

BRENNAN
CENTER
FOR JUSTICE



June 27, 2012

BY U.S. MAIL AND EMAIL

The Honorable Ken Detzner
Secretary of State
Florida Department of State
R.A. Gray Building
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Tallahassee, Florida 32399-0250
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Dear Secretary Detzner,

**Re: Florida's "New Initiative to Remove Non-Citizens from
Florida Voter Rolls."**

We write to identify critical problems undermining the reliability and legality of the Florida Department of State's new systematic program to identify potential non-citizens for removal from the voter rolls. While Florida has yet to fully disclose key information about this program, numerous deficiencies in the methodology, implementation and timing of this program are apparent. Key aspects of the process used to identify and notify potential non-citizens render it highly inaccurate, unreliable and in conflict with several requirements of federal and state law. If the Department continues to pursue implementation of this program it will further intimidate and confuse thousands of voters and cause the wrongful removal of eligible voters from the rolls—particularly naturalized citizens and minority voters—without adequate time to preserve their right to vote before the next election.

Florida's systematic voter purge raises a number of legal and policy concerns. While Florida can and should take appropriate, individualized, action to remove non-citizens from the rolls and prosecute election misconduct, it cannot do so as part of an eleventh hour purge that captures hundreds, if not thousands, of citizens who are legitimate voters. It is particularly troubling that the purge disproportionately impacts new citizens, Latinos and other minority groups who are eligible to vote. The state's notification and verification procedures include impermissible documentary proof of citizenship requirements not authorized by state or federal

law, are non-uniform, and have already intimidated and confused eligible registered voters. Contrary to the State's insistence, these deficiencies could not be cured by access to federal immigration lists, which are insufficient for accurate identification of eligible voters.

For these reasons, and as further discussed below, the Brennan Center for Justice and League of Women Voters of Florida strongly urge not only an immediate halt to the program, but its continued suspension until the Department can conduct a more open and accurate process for implementing this, or any similar, program. Further, the Department should publicly and completely disclose the contours of how the current program was developed, including how the initial list was compiled and is being refined and maintained; cure any past or ongoing violations (including reinstatement of removed voters and notice to those voters of their corrected registration status); and implement election day safeguards to protect the rights of the eligible voters on the current lists.

1. The Initiative is Unreliable and Prone to Error.

To ensure that large scale and systematic voter removal programs do not lead to disenfranchisement, procedures and methods must be transparent, accurate, and completed within reasonable time frames.¹ Florida's own past history teaches that without the safeguards of public monitoring, well-vetted matching methodologies, and adequate time for review and correction, the consequences can be enormous.² Thus, when—as is the case with the instant initiative—the voter removal program is on a scale of tens of thousands, and incorporates wholly new database and matching protocols, there is no room to take shortcuts. Unfortunately, the current initiative does just that. As discussed below, a close review of public records available to

¹ Federal and Florida state law require a regularly conducted “general registration list maintenance program to protect the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records.” FLA. STAT. § 98.065(1); 42 U.S.C. § 1973gg(b)(4). At the same time, because the fundamental right to vote is ultimately at stake every time the state initiates voter list cleansing efforts, both the National Voter Registration Act (“NVRA”) and Florida election law mandate that state voter registration list maintenance programs and activities be uniform and nondiscriminatory, and completed sufficiently in advance of upcoming elections. 42 U.S.C. § 1973gg-6(b)(1); FLA. STAT. §§ 98.065(1), 98.065(3), 98.065(5), 98.075(1).

² In 2000, Florida's effort to purge persons with criminal convictions from the rolls led to, by conservative estimates, close to 12,000 eligible voters being identified for removal. Adam C. Smith, *No Telling if Voter Rolls are Ready for 2004*, ST. PETERSBURG TIMES, Dec. 21, 2003. In 2004, Florida's attempt to purge persons with felony convictions from the voter rolls generated a list that included thousands of voters whose right to vote had been restored under Florida law. Ford Fessenden, *Florida List for Purges of Voters Proves Flawed*, N.Y. TIMES, July 10, 2004, at A02. See also MYRNA PÉREZ, BRENNAN CTR. FOR JUSTICE, VOTER PURGES 23-24 (2008), available at http://brennan.3cdn.net/5de1bb5cbe2c40cb0c_s0m6bqskv.pdf.

date,³ court filings, and widespread media reports strongly indicates that this purge program is highly unreliable and inaccurate.

a. To the extent it has been disclosed, the data matching methodology appears inadequate and error prone.

