STATE OF INDIANA

TODD ROKITA, Secretary of State

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Wan J. Kim
Assistant Attorney General
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United States Department of Justice
Washington, DC 20530

By electronic mail and U.S. mail

Dear Assistant Attorney General Kim:

Thank you for your letter of May 18, 2006, which asked that the Co-Directors of the Indiana Election Division contact Mr. Eric Eversole by this date concerning the State's intentions with regard to the enforcement of voter list maintenance provisions of the National Voter Registration Act. I have provided Mr. Eversole with the electronic mail copy of this response.

I should begin by stating that this response reflects my individual view as one of the two Co-Directors of the Indiana Election Division, and not necessarily that of my colleague as Co-Director, and therefore, not of the Election Division itself. Under Indiana Code 3-6-4.2-3, as construed by the Indiana Supreme Court in *Sammons v. Conrad,* 2000, 740 N.E. 2d 114, the Election Division can only act when its two Co-Directors agree.

I agree with your assertion that Indiana is not currently meeting its voter list maintenance obligations under the National Voter Registration Act (NVRA). The large number of deceased and duplicate voter registrations identified as part of the implementation of the statewide voter registration system before January 1, 2006, and the fact that 67 of Indiana's 92 counties currently have more than 90% of their citizen voting age population registered to vote indicate that the state's voter registration rolls are bloated with many inaccurate and invalid voter registrations. I find these statistics to be very disturbing since I take my own responsibility and that of the State to properly enforce NVRA very seriously.

To carry out these voter list maintenance duties, the Secretary of State has proposed (and I have supported as one of Indiana's "NVRA officials" jointly designated under Indiana Code 3-7-11-1 to administer NVRA), using a statewide, non-discriminatory, election related mailing that would identify registrants who are no longer eligible to vote in Indiana. You described this mailing in your letter as "a good start." However, as previous correspondence received by Mr. Eversole indicates, my fellow Co-Director has not

agreed to expend any funds for this uniform statewide mailing, and has instead proposed using a combination of methods such as programs to identify deceased voters, duplicate voters, and individuals with addresses that may be identified as invalid or outdated by the National Change of Address Program (NCOA).

Before 2006, Indiana conducted programs to do largely what my colleague is proposing now like identifying both deceased and duplicate voter registrations, and provide that information to county voter registration officers. These proposals have produced what I would describe as "mixed" results at best. Although several counties were diligent in processing this information, this office has been advised by both incumbent county election officials and county election officials who have just taken office, that in some counties, the voter list maintenance information has been simply "filed away" and not used by the county to either inactivate (or, when appropriate, to cancel), voter registrations included in the information provided by the state. I do not believe this approach satisfies the letter or the spirit of NVRA, but would invite you to suggest differently if that is the case. I do note that you support Secretary Rokita's comprehensive approach, however.

Even if my colleague's "combination" plan would satisfy the law, I have received no details regarding any proposed budget or other contract documents necessary to implement any component of this combination of programs. As a result, I am concerned that it is increasingly likely that the state and county voter registration offices will be unable to complete any voter list maintenance program before the August 9, 2006 deadline for doing so under NVRA.

As a result, I join the Secretary of State's office in continuing to question whether this "combination" approach to voter list maintenance is in fact less expensive and more effective than the detailed, comprehensive proposal the Secretary submitted for starting with a uniform statewide mailing.

That being said, during our last telephone conversation with Mr. Eversole, both my colleague and I agreed to discuss the development of a memorandum of understanding with the Department that would memorialize a commitment for the State's short-term and long-term plans for ensuring compliance with NVRA's voter list maintenance provisions. The Secretary of State and I completely agree with a long term maintenance approach now that we have, for the first time ever, a great tool (the statewide voter file) for doing this maintenance effectively and at a reasonable cost. I appreciate Mr. Eversole's willingness to defer this discussion until after this office completed its many tasks related to our state's May 2, 2006 primary. Now that these tasks are almost entirely completed, I would be more than happy to discuss this proposed memorandum of understanding with Mr. Eversole, and would make myself available for a telephone conference at any time convenient for him.

Very truly yours,

J. Bradley King

CC:

The Honorable Todd Rokita-Indiana Secretary of State
Ms. Kristi Robertson-Co-Director, Indiana Election Division
Mr. Dan Parker-Chairman, Indiana State Democratic Party
Mr. Murray Clark-Chairman, Indiana State Republican Party