



U.S. Department of Justice

Civil Rights Division

Voting Section - NWB
950 Pennsylvania Ave, NW
Washington, DC 20530

JUN 28 2017

The Honorable Billy Way, Jr.
State Election Commission Chair
P.O. Box 5987
Columbia, SC 29250-5987

Dear Chairman Way:

We write to you as the chief election official for the State of South Carolina to request information regarding the State's procedures for compliance with the statewide voter registration list maintenance provisions of the National Voter Registration Act ("NVRA"), 52 U.S.C. § 20501 et seq. and the Help America Vote Act ("HAVA"), 52 U.S.C. § 20901 et seq. As part of our nationwide enforcement efforts, we are reviewing voter registration list maintenance procedures in each state covered by the NVRA.

The NVRA imposes several requirements on covered states that promote the maintenance of accurate statewide voter lists. Among other things, states must:

- "conduct a general program that makes a reasonable effort to remove the names of ineligible voters" from the statewide voter registration list due to the registrant's death or change of residence (Section 8(a)(4), 52 U.S.C. § 20507(a)(4));
- ensure that the state's general program complies with the requirements and protections imposed by Sections 8(b), (c), and (d) (52 U.S.C. § 20507(b)-(d));
- ensure that any change-of-address form submitted by a voter to a state's motor vehicle authority for driver's licensing purposes serves as a change of address for voter registration purposes, unless the voter states a contrary intention on the form (Section 5(d), 52 U.S.C. § 20504(d));
- ensure that when a registrar receives information that a registered voter has moved to a new address within the registrar's jurisdiction, the voter list is updated to reflect the new address (Section 8(f), 52 U.S.C. § 20507(f)); and
- maintain and make available for public inspection for at least two years "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" (Section 8(i), 52 U.S.C. § 20507(i)).

The NVRA imposes these requirements on the state itself. Thus, where a state tasks local election officials with implementing aspects of its list maintenance procedures, the state's chief

elections official must “actively oversee the general program” and ensure that it is “reasonably conducted.” *United States v. Missouri*, 535 F.3d 844, 850 (8th Cir. 2008).

HAVA also imposes certain list maintenance obligations on states as part of the uniform statewide database requirements of Section 303(a)(2) of HAVA, 52 U.S.C. § 21083(a)(2), including coordinating the state voter registration list with state agency records on felony status and death.

As well as reviewing states’ procedures, our efforts to assess compliance with these provisions will also include an analysis of voter registration data reported by each state to the U.S. Election Assistance Commission (“EAC”) as part of its biennial Election Administration and Voting Survey (“EAVS”). Data regarding confirmation notices, removals from the voter registration list, and active and inactive registered voters are of particular relevance and are among the categories of data for which reporting is required by EAC regulations. *See* 11 C.F.R. § 9428.7. However, such data for some states were not included in the 2014 EAVS report,¹ the most recent survey results published by the EAC. Thus, some states are receiving a request for any missing data as part of the information requested below. Similarly, we will review the forthcoming 2016 EAVS data when they are available.

To assist our efforts, we respectfully request that you provide us with the following information related to the above requirements:

- All statutes, regulations, written guidance, internal policies, or database user manuals that set out the procedures South Carolina has put in place relating to:
 - (A) the general program required by Section 8(a)(4) to remove voters from the voter registration list who have become ineligible due to death or change of residence;
 - (B) the requirement of Section 5(d) that motor vehicle changes of address generally serve as updates to voter registration records;
 - (C) any other process that election officials are authorized or required to follow to remove voters by reason of death or change in residence, such as challenge procedures or other list maintenance activities not part of the “general program”; and
 - (D) the processes that the state follows for coordinating state databases under HAVA for list maintenance purposes, and any other database coordination or comparison that the state undertakes for list maintenance purposes.

If your state has relevant procedures in place that are not covered by these written materials, please provide a description of them.

¹ U.S. Election Assistance Commission, “The EAC 2014 Election Administration and Voting Survey Comprehensive Report: A Report to the 114th Congress,” June 30, 2015, *available at* https://www.eac.gov/assets/1/1/2014_EAC_EAVS_Comprehensive_Report_508_Compliant.pdf.

- An explanation of which election officials are responsible for implementing South Carolina's general program of voter registration list maintenance, and for those responsible officials not employed by your office (such as a local election official), a description of the steps that you have taken to ensure that the State's list maintenance program has been properly carried out in full compliance with the NVRA.

Please provide this information within 30 days of the date of this letter. The materials may be sent by email to voting.section@usdoj.gov or by FedEx or UPS to Voting Section, Civil Rights Division, Room 7254, U.S. Department of Justice, 1800 G Street NW, Washington, DC 20006. If you have any questions regarding this request, please contact David Cooper at 202-305-4733 or Samuel Olikier-Friedland at 202-353-6196. We very much appreciate your cooperation in our nationwide efforts to monitor NVRA compliance.

Sincerely,

Signature Redacted

T. Christian Herren, Jr.
Chief, Voting Section

cc: Ms. Marci Andino, Executive Director, State Election Commission