

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION - FRANKFORT**

JUDICIAL WATCH, INC.,

Plaintiff,

UNITED STATES OF AMERICA,

Proposed Plaintiff-Intervenor,

v.

ALISON LUNDERGAN GRIMES, et al.,

Defendants.

Civil No. 3:17-CV-94-GFVT-EBA

UNOPPOSED MOTION TO INTERVENE

The United States of America respectfully moves to intervene as a plaintiff in the above-captioned action. In this action, Plaintiff Judicial Watch alleges violations of Section 8 of the National Voter Registration Act (the “NVRA”) against the Kentucky Secretary of State and the executive director and members of the Kentucky State Board of Elections (“Defendants”). In its proposed complaint in intervention, the United States Department of Justice, on behalf of the United States, would bring claims under Section 8 of the NVRA against proposed defendants the Commonwealth of Kentucky and the Kentucky State Board of Elections, as well as the Kentucky Secretary of State. Where the federal government’s claims are based upon the NVRA, a statute enforced by the Department of Justice, and raise factual and legal questions that are already at issue in pending litigation, timely intervention by the Attorney General on behalf of the United States should be permitted.

Of particular note, the United States also intends to respectfully request the Court's approval of a proposed Agreed Order which would resolve and settle all claims in this litigation, and which all of the parties and proposed parties have already agreed to and signed. Shortly after this motion to intervene is filed, the parties and proposed parties will file a separate, joint motion to enter the proposed Agreed Order.

The United States' proposed Complaint in Intervention is attached as Exhibit 1. The original parties to the action have consented to intervention by the United States, and the proposed defendants have agreed to waive service of the summons and complaint. A proposed Order granting this motion to intervene is attached as Exhibit 2.

Accordingly, the United States respectfully requests that the Court grant this unopposed motion to intervene pursuant to Federal Rule of Civil Procedure 24(b)(2)(A) or 24(b)(1)(B).

BACKGROUND

As part of a nationwide enforcement effort, the United States sent a letter to Kentucky on June 28, 2017, requesting information relating to the Commonwealth's compliance with the list maintenance provisions of Section 8 of the NVRA. Kentucky responded on January 24, 2018. As a result of its investigation, the United States sent a notice letter to Kentucky, advising that the Civil Rights Division had authorized a lawsuit to enforce Section 8 of the NVRA.

Judicial Watch filed its own lawsuit against Kentucky officials pursuant to Section 8 of the NVRA on November 14, 2017. This Court set a December 14, 2018 deadline for discovery and a January 25, 2019 deadline for dispositive motions.

The United States, along with all of the original and proposed parties in this litigation, have reached a settlement agreement to resolve all claims brought by the United States and by Judicial Watch under Section 8 of the NVRA.

ARGUMENT

I. This Court Should Permit the United States to Intervene Under Rule 24(b)(2)(A) — Permissive Intervention by a Government Agency

Federal Rule of Civil Procedure 24(b)(2)(A) states, “On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party’s claim or defense is based on[] a statute or executive order administered by the officer or agency[.]” In the Sixth Circuit, “Rule 24 is broadly construed in favor of potential intervenors.” *Purnell v. City of Akron*, 925 F.2d 941, 950 (6th Cir. 1991).

“The whole thrust of the amendment [to include government intervention] is in the direction of allowing intervention liberally to governmental agencies and officers seeking to speak for the public interest and . . . courts have permitted intervention accordingly.” 7C CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1912 (3d ed. 2018). *See also Blowers v. Lawyers Co-Op. Pub. Co.*, 527 F.2d 333, 334 (2nd Cir. 1975) (noting that a “hospitable attitude” toward government agency intervention “is appropriate”); *Nuesse v. Camp*, 385 F.2d 694, 705 (D.C. Cir. 1967) (“[Rule 24(b) as amended] considers the governmental application with a fresh and more hospitable approach.”); *Smith v. Federal Housing Finance Agency*, 2013 WL 12121334, at *2 (E.D. Tenn., Jan. 22, 2013) (“Pursuant to Rule 24(b)(2)(A), ‘permissive intervention is liberally granted to government officials ‘when sought because an aspect of the public interest with which [the officer] is officially concerned is involved in the litigation.’” (internal citations omitted)).

Rule 24(b) provides that a motion for permissive intervention be “timely,” Fed. R. Civ. P. 24(b)(1), and states that the Court must consider “whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights,” Fed. R. Civ. P. 24(b)(3). All such

factors favor granting the United States' motion for permissive intervention under Rule 24(b)(2)(A).

First, the United States' motion to intervene is timely and will not delay or impair the original parties' rights. The United States moves to intervene many months before the end of discovery and the deadline for dispositive motions. Moreover, the United States' request to intervene will not unduly delay the matter or prejudice the original parties, as all parties have already reached a settlement agreement that will resolve the claims of both plaintiffs, and all parties consent to the United States' request to intervene.

Second, the United States' enforcement interests here are strong. The United States is the governmental entity with primary responsibility for enforcing the NVRA. *See* 52 U.S.C. § 20510(a). Denying the motion to intervene would impair these enforcement interests by requiring the United States to initiate parallel litigation concerning many of the same legal and factual issues—*e.g.*, whether the Commonwealth's voter list maintenance program complies with Section 8 of the NVRA—which in turn raises the possibility of inconsistent legal rulings or overlapping remedial orders.

Third, the United States' participation will help to achieve a just and equitable resolution of the legal questions presented in this action to the benefit of all Kentucky voters and the public interest. Adjudicating Judicial Watch's and the United States' overlapping factual allegations in a single action is more likely to result in a comprehensive resolution of the underlying issues to the benefit of the voting public, and doing so will conserve scarce judicial resources, particularly in light of the negotiated resolution that all parties and proposed parties will present to the court. The United States is also able to add as a defendant the Commonwealth of Kentucky, which is subject to the NVRA's requirements. *See, e.g.*, 52 U.S.C. § 20507(a).

II. In the Alternative, This Court Should Permit the United States to Intervene Under Rule 24(b)(1)(B)—Permissive Intervention Involving Common Questions of Law or Fact

Permissive intervention is also warranted under Federal Rule of Civil Procedure 24(b)(1)(B). The threshold requirement for such intervention, in addition to timeliness, is “a claim or defense that shares with the main action a common question of law or fact.” *Id.*

Like Judicial Watch’s complaint, the United States’ proposed complaint in intervention alleges that the State Board of Elections has failed to conduct a general list maintenance program under NVRA Section 8(a)(4), 52 U.S.C. § 20507(a)(4), to remove voters based on change of address. *Compare* ECF No. 1, at 13 ¶ 59 *with* Proposed Compl. in Intervention, Ex. 1, at 9 ¶ 35. For example, Judicial Watch alleges that Kentucky has failed to report to the U.S. Election Assistance Commission the number of inactive registrants on its rolls and the number of “confirmation notices” that it has sent. ECF No. 1, at 6 ¶ 22, 7 ¶ 31. The United States alleges that the State Board of Elections has not used available and reliable sources of information to identify registrants who may have moved, has not mailed any forwardable notices to registrants pursuant to Section 8(d) of the NVRA since 2009, and currently has no registrants on its inactive list or in the Section 8(d) process. Proposed Compl. in Intervention, Ex. 1, at 7 ¶¶ 29-30. Accordingly, the United States’ proposed complaint in intervention shares with the main action both common questions of law and common questions of fact and the United States should be permitted to intervene under Rule 24(b)(1)(B).

For the foregoing reasons, this Court should grant the United States’ Unopposed Motion to Intervene pursuant to Federal Rules of Civil Procedure 24(b)(2)(A) or 24(b)(1)(B).

Respectfully submitted,

JOHN M. GORE
Acting Assistant Attorney General
Civil Rights Division

/s/ David G. Cooper

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Date: June 12, 2018

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2018, a true and correct copy of the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ David G. Cooper
David G. Cooper

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Defendants.

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UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

**COMMONWEALTH OF KENTUCKY;
COMMONWEALTH OF KENTUCKY
STATE BOARD OF ELECTIONS; and
KENTUCKY SECRETARY OF STATE**

Alison Lundergan Grimes, in her official
capacity,

Defendants.

COMPLAINT IN INTERVENTION

The United States of America alleges:

1. The Attorney General hereby files this complaint in intervention on behalf of the United States of America to enforce the provisions of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20507.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 52 U.S.C. § 20510(a) and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to 28 U.S.C. §§ 97(a) and 1391(b).

PARTIES

4. Plaintiff-Intervenor United States of America seeks declaratory and injunctive relief pursuant to Section 11 of the NVRA, which authorizes the Attorney General to bring suit to enforce this federal statute. 52 U.S.C. § 20510(a).

5. Defendant Commonwealth of Kentucky is one of the States of the United States of America and is subject to the requirements of the NVRA. 52 U.S.C. §§ 20502(4), 20503, 20507.

6. Defendant Kentucky State Board of Elections is responsible for administering Kentucky's election laws and supervising the registration and purging of voters within the State. KRS § 117.015(1).

7. Defendant Kentucky Secretary of State, Alison Lundergan Grimes, is sued in her official capacity as chair of the Kentucky State Board of Elections and as the chief State election official responsible for coordinating Kentucky's responsibilities under the NVRA. *See* 52 U.S.C. § 20509; KRS § 117.015(2).

CAUSE OF ACTION:
SECTION 8 OF THE NATIONAL VOTER REGISTRATION ACT, 52 U.S.C. § 20507

Voter List Maintenance Requirements under the NVRA

8. The NVRA was enacted “to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office” while “ensur[ing] that accurate and current voter registration rolls are maintained.” 52 U.S.C. § 20501(b)(1), (4).

9. Section 8 of the NVRA (“Section 8”) addresses state voter list maintenance procedures for elections for federal office. 52 U.S.C. § 20507.

10. Section 8 prescribes the conditions under which registrants may be removed from voter registration lists and the procedures that must be followed before making those removals. 52 U.S.C. § 20507.

11. Programs to maintain accurate and current voter registration lists must be uniform and nondiscriminatory, and they must comply with the Voting Rights Act. 52 U.S.C. § 20507(b)(1).

12. Programs to maintain accurate and current voter registration lists may not remove registrants by reason of a registrant’s failure to vote, except as provided in the procedures under Sections 8(c) and (d). 52 U.S.C. § 20507(b)(2).

13. Section 8 permits states to remove the name of a person from the voter registration lists upon the request of the registrant, and, if state law so provides, for mental incapacity or for criminal conviction. 52 U.S.C. § 20507(a)(3)(A)-(B).

14. Section 8 also requires states to conduct a general voter registration list maintenance program that makes a reasonable effort to remove persons from the voter list who have become ineligible by reason of death or a change in residence outside of the jurisdiction, in accordance with procedures set forth in the NVRA. 52 U.S.C. § 20507(a)(4).

15. Section 8 further specifies the two circumstances under which a registrant may be removed from the voter registration list because the registrant has moved to another jurisdiction. 52 U.S.C. § 20507(d)(1).

16. First, a state can remove the name of a person from the voter registration list on grounds of a change of residence based upon the registrant’s written confirmation of a change of

address to a location outside of the registrar's jurisdiction. 52 U.S.C. § 20507(d)(1)(A).

17. Second, a state can remove the name of a person from the voter registration list on grounds of a change of residence upon completion of the process set forth in Section 8(d), 52 U.S.C. § 20507(d), which allows removal if:

- (a) The registrant fails to respond to a notice ("Section 8(d)(2) notice") which includes a postage prepaid and preaddressed return card sent by forwardable mail, on which the registrant may state his or her current address, and which contains specific instructions and information, 52 U.S.C. § 20507(d)(1)(B)(i), (d)(2), and
- (b) The registrant then fails to vote or appear to vote during the period ending on the day after the second federal general election subsequent to the Section 8(d)(2) notice being sent. 52 U.S.C. § 20507(d)(1)(B)(ii).

18. Section 8(f) provides that when a registrant has a change of residence to an address within the same jurisdiction, the voter registration list must be updated accordingly and the registrant's name may not be removed except as provided in Section 8(d). 52 U.S.C. § 20507(f).

19. Section 8 also provides an example of a list maintenance program that constitutes a reasonable effort to remove registrants who have become ineligible due to a change of residence. 52 U.S.C. § 20507(c)(1). Under this program, a state uses information from the United States Postal Service National Change of Address ("NCOA") program to identify registrants who may have changed residence. 52 U.S.C. § 20507(c)(1)(A). Where it appears from that NCOA information that a registrant has moved to a new address in the same jurisdiction, the registration record is updated to show the new address and the registrant is sent a

notice of the change by forwardable mail that includes a postage-prepaid, pre-addressed return form by which the registrant may verify or correct the address information. 52 U.S.C. § 20507(c)(1)(B)(i). Where it appears from the NCOA information that a registrant has moved to a new address in a different jurisdiction, the procedure set out in Section 8(d) and described above is used to confirm the address change. 52 U.S.C. § 20507(c)(1)(B)(ii).

20. Section 8 requires states to complete any program, the purpose of which is to systematically remove the names of ineligible registrants from the official list of eligible voters, not later than 90 days prior to the date of a primary election or general election for federal office. 52 U.S.C. § 20507(c)(2)(A).

Voter List Maintenance Procedures under Kentucky State Law

21. Kentucky law requires the State Board of Elections to establish a voter registration purge program using the change-of-address information supplied by the United States Postal Service through its licensees or other sources to identify registrants whose addresses may have changed. KRS § 116.112(1).

22. If it appears that a registrant has moved within the same county, the State Board of Elections is required to provide the county board of elections with the information necessary to change the registration record. The State Board of Elections is also required to send to the new address a notice of the change by forwardable mail and a postage-prepaid, pre-addressed return form by which the registrant may verify or correct the address information. KRS § 116.112(2).

