

# STATE VOTER REGISTRATION LIST MAINTENANCE

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## HEARING BEFORE THE COMMITTEE ON HOUSE ADMINISTRATION HOUSE OF REPRESENTATIVES ONE HUNDRED FIFTEENTH CONGRESS FIRST SESSION

OCTOBER 25, 2017

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## STATE VOTER REGISTRATION LIST MAINTENANCE

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WEDNESDAY, OCTOBER 25, 2017

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOUSE ADMINISTRATION,  
*Washington, DC.*

The Committee met, pursuant to call, at 11:04 a.m., in room 1310, Longworth House Office Building, Hon. Gregg Harper (Chairman of the Committee) presiding.

Present: Representatives Harper, Davis, Comstock, Loudermilk, Brady, and Raskin.

Staff Present: Sean Moran, Staff Director; Bob Sensenbrenner, General Counsel; Cole Felder, Deputy General Counsel; Dan Jarrell, Legislative Clerk; Erin McCracken, Communications Director; Jamie Fleet, Minority Staff Director; Khalil Abboud, Minority Deputy Staff Director; Tanya Sehgal, Minority Elections Counsel; and Eddie Flaherty, Minority Chief Clerk.

The CHAIRMAN. I now call to order the Committee on House Administration for purposes of today's hearing on State voter registration list maintenance.

The hearing record will remain open for 5 legislative days so Members may submit any materials they wish to include.

A quorum is present, so we may proceed.

I first would like to thank our witnesses for their appearance before the Committee. Today's hearing addresses an important subject both for our democracy and certainly for each of us as Members. We are each uniquely dependent on States conducting accurate elections every 2 years. The accuracy of our elections is the bedrock upon which all of our work in the people's House lies. Therefore, it is paramount that every election be conducted in a fair and open manner.

To that end, today, we have asked our witnesses to testify on State voter registration list maintenance. Ensuring the accuracy of voter registration lists is the foundation to a successful election. Having accurate lists increases voter confidence, eases the administration of elections, reduces wait times, and certainly helps prevent voter fraud and irregularity. The Bauer-Ginsberg Commission, headed by Bob Bauer, former President Barack Obama's campaign counsel and later White House counsel, and Ben Ginsberg, former President George W. Bush's campaign counsel and Mitt Romney's campaign counsel, noted this in the report stating, and I quote: "Improving the accuracy of registration rolls, for example, can expand access, reduce administrative costs, prevent fraud and irregularity, and reduce polling place congestion leading to long lines."

Many times, the work accomplished by our State and local election officials goes unsung. However, their work on ensuring the accuracy of voter rolls can clear the way for a better voting experience. It could both drive more citizens out to the polls and reduce voter fraud and irregularities. Voter list maintenance is the most important homework that each State and local election official needs to do.

Under our Constitution, it is the responsibility of the States to run elections. Congress can pass legislation to place mandates on States concerning the times, places, and manner of elections, which includes voter list maintenance requirements. Congress has enacted these requirements in the National Voter Registration Act, or NVRA, and the Help America Vote Act. But the implementation of these requirements lies with States, who have the ultimate responsibility for elections. Specifically, section 8 of the NVRA requires that States conduct a general program that makes reasonable efforts to remove the names of ineligible voters from the official lists. These laws were a product of legislative compromise, and each State has a responsibility to follow that law. The duties imposed by NVRA require critical functions in ensuring the accuracy and integrity of our elections.

When States do fail to follow the law, problems arise. For example, it seems intuitive that States should not have more registered voters than citizens of voting age. However, the most recent election administration surveys indicate that eight States have such problems. Even if States are given the benefit of the doubt that these inaccuracies are caused simply by voters moving out of a State and not canceling their previous registration, confidence in the election process is shaken and confusion at the polls can run rampant.

As we review these laws and others that impact State voter registration lists, it is important to remember that our country has changed from when NVRA was initially adopted in 1993. Technology has changed. Many other things have taken place. There have been a number of profound changes over the years since the law was enacted, and it is worth examining the mandates of the NVRA and how States bring that law into effect.

We must also recognize that the Federal Government is the partner of the States in list maintenance. We need to hear how the Federal Government can provide appropriate access of Federal databases to further their list maintenance efforts. For example, does the Social Security Death Index provide the appropriate information to States? How can the Federal Government improve the information sharing between States concerning residents while recognizing that States have already banned together and created programs to do so?

These are some of the important issues that are essential to our democracy. And on these specific points that I have mentioned, I want to again thank Indiana's Secretary of State and President of the National Association of Secretaries of State, Connie Lawson, for her hard work on this issue and for agreeing to be here to testify. And I now recognize Ranking Member Brady for any opening statement he may wish to give.

Mr. BRADY. Thank you, Mr. Chairman.

I want to thank you for calling this hearing. And I want to thank our witnesses for joining us today. I will have a longer statement for the record. So I will just make a few comments now. The National Voter Registration Act, or motor voter law, added an estimated 300 million new voters on the rolls. It was a commonsense idea: If you need to access a government service, you should be reminded to vote. It was that simple principle that inspired me to introduce the Automatic Voter Registration Act of 2017, which expanded the motor voter act.

But we need to carefully maintain voter lists. In maintaining these lists, we need to have one principle: No one who has lawfully registered to vote should be kicked off the rolls to keep them from voting. For example, the Ohio Secretary of State was using a process of list maintenance that involved canceling registrations of individuals who had not voted since 2008. That should not have happened. Again, I would like to thank the chairman for calling this hearing, and I look forward to the witnesses' testimony.

The CHAIRMAN. Thank you, Mr. Brady.

The Chair will now recognize Mr. Raskin for the purposes of an opening statement.

Mr. RASKIN. Mr. Chairman, thank you so much, and thanks for calling this really important hearing. I appreciate it.

And thank you also to the Ranking Member, Mr. Brady, for his leadership on these election issues.

You know, one of our great Presidents spoke of government of the people, by the people, and for the people. And I think that that beautiful tantalizing ideal expresses what we want to think of as democracy in America. Of course we didn't start that way. We started as a slave republic of white male property owners over the age of 21. The vast majority of people couldn't vote. And it has only been through political struggle and constitutional changes that we have opened America up to voting by everybody for the expression of popular will. So the 15th Amendment banned race discrimination in voting. The 14th Amendment established equal protection. The 19th Amendment gave women the right to vote. The 17th Amendment shifted the mode of election of U.S. Senators from the legislatures to the people. The 24th Amendment banned poll taxes in elections. The 26th Amendment lowered the voting age to 18. So we have opened democracy up to full participation by the people.

But even when we have these formal constitutional changes, we know that there have been repeated efforts to nullify the vote with things like the literacy test, the poll tax, grandfather clauses, obstacles to registration, difficulties imposed on the path to voting and so on. So, on the one hand, nothing is more American than the ideal of one person, one vote that was articulated in *Reynolds v. Sims*, *Harper v. Virginia Board of Elections*, a series of cases that established the right of everybody to vote. On the other hand, we also know that it is pretty American to see impulses or the impulse expressed in different places to disenfranchise people through behind-the-scenes political manipulation dressed up as bureaucratic extremism. And in our times, we have seen a lot of people disenfranchised through governmental efforts that were later discredited and found to be completely illegitimate.

I think a lot about the contested Presidential election that took place in Florida in 2000, where the Secretary of State, Katherine Harris, ordered a purge of the voter rolls to get rid of people who might be convicted felons and contracted out for more than a million dollars to a private party to do that.

And there was a memo written back to her saying: Well, we are getting some near matches, but the middle names are different. They are not quite right. There is a junior in one place, not in another.

And she wrote back: Cast a wide net.

And it came out in hearings after the election took place that more than 17,000 people were unlawfully denied the right to vote in Florida there. And we have seen lots of cases like that, where there have been efforts to disenfranchise populations, often targeted in minority communities, through bureaucratic efforts that are later determined to be imperfect.

So, when I think about this, Mr. Chairman, I think a lot about William Blackstone's famous comment that, in a free society, it is better that 10 guilty persons escape punishment than 1 innocent person be sent to prison. And I think about voting. You know, is it better to disenfranchise a thousand people who are legitimate bona fide voters in order to get one person whose name may have appeared in the same place in two different jurisdictions and might decide to engage in the ludicrous activity of trying to commit voter fraud by voting in two different places, which we know is extremely rare?

So I just want to make sure, as we go about this, I totally agree with you that we want accuracy, we want integrity in the voting process, but we don't want a voting process that actually works against the interests of the voters. So I will be very interested to hear what our witnesses have to say about that. And I welcome them today. Thank you. I yield back.

The CHAIRMAN. The gentleman yields back.

I would now like to introduce our witnesses for today. Connie Lawson serves as Indiana's 61st secretary of state. She has served in that capacity since 2012. Prior to her service as secretary of state, she served for 16 years in the Indiana Senate, where she was the first woman to serve as majority floor leader. Before joining the Indiana Senate, she served as the clerk of the Hendricks County Circuit Court. Secretary Lawson currently serves as the President of NASS, the National Association of Secretaries of State. She is also an Honorary Governor of the Richard Lugar Public Service Series, an Honorary Chairwoman of the Lupus Foundation of Indiana, and Co-Chair of the Hendricks County United Way.

Dale Ho is the Director of the ACLU's Voting Rights Project and supervises the ACLU's voting rights litigation and advocacy work nationwide. His current cases include *Husted v. A. Philip Randolph Institute*, a voter list maintenance case pending before the U.S. Supreme Court. Dale is also an adjunct professor of law at NYU School of Law and Brooklyn Law School. He is a graduate of Yale Law School and Princeton University.

The Committee has received your written testimony. You will each have 5 minutes to offer and present a summary of that submission. As you know, to help you keep the time, you see the lights

on the desk. So it will be green for 4 minutes, yellow for the last minute, and when time is expired, it will run red. So that would mean it is time to bring it in for a landing at that point.

The Chair now recognizes Secretary Lawson for the purposes of her opening statement for 5 minutes. Welcome.

**STATEMENTS OF THE HONORABLE CONNIE LAWSON, INDIANA  
SECRETARY OF STATE; AND DALE HO, DIRECTOR OF VOT-  
ING RIGHTS PROJECT, AMERICAN CIVIL LIBERTIES UNION**

**STATEMENT OF THE HONORABLE CONNIE LAWSON**

Ms. LAWSON. Well, good morning, Chairman Harper, Vice Chairman Davis, and Ranking Member Brady. I am very honored to be here with you this morning and to address you.

Voter list maintenance is needed because approximately 24 million, or one out of every eight, voter registrations in the United States are no longer valid or are significantly inaccurate according to the 2012 study by the Pew Center. The National Voter Registration Act of 1993 requires the removal of inaccurate voter registration records but with multiple safeguards to protect voters. In most cases, before a registration record may be canceled, the record must be identified as showing an inaccurate current address for the voter. Only after two Federal elections have taken place, up to 4 years, and only if the voter has not confirmed during those 4 years that the record is in fact accurate can the voter registration record be canceled, as required by this Federal law. Simple failure to vote never causes a registration record to be canceled. Cancellation only occurs if the registration contains inaccurate information which indicates that the voter is no longer qualified to vote at that address.

Local election administrators in Indiana's 92 counties, who are most familiar with their voters and communities, perform voter list maintenance daily by updating information on voters who have moved, died, or requested that their registration be canceled. However, many counties do not have the money to do the periodic and uniform mailings that are required by Federal law. Thus, the State has taken the lead. This process begins when the State mails all Indiana voters a postcard. Some are returned due to an unknown or insufficient address. The State mails these voters a second forwardable postcard, asking the voter to provide us with updated information. If the voter responds, their county updates their information and no further action is needed. If they do not respond to either mailing, their record is marked inactive. Once a record is marked inactive, it is not removed from the list unless the voter misses the next two Federal elections or otherwise fails to confirm their address is in fact correct. The voter is still eligible to vote during this 4-year period. If the voter casts a ballot from that address during any election in that 4-year period, the primary, the general, or the special, their record is automatically returned to an active status.

In 2014, Indiana undertook voter list maintenance using the statewide mailing process. Inactive registrations remained on the rolls for 2014, 2015, 2016. Records that were still inactive at the end of that period were canceled in 2017. As of today, 481,235 voter registrations have been canceled through this process. Voter list

maintenance reduces election costs. Counties with bloated voter rolls are forced to spend more money to purchase extra equipment, secure additional locations, and pay for election workers. Allowing invalid registrations to remain on the rolls distorts the reality of actual voter participation and turnout. In 2016, the official voter turnout in Indiana was 58 percent of all registered voters, despite a record number of voters turning out to vote. If the voter list maintenance conducted this year, in 2017, had taken place before the 2016 election, Indiana's turnout would have been about 65 percent.

Voter list maintenance also boosts voter confidence in our election system. I often hear from poll workers and county officials that voters are disturbed by seeing the name of a deceased family member or neighbor still on the list years after death or moving away.

As I close, I want to address the uncertainty that clouds voter list maintenance across the country. In States that are attempting to comply with Federal law, like Indiana, activist groups are suing to keep maintenance from being done. In States that are not participating, activist groups are suing to force the process. Performing voter list maintenance is the law, according to the NVRA. This law was a compromise that required voter registrations to be available at government offices, such as the BMV, and voter list maintenance to be performed. We enforce the registration portion of the law uniformly but not the voter list maintenance piece. So I encourage Congress to clarify this expectation for the States, and I congratulate and commend the efforts of State officials around the country who are continuing to work hard in the face of this uncertainty.

