

April 29, 2021

House Committee on Elections
Texas House of Representatives
Capitol Extension, Room E2.028
1100 Congress Avenue, Austin, Texas

Re: Opposition to S.B. 1340

Dear Chair Cain, Vice Chair González, and Committee Members:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) writes to convey our strong opposition to Texas Senate Bill (“S.B.”) 1340.¹ If enacted, S.B. 1340 would codify flawed voter-registration and list-maintenance procedures, including reliance on the disbanded and discredited Interstate Voter Registration Crosscheck Program, that are known to burden naturalized citizens, who are predominantly voters of color. S.B. 1340 also likely violates at least two separate provision of the National Voter Registration Act (“NVRA”) of 1993,² in addition to raising serious concerns under the First, Fourteenth, Fifteenth, and Twenty-Sixth Amendments to the United States Constitution and Section 2 of the Voting Rights Act.³ Moreover, S.B. 1340’s provisions serve no legitimate, non-discriminatory purpose. For these reasons, as set forth in detail below, we urge this Committee to oppose S.B. 1340.

I. S.B. 1340 Creates Procedures that Will Result in the Improper Removal of Naturalized Citizens from the Voter Rolls and Will Create a Discriminatory Removal Program that likely Violates the U.S. Constitution and Multiple Federal Laws (Section 2)

Section 2 of S.B. 1340 would require the Secretary of State to, “at least twice each year, . . . use the United States Department of Homeland Security (“DHS”) database of noncitizens living in Texas to identify noncitizens whose voter registrations should be canceled.”⁴ It also requires the Secretary to use Department of Public Safety (“DPS”) files on persons who apply for a Texas driver’s license or identification card and indicate they are non-citizens to “fulfill its responsibility to manage the voter rolls.”⁵ S.B. 1340 then empowers the Secretary to cancel a voter registration and prevent an individual from registering to vote when the Secretary determines that a “strong match” exists between

¹ S.B. No. 1340 (Engrossed Version), 87th Leg., Reg. Sess. (Tex. 2021) (hereinafter “S.B. 1340”).

² 52 U.S.C. § 20501 *et seq.*

³ See U.S. Const. amends. XIV, XV, XXVI; 52 § U.S.C. 10301.

⁴ S.B. 1340, § 2 (amending Tex. Election Code § 11.0021).

⁵ S.B. 1340, § 2.

information combinations “identified as common to a voter and to an individual who is not a citizen of the United States.”⁶

This appears to codify the flawed procedure that led to the improper removal of thousands of naturalized citizens, who in Texas are disproportionately Hispanic and Asian, in 2019 and ultimately led the State to enter into a binding settlement agreement in *Texas LULAC v. Whitley*.⁷ Yet the legislation does not include the safeguards required by the terms of that settlement agreement to ensure naturalized citizens are not improperly removed and discriminately burdened. As explained in the 2019 settlement agreement, the Secretary cannot immediately cancel the registration of a voter who registered to vote *after* previously indicating that he or she was not a citizen, because the person could have become naturalized between those two dates.⁸ Instead of complying with this settlement agreement and including what is required by federal law and the U.S. Constitution,⁹ S.B. 1340 creates an opaque matching criterion that does not clearly require the State to comply with any of these binding constitutional and legal constraints.

Indeed, the NVRA makes clear that “[a]ny State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office-- shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965.”¹⁰ In *Whitley*, the court determined that relying on Department of Public Safety (“DPS”) data to immediately cancel voter registrations would likely violate the NVRA and VRA. Accordingly, that court prohibited the Secretary of State and Texas counties from removing any voter from the voter registration

⁶ S.B. 1340, § 2 (“(b) The secretary of state shall by rule determine what information combinations identified as common to a voter and to an individual who is not a citizen of the United States constitute a weak match or a strong match in order to (1) produce the least possible impact on Texas voters; and (2) fulfill its responsibility to manage the voter rolls. ... (e) The secretary of state may determine a voter is ineligible to register to vote or vote based on a strong match.”).

