



September 5, 2024

Via Electronic Mail

The Honorable Kristen Clarke
Assistant Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Re: Threat of Mass Voter Challenges to Voters

Dear Assistant Attorney General Clarke:

The undersigned civil and voting rights organizations write to express our concern about the threat of mass voter challenges ahead of the 2024 general election. Mass voter challenges are based on unsubstantiated and false claims that voter rolls are filled with voters who have died, moved, or are not citizens.¹ These challenges potentially disenfranchise or deter eligible voters, especially voters of color, impose significant burdens on election administrators, and sow doubt in the validity of our election processes and outcomes.² We thank you for your continued work to protect voters and democracy and, in continuation of that work, respectfully urge the Department of Justice to issue guidance on mass voter challenges.

In the lead up to the 2024 general election, threats of mass voter challenges have resurfaced. For example, one Florida resident submitted a list of 10,000 voters to the Florida Secretary of State and the Director of the Florida Division of Elections for potential removal from the voter rolls in May of this year.³ The list was generated using a list-matching database program known as EagleAI for which there is a growing body of evidence pointing to its use of faulty data methodologies to flag voters for removal, including misguided analyses of United States Postal Service records.⁴ Ultimately, the Director of the Florida Division of Elections forwarded the list to county election supervisors and asked them to “take action.”⁵ A few hundred miles away, in Georgia, on the first day of early voting during the general primary, the head of the Bibb County Republican Party submitted a list challenging the registrations of 159 Mercer University students, all of which were dismissed.⁶ He too had compiled the list using

¹ Clint Swift, et al., *Unraveling the Rise of Mass Voter Challenges*, Protect Democracy, 3, (2024), <https://protectdemocracy.org/wp-content/uploads/2024/06/Mass-Challenges.pdf>.

² Id.

³ Matt Dixon & Jane C. Timm, *Florida is using a fraud-hunting tool used by the right to look for voters to remove from the rolls*, NBC, May 24, 2024, <https://www.nbcnews.com/politics/2024-election/florida-eagleai-fraud-hunting-tool-right-voters-rcna153841>.

⁴ See, e.g., *Eagle AI Network “Capabilities Study,”* Documented Aug. 17, 2023, <https://documented.net/media/eagle-ai-network-capabilities-study>; *Inside the ‘Election Integrity’ App Built to Purge US Voter Rolls*, WIRED, Nov. 8, 2022, <https://www.wired.com/story/true-the-vote-iv3-app-voter-fraud/>.

⁵ Dixon, *supra* note 4.

⁶ Grant Blankenship, *A data tool being used to challenge voter registrations is raising many concerns*, June 20, 2024, <https://www.npr.org/2024/06/04/nx-s1-4991945/voter-registration-mass-challenges-georgia>.

EagleAI.⁷ Shockingly, since 2021, six individuals have submitted approximately 89,000 voter challenges in the state of Georgia.⁸ The undersigned civil and voting rights organizations are concerned that similar efforts will be made by individuals and groups associated with the Election Integrity Network, True the Vote, and the Pigpen Project (to name a few) in the coming months.⁹

Mass voter challenges conflict with various provisions of federal law, including the National Voter Registration Act (NVRA), the Civil Rights Act of 1960, the Fifteenth Amendment, the Due Process Clause of the Fourteenth Amendment, and federal voter intimidation statutes including the Ku Klux Klan Act of 1871 and Section 11(b) of the Voting Rights Act of 1965. We urge the Department to issue guidance reflecting the manner in which large-scale, meritless efforts to cull voters from state voter rolls likely run afoul of federal law.

I. National Voter Registration Act

The NVRA prohibits the systematic removal of voters from voter rolls 90 days before an election (“90-Day Provision”). The 90-Day Provision, in relevant part, requires that:

A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.¹⁰

The NVRA, moreover, prohibits the removal of a voter from a state’s voter rolls based on a change of residency unless the voter confirms in writing that they have moved or does not respond to a notice *and* has not voted in two federal election cycles (“Residency Provision”).¹¹ The Residency Provision thus guards against mass voter challenges seeking to purge voters on the basis of an alleged change of residency.¹²

Notably, both the Residency Provision and 90-Day Provision have been utilized to protect voters from mass voter challenges. In *Majority Forward v. Ben Hill County Board of Elections*, Majority Forward and a registered voter filed suit against the Muscogee County Board

⁷ *Id.*

⁸ Doug Bock Clark, *Close to 100,000 Voter Registrations Were Challenged in Georgia — Almost All by Just Six Right-Wing Activists*, ProPublica, July 13, 2023, <https://www.propublica.org/article/right-wing-activists-georgia-voter-challenges>.

