

**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 FUND OF MICHIGAN,
as an organization and representative of its
members, AMERICAN CIVIL LIBERTIES
UNION OF MICHIGAN, as an organization and
representative of its members,

Case No.

Hon.

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.

_____ /

COMPLAINT

Plaintiffs United States Student Association Foundation, American Civil Liberties Union Fund of Michigan and American Civil Liberties Union of Michigan (together, “Plaintiffs”), through their undersigned attorneys, for their Complaint against Defendants Terri Lynn Land, Michigan Secretary of State, Christopher M. Thomas, Michigan Director of Elections, and Frances McMullan, City Clerk for the City of Ypsilanti, Michigan, in their official capacities, state as follows:

SUMMARY OF ACTION

1. This is an action seeking an injunctive order prohibiting the Michigan Secretary of State, Michigan Director of Elections and the City Clerk for the City of Ypsilanti,

Michigan from engaging in actions which violate both federal and state laws protecting the rights of Michigan residents to vote. Through two separate policies and practices employed by the Michigan Department of State, thousands of voters have been, and will continue to be improperly disfranchised in Michigan. In violation of State and Federal law, Defendants are immediately cancelling voters' registrations and removing their names from the eligible voting lists. Additionally, contrary to federal law, Defendants are rejecting voter's registrations upon notice that original voter identification cards have been returned as undeliverable. Intervention by this Court is necessary to preserve for Michigan residents their fundamental right as citizens of Michigan and the United States to vote in the November election. Absent the requested injunctive relief, qualified Michigan voters will be disfranchised and prevented from voting in the November 4, 2008 election.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff United States Student Association Foundation ("USSA") is a nonprofit corporation organized under the laws of the District of Columbia. It was founded in 1947 and is the country's oldest and largest national student-led organization. USSA develops current and future leaders and amplifies the student voice at the local, state, and national levels through grassroots mobilization efforts, and is dedicated to training, organizing, and developing a base of student leaders who are utilizing those skills to engage in expanding access to higher education and advancing the broader movement for social justice. A cornerstone of USSA's activities is "helping students make their voice heard at the ballot box," including through non-partisan voter registration drives. In that regard, USSA's national electoral project focuses on building strong peer-to-peer student electoral coalitions and maximizing voter turnout among college populations. USSA employs a statewide field organizer in Michigan whose duties

include organizing voter registration and get-out-the-vote (“GOTV”) activities at Michigan colleges and universities.

3. Plaintiffs ACLU Fund of Michigan (“ACLU Fund”) and ACLU of Michigan (“ACLU of Michigan”) are nonprofit organizations that engage in public education and lobbying about civil rights and civil liberties in the state of Michigan. The ACLU of Michigan has approximately 15,000 members with approximately 6,000 members located within the Eastern District of Michigan, most of whom are registered voters. Members of the ACLU of Michigan support its mission which is to protect and defend civil liberties. As such, members are civic activists with a strong interest in voting, efficient and fair elections, and equal access to the ballot. The ACLU Fund is extensively involved in a variety of voter empowerment initiatives throughout Michigan, including voter education, collection and analysis of voting irregularities, advocacy for positive election reform, and – when necessary – litigation to ensure the protection of voters’ rights under the law. The ACLU of Michigan is likewise dedicated to equal protection of the laws, including issues of racial justice and equality. The ACLU Fund and the ACLU of Michigan are both headquartered at 2966 Woodward Avenue, Detroit, MI 48201.

4. Defendant Terri Lynn Land (“Land”) is sued in her official capacity as Secretary of State of the State of Michigan. Her official residence is at Treasury Building, 1st Floor, 430 West Allegan, Lansing, MI 48918. In her capacity as Secretary of State, Defendant Land is the chief election officer of the state and has supervisory control over local election officials. Mich. Comp. Laws § 168.21. She is responsible for administering all statewide elections; for issuing instructions and promulgating rules for the conduct of elections; for publishing manuals of instructions on election administration for use at polling places; for prescribing uniform forms, notices, and supplies for use in the conduct of elections and

regulations; and for training and instructing township, city, and village clerks with respect to election administration, among other things. *Id.* § 168.31. She is also responsible for coordinating the requirements of Michigan election law and federal law, including the Help America Vote Act of 2002 and National Voter Registration Act of 1993. *Id.* § 168.509n. In addition, she is charged with establishing and maintaining a statewide qualified voter file, as well as a computer system that allows each county, city, township, or village access to that file. *Id.* § 169.509r(1).

