



Sent Via Email

August 28, 2020

Hon. Brad Raffensperger
Georgia Secretary of State
214 State Capitol
Atlanta, Georgia 30334
Email: brad@sos.ga.gov

Re: Transferring Voter Registrations to Inactive Status Before the Election

Dear Secretary Raffensperger:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), All Voting Is Local Georgia, American Civil Liberties Union of Georgia, Georgia NAACP, and The Justice Collaborative, we are writing to urge you to refrain from transferring voters to inactive status until after the November 3, 2020 general election.

It has been reported that tens of thousands of Georgia voter registrations may be transferred to inactive status before the general election because absentee ballot applications mailed to them in the spring were returned as undeliverable.¹ It is critical that you refrain from taking this action until after the general election, at the earliest, for four main reasons. *First*, Georgia law may not permit this action to be taken now. *Second*, a significant portion of voters whose absentee ballot applications were returned as undeliverable are likely still active voters who intend to participate in the general election. *Third*, transferring voters to inactive status now would have unintended consequences for the general election. *Fourth*, even if the state is permitted to transfer voters to inactive status now, it is more efficient to postpone this action until after the general election.

¹ See Mark Niese, *Georgia voters to be made ‘inactive’ after absentee mail undeliverable*, The Atlanta Journal Constitution (Aug. 18, 2020) available at <https://www.ajc.com/politics/georgia-voters-to-be-made-inactive-after-absentee-mail-undeliverable/D7K5RATLZVGDHNBZXJE6EUSC6Y/>.

Georgia Law May Not Permit the State to Transfer Voters to Inactive Status Within 90 Days of the Election

Georgia law requires that all list maintenance activities—including transferring voters to the inactive list—must conclude no later than 90 days prior to a general election for federal offices.² Georgia carves out only one narrow exception to this rule: If mail sent to specific voters had been returned as undeliverable, the state may send confirmation notices to those voters within the 90-day period prior to the election.³ However, this narrow exception appears to *only* permit the mailing of confirmation notices, and does not permit the transfer of voters to the inactive list.⁴ Therefore, because we are currently within the 90-day period prior to the general election, transferring voters to the inactive list may not be permitted under Georgia law.

Moreover, even if we were not within the 90-day period prior to the election, there is nothing in Georgia law *requiring* the state to transfer voters to the inactive list now. Although Georgia law dictates that confirmation notices should be sent to any voters if mail is returned as undeliverable, the law does not dictate how quickly the state must take action after mail is returned as undeliverable.⁵ Similarly, although Georgia law requires electors to return confirmation notices within 30 days, the law does not dictate how quickly the state must act to transfer voters to the inactive list after a voter fails to return the confirmation notice within 30 days.⁶ Therefore, even if the state were not barred from transferring voters to the inactive voter list now, there is nothing in the law requiring this action to take place within any particular timeframe.

A Significant Portion of Voters Whose Absentee Ballot Applications Were Returned as Undeliverable Are Likely Still Active Voters Who Intend to Participate in the General Election

There are a wide range of circumstances that would result in the absentee ballot application mailing being returned as undeliverable, even though voters have not moved and have every intention of participating in the general election this November. For example:

² See Ga. Code § 21-2-234(i) (“List maintenance activities pursuant to this Code section and Code Section 21-2-233 shall be completed not later than 90 days prior to a general primary or general election for federal offices or a presidential preference primary.”).

³ The prohibition on list maintenance activities during the last 90 days “shall not apply to notices sent pursuant to subsection (b) of this Code Section.” *Id.*

⁴ This letter does not address whether the decision to transfer voters to the inactive list is barred on other grounds, including federal statutes or the United States or Georgia Constitutions.

⁵ See Ga. Code § 21-2-234(b).

⁶ See Ga. Code § 21-2-234(c).

- Mail may be returned as undeliverable because of typos in the voter registration database or other data entry errors.⁷
- Mail can be undeliverable due to USPS adjustments, including renumbering of houses, renaming of streets, or conversion from rural-style addresses to city-style addresses.⁸ This may be a particular problem in some of Georgia’s rural counties where voters may have used rural-style addresses, rather than city-style addresses, on their registration forms.
- Mail sent to voters whose residences differ from their mailing addresses may be particularly at risk of having mail returned as undeliverable.⁹ Although Georgia’s voter registration form asks voters to identify their mailing address if it is different from their residence,¹⁰ voters may inadvertently neglect to provide their mailing address or they may change their mailing address without changing their residence. In particular, some voters may have used a P.O. Box on their voter registration and have since changed boxes or failed to pay rent on their boxes.¹¹
- Mail may be returned as undeliverable if the voter does not live at a traditional address. Homeless individuals, who may only list a temporary address, are a prime example of this problem.
- Mail may be returned as undeliverable if the voter does not have a functional mailbox.¹²
- Mail may be returned as undeliverable if the voter is not listed on the mailbox of the address. Couples, roommates, or family members may list only one or two members of the residential unit

⁷ Moreover, address numbers and names may be mistyped or transposed, portions of address (including apartment numbers, house numbers, or directional indicators) may be dropped, or addresses may simply be entered incorrectly.

