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The Honorable Ruth Hughes
Texas Secretary of State
P.O. Box 12887
Austin, TX 78711
Email: secretary@sos.texas.gov

Sent via email and USPS

Re: Notice of Texas' Continued Failure to Comply with Voter Registration Obligations pursuant to the National Voter Registration Act of 1993

Dear Secretary Hughes,

In 2015, the Secretary of State (SOS) was put on notice that the State of Texas was violating the voting rights of hundreds of thousands of Texans by willfully ignoring its obligations under the National Voter Registration Act (NVRA), a decades-old federal law. After the State still refused to comply, several Texas voters sued, including Jarrod Stringer. Unfortunately, after years of litigation and untold amounts of wasted taxpayer dollars, the State remains steadfast in its refusal to correct these failures—despite having the funds and technologic ability to do so. To this day, the NVRA rights of at least 1.5 million Texas are violated each year, every time one of those voters interacts online with the Department of Public Safety (DPS) driver's license system.

Under the NVRA, *every time* an eligible resident obtains, renews, or updates his or her driver's license with DPS, the State must ensure that the driver's license application simultaneously serves as a voter registration application.¹ In 2018, after years of litigation, Chief Judge Orlando Garcia ruled that the State was indeed violating the NVRA and constitutional rights of its citizens and that the State's system must be promptly reformed.

The State appealed and, in November of this year, the Fifth Circuit Court of Appeals reversed Judge Garcia's decision, finding that the plaintiffs failed to satisfy standing requirements. Notably, the Fifth Circuit did not disturb the merits of the lower court's decision. Indeed, Judge James Ho wrote in his concurrence:

... Plaintiffs have indeed endured an injury...they were unable to exercise their right to vote in past election cycles. And it is a right they will never be able to recover. As citizens, we can hope it is a deprivation they will not experience again . . .

¹ 52 U.S.C. § 20503(a)(1).

Stringer v. Whitley, 942 F.3d 715, 726 (5th Cir. 2019) (Ho, J., concurring).

And yet, it *has* happened again to Mr. Stringer, and to countless other Texas voters.

Today, we write again on behalf of Mr. Stringer, as well as on behalf of other eligible voters and Texas organizations working to advance voter registration to notify you that the State still is not compliant with its obligations under Section 5 of the NVRA. As a result, large numbers of eligible Texas voters either did not appear on the voter rolls or appeared with incorrect address information when they attempted to exercise their franchise in 2018—and were disenfranchised as a result. Countless more stand to be similarly impacted during the primary and general elections in 2020.

Compliance with the NVRA is necessary to ensure that all eligible Texas voters have an equal ability to participate in our democracy. Ultimate responsibility for enforcing the NVRA rests with your office as the State’s chief election officer.² Accordingly, this letter provides formal notice to the State of an NVRA violation under 52 U.S.C. § 20510(b) on behalf of Jarrod Stringer, Nayeli Gomez, John Harms, MOVE Texas Civic Fund, and the League of Women Voters of Texas.

OVERVIEW OF THE NVRA

The NVRA was enacted in 1993 to “establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office.”³ To achieve this goal the NVRA imposes certain requirements upon state motor vehicle bureaus. Specifically, every time an eligible resident renews or updates his or her driver’s license with a state motor vehicle bureau like Texas’ DPS, that state must ensure that each driver’s license application “simultaneously” serves as a voter registration application.⁴ In doing so, with limited exceptions, states may not “require any information that duplicates information required in the driver’s license portion of the form.”⁵

FAILURE TO CREDIT ONLINE TRANSACTIONS

Texas is still systemically failing to register Texas voters when they submit a driver’s license renewal or change-of-address application during online driver’s license transactions. Applications submitted to DPS online to renew a driver’s license or to update the address associated with a driver’s license are governed by the NVRA, which apply to “[e]ach State motor vehicle driver’s license application (including any renewal application)” and “[a]ny change of address form submitted . . . for purposes of a State motor vehicle driver’s license” and which prohibit requiring duplicative information.⁶ “On the

² *Scott v. Schedler*, 771 F.3d 831, 838-9 (5th Cir. 2014).

³ 52 U.S.C. § 20501.

⁴ 52 U.S.C. § 20503(a)(1).

⁵ *Id.* at 20504(a)(2).

