on outdated, unreliable, and unverified data.

1. Pennsylvania

In April 2020, Judicial Watch sued Pennsylvania, and three Philadelphia-area counties (Bucks, Chester, and Delaware), under the NVRA.[91] Judicial Watch claimed that those counties had failed to properly maintain their lists and asked the federal court to order them to purge thousands of voters that it believed could have been removed because they changed their residence.

The ACLU, ACLU of Pennsylvania, and Lawyers' Committee for Civil Rights Under Law, successfully intervened on behalf of Common Cause of Pennsylvania and the League of Women Voters of Pennsylvania—groups with thousands of duly registered members in the state, many of whom would have been at risk of removal if the court had entered the relief sought.[92]

In March 2021, the court dismissed Judicial Watch's lawsuit against Bucks, Chester, and Delaware counties.[93] The court concluded that Judicial Watch based its lawsuit on outdated

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[88] *Id.* at 1839 ("[T]he NVRA is clear about the need to send a 'return card' (or obtain written confirmation of a move) before pruning a registrant's name . . . .").

[89] *Id.* at 1863 (Sotomayor, J., dissenting).

[90] *Id.*

[91] *See* Compl., *Judicial Watch, Inc. v. Commonwealth of Pa.*, No. 20-cv-00708 (M.D. Pa. Apr. 29, 2020), ECF No. 1.

[92] *See* Order, *Judicial Watch, Inc. v. Commonwealth of Pa.*, No. 20-cv-00708 (M.D Pa. Nov. 19, 2020), ECF No. 50.

[93] *See Judicial Watch, Inc. v. Commonwealth of Pa.*, No. 20-cv-00708, 2021 WL 858865 (M.D. Pa. Mar. 8, 2021).

data, and also rejected its claim that high registration rates, alone, should lead to an inference that the counties had a list maintenance problem.

2. Detroit, Michigan

On December 10, 2019, the Public Interest Legal Foundation (PILF) filed suit against the Detroit City Clerk and Director of Elections, alleging that they violated the NVRA by failing to maintain a "reasonable list maintenance program to detect and remove deceased registrants from the rolls."[94] PILF's claims, however, relied on questionable and unsubstantiated data, including, for example, that Detroit's rolls included multiple registrations for the same individuals, based on the unsubstantiated assumption that voters with similar names are the same person.[95]

The Brennan Center for Justice, on behalf of the League of Women Voters of Michigan and the League of Women Voters of Detroit, intervened in the case, and pressed PILF to produce evidence to support its claims.[96] Instead even trying to prove its claims, PILF dropped the case. The parties stipulated to the dismissal of the case with prejudice on June 30, 2020.[97]

3. Broward County, Florida

In June 2016, the American Civil Rights Union (ACRU) brought suit against Dr. Brenda Snipes in her official capacity as the Supervisor of Elections of Broward County, Florida. ACRU alleged that Dr. Snipes violated the NVRA by failing to more aggressively purge voters from the state's registration list.[98] Specifically, the ACRU claimed that Broward County "ha[d] an implausible number of registered voters compared to the number of eligible living citizens"[99] and opined that Dr. Snipes could have used alternative data sources to more accurately count registered voters.[100] The 1199 SEIU United Healthcare Workers East intervened in the case, arguing that the ACRU's challenge posed a substantial risk that eligible voters would be purged from the rolls.[101]

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[94] Compl. ¶ 9, *Public Interest Legal Foundation v. Winfrey*, 463 F. Supp. 3d 795 (E.D. Mich. 2020), No. 2:19-cv-13638, ECF No. 1.

[95] *Id.* ¶¶ 20–22; League of Women Voters' Br. & Mot. to Intervene at 11, *Public Interest Legal Foundation*, 463 F. Supp. 3d, No. 2:19-cv-13638, ECF No. 21.

[96] Order Granting Intervention, *Public Interest Legal Foundation*, 463 F. Supp. 3d, No. 2:19-cv-13638, ECF No. 42.

[97] Stipulation of Dismissal at 1, *Public Interest Legal Foundation*, 463 F. Supp. 3d, No. 2:19-cv-13638, ECF No. 56.

[98] *Historic Decision in Broward County is Win for Eligible Voters*, Demos (Mar. 30, 2018), https://www.demos.org/press-release/historic-decision-broward-county-win-eligible-voters.

[99] Bench Order at 3, *Bellitto v. Snipes*, No. 0:16-cv-61474, (S.D. Fla. Mar. 30, 2018), ECF No. 244 at 3 (citation omitted).

[100] *Id.* at 17.

[101] *Id.* at 3.

The district court rejected the ACRU's challenge, finding that the ACRU had "failed to prove a violation of Section 8 of the NVRA,"[102] and that its claims were "unsupported by any credible evidence."[103] The Eleventh Circuit affirmed judgment on appeal.[104]

4. Virginia

In 2016 and 2017, PILF published a pair of reports titled "Alien Invasion," featuring a UFO on the cover, and hyping a problem of supposedly widespread noncitizen registration in Pennsylvania and Virginia. The reports "included names, phone numbers, addresses and Social Security numbers of individuals removedfrom voter rolls allegedly because they were noncitizens."[105] Many of named individuals, however, turned out to be U.S. citizens. PILF was sued for defamation and voter intimidation, and discovery revealed that PILF "had in its possession internal emails among . . . election officials raising concerns about how the records were being misrepresented," as well as "other warnings about citizens being mislabeled as noncitizens."[106] According to Protect Democracy and other groups who represented the plaintiffs, PILF was "aware th[at] people they identified intheir report might be citizens," but "ignored red flags," including "warnings [that] came from Virginia election officials."[107]

PILF ultimately settled the case. Under the terms of the settlement, PILF lawyer J. Christian Adams was required to "offer a written apology to . . . four Virginia voters" whom PILF had falsely identified as noncitizens, and "also agreed to remove the personal information of the accused from the reports and add a statement to the front of them acknowledging that theyfalsely accused people of being noncitizens."[108]

Conclusion

There is no dispute that state and local jurisdictions need to ensure that voter rolls are accurate and up-to-date. However, the integrity of our voter rolls—and thus our democratic process itself—are threatened by overly aggressive practices that wrongfully purge legitimate voters from the rolls—often disproportionately voters of color, voters with disabilities, and other historically disenfranchised voters.

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[102] *Id.*

[103] *Id.* at 20; *see also id.* at 18 ("ACRU's argument that Broward County's registration rates are unreasonably high is . . . unsupported by any credible evidence and necessarily fails to support ACRU's contention that Snipes failed to comply with the NVRA's list-maintenance requirements.").

[104] *Bellitto v. Snipes*, 935 F.3d 1192 (11th Cir. 2019).

[105] Tierney Sneed, *Ex-Trump Voter Fraud Commissioner Settles Lawsuit Over 'Alien Invasion' Reports Talking Points Memo*, TPM (July 17, 2019), https://talkingpointsmemo.com/muckraker/trump-voter-fraud-comissioner-defamation-lawsuit-settled.

[106] *Id.*

[107] Sam Levine, *Voter Fraud Activist Will Apologize to Citizens He Accused of Being Illegal Voters*, Huffington Post (July 18, 2019), available at https://www.huffpost.com/entry/j-christian- adams-pilf-settlement_n_5d309002e4b0419fd3298ee6.

[108] *Id.*

The United States continues to lag behind other developed democracies when it comes to participation in elections—even this past election cycle when this country saw historic turnout.[109] As Chief Justice John Roberts wrote, "[t]here is no right more basic in our democracy than the right to participate in electing our political leaders."[110] Our democracy is more representative, responsive, and accountable, when more rather than fewer Americans participate. To build a strong, vibrant, and inclusive democracy that will endure, we should be working together to make voting more accessible and remove obstacles to the voting booth—including practices that wrongly remove voters from the rolls.

I thank you again for the opportunity to testify before you, and look forward to answering any questions that you have.

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[109] *See* Drew DeSilver, *In Past Elections, U.S. Trailed Most Developed Countries in Voter Turnout*, Pew Rsch. Ctr. (Nov. 3, 2020), http://www.pewresearch.org/fact-tank/2017/05/15/u-s-voter-turnout-trails-most-developed-countries/; James Palmer & Audrey Wilson, *Historic U.S. Turnout Still Lags Behind Major Democracies*, Foreign Pol'y (Nov. 3, 2020), https://foreignpolicy.com/2020/11/03/historic-united-states-voter-turnout-2020-election-behind-other-democracies-global/.

[110] *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 191 (2014); *see also Reynolds v. Sims*, 377 U.S. 533, 555 (1964) ("The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.").

Chairman BUTTERFIELD. Thank you, Ms. Lakin.
At this time, I will recognize Dr. Meredith.
You are recognized for five minutes.

STATEMENT OF MARC MEREDITH

Mr. MEREDITH. Chairman Butterfield, Ranking Member Steil, and members of the Committee, thank you for the opportunity to testify before you today.

Managing voter registration or list maintenance is one of the most challenging tasks election administrators face. The structure of American election administration means that elections officials often are deciding whether to take actions to cancel a registration with uncertainty about whether a registrant remains eligible to vote at their address of registration.

There are negative consequences both in failing to take action on the registrations of those who are no longer eligible to vote and when taking action on those registrations who are, in fact, eligible.

Keeping ineligible registrations on the rolls increases the cost of election administration and leaves open the possibility that an invalid vote could be cast.

Conversely, taking action on eligible registrations can reduce these registrants' trust in the electoral system and prevent them from casting a ballot.

My testimony today highlights my research showing that poorly conceived list maintenance protocols can jeopardize electoral integrity by impeding eligible registrants—and particularly eligible minority registrants—from voting.

Election administrators have not always recognized some of the limitations in the data commonly used in list maintenance protocols. List maintenance protocols often rely on information on voter registrants contained in other administrative data, including data from other States' registration rolls, to identify ineligible registrations.

Sometimes information about a different individual, who I refer to as a registration doppelganger, gets attributed to a registrant.

This occurred frequently, for example, in data provided by the Interstate Voter Registration Crosscheck program, or Crosscheck, a consortium in operation between 2005 and 2019 to assist member States in identifying registrants who have moved out of State.

Crosscheck identified cases in which a registrant in one member State shared the same first name, last name, and date of birth as a registrant in another member State.

In some cases, election administrators took action on the registrations identified by Crosscheck, even in the absence of corroborating information indicating that these two registrations belong to the same person.

While the probability that any two distinct registrants share the same first name, last name, and date of birth is exceedingly small, this happens with significant frequency once you are considering trillions of pairings of registrations.

Thus, list maintenance protocols that took action on the basis of Crosscheck data in the absence of corroborating information made it harder for some eligible registrants to vote just because they had

the misfortune of sharing the same first name, last name, and date of birth with a registrant in another Crosscheck member State.

A study that I recently published about Wisconsin's list maintenance protocols in 2017 and 2018 illustrates other issues with using databases to identify registrants for cancellation without appropriate safeguards.

In late 2017, the Wisconsin Elections Commission mailed out postcards to registrants flagged as potentially having moved by the Electronic Registration Information Center, or ERIC. The postcards asked recipients to confirm their registration to avoid having it canceled.

Two findings of my study are particularly relevant.

First, a majority of registrants who were eligible to vote at their address of registration failed to respond to the postcard. This highlights that giving notice is not sufficient to undo all of the damage when eligible registrations are canceled.

Second, minority registrants were about twice as likely as White registrants to vote in 2018 at the address at which they were flagged as potentially moving from. This highlights the potential for new list maintenance protocols to particularly impede eligible minority registrants from voting when they are first enacted.

The National Voter Registration Act of 1993, or NVRA, helps but is not sufficient to prevent poorly conceived list maintenance protocols from unnecessarily disenfranchising voters.

First, litigation relying on NVRA only blocked the recent Indiana law, which attempted to cancel registrations solely on the basis of Crosscheck data once it had already been passed.

Second, the NVRA does not stop Indiana or any other State from using flawed data like Crosscheck to move registrants from active to inactive status.

There are a number of reasons why it became more difficult for an inactive registrant to vote than an active registrant. For example, inactive registrants are excluded in many States from receiving certain forms of election mail that are shown to increase turnout. Finally, the NVRA does not cover all States.

List maintenance protocols that lack meaningful safeguards, like Indiana's implementation of Crosscheck, come at a significant, perhaps unacceptable cost to electoral integrity.

My research shows that applying a list maintenance protocol proposed by Crosscheck in Iowa would have flagged thousands of registrations that were, in fact, used to legally vote.

Greater oversight could prevent the use of list maintenance protocols that fail to recognize electoral integrity means ensuring eligible registrants can vote as well as stopping ineligible votes from being cast.

Thank you.

[The statement of Mr. Meredith follows:]

Written Testimony of Marc Meredith
Associate Professor of Political Science
University of Pennsylvania

Before the Subcommittee on Elections for the Committee on House Administration of the United States House of Representatives
Hearing on "Voting in America: The Potential for Voter List Purges to Interfere with Free and Fair Access to the Ballot"

May 6, 2021

Key takeaways

- Engaging in high-quality voter registration list maintenance is crucial to fulfilling the dual mandates of election administration: making voting accessible while ensuring the integrity of our elections.
- Election administrators frequently receive inconclusive evidence suggesting that a registered voter may no longer be eligible to vote at their address of registration.
- Seemingly small details about how election administrators use such evidence to conduct list maintenance can have important consequences for how often list maintenance is initiated against a registrant who does, in fact, remain eligible to vote at their address of registration.
- While the National Voter Registration Act of 1993 (NVRA) provides protections that reduce the number of cases in which a registration of an eligible registrant is immediately canceled, it does not prevent poorly conceived list-maintenance protocols from reducing the accessibility of voting by inactivating the registrations of eligible registrants.
- My research demonstrates that minority registrants are more likely than White registrants to be incorrectly identified as no longer eligible to vote at their address of registration.
- My research finds that the number of votes impeded by poorly conceived list-maintenance protocols is large relative to incidence of fraud that this list-maintenance seeks to prevent.

I. Introduction

Chairman Butterfield, Ranking Member Steil, and Members of the Committee, thank you for the opportunity to testify before you today.

The management of voter registrations is one of the most challenging tasks that our election administrators engage in. At the heart of this challenge is the fact that registrants inevitably become ineligible to vote at a given address, either because they move, die, or are otherwise no longer eligible to vote. The decentralized nature of American election administration makes it particularly hard to recognize when registrants move to a new address, especially when that new address is located in a different state.

Research by myself and other political scientists can help inform the processes used by election administrators to update voter registrations, which is sometimes referred to as list maintenance. There often is uncertainty about whether a registrant remains eligible to vote at their address of registration. In such cases, there are negative consequences both when failing to initiate list-maintenance on the registrations of those who are no longer eligible to vote and when initiating list-maintenance on the registrations of those who are in fact eligible. Keeping ineligible registrations on the rolls increases the cost of election administration and leaves open the possibility that an invalid vote could be cast using an ineligible registration. Conversely, initiating list-maintenance on eligible registrations can reduce these registrants' trust in the electoral system and impede them from casting a ballot. Political science research helps us better understand the expected frequency of such errors and the consequences of these errors for political participation and electoral integrity.

My testimony is organized as follows. Section II describes some of the challenges of using administrative data to determine whether a registrant remains eligible to vote. Section III highlights what protections the National Voter Registration Act of 1993 (NVRA) provides against poorly conceived list-maintenance protocols. Section IV presents the findings of my research showing that list maintenance is more likely to be wrongly initiated against minority registrants than White registrants. Section V discusses how a poorly conceived list-maintenance protocol can impede many votes relative to number of fraudulent votes it may prevent. Section VI concludes.

II. Administrative Data and List Maintenance

Election administrators often are uncertain about whether a registrant remains eligible to vote at their address of registration when deciding about whether to initiate list maintenance on the registration. Few registrants immediately contact an election administrator in the jurisdiction where they used to live and inform them when they move. Instead, election administrators are left to piece together clues contained in administrative data that are often collected for purposes besides managing voter registrations to make decisions that affect whether a registration remains on the registration rolls.

Political science research is particularly helpful for improving our understanding of the consequences of the record-linkage protocols used in the process of list maintenance. In the domain of list maintenance, record-linkage protocols refer to the methods used to identify information about a registrant in other databases that election administrators have access to. For example, an election administrator may want to link a registrant to their driver's license record because a difference between an address of registration and the address on a driver's license is a clue suggesting that a registrant may no longer reside at their address of registration. When trying to uncover information about registrants in another database, it helps when both the registration rolls and the other database contain a linking variable, or variables, that make it easy to bring together information about the same individual in the two different databases. For example, linking a registration record to the registrant's information in a driver's license database is simple when both always contain accurate information on an individual's driver's license number. But it may be significantly harder when at least some voter registration records do not contain information on the registrant's driver's license number or contain an inaccurate

representation of their driver's license number. In such circumstances, election administrators have to look for less obvious linking variables. They may, for example, try to identify a registrant's record in a driver's license database by searching for a driver's license record with the same name and date of birth as the registrant.

Research conducted by political scientists, including myself, show that even seemingly minor details about record linkage could have important consequences for how often election administrators wrongly cancel the registration of an eligible registrant. One specific issue that my research addresses is the possibility of registration doppelgängers. Registration doppelgängers occur when an election administrator uses a record-linkage process that causes a registrant to link to a different individual's record in another database. In the aforementioned driver's license example, there are occasionally registration doppelgänger in a driver's license database that share the same first name, last name, and date of birth as a registrant.[1] When a record-linkage protocol links a registrant to this registration doppelgänger in the driver's license database, it will be linking the registrant to a different person. The registrant's address of registration is going to differ from the linked driver's license address when this happens, but not because the registrant has moved from their address of registration. Thus, when list maintenance is initiated on registrations when these two addresses differ, it will be initiated on an eligible registrant when they are linked to a registration doppelgänger.

My research shows that record linkage done by the Interstate Voter Registration Crosscheck Program (henceforth Crosscheck), which a number of states used to assist in list maintenance within the last ten years, generated a substantial number of registration doppelgängers.[2] Crosscheck was a consortium in operation between 2005 and 2019 to assist in identifying cases in which the same person was registered to vote in two members states. At one point in time there were 29 member states in Crosscheck, with many of these states using the data provided by Crosscheck in their list-maintenance protocols. Linking together the registration records of people who are registered to vote in two different states is a challenging task because few fields are consistently reported in different states' registration rolls. What Crosscheck provided to each member state were the cases in which a registrant in their state shared the same first name, last name, and date of birth as a registrant in another member state. My research showing that many of these matches were registration doppelgängers shares the same underlying logic as something known as the birthday problem.[3] The birthday problem refers to the likelihood that two individuals in a room will share the same birthday as a function of the number of people in the room. When the birthday problem was taught in my high school math class, I remember being surprised that it is more likely than not that two people in the same room will share the same birthday once there are about 23 people in the room. After all, the chance that any pair of individuals would be born on the same day is quite small, roughly 1 in 365. The key point of the birthday problem is that as you add more people into the room, you end up generating more and more pairings – 5 people generate 10 pairings, 10 people generate 45

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[1] Ansolabehere, Stephen and Eitan Hirsch. 2017. "ADGN: An Algorithm for Record Linkage Using Address, Date of Birth, Gender, and Name." *Statistics and Public Policy* 4(1): 1-10.

[2] Goel, Sharad, Marc Meredith, Michael Morse, David Rothschild, and Houshmand Shirani-Mehr. 2020. "One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections." *American Political Science Review* 114(2): 456-469.

[3] See also Michael P. McDonald and Justin Levitt. 2008. "See Double Voting: An Extension of the Birthday Problem." *Election Law Journal: Rules, Politics, and Policy* 7(2): 111-122.

pairings, and 15 people generate 96 pairings. Each additional person that comes into the room creates more pairings than the last. As you keep adding more people into the room, eventually one of those pairings is going to share the same birthday.

Applying this same logic to the Crosscheck data, there will be cases in which two different registrants share the same first name, last name, and date of birth if you start comparing enough registrations. The probability that any two distinct registrants share the same first name, last name, and date of birth is exceedingly tiny. But even an exceedingly tiny probability can generate a substantial number of cases once you are considering trillions of pairings. My research shows, for example, that over a million pairings of different voters in the 2012 presidential election shared the same first name, last name, and date of birth.[4] In practice, this means that a substantial share of the pairings returned to states by Crosscheck represented cases in which two different registrants shared the same first name, last name, and date of birth instead of the same person being registered to vote in two different states.

Lack of concern about registration doppelgängers resulted in Crosscheck data being used to impede the ability of eligible registrants to vote. An implication of my research is that more information is needed, such as information about whether the registrations share a common middle name or last four digits of a social security number (SSN4), before the existence of a registration with the same first name, last name, and date of birth should be used to initiate list maintenance. However, research by political scientist Michael McDonald into Indiana's use of Crosscheck data shows that county elections officials did not always understand this when conducting list maintenance between 2015-2017.[5] McDonald's research shows that list-maintenance actions were initiated by numerous counties on nearly all the registrations flagged by Crosscheck, even in the absence of auxiliary information supporting the conclusion that these were not registration doppelgängers. McDonald's analysis suggests that Indiana's use of Crosscheck data likely triggered list-maintenance against thousands of eligible registrants who continued to reside at their address of registration, but who had the misfortunate of sharing the same first name, last name, and date of birth of a registrant in another Crosscheck member state.

McDonald's research on Georgia's use of the National Change of Address (NCOA) data highlights how these data also can generate registration doppelgängers.[6] NCOA data are compiled from the reports people file with the United States Postal Service (USPS) when they want their mail held or forwarded. While these data are not collected with the purpose of supporting list maintenance, many election officials use NCOA data in their list-maintenance protocol. Because supporting list maintenance is not the purpose of NCOA data, they do not contain all of the identifying information, like date of birth, that they would ideally contain to reduce the potential for registration doppelgängers. McDonald investigates the consequence of this by comparing how often two large voter registration firms that specialize in record linkage, L2 and TargetSmart, agree with Georgia's assessment that a given registrant's record is contained in the NCOA data. In 14 percent of cases, McDonald finds that these firms do not

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[4] Ibid 2.
[5] See Expert Report of Michael P. McDonald in *Common Cause Indiana v. Lawson* (Case 1:17-cv-03936-TWP-MPB).
[6] See Expert Report of Michael P. McDonald in *Fair Fight Action, Inc. v. Brad Raffensperger* (Case 1:18-CV-5391-SCJ).

agree with Georgia's conclusion that a given registrant is contained in the NCOA data. The broader takeaway is that linking registrations to NCOA data is challenging, and improperly using NCOA data can potentially generate a substantial number of registration doppelgängers.

Improper interpretation of a record linkage can also impede the ability of eligible registrants to vote even when a registrant is correctly linked to their own record in another database. One issue that my research highlights is that it can be hard to determine a registrant's current address when a record linkage process determines that the same registrant is registered to vote at two locations. For example, Crosscheck suggested that election administrators initiate list maintenance on the registration with the earlier registration date when its data showed that the same registrant was registered to vote in two different states. However, my research shows that it is not always the case that a registrant is voting at the address with the more recent registration date.[7] One of the challenges here is that states sometimes are reporting slightly different information in a field like registration date, making it so that registrants sometimes currently reside at the address with the earlier registration date. More broadly, this finding illustrates that election administrators need to think about the quality of the data being linked, in addition to the quality of the record linkage, when evaluating the likelihood that a registrant who remains eligible to vote is impeded from doing so because of a list-maintenance protocol. Failing to recognize the limitations of the data commonly used in these protocols can initiate list maintenance against a substantial number of registrants who remain eligible to vote.

III. NVRA and List Maintenance

Under the NVRA, a registrant must be given notice and the opportunity to vote in the next two general elections before their registration is canceled, unless the registrant authorizes the cancelation. Typically, this means that when a jurisdiction initiates list maintenance on a registration, the registration moves from active to inactive status, with the jurisdiction attempting to notify the registrant of this status change, usually using a postcard. The registrant must be given two federal elections to confirm their registration status before the registration is canceled. It was this provision that ultimately caused SEA 442 (2017) – which permitted Indiana counties to cancel the registrants flagged by Crosscheck without notice and without waiting through two general election cycles with no voter activity – to be struck down in the courts.[8]

While the NVRA provides protections from some list maintenance policies that could be especially disenfranchising, these protections are not sufficient to prevent poorly contrived list-maintenance protocols from unnecessarily disenfranchising voters. First, litigation only blocked a policy like Indiana's SEA 442 (2017) once it had already been passed. Second, the NVRA does not stop Indiana or any other state from using flawed data, like Crosscheck data, to move registrants from active to inactive status. Moving eligible registrations from active to inactive status could reduce voter turnout in a number of ways. First, having an eligible registration moved from active to inactive may reduce a registrant's confidence in the electoral system. Second, many states only send certain forms of election mail that may mobilize registrants, such as sample ballots, to active registrants. Likewise, campaigns often exclude inactive registrants from their get out the vote efforts. Third, moving an eligible registration from active to inactive

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[7] Ibid 2.

[8] *Common Cause Indiana v. Lawson*, 937 F.3d 944, 958-59 (7th Cir. 2019).

status may eventually result in an eligible registration being canceled as a significant number of registrants exercise their right to abstain from voting in two successive federal elections. For example, there were about 90,000 registrants who voted at their address of registration in the 2016 presidential election in Florida and North Carolina who had not cast a vote at that address of registration since the 2008 presidential election.[9] Finally, some states are exempted from the NVRA because of their longstanding use of Election Day registration. While Election Day registration provides an important safeguard if a poorly contrived list-maintenance protocol is implemented, Election Day registration is not a perfect substitute for remaining registered for many of the same reasons why it is disenfranchising to move eligible registrations from active to inactive status.

One factor that makes it more problematic when list maintenance is initiated based on flawed data, like Crosscheck data, is that few eligible registrants confirm their address when they are mailed a notification informing them that list maintenance has been initiated. This is demonstrated by a study that I conducted examining registrants who were incorrectly flagged as potential movers in Wisconsin by the Electronic Registration Information Center (ERIC) in late 2017.[10] ERIC is a non-profit corporation governed by member states, which currently assists 30 states and the District of Columbia in list maintenance efforts.

In late 2017, the Wisconsin Elections Commission (WEC) mailed out postcards to 341,855 registrants that ERIC flagged as potential movers asking them to confirm their registration to avoid having their registration canceled. 6,153, or about 1.8 percent, of the registrants mailed a postcard confirmed their registration.[11] My study estimates that at least double that amount voted at their address of registration during one of the four statewide elections that Wisconsin held in 2018.[12] This means that, at a minimum, 2 out of 3 registrants who continued to reside at their address of registration failed to confirm their registration after being sent a postcard asking them to do so. Some of the reasons why this occurred is because registrants never saw the postcard sent by WEC, and those that did failed to understand its significance for the status of their registration. Importantly, my research uncovered no evidence suggesting there were any extenuating circumstances surrounding the mailing of postcards that would have caused recipients to be more or less likely to respond to them in this case than in other contexts.

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[9] Herron, Michael C and Daniel A. Smith. 2018, "Estimating the Differential Effects of Purging Inactive Registered Voters." 2018 Election Sciences, Reform, and Administration Conference University of Wisconsin-Madison (available from https://esra.wisc.edu/wp-content/uploads/sites/1556/2020/11/herron.pdf).

[10] Huber, Gregory, Marc Meredith, Michael Morse, Katie Steele. 2021. "The Racial Burden of Voter List Maintenance Errors: Evidence from Wisconsin's Supplemental Movers Poll Books." Science Advances 7(8).

[11] Wisconsin Elections Commission. 2019. "Assessment of Wisconsin's Electronic Registration Information Center (ERIC) Participation." (available from https://elections.wi.gov/sites/elections.wi.gov/files/2019-03/Open%20Session%20Commission%20Meeting%20Materials%20AMENDED%203.11.2019.pdf).

[12] Ibid 10.

IV. Race, Ethnicity and List Maintenance

One primary focus of my study focusing on registrants flagged by ERIC in Wisconsin in 2017 is to investigate whether there is any evidence that minority registrants flagged by ERIC were more likely to reside at their address of registration than White registrants flagged by ERIC. Previous research highlights cases in which minority registrations are more likely to be removed than White registrations,[13] as well as evidence that removing the protections of Section 5 of the Voting Rights Act caused an increase in registration removals.[14] But examining whether registrants who are minority are more likely than registrants who are White to vote at the registration address flagged by ERIC is a more direct test of differential burden.

My study finds minority registrants are substantially more likely than White registrants to vote at the address flagged by ERIC.[15] The differences are not only statistically significant, but also substantively important with minority registrants being about twice as likely as White registrants to be vote at their address of registration. Even larger differences are found when focusing specifically on the differences between White and Black registrants. Importantly, this happened even though Wisconsin was relying on ERIC data, which is generally thought to be high quality and is used in many states' list-maintenance protocols. This was the first time that Wisconsin used ERIC data to assist in list maintenance, and one of the issues highlighted by the WEC in its postmortem were unexpected data-quality issues with the data provided by the Wisconsin DMV.[16] This highlights the potential for new list-maintenance protocols to impede a substantial number of eligible registrants, and particularly eligible minority registrants, when they are first enacted.

While the data do not allow me to tease out exactly why minority, and especially Black registrants, are more likely to be incorrectly flagged as moving, I believe that residential mobility is an important part of the story. It may be more challenging to identify the current address of minority registrants than White registrants using administrative records because data show that minorities are more likely than Whites to live at addresses for short amounts of time.[17] Election administrators report that they are better able identify the address that someone is moving from and the address that someone is moving to in ERIC data the longer that someone lives at an address.[18] I also theorize that there may be circumstances when people from multi-unit buildings and multi-generational households are more likely to be incorrectly flagged as moving, both of which could disproportionately affect minority registrants, although I do not find evidence that this happened in this case.

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[13] Morris, Kevin and Myrna Perez. 2018. "Florida, Georgia, North Carolina Still Purging Voters at High Rates." Brennan Center for Justice Technical Report (available from https://www.brennancenter.org/our-work/analysis-opinion/florida-georgia-north-carolina-still-purging-voters-high-rates).

[14] Feder, Catalina and Michael G Miller. 2020. "Voter Purges After Shelby." *American Politics Research* 48(6):687-692.

[15] Ibid 10.

[16] Ibid 11.

[17] For evidence that minorities are more likely to frequently move than Whites, see National Survey of Children's Health. 2016 (available from https://www.nschdata.org/browse/survey/results?q=5225&g=606).

[18] Brater, Jonathan, Kevin Morris, Myrna Perez and Christopher Deluzio. 2018. "Purges: A Growing Threat to the Right to Vote." Brennan Center for Justice Technical report (available from https://www.brennancenter.org/our-work/research-reports/purges-growing-threat-right-vote).

V. Election Integrity and List Maintenance

Political science research is also helpful for thinking about the consequences of false negatives when conducting list maintenance. False negatives in this context refer to cases in which a list maintenance is not initiated despite a registrant no longer being eligible to vote at their address of registration. While there are other costs to keeping ineligible registrations on the rolls, arguably the most salient concern is that ineligible registrations could be used to cast fraudulent votes.

One concern about ineligible registrations is that registrants with two or more registrations may commit voter fraud by casting a vote using each of these registrations. My research explicitly addresses this possibility and tries to estimate the number of cases in which the same person cast a ballot in two states in the 2012 presidential election.[19] I conclude that double voting is extremely rare, particularly when compared to number votes that would be impeded by the list-maintenance protocols that would be needed to remove the registrations that may have been used to cast two ballots. One strategy suggested by Crosscheck was to initiate list maintenance on the registration with the earlier registration date. I find that doing this would impede approximately 300 legitimate votes for each double vote that potentially would be prevented. Overall, my research finds substantially fewer than 1 in every 4,000 voters cast two ballots, with the exact estimate depending how often registrations were inaccurately marked as being used to vote. While I do not know exactly how often this occurs, an audit that I conducted of Philadelphia poll books suggests it happens with enough frequency so that it likely explains a significant portion, if not nearly all, of the cases in which two registrations belonging to the same individuals were both marked as being used to vote in the 2012 presidential election.

Another concern about ineligible registrations is that they can be used in efforts to commit election fraud. In this context, election fraud refers to supporters of a candidate or candidates casting votes using ineligible registrations with a goal of increasing the vote share of their preferred candidate or candidates. The registration records of registrants who are known to be deceased may be particularly attractive to use when committing election fraud, because none of these registrants will show up to vote and discover that their registration has already been used. However, there is no evidence that the registrations of deceased registrants systematically are used to cast ballots. One study focusing specifically on Washington State between 2011-2018 estimated a grand total of 14 votes were cast using the registration of a deceased voters over this time period.[20]

Ultimately, research finds little evidence that ineligible registrations are used to commit voter fraud or election fraud. This is consistent with the broader political science research that

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[19] Ibid 2.

[20] Jennifer Wu, Chenoa Yorgason, Hanna Folsz, Cassandra Handan-Nader, Andrew Myers, Tobias Nowacki, Daniel M. Thompson, Jesse Yoder, and Andrew B. Hall, 2020. "Are Dead People Voting by Mail? Evidence from Washington State Administrative Records." Stanford University working paper (available from https://stanforddpl.org/papers/wu_et_al_2020_dead_voting/).

finds little evidence of either election or voter fraud of any form.[21] This does not mean we should not engage in list maintenance, as there are other reasons besides preventing fraud for removing ineligible registrations. But it further emphasizes why electoral integrity is bolstered when there are policies that protect eligible registrants from having list-maintenance initiated against their registration based on flawed data or methods.

VI. Conclusion

It is essential that election administrators conduct high quality list maintenance to ensure that voting remains accessible and maintain our electoral integrity. My testimony highlights the limitations of the data used in list-maintenance protocols that makes this one of the most challenging elements of an election administrator's job. When an election administrator fails to recognize these limitations, it can jeopardize a registrant's ability to vote even though they remain eligible to vote at their address of registration. While the protections of the NVRA help to prevent some of the negative consequences of poorly conceived list-maintenance protocols, these protections have proven to be insufficient in recent years to prevent data from being improperly used to initiate list-maintenance against a substantial number of eligible registrants. This is especially problematic given my research showing that minority registrants may be more likely than White registrants to be incorrectly identified as being no longer eligible to vote at their address of registration. As such, more federal oversight over list-maintenance protocols is justified to ensure these protocols are not reducing the political participation of groups who have historically faced greater barriers to accessing the polls.

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[21] Cottrell, David, Michael C Herron, and Sean J Westwood. 2018. "An Exploration of Donald Trump's Allegations of Massive Voter Fraud in the 2016 General Election." *Electoral Studies* 51: 123-142; Minnite, Lorraine C. 2010. *The Myth of Voter Fraud*. Ithaca, NY: Cornell University Press.

Chairman BUTTERFIELD. Thank you, Dr. Meredith.

Ms. Phillips, you are now recognized for five minutes.

STATEMENT OF KAYLAN PHILLIPS

Ms. PHILLIPS. Chairman Butterfield, Ranking Member Steil, members of the Committee, thank you for the invitation to testify today. I am litigation counsel for the Public Interest Legal Foundation, a nonpartisan charity devoted to promoting election integrity and best practices for election officials.

A significant problem facing America's electoral process is the chronic inaccuracy and lack of integrity in the voter rolls that list the individuals registered to vote in local, State, and Federal elections.

As an initial matter, I implore the Committee to reconsider the use of the term "purge" when referring to list maintenance practices. Historically speaking, purges are often violent systemic acts of removing political, racial, or ethnic groups from society. Simply put, list maintenance is good public policy.

For example, the Public Interest Legal Foundation discovered one Pennsylvania registrant who had seven active registrations.

The failure to maintain a continuous program of reasonable list maintenance causes many problems, including inaccurate voter rolls and misallocation of election resources and funds by both election officials and candidates.

The Public Interest Legal Foundation has developed a robust data analysis program with particular emphasis on voter registration list maintenance audit functions.

In essence, the foundation can see how well of a job States are doing to identify and timely remove registrants who are deceased, relocated, exist in duplicate or worse, and may be claiming improper addresses as residences.

The foundation recently settled a Federal lawsuit against the Pennsylvania Department of State focused on the question of whether the Commonwealth was performing reasonable efforts to remove deceased registrants from the rolls per Section 8 of the National Voter Registration Act of 1993.

Foundation researchers found in excess of 21,000 registered voters positively matched against verifiable death records, some with dates of death dating back as far as the late 1990s.

In the aftermath of the 2020 election, lawmakers must come to understand the overall quality of an election experience relying heavily on mail ballots rests on the reliability of the voter registration lists. Vote by mail plus inaccurate registration lists equals problems.

By expanding the removal categories under the National Voter Registration Act, we can reap the benefit of more detailed accounting practices and hedge the risk of a single person being automatically mailed two ballots with variations of their own names on it.

In closing, we have seen marked improvement in voter roll quality over the past decade. Many States are showing noteworthy innovations in maintaining lists despite Federal mandates based on practices and technologies from nearly 30 years ago.

Congress can act to help identify and spread those best practices.

The time for measured action is now. Election integrity policies have sustained popularity for years and are showing renewed spike in interest.

I look forward to any further questions. Thank you for the opportunity to appear.

[The statement of Ms. Phillips follows:]

Testimony of
Kaylan Phillips

Before the U.S. Committee on House Administration
Subcommittee on Elections

On

Voting in America: The Potential for Voter List 'Purges' to Interfere with Free and Fair Access to the Ballot

May 6, 2021

Kaylan L. Phillips
Litigation Counsel
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Chairman Butterfield, Ranking Member Steil, members of the Committee, thank you for the invitation to testify today.

I am Litigation Counsel for the Public Interest Legal Foundation, a non-partisan charity devoted to promoting election integrity and best practices for election officials.

A significant problem facing America's electoral process is the chronic inaccuracy and lack of integrity in the voter rolls that list the individuals registered to vote in local, state, and federal elections.

Federal law requires states to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of—(A) the death of the registrant; or (B) a change in the residence of the registrant...." 52 U.S.C. § 20507(a)(4)(A).

Simply, list maintenance is good public policy. For example, we discovered one Pennsylvania resident that had seven active registrations because a third-party voter drive registered him seven times in the weeks before the 2016 Election. The failure to maintain a continuous program of reasonable list maintenance causes many problems, including inaccurate voter rolls and misallocation of election resources and funds by both election officials and candidates.

The Public Interest Legal Foundation has developed a robust data analysis program with particular emphasis on voter registration list maintenance audit functions. In essence, the Foundation can see how well of a job states are doing to identify and timely remove registrants who are deceased, relocated, exist in duplicate (or worse), and may be claiming improper addresses as residences.

Our data findings are deployed in a variety of means, ranging from direct leads to voter registrars for potential follow-up maintenance, litigation, or *amicus* briefs.

As an initial matter, I implore the Committee to reconsider the use of the term "purge" when referring to list maintenance. Historically speaking, purges are often violent, systematic acts of removing the political, racial, or ethnic groups from society.

That same rhetoric undergirds major concepts within H.R. 1, the For the People Act, and would hamper election officials' abilities to efficiently and accurately maintain voter rolls if it were to become law.

According to the Foundation's review of public information, **America's voter rolls shed a total of 62.5 million registrations from January 2010 to the end of 2018.** Reasons for removal nearly split between relocation (29%), death (21%), and two-cycle inactivity (30%). Felony removal and mental incapacity together consist of less than 3 percent. The remainder are locally designed measures for cancellation, such as duplicate and foreign national detections.[1]

The Foundation recently settled a federal lawsuit against the Pennsylvania Department of State focused on the question of whether the Commonwealth was performing reasonable efforts to remove deceased registrants from the voter rolls per Section 8 of the National Voter Registration Act of 1993.

Foundation researchers found an excess of 21,000 registered voters positively matched against verifiable death records – some with dates of death dating as far back as the late 1990s.

During the 2020 Primary and General Elections, Clark County (Las Vegas), Nevada, agreed to automatically mail every registered voter a ballot in light of pending litigation. Post-election research efforts found that a total of 223,000 primary ballots and other 92,000 general election ballots were directed to outdated addresses and were returned undeliverable. For a sense of scale, Nevada's Electoral College votes were awarded on a margin of less than 33,000.[2]

In the aftermath of the 2020 Election, lawmakers must come to understand that the overall quality of an election experience relying heavily on mail balloting rests on the reliability of the voter registration lists. Vote-by-mail plus inaccurate registration lists equals problems.

We do not need H.R. 1 to generate improvements to our election systems. Instead, adjustments to existing federal laws would create positive downstream effects on voter registration list maintenance and election administration.

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[1] U.S. Election Assistance Commission EAVS 2012-2018

[2] PILF; 92K Clark County Mail Ballots Went to Wrong Addresses in 2020 Presidential Election (March 10, 2021), https://publicinterestlegal.org/reports/92k-clark-county-nv-mail-ballots-went-to-wrong-addresses-in-2020-presidential-election/

For example, the federal voter registration list maintenance mandates found in the National Voter Registration Act should be expressly and unambiguously expanded to include eligibility checks and list hygiene programs.

In late April, Fresno County disclosed that it was considering a $4 million investment to engage a data company capable of leveraging credit bureau information to identify duplicate and other registration records in need of maintenance attention.[3] If Congress does not act to modernize the cleanup expectations to fit today's electorate, localities must continue to work unilaterally.

By expanding the removal categories, we reap the benefit of more detailed accounting practices and especially hedge the risk of a single person being automatically mailed two ballots with variations of their own names on them.

In closing, we have seen a marked improvement in voter roll quality over the past decade.[4] Many states are showing noteworthy innovations in maintaining lists despite federal mandates based on practices and technologies from nearly 30 years ago. Congress can act to help identify and spread these best practices.

The time for measured action is now. Election integrity policies have sustained popularity for years and are showing renewed spikes in interest. Voter ID is in high demand.[5] New polling from *The Hill*/HarrisX notes that a plurality of Americans demands more sophisticated voter integrity procedures in general.[6]

I look forward to any further questions. Thank you for the opportunity to appear.

Date: May 6, 2021
Respectfully submitted,
Kaylan L. Phillips

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[3] *The Fresno Bee*; How much is voter confidence worth? Fresno County could spend $4 million or more (April 27, 2021), https://www.fresnobee.com/news/politics-government/article250984619.html
[4] PILF; *Critical Condition* (September 16, 2020), https://publicinterestlegal.org/reports/critical-condition-american-voter-rolls-filled-with-errors-dead-voters-and-duplicate-registrations/
[5] Rasmussen Reports; 75% Support Voter ID Laws (March 17, 2021), https://www.rasmussenreports.com/public_content/lifestyle/general_lifestyle/march_2021/75_support_voter_id_laws
[6] *The Hill*; Poll: Plurality of voters say stricter laws needed to prevent voter fraud (May 3, 2021), https://www.msn.com/en-us/news/politics/poll-plurality-of-voters-say-stricter-laws-needed-to-prevent-voter-fraud/ar-BB1gjTTI?li=BBnbcA1

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Kaylan L. Phillips joined Public Interest Legal Foundation in 2012. She has litigated election law and constitutional law cases across the nation, from Washington state to Maine. Kaylan has extensive experience at every level of litigation in state and federal court, including the Supreme Court. She also has experience representing clients before federal and state administrative agencies. Kaylan has also authored numerous *amicus curiae* briefs on state and federal election law issues. Kaylan received her B.A. (with honors, 2005) from the University of Oklahoma and J.D. (2008) from the University of Tulsa. She is admitted to practice law in the State of Oklahoma, State of Indiana, the District of Columbia, and in many federal district and appellate courts.

Chairman BUTTERFIELD. And thank you, Ms. Phillips, for your testimony.

It is now time for member questions. I will go in the following order.

Mr. Aguilar, you should go first.

Mr. AGUILAR. Thank you so much, Mr. Chairman. I appreciate you having this hearing, and Chairperson Lofgren, Ranking Member Steil, and Ranking Member Davis for being here.

And all of our witnesses who took the time to be here, thank you so much.

You know, we heard a lot here about voter list maintenance and how it can hurt Americans' ability to vote.

Dr. Meredith, Ms. Lakin, and Attorney General Kaul, can each of you provide just one way that list maintenance can occur without removing Americans' access to the ballot box?

Dr. Meredith.

Mr. MEREDITH. Congressman, I will go first because I was named first.

I think there are ways that you can improve the process to reduce the likelihood of errors in either direction. Whenever there is uncertainty you can never be sure you are going to hit one way or another, but your goal is to do the best that you can to reduce your errors. Your goal can never be zero errors.

