



The Law Behind Cleaning Up Voter Rolls

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As in the last several election years, election integrity is a common topic among voters and media. Some of the discussion focuses on the legitimacy of voter rolls. To understand the obligations of election officials, a review of two federal laws is helpful. Below we set out information about the National Voter Registration Act of 1993 and the Help America Vote Act.

Retaining voter rolls bloated with ineligible voters harms the electoral process, heightens the risk of electoral fraud, and undermines public confidence in elections. “Confidence in the integrity of our electoral processes is,” in turn, “essential to the functioning of our participatory democracy.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). Congress enacted the [National Voter Registration Act of 1993](#) (NVRA), sometimes called the “motor voter law,” “to protect the integrity of the electoral process.” 52 U.S.C. §20501(b)(3). Specifically, section 8 was enacted “to ensure that accurate and current voter registration rolls are maintained.” §20501(b)(4).

Section 8 obligates States to “conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters.” 52 U.S.C. §20507(a)(4). “[F]ederal law makes this removal mandatory.” *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1842 (2018). Specifically, section 8 requires States to remove individuals from the voter rolls who

have become ineligible due to “death” or due to “a change in ... residence” outside their current voting jurisdiction. 52 U.S.C. §20507(4)(A)-(B). Each State’s program for maintaining voter-registration lists must be “uniform, non-discriminatory, and in compliance with the Voting Rights Act.” 52 U.S.C. §20507(b)(1).

Section 8 of the NVRA requires that States keep and make available for public inspection, for a period of 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, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered. An independent requirement found at 52 U.S.C. §20701 requires all records relating to any voter registration or application in any election for federal office be preserved for at least 22 months from that federal election.

The [Help America Vote Act](#) (HAVA) also requires States to adopt computerized statewide voter registration lists and maintain them “on a regular basis” in accordance with the NVRA. 52 U.S.C. §21083(a)(2)(A). States must “ensure that voter registration records in the State are accurate and are updated regularly”—an obligation that includes a “reasonable effort to remove registrants who

are ineligible to vote from the official list of eligible voters.” 52 U.S.C. §21083(a)(4). HAVA’s list maintenance requirements include coordination with “State agency records on death” and “State agency records on felony status” to facilitate the removal of individuals who are deceased or rendered ineligible under state law due to a felony conviction. 52 U.S.C. §21083(a)(2)(A)(ii)(I)-(II).

According to the bipartisan Carter-Baker Commission, “registration lists lie at the root of most problems encountered in U.S. elections.” Inaccurate voter rolls that contain “ineligible, duplicate, fictional, or deceased voters” invite “fraud.” “While election fraud is difficult to measure” (because many cases go undetected, uninvestigated, or unprosecuted), “it occurs.” “In close or disputed elections, and there are many, a small amount of fraud could make the margin of difference.” And “the perception of possible fraud contributes to low confidence in the system.” The Supreme Court agrees. See *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181 (2008) (lead op. of Stevens, J.).

Courts and experts have likewise recognized that voter fraud is both real and notoriously “difficult to detect and prosecute.” *Tex. Democratic Party v. Abbott*, 961 F.3d 389, 396 (5th Cir. 2020). According to Justice Stevens, “the risk of voter fraud”—particularly with “absentee ballots”—is “real.” *Crawford*, 553 U.S. at 195-96; accord *Griffin v. Roupas*, 385 F.3d 1128, 1130-31 (7th Cir. 2004) (“Voting fraud is a serious problem in U.S. elections ... and it is facilitated by absentee voting.”); *Veasey v. Perry*, 71 F. Supp. 3d 627, 641 (S.D. Tex. 2014) (finding broad “agreement that voter fraud actually takes place in abundance in connection with absentee balloting”); *Tex. Democratic Party*, 961 F.3d at 414 (Ho, J., concurring) (“[C]ourts have repeatedly found that mail-in ballots are particularly susceptible

to fraud.”). As Professor Michael Morley puts it, “election officials can neither exercise control over absentee ballots once they are mailed out to voters, nor ensure that they have been received and cast by the voters entitled to do so.” Stated differently, “absentee voting is to voting in person as a take-home exam is to a proctored one.” *Griffin*, 385 F.3d at 1131.

Recognizing these concerns, the NVRA includes a private right of action. It empowers any “person who is aggrieved by a violation” to “provide written notice of the violation to the chief election official of the State involved.” 52 U.S.C. §20510(b)(1). “If the violation is not corrected within 90 days after receipt of a notice, ... the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief.” §20510(b)(2).

NVRA’s private right of act is the basis of *Green v. Bell*, a lawsuit pending in federal court in the Western District of North Carolina. Two voters, both active members of the Republican Party, filed their lawsuit in 2021 to force the Executive Director of the state Board of Elections “to fully comply with any existing procedures that North Carolina has in place to ensure ineligible voters are identified and removed from the rolls” and “to develop and implement additional reasonable and effective registration list-maintenance programs to cure their failure to comply with section 8 of the NVRA and to ensure that ineligible registrants are not on the voter rolls.” The case is still in the pre-trial phase. The trial court recently granted a request to extend the scheduling of the case. Discovery is now expected to close in August of this year. The trial is expected for January 6, 2025.

As the *Green* case percolates through the court, North Carolina can hope for improved voter rolls. During the 2024 election cycle, the State Board of Elections is slated to conduct list maintenance activities. Also, beginning on July 1, 2024, new legislation requires North Carolina Department of Health and Human Services to report weekly the names of deceased persons to the State Board, the State Board will be required to report weekly the names of persons convicted of a felony to the county boards, and clerks of court in North Carolina will be required to communicate to the State Board information regarding requests by persons selected for jury duty to be excused from jury duty on the basis that the person is not a citizen of the United States. See [N.C. Sess. Law 2023-140](#), §§ 44(d), (e), and (f) (effective date July 1, 2024) (codified as N.C.G.S. § 9-6.2 and amending N.C.G.S. § 163-82.14 to add subsection (c1)). Pursuant to statute, the State Board shall use this information to conduct list maintenance efforts pursuant to N.C.G.S. § 163-82.14 and the National Voter Registration Act of 1965. *Id.*

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“A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.”

Constitution of 197, art. I, §35
Constitution of 1868, art. I, § 29
Constitution of 1176, Declaration of Rights, § 21