⁷ See *Texas LULAC v. Whitley*, No. SA-19-CA-074-FB, 2019 WL 7938511 (W.D. Tex. Feb. 27, 2019).

⁸ *Id.*, 2019 WL 7938511 at *1 (“The evidence has shown in a hearing before this Court that there is no widespread voter fraud. The challenge is how to ferret the infinitesimal needles out of the haystack of 15 million Texas voters. The Secretary of State ... in February 2018, ...[transitioned]... to a proactive process using tens of thousands of Department of Public Safety driver license records matched with voter registration records. ..., meaning perfectly legal naturalized Americans were burdened ... No native born Americans were subjected to such treatment. .. Out of 98,000 new American voters on the list, thus far approximately 80 have been identified as being ineligible to vote. Almost immediately upon sending the list, the government had an “oops” moment, realizing that 25,000 names should not have been included. It appears this is a solution looking for a problem.”)

⁹ See U.S. Const. amend XIV, § 1 (“[N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.”).

¹⁰ 52 U.S.C. § 20507(b).

list on the basis of DPS data alone.¹¹ Likewise, because the iteration of a Department of Homeland Security database listing non-citizens residing in Texas may not contain the most recent information on naturalizations, the data can yield the same unlawful result: the removal of recently naturalized citizens, who are disproportionately Hispanic and Asian citizens in Texas, and include Black citizens.¹² Because Section 2 of S.B. 1340 permits the immediate cancellation of a voter registration based on data from two data sources that could include naturalized citizens, this legislation could lead to the same discriminatory and burdensome result, which violates federal law.

Thus, Section 2 of S.B. 1340, as written, could lead to the cancellation of voter registrations for impermissible reasons, and will target and discriminately set up for removal naturalized citizens, who are disproportionately Hispanic and Asian in Texas. Section 2 allows—and, by specifically failing to provide safeguards to prevent a discriminatory result, *encourages*—the creation of a discriminatory removal program imposes qualifications and prerequisites for voting which will result in denial or abridgement of the right to vote on account of race or color.

II. S.B. 1340 Creates Burdensome Requirements for Simultaneous Applications for a Driver’s License and Voter Registration in the Online Voter Portal, Likely in Violation of Federal Law (Section 6)

Although Section 6 of S.B. 1340 provides for the creation of an online voter registration portal, which is an important step for Texas, it also imposes additional requirements for individuals to become registered to vote using the system. By adding additional time to the voter registration process, in the context of a person’s already lengthy application for a State motor vehicle driver’s license, S.B. 1340 decreases the likelihood that a person will simultaneously apply for a voter registration with his or her driver’s license application. This also likely violates federal law.

Section 5 of the NVRA prevents states from requiring “any information that duplicates information ... in the driver’s license ... form” and sets out that “only the minimum amount of information necessary” can be requested of a person registering to vote in this manner.¹³ Section 6 of S.B. 1340 specifically

¹¹ *Whitley*, 2019 WL 7938511 at *2.

¹² Of all states, Texas is home to the highest number of Black immigrants from Africa and the fifth-highest number of Black immigrants who are eligible voters. See New American Economy Research Fund, *Power of the Purse: The Contributions of Black Immigrants in the United States* (Mar. 19, 2020), <https://research.newamericaneconomy.org/report/black-immigrants-2020/>.

¹³ 52 U.S.C. § 20504 (“The voter registration application portion of an application for a State motor vehicle driver’s license – (A) may not require any information that duplicates information required in the driver’s license portion of the form (other than a second signature or

requires voters registering through DPS during a driver's license transaction to provide the audit number and date of issuance of their driver's licenses and consent to their signature's use for both motor vehicle and voter registration purposes.¹⁴ This is in addition to requiring these voters to provide the information already required in state law for every voter registration.¹⁵

Thus, the online voter registration contemplated by Section 6 of S.B. 1340 would require a prospective voter to enter duplicative and additional information to become registered to vote during a driver's license transaction with a State motor vehicle agency. This will hinder voters' ability to efficiently become registered to vote while engaging in an already time intensive interaction with the State, a problem contemplated and remedied by Section 5 of the NVRA.