But I think one piece of data that is very helpful in voter registration databases is the last four digits of an individual's Social Security number.

In cases where you have access to the last—in a case where both States have access to the last four digits of someone's Social Security number, both States do, they can make much more accurate assessments when they observe someone with the same first name, last name, and date of birth in their registration files to know whether those are the same person or the so-called registration doppelganger.

Mr. AGUILAR. Ms. Lakin.

Ms. LAKIN. So I think there are a number of ways that voter list maintenance can be improved.

One example I would give is perhaps automatic voter registration, which is a way of both facilitating participation and also making sure that voter rolls are more accurate by creating a constant stream of updates between registration agencies, other State agencies, and elections officials.

About 19 States, including Representative Davis' home State of Illinois, have in recent years adopted these kinds of forms of automatic voter registration, which ensures that when voters move, for example, their registrations are automatically updated with the State. I think this is one really good way of ensuring both the accuracy of the voter rolls and ensuring that, at the very least, reducing the risk that voters are improperly removed from the rolls.

Mr. AGUILAR. Thank you.

General Kaul.

Mr. KAUL. Yeah. There are very useful ways to utilize cross-State data like the ERIC data that I was talking about before. One of the purposes of that data is to encourage States to reach out to people who aren't registered and to help them get registered to vote.

At the same time, that data can also be helpful in providing information to election administrators to identify cases where there might potentially be voters who should be deactivated.

What is important I think, though, is not to just take that data and act based on that data alone, but rather to follow up, and, for example, if you believe that somebody who is registered may have died, to follow up and get confirmation from vital records as to what that data indicates may be the case.

Mr. AGUILAR. Thank you. I appreciate the answer.

Ms. Phillips, in 2016 and 2017 Public Interest Legal Foundation prepared a report titled "Alien Invasion" that alleged widespread noncitizen registration in Pennsylvania and Virginia and included highly sensitive personal information of numerous voters. Is that correct?

Ms. PHILLIPS. I disagree with the classification, but there is a report that we published called "Alien Invasion," yes.

Mr. AGUILAR. The report was found to include inaccuracies. Many of the voters listed in the report were, in fact, citizens properly registered to vote. Is that correct?

Ms. PHILLIPS. The report relied upon data from the State of Virginia, and if there was any problem with that data, that would lie in the hands of the State of Virginia. And, in fact, we sued the State of Virginia for improper list maintenance.

Mr. AGUILAR. Was the president and general counsel of your organization ever required to issue a written apology to voters that had incorrectly been described in the report as noncitizens?

Ms. PHILLIPS. There is an apology. He made an apology.

Mr. AGUILAR. Was he required to issue the apology?

Ms. PHILLIPS. Not to my knowledge.

Mr. AGUILAR. Your organization has brought numerous efforts to try and force States and local governments to remove voters from their voting rolls. And given that your organization has been proven to not accurately determine whether voters are properly registered, why is your organization in a better position than local elected officials to decide which voters should be removed?

Ms. PHILLIPS. Well, I would like to know what inaccuracies you have discovered. In fact, we have offered a bounty, so to speak, for anyone who can find somebody who was improperly removed resulting from our enforcement actions, and to date, no one has come forward saying that they were improperly removed as a result of our actions.

Mr. AGUILAR. Thank you, Mr. Chairman. My time is up.

Chairman BUTTERFIELD. Thank you, Mr. Aguilar.

At this time, I will recognize the Ranking Member, Mr. Steil, for 5 minutes.

Mr. STEIL. Thank you, Mr. Chairman.

What I am hearing today is, I think we can all agree we want every eligible voter to be able to cast a ballot. My objective is to ensure that it is easy to vote and hard to cheat.

There are two key reasons why a person registered in a jurisdiction would need to be removed from the voter roll: The person is either deceased or the person has moved out of the jurisdiction or is otherwise disqualified. Federal law requires removing these registrants.

In general, in Wisconsin, we do a pretty good job removing, in particular, deceased persons from the voter rolls. But at times, and in particular when the death is closely timed to the election, there have been instances of a person voting illegally on behalf of a dead person.

Mr. Kaul, are you familiar with a case of voter fraud in Ozaukee County from 2020 in which a Wisconsin woman was charged with voting on behalf of her dead partner?

Mr. KAUL. I have read reporting about that, yes.

Mr. STEIL. Very good. I think it is a case worthwhile looking into, because I think it shows that there are instances, when voter rolls are not clean, someone may try to take advantage of the situation. I think it shows the importance of making sure the voter rolls are accurate and up to date.

And it is much more difficult, admittedly, to clean up voter rolls when someone moves because there is less paperwork associated than when someone has passed away.

And the question before us today is, how do we clean up and remove ineligible voters from our voter rolls to avoid any illegal votes while still making it easy for folks to vote legally?

And so, Mr. Kaul, if I can, should election officials in Wisconsin be prioritizing maintaining accurate voter rolls, in your opinion?

Mr. KAUL. Yes. I think list maintenance is important for all the reasons that you have heard spoken about today. And I also think in Wisconsin we have same day registration, which I encourage all States to adopt because it is really helpful.

Mr. STEIL. I am going to get to that in just a second. I had that in my opening remarks because I think that is a key point here, and, in particular, how it plays out with voter ID.

But, Mr. Kaul, is it correct that the original—not the original, the 2019 active movers list from the Wisconsin Elections Commission, that is the list of individuals who report on an official government transaction form an address different from their voter registration address, included, I think as you said, 232,000 individuals?

Mr. KAUL. It was approximately 230,000, yes.

Mr. STEIL. In that neighborhood. And Wisconsin was able to confirm about 7 percent or about 17,000 of those individuals were registered at their original address, correct?

Mr. KAUL. That is approximately right, yes.

Mr. STEIL. That is the number I have from the Wisconsin Elections Commission.

And so then I think the question becomes, what about the other 93 percent of the individuals, the overwhelming majority of the people on the 2019 original movers list, what happened to them?

And from the Wisconsin Elections Commission we were able to discover that 58 percent registered at a new address, which is great—they have moved, they are engaged in the process, that is appropriate, those folks it would be rational to bring off the list then—3.6 percent were deemed inactive for reasons such as moving out of State, being deceased, or another reason.

And then the question really comes to, what is the final third? The roughly 30 percent or 71,000 people still on the active mover

list are there because they didn't respond to a simple request for information from WEC.

But there are also further indications that they have moved and they have not requested continuation of address, they have not re-registered to vote at a new address, and they did not vote in the 2020 election.

WEC confirmed that no one in this list of roughly 71,000 people did vote in the 2020 election, which is, to me, further evidence that this might have been a list of folks that have moved. And then, Mr. Kaul, you argued in court to keep these 71,000 individuals on the voter rolls.

And so the question becomes, what is the plan to keep the voter rolls accurate if we don't ultimately remove ineligible voters?

And in the response to Mr. Aguilar asking what is the plan, I know we can do additional followup, but is there a specific plan that we could do in Wisconsin to specifically remove voters that all evidence indicates have moved and should be removed from the rolls?

Mr. KAUL. Yeah. So, first of all, what we argued in court was that the Wisconsin Elections Commission was not required to remove a number of voters from the rolls. And the figure that you cited, the 230,000 figure, that shrunk significantly over time for the reasons that you mentioned.

Mr. STEIL. And it came down to 70,000 people total.

But here, let me just move as to why I am so concerned.

H.R. 1, as you may know, was passed by the House and would really gut voter ID laws. And when this issue is combined in Wisconsin, it gives me great pause that we have 71,000 people on the rolls that appear to be incorrectly on the rolls, by all accounts, and we are looking at gutting voter ID law with H.R. 1.

And so in Wisconsin and States across the country, we have voter rolls that are problematic and not accurate. And at the same time, we have Nancy Pelosi and attorneys working to gut voter ID law, and further, H.R. 1 would create a one-size-fits-all approach.

So I will leave it with this, because I know my time is running out, Mr. Chairman.

I want it to be easy to vote and hard to cheat. And rather than working to remove key voter integrity provisions, my priority would be for us to work to find ways to really improve the confidence in our elections by working to appropriately clean up the lists.

And with that, I will pause and yield back to you, Mr. Chairman.

Chairman BUTTERFIELD. Thank you. The Ranking Member yields back.

At this time, I will recognize Ms. Leger Fernandez for 5 minutes.

Ms. LEGER FERNANDEZ. Thank you, Mr. Chair, for holding this important hearing to hear about voting roll purges as a means of suppressing access to the ballot.

And I want to really thank the witnesses for lending us your expertise and viewpoints.

So the 2020 Presidential election saw record numbers of Americans, including record numbers of Latinos, turn out to vote. And this was in spite of certain State actions designed to limit access to the polls, especially for Latinos and other communities of color. And we see that certain States continue to pursue efforts to limit

access to the ballot, including using the purging of voter rolls as an excuse.

So I would note that while HAVA and Federal and State laws require maintenance of the rolls, it must be nondiscriminatory.

So that is the issue that we are concerned about today, is how can we ensure it is nondiscriminatory, especially when we have so many instances of States choosing to target Latinos and other minority voters in that process.

For example, both Florida and Texas have engaged in high-profile efforts to try to remove alleged noncitizens, predominantly Latino voters, from the voting rolls.

Ms. Phillips, after facing legal challenges, those two States were forced to abandon those efforts. Indeed, the Texas Federal court found that the alleged problem of voter fraud was, quote, "infinitesimally small."

And, as Ms. Lakin noted, the court further found that Texas' State actions to purge the voter rolls, which were very similar to Florida's, exemplified, as you noted, exemplified the power of government to strike fear and anxiety and to intimidate the least powerful among us.

Ms. Phillips, as a litigator in these matters, have you read these orders, the *Texas LULAC* v. *Whitley* and *Arcia* v. *Florida Secretary of State?*

Ms. PHILLIPS. Yes, I have.

Ms. LEGER FERNANDEZ. Mr. Chair, I seek unanimous consent to enter into the record the two documents. As noted, the first was the 11th Circuit decision holding that Florida's voter purge program violated the law, and the second was the district court order requiring that Texas officials halt the removal of voters from the polls.

Chairman BUTTERFIELD. All right. Without objection.

Ms. LEGER FERNANDEZ. Ms. Phillips, you opined in your testimony that inaccurate voter rolls is a significant problem in America's electoral process.

Do you think it is a problem if these purges remove a disproportionate number of eligible voters of color from the voter rolls? This is a yes or no question.

Ms. PHILLIPS. Absolutely. No eligible voter should be removed.

Ms. LEGER FERNANDEZ. Thank you.

You know, contrary to what we hear in sometimes capitalize tweets of fraud and big news splashes, there is not actually evidence that there are many undocumented immigrants committing widespread voter fraud.

Dr. Meredith, in your view, what is the result, what is the actual result when we have these targeted, highly publicized efforts to remove noncitizens from the voter rolls?

Mr. MEREDITH. I think you want to think both about the direct and indirect effects that election actions will have. There are potential direct effects if an eligible person's registration gets removed or the direct effects if an action results in a registration being removed that prevents an eligible vote from being cast.

But I also think it is important to keep in mind that voters don't have complete information. A lot of times I like to remind my Intro-

duction to American Politics class that only two-thirds of Americans know the name of the Vice President.

And so I think one concern I have when you have high-profile efforts is that people don't always understand the exact actions being taken and can misconstrue actions to potentially have broader effects than they do.

So, for example, I have done research on voter ID laws and show that a lot of people don't understand that if they don't have their ID on the day of the election there may be a process for them to still cast a ballot via provisional ballot.

And so I have concerns about any election policy that you don't just want to think about directly who the affected parties are but also indirectly what the consequences might be.

Ms. LEGER FERNANDEZ. Thank you, Mr. Meredith.

Ms. Lakin, you noted in your written testimony that many lawsuits brought by the Public Interest Legal Foundation and other activist organizations actually focused on jurisdictions with large Latino and Black populations and that these lawsuits were rejected.

Can you share how these cases could limit voting access for minority voters?

Ms. LAKIN. Yes, absolutely.

The problem with many of these voter roll purges, as we have discussed, is that in many cases the inaccuracies in the voter rolls, the type of information that is being collected, for example, noncitizen information, are going to target, unfortunately, voters of color most frequently.

When applied then in certain areas that have high populations of minority voters you are going to end up in a situation where you are inevitably disproportionately removing voters of color and minorities from the rolls, and that is extremely concerning.

Ms. LEGER FERNANDEZ. Thank you. My time is up. I yield back.

You need to unmute, Mr. Chair.

Mr. DAVIS. I think you are muted, Mr. Chair.

Chairman BUTTERFIELD. I was trying to use the space bar to unmute. I keep getting a message that it can be used as an unmute tool, but it didn't work.

But anyway, thank you, thank you to the gentlelady for your questions.

At this time, I will recognize the Ranking Member from Illinois, Mr. Davis.

Mr. DAVIS. Just a quick point of personal privilege. We will ask Jamie Fleet to send down the CAO to get your spacebar fixed, Mr. Chair. They will be there momentarily, I promise.

Chairman BUTTERFIELD. I think I was the problem, Rodney. I confess.

Mr. DAVIS. It is never user error, sir. Never user error.

Chairman BUTTERFIELD. Thank you.

Mr. DAVIS. I really enjoy these hearings. And I have traveled the country during the last Congress, talking about many of these issues.

And here is the good news. The vote suppressionists that we talk about in this Subcommittee, they have been doing a pretty crappy job over the last two election cycles, because we had historic mid-

term turnout, we had historic turnout in 2020, which is great, because that meant as many eligible voters in the United States were able to cast a vote for their preferred candidates.

And while we may not like the outcomes of elections, that is a positive that we all ought to celebrate.

And that leads me to my question.

So, Ms. Phillips, thanks again for being here today, again, with all the witnesses. Give us your definition of list maintenance for the Committee.

Ms. PHILLIPS. Certainly. List maintenance is ensuring that only eligible individuals are on the voter registration list.

Mr. DAVIS. Good. As you are aware, Section 8 of the NVRA governs the process for States to conduct list maintenance, which is critical for good election administration.

Can you briefly describe the criteria and requirements that must be met in order for a State to remove a voter from its registration rolls?

Ms. PHILLIPS. Sure. Section 8 requires that list maintenance be conducted for registrants who are deceased and who have been moved. And there are certain fail-safes in there to ensure that voters are not removed unless certain criteria are met.

Mr. DAVIS. Great.

There are many people who believe that voters are removed from their State's voters rolls solely as a result of not voting. That is not true, right?

Ms. PHILLIPS. That is not true.

Mr. DAVIS. What makes a voter inactive?

Ms. PHILLIPS. It depends on the State law. Oftentimes it is an indication from a number of sources that a voter has moved, a registrant has moved, for example, the National Change of Address database.

Mr. DAVIS. Okay.

Speaking of that, can you describe the voter notification process and really the timeframe that States must follow when removing inactive voters from the registration rolls according to law?

Ms. PHILLIPS. Absolutely. The problem is that this is State law specific. So it is difficult to explain every State's procedure.

However, in general, there will be a notice sent to the address that is on file and there will be steps that the registrant can take to confirm that the address is still valid.

And then, if the notice is returned to election officials, there are other steps that are then taken by the election official.

Mr. DAVIS. Okay.

And some States actually do multiple notices, correct?

Ms. PHILLIPS. That is correct.

Mr. DAVIS. Okay.

You state in your testimony that a significant problem facing America's electoral process is the chronic inaccuracy and lack of integrity in the voter rolls that list the individuals registered to vote in local, State, and Federal elections.

The foundation has conducted extensive research into the accuracy of various State voter rolls, right?

Ms. PHILLIPS. Correct.

Mr. DAVIS. In fact, your foundation has sued several States for failure to maintain accurate and current voter rolls as required by Federal law, correct?

Ms. PHILLIPS. That is correct. Not—we have sued counties and State election officials.

Mr. DAVIS. Okay.

And through your foundation's work, have you discovered State voter rolls that contain more voters registered in a jurisdiction than eligible voters that live in that jurisdiction?

Ms. PHILLIPS. Yes.

Mr. DAVIS. Voters registered at commercial addresses rather than residential addresses?

Ms. PHILLIPS. Yes.

Mr. DAVIS. What about voters registered at vacant lots?

Ms. PHILLIPS. Yes.

Mr. DAVIS. Deceased voters, dead voters?

Ms. PHILLIPS. Yes.

Mr. DAVIS. I know I am from Illinois. I shouldn't talk about that.

Nonresident voters?

Ms. PHILLIPS. I am sorry. What do you mean by nonresident voters? Not resident of the jurisdiction?

Mr. DAVIS. Correct.

Ms. PHILLIPS. Yes.

Mr. DAVIS. What about duplicate registrations?

Ms. PHILLIPS. Yes.

Mr. DAVIS. Noncitizen voters?

Ms. PHILLIPS. Noncitizen registrants, yes.

Mr. DAVIS. Noncitizen registrants. Okay.

Well, look, I think it is great to have these discussions. We are talking about vote fraud being infinitesimal, it is just such a small amount, it is just a little bit of fraud. You know, everything matters. Every instance of fraud matters.

Remember, we did not seat a duly elected Member from North Carolina's Ninth District because of voter fraud and the ballot harvesting provisions that were not legal in North Carolina but legal in California and others.

There are so many processes right now in our election process that we need to delve into that, but at the same time we have to encourage the positivity of how well we have done as a country in every State across this Nation in having historic voter turnout in the midterms and in the last election, the last Presidential election.

And I know some of my colleagues' heads might be exploding. They will say, "Turnout doesn't matter."

Well, it did when we were figuring out—when our predecessors were figuring out what covered jurisdictions would be in the original Voting Rights Act. It mattered then, it should matter today, and we are doing things right in this country.

And I thank all of our witnesses and my colleagues for being here today.

I yield back.

Chairman BUTTERFIELD. I thank you, Mr. Davis.

At this time the Chair recognizes the gentleman from Georgia, Mr. Loudermilk.

Mr. LOUDERMILK. Well, thank you, Mr. Chairman. I appreciate the opportunity to be here and appreciate this hearing, because voter maintenance is extremely important.

And before I begin my questions, I want to reiterate that this is a top priority for every Republican on the Committee, that every lawful vote be counted and that every qualified voter is able to vote safely. That is extremely important. It is the basis of our Nation and our election system.

The integrity of our elections should be paramount as we exercise our role on this Committee to oversee the Federal elections process, and that includes ensuring that voter rolls are kept up to date.

One issue that is of particular concern to me and many of my colleagues and one that I will continue to be vocal about addressing is the propensity for poorly maintained voter rolls to undermine public confidence in election results, especially with the increased prevalence of mass mail-in ballots like we saw in the 2020 election.

In fact, a member of my staff received three primary ballots during the last election cycle. The ballots did not belong to my staff member or anyone else who lived at that address, and they had lived at that address for several years.

And at the residence for the elections in the jurisdiction which he received the ballots, they did not live. Basically he lived in D.C. and these ballots came from Maryland to someone else's name. And, again, he had lived at that address from way beyond the previous election.

To be clear, these were not ballot applications but live ballots.

And in this scenario, if this scenario that had played out—now, he took pictures of these ballots and he showed them to me and he properly destroyed those ballots.

But if this scenario plays out in States across the country, the potential for millions of ballots to be sent out indiscriminately without people requesting them and to the wrong address creates the potential for fraud.

And he very well easily could have filled out these three ballots that weren't his. He is from Georgia, lives in D.C., received the Georgia ballot he requested, but received three ballots from Maryland he did not request to other people's names.

And this really brings doubt to the integrity of the election system.

Now, my questions.

Ms. Phillips, your foundation brought enforcement action against States for failing to conduct comprehensive list maintenance as required under the National Voter Registration Act, as the ranking member has brought up.

In your opinion, why are certain States reluctant to routinely conduct voter list maintenance?

Ms. PHILLIPS. In my opinion, the pressure has come from various interest groups not to maintain the rolls for myriad reasons. So the pressure is to do nothing.

It is also at times difficult to conduct list maintenance. It requires diligence. It requires consistency. And there may be lack of training. Various reasons why election officials would not conduct list maintenance.

Mr. LOUDERMILK. Okay. One thing you didn't mention was funding. Do you ever—have you ever encountered that maybe it is a lack of funding to do this?

Ms. PHILLIPS. Absolutely. And the problem is that having unclean rolls only makes the financial burden greater when you are mailing out pieces of mail to individuals that should not be registered to vote. So it is one of those tasks that should be a priority in order to trim budgets in other places.

Mr. LOUDERMILK. So you have mentioned that there is pressure from outside groups, which we are fully aware of in Georgia. There are a lot of groups putting a lot of pressure on the election system, on both sides.

But you have mentioned that they are putting a lot of pressure on some elected officials or government officials to not purge voter rolls. I note in some cases there are threats of lawsuits, et cetera, et cetera.

What impact does a State's failure to conduct their list maintenance have on the integrity of our election process?

Ms. PHILLIPS. As you mentioned, it is devastating to voter confidence. The example of one person receiving multiple ballots, especially for individuals that do not live in that location, those effects can be felt far and wide.

So it is a voter confidence issue and it also is just a misallocation of resources for these election officials that have in many cases very limited budgets anyway.

Mr. LOUDERMILK. Well, thank you.

And one last question for you. Are States required to coordinate with State or Federal agencies to verify voter information when conducting their list maintenance?

Ms. PHILLIPS. No.

Mr. LOUDERMILK. Okay.

Turning to Ms. Lakin.

Your state in your testimony that accurate rolls are appropriate and necessary for election administration. And I am glad to hear that the ACLU supports voter list maintenance.

In your testimony you highlight perceived problems with various databases available but don't mention alternatives. If States need accurate voter registration lists, what databases or alternative measures should they use to maintain their lists?

Ms. LAKIN. Thank you, Representative.

I think I mentioned earlier today that automatic voter registration, for example, is one solution, one assistive program that could provide assistance with maintaining accurate voter rolls, as well as ensuring that voters aren't improperly purged from the rolls.

In addition, having good notice and sufficient time for voters who may have been purged from the rolls inaccurately to correct the record is absolutely critical in this regard and is not always provided in the way that it should be provided, as is the case in Indiana where we have sued successfully multiple times.

Mr. LOUDERMILK. Well, and making sure that only legal voters are the ones casting the vote is important. I could go through multiple stories of even in this last election people that have moved as much as a decade before started receiving ballots again from the State they moved from.

And I have got numerous reports of that, and even people that are family members who called me and said, "Hey, I just want to let you know. You know I moved from State X 10 years ago. I just started getting a ballot again in this election"—which was ironic, that it was this election that they got the ballots that they had never—that they hadn't received since they left, which tells me it was a voter list issue.

So thank you, Mr. Chairman, for this hearing. I appreciate the time. And I yield back.

Chairman BUTTERFIELD. I thank the gentleman.

At this time I will recognize the gentlelady from Pennsylvania, Ms. Scanlon, for 5 minutes.

Ms. SCANLON. Thank you, Chairman Butterfield, for holding this very timely hearing.

Chairman BUTTERFIELD. It is not a Loudermilk 5 minutes. That is a Scanlon 5 minutes.

Ms. SCANLON. Can I have some of Davis' time maybe?

Chairman BUTTERFIELD. You could do a Davis time limit, sure.

Ms. SCANLON. Okay.

Chairman BUTTERFIELD. Yes.

Ms. SCANLON. Over the past decade we have seen a rise in modern day voter suppression techniques built upon a false narrative that our elections are vulnerable to widespread fraud.

This false, unsubstantiated narrative has been used to justify an array of voter suppression techniques, including strict voter ID laws, restrictions on hours and places of voting, and the practice under consideration today, voter roll purges.

Unlike gerrymandering, which has a long history of bipartisan abuse, these new techniques have been weaponized by one party to suppress the votes of those less likely to support that party and to energize its own supporters by claiming—without evidence—that our elections are subject to widespread fraud.

Of course, the members of this Committee and the entire world saw the damage that can occur when national leaders spread lies about the integrity of our elections, with exhibit A being the violent attack on the U.S. Capitol which occurred 4 months ago today.

Pennsylvania has a robust bipartisan election security system, including voter roll maintenance, which not only conducts secure and accurate elections twice a year, but also in the past year has managed to identify and prosecute those few bad actors who tried to commit election fraud. And it is worth noting that they were all supporters of the former President who were inspired by his unsubstantiated claims of rampant election fraud.

So we are talking about voter roll purges that have been initiated by some States, but I want to focus on efforts by groups such as Judicial Watch and the Public Interest Legal Foundation to force voter purges in areas that do not favor their candidates.

In the lead-up to the 2020 election, the group Judicial Watch attempted to force the State to purge hundreds of thousands of voters but focused on the three counties bordering Philadelphia, two of which I represent, which have increasingly trended to Democratic candidates over recent years.

Ms. Lakin, the ACLU intervened in this suit brought against Pennsylvania and its counties prior to the 2020 election. Can you

discuss what happened in that case and address Judicial Watch's allegations about mass defects in voter roll maintenance?

Ms. LAKIN. Yes, absolutely.

In this case, which was recently dismissed in March of 2021, there were allegations that the list maintenance process was incomplete, was unreasonable, or was insufficient.

In dismissing this case, however, the court concluded that the lawsuit was based on outdated information and data which is subject to all the problems that we have discussed earlier.

And the court also concluded that Judicial Watch based its lawsuit on—rejected the claim that just high discrimination alone should lead to an inference that counties have a list maintenance problem and targeting districts just based on that information alone leads to—is not a problem in itself.

And I should just flag very, very briefly that, because there is this notice and waiting process that has been highlighted by many members today and other witnesses, there is often a little bit of a lag before some voters that are to be removed are actually removed.

And so that in and of itself should not be a basis for forcing jurisdictions like your own to conduct overly aggressive purges based on information that is outdated and may, therefore, wrongly purge and disenfranchise voters.

Ms. SCANLON. Would it be fair to say that this group was not seeking for a global solution to Pennsylvania's voter roll situation if it was only targeting the most Democratic districts?

Ms. LAKIN. I think that would be fair to say, that it was targeting just the three districts that were included in the lawsuit.

Ms. SCANLON. Are you aware that, having had the case dismissed just in March, three days ago Judicial Watch has now tried to start the case all over again in the run-up to the 2022 elections?

Ms. LAKIN. I am, unfortunately, aware of that fact.

Ms. SCANLON. Unfortunately aware.

So one of the things we have seen is that Judicial Watch and these other organizations bring these suits. Very expensive, aren't they?

Ms. LAKIN. Litigation is often extremely expensive on both ends, on everybody's part.

Ms. SCANLON. So it wastes valuable public resources that could go into more election security, more election availability?

Ms. LAKIN. I think that is a fair statement.

Ms. SCANLON. Okay.

Is there anything we can do to reform the NVRA to prevent suits like the one that was brought here?

Ms. LAKIN. Yes. There are multiple ways that list maintenance can be improved. There can be additional protections for ensuring that overly aggressive purges aren't taking place.

For example, increased guardrails for using improper, unreliable, or outdated data; ensuring that there are additional checks on that information; ensuring that there is more notice that is provided for voters who may be flagged in that; and banning, for example, inaccurate proxies, for example, the failure to vote, which we have argued and have demonstrated is highly inaccurate as a trigger for removing someone from the rolls.

These are all different methods for ensuring that local jurisdictions and States aren't forced to conduct purges that are overly aggressive and wrongly disenfranchise thousands and thousands of voters.

Ms. SCANLON. Thank you.

And I see that my time is expired. I did want to involve Mr. Meredith from the University of Pennsylvania in the discussion, but I am afraid the Chair will have my head.

So thank you for your testimony, and I did appreciate your report.

Chairman BUTTERFIELD. Thank you, Ms. Scanlon. And you just got a chuckle from the staff. Thank you.

The Chair now recognizes himself for not more than 5 minutes.

Let me just address this to Ms. Lakin.

Ms. Lakin, what do you think are the most important changes that we can make to Federal election laws governing State voter list maintenance practices?

Ms. LAKIN. Thank you for that question, Chairman.

The Congress can do many things. I would point to the list maintenance and transparency and notice provisions in H.R. 1. Those go quite a long way.

In addition, there are these guardrails that I mentioned with Representative Scanlon that help to ensure that proxies that are unreliable, that are based on outdated databases are in place to ensure that voters are given security precautions before they are removed from the rolls.

I would also highlight—and this has come up in a few instances—that same-day registration, I will add that it does, in fact, provide at least some fail-safe for voters who may be erroneously purged from the rolls who can then show up at the polls, that they are able to register and vote at that time. That is at least a fail-safe option for those voters.

Chairman BUTTERFIELD. Thank you.

What about you, Dr. Meredith? Can you add any to this discussion?

Mr. MEREDITH. I think one thing I would like to see done is more modernization in how people are notified when there are questions about whether they are eligible to vote or not.

I think the cases that make me most concerned are when things like undelivered election mail trigger list maintenance action which is then responded to by sending them a postcard. If the problem is that there is an issue with the mail, you are not going get that postcard.

And so I think we need to be thinking about what forms of communication we can be using beyond postcards to make sure that voters actually see the information and can act upon it in a timely way.

Chairman BUTTERFIELD. Thank you. Thank you for that.

Let me now go to the attorney general.

Mr. Kaul, you have testified, I believe you said, in numerous cases to protect voters' access to the ballot, and that is a good background for the question that I need to ask you.

What are the most important tools at the Federal level, not the State level, but the Federal level to protect the right of the voter to exercise their franchise?

Mr. KAUL. That is right, Mr. Chair. I have litigated several voting rights cases.

Certainly the U.S. Constitution protections related to the right to vote are critically important. But the Voting Rights Act plays a critical role as well.

Strengthening the Voting Rights Act and providing greater clarity to how Section 2 applies, I think, is very useful.

It is also true that we have seen States since the Shelby County ruling restrict access to voting. So restoring some sort of regime like used to be in place under Section 5 would be extremely valuable.

And then rules that protect people's access to registration, like the NVRA, are also very valuable.

Chairman BUTTERFIELD. Attorney General, my staff tells me that you successfully defended the Wisconsin Elections Commission against an effort by a conservative group to compel—it was an interest group—to compel the purging of voters in your State.

Why are State and local election officials in a better position than private interest groups to determine whether to initiate proceedings?

Mr. KAUL. There are a few reasons. One is State and local officials can obtain local data and they can find things like death notifications that, when you have an outside interest group that is just using log scale data, they can't get into the details as well.

The other thing is election officials often have access to personal identifying information that is not publicly available. And so they can make a better determination often about whether two records relate to the same person or different people.

And then, of course, they have experience administering our elections. They are not there with an agenda other than to administer elections fairly and effectively.

Chairman BUTTERFIELD. Thank you.

I have got 30 seconds left, and let me conclude with Ms. Lakin.

How do State voter removal programs have the potential to discriminate against minority voters?

Ms. LAKIN. Well, there are a number of different ways. The database inaccuracies and flawed matching protocols that we have discussed play a really big part in this.

As I noted, in Texas the fraud effort there targeted naturalized citizens who are a group that, at least in Texas, 80 percent of that group were Black or Latinx or of Asian origin. The same was true in the Florida purge that attempted to target, again, noncitizens but ended up sweeping in naturalized citizens.

Matching protocols, as we talked about with Dr. Meredith, they rely on names and date of birth. They frequently disproportionately flag voters of color because of their naming conventions and higher rates of similar names.

These burdens also, they are halting the process of getting registered in the first instance. They fall more heavily on voters of color due to structural inequalities, structural racism, the history

of suppression in this country that make many of these activities much more difficult for voters to overcome.

Chairman BUTTERFIELD. Thank you.

Ms. LAKIN. Thank you.

Chairman BUTTERFIELD. Thank you. I think my 5 minutes has expired.

Let me just thank all of the witnesses for your very valuable testimony today.

And I thank the members for their questions. These have been some very insightful questions.

The members of the Committee may have additional questions for the witnesses. And, if so, we will ask you to respond to those in writing. The hearing record will be held open for those responses.

Again, I want to thank all of the witnesses for your very valuable testimony today. Many thanks to all of you for all that you do in the voting space, in the election space. You have been very valuable to this process, and I thank you for it.

We will continue to have these important hearings as we seek to comply with the Supreme Court's decision of 2013.

Without objection, the Subcommittee on Elections of the Committee on House Administration stands adjourned.

[Whereupon, at 3:25 p.m., the Subcommittee was adjourned.]

QUESTIONS FOR THE RECORD

HEARING
SUBCOMMITTEE ON ELECTIONS
OF THE
COMMITTEE ON HOUSE ADMINISTRATION
"VOTING IN AMERICA: THE POTENTIAL FOR VOTER LIST PURGES TO INTERFERE WITH FREE AND FAIR ACCESS TO THE BALLOT"
MAY 6, 2021
MAJORITY QUESTIONS FOR THE RECORD
FOR
THE HONORABLE JOSH KAUL
ATTORNEY GENERAL
WISCONSIN DEPARTMENT OF JUSTICE

1. You defended the State of Wisconsin against a lawsuit by the conservative Wisconsin Institute for Law & Liberty seeking to compel local officials to remove voters from their rolls.

    a. Why are these efforts by outside groups to try to purge voters problematic?

These efforts can lead to the deactivation of voter registrations of voters who are properly registered. Voter purge efforts could also cause voters to be confused about whether they remain actively registered. Litigation can require election officials to divert limited resources. And, claims that election officials failed to comply with the law—even if those claims are ultimately rejected—can undermine confidence in the integrity of elections.

    b. In the course of the litigation, what did you learn about the accuracy of databases used to identify voters who have potentially moved or who are registered in other jurisdictions?

Wisconsin's experience shows that the use of data like that used to create the ERIC movers report, even in conjunction with a mailing, can lead to thousands of voters being identified as having potentially moved even though they have not moved.

2. Your testimony notes that "the available evidence from Wisconsin shows that thousands of individuals identified by ERIC movers data as having possibly moved have not in fact moved and that minority voters are disproportionately likely to be incorrectly identified as having possibly moved." What do you recommend that Congress should do to protect voters, especially disproportionately impacted minority voters, from errant voter purge efforts?

I recommend that Congress pass legislation that strengthens the protections for voters under federal law, including the protections provided under the Voting Rights Act. Policies that facilitate voter registration, such as automatic voter registration, would also help protect voters.

3. Is there anything else discussed during the May 6 hearing to which you would like to respond? If so, please provide your responses here.

MINORITY QUESTIONS FOR THE RECORD
FOR
THE HONORABLE JOSH KAUL
ATTORNEY GENERAL
WISCONSIN DEPARTMENT OF JUSTICE

1. Is it true that before you were Attorney General you were a lead attorney challenging Wisconsin's requirement to show a photo ID at the polls?

Prior to serving as Attorney General, I worked on several voting rights cases, including a case involving challenges to Wisconsin's photo ID requirement for voting.

2. You challenged Wisconsin's voter ID law as a private attorney. Do you personally oppose Wisconsin's voter ID requirement?

Yes.

3. You opposed having the Wisconsin Elections Commission clean up the voting rolls. Do you have a plan to maintain an accurate voter roll in the state? If so, what is that plan to clean up the approximately 77,000 individuals who are still inaccurately on the voter rolls?

Wisconsin law provides for voter list maintenance. Subsequent to each general election, the WEC is required to mail a notice to each elector "who has not voted within the previous 4 years if qualified to do so during that entire period," Wis. Stat. § 6.50(1), and to change the registration status of any such elector who "has not applied for continuation of registration within 30 days of the date of mailing . . . from eligible to ineligible." Wis. Stat. § 6.50(2).

Local election officials are also empowered to assist with voter list maintenance in Wisconsin. Under Wis. Stat. § 6.50(3):

> Upon receipt of reliable information that a registered elector has changed his or her residence to a location outside of the municipality, the municipal clerk or board of elections commissioners shall notify the elector by mailing a notice by 1st class mail to the elector's registration address stating the source of the information. . . . If the elector no longer resides in the municipality or fails to apply for continuation of registration within 30 days of the date the notice is mailed, the clerk or board of election commissioners shall change the elector's registration from eligible to ineligible status.

In addition, "[t]he municipal clerk or board of election commissioners shall change the registration of deceased electors from eligible to ineligible status by means of checking vital statistics reports." Wis. Stat. § 6.50(4). Wisconsin Stat. § 6.50(5) provides for investigation by the municipal clerk or board of election commissioners if an elector's registration "is listed at a building which has been condemned for human habitation by the municipality" under a provision of Wisconsin law, and that, if the municipal clerk or board of election commissioners "can find no reason why the registration of such elector should not be changed from eligible to ineligible status, the clerk or board of election commissioners shall change the elector's registration status." And, under Wis. Stat. § 6.50(6), "[t]he municipal clerk, upon authorization by an elector, shall change the elector's registration from eligible to ineligible status."

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MAY 6, 2021
MAJORITY QUESTIONS FOR THE RECORD
FOR
MS. SOPHIA LIN LAKIN
AMERICAN CIVIL LIBERTIES UNION

1. **What can Congress do to ensure that voters are in the best position possible to know if they are the subject of a registration removal program initiated by a state or local government?**

   There are at least three areas where Congress can reinforce or provide additional protections to ensure that voters are in the best position possible to know if they are the subject of a registration removal program:

   - Transparency around removal process: Congress can require state and local governments to provide greater transparency and public notice regarding when a removal program is being initiated and what criteria and process is utilized to identify voters who may be removed. Such transparency requirements will help to alert voters directly. They will also be especially useful for organizations that assist voters with their registrations. Knowing when and how a purge is going to take place will allow such organizations to target their resources more effectively and efficiently to help ensure that voters check their registrations and are not improperly targeted for removal. Greater transparency will also enable advocates to flag concerns about how or when a purge is being conducted *before* voters are erroneously removed by a flawed or improperly timed removal process.

   - Notice of potential removal: Congress can reinforce and strengthen existing requirements that state and local government have a reasonable basis to believe that a voter should be purged before they may flag a voter for removal (ensuring that fewer voters are erroneously flagged in the first instance), and that voters be provided notice if they are flagged for removal *prior* to being removed. Congress can, for example, bar using voter inactivity—a highly imperfect proxy for voter eligibility—as a basis for targeting a voter for removal.

- Adequate time to contest an erroneous removal before an election takes place: Congress can likewise reinforce and strengthen existing requirements that voters be provided with sufficient time to contest an erroneous removal before an election takes place. Congress can, for example, increase the amount of time before an election that certain kinds of removal programs with a higher risk of error must be completed. Providing this opportunity will increase the likelihood that an erroneously removed voter will learn of the removal in the first instance (and then have the opportunity to correct the error before it is too late).

2. **When you have brought a successful case challenging an errant state or local voter purge effort, how long has it typically taken for your clients to obtain relief? What are the principal legal obstacles to your clients obtaining relief in a timely fashion? How expensive are those cases to litigate?**

   These cases often taken years to litigate in their entirety. As described in my written testimony, the *Common Cause Indiana v. Sullivan* case, for example, is quickly approaching its fourth year and is currently on its second appeal.[1] These cases can be quite expensive to litigate and can easily cost both the plaintiffs and the state or local government conducting the purge hundreds of thousands of dollars—if not more—in attorney hours alone.

3. **Are there any changes to the NVRA or other federal laws you believe could help reduce the risk that state voter list maintenance efforts do not remove properly registered voters?**

   In addition to greater transparency, notice, and opportunity for voters to correct errors, there are two reforms that could help ensure that state voter list maintenance efforts do not remove or disenfranchise properly registered voters:

   - **Automatic Voter Registration** is a way of both facilitating participation and ensuring that the voter rolls are more accurate by creating a constant stream of updates between registration agencies and election officials. About 19 states have in recent years adopted a form of automatic voter registration which ensures that when voters

[1] *Common Cause Ind. v. Lawson*, 937 F.3d 944, 962 (7th Cir. 2019).

move for example, their registrations are automatically updated with the state.[2]

- **Election day registration can** be a valuable safety net in making sure that any voters who are purged erroneously are not disenfranchised. Eighteen states and the District of Columbia have election day registration, and another two states offer same-day registration during some portion of the early voting period.[3] The ten states with the highest turnout in 2020 all had same-day registration,[4] with nine of the top ten offering same-day registration on election day. The consensus among political scientists is the election day registration boosts turnout by two to ten percentage points, with particular gains among historically lower-turnout or disenfranchised groups like young, lower-income, and Black voters.[5]

4. **There have been a number of cases where private litigants, like your organization, have successfully stopped a state or local government's effort to improperly purge voters from their voting rolls. After those unlawful efforts, have any of those states or local governments subsequently sought to engage in new efforts to improperly remove voters from their voting rolls? If so, please describe?**

   The *Common Cause Indiana v. Sullivan* case described in my written testimony is one example of a state's repeated attempt to improperly purge voters from the voting rolls, despite court intervention. Other states (like Georgia) have also engaged in persistent efforts to aggressively purge voters from the rolls that has necessitated litigation. As is the case with other suppressive voting laws and practices, even where voting rights advocates like the ACLU are able to successfully block one unlawful practice through litigation, another can quickly spring up in its place. The need for repeat

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[2] *See* Nat'l Conference of State Legislatures, Automatic Voter Registration, https://www.ncsl.org/research/elections-and-campaigns/automatic-voter-registration.aspx (last visited June 1, 2021).

[3] *See* Nat'l Conference of State Legislatures, Same Day Voter Registration, https://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx (last visited June 1, 2021).

[4] 2020 Election: Which States Had the Highest Turnout?, Statista, Nov. 10, 2020, https://www.msn.com/en-us/news/us/2020-election-which-states-had-the-highest-turnout/ar-BB1aRSR0.

[5] *See* Dale E. Ho, *Election Day Registration and the Limits of Litigation*, 129 Yale L. J. 185 (2019).

litigation in the vote purge context is just another example illustrating the limits of case-by-case litigation when it comes to protecting voters.

5. Your testimony highlights several examples of cases in which conservative interest groups have filed legal actions seeking to compel jurisdictions to remove voters from their voting rolls?

a. Why are these lawsuits problematic? How expensive and time-consuming is it for organizations like yours to intervene and defend against these sorts of actions?

The rise of lawsuits brought by activist groups agitating for elections officials to purge the rolls more aggressively is deeply concerning. These lawsuits are typically based on the kind of incomplete and outdated data and flawed processes described in my written testimony that incorrectly identify voters for removal—too often disproportionately voters of color and other historically disenfranchised voters.

Exacerbating this issue, jurisdictions that are targeted frequently do not have the kind of time, resources, and expertise to aggressively push back. As discussed above, voter purge litigation can span years and cost hundreds and thousands of dollars. As a result, voters in those jurisdictions may lose important safeguards and be improperly removed and ultimately disenfranchised.

While voting rights organizations like the ACLU, the Brennan Center for Justice, and others have sought to intervene on behalf of voters in many of these cases, the substantial resource and time commitment involved in being a part of these cases means we cannot be everywhere. Intervention in these cases is also costly in another respect: for every purge case we intervene in, there are fewer resources to focus on other voter suppression and voting access concerns.

b. Are these lawsuits targeted at particular types of jurisdictions, such as jurisdictions with disproportionately large minority populations?

Many of these lawsuits have indeed been brought against jurisdictions with disproportionately large minority populations. These include recent

lawsuits in Detroit and the suburbs of Philadelphia (both described in my written testimony), as well as in North Carolina, among others.

c. What can Congress do to assist state and local governments and voters to defend against specious efforts to compel states to remove voters from their voting rolls.

Strengthening and clarifying existing protections for voters when it comes to voter list maintenance is one way that Congress can help state and local governments defend against these efforts to push jurisdictions to purge voting rolls more aggressively. Mandating increased accuracy for data that can be used to flag a voter for removal, for example, will make it more difficult for activist organizations to call for aggressive purges using the kinds of unreliable data and unfounded assertions that currently form the basis of these challenges.

6. Is Section 2 of the Voting Rights Act an adequate tool to protect voters from inaccurate state or local voter purge efforts? If not, why?

By itself, Section 2 of the Voting Rights Act is not an adequate tool to protect voters from inaccurate state or local voter purge efforts. Section 2 cases prohibit only those voting practices that are discriminatory in nature. It does not limit purges that lack discriminatory results but are still inaccurate and disenfranchise eligible voters. Proving discrimination, moreover, is very resource-intensive, which makes Section 2 litigation cost-prohibitive in many circumstances.

