

**Testimony of
J. Christian Adams**

Before the House State Government Committee

On

Election Integrity and Reforms

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Chairman Metcalfe, Ranking Member Cohen, members of the Committee, thank you for the invitation to testify today.

I am the President and General Counsel of the Public Interest Legal Foundation, a non-partisan charity devoted to promoting election integrity and best practices for election officials. I have brought cases in federal court against Pennsylvania election officials for failing to comply with federal law and we have conducted research into alien registration and voting in the Commonwealth and why it occurs. My organization has produced two reports detailing several system failures inviting noncitizens to register to vote in the Commonwealth – one for Philadelphia and one for Allegheny County.

Almost two years to the day have passed since my last appearance before this body and unfortunately the cause for my invitation has gotten worse. Only this time, some of my warnings from 2016 have yielded subsequent proofs on a large scale within Pennsylvania’s election system.

I appear before you today because even though more than a year has passed since Commonwealth officials disclosed a “glitch” inviting non-U.S. citizens to vote existed, the general public remains in the dark on how large the problem truly is. State officials have hidden the full extent of the problem from this body and the citizens of the Commonwealth. My organization has had to file a federal lawsuit to obtain basic public records involving the extent of the problem, and the Commonwealth has vigorously defended against the lawsuit and against public disclosure.¹

We do not believe that enough is being done to prevent ineligible persons from being added to the voter rolls.

Instead of opposing our lawsuit, Commonwealth election officials should be transparent about the mistakes made over the last 20 years that allowed noncitizens to register and noncitizens to vote.

Section 8 of the National Voter Registration Act (NVRA), aka “Motor Voter,” grants all of us certain inspection rights regarding records that memorialize a county or state’s effort to keep voter rolls updated and reliable. Shortly after the Commonwealth admitted to the infamous “glitch” inviting noncitizen voter registrations and then promised efforts to rectify the issue, my Foundation began

¹ *PILF v. Torres et. al*, United States District Court for the Middle District of Pennsylvania (Case Number 1:18-cv-00463).

exercising its federal inspection rights to identify precisely which tactics were being employed and to discern any semblance of scale.

Disagreements eventually led to denials of access—effectively ripening the federal case filed in February 2018.

As this litigation progressed in preliminary stages, the Commonwealth adopted a two-faced posture. On one hand, statewide election officers assured the Court that it had nothing for my Foundation to inspect, stating it did not have a “removal program regarding non-citizens” on May 2. Yet a week prior, the Department of State selectively circulated an example letter to be directed to thousands of current registrants whose eligibility was now in question and needed to be confirmed in time for the November elections.

The Commonwealth has demonstrated comfort in assuring a federal court there is nothing to see, while engaging in a careful public relations strategy which downplays its efforts to identify and remove noncitizen voters among us.

This committee should understand that federal inspection rights under the NVRA are quite comprehensive. Local news reporting indicates that the Commonwealth amassed a list of current registrants numbering in the thousands, yet remains opaque on how the list was generated; whose data DOS relied on beyond its own; the recipients of the mailings; their responses; and, the final actions made with respect to the maintenance of the registrations in question. Based on the statements the Commonwealth gave to the press earlier this year, it remains unclear if the list ranging around 10,000 registrants is an exhaustive one — or only the first tranche of subjects before the 2018 Election.

The Commonwealth cannot absolve itself of transparency demands simply by stating a few numbers and vague explanations. Federal law requires Pennsylvania to show its work—particularly in the weeks before a general election.

I know my Foundation is not alone with its frustration in the Department of State. Even the *Philadelphia Inquirer*'s editorial board registered its unease with how the Commonwealth is handling this affair and documented my organization and others' efforts to uncover what is actually happening.²

² *The Philadelphia Inquirer*; Are there thousands of ineligible immigrants registered to vote in Pa.? We don't know yet (April 5, 2018), <http://www.philly.com/philly/opinion/editorials/ineligible-voters-immigrants-pa-motor-votor-20180405.html>.

The federal lawsuit continues at preliminary stages and I will certainly offer this body updates as they are available.

My Foundation was able to dislodge some information from a minority of counties across the Commonwealth, offering only a glimpse of how noncitizens are becoming registered to vote, how they are discovered, and cancelled. We have compiled that information in a report called *Steeling the Vote*.³

According to my Foundation's research in Allegheny County, noncitizens were invited to register at the DMV and it was on them to self-report their unlawful registrations.

