

September 20, 2010

John W. Vaudreuil  
Office of the United States Attorney  
Western District of Wisconsin  
P.O. Box 1585  
Madison, WI 53701

Dear Attorney Vaudreuil,

As you are no doubt aware, organizations and individuals have voiced general concerns about efforts to improperly challenge voters' eligibility in the upcoming November 2010 election in Wisconsin. These concerns arise out of experiences in past Wisconsin elections, as well as experiences in other states.

Unfortunately, the concern is no longer premised only on past experiences or incidents in other states. On June 12, 2010, members of the Wisconsin Tea Party met and discussed their plans to work with the Republican Party of Wisconsin ("RPW") and Americans for Prosperity ("AFP") to target racial minorities in a voter caging program, and to systematically challenge these same electors at the polls on election day.

The purpose of this letter is to ask for an investigation into the plans by the Wisconsin Tea Party, the RPW, and AFP to engage in voter suppression and to monitor the organizations' activities leading up to and including the November 2, 2010 election to prevent any actual unlawful voter suppression.

As the enclosed transcript and press release outline in painful detail, the Wisconsin Tea Party, the RPW, and AFP plan to organize a targeted mail program to minority voters on the state-wide voter registration list and, through this mailing, inform the voter: (1) they must call and confirm their registration information, and (2) if they do not call the number provided they could be removed from the voter lists. On election day, these organizations will then "make use" of any postcards that are returned as undeliverable to challenge voters at the polls, utilize law enforcement, as well as attorneys trained and provided by the RPW, to support their challenges. The organizations plan to recruit and place individuals as official poll workers in selected municipalities in order to be able to make the challenges as official poll workers.

Federal law – principally the Fourteenth and Fifteenth amendments to the U.S. Constitution, the Civil Rights Act and the Voting Rights Act – prohibits a state (and any political subdivision) from imposing or applying voting qualifications that result in a denial or abridgement of the right of any citizen to vote on account of race or color. 42 U.S.C. § 1973(a). Private individuals similarly may not prevent qualified voters from voting using processes based in whole or in part on the voters' race or color. *Democratic Nat'l Comm. v. Republican Nat'l Comm.*, 671 F. Supp. 2d 575, 602 (D.N.J. 2009); *Bastou v. Kentucky*, 476 U.S. 79 (1986).

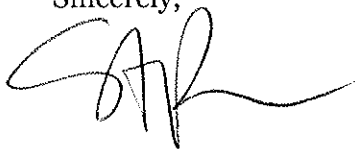
The plans outlined by the Tea Party, RPW and AFP have the clear potential to violate federal law. Statements made during the June 12 meeting make clear that race is a motivating factor in the planned caging and challenge effort. Whether the organizations challenge voters as private citizens or follow through with their plans to conduct the challenges as official poll workers (and, thus, state actors), the activity may be illegal. *Any* efforts to prevent qualified electors from voting based on their race or color must be immediately investigated and, if substantiated, stopped.

The plan to challenge electors based solely on the mail program also has the potential to violate federal law. Challenges to an elector's eligibility cannot be based solely on returned mail because a returned mailing does not provide a sufficient basis for suspecting that a voter is not a qualified elector. 42 U.S.C. § 1973gg. Accordingly, a challenge would be unlawful if it is based only on the voter's failure to respond to the mailing. This is true even if the challenge comes from a volunteer election observer. *See Tiryak v. Jordan*, 472 F. Supp. 822, 824 (E.D. Pa 1979).

Federal law further precludes any person, whether acting under color of law or not, from engaging in coercive behavior to deprive a person of his or her right to vote. 18 U.S.C. § 242; 42 U.S.C. § 1973i(b). Based on statements in the transcript, the mail program is likely to contain false and misleading statements informing voters that their name may be removed from the voter registration list if they fail to call the telephone number provided. This is simply not true. As discussed above, it is illegal to remove a voter from the statewide database only based on this reason. Thus, the described mailing could include coercive statements in an attempt to deprive qualified electors of their right to vote.

I respectfully request that your office conduct an investigation into the questionable plans by the Wisconsin Tea Party, RPW and AFP and take whatever action necessary to ensure that all qualified citizens' right to vote is protected for the November 2010 election.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scot Ross', with a long horizontal flourish extending to the right.

