

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES STUDENT ASSOCIATION
FOUNDATION, as an organization and representative
of its members, AMERICAN CIVIL LIBERTIES
UNION OF MICHIGAN, as an organization and
representative of its members, AMERICAN CIVIL
LIBERTIES UNION FUND OF MICHIGAN, as an
organization and representative of its members,

Case No. 2:08-cv-14019

Hon. Stephen J. Murphy III

Plaintiffs,

v.

TERRI LYNN LAND, Michigan Secretary of State,
and CHRISTOPHER M. THOMAS, Michigan
Director of Elections, FRANCES MCMULLAN, City
Clerk for the City of Ypsilanti, Michigan, in their
official capacities,

Defendants.

**CONSOLIDATED REPLY BRIEF IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

I. Plaintiffs Have Demonstrated a Likelihood of Success on the Merits

A. Immediate Purging Practice

The NVRA allows the removal of names from the voting rolls based on a change of residency only under two specific circumstances: (1) where the voter himself has notified the state of a change in residence or (2) where the voter has failed to respond to a NVRA-compliant notice and failed to vote in two general November elections.¹ The State Defendants quite clearly argue that the Court must read a statute by its plain language and apply it as written. However, as Defendants' justification for the Purging Practice is articulated, it becomes clear that they, themselves, are not following this mandate. The requirement that the Defendants receive change of residency confirmation in writing before taking action under a voter removal plan means Defendants must actually receive confirmation in writing, and may not act on a "reasonable assumption." Moreover, it certainly does not mean that the Defendants must provide the statutory protections to the voter only in those circumstances where the voter manifests his or her intent through use of the Postal Service.

1. Notification by a Cooperating State Agency is Not "Confirmation in Writing" by a Voter that He Has Changed Residency

The State Defendants argue that when a person surrenders his driver's license during the application process for a new license in another state, that person is "confirm[ing] in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered." Opposition at 13 (quoting 42 U.S.C. 1973gg-6(d)(1)(A)). *This is a fundamentally flawed assumption, and betrays the core problem for which Plaintiffs are seeking redress.* The application for a driver's license or state identification card in another state

¹ As discussed in the Brief in Support, Michigan law also provides protections prior to the immediate removal of voters. See, M.C.L. §168.509aa(3)(c)(3).

may be driven by any number of factors, none of which has any bearing on a voter's residence for voting purposes. A Michigan student going to school in Ohio nine months out of the year may find it more convenient to have an Ohio license and an Ohio car registration.² A Michigan senior citizen who spends her winters in Florida may prefer to hold a Florida license for insurance reasons. The only facts the State Defendants know in this circumstance – the only “confirmation” of any kind -- is that these Michigan residents have surrendered their driver’s licenses. Defendants have no indication whatsoever of whether or not they requested voter registration in the new state or specifically declined such registration in favor of remaining a Michigan resident for voting purposes.

The notification received by Defendants does not confirm that the voter has changed his residence for voting purposes.³ The Legislative History of the NVRA acknowledges that residency for driving purposes and voting purposes can be very different. See Exhibit 11 to Brief in Support, H.R. Rep. 103-9, H.R. Rep. No. 9, 103rd Cong., 1993 U.S.C.C.A. No. 105 (Feb. 2, 1993) (“The requirements of residency pertaining to driver’s licenses may vary from those pertaining to voting...”). Likewise, with respect to intra-state change-of-address notifications completed at a DMV bureau, the NVRA statute itself recognizes that a person may claim one residence for driver licensing purposes, while claiming another address for voting purposes. See 42 U.S.C. § 1973gg-3(d).

² Defendants assert that certain states exempt out-of-state students from the requirement of obtaining a driver’s license. This may be true, however, such students may not be aware of such an exemption or may nonetheless choose to obtain an out-of-state driver’s license for any variety of reasons, including lower car insurance or ease of access into local establishments requiring identification.

³ Throughout their brief, Defendants conflate the terms “residence” with “change of address.” The NVRA requires written confirmation of a change of residence, not merely an address change. The term “residence” has a significant legal meaning and, as discussed, an individual can have more than one “residence.”