The last piece I want to include is that our office does participate in the Interstate Crosscheck Program to assist voter list maintenance, and I am happy to explain how this works in Indiana if need be. Thank you again for the opportunity.

[The statement of Ms. Lawson follows:]





## **Office of the Indiana Secretary of State**

200 W. Washington St. Indianapolis, IN 46204

### **Indiana Secretary of State Connie Lawson Remarks to the Committee on House Administration**

October 25, 2017

Good morning Chairman Harper, Vice Chairman Davis, Ranking Member Brady, and distinguished Members of the Committee. Thank you for the opportunity to appear before you today. I'm Connie Lawson, Indiana's Secretary of State and chief elections officer. I am also president of the bipartisan National Association of Secretaries of State.

I am honored to address you. Voter List Maintenance is needed because approximately 24 million – or, one out of every eight – voter registrations in the United States are no longer valid or are significantly inaccurate, according to a 2012 study by the Pew Center.<sup>1</sup>

The National Voter Registration Act of 1993 requires the removal of inaccurate voter registration records, but with multiple safeguards to protect voters. In most cases before a registration record may be cancelled, the record must be identified as showing an incorrect current address for the voter. Only after two federal elections have taken place (up to 4 years), and only if the voter has not confirmed during those four years that the record is in fact accurate, can the voter registration record be cancelled as required by this federal law.

Simple failure to vote never causes a registration record to be cancelled. Cancellation only occurs if the registration contains inaccurate information which indicates that the voter is no longer qualified to vote at that address.

Local election administrators in Indiana's counties, who are most familiar with their voters and communities, perform voter list maintenance daily by updating information on voters who have moved, died, or requested that their registration be cancelled. However, many counties do not have the money to do periodic and uniform mailings to their voters as required by federal law. Thus the State has taken the lead.

This process begins when the state mails all Indiana voters a postcard. Some are returned due to an "unknown or insufficient" address. The state mails these voters a second, forward-able postcard, asking the voter to provide us with updated information. If the voter responds, their county updates their information, and no further action is needed by that voter. If the voter does not respond to either mailing, the record is marked inactive. Once a record is marked inactive, it

<sup>1</sup> "Inaccurate, Costly, and Inefficient: Evidence That America's Voter Registration System Needs an Upgrade," *The Pew Center on the States*, accessed October 13, 2017, [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs\\_assets/2012/pewupgradingvoterregistrationpdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2012/pewupgradingvoterregistrationpdf.pdf)

is not removed from the list unless the voter misses the next two federal elections or otherwise fails to confirm their address is in fact correct. The voter is still eligible to vote during this four year period. If the voter casts a ballot from that address during any election that period (primary, general or special), their record is automatically returned to active status.

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Voter List Maintenance reduces election costs. Counties with bloated voter rolls are forced to spend more money to purchase extra equipment, secure additional locations and pay for election workers.

Allowing invalid registrations to remain on the rolls distorts the reality of actual voter participation and turnout. In 2016, the official voter turnout in Indiana was 58% of all registered voters, despite a record number of voters turning out to vote. Yet it is estimated that, if the Voter List Maintenance conducted this year had taken place before the 2016 general election, Indiana's turnout would have been about 65% - among the best in the nation.<sup>2</sup>

Voter List Maintenance also boosts voter confidence in our election system. I often hear from poll workers and county officials that voters are disturbed by seeing the name of a deceased family member or neighbor still on the list, years after their death or moving away.

As I close, I want to address the uncertainty that clouds voter list maintenance across the country. In states that are attempting to comply with federal law, like Indiana, activists groups are suing to keep maintenance from being done. In states that are not participating, activists groups are suing to force the process. Performing Voter List Maintenance is the law according to the National Voter Registration Act. This law was a compromise that required voter registrations to be available at government offices such as the BMV and voter list maintenance to be performed. We enforce the registration portion of the law uniformly but not the voter list maintenance piece. I encourage Congress to clarify this expectation for the states and to uphold the compromise of the National Voter Registration Act, and I commend the efforts of state officials around the country who are continuing to work hard in the face of this uncertainty.

I know I am getting close to the 5 minute mark, so the last piece I want to include is that our office participates in the Interstate Crosscheck program to assist with voter list maintenance efforts. I am happy to explain how this works in Indiana if need be.

Thank you again for the opportunity to speak with you today. With that, I will end my prepared remarks, and I am happy to take any questions.

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<sup>2</sup> "Voting and Registration in the Election of November 2016," last modified May 2017, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html>

The CHAIRMAN. Thank you, Secretary Lawson.

The Chair will now recognize Mr. Ho for 5 minutes for the purposes of an opening statement. Welcome.

#### STATEMENT OF DALE HO

Mr. HO. Thank you, Chairman Harper, Ranking Member Brady, and Members of this Committee. Thank you for holding this hearing and for the opportunity to testify today.

The right to vote is the cornerstone of our democracy. And we at the ACLU seek to protect it on equal terms for all Americans. But you can't vote if you are not on the rolls. And voter list accuracy therefore requires ensuring that eligible voters are able to get on the lists, that they are not erroneously purged, and that thinning the rolls only occurs when people are or become ineligible to vote.

Unfortunately, as described in my written testimony and as was referenced by Ranking Member Brady and Congressman Raskin, erroneous list maintenance efforts in States like Florida, Ohio, and Texas have wrongfully targeted thousands of vote voters for removal from the rolls. In one incident in Madison County, Mississippi, 10,000 voters were illegally purged just days before an election, including David Landrum, a Republican candidate for what is now Chairman Harper's district. Just yesterday, my home city of New York acknowledged wrongfully purging about 114,000 voters in advance of last year's Presidential primary. So this problem is not limited to any region or party.

Our registration systems should of course be modernized to better account for people who move. And that is why 10 States, most recently Representative Davis' home State of Illinois, on a bipartisan basis, adopted a system of automatic registration, which ensures that unregistered voters are registered and updates rolls when voters move. It is an innovation that both maintains accuracy and helps voters participate without unnecessary bureaucratic hurdles.

Now Secretary Lawson has referenced the Interstate Voter Registration Crosscheck system, which purports to compare voter rolls in multiple States. And with due respect to the secretary, we advise against Crosscheck, which a team of researchers at Stanford, Harvard, UPenn, and Microsoft found misidentify supposed double voters more than 99 percent of the time. Crosscheck's user manual itself states, quote, "A significant number of apparent double votes are false positives." And, therefore, States, including Florida, Oregon, and Washington, have dropped out of the program all together.

We sometimes also hear suggestions to compare State voters rolls to the Department of Homeland Security's Systematic Alien Verification for Entitlements, or SAVE, database. But citing concerns about accuracy, courts have struck down list maintenance efforts involving SAVE in States like Iowa and Florida, where bad matching protocols led the State of Florida to mistakenly designate thousands of Americans as noncitizens, including Bill Internicola, a Brooklyn born World War II veteran who had fought at the Battle of the Bulge. Now, as you know, on June 28, the Department of Justice requested information on list maintenance from 44 States, a sweeping inquiry that Vanita Gupta, former head of

DOJ's Civil Rights Division and now president of the Leadership Conference on Civil Rights, has described as, quote, "virtually unprecedented."

The timing of this request is also suspect, coming on the same day as an infamous demand by the Presidential Commission on Election Integrity for all 50 States' voter rolls. Stockpiling huge amounts voters' personal data in this manner raises significant cybersecurity concerns. The Commission's plans have been described as a, quote, "hacker's gold mine" by cybersecurity experts. And this week, it was reported that passwords for Crosscheck have been disseminated via email to dozens of people at a time, a risky practice that could permit unauthorized access to voter data from 30 States. Given that dozens of States' registration systems were victims of attempted cyber attacks last year, these plans are risky at best.

But I want to emphasize that, as Secretary Lawson said at a Senate Intelligence Committee hearing last year, there is no indication that vote counting was manipulated last year. And as Representative Walker stated last year, there are cases from time to time that need to be investigated, but there is, quote, no mass conspiracy of voter fraud going on. Although we face threats, our elections are secure.

Now, unfortunately, we as Americans increasingly seem to refuse to accept the basic legitimacy of our political opponents on the assumption that their electoral support must be the result of fraud. Suggestions along these lines, like the President's false statement that millions of illegal votes cost him the popular vote, do a disservice to men and women who have risked their lives for our democracy, people like my grandfather, Raymundo Sena Estacion, and other Filipino veterans who, as we speak during this hearing, are being awarded the Congressional Gold Medal in Emancipation Hall for their service in World War II.

I, therefore, urge this Committee to facilitate participation by encouraging States to adopt systems that automatically update voters' registration information along the lines of Ranking Member Brady's bill, to reject plans that purge eligible voters from the rolls, to help ensure that votes are counted accurately by supporting State efforts to enhance cybersecurity systems. Our democracy is more vibrant and more truly representative when more Americans participate. Thank you.

[The statement of Mr. Ho follows:]



**WRITTEN STATEMENT OF  
DALE HO  
DIRECTOR, VOTING RIGHTS PROJECT  
AMERICAN CIVIL LIBERTIES UNION**

**For a Hearing on**

**State Voter Registration List Maintenance**

**Submitted to the U.S. House Committee on Administration**

**October 25, 2017**

### Introduction

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

My name is Dale Ho, and I am the Director of the American Civil Liberties Union (ACLU) Voting Rights Project. For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the Constitution and laws of the United States. With approximately 1.6 million members, activists, and supporters, the ACLU is a nationwide organization that advances its mission of defending the principles of liberty and equality embodied in our Constitution and civil rights laws. The ACLU's Voting Rights Project, established in 1965, has filed more than 300 lawsuits to enforce the provisions of our country's voting laws and constitution, including the Voting Rights Act of 1965 and the National Voter Registration Act of 1993. And through our People Power platform, the ACLU recently launched a fifty-state campaign to protect and expand access to the ballot nationwide.

In my capacity as Director of the ACLU's Voting Rights Project, I supervise the ACLU's voting rights litigation and advocacy work nationwide. My work focuses on ensuring access to the franchise on equal terms for all Americans. My current cases include *Husted v. A. Philip Randolph Institute*, a voter list maintenance case pending before the U.S. Supreme Court; and *Fish v. Kobach*, a case concerning onerous and unnecessary documentation requirements for voter registration in the State of Kansas. In addition to my work at the ACLU, I also serve as an adjunct professor at NYU School of Law and Brooklyn Law School. I am widely published on voting rights in law reviews including the *Harvard Civil Rights-Civil Liberties Law Review* and the *Yale Law Journal Forum* (forthcoming).

I want to thank you for holding this hearing today on voter list maintenance. As Chief Justice John Roberts recently wrote, "[t]here is no right more basic in our democracy than the right to participate in electing our political leaders."<sup>1</sup> The right to vote is frequently described as the right that is preservative of all others.<sup>2</sup> All of our rights as Americans are protected by our right to vote. We are not truly free without self-government, which entails a vibrant participatory democracy in which every American's voice can be heard.

It is particularly gratifying for me to appear before you today at the same time that Speaker Ryan is holding a ceremony in Emancipation Hall to present a Congressional Gold Medal to Filipino veterans of World War II. I was supposed to be attending that ceremony on behalf of my grandfather, Raymundo Seña Estacion, who served in the United States Army Forces in the Far East, and survived the Bataan Death March during the Japanese occupation of

<sup>1</sup> *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1440-41 (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.").

<sup>2</sup> *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

the Philippines. After the war, he was stationed for a time at Fort Sill in Oklahoma. He died at the age of 27; I never had the opportunity to meet him. But his service to our country—in defense of a democracy in which he himself could not participate—is a reminder to me of just how precious the right to vote is.

My written statement today will focus on two threats to the integrity of voter lists:

- (1) Improper list maintenance practices that have resulted in wrongful purges of eligible voters;
- (2) Efforts during the 2016 Election to compromise electronic voter registration lists by hacking.

#### **I. Improper List Maintenance Practices**

Everyone agrees that proper maintenance of voter lists is a critical component of elections integrity. But what often gets lost is that voter list accuracy entails not only removing ineligible registrants, but also ensuring that eligible voters are not erroneously purged from the rolls. Two basic principles should therefore govern list-maintenance activities: accuracy; and adequate notice to voters. With respect to accuracy, list maintenance practices must be based on information that correctly identifies voters who have become ineligible—for example, due to death or a change in residence—since registering to vote. With respect to notice, voters targeted for removal must be given notice consistent with the requirements of the NVRA, with adequate time to contest their removal before an election takes place.

Unfortunately, the failure to adhere to these principles has frequently resulted in eligible voters being taken off the voter rolls through no fault of their own. 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. Such purges have often occurred too close to an election to permit corrective action, with voters sometimes not learning that they have been purged until they appear at the polls to vote on Election Day.

At least three problems frequently plague voter purge programs (well-intentioned or otherwise): (1) inaccurate underlying data, which mistakenly identify legitimate registrants as ineligible; and (2) unreliable matching protocols, which confuse eligible registrants for others who are not eligible to vote; and (3) inappropriate timing, which fails to give registrants sufficient opportunity to contest their removal prior to an election. As I explain below, efforts to compare voter registration lists among states using systems like the Interstate Voter Registration Crosscheck program, or to compare voter lists to federal databases like the Department of Homeland Security's Systematic Alien Verification for Entitlements, have all suffered from these flaws, and have resulted in the wrongful designation of properly-registered voters for removal from the rolls.