23. If it appears that a registrant has moved to a different county or state, the State Board of Elections is required to send to the address at which the registrant was last registered,

by forwardable mail, a notice with a postage-prepaid and pre-addressed return card on which the registrant may state his or her current address. KRS § 116.112(3).

24. A registrant may not be removed from the registration records 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 county; or
- (b) Has failed to respond to the mailed notice and has not voted or appeared to vote and, if necessary, correct 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.

KRS § 116.112(4).

25. As part of its list maintenance program, the State Board of Elections is required by state law to maintain an inactive list. State law provides that when the State Board sends the notices described in KRS § 116.112(3) to registrants identified as having moved to a new county or state, the registrants who do not respond to the notice and do not vote or appear to vote for two federal election cycles are maintained on an inactive list. KRS § 116.112(5). When the State Board last sent such notices in 2009, those registrants who did not respond to the notice and did not vote or appear to vote for two federal election cycles were included on an inactive list and ultimately removed from the registration list.

26. Kentucky law permits registrants on the inactive list to vote, but not to be counted for other purposes such as creating precincts or calculating the state funding provided to county clerks based on the number of registered voters in the county. KRS § 116.112(7).

27. Kentucky law requires the State Board of Elections to complete, not later than ninety days prior to the date of a primary or general election, any program the purpose of which is to systematically remove the names of ineligible voters from the registration records. KRS § 116.112(6).

28. In recent years, however, Kentucky has not implemented a general program of list maintenance that makes a reasonable effort to remove registrants who have become ineligible due to a change of residence.

29. Kentucky has not used available and reliable sources of information, such as the NCOA program, to identify registrants who may have moved.

30. Since 2009, the State Board of Elections has not mailed any forwardable notices to registrants under the change of address process contemplated by Section 8(d) of the NVRA and KRS § 116.112. The State Board of Elections has not removed registrants who have become ineligible due to an unreported change of residence, as contemplated by the procedures set out in Section 8(d) of the NVRA and KRS § 116.112, since 2015. Kentucky currently has no registrants on its inactive list or in the Section 8(d) process.

31. Biennial reports published by the U.S. Election Assistance Commission (“EAC”), based on data provided by Kentucky and other states, confirm these facts. The EAC report covering the 2015-2016 election cycle, published in June 2017, indicates that Kentucky had no inactive voters as of the conclusion of the reporting period. This and prior EAC reports confirm that the State Board of Elections has not sent Section 8(d)(2) mailings since the 2009-2010 election cycle.

32. On June 28, 2017, the United States Department of Justice sent a letter to Kentucky, requesting information relating to the Commonwealth’s compliance with the list

maintenance provisions of the NVRA, including the number of confirmation notices sent during the 2013-2014 election cycle, as requested by the EAC. *See* Exhibit A. On January 24, 2018, Kentucky sent a letter to the Department of Justice responding to the request for information. In regards to the 2013-2014 EAC report, the response stated, “Kentucky did not include data regarding confirmation notices and removal for failure to vote because there is no data to report. . . . The Kentucky Legislature has not funded the initiative, nor made it mandatory, so the State Board of Elections has not done a cancellation mailing during the time frame requested.”

33. The only procedures that the State Board of Elections implements to identify individuals who have changed residence, and who have not reported the change to election authorities or driver licensing authorities in Kentucky, relate to some registrants who have moved out of state. Upon receiving notice from election officials in another state that a person who moved to that state may have been registered in Kentucky, the State Board of Elections attempts to identify the person on the statewide voter registration list and, if successful, sends the registrant a notice seeking confirmation of the address change. If the registrant returns the notice and confirms that he or she has moved out of the State, the registrant is removed from the voter registration list. If the State Board does not receive a response, the registrant is not placed into the process defined in Section 8(d) of the NVRA and KRS § 116.112. Rather, no further action is taken, and the registrant remains an active registered voter in Kentucky.

34. This program results only in the removal of registrants who have (1) moved out of Kentucky, (2) moved to a state that voluntarily sends this information to Kentucky, and (3) received and affirmatively responded to a notice. This does not reach registrants who have moved to other states or moved within Kentucky without notifying election or motor vehicle authorities, or who failed to respond affirmatively to the State Board’s notice.

Violation of Section 8 of the NVRA

35. Defendants' practices do not comply with the NVRA's requirement that states conduct a general program of voter registration list maintenance that makes a reasonable effort to remove persons from the voter rolls who have become ineligible due to a change in residence outside of the jurisdiction. 52 U.S.C. § 20507(a)(4)(B).

36. Unless and until ordered to do so by this Court, the Defendants will not take timely and comprehensive actions necessary to ensure that a list maintenance program is implemented as required by Section 8 of the NVRA.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter an ORDER:

- (1) Declaring that Defendants have violated Section 8 of the NVRA;
- (2) Enjoining Defendants, their agents and successors in office, and all persons acting in concert with them from future non-compliance with Section 8 of the NVRA;
- (3) Requiring Defendants, their agents and successors in office, and all persons acting in concert with them, to take all steps necessary to ensure immediate and ongoing compliance with Section 8 of the NVRA; and
- (4) Ordering any such additional relief as the interests of justice may require, together with the costs and disbursement in maintaining this action.

Date: June 12, 2018

Respectfully submitted,

JOHN M. GORE
Acting Assistant Attorney General
Civil Rights Division

/s/ David G. Cooper
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EXHIBIT A



Civil Rights Division

Voting Section - NWB
950 Pennsylvania Ave, NW
Washington, DC 20530

JUN 28 2017

The Honorable Alison Lundergan Grimes
Secretary of State
700 Capital Ave., Ste. 152
Frankfort, KY 40601

Dear Secretary Grimes:

We write to you as the chief election official for the Commonwealth of Kentucky to request information regarding the State's procedures for compliance with the statewide voter registration list maintenance provisions of the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20501 et seq. and the Help America Vote Act ("HAVA"), 52 U.S.C. § 20901 et seq. As part of our nationwide enforcement efforts, we are reviewing voter registration list maintenance procedures in each state covered by the NVRA.

The NVRA imposes several requirements on covered states that promote the maintenance of accurate statewide voter lists. Among other things, states must:

- "conduct a general program that makes a reasonable effort to remove the names of ineligible voters" from the statewide voter registration list due to the registrant's death or change of residence (Section 8(a)(4), 52 U.S.C. § 20507(a)(4));
- ensure that the state's general program complies with the requirements and protections imposed by Sections 8(b), (c), and (d) (52 U.S.C. § 20507(b)-(d));
- ensure that any change-of-address form submitted by a voter to a state's motor vehicle authority for driver's licensing purposes serves as a change of address for voter registration purposes, unless the voter states a contrary intention on the form (Section 5(d), 52 U.S.C. § 20504(d));
- ensure that when a registrar receives information that a registered voter has moved to a new address within the registrar's jurisdiction, the voter list is updated to reflect the new address (Section 8(f), 52 U.S.C. § 20507(f)); and
- maintain and make available for public inspection for at least two years "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" (Section 8(i), 52 U.S.C. § 20507(i)).

The NVRA imposes these requirements on the state itself. Thus, where a state tasks local election officials with implementing aspects of its list maintenance procedures, the state's chief

elections official must “actively oversee the general program” and ensure that it is “reasonably conducted.” *United States v. Missouri*, 535 F.3d 844, 850 (8th Cir. 2008).

HAVA also imposes certain list maintenance obligations on states as part of the uniform statewide database requirements of Section 303(a)(2) of HAVA, 52 U.S.C. § 21083(a)(2), including coordinating the state voter registration list with state agency records on felony status and death.

As well as reviewing states’ procedures, our efforts to assess compliance with these provisions will also include an analysis of voter registration data reported by each state to the U.S. Election Assistance Commission (“EAC”) as part of its biennial Election Administration and Voting Survey (“EAVS”). Data regarding confirmation notices, removals from the voter registration list, and active and inactive registered voters are of particular relevance and are among the categories of data for which reporting is required by EAC regulations. *See* 11 C.F.R. § 9428.7. However, such data for some states were not included in the 2014 EAVS report,¹ the most recent survey results published by the EAC. Thus, some states are receiving a request for any missing data as part of the information requested below. Similarly, we will review the forthcoming 2016 EAVS data when they are available.

To assist our efforts, we respectfully request that you provide us with the following information related to the above requirements:

- All statutes, regulations, written guidance, internal policies, or database user manuals that set out the procedures Kentucky has put in place relating to:
 - (A) the general program required by Section 8(a)(4) to remove voters from the voter registration list who have become ineligible due to death or change of residence;
 - (B) the requirement of Section 5(d) that motor vehicle changes of address generally serve as updates to voter registration records;
 - (C) any other process that election officials are authorized or required to follow to remove voters by reason of death or change in residence, such as challenge procedures or other list maintenance activities not part of the “general program”; and
 - (D) the processes that the state follows for coordinating state databases under HAVA for list maintenance purposes, and any other database coordination or comparison that the state undertakes for list maintenance purposes.

If your state has relevant procedures in place that are not covered by these written materials, please provide a description of them.

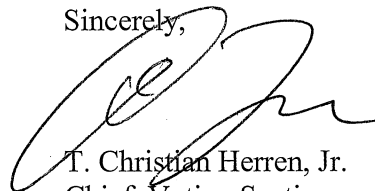
¹ U.S. Election Assistance Commission, “The EAC 2014 Election Administration and Voting Survey Comprehensive Report: A Report to the 114th Congress,” June 30, 2015, *available at* https://www.eac.gov/assets/1/1/2014_EAC_EAVS_Comprehensive_Report_508_Compliant.pdf.

- An explanation of which election officials are responsible for implementing Kentucky's general program of voter registration list maintenance, and for those responsible officials not employed by your office (such as a local election official), a description of the steps that you have taken to ensure that the State's list maintenance program has been properly carried out in full compliance with the NVRA.
- The following data relating to voter registration list maintenance that were requested by the EAC as part of its 2014 EAVS, but were not included for Kentucky in the EAC's survey report² (please provide data for each of your state's local jurisdictions, as defined by the 2014 EAVS):
 - The number of confirmation notices sent to voters in the period between the close of registration for the November 2012 general election and the close of registration for the November 2014 general election (requested by question A10a of the 2014 EAVS Survey Instrument)
 - The number of voters removed from the voter registration rolls in your jurisdiction in the period between the close of registration for the November 2012 general election and the close of registration for the November 2014 general election due to failure to respond to notice sent and failure to vote in the two most recent Federal elections (requested by question A11g of the 2014 EAVS Survey Instrument)

Please also indicate whether Kentucky is reporting similar data in response to the 2016 EAVS.

Please provide this information within 30 days of the date of this letter. The materials may be sent by email to voting.section@usdoj.gov or by FedEx or UPS to Voting Section, Civil Rights Division, Room 7254, U.S. Department of Justice, 1800 G Street NW, Washington, DC 20006. If you have any questions regarding this request, please contact Samuel Oliker-Friedland at 202-353-6196 or David Cooper at 202-305-4733. We very much appreciate your cooperation in our nationwide efforts to monitor NVRA compliance.

Sincerely,



T. Christian Herren, Jr.
Chief, Voting Section

cc: Ms. Maryellen Allen, Executive Director, State Board of Elections

² See 2014 EAVS Report, tbls. 4a & 4b; 2014 EAVS Survey Instrument, available at <https://www.eac.gov/assets/1/1/2014%20Election%20Administration%20and%20Voting%20SurveyFinal-2014-05-15.pdf>.

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[PROPOSED] ORDER

Upon consideration and for good cause shown, the United States' Motion to Intervene (ECF No. ___) is GRANTED. The United States shall file its Complaint in Intervention as expeditiously as possible.

SO ORDERED.

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PARTIES

4. Plaintiff-Intervenor United States of America seeks declaratory and injunctive relief pursuant to Section 11 of the NVRA, which authorizes the Attorney General to bring suit to enforce this federal statute. 52 U.S.C. § 20510(a).

5. Defendant Commonwealth of Kentucky is one of the States of the United States of America and is subject to the requirements of the NVRA. 52 U.S.C. §§ 20502(4), 20503, 20507.

6. Defendant Kentucky State Board of Elections is responsible for administering Kentucky's election laws and supervising the registration and purging of voters within the State. KRS § 117.015(1).

7. Defendant Kentucky Secretary of State, Alison Lundergan Grimes, is sued in her official capacity as chair of the Kentucky State Board of Elections and as the chief State election official responsible for coordinating Kentucky's responsibilities under the NVRA. *See* 52 U.S.C. § 20509; KRS § 117.015(2).

CAUSE OF ACTION:
SECTION 8 OF THE NATIONAL VOTER REGISTRATION ACT, 52 U.S.C. § 20507

Voter List Maintenance Requirements under the NVRA

8. The NVRA was enacted “to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office” while “ensur[ing] that accurate and current voter registration rolls are maintained.” 52 U.S.C. § 20501(b)(1), (4).

9. Section 8 of the NVRA (“Section 8”) addresses state voter list maintenance procedures for elections for federal office. 52 U.S.C. § 20507.

10. Section 8 prescribes the conditions under which registrants may be removed from voter registration lists and the procedures that must be followed before making those removals. 52 U.S.C. § 20507.

11. Programs to maintain accurate and current voter registration lists must be uniform and nondiscriminatory, and they must comply with the Voting Rights Act. 52 U.S.C. § 20507(b)(1).

12. Programs to maintain accurate and current voter registration lists may not remove registrants by reason of a registrant’s failure to vote, except as provided in the procedures under Sections 8(c) and (d). 52 U.S.C. § 20507(b)(2).

