



October 21, 2024

Hon. Frank LaRose
Secretary of State
180 S. Civic Center Dr.
Columbus, Ohio 43215
secretarylarose@ohiosos.gov

Re: Notice of Violation of National Voter Registration Act and Demand for Remedial Actions and Documents

Dear Secretary LaRose,

Campaign Legal Center (“CLC”), All Voting Is Local - Ohio (“AVIL”), American Civil Liberties Union Ohio (“ACLU Ohio”), and American Civil Liberties Union (“ACLU”) write to inform you that your office is in violation of the National Voter Registration Act (“NVRA”), 52 U.S.C. § 20501 et seq. First, the voter list maintenance program you initiated on May 14, 2024, and its continued implementation beyond August 6, 2024, constitutes unlawful list-maintenance activity under the NVRA and unlawful discrimination and voter intimidation in violation of the Voting Rights Act (“VRA”), Fourteenth Amendment, and Ohio law. Second, your continued denial of AVIL and CLC’s public records request submitted on August 29, 2024 violates the NVRA’s recordkeeping and reporting requirements. Since both violations are occurring within 30 days of the November 2024 general election, your office may be subject to legal action without any further notice. 52 U.S.C. § 20510(b)(3).

I. Unlawful List-Maintenance Program

On **May 14, 2024**, your office issued Directive 2024-08 to all county boards of elections, outlining a list maintenance program for “Removal of Non-citizens from Voter Registration Databases.”¹ Shortly after May 14, your office began

¹ Directive 2024-08, Ohio Secretary of State (May 14, 2024), https://www.ohiosos.gov/globalassets/elections/directives/2024/dir2024-08_annualreviewstatewideoverregistrationdatabaseidentifynon-citizens.pdf [hereinafter “Directive 2024-08”].

sending letters to registered voters in Ohio notifying them that “[r]ecords indicate that you are registered to vote, but you provided documentation during your last interaction with the Ohio Bureau of Motor Vehicles confirming that you are not a United States citizen.” (“Noncitizen Attestation Letter”). The letter further states, without citation, that “[t]o comply with state and federal law,” recipients must complete and return the “Ohio Voter Registration Eligibility Confirmation” form either affirming their citizenship through their certificate of naturalization number or cancelling their registration.²

The letter further warns recipients of potential felony liability in two places, including on the “Ohio Voter Registration Eligibility Confirmation” form, which states: “WHOEVER COMMITS ELECTION FALSTIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.”³

On **August 1, 2024**, your office issued Directive 2024-16 to all county boards of registrars, as “a supplement to Directive 2024-08” to “provide[] for the additional removal of registrants who have self-identified as non-citizens to the Ohio Bureau of Motor Vehicles (BMV) and who have been verified as non-citizens through the federal SAVE database.”⁴

Though you directed registrars to complete removals by August 6, 2024, your continued mailing of the Noncitizen Attestation Letter to registered voters is a continuation of the May 14, 2024 list-maintenance program. Your office sent different iterations of the Noncitizen Attestation Letter to registered voters as recently as **September 30, 2024**—mere days before the **October 7, 2024** voter registration deadline in Ohio and well within the 90-day quiet period for list maintenance mandated by the NVRA.

Recipients of the Noncitizen Attestation Letter have been left to guess as to what effect a response or nonresponse has and whether they would have their voter registrations cancelled or be criminally prosecuted for voting. This has resulted in, at minimum, confusion and uncertainty among these recipients.

The continued issuance of these Noncitizen Attestation Letters constitutes an ongoing and untimely systematic voter list maintenance program that unlawfully targets naturalized citizens. In so doing, it violates the NVRA, and may constitute unlawful voter intimidation under federal and Ohio law.

² Noncitizen Attestation Letter; To add insult to injury, your office has asked recipients to fund the state’s unlawful list maintenance practice, requiring that when recipients return the mandated “Ohio Voter Registration Eligibility Confirmation” form that they “[p]lease make sure to affix the appropriate postage.” *Id.*

³ “Ohio Voter Registration Eligibility Confirmation” form.

⁴ https://www.ohiosos.gov/globalassets/elections/directives/2024/dir2024-16_removalofnon-citizen-records.pdf [hereinafter “Directive 2024-16”].

