



November 2, 2018

By Email

Chairman Lynda Hairston
Madison County Board of Registrars
Charles Stone Agricultural Center
819 Cook Avenue, Suite 150
Huntsville, Alabama 35801
lhairston@madisoncountyal.gov

Re: Improper Obstacles to Registering to Vote for Students at Alabama A & M and Oakwood Universities

Dear Chairman Hairston:

As part of our efforts to ensure that all citizens can exercise the fundamental right to vote, the NAACP Legal Defense and Educational Fund, Inc. (LDF)¹ monitors voter registration issues around the country. It has come to our attention that many students at the historically Black institutions of Alabama Agricultural and Mechanical University (“Alabama A&M”) and Oakwood University have been experiencing a variety of troubling issues with registering to vote.² Based on our conversations with students and individuals involved in registering students as well as news reports, we have identified three major areas of concern relating to voter registration. We urge your office to act swiftly to correct these issues and comply with federal law, which requires you to eliminate discriminatory or arbitrary restrictions on the right to register to vote.

I. Students’ Voter Registration Applications Rejected for Immaterial Reasons

Over the past two months, many Black students at Alabama A&M and Oakwood University filled out registration forms and had them delivered to the Madison County registrar in

¹ Since its founding in 1940, LDF has been a pioneer in the struggle to secure and protect the civil rights of Black people and other people of color in Alabama and elsewhere. *See, e.g., Ala. Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257 (LDF as amicus in the successful challenge to a state legislative racial gerrymander); *Lewis v. Governor of Ala.*, 896 F.3d 1282 (11th Cir. 2018) (LDF as amicus in the successful appeal of a race-discrimination claim); *Stout v. Jefferson Cty. Bd. of Educ.*, 882 F. 3d 988 (11th Cir. 2018) (LDF successfully challenging an Alabama city’s attempt to form a nearly all-white splinter school district). LDF has been completely separate from the NAACP, and its state and local branches, since 1957.

² See Lee Roop & Paul Gattis, *Voter Suppression Concerns Surface in Huntsville as Election Nears, Alabama* (Oct. 31, 2018).



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person before the registration deadline. Many of those students, however, had their registrations rejected for reasons not material to ascertaining whether they are eligible to vote in the upcoming election.³ For example, some applications were reportedly rejected because students listed their dorm rooms on the first, rather than the second, address line on the voter registration form.

The Voting Rights Act (“VRA”), however, forbids you or anyone in your office from denying any individual the right to register because of errors immaterial to “determining whether [an] individual is qualified under State law to vote[.]”⁴ Because federal law requires the Madison County Board of Registrar to keep copies of all records relating to voter registration,⁵ we ask that you review all rejected voter registration forms submitted by students from Oakwood or Alabama A&M Universities over the past two months. If there are any forms that have been wrongly rejected for immaterial reasons, those applicants should be immediately registered to vote. While we have reason to believe that some students whose forms were rejected have reregistered to address immaterial errors, other students may not have taken this additional unnecessary step. We therefore urge you to take all efforts to ensure that all such students are registered and able to cast a regular ballot for this upcoming election. If, as part of this effort, any student’s status is changed to registered, those students should be notified of that status change.

II. Students Unlisted for Unclear Reasons

We also understand that some students who filled out registration forms and had them delivered to the Madison County Board of Registrars within the last two months have recently discovered that they have no record listed on the Alabama Votes official state website.⁶ We further understand that some of those students received no notification that there was anything defective about their registration application. It is unclear why no record of these students’ registration appears online. Again, we urge you to ensure that your office is complying with federal law requiring that “any eligible applicant is registered to vote[.]”⁷ If these students were not registered

³ As you know, United States citizens have the right to vote in Alabama if they are 18 years old, have resided in an Alabama county for a sufficient amount of time, have registered “as provided by law,” and have not been convicted of a felony involving moral turpitude or have been deemed mentally incompetent without the subsequent “restoration” of the right to vote. Ala. Const. art. VIII, § 177; Ala. Code § 17-3-30.

⁴ 52 U.S.C. § 10101(a)(2)(A) (“No person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election[.]”).

⁵ See 52 U.S.C. § 20507(i)(1) (“Each State shall maintain for at least two years and shall make available for public inspection . . . 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, except to the extent that such records relate to a declination to register to vote or to the identify of a voter registration agency through which any particular voter is registered.”); see also 52 U.S.C. § 20701.

⁶ See AlabamaVotes, <https://myinfo.alabamavotes.gov/VoterView/RegistrantSearch.do>.

⁷ 52 U.S.C. § 20507(a)(1).



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because your office deemed their applications defective in some way, your office was obligated by the National Voter Registration Act (“NVRA”) to notify the affected students “of the disposition of the[ir] application,” including the reason for the application’s rejection.⁸

It is imperative that your office investigate and correct these issues promptly. The right to vote is too important for Black students to be left in limbo, at this late date, regarding their eligibility.