13. Section 8 permits states to remove the name of a person from the voter registration lists upon the request of the registrant, and, if state law so provides, for mental incapacity or for criminal conviction. 52 U.S.C. § 20507(a)(3)(A)-(B).

14. Section 8 also requires states to conduct a general voter registration list maintenance program that makes a reasonable effort to remove persons from the voter list who have become ineligible by reason of death or a change in residence outside of the jurisdiction, in accordance with procedures set forth in the NVRA. 52 U.S.C. § 20507(a)(4).

15. Section 8 further specifies the two circumstances under which a registrant may be removed from the voter registration list because the registrant has moved to another jurisdiction. 52 U.S.C. § 20507(d)(1).

16. First, a state can remove the name of a person from the voter registration list on grounds of a change of residence based upon the registrant’s written confirmation of a change of

address to a location outside of the registrar's jurisdiction. 52 U.S.C. § 20507(d)(1)(A).

17. Second, a state can remove the name of a person from the voter registration list on grounds of a change of residence upon completion of the process set forth in Section 8(d), 52 U.S.C. § 20507(d), which allows removal if:

- (a) The registrant fails to respond to a notice ("Section 8(d)(2) notice") which includes a postage prepaid and preaddressed return card sent by forwardable mail, on which the registrant may state his or her current address, and which contains specific instructions and information, 52 U.S.C. § 20507(d)(1)(B)(i), (d)(2), and
- (b) The registrant then fails to vote or appear to vote during the period ending on the day after the second federal general election subsequent to the Section 8(d)(2) notice being sent. 52 U.S.C. § 20507(d)(1)(B)(ii).

18. Section 8(f) provides that when a registrant has a change of residence to an address within the same jurisdiction, the voter registration list must be updated accordingly and the registrant's name may not be removed except as provided in Section 8(d). 52 U.S.C. § 20507(f).

19. Section 8 also provides an example of a list maintenance program that constitutes a reasonable effort to remove registrants who have become ineligible due to a change of residence. 52 U.S.C. § 20507(c)(1). Under this program, a state uses information from the United States Postal Service National Change of Address ("NCOA") program to identify registrants who may have changed residence. 52 U.S.C. § 20507(c)(1)(A). Where it appears from that NCOA information that a registrant has moved to a new address in the same jurisdiction, the registration record is updated to show the new address and the registrant is sent a

notice of the change by forwardable mail that includes a postage-prepaid, pre-addressed return form by which the registrant may verify or correct the address information. 52 U.S.C. § 20507(c)(1)(B)(i). Where it appears from the NCOA information that a registrant has moved to a new address in a different jurisdiction, the procedure set out in Section 8(d) and described above is used to confirm the address change. 52 U.S.C. § 20507(c)(1)(B)(ii).

20. Section 8 requires states to complete any program, the purpose of which is to systematically remove the names of ineligible registrants from the official list of eligible voters, not later than 90 days prior to the date of a primary election or general election for federal office. 52 U.S.C. § 20507(c)(2)(A).

Voter List Maintenance Procedures under Kentucky State Law

21. Kentucky law requires the State Board of Elections to establish a voter registration purge program using the change-of-address information supplied by the United States Postal Service through its licensees or other sources to identify registrants whose addresses may have changed. KRS § 116.112(1).

22. If it appears that a registrant has moved within the same county, the State Board of Elections is required to provide the county board of elections with the information necessary to change the registration record. The State Board of Elections is also required to send to the new address a notice of the change by forwardable mail and a postage-prepaid, pre-addressed return form by which the registrant may verify or correct the address information. KRS § 116.112(2).

23. If it appears that a registrant has moved to a different county or state, the State Board of Elections is required to send to the address at which the registrant was last registered,

by forwardable mail, a notice with a postage-prepaid and pre-addressed return card on which the registrant may state his or her current address. KRS § 116.112(3).

24. A registrant may not be removed from the registration records 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 county; or
- (b) Has failed to respond to the mailed notice and has not voted or appeared to vote and, if necessary, correct 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.

KRS § 116.112(4).

25. As part of its list maintenance program, the State Board of Elections is required by state law to maintain an inactive list. State law provides that when the State Board sends the notices described in KRS § 116.112(3) to registrants identified as having moved to a new county or state, the registrants who do not respond to the notice and do not vote or appear to vote for two federal election cycles are maintained on an inactive list. KRS § 116.112(5). When the State Board last sent such notices in 2009, those registrants who did not respond to the notice and did not vote or appear to vote for two federal election cycles were included on an inactive list and ultimately removed from the registration list.

26. Kentucky law permits registrants on the inactive list to vote, but not to be counted for other purposes such as creating precincts or calculating the state funding provided to county clerks based on the number of registered voters in the county. KRS § 116.112(7).

27. Kentucky law requires the State Board of Elections to complete, not later than ninety days prior to the date of a primary or general election, any program the purpose of which is to systematically remove the names of ineligible voters from the registration records. KRS § 116.112(6).

28. In recent years, however, Kentucky has not implemented a general program of list maintenance that makes a reasonable effort to remove registrants who have become ineligible due to a change of residence.

29. Kentucky has not used available and reliable sources of information, such as the NCOA program, to identify registrants who may have moved.

30. Since 2009, the State Board of Elections has not mailed any forwardable notices to registrants under the change of address process contemplated by Section 8(d) of the NVRA and KRS § 116.112. The State Board of Elections has not removed registrants who have become ineligible due to an unreported change of residence, as contemplated by the procedures set out in Section 8(d) of the NVRA and KRS § 116.112, since 2015. Kentucky currently has no registrants on its inactive list or in the Section 8(d) process.

31. Biennial reports published by the U.S. Election Assistance Commission (“EAC”), based on data provided by Kentucky and other states, confirm these facts. The EAC report covering the 2015-2016 election cycle, published in June 2017, indicates that Kentucky had no inactive voters as of the conclusion of the reporting period. This and prior EAC reports confirm that the State Board of Elections has not sent Section 8(d)(2) mailings since the 2009-2010 election cycle.

32. On June 28, 2017, the United States Department of Justice sent a letter to Kentucky, requesting information relating to the Commonwealth’s compliance with the list

maintenance provisions of the NVRA, including the number of confirmation notices sent during the 2013-2014 election cycle, as requested by the EAC. *See* Exhibit A. On January 24, 2018, Kentucky sent a letter to the Department of Justice responding to the request for information. In regards to the 2013-2014 EAC report, the response stated, “Kentucky did not include data regarding confirmation notices and removal for failure to vote because there is no data to report. . . . The Kentucky Legislature has not funded the initiative, nor made it mandatory, so the State Board of Elections has not done a cancellation mailing during the time frame requested.”

33. The only procedures that the State Board of Elections implements to identify individuals who have changed residence, and who have not reported the change to election authorities or driver licensing authorities in Kentucky, relate to some registrants who have moved out of state. Upon receiving notice from election officials in another state that a person who moved to that state may have been registered in Kentucky, the State Board of Elections attempts to identify the person on the statewide voter registration list and, if successful, sends the registrant a notice seeking confirmation of the address change. If the registrant returns the notice and confirms that he or she has moved out of the State, the registrant is removed from the voter registration list. If the State Board does not receive a response, the registrant is not placed into the process defined in Section 8(d) of the NVRA and KRS § 116.112. Rather, no further action is taken, and the registrant remains an active registered voter in Kentucky.

34. This program results only in the removal of registrants who have (1) moved out of Kentucky, (2) moved to a state that voluntarily sends this information to Kentucky, and (3) received and affirmatively responded to a notice. This does not reach registrants who have moved to other states or moved within Kentucky without notifying election or motor vehicle authorities, or who failed to respond affirmatively to the State Board’s notice.

Violation of Section 8 of the NVRA

35. Defendants' practices do not comply with the NVRA's requirement that states conduct a general program of voter registration list maintenance that makes a reasonable effort to remove persons from the voter rolls who have become ineligible due to a change in residence outside of the jurisdiction. 52 U.S.C. § 20507(a)(4)(B).

36. Unless and until ordered to do so by this Court, the Defendants will not take timely and comprehensive actions necessary to ensure that a list maintenance program is implemented as required by Section 8 of the NVRA.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter an ORDER:

- (1) Declaring that Defendants have violated Section 8 of the NVRA;
- (2) Enjoining Defendants, their agents and successors in office, and all persons acting in concert with them from future non-compliance with Section 8 of the NVRA;
- (3) Requiring Defendants, their agents and successors in office, and all persons acting in concert with them, to take all steps necessary to ensure immediate and ongoing compliance with Section 8 of the NVRA; and
- (4) Ordering any such additional relief as the interests of justice may require, together with the costs and disbursement in maintaining this action.

Date: June 12, 2018

Respectfully submitted,

JOHN M. GORE
Acting Assistant Attorney General
Civil Rights Division

/s/ David G. Cooper
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JOHN A. RUSS IV
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EXHIBIT A



Civil Rights Division

Voting Section - NWB
950 Pennsylvania Ave, NW
Washington, DC 20530

JUN 28 2017

The Honorable Alison Lundergan Grimes
Secretary of State
700 Capital Ave., Ste. 152
Frankfort, KY 40601

Dear Secretary Grimes:

We write to you as the chief election official for the Commonwealth of Kentucky to request information regarding the State's procedures for compliance with the statewide voter registration list maintenance provisions of the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20501 et seq. and the Help America Vote Act ("HAVA"), 52 U.S.C. § 20901 et seq. As part of our nationwide enforcement efforts, we are reviewing voter registration list maintenance procedures in each state covered by the NVRA.

The NVRA imposes several requirements on covered states that promote the maintenance of accurate statewide voter lists. Among other things, states must:

- "conduct a general program that makes a reasonable effort to remove the names of ineligible voters" from the statewide voter registration list due to the registrant's death or change of residence (Section 8(a)(4), 52 U.S.C. § 20507(a)(4));
- ensure that the state's general program complies with the requirements and protections imposed by Sections 8(b), (c), and (d) (52 U.S.C. § 20507(b)-(d));
- ensure that any change-of-address form submitted by a voter to a state's motor vehicle authority for driver's licensing purposes serves as a change of address for voter registration purposes, unless the voter states a contrary intention on the form (Section 5(d), 52 U.S.C. § 20504(d));
- ensure that when a registrar receives information that a registered voter has moved to a new address within the registrar's jurisdiction, the voter list is updated to reflect the new address (Section 8(f), 52 U.S.C. § 20507(f)); and
- maintain and make available for public inspection for at least two years "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" (Section 8(i), 52 U.S.C. § 20507(i)).

The NVRA imposes these requirements on the state itself. Thus, where a state tasks local election officials with implementing aspects of its list maintenance procedures, the state's chief

elections official must “actively oversee the general program” and ensure that it is “reasonably conducted.” *United States v. Missouri*, 535 F.3d 844, 850 (8th Cir. 2008).

HAVA also imposes certain list maintenance obligations on states as part of the uniform statewide database requirements of Section 303(a)(2) of HAVA, 52 U.S.C. § 21083(a)(2), including coordinating the state voter registration list with state agency records on felony status and death.

As well as reviewing states’ procedures, our efforts to assess compliance with these provisions will also include an analysis of voter registration data reported by each state to the U.S. Election Assistance Commission (“EAC”) as part of its biennial Election Administration and Voting Survey (“EAVS”). Data regarding confirmation notices, removals from the voter registration list, and active and inactive registered voters are of particular relevance and are among the categories of data for which reporting is required by EAC regulations. *See* 11 C.F.R. § 9428.7. However, such data for some states were not included in the 2014 EAVS report,¹ the most recent survey results published by the EAC. Thus, some states are receiving a request for any missing data as part of the information requested below. Similarly, we will review the forthcoming 2016 EAVS data when they are available.

To assist our efforts, we respectfully request that you provide us with the following information related to the above requirements:

- All statutes, regulations, written guidance, internal policies, or database user manuals that set out the procedures Kentucky has put in place relating to:
 - (A) the general program required by Section 8(a)(4) to remove voters from the voter registration list who have become ineligible due to death or change of residence;
 - (B) the requirement of Section 5(d) that motor vehicle changes of address generally serve as updates to voter registration records;
 - (C) any other process that election officials are authorized or required to follow to remove voters by reason of death or change in residence, such as challenge procedures or other list maintenance activities not part of the “general program”; and
 - (D) the processes that the state follows for coordinating state databases under HAVA for list maintenance purposes, and any other database coordination or comparison that the state undertakes for list maintenance purposes.

If your state has relevant procedures in place that are not covered by these written materials, please provide a description of them.

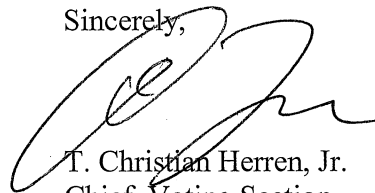
¹ U.S. Election Assistance Commission, “The EAC 2014 Election Administration and Voting Survey Comprehensive Report: A Report to the 114th Congress,” June 30, 2015, *available at* https://www.eac.gov/assets/1/1/2014_EAC_EAVS_Comprehensive_Report_508_Compliant.pdf.

- An explanation of which election officials are responsible for implementing Kentucky's general program of voter registration list maintenance, and for those responsible officials not employed by your office (such as a local election official), a description of the steps that you have taken to ensure that the State's list maintenance program has been properly carried out in full compliance with the NVRA.
- The following data relating to voter registration list maintenance that were requested by the EAC as part of its 2014 EAVS, but were not included for Kentucky in the EAC's survey report² (please provide data for each of your state's local jurisdictions, as defined by the 2014 EAVS):
 - The number of confirmation notices sent to voters in the period between the close of registration for the November 2012 general election and the close of registration for the November 2014 general election (requested by question A10a of the 2014 EAVS Survey Instrument)
 - The number of voters removed from the voter registration rolls in your jurisdiction in the period between the close of registration for the November 2012 general election and the close of registration for the November 2014 general election due to failure to respond to notice sent and failure to vote in the two most recent Federal elections (requested by question A11g of the 2014 EAVS Survey Instrument)

Please also indicate whether Kentucky is reporting similar data in response to the 2016 EAVS.

