

# EXHIBIT 9



July 8, 2008

**VIA ELECTRONIC MAIL TO:**  
**ThomasC@Michigan.gov ; ChristopherT@Michigan.gov**

Mr. Christopher M. Thomas  
Director of Elections  
Michigan Department of State  
430 West Allegan, First Floor  
Lansing, MI 48918

**Re: Meeting on July 9, 2008**

Dear Mr. Thomas:

On behalf of Advancement Project, we would like to thank you and your staff members for agreeing to meet with us and some of our community partners on **July 9, 2008, at 10:30 a.m.**, to discuss various election administration issues. We hope that this will be the first of several periodic meetings between us during this election cycle. We understand that you have scheduled approximately one and a half to two hours for this meeting. We appreciate your consideration in this regard and take this as a positive sign of the Michigan Department of State's willingness to be responsive and proactive to community and public interest groups and their legitimate concerns regarding the voting and voter registration process.

As you may know, Advancement Project is a Washington, DC-based policy, communications, and legal action group that is committed to the principals of racial justice, universal opportunity and a just democracy for all. We work directly with community organizations, year-round, bringing them the tools of legal advocacy and strategic communications to dismantle structural exclusion. Through our signature Voter Protection Program, part of our Power and Democracy initiative, we focus on increasing democratic participation in low-income and minority communities. To that end, by working and meeting with our community partners and election officials like you, we seek to identify, investigate, and resolve obstacles to voter participation and provide mechanisms for removing those obstacles well in advance of Election Day. For this meeting, we have invited

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representatives from the Michigan Election Reform Alliance (MERA),<sup>1</sup> the Michigan State Conference of the NAACP,<sup>2</sup> and ACORN<sup>3</sup> to attend with us.

During our meeting, we would like to cover the following topics and to discuss ways that we can achieve resolutions with respect to these issues in a manner that complies with federal and Michigan law; preserves the integrity of the electoral system; and eliminates, to the maximum extent possible, any unnecessary barriers to voting and voter registration, particularly in the minority and low-income communities in which the bulk of the work of Advancement Project and its community partners is focused:

- The Department of State's Purging of Voters Based on a Statewide Mail Canvassing Completed in July and August of 2006
- The Department of State's Ongoing and Immediate Purging of Voters Who Are Presumed to Have Moved Out of State
- The Cancellation of Newly Registered Voters Whose Original Voter Identification Cards are Returned as Undeliverable
- The Department of State's Directive Authorizing Election Inspectors to Require Multiple Photo IDs From Voters on Election Day
- The Department of State's Plans (if Any) of Restricting Public Access to Election Administration Materials

In addition, we would like to discuss two important ways in which we believe that collaboration between the Department of State and Advancement Project would help eliminate Election Day confusion and, thereby, ensure a more smoothly run and stress-free electoral experience for everyone concerned. Specifically, we would like the Department to consider:

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<sup>1</sup> The Michigan Election Reform Alliance (MERA) is a non-profit, non-partisan, pro-democracy, grassroots organization dedicated to the realization of election processes that consistently uphold the principles of democracy to ensure the confidence of voters and maximize representation of all citizens of the United States of America

<sup>2</sup> Founded in 1909, the National Association for the Advancement of Colored People (NAACP) is committed to ensuring the political, educational, social, and economic equality of rights of all persons and to eliminating racial hatred and racial discrimination. As in previous years, the NAACP's 2008 Voter Empowerment Program is designed to empower African Americans and people of color by increasing their awareness and participation in the electoral process.

<sup>3</sup> The Association of Community Organizations for Reform Now (ACORN) is the nation's largest grassroots community organization of low- and moderate-income people with over 400,000 member families organized into more than 1,200 neighborhood chapters in 110 cities across the country. Since 2004, ACORN has helped more than 1.7 million low- and moderate-income and minority citizens apply to register to vote.

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- Including Advancement Project's "Poll Worker Palm Cards" Within the Materials Disseminated to Election Inspectors, and
- Providing Advancement Project With Regular Access to the QVF File, to Facilitate Verification of Newly-Registered Voters

We discuss each of the above issues in turn, below.<sup>4</sup>

**The Department of State's Purging of Voters Based on a  
Statewide Mail Canvassing Completed in July and August of 2006**

On or about July 7, 2006 — which was 32 days prior to the August 8, 2006, federal primary election — the Department of State sent a postcard mailing by nonforwardable mail to every registered voter in Michigan, reminding them of the dates for the upcoming primary and general elections and encouraging them to participate in the electoral process.<sup>5</sup> On August 8, 2006 (the date of the federal primary election and 91 days before the November 7, 2006 federal general election), the Department sent residency confirmation notices to each voter whose postcard was returned as undeliverable and also triggered the "cancellation countdown" flag for each of those voters' records in the statewide voter registration database ("Qualified Voter File" or "QVF").<sup>6</sup> Thus, any voter who was sent a residency confirmation notice on August 8, 2006, and who does not respond to the notice, vote, or otherwise confirm his or her identity prior to the November 4, 2008, federal general election, is subject to being automatically purged from the voter rolls on or after November 5, 2008.

