

**IT IS TIME TO START ENFORCING THE NATIONAL VOTER
REGISTRATION ACT OF 1993**

Testimony before the Presidential Advisory Commission on Election Integrity

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Background and Experience

My name is Robert D. Popper. I am a Senior Attorney and the Director of the Election Integrity Project at Judicial Watch, Inc. Judicial Watch is a Washington, D.C.-based public interest nonprofit dedicated to promoting transparency, accountability, and integrity in government, politics, and the law.

I was admitted to the Bar in New York in 1990, and I have been practicing as a litigator for 27 years. I have special knowledge and expertise in the area of voting law. In 1995, as a solo practitioner, I represented plaintiffs in a successful constitutional challenge alleging racial segregation in the design of New York's 12th Congressional District.¹

In 2005, I joined the Voting Section of the Civil Rights Division of the U.S. Department of Justice, where I worked for eight years. In my time there, I managed voting rights investigations, litigations, consent decrees, and settlements in dozens of states. I spoke about voting rights issues at professional conferences and to state and local officials. In 2008, I was promoted to Deputy Chief of the Voting Section.

In 2013, I joined Judicial Watch as Director of the Election Integrity Project. In my time here, I have litigated voting rights cases in several states and have filed numerous friend-of-the-court briefs before the U.S. Supreme Court and various courts of appeal. I have testified before state legislatures on voting reform measures. In the course of my career, I have published popular pieces and scholarly articles on the subject of voting law.²

¹ *Diaz v. Silver*, 978 F. Supp. 96 (E.D.N.Y. 1997) (three-judge court), *aff'd mem.*, 521 U.S. 801 (1997).

² See *The Voter Suppression Myth Takes Another Hit*, WALL ST. J., December 28, 2014; *Florida Gets Another Chance to Appeal for the Right to Clean Voter Rolls, They Should Take It*, THE DAILY CALLER, December 11, 2014; *Political Fraud About Voter Fraud*, WALL ST. J., April 27, 2014; *Little-Noticed Provision Would Dramatically Expand DOJ's Authority at the Polls*, THE DAILY CALLER, March 28, 2014; and, with Professor Daniel D. Polsby, *Guinier's Theory of Political Market Failure*, 77 SOC. SCI. Q. 14 (1996); *Racial Lines*, NAT. REV. 53, February 20, 1995; *Ugly: An Inquiry into the Problem of Racial Gerrymandering Under the Voting Rights Act*, 92 MICH. L. REV. 652 (1993); *The Third Criterion: Compactness as a Procedural Safeguard*

I am particularly familiar with the National Voter Registration Act of 1993 (NVRA), the subject of my testimony. From 2005 to 2008, I had primary responsibility at the Department of Justice for enforcing that statute. In 2008, I received a Special Commendation Award for my efforts in enforcing Section 7 of the NVRA, which requires state offices providing public assistance to offer those receiving it the opportunity to register to vote. During that same period, I also litigated several cases for the Department to enforce the voter roll list maintenance provisions of Section 8 of the Act, and I obtained consent decrees with the states of Maine, Indiana, and New Jersey, and a settlement agreement with the City of Philadelphia, in which they agreed to abide by Section 8's provisions.³ As I will explain, these were the last cases the Department ever brought to enforce the voter list maintenance provisions of the NVRA.

Judicial Watch has been actively involved as a private litigant in enforcing Section 8 of the NVRA, suing Ohio and Indiana in 2012 for their failure to comply.⁴ After I moved to Judicial Watch in 2013, we concluded a settlement agreement resolving litigation against the State of Ohio⁵ and voluntarily dismissed our lawsuit against Indiana after the State restructured its election administration and undertook remedial measures. This year, based on our analysis of available census and voter registration data, Judicial Watch sent letters to twelve states, and to 113 counties in those states, providing them statutory notice that they were failing to comply with their list maintenance obligations under Section 8 of the NVRA.⁶ The letters warned those jurisdictions that they would be subject to a private lawsuit if they did not undertake the list maintenance required by the statute.