⁶ 52 U.S.C. §§ 20504(a)(1) & (2) & (d) (emphasis added).

plain text of the statute, the rule seems simple enough: If it's good enough for motorist licensing, then it ought to be good enough for voter registration."⁷

The State's policies and practices openly violate the NVRA. A holder of a Texas driver's license can renew that license or update the address information on that license at <https://txapps.texas.gov/tolapp/txdl/>. But, when the potential voter wishes to register or update their voter registration through this same application, they are unable to do so. Rather, at the end of the driver's license transaction, the potential voter is sent to the Secretary of State's website—which is altogether separate and distinct from the *DPS* online system—and is there required to fill out a new form with duplicative information, print the form, sign the form and mail it to the proper authority, all before becoming registered to vote.

The Experiences of Individual Voters

Jarrold Stringer

The State's violations of the NVRA have harmed Mr. Stringer multiple times. Again, Mr. Stringer initially filed a lawsuit against the Secretary of State and DPS in 2016. After moving from Arlington to San Antonio, Mr. Stringer updated the address on his driver's license online using the DPS website on August 1, 2014. The State failed to simultaneously update his voter registration, as required by the NVRA, during Mr. Stringer's transaction. On or around November 23, 2019, both agencies refused again to simultaneously update his voter registration when, after moving from San Antonio to Houston, the address on his driver's license was updated online using the DPS website. Mr. Stringer remains unregistered to vote in Harris County, his current county of residence.

Nayeli Gomez

Nayeli Gomez is aggrieved by the State's violations of the NVRA because her voter registration was not simultaneously updated when she updated her driver's license. On December 09, 2019, Ms. Gomez updated her driver's license address online after moving to a new address within Bexar County. Because it was impossible for her to simultaneously update her voter registration during this transaction, she did not do so. Ms. Gomez remains registered to vote at the incorrect address and wishes for her online driver's license transaction to serve as a simultaneous voter registration transaction.

John Harms

John Harms is aggrieved by the State's violations of the NVRA because he was not offered the opportunity to simultaneously update his voter registration to his new county of residence when he updated his driver's license through DPS's online portal on or around October 08, 2019. Mr. Harms

⁷ *Stringer v. Whitley*, 942 F.3d 715, 726 (5th Cir. 2019) (Ho, J., concurring).

updated his driver's license because he moved from Bastrop County to Travis County. Because it was impossible for him to simultaneously update his voter registration during this transaction, he did not do so. Mr. Harms remains unregistered to vote in Travis County, his current county of residence, and wishes for his online driver's license transaction to serve as a simultaneous voter registration transaction.

The Experiences of Voter Registration Organizations

MOVE Texas Civic Fund

MOVE Texas Civic Fund ("MOVE Texas") is a grassroots nonpartisan, nonprofit organization building power in underrepresented youth communities through civic education, leadership development, and issue advocacy. MOVE Texas conducts voter registration in multiple counties in Texas, including on college campuses, where MOVE Texas employees and volunteers offer college students and other would-be voters the opportunity to register to vote. MOVE Texas is forced to divert resources to register people who would have otherwise been registered to vote or updated their voter registration address through DPS's online driver's license system. The State's failure to comply with the NVRA by denying voter registration and voter registration address updates frustrates MOVE Texas' mission.

League of Women Voters of Texas

The League of Women Voters of Texas ("LWVTX") is a non-profit organization and its mission includes empowering voters, defending democracy and envisioning a democracy where every person has the desire, the right, the knowledge and the confidence to participate. LWVTX registers eligible individuals to vote across Texas and is forced to divert resources to register people who would have otherwise been registered to vote or updated their voter registration address through DPS's online driver license system. LWVTX has members across the state. The State's violations of the NVRA have and, if not corrected, will continue to frustrate LWVTX's mission and, further, harm LWVTX members who would like to simultaneously register to vote or update their voter registration while renewing and/or updating the address on their driver's license online using the DPS website.

CONCLUSION

In sum, under the NVRA, every time an eligible resident obtains, renews, or updates his or her driver's license with DPS, SOS must ensure that the driver's license application serves *simultaneously* as a voter registration application. As described above, the State is not complying with these mandates, and has refused to comply with these requirements for years.

The State must immediately remedy its violations of Section 5 of the NVRA. If not, the above-named parties are prepared to bring litigation pursuant to 52 U.S.C. § 20510(b)(2) to enforce their rights.

We look forward to your prompt response.

Very truly yours,



Mimi Murray Digby Marziani

President

Texas Civil Rights Project



Peter Kraus

Founding Partner

Waters & Kraus