### A. Background – The National Voter Registration Act (NVRA)

The National Voter Registration Act of 1993 (NVRA)<sup>3</sup> establishes a national framework for voter registration and voter list maintenance for federal elections. It is sometimes referred to as the “motor-voter” law, thanks to its most famous provision, which requires states to provide voter registration services through Department of Motor Vehicle offices.<sup>4</sup>

Section 8 of the NVRA requires states to maintain and update their voter registration lists, and protects registered voters against removal from the rolls.<sup>5</sup> In particular, Section 8 requires states to “conduct a general program that makes a reasonable effort to remove the name of ineligible voters” due to the registrant’s death or change in residence.<sup>6</sup> According to the Election Assistance Commission, between 2014 and 2016 16.7 million people (8.8 percent of all eligible voters) were removed from voting rolls through list maintenance practices.<sup>7</sup>

A central purpose of the statute is “to ensure that once registered, a voter remains on the rolls so long as he or she is eligible to vote in that jurisdiction.”<sup>8</sup> The statute therefore places strict limits as to reasons, timing and procedures for removal of registrants. Under Section 8, there are five specific circumstances under which a properly-registered voter may be removed from a voter registration list: when an individual has passed away, moved out of the jurisdiction, has been judged mentally incapacitated, has been convicted of a crime resulting in the loss of the right to vote, or requests to be removed.<sup>9</sup> The statute also prescribes the timing of removal of voters (prohibiting programs that systematically remove voters from the rolls within 90 days of a federal election),<sup>10</sup> and establishes mandatory procedures that must be followed before removing voters whom the state determines may have moved—namely, requiring states to send a notice to such voters, and then, if the voter does not return the notice, waiting a period of two general federal elections before removing them from the rolls.<sup>11</sup>

These safeguards are critical to voter list integrity. In enacting the NVRA, Congress expressed the “concern[] that [voter list-maintenance] programs can be abused and may result in

<sup>3</sup> 52 U.S.C. § 20501, *et seq.*

<sup>4</sup> 52 U.S.C. § 20504.

<sup>5</sup> “Any State program or activity” to “ensure[] the maintenance of an accurate and current voter registration roll . . . shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person’s failure to vote.” 52 U.S.C. §20507(b)(2).

<sup>6</sup> 52 U.S.C. § 20507(a)(4).

<sup>7</sup> U.S. Election Assistance Comm’n, The Election Administration and Voting Survey 2016 Comprehensive Rep., to the 115th Cong. at 47 (2016), [https://www.eac.gov/assets/1/6/2016\\_EAVS\\_Comprehensive\\_Report.pdf](https://www.eac.gov/assets/1/6/2016_EAVS_Comprehensive_Report.pdf). This was an increase of 1.9 million individuals compared to the same length of time in 2012 and 2014.

<sup>8</sup> S. Rep. No. 103-6, at 19 (1993).

<sup>9</sup> 52 U.S.C. § 20507(a)(3)-(4).

<sup>10</sup> 52 U.S.C. § 20507(c)(2).

<sup>11</sup> 52 U.S.C. § 20507(d).



the elimination of names of voters from the rolls solely due to their failure to respond to a mailing.”<sup>12</sup> Inaccurate purge programs may result in “persons who are legitimately registered” not being included on the rolls,<sup>13</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>14</sup>

A few examples of erroneous and/or unlawful purges include:

**Florida.** In 2000, Florida wrongly purged nearly 12,000 voters as a result of inaccurate matching criteria that led the state to misidentify these voters as ineligible felons. Utilizing a criminal conviction database, the state purged voters whose last name matched 80% of the letters of an individual with a criminal conviction—a highly inaccurate database matching protocol.<sup>15</sup> Undeterred by that debacle, in 2004 Florida once again attempted to remove 48,000 eligible voters from the rolls for being “suspected felons”<sup>16</sup>—a purge that erroneously included thousands of individuals who had their voting rights restored under Florida law, and which disproportionately affected African-American voters. Under pressure from civil rights groups Florida ordered officials to stop using flawed list to perform a voter purge.<sup>17</sup>

**Mississippi.** In 2008, just days before the March primary elections, approximately 10,000 voters were purged in Madison County, based on jury summonses and voter ID cards that were not delivered by the post office.<sup>18</sup> Among those removed from the rolls were David Landrum, a Republican candidate for Mississippi’s third congressional district,<sup>19</sup> and his wife Jill.<sup>20</sup> Mississippi Secretary of State Delbert Hosemann noted that the purge was illegal because it was conducted within 90 days of a federal election; his staff had to work overtime to ensure that these voters were reinstated prior to the election.

**Ohio.** In a case currently pending before the U.S. Supreme Court, the ACLU and our co-counsel Dēmos are challenging a process used by Ohio that targets voters for removal if they

<sup>12</sup> H.R. Rep. No. 103-9 (1993), at 15.

<sup>13</sup> S. Rep. No. 103-6 (1993), at 18.

<sup>14</sup> *Id.*

<sup>15</sup> Myrna Perez, Brennan Center for Justice, *Voter Purges* at 3 (2008) [https://www.brennancenter.org/sites/default/files/legacy/publications/Voter\\_Purges.f.pdf](https://www.brennancenter.org/sites/default/files/legacy/publications/Voter_Purges.f.pdf), citing Adam C. Smith, *No Telling if Voter Rolls are Ready for 2004*, St. Petersburg Times, Dec. 21, 2003, [http://www.sptimes.com/2003/12/21/State/No\\_telling\\_if\\_voter\\_r.shtml](http://www.sptimes.com/2003/12/21/State/No_telling_if_voter_r.shtml).

<sup>16</sup> Ford Fessenden, *Florida List for Purges of Voters Proves Flawed*, N.Y. Times, July 10, 2004, <http://www.nytimes.com/2004/07/10/us/florida-list-for-purge-of-voters-proves-flawed.html>.

<sup>17</sup> *Florida Scraps Flawed Felon Voting List*, Associated Press, USA Today, July 10, 2004, [https://usatoday30.usatoday.com/news/nation/2004-07-10-felons-vote-fla\\_x.htm](https://usatoday30.usatoday.com/news/nation/2004-07-10-felons-vote-fla_x.htm).

<sup>18</sup> Kandiss Crone, *Hosemann: Voter Purge Violated Federal Law*, MS News Now <http://www.msnewsnow.com/story/7973229/hosemann-voter-purge-violated-federal-law> (last visited Oct. 22, 2017).

<sup>19</sup> *Id.*

<sup>20</sup> Ann Ellis Simmons, *More on Madison Purge*, Miss. Third Cong. D. Blog (Mar. 6, 2008), <http://missthirddistrict.blogspot.com/2008/03/more-on-madison-purge.html>.

have 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 to another county, or out-of-state. That is a highly dubious proposition, as more than half of registered voters typically fail to vote in midterm elections.<sup>21</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>22</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>23</sup> With the support of the Department of Justice, Dēmos and the ACLU of Ohio litigated this case last year in the U.S. Court of Appeals for the Sixth Circuit, which issued a decision halting the practice.<sup>24</sup> As a result, more than 7,500 voters who had been purged had their votes counted in the 2016 election; without that decision, their ballots would have been tossed, and these voters would have been disenfranchised.

The case will be heard in Supreme Court on November 8. In sudden reversal, however, the Department of Justice—which, for more than 20 years had consistently maintained that such purges based on non-voting are illegal, through both Democratic and Republican administrations—has switched sides. Citing the recent change in administration, DOJ has now filed a brief on the side of Ohio,<sup>25</sup> and will be arguing that Ohio's purge—which the Department less than one year ago said was illegal—is actually permitted under federal law.

#### **B. The Improper Use of Federal Databases for Voter List Maintenance**

Despite the dubious record of aggressive purging efforts, proponents of more active list-maintenance practices often suggest comparing state voter lists to federal databases to identify registrants who are deceased or are noncitizens. In theory, such databases could provide states with a means of identifying deceased registrants who should no longer be on the rolls, or ineligible individuals who should never have been registered in the first place. In practice, however, efforts to match federal databases against state voter rolls only underscore that such efforts frequently result in the removal of legitimate voters due to incomplete, erroneous, or out-of-date data, and poor database matching techniques. All too often, the result has been the production of false positives that misidentify registrants as ineligible to vote.

<sup>21</sup> U.S. Elections Project, *1980-2014 Nov. Gen. Election*, <https://docs.google.com/spreadsheets/d/1or-N33CpOZYQ1UfZ0h8yGPSyz0Db-xjmZOXg3VJi-Q/edit#gid=1670431880> (last visited Oct. 22, 2017).

<sup>22</sup> Harmon Decl. at ¶ 6, *A. Philip Randolph Institute v. Husted*, No. 2:16-cv-303 (S.D. Ohio, Apr. 7, 2016), ECF No. 9-4.

<sup>23</sup> *Id.* at ¶¶ 7-12.

<sup>24</sup> *A. Philip Randolph Institute v. Husted*, 838 F.3d 699 (6th Cir. 2016).

<sup>25</sup> Jessie Balmert, *Trump's Justice Department reverses Obama's stance on Ohio's voter purge*, USA Today, Aug. 8, 2017, <https://www.usatoday.com/story/news/politics/onpolitics/2017/08/08/trumps-justice-department-reverses-obamas-stance-ohios-voter-purge/548983001/>.

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

One federal 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 with the state, for example, while applying for a driver's license.<sup>26</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>27</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>28</sup> Moreover, even for those noncitizens that are listed in the SAVE database, the program's data are not systematically updated to reflect changes in immigration status.<sup>29</sup> Consequently, SAVE offers nothing more than a snapshot of an individual's status in the US immigration system at a certain moment in time—and that status can, and often does, change over time.

For this reason, DHS has cautioned against relying heavily on SAVE data to verify citizenship and confirm voter eligibility.<sup>30</sup> Improper use of SAVE data for voter list maintenance could, for example, disenfranchise eligible citizens<sup>31</sup> who have become naturalized citizens since their entry in the SAVE database. Individuals with the same birthdate and name as non-citizens in the SAVE system are also vulnerable to wrongful removal<sup>32</sup> from voter

<sup>26</sup> Office of Inspector Gen., Dep't of Homeland Sec., OIG-12-125, U.S. Citizenship and Immigration Services 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>27</sup> See *id.*

<sup>28</sup> See Letter from Thomas E. Perez to Ken Detzner, Fla. Sec. of State, dated June 11, 2012 at 3, <https://assets.documentcloud.org/documents/805150/us-dep-of-justice-save-letter-1.pdf>.

<sup>29</sup> Immigration Policy Council, Fact Sheet, *Using the Systematic Alien Verification for Entitlements (SAVE) Program for Voter Eligibility Verification* at 3, Am. Immigration Council (Aug. 2012), <https://www.americanimmigrationcouncil.org/sites/default/files/research/usingthesaveprogramsforvotereligibilityverification.pdf>.

<sup>30</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 Memorandum, Dep't of Homeland Security, Agreement Between the Dep't of Homeland Security, U.S. Citizenship and Immigration Services, and Fla. Dep't of State/Division of Elections State or Local Government Agency, 12 (Aug. 14, 2012), <https://www.documentcloud.org/documents/805148-moa-dhs-fl-1.html>.

<sup>31</sup> In 2015, over 730,000 people became naturalized U.S. citizens. See Dep't of Homeland Security Office of Immigration Statistics, *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>32</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

registration lists. 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, two states that have attempted to use SAVE for voter registration purposes have seen those efforts declared unlawful by courts.

*a. Florida's Use of SAVE*

Florida's experience provides a cautionary tale. In 2012, Florida officials launched an aggressive campaign to remove 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>33</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>34</sup>

In its efforts to identify noncitizens, Florida officials initially stated that "nearly 200,000 registered voters may not be U.S. citizens."<sup>35</sup> Upon review, however, that numbers shrunk 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>36</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>37</sup>). Reports vary, but PolitiFact was ultimately able to confirm that a total

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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>.

<sup>33</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>34</sup> See DHS Memorandum of Agreement, *supra* note 30.

<sup>35</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>36</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>37</sup> See Weiner, *supra* note 36.

of only 85 noncitizens were removed from the rolls as a result of these efforts,<sup>38</sup> in a state of more than 11 million voters at the time<sup>39</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>40</sup> An analysis conducted by the Miami Herald indicated that 87% of those identified by the state as noncitizens on the rolls were minorities and 58% were Hispanic.<sup>41</sup>

Litigation ensued over Florida's attempts to use SAVE. The U.S. Court of Appeals for the Eleventh Circuit,<sup>42</sup> after noting that the SAVE database matching results were "far from perfect,"<sup>43</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>44</sup> The State was ultimately ordered to discontinue its purge based on the use of SAVE data.

#### *b. Iowa's Use of SAVE*

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 voting registration records.<sup>45</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 their fundamental right to vote."<sup>46</sup> The court ultimately

<sup>38</sup> See Amy Sherman, *Homeland Security warned that the SAVE database is not foolproof way to verify the voter rolls*, *LWV says*, PolitiFact: Florida, Oct. 30, 2013, <http://www.politifact.com/florida/statements/2013/oct/30/league-women-voters-florida/league-women-voters-says-homeland-security-warned/>.

