AMERICAN CIVIL LIBERTIES UNION of GEORGIA FOUNDATION

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July 21, 2017

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

Mary Carole Cooney, Chairperson
Fulton County Board of Registration and Elections
130 Peachtree St., Suite 2186
Atlanta, GA 30303

Via Certified Mail

Re: Improper Notices Sent to Megan Harrison and Daniel Hanley on June 29, 2017

Dear Secretary Brian B. Kemp and Ms. Mary Carole Cooney,

We represent Megan Harrison and Daniel Hanley. We write on behalf of our clients and all similarly situated voters—*i.e.*, registered voters in the State of Georgia 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"). This letter constitutes official written notice that the State of Georgia has violated the rights of Ms. Harrison and Mr. Hanley, as well as all other similarly situated registered voters the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20501 *et seq.* We ask that you promptly take corrective action to remedy these violations.

Ms. Harrison and Mr. Hanley are registered Georgia voters who moved within Fulton County last year. In apparent response to the fact that they had indicated to the U.S. Postal Service of this move, they received Purge Notices. It has been confirmed through your public statements made to the media and at the July 13, 2017 public meeting of the Fulton County Board of Registration and Elections, that Fulton County has sent such notices to over 45,000 registered voters who have moved within the county over the past 2 years, and that such notices were on a form created by the Secretary of State's office.

These Purge Notices expressly state that they are sent to any voter who has indicated to the U.S. Postal Service that they have moved in the last 2 years, while making no distinction between intra-county and inter-county movers. The sending of these Purges Notices to registered voters who have moved *within* the county in which they are registered violates Section 8 of the NVRA and state law as well. But we are not aware of any law requiring you to use the Secretary of State's form, especially when doing so violates the law.

I. Ms. Harrison and Mr. Hanley should not have been issued a Purge Notice simply because they moved within the same county

Instead of sending a Purge Notice to Ms. Harrison and Mr. Hanley, Fulton County should have simply updated their registrations automatically without requiring further affirmative action on their parts, because they recently moved within the same county. *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 Ms. Harrison and Mr. Hanley Purge Notices even though they moved *within* the same county, Fulton 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 confirming the change of address. 52 U.S.C. § 20507(c)(1)(B)(ii) (emphasis added). Since both the old and new address for Ms. Harrison and Mr. Hanley are in Fulton 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 insuring compliance by all state election officials with the requirements of the NVRA. Unless this violation is rectified without requiring any affirmative action on the part of Ms. Harrison and Mr. Hanley, they will 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 state 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 law contains an entirely separate subsection—subsection (c)—dealing with voters who have moved from one county to another. You are applying the incorrect procedure of subsection (c) to intra-county movers like Ms. Harrison and Mr. Hanley, 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.

Thank you for your prompt attention.

Sincerely,

Sean J. Young
Legal Director
ACLU of Georgia

Sophia Lin Lakin
Staff Attorney
ACLU Voting Rights Project