

# **The Foundation's Complaint**

**United States District Court  
Middle District of Pennsylvania  
Harrisburg Division**

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**The PUBLIC INTEREST LEGAL  
FOUNDATION**

*Plaintiff,*

v.

**ROBERT TORRES, in his official capacity as  
Acting Secretary of the Commonwealth of  
Pennsylvania, and JONATHAN M. MARKS,  
in his official capacity as the Commissioner of  
the Bureau of Commissions, Elections, and  
Legislation**

*Defendants.*

No. \_\_\_\_\_

**COMPLAINT**

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**Complaint**

Plaintiff, by its attorneys, brings this action for violations of Section 8 of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20507.

1. According to statements by Commonwealth election officials, non-U.S. citizens have been registering and voting in Pennsylvania for decades. Defendants possess records and data showing the extent to which noncitizens are participating in the Commonwealth’s elections. Federal law grants the public the right to inspect and duplicate that information. Defendants are shielding that information from the public, in violation of federal law.

2. Plaintiff seeks injunctive relief to compel Defendants to comply with Section 8 of the NVRA. Specifically, Plaintiff seeks an order commanding Defendants to permit inspection and duplication of records concerning the maintenance of voter registration lists pursuant to 52 U.S.C. § 20507(i).

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, because the action arises under the laws of the United States. This Court also has jurisdiction under 52 U.S.C. § 20510(b), because the action seeks injunctive relief under the NVRA.

4. Venue in this Court is proper under 28 U.S.C. § 1391(b)(1), because Defendants reside in this district, and 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claim occurred in this district.

### **PARTIES**

5. The Public Interest Legal Foundation, Inc. (the “Foundation”) is a non-partisan, public interest organization headquartered in Indianapolis, Indiana. The Foundation seeks to promote the integrity of elections nationwide. The Foundation has dedicated significant time and resources to ensure that voter rolls in the Commonwealth of Pennsylvania, and other jurisdictions throughout the United States, are free from ineligible registrants, noncitizens, individuals who are no longer residents and individuals who are registered in more than one location.

6. Defendant Robert Torres is the Acting Secretary of the Commonwealth of Pennsylvania. Defendant Torres is the Commonwealth's Chief Election Officer and administers the Pennsylvania Department of State, which is charged with the supervision and administration of federal and state election laws. *See, e.g.*, 25 Pa.C.S. § 1201, 1222.

7. Defendant Jonathan M. Marks is the Commissioner of the Bureau of Commissions, Elections, and Legislation, a bureau of the Pennsylvania Department of State. Defendant Marks is responsible for planning, developing and coordinating statewide implementation of voter registration and list maintenance activities. *See, e.g.*, 25 Pa.C.S. § 1201, 1222; *see also* Pennsylvania Department of State, About Us, Jonathan M. Marks, <http://www.dos.pa.gov/about-us/Pages/Commissioner,-Bureau-of-Commissions,-Elections,-and-Legislation.aspx>.

## **BACKGROUND**

### **The National Voter Registration Act**

8. The NVRA provides that “[e]ach State shall maintain for at least 2 years and shall make available for public inspection . . . **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) (emphasis added).

9. The only records exempted from the NVRA's public disclosure requirement are "records relate[d] to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered." 52 U.S.C. § 20507(i)(1).

### **Registration Lists and Registration List Maintenance in Pennsylvania**

10. In Pennsylvania, voter registration records are maintained by state and county officials using the Statewide Uniform Registry of Electors (SURE), which facilitates the registration and cancellation of registrants. 25 Pa.C.S. § 1222.

11. Using the SURE system, "Commissions shall institute a program to protect the integrity of the electoral process and to ensure the maintenance of accurate and current registration records." 25 Pa.C.S. § 1901(a).

12. Like the NVRA, Pennsylvania has a state public disclosure law pertaining to election list maintenance records. State law requires that all registration list maintenance records maintained by the Defendants be made available for public inspection and duplication:

The department and each commission shall preserve for two years and shall make available for public inspection and, where available, photocopying at a reasonable cost **all records** concerning the implementation of programs and activities conducted for the purposes of ensuring the accuracy and currency of official lists of registered electors except to the extent that the records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular qualified elector is registered.

25 Pa.C.S. § 1405(b)(1) (emphasis added).

13. When the registration of a registered elector is cancelled, election officials must “mark on all registration records of the elector the word ‘canceled’ and the date and cause of cancellation.” 25 Pa.C.S. § 1904(a). These records are subject to public inspection under NVRA.

14. Election officials must then “remove any registration records pertaining to the elector” and retain the cancellation records “separate from registered electors for five years.” *Id.* Upon cancellation, election officials must “promptly update information contained in its registration records” using the SURE system. *Id.* Records of removal and cancellations are subject to public inspection under the NVRA.

15. The names of prospective jurors for the federal and state courts of Pennsylvania are drawn from a pool of names created using the lists of registered voters. 42 Pa.C.S. § 4521(a)(2); *United States v. Green*, No. 10-186, 2011 U.S. Dist. LEXIS 115542, at \*4 (W.D. Pa. Oct. 6, 2011) (the “names of grand and petit jurors selected to serve . . . shall be selected at random from the voter registration lists of all the counties within the relevant divisions”) (citations and quotations omitted).

16. Only citizens are qualified to serve on juries in Pennsylvania. 42 Pa.C.S. § 4502(a).

17. The inclusion of noncitizens on voter registration lists risks the inclusion of non-qualified noncitizens on federal and state juries.

18. Furthermore, the inclusion of non-qualified noncitizens in the prospective jury pools imposes on clerks of court who use defective lists various costs associated with the identification and removal of unqualified jurors during the jury selection process.

### **Noncitizen Registration and Voting is a Crime**

19. United States citizenship is a requirement to register and to vote in Pennsylvania. 25 Pa.C.S. § 1301(a)-(b).

20. In Pennsylvania, it is a misdemeanor, punishable by up to five years in prison, for a noncitizen (or other ineligible individual) to apply for voter registration. 25 Pa.C.S. § 1703(a)(1); 25 Pa.C.S. § 1703(b).

21. Registration and voting by a noncitizen is criminalized under multiple federal felony statutes:

- a. 18 U.S.C. § 611 (criminalizes voting by illegal aliens in federal elections);
- b. 18 U.S.C. § 911 (criminalizes representing oneself to be a United States citizen);
- c. 18 U.S.C. § 1015(f) (criminalizes false statements in order to register to vote in any federal, state, or local election);

d. 52 U.S.C. § 20511(2) (criminalizes the fraudulent submission of voter registration applications and the fraudulent casting of ballots)

22. Election officials in Pennsylvania commit one or more state offenses when they knowingly allow the registration of a noncitizen or accept votes from a noncitizen.

23. It is misdemeanor, punishable by up to five years in prison, for an election official to “knowingly register[] or permit[] the registration of an applicant not lawfully entitled to be registered.” 25 Pa.C.S. § 1702(a).

24. It is a misdemeanor, punishable by up to five years in prison, for an election official to “[k]nowingly accept the vote of an individual not registered” to vote or “[k]nowingly receive a vote from a person falsely claiming to be a registered elector.” 25 Pa.C.S. § 1705(a)(2)-(3).

### **The Discovery of Noncitizen Registration and Voting in the Commonwealth**

25. Investigations by the Foundation and others have revealed that noncitizens are registering and voting in the Commonwealth.

26. In 2015, the Foundation submitted a request pursuant to the NVRA for list maintenance records maintained by the Philadelphia City Commission.

27. Records obtained by the Foundation showed that between 2013 and 2015, at least 86 registrations in the City of Philadelphia were cancelled because election officials determined that the registrant was not a U.S. citizen. Public

Interest Legal Foundation, *Aliens and Felons: Thousands on the Voter Rolls in Philadelphia* at 2, October 4, 2016, available at <https://publicinterestlegal.org/files/Philadelphia-Litigation-Report.pdf>.

28. In large measure, the illegal voter registrations detailed in these records were self-reported aliens. There was no active process in place to detect and remove them. Only self-reporting by aliens, who were concerned with jeopardizing their immigration status, led to their detection and removal from the rolls in Philadelphia.

29. Of the 86 noncitizens whose registrations were cancelled, 40 cast a ballot in at least one election prior to cancellation. *Id.*

30. The Foundation presented its findings in testimony to the State Government Committee of the Pennsylvania House of Representatives on October 4, 2016. Preparations for the November election and efforts to protect and improve the integrity of elections: Hearing before the State Government Committee of the House of Representatives, Oct. 4, 2016, transcript available at [http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2016\\_0147T.pdf](http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2016_0147T.pdf).

### **Systematic Registration of Identified Aliens Through PennDOT**

31. In September 2017, Al Schmidt, a Philadelphia city commissioner, revealed that a so-called “glitch” at Pennsylvania Department of Motor Vehicle branch offices was enabling noncitizens to register to vote when they applied for or

renewed their driver's licenses. Brennan, *Glitch let ineligible immigrants vote in Philly elections, officials say*, Philadelphia Inquirer, Sept. 20, 2017,

<http://www.philly.com/philly/news/politics/city/philly-voter-fraud-trump-immigrants-registration-commissioners-pennDOT-20170920.html>.

32. List maintenance records obtained by the Plaintiff from a number of county election officials in the Commonwealth—including those in Allegheny, Washington, Westmoreland, and York—plainly demonstrate that noncitizens have been registering to vote in the Commonwealth through a PennDOT administered process. The Defendants would possess counterpart and associated list maintenance documents as well as additional documents related to this defective list maintenance process.

