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July 6, 2015

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**BY E-MAIL**

Honorable Brian P. Kemp, Secretary of State  
c/o C. Ryan Germany, General Counsel  
Georgia Department of State  
214 State Capitol  
Atlanta, GA 30334

Re: Project Vote's Notice under Section 11(b) of the National Voter Registration Act

Dear Secretary Kemp:

We write to notify you that your office has violated the public disclosure provisions of Section 8(i) of the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20507(i), by failing to make available voter registration records requested by Project Vote. Over the past year, your office has either wholly failed to provide the records requested by Project Vote or, after significant delays, has provided records that are incomplete or cannot be understood without reference to other requested records that your office has not provided. Project Vote has continued to communicate with your office about these requests in an effort to avoid litigation, but because these records are imperative to Project Vote's mission, Project Vote can no longer afford to wait.

Your office's delays have already prevented Project Vote from accessing these records to assist eligible voters with registering in time to vote in the 2014 midterm elections, and Project Vote will not risk such consequences for future elections. Pursuant to Section 11(b) of the Act, 52 U.S.C. § 20510(b), this letter provides you with written notice of these violations. If your office does not correct these violations within 90 days after receipt of this letter, Project Vote will explore options for seeking redress against you in federal district court.

Your refusal to make the requested records available prevents Project Vote from determining if the rejection, cancelation, or failure to add voters or applicants to Georgia's voter rolls was lawful, and whether systemic election administration problems exist in Georgia. As Congress recognized when it enacted NVRA Section 8(i)(1) (the "Public Disclosure Provision"), transparency is essential to accomplishing the stated purposes of the NVRA, which include to "increase the number of eligible citizens who register to vote in elections for Federal office"; "to protect the integrity of the electoral process"; and "to ensure that accurate and current voter registration rolls are maintained." 52 U.S.C. §§ 20501(b), 20507(i)(1). Other subsections in Section 8 of the NVRA confirm the importance to Congress of accurate and fair voter registration

procedures generally. For example, Section 8(b) requires that “[a]ny 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 . . . shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965.” 52 U.S.C. § 20507(b). Further, Section 8(c) prohibits systematic removals of persons on the voter list within 90 days of a federal election, *see id.* § 20507(c)(2)(A), and Section 8(d) strictly limits the procedures for removals by reason of change of residence, *see id.* § 20507(d). Project Vote must have access to the requested records to identify and correct any existing problems in Georgia’s electoral process and to ensure that future voter registration drives conducted by Project Vote or similar organizations result in legally qualified applicants being added to and retained on the voter rolls.

Although no such showing is required in order to establish entitlement to these records, Project Vote has reason to believe that problems do exist in Georgia’s system. As a result of its ongoing nonpartisan voter registration efforts, including in Georgia, Project Vote suspects that a large number of properly completed voter registration applications submitted by qualified and eligible citizens of Georgia have been (and may continue to be) incorrectly rejected, canceled, stalled, or otherwise not added to the Georgia voter rolls. These suspicions have been reinforced by the recent resignation of Georgia Elections Director Linda Ford, who, as you know, resigned after an internal investigation concluded that she had changed the status of almost 8,000 voters from inactive to canceled within 90 days before an election in violation of federal law. As a result of voter registration applicants being rejected, canceled, or stalled, eligible voters in Georgia may have been prevented or discouraged from voting in the 2014 United States midterm elections and future elections.

For your reference, below is a summary of requested documents that your office has either failed to provide or has provided in incomplete form. We request that you correct these violations as soon as practicable.

**Records Identifying All Voters Rejected, Canceled, or Otherwise Not Added to the Voter Rolls.** Project Vote has requested but has not received complete records identifying all voter registration applicants who were rejected, canceled, or otherwise not added to Georgia’s voter rolls in the past two years, along with any records explaining or reflecting the reasons for their rejection, cancellation, or not being added. As early as May 13, 2014, Project Vote requested these records as they relate to voters rejected, canceled, or not added due to lack of proof of citizenship, and it expanded the request to include all voters rejected, canceled, or not added to the polls for any reason on September 24, 2014.

Without these records, Project Vote cannot ascertain whether Georgia’s reasons for rejecting, canceling, or otherwise not adding voters or applicants to the rolls are proper. This is precisely the function of the public disclosure provision—to allow public oversight to ensure states’ compliance with the NVRA and to achieve the Act’s purposes. *See* 52 U.S.C. § 20501(b) (stated purposes of the legislation include “to protect the integrity of the electoral process” and “to ensure

that accurate and current voter registration rolls are maintained”). Moreover, Project Vote’s concern is made especially relevant by the results of the recent internal investigation into your office’s activities, which revealed that your office had violated federal law by changing the status of almost 8,000 Georgia voters from inactive to canceled within 90 days of an election. This investigation was apparently conducted long after Project Vote’s requests were made but before the report of canceled voters was provided to Project Vote.

