

PUBLIC INTEREST

— LEGAL FOUNDATION —

**Testimony of
Kaylan L. Phillips**

**Before the United States House Committee on
Oversight and Reform**

Subcommittee on Civil Rights and Civil Liberties

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Chairman Raskin, Ranking Member Roy, and Members of the Committee, thank you for the invitation to participate in today's hearing.

My name is Kaylan Phillips. I am an attorney with the Public Interest Legal Foundation, a non-partisan, nonprofit law firm dedicated to election integrity that also promotes common-sense reforms that preserve the Constitutional framework of American elections.

I am pleased that the Committee is discussing the important topic of best and worst practices for protecting the right to vote.

It has never been easier to register to vote in this country than it is now. You are offered the opportunity to register to vote when you encounter many state agencies, including motor vehicle offices. Just last week, the Governor of my Foundation's home state, Indiana, signed a gun rights bill that included a provision requiring individuals be given an opportunity to register to vote when applying for license to carry a firearm.¹ If you somehow miss one of those opportunities, there are many private organizations that offer the opportunity to register to vote at community events and even door-to-door. In short, the opportunities to register to vote are plentiful and indisputably increasing.

Unfortunately, not much attention has been paid to ensuring that our country's voter rolls are accurate and current. As the Supreme Court recognized just last year, "[i]t has been estimated that 24 million voter registrations in the United States—about one in eight—are either invalid or significantly inaccurate."² This problem has a ripple effect, increasing the workload of elections officials and decreasing the public's confidence in our elections.

¹ <http://iga.in.gov/legislative/2019/bills/house/1284#document-6b89a6f6>.

² *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1838 (2018).

I have studied voter roll list maintenance procedures across the country and have seen these problems and inefficiencies first hand. In short, there is no one solution for the problem. The Constitution wisely entrusts the states to run their own elections. However, there are general strategies and techniques that are universally applicable by decentralized means. The Foundation published a report entitled *Best Practices for Achieving Integrity in Voter Registration* that draws from the Foundation’s experiences across the country to offer guidance on strategies and techniques in maintaining voter rolls in modern society.³ Best practices for elections officials include such commonsense institutional steps as writing down procedures and adequately training staff. Beyond those basics, there are many ways to improve information sharing amongst state agencies and between states. States should be encouraged to implement commonsense reforms that address the individualized problems they face.

One way to evaluate the accuracy of voter rolls is to compare voter registration rates with publicly available Census data. There are times when the number of registrants exceeds the number of people *eligible* to register to vote in a given location.⁴ The National Voter Registration Act (“NVRA”), in part, requires that election officials conduct reasonable list maintenance and make available for public inspection records relating to their list maintenance.⁵ The NVRA also allows private parties like the Foundation to bring a civil action for violations of the NVRA.⁶ When a problem is detected, the Foundation attempts to work with election officials to correct the problems or, if needed, brings a claim in federal court to enforce the law.

³ <https://publicinterestlegal.org/files/PILF-best-practices-report-FINAL.pdf>.

⁴ *See, e.g.*, <https://publicinterestlegal.org/blog/248-counties-registered-voters-live-adults/>.

⁵ 52 U.S.C. § 20507(a)(4) and (i).

⁶ 52 U.S.C. § 20510.

The Foundation has brought several such civil actions as part of its mission of ensuring that voter rolls are current and accurate.

One specific and alarming problem I have discovered in evaluating our nation's voter rolls is the failure of the citizenship safeguards on the federal voter registration form. Citizenship is a fundamental element of eligibility to vote in American elections. Yet the citizenship checks on the federal voter registration form are merely an honor system.⁷ There is a checkbox at the top of the form and an attestation of citizenship by the signature box. In my experience, these "safeguards" are wholly inadequate. Noncitizens continue to be registered to vote, sometimes by their own error and sometimes by the errors of elections officials. For example, our research has shown that individuals have been registered to vote even when they leave the citizenship checkbox blank or, worse, when they answer "no" to the question "Are you a citizen of the United States of America?"⁸ Regardless of the circumstances, registering noncitizens may jeopardize their immigration status.

The N-400 Application for Naturalization⁹ printed by the U.S. Citizenship and Immigration Services asks whether an individual has registered to vote or voted. The responses to these questions can weigh heavily against a prospective citizen. For example, when a voter record is discovered, a "Continuance" letter may be issued to the applicant, demanding they provide a variety of records including their full voter registration file and voting history (or official letter clarifying none) for further review. The Foundation's research finds that it is common for ineligible registrants to first learn of their voter registration status when the Continuance letter arrives. The applicant then has to reach out to local election officials to

⁷ https://www.eac.gov/assets/1/6/Federal_Voter_Registration_ENG.pdf.

⁸ https://publicinterestlegal.org/files/Safe-Spaces_Final.pdf.

⁹ <https://www.uscis.gov/n-400>.

request the cancellation of their registration and request documentation of all prior voting history. The stress caused by such a situation cannot be understated.

Yet, when a state seeks to verify citizenship, it is subjected to an onslaught of attacks in the public sphere and in the courtroom.¹⁰

If the Committee seeks to protect voters, it would be wise to focus on the failure of the citizenship checkbox. One solution is to equip states to verify citizenship before an individual is placed on the rolls. There are tools presently available to the federal government that could be made available to state and local election officials in order to identify and correct mistakes before it leads to life-altering consequences. Two examples include:

E-Verify database

This database allows employers to confirm employment eligibility. Allowing election officials to compare the information provided on voter registration forms to this database would give officials the ability to confirm eligibility and catch mistakes made during the registration process by both election officials and individuals.

Systematic Alien Verification for Entitlements (SAVE) database

The SAVE database, managed by U.S. Citizenship and Immigration Service, is another database that could help identify noncitizens before they are put on the voter rolls. States should be able to use this information in order to verify voter eligibility.

¹⁰ See e.g. *League of Women Voters, et al. v. Newby, et al.*, Case No. 16-236-RJL (D.D.C.).

Thank you for the opportunity to testify.

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Respectfully submitted,

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