

PUBLIC INTEREST

— LEGAL FOUNDATION —

VIA EMAIL, FACSIMILE AND CERTIFIED MAIL

April 7, 2020

The Hon. Maggie Toulouse Oliver
New Mexico Secretary of State
Elections Bureau & Ethics Division
325 Don Gaspar, Ste. 300
Santa Fe, NM 87501
Email: Sos.elections@state.nm.us

**Re: Statutory Notice of Violation of National Voter Registration Act
Request for Meeting**

Dear Secretary Toulouse Oliver:

Based upon our findings outlined below, I am required to write your offices pursuant to 52 U.S.C. § 205010(b) to notify you that it appears to us that the State of New Mexico is not in compliance in several respects with the requirements of Section 8 of the National Voter Registration Act of 1993 (“NVRA”). This federal statute requires election officials to make a reasonable effort to maintain voter registration lists that are free of dead registrants and registrants who have moved to other jurisdictions, and to systematically remove the names of other ineligible registrants. 52 U.S.C. §§ 20507(a)(3), (4)(A)-(B), 20507(c)(2)(A)-(B).

You are receiving this letter because, as New Mexico’s chief election official, you are ultimately responsible under state and federal law for maintaining accurate and current voter registration lists. We believe the problems identified in this letter can be resolved quickly and amicably. **We therefore request a meeting, via telephone or video, if necessary, with the New Mexico Secretary of State – Elections Bureau** to discuss our findings, identify why the violations are occurring, inspect supporting list maintenance records, and confirm how you plan to bring New Mexico back into compliance with state and federal law. We are hopeful that we may reach a curative plan so that we do not need to initiate litigation to cure these defects.

I. Evidence of Inadequate List Maintenance

1. Deceased Registrants and Implausible Dates of Birth

Our review of New Mexico’s official registration list indicates your office is not making a reasonable effort to remove the names of deceased registrants, as required by the NVRA. 52 U.S.C. § 20507(a)(4)(A). New Mexico law also requires that obituary notices or other probate records be used to make determinations of death prior to the cancellation of an affected registration record. N.M. Stat. § 1-4-25 (2018). Using the State’s official voter roll extract from October 2019, we identified more than **1,500** registrants aged older than 100 years (i.e. with years of birth listed as 1919 or earlier). Taken at face value, data suggest that the oldest registrants in the state are each roughly 120-years-old—most of which still carry “active” designations within the voter roll.

We matched the entire state’s “active” registry against various data sources containing records of death, primarily the Social Security Death Index. Our comparison yielded a substantial number of strong matches showing that active registrants remain on your rolls after they die. The statewide roll currently contains at least **1,681** registrants who are matched against the SSDI or published obituaries with corresponding dates of death on file at various credit reporting bureaus. At total of 58 percent matched registrants yielded concurrent dates of death between SSDI and published obituaries.

At least 87 percent of registrants matched against the SSDI apparently died in year 2018 or earlier, with some dates of death reaching as far back as 1983.

2. In-county Duplicate Registrations

Our analysis also found apparent duplicate registrations for the same person. Federal law requires that list maintenance be “conducted in a manner that ensures that ... duplicate names are eliminated from the computerized list” of registrants. 52 U.S.C. § 21083(a)(2)(B)(iii). Furthermore, New Mexico law states that a registrant voting more than once in a single election could be found guilty of a fourth-degree felony, thereby reasonably charging that voter registration officials act to limit any such opportunity thanks to duplicate registrations. N.M. Stat. § 1-20-8.1 (2018).

Notwithstanding these legal obligations, the Foundation identified at least **1,584** sets of matched duplicate voter registrations in New Mexico. This was a conservative sampling effort that only accounted for perfectly matched addresses, birth dates, and consecutive characters in name fields. Total figures of duplicate registrations in the state are likely higher, based on Foundation research elsewhere in the nation. All of these relied on the common denominator of exact match residential address identifiers in single-family residences or confirmed single units within multi-family buildings.

This is precisely the circumstance which the federally mandated statewide database was designed to prevent.

This suggest a harmful mix of large-scale human error and technical failures is at play. These results indicate your office is not doing an adequate job checking for existing registrations and/or not cancelling previous registrations when found.

The NVRA and New Mexico law require your office to make a reasonable effort to remove the names of registrants who have moved to a different jurisdiction or failed to respond to official mailings. 52 U.S.C. § 20507(a)(4)(B); When the same registrant is listed more than once on the official list of eligible registrants, it risks the possibility that the duplicate entry will not be flagged for cancellation. In that regard, the State of New Mexico’s failure to identify and investigate duplicate registrations is not “reasonable,” in violation of the NVRA. 52 U.S.C. § 20507(a)(4).

3. Apparent Use of Non-Residential Commercial Addresses for Voter Registration

Our research further identified nearly **190** instances where registrations were established at addresses apparently not intended for single- or multi-family residential use. As you know, the New Mexico-printed voter registration application document asks the user to state the “physical street address where you live now.” New Mexico statute further explains that such residences must be “the residence of a person is that place in which his habitation is fixed, and to which, whenever he is absent, he has the intention to return.” N.M. Stat. § 1-1-7

II. Notice of Violations and Curative Period

Given the nature of these findings, we are required to inform your office that this letter serves as your statutory notice pursuant to 52 U.S.C. § 20510(b) of violations of Section 8 of the NVRA, 52 U.S.C. § 20507. We do, however, believe these are best discussed directly and efficiently before any litigation or election contest complicates matters further.

Because the ongoing violations described herein are occurring within 120 days of an election for federal office, you may face federal litigation if the violations are not cured with 20 days of your receipt of this letter. 52 U.S.C. § 20510(b)(2).

III. Request for Meeting

Our representatives are available to meet with you, via telephone or video, if needed, to discuss our research and a remedial plan within the following month.

Please let us know which date(s) and time(s) you prefer.

Should you need to contact the Foundation regarding this matter, please contact me at lchurchwell@publicinterestlegal.org. Thank you for your service on this matter.

Sincerely,



Logan Churchwell
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Enclosure
New Mexico SOS Copy.xlsx