



COMMONWEALTH of VIRGINIA

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Steven Koski
Commissioner, Virginia Department of Elections
Washington Building, First Floor
1100 Bank Street
Richmond, VA 23219

Dear Commissioner Koski:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue(s) Presented

You have asked whether voter registrations of individuals flagged by the Department of Motor Vehicles (“DMV”) pursuant to the programs described in Va. Code Ann. § 24.2-410.1 and Va. Code Ann. § 46.2-328.1(E) can be cancelled within 90 days of a federal election, consistent with the National Voter Registration Act (“NVRA”). 52 U.S.C. § 20501, *et. seq.*

Background

Voter List Maintenance in Virginia

In recognition of the importance of maintaining an accurate list of voter registrations in the Commonwealth, the General Assembly has established robust mechanisms for identifying and removing ineligible individuals from the rolls. These programs for conducting routine maintenance of the voter registration list (hereafter “voter list maintenance”) typically involve Commonwealth agencies, other states, or private and federal operators of national databases sharing reliable information with the Department of Elections (“ELECT”). For instance, ELECT regularly receives reports from partner agencies regarding individuals who have recently died,¹ who have been convicted of a felony,² who have been adjudicated

¹ VA. CODE ANN. § 24.2-408 (2023).

² Section 24.2-409 (2023).

incapacitated,³ and who may not be citizens.⁴ This information is then utilized by election officials to identify and remove ineligible names from the voter registration list.⁵

Routine voter list maintenance is an essential tool for protecting election integrity, fostering public confidence in the democratic process, and enabling election officials to accurately plan and allocate resources for upcoming elections.⁶ However, officials should use care when conducting these programs, since they carry the risk of erroneously cancelling eligible voters and impacting their ability to cast ballots. To that end, there are evidence-based practices that officials can adopt to simultaneously advance both voter access and election integrity.⁷ In addition, it is important to clarify that the mere presence of outdated or erroneous information on the voter registration roll is not evidence of widespread voter fraud.⁸ In fact, experts have consistently found that voter fraud, and specifically instances of non-citizen voting, are exceedingly rare in the United States.⁹

List Maintenance Programs Based on Department of Motor Vehicles Data

Virginia law establishes two voter list maintenance programs involving information about potential non-citizens shared by the DMV with ELECT. Under the first program, DMV compiles a list of individuals who, in applying for a license or identification card with the DMV, declare they are citizens but present a document proving legal presence other than citizenship.¹⁰ The DMV attempts to verify each listed applicant's citizenship status through the Department of Homeland Security's Systematic Alien Verification for Entitlements ("SAVE") database.¹¹ Each month, DMV sends the list to ELECT along with any information about a listed applicant's citizenship status from SAVE.¹² ELECT filters out confirmed citizens, electronically matches the remaining individuals against the voter registration list, and forwards

³ Section 24.2-410 (2023).

⁴ Section 24.2-410.1 (2023); VA. CODE ANN. § 46.2-328.1(E) (2022).

⁵ Section 24.2-427 (2022).

⁶ See United States Election Assistance Commission, *FACT SHEET: Voter Registration List Maintenance* (2023) at <https://tinyurl.com/28pu59fn> (noting that accurate voter registration lists "protect[] election integrity," improves voter experiences, and promotes better planning and budget management for election officials.).

⁷ Michael Morse, et. al., *Modernizing Voter List Maintenance: An Evidence-Based Framework for Access and Integrity*, Bipartisan Policy Center (Sept. 2025) at <https://tinyurl.com/4znjad7r>.

⁸ Charles Stewart III, *Too Large, Too Small, or Just Right? Assessing the Growth of Voter Registration Rates Since the NVRA*, Massachusetts Institute of Technology Political Science (Sept. 2, 2019) (noting that excess registrations largely result from "administrative inefficiencies" and not voter fraud).

⁹ Elaine Kamarck, *How widespread is election fraud in the United States? Not very*, Brookings (Oct. 28, 2024) at <https://tinyurl.com/56auh5p3>; Center for Election Innovation and Research, *Update: Review of Claims of Noncitizen Registrants and Voters* (Feb. 2026) ("sweeping allegations about noncitizen registrations or voting appear to arise from misunderstanding, mischaracterizations, or outright fabrications about complex voter data.") at <https://tinyurl.com/3nssmbrs>.

