

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

THE DEMOCRATIC PARTY OF)
VIRGINIA,)
)
Plaintiffs,)
)
v.)
)
VIRGINIA STATE BOARD OF)
ELECTIONS, et al.,)
)
Defendants.)

Civil Action No.: 1:13-cv-01218-CMH-TRJ

DECLARATION OF MATTHEW DAVIS

Comes now, Matthew Davis, and pursuant to 28 U.S.C. § 1746, makes the following declaration under penalty of perjury:

1. I am a citizen of the Commonwealth of Virginia, am over 18 years of age, and am competent as a witness. I have personal knowledge of the matters set forth in this Declaration, and if called as a witness would testify as stated below.

2. I am the Information Services Manager for the Virginia State Board of Elections (“SBE”), a position I have held since January 10, 2010. One of the key responsibilities of the SBE is to ensure the integrity of elections in the Commonwealth and as such one of my primary responsibilities is managing the voter registration and election management system called the Virginia Election and Registration Information System (“VERIS”).

3. VERIS is used by all 133 electoral jurisdictions in the Commonwealth to maintain the voter registration list for all registered voters in Virginia. VERIS contains the voter registration information on over the 5.2 million registered voters in Virginia and has been in use since February 2007. VERIS also is used to manage candidate qualification and election results

reporting in the Commonwealth. Access to VERIS is controlled by the SBE and the infrastructure and software development and maintenance services for VERIS are provided and/or coordinated by the SBE.

4. In accordance to the Code of Virginia, each registered voter provides personally identifying information to their respective general registrar on a form provided by SBE. That provided information is then transcribed into VERIS by the general registrar or by members of their staff. Both state and federal law require the SBE to compare the data in VERIS periodically to external datasets to help ensure the accuracy of the voter registration rolls.

5. For example, SBE obtains a monthly list of felons from the Virginia State Police. The felon data is pulled into VERIS and compared to the voters who are currently registered. When a potential match is identified, SBE alerts the impacted general registrar of the potential match and the general registrar makes the final determination on whether or not the felon record belongs to the identified registered voter. If there is a match, the general registrar's duty is to cancel the voter's registration record and send the cancelled individual a letter informing him of the action.

6. SBE performs similar processes on a monthly basis with data obtained from the Social Security Administration, federal and state courts, the Virginia Department of Health Bureau of Vital Statistics and the Department of Motor Vehicles. In each of these cases, SBE identifies potential voter registration records that have an issue for the general registrars. The general registrars' statutory duty is to review the evidence provided to them and make registration decisions in accordance with the Code of Virginia.

7. Annually, SBE compares the entire voter registration list with the United States Postal Service's Change of Address database. On average, this process results in SBE mailing

out 250,000 notices to voters requesting that they confirm their registration address. Voters who do not respond to this mailing are moved to an inactive registration status. Voters who do respond or who have moved within their current registered locality have their voter registration records updated by their respective general registrar.

8. As part of my duties related to voter registration list maintenance, I was directed by SBE Secretary Don Palmer to work on the Interstate Crosscheck Program ("Crosscheck"). As part of the Crosscheck, SBE was provided with a report that listed voters in Virginia who were also registered in one or more of the other participating states based on a match of first name, last name and date of birth. Virginia received a list of 308,000 potential duplicate registrations. From this list, 2 voters were found to be registered in 7 different states, 10 voters were found to be registered in 6 different states, 113 voters were found to be registered in 5 different states, 1,123 voters were found to be registered in 4 different states and 16,361 voters were found to be registered in 3 different states and 253,786 voters were registered in Virginia and one other state.

9. Pursuant to discussion with Secretary Don Palmer, it was determined to perform further analysis of the data to narrow the list down to voters who matched other states' data with an exact match on their first name, last name, date of birth and last 4 digits of their Social Security Number. Virginia identified approximately 80,000 of these individuals. In addition, Virginia identified 296 voters who appear to have voted in more than one state in the November 2012 General Election. Further analysis would be required to determine whether the data demonstrated clearly that these voters did in fact vote in two states. By focusing initially on this exact data match, we eliminated from the crosscheck list 79,324 records who appeared to be registered in Virginia and another state. The most common reason for eliminating these voters is

because the other state -- Florida is a large example -- does not use the social security number for voter registration purposes.