Other federal laws have been instrumental in protecting voters from erroneous removals, in particular the National Voter Registration Act. But one issue that remains a particularly pernicious problem in the voter purge context is that we often do not find out about an improper purge until after a voter has shown up at the polls on election day only to find that their name has been erroneously removed from the rolls and it is too late to correct. Additional protections and safeguards aimed at exposing and preventing these purges *before* they are implemented are necessary.

7. Is there anything else discussed during the May 6 hearing to which you would like to respond? If so, please provide your responses here.

Proponents of aggressive, flawed voter roll purges claim that more voter purging increases election integrity and voter confidence. This conspicuously and conveniently ignores the incredible costs that purges of overly aggressively or sloppily remove eligible voters from the rolls.

Our client in the 2019 Texas purge case described in my written testimony is illustrative. Nivien Saleh was one of the voters wrongly flagged by Texas' wildly flawed and discriminatory purge program. Ms. Saleh became a U.S. citizen in 2018 after living in the United States for a decade. She was so proud to become a citizen that she arranged a private swearing in and registered immediately after to be sure she could vote in the March 2018 primaries. When she discovered she had been accused of being a non-citizen voter, she was angry and deeply disturbed. Aggressive purges can have a very real and harmful effect on our democracy.

Proper list maintenance requires *both* removing ineligible registrations *and* ensuring that eligible voters are not erroneously purged from the rolls. Both pieces are necessary to ensure election integrity.

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MAY 6, 2021
MAJORITY QUESTIONS FOR THE RECORD
FOR
DR. MARC MEREDITH
ASSOCIATE PROFESSOR
UNIVERSITY OF PENNSYLVANIA

1. Since the Supreme Court's decision in *Shelby County v. Holder*, more than 30 million voters have been removed from state voting rolls. Some argue that states' aggressive efforts to remove voters from their rolls is justified by the need to prevent voter fraud. Does the evidence support that argument?

Political science scholarship shows that voter fraud is an extremely rare event. And the overall incidence of voter fraud will overstate the benefits of aggressive list maintenance in reducing voter fraud because only a subset of the limited voter fraud that exists could potentially be prevented by more aggressive list maintenance. Moreover, political science research shows that aggressive list maintenance will often prevent many more legitimate votes than fraudulent votes. Thus, evidence does not suggest a need for states to increase the aggressiveness of efforts to remove registrations from their rolls to prevent voter fraud.

Political science research consistently finds little evidence of voter fraud. It is well documented that the share of voters convicted for voter fraud is infinitesimal relative to the number of ballots cast. For example, Rick Hasen, one of the leading scholars of election law, notes that there were only about 2,000 documented prosecutions for voter fraud between 2000 - 2012 out of the billions of votes that were cast over this time period.[1] While it is too early to know exactly how many people will be prosecuted for committing voter fraud in the 2020 presidential election, a summary of prosecutions described in local news reports as of May 4, 2021 only identified 16 incidents.[2] Political science research establishes this is because voter fraud occurs rarely as opposed to voter

[1] Hasen, Richard. 2020. "Opinion: Trump is Wrong About the Dangers of Absentee Ballots." *Washington Post* Apr. 9 (available from https://www.washingtonpost.com/opinions/2020/04/09/trump-is-wrong-about-dangers-absentee-ballots/).
[2] Bump, Philip. 2021. "Despite GOP Rhetoric, There Have Been Fewer Than Two Dozen Charged Cases of Voter Fraud Since the Election." *Washington Post* May 4 (available from https://www.washingtonpost.com/politics/2021/05/04/despite-gop-rhetoric-there-have-been-fewer-than-two-dozen-charged-cases-voter-fraud-since-election/).

fraud often goes undetected. For example, my research shows there was little evidence of systematic undetected cases of the same person voting twice in the 2012 presidential election, with many of the apparent cases of double voting likely being an artifact of there being errors in voter registration records.[3] Likewise, an analysis using Washington's voter registration records estimated that there were fewer than 20 cases of the voter registrations of deceased registrants being used to cast a ballot in that state between 2011 – 2018.[4]

It also is not the case that aggressive list maintenance would be necessary or sufficient to prevent the limited amount of attempted voter fraud that exists. First, attempts to commit fraud may be stopped even when an ineligible voter registration remains on the rolls. During the hearing on May 6, 2021, Representative Bryan Steil cited a case in the 2020 presidential election in which someone attempted to cast an absentee ballot sent to her deceased partner in Ozaukee County, Wisconsin as evidence for why it is important to remove ineligible registrations from the registration rolls. However, it is important to note that in this case local elections officials ultimately recognized the attempted fraud and did not count the ballot in question.[5] Moreover, voter fraud is not exclusively committed using ineligible registrations. My assessment is that a majority of cases described in the Heritage Foundation's database of voter fraud cases present a fact pattern suggesting that the fraud could not have plausibly been prevented by even the most aggressive list maintenance protocol.[6] Thus, the effect of removing ineligible registrations on the incidence of voter fraud is exceeding small given that it will only prevent a fraction of the limited amount of voter fraud that occurs.

The fact that aggressive list maintenance would prevent, at most, a small number of fraudulent votes is problematic given that more aggressive list maintenance will almost certainly make it more difficult for a sizeable number of people to vote. My written testimony highlighted cases in which poorly conceived list-maintenance protocols attempted to remove tens of thousands of eligible registrations in Indiana and Wisconsin. Thus, the number of registrants who ultimately are disenfranchised by such protocols will be greater than the number of fraudulent votes prevented even when only a small fraction of the registrants who have their eligible registrations removed are dissuaded from voting because of this list maintenance action.

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[3] Goel, Sharad, Marc Meredith, Michael Morse, David Rothschild, and Houshmand Shirani-Mehr. 2020. "One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections." *American Political Science Review* 114(2): 456-469.

[4] Jennifer Wu, Chenoa Yorgason, Hanna Folsz, Cassandra Handan-Nader, Andrew Myers, Tobias Nowacki, Daniel M. Thompson, Jesse Yoder, and Andrew B. Hall, 2020. "Are Dead People Voting by Mail? Evidence from Washington State Administrative Records." Stanford University working paper (available from https://stanforddpl.org/papers/wu_et_al_2020_dead_voting/).

[5] Bruce Vielmetti. 2020. "Cedarburg Woman Charged with Voter Fraud." *Milwaukee Journal Sentinel* Nov. 23 (available from https://www.jsonline.com/story/news/politics/2020/11/23/cedarburg-woman-charged-voter-fraud/6395296002/).

[6] Heritage Foundation, A Sampling of Recent Election Fraud Cases from Across the United States (available from https://www.heritage.org/voterfraud).

In summary, evidence does not support the necessity of engaging in more aggressive list maintenance to reduce the incidence of voter fraud. Both my oral and written testimony highlights the necessity of engaging in list maintenance, as the quality of American democracy is reduced when ineligible registrations are allowed to remain on the voter rolls for decades. But there is a negligible expected reduction in voter fraud when an ineligible registration is removed immediately instead of two or four years later. And there are real costs when an eligible registration is removed now instead of giving the registrant two or four more years to establish their eligibility. Thus, electoral integrity is not improved when aggressive list maintenance protocols push to move registrations to inactive status in the absence of evidence that the person is, in fact, ineligible to vote, or to expand the conditions under which registrations can be removed immediately, rather than being moved to inactive status for two federal elections.

2. In your written testimony you note that voter protections under NVRA's list maintenance requirements "are not sufficient to prevent poorly contrived list-maintenance protocols from unnecessarily disenfranchising voters."

a. Can you explain further why this is the case?

There are three primary reasons why the NVRA is not sufficient to prevent poorly contrived list-maintenance protocols from unnecessarily disenfranchising voters. First, laws and rules that are alleged to violate the NVRA require litigation after a law has already been passed. Second, the NVRA places insufficient limitations on what can be used to move a registration from active to inactive status. And third, not all states are bound by the NVRA. I'll discuss why each of these are problematic in turn.

There are a number of reasons why it is problematic that the NVRA generally only stops poorly contrived list-maintenance protocols after they are enacted. First, registrations may be improperly removed or inactivated before the litigation can establish that a list-maintenance protocol violates the NVRA. Additionally, successful litigation requires a lot of time, effort, and expense on the part of the plaintiffs representing those who are burdened by a poorly contrived list-maintenance protocol that violates the NVRA. This means that even those list-maintenance protocols that are struck down by the courts prior to implementation harm plaintiffs by diverting the plaintiffs' limited resources to deal with the issue. Moreover, a poorly contrived list-maintenance protocol can also cause voter confusion even if it is never implemented.

It is also problematic that the NVRA does not prevent many poorly contrived list-maintenance protocols from being used to move registrations from active to inactive status. As my written testimony highlights, there are a number of reasons why it can be more difficult for an eligible registrant to vote when their registration is inactive instead of active. First, many states only send certain forms of election mail that may

mobilize registrants, such as sample ballots, to active registrants. Likewise, campaigns often exclude inactive registrants from their get-out-the-vote efforts. Second, states sometimes make it more difficult for an inactive registrant to vote than an active registrant. For example, some states require inactive registrants to vote using a provisional ballot instead of on a machine. This is just one of the reasons why moving an eligible registration from active to inactive status could reduce that registrant's confidence in the electoral system. Third, moving an eligible registration from active to inactive status may eventually result in an eligible registration being canceled as a significant number of registrants exercise their right to abstain from voting in two successive federal election cycles.

Finally, the NVRA cannot prevent poorly contrived list-maintenance protocols from canceling registrations in states that are not subject to it. Six states currently are exempt from the NVRA because they historically had no voter registration or used Election-Day registration: Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming. Wisconsin would not have been able to immediately cancel thousands of eligible registrations based on ERIC data, as I detailed in my written testimony, if it was subject to the NVRA. While Election-Day registration mitigates the problems caused when eligible registrations are canceled, it does not eliminate them. In particular, the Wisconsin example discussed in my written testimony demonstrates that eligible registrants lost confidence in the electoral system when they showed up at the polls and discovered their registrations had been canceled.

b. What solutions do you recommend to address the insufficiency of NVRA in protecting eligible voters from being incorrectly removed from active voting rolls through list maintenance practices?

There are two solutions that I recommend to address the insufficiency of the NVRA in protecting eligible registrants from being incorrectly removed from active voting rolls through list maintenance practices. The first is the adoption of nationwide Election-Day registration. One of the worst possible outcomes when an eligible registrant is incorrectly removed from the voter rolls is that this registrant shows up to vote but is unable to cast a ballot because he or she lacks a registration to vote with. Election-Day registration makes it so that such a person can reregister to vote at the polls. While reregistering at the polls is not a perfect substitute for an eligible registrant remaining registered to vote, it makes is so that this person can access a process that allows him or her to cast a ballot.

The other solution that I recommend is that states be required to preclear non-standard list-maintenance practices with the federal government. A non-standard list-maintenance practice would refer to the use of data that is not already used by a substantial number of other states in their list maintenance protocol or using data to

cancel a registration that is usually used to inactive it. When this happens, states would be required to make an assessment of how many eligible registrants that they expect would be identified as being potentially ineligible. This would ensure that there was some consideration of how many eligible voters might be incorrectly removed or inactivated through a non-standard list maintenance protocol without preventing states from choosing to use a standard practice as part of their list-maintenance protocol, such as moving a registration record to inactive status when four years pass without a vote being cast or ERIC identifies the registrant as a potential mover.

HEARING
SUBCOMMITTEE ON ELECTIONS
OF THE
COMMITTEE ON HOUSE ADMINISTRATION
"VOTING IN AMERICA: THE POTENTIAL FOR VOTER LIST PURGES TO INTERFEREWITH FREE AND FAIR ACCESS TO THE BALLOT"
MAY 6, 2021
ANSWERS TO MAJORITY QUESTIONS FOR THE RECORD
FOR
MS. KAYLAN PHILLIPS
LITIGATION COUNSEL
PUBLIC INTEREST LEGAL FOUNDATION

1. You testified that Public Interest Legal Foundation ("PILF") has identified cases where non-citizens were included on voter registration lists. PILF has entered into a settlement agreement under which it admitted that it inaccurately alleged that numerous properly registered voters were non-citizens and issued a formal apology to voters it inaccurately identified as non-citizens, correct?

   Not correct. You have mischaracterized the court's finding. This was a novel question of law as to what constitutes a violation of the National Voter Registration Act. Other courts have specifically found the precise same ratio as probative of whether a jurisdiction is failing to properly maintain the rolls.Your question fails to note – certainly deliberately – that other courts had previously found this ratio to be probative. Any litigant can properly rely on jurisprudence supporting the probative value of the ratio. To recap, the ratio measured the number of registered voters on the rolls compared to United States Census data. The court you cite departed from the established jurisprudence on the point and found the temporal range of the American Community Survey detached the data point of population estimates from the registration number. We disagree with that court's departure from the previously established jurisprudence on the point. But one thing is for certain
   – litigants are entitled to rely on jurisprudence that other federal courts had established regarding what are probative registration ratios. That you cite one court which departed from the prior jurisprudence is nothing of note in litigation where battles of experts occur daily in courtrooms. Nevertheless, PILF does not only rely on this ratio to the extent it once did and instead hascollected discrete names of dead and duplicate registrants to inform private enforcement activity under the NVRA. We have found this approach to be more probative after the case you cite and it has yielded disturbing numbersof deceased registrants on the rolls – a circumstance we would urge your Committee to undertake to examine – as we presume nobody wants dirty rolls.
   Second, your characterization of what PILF did or did not do is wholly inaccurate. Your characterization omits the central fact that state election officials in the Commonwealth of Virginia identified registrants for removal and did indeed remove them from the rolls as "Declared Non-Citizens." While you

may wish to pin this mistake on PILF, it was in fact the Commonwealth of Virginia who made the mistake. Had we not become involved by requesting documents and accurately describing them and drawing reasonable inferences from them, nobody would have learned that the Commonwealth was making an enormous error in removing citizens from the rolls. This is precisely why PILF filed a cross claim in the litigation you cite against the State Board of Elections for failing to maintain accurate rolls. While the cross claim was not permitted to go forward, it does demonstrate both who was at fault for removing citizens—namely the Commonwealth—and who was most zealous in attempting to force a fix for improperly removing citizens—namely PILF. Lastly, PILF did not "issue a formal apology." Instead the President of the organization offered to apologize for overreliance on government records, records which stunningly reflected the improper and mistaken removal of citizens from the rolls as noncitizens. Never again will PILF rely on the Virginia State Board of Election's records cataloging the removal process of noncitizens because their particular process is apparently fraught with defects—defects which PILF sought to remedy in the cross claim against the State Board of Elections. No other organization has yet to make any effort whatsoever—including the plaintiffs who were improperly removed by the State Board as noncitizens—to remedy the problem in court. Perhaps this Committee could redirect their interest toward the Virginia State Board of Elections and examine why citizens were being removed and why they published documents relied on by the public—including PILF—characterizing these individuals as "Declared Non-Citizens" and then reaffirmed to the public that nobody on the list re-registered to vote.

2. You testified that PILF has identified cases where there were more registered voters than eligible voters in a particular jurisdiction. A federal court has found that the analysis PILF relied on in alleging that a jurisdiction has implausibly high registration rates was "misleading," correct?

Not correct. You have mischaracterized the court's finding. This was a novel question of law as to what constitutes a violation of the National Voter Registration Act. Other courts have specifically found the precise same ratio as probative of whether a jurisdiction is failing to properly maintain the rolls. Your question fails to note—certainly deliberatively—that other courts had previously found this ratio to be probative. Any litigant can properly rely on jurisprudence supporting the probative value of the ratio. To recap, the ratio measured the number of registered voters on the rolls compared to United States Census data. The court you cite departed from the established jurisprudence on the point and found the temporal range of the American Community Survey detached the data point of population estimates from the registration number. We disagree with that court's departure from the previously established jurisprudence on the point. But one thing is for certain—litigants are entitled to rely on jurisprudence that other federal courts had established regarding what are probative registration ratios. That you cite one court which departed from the prior jurisprudence is nothing of note in litigation where battles of experts occur daily in courtrooms. Nevertheless, PILF does not only rely on this ratio to the

extent it once did and instead has collected discrete names of dead and duplicate registrants to inform private enforcement activity under the NVRA. We have found this approach to be more probative after the case you cite and it has yielded disturbing numbers of deceased registrants on the rolls—a circumstance we would urge your Committee to undertake to examine—as we presume nobody wants dirty rolls.

ANSWERS TO MINORITY QUESTIONS FOR THE RECORD
FOR
MS. KAYLAN PHILLIPS
LITIGATION COUNSEL
PUBLIC INTEREST LEGAL FOUNDATION

1. Do inaccurate voter registration roles have an impact on mail voting or lines at polling places? Please explain.

   Inaccurate registrations can have a negative, down-stream effect on mail andin-person voting. As I mentioned in my previous written and verbal testimonies, the quality of the mail voting experience writ large is inextricably linked to how well the contents of a jurisdiction's voter roll are kept. The formula is straightforward: faulty voter rolls *plus* enhanced automation of mass mail voting *equals* disaster approaching disenfranchisement.

   Clark County, Nevada, offers a clear example of this proof after the 2020 Election. In order to scuttle a lawsuit brought by Democratic Party activists, the Clark County government agreed to instruct its Election Department to mass-mail actual primary ballots to all registered voters on file regardless of "active" or "inactive" status. As this Committee is aware, an inactive registrant is one who is documented to have an extensive period of inactivity plus instances where mailings to their address failed and were returned USPS-undeliverable. County elections officials testified that sending ballots to the inactive side of their ledger would waste an excess of $1 million and seemore than 90% of ballots return undeliverable.

   For the 2020 Primary, Clark County saw 223,000 live ballots return undeliverable –58% of those were from inactive registrants. More than 93,500ballots were returned undeliverable for faulty addresses from *active* registrants as well.[1] The 2020 General Election mass-mailed ballots only to active registrants. This time, more than 92,000 ballots bounced back.[2] For a sense of scale, Nevada's 2020 Electoral College votes were awarded based on a statewide difference of 33,596 votes.

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[1] PILF; 223K Clark County NV Mail Ballots Went to Wrong Addresses in 2020 Primary (August 5, 2020), https://publicinterestlegal.org/blog/report-223k-clark-county-nv-mail-ballots-went-to-wrong- addresses-in-2020-primary/ See also: *Las Vegas Review-Journal*; More than 223K mailed ballots returned undeliverable in primary (August 14, 2020), https://www.reviewjournal.com/news/politics-and-government/clark-county/more-than-223k-mailed-ballots-returned-undelivered-in-primary- 2095001/.
[2] PILF; 92K Clark County NV Mail Ballots Went to Wrong Addresses in 2020 General Election (March 10, 2021), https://publicinterestlegal.org/reports/92k-clark-county-nv-mail-ballots-went-to-wrong-addresses-in-2020-presidential-election/.

As for in-person voting effects, it is the Foundation's belief that dirty voter rolls can play a part in an accumulation of challenges which can create polling place line lags. Jurisdictions still using pen and paper pollbooks to check in voters can slow things down with duplications and other errors in the records. These problems, in essence, create longer, outdated lists to manually page through and denote corrections prior to assigning a voting booth. Stacked atop a lengthy ballot, finite voting booths, and high voter turnout, the queuing process can naturally suffer. Add pandemic social distancing and curbed indoor occupancy and a single vote can take hours tocast.

2. In your testimony, you state that the Public Legal Interest Foundation has conducted extensive research into the accuracy of state voter registration rolls. Below are additional questions with respect to the research performed by your Foundation.

PILF has conducted extensive research into the accuracy of state voter registration rolls. Below are responses to the specific questions asked.

a. How many state voter registration rolls has your Foundation analyzed?

Depending on the analytical metric in question, PILF has processed voter rolls for a total of 42 states as of September 2020. That number is rising thanks to recent successful federal litigation to secure public access to voter records in Maryland.[3] We have pending litigation against Illinois and Maine regarding access to their voter records.[4]

b. Briefly describe the methodology used in analyzing voter registration data.

After PILF collected data from 42 states and put it into a format where it could be studied, it was rigorously compared to commercial and government databases to increase confidence in the conclusions with particular emphasis on validating identities matched across state lines. Also included with the data were voter history fields, namely, data about when each registrant voted. The combination of state election data, commercial data, and federal sources such as the Social Security Death Index, provides researchers with perhaps the best platform ever constructed to analyze the health of the voter rolls and catalogue potentialvulnerabilities. The findings are a helpful starting point for state election officials to review the findings and make final determinations and take appropriate actions. The findings are available in PILF's report entitled *Critical Condition: American Voter Rolls Filled with Errors, Dead Voters, and Duplicate Registrations* ("*Critical Condition*".)[5]

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[3] *See PILF v. Linda Lamone*, https://publicinterestlegal.org/cases/pilf-v-linda-lamone/.
[4] *See PILF v. Matthew Dunlap*, https://publicinterestlegal.org/cases/pilf-v-matthew-dunlap/; *PILF v.Illinois SBE*, https://publicinterestlegal.org/cases/pilf-v-illinois-sbe/.
[5] https://publicinterestlegal.org/reports/critical-condition-american-voter-rolls-filled-with-errors- dead-voters-and-duplicate-registrations/.

c. What were the key findings or common themes from your Foundation's research?
Key findings from PILF's *Critical Condition* report found the following:

-- **349,773**: total number of potentially deceased registrants across 41 states (Michigan, Florida, New York, Texas and California account for roughly 51% of national dead registrants).

-- In 2016, **7,890** registrants were apparently credited for voting after death.

-- In 2018, **6,718** registrants were apparently credited for voting after death.

-- **43,760** likely duplicate registrants appear to have cast second votes in 2016 from the same address.

-- **37,889** likely duplicate registrants appear to have cast second votes in 2018 from the same address.

-- **8,360** – Number of registrants apparently registered in 2 states and credited for voting in both states in 2018.

-- **5,500** – Number of apparently duplicate registrants credited for voting twice in the same state from 2 different addresses in 2018.

-- **34,000** – Number of registrants credited for voting from apparently non-residential addresses in 2018.

d. The above figures from 2(c) were released as part of the PILF's September 2020 report, *Critical Condition*. A copy is enclosed with these responses.

3. H.R. 1, the "For the People Act," will undoubtedly complicate state and locallist maintenance functions with a combination of forced errors and the removal of particular tools to keep records current. I highlight only a few concerns here.

We cannot fully comprehend how much damage H.R. 1's requirement for universal automatic registration will do to voter rolls. No state in the Union operates a system like the federal legislation describes, and for good reason. Not only does H.R. 1 expand the number of government agencies tasked with passing customer data to voter rolls, said databases hold information on Americans from disparate periods in their respective lives. Under H.R. 1, we see risks of women getting automatically registered under maiden names. Werisk DMVs auto-registering people who moved out of state but hold the old driver's license. Foreign nationals are enrolled (although the bill protects them from immigration or criminal penalties). Community college enrollmentoffices in states with closed primaries will be auto-registering Independent orunaffiliated voters *en mass* unless partisan preference is included with class registrations. Universal automatic voter registration cranks errors into voter rolls, creating more corrective list maintenance needs.

H.R. 1's prohibition on collecting personally identifying information beyond the last-four of Social Security numbers will hamper states' abilities to fully utilize the Social Security Death Index and other tools relying on that number to validate identity. Previous, current, and any future crosscheckingcollaboratives have significantly relied upon social security numbers being appended to voter records so auditors could reliably track an individual moving across state lines before cancelling the former registration record.

Sec. 1071 also threatens voter roll duplication merge operations outlined by various state manuals on proper use of statewide voter registration databases. Statewide HAVA officers commonly issue guidelines for handling active, duplicated records and the proper practice for merging. In every protocol guide reviewed by my Foundation, Social Security numbers are usedas common denominators to validate identity.

4. In your written testimony, you state that research recently conducted by your Foundation found "more than 11,000 duplicated California registrants whose names, birthdates and addresses matched."

Research recently conducted by PILF found more than 11,000 duplicated California registrants whose names, birthdates and addresses matched.

Below are responses to the specific questions asked.

a. To your knowledge, when was the last time the state of California conducted general list maintenance as required by law?

The most uniform data source to gain a general sense of California's list maintenance activities is the U.S. Election Assistance Commission's EAVS report for the 2018 election cycle.[6] The survey shows that California volunteered data demonstrating removals for a grand total of733,613 registrants from rolls in 2017 and 2018. The survey informationcovering the 2020 election cycle is expected in summer 2021.

b. Is there any additional information that you can share with the Committee regarding the duplicate registrations identified?

PILF is preparing a full report to California and other applicable states regarding matching name/DOB/address duplicates. This is a collaborative process with officials to resolve all list maintenance matters.

Roughly a week before my Committee testimony, Fresno County announced it was exploring a $4 million expenditure to outsource a voter roll cleanup project to, in part, identify duplicate records.[7] This followed a February 2020 disclosure that thousands of primary ballots were sent to duplicated registrants in Fresno County due to variations of name spelling on the rolls.[8] This announcement was preceded by a statewide voter roll audit which found 84,000 duplicate registrants due to recent automatic voter registration programs.[9] More broadly speaking, CalTechresearchers raised concerns for duplications in voter rolls as well.[10]

Voter roll duplication will continue to challenge registrars so long as the

number of Motor Voter vectors increase amid the lack of express concern within Section 8 of the NVRA to correct them.

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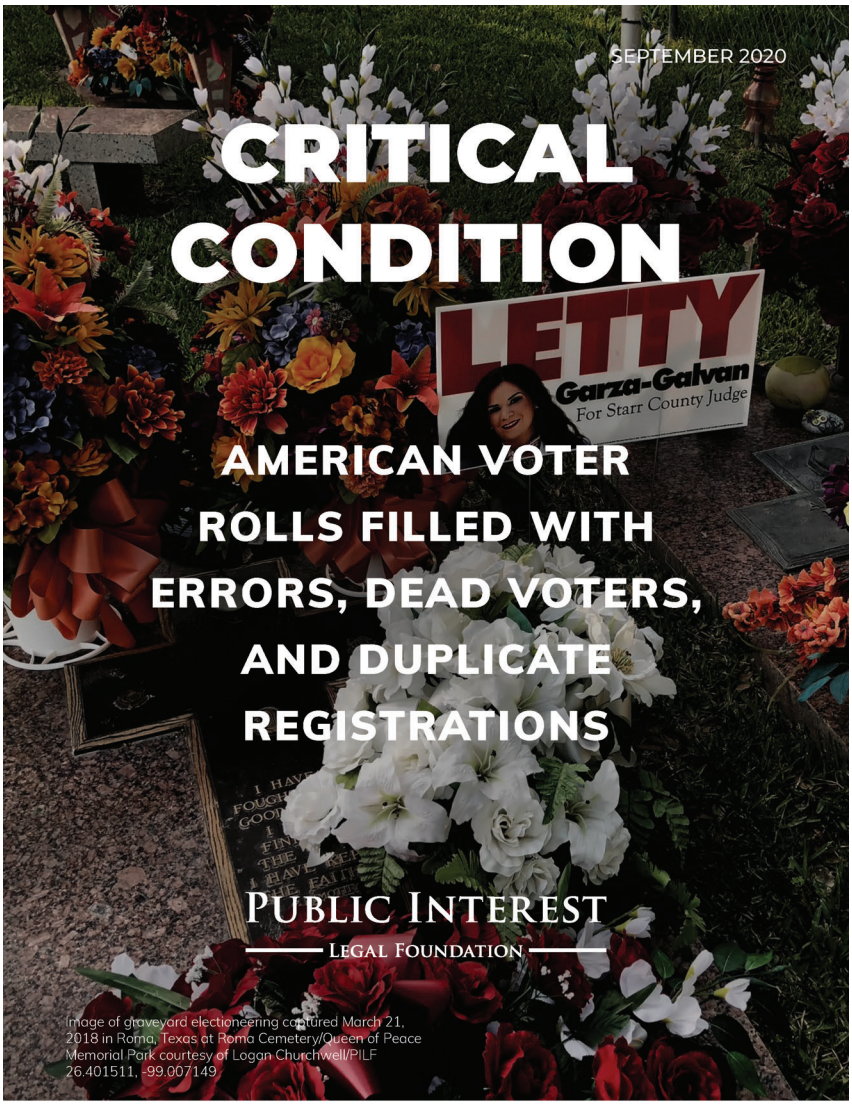
6 https://www.eac.gov/research-and-data/studies-and-reports.

7 *The Fresno Bee*; How much is voter confidence worth? Fresno County could spend $4 million or more (April 27, 2021), https://www.fresnobee.com/news/politics-government/article250984619.html.

8 duplicate ballots sent in the mail, clerk says. Here's what's beingdone (February 25, 2020), https://www.fresnobee.com/news/politics-government/election/local- election/article240625217.html.

9 *Los Angeles Times*; Nearly 84,000 duplicate voter records found in audit of California's 'motor voter' system (August 9, 2019), https://www.latimes.com/california/story/2019-08-09/duplicate-voter- records-audit-california-motor-voter-system.

10 Seo-young Silvia Kim, California Institute of Technology, HSS, Caltech, 1200 East California Blvd., Pasadena, CA 91125-0002, USA, https://journals.sagepub.com/doi/10.1177/1532673X19870512.


SEPTEMBER 2020
CRITICAL CONDITION
LETTY
Garza-Galvan
For Starr County Judge
AMERICAN VOTER ROLLS FILLED WITH ERRORS, DEAD VOTERS, AND DUPLICATE REGISTRATIONS
PUBLIC INTEREST
LEGAL FOUNDATION
Image of graveyard electioneering captured March 21, 2018 in Roma, Texas at Roma Cemetery/Queen of Peace Memorial Park courtesy of Logan Churchwell/PILF
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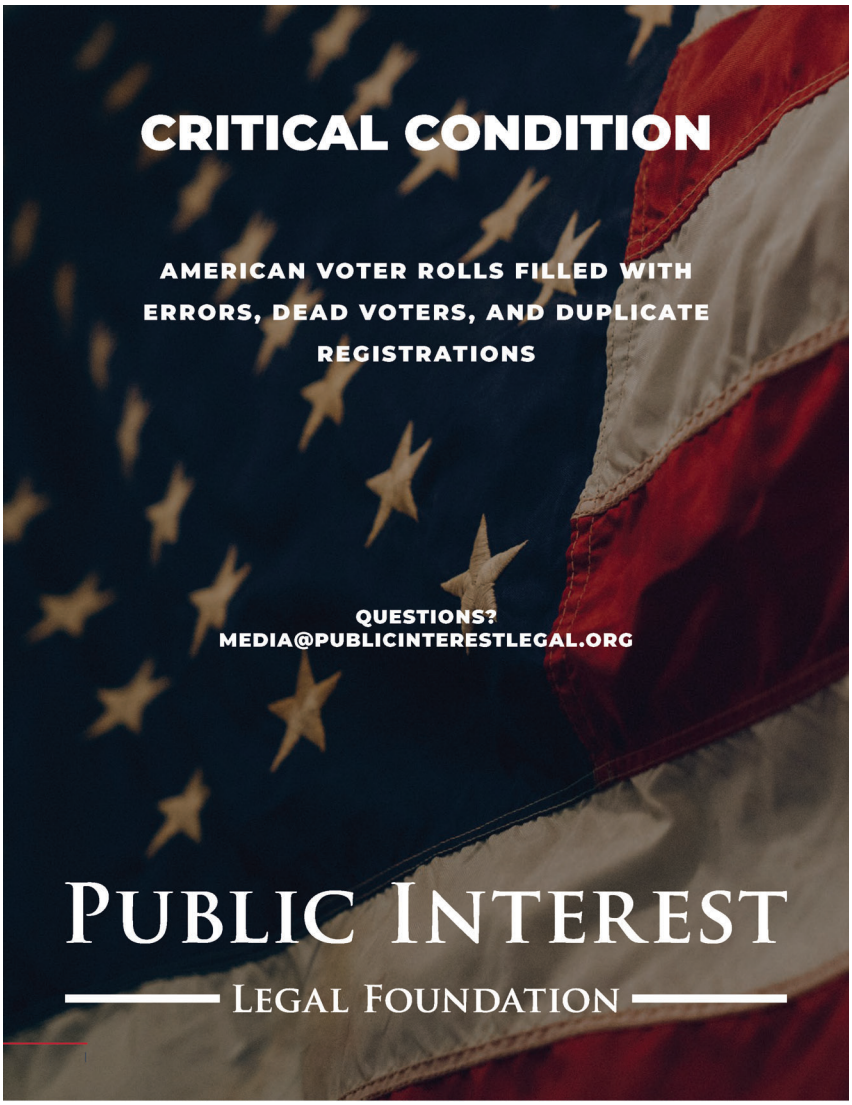

CRITICAL CONDITION
AMERICAN VOTER ROLLS FILLED WITH ERRORS, DEAD VOTERS, AND DUPLICATE REGISTRATIONS
QUESTIONS?
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PUBLIC INTEREST
LEGAL FOUNDATION

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LETTER FROM THE FOUNDATION PRESIDENT



In February 2012, the PEW Research Center conducted research that stunned many. PEW's report, *Inaccurate, Costly, and Inefficient*, found millions of deceased registrants on the voter rolls.[1] Millions more were registered multiple times in multiple states at the same time. Another 10 million had incorrect or outdated addresses. Few could have predicted that one in eight voter registrations across the nation had a problem. In the years since, I have cited that research scores of times.

But here's the problem: as surprising as those numbers were, they are from eight years ago. It was time to update them.

The first known attempt to update these figures came in the form of the Presidential Advisory Commission on Election Integrity in 2018, for which I was selected by President Donald J. Trump to serve. We quickly set to work approaching states to collect public voter registration data for comparison and audit. You probably know how the rest of the story goes: dozens of lawsuits, stonewalling and refusal by many state officials to provide the data, name-calling, and even some old-fashioned political grandstanding, including by members of the Commission who opposed the President and the mission of the Commission to research the extent of the problem and the vulnerabilities of the election process. The state of Vermont even passed a statute prohibiting cooperation with the Commission.

Millions of dollars poured into lawsuits filed by advocacy groups designed to shut down the Commission's work. Today, dishonest media report that the "Commission shut down without finding any voter fraud." That

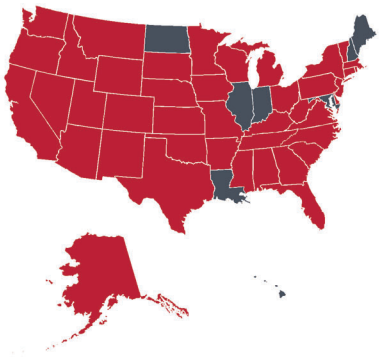
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standard false line has become a dishonest characterization of what happened. We didn't find voter fraud because we never got a chance to look.

Now that has changed.

In late 2019, the Public Interest Legal Foundation (Foundation) committed itself to doing what the Commission never got the opportunity to do: build an active database of all the nation's voter registration and voter history data. Like the Commission had planned, this database – dubbed SAVE (Safeguarding America's Votes and Elections) has comparison capabilities against itself and against other useful data sources like the Social Security Death Index. SAVE is now operational. It can identify deceased and duplicate voters. It can identify registrations at ineligible addresses like post office boxes or mailbox stores, and even people registered in multiple states simultaneously.

SAVE has all the public state registration data from 42 states. Three states that withheld the data from the Foundation were promptly sued – Illinois, Maine[2] and Maryland. States must follow federal disclosure laws and turn over information to which the public has access under the requirements of the National Voter Registration Act.



This report provides the nation with a status check on the health and quality of its voter rolls ahead of the 2020 Election. The timing is critical. Partisan advocates have fought for automatic vote-by-mail systems in which all registered voters are sent ballots. These efforts must assume the voter rolls are accurate enough to sustain this sort of radical transformation to how we conduct elections. They are not.

There is plenty of good news in this

report. Nearly a decade after those notorious PEW numbers went viral, the Foundation saw how years of litigation by election integrity groups such as the Foundation, Judicial Watch, the Election Integrity Project of California, the American Civil Rights Union, and others, has made a difference. Groups who fight to preserve the broken status quo – such as the A. Philip Randolph Institute, the League of Women Voters, and the Brennan Center – no longer enjoy an unopposed field. There is now advocacy, outreach, and networking by election integrity groups with local and state election officials to improve the accuracy of their voter rolls and these efforts have had measurable success.

Instead of praising those good government efforts, liberal groups have instead attacked them in the public arena and in the courts, falsely portraying them as an effort to disenfranchise voters. The exact opposite is true – these efforts are intended to protect the most precious right that voters have: the value of their ballot.

These groups are reactionary, and set in their ways.

We should not confuse improvement with completion. As made evident in this report there is still much work to be done to ensure and preserve clean, accurate voter rolls. Adding an additional challenge, in most states the current system places too much reliance on fixing bad data with communications occurring at the polling place. This opportunity is lost with mail ballots.

What does this report show? It appears there are hundreds of thousands of undetected dead registrants, dead registrants casting ballots, registrants with multiple registrations within the same state and different states, people voting twice across state lines, and many registered at improper commercial addresses like casinos, gas stations, and restaurants.

To the average voter reading through these pages with alarm, I ask that you do just one thing in these final months before the election: make sure that your household's voting records are current and free of errors – and that no one is registered at your

residence who does not actually reside there and whose name you do not recognize. Improving the nation's voter rolls starts at home—yours to be precise.

When voters have confidence in the system, they are more likely to participate. Fixing errors, duplications and obsolete registrations will increase confidence in the voting system and we hope clear the last barrier to participation: doubt in the integrity of the process.

Finally, the Foundation is the first to undertake completion of this sort of groundbreaking study. Academics, law professors, and liberal think tanks could have done this long ago to improve the system. They did not. They have other priorities. Instead, they have created a cottage industry unfairly trying to discredit those seeking to improve the system. I would invite them to evolve from being part of the problem to part of the solution. It's time to use your vast war chest to fix things rather than destroy state laws designed to bring integrity and order to our elections. Instead of trying to impede improvements, urge states to fix the problems we find here.

When we discover that Rashawn Slade of Swissvale, Pennsylvania, has seven active registrations because a third-party voter drive registered him seven times in the weeks before the 2016 Election (despite it being legal to be registered in duplicate) – do something about that. When we learn that some who died in the 1990s remain active on Detroit's voter rolls – do something about that. Stop attacking citizens and organizations like the Foundation who find and report these failures. Be part of the solution, not part of the problem.

I sincerely thank the supporters of the Public Interest Legal Foundation for helping see this work done and you, the reader, for taking the time to better educate yourself on the strengths and weaknesses of our shared voter registration and election systems.



J. Christian Adams
President and General Counsel
Public Interest Legal Foundation

WHY WE DID THIS

You can always count on a blizzard of "reports" right before an election. Though these efforts typically fall into one of two categories: "voter fraud" or "voter suppression," they almost always have one thing in common: they are based on statistical extrapolation rather than an audit of hard data. Whether the focus is on the number of foreign nationals participating in a given election, errors in a voter registration system, the number of registrants supposedly impacted by a new voter ID law, or some other election topic, the methodologies primary rely on supposition and estimates.

This report is entirely different.

Granular research concerning voter registration data is a rarity—and for good reason. It is expensive and as the Foundation's litigation shows, as well as the experience of the Presidential Commission, election officials are too often reluctant to provide it despite laws requiring them to do so. Before you can audit the nation's voter rolls, you must first overcome barriers erected by the keepers of the data. In some states, the cost to purchase the voter roll data is extraordinary. Other states limit access to favored groups, or worse, deny access entirely, forcing you to endure costly litigation to access these important public records, as we have done.

Even if you successfully obtain the data, you must resolve the challenge of making each state's data comparable to all others in terms of format uniformity. Then you have to compare the government data with private data to sift out as many false positives as you can.[3] Perfection is never possible. The task is to maximize confidence in the results.

For this effort, the Foundation collected every state's list maintenance records where

...election officials are too often reluctant to provide it [voter registration data] despite laws requiring them to do so.

possible. As of this reporting series, the Foundation gathered data from 42 states. The remainder was either blocked by local law (for which the Foundation is pursuing litigation in federal court) or insurmountable gaps in the poor quality of the state's data impaired the research. After the data were collected from the states and put into a format that it could be studied, it was compared to commercial data and other government data to increase confidence in the conclusions. Also included with the data were public records indicating when a person was credited with voting. The combination of state election data, commercial data, other government data such as the Social Security Death Index, provides researchers with perhaps the best platform ever constructed to analyze the health of the voter rolls and catalog potential voter fraud vulnerabilities.

...this report seeks to give Americans data-driven information of what is broken in our election systems and to think about ways to fix those problems and remedy our vulnerabilities.

The Foundation is currently pursuing litigation against the States of Illinois[4], Maryland[5] and Maine[6] to develop future findings.

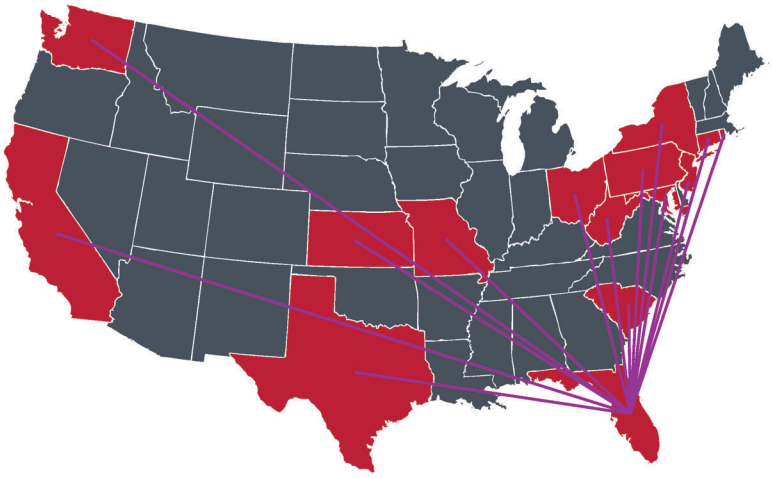
The granular findings outlined in this and recent reports were generated to inform the electorate and serve as the basis for voter roll clean-up efforts and, where appropriate, criminal and civil law enforcement investigations. More importantly, this report seeks to give Americans data-driven information of what is broken in our election systems and to think about ways to fix those problems and remedy our vulnerabilities.



We also wish to assure the electorate that someone is pursuing clean-up efforts in order to instill confidence in the integrity of the system and thereby promote robust voter participation.

The problems the Foundation's study found varied from state to state. It is possible that a populous state might exhibit significant numbers of deceased active registrants but show few examples of apparent duplicate voting. A less populous state might have greater instances of corrupted voter files – such as missing birthdate or address fields - or potential fraud than a much more populous state. Every state shows unique challenges and opportunities to better execute and enforce the law.

APPARENT DUPLICATE VOTE CROSSCHECK: FLORIDA 2018



7

SUMMARY OF FINDINGS

Deceased Registrants Across 41 States: 349,773
NY, TX, MI, FL, CA Account for Roughly 51% of National Deceased Registrants
In 2016, 7,890 Registrants Were Credited for Voting After Death
In 2018, 6,718 Registrants Were Credited for Voting After Death
North Carolina Leads U.S. in Deceased Registrants Credited for Voting After Death by More Than 4:1

43,760 Duplicate Registrants Appear to Have Cast Second Votes in 2016 from Same Address

37,889 Duplicate Registrants Appear to Have Cast Second Votes in 2018 from Same Address

Tens of Thousands of these Apparent Double Votes Were Exclusively Mail Ballots

Number of Registrants Apparently **Registered in 2 States** and **Credited for Voting** in **Both States** in 2018: **8,360**

Number of Apparently **Duplicate Registrants** Credited for **Voting Twice in Same State** from 2 different addresses in 2018: **5,500**

Number of Registrants Credited for Voting from Apparently **Nonresidential Addresses** in 2018: **34,000**

Being credited for voting means that government election officials recorded a data point whether or not a registrant voted in a particular election. A voting credit is often referred to as "voter history" record or file.

PART I – THE DATA

DECEASED REGISTRANTS & VOTING CREDITS

SAVE collected registration and list maintenance data from 42 states' registrant files, kept as part of the Help America Vote Act's mandate regarding statewide voter registration lists. These are public data and public information under the National Voter Registration Act of 1993. Based upon voter roll data collected nationwide at the end of 2019, 349,773 registrants in 41 states were matched against commonly utilized death records. These include New York (59,000 dead registrants) and Texas (36,000 dead registrants), for example. From those matched dead registrants, 14,608 voting credits were highlighted as occurring after respective dates of death and outside any extended early or absentee voting periods.

