

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

PROJECT VOTE/VOTING FOR
AMERICA, INC.,

Plaintiff,

v.

ELISA LONG and NANCY RODRIGUES,

Defendants.

:
:
:
:
:
:
:
:
:

Case No.: 2:10cv75

DEFENDANTS LONG AND RODRIGUES'
MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

Defendants, Elisa Long, General Registrar of Norfolk, Virginia ("Long"), and Nancy Rodrigues, Secretary, Virginia State Board of Elections ("SBE")("Rodrigues"), by counsel, submit this Memorandum of Law in support of their Motion to Dismiss.

Plaintiff, Project Vote/Voting for America, through its complaint requesting declaratory and injunctive relief, seeks access to individual voter registration applications and related records from Long. Plaintiff claims that Long and Rodrigues, in withholding these records under Va. Code § 24.2-444, are in violation of the Public Disclosure Provision of the National Voting Rights Act ("NVRA"), 42 U.S.C. § 1973gg-6(i). Section (1) of this provision makes 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 . . ." *Id.*

For the reasons stated below, Long and Rodrigues ask the Court to dismiss this action under Fed. R. Civ. P. 12(b)(1) and (b)(6) because: (1) plaintiff lacks standing to sue under the NVRA; (2) individual voter registration applications are not records

subject to the Public Disclosure Provision; and (3) the Virginia statute is not in conflict with the NVRA, undermining plaintiff's preemption claim.

I. BACKGROUND

Project Vote is a Washington, D.C.-based non-profit engaged in "ongoing nonpartisan voter protection efforts." Compl. at 2. In Virginia, it claims to have done "election protection work" in the 2009 election (a state election not covered by the NVRA), tracked "election bills in Virginia," and provided summaries of the same to "voters." *Id.* ¶ 4.

According to the Complaint, Project Vote received reports that "several students at Norfolk State University . . . experienced difficulty as they attempted to register to vote" for the federal November 2008 election. *Id.* ¶ 14. The Complaint alleges that those several applications from "ostensibly qualified" NSU students were being rejected by defendant Long's office in Norfolk. *Id.*

In May 2009, plaintiff requested by email that Long make available for inspection and copying, completed voter registration applications and related records for individuals who had submitted applications to the Norfolk Registrar from January 1, 2008, through October 31, 2008, but who were not registered to vote in time for the November 4, 2008, election. *Id.* ¶ 15. On May 13, 2009, Long, relying on Va. Code § 24.2-444, governing the public's access to voter registration records, refused plaintiff access to those records. *Id.* ¶ 17. Plaintiff's representatives appeared in Long's office on May 15, 2009, requesting in person, but again Long refused them access to, the requested records. *Id.* ¶ 19.

By letter dated June 22, 2009, plaintiff requested, under the NVRA Public Disclosure Provision, that defendant Rodrigues, for the SBE, direct all General Registrars to permit inspection and copying of "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 . . ." *Id.* ¶ 20. Plaintiff maintained that the records described in the Public Disclosure Provision included copies of completed voter registration applications. *Id.*

Prior to responding to plaintiff, the SBE requested that the Virginia Attorney General's Office issue an opinion regarding public access to the requested records. In a letter dated September 23, 2009, attached hereto as Exhibit "A," the Attorney General's Office stated in an informal opinion that "the completed voter registration application of any individual is not a part of the record of the implementation of programs and activities conducted for the purposes of ensuring the accuracy and currency of official lists of eligible voters." *Id.* ¶ 22.

Upon receipt of the opinion, Rodrigues declined plaintiff's request. *Id.* Plaintiff filed this action following defendants' refusal to allow access to the requested voter registration applications and related records.

II. LEGAL STANDARD

A. Motion to Dismiss for Lack of Jurisdiction

Under Rule 12(b)(1), jurisdiction once challenged by the defendant must be proven by the proponent of jurisdiction. *Marks v. United States Social Security Administration*, 906 F. Supp. 1017 (E.D. Va. 1995), *aff'd in part and vacated in part*, 92

F.3d 1180 (4th Cir. 1996). A trial court may go beyond the allegations of the complaint and consider additional evidence necessary to determine if there is in fact jurisdiction. *See Adams v. Bain*, 697 F.2d 1213 (4th Cir. 1982). A Rule 12(b)(1) motion may contend either that the complaint fails to allege facts sufficient to establish jurisdiction, or that the alleged jurisdictional facts are untrue. *Id.* at 1219.

B. Motion to Dismiss for Failure to State a Claim

On a Rule 12(b)(6) motion to dismiss, the court accepts all well-pled facts as true and construes these facts in the light most favorable to the plaintiff in weighing the legal sufficiency of the complaint. *See* Fed. R. Civ. P. 12(b)(6); *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1950-51 (2009); *Adcock v. Freightliner LLC*, 550 F.3d 369, 374 (4th Cir. 2008). However, legal conclusions, elements of a cause of action, and bare assertions devoid of further factual enhancement fail to constitute well-pled facts for Rule 12(b)(6) purposes. *See Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 255-256 (4th Cir. 2009) (relying on *Iqbal* and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)). Nor should the court consider “unwarranted inferences, unreasonable conclusions, or arguments.” *Id.* (quoting *Wahi v. Charleston Area Med. Ctr., Inc.*, 562 F.3d 599, 615 n. 26 (4th Cir. 2009)).

“While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels, and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555

(internal citations omitted). "Rule 8 . . . does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Iqbal*, 129 S.Ct. at 1950.

Relying on *Iqbal* and *Twombly*, the Fourth Circuit has opined that a complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Nemet Chevrolet*, 591 F.3d at 256 (citations omitted). The "complaint's factual allegations must produce an inference of liability strong enough to nudge the plaintiff's claims 'across the line from conceivable to plausible.'" *Id.* Thus, "the complaint must . . . plead sufficient facts to allow a court, drawing on 'judicial experience and common sense,' to infer 'more than the mere possibility of misconduct.'" *Id.*

A court may consider matters on the public record without converting the motion to one for summary judgment and can take judicial notice of pleadings in its own records. *Papasan v. Allain*, 478 U.S. 265, 286, n. 1 (1986). Non-judicial records outside the complaint may also be considered under Rule 12(b)(6). "[W]hen a plaintiff fails to introduce a pertinent document as part of his complaint, the defendant may attach the document to a motion to dismiss the complaint . . . not only documents quoted, relied upon, or incorporated by reference in the complaint, *but also official public records pertinent to the plaintiffs' claims.*" *Gasner v. County of Dinwiddie*, 162 F.R.D. 280, 282 (E.D.Va. 1995)(emphasis added).¹

¹ All documents attached to this Memorandum are accessible to the public and subject to Virginia's FOIA statute.

III. ARGUMENT

Put simply, this Motion places two issues before the Court, namely: (1) does plaintiff have standing, either by itself or in a representative capacity; and (2) does the following section from the NVRA encompass completed voter registration applications, or not:

(1) * * * *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 . . .*

(2) The records maintained pursuant to paragraph (1) shall include *lists* of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

42 U.S. §§ 1973gg-6(i) (emphasis added). This case is one of first impression regarding the second issue. If the answer to either question is “No,” then the Court should dismiss this action for the reasons discussed below.

A. Plaintiff Lacks Standing to Sue under the NVRA

A threshold question this Court must consider is whether Project Vote has standing on its own, or has standing to sue in a representative capacity. As set forth below, Project Vote fails to allege facts establishing either kind of standing.

1. Project Vote Fails to Allege Facts Establishing Its Own Standing

To establish its own standing under Article III, Project Vote must allege facts showing that: (1) it has suffered injury in fact; (2) there is a genuine nexus between Project Vote’s alleged injury and defendants’ alleged illegal conduct; and (3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable

decision. *See Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149 (4th Cir. 2000); *Allen v. Wright*, 468 U.S. 737, 750-51 (1984). With regard to the first element, a plaintiff's alleged injury must be "concrete and particularized," and be "actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)(internal citations omitted).

The NVRA grants standing to sue to "aggrieved persons" under 42 U.S.C. § 1973gg-9(b)(1) and (2). The NVRA only confers standing regarding elections for federal office. *Dobrovoly v. Nebraska*, 100 F. Supp.2d 1012, 1029-30 (D. Neb. 2000).

Defendants find no Fourth Circuit precedent dealing with standing under the NVRA. The Fifth Circuit has held that Congress intended to extend standing under the NVRA to the extent permissible under the Constitution. *Association of Community Orgs. for Reform v. Fowler*, 178 F.3d 350, 363 (5th Cir. 1999). However, the U.S. Supreme Court has long held that "mere interest in a problem" is not sufficient to confer standing to an organization. *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972)(organization's interest in an issue did not confer standing under the Administrative Procedure Act). A plaintiff organization in an NVRA suit must show that the organization itself, and not just its ideals, has been harmed in some concrete way as the result of the alleged disenfranchisement. *See Harkless v. Blackwell*, 467 F. Supp.2d 754, 761 (N.D. Ohio 2006), *rev'd on other grounds*, *Harkless v. Brunner*, 545 F.3d 445 (6th Cir. 2008).

In *United States Student Association Foundation v. Land*, 585 F. Supp.2d 925, 934 (E.D. Mich. 2008), a federal court in Michigan held that an organization lacked

standing on its own for this very reason in a suit brought under the NVRA.² In *Land*, the court held that an organization lacked standing under the NVRA where it alleged no facts showing that the organization had any concrete involvement in registering the voters who claimed NVRA violations. *Id.* The court also noted that even if the organization had been so involved, the organization would still lack standing if the number of allegedly disenfranchised persons was too small to have the “required impact upon the organization’s interests as a whole.” *Id.*

Similarly, in *Harkless*, 467 F. Supp.2d at 761, a federal court in Ohio held³ that an organization lacked standing under the NVRA because it alleged facts only establishing a “setback to its abstract social interests.” It alleged no facts showing that the organization itself was harmed. *Id.* The same is true here. Project Vote only alleges that “several students” at Norfolk State University (“NSU”) “experienced difficulty as they attempted to register to vote.” Compl. ¶ 14. It does not allege facts showing that it was harmed in any way.

