



VIA EMAIL

February 6, 2025

Leo Terrell
Senior Counsel to AAG for Civil Rights
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Office of the Assistant Attorney General, Main
Washington, D.C. 20530

RE: Potential Violations of 52 U.S.C. § 20701

Dear Mr. Terrell:

We write today to raise your office’s awareness to potential violations of 52 U.S.C. § 20701 by the Oregon Secretary of State (“ORSOS”). In short, Oregon officials do not retain monthly alerts from the Electronic Registration Information Center (“ERIC”) relating to registrants who were previously *and inaccurately* flagged as deceased. The Public Interest Legal Foundation (“Foundation”) is exercising its private right of action under 52 U.S.C. § 20510(b) to address the matter under the National Voter Registration Act (“NVRA”). We would invite a discussion with the appropriate Deputy Chief to encourage your participation in this case considering you have concurrent jurisdiction. Further, the Foundation believes a federal review of the facts would be beneficial to further clarify document retention mandates for all records found in the Civil Rights Act of 1960, which of course, your office has exclusive jurisdiction to enforce.

ERIC’s ‘Deceased Retractions’ Program

In addition to identifying “Eligible But Unregistered” and other voter list maintenance leads related to death, relocation, and duplication¹, ERIC also alerts member states to “deceased retractions” as part of its programming. These are lists of registrants who ERIC previously communicated were deceased but are later revealed to be alive. In other words, these are registrants who were removed improperly based on ERIC data. ERIC does not openly market these datasets on its website. The Foundation recently collected copies of the retraction reports among member states pursuant to inspection rights under the NVRA, 52 U.S.C. § 20507(i)(1).

To date, the Foundation has succeeded in collecting retraction reports from seven current member states without litigation. Some states’ reports date back to 2013. The files provide a

¹ <https://ericstates.org/how-does-it-work/>

combination of basic voter roll information like name, registration date, and unique voter ID numbers – plus internal ERIC data. Before passing retractions on to states, ERIC checks the last known voter status (e.g., active/inactive/cancelled) for the affected registrant and includes the indicators in the file. The Foundation’s latest tally shows that fifty-five percent (55%) of registrants who were wrongly marked deceased were already cancelled from voter rolls before the retractions were issued from ERIC.

Member	Total Retractions	Already Cancelled
Washington State	338	216
Illinois	245	56
South Carolina	129	110
Nevada	105	69
Connecticut	29	11
Utah	9	7
Vermont	5	0

ERIC relies on the Social Security Administration’s Limited Access Death Master File to flag voter registrants for potential cancellation. The Social Security Administration offers a brief guide for how to respond when the Administration incorrectly marks an individual as deceased.² Those affected must carry original identification records into a Social Security office to correct the error. One financial media outlet characterized the experience of being incorrectly marked deceased as “an utter nightmare” that happens “more often than you’d think.”³ The outlet reported that roughly 6,000 SSN holders are affected each year and they typically find out when seeking a loan, are locked out of their bank accounts, or the Social Security benefit checks stop. Data entry and handling errors at the Social Security Administration are usually to blame, the outlet reported. It is also possible that similar surprises could await affected voters at polling places.

ERIC Advised States to Research Options to Withhold Deceased Retractions

On November 7, 2023, ERIC Executive Director Shane Hamlin wrote to all member states advising that the Foundation’s record inspection requests should not be denied pursuant to federal regulations protecting Social Security data – but ERIC argued deceased retractions could potentially be shielded under state laws.⁴ The Foundation was able to confirm this via NVRA document inspection efforts in other states.

ORSOS Admits It Does Not Maintain Voter List Maintenance Records for ‘Retractions’

On April 24, 2024, the Foundation requested deceased retraction reports from ORSOS. On May 6, the ORSOS denied the NVRA request because “we do not have those records as we do not

² Social Security Administration; What should I do if I am incorrectly listed as deceased in Social Security records?, <https://faq.ssa.gov/en-US/Topic/article/KA-02917>

³ The Motley Fool; What to Do If the Social Security Administration Incorrectly Marks You as Dead (January 19, 2020), <https://www.fool.com/retirement/2020/01/19/what-to-do-if-the-social-security-administration-m.aspx>

⁴ ERIC email “**Sent to the ERIC Board of Directors & Secondary Points of Contact**” (November 7, 2023)

retain them.” The ORSOS later clarified that, “We receive the data monthly; however we do not download and retain the data.”

The Foundation can provide details how ORSOS is able to “receive” documents intended to aid in voter list maintenance, but not “download and retain” them. According to ERIC, list maintenance data are transmitted to member states via a File Transfer Protocol (“FTP”) server on a regular basis. Later, a “cleaner” function “deletes stuff left on the site after 30 or 45 days.”⁵ This practice leaves the public at an extremely difficult disadvantage in studying how many Oregon registrants are impacted monthly. You can see it also violates federal retention mandates, which you enforce.

The Foundation Sues ORSOS for Violations of the NVRA

On January 28, 2025, the Foundation filed a federal action against ORSOS for violations of the NVRA. The Foundation specifically alleges two violations. First, ORSOS is violating 52 U.S.C. § 20507(i)(1) by denying the Foundation’s request to inspect and reproduce ERIC retraction reports, which show who may not be deceased and therefore in need of reactivation. Second, ORSOS is violating 52 U.S.C. § 20507(i)(1) due to its admitted failure to maintain the ERIC deceased retraction reports for at least two years. A copy of the complaint and exhibits filed in the United States District Court for the District of Oregon accompanies this letter.

U.S. Has Exclusive Authority to Investigate Potential Violations of 52 U.S.C. § 20701

Finally, we arrive at the apparent violation of 52 U.S.C. § 20701’s 22-month document retention mandate preserving “all records and papers which come into [the ORSOS’] possession relating to any application, registration, payment of poll tax, or other act requisite to voting...” As you know, this statute does not carry a private right of action. Given all the above facts and analysis, the Foundation believes federal investigation within this specific statutory lens is warranted.

The Foundation thanks you for your attention to these matters and would welcome any follow-up conversations. Should your offices require additional documentation, we would be happy to oblige or speak with the appropriate Deputy Chief either on the telephone or at your office.

Sincerely,



Logan Churchwell
Research Director
Public Interest Legal Foundation

⁵ This information derives from an email dated November 3, 2022, from Sarah Whitt of ERIC to the Office of Vermont Secretary of State. That communication record and accompanying Deceased Retraction reports were disclosed to the Foundation via an NVRA request.