

SECRETARY OF STATE

STATE OF INDIANA

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Re: Correspondence Regarding the National Voter Registration Act

Ladies and Gentlemen,

I am writing on behalf of the Office of the Indiana Secretary of State in response to your correspondence dated June 9, 2017 regarding certain provisions contained in Indiana Senate Bill 442¹ and the National Voter Registration Act of 1993 (“NVRA”). With respect to your concerns and inquires regarding the NVRA, please note that this response to your inquiry is *informal*, because the Indiana Secretary of State is not the state’s chief election official for NVRA administration and compliance. The Indiana General Assembly has designated the (bi-partisan) Co-Directors of the Indiana Election Division as the “chief election official” responsible for coordination of state responsibilities under

¹ Ind. Public Law 74:2017. In pertinent part, IC 3-7-38.2.-5 “Submission of names to change of address service; voter information from other states” *as amended*, effective July 1, 2017.

NVRA.² Due to Co-Director's autonomy as state NVRA officials, the Secretary of State does not have authority to acknowledge your correspondence as a sufficient, timely or actionable 52 U.S.C. § 20510(b) pre-litigation notice.

Following is an informal review of Indiana's participation in the Interstate Voter Registration Crosscheck ("IVRC") program, and interpretation of SB 442 and the NVRA which may serve to inform your views and allay concerns your constituencies may have.

As you are aware, under the NVRA, states are required to ensure that accurate and current voter registration rolls are maintained.³ Also, expanded state collaboration in improving the accuracy of voter lists was among the key recommendations of the 2013-2014 bi-partisan Presidential Commission on Election Administration.⁴

Based on data from the U.S. Census Bureau and the Council of State Governments, approximately 150,000 Indiana Residents move *out of* the state and approximately 147,000 residents of other states move *into* Indiana each year.⁵ According to Indiana demographic and voter registration statistics, in recent years about 65% of the state's population was registered to vote. Factoring the population moving out of state annually with the percentage of registered voters indicates that nearly 100,000 individuals registered to vote in Indiana moved to some other state in 2016. Among the myriad of details accompanying an interstate move, it's unlikely that notifying the appropriate Indiana County voter registration official of one's departure would be high priority. Presumably however, a number of registered voters moving from Indiana complied with ubiquitous motor vehicle registration bureau laws, and obtained new driver's licenses or state ID cards in the states they'd moved to and, on account of the NVRA, were prompted to register to vote in their new home states.

As a result of the ordinary, predictable movement of people from place to place, voter state voter rolls become oversubscribed with tens of thousands of duplicate or multiple registrations each year. Over periods of years due to the innocent, cumulative effect of natural migration patterns a state's voter rolls can become bloated by hundreds of thousands of obsolete registrations. Contrary to views of critics of IVRC such as Rolling Stone Magazine investigative journalist, Greg Palast, cited in your letter, Indiana's participation in IVRC is not motivated by obsessive concern over the potential for double voting.⁶ Indiana's bi-partisan NVRA officials do not employ IVRC for partisan effect or as a "weapon of voter suppression". The state of Indiana and its county voter registration offices do not treat proposed IVRC matches as vote fraud suspects or the IVRC program as the basis of a criminal investigation. Such suggestions are baseless. Over the past 15

² IC 3-7-11-1.

³ 52 U.S. Code § 20501 (b)(4).

⁴ The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration (January, 2014) <https://bipartisanpolicy.org/the-presidential-commission-on-election-administration/>

⁵ See: <http://www.stats.indiana.edu/topic/population.asp> and http://www.in.gov/sos/elections/files/2016_General_Election_Turnout.pdf.

⁶ Greg Palast, The GOP's War on Voters, ROLLING STONE, Aug. 24, 2016, <http://www.rollingstone.com/politics/features/the-gops-stealth-war-against-voters-w435890>.

years the Office of the Indiana Secretary of State has continuously utilized HAVA funds and state appropriations to conduct multilingual voter registration, awareness and participation programs – applying over one million dollars to the effort during the 2015 and 2016 election cycles.

By legislative directive, Indiana first participated in the annual “Kansas” IVRC program in 2015 and thereafter in 2016 and 2017. IVRC is performed by Indiana’s NVRA officials (the Co-Directors of the Indiana Election Division) who also operate Indiana’s Statewide Voter Registration System (SVRS). Evaluation of IVRC “raw data” and dissemination of select or filtered data to county voter registration offices is one of multiple functionalities of Indiana’s SVRS. Indiana’s NVRA officials develop and implement operating procedures for state voter list maintenance activities, which include the IVRC program.

