

TESTIMONY BY CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS, ASIAN AMERICANS ADVANCING JUSTICE - CHICAGO, CHICAGO VOTES, COMMON CAUSE ILLINOIS, AND ILLINOIS COALITION FOR IMMIGRANT & REFUGEE RIGHTS BEFORE THE ILLINOIS HOUSE ELECTIONS & CAMPAIGN FINANCE COMMITTEE IN SUPPORT OF SENATE BILL 2273

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Thank you for the opportunity to submit testimony today on behalf of five non-profit, non-partisan organizations working to strengthen democracy in Illinois. Chicago Lawyers' Committee for Civil Rights (Chicago Lawyers' Committee) is a non-profit, non-partisan organization of civil rights lawyers and advocates working to secure racial equity and economic opportunity for all. The Voting Rights Project of Chicago Lawyers' Committee was established to eliminate, reduce, and prevent barriers to voting for communities of color and low-income residents in Illinois. Asian Americans Advancing Justice-Chicago's mission is to build power through collective advocacy and organizing to achieve racial equity. Chicago Votes is a non-partisan, non-profit organization building a more inclusive democracy by putting power in the hands of young Chicagoans, engaging and developing a new generation of leaders by opening the doors of government and politics to young people from all corners of the city. Common Cause Illinois is a non-partisan democracy organization that is dedicated to fair elections and making government at all levels more representative, open and responsive to the interests of ordinary people. The Illinois Coalition for Immigrant and Refugee Rights is a statewide coalition of immigrant serving organizations that is dedicated to promoting the rights of immigrants and refugees to full and equal participation in the civic, cultural, social, and political life of our diverse society. Our organizations jointly present this testimony in support of Senate Bill 2273.

While voter list maintenance is important to our democracy, it is just as important for voter rolls to be maintained fairly and legally. We appreciate and respect the bipartisan Illinois State Board of Elections (State Board) and its critical work to protect voter access and the security and integrity of voter information and elections systems in the State of Illinois. We share these goals with the State Board, and we believe that participation in the Interstate Crosscheck Program (Crosscheck) compromises these aims. After careful consideration of the risks and benefits of Crosscheck, and the ready availability of a safer data tool to maintain accurate voter rolls, we submit this testimony in support of Illinois Senate Bill 2273 (SB 2273). The Electronic Registration Information Center (ERIC) operates a voter list comparison tool that provides a safe mechanism for maintaining accurate voter rolls, and it should provide the exclusive interstate voter registration program for the State Board and other election authorities in Illinois. Although an optimal bill would prohibit any use of Crosscheck and contain additional safeguards for

voters, SB 2273 is a constructive step toward securing the information of Illinois voters and protecting voting rights in Illinois and across the country.

Illinois became a dues-paying member of the Electronic Registration Information Center (ERIC) in 2016. ERIC is an independent, nonprofit, and nonpartisan organization that is owned, managed, and controlled by its participating member states. ERIC operates a safe data tool for the maintenance of accurate voter rolls and voter privacy, and it has been adopted by 23 states and the District of Columbia. The requirement for the exclusive use of ERIC will provide the State of Illinois with a secure tool for the maintenance of accurate voter rolls and, subject to the exceptions provided for in SB 2273, will have the added benefit of discouraging the State Board's use of Crosscheck. Unlike the ERIC data tool, Crosscheck undermines the security and integrity of voting systems and may unfairly exclude voters and impede voter participation, as described below.

Inaccurate Crosscheck “Matches”

Crosscheck is a “free”¹ voter list comparison program funded by the state of Kansas and managed and controlled by Kansas Secretary of State Kris Kobach. The stated purpose of Crosscheck is to identify voters who are registered in multiple jurisdictions. The Crosscheck protocol compiles voter lists identified through name “matches” which purport to indicate fraudulent voting, and provides reports to member states.² While maintaining accurate voter rolls is necessary and doing so with a “free” service is appealing, participation in Crosscheck imposes alarming risks and hidden costs. Crosscheck has been widely criticized for providing misleading data, and numerous participating states have in turn misinterpreted or misused reports to unlawfully purge voters and abridge voting rights. These unlawful purges disproportionately affect low-income voters and voters of color, because they make up an unduly large proportion of the voters being removed from the rolls in certain communities nationwide. Crosscheck also creates acute risks for Illinois in particular: participation in the program requires election authorities to insecurely transfer and store sensitive Illinois voter data at a time when such data is vulnerable to increasingly advanced and widespread hacking. In addition, Crosscheck provides negligible benefits because the program addresses grossly exaggerated threats to voting integrity. No evidence exists to support the myth of widespread fraudulent voting.