<sup>39</sup> See Weiner, *supra* note 36.

<sup>40</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>.

<sup>41</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>42</sup> *Arcia v. Florida Sec'y of State*, 772 F.3d 1335 (11th Cir. 2014).

<sup>43</sup> *Id.* at 1339.

<sup>44</sup> *Id.* at 1342.

<sup>45</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>46</sup> First Am. Pet. ¶¶ 22-23, *ACLU of Iowa v. Schultz*, Case No. CV 9311, (Dist. Ct. Polk Cty. Aug. 8, 2012), <http://moritzlaw.osu.edu/electionlaw/litigation/documents/2012-08-08firstamendedpetitionforjudicialreview.pdf>.

agreed, blocking the purge, and finding that it “would chill the right to vote and cause irreparable harm.”<sup>47</sup> The office of the Iowa Secretary of State eventually abandoned an appeal of that ruling,<sup>48</sup> effectively conceding that Iowa’s efforts to use SAVE data to purge the voter rolls were unlawful and ending those efforts.

*c. Evidence of Noncitizen Registration*

States have engaged in these ill-fated efforts to use SAVE to ferret out supposed noncitizens on the voter rolls, despite the fact that there is simply no evidence that hordes of noncitizens are streaming to the polls. State-wide investigations in Minnesota, New Mexico, North Carolina, Ohio and Iowa all unearthed minimal instances of non-citizen voting.<sup>49</sup> A 2016 New York Times survey of election officials and law-enforcement in 49 states and Washington, D.C. found just two possible instances of noncitizens voting—out of 137.7 million voters nationwide.<sup>50</sup>

Federal courts have reached similar conclusions about the infrequency of noncitizen registration and voting. The U.S. Court of Appeals for the Tenth Circuit, in an opinion by George W. Bush appointee Judge Jerome Holmes, found last year that the “assertion that the ‘number of aliens on the voter rolls is likely to be in the hundreds, if not thousands’ is pure speculation.”<sup>51</sup> Similarly, the full (en banc) U.S. Court of Appeals for the Fifth Circuit, in an opinion by George W. Bush appointee Judge Catharina Haynes, found that “undocumented immigrants are unlikely to vote as they try to avoid contact with government agents for fear of being deported.”<sup>52</sup>

In sum, the suggestion that states should use the SAVE database more expansively for voter registration purposes is worse than a solution in search of a problem—it is a problem in itself, insofar as efforts to use SAVE in this manner have frequently resulted in the misidentification of eligible voters as noncitizens. While there may be limited circumstances in which SAVE contains more up-to-date information concerning immigration status than is currently available in a state’s own databases, SAVE should not be viewed as a panacea. And given past experiences of states that have attempted to use SAVE as a basis for purging their

<sup>47</sup> *Id.*, Ord. on Mot. for Review on the Merits at 5 (Dist. Ct. Polk County Nov. 12, 2013), <http://moritzlaw.osu.edu/electionlaw/litigation/documents/RulingforMotionforReview11-12-13.pdf>.

<sup>48</sup> Jason Noble, *Controversial Iowa voter rules will not take effect*, Des Moines Register, Mar. 13, 2015, <http://www.desmoinesregister.com/story/news/politics/2015/03/13/voter-registration-lawsuit-resolved-rules-invalidated/70280104/>.

<sup>49</sup> *Analysis: Noncitizen voting is vanishingly rare*, Brennan Center for Justice (Jan. 25, 2016), <http://www.brennancenter.org/analysis/analysis-noncitizen-voting-vanishingly-rare>

<sup>50</sup> Michael Wines, *All This Talk of Voter Fraud? Across U.S., Officials Found Next to None*, N.Y. Times (Dec. 18, 2016), [https://www.nytimes.com/2016/12/18/us/voter-fraud.html?\\_r=0](https://www.nytimes.com/2016/12/18/us/voter-fraud.html?_r=0)

<sup>51</sup> *Veasey v. Abbott*, 830 F.3d 216, 263 (5th Cir. 2016) (en banc), *cert. denied*, 137 S. Ct. 612 (2017).

<sup>52</sup> *Veasey v. Abbott*, 830 F.3d 216, 263 (5th Cir. 2016) (en banc), *cert. denied*, 137 S. Ct. 612 (2017).

voter rolls, proposals to use SAVE more broadly in this manner should be viewed with skepticism.

## 2. *Social Security Administration Data*

States and counties have sometimes sought to use data from the Social Security Administration (SSA) to identify registrants who have died. Like efforts to use the SAVE database, these programs should be viewed with skepticism. For example, in 2012, Texas purported to identify 68,000 registered voters as possibly deceased, based on a match to SSA records. But the matching protocols used were highly inaccurate, as Texas officials “repeatedly and mistakenly matched active longtime Texas voters to deceased strangers across the country.”<sup>53</sup> One such voter targeted for removal was James Harris Jr., a U.S. Air Force veteran in Harris County who had voted in every presidential election since the Nixon era, but who was mistaken for a James Harris who lived in Arkansas, and who had passed away in 1996.<sup>54</sup> An investigation by the Houston Chronicle concluded that “voters living in legislative districts with high percentages of Hispanics or African-Americans were more likely to be listed as ‘dead’ than others statewide. In fact, voters in eight heavily minority districts in Dallas, Houston, El Paso and Brownsville were twice as likely to be targeted as voters statewide.”<sup>55</sup>

## C. **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’s done accurately. A reliable system that automatically updates voter rolls when people move is an innovative way both to maintain the accuracy rolls and to help voters stay registered when moving without having to deal with unnecessary bureaucratic headaches. For example, ten states<sup>56</sup>—most recently Illinois<sup>57</sup>—have adopted automatic voter registration systems that enroll unregistered people and update already-registered voters’ address information when they interact with state agencies like the DMV. Oregon was the first state to adopt automatic registration, and experienced “a 4.1 percent increase in turnout, one of the largest increases between 2012 and 2016 among eligible voters of

<sup>53</sup> Lise Olsen, Texas’ voter purge made repeated errors, Chron.com, Nov. 2, 2012, <http://www.chron.com/news/politics/article/Texas-voter-purge-made-repeated-errors-4001767.php>

<sup>54</sup> *See id.*

<sup>55</sup> *Id.*

<sup>56</sup> Nat’l Conference of State Legislatures, Automatic Voter Registration, Aug. 31, 2017, <http://www.ncsl.org/research/elections-and-campaigns/automatic-voter-registration.aspx>.

<sup>57</sup> Sophia Tareen, *Illinois Governor signs automatic voter registration law*, State Register-Journal, Aug. 28, 2017, <http://www.sj-r.com/news/20170828/illinois-governor-signs-automatic-voter-registration-law>.

any state,” with one preliminary analysis suggesting that automatic registration “accounted for over a quarter of that increase.”<sup>58</sup>

A number of states, however, have joined the Interstate Voter Registration Crosscheck system, a program administered by Kansas Secretary of State Kris Kobach—which is not the type of reliable system that I am describing. Crosscheck purports to compare voter registration rolls in multiple states, in order to identify possible instances of double registration or double voting. Approximately 30 states currently participate in Crosscheck.<sup>59</sup> These states upload basic voter data from their voter registration databases to a server run by the Kansas Secretary of State, which then runs a comparison of the data across the member states in an attempt to find voters who may be registered in more than one state.

The Crosscheck system is highly inaccurate. The Crosscheck user manual specifically states that “a significant number of apparent double votes are false positives and not double votes.”<sup>60</sup> That is an understatement. A recent 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 would “impede 200 legal votes” for “every double vote prevented.”<sup>61</sup> In other words, the system incorrectly flags people as potential double voters more than 99% of the time because of false positives resulting from poor matching protocols.

Part of the problem with Crosscheck is that it treats registrations as a “match” using just three data points: first name, last name, and date of birth.<sup>62</sup> But these Crosscheck “matches” are highly unreliable, because of data entry errors and the fact that many voters share names and birthdates.<sup>63</sup> Nevertheless, all of these “matches” are then provided to each member state as “apparent duplicate registration[s]”<sup>64</sup>—even where other voter registration data compiled by

<sup>58</sup> Robert Griffin & Paul Gronke, *More states are registering voters automatically. Here's how that affects voting*, Wash. Post, June 16, 2017, [https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/16/more-states-are-registering-voters-automatically-heres-how-that-affects-voting/?utm\\_term=.5c2d90254c20](https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/16/more-states-are-registering-voters-automatically-heres-how-that-affects-voting/?utm_term=.5c2d90254c20).

<sup>59</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>60</sup> *Interstate Voter Registration Data Crosscheck 2014 Participation Guide* (“Interstate Crosscheck 2014 Participation Guide”) at 5, Wa. Office of the Sec’y of State (Dec. 2013) [https://we.sos.wa.gov/agency/osos/en/press\\_and\\_research/weekly\\_documents/Participation%20Guide%20with%20Comments.pdf](https://we.sos.wa.gov/agency/osos/en/press_and_research/weekly_documents/Participation%20Guide%20with%20Comments.pdf).

<sup>61</sup> Sharad Goel et al., *One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections* 33 (Harv. U., Working Paper, Jan. 13, 2017), <http://scholar.harvard.edu/morse/publications/one-person-one-vote-estimating-prevalence-double-voting-us-presidential-elections>.

<sup>62</sup> Interstate Crosscheck 2014 Participation Guide at 5.

<sup>63</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>64</sup> Interstate Crosscheck 2014 Participation Guide at 4.



Crosscheck, such as middle names and social security numbers, make clear that the “matched” registration records *do not correspond to the same person*.

But 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>65</sup>

Nevertheless, proponents of Crosscheck frequently tout these higher numbers of “potential” matches. For example, a recent presentation to the National Conference of State Legislatures by Kansas State Representative Keith Easau states that Crosscheck found over 5 million “potential” double registrants in 2016,<sup>66</sup> without acknowledging the extremely high rate of false positives generated by the system. I can think of 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.

Unsurprisingly, states and counties that have used information from Crosscheck in order to purge their voter rolls have 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.<sup>67</sup> Incidents like these have rightfully engendered substantial skepticism about Crosscheck’s utility. Explaining Minnesota’s decision not to join Crosscheck, Minnesota Secretary of State Steve Simon stated that “[a]fter looking at the data,” his office determined that “there is an unacceptably high risk of false positives.” Numerous states, including Florida, Oregon, and Washington, have therefore dropped out of Crosscheck.<sup>68</sup> Tony Green, spokesman for the Oregon Secretary of State explained, “We left because the data we received was unreliable.”<sup>69</sup>

I should also note that, by aggregating sensitive voter data from dozens of states, Crosscheck also raises substantial data privacy concerns. The Illinois Board of Elections, for

<sup>65</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/>.

<sup>66</sup> See Esau, *supra* note 59 at 16.

<sup>67</sup> Jacquelyn Powell, *Ada County wrongly strips more than 750 voter registrations*, IdahoNews.com, Aug. 28, 2014, <http://idahonews.com/news/truth-squad/ada-county-wrongly-strips-more-than-750-voter-registrations>.

<sup>68</sup> 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: Wonkblog (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=.5a1bd53a75c7](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=.5a1bd53a75c7)

<sup>69</sup> 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>

example, recently inadvertently disclosed documents containing passwords that are used to access Crosscheck data; and although it appears that these passwords are no longer in use, the documents revealed that Crosscheck passwords are sometimes disseminated via email to dozens of people at a time—a risky practice that could permit unauthorized access to large stockpiles of sensitive voter registration data.<sup>70</sup>

In sum, the Crosscheck system is highly inaccurate, and an improper basis for voter list maintenance programs. Worse, it gathers massive amounts of private voter data under what appear to be extremely lax cybersecurity protocols, raising concerns about voter list integrity for all the wrong reasons. And, given how Crosscheck has been used as a propaganda tool to fan unwarranted fears about massive numbers of duplicate registrations, its contributions to voter confidence and elections integrity are decidedly negative.

#### **D. Recent DOJ Activity Regarding Voter List Maintenance**

Despite the poor track record of aggressive list-maintenance programs, there are indications that the Department of Justice is seeking to encourage more voter purges. On June 28, DOJ sent letters to state election officials in all 44 states covered by the NVRA, asking for information concerning their voter list maintenance practices.<sup>71</sup> Vanita Gupta, former head of the Civil Rights Division at DOJ, described this dragnet for information as “virtually unprecedented.”<sup>72</sup> David Becker, a former senior litigator with the Voting Section in the Civil Rights Division, and now Executive Director the Center for Election Innovation & Research, stated,

In the quarter-century since passage of the NVRA, of which I spent seven years as a DOJ lawyer enforcing the NVRA, among other laws, I do not know of the DOJ conducting any other broad-based fishing expedition into list maintenance compliance, whether during Democratic or Republican administrations.<sup>73</sup>

This highly unusual request from DOJ is troubling in two respects.

First, part of what is so unusual about this blanket request is that it seeks information about only one part of the NVRA—the list-maintenance provisions—without any regard to the

<sup>70</sup> See Berman, *supra* note 65; Rich Miller, *Accidental (and apparently harmless) password leak could prompt move away from Crosscheck program*, Capitol Fax.com, Oct. 19, 2017, <https://capitolfax.com/2017/10/19/accidental-and-apparently-harmless-password-leak-could-prompt-move-away-from-crosscheck-program/>.