² In *Land*, the court narrowly found that the organization had representational standing, something Project Vote lacks here. 585 F. Supp.2d at 935.

³ On appeal, the Sixth Circuit found that the district court should have permitted the plaintiff to amend its complaint to cure its standing problem. 545 F.3d at 459. The Sixth Circuit did not, however, find that the district court erred in its ruling on the original complaint, *i.e.*, that it contained insufficient allegations to support standing. On the facts here, defendants believe that amendment would not cure the standing defects facing Project Vote because the number of applications at issue could not have harmed plaintiff enough to establish standing on its own, and plaintiff has no representational standing.

Applying the principle set forth by the U.S. Supreme Court in *Morton*, and the sound reasoning from *Land* and *Harkless*, the denial of “several” voter registration applications in Virginia does not establish standing for Project Vote, a Washington, D.C.-based non-profit, to bring this action. Finding a handful of rejected voting applicants provides no injury to Project Vote itself, nor could this materially affect its mission, including providing information to Virginia voters.⁴ See Compl. at 2. The Complaint understandably fails to allege facts establishing such harm.

At best, Project Vote can only argue that this handful of rejected voter registration applications offends its ideals and social policy interests, which are to “empower, educate, and mobilize . . . minority, youth, and other marginalized and underrepresented voters.” Compl. ¶ 4. This is the very rationale found to be insufficient by the U.S. Supreme Court in *Morton*, as well as by the federal courts in *Harkless* and *Land*. On this ground, the Court should dismiss this action due to lack of standing since Project Vote also lacks representational standing.

2. Project Vote’s Allegations Do Not Establish Representative Standing

In a representative capacity, an organization may have standing to redress its members’ injuries when: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization’s purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *United Food and Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 545 (1996) (citing *Hunt v.*

⁴ Project Vote’s decision to travel to Norfolk to request access to records previously denied by

Washington State Apple Advertising Comm'n, 432 U.S. 333 (1977)). The participation of members is not normally necessary in suits seeking only injunctive or declaratory relief. *United Food*, 517 U.S. at 546 (1996)(citation omitted).

Here, Project Vote's allegations fall short again. In the Complaint, Project Vote fails to allege any facts establishing that its members have been harmed by the alleged actions of defendants. Indeed, nowhere in the Complaint does Project Vote say that any of the NSU students, whose applications were denied, are members of Project Vote. On this ground, Project Vote has no representational standing, and the Court should dismiss the Complaint.

B. Virginia Law Does Not Conflict with Federal Law

1. The NVRA Does Not Require Disclosure of Voter Registration Applications

Plaintiff maintains that completed voter registration applications are "records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters," which must be available to the public for inspection and, where available, photocopying under the NVRA. 42 U.S.C. § 1973gg-6(i). Plaintiff asserts further that to the extent the Virginia statute prohibits this disclosure, federal law preempts Va. Code § 24.2-444.

Contrary to plaintiff's assertion, § 1973gg-6(i) does not mandate public access to completed voter registration applications because they are not "records concerning the implementation of programs and activities conducted for the purpose of ensuring the

correspondence, should not constitute "harm" for standing purposes. Compl. ¶ 19. Otherwise, any unwise expenditure of time could give someone standing to sue.

accuracy and currency of official lists of eligible voters” The language and plain meaning of the federal statute underscores plaintiff’s faulty construction.

“When [the Court] find[s] the [language] of a statute unambiguous, judicial inquiry is complete except in rare and exceptional circumstances[,] . . . where the application of the statute as written will produce a result ‘demonstrably at odds with the intentions of its drafters.’” *Demarest v. Manspeaker*, 498 U.S. 184, 190-91 (1991) (quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564 (1982)). “In looking for the plain meaning of a statutory term, [the court] refer[s] to the specific context (usually the subsection) in which the term is used.” *National Coalition for Students with Disabilities Educ. & Legal Defense Fund v. Gilmore*, 152 F.3d 283, 290 (4th Cir. 1998).

Section 1973gg(b)(1) of the NVRA states that its purpose is “to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office.” The statute sets forth mandatory procedures for states in registering voters and mandatory requirements for states in administering voter registration, including removal of voters from registration rolls. The question of whether voter registration applications are subject to public disclosure arises in the context of the procedure for *removing* voters from registration lists. Given this emphasis of the statute, it cannot reasonably be interpreted to cover the registration applications of people who never enter these lists.

Upon registration, § 1973gg-6(a)(3)-(4) prohibits the removal of an individual’s name from the list of eligible voters except: (1) at the registrant’s request; (2) by reason of criminal conviction or mental incapacity as provided by state law; (3) by

reason of death; or (4) by reason of a change in residence in accordance with § 1973gg-6(b)-(d). In an effort to ensure that a registered voter cannot be removed from the registration rolls by a failure to vote or because of a change of address, the statute strictly limits when a state may remove the name of a registrant from voting rolls because of an address change. *See* 42 U.S.C. § 1973gg(b). The House Report for this law states that the above procedure “attempts to incorporate an underlying purpose of [the NVRA]; that once registered, a voter should remain on the list of voters so long as the individual remains eligible to vote in that jurisdiction.” *See* H.R. Report No. 103-9, at 16, reprinted in 1993 U.S.C.C.A.N. 105, at 122.⁵

To further this purpose, under § 1973gg-6(d), the registrant’s name may be removed from the list of registered voters only as follows: (1) the registrant “confirms in writing that the registrant has changed residence to a place outside the registrar’s jurisdiction in which the registrant is registered”; or (2) the registrant “has failed to respond to a notice” of the disposition of the application and “has not voted or appeared to vote (and, if necessary, correct the registrar’s record of the registrant’s address) in an election during the period beginning on the date of the notice and

⁵ If a court believes that a statute’s language is any way unclear, a court should consult legislative history when interpreting that statute. *Dominion Resources, Inc. v. United States*, 219 F.3d 359, 365 (4th Cir. 2000).

ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.”⁶

Most pertinent to the case at hand, the NVRA’s Public Disclosure Provision, 42 U.S. §§ 1973gg-6(i), provides that:

(1) Each state shall maintain for at least 2 years and shall make available for public inspection and, when available, photocopying at a reasonable cost, 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 . . .*

(2) The records maintained pursuant to paragraph (1) shall include *lists* of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

(Emphasis added). This statute mandates public access to records that prove the states are properly maintaining lists of registered voters. But the plain language of the statute belies any intent to mandate public inspection of completed, individual voter registration applications to achieve that end. The statute neither directly mentions such applications, nor suggests that they must be available for public inspection.

⁶ To ensure the maintenance of accurate registration rolls, the NVRA requires states to use reliable information from government agencies such as the U.S. Postal Service’s change of address records. See 42 U.S.C. § 1973gg-6(c)(1). This is the National Change of Address or “NCOA” program discussed in this Memorandum. The statute also details specific procedures for confirming voter addresses, for following up a voter’s failure to return the postage prepaid and pre-addressed return card, and for voting following a failure to return the return card, so that a voter is not denied the opportunity to vote. See 42 U.S. §§ 1973gg-6(d) and (e).

In fact, Section 1973gg-6(i)(2), which *sets forth the types of records subject to disclosure*, states that the "records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice" As a matter of law, the records demanded by plaintiff are thus not subject to disclosure.

The records subject to disclosure are exemplified by the list generated by the SBE, from information received by the general registrars, in accordance with the "NCOA [National Change of Address] Confirmation Notice." This is the notice described in subsection (d)(2). A copy of the NCOA notice is attached as Exhibit "B"; a copy of a sample page of the list is attached as Exhibit "C." Individual voter registration applications are distinct from and not part of those programs or activities. A copy of a Virginia Voter Registration Application is attached as Exhibit "D."

Guidance from the Federal Election Commission ("FEC") supports the defendants' argument. In 42 U.S.C. § 1973 gg-7(a) (4), Congress authorized the FEC to "provide information to the states with respect to the responsibilities of the state under this subchapter." In 1994, the FEC prepared a guide entitled, *Implementing the National Voter Registration Act of 1993: Requirements, Issues, Approaches, and*

*Examples ("FEC Guide"), to assist states' compliance with the NVRA. A copy of pertinent pages of the FEC Guide is attached as Exhibit "E."*⁷

With regard to mandated record keeping requirements, the FEC cites to those records identified in § 1973gg-6(i)(2), i.e., lists of the names and addresses of persons to whom confirmation mailings were sent and information concerning responses to those mailings. The FEC also recommends that states might choose to retain records of the date and reasons for removals from the voter registration list or of declinations. *See* Exhibit "E," pp. 7-1 and 7-5.

Significantly, the FEC does not include voter registration applications within the scope of records specified, or suggested, for disclosure. *See* Exhibit "E," p. 7-1. The FEC also addresses the significance of confidentiality and suggests that states might choose to maintain the confidentiality of original voter registration documents:

States that request or require social security number on their voter registration form may want to explore this issue – especially in light of the case of *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993). Ultimately, all States might want to consider maintaining the confidentiality of all *original* voter registration documents *while providing public access to computerized lists of registered voters* minus the confidential information.

See Exhibit "E," p. 7 – 5 (emphasis added).

⁷ The Preface sets forth that the FEC "does not have legal authority either to interpret the Act or to determine whether this or that procedure meets the requirement of the Act" and that the document "is intended only as a general reference tool." *See* Exhibit "E," p. P-1. However, the FEC offers guidance to the states relevant to this matter, regarding record keeping requirements and the confidentiality of individual voter registration records.

In sum, 42 U.S.C. § 1973gg-6, read as a whole, shows Congressional intent to increase voter registration. In looking at the language and the specific context of § 1973gg-(b)(i), Congress intended to provide public disclosure only for records related to the procedures states use for voter registration and the maintenance of voter rolls (particularly with regard to accurate removal from those rolls), not for completed voter registration applications themselves. On this ground, the case should be dismissed.

2. Virginia Law Does Not Conflict with Federal Law

Like the NVRA, Virginia law only allows for the public inspection of records pertinent to voter list maintenance. Under the Virginia statutory scheme, Va. Code § 24.2-444 establishes the duties of the general registrars and the SBE as to voter registration records and public inspection.

