



## VIRGINIA BLOCKED ‘NON-CITIZENS, DECEASED, FELONS’ FROM ERIC’S ‘ELIGIBLE BUT UNREGISTERED’ VOTER OUTREACH

### ***ERIC Claimed at Least 168K Deceased, Relocated, Ineligible People as ‘Eligible’ for Taxpayer-Funded Outreach in Virginia***

**MARCH 2024** – During Virginia’s membership period with the Electronic Registration Information Center (ERIC), commonwealth officials had to block ineligible persons selected by ERIC from receiving voter registration instructions. Records disclosed to PILF demonstrated efforts to stop foreign nationals, felons, deceased, and others from receiving taxpayer-funded voter education materials. Public records reviewed in other ERIC member states show similar efforts – or none.

#### Virginia’s Exit & Potential Re-Entry into ERIC

When Virginia exited the interstate nonprofit in May 2023, Elections Commissioner Susan Beals wrote that ERIC “expanded beyond that of its initial intent – to improve the accuracy of voter rolls.”<sup>1</sup> Documents disclosed in response to a records request from the Public Interest Legal Foundation show some of the sophisticated lengths Virginia had to go to address that alleged overreach.

The Virginia Legislature advanced a bill to Governor Glenn Youngkin’s desk which would ultimately require the Commonwealth’s re-entry into ERIC.<sup>2 3</sup>

#### Crash Course: ERIC’s Mandatory ‘Eligible But Unregistered’ Process

To be a member in good standing with ERIC, a state must submit its voter registration and driver’s license customer data to ERIC for comparison. ERIC’s goal is to find a licensed driver who is not registered to vote. ERIC would consider that person Eligible But Unregistered or “EBU.” Often, someone who meets those criteria either *do not want* to be registered or *cannot legally register*. Remember, the National Voter Registration Act of 1993 (NVRA), aka “Motor Voter,” mandates that states like Virginia offer voter registration at DMVs. Meaning, every EBU fed back to Virginia has already said “NO” to a voter registration offer. Everyone meeting these EBU criteria was

Quick Takes
ERIC is an interstate collection of governments designed to collaborate on voter roll list maintenance. Members are also required to perform outreach to unregistered persons identified by ERIC.
Virginia built a system to filter out foreign nationals, deceased residents, and other ineligible individuals from voter registration postcards.
Not all ERIC states do similar work.

<sup>1</sup> Virginia ELECT Withdrawal Letter to ERIC (May 11, 2023), [https://www.documentcloud.org/documents/23810805-file\\_0097-2](https://www.documentcloud.org/documents/23810805-file_0097-2)

<sup>2</sup> Virginia’s LIS; HB 1177 (2024), <https://lis.virginia.gov/cgi-bin/legp604.exe?241+sum+HB1177>

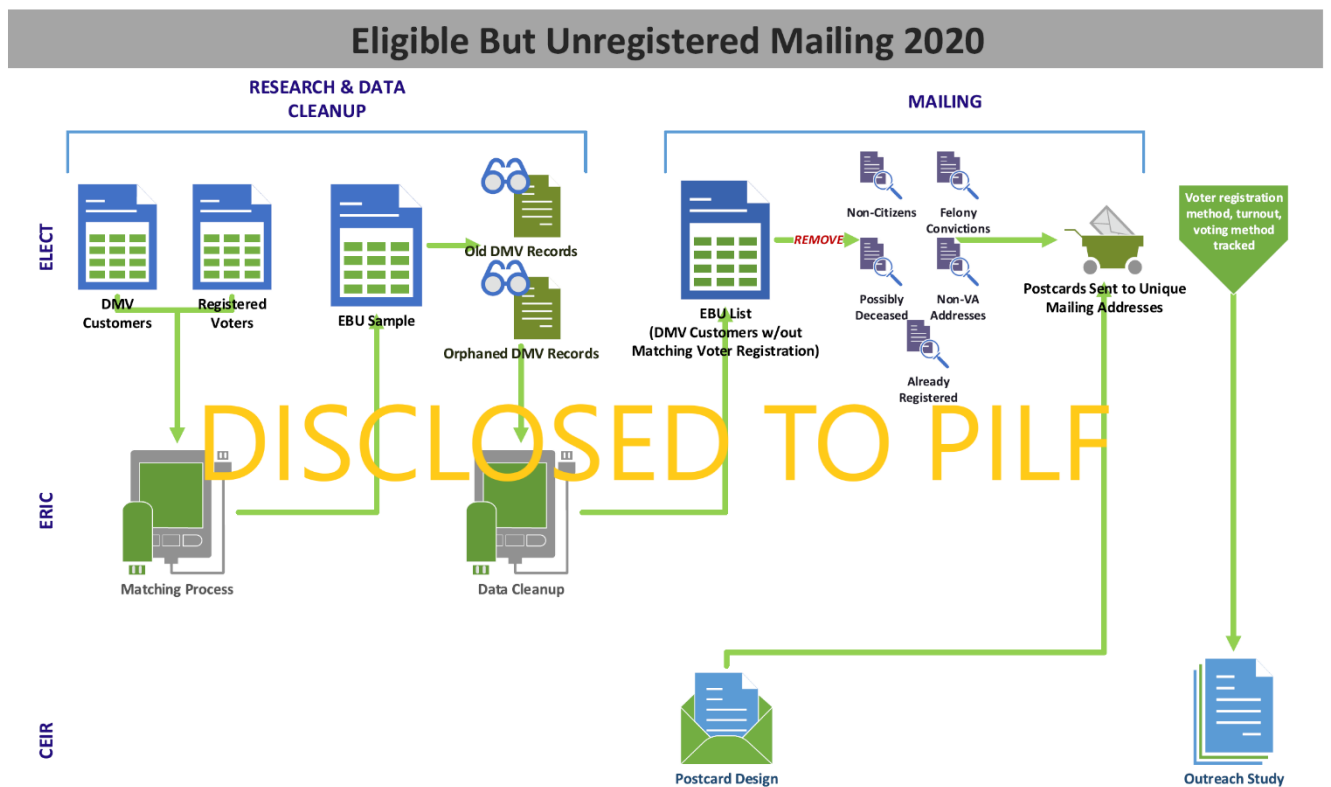
<sup>3</sup> Virginia’s LIS SB 606 (2024), <https://lis.virginia.gov/cgi-bin/legp604.exe?241+sum+SB606>