33. A small sample of list maintenance records received from Allegheny County election officials pursuant to an NVRA request are illustrative of both the existence of responsive records in the possession of the Department of State and also of the defects in list maintenance process, including the registration process administered at PennDOT offices. These records are attached to this Complaint as Exhibits A through G.<sup>1</sup>

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 5.2 and Local Rule 5.2, certain personal information has been redacted in these Exhibits. Additional information, such as driver's license numbers, alien registration numbers, and street addresses has also been redacted.

34. In 2005, Othman Alamoudi registered to vote in Allegheny County through the PennDOT application process. Exhibit A at 1. In 2012, Mr. Alamoudi's voter registration was cancelled because election officials determined he was not a U.S. citizen. Exhibit A at 1, 8. In 2014, Mr. Alamoudi *re-registered to vote*, this time using the mail application process. Exhibit A at 1. Mr. Alamoudi then voted in the 2014 General Election. Exhibit A at 2. In 2015, Allegheny County elections officials cancelled Mr. Alamoudi's voter registration a second time when he moved out of the county. Exhibit A at 1. After relocating to Mercer County, Pennsylvania, Mr. Alamoudi *again re-registered* using the PennDOT application process and is currently an active registrant. Exhibit A at 1, 7. Records indicate that Mr. Alamoudi voted in the 2016 General Election. Exhibit A at 7.

35. In 2002, Susan Hermanoche registered to vote in Allegheny County. Exhibit B at 1. In 2006, Ms. Hermanoche's voter registration was cancelled because election officials determined she was not a U.S. citizen. Exhibit B at 1. Since then, Ms. Hermanoche *has re-registered to vote twice*. Exhibit B at 1. Ms. Hermanoche has voted in several elections since she was flagged a noncitizen, including the 2008 Primary Election and the General Elections in 2010, 2012 and 2016. Exhibit B at 1, 6, 12. Prior to voting in the 2016 General Election, Ms. Hermanoche registered to vote through the PennDOT application process. She is currently an active registrant. Exhibit B at 1, 9.

36. In 2007, Mildred Nyama registered to vote in Allegheny County through the PennDOT application process. Exhibit C at 1. Ms. Nyama then voted in a total of four elections, including the General Elections in 2008, 2012, and 2016. Exhibit C at 1-2. In 2014, Ms. Nyama wrote to elections officials to request cancellation of her registration due to the fact that she is not a U.S. citizen. Exhibit C at 3-5.

37. In 2012, Devanathan Mudaliar registered to vote in Allegheny County through the PennDOT application process. Exhibit D at 1. In 2014, Mr. Mudaliar wrote to elections officials to request cancellation of his registration due to the fact that he is not a U.S. citizen. Exhibit D at 2-4. Mr. Mudaliar's letter explains that he registered to vote due to a "system error" "while going through the driving license pendot [sic] process." Exhibit D at 4.

38. In 2009, Felipe Rojas-Orta registered to vote in Allegheny County through the PennDOT application process. Exhibit E at 2. Mr. Rojas-Orta then voted in three separate elections, including the 2009 Municipal Primary and the General Elections in 2010 and 2016. Exhibit E at 5. In 2017, Mr. Rojas-Orta wrote to election officials to request cancellation of his registration, explaining, "I am not a citizen." Exhibit E at 3.

39. In 2006, Parshant Malhotra registered to vote in Allegheny County through the PennDOT application process. Exhibit F at 1. Mr. Malholtra then voted

in the 2007 Municipal Primary and the 2008 General Election. Exhibit F at 2. In 2013, Mr. Malholtra's registration was cancelled because election officials determined he is not a U.S. citizen. Exhibit F at 1.

40. In 2012, Alfredo Lopez Figallo registered to vote in Allegheny County through the PennDOT application process. Exhibit G at 1. In 2018, Mr. Lopez Figallo wrote to election officials to request cancellation of his registration due to the fact that he is not a U.S. citizen. Exhibit G at 2. Mr. Lopez Figallo explained,

On the day I was getting my drivers [sic] license, I registered to vote. My understanding was that as a permanent residende [sic] of the USA I could vote locally. I did not realize that I was no [sic] allowed to register in the first place.

Exhibit G at 2.

41. On or around October 11, 2017, then-Pennsylvania Secretary of the State Pedro Cortes resigned from office.

42. On October 25, 2017, the House State Government Committee held a hearing to examine the issue of noncitizen registration and voting, including the DMV "glitch" revealed by Commissioner Schmidt. Noncitizens Registered to Vote in Pennsylvania: Hearing before the State Government Committee of the House of Representatives, Oct. 25, 2017, transcript available at [http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017\\_0109T.pdf](http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017_0109T.pdf).

43. A representative of the Foundation appeared at that hearing and provided testimony concerning noncitizens registering and voting in the Commonwealth and elsewhere in the United States. Testimony of Noel H. Johnson, available at [http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017\\_0109\\_0004\\_TSTMNY.pdf](http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017_0109_0004_TSTMNY.pdf).

44. At the October 25 hearing, Commissioner Schmidt provided written and oral testimony to the committee. Testimony of Philadelphia City Commissioner Al Schmidt, available at [http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017\\_0109\\_0001\\_TSTMNY.pdf](http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017_0109_0001_TSTMNY.pdf).

45. In his written testimony, Commissioner Schmidt revealed that an investigation by his office found “220 non-citizens who were registered to vote in Philadelphia at some point between 2006 and 2017.” *Id.* at 1. Of those 220 noncitizens discovered, 90 had cast a total of 227 ballots, “with the largest number of votes (47) cast in the 2008 General Election.” *Id.* Of those 220 noncitizens discovered, 168 had initially registered through PennDOT (DMV) or modified their voter registration record through PennDOT (DMV). *Id.* at 2.

46. Upon information and belief, that information was shared with the Department of State prior to Commissioner Schmidt’s testimony on October 25, 2017. *See* Transcript, Hearing before the State Government Committee of the House of Representatives at 5:15-19, Oct. 25, 2017, available at

[http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017\\_0109T.pdf](http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017_0109T.pdf) (“We’ve received additional information this year, and Mr. Al Schmidt, the Vice Chair from the Philadelphia City Commissioners, who is one of the Commissioners over the elections in Philadelphia, he is going to be testifying here today also related to this issue.”).

47. At the October 25 hearing, Defendant Jonathan M. Marks, the Commissioner of the Bureau of Commissions, Elections, and Legislation, substantiated the revelation of Commissioner Schmidt.

48. According to Defendant Marks, the Department of State “undertook an analysis of the statewide voter registration database to determine whether ineligible residents were registering and voting.” Testimony of Jonathan Marks at 1, available at [http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017\\_0109\\_0002\\_TSTMNY.pdf](http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017_0109_0002_TSTMNY.pdf).

49. That analysis “found 1,160 records that indicate a registrant apparently self-reported and cancelled their registration because they were not citizens.” *Id.* Again, like in Philadelphia, these were only cases where an illegally registered noncitizen self-reported his or her illegal registration. It does not capture a wider search of how many total aliens were registered to vote under the so-called PennDOT “glitch.”

50. Defendant Marks submitted the following data to the State Government Committee regarding the Department of State's analysis of self-reported aliens on Pennsylvania voter rolls:

- Approximately 79% (912) never voted.
- Approximately 21% (248) individuals had voted at least 1 time. Of those 248:
  - 134 voted 1 time
  - 51 voted 2 times
  - 63 voted 3 or more times
  - Total ballots cast by the 248 individuals: 642
- The 1,160 records identified were from 46 counties.
- The 248 registrants with records showing they voted at least one time before cancelling were from 30 counties.
- Of the 1,160 who self-reported statewide, approximately 66% (769) had initially applied through the Motor Voter system.

*Id.* at 1-2. Records concerning this data analysis are subject to the public inspection provision of the NVRA.

51. According to Defendant Marks, "In a deeper analysis of the years 2000 through 2017, [the Department of State] found 544 ballots were cast by the identified registrants." *Id.* at 2.

52. As indicated by Defendant Marks, the noncitizens analyzed by the Department of State were only those noncitizens who "self-reported" their noncitizen status to election officials. *Id.* at 1.

53. On December 12, 2017, the Senate State Government Committee and the Senate Transportation Committee held a joint hearing to discuss noncitizen

registration and voting in the Commonwealth. Motor Voter, Unlawful Voting and Cyber Security: Joint Hearing before the Senate State Government Committee and the Senate Transportation Committee, Dec. 12, 2017, video available at <http://stategovernment.pasenategop.com/121217/>.

54. The Foundation submitted written testimony to the committees concerning noncitizens registering and voting in the Commonwealth. Testimony of J. Christian Adams, available at <http://stategovernment.pasenategop.com/wp-content/uploads/sites/30/2017/12/adams.pdf>.

55. At the December 12, 2017 joint hearing, Defendant Marks and Defendant Acting Secretary of State Robert Torres provided written and oral testimony.

56. Regarding the issue of noncitizens registering to vote through DMV offices, Defendant Torres explained it “is an issue that has extended over approximately twenty years.” Testimony of Acting Secretary Torres at 30:15-30:38, video available at <http://stategovernment.pasenategop.com/121217/>.

57. In written testimony, Defendant Torres explained that the Department of State is continuing to investigate noncitizens presently registered to vote. Specifically, Defendant Torres explained, “The Department’s ongoing effort includes expert analysis of the State Uniform Registry of Electors (SURE) database and PennDOT’s driver license database.” Testimony of Acting Secretary

Torres at 2, available at <http://stategovernment.pasenategop.com/wp-content/uploads/sites/30/2017/12/torres.pdf>.