Section 24.2-444(A) requires the SBE to provide general registrars with "lists of registered voters for inspection and lists of persons registering," and "lists of persons denied registration." These lists are open for public inspection.

Section 24.2-444(B) is substantially similar to the NVRA's Public Disclosure Provision, 42 U.S. §§ 1973gg-6(i)(1). Virginia Code § 24.2-444(B) states that:

The general registrars shall maintain for at least two years and shall make available for public inspection and copying and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of the registration records pursuant to §§ 24.2-427, 24.2-428 and 24.2-428.1, including lists of the names and addresses of all persons to whom notices are sent, and information concerning whether each person has responded to the notice as of the date that inspection of the records is made.

The three code sections specified in § 24.2-444(B) mandate the process – the “programs and activities” – by which the SBE and general registrars maintain, review, and keep current the lists of registered voters, i.e., the manner in which they engage in list maintenance. Section 24.2-427 specifies how registered voters may cancel their registration and mandates the cancellation of the registration of deceased persons and others disqualified to vote.

Section 24.2-428 requires the SBE to “establish a voter list maintenance program using the change of address information supplied by the United States Postal Service through its licensees or by other reliable sources to identify voters whose addresses may have changed.” The statute mandates that “[a]ny such program shall be regular and periodic and shall be conducted at least annually.” *Id.*

Further, § 24.2-428 dictates the manner in which notices and prepaid and pre-addressed return cards are sent to voters who have moved to different addresses, both in and out of the same county or city, and how general registrars must correct registration records from the information obtained from the return card. Section 24.2-428.1 establishes “other procedures for assigning registered voters to inactive status” in addition to those provided for in § 24.2-428.

Finally, the Virginia Code mandates that:

No list provided by the State Board under subsection A nor any record made available for public inspection under subsection B shall contain any of the following information: (i) an individual’s social security number, or any part thereof; (ii) the residence address of an individual who has furnished a post office box address in lieu of his residence address as authorized by subsection B of § 24.2-418; (iii) the declination by an individual to register to vote and related records; (iv) the identity of a voter

registration agency through which a particular voter is registered; or (v) the day and month of birth of an individual. No voter registration records other than the lists provided by the State Board under subsection A and the records made available under Subsection B shall be open to public inspection.

Va. Code § 24.2-444(C).

Virginia thus permits public inspection of the same records accessible for public inspection under the NVRA, namely all records related to the maintenance, and ensuring the accuracy and currency of, voter registration lists. Together, Va. Code §§ 24.2-444, 24.2-427, 24.2-428 and 24.2-428.1 comport with the NVRA. They require, *inter alia*, that the SBE establish a voter list maintenance program with regular and periodic review, mandate the use of change of address information supplied by the United States Postal Service, and provide for notices and prepaid and pre-addressed return cards.

These procedures generate records directly related to the maintenance of the voter registration lists. These records, “concern[] the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters...,” and therefore *are* available for public inspection under § 1973gg-6(i). Virginia’s statutory scheme is no more restrictive than, and does not conflict with, the NVRA.

In addition, the Virginia legislature has clearly expressed its intent to maintain the confidentiality of original voter registration documents, exactly as suggested by the

FEC. In 2007, the Legislature amended Va. Code § 24.2-444(C) to prohibit public access to voter registration records.⁸

Of added significance, the Virginia Voter Registration Application Form specifically states "this registration card will not be open to inspection by the public," in an effort to preserve applicants' privacy. *See* Exhibit "C." The Application also asks whether the registrant has ever been convicted of a felony or has ever been judged mentally incapacitated. Making this information public would have a chilling effect on voter registration and run directly counter to the express purpose of the NVRA. It would also be contrary to the confidentiality considerations of both the FEC and the Virginia Legislature.

3. Plaintiff's Preemption Claim Fails Absent a Conflict

The Supremacy Clause provides that the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary

⁸ In *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993), the Fourth Circuit held that voter registration could not be conditioned on a requirement to allow public disclosure of personal information. On remand, this Court approved, by consent decree, a Privacy Act notice for use on Virginia voter registration applications: "[t]his registration card will not be open to inspection by the public." *Greidinger v. Davis*, No. 3:91CV00476 (E.D.Va. Aug. 20, 1993).

In 2007, the Virginia Supreme Court, in *Rivera v. Long*, No. 070274, slip. op. (Va. Sup. Ct. Feb. 8, 2008), permitted public inspection, under Virginia's FOIA, of invalid voter registration applications and copies of letters sent by Long to rejected applicants, with social security numbers redacted. In response to *Rivera*, the Virginia General Assembly amended § 24.2-444(C) to ensure that no records available for public inspection contained social security numbers.

The Virginia Legislature's increasing concern to limit access to personal information, such as social security numbers, is reflected in other statutes, including Va. Code §2.2-3808.1 (prohibiting state agencies from disclosing, among other things, SSNs); Va. Code § 18.2-186.2 (identity theft statute); Va. Code §2.2-3815 (prohibiting disclosure of SSNs under Virginia FOIA disclosures); and Va. Code §24.2-1002.1 (making it a Class 5 felony to disclose or make an unauthorized use of a SSN of any applicant for voter registration).

notwithstanding.” U.S. Const. Art. VI, cl. 2. Under the Supremacy Clause, the “relative importance to the State of its own law is not material when there is a conflict with a valid federal law, for any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield.” *King v. McMillan*, 594 F.3d 301, 309 (4th Cir. 2010) (quoting *Felder v. Casey*, 487 U.S. 131, 138 (1988) (internal quotations and citations omitted)).

Federal law may preempt state law in three ways: express preemption, field preemption, and conflict preemption. *H & R Block Eastern Enterprises, Inc. v. Raskin*, 591 F.3d 718, 722 (4th Cir. 2010). Plaintiff maintains that preemption exists here because of a direct conflict between state and federal law. A state law is preempted to the extent it actually conflicts with federal law, either because compliance with both laws is impossible or the state law interferes with the accomplishment of Congressional objectives or the methods chosen for meeting those objectives. *College Loan Corp. v. SLM Corp.*, 396 F.3d 588, 596 (4th Cir. 2005) (citing *Gade v. Nat'l Solid Wastes Mgmt. Assoc.*, 505 U.S. 88, 103 (1992)); *S. Blasting Servs. v. Wilkes County*, 288 F.3d 584, 591 (4th Cir. 2002)).

As addressed above, voter registration applications are not among the records available for public inspection pursuant to the NVRA Public Disclosure Provision. There is no indication that Congress intended to grant the public access to the original voter registration applications as part of the statutory scheme to ensure the accuracy and currency of voter registration lists.

Consequently, Virginia law, which permits access to the same records as does the NVRA, does not interfere with the accomplishment of Congressional objectives in the federal statute. In the absence of any conflict between the NVRA and Virginia law, plaintiff's preemption argument fails as a matter of law.

III. CONCLUSION

For these reasons, defendants Elisa Long and Nancy Rodrigues respectfully request that the Court dismiss plaintiff's claim, with prejudice.

Respectfully submitted,

ELISA LONG

Defendant

By: _____/s/_____
Of Counsel

Jeff W. Rosen, Esquire
Virginia Bar No. 22689
Attorney for Elisa Long
Pender & Coward
222 Central Park Avenue
Virginia Beach, Virginia 23462
Phone: (757) 490-6253
Fax: (757) 497-1914
Email: jrosen@pendercoward.com

Lisa Ehrich, Esquire
Virginia Bar No. 32205
Attorney for Elisa Long
Pender & Coward
222 Central Park Avenue
Virginia Beach, Virginia 23462
Phone: (757) 490-6253
Fax: (757) 497-1914
Email: lehrich@pendercoward.com

NANCY RODRIGUES

Defendant

By: _____/s/_____
Of Counsel

Stephen M. Hall
Virginia Bar No. 44132
Assistant Attorney General III
Counsel for Defendant Nancy Rodrigues
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
Phone: (804) 786-1586
Fax: (804) 371-2087
Email: shall@oag.state.va.us

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of March, 2010, I electronically filed the foregoing *MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS* with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

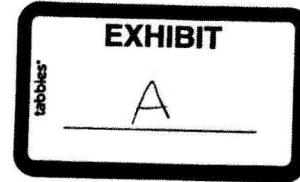
Augustin Marin Ripa
Ropes & Gray, LLP
700 12th Street NW; Suite 900
Washington, DC 20005
Augustine.ripa@ropesgray.com

Jason Gassan Idilbi
Ropes & Gray, LLP
700 12th Street NW; Suite 900
Washington, DC 20005
Jason.idilbi@gopesgray.com

Ryan Morland Malone
Ropes & Gray, LLP
700 12th Street NW; Suite 900
Washington, DC 20005
Ryan.malone@ropesgray.com
Attorneys for Plaintiff

Stephen M. Hall, Esq.
Assistant Attorney General III
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
Shall@oag.state.va.us
Attorney for Defendant Nancy Rodrigues

_____/s/_____
Jeff W. Rosen, Esq.
Virginia Bar No. 22689
Attorney for Elisa Long
Pender & Coward
222 Central Park Avenue
Virginia Beach, Virginia 23462
Phone: (757) 490-6253
Fax: (757) 497-1914
Email: jrosen@pendercoward.com



COMMONWEALTH OF VIRGINIA

Office of the Attorney General

William C. Mims
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

September 23, 2009

Ms. Nancy Rodrigues
Secretary, State Board of Elections
1100 Bank Street, First Floor
Richmond, Virginia 23219

Dear Ms. Rodrigues:

The Supreme Court of Virginia recognizes that construction of the Constitution and statutes of the Commonwealth by the Attorney General under § 2.2-505 of the *Code of Virginia* "is of the most persuasive character and is entitled to due consideration."¹ The same status and weight, however, is not afforded informal opinions and advice rendered by deputy and assistant attorneys general. The views expressed herein do not constitute an opinion of the Attorney General under the provisions of § 2.2-505. Consequently, this response to your inquiry represents only the individual views of one of the counsel to the Attorney General.²

Issue Presented

You ask whether the completed voter registration application of any individual is a part of the record of the implementation of programs and activities conducted for the purposes of ensuring the accuracy and currency of official lists of eligible voters covered by § 1973gg-6(i) of the National Voter Registration Act of 1993 ("NVRA").³

Response

It is my view that the completed voter registration application of any individual is not a part of the record of the implementation of programs and activities conducted for the purposes of ensuring the accuracy and currency of official lists of eligible voters covered by § 1973gg-6(i) of the National Voter Registration Act of 1993.

