

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

STACEY HOPKINS,

Petitioner,

v.

**FULTON COUNTY BOARD OF
REGISTRATION AND
ELECTIONS,**

Defendant.

Civil Action File

2017CV293325

No. _____

VERIFIED PETITION FOR WRIT OF MANDAMUS

This is a Petition for a Writ of Mandamus to compel the Fulton County Board of Registration and Elections (the “Board”), to comply with their mandatory public duties under subsection (b) of O.C.G.A. § 21-2-233. Pursuant to subsection (b), when a registered voter has moved within a particular county (“intra-county movers”) and has informed the United States Postal Service of their change of address, the county registrar “shall”: (1) “change[]” the “the list of electors” to “reflect the new address” of that voter; and (2) send a “notice of the change” to the elector where the elector “may verify or correct the address information.” O.C.G.A. § 21-2-233(b). The statute does not indicate any consequences if the intra-county voter does not respond to this courtesy notice.

Petitioner Stacey Hopkins was a registered voter in Fulton County who recently moved within Fulton County and informed the United States Postal Service of her change of address. The Board, however, did not “change” her voter registration information to “reflect her new address,” nor did the Board send her a notice of any such change, as required by the statute. It has also since become clear that the Board has not complied with its duties with respect to other intra-county movers and registered voters in Fulton County who have informed the United States Postal Service of that move in the last two years. Instead, the Board refused to update their list of electors, and they sent Ms. Hopkins and these voters a different kind of notice requiring them to respond in 30 days or be made “inactive.” State law, however, only authorizes these “respond or become inactive” notices for *inter*-county movers, i.e., voters who move from one county to another, not intra-county movers. *See* O.C.G.A. § 21-2-233(c).

Accordingly, Petitioner requests that this court to issue a Writ of Mandamus compelling Defendants to: (1) comply with its public duty to “change[]” “the list of electors” “to reflect the new address” that Ms. Hopkins provided to the United States Postal Service and to send Ms. Hopkins a notice of that change that would allow her to verify or correct that information, without any consequences attached if she does not respond; (2) comply with its public duty “change[]” “the list of electors” “to reflect the new address[es]” that all intra-county movers who were

registered voters had provided to the United States Postal Service, and to send all such voters notices of these changes which allow them to verify or correct that information without any consequences attached if they do not respond. In light of fast-approaching municipal elections, Petitioner respectfully requests that such relief be ordered as soon as practicable.

In support of this Verified Petition for Writ of Mandamus, Petitioner show this Honorable Court the following:

1. **Petitioner** Stacey Hopkins was and is a registered voter in Fulton County who moved within Fulton County last year and informed the United States Postal Service of that move. Petitioner is interested in having the laws executed and the public duty in question enforced, and need not show any legal or special interest. O.C.G.A. § 9-6-24.

2. The **Defendant** is the Fulton County Board of Registration and Elections (the “Board”). Among other duties, the Board is responsible for carrying out the responsibilities of county registrars and voter registration. *See* O.C.G.A. §§ 21-2-40; 21-2-212; Code of Laws of Fulton County Pt. 1, Ch. 14, Art. II. § 13-32.

3. This Court has jurisdiction to issue a Writ of Mandamus under O.C.G.A. § 9-6-20 *et seq.*

I. The Board Has Failed to Comply with its Clear Mandatory Duties under O.C.G.A. § 21-2-233(b)

4. Defendant has a clear legal duty under subsection (b) of O.C.G.A. § 21-2-233, which provides:

If it appears from the change of address information supplied by the licensees of the United States Postal Service that an elector whose name appears on the official list of electors has moved to a different address in the county in which the elector is presently registered, the list of electors *shall* be changed to reflect the new address and the elector *shall* be sent a notice of the change by forwardable mail at the elector's old address with a postage prepaid, preaddressed return form by which the elector *may* verify or correct the address information.

O.C.G.A. § 21-2-233(b) (emphasis added).

5. Thus, according to the statute, the Board “shall” do two things when an elector has informed the United States Postal Service that they have “moved to a different address in the county in which the elector is presently registered,” that is, moved within the same county:

6. First, “the list of electors *shall* be changed to reflect the new address.” In other words, the registrar must update the elector’s voter registration information to reflect the new address, and that obligation is automatically triggered once the registrar receives notice from the United States Postal Service that a registered voter has moved within the same county.

7. Second, “the elector *shall* be sent a notice of the change by forwardable mail . . . by which the elector *may* verify or correct the address information.” This courtesy notice informs the voter that their information has been updated and gives the voter an opportunity to “verify or correct” the update.

Importantly, however, whether the voter responds is optional, since the statute provides that the voter “*may* verify or correct” the update. Accordingly, the statute does not provide for any consequences if the voter does not respond to that notice.

8. Petitioner Stacey Hopkins, while a registered voter in Fulton County, moved within Fulton County (from an address in College Park to an address in Atlanta, both within Fulton County) and informed the United States Postal Service of that change of address last year.

