



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

October 30, 2023

VIA EMAIL AND USPS CERTIFIED MAIL

Hon. Shirley N. Weber
California Secretary of State
1500 11th Street
Sacramento, California 95814

**Re: Notice of Violation of the National Voter Registration Act of 1993,
52 U.S.C. § 20507**

Dear Secretary Weber:

I write on behalf of Judicial Watch, Inc. (“Judicial Watch”) and the Libertarian Party of California (“LPCA”) to notify you that your office is currently in violation of Section 8 of the National Voter Registration Act of 1993 (NVRA). We write to you as the chief state election official responsible for coordinating California’s compliance with Section 8 of the NVRA.¹ This letter serves as pre-suit notice pursuant to 52 U.S.C. § 20510(b)(1) & (2) that Judicial Watch and the LPCA will file a lawsuit against you if these violations are not corrected within 90 days.

Background

As you are no doubt aware, the NVRA was intended both to “increase the number of eligible citizens who register” and “to protect the integrity of the electoral process” and “ensure that accurate and current voter registration rolls are maintained.”² The goal of ensuring election integrity was embodied in Section 8, which requires each state to “conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of ... the death of the registrant; or ... a change in the residence of the registrant.”³

The registration of a voter who may have moved may only be cancelled in one of two ways. First, it is cancelled if the registrant confirms a change of address in writing.⁴ Second, if the registrant is sent a postage prepaid, pre-addressed, forwardable notice requesting address confirmation (the “Confirmation Notice”), fails to respond to it, and then fails to vote in the next two general federal elections, that registration must be cancelled.⁵ Registrants who have failed to

¹ Cal. Elec. Code § 10(a); Cal. Gov. Code § 12172.5(a).

² 52 U.S.C. § 20501(b).

³ *Id.*, § 20507(a)(4).

⁴ *Id.*, § 20507(d)(1)(A).

⁵ *Id.*, § 20507(d)(1)(B) (“Section 8(d)(1)(B)”; (d)(2), (d)(3); see *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1841-42 (2018) (“federal law makes this removal mandatory”).

respond to a Confirmation Notice and whose registrations will be cancelled after the statutory waiting period are said to be “inactive.”⁶ However, inactive registrations may still be voted on election day.⁷

The NVRA contains a public records provision. Section 8(i) 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.”⁸ 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.”⁹

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.¹⁰ Federal regulations require you to provide data to the EAC for use in this report.¹¹ The EAC posted the most recent survey it sent to the states to elicit their responses for its biennial report.¹²

On June 29, 2023, the EAC published the data it received from the states, including your state, in response to this survey, for the reporting period from November 2020 through November 2022.

Facts Showing Violations of the List Maintenance Provisions of the NVRA

According to your state’s responses to the EAC’s survey, 27 California counties reported removing five or fewer—and, in most of those counties, zero—voter registrations from the list of eligible voters during the period from November 2020 to November 2022 for failing to respond to a Confirmation Notice and failing to vote in two consecutive general federal elections.¹³ Another 19 counties simply did not report any data whatsoever to the EAC regarding removals under

⁶ *E.g.*, 11 C.F.R. § 9428.2(d).

⁷ 52 U.S.C. § 20507(d)(2)(A).

⁸ 52 U.S.C. § 20507(i)(1).

⁹ *Id.*, § 20507(i)(2).

¹⁰ 52 U.S.C. § 20508(a)(3).

¹¹ 11 C.F.R. § 9428.7.

¹² The survey is available at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys> at the link entitled “2022 Election Administration and Voting Survey Instrument.”

¹³ The data referred to is available at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys> at the link entitled “EAVS Datasets Version 1.0 (released June 29, 2023),” in Column CZ, which contains the responses to question A9e of the survey. The following 19 counties reported zero such removals during that period: Alpine County, Amador County, Calaveras County, Del Norte County, Glenn County, Humboldt County, Madera County, Merced County, Modoc County, Monterey County, Placer County, San Bernardino County, San Francisco County, San Mateo County, Santa Barbara County, Santa Cruz County, Sierra County, Solano County, and Stanislaus County. Another eight counties reported from one to five such removals during that period: Alameda County (1 removal), Colusa County (1), Lake County (1), Mendocino County (1), San Joaquin County (2), San Luis Obispo County (5), Siskiyou County (2), and Yolo County (2).

Section 8(d)(1)(B). Instead, in the relevant column where the data should have been, the survey response for each of these counties merely states, “Data not available.”¹⁴

On August 4, 2023, Judicial Watch wrote to you pointing out these facts and asking you to confirm the data contained in the EAC’s report and to provide the data that was omitted. We also asked for certain public records pursuant to Section 8(i). On August 29, 2023, your office responded by means of an email from “Secretary of State, Constituent Affairs,” which treated our factual inquiries about the aforementioned county data as requests for public records, and stated that “[w]e have no records responsive to your requests.” (Both our letter and your email response, without documentary attachments, are annexed hereto.) Our inquiries were not requests for public records, however, but requests for information, which your response signally failed to provide.

Both common sense and Judicial Watch’s enforcement experience confirm that there is no possible way California has complied with Section 8(d)(1)(B) of the NVRA, the key NVRA provision dealing with voters who have changed residence, when 46 of its 57 counties either removed no or just a few registrations under that provision, or failed to report removals at all, for the past two reporting years. Nor is it possible, given these facts, that California is complying with its list maintenance obligations to “conduct a general program that makes a reasonable effort to remove the names” of voters who have moved or died. *See* 52 U.S.C. § 20507(a)(4).