While the current initiative to remove non-citizens was not announced to the public until May 9, 2012, it has subsequently come to light that the effort began well before September 2011.⁴ However, even now, the State has not fully disclosed to the public the procedures that it used to conduct the matching of database information and to identify voters for verification.⁵ This lack of transparency in and of itself is contributing to the unreliability of the lists created for notifying, verifying, and potentially removing voters from the rolls.

By the Department's own reports, in order to identify potential non-citizens on its rolls, it has compared names in the Florida Voter Registration System (FVRS) with the State Department of Highway Safety and Motor Vehicles (DHSMV) database commonly known as "DAVE" (Driver and Vehicle Express systems), which started collecting citizenship information in 2010. According to some reports, including the Department's own news release, the State initially identified as many as 182,000 potential non-citizens through this database match.⁶ Though the process for refining this list has not been clearly explained, reports indicate that the Department narrowed the initial list down to 25,000, and further narrowed that list to between 2,600 and

³ The Brennan Center for Justice submitted a detailed records request to your office on May 18, 2012, seeking comprehensive information related to the processes and procedures leading to, and implementing, the current initiative. As of June 22, 2012, the only response to that request was the list of some 2,700 potential non-citizens, which had been previously disclosed to supervisors of elections and others. All other records we have been able to obtain to date are from records requests to the Martin County Supervisor and from other publicly available sources.

⁴ Marc Caputo, *Florida's Noncitizen Voter Purge Grew from 5-Minute Conversation*, THE MIAMI HERALD, June 13, 2012, <http://www.miamiherald.com/2012/06/13/2847062/floridas-noncitizen-voter-purge.html> (discussing conversations between Governor Scott and then-Secretary of State Kurt Browning in February 2011); see Exhibit G, Complaint, Fla. Dep't of State v. U.S. Dep't of Homeland Sec., No. 1:12-cv-00960 (D.D.C. June 12, 2012) (documenting September 2011 request by the Florida Department of State to the U.S. Department of Homeland Security to access the Systematic Alien Verification for Entitlement ("SAVE") database in order to check the citizenship status of registered voters and new applicants).

⁵ *Supra* note 3.

⁶ Caputo, *supra* note 4; see also Florida Secretary of State News Release, *Frequently Asked Questions About Protecting Citizen Voter Rights in Florida* (June 6, 2012), available at <http://www.flgov.com/2012/06/06/frequently-asked-questions-about-protecting-citizen-voter-rights-in-florida/>. However, according to a PowerPoint presentation to Supervisors of Elections, the Department of State indicates only 1,256 registered voters were initially identified as potentially ineligible non-citizens. FLA. DEP'T OF STATE, PROCESSING INELIGIBLE REGISTERED VOTERS – NON-IMMIGRANTS 2 (2012).

2,700 registered voters.⁷ In early April 2012, election supervisors were sent names of registered voters in their respective counties based on a list of approximately 2,700 potential noncitizens.⁸

According to a Department of State PowerPoint presentation shared with supervisors, in creating this list, the Bureau of Voter Registration Services (BVRS) initially searched DAVE for all non-citizens identified as “non-immigrants,” which includes persons legally authorized to be in the United States for a limited period of time, and who must annually renew their drivers’ licenses or state ID cards.⁹ BVRS apparently further searched for various indicators and records, including whether the individual is listed as 1) “Not a U.S. Citizen,” 2) having a foreign country of birth, and 3) having submitted supporting identification documents to show proof of legal status as required by the REAL ID Act.¹⁰ The PowerPoint indicates that BVRS also cross-checked against names identified against ICE’s public online site of non-citizen detainees. Finally, according to this PowerPoint, when cross matching between BVRS and DAVE, the Department required an “exact” match between any three of the following five items: 1) last name, 2) first name, 3) Social Security number, 4) drivers license number, and 5) birth date.¹¹

The described match process is insufficient for producing a reliable list for use in a systematic voter removal program. First, as the State acknowledges, not every record in the DAVE database contains REAL ID documentation, and will not until December 1, 2017.¹² Second, under the described procedures, individuals would be included on the list based on a match of the same first and last names and date of birth. The likelihood of an erroneous match when relying on only these three identifiers is well established.¹³ Third, this match process easily captures outdated information that sweeps in individuals who have not updated their drivers’ licenses since becoming naturalized citizens. Further, including the country of birth among the relevant search criteria, particularly given the other shortcomings, is of extremely limited value because it captures both children of U.S. citizens born abroad and naturalized citizens.

