

June 27, 2024

Mark Goins
Tennessee Coordinator of Elections
ATTN: General Counsel
312 Rosa L. Parks Avenue, 7th Floor
Nashville, TN 37243
Mark.Goins@tn.gov

Tre Hargett
Secretary of State of Tennessee
State Capitol
Nashville, TN 37243-1102
Tre.Hargett@tn.gov

**Re: Notice of Violation of National Voter Registration Act and Demand
for Remedial Actions and Documents**

Dear Secretary Hargett and Mr. Goins:

The American Civil Liberties Union Foundation of Tennessee and American Civil Liberties Union Foundation, on behalf of American Muslim Advisory Council of Tennessee, Civic TN, Conexión Americas, the Nashville Branch of the NAACP, Organize TN, Tennessee Immigrant & Refugee Rights Coalition, Tennessee Justice for Our Neighbors, League of Women Voters Tennessee Chapter, and individual voters who received your June 13 letter, write to inform you that the voter list maintenance program you initiated on June 13, 2024 violates the National Voter Registration Act (“NVRA”). This letter serves as the pre-suit notice required by 52 U.S.C. §20510(b)(2).

On June 13, 2024, you sent letters to 14,375 registered voters in Tennessee notifying them that your office “received information that appears to indicate” their voter information “matches with an individual who may not have been a U.S. citizen at the time of obtaining a Tennessee driver license or ID card.” (“June 13 Letter”). The letter then summarily warned recipients that if they vote and are not a U.S. citizen, they may violate Tenn. Code Ann. § 2-19-107—a class D Felony that can carry a sentence of 2 – 12 years and fine not to exceed \$5,000.

The letter specifically instructs recipients to provide documentary proof of their citizenship and eligibility to vote to your office by submitting “a legible photocopy of [a] birth certificate; United States passport, identifying the voter’s name and showing the passport number; United States naturalization documentation, or the number of the voter’s certificate of naturalization; or a document or method of proof of citizenship established by the federal Immigrant Reform and Control Act of 1986.”¹

¹ <https://www.wkrn.com/wp-content/uploads/sites/73/2024/06/Election-Letter-Sent-to-Voters.pdf?ipid=promo-link>



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Tennessee

PO Box 120160
Nashville TN 37212
(615) 320-7142
aclu-tn.org

Letter to Goins and Hargett

June 27, 2024

Page 2 of 8

While you may have opined to state representatives (*see* June 25 Letter to Leader Camper) that your office would not be purging voters based on letter recipients' response, or lack of response, these assurances are inconsistent with state law. Tenn. Code Ann. §2-2-141(c), the statutory list maintenance program you initiated by sending these letters, requires that voters who do not provide documentary proof of citizenship to the county election commission within 30 days must be purged. The coordinator of elections is compelled by state law to seek to purge registration records where the county election commission fails to do so as required by law. Tenn. Code. Ann. §2-11-202(6).

Alarming, none of your assurances that voters' registrations would not be purged were included in the initial letter demanding documentary proof of citizenship. Recipients of the letter were left to guess as to what effect a response or non-response would merit and whether they would have their voter registrations cancelled or be criminally prosecuted for voting, resulting in, at minimum, confusion and uncertainty among these recipients, and potentially constituting unlawful voter intimidation.

The issuance of these letters implements an untimely systematic voter list maintenance program that unlawfully targets naturalized citizens and violates federal law, including the National Voter Registration Act and Section 2 of the Voting Rights Act.

National Voting Rights Act Violations

Section 8(c) of the National Voter Registration Act ["NVRA"] requires that "[a] State *shall complete*, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters." 52 U.S.C. § 20507(c)(2)(A) (emphasis added). On June 13, 2024, you began a statutory voter list maintenance program. This program begins with the coordinator of elections comparing the state database with the department of safety database and ends with non-eligible voters' registrations being purged. *See* Tenn. Code Ann. § 2-2-141. You began this program 49 days before the August 1, 2024 primary election and only 29 days before early voting begins on July 12, 2024, in clear violation of the NVRA's requirement that any list maintenance program be *completed* 90 days before a federal election.

Section 8(b) of the NVRA also requires that list maintenance programs be "uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965." 52 U.S.C. § 20507(b)(1). The list maintenance program you began with the June 13 Letter unlawfully targets naturalized citizens in a discriminatory



manner. Federal courts in Florida, Texas, and Arizona have ruled that nearly identical maintenance programs are unlawful under this provision. *See United States v. Florida*, 870F. Supp. 2d 1346, 1347-48 (N.D. Fla. 2012); *Texas League of United Latin Am. Citizens v. Whitley*, No. CV SA-19-CA-074-FB, 2019 WL 7938511, at *1 (W.D. Tex. Feb. 27, 2019); *Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2024 WL 862406, at *22 (D. Ariz. Feb. 29, 2024).

