

PUBLIC INTEREST
— LEGAL FOUNDATION —

VIA EMAIL & CERTIFIED MAIL

September 20, 2021

Hon. Kevin Meyer
Lieutenant Governor for the State of Alaska
P.O. Box 110015
Juneau, AK 99811-0001
Email: lt.governor@alaska.gov

Gail Fenumiai
Director, Division of Elections
240 Main Street, Suite 400
P.O. Box 110017
Juneau, Alaska 99811-0017
Email: Gail.Fenumiai@alaska.gov

RE: Notice of NVRA Violation

Dear Lieutenant Governor Meyer:

Pursuant to 52 U.S.C. § 20510(b)(1), this letter serves as statutory notice to you, as Alaska's chief election official that Alaska is in violation of the National Voter Registration Act ("NVRA") for failure to permit inspection and reproduction of public records as required by the NVRA, 52 U.S.C. § 20507(i)(1).

You are hereby notified that you now face federal litigation if you continue to deny access to the requested records.

Background

The NVRA requires each state and the District of Columbia 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)(1). The records the NVRA describes are commonly referred to as "voter list maintenance" records.

On August 11, 2021, pursuant to the NVRA, the Foundation requested from the Alaska Division of Elections office the opportunity to inspect or receive certain voter list maintenance records. The Foundation requested (1) "[a]ll 'ERIC Data' received from [the Electronic Registration Information Center ('ERIC')] during the years 2019, 2020, and 2021 concerning registered voters identified as deceased or potentially deceased"¹ and (2) "all reports and/or statewide-

¹ As explained in the Foundation's August 11 request, "ERIC Data" is a term used in ERIC's membership agreement to describe "data included in reports provided by ERIC" to member states concerning deceased and relocated registrants, and other information related to voter registration list maintenance. *See* ERIC Membership

voter-registration-system-generated lists showing all registrants removed from the list of eligible voters for reason of death for the years 2019, 2020, and 2021.” A copy of the Foundation’s August 11 request is enclosed with this letter.

In a letter dated September 16, 2021, Division of Elections Director Gail Fenumiai provided the Division’s response to the Foundation’s request.

Division of Election Responses

Request 1: *“All ‘ERIC Data’ received from ERIC during the years 2019, 2020, and 2021 concerning registered voters identified as deceased or potentially deceased.”*

The Division of Elections denied Request 1 pursuant to “42 USC 1306c” and “15 CFR 1110.102.”

Request 2: *“All reports and/or statewide-voter-registration-system-generated lists showing all registrants removed from the list of eligible voters for reason of death for the years 2019, 2020, and 2021. Such lists will optimally include unique voter identification numbers, county or locality, full names, addresses, and dates of birth.”*

The Division of Elections granted Request 2 in part and denied Request 2 in part. The Division of Elections provide a “list of deceased voters DOE removed from the voter registration list between January 1, 2019 and August 11, 2021.” However, the Division of Elections did not include dates of birth in the list.

Violation of the National Voter Registration Act

As explained in the Foundation’s August 11, 2021 request, 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)(1) (emphasis added). The NVRA exempts only two pieces of information— (1) a declination to register to vote, and (2) the identity of a voter registration agency through which any particular voter is registered. 52 U.S.C. § 20507(i)(1). The Foundation does not seek either of those things and the NVRA exempts no other records.

Neither other federal statutes nor federal regulations supersede or override the NVRA’s public disclosure requirements as a matter of law. And Alaska law is inoperative here because the Foundation’s request is made pursuant to the NVRA. Any Alaska law that limits disclosure of the requested records is without force because the NVRA, as a federal enactment, is superior to conflicting state laws under the Constitution’s Elections and Supremacy Clauses. *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 9 (2013).

Agreement at Section 4(a) (page 15), available at https://ericstates.org/wp-content/uploads/2020/02/ERIC_Bylaws_01-2020.pdf (last accessed Sept. 7, 2021).

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

Lieutenant Governor Meyer is hereby notified that his office is violating the NVRA and that litigation may commence against him if the violations described herein are not cured within 90 days of the receipt of this letter. 52 U.S.C. § 20510(b)(2). For lawsuits initiated by a private party, an award of attorney's fees, expenses, and costs incurred is available under 52 U.S.C. § 20510(c). The Foundation was recently awarded attorney's fees and litigation expenses as the prevailing party in an action to enforce the NVRA's public inspection rights.²

The Foundation believes its request can be lawfully and amicably satisfied in the following way:

- 1. The Alaska Division of Elections shall provide to the Foundation the requested "ERIC Data" reports with unique voter identification numbers. The Foundation will consent, in this instance, to the redaction of all data elements contained in the Limited Access Death Master File ("LADMF"), such as SSN dates of birth, SSN dates of death, SSN death locations, and full/partial SSN numbers.**

The assignment of unique voter identification numbers to each registrant is required by the Help America Vote Act, 52 U.S.C. § 303(a)(1)(A). The NVRA makes voter identification numbers subject to public inspection. 52 U.S.C. § 20507(i)(1). Voter identification numbers are not contained or mentioned in the LADMF and therefore neither the United States Code or Code of Federal Regulations govern or prohibit their disclosure. For these reasons, Alaska must allow the Foundation access to ERIC Data with voter identification numbers.

If the violations described herein are not cured in the time afford by law, we will have no choice but to pursue remedies in federal court.

Please contact me to arrange for secure transmission of the requested records, if necessary. Thank you for your continued attention on this matter.

Sincerely,



Logan Churchwell
Research Director
Public Interest Legal Foundation

² Doc. 97, *Public Interest Legal Foundation v. Bennett*, No. 4:18-cv-0981 (entered June 30, 2021).