

PUBLIC INTEREST

— LEGAL FOUNDATION —

VIA EMAIL AND CERTIFIED MAIL

April 23, 2020

Jocelyn Benson
Secretary of State
Richard H. Austin Building
430 W. Allegan, 4th Floor
Lansing, MI 48933
Secretary@michigan.gov

RE: Notice of NVRA Violation

Dear Secretary Benson and Mr. Fracassi:

On March 5, 2020, we requested the opportunity to inspect or receive copies of records pursuant to the National Voter Registration Act of 1993 (NVRA), 52 U.S.C. 20501 *et seq.* On April 22, 2020, the Michigan Department of State denied our request.

Pursuant to 52 U.S.C. § 20510(b), this letter serves to **notify you that the Michigan Secretary of State is in violation of the National Voter Registration Act** for failure to permit inspection and duplication of public records as required by 52 U.S.C. § 20507(i).

It is our hope that you will work quickly to provide for disclosure of the requested records. If not, according to federal law, a lawsuit under the NVRA may be filed within 90 days of your receipt of this notice. 52 U.S.C. § 20510(b). For lawsuits initiated by a private party, an award of attorney's fees, expenses, and costs incurred are available under 52 U.S.C. § 20510(c).

As explained in our request, the NVRA requires election officials to “make available for public inspection and, where available, photocopying at a reasonable cost, 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.” 52 U.S.C. § 20507(i).

In your correspondence dated April 22, 2020, you claim that the requested records are not “voter *registration* or voter registration *cancellation* records required to be produced under the NVRA – the vehicle through which this request is submitted.” However, under federal and Michigan law, voting (and failing to vote) plays an important role in the maintenance of the official list of eligible voters.

Both the NVRA and Michigan law require election officials to remove someone from the voter roll if they have not responded to an address confirmation notice and not voted in two consecutive general elections. 52 U.S.C. § 20507(d)(1)(B)(i)-(ii); MCL § 168.509aa(4). Thus, voting history records must be reviewed as part of the process of identifying whether a registrant is inactive.

Furthermore, election officials can use the address information supplied on an absentee ballot application—copies of which we requested—to initiate address confirmation procedures. *See* MCL § 168.509aa(1)-(2). Address confirmation notices—and replies to the same—are the means by which election officials update registration information, in order to keep the voter rolls accurate and current.

Therefore, the requested records are subject to the NVRA as they “concern[] the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i). These records must be made available for public inspection. *Id.*

We respectfully request that you reconsider your position and provide the requested records immediately.

Thank you for your attention to this matter.

Sincerely,



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cc: Adam Fracassi (via email FracassiA@michigan.gov)