III. S.B. 1340's Changes to the Process by Which Voter Registrations Become Effective Violate Federal Law and Raise Constitutional Concerns (Sections 16 and 49)

S.B. 1340 would also make it harder for eligible voters to register in time for an upcoming election by changing the triggering event for the 30-day period set forth in Texas law before a new registration becomes effective.¹⁶ Instead of calculating these 30 days from the date a voter *submits* a registration application, S.B. 1340 would begin counting only when the registrar *approves* that

other information necessary under subparagraph (C)); (B) may require only the minimum amount of information necessary to--(i) prevent duplicate voter registrations; and (ii) enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process”).

¹⁴ S.B. 1340, § 6 (amending Tex. Election Code § 13.009 to add that “(b) An applicant for electronic voter registration must: (1) attest to the truth of the information provided on the application by affirmatively accepting the information as true; (2) affirmatively consent to the use of the signature on the applicant's driver's license or personal identification card for voter registration purposes; (3) provide the information required under Section 13.002(c)”).

¹⁵ Tex. Election Code § 13.002(c) (“A registration application must include: (1) the applicant's first name, middle name, if any, last name, and former name, if any; (2) the month, day, and year of the applicant's birth; (3) a statement that the applicant is a United States citizen; (4) a statement that the applicant is a resident of the county; (5) a statement that the applicant has not been determined by a final judgment of a court exercising probate jurisdiction to be: (A) totally mentally incapacitated; or (B) partially mentally incapacitated without the right to vote; (6) a statement that the applicant has not been finally convicted of a felony or that the applicant is a felon eligible for registration under Section 13.001; (7) the applicant's residence address or, if the residence has no address, the address at which the applicant receives mail and a concise description of the location of the applicant's residence; (8) the following information: (A) the applicant's Texas driver's license number or the number of a personal identification card issued by the Department of Public Safety; (B) if the applicant has not been issued a number described by Paragraph (A), the last four digits of the applicant's social security number; or (C) a statement by the applicant that the applicant has not been issued a number described by Paragraph (A) or (B); (9) if the application is made by an agent, a statement of the agent's relationship to the applicant; and (10) the city and county in which the applicant formerly resided.”).

¹⁶ S.B. 1340, § 16; *see also* Tex. Elec. Code § 13.143(a).

application—which may occur several days after a voter submits it.¹⁷ This change would likely violate Section 8 of the NVRA, which requires states to ensure that all eligible individuals who apply 30 days or more before an election are registered in time to participate in that election.¹⁸ Because this proposed change to Texas law would likely disenfranchise large numbers of newly eligible voters, including young people and naturalized citizens, who are disproportionately people of color,¹⁹ S.B. 1340 also raises constitutional and VRA concerns.

Under current Texas law, consistent with the NVRA’s requirements, when an eligible Texan who is at least 18 years old registers to vote, their registration becomes effective “on the 30th day after the date the application is submitted to the registrar.”²⁰ If an eligible voter applies by mail, their registration becomes effective 30 days from the application’s postmark date.²¹ If an eligible voter applies in-person through a Volunteer Deputy Registrar (“VDR”), the voter’s registration becomes effective 30 days from the date they submit their application to the VDR.²²

In short, as long as an eligible Texan postmarks, hand-delivers, or otherwise *submits* their registration application at least 30 days before Election Day, current law guarantees that they will be registered in time to cast a ballot in

¹⁷ Patrick Svitek, *Texas hits nearly 17 million registered voters for November election*, Texas Tribune (Oct. 16, 2020), <https://www.texastribune.org/2020/10/16/texas-2020-registered-voters/>.

¹⁸ 52 U.S.C. § 20507(1)(a).