Defendants themselves admit this act alone (surrendering a Michigan driver's license) is not conclusive of an intent to change residency for voting purposes but, instead, merely allows one to draw a "reasonable conclusion" of change of residency. See e.g., State Defendants' Response Brief at 15 ("Thus, a *reasonable conclusion* can be drawn from these facts that a person who has surrendered his or her Michigan driver's license during the process of applying for a new license in a different State, has confirmed a change of residence to the new State."); see also, Id. at 16 ("...surrendering the license is *indicative* of intent to remain in the new state (or of no intention to return to Michigan)."). A "reasonable conclusion" by the Defendants is neither a legally sufficient nor permissible surrogate for confirmation in writing by the registrant.⁴

Indeed, the State Defendants' argument that surrendering a Michigan driver's license and obtaining a driver's license in another state "ipso facto" means that the voter no longer resides in Michigan, and is therefore ineligible to vote here (Opposition at 15), is belied by its own current procedures: under the current protocol, out-of-state driver's license is acceptable photo identification for voting in Michigan.⁵ Certainly, then, a Michigan resident must be apply to apply for and obtain an out-of-state driver's license and still be a validly

⁴ Defendants append a 1996 e-mail that purports to be from an employee of the Federal Election Commission, and appears to sanction this procedure through concluding that "any notice of a change of residence to a location outside the register's jurisdiction that is received from either a public assistance agency or a motor vehicle office is presumed to have been originated by the registrant." See, Exhibit 1, Attachment 5 to Opposition Brief. This e-mail bears no credence. As an initial matter, an Federal Agency speaks through its official pronouncements, not through an informal exchange of emails. There is no evidence that the Federal Election Commission ever issued an official opinion (formal, informal, or advisory) that countenanced the views expressed in the e-mail upon which Defendants rely. Moreover, the FEC is not the current regulatory agency for the NVRA. See 42 U.S.C. § 15532 (transferring regulatory authority under the NVRA from the Federal Election Commission to the Election Assistance Commission). Finally, and importantly, the "presumption" that the author of the email makes is flatly contrary to the letter of the law which demands that the confirmation is from the voter himself and in writing.

⁵ See, Exhibit 1, "What Every Voter Should Know", www.michigan.gov/documents/sos/ED-125_08-2008_Instrc_for_Voting_239122_7.pdf.

registered Michigan voter. While a Michigan registered voter's recent acquisition of an out-of-state driver's license may well prompt Defendants to inquire into whether the voter intends to remain registered in Michigan, it does not give the official license to immediately cancel the voter's Michigan registration. To the contrary, it is the duty of the Defendants to afford Plaintiffs the protections to which they are entitled, which, in this case, means that notice is given, and the voter remains on the rolls and allowed to vote upon confirmation of his address. 42 U.S.C 1973gg-6(d); MCL 168.509aa(3)(c)(3)

2. The Obligations Imposed Under Section (d)(1)(B) are not Limited to Information Obtained by the Postal Service

Defendants contend that they only required to send an NVRA compliant notice⁶ and provide the protections afforded in Section 6(d) in circumstances where the information regarding the alleged change in residence was received through the United States Postal Service. Opposition at 13. Although not entirely clear, it appears that this argument is premised on an incomplete reading of Section 6(a)(4).

Under the NVRA each state is required to conduct a program that makes a reasonable effort to remove the names of ineligible voters by reason of death or change of residence. See 42 U.S.C. §1973gg-6(a)(4). When the removal is due to a change of residence, any such removal must be in accordance with “subsections (b), (c), *and (d)* of [Section 6].” Id. (emphasis added). Section (c) simply provides, but does not require, that such a voter removal program *may* be based on information provided by the United States Postal Service.⁷ Section (d)

⁶ An NVRA compliant notice sets forth the registrant's rights, including language providing that the registrant will remain on the voting rolls for the period of two election cycles in the event that he does not respond and fails to appear to vote. 42 U.S.C. 1973gg-6(d)(2).

⁷ Section (b) requires that any program be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 and does not result in removal based on failure to vote absent specific circumstances. Id. at (b)(1)-(2).

mandates that a voter shall only be removed if he provides written notification of a change of residence or if the voter has failed to respond to a NVRA compliant notice and until the voter has failed to vote in two general Federal Elections. See 42 U.S.C. §1973gg-6(d)(1)(A)-(B). This final and mandatory provision does not condition its protection on the use of the Postal Service, and certainly does not limit its application to information obtained through the Postal Service as Defendants suggest. Indeed, to adopt Defendants' interpretation would supplant the mandatory section (subsection (d)) with the permissive one (subsection (c)). This is contrary to the long-standing rules of statutory construction and the clear language of the NVRA. Anderson v. Yungkau, 329 U.S. 482, 485, 67 S. Ct. 428, 91 L. Ed. 436(1947)("when the same rule uses both "may" and "shall," the normal inference is that each is used in its usual sense -- the one act being permissive, and the other mandatory.").