Please provide this information within 30 days of the date of this letter. The materials may be sent by email to voting.section@usdoj.gov or by FedEx or UPS to Voting Section, Civil Rights Division, Room 7254, U.S. Department of Justice, 1800 G Street NW, Washington, DC 20006. If you have any questions regarding this request, please contact Samuel Oliker-Friedland at 202-353-6196 or David Cooper at 202-305-4733. We very much appreciate your cooperation in our nationwide efforts to monitor NVRA compliance.

Sincerely,



T. Christian Herren, Jr.
Chief, Voting Section

cc: Ms. Maryellen Allen, Executive Director, State Board of Elections

² See 2014 EAVS Report, tbls. 4a & 4b; 2014 EAVS Survey Instrument, available at <https://www.eac.gov/assets/1/1/2014%20Election%20Administration%20and%20Voting%20SurveyFinal-2014-05-15.pdf>.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION - FRANKFORT**

JUDICIAL WATCH, INC.,

Plaintiff,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

ALISON LUNDERGAN GRIMES, et al.,

Defendants.

Civil No. 3:17-CV-94-GFVT-EBA

[PROPOSED] ORDER

Upon consideration and for good cause shown, the United States' Motion to Intervene (ECF No. ___) is GRANTED. The United States shall file its Complaint in Intervention as expeditiously as possible.

SO ORDERED.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION - FRANKFORT**

JUDICIAL WATCH, INC.,

Plaintiff,

UNITED STATES OF AMERICA,

Proposed Plaintiff-Intervenor,

v.

ALISON LUNDERGAN GRIMES, et al.,

Defendants.

Civil No. 3:17-CV-94-GFVT-EBA

JOINT MOTION FOR ENTRY OF AGREED ORDER

The parties and proposed parties, through their undersigned counsel, respectfully move this Court to enter the accompanying Agreed Order. The parties and proposed parties have negotiated in good faith and agreed to entry of the proposed Agreed Order to resolve all claims in this action and to ensure compliance with Section 8 of the National Voter Registration Act, 52 U.S.C. § 20507. The parties and proposed parties share the goals of (1) improving the accuracy of voter registration records through a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of registered voters and (2) ensuring that Kentucky residents are not removed from official lists of registered voters absent the procedural safeguards set forth in the NVRA.

WHEREFORE, the parties and proposed parties move that the accompanying Agreed Order be entered by this Court.

AGREED AND CONSENTED TO, JUNE 12, 2018.

For proposed Plaintiff-Intervenor United States of America:

JOHN M. GORE
Acting Assistant Attorney General
Civil Rights Division

/s/ David G. Cooper _____
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Date: June 12, 2018

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/s/ Robert D. Popper

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Date: June 12, 2018

For Defendant Kentucky Secretary of State Alison Lundergan Grimes, in her official capacity:

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Date: June 12, 2018

For proposed Defendant Commonwealth of Kentucky State Board of Elections, and Defendant board members and Executive Director thereof:

/s/ Daniel Luke Morgan

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Stephen Garrett Amato

Katherine K. Yunker

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Date: June 12, 2018

For proposed Defendant Commonwealth of Kentucky:

ANDY BESHEAR
Kentucky Attorney General

/s/ Marc G. Farris _____

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Date: June 12, 2018

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2018, a true and correct copy of the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ David G. Cooper
David G. Cooper

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION - FRANKFORT**

JUDICIAL WATCH, INC.,

Plaintiff,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

ALISON LUNDERGAN GRIMES, et al.,

Defendants.

Civil No. 3:17-CV-94-GFVT-EBA

AGREED ORDER

Judicial Watch, Inc. (“Judicial Watch”) has filed a Complaint in the above-captioned matter alleging violations of Section 8 of the National Voter Registration Act of 1993 (“NVRA”). 52 U.S.C. § 20507. The United States of America (“United States”) has filed a Complaint in Intervention in this matter, alleging violations of Section 8 of the NVRA, with the agreement of all the parties.

The parties, through counsel, have conferred and agreed that this action should be settled without the delay and expense of litigation. The parties share the goals of (1) improving the accuracy of voter registration records through a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of registered voters and (2) ensuring that Kentucky residents are not removed from official lists of registered voters absent the procedural safeguards set forth in the NVRA. Accordingly, the parties have negotiated in good faith and hereby agree to the entry of this Agreed Order as an appropriate resolution.

The parties stipulate and agree that:

1. The Court has jurisdiction over this action pursuant to 52 U.S.C. § 20510(a) and 28 U.S.C. §§ 1331 and 1345.
2. Venue is proper in this district pursuant to 28 U.S.C. §§ 97(a) and 1391(b).
3. The NVRA authorizes the Attorney General of the United States to bring a civil action for such declaratory or injunctive relief as is necessary to carry out the Act. 52 U.S.C. § 20510(a).
4. Judicial Watch brings suit under the NVRA's private right of action, 52 U.S.C. § 20510(b), and this Court has subject matter jurisdiction over its claims, which arise under federal law. 28 U.S.C. § 1331.
5. The Commonwealth of Kentucky, Commonwealth of Kentucky State Board of Elections, and Kentucky Secretary of State are proper parties in this action.
6. The Commonwealth of Kentucky is one of the States of the United States of America and is subject to the requirements of the NVRA. 52 U.S.C. §§ 20502(4), 20503, 20507.
7. The Commonwealth of Kentucky, through its State Board of Elections, is responsible for administering Kentucky's election laws and supervising the registration and purging of registrants within the State. KRS § 117.015(1). The Secretary of State is the *ex officio* chair of the Kentucky State Board of Elections and Kentucky's chief State election official, and is responsible for coordinating the State's responsibilities under the NVRA. *See* 52 U.S.C. § 20509; KRS § 117.015(2).
8. The NVRA was enacted "to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office" while "ensur[ing] that accurate and current voter registration rolls are maintained." 52 U.S.C. § 20501(b)(1), (4).

9. Section 8 of the NVRA (“Section 8”) addresses state voter list maintenance procedures for elections for federal office. 52 U.S.C. § 20507.

10. Section 8 prescribes the conditions under which registrants may be removed from voter registration lists and the procedures that must be followed before making those removals. 52 U.S.C. § 20507.

11. Programs to maintain accurate and current voter registration lists must be uniform and nondiscriminatory, and they must comply with the Voting Rights Act. 52 U.S.C. § 20507(b)(1).

12. Programs to maintain accurate and current voter registration lists may not remove registrants by reason of a registrant’s failure to vote, except as provided in the procedures under Sections 8(c) and (d). 52 U.S.C. § 20507(b)(2).

13. Section 8 permits states to remove the name of a person from the voter registration lists upon the request of the registrant, and, if state law so provides, for mental incapacity or for criminal conviction. 52 U.S.C. § 20507(a)(3)(A)-(B).

14. Section 8 also requires states to conduct a general voter registration list maintenance program that makes a reasonable effort to remove persons from the voter list who have become ineligible by reason of death or a change in residence outside of the jurisdiction, in accordance with procedures set forth in the NVRA. 52 U.S.C. § 20507(a)(4).

15. Section 8 further specifies the two circumstances under which a registrant may be removed from the voter registration list because the registrant has moved to another jurisdiction. 52 U.S.C. § 20507(d)(1).

16. First, a state can remove the name of a person from the voter registration list on grounds of a change of residence based upon the registrant's written confirmation of a change of address to a location outside of the registrar's jurisdiction. 52 U.S.C. § 20507(d)(1)(A).

17. Second, a state can remove the name of a person from the voter registration list on grounds of a change of residence upon completion of the process set forth in Section 8(d), 52 U.S.C. § 20507(d), which allows removal if:

- (a) The registrant fails to respond to a notice ("Section 8(d)(2) notice") which includes a postage prepaid and preaddressed return card sent by forwardable mail, on which the registrant may state his or her current address, and which contains specific instructions and information, 52 U.S.C. § 20507(d)(1)(B)(i), (d)(2), and
- (b) The registrant then fails to vote or appear to vote during the period ending on the day after the second federal general election subsequent to the Section 8(d)(2) notice being sent. 52 U.S.C. § 20507(d)(1)(B)(ii).

18. Section 8(f) provides that when a registrant has a change-of-address to an address within the same jurisdiction, the voter registration list must be updated accordingly and the registrant's name may not be removed except as provided in Section 8(d). 52 U.S.C. § 20507(f).

19. Section 8 also provides an example of a list maintenance program that constitutes a reasonable effort to remove registrants who have become ineligible due to a change of residence. 52 U.S.C. § 20507(c)(1). Under this program, a state uses information from the United States Postal Service National Change of Address ("NCOA") program to identify registrants who may have changed residence. 52 U.S.C. § 20507(c)(1)(A). Where it appears from that information that a registrant has moved to a new address in the same jurisdiction, the

registration record is updated to show the new address and the registrant is sent a notice of the change by forwardable mail that includes a postage-prepaid, pre-addressed return form by which the registrant may verify or correct the address information. 52 U.S.C. § 20507(c)(1)(B)(i).

Where it appears from the NCOA information that a registrant has moved to a new address in a different jurisdiction, the procedure set out in Section 8(d) and described above is used to confirm the address change. 52 U.S.C. § 20507(c)(1)(B)(ii).

20. Section 8 requires states to complete any program, the purpose of which is to systematically remove the names of ineligible registrants from the official list of eligible voters, not later than 90 days prior to the date of a primary election or general election for federal office. 52 U.S.C. § 20507(c)(2)(A).

21. Kentucky law requires the Kentucky State Board of Elections to establish a voter registration removal program using the change-of-address information supplied by the United States Postal Service through its licensees or other sources to identify registrants whose addresses may have changed. KRS § 116.112(1).

22. If it appears that a registrant has moved within the same county, the Kentucky State Board of Elections is required to provide the county board of elections with the information necessary to change the registration record. The Kentucky State Board of Elections is also required to send to the new address a notice of the change by forwardable mail and a postage-prepaid, pre-addressed return form by which the registrant may verify or correct the address information. KRS § 116.112(2).

23. If it appears that a registrant has moved to a different county or state, the Kentucky State Board of Elections is required to send to the address at which the registrant was

last registered, by forwardable mail, a notice with a postage-prepaid and pre-addressed return card on which the registrant may state his or her current address. KRS § 116.112(3).

24. A registrant may not be removed from the registration records 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 county; or
- (b) Has failed to respond to the mailed notice and has not voted or appeared to vote and, if necessary, correct 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.

KRS § 116.112(4).

25. As part of its list maintenance program, the Kentucky State Board of Elections is required by state law to maintain an inactive list. State law provides that when the State Board sends the notices described in K.R.S. § 116.112(3) to registrants identified as having moved to a new county or state, the registrants who do not respond to the notice and do not vote or appear to vote for two federal election cycles are maintained on an inactive list. K.R.S. § 116.112(5).

When the State Board last sent such notices in 2009, those registrants who did not respond to the notice and did not vote or appear to vote for two federal election cycles were included on an inactive list and ultimately 67,743 individuals were removed from the registration list.

26. Kentucky law permits registrants on the inactive list to vote, but not to be counted for other purposes such as creating precincts or calculating the state funding provided to county clerks based on the number of registered voters in the county. KRS § 116.112(7).

27. Kentucky law requires the Kentucky State Board of Elections to complete, not later than ninety days prior to the date of a primary or general election, any program the purpose of which is to systematically remove the names of ineligible voters from the registration records. KRS § 116.112(6).

28. The Kentucky State Board of Elections maintains and follows a registration removal program that since 2011, has removed 424,429 individuals from Kentucky's voter rolls due to an individual's death, felon status, mental incompetence, move out of state with their written confirmation, or at their request. The Kentucky State Board of Elections has been unable to secure sufficient funding to implement its list maintenance procedures as to registrants who have moved without notifying election or motor vehicle authorities, despite seeking funding from the General Assembly for these efforts in every budget request since 2008. Currently, there are no registrants on an inactive list or in the process set out in Section 8(d) of the NVRA and KRS § 116.112. Since 2009, no forwardable notices have been mailed to registrants under the change of address process contemplated by Section 8(d) of the NVRA and KRS § 116.112. Since 2015, no registrants who have become ineligible due to change of residence have been removed as contemplated by the procedures set out in Section 8(d) of the NVRA and KRS § 116.112.

29. Due to this lack of funding, the practices currently in place in Kentucky do not comply with the NVRA's requirement that states conduct a general voter registration list maintenance program that makes a reasonable effort to remove ineligible persons from the voter rolls due to a change in residence outside of the jurisdiction. 52 U.S.C. § 20507(a)(4)(B).

30. The parties agree to work in a fair, reasonable, and collaborative fashion under the terms of this Agreed Order set forth below.

