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July 21, 2017

Brian B. Kemp
Secretary of State
214 State Capitol
Atlanta, GA 30334

Stephen Day, Chairman
Gwinnett County Board of Registration and Elections
75 Langley Drive
Lawrenceville, GA 30046

Via Certified Mail

Re: Notices illegally issued to registered voters who have moved within the same county in violation of the NVRA

Dear Secretary Brian B. Kemp and Mr. Day,

This letter is written on behalf of the Georgia Coalition for the People's Agenda, the Georgia State Conference of the NAACP, and Asian Americans Advancing Justice-Atlanta, registered voters that these organizations represent and serve, and other similarly situated registered voters who recently moved within the same county and who as a result received notices in the mail informing them that they would become "inactive" voters potentially purged from the rolls unless they took immediate affirmative steps (hereinafter "Purge Notice"). We write to notify you that the State of Georgia and the Gwinnett County Board of Registration and Elections are not in compliance with Section 8 of the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20507, and further include an Open Records Request herein. We ask that you promptly take corrective action to remedy these violations.

It has become clear that the Purge Notice was drafted and created by the Secretary of State's office. These Purge Notices expressly state that they are sent to any voter who has moved in the last two years while making no distinction between intra-county and inter-county movers. The sending of these Purge Notices, which require recipients to respond in 30 days or become "inactive," to voters who have moved within Gwinnett County violates Section 8 of the NVRA and state law as well.

As was explained by a representative from Asian Americans Advancing Justice-Atlanta at the last public meeting of the Board, registered voters in Gwinnett who have moved within the same county improperly received these Purge Notices. However, we are not aware of any law requiring you to use the Secretary of State's erroneous form, especially when doing so violates both federal and state law.

I. Violation of Section 8 of the National Voter Registration Act of 1993

Instead of sending Purge Notices to registered voters who recently moved within the county, Gwinnett County should have simply updated their registrations automatically without requiring further affirmative action on their parts, since they have remained within your jurisdiction. *See* 52 U.S.C. § 20507(f), (j)(2); *see also* *N.C. State Conf. of the NAACP v. N.C. State Bd. of Elections*, 2016 WL 6581284, at *8 (M.D.N.C. Nov. 4, 2016) (“The NVRA places the burden on the County Boards to update a voter’s change-of-address within the same county.”); *A. Philip Randolph Inst. v. Husted*, 838 F.3d 699, 706 (6th Cir. 2016) (“[O]ne of the guiding principles of [the NVRA is] to ensure that once registered, a voter remains on the rolls so long as he or she is eligible to vote in that jurisdiction.” (citation omitted)). By sending registered voters Purge Notices when they simply moved *within* the same county, Gwinnett County violated the NVRA.

Section 8(f) of the NVRA provides, “In the case of a change of address, for voting purposes, of a registrant to another address *within the same registrar’s jurisdiction*, the registrar shall correct the voting registration list accordingly, and the registrant’s name *may not be removed from the official list of eligible voters* by reason of such a change of address except” under circumstances not relevant here. 52 U.S.C. § 20507(f) (emphasis added); *see also* 52 U.S.C. § 20507(j)(2) (defining “registrar’s jurisdiction” as being the county if voter registration is maintained by the county). In addition, Section 8(c) of the NVRA, the so-called “safe harbor” provision, provides that:

if it appears from information provided by the Postal Service that . . . a registrant has moved to a different residence address *in the same registrar’s jurisdiction* in which the registrant is currently registered, the registrar [may change] the registration records to show the new address and [may send] the registrant 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.

52 U.S.C. § 20507(c)(1)(B)(i) (emphasis added). This procedure does *not* contemplate any required action on the part of the voter. Only if the registrant “has moved to a different residence address *not in the same registrar’s jurisdiction*” can the registrar issue any kind of notice requiring the registrant to confirm the change of address. 52 U.S.C. § 20507(c)(1)(B)(ii) (emphasis added). Since both the old and new addresses for these voters are in Gwinnett County, it was unlawful to send them a Purge Notice requiring them to take affirmative steps to maintain their registration.

As Secretary of State, you have been designated by O.C.G.A. § 21-2-210 as Georgia’s chief election officer and are responsible under that code section, as well as under 52 U.S.C. § 20509, for ensuring compliance by all state election officials with the requirements of the NVRA. Unless this violation is rectified, the above-named organizations will reserve the right to bring a civil action in an appropriate district court for a declaratory and injunctive relief to redress the violation and for attorneys’ fees and expenses, as provided by 52 U.S.C. § 20510(b)(2).

