

PUBLIC INTEREST

— LEGAL FOUNDATION —

**Testimony of
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**Before the House State Government Committee
On
Noncitizen registration and voting in the Commonwealth**

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

I am an attorney with the Public Interest Legal Foundation, a non-partisan charity devoted to promoting election integrity and preserving the constitutional decentralization of power so that states may administer their own elections.

In 2016, as a result of a lawsuit filed against the City of Philadelphia, my organization discovered that non-citizens were getting onto the voter rolls in Philadelphia, and in some cases voting. We issued a detailed report about these discoveries in Philadelphia, copies of which were presented to this committee in October of 2016.

Unfortunately the report by the Public Interest Legal Foundation was the canary in the coal mine. The problem of noncitizen registration that we discovered in Philadelphia was not confined to Philadelphia, but affected the entire Commonwealth. A subsequent report found that aliens were getting on Pennsylvania voter rolls because of a glitch in implementation of Motor Voter protocols.

Other investigations and legal actions by my organization have led to similar discoveries of noncitizens on the voter rolls in other states. These experiences have led me to believe two things: (1) that the current voter registration system is failing to keep noncitizens from registering to vote, and (2) there are inadequate safeguards in place to detect and remove noncitizens once they find their way onto the rolls.

The most important things this Committee can do to solve the problem of alien registration and voting are as follows:

(1) Examine the scope of the known problem. Demand the lists of aliens who have been discovered and removed for citizenship defects across the Commonwealth from the Secretary of the Commonwealth. The Public Interest Legal Foundation obtained this data for only the City of Philadelphia.

(2) Examine the scope of the unknown problem. Demand from the Secretary of the Commonwealth the list of registrants who were registered because of the recently discovered glitch in the Motor Voter process. Do not be deterred, because these are public list maintenance records that are obtainable under federal law. My organization sent the Secretary of the Commonwealth a request for those records on Monday of this week, and will go to federal court if necessary to obtain them.

(3) Review voting history for the noncitizens who registered to vote. How many of them voted? Were any prosecuted for what constitutes both a state and federal crime?

(4) Implement some measure of citizenship verification protocols in Pennsylvania. There are a variety of options, ranging from requiring documentary proof of citizenship at registration, to accessing commercial or government databases to assist in citizenship verification, to, if nothing else, fixing the mess that has plagued Pennsylvania voter registration for years when it allowed aliens to register.

Our research was presented to this Committee almost exactly one year ago. To our knowledge, nothing has been done to remedy or root out these election crimes. My organization is here before you again today to ask that something be done to cure known problems in Pennsylvania's electoral process.

Only eligible citizens who are entitled to cast ballots on election day should appear on the voter registration rolls. Unfortunately, in Pennsylvania, that has not been the case.

Through the passage of the National Voter Registration Act and the Help American Vote Act, Congress has acknowledged that clean and accurate voter rolls are necessary to ensure that elections are conducted fairly and honestly. To that end, these laws are designed, in part, to ensure that ineligible registrations are discovered and removed from the lists of eligible voters.

Recent discoveries show that Philadelphia is one among many jurisdictions that is not doing all that it can to prevent ineligible persons from registering or to discover and remove them once they register to vote.

Through litigation brought on behalf of the American Civil Rights Union, the Public Interest Legal Foundation has unearthed evidence showing that **ineligible aliens have populated the voter rolls in Philadelphia. Dozens have voted in past elections.** Many of these ineligible aliens have been on the rolls for decades. The Public Interest Legal Foundation detailed its findings in a published report, which is available at the Foundation's website.¹ The report includes official records we obtained from election officials, which list the names of alien registrants and the dates which they last voted in an election.

¹ <https://publicinterestlegal.org/files/Philadelphia-Litigation-Report.pdf>

When an alien votes in an election it is a felony. It is not a victimless crime. Each vote by an ineligible noncitizen cancels out the vote of an American citizen. For that reason, when election crimes are discovered, they should be vigorously prosecuted by local and federal authorities. When election crimes are ignored by election officials and prosecutors, it simply encourages more election crimes. The effort of this Committee is an important step to rooting out election fraud, but much more can and should be done. Other jurisdictions across the country have implemented tools to detect citizenship defects before they result in the disenfranchisement of American citizens. Pennsylvania should be doing the same.

Out litigation against the City of Philadelphia, we discovered that aliens were registering to vote and voting. Since then, others in this state have discovered even more noncitizens that have done the same. The law is clear: noncitizens are not eligible to vote in Pennsylvania. The law makes no distinction between legal and illegal noncitizens in this regard. Neither is qualified to vote.