Background

You advise that in May 2009, representatives of the Advancement Project (the "Project") visited the Office of the General Registrar for the City of Norfolk (the "Norfolk General Registrar"). You state

¹Barber v. City of Danville, 149 Va. 418, 424, 141 S.E. 126, 127 (1928); see also Va. Beach v. Va. Rest. Ass'n, 231 Va. 130, 135, 341 S.E.2d 198, 201 (1986); Bd. of Supvs. v. Marshall, 215 Va. 756, 762, 214 S.E.2d 146, 150 (1975).

²See VA. CODE ANN. § 2.2-501 (2008) (permitting Attorney General to appoint such deputy and assistant attorneys general as may be necessary).

³42 U.S.C.S. §§ 1973gg to 1973gg-10 (LexisNexis 2000 & Supp. 2009).

Ms. Nancy Rodrigues
 September 23, 2009
 Page 2

that the Project's representatives requested copies of the voter registration applications of persons whose applications had been denied. The Norfolk General Registrar contacted the State Board of Elections (the "State Board") for guidance regarding the request. You relate that the State Board informed the Norfolk General Registrar that § 24.2-444, as amended by the 2007 Session of the General Assembly⁴ (the "2007 Amendment"), did not permit any individual to obtain copies of voter registration regardless of whether social security numbers and dates of birth were redacted. An attorney for the Project subsequently corresponded with the Norfolk General Registrar and the State Board questioning the Board's interpretation and asserting that NVRA preempts Virginia law.

Further, you advise further that the 2007 Amendment to § 24.2-444 was enacted in response to litigation against the Norfolk General Registrar by a different Project representative. Pursuant to The Virginia Freedom of Information Act,⁵ the Project representative was seeking copies of invalid voter registration applications and copies of the letters sent by the Norfolk General Registrar to the rejected applicants.⁶ You relate that the General Assembly enacted the 2007 Amendment in response to *Rivera* to increase the protection afforded individual registration applications consistent with the express assurance in the Privacy Act notice on voter registration applications (the "Notice"). The Notice provides that "[t]his registration card will not be open to inspection by the public." You advise that the Notice was added to the registration form in response to *Greidinger v. Davis*,⁷ in which the Court of Appeals for the Fourth Circuit held that registration to vote could not be conditioned on a requirement to allow public disclosure of social security account numbers.⁸ Upon remand, the United States District Court for the Eastern District of Virginia, by consent decree, approved the Privacy Act notice currently used in voter registration applications.⁹ Since the *Greidinger* decision, you advise that the Commonwealth has enacted legislation, the Government Data Collection and Disseminations Practices Act, protecting individual information contained in government databases. You note that the Data Collection Act requires advance notice to the subject of the records before the records are provided to any third party who does not have regular access.

You explain that under the 2007 Amendment, a registrar must provide public inspection lists of persons registered and denied registration. You assert that these lists strike a balance between voter advocacy groups' interest in monitoring general registrars and the legitimate privacy expectations of voters. Further, you state that the lists protect the administration of elections from the undue interference that can result when advocacy groups request that the redacted copies they are seeking take precedence over the registration of voters and the mailing of absentee ballots.

⁴See 2007 Va. Acts chs. 311, 318, at 435, 437-38, 447, 451, respectively.

⁵See VA. CODE ANN. tit. 2.2, ch. 37, §§ 2.2-3700 to 2.2-3714 (2008 & Supp. 2009).

⁶See *Rivera v. Long*, No. 070274, slip. op. (Va. Sup. Ct. Feb. 8, 2008).

⁷988 F.2d 1344 (4th Cir. 1993).

⁸*Id.* at 1355.

⁹See *Greidinger v. Davis*, No. 3:91CV00476, *1 (E.D. Va. Aug. 20, 1993) (consent order) (on file with this Office) (agreeing that Commonwealth "shall no longer permit public access to voter registration or election records containing [social security] numbers"). The District Court approved the federal Privacy Act notice shown on Exhibit A of the consent order. *Id.* at *3.

Ms. Nancy Rodrigues
 September 23, 2009
 Page 3

Applicable Law and Discussion

NVRA¹⁰ became effective in the Commonwealth on March 6, 1996.¹¹ Section 1973gg(b)(1) of NVRA provides that its purpose is “to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office.” In elections for federal office, § 1973gg-2(a) of NVRA requires that each state establish procedures to register voters: (1) by application made simultaneously with an application for a driver’s license pursuant to § 1973gg-3; (2) by mail application pursuant to § 1973gg-4; and (3) by application in person at registration sites in accordance with state law and at offices designated under § 1973gg-5.

Once a person is registered to vote, § 1973gg-6(a)(3)-(4) limits the instances in which the name of a registrant may be removed from the list of eligible voters. A registrant’s name may not be removed except: (1) at the registrant’s request; (2) by reason of criminal conviction or mental incapacity as provided by state law; (3) by reason of death; or (4) by reason of a change in residence in accordance with § 1973gg-6(b)-(d).¹² Section § 1973gg-6(e) establishes procedures for voting following a change of address. Section 1973gg-7 establishes restrictions on, and requirements for, a mail voter registration form. Section 1973gg-8 requires each state to designate a chief state election official to coordinate state responsibilities under NVRA. Finally, §§ 1973gg-9 and 1973gg-10 establish civil and criminal penalties for violations of NVRA.

Section 1973gg-6 provides requirements that states must follow in the administration of voter registration. First, state election officials must “ensure that any eligible applicant is registered to vote in an election” whenever a valid voter registration form is postmarked or received by the appropriate state official no later than thirty days before the date of the election.¹³ The appropriate state election official must then “send notice to [each] applicant of the disposition of the application.”¹⁴ As previously noted, a registrant’s name may not be removed from the official list of eligible voters except at the registrant’s request, due to criminal conviction or mental incapacity as provided by state law, the death of the registrant, or due to a change of the registrant’s residence.¹⁵ However, removal by reason of change of residence may be conducted only in accordance with specific requirements set forth in § 1973gg-6(b)-(d). Specifically, § 1973gg-6(d) provides the circumstances under which a state may remove a name from voting rolls:

(1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant—

(A) confirms in writing that the registrant has changed residence to a place outside the registrar’s jurisdiction in which the registrant is registered; or

¹⁰ See *supra* note 3 and accompanying text.

¹¹ See *Commonwealth v. United States*, No. 3:95CV357-RLW (E.D. Va. Oct. 18, 1995) (order).

¹² 42 U.S.C.S. § 1973gg-6(a)(3)-(4) (LexisNexis 2000).

¹³ 42 U.S.C.S. § 1973gg-6(a)(1)(A) (LexisNexis 2000).

¹⁴ 42 U.S.C.S. § 1973gg-6(a)(2) (LexisNexis 2000).

¹⁵ 42 U.S.C.S. § 1973gg-6(a)(3)-(4).

Ms. Nancy Rodrigues
September 23, 2009
Page 4

- (B)(i) has failed to respond to a notice described in paragraph (2); and
- (ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

One of NVRA's central purposes is to expand dramatically the opportunities for voter registration and to ensure that, once registered, voters could not be removed from the registration rolls by a failure to vote or because they had changed addresses.¹⁶ To achieve this purpose, NVRA strictly limits removal of voters based on change of address and instead requires that, for federal elections, states maintain accurate registration rolls by using reliable information from government agencies such as the U.S. Postal Service's change of address records.¹⁷ In NVRA, Congress "went even further by also requiring the implementation of 'fail-safe' voting procedures to ensure voters would not be removed from registration rolls due to clerical errors or the voter's own failure to reregister at a new address."¹⁸

Because NVRA strictly limits removal of voters from the voting rolls, the procedures for confirming voter addresses and following up a failure to return the postage prepaid and pre-addressed return card are set forth in considerable detail.¹⁹ The House Report of the Committee on House Administration (the "House Report"), in recommending passage of NVRA, makes it very clear that a state is prohibited

from removing the name of a registered voter by reason of a change in residence, unless the registered voter confirms in writing that he or she has changed residence outside the jurisdiction in which registered; or has failed to respond to a notice sent by the State and has not voted or appeared to vote within two general elections for Federal office since the date of the notice.^[20]

In addition, NVRA provides a detailed procedure for voting following a failure to return the postage prepaid and preaddressed return card so a voter is not denied the opportunity to vote.²¹ The House Report, also comments that § 1973gg-6(e) "attempts to incorporate an underlying purpose of [NVRA]; that once registered, a voter should remain on the list of voters so long as the individual remains eligible to vote in that jurisdiction."²²

The only approved method for removing a voter's name from the roll of qualified voters by reason of a change of address is as provided in NVRA.²³ However, I note that the procedures in

¹⁶ 42 U.S.C.S. § 1973gg(b) (LexisNexis 2000).

¹⁷ 42 U.S.C.S. § 1973gg-6(c)(1) (LexisNexis 2000).

¹⁸ See *Welker v. Clarke*, 239 F.3d 596, 599 (3d Cir. 2001) (citing § 1973gg-6(b)(1)); see also H.R. REP. NO. 103-9, at 14 (1993) [hereinafter "H.R. REPORT"], reprinted in 1993 U.S.C.C.A.N. 105, 118 (noting only reasons for removing persons from list of eligible voters).

¹⁹ See 42 U.S.C.S. § 1973gg-6(d) (LexisNexis 2000).

²⁰ See H.R. REPORT, *supra* note 18, at 16, reprinted in 1993 U.S.C.C.A.N. at 120.

²¹ 42 U.S.C.S. § 1973gg-6(e) (LexisNexis 2000).