submitted to Virginia officials for taxpayer-funded postcard outreach explaining how to register to vote.

### Inside Virginia's EBU Filter

Records disclosed to PILF show that months before the 2020 General Election, then-Virginia Elections Commissioner Christopher Piper opted to engage in two rounds of EBU outreach. In June 2020, ERIC supplied a list of “approximately 360,000” for EBU postcards. Meeting notes between Virginia, ERIC, and the Center for Election Innovation and Research (CEIR) dated July 29, 2020, detailed plans for a second round of EBU mailings, dubbed a “refresh,” which would target “about 1.9 million” around Labor Day weekend. The notes also described and illustrated filtration protocols before the 1.9 million names and addresses were printed on postcards designed by CEIR. After the “refresh” mailing and Election Day, Virginia agreed to turn over voter registration and turnout data related to the EBUs to CEIR for its own research purposes and an “outreach study.”

Below is a flowchart shared between Virginia officials, ERIC, and CEIR outlining filtration and labor division.



The records disclosed to PILF show that of ERIC’s 1.9 million “Eligible But Unregistered” listing in Virginia, the following would not receive mail:

- “Approximately 100,000 deceased”
- “Approximately 68,000 no longer in [Virginia]”
- Other “Ineligible” (e.g., “felony, already registered”)

**How Did Virginia Spot Foreign Nationals in the ERIC Data?**

After ERIC handed off names and addresses, Virginia used its previous voter registration list maintenance work to inform who received EBU outreach postcards. This meant that Virginia had to fact-check the EBU prospect list for people known by the Commonwealth to already be deceased, convicted of a felony, or removed from the voter roll for other reasons. Because of a relatively unique Old Dominion law, Virginia could also use the same concept for “declared” foreign nationals.

‘Declared Non-Citizen’ Removals / Report Year	
2023	2,219
2022	2,771
2021	1,302
2020	802
2019	524
2018	566
2017	1,686
2016	404
2015	693
2014	434
<b>TOTAL</b>	<b>11,401</b>

When a DMV customer in Virginia claims in their paperwork to be a foreign national, their information is required to be shared with Commonwealth election officials so they can see if the person was already registered to vote. In the event of a match, the registrant is set on a pathway to removal from the voter roll if they do not affirm their citizenship status in a timely manner.<sup>4</sup> The Virginia Department of Elections publishes annual totals of citizenship-related cancellations.<sup>5</sup> The records disclosed to PILF do not show how many “non-citizens” were spotted in ERIC’s EBU list, but other public data do give a sense of scale for how many could have been prevented from receiving postcards, based on prior removals from the voter roll. Since 2014, Virginia reportedly removed **more than 11,000** registrants from the voter roll as “declared non-citizen[s].” However, some of those individuals may have subsequently naturalized and re-registered.

**Addressing ERIC’s EBU Data Quality in Other States**

PILF surveyed a collection of states for records indicating how they may perform similar EBU data filtration functions.

**Colorado.** Weeks before the 2022 Midterms, Colorado made national news after admitting a “data analytic error” resulted in more than 31,000 foreign nationals receiving postcards with instructions on how to register to vote. The ERIC Eligible But Unregistered program was ultimately determined to be the catalyst. PILF dug into the records of the case and saw where state officials were vague with county colleagues about the specific “error.”<sup>6</sup> Colorado quickly built a system to block any foreign nationals who received the EBU cards from completing voter registration before the 2022 midterms. If they had a blocking mechanism for foreign residents, it malfunctioned in 2022.

