

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
DEL RIO DIVISION**

AMERICAN CIVIL RIGHTS UNION, )  
in its individual and corporate capacities, )  
 )  
 *Plaintiff,* )

v. )

Civil Action No. 14-12

SHERIFF/TAX ASSESSOR-COLLECTOR )  
WILLIAM "CLINT" MCDONALD, in his )  
official capacity, )  
 *Defendant.* )

**Serve: William Clint McDonald** )  
105 E Hackberry St )  
Sanderson, TX 79848 )  
 )  
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**COMPLAINT**

Plaintiff, by its attorneys, brings this action for violations of Section 8 of the National Voter Registration Act of 1993 (“NVRA”), 42 U.S.C. §1973gg-6, *et. seq.*

1. Plaintiff seeks declaratory and injunctive relief to compel Defendant’s compliance with Section 8 of the NVRA. Specifically, Defendant has violated Section 8 by failing to make a reasonable effort to conduct voter list maintenance programs in elections for federal office and by failing to produce records and data related to those efforts, as required by Section 8. Plaintiff seeks injunctive relief commanding Defendant to permit inspections of election records pursuant to 42 U.S.C. §1973gg-6(i)(1). Plaintiff also seeks a declaration and an injunction requiring Defendant to conduct and execute effective voter list maintenance programs in a manner that is consistent with federal law.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331, as the action arises under the laws of the United States. This Court also has jurisdiction under 42 U.S.C. §1973gg-9(b)(2), as the action seeks injunctive and declaratory relief under the NVRA.

3. Venue in this Court is proper under 28 U.S.C. §1391(b), because a substantial part of the events or omissions giving rise to the claim occurred in this district.

### **PARTIES**

4. Plaintiff American Civil Rights Union, Inc., (“ACRU”) is a non-profit corporation, incorporated in the District of Columbia, which promotes election integrity, compliance with federal election laws, government transparency and constitutional government. Plaintiff ACRU brings this action in its individual and corporate capacities and also on behalf of its members and supporters who are registered to vote in the State of Texas.

5. The Defendant, Terrell County Sherriff/Tax Assessor Collector is the county registrar. As registrar, the Defendant has the power to conduct voter registration and voter roll maintenance pursuant to Tex. Elec. Code Ann. § 12.001 and Tex. Elec. Code Ann. § 15.022(a).

6. Numerous Texas statutes vest power solely in the Defendant to maintain voter rolls and place responsibility on the Defendant to ensure that only eligible voters are on the rolls.

(a). Tex. Elec. Code Ann. § 15.022(a) mandates “[t]he registrar shall make the appropriate corrections in the registration records, including, if necessary, deleting a voter's name from the suspense list.”

(b). Furthermore, Tex. Elec. Code Ann. § 15.022(b) specifically requires the Defendant to, at least monthly, “request from the United States Postal Service any available information indicating address reclassifications affecting the registered voters of the county.”

(c). Tex. Elec. Code Ann. § 16.031 states that “[t]he registrar shall cancel a voter’s registration immediately on receipt of notice ... that the voter’s residence is outside the county; ... that the voter is deceased ... [of] a final judgment of the voter’s mental incapacity without the right to vote, conviction of a felony” and other notices indicating that the voter has an address outside the state or county for voting purposes. Tex. Elec. Code Ann. § 16.0331 states that “the registrar shall cancel the voter’s registration ... if a voter fails to submit to the registrar proof of citizenship” within 30 days of being mailed a notice requesting such proof after the voter is “excused or disqualified from jury service because of citizenship status....”

(d). Tex. Elec. Code Ann. § 18.003(a) requires the Defendant to prepare the certified list of registered voters eligible to vote in upcoming elections. This list is the government records which is used to determine eligibility to cast a ballot in a Texas election.

(e). For each election held in the county in a voting year, Tex. Elec. Code Ann. § 18.003(b) requires the Defendant to “prepare and furnish to the authority responsible for procuring election supplies a certified list of corrections.” This list must contain “(1) the name of each person for whom the information on a list of registered voters furnished under Section 18.001 or Section 18.002 has changed because of cancellation or correction; and (2) an indication that the person’s registration has been canceled or the corrected registration information.”

