

# PUBLIC INTEREST

— LEGAL FOUNDATION —

VIA EMAIL AND CERTIFIED MAIL

April 27, 2020

## Virginia Department of Elections

Washington Building  
1100 Bank Street, First Floor  
Richmond, VA 23219

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

Dear Commissioner Piper and Members Brink, Lecruise, and O'Bannon:

Based upon our findings outlined below, I write your offices pursuant to 52 U.S.C. § 205010(b) to notify you that the Commonwealth of Virginia is apparently not in compliance with the requirements of Section 8 of the National Voter Registration Act of 1993 (“NVRA”). This 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).

Commissioner Piper is receiving this letter because, as Virginia’s chief election official, he is ultimately responsible under Commonwealth and federal law for maintaining accurate and current voter registration lists. Va. Code § 24.2-404.1. 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 Virginia Department of Elections** to discuss our findings, identify why the violations are occurring, inspect supporting list maintenance records, and confirm how you plan to bring Virginia back into compliance with Commonwealth 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**

Our review of Virginia’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). Virginia has kept registrants has active long after the registrants have died. Virginia law also requires that the State Registrar of Vital Records and other official sources be used to make determinations of death prior to the cancellation of an affected registration record. Va. Code § 24.2-408; Va. Code §24.2-427. Using the Commonwealth’s official voter roll extract from October 2019, we matched the entire “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 contained at least **11,600** registrants who are matched against the

SSDI or published obituaries with corresponding dates of death on file at various credit reporting bureaus, based on our point of purchase.

At least 65 percent of registrants matched against the SSDI apparently died in September 2019 or earlier, with some dates of death reaching back decades.

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

Our research further identified more than **1,770** instances where registrations were established at addresses apparently not intended for single or multi-family residential use. As you know, the Virginia-printed voter registration application form asks the user to state “Residence address (May not be a P.O. Box).” Virginia law further explains that legal residency “requires both domicile and a place of abode. To establish domicile, a person must live in a particular locality with the intention to remain. A place of abode is the physical place where a person dwells.” § 24.2-101.

## 3. Persons Apparently Registered Twice Across State Lines with Concerning Overlapping Voter Credits from the 2018 General Election.

Finally, our research identified at least **592** examples where Virginia registrants (according to the October 2019 version of the official voter registration roll issued by ELECT) were apparently and simultaneously registered in another U.S. state. Further, face-value reviews of voter credit histories show cause for concern, given the apparently overlapping credits issued for the 2018 General Election. Virginia statute requires that voter registration lists and history files from other states be utilized for comparison to ultimately decide if a registrant has moved out of state. Va. Code § 24.2-404.4.

In sum, the highlighted registration files appeared to exist as interstate duplicates before the 2018 Election, were each assigned voting credits for the 2018 General Election, and remained on the rolls up to the point of purchase in October 2019. Potential matches of full names and dates of birth were filtered through commercial identity-validation services using Social Security data and more to process the resulting 592 examples. We have utilized multiple means to verify these duplicate registrations but ultimately only your office can conclusively determine whether or not these registrations are indeed duplications. They appear to be duplicate registrations based on a variety of data sources. You have procedures under state law to verify our work.

## **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.

Your office may face federal litigation if the violations are not cured with 90 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. 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](mailto:lchurchwell@publicinterestlegal.org). Thank you for your service.

Sincerely,



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Enclosure  
Virginia ELECT Copy.xlsx