¹⁹ See Alexa Ura & Lindsay Carbonnel, *Young Texans Make Up Most Diverse Generation*, Tex. Tribune (June 23, 2016), <https://www.texastribune.org/2016/06/23/texas-children-make-most-diverse-generation/>; Olga Garza et al., *Young Texans: Demographic Overview*, Fiscal Notes (Feb, 2020), <https://comptroller.texas.gov/economy/fiscal-notes/2020/feb/texans.php>; Robert Warren & Donald Kerwin, *The US Eligible-to-Naturalize Population: Detailed Social and Economic Characteristics*, 3 J. Migration & Human Security 306, 311 (2015); Abby Budiman et al., *Naturalized Citizens Make Up Record One-in-Ten U.S. Eligible Voters in 2020*, Pew Research Ctr. (Feb. 26, 2020), <https://www.pewresearch.org/hispanic/2020/02/26/naturalized-citizens-make-up-record-one-in-ten-u-s-eligible-voters-in-2020/>.

²⁰ Tex. Elec. Code § 13.143(a). There are three situations under Texas law when this rule operates differently. *First*, if a voter-registration applicant is younger than 18 when they submit the application, their registration becomes effective either 30 days after submission “or on the date the applicant becomes 18 years of age, whichever is later.” *Id.* *Second*, a voter’s “registration is effective for purposes of early voting if it will be effective on election day,” enabling new voters to participate in early voting, in some circumstances, fewer than 30 days after applying. *Id.* § 13.143(b). *Third*, “[i]f the 30th day before the date of an election is a Saturday, Sunday, or legal state or national holiday, an application is considered to be timely if it is submitted to the registrar on or before the next regular business day.” *Id.* § 13.143(e). However, S.B. 1340 would alter the operation of the first two provisions and repeal the third. See S.B. 1340, Sections 16 & 49.

²¹ Tex. Elec. Code § 13.143(d).

²² Tex. Elec. Code § 13.041 (“The date of submission of a completed registration application to a volunteer deputy registrar is considered to be the date of submission to the registrar for the purpose of determining the effective date of registration only.”).

that election.²³ Recent events have underscored the importance of the flexibility these rules provide. USPS delivery can be delayed during election seasons, as it was in 2020.²⁴ In addition, registrars often receive high volumes of registration applications when an election is approaching, which can lead to delays—as in 2020, when Texas election officials did not finish processing registration applications until 11 days after the October 5 deadline.²⁵ By preventing voters affected by such delays from becoming registered until their applications are processed and approved, S.B. 1340 would disenfranchise eligible voters who complied with state law and submitted their applications on time, 30 days or more before Election Day.

Federal law forbids such a result. Section 8 of the NVRA, which current Texas law implements, compels Texas and other states to “ensure that any eligible applicant” whose voter-registration application is “submitted” or “post-marked” at least 30 days before the date of an election is registered in time to vote in that election.²⁶ Notably, this provision sets an outer boundary—because the NVRA requires registrations to become effective “not later than *the lesser of* 30 days, or the period provided by State law, before the date of the election,”²⁷ states remain free to accept registrations as timely for an upcoming election after than the 30-day mark, including on Election Day itself.²⁸ What states may

²³ Tex. Elec. Code § 13.143(a).

²⁴ See, e.g., Press Release, Ann Harris Bennett, Tax Assessor-Collector & Voter Registrar, *Harris County Voter Registration Applications Delayed by USPS Issues* (Sept. 18, 2020), <https://www.hctax.net/About/Announcements/September182020>; Brian Naylor, *DeJoy Announces 10-Year Reorganization Of U.S. Postal Service*, NPR (Mar. 23, 2021), <https://www.npr.org/2021/03/23/980092945/dejoy-announces-10-year-reorganization-of-u-s-postal-service>.

²⁵ Svitek, *supra* note 17.