9. Upon information and belief, at some time this year, the Board obtained a comparison of the official list of electors to the change of address information supplied by the United States Postal Service. *Cf.* O.C.G.A. § 21-2-233(a) (“The Secretary of State is authorized to cause at his or her discretion the official list of electors to be compared to the change of address information supplied by the United States Postal Service through its licensees periodically for the purpose of identifying those electors whose addresses have changed.”).

10. The Board then became aware “from the change of address information supplied by the licenses of the United States Postal Service” that Ms. Hopkins had “moved to a different address in the county in which the elector [was] presently registered.” O.C.G.A. § 21-2-233(b).

11. However, the Board did not change Ms. Hopkins’s voter registration information “to reflect the new address,” as O.C.G.A. § 21-2-233(b) commands.

The address on Ms. Hopkins's voter registration page (accessed via <https://www.mvp.sos.ga.gov>) continues to reflect her old address in College Park. Nor did the Board "sen[d] a notice of the change . . . by which the elector may verify or correct the address information," O.C.G.A. § 21-2-233(b), which is unsurprising since the Board did not make any such change in the first place.

12. The Board has yet to comply with these duties with respect to Ms. Hopkins. As discussed below, the Board also has not complied with its duties with respect to all other registered voters who have moved within Fulton County in the last two years.

II. The Board Erroneously Sent Ms. Hopkins and Other Intra-County Movers a Different Notice Reserved for *Inter-County* Movers

13. The Board's non-compliance with its mandatory duties under O.C.G.A. § 21-2-233(b) is sufficient to justify a Writ of Mandamus. To briefly provide greater context, the below discusses how Petitioner first became aware of the Board's non-compliance.

14. Petitioner was first made aware that the Board was not going to comply with its mandatory duties when she received a notice in the mail on or around July 3, 2017. This notice did not resemble at all the kind of courtesy notice described by subsection (b) of O.C.G.A. § 21-2-233, which does not require the voter to respond.

15. Instead, the notice she received, attached as Exhibit A, informed her that she must “return the attached card within 30 days” or “you will be moved to an inactive status.” The attached card resembled a voter registration form.

16. Under state law, the type of notice that Ms. Hopkins received—where failure to respond in 30 days results in inactive status—is reserved for *inter*-county movers, not *intra*-county movers. This “respond or become inactive” type of notice is addressed in a separate subsection of the statute. Subsection (c) of O.C.G.A. § 21-2-233 provides, with pertinent parts emphasized:

If it appears from the change of address information supplied by the licensees of the United States Postal Service that an elector whose name appears on the official list of electors *has moved to a different address outside of the boundaries of the county or municipality in which the elector is presently registered*, such elector shall be sent a confirmation notice as provided in Code Section 21-2-234 at the old address of the elector. The registrars may also send a confirmation notice to the elector's new address.

If the elector confirms the change of address to an address outside of the State of Georgia, the elector's name shall be removed from the appropriate list of electors.

If the elector confirms the change of address to an address outside of the boundaries of the county or municipality in which the elector is presently registered, but still within the State of Georgia, the elector's registration shall be transferred to the new county or municipality. The Secretary of State or the registrars shall forward the confirmation card to the registrars of the county in which the elector's new address is located and the registrars of the county of the new address shall update the voter registration list to reflect the change of address.

If the elector responds to the notice and affirms that the elector has not moved, the elector shall remain on the list of electors at the elector's current address.

If the elector fails to respond to the notice within 30 days after the date of the notice, the elector shall be transferred to the inactive list provided for in Code Section 21-2-235.

O.C.G.A. § 21-2-233(c) (emphasis added). As shown above, subsection (c) applies only to voters who have “moved to a different address outside of the boundaries of the county or municipality in which the elector is presently registered,” that is, *inter*-county movers.

17. Although O.C.G.A. § 21-2-233 treats intra-county movers and inter-county movers differently in separate subsections, the boilerplate notice received by Ms. Hopkins does not make a distinction between the two, informing the voter that they have received the notice because “You have filed a change of address form with the U.S. Postal Service.”¹

18. Upon information and belief, intra-county movers and inter-county movers are treated differently because elections are generally run at the county-level; here, by the Fulton County Board of Registration and Elections. Since a registered voter who moves within the same county remains in the same jurisdiction of the county registrar, the county registrar can easily update their

¹ The notice also indicates that the voter may have received the notice because they “have not voted or updated your voter registration in at least 3 years” or “Official election mail has been returned when sent to the address on your voter registration record.” Ms. Hopkins has voted within the last three years, and after calling the Board on or around July 3, the Board confirmed that official election mail was not returned, and that the only reason she received the notice was because of United States Postal Service change-of-address information.

registration without requiring more of the voter or interacting with other counties. When a registered voter moves from one county to another, however, the move implicates two different county registrars so greater clarity from the voter as to where they live is arguably required to ensure that the voter is registered with the correct county.

