



**Judicial  
Watch**<sup>®</sup>  
*Because no one  
is above the law!*

November 16, 2021

*VIA USPS CERTIFIED MAIL AND EMAIL*

Hon. Shemia Fagan  
Oregon Secretary of State  
Elections Division  
Public Service Building Suite 501  
255 Capitol St. NE  
Salem, OR 97310

**Re: Statutory Notice of Violations of 52 U.S.C. § 20507.**

Dear Secretary Fagan:

I write as legal counsel for Judicial Watch, Inc. (“Judicial Watch”). This letter is to notify you that we have determined that Oregon is in violation of Section 8(a)(4) of the National Voter Registration Act of 1993 (NVRA), which mandates that you conduct a general program that makes a reasonable effort to remove the names of ineligible voters.<sup>1</sup> This letter serves as pre-suit notice pursuant to 52 U.S.C. § 20510(b)(1) & (2). Judicial Watch will file a complaint against you if these violations are not corrected within 90 days.

This letter also serves as a request pursuant to 52 U.S.C. § 20507(i) for records related to voter registration activities, which records you are required to keep and to provide upon request.

### **Violations of Section 8 of the NVRA**

Section 8(a)(4) of the NVRA requires states to “conduct a general program that makes a reasonable effort to remove the names of ineligible voters” by reason of death or change of address.<sup>2</sup> We determined the noticed violation of the NVRA based upon the following.

A voter registration is subject to cancellation under Section 8(d)(1)(B) of the NVRA when a voter fails to respond to an address confirmation notice and then fails to vote or correct the

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<sup>1</sup> As secretary of state, you are designated by law as the chief State election official responsible for coordinating Oregon’s compliance with the NVRA. *See* 52 U.S.C. § 20509; O.R.S. § 246.110. As such, you are liable for the violations described in this letter. *See U.S. v. Missouri*, 535 F.3d 844, 850, 851 (8th Cir. 2008).

<sup>2</sup> 52 U.S.C. § 20507(a)(4).

registration record before the second general federal election following the notice.<sup>3</sup> The Supreme Court has held that such removals are mandatory.<sup>4</sup>

Federal law requires the Election Assistance Commission (EAC) to submit a report to Congress every second year assessing the impact of the NVRA on the administration of federal elections during the preceding two years.<sup>5</sup> Federal regulations require chief State election officials to provide data to the EAC for use in this report.<sup>6</sup> The EAC has published the data it received from the states—including your state—for the last two reporting periods. Together these datasets contain four years of self-reported data concerning compliance with the NVRA, from November 2016 through November 2020.<sup>7</sup>

The data shows that fourteen Oregon counties reported removing *five or fewer* voter registrations pursuant to Section 8(d)(1)(B) in that *four-year* period. Many of these reported removing no registrations at all. These fourteen counties are Multnomah County (five removals reported in four years), Lane County (two removals), Klamath County (one removal), Columbia County (one removal), Tillamook County (one removal), Crook County (zero removals), Wasco County (one removal), Hood River County (four removals), Wallowa County (zero removals), Harney County (zero removals), Lake County (one removal), Sherman County (one removal), Gilliam County (zero removals), Wheeler County (zero removals).

Eleven other Oregon counties reported similarly low removals pursuant to Section 8(d)(1)(B) over the last *two* years: Marion County (one removal reported in two years), Jackson County (zero removals), Douglas County (five removals), Yamhill County (one removal), Josephine County (one removal), Polk County (zero removals), Coos County (three removals), Lincoln County (six removals), Union County (five removals), Malheur County (zero removals), Baker County (zero removals).

It is simply not possible to comply with the NVRA while removing zero or literal handfuls of registrations under that provision. Many tens of thousands of voters must have changed residence without notifying election officials during those years.

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<sup>3</sup> 52 U.S.C. § 20507(d)(1)(B).

<sup>4</sup> *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1841-42 (2018).

<sup>5</sup> 52 U.S.C. § 20508(a)(3).

<sup>6</sup> 11 C.F.R. § 9428.7.

