



September 3, 2019

The Honorable Frank LaRose  
Ohio Secretary of State  
22 North Fourth Street, 16th Floor  
Columbus, Ohio 43215

Dear Secretary LaRose:

We write to express our concerns, and seek clarification, regarding issues that have come to light in advance of the voter registration cancellations scheduled for September 6, 2019. As an initial matter, we thank and commend you and your office for the transparency with which you have conducted this year's maintenance process and for this first-ever effort to compile a statewide "Registration Reset List" ("RRL") from the county board of elections ("BOE") lists. We agree with you that this openness has contributed to exposing several errors that could have potentially resulted in the wrongful removal of active voters from the rolls.<sup>1</sup> And like you, we hope that this transparency will improve voters' confidence in election officials and the integrity of Ohio's election system.

In furtherance of this spirit of transparency and averting litigation, we wanted to write your office first and see if we can resolve these outstanding issues. Specifically, we request that your office communicate, in writing, whether you will take the following steps:

- Confirm that the registrations of the voters who appear on the attached list, Exhibit A, who voted in either or both of the general elections in 2016 and 2018, will not be cancelled;
- Explain whether the issues resulting from use of the DIMS system was the result of user error or flaws intrinsic to the system;
- Confirm that your office will commit to conducting a review of past cancellations, in light of errors discovered during the current maintenance process;
- Direct BOE officials to review petition signatures submitted between January 1, 2015 and September 6, 2019 to avoid removal of voters who signed petitions within this time frame, and, going forward, establish a statewide list of petition signers so that BOE officials can check it against their lists; and

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<sup>1</sup> Doug Caruso & Rick Rouan, *Vendor's errors lead to hundreds of voters targeted for purge in Ohio*, COLUMBUS DISPATCH (Aug. 25, 2019), <https://www.dispatch.com/news/20190825/vendors-errors-lead-to-hundreds-of-voters-targeted-for-purge-in-ohio/1>.

- Confirm that no intra-county movers who were sent notices in 2015 will be removed from the rolls, if they voted in the 2014 general election.

First, there are at least 794 individuals on the Registration Reset List (“RRL”) who voted in either or both of the 2016 and 2018 general elections, as indicated by comparison to the Ohio voter file. Please refer to the attached list of voters who appear on the statewide RRL, despite having voted in 2016 and/or 2018. Under the National Voter Registration Act and Ohio state law, they of course cannot be removed from the rolls. 52 U.S.C. § 20507(b)(2)(B); Ohio Rev. Code Ann. § 3503.21(E). **We ask that you confirm in writing that these individuals’ registrations will not be canceled.** Additionally, where there is smoke, there is usually fire. While we and our partners have not yet had an opportunity to compare the RRL against voting history for other elections in the four-year period beginning with the notices’ mailing in 2015, we strongly suspect that there are individuals who voted in elections other than the 2016 and 2018 general elections, such as the presidential primaries and local elections, and who nevertheless appear on the RRL in violation of federal and state law. Staff for the *Columbus Dispatch* found 1,641 individuals on the list who had voted since 2015, including 110 voters who voted in the 2018 federal midterm elections.<sup>2</sup> These errors, which threaten to unlawfully purge duly-registered, eligible Ohio voters, have been found in more than 1 out of every 8 counties in Ohio. For unknown reasons, they appear to be concentrated in four counties—Clermont, Fairfield, Hancock, and Wayne—but are also reflected in the data sent to your office from seven other counties, including Crawford, Cuyahoga, Lorain, Medina, Henry, Stark, and Trumbull.

Second, we seek additional information about the DIMS system. According to public reports, fourteen of the fifteen counties that use this system incorrectly flagged 1,641 active voters to receive confirmation notices, compared to a total of just seven incorrectly-flagged voters in the state’s remaining 73 counties that do not use DIMS.<sup>3</sup> Your office reported that it found 1,461 voters who mistakenly received notices.<sup>4</sup> We request information as to whether (a) your office reviewed county officials’ use of DIMS; and (b) if so, whether it is your conclusion that these voters were wrongly flagged as a result of human error or issues inherent to the DIMS system. **To the extent these mistakes resulted from systemic problems with DIMS, we ask that your office commit, again in writing, to issuing a directive prohibiting its use in future list maintenance activities.** Seventy-three counties seem to perform their mandatory list maintenance activities with minimal error without using DIMS, so it would seem that this apparently error-prone system can be retired without consequence.