Scot Ross  
Executive Director  
One Wisconsin Now

cc: Mike Wittenwyler, Godfrey and Kahn, SC



September 20, 2010

J.B. Van Hollen  
Wisconsin Attorney General  
Wisconsin Department of Justice  
P.O. Box 7857  
Madison, WI 53707

Dear Attorney General Van Hollen,

As you are no doubt aware, organizations and individuals have voiced general concerns about efforts to improperly challenge voters' eligibility in the upcoming November 2010 election in Wisconsin. These concerns arise out of experiences in past elections, both as well as experiences in other states.

Unfortunately, the concern is no longer premised only on past experiences. On June 12, 2010, members of the Wisconsin Tea Party met and discussed their plans to work with the Republican Party of Wisconsin ("RPW") and Americans for Prosperity ("AFP") to target racial minorities in a voter caging program, and to systematically challenge these same electors at the polls on election day.

The purpose of this letter is to ask the Wisconsin Department of Justice to use its authority to investigate plans by the Wisconsin Tea Party, the RPW, and AFP to engage in voter suppression and to monitor the organizations' activities leading up to and including the November 2, 2010 election to prevent any actual unlawful voter suppression.

Wisconsin law authorizes the Attorney General to investigate allegations of violations of the Federal Voting Rights Act. Wis. Stat. § 5.081. The Voting Rights Act prohibits a state (and any political subdivision) from imposing or applying voting qualifications that result in a denial or abridgement of the right of any citizen to vote on account of race or color. 42 U.S.C. § 1973(a).

As the enclosed transcript and press release outline in painful detail, the Wisconsin Tea Party, the RPW, and AFP plan to organize a targeted mail program to minority voters on the state-wide voter registration list and, through this mailing, inform the voter: (1) they must call and confirm their registration information, and (2) if they do not call the number provided they could be removed from the voter lists. On election day, these organizations will then "make use" of any postcards that are returned as undeliverable to challenge voters at the polls, utilize law enforcement, as well as attorneys trained and provided by the RPW, to support their challenges. The organizations also plan to recruit and place individuals as official poll workers in selected municipalities in order to be able to make the challenges as official poll workers.

The plans outlined by the Tea Party, RPW and AFP raise serious concerns that need to be investigated to determine whether they may violate the Voting Rights Act. Statements made during the June 16 meeting make clear that race is a motivating factor in the planned caging and challenge effort. Plans to challenge voters' registration based on the racially-targeted caging operation place the activity squarely within the prohibitions set forth in the Voting Rights Act. *Any* efforts to deter qualified electors from voting based on their race or color must be immediately investigated and, if substantiated, stopped.

In addition, Section 12.09 of the Wisconsin Statutes prohibits any person from using fraudulent means to impede a qualified elector from his or her right to vote. Wis. Stat. § 12.09(b). The mail program described by the Tea Party members may violate this statute because the mail would apparently contain false and misleading information that would undoubtedly impede qualified electors from exercising their right to vote by informing voters that their name may be removed from the voter registration list if they fail to call the telephone number provided. It would be unlawful to remove a voter from the statewide database based on the voters decision not to call the number printed on the mailing. Some voters who receive this mail will certainly believe that they will not be allowed to vote if they do not place the call and, for this reason, will decide not to go to the polls on election day. Such a mailing therefore has a strong potential to impede citizens' right to vote.

The transcript from the June 12, 2010 Tea Party meeting clearly outlines these organizations' plans to engage in questionable conduct. At a minimum, the voter caging and challenge plans outlined by the Tea Party demonstrate a willingness to deter individuals from voting. Should your investigation substantiate that these plans are being acted upon in an unlawful manner, you have the authority to commence legal action to ensure that all qualified citizens' right to vote is protected for the November 2010 election.

Sincerely,

A handwritten signature in black ink, appearing to read 'SR', with a long horizontal flourish extending to the right.

