



April 6, 2016

Via First Class Mail and Email

Honorable Jon Husted
Ohio Secretary of State
180 East Broad Street, 16th Floor
Columbus, Ohio 43215
jhusted@ohiosecretaryofstate.gov

RE: *Compliance with Section 8 of the National Voter Registration Act*

Dear Secretary Husted:

On December 17, 2015 and February 23, 2016, we wrote on behalf of the Ohio A. Philip Randolph Institute (“APRI”) and the Northeast Ohio Coalition for the Homeless (“NEOCH”) to notify you of APRI’s and NEOCH’s concern that Ohio’s “Supplemental Process” for voter roll maintenance does not comply with the National Voter Registration Act of 1993 (“NVRA”).

We now write on behalf of APRI, NEOCH, persons registered to vote in Ohio whose interests APRI represents, and other Ohio voters to notify you that Ohio’s National Change of Address (“NCOA”) Process, as outlined in Directive 2011-15 and similar roll-maintenance directives, also violates the NVRA. The NCOA Process requires that counties cancel the registrations of voters whom the U.S. Postal Service’s NCOA program identifies as having moved within a county if the voter does not respond to a confirmation notice and does not vote in the four-year period following the mailing of the notice. This process violates the NVRA. We ask you, as the State’s chief election official, to take immediate steps to bring the State into compliance with federal law.

I. The Requirements of Section 8 of the NVRA

As you are aware, Section 8 of the NVRA requires states to “conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of ... a change in residence[.]” 52 U.S.C.A. § 20507(a)(4). Section 8 of the NVRA explicitly contemplates the use of NCOA data for identifying voters who have moved and maintaining accurate registration rolls. *See id.* § 20507(c)(1) (noting that a state may satisfy its obligations to maintain accurate rolls by using NCOA data to identify voters who have changed residence).

Section 8(c)(1) provides that when NCOA data indicates that a voter has moved within her county of registration, the state must update its voter registration records to reflect the new address and must send the voter a notice of the change, along with a return form that allows the voter to confirm or correct the new address information. 52 U.S.C. § 20507(c)(1)(B)(i). This “confirm or correct” notice is not the same notice that is sent to voters who have moved outside their prior county of registration. *Compare* 52 U.S.C. § 20507(c)(1)(B)(i) (for in-county address changes, the registrar must send “a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information”), *with* 52 U.S.C. § 20507(c)(1)(B)(ii) (for out-of-county address changes, the registrar must “use[] the notice procedure described in subsection (d)(2) to confirm the change of address”). Thus, when relying on NCOA data for address-change information, a state may only use the Section 8(d)(2) notice-and-waiting period to cancel the registration if the NCOA address is outside the county in which the voter is registered. If the new address on file with NCOA is within the same county as the voter’s prior address, the state is prohibited from removing the voter from the rolls. *See* Dep’t. of Justice, “The National Voter Registration Act of 1993 (NVRA),” ¶ 30, *available at* <http://www.justice.gov/crt/national-voter-registration-act-1993-nvra> (The NVRA “prohibits removing registrants from the registration list due to a change of address to another location within the same registrar’s jurisdiction, even if the voter has failed to notify the registrar of the move within the jurisdiction.”).

II. Ohio’s NCOA Process, As It Relates to Intra-County Moves, Violates Section 8 of the NVRA.

As Directive 2011-15 and similar roll-maintenance directives indicate, Ohio instructs county boards of elections to send a confirmation notice (“SOS Form 10-S”) to all voters who have a change of address on file in the NCOA database, regardless of whether the voter has moved within the county or to a new county. *See, e.g.*, Directive 2011-15, “2011 General Voter Records Maintenance Program (National Change of Address and Supplemental Processes); Grounds for Registration Cancellations (April 18, 2011). Voters must “complete and return” this notice “in order to update [their] voter registration information,” even if the new address is the same one the voter provided to the Postal Service. *Id.* (Part E). It is only *after* an elector responds to the confirmation notice that the county will update her voter registration information and send an acknowledgement card. *Id.*; *see also* SOS Form 10-S (March 2015) (advising voters that “[i]f [they] have permanently moved (either within a county or from one Ohio county to another),” they can update their voter registration address online or by filling out and returning SOS Form 10-S).

Moreover, SOS Form 10-S requires the voter to provide much more information than simply a verification or correction of the new address. The voter must also provide her name, date of birth, identifying information, and signature under penalty of perjury. The form effectively requires a voter who has moved within the county to re-register to vote. This practice violates the plain language of Section 8 of the NVRA. As noted above,

Section 8(c)(1) requires Ohio to automatically update the voter's address when the NCOA database provides a new address within the same county, and the law authorizes the mailing of a card only for the purpose of verifying or correcting the address change. The NVRA does not authorize the mailing of a confirmation notice that requires a voter to re-submit all of the same information related to eligibility that appeared on the voter's original voter registration application.

Worse, individuals who fail to respond to the confirmation notice and do not vote or otherwise interact with their local board of elections during the subsequent four-year period will be purged. Purging voters when the state has NCOA data indicating that the voter has moved within the county, as Ohio does, is a clear violation of the NVRA.

III. Conclusion

The State of Ohio is engaged in continuing violations of the NVRA. Ohio must ensure that all of its citizens are guaranteed the right to vote and are not unlawfully purged from the voter rolls or otherwise forced to re-register as a result of the State's unlawful conduct. As Ohio's chief election official, you are responsible for ensuring that the State complies with the NVRA.

This letter serves as notice pursuant to 52 U.S.C.A. § 20510(b) of violations by Ohio of Section 8 of the NVRA, 52 U.S.C.A. § 20507. We are prepared to meet with you and other state officials to develop a comprehensive plan that will bring Ohio's NCOA Process into compliance with the NVRA. In the absence of such a plan, we will have no alternative but to initiate litigation.

Sincerely,



Stuart C. Naifeh
Demos
220 Fifth Ave., 2nd Floor
New York, NY 10001
(212) 485-6055
snaifeh@demos.org



Freda J. Levenson
ACLU of Ohio
4506 Chester Ave.
Cleveland, Ohio 44122
flevenson@acluohio.org

cc: Steven Voigt
Senior Assistant Attorney General, Constitutional Offices Section
Ohio Attorney General's Office
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
steven.voigt@ohioattorneygeneral.gov

Jordan Berman
Assistant Attorney General, Constitutional Offices Section
Ohio Attorney General's Office
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
jordan.berman@ohioattorneygeneral.gov