



California National Voter Registration Act Manual

JANUARY 2020

Chapter 1

Executive Summary

The NVRA

The National Voter Registration Act of 1993 (NVRA) was designed to increase the number of registered voters in the United States by requiring many government offices to offer people the opportunity to register to vote. The NVRA requires each state to offer voter registration services at motor vehicle agency offices and, in addition, to designate as voter registration agencies:

- All offices that provide public assistance;
- All offices that provide state-funded programs primarily engaged in providing services to persons with disabilities; and
- Other state and local agencies.

Beyond expanding opportunities to register to vote, the NVRA also protects the integrity of elections by requiring states to maintain accurate and current voter registration rolls. The NVRA specifically prevents states from removing voters from the rolls unless certain conditions are met and requires states to offer “fail safe” voting to registered voters who have moved within their county. California’s provisional voting laws meet NVRA requirements.

The United States Election Assistance Commission (EAC) reports to Congress every two years on the impact of the NVRA. The EAC gathers data on the NVRA from states by including questions about NVRA voter registrations and provisional voting in its biennial Election Day Survey of all 50 states. In California, the Secretary of State responds to the EAC survey by gathering and compiling data from each of the 58 county elections offices.

Voter Registration at the Department of Motor Vehicles

Chapter Two of this manual covers NVRA voter registration services at the Department of Motor Vehicles (DMV). Under the NVRA, state motor vehicle departments must offer voter registration with each new, renewal, or change of address application for a state driver license or identification card (DL/ID). Under the NVRA, DMV change of address requests serve as notice of a change of address for voter registration purposes, unless the voter chooses otherwise.

In California, under the California Motor Voter program, every eligible applicant who visits a DMV office to apply for or renew a DL/ID or to change an address is automatically registered to vote, unless they choose to opt out of automatic registration. Additionally, every eligible applicant who receives a DL/ID renewal form online is automatically registered to vote, unless they choose to opt out of automatic registration.

During the automatic registration process, the applicant can register for the first time or re-register after a change in name, address, or party preference. This voter registration information is sent electronically to the California statewide voter registration database, which then shares the information with county elections officials who update voter registration records. Additionally, when a voter updates their address with a DMV office in California, this information is also provided to the statewide voter registration database.

Moreover, every person who receives a DL/ID renewal form by mail also receives a California Voter Registration Application (VRC). The VRC can be used to register to vote or to re-register after a change in name, address, or party preference. Lastly, the DMV continues to accept completed VRCs and forwards them to the Secretary of State or the county where the voter lives.

Voter Registration at Public Assistance Agencies, Disability Service Agencies, and Other Voter Registration Agencies in California

Chapter Three of this manual covers voter registration services at public assistance agencies, disability service agencies, and other agencies designated under the NVRA. The NVRA requires each state to designate as “voter registration agencies” all agencies and offices that provide public assistance or are funded by the state primarily to serve people with disabilities.

Designated agencies must provide both an NVRA Voter Preference Form, which asks “Would you like to register to vote?” and a VRC to each person who applies for new services or benefits, requests renewal or recertification, or identifies a change of address. The NVRA requires designated agencies to ask the applicant to complete the Voter Preference Form and to keep all completed Voter Preference Forms on file for two years. If an applicant asks for assistance in completing a VRC, the NVRA requires designated agencies to assist the applicant with filling out the VRC in the same manner it assists applicants with filling out the agency’s own forms. Finally, designated agencies must accept and forward completed VRCs to elections officials.

California law goes a step further than the NVRA and requires that if an NVRA agency allows applicants to apply online for services, they must also allow an applicant to electronically submit a Voter Preference Form and voter registration application. All NVRA agencies are provided their own unique URL for voter registration purposes.

Registered Voter List Maintenance Requirements

Chapter Four of this manual covers the NVRA requirements on how states maintain voter registration rolls. California state election laws meet the NVRA list maintenance requirements. Both the NVRA and state law provide for the:

- confirmation of voter registration sent to each newly registered voter or voter who updates their voter registration;

- removal of ineligible and deceased voters from the rolls;
- updating of a voter's current registration if it is within California;
- cancellation of a voter's registration if the:
 - voter confirms a change of residence outside California; or
 - county elections official receives notice from the U.S. postal service that the voter appears to have moved, and the voter both fails to respond to an address verification postcard and fails to vote in two subsequent federal general elections. In California, the county elections officials receive notices such as this via messages from the statewide voter registration database.

In some cases, California law provides more opportunities to voters while remaining consistent with the NVRA. For example, the NVRA requires states to accept voter registrations up to 30 days prior to the election. Because California has a 15-day voter registration deadline, elections officials accept voter registrations until 15 days prior to each election.

Additionally, California offers conditional voter registration (CVR) beginning on the close of the registration up through and including Election Day. Voter registrations received after the 15-day deadline that are not CVRs, are accepted for the purpose of registering voters for future elections, with the exception of registrations from new residents of California and new United States citizens. Under California law, new California residents can register to vote up to seven days prior to an election. New United States citizens are eligible to register and vote up to the time polls close on Election Day.

Provisional Voting

Chapter Five of this manual covers provisional voting, and encompasses the “fail safe” voting requirements under the NVRA. California provisional voting laws meet the NVRA fail safe voting requirements and the federal Help America Vote Act (HAVA) provisional voting requirements. California law gives any voter whose registration cannot be confirmed at the polling place the right to vote using a provisional ballot. California law also allows for conditional voter registration (CVR) and CVR provisional voting beginning on the close of registration up through and including Election Day at county elections offices and other designated locations. California voters can also check My Voter Status found on the Secretary of State's website at <https://voterstatus.sos.ca.gov/> to see if their provisional ballot has been accepted.

Recordkeeping and Reporting

Chapter Six of this manual covers state and county recordkeeping and reporting requirements under the NVRA and HAVA. The EAC reports to Congress biennially on the impact of the NVRA. To gather data for the report, the EAC surveys all 50 states every other year following the federal general election. The California Secretary of State's office responds to the EAC survey by gathering and compiling data from each of the 58 county elections offices. Counties report aggregate data on registration and voting information, including but not limited to:

- total number of registered voters (active and inactive);
- total number of voters in the most recent federal election;
- registrations by type (new, valid, rejected, duplicate, re-registrations);
- registrations by source (mail, DMV, public assistance agencies, disability service agencies, armed forces recruitment offices, other NVRA designated agencies, and other sources);
- registration removals;
- military and overseas voters and vote-by-mail ballots transmitted and cast;
- provisional ballots cast; and
- registration confirmation notices mailed, and responses received, under the NVRA list maintenance requirements.

National Mail Voter Registration Form

The last chapter of this manual, Chapter Seven, covers the NVRA requirements to establish the National Mail Voter Registration Form (National Form) and allow people to register to vote by mail. The NVRA permits states to develop their own voter registration forms but requires states to accept and use the National Form. California, a leader in mail registration and vote-by-mail voting, had already established mail registration and vote-by-mail laws before the NVRA. (See Elec. Code, § 3000 et seq.)

Enforcement of the NVRA

The NVRA authorizes the United States Department of Justice to bring a civil action in federal district court against states that do not comply with the NVRA. The NVRA also allows a person who believes they suffered harm due to a state or local failure to properly implement the NVRA to sue a state or local agency. In most circumstances, private parties must first notify the chief elections official of the state and provide an opportunity for the state to correct the violation before filing a legal action. An individual or group who prevails in court may be awarded reasonable court costs and attorney's fees. Finally, the NVRA establishes criminal penalties for certain intentional acts regarding registration, voting, or violation or denial of any other right under the NVRA.

Implementation of the NVRA in California

California embraces the NVRA's requirements and goals of helping more eligible citizens register to vote and cast ballots on Election Day by offering automatic voter registration through the DMV; offering voter registration at state and local agencies, offering vote-by-mail and provisional voting; offering conditional voter registration; offering online voter registration at RegisterToVote.ca.gov; allowing counties to conduct elections pursuant to the Voter's Choice Act and utilize vote centers; and by maintaining accurate voter rolls.

California laws permitting voter registration by mail, vote-by-mail voting, and provisional voting, as well as laws setting voter list maintenance standards meet or exceed NVRA requirements. And although the NVRA did not require the adoption of state law to give it effect, as more fully discussed in Chapter 3 of this manual, in January 2013, Senate Bill 35 codified portions of the NVRA into state law and placed new requirements on NVRA agencies, county elections officials, and the Secretary of State. (See Elec. Code, § 2400 et seq.)

This manual is designed to help counties, as well as state and local agencies designated as voter registration agencies under the NVRA, understand and carry out their NVRA duties. The Secretary of State also offers specific guidance and training for designated NVRA agencies on the Secretary of State website at <https://www.sos.ca.gov/elections/voter-registration/nvra/training/>.

Chapter 2

Voter Registration at Department of Motor Vehicles (DMV)

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I. NVRA and California Elections Code Requirements for DMV Voter Registration

The National Voter Registration Act of 1993 (NVRA) requires the Department of Motor Vehicles (DMV) to provide voter registration services to people who apply for or renew a driver license or identification card (DL/ID). (52 U.S.C. § 20504(a).) In addition, unless the DMV customer indicates that the voter registration address should not be updated, any change of address form submitted for a DL/ID will also serve as a notice of change of address for voter registration purposes. (52 U.S.C. § 20504(d).) Pursuant to the NVRA, certain information provided in the voter registration application received by the DMV remains confidential. Specifically, an applicant's decision whether to register to vote, and the office at which the voter registration took place, must be kept confidential and may not be used for any purpose other than voter registration. (52 U.S.C. § 20504(c)(2)(D)(iii).)

The NVRA provides that "a completed voter registration portion of an application for a State motor vehicle driver's license accepted at a State motor vehicle authority shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance," and that "[i]f a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance." (52 U.S.C. § 20504(e)(1), (2).)

The California New Motor Voter Program was enacted in 2016 and took effect in 2018. (Elec. Code, §§ 2260-2270.) Under this program, eligible DMV customers completing an original or renewal DL/ID application, or a change of DL/ID address transaction, will automatically have their voter registration information transmitted to the Secretary of State. Eligible DMV customers will be registered to vote unless they opt out of voter registration during their DMV transaction.¹

Californians are eligible to vote if they are 18 or older and:

- A United States citizen and a resident of California,
- Not currently in state or federal prison or on parole for the conviction of a felony, and
- Not currently found mentally incompetent to vote by a court.

Voter pre-registration is available through the DMV for Californians who are 16 or 17 years old and meet the other eligibility requirements. They will automatically be registered to vote when they turn 18.

¹ In accordance with California State Assembly Bill 60 ("AB 60"), Stats. 2013, Ch. 524, DMV is authorized to issue a DL/ID without receiving satisfactory proof that the applicant's presence in the United States is authorized under federal law. Customers applying for or renewing a DL/ID under AB 60 will not be presented with the option to register to vote, if using an electronic form or a paper form that has been pre-populated with their information. Regardless of the type of form these customers use, or even if they are submitting change of address information, these customers will not have their information transmitted to the Secretary of State.

