



June 22, 2017

**Via Email, Fax, and U.S. Mail**

**Email Address: [delbert.hosemann@sos.ms.gov](mailto:delbert.hosemann@sos.ms.gov)**

The Honorable Delbert Hosemann  
Mississippi Secretary of State  
New Capitol  
Room 105  
Jackson, Mississippi 39201

Re: Notice of non-compliance with the  
National Voter Registration Act of 1993 (52 U.S.C. § 20507)

Dear Secretary Hosemann:

We write on behalf of the Mississippi State Conference of the NAACP, the eligible voters it represents, and others similarly situated, to notify you that your office and the State of Mississippi are in violation of Section 8 of the National Voter Registration Act of 1993 (52 U.S.C. § 20507(a)) (“NVRA”) because the State’s voter registration procedure requires voting-eligible Mississippi citizens to register to vote more than thirty days prior to a runoff election for a federal office.

In federal primary and special elections, there is a runoff election if no candidate receives a majority of the votes cast. Miss. Code Ann. §§ 23-15-191, 23-15-305, 23-15-833, 23-15-853, and § 23-15-855. The State currently offers no opportunity for eligible Mississippians who are not registered to vote in time for the initial federal primary or special election to register and vote in the subsequent runoff election, which occurs if no candidate receives a majority of the votes cast.

To be eligible to vote in any election, including those for federal office, Mississippi citizens must be registered to vote at least thirty days before an election. Miss. Code Ann. §§ 23-15-11, 23-15-125. The Mississippi Attorney General’s Office has opined that only voters who were registered thirty days prior to the preceding primary or special election are eligible to vote in the following runoff election. *See* MS AG Op. Horton, 1983 WL 43044 (1983) (voters not registered thirty days prior to the first primary are not eligible to vote in the second primary); MS AG Op. Hillman, 2011 WL 1909371 (2011) (the registration deadline for a runoff is the deadline associated with the preceding election).

*Co-Chairs*  
Teresa Wynn Roseborough  
Adam Klein

*Secretary*  
Eleanor H. Smith

*Treasurer*  
David Smith

*General Counsel*  
Nicholas T. Christakos

*President and  
Executive Director*  
Kristen Clarke



*Co-Chairs*

Teresa Wynn Roseborough  
Adam Klein

*Secretary*

Eleanor H. Smith

*Treasurer*

David Smith

*General Counsel*

Nicholas T. Christakos

*President and*

*Executive Director*

Kristen Clarke

This conflicts with Section 8(a)(1) of the NVRA, which requires that each State shall “ensure that any eligible applicant is registered to vote in an election” if the applicant has registered to vote “not later than the lesser of 30 days, or the period provided by State law, before the date of the election.” 52 U.S.C. § 20507(a)(1). Notably, the NVRA defines “election” with reference to the Federal Election Campaign Act of 1971 (FECA). 52 U.S.C. § 20502(1) (citing 52 U.S.C. § 30101(1)(A)). FECA defines “election” as “a general, special, primary, or runoff election.” *Id.* Elections for federal office are defined so as to include those for a “Representative in... Congress.” 52 U.S.C. § 30101(3).

A person is registered to vote under Section 8 when “the valid voter registration form of the applicant” is: (1) “submitted to the appropriate State motor vehicle authority” in accordance with 52 U.S.C. §20504 (registration by application simultaneous with an application for a motor vehicle driver's license); (2) submitted by postmarked mail in accordance with 52 U.S.C. §20505; (3) “accepted at the voter registration agency” in accordance with 52 U.S.C. §20506; or (4) otherwise “received by the appropriate State election official.” 52 U.S.C. §§ 20507(a)(1)(A)–(D).

Last year, in an analogous case in Georgia, a court granted a preliminary injunction enjoining a similar runoff election voter registration procedure because it required citizens to register more than thirty days prior to a runoff election for federal offices in violation of Section 8 of the NVRA. *Ga. State Conf. of the NAACP v. Kemp*, No. 1:17-cv-1397, 2018 WL 2271244 (N.D. Ga. Apr. 11, 2017). Similarly, in *Ariz. Democratic Party v. Reagan*, No. CV-16-03618-PHX-SPL, 2016 WL 6523427, (D. Ariz. Nov. 3, 2016), the Court also determined that the Arizona Secretary of State violated Section 8 of the NVRA by imposing voter registration deadlines exceeding the NVRA’s thirty day limit by only one or two days depending upon whether the applications were mailed-in or presented in person.

Thus, it is clear that the current voter registration procedure under Mississippi law for federal primary and special elections violates Section 8 of the NVRA by requiring voting eligible Mississippians to register to vote more than thirty days prior to the primary and special election runoff elections for federal offices.

The upcoming United States Senate Democratic primary runoff election on June 26, 2018 exemplifies how these provisions of Mississippi law violate the NVRA. The registration deadline for the June 5, 2018 primary election was on May 7, 2018. According to the NVRA, the voter registration deadline for the June 26, 2018 Democratic primary runoff should have been May 29, 2018 (accounting for





weekends and holidays). Thus, State law deprived eligible Mississippians twenty-two additional days to register to vote in this federal runoff election that they should have been afforded under the NVRA.

Eligible Mississippians will continue to suffer the denial of their right to register to vote up to thirty days prior to future federal runoff elections – including in the event the November 6, 2018 special election for United States Senator goes to a runoff on November 27, 2018.

Although we are not required to give you advance written notice of the State's violation of Section 8 of the NVRA, this letter is being tendered in the hope that the State will immediately voluntarily undertake remedial action to bring the State into compliance with Section 8 of the NVRA, so that all eligible citizens will be able to participate in future runoff elections for federal offices in Mississippi including, if necessary, the November 27, 2018 runoff election for United States Senate.

Please contact the undersigned to resolve this matter within the next twenty (20) days.

Sincerely,

John Powers<sup>1</sup>  
Counsel  
Voting Rights Project  
Lawyers' Committee for Civil Rights Under Law  
1401 New York Avenue NW, Suite 400  
Washington, DC 20005  
Telephone: (202) 662-8389  
General Fax: (202) 783-0857  
[jpowers@lawyerscommittee.org](mailto:jpowers@lawyerscommittee.org)

---

<sup>1</sup> Admitted to practice in Maryland and the District of Columbia.