Though states with larger populations usually had the largest number of deceased registrants still on the voter rolls, those where government records showed the registrant cast a ballot after dying were more common in smaller states. North Carolina and Oregon mark the clearest examples of this phenomena where smaller numbers of deceased registrants exist on the rolls but a larger percentage of them show voting credit.

Oregon has an all vote by mail system. There have been convictions in Oregon for voting mail ballots for those who have died.[7]

When it comes to dead registrants and voting credits, the Foundation's research is constrained by the accuracy, or lack of accuracy, of the government records related to voting credits. Voting credits are usually assembled well after an election. Officials, for example, must review poll books and sign-in sheets to see who voted, and to modify the statewide list maintenance records to reflect this activity.

These modifications to the voter credit data are not insignificant and data entry errors can impact a registrant's ability to remain on the rolls and vote. If voting credits are not provided after a registrant votes, then that registrant is shown to be inactive in the election, and their ability to stay on the rolls if they don't respond to official notices from election officials could be improperly impaired.

For this reason, the Foundation has relied on voting credit data in the official list maintenance records to reach conclusions about duplicate votes and deceased persons receiving credits. Because the voting credit data in the government records are significant, we attach a degree of reliability to them that is commensurate with such an important piece of information. That being said, it is certainly possible that election officials are making mistakes regarding voting credit data. If that is the case, then this report serves to initiate an examination of a previously undetected breakdown in election administration – false positives regarding voting credit data.

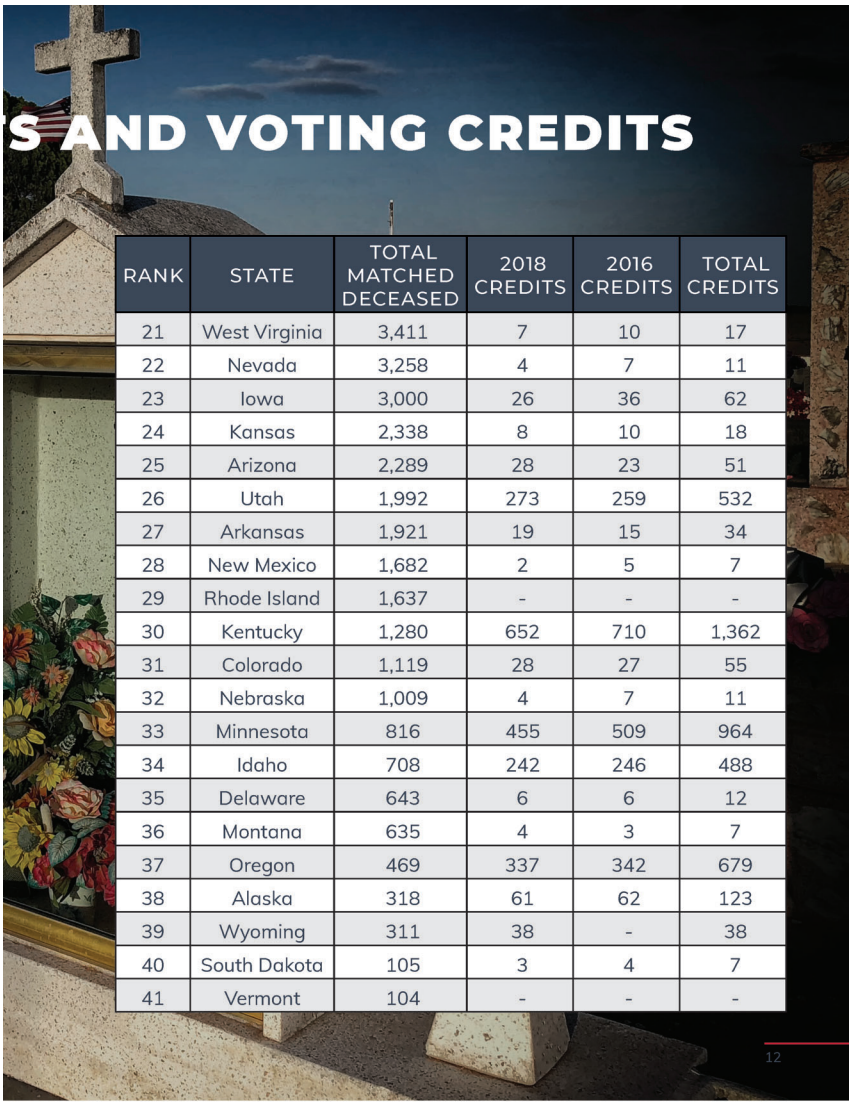
New York, Texas, Michigan, Florida, and California make up 51 percent of all matched dead registrants across the United States. In other words, these five states account for a majority of the instances where the deceased are remaining on the rolls. Following closely behind with at least 11,000 apiece were Pennsylvania, South Carolina, North Carolina, Connecticut, Virginia, New Jersey, and Tennessee.

MOST DECEASED VOTING CREDITS PER STATE - 2018	
North Carolina	2,172
Mississippi	723
Kentucky	652
Minnesota	455
California	350
Oregon	337

MOST DECEASED VOTING CREDITS PER STATE - 2016	
North Carolina	2,454
Kentucky	710
Mississippi	662
New York	549
Minnesota	509
California	424



RANK	STATE	TOTAL MATCHED DECEASED	2018 CREDITS	2016 CREDITS	TOTAL CREDITS
	TOTALS	349,773	6,718	7,890	14,608
1	New York	59,096	147	549	696
2	Texas	36,054	136	153	289
3	Michigan	34,225	97	104	201
4	Florida	25,162	100	117	217
5	California	23,414	350	424	774
6	Pennsylvania	16,685	127	177	304
7	South Carolina	14,351	50	273	323
8	North Carolina	12,940	2,172	2,454	4,626
9	Connecticut	11,948	96	103	199
10	Virginia	11,903	43	47	90
11	New Jersey	11,814	87	105	192
12	Tennessee	11,126	46	42	88
13	Missouri	8,358	27	34	61
14	Alabama	7,922	41	66	107
15	Ohio	7,368	51	51	102
16	Wisconsin	6,805	163	186	349
17	Mississippi	6,738	723	662	1,385
18	Oklahoma	5,302	27	45	72
19	Washington	5,274	26	-	26
20	Georgia	4,243	12	17	29



RANK	STATE	TOTAL MATCHED DECEASED	2018 CREDITS	2016 CREDITS	TOTAL CREDITS
21	West Virginia	3,411	7	10	17
22	Nevada	3,258	4	7	11
23	Iowa	3,000	26	36	62
24	Kansas	2,338	8	10	18
25	Arizona	2,289	28	23	51
26	Utah	1,992	273	259	532
27	Arkansas	1,921	19	15	34
28	New Mexico	1,682	2	5	7
29	Rhode Island	1,637	-	-	-
30	Kentucky	1,280	652	710	1,362
31	Colorado	1,119	28	27	55
32	Nebraska	1,009	4	7	11
33	Minnesota	816	455	509	964
34	Idaho	708	242	246	488
35	Delaware	643	6	6	12
36	Montana	635	4	3	7
37	Oregon	469	337	342	679
38	Alaska	318	61	62	123
39	Wyoming	311	38	-	38
40	South Dakota	105	3	4	7
41	Vermont	104	-	-	-

METHODOLOGY

The Foundation utilized a combination of three sets of primary death record sources. The Social Security Death Index is the repository for information about social security beneficiaries who have died. When the Social Security Administration receives notice that someone has died – often through an application for death benefits – the event is incorporated into the Social Security Death Index (SSDI). The SSDI contains false negatives. For example, not everyone who dies is in the SSDI. Some family members never notify the SSDI or never seek death benefits. The SSDI was designed to keep tabs on its benefits-receiving customer base, not act as an exhaustive listing of all deceased Americans with a Social Security number.

Relying only on the SSDI to catalog the deceased can omit younger people who have died. To account for this issue, the Foundation additionally compared full voter roll data against national obituary data. Of course, not everybody who has died is in the SSDI or has a paid-for obituary. But these missing examples of deceased registrants, if they were known, would only push the number of deceased registrants on the rolls higher, not lower.

Once SAVE identified matches between the voter registration lists and SSDI and obituaries, an additional and important step was undertaken. These matches were then screened against the three major credit bureaus (Experian, Equifax, and TransUnion) for final confirmation that the person on the rolls and the person who had died were one and the same person. This process allows for high-confidence confirmation for corresponding dates of birth, death, and address history. There are other potential sources of data to refine these results further but either the Foundation did not have any access to those data or the costs to utilize those data were exponentially higher.

NEW YORK
National Rank: 1
59,096 Dead Registrants
549 Voter Credits in 2016
147 Voter Credits in 2018

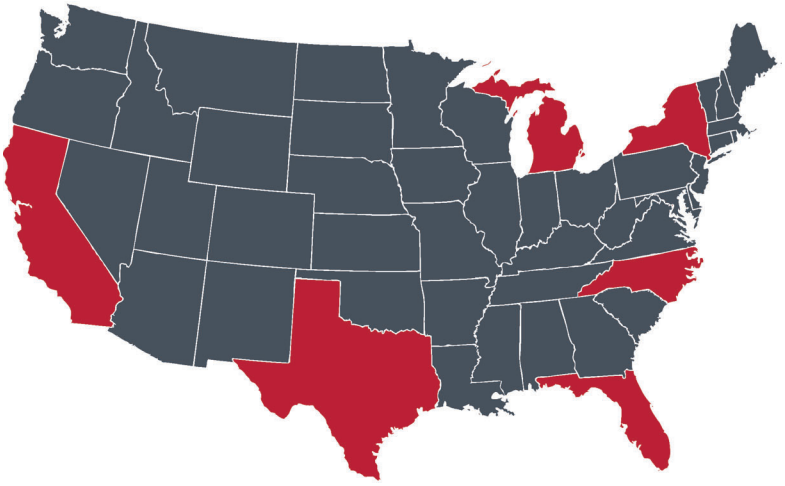
FLORIDA
National Rank: 4
25,162 Dead Registrants
117 Voter Credits in 2016
100 Voter Credits in 2018

TEXAS
National Rank: 2
36,054 Dead Registrants
153 Voter Credits in 2016
136 Voter Credits in 2018

CALIFORNIA
National Rank: 5
23,414 Dead Registrants
424 Voter Credits in 2016
350 Voter Credits in 2018

MICHIGAN
National Rank: 3
34,225 Dead Registrants
104 Voter Credits in 2016
97 Voter Credits in 2018

NORTH CAROLINA
National Rank: 8
12,940 Dead Registrants
2,454 Voter Credits in 2016
2,172 Voter Credits in 2018



DUPLICATE REGISTRANTS WITH TWO SEPARATE VOTING CREDITS IN SAME ELECTION

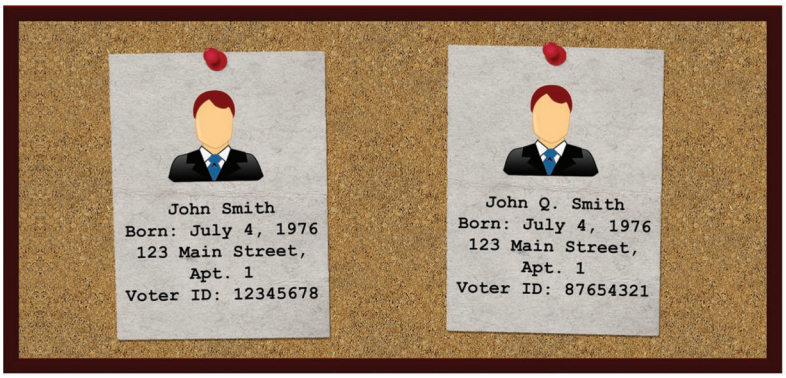
A duplicate registration is when a person is registered to vote more than once at the same time. Sometimes duplicate registrants have more than two active registrations. It is not necessarily illegal to have two active registrations, but it is a felony to vote more than once for the same federal office under federal law. Various state laws make it illegal to vote more than once. States are required under federal law to have a statewide database that detects and fixes duplicate registrations. The National Voter Registration Act (NVRA) and Help America Vote Act allow for enforcement actions against election officials for not having adequate list maintenance practices.

Since 2017, the Foundation has studied several local jurisdictions' voter rolls to quantify the number of times duplicate registrations were created—and how long they went undetected by election officials. This work has yielded some of the most surprising results of all the in-depth research in this report. Simply, states are allowing the same persons to register multiple times without detection. In Pennsylvania, for example, the Foundation found one registrant with seven separate active registrations, all at the same address, with the same name and date of birth. All seven registrations had separate active state issued voter identification numbers. This registrant was active on the rolls for four years before the Foundation discovered him, according to local officials.

Why aren't the states catching their own duplicates? The Help America Vote Act of 2002 was specifically designed to prevent this from happening. The Department of Justice is tasked with enforcing the laws that relate to maintaining the statewide database free from such duplicates, among other requirements.

The truth is that the career employees in the Voting Section of the Civil Rights Division of Department of Justice have no interest in enforcing this law. If they do – as they did against New York and California – they do so only in the most extreme circumstances. New York refused to adopt modern voting machines, so they acted. California was negligent in implementing a statewide voter database not for a year or two, but for over a decade. Only then did the career attorneys in the Voting Section bring an action. But they have filed very few actions to enforce these provisions.

All of the findings of duplicates in this report speak directly to the ineffective enforcement of the Help America Vote Act (HAVA) since its adoption in 2002 by the lawyers at the Department of Justice (DOJ). They do not even detect the problems or view enforcement of HAVA and the NVRA as outlier priorities. Many formerly worked at the NAACP, ACLU or similar groups that oppose enforcement of HAVA and the NVRA to clean up and maintain accurate voter registration rolls. An investigation by the DOJ Inspector General into the failure to enforce the NVRA and HAVA found that DOJ staff recruited applicants who were likely to be opposed to enforcing



these laws by selecting only liberal lawyers to recruit and alerting organizations about vacancies that were almost exclusively left of center. The Inspector General urged the Voting Section to reevaluate existing hiring practices.[8] Those organizations routinely appear as intervenors to prevent, as they derisively call list maintenance, "purges." This same mindset has infected the career ranks of the Voting Section at the Justice Department and every single instance of duplicate registrants on statewide rolls confirms this bias and their failure to act to properly enforce the law.

Despite DOJ failures to enforce the law, this body of research shows that some states are better than others at either preventing registration duplication from occurring, or were equipped to catch the errors in a reasonable amount of time. Every state studied to date has a protocol for handling suspected duplicate registrations. Whether states are following their own rules is reflected in the data. One thing is certain – each state filed a HAVA plan with the U.S. Election Assistance Commission on how it intended to use federal funds to comply with HAVA. The DOJ's Voting Section has authority to enforce HAVA's list maintenance mandates when these HAVA plans are ignored, resulting in swarms of duplicates as SAVE demonstrates has occurred.

...databases and the clerks operating them are regularly creating second or third registrations when the registrant intended for only an update to their existing file.

In states prone to duplications, it is easy to register to vote multiple times. Whether it is a surname change, transposed digits in a birthdate, a typographical error, a deputy voter registrar's error (phonetic confusion like "Devereaux" versus "DeVero") or even conflicting gender claims, voter databases and the clerks operating them are regularly creating second or third registrations when the registrant intended for only an update to their existing file.

It is not necessarily illegal to

be registered twice—whether it's in the same house or across two states—especially if an officer cannot prove some semblance of intent. However, it is unlawful to cast multiple ballots in the same election. Currently, 11 states have laws prohibiting voting in that state and another.[9] Seven states have explicit laws barring double votes in those particular states.[10] Thirty-one states generally prohibit double voting in the same election.[11] Federal law also bars "voting more than once."[12] Within federal and most state laws, double voting is considered a felony.

A startling number of same-address duplicate registrants apparently took advantage of the extra votes in 2016 and 2018. In the 2016 Presidential Election, 43,760 registrants across 33 states purportedly cast second ballots, according to voting credits issued to their records. For the 2018 General Midterms, 37,889 registrants across 31 states did the same. Again, these conclusions depend on the accuracy of state voter credit data. If in fact states are bungling the recording of voter credit data (and these registrants are not casting second ballots) then this too must be fixed. Voter credit data is an important list maintenance datapoint because it determines when it is legal and appropriate to remove someone from the voter rolls. But if state voting records are accurate, this represents potentially over 80,000 instances of election fraud in just two elections.



WHAT CONSTITUTES CASTING TWO BALLOTS?

A registrant who has multiple active registrations at the same address, for the purposes of this report, must match across the following parameters:

- **First name**
- **Last name characters (allows matching for a maiden name with a subsequent hyphenated name)**
- **Date of birth (with matching for transposed or incomplete numbers)**
- **Full address and applicable apartment/unit number**
- **General election voting credit**

SAME-ADDRESS DUPLICATES SHOWING SECOND VOTE CREDIT IN 2016

RANK	STATE	COUNT
1	North Carolina	9,734
2	Georgia	9,619
3	Michigan	7,140
4	Colorado	3,445
5	Mississippi	3,368
6	Arizona	3,277
7	Wisconsin	2,066
8	Delaware	1,816
9	California	903
10	New Mexico	863
11	Utah	585
12	Idaho	301
13	Alaska	209
14	Vermont	134
15	South Dakota	122
16	New York	94
17	Pennsylvania	13

RANK	STATE	COUNT
18	Texas	13
19	New Jersey	11
20	Connecticut	8
21	South Carolina	8
22	Florida	7
23	Alabama	4
24	Minnesota	4
25	Arkansas	3
26	Nebraska	3
27	Tennessee	3
28	Ohio	2
29	Kansas	1
29	Kentucky	1
29	Oklahoma	1
29	Oregon	1
29	West Virginia	1
		43,760

SAME-ADDRESS DUPLICATES SHOWING SECOND VOTE CREDIT IN 2018

RANK	STATE	TOTAL
1	Georgia	9,899
2	North Carolina	7,026
3	Michigan	6,457
4	Colorado	3,175
5	Arizona	3,077
6	Mississippi	2,428
7	Wisconsin	1,828
8	Delaware	1,304
9	New Mexico	721
10	California	624
11	Utah	549
12	Idaho	235
13	Alaska	190
14	South Dakota	100
15	Vermont	96
16	Wyoming	82

RANK	STATE	TOTAL
17	New York	36
18	Pennsylvania	14
19	New Jersey	10
20	Texas	8
21	Connecticut	7
22	Florida	6
23	Alabama	3
24	Arkansas	3
25	South Carolina	3
26	Kentucky	2
27	Kansas	2
28	Ohio	1
28	Oklahoma	1
28	Oregon	1
28	West Virginia	1
		37,889

An alarming trend that emerged from both the 2018 and 2016 datasets was the prominence of duplicate registrants being credited for casting two absentee/mail-in ballots at the same time in the same election. The Foundation was able to determine, when detailed data was provided by the various states, how often these apparently duplicate registrants either participated by voting twice by mail or by voting both in-person and again by mail in a single election.

Mail ballots appear to be the problem. Remember, someone casting a mail ballot need not present themselves in front of any election official. Moreover, groups like the League of Women Voters are even seeking to invalidate witness requirements for mail ballots in the 2020 Election.

2016 GENERAL ELECTION		
RANK	STATE	MAIL-MAIL %
1	North Carolina	51%
2	Georgia	43%
3	Michigan	68%
4	Colorado	90%
6	Arizona	9%
7	Wisconsin	14%
9	California	34%
10	New Mexico	4%
11	Utah	59%

22% of Arizona's 2016 double vote credits involved mail and subsequent in-person vote combinations.

34% of New Mexico's 2016 double vote credits involved mail and subsequent in-person vote combinations.

2018 GENERAL ELECTION		
RANK	STATE	MAIL-MAIL %
1	Georgia	42%
2	North Carolina	42%
3	Michigan	69%
4	Colorado	95%
5	Arizona	57%
7	Wisconsin	10%
9	New Mexico	5%
10	California	37%
11	Utah	84%

While in conversations with election officials about these data, one question is uniformly asked: what does it take to get assigned a mail ballot credit as opposed to a polling place one? Generally speaking, a polling place credit means that a poll check-in was successfully completed by the voter. One way a counted ballot is not behind that credit is if the voter chose not to complete the balloting process at the site after he or she checked in. Another way a counted ballot is not behind the credit is if the election official – either at the polling site or processing the poll books after the election – mistakenly assigned an in-person credit to the wrong registrant. As for mail ballot credits, only returned and counted ballots result in such credits. Rejected, surrendered, spoiled, or otherwise missing ballots do not result in a credit.




I VOTED
TWICE

INTRASTATE DUPLICATES

Even though HAVA required that states build a single database to house all registered voters to prevent—in part—duplication across county lines, the same can apparently still happen in 2020. The premise is simple: an 18-year-old registers in her hometown in county A, goes off to college in county B, starts a career and family in county C. All along the way, she is updating her registration and canceling the previous one with each transaction—or so she thought.



In 24 states, apparently duplicate registrants were given double voting credits in 2018 across each state's county lines or even within the same county. As an example, a registrant in Wake County, North Carolina, with matching full name, date of birth, and Social Security number appearing on the voter rolls twice with two different registration addresses was credited for voting at each location with two absentee ballots. This type of scenario—regardless of voting method—occurred more than 5,500 times during the 2018 Midterms nationwide.

In theory, personally identifying information (PII) like a Social Security number would serve as a common denominator when a person changes addresses and wishes for her voter registration record to reflect those life changes. But in the vast majority of states registrants are not required to provide a full Social Security number (SSN). As described above, some states' database systems are designed in a way to confuse Michael Smith and Michael M. Smith for two different people even though they were both born on July 4, 1976 and live at 123 Main Street Apartment A. It is, therefore, no wonder a duplicate registration occurs when Michael and Michael M. appear at two different addresses and one is without a SSN.

The table outlines the states with the highest numbers of apparently duplicate voters with differing addresses and overlapping voter credits for the 2018 General Election. Reviews of Social Security numbers and address histories from credit reporting databases served to validate identity. The review process allowed the Foundation to access personal address histories maintained by credit reporting bureaus going back a decade.

SAME-ADDRESS DUPLICATES WITH DOUBLE VOTE CREDITS

RANK	STATE	2018	2016	TOTALS
1	Georgia	9,899	9,619	19,518
2	North Carolina	7,026	9,734	16,760
3	Michigan	6,457	7,140	13,597
4	Colorado	3,175	3,445	6,620
5	Arizona	3,077	3,277	6,354
6	Mississippi	2,428	3,368	5,796
7	Wisconsin	1,828	2,066	3,894
8	Delaware	1,304	1,816	3,120
9	New Mexico	721	863	1,584
10	California	624	903	1,527
11	Utah	549	585	1,134
12	Idaho	235	301	536
13	Alaska	190	209	399
14	Vermont	96	134	230
15	South Dakota	100	122	222
16	New York	36	94	130
17	Wyoming	82	0	82

RANK	STATE	2018	2016	TOTALS
18	Pennsylvania	14	13	27
19	Texas	8	13	21
20	New Jersey	10	11	21
21	Connecticut	7	8	15
22	Florida	6	7	13
23	South Carolina	3	8	11
24	Alabama	3	4	7
25	Arkansas	3	3	6
26	Minnesota	-	4	4
27	Nebraska	-	3	3
28	Tennessee	-	3	3
29	Ohio	1	2	3
30	Kansas	2	1	3
31	Kentucky	2	1	3
32	Oklahoma	1	1	2
33	Oregon	1	1	2
34	West Virginia	1	1	2

WHY DO DUPLICATE REGISTRATIONS MATTER?

On the surface, seeing that someone accidentally became registered twice may seem like a minor matter. After all, there are a number of ways in which a person can become registered to vote beyond simply picking up an application and mailing it to the elections office. Even community college applications can double as voter registration forms in some states. People are likely to fill out these forms differently over time, but officials should be able to merge the disparate information into one file, right?

Not in every state.

Duplicate voter registrations are still very much an underappreciated concern—but the Foundation isn't the only outfit sounding the alarm about duplicates anymore.

"Duplicates are an important indicator in voter file quality," an academic paper from CalTech noted in September 2019.[13] Georgia was the only state during the 2018 election cycle to systematically report the number of duplicate registrations it cleaned up before votes were cast. Other states should follow Georgia's lead for transparency. Georgia voluntarily revealed it corrected almost 63,000 such files.[14] In late 2019 and early 2020, the Foundation filed federal lawsuits in Detroit, Michigan, and Pittsburgh, Pennsylvania, where long-undetected duplicate registrations by the same individual were specifically cited as voter list maintenance failures under the National Voter Registration Act of 1993 and state laws.

We believe data such as these detailed here makes enforcement of the National Voter Registration Act – both by private parties and by the Justice Department – more targeted, efficient and precise.

Duplicates are the easiest voter roll errors to detect and fix. States possess the data already. Reliance on third party data isn't needed. All it requires is sorting the statewide database file to detect duplicates. In litigation, the Foundation once asked an election official in a deposition if they had ever sorted the registrant file to detect duplicates. Not only had they never done it, they never even thought of doing it. That's the sad reality of why there are so many duplicate registrations in America. The existence of so many duplicates has direct relevance to any proposed movement to vote by mail. Those who most strongly advocate for vote-by-mail probably never considered the possibility of so many duplicates on the voter rolls either.

RANK	STATE	% OF DUPLICATES CREDITED FOR CASTING 2 MAIL BALLOTS
1	Georgia	42.53%
2	North Carolina	47.34%
3	Michigan	68.29%
4	Colorado	92.19%
5	Arizona	31.95%
6	Mississippi	0.00%
7	Wisconsin	12.02%
8	Delaware	0.00%
9	New Mexico	4.23%
10	California	35.17%
11	Utah	71.08%

THE INTERSTATE CROSSCHECK

Checking a state's voter roll against another state can be a harder task, but the SAVE Database did just that.

More than 8,360 single registrants were identified in the SAVE Database as apparently being registered and credited for voting twice in two different states during the 2018 General Election, a potential violation of state and federal election laws. That represents over 8,000 potential cases of election fraud.

Again, state election officials are better suited to make final determinations if indeed these apparently credited double voters are indeed the same people. State officials will have access to additional identifying information to confirm SAVE's findings, but here's why we can have confidence in them.

One of the challenges to detecting cross state duplicate registrations is that there are plenty of people with the same name and date of birth. When two separate voter registrations of apparently the same person are detected across state lines, there must be some validation with PII that these are in fact the same person. The SAVE database supplemented the voter registration information received from states with commercial database and credit bureau information to find PII unique to each registered voter to avoid false positives. It resulted in 150,000 potential double voters being reduced to 8,360 when unique PII was included in the analysis. This was not an inexpensive process in building the SAVE Database, but it was important to increase the confidence of the conclusions.

The SAVE Database focused on a single state and then compared registration lists from that state against all the others. It then repeated the process with all of the states in the database.

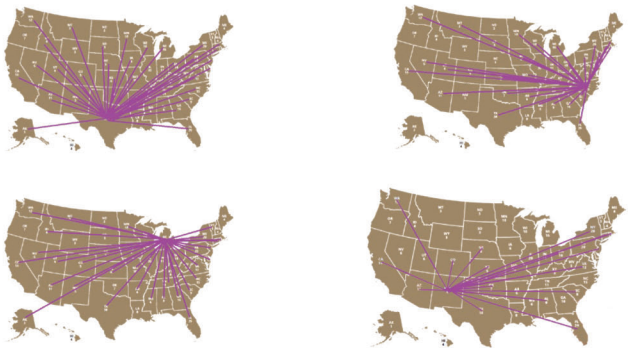
Americans have long heard about the "snowbird" effect on Florida's elections over the years featuring New Yorkers and residents of other northeastern states seeking warmer weather come late fall. There is considerable truth to the meme—but not all apparent duplicates were generated by owners of second homes. A relatively even distribution of apparent duplications existed between coupled states like New York and Florida (snowbird second home types) and domestic migrants (nearly any state and Texas). Wherever former Californians fled to, you could see duplications.

To better demonstrate the findings, this table lays out the states with the most duplicate sets of registrants who voted in more than one state.

STATE	APPARENT INTERSTATE DUPLICATES WITH VOTING CREDITS IN MORE THAN ONE STATE (2018)
California	2,005
Florida	1,836
Texas	1,125
North Carolina	1,029
Pennsylvania	917
Georgia	844
New Jersey	830
New York	793
Michigan	791
Virginia	592

As the Foundation has stressed many times in the past, being registered to vote twice in two (or potentially more) states is not a criminal act. Registrants do not always notify their former state that they have moved and some states do not always send information about a new registrant voter to that registrant's state of former residence.

Without mandatory cross-state reporting protocols, duplicate registrations can be hard to avoid. If a person relocates from a state with substandard voter list maintenance practices, it can take sometimes up to eight years to fall off their former roll due to inactivity if they do not successfully alert the jurisdiction of their move. This highlights the need for states to participate in cooperative ventures to identify these duplicate registrants. States would be well advised to take the leads of private organizations – such as the Foundation – that have spent private dollars to do what the states ought to be doing more effectively--detect obsolete registrations. Instead of spurning private efforts, states should embrace them as partners. After all, a confirmation notice can be sent to the new address to complete the process, or a subsequent registration can be used as a written notice from the registrant to cancel the obsolete registration.



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VOTES CAST FROM NON-RESIDENTIAL ADDRESSES

SAVE compared the nation's voter rolls with commercial addresses. The data shows that instead of being registered at actual residences as required by state laws, 35,000 registrations are at commercial locations such as casinos, gas stations, and restaurants.

In July 2020, Congressman Steve Watkins (R-Kansas) was charged on three felony counts of alleged voter fraud for claiming a UPS Store address as his residence and then voting in 2019 municipal elections.[15] Voter registration applications printed by the State of Kansas ask the user directly to give their "residential address."[16] Kansas law is also clear that a permanent address used for voter registration purposes must be a "place of residence."[17] Before this case arose, the Foundation was ascertaining if zoned nonresidential addresses were ever claimed as homes for the purpose of voting—and whether

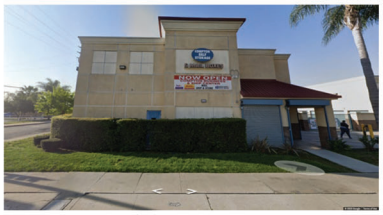
RANK	STATE	TOTAL
1	California	7,244
2	Texas	1,952
3	Virginia	1,772
4	Wisconsin	1,653
5	Florida	1,623
6	North Carolina	1,597
7	Arizona	1,435
8	Alabama	1,336
9	New York	1,312
10	Pennsylvania	1,115
11	Washington	1,083
12	Ohio	1,047
13	Georgia	912
14	Kentucky	824
15	Colorado	805
16	Montana	765
17	Oklahoma	636
18	Oregon	617
19	Kansas	599
20	Alaska	565
21	South Carolina	528

RANK	STATE	TOTAL
22	Nebraska	484
23	Mississippi	456
24	Iowa	451
25	Nevada	429
26	Tennessee	395
27	Missouri	387
28	Utah	265
29	West Virginia	242
30	Connecticut	235
31	Wyoming	206
32	Minnesota	199
33	New Mexico	188
34	Idaho	178
35	Michigan	135
36	Rhode Island	115
37	South Dakota	70
38	New Jersey	64
39	Massachusetts	41
40	Delaware	16
41	Vermont	15
	TOTAL	33,991

any voting credits were assigned for such voters in the 2018 federal midterm elections.

Voting credits were assigned to 34,000 registrants across 41 states at addresses zoned for non-residential buildings in federal midterm elections in 2018. The study focused on addresses zoned for light/heavy industrial, office parks, single-use retail, and service stations.

Although most states are relatively generous on what they consider a residence—a group shelter or even an overpass is fine as long as you're specific on the location—they tend to draw the line at rented mailboxes measuring not much bigger than a shoebox. A very small minority of states allow you to claim a commercial address as your home if you do indeed live there.



1450 E. Compton Blvd., Compton, CA
17 votes in 2018

STATE	APPLICATION LANGUAGE
Alabama	Address Where You Live
Alaska	You MUST provide the Alaska residence address where you claim residency. Do not use PO, PSC, HC or RR.
Arizona	Residential Address (where you live–no P.O.Box/business address)
Arkansas	Address Where You Live
California	Not a P.O. Box or business address (Number, Street, Ave., Drive, etc. Include N, S, E, W)
Colorado	Address (no P.O. Boxes)
Connecticut	Address Where You Live
Delaware	Street address
Florida	Address Where You Live (legal residence-no P.O. Box)
Georgia	RESIDENCE ADDRESS: House No. and street name
Idaho	Residence Address (Do not use PO Box or business address. If no street address, describe location of residence by cross streets, section, township, range, or other physical description.)
Iowa	Address Where You Live
Kansas	Residential Address
Kentucky	Residential Address
Massachusetts	Address where you live now
Michigan	address where you live – house number & street name
Minnesota	address where you live (residence) if mail cannot be delivered to the address above, provide P.O. Box
Mississippi	Physical Home Address(Where you live)
Missouri	ADDRESS WHERE YOU LIVE (HOUSE NO., STREET, APT. NO, OR RURAL ROUTE AND BOX - NO PO BOXES)

STATE	APPLICATION LANGUAGE
Montana	Montana Residence Address
Nebraska	Current Residential Address
Nevada	Nevada Residential Address –See Instructions on Back (No P.O.Box / Business Address)
New Jersey	Home Address (DO NOT use PO Box)
New Mexico	Physical Address Where You Live Now
New York	The address where you live
North Carolina	Provide your residential address - where you physically live. Do not enter a P.O. Box or a mail drop location.
Ohio	Your voting residence is the location that you consider to be a permanent, not a temporary, residence. Your voting residence is the place in which your habitation is fixed and to which, whenever you are absent, you intend to return. If you do not have a fixed place of habitation, but you are a consistent or regular inhabitant of a shelter or other location to which you intend to return, you may use that shelter or other location as your residence for purposes of registering to vote.
Oklahoma	Street or 911 address or directions to your home Do not use a rural route or P.O. box
Oregon	Oregon residence address
Pennsylvania	Address (not P.O. Box)
Rhode Island	Home Address (Do not enter a post office box)
South Carolina	Address Where You Live
South Dakota	If Residence Address is a PO Box, rural box, or general delivery, you must give the location of your residence
Tennessee	Address Where You Live (legal residence-no P.O. Box)

STATE	APPLICATION LANGUAGE
Texas	Residence Address: Street Address and Apartment Number. If none, describe where you live. Do not include P.O. Box, Rural Rt. or Business Address
Utah	Physical Address (required, principal place of residence, no P.O. Box)
Vermont	My principal dwelling place is located at
Virginia	Residence address (May not be a P.O. Box)
Washington	residential address in Washington
West Virginia	Provide your residence address (the address where you live). Check the box if you live within city limits. Include the name of the county where you live.
Wisconsin	The Address Where You Live your residential voting address, which cannot be a P.O. Box
Wyoming	Wyoming address where you live



1695 N. Nellis Blvd. Las Vegas, NV
2 votes in 2018



NPR West Headquarters
9909 Jefferson Blvd. Culver City, CA
4 mail ballots cast from here in 2018



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PART II – DEPLOYMENT

LITIGATION & OFFICIAL OUTREACH

We have all heard the refrain that voter fraud is rare, and not widespread. The same people and groups who say this the loudest never bother to look. They have not undertaken a project such as this SAVE Database. Indeed, rather than support an effort to fix the problems SAVE Database has detected, Americans can count on them to interfere with any proposed solutions, and even attack the existence of this report.

Shame on them. Had we learned 30 years ago that voter rolls were full of thousands of dead but active registrants, or thousands of duplicates potentially voting twice inside states and across state lines, Americans – both Republican and Democrat - would have been united in calls to find solutions to fix the problem. Liberal interest groups would not have dared pick a fight over these findings. Federal employees in the Voting Section at the Department of Justice would have spent more energy considering ways to act to fix the problems rather essentially ignoring this problem.

The SAVE data findings are also relevant in 2020 to the rush to move to automatic vote-by-mail. It has been used by the Foundation in, as of this writing, 11 briefs in COVID-19-related litigation brought by liberal groups seeking to cancel or modify state election laws that protect the integrity and security of the election and voting process.[18]

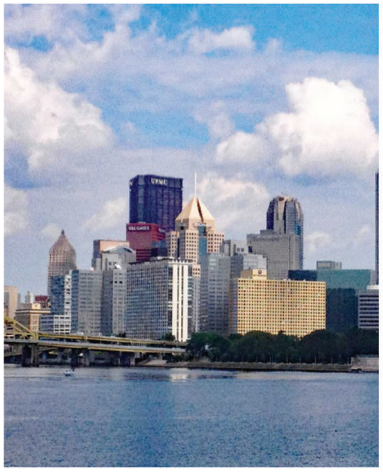
SAVE could not have come at a better time.



THE FOUNDATION'S LITIGATION

ALLEGHENY COUNTY, PENNSYLVANIA

Over the past two years, Pennsylvania has received national attention for admitting to registration glitches over decades that resulted in thousands of foreign nationals being registered to vote. The Foundation is currently litigating against the Commonwealth to collect all documents explaining the full scale of the failure.[19] Pennsylvania has fought tooth and nail to conceal the extent of the problem, including how many aliens illegally cast ballots in elections.



The Foundation released a report about foreign national registration collected from Allegheny County, home to Pittsburgh.[20] In 2019, careful reviews of that county's voter roll revealed thousands of duplicates, triplicates, quadruplicates, and even one man simultaneously registered to vote seven times. On January 15, the County was formally notified of the nearly 7,500 registrants flagged for duplication concerns; 1,500 matched against the Social Security Death Index; another 1,500 who were older than 100 years of age (49 born in the 1800s); nearly 1,200 registrants showing no date of birth; and more.

Shortly before the onset of the pandemic, the ACLU tried to intervene in the case, essentially arguing that Allegheny County and the court could not be trusted to handle the Foundation's data. That's a shame, because the errors on the rolls were objective, clear and easy to fix. The parties reached an agreement to fix the problems and improve the process. This is how the SAVE Database can be used to improve the administration of American elections and protect voters from dilution of their franchise.

"Allegheny County deserves credit for agreeing to fix a serious problem with elections there. People have been getting registered two, three, four, even seven times over to vote in Pittsburgh and the suburbs. We found those problems, and the County agreed to fix them. We also outlined plans to address registration files which may be outdated, incomplete, or belong to deceased persons. This settlement demonstrates what can be accomplished when good government groups work with election officials in good faith without the interference of ideologically driven activists who oppose such measures. Those same activists push radical changes to vote by mail, which shows how important this settlement was for a clean election in Pennsylvania."
— J. Christian Adams



THE FOUNDATION'S LITIGATION

CITY OF DETROIT

In May 2019, the City was notified about a variety issues that, by all appearances and communications, were being ignored. Detroit was warned about the thousands of "active" registrants aged 85-plus that were matched against the Social Security Death Index. Officials were alerted to registrants being shown as born in "1823." A child appeared to be registered. Yet again, thousands were registered in duplicate and triplicate. A federal lawsuit to correct these matters was filed on December 10, 2019.

Once discovery was fully underway, documents and statements by the defendants began to illuminate how nearly every one of the thousands of duplicates had been cleaned up. Local officials had started hunting for death records across the state. By June, the Foundation was satisfied by the amount of action evident coming from the City and dismissed the case.



“This case wasn’t complicated. The City of Detroit could have started to fix these problems before litigation, but didn’t. Other jurisdictions should take note--if you don’t act on solid data that your voter rolls are corrupted with dead and duplicate registrations, you will be sued. It is also a message to left wing groups who sought to stop the cleanups. They need to stop standing in the way of clean elections and stop wasting court time with their anti-integrity agenda. Election officials can get rolls clean without removing valid registrants. It’s time groups like the League of Woman Voters realized that data-driven list maintenance is something most Americans want.”
— J. Christian Adams









THE COVID CASES

Liberals have sought to cancel state election laws and re-write the rules of the 2020 election that protect the integrity and security of voting and the election process because of the pandemic. A hyper funded litigation effort was deployed, asking courts to cancel state laws enacted by democratically elected legislatures and signed by governors. This antidemocratic effort has a common theme: demanding mail ballots are made available with fewer rules; loosen or get rid of procedures to verify the identity of the voter and prevent the forgery and alteration of ballots; force states to legalize vote harvesting and allow campaign staffers, party activists, and political consultants access to voted absentee ballots; and change deadlines. As lawsuits are filed, the Foundation – using the important data from SAVE – files amicus briefs to demonstrate to courts what risks would be incurred by implementing automatic circulation of mail-in ballots and loosening or voiding security protocols.



ISSA V. NEWSOM
RNC V. NEWSOM
U.S. Eastern District of California
Plaintiff(s): Darrell Issa, James B. Oerding, Jerry Griffin, Michelle Bolotin, Michael Sienkiewicz, Republican National Committee
Core Issues: Lawsuit to block California from performing an all vote-by-mail election for the 2020 General Election
The Foundation's Brief: 23,000 deceased registrants, 1,800 apparently duplicated voters, 2,000 apparent interstate duplicate voters

FAY V. MERRILL
Connecticut Supreme Court
Plaintiff(s): Mary Fay
Core Issues: Enjoining the automatic circulation of mail ballots during the 2020 General Election
The Foundation's Brief: 12,000 deceased registrants, duplicate registrations, risks of sending mail to outdated addresses

THE NEW GEORGIA PROJECT V. RAFFENSPERGER
U.S. Northern District of Georgia
Plaintiff(s): The New Georgia Project (Stacey Abrams)
Core Issues: Error notification, absentee age restriction, postage requirement, receipt deadline, voiding ballot harvest ban
The Foundation's Brief: 4,200 deceased registrants, nearly 20,000 duplicates were credited for second votes in 2016 and 2018, nearly 850 Georgians credited for voting in 2 states

DEMOCRACY NC V. NC STATE BOARD OF ELECTIONS

U.S. Middle District of North Carolina

Plaintiff(s): Democracy North Carolina, The League of Women Voters North Carolina, Donna Permar, John P. Clark, Margaret B. Cates, Lelia Bentley, Regina Whitney Edwards, Robert K. Priddy II, Susan Shaffer, and Walter Hutchins

Core Issues: Waive 25-day application deadline, remove witness requirements, other-than-mail ballot returns

The Foundation's Brief: # Apparently duplicated registrants credited for 2nd votes in 2016 General Election: 9,700, # apparently duplicated registrants credited for 2nd votes in 2018 General Election: 7,000

NEW MEXICO EX REL. RIDDLE V. OLIVER

New Mexico Supreme Court

Plaintiff(s): New Mexico County Clerks

Core Issues: Automatic ballot mailings to all registrants in time for June 2020 Primary Election

The Foundation's Brief: 3,100 registrants flagged for duplicate voting concerns, 1,680 apparently deceased registrants, 1,500 aged 100+

FISHER V. HARGETT

Tennessee Supreme Court

Plaintiff(s): Earle Fisher, Benjamin Lay

Core Issues: TN Legislature's rights to rule over conduct of elections procedures

The Foundation's Brief: No constitutional right to a mail ballot



TEXAS DEMOCRATIC PARTY V. ABBOTT

U.S. Western District of Texas, Fifth Circuit Court of Appeals

Plaintiff(s): TX Democratic Party, Gilberto Hinojosa, Joseph Daniel Cascino, Shanda Marie Sansing, Brenda Li Garcia

Core Issues: Voter intimidation, mail voting security, alleged 26th Amendment violations

The Foundation's Brief: Plaintiffs fail to make intimidation claim, mail voting is fraught with fraud, ballot harvesting risks, Texas does not violate 26th Amendment

LEAGUE OF WOMEN VOTERS VIRGINIA V. VIRGINIA STATE BOARD OF ELECTIONS

U.S. Western District of Virginia

Plaintiff(s): League of Women Voters Virginia

Core Issues: Remove witness signature requirements from mail ballot materials

The Foundation's Brief: 11,600 potentially deceased registrants, 1,700 apparent commercial address votes, nearly 600 Virginians credited for casting a second ballot in another state

ZIGNEGO V. WISCONSIN ELECTIONS COMMISSION

Wisconsin Supreme Court

Plaintiff(s): Wisconsin Ex Rel, Timothy Zignego, David W. Opitz, Frederick Luehrs III

Core Issues: Ensure clean voter rolls prior to 2020 Election

The Foundation's Brief: 6,000 apparently deceased registrants, nearly 4,000 duplicates were credited for second votes in 2016 and 2018



A TOOLBOX ADDITION/POTENTIAL REPLACEMENT FOR VOTER REGISTRARS

Voter registration offices across the nation need all the help they can get to keep records accurate and up-to-date. America is a highly mobile society and good help can sometimes be hard to find in keeping pace with the electorate. Furthermore, locales can sometimes be limited by statute or budget in affirmatively engaging outside help. More than a decade ago, several states joined forces to pool data and expertise to keep tabs on more mobile registrants. The Interstate Voter Registration Crosscheck program grew initially under the management of the Kansas and Missouri Secretaries of State to a majority of states participating prior to the 2016 Elections. But alongside the government cooperative, Pew Research's ERIC (Electronic Registration Information Center) co-op continued to grow without the affixed political lightning rods.