III. Attempts to Resolve the Matter Have Failed

19. On July 11, 2017, in response to a news article which suggested that the Board was not complying with its duties with respect to *all* registered voters who had moved intra-county in the last two years, a pair of letters were sent to the Board informing them that they were in violation of state and federal law. *See* Exhibit B (citing article). On July 15, the Board responded via e-mail and asserted conclusorily that O.C.G.A. § 21-2-233 justified their action. *See* Exhibit C. On July 18, Petitioner responded by explaining why O.C.G.A. § 21-2-233 did not in fact justify their action because it expressly requires that intra-county movers and inter-county movers be treated differently for the reasons given above, and that Ms. Hopkins and other intra-county movers improperly received “respond or become inactive” notices which are intended only for inter-county movers. The letter offered to resolve this matter without resorting to litigation. *See* Exhibit D. There has been no response from the Board.

20. Petitioner has “no other specific legal remedy” for Defendant’s “failure to perform” its public duty. O.C.G.A. § 9-6-20. Municipal elections are fast approaching, and it is important that the Board correct this error by complying with their duties as soon as practicable.

21. This petition concerns one of public right whose object is to procure the enforcement of a public duty. Petitioner is interested in having the laws executed and the duty in question enforced, and need not show any legal or special interest. O.C.G.A. § 9-6-24.

WHEREFORE: Petitioner respectfully requests that this Court issue a Mandamus Nisi (proposed order attached hereto) as soon as practicable, directing the Defendant to be and appear before this Court within not less than ten nor more than thirty days, as required by O.C.G.A. § 9-6-27(a), then and there to be heard, and show cause, if any they have, why a Writ of Mandamus Absolute should not be granted, ordering Defendant to Accordingly, Petitioner requests that this court to issue a Writ of Mandamus compelling Defendants to: (1) comply with its public duty to “change[]” “the list of electors” “to reflect the new address” that Ms. Hopkins provided to the United States Postal Service and to send Ms. Hopkins a notice of that change that would allow her to verify or correct that information, without any consequences attached if she does not respond; (2) comply with its public duty “change[]” “the list of electors” “to reflect the new address[es]” that all

intra-county movers who were registered voters had provided to the United States Postal Service, and to send all such voters notices of these changes which allow them to verify or correct that information without any consequences attached if they do not respond.

Petitioner also requests such other and further relief as may be just and proper, including attorneys' fees.

This 28th day of July, 2017.

Respectfully submitted,

/s/ Sean J. Young

Sean J. Young
Georgia Bar No. 790399
syoun@acluga.org

American Civil Liberties Union
Foundation of Georgia, Inc.
P.O. Box 77208
Atlanta, Georgia 30357
(770) 303-8111

VERIFICATION

Before the undersigned officer duly authorized to administer oaths came Stacey Hopkins, who swears under oath that she has read and examined the foregoing **Verified Petition for Writ of Mandamus**, and that the statements contained therein are true and correct to the best of her knowledge.

Stacey Hopkins

Stacey Hopkins

SWORN TO and subscribed before

me this 28th day of July, 2017

Latesha West

NOTARY PUBLIC

My Commission Expires:

09/08/2018



**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

STACEY HOPKINS,

Petitioner,

v.

**FULTON COUNTY BOARD OF
REGISTRATION AND
ELECTIONS,**

Defendant.

Civil Action File

No. _____

MANDAMUS NISI

The petition of Stacey Hopkins in the above-entitled cause having been read and considered, the same is hereby sanctioned and ordered filed; and it is further ordered that the Defendant named, Fulton County Board of Registration and Elections, be and appear before me at the Courthouse in the City of Atlanta, Georgia, on the ___ day of _____, 2017, at _____ o'clock, [a.m./p.m.], or so soon thereafter as can be heard, then and there to show cause why a mandamus absolute should not be issued against them as prayed for in the Petition, and further relief be granted as the facts of the case may warrant.

It is further ordered that in default of such appearance and showing the mandamus prayed for will be made absolute and the Petitioner will be accorded such relief as they may show they are entitled to.

It is further ordered that a copy of said Petition and this order be served upon said Defendants.

Dated and signed, this ____ day of _____, 2017.

Judge
Superior Court
Fulton County, Georgia

EXHIBIT A

DEAR VOTER:

YOUR COUNTY BOARD OF REGISTRARS IS UPDATING ITS VOTER REGISTRATION LIST

The attached confirmation notice has been sent in response to one of the following:

- 1) You have filed a change of address form with the U.S. Postal Service;
- 2) You have not voted or updated your voter registration in at least 3 years; or
- 3) Official election mail has been returned when sent to the address on your voter registration record.

PLEASE NOTE: This confirmation notice was sent to the current mailing address on your voter registration record. The county you are currently registered in is shown in both the maller portion of this notice and return portion of this notice.

(1) If you still live at the same address as shown on the current voter registration file, complete the attached card and return within 30 days.

(2) If you have moved to an address within the county that is different from the address currently on file, complete the attached card and return within 30 days. A new precinct card will be mailed showing your new voting location.

(3) If you have moved from the county in which you are currently registered to an address outside such county, please complete and return the form below within 30 days. If your new residence address is within Georgia but outside the county where you are currently registered, your voter registration file shall be transferred to the county of your new address. If your residence address is outside the State of Georgia, your name will be removed from the list of electors.

