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Testimony of SEC Executive Director Marci Andino before the House Election Laws Subcommittee

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I appreciate the opportunity to speak with you today. The mission of the State Election Commission is to ensure every eligible South Carolina citizen has the opportunity to register to vote, participate in fair and impartial elections, and have the assurance that their votes will count.

I want to emphasize upfront the State Election Commission has been – and remains – studiously neutral before, during and after passage of the voter photo ID Act. Our only interest – our only objective – is to respect the rights of voters, to protect the integrity of the voting system and to uphold the laws of South Carolina and the United States that pertain to voting and elections. If the Act is pre-cleared by the Department of Justice, we are the agency charged with implementation. We are dedicated to having a successful implementation by making sure counties will be able to begin producing voter registration cards with photos as soon after approval as possible. We are also committed to making sure that voters are not disenfranchised because they do not have a photo ID.

For the last few weeks, there has been a great deal of discussion about South Carolina's photo ID law and some of the data used in consideration of this law.

There are three issues that I want to address with you today: the dead, data and due process.

The Dead

First, I want to address the issue of dead citizens who remain on the voter registration rolls and – most importantly – possible fraud with ballots cast in the name of deceased voters.

DMV analyzed several databases and identified approximately 37,000 voters believed to be deceased who remain on the voter registration list. Further analysis indicated that 953 ballots have been cast in the names of voters who were deceased. For the record, I have not been provided with the list of 953 voters.

We were first made aware of this claim on January 11th. As soon as the State Election Commission learned that evidence of voter fraud may exist, we joined others in calling for an immediate investigation by the SLED, to identify where and when these ballots were purportedly cast and to seek prosecution of any individual suspected of having committed voter fraud.

County registration and election officials expressed their concern over the allegations of voter fraud having been committed in their counties.

For example, Naomi DeFrenn, the Barnwell County election director, called our office to find out if any of the dead voters were from Barnwell County. We provided her with the names of the 4 voters identified as deceased on the list of 37,000. One of the voters had already been identified as deceased though records provided by the DHEC Bureau of Vital Statistics and previously removed from the active list of registered voters. Ms. DeFrenn conducted her own research and found another voter had died out of state in New York. That voter has since been removed. She personally contacted the other two voters who had been identified as deceased and found they are alive.

With the presidential primary looming on January 21, we felt compelled to see if any of the 37,000 voters identified as deceased had requested absentee ballots for the primary. We found 10 voters in 8 different counties who had, in fact, filled

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out an application for an absentee ballot. We immediately asked local election officials to provide us with copies of the voter registration and absentee applications signed by these voters. Fortunately, in every case, we were able to confirm that the signatures on these forms matched and that, again, these voters are alive.

Last Thursday, the Attorney General's office provided me with a partial list of the 953 deceased voters alleged to have cast ballots. They provided six (6) names. These six names were from Abbeville County. Granted this is a very small sample in a small county, but that makes it easy to investigate and confirm what took place. A review of the voter registration lists and signatures on the poll lists from the elections in question revealed that of these six:

- One was an absentee ballot completed and cast by a voter who then died before election day;
- Another was the result of an error by a poll worker who mistakenly marked the voter as Samuel Ferguson, Jr. when the voter was in fact Samuel Ferguson, III;
- Two were the result of stray marks on the voter registration list detected by the scanner and missed during error correction – again, a clerical error;
- The final two were the result of poll managers incorrectly marking the name of the voter in question instead of the voter listed either above or below on the voter registration list.

I have 25 years experience working with voter registration and election data and I can tell you that this is, unfortunately not uncommon. Our system is not perfect; however, we have made great improvements over the years. The incorrect marking of voter registration lists by poll managers is addressed in poll manager training and tools are provided to polling places to make this process easier and reduce the instances of marking the wrong voter. The State Election Commission has also developed an electronic voter registration list that allows poll managers to use laptop computers to locate voters and indicate participation in an election.