<sup>71</sup> See, e.g., Letter from T. Christian Herren, Jr., Chief, Voting Section, U.S. Dep’t of Justice, Civil Rights Div. to Kim Westbrook Strach, June 28, 2017, available at <https://www.documentcloud.org/documents/3881855-Correspondence-DOJ-Letter-06282017.html>.

<sup>72</sup> Vanita Gupta, *The Voter Purges Are Coming*, N.Y. Times, July 19, 2017, [https://www.nytimes.com/2017/07/19/opinion/donald-trump-voting-rights-purge.html?smid=tw-share&\\_r=1](https://www.nytimes.com/2017/07/19/opinion/donald-trump-voting-rights-purge.html?smid=tw-share&_r=1).

<sup>73</sup> David Becker, *Why Wednesday’s ‘Election Integrity’ Actions Should Be Watched By States*, Route Fifty (June 29, 2017), <http://www.routefifty.com/management/2017/06/trump-election-integrity-commission-state-voter-data/139107/>.

NVRA's other provisions, such as those requiring states to provide voter registration services at public assistance offices.<sup>74</sup> It thus appears that the Civil Rights Division may be reorienting its focus away from its historical mission of ensuring that voters have access. As Sam Bagenstos, who served as the Principal Deputy Assistant Attorney General for Civil Rights from 2009 until 2011, stated, DOJ appears to be "laying the groundwork to file lawsuits against states that, in their view, aren't kicking enough people off of the rolls,"<sup>75</sup> potentially at the cost of abandoning the Civil Rights Division's work to ensure that voter registration opportunities are available to all Americans in accordance with federal law.

Second, the timing of the request is highly suspect, as it was sent on the same day as an infamous letter from Kris Kobach, in his capacity as Vice-Chair of the Presidential Commission of Election Integrity, demanding the voter rolls from all 50 states. This unprecedented request to amass the personal data of every registered voter in America was widely condemned, with 44 states refusing to comply in whole or in part with the request.<sup>76</sup> Mississippi Secretary of State Hosemann, famously responded by suggesting that the Commission go "jump in the Gulf of Mexico."<sup>77</sup>

As former Acting Assistant Attorney General Gupta stated, there are "serious concerns about the potential coordination between the Pence-Kobach commission and government agencies, including the Justice Department."<sup>78</sup> The possibility that DOJ could be working with the Commission is troubling on multiple levels. Recently-disclosed documents suggest that the Commission's purpose has been, even prior to its inception, a sham designed to gin up a false narrative to justify changes to the NVRA.

Some background is helpful. In 2013, in his role as Kansas Secretary of State, Kobach began enforcing a "documentary proof of citizenship requirement" for voter registration, making Kansas one of only two states nationwide to implement such a requirement. Under the law, a voter registration applicant is required to show a document like a birth certificate or a passport when registering to vote. This requirement is much more onerous than it may initially sound. It makes registration drives impossible; burdens voters (like students) without easy access to documents; and inevitably requires many voters to pay a government fee—the price of a birth

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<sup>74</sup> See 52 U.S.C. § 20506.

<sup>75</sup> Sam Levine, *This DOJ Letter May Be More Alarming Than Trump Commission's Request For Voter Data*, Huffington Post, July 5, 2017, [https://www.huffingtonpost.com/entry/departement-of-justice-voter-purge\\_us\\_595d22b1e4b0da2c7326c38b](https://www.huffingtonpost.com/entry/departement-of-justice-voter-purge_us_595d22b1e4b0da2c7326c38b).

<sup>76</sup> See Liz Stark & Grace Hauck, *Forty-four states and DC have refused to give certain voter information to Trump commission*, CNN, July 5, 2017, <http://www.cnn.com/2017/07/03/politics/kris-kobach-letter-voter-fraud-commission-information/index.html>.

<sup>77</sup> *Id.*

<sup>78</sup> Sam Levine, *New Document Shows Inner Workings Of Trump's Voter Fraud Probe*, Huffington Post, Oct. 3, 2017, [https://www.huffingtonpost.com/entry/trump-voter-fraud-probe\\_us\\_59d2a80ee4b0f962988957f5](https://www.huffingtonpost.com/entry/trump-voter-fraud-probe_us_59d2a80ee4b0f962988957f5).

certificate, which in some states can be as much as \$50<sup>79</sup>—in order to register to vote. In its first three years, Kansas’ documentation requirements blocked more than 35,000 registrations, approximately 14% of all new voter registration applications in that period; approximately 44% of these applications were from individuals under the age of 30.<sup>80</sup>

In a case in which I am lead counsel, the ACLU, representing the League of Women Voters of Kansas and individual voters whose applications had been blocked, sued to block the law under the NVRA. In a decision last year, the U.S. Court of Appeals for the Tenth Circuit preliminarily blocked the requirement for motor-voter applicants.<sup>81</sup> In a unanimous decision, the Court found that the Kansas law caused a “mass denial of a fundamental constitutional right.”<sup>82</sup> The NVRA had thus provided a critical bulwark against voter suppression in Kansas.

Recently-released documents in the litigation, however, indicate that Secretary Kobach proceeded to draft amendments to the NVRA that would grant him authority to demand citizenship documents from voter registration applicants.<sup>83</sup> And the day after the election, Secretary Kobach sent an email to the Trump transition team stating that he had already “started [drafting] amendments to the NVRA” regarding “proof of citizenship.”<sup>84</sup> Two weeks later, Secretary Kobach then met with president-elect Trump during the transition, bringing with him an infamous memo that referenced amending the NVRA “to promote proof of citizenship requirements.”<sup>85</sup> After that meeting, president-elect Trump tweeted that illegal votes had supposedly cost him the popular vote,<sup>86</sup> and went on to name Secretary Kobach the vice-chair of his Election Integrity Commission.

These plans have not been shared transparently with the public. Secretary Kobach was ultimately fined \$1,000 by a federal court for improperly attempting to conceal documents concerning these plans, with the court finding that he had engaged in “deceptive conduct” and made “patently misleading representations to the court.”<sup>87</sup> Now that these documents have been

<sup>79</sup> See *Why Order from Vital Check?*, VitalChek.com, <https://www.vitalchek.com/> (last visited Oct. 23, 2017).

<sup>80</sup> See Expert Rep. of Michael McDonald at 2-3, *Fish v. Kobach*, No. 2:16-cv-02105-JAR-JPO (D. Kan. Feb. 26, 2016), ECF No. 20-1.

<sup>81</sup> *Fish v. Kobach*, 840 F.3d 710 (10th Cir. 2016).

<sup>82</sup> *Id.* at 755.

<sup>83</sup> Bryan Lowry and Hunter Woodall, *Unsealed documents show Kobach urged Trump to change federal voting law*, Kansas City Star, Oct. 5, 2017, <http://www.kansascity.com/news/politics-government/article177327621.html>.

<sup>84</sup> Christopher Ingraham, *Vice chair of Trump’s voter fraud commission wants to change federal law to add new requirements for voting, email shows*, Wash. Post: Wonkblog, July 17, 2017, [https://www.washingtonpost.com/news/wonk/wp/2017/07/17/vice-chair-of-trumps-voter-fraud-commission-wants-to-change-federal-law-to-make-it-harder-to-vote-email-shows/?utm\\_term=.55071bb5c2f8](https://www.washingtonpost.com/news/wonk/wp/2017/07/17/vice-chair-of-trumps-voter-fraud-commission-wants-to-change-federal-law-to-make-it-harder-to-vote-email-shows/?utm_term=.55071bb5c2f8).

<sup>85</sup> Lowry and Woodall, *supra* note 83.

<sup>86</sup> Donald Trump, Twitter, Nov. 27, 2016, <https://twitter.com/realdonaldtrump/status/802972944532209664?lang=en>.

<sup>87</sup> See Ord. at 4, 7, *Fish v. Kobach*, Case 2:16-cv-02105-JAR-JPO, (D. Kan. June 23, 2017), ECF 355.

made public, it is reasonable to conclude that—notwithstanding repeated public pronouncements that the Commission has no preordained results—its true purpose has been, from the beginning, not to enhance elections “integrity,” but rather to eviscerate the NVRA and permit states to impose documentation requirements for voter registration that have been absolutely devastating in Kansas.

This lack of transparency, however, continues. Members of the Commission and/or Commission staff appear to have made plans and coordinated with other government agencies in possible violation of federal transparency requirements. The next meeting of the Commission has apparently been scheduled for December, but several Commissioners were not even aware of that fact until speaking with a journalist last weekend;<sup>88</sup> two have even “sent letters to commission staff complaining about a lack of information about the panel’s agenda and demanding answers about its activities.”<sup>89</sup>

In sum, the possibility that DOJ’s list maintenance activities may be carried out in coordination with a Commission whose activities to date have been highly suspect is cause for concern.

#### **E. Comparisons of Population Figures and Numbers of Registered Voters**

Advocates of more aggressive purges sometimes point to statistics that purport to show that the number of registered voters in a particular county exceeds the population of voting-eligible adults. These allegations vary in terms of the specifics, but two broad points are warranted here.

First, such statistics should be viewed with extreme caution, as there are reasons to believe that they rely on inaccurate data—with respect to both the number of registered voters and the size of the relevant population in a county. For example, PolitiFact recently examined a claim by the Public Interest Legal Foundation (PILF) that Bryan County, Georgia, supposedly had “corrupted voter rolls because it had more voters registered than the eligible population in the county,” and rated this assertion as “False,” noting that PILF’s count of registered voters in the county included “inactive” voters—that is, registrants who are in process of being removed from the rolls, but whose removal has not yet been completed in accordance with the NVRA’s requirement that, after sending a notice to voters that their registrations will be canceled, states must wait two general federal election cycles before completing that removal process.<sup>90</sup> In other words, the registration numbers used by organizations like PILF are inflated because they

<sup>88</sup> See Jessica Huseman, Twitter, Oct. 21, 2017, <https://twitter.com/JessicaHuseman/status/921754606014746624>.

<sup>89</sup> Associated Press, *Trump’s secretive voter fraud panel is keeping own members in the dark*, The Guardian, Oct. 22, 2017, [https://www.theguardian.com/us-news/2017/oct/22/trumps-secretive-voter-panel-is-keeping-own-members-in-the-dark?CMP=share\\_btn\\_tw](https://www.theguardian.com/us-news/2017/oct/22/trumps-secretive-voter-panel-is-keeping-own-members-in-the-dark?CMP=share_btn_tw).

<sup>90</sup> Jon Greenberg, *Anti-vote fraud group levels false charge of corrupted voter rolls*, PolitiFact, Oct. 4, 2017, <http://www.politifact.com/georgia/statements/2017/oct/04/public-interest-legal-foundation/anti-vote-fraud-group-levels-false-charge-corrupte/>.

include voters *whose registrations have already been targeted for removal*, and which are in the process of being removed in accordance with federal legal requirements.

The population figures used in such calculations should also be taken with a grain of salt. They sometimes rely on Census Bureau estimates of the population rather than an actual enumeration, meaning that they are *estimates* with a margin of error, rather than a hard count<sup>91</sup>; and such estimates can often be unreliable for small counties. Moreover, the Census Bureau also generally counts people as residents of a place based on the fact that they are physically located there most of the time—but as any college student, member of the military, or Congressperson can tell you, the place that you sleep is not necessarily the same place that you call home and where you are properly registered to vote.<sup>92</sup> For these reasons and others, assertions that a particular county has more voters than eligible citizens should be viewed with caution.

Second, even taking these statistics at face value, they are not necessarily indicators of fraud or wrongful activity. Voter registration is administered at the state and local levels, and we live in a highly mobile society. The fact that a person is registered to vote in more than one state is almost always a reflection of those two simple facts rather than any sort of malfeasance. Indeed, several members of President Trump's cabinet, inner circle, and family—including Treasury Secretary Steven Mnuchin, former adviser Steve Bannon; former press secretary Sean Spicer; his son-in-law Jared Kushner; and his daughter Tiffany Trump—were all registered to vote in more than one state last year.<sup>93</sup> Ultimately, the mere existence of some deadwood on the rolls is not by itself evidence of fraud.

The bottom line is that there is no evidence of substantial fraud arising from inflated voter rolls. Speaker Ryan has stated that he's seen "no evidence" of rampant voter fraud during the 2016 election.<sup>94</sup> U.S. Election Assistance Commissioner, Republican Matthew Masterson has stated that the 2016 election "had integrity. It was extremely well administered.... The process was secure."<sup>95</sup> And, during recount litigation in Michigan, even the President's own

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<sup>91</sup> See Justin Levitt, *Comparing registered voters and CVAP*, Election Law Blog, Oct. 5, 2017, <http://electionlawblog.org/?p=95240>.

<sup>92</sup> See *id.*

<sup>93</sup> Erin, McCann, *Who Is Registered to Vote in Two States? Some in Trump's Inner Circle*, N.Y. Times, Jan., 27, 2017, <https://www.nytimes.com/2017/01/27/us/politics/trump-cabinet-family-voter-registration.html>.

<sup>94</sup> Scott Wong, "Ryan: 'No evidence' of mass voter fraud as Trump claimed," The Hill, Jan. 24, 2017, <http://thehill.com/homenews/house/315844-ryan-no-evidence-of-mass-voter-fraud-as-trump-claimed>.