⁸ See United States Postal Service, *507 Mailer Services*, available at <https://pe.usps.com/text/dmm300/507.htm> (“Mail can be undeliverable because of USPS adjustments such as the following: a. Renumbering of houses. b. Renaming of streets. c. Conversion from rural-style addresses (rural route and box number or highway contract route and box number) to city-style addresses (house number and street name). d. Realignment of rural or highway contract routes. e. Conversion from rural or highway contract service to city delivery service. f. Consolidation of routes. g. Consolidation of Post Offices or adjustment of delivery districts.”).

⁹ In fact, the absentee ballot application mailed to voters in the spring was erroneously sent to residence addresses for about 323,000 voters who had listed P.O. Boxes as their mailing addresses on their voter registration forms. See Sarah Kallis, *Georgia to mail out 323,000 new absentee ballot request forms*, Atlanta Journal-Constitution (Apr. 30, 2020) available at <https://www.ajc.com/news/state--regional-govt--politics/georgia-mail-out-323-000-new-absentee-ballot-request-forms/bWgargMOEMBLLYNwxOdbML/>. These applications were returned as undeliverable and new applications had to be mailed to those voters. The Secretary of State should ensure that the 323,000 voters whose absentee ballot applications were returned as undeliverable only because the application was erroneously sent to their residential address rather than their mailing address are not at risk of being transferred to inactive status.

¹⁰ See Georgia Application for Voter Registration, available at https://sos.ga.gov/admin/files/GA_VR_APP_2019.pdf.

¹¹ See United States Postal Service, *507 Mailer Services*, available at <https://pe.usps.com/text/dmm300/507.htm> (mail is undeliverable if “[p]ost office box closed for nonpayment of rent.”).

¹² See United States Postal Service, *507 Mailer Services*, available at <https://pe.usps.com/text/dmm300/507.htm> (mail is undeliverable if “[a]ddressee failed to provide a receptacle for receipt of mail.”).

on the mailbox. Particularly when the unlisted members of the unit do not share the same surname, the postal delivery person may presume that the individual does not live at the listed address.

- A voter has the right to refuse to accept mail, in which case it will be returned as undeliverable.¹³

As a result, a decision to transfer voters to inactive status, based on the absentee ballot application being returned as undeliverable, would likely affect a significant number of voters who have not moved and intend to participate in the general election this year. Moreover, we are concerned that these risk factors will disproportionately affect Black, Latinx, and low-income communities.

Transferring Voters to Inactive Status Now Would Have Unintended Adverse Consequences for the General Election

A significant number of eligible and registered Georgia voters who would be transferred to the inactive list are likely to nonetheless vote in the general election. This would have at least two significant unintended adverse consequences.

First, the quantities of election materials that registrars must prepare for election day—including the number of voting devices,¹⁴ the number of ballots,¹⁵ and the number of voting booths or enclosures¹⁶—are calculated based on the number of *active* electors. Therefore, transferring voters to inactive status creates a risk that registrars may not have sufficient ballots and other equipment on election day. This risk is especially concerning in light of the fact that many Georgia poll sites experienced shortages of devices and ballots in the June 9, 2020 primary election.¹⁷ Transferring voters to the inactive list before the general election—notwithstanding the possibility that many of them will participate in that election—only further increases the risk that many poll sites will lack adequate ballots and materials.

¹³ See United States Postal Service, *508 Recipient Services*, available at <https://pe.usps.com/text/dmm300/508.htm> (“The addressee may refuse to accept a mailpiece when it is offered for delivery.”)

¹⁴ See Ga. Code § 21-2-235(a) (“Notwithstanding any other provision of law to the contrary, the names of electors on the inactive list of electors shall not be counted in computing the number of ballots required for an election, the number of voting devices needed for a precinct, the number of electors required to divide or constitute a precinct, or the number of signatures needed on any petition.”).

¹⁵ *Id.*; see also G.A. Code § 21-2-290 (“The superintendent shall provide, for each precinct in which a primary or election is to be held, a sufficient number of ballots equal to the number of active registered electors.”).

