

**From:** Tornow, Kelly

**Sent:** Tuesday, October 01, 2019 10:41 AM

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**Subject:** RE: [External] SB 250. Voter roll purges up in Rules at noon.

We do have a number of concerns with the PCS as follows:

1. The PCS requires the State Board to publish on its website the list the agency receives quarterly from the clerk of superior court, meaning the published list would not be an accurate reflection of those voters whom the State Board has identified/matched as potential non-citizens. The PCS requires the clerk of superior court to report quarterly to the State Board a list of persons disqualified from jury duty because the person is not a citizen of the United States. The files would contain the person's name, address, date of birth, and other personal information from the master jury list. Page 4, lines 18-21 of the PCS require that the State Board publish on its website the voter registration status of each person reported as disqualified from jury duty on the basis of non-citizenship, but this list would be published prior to the State Board reviewing the voter registration and citizenship status to match information in State and federal databases.
2. The State Board cannot release the information the agency uses to verify whether a registered voter may be a non-citizen because this information is confidential under Federal law. To determine matches for non-citizenship, the State Board utilizes the Systematic Alien Verification for Entitlements Program (SAVE) database, which is maintained by the U.S. Department of Homeland Security and allows participating agencies to verify an individual's immigration status. DHS has delegated to the State Board the authority to use the data supplied by the SAVE database. With that delegation, DHS has imposed binding confidentiality obligations on the State Board in the form of a Memorandum of Agreement (MOA). In particular, the MOA requires the State Board to "[c]omply with the Privacy Act . . . and other applicable laws, regulations, and policies, including but not limited to all OMB and DHS privacy guidance, in conducting verification procedures pursuant to this MOA, and in safeguarding, maintaining, and disclosing any data provided or received pursuant to the MOA;" to "[s]afeguard" SAVE information "to ensure that it is not used for any other purpose than described in this MOA and protect its confidentiality, including ensuring that it is not disclosed to any unauthorized person(s) without the prior written consent" of DHS; and to use SAVE information "solely for the purpose of determining the eligibility" of registrants to vote. In addition, the State Board has acknowledged that all information it receives from DHS is governed by the Privacy Act, and that any person who uses the information "for any purpose other than as provided for in this MOA may be subject to criminal penalties." Release of information contained in the SAVE database, including information related to covered persons' citizenship status, would mean that information from SAVE would be disclosed to unauthorized persons, would no longer be confidential, and would be used for a purpose entirely different than that covered by the MOA.

3. State Board staff have concerns about the safety of voters impacted by this legislation, and have litigation concerns about publicly releasing information as to potential non-citizenship of voters. A number of cases have recognized that the release of sensitive records could suppress or burden voter registration and participation. In addition, releasing inaccurate information could also expose the State Board to claims that it participated in the defamation of voters. In Virginia, an organization allegedly used voter information it gathered from public records requests in other jurisdictions to falsely accuse a number of legal voters of crimes. These accusations, in turn, led to alleged harassment, embarrassment, damaging publicity, and other harms for such voters. Further, the false imputation of criminal conduct is often considered to be defamatory per se, and State Board staff have concerns that the agency supplying potentially false information to the public regarding non-citizenship status opens the agency up to liability on a defamation claim. I have attached to this email the State Board's Memorandum in Support of Motion to Dismiss in *Public Interest Legal Foundation, Inc. v. North Carolina State Board of Elections*, which details the litigation and safety issues in a case brought by a plaintiff seeking information related to registered voters who were identified as potential non-citizens.

Please let us know if you have any questions. I will be present at the committee meeting at noon today.

Thank you,  
Kelly

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**Email was from Kelly Tornow:**



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**Formerly of Left wing groups :**

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