WHEREFORE, the parties having freely given their consent, and the terms of this Agreed Order being fair, reasonable, and consistent with the NVRA's requirements, it is hereby ORDERED, ADJUDGED, and DECREED that:

31. The Kentucky State Board of Elections shall develop and implement a general program of statewide voter list maintenance that makes a reasonable effort to remove from the statewide voter registration list the names of registrants who have become ineligible due to a change in residence in accord with section 8 of the NVRA, 52 U.S.C. § 20507, and KRS § 116.112. The general program

- (a) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act, 52 U.S.C. § 10301 *et seq.*;
- (b) shall not result in the removal of any registrant from the statewide voter registration list by reason of the registrant's failure to vote, except as provided under sections 8(c) and (d) of the NVRA;
- (c) shall comply with the standards and procedures set out in sections 8(b)-(d) of the NVRA and KRS § 116.112;
- (d) shall require all systematic list maintenance activities relating to the removal of registrants due to a change in residence to be completed at least 90 days prior to the next primary or general election for federal office as provided in section 8(c)(2)(A) of the NVRA (with the exceptions noted in section 8(c)(2)(B) of the NVRA) and KRS § 116.112(6); and
- (e) shall base removals due to a change in residence only on either: (1) the registrant's written confirmation of a change of address outside the jurisdiction,

or (2) the registrant (a) failing to respond to a forwardable notice sent by the Kentucky State Board of Elections or its designee, which meets the requirements of section 8(d)(2) of the NVRA and KRS § 116.112(3), and (b) failing to vote or appear to vote during the period ending on the day after the second federal general election subsequent to the notice being sent.

Comprehensive Plan

32. To assist in the establishment of the general program described above, the Kentucky State Board of Elections shall create a Comprehensive Plan and implement and adhere to its terms.

33. Within 45 days of the effective date of this Agreed Order, the Kentucky State Board of Elections shall provide counsel for the parties with its draft Comprehensive Plan. The parties shall have 30 days to respond. If the parties cannot in good faith agree upon the terms of an appropriate Plan within 30 days of the date the last response, the parties may seek a resolution from the Court. Responses to any such request for resolution shall be filed with the Court within 10 days of the request. Any agreed upon Comprehensive Plan shall be filed with the Court and, if deemed appropriate by the Court, so ordered. The Kentucky State Board of Elections will proceed with the actions described in subparagraph 34(c) below regarding a canvass mailing in the stated timeframes regardless of whether a Comprehensive Plan is in place.

34. The Comprehensive Plan shall include a detailed description of all procedures to be followed by the Kentucky State Board of Elections for maintaining an accurate statewide voter registration list, including procedures to identify registrants who have become ineligible due to change in residence. The descriptions shall include a step-by-step account of all actions to

be undertaken and the expected timeframe and frequency of such actions. At a minimum, the Comprehensive Plan shall include the following:

- (a) **Procedures.** Procedures for a general program of list maintenance for registrants who may have become ineligible due to a change of residence that has not been reported to election officials, including procedures that can be implemented in 2018 (bearing in the mind the 90-day quiet period before federal elections), procedures going forward in subsequent years, and procedures for reaching back to identify registrants who may have become ineligible due to an unreported change of residence since 2009.
- (b) **Sources of Information Used Regularly.** Procedures to identify registered voters who may have moved without reporting such move to election officials, including procedures for obtaining, processing, and reliably matching information to the statewide voter registration database:
 - (i) data from the U.S. Postal Service National Change of Address (NCOA) program;
 - (ii) mail sent by the Kentucky State Board of Elections or local election officials returned as undeliverable with or without forwarding address;
 - (iii) lists from the Kentucky Transportation Cabinet of former Kentucky residents who have surrendered Kentucky driver licenses or other state-issued identification to motor vehicle authorities in another state;
 - (iv) data from other states indicating that a Kentucky registrant may have moved to that state; and

- (v) reliable evidence of address changes from the Electronic Registration Information Center.

For each source of information, the Plan shall include the expected date by which the data will first be obtained and the frequency with which such data will be obtained and used in the future, including a plan to obtain and use change-of-address information from either NCOA data or the Electronic Registration Information Center at least once per year.

- (c) **Canvass Mailing.** Procedures for sending a nonforwardable canvass mailing to identify registrants through mail returned as undeliverable who may have unreported moves since 2009, excluding any already identified through the Kentucky State Board of Elections' initial use of the information listed in subparagraph (b), including the expected date(s) between May 23 and August 8, 2018, on which the canvass mailing will be sent. Where such nonforwardable canvass mailing is returned as undeliverable with or without forwarding address, this would include procedures for moving ahead during the time period between May 23 and August 8, 2018 as set forth in subparagraphs (d)(i), d(ii), and (e) below.
- (d) **Registration List Updates.** Procedures for using the data that is successfully matched to the statewide voter registration list under subparagraphs (b) and (c) to update the registration list, including:
 - (i) procedures to be followed where data obtained from the sources of information outlined in subparagraphs (b) and (c) above indicate that registrants may have an unreported move inside the registrar's

jurisdiction, which shall include updating the registrants' records in compliance with sections 8(c)(1)(B)(i) and 8(f) of the NVRA and sending appropriate notices of such updates, as described in section 8(c)(1)(B)(i);

- (ii) procedures to be followed where data obtained from the sources of information outlined in subparagraphs (b) and (c) above indicates that registrants may have an unreported move outside the registrar's jurisdiction, which shall include sending the specific forwardable notice described in section 8(d)(2) of the NVRA to confirm the registrants' changes in residence, waiting for two federal general elections for the registrant to respond or vote or appear to vote, and failing that, to remove them from the statewide voter registration database according to the procedures set forth in section 8(d) of the NVRA; and
 - (iii) the form and content of all notices to be sent to registrants as part of the list maintenance activities described in the Comprehensive Plan.
- (e) **Timing of Notices and Updates.** The expected date(s) between May 23 and August 8, 2018 when notices will be sent under sections 8(c)(1)(B)(i) or 8(d)(2) of the NVRA and updates carried out under section 8(f) of the NVRA, and the expected timeframes in future years (not within 90 days of an upcoming primary or general election for federal office) when such notices will be sent and updates carried out.
- (f) **List of Registrants to Whom Notices Have Been Sent.** Procedures for maintaining a list that includes all registrants identified through subparagraphs

(b) or (c) as voters who may have become ineligible due to a change in residence outside the jurisdiction, and are mailed notices conforming to section 8(d)(2) of the NVRA, including procedures to ensure that (1) any registrant on the list who appears to vote and is otherwise eligible is permitted to cast a ballot, (2) any registrant on the list can access and review information about his or her registration record and status through Kentucky's web-based voter portal, and (3) any registrant who responds to the notice and affirms that they remain in the jurisdiction or votes or appears to vote or confirms or updates his or her registration address is updated in the statewide database and returned to active status.

- (g) **Removals.** Procedures for removing from the statewide voter registration list any registrant who is mailed a notice conforming to section 8(d)(2) of the NVRA who does not respond to the notice and who does not vote or appear to vote or otherwise have contact with election officials through the day after the second federal general election following the date on which the registrant was mailed the section 8(d) notice, including
- (i) a commitment to remove the registration of any registrant who meets the conditions prescribed by KRS § 116.112(4), and
 - (ii) the expected timeframe when such removals will be carried out (not within 90 days of an upcoming primary or general election for federal office).
- (h) **Database Management.** A description of databases to be used in list maintenance activities and a plan to consult with relevant database managers,

assess the quality of data to be used in list maintenance activities, and develop sound and reliable matching criteria to be used in list maintenance activities (to ensure that the persons identified as having a possible move are properly matched up with the same persons registered in the statewide voter registration database).

- (i) **Record-Keeping.** Procedures for maintaining and making available for inspection and copying the records concerning implementation of the general program activities outlined in this decree, in accord with section 8(i) of the NVRA and KRS § 116.112(8).
- (j) **Local Election Officials.** A detailed description of any role that local election officials may play in list maintenance activities.
- (k) **Public Outreach.** Practices to be followed to educate voters regarding the importance of confirming their registration status, including efforts to be made before the close of registration for each federal general election that follows the removal of registrants on the list described in subparagraph (f).

Reporting

35. (a) Within 30 days of the date of this Agreed Order, the Kentucky State Board of Elections will make publicly available on its website, any written procedures relevant to list maintenance, including memos, manuals, training materials, informal guidance, administrative regulations, etc., that exist as of the date of this Agreed Order, and it will make publicly available on its website any such documents subsequently released or revised at the time of such release or revision. These documents shall include any guidance to county clerks

regarding implementation of registration updates based on change-of-address data. At the time the information is made public, the State Board will provide a copy or link to counsel for Judicial Watch and the United States.

- (b) The Kentucky State Board of Elections will make the results of its efforts of information collection and list maintenance outlined in subparagraphs 34(b)-(g) above publicly available on its website by September 30, 2018, and will update such publicly available information at least once per year by September 30 of each year. At the time the information is made public, the State Board will provide a copy or link to counsel for Judicial Watch and the United States.
- (c) The publicly available information described in subparagraph (b) above and provided to counsel for Judicial Watch and the United States will include the following:
 - (i) Number of registrants identified who may have moved, by source of information listed in subparagraph 34(b) revealing the possible move;
 - (ii) Number of registration records updated;
 - (iii) Number of registrants to whom notices conforming to section 8(c)(1)(B)(i) of the NVRA were sent;
 - (iv) Number of notices conforming to section 8(c)(1)(B)(i) that were returned as undeliverable;
 - (v) Number of notices conforming to section 8(c)(1)(B)(i) that were returned by the registrant confirming or correcting registration information;

- (vi) Number of registrants to whom notices conforming to section 8(d)(2) of the NVRA were sent;
- (vii) Number of notices conforming to section 8(d)(2) returned by the registrant confirming or correcting registration information;
- (viii) Number of notices conforming to section 8(d)(2) returned as undeliverable; and
- (ix) Number of notices conforming to section 8(d)(2) to which no response was received;
- (x) Total number of removals from the statewide voter registration list, with a breakdown by reason for removal, as defined by the U.S. Election Assistance Commission's 2016 Election Administration and Voting Survey;
- (xi) Number of removals from the statewide voter registration list due to a move out of jurisdiction, as defined by the U.S. Election Assistance Commission's 2016 Election Administration and Voting Survey, with a breakdown by the source of information relied on;
- (xii) Number of active registered voters as of the date of the report; and
- (xiii) Number of registrants on the list described in subparagraph 34(f) as of the date of the report.

36. All data reported under the above requirements shall include any list maintenance activity conducted by local election officials.

37. The Kentucky State Board of Elections will report to the U.S. Election Assistance Commission the voter registration data required by the Commission's biennial Election Administration and Voting Survey, during the term of this Agreed Order.

Enforcement and Term

38. The parties to this Agreed Order must employ best efforts to defend this Agreed Order against any legal challenge by non-parties to this agreement.

39. The parties will work cooperatively as the Kentucky State Board of Elections seeks to ensure compliance with the terms of this Agreed Order and the NVRA.

40. This Agreed Order shall take effect once it has been approved by the Court and entered upon the docket ("the effective date").

41. This Agreed Order shall remain in effect through October 31, 2023, on which date the agreement will terminate automatically unless the parties mutually agree to extend it or the Court determines that the Defendants have not achieved substantial compliance with its terms.

42. Until the termination of this Agreed Order, the Court shall retain jurisdiction over this action to enter such further relief as may be necessary for the effectuation of the terms of this Agreed Order.

43. Each party shall bear its own costs and fees.

The undersigned agree to entry of this Agreed Order:

For Plaintiff-Intervenor United States of America:

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Acting Assistant Attorney General
Civil Rights Division



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Date: June 11, 2018

For Plaintiff Judicial Watch:



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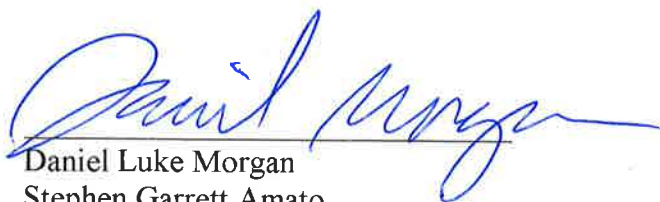
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Date: June 14, 2018

For Defendant Kentucky Secretary of State Alison Lundergan Grimes, in her official capacity:

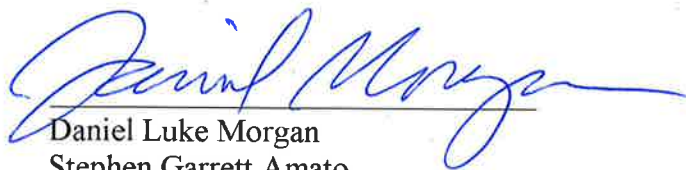


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Date: June 11, 2018

For Defendants Commonwealth of Kentucky State Board of Elections and board members and executive director thereof:




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Date: June 11, 2018

SO ORDERED

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION - FRANKFORT**

JUDICIAL WATCH, INC.,

Plaintiff,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

ALISON LUNDERGAN GRIMES, et al.,

Defendants.

Civil No. 3:17-CV-94-GFVT-EBA

ORDER

Upon consideration and for good cause shown, the United States' Motion to Intervene (ECF No. ___) is GRANTED. The United States shall file its Complaint in Intervention as expeditiously as possible.

SO ORDERED.

Signed June 21, 2018.

ETA

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION - FRANKFORT**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

ALISON LUNDERGAN GRIMES, et al.,

Defendants.

Civil No. 3:17-CV-00094-GFVT

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

**COMMONWEALTH OF KENTUCKY;
COMMONWEALTH OF KENTUCKY
STATE BOARD OF ELECTIONS; and
KENTUCKY SECRETARY OF STATE**

Alison Lundergan Grimes, in her official
capacity,

Defendants.

COMPLAINT IN INTERVENTION

The United States of America alleges:

1. The Attorney General hereby files this complaint in intervention on behalf of the United States of America to enforce the provisions of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20507.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 52 U.S.C. § 20510(a) and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to 28 U.S.C. §§ 97(a) and 1391(b).

PARTIES

4. Plaintiff-Intervenor United States of America seeks declaratory and injunctive relief pursuant to Section 11 of the NVRA, which authorizes the Attorney General to bring suit to enforce this federal statute. 52 U.S.C. § 20510(a).