5. Defendant Christopher M. Thomas (“Thomas”) is sued in his official capacity as Director of Elections in the State of Michigan. His official residence is at Treasury Building, 1st Floor, 430 West Allegan, Lansing, MI 48918. Defendant Thomas is vested with the powers of the Secretary of State with respect to elections and is responsible for the supervision and administration of the election laws, under the supervision of the Secretary of State. *Id.* § 168.31.

6. Defendant Frances McMullan (“McMullan”) is sued in her official capacity as the City Clerk for the City of Ypsilanti, Michigan. Her official residence is at City Hall – First Floor, One South Huron Street, Ypsilanti, MI 48197. In her capacity as City Clerk, Defendant McMullan is responsible for receiving and processing voter registration applications for residents of the City of Ypsilanti; preparing and transmitting the required disposition notices related to such applications; and keeping all original records relating to each registered elector in the City of Ypsilanti. MCL §§ 168.497, 168.499, 168.500b, 168.500c. Specifically, Defendant McMullan is also the official charged by Michigan law with the responsibility of removing newly registered Ypsilanti voters from the rolls whenever their original voter identification cards are returned by the post office as undeliverable. MCL §§ 168.499(3), 168.500c.

7. The claims set forth in this Complaint are brought against both Land, Thomas and McMullan (collectively referred to as “Defendants”) in their official capacities.

8. This Court has jurisdiction of this controversy pursuant to 28 U.S.C. § 1331 and § 1343(3) and (4). Supplemental jurisdiction over Count III is appropriate under 28 U.S.C. § 1367.

9. This Court is the proper venue for adjudication of this dispute pursuant to 28 U.S.C. § 1391(b)(1) and (2).

COMMON ALLEGATIONS

Michigan Voter Registration Procedure

10. Under Michigan’s Election Law, “[a]n elector entitled to registration in an election precinct may become registered in the precinct by applying in person and signing the registration application before the clerk or assistant clerk of the township, city, or village in which the precinct is located.” MCL § 168.499(1).

11. Michigan also allows voters to register by mail, or in person at the county clerk’s office or any Secretary of State branch office.

12. To be eligible to register to vote in Michigan, a person must be a United States citizen and, by the time of the next election following registration, must be at least 18 years of age; a resident of Michigan for at least 30 days; and a resident of the city, township, or village in which he seeks to be registered. MCL § 168.491.

13. Under Michigan’s Election Law and the National Voter Registration Act of 1993, 42 U.S.C. §§ 1973gg et seq. (“NVRA”), a qualified Michigan citizen may to register to vote in a number of ways. She may register in person before the clerk of the county, city, township, or village where she resides; or at a Secretary of State branch office, a public

assistance agency, an armed forces recruitment center, or a number of other designated state, federal, and nongovernmental agencies. 42 U.S.C. §§ 1973gg-2, 1973gg-3, 1973gg-5; MCL §§ 168.492, 168.499, 168.500a, 168.509u.

14. The NVRA and Michigan law also allow voters to register by mail. 42 U.S.C. § 1973gg-4; MCL § 168.509t, 168.509u.

15. Regardless of which method of registration a person chooses, Section 8 of the NVRA requires Michigan's election officials to "insure that any eligible applicant is registered to vote in an election" whenever a valid voter registration form is received or postmarked on or prior to 30 days before the date of the election. 42 U.S.C. § 1973gg-6(a)(1).

16. Section 8 also requires Michigan's election officials "to send notice to the applicant of the disposition of the application," 42 U.S.C. § 1973gg-6(a)(2), and prohibits election officials from removing any registered voter from the rolls except at the request of the registrant, the death of the registrant, or pursuant to the confirmation of registration procedures set forth in subsections (b), (c), and (d) of Section 8. 42 U.S.C. § 1973gg-6(a)(3) and (4).

17. Section 303(a) of the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. § 15483(a), mandated that all states develop and maintain a single, uniform computerized voter registration database for administration of all federal elections by January 1, 2006.

18. Michigan has maintained a statewide voter registration database, known as the Qualified Voter File (the "QVF"), since the 1998 election cycle.