²⁶ 52 U.S.C. § 20507(a)(1)(A) (requiring states to register “any eligible applicant” who uses a motor vehicle application in time for an upcoming election “if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election”) (emphasis added); *id.* § 20507(a)(1)(B) (requiring states to register “any eligible applicant” who registers by mail in time for an upcoming election “if the valid voter registration form of the applicant is *postmarked* not later than the lesser of 30 days, or the period provided by State law, before the date of the election”) (emphasis added); see also *id.* § 20507(a)(1)(C) (requiring states to register “any eligible applicant” applying at a voter registration agency in time for an upcoming election “if the valid voter registration form of the applicant is *accepted* at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election”) (emphasis added); *id.* § 20507(a)(1)(D) (requiring states, “in any other case,” to register “any eligible applicant” for an upcoming election “if the valid voter registration form of the applicant is *received* by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election”) (emphasis added).

²⁷ 52 U.S.C. § 20507(a)(1)(A) (emphasis added); *id.* § 20507(a)(1)(B) (same); *id.* § 20507(a)(1)(C) (same); *id.* § 20507(a)(1)(D) (same).

²⁸ As of October 2020, Texas was one of only 10 states that forced voters to register 30 days before an election—39 other states accepted registration applications submitted or post-marked later as timely for an upcoming election, and 19 states and the District of Columbia

not do is refuse registrations for an upcoming election that are submitted on or before the 30-day mark. As long as an eligible voter submits their application 30 days before an election, Texas cannot prevent that voter from registering and voting in that election without violating the NVRA.²⁹

Yet S.B. 1340 would do precisely that. If S.B. 1340's changes are enacted, based on Texas's experience in 2020, an eligible voter who applies on the 30th, 31st, or even 41st day before an election would risk disenfranchisement.³⁰ For the 2020 general election, at least 50,000 timely registration applications submitted by eligible Texans were not approved until 11 days after the submission deadline.³¹ If S.B. 1340 had been the law then, those voters would have been disenfranchised. Indeed, no matter how early Texans submit their applications, S.B. 1340's revised procedures provide no guarantee that they will be registered by Election Day. These effects of S.B. 1340 expressly contravene Section 8 of the NVRA. In addition, because S.B. 1340's revised registration process would likely fall hardest on newly eligible Texas voters, including young people and naturalized citizens—both of whom are disproportionately people of color³²—S.B. 1340 also raises concerns under Section 2 of the Voting Rights Act and the Fourteenth, Fifteenth, and Twenty-Sixth Amendments to the U.S. Constitution.

IV. The Secretary of State Should Not Be Given Control Over Statewide Voter Registration—Doing so Will Be Expensive, Burdensome, and Inappropriate in Light of the SOS's Recent Actions (Sections 3, 11–14, 30–31)

S.B. 1340 would also transform the way voter-registration is conducted in Texas by transferring primary responsibility for list maintenance from county clerks and election administrators to the Secretary of State ("SOS").³³ S.B. 1340 would also transfer control over eligibility and challenge hearings to the SOS, likely requiring voters who wish to defend their right to vote to do so in proceedings conducted in Austin, regardless of where in Texas a voter lives.³⁴

This Committee should oppose these sweeping changes for at least three reasons. *First*, they are expensive and impractical. As the most recent fiscal note for S.B. 1340 reveals, these changes would cost the General Revenue Fund more

allowed voters to register and vote in an election on the same day. Nat'l Conf. of State Legislatures, *Voter Registration Deadlines* (Oct. 2, 2020), <https://www.ncsl.org/research/elections-and-campaigns/voter-registration-deadlines.aspx>. One state, North Dakota, does not require voters to register. Nat'l Conf. of State Legislatures, *Voter Registration* (Oct. 5, 2020), <https://www.ncsl.org/research/elections-and-campaigns/voter-registration.aspx>.

²⁹ 52 U.S.C. § 20507(a)(1); *see also supra* note 26.

³⁰ *See Svitek, supra* note 17.

³¹ *Id.*

³² *See sources* *cites supra* note 19.

³³ S.B. 1340, Sections 11, 12, 13, 14, 30, 31.