5. Defendant Commonwealth of Kentucky is one of the States of the United States of America and is subject to the requirements of the NVRA. 52 U.S.C. §§ 20502(4), 20503, 20507.

6. Defendant Kentucky State Board of Elections is responsible for administering Kentucky's election laws and supervising the registration and purging of voters within the State. KRS § 117.015(1).

7. Defendant Kentucky Secretary of State, Alison Lundergan Grimes, is sued in her official capacity as chair of the Kentucky State Board of Elections and as the chief State election official responsible for coordinating Kentucky's responsibilities under the NVRA. *See* 52 U.S.C. § 20509; KRS § 117.015(2).

CAUSE OF ACTION:
SECTION 8 OF THE NATIONAL VOTER REGISTRATION ACT, 52 U.S.C. § 20507

Voter List Maintenance Requirements under the NVRA

8. The NVRA was enacted “to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office” while “ensur[ing] that accurate and current voter registration rolls are maintained.” 52 U.S.C. § 20501(b)(1), (4).

9. Section 8 of the NVRA (“Section 8”) addresses state voter list maintenance procedures for elections for federal office. 52 U.S.C. § 20507.

10. Section 8 prescribes the conditions under which registrants may be removed from voter registration lists and the procedures that must be followed before making those removals. 52 U.S.C. § 20507.

11. Programs to maintain accurate and current voter registration lists must be uniform and nondiscriminatory, and they must comply with the Voting Rights Act. 52 U.S.C. § 20507(b)(1).

12. Programs to maintain accurate and current voter registration lists may not remove registrants by reason of a registrant’s failure to vote, except as provided in the procedures under Sections 8(c) and (d). 52 U.S.C. § 20507(b)(2).

13. Section 8 permits states to remove the name of a person from the voter registration lists upon the request of the registrant, and, if state law so provides, for mental incapacity or for criminal conviction. 52 U.S.C. § 20507(a)(3)(A)-(B).

14. Section 8 also requires states to conduct a general voter registration list maintenance program that makes a reasonable effort to remove persons from the voter list who have become ineligible by reason of death or a change in residence outside of the jurisdiction, in accordance with procedures set forth in the NVRA. 52 U.S.C. § 20507(a)(4).

15. Section 8 further specifies the two circumstances under which a registrant may be removed from the voter registration list because the registrant has moved to another jurisdiction. 52 U.S.C. § 20507(d)(1).

16. First, a state can remove the name of a person from the voter registration list on grounds of a change of residence based upon the registrant’s written confirmation of a change of

address to a location outside of the registrar's jurisdiction. 52 U.S.C. § 20507(d)(1)(A).

17. Second, a state can remove the name of a person from the voter registration list on grounds of a change of residence upon completion of the process set forth in Section 8(d), 52 U.S.C. § 20507(d), which allows removal if:

- (a) The registrant fails to respond to a notice ("Section 8(d)(2) notice") which includes a postage prepaid and preaddressed return card sent by forwardable mail, on which the registrant may state his or her current address, and which contains specific instructions and information, 52 U.S.C. § 20507(d)(1)(B)(i), (d)(2), and
- (b) The registrant then fails to vote or appear to vote during the period ending on the day after the second federal general election subsequent to the Section 8(d)(2) notice being sent. 52 U.S.C. § 20507(d)(1)(B)(ii).

18. Section 8(f) provides that when a registrant has a change of residence to an address within the same jurisdiction, the voter registration list must be updated accordingly and the registrant's name may not be removed except as provided in Section 8(d). 52 U.S.C. § 20507(f).

19. Section 8 also provides an example of a list maintenance program that constitutes a reasonable effort to remove registrants who have become ineligible due to a change of residence. 52 U.S.C. § 20507(c)(1). Under this program, a state uses information from the United States Postal Service National Change of Address ("NCOA") program to identify registrants who may have changed residence. 52 U.S.C. § 20507(c)(1)(A). Where it appears from that NCOA information that a registrant has moved to a new address in the same jurisdiction, the registration record is updated to show the new address and the registrant is sent a

notice of the change by forwardable mail that includes a postage-prepaid, pre-addressed return form by which the registrant may verify or correct the address information. 52 U.S.C. § 20507(c)(1)(B)(i). Where it appears from the NCOA information that a registrant has moved to a new address in a different jurisdiction, the procedure set out in Section 8(d) and described above is used to confirm the address change. 52 U.S.C. § 20507(c)(1)(B)(ii).

20. Section 8 requires states to complete any program, the purpose of which is to systematically remove the names of ineligible registrants from the official list of eligible voters, not later than 90 days prior to the date of a primary election or general election for federal office. 52 U.S.C. § 20507(c)(2)(A).

Voter List Maintenance Procedures under Kentucky State Law

21. Kentucky law requires the State Board of Elections to establish a voter registration purge program using the change-of-address information supplied by the United States Postal Service through its licensees or other sources to identify registrants whose addresses may have changed. KRS § 116.112(1).

22. If it appears that a registrant has moved within the same county, the State Board of Elections is required to provide the county board of elections with the information necessary to change the registration record. The State Board of Elections is also required to send to the new address a notice of the change by forwardable mail and a postage-prepaid, pre-addressed return form by which the registrant may verify or correct the address information. KRS § 116.112(2).

23. If it appears that a registrant has moved to a different county or state, the State Board of Elections is required to send to the address at which the registrant was last registered,

by forwardable mail, a notice with a postage-prepaid and pre-addressed return card on which the registrant may state his or her current address. KRS § 116.112(3).

24. A registrant may not be removed from the registration records 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 county; or
- (b) Has failed to respond to the mailed notice and has not voted or appeared to vote and, if necessary, correct 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.

KRS § 116.112(4).

25. As part of its list maintenance program, the State Board of Elections is required by state law to maintain an inactive list. State law provides that when the State Board sends the notices described in KRS § 116.112(3) to registrants identified as having moved to a new county or state, the registrants who do not respond to the notice and do not vote or appear to vote for two federal election cycles are maintained on an inactive list. KRS § 116.112(5). When the State Board last sent such notices in 2009, those registrants who did not respond to the notice and did not vote or appear to vote for two federal election cycles were included on an inactive list and ultimately removed from the registration list.

26. Kentucky law permits registrants on the inactive list to vote, but not to be counted for other purposes such as creating precincts or calculating the state funding provided to county clerks based on the number of registered voters in the county. KRS § 116.112(7).

27. Kentucky law requires the State Board of Elections to complete, not later than ninety days prior to the date of a primary or general election, any program the purpose of which is to systematically remove the names of ineligible voters from the registration records. KRS § 116.112(6).

28. In recent years, however, Kentucky has not implemented a general program of list maintenance that makes a reasonable effort to remove registrants who have become ineligible due to a change of residence.

29. Kentucky has not used available and reliable sources of information, such as the NCOA program, to identify registrants who may have moved.

30. Since 2009, the State Board of Elections has not mailed any forwardable notices to registrants under the change of address process contemplated by Section 8(d) of the NVRA and KRS § 116.112. The State Board of Elections has not removed registrants who have become ineligible due to an unreported change of residence, as contemplated by the procedures set out in Section 8(d) of the NVRA and KRS § 116.112, since 2015. Kentucky currently has no registrants on its inactive list or in the Section 8(d) process.

31. Biennial reports published by the U.S. Election Assistance Commission (“EAC”), based on data provided by Kentucky and other states, confirm these facts. The EAC report covering the 2015-2016 election cycle, published in June 2017, indicates that Kentucky had no inactive voters as of the conclusion of the reporting period. This and prior EAC reports confirm that the State Board of Elections has not sent Section 8(d)(2) mailings since the 2009-2010 election cycle.

32. On June 28, 2017, the United States Department of Justice sent a letter to Kentucky, requesting information relating to the Commonwealth’s compliance with the list

maintenance provisions of the NVRA, including the number of confirmation notices sent during the 2013-2014 election cycle, as requested by the EAC. *See* Exhibit A. On January 24, 2018, Kentucky sent a letter to the Department of Justice responding to the request for information. In regards to the 2013-2014 EAC report, the response stated, “Kentucky did not include data regarding confirmation notices and removal for failure to vote because there is no data to report. . . . The Kentucky Legislature has not funded the initiative, nor made it mandatory, so the State Board of Elections has not done a cancellation mailing during the time frame requested.”

33. The only procedures that the State Board of Elections implements to identify individuals who have changed residence, and who have not reported the change to election authorities or driver licensing authorities in Kentucky, relate to some registrants who have moved out of state. Upon receiving notice from election officials in another state that a person who moved to that state may have been registered in Kentucky, the State Board of Elections attempts to identify the person on the statewide voter registration list and, if successful, sends the registrant a notice seeking confirmation of the address change. If the registrant returns the notice and confirms that he or she has moved out of the State, the registrant is removed from the voter registration list. If the State Board does not receive a response, the registrant is not placed into the process defined in Section 8(d) of the NVRA and KRS § 116.112. Rather, no further action is taken, and the registrant remains an active registered voter in Kentucky.

34. This program results only in the removal of registrants who have (1) moved out of Kentucky, (2) moved to a state that voluntarily sends this information to Kentucky, and (3) received and affirmatively responded to a notice. This does not reach registrants who have moved to other states or moved within Kentucky without notifying election or motor vehicle authorities, or who failed to respond affirmatively to the State Board’s notice.

Violation of Section 8 of the NVRA

35. Defendants' practices do not comply with the NVRA's requirement that states conduct a general program of voter registration list maintenance that makes a reasonable effort to remove persons from the voter rolls who have become ineligible due to a change in residence outside of the jurisdiction. 52 U.S.C. § 20507(a)(4)(B).

36. Unless and until ordered to do so by this Court, the Defendants will not take timely and comprehensive actions necessary to ensure that a list maintenance program is implemented as required by Section 8 of the NVRA.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter an ORDER:

- (1) Declaring that Defendants have violated Section 8 of the NVRA;
- (2) Enjoining Defendants, their agents and successors in office, and all persons acting in concert with them from future non-compliance with Section 8 of the NVRA;
- (3) Requiring Defendants, their agents and successors in office, and all persons acting in concert with them, to take all steps necessary to ensure immediate and ongoing compliance with Section 8 of the NVRA; and
- (4) Ordering any such additional relief as the interests of justice may require, together with the costs and disbursement in maintaining this action.

Date: June 12, 2018

Respectfully submitted,

JOHN M. GORE
Acting Assistant Attorney General
Civil Rights Division

/s/ David G. Cooper
T. CHRISTIAN HERREN, JR
JOHN A. RUSS IV
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EXHIBIT A



Civil Rights Division

*Voting Section - NWB
950 Pennsylvania Ave, NW
Washington, DC 20530*

JUN 28 2017

The Honorable Alison Lundergan Grimes
Secretary of State
700 Capital Ave., Ste. 152
Frankfort, KY 40601

Dear Secretary Grimes:

We write to you as the chief election official for the Commonwealth of Kentucky to request information regarding the State's procedures for compliance with the statewide voter registration list maintenance provisions of the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20501 et seq. and the Help America Vote Act ("HAVA"), 52 U.S.C. § 20901 et seq. As part of our nationwide enforcement efforts, we are reviewing voter registration list maintenance procedures in each state covered by the NVRA.

The NVRA imposes several requirements on covered states that promote the maintenance of accurate statewide voter lists. Among other things, states must:

- "conduct a general program that makes a reasonable effort to remove the names of ineligible voters" from the statewide voter registration list due to the registrant's death or change of residence (Section 8(a)(4), 52 U.S.C. § 20507(a)(4));
- ensure that the state's general program complies with the requirements and protections imposed by Sections 8(b), (c), and (d) (52 U.S.C. § 20507(b)-(d));
- ensure that any change-of-address form submitted by a voter to a state's motor vehicle authority for driver's licensing purposes serves as a change of address for voter registration purposes, unless the voter states a contrary intention on the form (Section 5(d), 52 U.S.C. § 20504(d));
- ensure that when a registrar receives information that a registered voter has moved to a new address within the registrar's jurisdiction, the voter list is updated to reflect the new address (Section 8(f), 52 U.S.C. § 20507(f)); and
- maintain and make available for public inspection for at least two years "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" (Section 8(i), 52 U.S.C. § 20507(i)).

The NVRA imposes these requirements on the state itself. Thus, where a state tasks local election officials with implementing aspects of its list maintenance procedures, the state's chief

elections official must “actively oversee the general program” and ensure that it is “reasonably conducted.” *United States v. Missouri*, 535 F.3d 844, 850 (8th Cir. 2008).

HAVA also imposes certain list maintenance obligations on states as part of the uniform statewide database requirements of Section 303(a)(2) of HAVA, 52 U.S.C. § 21083(a)(2), including coordinating the state voter registration list with state agency records on felony status and death.

As well as reviewing states’ procedures, our efforts to assess compliance with these provisions will also include an analysis of voter registration data reported by each state to the U.S. Election Assistance Commission (“EAC”) as part of its biennial Election Administration and Voting Survey (“EAVS”). Data regarding confirmation notices, removals from the voter registration list, and active and inactive registered voters are of particular relevance and are among the categories of data for which reporting is required by EAC regulations. *See* 11 C.F.R. § 9428.7. However, such data for some states were not included in the 2014 EAVS report,¹ the most recent survey results published by the EAC. Thus, some states are receiving a request for any missing data as part of the information requested below. Similarly, we will review the forthcoming 2016 EAVS data when they are available.