19. The QVF links local election officials throughout the state to a fully automated, interactive statewide voter registration database.

20. Information from the voter's registration form is used to populate Michigan's Qualified Voter File (the "QVF"), which was first placed into operation for the 1998

election cycle, links election officials throughout the state to a fully automated, interactive statewide voter registration database.

21. The QVF was established by and is maintained by the Michigan Secretary of State. Data entry procedures for the QVF are described in the Secretary of State's Voter Registration Module.

22. Upon information and belief, Defendants instruct their employees and agents to adhere to the procedures set forth in the Voter Registration Module, and Defendants' employees and agents do, in fact, adhere to such procedures.

23. In order to add a Michigan voter to the QVF, the responsible clerk first searches to ensure that the voter's information does not already exist in the QVF, then enters the voter's name, birth date, address and other relevant information on the "Voter Registration" screen.

24. Once the voter's name is entered into the QVF, the voter may check his registration status online at the Michigan Department of State's Michigan Information Center.

25. Once the voter's information is entered into the QVF, the clerk can use the QVF system to create and print a voter identification card.

26. The voter ID card may be printed immediately, or saved in a "local report queue" for later batch printing.

27. A voter does not need to present a voter ID card in order to vote.

28. As long as the voter's information is in the QVF, even if a voter identification card is not sent out, the voter is directed to a webpage that states: "Yes, You Are Registered!"

29. A person who appears to vote at an election and whose name appears in the QVF is considered a registered voter under the Michigan Election Law. MCL 168.509o(2).

30. A voter in the QVF is assigned one of five statuses: Active, Verify, Challenged, Canceled or Rejected. The default status is Active; in order to assign any other status, a specific reason must be checked off on the Change Status screen.

31. Voters having Active, Verify and Challenged status all appear on the relevant precinct voting lists; however, poll workers must obtain or verify voter information from Verify and Challenged status voters before issuing a ballot.

32. Pursuant to the NVRA, a voter may not be removed from the voters list unless (1) the voter has requested removal; (2) state law requires removal by reason of criminal conviction or mental capacity; (3) the voter has confirmed in writing that he has moved outside the jurisdiction maintaining the specific voter list, or (4) the voter both (a) has failed to respond to a cancellation notice issued pursuant to the NVRA *and* (b) has not voted or appeared to vote in the two federal general elections following the date of notice.

Michigan's Differing Procedure Upon Return of Undeliverable Voter Identification Cards

33. Section 8(a)(1) of the NVRA imposes an obligation upon states to register qualified voters immediately upon receipt of their properly completed voter registration forms. 42 U.S.C. § 1973gg-6(a)(1).

34. Section 8(a)(2), in turn, obligates states to send voters a disposition notice concerning their registration. 42 U.S.C. § 19733gg-6(a)(2).

35. Section 8(a)(3) prohibits states from removing voters from the rolls, except for reasons specified in the statute.

36. Michigan's Election Law requires city and township clerks to issue a voter identification card to any applicant that the clerk determines to be qualified to vote, based on the applicant's completed voter registration application. MCL §§ 168.499(3), 168.500c.

37. After the voter's identification card is generated, it is forwarded to the voter by first-class mail. MCL 5168.499(3).

38. However, the Michigan statute also provides that if the elector's *original* voter identification card is returned as undeliverable, "the clerk shall reject the registration and send the individual a notice of rejection," MCL § 168.499(3); that the returned original ID card is to be attached to the voter's completed registration application, MCL § 168.500c; and that "the person shall be deemed not registered," MCL § 168.500c (the "Cancellation Procedure").

39. Thus, under this statutory provision, the voter who has completed an application, whose name has been added to the QVF, and who has been told by the Secretary of State: "Yes, You Are Registered!" is deemed not registered and removed from the voting rolls.

40. Upon information and belief, Defendants adhere to this procedure.

41. While this procedure would prevent a voter from identifying a fraudulent name or address, it also serves to disfranchise qualified voters whose cards are returned as undeliverable due to postal error, clerical error, inadvertent routing within a multi unit dwelling, and even simple misspelling or transposition of numbers in an address.

42. If a voter's *duplicate* voter identification card is returned as undeliverable, Michigan law instructs the local clerks to "accept this as information that the elector has moved and . . . proceed in conformity with section 509aa," which is Michigan's counterpart to Section 8(d) of the National Voter Registration Act ("NVRA"), 42 U.S.C. 1973gg *et seq.* MCL 168.499(3).