58. Commissioner Schmidt again provided written and oral testimony at the December 12, 2017 joint hearing. Testimony of Al Schmidt, available at <http://stategovernment.pasenategop.com/wp-content/uploads/sites/30/2017/12/schmidt.pdf>.

59. According to Commissioner Schmidt's testimony,

When non- citizens apply for a driver's license at PennDOT, they are required to provide stay documents to show their legal status to remain in the U.S. for at least one year. PennDOT verifies these immigration documents electronically with the U.S. Department of Homeland Security and the applicant's driver's license record is marked using an INS Indicator.

*Id.* at 2.

60. When an applicant applies for voter registration, he or she is asked to provide their Pennsylvania driver's license or PennDOT ID card number. *See* Department of State, PA Online Voter Registration Application, <https://www.pavoterservices.pa.gov/pages/VoterRegistrationApplication.aspx>. According to the application's instructions, "If you have a PA driver's license or PennDOT ID card number, you must use it" to register to vote. *Id.*

61. Consequently, an individual's driver's license number can be used to verify whether someone is both a noncitizen (by the presence of the INS Indicator) and registered to vote (driver's license number is part of registration record). *See*

Testimony of Commissioner Schmidt at 62:28-63:17, video available at <http://stategovernment.pasenategop.com/121217/>.

62. In his oral testimony, Commissioner Schmidt explained that in July, August, and September of 2017, his office began meeting with the Department of State to discuss the issue of noncitizens registering to vote. Testimony of Commissioner Schmidt starting at 60:18, video available at <http://stategovernment.pasenategop.com/121217/>.

63. According to Commissioner Schmidt, the meetings with the Department of State resulted in an analysis that matched the driver's license numbers of noncitizens with the driver's license numbers of registered voters (hereafter, the "Noncitizen Matching Analysis"). Testimony of Commissioner Schmidt starting at 63:17, video available at <http://stategovernment.pasenategop.com/121217/>.

64. In his oral testimony given at the October 25, 2017 hearing of the House State Government Committee, Commissioner Schmidt stated that the Department of State was in the process of completing the Noncitizen Matching Analysis. Transcript, Noncitizens Registered to Vote in Pennsylvania: Hearing before the State Government Committee of the House of Representatives at 51:4-8, Oct. 25, 2017, available at [http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017\\_0109T.pdf](http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017_0109T.pdf) ("Well, respectfully, I think we'll be in a better position to

answer your question once the Department of State completes its match of voter registrations with driver's license numbers with INS indicators and then sort of working it down from there.”).

65. According to Commissioner Schmidt, the Department of State has completed the Noncitizen Matching Analysis. In his oral testimony, Commissioner Schmidt stated that the analysis revealed over 100,000 matches, meaning that the analysis showed over 100,000 noncitizens who were presently registered to vote in Pennsylvania. Testimony of Commissioner Schmidt starting at 63:40, video available at <http://stategovernment.pasenategop.com/121217/>. Records concerning this analysis of voter registration records are subject to public inspection rights under the NVRA.

66. In his written testimony (and again in his oral remarks) Commissioner Schmidt called on the Department of State to “[r]elease the results of the data matching of PennDOT driver's license numbers with INS Indicators against driver's license numbers of registered voters in the statewide voter registration database to the County Boards of Election,” and contact the implicated individuals so they can “take action to cancel their voter registration status prior to the next election.” Testimony of Commissioner Schmidt at 3, available at <http://stategovernment.pasenategop.com/wp-content/uploads/sites/30/2017/12/>

[schmidt.pdf](#); *see also*, Testimony of Commissioner Schmidt starting at 67:45, video available at <http://stategovernment.pasenategop.com/121217/>.

### **The Foundation Sought and was Denied Access to Records Concerning Noncitizen Registrants**

67. On October 23, 2017, the Foundation contacted Defendant Marks of the Department of State’s Bureau of Commissions, Elections, and Legislation via letter (hereafter, the “DOS Records Request,” attached as Exhibit H).

68. Pursuant to the public records inspection provision of the NVRA, 52 U.S.C. § 20507(i), the Foundation’s DOS Records Request sought the opportunity to inspect records concerning noncitizen registrants, including records related to their removal from the voter registration lists and referrals to law enforcement.<sup>2</sup> *See* Exhibit H.

69. The DOS Records Request specifically identified as responsive “all voter records that were referenced in recent news media reports regarding individuals improperly exposed to registration prompts due to a ‘glitch’ in PennDOT’s Motor Voter compliance system,” and records related to a “review” of these records by the Department of State. Exhibit H at 1.

70. At the October 25, 2017 hearing of the House State Government Committee, Defendant Marks confirmed that the Department had “begun to review the data on this issue” and that an “analysis” had been conducted concerning, at

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<sup>2</sup> The entire scope of the requested records is available at Exhibits H and I.

least, the 1,160 noncitizens who had self-reported their statute as noncitizens and who had sought cancellation of their registrations. Testimony of Defendant Marks at 1, Oct. 25, 2017, available at [http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017\\_0109\\_0002\\_TSTMNY.pdf](http://www.legis.state.pa.us/WU01/LI/TR/Transcripts/2017_0109_0002_TSTMNY.pdf).

71. On October 25, 2017, a representative of the Foundation visited the Department of State's Bureau of Commissions, Elections, and Legislation to inspect the requested records.

72. An office employee informed the Foundation's representative that the DOS Records Request had been received, but that the requested records were not available for inspection. The request to inspect the records was denied.

73. The office employee notified someone in the Office of the Chief Counsel that the Foundation's representative was in the office to inspect the requested records.

74. After a short while, a representative from the Office of the Chief Counsel informed the Foundation's representative that the office was in the process of reviewing the DOS Records Request and that the office would provide a response via email in the next few days.

75. The Department of State did not permit the Foundation to inspect the requested records.

76. On October 30, 2017, Rebecca Fuhrman, an Agency Open Records Officer in the Office of the Chief Counsel, sent a letter via email to the Foundation. The letter acknowledged receipt of the DOS Records Request, but indicated that it was being processed under the Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101 *et seq.* The letter asked for an additional 30 days—or until November 29, 2017, to provide a response.

77. In a response sent via email, the Foundation again notified the Department of State that the Foundation’s DOS Records Request was made pursuant to the NVRA, not the Pennsylvania Right-to-Know Law.

78. In an email dated October 30, 2017, Ms. Fuhrman stated, “The Department acknowledges that your request is made pursuant to the NVRA.”

79. No further response was received from the Department of State by their internal deadline of November 29, 2017.

80. When no response was given, on December 4, 2017, the Foundation wrote to Defendant Marks and Ms. Fuhrman to ascertain the status of the DOS Records Request and to clarify the scope of the requested records, explaining that the DOS Records Request includes records related to the Noncitizen Matching Analysis: “results (full or interim) from an aforementioned official ‘review’ of voter data compared against PennDOT’s database of customers to identify voters

with matching driver profiles containing noncitizen designations” (hereafter the “DOS Clarification Letter, attached as Exhibit I).

81. The DOS Clarification Letter advised Defendant Marks’s office that a representative of the Foundation would again be visiting his office on December 6, 2017 to inspect the requested records. Exhibit I at 2.

82. In an email to the Foundation dated December 5, 2017, Kathleen Kotula, Deputy Chief Counsel for the Department of State, stated that the requested documents would not be available for inspection on December 6 and that a separate email detailing the reasons for the unavailability would follow.

83. On December 6, 2017, a representative of the Foundation again visited the office of the Department of State’s Bureau of Commissions, Elections, and Legislation to inspect the requested records.

84. An employee for the Department of State, Jessica Mathis, advised the Foundation’s representative that the requested records could not be inspected and that “an email had been sent” regarding the matter.

85. At that time, no such email had been received by the Foundation.

86. The Department of State did not permit inspection of the requested records, including records related to the Noncitizen Matching Analysis.

87. On December 20, 2017, Deputy Chief Counsel Kotula emailed a letter from Defendant Marks to the Foundation regarding the DOS Records Request.

88. Defendant Marks’s letter stated, “[T]he Department does not agree that the NVRA entitles you to access the records you seek.”

89. In the letter, the Department of State takes the position that the NVRA’s public inspection provision is limited to list maintenance records that concern registrants who were determined to be ineligible “by reason of death or a change of residence.”

90. As was stated by the Foundation in the Records Request, the NVRA’s public inspection provision, 52 U.S.C. § 20507(i), does not contain the limitation advanced by the Department of State. Rather, the public inspection provision requires the Department of State to “make available for public inspection . . . **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) (emphasis added).

91. The Department of State’s letter further states,

[E]ven assuming *arguendo* that the NVRA would apply to a systematic removal program regarding non-citizens, the Department does not currently have such a program in place. As such, no responsive documents exist.

92. The NVRA’s public inspection provision is not limited to records concerning “systematic removal program[s],” but applies to all records concerning “the implementation of programs and activities.” 52 U.S.C. § 20507(i).

93. Furthermore, the Department of State's position is contradicted by several sources, including the letter from Defendant Mark's itself, in which the Department states that it is "actively reviewing" the matter of noncitizen registration. The Department's statement is also contradicted by the testimony of Defendant Marks, Defendant Torres, and Commissioner Schmidt, which details activities by the Department concerning the registration of noncitizens.

94. The requested records, including records related to the Noncitizen Matching Analysis, are "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). Those records must be made available under the NVRA's public inspection provision.

