



31,000 Foreign Nationals in Colorado Sent Voter Registration Instructions by State Election Officials Before 2022 Midterms

State Blames ‘Data Analytic Error’ for Non-Citizens in 58 Counties Receiving Registration Materials

January 2023 – In the final weeks of the 2022 Midterm Elections, one story from Colorado shocked the country after Colorado election officials admitted to mailing more than **31,000 foreign nationals** information about how to register to vote. The Public Interest Legal Foundation’s review of communication records about this saga provides new insights into how this happened and offers lessons for states belonging to the Electronic Registration Information Center known as “ERIC.”

Factual Review

On October 7, 2022, news hit of the mailings by election officials to foreign nationals. It broke on a Colorado public radio station. More than 31,000 postcards were mailed from the Colorado Secretary of State Jena Griswold’s office “notifying [noncitizen recipients] on how they could register to vote.”¹ Initial news reports were unclear exactly why Griswold’s office did this, but did note that Colorado was obligated by its agreement with ERIC to send at least one set of postcards per election cycle (2021-2022).

At the outset, officials in Griswold’s office were reportedly uncertain about the specific failures that allowed the mailings to citizens of other countries. Officials could only explain that the list of 31,000 recipients was derived from a comparison between the Colorado statewide voter roll and the master listing of licensed drivers in the state. That very comparison is a core ingredient of membership in ERIC. It is intended to find eligible citizens who are not registered to vote and to encourage them to register to vote. In Colorado’s case, a haphazard version of that process resulted in ineligible foreigners living in Colorado being urged to register to vote.

County	Count
Arapahoe	6031
Denver	5486
Adams	3710
Boulder	3090
El Paso	2331
Jefferson	2164
Weld	1926
Larimer	1760
Douglas	1575
Garfield	561
Broomfield	371
Mesa	309
Pueblo	296
Morgan	186
Montrose	147
Eagle	142
Yuma	94
La Plata	87
Delta	73
Gunnison	63

PILF’s Investigation

Upon learning of the mailings, the Public Interest Legal Foundation launched an inquiry to fully understand who was responsible.

Communication records obtained in PILF’s investigation portray a Secretary of State’s office

more focused on damage control than answering questions posed by concerned county election officials.

Days after the initial admission to media that foreign nationals were encouraged to register to vote, county election clerks were briefed about a “data analytic error.” This “analytic error” placed more than 31,000 foreigners living in Colorado on the state’s mailing list with voter registration information.

State election officials did not elaborate as to what the “analytic error” actually was. For example, the “analytic error” could be a total absence of any analysis at all as to whether foreign nationals were on the list to mail registration materials. Or, was this “analytic error” a series of false negatives after a diligent effort to screen out noncitizens from the mailings? State election officials didn’t say.

Yet some county election clerks emailed stories about pressure they were receiving locally and implored Secretary of State Griswold’s office to provide guidance about how to talk to reporters or county executives.

ERIC had a role in the problem. The Eligible But Unregistered (EBU) process performed by ERIC seeks licensed drivers who are not registered to vote. These unregistered license holders become the universe of people who are urged to register to vote under the ERIC agreement. In the past, the Colorado Secretary of State openly described to reporters the procedures in place to prevent mail from being sent to ineligible recipients.ⁱⁱ In 2022, those procedures either were no longer in place, or, failed entirely.

Cont’d County	Count
Phillips	61
Prowers	60
Routt	57
Moffat	54
Lake	46
Pitkin	45
Kit Carson	42
Alamosa	41
Logan	37
Otero	31
Montezuma	26
Summit	23
Chaffee	22
Fremont	16
Teller	16
Las Animas	13
Washington	13
Archuleta	10
Rio Grande	9
Elbert	8

Colorado’s Damage Control Plan

During its efforts at damage control around October 11 with county election officials, officials at the Colorado Secretary of State’s office laid out the following four-prong strategy to contain fallout from the matter:

- ✓ COSOS planned to send a second piece of mail notifying recipients of a message sent in error and a reminder of qualifications to vote;
- ✓ COSOS built a mechanism into the online voter registration portal to prevent any of the 31,093 from using the system;
- ✓ COSOS scheduled daily comparisons between the voter roll and the state’s Department of Revenue tax roll (which contains citizenship status markers); and,
- ✓ COSOS planned daily comparisons between the 31,093 EBU list and the statewide voter roll.