⁹ See, e.g., Alexandra Berzon and Nick Corasaniti, *Trump’s Allies Ramp Up Campaign Targeting Voter Rolls*, NYT, Mar. 6, 2024, <https://www.nytimes.com/2024/03/03/us/politics/trump-voter-rolls.html>; Curt Devine, Yahya Abou-Ghazala and Kyung Lah, *A half-million records and one app: The group behind a massive effort to ‘clean’ voter rolls*, CNN, July 29, 2024, <https://www.cnn.com/2024/07/29/politics/voter-rolls-ballot-challenges-true-the-vote-elections/index.html>; *Inside the ‘Election Integrity’ App Built to Purge US Voter Rolls*, WIRED, Nov. 8, 2022, <https://www.wired.com/story/true-the-vote-iv3-app-voter-fraud/>; *Meet “Eagle AI,” the Cleta Mitchell-Backed MAGA Mass Voter Challenge Program*, Documented, Aug. 17, 2023, <https://documented.net/investigations/meet-eagle-ai-the-cleta-mitchell-backed-project-for-maga-activists-to-file-mass-voter-challenges>.

¹⁰ 52 U.S.C.A. § 20507.

¹¹ *Id.*

¹² *Id.*

of Elections, arguing that it had violated the NVRA (as well as the First and Fourteenth Amendments) by improperly sustaining challenges of 4,033 voters based upon inaccurate, unreliable, and inconclusive data allegedly drawn from the National Change of Address (“NCOA”) registry.¹³ The plaintiffs argued the removal of the targeted voters from the official registration list on the basis that they had allegedly changed residency violated the 90-Day Provision and Residency Provision, respectively, because the election officials did not receive written confirmation from the voters that they had changed their addresses and failed to conduct individualized inquiries necessary to sustain challenges made within 90 days of a federal election.¹⁴

The United States District Court for the Middle District of Georgia agreed, reasoning that the voters had not provided written confirmation of a change of address.¹⁵ Moreover, although the defendants argued that the 90-Day Provision of the NVRA was inapplicable, the court found otherwise, noting that although the challenges were initiated by individuals, the attempted removals of thousands of voters *en masse* were “systematic” and thus fell under the purview of the NVRA.¹⁶ The court noted the legislative purpose animating the 90-Day Provision “strikes a careful balance: It permits systemic removal programs at any time *except* for the 90 days before an election because that is when the risk of disenfranchising eligible voters is the greatest.”¹⁷

Similarly, in *North Carolina NAACP v. Bipartisan Board of Elections & Ethics Enforcement*, the North Carolina NAACP filed suit against three North Carolina county boards of elections after thousands of voter registrations were canceled based upon challenges brought by a handful of private individuals on change-of-residency grounds.¹⁸ The United States District Court for the Middle District of North Carolina ultimately granted an injunction in favor of the North Carolina NAACP, holding that the removal of voters *en masse* at the behest of private citizens violated the 90-Day Provision and Residency Provision of the NVRA.¹⁹ The court specifically found all three counties violated the NVRA’s prohibition on removing voters on change-of-residency grounds because they had failed to follow the statute’s required notice and confirmation procedures.²⁰ In addition, the court held that all three counties had violated the 90-Day Provision because the removal of 65 voters in Beaufort County, approximately 3,500 individuals in Cumberland County, and 374 voters in Moore County constituted systematic removals prohibited within the NVRA’s 90-day window.²¹ Ultimately, as *North Carolina NAACP* and *Majority Forward* illustrate, mass voter challenges likely violate the 90-Day Provision and Residency Provision of the NVRA.

¹³ *Majority Forward v. Ben Hill Cnty. Bd. of Elections*, 512 F. Supp. 3d 1354, 1360 (M.D. Ga. 2021).

