



Secretary of State Brian P. Kemp  
214 State Capitol  
Atlanta, Georgia 30334

Chris Harvey  
Director of Elections Division  
2 MLK Jr. Dr. S.E.  
Suite 802, Floyd West Tower  
Atlanta, GA 30334

August 14, 2018

Dear Secretary Kemp and Mr. Harvey,

By letter dated May 11, 2018, and pursuant to Section 8 of the National Voter Registration Act of 1993, 52 U.S.C. § 20507(i)(1) (the “NVRA”), Campaign Legal Center and Southern Center for Human Rights submitted a request for records directed to the Georgia Secretary of State and the Director of Elections Division (together, the “State”). We are in receipt of the State’s responses by electronic mail dated June 26, 2018, and July 6, 2018, and understand that the State will continue to produce relevant materials on a rolling basis.

In anticipation of the next production by the State, we note that, in response to Request 4(c), the State produced an agreement titled “Intragovernmental Agreement Between Office of the Georgia Secretary of State and Georgia Department of Community Supervision.” Article II.A.1 of that agreement states “DCS [Department of Community Supervision] will provide SOS [Secretary of State] with a text file *consistent with parameters agreed upon by the Parties*” (emphasis added). However, the State has not provided any documents relating to the “parameters agreed upon by the parties” to implement the written agreement. These documents are expressly called for by Request 4(c), which asks for all “agreements between your office and the . . . Georgia Department of Community Supervision,” and the parameters that your office has agreed upon with DCS are plainly such an agreement. Please provide documents relating to those parameters.

We also want to emphasize that documents responsive to Requests 4(a) and 4(b)<sup>1</sup> will also be particularly important in allowing us to understand such

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<sup>1</sup> Requests 4(a) and 4(b) state: Please provide the following documents related to any process in place in your office for matching voters and voter applicants to felony conviction records: (a) All documents, including from any responsible vendor, reflecting processes and policies for populating

“parameters agreed upon by” DCS and SOS. We therefore urge you to prioritize in your productions documents that are responsive to Requests 4(a) and 4(b). We remind the State that it is obligated under the NVRA to produce information related to such parameters and processes for matching voters and voter applicants to felony conviction records, even if such processes have been contracted out to a third-party vendor.

We also note that the State responded to several requests—including Requests 2(a-d), 4(d)(i-ii), and 4(e)—with the statement that the “information is confidential pursuant to O.C.G.A. § 42-8-40.” Though the State may consider such information confidential under state law, the State is nevertheless obligated to provide the information pursuant to the NVRA. Section 8(i) of the NVRA requires the State to “make available for public inspection . . . all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters . . .”<sup>2</sup> The courts have interpreted Section 8(i) expansively. For instance, the leading case interpreting the NVRA’s open records requirement held that completed voter registration applications were covered by Section 8(i) because reviewing such applications was both a “program” and an “activity” “conducted for the purpose of ensuring the accuracy and currency of official lists” under the NVRA.<sup>3</sup> Similarly, the District Court for the Northern District of Georgia has held that the Secretary of State is required to produce a broad array of documents under the NVRA, including in particular documents that relate to the State’s handling of the registration of individual voters.<sup>4</sup> And it is well settled that, if a document falls within the disclosure requirements of Section 8(i), state laws restricting disclosure are preempted.<sup>5</sup> We believe that the requested documents fall well within the scope of Section 8(i) and therefore that a court would compel disclosure of the information notwithstanding the state confidentiality statute.

We look forward to receiving continued productions from the State in response to our May 11, 2018 letter.

Sincerely,

Danielle Lang  
Senior Legal Counsel  
Campaign Legal Center

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and updating any database of felony conviction records used for assessing voter eligibility. (b) All documents, including from any responsible vendor, reflecting processes and policies for matching voters and voter applicants to felony conviction records, through a database or otherwise.

<sup>2</sup> 52 U.S.C. § 20507(6)(i)(1).

<sup>3</sup> *Project Vote/Voting for America, Inc. v. Long*, 682 F.3d 331, 335 (4th Cir. 2012).

<sup>4</sup> *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320 (N.D. Ga. 2016).

<sup>5</sup> See, e.g., *Judicial Watch, Inc. v. Lamone*, No. ELH-17-2006, 2018 WL 2564720 (D. Md. June 4, 2018); *Project Vote, True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 732 (S.D. Miss. 2014) (Where “the NVRA would directly conflict” with state law, the NVRA “would preempt [state] law.”); *Voting for America, Inc. v. Steen*, 732 F.3d 382, 399 (5th Cir. 2013).

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