The following registration services are provided by DMV, in connection with DL/ID applications or changes of address:

- An electronic Driver License and ID Card Application (eDL44 and eDL44C) containing the voter registration application that can be completed online prior to visiting a field office, or during a field office visit at a touch screen terminal or ADA (Americans With Disabilities Act) station.
- Paper and electronic change of address forms for DL/ID purposes (DMV 14) that serve as a notice of change of address for voter registration purposes, unless the customer indicates otherwise on the change of address form. These forms also contain a voter registration application.
- For eligible licensees or card holders, paper DL/ID Renewal by Mail applications (DL 410 and DL 6) contain a voter registration application.
- Paper Voter Registration Cards (VRCs) in field offices for customers who want to register to vote but who are not applying for, renewing, or changing an address for a DL/ID. VRCs are also provided to customers who are unable to complete their DL/ID transaction in the field office due to a system outage, and who request a VRC.
- Secure and timely electronic transmission to the Secretary of State of registration information collected from DL/ID applications and change of address forms.
- Timely delivery of completed paper VRCs to the county elections officials.
- Voter registration information and a link to the Secretary of State's website on the DMV's website.
- Referral to the Secretary of State or county elections officials when customers inquire regarding their voter registration status. DMV cannot provide this information to the customer.

II. DMV Forms and Procedures

A. DL/ID Transactions at a Field Office

1. Electronic DL/ID Application, Renewal, or Replacement – eDL44 and eDL44C

The electronic application form for a DL/ID is the eDL44. For commercial license applications, the form is called the eDL44C. A voter registration application is part of these electronic forms. These forms can be completed by customers in the field office on special touch screens when applying in person. Alternatively, these forms can be completed at home, prior to a visit, by accessing them online.

On the eDL44 and eDL44C forms, if the customer does not answer "Yes" to the citizenship and other voter eligibility questions, the customer is not presented

with the voter registration portion of the electronic application and no customer data is transmitted to the Secretary of State.

For customers who indicate they are eligible to vote, the eDL44 and eDL44C asks whether the customer would like to register to vote, update their voter registration information, or opt out of voter registration. If the customer would like to register or update their registration, the eDL44 and eDL44C solicits specific voter registration information, such as political party preference and whether the customer wants to become a permanent vote-by-mail voter. The customer's answers are delivered to Secretary of State in an electronic file that also contains minimum identification information, such as a DL/ID number, name, residence and mailing address, if available, date of birth, and digitized signature (which is retrieved at a later time), as required by the California Motor Voter Program. If the customer indicates that they would like to opt out of voter registration, the customer is not presented with the remaining portion of the voter registration application. If a customer indicates they are eligible to vote but opts out of registration, that customer's information is provided to the Secretary of State for outreach purposes.

2. Paper DL/ID Application, Renewal, or Replacement – DL44/DL44C

In some instances, a paper DL/ID application is requested or required. The voter registration portion of the application is part of the paper DL/ID application, which is called the DL44 or DL44C (for commercial licenses). All voter eligibility, preference, and opt-out questions on the eDL44 and eDL44C also appear on the DL44 and DL44C. DMV technicians enter the information from the paper application into the DMV system, and provide the customer with the ability to verify that the entered information is correct, prior to completing the application. If the customer does not answer "Yes" to the citizenship and other voter eligibility questions, no customer data is transmitted to the Secretary of State. For customers who indicate they are eligible to vote, their answers are delivered to Secretary of State in an electronic file that also contains minimum identification information, such as a DL/ID number, name, residence and mailing address, if available, date of birth, and digitized signature (which is retrieved at a later time), as required by the California Motor Voter Program. If a customer indicates they are eligible to vote but opts out of registration, that customer's information is provided to the Secretary of State for outreach purposes.

3. Change of Address Form – DMV 14

The Notice of Change of Address Form (DMV 14) is used to process a DL/ID change of address. The form is available in a paper format that can be submitted in person at a DMV office. (It can also be submitted by mail to DMV headquarters in Sacramento, or electronically via the Internet.) The DMV 14 includes a section permitting the customer to indicate if they do not want their

change of address for DL/ID purposes to also change their address for voter registration purposes. The DMV 14 also includes a voter registration application. If the customer wants their change of address to be used for voter registration purposes, or if the customer completes the voter registration portion of the form and indicates they are eligible to vote, the customer's answers are delivered to Secretary of State in an electronic file that also contains minimum identification information, such as a DL/ID number, name, residence and mailing address, if available, date of birth, and digitized signature (which is retrieved at a later time), as required by the California Motor Voter Program. If, on the voter registration portion of the form, the customer does not answer "Yes" to the citizenship and other voter eligibility questions, no customer data is transmitted to the Secretary of State. If a customer indicates they are eligible to vote but opts out of registration, that customer's information is provided to the Secretary of State for outreach purposes.

4. DMV Voter Registration Card

The Secretary of State prints Voter Registration Cards (VRCs) for the DMV so that all DMV field offices can provide VRCs to applicants who want to register to vote but are not transacting an original or renewal DL/ID application, or a change of address for DL/ID purposes. VRCs are also provided to customers who are unable to complete their DL/ID transaction in the field office due to a system outage, and who request a VRC. To identify VRCs submitted by registrants through the DMV, the DMV VRCs include a DMV icon in the upper right-hand corner of the document. Secretary of State is therefore able to track and report DMV registration activity as required under the NVRA. DMV field offices within counties designated as minority language counties by the federal Voting Rights Act provide paper VRCs in the prescribed minority language(s) of that county. Applicants who wish to register in this way may provide the VRC to the DMV for submission or they may mail it directly to their county elections office, as the VRCs are postage-paid and pre-addressed accordingly.

DMV employees do not complete entries on a VRC unless an applicant requests assistance. DMV employees check to make sure that applicants complete and sign the VRC if it is submitted by an office visitor who is not completing a DL/ID application or changing their DL/ID address. DMV employees are **not** required to sign the VRC as the person assisting with the registration.

If an applicant has difficulty completing the English language VRC, the DMV employee will:

- Ask the applicant if he/she prefers a VRC in another language.

- If the VRC is not available at the DMV field office in the appropriate language, give the applicant the appropriate toll-free number to call and order election materials in the preferred language.
- Inform the applicant the VRC may be completed elsewhere, if preferred.

B. DL/ID Transactions by Mail

1. DL/ID Renewal – DL6/DL410 FO

Customers who are eligible to renew their DL/ID by mail receive a renewal form in the mail, called a DL6. Except for customers with an AB 60 DL/ID², the DL6 contains a voter registration application. Customers who are eligible to renew their DL/ID by mail and have not yet received a DL6 may submit a renewal by mail eligibility information form called a DL410 FO, which also contains a voter registration application. Customers may provide an updated address on these forms. Both forms include a section permitting the customer to indicate if they do not want their change of address for DL/ID purposes to also change their address for voter registration purposes. If the customer wants their change of address to be used for voter registration purposes, or if the customer completes the voter registration portion of the form and indicates they are eligible to vote, the customer's answers are delivered to Secretary of State in an electronic file that also contains minimum identification information, such as a DL/ID number, name, residence and mailing address, if available, date of birth, and digitized signature (which is retrieved at a later time), as required by the California Motor Voter Program. If the customer does not answer "Yes" to the citizenship and other voter eligibility questions, no customer data is transmitted to the Secretary of State. If a customer indicates they are eligible to vote but opts out of registration, that customer's information is provided to the Secretary of State for outreach purposes.

2. Change of Address – DMV 14

The Notice of Change of Address Form (DMV 14) is used to process a DL/ID change of address. The form may be submitted by mail to DMV headquarters in Sacramento. (The form can also be submitted in person at a DMV field office, or electronically via the Internet.) The DMV 14 includes a section permitting the customer to indicate if they do not want their change of address for DL/ID purposes to also change their address for voter registration purposes. The DMV 14 also includes a voter registration application. If the customer wants their change of address to be used for voter registration purposes, or if the customer completes the voter registration portion of the form and indicates they are eligible to vote, the customer's answers are delivered to Secretary of State in an electronic file that also contains minimum identification information, such as a DL/ID number, name, residence and mailing address, if available, date of

² The renewal by mail form that is sent to AB 60 licensees is called a DL6U.

birth, and digitized signature (which is retrieved at a later time), as required by the California Motor Voter Program. If, on the voter registration portion of the form, the customer does not answer “Yes” to the citizenship and other voter eligibility questions, no customer data is transmitted to the Secretary of State. If a customer indicates they are eligible to vote but opts out of registration, that customer’s information is provided to the Secretary of State for outreach purposes.

C. DL/ID Transactions Over the Internet

1. Driver License Internet Renewal (DLIR)

Eligible customers may renew their DL/ID via the Internet. A voter registration application is contained within the online renewal application. All of the same features of the eDL44/eDL44C are included in the online renewal internet form, including the ability to elect to update the voter registration address, and the ability to register, update their voter registration information, or opt out of voter registration. If the customer indicates that they are not eligible to vote, the customer is not presented with the remaining portion of the voter registration application. If a customer indicates they are eligible to vote but opts out of registration, that customer’s information is provided to the Secretary of State for outreach purposes. The online renewal internet form includes a section permitting the customer to indicate if they do not want their change of address for DL/ID purposes (if any) to also change their address for voter registration purposes. If the customer wants their change of address to be used for voter registration purposes, or if the customer completes the voter registration portion of the form and indicates they are eligible to vote, the customer’s answers are delivered to Secretary of State in an electronic file that also contains minimum identification information, such as a DL/ID number, name, residence and mailing address, if available, date of birth, and digitized signature (which is retrieved at a later time), as required by the California Motor Voter Program.

2. Internet Change of Address (ICA) – DMV 14

Eligible customers may submit a change of address to their DL/ID via the Internet, using the Notice of Change of Address Form (DMV 14). (The form can also be submitted in person at a DMV field office, or by mail to DMV headquarters in Sacramento.) The DMV 14 includes a section permitting the customer to indicate if they do not want their change of address for DL/ID purposes to also change their address for voter registration purposes. The DMV 14 also includes a voter registration application. If the customer wants their change of address to be used for voter registration purposes, or if the customer completes the voter registration portion of the form and indicates they are eligible to vote, the customer’s answers are delivered to Secretary of State in an electronic file that also contains minimum identification information, such as a DL/ID number, name, residence and mailing address, if available, date of

birth, and digitized signature (which is retrieved at a later time), as required by the California Motor Voter Program. If, on the voter registration portion of the form, the customer does not answer “Yes” to the citizenship and other voter eligibility questions, no customer data is transmitted to the Secretary of State. If a customer indicates they are eligible to vote but opts out of registration, that customer’s information is provided to the Secretary of State for outreach purposes.

III. Receipt and Processing of Electronic Voter Registration Information by Elections Officials

The NVRA requires completed voter registration applications submitted as part of a DL/ID application to be transmitted to the appropriate elections official not later than 10 days after acceptance by the DMV. (52 U.S.C. § 20504(e)(1).) If a voter registration application submitted as part of a DL/ID application is accepted within five days before the last day for registration to vote in an upcoming election, the NVRA requires that the application be transmitted within five days of acceptance. (52 U.S.C. § 20504(e)(2).) Further, the NVRA and state law provide that if a valid application is submitted to the DMV on or before the 15th day before an election, the applicant should be registered to vote in the election. (52 U.S.C. §20507(a)(1)(A); Elec. Code, § 2102(a)(2).)

A. Transmission of Electronic Voter Registration Information to the Secretary of State

The Secretary of State retrieves voter registration information from the DMV several times each week.

For DMV customers who have attested to their eligibility to register to vote, the Secretary of State retrieves the corresponding electronic voter registration records, updates to voter registration records, and change of address requests. The Secretary of State then analyzes the records, excludes records of customers who opted out of voter registration, duplicate records and records for which a more recent registration exists, and processes the remaining records directly into the statewide voter registration system. For DMV customers who have attested to their eligibility to register to vote, but who have indicated that they do not want to register to vote or update their voter registration information, the Secretary of State sends an Opt Out Postcard, which provides information on how the customer can register to vote. (Elec. Code, § 2263(b).)