95. The Department of State's refusal to allow inspection of requested records, including records related to the Noncitizen Matching Analysis, is a violation of the public inspection provision of the NVRA.

96. After receiving the letter denying the DOS Records Request, the Foundation sent a response via letter to the Department of State (hereafter, the "DOS Violation Notice," attached as Exhibit J).

97. As required by the private-right-of-action provision of the NVRA, 52 U.S.C. § 20510, the DOS Violation Notice informed the Department of State that

its refusal to allow inspection of the requested records is a violation of the NVRA's public inspection provision. Exhibit J at 1.

98. The Violation Notice further informed the Department of State that because the violation of the NVRA occurred within 120 days of an election for federal office,<sup>3</sup> the Department of State had 20 days to cure the violation or it could face "a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation." 52 U.S.C. § 20510(b)(2).

99. No further correspondence has been received from the Department of State.

100. The Department of State has not made the requested records available for public inspection, but has intentionally and repeatedly denied the Foundation access to the request records.

101. The Foundation is not the only entity that has requested access to the Department of State's records concerning registration by noncitizens and the Noncitizen Matching Analysis. On November 29, 2017, Daryl Metcalfe, Chairman of the House State Government Committee, wrote to the Department of State to request, *inter alia*, records

indicat[ing] the total number of record matches obtained by comparing driver's license numbers and PennDOT ID card numbers

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<sup>3</sup> On October 23, 2017 Governor Wolf issued a Writ of Election setting a date of March 13, 2018 for a special election to fill Pennsylvania's vacant 18th Congressional District.

of registered electors in the SURE system database with driver's license numbers and PennDOT ID card numbers of individuals who hold a driver's license or PennDOT ID card, whose license or ID card record includes an INS indicator.

Upon information and belief, the Department of State has not provided the requested records to Chairman Metcalfe.

### **Defendants Have Violated the NVRA by Refusing to Provide Inspection of the Requested Records**

102. The records requested from Defendants are 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).

103. Under the NVRA, the Defendants are obligated to make the requested records available for public inspection and photocopying. Defendants have not done so and are therefore in violation of law.

### **Defendants' Violations of Law Have Harmed the Foundation and the Public**

104. As an integral part of its public interest mission, the Foundation gathers and disseminates information about compliance by state and local officials with federal election statutes, including election integrity statutes.

105. Using records and data compiled through use of the NVRA's public inspection provision, the Foundation has produced written reports concerning the registration and voting activity of noncitizens. These reports have been published

on the Internet. See Public Interest Legal Foundation, *Alien Invasion II: The Sequel to the Discovery and Cover-up of Non-citizen Registration and Voting in Virginia*, May 29, 2017, available at <https://publicinterestlegal.org/blog/alien-invasion-ii-sequel-discovery-cover-non-citizen-registration-voting-virginia/>; Public Interest Legal Foundation, *Garden State Gotcha*, Sept. 11, 2017, available at [https://publicinterestlegal.org/files/Garden-State-Gotcha\\_PILF.pdf](https://publicinterestlegal.org/files/Garden-State-Gotcha_PILF.pdf). One such report concerns noncitizen registration and voting in Philadelphia, Pennsylvania. Public Interest Legal Foundation, *Aliens & Felons: Thousands on the Voter Rolls in Philadelphia*, October 4, 2016, available at <https://publicinterestlegal.org/files/Philadelphia-Litigation-Report.pdf>.

106. The Foundation has disseminated this information through media and press sources. Representatives of the Foundation have appeared on national television programs discussing the inadequacies of state election systems in preventing aliens from registering and voting. The Foundation believes that transparency is an important tool to keep voter rolls free of illegal registrants.

107. By denying the Foundation access to the requested records Defendants have impaired and will impair the Foundation from carrying out its mission.

108. A central activity of the Foundation is to promote election integrity and compliance with federal and state statutes which promote the integrity of

elections. The Defendants' violations of NVRA have impaired and will impair the Foundation from carrying out this its mission.

109. The failure of the Defendants to comply with their obligations under the NVRA has also undermined the confidence of Pennsylvania's properly registered voters in the integrity of the voter registration rolls, and, accordingly, has undermined the integrity of elections held across the Commonwealth of Pennsylvania.

110. Defendants have not cured their violation of the NVRA within the 20-day period applicable within 120 days of a federal election under the NVRA. 52 U.S.C. § 20510(b)(2).

111. The Foundation has spent considerable time and financial resources in an effort to obtain the requested records and to improve the accuracy of voter rolls across the Commonwealth.

112. The Defendants' failure to permit inspection and duplication of the requested records pursuant to the NVRA has frustrated, impeded and harmed the efforts of the Foundation.

## **COUNT I**

### **Violation of the NVRA Failure to Permit Inspection and Duplication of List Maintenance Records**

113. Plaintiff realleges paragraphs 1 through 112 as if fully stated herein.

114. Defendants have failed to permit inspection and duplication of records concerning Defendants' implementation of programs and activities for ensuring the accuracy and currency of official lists of eligible voters, in violation of Section 8 of the NVRA, 52 U.S.C. § 20507(i). *See Project Vote v. Long*, 682 F.3d 331, 334-335 (4th Cir. 2012) (The NVRA requires local election officials to provide such data to the public).

115. Defendants have not cured their violation of law within the 20-day period afforded them by the NVRA for violations that occur within 120 days of an election for federal office. 52 U.S.C. § 20510(b)(2).

116. Plaintiff has suffered an irreparable informational injury as a direct result of Defendants' violations of Section 8 of the NVRA because the Plaintiff does not have the data and records requested. The NVRA confers upon Plaintiff a right to information, and by denying that information to the Plaintiff, the Defendants have caused a concrete injury to the Plaintiff.

117. Plaintiff will continue to be injured by the Defendants' violations of Section 8 of the NVRA unless and until the Defendants are enjoined from continuing to violate the law.

118. Plaintiff has no adequate remedy at law.

**PRAYER FOR RELIEF**

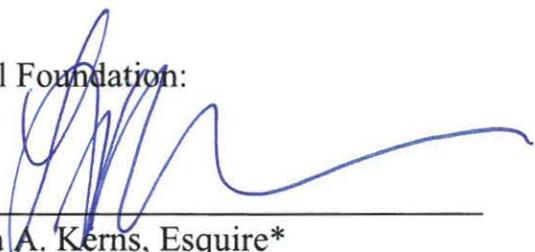
WHEREFORE, Plaintiff prays for a judgment:

1. Declaring that Defendants are in violation of Section 8 of the NVRA;
2. Ordering the Defendants to provide to the Plaintiff the records concerning their implementation of programs and activities to ensure the accuracy and currency of voter registration lists;
3. Ordering the Defendants to pay Plaintiff's reasonable attorney's fees, including litigation expenses and costs, pursuant to 52 U.S.C. § 20510(c); and
4. Granting Plaintiff further relief that this Court deems just and proper.

Dated: February 26, 2018

Respectfully submitted,

For the Plaintiff Public Interest Legal Foundation:



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Linda A. Kerns, Esquire\*  
LAW OFFICES OF LINDA A. KERNS, LLC  
1420 Locust Street – Suite 200  
Philadelphia, PA 19102  
PA Atty ID 84495  
Tel: (215) 731-1400  
Fax: (215) 701-4154  
linda@lindakernslaw.com  
\*General admission scheduled for March 9, 2018.

J. Christian Adams (Va. Bar # 42543)\*  
Noel H. Johnson (Wis. Bar # 1068004)\*  
Attorneys for Public Interest Legal Foundation, Inc.  
32 E. Washington St.  
Ste. 1675  
Indianapolis, IN 46204