⁷ Caputo, *supra* note 4.

⁸ See Email from Christopher R. Sharp, to Supervisors of Elections, Subject Line: List Maintenance information and webinar (Apr. 2, 2012) (advising that the Division of Elections had worked through a preliminary list of individuals identified as potential non-U.S. citizens and the files would be sent on CDs via FedEx on April 3, 2012).

⁹ FLA. DEP’T OF STATE, *supra* note 6, at 2.

¹⁰ *Id.* at 4.

¹¹ *Id.* at 7.

¹² *Id.* at 5.

¹³ See PÉREZ, *supra* note 2, at 22-24. For a discussion of the fact that, with large numbers of people, it is likely that different people will share the same name and birth date, *see generally* Michael P. McDonald & Justin Levitt, *Seeing Double Voting*, 7 ELECTION L. J. 111 (2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=997888.

Not surprisingly, this deficient match process has created a list with a substantial false positive error rate. Based on consistent media accounts, more than 500 people on the lists have been confirmed as citizens.¹⁴ That represents nearly 20% of the total list of almost 2,700 voters identified for verification of eligibility. In Miami-Dade County alone, the known error rate is over 30%.¹⁵ As of May 31st, Miami-Dade Supervisor of Elections Penelope Townsley had sent potential non-citizen removal notifications to 1,637 registered voters, of whom 478 responded to confirm citizenship. Notices were not sent to 65 names on the list because they were identified by Supervisor Townsley as duplicates, previously removed deceased voters, voters listed as citizens in DAVE, or voters registered in other counties. Based on these findings, Supervisor Townsley advised the Department of State that the known error rate in Miami-Dade was between 30 and 33%.¹⁶ Since this figure only includes voters currently *known* to be wrongly included, the actual number of eligible citizens wrongly targeted for removal could be substantially higher. Wrongfully listed voters have been documented elsewhere throughout the State.¹⁷

In comparison, reports of confirmed non-citizens identified through the program have been far fewer. While the numbers reported vary,¹⁸ Governor Scott claims that the State has

¹⁴ Caputo, *supra* note 4.

¹⁵ Letter from Penelope Townsley, Supervisor of Elections, Miami-Dade Elections Dep't, to Dr. Gisela Salas, Dir., Fla. Dep't of State (May 31, 2012).

¹⁶ *Id.*

¹⁷ Seminole County Election Supervisor Mike Ertel posted a picture of himself holding the U.S. passport of one of the identified "non-citizens" on the rolls. Judd Legum, *How Governor Rick Scott is Preventing Eligible U.S. Citizens from Voting in Florida*, THINK PROGRESS, May 21, 2012, <http://thinkprogress.org/justice/2012/05/23/488882/how-governor-rick-scott-is-preventing-eligible-us-citizens-from-voting-in-florida/>. A 91-year-old World War II Veteran born in Brooklyn was wrongly identified as a non-citizen. Greg Allen, *World War II Vet Caught up in Florida's Voter Purge Controversy*, NPR: IT'S ALL POLITICS, May 31, 2012, <http://www.npr.org/blogs/itsallpolitics/2012/05/31/154020289/world-war-ii-vet-caught-up-in-floridas-voter-purge-controversy>. A U.S. citizen in Hillsborough County who was naturalized in 2010 was also wrongly identified. Complaint at 11-12, *Mi Familia Vota Education Fund v. Detzner*, No. 8:12-cv-1294 (M.D. Fla. June 8, 2012). In Citrus County, 2 out of 3 alleged non-citizens were shown to be eligible voters. Steve Bousquet, *Noncitizen Voter Database has Flaws, Local Elections Officials Say*, TAMPA BAY TIMES, May 14, 2012, <http://www.tampabay.com/news/politics/national/noncitizen-voter-database-has-flaws-local-elections-officials-say/1230074>. In Pasco County, two supposed non-citizens were identified as eligible. One was flagged because of a clerical error. Dara Kam, *County Elections Officials Question Florida's List of Non-Citizen Voters*, PALM BEACH POST, May 19, 2012, <http://www.palmbeachpost.com/news/news/state-regional/county-elections-officials-question-floridas-list-/nPKQt/>.

