

HOW MUCH IS ENOUGH? VOTER REGISTRATION LIST MAINTENANCE UNDER THE NVRA

ERIN C. GIANOPOULOS[†]

I. INTRODUCTION	265
II. BACKGROUND	269
A. NVRA History	271
B. Purging the Rolls	273
C. Voter Fraud	275
III. ANALYSIS	278
A. Recent Settlements	279
B. The Opposite Challenge: Aggressive List Maintenance	281
C. Confidence in Elections	283
IV. CONCLUSION	285

VOTER FRAUD IS NOT A CONSPIRACY THEORY, IT IS A
FACT!!!

President Donald J. Trump¹

I. INTRODUCTION

In December 2019, the Public Interest Legal Foundation (PILF) set its sights on Detroit. PILF, a conservative 501(c)(3) founded in 2012 and “dedicated to election integrity,”² targeted Detroit’s City Clerk for its maintenance of the voter registration roll.³ In its claim, PILF alleged that the Detroit City Clerk failed to maintain accurate and current voter rolls as required by the National Voter Registration Act of 1993 (NVRA).⁴ PILF used the private cause of action the Act⁵ creates to scrutinize the City’s

[†] B.A. 1998, University of Michigan; J.D. expected 2021, Wayne State University Law School. Many thanks to the Detroit City Law Department for the interesting assignment, and for the continued support of the lawyers there long after my internship’s end. And thanks to my wise and patient advisor, Professor Jonathan Weinberg. 先生、どうもありがとうございます。

1. @realDonaldTrump, TWITTER (Dec. 24, 2020, 3:56 PM), disabled account now archived at <https://www.thetrumparchive.com/> [<https://perma.cc/L4QN-ZY8Y>].

2. *About PILF*, PUB. INT. LEGAL FOUND., <https://publicinterestlegal.org/about/> [<https://perma.cc/H2LK-U65V>] (last visited Mar. 1, 2021).

3. Complaint, Pub. Int. Legal Found. v. Winfrey, 463 F. Supp. 3d 795 (E.D. Mich. 2020) [hereinafter *Complaint*].

4. *Id.* at 3.

5. 52 U.S.C. § 20510(b) [hereinafter NVRA].

registration roll-scrubbing plans, demanding more than the reasonable maintenance effort the law requires.⁶ PILF and other nonprofit organizations have filed similar claims in small towns across the U.S.⁷ PILF, the American Constitutional Rights Union, Judicial Watch, and the Voter Integrity Project are the four main non-profits perpetuating voter fraud conspiracies, with the groups involved in at least sixty-one election-related lawsuits since 2012.⁸ They claim that without aggressive list maintenance, ineligible voters would remain on the rolls, in violation of the statute.⁹ Despite the persistent fear of inaccurate rolls leading to fraud, however, no evidence of voter fraud of any magnitude supports these claims.¹⁰

While the NVRA requires the removal the names of ineligible voters from registration lists “by reason of death . . . [or] a change of residence[,]”¹¹ the motivation behind the legislation was to increase the registration rates and participation of eligible voters, not to address any

6. *See, e.g., Winfrey*, 463 F. Supp. 3d 795 (dismissing the case with prejudice in June 2020).

7. *See, e.g., ACRU v. Martinez-Rivera*, 1666 F. Supp. 3d 779 (W.D. Tex. 2017); *Voter Integrity Project NC, Inc. v. Wake County Board of Elections*, 301 F. Supp. 3d 612 (E.D.N.C. 2017). The Trump administration also took a stab at making zealous list-scrubbing a requirement under the Act, establishing the Commission on Election Integrity. *See Jane Henegar, Election Integrity Effort is Attack on Voters*, 38 INDIANAPOLIS BUS. J. 21 (2017). Chaired by Mike Pence, the Commission hoped to examine list maintenance procedures in each state and sent out letters asking how states planned to remove people from the voter rolls. *Id.* Trump dismantled the Commission, but the intent remains in legal claims of organizations like PILF. *See also Sam Levine, This DOJ Letter May Be More Alarming Than Trump Commission’s Request For Voter Data*, HUFFINGTON POST (July 5, 2017, 3:58 PM), https://www.huffpost.com/entry/departments-of-justice-voter-purge_n_595d22b1e4b0da2c7326c38b [<https://perma.cc/JF5J-ZVLJ>]. Sam Bagenstos, principal deputy assistant attorney general for civil rights from 2009 until 2011, said of the Commission that it “looks like what they’re doing is they’re laying the groundwork to file lawsuits against states that, in their view, aren’t kicking enough people off of the rolls.” *Id.*

8. Simon Lewis & Joseph Tanfani, *Special Report: How a small group of U.S. lawyers pushed voter fraud fears into the mainstream*, REUTERS (Sept. 9, 2020, 6:43 AM), <https://www.reuters.com/article/us-usa-election-voter-fraud-special-repo/special-report-how-a-small-group-of-u-s-lawyers-pushed-voter-fraud-fears-into-the-mainstream-idUSKBN2601GZ> [<https://perma.cc/YCC2-BE2C>].

9. *Complaint, Winfrey*, 463 F. Supp. 3d. 795.

10. *The Heritage Foundation Database of Voter Fraud*, HERITAGE FOUNDATION (last visited Dec. 14, 2020), <https://www.heritage.org/voterfraud> [<https://perma.cc/28L6-L5AP>] [hereinafter *Heritage Foundation Database*].

11. 52 U.S.C. § 20507(a)(4) (requiring that “[i]n the administration of voter registration for elections for Federal office, each State shall – conduct a *general* program that makes a *reasonable* effort to remove the names of ineligible voters from the official lists of eligible voters by reason of – (A) the death of the registrant; or (B) a change in the residence of the registrant . . .”) (emphasis added).

incredibly rare occurrences of voter fraud.¹² Striking a balance between this goal and the list maintenance requirement positions the NVRA squarely in the nation's long history of efforts to make voting not only widely accessible, but also accurate.¹³

Previous efforts to ensure accuracy and prevent fraud focused on passing legislation restricting registration, not on policing list maintenance as in the Detroit case.¹⁴ NVRA litigation usually arises when voter advocacy groups challenge this legislation in the courts.¹⁵ Challenging list maintenance efforts as inadequate under the NVRA is a relatively new approach, with PILF beginning its efforts in 2015, before the 2016 election.¹⁶ Many of the small, Democratic-leaning towns and Black-majority counties PILF previously targeted settled these cases out of court. In these agreements, the local governments agreed to onerous oversight and labor-intensive maintenance that exceeded NVRA requirements and what the Act's authors intended.¹⁷ But Congress did not define what reasonable list maintenance means in the Act, and courts have yet to

12. *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1863 (2018) (Sotomayor, J., dissenting). Justice Sotomayor dissented separately to highlight that the purpose of the NVRA was “to increase the registration and enhance the participation of eligible voters.” *Id.*

13. ERIC FONER, *THE SECOND FOUNDING: HOW THE CIVIL WAR AND RECONSTRUCTION REMADE THE CONSTITUTION* 116 (2019).

14. *See, e.g.*, Robert Barned & Ann E. Marimow, *Appeals Court Strikes Sown North Carolina's Voter-ID Law*, WASH. POST (July 29, 2016), https://www.washingtonpost.com/local/public-safety/appeals-court-strikes-down-north-carolinas-voter-id-law/2016/07/29/810b5844-4f72-11e6-aa14-e0c1087f7583_story.html [<https://perma.cc/T9D8-DX8Z>] (noting that “North Carolina’s omnibus bill selectively chose voter-ID requirements, reduced the number of early-voting days and changed registration procedures in ways meant to harm blacks, who overwhelmingly vote for the Democratic Party.”).