¹⁴ *Id.* at 1368.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 1368 (quoting *Arcia v. Fla. Sec’y of State*, 772 F.3d at 1346 (11th Cir. 2014)).

¹⁸ *N. Carolina State Conf. of NAACP v. Bipartisan Bd. of Elections & Ethics Enf’t*, No. 1:16CV1274, 2018 WL 3748172, at *1 (M.D.N.C. Aug. 7, 2018).

¹⁹ *Id.* at *12.

²⁰ *Id.* at *4-12.

²¹ *Id.*

Guidance from the Department of Justice reflecting that mass voter challenges violate these provisions of the NVRA would serve as a powerful reminder of the purpose behind the NVRA as well as support for boards of elections faced with mass voter challenges.

II. Civil Rights Act of 1960 and the Fifteenth Amendment

Mass voter challenges may also run afoul of the Civil Rights Act of 1960 and the Fifteenth Amendment. Notably, prior to the passage of the Civil Rights Acts of 1957, 1960, and 1964, as well as the Voting Rights Act of 1965, challenging or preventing Black voters from registering to vote was a common tactic used to suppress their political power.²² In response, the United States initiated several suits against local registrars under 42 U.S.C. §1971 (now codified as 52 U.S.C. §10101(a)), which forbade denying qualified citizens the right to vote based on race.²³

Notably, in *United States v. McElveen*, the Department of Justice filed suit against a Washington Parish registrar who had purged 85% of the jurisdiction's Black voters after the local segregationist Citizens Council challenged their eligibility to vote.²⁴ The district court ultimately ruled that the challenges and subsequent removals violated 42 U.S.C. § 1971 and the Fifteenth Amendment.²⁵ Notably, the court held that even though the purged voters made disqualifying errors in their voter registrations, the registrar had violated 42 U.S.C. § 1971 by purging only Black voters while preserving the registrations of white voters who had similar errors.²⁶ Other courts have also ruled that challenges to voter eligibility made by private individuals are made under color of law and may violate the Fifteenth Amendment, as well as other federal civil rights provisions.²⁷

Turning to the present day, many mass voter challenges have been made in jurisdictions with large populations of voters of color, such as the counties of Muscogee, Cobb, and Fulton in Georgia, among others.²⁸ In 2020, these counties' populations were, respectively, 49.4%, 29.1% and 44.8% Black.²⁹ We urge the Department to make clear to election officials that they must adjudicate challenges without discriminatory purpose or impact and that laws on voter eligibility apply equally to all voters, regardless of race.

²² See *Ben Cady and Tom Glazer, Voters Strike Back: Litigating Against Modern Voter Intimidation*, 39 N.Y.U. Rev. L. & Soc. Change 173, 188-89 (2015).

²³ *United States v. McElveen*, 180 F. Supp. 10, 11 (E.D. La.), *aff'd in part sub nom. United States v. Thomas*, 362 U.S. 58, 80 (1960).

²⁴ *Id.*

²⁵ *Id.* at 13-14.

²⁶ *Id.*

²⁷ *United States v. Lucky*, 239 F. Supp. 233, 239 (W.D. La. 1965).

²⁸ Russ Bynum, *Group says it's challenging residency of 364K Georgia voters*, Associated Press, Dec. 18, 2020, <https://apnews.com/article/joe-biden-savannah-local-elections-georgia-elections-17cbbfbd19f9b506480855ca9cbc251c>.

²⁹ *Georgia US 2020 Census*, United States Census Bureau, Aug. 25, 2021, <https://www.census.gov/library/stories/state-by-state/georgia-population-change-between-census-decade.html>.

