What You Need To Know About
Interstate Crosscheck Voting Software

Prepared for Santa Cruz Indivisible by the Voter Suppression Group

In 2005, Kansas Secretary of State Kris Kobach — who, as chair of his state's Republican Party, championed an illegal voter suppression technique called "caging"[i]— launched a program called Interstate Crosscheck to compare voter registration data across states and ferret out evidence of double voting. The program expanded to 30 states, according to the National Conference of State Legislatures (NCSL), but it's been controversial from the start. For one thing, it has resulted in very few actual cases of fraud being referred for prosecution, as alleged cases of double voting in multiple states turned out to be clerical and other errors. One tally found that while the program has flagged 7.2 million possible double registrants, no more than four have actually been charged with deliberate double registration or double voting. Meanwhile, some states including Florida dropped out of the program due to doubts about the reliability of its data — though others, including the swing state of North Carolina, joined despite those issues. Source: Sep 2 2016, *The Voting News*

Now a new investigation from *Rolling Stone* raises fresh concerns about Interstate Crosscheck, finding that its methodology has a built-in racial bias that puts people with African-American, Latino and Asian names at greater risk of being wrongly accused of double voting. http://www.rollingstone.com/politics/features/the-gops-stealth-war-against-voters-w435890

The issues with Crosscheck that the *Rolling Stone* article by Palast uncovered include:

- The Crosscheck list disproportionately threatens solid Democratic constituencies: young, black, Hispanic and Asian-American voters – with some of the biggest

possible purges underway in Ohio and North Carolina, two crucial swing states with tight Senate races.
- When Palast was able to get the list of purged voters from the states (most refused), he found that one-fourth of the names lacked a middle name match.
- The software did not distinguish between "Sr." and Jr." after names, eliminating a lot of father-son voters.
- Common names were flagged by the software. So, for instance, "James Wilbur Brown" in Virginia would be flagged as the same voter as "James Strachey Brown" in Minnesota.
- The software apparently does not use Social Security numbers to double-check when names appear to be the same individual.
- Because minority groups often have lots of very common last names, the process is inherently biased toward communities of color. For example, Ngyuen, Garcia, Washington and Kim represent many hundreds of thousands of individuals.
- Voters tagged as problematic are sent a single post card, covered with small text, that the voter must complete and mail back. This is easily mistaken for junk mail, or lost, or not understood.

How Many States Use Crosscheck?

The Interstate Crosscheck System is a database used by 27 states to identify voters potentially registered to vote in more than one state. Oregon recently dropped it because the state realized the results were faulty. The states that currently (as of June 2017) use Crosscheck are:

Alaska	Missouri
Arkansas	Mississippi
Arizona	Nebraska
Colorado	Nevada
Georgia	North Carolina
Idaho	Ohio
Illinois	Oklahoma
Indiana	Pennsylvania
Iowa	South Carolina
Kansas	South Dakota
Kentucky	Tennessee
Louisiana	Virginia
Massachusetts	West Virginia
Michigan	

Source: Center for American Progress Action Fund
https://healthofstatedemocracies.org/factors/intercross.html

From Wikipedia: "Despite over seven million "potential double voters" being "flagged" by the Crosscheck program in 2014, less than four people were charged, and not a single flagging led to a conviction, casting doubt on the system's reliability.[7][4]"

It is probable that Crosscheck purged many thousands of voters off the roles in the 2016 election. Greg Palast's article in *Rolling Stone* says of Virginia alone: "… a stunning 41,637 names were 'canceled' from voter rolls, most of them just before Election Day." As these voters were by design predominantly young, black, Hispanic, or Asian, and therefore more likely to vote for Hillary Clinton, Trump was indeed correct; the election was rigged. In his favor.

What is ERIC?