Notably missing from the strategy was providing county election officials the names of the foreign nationals who received the voter registration materials in their county. This omission

matters. When Moffat County officials asked to see more information about the 54 foreigners mailed voter registration materials in Moffat County, Deputy Secretary of State Christopher Beall refused.ⁱⁱⁱ According to records obtained by PILF, Beall cited “potential legal issues” to justify denying county election officials complete information.

From: Dwight Shallman
To: Sarah Colding
Subject: RE: Eligible but unregistered (EBU) mailing - follow up from yesterday's County Support Call
Date: Tuesday, October 11, 2022 12:31:00 PM
Attachments: image003.png

Deputy Secretary Beall stated in yesterday's call that there are potential legal issues that need to be addressed before lists of erroneous recipients in each county can be shared. I do not have a timeline for when those legal issues may be resolved, or if they can be at all. I will pass along whatever the executive and legal teams here authorize me to share – I just don't know when or if that will happen. Sorry – that's all the information I have.

From: [REDACTED]@moffatcounty.net>

No records reveal that Deputy Secretary of State Beall was ever forthcoming about the “potential legal issues” associated with his office offering voter registration materials to foreign citizens. One possibility is that some of the foreign citizens could have committed an election crime by registering to vote. It be would a federal crime for a foreign citizen to vote in the 2022 election. When the Secretary of State of Colorado did not disclose to county election officials the names of the foreigners offered voter registration materials by her office, she hid the ability of the public and law enforcement from ascertaining whether, indeed, foreigners did register to vote as a result of being urged to do so by the Colorado Secretary of State.

Legal Risks & Consequences for the 31,093

The “legal consequences” also extend to the foreign nationals offered voter registration materials by the Colorado Secretary of State who are seeking to naturalize as American citizens. Suppose a person on the now preposterously-named Eligible But Unregistered list in Colorado ultimately registered even though they were a foreign citizen. Even if they stayed on the voter roll for the briefest amount of time, a record of their registration is made and is permanent. When that improperly registered foreign citizen seeks to naturalize, they will be forced to admit to federal officials that they were illegally registered to vote, and thus jeopardize their application for naturalization. PILF has spent years documenting the consequences when foreign nationals register to vote.^{iv} If the officer is displeased with the immigrant's explanation of events, the best-case scenario is a termination of their naturalization. Some who register are straight deported.^v

Cont'd County	Count
San Miguel	8
Grand	7
Kiowa	7
Bent	5
Rio Blanco	5
Ouray	4
Clear Creek	3
Jackson	3
Lincoln	3
Sedgwick	3
Cheyenne	2
Costilla	2
Crowley	2
Gilpin	2
Park	2
Baca	1
Huerfano	1
Saguache	1

Other PILF Concerns in Colorado Involving ERIC

PILF is currently engaged in federal litigation with Secretary of State Griswold over access to other public records that ERIC provides. The mess involving Griswold's courting of non-citizens for voter registration, and the role that the ERIC process

played in the mess, is a vivid illustration of why ERIC records must be public. In December 2021, PILF sued to see records showing how ERIC alerted Secretary of State Griswold to deceased voter registrants.^{vi} PILF is litigating similar issues in the District of Columbia, Alaska, and Louisiana due to similar inspection refusals.

PILF President J. Christian Adams

“Colorado shouldn’t be sending foreign nationals voter registration information. When they do, the public should be able to see all of the records so we can hold election officials accountable. Transparency in elections is essential. This circus right before a federal election shouldn’t happen. Knowing who is to blame and what went wrong is essential to prevent a repeat.”

ⁱ Colorado Public Radio; Colorado accidentally sent voter registration notices to 30,000 residents who are not citizens (October 7, 2022), <https://www.cpr.org/2022/10/07/colorado-voter-registration-notices-non-citizens/>

ⁱⁱ Colorado Public Radio; GOP Congressman Wants Federal Investigation of Voter Registration Postcards (September 30, 2020), <https://www.cpr.org/2020/09/30/gop-congressman-wants-federal-investigation-of-voter-registration-postcards/>

ⁱⁱⁱ Beall’s LinkedIn page refers to himself as “formerly a journalist, then a trial lawyer, still a law professor” and identifies himself as a former reporter for the *The Providence Journal* and *Las Vegas Review Journal*. For good measure, Beall also notes he was an attorney for Obama for America, an attorney for the Colorado Democratic Party, the ACLU and “Colorado Lawyers for the Arts.”

^{iv} <https://publicinterestlegal.org/reports/>

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

^{vi} <https://publicinterestlegal.org/cases/pilf-v-griswold/>