¹⁸ A June 6th article in the Orlando Sentinel reports 13 admitted non-citizens in Miami-Dade as the highest total identified. *Scott Administration Refuses to Halt Voter 'Purge'*, ORLANDO SENTINEL, June 6, 2012, http://articles.orlandosentinel.com/2012-06-06/news/fl-state-justice-voter-purge-20120606_1_voter-rolls-purge-ron-labasky. Subsequent estimates based on reports

identified approximately 100 non-citizens on the voter rolls, including approximately 50 who had cast ballots in prior elections¹⁹—a claim that is at the high end of reported estimates. Unquestionably, if non-citizens are on the voter rolls, these voters should never have registered. And, as a general matter, the State can and should take appropriate, individualized, measures to remove non-citizens and prosecute any election fraud related to their registration and casting of ballots. However, it cannot do so as part of an eleventh hour registration list purge, in which at least 20%, and quite possibly far more of those identified for removal are in fact eligible citizens.

The risk of eligible citizens being wrongly removed from the rolls under the current plan is real. Supervisors in two counties confirmed to the media that voters had already been removed from the rolls for failure to respond with proof of citizenship, not because they were in fact confirmed to be non-citizens.²⁰ While, by early June, those SOEs had reinstated the removed voters, that correction occurred only because of a unified effort by the SOEs, and their professional association, Florida State Association of Supervisors of Elections (FSASE), to suspend any further implementation of the purge program—precisely because it is unreliable and in conflict with federal and state laws.²¹ Despite this effort, at least some counties have reported they are continuing with the purge and have removed voters—even in the absence of proof that those voters are non-citizens.²²

b. The State's effort to access federal immigration databases will not remedy the reliability and accuracy problems.

The State's insistent claim that access to the federal Systematic Alien Verification for Entitlements (SAVE) program will resolve any deficiencies in the current match process

by various officials, including Governor Scott, range from 100-140 non-citizens who have been identified as present on the voter rolls. Caputo, *supra* note 4.

¹⁹ Nick Wing, *Rick Scott: Voter Purge Turned Up 'Over 50' Non-Citizen Voters -- 'The Debate's Over,'* HUFFINGTON POST, June 12, 2012, http://www.huffingtonpost.com/2012/06/12/rick-scott-voter-purge-non-citizens_n_1589796.html?ncid=edlinkusaolp00000003.

²⁰ Josh Israel, *Fifteen Voters Removed In Rick Scott's Purge Reinstated by Florida Elections Supervisors*, THINK PROGRESS, June 4, 2012, <http://thinkprogress.org/justice/2012/06/04/494794/fifteen-voters-removed-in-rick-scotts-purge-reinstated-by-florida-elections-supervisors/>.

²¹ On June 1, Ron Labasky, the General Counsel of the Association of Florida Supervisors of Elections, recommended that the Supervisors not implement the voter purge. In a memo he circulated to the Supervisors, Mr. Labasky cited potential violation of the National Voter Registration Act and other concerns. Memorandum from Ron Labasky (June 1, 2012) (on file). On June 2, the Association announced that all 67 county supervisors would suspend the purge program. Judd Legum, *All 67 Florida County Election Supervisors Suspend Governor Rick Scott's Voter Purge*, THINK PROGRESS, June 2, 2012, <http://thinkprogress.org/justice/2012/06/02/494088/all-67-florida-election-supervisors-suspend-governor-rick-scotts-voter-purge/>.

²² See Caputo, *supra* note 20.

seriously overstates the usefulness and accuracy of SAVE for the purposes of a verifying names in a voter list maintenance program.

