October 25, 2018

Diane J. Noonan
Director, Butler County Board of Elections
Eric Corbin
Deputy Director, Butler County Board of Elections
1802 Princeton Road, Suite 600
Hamilton, OH 45011
noonandj@butlercountyohio.org
corbinea@butlercountyohio.org

VIA E-MAIL

Re: Identification Envelope Issues with Early Vote Mail Ballots in Butler County

Dear Director Noonan and Deputy Director Corbin:

Campaign Legal Center ("CLC") writes to inform you of our concerns regarding the identification envelopes for early vote mail-in ballots in Butler County, Ohio. It has come to our attention that an error on the identification envelopes for early vote mail-in ballots in Butler County has caused confusion among voters and resulted in the rejection of certain absentee ballots. We understand that the Butler County Board of Elections ("Butler BoE") is doing everything possible to notify voters of this error and cure the defects in these absentee ballots, but we write to propose a potential solution that you may not have considered.

Based on local media reports and discussions with Ohio-based voter organizations, we understand that the Secretary of State's office redesigned Form 12-A— the identification envelope for early vote mail-in ballots—and distributed it to the various Ohio county boards of election. The Butler BoE then customized the form for electors in Butler County, including by adding a field of boxes for electors to use when entering their driver's license number as a means of identification, as described in Section 3503.14(A)(6) of the Ohio Revised Code. Unfortunately, the forms that were sent to approximately 20,000 voters in Butler County mistakenly contained six boxes in the driver's license field—two fewer than the number of digits in an Ohio driver's license number.

Because of this inadvertent error, a significant number of voters who already returned their mail-in ballots included only six of the eight digits in their driver's license number on the envelope, and for that reason, their ballots were rejected. We understand that, pursuant to the procedure set forth in Section 3509.06(D)(3)(b) of the Ohio Revised Code, voters whose ballots were rejected due to errors with their driver's license number were sent an 11-S letter, as well as an additional special notice informing the 20,000 voters who received faulty envelopes about the problem and inviting them to provide additional information to cure the problem so that their ballot can be accepted.

CLC appreciates the Butler BoE's sincere efforts to notify affected Butler County voters of the problems with the identification envelope. However, we believe that it is inappropriate to place the burden on voters who have already proactively sought absentee ballots to take the additional step of correcting a mistake that occurred through no fault of their own. We strongly urge the Butler BoE to accept ballots from voters who included six digits of their driver's license number on their submitted identification envelope. As explained below, we believe that the information already provided by the voters is sufficient to verify the identities of the affected voters and ensure that their votes are properly counted.

We understand that Ohio law requires that absentee ballots contain one of the following forms of identification: the voter's driver's license number, the last four digits of the voter's social security number, or a copy of a current and valid photo identification or other acceptable document that shows the voter's name and address. Ohio Rev. Code § 3509.06(3)(a)(v). If the information contained in the voter's identification envelope statement is "incomplete" or "does not conform to the information contained in the statewide voter registration database concerning the voter," the board must provide the voter with written notice informing them of the nature of the defect and providing them an opportunity to provide the necessary information. *Id*. at § 3509.06(3)(b).

The Butler BoE should consider the ballots submitted with six digits of the voter's driver's license to be substantially complete, given that the submission of those digits was induced by an error created through no fault of the voters. The Butler BoE can ensure that the submitted driver's license numbers "conform to the information contained in the statewide voter registration database," *Id*., by checking for a soft match against the database using the partial driver's license numbers provided by the voters in conjunction with the other information included with the ballot. If the six numbers provided match six of the eight numbers on file with the same name and address (thus, conforming to the statewide database), the Butler BoE should consider that information sufficient to confirm the identity of these specific individuals. Requiring technical perfection in the provision of this information is unfairly burdensome to voters, particularly when any errors were caused by a mistake originating from the incorrectly designed forms. *See Northeast Ohio Coalition for the Homeless v. Husted*, 837 F.3d 612, 630–35 (6th Cir. 2016) (finding that imposing a requirement of technical perfection on voter's addresses and birthdates on absentee ballots creates an undue burden on the right to vote). Given that voters have provided enough information to properly identify them with a soft match against driver's

license and voter registration databases, we believe that this solution provides the most effective method for ensuring that all ballots are properly verified and counted.

We look forward to hearing from you and are open to continued discussions regarding possible solutions to this issue.

Respectfully submitted,

/s/Jonathan Diaz

Jonathan Diaz
Legal Counsel, Voting Rights
Campaign Legal Center
1411 K Street, NW, Suite 1400
Washington, DC 20005
202-868-4758
jdiaz@campaignlegalcenter.org