



**Judicial
Watch**[®]
*Because no one
is above the law!*

August 1, 2017

VIA USPS CERTIFIED MAIL AND EMAIL

The Honorable Alex Padilla
California Secretary of State
1500 11th Street
Sacramento, California 95814

Re: Violations of Section 8 of the National Voter Registration Act, 52 U.S.C. § 20507

Dear Secretary Padilla:

I write as legal counsel for Michael S. Black, Tom Burr, Fred Cruz, Dennis Dorman, Jean Esop, Jerry Griffin, Rhue Guyant, Sharon Kowalski, Wolfgang Kupka, Susan Lowell, Delores M. Mars, James B. Oerding, Richard Parker, Jim Redhead, Lisa Remmer, Charlene Saunders, Michael Sienkiewicz, Melanie S. Swain, Norman Charles Walker, Hugh E. Winthrop, Kristine Wolfley, in their individual capacity as registered California voters, Election Integrity Project California, Inc., a registered non-profit corporation in California, and Judicial Watch, Inc., to bring your attention to violations of Section 8 of the National Voter Registration Act (“NVRA”) in California. From public records obtained on the Election Assistance Commission (“EAC”) 2016 Election Administration Voting Survey (“EAVS”), and through verbal accounts from various county agencies, eleven (11) counties in California have more total registered voters than citizen voting age population (CVAP) calculated by the U.S. Census Bureau’s 2011-2015 American Community Survey. This is strong circumstantial evidence that California municipalities are not conducting reasonable voter registration list maintenance as mandated under the NVRA.

NVRA Section 8 requires states to conduct reasonable list maintenance so as to maintain an accurate record of eligible voters for use in conducting federal elections.¹ As you may know, Congress enacted Section 8 of the NVRA to protect the integrity of the electoral process. Allowing the names of ineligible voters to remain on the voting rolls harms the integrity of the electoral process and undermines voter confidence in the legitimacy of elections. As the U.S. Supreme Court has stated, “[P]ublic confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process.”²

¹ In California, responsibility to coordinate statewide NVRA Section 8 compliance lies with the Secretary of State’s Office. *See* Cal. Elec. Code § 2404(a).

² *Crawford et al. v. Marion County Election Board*, 553 US 181, 197 (2008).

This letter serves as statutory notice that Michael S. Black, Tom Burr, Fred Cruz, Dennis Dorman, Jean Esop, Jerry Griffin, Rhue Guyant, Sharon Kowalski, Wolfgang Kupka, Susan Lowell, Delores M. Mars, James B. Oerding, Richard Parker, Jim Redhead, Lisa Remmer, Charlene Saunders, Michael Sienkiewicz, Melanie S. Swain, Norman Charles Walker, Hugh E. Winthrop, Kristine Wolfley, in their individual capacity as registered California voters, Election Integrity Project California, Inc., a registered non-profit corporation in California, and Judicial Watch, Inc., will bring a lawsuit against you and, if appropriate, against the counties named in this letter, if you do not take specific actions to correct these violations of Section 8 within 90 days. In addition, by this letter we are asking you and, to the extent that they keep records separately, the eleven (11) counties named in this letter, to produce certain records to us which you are required to make available under Section 8(i) of the NVRA.³ We hope that litigation will not be necessary to enforce either of these claims.

As the top election official in California, it is your responsibility under federal law to coordinate California's statewide effort to conduct a program that reasonably ensures the lists of eligible voters are accurate. The following information explains how we determined that your state and the counties named are in violation of NVRA Section 8 and the remedial steps that must be taken to comply with the law.

1. Eleven California Counties Have More Total Registered Voters Than Citizen Voting Age Population

Based on our review of 2016 EAC EAVS report, the 2011-2015 U.S. Census Bureau's American Community Survey, and the most recent California total active and total inactive voter registration records, California is failing to comply with the voter registration list maintenance requirements of Section 8 of the NVRA. For example, a comparison of the 2011-2015 U.S. Census Bureau's American Community Survey, and the most recent California active and inactive voter registration records shows there were more total registered voters than there were adults over the age of 18 living in each of the following eleven (11) counties: Imperial (102%), Lassen (102%), Los Angeles (112%), Monterey (104%), San Diego (138%), San Francisco (114%), San Mateo (111%), Santa Cruz (109%), Solano (111%), Stanislaus (102%), and Yolo (110%). Our own research shows that the situation in these counties is, if anything, worse than the foregoing data suggest. For example, we contacted Los Angeles County directly this past June. At that time, county officials informed us that the total number of registered voters now stands at a number that is a whopping 144% of the total number of resident citizens of voting age.