Judicial Watch expects that it will bring such lawsuits against noncomplying jurisdictions. Further, in July of this year, Judicial Watch commenced a lawsuit against the State of Maryland for refusing to grant it access to election-related documents that the State was required by the NVRA to keep and to make publicly available.⁷

Against Partisan Gerrymandering, 9 YALE L. & POL'Y REV. 301 (1991); *Gerrymandering: Harms and a New Solution*, Heartland Institute Monograph (1990).

³ For summaries of the relevant cases, see <https://www.justice.gov/crt/cases-raising-claims-under-national-voter-registration-act#philadelphia>.

⁴ *Judicial Watch, Inc. v. King*, 993 F. Supp. 2d 919 (S.D. Ind. 2012); *Judicial Watch v. Husted*, Civil Action No. 12-792 (S.D. Ohio 2012).

⁵ This agreement is available at <http://www.judicialwatch.org/document-archive/01-14-ohio-voter-rolls-settlement/>.

⁶ See <http://www.judicialwatch.org/press-room/press-releases/judicial-watch-warns-11-states-clean-voter-registration-lists-face-federal-lawsuit/>; <http://www.judicialwatch.org/press-room/press-releases/judicial-watch-warns-california-clean-voter-registration-lists-face-federal-lawsuit/>.

⁷ *Judicial Watch v. Lamone*, No. 1:17-cv-02006 (D. Md. 2017); see <http://www.judicialwatch.org/press-room/press-releases/judicial-watch-sues-voter-registration-data-national-voter-registration-act/>.

Americans Do Not Trust the Integrity of Our Electoral System

The American people have come to believe that there are serious problems with our electoral system. One study from last year showed that Americans have little faith in the integrity of their elections and postulated that this partly explains low voter turnout.⁸ A Rasmussen poll from 2016 reported that only 41% of those polled believe “American elections are fair to voters.”⁹ A Washington Post-ABC News poll from 2016 found that 46% of those polled believed that voter fraud happens either “somewhat” or “very” often.¹⁰

Particularly revealing is a Gallup poll that compares American attitudes with those of other countries. In a poll taken in 2016 – *before* the parties’ national conventions that summer – Americans were asked if they had confidence in the “honesty of elections.” A “record-low 30%” said that they did, while an astonishing 69% said that they did not.¹¹ This trend has become significantly worse in recent years, and the United States is now a significant outlier among the nations polled. Gallup reports that “[g]lobally, the U.S. ranks 90th out of 112 countries that Gallup has asked this question in so far this year,” and among countries that are true electoral democracies, “only Mexico (19%) ranks lower than the U.S.”¹²

Unfortunately, poor list maintenance practices lend credence to the public perception that our nation’s electoral system is not functioning properly.

The Voter List Maintenance Goals of the NVRA Are Not Being Met

As the NVRA itself makes clear in its “Findings and Purposes,” it was enacted in order to achieve two different goals. It was intended, first, to “increase the number of eligible citizens who register to vote,” enhancing their “participation . . . in elections for Federal office”; and, second, to “protect the integrity of the electoral process,” ensuring “that accurate and current voter rolls are maintained.”¹³

The first goal of increasing eligible registrants was intended to be met by increasing the number of state offices where citizens are offered the opportunity to register to vote. The most significant NVRA provision supporting this goal is the requirement that every application for a state driver’s license must serve as well as a voter registration application, unless an applicant

⁸ See, e.g., Pippa Norris, Holly Ann Garnett and Max Grömping, *Why Don’t More Americans Vote? Maybe Because They Don’t Trust U.S. Elections*, Wash. Post, December 26, 2016.

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http://www.rasmussenreports.com/public_content/politics/general_politics/january_2016/are_u_s_elections_fair.

¹⁰ https://www.washingtonpost.com/page/2010-2019/WashingtonPost/2016/09/15/National-Politics/Polling/release_444.xml?tid=a_inl.

¹¹ <http://www.gallup.com/poll/196976/update-americans-confidence-voting-election.aspx>.

