



Idaho

November 6, 2018

Via e-mail

Lawrence Denney
Idaho Secretary of State
700 W. Jefferson St., Room E205
Boise, ID 83702
elections@sos.idaho.gov

Re: Intimidation of Student Voters

Dear Secretary Denney:

As the Chief Election Officer for the State of Idaho, we expect that you and your Office will ensure compliance with all state and federal election laws. It has been brought to our attention that certain precincts within Madison County have posted signs specifically directed at students. Additionally, it is our understanding that these signs were not created and distributed through all precincts, and so are targeting certain precincts within Madison County.

The first of these two signs targeted students directly, with "STUDENTS" in large font size letters and underlined across the top. It goes on to assert that there "is no federal right to vote anywhere in the United States for the office of President." While this is a puzzling inclusion as this is a midterm election, it is completely galling for such a post to be made within a polling place, as there is most certainly a federal right to vote, guaranteed by the First Amendment and Fourteenth Amendment throughout everywhere in the United States.¹ This statement is clearly intended to undermine voters' confidence in their rights and intimidate and discourage them

¹ To the extent that this line is a shorthand perversion of the decision in *Bush v. Gore*, which reads, "The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the electoral college," 531 U.S. 98, 104 (2004), the full text of this line demonstrates how inappropriate and confusing to citizens the posted claim is. Because, of course, as the state of Idaho has chosen "a statewide election as the means to implement its power to appoint members of the electoral college," Idaho Code Ann. § 34-606, each voter in Idaho does have a "federal right to vote . . . for the office of President."

from exercising their franchise. And in the context of the posting, this intimidation is aimed at students.

While, of course, Idaho has the authority to set the qualifications for those who can vote, U.S. Const. Art. I, § 2, cl. 1, these signs do far more than inform potential voters of the qualifications that need to be met. In addition to the confusing and intimidating assertion addressed above, the first sign includes the State trying to compel individuals to think in a certain way,² and the second describes the question of certain residents registering to vote as a “controversy.” Additionally, taken together the signs appear to deploy Idaho Code Ann. § 34-405 in order to discourage certain voters from registering and voting.

Taken together, these signs are an inappropriate attempt to intimidate certain Idaho voters from exercising their franchise. Section 11(b) of the Voting Rights Act, provides, that “No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote[.]” 52 U.S.C. § 10307(b).

The signs at issue in Madison County at the very least “attempt to intimidate” certain classes of voters.³ It is our understanding that your Office indicated that these signs were important so that certain individuals would not alter their residence for purposes of scholarships and the like. While providing voter education to help individuals determine their proper residence is certainly important,⁴ the way to do it is not through confusing, misleading, and intimidating signs posted in polling locations, that may dissuade eligible voters from exercising their rights. Importantly, even if these signs were intended for the purpose you describe, a violation of Section 11(b) of the VRA can be established without any showing that the perpetrator had a subjective purpose of intimidating voters through its words or actions. *See* H.R. Rep. No. 89-439, at 30 (1965) (“[N]o subjective purpose or intent need be shown” under Section 11(b) of the VRA.); *see also League of United Latin Am. Citizens – Richmond Region Council v. Public Interest Legal Found.*, No. 18-cv-423, 2018 WL 3848404, at *3-4 (E.D. Va. August 13, 2018) (holding that Section 11(b) does not require specific intent to intimidate).

² The first posting states, “Registering to vote is a serious matter which should only be done after proper reflection.”

³ Additionally, to the extent that the signs are posted only in certain precincts, this also runs afoul of the the Equal Protection Clause. *See Bush v. Gore*, 531 U.S. 98, 106, 107 (2000) (emphasizing the importance of “specific rules designed to ensure uniform treatment of voters”).

⁴ The ACLU of Idaho would be happy to work with your office going forward on such education efforts.

We trust that you will take these concerns seriously. We too take them very seriously, and demand the signs be removed from each of the polling locations in which they are present. We also request that this information be removed from the Secretary of State's website on idahovotes.gov.

Sincerely,

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