

## The Breach 207: Fighting Trump's Efforts to Suppress the Vote

Lindsay B.: Welcome to The Breach, your deep dive into authoritarianism and corruption in the era of Trump. If you're enjoying the show, please take a moment to rate and review us on iTunes to help inform others about these critical issues. I'm your host, Lindsay Beyerstein. My guest today is Natasha Merle of the NAACP Legal Defense and Education Fund. In July, her organization became the seventh to file a lawsuit against the Trump administration on the grounds that Trump's new voting commission was formed with the intent to discriminate against voters of color, in violation of the Constitution.

In 2016, Donald Trump lost the popular vote. Unable to accept that more voters cast their ballots for Hillary Rodham Clinton of their own free will, Trump revived the old Republican canard of voter fraud to explain his poor showing at the polls. Republicans have long used allegations of voter fraud as a cover for voter suppression, specifically of people of color and poorer people, who are statistically more likely to vote for Democrats. In the wake of the Nazi terrorist attack in Charlottesville and the subsequent massive demonstration against hate in Boston, it's a good time to reflect on the ways in which white supremacy shapes our country's most basic institutions, including voting.

Natasha, welcome to the program.

Natasha Merle: Thanks for having me.

Lindsay B.: What is the evidence, if any, that voter fraud is a problem?

Natasha Merle: Actually, there is no evidence that voter fraud is a problem. Voter fraud, or allegations of voter fraud, have long been used as a pretext to support measures to further restrict voting, but there is no evidence that voter fraud appears on a wide-scale level as many individuals, including the President, have alleged.

Lindsay B.: In one of the legal documents on your website, I saw that over 20 million votes have been cast in Alabama since the turn of the century and, in that time, only one case of voter impersonation has showed up. That's a really striking statistic.

Natasha Merle: Yeah, it definitely is. I'm glad you brought that up, because in Alabama they passed the photo ID requirement, which now requires voters in Alabama to have a certain form of ID in order to vote, but we know from just this past election over 100,000 Alabamians did not have the required ID to vote. These were registered voters who were otherwise eligible to vote, but because they did not have the required ID, they were not allowed to vote. There's twice as many black and Latinos in Alabama who lack the required ID than white voters in Alabama.

Lindsay B.: Why are Republicans so obsessed with this?

Natasha Merle: I can't speak to exactly why Republicans may or may not be obsessed with this. I

mean I think what we do know is that voter fraud or allegations of voter fraud have long been used as a pretext to disenfranchise certain groups of Americans but, to this day, there has not been any widespread evidence of voter fraud and it's diffused ... Instead, these laws are passed, and they're used to restrict voters' access to the franchise.

Lindsay B.: Can you tell us a bit about the Kobach Commission?

Natasha Merle: Yeah. In May of 2017, May of this year, President Trump signed an executive order that put into place what he called the Presidential Election Integrity Commission. This commission is chaired by Vice President Pence and by Secretary of State of Kansas, Kris Kobach. This commission is put in place to investigate voter fraud, again, investigate this allegation, this unfounded, unsubstantiated claims of voter fraud. It's quite interesting or quite telling that President Trump has been claiming, without any factual support, that three to five million, he said "illegals," voted in this election and, but for that, he would have won the popular vote, and then after he becomes president, he puts together this commission to investigate this supposed voter fraud.

The commission is headed not only by Kobach and Pence, but other commission members who similarly agree with the President and similarly believe that voter fraud exists on a wide-scale level. A number of members, and the President himself, have stated that voter fraud happens ... or that "illegals" are voting illegally or are voting without being able to ... and that large-scale voter fraud has happened in urban areas, pointing to black and brown communities.

Lindsay B.: What is the Kobach Commission actually doing day to day in terms of its investigation? Do we know?

