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November 12, 2015

VIA HAND DELIVERY

Brian B. Kemp
Georgia Secretary of State
c/o State Elections Division
2 Martin Luther King Jr. Drive, S.W.
Suite 802, West Tower
Atlanta, Georgia 30334

Re: *Georgia's non-compliance with section 8(b) of the National Voter Registration Act of 1993*

Dear Secretary Kemp,

This letter is written on behalf of Common Cause and the Georgia State Conference of the National Association for the Advancement of Colored People, their respective members, and other persons represented by either organization whose voter registration status has been affected because they were sent confirmation-of-address notices after having failed to vote for three calendar years (the "Aggrieved Parties").

As Secretary of State, you have been designated by O.C.G.A. § 21-2-210 as Georgia's chief election officer and are responsible under that code section, as well as under 52 U.S.C. § 20509, for insuring compliance by all state election officials with the requirements of the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20501 *et seq.*

The Aggrieved Parties send this letter pursuant to 52 U.S.C. § 20510(b) to provide you with written notice that the State of Georgia is not in compliance with section 8 of the NVRA, 52 U.S.C. § 20507. Specifically, O.C.G.A. § 21-2-234(a)(2), alone and in combination with the other provisions of O.C.G.A. §§ 21-2-234 and 21-2-235, violates the provisions of section 8(b) of the NVRA that prohibit a State from removing lawfully registered voters because they have failed to vote. 52 U.S.C. § 20507(b)(2).

Section 8 of the NVRA permits States to send confirmation-of-address notices to registered voters whom it has reason to believe based on information supplied by the USPS or its licensees may have changed residence and thus are no longer eligible to vote within a particular jurisdiction, and then remove them from the rolls of registered voters if they fail to confirm their addresses and subsequently fail to vote in the next two consecutive general elections. The

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Aggrieved Parties do not object to this procedure, and Georgia has authorized it in pertinent part by O.C.G.A. §§ 21-2-233–35.

The Aggrieved Parties do, however, object to O.C.G.A. § 21-2-234(a)(2) because it violates section 8(b) of the NVRA. Subsection 234(a)(2) of the Official Code of Georgia Annotated requires you to initiate a voter-removal procedure against a Georgia voter simply because the voter has failed to vote in three calendar years. During the first six months of each odd-numbered year, subsection 234(a)(2) requires you to “identify all electors whose names appear on the list of electors with whom there has been no contact during the preceding three calendar years and who were not identified as changing addresses under Code Section 21-2-233.” O.C.G.A. § 21-2-234(a)(2). The subsection then requires those voters to be sent a confirmation-of-address notice by forwardable, first-class mail. *Id.* Under Georgia law, if those voters do not respond to that notice within 30 days and make no contact for two general election cycles thereafter, then their voter-registration status is cancelled. *See id.* §§ 21-2-234–35. Once their voter-registration status is cancelled, these voters cannot vote unless they re-register.

Nothing in the NVRA authorizes a State to send confirmation-of-address notices to, and demand confirmation of address from, registered voters whom the State has no reason to believe have changed residence other than that voter has failed to vote in three calendar years. Rather, section 8(b) of the NVRA prohibits state elections officials from sending confirmation-of-address notices to Georgia voters simply because they have failed to vote, or otherwise make contact, in three calendar years. Subsection 8(b) of the NVRA not only forbids Georgia from simply cancelling a voter’s registration status merely because he or she has failed to vote. It also prohibits state election officials from *initiating* a voter-removal procedure against a voter simply because the voter has failed to vote in three years. The failure to vote for three years is not a basis by which the state may presume a registered voter has changed address.

For this reason, in a letter dated October 24, 1994, the Department of Justice notified the State of Georgia that it was not permitted by either the Voting Rights Act or the NVRA to initiate a purge procedure against registered voters simply because they had failed to vote for three calendar years. Furthermore, the Department of Justice suggests that, under the NVRA, a State may not send a confirmation notice to a voter solely because that voter has failed to vote in a certain period of time. *See* Dept. of Justice, “The National Voter Registration Act of 1993 (NVRA),” ¶¶ 34–35, *available at* http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php.

Nevertheless, Georgia has employed this procedure for many years to artificially reduce the size of Georgia’s electorate. For the past ten years, at almost every general election for federal office, approximately 14% of all Georgia voters were in inactive status—that is, they had been sent a confirmation-of-address notice and failed to respond. As of June 2, 2015, there were 838,908 Georgians on the inactive list of voters. Many of those voters should have never been sent confirmation-of-address notices under the subsection 234(a)(2) procedure. Further, a large percentage of these voters will have their voter-registration status cancelled if they do not vote in the 2016 general election.

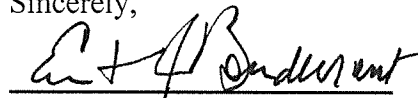
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The operation of the procedure required by O.C.G.A. § 21-2-234(a)(2) jeopardizes the voter-registration status of thousands of Georgians. A very large number of voters removed from the voter rolls are removed as a result of the procedure that begins with O.C.G.A. § 21-2-234(a)(2). From October 1, 2012 to April 2, 2015, at least 320,986 Georgians had their voter-registration status cancelled because of inactivity. Again, many of these voters should never have been targeted by the subsection 234(a)(2) procedure.

The procedure required by O.C.G.A. § 21-2-234(a)(2) not only burdens those Georgia voters it targets. It also frustrates voter-registration groups, such as the Aggrieved Parties, who work to expand the electorate in Georgia. Because of the unlawful initiation of a voter-removal program under O.C.G.A. § 21-2-234(a)(2), voter registration groups must redirect their efforts to re-engage inactive voters—or re-register cancelled voters—who should have never been sent a confirmation-of-address notice in the first instance. This raises the costs and likelihood of voter-registration, contrary to the overarching purpose of the NVRA.

If the violations of the NVRA outlined above are not corrected by the State within 90 days of your receipt of this letter by ceasing from sending confirmation-of-address notices to Georgia registered voters simply because they failed to vote in three calendar years and restoring to the active list of registered voters all voters whose names were placed on the list of inactive voters pursuant to O.C.G.A. § 21-2-234(a)(2) and were subsequently purged from the list at any time during the past four years pursuant to O.C.G.A. § 21-2-235, or whose names are currently on the list of inactive voters pursuant to O.C.G.A. § 21-2-234(a)(2) and are thus subject to being purged in the future under O.C.G.A. § 21-2-235, the Aggrieved Parties intend to bring a civil action in an appropriate district court for a declaratory and injunctive relief to redress the violation alleged above, and for attorney's fees and expenses, as provided by 52 U.S.C. § 20510(b)(2).

Sincerely,



Emmet J. Bondurant

Jeremy D. Farris

cc: Miles Rapoport, President, Common Cause
Rev. Dr. Francys Johnson, State President, Georgia State Conference, NAACP
Richard A. Dellheim, Deputy Chief, Civil Rights Division, United States Department of Justice