Crosscheck uses an inaccurate name comparison protocol that endangers the election process in Illinois and elsewhere. Crosscheck employs two-dimensional criteria for identifying similar and matched names that lead to rampant inaccuracies³ and that are not suited for widespread use in

¹ Crosscheck purports to be free, but the attendant costs are hidden and difficult to quantify; participating states must dedicate considerable time and personnel to sift through results and gather data. *See* Interstate Voter Registration Data Crosscheck 2014 Participation Guide, Dec. 2013, https://wei.sos.wa.gov/agency/osos/en/press_and_research/weekly/Documents/Participation%20Guide%20with%20Comments.pdf. Additionally, prosecuting often mistaken instances of fraudulent voting and remedying Crosscheck errors is another cost. *See e.g.*, Cynthia Sewell, *Ada County Mistakenly Revokes 765 Voter Registrations*, IDAHO STATESMAN, Aug. 29, 2001, <http://www.idahostatesman.com/2014/08/29/3346833/adamistakenly-revokes-765-voter.html>; Jim Nolan, *Chesterfield Registrar Delays Purge of Voter Rolls*, Richmond Times-Dispatch, Oct. 9, 2013.

² *See* Memorandum from the National Conference of State Legislatures, *Voter List Accuracy*, Jul. 16, 2016 (on file at <http://www.ncsl.org/research/elections-and-campaigns/voter-list-accuracy.aspx>).

³ Potential matches are determined by flat similarities between the first and last name and date of birth of over 45 million voters. Despite the fact that Crosscheck requires states to provide more individualizing voter information, (e.g. social security numbers), these metrics are not used to determine potential matches. *See* Stephen Pettigrew and Mayya Komisarchik, *Pence's*

comparing voter lists (*i.e.* not suited to the analysis of lists on which similar, or the same, names identify many different people). Such overly-broad metrics produce false positives that do not reflect actual instances of duplicative voter registration and voting.⁴ The resulting overly-broad purges based on false Crosscheck matches have harmed voters in a wide range of communities and states, including Virginia, Idaho, and Indiana.⁵ Our neighbors in Indiana face the imminent danger of being disenfranchised due to Crosscheck. In 2017, Indiana enacted a law that allows election officials to remove voters from the state's voter rolls if they appear on a list of people matched as registered in another state – and further specifies that election officials are not required to confirm the match or notify the voter of removal.⁶ Lawsuits filed by American Civil Liberties Union of Indiana, Common Cause Indiana, Indiana State Conference of NAACP, and League of Women Voters of Indiana allege that the amended law violates the National Voter Registration Act (NVRA) and causes voters to be erroneously removed from the rolls, disenfranchising voters of color in particular.⁷ As a result, our own state's continued participation in Crosscheck inevitably affects voters in neighboring states using Crosscheck, such as Indiana, whose laws then allow legitimate voters to be incorrectly purged from their rolls.

