

PUBLIC INTEREST

— LEGAL FOUNDATION —

VIA EMAIL

April 30, 2019

Kim Westbrook Strach
Executive Director
North Carolina State Board of Elections
P.O. Box 27255
Raleigh, NC 27611-7255
Email: Kim.Strach@ncsbe.gov, Elections.SBOE@ncsbe.gov

RE: Notice of NVRA Violation

Dear Ms. Strach:

It has been nearly seven months since the North Carolina State Board of Elections (NCSBE) promised to produce voter list maintenance records originally requested from certain North Carolina county boards of elections pursuant to the records inspection provision of the National Voter Registration Act of 1993 (“NVRA”). 52 U.S.C. 20507(i). The requested records concern the actions county election officials have taken to identify and cancel registrations belonging to individuals who do not satisfy the citizenship requirements for voting.

To date, **we not have not received any responsive records from the NCSBE**, despite repeated assurances that production of records was imminently forthcoming.

This letter serves to notify that the **NCSBE is in violation of the NVRA for failure to permit inspection and photocopying of public records as required by 52 U.S.C. § 20507(i)**. Because these violations are ongoing and occurring within 30 days of an election for federal office,¹ the NVRA authorizes us to pursue immediate federal litigation to enforce the inspection requirements of the law. *See* 52 U.S.C. § 20510(b)(3). However, we are providing this letter with the hope that you will immediately remedy these violations and make litigation unnecessary.

Background

On September 10, 2018, we requested the opportunity to inspect or receive certain voter list maintenance records from the county boards of elections in Guilford, Forsyth, and Durham pursuant to the records inspection provision of the NVRA, 52 U.S.C. § 20507(i). In part, the request sought “[d]ocuments regarding all registrants who were identified as potentially not satisfying the citizenship requirements for registration” and “actions taken regarding the registrant’s registration.” A copy of the letter served on the Durham County Board of Elections is attached this request, for reference.

¹ The primary election for North Carolina’s 9th Congressional District is scheduled to occur on May 14, 2019.

When we received no response to our requests, we notified each county board on October 1, 2018 that it was in violation of the NVRA, copying the NCSBE on the correspondence. That same day, the NCSBE wrote to us via email, explaining that it would “help facilitate a response to [the] recent records request[s]” made to Guilford, Forsyth, and Durham because “our agency likely houses some of the data responsive to your request.” On October 9, 2018, we asked the NCSBE to provide the same records for the counties of Mecklenburg and Buncombe as well.

When asked for an update on the progress of the request 20 days later, the NCSBE stated, “We are still working on them and would hope to have a response to you some time in November.” The NCSBE did not produce any records in November.

Cognizant that the NCSBE was facing uncertainty regarding the legality of its composition, we remained patient, and agreed to travel to NCSBE offices to conduct an in-person inspection of the requested records on January 11, 2019.

On or around January 9, 2019, the NCSBE contacted us via telephone to indicate that the scheduled in-person visit was not necessary because the NCSBE would begin production of records by the end of January. On January 9, 2019, the phone call was memorialized in an email, in which the NCSBE stated, “Working on the citizenship request now, per our discussion. I will send records for your additional request on a rolling basis as they are reviewed and redacted.” The NCSBE did not produce any records by the end of January.

More than two months later, on April 10, 2019, we again wrote to the NCSBE to request an update on the progress of the requests. Later than day, the NCSBE responded via email, stating, “I will give you a full update and hopefully start providing responsive documents tomorrow or Friday.” The NCSBE did not produce any records—let alone an “update”—by Friday, April 12, as promised.

As of the date of this letter, the NCSBE has not provided a substantive update on its progress or produced any records responsive to the request. It has now been **232 days** since we first requested access to public voter list maintenance records in the possession of North Carolina election officials.

Violation of the National Voter Registration Act

As explained in the September 10, 2018 requests (attached), the NVRA requires election officials to 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.” 52 U.S.C. § 20507(i). The requested records fall within the scope of this requirement.

Failure to permit public inspection or otherwise provide copies of these records is a violation of federal law for which the NVRA provides a private-right-of-action. 52 U.S.C. § 20510(b).

A primary election for federal office in North Carolina is scheduled for May 14, 2019.² For NVRA violations occurring within 30 days of an election for federal office, there is no curative period. 52 U.S.C. § 20510(b)(3). **If the NVRA violation described herein is not corrected immediately, the Foundation will pursue federal litigation to enforce its rights.** For any 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 the state's chief election official for purposes of the NVRA, N.C. Gen. Stat. § 163A-6, the Executive Director of the NCSBE is copied on this correspondence. *See Voter Integrity Project NC, Inc. v. Wake Cty. Bd. of Elections*, 301 F. Supp. 3d 612, 617 n.4 (E.D.N.C. 2017).

Please direct all future correspondence to njohnson@publicinterestlegal.org.

Thank you for your service on this matter.

Sincerely,

Noel Johnson
Litigation Counsel
Public Interest Legal Foundation

CC:

Mr. Robert Cordle
Chairman
North Carolina State Board of Elections
P.O. Box 27255
Raleigh, NC 27611-7255

² <https://s3.amazonaws.com/dl.ncsbe.gov/Elections/2019/District9Candidates.pdf>.