

Congress of the United States  
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051

MINORITY (202) 225-5074

<http://oversight.house.gov>

March 28, 2019

Mr. David Whitley  
Acting Secretary of State  
State of Texas  
James E. Rudder Building  
1019 Brazos Street  
Austin, TX 78701

Dear Acting Secretary Whitley:

The Committee on Oversight and Reform is investigating recent efforts by your office to purge voter rolls in Texas. We are disturbed by reports that your office has taken steps to remove thousands of eligible American voters from the rolls in Texas and that you have referred many of these Americans for possible criminal prosecution for exercising their right to vote.

On January 25, 2019, you issued an advisory to county election officials claiming that approximately 95,000 registered voters in Texas may not be U.S. citizens. You advised county officials to send notices to the 95,000 individuals and, if responses were not received within 30 days, to cancel their voter registrations. You also alleged that approximately 58,000 of these individuals may have “voted in one or more Texas elections” and indicated that you had referred the matter to the Texas Attorney General for possible criminal prosecution.<sup>1</sup>

The Texas Attorney General, the Governor of Texas, and even President Donald Trump made public statements about your advisory, with President Trump wrote that these numbers “are just the tip of the iceberg” and asserted that “voter fraud is rampant.”<sup>2</sup>

Since you sent this advisory, however, reports have indicated that your office erroneously flagged tens of thousands of voters, including at least 18,000 voters in Harris County, more than 1,700 voters in Dallas County, all the voters flagged in McLennan County, and even a staff member for the El Paso County election administrator. On February 13, 2019, you wrote to Texas state legislators:

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<sup>1</sup> Texas Secretary of State, *Secretary Whitley Issues Advisory on Voter Registration List Maintenance Activity* (Jan. 25, 2019) (online at [sos.texas.gov/about/newsreleases/2019/012519.shtml](http://sos.texas.gov/about/newsreleases/2019/012519.shtml)).

<sup>2</sup> “Someone Did Not Do Their Due Diligence”: *How an Attempt to Review Texas’ Voter Rolls Turned Into a Debacle*, Texas Tribune (Feb. 1, 2019) (online at [texastribune.org/2019/02/01/texas-citizenship-voter-roll-review-how-it-turned-boondoggle](http://texastribune.org/2019/02/01/texas-citizenship-voter-roll-review-how-it-turned-boondoggle)).

In hindsight, however, before announcing the number of people who may not be eligible to vote, more time should have been devoted to additional communication with the counties and DPS [the Texas Department of Public Safety] to further eliminate anyone from our original list who is, in fact, eligible to vote.<sup>3</sup>

On February 27, a federal judge issued a temporary injunction stopping counties from issuing further notices to individuals on your list or removing these individuals from the voting rolls. The judge wrote: "The evidence has shown in a hearing before this Court that there is no widespread voter fraud." The judge sharply criticized your January 25 advisory:

Notwithstanding good intentions, the road to a solution was inherently paved with flawed results, meaning perfectly legal naturalized Americans were burdened with what the Court finds to be ham-handed and threatening correspondence from the state which did not politely ask for information but rather exemplifies the power of government to strike fear and anxiety and to intimidate the least powerful among us.<sup>4</sup>

In light of the serious concerns that have been raised about your office's January 25, 2019, election advisory (Election Advisory No. 2019-02), please produce by April 11, 2019, the following documents referring or relating to this advisory:

1. Communications within your office;
2. Documents received from the Texas Department of Public Safety that served as the basis for the advisory;
3. Communications with employees of the Texas Department of Public Safety;
4. Communications with Attorney General Ken Paxton or other employees of the Texas Office of the Attorney General;
5. Communications with Governor Greg Abbott or other employees of the Office of the Texas Governor;
6. Communications with county or local election officials;
7. Communications with Trump Administration officials; and
8. Communications with other third parties, including local or national political parties or advocacy groups.

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<sup>3</sup> Letter from David Whitley, Texas Secretary of State, to Redacted Recipient (Feb. 13, 2019) (online at [static.texastribune.org/media/files/aa46672d034fd04cbc82b4f6d6625700/David\\_Whitley\\_Letter?\\_ga=2.114860932.24059431.1550767890-1210439982.1549548522](http://static.texastribune.org/media/files/aa46672d034fd04cbc82b4f6d6625700/David_Whitley_Letter?_ga=2.114860932.24059431.1550767890-1210439982.1549548522)).

<sup>4</sup> *Texas LULAC v. Whitley*, 5:19-cv-00074-FB (W.D. Tex. Feb. 27, 2019).

Mr. David Whitley

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The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. The Committee has examined state voting and elections issues on numerous occasions, including multiple hearings in the 115th Congress on federal and state election security efforts.<sup>5</sup> In addition, the Subcommittee on Civil Rights and Civil Liberties has oversight jurisdiction over voting rights issues under Committee Rules.

An attachment to this letter provides additional instructions for responding to the Committee’s request. If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Thank you for your attention to this matter.

Sincerely,



Elijah E. Cummings  
Chairman



Jamie Raskin  
Chairman  
Subcommittee on Civil Rights and Civil  
Liberties

Enclosure

cc: The Honorable Jim Jordan, Ranking Member

The Honorable Chip Roy, Ranking Member  
Subcommittee on Civil Rights and Civil Liberties

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<sup>5</sup> Committee on Oversight and Government Reform, Hearing on *Cyber-securing the Vote: Ensuring the Integrity of the U.S. Election Systems*, 115th Cong. (July 24, 2018); Committee on Oversight and Government Reform, Subcommittee on Information Technology and Subcommittee on Intergovernmental Affairs Joint Hearing on *Cybersecurity of Voting Machines*, 115th Cong. (Nov. 29, 2017).

## Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
  - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - b. Document numbers in the load file should match document Bates numbers and TIF file names.
  - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:  
  
BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,  
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **Definitions**

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.