²² See H.R. REPORT, *supra* note 18, at 18, reprinted in 1993 U.S.C.C.A.N. at 122.

²³ 42 U.S.C.S. § 1973gg-6(f) (LexisNexis 2000) (providing that removal from list of eligible voters must follow procedures in §1973gg-6(d)).

Ms. Nancy Rodrigues
 September 23, 2009
 Page 5

§ 1973gg-6(d) were mandated only with respect to federal elections.²⁴ Therefore, states are free to maintain a different voter registration system for state and local elections even though such action would create two different electorates.

In addition to the detailed procedures in NVRA for removal of voters' names from the list of qualified voters, § 1973gg-6(i) provides that:

- (1) Each State shall maintain for at least 2 years and shall make available for public inspection and, when available, photocopying at a reasonable costs, 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....*
- (2) The records maintained pursuant to paragraph (1) shall include *lists* of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made. [Emphasis added.]

Any person in the Commonwealth who is not registered to vote and who has the qualifications required by the Constitution of Virginia and Title 24.2 is entitled to register to vote in Virginia.²⁵ Once a person is registered to vote in the Commonwealth, he remains registered to vote unless his registration is cancelled.²⁶ The application to register to vote is a form prescribed by the State Board;²⁷ once it is completed by the voter, it is "kept and preserved by the general registrar."²⁸ It is only after the application to register to vote is completed and a voter is added and maintained on the qualified voting list that the process of removing voters from such a list may begin. Therefore, it is my view that the act of registering, that is the application, to vote is separate and distinct from the act of verifying the addresses, and maintaining the list, of eligible voters pursuant to NVRA.

The application to register to vote is not a part of the program or activity conducted to ensure the accuracy and currency of the official registered voter list maintained by the State Board.²⁹ Instead, the program or activity records merely consists of the official registered voter list and all documents used in the National Change of Address ("NCOA") program of the U.S. Postal Service in the regular periodic review of the registration records. The House Report notes as follows:

By using the NCOA, a State may use change of address information to identify registrants whose addresses may have changed. If it appears from the information provided that a registrant has moved to a different address within the jurisdiction of the same voting registrar, the registrar is required to make the address change automatically and send the registrant a notice by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information. If the registrant appears to have moved to an address outside of the jurisdiction of the registrar,

²⁴ 42 U.S.C.S. § 1973gg(a)-(b) (LexisNexis 2000).

²⁵ VA. CONST. art. II, §§ 1-2; VA. CODE ANN. § 24.2-400 (2006).

²⁶ VA. CODE ANN. § 24.2-417 (2006).

²⁷ See VA. CODE ANN. § 24.2-418(A) (Supp. 2009).

²⁸ VA. CODE ANN. § 24.2-444(A) (Supp. 2009).

²⁹ Section 24.2-404(A)(1) (Supp. 2009) (requiring "complete, separate, and accurate record of all registered voters in the Commonwealth").

Ms. Nancy Rodrigues
September 23, 2009
Page 6

the registrar may not remove the name of the voter until the registrar has sent a notice to the registrant as provided in subsection (d).^[30]

A "statute's legislative history is the first tool of statutory construction a court utilizes to determine congressional intent when statutory language is unclear."³¹ Furthermore, in the Fourth Circuit Court of Appeals, "conference reports are the most persuasive evidence of legislative intent, after the statute itself."³² "In determining the meaning of the statute, [courts] look not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy."³³ "In looking for the plain meaning of a statutory term, [the court] refer[s] to the specific context (usually the subsection) in which the term is used."³⁴

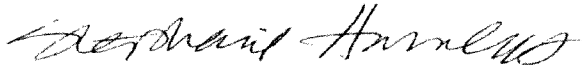
It is all the documents that are generated during the regular periodic review of the registration records program that constitute the records that must be maintained for a period of two years and made available for public inspection and copying under § 1973gg-6(i).³⁵ Because the voter registration application is not a part of the regular periodic review of the registration records, it is not a record that must be made available for public inspection and copying.

Conclusion

Accordingly, it is my view that the completed voter registration application of any individual is not a part of the record of the implementation of programs and activities conducted for the purposes of ensuring the accuracy and currency of official lists of eligible voters covered by § 1973gg-6(i) of the National Voter Registration Act of 1993.

With kindest regards, I am

Sincerely,



Stephanie L. Hamlett
Senior Counsel to the Attorney General

1:213; 1:941/09-0561

³⁰ See H.R. REPORT, *supra* note 18, at 15-16, *reprinted in* 1993 U.S.C.C.A.N. at 119-20.

³¹ *Dominion Res., Inc. v. United States*, 219 F.3d 359, 365 (4th Cir. 2000).

³² *Austin v. Owens-Brockway Glass Container, Inc.*, 78 F.3d 875, 881 (4th Cir. 1996).

³³ *Crandon v. United States*, 494 U.S. 152, 158 (1990).

³⁴ *Nat'l Coalition for Students v. Allen*, 152 F.3d 283, 290 (4th Cir. 1998).

³⁵ Section 1973gg-6(i)(2) specifically refers to the list of names and addresses to whom notices are to be sent pursuant to § 1973gg-6(d). I note also that § 24.2-444(c) of the *Virginia Code* provides that "[n]o voter registration records other than the lists provided by the State Board ... shall be open to public inspection."

SEE BACK FOR OPENING INSTRUCTIONS

VA STATE BOARD OF ELECTIONS
P.O. BOX 85669
Richmond, VA 23255-5669

RETURN SERVICE REQUESTED

NONPROFIT ORG
U.S. POSTAGE
PAID
VA STATE BOARD
OF ELECTIONS

Line G Locality RTNXXXXXXXXXXXXXXXXXXXXXXXXXXXXZ



ReturnBCHRXXXXXXXXXXXXXE



Official Voter Information

Line 1 ctrl lineXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXZ



Line K Name OMEXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXZ

Line L addr 2 OMEXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXZ

Line M addr 3 OMEXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXZ

Line N addr 4 OMEXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXZ

Virginia

1. Insert thumbs along this edge and gently pull open



DO WE HAVE YOUR CORRECT ADDRESS?

Dear Voter:

Information from the Post Office suggests you may have moved, but we can not change your voter registration address without your signature. Please help us update your registration record by completing the form below.

The first address shown on the form is the address at which you are currently registered to vote. If a second address is shown, that is the address the Post office has for you. If neither of these addresses is correct, please provide your correct home address in the space labeled "other." We must have a street address or rural route address for voting purposes. We cannot accept a PO Box.

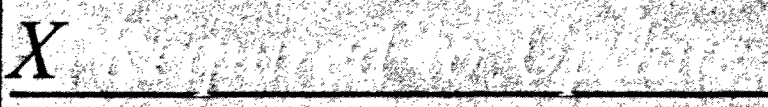
When we receive your completed card, we will update your record. If your address has changed but is still in Virginia, your local registrar will update your registration and send you a new voter card. If you have moved out of the state, your Virginia voter registration will be canceled.

To ensure you are eligible to vote in future elections in Virginia, we must be notified of your correct address. Otherwise, your eligibility to vote will be questioned and you will be required to affirm your address in writing the next time you vote. If you do not vote within two federal elections, you will be removed from the voter registration list.

Thank you for helping us keep your voter registration accurate and up to date. Please call **Line H Phone #** if you have any questions.

↓ Please detach and return in envelope provided - no postage necessary ↓

Line 1

Line O reg. nameXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXZ	
Line P reg.	Line Q dob Line R
NEW NAME (if changed):	
CHECK WHICH ADDRESS IS YOUR CORRECT HOME (RESIDENCE) ADDRESS: (Military please check your address of record; full time students please check your permanent address)	
☐ Where you are registered to vote: ☒ LYXXXXXXXXXXXXXZ: ☐ Other (can NOT be PO Box):	
Line S Res addr 1XXXXXXXXXXXXXXXXXXXXXXXXXXXXXZ	Line V Mail addr 1XXXXXXXXXXXXXXXXXXXXXXXXXXXXXZ
Line T Res addr 2XXXXXXXXXXXXXXXXXXXXXXXXXXXXXZ	Line W Mail addr 2XXXXXXXXXXXXXXXXXXXXXXXXXXXXXZ
Line U Res addr 3XXXXXXXXXXXXXXXXXXXXXXXXXXXXXZ	Line X Mail addr 3XXXXXXXXXXXXXXXXXXXXXXXXXXXXXZ
Street _____	
City, State, Zip _____	
You may request that your home address not be released if you or a member of your household (a) are active or retired law enforcement , or (b) have been granted a protective court order , (c) are in fear of your personal safety from someone who has threatened or stalked you and have filed a complaint against that person with a magistrate or law enforcement (must attach copy of complaint), or (d) participate in the Address Confidentiality Program . You must show a Virginia P.O. box under mailing address in Box 3 above.	
(Check One) ☐ Law Enforcement Officer ☐ Protective Order ☐ Threatened/Stalked ☐ Address Confidentiality Program	
	COUNTY/CITY RESIDENCE:
	DAYTIME PHONE:
SIGNATURE (can not accept POA/second party signatures) DATE	



**No Postage
Necessary If
Mailed In The
United States**

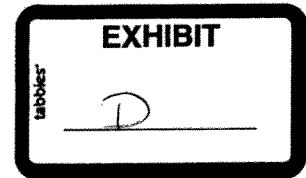


POSTAGE WILL BE PAID BY ADDRESSEE

Line E addr 3 BREXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXZ



Virginia Voter Registration Application Form



Instructions

You are not officially registered to vote until this application is approved. You should receive a Voter Card in the mail. If you do not receive this acknowledgement within 30 days after mailing this form, please contact your city or county voter registration office or the State Board of Elections. If you are already registered to vote with your current name and address, you do not need to re-register. If you have any questions regarding your voter registration status, please call your local Voter Registration Office.

Identification Requirement

For Registration

If you are registering for the first time by mail, federal law (the Help America Vote Act) requires you to provide identification. To avoid delays, please **enclose a copy of one of the following documents** that shows your **name and address** with your application: (1) current and valid photo ID, (2) current utility bill, (3) bank statement, (4) government check, (5) paycheck, or (6) other government document. You can also present this required identification at the polls but may experience delays.

