

May 3, 2021

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

Re: Opposition to S.B. 1114

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

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) writes to convey our opposition to Texas Senate Bill (“S.B.”) 1114.¹ If enacted, S.B. 1114 would codify flawed voter purge procedures that are known to lead to the removal of recently naturalized U.S. citizens, who in Texas are predominately Latino and Asian,² and include Black citizens.³ S.B. 1114’s potential burdens on naturalized citizens raise concerns under the Fourteenth and Fifteenth Amendments to the United States Constitution, Section 2 of the Voting Rights Act of 1965 (“VRA”), as well as the National Voter Registration Act of 1993 (“NVRA”).⁴ This bill also fails to incorporate the safeguards required as part of a binding settlement agreement the State reached in 2019, which arose from the Secretary of State’s unlawful attempt to purge nearly 100,000 naturalized-citizen voters from the Texas voter rolls in much the same manner. If the terms of that settlement agreement were incorporated into S.B. 1114, it could help prevent this potentially unlawful result.⁵ S.B. 1114’s neglect of critical safeguards serves no legitimate, non-discriminatory purpose. Accordingly, this Committee should oppose S.B. 1114.

¹ S.B. No. 1114 (Engrossed), 87th Leg., Reg. Sess. (Tex. 2021) (hereinafter “S.B. 1114”).

² See 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/>.

³ Texas is home to the highest number of Black immigrants from Africa and has 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/>.

⁴ See U.S. Const. amends. XIV, XV; 52 U.S.C. § 10301; 52 U.S.C. § 20501 *et seq.*

⁵ *Texas LULAC v. Whitley*, No. CV SA-19-CA-074-FB, 2019 WL 7938511, at *1–*2 (W.D. Tex. Feb. 27, 2019).

I. S.B. 1114’s Enactment Could Result in the Discriminatory and Improper Removal of Naturalized Citizens from the Voter Rolls, In Violation the U.S. Constitution and Federal Laws.

S.B. 1114 would require the Secretary of State to enter into an agreement with the Department of Public Safety (“DPS”) under which DPS files on persons who have applied for a Texas driver’s license or identification card in the past and indicated they were not—at *that time*—U.S. citizens are compared to the Texas voter-registration files “on a monthly basis to verify the accuracy of citizenship status information provided on voter registration applications.”⁶

S.B. 1114 appears to partially codify the flawed procedure that led to the improper flagging for removal of 98,000 naturalized citizens in 2019 and that ultimately led the State to enter into a binding settlement agreement in *Texas LULAC v. Whitley*.⁷ As a federal district court judge found at the time, “perfectly legal naturalized Americans were burdened with . . . ham-handed and threatening” actions by the Secretary of State, which raised equal-protection concerns and “exemplifie[d] the power of government to strike fear and anxiety and to intimidate the least powerful among us.”⁸ The Secretary’s methodology in 2019, which S.B. 1114 appears to replicate, was severely overinclusive—nearly all of the individuals targeted for removal were naturalized citizens who had become U.S. citizens *before registering to vote*.⁹

S.B. 1114’s text does not include the critical safeguards required by the terms of the *Whitley* settlement agreement to ensure that naturalized citizens are not improperly removed, discriminately burdened, and denied the right to vote on account of race or color. As explained in the 2019 settlement agreement in *Whitley*, the Secretary cannot immediately cancel the registration of a voter who registers to vote *after* previously indicating that he or she was not a citizen, because the person could have naturalized between those two dates.¹⁰ To prevent the purging of naturalized citizens, the settlement agreement required the Secretary of State to 1) compare DPS records to the voter registration database,

⁶ S.B. 1114, § 1.

⁷ See generally *Whitley*, 2019 WL 7938511.

⁸ *Id.*, at *1.

⁹ *Id.* at *1 (“Out of 98,000 new American voters on the list, thus far approximately 80 have been identified as being ineligible to vote.”).

¹⁰ *Id.* 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.”).

2) use a matching criteria to determine to a high degree of likelihood that the person in the DPS database is the same person as in the voter registration database, and 3) to then identify only currently registered voters who registered to vote *before* they presented documents to a DPS office indicating non-U.S. citizenship. Instead of including terms reflecting the protections from the settlement agreement and the requirements of federal law and the U.S. Constitution,¹¹ S.B. 1114's procedures create an opaque matching process that does not clearly require the State to comply with these legal constraints.

Because this proposed change to Texas law would likely lead to the wrongful purging of naturalized citizens, who are disproportionately people of color,¹² S.B. 1114 raises constitutional, VRA, and NVRA concerns and should be opposed.¹³ By failing to provide safeguards to prevent a foreseeable and wrongful targeting of naturalized-citizen voters, S.B. 1114 *encourages* wrongful and disproportionate purging, and raises strong concerns regarding discriminatory intent.

* * *

For the foregoing reasons, we respectfully urge this Committee to oppose S.B. 1114. 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,

/s/ Steven Lance

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¹¹ 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.”).

¹² See *supra* notes 2 & 3.

¹³ A voter-purge program that discriminatorily targeted naturalized citizens for wrongful purging would be inconsistent with the State’s duty to afford all persons “the equal protection of the laws,” see U.S. Const. amend. XIV, would deny the right to vote “on account of race or color,” see 52 U.S.C. § 10301(a), and would be neither “uniform, nondiscriminatory, [nor] in compliance with the Voting Rights Act of 1965,” see 52 U.S.C. § 20507(b).

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 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.