Like the list maintenance programs in those states, Tennessee’s program, as stated in Tenn. Code Ann. §2-2-141, will only impact naturalized citizens on the voter rolls, as opposed to natural born citizens. *Cf. Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2024 WL 862406, at *22 (D. Ariz. Feb. 29, 2024) (because state motor vehicle division “does not issue foreign-type credentials to native-born citizens, only naturalized citizens will ever be misidentified as non-citizens.”). As such, this list maintenance program is *not* “uniform” and “nondiscriminatory,” as required by the NVRA. 52 U.S.C. § 20507(b)(1). As “only naturalized citizens will ever be misidentified as non-citizens,” *Mi Familia Vota*, 2024 WL 862406, at *22, this program “would have a non-uniform and discriminatory impact on naturalized citizens,” and thus violates Section 8 of the NVRA. *Id.* at *41 (D. Ariz. Feb. 29, 2024). When applying the NVRA “uniform” and “nondiscriminatory” provision in *United States v. Florida*, the court found that their program likely “ran afoul of this provision” because the methodology “made it likely that the properly registered citizens who would be required to respond and provide documentation would be primarily newly naturalized citizens,” and the program therefore “was likely to have a discriminatory impact on these new citizens.” 870 F. Supp. 2d at 1351. It did not matter that responding to this inquiry was not hard— “[a] state cannot properly impose burdensome demands in a discriminatory manner.” *Id.*

Lastly, your letter instructs naturalized citizens, who have already affirmed their citizenship and eligibility in order to register to vote, to provide additional documentary proof of citizenship in order to remain on the rolls. This demand for additional documentary proof of citizenship, if ultimately used to prevent June 13 Letter recipients from (re)registering to vote as state law may require, also violates the NVRA’s “accept and use” provisions. 52 U.S.C. §§ 20505(a), 20505(a)(2), 20508(b)(1). Additionally, if eligible applicants who submitted valid voter registration forms are later purged for a lack of documentary proof of eligibility prior to a federal election, as the statutory provision allowing for your letter requires, that action will also violate the NVRA’s mandate to ensure that “any eligible applicant is registered to vote in an election.” 52 U.S.C. § 20507(a)(1).



**Voter Intimidation, Fourteenth and Fifteenth Amendment Violation, and
Section 2 of the Voting Rights Act Violation**

Your list maintenance program further bears the indicia of a discriminatory purpose and has the effect of voter intimidation by imposing a heavier burden on persons based on their race and national origin. *See Village of Arlington Height v. Metro. Housing Devel. Corp.*, 429 US 252.

The State of Tennessee has a shameful history of voter intimidation. It is well documented that the Ku Klux Klan was founded in this state by former Confederate General Nathan Bedford Forrest. One of the founding purposes of the Klan was to intimidate and prevent newly freed African Americans from exercising their right to vote. Historically, in Tennessee and throughout the South, voters of color have been harassed, taxed, and beaten for seeking to exercise their basic voting rights.

By including dire warnings of criminal prosecution, jail time, and substantial fines, and no information as to whether a voter's registration would be purged, the letter has the distinct effect of intimidating and dissuading persons from exercising their right to vote. As has been noted in the media, registered voters who received the letter have reported feeling confused and intimidated.² Voter intimidation is illegal under both federal and Tennessee law. *See* 52 U.S.C. § 10101(b); Tenn. Code Ann. § 2-19-115 (2021).

Naturalized citizens are, by definition, persons whose national origin lies outside the United States, and are therefore protected from unlawful discrimination by the U.S. Constitution and federal law—including from state-sanctioned voter intimidation. Your list maintenance program's disparate treatment of naturalized citizens places a discriminatory burden upon them by requiring them to respond to the letter and prove their citizenship with specific forms of documentation, which are not required of U.S.-born citizens. Moreover, according to the U.S. Census Bureau, the majority of naturalized citizens in Tennessee are comprised of racial and ethnic minorities, adding an additional layer of unlawful discrimination to this effort. U.S. DEP'T OF HOMELAND SEC., PROFILES ON NATURALIZED CITIZENS: TENNESSEE (2022). This discriminatory practice violates both the Equal Protection Clause of the Fourteenth Amendment and Section 2 of the Voting Rights Act.

² <https://www.newschannel5.com/news/tn-secretary-of-states-office-sent-out-14-000-letters-asking-voters-to-prove-citizenship-ahead-of-election>



Tennessee

Demands

For the aforementioned reasons, the American Civil Liberties Foundation of Tennessee and the above-mentioned organizations make the following demands upon Coordinator Goins and the Secretary of State:

1. Immediately cease all list maintenance program actions that are outside of the scope of authority specifically granted to the coordinator of elections under TCA § 2-2-141;
2. Immediately cease all list maintenance programs that are violative of the rights guaranteed under the Fourteenth and Fifteenth Amendment to the United States Constitution and Section 2 of the Voting Rights Act;
3. Immediately cease all list maintenance programs, namely the program initiated on June 13, 2024, that violate the NVRA.
4. Within 10 business days of receipt of this demand, issue a public statement that no person will be removed from Tennessee's voter rolls pursuant to the process initiated by your office on June 13, 2024;
5. Within 10 business days of receipt of this demand, issue a subsequent letter to all June 13 Letter recipients detailing that their voter registration will not be purged and that they, as U.S. citizens, have the right to vote as normal.

