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Dear Secretary Benson and Director Brater:

As you are aware, the National Voter Registration Act (“NVRA”) requires states to maintain clean and accurate voter registration records. Based on our analysis, 19 Michigan counties appear to be in violation of Section 8 of the NVRA. By comparing publicly available voter registration records with the U.S. Census Bureau’s 2013-2017 American Community Survey of citizen voting age population, we have determined that one county, Leelanau, has more registered voters than adult citizens over the age of 18. Furthermore, we have identified 18 counties—Allegan, Antrim, Barry, Benzie, Charlevoix, Cheboygan, Emmet, Grand Traverse, Iosco, Kalkaska, Kent, Keweenaw, Livingston, Mackinac, Oakland, Otsego, Roscommon, and Washtenaw—that have voter registration rates that exceed 90 percent of adult citizens over the age of 18, a figure that far eclipses the voter registration rate nationwide in recent elections. This evidence strongly suggests that these counties are not conducting appropriate list maintenance as required by federal law.

Congress enacted the NVRA “to protect the integrity of the electoral process.” 52 U.S.C. § 20501(b)(3). Specifically, it enacted Section 8 “to ensure that accurate and current voter registration rolls are maintained.” 52 U.S.C. § 20501(b)(4). Retaining voter rolls bloated with ineligible voters harms the electoral process, heightens the risk of electoral fraud, and undermines public confidence in elections. After all, “[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam). Section 8 obligates states to “conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters” due to death or change of residence. 52 U.S.C. § 20507(a)(4). And as the U.S. Supreme Court has recently confirmed, “federal law makes this removal mandatory.” *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833, 1842 (2018).

This letter provides statutory notice that Tony Daunt, acting as a registered Michigan voter with a substantial interest in secure elections, will bring a lawsuit against you and, if appropriate, against the counties named in this letter, if you fail to take specific actions to correct these violations of Section 8 within the 90-day timeframe specified in federal law. Furthermore, while we hope to avoid litigation, we nonetheless formally request that you and the 19 counties named in this letter, to the extent that they maintain separate records, take steps to preserve documents as required by Section 8(i) of the NVRA. 52 U.S.C. § 20507(i)(1)-(2).

As the Secretary of State and Director of Elections, you are responsible for coordinating the required statewide list maintenance under the NVRA. The NVRA requires each state to “designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under” the law. 52 U.S.C. § 20509. Michigan law designates the Secretary of State as the state’s chief election officer, Mich. Comp. Laws Ann. § 168.21, and instructs the Director of Elections to “perform the duties of the secretary of state under his or her supervision, with respect to the supervision and administration of the election laws.” *Id.* at § 168.32. This letter explains how we concluded that Michigan and the 19 named counties are violating Section 8 of the NVRA, and the curative steps needed to bring the state into compliance with the law and avoid litigation.

I. The NVRA Protects Election Integrity by Requiring Reasonable Efforts Be Made to Maintain Accurate and Current Lists of Registered Voters.

Michigan’s voter registration list maintenance program must be “uniform, non-discriminatory, and in compliance with the Voting Rights Act.” 52 U.S.C. § 20507(b)(1). Section 8 requires that states “remove the names of ineligible voters from the official lists of eligible voters by reason of (A) the death of the registrant; or (B) a change in the residence of the registrant” to outside of his or her current voting jurisdiction. 52 U.S.C. § 20507(4)(A)-(B).

Additionally, the Help America Vote Act (“HAVA”) mandates that states adopt computerized statewide voter registration lists and maintain them “on a regular basis” in accordance with the NVRA. 52 U.S.C. § 21083(a)(2)(A). States must “ensure that voter registration records in the State are accurate and are updated regularly,” a process which must include making a “reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.” 52 U.S.C. § 21083(a)(4). HAVA’s list maintenance mandates include coordination with “State agency records on death” and “State agency records on felony status” to facilitate the removal of individuals who are deceased or rendered ineligible under state law due to felony conviction. 52 U.S.C. § 21083(a)(2)(A)(ii)(I)-(II).

As the chief election officials for Michigan, the responsibility rests with you to coordinate and oversee the list maintenance activities of local and county election officials. *See, e.g., Scott v. Schedler*, 771 F.3d 831, 839 (5th Cir. 2014) (noting that “the NVRA’s centralization of responsibility counsels against . . . buck passing”); *U.S. v. Missouri*, 535 F.3d 844, 850 (8th Cir. 2008) (noting that a state or chief election official “may not delegate the responsibility to

conduct a general program to a local official and thereby avoid responsibility if such a program is not reasonably conducted”).

II. One Michigan County Has More Registered Voters Than Voting-Eligible Citizens; 18 Others Have Suspiciously High Rates of Voter Registration.

Based on data gathered from the U.S. Census Bureau’s 2013-2017 American Community Survey and the most up-to-date count of registered voters available from the Secretary of State’s office, Michigan appears to be failing to meet its list maintenance obligations. Comparing the registered voter count to the 2013-2017 American Community Survey reveals that Leelanau County has a registration rate of 103%. In other words, there are more registered voters than eligible voters. This plainly shows that voter registration records are not being maintained. Meanwhile, 18 other counties across the state—Allegan (90.2%), Antrim (98.1%), Barry (90.1%), Benzie (98.3%), Charlevoix (94.9%), Cheboygan (90.6%), Emmet (98%), Grand Traverse (95.9%), Iosco (90.3%), Kalkaska (94.2%), Kent (90.7%), Keweenaw (92.9%), Livingston (95%), Mackinac (92.6%), Oakland (93.6%), Otsego (94.3%), Roscommon (90.8%), and Washtenaw (92.4%)—purport to have more than 90% (in some cases, approaching 100%) of their citizen voting-age populations registered to vote.