III. Fourteenth Amendment Due Process Clause

Without sufficient notice and hearing procedures, voters swept up in mass challenges may be deprived of their fundamental right to due process under the Fourteenth Amendment. The right to vote is a fundamental liberty protected by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.³⁰ This right to vote is also a personal right which is vested in qualified individuals by virtue of their citizenship, and not a privilege that may be denied at the discretion of state officers or state governments.³¹ The right to have that vote counted is also a fundamental right.³²

In *Self-Advocacy Solutions v. Jaeger*, the court struck down a signature matching system for absentee ballots that provided no guidance on what constituted an acceptable match and gave neither notice nor a hearing for voters whose ballots would be disqualified.³³ In its ruling, the court noted the essential elements of due process were notice and an opportunity to respond before deprivation of a constitutionally protected interest, here, the right to vote.³⁴ Notably, the court highlighted that if a voter is deprived of their right to vote before an election, there is no post-election remedy since a vote cannot be cast once an election is concluded.³⁵ This is equally true when a voter's eligibility is challenged, and they are subsequently removed from the rolls.

We urge the Department to provide guidance that makes clear that election officials must provide meaningful notice and an opportunity to be heard when a voter's eligibility is challenged.³⁶ Voters must be able to defend their right to vote, which would be rendered illusory if they are disqualified without a uniform, non-discriminatory process to protect it.

IV. Federal Voter Intimidation Statutes: Ku Klux Klan Act of 1871 and Section 11(b) of the Voting Rights Act of 1965

Mass voter challenges may also violate federal voter intimidation statutes. In response to intimidation and violence targeting Black Americans during the Reconstruction Era, Congress enacted the Ku Klux Klan of 1871 (also known as the "Enforcement Act of 1871"), which prohibits two or more persons from working together to "prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for

³⁰ *Texas v. United States*, 384 U.S. 155 (1966); see also *Ex parte Yarbrough*, 110 U.S. 651 (1884).

³¹ *United States v. Penton*, 212 F. Supp. 193, 202 (M.D. Ala. 1962).

³² *United States v. Mosley*, 238 U.S. 383, 386 (1915).

³³ *Self Advoc. Sols. N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1056 (D.N.D. 2020).

³⁴ *Id.* at 1052.

³⁵ *Id.*

³⁶ See *Miller v. Blackwell*, 348 F. Supp. 2d 916, 921-22 (S.D. Ohio 2004) (enjoining Ohio election officials from purging voters based upon mass challenges by the RNC because notice of such challenges, mailed immediately before an election to voter addresses where a non forwardable mailing had already been returned would likely violate the Due Process Clause of the Fourteenth Amendment and the fundamental right to vote).

President or Vice President, or as a Member of Congress of the United States.”³⁷ Almost a century later, in response to continuing intimidation tactics used against Black voters, Congress passed Section 11 of the Voting Rights Act, which prohibits all persons whether “acting under color of law or otherwise” from “intimidat [ing], threaten[ing], or coerce[ing], or attempt[ing] to intimidate, threaten, or coerce any person for voting or attempting to vote.”³⁸ Notably, plaintiffs bringing section 11(b) and Ku Klux Klan Act claims need not prove racial motivation.³⁹ Furthermore, with regard to intent more broadly, Congress deliberately omitted an intent requirement from section 11(b) while the Ku Klux Klan Act requires a showing of mindset through a conspiracy requirement.⁴⁰

Although only a handful of cases exist concerning the above mentioned federal intimidation statutes, prior litigation suggests that mass voter challenge efforts could violate these provisions. For example, in *Democratic National Committee v. Republican National Committee*, the DNC brought claims under the Ku Klux Klan Act of 1871 and Section 11(b) of the Voting Rights Act against the RNC for compiling an error-filled list of voters to challenge in New Jersey.⁴¹ The complaint alleged that even after being informed its list was based upon faulty and outdated data, the RNC published posters noting that violating election laws is a federal crime and warning voters that they had hired sheriffs and local policemen to patrol targeted precincts.⁴² Although the case was not ultimately adjudicated on the merits, it did result in a favorable consent decree for the Democratic National Committee.⁴³

Prior federal agency guidance, moreover, suggests that large-scale challenge efforts may rise to the level of voter intimidation. Notably, the United States Election Assistance Commission (“EAC”) issued a report defining coercion in the voting rights context as “knowingly challenging a person’s right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenges of voters solely to prevent voter[s] from voting or to delay the process of voting.”⁴⁴ Likewise, in its Election’s Prosecution Manual, the Department defines voter intimidation as either overt or subtle conduct designed to “deter or influence voting activity.”⁴⁵ Indeed, such conduct prompted the

³⁷ See, e.g., Enforcement Act of 1871 § 2 (codified as amended 42 U.S. Code § 1985(3)); Ben Cady & Tom Glazer, *Voters Strike Back: Litigating Against Modern Voter Intimidation*, 39 N.Y.U. Rev. L. & Soc. Change 173, 184-85 (2015).

