



**Judicial
Watch**[®]
*Because no one
is above the law!*

July 10, 2024

VIA USPS CERTIFIED MAIL AND EMAIL

Hon. Lavonne Griffin-Valde
Secretary of State of Oregon
900 Court Street NE
Capitol Room 136
Salem, Oregon 97301

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

Dear Secretary Griffin-Valde:

I write on behalf of Judicial Watch, Inc. (“Judicial Watch”), the Constitution Party of Oregon (“Constitution Party”), and Suni Danforth, 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 Oregon’s chief state elections officer, responsible for coordinating Oregon’s compliance with Section 8 of the NVRA.¹ This letter serves as pre-suit notice pursuant to 52 U.S.C. § 20510(b)(1) & (2) that Judicial Watch, the Constitution Party, and Suni Danforth will file a lawsuit against you if these violations are not corrected within 20 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.”² 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.”³

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.⁴ 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

¹ Or. Rev. Stat. § 246.110; 52 U.S.C. § 20509.

² *Id.* § 20501(b).

³ *Id.* § 20507(a)(4).

⁴ *Id.* § 20507(d)(1)(A).

two general federal elections, that registration must be cancelled.⁵ 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.”⁶ However, inactive registrations may still be voted on election day.⁷

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.”⁸ 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.”⁹

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.¹⁰ Federal regulations require you to provide data to the EAC for use in this report, specifically including “the total number of registrants statewide that were considered ‘inactive’ at the close of the most recent federal general election.”¹¹ The EAC posted the most recent survey it sent to the states to elicit their responses for its biennial report.¹²

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, 19 Oregon counties 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

⁵ *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”).

⁶ *E.g.*, 11 C.F.R. § 9428.2(d).

⁷ 52 U.S.C. § 20507(d)(2)(A).

⁸ *Id.* § 20507(i)(1).

⁹ *Id.* § 20507(i)(2).

¹⁰ *Id.* § 20508(a)(3).

¹¹ 11 C.F.R. § 9428.7(b)(4).

¹² 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.”

consecutive general federal elections.¹³ Another ten counties reported just a handful such removals during the same two-year period.¹⁴

Furthermore, not a single one of Oregon's 36 counties reported any data whatsoever to the EAC regarding inactive registrations. Instead, in the relevant column where the data should have been, the survey response for each of Oregon's counties merely stated, "Data not available."¹⁵

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) of the NVRA. On September 15, 2023, your office responded by means of an email from "Greg Bergerson, OCVR Support Desk Analyst," within the Elections Division of the Oregon Secretary of State's office, which treated our factual inquiries about the aforementioned county data as requests for public records. Neither Mr. Bergerson nor anyone within your office ever provided any substantive response to our request to confirm the numbers provided to the EAC.

Both common sense and Judicial Watch's enforcement experience confirm that there is no possible way Oregon has complied with Section 8(d)(1)(B) of the NVRA, the key NVRA provision dealing with voters who have changed residence, when 28 of its 36 counties either removed no or just a few registrations under that provision during the past two reporting years, and when all 36 of its counties failed to report any data regarding inactive registrations. These facts show that Oregon is not 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).

Oregon's non-compliance with the NVRA is further illustrated by the unusually high registration rates observed in several of its counties. Comparing the data your state reported to the EAC regarding the total registrations for each county¹⁶ to the U.S. Census Bureau's most recent five-year estimates of the numbers of resident citizens over the age of eighteen¹⁷ suggests that

¹³ 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. The 19 counties reporting zero such removals are: Baker County, Benton County, Clatsop County, Columbia County, Gilliam County, Grant County, Harney County, Hood River County, Klamath County, Lane County, Linn County, Malheur County, Morrow County, Multnomah County, Polk County, Sherman County, Wallowa County, Wasco County, and Wheeler County.

¹⁴ These ten counties are: Douglas County (1 such removal), Jackson County (11), Josephine County (3), Lincoln County (2), Marion County (5), Tillamook County (1), Umatilla County (3), Union County (3), Washington County (6), and Yamhill County (1).

¹⁵ 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.

¹⁶ 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.

¹⁷ This data is found on the U.S. Census Bureau's website in table DP05 ("ACS Demographic and Housing Estimates"), by selecting "2022: ACS 5-Year Estimates Data Profiles" as the data source and scrolling down to the heading, "Citizen, 18 and over population" for each county in Oregon.

eight Oregon counties have more voter registrations than citizens of voting age.¹⁸ Several federal courts have determined that such high registration rates are sufficient grounds for alleging a failure to comply with the NVRA's requirement to make reasonable efforts to remove voters by reason of death or change of address.¹⁹

The foregoing facts amply demonstrate that Oregon is not complying with the list maintenance provisions of the NVRA.

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If you do not contact us about correcting or otherwise resolving the above-identified violations within 20 days, Judicial Watch, the Constitution Party, and Suni Danforth 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. We are always glad to avoid costly litigation and to amicably resolve disputes.

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.

¹⁸ These are: Crook County, Wallowa County, Hood River County, Sherman County, Deschutes County, Linn County, Columbia County, and Josephine County.

¹⁹ *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).