DMV customers who submitted updates to an existing voter registration via a paper form (DL44, DL410 FO, DL6, or DMV 14) and left a blank response for political party, vote by mail preference, and/or ballot material language will retain their previously indicated preferences from the existing voter registration record, for those fields. (Elec. Code, § 2265(c).) The Secretary of State sends a Voter Preference Postcard to all DMV customers who submitted updates to an existing

voter registration via a paper form and left a blank response for political party, vote by mail preference, and/or ballot material language, notifying them that they are registered and providing information on how to update their voter registration information. (DMV electronic forms do not permit customers attempting to update their voter registrations to leave those fields blank.)

For DMV customers who applied for or renewed a DL/ID or changed their address for voting purposes via a paper form (DL44, DL410 FO, DL6, or DMV 14), but based on inconsistent or missing information the Secretary of State is unable to determine if they were eligible to vote, or if they wanted to register or update their voter registration information, and for DMV customers who changed their address, but indicated they did not want to share their change of address for voter registration purposes, the Secretary of State will send these DMV customers a Registration Opportunity Postcard, notifying them that their recent attempt to register or update their voter registration information through their DMV transaction was not successful, and providing information on how to register to vote or update their current voter registration.

B. Processing of Voter Registration Information by the Secretary of State and County Elections Officials

County elections officials access the new and updated voter registration records in the statewide voter registration system electronically through their elections management systems (EMSs) for processing.

County elections officials will also receive EMS messages for DMV voter registration records indicating a potential change of address for an existing voter registration. County elections officials either accept or reject these possible match determinations. The voter registration record will be updated in the statewide voter registration system accordingly.³

DMV customers who submitted updates to an existing voter registration via a paper form (DL44, DL410 FO, DL6, or DMV 14) and left a blank response for political party, vote by mail, and/or ballot material language preference will retain their previously indicated preferences from the existing voter registration record, for those fields. (Elec. Code, § 2265(c).) DMV electronic forms do not permit customers attempting to update their voter registrations to leave those fields blank.

For all new or updated voter registrations, including changes of address, county elections officials provide notification to the voter by mailing a non-forwardable Voter Notification Card (VNC). (Elec. Code, § 2155.)

³ A new or updated voter registration resulting from a DMV transaction, and a DMV change of address that results in an updated voter registration, all constitute a notification of continued residency within California, for purposes of determining eligibility for cancellation of a voter's registration. (See Chapter 4, Voter Registration Applications and Voter List Maintenance, p. 19 n. 13.)

IV. Receipt of VRCs and Processing by County Elections Officials

A. Sources

1. **Local DMV Field Offices:** DMV field offices forward to the county elections official all VRCs completed and submitted in their offices. For a list of field offices by county, please visit the DMV's website: www.dmv.ca.gov
2. **Secretary of State:** Most VRCs available in DMV offices are not pre-addressed to a specific county. Rather, they are pre-addressed to the Secretary of State. VRCs from DMV field offices that are completed and mailed by a DMV customer outside of a DMV field office will reach the Secretary of State, who will forward these VRCs to the appropriate county elections official.
3. **Other Counties:** DMV field offices forward all VRCs submitted in the field office to either the Secretary of State or the elections official in the county where the DMV field office is located. The Secretary of State forwards these VRCs to the appropriate county elections official. Because DMV applicants occasionally go to field offices outside their county of residence, county elections officials may receive VRCs forwarded from DMV field offices for applicants who live in another county; the county elections official receiving such VRCs forwards them to the appropriate county elections official.

B. Method and Frequency of Transmittal

1. **Local DMV Field Offices:** Local DMV field offices forward all VRCs received to county elections offices on a daily basis. The VRCs are typically sent by priority mail. County elections offices may also work out alternate arrangements with their local DMV field offices for the transmittal of VRCs.
2. **Secretary of State:** The Secretary of State sorts and forwards to the appropriate county elections offices all VRCs received on a daily basis.
3. **Other Counties:** The frequency that county elections offices forward DMV VRCs completed by out-of-county residents to the appropriate county elections office will vary according to each county elections office's policy or practice. Each county elections office may want to contact other county elections offices to arrange for specific transmittal methods/frequencies.

C. Processing VRCs

County elections officials must track the number of registrations received from DMV, after subtracting VRCs that are forwarded to other counties and adding VRCs received from other counties.

V. Training

While not required by the NVRA, the Secretary of State and DMV provide training to their employees.⁴ The Secretary of State annually provides a live training to all Secretary of State employees responsible for the receipt and processing of voter registration information from DMV, including but not limited to training on the procedures for regular monitoring of the timeliness of the receipt of registration data from DMV transactions and the protocol for reporting and addressing problems with the timeliness and quality of the voter registration data received from DMV. DMV provides initial training to new employees and annual refresher trainings to continuing employees who interact with the motor voter system, including but not limited to training on processing voter information submitted to DMV, transmission deadlines in the NVRA, and procedures for identifying and reporting errors or delays.

VI. Resources and Monitoring

County elections officials will contact the Secretary of State's office if they have questions regarding voter registrations completed or attempted through the California New Motor Voter Program. DMV customers with voter registration questions can contact the Secretary of State's Voter Hotline at (800) 345-VOTE (8683) (or the other toll-free hotlines that are available in 9 languages).

The Secretary of State and DMV have appointed NVRA coordinators. DMV's NVRA coordinator monitors DMV's compliance with the NVRA, including the processing and timely transmission of voter registration information submitted to DMV. The Secretary of State's Section 5 NVRA coordinator monitors the Secretary of State's compliance with Section 5 of the NVRA, including the processing and timely transmission of voter registration information submitted to DMV.

VII. Additional Information

A. Late Voter Registrations and Transmission Delays

Under the NVRA and state law, a voter registration is timely as long as it is submitted to the DMV by the last day to register to vote, i.e., the 15th day prior to an election. (52 U.S.C. § 20504(a)(1)(A); Elec. Code, § 2101(a)(2).) If voter registration records resulting from DMV transactions are not transmitted from DMV to the Secretary of State within five or ten days after acceptance as required under the NVRA (52 U.S.C. § 20504(e)(1), (e)(2)), the Secretary of State will, when required or appropriate, notify county elections officials, who may need to take additional steps to count ballots cast by affected voters.

⁴ This training is pursuant to the Stipulation and Order Regarding Enforcement of Settlement Agreement ("Stipulation"), League of Women Voters of California, et al. v. Annis, et al., No. 3:17-cv-02665-LB (N.D. Cal. Feb. 5, 2019); the terms of the Stipulation expire on December 31, 2020.

While not required by the NVRA, DMV will notify the Secretary of State of any errors or delays related to the timely transmission of voter registration records received by DMV within three business days of the discovery of the error or delay by DMV management.⁵ The Secretary of State will notify county elections officials of any errors or delays related to the timely transmission of voter registration records from DMV within three business days of the discovery of the error or delay by Secretary of State management.

If there is such a delay in forwarding voter registration records resulting from DMV transactions to the Secretary of State, a new or updated voter registration may not appear on the county or precinct voter rolls even though the applicant submitted a timely voter registration application to the DMV. If this happens, the applicant will be asked to cast a provisional ballot, which will be counted as part of the official canvass as long as the county elections office receives the voter registration application before the end of the canvass period. State law authorizes a county elections official to seek a court order extending the canvass period, in certain circumstances. (Elec. Code, § 15701.) State law also provides that a superior court in the county of a voter's residence may order a voter's provisional ballot to be included in any semiofficial or official canvas. (Elec. Code, § 14310(c)(2)(A)(iii).)

Alternatively, California law permits a voter to file a motion in superior court on Election Day to compel registration if the voter registered to vote on or before the deadline to register at the DMV or another voter registration agency designated as such under the NVRA. (Elec. Code, § 2142.) Conditional voter registration (and conditional voting) are also available at specific locations starting the day after the close of registration up through Election Day. (Elec. Code, § 2170.)

B. Minority Language Availability

DMV makes voter registration available in the following languages: English, Spanish, Chinese, Hindi, Japanese, Khmer, Korean, Tagalog, Thai, and Vietnamese. The Secretary of State prints and distributes VRCs in the same languages. Upon request, the Secretary of State will provide county elections officials with VRCs in one or more languages. The elections official will, in turn, supply these forms as required, or upon request, to local DMV field offices within their county.

C. DMV Mobile Units in Rural Counties

Some counties do not have DMV field offices, but instead are served by mobile units, or "travel runs." Processing requirements are the same for travel runs.

⁵ This notification requirement is pursuant to the above-referenced Stipulation.

Chapter 3

NVRA Implementation at Public Assistance Agencies, Agencies Serving People with Disabilities, and Other Designated Agencies

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I. Section 7 of the National Voter Registration Act (NVRA)

A. Designated Voter Registration Agencies (VRAs)

The NVRA requires states to offer voter registration services at all public assistance and disability service offices. Specifically, Section 7¹ of the NVRA requires states to designate as voter registration agencies (VRAs) all offices that provide public assistance and state-funded programs primarily engaged in providing services to persons with disabilities. (52 U.S.C. § 20506(a)(2).) Additionally, it requires the designation of “other” state offices as VRAs. (52 U.S.C. § 20506(a)(3).) The NVRA also requires states to designate Armed Forces recruitment offices and other offices in the state as VRAs. (52 U.S.C. § 20506(c).)

In California, the following offices are designated as VRAs under the NVRA:

Department of Motor Vehicles (DMV)

Public Assistance Agencies

- California Student Aid Commission (CSAC)
- County offices that administer General Assistance/General Relief Programs
- Covered California:
 - California’s Health Benefit Exchange and certified enrollment entities, county social services offices, certified insurance agents
- Department of Health Care Services and county social services offices:
 - Medi-Cal Program
- Department of Public Health (DPH) and community-based agencies under contract with DPH:
 - Women, Infants, and Children Nutrition Program (WIC)
- Department of Social Services (DSS) and county social services offices:
 - California Work Opportunity and Responsibility to Kids (CalWORKS)
 - CalFresh Program
 - In-Home Supportive Services Program
- Private entities under contract with Public Assistance Agencies to provide NVRA-related services

¹ Throughout this chapter, “Section 7” refers to 52 U.S.C. § 20506.

State-Funded Agencies Primarily Serving Persons with Disabilities

- Department of Developmental Services (DDS) and community-based agencies under contract with DDS:
 - Regional Centers
- Department of Rehabilitation (DOR) and community-based agencies under contract with DOR:
 - Vocational Rehabilitation Services
 - Independent Living Centers
- Department of Social Services (DSS) and community-based agencies under contract with DSS:
 - Office of Deaf Access (to provide services to the deaf)
- Department of Social Services (DSS):
 - Office of Services to the Blind, Assistance Dog Special Allowance Program
- University of California (UC) Offices for Students with Disabilities
- California State University (CSU) Offices for Students with Disabilities
- California Community Colleges (CCC) Offices for Students with Disabilities
- Private entities under contract with Disability Service Agencies to provide NVRA-related services

State and County Mental Health Providers

Armed Forces Recruitment Offices

Other Agencies Designated by the State Under NVRA

- Franchise Tax Board district offices
- California Department of Tax and Fee Administration offices
- Private entities under contract with these agencies to provide NVRA-related services

B. Responsibilities of Voter Registration Agency Offices

At a minimum, the NVRA requires voter registration agencies (VRAs) to provide voter registration services each time a person:

- applies for services or assistance;
- requests renewal or recertification; or
- requests a change of address.

(52 U.S.C. § 20506(a)(6).)

The NVRA requires VRAs to provide the following voter registration services to each applicant:

- distribute a Voter Registration Card (VRC);
- distribute a Voter Preference Form (Preference Form);
- assist each applicant with completing the VRC, unless the applicant refuses such assistance;
- accept and send completed VRC to elections officials; and
- keep the completed Preference Form on file for two years.

