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March 18, 2024

SENT VIA EMAIL

Polly Skolarus, Clerk
Genoa Township Hall
2911 Dorr Road
Brighton, MI 48116-9498

Dear Clerk Skolarus,

We are writing to follow up on the ACLU of Michigan's recent communications. In this letter we request corrective action and clarifying information regarding voters whose registration has been challenged based on residency-related issues. The legal bases for our concerns are stated in our February 7, 2024 letter[1] which we enclose here for your reference. By way of very brief summary of that letter, both Michigan law and the federal National Voter Registration Act (NVRA) provide strong protections to ensure that voters are not disenfranchised by having their registration wrongfully cancelled. In order to protect against such an outcome, the law provides that if a clerk receives reliable information that a voter may have moved out of the jurisdiction in which they are registered, the proper and lawful course of action is to send a notice to the voter and to place them in a countdown whereby their registration is canceled only if they respond to the notice requesting to have their registration cancelled or both (1) fail to respond to the notice *and* (2) fail to vote in either of the next two federal elections.

Since our February 7 letter, there have been further developments that we wish to note.

As you are likely aware, on February 12, 2024, Jonathan Brater, Director of the Bureau of Elections, wrote to all municipal Clerks and Election Directors regarding recent challenges to the registrations of Michigan voters (the "Brater Letter"). In this letter, Director Brater advised that voters generally are not to be removed from the rolls pursuant to MCL 168.512 on the basis of residency issues unless, among other things, the voter is provided notice of the alleged residency issue that complies with MCL 168.509aa and the NVRA and "either the voter confirms the voter has changed residency or the voter does not respond to the notice and does not vote during the period of two federal elections following the notice." Brater Letter at 1. Accordingly, and as stated in our February 7, 2024 letter, voters are not to be removed from the registration rolls based on the 30-day window set forth in MCL 168.512.

In addition, the Brater Letter set forth various requirements that apply to any attempt to challenge a voter's registration. As relevant here, a clerk may consider only a voter registration challenge "to a single voter, not a mass challenge to multiple voters," accompanied by a written, notarized affidavit specifying the grounds for a voter's disqualification. Brater Letter at 2. The

[1] It is our understanding that due to an administrative oversight, you did not actually open and view our letter until March 8.

challenges based on secondhand information that Stand Up Livingston has lodged with your office plainly do not meet these requirements. For one, approximately 50 affidavits were filed purporting to challenge the registrations of 112 voters, a direct violation of Director Brater's clear instruction that "an individual may not submit a single challenge to multiple registered voters within a single affidavit." Brater Letter at 2.

Furthermore, there is no reason to believe that the Stand Up Livingston canvassers informed people whose doors they knocked on that the information they were gathering would be used to cancel voter registrations. There is no evidence that canvassers made relevant and necessary inquiries before challenging a voter, such as attempting to determine whether the challenged voter is a student, military member, overseas voter, or snowbird. Such voters (and others as well) might all be properly registered at an address in Genoa Township, even if they were not physically residing at that address on the day that a Stand Up Livingston canvasser happened to knock on the door. In fact, several of the affidavits were not even signed by anyone who lives at the address in question. Rather, they are signed by an appointed officer of the Livingston County Republican Party and provide—at best—only hearsay about what some (often unnamed) person may have said.

Accordingly, and for the reasons stated in our February 7, 2024 letter, any removal of voters from the registration rolls under the 30-day window provided by MCL 168.512 violates both Michigan law and the NVRA, and likely Article 2, § 4 of the Michigan Constitution, which guarantees a fundamental right to vote.

We regret the necessity to send this letter, but it follows several months of less formal attempts on the behalf of the ACLU of Michigan to work collaboratively with your office to ensure that voters' registrations were not erroneously canceled.

On December 27, 2023, we filed a Freedom of Information Act (FOIA) request with your office for documents and correspondence relating to a canvassing effort by Stand Up Livingston to challenge voter registrations. In response to our FOIA request, you provided approximately 50 affidavits that were sent to your office challenging the voter registrations of 112 individuals.

