



October 3, 2024

Via email and U.S. Mail

Frank LaRose
Ohio Secretary of State
180 Civic Center Drive
Columbus, OH 43215
flarose@ohiosos.gov

Re: NVRA Compliance as to Ohio Third-Party Voter Challenges

Dear Secretary LaRose:

We are writing on behalf of the League of Women Voters of Ohio and Common Cause Ohio, as well as their members, and other persons and organizations similarly situated, regarding the application of Ohio law provisions relating to voter challenges, including Ohio Rev. Code § 3503.24. This letter serves as written notice pursuant to 52 U.S.C. § 20510(b) that the manner in which Ohio voter challenge provisions such as § 3503.24¹ are being applied to remove voters suspected of moving *en masse* based on third-party submissions violates Section 8 of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20507, which sets out the exclusive basis for removing registered voters for a purported change of address, *id.* § 20507(d). Additionally, beginning 90 days before the November 5, 2024 election, on August 7, 2024, “any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters”-- including but not limited to removals based on third-party mass voter challenges--would also violate Section 8(c) of the NVRA. *Id.* § 20507(c)(2); *see also* Ex. 1, U.S. Dep’t of Justice, Voter Registration List Maintenance: Guidance Under Section 8 of the National Voter Registration Act, 52 U.S.C. § 20507, at 4 (Sept. 2024), <https://www.justice.gov/crt/media/1366561/dl> [hereinafter “DOJ Guidance”] (providing that this 90-day deadline “also applies to list maintenance programs based on third-party challenges derived from any large, computerized data-matching process.”).

¹ There are also additional Ohio statutory provisions regarding voter challenges that could potentially be applied to violate Section 8 of the NVRA. *See, e.g.*, §§ 3505.20, 3509.06–07. To the extent that voters could be challenged under provisions like § 3505.20 (at the polling place) and §§ 3509.06–07 (absent voters) on the grounds of purported change of residency without complying with the notice-and-waiting-period process of Section 8(d), or on grounds such as purported change of residency after the 90-day deadline in Section 8(c), any removals based on such challenges would also violate Section 8 of the NVRA. *See* 52 U.S.C. §§ 20507(c), (d); *infra* Parts I, II.

I. Requirements of Section 8 of the NVRA

A. Section 8(d)

Section 8(d) of the NVRA sets out the *only* way that a voter can be removed from the rolls for a purported change of address, detailing that “[a] State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant”:

(A) confirms in writing that the registrant has changed residence to a place outside the registrar’s jurisdiction in which the registrant is registered; or (B)(i) has failed to respond to a notice described in paragraph (2); and (ii) has not voted or appeared to vote (and, if necessary, correct the registrar’s record of the registrant’s address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

52 U.S.C. § 20507(d). Any removal of a voter from the official list of eligible voters for November’s federal elections based on a purported change of address that does not comply with the notice and waiting period mandated by Section 8(d) of the NVRA is unlawful.

B. Section 8(c)

Section 8(c) pauses “*any* program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters” in the “90 days prior to the date of a primary or general election for Federal office.” 52 U.S.C. § 20507(c)(2). The only exceptions to this 90-day rule are for removals “at the request of the registrant,” or based on “criminal conviction or mental incapacity,” death, or “correction of registration records.” *Id.* § 20507(c)(2)(B). This limitation applies to “*any*” and all list maintenance programs, including those “based on third-party challenges derived” from data-matching processes. *See* DOJ Guidance at 4.

II. Current Non-Compliance with Section 8 of the NVRA

C. Section 8(d)

Public records, including minutes from county boards of elections meetings, voter challenge materials, and other communications, show that the county boards of election in Delaware County, Muskingum County, likely Logan County, and potentially other counties (including Cuyahoga County) have removed voters following mass challenges brought by third parties under Ohio Rev. Code § 3503.24, based on information purporting to show a change of a registrant’s residence. For example, public records from Delaware County show that the Delaware County Board of Elections has granted at least 84 third-party challenges (and potentially hundreds of additional challenges) brought on the basis of a purported change in residency, without any evidence of either direct communication from those voters that they wished to be removed or compliance with Section 8(d)’s notice-and-waiting procedures.

