



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,<sup>1</sup> 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.”<sup>2</sup> A voter’s name is on the voter roll “only because a voter took the trouble to put it there.”<sup>3</sup> “[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.”<sup>4</sup>

---

<sup>1</sup> S. Rep. No. 103-6 (1993), at 18.

<sup>2</sup> *Id.*

<sup>3</sup> *Common Cause Ind. v. Lawson*, 937 F.3d 944, 962 (7th Cir. 2019).

<sup>4</sup> *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,”<sup>5</sup> and there is a “long history of such list cleaning mechanisms which have been used to violate the basic rights of citizens.”<sup>6</sup> 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 its 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.<sup>7</sup> 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

---

<sup>5</sup> H.R. Rep. No. 103-9 (1993), at 2.

<sup>6</sup> S. Rep. No. 103-6 (1993), at 18.

<sup>7</sup> 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.<sup>8</sup> Copycat programs, like the new Indiana Data Enhancement Association (IDEA),<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

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.”<sup>12</sup> 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.”<sup>13</sup> 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.

---

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

<sup>9</sup> 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/](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.”).

<sup>10</sup> 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](http://www.ncsl.org/Portals/1/Documents/Elections/Kansas_VR_Crosscheck_Program.pdf).

<sup>11</sup> *Id.*

<sup>12</sup> *Interstate Voter Registration Data Crosscheck 2017 Participation Guide* (“Interstate Crosscheck 2017 Participation Guide”) at 4, Kan. Sec’y of State (Jan. 2017).

<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> A match methodology using only first name, last name and date of birth is thus more likely to produce matches among such minority populations.<sup>18</sup>

Despite these issues, all of these “matches” are then provided to each member state as apparent duplicate registrations<sup>19</sup>—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*.<sup>20</sup> 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.”<sup>21</sup>

---

<sup>14</sup> Interstate Crosscheck 2017 Participation Guide at 3.

<sup>15</sup> The Birthday Paradox is a well-known phenomenon of probability theory. In a random group of 23 people, there is 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/>.

<sup>16</sup> 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>.

<sup>17</sup> 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/>.

<sup>18</sup> 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>.

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

<sup>20</sup> 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.

<sup>21</sup> 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,<sup>22</sup> 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,<sup>23</sup> 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.<sup>24</sup> The ACLU, ACLU of Indiana, and Demos challenged this new requirement in Indiana on behalf of Common Cause Indiana,<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup>

Federal courts preliminarily blocked the new requirement from being implemented.<sup>28</sup> Under the NVRA, the Seventh Circuit observed states cannot rely on “indirect information from third-party database[s]” like Crosscheck to purge voters.<sup>29</sup> 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.<sup>30</sup> As the Court stated, “[w]e live in a representative democracy, in which

---

<sup>22</sup> See Esau, *supra* note 10 at 16.

<sup>23</sup> 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](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>.

<sup>24</sup> 52 U.S.C. § 20507(d).

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

<sup>26</sup> 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.

<sup>27</sup> See *Ind. State Conf. of NAACP*, 326 F. Supp. 3d at 664.

<sup>28</sup> *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).

<sup>29</sup> *Common Cause Ind.*, 937 F.3d at 961.

<sup>30</sup> *Id.* at 961–62.

the voice of the people is essential to the legitimacy of our governing institutions.”<sup>31</sup> 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.”<sup>32</sup>

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.<sup>33</sup> 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.<sup>34</sup>

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

This latest iteration of Indiana’s effort to improperly purge voters using third-party information was permanently blocked by a federal district court.<sup>37</sup> 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.<sup>38</sup> 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.<sup>39</sup> 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

---

<sup>31</sup> *Id.* at 962.

<sup>32</sup> *Id.*

<sup>33</sup> 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/>.

<sup>34</sup> *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).

<sup>35</sup> *See* Ind. Code § 3-7-38.2-5.1(a)–(b) (2020).

<sup>36</sup> *Common Cause Indiana v. Lawson*, 481 F. Supp. 3d at 807.

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

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

<sup>39</sup> 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.<sup>40</sup>

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 noncitizen 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:



<sup>40</sup> 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.