In our experience, these kinds of registration rates indicate a failure to comply with the voter list maintenance requirements of the NVRA. The failure to maintain accurate, up-to-date voter registration lists creates the risk that the 2018 federal elections will lack the integrity required by federal law and by the expectations of California citizens, and will therefore undermine public confidence in the electoral process.

³ 52 U.S.C. § 20507(i).

2. The NVRA Requires You to Undertake Reasonable Efforts to Maintain Accurate Lists of Eligible Registered Voters

Under Section 8 of the NVRA, California, and each county identified in this letter, is required to undertake a uniform, nondiscriminatory voter registration list maintenance program that complies with the Voting Rights Act of 1965.⁴ Specifically, Section 8 requires states to make a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters due to (A) “the death of the registrant” or (B) “a change in the residence of the registrant” to a place outside the jurisdiction in which he or she is registered.⁵ Section 8 also requires states to ensure noncitizens are not registered to vote.⁶

The list maintenance obligations of Section 8 of the NVRA were elaborated upon by the Help America Vote Act (“HAVA”), which requires states to “ensure that voter registration records in the State are accurate and updated regularly” and undertake a “system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”⁷ HAVA also requires each state to coordinate its computerized statewide voter registration list with state agency death records.⁸ Finally, HAVA requires all states to remove convicted felons from the voter rolls if felons cannot vote under state law.⁹

As the chief state election official for California, you are required to lead and direct voter list maintenance efforts in your state, and you must conduct an active oversight program to monitor local county election officials’ list maintenance activities.¹⁰ If your oversight reveals that counties have failed to adequately execute list maintenance tasks, you must either change the state’s program to ensure county compliance, or assume direct responsibility over the failing counties’ list maintenance tasks.¹¹

3. Failure to Comply with NVRA Subjects You to Lawsuits and Financial Costs

In passing the NVRA, Congress authorized a private right of action to enforce the provisions of the NVRA, including Section 8. Accordingly, private persons may bring a lawsuit

⁴ 52 U.S.C. § 20507(b)(1).

⁵ 52 U.S.C. § 20507(a)(4).

⁶ *U.S. v. Florida*, 870 F. Supp. 2d 1346, 1351 (N.D. Fla. 2012) (“For noncitizens, the state’s duty is to maintain an accurate voting list . . . A state can and should . . . block[] a noncitizen from registering in the first place”).

⁷ 52 U.S.C. §§ 21083(a)(4) and 21083(a)(4)(A).

⁸ 52 U.S.C. § 21083(a)(2)(A)(ii)(II).

⁹ 52 U.S.C. § 21083(a)(2)(A)(ii) and (ii)(I).

¹⁰ *U.S. v. Missouri*, 535 F.3d 844, 850-851 (8th Cir. 2008).

¹¹ *U.S. v. Missouri*, 535 F.3d 844, 851 (8th Cir. 2008).

under the NVRA if the violations identified herein are not corrected within 90 days of receipt of this letter.¹² You are receiving this letter because you are the designated chief state election official under the NVRA.

Congress also authorized awards of attorney's fees, including litigation expenses and costs, to the prevailing party.¹³ Consequently, if a lawsuit is initiated under the NVRA and the court finds you in violation, you will be responsible for paying our attorneys' fees, costs, and litigation expenses.

4. Avoiding Litigation

We hope you will promptly initiate efforts to comply with Section 8 so that no lawsuit will be necessary. We ask you and, to the extent that they wish to respond separately, each county identified in this letter, to please respond to this letter in writing no later than 30 days from today informing us of the compliance steps you are taking. Specifically, we ask you to: (1) conduct or implement a systematic, uniform, nondiscriminatory program to remove from the list of eligible voters the names of persons who have become ineligible to vote by reason of a change in residence; and (2) conduct or implement additional routine measures to remove from the list of eligible voters the names of persons who have become ineligible to vote by reason of death, change in residence, or a disqualifying criminal conviction, and to remove noncitizens who have registered to vote unlawfully.