During their August 1, 2024 voter challenge hearing, the Delaware County Board of Elections heard testimony from a group of challengers regarding their voter challenges against approximately 280 voters. Ex. 2, Transcript of Delaware County Board of Elections Voter Challenge Hearings, Thursday, August 1, 2024 9:00 a.m., at 12 [hereinafter “Delaware County BOE August 1, 2024 Hearing Transcript”]. After accounting for voter challenges that had already been resolved prior to the hearing, Board members noted that there were “241 remaining challenges in front of us.” *Id.* at 63. These voters were challenged based on alleged change of residence from Delaware County, Ohio to six other states: Florida, Georgia, Michigan, North Carolina, Tennessee, and Texas. *Id.* at 15–21, 68. A challenger testified that these voters were challenged for allegedly moving (based on National Change of Address data) and allegedly registering to vote and voting in a different state. *Id.* at 16–20. But another challenger explained that in some states, it could be “much more difficult to look up a person to see if they voted,” noting that the challengers did not have personal information for the challenged voters such as “Social Security numbers, driver’s license or their own voter ID,” *see id.* at 26—key personal information that would help ensure accurate matching of data for the challenged voters and protect against false positive matches.² Additionally, no challenged voters themselves were found present at the hearing to defend their voter registration status, and some of the challengers were also not present to explain their challenges and evidence; the Chairman of the Board noted the difficulty of attending a hearing within 10 days of a voter challenge (particularly when factoring in the time it takes to even mail a letter with notice of the hearing). *See id.* at 43–44.

After learning that the challengers’ evidence for five of the six states at issue (all but North Carolina) was compiled from third-party sources (such as Check My Vote) rather than governmental sources, the Chairman of the Board made a motion that evidence from such non-governmental sources would not meet the clear and convincing threshold to sustain the voter challenges; the Board reached a tie vote regarding this motion. *Id.* at 66–69. The Board also reached a tie vote on a motion that all 241 outstanding voter challenges should be sustained and those voters should be removed from the rolls—regardless of the source of the evidence against them and questions about the reliability of these sources. *Id.* at 66–70. For tie votes by the Board, the Chairman of the Board noted that the Secretary of State would decide the outcome, and the Board planned to submit these motions to the Secretary of State by August 16, 2024. *Id.* at 69, 78.³ The Board then turned to focus on just the subset of 84 voters for which the challengers had

² Notably, according to video footage of the testimony of the Director of Elections in Hamilton County, the County reached out to the Ohio Secretary of State’s Public Integrity Division for help addressing similar third-party mass voter challenges; in response, the Public Integrity Division noted that “without the last four digits of the Social Security Number, there’s still a statistically significant chance potential matches are actually false positives representing two different people.” Hamilton County Board of Elections 9/4/24 Meeting Video Footage, Intercommunity Cable Regulatory Commission TV, available at <https://www.icrctv.com/community/hamilton-county-board-elections>. These kinds of risks are precisely why the NVRA protects voters from change-of-address removals without a notice-and-waiting-period as well as systematic removals just before an election.

³ Under Ohio law, if a Board of Elections cannot reach agreement, for example when there is a tie vote, they can submit the controversy to the Secretary of State, and the Secretary of State shall make the final decision. Ohio Rev. Code § 3501.11. During its August 1, 2024 meeting, the Delaware County Board of Elections was unable to reach agreement on some of the voter challenges raising concerns about whether registered voters had moved and sent those to the Secretary of State for final decision. Ex. 2, Delaware County BOE August 1, 2024 Hearing Transcript, at 66–70. We are not aware if the Secretary of State issued a decision regarding these voters, but we urge the Secretary to comply with the NVRA and resolve the tie votes by denying these voter challenges. As explained *supra* and *infra*, any such challenges (or similar challenges) should be denied because removing voters based on a purported change

produced governmental sources (from North Carolina) purportedly supporting their claims, and the Board voted and reached agreement to remove these 84 voters. *Id.* at 76–77.