(52 U.S.C. § 20506(a)(4), (6).)

These voter registration services must be provided whether the transaction is conducted in person or remotely, for example via phone, email, or Internet.

C. Equal Assistance

The NVRA requires VRAs to assist applicants with filling out the VRC. Section 7 specifically requires that agencies provide each person the same degree of assistance in completing the VRC as is provided by the office in completing its own agency forms, unless the person declines assistance. (52 U.S.C. § 20506(a)(6)(C).)

The applicant has the right to complete the VRC without assistance, but equal assistance also entails reviewing the VRC and Preference Form for completeness, just as the agency would review its own forms for completeness.

When an agency provides services to a person with a disability at the person's home, the agency must also provide voter registration services at the person's home. (52 U.S.C. § 20506(a)(4)(B).)

Agencies may provide the Secretary of State's Voter Hotline: (800) 345-VOTE (8683) (or the other toll-free hotlines that are available in 9 languages) for applicants to use if they need help registering or have questions about their voting rights. They may also direct applicants to RegisterToVote.ca.gov, California's Online Voter Registration application that is available in 10 languages and is accessible for applicants who use screen readers.

D. Forwarding the Voter Registration Card and Retaining the Voter Preference Form

The NVRA requires VRAs to forward completed VRCs to elections offices within 10 days of receipt (within 5 days, if received within 5 days of the voter registration deadline). (52 U.S.C. § 20506(d).) As a best practice, agencies should forward VRCs on a daily basis. VRCs are pre-addressed to the county elections office and contain a postage-paid stamp.

The NVRA requires VRAs to keep completed Preference Forms on file at the agency for two years. Preference Forms can be stored in a central, chronological file, so that the agency can easily determine how many Preference Forms are received in a given month, which can help demonstrate NVRA compliance. They can also be kept in each client's file and maintained in either hard copy or in an electronic format.

E. Restrictions on Influencing Applicants

The NVRA places restrictions on how VRA staff may interact with applicants when providing the opportunity to register to vote. VRA staff must not:

- seek to influence an applicant's political party preference;
- display any political party preference or allegiance;
- make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or
- make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(52 U.S.C. § 20506(a)(5).)

II. Elections Code Division 2, Chapter 6 - Senate Bill (SB) 35

Elections Code section 2400 et. seq is California's NVRA law, which became effective in January 2013 (See Senate Bill (SB) 35 (Padilla), Chapter 505, Statutes of 2012). It places requirements on VRAs, county elections officials, and the Secretary of State.

A. Elections Code Overview

Elections Code sections 2406 and 2408 require VRAs to do the following:

- notify the county elections office of each office or site in the county (Elec. Code, § 2406(a)(1));
- designate a VRA coordinator (Elec. Code, § 2406(a)(2));
- order VRCs exclusively from the county elections office² (Elec. Code, § 2406(a)(3));
- offer minority language forms as required by the federal Voting Rights Act (Elec. Code, § 2406(a)(4));
- train employees annually (Elec. Code, § 2406(a)(5)); and

² The offices for students with disabilities at the public education institutions and the office of Services to the Blind, Assistance Dog Special Allowance Program order state VRCs directly from the Secretary of State's office, as they serve students and clients from multiple counties across the State.

- offer an online Voter Preference Form and link to California Online Voter Registration (RegisterToVote.ca.gov) if the agency offers enrollment, renewal, or change of address transactions online (Elec. Code, § 2408(a)).

County elections officials must report the number of voter registrations generated by each VRA office or site in the county. (Elec. Code, §§ 2405, 2407.) The Secretary of State has developed a reporting template for the 58 county elections offices. The county elections office reporting template contains a list of the known VRA offices and sites in each county. County elections officials must maintain an up-to-date list of the VRA offices and sites in the county and add new offices and sites to the list as appropriate.

The **Secretary of State** must prepare training materials, post county NVRA reports on the Secretary of State's NVRA website, and coordinate NVRA compliance throughout the state. (Elec. Code, §§ 2404, 2407.)

Additionally, the Secretary of State will report the number of voter registrations generated from VRAs' unique URLs, as well as from the offices for students with disabilities at the University of California, California State University, and California Community Colleges (collectively referred to as "public education institutions"), and the office of Services to the Blind, Assistance Dog Special Allowance Program, as those VRAs order state VRCs directly from the Secretary of State's office.

B. Tracking VRA Voter Registrations

In order to properly track VRA voter registrations, VRAs must order all supplies of blank VRCs from county elections officials, and county elections officials must record the serial numbers of the VRCs supplied to each VRA office or site. (Elec. Code, §§ 2405, 2406.) VRAs with multiple offices or sites in a county must coordinate distribution of the VRCs with county elections officials to ensure proper tracking. (Elec. Code, §§ 2405, 2406.)

The exceptions to this requirement are those specified VRAs, offices for students with disabilities at the public education institutions and office of Services to the Blind, Assistance Dog Special Allowance Program, whose clients do not necessarily live in one county; those VRAs order state VRCs directly from the Secretary of State's office. The Secretary of State records the serial numbers from those state VRCs and tracks those registrations. Additionally, the Secretary of State will report the number of voter registrations generated from VRA's unique URLs.

C. VRA Training

VRAs must to train employees annually on NVRA requirements and on how to assist applicants with voter registration. (Elec. Code, § 2403.) County elections officials must assist with training, if requested by a VRA. (Elec. Code, § 2405.) The Secretary of State has created specific NVRA/SB 35 training for county elections officials, VRA

coordinators, and VRA staff. The training materials are available on the Secretary of State's NVRA website: sos.ca.gov/elections/nvra/training/. (See Elec. Code, § 2404(a)(2).)

In order to ensure uniform compliance, VRAs should develop scripts for their staff to use when providing voter registration services under the NVRA.

D. Designating a VRA Coordinator

VRAs must appoint one staff person at each agency office to be in charge of NVRA compliance, including arranging staff training, ordering supplies of VRCs from the county elections office (or for those identified VRAs-from the Secretary of State's office), and ensuring VRCs are submitted in a timely manner to the county elections office (or the Secretary of State's office if it is a state VRC). (Elec. Code, § 2406(a)(2).)

E. Instructions from State Agencies

Since the passage of SB 35, many of California's VRAs have issued some form of guidance to their local agencies/offices with respect to NVRA and the California Elections Code requirements and the implementation of those requirements. These guidance letters are available on the Secretary of State's website: www.sos.ca.gov/elections/voter-registration/nvra/voter-registration-agencies/nvra-agency-guidance-letters/.

III. Voter Registration Services under the NVRA

A. How the NVRA Works in Practice

Below are examples of how NVRA compliance can be accomplished when conducting NVRA-covered transactions in various settings: in person, by mail, over the phone, or via email or the Internet. Agencies have flexibility in determining the best methods to use to ensure NVRA compliance in each setting. Therefore, in the following descriptions, the term "must" indicates a specific practice is mandated under the NVRA, while the term "should" indicates a recommended practice that can help ensure compliance but which is not expressly mandated under the NVRA.

The United States Department of Justice (US DOJ) has published guidance on complying with the NVRA that contains a number of the practices described below. For more information, please visit the US DOJ Civil Rights Division Voting Section website directly at: www.justice.gov/crt/national-voter-registration-act-1993-nvra

In-Person/Mail Transactions: Voter registration agencies must include a VRC and Voter Preference Form in the agency's standard packet of application materials handed or mailed to applicants who request services or benefits, renewal, recertification, or a change of name or address. If the applicant returns the mailed

packet without the VRC or Voter Preference Form, the agency should follow up with the applicant once to attempt to gather the missing form(s).

Agencies must offer voter registration services to the person who is filling out the agency's forms. This includes a parent or guardian completing forms for a child. Agencies must provide assistance with completing the VRC and the Preference Form to the extent as it is provided with respect to every other service of application for benefits.

Phone Transactions: Voter registration agency staff must ask applicants who apply for services or benefits, renewal, recertification, or a change of address by phone: "If you are not registered to vote where you live now, would you like to register today?"

Agency staff must note the applicant's response on the Preference Form and if the applicant says "yes" the agency must provide the applicant an opportunity to register to vote by sending a VRC to the applicant by mail.

Email and Internet Transactions: Under the California Elections Code VRAs that offer the opportunity to apply online for service, assistance, or to submit a recertification, renewal, or change of address form online must allow the applicant to electronically submit a Preference Form and connect the applicant to the Secretary of State's online voter registration form (RegisterToVote.ca.gov). Agencies must record the applicant's electronic Voter Preference Form decision. Agencies must send applicants a Preference Form and VRC if the applicant does not answer the electronic Preference Form.

Agencies that connect applicants to the online voter registration form must coordinate with the Secretary of State to establish electronic tracking of the number of applicants who use this form to register to vote. In addition, VRAs should include a link on the agency's main webpage to the Secretary of State's online voter registration form: RegisterToVote.ca.gov/

Voter Registration at Public Counters: In addition to offering voter registration during NVRA-covered transactions, it is a best practice for VRAs to offer applicants or others an opportunity to register to vote in public areas and waiting rooms by keeping a supply of VRCs on public counters and displaying voter information. VRC supplies must be obtained from the county elections office where the agency is located. However, the offices for students with disabilities at the public education institutions and the office of Services to the Blind, Assistance Dog Special Allowance Program obtain their VRCs directly from the Secretary of State. To obtain voter educational materials, such as posters, DVDs, and brochures, please call the Secretary of State's NVRA Office at (916) 657-2166 or email nvra@sos.ca.gov.

Technology Upgrades: When upgrading technology related to the application, renewal or recertification, or change of address process, VRAs must ensure that voter registration services, as required by the NVRA, are integrated. (Elec. Code, § 2408.)

For example, if the agency offers online enrollment in services or benefits, the website enrollment interview should include an electronic Preference Form and a link to the Secretary of State's online voter registration form (RegisterToVote.ca.gov/), where the applicant can register to vote online.

B. Voter Preference Form and Voter Registration Card

The NVRA requires VRAs to give applicants for services or assistance **both** a Voter Preference Form (Preference Form) **and** a VRC.

Preference Form

The Preference Form must contain certain statutory language, as specified by Section 7 of the NVRA. The Secretary of State has developed a uniform Preference Form for California VRAs to use. (A Preference Form is attached as Appendix A.)

If VRA chooses to create its own Preference Form, the form must include the following NVRA required language:

- the question: "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";
- if the agency provides public assistance, the statement: "Applying to register or declining to register to vote will not affect the amount of assistance you will be provided by this agency.";
- boxes for the applicant to check to indicate whether the applicant would like to register to vote or decline to register to vote, together with the statement (in close proximity to the boxes and in prominent type), "IF YOU DO NOT CHECK A BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME. You may take the attached voter registration form to register at your convenience.";
- the statement: "If you would like help in filling out the voter registration form, we will help you. The decision whether to seek or accept help is yours. You may fill out the voter registration form in private."; and
- the statement, "If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party preference or other political preference, you may file a complaint with _____." (*The blank should be filled with the name, address, telephone number, and website of Secretary of State.*)

As noted above, both the Preference Form and the VRC must be provided to each applicant along with the agency's own forms routinely distributed to applicants during intake, renewal, recertification, and change of address procedures. (Elec. Code, § 2401(a); 52 U.S.C. § 20506(a)(6)(B).)

Completing the Preference Form

For in-person transactions, the voter registration agency should ask the applicant to complete the Preference Form and VRC.

For mail transactions, if an applicant does not complete and return a Preference Form, agency staff should attempt to follow up once with the applicant to find out whether the applicant would like to register to vote or needs assistance.

For phone transactions, agency staff should record the applicant's preference.