¹² *Id.*

¹³ 52 U.S.C. § 20501(b).

does not wish to register or is already registered.¹⁴ It is this provision that has afforded the NVRA its popular designation as the “Motor Voter” law. There is good evidence that the first goal of the NVRA has been largely realized. For example, in the twenty-year period starting in 1992, a year before the NVRA was enacted, through 2012, the registration rate increased nationally by more than 11%.¹⁵

The second goal of protecting electoral integrity by ensuring accurate and current voter rolls was supposed to be achieved by the NVRA’s requirement that states “conduct a general program that makes a reasonable effort to remove the names of ineligible voters” from the rolls if they have died or moved elsewhere.¹⁶

This second goal has not been met. Five years ago, this fact was brought forcefully to national attention by a study noting that “24 million – one of every eight – voter registrations in the United States are no longer valid or are significantly inaccurate”; that “1.8 million deceased individuals are listed as voters,” and that “2.75 million people have registrations in more than one state.”¹⁷

Based on Judicial Watch’s research this year, there is every reason to believe that these problems have gotten worse. This past July, the Election Assistance Commission publicly released the responses provided to its most recent election administration survey. By law, the Commission is required to submit a report to Congress every two years “assessing the impact” of the NVRA “on the administration of elections for Federal office during the preceding 2-year period.”¹⁸ States are required to provide the information requested by the Commission.¹⁹

Judicial Watch hired a political scientist and demographer to compare the registration information contained in the Commission’s report with the latest census data.²⁰ We also contacted particular counties directly to obtain or confirm certain data.

Our study indicates a pervasive failure by state and county officials to fulfill the voter list maintenance obligations imposed by the NVRA. To begin with, the EAC’s survey includes a question about the number of NVRA address confirmation notices sent during a two-year

¹⁴ 52 U.S.C. § 20504(a).

¹⁵ Royce Crocker, *The National Voter Registration Act of 1993: History, Implementation, and Effects*, Appendix A, CONG. RES. SERV., Sept. 18, 2013.

¹⁶ 52 U.S.C. § 20507(a)(4).

¹⁷ *Inaccurate, Costly, and Inefficient: Evidence That America’s Voter Registration System Needs an Upgrade*, PEW RES. CTR. ON THE STATES, Feb. 14, 2012, at 1.

¹⁸ 52 U.S.C. § 20508(a)(3).

¹⁹ See 11 C.F.R. § 9428.7.

²⁰ See *The Election Administration & Voting Survey: 2016 Comprehensive Report*, ELECTION ASSISTANCE COMM’N, June 29, 2017, available, along with the relevant datasets, at <https://www.eac.gov/research-and-data/election-administration-voting-survey/>, and the latest American Community Survey population and demographic data, available at <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>.

reporting period.²¹ Jurisdictions are required to send these notices to those who are believed to have moved prior to placing them in an inactive status for a statutory waiting period of two general federal elections.²² A failure to send such notices shows that a jurisdiction is not endeavoring to determine who may have moved elsewhere.

There are over 2,800 counties in states covered by the NVRA. Of these, 415, or about 15% of all covered counties, did not report sending *any* confirmation notices during the two-year period from 2014 to 2016. This fact suggests a widespread failure to comply with the NVRA. Moreover, of the counties that *did* report sending confirmation notices, another 581, or about 20% of the total, reported sending notices during the last two-year period to fewer than 5% of their registered voters. Given that the Census Bureau reports that about 11% of Americans move *every year*,²³ these low rates also suggest that these counties are not diligently conducting voter list maintenance.

Counties' overall registration rates also reveal compliance issues. Our study showed that, in 462 U.S. counties, the number of voter registrations exceeded the number of citizens over the age of 18 who resided in those counties. In other words, those counties' registration rates exceeded 100% of the population eligible to register.²⁴ Federal courts have repeatedly held that such an imbalance between registrations and age-eligible citizens is grounds for believing that a jurisdiction is not living up to its list maintenance obligations.²⁵ These 462 counties, moreover, constitute about 17% of all U.S. counties covered by the NVRA where we have enough data to make these calculations.

These facts show widespread noncompliance with the NVRA. The problem, moreover, is worse than it was even a few years ago. When Judicial Watch conducted a similar registration analysis in 2015, we found that 312 counties covered by the NVRA had more registered voters than voting-age citizen population, which was about 11% of all counties where we had the data necessary to make this comparison.

