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Transmitted Via Facsimile and Overnight Mail

March 26, 2008

Hon. C. Delbert Hosemann
Mississippi Secretary of State
401 Mississippi Street
Jackson, MS 39201

RE: Mississippi Purge Protocols

Dear Secretary Hosemann:

We write regarding the ten thousand or more persons registered to vote in Madison County, Mississippi who were purged from the voter rolls a week before the March 11th presidential primary. By all media accounts, your office denounced the timing of the purge and acted swiftly to reinstate these purged voters. We applaud these actions. In many ways, however, damage has been done notwithstanding your efforts. Media revelations that an election official acting alone can purge voters from her home and outside public scrutiny, as well as the speculation that the purge was politically motivated, will undermine public confidence in election administration.

Much can be learned from the Madison County purge, namely the need for clear and transparent protocols which promote accurate and accountable purges, procedures which facilitate easy voter reinstatement in the event of wrongful purges, and a reliable fail-safe to correct the problem at the polls if needed. These three things will do much to protect voters and guard against error in the future. Given the likely high participation rates that can be expected in the November elections, it is particularly important that Mississippi have strong voter protections built into its purge practices. We strongly urge you to consider the specific recommendations set forth below.

Protocols to Ensure Accuracy & Accountability

Purges demand a high degree of accuracy and accountability because they implicate the fundamental right to vote and occur in a political context. Certain voter protections would promote accuracy and accountability, including:

- **Officials authorized to purge voter records should have a high degree of certainty that a name belongs to an ineligible person or is a duplicate record.** If purge lists are developed by matching names on the voter registration list to names from other sources, for example, criminal conviction lists, directives should specify the information sufficient for attaining a high degree of certainty that the correct person has been identified. An exact match on multiple fields, including at a minimum, last name, first name, middle name, prefix, suffix, date of birth, and address or driver's license number should be required between the source list and the voter registration list before concluding that a name should be purged from the voter registration list. Under no circumstances is an exact match on full name and date of birth or full name and address alone sufficient.
- **The quality of purge source lists should be routinely audited and reliance upon them adjusted accordingly.** The Madison County purge was ostensibly based upon the return of undeliverable jury notices, voter identification cards, and other official mail, thus establishing that returned mail alone is an inadequate source for purging. Similarly, other states have reported problems with relying on lists of deceased persons or change of address information from the postal service for identifying registrants to be purged because of deficiencies in those sources. Accordingly, any purge source list should be evaluated to ensure that the information it provides is accurate, helpful, and sufficient for the purpose of purging voters.
- **The removal of any voter's record must be authorized by at least two officials.** The statewide voter registration database should also have the design capacity to include information on who authorized the removal and on what grounds. The news media reported that District 1 County Election Commissioner Sue Sautemeister acted on her own when she purged the Madison County voters, but no one person, acting alone, should be able to remove names from voter registration lists. The potential for human error and the importance of what is at stake demands that the purge process have certain checks in place, such as requiring approval from at least two officials before conducting a purge.
- **Before any voter is removed from the rolls for any reason, he or she should be notified and given the opportunity to correct any errors or omissions or demonstrate eligibility.** The National Voter Registration Act requires that all registrants suspected of having changed addresses be afforded certain protections, such as formal notice via forwardable mail and the opportunity to respond, among others, before being purged. Extending this protection to all registrants for routine purges, i.e., those purges that occur when an individual registrant is

identified as a candidate for removal, will reduce the purging of eligible persons and avoid complications at the polls.

- **Mississippi should provide public notice of any organized county-wide or state-wide purge two weeks prior to the purge, and provide an explanation of how that purge will be conducted.** Systematic purges – those conducted as part of a coordinated effort to clean up rolls involving numerous registrants – can result in large-scale disenfranchisement because of the number of registrants involved. Public notice encourages registrants to be vigilant and to follow-up after the purge to confirm that they are still on the voter rolls.

Voter Reinstatement Protocols

The Madison County purge, occurring shortly before the state’s presidential primary election, provides strong justification for protocols that facilitate the reinstatement of erroneously purged voters quickly and easily. Those protocols, at a minimum, should include:

- **The statewide voter registration database should have the design capacity to keep the records of the names removed from the voter registration list.** The status of voters should be changed in the database to reflect any adjudication of ineligibility, but the record, including voter history, should be maintained so that any error is easily corrected.
- **The records of voters purged from the registration list, and the reason justifying the removal, should be made available for public inspection and copy.** The purge process should not occur behind closed doors and outside public scrutiny. Voters and their advocates must have ample information to identify registrants wrongly purged. Protocols should include protections to ensure that sensitive information, especially that pertaining to domestic violence survivors, is not any more available to state employees, election officials, and the public than is absolutely necessary to protect voting rights.

Robust Fail-Safe Procedures

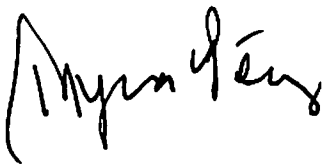
Pursuant to the Help American Vote Act (“HAVA”), no registered voter should be turned away from the polls because her name is not found on the voter registration rolls. Instead, she should be provided a provisional ballot which will be counted upon determination by election officials that it was cast by an eligible voter. Research shows, however, that in some states, provisional ballots are an ineffective fail-safe for a number of reasons, including improper denial of provisional ballots by election workers, and failure to count provisional ballots. Because not all purge errors will be corrected prior to the election, purge protocols must include effective fail-safe voting procedures, including:

- **Election workers should be given clear instructions and adequate training on the proper administration of HAVA's provisional balloting requirements.** Election workers should clearly understand that no voter should be denied a provisional ballot, all voters must be given the opportunity to substantiate their eligibility to vote, all voters must be informed as to how they can substantiate their eligibility, all voters must be informed as to how they can determine whether their ballot was counted, and that the ballot must be counted when a voter confirms that she is registered and eligible to vote.

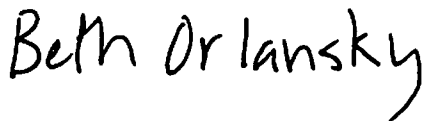
The above protocols will provide much protection to voters, and we urge their adoption in advance of the November elections. We are available to discuss any of these recommendations in greater length with you should that be helpful. Myrna Pérez can be reached at (212) 998-6284 or myrna.perez@nyu.edu, and Beth Orlansky can be reached at (601) 352-2269 or borlansky@mscenterforjustice.org.

Thank you in advance for your attention to this very important matter.

Sincerely,



Myrna Pérez
Counsel, Brennan Center for Justice



Beth Orlansky
Staff Attorney, Mississippi Center for Justice