(4) If you do not return the attached card within 30 days, you will be moved to an inactive status. Your voter registration will be canceled if you DO NOT update your voter registration or vote in an election up to and including the second November General Election held after you are placed on the inactive list.

If you have questions, please contact your County Board of Registrars at the address shown on the outside of this mailer or the Secretary of State's office at 404-656-2871. Visit our website at www.sos.ga.gov/elections for information on elections and voter registration.

If you have moved out of state, please visit www.eac.gov/voter_resources/contact_your_state.aspx to find out how to register to vote in your new state.

To confirm or update your voter registration information, please fill out the card below in ink.

• Fold and seal as instructed. No postage necessary.

RETURN WITHIN 30 DAYS!

TO RETURN: 1) REMOVE TOP 1/2" STUB, 2) FOLD TOP PANEL DOWN, 3) MOISTEN AREAS BELOW AS INSTRUCTED, 4) FOLD BOTTOM PANEL UP, THEN 5) APPLY PRESSURE AT THE GLUE AREAS TO SEAL.



For Android

From the Secretary of State website, www.sos.ga.gov, a registered voter with a valid Georgia driver's license or identification card issued by the GA Department of Driver Services may change his or her name or address using Online Voter Registration. You may also access Online Voter Registration by downloading the GA SOS app.

Visit our website @ www.mvp.sos.ga.gov/MVP, download the GA SOS app or contact your local registrar's office.



For Apple

IN ORDER TO MAINTAIN YOUR PRIVACY, DO NOT SEPARATE THE CARD BELOW FROM THIS SECTION!

CONFIDENTIAL

(FILL IN ALL BOXES ON THIS FORM. USE INK ONLY! (DO NOT USE PENCIL!))

>>> Do not separate this card from the section above! See instructions above. <<<

Please update / confirm my voter registration within current county of registration:

Your Name (as appears on this mailer):		Valid GA. Driver's License or GA. I.D. No.: Required	
Present Name (if different from name on this mailer):		Last 4 Digits of Social Security Number: Optional (If no GA Driver's License or I.D. Card No., the last 4 digits of your social security number are required.)	
Date of Birth:	Phone (Optional):	Residence County:	Inside City Limits: <input type="checkbox"/> Yes <input type="checkbox"/> No

TEN
POT

TEN
POT

(FILL IN ALL BOXES ON THIS FORM. USE INK ONLY! (DO NOT USE PENCIL!))

>>> Do not separate this card from the section above! See instructions above. <<<

Please update / confirm my voter registration within current county of registration:

Your Name (as appears on this mailer):		Valid GA. Driver's License or GA. I.D. No.: Required	
Present Name (if different from name on this mailer):		Last 4 Digits of Social Security Number: Optional	
Date of Birth:		Phone (Optional):	Residence County:
Residence Street Address: <small>See instruction #3 above re. moving outside current county of registration</small>		Apt #	City
Mailing Address (If different from residence):		Apt #	City
Military or Overseas		Inside City Limits:	
Yes <input type="checkbox"/> No <input type="checkbox"/>		Yes <input type="checkbox"/> No <input type="checkbox"/>	
State		Zip Code	
State		Zip Code	

MOISTEN THIS SPOT

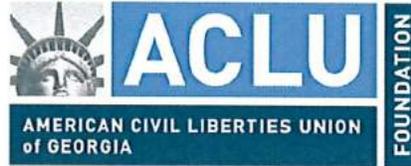
MOISTEN THIS SPOT

X
Signature: _____

Date: _____

MOISTEN THIS AREA

EXHIBIT B



P.O. Box 77208 Atlanta, Georgia 30357 | 770-303-8111 | syoung@acluga.org

July 11, 2017

Brian B. Kemp
Secretary of State
214 State Capitol
Atlanta, GA 30334

Mary Carole Cooney, Chairperson
Fulton County Board of Registration and Elections
130 Peachtree St., Suite 2186
Atlanta, GA 30303

Via Fed Ex Overnight Mail and E-mail

Re: Intimidating voter purge notices received by over 45,000 registered voters who have moved within the same county in violation of the NVRA

Dear Secretary Brian B. Kemp and Ms. Mary Carole Cooney,

This letter is written on behalf of the Georgia Coalition for the People's Agenda, the Georgia State Conference of the NAACP, and Asia -Americans Advancing Justice-Atlanta, registered voters that these organizations represent and serve, and others similarly situated to notify you that the State of Georgia is not in compliance with Section 8 of the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20507.

According to a recent article in the *Atlanta Daily World*,¹ the Fulton County Board of Registration and Elections ("Fulton County") appears to have admitted that they sent to over 45,000 registered voters "who have moved within the county over the past 2 years" purge notices saying that they would be moved to "inactive" status if they do not respond within 30 days. Even more troubling, Fulton County admitted that this practice was pursuant to "state guidelines," which suggest that Fulton County—and all other 158 counties in Georgia—is acting at the express behest of the Secretary of State.