B. Cancellation Procedure

1. Voters Whose Original ID Cards Are Returned as Undeliverable Are "Registered" Under MCL § 168.509o and the NVRA

The State Defendants argue that, despite the clear mandate of MCL § 168.509o, voters who are entered into the QVF and appear to vote are not thereby registered because "subsection 509o(2) does not supplant MCL 168.500c's 'receipt' requirement." Opposition at 23. In fact, that is exactly what subsection 509o(2) does: "*Notwithstanding any other provision of law to the contrary*, beginning January 1, 1998, a person who appears to vote in an election and whose name appears in the qualified voter file for that city, township, village, or school district is considered a *registered voter* of that city, township, village, or school district under this act." MCL § 168.509o(2) (emphases added). Under the plain language of the statute, to the extent that any other provision of law – including subsection 500c – is contrary to subsection 509o(2), the other provision of law is superseded.

Furthermore, as discussed below, the State Defendants' registration and voting procedures clearly show that – in accordance with MCL § 168.509o(2) – a voter's registration and eligibility to vote do *not* depend on the successful receipt of a voter ID card. Voters whose original voter ID cards are returned as undeliverable are nonetheless registered and are entitled to the protections of Section 8(d) of the NVRA. The State Defendants' Cancellation Procedure wrongfully deprives voters of these protections.

2. A Voter Whose Original ID Card Is Returned as Undeliverable, But Who Happens to Have a Voter Registration Receipt, May Vote a Regular Ballot

When a voter registers in person using Form NSP-938B (but not when a voter registers by mail), the registrar initials, dates and gives the upper portion of the form to the voter to serve as the voter registration receipt.⁸ If that voter's original voter ID card is subsequently returned as undeliverable, and his name is suppressed from the precinct list, he can show up on election day, produce his validated registration receipt, and vote a regular ballot.⁹ Making the reasonable assumption that the state does not permit unregistered persons to vote, the only logical inference from the state's procedure is that voters who submit complete and accurate applications are registered, irrespective of whether their ID cards are successfully delivered. And because such voters are registered, the state cannot remove them from the rolls without following the mandates of the NVRA.

⁸ State of Michigan Department of Human Services Reference Forms & Publications Manual, NSP-938B Michigan Voter Registration Application at 6, available at <http://www.mfia.state.mi.us/olmweb/ex/rff/Nsp938b.pdf>, attached hereto as Exhibit 2.

⁹ See, Department of State Bureau of Elections, Procedure for Issuing a Ballot If Voter's Name Does Not Appear On Registration List, available at http://www.michigan.gov/documents/Procedure_Provisional_Vote_2_95228_7.pdf. Of course, this is no protection at all for the many voters who register by mail and thus do not receive a validated registration receipt from the registrar.

3. An Original Voter ID Card is a “Notice of Disposition” Under the NVRA and Must Be Treated Accordingly

Seeking to ignore their initial issuance of the original voter ID card after receiving and processing a registration, the State Defendants argue that it is the Notice of Rejection that is sent out after the return of an original ID card, and not the ID card itself, that “acts as the notice of disposition of the application required under NVRA, subsection 1973gg-6(a)(2).” Opposition at 19. This argument is plainly not credible. Were the original voter ID card not a “notice of disposition” as required under subsection 1973gg-6(a)(2), voters whose original ID cards are not returned would receive no “notice of disposition” at all, in violation of Section 8(a)(2) of the NVRA.

C. The Cancellation Procedure Violates the Civil Rights Act

The State Defendants argue that the Cancellation Procedure does not violate the Civil Rights Act, which Plaintiffs seek to enforce through 42 U.S.C. § 1983. Opposition at 25-26. The State Defendants’ arguments rest on a flawed assumption: that receipt of a voter ID card constitutes a “qualification” to vote. To be perfectly clear: Plaintiffs do not dispute that residence is a qualification for voting. What Plaintiffs do dispute is the State Defendants’ erroneous conflation of residency qualifications with the receipt of a voter ID card.

