

May 24, 2024

The Honorable Cord Byrd, Secretary of State
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399

CC: Ms. Maria Matthews
Director, Florida Division of Elections
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

RE: The use of EagleAI for voter list maintenance at the county level

Dear Secretary Byrd,

All Voting is Local Action and the below-signed organizations are deeply concerned about the attached email sent by Director Maria Mathews to supervisors of elections on May 15, 2024, directing them to conduct voter registration list maintenance under Sections 98.045(2), 98.065, or 98.075(6)-(7) of Florida Statutes, using data produced by a private citizen affiliated with EagleAI. Such action would likely violate state and possibly federal law and improperly jeopardize the voting status of thousands of Floridians.

According to the email sent by Director Matthews, a concerned citizen shared a list of approximately 10,000 Florida voters who they asserted should be examined for list maintenance. The email's sender said the list was generated with the assistance of EagleAI. EagleAI is a list-matching database that relies exclusively on publicly available information, all of which is insufficient to determine whether a voter is eligible to vote at their registration address. According to Georgia Elections Director Blake Evans, "EagleAI draws inaccurate conclusions and then presents them as if they are evidence of wrongdoing."¹

There are many reasons why an eligible voter's personal data may be erroneously flagged by citizen activists. For example, a voter may have temporarily moved, public property records or commercial data may contain typos or be outdated, or multiple voters may share the same name,

¹ Jane Timms, "Inside the right's effort to build a voter fraud hunting tool," *NBC News*, August 17, 2023, <https://www.nbcnews.com/politics/2024-election/conservatives-voter-fraud-hunting-tool-eagleai-cleta-mitchell-rcna97327>

a common problem when comparing large data sets. EagleAI increases the risk of removing eligible voters by this method at an unacceptably high rate.

A concerning aspect of EagleAI is that it presents itself as nonpartisan software, which is disingenuous. This tool has repeatedly been supported by known election deniers who want to re-litigate the 2020 election. Its supporters should be understood not as people who are genuinely trying to improve elections but as people who are purposefully sowing distrust in our elections. It would also set a horrifying precedent for states nationwide, which could see EagleAI as a legitimate tool.

EagleAI purports to partially replicate the work of the Electronic Registration Information Center (ERIC), a trusted, bi-partisan, state-led organization that assists states in maintaining accurate voter rolls. Although Florida was previously a member of ERIC, the state exited ERIC in 2023.² Unlike ERIC, EagleAI lacks the needed oversight or consensus across election officials to prevent eligible voters from being wrongfully flagged for removal from the voter rolls.

We cannot hand over the fate of Florida voters to such an unreliable platform.

In addition to the myriad problems associated with EagleAI's accuracy and usefulness, conducting list maintenance on the basis of this, or similar, lists would likely violate multiple state laws. First, instructing county election officials to use this data to conduct voter list maintenance would violate Florida law barring the use of non-governmental entities to conduct list maintenance.³ As Director Mathews acknowledges in her email, she “do[es] not know when the information was exactly compiled and what all sources were consulted to derive this list.” Using this privately sourced data would thus be a clear violation of state law.

Our concerns are not just limited to the use of data by EagleAI for list maintenance purposes. One of our larger worries is that the state and SOEs are improperly allowing citizen activists to subvert the official challenge procedures outlined in Florida Statute section 101.111, which outlines the proper avenue for private voter challenges in Florida and contains important protections to mitigate frivolous challenges. Citizen activists do not have a right to initiate list maintenance in the state of Florida.

The list was provided with no information about the source of data or methodology used to identify these voters. It is a criminal offense in Florida to make frivolous challenges, which are

² Miles Parks, “3 more Republican states announce they're leaving a key voting data partnership,” *NPR*, March 6, 2023, <https://www.npr.org/2023/03/06/1161374479/electronic-registration-information-center-eric-florida-missouri-west-virginia>

³ Fla.Stat. 98.075 (6) http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0098/Sections/0098.075.html

subject to misdemeanor penalties for each voter challenged.⁴ The alleged “concerned citizen” cannot be a registered voter in multiple counties so any challenge resulting from using this data could not be compliant with Florida law. The state must not enable unknown actors with suspect motives to skirt Florida’s prescribed process for voter qualification challenges by asking supervisors to initiate list maintenance based on this unsourced and unaccountable information.

Furthermore, the First, Fourteenth, and Fifteenth Amendments to the U.S. Constitution prohibit government officials from burdening the right to vote without justification.⁵ Any decision from the state or a supervisor of election’s office that would frivolously remove voters in subversion of any official state challenge procedures imposes a burden on voters that is not supported by any legitimate justification, and may therefore violate the U.S. Constitution.

