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July 16, 2024

VIA MAIL AND EMAIL [jpreptit@aclu-tn.org]

Mr. Jeff Preptit
ACLU Foundation of Tennessee
P.O. Box 120160
Nashville, TN 37212

Re: Response to Notice of Alleged Violations of the NVRA, Fourteenth and Fifteenth Amendments, and Section 2 of the Voting Rights Act

Dear Mr. Preptit,

I am one of the attorneys representing Tennessee Secretary of State Tre Hargett, Tennessee Coordinator of Elections Mark Goins, and the Tennessee Secretary of State's Office. I write in response to your letter of June 27, 2024, that takes issue with the June 13, 2024, letter the Coordinator of Elections sent to 14,375 individuals. In short, the Coordinator's sending of the June 13 letter was an appropriate action to fulfill his obligations to ensure the integrity of elections in Tennessee. To the extent they wish to do so, it provides registered voters the opportunity to correct his or her voter record. It does not threaten to remove anyone from the voter rolls, and the June 13 letter is not part of a systematic voter removal program.

The sending of the June 13 letter did not run afoul of Sections 20507(b) and (c) of the NVRA, because the letter places no burden on any voter to prove anything under threat of being removed from the list of eligible voters. Every case you referenced is distinguishable from the Tennessee letter in that no one who received the June 13 letter will be removed if the person does not respond to this letter. Furthermore, the NVRA expressly allows removals "at the request of the registrant" and "correction of

registration records." 52 U.S.C. § 20507(c)(2)(B). The letter explicitly instructs the recipients to only respond if they need to correct their voter information on file with election officials. The June 13 letter does not "impose[] a heavier burden" on anyone in violation of the Fourteenth and Fifteenth Amendments or Section 2 of the Voting Rights Act.

Frankly, the bulk of your eight-page letter attempts to rewrite the Coordinator's one-and-a-half-page letter. But as it is, and as explained below, the June 13 letter was nothing more than the Coordinator's attempt to fulfill his obligations under Tennessee law, to avoid burdening voters, and to ensure a fair and efficient election.

The June 13, 2024, Letter

Before addressing the concerns that you raised as to the legality of the June 13 letter, it is important that the letter be accurately characterized.

On June 13, 2024, the Coordinator of Elections sent a letter to 14,375 registered voters in Tennessee informing them that the current voter information on file "appears to indicate that your voter information matches with an individual who may not have been a United States citizen at the time of obtaining a Tennessee drive license or ID card." The letter then states it is illegal for non-US citizens to vote and provides the penalty for doing so. The letter then states "[i]f you need to correct your record, please follow these instructions." The letter goes on to provide the instructions for making corrections. Finally, the letter concludes "[t]hank you for your cooperation in this request to keep the voter registration list correct" with an invitation to call a toll-free number with any questions.

To be sure, the following allegations in your letter of June 27 are demonstrably false:

- You state the June 13 letter "specifically instructs recipients to provide documentary proof of their citizenship and eligibility to vote[.]" That is inaccurate. To the contrary, the June 13 letter states, "[i]f you need to correct your record, please follow these instructions." Moreover, underscoring the voluntariness of the letter, it states, "[i]f you are a United States citizen and

would like to submit proof of citizenship, you can submit a legible photocopy of one of the following documents….” The letter does not ask the recipient to do anything, unless their voter record is incorrect. And only then does the letter invite them to correct it. The June 13 letter does not require any action by the recipient. It attaches neither time constraints nor consequences to accepting or declining the invitation to correct records, if needed.

- Potentially realizing this, your letter then admits the Coordinator has already sent a letter, that has been made public and widely reported on, to House Minority Leader Karen Camper confirming that a lack of response to the June 13 letter will not affect a recipient’s ability to vote. And your only argument in light of that plain statement is you don’t believe this statement as a result of your misinterpretation of state law.

- You then call it alarming that the Coordinator did not explicitly state “voters’ registrations would not be purged” for failure to respond. But that ignores the plain language of the letter – “[i]f you need to correct your record, please follow these instructions.” There is no way to read that phrase without understanding that there may be no requirement to respond.

- Relatedly, you state, “[r]ecipients were left to guess as to what effect a response or non-response would merit and whether they would have their voter registrations cancelled or be criminally prosecuted for voting, resulting in, at a minimum, confusion and uncertainty among these recipients[.]” Again, the Coordinator cannot understate the clarity of the letter. To repeat, it states, “[i]f you need to correct your record, please follow these instructions.” The only potential prosecution referenced in the letter applies to non-US citizens. To the extent there is any confusion at all, it was caused by outside parties such as those who signed your letter claiming the June 13 letter said something it did not.

The June 13 letter did not implicate Section 20507(c)(2)(A) because it was not part of a program to systematically remove names from a voter list.

Section 20507(c)(2)(A) of Title 52 of the United States Code, aptly contained in a paragraph titled “[v]oter removal programs[,]” commands States to “complete, not later

than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters." The NVRA, however, expressly allows removals "at the request of the registrant" and "correction of registration records." 52 U.S.C. § 20507(c)(2)(B).