10. A presentation of these statistics was made to the State Board of Elections in April 2013 and the Board voted to have the staff of the State Board of Elections work with the Office of Attorney General to investigate the potential cases of duplicate voting. Because in Virginia there is no signature needed for a vote in a polling place, it was determined that the effort should focus on voters who had signed something at the time of voting in both states. In Virginia, the initial review was based on those who voted by absentee ballot, while in other states we could focus on both absentee voting and signatures at the poll book if applicable.

11. Based upon this very focused and narrow review, we identified 47 individuals who appear to have voted in both Virginia and another state in the 2012 election. I worked to obtain copies of some of these voters' Virginia Absentee Ballot Applications and other documentation from the general registrars. I also worked to obtain copies of signed documentation from the other states for comparison. It is my understanding that these cases are in various states of prosecution in Virginia and in other states.

12. The next several months were extremely busy at the State Board of Elections. We conducted the May 2013 General Election and the June 2013 Primaries. In July, SBE conducted its Code of Virginia required Annual Training event for all general registrars and electoral board members and kicked off its annual federally required National Change of Address mailing to approximately 250,000 voters. SBE also built its online voter registration system from the ground up between the months of April and July, going live on or about July 22, 2013. Beyond that, approximately 30 other pieces of new legislation had to be implemented by July 1st by the

staff of the SBE, including establishing a registration and training program for third-party voter registration groups.

13. A number of new pieces of legislation now requires SBE to compare voter registration data with other states for the purposes of list maintenance and to provide that information to general registrars. Given the election schedules and legislative implementation needs in Virginia, late summer provided the best and first opportunity for SBE to provide the data to the general registrars for their review and action. As scheduling allowed, SBE began the process of preparing the results from the Crosscheck for sharing with the general registrars. A report format was developed and the results were shared with the general registrars in James City County and Pulaski County for feedback. Both general registrars indicated that the report format provided them with the information that was needed to make registration decisions.

14. On August 23, 2013, each general registrar in Virginia was provided with an Excel spreadsheet listing the voters in their localities who were registered in another state. See Exhibit 1 attached hereto. The file included the Virginia voter identification number, the voter's name, date of birth, last 4 digits of their Social Security Number, the other state and jurisdiction where they were registered, their current Virginia registration status and the dates of registration in both Virginia and the other state. The general registrars were asked to review the records for possible cancellation. They were not instructed to cancel every voter on the list.

15. Based on feedback from the general registrars, on August 28, 2013, I updated the Excel spreadsheets provided to the localities to include new columns of data. See Exhibit 2 Attached hereto. Specifically, I added the voter's address in the other state and I added a column that showed the date of the last registration application received in Virginia. In addition, in the communication to the general registrars on August 28, 2013, I specifically recommended that the

general registrars not cancel any voter who had a more recent Virginia activity date than the date of registration in the other state.

16. I have read the Complaint in this case that alleges there were errors in the Crosscheck lists provided to localities because some of the voters were correctly registered in Virginia. That is not correct. The so called "errors" were to be expected. SBE did and does not cancel voter's registrations based upon the Crosscheck list or similar lists. Instead, these lists are sent to the general registrars whose duty it is to review all of the available data within VERIS regarding each voter registration record. For example, the general registrar would have checked the vote history for each voter to see if they have actively participated in elections since registering in the other state and they would have checked the correspondence records to see if the voter had responded to a letter requesting information since registering in the other state.

17. There appear to be two primary reasons why there are so called "errors" in the Crosscheck list. First, a voter can move out of state, register in that state, then move back to Virginia and submit an application here. If his registration in Virginia was never cancelled, registrars treated the new application as a voter registration update. This type of voter would still show up on the Crosscheck list as having a voter registration date that pre-dates the out of state registration. The registrar would quickly identify this during his review and not cancel such a voter.

18. Second, the Crosscheck list is based on data at a specific point in time. In other words, the Crosscheck list accurately reflects the data as of January 2013. This is when all of the data was provided to the coordinator of the Crosscheck. The final Crosscheck list was not provided to the election community until August 2013. During this intervening time, a voter could have registered in Virginia or voted in a primary. Thus, the voter would show on the

Crosscheck list as a possible cancellation but in fact would not be eligible for cancellation, and the registrar would be able to quickly determine that with the information provided.