Natasha Merle: Well, right now what we know is they've had one meeting, and they have another meeting coming up in this fall. What we know so far is that Kobach has sent out a request for voter files from each state, for the voter data that each state keeps of its voters. We know that he's made that request. Some states are complying. Some states are saying that they're not going to comply. Some states are saying they are going to comply on a limited basis. We know that, with this data, what Kobach and the commission intends to do is to compare the state voter files to federal databases, including databases such as the Department of Homeland Security, to try to pinpoint people that they allege are not eligible voters.

However, Kobach has tried to ... has a similar program, the similar Crosscheck Program, and that program we know is full of errors and leads to a lot of false positives. Those false positives of people who they're going to allege are not eligible to vote, many times, are black and Latino voters. I think what they're trying to do, on a wider scale, is compare the state voter files to the federal databases to see if they could pinpoint people with their unreliable method to determine if they're no eligible voters.

Lindsay B.: What's your organization doing to counter the Kobach Commission?

Natasha Merle: We have, of course, like you mentioned, we have a lawsuit against the Kobach Commission. We filed a lawsuit against the Voter Fraud Commission last month. One of our claims is that of intentional discrimination. There's many lawsuits against the voter fraud commission. Our lawsuit is the only one that pretty much calls the commission what it is, and it is a tool to discriminate and to chill black and Latino voters and to deny them access to their ballot. We also allege that the President has exceeded his authority in creating such a commission, that he does not have the Constitutional or statutory authority to create such a commission to investigate "voter fraud." We also allege that the commission is not fairly balanced, as required, given the membership of the commission.

We're also doing public education. Already, we're seeing the chilling effect of the commission. A number of voters have expressed that they want to cancel their registration. A number of voters have already canceled their registration throughout the state. We've heard reports from Florida, to Colorado, to Georgia, to other states, to New York. Recently, voters wanted to know how they could cancel their registration once New York stated that they were going to hand over the information to the commission. Obviously, here at the Legal Defense Fund, we want everybody to remain registered, to register to vote, and to cast their ballots, as is their right, and so we have public education to encourage voters to do just that.

Lindsay B.: You mentioned that this exceeds Trump's powers. Can you explain what powers he's trying to invoke?

Natasha Merle: He's put together a commission, like I said, headed by Kobach and other members who already believe that voter fraud exists. He did not put together a commission that will simply advise him. He's put together a commission that's going to investigate. The President does not have the authority to put together a commission that will investigate voters for voter fraud, and so by doing this crosscheck, they're investigating voters to see if there's any ineligible voters who are attempting to vote or who appear on the voter rolls. That is exceeding the President's executive authority.

Furthermore, Congress has already spoken about this. Congress has already put into place a manner in which it can investigate voter fraud and to maintain the integrity of the election, and that is through the Election Assistance Commission, the U.S. Election Assistance Commission. That commission is a bipartisan commission and with oversight that has the authority to investigate voter fraud and to investigate the elections to ensure their integrity. By bypassing this bipartisan commission already put in place by Congress and that has the proper oversight, the President has exceeded his authority.

Lindsay B.: That's a really important point. I feel like that hasn't been stressed a lot in a lot of the coverage about this. Suppose the commission goes ahead and does its investigation and comes up with a report with this blacklist of supposed voter fraudsters, what happens next? Do they have any legal authority to do anything

with that list?

Natasha Merle: What we think is going to happen is that, yes, they're going to come up, maybe, with a list of individuals or allegations of people being on voter rolls who are ineligible to be on voter rolls. From there, the commission will make, we think is likely, recommendations for further restrictive voting laws. For example, they may further support photo ID laws on a wider level. They may support or they may recommend laws that require proof of citizenship in order to register to vote. Once they have their evidence or once they have what they think is evidence of voter fraud ... We think that it's likely that they will come to that since the commission is highly skewed with people who already believe in voter fraud. Once they have what they think is evidence of voter fraud, we think the next step for them would be to make recommendations that will further restrict access to the franchise.

Lindsay B.: In very broad strokes, what have the courts said about voter ID laws, specifically, in the past?