³⁸ Voting Rights Act of 1965 § 11(b), 52 U.S.C.A. § 10307.

³⁹ See, e.g., Voting Rights Act of 1965 § 11(b), 52 U.S.C.A. § 10307; Enforcement Act of 1871 § 2 (codified as amended 42 U.S. Code § 1985(3)); Ben Cady & Tom Glazer, *Voters Strike Back: Litigating Against Modern Voter Intimidation*, 39 N.Y.U. Rev. L. & Soc. Change 173, 202 (2015).

⁴⁰ See, e.g., Voting Rights Act of 1965 § 11(b), 52 U.S.C.A. § 10307; Enforcement Act of 1871 § 2 (codified as amended 42 U.S. Code § 1985(3)); Ben Cady & Tom Glazer, *Voters Strike Back: Litigating Against Modern Voter Intimidation*, 39 N.Y.U. Rev. L. & Soc. Change 173, 202, 205-06 (2015).

⁴¹ Complaint at 13-15, *Democratic Nat’l Comm. v. Republican Nat’l Comm.*, No. 2:81-cv-03876-DRD-SDW (D.N.J. Feb. 11, 1982).

⁴² *Id.* at 10-11.

⁴³ Consent Decree, *Democratic Nat’l Comm. v. Republican Nat’l Comm.*, No. 2:81-cv-03876-DRD-SDW (D.N.J. Nov. 1, 1982).

⁴⁴ U.S. Election Assistance Comm’n, *Election Crimes: An Initial Review and Recommendations for Future Study* 14 (2006).

⁴⁵ U.S. Dep’t of Justice, *Federal Prosecution of Election Offenses* 50 (2017).

Department to take action to protect voters in 1990, when, ahead of a bitterly contested Senate race, Black voters in North Carolina received postcards warning them of strict residency requirements for voting and imprisonment for voter fraud.⁴⁶

In line with the above-mentioned case law and agency interpretation, we urge the Department to issue guidance that mass voter challenges may violate federal voter intimidation statutes, including the Ku Klux Klan Act of 1871 and Section 11(b) of the Voting Rights Act of 1965.

V. Conclusion

As explained above, mass voter challenges may violate federal law, including the National Voter Registration Act, the Due Process Clause of the Fourteenth Amendment, the Fifteenth Amendment, the Civil Rights Act of 1960, the Ku Klux Klan Act of 1871, and Section 11(b) of the Voting Rights Act of 1965. We are deeply concerned about the potential for mass voter challenges to harm voters and disrupt the 2024 general election. We therefore respectfully urge the DOJ to issue the above-requested guidance and take any other action it deems necessary to address this threat.

Thank you for your attention to this matter. Please contact Phi Nguyen at pnguyen@demos.org and Roni Druks at rdruks@demos.org should you have any questions.

Respectfully,

Phi Nguyen
 Director, Democracy Program
 Roni Druks
 Senior Counsel, Democracy Program
 DĒMOS

Advancement Project
 A Little Piece of Light
 All Voting is Local
 Campaign Legal Center
 Center for Popular Democracy
 Common Cause
 Fair Elections Center
 Florida Rising Together
 League of Women Voters of the United States
 The Protect Democracy Project
 Southern Echo

⁴⁶ Drummond Ayres Jr, *THE 1990 CAMPAIGN; Judge Assails G.O.P. Mailing in Carolina*, N.Y. Times, Nov. 6, 1990, <https://www.nytimes.com/1990/11/06/us/the-1990-campaign-judge-assails-gop-mailing-in-carolina.html#:~:text=A%20Federal%20judge%20said%20today%20in%20New%20Jersey%20that%20mailings.>

Southern Poverty Law Center
State Voices
Vote Flare

CC: Sparkle Sooknanan, Principal Deputy Assistant Attorney General, Civil Rights Division
Tamar Hagler, Chief, Voting Section
Rob Weiner, Senior Counsel