19. For the voters who were cancelled, the general register determined that the registration in the other state occurred after the registration and activity in Virginia occurred. I am aware of examples where general registrars have made a mistake and cancelled a voter who should not have been cancelled. There are multiple safe-guards however in the system that protect the rights of these voters to cast a ballot. In the event of a cancellation, each voter should have been issued a letter by the general registrar informing them of the cancellation and providing them with information on correcting the cancellation if it occurred in error. In addition, any cancelled voter who does show up to vote on Election Day will still be able to cast a provisional ballot which if the voter is an eligible voter will be counted after a review and verification by the local electoral board. While this is an inconvenience to the voter, this is directly caused by the fact that the individual is registered to vote in more than one state, which if done intentionally is a felony.

20. The lists of voters provided to the general registrars was not a "purge list" nor were any particular voters targeted based on any discriminating factor. These lists were a list of individuals who at the time of the data comparison in January 2013 appeared to be illegally registered in more than one state. In addition, SBE already attempted to contact over 50% of these voters in the past through the National Change of Address process.

21. SBE exists to ensure the integrity of the election process in Virginia. One of the methods at our disposal is working to ensure the accuracy of the registered voter list. Every voter removed from Virginia's registered voter list will have multiple opportunities to correct their registration and ensure that they ballot is cast and counted. In addition, SBE has taken

major steps in the last year to actually increase voter registration through the mailing of almost 900,000 postcards to unregistered residents and the launching of the online voter registration system.

22. I declare under penalty of perjury that the foregoing is true and correct. Executed on October 11, 2013.

FURTHER AFFIANT SAYETH NOT.



MATTHEW DAVIS

Lief, Joshua N.

From: Davis, Matthew (SBE) [Matthew.Davis@sbe.virginia.gov]
Sent: Friday, August 23, 2013 4:06 PM
To: SBE - General Registrars; SBE - EB Members
Subject: Out of State Cancellations Notices - OFFICIAL SBE COMMUNICATION

Importance: High

In January 2013, Virginia participated in a multi-state voter registration crosscheck spearheaded by Kansas. A total of 21 states participated, sharing over 84 million voter registration records.

As a result of this initiative, Virginia has received a list of 80,515 voters who, as of January 2013, were registered in Virginia prior to registering in one of the other participating states. Through normal registration update and cancellation processes 23,222 Virginia voter records have already been corrected. This leaves an additional 57,293 voters (27,042 active and 30,251 inactive) on Virginia's voter registration rolls that need to be reviewed for possible cancellation.

SBE has prepared an Excel file for each locality listing the voters that need to be reviewed for cancellation and mailed a notice. The file includes all of the information that you will likely need to make a determination on whether or not to cancel the voter record, including the Virginia voter ID, voter name, date of birth, last four SSN, other state, other jurisdiction, date of registration in both Virginia and the other jurisdiction, and their current Virginia registration status.

To access your locality file, log into VERIS and click on the "GR Downloads" link. Next, click on the "2013 Crosscheck Cancellations" link and finally click on the link for your locality.

Please review your locality file and the information provided for each voter as soon as possible. These records are to be handled in the same manner as any other out of state cancellation notice that you may receive. Any questions can be directed to Garry Ellis at garry.ellis@sbe.virginia.gov.

Thank you,

Matt Davis

Matthew J. Davis
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AITR/ISO
Virginia State Board of Elections
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Office: 804-864-8905
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Colescott, Sharon T.

From: Davis, Matthew (SBE) [Matthew.Davis@SBE.virginia.gov]
Sent: Wednesday, August 28, 2013 9:02 AM
To: SBE - General Registrars; SBE - EB Members
Subject: Out of State Cancellations - UPDATED - OFFICIAL SBE COMMUNICATION

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

This is a follow up to the communication sent out Friday afternoon regarding Out of State Cancellation notices received from the multi-state crosscheck.

New Excel files have been posted in VERIS containing your out of state cancellation notices. Please note the following:

- 1) We worked with the VERIS vendor yesterday and we were able to identify a new piece of data in the VERIS database that will help you make your cancellation decisions. Specifically, we have added a column called "VA_LAST_REGISTRATION_APP_RECEIVED". The column contains the date that a voter registration form was last received by your office for a particular voter. In some cases, this date is NEWER than the registration date in Virginia AND the registration date in the other state. If this date is newer, it is recommended that you DO NOT cancel the Virginia record for this voter.
- 2) We have added four new columns that contain the voter's other state address. The columns are "NEW_ADDRESS_LINE_1", "NEW_ADDRESS_LINE_2", "NEW_CITY", "NEW_STATE", and "NEW_ZIP".

The addition of these columns should assist you in making the necessary decisions regarding cancelling a voter's record.

Thank you,

Matt Davis

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