Tel: (317) 203-5599

Fax: (888) 815-5641

adams@PublicInterestLegal.org

njohnson@PublicInterestLegal.org

*\* Pro Hac Vice application to be filed*

**VERIFICATION**

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: February 26, 2018

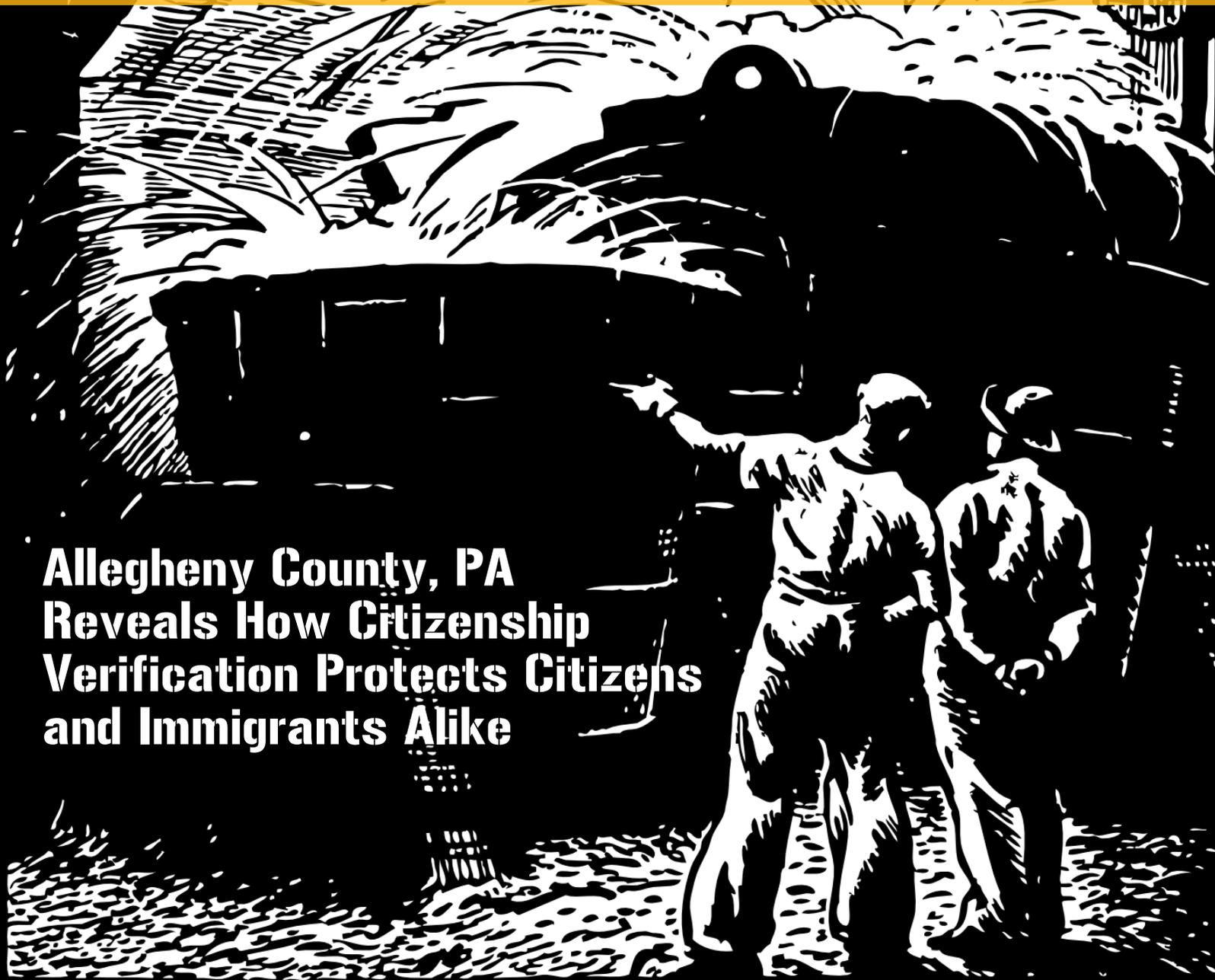


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Linda A. Kerns  
Counsel for Plaintiff



# STEELING THE VOTE



**Allegheny County, PA  
Reveals How Citizenship  
Verification Protects Citizens  
and Immigrants Alike**

# PUBLIC INTEREST

— LEGAL FOUNDATION —

July 2018

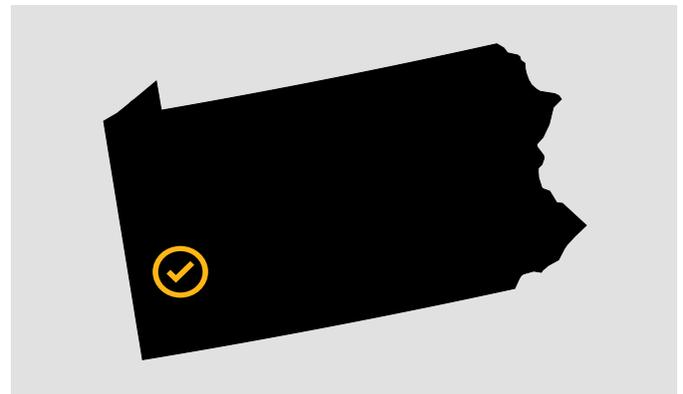
# INTRODUCTION

In late 2017, the Keystone State made national news after election officials, both statewide and local, admitted that noncitizens had been registering to vote at PennDOT offices for at least the last two decades. Often described as a “glitch,” the procedural flaw that permitted noncitizen registration was known to exist since the mid-1990s when the Commonwealth enacted National Voter Registration Act of 1993 (NVRA)—otherwise known as the Motor Voter law. According to officials, any person seeking a driver’s license—regardless of his or her immigration documents on the table during the transaction—was erroneously screened for interest in registering to vote. According to one Philadelphia City Commissioner, the number of noncitizens who entered the voter registration system during the last two decades exceeded 100,000.

Following these shocking revelations, the Public Interest Legal Foundation invoked its federal right to inspect Pennsylvania Department of State records that would shed light on the true extent of the problem and, the Foundation hoped, spur commonsense reform that would protect voters and immigrants alike. The Department of State refused to allow inspection of its records, forcing the Foundation to file a lawsuit in federal court to gain access to information that Congress intended would be publicly available.<sup>1</sup>

A similar request for voter registration records was made in Allegheny County. After initially resisting, Allegheny officials eventually produced hundreds of pages of records related to noncitizens who had registered to vote in the County over the last decade.

The records uncovered by the Foundation reveal how **139 individuals in Allegheny County alone reported or confirmed their ineligible noncitizen statuses** despite being registered to vote since 2006. The vast majority of these (71 percent) came forward with the hope their records did not hinder or derail their plans for citizenship naturalization. The remainder admitted their status after a typically unrelated list maintenance action occurred. These records further show that 27 percent of self-reporting noncitizens cast at least one ballot prior to their admission of ineligibility and removal from the rolls. This report will further account for the confusion and unlawful votes suffered in the wake of this entirely avoidable matter.



The data presented in this report requires an important caveat. The noncitizens found on the rolls in Allegheny County are only the ones who *self-reported* their noncitizen status to election officials. Given the twenty-year period during which the so-called registration “glitch” persisted, one thing is for sure: the total number of noncitizens who found their way into Pennsylvania’s voter registration system far exceeds the number of noncitizens who have outed themselves to date.



The full extent of noncitizen registration and voting throughout the Commonwealth remains a mystery mostly due to the obstructionist tactics of the Department of State, which refuses to turn over records that might show just how many noncitizens are presently registered to vote. The records uncovered by the Foundation in Allegheny County, however, begin to paint a picture of a troubling problem that has affected immigrants and citizens in every corner of the Commonwealth, according to state officials.

The Commonwealth now assures the public that it no longer offers voter registration before citizenship status is known—only U.S. citizens who can legally register now see the prompts that facilitated noncitizen registration. However, this alone cannot reduce the risk of ineligible registration and voting. To better protect citizens and noncitizens alike, Pennsylvania lawmakers must do more to verify citizenship, including sharing PennDOT proof of identity records with the Department of State. To aid this goal, this report outlines commonsense remedial measures that Pennsylvania should consider and adopt. By doing so, the Keystone State could join the growing ranks of pioneers like Virginia and Arizona, which are taking proactive measures to protect immigrants and safeguard the right to vote of all citizens.





# SUMMARY OF FINDINGS

139

Noncitizen registrations cancelled in Allegheny County through self-reporting since 2006

## Party Registration

74 

38 Undeclared

23 

2 

2 Independent

## Method of Registration

87 

23 Unknown

16 Self

13 

6

Average number of years a noncitizen was registered to vote before removal

27

Percent of noncitizens who cast at least one ballot prior to removal from the voter rolls



## WHAT IS 'MOTOR VOTER?'

The problems with the voter rolls in Pennsylvania and other states can be traced to 1993. Within months of assuming the Presidency, Bill Clinton signed into law the National Voter Registration Act (“NVRA”), a sweeping piece of legislation that proponents claimed would increase the number of registered voters and participation in our elections. One thing is for sure— defects in the legislation also increased the number of ineligible voters on voter rolls.



The NVRA, commonly known as “Motor Voter,” requires each state to offer voter registration to any individual that applies for a driver’s license. This provision of the law requires the applicant to swear to his or her citizenship under penalty of perjury, but does not explicitly authorize (nor explicitly deny) the state’s ability to verify citizenship through formal documentation. Instead, the law provides that the states “may require only the minimum amount of information necessary to . . . enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.”<sup>2</sup>

Attempts by various states to require registrants to provide documentary proof of citizenship during registration for federal elections have been thwarted by lawsuits brought by left-leaning groups. Like other states, Pennsylvania requires applicants to merely check a box in order to “prove” their citizenship status. In other words, it’s nothing more than the honor system. If a noncitizen checks “Yes” to the citizenship question in any setting, they are simply enrolled without any further verification, even if they presented a Green Card to identify themselves at the time of registration.

2	Are you a citizen of the U.S.?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	Will you be 18 years or older on or before election day?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

The honor system has proven to be inadequate. This honor system not only risks corrupting the voter rolls, it exposes noncitizens to potential legal difficulties later in life.



## NONCITIZENS DISCOVERED ON THE ROLLS IN PA

The Allegheny County research effort did not occur in a vacuum. Years before the alarming official statements and lacking transparency from Harrisburg, several research efforts were already indicating problems with noncitizen voter registration in the Commonwealth. In 2012, the City of Philadelphia published and circulated a “snapshot” report detailing 19 instances where noncitizens admitted to ineligible voter registration after the fact.<sup>3</sup> Seven of those cast at least one ballot in their lifespans as registered voters.<sup>4</sup> In 2016, the Public Interest Legal Foundation released an updated look at the City, reporting that from 2013 to 2015, another 86 noncitizens self-reported their ineligible registrations. Of those, 40 cast at least one ballot.<sup>5</sup> By 2017, the Commonwealth released data indicating more than 1,000 similar self-reports.<sup>6</sup>

As the data disclosures and official admissions to pre-existing knowledge of a “glitch” allowing noncitizens to register in PennDOT offices became national news, Pennsylvania Secretary of State Pedro Cortes quietly resigned on October 11, 2017.<sup>7</sup>

In December, Philadelphia City Commissioner Al Schmidt— whose three-member commission administers registration and elections in Pennsylvania’s largest jurisdiction—testified in Harrisburg that potentially 100,000 noncitizens could be matched between voter rolls and PennDOT customer lists. Commissioner Schmidt challenged the Commonwealth’s claim that PennDOT was suffering a “glitch” in its Motor Voter duties. What the Commonwealth had done, Schmidt claimed, was create a “Trojan horse” responsible for 75 percent of all ineligible registrants.<sup>8</sup>

Throughout the latest round of admissions and data releases on the matter, the Foundation pressed various Pennsylvania counties and the Department of State to release more records to the public. As previously noted, inspection rights invoked under the National Voter Registration Act were rebuffed from Harrisburg, eventually leading to federal litigation.<sup>9</sup> After the suit commenced, the Commonwealth quietly began a list maintenance operation by sending official mailers to more than 7,700 potential noncitizen registrants despite their subsequent claims before the court that no such operations (and accompanying data) existed.<sup>10</sup>



100k

Number of noncitizen matches between voter rolls and PennDOT records, according to a Philadelphia City Commissioner

To date, the Department of State has refused newspapers, legislators, and private organizations like the Foundation access to noncitizen data.<sup>11</sup> Some counties, however, like Allegheny, did release data responsive to the Foundation’s requests.