We recognize that Section 303(a) of the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. § 15483(a), requires states to perform regular list maintenance to ensure that their statewide voter registration lists remain current and accurate. However, HAVA also admonishes states to conduct their list maintenance activities in a manner that ensures that no eligible voters are removed from the rolls in error. 42 U.S.C. § 15483(a)(4). In addition, states are required by HAVA to comply with Section 8 of the NVRA, 42 U.S.C. § 1973gg-6, in connection with any voter removal program. 42 U.S.C. § 15483(a)(2)(A)(i).

With these principles in mind, we have several concerns with the Department's July-August 2006 purge program. First, we believe that the program was undertaken in violation of the NVRA, which prohibits states from engaging in list maintenance activity related to address changes within

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<sup>4</sup> To the extent that any notice is required pursuant to Section 11(b) of the NVRA, we intend for this letter to provide such notice on behalf of all persons aggrieved by any violations raised herein, and we request that appropriate remedial action be taken, as outlined herein, within 20 days of the Department's receipt of this letter.

<sup>5</sup> Mich. Dept. of State, NEWS YOU CAN USE Iss. No. 237 (Jul. 7, 2006). It is unclear, from this NYCU notice, whether the postcard mailings were sent to the voters' *registration* residence address or to their *mailing* address.

<sup>6</sup> Mich. Dept. of State, NEWS YOU CAN USE Iss. No. 244 (Aug. 8, 2006).

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90 days of a federal election. 42 U.S.C. § 1973gg-6(c)(2).<sup>7</sup> The first step in this list maintenance process (i.e., the statewide mailing of the postcards) occurred on July 7, 2006 — 32 days before the federal primary election. Although the postcards were ostensibly designed partially as educational and informational mailings, they also were obviously designed and intended to be used as a list maintenance tool.

Second, it appears that the Department has failed to maintain the required records related to this purge program in accordance with Section 8(i) of the NVRA, 42 U.S.C. § 1973gg-6(i), which unequivocally states that states are required to maintain for a minimum of two years “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,” specifically including but not limited to “lists of the names and addresses of all persons to whom [residency confirmation notices] are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.” Advancement Project, MERA, and possibly others have previously made specific public records requests for these materials, and we were advised that the records did not exist in the forms we requested.<sup>8</sup>

**Accordingly, we believe that the following actions are necessary to resolve our concerns with respect to the July-August 2006 purge: (1) the Department should immediately prepare and produce to Advancement Project (pursuant to our earlier public records request) a unified, easily decipherable list that complies with Section 8(i) of the NVRA by indicating the names and addresses of all persons to whom residency confirmation requests were sent and whether such persons have responded to the notices; (2) the Department should remove the “cancellation countdown” flag from any voter’s record for whom the flag was triggered as a result of the July-August 2006 purge program.**

**In addition, we hereby request that the Department maintain, preserve, and not destroy any and all returned postcards and all other records relating to the July-August 2006 purge program until after December 31, 2009.**

**The Department of State’s Ongoing and Immediate Purging  
of Voters Who Are Presumed to Have Moved Out of State**

The Michigan Department of State, which administers both driver’s license and voter registration records, appears to use a streamlined procedure for immediately canceling the registrations of Michigan voters who receive driver’s licenses in other states. On a quarterly basis,

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<sup>7</sup> The legislative history relating to this code section makes it clear that the 90-day prohibition applies not only to the completion of any list maintenance program, but also to the commencement of “outreach activities such as a mailing or a door-to-door canvas” within 90 days of a federal election. See H.R. Rep. No. 103-9.

<sup>8</sup> According to the Department, anyone requesting such data would be required manually to cross-reference multiple spreadsheets of data with the complete statewide QVF in order to discover the identity of persons to whom residency confirmation notices were sent and then to discern whether any such person had responded to the notice.

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upon receipt of notices from cooperating state motor vehicle licensing bureaus of drivers who surrender their Michigan driver's license, the Department immediately cancels those persons' Michigan driver's licenses. In addition, if those persons are also registered voters, the Department immediately cancels those persons' voter registrations and instructs the local city or township clerk to issue a "30-Day Notice of Cancellation (Out of State)" to the affected voters, informing them that their registrations will be canceled in 30 days unless they return the postage-paid return card attached to the notice.<sup>9</sup> According to the Department's own estimations, over 280,000 voters per year are removed from the rolls in this manner.