Third, there can be no doubt that the errors uncovered by our organizations and *The Columbus Dispatch* raise serious concerns about the processes developed by past Secretaries of State, who were not as transparent in their list maintenance as your office has been. Given that your administration has looked to preexisting procedures and systems in carrying out this year’s maintenance, there are reasonable grounds to conclude that such errors may have occurred in previous years and that, as a result, active voters were unlawfully purged. **We respectfully request that you and your office commit in writing to conducting a review of past removals going back to January 1, 2015, and that your office issue a report detailing whether any voters who**

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

cast ballots during the four-year period following a mailed confirmation notice were wrongfully cancelled. We request that your office identify how many such removals occurred in each county, and in what years, and set out recommendations for preventing these problems in the future. This type of investigation would allow your office to rectify past errors and improve existing procedures, while gaining the trust of voters and non-profit groups with whom your office collaborates.

Fourth, we agree with you and your office, as well as the Ohio Election Manual and the relevant directives issued by your office, that signing a petition constitutes “voter activity” that preserves or restores a voter to active registration status. Ohio Election Manual, Directives 2019-13, 2019-09.<sup>5</sup> However, the fact that Franklin County officials sent last-chance notices to voters who had signed election petitions<sup>6</sup> indicates that not all counties are consistently reviewing petition signatures for list maintenance purposes. There is also some question as to whether, in reviewing all submitted petitions, election officials in all 88 counties are recording the names of each voter who signs a petition, or if they stop recording names that appear after a petition secures the requisite number of signatures. **As part of your efforts to make the maintenance process more transparent, we request that your office (a) order BOE officials to re-review petition signatures submitted to them between January 1, 2014 and September 6, 2019, to ensure they have taken into account all petition signers and put them on active status, and (b) commit to compiling a statewide list of all registered voters who sign petitions that is comprehensive and searchable so that it can be used in future list maintenance processes. Please confirm in writing that you and your office commit to taking these two steps.**

Fifth and finally, we also have concerns that intra-county movers who appear on the RRL may be purged in violation of Ohio law. Ohio law does not expressly authorize the removal of intra-county movers from the voter rolls. Ohio Rev. Code Ann. §§ 3503.21(A)(6) (mandating removal of inter-county movers, but not intra-county movers), 3503.21(C) (prohibiting the cancellation of registration not authorized by one of the enumerated statutes). Intra-county movers should only be on the RRL via the Supplemental Process, not the NCOA confirmation process. However, in Hamilton County, for example, analyses show that 55 individuals who moved intra-county and received a confirmation notice in 2015 in fact voted in the 2014 general election. *See* Exhibit B. Those 56 individuals’ votes in 2014 should have precluded the initiation of the Supplemental Process as to them. We have not done this analysis as to all 88 counties in Ohio. **Please confirm that all 88 counties will review this before the cancellation of any voters’ registrations, and please confirm in writing that the BOE offices will be directed not to cancel the registration of any intra-county movers on the RRL unless there is an independent, legal basis for removal. Voting in 2014 would seem to preclude the cancellation of registration through the Supplemental Process. To the extent the BOE offices identify intra-county movers who voted in the 2014 election and must be removed from the RRL, please convey to us the numbers of such individuals in each of Ohio’s counties who were removed from the RRL.**

Nothing about the *APRI v. Husted* settlement agreement that was just announced modifies our requests or cures the potential violations of federal and state list maintenance laws outlined

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<sup>5</sup> *See* Caruso & Rouan, *supra* note 1.

<sup>6</sup> Caruso & Rouan, *supra* note 1.

above. Voter registration rolls must still be made accurate in compliance with all legal requirements, and registered voters may only be removed after strictly following the requisite procedures.

Though we hope this can be avoided, we are prepared to pursue litigation to halt this list maintenance process and/or to compel the remedial actions described above. Even though it has been executed with the oversight and transparency demonstrated by your office, this process has posed an undue risk of unlawful removal. It remains our preference to work with your office to avoid resolving this in court, and to this end, we hope to receive your responses on the above issues promptly.

Again, thank you for your efforts to make this process more accessible and for fielding our concerns. We look forward to your response. Please direct your response to Jon Sherman, Senior Counsel at Fair Elections Center, at [jsherman@fairelectionscenter.org](mailto:jsherman@fairelectionscenter.org) **by no later than tomorrow, Wednesday September 4 at 6:00 p.m.** Thank you for your time and attention to these issues.

Sincerely,

A handwritten signature in black ink, appearing to be 'JS', written in a cursive, stylized manner.

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