The letter allows those who were never eligible to register to vote under Tennessee law to correct voter records by voluntarily removing themselves from the voter rolls. The letter states, "[i]f you are not a United States citizen and would like your name removed from the voting rolls at this time, you may use the enclosed form to make the request." To stop these individuals from voluntarily removing themselves from the voter rolls even though they are ineligible, as your letter mandates in demand number 4, leads to the absurd result in that it subjects the person to criminal penalties, deportation, and the dilution of the votes of eligible voters.

Even so, the June 13 letter does not threaten removal of any single name from the Tennessee eligible voter list, much less the systematic removal of multiple names for failure to respond. Instead, the letter explicitly provides recipients an opportunity to respond if they'd like to correct their voter registration record. As such, it cannot possibly be true that the June 13 letter was an attempt to remove anyone eligible to vote from the eligible voter list, much less an attempt to do so systematically. To be such an attempt, the letter would have had to require a response to stay on the eligible voter list, which it did not.

The law that you cited in your letter bears out this logical conclusion. In *U.S. v. Florida, et al.*, the Court noted that Florida sent letters to roughly 180,000 registered voters stating that, if they "failed to respond within 30 days, the person might be removed from the voter roll." *See* 870 F.Supp.2d 1346, 1347 (N.D. Fla. 2012).[1] In that case, the "burdensome" demand was to **require** a response to maintain voter eligibility. Again, the

[1] It is also worth noting that the Florida court explicitly stated "(c)(2) does not prohibit a state from systematically removing improperly registered noncitizens during the quiet period [90 days prior to a primary or election][,]" which seems to be an argument made in your June 27 letter. *Id.* at 1350. The Court there, as well as other courts, have held that (c)(2)'s 90-day period does not apply to programs intended to remove names of individuals never eligible to register from voter lists.

June 13 letter required / demanded nothing of any recipient. It provided registered voters the opportunity to correct their record.

Texas League of United Latin Am. Citizens v. Whitley, an unpublished opinion with very little discussion of the facts that led to the lawsuit, requires the same conclusion. No. CV SA-19-CA-074-FB, 2019 WL 7938511, at *1 (W.D. Tex. Feb. 27, 2019). While not explicitly discussed in the *Whitley* opinion, the letter Texas sent stated, "[y]ou are required to provide proof of citizenship to maintain your registration status…If you fail to provide this proof of citizenship within 30 days from the date of this letter, your voter registration will be cancelled." That is not the case here.

Again, the June 13 letter did not threaten recipients with the removal from the eligible voter list for failure to answer. In fact, they were told the opposite – to only respond if they wanted to correct their voter record. We could not locate a case in which Section 20507(c) of the NVRA was invoked without an explicit threat to remove a voter from the eligible voter list and the requirement that a voter provide additional information to remain on that list.

Section 20507(b) does not apply to the June 13 letter.

Section 20507(b), aptly titled "Confirmation of voter registration[,]" states that States may "protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll[.]" It's only limitations to that power are: 1) that is must be done in a uniform, nondiscriminatory manner, and in compliance with the Voting Rights Act of 1965; and 2) that it shall not result in the removal of names for failure to vote, with some exceptions.

Again, as evidenced by the case you cite in your letter, a key to invoking 20507(b) is an attempt by the State to confirm voter registration information coupled with the threat of removal from the eligible voter list. The Arizona court in *Fontes*, another unpublished case, and one that actually focused on a myriad of issues not present here, explicitly stated that the laws in question required removal from eligible voter lists for failure to respond. It summarized the program as:

> When the county recorder obtains information pursuant to this section and confirms that the person registered is not a United States citizen, including when the county recorder receives a summary report from the jury commissioner or jury manager pursuant to § 21-314 indicating that a person who is registered to vote has stated that the person is not a United States citizen. Before the county recorder cancels a registration pursuant to this paragraph, the county recorder **shall send the person notice by forwardable mail that the person's registration will be canceled in thirty-five days unless the person provides satisfactory evidence of United States citizenship** pursuant to § 16-166. The notice shall include a list of documents the person may provide and a postage prepaid preaddressed return envelope. **If the person registered does not provide satisfactory evidence within thirty-five days, the county recorder shall cancel the registration and notify the county attorney and attorney general for possible investigation.**

Mi Familia Vota v. Fontes, No. CV-22-00509-PHX-SRB, 2024 WL 862406, at *4 (D. Ariz. Feb. 29, 2024)(emphasis added).

Again, and not to be repetitive, the June 13 letter contained neither a threat to remove recipients from the eligible voter list nor a requirement to provide more information to remain on the eligible voter list. We could not locate a case in which Section 20507(b) of the NVRA was invoked without an explicit threat to remove a voter from the eligible voter list and the requirement that a voter provide additional information to remain on that list.[2] Section 20507(b) does not apply to the June 13 letter.

[2] This renders your statements about whether the program was administered in a uniform and nondiscriminatory way irrelevant.

