

Via U.S. Mail and facsimile to 682-3408

October 31, 2016

The Honorable Mark Martin
Arkansas Secretary of State
Executive Office
State Capitol, Suite 256
500 Woodlane Street
Little Rock, AR 72201

Re: Non-compliance with Section 8 of the National Voter Registration Act of 1993

Dear Secretary of State Martin,

This letter is on behalf of the Arkansas Civil Liberties Union, our members, and the many eligible Arkansans who have been stripped of their right to vote, to provide you with official notice that your office and election officials are in violation of the National Voter Registration Act of 1993 (NVRA), 52 U.S.C. §20507. We urge you to immediately ensure that voting rights are restored for all persons improperly removed from Arkansas' registered voter list based on the flawed data from Arkansas Crime Information Center (ACIC) in violation of Section 8 of the NVRA.

The NVRA provides that (1) the right of citizens of the United States to vote is a fundamental right; (2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and (3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect of voter participation in elections for Federal office and disproportionately harm voter participation. 52 U.S.C. §20501 Section 8 of the NVRA requires that States keep accurate and current voter registration lists. At the same time, the Act requires list maintenance programs to incorporate specific safeguards, e.g., that they be uniform, non-discriminatory, in compliance with the Voting Rights Act, and not be undertaken within 90 days of a federal election.

52 U.S.C. § 20507(a) provides, in pertinent part:

“In the administration of voter registration for elections for Federal office, each State shall (1) ensure that any eligible applicant is registered to vote in an election...”

52 U.S.C. § 20507(a)(3) provides:

“[T]hat the name of a registrant may not be removed from the official list of eligible voters except – (A) at the request of the registrant; (B) as provided by State law, by reason of

criminal conviction or mental incapacity; or (C) as provided under paragraph (4) [discussing deceased registrants or individuals who have changed residence];”

52 U.S.C. § 20507(b)(1) provides, in pertinent part:

“Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office-

(1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.) [now 52 U.S.C. § 10301 et seq.]....”

52 U.S.C. § 20507(i) provides, in pertinent part:

“Each State shall... make available for public inspection and, where available, photocopying at a reasonable cost, 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...”

Based upon our investigation to date, it appears that eligible Arkansas voters have been removed from the voter registration list and risk disenfranchisement in violation of 52 U.S.C. §§ 20507(a)(1), 20507(a)(3), and 20507(b)(1). We have found that:

- (1) More than 7,000 eligible registered Arkansas voters were flagged for removal, many improperly flagged and removed from the statewide voter registration list since June 2016 due to flawed data obtained from the Arkansas Crime Information Center (ACIC) by the Secretary of State’s office and provided to the county clerks.
- (2) State election officials have neither taken steps to ensure restoration of nor restored all eligible voters to the voter registration list who were improperly removed from the rolls based on erroneous felony conviction and status information.
- (3) The Arkansas Secretary of State has not identified for county clerks or county board of election commissioners voters for whom ACIC data passed by the Secretary to the clerks was accurate or inaccurate nor has the Secretary of State instructed county clerks to restore those eligible registered voters who were erroneously removed to the voter registration list or ensured all lawfully registered voters removed due to faulty data were restored.
- (4) The Arkansas Secretary of State has failed to provide information responsive to written requests for information related to the removal of voters, including identities of voters affected by the alleged status of a purported felony conviction.

To register to vote in Arkansas, an applicant must (1) be a U.S. citizen; (2) have been an Arkansas resident for at least 30 days prior to Election Day; (3) be at least 18 years old on Election Day; (4) not be a convicted felon who has not been discharged or pardoned; (5) not

have been declared by a court to be mentally incompetent to vote; and (6) not registered in another county or state.¹

In June 2016, the Arkansas Secretary of State's office obtained and sent badly flawed data regarding the purported eligibility of thousands of Arkansans to the state's 75 county clerks.² The Secretary of State determined that more than 7,000 registered voters should be flagged and removed from the list of electors due to felony convictions identified in data provided by the Secretary of State.

The NVRA expressly permits the removal of voters from the registration lists who have been convicted of a disqualifying crime. 52 U.S.C. § 20507(a)(3). We do note and respect the Secretary of State's authority to implement the eligibility requirements enumerated in the Arkansas Constitution. The problem, however, is that the ACIC data provided by the Secretary is badly flawed and resulted in the removal of eligible voters from the statewide registration list. The Pulaski County Clerk, the state's largest county, observed that more than half of the 2,000 voters identified by the Secretary of State's office were improperly designated as being ineligible to vote. More than 300 people on the list were "completely innocent."³ ACIC administrator Brad Cazort conducted an internal review and noted that a substantial number of the purported felonies never occurred or were categorized incorrectly.⁴ Improperly removed voters include ex-felons who have paid their debt to society and successfully had their voting rights reinstated, some who have been pardoned or had their records sealed, as well as roughly 4,000 people who have never been convicted of a felony.

The Secretary of State's office flagged voters as having felony convictions without notice to the clerks that the data was unverified, that this was a departure from previous sources of data, or that the effort was a first time attempt to conduct an audit of voter eligibility based on a new source of data containing information dating back to the 1970's. County clerks in Arkansas have undertaken ad hoc and non-uniform efforts in response to receipt of this flawed data and in restoring the rights of voters in their respective counties. The Secretary has not provided the county clerks or county boards of election commissioners with updated, accurate information, regarding these flagged voters nor has your office taken steps to ensure a statewide restoration of voters wrongfully removed. Thus, eligible Arkansas voters' rights remain in jeopardy.

