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TESTIMONY BEFORE THE SC HOUSE OF REPRESENTATIVES LEGISLATIVE OVERSIGHT COMMITTEE: AD HOC COMMITTEE – STATE ELECTION COMMISSION (SEC), VOTER REGISTRATION ROLLS

June 30, 2021

The League of Women Voters of South Carolina is very familiar with the SEC processes associated with the maintenance of voter rolls. We have met over the years with SEC staff including Director Andino to review these processes. We have participated in hearings in both House and Senate. We have reviewed many documents. On that basis, we have great confidence in saying that the SEC processes are consistent with the requirements of the National Voter Registration Act (NVRA) and reflect best practices in this area to the extent possible, given some areas of concern in South Carolina's statutory requirements. SEC practices do not leave room for systematic voter fraud. South Carolina does not have a problem with dead people voting. The worst problem South Carolina has is not enough people voting. Nothing should be done that would amplify that very real problem, and there are improvements that should be made.

There are four legitimate reasons for removing persons from the voting list:

1. Death
2. Change of primary residence
3. Incarceration following conviction
4. Mental incapacity

We will address each of these in order to document the reasoning behind our recommendations, which are as follows:

1. No change should be made that would increase the probability that a voter will be removed from the active voter rolls in error.
2. The error-prone practice of using voting frequency backed up by documents sent through the US Postal Service as an indicator of voter movement should be ended immediately.
3. There should be a statutory mandate to provide voter registration information and assistance to persons who are leaving incarceration or who have been legally declared mentally competent.
4. The practice of providing inactive as well as active voter lists through electronic poll books must be continued, both as a sound practice and as a matter of conformity with federal court rulings.
5. Poll workers should be required to tell voters who have been removed from the active voter list that they remain on the inactive list and can vote immediately.

We begin by noting that the House Oversight Committee prepared a more than 1000-page report on SEC operations in 2017 and has thoroughly examined these processes.¹ (The Senate has had an oversight process underway in 2021 but no report has been issued at this time.) This House report expands on information

¹ Legislative Oversight Committee: Study of the South Carolina State Election Commission, December 29, 2017.
<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ElectionCommission/Full%20Committee%20Study%20-%20SEC.pdf>. Accessed 3 Jun 2021.

available through the requirements listed in Title 7 Chapter 3 of the South Carolina Code. We will not reiterate that material in this testimony, but we will note the changes since 2017 of which we are aware. We will then reiterate our recommendations for improvement of South Carolina's voter registration and voter roll maintenance procedures.

DEATH

"Zombie voters" are a zombie issue. It just won't die no matter how ragged it gets. A little history is instructive. In 2012-2013 there were very public charges of claims of votes in the name of deceased electors.² The Director of the DMV alleged that over 950 deceased individuals had voted. Legislative hearings were held in both houses of the General Assembly. The Attorney General expressed great concern that there were dead people voting. However, the SEC reviewed the claims and found them baseless, the result of clerical errors and stray marks picked up by scanners. Subsequently, SLED conducted a thorough independent review and produced a more than 500-page report. The *Free Times* had to file a FOIA request to get that report and discover that SLED found NO evidence of any illegal activity. None.

This is not surprising. While voting in the name of deceased individuals might have worked a century ago, today it would be very hard, and virtually impossible as a broad election fraud strategy. To vote in person requires personal identification, so that approach won't work. Absentee voting by mail requires having the birthdate and the last four digits of the Social Security Number of the voter. That is why the only two cases of dead voter fraud reported nationally in 2020 were immediate relatives of the deceased who had access to protected personal information. One was a gentleman who voted in the name of his wife after he murdered her.³

Even if the personal information is available and an absentee ballot is obtained in the name of a deceased voter, before that absentee ballot is counted the ballot is logged against the registration record. It is very likely that if the voter record hadn't been updated before the ballot was sent out, it will have been updated before the ballot envelope is opened. This is not a pathway for successful large-scale fraud.

CHANGE OF ADDRESS

South Carolina employs multiple avenues to address changes of address. The National Change of Address Database (NCOA) administered by the US Postal Service covers all states. The most significant change since the 2017 House report on SEC processes is that the state has transitioned from using the very flawed Crosscheck system run by the Kansas Secretary of State to the Electronic Registration Information System (ERIC), designed by the nonpartisan Pew Foundation. This is one a component in a multi-pronged approach to identifying voters who have moved out of state.