For Voting

Virginia law requires every voter voting in person to show identification or sign a statement, subject to felony penalties for false statements pursuant to §24.2-1016, that the person is the named registered voter.

Mailing Instructions

- Place completed application in an envelope.
- Write your name and return address on envelope.
- Write the address of the voter registration office for the county or city where you live. List provided on the next page.
- Must be **postmarked** at least 29 days before the next Primary or General Election in which you plan to vote. (22 days before starting 1/1/2010)

Privacy Act Notice: Article II, Section 2 of the Constitution of Virginia (1971) requires that a person registering to vote provide his or her social security number, if any. Therefore, if you do not provide your social security number, your application for voter registration will be denied. Section 7 of the Federal Privacy Act (Public Law Number 93-579) allows the Commonwealth to enforce this requirement, but also requires that you be advised that state and local voting officials will use the social security number as a unique identifier to ensure that no person is registered in more than one place. This registration card will not be open to inspection by the public. Your social security number will appear on reports produced only for official use by voter registration and election officials, and for jury selection purposes by courts.

WARNING: INTENTIONALLY VOTING MORE THAN ONCE IN AN ELECTION OR MAKING A MATERIALLY FALSE STATEMENT ON THIS FORM CONSTITUTES THE CRIME OF ELECTION FRAUD, WHICH IS PUNISHABLE UNDER VIRGINIA LAW AS A FELONY. VIOLATORS MAY BE SENTENCED TO UP TO 10 YEARS IN PRISON, OR UP TO 12 MONTHS IN JAIL AND/OR FINED UP TO \$2,500.

List of Voter Registration Offices
(General Registrar) as of 7/1/2009

Accomack County
PO Box 97
Accomack, VA 23301-0097
(757) 787 - 2935

Albemarle County
PMB 404, 536 Pantops Center
Charlottesville, VA 22911
(434) 972 - 4173

Alexandria City
132 North Royal St, Ste. 100
Alexandria, VA 22314-3283
(703) 838 - 4050

Alleghany County
110 Rosedale Ave, Ste. D
Covington, VA 24426-1294
(540) 965 - 1690

Amelia County
PO Box 481
Amelia, VA 23002-0481
(804) 561 - 3460

Amherst County
PO Box 550
Amherst, VA 24521-0550
(434) 946 - 9315

Appomattox County
PO Box 8
Appomattox, VA 24522-0008
(434) 352 - 5302

Arlington County
2100 Clarendon Blvd, Ste. 320
Arlington, VA 22201-5400
(703) 228 - 3456

Augusta County
PO Box 590
Verona, VA 24482-0590
(540) 245 - 5656

Bath County
PO Box 157
Warm Springs, VA 24484-0157
(540) 839 - 7266

Bedford County
County Admin Building
122 East Main St, Ste. 204
Bedford, VA 24523-2000
(540) 586 - 7649

Bedford City
215 East Main Street
Bedford, VA 24523-2012
(540) 587 - 6007

Bland County
PO Box 535
Bland, VA 24315-0535
(276) 668 - 4441

Botetourt County
PO Box 62
Fincastle, VA 24090-0062
(540) 473 - 8235

Bristol City
300 Lee St
Bristol, VA 24201-4327
(276) 645 - 7318

Brunswick County
100 Tobacco St, Rm. 103
Lawrenceville, VA 23868-1823
(434) 848 - 4414

Buchanan County
PO Box 975
Grundy, VA 24614-0975
(276) 935 - 6534

Buckingham County
PO Box 222
Buckingham, VA 23921-0222
(434) 969 - 4304

Buena Vista City
2039 Sycamore Ave
Buena Vista, VA 24416-3133
(540) 261 - 8605

Campbell County
PO Box 103
Rustburg, VA 24588-0103
(434) 332 - 9579

Caroline County
PO Box 304
Bowling Green, VA 22427-0304
(804) 633 - 9083

Carroll County
Governmental Center
605-3 Pine St, B 110
Hillsville, VA 24343-1404
(276) 730 - 3035

Charles City County
PO Box 146
Charles City, VA 23030-0146
(804) 652 - 4806

Charlotte County
PO Box 118
Charlotte CH, VA 23923-0118
(434) 542 - 5856

Charlottesville City
PO Box 911
Charlottesville, VA 22902-0911
(434) 970 - 3250

Chesapeake City
411 Cedar Rd
Chesapeake, VA 23322-5566
(757) 277 - 9797

Chesterfield County
PO Box 1690
Chesterfield, VA 23832-1690
(804) 748 - 1471

Clarke County
PO Box 555
Berryville, VA 22611-0555
(540) 955 - 5168

Colonial Heights City
PO Box 3401
Colonial Heights, VA 23834-9001
(804) 520 - 9277

Covington City
1011A North Rockbridge Ave
Covington, VA 24426-1534
(540) 965 - 6380

Craig County
PO Box 8
New Castle, VA 24127-0008
(540) 964 - 6190

Culpeper County
151 N Main St
Culpeper, VA 22701
(540) 825 - 0652

Cumberland County
PO Box 125
Cumberland, VA 23040-0008
(804) 492 - 4504

Danville City
515 Main St
Danville, VA 24541-1317
(434) 799 - 6560

Dickenson County
PO Box 1306
Clintwood, VA 24228-1306
(276) 926 - 1620

Dinwiddie County
PO Box 365
Dinwiddie, VA 23841-0365
(804) 469 - 4512

Emporia City
PO Box 1092
Emporia, VA 23847-1092
(434) 634 - 9533

Essex County
PO Box 1561
Tappahannock, VA 22560-1561
(804) 443 - 4611

Fairfax County
12000 Govt Ctr Pkwy, Ste. 323
Fairfax, VA 22035-0081
(703) 222 - 0776

Fairfax City
10455 Armstrong St
Sisson House
Fairfax, VA 22030-3640
(703) 365 - 7890

Falls Church City
300 Park Ave, Rm 101E
Falls Church, VA 22046-3332
(703) 248 - 5085

Fauquier County
32 Waterloo St, Ste. 207
Warrenton, VA 20186-3238
(540) 347 - 6972

Floyd County
100 East Main St, Rm. 302
Floyd, VA 24091-2101
(540) 745 - 9350

Fluvanna County
PO Box 44
Palmyra, VA 22963-0044
(434) 589 - 3593

Franklin County
70 East Court St, Ste. 302
Rocky Mount, VA 24151-1720
(540) 483 - 3025

Franklin City
PO Box 42
Franklin, VA 23851-0042
(757) 562 - 8545

Frederick County
107 North Kent St, Ste. 102
Winchester, VA 22601-5000
(540) 665 - 5660

Fredericksburg City
Executive Plaza
601 Caroline St, Ste. 100
Fredericksburg, VA 22401
(540) 372 - 1030

Galax City
PO Box 1045
Galax, VA 24333-1045
(276) 236 - 7509

Giles County
120 North Main St, Ste. 3
Pearisburg, VA 24134-1625
(540) 921 - 2802

Gloucester County
PO Box 208
Gloucester, VA 23061-0208
(804) 693 - 3659

Goochland County
PO Box 1013
Goochland, VA 23063-1013
(804) 556 - 5803

Grayson County
PO Box 449
Independence, VA 24348-0449
(276) 773 - 2842

Greene County
PO Box 341
Standardsville, VA 22973-0341
(434) 985 - 5213

Greensville County
PO Box 1092
Emporia, VA 23847-1092
(434) 348 - 4228

Halifax County
PO Box 400
Halifax, VA 24558-0400
(434) 476 - 3222

Hampton City
1919 Commerce Dr, Ste. 280
Hampton, VA 23666
(757) 727 - 6218

Hanover County
PO Box 419
Hanover, VA 23069-0419
(804) 365 - 6080

Harrisonburg City
PO Box 20031
Harrisonburg, VA 22801
(540) 432 - 7707

Henrico County
PO Box 90775
Henrico, VA 23273-0775
(804) 501 - 4347

Henry County
PO Box 7
Collinsville, VA 24078-0007
(276) 638 - 5108

Highland County
PO Box 386
Monteary, VA 24465-0386
(540) 468 - 2013

Hopewell City
309 North 2nd Ave
Hopewell, VA 23860-2704
(804) 541 - 2232

Isle of Wight County
PO Box 77
Isle of Wight, VA 23397-0077
(757) 365 - 6230

James City County
PO Box 3567
Williamsburg, VA 23187-3567
(757) 253 - 6868

King & Queen County
PO Box 58
King & Queen CH, VA 23065-0056
(804) 785 - 5980

King George County
PO Box 1359
King George, VA 22485-1359
(540) 775 - 9186

King William County
PO Box 173
King William, VA 23086-0173
(804) 789 - 4952

Lancaster County
PO Box 159
Lancaster, VA 22503-0159
(804) 462 - 5277

Lee County
PO Box 363
Jonesville, VA 24263-0363
(276) 346 - 7780

Lexington City
PO Box 922
Lexington, VA 24450-0922
(540) 462 - 3706

Loudoun County
801 Sycolin Rd, SE, Ste. 102
Leesburg, VA 20175-5686
(703) 777 - 0380

Louisiana County
PO Box 220
Louisia, VA 23093-0220
(540) 967 - 3427

Lunenburg County
160 Courthouse Sq
Lunenburg, VA 23952-9999
(434) 696 - 3071

Lynchburg City
3236 Odd Fellows Rd
Lynchburg, VA 24501
(434) 847 - 1609

Madison County
PO Box 267
Madison, VA 22727-0267
(540) 948 - 6533

Manassas City
9025 Center St
Manassas, VA 20110-5403
(703) 257 - 8230

Manassas Park City
City Hall, 1 Park Center Ct
Manassas Park, VA 20111-2395
(703) 335 - 8806