¹ AR Const. Art. 3 §1, Amend. 51 §§ 9(a)(1) & 11(a)(4).

² Hardy, Benjamin, *Arkansas Times*: [Data mix-up from Arkansas Secretary of State Purges Unknown Number of Eligible Voters](#). July 25, 2016

³ Mershon, Matthew, *KATV Little Rock*: [Pulaski Co. Clerk says Sec. of State needs to take responsibility in possible voter purge](#). Friday, August 12, 2016

⁴ Fanney, Brian, *Northwest Arkansas Democrat Gazette*: [Flaggers of 7,730 voters used crime center's faulty entries](#). September 3, 2016. <http://www.nwaonline.com/news/2016/sep/03/20-000-cases-erroneously-listed-felonie/?news-arkansas>

The Secretary of State is well aware of the flaws in the data and the possibility that thousands of Arkansan voters may be erroneously disenfranchised. We have asked for additional information about those voters affected but have not received same.

In particular, we requested, on August 3, 2016:

- (1) Records by, from, to, or between the Arkansas Secretary of State's office and the Arkansas Crime Information Center, ADC, and other sources concerning persons who may have had a criminal conviction that may affect their voting rights or status as a voter;
- (2) All records concerning use of ACIC or any other data relating to possible criminal history of any voter, including requests for information and lists supplied by ADC, ACIC or other sources to the Secretary of State or transmitted by the Secretary of State to any government official, including county clerks or other county election officials, and any follow up records to or from government officials or offices concerning possible criminal histories and voters, to include specifically all records concerning information provided to counties in June, 2016 by the Secretary of State and records that relate to actions taken and not taken after June with respect to this data;
- (3) Records by, from, to or between the Arkansas Secretary of State's office and any other government officials or offices concerning errors in any data or information concerning a voter or voters;
- (4) Lists of voters flagged by ACIC with possible criminal histories and all records concerning those who may have been inappropriately or mistakenly flagged;
- (5) All records concerning clerks' reversal or treatment of voters who have been or may have been improperly flagged for criminal histories;
- (6) Records concerning county clerks or elections officials' obligations to verify data transmitted by the Secretary of State;
- (7) Records concerning restoration of voting rights for those who have discharged felony sentences and obligations who may re-register to vote;
- (8) Records concerning all voters who may have been incorrectly flagged as inactive;
- (9) Records concerning all voters who may have been incorrectly flagged as removable or whose registrations are to be cancelled; and
- (10) Records concerning potential flaws in any database or information received or transmitted or used by concerning voters' eligibility or status.

Your office responded August 12 with records dating to August 5, but did not provide a list of voters potentially affected by the use of faulty ACIC data. On August 15, we objected to this omission. We renewed our request on August 17 and sought an updated chart listing voters affected by county. Your office objected again to providing a list of potentially affected voters. On August 22, we again sought records from the registered voter and voter history databases indicating all voters who had a change of status from January 1, 2016 to date, with all fields for voters and reason for status change and requested a report showing the status of requests to roll back the faulty data run from various counties. Your office responded August 22 but again did not provide documents indicating voters affected, denying having any reports concerning requests from counties to roll back the faulty data run and denying ability to generate information concerning voters with a change of status from January 1, 2016 to date.

The Secretary of State is obligated to make this information available for public inspection and photocopying at a reasonable cost because the information constitutes “records” concerning “activities conducted for the purpose of ensuring the accuracy... of official lists of eligible voters. 52 U.S.C. § 20507(i); see also *Project Vote v. Kemp*, No. 1:16-cv-2445-WSD, 2016 WL 5092512 at *16-17 (N.D. Ga. Sept. 20, 2016). Pursuant to the Arkansas Freedom of Information Act and the NVRA, we renew our prior requests and seek the previously requested records, updated to current date, as well as any records relevant to our general concerns outlined herein about the removal of eligible voters based on their purported felony conviction status and any guidance or direction provided to county election officials concerning voters affected by the faulty data and how the voters, and their provisional ballots are to be treated . This request includes documents regarding any voters flagged for removal as well as records explaining or reflecting the reasons for an applicant’s or voter’s rejection, cancellation, or not being added to the registration list on account of their purported felony conviction status.

Based upon the foregoing, it appears that the Secretary of State has taken action that led to eligible electors being improperly removed based on badly flawed data in violation Section 8(a) of the NVRA. It also appears that this mass removal of electors has not been conducted uniformly in violation of Section 8(b)(1). Finally, the Secretary of State has not responded to written requests for information concerning these voters in violation of the NVRA’s public disclosure provisions.

Please be advised that this letter serves as written notice pursuant to 52 U.S.C § 20510. These violations are current and ongoing within 120 days of a federal election. We, our clients and the voters of Arkansas shall reserve the right to pursue all available legal remedies, including remedies that allow for an award of attorneys’ fees and costs, should you choose to continue to violate the NVRA and refuse to immediately (1) cease and desist sharing flawed data facilitating removal or disfranchisement of electors from the state’s voter registration list; (2) ensure the unlawfully purged voters are restored to the rolls and will have any votes cast counted and (3) produce records requested pursuant to the Arkansas Freedom of Information Act and the public disclosure provisions of the NVRA . If these violations are not corrected within 20 days of receipt, litigation can be brought to address these violations. We hope that your office will take appropriate action; to discuss resolution of this matter, please contact me at 501-374-2842. Thank you for your attention and anticipated cooperation.

Respectfully,

Holly Dickson