¹⁰ Section 46.2-328.1(E).

¹¹ United States Citizenship and Immigration Services, *SAVE* at <https://www.uscis.gov/save> (last accessed April 3, 2026) ("SAVE is an online service for registered federal, state, territorial, tribal, and local government agencies to verify immigration status and U.S. citizenship of applicants seeking benefits or licenses.").

¹² Section 46.2-328.1(E) ("For any applicant who presents a document pursuant to this section proving legal presence other than citizenship, the Department shall record and provide to the State Board of Elections monthly the applicant's document number, if any, issued by an agency or court of the United States government.").

matches to the appropriate general registrar for cancellation.¹³ For clarity, in this opinion, this first program is called “Documentation of Legal Presence Removals.”

For the second list maintenance program, DMV creates a list of “all persons who have indicated a noncitizen status” when applying for or renewing a license, or identification document.¹⁴ In practice, DMV compiles a list of any individual who checks “no” in response to the question “Are you a citizen?” in an online portal. There are reports that this method has resulted in flagging eligible citizens due to inadvertent user error.¹⁵ DMV furnishes this list of self-attested non-citizens to ELECT daily.¹⁶ ELECT then electronically matches the DMV list against the voter registration list, and transmits, for each match, information from the DMV list to the appropriate registrar.¹⁷ After independently confirming that the individual flagged by DMV matches a voter registration record, registrars must send a notice of intent to cancel, allowing the person 14 days to submit a sworn statement confirming citizenship.¹⁸ If the person does not respond and confirm their citizenship, the registrar must cancel their registration.¹⁹ For clarity, in this opinion, this second program is called “Self-Attestation Removals.”

Applicable Law and Discussion

The National Voter Registration Act and the 90-Day Quiet Period

The NVRA is a federal law that sets forth certain voter registration requirements that apply to federal elections. The law includes provisions governing list maintenance procedures. While the NVRA requires states to “make a reasonable effort” to remove ineligible names from their registration lists, it also places important limits on how they conduct voter list maintenance programs.²⁰ In particular, the NVRA creates a quiet period of 90 days before a federal primary or general election, during which States cannot complete “any program the purpose of which is to systematically remove the names of ineligible voters from the official list of eligible voters.”²¹

The 90-day quiet period applies to systematic programs that involve the removal of non-citizens from the voter registration list. The language of the statute states that the quiet period applies to “any program” for removing “*ineligible* voters.”²² The NVRA “is premised on the assumption that citizenship is

¹³ Section 24.2-404(A)(4) (2023).

¹⁴ Section 24.2-410.1.

¹⁵ Jude Joffe-Block, *U.S. citizens are among the voters removed in Virginia’s controversial purge*, National Public Radio (Oct. 30, 2024).

¹⁶ Governor Abigail Spanberger, Executive Order 13 (2026); Under the statute, DMV is only required to furnish the list monthly, but the Governor has ordered the agency to provide the list on a more frequent basis. Section § 24.2-410.1(A).

¹⁷ *Id.*

¹⁸ Section 24.2-427(C) (2022).

¹⁹ *Id.* Section 24.2-427(A) (2022) (registrars “shall promptly cancel the registration of . . . all persons known by him not to be United States citizens by reason of reports from the Department of Motor Vehicles pursuant to § 24.2-410.1.”).

²⁰ 52 U.S.C. § 20507(a)(4).

²¹ 52 U.S.C. § 20507(c)(2).

²² *Id.* (emphasis added)

one of the requirements for eligibility to vote.”²³ Consequently, a systematic program designed to remove non-citizens from the registration rolls is clearly a “program the purpose of which is to systematically remove the names of *ineligible* voters” as that term is used in the NVRA.²⁴

A list maintenance program is “systematic” and subject to the 90-day quiet period if it uses “a mass computerized data-matching process to compare the voter rolls with other state and federal databases, followed by the mailing of notices.”²⁵ By contrast, a program is not systematic, and thus permissible during the 90-day quiet period, if it “require[s] communication with or particularized investigation into any specific individual.”²⁶ This individualized consideration requires more than sending a form notice to a potentially ineligible voter.²⁷