<sup>95</sup> Dave Levinthal, *President Trump Says Voter Fraud Is a Huge Problem. A Top Republican Election Official Disagrees*, TIME, April 13, 2017, [http://time.com/4736959/voter-fraud-trump-matthew-masterson/?xid=time\\_socialflow\\_twitter](http://time.com/4736959/voter-fraud-trump-matthew-masterson/?xid=time_socialflow_twitter).

legal team told a court that “all available evidence suggests that the 2016 general election was not tainted by fraud or mistake.”<sup>96</sup>

Given the absence of any evidence of a widespread problem of elections fraud—resulting from supposedly inflated rolls or otherwise—it is reasonable to ask whether the focus on culling the voter rolls is misplaced, particularly given our demonstrated experience of overzealous voter removal programs. The greatest threat to voter list accuracy—and thus, to elections integrity—is not the phantom specter of fraudsters voting en masse in the names of illegitimate registrants, but rather the very real pattern of wrongfully purging legitimately-registered eligible voters from the rolls.

## II. The Security of Electronic State Voting Rolls

Although cybersecurity is not my area of expertise, I would be remiss if I did not note that there is potentially one additional threat to voter list integrity that bears mentioning: hacking. While there is no evidence indicating that vote totals from the 2016 election were unlawfully altered in any way, there is a general consensus that foreign actors, including those associated with Russia, made attempts to compromise state voter registration systems during the 2016 election.<sup>97</sup> Reporting from multiple news outlets places the number of states that were targeted between 21 and 39, based on those with direct knowledge of the U.S. investigation into the matter and reports from the Department of Homeland Security (DHS).<sup>98</sup> According to former top Obama Administration officials, the “number of actual successful intrusions, where Russian agents gained sufficient access to attempt to alter, delete or download and information, was ‘less than a dozen.’”<sup>99</sup>

<sup>96</sup> Philip Bump, *Reminder: In an anti-recount filing, Trump’s lawyers said the election was “not tainted by fraud or mistake”*, Wash. Post, Jan. 25 2017, [https://www.washingtonpost.com/news/the-fix/wp/2016/12/05/in-an-anti-recount-filing-trumps-lawyers-say-the-election-was-not-tainted-by-fraud-or-mistake/?utm\\_term=.b7f98e66afe2](https://www.washingtonpost.com/news/the-fix/wp/2016/12/05/in-an-anti-recount-filing-trumps-lawyers-say-the-election-was-not-tainted-by-fraud-or-mistake/?utm_term=.b7f98e66afe2).

<sup>97</sup> Michael Riley, *Russian Cyber Hacks on U.S. Electoral System Far Wider Than Previously Known*, Bloomberg Politics, June 13, 2017, <https://www.bloomberg.com/news/articles/2017-06-13/russian-breach-of-39-states-threatens-future-u-s-elections>; Massimo Calabresi, *Election Hackers Altered Voter Rolls, Stole Private Data, Officials Say*, TIME, June 22, 2017, <http://time.com/4828306/russian-hacking-election-widespread-private-data/>; Sari Horwitz, Ellen Nakashima, and Matea Gold, *DHS tells states about Russian hacking during 2016 election*, Wash. Post, Sept. 22, 2017, [https://www.washingtonpost.com/world/national-security/dhs-tells-states-about-russian-hacking-during-2016-election/2017/09/22/fd263a2c-9fe2-11e7-8ea1-ed975285475e\\_story.html?utm\\_term=.63c137753b12](https://www.washingtonpost.com/world/national-security/dhs-tells-states-about-russian-hacking-during-2016-election/2017/09/22/fd263a2c-9fe2-11e7-8ea1-ed975285475e_story.html?utm_term=.63c137753b12).

<sup>98</sup> According to DHS the targeted states include: Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Illinois, Iowa, Maryland, Minnesota, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, Washington, and Wisconsin. Sam Levine, *States Accuse DHS of Giving Them Bad Information About Russian Hacking*, Huffington Post, Sept. 28, 2017, [https://www.huffingtonpost.com/entry/dhs-russia-hacking\\_us\\_59cd0da3e4b0e005cc57235d](https://www.huffingtonpost.com/entry/dhs-russia-hacking_us_59cd0da3e4b0e005cc57235d).

<sup>99</sup> Calabresi, *supra* note 97.

Six states and territories have publicly reported being the victims of confirmed or suspected foreign cyber-attacks. This includes Arizona<sup>100</sup>, Florida<sup>101</sup>, Illinois, Mississippi, and Washington<sup>102</sup>. In Mississippi, Secretary of State Hosemann stated that the state had over 5,000 hacking attempts in August 2016 and 4,000 attempts in September 2016.<sup>103</sup> Illinois also reported that 90,000 records containing drivers license numbers, 25% of which contained the last four digits of a voter's Social Security number, were stolen by Russian-affiliated actors.<sup>104</sup> Two additional jurisdictions, Riverside County, California<sup>105</sup> and South Carolina<sup>106</sup>, reported that they were victims of confirmed or suspected cyberattacks, but it is unknown the origin of the attack, whether foreign or domestic. It remains unclear from reporting what, if any, information was obtained.

In response to hacking attempts, states across the country have taken steps to upgrade and secure voting system databases and machines, and to address other potential vulnerabilities. Delaware, for example, is moving its voter registration list off the state's mainframe computer and replacing old electronic voting systems that do not leave a paper record. Other states, including Colorado and Rhode Island will verify election results through an advanced statistical analysis called a "risk-limiting audit." West Virginia is adding a cybersecurity expert to its

<sup>100</sup> Jeff Pegues, *After hack, Arizona working to keep its elections database secure*, CBS News, Oct. 13, 2016, <https://www.cbsnews.com/news/after-hack-arizona-working-to-keep-its-elections-database-secure/>; Ellen Nakashima, *Russian hackers targeted Arizona election system*, Wash. Post, Aug. 29, 2016, [https://www.washingtonpost.com/world/national-security/fbi-is-investigating-foreign-hacks-of-state-election-systems/2016/08/29/6e758ff4-6e00-11e6-8365-b19e428a975e\\_story.html?utm\\_term=.1b743c7a90fc](https://www.washingtonpost.com/world/national-security/fbi-is-investigating-foreign-hacks-of-state-election-systems/2016/08/29/6e758ff4-6e00-11e6-8365-b19e428a975e_story.html?utm_term=.1b743c7a90fc).

<sup>101</sup> Kristen M. Clarke, Michael Auslen, & Steve Bousquet, *FBI warns election officials that hackers tried to break into Florida voting system*, Tampa Bay Times, Sept. 30, 2016, <http://www.tampabay.com/news/politics/stateroundup/fbi-warns-election-officials-that-hackers-tried-to-break-into-florida/2296035>; Rebecca Ballhaus, Erica Orden, & Valeria Bauerlein, *State Officials to Testify on Possible Russian Involvement in 2016 Election*, WSJ, June 18, 2017, <https://www.wsj.com/articles/state-officials-to-testify-on-possible-russian-involvement-in-2016-election-1497787201>.

<sup>102</sup> Matt Markovich, *State protecting voter registration database from hackers*, KOMONews, Sept. 29, 2016, <http://komonews.com/news/local/state-safeguarding-voter-registration-databases-before-november-election>; Abraham Epton and John Ryan, *Hackers target Washington election systems*, KUOW, Sep. 30, 2016, <http://kuow.org/post/hackers-target-washington-election-systems>.

<sup>103</sup> Patsy R. Brumfield, *Anti-hacking security boosted on state voting systems*, Mississippi Today, Oct. 3, 2016, <https://mississippitoday.org/2016/10/03/anti-hacking-security-boosted-on-mississippi-voting-systems/>.

<sup>104</sup> Calabresi, *supra* note 97.

<sup>105</sup> Jacob Preal, *DA confirms hackers are culprit of voter registration changes*, Valley News, June 10, 2016, <http://myvalleynews.com/most-relevant/voting-irregularities-disenfranchises-many-riverside-county/>; John Sepulvado, *DA: Hackers Penetrated Voter Registrations in 2016 Through State's Election Site*, KQED, July 21, 2017, <https://www.kqed.org/news/2017/07/21/hackers-penetrated-voter-registrations-in-2016-through-states-election-site/>.

<sup>106</sup> Nathaniel Cary, *How safe is your vote?*, Greenville Online, Oct. 22, 2016, <http://www.greenvilleonline.com/story/news/politics/elections/2016/10/22/how-safe-your-vote/92554584>; Alexa Corse, *South Carolina May Prove a Microcosm of U.S. Election Hacking Efforts*, WSJ, July 16, 2017, <https://www.wsj.com/articles/south-carolina-may-prove-a-microcosm-of-u-s-election-hacking-efforts-1500202806>.



elections office.<sup>107</sup> And, at the federal level, the U.S. Election Assistance Commission has issued voluntary voting system guidelines for securing voting systems, including voter registration lists.<sup>108</sup>

Additional changes can be made at both the federal and state level to put in place safeguards to further secure voter registration lists and protect against efforts to compromise voter registration systems. At the federal level, providing grant funding to states and localities to improve election infrastructure in order to prevent against cybersecurity vulnerabilities is one proposed solution.<sup>109</sup> Any grant funding programs must come with adequate safeguards to protect against privacy concerns arising from information sharing programs.

At the state and local level, the Brennan Center for Justice has developed a list of recommendations that have been endorsed by cybersecurity and election experts.<sup>110</sup> These recommendations include:

- Implementing regular state audits and threat assessments of voter registration systems; and upgrading and replacing antiquated IT infrastructure, including database software and operating systems.<sup>111</sup>
- Adopting general security best practices, including limiting employee access to registration systems, running frequent scans of databases to monitor and identify abnormal or potentially fraudulent activity, and conducting regular random audits of the registration lists themselves.<sup>112</sup>
- Developing contingency plans for a successful hack, which could allow for the quick recovery of data so that, in the event of a cyberattack, voters are still able to register and cast a ballot.<sup>113</sup> Contingency plans for Election Day could include having backups of voter registration lists on hand in paper form; and where

<sup>107</sup> Michael Wines, *Wary of Hackers, States Move to Upgrade Voting Systems*, N.Y. Times, Oct. 14, 2017, <https://www.nytimes.com/2017/10/14/us/voting-russians-hacking-states-.html>.

<sup>108</sup> *Voluntary Voting System Guidelines*, U.S. Election Assistance Comm'n, <https://www.eac.gov/voting-equipment/voluntary-voting-system-guidelines/> (last visited Oct. 22, 2017).

<sup>109</sup> Lawrence Norden and Ian Vandewalker, Brennan Center for Justice, *Securing Elections from Foreign Interference* (2017), [https://www.brennancenter.org/sites/default/files/publications/Securing\\_Elections\\_From\\_Foreign\\_Interference\\_1.pdf](https://www.brennancenter.org/sites/default/files/publications/Securing_Elections_From_Foreign_Interference_1.pdf).

<sup>110</sup> *Id.* at 14-21.

<sup>111</sup> *Id.* at 17.

<sup>112</sup> *Id.* at 20.

<sup>113</sup> *Id.*

electronic poll books are used, having paper poll book backups readily available.<sup>114</sup>

Encouraging the development and implementation of best practices along these lines will go a long way in ensuring that voter registration lists remain secure and not result in the denial of the right to vote as a result of a compromised voter registration list.

### **Conclusion**

We face threats to the integrity of our voter rolls from overly aggressive purges that wrongfully remove legitimate voters from the rolls, and possibly from inadequate cyber-security systems that leave our voter registration systems vulnerable to hacking.

Ultimately, however, the greatest threat to our democracy arises from the failure to respect the voice of the electorate. All too often, this disrespect stems from a refusal to accept the basic legitimacy of political opponents, on the assumption that their electoral support comes not from actual voters, but rather must be the result of fraud or corruption. It is that sort of fundamental unwillingness to accept the judgment of the democratic process that underpins comments like the President's false assertion that three to five million illegal votes cost him the popular vote—when there is not a shred of evidence indicating anything other than what we all know: that he lost the popular vote by almost three million ballots. There is perhaps nothing more damaging to the spirit of civic engagement than specious allegations of fraud, which convey the message to voters that their votes don't matter because the system is irrevocably corrupt. Such assertions do a disservice to men and women like my grandfather, who risked their lives to defend our democracy.

When we disagree, we are supposed to try to convince the electorate through debate and persuasion. That's how democracy is supposed to work. If instead we give up on that and try to shift the rules of the game to ensure our preferred results, we will have lost faith in our democratic system. When falsehoods are used to justify unnecessary restrictions on the franchise or overzealous purges that kick legitimate voters off of the rolls, the damage to our democracy is irreparable. Because even if such measures do not affect the outcome of an election, disenfranchising a single citizen translates to denying one of our fellow Americans of the most fundamental right that we have in our democracy.

We have one of the lowest turnout rates in the western world.<sup>115</sup> Our democracy is more representative, responsive, and accountable, when more rather than fewer Americans participate. We should be working together to do everything we can to build a strong, vibrant, and inclusive democracy.

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<sup>114</sup> *Id.* at 21.

<sup>115</sup> Drew DeSilver, *U.S. trails most developed countries in voter turnout*, Pew Research Center, May 15, 2017, <http://www.pewresearch.org/fact-tank/2017/05/15/u-s-voter-turnout-trails-most-developed-countries/>.

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

The CHAIRMAN. I want to thank each of you for your testimony and for starting this hearing on what we know is a very essential and important subject. And I want to again thank you both for taking the time to be here.