The "Kansas Crosscheck" (Interstate Voter Registration Crosscheck) sustained heavily funded left-wing attacks for years as ERIC managed to pick up clients in their wake. Unlike the Kansas/Missouri model, that nonprofit organization charged member states expensive dues, required more data from states than just voter rolls, and required that list maintenance leads be shielded from public record laws. ERIC now has a majority of participating states with recent recruits like Texas and Florida. Despite the pedigree of ERIC being squarely in the left-of-center camp, foes of election integrity have even turned on ERIC's crosscheck program.

"ERIC should be called ERROR because it's that erroneous and that full of flaws. ERIC claims to find people who've moved. Now, apparently almost half the people on the list are young people." – Barbara Arnwine, Lawyers Committee for Civil Rights Under Law

One nonprofit publication promoting Arnwine's critiques went so far as to label the outfit "ERIC Crow—Jim Crow's Liberal Cousin." [21] The group featured content suggesting that PEW President Rebecca W. Rimel "looks

like the kind old lady down the street with too many cats who will look in on yours when you're on vacation... Just don't leave your voter rolls with her. When you come home, you'll find them bleached white and oddly shrunken."

The Foundation's SAVE Database offers a well-timed substitute or addition to the voter registrar's toolbox.

- **SAVE does not cost states a dime to participate. The Foundation's mission is in part to cooperatively improve voter rolls across the country. Taxpayers should not have to pay extra for that.**
- **SAVE does not require states to provide confidential, non-public information on its registered voters and unregistered residents. ERIC requires voter roll and confidential driver's license information for membership.**
- **SAVE does not require members to mass mail voter registration offers to licensed drivers who are not registered to vote.**
- **In fact, there is no membership structure in SAVE whatsoever.**

States need as many tools and lead-generating systems as they can handle. The Barack Obama-impaneled Presidential Commission on Election Administration was on target when it recommended that "interstate exchanges of voter registration should be expanded." [22]



SAVE PREQUEL REPORTS

The methodologies and audit capacities underpinning the SAVE Database have been explored and reported since October 2018. This section summarizes each edition. All are available online at the Foundation's website for public education uses.

IS FLORIDA READY FOR THE 2020 ELECTIONS?

July 2020



Florida's role in determining the outcome in national elections, combined with its mobile population of snowbirds, makes it vulnerable to election fraud, irregularities, and errors. We know that foreign nationals register and vote but proof is not typically available until they are forced to self-report their records in the face of an immigration proceeding. We know that deceased registrants received mail-in ballots at their former addresses and that those ballots were later counted in federal elections. We also know that some Floridians voted more than once in the same election by virtue of having a second residence in another state.

DOWN THE HATCH: HOW LEFT-WING ELECTION REFORMS CAN BE FORCED ON UNSUSPECTING COMMUNITIES

May 2020



In late 2019, the Public Interest Legal Foundation encountered alarm about a rather novel situation, where election officials were creating voting process errors and also acting as sovereign partners with outside ideological interest groups. With the help of New Mexico's open records statutes, these theories were investigated.

CALM BEFORE THE STORM: ARE PALM BEACH COUNTY'S ELECTIONS PROTECTED AGAINST EMERGING THREATS?

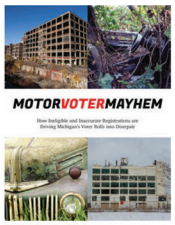
November 2019



The 2018 Midterm was marred by recount delays and other alarming events, which went on to gain national attention in the days and weeks following election day. Shortly before Governor Ron DeSantis ended Palm Beach County Supervisor of Elections Susan Bucher's tenure in office, the Public Interest Legal Foundation began audits and record collection efforts to identify specific flaws within voter registration files and any systemic glitches creating them.

MOTOR VOTER MAYHEM: MICHIGAN'S VOTER ROLLS IN DISREPAIR

October 2018



Michigan demonstrates how noncitizens become registered to vote through DMV transactions and others like it required by the National Voter Registration Act of 1993. The State does not have a verification system keeping false claims of citizenship (intentionally given or otherwise) from being accepted during voter registration. Immigrants and citizens alike continue to suffer the consequences. Several Michigan jurisdictions also exhibited alarming problems with other voter roll maintenance obligations like duplications and potentially deceased registrants remaining on the rolls for years on end.

DATA LITIGATION

A minority of states refuse to disclose or sell voter registration data to non-partisan or private entities. One must be a state resident and/or be a representative of a recognized political party organization. Any moral high ground that these states tried to stand on when the Trump Presidential Advisory Commission on Election Integrity came asking for data was dubious at best.[23]

During data collection, several states similarly refused the Foundation's requests on the basis that it was not a qualifying partisan entity, or it was not local.

PUBLIC INTEREST LEGAL FOUNDATION V. MATTHEW DUNLAP
U.S. District of Maine

February 19, 2020, the Foundation sued Maine Secretary of State Matthew Dunlap for refusing to disclose voter registration records under the National Voter Registration Act's public inspection provision. A copy of Maine's statewide roll was originally requested on October 17, 2019, and rejected the same day—explaining the data could not be shared since the Foundation had zero interest in leveraging the data for partisan ends.

> **"Secretary Dunlap purports to be a champion of transparency, until it comes to his own office. Maine law conflicts with federal statute. A person or organization's lack of partisan interests should not disqualify them from reviewing list maintenance records."**
> **— J. Christian Adams**

As of the release of this report, litigation is pending and proceeding toward a potential trial.

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PUBLIC INTEREST LEGAL FOUNDATION V. LINDA LAMONE
U.S. District of Maryland

On December 16, 2019, the Foundation sued the Maryland State Board of Elections (MSBOE) for refusing to disclose voter registration records under the National Voter Registration Act's public inspection provision. The State informed the Foundation the November prior that because it was not based locally, the application to copy the data would be rejected. Shortly before this report published, the MSBOE agreed to settle the case and released all requested documents.

PUBLIC INTEREST LEGAL FOUNDATION V. ILLINOIS STATE BOARD OF ELECTIONS
U.S. Central District of Illinois

On July 27, 2020, the Foundation sued the Illinois State Board of Elections for refusing to disclose voter registration records under the National Voter Registration Act's public inspection provision. The State prevents private, non-partisan groups from accessing full extracts of the registered voter file.



CONCLUSION

In the aftermath of the 2016 Election, voter registration list maintenance took on a new meaning and sense of urgency. If states' voter databases were fair game for outside attackers then simply relying on strong passwords and fully funded IT departments was an incomplete strategy. The Foundation went to work arguing how effective voter list maintenance practices served as natural defenses against hostile parties who would sabotage whole systems. If voter data was a soft target, then officials and the general public needed to know where the weaknesses were. But you cannot hope to improve the contents of American voter registration systems unless you are first willing to digest them in their entirety. Building the SAVE Database became an absolute necessity.



During the first half of the 2020 Election cycle, the Foundation and some state governments built tools for the next time that Russian hackers or others came calling. When the Chinese Coronavirus came first, SAVE took on a whole new use.

As America grappled with the demands and attendant logistics for more mail voting, the Foundation sounded alarms to the fact that the most important piece of the process—voter registration data—was not being maintained for the task. In an all-mail voting scenario, hundreds of thousands of dead registrants would get ballots; many thousands more would again have opportunities to vote twice; and many thousands more would have chances to claim mailbox rental stores, warehouses, or gas

stations as homes. Accounting for only the past two federal elections, SAVE generated more than 500,000 leads for voter registrars and law enforcement to act upon.

Large scale, cooperative voter registration best practices are now under full assault by increasingly well-funded leftist activist groups. When established and respected organizations too fall under racialist attacks, alternatives and supplements must come forward, like SAVE has done. If early trends show a sustaining effect, America could become even more mobile as citizens relocate to avoid virus hotspots.[24]

As noted at the outset of the report, the nation's voter rolls have shown improvement in some states over the past decade. Year-round pressure and a consistent drumbeat for improved collaboration among officials is the key to long-term success. But even in this period of improvement, problems are still appearing on a widespread scale. There is substantial evidence demonstrating how clumsy or even negligent acts by voter registrars can result in bad actors taking advantage in increasingly tight election contests. Once thought to only impact local elections, voter fraud (by mail in particular) has now marred at least one federal contest. SAVE is the only national tool built to account for this sobering challenge and confront it.

These data show that the nation is not yet ready for an all-mail election. Put aside the wholesale ineptitude of the United States Postal Service to run a national election, the voter rolls remain a mess. If voter rolls are a mess, mail elections will be a mess.

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The Public Interest Legal Foundation, a 501(c)(3) non-profit organization, relies on contributions to conduct the research and develop findings like those contained in this report. PILF is the only organization performing this level of work with respect to voter registration system integrity in America. Time, travel, and technology help deliver new insights into our election systems to better educate citizens and policymakers alike. We also bring litigation to pry this public information from government officials when necessary. None of this would be possible without your support. Please help us expand our efforts by visiting

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SUBMISSIONS FOR THE RECORD

BLOG

How the Wisconsin Voter Purge Targets Black Voters

DECEMBER 20, 2019
SHRUTI BANERJEE
STUART NAIFEH

A conservative group is suing to force the state of Wisconsin to purge 234,000 from voter rolls. According to our analysis of Census data, this could disproportionately target voters of color.



In 2016, Donald Trump won the state of Wisconsin by fewer than 23,000 votes out of almost 3 million cast in the state. Now, as we enter 2020, a massive voter purge threatens to skew the electorate and prevent eligible voters from having their say.

In October, the conservative Wisconsin Institute for Law and Liberty (WILL), a group that has backed former governor Scott Walker's attacks on organized labor, filed a lawsuit against the Wisconsin Election Commission, asking the court to force the Commission to purge 234,000 voters from the state's voter rolls. One week ago, a judge ruled in WILL's favor and ordered the purge. According to our analysis, the voters targeted for removal are disproportionately voters of color.

Why Are Voters Being Purged in Wisconsin?

WILL's lawsuit targets voters who were flagged as having moved through an interstate system known as ERIC. [...] But ERIC doesn't always get it right.

WILL's lawsuit targets voters who were flagged as having moved through an interstate system known as the Electronic Registration Information Center (ERIC). ERIC pools voter registration, postal service, and driver's license information from member states and attempts to identify voters who have moved within the state or to another member state, allowing states to remove those who have become ineligible to vote in the election district in which they are registered. But ERIC doesn't always get it right. In 2017, the first year Wisconsin participated in ERIC, 46,000 of the more than 340,000 individuals on Wisconsin's ERIC list—double Trump's margin of victory—were incorrectly flagged as having moved. These individuals were purged after failing to respond to a mailed notice that gave them 30 days to confirm or update their registrations.

Recognizing the inaccuracies in the ERIC list and having experienced the consequences in the 2018 election cycle when the names of thousands of eligible, registered voters were missing from poll books when they went to vote, the Wisconsin Election Commission decided to take it more slowly the second time around. Voters on the 2019 ERIC list would be given until after the 2020 election to confirm or correct their registrations—which they could do by responding to a mailing or by confirming their address at the polls on election day. Protecting voters from improper removal would mean higher participation by eligible voters. WILL sued to prevent WEC from taking that voter-protective approach. The lawsuit charged that Wisconsin law requires voters on the ERIC list to be purged if they don't respond to the mailing within 30 days. Last Friday, Ozaukee County Circuit Judge Paul Malloy agreed and ordered the Election Commission to begin cancelling registrations immediately.

Who Does the Purge Target?

We can use demographic data from the U.S. Census Bureau to estimate the impact this purge could have based on race in Wisconsin.

The Wisconsin Election Commission has not publicly released the list that was used to target voters for removal, and this lack of detailed public data prevents us from knowing exactly which voters are affected by the court's order. But we can use demographic data from the U.S. Census Bureau to estimate the impact this purge could have based on race in Wisconsin. These data indicate that a disproportionate number of mailers were sent to areas with large Black voting bases.

While the Black voting population comprises only 5.7% of Wisconsin's total electorate, the highest concentrations of 2019 ERIC mailers were sent to areas that are home to the largest Black voting population in Wisconsin. Over one-third—35%—of the mailers sent to voters on the 2019 ERIC list went to the two counties where the vast majority of Wisconsin's Black voters reside, Milwaukee and Dane. These two counties are home to three quarters—74.665%—of Wisconsin's Black voters; Black voters make up 17.45% of these counties' entire electorate.1

And while these counties are large, they are not large enough to account for the significantly higher number of their voters targeted in WILL's lawsuit. For example, Milwaukee County makes up 15% of Wisconsin's electorate, but received almost 22% of the mailers. Similarly, Dane County makes up 9% of the electorate and received 13% of the total mailers. In comparison, Fond Du Lac County, which has an electorate that is 96% white, makes up 2% of Wisconsin's total electorate and received 1.4% of mailers.

Census data also indicate that this voter purge could negatively impact Latino and Asian American voters in Wisconsin. Milwaukee County is home to 37.32% of the state's Latino voters, and 20.73% of its Asian voters.2 Many of these voters have a limited ability to understand English, but the ERIC mailers were not provided in any other language.

Disenfranchising Voters of Color Harms Democracy

The court-ordered voter purge in Wisconsin will fall disproportionately on some of the most vulnerable voters. Although Wisconsin allows registration right up through Election Day, voters who want to register at the polls have to bring proof of address—something voters who believe they are registered don't think to take with them when they go to vote. And when more voters

have to register on Election Day, it increases the amount of time everyone has to wait in line to vote.

Disproportionately excluding voters of color will weaken democracy in the state and could have profound effects for the nation.

Disproportionately excluding voters of color will weaken democracy in the state and could have profound effects for the nation. Voting rights advocates in the state have now asked a federal court to intervene and stop this unwarranted and discriminatory purge. Whatever the courts may do, Wisconsin voters must recognize the purge for what it is: undue voter suppression that will hit communities of color hardest.

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One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections

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Beliefs about the incidence of voter fraud inform how people view the trade-off between electoral integrity and voter accessibility. To better inform such beliefs about the rate of double voting, we develop and apply a method to estimate how many people voted twice in the 2012 presidential election. We estimate that about one in 4,000 voters cast two ballots, although an audit suggests that the true rate may be lower due to small errors in electronic vote records. We corroborate our estimates and extend our analysis using data from a subset of states that share social security numbers, making it easier to quantify who may have voted twice. For this subset of states, we find that one suggested strategy to reduce double voting—removing the registration with an earlier registration date when two share the same name and birthdate—could impede approximately 300 legitimate votes for each double vote prevented.

INTRODUCTION

At the heart of the current "voting wars" (Hasen 2012) lie different beliefs about the incidence of voter fraud (Ansolabehere and Persily 2008; Stewart III, Ansolabehere, and Persily 2016). These beliefs in turn shape the evolving nature of voting rights (Minnite 2010), making it critical to quantify and clarify how often such fraud actually occurs (Alvarez, Hall, and Hyde 2009).

Voter fraud could come in many forms, including the casting of multiple ballots (i.e., double voting), illegal ballots (e.g., noncitizen voting), or other peoples' ballots (i.e., voter impersonation).[1] After extensive research, Levitt (2007) and Minnite (2010) conclude that little to no voter fraud—of any stripe—has occurred in recent U.S. elections. One of their primary pieces of evidence is that few people have been successfully prosecuted for voter fraud. Not everyone, however, accepts these conclusions, both because such prosecutions are dependent on the investigation of, or at least allegations by, legal authorities (Fund 2004) and because voter fraud may be difficult to detect when it is done well (Ahlquist, Mayer, and Jackman 2014; Christensen and Schultz 2013).

We focus specifically on double voting, which is one of "the most common assertions of voter fraud" and a factor in structuring policy about the removal of voter registrations (Levitt 2007, 12). Identifying double voters is particularly challenging because the information in publicly available state voter files—stitched together to create a national file—is necessarily limited due to privacy concerns. Information on social security numbers is particularly useful for determining whether two registrations belong to one person, but this information is not included in public voter files even when known by a state. The only variables consistently reported across states about each registration are first name, last name, and date of birth (DOB). Although approximately three million pairs of 2012 vote records share these three attributes, some of these parings represent two distinct voters rather than one double voter.

We first develop a statistical technique to estimate the aggregate amount of double voting using a national voter file. Roughly speaking, we estimate the number of double voters by subtracting the number of distinct voters that we expect to share the same first name, last name, and DOB from the number of observed matching pairs. We build on McDonald and Levitt's (2008) probabilistic birth-date model for our estimation strategy and extend their work in four ways, accounting for nonuniformity in the distribution of birthdays, producing analytic confidence intervals, explicitly accounting for measurement error in vote history, and looking at the entire country instead of a single state.

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[1] Voter fraud should be distinguished from election fraud, in the sense that voter fraud is driven by voters, whereas election fraud is not. For example, if a state or local election official manipulated vote totals or a campaign operative manipulated voters' absentee ballots, it would be election fraud, but not voter fraud.

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If registration records in our national voter file are never wrongly marked as having been used to vote, we estimate that about one in 4,000 votes cast in 2012 were double votes. But inaccurate marking of vote records would cause our estimate to overstate the number of true double votes. In fact, a 1.3% clerical error rate would be sufficient to explain all of these apparent double votes. Unfortunately, no data exist to make a definitive statement about the error rate nationwide. However, a comparison we make of vote records in a poll book to vote records in a voter file supports the idea that enough measurement error exists to explain at least some, and potentially nearly all, of the apparent double votes.

After we use a national voter file to produce our estimate of double voting, we use data generated by the Interstate Crosscheck Program, a consortium of states that share detailed registration information with each other, to validate the result. The data include all of the cases in which a registration record in a single state in the consortium had the same first name, last name, and DOB as a registration record in any other participating state, plus an indicator for whether the last four digits of each registration's social security number (SSN4) is known and an indicator for whether the two are the same. Using these data, we first identify cases in which both registration records have a known SSN4 and were used to vote, and then calculate the share of these cases in which the SSN4s match. In the national voter file, we estimate that 97% of the votes cast with the same first name, last name, and DOB were cast by two distinct individuals. If we limit our focus to Crosscheck states, we estimate that fully 99.4% of votes cast with the same name and DOB were cast by distinct individuals. In the consortium data, where we can measure this statistic more directly, we estimate this quantity to be 99.5%.

The more fine-grained consortium data also allow us to better quantify the balance between voter accessibility and electoral integrity at the heart of the current voting wars. Fewer than 10 of the roughly 26,000 known duplicate registrations we identified in the consortium data were used to cast two votes in 2012. By contrast, we identified more than 2,500 cases in which only the registration record with an earlier registration date was used to vote in 2012. This ratio is particularly important when evaluating policies such as Indiana's, which instructed local registrars to cancel registrations that share a common first name, last name, and DOB with a registration in another state if the Indiana registration had an earlier registration date [Ind. Code Ann. 3-7-38.2-5(d)(2); see generally *Com. Cause Indiana v. Lawson,* 937 F.3d 944 (7th Cir. 2019)]. Our results suggest that such a strategy would eliminate more than 300 registrations used to cast a seemingly legitimate vote for every double vote prevented. More broadly, these findings highlight that the number of registration records that share common observable characteristics and the number of duplicate registrations are poor proxies for the number of double votes.

THE MEASUREMENT OF VOTER FRAUD

The Supreme Court has voiced concern that perceptions of voter fraud "drive[] honest citizens out of the democratic process and breed[] distrust of our government" [*Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006)]. This suggests an important scholarly role for the measurement of voter fraud: if there is little voter fraud, it is particularly important for this to be documented and for the public to be made aware.

To this end, the recent growth of election forensics has ushered in a host of new measurement methods to detect patterns consistent with various conceptions of electoral fraud (see, e.g., Ahlquist, Mayer, and Jackman 2014; Beber and Scacco 2012; Cantú and Saiegh 2011; Christensen and Schultz 2013; Cottrell, Herron, and Westwood 2018; Fukumoto and Horiuchi 2011; Hood and Gillespie 2012; Mebane 2009; Montgomery et al. 2015). But little existing election forensics work examines the issue of double voting, despite the frequency with which it is alleged (Levitt 2007).

McDonald and Levitt's (2008) study of double voting within New Jersey in the 2004 presidential election is the most extensive work to date on the topic. McDonald and Levitt identify 884 pairs of vote records that have the same first name, last name, and DOB. Via simulation, they estimate the number of vote records that would be expected to share these observable characteristics by drawing the year of birth for a vote record at random from the empirical age distribution of voters and assuming that birthdays within years follow a uniform distribution. Using this method, McDonald and Levitt put a 95% confidence interval of 300–500 people voting twice in New Jersey in this election. If this estimate is correct and the rate of intrastate double voting in New Jersey is representative of the rate in the rest of the county, it would imply that more than 10,000 intrastate double votes were cast across the country during the 2004 presidential election.

In the sections that follow, we build on work by McDonald and Levitt (2008) and by Yancey (2010) to estimate the number of people who cast two ballots—either in the same state or in two different states—in the 2012 U.S. presidential election. In addition to expanding the scope of analysis using a national voter file, we deal with two statistical challenges that McDonald and Levitt identify in their approach. First, our model accounts for both name and day-of-birth periodicity. Second, we allow for the possibility that some registration records are incorrectly marked as being used to cast a ballot. McDonald and Levitt note that failure to account for either issue can inflate estimates of double voting. Indeed, we estimate that the actual number of double votes is fewer than one-tenth of what their approach suggests.

Our approach departs from many of the standard strategies for record linkage (see, e.g., Elmagarmid, Ipeirotis, and Verykios 2007). For example, recent work by Enamorado, Fifield, and Imai (2019) is part of a broader set of Bayesian mixture models that generate posterior probability estimates that record i from dataset A and record j from dataset B are associated with the same observation, even when the number of overlapping variables between the two datasets is inconsistent or some of the variables are measured with error [see also Sadinle (2017) and Steorts, Hall, and

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Fienberg (2016)]. These models are well suited for estimating the likelihood that a specific registration in state A and a specific registration in state B belong to the same person based on all the information that can be assembled about each registration.

Estimating the total number of double votes, however, presents a number of challenges to existing Bayesian record-linkage models. National voter files contain a limited set of consistent identifiers, making it difficult to conclusively determine whether a particular pair of vote records represents the same individual voting twice. In theory, one could aggregate over the posterior probabilities that each pair of records comes from the same individual and interpret this sum as the estimated number of double votes. But the infrequency of double voting brings into question the accuracy of the posterior probabilities. Indeed, previous work suggests that the performance of existing Bayesian record-linkage models declines when the overlap—the share of observations from one dataset that also are contained in the other—decreases (Enamorado, Fifield, and Imai 2019; McVeigh and Murray 2017). For example, Enamorado, Fifield, and Imai show classification errors increase when the overlap is reduced from 50% to 20%. Because double voting is rare, overlap is less than 1% in our setup, even if we engage in the forms of blocking suggested by Enamorado, Fifield, and Imai. If this low amount of overlap generates even small inaccuracies in estimates of posterior probabilities, these inaccuracies can be consequential because the probabilities get aggregated over such a large number of potential pairings.

Alternatively, we could apply a threshold to the posterior probabilities to determine whether any given pairing should be considered a match, as is common in the Bayesian record-linkage literature (Fellegi and Sunter 1969). For example, Enamorado, Fifield, and Imai (2019) apply thresholds between 0.75 and 0.95 when defining whether voter registration records in two datasets are a match. But in our setting, our results indicate that the probability that two vote records that share the same first name, last name, and DOB belong to the same individual is less than 0.05, hindering efforts to apply this threshold strategy.

Because our quantity of interest is the total number of people casting two ballots, there are several advantages of modeling the aggregate number of matches instead of trying to identify specific double voters. Whereas most existing record-linkage models consider only the overall match quality of two fields, we consider the actual values in those fields. As a result, our method can naturally account for the varying popularity of names and non-uniform birth-date patterns. Relatedly, most record-linkage approaches evaluate the match quality of two records in a given field independent of the information contained in other fields. By contrast, our model accounts for interactions between someone's first name and DOB that affect the likelihood that two people who share these characteristics are, in fact, the same person. Such flexibility can be incorporated into existing record-linkage methods, but this typically comes with significant computational overhead or loss of theoretical guarantees (Enamorado, Fifield, and Imai 2019). Thus, although we believe in theory that the number of double votes could be estimated via record-linkage models, doing so appears to require a nontrivial extension of existing methods.

We also take steps to address some of the weaknesses of our approach relative to the standard strategies for record linkage. Bayesian record-linkage models are better equipped than ours for dealing with data recording errors (e.g., misspelled names) and missing data. We take two actions to deal with this. First we preprocess the data to correct some data recording errors. Second, we exclude some observations that we think are particularly likely to have data errors and then scale our estimates to account for the missing and excluded data.

Our statistical approach has applications beyond estimating the incidence of double voting. Ansolabehere and Hersh (2017) develop the terms "matchability" and "identifiability" to define two contrasting goals of record linkage. Their focus is on voter identification laws, in which identifiability refers to the identification of the specific individuals who possess the identification required to vote and matchability refers to quantifying differences over groups (e.g., racial groups) in the likelihood of possession. Our approach to studying matchability without first establishing identifiability may be useful in informing similarly broad political debates, particularly when linking datasets with two key properties. First, that there is a reasonable chance distinct records match on DOB and the other identifiers available in the two datasets, perhaps because identifiers are limited to preserve anonymity. Second, that few observations in the two datasets are true matches. For example, there have been multiple cases in recent years in which a substantial number of individuals on a list of potential noncitizens share common identifiers with a registered voter (Garner 2019). Our method could be applied to determine how many people on such a list are actually registered to vote.

DATA

This study uses three sources of data: (1) a national voter file, with first name, last name, and DOB; (2) a comparison of local poll books with an analogous local voter file; and (3) a list of cases in which voter registration records in different states had a common first name, last name, and DOB, supplemented with information about whether the registration records shared a common SSN4.

Each source of data plays a distinct role. The national voter file, which comes from TargetSmart, a data vendor, is used to estimate the rate of double voting. The poll book comes from Philadelphia, Pennsylvania, and is used to suggest the degree of measurement error in vote records, although it cannot offer a nationally representative estimate. Finally, the multistate match was generated by the consortium of states known as the Interstate Crosscheck Program and is used to both validate the model result and quantify the implications for election administration.

National Voter File

To estimate the number of people who voted twice in the 2012 election, we use TargetSmart's national voter file, which lists the first name, last name, DOB, and

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turnout history associated with each voter registration.[2] The 126,444,926 vote records in these data provide a nearly comprehensive list of 2012 general election participation.[3]

One limitation of our approach is that we need to observe first name, last name, and DOB to include a vote record in our analysis. Thus, we exclude 1,019, 3,145, and 1,498,005 vote records from all of our analyses because we do not have information on the first name, last name, or DOB, respectively. While we scale our estimates to account for the fact these vote records are not included in our analysis, this requires an assumption that vote records missing at least one of these three fields were equally likely to be used to double vote as vote records missing none of these fields.

A second limitation of our approach is that measurement error in registration records may influence our estimated rate of double voting. Such bias could point in either direction. An error could eliminate the distinguishing feature between two actually unique vote records, creating the appearance of a double vote, or introduce such a distinguishing feature, masking what would otherwise have been detected as a double vote.

Section A.4 in the Appendix highlights a number of forms of measurement error in the TargetSmart data. Across all years, we found an improbable 14% of 2012 vote records that were associated with a first-of-the-month birthday. McDonald (2007) notes that first-of-the-month birthdays are sometimes used by election officials to identify missing information and drops records with such "placeholder" dates of birth. We follow the same strategy here and remove these records from our baseline analysis that might otherwise cause us to overestimate the number of double votes.

We similarly are concerned that some states generally have poor record-keeping practices, which might introduce an unknown bias into our estimate. Ansolabehere and Hersh (2010) conclude that voter registration data from some states, most notably Mississippi, perform consistently worse than others across a range of data validation exercises. We take advantage of the information contained in both residential addresses and generational suffixes (e.g., "Jr." and "Sr.") to generate two related measures of the accuracy of a state's voter records. It is highly unlikely that two voters with the same first name, last name, and DOB would be registered to vote at the same address. Although most states have almost no cases like this, seven states, including Mississippi, have a significant number of such pairings. Our suspicion that many of these cases represent fathers and sons who are incorrectly noted as having a common DOB is bolstered by the finding that many of these pairings do not share a common suffix. Because this suggests that there is substantial measurement error in voter records in these states, we drop these states from our baseline analysis.[4]

Our preferred sample includes 104,206,222 of the 126,444,926 vote records contained in the full dataset. We explain in the Results section how we adjust our final estimate to account for the dropped records. In doing so, we make an additional assumption that registration records with a first-of-the-month birthday and from the seven dropped states are used to cast double votes at the same rate as all other registration records.

Finally, we address measurement error in names. Two vote records that should be associated with the same person might not be if each has a similar, but not identical, first name. To reduce the possibility that such measurement error causes us to underestimate the number of double votes, the Appendix details how we use commercial software to resolve each first name to a standardized form.

Ultimately, though, this preprocessing approach cannot address all problems of exact matching vote records. For example, while we correct transcription errors in first names, we cannot address the case of outright voter evasion, in which registration records are purposely misleading. That remains a weakness of our inferential approach, although the problem is likely mitigated by established practices of checking registration information against other state databases. To better understand the consequences of measurement error, we present a sensitivity analysis in the Appendix that shows how our estimate of the number of double votes may be affected by such error.

Philadelphia Vote Record Audit

As we discuss in the next section, our estimate of the number of double votes depends on the rate at which registration records are erroneously marked as being used to vote. While we selected Philadelphia in part out of geographical convenience, we also thought the process it uses to translate its poll books into vote records would make it middle-of-the-road in terms of the incidence of such errors. There are three general approaches to the task of generating electronic vote records. Some jurisdictions use an electronic poll book, which automatically updates the voter file and, thus, should be the least error-prone. But in 2012, only a quarter of voters used an electronic poll book to check-in to vote (Election Assistance Commission 2013). Other jurisdictions manually key in the information about who voted, which we expect to be the most error-prone method. The third method, which is illustrated by the Philadelphia poll book displayed in Figure 1, is to attach a bar code to each registration record, which should be scanned after the election if it is used to vote. We expect this will generate more error than an electronic poll book, but less error than when the information gets manually entered.

[2] TargetSmart sometimes supplements its data with commercially sourced DOBs. We include these observations in our baseline analysis, although we also report results when such observations are dropped.

[3] The FEC reported that just more than 129 million votes were cast in the 2012 presidential election. While the vote records most likely to be removed, such as those with a known change of address (McDonald 2007), also may be used disproportionately to cast double votes, our almost total coverage makes underestimating fraud less of a concern.

[4] In four of the seven states we drop, more than 50% of the vote records have commercially sourced birthdays, suggesting some of the measurement error is caused by how commercially sourced birthdays are linked to voter records. Among the states included in our baseline analysis, only two have comparable levels of commercially sourced birthdays.

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FIGURE 1. Example of a Philadelphia Poll Book After an Election



Because of the local variation in updating voter history, however, our audit is meant only to be illustrative, not representative, of the error rate in the population.

We knew of no existing data that were useful for estimating this quantity. To fill this gap, we conducted an audit in which we compared data on who voted in the 2010 midterm election in Philadelphia according to the poll books with who voted according to an electronic voter file produced on December 8, 2010. Our principle interest is in identifying false positives: registrations that had an electronic record of voting, but were not listed as having voted in a poll book.

Auditors validated 11,676 electronic registration records with a record of voting and 17,587 electronic registration records without a record of voting in 47 randomly selected precincts in Philadelphia.

Interstate Crosscheck Multistate Match with SSN4

The Interstate Crosscheck Program is a consortium of states that share individual-level voter registration data in an effort to eliminate duplicate registrations and prevent (or prosecute) double voters. According to Crosscheck's Participation Guide (see Section A.10 in the Appendix), administrators return to each participating state a list of registrations in that state that share the same first name, last name, and DOB as a registration in another participating state. Most of our analysis focuses on 2012, in which Crosscheck handled more than 45 million voter registration records and flagged more than a million.

We obtained the list of 100,140 and 139,333 pairings that Crosscheck provided to the Iowa Secretary of State before the 2012 and 2014 elections, respectively. In addition to the first name, last name, and DOB, these data include the middle name, suffix, registration address, county of registration, date of voter registration, voter registration status (i.e., active or inactive), and the last four digits of a registrant's social security number (SSN4) in both the Iowa voter file and the voter file of the state of the matched registration. For the Iowa registration, it also includes the voter registration number. For privacy reasons, Iowa removed the SSN4 before providing us with these data, instead including an indicator for whether the SSN4 was missing for the Iowa registration, an indicator for whether the SSN4 was missing for the other state's registration, and an indicator for whether the SSN4 was the same in Iowa and the other state.[5]

Knowledge of SSN4 match allows us to better assess whether a specific pairing reported by Crosscheck represents the same individual registered twice or two distinct individuals, each registered a single time. Only 1 in 10,000 distinct people with the same first name, same last name, and same DOB would also share the same SSN4 by chance. So, pairings that share all four attributes in common are likely the same person registered twice. And absent transcription error, registrations with different SSN4s are for two distinct people.

To assess the frequency with which votes are cast using the registration records flagged by Crosscheck, we merged the Crosscheck data with the TargetSmart national voter file. We exactly matched records on first name, middle name, last name, DOB, and state.[6] Because our TargetSmart data were generated after our Crosscheck data, a registrant's information may have changed between when Crosscheck identified its pairings and when the TargetSmart data were compiled. In addition, some of the information reported to Crosscheck may not have been reported to TargetSmart, particularly if such information is privileged or confidential. Because we are concerned that some registrants in Crosscheck will fail to match to their own vote record in TargetSmart, we also merged the Iowa-specific registration records flagged by Crosscheck with a contemporaneous Iowa voter file using the voter registration number that is contained in both sources.

METHODOLOGY

We now detail our statistical approach to estimating the incidence of double voting. At a high level, we start

[5] We sent a public records request to every state that participated in Crosscheck in 2012 to get similar data. Iowa was the only state that was able to provide us with the data in such a way that allowed us to observe all three of these indicators.

[6] It is appropriate to use the middle name in this match because we assume that we are generally matching to the exact registration record identified by Crosscheck.

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with the set of apparent double votes (i.e., vote records with the same first name, last name, and DOB) and then subtract the number of matches one would expect to occur by chance—a procedure we formalize in the first sub-section that follows. We show how to compute the number of these coincidental matches in the next sub-section by modeling the relationship between names and dates of birth. In the final sub-section we describe how to derive more precise estimates of double voting that account for two forms of measurement error: (1) inaccuracies in recorded birthdays and (2) inaccuracies in recorded turnout.

Adjusting for Doppelgängers

We start by making two key assumptions. First, we assume that the voter file is a completely accurate reporting of whether a registration was used to vote in a given election. When this assumption holds, double voting is the only explanation for why the same individual would be recorded as having voted twice. We revisit this assumption in the last sub-section when we investigate the effect of recording errors on our estimate. Second, we assume that an individual votes at most twice. We make this simplifying assumption because few people are registered to vote more than twice (Pew 2012) and about 95% of the cases in which vote records match on name and DOB involve only two records.

Given this, we decompose the number of people k who voted twice in a given election into the sum

$$k = \sum_f \sum_l \sum_y k_{f,l,y}, \tag{1}$$

where $k_{f,l,y}$ is the number of double voters with the first name f and the last name l who were born in year y. Although we cannot observe $k_{f,l,y}$, we can estimate it by combining three quantities. The first is $n_{f,l,y}$: the number of vote records in a given election with the first name f, last name l, and birth year y. The second is $m_{f,l,y}$: among the $n_{f,l,y}$ vote records, $m_{f,l,y}$ is the number of pairs of records having the same birthday. Finally, the third is $p_{b|f,l,y}$: the probability of having a birthday b conditional on having the first name f, last name l, and being born in year y.[7]

Theorem 1, which is presented in the Appendix, shows how we combine these three quantities to estimate $k_{f,l,y}$.[8] Roughly, starting with the number of observed matches $m_{f,l,y}$, we subtract the number of pairs expected to match by chance alone. Specifically, we have

$$\hat{k}_{f,l,y} = \left(m_{f,l,y} - \binom{n_{f,l,y}}{2} \sum_i p^2_{b|f,l,y} \right) \Big/ \left(1 - \sum_i p^2_{b|f,l,y} \right). \tag{2}$$

Theorem 1 further provides an analytic bound on the variance of $\hat{k}_{f,l,y}$, which in turn yields confidence intervals on our estimate of double voting. To derive these expressions, we treat $m_{f,l,y}$ as the realization of a random variable, $M_{f,l,y}$, that depends on (1) the actual number of double votes cast (which we treat as a fixed but unknown quantity) and (2) the number of pairs of vote records matching on birthday just by chance (which we treat as random). The remaining two terms, $n_{f,l,y}$ and $p_{b|f,l,y}$, are considered to be fixed.

To evaluate equation (2), we need values for $n_{f,l,y}$, $m_{f,l,y}$, and $p_{b|f,l,y}$. The first two can be directly observed from the voter file, but the birthday distribution $p_{b|f,l,y}$ must be estimated, as we describe next.

Modeling the Birthday Distribution

For simplicity, one could take $p_{b|f,l,y}$ to be uniform across days of the year, but that would miss important patterns in the birthday distribution, including periodicities in birth day-of-week and seasonal correlation between first names and birthdays. Figures 2 and 3 illustrate these patterns. First, using data on 2012 voters born in 1970, Figure 2 shows that the same number of people are not born on all days. For example, people are more likely to be born during autumn than during other parts of the year and on weekdays than on weekends. Second, Figure 3 shows that certain first names are more frequently observed among people born in certain points of the year and in certain years.

In addition to our assumptions about no measurement error and a maximum of two votes per person, we assume $p_{b|f,l,y}$ can be well approximated as follows. Define $d_{b,y}$ as the day of the week on which birthday b occurred in year y. For instance, $d_{\text{September 25, 1970}} =$ Friday. Let B, F, and D be random variables that specify the birthday, first name, and birth day-of-week of a random voter. Then we estimate $p_{b|f,l,y}$ by

$$\hat{p}_{b|f,l,y} = \frac{\widehat{\Pr}(B = b \mid F = f)\, \widehat{\Pr}\left(D = d_{b,y}\right)}{\sum_{b'} \widehat{\Pr}(B = b' \mid F = f)\, \widehat{\Pr}\left(D = d_{b',y}\right)}. \tag{3}$$

Section A.1 in the Appendix provides theoretical justification for the specific form of our estimator. The constituent factors in equation (3) are estimated as follows. First,

$$\widehat{\Pr}(D = d) = \frac{\sum_{f'} \sum_{y'} \sum_{b'} r_{f',y',b'} \mathbb{1}\left(d_{b',y'} = d\right)}{\sum_{f'} \sum_{y'} \sum_{b'} r_{f',y',b'}}, \tag{4}$$

where $r_{f,y,b}$ is the number of vote records with the first name f, birthday b, and birth year y. Second, for a smoothing parameter $\theta = 11{,}000$ that maximizes model fit,[9] we set

[7] $p_{b|f,l,y}$ is shorthand for $\Pr(B = b|F = f, L = l, Y = y)$.

[8] In the theorem, we assume that the observed birthdays are the union of two random samples: (1) an unknown number of independent, random draws from a discrete birthday distribution and (2) copies of k observations from the first sample, corresponding to k double votes.

[9] This θ maximizes the likelihood of observing the data under the model, as estimated on a random 1% sample of vote records held out when constructing $\hat{p}_{b|f,l,y}$.

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FIGURE 2. Distribution of (Cleaned) Birthdays in 1970 in the National Voter File

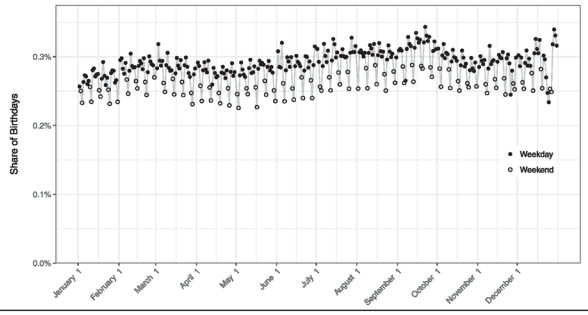
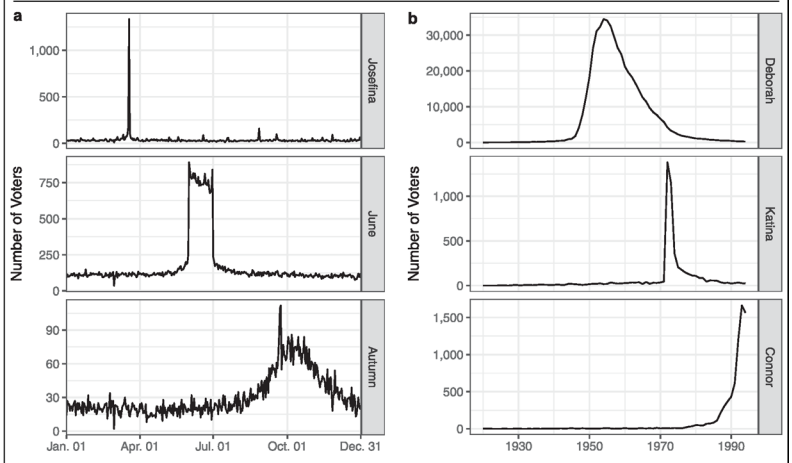


FIGURE 3. Examples of Names Among 2012 Voters with a Nonuniform Date of Birth Distribution, by Day (a) or Year (b) of Birth.



Note: For example, those with the name June were likely born in the month of June, and those with the name Josefina were likely born on March 19, the associated name day.

$$\widehat{\Pr}(B = b \mid F = f) = \frac{\theta\,\widehat{\Pr}(B = b) + \sum_{y' \neq y} r_{f,y',b}}{\sum_{b'} \left(\theta\,\widehat{\Pr}(B = b') + \sum_{y' \neq y} r_{f,y',b'}\right)}, \tag{5}$$

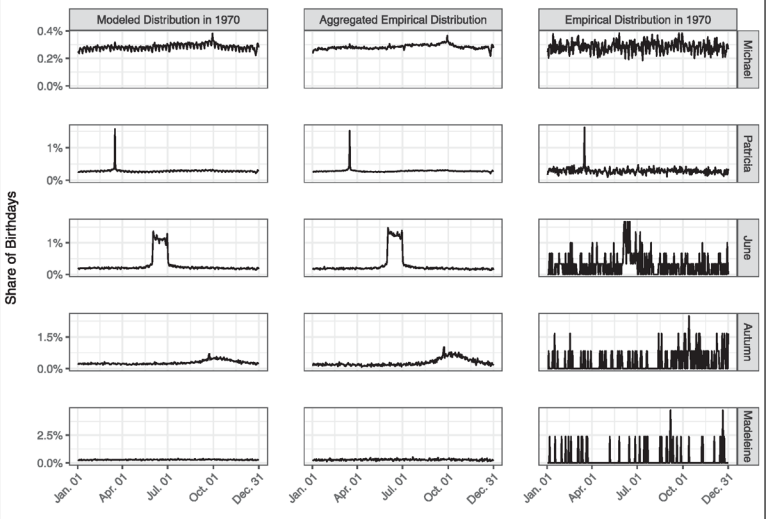
where

$$\widehat{\Pr}(B = b) = \frac{\sum_{f'} \sum_{y'} r_{f',y',b}}{\sum_{b'} \sum_{f'} \sum_{y'} r_{f',y',b'}}. \tag{6}$$

Our estimates of $\Pr(D = d)$ and $\Pr(B = b)$ in equations (4) and (6) aggregate over all voters to

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FIGURE 4. Modeled Distribution of Birthdays for Voters Born in 1970 for Five Different First Names vs. the Empirical Distribution of Birthdays for Voters with Those First Names (Aggregated Across All Years) and the Empirical Distribution of Birthdays for Voters with Those First Names Born in 1970.