A. The Secretary's List-Maintenance Program Violates the NVRA

Section 8(c) of the National Voter Registration Act requires that “[a] State *shall 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.” 52 U.S.C. § 20507(c)(2)(A) (emphasis added). On May 14, 2024, you began a list-maintenance program when you issued Directive 2024-08 “to the 88 county boards of elections initiating a confirmation and removal process of non-citizens from the state’s voter registration rolls.”⁵ Shortly thereafter, your office began mailing the Noncitizen Attestation Letter to registered voters. Under the NVRA, that list maintenance program should have ceased no later than 90 days before the federal general election. You have continued to mail the Noncitizen Attestation Letter with the “Ohio Voter Registration Eligibility Confirmation” form to registered voters as recently as September 30, 2024—just 36 days before the November 5, 2024 General Election and undoubtedly within the “quiet period.” The continued mailing of the Noncitizen Attestation Letter with the intent to “systematically remove the names of ineligible voters” is in clear violation of the NVRA’s requirement that any list-maintenance program be completed 90 days before a federal election. 52 U.S.C. § 20507(c)(2)(A); *see also Alabama Coalition for Immigrant Justice v. Allen*, No. 2:24-cv-01254-AMM (N.D. Ala. Oct. 16, 2024) ECF No. 90 (enjoining Alabama’s purge program, involving mailed letters to registered voters for further citizenship verification, as a violation of the 90-day NVRA quiet period).

Section 8(b) of the NVRA also requires that list-maintenance programs be “uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965.” 52 U.S.C. § 20507(b)(1). The list-maintenance program you began on May 14, 2024 unlawfully targets naturalized citizens in a discriminatory manner. Federal courts in Florida, Texas, and Arizona have ruled that nearly identical list-maintenance programs are unlawful under this provision. *See United States v. Florida*, 870F. Supp. 2d 1346, 1347-48 (N.D. Fla. 2012); *Texas League of United Latin Am. Citizens v. Whitley*, No. CV SA-19-CA-074-FB, 2019 WL 7938511, at *1 (W.D. Tex. Feb. 27, 2019); *Mi Familia Vota v. Fontes*, No. CV22-00509-PHX-SRB, 2024 WL 862406, at *22 (D. Ariz. Feb. 29, 2024).

Like the list-maintenance programs in those states, Ohio’s program, as stated in the Secretary’s Directive 2024-08 and Directive 2024-16, will only impact naturalized citizens on the voter rolls. *Cf. Mi Familia Vota v. Fontes*, No. CV22-00509-PHX-SRB, 2024 WL 862406, at *22 (D. Ariz. Feb. 29, 2024) (because state motor vehicle division “does not issue foreign-type credentials to native-

⁵ Press Release, Secretary LaRose Announces Expanded Effort to Verify Citizenship Status on Ohio Voter Rolls, Ohio Secretary of State (May 14, 2024), <https://www.ohiosos.gov/media-center/press-releases/2024/2024-05-14a/>; *see also* Directive 2024-08.

born citizens, only naturalized citizens will ever be misidentified as noncitizens.”). As such, this list-maintenance program is not “uniform” and “nondiscriminatory,” as required by the NVRA. 52 U.S.C. § 20507(b)(1). As “only naturalized citizens will ever be misidentified as non-citizens,” *Mi Familia Vota*, 2024 WL 862406, at *22, this program “would have a non-uniform and discriminatory impact on naturalized citizens,” and thus violates Section 8 of the NVRA. *Id.* at *41 (D. Ariz. Feb. 29, 2024). When applying the NVRA’s “uniform and nondiscriminatory” provision in *United States v. Florida*, the court found that their program likely “ran afoul of this provision” because the methodology “made it likely that the properly registered citizens who would be required to respond and provide documentation would be primarily newly naturalized citizens,” and the program therefore “was likely to have a discriminatory impact on these new citizens.” 870 F. Supp. 2d at 1351. It did not matter that the State argued that responding to this inquiry was not difficult— “[a] state cannot properly impose burdensome demands in a discriminatory manner.” *Id.*

Lastly, your letter instructs naturalized citizens, who have already affirmed their citizenship and eligibility in order to register to vote, to provide additional proof of citizenship in order to remain on the rolls, i.e. a certification of naturalization number. This demand for additional proof of citizenship, if ultimately used to purge letter recipients from the voter rolls, also violates the NVRA’s “accept and use” provisions. 52 U.S.C. §§ 20505(a), 20505(a)(2), 20508(b)(1); *see Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 14 (2013). Additionally, if eligible applicants who submitted valid voter registration forms are later purged for failing to return the “Ohio Voter Registration Eligibility Confirmation” prior to a federal election, that action will also violate the NVRA’s mandate to ensure that “any eligible applicant is registered to vote in an election.” 52 U.S.C. § 20507(a)(1).