State and county officials confronted with improbably high registration rates often try to talk past the data in predictable ways. For example, such officials tell us that registration rates are high precisely because the NVRA requires officials to wait for two general elections before removing the registrations of those who have not responded to confirmation notices. By this reasoning a high registration rate shows, not a lack of compliance with the NVRA, but a diligent effort to send out confirmation notices and to move registrations to the inactive list.

²¹ *Election Administration & Voting Survey*, supra note 19, at 188 (question A10a).

²² 52 U.S.C. § 20507(d)(2).

²³ <https://www.census.gov/newsroom/blogs/random-samplings/2017/01/mover-rate.html>.

²⁴ Remarkably, there also were 15 counties reporting more voter registrations than their *total* populations, including minors and noncitizens.

²⁵ See *Voter Integrity Project NC, Inc. v. Wake Cnty. Bd. of Elections*, 2017 U.S. Dist. Lexis 23565 at *17-18 (W.D.N.C. Feb. 21, 2017); *Bellitto v. Snipes*, 2017 U.S. Dist. Lexis 107355 at *52-53 (S.D. Fla. July 11, 2017); *Am. Civ. Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 793-94 (W.D. Tex. Mar. 30, 2015).

In my experience, such claims are almost always belied by the facts. It is often the case that a county with a high registration rate also sent relatively few confirmation notices during the reporting period. Such facts contradict any claim that high registration rates are due to voters being moved to the inactive list. And while it is conceivable that a “bump” in total registrations will occur after a sudden, significant effort to remove invalid registrations, this effect should be temporary and should decline over time. An examination of the age of inactive registrations is enough to settle this kind of dispute. In one investigation, we found thousands of registrations that had been inactive for more than a decade. These cannot be explained by ordinary list maintenance procedures or by the need to wait for two elections before cancelling a registration.

States with high registration rates also implausibly contend that inactive registrations should not be considered at all in determining registration rates. By subtracting these out, these states hope to show lower and more reasonable-looking registration rates. The reasons for conducting this special arithmetical operation are rarely elaborated in any detail, but we have heard the argument that such inactive registrations are irrelevant because they are awaiting cancellation, or because the registrants are probably living elsewhere. Note at the outset that the factual premises of these assertions are wrong. Registrations may be moved to the inactive list for any number of reasons under various state laws, and not just because the registrant failed to return a confirmation notice. Further, as we have discovered, registrations often sit on state inactive lists for many years beyond the NVRA’s statutory waiting period without being cancelled.

But there is a far more basic problem with the argument that inactive registrations ought not to count. The NVRA plainly provides that *inactive registrations may still be voted*.²⁶ This voting can take place as late as Election Day, at which point “affirmation or confirmation of the registrant’s address *may* be required.”²⁷ But the voter need not vote by provisional ballot or endure any other impediment to voting.²⁸

The simple fact is that as long as a registration may be voted on the next Election Day, it should be treated as part of a state’s voter registration list. That is why, when I worked in the Voting Section of the Department of Justice, we invariably considered inactive registrations when analyzing the NVRA programs of covered states and counties. For the same reason, when we concluded an NVRA settlement decree or agreement we insisted on receiving information and reports about inactive registrations.²⁹

²⁶ 52 U.S.C. § 20507(d)(2)(A).

²⁷ *Id.* (emphasis added).

²⁸ See *A. Philip Randolph Inst. v. Husted*, 838 F.3d 699, 716 (6th Cir. 2016) (Siler, J., concurring in part, dissenting in part), *cert. granted* 137 S. Ct. 2188 (2017) (“an ‘inactive’ voter has all the rights to cast a regular ballot at any election,” and “if the registrant has any voting activity during those four years, he or she returns to an active voter status”); *Common Cause v. Kemp*, 2017 U.S. Dist. Lexis 93417 at *2 (N.D. Ga. Mar. 17, 2017) (“Voters on the inactive list can still vote.”).

²⁹ See, e.g., *United States v. Indiana*, 2006 U.S. Dist. LEXIS 45640 at *4-5, *9-10 (S.D. Ind. July 5, 2006) (consent decree requiring initial report and annual reports including information on inactive voters).