Natasha Merle: As I said earlier, in the Alabama case, the Alabama photo ID case, that is currently being litigated. However, there is the Texas photo ID case, in which the District Court said that that photo ID law was passed with the intent to discriminate. That law, the Texas photo ID law, was found to have intentionally discriminated against black and Latino voters in Texas.

Lindsay B.: Should we anticipate that photo ID cases are going to be coming back before the Supreme Court any time soon?

Natasha Merle: I think these laws are going to continue to be passed. Some states are going to continue to try to require these type of photo ID laws, and they're going to continue using this allegation of widespread voter fraud to pass these laws and to implement these laws. I think, at LDF, we are going to continue to combat those type of false allegations and to combat any laws that intentionally discriminate against black and Latino voters.

Lindsay B.: We can say that Trump did this out his humiliation about losing the popular vote, but the reality is that this is part of a long history of voter suppression, as you were saying, through allegations of voter fraud. How far does it go back? Is it something that stretches all the way back to, say, the Voting Rights Act, or is it more recent than that?

Natasha Merle: Throughout history, there has never been the idea of widespread voter fraud. That has never been proven. That has never been shown, but you're right that this goes even before Trump's loss of the popular vote. Literacy tests and poll taxes ... Some states use the reasoning of preventing voter fraud to pass literacy tests and poll taxes. Of course, we know those, the poll tax and the literacy tests, they work to disenfranchise black voters. Even back then, the idea was we're doing this to combat voter fraud. This does have a long history of needing to be combated and being used to disenfranchise people of color. LDF, the Legal Defense Fund, has been fighting this issue. We continue to fight it through the Alabama photo ID case,

through the Texas photo ID case.

Lindsay B.: In a way, having to go to the DMV during certain hours to get your photo ID is like a modern-day poll tax, right? I mean it costs you to get there. You might have to pay for your ID itself. Is that legally important?

Natasha Merle: That is important because that is a burden. That is putting a burden on voters. Like you said, many voters in Alabama do not have transportation, and they have to pay people to provide them transportation. That takes money. They may have to take time off of work to go to the DMV at certain hours, which is a loss of money. They have to pay for the photo ID, which is also money they may not have. This is an extreme burden on otherwise eligible voters, and this is a burden that weighs more heavily on black and Latino voters in Alabama than on white voters.

Lindsay B.: Can you talk a bit about the plaintiff in the lawsuit that you're working on now, the first one that you mentioned? I think her name's Miss Ambrosio. She seems like she has quite an interesting personal story.

Natasha Merle: Yes. Miss Ambrosio is currently a college student. She was a high school student when she first became a part of this litigation. Ambrosio did not have an ID. She had an expired passport. She had no other form of ID. She did not drive. She did not really know how to drive. I think maybe she had taken one class and then never drove again. She goes to school ... or when she first became a plaintiff, she was in high school, and she had extracurriculars after school. Her father would work from, sometimes, three, four o'clock in the morning to the late afternoon. Her mother would work from like around 3:00 p.m. to late at night, and so there was never a time when her parents could take her to the DMV to get an ID. Furthermore, she had afterschool extracurricular activities, as she should. Miss Ambrosio never had an opportunity or a way to get to the DMV in order to get an ID so that she could vote. She did want to vote, but because of the photo ID law, she was denied that opportunity to vote in March of 2016.

Lindsay B.: What are authorities doing as part of voter suppression at the DMV level to make it harder for people to access the IDs that they need?

Natasha Merle: I think one of the hardest things about getting the ID for individuals in Alabama is the transportation. Before, Alabama had actually closed a number of the DMVs in the Black Belt, which required people to travel even further to get an ID if they were trying to get an ID to vote. I think just having the limited hours or the hours that they have, which do not allow for everybody to have a opportunity to get the ID, and having to travel to the DMV to actually get the ID is quite inhibitive for some voters.

Lindsay B.: Beyond voter ID, what are some other voter-fraud-allegation-related techniques that governments are using to discourage people from voting?

Natasha Merle: I think, right now, since the Shelby County decision, I think the photo ID law is the one LDF, at least, that we are combating the most, like I said, through the Texas

photo ID case and through the Alabama photo ID case. I think those are the ones that we have our eye on the most, currently.