When you respond to this letter, you, and, to the extent that they wish to respond through separate counsel, each county identified in this letter, should identify all the steps taken or planned, in detail, and advise us of the results of those efforts or the target implementation date for each identified activity or program. If you plan to begin taking new steps in 2017 to comply with your obligations, please outline them to us in your response, providing specific dates for completion of each activity. In order to avoid litigation, we may seek certain reasonable assurances that you will affirmatively undertake the steps outlined, up to and including the execution of a settlement agreement. You may wish to consult Judicial Watch's recent settlement agreement with the State of Ohio for examples of certain activities which tend to show compliance with NVRA Section 8.¹⁴ You should also evaluate whether your office is communicating and coordinating effectively for list maintenance purposes with the various federal, state, and local entities listed immediately below in Section 5 of this letter.

¹² 52 U.S.C. § 20510(b)(2).

¹³ 52 U.S.C. § 20510(c).

¹⁴ A copy of the Settlement Agreement between Judicial Watch and Ohio is available at <http://www.judicialwatch.org/wp-content/uploads/2014/01/01-14-Ohio-Voter-Rolls-Settlement.pdf>.

5. Production of Records

Finally, pursuant to your obligations under the NVRA,¹⁵ your office and, to the extent that they keep records separately from your office, each county named in this letter, should make available to us all pertinent records concerning “the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency” of California’s official eligible voter lists during the past 2 years. Please include these records with your response to this letter. These records should include, but are not limited to:

1. Copies of the most recent voter registration database from each California county and city mentioned in this letter, including fields indicating name, date of birth, home address, most recent voter activity, and active or inactive status.
2. Copies of all email or other communications internal to the office of the California Secretary of State, including any of its divisions, bureaus, offices, third party agents, or contractors, (hereinafter, collectively “Secretary’s Office”) relating to the maintenance of accurate and current voter rolls.
3. Copies of all email or other communications between the Secretary’s Office and all California County voter registration officials concerning:
 - a. Instructions to the counties concerning their general list maintenance practices and obligations;
 - b. Instructions to the counties for the removal of specific noncitizens and deceased, relocated, or convicted persons identified by the Secretary’s Office; and
 - c. Notices to the counties concerning any failure to comply with their voter list maintenance obligations under California’s program.
4. Copies of all email or other communications between the Secretary’s Office and the California State Department of Health, the California State Department of Corrections, the California Department of Motor Vehicles, and the California State Judiciary concerning obtaining information about deceased, relocated, convicted, or noncitizen registered voters for the purpose of updating California’s voter registration lists.
5. Copies of all email or other communications between the Secretary’s Office and the U.S. Attorney(s) for California, the U.S. District Court for California, the U.S. Social Security Administration, the U.S. Postal Service, the U.S. Citizenship and Immigration Services, and the U.S. Department of Homeland Security concerning the National Change of Address database, the Systematic Alien Verification for Entitlements database, or any other means of obtaining information about deceased, relocated, convicted, or noncitizen registered voters for the purpose of updating California’s voter registration lists.

¹⁵ 52 U.S.C. § 20507(i).

6. Copies of all email or other communications between the Secretary's Office and the Interstate Voter Registration Cross-Check Program, the Electronic Registration Information Center, the National Association for Public Health Statistics and Information Systems, the American Association of Motor Vehicle Authorities, and any other U.S. State concerning obtaining information about deceased or relocated registered voters for the purpose of updating California's voter registration lists.

If these records are not produced within 14 days, or if you fail to otherwise advise us that you are making them available to us at specified times and locations, you will be deemed to be in violation of the NVRA and subject to litigation.

* * * * *

I hope that the concerns identified in this letter can be resolved amicably. However, if we believe you do not intend to correct the above-identified problems, a federal lawsuit seeking declaratory and injunctive relief against you may be necessary. We look forward to receiving your prompt response.

Sincerely,

JUDICIAL WATCH, INC.

s/ Robert D. Popper _____

Robert D. Popper
Attorney, Judicial Watch, Inc.

By: U.S. Postal Service Certified Mail and Email

cc: Robert D. Popper, Esq., Judicial Watch; Jana Lean, Chief of Elections Division, California Secretary of State; Debbie Porter, Imperial County Registrar of Voters; Julie Bustamante, Lassen County Clerk-Recorder; Dean Logan, Los Angeles County Registrar - Recorder/County Clerk; Claudio Valenzuela, Monterey County Registrar of Voters; Michael Vu, San Diego County Registrar of Voters; John Arntz, San Francisco County Director of Elections; Mark Church, San Mateo County Chief Elections Officer & Assessor-County Clerk-Recorder; Gail Pellerin, Santa Cruz County Clerk; Ira Rosenthal, Solano County Registrar of Voters; Lee Lundrigan, Stanislaus County Registrar of Voters; Jesse Salinas, Yolo County Clerk-Recorder