Agencies are not required to complete Preference Forms on behalf of applicants who choose not to return the Preference Form in a transaction. In such instances, after following up with the person, agencies may include a blank Preference Form with the applicant's name in their records and write "no response" on the form.

Voter Registration Card (VRC)

The NVRA requires all states to accept the National Mail Voter Registration Form, but allows each state to develop its own voter registration form, as long as it is equivalent to the federal form. (Image of the Voter Registration Card is attached as Appendix B.)

In California, the Secretary of State prints and supplies VRCs to county elections officials. (Elec. Code, § 2161.) In turn, county elections officials distribute supplies of VRCs to VRAs within the county. (Elec. Code, § 2405(b)(1).)

County elections officials record the serial number ranges of VRCs distributed to voter registration agencies in order to be able to track the number of completed VRCs returned and attribute new registration data to the voter registration agency office or site that distributed the form. (Elec. Code, § 2405(b)(2).) The Secretary of State records the serial number ranges of VRCs distributed to the offices for students with disabilities at the public education institutions and the office of Services to the Blind, Assistance Dog Special Allowance Program.

VRAs must distribute the VRC rather than the National Mail Voter Registration Form in order to ensure county elections officials can properly track and report the number of registrations each VRA generates.

C. Obtaining Supplies of Voter Registration Cards

The Secretary of State prints county-specific postage-paid VRCs, which include the address of the county elections office, for each of California's 58 counties. (Elec. Code, § 2161.)

Public assistance service agencies, disability service agencies, and other VRAs must obtain supplies of VRCs from the county elections office in the county where the agency office is located. The only exception is for the offices for students with disabilities at the public education institutions and the office of Services to the Blind, Assistance Dog Special Allowance Program, which have been directed to order state VRCs from the Secretary of State's office. This will ensure proper tracking and reporting of completed registrations and help attribute new registrations to the correct VRA.

As noted above, while the National Voter Registration Form is valid and accepted in California, VRAs should obtain and distribute supplies of the state VRC from their county elections office (or from the Secretary of State for those previously identified VRAs). The national form contains no serial number and gives county elections officials no method of tracking whether a new registration came from a VRA.

Using the California VRC helps ensure: 1) completed VRCs will be returned to the county elections office where the voter lives, because the VRC is self-addressed and postage paid; and 2) the county elections office can properly track and report the number of voter registrations coming from local VRA offices.

The Secretary of State, the United States Election Assistance Commission, and the United States Department of Justice review reports of the number of voter registrations coming from VRAs in order to determine whether agencies are providing the opportunity to register to vote in compliance with the NVRA. To ensure VRAs are recognized for their compliance with the NVRA, all supplies of VRCs must be obtained from the county elections office in which the agency is located (or from the Secretary of State for those previously identified VRAs).

Another way of tracking voter registration generated from NVRA agencies is by way of unique URLs. All California VRAs are provided a unique URL that can be posted on their agencies' websites directing visitors of their sites to the California online voter registration application at RegisterToVote.ca.gov. The Secretary of State's office tracks registrations identified with the unique URLs and credits the appropriate VRA.

D. Confidentiality

The NVRA requires a voter's decision to register or decline to register to vote to be kept confidential, except for voter registration purposes. The NVRA also requires the location (e.g., public assistance agency) where an applicant registers to be kept confidential. One of the primary goals of the NVRA's confidentiality provisions is to protect the privacy of applicants who receive public assistance or disability services.

In California, VRAs and county elections offices must keep information regarding an applicant's choice to register or decline to register, including Preference Forms, as well as the identity of the agency through which a particular voter registered confidential.

In order to protect privacy and accurately report on voter registration at VRAs, county elections officials should distribute VRCs by assigning specific blocks of VRC affidavit numbers to the VRAs and tracking those affidavit numbers as completed VRCs are returned to elections offices.

E. Providing NVRA Materials in Other Languages

Section 203 of the Voting Rights Act of 1965 (VRA) requires that, in covered jurisdictions, all election information available in English be made available in certain minority languages. Covered jurisdictions are determined by the Census Bureau based upon a formula in the VRA. Under the most recent United States Census Bureau determination, the state of California is covered for Spanish language assistance. Additionally, nine counties are covered for one or more Asian languages. The NVRA requires that voter registration agencies in counties covered by Section 203 of the VRA provide election materials in covered languages.

Agencies with offices in counties covered by Section 203 of the VRA should contact their county elections offices for materials, including VRCs in covered languages.

County elections offices have supplies of VRCs in every language required by the federal Voting Rights Act in that county.

The Preference Form is available in 10 languages: English, Spanish, Chinese, Hindi, Japanese, Khmer, Korean, Tagalog, Thai, and Vietnamese. All versions of the Preference Form may be downloaded and printed from the Secretary of State's NVRA website: sos.ca.gov/elections/voter-registration/nvra/training/voter-preference-forms/

IV. Transmittal Deadlines and Late Registrations

A. Transmittal of Voter Registration Cards to County Elections Officials

The NVRA requires that VRA offices and sites transmit completed VRCs to the county elections office within 10 days. If a VRA receives a completed VRC within five days of the voter registration deadline (the 15th day prior to an election), the agency must transmit the VRC to the county elections office within five days. However, it is recommended as a best practice that VRAs transmit VRCs to elections officials daily.

In order to meet these transmittal deadlines, each VRA office must establish procedures for ensuring timely transmittal of accepted forms to the appropriate local elections official. These procedures should be developed in consultation with the local elections official to whom the forms will be transmitted.

Best Practice - Daily transmittal of completed VRCs

Since the California VRC is a self-addressed and postage-paid form, VRAs should make it part of their daily routine to place completed VRCs in the mail. If the agency

is located in the same facility as the county elections office, the agency may hand deliver or use inter-office mail on a daily basis to transmit completed VRCs to the county elections office.

B. Timely Voter Registrations

The voter registration deadline in California is the 15th day prior to each election. Under the NVRA, if a person completes and submits a VRC to a VRA on or before the voter registration deadline, the registration is timely. (See Chapter 4, Voter List Maintenance, Section II, Receipt of Voter Registration Cards.)

VRAs should make every effort to transmit completed registration forms from their offices and sites daily in order to minimize the number of registrations that arrive at the elections office after the deadline to register.

County elections officials should notify VRA offices of upcoming election dates and voter registration deadlines and should remind VRAs of the need to transmit VRCs on a daily basis. This will help minimize the number of provisional ballots used in a given election.

V. Resources

Secretary of State NVRA Coordinator

Phone: (916) 657-2166

Fax: (916) 653-3214

Email: nvra@sos.ca.gov

Secretary of State NVRA Website

sos.ca.gov/elections/voter-registration/nvra/

Training Information and Resources for NVRA Agencies

sos.ca.gov/elections/voter-registration/nvra/training/

Voter Hotlines

(800) 345-VOTE (8683) - English

(800) 232-VOTA (8682) - Español / Spanish

(800) 339-2857 - 中文 / Chinese

(888) 345-2692 - हिन्दी / Hindi

(800) 339-2865 - 日本語 / Japanese

(888) 345-4917 - ខ្មែរ / Khmer

(866) 575-1558 - 한국어 / Korean

(800) 339-2957 - Tagalog

(855) 345-3933 - ภาษาไทย/Thai

(800) 339-8163 - Việt ngữ / Vietnamese

(800) 833-8683 - TTY/TDD

County Elections Offices

www.sos.ca.gov/elections/voting-resources/county-elections-offices/

U.S. Department of Justice - Civil Rights Division Voting Section

justice.gov/crt/about/vot/nvra/activ_nvra.php

Chapter 4

Voter Registration Applications and Voter List Maintenance

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I. Overview

Promoting the exercise of the fundamental right to vote and facilitating voter participation in elections is at the heart of the NVRA. (52 U.S.C. § 20501.) Exemplifying these principles, the purposes of the NVRA are fourfold: “(1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office; (2) to make it possible for Federal, State, and local governments to implement this chapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office; (3) to protect the integrity of the electoral process; and (4) to ensure that accurate and current voter registration rolls are maintained.”

Section 8¹ of the NVRA requires that any list maintenance program aimed at ensuring the integrity of voter registration rolls conforms to certain basic requirements, and be uniform, nondiscriminatory and in compliance with the Voting Rights Act of 1965. (52 U.S.C. § 20507.) Section 8 also establishes specific requirements concerning (1) voter registration processing; (2) notices to voters regarding the disposition of voter registration applications; (3) maintenance of a general program that makes a “reasonable effort to remove the names of ineligible voters from the lists of eligible voters” by reason of death or change in the residence of the registrant. (52 U.S.C. § 20507.) And, Section 8(d) provides that voters shall not be removed from the official list of eligible voters on the ground that the registrant has changed residence unless (1) the registrant confirms in writing a change of residence outside the registrar’s jurisdiction, or (2) the registrant has failed to respond to an address confirmation notice in the form specified in Section 8(d)(2), and has not offered or appeared to vote in any election within the next two federal general election cycles following the date of the address confirmation notice.²

California law imposes its own requirements regarding notifications to persons who register to vote and list maintenance activities. The following sections describe these state law requirements and their relationship to the requirements under Section 8 of the NVRA.

II. Acceptance of Valid Voter Registration Application

The NVRA specifies the time period for accepting valid voter registration applications (also known in the paper form as voter registration cards (VRCs)), and for determining eligibility for an upcoming election. The NVRA requires states to accept valid voter registration applications submitted to any NVRA voter

¹ Throughout this chapter, “Section 8” refers to 52 U.S.C. § 20507.

² Counties must maintain 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, with some exceptions. “Records” includes lists of the names and addresses of voters to whom Section 8(d)(2) notices were sent, and information concerning whether the voters responded. (See, Chapter 6, Recordkeeping and Reporting Requirements; 52 U.S.C. § 20507(i).)

registration agency by the state's voter registration deadline, which in California is 15 days before each election. (Elec. Code, § 2102; 52 U.S.C. § 20507(a)(1).)³

Under the NVRA, a voter registration application must be accepted as timely for an upcoming election if it is received in one of the following ways:

By an elections official by mail, and was:

- **Postmarked** on or before the voter registration deadline

By the Department of Motor Vehicles (DMV), and was:

- **Submitted** to DMV on or before the voter registration deadline

By another NVRA voter registration agency, and was:

- **Accepted** at the agency on or before the voter registration deadline

By an elections official, and was:

- **Received** by the elections official on or before the voter registration deadline

(52 U.S.C. § 20507(a)(1)(A)-(D).)

California law generally mirrors the NVRA with respect to the time periods for determining eligibility. Under California law, a voter registration deadline is 15 days prior to the election. (Elec. Code, §§ 2102 (a)(1)-(4), 2114, 2119(d)(1)-(4).) California law also provides for registration over the internet through the California Online Voter Registration Application, which must be submitted on or before the 15-day voter registration deadline. (Elec. Code, § 2196.) The Secretary of State has issued a guidance document, "Updating Voter Registration Dates," for county elections officials to use when adding or updating voter registration dates. (See guidance document, Updating Voter Registration Dates, attached as Appendix C.) This guidance document addresses the applicable registration date for voter registration applications submitted to and/or processed by an NVRA registration agency.

The DMV and other agencies designated as NVRA voter registration agencies must transmit completed paper VRCs to elections officials within 10 days of acceptance and within five days, if accepted within five days of the voter registration deadline. (52 U.S.C. §§ 20504(e), 20506(d).) As a best practice, the Secretary of State recommends daily transmittal of paper VRCs to elections officials to minimize the potential for delay and to ensure that eligible voters can vote in an upcoming federal, state, and local election.