B. The Secretary’s List-Maintenance Program Violates the VRA, the Fourteenth Amendment, and Ohio Voter-Intimidation Law

Your list-maintenance program classifies on the basis of national origin and citizenship classification, bears the indicia of a discriminatory purpose, and has the effect of voter intimidation by imposing a heavier burden on persons based on their race and national origin. *See Village of Arlington Height v. Metro. Housing Devel. Corp.*, 429 U.S. 252 (1977). By including dire warnings of criminal prosecution, and no information as to whether a voter’s registration would be purged, the letter has the distinct effect of intimidating and dissuading persons from exercising their right to vote. As has been noted in the media, registered voters who received the letter have reported feeling

confused and intimidated.⁶ Voter intimidation is illegal under both federal and Ohio law. *See* 52 U.S.C. § 10101(b); Ohio Rev. Code Ann. §§ 3501.35, 3501.90, 3599.01, 3599.24, 3599.26.

Naturalized citizens are, by definition, persons whose national origin lies outside the United States. It is well established that “the rights of citizenship of the native born and of the naturalized person are of the same dignity and are coextensive.” *Schneider v. Rusk*, 377 U.S. 163, 165 (1964). Naturalized citizens are therefore protected from unlawful discrimination by the U.S. Constitution and federal law—including from state-sanctioned voter intimidation. Your 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, which is not required of U.S.-born citizens. Moreover, according to the U.S. Census Bureau, the majority of naturalized citizens in Ohio are comprised of racial and ethnic minorities, adding an additional layer of unlawful discrimination to this effort.⁷ This discriminatory practice violates both the Equal Protection Clause of the Fourteenth Amendment and Section 2 of the VRA, which prohibits “the use of voting practices that result in citizens being denied equal access to the democratic process on account of “race, color, or membership in a language minority group.” 52 U.S.C. 10301.⁸

II. Unlawful Withholding of Records

Your refusal to provide records requested under the NVRA Public Disclosure Provision constitutes a violation of Section 8 of the NVRA. CLC and AVIL requested these records pursuant to the NVRA on **August 29, 2024**. After your office denied the request under state law on **September 16**, your office was provided notice under 52 U.S.C. § 20510(b)(2) on **October 1** that this denial violates the NVRA.

As you are well aware, the NVRA requires your office to maintain for at least two years and make available for public inspection “all records concerning the

⁶ Nick Evans, *Citizens caught in Ohio noncitizen voting audit say latest letter offers incomplete information*, Ohio Capital J. (Sept. 4, 2024), <https://ohiocapitaljournal.com/2024/09/04/citizens-caught-in-ohio-noncitizen-voting-audit-say-latest-letter-offers-incomplete-information/>; *see also* “Did I just lost my chance to vote?”, Reddit, (Oct. 7, 2024), https://www.reddit.com/r/Ohio/comments/1fyoci8/did_i_just_lose_my_chance_to_vote/?share_id=FGkN8R0yd5fsoyNUmmlZ8&utm_content=2&utm_medium=ios_app&utm_name=ioscss&utm_source=share&utm_term=1.

⁷ *See Profiles on Naturalized Citizens: Ohio*, U.S. Dept. Homeland Security (2022), <https://ohss.dhs.gov/topics/immigration/naturalizations/profiles-naturalized-citizens>

⁸ *See also* U.S. Dept. of Justice, Guidance Under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, for Redistricting and Methods of Electing Government Bodies (Sept. 1, 2021), <https://www.justice.gov/opa/press-release/file/1429486/download>.

implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i)(1) (the “Public Disclosure Provision”). Records pertaining to individualized voter information and list removal fall squarely within the ambit of the NVRA’s Public Disclosure Provision.

Section 8 of the NVRA requires the public disclosure of state voter list-maintenance activities. The Public Disclosure Provision mandates: “Each State shall maintain . . . and shall 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.” 52 U.S.C. § 20507(i)(1) (emphasis added). Courts generally construe “all records” broadly. *See, e.g., Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1336 (N.D. Ga. 2016); *True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 720 (S.D. Miss. 2014); *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 336 (4th Cir. 2012). Such records include electronic information contained in a state’s computerized voter registration databases. This information must be produced regardless of whether state law treats it as a public record. *See Project Vote*, 208 F. Supp. 3d at 1336. A state’s failure to disclose relevant information requested under Section 8 constitutes a violation of the NVRA. 52 U.S.C. 20510(b); *see Project Vote*, 208 F. Supp. 3d at 1351-52 (ordering the state defendant to provide voter list-maintenance records withheld in violation of NVRA).