We now have the opportunity for our Committee Members to ask each of you questions. Each member is allotted 5 minutes to question the witnesses. To help us keep track of our time, we have got the same lights in front of us—that you can't see—to keep us on track.

And I will now recognize myself for 5 minutes for the purposes of asking those questions. If I could, Mr. Ho, just to kind of follow up on the Mississippi example that you gave from Madison County, Mississippi, most of which is in my district, some in Congressman Thompson's district, and it is my understanding of course that approximately 10,000 voters were purged from the rolls about 2 weeks before the election. But to clear that up, I want to commend our secretary of state, Delbert Hosemann, whose staff worked well and very hard to make sure that was corrected. And it was corrected in time for the election. So there was no impact because it was detected. Is that correct?

Mr. HO. That is my understanding as well, that Secretary Hosemann understood that this was an illegal purge because it was being conducted—

The CHAIRMAN. Within 90 days.

Mr. HO. Exactly. And that his staff worked overtime to make sure that those voters were restored to the rolls. So it is a testament to the hard work of his office that no voters were disenfranchised as a result of that illegal purge.

The CHAIRMAN. That is something we certainly commend his staff. And they continue to do a great job of making sure we do those things. Secretary Lawson, in your experience, what impact would you say that inaccurate voter registration lists might have on the lines at polling locations? That seems to be the big story a lot of times on why people walk away, is maybe the lines are too lengthy.

Ms. LAWSON. Well, I think it can make a difference. Obviously, we want to make sure that the voters that show up to vote are able to vote. But I think what it does more than increase the time to vote, it increases the process time. So it is the time that the poll workers have to process someone when we have an inaccurate list to help that person with an individual request. That is where the lines get longer.

The CHAIRMAN. When you are discussing coming up with how to make sure the list—and look, I understand a voter list is never going to be 100 percent accurate. We get that. There is always going to be things that happen and take place. But what impact would accurate voter registration lists have on the costs of your administering elections?

Ms. LAWSON. Well, you know, counties have to send to each voting location the correct number of machines, supplies, ballots, have the right amount of poll workers. And all of that costs money. So, if the lists are inflated, it can make a difference. But I think because of the light of all of the things we have heard about election security and integrity, what it probably does as well is that it takes

away money that could be spent by local election jurisdictions on security and integrity of our elections.

The CHAIRMAN. I know that when we are looking at the law—and title 52, section 21083(a)(3), says the appropriate State or local office shall provide adequate technological security measures to prevent the unauthorized access to the computerized lists established under this section. So we are not only discussing getting to an accurate list but also the protection of that and cybersecurity threats. Are you satisfied that those measures are being taken and followed in your State?

Ms. LAWSON. Regarding cybersecurity?

The CHAIRMAN. Yes.

Ms. LAWSON. I think, across the country, secretaries are spending hours every day on cybersecurity. And there are a number of activities going on. My legislature has been supportive, luckily, in Indiana for us to take a number of steps to improve our election security.

The CHAIRMAN. And I am sure that that is a major topic when you have your meetings for the National Association of Secretaries of State.

Ms. LAWSON. That is correct. The national association has a number of meetings. We have developed our own cybersecurity task force. We are a member of the Government Coordinating Council for DHS to make sure that we do everything we can to increase the security of our elections.

The CHAIRMAN. Explain to us what is Indiana's voter list maintenance policy and who is responsible for it.

Ms. LAWSON. Well, in Indiana, it is a bipartisan effort. We have our Indiana Election Division, where we have a bipartisan attorney and director. It is also—it is the counties that make the decision whether or not a voter's records should be removed. And that is a bipartisan county election board as well. And then the actual Indiana General Assembly appropriates the money, and those are bipartisan votes as well, so that we can afford, the State can do that mailing on behalf of the counties.

The CHAIRMAN. Those bipartisan election boards or election commissioners, whatever they may be in various States, that is probably the most thankless job that is out there. And so, for the record, I want to thank all the hardworking people that do make sure that they do their best effort on that. That is a lot of work. So thank you each for your answers.

The Chair will now recognize Mr. Brady for 5 minutes.

Mr. BRADY. Thank you, Mr. Chairman.

As I said earlier, I have introduced the automatic voter registration bill for the last few Congresses. The Brennan Center estimated my proposal could add 50 million voters to the rolls. Could both of you comment on this idea generally?

Ladies first.

Ms. LAWSON. Indiana does not have automatic voter registration, but we have done a number of things over the years to increase access. For an example, our [Indianavoters.com](http://Indianavoters.com), we have an outward facing online voter registration. Voters do get asked at the BMV, at our Bureau of Motor Vehicles we call it, if they want to register to vote. We just passed some laws that increased that participation

with our BMV. And I am not—I apologize, Mr. Brady. I have not been aware of your bill.

Mr. BRADY. That is okay. A lot of people haven't been.

Mr. Ho.

Mr. HO. If I may. And thank you, Ranking Member Brady, for introducing that legislation. We are generally supportive of the idea of automatic registration. We think this is a way to accomplish both the goals of making sure that the registration lists are accurate and as up-to-date as possible while at the same time increasing access and facilitating participation for more Americans. Ten States have adopted some form of automatic registration. This includes States that are sometimes called red, sometimes called blue, States like Alaska, West Virginia, and, as I mentioned in my opening remarks, most recently, Illinois, signed into law by a Republican Governor. So we think it is a good idea. We think it is very important that those systems have adequate safeguards to ensure that people who are ineligible to vote don't become automatically registered. That doesn't do good for either elections or for those people themselves. But as long as those safeguards are built in, we think these systems are generally a good idea.

Mr. BRADY. How would such a proposal fit into proper list maintenance so that tragedies like what happened in Ohio will not happen again?

Mr. HO. Well, if you had a situation like that, then programs like Ohio's, the one that you referenced in your remarks, and which we at the ACLU have been litigating, that case is set to go to the Supreme Court 2 weeks from today, programs like Ohio's would be unnecessary. I mean, Ohio is a really extreme outlier. They treat a person, if you do not vote in a 2-year period, they treat that as evidence that you may have moved and, not just moved, but moved out of the country—I am sorry, out of the county or out of the State and become ineligible on that basis. Now, in our midterm elections, typically more than half of registered voters don't participate. So that is an awfully heroic assumption on the part of the State of Ohio. And, fortunately, the U.S. Court of Appeals for the Sixth Circuit agreed with us last year, and 7,500 people were able to vote as a result of the ruling we got.

But if you had an automatic system that updated people's registration statuses when they interacted with the State, then maybe overzealous programs like Ohio's would no longer be necessary.

Mr. BRADY. Thank you.

Madam Secretary, all my bill does is expand motor voter. Social Security offices, food stamp offices, city and State agencies. That gives the people an opportunity to let them know that they can—check a box and they can get a registration and vote automatically right there. It just allows more people to participate in our democratic system. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Brady yields back.

The Chair now recognizes Mr. Davis, the vice chairman of the Committee.

Mr. DAVIS. Thank you, Chairman.

Madam Secretary, first, just a quick question. We hear a lot in elections about voter turnout. Do accurate voter registration lists help you as a Secretary of State depict better turnout models?

Ms. LAWSON. Well, as I mentioned in my opening remarks, I believe it does. Indiana did voter list maintenance starting in 2014, but we weren't able to complete it until after the 2016 general election cycle. The maintenance that we did this year would have actually given us a 65-percent turnout rather than a 58-percent turnout. And I think that encourages the voters to be a part of the group of people who are active voters and do turn out to vote.

Mr. DAVIS. Thank you very much.

You know, as Mr. Ho mentioned, my home State of Illinois just implemented automatic voter registration. We have had motor voter. Now I want to ask you about sharing that information between States. A resident of Illinois moves to Indiana. Do your two States or do all States, effectively, share this information with the DMV to ensure that those individuals aren't registered in both States?

Ms. LAWSON. It is my understanding that it is really and truly the information that the voter gives. So I believe that every State will ask, what is your previous address? And if the voter states that correctly, then that State is notified. But if the voter doesn't give the information, the States don't get it. They can't share it.

Mr. DAVIS. Mr. Ho, how many counties do you think nationwide maybe have more than 100 percent registered on their voter rolls?

Mr. HO. I don't have the specific number in front of me, Representative Davis. But I think what I should note is that sometimes assertions about there being more registered voters than total population or adult population in a particular county are exaggerations. PolitiFact, for instance, looked at an assertion by the Public Interest Legal Foundation that Bryan County, Georgia—

Mr. DAVIS. Actually, if I could, I want to stick to the numbers. Do you have any estimate of how many counties you think would reach that, regardless of whether or not having more than a hundred percent—we can have that debate later, but I don't have enough time. I mean, I have got a report or a letter here from the American Civil Rights Union that says 200 counties, over 200 counties nationwide. That doesn't sound like much when you look at our country, right? But I have got from the Illinois State Board of Elections that 24 of 102 counties in my home State have more than 100 percent registered in their county, more so than their population that is eligible to vote. So, with that being said, and especially now that we have automatic voter registration, I mean what would you recommend our States do, our State Board of Elections in Illinois, Secretary of State in Indiana, and others, to make sure that no one is eligible to vote in two jurisdictions and therefore can't do some of the things that we have seen voters unfortunately do in the past? A prime example of misusing voting privileges would have been one of the previous secretaries of state in the State of Indiana. So, obviously, I think we need to be better prepared. So what do you recommend we do?

Mr. HO. I guess I would say three things to that, Representative Davis. The first is just to take a step back and look at what those numbers actually signify. So, when you say that there are more

voters in a jurisdiction than people, a lot of times those counts include people who are designated as inactive registrants, which means they are in the process of being removed from the rolls. So PolitiFact, for instance, rated a claim that Bryan County, Georgia, had more registered voters than adults as false, and gave it that inaccurate rating.

But the second thing I would say is, in principle, there is nothing wrong with the idea of sharing information across State lines. You just have to make sure that the underlying data is accurate and that your matching protocols don't generate false positives. And, unfortunately, the Crosscheck system, which we hear referenced frequently, suffers from flaws in both of those regards.

Mr. DAVIS. Do you think this hundred percent, more than 100 percent voter registration in certain counties, regardless of the justification—is it Bryan County, Georgia? Is that what you said?

Mr. HO. Yes.

Mr. DAVIS. Is that your district, Barry?

Mr. LOUDERMILK. No, it is not.

Mr. DAVIS. Regardless of that, I mean, don't you think the negative stories impact voter confidence? Wouldn't it be better to be able to say, "Hey, we have got 65 percent turnout, this is record turnout in the State of Indiana," because in the end, don't we all want everyone who is eligible to vote to vote?

Mr. HO. Of course we want as much turnout as possible. Our democracy is better off when more Americans——

Mr. DAVIS. Absolutely. Absolutely. I guess what I don't get is, how can we work together to make sure that we put better systems in place, especially with the institution of automatic voter registration in my home State, what can we do to work together just to make it better so that we know everybody who is eligible to vote can and those who are not can't do it more than once?

Mr. HO. Well, I would agree with you that we need to make our voter registration systems more accurate and more modern. And I think the automatic system that you have just adopted in Illinois, I mean, it has just been signed into law, so it hasn't had the opportunity to go to work yet. I think that is a very good first step towards making progress in that area.

Mr. DAVIS. I look forward to working with you and the ACLU in making sure that we implement standards while this new process is being put in place to ensure that they are the most accurate voter rolls. So thank you very much. I yield back.

The CHAIRMAN. The gentleman yields back.

The Chair will now recognize Mr. Raskin for 5 minutes for the purposes of asking questions.

Mr. RASKIN. Mr. Chairman, thank you so much.

And thank you both for your fine testimony.

Mr. Ho, you testified that there was this study done by researchers at Stanford and UPenn and some other universities and Microsoft, which found that the Crosscheck Program, which is being used by a lot of States, would eliminate about 200 voter registrations used to cast legitimate votes for every one registration used to cast a double vote. Can you explain why that is the case? And then I have got a followup on that.



Mr. HO. Sure. I am not an expert myself in computer database matching efforts, but my understanding is that the Crosscheck system, the criteria that are employed for matching people are very loose. So, for instance, Crosscheck treats people as a match when their first name, last name, and date of birth are matches. But even when there is other information in the States' records, say a middle name, a Social Security number that does not match and that indicates that we are in fact not talking about the same person.

Mr. RASKIN. Okay. And that mirrors what I was talking about happened in Florida, and I remember it being scandalized by the wide net that was cast to purge legitimate voters from the rolls. Do you want to say anything about the potential for the disproportionate effect of that on minority communities? Because I saw some Census data which shows that minorities are overrepresented in 85 of the 100 most common last names where we are most likely to have confusion. So, if your name is Washington, there is an 89-percent chance that you are African American. If your last name is Hernandez, there is a 94-percent chance you are a Hispanic. If your last name is Kim, there is a 95-percent chance you are Asian. So what is the effect in those communities if you cast a wide net and it is enough to have a birthday and a first and last name match as opposed to adding in Social Security information, addresses, and so on?

Mr. HO. What you referenced is my understanding as well, that when you have loose matching criteria amongst State voter lists to try to identify potential double registrants, you end up with false positives that disproportionately affect communities of color.

Mr. RASKIN. Got you. Okay.

And so, Madam Secretary, let me ask you: Back to the initial kind of philosophical puzzle I started with, how many legitimate voters is it worth disenfranchising to catch one actual double registration in two different States?