These voter registration rates are abnormally, or in the case of Leelanau, impossibly, high. This constitutes strong evidence that Michigan’s voter rolls are not being properly maintained. According to the U.S. Census Bureau, only 66.9% of the citizen voting-age population was registered nationwide in the November 2018 election. *See* U.S. Census Bureau, Voting and Registration in the Election of November 2018, Table 4a, Reported Voting and Registration, for States: November 2018, bit.ly/2T52i3U. Similarly, only 70.3% of the citizen voting-age population was registered in the November 2016 election. *See* U.S. Census Bureau, Voting and Registration in the Election of November 2016, Table 4a, Reported Voting and Registration, for States: November 2016, bit.ly/32mKNyZ; *see also* U.S. Census Bureau, Historical Reported Voting Rates, Table A-3b, Reported Voting and Registration for Total and Citizen Voting-age Population by State: Congressional Elections 1974 to 2018, bit.ly/2vf1cJz. The U.S. Census Bureau further reported Michigan’s statewide voter registration rates for the 2018 and 2016 elections were 73.4% and 74.1% of the citizen voting-age population, respectively. *Id.* Thus, these 19 counties are significant outliers, touting voter registration rates 20 to 30 percentage points higher than the national figures from 2018 and 2016, and 15 to 25 percentage points higher than the state figures for the same period. Discrepancies on this scale almost certainly cannot be attributed to above-average voter participation, but instead point to deficient list maintenance.

Michigan’s failure to provide accurate voter rolls violates federal law, jeopardizes the integrity of the upcoming 2020 federal election, and signals to voters that elections in Michigan are not being properly safeguarded.

III. Avoiding Litigation

The NVRA includes a private right of action, empowering any “person who is aggrieved by a violation” of the statute to bring a civil action in federal district court for

declaratory or injunctive relief. 52 U.S.C. § 20510(b)(1)-(2). If the violations we have identified are not corrected within 90 days of receipt of this letter, we will have no choice but to file a lawsuit. *See* 52 U.S.C. § 20510(b)(2).

We hope to avoid litigation and would welcome immediate efforts by your office to bring Michigan into compliance with Section 8. We ask that you establish, if one has not already been initiated, a comprehensive and nondiscriminatory list maintenance program in compliance with federal law. Specifically, this program must identify and remove the following categories of individuals from the official lists of eligible voters:

1. All persons who are ineligible to vote by reason of a change in residence;
2. Deceased individuals;
3. Persons who are presently incarcerated;
4. All other ineligible voters.

We also ask that you, and should they wish to respond separately, each named county, respond in writing within 45 days of the date of this letter. This response should fully describe the efforts, policies, and programs you are taking, or plan to undertake prior to the 2020 general election to bring Michigan into compliance with Section 8. This response should also note when you plan to begin and complete each specified measure and the results of any programs or activities you have already undertaken. We also ask you to advise us what policies are presently in place, or will be put in place, to ensure effective and routine coordination of list maintenance activities with the federal, state, and local entities outlined below. Finally, we seek a description of the specific steps you intend to take to ensure routine and effective list maintenance on a continuing basis beyond the 2020 election. In order to avoid litigation, we may seek certain reasonable assurances that you will affirmatively undertake these efforts, up to and including the execution of a settlement agreement.

Should you refuse to comply with Section 8 and thus necessitate legal action, you should be aware that the NVRA authorizes courts to award “reasonable attorney fees, including litigation expenses, and costs” to the prevailing party. 52 U.S.C. § 20510(c). Therefore, if litigation ensues, you risk bearing the financial burden of the full cost of the litigation.

IV. Preservation of Records

We further ask that you take steps to preserve certain records as required under the NVRA, should they be needed in the future or for possible litigation. 52 U.S.C. § 20507(i). These documents and records include, but are not limited to:

1. A copy of the most recent voter registration database for the state of Michigan and for each named county, including pertinent information on each voter (name, date of birth, home address, voter activity, and active or inactive status);
2. Internal communications and emails of the Michigan Secretary of State’s office, the Bureau of Elections, and any divisions, bureaus, offices, third party agents, and contractors (collectively the “Secretary of State”) relating to voter list maintenance;

3. All emails or other communications between the Secretary of State and county elections officials concerning their list maintenance activities, their duties to maintain accurate and current lists, and any consequences arising from a failure to do so;
4. All email or other communications between the Secretary of State and any state or federal offices and agencies, in which the Secretary of State seeks or obtains information about registered voters who have moved, been convicted and imprisoned, died, or are otherwise ineligible, for use in list maintenance activities; and
5. All email or other communications between the Secretary of State and any other state, as well as email and communications with the Interstate Voter Registration Cross-Check Program, the Electronic Registration Information Center, the American Association of Motor Vehicle Authorities, and the National Association for Public Health Statistics and Information Systems, regarding obtaining information about voters who are deceased or who have moved for use in list maintenance activities.

We look forward to working with you in a productive fashion to ensure the accuracy and currency of Michigan's voter rolls and to protect the integrity of its voting process. While we hope to avoid litigation, if we do not receive the requested response, and if Michigan fails to take the necessary curative steps to resolve the issues identified in this letter, you will be subject to a lawsuit seeking declaratory and injunctive relief.

We look forward to your response.

Sincerely,

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