Since then, we have been in touch with your office several times to try to make sure that your response to these affidavits was lawful and did not result in cancellation of voter registrations. On January 2, 2024, in an email exchange with Delaney Barker, one of the undersigned, you informed us that no voters had been removed in response to the challenges submitted by Stand Up Livingston. You informed us, at most, some of the 112 challenged voters had been marked as "challenged" in the Qualified Voter File (QVF) and that cancellations were not going to be considered until after the presidential election this November. You reaffirmed this position in January 4 and January 9 telephone calls with Ms. Barker.

We were, therefore, surprised and disappointed to read in an article published in the *New York Times* on March 3, 2024, that voters in Genoa Township whose registrations were challenged by Stand Up Livingston had, in fact, had their registrations canceled by your office. Berzon & Corasaniti, *Trump's Allies Ramp Up Campaign Targeting Voter Rolls*, New York Times (March 3, 2024) <https://www.nytimes.com/2024/03/03/us/politics/trump-voter-rolls.html>.

Since that article was published, we have been unable to obtain confirmation from your office that no voters are being removed from the registration rolls in response to the challenges posed by Stand Up Livingston or others. Rather, in a March 8, 2024 call, your office indicated that some voters had in fact been removed from the registration rolls. In the course of this call, it seemed that your office has been reviewing the registration statuses of more than just the 112 voters identified in the Stand Up Livingston affidavits, perhaps encompassing a larger list of as many as 500 voters. You were not able to provide the number of voters whose registrations were ultimately canceled nor to provide a detailed explanation of the basis for any cancellations or the process that was followed.

Accordingly, by this letter, we are requesting that you take the following actions to confirm that this matter has been resolved appropriately:

1. Reinstate every voter who was removed from the registration rolls since October 1, 2023 in response to a challenge based on residency, unless such removal complied with the NVRA's notice and countdown requirements—i.e., the voter was sent notice of the challenge and did not vote in the period of two federal elections following the notice;

2. Mail a notice to all voters who previously received a notice that their voter registration had been challenged on the basis of residency-related issues since October 1, 2023, informing them that they were not removed from the voter rolls and will be eligible to vote in November 2024; and

3. Provide us with the following specific information, so that we can ensure that no further Genoa Township voters are at risk of being disenfranchised going forwards:

    a. A list of every voter whose registration was challenged between October 1, 2023 and the date of this letter, including the full list of as many as 500 registered voters for whom you considered challenges;

    b. A list of every voter who was removed from the Genoa Township's rolls between October 1, 2023 and the date of this letter;

    c. As to each voter removed from the rolls, a statement of the reasons for removal, including a statement as to whether this removal complied with the NVRA countdown requirements;

    d. A statement as to how the voters were removed in the QVF—i.e., what information had to be entered into the QVF and what reason was given in the QVF for the removals;

    e. A list of all voters who have been reinstated between October 1, 2023 and the date of your response to this letter, and the reasons why they were reinstated;

    f. A list of all voters who received notice that their status had been challenged between October 1, 2023 and the date of this letter, an explanation of how

that notice was provided, and copies of the notices that were sent by your office;

g. A list of any voters who have been placed into the NVRA countdown since October 1, 2023, with confirmation that the appropriate notice was sent under the NVRA and MCL 168.509aa–509cc;

h. A list of the voters who are still on the registration rolls but were moved into challenged status;

i. An explanation of the legal basis for putting voters into challenged status; and

j. An explanation of the consequences of being placed into "challenged" status" as regards a voter's ability to vote either in person or via absentee ballot.

In any event, we are requesting a response confirming that items (1) and (2) have occurred by no later than April 1. We request that you provide the additional information requested in item (3) by April 15, and invite you to contact us if such information can be most suitably provided in a somewhat different way or format than we have requested. Our goal is not to place onerous or unnecessary demands on the time of you and your staff, but, rather, to understand what has occurred so that we can help ensure that it does not happen again either in Genoa Township or other jurisdictions. We would of course prefer to resolve this without the need to enlist judicial guidance. But given that we are in the midst of a significant election cycle, we cannot permit this issue to remain unresolved.

