



July 19, 2019

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New York State Board of Elections
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Jason Schofield and Edward G. McDonough
Rensselaer County Board of Elections
Ned Pattison Government Center
1600 7th Avenue
Troy, New York 12180
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Via email

RE: *Violation of Sections 5 and 8 of the National Voter Registration Act*

Dear Mr. Valentine, Mr. Brehm, Mr. Schofield, and Mr. McDonough:

We write to notify you that the new policy announced by the Rensselaer County Board of Elections (“County”) on July 18, 2019, is in blatant violation of Section 5 of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20504 (“Section 5”) and Section 8 of the NVRA, 52 U.S.C. § 20507 (“Section 8”) and must immediately be suspended in order to protect the legally protected privacy interests of Rensselaer County voters. While we hope the County will reconsider this ill-conceived and unlawful proposal, we are prepared to litigate should the County proceed with implementing it.

Yesterday, the County announced a new policy stating that it would “immediately” begin sharing the identities of persons who register to vote through the Department of Motor Vehicles (“DMV”) with the Immigration and Customs Service (“ICE”). This policy is in clear violation of at least two provisions of the NVRA: specifically, 52 U.S.C. § 20504(c)(2)(D)(iii),

which is part of Section 5; and 52 U.S.C. § 20507(a)(6), which is part of Section 8.

Both of those provisions make clear that election officials must keep confidential, and not share in any form, the specific public agency at which a voter has registered to vote.

The relevant provision of Section 5 provides:

(c) Forms and procedures

....

(2) The voter registration application portion of an application for a State motor vehicle driver's license-

(D) shall include, in print that is identical to that used in the attestation portion of the application-

....

(iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

52 U.S.C. § 20504(c)(2)(D)(iii).

Similarly, Section 8 provides, in relevant part, "In general. In the administration of voter registration for elections for Federal office, each State shall—... (6) ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public." 52 U.S.C. § 20507(a).

Sharing information about those who register through the DMV with a federal agency with the intention that it be used not for voter registration purposes but for immigration enforcement purposes is plainly contrary to these provisions. Moreover, the Board's planned actions likely violate state election and privacy laws as well.

Not only is the announced policy in clear violation of the NVRA and other laws; it also wrongfully threatens to call into question the lawful status of many U.S. citizens who are properly registered to vote. Citizens of the United States share many common names. The process that the County plans to put into place will inevitably result in forwarding to ICE the names of persons who are U.S. citizens, but simply happen to share a common name and other identifying information with persons in the ICE database. This will undoubtedly affect citizens of color disproportionately.

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We call on the State Board of Elections, which is the designated Chief Election Official for New York under the NVRA, and the Rensselaer County Board of Elections, to immediately halt the implementation of this unwise and clearly illegal policy.

Sincerely,

A handwritten signature in black ink, appearing to read 'CB', followed by a horizontal line extending to the right.

Chiraag Bains

Director of Legal Strategies

cc Hon. Letitia James, New York State Attorney General
(by email to letitia.james@ag.ny.gov)