



December 17, 2015

*Via certified mail and email*

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

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

Dear Secretary Husted:

We write on behalf of the Ohio A. Philip Randolph Institute (APRI), persons registered to vote in Ohio whose interests APRI represents, and other Ohio voters who have been or may be purged from Ohio's list of eligible voters pursuant to the "Supplemental Process" outlined in Directive 2011-15—"General Voter Records Maintenance Program" issued by your office or any similar roll-maintenance procedure (hereinafter the "Supplemental Process"). We write pursuant to 52 U.S.C. § 20510(b) to notify you that the State of Ohio is not in compliance with Section 8 of the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20507, which prohibits States, including Ohio, from removing voters from the rolls except in certain specified circumstances and pursuant to specific procedures. Specifically, the Supplemental Process violates Section 8(b) of the NVRA, which prohibits states from removing lawfully registered voters because they have failed to vote.

We urge you, as the State's chief election official, to take immediate steps to bring the State into compliance with federal law by reinstating all voters whose voter registration records have been cancelled pursuant to the Supplemental Process and by directing local election officials to cease and desist from cancelling any voter registration based on the Supplemental Process. We welcome the opportunity to meet with you, in advance of the 2016 primary election, to develop a plan for compliance with the NVRA.

#### **I. The Requirements of Section 8 of the NVRA**

Section 8 of the NVRA lays out all permissible reasons for which states may remove registered voters from the rolls. Importantly, the NVRA expressly prohibits removing the name of a registrant from the voter roll, "except at the request of the registrant; or as

provided by State law by reason of criminal conviction or mental incapacity” or when the voter changes address, and then only after the address change has been confirmed in accordance with specific procedures. 52 U.S.C. § 20507(a)(3), (4); *id.* § 20507(c), (d). Removal based on a registrant’s failure to vote is prohibited. *Id.* § 20507(b)(2).

The NVRA establishes two specific procedures by which an individual may be removed from the voter registration rolls based on a change in residence: (i) when the registrant herself provides the information and/or confirmation that she has moved outside the jurisdiction in which she is registered, or (ii) when reliable second-hand information indicates the voter may have changed address, and then only after the state sends a confirmation notice in accordance with 52 U.S.C. § 20507(d)(2) and the voter fails to respond and fails to vote in any election in a period encompassing two federal general elections. *Id.* § 20507(d)(1)(B). Without a reliable basis for believing the voter has moved, the confirmation procedure of Section 8(d)(2) is inapplicable, and removal of the voter for failing to vote violates Section 8(b).

## **II. Ohio’s Supplemental Process for Roll Maintenance Violates Section 8 of the NVRA Because Failure to Vote Cannot Trigger the Sending of a Confirmation Notice.**

Under Ohio’s Supplemental Process, voters are sent a confirmation notice not based on reliable second-hand information, such as the United States Postal Service’s National Change of Address program, but based only upon the voter’s failure to vote for a two-year period.<sup>1</sup> Put differently, the State of Ohio presumes that an Ohio elector’s failure to vote during a single federal election cycle constitutes evidence that the voter has moved and justifies the sending of a confirmation notice. Triggered only by this period of inactivity, Ohio imposes an obligation upon the voter to take action or else have her registration cancelled. To avoid being purged, the voter must take the affirmative step of completing and returning a confirmation form—even if the voter has not moved—or of going to the polls or requesting an absentee ballot to vote in an election she may not want to participate in. If the voter does not return the confirmation card and does not vote in either of the next two federal elections, Ohio purges that voter from the rolls.

Moreover, in order for a voter who has not moved to remain registered after missing one federal and one local election, the voter must provide all of the same information the voter had to provide to register to vote in the first place, including proof of her identity and an attestation under penalty of criminal prosecution that she is eligible to vote. In other words, after sitting out a mere two elections, an Ohio voter is required to, essentially, re-register. Such a requirement is contrary to the NVRA’s purposes and inconsistent with Section 8’s prohibition on purging voters for failing to vote.

Significantly, if the voter does not respond to the notice within thirty days, she is designated an “inactive” voter. In Ohio, although inactive voters remain eligible to vote,

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<sup>1</sup> See, e.g., Directive 2015-09, “2015 General Voter Records Maintenance Program” (May 19, 2015) available at <http://www.sos.state.oh.us/sos/upload/elections/directives/2015/Dir2015-09.pdf>.

such a designation carries important collateral consequences. For instance, many voters on the inactive list are not sent absentee-ballot applications, potentially hindering their ability to cast a ballot.<sup>2</sup> Because Ohio law requires that local election officials count only active voters for crucial election-administration determinations, such as the number of ballots to be printed, Ohio Rev. Code § 3505.11, and drawing precinct boundaries, *id.* § 3501.18, precincts and polling places in areas with large numbers of voters on inactive status may be ill equipped to handle the strains of a high-turnout election.

Ohio's practice of designating voters "inactive" and purging them if they continue to fail to vote spans many years and is ongoing. Ohio's most recent purge of voters pursuant to the Supplemental Process in the summer of 2015 is estimated to have resulted in the removal of hundreds of thousands of Ohio voters, many of whom have not moved.

For instance, in July 2015, Cuyahoga County—Ohio's largest county by both population and area—purged more than 51,000 voters from its rolls, approximately 80% of whom were purged based on the "Supplemental Process." Moreover, an analysis of the zip codes of the voters who were purged in Cuyahoga County shows that the purge likely had a disproportionate impact on communities of color—a particularly troubling outcome of this unlawful process, and one that may well implicate the non-discrimination provisions of the NVRA. 52 U.S.C. § 20507(b).

The Supplemental Process will continue to negatively impact voters who have not moved. Under the Roll Maintenance directives issued from 2012 to 2015, hundreds of thousands of voters will be unlawfully purged pursuant to the Supplemental Process in the next four years alone. Additionally, the 2016 presidential primary election will mark the end of a new two-year period and, if the Supplemental Process continues, voters throughout Ohio will be sent a confirmation notice in summer 2016 as a direct result of their inactivity in the primary election.

The Supplemental Process not only threatens to disenfranchise eligible and lawfully registered Ohio voters; it also burdens APRI, which works to expand the electorate in Ohio through voter-registration drives and similar voter-engagement activities. Because of the unlawful cancellation of voter registrations pursuant to the Supplemental Process, APRI must redirect its efforts from other activities to warn voters of the consequences of inactivity or to re-register purged voters who, under the NVRA, should never have been sent a confirmation-of-address notice and cancelled in the first place.

Ohio must cease carrying out purges pursuant to the unlawful Supplemental Process and must reinstate the voters it illegally removed from its voter rolls pursuant to this process.

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<sup>2</sup> See Directive 2014-15, "Preparation for Statewide Mailing of Absentee Ballot Applications for the November 4, 2014 General Election" (May 21, 2014) *available at* <http://www.sos.state.oh.us/sos/upload/elections/directives/2015/Dir2015-09.pdf>.

**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 merely for exercising their First Amendment right not to cast a ballot. 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. § 20510(b) of violations by Ohio of Section 8 of the NVRA, 52 U.S.C. § 20507. As stated above, we are prepared to meet with you and other state officials as soon as possible to develop a comprehensive plan that will bring Ohio's roll maintenance procedures into compliance with the NVRA in advance of the March 2016 primary election. In the absence of such a plan, we will have no alternative but to initiate litigation at the conclusion of the statutory waiting period.

Sincerely,



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