The State Defendants allege that voters whose original voter ID cards are returned and voters whose duplicate voter ID cards are returned are not “equally qualified,” because the latter has satisfied the local residence requirement and the former has not. The State Defendants are mistaken. Both groups of voters *are* equally qualified: Each voter has fully and accurately completed a voter registration application, including a verification under penalty of perjury that he meets all qualifications under the law, and each voter has had his voter ID card returned as undeliverable. When a duplicate ID card is returned as undeliverable with no forwarding

address, the evidence is just as persuasive (or just as questionable) that the voter does not presently satisfy the residence requirement as it is when an original ID card is returned. That voter (whose duplicate card is returned) is afforded the protections of the NVRA. His name is marked as “Challenged” in the QVF, he appears on the precinct list and he can vote a regular ballot on election day upon verifying his residency. On the identical evidence of supposed non-residence, the voter whose original card is returned is marked “Rejected” in the QVF, is suppressed from the precinct list and, at best, can vote a provisional ballot that almost certainly will not be counted. This disparate treatment of equally-qualified electors plainly violates the Civil Rights Act. 42 U.S.C. § 1971(a)(2)(A) (as enforced through 42 U.S.C. § 1983).

The State Defendants further argue that the Cancellation Procedure does not violate the Materiality Provision of the Civil Rights Act, because “local residence is a qualification for registering to vote and for voting.” Opposition at 26. Once again, the State Defendants miss the point. No one has suggested that local residence is not a material qualification for voting. Receipt of a voter ID card, however, is *not* material to whether a voter is qualified to vote. Despite their argument that the return of a voter ID card makes it “reasonable to assume that the person does not live there,” *id.*, the State Defendants plainly understand the difference between residence and receipt. If they did not, they would likewise bar from voting those voters whose duplicate ID cards are returned as undeliverable with no forwarding address. As Plaintiffs pointed out in their Initial Brief, there are numerous non-material errors and omissions by the voter, by the registrar or by the post office, that may lead to an ID card being returned as undeliverable. These non-material errors and omissions have no bearing on whether the voter is, as he has attested under penalty of perjury, actually qualified to vote. Thus, the State Defendants’ disfranchisement of voters on the basis of such non-material

errors and omissions violates the Civil Rights Act. 42 U.S.C. § 1971(a)(2)(B) (as enforced through 42 U.S.C. § 1983).

D. The Cancellation Procedure Is Not Narrowly Tailored to the State's Interest in Preventing Voter Fraud

The State Defendants concede Plaintiffs' assertion that restrictions that place a severe burden on constitutional rights must be "narrowly drawn to advance a state interest of compelling importance." Opposition at 27 (quoting Burdick v. Takushi, 504 U.S. 428, 434 (1992)). Here, the burden that the State Defendants place on Plaintiffs and their constituencies is the most severe possible: It threatens to completely disfranchise them. Even if voters whose ID cards are returned are issued provisional ballots, such ballots are meaningless because they cannot be counted. See Section II, below. As a result, the Court must determine whether – assuming the State's interest to be of "compelling importance" – its restrictions are "narrowly drawn." In light of the draconian and unnecessary burden placed on voters, the only possible conclusion is that the restrictions are not narrowly drawn.

The State Defendants argue that they have a compelling interest in preventing fraudulent voter registrations, and make much of alleged irregularities in certain voter registration drives conducted by strangers to this lawsuit. Opposition at 29. As an initial matter, there are a number of safeguards in place already to prevent voter fraud. For example, a voter must verify his qualifications on the voter registration form under penalty of perjury, subjecting himself to the potential for fines or imprisonment or both for a false application.¹⁰ Additionally, a voter must satisfy Michigan's voter identification requirement by presenting picture ID or

¹⁰ See Michigan Voter Registration Application, Exh. 3 at 3.

signing an affidavit before she can be issued a ballot.¹¹ Moreover, the existence of alleged fraud in voter registrations cannot justify the complete disfranchisement of legitimate, qualified voters, particularly when other, less drastic means are available – and, indeed, are employed by the State.

Perhaps most importantly, the State Defendants use a different, and far less overreaching, approach when dealing with a voter whose duplicate cards have been returned as undeliverable with no forwarding address. That voter is marked as “Challenged” in the QVF, appears on the precinct list and can vote a regular ballot on election day upon verifying his residency. On the *identical evidence of supposed non-residence*, the voter whose original card is returned is marked “Rejected” in the QVF, is suppressed from the precinct list and, at best, can vote a provisional ballot that – under current practices – will not be counted. If the State Defendants’ purpose is to prevent non-residents from voting, their own procedures demonstrate that marking a voter as “Challenged” and requiring verification of residency are ample safeguards against voter fraud. Marking a voter as “Rejected” in the QVF and relegating the voter to a provisional ballot that is unlikely to be counted goes far beyond what is required to prevent non-residents from voting, is not narrowly tailored, and thus cannot withstand the level of scrutiny required.