By processing these challenges and removing these 84 voters as a result of the Delaware County Board of Elections’ vote at its August 1, 2024 hearing, the Delaware County Board of Elections, pursuant to Ohio state law, Ohio Rev. Code § 3503.24, removed registrants from the official list of eligible voters based on purported change of residence without complying with the notice-and-waiting-period process, in violation of Section 8(d) of the NVRA. *See* 52 U.S.C. § 20507(d). Because these removals were made “on the ground that the registrant has changed residence” without first providing the legally required NVRA notice to those voters and waiting until “the second general election for Federal office that occurs after the date of the notice” to allow those voters to respond or “vote[] or appear[] to vote,” the removal of these 84 voters in Delaware County violated Section 8(d) of the NVRA. *See id.*

Any additional removals based “on the ground that the registrant has changed residence”—including but not limited to any potential removals of the challenged voters for whom the Delaware Board of Elections reached a tie vote and whose outcomes have been or would be decided by the Secretary of State—without first complying with the notice-and-waiting-period requirement would similarly violate Section 8(d) of the NVRA. *See id.* § 20507(d).

Similarly, in Muskingum County, during voter challenge hearings on July 2, 2024 and July 24, 2024, the Muskingum County Board of Elections voted to remove voters from the rolls based on challenges on grounds of purported change of residency, without any evidence of either direct communication from those voters that they wished to be removed or compliance with Section 8(d)’s notice-and-waiting procedures. Public records show that a voter challenge hearing was held on July 2, 2024 to address at least 15 challenges. Ex. 3, Voter Challenge Materials. The basis for all of these challenges was similar: that the challenged voter had allegedly moved from Muskingum County, Ohio to other states and voted in those states, based on evidence compiled from third-party sources (such as Check My Vote or The People’s Audit). *See id.* at 3–4, 8–9, 15–16, 21–22, 27–28, 34–35, 41–42, 47–48, 53–54, 57–58, 63–64, 66–67, 69–70, 74–75, 79–80. The records show that the Muskingum County Board of Elections voted to remove at least 10 of the voters challenged at this hearing, *see id.* at 2, 7, 14, 20, 26, 33, 40, 46, 52, 61, with the remaining challenged voters responding themselves to cancel their registrations, *see id.* at 59, 71, 76, 81. Public records show that another voter challenge hearing was held in Muskingum County on July 24, 2024 to address at least another challenge. Ex. 4, Voter Challenge Materials. The basis for this challenge was also that the challenged voter had allegedly moved out of state and voted in another state. *Id.* at 2–4. Records show that the Board also voted to remove this challenged voter at the hearing. *Id.* at 12. Because these voters were removed based on purported change of residency without first complying with the required notice-and-waiting procedures, these removals—or other removals on similar grounds—violate Section 8(d) of the NVRA. *See* 52 U.S.C. § 20507(d).

of residence without complying with the required NVRA notice-and-waiting-period would violate Section 8(d) of the NVRA; moreover, any such removals within 90 days of a federal election would violate Section(c) of the NVRA.

Additionally, in Logan County, public records show that the Logan County Board of Elections had “accepted” at least some voter challenges based on purported change of residency at a June 26, 2024 meeting. *See* Ex. 5, July 25, 2024 Email – Logan County BOE update, at 1 (noting that some of a group of 125 challenges were accepted by the Board were based on claims that the challenged voters “had moved”). We are not aware of evidence of direct communication from these voters that they wished to be removed or that the Section 8(d) notice-and-waiting-period had been completed for these voters; to the extent that any of these voters were removed by the Logan County Board of Elections without direct communications from the voters or compliance with the required notice-and-waiting procedures, these and similar removals would also violate Section 8(d) of the NVRA. *See* 52 U.S.C. § 20507(d).