Crosscheck harms voters of all backgrounds and political parties, but it has a particular adverse effect on voters of color. For example, the Crosscheck protocol does not control for increased name commonality within ethnic sections of the electorate⁸, even though communities of color are overrepresented in 85 of 100 of the most common last names.⁹ A database expert who reviewed Crosscheck matches from certain states found that the system flagged one in six Latinos, one in seven Asian Americans, and one in nine African Americans as potential double registrants in the states examined. This leads to an inherent bias, and voters of color are more likely to be mistakenly purged from the voter rolls.¹⁰

Voter Fraud Commission will Almost Certainly 'Find' Thousands of Duplicate Registrations That Aren't Duplicates. Here's Why, THE WASHINGTON POST, Jul. 27, 2017, https://www.washingtonpost.com/news/monkey-cage/wp/2017/07/27/pences-voter-fraud-commission-will-almost-certainly-find-thousands-of-duplicate-registrations-that-arent-duplicates-heres-why/?utm_term=.b49df92300cb; Sharad Goel et al., *One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections*, Jan. 13, 2017, at 15, <https://scholar.harvard.edu/morse/publications/one-person-one-vote-estimating-prevalence-double-voting-us-presidential-elections> (2017 Duplicative Voting Study).

⁴ See Sharad Goel et al., *Chasing Electoral Ghosts*, SLATE, Nov. 7, 2016, http://www.slate.com/articles/news_and_politics/jurisprudence/2016/11/we_looked_at_130_million_ballots_from_the_2012_election_and_found_zero_fraud.html; 2017 Duplicative Voting Study at 5.

⁵ See Brennan Center, Press Release, *Recently-Passed Law Could Illegally Boot Voters From Registration Rolls in Indiana*, May 25, 2017, <https://www.brennancenter.org/press-release/recently-passed-law-could-illegally-boot-voters-registration-rolls-indiana>; Stephen J. Beard, *Indiana's New Voter Purge Law Discriminates, Lawsuit Says*, INDY STAR, Aug. 25, 2017, <https://www.indystar.com/story/news/2017/08/23/lawsuit-says-new-law-purge-indiana-voters-d-challengeindiana-tops-nation-voter-purge-naacp-wants-sto/594271001>; Cynthia Sewell, *Ada County Mistakenly Revokes 765 Voter Registrations*, IDAHO STATESMAN, Aug. 29, 2001, <http://www.idahostatesman.com/2014/08/29/3346833/adamistakenly-revokes-765-voter.html>; Jim Nolan, *Chesterfield Registrar Delays Purge of Voter Rolls*, RICHMOND TIMES-DISPATCH, Oct. 9, 2013.

⁶ Ind. Public Law 74:2017 (“SEA 442”), effective July 1, 2017 and amending Indiana Code § 3-7-38.2-5.

⁷ *Common Cause Indiana v. Lawson*, No. 17-cv-03936 (S.D. Ind. Oct. 27, 2017); *Indiana State Conference of NAACP & League of Women Voters of Indiana v. Lawson*, No. 17-02897 (S.D. Ind. Aug. 23, 2017). Indiana Secretary of State Connie Lawson and other Indiana officials have touted other tools and procedures that can allegedly be used to verify Crosscheck matches, but this does not change the fact that Indiana Senate Enacted Act 442 still governs Indiana election officials and does not mention or require such verification.

⁸ United States Census Bureau, *Frequently Occurring Surnames from the 2010 Census*; https://www.census.gov/topics/population/genealogy/data/2010_surnames.html.

⁹ Greg Palast, *The GOP's Stealth War Against Voters*, ROLLING STONE, Aug 24, 2016, <http://www.rollingstone.com/politics/features/the-gops-stealth-war-against-votersw435890>.

¹⁰ See Christopher Ingraham, *This Anti-Voter-Fraud Program Gets it Wrong Over 99 Percent of the Time. The GOP Wants to Take it Nationwide*, THE WASHINGTON POST, Jul. 20, 2017, https://www.washingtonpost.com/news/wonk/wp/2017/07/20/this-anti-voter-fraud-program-gets-it-wrong-over-99-of-the-time-the-gop-wants-to-take-it-nationwide/?utm_term=.ace99bcfb2e4.