Indiana’s IVRC “Matching” Standards and Procedures

Throughout its participation in IVRC, Indiana’s NVRA officials have concurred that reliable matching of individuals among a large population of several state’s voter registrations requires precise, logical matching of *more* data than a first name, last name and date of birth. Indiana’s NVRA officials set the rules for evaluating proposed “matches” and have never permitted voter registration offices to cancel voter registrations based solely on first name, last name and date of birth matching. As applied by Indiana’s NVRA officials, IC 3-7-38.2-5 (prior to and as amended) does not operate to lower existing standards for voter registration matching. IVRC match criteria for post July 1, 2017 proposed matches were amended by state NVRA officials to be even *more* exacting and reliable.⁷

Indiana’s SVRS methodology for evaluating raw IVRC match data has always been a matter of public record and is designed to only identify potential registration matches that are *highly likely* to be one and the same individual - and to reject any potential match in any instance where the available data is insufficient or contains inconsistent data points.

Indiana’s SVRS evaluates IVRC “raw data” utilizing strict criteria and methodology requiring *exact* matching of *full* first name, *full* middle name or consistent middle initial, *full* last name, *full or consistent* suffix, *exact* date of birth *and* an exact match of at least one additional unit of data. In virtually all cases the available additional data is the last four digits of a Social Security Number. Only matches meeting this high standard, which *Goel and Meredith* (2017)⁸ classify as “*likely to be a case of the same person registered in two different states*” qualify to be forwarded, on an individual basis, to county voter registration offices. County voter registration offices are directed to then determine on an individual basis, with no limitation on use of additional information or investigation, if a

⁷ See: <http://www.in.gov/sos/elections/2397.htm> , <http://www.in.gov/sos/elections/2398.htm> and <http://www.in.gov/sos/elections/4103..htm>.

⁸ Goel, S., Meredith, M., Morse, M., Rothschild, D., & Shirani-Mehr, H. *One Person, One Vote: Estimating the Prevalence of Double Voting in US Presidential Elections*. <https://scholar.harvard.edu/morse/publications/one-person-one-vote-estimating-prevalence-double-voting-us-presidential-elections>

proposed match identifies a specific individual registered to vote in their jurisdiction who *subsequently* registered to vote in another state.

Indiana's IVRC matching criteria and procedures (before and after July 1, 2017) are significantly more rigorous than the criteria and procedures employed in any of the states cited in your letter as examples of "error prone" crosscheck programs.⁹

Basis for Cancellation of a Confirmed Duplicate Voter Registration

In specific instances such as a voter's death, criminal conviction, mental incapacity, failure to vote, USPS notice of change address, or failure to respond to a voter registration confirmation mailing, the NVRA provides directives for voter list maintenance. Though NVRA applies specifically to a variety of situations, it does not prohibit immediate cancellation of a duplicate *previous* voter registration based upon reliable, uniform, nondiscriminatory, information received from a voter registration official who has accepted a *subsequent* registration. NVRA *requires* states to conduct a general program that makes a reasonable effort to remove the names of ineligible voters upon their written confirmation of a change of address to a location outside the registrar's jurisdiction.¹⁰ The Indiana General Assembly and Indiana's NVRA officials have adopted the position that a voter registration application, signed and affirmed under the penalty of perjury constitutes a registrant's authorization to cancel previous registrations.

It's expected when a registered voter moves from one place to another and subsequently registers to vote, that the voter will report their previous address on the application and that the official taking the new registration will inform the registration authority for the former address - who will proceed to cancel the now obsolete previous registration. It's not expected that a voter registration office, upon being informed by another voter registration official, that a voter has moved and re-registered, must then contact the voter to seek permission to cancel the registration in their jurisdiction, or wait two election cycles before acting. Voter registration official-to-official voter list maintenance activity triggered by, and based on the conscious, affirmative action an individual takes to change or update their voter registration is the longstanding, accepted practice and was not overruled by the NVRA.

The NVRA protects a person's right to cast a vote, which is highly important. The NVRA does not however, entitle a person to be simultaneously registered to vote in two or more locations. Cancellation of a voter's previous, obsolete, registration as a result of the submission and acceptance of a *new registration application* is distinct from (NVRA governed) voter list maintenance based solely on a change of residence.¹¹ IVRC procedures which result in the positive identification of a specific person currently

⁹ See **Attachment A**, analysis of news accounts of IVRC program activity in FL, GA, ID, KY, NC, OH, OR, VA, WA.

¹⁰ 52 U.S.C. § 20507(d)(A); See: *Federal Election Commission's Guide to Implementing the National Voter Registration Act*. p. 5-5. <https://www.eac.gov/assets/1/28/Implementing%20the%20NVRA--Report%20to%20State%20and%20Local%20Election%20Of.pdf>.

¹¹ In the *distinct* case where an individual has changed residence (only) a change of residence confirmation mailing would need to include information on how they can remain eligible to vote - by registering to vote at their new residence per 52 U.S.C. § 2507 (d)(2)(B).

registered in one state who is, and *will remain* (subsequently) registered to vote in another, does not operate as voter disenfranchisement or suppression.

