



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

November 15, 2023

*VIA USPS CERTIFIED MAIL AND EMAIL*

Ms. Bernadette Matthews  
Executive Director, Illinois State Board of Elections  
69 W. Washington Street  
Suite LL08  
Chicago, Illinois 60602

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

Dear Executive Director Matthews:

I write on behalf of Judicial Watch, Inc. (“Judicial Watch”), Carol J. Davis, a resident and registered Illinois voter, and Illinois Family Action (“IFA”), 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 Illinois’ 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) that Judicial Watch, Carol J. Davis, and IFA 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.”<sup>2</sup> 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.”<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 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

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<sup>1</sup> 10 Ill. Comp. Stat. Ann. 5/1A-7, 5/1A-8.

<sup>2</sup> 52 U.S.C. § 20501(b).

<sup>3</sup> *Id.*, § 20507(a)(4).

<sup>4</sup> *Id.*, § 20507(d)(1)(A).

two general federal elections, that registration must be 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>

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.”<sup>8</sup> 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.”<sup>9</sup>

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, 23 Illinois counties reported removing fifteen or fewer—and, in almost half 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.<sup>10</sup> Another 34 Illinois jurisdictions simply did not report any data whatsoever to the EAC regarding removals under 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.”<sup>11</sup>

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<sup>5</sup> *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”).

<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. § 20507(i)(1).

<sup>9</sup> *Id.*, § 20507(i)(2).

<sup>10</sup> 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 11 counties reported zero such removals during that period: Christian County, Clark County, De Kalb County, Johnson County, Lee County, Macon County, Marshall County, Pike County, Stark County, Union County, and Washington County. Another twelve counties reported from one to fifteen such removals during that period: Bureau County (1 removal), Edwards County (12), Franklin County (11), Hamilton County (5), Henry County (10), Lake County (8), Marion County (12), Ogle County (11), Piatt County (15), Pulaski County (6), Putnam County (5), and Randolph County (4).

<sup>11</sup> 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 34 jurisdictions for which no data was provided are: Adams County, Alexander County, Brown County, Cass County, Chicago City, Clay County, Clinton County, Cook County, Crawford County, Douglas County, East St. Louis City, Fayette County, Gallatin County, Greene County, Grundy County, Jefferson County, Kane County, Kankakee County, Knox County,

There are other significant gaps in the data Illinois reported to the EAC. The sending of address Confirmation Notices is a crucial step in the NVRA’s registration removal process. Yet 29 Illinois counties did not report any data regarding the number of Confirmation Notices sent during the period from November 2020 to November 2022, reporting instead “Data not available.”<sup>12</sup> The designation of registrations as “inactive,” pending their ultimate disposition, is another crucial step in the NVRA’s statutory removal process. Yet 22 counties did not report any data regarding inactive registrations during the relevant period from November 2020 to November 2022, reporting instead “Data not available.”<sup>13</sup>

On August 4, 2023, Judicial Watch wrote to you to pointing out these facts and asking you to confirm data contained in the EAC’s report and provide data that was omitted. We also asked for certain public records pursuant to Section 8(i). On September 1, 2023, General Counsel Marni M. Malowitz responded on behalf of the Illinois State Board of Elections (“SBE”). She writes that “SBE’s obligations under Section 8(i) of the NVRA are limited to producing existing records, not responding to interrogatory-style inquiries.” Fair enough, but if you continue to withhold this information and we commence a lawsuit in 90 days, SBE will soon be compelled to respond to actual interrogatories, on these and other topics. Ms. Malowitz also claims that “Illinois is a bottom up jurisdiction, where local election authorities are responsible for inputting and maintaining voter registration records for their residents,” and that “SBE does not have access to local election authorities’ list maintenance records.” But the NVRA squarely places responsibility for NVRA compliance on the state, not on its counties or cities.<sup>14</sup> Courts have rejected state efforts to avoid their NVRA responsibilities by claiming that they have been delegated to local jurisdictions.<sup>15</sup>

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La Salle County, Logan County, Mason County, McDonough County, Mercer County, Monroe County, Morgan County, Perry County, Richland County, Scott County, Vermilion County, Warren County, White County, Winnebago County, and Woodford County.