## THE 'GLITCH' THAT WASN'T

Philadelphia Commissioner Schmidt's use of the term "Trojan horse" is fitting when describing how the Commonwealth exposed immigrants to voter registration. Given that all one needs in Pennsylvania to demonstrate eligible citizenship in voter registration is the ability to check a box attesting the same, a noncitizen will easily slip through the system when the opportunity is offered by a state officer to an immigrant whose grasp on the English language is limited. **It takes years (an average of six in Allegheny County) before an event triggers a noncitizen to come forward and report their illegal registration at great risk to their own personal interests.** But until that time comes, a noncitizen looks identical to a citizen when looking at voter registration data.

The Department of State moved to assuage concerned citizens by admitting to a system "glitch" in PennDOT's Motor Voter procedures. At the same time, Commonwealth officials added the fact they were **aware of the problem since the mid-1990s.**<sup>12</sup> The facts on the matter demonstrate that what occurred throughout Pennsylvania was anything but a "glitch."

When a noncitizen approaches PennDOT for a new driver's license, they are held to a higher standard than when registering to vote. Immigrant customers are required to provide all of the following to prove identity: original immigration paperwork denoting legal presence; valid foreign passport; and Social Security documentation.<sup>13</sup> With these documents on the table, no properly trained PennDOT employee would engage a customer about their interest in voter registration—yet every customer was treated as if they were eligible citizens.

Early on, PennDOT blamed procedural reforms in August 2016 that re-ordered the battery of questions and prompts that a driver's license customer sees to "immediately" screen for voter registration. Though this might explain confusion suffered in the past two years, the records reviewed by the Foundation describe how noncitizens were passing into the voter rolls regardless of the order of questions in the decade before. Scores of noncitizens complained not about the order of inquiry—but the fact they were offered registration in a language they did not completely understand. Some even complained about feeling pressure to register from PennDOT employees when they shared their confusion by the prompts.

Dear Sirs and Madams;

My name is Turan [REDACTED] On this day 02/18/2009 I went to get my License at Penn DOT Bridgeville license center. THEY thought I could vote for elections! **And they made me fill up applications for voter registration and I started fill it up!** Because I thought that was any other paper needed to be filled up in order to get my license.

I am just a Green card holder (permanent resident) and I don't speak English nor I am NOT A Citizen! She should not offer any voting registration to any foreign person who doesn't speak English.

Because of that I would want you to CANCEL my voting registration

Thank you for your understanding and your help!!!

## THE 'GLITCH' THAT WASN'T cont...

Many remain skeptical of the Commonwealth's explanation, including Philadelphia Commissioner Schmidt, who, when testifying before the Pennsylvania General Assembly, challenged the assertion that the registration of noncitizens was the result of a simple "glitch":

A "glitch" is the completely wrong term for this. A "glitch" would be a program that is designed to do one thing, but it does something else. This is more "thoughtlessness." And, it's "thoughtlessness" for now more than 20 years.<sup>14</sup>

**At least one Allegheny County noncitizen registrant case should have triggered red flags throughout the Department of State and PennDOT nearly a decade before the 2017 admissions.** Days after the 2008 election, the Allegheny County Election Division received a concerned citizen's complaint from a person who overheard a coworker "bragging" about his noncitizen wife's vote for President of the United States.<sup>15</sup> The County was able to identify the potential noncitizen voter and then confirm her application originated from PennDOT in 2007.<sup>16</sup>

An email was then sent to the Department of State, asking if "PennDOT [has] citizenship requirements for [driver's licenses], if not, are applicants asked if they are citizens?" The same email added that the County previously "cancelled 3 or 4 non citizens" that year from PennDOT.<sup>17</sup>

The Department of State responded by writing that PennDOT does ask about citizenship during the voter registration screening, but promised to forward the larger matter to get more information. The Commonwealth election chief at the time added that "**voting falsely is a federal offense [sic]. I recommend talking with your solicitor if it comes to that.**"<sup>18</sup> The registrant in question later acknowledged in writing in 2009 to being a noncitizen, but the records are silent if prosecution was pursued in any way.<sup>19</sup>

Glitches are by nature emergent and usually temporary. Pennsylvania's application of the Motor Voter law prematurely exposed all immigrant customers to registration while eligible citizens suffered vote dilution. Ending voter registration screening for all PennDOT customers was one necessary reform the Commonwealth was wise to finally enact, but the job is not yet done.

**From:** Boscia, Diane  
**To:** OLeary, Molly  
**Sent:** Mon Nov 10 17:49:52 2008  
**Subject:** Voter info

The second case involves a possible non citizen who registered to vote through PenDOT.

(We've cancelled 3 or 4 non citizens this year who were DOTIA's)

A very concerned voter called today as a co-worker, John [REDACTED] claimed (was bragging about) his wife who is not a citizen was able to vote.

Excerpt from email between Department of State and Allegheny County

## PA'S PATCHWORK DETECTION SYSTEM

Pennsylvania, like too many states, does not employ a comprehensive system of verifying and removing noncitizen voters from the rolls. County and Commonwealth officials are dependent on ineligible voters volunteering their statuses—often at great personal and legal risk—to keep records clear of unlawful entries. The Foundation's review of documents belonging to previously cancelled noncitizen registrants reveals a patchwork system of reactionary detection that takes several years to work—if ever.

During the review of the 139 noncitizen registration files disclosed by Allegheny County, clear trends emerged on how ineligibility is discerned over an average period of six years per person. Either a personal immigration trigger forces a noncitizen to approach officials with their status clarification, or a typically unrelated government procedure draws an admission from the noncitizen.

**Seventy-one percent (71%) of cancellations initiated when a noncitizen was compelled to contact Allegheny County due to a pending immigration matter or fear of future jeopardy.** Pennsylvania's statewide voter list database system categorized the vast majority (63 percent) of cancellations as originating in the Motor Voter system. Noncitizens—32 cases in particular—specifically named PennDOT's system as a cause of confusion when writing their admissions. Some mention confusing advice given by PennDOT employees when registration was offered. Many note that a language barrier tripped them up when being screened for voter registration interest in English only.



Noncitizen registrations that originated in the PennDOT 'Motor Voter' system

Noncitizens commonly referenced the fact they were seeking to convert their legal permanent resident status or marriage visa to naturalized citizenship when cancelling their registrations. This is done because the federal application for naturalization<sup>20</sup> engages the user in a specific set of questions regarding previous claims of U.S. citizenship and voter participation. An established voting history atop an illegal registration has proven to convert a citizenship track into a deportation order.<sup>21</sup> Immigration officers regularly demand all records contained within a noncitizen voter registrant's file and make determinations on future immigration status. Allegheny County documents detail how noncitizens currently naturalizing or planning to do the same will reach out to clear their records and express surprise, outrage, and sometimes contrition by the facts in their respective files. **Allegheny County maintains a pre-printed letter for noncitizens to sign when they express a desire to de-register—formally closing their file.**



## PA'S PATCHWORK DETECTION SYSTEM cont...

One loophole to this system became apparent when PILF found no evidence of self-reports originating from a noncitizen's need to renew a Green Card status. As a matter of fact, the I-90 Form<sup>22</sup> maintained by the U.S. Customs and Immigration Service does not contain any questions related to voting—essentially foreclosing the need to cancel an unlawful voter registration.

The second trigger for a noncitizen self-report derives from official activities undertaken by the County or other government agencies. The Foundation was able to identify four primary activities which would later inspire noncitizens to admit their ineligible statuses in response.

### **Husted Inactivity Trigger**

Well before the Supreme Court confirmed in 2018 that states could use a period of inactivity and unresponsiveness to official inquiries to “prune” voter lists of ineligible registrations,<sup>23</sup> Allegheny County cancelled nearly 16 percent of all disclosed noncitizens as a byproduct of this list maintenance practice. After a period of nonvoting for five consecutive years, Pennsylvania counties will mail letters to the registrants notifying them of the trend and asking them to “verify your voter information ... make necessary changes” and do so at least 30 days before the upcoming federal election. Rather than note the address on file needed an update or explain that no candidates drove a letter recipient to the ballot box, 22 noncitizens responded by outing their citizenship statuses.

### **Jury Data Transfers**

In Pennsylvania, jury wheels are primarily populated using voter registration lists.