As noted *supra*, Section 8(d) sets forth the *exclusive* method for conducting list maintenance activities involving voters who have allegedly moved from the address indicated in the voter file. Courts have prohibited list maintenance and voter challenge procedures that removed voters from the list of eligible voters based on an alleged change in address without first complying with Section 8(d)’s notice-and-waiting-period requirement or receiving direct communication from the voter that they wish to be removed. *See Majority Forward v. Ben Hill Cnty. Bd. of Elections*, 512 F. Supp. 3d 1354, 1369–70 (M.D. Ga. 2021) (finding a likely violation in the mass voter challenge context where board of elections defendants did not comply with the notice-and-waiting-period requirement and challenged voters “never gave Defendants written confirmation of their change of address”); *N.C. State Conf. NAACP v. N.C. State Bd. of Elections*, 2016 WL 6581284, at *7–8 (M.D.N.C. Nov. 4, 2016) (finding a likely violation in the mass voter challenge context where notice mailings that were sent to challenged voters “did not comply with the notice requirements” of the NVRA because they were not sent by forwardable mail, and the State did not “giv[e] these voters two federal election cycles to vote or otherwise update their voter registration”); *see also Common Cause v. Indiana*, 937 F.3d 944, 958–59 (7th Cir. 2019); *League of Women Voters of Indiana, Inc. v. Sullivan*, 5 F.4th 714, 724 (7th Cir. 2021) (a registered voter cannot be removed “without either direct communication from the voter or compliance with the NVRA’s notice-and-waiting procedures”); *U.S. Student Ass’n Found. v. Land*, 546 F.3d 373, 381–82 (6th Cir. 2008) (a registered elector cannot be removed “from an official registration list on the grounds that his or her residence has changed unless the specified criteria of [Section 8] are met”); *Common Cause New York v. Brehm*, 432 F. Supp. 3d 285, 318–19 (S.D.N.Y. 2020) (same).

As made clear in recent guidance from the United States Department of Justice, absent written confirmation from the voter themselves, removal based on change of residence must follow the provisions of Section 8(d). Indeed, the guidance states plainly that “a State may remove a person from the voter registration list due to a change in residence *only* in one of two circumstances: upon (1) the person’s written confirmation of a change in residence to a place outside the jurisdiction, or (2) completion of the notice-and-waiting process described in Section 8(d)(2).” DOJ Guidance at 4 (emphasis in original). Moreover, “[a] third-party submission—such as a submission of another individual’s information via an online portal or a challenge based solely on public database information—is *not* confirmation by the registrant of a change of address.” *Id.* (emphasis in original). Processing challenges that contain neither precondition would violate Section 8(d) of the NVRA.

D. Section 8(c)

Section 8(c) of the NVRA generally prohibits, within 90 days of a federal election, “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). Courts have confirmed that reviewing registered voters’ eligibility *en masse* and without individualized knowledge of the challenged voter—whether through challenge proceedings or through official-initiated list maintenance activities—based on allegations that they have moved from their residence is precisely the sort of list maintenance program that falls within the ambit of the 90-day requirement. *See, e.g., Majority Forward v. Ben Hill Cnty. Bd. of Elections*, 512 F. Supp. 3d 1354, 1369–70 (M.D. Ga. 2021); *N.C. State Conf. NAACP v. N.C. State Bd. of Elections*, 2016 WL 6581284, at *5 (M.D.N.C. Nov. 4, 2016). Any systematic removals of voters based on challenges, including but not limited to removals based on residence, thus violate Section 8(c) if those removals were to take place after August 7, 2024, which was the beginning of the 90-day period ahead of the November 5, 2024 general election.

The challenges that are being processed in Delaware County—and potentially other Ohio counties—have all the hallmarks of systematic challenges. At least hundreds of Ohio voters have been challenged recently in Delaware County alone. Ex. 2, Delaware County BOE August 1, 2024 Hearing Transcript, at 12. These challengers did not attest to any individualized or personalized knowledge of the voters they challenged, but rather acknowledged that their data was pulled largely by other people who were not present at the hearing, using mostly non-governmental sources. *See id.* at 15–22. Additionally, some challengers themselves were not present at the hearing to present or explain their evidence and processes. *Id.* at 44. Consequently, any list maintenance activities based on these systematic challenges that result in removals after August 7, 2024—whether these potential removals have already been completed or may still be completed, including any that may be pending the decision of the Secretary of State, such as the challenged voters for whom the Delaware County Board of Elections reached a tie vote—would violate Section 8(c) of the NVRA.