43. If the confirmation of registration notice sent out pursuant to MCL § 509aa is likewise returned as undeliverable, the clerk is instructed to mark the voter's registration record as "challenged," which triggers an obligation on the poll worker to inquire further into the voter's qualifications when he or she appears to vote, but still provides the voter the opportunity to cast a ballot. *Id.*

The Defendants' Immediate Purging of Voters Who Are Presumed to Have Changed Residence Due to Information that the Voter Has Applied for an Out of State Driver's License

44. Michigan's Election Law contains several sections addressing protocol related to registered voters who change residence.

45. The Voter Registration Module instructs that, whenever a clerk receives "reliable information" that a registered voter has moved to another jurisdiction, the voter's status is changed to "Verify," and a precinct list code is added to alert poll workers to verify the voter's residence in the jurisdiction before issuing a ballot.

46. The clerk also generates and sends out a Confirmation Notice of Cancellation ("Notice") to the voter.

47. If the Notice is returned as undeliverable, the voter's status is changed "Challenge - Residency."

48. The voter's status will be changed to "Cancel" on the QVF only if the voter confirms that he has moved out of the jurisdiction or there has been no response from the voter after the second November General Election held in even numbered years after the Notice was sent.

49. This procedure is required by both the National Voter Registration Act of 1993 and state law. See MCL §168.509aa; see also 42 U.S.C. §1973gg-6.

50. While mandated by these statutes, however, this procedure is not followed under circumstances where the Defendants receive notice from a cooperating state motor vehicle licensing bureau that an individual has surrendered his or her Michigan driver's license and applied for a driver's license in another state.

51. Upon receipt of such information, the voter's registration is immediately cancelled and the voter's name is removed from the precinct list (the "Purging Procedure").

52. The Department further instructs the local city or township clerk to issue a "30-Day Notice of Cancellation (Out of State)" ("30-Day Notice") to the affected voters.

53. The 30-Day Notice specifically informs the affected individuals that their registration will be canceled in 30 days unless they return the postage-paid return card attached to the 30-Day Notice.

54. The 30-Day Notice does not inform affected voters that their names have *already* been removed from the precinct voter rolls and that – unless their status is returned to "Active" – they are *already* unable to vote.

55. To return to "Active" status, a voter must affirmatively notify the state within 30 days that he or she wishes to remain registered to vote in Michigan.

56. Plaintiffs' members, for various reasons, may procure a driver's license in a state other than Michigan while intending to maintain their Michigan residency. Students who spend eight or nine months per year at an out-of-state college, or citizens who spend several months per year in a warmer climate often elect to obtain an out-of-state driver's license while maintaining their Michigan residency. Indeed, some states require individuals who are in state for a certain period or who take certain actions obtain an in-state driver's license even if their permanent residence remains in Michigan. See, e.g., Ohio Bureau of Motor Vehicles, How to

Obtain an Ohio Driver License, Vehicle Registration, License Plates & Ohio Title, available at http://www.bmv.ohio.gov/misc/new_resident.htm (stating Ohio requirement that persons who have, among other things, signed a lease or taken a job in Ohio must obtain an Ohio driver's license "as soon as possible"); Wisconsin Department of Transportation, Drivers & Vehicles: Non-Residents, available at <http://www.dot.wisconsin.gov/drivers/drivers/apply/nonreside/index.htm> (Wisconsin license must be obtained within 60 days).

57. As discussed below, these voters are being improperly and illegally disfranchised through the Defendants' practice of immediately cancelling their voter registrations (the "Immediate Purging Practice").

58. According to the Departments' estimates, it cancels the registration of over 280,000 voters per year through this procedure.

The Defendants' Position and Stated Intent to Maintain the Present Procedure

59. The next general election will be held on November 4, 2008, and presents the opportunity for Plaintiffs' members to select individuals for national, state and local offices.

60. By correspondence dated July 8, 2008, Plaintiffs' co-counsel notified the Defendants that the Cancellation and Purging Procedures violate federal law, and urged the Defendants to discontinue such practices and to take remedial action to re-enfranchise affected voters.