¹¹ See Secretary of State, What Every Voter Should Know, available at http://www.michigan.gov/documents/sos/ED-125_08-2008_Instrc_for_Voting_239122_7.pdf, attached hereto as Exhibit 1.

II. The Availability of Provisional Ballots Under Federal and Michigan Law Does Not Eliminate the Irreparable Harm to Plaintiffs of Being Unlawfully Removed From the Voter Rolls

Defendants claim that Plaintiffs are not entitled to a preliminary injunction because, assuming that the “Cancellation Procedure” (relating to voters whose original ID cards are returned) and the “Purging Procedure” (relating to voters who obtain drivers licenses in other states) are unlawful, Plaintiffs will suffer no irreparable harm, because they will have the opportunity to cast provisional ballots. This claim is completely without merit – or, at a bare minimum, grossly overstated.

It is true that HAVA and the Michigan Election Law require election officials to provide provisional ballots to any voter who does not appear on the precinct list but who nevertheless claims to be a registered voter. *See* 42 U.S.C. § 15482(a); MCL § 168.523a. However, those same laws also provide that provisional ballots may be counted only if the election official later determines, after the election, that the individual was eligible to vote under state law. *See* 42 U.S.C. § 15482(a)(4); MCL § 18.813. Pursuant to Michigan law, one must be a validly registered voter in order to vote in an election. MCL § 168.492. Persons who are not validly registered by the close of registration (i.e., 30 days before the election) are not eligible, under Michigan law, to vote in the election. MCL § 168.497.

The statutes that establish the Cancellation Procedure – MCL §§ 168.499 and 168.500c – clearly provide that a person whose original voter registration card is not returned as undeliverable is to have his voter registration **rejected** and is **“deemed not registered under [the Michigan Election Law].”** Similarly, under the State Defendants’ Purging Procedure, the QVF record for every registered Michigan voter who obtains a driver’s license in another state is **“automatically cancelled”** by the Department of State on a quarterly basis, and local clerks are

then instructed to send the “30-Day Notice of Cancellation (Out-of-State)” to the affected voters. (See Att. 7 to Thomas Decl; Prelim. Inj. Br. Ex. 7 [NEWS YOU CAN USE Issue No. 255 (Oct. 11, 2006)].) Thus, even if a voter affected by the Cancellation Procedure or the Purging Procedure were to complete a provisional ballot on Election Day, the local clerk would not be permitted to count the ballot after reviewing the QVF, because the QVF would affirmatively show that the voter is listed as “cancelled” – meaning he or she no longer has a valid voter registration.¹² In other words, the end result is the same whether or not such voters cast a provisional ballot: Their votes will not be counted. The right to have one’s ballot *counted* is fundamental, and the deprivation of that right constitutes irreparable harm. Bay County Democratic Party v. Land, 347 F. Supp. 2d 404, 435-36 (E.D. Mich. 2004).

In a *post-hoc*, litigation-inspired attempt to mitigate the harm to Plaintiffs resulting from the Purging and Cancellation procedures, Defendants state that they are preparing an “Election News” article, “*which will be distributed in early October,*” emphasizing (1) that voters whose original ID cards are returned as undeliverable are “eligible to receive a provisional ballot” (Thomas Decl. ¶ 7) (emphasis added) and (2) that “The Bureau of Elections *would instruct* a local election official to change the status of a registration record to “active” at any time after a 30-Day Cancellation Notice is issued, and the person seeks to vote and asserts that he or she has remained a permanent Michigan resident.” The State Defendants represent that this

¹² Indeed, the application of the Purging Procedure or the Cancellation Procedure leaves the affected voter worse off than a voter who affirms that he or she registered prior to the close of registration but for whom *no* registration information can be found in the QVF. This is so because one of the safeguards contained in Michigan’s provisional ballot statute and procedures allows voters for whom no record can be located to have their provisional ballots counted, provided they can supply government-issued photo identification establishing their identity and identification establishing their residence in the jurisdiction. See MCL § 168.813(1); *Mich. Dept. of State, PROCEDURE FOR HANDLING “ENVELOPE” BALLOTS RETURNED TO THE CLERK’S OFFICE* (Nov. 2007), available at http://www.michigan.gov/documents/Procedure_Handling_Env2_95243_7.pdf, attached hereto at Exhibit 4.

would apply to voters who sought to vote in person on Election Day or by absentee ballot prior to Election Day (Thomas Decl. ¶ 11) (emphasis added).