As a final point, it is worth remembering that every U.S. county covered by the NVRA must abide by the same rules, and must respect and accommodate the same statutory waiting period. Yet 83% of these counties had registration rates – including active *and* inactive voters – that were less than 100%. As federal courts have acknowledged, the fact that a county has a registration rate exceeding 100% is strong circumstantial evidence that that county is not conducting a reasonable program of voter list maintenance.

The Department of Justice Has Failed to Enforce the NVRA's List Maintenance Provisions and Has Impaired States' Efforts to Maintain Their Voter Rolls

From 2005 to 2007, Section 8 list maintenance claims were included in federal complaints filed by the Department of Justice against Missouri, Maine, New Jersey, Indiana, and the City of Philadelphia. The Department ultimately obtained court-ordered consent decrees with Maine, New Jersey, and Indiana, and concluded a settlement agreement with the City of Philadelphia.³⁰ I managed each of those litigations for the Department. The last of the NVRA-related consent decrees expired in 2009.

I was present at a meeting in November 2009 in which the Deputy Assistant Attorney General in charge of the Voting Section told the staff that Section 8 cases were not a priority.³¹ From that time until the present, the Department of Justice has not filed a single complaint involving a claim under the voter list maintenance provisions of Section 8 of the NVRA. To my knowledge, the Department has not sent any state or county a notice letter indicating that it intended to sue to enforce those provisions. I know, moreover, that there were many states that the Department could have targeted for enforcement action during the intervening years.

The Department during the last administration appears to have completely abandoned all efforts to enforce the list maintenance provisions of Section 8 of the NVRA. Even worse, the Department engaged in litigation specifically intended to limit the ability of states to remove ineligible registrations from the rolls. I will cite a few examples.

In 2012, Florida sought to conduct a list maintenance program designed to remove noncitizens from its voter rolls. The Department of Justice and, in a separate action, a group of left-leaning advocacy organizations sued to enjoin Florida's program. The NVRA requires that any program to cancel the registrations of those who have moved must stop during the 90 days right before an election.³² Both the Department and the private litigants argued that this provision prevented Florida from attempting to remove *noncitizens* from the voter rolls during that 90-day period. The argument is extraordinary, considering that noncitizens were never

³⁰ These cases are described on the Department's website, at <https://www.justice.gov/crt/cases-raising-claims-under-national-voter-registration-act#philadelphia>.

³¹ See *A Review of the Operations of the Voting Section of the Civil Rights Division*, OFFICE OF THE INSPECTOR GENERAL, OVERSIGHT AND REVIEW DIVISION 100-101, March 2013, available at <https://oig.justice.gov/reports/2013/s1303.pdf>.

³² 52 U.S.C. § 20507(c)(2)(A).

eligible to register or vote, and, consequently, that they only could be listed on the voter rolls because of an error, or by means of a fraudulent registration.

Each of the district courts that heard this argument rejected it.³³ But the private plaintiffs appealed, and, in a surprise 2-1 ruling, an 11th Circuit panel accepted their argument and reversed the lower court's decision.³⁴ Just as surprising, the administration of Governor Rick Scott refused to appeal that ruling to the Supreme Court. As a result, it is now the law in the 11th Circuit that noncitizens may *not* be systematically removed from the voter rolls in the 90 days before an election. My point is not merely that the result is wrong, even outrageous, but that the U.S. Department of Justice actively sought this result.

In two other cases, the Department provided *amicus* support to private plaintiffs seeking to restrict states' ability to monitor and remove ineligible registrations. The NVRA specifies that voters may not be removed merely for failing to vote.³⁵ The electoral laws of Georgia and Ohio provide that address confirmation notices must be sent to voters who have had no voting-related activity for a certain period of time – three years under Georgia law and two years in Ohio. If the registrants to whom those notices are sent respond, they are designated as active voters. If they fail to respond, they are put in an inactive status and, if they do not contact the state or appear to vote during the NVRA's statutory waiting period of two general federal elections, they are removed from the rolls.