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This program is not used in all counties, but in the counties and precincts using the system, efficiency and accuracy is greatly improved. On election day, polling places are managed by approximately 20,000 poll workers who are basically election volunteers. Many are senior citizens and work 14-16 hours on election day and receive \$60 in compensation. My counterparts in other states share similar stories – South Carolina is not unique in this respect. Another step we have taken to improve the accuracy of voter registration data is to request DMV provide us with information on SC drivers who obtain a driver’s license in other states. This information could be useful in identifying voters who have moved and are no longer residents of our State.

I’m not trying to minimize the seriousness of allegation of voter fraud. If even one fraudulent vote has been cast, that is one too many, and we hope that the Attorney General or SLED will investigate any instances of voter fraud and prosecute the offenders to the fullest extent allowed by law. We stand ready to assist in those efforts.

At the same time, characterizing this as an established fact threatens the confidence our citizens have in our election process.

Fortunately, the records are clear and readily available, so this is not a question that needs to linger in the minds of voters concerned about the integrity of our elections. The truth is out there, and, like you, we want to get to the bottom of this.

The Data

Voter registration in South Carolina is permanent. This means we have voters on our system that registered to vote in 1967 when the statewide voter registration system was developed. Many of these voters have never come face to face with county election officials since they registered. In addition, when many of these voters first registered, they did not have social security numbers.

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The voter photo ID Act, as passed by the General Assembly and signed by the Governor, directs the State Election Commission "...to create a list containing ALL registered voters of South Carolina who are otherwise qualified to vote but do not have a South Carolina driver's license or other form of identification containing a photograph issued by DMV as of December 1, 2011." This Act does not authorize removal of a voter's name from the list.

In September of last year, at the request of the Attorney General's Office and the Department of Justice, we asked the Division of State Information Technology to perform a preliminary comparison of the DMV and voter registration data. The preliminary comparison identified 238,333 active and inactive voters who potentially did not have a DMV issued photo ID. We met with the DMV in October. DMV staff offered to conduct further analysis using data from the Social Security Administration. In this analysis, DMV identified the following:

- Approximately 37,000 registered voters believed to be deceased.
- Approximately 58,000 voters as having "past DL/ID expiration; forgot to renew; moved and did not surrender DL/ID to new state; incarcerated."
- Approximately 96,000 more voters were identified by DMV as having "moved out of state and license returned; DL/ID returned due to suspension; DL/ID voluntarily surrendered."

Based on this analysis, DMV claims there are no more than 30,000 voters who lack DMV issued credentials.

Then, in December, we compiled the required comparison. This comparison lists 202,484 voters who potentially do not have a DMV issued credential. Voters who have expired, suspended or surrendered DMV credentials were flagged on the list; however, pursuant to the Act we were unable to remove these voters. This brings me to due process.

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Due Process

The South Carolina Constitution guarantees a citizen's fundamental right to vote. Once a citizen has registered to vote, this right cannot be taken away except for as provided by law.

There are very specific state and federal laws that prescribe when, why and how a voter can be removed from the statewide voter registration list.

Pursuant to the National Voter Registration Act (NVRA) of 1993, South Carolina designated the executive director of the State Election Commission as the chief state election official to be responsible for overseeing all state obligations under the NVRA. The NVRA allows a voter's name to be removed from the list at the voter's request, because of criminal conviction, mental incapacity, or death. The NVRA allows the name of a voter to be removed if they have moved, but only if the voter confirms he or she has moved out of the jurisdiction or fails to respond to a confirmation mailing. Confirmation mailings must be concluded 90 days prior to a federal election. This precludes us from doing a confirmation mailing until 2013.

Removing a voter who the DMV says MAY have forgotten to renew his or her license, who MAY have moved out of the state or who MAY be dead simply does not meet the requirements of the voter photo ID act or other state and federal laws.

Conclusion

Just as one instance of voter fraud is one too many, a single voter denied his or her right to vote because of a clerical error or the vagaries of data analysis is one too many as well.

Again, thank you for the opportunity to speak with you today. I hope that I have answered some of your questions about the election commission's efforts to carry out state and federal law pertaining to voter registration, voting and elections. It is very important for all of us to get this right.