II. Violation of O.C.G.A. § 21-2-233(b)

Your actions are also in direct violation of Georgia law. Section 21-2-233(b) of the O.C.G.A., which mirrors 52 U.S.C. § 20507(c)(1)(B)(i), expressly provides that registered voters who inform the U.S. Postal Service that they have moved within the same county must have their voter registration information *automatically updated* without requiring further affirmative action on the voter's part. The statute provides:

If it appears from the change of address information supplied by the licensees of the United States Postal Service that an elector whose name appears on the official list of electors has moved *to a different address in the county in which the elector is presently registered*, the list of electors *shall be changed to reflect the new address* and the elector shall be sent a notice of the change by forwardable mail at the elector's old address with a postage prepaid, preaddressed return form by which the elector *may* verify or correct the address information. The registrars may also send a notice of the change by forwardable mail to the elector's new address with a postage prepaid, preaddressed return form by which the elector *may* verify or correct the address information

O.C.G.A. § 21-2-233(b) (emphasis added). While the statute permits counties to send such a voters a mailing by which they can “verify or correct” the address information, as with the NVRA, this provision makes clear that there is no consequence to the voter if they do not respond to this mailing.

The statute contains an entirely separate subsection—subsection (c)—that addresses voters who have moved from one county to another. You are applying the incorrect procedure of subsection (c) to intra-county movers, whose treatment is specified in subsection (b) described above. The language on the notices themselves indicate that they are being sent to any voter who has registered a change of address with the U.S. Postal Service, without making a distinction between intra-county movers and inter-county movers, in violation of both federal and state law.

III. Open Records Request concerning Gwinnett County's Voter Purge Procedures

Furthermore, pursuant to the Georgia Open Records Act (O.C.G.A. § 50-18-70 et seq.), we respectfully request access to inspect and copy the following public records prepared or received by the Office of the Secretary of State or its employees, as well as those prepared or received by the Gwinnett County Board of Registration and Elections or its employee:

All documents from June 1, 2016, to the present, concerning the Purge Notice received by any other Georgia voter on the grounds that such voter has changed residence, either within the same county or from one county to another.

Any list of voters who received a Purge Notice in 2017 on the grounds that they changed residence, whether such voters changed residence within the same county or from one county to another, with their personal information appropriately redacted pursuant to state law, and the number of such voters who received a Purge Notice in each Georgia county.

All documents from June 1, 2016, to the present, concerning the cost of mailing each and every Purge Notice.

All documents from June 1, 2016, to the present, concerning any state or county guidelines on the issuance of the type of Purge Notice issued to any other Georgia voter on the grounds that such voter has changed residence, either within the same county or from one county to another, including documents with information on which government officials created or were involved in the development of such guidelines, when these guidelines were created, and the reasons for such guidelines.

All documents from June 1, 2016, to the present, concerning the drafting of the language used in the Purge Notice.

Pursuant to the Open Records Act (O.C.G.A. § 50-18-74), we request that you make these records available for inspection within a reasonable time not to exceed three business days of your receipt of this request. Should you determine that some portion of the documents requested are exempt from disclosure, please release any reasonably segregable portions that are not exempt, pursuant to O.C.G.A. § 50-18-72(g). In addition, if our request is denied in whole or in part, the law requires your agency to justify all deletions by reference to exemptions of the Georgia Open Records Act, specifying code section, subsection, and paragraph. *See* O.C.G.A. § 50-18-72(h).

We request that you waive the copying fees. If your office does not maintain these public records, please let us know who does and include the proper custodian's name and address. To the extent that your office claims the right to withhold any record, or portion of any record, please describe each and every record or portion that is being withheld and the claimed reason for exemption, citing the exact language of the Open Records Act on which you rely.

Should your estimate of those fees exceed \$10, please advise us of the costs before they are incurred. We would prefer electronic copies of the records whenever possible. However, we also seek a waiver of any and all possible charges because the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of how your offices are removing voters on the grounds that they have changed residence. *See* O.C.G.A. s 50-18-71(c). This information is not being sought for commercial purposes.

If any records are unavailable within three business days of receipt of the request, and responsive records exist, we seek a description of such records and a timeline of when access to the records will be provided. If you have suggestions for tailoring this request so as to ensure a more expeditious but still meaningful response, we would be happy to consider them. We receive the right to appeal any decision to withhold any information or to deny a waiver of fees.

Thank you for your prompt attention. We are happy to discuss this matter by phone if it will result in speedy resolution of this matter.

Sincerely,



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