15. *See, e.g., Husted*, 138 S. Ct. at 1833 (describing instances where advocacy groups claimed that the state’s process for removing inactive registrants from the registered voter rolls and the state’s return-card notice for registrants whose residence had changed violated the NVRA).

16. PILF’s first case under Sec. 8 of the NVRA was *ACRU v. Clarke County Election Commission*, No. 2:15-cv-101 (S.D. Miss. 2015), as noted in *Settlement Requires Mississippi County to Clean Up Corrupted Voter Rolls*, PUB. INT. LEGAL FOUND. (Nov. 25, 2015), <https://publicinterestlegal.org/pilf-files/Press-Release-Clarke-County-Mississippi-Consent-Decree-Nov.-25-2015.pdf> [<https://perma.cc/P2NY-D4TS>].

17. *See, e.g.*, Consent Decree, *ACRU v. Clarke Cnty. Election Comm’n* (S.D. Miss. 2015), (No. 2:15-cv-101); *See also* *ACRU v. Election Administrator Starr County, Texas* No. 7:16-cv-00103 (S.D. Tex. 2016) (concerning Starr County, Texas, a Democratic county, which is also majority Latino); *ACRU v. Noxubee Cnty. Election Comm’n*, No. 3:15-cv-00815-WHB-JCG (S.D. Miss. 2015) (concerning Noxubee County, Mississippi, another Democratic county and majority-minority county).

interpret the substantive floor of reasonableness in these claims.¹⁸ While it is unclear why election officials would choose to settle, it seems likely that this undefined legal standard intimidated the small towns this litigation targeted. These were easy wins that PILF would then celebrate in its press releases, creating a sense of legitimacy around the claims.¹⁹

This Note will argue that the goal of increased voter participation should determine the NVRA's reasonable list maintenance requirement. This analysis should not ignore Congress's concern about election integrity; it should instead create a spectrum with voter participation on one end and election integrity on the other. The proper analysis should strike a balance closer to the goal of expanding the franchise for three reasons. First, Congress enacted the NVRA to increase the number of participating voters by increasing registration numbers.²⁰ Neither courts nor partisan voter-suppression groups may interpret an additional requirement for limited registration list maintenance in a way that undercuts this historic goal. Second, the aggressive roll scrubbing that PILF and other groups demand dissolves the statutory purpose of the NVRA by increasing the unacceptable risk of purging valid voters. Voter purges are a historic tactic notorious for disenfranchising eligible voters; maintenance that removes eligible voters is inconsistent with the accuracy that presumably motivates these purges.²¹ Finally, fears of voter fraud sustained despite the absence of any proof of fraud—much less fraud connected to list maintenance procedures that otherwise comply with the NVRA's requirements—cannot push the test of what is reasonable away from the Act's impetus of increased voter participation. Reasonable list maintenance required by the NVRA²² should not require the extensive administrative demands PILF and others have attempted to legitimize in their settlement actions.²³ Local governments faced with similar charges

18. See, e.g., *Bellitto v. Snipes*, 935 F.3d 1192, 1207 (11th Cir. 2019) (explaining that “the NVRA only requires that [a] County make a reasonable effort, not an exhaustive one”).

19. See *Cases*, PUB. INT. LEGAL FOUND. www.publicinterestlegal.org [<https://perma.cc/CUY5-D73H>] (last visited Apr. 5, 2020) (providing a list of settlements along with celebratory press releases).

20. Becky Cain, *Should Congress Pass the National Voter Registration Act?* CONG. DIG. 78, 94 (Mar. 1993) (discussing Majority Views, Comm. on House Admin., from Comm. Rep. 103-9 of the Comm. on House Admin., Rep. Al Swift (WA-D), Chairman, submitted Feb. 3, 1993, on H.R. 2, the Nat'l Voter Registration Act [hereinafter House Comm. Rep. 103-9]).

21. *National Voter Registration Act-Statutory Interpretation-Election Law-Husted v. A. Philip Randolph Institute*, 132 HARV. L. REV. 437, 446 (2018).

22. 52 U.S.C. § 20507(a)(4).

23. See *infra* Section III.A.

in the future should not settle if they otherwise meet the NVRA's requirements.

Part II outlines the history of voter registration, the NVRA, the origins of the arguments against voter purges and the fear of voter fraud. Part III analyzes the recent settlements in cases claiming insufficient voter registration list maintenance with litigation brought against overly aggressive maintenance efforts. Part IV concludes by recommending an interpretation of the list maintenance requirement in the NVRA that balances the need to maintain accurate rolls with the driving force behind the legislation, which was to increase voter turnout. Local governments cannot sacrifice accuracy engaging by overly aggressive purges, but must follow the textual requirements of that Act and maintain reasonable, but not exhaustive, maintenance measures.

II. BACKGROUND

Voter registration has not always been a requirement. Before the mid-nineteenth century, most states had no officially prepared list of eligible voters, and men were not required to take registration steps before election day.²⁴ This was unsurprising, as neither states nor individuals at the time were prepared to maintain the detailed information such registration would require.²⁵ Massachusetts was an early adopter, passing a voter registration requirement in 1800 that survived a constitutional challenge in 1832. In that case, the court ruled that creating this qualified list did not interfere with the right to vote, and that registration was “highly reasonable and useful, calculated to promote peace, order and celerity in the conduct of elections.”²⁶ But Massachusetts remained an outlier, as the requirements for a uniform system of identity and documentation did not yet uniformly exist.²⁷ By World War I, most states had adopted some form of formal voter registration procedure, because where populations were rapidly growing county clerks could no longer personally identify every eligible citizen.²⁸ In these locations, registration was desirable, but it often also

24. Lily Rothman, *For National Voter Registration Day, Here's How Registering to Vote Became a Thing*, TIME (Sept. 26, 2016), <http://time.com/4502154/voter-registration-history/> [<https://perma.cc/MN9Q-2EH3>].

25. Jonathan Weinberg, *Digital ID: Identity and Privacy in a Digital World*, ch. 3 (March 2020) (unpublished manuscript) (on file with author).

26. *Capen v. Foster*, 12 Pickering 485, 498 (Mass. 1832).