The Electronic Registration Information Center (ERIC) is a multistate partnership that uses a sophisticated and secure data-matching tool to improve the accuracy and efficiency of state voter registration systems. Through participation in ERIC, states can compare official data on eligible voters—such as voter and motor vehicle registrations, U.S. Postal Service addresses, and Social Security death records—to keep voter rolls more complete and up to date. ERIC is owned, managed, and funded by participating states and was formed in 2012 with assistance from The Pew Charitable Trusts. Source: http://www.pewtrusts.org/en/projects/election-initiatives/about/upgrading-voter-registration/eric

A fact sheet on ERIC can be downloaded here: http://www.commoncause.org/states/massachusetts/issues/voting-and-elections/electronic-registration-information-center/ccma-eric-factsheet-final.pdf

We could find no data on ERIC's accuracy, but several states have dropped Crosscheck in favor of ERIC on the basis of ERiC's having more reliable data. The fact that it was developed by the Pew Foundation gives it more credibility than something backed by Kris Kobach.

We do not recommend endorsing ERIC at this time because although ERIC appears to be unbiased, voter-checking software addresses a non-problem in this country. We simply do not have enough voter fraud to require it, and endorsing any such software supports the conservative narrative about extensive voter fraud.

Trump's Election Integrity Commission

Kris Kobach was appointed to Trump's recently-created Election Integrity Commission, formed allegedly to address the problem of voter fraud—something that is vanishingly rare in this country. The Commission has demanded of the states that they hand over all their voter rolls. Most (44 at last count) have refused, although some of these states did hand over some of their data.

The Brennan Center for Justice issued a report in 2017 that focused on how large the voter fraud problem is: "The report reviewed elections that had been meticulously studied for voter fraud, and found incident rates between 0.0003 percent and 0.0025 percent. Given this tiny incident rate for voter impersonation fraud, it is more likely … that an American "will be struck by lightning than that he will impersonate another voter at the polls."ii

So what is the purpose of the Election Integrity Commission? Many experts see it as a full-on voter suppression effort. This is backed by Trump's selection of commissioners:

- Kris Kobach: He's been sued by the ACLU four times (and lost) for disenfranchising Kansans with draconian laws that only make it harder for them to vote.
- Ken Blackwell: His office released the Social Security numbers of nearly six million voters in Ohio -- so we shouldn't have much trust in him to protect private voting data they're asking states to hand over. Ken Blackwell currently is the Senior Fellow for Human Rights and Constitutional Governance at the Family Research Council. He is a national bestselling author of three books: *Rebuilding America: A Prescription For Creating Strong Families, Building The Wealth Of Working People, And Ending Welfare*; *The Blueprint: Obama's Plan to Subvert the Constitution and Build an Imperial Presidency*; and *Resurgent: How Constitutional Conservatism Can Save America*.
- Hans von Spakovsky: Spakovsky was stopped from serving on the Federal Election Commission for his career of pioneering voter suppression efforts. Slate.com describes him this way: "Von Spakovsky has done more than anyone else to bring unfounded fears about voter fraud into the mainstream of Republican discourse. A former member of the Federal Election Commission, Von Spakovsky served under Bush and Attorney General John Ashcroft as the de facto head of the voting section in the Justice Department's civil rights division. In that capacity, he distinguished himself as an exceptionally zealous believer in the idea that widespread voter fraud exists and must be dealt with urgently through aggressive purging of voter rolls and strict voter ID laws."iii
- J. Christian Adams: It's his mission to sue states and counties for not purging enough people from their voter rolls. He serves as President and General Counsel of the Public Interest Legal Foundation. His *New York Times* bestselling book is *Injustice: Exposing the Racial Agenda of the Obama Justice Department* (Regnery). Wikipedia says: "… formerly employed by the United States Department of Justice under the George W. Bush administration. After leaving his position in 2010, Adams accused the department of racial bias in its handling of a voter intimidation case against members of the New Black Panther Party.[3][4]

It should be noted that Kris Kobach's motivations aren't even hidden. He is best known as the author of Arizona's "Driving While Brown Law," which allowed cops to racially profile drivers, pull them over and ask for proof of their legal status. He co-wrote the

ultraconservative 2016 RNC party platform, working in a recommendation that Crosscheck be adopted by every state in the Union. He's also the Trump adviser who came up with a proposal to force Mexico into paying for Trump's wall. (Source: http://www.rollingstone.com/politics/features/the-gops-stealth-war-against-voters-w435890)

Now Kris Kobach is part of DT's Presidential Advisory Committee on Election Integrity, formed to ferret out the virtually non-existent voter fraud. Here's what the *Kansas City Star* has to say about Kris Kobach:

Last week, a federal judge <u>fined him $1,000</u> for making "patently misleading representations" about documents he took to a November meeting with Trump that relate to federal voting law as part of an ongoing voting rights case.