In prior communications with our office, the Department has taken the position that the NVRA allows this immediate cancellation of voter registrations and does not require even the 30-day notice that the Department instructs its local clerks to send to the affected voters. We respectfully disagree. Section 8(d) of the NVRA and the comparable provision of Michigan law, MCL § 168.509aa, require that whenever election officials receive reliable information from the post office or other sources (such as these cooperative arrangements with other state driver licensing bureaus) that voters have moved, they are to send confirmation of registration notices to the affected voters. Such voters are not to be removed from the rolls unless and until two full federal general election cycles pass with no contact or update from the voters.

**Accordingly, we urge the Department forthwith to discontinue its practice of immediately canceling the voter registrations of those persons for whom it receives notice that they have surrendered their driver's licenses and that the state proceed instead to follow the confirmation of registration procedures set forth in Section 8(d) of the NVRA and MCL § 168.509aa. In addition, we request that all such voters whose registrations were canceled pursuant to this 30-day notice procedure between January 1, 2006, and the present and whose registrations have not been reactivated in the interim by other means be immediately restored to active status, unless the Department has received a specific written request from an affected voter authorizing the cancellation of a particular registration or the affected voter is presently no longer qualified to vote by reasons other than a change of address. Pursuant to our earlier public records request, we request that the Department immediately prepare and produce to Advancement Project a unified, easily decipherable list that complies with Section 8(i) of the NVRA by indicating the names and addresses of all persons to whom 30-Day Notices of Cancellation (Out of State) were sent and whether such persons have responded to the notices.**

Finally, we hereby request that the Department maintain, preserve, and not destroy until after December 31, 2009, any and records relating to the Department's quarterly purge programs that have, since January 1, 2006, resulted in the cancellation of out-of-state voters and the sending of 30-day cancellation notices.

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<sup>9</sup> Mich. Dept. of State, NEWS YOU CAN USE Iss. No. 255 (Oct. 1, 2006).

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**The Cancellation of Newly Registered Voters Whose  
Original Voter Identification Cards are Returned as Undeliverable**

Michigan's Election Law requires city and township clerks to issue a voter identification card to any applicant that the clerk determines to be qualified to vote (based on the applicant's completed voter registration application). MCL § 168.499(3), 168.500c. See also 42 U.S.C. § 1973gg-6(a)(2) (requiring that disposition notices be sent to all voter applicants). However, the Michigan statute also says that if the elector's *original* voter identification card is returned as undeliverable, "the clerk shall reject the registration and send the individual a notice of rejection," MCL 168.499(3); that the returned ID card is to be attached to the voter's completed registration application; and that "the person shall be deemed not registered," MCL 168.500c. By contrast, if a voter's *duplicate* ID card is returned as undeliverable, Michigan law instructs the local clerks to "accept this as information that the elector has moved and... proceed in conformity with section 509aa," which is Michigan's counterpart to Section 8(d) of the NVRA. MCL § 168.499(3). If the confirmation of registration notice is likewise returned as undeliverable, the clerk is instructed to mark the voter's registration record as "challenged," which triggers an obligation on the poll worker to inquire further into the voter's qualifications when he or she appears to vote. *Id.*

We believe that the removal of voters from the rolls based on the return of their original voter identification cards as undeliverable is a violation of the NVRA and 42 U.S.C. § 1971(a)(2), notwithstanding the provision of the Michigan Election Law which "deems" such voters as "not registered." The receipt of a federally mandated disposition notice following registration is an external factor outside of a voter's control and completely unrelated to a voter's qualification and eligibility to vote. *Cf.* MCL § 168.492 (outlining voter eligibility qualifications).<sup>10</sup>

**Accordingly, we urge the Department of State to take any and all appropriate steps — including issuing emergency regulations, obtaining appropriate advisory opinions from the Attorney General, or recommending appropriate legislation — to direct all local clerks to discontinue the practice of immediately canceling voters based upon the return of their original voter ID cards. Instead, the return of original voter ID cards should be treated in the same manner as the return of a duplicate ID card.**

**The Department of State's Directive Authorizing Election Inspectors  
to Require Multiple Photo IDs From Voters on Election Day**

In September 2007, the Department of State issued a detailed interpretive document entitled *Picture Identification in the Polls: Instructions to Election Officials*.<sup>11</sup> Of particular concern to

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<sup>10</sup> We are aware of and respectfully disagree with Judge Hillman's opinion to the contrary in *ACORN v. Miller*, 912 F. Supp. 976, 986-88 (W.D. Mich. 1995), *aff'd on other grounds*, 129 F.3d 833 (6<sup>th</sup> Cir. 1997). We also note that that portion of Judge Hillman's ruling was not appealed to or ruled upon by the Sixth Circuit, nor was any claim brought under 42 U.S.C. § 1971(a)(2) or Section 2 of the Voting Rights Act. We are confident that a court presented with this issue today would find these particular provisions of the Michigan Election Law to be in violation of federal law.