All three categories of documents in CLC and AVIL’s request for Voter Identification records pertain to Ohio’s list-maintenance practices “conducted for the purpose of ensuring the accuracy and currency” of Ohio’s voter rolls—and thus must be disclosed under the NVRA. *See, e.g., Pub. Interest Legal Found., Inc. v. Matthews*, 589 F. Supp. 3d 932, 941 (C.D. Ill. 2022) (“[T]he Public Disclosure Provision casts a wide net, mandating ‘all records’ be made publicly available. Such expansive language ‘sets a floor, not a ceiling.’”) (quoting *Project Vote/Voting for Am., Inc. v. Long*, 682 F.3d 331, 337 (4th Cir. 2012)) (emphasis in original); Order, *Pub. Interest Legal Found., Inc. v. Knapp*, 3:24-cv-01276-JFA (D.S.C. Sept. 18, 2024), ECF No. 38 (“South Carolina Statewide Voter Registration List is a record subject to inspection pursuant to the NVRA”).

As previously explained in CLC and AVIL’s October 1 letter, to the extent you contend that Ohio law governs and narrows your responsibilities for disclosure under the NVRA, federal law preempts state law. *See Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8 (2013) (noting that the Elections Clause grants Congress the power to “supplant” state laws which conflict with federal law, including the NVRA). States enjoy no “presumption against preemption” for state laws when they conflict with the NVRA. *Id.* at 13-15. Accordingly, any

“Confidential Law Enforcement Investigatory Records exemption” under Ohio law poses no barrier to, or grounds to deny, disclosure. *See, e.g., Pub. Interest Legal Found., Inc. v. Knapp*, No. 3:24-cv-01276-JFA (D.S.C. Sept. 18, 2024) (“the NVRA preempts any [state] law limiting access to the Statewide Voter Registration List”); *Pub. Interest Legal Found. v. Boockvar*, 431 F. Supp. 3d 553, 564 (M.D. Pa. 2019) (“[W]e need not consider whether the requested records are protected by [state law] because [the plaintiff] sought its records under the NVRA. To the extent [state] law conflicts with our interpretation of federal law, federal law controls.”); *Judicial Watch, Inc. v. Lamone*, 399 F. Supp. 3d 425, 445 (D. Md. 2019) (state law restricting access to voter registration records is preempted where it “undermines [the NVRA Public Disclosure Provision’s] efficacy” and “is an obstacle to the accomplishment of the NVRA’s purpose”); *Project Vote/Voting For Am., Inc. v. Long*, 813 F. Supp. 2d 738, 743 (E.D. Va. 2011) (“to the extent that any [state] law, rule, or regulation forecloses disclosure . . . the court FINDS that it is preempted by the NVRA”), *aff’d* by 682 F.3d 331 (4th Cir. 2012).

In sum, your office has an affirmative obligation under the NVRA to identify and produce documents responsive to CLC and AVIL’s public records request as originally submitted on **August 29, 2024**.

III. Demands

In light of your continued violations of state and federal law, CLC, AVIL, ACLU Ohio, and ACLU request the following actions to remedy these ongoing harms:

1. Immediately stop the list-maintenance programs initiated on **May 14, 2024**;
2. Issue a public statement confirming that no person has been removed from Ohio’s voter rolls since **August 6, 2024** or thereafter, pursuant to the process initiated by your office on **May 14, 2024**;
3. Issue a subsequent letter to all “Ohio Voter Registration Eligibility Confirmation” and Noncitizen Attestation Letter recipients detailing that their voter registration will not be purged prior to the Election and will be permitted to vote.
4. Immediately, identify and produce documents responsive to CLC and AVIL’s **August 29, 2024** public records request made pursuant to 52 U.S.C. § 20507.

Please provide the requested documents in electronic format where possible. If any responsive documents or communications are in the possession of the Secretary of State or any employees of the Secretary of State on non-governmental computers, electronic devices, or in paper copy, please include such documents and communications in your production.

Sincerely,

/s/ Jonathan Diaz

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