



South Dakota Secretary of State

Monae L. Johnson
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October 11, 2024

American Civil Liberties Union
Elizabeth Skarin
Andrew Malone
P.O. Box 91952
Sioux Falls, SD 57109
By email only eskarin@aclu.org and amalone@aclu.org

RE: South Dakota Initial Response to ACLU

Dear Ms. Skarin and Mr. Malone,

The South Dakota Secretary of State's Office ("Office") is in receipt of your correspondence dated October 8, 2024. The allegations indicating this Office conducted a mass voter purge in violation of the National Voter Registration Act ("NVRA") are without merit.

Your October 8th correspondence requesting documents will be responded to as an open records request. *See* SDCL Ch. 1-27. This response satisfies the time requirements of SDCL 1-27-37. Be advised that this Office strived to promptly provide this response by your requested deadline of Friday, October 11, 2024. Requested records will be assembled and reviewed for what information may be subject to disclosure under the provisions of SDCL Ch. 1-27, federal voter registration laws, and federal driver's licensing laws. This Office anticipates being able to fully respond to your written record request within 30 days from today. Without waiving this Office's obligation to determine whether information is subject to disclosure, this Office would like to provide you additional information on the State's compliance with the NVRA.

The Department of Public Safety ("DPS") was recently made aware of a situation in which a non-U.S. citizen had been inadvertently registered to vote when that individual applied for a driver's license. DPS looked into that applicant to determine the cause of this error. DPS examined a copy of the driver licensing application and discovered that the applicant had marked "no" indicating their own non-U.S. citizenship status but then failed to check the box to opt-out of automatic voter registration. As such, the driver licensing applicant was erroneously automatically registered to vote despite their own admission of having no legal standing to do so. Based upon this discovery, a review occurred which resulted in identifying 274 separate non-U.S. citizens as being impacted by the inadvertent error, but the review did not end there.

DPS continued an individualized review of each of the driver licensing applications to ensure each had disclosed their non-U.S. citizen status. In each instance, it was discovered that the non-U.S. citizen applicant provided all the proper documentation to show their legal status as a non-U.S.

citizen but were subsequently automatically registered to vote. Then to ensure that non-citizenship status was the most accurate status of each applicant, DPS ran each individual through the SAVE database on two separate occasions: first, upon discovery of the error about two weeks ago and then again before the individuals were removed from the voter rolls on October 7, 2024.

Then SOS made its own review of each impacted individual. This individualized review identified that one of the 274 individuals had since become a naturalized citizen. As a result, this person was correctly retained on the voter rolls. Our process not only identified inaccuracies, but it also accounted for changes in citizenship status. The remaining 273 individuals remained non-U.S. citizens, and ultimately on October 7, 2024, they were correctly and lawfully removed from the voter rolls.

Your claim that South Dakota conducted a “systematic” review of voters’ citizenship status and the improper removal of individuals from voter rolls is not accurate. The removal was not conducted during any general program of voter roll maintenance but as a correction of registration records because none of these individuals should have been registered in the first place. *Arcia v. Florida Sec’y of State*, 772 F.3d 1335, 1345 citing 42 U.S.C. § 1973gg-6(c)(2)(B) (Transferred to 52 U.S.C.A. § 20507).

The actions undertaken by this Office align with the case law referenced in your letter. For instance, in *Arcia v. Florida*, the Court differentiated between “systematic” and “non- systematic” removals. *Arcia v. Florida Sec’y of State*, 772 F.3d 1335, 1345 (11th Cir. 2014). It concluded that Florida’s approach was indeed “systematic” because it did not rely on individualized information or investigations when determining which names to remove from the voter registry. As you are aware, the Court went on to say that states are not barred “from investigating potential non-citizens and removing them on the basis of individualized information, even within the 90–day window.” *Id.* at 1348. Therefore, individuals can be removed from the voter rolls at any time before an election provided that these removals are based on rigorous, individualized review. *Id.* at 1346-48. The Court emphasized that “individualized removals do not present the same risks as systematic removals because they are based on individual correspondence or rigorous individualized inquiry, leading to a smaller chance for mistakes” *Id.* at 1346-48 (emphasis added).

Distinguishable from Florida’s systematic removal, South Dakota’s DPS identified one driver’s license application who indicated “no” regarding their U.S. citizenship and yet were still registered to vote due to error. From there, South Dakota’s process involved several employees who meticulously reviewed each application and supporting documentation to identify self-disclosed non-U.S. citizens. They then cross-checked these individuals to see if they were inadvertently registered to vote. This approach led to the identification of 274 non-U.S. citizens. Then, each of these cases was further verified twice through the SAVE database to confirm current citizenship status, which led to the identification and removal of 273 non-U.S. citizens. This entire process exemplifies the “individualized information or investigation” that the *Arcia* court described as necessary for determining ineligible voters and not in violation of the Quiet Period Provision of the NVRA. Similarly, North Carolina was found to have violated this provision because it relied on a single source of information, contrasted by South Dakota’s reliance on multiple records and searches and the SAVE database. See *N.C. State Conf. of NAACP v. Bipartisan Bd. Of Elections & Ethics Enft*, No. 1:16-CV-1274, 2018 WL 3748172, at *7-9 (M.D.N.C. Aug. 7, 2018) (finding cancellation of 374 voters’ registrations’ based on a single source of information “lacked the individualized inquiry

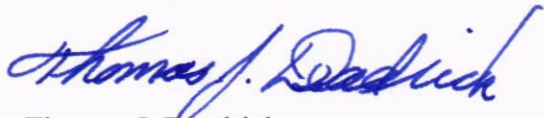
necessary to survive the NVRA's prohibition on systematic removals within 90 days of a federal general election).

Our careful approach underscores our commitment to maintaining the integrity of the voter rolls while ensuring that eligible citizens are not inadvertently removed. Each step taken in this process reflects our dedication to conducting individualized assessments rather than relying on systematic removals, ultimately leading to the most accurate outcomes and election integrity for the people of South Dakota.

Notification letters have been sent to the 273 individuals who were removed from the voter rolls. These letters explain the situation and provide guidance on how to re-register or dispute the finding if they believe they are now eligible.

I trust that this response fully addresses your October 8, 2024, correspondence.

Respectfully,



Thomas J. Deadrick
Deputy, Secretary of State