<sup>4</sup> Va. Code § 24.2-410.1.

<sup>5</sup> VA ELECT; Voter Registration List Maintenance reports archive (accessed February 2024), <https://www.elections.virginia.gov/resultsreports/maintenance-reports/>

<sup>6</sup> PILF; 31,000 Foreign Nationals in Colorado Sent Voter Registration Instructions by State Election Officials Before 2022 Midterms (January 5, 2023), <https://publicinterestlegal.org/reports/31000-foreign-nationals-in-colorado-sent-voter-registration-instructions-by-state-election-officials-before-2022-midterms/>

**Illinois.** Communication records disclosed to PILF from the Illinois State Board of Elections show internal conversations about how ERIC data needed to be vetted to prevent foreign nationals and adolescent drivers from receiving EBU postcards. Emails dated throughout 2022 show how green card/legal permanent residents and other visa holders were being flagged within the ERIC lists.

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From: Sapochak, Dave [REDACTED]  
Sent: Thursday, March 3, 2022 11:25 AM  
To: D Schultz [REDACTED]; Glahn, Brenda L [REDACTED]; Bales, David S [REDACTED]  
Cc: K Thomas [REDACTED]; Fawns, Blake [REDACTED]; Nicholson, Clayton [REDACTED]  
Subject: RE: External: Review of criteria for creation of ERIC Eligible but Unregistered mailing

These changes have been made.....

**DISCLOSED TO PILF**

- We've added the removal of anyone that we know that is not a US Citizen to the best of our Knowledge
  - NC-TAG = 1 (Length of Stay) or a 3 – (Permanent Resident).
  - We were already filtering TVDL and UTVDL (Temporary Visitors)
- We added a check to compare birth date to the next general/consolidated election date to verify that they will be 18 on or before that date.

The test is currently running and a test file will be forth coming.

**DISCLOSED TO PILF**

Dave

**New Mexico.** The New Mexico Secretary of State takes a very different approach. Its website offers a frequently asked questions webpage about the EBU process. To the question, “*I am a non-citizen, why did I receive a voter registration outreach postcard?*”, the State is blunt: “*If you are a non-citizen and you are in the motor vehicle database, **it is likely you have received** a voter registration outreach postcard. However, given your non-citizen status, you are not eligible to vote and should not register. Registering to vote if you are not eligible is a felony.*”<sup>7</sup> [emphasis added].

**Maryland.** The Maryland State Board of Elections confirmed to PILF in 2023 that it had no documents demonstrating any kind of effort describing the process to filter EBU lists for known ineligible persons.

### What to Do About the EBU?

The ERIC Eligible But Unregistered concept pushes member states into risky territory. In principle, encouraging others to register to vote is a noble act; but too easily aliens, felons, and others who are not eligible to vote receive these targeted mailings can wrongly conclude that they are, in fact, eligible. If states are wise, they perform additional work to be good stewards of public resources while simultaneously shielding immigrants and others who are not eligible from receiving instructions about voter registration.

It does not have to be this way.

Prior to Ohio’s exit from ERIC in 2023, Secretary of State Frank LaRose floated a reform: make the EBU and other ERIC programs optional or “a la carte.”<sup>8</sup> PILF and even some leading left-leaning voices<sup>9</sup> lauded the concept as opposed to abandoning the project altogether. Hardliners in ERIC leadership did not budge, and Alabama, Florida, Iowa, Louisiana, Missouri, Ohio, Texas, Virginia,

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<sup>7</sup> NMSOS; ERIC Project FAQs (accessed February 2024), <https://www.sos.nm.gov/voting-and-elections/voter-information-portal-nmvote-org/eric-project-faqs/>

<sup>8</sup> *The Washington Post*; Florida, Two Other States Quit ERIC (March 6, 2023), <https://www.washingtonpost.com/politics/2023/03/06/election-deniers-voter-rolls/>

<sup>9</sup> Election Law Blog; Some thoughts on L’affaire ERIC (March 20, 2023), <https://electionlawblog.org/?p=135203>

and West Virginia ultimately made their exits. This meant that ERIC remainders like Michigan and Wisconsin could not easily catch when their former voters moved to Texas and Florida. Election officials around the Mid-Atlantic region have blind spots with Virginia gone. ERIC's return on investment rests on a diverse member portfolio.

**If ERIC leaders were serious about rebuilding their coalition, they would return to discussions about these reasonable reforms.**

**PILF President, J. Christian Adams**

*"States should work collaboratively to maintain voter rolls and should reach for every available tool," said PILF President J. Christian Adams. "ERIC must be receptive to state solutions that improve list maintenance. States that are a part of ERIC should enact safeguards to ensure they are not sending voter registration postcards to aliens, deceased, felons, and other people ineligible to vote."*