*Rejected Voter Records.* Your office did not provide any material responsive to Project Vote’s requests for records identifying rejected voters until October 14, 2014, and the report your office provided at that time, a so-called “NVF” (“non-verify”) report, was incomplete. The report contained only 14,000 records of applicants not placed on the rolls with a status of “NVF” due to a non-match with Department of Driver Services (“DDS”) or Social Security Administration (“SSA”) records, “including a citizenship non-match.” It did not contain applicants who were rejected or otherwise not added to the rolls for any reason other than a “non-match,” and it did not include sufficient data explaining the specific reasons for non-verification, including whether the applicants listed were rejected due to a lack of proof of citizenship or a lack of a record regarding citizenship, whether the applicants listed were rejected because the relevant data match affirmatively contained information indicating non-citizenship, whether they were rejected due to a non-match with DDS or SSA records and the nature of the non-match, whether they had used a provisional ballot, etc. Project Vote promptly notified your office of these deficiencies by email on October 15, 2014. Mr. Germany informed Project Vote on October 17, 2014 that the “NVF” report contained all rejected applicants rejected for any reason. However, this appears to be contradicted by the canceled voter report provided on April 3, 2015 (see next section), which lists over 30,000 voters with a status of “NVF.” Further, Project Vote still requires, and again requests that you provide, the data explaining the specific reasons for non-verification.

*Canceled Voter Records.* Your office did not provide any records identifying canceled voters until April 3, 2015, almost six months after Project Vote notified your office of the deficiencies in the October 14 NVF report and almost seven and eleven months after Project Vote’s original requests for these records. Again, the report your office provided was deficient and did not satisfy Project Vote’s request. The report did not contain sufficient information to allow Project Vote to understand the reasons for the individual voters’ cancelations. The acronyms used in the report were only cursorily defined. *See* Apr. 3, 2014 Canceled Voter Report (for example, defining “HER” code as just “Hearing,” both “NVF” and “REJ” codes as “Not Verified,” and “ERR” code as “Error”). Project Vote thus again requests that you provide additional information regarding the reasons for the cancelations of individual voters. Further, please confirm in writing that the canceled report provided on April 3, 2015 contains the entire list of all rejected applicants rejected for any reason.

*Records Identifying Voter Applicants Otherwise Not Added to the Rolls.* Your office has never provided Project Vote with records identifying voter registration applicants not added to the rolls for reasons other than being rejected or canceled. This would include any voters not added to

the rolls because they are pending verification. Project Vote has reason to believe that a significant number of voters or voter registration applicants do not appear on the rolls for reasons other than rejection or cancelation, including that they are pending. Media sources reported in October of 2014 that approximately 2,000 to 3,000 voter registration applications were “pending” just days before early voting began for midterm elections, up from the average of 50 to 70 in previous years. *See, e.g.,* Kristina Torres, *AJC Analysis: Georgia Sees Surge in Voter Rolls*, ATL. J.-CONSTITUTION (Oct. 7, 2014, 7:10 PM), <http://www.myajc.com/news/news/state-regional-govt-politics/ajc-analysis-georgia-sees-surge-in-voter-rolls/nhdgL/>. As these sources further reported, at least one Georgia voting rights group could not locate on the voter rolls more than 40,000 of the 85,000 applicants it assisted in a voter registration drive held around the same time, *see, e.g., id.*, a rate of rejection that, in Project Vote’s experience, far exceeds the typical rejection rate in other states.

**Statewide Registered Voter List.** Project Vote acknowledges that your office has provided three statewide registered voter lists (current as of August, October, and December 2014). Project Vote requested this list as early as June 3, 2014.

**Complete Database File Underlying the Above Records and Reports.** Your office has failed to provide a complete database file underlying the above records and reports that contains all of the data fields your office has on file. Project Vote requested this database as early as October 30, 2014. Indeed, to the extent the information sought in the above requests is entirely contained in the complete database, providing the complete information in the database file would likely satisfy those requests. Project Vote needs the complete information contained in this database to identify not only voters or voter registration applicants not identified in any of the rejected or canceled voter records, but also to locate missing data related to voters that are identified in the rejected or canceled voter records, *e.g.*, whether rejected voters used a driver’s license number or Social Security number on their voter registration applications and/or were rejected due to a non-match with DDS or SSN records. Project Vote also needs this information to determine whether Georgia is conducting appropriate activities to maintain the accuracy and currency of its voter list in compliance with the NVRA and other law.

**Records Reflecting the Meaning of All Codes, Fields, and Abbreviations Used in the Above Records and Reports.** Project Vote has received incomplete and deficient responses to its requests for records reflecting the definitions of all codes, fields, and abbreviations used in the reports provided by your office. Without these codes, the information in these reports is virtually meaningless. Project Vote has consistently requested this information in conjunction with each of its requests since May 13, 2014. On October 14, 2014, your office provided a cursory definition of the status code “NVF” used in the report provided that same day. *See* Email from C. Ryan Germany, General Counsel, Georgia Secretary of State, to Brian Mellor, General Counsel, Project Vote (October 14, 2014) (stating that “non-verify” indicates “applicants that were not placed on the rolls due to a non-match with the DDS or SSA records, including a citizenship non-match”). This definition was not sufficient to allow Project Vote to determine the individual reasons for why each applicant on the “NVF” report was not added to the voter rolls, *i.e.*, non-match with DDS records,