27. Weinberg, *supra* note 25.

28. Naila S. Awan, *When Names Disappear: State Roll-Maintenance Practices*, 49 U. MEM. L. REV., 1107, 1109 (2019).

served a more insidious purpose.²⁹ Politicians often manipulated voter registration to disenfranchise Blacks, immigrants, and the working class, who were mainly concentrated in urban areas, and for a long time, registration only applied in larger cities.³⁰ Despite its relative youth in the history of our voting process, policymakers soon recognized registration as a key gatekeeping mechanism.³¹ Strict registration rules became the number one protection against the long-time specter allegedly threatening our elections: voter fraud.

Concerns about the danger of fraud have repeatedly surfaced in any attempt to defeat legislation that would expand voting access.³² Since the passage of the Fifteenth Amendment,³³ laws have been necessary to ensure the right now promised by the Constitution, which was neither self-enforcing nor universal in its command of acquiescence.³⁴ Authors designed the Voting Rights Act of 1965 to enforce these constitutional rights, and many saw efforts to establish a national voter registration system as a necessary element of this civil rights-era reform.³⁵ This belief formed part of the impetus behind the development and passage of the NVRA.³⁶ However, the NVRA was not the first attempt to increase voter registration numbers. In the 1970s, Congress attempted to pass legislation that would establish a postcard registration system through the U.S. Postal Service and administered by a newly developed agency inside the Census Bureau.³⁷ This campaign stalled for the same reasons that have always held up improvements to voter access: a fear that the provision would help a

29. See ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* xxv (2000) (explaining that as poor immigrants more uniformly came to represent American urban voters there was an accompanying “mushrooming upper- and middle-class antagonism to universal suffrage”).

30. Daniel P. Tokaji, *Voter Registration and Election Reform*, 17 WM. & MARY BILL RTS. J. 453, 461 (Dec. 2008). See also Weinberg, *supra* note 25, at 3–4.

31. Tokaji, *supra* note 30.

32. See, e.g., KEYSSAR, *supra* note 29, at 253 (2000) (explaining that former President George H. W. Bush vetoed a federal attempt at a motor voter law in 1992, “arguing that it ‘imposes an unnecessary and costly federal regime on the states’ and was ‘an open invitation to fraud and corruption’”).

33. U.S. CONST. amend. XV, § 1 (stating that “[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”).

34. FONER, *supra* note 13.

35. Gerald D. Kleczka, *Should Congress Pass the National Voter Registration Act?* CONG. DIG., PRO, at 82 (March 1993).

36. 52 U.S.C. § 20507(i)(b).

37. Royce Crocker, *The National Voter Registration Act of 1993: History, Implementation, and Effects*, CONG. RSCH. SERV. 1 (May 9, 2011), <https://fas.org/sgp/crs/misc/R40609.pdf>. [<https://perma.cc/QAY2-2YPY>].

political opponent.³⁸ A coalition of Republicans and Southern Democrats, fearing increased voter turnout in their representative districts would harm their political chances, stalled the postcard registration legislation in the Senate until it eventually disappeared.³⁹ A push for election day registration similarly died out during the Carter administration.⁴⁰ The 1980s saw the passage of more narrowly-focused voter registration reforms, but Congress did not revive a nation-wide push again until voter turnout reached a new low in the 1988 presidential election.⁴¹ Only when low turnout reached unprecedented levels did registration become a bipartisan goal.⁴² Increasing voter participation, not election integrity, was originally central to the NVRA.

A. NVRA History

The legislative history of the NVRA encompasses all the lessons learned through these previous attempts to increase participation and protect the voting franchise.⁴³ When interpreting the NVRA today, examining this history is useful, and it supports a textual reading of the statute. The NVRA requires reasonable list maintenance. Section (a)(4) requires that

[i]n the administration of voter registration for elections for Federal office, each State shall – conduct a *general* program that makes a *reasonable* effort to remove the names of ineligible voters from the official lists of eligible voters by reason of – (A) the death of the registrant; or (B) a change in the residence of the registrant.⁴⁴

This guidance does not specifically define what the effort requires.⁴⁵ Because no court has definitively decided how to interpret this requirement, the legislative history can help us define the level of effort lawmakers intended.⁴⁶

38. KEYSSAR, *supra* note 29, at 254 (2000) (noting that in 1977 President Carter “attributed the opposition [to his mandated election-day registration] to the reluctance of incumbents to expand their own electorates, which could make reelection more problematic.”).

39. Margaret Groarke, *The Impact of Voter Fraud Claims on Voter Registration Reform Legislation*, 131 POL. SCI. Q., 571, 575 (2016).

40. *Id.*

41. Crocker, *supra* note 37, at 2.

42. *Id.*

43. Crocker, *supra* note 37.

44. 52 U.S.C. § 20507(a)(4) (emphasis added).

45. *Id.*

46. No court has held what constitutes “reasonable list maintenance,” only what was unreasonable. *See, e.g.,* Husted v. A. Philip Randolph Inst., 138 S. Ct. 1833 (2018).

The general intent of the NVRA was to increase voter registration and turnout.⁴⁷ Declining turnout in federal elections helped build bipartisan support for legislation to increase registration.⁴⁸ Voter turnout in the 1988 presidential election was just over half of the voting-age population—its lowest point in forty years.⁴⁹ In the 1992 Presidential election, forty-four percent of the eligible electorate failed to vote.⁵⁰ Some in Congress believed that making registration less complicated was one easy way to increase turnout through legislation.⁵¹ Many supporters also considered the NVRA a necessary measure to eliminate voter registration restrictions—the final barrier to exercising the right to vote.⁵²

The NVRA is often referred to as the “motor voter” law because it required that states administer voter registration concurrently with licensing and registration through the Department of Motor Vehicles.⁵³ However, this was not always the administrative plan.⁵⁴ Partisan politics drove the determination of method and location of registration through the bill.⁵⁵ Research conducted after the 1988 presidential election found that qualified voters most often cited issues with registration as their reason for not participating in an election.⁵⁶ Research also found that the “groups that are less likely to be registered—low-income people, people of color, and young adults—are more likely to be Democrats.”⁵⁷ Republicans feared that universal registration would be to their political detriment.⁵⁸ Proponents of the plan hoped to perform voter registration at many different times

47. Vic Fazio, *Should Congress Pass the National Voter Registration Act?* CONG. DIG., PRO, 78 at 84 (Mar. 1993) (noting that the Act has the potential to “revitalize democracy.”).

48. *Id.* at 86 (explaining that we still have “the worst voting participation rate among the world’s leading democracies. Only six out of every 10 eligible American voters is [sic] registered.”). couldn’t find these

49. Crocker, *supra* note 37, at 2.

50. House Comm. Rep. 103-9, *supra* note 20.

51. *Id.*

52. Crocker, *supra* note 37, at 2.

53. *Id.* at 33.

54. *See generally* Cain, *supra* note 20.

