



February 1, 2019

Secretary David Whitley
Texas Secretary of State
P.O. Box 12887
Austin, TX 78711-2887
secretary@sos.texas.gov

Re: Notice of Violation of National Voter Registration Act and Demand for Documents

VIA E-MAIL AND U.S.P.S.

Dear Secretary Whitley:

The Texas League of United Latin American Citizens, the National League of United Latin American Citizens, and Julie Hilberg, through their undersigned counsel, write to inform you that the voter purge program you announced in Election Advisory No. 2019-02 on January 25, 2019 violates the National Voter Registration Act (“NVRA”). This letter serves as the pre-suit notice required by 52 U.S.C. § 20510(b)(2); if the violation is not remedied within 90 days, we will assert legal claims under the NVRA.

You compiled a list of 95,000 registered voters you contend might not be U.S. citizens because records—in some cases up to twenty-three years old—indicate that they were not citizens at the time they applied for driver licenses or state-issued identification cards. You have advised county Voter Registrars and Elections Administrators to send notices to these registered voters giving them 30 days to prove their citizenship, to cancel the registrations of those who do not submit such proof, and have explained that there “is likely to be law enforcement interest in the data” you submitted to the counties. Although you acknowledge your program resulted in “WEAK” evidence of non-citizenship, you made no effort to determine whether any of

the individuals you identified subsequently became naturalized citizens eligible to vote.¹

I. Texas’s Voter Purge Program Violates the NVRA.

Texas’s voter purge program violates the NVRA’s requirement that list maintenance programs be “uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965.” 52 U.S.C. § 20507(b)(1). Indeed, a federal court has ruled that a nearly identical program pursued by Florida was unlawful. Florida’s Secretary of State compiled a list of 180,000 registered voters whose driver license applications disclosed that they were non-citizens at the time they applied, and advised county Election Supervisors to provide those registered voters 30 days to prove their citizenship to avoid cancellation of their registration. *See United States v. Florida*, 870 F. Supp. 2d 1346, 1347-48 (N.D. Fla. 2012).

The court explained that there were “major flaws” with this program because “[t]he Secretary compiled the list in a manner certain to include a large number of citizens.” *Id.* at 1347. That was so, the court explained, because over a three-year period, 240,000 Floridians became newly naturalized citizens, while, like in Texas, Florida Driver’s Licenses have a six year renewal period. Thus, the Court found that all 180,000 people on the list could have become naturalized citizens in the time since they initially applied for or last renewed their drivers’ licenses. In other words, the entire 180,000 person list could have consisted of people who were, in fact, properly registered.

The court explained that this program (which the Florida Secretary of State abandoned) violated the NVRA’s requirement that list maintenance activities be uniform and nondiscriminatory:

The Secretary’s methodology made it likely that the properly registered citizens who would be required to respond and provide documentation would be primarily newly naturalized citizens. The program was likely to have a discriminatory impact on these new citizens. And while the Secretary suggests that having to respond to this kind of inquiry is of little import, that is not so. *A state cannot properly impose burdensome demands in a discriminatory manner.*

Id. at 1350 (emphasis added)

¹ Hours after you released your advisory, Attorney General Paxton tweeted a “VOTER FRAUD ALERT” with no caveat about the admittedly “WEAK” evidence. He subsequently issued a press release warning seven times of “fraud” and of “illegal voting,” “crimes against the democratic process,” and “election crimes.” Two days later, President Trump tweeted that “58,000 non-citizens voted in Texas, with 95,000 non-citizens registered to vote,” complaining of “rampant” “voter fraud.” Yet again, this public pronouncement contained no mention of “WEAK” evidence.

The same is true here. Indeed, data from the U.S. Department of Homeland Security show that between 50,000 and 65,000 Texas residents become naturalized citizens every year. Over the most recent six years of data—the lifespan of a Texas driver license—348,552 Texas residents have become newly naturalized citizens.² If just 27% of those newly naturalized citizens registered to vote after obtaining a driver license or state-issued identification card, that would suffice to explain your entire 95,000 person “WEAK” match list, putting tens of thousands of eligible voters at risk for being wrongly purged.

The purge program also has a disproportionate effect on newly naturalized citizens of Mexican origin. Mexico is the country of origin for 130,627 of the 348,552 Texas residents who became naturalized citizens over the past six years, and for over 20,000 of the Texas residents who become naturalized citizens each year.³ Thus, the purge program plainly discriminates against eligible voters based on Mexican origin. It therefore violates Section 2 of the Voting Rights Act, and consequently the NVRA.

Finally, the purge program violates the NVRA’s requirement that the State “ensure that any eligible applicant is registered to vote in an election.” 52 U.S.C. § 20507(a)(1) (emphasis added). Texas may not rely upon stale and flimsy evidence to remove voters whom federal law requires the State to “ensure” remain registered.

II. Demand for Documents

The NVRA requires that Texas, upon request, produce “all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i)(1). We therefore request that the following documents be produced forthwith:

1. The list of all 95,000 registered voters, and all 58,000 voters, your office identified as potential non-citizens;
2. All documents supporting your contention that the registered voters or voters referred to in Request No. 1 were potentially non-citizens;
3. All documents regarding the development, implementation, or announcement of the program described in Election Advisory 2019-02, including drafts of such documents;
4. All advisory or guidance documents, whether formal or informal, provided to county Voter Registrars or Elections Administrators regarding the implementation of Election Advisory 2019-02, including those provided after the release of Election Advisory 2019-02;
5. All communications regarding the development, implementation, or announcement of the program described in Election Advisory 2019-02, including but not limited to:
 - a. internal communications of the Secretary of State’s office;

² See U.S. Dep’t of Homeland Security, *Profiles on Naturalized Citizens*, <https://www.dhs.gov/profiles-naturalized-citizens>.

³ *Id.*

- b. communications between the Secretary of State's office and other State agencies, including but not limited to the office of the Governor, the office of the Attorney General, and the Department of Public Safety;
- c. communications between the Secretary of State's office and any legislative branch officials or employees;
- d. communications between the Secretary of State's office and any federal officeholder;
- e. communications between the Secretary of State's office and any county officials, including but not limited to Voter Registrars and Elections Administrators;
- f. communications between the Secretary of State's office and any outside consultants, experts, or advisers;
- g. communications between the Secretary of State's office and the media;
- h. communications between the Secretary of State's office and members of the public;
- i. any other communications related to Election Advisory 2019-02.

Please provide the requested documents electronically by email (mgaber@campaignlegal.org) or FTP transfer if available. If any responsive documents or communications are in the possession of the Secretary of State or any employees of the Secretary of State on non-governmental computers, electronic devices, or in paper copy, please include such documents and communications in your production.

* * *

The program announced in Election Advisory 2019-02 plainly violates the NVRA. It also violates Section 2 of the Voting Rights Act and constitutes an unconstitutional, undue burden on the right to vote in violation of the First and Fourteenth Amendments. The irresponsible and inaccurate publicity by the Secretary of State and the Attorney General, in particular, constitutes an unlawful voter intimidation effort prohibited by the Voting Rights Act. Please be advised that if the NVRA violation is not remedied within 90 days, we intend to pursue legal action on that basis.

Sincerely,

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