The Voting Rights Act (“VRA”) prohibits voting standards, practices, or procedures, including challenges to voter eligibility and voter purges, that were enacted with a racially discriminatory intent or have a racially discriminatory result.⁶ Mass challenges to voter eligibility have long been a tactic to suppress political participation, especially of Black voters and other voters of color.⁷ Subverting the challenges procedure to *en masse* remove voters has the same discriminatory effect. Accordingly, if a supervisor of election’s office, under the direction of the state, frivolously removes voters—particularly where they have no reasonable knowledge of how or why the voters should be removed—your office and the supervisor of election’s office may be in violation of the VRA.

The email from Director Matthews may also lead supervisors of elections to take action that may violate the National Voter Registration Act of 1993 (NVRA). Section 8 of the NVRA⁸ requires reasonable, uniform, and non-discriminatory list maintenance. In addition, programs with the purpose of systematically removing voters from the roles are prohibited within 90 days of a primary or general election for federal office. This cutoff for the August 20th primary election has already passed.

⁴ Fla.Stat. 101.111

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0101/Sections/0101.111.html

⁵ See *Burdick v. Takushi*, 504 U.S. 428 (1992) (“A court considering a challenge to a state election law must weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiffs seeks to vindicate’ against ‘the precise interest put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’”) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

⁶ See 52 U.S.C. § 10301.

⁷ Jonathan Brater, Voter Purges: The Risks in 2018, Brennan Center 1, 1-2 (2018), https://www.brennancenter.org/sites/default/files/201908/Report_Voter_Purges_The_Risks_in_2018.pdf; see also Laughlin McDonald, A Voting Rights Odyssey: Black Enfranchisement in Georgia 1, 52-54 (2003) (describing the historical origins of Georgia’s voter challenge laws).

⁸ 52 U.S.C. § 20507

Lastly, the Division of Elections may have broken state law in another way. Pursuant to Florida Statutes section 97.0291, “No agency or state or local official responsible for conducting elections” may “accept ... any donation in the form of money, grants, property, or personal services from an individual or a nongovernmental entity for the purpose of funding any type of expenses related to election administration.”⁹

It is also troubling that the director invokes the Office of Election Crimes and Security and requests that supervisors of elections send voters there for potential investigation based on these unsourced allegations. This is chilling for both voters and the supervisors. It suggests that the supervisors have an obligation to initiate list maintenance based on these lists or risk being subject to investigations themselves.

The undersigned organizations demand urgent action on the part of the Department of State. First, we ask that the Department of State inform counties that the email that Director Mathews sent to the supervisors of elections on May 15 should be disregarded in its entirety. Second, we ask that the Department of State commit to encouraging counties *not* to perform list maintenance based on unreliable and unreviewed data, including from EagleAI and similar databases, particularly when such data has not been reviewed or undergone any quality control processes by the Department of State. Third, we ask that the Department of State refrain from communicating anything that may be perceived as an improper or threatening use of the Office of Election Crimes and Security.

Cordially,

Brad Ashwell Florida State Director All Voting is Local Action	Adora Obi Nweze President NAACP Florida State Conference	Amy Keith Executive Director Common Cause Florida
Leah Wong Attorney Legal Defense Fund	John Powers Program Director, Power & Democracy Advancement Project	Maruxa Cardenas Co-Director La Mesa Boricua de Florida
Cassandra Brown Cofounder, Executive Director All About the Ballots	Rosemary McCoy CEO Harriet Tubman Freedom Fighters	Jonathan Diaz Director, Voting Advocacy and Partnerships Campaign Legal Center
Laura Munoz Civic Engagement Director Florida Student Power Alliance	Michele Eiger State Organizer Religious Action Center for Reform Judaism	Jamil Davis Florida State Co-Organizing Manager Black Voters Matter

⁹ Fla.Stat. 97.0291

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0097/Sections/0097.0291.html

Genesis Robinson. Interim Executive Director Equal Ground Education Fund	Cecile M. Scoon, Esq. Co-President League of Women Voters of Florida	Debbie Chandler, Esq. Co-President League of Women Voters of Florida
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Juanica Fernandes Executive Director State Voices Florida	Jon Harris Maurer Public Policy Director Equality Florida	Bacardi Jackson Executive Director ACLU of Florida
Devan Cheaves Director of Campaigns & Programs Central Florida Jobs with Justice	Kruzshander Scott Founder Sisters Seat at the Table	Kelly Frazier President Northside Coalition of Jacksonville
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