Lindsay B.: In terms of the balance of the Supreme Court, are there judges that you're particularly worried about in terms of their stance on voting rights?

Natasha Merle: I think all judges on the court, whether appointed by a Democrat or a Republican, should see the importance of every American having access to the franchise. We think that a lot of these cases that federal courts are finding intentional discrimination, we think those are the correct decisions, and those are the evidence decisions based on what state legislators are doing, based on what the state is doing. Whether the judges are appointed by Democrats or by Republicans, we think each judge should see the importance of ensuring that every American has access to the franchise.

Lindsay B.: Intentional discrimination's a really difficult standard to prove, especially if you don't have access to tapes of people expounding on their intentions. As a lawyer, how do you go about proving something elusive like deliberate intent to discriminate in a case like this?

Natasha Merle: Yeah. That's a good point. Sometimes you do have legislators, state legislators, saying on the record that they don't want "illegals" or "aborigines" voting. Sometimes you have those type of statements on the record. Sometimes you have emails, but a lot of the time, you don't, and a lot of times you are required to rely upon the circumstantial evidence. For example, in Alabama, in the legislature, we know that the black caucus in the Alabama legislature informed the other sponsors of the bill, of the photo ID bill, that this would impact their constituents, that it would be inhibitive for their constituents, that it would disproportionately impact black and Latino voters, and so the state legislature knew that this bill would have a disproportionate impact on black and Latino voters. That is just kind of part of this circumstantial evidence that you would want to put forward, or that you could put forward, to show that this law was passed with the intent to discriminate against the black and Latino voters in the state.

Lindsay B.: That's really interesting that you can use testimony and things that are presented to the legislature while they're deliberating about passing a law in future legal cases.

Natasha Merle: Yes, because like you said, a lot of the time you may not have legislatures saying certain things on the record that would go to intentional discrimination, but if you look at other circumstances, perhaps you can also look at how long the bill was debated, if the legislatures cut off debate quickly, like they didn't want the bill to be debated, that could also kind of support your claim of intentional discrimination.

Lindsay B.: It just goes to show how important it is for people who want to be active to go and participate in these kinds of things that the legislature hear. Here at Rewire, we have a lot of coverage of people who are active in the fight for reproductive rights, and we're always covering hearings at legislatures of people getting up and

speaking. I think a lot of people sometimes get discouraged thinking, "Oh, it's an all-Republican legislature. This is never gonna sway how they vote," so I think it's really empowering what you just said about that your testimony before that legislature could come back in court case someday and make a big difference.

Natasha Merle: Yes, exactly. If the legislature, if they knew or if they were told that this may disproportionately impact the black and Latino constituents of other legislatures, that's important. That's important for us in a court case. Also, furthermore, I would say, also in Alabama, the black legislators asked the sponsors, "Show us proof of voter fraud. You're saying that this bill, this photo ID bill, is necessary in order to combat voter fraud." They asked for evidence and cases of voter fraud, and they were given none. Perhaps you could use that as circumstantial evidence that voter fraud was not the real reason that the legislature passed this bill.

Lindsay B.: Is there any technological forefront of voter fraud allegations? We've seen the use of databases and, before that, caging lists and stuff like that. Are there any new threats on the horizon?

Natasha Merle: I don't know if there are any new threats on the horizon. What I do know is that the Crosscheck Program is problematic and that many people may not be aware of why it's problematic. We discuss and we allege in our complaint why such comparison of databases is problematic and why you're going to get a large number of false positives. You may think you have identified people who are ineligible voters who are on voter rolls, but why that may be incorrect, and also why a large number of those people who are going to be erroneously identified will be black and Latino voters.

Lindsay B.: If somebody wants to get involved in their community about defending voting rights, what are some things they can do?