The number of persons who move from one state to another and become registered to vote each time they move is significant and Indiana's NVRA officials believe that the IVRC procedures employed to confirm duplicate registration matches are compliant, very reliable, uniform and non-discriminatory. While it's possible that any voter list maintenance program might result in the erroneous cancellation of a voter's registration, fail-safe voting options in Indiana significantly mitigate the risk of disenfranchisement. The NVRA as implemented in Indiana provides that in the event a voter learn at the polls on Election Day that their registration was canceled due to registration information received from another jurisdiction, they need only provide an oral or written affirmation of their continued eligibility and residence in the jurisdiction in order to cast a regular ballot.¹² Indiana *does not* require a voter to cast a provisional ballot in such case.

For additional information on IVRC and all of Indiana's voter list maintenance activities, please contact the Indiana Election Division, 301 W. Washington St. Room 302, Indianapolis, IN 46204-2767, telephone: 317-232-3939, email: elections@iec.in.gov.

Truly yours,

Jerold A. Bonnet, General Counsel
Office of the Indiana Secretary of State

cc: Indiana Election Division

Enc.

¹² IC 3-7-48-5.

Attachment A

Review of Articles Cited as Evidence of the Unreliability of Interstate Voter Registration Crosscheck Matching Data

1. *Virginia Offers Lessons for Voter List Maintenance*, Jonathan Brater, Brennan for Justice, November 25, 2013, <https://www.brennancenter.org/analysis/virginia-offers-lessons-voter-list-maintenance> see also: *Chesterfield Registrar Delays Purge of Voter Rolls – Registrar Cites Errors on List; Democrats Want all Localities to Wait*, Jim Nolan, Richmond Times Dispatch, October 9, 2013.

Numerous problems with the process the Virginia State Board of Elections followed (circa 2013) in its first attempt to utilize IVRC data were evident. Voter list maintenance activities were not suspended 90 days before an election, a sound methodology for evaluating and confirming potential matches was not employed and presentation of data fostered confusion between previous and subsequent registrations. Indiana does not conduct voter list maintenance within 90 days of an election. Indiana's SVRS employs a multifactor confidence analysis to identify only very likely duplicate registrations which are presented to county election offices in a format requiring confirmation of potential matches on an individual basis.

2. *Florida No Longer Part of a Controversial National Voter Data Project*, Jon Greenburg and Amy Sherman, Miami Herald, April 4, 2014, <http://miami-herald.typepad.com/nakedpolitics/2014/04/florida-no-longer-part-of-controversial-national-voter-data-project.html>.

Apparently Florida election officials attempted to update its voter registration rolls "en masse" using "raw" interstate crosscheck data which included potential matches based on incomplete and inconsistent data. There is no indication that Florida undertook to develop and implement acceptable standards for evaluating preliminary IVRC data. Unlike Florida, Indiana's NVRA officials took the time and effort to develop and implement a reliable system to evaluate and screen preliminary IVRC data.

3. *The GOP's Stealth War on Voters*, Greg Palast, Rolling Stone, Aug. 24, 2016, <http://www.rollingstone.com/politics/features/the-gops-stealth-war-against-voters-w435890>.

Mr. Palast's highly selective reporting on IVRC programs suggests that election officials in participating states are obsessed with voter suppression and willfully disregard the NVRA and other applicable laws. Mr. Palast's conclusion that IVRC programs are conducted in bad faith, illegally, recklessly, with racial animus and in absolute secrecy, while fascinating and sensational, is not

supported by obvious facts and readily available data. Numerous inquiries among election officials and voter registration offices in IVRC states were made in an attempt to confirm Mr. Palast's report that states viewed IVRC matches as "suspects" and statement that "state after state told us their lists of suspects were part of a criminal investigation". No basis for his claims could be found.

Indiana's IVRC is administered transparently, by a bi-partisan team of state election officials, utilizing methodology that eliminates from consideration any potential duplicate registration match with a less than full, exactly matching data set. Indiana does not conduct voter list maintenance "just before Election Day", does not ignore inconsistent data in proposed matches, would not match 'James Willie Brown with James Arthur Brown, James Clifford Brown or James Lynn Brown. Nor would Indiana summarily match all "Garcias", Washingtons, Tans, Lees, or Nugyns.

4. *Elections Officials told Rick Scott he Was Dead and Couldn't Vote*, Lloyd Dunkelburger, Herald-Tribune, June 4, 2012, <http://politics.heraldtribune.com/2012/06/14/scott-mistakenly-declared-dead-on-voting-rolls/>.

This article cites the apparent misuse of IVRC data for the cancellation of a voter's registration less than 90 days before an election based on inconsistent and mismatched data. Also, upon learning of the erroneous cancellation on Election Day, the individual was required to cast a provisional ballot. Though it's not clear what the source of information that led to the cancelation was, to the extent that IVRC data was involved, obviously that Florida either did not screen potential matches at all, or relied on evaluation criteria that identified a match despite available inconsistent or non-matching data. As noted previously, Indiana's IVRC procedures would not accept individuals with different middle names, inconsistent suffixes or insufficient data, as matches. Indiana does not allow voter list maintenance to be conducted less than 90 days before an election and Indiana would not require an individual, who believes they were incorrectly removed from a voter roll to cast a provisional ballot.