



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

September 22, 2023

*VIA USPS CERTIFIED MAIL AND EMAIL*

Ms. Monica Holman Evans  
Executive Director, District of Columbia Board of Elections  
1015 Half Street, SE  
Suite 750  
Washington, D.C. 20003

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

Dear Ms. Evans:

I write on behalf of Judicial Watch, Inc. (“Judicial Watch”), and on behalf of the District of Columbia Republican Party (“DCRP”), to notify you that your office, the District of Columbia Board of Elections (“DC BOE”), is currently in violation of Section 8 of the National Voter Registration Act of 1993 (NVRA). Section 8 of the NVRA mandates that the DC BOE conducts a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters for DC. We write to you as the chief election official responsible for coordinating the DC BOE’s compliance with Section 8 of the NVRA.<sup>1</sup> This letter serves as pre-suit notice pursuant to 52 U.S.C. § 20510(b)(1) & (2). Judicial Watch and the DCRP will file a complaint against you if these violations are not corrected within 90 days.

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

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.”<sup>2</sup> The goal of ensuring election integrity was embodied in Section 8, which requires each state and the District of Columbia 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.”<sup>3</sup>

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.<sup>4</sup> Second, if a

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<sup>1</sup> D.C. Code § 1-1001.07(d)(12)(A).

<sup>2</sup> 52 U.S.C. § 20501(b).

<sup>3</sup> *Id.*, § 20507(a)(4).

<sup>4</sup> *Id.*, § 20507(d)(1)(A).

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 is cancelled.<sup>5</sup> Registrants who have failed to respond to a Confirmation Notice and whose registrations will be cancelled after the statutory waiting period are said to be “inactive.”<sup>6</sup> However, inactive registrations may still be voted on election day.<sup>7</sup>

Federal law requires the 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>8</sup> Federal regulations require you to provide data to the EAC for use in this report.<sup>9</sup> The EAC posted the most recent survey it sent to the states to elicit their responses for its biennial report.<sup>10</sup>

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

According to the EAC, your survey responses show that the District of Columbia reported removing *zero* voter registrations from November 2020 to November 2022 pursuant to Section 8(d)(1)(B) of the NVRA for failing to respond to a Confirmation Notice and failing to vote in two consecutive general federal elections.<sup>11</sup> In our experience, and as a matter of common sense, there is no possible way that the DC BOE is complying with the NVRA if it removed no registrations pursuant to that provision in a two-year period.

### **Our Prior Correspondence**

In a letter dated August 4, 2023, Robert D. Popper from our office wrote to you about the above-referenced survey data regarding DC BOE’s removals under Section 8(d)(1)(B) of the NVRA. In his letter he asked, among other things, whether the published data showing no such removals in that two-year period was accurate. On September 11, 2023, you responded to Mr. Popper’s letter. I have attached both letters to this correspondence.

In your response, you cited difficulties confronting the District of Columbia Board of Elections due to (1) a data conversion commencing in 2019, (2) a redistricting issue in 2022, and (3) a staffing shortage affecting the Board’s Data Services Division. You confirmed these numbers and concluded that, “[f]or the reasons indicated above, the Board did not remove any voter

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<sup>5</sup> *Id.*, § 20507(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”).

<sup>6</sup> *E.g.*, 11 C.F.R. § 9428.2(d).

<sup>7</sup> 52 U.S.C. § 20507(d)(2)(A).

<sup>8</sup> 52 U.S.C. § 20508(a)(3).

<sup>9</sup> 11 C.F.R. § 9428.7.

<sup>10</sup> The survey is available at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys>, under the heading for 2022, at the link entitled “2022 Election Administration and Voting Survey Instrument.”

<sup>11</sup> The data referred to is available at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys>, under the heading for 2022, 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.

registrations from November 2020 to November 2022 pursuant to Section 8(d)(1)(B) of the NVRA for failing to respond to a Confirmation Notice and failing to vote in two consecutive general federal elections.” Nor did your letter mention any such removals at any time after November 2022.

Simply put, your letter concedes outright that your office has failed to comply with Section 8 of the NVRA for an extended period of time.

The EAC report also reveals that the number of inactive registrations in DC amounts to about one quarter of the total number of the City’s registrations. DC has one of the highest percentages of inactive registrants of any state or county in the United States. Further, DC’s total registration rate—its total number of registrations divided by the most recent census estimates of its citizen voting-age population—is over 131%. This is one of the highest total registration rates of any state or county in the United States. These data are consistent with each other, and also with your admission that DC has failed to comply with the NVRA.

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.

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Please do not misunderstand me. We have long experience with list maintenance litigation and are well aware of the practical difficulties jurisdictions like DC face in trying to maintain their voter rolls. 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. In fact, we have a track record of resolving NVRA claims on reasonable terms.

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

Sincerely,

**JUDICIAL WATCH, INC.**

*s/ Eric W. Lee*

Eric W. Lee

Attorney, Judicial Watch, Inc.

Attachments