55. *Id.*

56. Awan, *supra* note 28, at 1112.

57. Kenneth J. Cooper, *House Backs Eased Voter Registration*, WASH. POST (Feb. 5, 1993), <https://www.washingtonpost.com/archive/politics/1993/02/05/house-backs-eased-voter-registration/9391c9f3-b018-4bf9-94d3-ce8727e2a7ca/> [<https://perma.cc/V7VR-EUN3>]. (stating that “[a]ll of us are interested in extending the right to vote to all. But at unemployment and welfare offices only? . . . If you want to pick a party affiliation of these people, take a guess. You won’t pick ours.”).

58. KEYSSAR, *supra* note 29, at 254 (explaining that “[e]asing registration requirements was widely perceived as a step that would help Democrats and hurt Republicans: most of the new enrollees were expected to be poor, members of minority groups, or young, and all of these groups tended to vote Democratic.”).

when the government interacted with citizens, but because registration at welfare centers and other locations administering government benefits would unfairly benefit Democratic candidates in the political calculus, a compromise was necessary.⁵⁹ This is why the Department of Motor Vehicles (DMV) became the only registration location.⁶⁰ Proponents of the bill believed that by agreeing to this limitation and only requiring registration services at DMV locations, “large scale purges and list cleaning systems” would be unnecessary.⁶¹ But despite the larger goal of increasing voter access, Republican legislators would want more restrictions.

B. Purging the Rolls

The addition of a mandatory purge was key to garnering Republican support for the NVRA.⁶² Bill Thomas, then a Republican Congressman, promised to support the bill and to help bring along Newt Gingrich, then the minority whip, if proponents would include a periodic purge requirement to ensure accuracy of the voter registration rolls.⁶³ “For members of Congress who expressed concern about fraud . . . keeping the voter rolls clean of voters who had moved or died was one way to reduce the opportunity for fraud.”⁶⁴ The requirement also allowed states to enact laws to implement purges.⁶⁵ The NVRA would give such laws a facially neutral path to enable voter suppression, leaving the “discriminatory disenfranchising effect” unrealized until the laws were eventually challenged in court.⁶⁶

The NVRA’s proponents saw a purge as a compromise necessary for passage, but list maintenance was never the goal of the bill.⁶⁷ Advocates believed that if they focused on “designing the least damaging purge and made a list of specific provisions that would protect access to the franchise[,]” the purge would not be as damaging, and the bill could pass with the necessary bipartisan support.⁶⁸ For many advocates of the bill in

59. Groarke, *supra* note 39, at 573.

60. *Id.*

61. S. REP. NO. 103-6, at 18 (1993) (explaining that “[o]ne of the advantages of the bill is the fact that the motor-voter and agency-based programs are ongoing and that applications and renewals may serve as updating the addresses of registered voters.”).

62. *Id.*

63. Groarke, *supra* note 39, at 586.

64. *Id.*

65. *Id.*

66. Lydia Hardy, *Voter Suppression Post-Shelby: Impacts and Issues of Voter Purge and Voter ID Laws*, 71 MERCER L. REV. 857, 860 (2020).

67. *Id.*

68. Groarke, *supra* note 39, at 588.

the civil rights community, however, these required purges were a step backward, adding permission to commit potentially discriminatory acts directly into the language of the statute.⁶⁹ After the bill passed in the House of Representatives, the National Association for the Advancement of Colored People (NAACP) Legal Defense Fund decried the addition of the Section 8 purge.⁷⁰ And yet, despite these significant compromises, the addition of a required purge of the voter registration rolls did not end the charges of fraud against the bill and its passage.⁷¹ In fact, President George H. W. Bush vetoed the bill, saying that it was “an open invitation to fraud and corruption.”⁷² Ross Perot, the Independent candidate in that race, disagreed, arguing that “[t]he only reason to veto this bill is to try to keep people away from the polls this fall.”⁷³ After this veto, the Human Service Employees Registration and Voter Education (Human SERVE) Fund and other remaining supporters convinced Democratic candidate Bill Clinton to commit to making the NVRA part of the agenda for his first 100 days. Clinton’s victory put the Motor Voter bill on the fast-track.⁷⁴

Despite its new prioritization, the addition of a purging requirement destroyed the unity of advocates that had supported the bill.⁷⁵ And the purge was not the only provision the coalition of supporters added to appease opponents and the fraud claims they knew would come.⁷⁶ Fraudulent registration would be penalized.⁷⁷ Identification requirements and follow-on validation for same-day registration were added.⁷⁸ Advocates hoped this would let them “lead with the assertion that [they were] acting to reduce election fraud by the enforcement sections of the bill.”⁷⁹ In addition to Newt Gingrich in the House, Mitch McConnell (R-KY) and Ted Stevens (R-AL) fought the bill in the Senate on the claim that the bill would lead to wide-spread voter fraud.⁸⁰ None of these politicians ever attempted to substantiate these claims.⁸¹ For advocates at

69. *Id.*

70. *Id.* at 593.

71. *Id.*

72. George H. W. Bush, *Message to the Senate Returning without Approval the National Voter Registration Act of 1992*, AM. PRESIDENCY PROJECT (July 2, 1992), <https://www.presidency.ucsb.edu/documents/message-the-senate-returning-without-approval-the-national-voter-registration-act-1992> [<https://perma.cc/T2PH-4XGM>].

73. Groarke, *supra* note 39, at 589.

74. Bush, *supra* note 72.

75. Groarke, *supra* note 39, at 588.

76. *Id.*

77. Groarke, *supra* note 39, at 583.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* at 588.

the time, the biggest disappointment with the passage of the NVRA was the purging requirement.⁸² Because of this requirement, states have purged 112 million names from their voter rolls between 1996 and 2012.⁸³ Indeed, Professor Margaret Groarke noted in her 2016 article on voter fraud, that “[o]n average, 7.6 percent of all names registered have been removed in each election cycle between 1995 and 2012.”⁸⁴ Fraud concerns nearly stopped the legislation in its tracks several times over the years before its passage.⁸⁵ These same fraud claims transformed the bill by limiting its effectiveness with the very purge requirement that is still at the center of litigation today.⁸⁶ Many states still have not fully implemented the requirements created by the NVRA, and Congress continues to try to limit its reach.⁸⁷ Even though the purge was necessary for political passage, it did not change the purpose of the bill: to increase turnout. Therefore, the list maintenance requirement must not undermine the goal of voter participation.

C. Voter Fraud

Voter Fraud in Detroit is rampant, and has been for many years!

President Donald J. Trump⁸⁸

The NVRA’s opponents argued that, by making voter registration easier, the bill made election fraud possible. In fact, the argument alleging fraud shaped the final bill more than any other.⁸⁹ Opponents of the bill noted that the Act made it easy for ineligible persons to register to vote, especially in states with large noncitizen populations.⁹⁰ But, despite these claims of improper registration leading to the possibility of fraud, the

82. *Id.*

83. *Id.* at 592

84. *Id.*

85. *Id.* at 571.