Crosscheck Security Risks

In addition to being a source of inaccurate and misleading records that impair voting rights and damage the voting process, Crosscheck endangers the privacy of Illinois voters through its insecure handling of sensitive voter information. The program facilitates the transfer of various states' voter information through a file transfer protocol (FTP) into a centralized server for purposes of comparison, and then makes this information available for downloading by program participants.¹¹ Information technology experts have recognized FTP servers as insecure, and their use increases the likelihood and magnitude of potential data breaches.¹² By centralizing more than 45 million voters' sensitive data through an FTP protocol, Crosscheck creates a large, attractive target of valuable private information. In fact, several sets of login credentials have been compromised and could be used by whoever has the information to access the cache of voter information centralized for Crosscheck, among other security flaws of the system.¹³ Illinois election officials are aware of the particular threat to voter privacy here in Illinois, given reported cyberattacks and other security deficiencies that have compromised information about massive numbers of Illinois voters in 2016 and 2017.

The efforts of Illinois election officials to protect Illinois voter privacy will be enhanced by the state's exclusive participation in ERIC, which offers a more secure system than Crosscheck for the gathering and management of voter data.¹⁴ ERIC also provides better oversight than Crosscheck to Illinois taxpayers. Unlike more transparent voter comparison programs such as ERIC,¹⁵ Crosscheck provides no centralized information to its members through a website or portal, other than the FTP site that facilitates the annual insecure transfer of sensitive voter information. As a recipient of a "free" service, Illinois (along with other participant states) has little leverage to demand information on Crosscheck's funding, to mitigate risks and costs, or to insist on simple safeguards to protect voter information.

Data on Voter Fraud

¹¹ See Brad Bryant, State Election Dir., Kansas Sec'y of State's Office, Presentation to the National Association of State Election Directors: *Interstate Voter Registration Crosscheck Program*, Jan. 26, 2013, http://www.nased.org/NA SED_Winter_2013_PP_Presentations/KANSAS.pdf.

¹² See Pierluigi Paganini, *Forget FTP: 4 Modern Protocols You Should Use Instead*, CYBER DEFENSE MAGAZINE, Jul. 26, 2017, <http://www.cyberdefensemagazine.com/forget-ftp-4-modern-protocols-you-should-use-instead/>; see also FBI, Cyber Division, *Cyber Criminals Targeting FTP Servers to Compromise Protected Health Information*, Mar. 22, 2017, <https://info.publicintelligence.net/FBI-PHI-FTP.pdf>; United States Postal Service, Industry Alert, *Discontinued Support for File Transfer Protocol Effective August 31, 2017*, Jun. 16, 2017, <https://postalpro.usps.com/node/3964>.

¹³ See Jessica Huseman & Derek Willis, *The Voter Fraud Commission Wants Your Data – But Experts Say They Can't Keep it Safe*, PROPUBLICA, Oct. 23, 2017, <https://www.propublica.org/article/crosscheck-the-voter-fraud-commission-wants-your-data-keep-it-safe>; Dell Cameron, *Even a Novice Hacker Could Breach the Network Hosting Kris Kobach's Bogus Voter Fraud Program*, GIZMODO, Nov. 9, 2017, <https://gizmodo.com/even-a-novice-hacker-could-breach-the-network-hosting-k-1820263699>.

¹⁴ The risk is needless because Illinois can use easily use a safer system: data is transferred under ERIC via the state of the art IBM InfoSphere™ Sensemaking software specially and securely designed for by IBM for the program with support from the Pew Charitable Trusts. Electronic Registration Information Center, *ERIC: Technology and Security Overview*, Mar. 3, 2015, http://ericstates.org/images/documents/ERIC_Tech_and_Security_Brief_v2.1.pdf.

¹⁵ ERIC provides a wealth of information on a website devoted to informing the public and member states: www.ericstates.org/ and Pew Charitable Trusts, which the nonprofit entity that initiated ERIC provides further resources at <http://www.pewtrusts.org/en/projects/election-initiatives/about/upgrading-voter-registration/eric>.