Sending out confusing and intimidating purge notices in an irresponsible and unlawful manner has the effect, if not the purpose, of making it harder for Georgia voters of all political parties—particularly voters with less income or educational background—to exercise their fundamental right to vote. Voter registration systems are supposed to facilitate the process of voting, and not be a trap for the unwary.

¹ *Fulton County sends over 45k confirmation notices to voters*, Atlanta Daily World, <http://bit.ly/2uJD2lq>.

In any event, as explained below, sending these kinds of purge notices to registered voters who have indicated to the U.S. Postal Service that they have changed residence within the same county is in violation of federal law, and state law as well. As a result, we demand that Fulton County immediately update their voter lists to reflect this intra-county change-of-address, with a follow-up letter explaining your error and allowing such voters to verify or correct their new address while making it absolutely clear that the voter does not have to take any further action to maintain their registration. We further demand that the Secretary of State immediately direct all county boards of registration and elections to do the same.

If you do not comply with these demands within 90 days, we will bring a civil action in an appropriate district court for a declaratory and injunctive relief to redress the violation, and for attorneys' fees and expenses, as provided by 52 U.S.C. § 20510(b)(2).

I. Violation of Section 8 of the National Voter Registration Act of 1993

Sending these purge notices to registered voters who have moved within the same county violates the NVRA, which “places the burden on the County Boards to update a voter’s change-of-address within the same county.” *N.C. State Conf. of the NAACP v. N.C. State Bd. of Elections*, No. 1:16CV1274, 2016 WL 6581284, at *8 (M.D.N.C. Nov. 4, 2016); *see also A. Philip Randolph Inst. v. Husted*, 838 F.3d 699, 706 (6th Cir. 2016) (“[O]ne of the guiding principles of [the NVRA is] to ensure that once registered, a voter remains on the rolls so long as he or she is eligible to vote in that jurisdiction.” (citing S. Rep. No. 103-6, at 19 (1993))).

Section 8(f) of the NVRA provides, “In the case of a change of address, for voting purposes, of a registrant to another address *within the same registrar’s jurisdiction*, the registrar shall correct the voting registration list accordingly, and the registrant’s name *may not be removed from the official list of eligible voters* by reason of such a change of address except” under circumstances not relevant here. 52 U.S.C. § 20507(f) (emphasis added); *see also* 52 U.S.C. § 20507(j)(2) (defining “registrar’s jurisdiction” as being the county if voter registration is maintained by the county). In addition, the safe harbor provision of the NVRA provides that:

if it appears from information provided by the Postal Service that . . . a registrant has moved to a different residence address *in the same registrar’s jurisdiction* in which the registrant is currently registered, the registrar [may change] the registration records to show the new address and [may send] the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information.

52 U.S.C. § 20507(c)(1)(B)(i) (emphasis added). While the statute permits counties to send such a voters a mailing by which they can “verify or correct” the address information, it makes clear that such action is optional. This procedure does *not* contemplate any affirmative action on the part of the voter who has moved within the same county.

II. Violation of O.C.G.A. § 21-2-233(b)

Moreover, your actions are in direct violation of Georgia state law as well. Section 21-2-233(b) of the O.C.G.A., which mirrors 52 U.S.C. § 20507(c)(1)(B)(i), expressly provides that registered voters who inform the U.S. Postal Service that they have moved within the same county must have their voter registration information *automatically updated* without requiring further affirmative action on the voter's part. The statute provides:

If it appears from the change of address information supplied by the licensees of the United States Postal Service that an elector whose name appears on the official list of electors has moved *to a different address in the county in which the elector is presently registered*, the list of electors *shall be changed to reflect the new address* and the elector shall be sent a notice of the change by forwardable mail at the elector's old address with a postage prepaid, preaddressed return form by which the elector may verify or correct the address information. The registrars may also send a notice of the change by forwardable mail to the elector's new address with a postage prepaid, preaddressed return form by which the elector may verify or correct the address information

O.C.G.A. § 21-2-233(b) (emphasis added). While the statute permits counties to send such a voters a mailing by which they can "verify or correct" the address information, as with the NVRA, this provision makes clear that such action is optional.

* * *

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 NVRA. This violation must be rectified by immediately updating all counties' voter lists to reflect any intra-county change-of-address reported by the U.S. Postal Service, with follow-up letters explaining your error and allowing such voters to verify or correct their new address while making it absolutely clear that the voter does not have to take any further action to maintain their registration. If it is not, we will bring a civil action in an appropriate district court for a declaratory and injunctive relief to redress the violation, and for attorneys' fees and expenses, as provided by 52 U.S.C. § 20510(b)(2).

Thank you for your prompt attention. We are happy to discuss this matter by phone is it will result in speedy resolution of this matter.