86. *Id.* at 594.

87. *Id.* at 575.

88. @realDonaldTrump, TWITTER (Nov. 19, 2020, 7:46 AM), disabled account now archived at <https://www.thetrumparchive.com/> [<https://perma.cc/L4QN-ZY8Y>].

89. Groarke, *supra* note 39, at 591.

90. Crocker, *supra* note 39, at 9. The NVRA’s provisions created a process that was almost automatic when obtaining a driver’s license. In order to obtain work authorization, many noncitizens required drivers’ licenses and would then have this opportunity to register. Opponents argued that the Act would be responsible for the registration of large numbers of immigrants otherwise ineligible to vote. *Id.*

actual connection between having more voters registered than are permitted has never led to wide-spread voting by unqualified people.⁹¹

The Heritage Foundation maintains a comprehensive list of all proven cases of voter fraud, and, in their collection, the total number of proven instances since the 1980s is only 1,302.⁹² The registration lists may carry some inaccuracies, but that is not the point. Excessive scrubbing is a bar to legitimate voting because it is likely to remove eligible and unsuspecting voters.⁹³ Without a connection between imperfect lists and actual illegal votes cast, the fraud argument remains unfounded.⁹⁴ Voter ID laws, another measure used to deter fraud, can only curtail voter impersonation, as reported by a comprehensive Brennan Center study by Justin Levitt and Spencer Overton.⁹⁵ There are almost no cases reported of this kind of voter fraud anywhere.⁹⁶ Between 2000 and 2014, Professor Levitt attempted to pinpoint every allegation of voter impersonation and was able to identify only thirty-one credible violations, ever.⁹⁷ Therefore, while voter ID laws do not protect against any real threat of voter fraud, they absolutely do reduce voter turnout because of the additional obstacles they erect around the access to vote.⁹⁸ Historic arguments against the NVRA's passage cited the threat of voter fraud,⁹⁹ and indeed this remains the main concern of PILF in its case in Detroit and the other cases the organization continues to peruse.¹⁰⁰ Despite this long-standing fear, no historical evidence and no evidence in any of PILF's modern claims prove

91. Justin Levitt, *The Truth about Voter Fraud*, BRENNAN CTR. FOR JUST. (2007), <https://www.brennancenter.org/publication/truth-about-voter-fraud> [<https://perma.cc/38M4-8S9T>] (noting that fraud by individual voters is a singularly foolish and ineffective way to attempt to win an election. Each act of voter fraud in connection with a federal election risks five years in prison and a \$10,000 fine, in addition to any state penalties. In return, it yields at most one incremental vote. That single extra vote is simply not worth the price.).

92. The Heritage Foundation Database, *supra* note 10.

93. Awan, *supra* note 28, at 1108. Just one example of excessive scrubbing employs software that checks for and removes voters who share a first name, last name, and date of birth. This can have not only an unexpected and undesired outcome, but a discriminatory one as well, as “one-sixth of all Asian-Americans share just 30 surnames and 50 percent of minorities share common last names, versus 30 percent of whites.” *Id.* at 1122.

94. *See generally id.*

95. Jonathan Brater, et al., *Purges: A Growing Threat to the Right to Vote*, BRENNAN CTR. FOR JUST. (July 20, 2018), <https://www.brennancenter.org/our-work/research-reports/purges-growing-threat-right-vote> [<https://perma.cc/D9KZ-AUVW>].

96. *Id.*

97. *Id.*

98. Groarke, *supra* note 39, at 573.

99. Cain, *supra* note 20 (noting that arguments against the Act about fraud are just not proven. “There is no fraud.”).

100. *Pub. Int. Legal Found. v. Winfrey*, 463 F. Supp. 3d 795 (E.D. Mich. 2020).

the existence of any actual voter fraud.¹⁰¹ Representative Al Swift (D-Wash.), the NVRA's chief sponsor, stated: “[t]he fraud issue that is being raised here today is the biggest fraud in this debate.”¹⁰² In her 2020 article on voter suppression, Lydia Hardy writes that the correlation between the lack of any credible evidence of fraud and the consistency with which fraud is used to restrict access to the franchise “show[s] that a State lacks legitimate intent in passing and enforcing these laws outside of racially motivated factors.”¹⁰³

Arguing today against claims of wide-spread voter fraud is not the same as claiming that U.S. elections are without fault. U.S. election history abounds with tales of self-serving impropriety and corruption.¹⁰⁴ This corruption and fraud, however, is usually not committed by voters.¹⁰⁵ And, most importantly, fraud rarely, if ever, has anything to do with the registration process.¹⁰⁶ Historically, election problems arise most often from human and technical errors in the application of voting procedures.¹⁰⁷ It is worth noting that politicians opposed to easy voter registration are also opposed to procedural changes that would make election day activities easier, such as allowing states to count absentee votes as they come in rather than waiting to count them on election day.¹⁰⁸

101. Alison Durkee, *Trump and the GOP Have Now Lost More Than 50 Post-Election Lawsuits*, FORBES (Dec. 8, 2020, 5:06 AM), <https://www.forbes.com/sites/alisondurkee/2020/12/08/trump-and-the-gop-have-now-lost-50-post-election-lawsuits/?sh=29c438442960> [<https://perma.cc/749W-J63H>] (noting that “while the Trump campaign has frequently alleged voter fraud outside of court . . . the campaign has largely backed away from arguing voter fraud in court, with attorney Rudy Giuliani even telling a judge in a Pennsylvania hearing, ‘This is not a fraud case.’”).

102. Cooper, *supra* note 57.

103. Hardy, *supra* note 66, at 875.

104. KEYSSAR, *supra* note 29, at 279 (noting that Republicans claim widespread fraud, citing “Democratic efforts to enroll new voters (qualified or not), get them to the polls (sometimes with cash inducements), and remove legal safeguards (like the presentation of identification documents),” though whether these actually represent a systemic problem is a matter of current partisan debate.).

105. Levitt, *supra* note 91; David Callahan & Lorraine Minnite, *Securing the Vote: An Analysis of Election Fraud*, DEMOS (2003), https://www.demos.org/sites/default/files/publications/EDR_-_Securing_the_Vote.pdf [<https://perma.cc/5TGF-VZPZ>].

106. Levitt, *supra* note 91, at 20.

107. *Id.* at 7 (explaining that “in the course of millions of recorded votes and voters, it is virtually certain that there will be clerical errors. Often, what appears to be voter fraud—a person attempting to vote under a false name, for example—can be traced back to a typo.”).