Martinsville City
PO Box 1323
Martinsville, VA 24114-1323
(276) 403 - 5122

Mathews County
PO Box 328
Mathews, VA 23109-0328
(804) 725 - 3200

Mecklenburg County
PO Box 436
Boydton, VA 23917-0436
(434) 738 - 6191

Middlesex County
PO Box 358
Saluda, VA 23149-0358
(804) 758 - 4420

Montgomery County
755 Roanoke St, Ste. 1F
Christiansburg, VA 24073-3175
(540) 382 - 5741

Nelson County
PO Box 292
Lovingsston, VA 22949-0292
(434) 263 - 4068

New Kent County
PO Box 128
New Kent, VA 23124-0128
(804) 966 - 9699

Newport News City
2400 Washington Ave
Newport News, VA 23607-4305
(757) 926 - 8683

Norfolk City
PO Box 1531
Norfolk, VA 23501-1531
(757) 664 - 4353

Northampton County
PO Box 510
Eastville, VA 23347-0510
(757) 678 - 0480

Northumberland County
PO Box 84
Heathsville, VA 22473-0084
(804) 580 - 4655

Norton City
PO Box 225
Norton, VA 24273-0225
(276) 679 - 1162

Nottoway County
PO Box 24
Nottoway, VA 23955-0024
(434) 645 - 8148

Orange County
146 Madison Rd, Ste. 204
Orange, VA 22960-1449
(540) 672 - 5262

Page County
117 South Court St
Luray, VA 22835-1289
(540) 743 - 3986

Patrick County
PO Box 635
Stuart, VA 24171-0635
(276) 694 - 7206

Petersburg City
PO Box 1031
Petersburg, VA 23804-1031
(804) 733 - 2380

Pittsylvania County
110 Old Chatham Elementary Ln
Chatham, VA 24531
(434) 432 - 7971

Poquoson City
500 City Hall Ave, Rm. 139
Poquoson, VA 23662-1996
(757) 868 - 3070

Portsmouth City
801 Crawford St, 1st Fl
Portsmouth, VA 23704-3822
(757) 393 - 8644

Powhatan County
3834 Old Buckingham Rd, Ste. G
Powhatan, VA 23139-7051
(804) 598 - 5604

Prince Edward County
PO Box J
Farmville, VA 23901
(434) 392 - 4767

Prince George County
PO Box 34
Prince George, VA 23875-0034
(804) 722 - 8748

Prince William County
9250 Lee Ave, Suite 1
Manassas, VA 20110-5554
(703) 792 - 6470

Pulaski County
52 West Main St, Ste. 300
Pulaski, VA 24301-5045
(540) 980 - 2111

Radford City
West End Professional Building
519 2nd St, Lower Level
Radford, VA 24141
(540) 731 - 3639

Rappahannock County
PO Box 236
Washington, VA 22747-0236
(540) 675 - 6380

Richmond County
PO Box 1000
Warsaw, VA 22572-1000
(804) 333 - 4772

Richmond City
PO Box 61037
Richmond, VA 23261-1037
(804) 646 - 5950

Roanoke County
PO Box 20884
Roanoke, VA 24018-0089
(540) 772 - 7500

Roanoke City
PO Box 1095
Roanoke, VA 24005-1095
(540) 853 - 2281

Rockbridge County
150 South Main St
Lexington, VA 24450
(540) 463 - 7203

Rockingham County
20 E. Gay Street
Harrisonburg, VA 22802-4108
(540) 564 - 3055

Russell County
PO Box 383
Lebanon, VA 24266-0383
(276) 889 - 8006

Salem City
PO Box 203
Salem, VA 24153-0203
(540) 375 - 3034

Scott County
PO Box 1892
Gate City, VA 24251-3417
(276) 386 - 3843

Shenandoah County
600 North Main St, Ste. 103
Woodstock, VA 22664-1855
(540) 459 - 6195

Smyth County
121 Bagley Cir, Ste. 108
Marion, VA 24354
(276) 783 - 4511

Southampton County
PO Box 666
Courtland, VA 23837-0666
(757) 653 - 9280

Spotsylvania County
PO Box 133
Spotsylvania, VA 22553-0133
(540) 507 - 7380

Stafford County
PO Box 301
Stafford, VA 22555-0301
(540) 658 - 4000

Staunton City
PO Box 58
Staunton, VA 24402-0058
(540) 332 - 3840

Suffolk City
PO Box 1966
Suffolk, VA 23439-1966
(757) 514 - 7751

Surry County
PO Box 264
Surry, VA 23883-0264
(757) 294 - 5213

Sussex County
PO Box 1302
Sussex, VA 23884-0302
(434) 246 - 1047

Tazewell County
PO Box 201
Tazewell, VA 24651-0201
(276) 988 - 1305

Virginia Beach City
PO Box 6247
Virginia Beach, VA 23456-0247
(757) 385 - 8683

Warren County
220 North Commerce Ave, Ste. 700
Front Royal, VA 22630
(540) 635 - 4327

Washington County
25552 Lee Hwy, Ste. 1
Abingdon, VA 24211-7466
(276) 676 - 6227

Waynesboro City
250 S. Wayne Ave, Ste 205
Waynesboro, VA 22980
(540) 942 - 6820

Westmoreland County
PO Box 354
Montross, VA 22520-0354
(804) 493 - 8898

Williamsburg City
PO Box 3538
Williamsburg, VA 23187-3538
(757) 220 - 6157

Winchester City
107-A N. East Lane
Winchester, VA 22601-5045
(540) 545 - 7910

Wise County
PO Box 309
Wise, VA 24293-0309
(276) 328 - 8331

Wythe County
245 South Fourth St, Ste. 101
Wytheville, VA 24382-2598
(276) 223 - 6038

York County
PO Box 451
Yorktown, VA 23690-0451
(757) 890 - 3440

Virginia Voter Registration Application Form

→ Use this form to register to vote in Virginia or report a change in name or address. If you are already registered with your current name and address, you do not need to re-register.

To register to vote in Virginia, you must:

- Be a **United States citizen**
- Be a **resident of Virginia**
- Be **18 years old by the next general election**
- Have **had your voting rights restored** if you have ever been convicted of a felony
- Have **had your capacity restored** if you have ever been declared mentally incapacitated in a Circuit Court

→ **Starred (*) items are required.** If you do not complete all of the items that are marked with *, your application may be denied. Once your local registrar approves your application, you will receive a voter card by mail.

1	*Are you a citizen of the United States of America? ☐ YES ☐ NO	*Will you be at least 18 years of age on or before the next General Election day? ☐ YES ☐ NO	If you checked "NO" in response to either of these questions, do not complete this form.
2	* Social Security Number - - ☐ Male ☐ Female / / - -	* Gender ☐ None ☐ None	
	* Last Name	* First Name	* Full Middle or Maiden Name
3	* Residence (Permanent) Home Address Apt/Unit/Lot/Rm/Ste City/Town Zip Code		
	If Rural Address or Homeless, please describe where you reside		E-mail address
	Mailing Address (If different) / Virginia P.O.Box or Uniformed Service Address, if applicable (include Zip Code)		
	☐ City or ☐ County Name of City or County of Residence		
4	* Have you ever been convicted of a felony? ☐ YES ☐ NO State where convicted _____ If YES, have your voting rights been restored? ☐ YES ☐ NO If YES, when restored? / /		
5	* Have you ever been judged mentally incapacitated? ☐ YES ☐ NO If YES, has court restored you to capacity? ☐ YES ☐ NO If YES, when restored? / /		
6	Registration Statement: I swear/affirm, under felony penalty for making willfully false material statements or entries, that the information provided on this form is true. I authorize the cancellation (entered in Box 7 below) of my current registration and I have read the Privacy Act Notice on the front of this form.		
	→ * Signature (or mark if unable to sign) _____ / /		
	If applicant is unable to sign due to a physical disability, write the name/address of person who assisted. (Required). ☐ Check/describe if you have a disability that requires accommodation in order to vote.		
	☐ I'm interested in being an Election Official on Election Day. Please send me information. You may request that your home address not be released if you or member of your household are (a) active or retired law enforcement, or (b) have been granted a protective court order, or (c) are in fear of your personal safety from someone who has threatened or stalked you and have filed a complaint against that person with a magistrate or law enforcement (must attach copy of complaint) or (d) participate in the Address Confidentiality Program. You must show a Virginia P.O. box under mailing address in Box 3 above. ☐ Law Enforcement ☐ Protective Order ☐ Threatened/Stalked ☐ Address Confidentiality Program		
7	*Previous Voter Registration Information—Commonwealth of Virginia		
	☐ No, I am not currently registered to vote in Virginia or another state.		
	☐ Yes, I am registered to vote at another address in Virginia or in another state. If YES, the information below must be completed:		
	Full Name as Registered	Date of Birth / /	Social Security Number (last 4 digits required) - -
	Address at which you were previously registered to vote	City/Town	State Zip Code
	City/County/Town of Residence (if applicable). This cancellation information will be sent to the county or city and state you entered above.		

Virginia Voter Registration Application Receipt

Name of Applicant

MM	DD	YY	YY
----	----	----	----

 Date

Name of group or individual receiving application

E-mail address

Area	Area	Area
------	------	------

 Daytime telephone number of group or individual receiving application

No receipt is required for application completed in the Voter Registration Office.

If you have not received a Voter Card within thirty (30) days of submitting a Voter Registration Application, please **contact the Virginia State Board of Elections.**

On-line: www.sbe.virginia.gov
 Voice: 800 - 552 - 9745
 TTY: 800 - 260 - 3466
 Richmond local: 804 - 864 - 8901

VA-NVRA-1 7/09

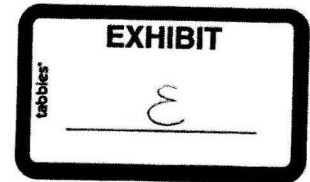
Notes

☐ Deceased	☐ Judged Incapacitated	☐ Transferred Out
☐ Out of State	☐ Error Deleted	☐ Re-Registered
☐ Personal Request	☐ NVRA Cancel	☐ Inactive Status
☐ Convicted of a Felony	☐ Reactivated	

New Last Name		New First, Middle/Maiden Name and Suffix		Date changed
Other changes		New PCT		Authorized by
				Date changed

Registration date	PCT	Town code	Denial date & reason	Date changed
-------------------	-----	-----------	----------------------	--------------

For Office Use Only



Implementing the National Voter Registration Act of 1993: Requirements, Issues, Approaches, and Examples

**Prepared by:
The National Clearinghouse on Election Administration
Federal Election Commission
Washington, D.C.
January 1, 1994**

PREFACE

This document was prepared by the Federal Election Commission (FEC) pursuant to 2 U.S.C. 438(a)(10) which requires the Commission to "serve as a national clearinghouse for the compilation of information and review of procedures with respect to the administration of Federal elections." In addition, the National Voter Registration Act of 1993 (NVRA) mandates that the FEC "provide information to the States with respect to the responsibilities of the States under this Act" [Section 9(a)(4)] while Section 9 of the Joint Conference Committee Report on the NVRA states that "the conferees expect the Commission to play an advisory role to the States and to facilitate the exchange of information among the States."