III. Students Listed as Inactive Due to Return of Voter Registration Certificate

Many Black students at Oakwood and Alabama A&M who recently registered to vote were placed in “inactive” status by your office. As you know, inactive voters must complete an additional voter re-identification form before casting a regular ballot.

Our understanding is that your office is placing all newly registered voters on the inactive list if the postal service returns the voter’s registration certificate postcard to your office as undeliverable.⁹ It appears that you have decided that the return is evidence the student no longer resides at the address and that this justifies making the student an inactive voter. But we have been unable to find any authority in Alabama state law that would require your office to use the return of a newly registered voter’s registration certificate as a basis for placing that voter in inactive status. The disparate and arbitrary treatment of newly registered voters is thus inconsistent with both state law and basic principles of due process and equal protection under the United States Constitution.

Nor is there any basis to infer that a returned certificate means an Alabama A&M student no longer resides at the address provided on the voter registration form. Mail at Alabama A&M is delivered to a centralized post office, and then students can opt to have their mail forwarded to their dormitories. Many students choose this option, and there is therefore no reason for them to regularly check their mail at the post office. The postcards, however, were not forwarded to the students’ dorms. Given this mailing system, a returned postcard is not in any way indicative that a student no longer resides on the campus, and thus is not a basis to put the student on inactive status, especially given the recency of registration.

Worse, it appears that many—if not most—of these students were not informed of this change to their status, which, again, may violate the NVRA’s requirement that an applicant be informed of the “disposition of the application[.]”¹⁰ As a result, many students likely will not discover this issue until Election Day. This, coupled with the additional burden on “inactive”

⁸ *Id.* § 20507(a)(2).

⁹ *See* Roop & Gattis, *supra* note 3.

¹⁰ 52 U.S.C. § 20507(a)(2).



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voters to fill out a re-identification form, will place an obstacle in the path of not only the Black students who should not have had to re-identify at all but also every person at the polling place who will suffer from longer voting lines.

Each voter has a “constitutionally protected right to participate in elections *on an equal basis* with other citizens in the jurisdiction.”¹¹ Thus, “[h]aving once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another[.]”¹² By requiring a subset of voters to unnecessarily re-identify before voting, Madison County is unjustifiably subjecting students to arbitrary and disparate treatment in likely violation of the Fourteenth Amendment and the Twenty-Sixth Amendments.¹³ Because your office’s actions also primarily affect Black student voters, they may also violate the Fourteenth, Fifteenth, and Twenty-Sixth Amendments and the VRA. To avoid such violations, we respectfully request that you to take the simple step of reversing any inactive designations based on the return of these postal cards made in the last three months relating to applications from these universities.

The right to vote is fundamental and our most sacred civic right and responsibility. The Madison County Registrar’s Office is responsible for ensuring all voters have a fair and equal opportunity to exercise this right. In so doing, it is critical that you comply with the dictates of federal and state law. We urge you to continue your dialogue with the community and work out a way to resolve these issues without the need for litigation. Please respond in writing by the end of the day on November 2, 2018.

If you have any questions, please contact Daniel Harawa at 202-216-5563.

¹¹ *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 10 (1982); see also *Arcia v. Fla. Sec’y of State*, 772 F.3d 1335 (11th Cir. 2014); *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349 (11th Cir. 2005).

¹² *Curling v. Kemp*, No. 17-cv-2989, 2018 WL 4625653 (N.D. Ga. Sept. 17, 2018), at *15 (quoting *Bush v. Gore*, 531 U.S. 98, 104–05 (2000)).

¹³ *League of Women Voters of Fl. V. Detzner*, 314 F.Supp.3d 1205, 1217 (N.D. Fl. 2018); see also *Symm v. United States*, 439 U.S. 1105 (1979), *summarily aff’g*, *United States v. Texas*, 445 F. Supp. 1245 (S.D. Tex. 1978) (three-judge court).



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Sincerely,

A handwritten signature in blue ink, appearing to read "D Harawa".

Daniel Harawa, Assistant Counsel
Catherine Meza, Senior Counsel
Kerrel Murray, Appellate Litigation & Policy Fellow
NAACP LEGAL DEFENSE
& EDUCATIONAL FUND, INC.
700 14th St., NW, Suite 600
Washington, D.C. 20005

Sherrilyn Ifill, President & Director-Counsel
Janai S. Nelson, Associate Director-Counsel
Samuel Spital, Director of Litigation
Leah C. Aden, Deputy Director of Litigation
Deuel Ross, Assistant Counsel
NAACP LEGAL DEFENSE
& EDUCATIONAL FUND, INC.
40 Rector, 5th Fl.
New York, NY 10006

CC (by email): John Merrill, Alabama Secretary of State
Tommy Ragland, Madison County Probate Judge