³⁴ *See generally id.*

than \$49.5 million over the next five years alone.³⁵ *Second*, the burden on voters who would have no choice but to travel to Austin if they wished to “appear personally at the hearing to offer evidence or argument” in eligibility and challenge hearings would be severe and unjustified.³⁶ *Third*, the SOS’s recent attempt to purge nearly 100,000 eligible naturalized-citizen voters—an action a federal judge described as “ham-handed,” a “mess,” and an example of “the power of government to strike fear and anxiety and to intimidate the least powerful among us”³⁷—casts doubt on the appropriateness of increasing the SOS’s role in voter registration.

V. Texas Should Not Use Data from a Flawed and Discredited Program to Flag Otherwise Eligible Voters to Potentially Be Removed from the Voter Rolls (Section 21)

Data from the flawed and discredited Interstate Voter Registration Cross-check Program (“Crosscheck”) should not be used to put otherwise eligible voters on a process to be removed if they do not respond to a postcard in the mail or vote in two federal election cycles. Yet S.B. 1340 will write³⁸ into Texas law reliance on data from this program, in addition to one other data set, to identify voters who may have moved. The only other data source S.B. 1340 would require the Secretary of State to consider is data from the U.S. Postal Service, National Change of Address (“NCOA”) registry. Because NCOA data does not contain information necessary to accurately identify a voter who has moved, S.B. 1340 would lead to the erroneous flagging of voters to be removed from the voter rolls, with the burden disproportionately falling on people of color.

Senate Bill 1340 would amend the Texas Election Code to require the Secretary of State to, “as frequently as possible,” compare 1) United States Postal Service, National Change of Address database data, 2) data from the Interstate Voter Registration Crosscheck Program; and 3) information on non-

³⁵ Leg. Budget Bd., *Fiscal Note, 87th Leg. Reg. Sess, In re: SB1340 by Buckingham (relating to voter qualification and registration.)*, Committee Report 1st House, *Substituted* (Apr. 6, 2021) <https://capitol.texas.gov/tlodocs/87R/fiscalnotes/pdf/SB01340S.pdf#navpanes=0>.

³⁶ S.B. 1340, § 12, 30, 31; *see also id.* §§ 11, 13, 14.

³⁷ *Texas LULAC v. Whitley*, No. CV SA-19-CA-074-FB, 2019 WL 7938511, at *1–*2 (W.D. Tex. Feb. 27, 2019).

³⁸ Texas Election Code § 18.062 does require Texas’ participation in an Interstate Voter Registration Crosscheck program. Section 18.062 says “[t]o maintain the statewide voter registration list and to prevent duplication of registration in more than one state or jurisdiction, the secretary of state shall cooperate with other states and jurisdictions to develop systems to compare voters, voter history, and voter registration lists to identify voters whose addresses have changed.” *Id.* If Texas legislators mean to refer to ERIC in S.B. 1340, given that Texas joined the Electronic Registration Information Center (“ERIC”) in March of 2020, S.B. 1340 should say the “Electronic Voter Registration Information Center” explicitly, as the other interstate voter registration comparison program referred to as the Interstate Voter Registration Crosscheck Program is discredited and disbanded, as described above.

voting in Texas to identify voters who may have moved outside of their county of registration or outside of the State.³⁹

Interstate voter roll comparison programs routinely produce inconsistent, discriminatory, and erroneous results.⁴⁰ These issues occur because a) there are errors in states' voter files which cause false flags and matches and b) states do not track and transmit the same information across data comparison fields in the same way. For example, many states describe the “date of registration” for their voters in different ways—some states may use the date when the voter first registered, while other states may use the last time a voter updated his or her voter registration information. These issues led Crosscheck, specifically, to be disbanded and discredited.⁴¹ Crosscheck was ultimately suspended indefinitely as part of a settlement agreement.⁴² Tellingly, a recent study of Wisconsin's voter rolls found that Black voters were more likely than white voters to be improperly flagged as having moved by the Wisconsin voter purge program, which relied on NCOA and ERIC (Electronic Registration Information Center)