61. Thomas, on behalf of the Defendants, responded by letter dated August 29, 2008.

62. As to the Immediate Purging Practice, Defendants affirmed that voter registrations are indeed cancelled in this manner, and that the onus lies with the voter to "correct

the record,” stating that the change of address for purposes of a driver license constitutes a change of address for voter registration under federal law.

63. As to the Cancellation Procedure for newly-registered voters, the Defendants maintained that the individuals whose registrations are cancelled upon return of the original voter ID cards had “never become registered voters,” and, thus, could not have had their registrations cancelled.

64. Defendants neither agreed to alter their practices nor to reactivate the registrations of the affected voters.

65. Absent the requested injunctive relief, illegally disfranchised voters will be turned away when seeking to exercise their fundamental right to vote on November 4, 2008.

COUNT I
(Violation of the NVRA -- Purging Procedure)

66. Plaintiffs repeat and reallege the preceding allegations as though fully set forth herein.

67. 42 U.S.C. § 1983 authorizes suits for the deprivation of a right secured by the Constitution or the laws of United States caused by a person acting under the color of state law.

68. Section 11(b) of the NVRA likewise creates a private right of action for parties who are aggrieved by a violation of the Act. 42 U.S.C. § 1973gg-9(b).

69. Section 8(d) of the National Voter Registration Act (“NVRA”), 42 U.S.C. § 1973gg-6(d), grants a right to voters by expressly prohibiting a state from removing a voter’s name from the voting rolls until the voter confirms his or her change of address in writing or the period of two general election cycles has expired, in the event that a notice was sent and the voter failed to respond to it (the “NVRA Safeguards”).

70. In violation of Section 8(d), Defendants are immediately removing the voters name from the voting rolls, without providing the requisite notice and without waiting the period of two Federal general election cycles, whenever Defendants receive information that an affected voter has applied for an out-of-state driver's license (the "Purging Procedure").

71. The Purging Procedure deprives voters of their rights under the NVRA, disfranchises the student communities that Plaintiff serves and, thus, frustrates Plaintiffs' mission of creating politically active communities and maximizing voter turnout – particularly among college and university students.

72. The Purging Procedure threatens Plaintiffs' constituents with real and immediate harm by the burdens placed on registration.

73. The Purging Procedure deprives Plaintiffs' members of the NVRA Safeguards prior to removing their names from the voting rolls and presents the real and immediate threat that such members will be disfranchised.

74. On July 8, 2008, Plaintiffs' co-counsel provided Defendant Thomas written *ante litem* notice that the Purging Procedure was in violation of the NVRA. To date, the violation has not been corrected.

COUNT II
(Violation of M.C.L.A. § 168.509aa -- Purging Procedure)

75. Plaintiffs repeat and reallege the preceding allegations as though fully set forth herein.

76. M.C.L. § 168.509aa expressly provides that whenever election officials receive "reliable information" that a voter has moved, the official shall not remove a voters name from the voting rolls until the voter confirms his or her change of address in writing or the period

of two general election cycles has expired, in the event that a notice was sent and the voter failed to respond to it (the “MCL Safeguards”).

77. In violation of M.C.L. § 168.509aa, Defendants are immediately removing the voter’s name from the voting rolls, without providing the requisite notice and without waiting the period of two Federal general election cycles, whenever Defendants receive information that an affected voter has applied for an out-of-state driver’s license (the “Purging Procedure”).

78. The Purging Procedure disfranchises the student communities that Plaintiff serves and, thus, frustrate Plaintiffs’ mission.

79. The Purging Procedure threatens Plaintiffs’ members with real and immediate harm by the burdens placed on registration.

80. The Purging Procedure deprives Plaintiffs’ members of the MCL Safeguards prior to removing their names from the voting rolls and presents the real and immediate threat that such members will be disfranchised.

COUNT III
(Violation of the NVRA -- Cancellation Procedure)

81. Plaintiffs repeat and reallege the preceding allegations as though fully set forth herein.

82. Section 8(d) of the NVRA grants a right to voters by expressly prohibiting a state from removing a voter’s name until the voter confirms his or her change of address in writing or, in the event that a notice is sent and the voter fails to respond to it, until after the period of two general election cycles has expired (the “NVRA Safeguards”). 42 U.S.C. § 1973gg-6(d).

83. Once a registrant's name appears on the official list of eligible voters, Section 8(d) of the NVRA provides the only method by which such name may be removed on the ground that the registrant has changed residences.

