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FOR JUSTICE

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April 16, 2010

Delivered via E-Mail and U.S. Mail

Mr. Mark Ward
Election Administrator, Benton County
113 Maple Street
Camden, TN 38320

Re: News reports of Voter Purges

Dear Mr. Ward:

Thank you for providing me your contact information last week. As I indicated in our conversation, I am with the Brennan Center for Justice at NYU School of Law. I write on behalf of American Civil Liberties Union of Tennessee (ACLU-TN) and the Brennan Center for Justice with great interest as to the details of recent voter registration list maintenance activity in Benton County as reported on msnbc.com. By way of this letter, we seek to provide information about the requirements of the National Voter Registration Act of 1993 (the "NVRA")¹, urge you to reinstate any wrongfully affected voters, and offer our assistance in any way we can be helpful.

The Brennan Center is a non-partisan organization that unites scholars and advocates in pursuit of a vision of inclusive and effective democracy. Toward that end, the Center's Democracy Program promotes reforms that eliminate barriers to full and equal political participation and that foster responsive and responsible governance. In particular, the Brennan Center has extensively studied list maintenance practices nationwide, analyzed both effective and ineffective list maintenance activity, and produced materials to educate the public and election officials about best practices with respect to list maintenance activity.

ACLU-TN is a nonpartisan nonprofit organization with individual members throughout the state of Tennessee. ACLU-TN is dedicated to translating the

¹ See 42 U.S.C. § 1973gg *et seq.*

guarantees of the Bill of Rights into reality for all Tennesseans. ACLU-TN has a demonstrated interest in the voting rights of Tennesseans, in the integrity and proper administration of Tennessee's election system, and frequently litigates voting rights and election law issues throughout the state.

The news report indicates that Benton County has removed registrants from the voter rolls, at least some who have been on the rolls for a long period of time, because those registrations have been subsequently deemed deficient under state law. If the report is true, these removals would constitute a violation of Section 8(a) of the NVRA because, for the purpose of administering federal elections, States may only remove a voter registration record from the official list of registered voters based on the grounds listed in Section 8(a)(3) and (4) of the NVRA. States may not remove a previously registered voter from the rolls based on a subsequently identified defect in the original registration application unless the removal otherwise meets the requirements of Section 8(a).

NVRA Section 8(a)'s Requirements

Section 8(a) sets out the exclusive causes for which an election official may remove such a registered voter. Section 8(a) provides:

- (a) In general, in the administration of voter registration for elections for Federal office, each State shall . . .
 - (3) provide that 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);
 - (4) conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of—
 - (A) the death of the registrant; or
 - (B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d) of this section.

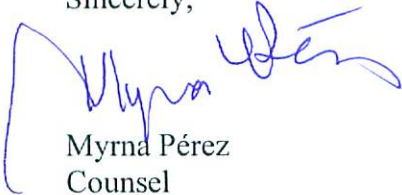
42 U.S.C. § 1973gg-6(a).

Under the express terms of the NVRA, once a registration application has been accepted, it is impermissible for a state to remove a registration record from the rolls for reasons other than those listed above. Accordingly, Section 8 prohibits the invalidation of any registration election officials later decide are incomplete under state law.

Conclusion

It is our hope that the news report inaccurately represents the details and circumstances of the recent Benton County list maintenance activity, or that the voters have been reinstated in the interim. We would very much appreciate hearing from you any additional information that bears on this matter. If the news report is complete and accurate, however, it is our view that Benton County and the State of Tennessee must promptly reinstate these voters to comply with federal law and to avoid unnecessary confusion in the upcoming May elections. The Brennan Center works with states and localities on election administration in a number of different contexts and capacities and we would be eager to explore with you solutions that will be minimally disruptive to your election administration while affording voters the protections they are entitled under federal law. Thank you very much for your attention to this matter and we respectfully request to hear from you by April 30, 2010.

Sincerely,



Myrna Pérez
Counsel
Brennan Center for Justice

Cc: Hedy Weinberg