³ In California, same day voter registration/conditional voter registration (CVR) and CVR provisional voting is available following the 15-day close of registration up through and including Election Day. CVR and CVR provisional voting are offered at all polling locations. (Elec. Code, § 2170.)

County elections officials must process voter registration applications immediately. (Cal. Code Regs., tit. 2, § 20108.40.) While delays may occur in the transmittal of voter registration applications from the DMV or another NVRA voter registration agency, elections offices must nevertheless process as timely, completed applications that are: (1) accepted by the DMV or another NVRA voter registration agency on or before the voter registration deadline, and (2) received by the elections official prior to the certification of the election. (Elec. Code, § 2102(a)(2); Cal. Code Regs., tit. 2, § 20108.18(b)(3).)

III. Notification of Disposition of Voter Registration Application: Voter Notification Card

Section 8 of the NVRA requires that elections officials notify each voter registration applicant of the disposition of his or her voter registration application, for instance, whether the application is accepted or rejected, or whether additional information is needed. (52 U.S.C. § 20507(a)(2).)

While the NVRA is silent with respect to a particular method for notifying an applicant about the disposition of his or her application, state law provides for the following methods and requirements.

A. Application Accepted

A completed voter registration application must contain the following statutorily required information: facts establishing the applicant as an elector, the applicant's name, place of residence, mailing address if different than the place of residence, date of birth, country of birth, driver license (or state identification card) number or last four digits of social security number, and that the applicant is not in state or federal prison for a felony conviction. (Elec. Code, § 2150(a).) The application must also certify as to the truthfulness and correctness of the contents and be signed under penalty of perjury. (Elec. Code, § 2150(b).)

In California, when a voter registration application is processed and the applicant's eligibility is verified, the application is accepted and the applicant becomes a registered voter, or if it is a reregistration, the voter's existing registration record is updated. (Elec. Code, §§ 2102, 2115, 2119, 2155, 2170.) Once an application is accepted or a registration updated (including the updating of a mailing address), the county elections official must provide notification to the voter by mailing a *non-forwardable* Voter Notification Card (VNC).⁴ (Elec. Code, § 2155.) County elections officials mail the VNCs to the residence address listed, unless a separate mailing address has been provided. California law allows the county elections official to notify

⁴ Pursuant to California law, county elections officials also mail a VNC upon receipt of an address correction notice or letter responding to a mailing under Elections Code sections 2119, 2155, 2220 through 2226, or the NVRA. (Elec. Code, §§ 2155, 2155.3.)

applicants of properly executed affidavits of registration by text message or email that their voter registration information has been received and that they will receive a VNC. (Elec. Code, § 2155.4.)

Elections Code section 2155 provides that the voter notification shall be in substantially the following form:

VOTER NOTIFICATION

You are registered to vote. The party preference you chose, if any, is on this card. This card is being sent as a notification of:

1. Your recently completed affidavit of registration.

OR,

2. A change to your registration because of an official notice that you have moved. If your residence address has not changed or if your move is temporary, please call or write to our office immediately.

OR,

3. Your recent registration with a change in party preference. If this change is not correct, please call or write to our office immediately.

You may vote in any election held 15 or more days after the date on this card.

Your name will appear on the roster kept at the polls.

Please contact our office if the information shown on the reverse side of this card is incorrect.

(This language is also found in Appendix D, Recommended Language for List Maintenance Mailings; a diagram related to this and other mailings is attached as Appendix E.) The VNC satisfies the NVRA's requirement to notify each voter registration applicant of the disposition of his or her registration application. (52 U.S.C. § 20507(a)(2).)

B. Application Rejected or Request to Cure Defect

A county elections official may reject an application if (1) the applicant does not meet the qualifications for registering to vote; or (2) the application is

missing required information, and the missing information does not have an applicable rebuttable presumption and the elections official cannot obtain the information from the applicant. (Elec. Code, §§ 2150, 2153, 2154.)

When required information is missing from the voter registration application, county elections offices must attempt to contact the applicant. (Elec. Code, §§ 2150, 2153.) For example, if an applicant has not checked the “Yes” box to indicate U.S. citizenship and instead left the U.S. citizenship check box on the application blank, the application cannot be accepted; the county elections official must attempt to contact the applicant to seek this information. (See Elec. Code, §§ 2111, 2112, 2150(a)(1), 2153; 52 U.S.C. § 21083(b)(4)(A), (B) (HAVA).)

Generally, if required information is missing, but the mailing address is legible, the county elections official must send the applicant a new VRC or document requesting the missing information. With respect to the effective date of the affidavit, the following guidance has been provided:

If upon initial submission, a signature is missing:

after the applicant returns the VRC or document with the signature, the voter registration application must be processed, and the voter registered with an effective date of the date the unsigned affidavit was initially received.

If upon initial submission other information, such as a date of birth, name, or citizenship affirmation is missing, or if the applicant used a PO Box or business address as a residence address, or if the stated address is nonexistent:

after the applicant returns the VRC or document providing the missing information, the voter registration application must be processed, and the voter registered with an effective date of the date the affidavit is completed or the missing information is received.

(See Appendix C, Updating Voter Registration Dates.) If no response is received from the applicant, then the applicant shall not be registered. (Elec. Code, § 2153.)

However, if the voter registration application is executed under penalty of perjury, and the missing information falls within the “rebuttable presumption” category, the application cannot be rejected, and the county elections official is not required to contact the applicant for this information. (Elec. Code, § 2154.) The following are rebuttable presumptions set forth in California law:

- No middle name or initial is provided – the presumption is that none exists.
- No party preference is provided – the presumption is that the applicant declined to disclose a party preference.⁵
- No execution date is provided – the presumption is that the application was executed on or before the 15-day close of registration, provided that the county elections official either: (1) received the application on or before the 15-day close; or (2) received by mail the application and it is postmarked on or before the 15-day close.
- No state of birth within the United States is provided, but instead “U.S.A.,” “United States,” or other indication of the United States is provided – the presumption is that the applicant was born in a state or territory of the United States. The affiant’s failure to furnish his or her place birth shall not preclude his or her affidavit of registration from being deemed complete. However, as stated above, the affiant must have checked the “Yes” box to indicate U.S. Citizenship before an affidavit of registration can be deemed complete.

(Elec. Code, § 2154(a)-(d).)

If the application is rejected for other reasons, the county elections officials must notify the applicant of the reason for rejection. (Elec. Code, § 2153; 52 U.S.C. § 20507(a)(2).)

IV. Residency Confirmation Procedures and Mailings

Section 8 requires that the state “conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of” death or change of address. (52 U.S.C. § 20507(a).) The NVRA does not mandate any particular method of identifying ineligible voters. State law, however, provides several methods for elections officials to confirm registrants’ addresses in compliance with NVRA requirements, as described below.⁶

⁵ Updates to a voter registration record through a California Department of Motor Vehicles (DMV)-based voter registration transaction are handled differently: when an applicant updates his or her voter registration record, but does not indicate a party preference, and a preference had previously been chosen, the party preference reverts to the most recent party preference. (See Section III of Chapter 2, Voter Registration at Department of Motor Vehicles (DMV).)

⁶ In addition to the residency confirmation procedures provided in Elections Code sections 2220-2226 and set forth in this Section, the Secretary of State receives and sends on to county elections officials change-of-address information from specific transactions at the DMV. (See Chapter 2, Voter Registration at Department of Motor Vehicles (DMV).)

Some of these methods to confirm addresses may result in elections officials placing a voter's registration on inactive status, as described below. Under California law, voters with an inactive status are not mailed election materials, and they are not taken into consideration in determining the number of signatures required for qualification of candidates or ballot measures, precinct size, or other election administration processes. (Elec. Code, § 2226(a)(2).)

The Secretary of State strongly recommends⁷ that a list of inactive voters, in addition to the required list of active voters, be provided to each polling place in the county. (Elec. Code, §§ 349.5, 359, 359.2, 2183, 2191, 2226(c).) If the county elections official provides a list of inactive voters to the polling place and an inactive voter offers/appears to vote and is on the list, the voter shall be provided a nonprovisional ballot to vote. If the county elections official does not provide a list of inactive voters to the polling place or if a list is provided, but the inactive voter is not on the list and the inactive voter offers/appears to vote, the voter shall be provided an opportunity to vote provisionally. (Elec. Code, §§ 2170, 14310.)

A. Voter Notification Card (VNC)

As described in Section III above, "Notification of Disposition of Voter Registration Application: Voter Notification Card," California law requires a Voter Notification Card (VNC) to be sent to each voter registration applicant who submits a properly executed and complete voter registration application, including a reregistration and a change of mailing address. (Elec. Code, §§ 2155, 2155.3.) Additionally, county elections officials must also send VNCs upon the receipt of an address correction notice or letter responding to a mailing under Elections Code section 2119, Article 2 (commencing with Section 2220), or the NVRA.⁸ (Elec. Code, § 2155.)

The purpose of the VNC is two-fold: (a) to notify the applicant that he or she is registered to vote, and (b) to confirm the voter's address and voter preference information. (Elec. Code, § 2155.) The voter notification shall state the party preference for which the voter has registered in the following format: "Party: (Name of political party)."

VNC cards are *non-forwardable*, first-class mail sent to the residence address listed on the voter's registration application, unless a separate mailing address has been provided. The post office provides updated information if the VNC cannot be delivered as addressed but does not forward it to the addressee.

⁷ At least one federal district court has found that the failure to provide a list of inactive voters at all polling locations violates the fundamental right to vote. (See, *Common Cause N.Y. v. Brehm, et al.* (Jan. 10, 2020) No. 17-CV-06770.)

⁸ This includes voter registration applications and change-of-address information received from specific transactions at the DMV. (See Chapter 2, Voter Registration at Department of Motor Vehicles (DMV).)

A voter's voter registration will remain active even if the voter does not respond to a VNC.

If a voter replies to a VNC with an address change within his or her county, the county elections official shall update the voter's registration record and send a VNC to the new address. If the voter replies with a residence address change in another county, the county elections official of the former county shall alert the county elections official associated with the new residence address through use of the statewide voter registration system (in the statewide voter registration system this is known as the "push voter" function); the county elections official associated with the voter's new residence address shall send a new VNC to the new address. (Elec. Code, §§ 2119, 2120, 2155, 2226(a)(1); 52 U.S.C. §§ 20507(d)(3), (f); see also Section V, "Address Confirmation Notices; Updating, Inactivating, and Cancelling Voter Registration Records.")

If a VNC is returned by the post office, it will be treated as a notice of change of address and subsequently, a *forwardable* address confirmation mailing will be sent to the voter.

If the address change is to an address in the same county, the county elections official shall update the voter's registration record and send an address confirmation mailing that complies with Elections Code section 2225(b) to the new address.

If the address change is in another county, the county elections official of the former county shall alert the county elections official associated with the new residence address through use of the statewide voter registration system (in the statewide voter registration system this is known as the "push voter" function); the county elections official associated with the voter's new residence address shall send an address confirmation mailing that complies with Elections Code section 2225(b) to the new address.

If the address change is to another state, if there is no forwarding address, or a returned mailing indicates that the voter does not live at that address, the county elections official shall update the voter's registration record to inactive and send a confirmation mailing that complies with Elections Code section 2225(c)/Section 8(d)(2).

(See Elec. Code, §§ 2225, 2226; 52 U.S.C. § 20507(c)(1)(B), (d)(2); see also Section V, "Address Confirmation Notices; Updating, Inactivating, and Cancelling Voter Registration Records"; a diagram related to this and other mailings is attached as Appendix E.)