Defendants' first statement simply restates the existing HAVA and Michigan Election Law requirements that provisional ballots must be provided to voters who claim to be registered but who do not appear on the precinct list. The statement says nothing about whether the provisional ballot provided to the voter would count. And Defendants' second statement is, at once, contrary to the existing written directives that have been circulated to the state's local clerks and also at odds with the plain text of the provisional ballot statutes, which prevent voters who are showing in the QVF as ineligible from having their provisional ballots counted.

Finally, Michigan's prior record of provisional ballot administration demonstrates that the availability of provisional ballots provides little to no protection to the voters who receive them. Indeed, a study conducted by the U.S. Election Assistance Commission shows that Michigan had an abysmal **81% rejection rate** of provisional ballots cast during the most recent federal general election in 2006.¹³ Likewise, a preliminary review of provisional ballots cast in the City of Detroit reveals that at least 750 provisional ballots were rejected as a result of a returned ID card during the 2006 general election. Exhibit 5, Declaration of Brandon Jessup [hereinafter "Jessup Decl."] ¶5 & Ex. 5.A. Clearly, these statistics cast grave doubt upon Defendants' claim that the availability of provisional ballots eliminates the irreparable harm to Plaintiffs.

¹³ See U.S. Election Assistance Comm'n, THE 2006 ELECTION ADMINISTRATION AND VOTING SURVEY: A SUMMARY OF KEY FINDINGS (Dec. 2007), at 18, 43, available at <http://www.eac.gov/files/Eds2006/eds2006/edsr-final-adopted-version.pdf>. Other traditional battleground states, such as Florida and Ohio, also experienced rampant problems with provisional ballot administration during the 2006 general election. See generally Advancement Project, PROVISIONAL VOTING: FAILSAFE VOTING OR TRAPDOOR TO DISENFRANCHISEMENT? (September 2008), available at <http://www.advancementproject.org/pdfs/Provisional-Ballot-Report-Final-9-16-08.pdf>.

III. Balance of the Harms

Defendants claim that a preliminary injunction will cause them harm, as restoring to “Active” all affected voters would take “time, attention and resources away from preparations for the actual holding of the election itself.”¹⁴ See Opposition Brief at 33. As an initial matter, to the extent this is a “burden” it is a burden already imposed by federal law to maintain active and correct voter rolls and not to disfranchise eligible voters. 42 U.S.C. § 15483(a)(2)(B) and (a)(4)(B), 1973gg-6(a). When counterbalanced against the harm to Plaintiffs’ members, *disfranchisement*, it should be no burden at all for Defendants to follow the law. If it is warranted, it should be ordered, notwithstanding the fact that it may require additional effort.

The State Defendants also submit that restoring voters to “Active” status could result in duplicate voter registrations and could create an inflated or erroneous official voter list. Id. Even assuming that to be the case, it does not justify denial of the remedy. The State Defendants, with knowledge of their systems and capabilities, should be able to suggest a workable alternative, such as restoring affected voters to “Challenged” status – a remedy that would allow the voters the right to provide proof of residency and vote, while allowing the State Defendants to avoid the harm they claim.

¹⁴ Contrary to Defendants contention, Plaintiffs did not wait until the eleventh hour to seek this relief. Plaintiffs raised this issue with Defendant Thomas in early July of 2008. There is no evidence suggesting that Plaintiffs were aware of the challenged practices for any meaningful period prior to that time. Defendant Thomas’ letter in response (while dated August 29, 2008) was not received until September 8, 2008. Plaintiffs’ Complaint and the instant Motion were filed on September 17, 2008, seven business days after notification by Defendant Thomas that no action would be taken to remedy the issues raised.

Respectfully submitted,

/s/ Matthew J. Lund

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Dated: September 29, 2008

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Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2008, I served a true and correct copy of the foregoing Reply Brief in Support of Plaintiffs' Motion for Preliminary Injunction and this Certificate of Service to the parties of record through the Court's electronic filing system.

Respectfully submitted,

/s/ Matthew J. Lund

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