California’s non-compliance with the NVRA is further indicated by the unusually high registration rates observed in its counties. Comparing the data your state reported to the EAC regarding the total registration numbers for each county¹⁵ to the U.S. Census Bureau’s most recent five-year estimates of the numbers of resident citizens over the age of eighteen¹⁶ suggests that 21 California counties have more voter registrations than citizens of voting age.¹⁷ Several federal courts have determined that such high registration rates are sufficient grounds for alleging a failure

¹⁴ These responses are also found at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys> at the link entitled “EAVS Datasets Version 1.0 (released June 29, 2023)” in Column CZ. The 19 counties for which no data was provided are: El Dorado County, Imperial County, Inyo County, Kern County, Lassen County, Marin County, Mono County, Napa County, Nevada County, Orange County, Plumas County, Riverside County, San Benito County, Santa Clara County, Shasta County, Sonoma County, Trinity County, Tulare County, and Ventura County.

¹⁵ See the data at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys> at the link entitled “EAVS Datasets Version 1.0 (released June 29, 2023),” in Column E.

¹⁶ This data is found on the U.S. Census Bureau’s website in table DP05 (“ACS Demographic and Housing Estimates”), by selecting “2021: ACS 5-Year Estimates Data Profiles” as the data source and scrolling down to the heading, “Citizen, 18 and over population” for each county. For example, the relevant data for Alameda County is available at <https://data.census.gov/table/ACSDP5Y2021.DP05?q=Alameda+County,+California>.

¹⁷ These are: Alameda County, Alpine County, Calaveras County, El Dorado County, Imperial County, Marin County, Modoc County, Nevada County, Placer County, Plumas County, Riverside County, San Benito County, San Diego County, San Mateo County, Santa Clara County, Santa Cruz County, Shasta County, Solano County, Stanislaus County, Ventura County, and Yolo County. The same is true for the State of California as a whole, in that its total registration exceeds its citizen voting-age population.

to comply with the NVRA's mandate to make reasonable efforts to remove voters by reason of death or change of address.¹⁸

Consistent with the foregoing facts, your own data shows that California's counties have unusually high inactive registration rates. For example, data your state supplied to the EAC shows that in 12 California counties inactive registrations constitute more than 20% of all registrations, and in one county more than 27% of all registrations.¹⁹ By contrast, the national inactive rate is 11.1%.²⁰ High inactive rates are also sufficient grounds for alleging non-compliance with the NVRA.²¹

The foregoing facts amply demonstrate that California is not complying with the list maintenance provisions of the NVRA.

Facts Showing Violations of the Public Records Provisions of the NVRA

Judicial Watch's August 4, 2023 letter also requested, pursuant to Section 8(i) of the NVRA, seven categories of public records concerning California's programs and activities to ensure the accuracy and currency of its voter lists.

The second request and the response we received from you on August 29, 2023, were:

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.

Response: We have no records responsive to your request.

This request seeks a category of documents that the NVRA specifically requires states to provide on request.²² Accordingly, your response effectively concedes a violation of the public records provisions of the NVRA.

The third request and your response are as follows:

¹⁸ See, e.g., *Green v. Bell*, No. 3:21-cv-00493-RJC-DCK, 2023 U.S. Dist. LEXIS 45989, at *12 (W.D.N.C. Mar. 20, 2023); *Judicial Watch, Inc. v. Griswold*, 554 F. Supp. 3d 1091, 1107 (D. Colo. 2021); *Voter Integrity Project NC, Inc. v. Wake Cnty. Bd. of Election*, 301 F. Supp. 3d 612, 620 (E.D.N.C. 2017).

¹⁹ These are: Del Norte County, Imperial County, Lake County, Modoc County, Plumas County, San Mateo County, Santa Clara County, Santa Cruz County, Shasta County, Solano County, Stanislaus County, and Yolo County. The data are obtained for each county by dividing Column G by Column E, in the document entitled "EAVS Datasets Version 1.0 (released June 29, 2023)," available at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys>.

²⁰ See ELECTION ADMINISTRATION AND VOTING SURVEY 2022 COMPREHENSIVE REPORT at 141-42, available at link entitled "2022 Election Administration and Voting Survey Report (Full PDF Version)," at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys>.

²¹ See *Judicial Watch, Inc. v. Griswold*, 554 F. Supp. 3d at 1107.

²² See 52 U.S.C. § 20507(i)(2).

3. Communications concerning the EAC's 2022 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.

Response: We will provide all non-privileged and non-exempt records relating to this request, however, these records are currently still under legal review.

Until responsive documents have been provided, this request has not been complied with.

The sixth request and your response are:

6. 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.

Response: This request is not specific enough to perform a search to identify any specific record or records that might be responsive, (not "a reasonable and focused request" per *Rogers v. Superior Court* (1993) 19 Cal. App. 4th 469, 481). ...

This request restricts its reach both to a particular kind of evaluation and to a particular kind of topic for such an evaluation, and is specific enough to allow a proper search. Your failure to conduct a search or provide documents violates the public records provisions of the NVRA.

* * * * *

If you do not contact us about correcting or otherwise resolving the above-identified violations within 90 days, Judicial Watch and the LPCA 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 have long experience with list maintenance litigation and are well aware of the practical difficulties jurisdictions face in trying to maintain their voter rolls. As we believe we showed during our previous litigation involving your office and Los Angeles County, we are absolutely willing to compromise and work together to come up with a realistic plan to address these difficulties. We are always glad to avoid costly litigation and to amicably resolve disputes.

Notice of Violation of the NVRA

October 30, 2023

Page | 6

Please contact us if you have any questions about the foregoing. We look forward to hearing from you.

Sincerely,

JUDICIAL WATCH, INC.

s/ Robert D. Popper

Robert D. Popper
Attorney, Judicial Watch, Inc.