### **FACTUAL BACKGROUND**

7. Defendant has a federal obligation to maintain accurate and current voter rolls which only contain the names of eligible voters residing in Terrell County. Federal law requires “local election officials [to] perform list maintenance with respect to the computerized [state] list on a regular basis.” 42 U.S.C. §15483(a)(2)(A). Moreover, Section 8 of NVRA requires

Defendant to “conduct a general program that makes a reasonable effort to 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 . . .” 42 U.S.C. §1973gg-6(a)(4).

Local election officials such as the Defendant are specifically obliged to carry out these list maintenance duties and remove ineligible voters from the rolls pursuant to 42 U.S.C. §1973gg-6(d)(3).

8. Section 8 of the NVRA also requires that Defendant shall “complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters.” 42 U.S.C. §1973gg-6(c)(2)(A). Section 8 of the NVRA mandates that any such list maintenance programs or activities “shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. §1973 *et seq.*)” 42 U.S.C. §1973gg-6(b)(1).

9. Also pursuant to Section 8 of the NVRA, Defendant “shall maintain for at least 2 years and shall make available for public inspection . . . all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters. . . .” 42 U.S.C. §1973gg-6(i).

10. Voter rolls maintained by the Defendant for Terrell County contain more voters registered to vote than citizens eligible to vote. In 2013, just after the November 2012 federal election, Terrell County, Texas had 892 registered voters, despite having a voting age population of only 733 according to the 2010 United States Census. More than 121 percent of living citizens old enough to vote were registered to vote in Terrell County in 2013. This marked an increase from 118% in 2011. Since then, Terrell County the longstanding problems regarding voter roll maintenance have persisted with 859 registered voters on the rolls who would ultimately be

eligible to vote upon presentation of adequate credentials, as of January 2014.<sup>1</sup> Defendant is responsible for allowing this circumstance to occur. By failing to implement a program which takes reasonable steps to cure these circumstances, Defendant has violated NVRA and other federal list maintenance statutes.

11. The failure of the Defendant to comply with its obligations under federal voter registration laws has undermined the confidence of Texas' properly registered voters in the integrity of the voter registration rolls and, accordingly, in the integrity of elections held in the State of Texas.

12. Terrell County election officials were sent multiple notices about failure to adequately maintain voter rolls throughout 2013, including from the Plaintiff. On September 12, 2013, ACRU on its own behalf, on behalf of members and supporters of ACRU who are registered to vote in the State of Texas, sent a statutory notice letter to Terrell County election officials about failures to comply with federal voter registration laws. The letter explained that, according to 2010 Census information and publicly available voter registration data, Terrell County had more registered voters on the official list of registered voters than the county had citizens eligible to vote. The letter, *inter alia*, stated: "Simply, Terrell County has significantly more voters on the registration rolls than it has eligible live voters."

13. The September 12, 2013, letter also sought a variety of publicly available information which would tend to indicate whether or not the Defendant was in compliance with NVRA and other federal laws. Among the data requested were current registration data, the numbers of voters purged pursuant to maintenance obligations, the number of notices sent to

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<sup>1</sup> This includes 166 voters as of January 2014 who are on the "suspense list." "An individual on the suspense list is still a registered voter and has the same rights as a non-suspense list voter" according to the Texas Secretary of State. *See*, <http://www.sos.state.tx.us/elections/vr/index.shtml>

inactive voters, the number of voters removed due to criminal conviction, and the most recent number of registered voters.

14. The September 12, 2013, letter also requested public inspection all records concerning “the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency” of official lists of eligible voters, explaining that such records were required to be made available under Section 8 of the NVRA.

15. The September 12, 2013, letter also gave notice that a lawsuit may be brought against to ensure compliance with the requirements of federal voter registration laws.

16. No response to the September 12, 2013, notice letter was received.

#### **PLAINTIFF ACRU**

17. Plaintiff ACRU is a corporation with individual members and supporters. Members and supporters enable the mission of ACRU and some make financial contributions to support this mission.

18. An essential and core mission of the Plaintiff is to foster compliance with federal election laws, promote election integrity and ensure that only eligible voters may participate in American election so as prevent dilution of legitimate votes by illegal votes.