"The courts have repudiated his methods on multiple occasions but often after the damage has been done to voters," Merrill said. "Given Secretary Kobach's history we find it very difficult to have confidence in the work of this commission."

The commission is chaired by Vice President Mike Pence. Pence's spokesman, Marc Lotter, said that in the commission's first phone meeting Wednesday every member on the call supported the request for documents.

Vanita Gupta, the former head of the U.S. Department of Justice's office of Civil Rights, said that the timing of the letter coincides with a Justice Department request to states for information on voter registration processes. Gupta, who now leads the Leadership Conference on Civil and Human Rights, said the letters "seem to confirm that the Trump administration is laying the groundwork to suppress the right to vote."

Kobach called this criticism "complete nonsense."

Many suspect that the reason the Election Integrity Commission has demanded a list of all voters in every state is to run the names through Crosscheck to weed out "voter fraud," which we can confidently expect to consist of millions of liberals and people of color.

The Center for American Progress Fund recommends the states cease the use of Crosscheck, and recommends another system called ERIC. Source: Center for American Progress Action Fund https://healthofstatedemocracies.org/factors/intercross.html

The ACLU and Crosscheck

Because Crosscheck is a voter suppression tool, our first thought was to ask the American Civil Liberties Union if they were going to target Crosscheck. If the ACLU already was addressing Crosscheck, that would be reassuring. We contacted Faiz Shakir, who is the ACLU's Director of National Political Policy (title may be incorrect). Mr. Shakir

responded that ACLU was about to launch a huge, national effort against voter suppression—but that he had never heard of Crosscheck. We sent him links and other materials on the subject, so perhaps we can hope that ACLU will take on Crosscheck as one of their anti-voter suppression initiatives. We have asked Mr. Shakir to keep us posted on what ACLU is doing about Crosscheck.

What Can Indivisible Do?

The use of Crosscheck is a state-by-state decision. The program is coordinated through the office of the Secretary of State, which oversees elections. If you are living in a state that uses Crosscheck, the most effective thing you can do is to contact—or better, visit—your Secretary of State to ask that use of Crosscheck be discontinued on the basis of inherent bias and gross errors that infringe on voters' civil rights.

California does not use Crosscheck, so we should reach out to Indivisible groups in the 27 states that do use Crosscheck, providing factual information about why using Crosscheck is a civil rights violation. (This document is a start.) We should ask Indivisible members in these states to contact their Secretary of State with this information, asking them to drop its use.

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i **Caging (from Wikipedia):** "Voter caging typically refers to the practice of sending mail to addresses on the voter rolls, compiling a list of the mail that is returned undelivered, and using that list to purge or challenge voters' registrations and votes on the grounds that the voters on the roll do not legally reside at their registered addresses.[2]

Usually, a political party will send out non-forwardable, first-class mail to voters or particular voters they want to target (often assumed to be a demographic that belongs to the opposing party). It will compile a list of voters for whom mail has been returned as undeliverable. The list is called a caging list. In some cases, such mail can be returned at a rate of 1 in every 15 letters sent out, as shown in Ohio in 2008 when the Board of Elections had 600,000 letters of voter confirmation returned as undeliverable.[3] The party uses caging lists created by themselves or by the Board of Elections to challenge the registration status of voters and potentially purge them from the voting rolls under state laws that allow voters whose registrations are suspect to be challenged.
When voters turn out to vote, they may be challenged and required to cast a provisional ballot. If investigation of the provisional ballot demonstrates that the voter has just moved or there is an error in the address and the voter is legally registered, the vote should be counted as well as vice versa."

 Voter caging was declared illegal under the Voting rights Act of 1965, and it was also prohibited by the National Voter Registration Act of 1993. But it is still being practiced by Republicans in red states. The ACLU has challenged it, not always successfully.

ii https://www.brennancenter.org/analysis/debunking-voter-fraud-myth
iii http://slate.me/2usqIFk