Sincerely,



Sean J. Young
Legal Director
ACLU of Georgia

Helen Butler
Executive Director
Georgia Coalition for the People's Agenda

Sophia Lin Lakin

Francys Johnson

Staff Attorney
ACLU Voting Rights Project

State President
Georgia State Conference for the NAACP

Phi Nguyen
Litigation Director
Asian Americans Advancing Justice-Atlanta



P.O. Box 77208 Atlanta, Georgia 30357 | 770-303-8111 | syoung@acluga.org

July 11, 2017

Brian B. Kemp
Secretary of State
214 State Capitol
Atlanta, GA 30334

Mary Carole Cooney, Chairperson
Fulton County Board of Registration and Elections
130 Peachtree St., Suite 2186
Atlanta, GA 30303

Via Certified Mail

Re: Voter Purge Notice Received by Stacey Hopkins on July 3, 2017

Dear Secretary Brian B. Kemp and Ms. Mary Carole Cooney,

This letter is written on behalf of Stacey Hopkins, an African-American activist and registered voter in the State of Georgia. On July 3, 2017, Ms. Hopkins received an alarming notice in the mail—with highly misleading, confusing, and intimidating language—suggesting that she would be made “inactive” and potentially purged from the rolls unless she took immediate affirmative steps (the “Purge Notice”).¹ This was in apparent response to the fact that she moved within Fulton County last year. More troubling, according to a recent article in the *Atlanta Daily World*,² Fulton County appears to have admitted that they have sent these Purge Notices to over 45,000 registered voters “who have moved *within the county* over the past 2 years” (emphasis added), and pursuant to “state guidelines.”

As explained below, it is unlawful under the National Voter Registration Act of 1993 to issue these kinds of Purge Notices or require any affirmative action of registered voters who move within the same county. See 52 U.S.C. § 20507(f), (j). This letter constitutes official written notice that the State of Georgia has violated Ms. Hopkins’s rights (and potentially the rights of 45,000 other voters in Fulton County alone) under Section 8 of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20507. This letter also serves as an Open Records Request to ascertain on what basis Ms. Hopkins has received this Purge Notice and to ensure that the State is not systematically purging Ms. Hopkins or other voters in an unlawful manner.

Though written on behalf of Ms. Hopkins, the issues raised in the letter extend well beyond her individual circumstances, and strike at the heart of our democracy. Sending out

¹ A photo of the Purge Notice was posted on Ms. Hopkins’s Twitter account, which can be found here: <http://bit.ly/2t6rEOA>. The term “Purge Notice” shall also include the same type of notice received by any other Georgia voter.

² *Fulton County sends over 45k confirmation notices to voters*, Atlanta Daily World, <http://bit.ly/2uJD2lq>.

confusing and intimidating Purge Notices in an irresponsible and unlawful manner has the effect, if not the purpose, of making it harder for Georgia voters of all political parties—particularly voters with less income or educational background—to exercise their fundamental right to vote. Voter registration systems are supposed to facilitate the process of voting, and not be a trap for the unwary.

I. Ms. Hopkins was unable to obtain a clear answer from you on why she received a Purge Notice

As a preliminary matter, it was highly disturbing that Ms. Hopkins was unable to obtain a clear answer from either of your offices on why she received a purge notice in the first place. According to the Purge Notice, Ms. Hopkins received the notice “in response to one of the following: 1) You have filed a change of address form with the U.S. Postal Service; 2) You have not voted or updated your voter registration in at least 3 years; or 3) Official election mail has been returned when sent to the address on your voter registration record.” When Ms. Hopkins called the Fulton County Board of Registration and Elections (“Fulton County”) to ask for an explanation, they were unable to provide one. Specifically, Fulton County: 1) admitted that they did not check the U.S. Postal Service change-of-address system with respect to Ms. Hopkins; 2) acknowledged that Ms. Hopkins had voted in the last 3 years; and 3) confirmed that they did not send Ms. Hopkins any separate election mailing that was returned.

When pressed further, Fulton County told Ms. Hopkins to call the Secretary of State’s office to determine what happened. When Ms. Hopkins called the Secretary of State’s office, she was told to call Fulton County to determine what happened.

Subjecting voters to such Kafkaesque, bureaucratic nonsense is a hallmark of Jim Crow voter suppression. “The cherished right of people in a country like ours to vote cannot be obliterated by the use of [devices] like this, which leave the voting fate of a citizen to the passing whim or impulse of an individual registrar.” *Louisiana v. United States*, 380 U.S. 145, 153 (1965). This is a clear example of how these Purge Notices serve to confuse and intimidate voters with the effect or purpose of keeping them from the polls.

II. Ms. Hopkins should not have been issued a Purge Notice simply because she moved within the same county

To the extent that Fulton County did rely on information from the U.S. Postal Service change-of-address system indicating that Ms. Hopkins had moved (contrary to what they told Ms. Hopkins), Fulton County should have simply updated Ms. Hopkins’s registration without sending her a Purge Notice, because she moved within the same county. *See N.C. State Conf. of the NAACP v. N.C. State Bd. of Elections*, 2016 WL 6581284, at *8 (M.D.N.C. Nov. 4, 2016) (“The NVRA places the burden on the County Boards to update a voter’s change-of-address within the same county.”); *A. Philip Randolph Inst. v. Husted*, 838 F.3d 699, 706 (6th Cir. 2016) (“[O]ne of the guiding principles of [the NVRA is] to ensure that once registered, a voter remains on the rolls so long as he or she is eligible to vote in that jurisdiction.” (citation omitted)).