19. Plaintiff has members and supporters in the State of Texas. Plaintiff’s members and supporters in the State of Texas are registered to vote in the State of Texas. These members and supporters share Plaintiff’s interest in the accuracy and currency of official lists of eligible voters in the State of Texas, as the accuracy and currency of these lists directly affects their right to vote.

20. Defendant's actions and omissions have injured and continue to cause injury to members and supporters of Plaintiff who are registered to vote in the State of Texas because they are undermining their confidence in the integrity of the electoral process and the effectiveness of their vote.

21. It is unlikely that any individual supporter would have the ability or the resources to take action to protect their individual interests or redress the injury to their right to vote absent collective action by Plaintiff.

22. Plaintiff itself has been and continues to be harmed by the refusal of Defendant to provide substantive responses to requests for election data and the rights to inspect election records concerning the Defendant's voter list maintenance programs and activities, an issue of substantial public importance especially in an election year. Not only has the refusal of Defendant denied Plaintiff the ability to obtain records and data about an issue of substantial public importance, but it also is preventing Plaintiff from analyzing such records and information and disseminating its findings to the public. Consequently, Defendant is injuring the ability of Plaintiff to carry out its public interest mission.

23. As an integral part of its public interest mission, Plaintiff disseminates information about compliance by state and local officials with federal election statutes, including election integrity statutes. A central activity of the Plaintiff is to promote election integrity and compliance with federal and state statutes which ensure the integrity of elections. Defendant's violation of NVRA has impaired and will impair Plaintiff from carrying out this public interest mission. Plaintiff itself has been harmed by Defendant's noncompliance with the NVRA

**COUNT I**

**(Violation of the NVRA: Failure to Conduct List Maintenance)**

24. Plaintiff realleges paragraphs 1 through 23 as if fully stated herein.

25. Defendant has failed to make reasonable efforts to conduct voter list maintenance programs, in violation of Section 8 of NVRA, 42 U.S.C. §1973gg-6 and 42 U.S.C. §15483(a)(2)(A).

26. Plaintiff has suffered an irreparable injury as a direct result of Defendant's violation of Section 8 of the NVRA and 42 U.S.C. §15483(a)(2)(A). Defendant's failure to comply with the NVRA has aggrieved plaintiff by impairing its essential and core mission of fostering compliance with federal election laws, promotion of election integrity and avoiding vote dilution when ineligible voters participate in elections.

27. Plaintiff's members and supporters in Texas will continue to be injured by Defendant's violations of Section 8 of the NVRA because confidence in the legitimacy of elections in Texas will be undermined and burden their right to vote unless and until Defendant is enjoined from continuing to violate the law.

28. Plaintiff has no adequate remedy at law.

## **COUNT II**

### **(Violation of the NVRA: Failure to Produce Records and Data)**

29. Plaintiff realleges paragraphs 1 through 28 as if fully stated herein.

30. Defendant has failed to respond to Plaintiff's written request for data, failed to produce or otherwise failed to make records available to Plaintiff concerning Defendant's implementation of programs and activities for ensuring the accuracy and currency of official lists of eligible voters for Terrell County, in violation of Section 8 of the NVRA, 42 U.S.C. §1973gg-6.



31. Plaintiff has suffered an irreparable informational injury as a direct result of Defendant's violation of Section 8 of the NVRA because the Plaintiff does not have the data and records requested. The NVRA confers upon Plaintiff an individual right to information, and by denying that information to Plaintiff, Defendant caused a concrete injury to Plaintiff.

32. Plaintiff will continue to be injured by Defendant's violations of Section 8 of the NVRA unless and until Defendant is enjoined from continuing to violate the law.

33. Plaintiff has no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for a judgment:

1. Declaring that Defendant is in violation of Section 8 of the NVRA;
2. Enjoining the Defendant from failing or refusing to comply with the voter registration list maintenance requirements of Section 8 of the NVRA in the future;
3. Ordering the Defendant to pay Plaintiff's reasonable attorney's fees, including litigation expenses and costs, pursuant to 42 U.S.C. §1973gg-9(c); and
4. Granting Plaintiff further relief that this Court deems just and proper.

Respectfully submitted,

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