



January 28, 2019

The Honorable David Whitley

Texas Secretary of State

P.O. Box 12887

Austin, TX 78711

Via email: secretary@sos.texas.gov

Dear Secretary Whitley,

We write to express alarm regarding your recent publication of Election Advisory No. 2019-02, dated January 25, 2019 (“the Advisory”), relating to the use of Department of Public Safety (“DPS”) data to attempt to identify non-citizen registered voters. The methodology your office apparently employed to identify such voters looks deeply flawed, and its origins and intent are highly suspect. ***As a result, we demand that you immediately rescind the Advisory before counties take action on it.***

First, the procedures you’ve outlined in the Advisory for conducting this investigation and mass purge are woefully inadequate to ensure that only ineligible voters are removed from the rolls. As it currently stands, counties taking action based on the advisory will likely be in violation of federal law. Indeed, when Florida attempted similar measures, the state had to abandon them under threat of litigation.

The Advisory explains that you compiled this list of potential non-citizens by relying on documents that Texans submitted to DPS “indicating the person is not a citizen of the United States *at the time the person obtained a Driver License or Personal Identification Card*” (emphasis added). Using such a data set to review the *current* citizenship status of anyone is inherently flawed because it fails to account for individuals who became naturalized citizens and registered to vote *at any point after having obtained their driver license or personal identification card*. Given that Texas Driver Licenses and ID Cards do not expire for a full six years after they are issued, the odds are quite high that this list of purported non-citizens includes tens of thousands of people who are now US citizens entitled to vote. Indeed, each year, between 52,000-63,000 Texans become naturalized citizens (roughly the same number of potential

non-citizens you claim have voted in Texas elections over a 22-year period).¹ Given that newly naturalized citizens have voter registration rates around 50%,² it is reasonable to conclude that at least 25,000 newly naturalized Texans are lawfully registering to vote each year. Even if one assumes that not all naturalized citizens previously obtained driver licenses, and not all registered naturalized citizens registered immediately, it is easy to see how this would result in your office obtaining over 90,000 incorrectly identified matches.

A fundamentally identical purge effort in Florida illustrates the inherent danger with your methodology. There, Florida's Secretary of State created a list of approximately 180,000 registered voters that he claimed were non-citizens based on records from when they obtained driver licenses.³ The Secretary then distributed the list to county election officials, suggesting that they "send[] a letter to each person on the list directing the person to send back a form swearing, under penalty of perjury, that the person was or was not a citizen, and, if a citizen, either requesting a hearing or attaching documents showing citizenship." The letter further "included a statement that if the person failed to respond within 30 days, the person might be removed from the voter roll." Similarly, you suggest that Texas county election officials send a "Proof of Citizenship Letter" to those on the list you have compiled of potential non-citizens, demanding that they supply proof of citizenship within 30 days or be taken off the voter rolls.

The Florida results were a failure: out of an initial list of 180,000 flagged registrations, only 85 ultimately proved actionable.⁴ ***That means that under a nearly identical program, less than .0005% of flagged registrations turned out to be non-citizens.*** It should be no surprise, then, that a federal judge admonished the Florida election officials: "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.... A state cannot properly impose burdensome demands in a discriminatory manner."⁵

Even after rescinding the Advisory, your office must not issue any future such advisories until you have addressed serious questions about the methodology, origin, and timing of the Advisory. Some relevant questions that the public deserves transparency on include:

¹ Department of Homeland Security, Persons Naturalized By State Or Territory Of Residence: Fiscal Years 2007 To 2016, DHS.Gov (Nov. 14, 2017), <https://www.dhs.gov/immigration-statistics/yearbook/2016/table22>.

² See, e.g., Center for the Study of Immigrant Integration, *Rock the (Naturalized) Vote: The Size and Location of the Recently Naturalized Voting Age Citizen Population*, USC Dornsife (2012), <https://dornsife.usc.edu/csii/rock-the-naturalized-vote>.

³ *United States v. Fla.*, 870 F. Supp. 2d 1346 (N.D. Fla. 2012).

⁴ See Steve Bosquet & Amy Sherman, *Florida Suspends Non-citizen Voter Purge Efforts*, Miami Herald (March 27, 2014), <https://www.miamiherald.com/news/politics-government/article2087729.html>.

⁵ *United States v. Fla.*, 870 F. Supp. 2d at 1347-48.

- Who made the decision that this avenue of investigation should be a top priority, and ultimately approved this new process (your predecessor or another senior state official)? Was this person aware of the dismal accuracy of a similar program instituted and then ultimately abandoned by the State of Florida around 2012?
- What are the bases for the claims in your press statement “that a total of approximately 95,000 individuals identified by DPS as non-U.S. citizens have a matching voter registration record in Texas, approximately 58,000 of whom have voted in one or more Texas elections”? What number of votes were there and in which elections? If the underlying 95,000 number is largely inaccurate, the 58,000 number is false and inflammatory.
- What steps does your office plan to take to ensure that any further investigation or mass purges does not become a vehicle for any kind of profiling on the basis of race, ethnicity, or political affiliation?

Please advise by the close of business on Wednesday, January 30, 2019, whether you intend to take the steps we have outlined above, and any additional steps you intend to take on this matter.

We are also sending a copy of this letter to the voter registrars of all 254 Texas counties in order to alert them of the flaws in your data and to ask each of them to refrain from taking action regarding your advisory until you provide additional information regarding the methodology used. As you are well aware, each registrar is independently responsible for maintaining their voter rolls in a non-discriminatory way.

Sincerely,

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