Natasha Merle: A lot of things that people do is to volunteer to be poll workers during their local elections. I think that is a big thing that people often do, as well as volunteering to help people to register to vote. I think that is going to be a big thing. A lot of organizations already register people to vote and have volunteer campuses who assist in registering people to vote. At this time, where Americans may be chilled, voters may be chilled from wanting to register to vote because they don't want to get caught up in this crosscheck, and they don't want their information being sent to the commission, I think we need to do more education about voter registration and ensuring that people continue to register to vote and that voters don't start even more start canceling their registration.

Lindsay B.: Did you see that front page story in the New York Times about Look Ahead America, that voting group that's founded by former Trump aids?

Natasha Merle: I saw that something like that came out today. I have not had a chance to review it.

Lindsay B.: It's really disturbing because, I mean, they're claiming that they're going to be using outreach to register unregistered voters that meet a certain psycho-demographic

profile, is the word that they use. They're also recruiting so-called poll watchers to go to the polls.

Natasha Merle: Yeah. I think, around the November 2016 election, Trump also encouraged people to go watch their polls and to ... At a number of rallies, he said, "Go watch your polls. Don't let this election be taken from us. You know what I mean." He would say things like that. That was quite disturbing because, one, we do know what he means. He means to go watch black and Latino areas because he believes and he alleges that voter fraud occurs in black and Latino areas, but also to encourage people to go out untrained and to watch people vote and to harass and intimidate people. That's quite troubling.

Obviously, that's not what people should be doing. If you want to volunteer, get with a local organization that can train you on helping people register to vote. That is one way you could do it, but it should not be an intimidation tactic. It should not be harassment. Everybody has the freedom to go exercise their right to vote, and they should not have a fear of being followed, being watched, or being harassed by somebody when they try to go cast their ballots.

Lindsay B.: In the wake of the Charlottesville attacks, I think it really drives home how close that history really is.

Natasha Merle: Yeah, definitely. What we saw this past weekend in Charlottesville was horrible. Many people, and Republicans, and legislators have come out to denounce Nazism, white supremacy, but I think that lawmakers need to and should do more. It's inconsistent to denounce white supremacy but not repudiate voter ID laws, to not repudiate the Muslim ban, to not repudiate the "wall." These are all things that support and are grounded in white supremacy. The photo ID bills disproportionately impact black and brown voters. They disproportionately prevent black and Latino voters from voting. You cannot say you are not for white supremacy but, at the same time, be for disenfranchising black and Latino voters.

Lindsay B.: Do you have any confidence that the Justice Department will act against voter intimidation in the elections ahead?

Natasha Merle: The Justice Department, the Civil Rights Division, we hope that they would. We hope that they would combat to denounce any type of voter intimidation to ensure that voters are not being intimidated or harassed when they're at the polls. That would be our hope because they are, to a certain extent, the front line of ensuring that every American is able to cast their ballot.

Lindsay B.: Natasha, that's all the time we have for today. Thank you so much for coming on the program.

Natasha Merle: Thank you for having me.

Lindsay B.: Now it's time for recommended reading, handpicked selections to help you make sense of the bewildering political moment. This week, we're technically doing

recommended viewing. Elle Reeve of Vice News embedded with Nazis in Charlottesville during the Unite the Right rally to make an unforgettable documentary called Charlottesville: Race and Terror. Reeve got remarkable access to Nazi leaders like Chris Cantwell and David Duke. She was at the scene when the white supremacists drove into the crowd of counter-protesters, killing one woman and injuring 19 others. Cantwell has since become known as the crying Nazi because of a video he made of himself blubbering about how scared he is that there's a warrant out for his arrest. Cantwell first rose to national prominence with an appearance on The Colbert Report, which documented his unrelenting harassment campaign of meter maids in Keene, New Hampshire. We'll include links to all three in the show notes. Live free or die, baby.

The Breach is produced by Nora Hurley for Rewire Radio. Our executive producer is Marc Faletti. Our theme music is Dark Alliance performed by Darcy James Argue's Secret Society. I'm your host, Lindsay Beyerstein. Tweet your suggestions, comments, and questions to @Beyerstein on Twitter. See you next week.