



**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.

\* \* \* \* \*

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).



**Judicial  
Watch**<sup>®</sup>  
*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.<sup>1</sup> 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.”<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 two general federal elections, that registration must be cancelled.<sup>5</sup> Registrants who have failed to

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<sup>1</sup> Cal. Elec. Code § 10(a); Cal. Gov. Code § 12172.5(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).

<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”).

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>

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>10</sup> Federal regulations require you to provide data to the EAC for use in this report.<sup>11</sup> The EAC posted the most recent survey it sent to the states to elicit their responses for its biennial report.<sup>12</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, 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.<sup>13</sup> Another 19 counties simply did not report any data whatsoever to the EAC regarding removals under

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<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> 52 U.S.C. § 20508(a)(3).

<sup>11</sup> 11 C.F.R. § 9428.7.

<sup>12</sup> 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.”

<sup>13</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 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.”<sup>14</sup>

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 county<sup>15</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>16</sup> suggests that 21 California counties have more voter registrations than citizens of voting age.<sup>17</sup> Several federal courts have determined that such high registration rates are sufficient grounds for alleging a failure

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<sup>14</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 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.

<sup>15</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>16</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 Alameda County is available at <https://data.census.gov/table/ACSDP5Y2021.DP05?q=Alameda+County,+California>.

<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup> By contrast, the national inactive rate is 11.1%.<sup>20</sup> High inactive rates are also sufficient grounds for alleging non-compliance with the NVRA.<sup>21</sup>

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.<sup>22</sup> Accordingly, your response effectively concedes a violation of the public records provisions of the NVRA.

The third request and your response are as follows:

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<sup>18</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).

<sup>19</sup> 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>.

<sup>20</sup> 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>.

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

<sup>22</sup> 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.

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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

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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.



**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