¹⁶ See Ga. Code § 21-2-367(b) (“In each precinct in which optical scanning voting systems are used, the county or municipal governing authority, as appropriate, shall provide at least one voting booth or enclosure for each 250 electors therein, or fraction thereof.”).

¹⁷ Pam Fessler, *Chaos In Primary Elections Raises Fears For November*, NPR (June 15, 2020), available at <https://www.npr.org/2020/06/15/876474124/chaos-in-primary-elections-raises-fears-for-november>; Danny Hakim, Reid Epstein, and Stephanie Saul, *Anatomy of an Election ‘Meltdown’ in Georgia*, *The New York Times* (July 25, 2020) available at <https://www.nytimes.com/2020/07/25/us/politics/georgia-election-voting-problems.html>.

Second, the state and registrars often send mailings only to active voters.¹⁸ Therefore, transferring voters to inactive status creates a possibility that these voters would not receive critical election communications or other informational materials. To the extent registrars disseminate information on in-person voting only to active voters (such as poll site changes and early voting dates and times), voters transferred to the inactive list would be excluded and may attempt to vote at an incorrect location or time. To the extent registrars disseminate information on absentee voting only to active voters (such as absentee ballot applications), voters transferred to the inactive list may miss their opportunity to vote by absentee ballot and may be forced to vote in person, resulting in longer lines for everyone.

It is More Efficient to Postpone this Action Until After the General Election

Many of the voters whose mail was returned as undeliverable are likely active voters who intend to participate in the general election. Therefore, rather than transferring these voters to inactive status now, it is more efficient to wait to take any action until after November 3, 2020. If these voters participate, there is no need to transfer them to inactive status.

Moreover, this is an especially concerning time to impose additional administrative burdens on election officials, who are currently working hard to prepare for the upcoming election, including processing new registrations, identifying and finalizing polling locations, preparing voting materials, recruiting and training poll workers, and navigating the unprecedented logistical challenges imposed by the COVID-19 pandemic. This project would distract election officials from more urgent and important tasks, and without the time to exercise due care, the process of transferring tens of thousands of registrations to inactive status is prone to mistakes or data entry errors. Therefore, we urge you to delay this action until after the November election.

We ask that you respond by September 9, 2020. In addition, if you have questions or would like to discuss these issues in the meantime, please contact Aklima Khondoker by email at aklima@allvotingislocal.org or telephone at (678) 628-8298.

¹⁸ For example, the absentee ballot application was only sent to active voters, and not inactive voters. See Mark Niese, *Online absentee ballot applications approved for Georgia voters*, The Atlanta Journal-Constitution (Aug. 10, 2020), available at <https://www.ajc.com/politics/online-absentee-ballot-applications-approved-for-georgia-voters/V7IZNIOGXNANLAVIAXNRZFT43A/>. Georgia law obligates registrars to provide reasonable notice to active electors of the availability of early voting options, but registrars have discretion as to whether to include inactive voters in those communications. See Ga. Code § 21-2-385.

Sincerely,

/s Aklima Khondoker

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All Voting is Local

All Voting is Local fights to eliminate needless and discriminatory barriers to voting through advocacy, coalition partnership, and outreach. It is a collaborative campaign housed at The Leadership Conference Education Fund, the education and research arm of the Leadership Conference on Civil and Human Rights, the nation's oldest and largest civil and human rights coalition of more than 200 national organizations. We are dedicated to building public will for laws and policies that promote and protect voting rights.

The American Civil Liberties Union Foundation of Georgia ("ACLU-GA")

The ACLU of Georgia envisions a state that guarantees all persons the civil liberties and rights contained in the United States and Georgia Constitutions and Bill of Rights. ACLU-GA enhances and defends the civil liberties and rights of all Georgians through legal action, legislative and community advocacy, and civic education and engagement. We are an inclusive, nonpartisan, and statewide organization powered by our members, donors and active volunteers.

NAACP Legal Defense and Educational Fund, Inc. ("LDF")

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that prohibit voter discrimination, intimidation, and suppression and increase access to the electoral process.

Georgia NAACP

The Georgia National Association for the Advancement of Colored People (NAACP) has had an unbroken presence in Georgia since 1917. The Georgia NAACP maintains a network of branches throughout Georgia, from cities to small rural counties. The Georgia NAACP has been the most effective and consistent advocates for African American civil rights in Georgia.

The Justice Collaborative

The Justice Collaborative supplies deep legal, policy, communications, and networking support to visionary leaders and organizations working to end dehumanization and extreme vulnerability and build

in their place a society with dignity and freedom for all of us, starting with those who are the most vulnerable.