About 71 percent of noncitizens removed from the Allegheny County voter rolls from 2006 to 2018 were discovered because they reported their own statuses at the risk of criminal and immigration jeopardy. Disclosed records demonstrated that roughly 63 percent of noncitizen removals over the years occurred initially thanks to PennDOT transactions.

Noncitizens sat on voter rolls for an average of six (6) years between registration and removal. This is certainly a point of concern given that every day a noncitizen remains registered to vote is a day that can count against them in the eyes of an immigration case officer or judge.

Transparency into failures of the past is not alone going to resolve this matter. The Commonwealth's alleged efforts to reach out to noncitizen registrants before November is a one-off fix—not a course correction.

The fact remains: when a voter applicant checks the box on a voter registration form that they are indeed a U.S. citizen and therefore eligible to cast a ballot, that claim is not verified. Yet nothing is stopping Pennsylvania from leveraging data it already maintains to better verify eligibility for voting. The Commonwealth holds a variety of databases with documentary proofs of residency and citizenship—it need only use them on a rolling basis. Failure to do so will continue to trap unsuspecting immigrants into systems that can yield illegal votes and a variety of legal consequences to follow.

³ PILF; *Steeling the Vote* (July 12, 2018), <https://publicinterestlegal.org/blog/steeling-the-vote-allegheny-county-reveals-how-citizenship-verification-protects-citizens-and-immigrants-alike/>

As I have told this body before, the number of illegal votes doesn't matter when the integrity of the process is at stake. That integrity is a risk because it invites illegal participation and sets otherwise law-abiding immigrants up to fail.

My concerns today are not limited to noncitizen voting in the Commonwealth. My organization represented a client which sought a federal injunction requiring that the registrations of incarcerated felons be cancelled or held in frozen status as they served their prison sentences and release requirements, like commonly seen across the country. This effort eventually led to a U.S. 3rd Circuit Court of Appeals opinion generally finding that current Pennsylvania law and practice did not violate maintenance mandates under the NVRA. Accordingly, incarcerated felons—even those serving life sentences—remain lawfully registered to vote in the Commonwealth.

Regardless of the federal opinion, those concerned with the integrity of the Keystone State's election system cannot allow the status quo to stand. I last addressed this Legislature before the noncitizen "glitch" came to light. I can't help but to see a parallel threat looming with felon voters.

Pennsylvania has options on how to handle felon registrants. It can reform practices to require local clerks to flag a registrant's file in the event of a felony sentence, essentially freezing it in time so no actions can occur until the registrant has paid his due. North Carolina employs a system like this. Or, the Commonwealth can move to cancel registrations belonging to new felons entirely until they are off paper. This cuts down on election administration costs and confusion when someone otherwise sets out to electioneer them. Under this very common system, a felon in living a half-way house can be told by a poll worker that they are not registered—reminding them of their status—as opposed to handing them a ballot and promising legal fallout later.

Simply doing nothing is myopic and uncaring. We live in a post-2016 world now where election systems can be fair game to state-sponsored entities looking to wreak havoc. Pennsylvania has already admitted to directly inviting foreign influences into its elections for decades. We cannot let this felon voting issue remain a loose end to be exploited on scales large or small.

In both matters—noncitizen and felon—Pennsylvania is setting people up to fail. Bad procedures offered voter registration to Asian immigrants in only English or Spanish. Today, bad law is creating a space for felons to mistakenly cast a ballot at the behest of a pushy campaign volunteer just as they try to rejoin civilian life.

When officials show lacking care for proper procedure, they in turn neglect the people intentionally or unintentionally accessing the systems they are charged with operating. When these systems fail, the immigrant and the felon will pay the penalty—every single time.

The attached report and court filings catalogue our work throughout the Commonwealth to better improve election integrity.

Thank you for the opportunity to appear.

Date: October 10, 2018
Respectfully submitted,
J. Christian Adams

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J. Christian Adams is the President and General Counsel of the Public Interest Legal Foundation. He is a native of Westmoreland County. PILF is dedicated to fostering election integrity and preserving the constitutional power of states in administering elections. He served from 2005 to 2010 in the Voting Section at the United States Department of Justice where he brought a wide range of election cases to protect racial minorities in South Carolina, Florida, and Texas. He litigates election law cases throughout the United States. He received the Department of Justice award for outstanding service and numerous other Justice Department performance awards. Prior to his time at the Justice Department, he served as General Counsel to the South Carolina Secretary of State. He has a law degree from the University of South Carolina School of Law. He is a member of the South Carolina and Virginia Bars.