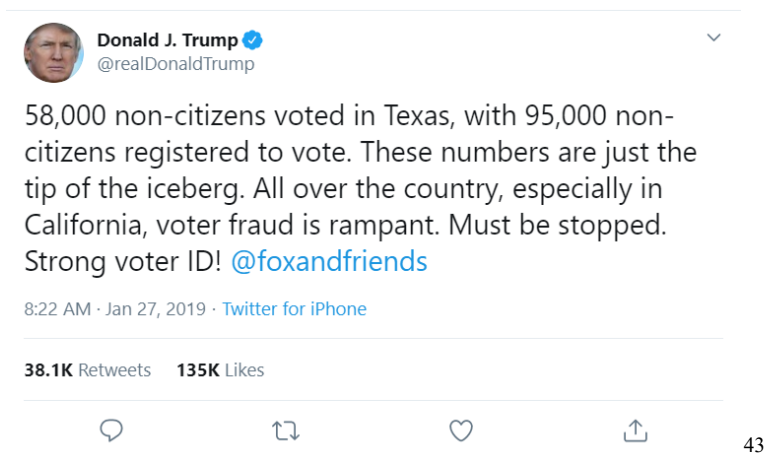
<sup>41</sup> Ken Paxton, Twitter, Jan. 25, 2019, available at <https://twitter.com/kenpaxton/status/1088898595653386240?lang=en>.



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”:



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



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

<sup>42</sup> Greg Abbott, Twitter, Jan. 25, 2019, available at [https://twitter.com/gregabbott\\_tx/status/1088918898643271680?lang=en](https://twitter.com/gregabbott_tx/status/1088918898643271680?lang=en).

<sup>43</sup> 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.”<sup>44</sup> 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.”<sup>45</sup>

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.”<sup>46</sup> 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.”<sup>47</sup> “The state [ended up] on the hook for \$450,000 in costs and attorney fees for the plaintiffs’ lawyers.”<sup>48</sup>

Secretary of State David Whitley ended up departing from office in disgrace.<sup>49</sup> 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

---

<sup>44</sup> 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/>.

<sup>45</sup> 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>.

<sup>46</sup> 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/>.

<sup>47</sup> 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.

<sup>48</sup> Ura, *supra* note 46.

<sup>49</sup> 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.<sup>50</sup> 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),<sup>51</sup> 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.”<sup>52</sup> 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.<sup>53</sup> 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.<sup>54</sup> As with comparisons to the DMV database, improper use of SAVE data for voter purges could, for example, disenfranchise eligible citizens<sup>55</sup> 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.<sup>56</sup> 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.

---

<sup>50</sup> 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](http://www.oig.dhs.gov/assets/Mgmt/2012/OIG_12-125_Sep12.pdf).

<sup>51</sup> *See id.*

<sup>52</sup> *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>.

<sup>53</sup> 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>.

<sup>54</sup> 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>.

<sup>55</sup> 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>.

<sup>56</sup> 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.<sup>57</sup> 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."<sup>58</sup>

In its efforts to identify noncitizens, Florida officials initially stated that "nearly 200,000 registered voters may not be U.S. citizens."<sup>59</sup> 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,<sup>60</sup> 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<sup>61</sup>). 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,<sup>62</sup> in a state of more than 11 million voters at the time<sup>63</sup> (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.<sup>64</sup> An analysis conducted by the

---

<sup>57</sup> 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.)

<sup>58</sup> See DHS Mem. of Agreement, *supra* note 54.

<sup>59</sup> 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>

<sup>60</sup> 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/gJQAhvNIV\\_blog.html?utm\\_term=.f9e1842173a2](https://www.washingtonpost.com/blogs/the-fix/post/floridas-voter-purge-explained/2012/06/18/gJQAhvNIV_blog.html?utm_term=.f9e1842173a2).

<sup>61</sup> See *id.*

<sup>62</sup> 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-/>.

<sup>63</sup> See Weiner, *supra* note 60.

<sup>64</sup> 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.<sup>65</sup>

Litigation ensued over Florida's attempts to use SAVE. The U.S. Court of Appeals for the Eleventh Circuit,<sup>66</sup> after noting that the SAVE database matching results were "far from perfect,"<sup>67</sup> 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."<sup>68</sup> 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.<sup>69</sup> 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."<sup>70</sup> The court ultimately agreed, blocking the purge, and finding that it "would chill the right to vote and cause irreparable harm."<sup>71</sup> The office of the Iowa Secretary of State eventually abandoned an appeal of that ruling,<sup>72</sup> 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

---

<sup>65</sup> *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>.

<sup>66</sup> *Arcia v. Florida Sec'y of State*, 772 F.3d 1335 (11th Cir. 2014).