Scot Ross  
Executive Director  
One Wisconsin Now

cc: John Chisholm, Milwaukee County District Attorney, Elections Integrity Task Force  
Mike Wittenwyler, Godfrey and Kahn, SC



September 20, 2010

Kevin Kennedy  
Director and General Counsel  
Government Accountability Board  
PO Box 7984  
Madison, WI 53707

Dear Mr. Kennedy:

As the Government Accountability Board is well-aware, there exist general concerns that various organizations may engage in efforts to improperly challenge voters' eligibility in the upcoming November 2010 election. These concerns arise out of experiences in past elections, both in Wisconsin as well as experiences in other states across the country.

Unfortunately, the concern is no longer premised only on past experiences. On June 12, 2010, members of the Wisconsin Tea Party met and discussed their plans to work with the Republican Party of Wisconsin ("RPW") and Americans for Prosperity ("AFP") to target racial minorities and college students in a voter caging program, and to systematically challenge these same electors at the polls on election day.

The purpose of this letter is to ask the Wisconsin Government Accountability Board to use its authority under Section 5.05 of the Wisconsin Statutes to investigate plans by the Wisconsin Tea Party, the RPW, and AFP to engage in voter suppression and to monitor the organizations' activities leading up to and including the November 2, 2010 election to prevent any actual unlawful voter suppression.

As the enclosed transcript and press release outline in painful detail, the organizations plan to fund a targeted mail program to minority and student voters on the state-wide voter registration list and, through this mailing, inform the voter: (1) they must call and confirm their registration information, and (2) if they do not call the number provided they could be removed from the voter lists. On election day, these organizations will then "make use" of any postcards that are returned as undeliverable to challenge voters at the polls, utilize law enforcement, as well as attorneys trained and provided by the RPW, to support their challenges. The organizations also plan to recruit and place individuals as official poll workers in selected municipalities in order to be able to make the challenges as official poll workers.

The plans outlined by the Tea Party, RPW and AFP raise serious concerns that need to be investigated by the G.A.B. prior to the November 2, 2010 election.

First and foremost, racially-targeted voter caging operations would be illegal. Statements made during the June 16 meeting make clear that race is a motivating factor in the planned caging and challenge effort. *Any* efforts to deter qualified electors from voting based on their race must be immediately investigated and, if substantiated, stopped. (These organizations also plan to use the voter caging and challenge effort to target college and university students.)




In addition, Section 12.09 of the Wisconsin Statutes prohibits any person from using fraudulent means to impede a qualified elector from his or her right to vote. Wis. Stat. § 12.09(b). The mail program described by the Tea Party members could possibly violate this statute because the mail apparently will contain false and misleading information that would likely impede qualified electors from exercising their right to vote by informing voters that their name may be removed from the voter registration list if they fail to call the telephone number provided. It would be unlawful to remove a voter from the statewide database based on the voters decision not to call the number printed on the mailing. Some voters who receive this mail will certainly believe that they will not be allowed to vote if they do not place the call and, for this reason, will decide not to go to the polls on election day. Such a mailing therefore has a strong potential to impede citizens' right to vote.

These organizations' election day plans could also put the state at risk of violating federal law. Challenges to an elector's eligibility cannot be based solely on returned mail because a returned mailing does not provide a sufficient basis for suspecting that a voter is not a qualified elector. 42 U.S.C. § 1973gg. Accordingly, a challenge would be unlawful if it is based only on the voter's failure to respond to the mailing. The organizations' plans to recruit individuals to become poll workers in order to conduct challenges based only on the returned mail would likely result in individuals acting unlawfully under color of state law.

Similarly, even if the challenge comes from a volunteer election observer, the challenge would be unlawful if it is based on the voter's failure to respond to the mailing. *See Tiryak v. Jordan*, 472 F. Supp. 822, 824 (E.D. Pa 1979). Any challenge to an elector's eligibility based on such unreliable grounds is an abuse of the right to challenge and would violate state and federal law, subjecting the challenger to removal and other sanctions.

The transcript from the June 12, 2010 Tea Party meeting clearly outlines these organizations' plans to engage in questionable conduct. At a minimum, the voter caging and challenge plans outlined by the Tea Party demonstrate an effort to deter individuals from voting. The G.A.B. should investigate these plans further to ensure that all qualified citizens' right to vote is protected for the November 2010 election.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scot Ross', written in a cursive style.

Scot Ross  
Executive Director  
One Wisconsin Now

cc: Mike Wittenwyler, Godfrey and Kahn, SC