Note: Across all years (in 1970), we observe 1,669,641 (39,583) voters named Michael; 894,836 (7,621) voters named Patricia; 60,464 (299) voters named June; 10,956 (120) voters named Autumn; and 7,084 (42) voters named Madeleine.

generate the empirical distributions. Our estimate of $\Pr(B = b|F = f)$ in equation (5) averages the birthday distribution specific to each first name f with the overall distribution aggregated over all first names in every year, excluding observations from year y to remove the effect of a specific registrant's own data when estimating the probability that he or she was born on a given day.[10]

Figure 4 shows the modeled distribution of birthdays of voters born in 1970 for five different first names and how they compare to the empirical distribution of birthdays. The names in the plot are ordered from top to bottom based on their popularity among voters. For names such as Michael, which have a mostly uniform birthday distribution in a year, our model captures day-of-week and seasonal effects well. In addition, for names with nonuniform birthday distributions and different levels of popularity, such as Patricia, June, or Autumn, our method is able to capture the cyclic popularity of the first names. Finally, for highly infrequent names, such as Madeleine, our model captures only aggregate, non–name-specific day-of-week and seasonality trends.

To investigate the finite-sample properties of our estimator $\hat{k}_{f,l,y}$ in equation (2), we carry out a simulation exercise, described in detail in the Appendix (Section A.5). In brief, we first generate 100 synthetic voter files with a known number of double votes k. We then apply our full statistical procedure, including approximation of the birthday distribution $p_{b|f,l,y}$, to estimate the number of double votes in each synthetic dataset. Across a range of values for k, we find that our estimation strategy does a good job of recovering the number of double votes (Figure A.5). We further find that our analytic confidence intervals for $\hat{k}$ are somewhat conservative. Among the 100 synthetic datasets, the 95% confidence intervals always contained the correct value, and the 80% confidence intervals contained the correct value in 98 of the 100 cases. This pattern is expected as the analytic expression derived in Theorem 1 is an upper bound on the standard error.

[10] In theory, $p_{b|f,l,y}$ is the birthday distribution of the actual voters. In practice, however, we estimate this distribution over the set of vote records. Implicitly, this procedure assumes that any double voting does not substantially alter the true birthday distribution. In Section A.5, we show via simulation that indeed our estimate is reliable over a large range of plausible double voting.

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Accounting for Measurement Errors

As discussed earlier, voter files often suffer from two significant sources of error. First, the birthdates for some observations are particularly likely to be recorded incorrectly—including those in certain states and those listed as having first-of-the-month birthdates. We accordingly perform our primary analysis on a subset that excludes these records, but that restriction can itself skew estimates if not handled appropriately. Second, a voter file does not provide a completely accurate account of who did and who did not vote in a given election. Such discrepancies may indeed be relatively common; as Minnite (2010, 7) describes, the "United States has a fragmented, inefficient, inequitable, complicated, and overly complex electoral process run on Election Day essentially by an army of volunteers."

Here, we describe a statistical procedure to correct both for our sample restriction and for misrecorded votes. But before doing so, it is useful to understand how measurement error can produce the appearance of a double vote. In the run-up to the 2016 election, a local television station reported that Charles R. Jeter, Jr., a North Carolina state representative, voted twice in the 2004 presidential election, once in North Carolina, where he was living at the time, and once in South Carolina, where he grew up. While Jeter had not voted in South Carolina in 2004, his mother had. A poll manager made a mistake and Jeter's mother signed the poll book next to her son's "deadwood" registration instead of her own registration on the line (Ochsner 2016), creating an illusory double vote.

A thought experiment illustrates how errors like these in the recording of votes in a voter file could generate a substantial number of cases of illusory double voting. Imagine a world with 140 million registration records, 100 million of which were used to cast a ballot in an election. If a vote record is mistakenly attached to a nonvoting registration in 1% of the cases, this would result in one million records, or 2.5% of nonvoting registrations, being incorrectly marked as being used to cast a ballot. Some number of these registration records are dormant deadwood registrations of people who moved to, and voted in, a different jurisdiction. Assuming recording errors are assigned randomly, we would generate 2,500 illusory double votes for every 100,000 voters that have a deadwood registration.

To correct for such errors, we assume voter registrations go through a stochastic update process in which each record is duplicated with probability p_u and dropped with probability p_r. Proposition 2, which is presented in the Appendix, estimates the original number of double voters before the update happened, k^{orig}, based on the number of double voters that end up in the updated sample, K, and the number of vote records in the updated sample, N.[11] In particular, we have

$$\hat{k}^{\text{orig}} = \frac{K}{(1-p_r)^2 - 2p_u} - \frac{Np_u}{(1+p_u-p_r+p_up_r)\left((1-p_r)^2-2p_u\right)}. \quad (7)$$

To see how equation (7) can be used to account for measurement errors, let f_p represent the probability of a false positive, such that a registration record that was not used to cast a ballot nonetheless has a vote record associated with it. Similarly, let f_n represent the probability of a false negative, such that a registration record that was used to cast a ballot does not have a vote record associated with it. In addition, let c be the number of cases where a voter has a duplicate registration record in another state and let n be the total number of votes in the election.

In the context of equation (7), p_u is the probability of a vote record getting duplicated in the voter file, which corresponds to cases where a deadwood registration for a voter in another state is wrongly recorded as having voted. We can thus set p_u to be $c(1-f_n)f_p/n$.[12] Furthermore, p_r is the probability of a vote record getting dropped, which is the same as the false negative rate, and so $p_r = f_n$. Finally, K is the number of double voters we observe before adjusting for measurement errors, which can be estimated from Theorem 1.

To carry out this approach, we need an estimate of the number of deadwood registrations for voters (c) as well as the probability of observing false-positive (f_p) and false-negative (f_n) vote records in a voter file. To estimate deadwood registrations, we follow a procedure similar to the one outlined in Theorem 1, which we detail in Section A.7 of the Appendix. We estimate f_n and f_p via our Philadelphia audit, as described below.

Equation (7) can likewise be used to adjust for our exclusion of records with suspect birthdates. Specifically, we set the drop rate p_r to the proportion of records that were excluded and set the duplication rate p_u to 0. In this case, equation (7) simplifies to $\hat{k}^{\text{orig}} = K/(1-p_r)^2$.

RESULTS

Baseline Results

We begin our analysis by excluding observations with data quality issues, as described earlier, to obtain our preferred sample of just more than 104 million vote records. Within our preferred sample, there are 763,133 pairs of 2012 vote records that share the same first name, last name, and DOB. Given our assumptions about $p_{b|f,l,y}$, we estimate that within our preferred sample there were 21,724 (s.e. = 1,728) double votes cast in 2012 using Theorem 1. Using Proposition 2, we scale the results of our analysis on our preferred sample to account for the

[11] While in Theorem 1 both the number of double votes and the number of vote records were fixed quantities, under the setting of Proposition 2 both are treated as random variables because they are generated after a stochastic update process. Hence, they are shown by K and N, respectively. We can observe the realized value of N directly from the voter file, and we can estimate the realized value of K using Theorem 1.

[12] Assuming c voters have a duplicate registration record in another state, we can estimate $c(1-f_n)$ of them to have their votes correctly recorded. Of the duplicate registration records for these $c(1-f_n)$ voters, we expect $c(1-f_n)f_p$ of them to be incorrectly recorded as voted. Therefore, the proportion of voters that are duplicated because of measurement errors is $\frac{c(1-f_n)f_p}{n}$.

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observations we excluded. Given that the FEC reported that just more than 129 million votes were cast in the 2012 presidential election (Federal Election Commission 2013), 19.3% of votes were dropped when generating our preferred sample. Equation (7) shows we can accordingly generalize the rate of double voting in the broader population by multiplying the estimated number of double voters in our preferred sample by 1.53. Thus, we estimate there were 33,346 (s.e. = 2,652) double voters in the full population of 129 million voters, or about 1 for every 4,000 voters.[13]

Tables A.3 and A.4 in the Appendix demonstrate the sensitivity of our results to a number of the assumptions we make in our analysis. Table A.3 focuses on sample restrictions, and shows that the estimated number of double votes would be substantially higher if we did not exclude observations with a first-of-the-month birthday,[14] would be somewhat higher if we kept states despite issues with multigenerational households, and would be similar if we excluded commercially sourced dates of birth. Table A.3 also shows that using our preferred birthday distribution, rather than a uniform distribution, reduces the estimated number of double votes in our preferred sample by approximately 25%. A little under half of this reduction results from accounting for periodicity that affects all first names and a little over half of this reduction results from accounting for name-specific periodicity. Finally, Table A.4 shows that our results are not particularly sensitive to the standardization of the first name and assumptions about the smoothing parameter θ in our birthday distribution function.

Our method produces a substantively different estimate of the rate of double voting than McDonald and Levitt's (2008) on our preferred sample. McDonald and Levitt's method generates an estimate of about 200,000 double votes, which is about ten times larger than what we estimate using our method. Most of the difference is because their method fails to account for the higher number of distinct voters who share a common first name, last name, and DOB because of the changing popularity of first names over years. The remainder of the difference is a function of the nonuniformity of the distribution of first names within years that we discussed in the previous paragraph.

Accounting for Measurement Error in Vote Records

We next explore how measurement error in vote records affects our estimates of double voting. As the earlier Charles Jeter example highlighted, it is the combination of voters having a deadwood registration and clerical error in recording vote history that leads to false double votes. In this section, we first provide estimates of deadwood registration. Given this estimate, we then calculate the implied rate of double votes as a function of the amount of measurement error. Finally, we use an audit to calibrate the amount of measurement error.

We observe 1,837,112 pairs in our preferred sample of the voter file in which two registration records in different states shared the same first name, last name, and DOB, and exactly one of them is recorded as having voted. Applying Theorem 2 gives us an estimate of 1,597,732 (s.e. = 22,197) 2012 voters who have a duplicate registration.

Figure 5 shows how our estimate of double voting changes with respect to different hypothetical error rates. If we assume $f_{\mathrm{p}} = f_{\mathrm{n}} = f$ as the clerical error rate, then we should plug in $p_{\mathrm{u}} = \frac{1{,}597{,}732 \times f \times (1-f)}{104{,}206{,}222}$ and $p_{\mathrm{r}} = f$ in Proposition 2 to correct for measurement error. In the figure, we additionally apply Proposition 2 to scale up our estimates to account for records that we dropped to create our preferred sample. We find that a clerical error rate of 1.3% would be sufficient to explain nearly all the apparent double voting.

We use our Philadelphia poll book audit data to give a rough approximation of the clerical error rate. Our audit, which is described in more detail in Section A.6 in the Appendix, found that 1% of registrations without a vote record in the poll book nonetheless have an electronic vote record. This suggests that, at a minimum, our unadjusted estimate overstates the incidence of double voting. If our Philadelphia audit were representative of the false-positive rate in the population, Figure 5 indicates that our estimate would drop to about 10,000 double votes, or about 1 double vote per 13,000 votes cast. These audit results, however, are only meant to be illustrative of the false-positive rate in the population.

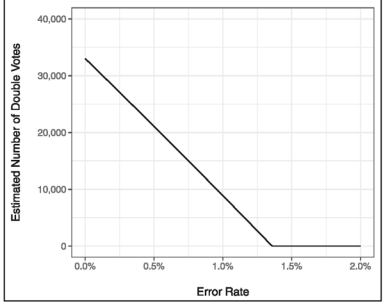
Multiple notes of caution are discussed in more detail in Section A.6. The false-positive rate in Philadelphia may be larger than the rate in the general population, perhaps because Pennsylvania is known to have more voter file discrepancies (Ansolabehere and Hersh 2010), but it may also be smaller because the local office has a large, professionalized, and experienced staff. Furthermore, while a small but growing number of jurisdictions use an electronic poll book to record vote history, Philadelphia's poll-book-and-bar-code approach likely produces fewer errors than a sign-in sheet with no bar codes, which requires manual entry. Finally, note that we are measuring the translation error

[13] We can observe which registrations were used to cast a ballot, but not which registrations were used to cast a vote in any given contest. Thus, we cannot use these data to distinguish between generally voting twice in two states and specifically voting twice in two states, but for different offices. While it is both a federal and a state crime to vote twice in the same election, the National Conference of State Legislature (2018) has suggested that what constitutes the "same election" may be ambiguous in the latter, more specific circumstance. That would suggest our estimate is conservative.

[14] We specified Equations (3)–(5) knowing that observations with first-of-the-month birthdays would be dropped in our baseline model. Although our estimates are sensitive to the inclusion of these observations, we would specify these equations differently to better account for the excess number of people with a first-of-the-month birthday if we were trying to estimate the number of double votes with these observations remaining in the sample. Beyond first-of-the-month birthdays, we also show in Section A.5 that a one percent rate of measurement error in DOB causes us to underestimate the number of double votes by 2.2 to 2.5%.

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FIGURE 5. How the Estimated Number of Double Votes Changes Based on the Clerical Error Rate



between the poll book and the voter file, but that translation error is just one type of possible clerical error. There may be errors in the poll book itself, such as in the Charles Jeter example, that our audit would not detect. For example, Hopkins et al. (2017) report that 105 individuals were forced to file a provisional ballot in a recent state election because their registration was wrongly marked in the poll book as having been used to vote earlier in the day. Ultimately, all we can conclude is that measurement error likely explains a sizable portion, and possibly nearly all, of the double votes that we estimated via Theorem 1 under the assumption of no such measurement error.

Model Validation

In the previous subsection, we estimated that about 1 in 35 vote records that shared the same first name, last name, and DOB in our preferred sample of the national voter file were double votes, assuming no measurement error in vote records. In this subsection, we validate our model by presenting the same ratio in the Crosscheck data, using SSN4 to identify double votes between Iowa and the other participating states.

Table 1 looks at the registration pairings identified by Crosscheck based on first name, last name, and DOB in which SSN4 information is available for both records in the match. The incidence of likely double votes—cases in which the SSN4 matched and both registration records were used to cast a ballot—is extremely low. In fact, there are only seven cases in 2012 in which both registration records with the same SSN4 were used to cast a vote. By contrast, there were 1,476 cases in which both registration records with different SSN4s were used to vote. Thus, the probability of a registration pairing sharing an SSN4 conditional on both registrations being used to cast a ballot was about 1 in 200 in 2012. The same quantity in 2014 was about 1 in 300.

Despite the benefit of SSN4 information, it is important to consider that, as a result, Table 1 relies on a nonrandom subset of potential double registrants. The incidence of double voting may differ between registration records with known and unknown SSN4s. Moreover, the data presented in Table 1 are generated from a nonrandom subset of states. This could be problematic for the purposes of validation to the extent that the incidence of double voting in Crosscheck states is higher or lower than the incidence of double voting in the nation. On the one hand, states that permit no-excuse absentee voting, such as Iowa, seemingly make it easier to cast two ballots than states that do not. A state may also opt in to Crosscheck, in part, because it believes the rate of double voting is higher in the state. On the other hand, states involved in Crosscheck may take more actions than the typical state to deter double voting.[15]

To facilitate a better comparison between our model and Table 1, we use our model to generate a parallel estimate of the number of double votes between Iowa and other Crosscheck states. To do so, we first estimate the number of double votes between all Crosscheck states and then subtract our estimates of (1) the number of double votes between Crosscheck states other than Iowa and (2) the number of double votes within Iowa.[16] This Crosscheck-specific model estimates that one in 150, or about 0.6%, of vote records with the same first name, last name, and DOB are double votes. Given that Table 1 shows the observed ratio in the Crosscheck data is 0.5%, this lends strong support to our modeling approach.

Implications for Election Administration

Table 1 shows that, based on the subset of pairings with SSN4 data, 70–75% of registrations which match on first name, last name, and DOB are in fact double registrations. Crosscheck recommends canceling the registration with an earlier date of registration in these cases with an SSN4 match, provided there is also middle name consistency (see the Crosscheck participation guide reproduced in Section A.10). Indiana is at least one state that largely codified this practice [Ind. Code Ann. 3-7-38.2-5(d)(2); see generally *Com. Cause Indiana v. Lawson,* 937 F.3d 944 (7th Cir. 2019)].

Yet, problems remain even when it is known that two registration records belong to the same person partly because states provide different information in the date of registration field. Some states use the voter registration date to represent the date that a registration was

[15] Measurement error in vote history could also cause some Crosscheck registration records used to cast a ballot to not have a vote record attached to it. But Section A.8 in the Appendix shows very similar patterns in 2012 if turnout in Iowa is directly measured from the voter file, and we restrict the analysis to states in which fewer than 10% of vote records have a birthday on the first of the month.

[16] We exclude Arizona, Michigan, and Missouri from the list of Crosscheck states to track Table 1, which also effectively drops these states because of the lack of SSN4 information. We also drop Mississippi because of our general concerns about data quality discussed in earlier.

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TABLE 1. Vote Records Among Registration Pairings with Known SSN4s

Year of data	2012		2014	
SSN4 match	Yes	No	Yes	No
# Of registrations (reg.)	25,987	8,913	34,189	14,766
Which reg. used to vote:				
Both	7	1,476	9	2,809
One (earlier reg. date)	2,542	1,678	2,018	3,418
One (later or unknown reg. date)	9,430	2,581	8,613	2,709
Neither	14,008	3,178	23,549	5,830

initiated, whereas others use it to represent the date a registration was last modified. As a result, the registration record with the earlier registration date is not necessarily the deadwood registration. In particular, the active registration may have the earlier registration date when individuals return to the state where they were previously registered to vote. Imagine a voter who initially registers to vote in state A in 2012, then moves to and votes in state B in 2014, before finally moving back to and voting in state A in 2016. The voter's date of registration in state A may be the earlier of the two if state A either reactivates the initial registration and does not update the registration date or creates a new registration but nonetheless assigns the voter to their original registration date.

Table 1 confirms that while more single ballots were cast using the registration with the later date of registration in a pair, the registration with the earlier registration date in a pair was used to cast a single ballot 2,542 times. Thus, canceling the record with the earlier registration date would risk impeding more than 300 votes for every double vote prevented.

It is true that, as mentioned earlier, these data focus on a nonrandom subpopulation over which the rate of double voting is potentially particularly low. But even if the number of double votes were five to ten times higher—to reflect the incidence of double voting we estimated in the national voter file—we would still conclude that such a strategy would result in many more impeded votes for every double vote prevented.

A final difficulty implied by Table 1 is that a majority of the potential double registrations identified by Crosscheck have at least one unknown SSN4. In 2012, the full dataset contained 100,140 pairs of registrations with the same first name, last name, and DOB, so the fact that 25,987 pairs had matching SSN4s and 8,913 pairs did not have matching SSN4s means that 65,240, or 65.1%, pairs of registrations had at least one unknown SSN4. Likewise, 64.9% pairs of registrations had at least one unknown SSN4 in 2014.

Thus, although a majority of the pairs identified by Crosscheck appear to be the same person registered in two states, more often than not an election administrator will not have enough information to distinguish between good and bad matches. An administrator who nonetheless believes that aggregate match quality is sufficiently high to justify dropping the registration with the earlier registration date would impede even more votes.

DISCUSSION

The evidence compiled in this article suggests that double voting is not currently carried out in such a systematic way that it presents a threat to the integrity of American elections. We estimate that at most only 1 in 4,000 votes cast in 2012 were double votes, with measurement error in turnout records possibly explaining a significant portion, if not all, of this.

Scholars have been concerned about the (mis)measurement of voter fraud because sometimes the twin goals of improving both electoral integrity and voter accessibility come into conflict. One reason that people disagree about how to run elections is that they focus on either accessibility or integrity, without much consideration of this trade-off. For example, when speaking out against a voter identification law, a Democratic state representative argued that "if even one person is disenfranchised … that will be one person too many" (People For The American Way 2012). Republican Kris Kobach used similar logic but instead contended that "one case of voter fraud is [one] too many" (Lowry 2015). Such statements promote a debate that focuses on maximizing accessibility or integrity, without any consideration for the other dimension.

But many election administration policies fall along a continuum from promoting accessibility, with some potential loss of integrity, to protecting integrity, but potentially disenfranchising legitimate voters. For example, the adoption of absentee ballots made it easier for people to access a ballot, particularly those who are elderly or disabled (Barreto 2006; Miller and Powell 2016), while also introducing new ways through which fraudulent ballots could be cast (Fund 2004, 47–50). Likewise, when maintaining voter registration records, there is a trade-off between reducing deadwood and potentially removing legitimate registrations.

This article highlights how emphasizing election integrity when maintaining voter registration records without consideration for voter accessibility is likely to lead to poor election administration. Such list maintenance is particularly necessary in the United States, where a decentralized election apparatus produces

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duplicate registrations as people move across jurisdictions. But it is also difficult because, as we demonstrate, sparse individually identifying information often makes it hard to definitively conclude whether two registrations belong to the same person, at least without significant investigation. Moreover, even when it is known two registrations belong to the same person, we highlight that it is often not easy to differentiate between the active and deadwood registration, at least using a single variable such as registration date.

Our findings that double voting is not threatening the integrity of American elections may come as a surprise to a number of Americans who report on surveys that double voting is not rare. Stewart III, Ansolabehere, and Persily (2016) find that about 25% of the public believes that voting more than once happens either commonly or occasionally (as opposed to infrequently or never), whereas another 20% report being unsure how often it happens. Such beliefs are driven, at least in part, by the lack of a clear differentiation in public reporting between (1) registration records that share common observable characteristics, (2) duplicate registrations, and (3) double votes. For example, in 2013, Crosscheck circulated Figure A.6 in the Appendix which reported that it had identified 1,395,074 "potential duplicate voters"—registration records with a common first and last name and DOB, per (1)—among the 15 states participating in the program at the time. Our analysis of the 100,140 records flagged in Iowa in 2012 allows us to better understand how many of these pairings represented duplicate registrations and how many of these duplicate registrations actually produced double votes. Of the 34,900 pairings in which the SSN4 is known for both records, 25,987 had the same SSN4. We thus estimate that roughly three-quarters of the registrations flagged by Crosscheck were, in fact, duplicate registrations, although election administrators often lack the necessary SSN4 to determine whether a particular match is good or bad. More importantly, fewer than 10 of the known 25,987 duplicate registrations were used to cast a ballot twice. This shows that there can be a large number of registration records that share common observable characteristics and duplicate registrations, without almost any double votes. Reporting the first two quantities in place of the last risks confusing the public about the integrity of American elections.

SUPPLEMENTARY MATERIAL

To view supplementary material for this article, please visit https://doi.org/10.1017/S000305541900087X.

Replication materials can be found on Dataverse at: https://doi.org/10.7910/DVN/QM15HX.

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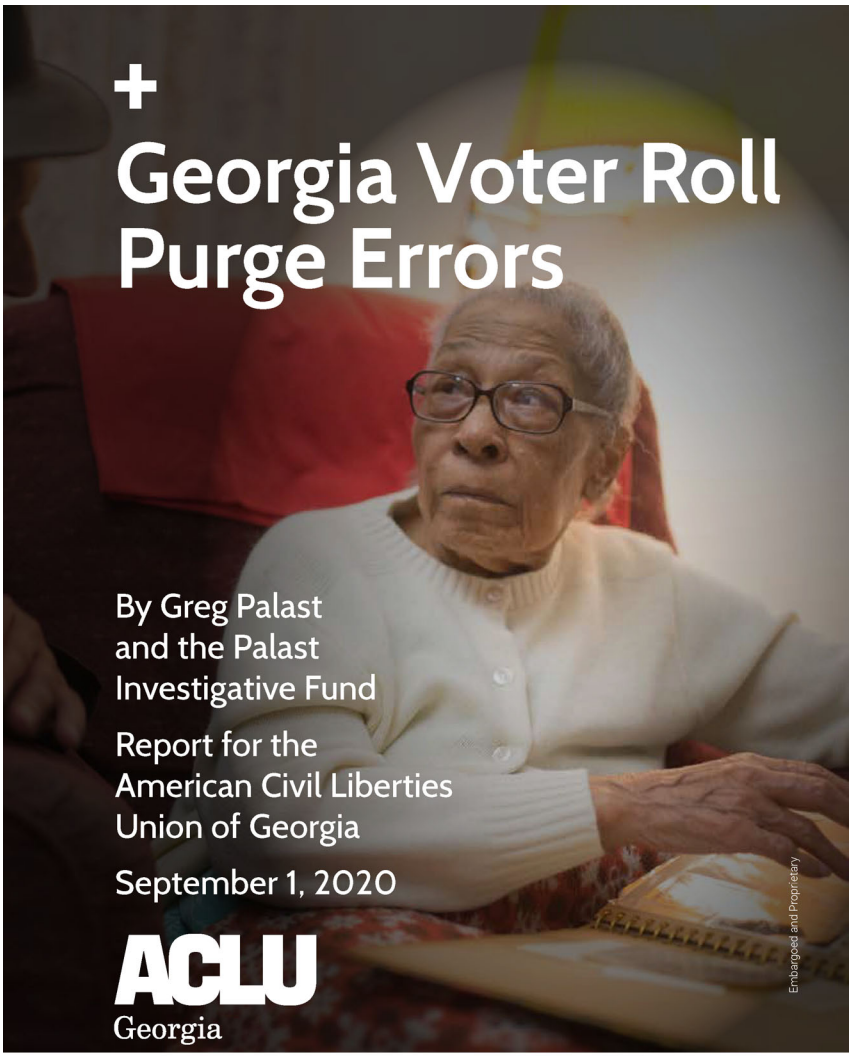
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Georgia Voter Roll Purge Errors
By Greg Palast and the Palast Investigative Fund
Report for the American Civil Liberties Union of Georgia
September 1, 2020
ACLU Georgia
Embargoed and Proprietary

2



Front Cover:
Ms. Christine Jordan of Atlanta, cousin to Martin Luther King, Jr. telling her story of being purged from the voter rolls in Atlanta—after 50 years of voting in the exact same polling place.

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a 501(c)(3) non-partisan not-for-profit project
of the Sustainable Markets Foundation

September 1, 2020

Andrea Young, Executive Director
American Civil Liberties Union of Georgia
P.O. Box 77208
Atlanta, Georgia 30357

Re: Georgia Voter Roll Purge Errors

Ms. Young,

The Palast Investigative Fund is a project of the 501c3 non-partisan, not-for-profit Sustainable Markets Foundation, New York.

For seven years, since 2013, as principal investigator I have directed an inquiry into a series of voter purges in Georgia, that is, removals of several hundred thousand citizens from Georgia's registration rolls.

In addition to our team of investigators, database specialists, and attorneys, we have retained five consulting firms expert in the field of Advanced Address List Hygiene which, as we will explain, is crucial to this analysis.

My team and I were originally retained by Al Jazeera America, Rolling Stone Magazine and Salon.com for a series by-line print and film reports on the voter purges in Georgia and elsewhere.

Given our findings of what appears to be large-scale disenfranchisement of legitimate voters, our foundation has chosen, in the public interest, to make our findings available to the ACLU of Georgia for review in preparation for making our findings public. We have also created a website where Georgians may look up their names to check if they have been wrongly disenfranchised.

Yours,

Greg Palast, *Principal Investigator*

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VOTE
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+ Executive Summary

In October 2019, the Georgia Secretary of State published a list of 313,243 citizens purged from the state's voter rolls on grounds they had moved from their registration address.

The Palast Investigative Fund hired the top five expert firms in address verification to scrutinize the list, name by name. To do so, they applied Advanced Address List Hygiene, the industry standard for residential address verification, calling on over 240 data sources, in addition to our Postal Service licensee who accessed the deep history files of the Postal Service, a process required by the Post Office for commercial enterprises such as Amazon and Ebay.

We found 198,351 Georgia voters who supposedly moved from their registration addresses who, in fact, have not moved at all, and therefore were wrongly purged, a 63.3% error rate.

Again, this is not a "sampling" of the list, but a detailed name-by-name review of the addresses of the citizens that the Secretary of State eliminated from the state's voter rolls.

The conclusion is conservative, because the 63.3% error rate does not including the of tens of thousands of other citizens who have moved within their neighborhood, some within their buildings. (The National Voter Registration Act prohibits cancelling the registration of those who move within their voting jurisdiction.)

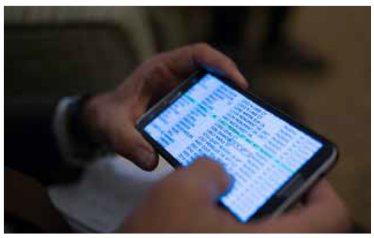
To allow these wrongly cancelled registrants to re-register and restore their ability to vote, the Palast Investigative Fund has created **a website where Georgians can look up to see if they are on the purge list at SaveMyVote2020.org.**

One likely source of state error: 3 of 4 voters cancelled who were marked "NCOA" by the Secretary are, in fact, not on the NCOA (National Change-of-Address) list. Counsel informs us that federal law permits cancellations using NCOA lists only available to specialized Postal Service licensees as on our expert team.

For reasons explained herein, the cancellations concentrate among younger citizens and citizens of color.









Introduction: A Seven Year Investigation

The Palast Investigative Fund is a project of the 501c3 non-partisan, not-for-profit Sustainable Markets Foundation, New York.

For seven years, since 2013, principal investigator Greg Palast has directed an inquiry into a series of voter purges in Georgia, that is, removals of several hundred thousand citizens from Georgia's registration rolls.

In addition to our team of investigators, database specialists, and attorneys, we have retained five consulting firms expert in the field of Advanced Address List Hygiene which, as we will explain, is crucial to this analysis.

Greg Palast and team were originally retained by Al Jazeera America, *Rolling Stone Magazine* and Salon.com for a series by-line print and film reports on the voter purges in Georgia and elsewhere.

Given our findings of what appears to be large-scale disenfranchisement of legitimate voters, our Foundation has chosen, in the public interest, to make our findings public and to provide a site where Georgians may look up their names to check if they have been wrongly disenfranchised.

Our findings have been given to the American Civil Liberties Union of Georgia in light of the ACLU's expertise and commitment to this issue.

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The Palast Investigations team used over 200 data sources to verify each voters' address including subscriptions, mortgage payments, deliveries, credit card activity, DMV records, property tax on primary residence, etc. Oddly, the state failed to check its own records: income and local tax payments, etc.

Advanced Address List Hygiene

8

While we cannot identify every cause of the state's large error rate, our experts point to the state's use of very few, inaccurate ,and unverifiable data sources as explained below.

Our experts clients include Ebay, Home Depot, Google, American Express, and most of the large commercial mailers who cannot afford errors in deliveries or billings.

By contrast, the State of Georgia supposedly uses three sources: a form of the National Change of Address registry (NCOA) of the U.S. Postal Service, returned mail, or a failure to vote in two federal elections cycles combined with a failure to return a "confirmation" postcard (often called the "use-it-or-lose it" process). These methods violate commercial industry standards and the U.S. Post Office requirements for address verification and lead, as we discovered, to substantially inaccurate, "unreasonable" results that deprive U.S. citizens of their constitutional right to vote.

Moved/Not Moved

Counsel informs us that under the National Voter Registration Act of 1993, no citizen may be removed from voter rolls unless there is "reasonable" evidence the voter has moved their residence from their registration jurisdiction. 52 U.S. Code § 20507 Requirements with respect to administration of voter registration; Husted v. APRI 584 U. S.____(2018.)

Therefore, the Palast team set out to answer a simple question: Did these voters move from their registration address?

If the answer is 'no,' the state is prohibited from cancelling the citizen's voter registration.

Even if a voter moved, so long as they moved nearby within their jurisdiction, the State is also prohibited from cancelling the citizen's voter registration.

Therefore, beginning in 2018, the Palast Investigative Fund retained five of the nation's leading firms expert in residential address verification to answer the question regarding whether U.S.

The Palast team set out to answer a simple question:
Did these voters move from their registration address?



citizens move from the address on their voter registration.

- Swedlund Assoc—Mark Swedlund, Founder: Direct Marketing/mailing expert
- American Fifth Act—John Lenser, CEO: mailing, address hygiene consultant
- Merkle Inc.—Licensee to the US Postal Service with special access to historic NCOA files
- Computec—Experts in address list data analysis; creator of the attached "waterfall" of results
- Deconcatenation specialist (conforming databases to standard form)

The Palast Fund would like to thank Mr. Lenser and Mr. Swedlund for working *pro bono* for these past three years.

Commercial Address Verification

According to John Lenser, CEO of the firm that conducts the address verification and hires the USPS NCOA licensees for Home Depot and others, advanced address list hygiene, the industry standard, "can verify a resident's address with 96%+ accuracy for a cost that is a fraction of the State of Georgia's principal method," that is, sending a postcard to confirm if a person has moved.

Over the seven years of our investigation that included the address list hygiene experts, the Palast Investigative Fund team of a dozen investigators, attorneys, specialists, and production team spent substantial time in Georgia speaking with and filming state officials and local experts in voting issues as well as with voters whose registrations the state government eliminated.

Regarding cost: The fee for the postal and proprietary data bases runs about 5¢ per address—versus a postcard, printed, mailed, postage-paid return plus processing for half million cards that can run into the millions of dollars – to obtain substantially inaccurate results.

Note on *Palast v Kemp*

To obtain information regarding the reasons that the state cancelled the voter registration of the 313,243 citizens, the Palast Fund, for *Rolling Stone*, filed several Open Records Requests with the Georgia Secretary of State. To enforce compliance, we filed suit in federal district court. On February 4, 2020, Judge Eleanor Ross

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handed down a decision *sua sponte* that the Court would declare a Summary in favor of Palast in *Palast v. Kemp*.

Palast was represented by Jeanne Mirer of Mirer Mazzocchi & Julien PLLC, New York and G. Brian Spears PC of Atlanta.

The current pandemic has stalled the entry of final judgment—but the data since made available by the state is sufficient for this analysis.

Analysis of 313,243 individual voter records

This year, the Palast Investigative Fund retained Swedlund Assoc. and American Fifth Act, Inc. to process the addresses of the 313,243 citizens whose voter registration the Georgia Secretary of State confirmed it had cancelled from government rolls alleging that these citizens had moved from the address on their voter registration.

10 The United States Postal Service requires this processing prior to mailing to assure that mailing lists are accurate, have the current address of the recipient, and are deliverable. While state and county governments are not required to follow this procedure, it is good, standard practice to do so.

As a byproduct of such processing, detailed reports are generated as to the those who still live at the address submitted, those who have moved (including their new, current addresses), and deliverability of addresses. A report of this processing is presented below. The purpose of this processing is so that the Palast Fund can mail a survey to a statistically valid subset of the file of those residing at their address of registration and request the post office apply a 'do not forward'/ 'return to sender' service. Besides providing information from the survey, this mailing will further validate the results of this processing.

Two address list hygiene firms, Merkle and CompuTech Direct, provided the data regarding the 313,243 U.S. citizens whom the secretary of state's office removed from the voter rolls. Those companies' clients have included Google, Amazon, Ebay and American Express.

John Lenser, CEO of American Fifth Act, Inc, analyzed the list. Lenser has had extensive experience in list hygiene, circulation planning, and modeling for catalog and e-commerce companies.

Information from the mailing of our survey will be presented at a later date.

Processing of Voter Records

To determine whether a purged voter continued to reside at the address indicated on their voter registration or had moved, the Palast Investigative Fund utilized the same advanced list hygiene technology that is used to ensure the accuracy and deliverability of direct mail for many national commercial mailers. For direct mailers, this inexpensive technology either validates that the customer still lives at their current address or provides a new address for mailing.

The National Change of Address (NCOA) database provided by the United States Postal Service and Proprietary Change of Address (PCOA) advanced address hygiene tools provided by specialized vendors were used to process the list of Georgia voters.

The United States Postal Services NCOA maintains a change of address file of moves submitted by individuals for the prior 48 months which can be accessed only by a limited number of licensees.

For this list processing, Merkle, Inc., a USPS licensee, also provided the 200+ data sources of PCOA which virtually eliminates undeliverable mail by either updating the address or identifying those addresses that are unable to be otherwise resolved.

PCOA identifies significantly more change of addresses than can be identified through NCOA although NCOA is one component of Merkle's processing. Merkle's PCOA proprietary "knowledge base" consists of over 240 million individuals for whom there are over 200 contributing sources such as commercial billing entities that corroborate the identity and present location of each individual. This additional information would tend to identify far more movers than the

NCOA alone.

Counsel informs us that the National Voter Registration Act of 1993 makes such purges voluntary for each state. According to NVRA, a state may establish a voter removal program under which change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed.

Results

Applying the NCOA and PCOA to the Georgia file confirmed conservatively that 198,351 voters, or 63.3% of the total file, still reside at their original address.

We left out of this list those voters whose addresses we were unable to confirm. Therefore, the 198,351 is a conservative number.

In County Moves

The Fund is in the process of analyzing the list for those citizens who may have moved within their county of registration. Our counsel has informed us that those citizens should also have remained on the state's voter rolls and the state should never have cancelled their registrations on that basis. Including these in-county moves could increase the error rate significantly above the 63.3% found so far.

The state provided many unreadable or unverified files. As a result, we can only confirm that 65,411, or about one in three citizens, moved from their county of registration. Looking at the data another way: two out of three – 2/3 or 66% -- of the state's list remained at the address where they are registered.

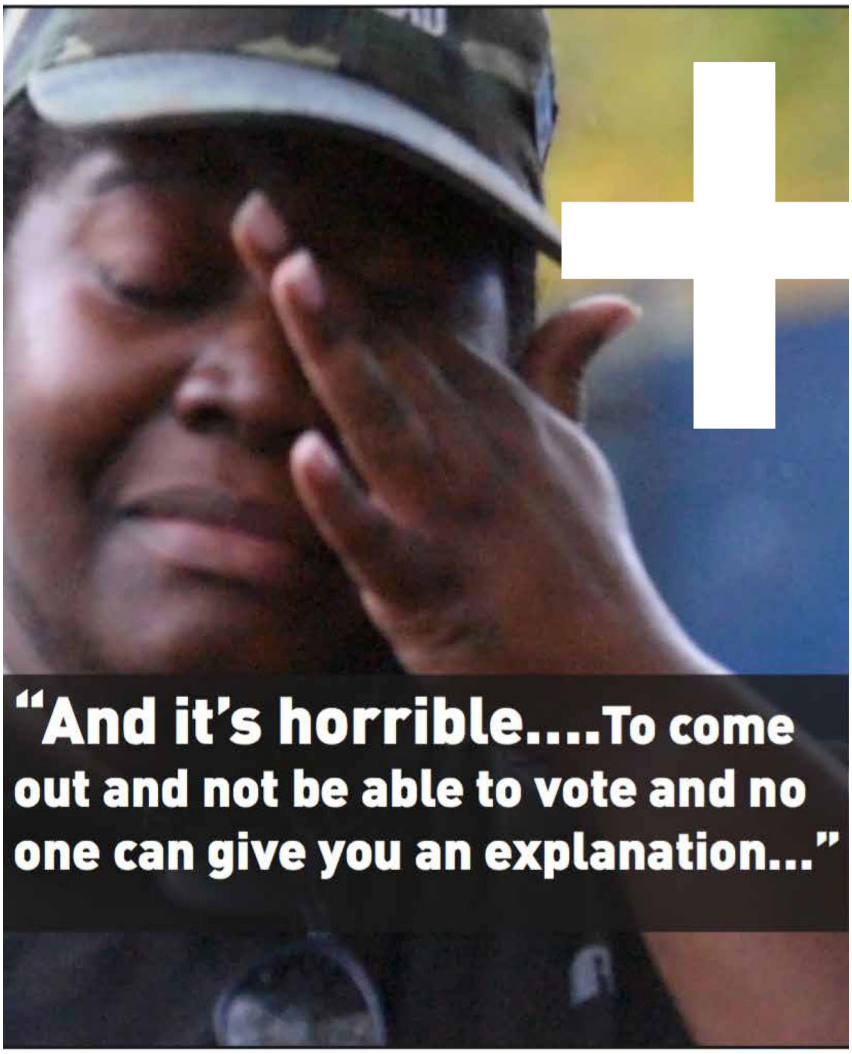


Website Listing of Wrongly Purged Voters

Given that most citizens whom the state has cancelled their voter registrations have no idea that they have lost their registrations, the Palast Fund has created a website:
GregPalast.com | SaveMyVote2020.org.

As a public service, we have created this website to allow voters to look up their address with links for these voters to re-register online.

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"And it's horrible....To come out and not be able to vote and no one can give you an explanation..."

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Consistent with prior findings

This is the Palast team's second review of the Georgia voter registration cancellation lists. In 2018, we obtained a list of over half a million Georgians removed from the voter rolls by order of the Secretary of State in 2017.

Again, we hired address list hygiene experts to analyze the list. **We found and named 340,134 voters who had not moved from their registration address** but, whom the Secretary of State nevertheless had canceled their voter registration based on erroneous information these citizens had moved their residence.

Others had moved locally—meaning within the same voting jurisdiction, yet the secretary of state wrongly cancelled their voter registrations.

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Commissioned by Salon.com, the Palast Fund contacted several of these voters including Ms. Christine Jordan of Atlanta, who, in 2018, at age 92, entered the polling station where she had voted for 50 years.

Ms. Jordan was turned away, because the state had cancelled her voter registration alleging that she had moved from her registration address. To verify the state's assertion claim, Palast and team visited Ms. Jordan at the where she has lived for more than half a century which she proved by showing us photos of her having dinner at that home with her cousin, the late Martin Luther King Jr.



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What is the source of Georgia's error rate?

How could the state of Georgia produce a list of "moved" voters that is so extraordinarily wrong?

The explanation, according to experts on our team, is that, first, the state sent out address confirmation postcards to hundreds of thousands of voters without first applying Advance Address List Hygiene methods. Notably, the Postal Service requires applying address list hygiene for mass mailings. Non-governmental enterprises must obtain a "cast certification" from the Postal Service for mass mailings because the Postal Service wants to avoid huge undeliverable and returns.

There is a deeper concern. The Secretary of State's records indicate that 108,306 voters were purged because they were allegedly identified by the Postal Service's National Change of Address (NCOA) registry.

However, three out of four voters identified as "NCOA" are not, in fact, found on the official, licensed NCOA list. We must note that there are two NCOA lists—one available to any member of the public that goes back 24 months; one that goes back at least 48 months, a list only available to licensees such as Merkle.

We used the more comprehensive licensee list. And we found that 80,408 of the voters listed by the state as NCOA are not, in fact, found on the NCOA list.

The National Voter Registration Act 52 USC Ch. 205(c) states under the heading, "Voter removal programs,

> "(1) A State may meet the requirement of subsection (a)(4) by establishing a program under which—
>
> "(A) change-of-address information supplied by the Postal Service **through its licensees** is used to identify registrants whose addresses may have changed..."



Emphasis added. The Secretary of State's office has not responded to our queries about their massive inconsistency with official postal licensee records. Their error rate suggests the state did not use a USPS licensed specialist or they included names not on the licensed NCOA list.

The state cancelled the voter registrations of an additional 84,376 citizens, because postcards sent to their residences were returned to the state or a county as undeliverable. Again, this is surprising as 51,785 of these voters have mailable addresses recognized by the Post Office. Again, the Georgia Secretary of State provided no explanation of this extraordinary deviation from Postal and other records.

Our experts note that a card returned as undeliverable does not, in and of itself, indicate that a voter has permanently moved residence. Many cards were returned because they were missing apartment addresses. Again, this is no indication the voter has made a registration-cancelling move. For this reason, the Wisconsin Board of Elections, for example, has refused to use returned undeliverable mail as grounds for disenfranchisement.

"Use it or lose it"–so-called "inactive" voters

Instead of industry standard practice for verifying address moves, Georgia's principal method of identifying voters who have moved is by sending an "address confirmation" postcard to voters who have failed to vote in two federal elections.

This is the main source of the state's extreme error rate.

First, all mailing experts on our team and beyond, unanimously agree that failure to vote is not any indication of a voter having moved residence. Of the hundreds, even thousands of data points used in the industry, no one uses voting frequency. There are many reasons why voters may choose not to vote. Moving a residence is not the major reason.

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Moreover, counsel advises us that the "Failure to Vote" clause of the National Voter Registration Act explicitly prohibits using non-voting as a reason to cancel a citizen's voter registration. However, under the recent June 2018 Husted decision, the U.S. Supreme Court allowed for using failure to vote as one piece of evidence that a voter has moved. Thus, the "confirmation" card mailed to "inactive" voters. However, this combination of non-voting and failure to return a postcard cannot be used if it is not "reasonable" information. As the Georgia confirmation-by-postcard purge captures voters who did not move, Georgia's method is, on its face, unreasonable.