When an individual claims he is not a citizen when responding to a jury duty notice, the notice is collected and sent to voter registration officials, who cancel the registration of any self-identifying noncitizens. The Foundation recognizes Allegheny County's detection method as a best practice worthy of utilization across the country.<sup>24</sup> In the County, 14 noncitizens were positively identified and cancelled after they confirmed their lack of citizenship when responding to a jury duty notice.

### **National Change of Address**

Counties and locales around the nation commonly tap into the National Change of Address (NCOA) system operated by the U.S. Postal Service to keep tabs on registrants who leave their respective jurisdictions without direct notice stating they are moving away. When an NCOA match occurs, the County sends a letter to the registrant's new address to confirm details. In one Allegheny County case, a letter was returned with an admission of noncitizenship.

### **Federal Inquiry**

One record was cancelled as the result of a USCIS inquiry to the County about a potential noncitizen registrant. Though this is not a list maintenance practice like the above examples per se, there is at least some evidence of an open line of communication between local officials and immigration agents—and should be commended.

### **Outliers**

In one case, a citizen complained about a coworker's noncitizen wife being able to vote in the 2008 Election. In another, a noncitizen was apparently registered by accident even after they checked “NO” on the question about citizenship eligibility.

## CASE STUDIES

The Foundation chose to highlight 10 cases where noncitizens came clean by one reason or another about their ineligible status. The records, generally comprised of direct statements from the noncitizens, illuminate system failures and the stakes involved when bad policy and bad training combine against an immigrant in the voting system.<sup>25</sup>

1

Name: **Alister**<sup>26</sup>  
Registration Year: **2004**  
Cancellation Year: **2009**  
Method: **Third-Party Drive**  
Voted: **Yes**

Alister was a university student prompted to register by a third-party drive on campus ahead of the 2004 Election. He wrote later in 2009 that he was unaware only citizens could vote and did not recall any question on the voter registration form about citizenship eligibility. He voted in the 2004 Presidential election. He apologized five years later for the incident and thanked the County for “the opportunity to explain myself, because that’s one of the reasons why the USA is so great.” Alister’s record contained a copy of his completed voter registration form, which indicates the checkbox for “YES” on citizenship was marked. It is unclear if the third-party circulator completed that portion of the form thereafter.

To whom it may concern,

During my sophomore year at Cal U of Pennsylvania, I inadvertently signed up to vote during a “get voters to the poll drive”. I was not aware at that time that legal aliens were not permitted to vote. I only did so as part of the “drive” on campus to get college students registered. I was not asked to show any identification other than my college ID. At the time, I do not recall being asked if I was a citizen nor do I remember any indication of that on the application that I signed. I have never denied the fact that I was not a US citizen and I find it unusual that the application was processed as such. When the voter’s registration card came in the mail, I did vote in the 2004 election, I however understand now that that was wrong and I am very sorry.

I have been in the USA since I was 5 years old and I love this country and would do anything I could to defend it, and be an upstanding citizen, so I am willing to accept the consequences that I have incurred. Thank you for allowing me the opportunity to explain myself, because that’s one of the reasons why the USA is so great.

Sincerely,

Alister [REDACTED]



## CASE STUDIES

2

Name: **Angelo**<sup>27</sup>  
Registration Year: **1998**  
Cancellation Year: **2014**  
Method: **Motor Voter**  
Voted: **Yes**

Angelo represents yet another example where citizenship verification can correct for false assumptions on the part of the noncitizen. After he moved to Pittsburgh, Angelo followed the PennDOT voting prompts under the admittedly mistaken belief that his completed military service record would directly confer U.S. citizenship. His voting record consists of ballots cast nearly every year from 2001 to 2014.

3

Name: **Beulah**<sup>28</sup>  
Registration Year: **2012**  
Cancellation Year: **2013**  
Method: **Third-Party Drive**  
Voted: **Yes**

Beulah's case involves accusations of alleged identity theft at the hands of a third-party registration drive. A letter composed by Allegheny County memorialized her meeting with officials where she explained that her wallet containing an identification card was stolen in 2012 and an application for voter registration was later submitted in her name. The County added that "many forms we have received via this method have been suspicious and have resulted in investigations."

Dear Sirs,

Beulah [REDACTED] came into our office to cancel her voter registration. She wrote an explanation of how she was fraudulently registered after having her wallet stolen with her identification enclosed. We looked into her registration record and found that she was registered as Beulah [REDACTED] through a voter registration drive.

Many of the forms we have received via this method have been suspicious and have resulted in investigations.

Allegheny County internal memorandum

## CASE STUDIES

4

Name: **Conroy**<sup>29</sup>  
 Registration Year: **2000**  
 Cancellation Year: **2008**  
 Method: **Motor Voter/Third-Party Drive**  
 Voted: **Yes**

Conroy presents a straightforward case demonstrating how the checkbox honor system for verifying citizenship can fail. He first registered to vote via PennDOT in 2000 and then again through a voter registration drive. Each time, he checked a box indicating U.S. citizenship and eligibility to vote. His record shows a ballot cast in 2004. In 2008, he wrote that he “did not no I had to be a U.S. citizen to vot.” [sic]

1	Are you a citizen of the United States of America?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	If you checked "No" in response to either of these questions, do not complete this form.				
	Will you be 18 years of age on or before election day?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
2	<input type="checkbox"/> New Registration <input type="checkbox"/> Change of Name <input type="checkbox"/> Change of Address <input type="checkbox"/> Change of Party <input type="checkbox"/> I am a Federal or State employee and wish to retain my voting residence in the county where I last resided.						
3	Mr Mrs Miss	Last Name	First Name	Middle Name/Initial	Jr Sr II III IV	DL #	OR SS# (last 4 digits)

Pennsylvania voter registration application

5

Name: **John**<sup>30</sup>  
 Registration Year: **2000**  
 Cancellation Year: **2010**  
 Method: **Self**  
 Voted: **Yes**

For the first five years as a registered voter, John cast ballots in the 2002 and 2004 general elections. He stopped voting from there and by 2009, Allegheny County was not sure if he was still home. A “Five Year Notice” letter was sent to his address, indicating his inactivity and seeking updated information to keep the registration in “active” status. John wrote back that he is a legal permanent resident from the United Kingdom and wished to be removed from the roll.

6

Name: **Abdel**<sup>31</sup>  
 Registration Year: **2009**  
 Cancellation Year: **2009**  
 Method: **Motor Voter**  
 Voted: **No**

Shortly after a voter ID appeared in the mail, Abdel wrote to Allegheny County looking to correct the mistake. He noted through the help of his attorney that the questions involving voter registration posed to him by PennDOT were in English—a language he did “not have a good command of” and “did not comprehend that [he] was registering to vote.” His record was cancelled thereafter.

## CASE STUDIES

7

Name: **Turan**<sup>32</sup>  
Registration Year: **2009**  
Cancellation Year: **2009**  
Method: **Motor Voter**  
Voted: **No**

Turan, despite his short span as a registered voter, wrote to Allegheny County squarely placing blame for his registration on PennDOT. In a typed letter, he exclaimed that “[PennDOT] thought I could vote for elections! And they made me fill up applications for voter registration and I started to fill it up!” He added, “I don’t speak English nor am I NOT A Citizen! [sic] She should not offer any voting registration to any foreign person who doesn’t speak English.”

8

Name: **Sadik**<sup>33</sup>  
Registration Year: **2016**  
Cancellation Year: **2016**  
Method: **Third-Party Drive**  
Voted: **No**

Sadik says he was approached by a man offering job assistance and was given a stack of applications to complete. One of those, he says, was a voter registration form in English. Sadik notes that he has refugee status after leaving Sudan. “I spoke no English and didn’t understand what I was signing ... If I knew that I was registering to vote, and that I was not allowed to vote, I would not have registered.”

To whom it may concern:

I am writing to request that I be deregistered to vote in Allegheny County. I am a Refugee from Sudan and not a U.S. Citizen, and therefore am not eligible to register to vote or vote in the United States. I mistakenly registered to vote because a man approached me to help me find a job and I gave him my information, he gave me forms to sign and one of them was apparently a voter's registration form. As a refugee in the United States when this happened, I spoke no English and didn't understand what I was signing. Even today my English is not perfect and I sometimes have difficulty understanding things especially when spoken fast. If I knew that I was registering to vote, and that I was not allowed to vote, I would not have registered.

At this time, could you please deregister me from the registration rolls and provide a copy of my entire voter registration file including all documents, signatures and forms that may explain how I was registered to vote without realizing it.

Thank you for your assistance with this matter.

## CASE STUDIES

9

Name: **Yoanki**<sup>34</sup>  
Registration Year: **2006**  
Cancellation Year: **2010**  
Method: **Motor Voter**  
Voted: **No**

Yoanki visited a PennDOT office and four years later reported that his registration arose out of a language barrier and an employee trying to communicate about voting all the same. The noncitizen noted in a handwritten letter that the employee asked about political party preference, which he reportedly said “Republican.” Curiously, PennDOT registered him as a Democrat for a period of time. Yoanki wrote that he wanted to “fix the error” and did not want “any problem with the law.”

10

Name: **Karen**<sup>35</sup>  
Registration Year: **1996**  
Cancellation Year: **2008**  
Method: **Motor Voter**  
Voted: **No**

Karen’s record is strikingly similar to the notorious Margarita Fitzpatrick case. Karen came to the U.S. on a fiancé visa and was exposed to Motor Voter at PennDOT. She wrote that when she was offered registration, “I asked the attendant if I should fill it out. I told her that I didn’t think I was qualified to vote as I wasn’t a citizen. She thought I should fill it out anyway, and that I would be rejected if I was not qualified.”

