

February 21, 2019

Dear Democratic Members of the Texas Senate,

We, the undersigned Texas organizations, call on you to affirmatively block the confirmation of David Whitley for Texas Secretary of State. In the two months since Governor Greg Abbott appointed Mr. Whitley to serve on December 17, 2018, it has become exceedingly clear that Mr. Whitley is unfit to serve in that office. In that short time, Mr. Whitley has targeted naturalized citizens for disenfranchisement and falsely accused them of committing voter fraud. This act, which Mr. Whitley admits was done without taking meaningful steps to ensure the accuracy of his accusations, is the latest episode in an ugly history of voter intimidation against racial and ethnic minorities in Texas. Mr. Whitley's actions demonstrate a level of incompetence that we cannot accept in a position tasked to protect and advance our most fundamental rights of civic participation. Each of you has affirmed your personal commitment to protecting voting rights and reject discrimination; now, you have a duty to vote against Mr. Whitley's confirmation.

A little over a month after Mr. Whitley was appointed, he issued an advisory and press release on January 25, 2019 that falsely insinuated that 95,000 non-citizen Texans were unlawfully on the voter rolls and that 58,000 non-citizen Texans had, in fact, voted. In that press release, Mr. Whitley disclosed that he shared that list of Texas residents with the Attorney General for a criminal investigation and possible prosecution, and advised Texas counties to take steps towards purging these persons from the voter rolls. Soon after, President Donald J. Trump and Texas Attorney General Ken Paxton tweeted about the list, claiming it proved there is "rampant" voter fraud in our country.

Immediately, county officials, the press, and voting rights experts identified significant flaws in Mr. Whitley's methodology, meaning that a significant number of naturalized citizens were targeted. Subsequently, Mr. Whitley has acknowledged that he knew *prior* to referring the list for criminal investigation that there were mistakes in the list.¹ In short, Mr. Whitley knew or had reason to know that a substantial number of these 58,000 Texas residents had *not* voted unlawfully, and still he sent the entire list to the Attorney General for criminal investigation and potential prosecution. As a result of these derelictions of duty, Mr. Whitley is now a named defendant in at least three separate lawsuits that allege his conduct was unlawful under various provisions of the U.S. Constitution and federal voting rights laws.²

¹ Alexa Ura, *Texas Secretary of State David Whitley Defends Releasing Flawed Data About Voter Citizenship Review*, TEXAS TRIBUNE (Feb. 7, 2019), <https://www.texastribune.org/2019/02/07/texas-secretary-state-confirmation-hearing/>.

² Alexa Ura, *Another Group of Civil Rights Organizations Sues Texas Over Voter Citizenship Review*, TEXAS TRIBUNE (Feb. 4, 2019), <https://www.texastribune.org/2019/02/04/civil-rights-groups-sue-texas-over-voter-citizenship-review/>

Numerous sources have confirmed the longstanding, ugly history of voter suppression in Texas. As one landmark federal court case observed, “There has been a clear and disturbing pattern of discrimination in the name of combating voter fraud in Texas...This history of discrimination has permeated all aspects of life in Texas,” resulting in “disparities in education, employment, housing, and transportation,” among others.³ It is against this backdrop that Mr. Whitley, the highest ranking election official in the state, created a process that would inherently target naturalized U.S. citizens in particular, and knowingly and falsely accused them of voting unlawfully. This conduct is, on its own, disqualifying.

In addition, however, Mr. Whitley demonstrated an embarrassing lack of knowledge about the process he initiated. For instance, during a hearing before the Senate Nominations Committee on February 7, Mr. Whitley repeatedly failed to answer questions about the data available to the Office of the Secretary of State prior to the transmittal of the list. At one point during the hearing, the sitting Secretary of State testified that the definition of voter suppression was “irrelevant.”⁴ He later sent a secret letter to lawmakers, leaked to the *Texas Tribune*, admitting that “more time” and “additional communication” should have been taken to eliminate eligible voters from the list.⁵ This is too little, too late.

Under no circumstances should Mr. Whitley be allowed to continue to serve as the Texas Secretary of State. The Senate Democratic caucus – and each of you individually– have the power to unite in defense of the voting rights of all Texans and stop his confirmation. The tens of thousands of staff, members, volunteers, and other Texans affiliated with the undersigned organizations are counting on you. **We call on you to affirmatively block the confirmation of David Whitley for Texas Secretary of State, and to block the confirmation of any future nominee for that position who declines to withdraw the advisory sent to counties throughout the State.**

Sincerely,

America's Voice

American Gateways

Asian American Legal Defense and Education Fund

³ *Veasey v. Perry*, 71 F.Supp.3d 627, 637 (Doc. 628, at 8 (S.D. Tex. 2014).

⁴ Ura, *supra* note 1.

⁵ Alexa Ura, *Texas Secretary of State Apologizes For How He Rolled Out Voter Citizenship Review. But He Still Supports the Effort.*, TEXAS TRIBUNE (Feb. 14, 2019), <https://www.texastribune.org/2019/02/14/david-whitley-delivered-texas-lawmakers-apology-for-citizenship-review/>).

Battleground Texas Engagement Fund

Clean Elections Texas

Common Cause Texas

Common Ground for Texans

Deeds Not Words

Emgage-TX

Fuerza del Valle

Grassroots Leadership

HOPE Border Institute

Indivisible Austin

Indivisible TX Lege

Jolt & Jolt Initiative

Korean American Voters League

League of United Latin American Citizens

League of Women Voters of Texas

Lubbock, Tx. NAACP Charter #6198

MOVE Texas

Planned Parenthood Texas Votes

Progress Texas

Public Citizen

RAICES

Texas AFL-CIO

Texas Civil Rights Project

Texas College Democrats

Texas Democratic Party

Texas Freedom Network

Texas NAACP

Texas Organizing Project

Texas Young Democrats

United We Dream Texas

University Democrats

Workers Defense Action Fund