SAVE is not a national database of citizens. Its intended purpose is to track the legal status of non-citizens for use in administering benefit programs. It draws on updates from various sources and databases to verify immigration status, or benefits eligibility, at a particular point in time and does not contain information on native-born citizens.²³ Thus, the U.S.-born citizens erroneously included on the purge list could not have been screened out through a match to SAVE. And, like Florida's DAVE database, SAVE can contain outdated information that does not reflect a person's current citizenship status. Furthermore, the SAVE program can verify individuals only if unique identifiers, such as an alien registration number, are provided to query the database. As the Florida Division of Elections has represented in its requests to access SAVE, the Division does not have the immigration-related numeric identifiers or documentation needed for matching through SAVE.²⁴

Given the inherent limitations of the SAVE database, there is no indication, let alone a guarantee, that attempting to match Florida's list of putative non-citizens against this database would resolve the shortcomings of the current match methodology.

2. Initial Reports Indicate the Initiative Disproportionally Impacts New Citizens, Hispanics, and Other Minority Groups.

The State's own data suggest that the purge program disproportionately burdens newly naturalized citizens and minority voters.

According to multiple reports and analysis, Hispanic voters are substantially overrepresented on the non-citizen purge list. One analysis found that 61% of individuals on the purge list are Hispanic, even though only 14% of registered voters in Florida are Hispanic. In contrast, while 70% of Florida voters are non-Hispanic white, they only constitute 16% of persons on the purge list. African Americans and Asian voters are also overrepresented on the list. African Americans constitute 14% of registered voters in Florida, but 16% of those on the purge list. And while Asian voters only constitute 2% of registered Florida voters, they represent 5% of those on the purge list.²⁵ With these figures combined, minority voters comprise at least

²³ American Immigration Council, Immigration Policy Center, *The Systematic Alien Verification For Entitlements (SAVE) Program, A Fact Sheet* (Dec. 15, 2011), available at <http://www.immigrationpolicy.org/just-facts/systematic-alien-verification-entitlements-save-program-fact-sheet>.

²⁴ Letter from T. Christian Herren Jr, Chief, Voting Section, Civil Rights Div., Dep't of Justice, to Ken Detzner, Sec'y of State of Fla. 3-4 (June 11, 2012); Complaint, Exhibit G, Fla. Dep't of State v. U.S. Dep't of Homeland Sec., *supra* note 4, at 4-6 (containing Feb. 21 e-mail listing key data fields that Florida has in its records but which do not include an "A number" or naturalization number and March 6 e-mail in which DHS advises that it "will need an 'A number' and [naturalization] certificate number before [it] can verify a status in SAVE").

²⁵ Complaint at 10, Karla Vanessa Arcia, et. al v. Detzner, No. 1:12-cv-22282 (S.D. Fla. June 19, 2012).

82% of those on the purge list despite constituting only 30% of the total population. Analysis by news journalists contain similar findings. For instance, the Miami Herald reported that 58% of those on the non-citizen list are Latino, while only 13% of those on the list are white.²⁶

These numbers strongly indicate that the program disproportionately identifies newly naturalized citizens and Hispanic and African-American voters. While the Brennan Center has only just received the state records necessary to conduct its own analysis of this data, these reports raise serious concerns that the current program runs afoul of the federal constitutional guarantee of equal protection. Likewise, a disproportional impact on minority voters would run afoul of the National Voter Registration Act (NVRA) requirements that list maintenance activities be non-discriminatory and comply with the Voting Rights Act.²⁷

3. The Initiative Imposes Impermissible Proof of Citizenship Requirements, Intimidates and Confuses Voters, and is Not Uniform.

The Department's instructions to supervisors on how to proceed with notice, verification, and potentially removal, creates a process that imposes improper burdens on already registered voters, is intimidating, and has had non-uniform application across the state – despite the best efforts of the FSASE to avoid such a problem. This has caused immense confusion and apprehension among citizens and risks deterring voters from confirming their eligibility and registration, and casting ballots in the upcoming primary and general elections.

In rolling out the initiative, the Department instructed supervisors that when sending notice of potential ineligibility and removal to registered voters, the notice should include a statement that failure to respond within 30 days may result in removal from the rolls, require the return of a signed, sworn form admitting or denying the accuracy of the information regarding their citizenship status, and also require submission of a copy of specified forms of documentary proof of citizenship.²⁸ Additionally, according to these instructions, if the supporting documentation reflects a difference in name, the voter “will have to provide a court order or marriage license showing authorized name change.”²⁹ It is unclear the extent to which voters have been informed they must produce original copies of such documentation or provide them in

²⁶ Marc Caputo and Patricia Mazzei, *Hispanics, NPAs More Likely to Face Noncitizen Voter Purge than Whites, GOP*, THE MIAMI HERALD, May 13, 2012, available at <http://www.miamiherald.com/2012/05/12/v-fullstory/2796905/noncitizen-voter-hunt-targets.html>.