To assist our efforts, we respectfully request that you provide us with the following information related to the above requirements:

- All statutes, regulations, written guidance, internal policies, or database user manuals that set out the procedures Kentucky has put in place relating to:
 - (A) the general program required by Section 8(a)(4) to remove voters from the voter registration list who have become ineligible due to death or change of residence;
 - (B) the requirement of Section 5(d) that motor vehicle changes of address generally serve as updates to voter registration records;
 - (C) any other process that election officials are authorized or required to follow to remove voters by reason of death or change in residence, such as challenge procedures or other list maintenance activities not part of the “general program”; and
 - (D) the processes that the state follows for coordinating state databases under HAVA for list maintenance purposes, and any other database coordination or comparison that the state undertakes for list maintenance purposes.

If your state has relevant procedures in place that are not covered by these written materials, please provide a description of them.

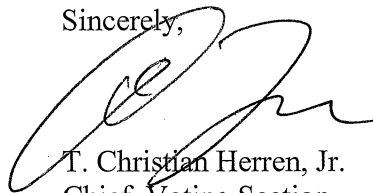
¹ U.S. Election Assistance Commission, “The EAC 2014 Election Administration and Voting Survey Comprehensive Report: A Report to the 114th Congress,” June 30, 2015, *available at* https://www.eac.gov/assets/1/1/2014_EAC_EAVS_Comprehensive_Report_508_Compliant.pdf.

- An explanation of which election officials are responsible for implementing Kentucky's general program of voter registration list maintenance, and for those responsible officials not employed by your office (such as a local election official), a description of the steps that you have taken to ensure that the State's list maintenance program has been properly carried out in full compliance with the NVRA.
- The following data relating to voter registration list maintenance that were requested by the EAC as part of its 2014 EAVS, but were not included for Kentucky in the EAC's survey report² (please provide data for each of your state's local jurisdictions, as defined by the 2014 EAVS):
 - The number of confirmation notices sent to voters in the period between the close of registration for the November 2012 general election and the close of registration for the November 2014 general election (requested by question A10a of the 2014 EAVS Survey Instrument)
 - The number of voters removed from the voter registration rolls in your jurisdiction in the period between the close of registration for the November 2012 general election and the close of registration for the November 2014 general election due to failure to respond to notice sent and failure to vote in the two most recent Federal elections (requested by question A11g of the 2014 EAVS Survey Instrument)

Please also indicate whether Kentucky is reporting similar data in response to the 2016 EAVS.

Please provide this information within 30 days of the date of this letter. The materials may be sent by email to voting.section@usdoj.gov or by FedEx or UPS to Voting Section, Civil Rights Division, Room 7254, U.S. Department of Justice, 1800 G Street NW, Washington, DC 20006. If you have any questions regarding this request, please contact Samuel Oliker-Friedland at 202-353-6196 or David Cooper at 202-305-4733. We very much appreciate your cooperation in our nationwide efforts to monitor NVRA compliance.

Sincerely,



T. Christian Herren, Jr.
Chief, Voting Section

cc: Ms. Maryellen Allen, Executive Director, State Board of Elections

² See 2014 EAVS Report, tbls. 4a & 4b; 2014 EAVS Survey Instrument, available at <https://www.eac.gov/assets/1/1/2014%20Election%20Administration%20and%20Voting%20SurveyFinal-2014-05-15.pdf>.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
FRANKFORT

JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	
)	Civil No. 3:17-cv-00094-GFVT
UNITED STATES OF AMERICA,)	
)	
Plaintiff–Intervenor,)	CONSENT JUDGMENT
V.)	
)	
ALISON LUNDERGAN GRIMES, et al.,)	

Defendants.

*** **

This matter is before the Court on the parties’ Proposed Agreed Order. [R. 33.] Judicial Watch, Inc. filed a Complaint alleging violations of Section 8 of the National Voter Registration Act of 1993 (NVRA). 52 U.S.C. § 20507. The United States of America filed a Complaint in Intervention in this matter, alleging violations of Section 8 of the NVRA, with the agreement of all the parties.

As indicated by the proposed order, the parties, through counsel, have conferred and agreed that this action should be settled without the delay and expense of litigation. [R. 33.] The parties share the goals of (1) improving the accuracy of voter registration records through a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of registered voters and (2) ensuring that Kentucky residents are not removed from official lists of registered voters absent the procedural safeguards set forth in the NVRA. Accordingly, the parties have negotiated in good faith and hereby agree to the entry of this Agreed Order as an appropriate resolution.

The parties stipulate and agree to the following:

1. The Court has jurisdiction over this action pursuant to 52 U.S.C. § 20510(a) and 28 U.S.C. §§ 1331 and 1345.
2. Venue is proper in this district pursuant to 28 U.S.C. §§ 97(a) and 1391(b).
3. The NVRA authorizes the Attorney General of the United States to bring a civil action for such declaratory or injunctive relief as is necessary to carry out the Act. 52 U.S.C. § 20510(a).
4. Judicial Watch brings suit under the NVRA's private right of action, 52 U.S.C. § 20510(b), and this Court has subject matter jurisdiction over its claims, which arise under federal law. 28 U.S.C. § 1331.
5. The Commonwealth of Kentucky, Commonwealth of Kentucky State Board of Elections, and Kentucky Secretary of State are proper parties in this action.
6. The Commonwealth of Kentucky is one of the States of the United States of America and is subject to the requirements of the NVRA. 52 U.S.C. §§ 20502(4), 20503, 20507.
7. The Commonwealth of Kentucky, through its State Board of Elections, is responsible for administering Kentucky's election laws and supervising the registration and purging of registrants within the State. KRS § 117.015(1). The Secretary of State is the *ex officio* chair of the Kentucky State Board of Elections and Kentucky's chief State election official, and is responsible for coordinating the State's responsibilities under the NVRA. See 52 U.S.C. § 20509; KRS § 117.015(2).
8. The NVRA was enacted "to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office" while "ensur[ing] that accurate and current voter registration rolls are maintained." 52 U.S.C. § 20501(b)(1), (4).

9. Section 8 of the NVRA (“Section 8”) addresses state voter list maintenance procedures for elections for federal office. 52 U.S.C. § 20507

10. Section 8 prescribes the conditions under which registrants may be removed from voter registration lists and the procedures that must be followed before making those removals. 52 U.S.C. § 20507.

11. Programs to maintain accurate and current voter registration lists must be uniform and nondiscriminatory, and they must comply with the Voting Rights Act. 52 U.S.C. § 20507(b)(1).

12. Programs to maintain accurate and current voter registration lists may not remove registrants by reason of a registrant’s failure to vote, except as provided in the procedures under Sections 8(c) and (d). 52 U.S.C. § 20507(b)(2).

13. Section 8 permits states to remove the name of a person from the voter registration lists upon the request of the registrant, and, if state law so provides, for mental incapacity or for criminal conviction. 52 U.S.C. § 20507(a)(3)(A)–(B).

14. Section 8 also requires states to conduct a general voter registration list maintenance program that makes a reasonable effort to remove persons from the voter list who have become ineligible by reason of death or a change in residence outside of the jurisdiction, in accordance with procedures set forth in the NVRA. 52 U.S.C. § 20507(a)(4).

15. Section 8 further specifies the two circumstances under which a registrant may be removed from the voter registration list because the registrant has moved to another jurisdiction. 52 U.S.C. § 20507(d)(1).

16. First, a state can remove the name of a person from the voter registration list on grounds of a change of residence based upon the registrant's written confirmation of a change of address to a location outside of the registrar's jurisdiction. 52 U.S.C. § 20507(d)(1)(A).

17. Second, a state can remove the name of a person from the voter registration list on grounds of a change of residence upon completion of the process set forth in Section 8(d), 52 U.S.C. § 20507(d), which allows removal if: (a) The registrant fails to respond to a notice ("Section 8(d)(2) notice") which includes a postage prepaid and preaddressed return card sent by forwardable mail, on which the registrant may state his or her current address, and which contains specific instructions and information, 52 U.S.C. § 20507(d)(1)(B)(i), (d)(2), and (b) The registrant then fails to vote or appear to vote during the period ending on the day after the second federal general election subsequent to the Section 8(d)(2) notice being sent. 52 U.S.C. § 20507(d)(1)(B)(ii).

18. Section 8(f) provides that when a registrant has a change-of-address to an address within the same jurisdiction, the voter registration list must be updated accordingly and the registrant's name may not be removed except as provided in Section 8(d). 52 U.S.C. § 20507(f).

19. Section 8 also provides an example of a list maintenance program that constitutes a reasonable effort to remove registrants who have become ineligible due to a change of residence. 52 U.S.C. § 20507(c)(1). Under this program, a state uses information from the United States Postal Service National Change of Address (NCOA) program to identify registrants who may have changed residence. 52 U.S.C. § 20507(c)(1)(A). Where it appears from that information that a registrant has moved to a new address in the same jurisdiction, the registration record is updated to show the new address and the registrant is sent a notice of the change by forwardable mail that includes a postage-prepaid, pre-addressed return form by which

the registrant may verify or correct the address information. 52 U.S.C. § 20507(c)(1)(B)(i).

Where it appears from the NCOA information that a registrant has moved to a new address in a different jurisdiction, the procedure set out in Section 8(d) and described above is used to confirm the address change. 52 U.S.C. § 20507(c)(1)(B)(ii).

20. Section 8 requires states to complete any program, the purpose of which is to systematically remove the names of ineligible registrants from the official list of eligible voters, not later than 90 days prior to the date of a primary election or general election for federal office. 52 U.S.C. § 20507(c)(2)(A).

21. Kentucky law requires the Kentucky State Board of Elections to establish a voter registration removal program using the change-of-address information supplied by the United States Postal Service through its licensees or other sources to identify registrants whose addresses may have changed. KRS § 116.112(1).

22. If it appears that a registrant has moved within the same county, the Kentucky State Board of Elections is required to provide the county board of elections with the information necessary to change the registration record. The Kentucky State Board of Elections is also required to send to the new address a notice of the change by forwardable mail and a postage prepaid, pre-addressed return form by which the registrant may verify or correct the address information. KRS § 116.112(2).

23. If it appears that a registrant has moved to a different county or state, the Kentucky State Board of Elections is required to send to the address at which the registrant was last registered, by forwardable mail, a notice with a postage-prepaid and pre-addressed return card on which the registrant may state his or her current address. KRS § 116.112(3).

24. A registrant may not be removed from the registration records 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 county; or (b) Has failed to respond to the mailed notice and has not voted or appeared to vote and, if necessary, correct 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. KRS § 116.112(4).

25. As part of its list maintenance program, the Kentucky State Board of Elections is required by state law to maintain an inactive list. State law provides that when the State Board sends the notices described in KRS § 116.112(3) to registrants identified as having moved to a new county or state, the registrants who do not respond to the notice and do not vote or appear to vote for two federal election cycles are maintained on an inactive list. KRS § 116.112(5). When the State Board last sent such notices in 2009, those registrants who did not respond to the notice and did not vote or appear to vote for two federal election cycles were included on an inactive list and ultimately 67,743 individuals were removed from the registration list.

26. Kentucky law permits registrants on the inactive list to vote, but not to be counted for other purposes such as creating precincts or calculating the state funding provided to county clerks based on the number of registered voters in the county. KRS § 116.112(7).

27. Kentucky law requires the Kentucky State Board of Elections to complete, not later than ninety days prior to the date of a primary or general election, any program the purpose of which is to systematically remove the names of ineligible voters from the registration records. KRS § 116.112(6).

28. The Kentucky State Board of Elections maintains and follows a registration removal program that since 2011, has removed 424,429 individuals from Kentucky's voter rolls due to an individual's death, felon status, mental incompetence, move out of state with their written confirmation, or at their request. The Kentucky State Board of Elections has been unable to secure sufficient funding to implement its list maintenance procedures as to registrants who have moved without notifying election or motor vehicle authorities, despite seeking funding from the General Assembly for these efforts in every budget request since 2008. Currently, there are no registrants on an inactive list or in the process set out in Section 8(d) of the NVRA and KRS § 116.112. Since 2009, no forwardable notices have been mailed to registrants under the change of address process contemplated by Section 8(d) of the NVRA and KRS § 116.112. Since 2015, no registrants who have become ineligible due to change of residence have been removed as contemplated by the procedures set out in Section 8(d) of the NVRA and KRS § 116.112.

29. Due to this lack of funding, the practices currently in place in Kentucky do not comply with the NVRA's requirement that states conduct a general voter registration list maintenance program that makes a reasonable effort to remove ineligible persons from the voter rolls due to a change in residence outside of the jurisdiction. 52 U.S.C. § 20507(a)(4)(B).

30. The parties agree to work in a fair, reasonable, and collaborative fashion under the terms of this Agreed Order set forth below.

Where the parties having freely given their consent, and the terms of this Agreed Order being fair, reasonable, and consistent with the NVRA's requirements, it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** as follows:

31. The Kentucky State Board of Elections shall develop and implement a general program of statewide voter list maintenance that makes a reasonable effort to remove from the statewide voter registration list the names of registrants who have become ineligible due to a change in residence in accord with section 8 of the NVRA, 52 U.S.C. § 20507, and KRS § 116.112. The general program:

- (a) Shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act, 52 U.S.C. § 10301 et seq.;
- (b) Shall not result in the removal of any registrant from the statewide voter registration list by reason of the registrant's failure to vote, except as provided under sections 8(c) and (d) of the NVRA;
- (c) Shall comply with the standards and procedures set out in sections 8(b)-(d) of the NVRA and KRS § 116.112;
- (d) Shall require all systematic list maintenance activities relating to the removal of registrants due to a change in residence to be completed at least 90 days prior to the next primary or general election for federal office as provided in section 8(c)(2)(A) of the NVRA (with the exceptions noted in section 8(c)(2)(B) of the NVRA) and KRS § 116.112(6); and
- (e) Shall base removals due to a change in residence only on either: (1) the registrant's written confirmation of a change of address outside the jurisdiction, or (2) the registrant (a) failing to respond to a forwardable notice sent by the Kentucky State Board of Elections or its designee, which meets the requirements of section 8(d)(2) of the NVRA and KRS § 116.112(3), and (b) failing to vote or

appear to vote during the period ending on the day after the second federal general election subsequent to the notice being sent.