<sup>67</sup> *Id.* at 1339.

<sup>68</sup> *Id.* at 1342.

<sup>69</sup> *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>.

<sup>70</sup> 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/2012-08-08firstamendedpetitionforjudicialreview.pdf>.

<sup>71</sup> *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>.

<sup>72</sup> 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.<sup>73</sup> 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.<sup>74</sup> Many state laws fail to protect individuals from frivolous, baseless challenges to their voting eligibility,<sup>75</sup> rendering those laws subject to abuse by “self-appointed voter fraud vigilantes.”<sup>76</sup> 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.<sup>77</sup> Voters were not provided notice. In one of those counties, “voters who were purged were disproportionately African American.”<sup>78</sup>

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.”<sup>79</sup> 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.<sup>80</sup>

---

<sup>73</sup> 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](https://www.brennancenter.org/sites/default/files/publications/Purges_Growing_Threat_2018.pdf).

<sup>74</sup> 52 U.S.C. § 20507(c)(2)(A).

<sup>75</sup> *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).

<sup>76</sup> 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>.

<sup>77</sup> *N.C. State Conf. of NAACP v. Bipartisan Bd. of Elections & Ethics Enft.*, No. 1:16CV1274, 2018 WL 3748172, at \*1, \*6 (M.D.N.C. Aug. 7, 2018).

<sup>78</sup> *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).

<sup>79</sup> 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>

<sup>80</sup> *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.<sup>81</sup>

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.<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup> 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.<sup>85</sup> 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.<sup>86</sup>

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.<sup>87</sup> The Court, however, also made

---

<sup>81</sup> 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/](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/).

<sup>82</sup> 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).

<sup>83</sup> 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.

<sup>84</sup> *Id.* at ¶¶ 7–12.

<sup>85</sup> *Husted*, 138 S. Ct. at 1864 (Sotomayor, J., dissenting).

<sup>86</sup> 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>.

<sup>87</sup> *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.<sup>88</sup>

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.<sup>89</sup> 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.<sup>90</sup>

## 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.<sup>91</sup> 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.<sup>92</sup>

In March 2021, the court dismissed Judicial Watch’s lawsuit against Bucks, Chester, and Delaware counties.<sup>93</sup> The court concluded that Judicial Watch based its lawsuit on outdated

---

<sup>88</sup> *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 . . .”).

<sup>89</sup> *Id.* at 1863 (Sotomayor, J., dissenting).

<sup>90</sup> *Id.*

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

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

<sup>93</sup> 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.”<sup>94</sup> 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.<sup>95</sup>

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.<sup>96</sup> 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.<sup>97</sup>

## 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.<sup>98</sup> Specifically, the ACRU claimed that Broward County “ha[d] an implausible number of registered voters compared to the number of eligible living citizens”<sup>99</sup> and opined that Dr. Snipes could have used alternative data sources to more accurately count registered voters.<sup>100</sup> 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.<sup>101</sup>

---

<sup>94</sup> 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.

<sup>95</sup> *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.

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

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

<sup>98</sup> *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>.

<sup>99</sup> 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).

<sup>100</sup> *Id.* at 17.

<sup>101</sup> *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,”<sup>102</sup> and that its claims were “unsupported by any credible evidence.”<sup>103</sup> The Eleventh Circuit affirmed judgment on appeal.<sup>104</sup>

#### 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 removed from voter rolls allegedly because they were noncitizens.”<sup>105</sup> 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.”<sup>106</sup> According to Protect Democracy and other groups who represented the plaintiffs, PILF was “aware th[at] people they identified in their report might be citizens,” but “ignored red flags,” including “warnings [that] came from Virginia election officials.”<sup>107</sup>

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 they falsely accused people of being noncitizens.”<sup>108</sup>

### 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.

---

<sup>102</sup> *Id.*

<sup>103</sup> *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.”).

<sup>104</sup> *Bellitto v. Snipes*, 935 F.3d 1192 (11th Cir. 2019).

<sup>105</sup> 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>.

<sup>106</sup> *Id.*

<sup>107</sup> 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](https://www.huffpost.com/entry/j-christian-adams-pilf-settlement_n_5d309002e4b0419fd3298ee6).

<sup>108</sup> *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.<sup>109</sup> 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.”<sup>110</sup> 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.

---

<sup>109</sup> 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/>.

<sup>110</sup> *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.”).