The purposes of this document are:

- to describe the requirements of the National Voter Registration Act (NVRA) of 1993 [Public Law 103-31, 42 U.S.C 1973gg et seq.]
- to identify the important issues relating to State implementation strategies and conforming State legislation, and
- to offer examples, where appropriate and available, of forms and procedures that have proved successful in jurisdictions around the nation.

It is very important to note, however, that the Federal Election Commission does *not* have legal authority either to interpret the Act or to determine whether this or that procedure meets the requirements of the Act. Indeed, the civil enforcement of the Act is specifically assigned to the Department of Justice.

THIS DOCUMENT, THEN, IS INTENDED ONLY AS A GENERAL REFERENCE TOOL. ANY SUGGESTIONS CONTAINED IN THIS DOCUMENT ARE PURELY HEURISTIC AND ARE OFFERED WITHOUT FORCE OF LAW, REGULATION, OR ADVISORY OPINION. NO DECISION REGARDING THE IMPLEMENTATION OF ANY FORMS, PROCEDURES, OR CONFORMING STATE LEGISLATION SHOULD BE MADE ON THE BASIS OF THIS DOCUMENT ALONE. SUCH DECISIONS SHOULD BE MADE ONLY AFTER CONSULTATION WITH YOUR STATE LEGAL AUTHORITY.

CHAPTER 7 - RECORD KEEPING AND REPORTING REQUIREMENTS

This chapter addresses the record keeping and reporting requirements of the National Voter Registration Act and related confidentiality issues. There are three types of record keeping requirements:

- those specifically cited in the law
- those implied by the reporting requirements, and
- those that local election officials may wish to adopt for their own purposes

RECORD KEEPING REQUIREMENTS SPECIFIED IN THE LAW

The Act requires voter registration officials to maintain for at least 2 years and to make available for public inspection (and, where available, for photocopying at a reasonable cost), "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, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered" [Section 8(i)(1)]. And according to Section 8(i)(2), these records are to include:

- lists of the names and addresses of all persons to whom confirmation mailings were sent (see Chapter 5 above), and
- information concerning whether or not each such person responded to the mailing as of the date that the records are inspected.

As a matter of prudence, though not as a requirement of the Act, States might also want to retain for the same period of time all records of removals from the voter registration list — the date and the reason.

The purposes of such record keeping are two-fold. First, such records enable the registrar to maintain an accurate "inactive" file as described in Chapter 5. Second, they enable interested private and public agencies to ensure that "list cleaning" activities are nondiscriminatory and otherwise in accordance with the NVRA.

Finally, although the Act does not specifically require that declinations be retained, States may nevertheless want to do so in order to maintain an audit trail, to ensure evidence should there be allegations of wrongdoing, and for the benefit of the agencies themselves.

RECORD KEEPING IMPLIED BY THE REPORTING REQUIREMENTS

The law requires the Federal Election Commission to report to the Congress each two years on the impact of the NVRA on the administration of elections for federal office [Section 9(a)3] and grants the FEC regulatory authority to this end [Section 9(a)(1)].

The FEC views this task as similar to the reporting procedures adopted pursuant to the Voting Accessibility for the Elderly and Act of 1984. That is to say, we envision a three-tier reporting pyramid with local election officials providing reports to the State, State election officials providing summary reports to the FEC, and the FEC preparing a report to the Congress.

We are unable, at this early date, to specify exactly what information the FEC might require of State and local election offices for the purpose of reporting to the Congress. This issue will require considerable consultation with the States. The FEC's objective is to be thorough but not burdensome.

Although the FEC is currently in the midst of research and rulemaking proceedings in order to determine what data are important yet practicable, our preliminary view is that the following data are likely to be requested:

1. State Voting Age Population (to be obtained by the FEC from the Bureau of Census)
2. The number of voters registered in the federal general election two years previous to the most recent federal general election (from previous records at the FEC)
3. The number of voters registered in the most recent federal general election
4. The total number of new registrations received between the past two federal general elections
5. The total number of voter registration applications received from (or generated by) motor vehicle offices between the past two federal general elections, as well as the total number of these that were duplicates.
6. The total number of voter registration applications received by mail between the past two federal general elections, as well as the total number of these that were duplicates.
7. The total number of voter registration applications received from (or generated by) all public assistance agencies (except agencies primarily serving the disabled) between the past two federal general elections, as well as the total number of these that were duplicates.
8. The total number of voter registration applications received from (or generated by) all agencies primarily serving the disabled between the past two federal general elections, as well as the total number of these that were duplicates.

9. The total number of voter registration applications received from (or generated by) Armed Forces recruitment offices between the past two federal general elections, as well as the total number of these that were duplicates.
10. The total number of voter registration applications received from (or generated by) all other designated or discretionary agencies between the past two federal general elections, as well as the total number of these that were duplicates.
11. The total number of voter registration applications received by all other means (in-person, deputy registrars, organized voter registration drives, etc.) between the past two federal general elections, as well as the total number of these that were duplicates.
12. The number of confirmations mailed out between the past two federal general elections in accordance with the NVRA
13. The number of responses to these confirmations mailings returned between the past two federal general elections
14. The total number of names that were, for whatever reason, deleted from the voter registration list between the past two federal general elections
15. The postal costs incurred between the past two federal general elections for all mailings requisite under the NVRA
16. In the first report, a general description of the State's implementation of the NVRA (with emphasis on which options were taken); and in subsequent reports, any changes made to the program
17. Problems encountered

By the same token, our preliminary view is that the following data will *not* be requested:

- The number of persons registered between the past two federal general elections *who voted in the past federal general election* (either totally or by registration intake method).
- Any registration numbers or other information regarding *specific* participating offices or agencies.
- The number of declinations filed at agencies or offices.
- The number of persons voting under the "fail-safe" provisions of the NVRA.
- The general or operating costs of implementing the NVRA.

We anticipate that the definitive list of data items required to be reported to the FEC will be promulgated in the second quarter of 1994.

OTHER RECORDS THAT ELECTION OFFICIALS MAY WISH TO KEEP

In addition to retaining the documents and records required either by the NVRA or by the Federal Election Commission, there are two other types of documents that election officials may want to have retained for their own purposes:

- the declination statements completed by applicants for public assistance, and
- any written affirmations required of fail-safe voters.

Ideally, the declination statement completed by each applicant for public assistance — whether it indicates that the applicant wishes to register to vote or declines to do so — would contain the name of the applicant and the date the statement was completed. This could be accomplished preferably by having the applicant sign and date the completed statement or else by having the service agent note the name and date on the statement.

If the name and date are affixed to the declination statement, it could then be removed from the applicant's case file and retained separately by the agency under secure and confidential conditions.

There are several reasons why such a procedure recommends itself. First, it would provide an audit trail of all such transactions should there be subsequent official or legal enquiries. (Indeed, the Election Crimes Branch of the Department of Justice has indicated that declination statements may fall under the 22-month document retention requirements of 42 U.S.C. 1974 *et seq.*). Second, in the event that there are subsequent official or legal enquiries, such a procedure would facilitate an investigation while ensuring the confidentiality of the public assistance case files. And third, should the agency be reimbursed for its voter registration activities through federal matching funds, such a procedure would provide clear evidence of all such activity.

For many of the same reasons, election officials may want to securely retain any written affirmations that State law may require of fail-safe voters on election day (although whether or not to require written affirmations from such voters is optional under the NVRA). Again, such records would provide an audit trail for any subsequent legal enquiry and in any event would clearly fall under the 22-month document retention requirements of 42 U.S.C. 1974 *et seq.*

IMPORTANT ISSUES IN RECORD KEEPING

The most significant issue regarding record keeping is confidentiality. The law specifically prohibits the public disclosure of information regarding any individual's declination to register or regarding the specific public assistance agency or motor vehicle *office* through which any particular individual registered [Sections 5(b), 5(c)(2)(D)(iii), 8(i)(1), and 7(a)(7)].

Yet information regarding the total *number and rate* of persons registered by each social service agency might prove valuable to local election officials and public interest groups even if such detailed information is not requested by the FEC.

The problem is that voter registration documents and records are generally considered public documents and, indeed, are often used for other purposes such as verifying petitions. Thus, in order to prevent divulging the public assistance agency or motor vehicle office through which any particular applicant registered, procedures must be created to obtain aggregate numbers by agency without identifying the agency in any decipherable way on the original voter registration document. (See also the discussions of accounting for motor voter registration forms in Chapter 2, accounting for mail registration forms in Chapter 3, and accounting for agency registration forms in Chapter 4).

Another confidentiality issue is the public disclosure of a registrant's social security number. States that request or require social security number on their voter registration form may want to explore this issue — especially in light of the case of *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993). Ultimately, all States might want to consider maintaining the confidentiality of all *original* voter registration documents while providing public access to computerized lists of registered voters minus the confidential information.

Alternately, States might want to consider requesting only the last four digits of an applicant's social security number — thereby providing a sorting number while not compromising the confidentiality of the applicants whole number.

Finally, States might want to review their own confidentiality laws regarding the voter registration records of certain protected individuals such as law enforcement officers, abused spouses, stalker victims, public personalities, and the like. This issue is especially important in light of the Act's public disclosure requirements [Section 8(i)(2)].