The June 13 Letter is Not Voter Intimidation and Does Not Violate the Fourteenth Amendment, Fifteenth Amendments, or Section 2 of the Voting Rights Act.

You begin your voter intimidation discussion by mischaracterizing the June 13 letter as a list maintenance program and stating that it imposes a heavier burden on persons based on their race or national origin. First, we fundamentally disagree that any additional burden has been placed on anyone as a result of the June 13 letter. Again, there is no obligation to respond, and no one will be removed from the voters rolls if they do not respond. The letter clearly uses the words "would like to submit proof of citizenship" and "[i]f you need to correct your record[.]" And the letter to House Minority Leader Camper, which has been widely published, affirms as much.

Second, Section 10101(b) of Title 52 of the United States Code states "[n]o person…shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote[.]" Nothing in the June 13 letter could be construed by a reasonable person as intimidating. Your letter describes "dire warnings of criminal prosecution, jail time, and substantial fines." It states that the June 13 letter had the "distinct effect of intimidating and dissuading persons from exercising their right to vote." That extreme statement is betrayed by the fact that almost identical language appears on the application for voter registration, and no one has successfully claimed it is intimidating or threatening there. Further, the June 13 letter does not individually threaten any recipient. In fact, it explicitly states the letter may not apply to the recipient at all. Additionally, the letter explicitly states that it is illegal for non-US citizens to vote. That is an accurate statement that is not threatening to a US citizen.

To further make the point that the letter contains a reasonable non-intimidating statement, in a widely released statement on July 8, 2024, the White House, in opposition to the SAVE Act, used similar language that you claim is intimidating. Specifically, the White House stated, "[i]t is already illegal for noncitizens to vote in Federal elections — it is a Federal crime punishable by prison and fines…Additionally, making a false claim of citizenship or unlawfully voting in an election is punishable by removal from the United States and a permanent bar to admission."[3]

[3] It should be noted that both Secretary Hargett and Coordinator Goins supported the SAVE Act.

The June 13 letter specifically says, "… it is illegal for an individual who is not a citizen of the United States to vote in a local, state, or federal election in Tennessee." By the plain language of the letter, you are not doing anything illegal if you are a US citizen and thus this language has no application to US citizens. However, informing *non-U.S. citizens* of the penalties of their actions serves to protect them by letting them know the consequences of their actions.

Finally, you state that "[y]our list maintenance program's disparate treatment of naturalized citizens places a discriminatory burden upon them by **requiring them to respond** to the letter and prove their citizenship…This discriminatory practice violates both the Equal Protection Clause of the Fourteenth Amendment and Section 2 of the Voting Rights Act." Again, your attempt to rewrite the June 13 letter cannot form the basis of any legal action. The June 13 letter does not require anything of anyone and does not enumerate any consequences for not responding. There is no burden on anyone. Any response is completely voluntary.

The June 13 letter was not sent as a part of the maintenance program described in Section 2-2-141 of the Tennessee Code.

To be clear, the June 13 letter is not a letter sent under Section 2-2-141 that initiates a process that could ultimately lead to removal from the voter roll. As I said before, this characterization of the letter is incorrect.

The Demands and Document Requests

Your June 27 letter contains a list of demands and documents requests. As to your demands, with numbers corresponding to your letter:

1. There is no current list maintenance program related to the June 13 letter in effect to cease that would be outside the scope of Tennessee election law.

2. There is no list maintenance program in effect that would violate the Fourteenth and Fifteenth Amendments or Section 2 of the Voting Rights Act.

3. There is no list maintenance program in effect that violates the NVRA.

4. Given the plain language in the June 13 letter, we do not believe that any further statement is necessary. But regardless, as you note in your letter, the Coordinator has already sent a public letter to the House Minority Leader. Media outlets also reported on this response. The June 13 letter allows those who were never eligible to register to vote under Tennessee law to correct their voter records by voluntarily removing themselves from the voter rolls. The letter states, "[i]f you are not a United States citizen and would like your name removed from the voting rolls at this time, you may use the enclosed form to make the request." To stop these individuals from voluntarily removing themselves from the voter rolls as you demand leads to the absurd result in that it subjects the person to criminal penalties, deportation, and the dilution of the votes of eligible voters, penalizing every eligible Tennessee voter.

5. Again, the office believes the June 13 letter was clear in its language. That said, the office has decided that, in light of mischaracterizations of the June 13 letter on social media and in other outlets, a second letter clarifying the June 13 letter has begun to go out to the original recipients who have not responded. It is the goal of the Secretary of State's Office to help all eligible Tennesseans vote, as well as to make sure only eligible Tennesseans vote.

As to your document requests, we are still reviewing them. Several are very broad. And others may be subject to exceptions from disclosure. We intend to follow up with you concerning your requests for documents.

Now that we have each written our too-long letters outlining our positions and many of the reasons for them, to the extent you disagree or have any questions, in my experience, the next, most helpful step, would be a meeting. To that end, please do not hesitate to reach out.

Very truly yours,

William N. Helou