Many say voter fraud doesn't exist. Our research in Philadelphia and elsewhere proves otherwise. Even when faced with clear evidence of a problem, many remain defiant. When these officials resist commonsense solutions—or refuse to even investigate evidence of fraud—one could reasonably conclude they find certain levels of fraud to be acceptable. Such attitudes are unacceptable.

Ultimately, the number of illegal votes doesn't matter when the integrity of the process is at stake. Nobody should tolerate voter fraud—whether it comes in bunches as we describe here, happens occasionally, or decides the outcome of an election. No excuses should be made for the lawless who steal the votes of American citizens. When the right to vote is at stake, Pennsylvania government officials are obligated to do everything in their power to address known problems and install safeguards that will prevent problems from arising in the future.

Recent discoveries show that the problems we have uncovered in Philadelphia extend to other jurisdictions in the Commonwealth. The problem is certainly exponentially bigger because the aliens detected on the rolls thus far were detected only because *they voluntarily asked to be removed from the rolls*. **The City, and as far as we know, the State, does nothing to actively prevent or discover noncitizen registration.** For example, to our knowledge the State does not use the Federal SAVE (Systematic Alien Verification for Entitlements) database.

Voter registration forms ask registrants to affirm their citizenship with nothing more than the check of a box. No documentary proof of citizenship must be shown.

This is nothing more than an honor system, one that is unquestionably failing to keep noncitizens from voting. To my knowledge, once the voter is registered in Pennsylvania, no additional checks are made about the citizenship status of the registrant. This system allows aliens to lurk on the voter rolls for decades, undetected.

Research by the Public Interest Legal foundation reveals that the honor system has caused noncitizens to unwittingly register to vote.² This not only risks corrupting the voter files, but exposes noncitizens to potential legal difficulties when they attempt to naturalize. Records obtained by my organization show that voter registration and voting by noncitizens can stall naturalization applications and even result in denial of the application, or worse, deportation. Many noncitizens claim they were unaware that they are registered to vote and often find themselves having to request cancellation of their registration before they may proceed through the naturalization process. Indeed, many, if not all, of the noncitizens recently discovered on the rolls in Pennsylvania became aware of their status as a registered voter when they were asked about their voter registration by the Department of Homeland Security when they applied for citizenship. A better citizenship verification procedure at the point of registration would likely reduce or eliminate these issues.

The Public Interest Legal Foundation's research into noncitizen voting in Virginia revealed that between 2011 and May 2017, election officials removed 5,556 residents from its voter rolls for citizenship problems.³ Those individuals cast 7,474 votes in multiple elections prior to their detection and removal. As in Pennsylvania, these removals were made possible only because the registrants self-reported their citizenship status to government officials *after* they registered to vote.

As our report details, the problems in Virginia were exacerbated by government officials who rejected proposals designed to strengthen election integrity. If left unchecked in Pennsylvania, the problem will likewise continue to get worse.

The system is failing to respond to aliens participating illegally in our elections as law enforcement officials have not vigorously prosecuted this voter

² Garden State Gotcha: How Opponents of Citizenship Verification for Voting Are Putting New Jersey's Noncitizens at Risk of Deportation, *available at* https://publicinterestlegal.org/files/Garden-State-Gotcha_PILF.pdf.

³ Alien Invasion II: The Sequel to the Discovery and Cover-up of Non-citizen Registration and Voting in Virginia, *available at* <https://publicinterestlegal.org/files/Alien-Invasion-II-FINAL.pdf>.

fraud. Yet these cases are tailor-made for investigation and prosecution. Make no mistake, when an alien registers to vote, it is voter fraud. It's also a federal felony.

When election officials don't care about ineligible voters on the rolls, who will?

Alien registration must not be allowed to persist. Clean rolls are the most important ingredient for clean elections. It is not enough for election officials to passively receive information from alien registrants before taking action to correct voter registration records. DMV records and juror recusal forms provide easily-accessible data that can be used by Pennsylvania election officials to confirm the citizenship status of registered voters.

The votes of American citizens are at stake. This Committee is obligated to take all actions within its power to protect those votes and restore the integrity of the Pennsylvania's electoral process.

Thank you for the opportunity to appear.

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Respectfully submitted,
Noel H. Johnson

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Noel H. Johnson is litigation counsel at the Public Interest Legal Foundation, a non-profit law firm dedicated to fostering election integrity and preserving the constitutional power of states in administering elections. In his practice, Mr. Johnson has participated in legal actions, investigations, and research designed to keep voter rolls clean and accurate throughout the country. He has a law degree from Marquette University School of Law and is a member of the Wisconsin bar.