Section 8(f) of the NVRA provides, “In the case of a change of address, for voting purposes, of a registrant to another address *within the same registrar’s jurisdiction*, the registrar shall correct the voting registration list accordingly, and the registrant’s name *may not be removed from the official list of eligible voters* by reason of such a change of address except” under circumstances not relevant here. 52 U.S.C. § 20507(f) (emphasis added); *see also* 52 U.S.C. § 20507(j)(2) (defining “registrar’s jurisdiction” as being the county if voter registration is maintained by the county). In addition, the safe harbor provision of the NVRA provides that:

if it appears from information provided by the Postal Service that . . . a registrant has moved to a different residence address *in the same registrar’s jurisdiction* in which the registrant is currently registered, the registrar [may change] the registration records to show the new address and [may send] the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information.

52 U.S.C. § 20507(c)(1)(B)(i) (emphasis added). This procedure does *not* contemplate any required action on the part of the voter. Only if the registrant “has moved to a different residence address *not in the same registrar’s jurisdiction*” can the registrar issue any kind of notice confirming the change of address. 52 U.S.C. § 20507(c)(1)(B)(ii) (emphasis added). Since both Ms. Hopkins’s old and new address are in Fulton County, it was unlawful to send her a Purge Notice requiring her to take affirmative steps to maintain her registration.

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 NVRA. Unless this violation is rectified without requiring any affirmative action on the part of Ms. Hopkins, she will bring a civil action in an appropriate district court for a declaratory and injunctive relief to redress the violation, and for attorneys’ fees and expenses, as provided by 52 U.S.C. § 20510(b)(2).

If there are other registered voters who have unlawfully received these Purge Notices, please provide written confirmation that those violations have been rectified as well.

III. Open Records Request concerning Fulton County’s Voter Purge Procedures

Furthermore, pursuant to the Georgia Open Records Act (O.C.G.A. § 50-18-70 et seq.), Ms. Hopkins respectfully requests access to inspect and copy the following public records prepared or received by the Office of the Secretary of State or its employees, as well as those prepared or received by the Fulton County Board of Registration and Elections:

All documents from June 1, 2016, to the present, concerning Stacey Hopkins.

All documents from June 1, 2016, to the present, concerning the Purge Notice received by Stacey Hopkins or any other Georgia voter on the grounds that such voter has changed residence, either within the same county or from one county to another.

Any list of voters who received a Purge Notice in 2017 on the grounds that they changed residence, whether such voters changed residence within the same county or from one county to another, with their personal information appropriately redacted pursuant to state law, and the number of such voters who received a Purge Notice in each Georgia county.

All documents from June 1, 2016, to the present, concerning the cost of mailing each and every Purge Notice.

All documents from June 1, 2016, to the present, concerning any state or county guidelines on the issuance of the type of Purge Notice issued to any other Georgia voter on the grounds that such voter has changed residence, either within the same county or from one county to another, including documents with information on which government officials created or were involved in the development of such guidelines, when these guidelines were created, and the reasons for such guidelines.

All documents from June 1, 2016, to the present, concerning the drafting of the language used in the Purge Notice.

Pursuant to the Open Records Act (O.C.G.A. § 50-18-74), we request that you make these records available for inspection within a reasonable time not to exceed three business days of your receipt of this request. Should you determine that some portion of the documents requested are exempt from disclosure, please release any reasonably segregable portions that are not exempt, pursuant to O.C.G.A. § 50-18-72(g). In addition, if our request is denied in whole or in part, the law requires your agency to justify all deletions by reference to exemptions of the Georgia Open Records Act, specifying code section, subsection, and paragraph. *See* O.C.G.A. § 50-18-72(h).

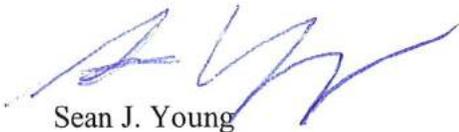
We request that you waive the copying fees. If your office does not maintain these public records, please let us know who does and include the proper custodian's name and address. To the extent that your office claims the right to withhold any record, or portion of any record, please describe each and every record or portion that is being withheld and the claimed reason for exemption, citing the exact language of the Open Records Act on which you rely.

Should your estimate of those fees exceed \$10, please advise us of the costs before they are incurred. We would prefer electronic copies of the records whenever possible. However, we also seek a waiver of any and all possible charges because the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of how your offices are removing voters on the grounds that they have changed residence. *See* O.C.G.A. s 50-18-71(c). This information is not being sought for commercial purposes.

If any records are unavailable within three business days of receipt of the request, and responsive records exist, we seek a description of such records and a timeline of when access to the records will be provided. If you have suggestions for tailoring this request so as to ensure a more expeditious but still meaningful response, we would be happy to consider them. We receive the right to appeal any decision to withhold any information or to deny a waiver of fees.