As Lenser of AFA tells us, [Georgia's system] certainly isn't a methodology to determine whether somebody has moved given that the list is no less than 65% wrong. There's a problem with using that methodology.

While non-voting is a suspect trigger for sending a card, failure to return a card, says expert Swedlund, is completely meaningless with regard to whether an individual has moved. The overwhelming majority of recipients will ignore or throw away the postcard as "junk mail."+

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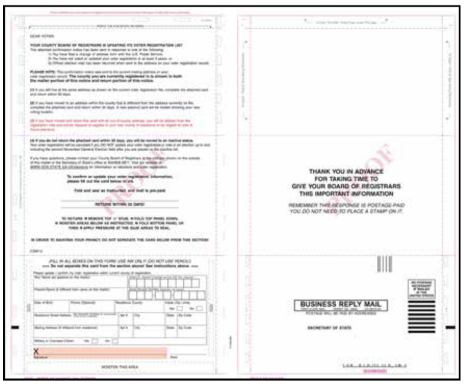


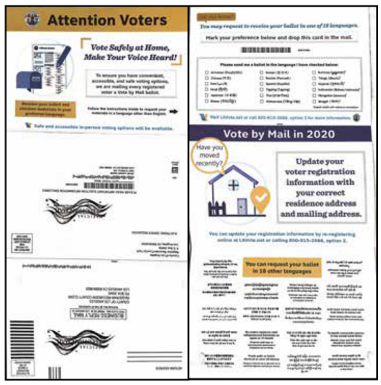
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The Cards

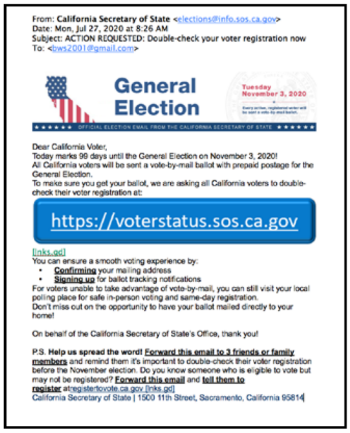
Indeed, our experts inform us that postcards are the measurably least likely form of communication to obtain a response. According to Mike Wychocki, another expert who specialized in designing mail for maximum response, the cards that the Georgia Secretary of State designed , violate the basic rules of the industry.

Georgia, ***left*** v. California, ***right***





In addition, the California Secretary of State also sends an e-mail to voters. >>



From: **California Secretary of State** <elections@info.sos.ca.gov>
Date: Mon, Jul 27, 2020 at 8:26 AM
Subject: ACTION REQUESTED: Double-check your voter registration now
To: <bws2001@gmail.com>

General Election

Tuesday November 3, 2020

OFFICIAL ELECTION EMAIL FROM THE CALIFORNIA SECRETARY OF STATE

Dear California Voter,
Today marks 90 days until the General Election on November 3, 2020!
All California voters will be sent a vote-by-mail ballot with prepaid postage for the General Election.
To make sure you get your ballot, we are asking all California voters to double-check their voter registration at:

https://voterstatus.sos.ca.gov

[links.gd]
You can ensure a smooth voting experience by:

- **Confirming** your mailing address
- **Signing up** for ballot tracking notifications

For voters unable to take advantage of vote-by-mail, you can still visit your local polling place for safe in-person voting and same-day registration.
Don't miss out on the opportunity to have your ballot mailed directly to your home!

On behalf of the California Secretary of State's Office, thank you!

P.S. **Help us spread the word!** **Forward this email to 3 friends or family members** and remind them it's important to double-check their voter registration before the November election. Do you know someone who is eligible to vote but may not be registered? **Forward this email** and **tell them to register** at registertovote.ca.gov [links.gd]
California Secretary of State | 1500 11th Street, Sacramento, California 95814

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Bias:
Age, Income, Urban, and Race

Our experts also warn that the Georgia purge-by-postcard methodology will substantially, disproportionately impact young voters, low-income, urban, and voters of color.



Racial, income, age, and location bias is endemic to the process. Whether conducted deliberately or unintentionally, we are unable to say.

The first problem is that Georgia's Secretary of State assumes that all recipients will read and return postcards—measurably wrong, and that postcard response rates are equal across demographic groups.

The Census Bureau says otherwise. According to the US Census Bureau's Mail Response/Return Rates Assessment (Decennial Statistical Studies Division), there a huge difference in official government postcard return rates: far lower for young, urban (renting), low-income, and citizens of color and those for whom English is a second language.

Age bias:
There are two problems that wrongly capture younger voters. First, younger voters are itinerate, far more likely to move (dorm room to dorm room, apartment to apartment).

Second, young voters are very unlikely to respond to a post card—it is not how younger citizens communicate as noted by Census studies. As AFA's Lenser states:

"The system where you save your vote by sending in a postcard would be detrimental or prejudicial against younger people. And we found in Georgia that the mailing lists skewed toward younger people. There was probably a 30 or 40% greater likelihood of younger people being on the list against other age groups."

Income/Urban:
One little-mentioned fact is that, according to Wychocki, the Post Office fails to deliver 4% to 20% of mail to large buildings in low-income urban centers. And renters are movers, though, as we found in one Atlanta case, a voter was purged for moving apartments in a building. And even if received, as mentioned, the probability of low-income, urban renters returning official mail is slim.

Racial bias:
All the other factors of bias create a racial bias as well. African-American and Hispanic voters tend to be more urban, more likely to be renters, have lower income and are, measurably, a younger registration demographic. Not surprisingly, all-English text is also a major barrier to returning the cards, especially among Asian-Americans according to registration organizations in Georgia.

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Our final report, which will include both county-level data and identification of local movers wrongly purged, will provide additional details of racial bias, in particular the overwhelming concentration of wrongly-identified movers in counties of the Atlanta Metro area.

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Summary of Findings:
Georgia Voter Registration Purge

Registrations cancelled by Sec. of State

Source of "move" information	
NCOA*	108,306
Returned mail	84,376
No vote / no contact 2 elections	120,561
Total "Mover" registrations cancelled by Sec. of State	**313,243**
Move verified by USPS NCOA & PCOA	65,411
Not verified as moved	247,832
Unverifiable records	33,526
Deceased	8,727
Not deceased, not verified as moved	205, 579
"Edit drops"**	10,398
Not moved, addresses verified & mailable	195,181
Secondary address (apt. #) missing	3,170
Not moved, address verified	**198, 351**
Georgia Purge List Error Rate	**63.3%**

*NCOA - While the Ga. Sec. of State lists these voters as having been identified by the USPS' NCOA (Nat'l. Change-of-Address) registry, NCOA licensees could locate only 27,898 on the NCOA list.
**Edit drops: Addresses the post office does not accept as "mailable."
Source: Computech Direct and Merkle, Inc USPS licensee.

About Greg Palast and the Palast Investigative Fund

For 20 years, Greg Palast has investigated racial voter suppression as a reporter for The Guardian, BBC Television Newsnight, Rolling Stone, Harper's, Salon, and elsewhere. His film and print exposé of mass purges in Georgia and elsewhere won Al Jazeera the Global Editor's award for data journalism.

Palast is a Puffin Foundation Fellow in Investigative Reporting and, among his awards, was last year named International Reporter of the Year by the Association of Mexican Journalists for his multi-nation investigations of vote suppression.

For two decades, before turning to journalism, Palast was an investigator and expert witness in major corporate racketeering, fraud and regulatory cases for several US state attorneys general, the US Justice Department and governments on four continents.

Palast, who earned his degree in economics from the University of Chicago, is author of the United Nations guide to industry regulation, based on his lectures at the Department of Applied Economics at Cambridge University and the University of Sao Paolo. Palast taught statistics at Indiana University.

Palast's popular writings included a 5-year series of investigative reports for The Guardian, Inside Corporate America, and five bestselling books including The Best Democracy Money Can Buy and several documentary reports for BBC, Channel 4 UK, and ARTE Europe.

With proceeds from his bestsellers, Palast founded the non-partisan, not-for-profit Palast Investigative Fund, now a project of the 501c3 non-partisan not-for-profit Sustainable Markets Foundation. The Fund is supported by the Puffin, Park, Cloud Mountain and other foundations dedicated to journalism. The Fund's purpose is to support long term, often multi-year, technically complex investigations in alliance with major news outlets.

The Fund fields a team, currently 20 strong, of investigators, researchers, technical experts, and a production crew.

The team is also completing a series of television PSAs and longer form broadcasts for one of America's premier production companies on protecting the right to vote in 2020.

Palast, 68, has recently returned to live in Los Angeles, where he was born.

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Georgia Voter Roll Purge Errors

By Greg Palast
and the Palast Investigative Fund

Report for the
American Civil Liberties
Union of Georgia

September 1, 2020

ACLU
Georgia

SCIENCE ADVANCES | RESEARCH ARTICLE

SOCIAL SCIENCES

The racial burden of voter list maintenance errors: Evidence from Wisconsin's supplemental movers poll books

Gregory A. Huber[1], Marc Meredith[2]*, Michael Morse[3], Katie Steele[4]

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Administrative records are increasingly used to identify registered voters who may have moved, with potential movers then sent postcards asking them to confirm their address of registration. It is important to understand how often these registrants did not move, and how often such an error is not corrected by the postcard confirmation process, because uncorrected errors make it more difficult for a registrant to subsequently vote. While federal privacy protections generally prevent researchers from observing the data necessary to estimate these quantities, we are able to study this process in Wisconsin because special poll books, available via public records requests, listed those registrants who were identified as potential movers and did not respond to a subsequent postcard. At least 4% of these registrants cast a ballot at their address of registration, with minority registrants twice as likely as white registrants to do so.

INTRODUCTION

Voter registration list maintenance, or list maintenance, is a practice that is increasingly at the heart of what has been termed "the voting wars" (*1*). Election administrators are required to periodically engage in list maintenance to "remove the names of ineligible voters from the official lists of eligible voters" [52 U.S.C. §20507(a)(4)]. This is necessary because up to one in every eight registrations is thought to no longer be valid (*2*). For example, a registrant may have subsequently moved or died. However, there is often a difficult trade-off between voter access and electoral integrity in making "reasonable effort(s)" at list maintenance (*3*). Failing to remove the registration of a registrant who is ineligible to cast a ballot can reduce electoral integrity (e.g., if that registration is used to fraudulently cast a ballot), but inactivating or removing the registration of an eligible citizen can reduce confidence in the voting process, exclude voters from certain forms of official election communication, and result in disenfranchisement if a citizen is removed and does not reregister before their state's registration deadline.

This paper focuses on the challenges of using administrative records to fulfill the federal mandate to identify "a change in the residence of the registrant" [52 U.S.C. §20507(a)(4)(B)]. Because of the decentralized nature of election administration in the United States and the lack of a national identity system, election administrators often resort to matching registration records to other administrative records to look for evidence that a registrant has moved. The Electronic Registration Information Center (ERIC), a nonprofit corporation governed by member states, currently assists 30 states and the District of Columbia in this list maintenance process. Member states agree to contact those registrants that ERIC suspects have moved, often using a mailed postcard, and ask them to confirm their address of registration. Registrants who fail to confirm that they reside at their address of registration can have their registration removed or, more likely, inactivated, which starts a process through which a registration is eventually removed.

This paper estimates how often registered voters are wrongly identified as suspected movers. Little is known about the extent of this type of list maintenance error, despite the widespread use of administrative records for list maintenance, because the ERIC membership agreement prohibits states from disclosing the necessary data. Our analysis instead focuses on publicly available poll books. Most of the registered voters in Wisconsin who were identified as suspected movers in 2017 were put into a "Supplemental Movers Poll List," henceforth referred to as the movers poll books, for the April, August, and November elections in 2018.

We took advantage of this state policy by collecting the movers poll books from a representative sample of wards, extracting the voter registration numbers in the poll books, and then matching the voter registration numbers to copies of the Wisconsin statewide voter file from early 2018 and early 2019. This workaround allows us to observe who did not respond to confirm their address of registration when sent a postcard and, for a subset of these registrants who voted in 2018, whether they did in fact, move.

A registrant may be falsely flagged as a suspected mover for multiple reasons. First, a registration record may be matched, incorrectly, to the administrative record of a different individual. Second, even when a registrant is correctly matched to their own administrative record(s), it can be difficult to determine which record contains a registrant's current address of residence.

In total, we estimate that about 4% of suspected movers cast a vote in 2018 at the address flagged as out of date. That is, they were flagged by ERIC as a suspected mover, did not respond to a postcard, and yet did not actually move and instead voted at their original address of registration. This is a lower bound on what we call the "false mover" error rate, because it is the act of voting that allows us to observe whether a suspected mover continues to reside at their address of registration. We cannot observe how many additional registrants in the movers poll books also continued to reside at their address of registration but did not vote in 2018. Limiting our analysis to the suspected movers who did vote in Wisconsin in 2018—and thus for whom we have the most recent address—we estimate

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that about 9% of those who voted in Wisconsin in 2018 cast a ballot at the address of registration flagged as out of date. Consistent with concerns about the potential disparate racial impact of voter list maintenance, we find that minority registrants in the movers poll books were more than twice as likely as white registrants in the movers poll books to vote at the address flagged by ERIC as out of date.

Background

The decentralized nature of election administration in the United States makes it hard for election administrators to conduct list maintenance. Currently, about 10% of Americans move to a new residence every year (*4*). Registrants are not required to, and often do not, tell local election officials when they have moved. Thus, election administrators need ways to identify and remove these registrants who are no longer eligible to vote at their address of registration.

Administrative records are an important source of information for identifying registrants with a new residence. Registrants who moved may generate a record of having done so with the Department of Motor Vehicles (DMV), when they change the address on their driver's license, or with the United States Postal Service (USPS), which is recorded in the National Change of Address (NCOA) System. Someone registering to vote in a new jurisdiction also generates an administrative record of where they resided on the day that they registered to vote. Thus, an election administrator can identify potential movers by linking their registration records with DMV data, the NCOA registry, or registration records from other jurisdictions.

While administrative records can be helpful for identifying potential movers, some of the registrants flagged as potential movers will actually still reside at their address of registration. One issue is that the NCOA does not contain all of the information that election officials would ideally want to implement list maintenance, because its primary purpose is to support the USPS. For example, the NCOA registry does not contain information on the date of birth of the person filing a change of address request. Another issue is that there is no unique identifier that links voter registration records across states. As a result, to identify people with multiple registrations, election administrators sometimes identify registrations with similar information in multiple states' voter registration databases using fields such as full name, date of birth, and, when available, the last four digits of a registrant's Social Security number. When all of this information is available and accurate, it is unlikely that two matched registrations belong to distinct people (*5*). However, this information is not always known or accurate in both states, which can lead to two registrations with similar information that nonetheless belong to two distinct people being erroneously classified as pertaining to the same person (*6*). When this happens, it can give the false impression that a registrant has moved.

Further, even when administrative records are correctly linked to a particular registrant, identifying the current residence of a registrant can be challenging, particularly if someone is a frequent mover (*7*). For example, individuals with multiple registrations sometimes do vote at the address of registration for the registration with an earlier registration date (*6*). This might arise when one state reports the date a registration was initiated as the registration date, while another reports the date the registration was last updated. The broader lesson is that administrative data often contain information about a voter's address on the day the administrative record was generated, but this may not be their address moving forward. A similar issue can emerge when an individual has multiple residences. For example, DMV records may show where a registrant typically resides in the summer, while their address of registration may be where they typically reside in the fall and winter. Last, data quality issues can also make it difficult to determine whether addresses in two different administrative data sources represent two distinct addresses or the same address presented differently.

Because of the challenges of identifying registrants who moved using administrative data, election administrators increasingly are partnering with ERIC to assist in this process. ERIC is a nonprofit organization that assists states in identifying unregistered citizens and maintaining accurate voter registration lists. Member states provide ERIC with their voter registration lists and administrative data, and ERIC returns two categories of lists to each partnering state. One type includes residents who are likely eligible to vote but who are not registered. The other type includes registrations potentially in need of list maintenance because the registrant may have moved within their state, moved to another ERIC state, died, or have duplicate registrations within their state. ERIC member states agree to contact most individuals on these lists, and encourage them either to register to vote or to confirm whether their registrations are accurate.

Prior evaluations show that states increase registration by contacting individuals who are not registered but likely eligible to vote. The seven states that initially joined ERIC in 2012 increased registration by about one percentage point more between 2008 and 2012 than states that did not initially join ERIC (*8*). People ERIC identified as unregistered in Delaware and Oregon were two percentage points more likely to be registered when sent a postcard encouraging them to register (*9*). Similarly, a postcard sent by Pennsylvania increased the registration rate among people ERIC identified as unregistered by about one percentage point (*10*).

Much less is known about the consequences of using the lists generated by ERIC to engage in list maintenance, including how many registrants flagged by ERIC fail to confirm their eligibility despite remaining eligible to vote at their address of registration. As this section highlights, there are a number of reasons why someone may appear to move in administrative records despite continuing to reside at their address of registration. Such individuals may also fail to respond to a postcard asking them to confirm their registration. For example, media reports highlight that some postcard recipients believe that these postcards are junk mail or a scam, while others report never receiving the postcard (*11*, *12*). Whatever the source of this error, anything that results in a valid registrant not receiving or returning their postcard risks jeopardizing their ability to vote.

An evaluation of ERIC's list maintenance practices was never publicly released despite a suggestion that such an evaluation was forthcoming (*8*). Moreover, independent external evaluations have not occurred because ERIC prevents member states from disclosing the data it provides to third parties. In part, this is because disclosure of information derived from DMV records could violate the federal Driver's Privacy Protection Act. As a result, ERIC maintains that any disclosure of ERIC data to researchers must be under the terms of a nondisclosure agreement negotiated with ERIC. The bylaws of ERIC state the following:

> The Member shall not use or transmit any ERIC data for any purpose other than the administration of elections under state or federal law. Should a Member receive a request to disclose ERIC data and determines that it is legally obligated, in whole or in part, to comply with such request, it shall not

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make the disclosure without first obtaining a court order compelling it to do so, a copy of which shall be provided to ERIC.

When rejecting our public records request for all of the registrations flagged by ERIC, the Wisconsin Election Commission (WEC) noted that "while the WEC possesses this data, due to the restrictions in the ERIC Membership Agreement and the statutory directive to comply with the Agreement as outlined above, this request is denied as it would require the transmission of ERIC Data for purposes other than the administration of elections." Thus, it remains unknown what share of suspected movers remain eligible to vote at their address of registration, as well as how the false mover error rate is distributed across important groups in the population. As with any algorithmic process, we need to understand its overall accuracy and assess the mechanism for mitigating any potential discriminatory impact (*13*). The goal of this paper is to provide credible evidence about these important public policy questions.

Evaluating vote list maintenance using Wisconsin data

In October 2017, ERIC provided data to the WEC indicating that 341,855 registered voters had potentially moved. These registrants were separated into three groups: (i) registrants identified as in-state movers, based on matching Wisconsin registration and Wisconsin motor vehicle data; (ii) registrants identified as cross-state movers, based on matching Wisconsin registration data to other participating states' registration or motor vehicle data; and (iii) registrants identified as general movers, based on NCOA data.

In addition to the general challenges associated with identifying movers in administrative data, there were specific challenges with Wisconsin data that caused some of these registrants to be identified as potential movers despite continuing to reside at their address of registration. Wisconsin is not subject to the National Voter Registration Act (NVRA) because of their historical use of Election Day registration. An implication is that motor vehicle data and voter registrations are not integrated in Wisconsin in the same way that they would be in a state subject to the NVRA. According to a 2019 memorandum produced by the WEC, "[s]taff identified several data discrepancies that caused voters to appear on the Movers list who may have not moved, such as differences in spelling between the street name on their voter registration record versus their DMV record, or cases where the new address was a PO Box" (*14*). Registrants in Wisconsin also may be less likely than registrants in other states to understand how a DMV transaction can affect their voter registration because, unlike in states subject to the NVRA, the Wisconsin DMV does not attempt to register individuals to vote. The WEC concluded that "while available data from the DMV implied many had moved, some of the voters, in fact, had not moved. Some reasons for this include voters who registered a vehicle or obtained a driver's license at an address other than the address they considered to be their voting residence. This included persons who registered a vehicle at a business address, vacation home, or their child's college address, and college students who obtained a driver's license when they are temporarily living away from home" (*14*).

The WEC sent postcards to the 341,855 potential movers identified by ERIC at their address of registration. Of these 341,855 registrants, 6153 responded to the postcard confirming that they continued to be eligible to vote at their address of registration. The remaining 335,702 registrants were initially removed from the voter rolls. We note that a state subject to the NVRA would not have been able to immediately remove these registrations and likely would have instead made them inactive. Indiana, although not a member of ERIC, recently was blocked from instituting a policy in which data provided by Crosscheck, a now defunct alternative to ERIC, were used to immediately remove registrants who did not confirm their eligibility [see *Common Cause Indiana v. Lawson*, 937 F.3d 944 (7th Cir. 2019)].

A unique policy intervention gives us an unusual opportunity to observe registrants who continued to reside at their address of registration despite not responding to the WEC's postcard. After a number of people whose registrations were removed showed up to vote in Wisconsin's statewide primary election in February 2018, the WEC took two actions that inform our understanding of the "false mover" error rate, which we define as individuals removed for having apparently moved despite actually residing at their address of registration. First, Wisconsin proactively reactivated 12,133 of these removed registrations between January and March 2018 because of some questions about data quality. This means that among those registrants who failed to return a postcard, at least 3.6% of registrants were likely incorrectly flagged as having moved.

Second, Wisconsin created separate movers poll books, containing the registrations of the suspected movers for the April, August, and November 2018 statewide elections. These poll books excluded registrations that had already been reactivated by the time these elections were held (e.g., did not include the 12,133 registrants automatically restored by the WEC or registrants whose current address of registration was confirmed in some other way before the election). Registrants listed in the movers poll books who showed up in person to vote at their address of registration would sign their name in these poll books, which certified that they still resided at their registration address and wanted to remain registered at it. Wisconsin law says that the state cannot restrict the public from observing a poll book, despite the ERIC policy agreement described above. A registrant would not sign the mover book if they voted via absentee ballot, although a voter would need to specify their registration address when requesting an absentee ballot. The default is that an absentee ballot is sent to a voter's address of registration, although a voter could request that it be sent to another address. Absentee ballots may not be forwarded.

We collect copies of these movers poll books for a random sample of precincts, extract the voter registration number of all of the listed registrants, and identify these registrants' records in the Wisconsin statewide voter file from both before and after the 2018 elections of interest.

Because we use the term "suspected mover" or "mover" to refer to someone in the movers poll books, we define a "mover voter" as someone who used a registration contained in a movers poll book to vote in at least one of the April 2018, August 2018, or November 2018 elections. Because the act of voting causes a registrant's address of registration to update if it has changed, we can be sure that a voter continues to reside at their listed address of registration in a way that we cannot for a nonvoter. Thus, we first estimate the share of registrants in the movers poll books who voted at the address contained in the poll book. This estimate provides a lower bound on the false mover error rate because a nonvoter who continues to reside at the address in the movers book will not be accounted for in this estimate.

Because our design relies on voting to estimate the false mover error rate, we also examine the relative error rate among suspected movers who voted in Wisconsin in 2018, whether at their original registration address or a new address. This allows us to measure, conditional on voting, the relative frequency of having been incorrectly flagged as having moved. The limitation of this analysis is that

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we are better able to track when someone votes at the same address than when someone votes at a new address. Thus, this estimate likely provides an upper bound on the false mover error rate.

In addition to characterizing the overall false mover error rate, we also investigate how the error rate varies as a function of various characteristics of the registration. Specifically, we examine whether minority suspected movers are more likely than white suspected movers to continue to reside at their registration address. Understanding whether list maintenance policies burden racial and ethnic minorities more than whites is one of the most important academic, legal, and policymaking questions about list maintenance and algorithmic fairness more generally. Some recent research suggests that minorities may be more burdened by registration removal than whites. For example, the share of registrations that were removed increased in counties that were previously subject to Section 5 of the Voting Rights Act before *Shelby County v. Holder* [570 U.S. 529 (2013)] (*15*). However, it is unclear whether this reflects increased incorrect removals or, instead, an ability to more easily remove ineligible registrants once these counties were free of federal oversight. Similarly, minorities were more likely than whites to have their registrations removed in 90 of 100 North Carolina counties between September 2016 and May 2018 (*16*), but again, it is not clear how many of these removals were incorrect removals, as some differences in the removal rates of minorities and whites are to be expected given that minorities are more likely than whites to move in a given year (*17*). Examining whether minority removed voters are more likely than white removed voters to continue to reside at the registration address flagged by ERIC is a more direct test of differential burden.

To be clear, we are not suggesting that minorities are intentionally targeted for removal. Instead, there are at least two reasons why minorities may be more likely than whites to be falsely flagged as suspected movers, even absent any intentional discrimination. First, minorities are more likely to reside in multi-unit buildings and more likely to reside in larger households (*18*, *19*), both of which, we hypothesize, increase the risk that someone who did not move will nevertheless be falsely flagged as moving. We expect registrants in multi-unit buildings to be disproportionately falsely flagged as moving because the additional complexity of addresses in multi-unit buildings increases the chance that two administrative records will represent the same address differently and thus wrongly suggest that a registrant has moved. We also expect registrants in larger households to be disproportionately falsely flagged as moving when other members of a household move, particularly when the movers and nonmovers share a similar name. Of course, registrants in multi-unit buildings and larger households might also be more likely to move in general. If living in a multi-unit building or living in a large household is too predictive of moving, then registrants in multi-unit buildings and larger households may not ultimately be more likely to be falsely flagged as moving.

Another reason why minorities may be more likely than whites to be falsely flagged as suspected movers is that they are more likely to be correctly flagged as having moved, but their registration address is incorrectly flagged as being out of date. One common scenario that we expect generates problems is when someone initially registers to vote at their address, moves to a new address, and then moves back to the address that they are registered to vote at. More generally, we expect that election administrators will be better able to correctly identify the address that someone is moving from and the address that someone is moving to the longer that someone lives at an address. Election administrators report that they find it challenging, for example, to identify the most recent address of frequent movers using ERIC data (*7*). Thus, we hypothesize that election administrators will be disproportionately likely to falsely flag a minority's registration address as out of date because minorities are more likely to frequently move (*20*).

Last, many of the same factors that increase the likelihood of being falsely flagged as a mover or being falsely flagged as having an out-of-date registration address could also make someone less likely to confirm their address of registration using a postcard. For example, mail may be less likely to reach a person living in a multi-unit building or a large household. Minorities may also be less likely to return the postcard than whites, for example, if they are more likely to perceive that the postcard is junk mail or a scam.

RESULTS

Main results

We would ideally estimate $p(same_i == 1 \mid mover)$, the conditional probability that registrants in the sampled movers poll books continued to reside at the same address contained in the movers poll book (i.e., the false mover error rate). We define $same_i$ as equal to 1 if registrant i has the same registration address in the 2018 and 2019 voter files, and 0 otherwise. This means that we only reliably measure $same_i$ for people who voted, because it is the act of voting that allows us to observe a registrant's most recent address. Thus, we define $voted_i$ as equal to 1 if registrant i voted in Wisconsin in either the April, August, or November 2018 elections, and 0 otherwise. While our baseline analysis only considers registrants who vote using the same registration number listed in the movers poll books, we consider the possibility that people might vote using a different registration number in our robustness analysis.

We then estimate two related conditional probabilities, each of which is informative of the false mover error rate. First, we estimate how frequently a suspected mover voted at their address of registration. That is, we estimate $p(same_i == 1, voted_i == 1 \mid mover)$. This will be a lower bound on the false mover error rate, because there are registrants whose listed address of registration did not change ($same_i == 1$) but who did not vote ($voted_i == 0$) and thus did not confirm that their address is up to date. Second, we limit our analysis to only those suspected movers who voted and examine how frequently they did so at their address of registration. Here, we estimate $p(same_i == 1 \mid voted_i == 1, mover)$. However, extrapolating from the subset of voters to the population of suspected movers requires an additional assumption that voters and nonvoters are equally likely to be falsely flagged as a mover and that the act of being flagged as a mover did not affect the turnout of those who had not moved. In addition, we suspect even then that this will be an upper bound because we believe it will be easier to observe that someone voted when they continue to reside at the same address than when they moved to a new address.

The first row of Table 1 shows that there were 60,145 registrants in the movers poll books that we sampled. Of these 60,145 registrants, 17,035 voted in at least one of the 2018 elections using their original registration number. Of these registrants, 1695 (about 2.8%) cast their ballots at the address flagged by ERIC, while 15,340 of these registrants (about 25%) cast a ballot at a new address of registration.

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Table 1. 2018 turnout among registrants in movers poll books. Note: Standard errors in parentheses.

	N	Voted	Voted and same address	Voted and different address
Sampled movers poll books registrants	60,145	17,035 28.3%	1695 2.8%	15,340 25.5%
Population estimate of movers poll books registrants	259,650 (47,020)	77,450 (16,015) 29.8% (1.3%)	9015 (2655) 3.5% (0.5%)	68,435 (13,505) 26.4% (0.9%)
Total registrants	5,927,690	2,443,715 41.2%	2,159,265 36.4%	284,450 4.8%

In the second row of Table 1, we use the data from our sample to extrapolate to the population of registrants in all movers poll books statewide. This estimate therefore applies the weights described in Materials and Methods to extrapolate from our sample to the entire state population. We estimate that 9015 (about 3.5%) of the 259,650 registrants in the movers poll books cast a ballot at the address flagged by ERIC. This 3.5% figure is substantial, implying that for about every 29 registrations in the movers poll book, one registrant continued to reside at their address of registration and used that registration to cast a ballot. We also find that more than 90% of these voters cast at least one in-person ballot.

However, 3.5% only represents a lower bound on the false mover error rate. First, the number does not include any voters who had their registration reactivated by the WEC before the movers poll books were created, including at least 12,133 removed registrations that the WEC proactively reactivated between January and March. Second, we show in the Robustness section that some registrants flagged as movers by ERIC subsequently cast ballots using a new registration number but at the same address. Last, some registrants in the movers poll book who did not vote may also not have moved, but we cannot observe this because we rely on the act of voting to learn a registrant's most recent address. The third row of Table 1 shows that only about 41% of all registrants in the February 2018 voter file cast a ballot in either the April, August, or November 2018 elections using the registration number contained in the February 2018 voter file. While this understates overall turnout because some of these registrants cast a ballot using a new voter registration number, it makes it clear that a nontrivial number of registrants who did not vote in these elections also did not move.

Table 2 shows that minorities in the movers poll books were more likely to vote at the address of registration flagged by ERIC than whites in the movers poll books. The dependent variable in regressions reported in columns 1 through 4 is equal to 1 if a suspected mover voted and did so at the address flagged by ERIC, and 0 if a suspected mover either voted but did so at a new address or did not vote. Column 1 presents the results of a regression in which this dependent variable is regressed on the predicted probability that the registrant is nonwhite. The interpretation of the constant is that our best estimate is that 2.7% of whites in the movers poll books cast a ballot at the address of registration flagged by ERIC. The interpretation of the coefficient on the probability that the registrant is minority is that our best estimate is that minorities in the movers poll books were 3.8 percentage points more likely to vote at the address of registration flagged by ERIC than whites in the movers poll books, meaning that about 6.5% of minorities in the movers poll books cast a ballot at the address of registration flagged by ERIC. Notably, this means that the lower bound on the false mover error rate is more than 100% larger for minorities than for whites.

Column 2 of Table 2 shows the results of a regression that disaggregates suspected minority movers by their probability of being different races and ethnicities. The results suggest that suspected movers who are black and, to a lesser extent, Hispanic, are significantly more likely to have voted at the address flagged by ERIC than suspected movers who are white. Suspected movers who are Asian or another race did not appear to vote at their listed addresses at rates significantly different from suspected movers who are white.

Columns 3 and 4 of Table 2 repeats the analysis from columns 1 and 2 while including some measures that we expect to account for some of the racial differences in the likelihood of being incorrectly identified as a mover. Specifically, we control for whether a registrant lives at a residence with multiple units, in a household with at least one other registered voter, and in a household with at least one other registered voter who has the same last name, each of which we expect to complicate the process of correctly matching administrative records. In the Supplementary Materials, we document how we construct these control variables. Because we cannot observe a registrant's prior movement history, we cannot control for the frequency of prior moves, which is another reason that we hypothesized we may observe differences across racial groups.

While we expected that registrants who lived in multi-unit residences would be more likely to be wrongly identified as a mover than registrants who lived in single-unit residences, they actually appear slightly less likely to be wrongly identified. One reason might be that the WEC proactively "identified several…situations where voters appeared to have moved but did not," including "cases where the voter registration address…contained a unit number but their DMV record did not, or vice versa" (*14*). Further, also contrary to our expectations, suspected voters who lived in a household with another registrant are less likely to vote at the address flagged by ERIC than removed voters who lived in a household with no other registrant, particularly when that registrant has the same last name as them. The fact that including these controls does not attenuate the coefficient on probability minority suggests that address complexity is not the reason for the disparate racial impact. Instead, the fact that minorities are more likely to move, making it more difficult to identify which address is the most recent, may be the culprit.

Groups of registrants who turn out at higher rates are likely to be overrepresented among registrants who vote and continue to reside at their address of registration. To ensure that this is not driving the results in columns 1 through 4, the analysis reported in columns 5 through 8 restricts our sample only to suspected movers who turned out to vote in at least one of the 2018 elections using their original registration number. This changes the interpretation of the coefficient to represent the probability that a mover voter cast their ballot at the address flagged by ERIC. This analysis shows that more than 21 and 17% of black and Hispanic mover registrants, respectively, who voted using their original registration number did so at the address flagged by ERIC, as opposed to about 10% of white mover registrants. Thus, differential turnout does not explain why black

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Table 2. Racial and ethnic minorities in movers poll books are disproportionately likely to vote at the address flagged by ERIC.

	Dependent variable							
	Voted at address flagged by ERIC							
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
pr(Minority)	0.038***		0.037***		0.096***		0.087***	
	(0.002)		(0.002)		(0.008)		(0.008)	
pr(Black)		0.053***		0.051***		0.117***		0.105***
		(0.003)		(0.003)		(0.009)		(0.009)
pr(Hispanic)		0.027***		0.025***		0.085***		0.073***
		(0.005)		(0.005)		(0.015)		(0.015)
pr(Asian)		−0.002		−0.001		0.014		0.018
		(0.006)		(0.006)		(0.022)		(0.021)
pr(Other)		0.018		0.023		−0.004		0.009
		(0.015)		(0.015)		(0.042)		(0.042)
Multi-unit			−0.005***	−0.004**			−0.019***	−0.017***
			(0.002)	(0.002)			(0.006)	(0.006)
Multi-ppl			−0.019***	−0.018***			−0.067***	−0.066***
			(0.002)	(0.002)			(0.007)	(0.007)
Multi-family			−0.006**	−0.006**			−0.032***	−0.032***
			(0.002)	(0.002)			(0.008)	(0.008)
Constant	0.027***	0.028***	0.038***	0.038***	0.095***	0.098***	0.142***	0.143***
	(0.001)	(0.001)	(0.001)	(0.001)	(0.003)	(0.003)	(0.004)	(0.004)
Observations	58,492	58,492	58,492	58,492	16,524	16,524	16,524	16,524

*$P < 0.1$. **$P < 0.05$. ***$P < 0.01$.

and Hispanic mover registrants were more likely to vote and reside at the address flagged by ERIC.

Robustness

In this section, we describe the robustness of our findings when we account for possible reasons why voters suspected of having moved would be missing from the regressions presented in the previous section. First, some municipalities did not provide us with poll books or only provided us copies of movers poll books for one or two of the three elections that we requested. This may cause us to miss some movers poll book voters, particularly when we are missing the April movers poll book. Second, some of the registrations flagged by ERIC may have been assigned a new voter registration number between the February 2018 and January 2019 statewide voter files, causing us to miss their vote record in at least one of the April, August, and November elections.

There are two types of missing data in our sample. First, table S1 highlights that a few of the sampled municipalities were unable to provide copies of poll books or failed to respond to our request. Given that these municipalities only contain 4.6% of the weighted registered voters within our sampling frame, their omission from our analysis is unlikely to substantially affect our results. Second, table S1 also shows that a number of municipalities only provided copies of the movers poll books for one or two of the three requested elections. Lacking the April movers poll book is particularly problematic because the act of voting in the April election is one reason why a registration flagged by ERIC would not appear in the August or November movers poll books.

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Table S2 shows why we conclude that our results would not change much if we had access to all three movers poll books in the 47 municipalities that sent us one or two movers poll books. We reach this conclusion by looking at how our results would change if we only observed a subset of the movers poll books in the 75 municipalities that sent us all three movers poll books.

Table S3 shows why we conclude that a significant number of movers poll book registrants voted using a new voter registration number. Some of these registrants may have reregistered on Election Day because Wisconsin permits same-day registration. Using data from the subset of mover registrants with rare names, we estimate that about 730 and 29,200 movers voted using a new voter registration number at the address flagged by ERIC and a new address, respectively. This implies that the lower bound on the false mover error rate is about 4%, while the share of mover voters who cast a ballot at the address flagged by ERIC is about 9%. However, this analysis presents no evidence that the racial differences we observe in Table 2 are an artifact of minority ERIC registrants being more likely to vote using a new voter registration number than white ERIC registrants.

Last, table S4 shows how our results in Table 2 change when we also include municipality fixed effects. We continue to find statistically significant differences in the rate at which minorities and whites in movers polls book vote at the address flagged by ERIC, although the magnitude of the difference is reduced by about one-third.

DISCUSSION

Our analysis of the list maintenance procedure used by Wisconsin reveals that it initially removed a substantial number of registrants who resided at their address of registration. These registrants were identified by ERIC as movers by matching administrative records. All registrants flagged as movers were then sent postcards in the mail that, in theory, gave those registrants who had not moved the opportunity to confirm their address of registration. Yet, we find at least 9000 registrants, or about 4% of all flagged registrants who did not respond to this postcard, went out to vote in 2018 at the address of registration flagged by ERIC as out of date. This represents a lower bound on the false mover error rate because there were additional registrants who continued to reside at their address of registration whom we could not observe, either because their registration was proactively reactivated before the creation of movers poll books or because they did not vote in 2018 and thus did not make use of the movers poll books.

In addition, we find that the burden of incorrect removal falls more heavily on minority registrants. Our analysis shows that the lower bound on the false mover error rate is more than twice as large for black registrants as it is for white registrants. This finding is consistent with claims that the more frequent movements of registrants of color may make it harder to determine their current residence and, hence, put registrants of color at a heightened risk of having their valid registrations removed (*21*).

Had Wisconsin not taken the unusual step of using movers poll books, the list maintenance process used by the state would have otherwise been obscured because of the state's participation in the ERIC consortium. ERIC prohibits states from disclosing to third parties the list of voters flagged as movers, which has heretofore made it impossible for independent researchers to assess its error rate. As we show, this lack of transparency may be consequential; incorrect removals are both large in number and display a disturbing differential racial burden. More creativity is needed to find ways to allow evaluation that are consistent with the Driver's Privacy Protection Act. More generally, both the public and policymakers need to be able to observe enough details about how algorithms work in practice to evaluate their fairness.

Beyond these broader issues, we also believe that our findings point to policy changes that can mitigate the potential disenfranchising effects of errors in voter list maintenance procedures. First, given that a substantial number of registrants fail to respond to a postcard seeking to validate their address, states should consider revising the process of address verification. Of the more than 300,000 people sent address-confirmation postcards by the WEC, only about 6000 people responded. Subsequently, the WEC proactively reactivated about 12,000 of the flagged registrations because it appeared that the registrant had not moved, even though the registrant did not respond to the postcard, and we identified at least an additional 9000 registrations in which the registrant did not respond to the postcard despite remaining eligible to vote at their address of registration. Given that most of the registrants who remain eligible to vote at their address of registration are not responding to a postcard, it may be that state communication should include multiple efforts at contact, clearer communication, or contact through means other than the USPS. Further, election administrators should consider whether, given the generally abysmal response rate to postcards, they should treat registrants whose postcard was returned as undeliverable (83,743 registrants in this case) differently than registrants who did not respond to a postcard (251,959 registrants in this case), as the former at least provides more evidence about moving than the latter.

Second, in states where failure to respond to a validation postcard leads to either removal or placing a voter on an inactive list, more effort should be made to correct errors. While the protections of the NVRA and Election Day registration reduce the costs of falsely flagging movers, they do not eliminate them. Inactive registrants are always eligible to vote, but they may not be sent official mailings from election administrators and face a more burdensome process to verify their identity before they can cast a ballot. Likewise, forcing someone to reregister to vote on Election Day is likely to increase the time it takes to vote. Wisconsin's movers poll books are an example of a clear intervention that avoided the disenfranchising effects of their list maintenance procedure, as is Election Day registration, although both processes will be more efficacious when those who are removed continue to receive notices about upcoming elections. Our results show why it is essential to make registrants aware if their registration is being moved to inactive status and to continue to alert these registrants to upcoming elections so that they know when and where to vote if they still reside at their address of registration.

Last, we do not think our results should be used to claim that states should not use ERIC to help with list maintenance. List maintenance is essential, and our data show that a large majority of the registrations ERIC flags as potential movers are for registrants who no longer reside at their address of registration. There is unlikely to be a method of conducting list maintenance that avoids incorrect removals without leaving a large number of ineligible registrations on the rolls. That said, we hope that this evaluation causes ERIC and its member states to further assess its practices and work toward reducing differences in the frequency of the incorrect flagging of white registrants and registrants of color. We also hope that it highlights to policymakers and the public the importance of treating the information from ERIC as evidence that

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registrants might have moved, rather than evidence that they did move, and to use it accordingly.

MATERIALS AND METHODS

Sampling movers poll books

We sent public records requests to a subset of Wisconsin municipalities that were selected on the basis of a stratified random sampling strategy designed to minimize both the cost to conduct this research and the burden placed on local election officials. Because of our sampling strategy, our analysis weights observations from sampled municipality m according to the inverse of their probability of being selected into our sample, π_m. π_m is calculated by multiplying $\gamma_{s(m)}$, the probability of sampling a municipality in strata $s(m)$, by λ_m, the probability of a ward being sampled in municipality m. We explain how weights were calculated in the following paragraphs, and note that our weighting allows us to make population-level inferences despite selective sampling.

We put each of the 1857 municipalities in Wisconsin that administer elections into one of three strata. The first strata contained the 20 biggest municipalities. We sampled municipalities in the first strata with probability 1. The second strata contained the next 124 largest municipalities. We sampled 31, or 25%, of the municipalities in the second strata. The third strata contained the 1713 smallest municipalities. We sampled 86, or 5%, of the municipalities in the third strata. Hence, $\gamma_1 = 1$, $\gamma_2 = 0.25$, and $\gamma_3 = 0.05$. This sampling strategy focused attention on large urban areas with both large numbers of voters and large numbers of minorities while also allowing us to make inferences about the state as a whole, including the many jurisdictions with small numbers of voters.

The public records request we sent to sampled municipalities initially asked for copies of the movers poll books used in the April, August, and November 2018 elections for all wards. Some municipalities, particularly those in the first and second strata, responded that they did not have the resources to copy movers poll books for every ward in their municipality. In such cases, we used a systematic sampling strategy to collect poll books from a subset of wards in the municipality. In each sampled municipality, we drew a random integer X between 1 and 10. We then asked them to provide copies of poll books for wards X, $X + 10$, $X + 20$, …until the resulting number was higher than the largest ward number in the municipality. Hence, $\lambda_m = 1$ if we collect the universe of poll books in municipality m and $\lambda_m = 0.1$ if we collected a systematic sample of wards from municipality m.

Processing movers poll books

Once we collected and scanned the poll book records, we wrote a computer program to perform optical character recognition and identify the voter registration numbers contained on each page of the files provided to us. We merged all of the voter registration numbers found in the movers poll books to the February 2018 voter file. This provides us with each registrant's address before any 2018 election. We then searched for a record in the January 2019 voter file (the voter file that contains information about voting in 2018 and includes updated address information for anyone whose registration details changed in 2018) with the same voter registration number and last name anywhere in the state. We include last name because voter registration numbers are generally unique within municipalities but not necessarily across them.