In exchange for its substantial risks to voting integrity and voter privacy, and its lack of transparency, Crosscheck provides negligible benefits because it addresses a non-existent problem; there is no compelling evidence for the existence of widespread voter fraud. The allegedly rampant threats to election integrity that the Crosscheck protocol purports to safeguard against are unsubstantiated by available data. Empirical evidence suggests that fraudulent voting is a non-issue, statistically speaking. Crosscheck therefore responds to a virtually non-existent risk, while creating a larger problem by denying legitimate voters their right to vote.¹⁶ Of particular note is the fact that Crosscheck sponsor Kris Kobach, despite considerable investments in investigation and prosecution, has secured only nine voter fraud convictions, the majority of which were of older voters who misunderstood their rights.¹⁷ Moreover, Illinois election officials recognize that widespread voter fraud is not a problem: when asked about reports of fraudulent voting, Jim Tenuto speaking on behalf of the State Board reported “[n]othing at all, really.”¹⁸ The bipartisan State Board’s 2017 letter to the Presidential Advisory Commission on Election Integrity importantly states the following about vote fraud and voter registration fraud: “The suspected instances we found equate to a fraud level of a couple thousandths of a single percent of the votes cast in the state.”

Costs of Crosscheck and Trend of States Withdrawing

It is evident that fraudulent voting is not the epidemic that proponents of Crosscheck and other actors insist.¹⁹ And yet, this fearmongering, which sows mistrust in our election process, is having dreaded and identifiable success.²⁰ Public perception of the incidence of voter fraud undermines the election process and is, and will increasingly continue to be, used to justify unnecessary restrictions on ballot box access to serve political gains. Some even argue that falsely-induced hysteria and mistrust of our election process is precisely the aim of foreign actors actively engaged in divisive misinformation warfare.²¹ Continued participation in Crosscheck is not justified, given that its risks are very real and looming, while the problem it purports to solve is not.

While the Crosscheck program is outdated and unwieldy, ERIC has emerged as a more accurate voter registration maintenance tool that is readily available in Illinois. In addition, ERIC serves a

¹⁶ See 2017 Duplicative Voting Study at 1 and 5 (statistical analysis using two million actual cases of common first name, last name, and date of birth in a national voter file found that duplicate votes accounted for just 0.02% of the votes cast in the 2012 presidential election and that Crosscheck guidelines would wrongfully eliminate 200 legitimate registrations for every one registration used to cast a double vote).

¹⁷ See Editorial, *The Voter Fraud Commission Relies on Some Really Dodgy Studies*, THE ECONOMIST, Jul. 20, 2017,

<https://www.economist.com/news/united-states/21725348-one-them-cited-mr-kobach-based-sample-37-respondents-voter-fraud>.

¹⁸ See Michael Wines, *All This Talk of Voter Fraud? Across U.S., Officials Found Next to None*, THE NEW YORK TIMES, Dec. 18, 2016, <https://www.nytimes.com/2016/12/18/us/voter-fraud.html>.

¹⁹ See Michael Wines, *All This Talk of Voter Fraud? Across U.S., Officials Found Next to None*, THE NEW YORK TIMES, Dec. 18, 2016, <https://www.nytimes.com/2016/12/18/us/voter-fraud.html>; Damien Sharkov, *How Russian Bots Rallied on Election Day to Smear Hillary Clinton and Put Donald Trump in the White House*, Newsweek, Nov. 8, 2017, <http://www.newsweek.com/when-donald-trump-got-elected-here-what-russian-trolls-were-doing-704921> (identifying four fake reports of mass election fraud and voting irregularities that were reposted at breakneck pace on presidential election day 2016).

²⁰ Sharad Goel et al., *One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections*, Oct. 24, 2017 at, <https://Sharad.com/papers/1p1v.pdf> (Updated 2017 Duplicative Voting Study) (reporting that between 20% and 35% of the American public erroneously believes that voter fraud is very common or occurs occasionally).