108. Riley Beggin, *Why Michigan is waiting: State law bars early counting of absentee votes*, BRIDGE MAG. (Nov. 4, 2020) <https://www.bridgemi.com/michigan-government/why-michigan-waiting-state-law-bars-early-counting-absentee-votes> [<https://perma.cc/>

III. ANALYSIS

The history of these decisions made during the drafting and passage of the NVRA has been written about in other areas examining claims of fraud on registration and other documentary pieces of the time.¹⁰⁹ Still, it has never been studied in light of these recent lawsuits under Section 20507(a)(4) of the Act related to the requirement for reasonable list maintenance. This litigation is in direct conflict with the textual requirements of the statute, requiring purges in addition to the death and relocation specifically enumerated in the law's language. These lawsuits also ignore the historical purpose of this legislation and work counter to the goal of increased participation, and the complete lack of actual fraud makes any requirement for more aggressive list maintenance unreasonable.¹¹⁰ The passionate advocacy work that supported the initial drafting of the bill completely dried up with the addition of this section in the Act, and the shift in support was a much more significant factor than just compromises made to ensure the NVRA's passage.¹¹¹ This was not an instance of political sausage-making but of the addition of a provision that goes completely counter to the Act's original purpose. Of course, none of this changes the fact that Congress added and passed this section of the Act, or that it is the law of the land, but the historical significance of this compromise should inform judges and defendants in cases like the one PILF brought in Detroit that this is a fight worth fighting. List maintenance should be reasonable, but there is no support to require that it be exhaustive.

Section 20507(a)(4) of the NVRA provides that each state is required to "conduct a general program that makes a *reasonable* effort to remove the names of ineligible voters[.]"¹¹² There is no court-ordered standard for list maintenance or any definition for "reasonable" as it applies in this section of the Act. Only one court decided a similar case on the merits, and found, applying a textual analysis, that "the NVRA only requires that [a] County make a reasonable effort, not an exhaustive one," finding that the "Health Department's records and the SSDI are reliable sources of

V686-MD9Y] (noting that "Michigan absentee ballots can't begin to be counted until 7 a.m. on Election Day by state law . . . Republican leaders control Michigan's Legislature and have been reluctant to change laws on processing absentee ballots, raising concerns that doing so would create the possibility for fraud.").

109. Groarke, *supra* note 39, at 571–72.

110. *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1863 (2018) (Sotomayor, J., dissenting).

111. Groarke, *supra* note 39, at 587–90.

112. 52 U.S.C. § 20507(a)(4).

information concerning registrant deaths.”¹¹³ While this is not entirely definitive, it does give a good sense that some of the demands these organizations have made hoping to require more stringent voter roll purges and other maintenance efforts need not take every measure available to make such removals.¹¹⁴ The cases where local governments have settled, which are much more numerous, require onerous standards arguably beyond the statutory requirement of reasonableness.¹¹⁵ Indeed, none of the actions required in the settlements are bad ideas, but they go far beyond the needs of the statute and are therefore inherently unnecessary when considering the NVRA’s goal of keeping registered voters on the rolls, and perhaps more importantly, create inaccuracies when eligible voters are removed. First, this Note will look at the terms of these settlements, and then it will explain why these tactics violate the language of and the intent behind the NVRA.

A. Recent Settlements

An organization similar to PILF, the American Civil Liberties Union (ACLU), negotiated several of these settlement agreements. The American Constitutional Rights Union (ACRU) is an organization created to counter successful litigation of the ACLU in areas concerning election integrity, immigration and border enforcement, and Second Amendment rights, among others.¹¹⁶ It is comparable to PILF in the Detroit case.¹¹⁷ *ACRU v. Martinez-Rivera*’s¹¹⁸ settlement required mailings to all voters with birthdays prior to 1920, mailings to all voters listed on National Change of Address (NCOA) lists, an annual scrub based on American community survey data, and that reports of such action be filed with the plaintiff’s attorneys. The settlement also required that the defendant establish written procedures for list maintenance and undergo training on list maintenance procedures.¹¹⁹ The settlement stipulated that the ACRU would oversee all efforts.¹²⁰

113. *Bellitto v. Snipes*, 935 F.3d 1192, 1207 (11th Cir. 2019).

114. *See supra* Part III.A.

115. *Id.*

116. *About the ACRU*, ACRU, <https://theacru.org/about-the-acru/> [<https://perma.cc/U35M-SKXV>] (last visited Dec. 13, 2020).

117. Jonathan Bratner, *Calls for More Purges Rests on Shaky Data*, BRENNAN CTR. FOR JUST. (Oct. 19, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/calls-more-purges-rest-shaky-data> [<https://perma.cc/FPZ5-DJP2>].

118. 1666 F. Supp. 3d 779 (W.D. Tex. 2017).

119. *ACRU Wins Voter Roll Clean-up in Another Texas County*, NEWSWIRE (Jan. 20, 2016), <https://www.newswire.com/news/acru-wins-voter-roll-clean-up-in-another-texas-county-7453486> [<https://perma.cc/7PFF-ZPNV>].

120. *Id.*

ACRU v. Jefferson Davis County Election Commission's settlement required notification of all possible deceased voters, a crosscheck for all voters with state health department death records, and a check of the Social Security master death index.¹²¹ All results must be reported to the ACRU.¹²² Defendants must review lists of disqualifying felonies from the department of corrections quarterly.¹²³ Under the settlement in *Voter Integrity Project NC, Inc. v. Wake County Board of Elections*,¹²⁴ NCOA maintenance would happen on a quarterly, rather than the planned semi-annual, basis.¹²⁵ Board officials would individually review each inactive voter to ensure timely removal.¹²⁶ Completed maintenance efforts would be subject to public inspection on a biennial basis until April 2023.¹²⁷ The county must comply with the plaintiff's requests for public review to ensure the current accuracy of the voter roll until that time.¹²⁸

The terms of these settlements are essential to the analysis of this new litigation because these terms are more aggressive than the Act requires and risk suppressing participation and dissolving the dual goals of the NVRA: increased voter participation and voter roll accuracy. While the defendants in these cases agreed to these terms, these are not decisions made in courts, and therefore do not reflect judicial interpretation of the statute and its requirements.¹²⁹ These settlements instead reflect the actions of organized conservative groups in small towns with underfunded elections offices accepting terms to relieve themselves of the nuisance of a lawsuit. These terms are more onerous than the NVRA requires and should not be used as a starting point when determining the floor of reasonableness under the Act.

121. Consent Decree at 2–3, *ACRU v. Jefferson Davis County Election Commission*, No. 2:13-cv-87-KS-MTP, (S.D. Miss. 2013).

122. *Id.* at 3.

123. *Id.* (ordering that “Defendant shall continue to obtain, at the minimum, on a quarterly basis from the Jefferson Davis Circuit Court Clerk, a list of those persons convicted of disqualifying felonies under the Mississippi Constitution.”).

124. 301 F. Supp. 3d 612 (E.D.N.C. 2017).

125. *Settlement Reached in Wake County NC Voter Roll Cleanup Lawsuit*, PUB. INT. LEGAL FOUND. (June 27, 2017), <https://publicinterestlegal.org/blog/settlement-reached-wake-county-nc-voter-roll-cleanup-lawsuit/> [<https://perma.cc/3AYG-3UB4>].