To Whom It May Concern:

I am writing to request that my name be removed from the voter registration list.

I am not eligible to vote as I am not an American citizen.

I had just come into the United States on a fiancé visa, and applied for a drivers license on August 1, 1996. When it came to the “register to vote” part of the application, I asked the attendant if I should fill it out. I told her that I didn’t think I was qualified to vote as I wasn’t a citizen. She thought I should fill it out anyway, and that it would be rejected if I was not qualified.

I have never voted in any election, and will not do so until I am a citizen.

Please remove my name from the voter registration list, and provide documentation to that effect, as well as a copy of my “voting record” that I may forward with my citizenship application.

## PROPOSED SOLUTIONS

Pennsylvania's admitted and demonstrated issues require more than simply ending the procedure that offers voter registration to noncitizens in PennDOT offices. Motor Voter's honor system to verify citizenship has shown itself to be inadequate. A suite of reforms is necessary to prevent citizens and immigrants alike from illegal registrations. The Foundation recommends the following:

- ✓ Pennsylvania should consider systems like seen in Virginia and Arizona where new applicants for voter registration are queried against other state databases, typically driver's license customer lists, to access proofs of U.S. citizenship contained in those systems. The PennDOT system already captures alien ID numbers and other original documents to clearly delineate between citizens and not. This reform places no up-front burden on new registrants, compared to documentary proof of citizenship laws like seen in some other states.
- ✓ Alternatively, Pennsylvania should utilize federal databases like SAVE to help identify noncitizens more quickly. Pennsylvania should use all available data, in addition to jury recusal information, to help maintain accurate and current voter rolls.
- ✓ The database, known as E-Verify, that is being used by U.S. employers to check the citizenship status of prospective employees should be made available to election officials and administrators to better identify registered voters and pending applicants who are not actually citizens.

- ✓ Pennsylvania election officials of all jurisdictions should always seize opportunities to better educate the public on issues related to voter eligibility and election integrity. Too many legal permanent residents thought they could vote and did so. The public must also be better informed to the limited role PennDOT plays in keeping voter records reliable. The offices are not arbiters of voter eligibility and simply pass along the data they are given. PennDOT employees must be continuously trained to not offer voter registration in any circumstance when foreign identifying documents are on their desk.
- ✓ The U.S. Department of Homeland Security should open new information-sharing channels between agencies to include Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), Citizenship and Immigration Services (USCIS) and Homeland Security Investigations (HSI) with state and local election officials to more easily identify non-citizens coming into contact with the federal immigration system.
- ✓ Law enforcement at both the federal and state level should exercise their authority to investigate and prosecute cases of voter fraud.



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<sup>1</sup> Section 20507(i) of the NVRA requires election officials to “make available for public inspection and, where available, photocopying at a reasonable cost, 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.”

<sup>2</sup> 52 U.S.C. § 20504.

<sup>3</sup> “Schmidt Investigation Alleges Illegal Voting in Primary,” Philadelphia Public Record (July 18, 2012), <http://www.phillyrecord.com/2012/07/schmidt-investigation-finds-illegal-voting-in-primary/>.

<sup>4</sup> Id.

<sup>5</sup> “Aliens & Felons: Thousands on the Voter Rolls in Philadelphia,” Public Interest Legal Foundation (2016), <https://publicinterestlegal.org/files/Philadelphia-Litigation-Report.pdf>.

<sup>6</sup> Chris Brennan, “Glitch let ineligible immigrants vote in Philly elections, officials say,” Philadelphia Inquirer (Sept. 20, 2017), <http://www.philly.com/philly/news/politics/city/philly-voter-fraud-trump-immigrants-registration-commissioners-penn-dot-20170920.html>.

<sup>7</sup> Later reports indicated Cortes may have been fired by the governor. Angela Coulombis, “Former Pa. election czar was fired, records show,” The Inquirer (Nov. 20, 2017), <http://www.philly.com/philly/news/politics/pedro-cortes-ousted-gov-wolf-secretary-state-20171120.html>.

<sup>8</sup> Brendan Kirby, “Noncitizen Voters in Pennsylvania Not a ‘Glitch,’ Philly Official Says,” PoliZette (March 13, 2018), <https://www.lifetzette.com/polizette/noncitizen-voters-in-pennsylvania-not-a-glitch-philly-official-says/>.

<sup>9</sup> *PILF v. Torres*, Case No. 1:18-cv-00463 (M.D. Pa.).

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<sup>10</sup> PILF, “PA Contradicts Own Claim of ‘No’ Noncitizen Voter Records,” (May 10, 2018), <https://publicinterestlegal.org/blog/pa-contradicts-own-claim-of-no-noncitizen-voter-records/>.

<sup>11</sup> Editorial Board, “Are there thousands of ineligible immigrants registered to vote in Pa.? We don’t know yet,” *The Philadelphia Inquirer* (April 5, 2018), <http://www.philly.com/philly/opinion/editorials/ineligible-voters-immigrants-pa-motor-voter-20180405.html>.

<sup>12</sup> See endnote 6.

<sup>13</sup> PennDOT Form DL-180, <http://www.dot.state.pa.us/Public/DVSPubsForms/BDL/BDL%20Form/DL-180.pdf>.

<sup>14</sup> Motor Voter, Unlawful Voting and Cyber Security: Joint Hearing before the Senate State Government Committee and the Senate Transportation Committee, Dec. 12, 2017, video available at <http://stategovernment.pasenategop.com/121217/> (cited testimony begins at 107:20).

<sup>15</sup> See pages 3 and 10 in the registration file for Fusako, available here: [https://publicinterestlegal.org/files/Fusako\\_Redacted.pdf](https://publicinterestlegal.org/files/Fusako_Redacted.pdf)

<sup>16</sup> *Id.* at 1.

<sup>17</sup> *Id.* at 10-11.

<sup>18</sup> *Id.* at 10.

<sup>19</sup> *Id.* at 4.

<sup>20</sup> USCIS Form N-400, Part 12, <https://www.uscis.gov/n-400>.

<sup>21</sup> NBC News; Grandmother Deported for Voter Fraud Leaves U.S. in Tears (Aug. 5, 2017), <https://www.nbcnews.com/politics/immigration/grandmother-deported-voter-fraud-leaves-u-s-tears-n789766>.

<sup>22</sup> USCIS, I-90 Application to Replace or Renew Permanent Resident Card, <https://www.uscis.gov/i-90>.

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<sup>23</sup> *Husted v. A. Philip Randolph Inst.*, No. 16-980, 2018 U.S. LEXIS 3504, at \*8-9 (June 11, 2018).

<sup>24</sup> PILF, *Best Practices for Achieving Integrity in Voter Registration* (June 21, 2017), <https://publicinterestlegal.org/blog/best-practices-achieving-integrity-voter-registration/>.

<sup>25</sup> Registration records referenced in case studies are available here: <https://publicinterestlegal.org/steeling-the-vote/>.

<sup>26</sup> Registration case file for Alister is available here: [https://publicinterestlegal.org/files/Alister\\_Redacted.pdf](https://publicinterestlegal.org/files/Alister_Redacted.pdf).

<sup>27</sup> Registration case file for Angelo is available here: [https://publicinterestlegal.org/files/Angelo\\_Redacted.pdf](https://publicinterestlegal.org/files/Angelo_Redacted.pdf).

<sup>28</sup> Registration case file for Beulah is available here: [https://publicinterestlegal.org/files/Beulah\\_Redacted.pdf](https://publicinterestlegal.org/files/Beulah_Redacted.pdf).

<sup>29</sup> Registration case file for Conroy is available here: [https://publicinterestlegal.org/files/Conroy\\_Redacted.pdf](https://publicinterestlegal.org/files/Conroy_Redacted.pdf).

<sup>30</sup> Registration case file for John is available here: [https://publicinterestlegal.org/files/John\\_Redacted.pdf](https://publicinterestlegal.org/files/John_Redacted.pdf).

<sup>31</sup> Registration case file for Abdel is available here: [https://publicinterestlegal.org/files/Abdelmounim\\_Redacted.pdf](https://publicinterestlegal.org/files/Abdelmounim_Redacted.pdf).

<sup>32</sup> Registration case file for Turan is available here: [https://publicinterestlegal.org/files/Turan\\_Redacted.pdf](https://publicinterestlegal.org/files/Turan_Redacted.pdf).

<sup>33</sup> Registration case file for Sadik is available here: [https://publicinterestlegal.org/files/Sadik\\_Redacted.pdf](https://publicinterestlegal.org/files/Sadik_Redacted.pdf).

<sup>34</sup> Registration case file for Yoanki is available here: [https://publicinterestlegal.org/files/Yoanki\\_Redacted.pdf](https://publicinterestlegal.org/files/Yoanki_Redacted.pdf).

<sup>35</sup> Registration case file for Karen is available here: [https://publicinterestlegal.org/files/Karen\\_Redacted.pdf](https://publicinterestlegal.org/files/Karen_Redacted.pdf).

# PUBLIC INTEREST

## — LEGAL FOUNDATION —

*The Public Interest Legal Foundation relies on small contributions to conduct the research and develop findings like contained in this report. The Foundation is the only organization performing this level of work with respect to voter registration system integrity. Time, travel, and technology help deliver new insights in our election systems to better educate regular citizens and policymakers alike. We also bring lawsuits to pry this information from government officials when necessary. None of this is possible without your support. Please help us expand our efforts by visiting [www.publicinterestlegal.org/donate](http://www.publicinterestlegal.org/donate) to offer your fully tax-deductible gift today.*