E. Additional Actions by County Boards of Election Prompting NVRA Concerns

Public records indicate that many voter challenges have been made in Cuyahoga County. For example, during a July 25, 2024 meeting, the Cuyahoga County Board of Elections heard challenges against ten voters who had been registered at an address that was a nursing home. Ex. 6, July 25, 2024 Cuyahoga County Board of Elections Meeting Minutes, at 6–7. None of the challenged voters were present at the hearing to testify on their own behalf. *Id.* at 6. According to the meeting minutes, the challenger testified that the challenged voters “had no voter activity at [that] address since November 2017,” and “research indicated that the nursing home had been closed for a few years.” *Id.* The Director noted that these challenged voters were “inactive. However, the process is not instantaneous in removing a voter, as there is a four-year window to the process.” *Id.* Still, the Board voted unanimously to uphold these challenges and remove these voters from the rolls. *Id.* at 7. The meeting minutes do not indicate whether the challenged voters had already gone through the “four-year window” notice-and-waiting procedures required by Section 8(d) of the NVRA, and they do not indicate that the voters had directly communicated

with the Board that they wished to be removed. As duly registered voters at this address, if they were challenged on the ground that they no longer lived at the same residence, these voters should have been afforded the same protections of Section 8(d) of the NVRA for removals based on purported change of residence. *See* 52 U.S.C. § 20507(d).

III. Conclusion

As Secretary of State of Ohio, you are the State’s “chief election officer,” Ohio Rev. Code § 3501.04, and, as such, are responsible for ensuring Ohio’s compliance with the NVRA. *See* 52 U.S.C. § 20509. This letter constitutes notice pursuant to 52 U.S.C. § 20510(b) that the actions of Delaware County, Muskingum County, and likely Logan County—and similar potential actions by other Ohio counties (including Cuyahoga County)—to remove voters from the rolls based on purported change of residence without first complying with the notice-and-waiting-period requirement violate Section 8 of the NVRA, 52 U.S.C. § 20507. Likewise, any removals of voters based on third-party mass challenges after August 7, 2024—including but not limited to removals based on purported change of residency—would violate Section 8(c) of the NVRA, *id.* § 20507(c)(2).

As you know, the next election for federal offices will occur on November 5, 2024, which is less than 120 days away. If the violations identified above are not corrected within 20 days, the undersigned may seek declaratory or injunctive relief to remedy these violations. *See* 52 U.S.C. § 20510(b) (“If the violation is not corrected . . . within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person may bring a civil action . . .”). We are prepared to meet with you and other officials at your earliest convenience to discuss these violations and to assist in your development of a comprehensive plan that addresses the problems identified in this letter. Thank you for your attention to this matter.

Sincerely,

/s/ Freda J. Levenson
Freda J. Levenson
American Civil Liberties Union of Ohio
Foundation
4506 Chester Avenue
Cleveland, OH 44103
flevenson@acluohio.org
(216) 541-1376

/s/ Alice Clapman
Alice Clapman
Brennan Center for Justice
at NYU School of Law
1140 Connecticut Avenue NW, Suite 1150
Washington, DC 20036
(202) 249-7190
clapmana@brennan.law.nyu.edu

/s/ Sarah Brannon
Sarah Brannon
Patricia Yan
American Civil Liberties Union Foundation
915 15th Street, NW
Washington, DC 20005

Patrick Berry
Brennan Center for Justice
at NYU School of Law
120 Broadway, Suite 1750
New York, NY 10271
(646) 292-8310

sbrannon@aclu.org
pyan@aclu.org
(202) 210-7287

berryp@brennan.law.nyu.edu

cc: Larry Obhof, Chief Legal Counsel
Ohio Secretary of State
lobhof@OhioSOS.Gov

Delaware County Board of Elections
BOE@delawarecountyohio.gov

Muskingum County Board of Elections
muskingum@OhioSoS.gov

Logan County Board of Elections
logan@OhioSoS.gov

Cuyahoga County Board of Elections
electioninfo@cuyahogacounty.gov