84. M.C.L. § 168.499(3) and M.C.L. § 168.500c deprive voters of the NVRA Safeguards because those sections provide for a voter's immediate removal from the list of eligible voters if the voter's original voter identification card is returned as nondeliverable (the "Cancellation Procedure").

85. MCL §§ 168.499(3) and 168.500c violate and are preempted by Section 8(d) of the NVRA, 42 U.S.C. § 1973gg-6(d).

86. The Cancellation Procedure disfranchises the student communities that Plaintiffs serve and, thus, frustrates Plaintiffs' mission.

87. The Cancellation Procedure threatens Plaintiffs' members with real and immediate harm by the burdens placed on registration.

88. The Cancellation Procedure deprives Plaintiffs' members of the NVRA Safeguards prior to removing their names from the voting rolls and presents the real and immediate threat that such members will be disfranchised.

89. On July 8, 2008, Plaintiffs' co-counsel provided Defendant Thomas with written *ante litem* notice that the Cancellation Procedure was in violation of the NVRA. To date, the violation has not been corrected.

COUNT IV
(Violation of the Civil Rights Act and 42 U.S.C. § 1983 -- Cancellation Procedure)

90. Plaintiffs repeat and reallege the preceding allegations as though fully set forth herein.

91. 42 U.S.C. § 1983 authorizes suits for the deprivation of a right secured by the Constitution or the laws of United States caused by a person acting under the color of state law.

92. The Civil Rights Act of 1964 grants rights to voters by providing, in relevant part, that:

(2) No person acting under color of law shall –

(A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure difference from the standards, practices or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote. . . .

42 U.S.C. § 1971(a)(2)(A).

93. Private litigants may enforce their rights under 42 U.S.C. § 1971(a)(2)(A) by bringing a suit under 42 U.S.C. § 1983.

94. The Cancellation Procedure selectively applies to only one group of qualified voters.

95. The Cancellation Procedure deprives those individuals whose original voter identification cards are returned as undeliverable of their right to vote.

96. However, individuals whose duplicate voter identification cards are returned as undeliverable are given the opportunity to correct the record and are afforded the right to vote.

97. As a result, two individuals who are equally qualified to be electors under the Michigan Constitution, and whose voter ID cards are returned as undeliverable, are treated differently, simply because one is a first-time registrant and the other had previously registered. The latter will be afforded the chance on Election Day to confirm his or her residency, correct

any clerical errors and cast a ballot. The former *equally qualified* individual will simply be disfranchised.

98. This arbitrary difference in treatment is directly contrary to the Civil Rights Act.

99. The Cancellation Procedure disfranchises the student communities that Plaintiffs serve and, thus, frustrate Plaintiffs' mission.

100. The Cancellation Procedure threatens Plaintiffs' members with real and immediate harm by the burdens placed on registration and the threat of disfranchisement.

COUNT V

(Violation of "Materiality Provision" of the Civil Rights Act, Section 8(d) of the NVRA and 42 U.S.C. § 1983 -- Cancellation Procedure)

101. Plaintiffs repeat and reallege the preceding allegations as though fully set forth herein.

102. 42 U.S.C. § 1983 authorizes suits for the deprivation of a right secured by the Constitution or the laws of United States caused by a person acting under the color of state law.

103. The Civil Rights Act prohibits the denial of the right to vote "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 to determining whether such individual is qualified under State law to vote in such election" (the "Materiality Provision"). 42 U.S.C. § 1971(a)(2)(B).

104. In the course of processing hundreds or even thousands of voter registrations, it is virtually certain that clerical or postal errors will occur that result in ID cards being returned as undeliverable.

105. Whether a voter has received a voter ID card is in no way material to whether an individual is qualified under Michigan law to vote.

106. Indeed, the Secretary of State website informs voters that they do not need to have a voter ID card in order to vote.

107. The Cancellation Procedure violates the Materiality Provision of the Civil Rights Act by denying voters the right to register and vote because of errors or omissions that are outside of a voter's control and are not material to the voter's qualifications.

108. The NVRA Safeguards set forth in Section 8(d) are designed to deal with such errors and omissions and to prevent the wrongful purging of voters from the rolls. The Cancellation Procedure violates the NVRA by depriving voters of the NVRA Safeguards and subjecting them to cancellation and purging due to non-material errors and omissions.