²¹ John Stoehr, *Distrust Will Break Democracy*, U.S. NEWS & WORLD REPORT, Sept. 27, 2017, <https://www.usnews.com/opinion/thomas-jefferson-street/articles/2017-09-27/how-trump-and-russia-are-corroding-trust-in-our-elections>.

positive internal purpose by identifying unregistered voters who can then be educated on the most efficient way for them to register to vote. ERIC has even been credited with increases in voter registration.²²

Crosscheck is only as strong as its participants, and its use is in decline. Just as Illinois led its neighbors to Crosscheck when it was the only viable tool, Illinois can again display leadership to signal that Crosscheck participation is not in the best interests of the states and the election process through the General Assembly's adoption of SB 2273. To be sure, the tide is turning; multiple states have recently left Crosscheck, with some citing the program's unreliability, inaccuracy, and propensity for errors, including our neighboring state of Kentucky.²³ Moreover, ERIC participation is on the rise in the Midwest; Missouri, Ohio, and Wisconsin have recently joined the program.²⁴ The usefulness of Crosscheck is limited by the number of states that participate, and many states use the program because their neighboring states do. If Illinois decided that ERIC would provide the exclusive interstate voter registration program for the state, subject to narrow exceptions, this could provide useful encouragement to other states to end their own use of Crosscheck, with beneficial results in the Midwest and across the country.

Mitigating Crosscheck's Harm in Illinois

If the General Assembly adopts SB 2273, including the exception allowing exclusive voter data sharing agreements with bordering states that do not participate in ERIC, then the State Board should implement safeguards to mitigate Crosscheck's potential impact. The State Board should demand that Crosscheck provide improved data gathering, transfer, and anonymity systems, and more transparent information on program security, funding, operations, and management. In addition, the State Board should develop safeguards, trainings, and best practices for all local election jurisdictions, including internal review protocols to avoid improper purges of potential matches identified by Crosscheck. SB 2273 will be a constructive step toward ensuring that Illinois election authorities will utilize ERIC to the fullest extent possible to maintain accurate voter lists as well as to find unregistered eligible voters.

Conclusion

We appreciate the efforts of the Illinois House Elections and Campaign Finance Committee to ensure that the State of Illinois stays up to date with new technological advances, anticipates trends and dangers, and upholds the integrity of our election system. We also value collaborating with Illinois State Board of Elections and other election authorities, and we appreciate that they have been gathering facts and formulating best practices regarding ERIC, Crosscheck, and other databases, so that we can all work towards having the most accurate voter

²² See *Electronic Registration Information Center (ERIC) Stage 1 Evaluation*, Dec. 10, 2013, https://www.rti.org/sites/default/files/resources/eric_stage1report_pewfinal_12-3-13.pdf.

²³ See, e.g., Dell Cameron, *Eighth State Quietly Quit Anti-Voter-Fraud Program Over Security Concerns and 'Unreliable' Results*, GIZMODO, Jan. 29, 2018, <https://gizmodo.com/eighth-state-quietly-quit-free-anti-voter-fraud-program-1822514538>; Peggy Lowe, *Kansans Caught in Crosscheck System Singled Out for Kobach's Voter Fraud Campaign*, KANSAS CITY PUBLIC RADIO, Feb. 7, 2017, <http://kcur.org/post/kansans-caught-crosscheck-system-singled-out-kobachs-voter-fraud-campaign>; Office of the Governor of Pennsylvania, *Pennsylvania Governor Wolf Statement on White House Election 'Integrity' Commission*, Press Release, Jul. 7, 2017, <https://www.governor.pa.gov/pennsylvania-governor-wolf-statement-on-white-house-election-integrity-commission>;

²⁴ Electronic Registration Information Center, *Frequently Asked Questions*, <http://www.ericstates.org/faq>.

rolls possible. SB 2273 will be another step in the progress of these efforts. Strong and timely implementation of automatic voter registration will also be an important way to improve fairness and accuracy of our voter registration systems across the state.

Illinois voter data is precious and powerful: it supports our democracy and can be misused to manipulate or shrink voter rolls in Illinois and other states. Breaches may be catastrophic not only to voting integrity, but also to the privacy and security of Illinois voters. ERIC promises to reduce these threats, while Crosscheck poses unacceptable risks and hidden costs to the voting rights of citizens in Illinois and nationwide, as well as the non-partisan election process that we all strive to foster and defend. Accordingly, we respectfully request that the General Assembly protect our collective interests by enacting SB 2273 and thereby promoting the exclusive reliance on the superior ERIC system. Thank you for your consideration.