<sup>11</sup> Mich. Dept. of State, ELECTION NEWS Iss. No. 49 (Sep. 12, 2007).

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Advancement Project is the Department's directives regarding "*What actions should an election inspector take if the photo appearing on the picture identification displayed by a voter does not resemble the voter closely enough to verify the voter's identity?*" The Department's directive gives poll workers a very wide degree of discretion under such circumstances. Although the directive counsels inspectors to "take into account the age of the photo and any explanations the voter may wish to offer (weight gain or loss, hair style or facial hair alterations, different eyeglass frames, etc.)," it ultimately allows inspectors to "ask to view any other acceptable forms of picture identification that the voter may have in his or her possession." If the voter does not have a second form of photo ID, the directive states that "the election inspector should issue a provisional ballot to the voter and contact the clerk." There is no option, under the directive, for a voter in such circumstances to complete an affidavit and vote a regular ballot.

Although we can understand the practical difficulty presented by a voter who produces an otherwise valid photo ID that appears not to resemble the voter's current appearance on Election Day, we do not believe that the Department's directive complies with Michigan Election Law. First, the photo ID law, MCL § 168.523, does not appear to allow the Department of State or any election worker the discretion to require or request a voter to produce a *second* piece of photo identification or to deny a regular ballot to a voter who complies with the law by producing valid photo ID merely because an election inspector states that he or she cannot discern the likeness of the voter. Second, under Michigan law, provisional ballots are to be issued only when a voter does not appear on the registration rolls in a precinct and that discrepancy cannot be resolved on Election Day after following a detailed four-step procedure. See MCL § 168.523a.

Fortunately, Michigan's challenge procedures already provide an appropriate method by which an election inspector or any other challenger may raise a question the qualifications and eligibility of a voter who appears on the rolls. See MCL § 168.727 to 168.129, 168.745 to 168.7849. Under those procedures, if a question arises as to a registered voter's qualifications, the voter is to be placed under oath and orally examined by the election inspector as to his or her qualifications to vote. If the answers show that the person is a qualified elector, he should receive a "challenged" ballot that is tabulated on Election Day as any other regular ballot. This procedure, in our view, is a far better method of resolving any concerns an election inspector may have related to a voter's appearance on Election Day as compared to the voter's photo on a valid identification.

**Accordingly, we request that the Department immediately rescind that portion of its directive that allows an election inspector to (a) request additional pieces of photo ID from a voter and/or (b) to issue a provisional ballot to a voter based on questions related to a voter's appearance.**

**The Department of State's Plans (if Any) of Restricting  
Public Access to Election Administration Materials**

Some of our community groups have received word that the Department of State intends to begin restricting public access to the NEWS YOU CAN USE and the ELECTION NEWS publications, as well as other election administration materials that are currently available on the internet, so that only local clerks and others with password access would be able to access such materials. This would be of great concern to Advancement Project if it were, in fact, true. If the Department of State's activities are made less transparent, our efforts (and the efforts of our coalition partners) to advocate on behalf of Michigan voters will be severely hampered. Therefore, to resolve any lingering

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confusion, we would like to get some clarity and reassurances from you that these materials will continue to be made available to the public and will not be restricted.

**Collaboration Between the Department of State and Advancement Project**

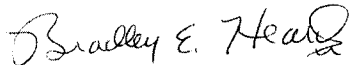
As we indicated earlier, part of Advancement Project's mission is to work collaboratively with election officials, wherever possible, to eliminate barriers to voting and registration, particularly in minority and low-income communities. During tomorrow's meeting, we would like to discuss two specific ways that the Department could collaborate with Advancement Project.

First, we would like for the Department to include Advancement Project's popular "Poll Worker Palm Cards" in the training materials that the Department provides to local election officials. Advancement Project creates these cards, which list the "top 10 things every poll worker should know," in several of the states in which our Voter Protection Program is active. Several local clerks in Michigan have already expressed interest in including our palm cards in their poll worker packets, and we believe these cards would have statewide appeal.

Second, Advancement Project is attempting to develop a protocol for assisting its coalition partners with verifying that the registrations they collect are being timely processed by local clerks and that the voters whom they are assisting with registration are actually making it onto the rolls. To do this, we would like to obtain regular access to the QVF (either directly or through a Department of State satellite office). We would like to discuss the feasibility of this idea with you during our meeting tomorrow.

We hope that this letter will provide an effective "roadmap" to guide our discussions tomorrow. Again, we appreciate very much your willingness to meet with us and look forward to the exchange.

Sincerely yours,



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Senior Attorney

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