In the Supplementary Materials, we present the results of an audit that evaluated how well this process performed at accurately capturing the voter registration records of the registrants contained in copies of the movers poll books that we collected. This audit reveals that our process generated a dataset that accurately represents the data contained in the copies of the movers poll books that we collected.

Inferring a registrant's race and ethnicity

Because the Wisconsin voter file does not include information on a registrant's race or ethnicity, we imputed this information using a method that combines information on a registrant's surname and the racial composition of a registrant's census block group (*22*). We describe in the Supplementary Materials how we used this method to calculate predicted race and ethnicity scores for each registrant in the movers poll book and a random sample of the Wisconsin voter file.

SUPPLEMENTARY MATERIALS

Supplementary material for this article is available at http://advances.sciencemag.org/cgi/content/full/7/8/eabe4498/DC1

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The racial burden of voter list maintenance errors: Evidence from Wisconsin's supplemental movers poll books

Gregory A. Huber, Marc Meredith, Michael Morse and Katie Steele

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UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
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Dec 4, 2014
STEVEN M. LARIMORE
CLERK U.S. DISTRICT CT.
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December 04, 2014

Steven M. Larimore
U.S. District Court
400 N MIAMI AVE
MIAMI, FL 33128-1810

Appeal Number: 12-15738-EE
Case Style: Karla Arcia, et al v. Florida Secretary of State
District Court Docket No: 1:12-cv-22282-WJZ

A copy of this letter, and the judgment form if noted above, but not a copy of the court's decision, is also being forwarded to counsel and pro se parties. A copy of the court's decision was previously forwarded to counsel and pro se parties on the date it was issued.

The enclosed copy of the judgment is hereby issued as mandate of the court. The court's opinion was previously provided on the date of issuance.

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Brenda H. McConnell
Phone #:

Enclosure(s)

MDT-1 Letter Issuing Mandate

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 12-15738

District Court Docket No.
1:12-cv-22282-WJZ

KARLA VANESSA ARCIA,
Individually,
MELANDE ANTOINE,
Individually,
FLORIDA IMMIGRANT COALITION, INC.,
Non-Profit Corporation,
NATIONAL CONGRESS FOR PUERTO RICAN RIGHTS,
Non-Profit Corporation,
FLORIDA NEW MAJORITY, INC.,
Non-Profit Corporation,
199SEIU UNITED HEALTHCARE WORKERS EAST FLORIDA,
a labor union,
VEYEYO,
a Civic Organization based in Miami Dade County,

Plaintiffs - Appellants,

versus

FLORIDA SECRETARY OF STATE,

Defendant - Appellee,

LUIS I. GARCIA, et al.,

Intervenor Defendants.

Appeal from the United States District Court for the
Southern District of Florida

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: November 17, 2014
For the Court: John Ley, Clerk of Court
By: Djuanna Clark

ISSUED AS MANDATE: 12/4/2014

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 12-15738

D.C. Docket No. 1:12-cv-22282-WJZ

KARLA VANESSA ARCIA,
MELANDE ANTOINE, et al.,

Plaintiffs-Appellants,

versus

FLORIDA SECRETARY OF STATE,

Defendant-Appellee,

LUIS I. GARCIA, et al.,

Intervenor Defendants.

Appeal from the United States District Court
for the Southern District of Florida

(April 1, 2014)

Before MARTIN, JORDAN and SUHRHEINRICH,* Circuit Judges.

MARTIN, Circuit Judge:

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* Honorable Richard F. Suhrheinrich, United States Circuit Judge for the Sixth Circuit, sitting by designation.

Section 8(c)(2)(A) of the National Voter Registration Act (the 90 Day Provision) requires states to "complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters." 42 U.S.C. § 1973gg-6(c)(2)(A). This provision became the center of a legal dispute in 2012, when a group of individual voters and organizations sued Florida Secretary of State Kenneth W. Detzner. These plaintiffs argued that Florida was violating the 90 Day Provision by conducting a program to systematically remove suspected non-citizens from the voter rolls within 90 days of a federal election. The District Court denied the plaintiffs' motions for a preliminary injunction and summary judgment, and entered judgment in favor of Secretary Detzner. The plaintiffs now appeal.

Because we conclude that Florida's program was an attempt to systematically remove names from the voter rolls in violation of the 90 Day Provision, we reverse and remand.

I. FACTS AND PROCEDURAL HISTORY

This case concerns Florida's efforts to remove the names of ineligible voters from the State's voter rolls prior to the 2012 primary and general elections. Concerned about people who are not citizens casting ballots in Florida elections,

Secretary of State Detzner engaged in two separate programs to identify and remove non-citizens from the Florida voter rolls.

Secretary Detzner's first program began in advance of the primary election and used records from the Department of Highway Safety and Motor Vehicles (DHSMV). The Secretary started by compiling a list of registered voters who had previously presented the DHSMV with identification—such as green cards or foreign passports—suggesting that they may be non-citizens. After putting together this list, he sent a portion of it to the State Supervisor of Elections in each county, instructing them to (1) review the names on the list, (2) conduct additional research using "whatever other sources you have," and (3) initiate a notice and removal process. Secretary Detzner suspended the program at the end of April 2012. Records indicate, however, that suspected non-citizens continued to be removed from the voter rolls during May and June, which was less than 90 days before the Florida primary election.

This first effort by Secretary Detzner to identify non-citizens was far from perfect. For example, Plaintiffs Karla V. Arcia and Melande Antoine were identified as non-citizen voters to be removed from the voter rolls. This, despite the fact that they were both United States citizens eligible to vote in the 2012 elections. Also, organizations like the Florida Immigration Coalition, Inc., the National Congress for Puerto Rican Rights, and 1199SEIU United Healthcare

Workers East (1199SEIU) diverted resources from their regularly-conducted programs and activities to counteract the effects of the Secretary's program. These efforts included locating and assisting members who had been wrongly identified as non-citizens to ensure that they were able to vote.

Despite these shortcomings in his initial program, Secretary Detzner renewed his efforts to remove non-citizens from the voter rolls in advance of the 2012 general election. Rather than use the DHSMV records, this second program relied on the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) database. Secretary Detzner also announced that he would not wait until after the general election to implement his program. Even though there were less than 90 days before the general election, Secretary Detzner stated publicly that he planned to forward the names of registered voters identified as non-citizens in the SAVE database to State Supervisors.

This case began on June 19, 2012, when the plaintiffs first challenged Secretary Detzner's efforts to remove non-citizens prior to the Florida primary election. Among other things, the plaintiffs alleged that they were entitled to declaratory and injunctive relief because the Secretary's actions were barred by the 90 Day Provision. After Secretary Detzner announced that he would resume the removal of purported non-citizens from the voter rolls using the SAVE database, the plaintiffs amended their complaint, arguing that the Secretary's program still

violated the NVRA's 90 Day Provision because of the proximity to the general election. The plaintiffs sought a preliminary injunction and summary judgment.

The District Court found that the 90 Day Provision did not apply to the Secretary's efforts to remove non-citizens from the voter rolls and denied the plaintiffs' motions for an injunction and summary judgment. At the plaintiffs' request, the District Court also entered judgment as a matter of law in favor of Secretary Detzner. Plaintiffs now appeal this final judgment.[1]

II. JURISDICTIONAL ISSUES

Before reaching the merits, we must first determine whether we have Article III jurisdiction over the parties and issues presented here. In particular, we must decide (1) whether the plaintiffs have standing and (2) whether this case is moot because the 2012 elections have passed.

A. STANDING

Secretary Detzner claims that neither the individual nor the organizational plaintiffs have standing because they did not suffer an "injury-in-fact." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136 (1992). "We review issues of standing de novo." Hollywood Mobile Estates Ltd. v. Seminole Tribe of Fla., 641 F.3d 1259, 1264 (11th Cir. 2011). Standing is determined at the

[1] The plaintiffs filed a motion to expedite this appeal, arguing that the Secretary's program risked disfranchising eligible voters incorrectly identified as non-citizens on the eve of the general election. Based on Secretary Detzner's assurances that no citizens would be mistakenly removed from the voter rolls before Election Day, this Court denied the plaintiffs' motion to expedite their appeal.

time the plaintiff's complaint is filed. Focus on the Family v. Pinellas Suncoast Transit Auth., 344 F.3d 1263, 1275 (11th Cir. 2003).

"'Injury in fact' reflects the statutory requirement that a person be 'adversely affected' or 'aggrieved,' and it serves to distinguish a person with a direct stake in the outcome of a litigation—even though small—from a person with a mere interest in the problem." United States v. Students Challenging Regulatory Agency Procedures, 412 U.S. 669, 689 n.14, 93 S. Ct. 2405, 2417 n.14 (1973) (noting that "an identifiable trifle is enough"). An injury-in-fact involves "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." See Lujan, 504 U.S. at 560, 112 S. Ct. at 2136 (quotation marks and internal citations omitted).

1. Individual Plaintiffs

The individual plaintiffs, Ms. Arcia and Ms. Antoine, have standing because (1) they were directly injured by Secretary Detzner's first program before the 2012 primary election and (2) at the time they filed their complaint, they had established a probable future injury allowing them to prospectively challenge Secretary Detzner's second program before the 2012 general election.

Ms. Arcia and Ms. Antoine had standing to challenge Secretary Detzner's first program before the 2012 primary election because they were directly injured by it when they were wrongly identified as non-citizens. Even though they were

ultimately not prevented from voting, an injury like theirs is sufficient to confer standing. See Common Cause/Ga. v. Billups, 554 F.3d 1340, 1351–52 (11th Cir. 2009) (finding that requirement to produce photo identification to vote was an injury sufficient to confer standing even though the right to vote was not "wholly denied"); Charles H. Wesley Educ. Found., Inc. v. Cox, 408 F.3d 1349, 1352 (11th Cir. 2005) (finding sufficient the injury of being unable to vote in home precinct because state government rejected voter's use of the federal registration form to change her address).

Ms. Arcia and Ms. Antoine also have standing to prospectively challenge the Secretary's second attempt to remove non-citizens from the voter rolls using the SAVE database. When the harm alleged is prospective, as it was here, a plaintiff can satisfy the injury-in-fact requirement by showing imminent harm. Fla. State Conf. of the NAACP v. Browning, 522 F.3d 1153, 1160–61 (11th Cir. 2008). While the threatened future injury cannot be merely hypothetical or conjectural, probabilistic harm is enough. Id. at 1162–63. Because Ms. Arcia and Ms. Antoine were naturalized U.S. citizens from Nicaragua and Haiti respectively, there was a realistic probability that they would be misidentified due to unintentional mistakes in the Secretary's data-matching process. See id. at 1163–64 (distinguishing foreseeable injuries from those based on assumptions and conjecture). This being the case, Ms. Arcia and Ms. Antoine sufficiently established standing based on the

potential errors that could occur when the Secretary attempted to confirm their immigration status in various state and federal databases in the hurried 90-day window before the election.

2. Organizational Plaintiffs

The organizational plaintiffs also have standing to challenge Secretary Detzner's program based on both a diversion-of-resources theory and an associational standing theory.

Under the diversion-of-resources theory, an organization has standing to sue when a defendant's illegal acts impair the organization's ability to engage in its own projects by forcing the organization to divert resources in response. Havens Realty Corp. v. Coleman, 455 U.S. 363, 379, 102 S. Ct. 1114, 1124 (1982) ("[C]oncrete and demonstrable injury to the organization's activities—with the consequent drain on the organization's resources—constitutes far more than simply a setback to the organization's abstract social interests."). For example, our precedent provides that organizations can establish standing to challenge election laws by showing that they will have to divert personnel and time to educating potential voters on compliance with the laws and assisting voters who might be left off the registration rolls on Election Day. See Browning, 522 F.3d at 1165–66.

Here, all three of the organizational plaintiffs—the Florida Immigrant Coalition, Inc., the National Congress for Puerto Rican Rights, and 1199SEIU—

submitted affidavits showing they have missions that include voter registration and education, or encouraging and safeguarding voter rights, and that they had diverted resources to address the Secretary's programs. A representative from 1199SEIU also testified that after some of its members were identified as potential non-citizens before the primary election, the organization expended resources to locate and assist the members to ensure that they were able to vote.[2] This redirection of resources to counteract the Secretary's removal program is a concrete and demonstrable injury, not an "abstract social interest[]." Havens Realty Corp., 455 U.S. at 379, 102 S. Ct. at 1124.

The organizational plaintiffs also have standing to challenge Secretary Detzner's programs under an associational standing theory. An organizational plaintiff has standing to enforce the rights of its members "when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Friends of the Earth, Inc., v. Laidlaw Envt'l Servs. (TOC), Inc., 528 U.S. 167, 181, 120 S. Ct. 693, 704 (2000). Based on our review of the affidavits provided on behalf of the organizational plaintiffs, we have concluded that the interests at stake in this

[2] This fact, together with Mr. Arcia and Ms. Antoine being included on the Secretary's list of purported non-citizens, distinguish this case from Clapper v. Amnesty International USA, ___ U.S. ___, 133 S. Ct. 1138 (2013), in which the Court found the plaintiffs' theory of standing "relie[d] on a highly attenuated chain of possibilities." Id. at 1148.

case are germane to the purposes and goals of the organizations. Further, the declaratory and injunctive relief sought by the organizations does not require the individual participation of the organizations' members. Browning, 522 F.3d at 1160. The only remaining issue is whether the members of the organizations themselves would have standing. We conclude that they do.

In order to sue on behalf of its members, organizational plaintiffs need not establish that all of their members are in danger of suffering an injury. Rather, the rule in this Circuit is that organizational plaintiffs need only establish that "at least one member faces a realistic danger" of suffering an injury. Id. at 1163. As in Browning, the organizational plaintiffs here argue that the process of matching voters across various databases creates a foreseeable risk of false positives and mismatches based on user errors, problems with the data-matching process, flaws in the underlying databases, and similarities in names and birthdates. See id. at 1163 (finding that "the injuries are foreseeable and the expected results of unconscious and largely unavoidable human errors in transcription"). The three organizational plaintiffs also represent a large number of people, like Ms. Arcia and Ms. Antoine, who face a realistic danger of being identified in the Secretary's removal programs because of their names or status as naturalized citizens. See id. (finding that large organizations like the NAACP had standing because there was a high probability that at least one of the members would be mistakenly

mismatched). On this record, the organizational plaintiffs have sufficiently established their standing to bring this action on behalf of their members.

B. MOOTNESS

Secretary Detzner next argues that the plaintiffs' claims are moot because the 2012 elections have passed. We retain jurisdiction to decide this case, however, because the exception to mootness for disputes "capable of repetition yet evading review" applies here.

The "capable of repetition, yet evading review" exception to the mootness doctrine applies where (1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again. Davis v. FEC, 554 U.S. 724, 735, 128 S. Ct. 2759, 2769–70 (2008) (quotation marks omitted) (rejecting mootness argument despite fact that election had passed). Both of these requirements are met here.

First, the plaintiffs are correct that Secretary Detzner's actions were too short in duration to be fully litigated prior to their cessation. In election cases, we have stated that there is often "not sufficient time between the filing of the complaint and the election to obtain judicial resolution of the controversy before the election." Teper v. Miller, 82 F.3d 989, 992 n.1 (11th Cir. 1996). Election cases also frequently present issues that will persist in future elections, and

resolving these disputes can simplify future challenges. See id. Here, the plaintiffs could not challenge Secretary Detzner's program until it became clear that it would continue past the 90th day before an election, giving the plaintiffs just three months before the case became moot. Based on this record, we conclude that the Secretary's actions here were in their duration too short to be fully litigated prior to their cessation or expiration. See Bourgeois v. Peters, 387 F.3d 1303, 1309 (11th Cir. 2004) ("[W]e conclude that one year is an insufficient amount of time for a district court, circuit court of appeals, and Supreme Court to adjudicate the typical case.").

Second, there is a reasonable expectation that these plaintiffs will be subjected to Secretary Detzner's program again. The District Court's ruling was not limited to the 2012 elections or the specific program employed by the Secretary in 2012. Rather, it interpreted the 90 Day Provision generally to allow systematic removal programs based on citizenship during the last 90 days before an election. The Secretary has also not offered to refrain from similar programs within the 90-day window in the future. Thus, there is a reasonable expectation that the plaintiffs will be subject to the same action again.

For these reasons, we have jurisdiction over this case, even though the 2012 elections have passed.

III. DISCUSSION

We now turn to the merits of this dispute. The primary issue here involves the statutory interpretation of the 90 Day Provision, which is codified at 42 U.S.C. § 1973gg-6(c)(2)(A). The 90 Day Provision requires that:

> A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.

42 U.S.C. § 1973gg-6(c)(2)(A). The issue presented is whether "any program . . . to systematically remove the names of ineligible voters" includes a program like the one initiated by Secretary Detzner to remove non-citizens from the voter rolls less than 90 days before the 2012 elections.

A. PLAIN MEANING

"As in all cases involving statutory construction, our starting point must be the language employed by Congress, and we assume that the legislative purpose is expressed by the ordinary meaning of the words used." Am. Tobacco Co. v. Patterson, 456 U.S. 63, 68, 102 S. Ct. 1534, 1537 (1982) (quotation marks and internal citations omitted). "Courts must assume that Congress intended the ordinary meaning of the words used, and absent a clearly expressed legislative intent to the contrary, that language is generally dispositive." Gonzalez v. McNary, 980 F.2d 1418, 1420 (11th Cir. 1993) (quotation marks omitted). Because this is a case involving statutory construction, our first task is to determine

whether Secretary Detzner's program is barred under the plain meaning of the 90 Day Provision. We believe that it is.

First, the purpose of Secretary Detzner's program was clearly to remove the names of "ineligible voters" from the Florida voter rolls. The National Voter Registration Act (NVRA) is premised on the assumption that citizenship is one of the requirements for eligibility to vote. See, e.g., 42 U.S.C. §§ 1973gg-3(c)(2)(C)(i), 1973gg-5(a)(6)(A)(i)(I), 1973gg-7(b)(2)(A) (requiring certain voter registration forms to state or specify "each eligibility requirement (including citizenship)" (emphasis added)). Thus, Secretary Detzner's program to remove non-citizens was a program to remove "ineligible voters."

Second, Secretary Detzner does not deny that his program was an attempt to "systematically" remove ineligible voters from the voter rolls. Although the statute provides no definition for the word "systematically" or "systematic," we agree that Secretary Detzner's program was a "systematic" program under any meaning of the word. Secretary Detzner's program did not rely upon individualized information or investigation to determine which names from the voter registry to remove. Rather, the Secretary used a mass computerized data-matching process to compare the voter rolls with other state and federal databases, followed by the mailing of notices. Certainly, it is telling that the database that

Secretary Detzner used before the general election—SAVE—stands for Systematic Alien Verification for Entitlements.

Finally, the phrase "any program" suggests that the 90 Day Provision has a broad meaning. Both the Supreme Court and this Court have had occasion to consider the meaning of the word "any." In United States v. Gonzalez, the Supreme Court noted that "[r]ead naturally, the word 'any' has an expansive meaning, that is 'one or some indiscriminately of whatever kind.'" 520 U.S. 1, 5, 117 S. Ct. 1032, 1035 (1997) (quoting Webster's Third New International Dictionary 97 (1976)). In the same way, this Court has held that when Congress does not add any language limiting the breadth of that word, "any" means all. Merritt v. Dillard Paper Co., 120 F.3d 1181, 1186 (11th Cir. 1997); Lyes v. City of Riviera Beach, 166 F.3d 1332, 1337 (11th Cir. 1999); United States v. Castro, 837 F.2d 441, 445 (11th Cir. 1988) (concluding that "any" meant "every" and "all"). "This long history of established meaning is important, because we readily presume that Congress knows the settled legal definition of the words it uses, and uses them in the settled sense." Harris v. Garner, 216 F.3d 970, 974 (11th Cir. 2000). The fact that the provision now before us applies to "any program" strongly suggests that Congress intended the 90 Day Provision to encompass programs of any kind, including a program like Secretary Detzner's to remove non-citizens.

B. STATUTORY CONTEXT AND PURPOSE

Thus, the plain meaning of the 90 Day Provision indicates that Secretary Detzner's actions fall under the category of "any program . . . to systematically remove the names of ineligible voters." 42 U.S.C. § 1973gg-6(c)(2)(A). The language of the 90 Day Provision, however, is not the end of our inquiry. "In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its policy." In re Colortex, 19 F.3d 1371, 1375 (11th Cir. 1994) (quotation marks omitted). Here, the statutory context and policy of the NVRA further buttresses our conclusion that the plain meaning of "any program . . . to systematically remove the names of ineligible voters" was intended by Congress to include programs like Secretary Detzner's.

First, Congress expressly allowed for a number of exceptions to the 90 Day Provision, and an exception for removals of non-citizens is not one of them. Directly after the 90 Day Provision, the statute includes a limiting provision, which states:

> [The 90 Day Provision] shall not be construed to preclude—(i) the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a) of this section; or (ii) correction of registration records pursuant to this subchapter

42 U.S.C. § 1973gg-6(c)(2)(B). Thus the limiting provision creates an exception in the 90 Day Provision for "correction of registration records"[3] and also directs us to several of the exceptions in § 1973gg-6(a) (the General Removal Provision). The General Removal Provision, which governs the removal of voters at any time, states that the names of registrants may not be removed from the voter rolls except:

> (3)(A) at the request of the registrant; (B) as provided by State law, by reason of criminal conviction or mental incapacity . . .
>
> (4)(A) the death of the registrant; or (B) a change in the residence of the registrant . . .

Id. § 1973gg-6(a)(3)–(4). Reading these two provisions together, the NVRA expressly allows states to conduct three types of removals during the final 90 days before a federal election. They are removals (1) at the request of the registrant; (2) as provided by State law, by reason of criminal conviction or mental incapacity; and (3) upon death of the registrant. See id. § 1973gg-6(c)(2)(B) (citing id. § 1973gg-6(a)(3)–(4)).

Noticeably absent from the list of exceptions to the 90 Day Provision is any exception for removal of non-citizens. "Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." Andrus v. Glover Constr. Co., 446 U.S. 608, 616–617, 100 S. Ct. 1905, 1910 (1980); see

[3] The Secretary has not argued that his program constitutes a "correction" of registration records.

also United States v. Brockamp, 519 U.S. 347, 352, 117 S. Ct. 849, 852 (1997) (observing that an "explicit listing of exceptions" indicates that "Congress did not intend courts to read other unmentioned, open-ended, 'equitable' exceptions into the statute"). The fact that Congress did not expressly include removals based on citizenship in its exhaustive list of exceptions to the 90 Day Provision is good evidence that such removals are prohibited.[4]

Finally, the stated purposes of the National Voter Registration Act further support our reading of the 90 Day Provision. The NVRA states that its purposes are:

> (1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;
>
> (2) to make it possible for Federal, State, and local governments to implement this Act in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;
>
> (3) to protect the integrity of the electoral process; and
>
> (4) to ensure that accurate and current voter registration rolls are maintained.

42 U.S.C. § 1973gg(b).

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[4] Secretary Detzner suggests that the exception for removals "as provided by State law, by reason of criminal conviction or mental incapacity" could be read to authorize the removal of non-citizens from the voter rolls. Like the District Court, we reject this interpretation. An exception for any removal "as provided by State law" would render the 90 Day Provision completely superfluous. See In re Griffith, 206 F.3d 1389, 1393 (11th Cir. 2000) ("[C]ourts should disfavor interpretations of statutes that render language superfluous . . . .") (quotation marks omitted).

As amici points out, the 90 Day Provision is designed to carefully balance these four competing purposes in the NVRA. Brief of Current and Former Election Officials as Amici Curiae, 14–15. For example, by limiting its reach to programs that "systematically" remove voters from the voter rolls, the 90 Day Provision permits removals based on individualized information at any time. According to amici, individualized removals are safe to conduct at any time because this type of removal is usually based on individual correspondence or rigorous individualized inquiry, leading to a smaller chance for mistakes.

For programs that systematically remove voters, however, Congress decided to be more cautious. At most times during the election cycle, the benefits of systematic programs outweigh the costs because eligible voters who are incorrectly removed have enough time to rectify any errors. In the final days before an election, however, the calculus changes. Eligible voters removed days or weeks before Election Day will likely not be able to correct the State's errors in time to vote. This is why the 90 Day Provision strikes a careful balance: It permits systematic removal programs at any time except for the 90 days before an election because that is when the risk of disfranchising eligible voters is the greatest.

C. SECRETARY DETZNER'S INTERPRETATION

Secretary Detzner responds that interpreting the 90 Day Provision to prohibit systematic removals of non-citizens would create grave constitutional concerns.

Because the 90 Day Provision and the General Removal Provision share many of the same exceptions, see 42 U.S.C. § 1973gg-6(c)(2)(B), Secretary Detzner believes that the statutory text of the NVRA provides us with only two options: either non-citizens may be excluded at any time, or not at all. The latter option, according to Secretary Detzner, would dilute the votes of citizens and trample on the rights of states to regulate the qualifications and functions of voters. See Williams v. Rhodes, 393 U.S. 23, 34, 89 S. Ct. 5, 12 (1968) ("[T]he State is left with broad powers to regulate voting, which may include laws relating to the qualifications and functions of electors.").

We reject Secretary Detzner's attempts to have us decide today whether both the General Removal Provision and the 90 Day Provision allow for removals of non-citizens. Certainly an interpretation of the General Removal Provision that prevents Florida from removing non-citizens would raise constitutional concerns regarding Congress's power to determine the qualifications of eligible voters in federal elections. Cf. Arizona v. Inter Tribal Council of Arizona, Inc., ___ U.S. ___, 133 S. Ct. 2247, 2257 (2013) ("Arizona is correct that the Elections Clause empowers Congress to regulate how federal elections are held, but not who may vote in them."). We are not convinced, however, that the Secretary's perceived need for an equitable exception in the General Removal Provision also requires us to find the same exception in the 90 Day Provision. None of the parties before us

have argued that we would reach an unconstitutional result in this case if we found that the 90 Day Provision prohibits systematic removals of non-citizens. Constitutional concerns would only arise in a later case which squarely presents the question of whether the General Removal Provision bars removal of non-citizens altogether. And before we ever get that case, Congress could change the language of the General Removal Provision to assuage any constitutional concerns. With this in mind, we will confine our ruling to apply to the plain meaning of the 90 Day Provision and decline Secretary Detzner's invitation to go further.

Secretary Detzner next argues that in drafting the NVRA, Congress only contemplated the removal of people who were once entitled to vote, not the removal of people who never had eligibility (like non-citizens). In support of this distinction, Secretary Detzner argues that non-citizens are not technically "registrants," and removing them from the voter rolls is not really a "removal" because the non-citizens on the voter rolls were never supposed to be there from the start. He also observes that all the exceptions to the General Removal Provision relate to voters who become ineligible (like those who become felons or mentally incapacitated) rather than those voters who are ineligible at the time of their registration (like non-citizens).

At the outset, we are skeptical of Secretary Detzner's arguments about what Congress may or may not have contemplated when drafting the NVRA. Our job is

to honor the broad statutory language in the 90 Day Provision, which unambiguously covers programs like Secretary Detzner's. See Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 79, 118 S. Ct. 998, 1002 (1998) ("But statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed."); Pa. Dep't of Corr. v. Yeskey, 524 U.S. 206, 212, 118 S. Ct. 1952, 1956 (1998) ("[T]he fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth." (quotation marks omitted)). We are not allowed to engage in "purpose-driven statutory interpretation at the expense of specific provisions." Myers v. TooJay's Mgmt. Corp., 640 F.3d 1278, 1286 (11th Cir. 2011) (quotation marks omitted); see id. ("When presented with the plain text of a statute, we do not gaze at it blurry-eyed, attempting to see some hidden image formed by the broad purpose that lies behind the legislation.").

We also reject Secretary Detzner's suggestion that there is a categorical difference between (1) registrants who are ineligible to vote on account of their citizenship and (2) registrants who are ineligible to vote because of their criminal history or mental capacity. Registrants in any of those categories could be ineligible to vote at the time of their registration or they could lose their eligibility later. For example, while some voters lose their eligibility to vote after they

register because of a criminal conviction or mental incapacity, other voters may have been ineligible for the same reasons at the time of their registration. In the same way, while Secretary Detzner is correct that a non-citizen registrant may have been ineligible to vote at the time that he registered, a citizen could also lose his citizenship after registering, thereby losing his eligibility to vote. See 8 U.S.C. § 1481(a)(5) (describing the procedure for a United States citizen to renounce his or her U.S. citizenship). Thus, we do not accept Secretary Detzner's argument that the NVRA distinguishes between the removals of registered voters who become ineligible to vote and registrants who were never eligible in the first place.

Finally, Secretary Detzner's limited interpretation of the 90 Day Provision would also require us to conclude—as the District Court did—that the 90 Day Provision only prohibits the removal of registrants who become ineligible to vote after moving to a different state. This is because the 90 Day Provision adopts all of the exceptions from the General Removal Provision except for the one allowing for removals based on a change in residence. See 42 U.S.C. § 1973gg-6(c)(2)(B). Such an interpretation, however, would functionally eviscerate the meaning of the phrase "any program" in the 90 Day Provision. See United States v. Ballinger, 395 F.3d 1218, 1236 (11th Cir. 2005) (noting that it is "a cardinal principle of statutory construction" that "a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or

insignificant") (quoting TRW Inc. v. Andrews, 534 U.S. 19, 31, 122 S. Ct. 441, 449 (2001)). Surely when Congress wrote that the 90 Day Provision applied to "any program," it intended for the provision to apply to more than just programs aimed at voters who have moved. If Congress wanted such a limited result, it could have said so. See CBS Inc. v. PrimeTime 24 Joint Venture, 245 F.3d 1217, 1226 (11th Cir. 2001) ("[W]here Congress knows how to say something but chooses not to, its silence is controlling." (quotation marks omitted)). As a result, we cannot accept Secretary Detzner's interpretation.

In closing, we emphasize that our interpretation of the 90 Day Provision does not in any way handcuff a state from using its resources to ensure that non-citizens are not listed in the voter rolls. The 90 Day Provision by its terms only applies to programs which "systematically" remove the names of ineligible voters. As a result, the 90 Day Provision would not bar a state from investigating potential non-citizens and removing them on the basis of individualized information, even within the 90-day window. All that the 90 Day Provision prohibits is a program whose purpose is to "systematically remove the names of ineligible voters" from the voter rolls within the last 90 days before a federal election. 42 U.S.C. § 1973gg-6(c)(2)(A).

IV. CONCLUSION

For these reasons, we reverse the District Court's grant of judgment as a matter of law to Secretary Detzner and remand with instructions to enter an order (1) declaring that Secretary Detzner's actions here were in violation of the 90 Day Provision of the NVRA; and (2) granting such further relief as the needs and interests of justice require.

REVERSED AND REMANDED.

JORDAN, Circuit Judge, concurring:

As Judge Martin correctly explains, the plain language of the so-called 90-Day Provision, 42 U.S.C. § 1973gg-6(c)(2)(A), prohibits states from using programs, like Florida's, to systematically remove suspected non-citizens from the voter rolls within 90 days of a federal election. There is little room for textual debate given the use of broad statutory language directed at "any program" to systematically remove ineligible voters from the rolls, and the failure to include lack of citizenship as one of the express exceptions to the bar against systematic removals during the 90-day quiet period. *See Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) ("[W]hen the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.") (internal quotation marks omitted). Indeed, if the 90-Day Provision spelled out the exceptions to the bar on systematic removals, instead of cross-referencing them from the General Removal Provision (§ 1973gg-6(a)(3)(A)-(B) & (4)(A)), the outcome in this case would be the statutory equivalent of a slam dunk, because the text would read like so:

> (2)(A) A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.
>
> (B) Subparagraph (A) shall not be construed to preclude—

> (i) the removal of names from official lists of voters [at the request of a registrant; as provided by State law, by reason of criminal conviction or mental incapacity; or the death of the registrant]; or
>
> (ii) correction of registration records pursuant to this subchapter.

This case is difficult because the exceptions to the 90-Day Provision also constitute (with slight changes in language) the permissible bases for the removal of persons from the voter rolls at any time under the General Removal Provision, and an "established canon of construction [is] that similar language contained within the same section of statute must be accorded a consistent meaning." *Nat'l Credit Union Admin. v. First Nat'l Bank & Trust Co.*, 522 U.S. 479, 501 (1998). If the limited exceptions to the 90-Day Provision mean that states cannot use systematic programs to remove non-citizens from the voter rolls within 90 days of a federal election, then—because of the symmetry of the 90-Day Provision and the General Removal Provision—it would appear to follow that states also cannot remove non-citizens from the voter rolls at any time. *See United States v. Florida*, 870 F. Supp. 2d 1346, 1349 (N.D. Fla. 2012). Such a result is instinctively difficult to accept, and may require courts to decide to what extent Congress can constitutionally limit the states' authority to determine the qualifications of eligible voters in federal elections. *See* U.S. Const. art. I, §§ 2, 4; *Arcia v. Detzner*, 908 F. Supp. 2d 1276, 1284 (S.D. Fla. 2012). *Cf. Arizona v. Inter Tribal Council of*

Arizona, Inc., 133 S. Ct. 2247, 2258-59 (2013) ("Since the power to establish voting requirements is of little value without the power to enforce those requirements, . . . it would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications.").

To avoid the problems created by this interaction between the 90-Day and General Removal Provisions, we would welcome the venerable doctrine of constitutional avoidance if it were "fairly possible" to read the statutory language in any other way. *See Crowell v. Benson,* 285 U.S. 22, 62 (1932). "But even so important a canon of statutory construction as that favoring the avoidance of serious constitutional questions does not *always* carry the day," *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, 437 (1995) (O'Connor, J., concurring in part and concurring in the judgment) (emphasis in original), and it does not do so here because it would require us to give the NVRA a plainly atextual reading. *See Salinas v. United States*, 522 U.S. 52, 60-61 (1997) ("[Although] [s]tatutes should be construed to avoid constitutional questions, . . . this interpretive canon is not a license for the judiciary to rewrite language enacted by the legislature. . . . Any other conclusion, while purporting to be an exercise in judicial restraint, would trench upon the powers vested in Congress[.]") (internal quotation marks and citations omitted).

Like the district court in *Florida*, 870 F. Supp. 2d at 1350, I am not persuaded by the Secretary's argument that the word "registrant" in the General Removal Provision should be read to mean only a person who could properly register to vote in the first place. The NVRA does not define "registrant," and we must therefore give the word its "ordinary meaning." *See Taniguchi v. Kan Pac. Saipan, Ltd.*, 132 S. Ct. 1997, 2002-03 (2012). In 1993, when Congress enacted the NVRA, "registrant" meant "one who registers; [especially] one who by virtue of securing an official registration obtains a specific right or title of possession and use." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1912 (1993). *See also* 2 THE NEW SHORTER OXFORD ENGLISH DICTIONARY 2528 (1993) (a registrant is "[a] person who registers, [especially] a person who by so doing gains a particular entitlement"). Given this ordinary meaning of the word, it is linguistically incorrect to say that a person is a "registrant" only if he or she is legally eligible to receive the benefits that come with registration. Indeed, a person can register for something even if he is not entitled to the ensuing benefits. That is the reason why the General Removal Provision lists several circumstances where registrants may be "removed from the official list of eligible voters." 42 U.S.C. § 1973gg-6(a)(3).

As made clear by the parties' briefs, each possible reading of the NVRA's 90-Day and General Removal Provisions does some present or future violence to the statutory scheme. Given the choice, and under the circumstances here, I opt for

the reading that applies the statutory text as written and surrender the interpretation that comes from a purpose-driven view of the Act and concomitant desire to avoid future constitutional questions. I do this because this case calls on us to interpret only one provision of the NVRA, the 90-Day Provision, and it is certainly reasonable (and constitutional) for Congress to limit systematic removals of non-citizens from the voter rolls within the 90-day quiet period. Stated differently, the result in *this* case is not an absurd one. *See Durr v. Shineski*, 638 F.3d 1342, 1349 (11th Cir. 2011) (explaining that the absurdity canon applies only in the "rare situations where the plain language of a statute, at least where read in isolation, yields a result that is both absurd and completely at odds with the entire statutory context in which the language is found").

Any constitutional problems would arise only in a future case squarely presenting the application of the General Removal Provision. Before any such case arises, Congress has the ability to change the language of the General Removal Provision (as well as the ability to modify the exceptions to the 90-Day Provision if it so desires). Should it not do so, the court addressing such a future case may have to confront the argument that Congress drafted a portion of the NVRA in an unconstitutional manner.

With these observations, I join Judge Martin's opinion for the court in full.

SUHRHEINRICH, Circuit Judge, dissenting:

I would affirm the judgment of the district court for the reasons set forth in the district court's opinion, *see Arcia v. Detzner*, 908 F. Supp. 2d 1276 (S.D. Fla. 2012), as well as the reasoning of *United States v. Florida*, 870 F. Supp. 2d 1346 (N.D. Fla. 2012). I therefore respectfully dissent.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

John Ley
Clerk of Court

For rules and forms visit
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April 01, 2014

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 12-15738-EE
Case Style: Karla Arcia, et al v. Florida Secretary of State
District Court Docket No: 1:12-cv-22282-WJZ

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the CRIMINAL JUSTICE ACT must file a CJA voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for a writ of certiorari (whichever is later).

Pursuant to Fed.R.App.P. 39, costs taxed against the appellee.

The Bill of Costs form is available on the internet at www.ca11.uscourts.gov

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Lois Tunstall, EE at (404) 335-6224.

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Djuanna Clark
Phone #: 404-335-6161

OPIN-1A Issuance of Opinion With Costs

FILED
FEB 27 2019
CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

TEXAS LEAGUE OF UNITED LATIN AMERICAN CITIZENS, ET AL.,	)	
Plaintiffs,	)	
V.	)	**CIVIL ACTION NO. SA-19-CA-074-FB**
DAVID WHITLEY, in his Official Capacity as Secretary of State for the State of Texas; ET AL.,	)	
Defendants.	)	

ORDER

Before the Court are a number of preliminary issues related to protecting the integrity of the election process and ensuring the Equal Protection of the laws for all Texans. There is unanimity among the parties, counsel and the Court that non-American citizens are ineligible to vote.

The evidence has shown in a hearing before this Court that there is no widespread voter fraud. The challenge is how to ferret the infinitesimal needles out of the haystack of 15 million Texas voters. The Secretary of State through his dedicated employees, beginning in February 2018, made a good faith effort to transition from a passive process of finding ineligible voters through the jury selection system in each county to a proactive process using tens of thousands of Department of Public Safety driver license records matched with voter registration records. Notwithstanding good intentions, the road to a solution was inherently paved with flawed results, meaning perfectly legal naturalized Americans were burdened with what the Court finds to be ham-handed and threatening correspondence from the state which did not politely ask for information but rather exemplifies the power of government to strike fear and anxiety and to intimidate the least powerful among us.[1] *See* Attachment A (TX-LULAC

[1] *Boustani v. Blackwell*, 460 F. Supp. 2d 822, 827 (N.D. Ohio 2006) (Boyko, J.) ("This Court has personally presided over numerous naturalization ceremonies and has witnessed firsthand the joy of these new Americans and their intense desire to participate in this nation's democratic process. There is no such thing as a second-class citizen

Exhibit 4). No native born Americans were subjected to such treatment. *See* U.S. CONST. amend XIV, § 1 ("[N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws."). Out of 98,000 new American voters on the list, thus far approximately 80 have been identified as being ineligible to vote.[2] Almost immediately upon sending the list, the government had an "oops" moment, realizing that 25,000 names should not have been included. It appears this is a solution looking for a problem. Indeed, Secretary of State Whitley has accepted responsibility and apologized for the failure to seek confirmation of the accuracy, appropriateness, competency and due diligence of the process before the rollout. Though promising more transparency, the Secretary has resisted plaintiffs' legal concerns as opposed to entering into an agreed solution precluding further fear and intimidation. *See* Attachment B (TX-LULAC Exhibit 54); *see also United States v. Florida,* 870 F. Supp. 2d 1346, 1347, 1348 (N.D. Fla. 2012) (Hinkle, J.) (explaining that Florida election officials identified only "a small number" of ineligible voters from Secretary of State's list of "180,000 registered voters who he said might be noncitizens").[3] The Florida program, similar in nature to Texas, was ultimately abandoned by the state. *Florida,* 870 F. Supp. 2d at 1350-51. Here, for the local officials responsible for implementing the program, it was not a Henry David Thoreau moment

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or a second-class American. Frankly, without naturalized citizens, there would be no America. It is shameful to imagine that this statute is an example of how the State of Ohio says thank you to those who helped build this country."). I concur. (Biery, J.).

[2]The Bard might say this is much ado about nothing. WILLIAM SHAKESPEARE, MUCH ADO ABOUT NOTHING, act 3, sc.1. On the other hand, for the people who perceive discriminatory impact, it is much ado about their constitutionally protected rights.

[3]As plaintiffs' counsel stated at the preliminary injunction hearing, "[o]n the Florida case, . . . they started at 180,000 identified voters in that state, and by the time they went through all the sifting, they ended up with 85" people who were ineligible to vote. (Docket no. 57, at page 52, lines 12-20); *see also Editor's Note on Nov. 12, 2018 to Story Published in May 2012,* https://www.nbcmiami.com/news/local (last visited Feb. 26, 2019) (explaining that Florida election documents show that initial list of 180,000 names was whittled to only 85 ineligible voters).

("Simplify, simplify.").[4] Rather, the Court heard compelling evidence concerning confusing and contradictory communications from the Secretary of State.

While the Court awaits proposed findings of fact and conclusions of law regarding the preliminary injunction issues, the Court is prepared to address some issues.

Defendants Whitley and Paxton have moved to dismiss, alleging the Court has no jurisdiction and plaintiffs have failed to state a claim. To the extent defendants rely upon state statutes in support of the jurisdictional motion, the Court holds that the United States Constitution trumps state law in appropriate circumstances, this being one. Moreover, given the highly credible evidence presented by plaintiffs, the Court finds overwhelmingly that claims for relief have been properly stated. Accordingly, defendants' motion to dismiss (docket no. 20) is DENIED.

Plaintiffs have also sued Attorney General Paxton, whose only involvement shown thus far is a press release, which the Court finds arguably vituperative in tone but nevertheless states the Attorney General's authority and, therefore, without further proof is within his First Amendment right to free speech. *See* Attachment C (TX-LULAC Exhibit 3). Clearly, this statement is not yelling fire in a crowded theater and therefore not subject to being censured.[5] While the Court would prefer that political rhetoric be newtralized to more civil discourse, Article III of the Constitution bestows no power on the federal judiciary to make wishes come true. Accordingly, plaintiffs' request for relief regarding the press release is DENIED.

The Court awaits final advice from the individual counties which are parties concerning whether they will agree to pause the process, particularly not sending any notice of examination letters without

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[4]HENRY D. THOREAU, WALDEN 91 (J. Lyndon Shanley ed., Princeton Univ. Press 1971) (1854).

[5]As Justice Oliver Wendell Holmes, Jr. stated in *Schenck v. United States*, 249 U.S. 47, 52 (1919): "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic."

prior approval of the Court. Local officials can continue to find out if in fact someone is registered who is not a citizen, so long as it is done without communicating directly with any particular individual on the list. In addition, local officials are ORDERED not to remove any person from the current voter registration list until authorized by this Court. As to the first rollout of 98,000, the Secretary of State is ORDERED to tell other counties which are not parties to this litigation, or party counties which will not agree to a pause, not to send any notice of examination letters nor remove voters from registration without prior approval of the Court with a conclusive showing that the person is ineligible to vote.

With reference to the new lists being prepared based on contemporaneous applications for driver licenses and applications to register to vote, the Secretary of State may proceed with the monthly rollouts. However, the Secretary of State is affirmatively ORDERED to advise and direct local voting officials not to send notice of examination letters nor remove voters from registration without prior approval of the Court.

The Court further finds and concludes the Secretary of State, though perhaps unintentionally, created this mess. As Robert Fulghum taught in *All I Really Need to Know I Learned in Kindergarten*, "always put things back where we found them and clean[] up our own messes." ROBERT FULGHUM, ALL I REALLY NEED TO KNOW I LEARNED IN KINDERGARTEN: UNCOMMON THOUGHTS ON COMMON THINGS (Villard Books 1986).

IT IS SO ORDERED.

SIGNED this 27 day of February, 2019.

FRED BIERY
UNITED STATES DISTRICT JUDGE