126. *Id.*

127. *Id.* (noting that “[b]y the end of this year, the WCBOE will review each ‘inactive’ voter ‘to ensure timely removal as provided by law’ and make completed maintenance efforts subject to public inspection. The WCBOE will continue to conduct such a review on a biennial basis until April 15, 2023.”).

128. *Id.*

129. See generally Leandra Lederman, *Precedent Lost: Why Encourage Settlement, and Why Permit Non-Party Involvement in Settlements?*, 75 NOTRE DAME L. REV. 221 (1999).

B. The Opposite Challenge: Aggressive List Maintenance

Recent litigation challenging voter registration roll maintenance under the Act has more commonly challenged state and municipalities on overly aggressive registration list maintenance.¹³⁰ To balance the view of the settlements in the previous cases in this new line of litigation explored here, this Note will look at a lawsuit brought by plaintiffs because of excessive list maintenance and illustrate relevant comparisons. The most significant case recently on voter registration was *Husted v. A. Philip Randolph Institute*, a 2018 Supreme Court decision.¹³¹ This case emerged amid a nation-wide uproar over newly passed voting restrictions, especially voter ID laws, passed by Republican state legislatures across the country in the 2010s.¹³² In this case, a 5-4 Court upheld an Ohio election statute that defined terms for removal from the voter registration rolls based on non-voting.¹³³ The Court narrowly decided to uphold the law that many commentators predicted would abet voter disenfranchisement.¹³⁴ The law in Ohio states that if, over a two-year period, any registered voter fails to participate in any kind of broadly

130. See, e.g., *Cases Raising Claims Under the National Voter Registration Act*, U.S. DEPT. JUST. (June 9, 2020) <https://www.justice.gov/crt/cases-raising-claims-under-national-voter-registration-act> [<https://perma.cc/N449-JF86>]; see also *United States v. N.Y.C. Bd. of Elections* (E.D.N.Y.) (explaining that the New York City Board of Elections violated NVRA § 8 by engaging in flawed procedures for conducting voter registration list maintenance); *United States v. Florida* (N.D. Fla. 2012) (noting that the state continued to conduct a systematic purge of voters from its voter registration rolls within ninety days of an election for federal office); and *United States v. Cibola County* (D.N.M. 2007) (holding that the county violated the NVRA by removing voters' names from the voter registration list without legal cause).

131. *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833 (2018).

132. Anthony J. Gaughan, *Notice, Due Process, and Voter Registration Purges*, 67 CLEV. ST. L. REV. 485, 486 (2019).

133. *Id.* at 485.

134. See Jeffrey Toobin, *The Supreme Court's Husted Decision Will Make It More Difficult for Democrats to Vote*, NEW YORKER (June 11, 2018), <https://www.newyorker.com/news/daily-comment/the-supreme-courts-husted-decision-will-make-it-more-difficult-for-democrats-to-vote> [<https://perma.cc/4PD2-FF2Y>] (arguing that the *Husted* decision will be viewed as a tool to purge “disfavored voters” from state voting rolls); see also Mark Joseph Stern, *Supreme Court, in 5-4 Decision, Allows States to Purge Voters for Their Failure to Vote*, SLATE (June 11, 2018, 11:39 AM), <https://slate.com/news-and-politics/2018/06/supreme-court-greenlights-ohio-voter-purges-in-husted-v-randolph.html> [<https://perma.cc/67LY-ENAL>] (noting that the ruling was “a nightmare scenario for voting-rights advocates.”); and Garrett Epps, *The Supreme Court Blesses Voter Purges*, ATLANTIC (June 12, 2018), <https://www.theatlantic.com/politics/archive/2018/06/the-supreme-court-blesses-voter-purges/562589/> [<https://perma.cc/FV37-ERA8>] (stating that “many Ohioans who should vote will not be allowed to; . . . a disproportionate number of them will be poor or members of minority communities . . . disenfranchisement of those voters will aid the Republican Party and disadvantage their opposition, the Democrats.”).

defined election activity, voters must confirm their address with a postcard notification sent through the U.S. Mail.¹³⁵ This would initiate the purge process if the postcard was not returned and the voter failed to vote in subsequent elections.¹³⁶ The critical distinction in this case is that the NVRA grants the state discretion in maintaining their voter rolls while only requiring that the maintenance plan be reasonable. Therefore, lawsuits challenging overly aggressive roll maintenance have made up the majority of NVRA legislation.¹³⁷

In much of the writing on the NVRA and the *Husted* case, authors looking at the bill claim that Congress had two main objectives in enacting the NVRA: increasing voter registration and ensuring voting rolls were kept up to date. However, this is incorrect. The falseness of this claim surfaces in the writings of some voting rights advocates, and also forms part of the reasoning in Justice Sotomayor's dissent in *Husted*.¹³⁸ Justice Sotomayor joined the other moderate liberal justices in a 4-justice dissent, but wrote separately that Congress passed the Act "against the backdrop of substantial efforts by States to disenfranchise low-income and minority voters, including programs that purged eligible voters from registration lists because they failed to vote in prior elections."¹³⁹ She recognized that while the accuracy of voter rolls is listed in the Act as a purpose for the legislation, this was accommodation for passage.¹⁴⁰ List maintenance was not a goal:

Congress crafted the NVRA with the understanding that, while States are required to make a 'reasonable effort' to remove ineligible voters from the registration lists, such removal programs must be developed in a manner that "prevent[s] poor and illiterate voters from being caught in a purge system which will require them to needlessly re-register" and "prevent[s] abuse which has a disparate impact on minority communities."¹⁴¹

Justice Sotomayor reasons that purge requirements are inconsistent with both of the two seemingly conflicting goals of accurate rolls and increased participation when maintenance requirements are so onerous

135. OHIO REV. CODE ANN. § 3503.21(B)(1) (stating that if "the registrant fails to respond to the confirmation notice or otherwise update the registration and fails to vote in any election during the period of two federal elections subsequent to the mailing of the confirmation notice" they will be removed from the rolls).

136. *Id.*

137. *See e.g.*, *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833 (2018).

138. *Id.*

139. *Husted*, 138 S. Ct. at 1863 (2018) (Sotomayor, J., dissenting).

140. *Id.*

141. *Id.* at 164 (citing S. REP. NO. 103-6, at 18 (1993)).

that they remove eligible voters.¹⁴² Professor Garrett Epps defines this relationship between the need to increase voter registration while also maintaining the rolls, saying that the statute's text "offers a conflict between two values: first, the right of every eligible citizen to vote without unreasonable or discriminatory state obstacles, and, second, the need for accurate voter rolls to be 'purged' of those who have died, lost the right to vote by criminal conviction, or moved away."¹⁴³ The conflict here means that while the Court found that the list maintenance in *Husted* did not violate the NVRA, it is also not required by the NVRA.¹⁴⁴ This is important when evaluating the settlement terms in the cases listed earlier. PILF conflates this decision supporting more aggressive list maintenance with one requiring more aggressive list maintenance. This is simply not what the law, from the plain language of the statute or judicial interpretations like *Husted*, requires.