109. The Cancellation Procedure disfranchises the student communities that Plaintiffs serve and, thus, frustrate Plaintiffs' mission.

110. The Cancellation Procedure threatens Plaintiffs' members with real and immediate harm by the burdens placed on registration.

111. The Cancellation Procedure presents the real and immediate threat that Plaintiffs' members will be disfranchised.

COUNT VI
(Violation of the First and Fourteenth Amendments of the United States Constitution
and 42 U.S.C. § 1983 – Cancellation Procedure)

112. Plaintiffs repeat and reallege the preceding allegations as though fully set forth herein.

113. 42 U.S.C. § 1983 authorizes suits for the deprivation of a right secured by the Constitution or the laws of United States caused by a person acting under the color of state law.

114. The First and Fourteenth Amendments protect the right to vote as a fundamental right. The First Amendment's guarantees of freedom of speech and association protect the right to vote and to participate in the political process. The Fourteenth Amendment guarantees equal protection under the laws.

115. Plaintiffs have members who will not be able to register and vote as a result of the Cancellation Procedure.

116. The Cancellation Procedure prevents these members from exercising their right to vote and to participate in the political process by improperly cancelling or rejecting their voter registration with the state of Michigan and removing them from the voting lists.

117. The Cancellation Procedure arbitrarily and unreasonably causes different classes of equally qualified voters whose identification cards are returned to be disparately treated. As a result, these Plaintiffs' members' fundamental right to vote and to participate in the political process is severely burdened by the Defendants' actions.

118. Defendants have no compelling interest that justifies this severe and unequal burden on the fundamental rights of the organizational Plaintiffs' members.

119. Defendants, acting under color of state law, have deprived and will deprive Plaintiffs and their members of the rights, privileges, and immunities secured to them by the First and Fourteenth Amendments to the United States Constitution and protected by 42 U.S.C. § 1983.

COUNT VII
(Preliminary Injunction)

120. Plaintiffs repeat and reallege the preceding allegations as though fully set forth herein.

121. Plaintiffs have a strong likelihood of success on Counts I through VI of this Complaint.

122. Absent a preliminary injunction, Plaintiffs will be immediately and irreparably harmed as a number of its constituents will be disfranchised at the next election.

123. Absent a preliminary injunction, Plaintiffs' core mission of maximizing voter registration, civic participation, and voter turnout among young adult voters, particularly those on college campuses, will be significantly frustrated.

124. Absent a preliminary injunction, the harm to Plaintiffs is substantial as their members will be denied the fundamental right to vote. In contrast, any harm to Defendants is *de minimis*.

125. The public interest weighs strongly in favor of letting every qualified resident of Michigan register and vote. The protections provided by the NVRA, sending notice to voters and retaining them on the list subject to challenge if justified fully protects the State's ability to prevent unqualified persons from voting.

COUNT VIII
(Permanent Injunction)

126. Plaintiffs repeat and reallege the preceding allegations as though fully set forth herein.

127. Upon information and belief, Defendants' use of the Purging and Cancellation Procedures have led or inevitably will lead to qualified voters being illegally disfranchised in violation of state and federal statutes and the U.S. Constitution.

128. Absent a permanent injunction, Plaintiffs will continue to be irreparably harmed as a number of their constituents will be disfranchised in future elections.

129. Absent a permanent injunction, the harm to Plaintiffs is substantial as their members will be denied the fundamental right to vote. In contrast, any harm to Defendants is *de minimis*.

130. The public interest weighs strongly in favor of letting every qualified resident of Michigan register and vote. The protections provided by the NVRA, sending notice to voters and retaining them on the list subject to challenge if justified fully protects the State's ability to prevent unqualified persons from voting.

COUNT IX
(Declaratory Judgment)

131. Plaintiffs repeat and reallege the preceding allegations as though fully set forth herein.

132. Pursuant to 28 U.S.C. § 2201(a), this Court “may declare the rights and other legal relations of any interested party seeking such declaration whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.” 28 U.S.C. § 2201(a).

133. A genuine dispute has arisen amongst the parties as to whether MCL §§ 168.499(3) and 168.500c are preempted by Section 8(d) of the NVRA, 42 U.S.C. § 1973gg-6(d).