B. Preelection Residency Confirmation Postcard

California law also requires county elections officials to conduct a residency confirmation procedure at least 90 days before the direct primary election. (Elec. Code, § 2220(a).) This confirmation is initiated by mailing a *non-forwardable* postcard, sent “Address Correction Requested, Return Postage Guaranteed,” to each registered voter of the county prior to a direct primary election. The postcard must be in substantially the following form:

We are requesting your assistance in correcting the addresses of voters who have moved and have not reregistered.

1. If you still live at the address noted on this postcard, your voter registration will remain in effect and you may disregard this notice.
2. If the person named on this postcard is not at this address, please return this postcard to your mail carrier.

(Elec. Code, § 2220(a).) (This language is also found in Appendix D, Recommended Language for List Maintenance Mailings; a diagram related to this and other mailings is attached as Appendix E.) The county elections official is not required to mail a preelection residency confirmation postcard to any voter who has voted at an election in the last six (6) months or to any person who will not be 18 years of age on or before the direct primary election. (Elec. Code, § 2220(b).)

A voter’s voter registration will remain active even if the voter does not respond to a preelection residency confirmation postcard.

If a voter replies to a preelection residency confirmation postcard with an address change within their county, the county elections official shall update the voter’s registration record and send a VNC to the new address. If the voter replies to a preelection residency confirmation postcard with a residence address change in another county, the county elections official of the former county shall alert the county elections official associated with the new residence address through use of the statewide voter registration system (in the statewide voter registration system this is known as the “push voter” function); the county elections official associated with the voter’s new residence address shall send a VNC to the new address. (Elec. Code, §§ 2119, 2120, 2155, 2226(a)(1); 52 U.S.C. §§ 20507(d)(3), (f); see also Section V, “Address Confirmation Notices; Updating, Inactivating, and Cancelling Voter Registration Records.”)

If a preelection residency confirmation postcard is returned by the post office, it will be treated as a notice of change of address and subsequently,

a *forwardable* address confirmation mailing shall be sent to the voter, as specified in Elections Code section 2221(a).

If the address change is to an address in the same county, the county elections official shall update the voter's registration record and send an address confirmation mailing that complies with Elections Code section 2225(b) to the new address.

If the address change is in another county, the county elections official of the former county shall alert the county elections official associated with the new residence address through use of the statewide voter registration system (in the statewide voter registration system this is known as the "push voter" function); the county elections official associated with the voter's new residence address shall send an address confirmation mailing that complies with Elections Code section 2225(b) to the new address.

If the address change is to another state, if there is no forwarding address, if it is returned by the post office as undeliverable, or if a returned mailing indicates that the voter is not at that address, the county elections official shall update the voter's registration record to inactive and send a confirmation mailing that complies with Elections Code section 2225(c)/Section 8(d)(2).

(See Elec. Code, §§ 2221(a), 2225, 2226; 52 U.S.C. § 20507(c)(1)(B), (d)(2); see also Section V, "Address Confirmation Notices; Updating, Inactivating, and Cancelling Voter Registration Records.")

As an alternative to the preelection residency confirmation postcard, county elections officials may use any of the following methods:

1. National Change of Address System (NCOA) Data

In California, the Secretary of State obtains National Change of Address System (NCOA) data from the California Employment Development Department and forwards the information to the county elections officials through the statewide voter registration system. (Elec. Code, § 2222; 52 U.S.C. § 20507(c)(1)(A).)

If the NCOA data indicates a change of address, it shall be treated as a notice of change of residence and subsequently, a *forwardable* address confirmation mailing shall be sent to the voter.

If the address change is to an address in the same county, the county elections official shall update the voter's registration

record and send an address confirmation mailing that complies with Elections Code section 2225(b) to the new address.

If the address change is in another county, the county elections official of the former county shall alert the county elections official associated with the new residence address through use of the statewide voter registration system (in the statewide voter registration system this is known as the “push voter” function); the county elections official associated with the voter’s new residence address shall send an address confirmation mailing that complies with Elections Code section 2225(b) to the new address.

If the address change is to another state or if there is no forwarding address, the county elections official shall update the voter’s registration record to inactive and send a confirmation mailing that complies with Elections Code section 2225(c)/Section 8(d)(2).

(See Elec. Code, §§ 2225, 2226; 52 U.S.C. § 20507(c)(1)(B), (d)(2); see also Section V, “Address Confirmation Notices; Updating, Inactivating, and Cancelling Voter Registration Records.”)

2. County Voter Information Guide

County elections officials may include the return address of the county elections official’s office on the outside portion of the county voter information guide or envelope mailed to the voter for an election conducted within the last six (6) months preceding the start of the confirmation process, along with the following statement:

Address Correction Requested and Notice:

If the person named on the county voter information guide is not at the address, please help keep the voter rolls current and save taxpayer dollars by returning this county voter information guide to your mail carrier.

(Elec. Code, § 2223; this language is also found in Appendix D, Recommended Language for List Maintenance Mailings; a diagram related to this and other mailings is attached as Appendix E.)

If the results of these efforts indicate a change of address from a physical mail back or an Address Change Service (ACS) electronic file, it will be treated as a notice of change of address and

subsequently, a *forwardable* address confirmation mailing will be sent to the voter.

If the address change is to an address in the same county, the county elections official shall update the voter's registration record and send an address confirmation mailing that complies with Elections Code section 2225(b) to the new address.

If the residence address change is in another county, the county elections official of the former county shall alert the county elections official associated with the new residence address through use of the statewide voter registration system (in the statewide voter registration system this is known as the "push voter" function); the county elections official associated with the voter's new residence address shall send an address confirmation mailing that complies with Elections Code section 2225(b) to the new address.

If the address change is to another state, if there is no forwarding address, if this mailing is returned by the post office as undeliverable, if the ACS file indicates that the mailing is undeliverable, or if a returned mailing indicates that the voter is not at that address, the county elections official shall update the voter's registration record to inactive and send a confirmation mailing that complies with Elections Code section 2225(c)/Section 8(d)(2).

(See Elec. Code, §§ 2225, 2226; 52 U.S.C. § 20507(c)(1)(B), (d)(2); see also Section V, "Address Confirmation Notices; Updating, Inactivating, and Cancelling Voter Registration Records.")

3. Consumer Credit Reporting Agency

County elections officials may contract with a consumer credit reporting agency or its licensees to obtain use of change-of-address data. (Elec. Code, § 2227.) If the results of these efforts indicate a change of address, the county elections official shall send a *forwardable* notice, including a postage-paid and preaddressed return form, which may be in the form of a postcard, to the registered voter to enable the voter to verify or correct address information. The *forwardable* notice shall be in substantially the following form:

We have received notification that you have moved to a new residence address in _____ County. You will remain registered to vote at your old address unless you notify our office that the address to which this card was mailed is a

change of your permanent residence. Please notify our office in writing by returning the attached postage-paid postcard. If this is not a permanent residence, and you do not wish to change your address for voting purposes, please disregard this notice.

(This language is also found in Appendix D, Recommended Language for List Maintenance Mailings; a diagram related to this and other mailings is attached as Appendix E.) The results of this mailing can only be used to update a voter's record or confirm their address. A voter's registration record cannot be changed to inactive status or cancelled for failure to respond to this postcard or if the postcard is returned as undeliverable. (Elec. Code, § 2227(f).) To initiate the inactivation or cancellation process, a different residency confirmation procedure must be used. (See, e.g., Elec. Code, §§ 2220-2226.)

C. Alternative Residency Confirmation (ARC) Postcard

The procedure for sending alternative residency confirmation (ARC) postcards was found in Elections Code section 2224. Assembly Bill (AB) 504 ("AB 504") (Berman) Chapter 262, Statutes of 2019, provides that Section 2224 became inoperative on January 1, 2020.

If elections officials had used the ARC postcard process, it could only lead to cancellation if the county elections official received as a result of the ARC postcard information or a notification that the voter no longer resides in California, and then sent the voter a *forwardable* address confirmation notice that complies with Section 8(d)(2) of the NVRA. (See Section V, "Address Confirmation Notices; Updating, Inactivating, and Cancelling Voter Registration Records.")⁹

For voters who have an "inactive" voter registration status as the result of having been mailed an ARC postcard, the county elections official "shall" send a forwardable address verification mailing, as set forth in subdivision (c) of Section 2225. The voter registration record of a voter who fails to respond to the address verification mailing, and who does not offer to vote or vote at any election between the date of the mailing described in Section 2225 and two federal general elections after the date of that mailing, shall be canceled. (Elec. Code, § 2226(a)(3); see Section V, "Address Confirmation Notices; Updating, Inactivating, and Cancelling Voter Registration Records.")

⁹ The Stipulated Order in *Wilson v. United States of America*, is no longer applicable as it has since been superseded by legislative amendments.

V. Address Confirmation Notices; Updating, Inactivating, and Cancelling Voter Registration Records

If county elections officials receive information indicating that a voter has moved to a new address, county elections officials send address confirmation notices as provided in California law and in NVRA Section 8(d)(2), as described below. (Elec. Code, §§ 2155, 2225, 2226; 52 U.S.C. § 20507(c), (d) and (f).) This information may be received from the voter directly, NCOA information, as well as in response to VNCs, preelection residency confirmation postcards, or county voter information guides. (Elec. Code, §§ 2155, 2155.3, 2220, 2222, 2223, 2225.)

The address confirmation process may ultimately result in cancellation of a voter registration record.¹⁰ Cancellation of a voter registration record because of a change of address requires compliance with the address confirmation process outlined below, in accordance with NVRA Section 8(d)(2). Thus, all address confirmation notices sent to registrants who are believed to have moved out-of-state, have no forwarding address, or have mail returned as undeliverable with no forwarding address, must comply with Section 8(d)(2) in order for those registrations to be cancelled. (Elec. Code, § 2225(c).)

A. Address Confirmation Notices Sent for In-State Moves

If a county elections official receives a mailing **from the voter** indicating the voter has moved to:

- **a new address in the same county in which the voter is currently registered**, it will be treated as a notice of change of address. The county elections official immediately shall update the registration record to show the new address and send a VNC. (Elec. Code, § 2155.)
- **a new residence address in another county within California**, it will be treated as a notice of change of address. The county elections official in receipt of the change-of-address information shall not remove the voter as an active voter from their county, but instead immediately shall alert the county elections official associated with the new residence address about the voter's new residence address through use of the statewide voter registration system (in the statewide voter registration system this is known as the "push voter" function); the county elections

¹⁰ Under Section 8 of the NVRA and California law, a voter registration record may be cancelled for a variety of reasons, such as: by written request from the voter, because of death or the voter has been found to be mentally incompetent to vote, because the voter is serving a state or federal prison sentence or is on parole for the conviction of a felony, or following the process established in California law and in NVRA Section 8(d)(2), described below, for voters who have moved to a new address. (Elec. Code, § 2201; 52 U.S.C. § 20507(a)(3), (4).) Additional reasons for cancellation in California are: by court order, upon notification the voter is registered in another state, or upon proof that the person is ineligible to vote. (Elec. Code, § 2201.) Cancelled registration records may be disposed of after five (5) years. (Elec. Code, § 17000.)

official associated with the voter's new residence address shall send a VNC to the new address. (Elec. Code, § 2155.)