Private plaintiffs in each state sued to enjoin those state laws, arguing that they were, in effect, removing voters merely for failing to vote, which is proscribed by the NVRA. The obvious rejoinder to this argument is that no one is being removed for failing to vote. Registrants are merely being sent address confirmation letters. What happens after that depends on how they respond.

Both district courts dismissed these lawsuits. The Georgia decision is on appeal to the 11th Circuit.³⁶ The Ohio decision was reversed by a divided panel of the 6th Circuit, and currently is on appeal to the Supreme Court, which granted the appellants' petition for a writ of certiorari.³⁷ I believe that the plaintiffs' claims are clearly meritless. But again, my main point is that the U.S. Department of Justice filed briefs supporting the plaintiffs in their efforts to restrict the power of states to remove ineligible registrants from the voter rolls.

More recently, in August of this year, the Department filed an *amicus* brief in the Supreme Court in the Ohio case reversing its prior position and supporting the State's

³³ *U.S. v. Detzner*, 870 F. Supp. 2d 1346 (N.D. Fla. 2012); *Arcia v. Detzner*, 908 F. Supp. 2d 1276 (S.D. Fla. 2012).

³⁴ *Arcia v. Detzner*, 746 F.3d 1273 (11th Cir. 2014).

³⁵ 52 U.S.C. § 20507(b)(2).

³⁶ *Common Cause v. Kemp*, 2017 U.S. Dist. Lexis 93417 (N.D. Ga. Mar. 17, 2017), *appeal docketed*, No. 17-11315 (11th Cir. Mar. 23, 2017).

³⁷ *A. Philip Randolph Institute v. Husted*, 2016 U.S. Dist. LEXIS 84519 (S.D. Ohio June 29, 2016), *rev'd*, 838 F.3d 699 (6th Cir. 2016), *cert. granted sub nom. Husted v. A. Philip Randolph Institute*, No. 16-980, 2017 U.S. LEXIS 3506 (May 30, 2017).

interpretation of the NVRA. I commend the Department for this decision. The position it takes in this brief is clearly supported by the plain text of the NVRA and by existing law.

Beyond the issues raised in this one case, however, I trust that this action signals that the Department is abandoning the approach adopted during the prior administration, which not only failed to enforce the list maintenance provisions of the NVRA, but sued states that were trying to comply with the statute. I also urge the Department to investigate states' and counties' voter list maintenance programs, and to notify and then sue those jurisdictions that fail to comply with the obligations imposed by Section 8 of the NVRA. With 462 counties showing registration rates greater than 100%, there are a large number of potential targets for enforcement.

Judicial Watch is proud of its efforts to enforce Section 8 of the NVRA. But the Department of Justice should be leading this work. The Department has far greater resources at its disposal than private nonprofits like Judicial Watch, and is far more likely to obtain the voluntary cooperation of states and counties when it notifies them of a potential violation.

The NVRA Should Be Enforced

There are sound policy and legal reasons for enforcing the voter list maintenance provisions of the NVRA and requiring states to clean their voter rolls. Yet, in engaging in this discussion, I find it is important not to confuse this matter with the debate over state voter identification laws. While I believe, with a majority of Americans, that there are persuasive reasons for requiring reliable photo identification at the polls on Election Day, the enforcement of the NVRA is a broader topic and it raises a number of different concerns.

To begin with, the NVRA already is federal law. Congress already engaged in the weighing of factors and the deliberation necessary to justify that law. We ought not choose which federal laws, or which provisions of those laws, we will enforce. This is particularly so with compromise legislation like the NVRA. As the statute's "Findings and Purposes" makes clear, the NVRA sought to accommodate both those who hoped for greater registration and access to voting, and those who hoped to ensure election integrity and guarantee accurate voter rolls. It is contrary to congressional intent, and, frankly, dishonest, to enforce only half of a compromise bill.