<sup>7</sup> The data are available at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys>. Data for the most recent reporting period (November 2018 through November 2020) is available under “2020” as “EAVS Datasets Version 1.1 (released October 8, 2021).” Column “CZ” shows the number of cancellations pursuant to Section 8(d)(1)(B) of the NVRA. Data for the previous reporting period (November 2016 through November 2018) is available under “2018” as “EAVS Datasets Version 1.3 (released July 15, 2020).” Column “CX” shows the relevant cancellations under Section 8(d)(1)(B).

Accordingly, this letter serves as official statutory notice, pursuant to 52 U.S.C. § 20510(b)(2), of violations of the NVRA. In response to this letter, please indicate whether you admit or contest the accuracy of the cited data. In this regard, please note:

1. The relevant data was provided to a federal commission by your state and your office pursuant to a federal mandate. Thus, it will not do simply to assert that “Judicial Watch got it wrong.” These are your state’s official numbers. If they are incorrect, it is the fault of someone in your office.

2. If the data are incorrect, please provide what you believe to be the correct numbers for the relevant periods.

3. In the same vein, if registrations were removed pursuant Section 8(d)(1)(B) *after* November 2020, please tell us, and tell us how many were removed.

4. Note that we are *only* referring to registrants who were sent an address inquiry notice, failed to respond, and then failed to vote or otherwise appear in the next two consecutive general federal elections, as set forth in Section 8(d)(1)(B) of the NVRA. We are *not* referring to registrations removed for any other reason. Specifically, we are not referring to total removals, to removals on account of the death of the registrant, or to removals where a registrant announces or confirms a change of address to relevant officials.

### **Request for Records Pursuant to NVRA Section 8(i)**

Section 8(i)(1) of the NVRA requires that “[e]ach state 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.” 52 U.S.C. § 20507(i)(1). That provision goes on to specifically provide that “[t]he records maintained . . . shall include lists of the names and addresses of all persons to whom [address confirmation] notices . . . are sent, and information concerning whether or not each such person has responded to the notice.” *Id.*, § 20507(i)(2).

Pursuant to Section 8(i), we ask that you provide the following records to Judicial Watch:

1. Copies of the state’s most recent voter registration database, including fields indicating each registered voters’ name, full date of birth, home address, most recent voter activity, and active or inactive status.

2. A list of the names and addresses of all persons to whom notices described in 52 U.S.C. § 20507(d)(2) were sent, and information concerning whether or not each such person responded to the notice.

3. Communications concerning the U.S. Election Assistance Commission's 2020 Election Administration and Voting Survey, including, but not limited to, responses to Section A of that survey, and any records provided along with those responses.
4. All records concerning any internal or external audit, evaluation, assessment, review, analysis, critique, or request for or response to any of the foregoing, relating to the accuracy and currency of official lists of eligible voters.
5. All records concerning any instance(s) of voter fraud, including, but not limited to, impersonation fraud, double voting, registration fraud, absentee ballot fraud, mail-in ballot fraud, registration or voting by noncitizens, unlawful assistance, or aiding, abetting, or conspiring to commit any of the foregoing.
6. All manuals, training materials, protocols, written standards, and official guidance concerning efforts to ensure the accuracy and currency of official lists of eligible voters.
7. All contracts with the U.S. Postal Service or any other federal agency to provide change-of-address information concerning registered voters.

If we do not hear within two weeks of the date of this letter that you intend to provide these records, we will assume that you do not intend to do so, and will act accordingly.

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If I have been blunt, it is from long experience in sending notice letters, receiving responses (or not), and commencing litigation under the NVRA. Please do not misinterpret this as any unwillingness to compromise or work together. We are always glad to avoid costly litigation and to amicably resolve any dispute. In fact, we have a track record of resolving NVRA claims on reasonable terms, including, in the early stages, for no fees.

However, if you do not contact us about correcting or otherwise resolving the above-identified problems within 90 days, we will commence a federal lawsuit seeking declaratory and injunctive relief against you. In such a lawsuit we would seek, in addition to injunctive relief, a judgment awarding reasonable attorney's fees, expenses, and costs. *See* 52 U.S.C. § 20510(c). For the reasons set forth above, we believe that such a lawsuit would be likely to succeed.

We look forward to receiving your prompt response.

Sincerely,

**JUDICIAL WATCH, INC.**

*s/ Robert D. Popper*

Robert D. Popper  
Attorney, Judicial Watch, Inc.