²⁷ 42 U.S.C. § 1973gg-6(b)(1); 42 U.S.C. § 1973(a). Further, to the extent this program constitutes a new “voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting”, the program has not been submitted for federal preclearance in violation of Section 5 of the Voting Rights Act. 42 U.S.C. § 1973c. *See also* Complaint at par. 38-42, *Mi Familia Vota*, *supra* note 17.

²⁸ FLA. DEP'T OF STATE, *supra* note 6, at 9, 11, 13.

²⁹ *Id.* at 14.

person, but at least in one county, voters were notified they must provide *original* documents.³⁰ The supervisors were further instructed to allow the voter 30 days to respond, publish notice if the mailing was undeliverable, provide a hearing only if an individual denied ineligibility and requested a hearing, and ultimately to remove from the FVRS those determined to be ineligible based on the above procedures.³¹

This process improperly places the burden of proof on the voter and illegally requires documentary proof of citizenship in violation of state law and the NVRA. As the State itself admits, “[c]urrent law does not allow Supervisors of Elections to require an applicant to submit proof of citizenship at the time of registering,” thus the “State of Florida does not collect and is not authorized to ask an applicant [to vote] for proof of his or her legal status in the U.S.”³² Indeed, any such effort would directly violate the NVRA, which prohibits states from requiring additional identifying information from voter registration applicants using federal voter registration forms beyond what is required by federal law.³³ It is no more permissible to do so through a systematic program that requires thousands of voters who have already registered – and who are disproportionately likely to be minority voters – to subsequently produce such documentation.

Further, reports based on interviews of voters, particularly Hispanics and newer citizens, confirm that these intimidating notices and forms have caused voters to fear they are no longer citizens, may have already been removed from the rolls, or no longer have a right to vote as a new citizen.³⁴

³⁰ Letter from Penda Hair, Co-Director, Advancement Project, to Christopher Herren, Chief, Voting Section, Civil Rights Division, Department of Justice (May 17, 2011) (attaching a form letter from Jennifer Edwards, Supervisor of Elections, Collier County, to voters identified as noncitizens (May 11, 2012)). The attached form letter instructs recipients to “stop by our main office with any *original* documentation that demonstrates U.S. citizenship. Do not mail these documents. You may want to call us prior to visiting our main office.”

³¹ FLA. DEP’T OF STATE, *supra* note 6, at 11-18.

³² Complaint, Exhibit G at 8-11, Fla. Dep’t of State v. U.S. Dep’t of Homeland Sec., *supra* note 4 (email exchange from Maria Matthews to Howard Roth at DHS on October 24-25, 2011).

³³ Recently, the full panel of the Ninth Circuit Court of Appeals held that Arizona could not require voters using federal voter registration forms to provide documentary proof of citizenship. *Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir. 2012) (*en banc*) (declaring documentary proof of citizenship requirement illegal under 42 U.S.C. § 1973-gg7(b)). At Arizona’s request, Justice Kennedy issued a temporary stay of the mandate pending further briefing to the Supreme Court. Order Granting Temporary Stay, *Arizona v. Gonzalez*, No. 11A1189 (U.S. June 14, 2012).

³⁴ See Complaint, *Mi Familia Vota*, *supra* note 17, at 10; Kathleen Haughney, *ACLU and Others Sue to Halt State Voter Purge*, SUN SENTINEL, June 8, 2012, http://articles.sun-sentinel.com/2012-06-08/news/fl-aclu-sues-over-voter-purge-20120608_1_voter-purge-citizen-voting-rolls.