Despite this, PILF and other organizations continue to bring their claims, tying up election offices with time-consuming administrative tasks to answer requirements in addition to their regular duties.¹⁴⁵ For example, in 2020, Michigan held federal elections in March, August, and November, making any kind of voter list maintenance impossible because of the statutorily required delays for removal prior to an election.¹⁴⁶ Additionally, in this Detroit case, discovery was scheduled for the same week of the Michigan state primary elections in March of 2020.¹⁴⁷ Because of the time constraints on the City of Detroit's elections office, the City's lawyers in the case requested an extension, assuming that since PILF was so concerned with election integrity that they would grant the request so the office could focus on the election at hand and not on the needs of the lawsuit. PILF lawyers refused.¹⁴⁸

C. Confidence in Elections

The PILF cases reviewed here lacked any evidence of fraud, but many lawsuits surrounding the 2020 election use mere claims of fraud as

142. *Id.*

143. Epps, *supra* note 134.

144. *Id.*

145. *See, e.g.*, PILF v. Sandvoss, 3:20-cv-03190-SEM-TSH (C.D. Ill. 2020), PILF v. Dunlap, No. 1:20-cv-00061-GZS (D. Maine 2020); PILF v. Lamone, et al., No. 1:19-cv-03564-DLB (D. Md. 2019).

146. Ken Coleman, *AG: 'Baseless' right-wing voter registration lawsuit dismissed*, MICH. ADVANCE (Feb. 17, 2021, 10:53 AM), <https://michiganadvance.com/blog/ag-baseless-right-wing-voter-registration-lawsuit-dismissed/> [<https://perma.cc/6WGWZ-J3SB>].

147. *Id.*

148. E-mail from Kaylan Phillips, PILF representative, to Eric Gaaboemail communication to Eric Gaabo, City of Detroit Attorney (March 6, 2020).

evidence.¹⁴⁹ President Trump’s supporters filed dozens of lawsuits in key battleground states, hoping to overturn election results and flip the outcome, but state and federal judges rejected these claims of wide-spread fraud.¹⁵⁰ The sheer number of cases brought in the wake of the election found to be without merit has finally garnered some criticism in the press, but the fact remains that these cases feed doubt. The pursuit of restrictions on registration access and voting rights is also now also openly and aggressively partisan.¹⁵¹ Michael Carvin recently argued in a case heard by the Supreme Court that the Republican Party had standing in a case where an Arizona law suppressed minority voting rights because a finding that the suppression was unlawful would “put the GOP at a competitive disadvantage relative to Democrats. And Politics is a zero-sum game.”¹⁵²

Justice Thomas worried about fraud claims going unexamined in a dissent from a denial of certiorari in a high-profile 2020 election case, noting that “[a]n election free from strong evidence of systemic fraud is not alone sufficient for election confidence.¹⁵³ Also important is the assurance that fraud will not go undetected. . . .”¹⁵⁴ But, confidence in election results is also harmed when unsubstantiated claims of wide-spread voter fraud give rise to frivolous lawsuits and maintain a sense of unrest and disorder in the public sphere.¹⁵⁵ “Every false attack on American democracy drove millions of ordinary people to believe a lie[:]” that Donald Trump had won the election and his victory was stolen.¹⁵⁶

149. Zack Smith & Hans von Spakovsky, *Opinion: Protect Michigan’s Election Process Integrity*, DET. NEWS (Dec. 2, 2020, 10:40 PM), <https://www.detroitnews.com/story/opinion/2020/12/03/opinion-protect-michigans-election-process-integrity/3793828001/> [<https://perma.cc/AJW9-GCNG>].

150. John Fritze, *Dissent by Justice Thomas in Election Case Draws Fire for Revisiting Baseless Trump Fraud Claims*, USA TODAY (Feb. 22, 2021, 5:34 PM), <https://www.usatoday.com/story/news/politics/2021/02/22/supreme-court-justice-clarence-thomas-renews-election-fraud-debate/4540788001/> [<https://perma.cc/Q7CC-ZGYM>].

151. Marc Elias, *The Day Democracy Was Attacked*, DEMOCRACY DOCKET (Jan. 11, 2021), <https://www.democracydocket.com/news/the-day-democracy-was-attacked/> [<https://perma.cc/C8HW-KCXD>].

152. Abigail Weinberg, *A GOP Lawyer Says the Quiet Part Out Loud in SCOTUS Voting Rights Case*, MOTHER JONES (Mar. 2, 2021) <https://www.motherjones.com/justice/2021/03/gop-lawyer-says-the-quiet-part-out-loud-in-scotus-voting-rights-case/> [<https://perma.cc/PBR3-FA9Y>].

153. Republican Party of Pa. v. Degraffenreid, 141 S. Ct. 732, 736 n.2 (2021) (Thomas, J., dissenting).

154. *Id.* at 736 n.2.

155. Jane C. Timm, *Trump’s Voter Fraud Lies Encouraged a Riot. GOP Allies are Still Giving Them Oxygen*, NBC NEWS (Jan. 10, 2021, 12:51 PM), <https://www.nbcnews.com/politics/donald-trump/trump-s-voter-fraud-lies-encouraged-riot-gop-allies-are-n1253509> [<https://perma.cc/FYK6-9AUQ>].

156. Elias, *supra* note 137.

These lies culminated in the attack on the capitol on January 6, 2021.¹⁵⁷ Continuing to give voter fraud equal legitimacy alongside other concerns related to voting rights when interpreting the NVRA's requirements feeds this conspiracy.

IV. CONCLUSION

Passing the NVRA was a victory, but the reforms that followed differed from those the bill's advocates originally imagined.¹⁵⁸ Fraud in voter registration roll maintenance is not a problem that requires a solution.¹⁵⁹ When interpreting the statutory requirement for list maintenance in the Act, we should emphasize the original goal of the statute, not the concessions made to secure its passage.¹⁶⁰ The language of the Act plainly only requires reasonable efforts, and anything beyond this reasonable standard should be seen as a threat to the accuracy of the rolls because of the well-known threat voter purges pose to eligible voters. PILF's cases are a nuisance, and they undermine the intent of the NVRA.¹⁶¹ As Justice Sotomayor correctly stated in *Husted*: “[c]ommunities that are disproportionately affected by unnecessarily harsh registration laws should not tolerate efforts to marginalize their influence in the political process, nor should allies who recognize blatant unfairness stand idly by.”¹⁶²

157. Timm, *supra* note 155.

158. Groarke, *supra* note 39, at 591.

159. *See supra* Part III.

160. *See supra* Part III.

161. *See supra* Section III.A

162. *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1865 (2018) (Sotomayor, J., dissenting).