Thank you for your prompt attention.

Sincerely,



Sean J. Young
Legal Director
ACLU of Georgia

Sophia Lin Lakin
Staff Attorney
ACLU Voting Rights Project

EXHIBIT C

Sean J Young

From: Mary Carole Cooney <mccooney@mindspring.com>
Sent: Saturday, July 15, 2017 2:15 PM
To: Sean J Young
Subject: Letter dater July 11, 2017

Dear Mr. Young, I have read your letter dated July 11, 2017 but not received by me until July 13, 2017. You have included an Open Records request to which, by copy of this email, I am asking our staff to respond. As to the lawfulness of what you have designated as a "Purge Notice," please refer to O.C.G.A. § 21-2-233 which sets out the County's obligations when the address of a voter appears to have changed. I appreciate your statement of concerns.

Very truly yours, Mary Carole Cooney

Mary Carole Cooney, Chairperson
Fulton County Board of Registration and Elections

EXHIBIT D

Sean J Young

From: Sean J Young
Sent: Tuesday, July 18, 2017 4:26 PM
To: 'cheryl.ringer@fultoncountyga.gov'
Cc: pnguyen (pnguyen@advancingjustice-atlanta.org); Sophia Lakin
Subject: Response to Ms. Cooney's email re: notices sent to intra-county movers
Attachments: Letter dater July 11, 2017

Dear Ms. Ringer,

I received the attached correspondence from Chairperson Cooney. As I believe you represent the Fulton County Board of Registration and Elections, I am responding to Ms. Cooney through you. I would be grateful if you could convey the below message to Ms. Cooney.

Thank you for reaching out, Chairperson Cooney. We understand your explanation and have also heard the explanation provided by Mr. Barron last Thursday of why he believed that the notices sent out by Fulton County was lawful under O.C.G.A. 21-2-233. Respectfully, I believe he was mistaken for the reasons given below, and I hope that we can reach agreement on this issue without resorting to litigation.

In short, state law requires that you treat intra-county movers (subsection (b) of O.C.G.A. 21-2-233 (referring to electors who have “moved to a different address in the county in which the elector is presently registered”)) and inter-county movers (subsection (c) of O.C.G.A. 21-2-233 (referring to electors who have “moved to a different address outside of the boundaries of the county or municipality in which the elector is presently registered”)) differently. Federal law also requires differential treatment. 52 U.S.C. 20507(c)(1)(B). Fulton County, however, has unlawfully treated both of them the same.

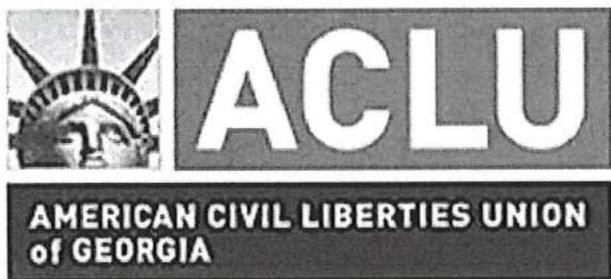
Intra-County movers: Under subsection (b) of O.C.G.A. 21-2-233, intra-county movers who notify USPS that they have moved are supposed to have their address automatically updated (“the list of electors shall be changed to reflect the new address”) followed by a notice that they may “verify or correct” the address the information. The provision specifies no consequence to them of not returning that “verify or correct” notice and it does not say that failure to respond should result in being placed on the “inactive” list.

Inter-County movers: Under subsection (c), on the other hand, inter-county movers who notify USPS that they have moved are supposed to be given a different “confirmation notice.” Unlike the notice described in subsection (b), there is a consequence if they do not return it within 30 days—they are put on the “inactive” list. (“If the elector fails to respond to the notice within 30 days after the date of the notice, the elector shall be transferred to the inactive list.”)

Thus, the type of notice that I believe you have sent out to over 45,000 intra-county movers is the notice described in subsection (c), which is reserved for inter-county movers: the one which puts voters on the inactive list if they fail to respond in 30 days. Instead, pursuant to subsection (b), you were supposed to have automatically updated the addresses of the 45,000 intra-county movers followed by a “verify or correct” notice that has no consequence if they fail to return it. Indeed, the writing on the notice itself says it was issued to everyone who changed their address with USPS, with no distinction made between intra-county and inter-county movers.

I believe that Mr. Barron also said at the meeting that the notice they sent out was created by the Secretary of State. However, I do not believe that you are required to use the form that the SOS gave you, as your obligation is to comply with the statute. As discussed above, the notice that you sent is incorrect because it says it is sent to anyone who submitted a change of address with USPS without making any distinction between intra-county and inter-county movers. In addition, we continue to harbor deep concerns about the wording of the notice, which is confusing and intimidating. We would be happy to work with you on a form that is more voter-friendly while still compliant with the law. Feel free to reach out by phone if easier to discuss.

Sean J. Young, Legal Director, ACLU of Georgia



Sean J. Young

Legal Director

American Civil Liberties Union of Georgia

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Pronouns: he/him/his

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