134. A genuine dispute has arisen amongst the parties as to whether the Purging Procedure violates Section 8(d) of the NVRA, 42 U.S.C. § 1973gg-6(d) and M.C.L. § 168.509aa.

135. Plaintiffs request that this Court declare the rights of the parties, including a declaration that MCL §§ 168.499(3) and 168.500c are preempted by Section 8(d) of the NVRA, 42 U.S.C. § 1973gg-6(d).

136. Plaintiffs further request that this Court declare that the Purging Procedure violates Section 8(d) of the NVRA, 42 U.S.C. § 1973gg-6(d) and M.C.L. § 168.509aa

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that the Court enter a preliminary injunction and permanent injunction ordering Defendants:

(1) to discontinue their practice of sending out 30-Day cancellation notices and immediately removing voters from precinct voting lists upon receipt of notice that such voters have surrendered their Michigan driver's licenses and/or applied for driver's licenses in another state;

(2) to follow the confirmation of registration procedures set forth in Section 8(d) of the NVRA and MCL § 168.509aa upon receipt of notification that a Michigan voter has surrendered his or her driver's license and/or applied for a driver's license in another state;

(3) to restore to "Active" status in the QVF all voters whose registrations (a) were cancelled pursuant to the 30-Day notice cancellation procedure between January 1, 2006 and the present and (b) have not been reactivated by other means, unless (x) Defendants have received a specific written request from an affected voter authorizing the cancellation of a particular registration, or (y) the affected voter is presently no longer qualified to vote under Michigan law by reason other than a change of address;

(4) to discontinue the practice of immediately cancelling or rejecting a voter's registration based upon the return of the original voter identification card as undeliverable;

(5) to treat the return of original voter identification cards in the same manner as the return of a duplicated identification cards;

(6) to restore to "Active" status in the QVF all voters whose registrations (a) were cancelled or rejected pursuant to MCL § 168.500c between January 1, 2006 and the present and (b) have not been reactivated by other means, unless (x) Defendants have received a specific written request from an affected voter authorizing the cancellation of a particular registration, or (y) the affected voter is presently no longer qualified to vote under Michigan law by reason other than a change of address; and

(7) to maintain, preserve, and not destroy until after December 31, 2009, any and all records relating to Defendants' quarterly purge programs that have, since January 1, 2006, resulted in the cancellation of the registration of voters who have applied for out-of-state driver's licenses, the sending of 30-day cancellation notices, and/or the cancellation or rejection of voters' registrations based upon the return of original voter identification cards;

Plaintiffs further request that this Court declare the rights of the parties, including a declaration that MCL §§ 168.499(3) and 168.500c are preempted by Section 8(d) of the NVRA, 42 U.S.C. § 1973gg-6(d); a declaration that the Purging Procedure violates Section 8(d) of the NVRA, 42 U.S.C. § 1973gg-6(d) and M.C.L. § 168.509aa; and grant such other and further relief as this Court deems appropriate.

Respectfully submitted,

/s/ Matthew J. Lund

MATTHEW J. LUND (P48632)
MARY K. DEON (P63019)
DEBORAH KOVSKY-APAP (P68258)
Cooperating Attorney
ACLU Fund of Michigan
Pepper Hamilton LLP
100 Renaissance Center, 36th Floor
Detroit, MI 48243-1157
(313) 259-7110
lundm@pepperlaw.com
deonm@pepperlaw.com
kovskyd@pepperlaw.com
Attorneys for Plaintiffs

Bradley E. Heard (admission pending)
Advancement Project
1730 M Street, NW, Suite 910
Washington, DC 20036
Phone: (202) 728-9557 Ext. 310
bheard@advancementproject.org
Attorneys for Plaintiffs

Meredith Bell-Platts (admission pending)
Neil Bradley (admission pending)
American Civil Liberties Union Foundation, Inc.
Voting Rights Project
230 Peachtree Street, NW, Suite 1440
Atlanta, GA 30303
Phone: 404.523.2721
mbell@aclu.org
nbradley@aclu.org
Attorneys for Plaintiffs

Michael J. Steinberg (P43085)
Kary L. Moss (P43759)
American Civil Liberties Union
Fund of Michigan
2966 Woodward Avenue
Detroit, MI 48221
(313) 578-6814
msteinberg@aclumich.org
Attorneys for Plaintiffs

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