Among the methods used by South Carolina, there remains one that should be retired. The practice of moving voters to the "inactive" list when they have failed to vote in two general elections is both error prone and not needed. This has been recognized by many organizations, including the American Bar Association (ABA), which in 2020 observed that:⁴

² Corey Hutchins, "18 Months Later, S. C. Law Enforcement Closes Case on 'Zombie Voters,' Finds No Fraud." *Free Times*, Wednesday, 3 Jul 2013.

³ Meredeith Deliso, "Man arrested in wife's murder now accused of voting for Trump in her name." *ABC News*, 14 May 2021. <https://abcnews.go.com/US/man-arrested-wifes-murder-now-accused-voting-trump/story?id=77692708>

⁴ Paul M. Smith. "Use it or Lose It" The Problem of Purges from the Registration Rolls of Voters Who Don't Vote Regularly." *American Bar Association Human Rights Magazine*, Vol. 45, No. 1: Voting Rights. 20 Feb.

Given these methods of cleansing the voting rolls, there simply is no justification for also using voter inactivity as an independent basis for eliminating registrations. But some states like Ohio and Georgia persist in canceling registrations of voters simply because they have not voted recently and failed to return a mailed notice. There is every reason to be concerned that this practice continues because it has a political skewing effect. Failure to vote regularly correlates with lower socioeconomic status and, at least in some places, with being a member of a racial minority

This kind of voter purge is outmoded and unjustified.

How do we know that? An assessment of the data supplied by the states themselves shows why purges based only on non-voting and non-return of a notice are guaranteed to dump a high percentage of people off the voting rolls who have not moved anywhere and otherwise remain eligible to vote in some future election. Those data are collected and published annually by the federal Election Assistance Commission.

This was expanded upon in another ABA article, in which numerous longstanding deficiencies of using the Postal Service for this purpose are itemized.⁵ It was shown in *Common Cause New York v. Brehm* that “voters were moved to inactive status and their name was omitted from poll books even though they still lived in the same place and had done nothing wrong.” This was shown to have affected 45,000 New York voters in the 2016 presidential election.

The League of Women Voters strongly recommends that South Carolina cease to use this outdated and error-prone method to move voters to an “inactive” list.

INCARCERATION FOLLOWING CONVICTION

Incarceration is a common reason for removal of voters from rolls. Again, the SEC has procedures in place to address this. However, we note that there are multiple bills pending in the General Assembly that would address the pressing need to provide information to inmates prior to release about the procedures needed to restore their voting rights.

MENTAL INCAPACITY

The sole finding of the 2017 House review of SEC procedures regarding roll maintenance was the need for improved processes for identifying and removing voters who have been declared mentally incompetent. If the SEC hasn’t done that, they should. However, we also note that persons who have been declared competent following a period of legal incompetence should be provided with information regarding the procedure for reinstatement to the rolls, which is reregistration.

THE ROLLS IN PRACTICE

It is an extremely important voter protection that the inactive as well as the active voter lists are included on electronic poll books so that a voter whose record has been moved to the “inactive” list can still vote if they appear at a polling place and, as usual, show their identification. The U. S. District Court for the Southern District

2020. https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-rights/-use-it-or-lose-it---the-problem-of-purges-from-the-registration0/

⁵ John Powers, “Common Cause New York v. Brehm Is the Canary in the Coal Mine When It Comes to Voting by Mail in the Coronavirus Age.” American Bar Association *Human Rights Magazine* Vol. 45 No. 3. https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-in-2020/common-cause-new-york-v-brehm-is-the-canary-in-the-coal-mine-wh/

of New York held in *Common Cause New York v. Brehm* that failure to provide this protection violates the Equal Protection Clause of the U. S. Constitution.⁶

THE LEAGUE'S RECOMMENDATIONS

Based on these considerations, the League of Women Voters of South Carolina has the following recommendations with respect to the statutory requirements associated with the SEC voter registration rolls:

- 1) No change should be made that would increase the probability that a voter will be removed from the active voter rolls in error.
- 2) The error-prone practice of using voting frequency backed up by documents sent through the US Postal Service as an indicator of voter movement should be ended immediately.
- 3) There should be a statutory mandate to provide voter registration information and assistance to persons who are leaving incarceration or who have been legally declared mentally competent.
- 4) The practice of providing inactive as well as active voter lists through electronic poll books must be continued, both as a sound practice and as a matter of conformity with federal court rulings.
- 5) Poll workers should be required to tell voters who have been removed from the active voter list that they remain on the inactive list and can vote immediately.

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⁶ Ibid.