Ms. LAWSON. I don't think we want to take anyone off the rolls that shouldn't be off the rolls that doesn't have an inaccurate record.

I will tell you, as regards to the Crosscheck program that Indiana participates, we developed a software program where we have a confidence level. So, if the first name and the last name matches, that is 30, 15 points, 15 points. If the middle name is exactly the same, that is another number of points. And until it reaches 75 percent or 75 points of confidence, our bipartisan county election boards don't even get the information. And, ultimately, they are the ones that are—

Mr. RASKIN. Can you give me the other point scorings that you have there? So how much is it for first name and last name and middle name?

Ms. LAWSON. There are a number. We use first name. We use last name. We use middle name, obviously. A suffix. Whether it is an initial for the middle name only. I can't remember exactly how many points, but I can certainly provide it to you after this testimony.

Mr. RASKIN. Okay.

Ms. LAWSON. I think I have that information. But it is driver's license number. It is Social Security number.

Mr. RASKIN. Let me just see if I can understand it. This is complicated stuff. If I find on one list, say, a Connie Meredith Lawson and I find on another list a Connie Julia Lawson, one way of doing it would say, "Well, the middle names don't match; we will keep that person on the rolls." But you are saying I could continue to accumulate points that would disqualify that person?

Ms. LAWSON. No. If the middle name doesn't match, I don't believe that would reach that level.

Mr. RASKIN. Even if you had the other requisite number of points?

Ms. LAWSON. Yes, yes.

Mr. RASKIN. So, in other words, you get to that number of points and then there are certain disqualifying irreconcilable information that would then remove that from the potential of a purge?

Ms. LAWSON. I can tell you if it doesn't reach a 75-point confidence level, it doesn't even go to the county officials. They never see it. We worked with a statistician who told us that the way we were doing our work, that I would have a better chance of winning the lottery than the counties removing the wrong person the way we were doing our confidence.

Mr. RASKIN. Okay. We definitely need to get to the bottom of that because that is clearly contrary to that finding by those other researchers who said, in 99 percent of the cases, under a Crosscheck disqualification system, you are going to get false positives. But you are saying reaching the 75 points in Indiana is necessary, but it is not sufficient for removal from the rolls?

Ms. LAWSON. That is correct.

Mr. RASKIN. Okay. Could you provide us more detailed information on precisely the point scoring system you have?

Ms. LAWSON. Absolutely.

Mr. RASKIN. And is that the system that is used in all of the jurisdictions?

Ms. LAWSON. That is what we use in Indiana. I can't answer for the other States.

Mr. RASKIN. Was that something that was provided by Crosscheck or that was something that you guys came up with?

Ms. LAWSON. That is something that we developed, sir.

Mr. RASKIN. In the Secretary of State's office?

Ms. LAWSON. Yes. Well, the Election Division, our bipartisan Election Division.

Mr. RASKIN. Okay. Very good.

Mr. Chairman, I yield back. Thank you.

The CHAIRMAN. The gentleman yields back.

The Chair will now recognize the gentlelady from Virginia, Mrs. Comstock, for 5 minutes.

Mrs. COMSTOCK. Thank you. I appreciate the hearing topic. And I know, you know, a lot of times we have anecdotes and things and people make statements, you know, publicly about false voting and all, but I wanted to bring a specific case to mind because it was something that happened in my very own precinct. We had two voters who moved from my precinct in 2011, late 2011 or so, early 2012, and moved from Virginia to Maryland. And 2012 was a Presi-

dential election. Maryland was not going to be a swing State or a competitive State; Virginia was. These people came back, and they registered to vote at a friend's house on the same street. Now, as it happened, a woman on the same street also was an election officer in 2012. So, when she got the election rolls and saw that the couple, who she knew, because it had been a neighbor for years, was now registered at a new house on the street that she knew they were not living in, because she lived on the street and knew that was somebody else's house, she looked at that and said: Well, this is strange.

They moved out of say—I am making up the number—but she moved out of 100 Smith Street and came back and registered to 105 Smith Street. And the election officer happened to live on 110 Smith Street and knew they weren't living there. So, when she went to be the election officer on election day and this couple came in, she said: Hey, you don't live here. Why are you coming in to vote?

And they said: Oh, no, we are homeless. We are living at Jeff's house, and we are still looking for a house.

So they ended up being allowed to vote because you challenged them, and they didn't even have to vote in a contested vote. They got to vote because they had their election card because they had gone and fraudulently registered to vote at this other person's house, even though they had their residence in Maryland.

So Virginia has elections every year. So, before the 2013 race came about, people in the neighborhood, because there were other people who knew this had happened, got information showing that they had gone—there was a newcomer newsletter in Maryland. They were living in Annapolis. They weren't living on the street. Numerous people on the street said: They are not living here.

Some stories got written up about it. This was all brought to the attention of the election board in our county, who then wrote up this fraudulent report and sent it to the prosecutors, who declined to prosecute.

So I guess I would ask you both, now, because this got so much attention, because these letters were publicized, because these letters were written, and because they were identified by name by numerous neighbors on the street, as well as by the person whose house they were living in who was a local Democrat activist, they did not show up to vote in 2013, which, given I was on the ballot, I was very appreciative of that. But what laws on the books or not on the books could—how do we get that type of case to not—I guess maybe I will direct it to Mr. Ho. What would you say we should do in that case? Because I think it was a pretty clear case of fraud. They weren't living on that street or in that neighborhood anymore, yet they were allowed to vote in 2012. And I was in the House of Delegates at that time. That district came out exactly tied between Obama and Romney. So, then, in 2013, it wasn't exactly tied; I had—you know, but it was a close election. So we are talking about a lot of close elections here, which is why they obviously wanted to vote here. What do you think we should do in those types of cases? And when you had a prosecutor who just wouldn't prosecute, what could we do to correct that?

Mr. HO. Thank you for the question, Representative Comstock. So I am not an expert in law enforcement. I am not familiar with the details of that case and why the prosecutor in that case declined to bring charges. It may very well be the case that whatever evidence was adduced was insufficient to meet the standards for probable cause for an indictment. I guess I would say this, is that no one is denying that there aren't cases from time to time that merit investigation and prosecution, as Representative Walker, who is not with us right now, has said.

But what we don't have is a substantial pattern of evidence of widespread fraud. We do have evidence that overenthusiastic purges have removed legitimate voters from the rolls. And I guess what I would say is that, when we are trying to balance these concerns, let's go where the evidence leads us. Let's make decisions based on that evidence and do a cost-benefit analysis here. And if we have evidence that these purges are overzealous, maybe we shouldn't be talking about doing more purging. Maybe we should be talking about doing less and more accurate purging.

Mrs. COMSTOCK. Or maybe more prosecution in terms of looking at that. Would that help in terms so that you are not purging as much as you are saying—you know, having more information available. Because we didn't have the Maryland rolls available. Actually, we were able, you know, people were able to look into that and see they hadn't yet registered in Maryland, because obviously they wanted to continue to vote in Virginia because there were closer elections in Virginia. So I think there is clearly a problem here. And I can tell you people kept coming to us saying: You know, they can't show up to vote.

I mean, you can imagine the neighbors who were sitting there watching them, their frustration of just having them bald-facedly lie to them about living on their street when they didn't. It is beyond anecdote. And so I think wherever we can highlight real fraud and make sure there is a response to it, it would be helpful.

The CHAIRMAN. The gentlelady yields back.

The Chair will now recognize gentleman from Georgia, Mr. Loudermilk, for 5 minutes.

Mr. LOUDERMILK. Thank you, Mr. Chairman.

I thank both of the witnesses for being here today. Secretary Lawson, first of all, thank you for your service. I know that sometimes that can be a thankless job, especially when you are dealing in the voters and voter registration and especially with the myriad of laws and regulations and procedures. And we often don't make it easy on you to do your job.

Let me ask you a quick question. Do you know or do you believe that there is duplicativeness between voter rolls in various States, for instance that there are people registered in one State and they are registered in another State?

Ms. LAWSON. I am sure that is the case, sir. You know, it is not—voters don't think about changing or canceling their voter registration in one State when they move to another, and it is certainly not against the law to be registered in more than one State. But it is against the law to vote in more than one State. And so, yes, I am sure that is the case.

Mr. LOUDERMILK. Okay.

Mr. Ho, do you know that there are duplicativeness between States in their voter rolls?

Mr. HO. I mean, news reports came out I think after the election that various members of the President's, for example, Cabinet and inner circle, like Treasury Secretary Mnuchin, former adviser Steve Bannon, former press secretary Sean Spicer were all registered to vote in more than one State last year. But no one accused them of fraud or anyone committing any kind of fraudulent activity in their names.

Mr. LOUDERMILK. So you take that news report as valid that they are—I mean, you are referencing a news report as a statement that you do believe that this is the case?

Mr. HO. I don't have any reason to doubt the veracity of the report.

Mr. LOUDERMILK. Okay. You kind of dispelled other news reports as invalid, and I just want to make sure that you are not trying to justify a particular end. I am living in a world of reality. Let me share with you this, and I have some other questions. I particularly know of three people that were registered in three different States simultaneously. They didn't know that they should cancel. That is not their responsibility. I think it is the responsibility of the States. So I asked one of them, because they work construction, they traveled, and a lot of times you live, and if you are doing a project that lasts for a year, you will move there, and you will live in Virginia for a year. Then you will move to Florida for a year. Then you go home to your home State of Texas for a while or whatever. And I asked one of them: With an election coming up, are you going to go home in time for the election?

They said: I am just going to vote right here.

I said: Oh, did you change your residency?

He said: No, I just registered to vote in this State.

I said: So did you cancel your registration?

No, I actually voted in the municipal election back in my home State when I was there a few months ago.

Now, this is somebody who is actually registered in three different States and, out of convenience, is just going to go vote from whatever State that they live in. So I know for a fact in at least three instances, and I am sure if, in my small group of folks that I know, that people would tell me, that that there has got to be multiple individuals that fall in that category.

Now, I do have issues with this automatic registration. I had issues with motor voter when it was put in because I come from an IT background. And there is one thing in the information technology arena, a rule we live by: If you don't have the data, you don't have to protect it. And we live in an age right now—I just came out of a hearing in Science and Technology where it is suspected that Russia is using a U.S. company to mine American intelligence information off personal computers. We live in a very dangerous world. And automatic voter registration that is going to register somebody who may not even know they were registered to vote, may not even know that their information is out there on a database, and who may never ever exercise their right to vote really puts those people at risk. I think voting is a responsibility, and

you need to make an effort to go vote. Now, that was my statement for the day.

A question to Ms. Lawson. Are there mandates in the NVRA that make it difficult for secretaries such as yourself to run an effective list maintenance program?

Ms. LAWSON. I believe that the requirement to mail two mailings to an individual is an impediment. As I mentioned, our counties couldn't afford to do it themselves as required by law. So the State took that over. It might be nice if there was just one mailing that was required, and it would be a forwardable postcard with that.

There are other things that we could take advantage of, the States, if we were allowed to. I think my State takes advantage of some tools that the Federal Government gives us. We do the STEVE, State and Territorial Exchange of Vital Events. In case somebody who lives on the border of our State goes to Kentucky and dies in a hospital there, we get that information. We get the EVE information. But there is other information that the Federal Government could give us that would help us.

Mr. LOUDERMILK. Mr. Chairman, can I have another 30 seconds to follow up?

The CHAIRMAN. Yes, sir.

Mr. LOUDERMILK. So we do know that there are times that we do need to remove somebody from a database. In fact, I think it is the responsibility for that person's personal information security that we do that. Knowing that there could be mistakes made, what safeguards does Indiana have to make sure their voters do not have their voter registration inaccurately canceled? And if a voter is in an inactive status, can they still cast a provisional ballot?

Ms. LAWSON. I appreciate the question. And the answer is, if the voter status is inactive when they show up to the polls, it is transparent to them and to the poll worker. So they are allowed to vote if they are in the inactive status.

If they have been removed and because they didn't respond to the two mail pieces and they didn't vote and they were removed, but they decided in 2016 that they wanted to show up and vote, according to NVRA, all they have to do is give an oral affirmation that they have never moved from that address and they are allowed to vote a regular ballot, not a provisional ballot.

Mr. LOUDERMILK. Okay. Thank you, Madam Secretary.

And, Mr. Chairman, I yield back the time that I have exceeded.

The CHAIRMAN. The gentleman yields back.

As a followup on that real quick, if they are not on the inactive but they say that "I am supposed to be able to vote here," do they still cast a provisional ballot and then the election board reviews that to see if it should be counted or not, or are they just escorted out?

Ms. LAWSON. It depends on the circumstances, but I know, in Indiana, the instructions that we give is that no voter is to be turned away. If their name is removed through a voter list maintenance effort and it should not have been, they can make an oral affirmation and still vote. If it is for some other reason that they are not there, they can vote provisionally, and that gives then the county 10 days to deal with that issue.

The CHAIRMAN. Great.

Thank both of you for being here. This is certainly a very vital subject. And your insight is much appreciated.

Without objection, all Members will have 5 legislative days to submit to the chair additional written questions for the witnesses, which we will forward and ask the witnesses to respond as promptly as they can so that their answers may be made a part of the record.

Without objection, this hearing is adjourned.

[Whereupon, at 12:02 p.m., the Committee was adjourned.]