Sincerely,

/s/Philip Mayor
Philip Mayor (P81691)
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Attachment

February 7, 2024 Letter from ACLU-MI
to Clerk Skolarus

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February 7, 2024 **SENT VIA EMAIL**

Genoa Township Clerk
Livingston County, Michigan
2911 Dorr Road
Brighton, MI 48116-9498

Dear Clerk Skolarus,

Thank you for providing information responding to our request pursuant to the Michigan Freedom of Information Act, MCL 15.231 *et seq*. We see that your office is being asked to utilize MCL 168.512 ("section 512") to remove voters from the voter rolls within 30 days due to a residency-based registration challenge without adhering to the process outlined in MLC 168.509aa-509cc ("sections 509aa-509cc") or the National Voter Registration Act ("NVRA"), which provide for a process that removes voters only if they have not responded to a notice and then failed to vote in two consecutive federal elections. We write to inform you of our position, which is that we believe it would be unlawful to use the 30-day section 512 process for residence-based voter removals. Instead, the process laid out in MCL168.509aa-509cc is the process required by Michigan law if a clerk has received information that they deem to be reliable regarding a voter's potential change of residence.

Section 512 instructs clerks who receive an affidavit challenging the registration of a voter that otherwise complies with the law to send a certified letter containing the grounds for the challenge to the voter. It further provides that the voter must be removed from the rolls if they do not respond to a notice within a 30-day window.

But critically, as applied to challenges to a voter's registration based upon an alleged change in residence, section 512 is superseded in Michigan law by MCL 168.509aa-509cc, which specifically governs what clerks may do when they receive information they deem reliable that a voter may have changed their residence. Moreover, if section 512 were to be applied to challenges based on alleged changes of residence, section 512 would be squarely in conflict with the National Voter Registration Act ("NVRA") and therefore preempted by that federal statute. See, e.g., *Arizona v Inter Tribal Council of Arizona, Inc*, 570 US 1, 14 (2013) (holding that the NVRA preempts conflicting state laws); see also *US Student Ass'n Foundation v Land*, 546 F3d 373, 386 (CA 6, 2008) (holding that removal of voters from the rolls by reason of change of address may only be conducted in accordance with specific requirements set forth in NVRA).

Indeed, sections 509aa-509cc were enacted to bring Michigan law into compliance with the NVRA. In its first legislative session after the NVRA was passed, the Michigan legislature enacted sections 509aa-509cc (among other provisions) to bring Michigan into compliance with the NVRA. See 1994 PA 441. These sections implement the NVRA and provide further details

for how to implement the NVRA's prescribed process for removal of a voter from the rolls in response to information that the voter has changed their residency. The NVRA provides that "a state shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant" goes through either of two processes: (1) the voter sends a direct communication indicating that they wish to be removed or (2) the state goes through the NVRA's prescribed process of notifying the voter, giving them an opportunity to respond, and then waiting two election cycles in which the voter does not vote before removing them. 52 USC 20507(d); see also *League of Women Voters of Indiana, Inc v Sullivan*, 5 F4th 714, 723 (CA 7, 2021). During the waiting period, a voter can respond to the question as to their residence by responding to the notice, updating their registration, or voting. This policy ensures voters are not erroneously removed from the voter rolls and disenfranchised.

Under the plain terms of sections 509aa-509cc and the NVRA, this process applies whenever the clerk receives "change of address information supplied by the United States postal service or other reliable information received by the clerk that identifies registered voters whose addresses may have changed as provided in this section." MCL 168.509aa. Therefore, the plain language of sections 509aa-509cc and the NVRA clearly indicate that removal of a voter who has moved using section 512's 30-day process would be unlawful. Accordingly, sections 509aa-509cc are the exclusive basis under Michigan law for removing voters based on a change in their residence, including any challenge based on an alleged change in residence. Permitting mass purges of the voting rolls within 30 days under section 512 threatens widespread baseless disenfranchisement of Michigan voters and would be illegal under both federal and Michigan law. For example, military voters who are currently stationed abroad and last resided in Genoa Township may well be among those whom Stand Up Livingston has challenged, as the military status of a former homeowner or renter would not be known to canvasser or current residents. If the 30-day section 512 process were used, such voters might find themselves removed from the rolls before they could reasonably respond and thus unable to vote absentee in the upcoming elections.

As I have noted, this letter describes the ACLU of Michigan's position on the illegality of using section 512 to remove voters from the rolls in response to a residency-based challenge. Please feel free to consult with the Secretary of State for further advice and guidance.

Sincerely,
/s/ Delaney Barker

Delaney Barker
Equal Justice Works Fellow
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