



P.O. Box 77208, Atlanta, GA 30357
678.439.9143 | syoung@acluga.org

December 22, 2020

Via Publication

Re: True the Vote Letter on Mass Voter Challenges

Dear Georgia Election Officials,

The ACLU of Georgia has learned that True the Vote, a Texas-based organization that has filed baseless eligibility challenges against 364,541 Georgia voters, has recently circulated a letter to elections officials regarding the purported legal merits of their challenge. Their letter is groundless, and their mass voter challenge should be rejected for lack of probable cause.

Both state and federal statutes already exist which detail an elaborate, multi-year procedure for testing whether voters who register address changes with the National Change of Address (“NCOA”) system have actually moved.¹ Federal law also prevents any kind of systematic removal program less than 90 days before an election.² The challengers’ letter tries to circumvent these requirements by saying they are challenging the voter’s ballot for the runoff election (pursuant to O.C.G.A. § 21-2-230), as opposed to the voter’s underlying registration (pursuant to O.C.G.A. § 21-2-229). This is a difference without legal distinction. Whether voters are prevented from casting a ballot in the next election or all future elections is irrelevant because the end result is the same: a systematic disenfranchisement of voters in violation of federal law.

The challengers’ letter also fails to address how the NCOA data provided presents sufficient probable cause to move forward with the mass challenges. Probable cause requires more than a simple search from an overbroad database such as the NCOA system. Probable cause must be “individualized”³ and “particularized with respect to that person.”⁴ Spreadsheets that show a list of individuals who have submitted a change of mailing address form fall considerably short of this standard.

¹ See 52 U.S.C. § 20507(d)(1); O.C.G.A. § 21-2-233.

² 52 U.S.C.A. § 20507(c)(2)(A).

³ *Autry v. State*, 277 Ga. App. 305, 309 (Ga. App. 2006).

⁴ *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979).

County boards across the state have already found that NCOA data cannot sustain a probable cause challenge. Election boards in Cobb, Gwinnett, Athens-Clarke, Clayton, and DeKalb counties have already dismissed these mass voter challenges for lack of probable cause. At a Cobb County Board of Elections and Registration hearing held on December 18, 2020, board members unanimously voted that there was no probable cause to sustain a challenge, noting that NCOA data “is not enough proof to allow this to move forward” and “in many cases is inaccurate as a source.”⁵

This is because NCOA information alone cannot show whether a voter may have changed their mailing address without forfeiting their eligibility to vote. For example, a voter may have moved for temporary purposes to stay with relatives during the pandemic or may be attending college in another part of the state. Even the most reliable NCOA data cannot possibly provide sufficient information to discern these circumstances.

For these reasons, we urge Georgia elections officials to dismiss these mass voter challenges because they lack probable cause.

Sincerely,



Sean J. Young
Legal Director
ACLU of Georgia

⁵ 11-Alive, 2020. *Cobb County Board of Elections Meeting* [video], available at: <<https://www.11alive.com/embeds/video/85-f100c358-6312-4d72-80b4-41a4415739e2/iframe?jwsourc=cl>> [Accessed 22 December 2020].