VIA EMAIL

January 8, 2018

John Merrill  
Secretary of State  
Executive Division  
600 Dexter Ave S- 105,  
Montgomery, AL 36130

Brent Beal  
Deputy Attorney General  
Office of the Secretary of State  
600 Dexter Avenue,  
Montgomery, AL 36130  
334-353-7857  
Fax: 334-242-4993

Re: Issues Concerning the Special Election

Dear Secretary Merrill and Mr. Beal:

Thank you for your response to our December 14, 2017 letter. The purpose of our letter was to request that the Alabama Secretary of State provide public guidance to voters affected by the issues we described therein. Now we write to urge you to take steps to avoid these issues in future elections.

First, concerning Mobile County, your letter offered no solution for voters who were wrongly turned away or made to cast provisional ballots due to a mismatch between the address on their photo ID and the voter roll. We received reports that this occurred at St. Ignatius Marion Center, St. Joan of Arc Catholic Church, Three Circle Church Midtown, New Shiloh Missionary Baptist, and Creekwood Church of Christ, as well as precincts in Baldwin County. It is impossible for us to identify every voter who was affected by this misapplication of the Photo ID Law before Probate Judge Davis was informed of the issue. Further, although Judge Davis was contacted on Election Day, it is unclear whether or when he gave corrective instructions to these precincts. It is also not clear that those voters who were already affected were informed of the process for correcting the poll workers’ erroneous decision to provide provisional ballots.

To begin to address our concerns, we ask that you respond by no later than January 10 to indicate whether you will take steps to comply with our requests. We request an investigation into the extent to which poll workers were incorrectly requiring the address of voters to match their photo ID. We request that you make public the findings of this investigation and issue recommendations to avoid misapplication of the Photo ID Law in future elections.
Regarding the inactive voter list, problems related to this issue were widely reported in the press and by groups on the ground. Your letter, however, offered no recourse or information for how affected voters could have addressed this issue. Here too we request that the Secretary investigate why voters were wrongly turned away or directed to cast provisional ballots and address the misapplication of the inactive voter list procedures. After an investigation, we ask that you publicly issue your findings and recommendations to avoid this issue in future elections.

Finally, in our December 14 letter, we provided specific suggestions for how the Re-Identification Form should be revised to comply with the Voting Rights Act and National Voter Registration Act. Congress passed the Voting Rights Act to eliminate the practice of requesting immaterial or otherwise unnecessary information, such as “place of birth,” that Alabama had used to arbitrarily and discriminatorily disqualify eligible citizens from voting. To comply with the Voting Rights Act, the Re-Identification Form should not include any requests for information that is not needed to determine a voter’s eligibility. The Re-Identification Form should eliminate requests for a voter’s place of birth, driver’s license number, social security number, mailing address, race, and sex. Alternatively, the Re-Identification Form should clearly state that the requested immaterial information is not and cannot be used to determine a voter’s eligibility and that providing such information is therefore optional for the voter.

Your letter did not indicate whether probate judges and poll workers were requiring voters to provide this immaterial information before being given a regular ballot. We are happy to schedule a date to further discuss our suggestions and the legal authority cited herein.

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2 Schwier v. Cox, 340 F.3d 1284, 1294 (11th Cir. 2003); see also United States v. Atkins, 323 F.2d 733, 737 (5th Cir. 1963) (discussing Alabama’s discriminatory abuse of such voter registration requirements); Alabama v. United States, 304 F.2d 583, 588-87 (5th Cir.) aff’d per curiam, 371 U.S. 37 (1962) (same).

3 See Schwier v. Cox, 439 F.3d 1285, 1286 (11th Cir. 2006) (affirming the lower court’s finding that “Georgia cannot mandate disclosure of [Social Security Numbers] because such information is not ‘material’ to a voter registration system under [] the Voting Rights Act.”).
Regards,

Sherrilyn Ifill  
President and Director-Counsel  
NAACP Legal Defense and Educational Fund, Inc.

/s/ J. Mitch McGuire  
J. Mitch McGuire  
Managing Partner  
McGuire & Associates, LLC  
31 Clayton Street  
Montgomery, Alabama 36104  
Office: 334-517-1000  
Fax: 334-517-1327  
jmcguire@mandabusinesslaw.com