<sup>12</sup> The responses referred to are available online 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 CJ, which contains the responses to question A8a of the survey. The 29 counties failing to report data about Confirmation Notices are: Alexander County, Boone County, Brown County, Champaign County, Clay County, Clinton County, De Kalb County, Fayette County, Franklin County, Gallatin County, Greene County, Grundy County, Henry County, Johnson County, Kankakee County, Logan County, McDonough County, Mercer County, Monroe County, Montgomery County, Ogle County, Richland County, Schuyler County, Scott County, Union County, Warren County, Wayne County, Williamson County, and Winnebago County.

<sup>13</sup> The responses referred to are available online 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 G, which contains the responses to question A1c of the survey. The 22 counties reporting no data regarding inactive registrations are: Adams County, Alexander County, Brown County, Clay County, De Kalb County, Fayette County, Grundy County, Johnson County, Knox County, La Salle County, McDonough County, Mercer County, Monroe County, Morgan County, Piatt County, Pike County, Randolph County, Rockford City, Shelby County, Stark County, Union County, and Warren County.

<sup>14</sup> See, e.g., 52 U.S.C. § 20507(a)(4) (“each *State* shall ... conduct a general program”); (c)(2) (“A *State* shall complete ... any program”); (i)(1) (“Each *State* shall maintain for at least 2 years ... all records”) (emphasis added).

<sup>15</sup> See *United States v. Missouri*, 535 F.3d 844, 850 (8th Cir. 2008) (the language of Section 8(a)(4) “clearly envisions” that the state “will actively oversee the general program”); see *id.* at 851 (lack of local compliance “remains relevant to determining whether or not” a state “is reasonably ‘conduct[ing] a general program’” of voter list maintenance); see also *Scott v. Schedler*, 771 F.3d 831, 839 (5th Cir. 2014) (chief state election official’s “coordination” power “includes enforcement power”).

Both common sense and Judicial Watch’s enforcement experience confirm that there is no possible way Illinois and the SBE have complied with Section 8(d)(1)(B) of the NVRA, the key NVRA provision dealing with voters who have changed residence, when 52 Illinois jurisdictions either removed no or just a few registrations under that provision, or failed to report removals at all, for the past two reporting years. This conclusion is bolstered by the fact that Illinois failed to report important data concerning Confirmation Notices and inactive registrations to the EAC. Nor is it possible, given these facts, that Illinois 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).

Your state’s non-compliance with the NVRA is further indicated by the unusually high registration rates observed in many Illinois jurisdictions. Comparing the data your state reported to the EAC regarding the total registration numbers for each county<sup>16</sup> to the U.S. Census Bureau’s most recent five-year estimates of the numbers of resident citizens over the age of eighteen<sup>17</sup> suggests that 15 Illinois jurisdictions have more voter registrations than citizens of voting age.<sup>18</sup> Several federal courts have determined that such high registration rates are sufficient grounds for alleging a failure to comply with the NVRA’s mandate to make reasonable efforts to remove voters by reason of death or change of address.<sup>19</sup>

The foregoing facts amply demonstrate that Illinois 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, six categories of public records concerning Illinois’ programs and activities to ensure the accuracy and currency of its voter lists.

The first request and the response we received from you on September 1, 2023, were:

*1. 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*

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<sup>16</sup> 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.

<sup>17</sup> 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 Adams County is available at <https://data.census.gov/table/ACSDP5Y2021.DP05?q=Adams+County,+Illinois>.

<sup>18</sup> These are: Alexander County, Clark County, Du Page County, East St. Louis City, Franklin County, Kendall County, Lake County, Macon County, Massac County, McHenry County, Mercer County, Pulaski County, Sangamon County, Scott County, and Woodford County.

<sup>19</sup> *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); *Am. Civ. Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 793-94 (W.D. Tex. Mar. 30, 2015).

*concerning whether or not each such person responded to the notice.*

SBE does not possess documents responsive to this request, as explained above.

This request seeks a category of documents that the NVRA specifically requires states to provide on request.<sup>20</sup> Accordingly, your response effectively concedes a violation of the public records provisions of the NVRA.

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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.

Please do not misunderstand me. We have long experience with list maintenance litigation and are well aware of the practical difficulties states like Illinois 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/ Robert D. Popper*

Robert D. Popper

Attorney, Judicial Watch, Inc.

Attachments

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<sup>20</sup> *See* 52 U.S.C. § 20507(i)(2).