In addition, accurate voter lists prevent more kinds of fraud than a voter ID requirement. For example, an accurate voter list prevents double voting, which most commonly occurs where recently moved voters vote in the electoral precincts associated both with their new and their old addresses. Requiring an ID does not prevent this, because double voters are who they say they are. Regular maintenance of the voter rolls also diminishes the opportunities for absentee or mail-in ballot fraud, which most experts agree is more common than impersonation fraud. Every week Judicial Watch gets emails like the one we received just a few days ago:

In the mail today, a letter came from the State of California Department of Motor Vehicles. The letter was addressed to my mother . . . who has been deceased since 2009. In the latter was a renewal form for her Disabled parking and a Voter Registration Form that just needed to be filled out and sent in. If these letters are

being sent at large to people who are deceased, it would be extremely easy for anyone to fill out the voter registration form – requesting to vote by mail – and no one would know that it was a fraudulent vote.

Our correspondent is correct, and if the voter rolls were better maintained, the possibility she alludes to would not arise.

Maintaining accurate voter rolls as required by the NVRA also has other benefits that have nothing to do with preventing fraud. For example, accurate voter rolls prevent honest mistakes, such as where those who are not aware that they are ineligible vote because they are listed on the rolls, or where voters cast a ballot in the wrong location, possibly in the wrong election, because the rolls are not current.

In addition, inaccurate voter rolls hamper legitimate voter education and get-out-the-vote efforts. To the extent that these efforts rely on voter rolls to determine whom to contact and where they may be reached, inaccurate voter rolls increase the expense of such efforts. It costs money to send thousands of pieces of mail to wrong addresses or to persons who no longer reside in the state.

As a final point, I would like to make a few observations about voter fraud, a topic much discussed today. We know that voter fraud, whether impersonation fraud, absentee ballot fraud, registration fraud, double voting, noncitizen voting, or voting by those ineligible under state law, occurs and is, in some form, a feature of every election, and we have suggestive, but not conclusive, evidence about the extent of such fraud. We also know that voter fraud is hard to detect and prove, especially where the law requires a showing of specific intent. We know that many states do not even bother to track voter fraud.³⁸ We also know that this is probably to be expected, given that voter fraud often is lightly penalized. In preparing my statement, I happened to research some of the voter fraud laws in neighboring Vermont. Its election law provides that the penalty for casting more than one ballot is a maximum fine of \$1,000 for a primary or general election, \$100 for a local election, and no incarceration in either case.³⁹ At the same time, Vermont law provides that the penalty for selling maple syrup without a license is a maximum fine of \$5,000 and up to a year in prison.⁴⁰

In any case, discussions about the precise extent and effect of voter fraud risk obscuring a more important point: Elections, like kitchens, must look clean. I was managing an election monitoring team in Philadelphia in November 2008 when two men, one of them armed with a club, took up a position outside a local polling station.⁴¹ Four years later, I was back in Philadelphia when we received a report that one polling place had a floor-to-ceiling mural of President Obama, along with his campaign logo and a quote from one of his speeches.⁴²

³⁸ See Robert D. Popper, *Political Fraud About Voter Fraud*, WALL ST. J., April 27, 2014.

³⁹ 17 V.S.A. § 1971.

⁴⁰ 6 V.S.A. §§ 483, 498.

⁴¹ <https://www.youtube.com/watch?v=neGbKHyGuHU>.

⁴² <http://www.nbcphiladelphia.com/news/local/Obamas-Face-Covered-at-Polling-Place-After-Court-Order-177511541.html>.

No one would dismiss the need for legislation forbidding weapons at a polling place because violence is rare, or because no one was frightened away from the polls, or because the incident did not sway the outcome of an election. People should be able to rely on the fact that they will be physically safe at polling stations.

Similarly, no one would deny the value of laws against electioneering or partisan displays inside polling places on the ground that these displays did not change anyone's mind or determine an election. Such displays suggest to the voters that the election officials are not impartial. Even if it never changes or influences a single vote, this behavior sends a bad message to the public. It suggests that election officials are not going to be fair.

For the same reasons, the law should incorporate and enforce elementary protections against voter fraud. Indeed, it is in part the absence of such protections that has led an astonishing 69% of Americans to say that they do not have confidence in the honesty of our elections. These elementary protections include the voter list maintenance provisions of Section 8 of the NVRA. Along with all of the other advantages derived from the statute, diligent enforcement of the NVRA will help convince the public that American elections are clean.