The different limits placed on systematic and individualized list maintenance programs during the 90-day quiet period reflect a careful balance struck by Congress in the NVRA. The stated purposes underlying the statute include “protect[ing] the integrity of the electoral process,” “ensur[ing] that accurate and current voter registration rolls are maintained,” and “establish[ing] procedures that will increase the number of eligible citizens who register to vote in elections for Federal office.”²⁸ The quiet period harmonizes these competing goals by requiring officials to act “cautiously with respect to systematic cancellation programs in the lead up to an election because such programs can cause inaccurate removal.”²⁹ Conversely, removals “based on individualized correspondence or rigorous individualized inquiry,” are not time-limited precisely because they carry “a smaller chance for mistakes.”³⁰

Virginia’s DMV Data-Matching Programs and the 90-Day Quiet Period

Both the Documentation of Legal Presence Removals³¹ and the Self-Attestation Removals³² are systematic as currently practiced and subject to the limitations imposed during the 90-day quiet period.

Both Programs involve DMV compiling and transmitting a list of data to ELECT, ELECT using a “computerized data-matching” process to compare the DMV list against the voter registration roll, and general registrars sending form cancellation notices to confirmed matches.³³ Neither program involves “individualized information or investigation.”³⁴ Furthermore, the current design of the Self-Attestation Removals do not include adequate safeguards for identifying and filtering out false positives, such as eligible citizens who erroneously checked the wrong box when using the DMV online system.

²³ *Arcia v. Sec’y of State of Florida*, 772 F.3d 1335,1344 (11th Cir. 2014) citing 52 U.S.C. 20504 (requiring certain voter registration forms to state or specify “each eligibility requirement (*including citizenship*) (emphasis added))”.

²⁴ 52 U.S.C. § 20507(c)(2)(emphasis added).

²⁵ *Mi Familia Vota v. Fontes*, 129 F.4th 691, 716-717 (9th Cir. 2025) quoting *Arcia*, 772 F.3d at 1344; *See also* Spanberger, E.O. 13 (2026).

²⁶ *Va. Coal. For Immigrant Rights (VACIR) v. Beals*, 803 F.Supp.3d 454, 473 (E.D. Va. 2025).

²⁷ *Mi Familia Vota*, 129 F. 4th at 717 (holding that a program is systematic even if it involves mailing of notices to an individual, if “the systematic comparison prompts the mailing.”).

²⁸ 52 U.S.C. § 20501(b).

²⁹ *Mi Familia Vota*, 129 F.4th at 717 (quoting *Arcia*, 772 F.3d at 1346).

³⁰ *Arcia*, 772 F.3d at 1346.

³¹ Section 46.2-328.1(E).

³² Section 24.2-410.1.

³³ *Beals*, 803 F. Supp. 3d at 473.

³⁴ *Id.*

Consequently, both programs are “necessarily systematic” and removals should not be undertaken under either program during the 90-day quiet period unless some modification is adopted that individualizes each determination.³⁵

Conclusion

Accordingly, it is my opinion that voter registrations of individuals flagged by the DMV pursuant to the programs described in Va. Code Ann. § 24.2-410.1, and Va. Code Ann. § 46.2-328.1 should not be cancelled within 90 days of a federal primary or general election. Those programs, as currently operated, involve systematic removal of ineligible voters from the list of eligible voters. Consequently, their use is limited by NVRA during the 90-day quiet period.

To ensure the Commonwealth can continue identifying and removing ineligible voters during the 90-day quiet period under Virginia law,³⁶ current processes will need to be restructured. In particular, during the quiet period, officials must pivot away from relying solely on mass computerized data-matching and transition to a more “rigorous individualized inquiry” that minimizes the “chance for mistakes” – the individualized process permitted under the NVRA.³⁷

As a matter of law, the Commonwealth is not prohibited from removing non-citizens from the voter rolls during the quiet period. Instead, removals that result from particularized investigation are permissible year-round.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Jay Jones', followed by a long horizontal line extending to the right.

Jay Jones
Attorney General

³⁵ *Id.*

³⁶ Section 24.2-427(B) (2022) (“The general registrar shall promptly cancel the registration of...(iii) all persons known by him not to be United States citizens...”).

³⁷ *Mi Familia Vota*, 129 F.4th at 717.