Additionally, the NVRA requires that Tennessee, upon request, produce "all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters." 52 U.S.C. § 20507(i)(1). We therefore request that the following documents be produced without delay:

1. The list of all 14,375 registered voters your office identified as potential non-citizens;
2. All records supporting your contention that the registered voters were potentially non-U.S. citizens;
3. All documents and communications relating to the development and implementation of the issuance of the June 13 Letter;
4. All advisory or guidance documents and communications, whether formal or informal, provided to county Voter Registrars or Election Administrators regarding the development and implementation of the issuance of the June 13 Letter;
5. All documents and communications regarding the development and implementation of policies and practices pursuant to TCA § 2-2-141, including but not limited to:
 - a. Internal communications of the Secretary of State's office;



- b. Communications between the Secretary of State's office and other State agencies, including but not limited to the Governor, the office of the Attorney General, and the Department of Safety and Homeland Security;
- c. Communications between the Secretary of State's office and any legislative branch officials or employees;
- d. Communications between the Secretary of State's office and any outside consultants, experts, advocacy organizations, or advisers;
- e. Any communications related to the issuance of the June 13 Letter.

Please provide the requested documents electronically by email to intake@aclu-tn.org or FTP transfer if available. If any responsive documents or communications are in the possession of the Secretary of State or any employees of the Secretary of State on non-governmental computers, electronic devices, or in paper copy, please include such documents and communications in your production.

Sincerely,

/s/ Jeff Preptit

Jeff Preptit (BPR No. 038451)
Stella Yarbrough (BPR No. 033637)
Lucas Cameron-Vaughn (BPR No. 036284)
ACLU FOUNDATION OF TENNESSEE
P.O. Box 120160
Nashville, TN 37212
Phone: (615) 320-7142
JPreptit@aclu-tn.org
SYarbrough@aclu-tn.org
Lucas@aclu-tn.org

/s/Theresa J. Lee

Theresa J. Lee
Sophia Lin Lakin
American Civil Liberties
Union Foundation
125 Broad St.
New York, NY 10004
Phone: 212.519.7836
tlee@aclu.org
slakin@aclu.org

/s/ Jonathan Diaz

Jonathan Diaz
Blair Bowie
Campaign Legal Center
1101 14th St NW, Suite 400
Washington, DC 20005
Phone: (202) 736-2200
jdiaz@campaignlegalcenter.org
bbowie@campaignlegalcenter.org



Letter to Goins and Hargett

June 27, 2024

Page 7 of 8

Organizations

/s/ Tessa Lemos Del Pino

Tessa Lemos Del Pino
Bethany Jackson (BPR No. 022639)
Emily Stotts (BPR No. 032388)
TENNESSEE JUSTICE FOR OUR
NEIGHBORS
2195 Nolensville Pike
Nashville, TN 37211
Phone: (615) 538-7481
director@tnjfon.org
bethany@tnjfon.org
emilystotts@tnjfon.org

/s/ Casey Bryant

Casey Bryant (BPR No. 033962)
ADVOCATES FOR IMMIGRANT
RIGHTS
P.O. Box 41734
Memphis, TN 38174
Phone: (901) 729-9560
casey@airlegal.org

/s/ Martha Silva

Martha Silva
Conexión Américas
2195 Nolensville Pike
Nashville, TN 37211
Phone: (615) 270-9252
martha@conexionamericas.org

/s/ Debby Gould

Debby Gould
League of Women Voters TN
PO Box 50640
Nashville, TN 37215
629-777-5677

/s/ Nadira Freeman

Nadira Freeman
Organize Tennessee
810 Dominican Dr, STE 305
Nashville, TN 37228

/s/ Sabina Mohyuddin

Sabina Mohyuddin
Executive Director
American Muslim Advisory
Council
2195 Nolensville Rd
Nashville, TN 37211
615-988-6460
pr@amactn.com

/s/ Joseph Gutierrez

Joseph Gutierrez
Executive Director
API Middle Tennessee
3511 Gallatin Pike, DD3
Nashville, TN 37216
joseph@apimidtn.org

/s/ Tequila Johnson

Tequila Johnson
The Equity Alliance
PO Box 331821
Nashville, TN 37203
Tequila@equityalliance.org

/s/ Jonathan Williamson

Jonathan Williamson
Nashville Chapter of the
NAACP
1308 Jefferson St
Nashville, TN 37208
615-329-0999

/s/ Matia Powell

Matia Powell
Civic TN
5016 Centennial Blvd
Ste 200
Nashville, TN 37209



Letter to Goins and Hargett

June 27, 2024

Page 8 of 8

/s/ Cara Doidge Kilgore

Cara Doidge Kilgore,

Sr. Operations Director

TENNESSEE IMMIGRANT AND

REFUGEE RIGHTS COALITION

3310 Ezell Rd.

Nashville, TN 37211

Phone: (615) 833-0384

cara@tnimmigrant.org

ACLU

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Tennessee