Comprehensive Plan

32. To assist in the establishment of the general program described above, the Kentucky State Board of Elections shall create a Comprehensive Plan and implement and adhere to its terms.

33. Within 45 days of the effective date of this Agreed Order, the Kentucky State Board of Elections shall provide counsel for the parties with its draft Comprehensive Plan. The parties shall have 30 days to respond. If the parties cannot in good faith agree upon the terms of an appropriate Plan within 30 days of the date the last response, the parties may seek a resolution from the Court. Responses to any such request for resolution shall be filed with the Court within 10 days of the request. Any agreed upon Comprehensive Plan shall be filed with the Court and, if deemed appropriate by the Court, so ordered. The Kentucky State Board of Elections will proceed with the actions described in subparagraph 34(c) below regarding a canvass mailing in the stated timeframes regardless of whether a Comprehensive Plan is in place.

34. The Comprehensive Plan shall include a detailed description of all procedures to be followed by the Kentucky State Board of Elections for maintaining an accurate statewide voter registration list, including procedures to identify registrants who have become ineligible due to change in residence. The descriptions shall include a step-by-step account of all actions to be undertaken and the expected timeframe and frequency of such actions. At a minimum, the Comprehensive Plan shall include the following:

- (a) **Procedures.** Procedures for a general program of list maintenance for registrants who may have become ineligible due to a change of residence that has

not been reported to election officials, including procedures that can be implemented in 2018 (bearing in the mind the 90-day quiet period before federal elections), procedures going forward in subsequent years, and procedures for reaching back to identify registrants who may have become ineligible due to an unreported change of residence since 2009.

(b) **Sources of Information Used Regularly.** Procedures to identify registered voters who may have moved without reporting such move to election officials, including procedures for obtaining, processing, and reliably matching information to the statewide voter registration database:

- i. data from the U.S. Postal Service National Change of Address (NCOA) program;
- ii. mail sent by the Kentucky State Board of Elections or local election officials returned as undeliverable with or without forwarding address;
- iii. lists from the Kentucky Transportation Cabinet of former Kentucky residents who have surrendered Kentucky driver licenses or other state issued identification to motor vehicle authorities in another state;
- iv. data from other states indicating that a Kentucky registrant may have moved to that state; and
- v. reliable evidence of address changes from the Electronic Registration Information Center

For each source of information, the Plan shall include the expected date by which the data will first be obtained and the frequency with which such data will be obtained and used in the future, including a plan to obtain and use change-of-

address information from either NCOA data or the Electronic Registration Information Center at least once per year.

(c) **Canvass Mailing**. Procedures for sending a nonforwardable canvass mailing to identify registrants through mail returned as undeliverable who may have unreported moves since 2009, excluding any already identified through the Kentucky State Board of Elections' initial use of the information listed in subparagraph (b), including the expected date(s) between May 23 and August 8, 2018, on which the canvass mailing will be sent. Where such nonforwardable canvass mailing is returned as undeliverable with or without forwarding address, this would include procedures for moving ahead during the time period between May 23 and August 8, 2018 as set forth in subparagraphs (d)(i), d(ii), and (e) below.

(d) **Registration List Updates**. Procedures for using the data that is successfully matched to the statewide voter registration list under subparagraphs (b) and (c) to update the registration list, including:

- i. procedures to be followed where data obtained from the sources of information outlined in subparagraphs (b) and (c) above indicate that registrants may have an unreported move inside the registrar's jurisdiction, which shall include updating the registrants' records in compliance with sections 8(c)(1)(B)(i) and 8(f) of the NVRA and sending appropriate notices of such updates, as described in section 8(c)(1)(B)(i);
- ii. procedures to be followed where data obtained from the sources of information outlined in subparagraphs (b) and (c) above indicates that

registrants may have an unreported move outside the registrar's jurisdiction, which shall include sending the specific forwardable notice described in section 8(d)(2) of the NVRA to confirm the registrants' changes in residence, waiting for two federal general elections for the registrant to respond or vote or appear to vote, and failing that, to remove them from the statewide voter registration database according to the procedures set forth in section 8(d) of the NVRA; and

iii. the form and content of all notices to be sent to registrants as part of the list maintenance activities described in the Comprehensive Plan.

(e) **Timing of Notices and Updates.** The expected date(s) between May 23 and August 8, 2018 when notices will be sent under sections 8(c)(1)(B)(i) or 8(d)(2) of the NVRA and updates carried out under section 8(f) of the NVRA, and the expected timeframes in future years (not within 90 days of an upcoming primary or general election for federal office) when such notices will be sent and updates carried out.

(f) **List of Registrants to Whom Notices Have Been Sent.** Procedures for maintaining a list that includes all registrants identified through subparagraphs (b) or (c) as voters who may have become ineligible due to a change in residence outside the jurisdiction, and are mailed notices conforming to section 8(d)(2) of the NVRA, including procedures to ensure that (1) any registrant on the list who appears to vote and is otherwise eligible is permitted to cast a ballot, (2) any registrant on the list can access and review information about his or her registration record and status through Kentucky's web-based voter portal, and (3)

any registrant who responds to the notice and affirms that they remain in the jurisdiction or votes or appears to vote or confirms or updates his or her registration address is updated in the statewide database and returned to active status.

(g) **Removals.** Procedures for removing from the statewide voter registration list any registrant who is mailed a notice conforming to section 8(d)(2) of the NVRA who does not respond to the notice and who does not vote or appear to vote or otherwise have contact with election officials through the day after the second federal general election following the date on which the registrant was mailed the section 8(d) notice, including:

- i. a commitment to remove the registration of any registrant who meets the conditions prescribed by KRS § 116.112(4), and
- ii. the expected timeframe when such removals will be carried out (not within 90 days of an upcoming primary or general election for federal office).

(h) **Database Management.** A description of databases to be used in list maintenance activities and a plan to consult with relevant database managers, assess the quality of data to be used in list maintenance activities, and develop sound and reliable matching criteria to be used in list maintenance activities (to ensure that the persons identified as having a possible move are properly matched up with the same persons registered in the statewide voter registration database).

(i) **Record-Keeping.** Procedures for maintaining and making available for inspection and copying the records concerning implementation of the general

program activities outlined in this decree, in accord with section 8(i) of the NVRA and KRS § 116.112(8).

(j) **Local Election Officials**. A detailed description of any role that local election officials may play in list maintenance activities.

(k) **Public Outreach**. Practices to be followed to educate voters regarding the importance of confirming their registration status, including efforts to be made before the close of registration for each federal general election that follows the removal of registrants on the list described in subparagraph (f).

Reporting

35.

(a) Within 30 days of the date of this Agreed Order, the Kentucky State Board of Elections will make publicly available on its website, any written procedures relevant to list maintenance, including memos, manuals, training materials, informal guidance, administrative regulations, etc., that exist as of the date of this Agreed Order, and it will make publicly available on its website any such documents subsequently released or revised at the time of such release or revision. These documents shall include any guidance to county clerks regarding implementation of registration updates based on change-of-address data. At the time the information is made public, the State Board will provide a copy or link to counsel for Judicial Watch and the United States.

(b) The Kentucky State Board of Elections will make the results of its efforts of information collection and list maintenance outlined in subparagraphs 34(b)–(g) above publicly available on its website by September 30, 2018, and will

update such publicly available information at least once per year by September 30 of each year. At the time the information is made public, the State Board will provide a copy or link to counsel for Judicial Watch and the United States.

(c) The publicly available information described in subparagraph (b) above and provided to counsel for Judicial Watch and the United States will include the following:

- i. Number of registrants identified who may have moved, by source of information listed in subparagraph 34(b) revealing the possible move;
- ii. Number of registration records updated;
- iii. Number of registrants to whom notices conforming to section 8(c)(1)(B)(i) of the NVRA were sent;
- iv. Number of notices conforming to section 8(c)(1)(B)(i) that were returned as undeliverable;
- v. Number of notices conforming to section 8(c)(1)(B)(i) that were returned by the registrant confirming or correcting registration information;
- vi. Number of registrants to whom notices conforming to section 8(d)(2) of the NVRA were sent;
- vii. Number of notices conforming to section 8(d)(2) returned by the registrant confirming or correcting registration information;
- viii. Number of notices conforming to section 8(d)(2) returned as undeliverable;
- ix. Number of notices conforming to section 8(d)(2) to which no response was received;

- x. Total number of removals from the statewide voter registration list, with a breakdown by reason for removal, as defined by the U.S. Election Assistance Commission's 2016 Election Administration and Voting Survey;
- xi. Number of removals from the statewide voter registration list due to a move out of jurisdiction, as defined by the U.S. Election Assistance Commission's 2016 Election Administration and Voting Survey, with a breakdown by the source of information relied on;
- xii. Number of active registered voters as of the date of the report; and
- xiii. Number of registrants on the list described in subparagraph 34(f) as of the date of the report.

36. All data reported under the above requirements shall include any list maintenance activity conducted by local election officials.

37. The Kentucky State Board of Elections will report to the U.S. Election Assistance Commission the voter registration data required by the Commission's biennial Election Administration and Voting Survey, during the term of this Agreed Order.

Enforcement and Term

38. The parties to this Agreed Order must employ best efforts to defend this Agreed Order against any legal challenge by non-parties to this agreement.

39. The parties will work cooperatively as the Kentucky State Board of Elections seeks to ensure compliance with the terms of this Agreed Order and the NVRA.

40. This Agreed Order shall take effect once it has been approved by the Court and entered upon the docket ("the effective date").

41. This Agreed Order shall remain in effect through October 31, 2023, on which date the agreement will terminate automatically unless the parties mutually agree to extend it or the Court determines that the Defendants have not achieved substantial compliance with its terms.

42. Until the termination of this Agreed Order, the Court shall retain jurisdiction over this action to enter such further relief as may be necessary for the effectuation of the terms of this Agreed Order.

43. Each party shall bear its own costs and fees.

This the 3d day of July, 2018.

The image shows a handwritten signature in black ink, which appears to read "Gregory F. Van Tatenhove". The signature is written over a circular official seal. The seal contains the text "UNITED STATES DISTRICT COURT" at the top and "EASTERN DISTRICT OF KENTUCKY" at the bottom. In the center of the seal is an eagle with its wings spread, perched on a shield.

Gregory F. Van Tatenhove
United States District Judge



U.S. Department of Justice
Civil Rights Division

NDH:TC
17-00362-F

*Freedom of Information/Privacy Acts Branch - BICN
950 Pennsylvania Ave., NW
Washington, DC 20530*

VIA EMAIL

November 14, 2018

Sean Morales-Doyle, Counsel, Democracy Program
Wendy R. Weiser, Director, Democracy Program
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New York, NY 10271
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Dear Mr. Morales-Doyle and Ms. Weiser:

This is a supplemental response to your July 20, 2017 Freedom of Information Act request, received by the Civil Rights Division on July 21, 2017, seeking the following information and a follow-up to our March 20, 2018 response:

- 1) All documents the Department of Justice (DOJ) received or receives from state or local election officials in response to the "Letter" (defined as the June 28, 2017, letter sent by the Voting Section to states covered by the National Voter Registration Act (NVRA)).
- 2) All communications and documents, including but not limited to emails and memoranda, between DOJ officer, employee, or agent, or any White House liaison to the Department, and any other person, including but not limited to any officer, employee, or agent of the White House or the Presidential Advisory Commission on Election Integrity concerning the Letter.

Regarding your first request for all documents regarding the Letter sent to states covered by the NVRA, I have determined that the attached approximately 100 pages regarding the State of Kentucky can be released in full without interfering with law enforcement proceedings. Regarding access to other documents concerning the State of Kentucky NVRA investigation, I have determined that access to those documents should be denied pursuant to 5 U.S.C. §552(b)(7)(A), since disclosure thereof could reasonably be expected to interfere with law enforcement proceedings. I have further determined that certain information within these records that is exempt from disclosure pursuant to 5 U.S.C. §552(b)(7)(A) should also be denied pursuant to 5 U.S.C. §552(b)(5), since the records consist of attorney work product, and include intra-agency memoranda containing pre-decisional, deliberative material and attorney client material. Exemption 7(A) is properly invoked when an agency retains oversight or some other continuing enforcement-related responsibility. See ABC Home Health Servs. v. HHS, 548 F.

Supp. 555, 556, 559 (N.D. Ga. 1982) (holding documents protected when "final settlement" was subject to reevaluation for at least three years); Timken v. U.S. Customs Serv., 531 F. Supp. 194, 199-200 (D.D.C. 1981) (finding protection proper when final determination could be challenged or appealed); Zeller v. United States, 467 F. Supp. 487, 501 (E.D.N.Y. 1979) (finding that records compiled to determine whether party is complying with consent decree were protectible). In Zeller, the court found that since that was a continuing injunction, and since there were continuing obligations upon Zeller arising out of statutory and regulatory requirements, defendants were not required to disclose the five listed documents even though no enforcement proceedings appeared to be imminent. Zeller v. United States, 467 F. Supp. 487, 501 (E.D.N.Y. 1979). Similarly, the Civil Rights Division has continuing enforcement-related responsibilities under NVRA in Kentucky and release of those documents would interfere with those law enforcement proceedings.

Although this matter is in litigation, I am obligated to inform you that if you are not satisfied with my response, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

I hope the Civil Rights Division has been of some assistance to you in this matter.

Sincerely,

Tink Cooper

Tink Cooper, Acting Chief
Freedom of Information/Privacy Acts Branch
Civil Rights Division