³⁹ S.B. 1340, § 21 (amending Tex. Election Code § 15.054 to add that “As frequently as possible, the secretary of state shall: (1) request from the United States Postal Service information from the National Change of Address database indicating address reclassifications or changes of address affecting the registered voters of the state; (2) examine any information obtained from the interstate voter registration crosscheck program under Section 18.062, indicating address reclassifications or changes of address affecting the registered voters of the state; and (3) identify each voter in the state who fails to vote in any election, submit an application for a ballot to be voted by mail... or submit a change in voter registration under Chapter 13 or 15 for two years from the date of a general election for state and county officers. (b) If information obtained under Subsection (a) gives the secretary of state reason to believe a voter has changed the voter's residence to a location outside of the county in which the voter is registered to vote, the secretary of state shall forward the information to the voter registrar for the county in which the voter is registered. (c) After receiving information on a voter under Subsection (b), the registrar shall deliver a confirmation notice to the voter in accordance with Section 15.051.”).

⁴⁰ Gregory Huber, Marc Meredith, Michael Morse & Katie Steele, *The Racial Burden of Voter List Maintenance Errors: Evidence from Wisconsin's Supplemental Movers Poll Books*, 7 Science Advances No. 8 (2021), <https://advances.sciencemag.org/content/7/8/eabe4498>.

⁴¹ *Common Cause v. Lawson*, 327 F. Supp. 3d 1139, 1143 (S.D. Ind. 2018) (finding that Indiana could not rely on information gleaned from the Interstate Voter Registration Crosscheck Program, alone, to cancel voter registrations because “statewide voter registration data does not provide the dates of registration in Indiana and other states to assist in determining what state registration occurred first. . . . [e]ven if dates of registration information was provided, this information is not complete or consistent because states . . . do not always populate the registration date field, and they have different policies in how they determine which date to use, so there is no uniform practice among states.”); Jonathan Brater, Kevin Morris, Myrna Pérez, and Christopher Deluzio, *Purges: A Growing Threat to the Right to Voter*, Brennan Center for Justice at New York University School of Law (Aug. 2019), https://www.brennancenter.org/sites/default/files/2019-08/Report_Purges_Growing_Threat.pdf.

⁴² Roxana Hegeman, *Multistate Voter Database Suspended in Lawsuit Settlement*, AP, (Dec. 10, 2019), <https://www.aclukansas.org/en/press-releases/aclu-kansas-settlement-puts-cross-check-out-commission-foreseeable-future-program>.

data.⁴³ This is particularly relevant to S.B. 1340 because ERIC data is significantly more reliable than Crosscheck data.⁴⁴ As a result, because Section 21 of S.B. 1340 requires Texas to rely on two data sources that are inaccurate and burdensome on voters of color, the legislation will prevent Texas from achieving an accurate and current voter registration list and lead to the removal of eligible voters, particularly Black voters, from the State's voter registration list, likely in violation of federal law and the Constitution.

Texas should not write into law anything mandating the State's participation in an interstate voter roll comparison program, particularly the flawed Crosscheck program, as such programs will inevitably disenfranchise eligible voters, lead to costly lawsuits, and move Texas farther away from achieving an accurate and current voter registration list.

* * *

For the foregoing reasons, we respectfully urge this Committee to oppose S.B. 1340. Please feel free to contact Steven Lance at (347) 947-0522 or by email at slance@naacpldf.org with any questions or to discuss these concerns in more detail.

Sincerely,

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NAACP Legal Defense and Educational Fund, Inc. ("LDF")

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in education, economic justice, political participation, and criminal

⁴³ Huber et al., *supra* note 40.

⁴⁴ *Id.*; see, e.g., *Lawson*, 327 F. Supp. 3d at 1143.

justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voter discrimination, intimidation, and suppression. LDF has been fully separate from the National Association for the Advancement of Colored People (“NAACP”) since 1957, though LDF was originally founded by the NAACP and shares its commitment to equal rights.