non-match with SSA records, or citizenship non-match. For example, Project Vote cannot determine from this information what criteria result in a “non-match,” and whether, for example, a lack of information in a database regarding citizenship results in a “non-match” or whether a citizenship “non-match” can only result from affirmative information regarding citizenship in a matched database. On April 3, 2014, your office provided cursory definitions of the acronyms used in the canceled voters report provided that same day, but included no additional records or information that would allow Project Vote to fully understand the individual reasons for why these voters were canceled. *See* Apr. 3, 2014 Canceled Voter Report (for example, defining “HER” code as just “Hearing,” both “NVF” and “REJ” codes as “Not Verified,” and “ERR” code as “Error”). Project Vote therefore reiterates its request that you provide records reflecting definitions of all codes, fields, and abbreviations used in the reports that you have provided thus far, as well as all codes, fields, and abbreviations used in any additional reports or materials that you provide, including any such codes, fields, and abbreviations used in the underlying database. As conveyed numerous times, including in the email from Ryan Malone to C. Ryan Germany dated October 20, 2015, “Project Vote needs to understand how and why each applicant is assigned the stated reasons for rejection or cancelation, as well as circumstances under which changes are made in the database fields.” If it cannot understand these details, Project Vote cannot determine whether Georgia’s voter registration processing procedures are proper and in compliance with federal voting laws such as the NVRA.

**Policies, Manuals, and Other Guidance.** Finally, Project Vote has yet to receive sufficient documents responsive to its requests for written policies, manuals, or other guidance provided to your staff, contractors, primary or election officials, or other relevant persons regarding the processing of voter registration applications and preparation of voter rolls. Project Vote requested these materials as they relate to Georgia’s proof of citizenship requirement as early as May 13, 2014, and it requested these materials as they relate to Georgia Code § 21-2-31, *i.e.*, voter registration generally, as early as September 24, 2014. Project Vote needs these materials to understand how and why each applicant is assigned the stated reasons for rejection or cancelation, to determine whether these reasons are proper.

Your office did not provide *any* materials responsive to this request until October 15, 2014, and the materials it provided then—a limited set of training materials and presentations—are incomplete on their face or with reference to public filings. The materials themselves refer to a User Guide and updates to it that your office failed to provide and that are clearly responsive to Project Vote’s request. *See, e.g.*, Mar. 31, 2014 Overview of GVRS at slide 5. Further, the materials provided do not include a Georgia Voter Registration System manual referenced in a recent lawsuit brought against your office in Fulton County Superior Court. *See Third Sector Dev., Inc. v. Kemp*, No. 2014-CV-252546 (Fulton Cnty. Super. Ct. filed Oct. 16, 2014). As indicated in Mr. Mellor’s email of October 15, 2014, the information should include, but not be limited to, records reflecting “all procedures the SOS staff, contractors, or local registrars follow regarding verification of applicants, including precisely what information or lack of information in DDS or SSA triggers assignment of the ‘NVF’ code or any other rejection code to an applicant.” Project

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Vote notified your office of these specific deficiencies by email on October 20, 2014, and further explained that Project Vote's request also includes records reflecting any instructions provided to programmers or other staff on how to construct DDS and SSN matches within the Georgia Voter Registration System, including the algorithm used to conduct the match. Project Vote has received no additional materials in response. Project Vote requests that you provide: (i) the referenced User Guide and updates to it; (ii) the referenced Georgia Voter Registration System manual; and (iii) any other responsive written policies, manuals, or other guidance. Databases are not self-executing. It is clear that in order for the voter registration system to operate to maintain an accurate and current voter list, instructions and programming must be in place. Project Vote must be able to examine these materials to understand Georgia's voter registration procedures.

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By preventing Project Vote from accessing these requested records, you have denied Project Vote its federal statutory rights under the NVRA. As Project Vote has explained in numerous communications to your office over the past year, Project Vote is entitled to access all of the requested records under the NVRA. Section 8(i)(1) of the NVRA requires Georgia to "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." 52 U.S.C. § 20507(i)(1). The requested records "unquestionably fall within the plain language of Section 8(i)(1)." *See Project Vote v. Long*, 682 F.3d 331, 337 (4th Cir. 2012). "Where the language is plain and the statutory scheme is coherent and consistent, there is no need to inquire further." *Id.* (internal quotation marks omitted). Thus, the NVRA requires Georgia to provide Project Vote access to the requested records.

Again, if your office continues to withhold from Project Vote the records it needs to determine whether qualified and eligible voter registration applicants are being timely and properly added to the Georgia voter rolls, Project Vote will be forced to consider bringing a civil action against you to enforce its right to access these records. It is imperative that we are able to review these records in their entirety as soon as is practicable to avoid further delays. In light of the extensive delays your office has already caused to date, we request a reply at your earliest opportunity.

Best regards,



Jonathan R. Ference-Burke

Copy to: Brian Mellor, Project Vote  
Michelle Kanter Cohen, Project Vote