This non-uniform and discriminatory treatment of eligible voters, coupled with the known inaccuracies of the program, runs afoul of both the NVRA, 42 U.S.C. § 1973gg-6(b)(1), and the Florida Election Code, Fla. Stat. § 98.065(1). As DOJ has charged, by relying on “outdated and inaccurate data” that Florida knows to be producing lists with “errors and incorrect information” and that can potentially deprive eligible citizens of their right to vote, the program violates NVRA Section 8(b)(1)’s requirements of uniform and nondiscriminatory procedures.³⁵ Likewise, the program is inconsistent with similar requirements under state law.³⁶

4. The Timing of the Initiative Violates the NVRA and Implementing State Law.

In addition to the problems detailed above, the timing of the current initiative violates federal and state law because it will not be complete within 90 days of the next upcoming federal election. *See* 42 U.S.C. § 1973gg et seq.; Fla. Stat. § 98.065(3); 98.065(1); 98.975(1).³⁷ The federal primary will occur in less than two months, on August 14, 2012. Thus, any systematic process for purging voters, including this one, must have already been completed by May 16, 2012, the 90th day prior to the date of that primary. Yet the initiative to purge potential non-citizens was not fully rolled out to county election officials until approximately late April or early May, and is still underway. This timing is unacceptable for ensuring fair and uniform election administration, and violates the NVRA blackout period prohibiting systematic purges within 90 days of a federal election, as well as implementing state law requirements.³⁸

³⁵ *See* Complaint at par. 26, United States v. Florida, No. 4:12-cv-00285-WS-CAS (N.D. Fla. June 12, 2012).

³⁶ Florida law requires that list maintenance be uniform, non discriminatory, and in compliance with applicable federal law. FLA. STAT. §§ 98.065(1), 98.075(1).

³⁷ *See* Complaint at par. 25, United States v. Florida, *supra* note 35. The NVRA 90 day quiet period applies to “any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.” 42 U.S.C. § 1973gg-6(c)(2)(A). The statute provides partial exemptions for individualized events, including at the request of the registrant, on the basis of death, or by reason of criminal conviction or mental incapacity. 42 U.S.C. § 1973gg-6(c)(2)(B). But such individualized removals are distinct from the systematic purge programs governed by the 90-day requirement. The NVRA does not allow last minute *systematic removal programs* for *any purpose* because they are likely to result in administrative error and wrongful purges. Accordingly, a purge based on lack of citizenship documentation is not exempt from the 90-day requirement.

³⁸ Florida Law requires that list maintenance be consistent with the NVRA, and requires the systematic list maintenance be completed not later than 90 days before a federal election. FLA. STAT. §§ 98.065(1), 98.065(3), 98.075(1). Pursuant to FLA. STAT. § 97.023, this letter serves as written notice of violations of both the NVRA and these state law requirements.

5. Conclusion

In sum, the Department's initiative to remove non-citizens from Florida's voter registration rolls is fundamentally flawed and violates various provisions of federal and state law by:

- Creating inaccurate and unreliable voter removal lists that wrongly include eligible voters;
- Disproportionately subjecting newly naturalized citizens and voters of color to intimidating notice of potential ineligibility to vote and possible removal from the rolls;
- Requiring those notified to produce documentary proof of citizenship, among other onerous verification requirements.
- Directing county supervisors to implement a program known to rely on outdated and inaccurate data and despite the FSASE determination that the program is unreliable and should not be implemented;
- Implementing a systematic program to remove voters within 90 days of a federal election, when there is insufficient time to correct errors.

Continued administration of this program will cause untold damage to public confidence in electoral administration and set up the potential disenfranchisement of eligible voters. To eliminate and remedy any harms to date, and potential future problems, we urge the Department to take the following immediate steps:

- Stop any and all implementation of the non-citizen purge program within the Department and among supervisors of elections;
- Reinstate to the rolls any voters who have not affirmatively confirmed non-citizen status, but were removed from the rolls, and send those voters confirmation of their corrected status;
- Send notification to all other individuals who received notice of potential ineligibility to confirm their current registration status and the cessation of the program;
- Publish public notices that the program has ceased;
- Publicly disclose complete records detailing the origins of the program and the procedures used to compile and verify the accuracy of the lists of potentially ineligible non-citizen voters;
- Institute Election Day safeguards that will protect any eligible voter on the disclosed lists from being erroneously prevented from casting a ballot.

With these measures Florida can ensure voters, and the public, are not left in the dark and that no eligible voter is mistakenly, or illegally, purged from the rolls or prevented from voting. We look forward to hearing from the Department by July 17, 2012, regarding its plans for taking these, or any other, corrective measures.

Respectfully submitted,



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