If a county elections official receives a mailing **returned by the post office with, or NCOA data** indicating a voter has moved to:

- **a forwarding or new address in the same county in which the voter is currently registered**, it will be treated as a notice of change of address. The county elections official immediately shall update the registration record to show the new address and send a *forwardable* mail notice of the address change and a postage paid, pre-addressed return form for the voter to verify or correct the address information, as described in Elections Code section 2225(b). (Elec. Code, §§ 2222, 2225(b), 2226(a)(1); 52 U.S.C. §§ 20507(c)(1)(B)(i), (d)(3), (f).)
- **a forwarding or new residence address in another county within California**, it will be treated as a notice of change of address. The county elections official in receipt of the change-of-address information shall not remove the voter as an active voter from their county, but instead immediately shall alert the county elections official associated with the new residence address about the voter's new residence address through use of the statewide voter registration system (in the statewide voter registration system this is known as the "push voter" function); the county elections official associated with the new residence address must send a *forwardable* mail notice of the address change and a postage paid, pre-addressed return form enabling the voter to verify or correct the address information, as described in Elections Code section 2225(b). (Elec. Code, §§ 2222, 2225(b), 2226(a)(1); 52 U.S.C. §§ 20507(c)(1)(B)(i), (d)(3).)

For these in-state moves, Elections Code section 2225(b) prescribes that the language of the *forwardable* mail notice:

We have received notification that you have moved to a new residence address in California. Your voter registration record has been updated to this new address. If this is correct, you do not have to take any action. If this is incorrect, you can notify our office by either returning the attached postage-paid postcard, or by calling toll free; you must notify us at least 15 days prior to the next election or you may be required to vote using a provisional ballot.

(This language is found in Appendix D, Recommended Language for List Maintenance Mailings; a diagram related to this and other mailings is attached as Appendix E.) A voter with an active voter status and a new valid address within California should not be placed on inactive status and

should not be subject to cancellation. Such a voter should not receive a Section 8(d)(2) notice. (Elec. Code, § 2225(e).)

B. Address Confirmation Notices Sent for Out-of-State Moves

If a county elections official receives a mailing **from the voter** indicating the voter has moved out of state, no address confirmation notice is required to be sent. Instead, the county elections official shall cancel the voter's record and send the required notification to the voter regarding the cancellation of the voter's record. (Elec. Code, § 2201(a); Cal. Code Regs., tit. 2, § 20070.)

If a mailing is returned by the post office with a **forwarding address outside California**, or if **NCOA data indicates a voter has moved outside California**, these should be treated as notices of change of address. The county elections official must send a *forwardable* address confirmation mailing to the voter. Upon the sending of this mail notice, the county elections official shall update the voter's record to "inactive." This mail notice must comply with the requirements of Section 8(d)(2), in order to initiate the cancellation process. (Elec. Code, §§ 2221(a)(1), 2225(c), (f); 52 U.S.C. § 20507(c)(1)(A), (B)(ii), (d)(1), (2)(A), (B), (3).)

The 8(d)(2) notice must provide a postage paid, pre-addressed return form for the voter to state his or her current address, and must explain that: (1) if the registrant did not change his or her residence, or changed residence within California, the registrant should return the card not later than 15 days prior to the date of the next election; (2) that if the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote 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; (3) if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters; and (4) if the registrant has changed residence to a place outside of California, the notice must include information concerning how the voter can continue to be eligible to vote. For example, information can be provided regarding the National Mail Voter Registration Form, which can be downloaded at: <https://www.eac.gov/voters/national-mail-voter-registration-form/>. (52 U.S.C. § 20507(d)(2); see *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833 (2018) attached as Appendix F.)

(Suggested language and format for 8(d)(2) notices is also found in Appendix D, Recommended Language for List Maintenance Mailings; a diagram related to this and other mailings is attached as Appendix E.)

C. Address Confirmation Notices Sent If No Forwarding Address

State law provides that notification received through **NCOA or Operation Mail that a voter has moved and has not given a forwarding address** requires the mailing of a *forwardable* notice to the voter. (Elec. Code, § 2225(a)(2).)

If a mailing is returned by the post office as **undeliverable and with no forwarding address**, in order to begin the cancellation process, the county elections official must send to the voter at that same address a *forwardable* address confirmation mailing that complies with Elections Code section 2225(c) (which refers to Section 8(d)(2) of the NVRA).

Upon the sending of this mail notice, the county elections official shall update the voter's record to "inactive." (Elec. Code, §§ 2221(a)(1), 2225(c), (f); 52 U.S.C. § 20507(d)(2)(A), (3).)

D. Updating or Inactivating Registrations Based on Responses to Address Confirmation Notices

If in response to any of the address confirmation notices described above (under Elections Code section 2225(b) or pursuant to Section 8(d)(2) of the NVRA), the voter provides written confirmation of a **change of address to a new residence address in California**, the county elections official immediately shall alert the county elections official associated with the new residence address about the voter's new residence address through use of the statewide voter registration system (in the statewide voter registration system this is known as the "push voter" function); the county elections official associated with the voter's new residence address shall then send a VNC to the new address to confirm the change in registration. (Elec. Code, §§ 2155, 2226(a)(1).)

1. Elections Code Section 2225(b)

If a voter does not return an address confirmation notice sent in accordance with Elections Code section 2225(b), the voter's status shall remain active.

If an address confirmation notice sent pursuant to Elections Code section 2225(b) is **returned as undeliverable**, in order to initiate the cancellation process, a *forwardable* address confirmation notice that complies with Section 8(d)(2) of the NVRA must then be mailed to the voter, and the voter's status shall be changed to inactive. (Elec. Code, §§ 2225(c), (f), 2226(a)(2).)

2. Elections Code Section 2225(c)/Section 8(d)(2) of the NVRA

If a voter does not return an address confirmation notice sent in accordance with Elections Code section 2225(c)/Section 8(d)(2) of the NVRA, the voter's status shall remain inactive. In accordance with NVRA section 8(d)(2), should the voter contact the county elections official at least 15 days prior to the next election, the county elections official will update the voter's voter registration record to that of active. (Elec. Code, § 2225(c).)

If an address confirmation notice sent pursuant to Elections Code section 2225(c)/Section 8(d)(2) of the NVRA is **returned as undeliverable**, the voter's status remains as inactive.

If, on or before the second general election for federal office after the address confirmation notice is sent, a voter with inactive status has not moved to a different state and (1) offers to vote in **any** election,¹¹ or (2) notifies the county elections official of continued residency, the county elections official shall restore the voter's status to active. (Elec. Code, § 2226(c); 52 U.S.C. § 20507(e).)

E. Cancelling Registrations After Two General Federal Elections

If a voter fails to return an address confirmation notice, sent in accordance with Section 8(d)(2) as set forth above, does not offer or appear to vote in any election within the next two federal general election cycles following the mailing of that notice; and does not notify a county elections official of continued residency within California,¹² the county elections official must update the voter's registration record to reflect that the registration is cancelled. (Elec. Code, §§ 2225(c), 2226(b); 52 U.S.C. §§ 21803(a)(4)(A), 20507(a)(4), (d)(3); see *Husted v. A. Philip Randolph Institute*, attached as Appendix F.)

¹¹ The following is a non-exhaustive list of examples of offering to vote: interactions with county elections official relating to the voter's registration record, submittal of a vote-by-mail application, and voting provisionally.)

¹² This notification to a county elections official may be made directly by the voter, or through a voter registration application or change-of-address information received from specific transactions at the DMV. (See Chapter 2, Voter Registration at Department of Motor Vehicles (DMV).)

Chapter 5
Provisional Voting

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I. California Law and Provisional Voting

California law provides that any voter claiming to be properly registered, but whose qualifications cannot be immediately established upon examination of the list of registered voters for the precinct or the records on file with the county elections official, is entitled to cast a provisional ballot. (Elec. Code, §§ 2300, 14310(a).)

The county elections official must advise voters of their right to cast a provisional ballot and must provide the voter with written instructions regarding the provisional voting process and procedures. State law requires people who vote a provisional ballot to execute, in the presence of the county elections official, a written affirmation, stating that they are eligible to vote and are registered in the county where they desire to vote. (Elec. Code, § 14310(a).)

Additionally, vote-by-mail voters shall be issued provisional ballots if: 1) they are unable to surrender their vote-by-mail ballot and the precinct board, vote center election board, or elections official cannot verify if the voters have returned their voted vote-by-mail ballot, and notate the voters' voter record accordingly or 2) they are unable to surrender their vote-by-mail ballot and the precinct board or elections official cannot readily determine if the voters are in the correct polling location. (Elec. Code, §§ 3016, 14310.)

Provisional ballot envelopes are delivered, along with regular ballots, to the county elections office canvassing area. Using the same procedures as used with vote-by-mail envelopes, the county elections official compares the signature for the provisional ballot with the signature on that voter's affidavit of registration. (Elections Code, § 3019.) If the signature does not match, the county elections official must follow specified procedures to notify the voter and allow the voter an opportunity to verify his or her signature before certification of the election. If the signature matches, the county elections official checks the voter registration database to verify whether the voter is properly registered to vote. Once the signature on the envelope has been verified and the voter's registration is confirmed, the ballot is separated from the envelope and counted as a regular ballot. Only the votes for contests for which the voter is eligible to vote are counted. If the voter's registration cannot be confirmed, the ballot is not counted, and the reason for not counting the ballot is recorded; however, beginning in 2019, by virtue of completing a provisional ballot envelope, voters may be registered for future elections. (Elec. Code, § 2160.)

Similar to HAVA, California law also requires the establishment of a Free Access System so the voter can find out if his or her provisional ballot has been counted. (Elec. Code, § 14310(d).) Information about how to access each county's Free Access System can be found on the Secretary of State's website at: www.sos.ca.gov/elections/ballot-status/.

Finally, California law provides that voters who have moved from one address to another within the same county and who have not notified the county elections official of their new address may vote provisionally on the day of the election at the polling place at which they are entitled to vote based on their new address, or at the county elections office, or at another central location designated by the elections office. (Elec. Code, § 14311.) As an alternative, conditional voter registration (CVR) and CVR provisional voting are available at all permanent offices of the county elections official, all vote centers, and designated satellite offices, which can include polling places if in compliance with Section 20023(d) of the California Code of Regulations. (Elec. Code, § 2170.)

California's provisional voting laws effectively comply with and compliment the NVRA "fail safe" protections and the HAVA provisional voting statutes.

II. NVRA "Fail Safe" Voting Requirements

Section 8¹ of the NVRA contains protections for voters that allow an eligible registered voter to cast a provisional ballot in California, if: 1) the voter has been placed on the inactive list or; 2) the voter moved to a new address inside the county but did not notify the county elections office before the election. The NVRA requires elections officials must allow these voters to update their registration and vote in the election using a provisional ballot envelope process. California law has provided for provisional voting since 1984 and meets the NVRA fail safe voting requirements.

III. The Help America Vote Act (HAVA) and Provisional Voting

Provisional voting is also mandated under the Help America Vote Act (HAVA) of 2002. Similar to the NVRA "fail safe" protections, provisional voting under HAVA is intended to prevent disenfranchisement of otherwise eligible voters due to voter registration errors or other unusual circumstances. HAVA requires provisional voting to be offered to voters when the voter's name does not appear on the roster or when the voter is required to provide identification under HAVA and is unable to provide identification. During the canvass period following each election, elections officials verify eligibility and registration before counting each provisional ballot. California law meets the HAVA provisional voting requirements.

IV. When Do Voters Cast a Provisional Ballot?

In counties that do not conduct elections using vote centers (see Elections Code section 4005), below are some of the common situations when a voter will need to cast a provisional ballot rather than a regular ballot:

¹ Throughout this chapter, "Section 8" refers to 52 U.S.C. § 20507.

- The voter moved but did not update his or her voter registration record to reflect the move;
- The voter's name does not appear on the list of registered voters and the eligibility to vote cannot be verified at the polling place;
- The voter's name (unless it is a changed surname) or address is different than that listed on the roster lists;
- The voter is required to provide identification under HAVA and is unable or refuses to provide proof of identity. Under HAVA, first-time voters who registered by mail – and for whom neither the social security number nor state identification number could be verified – may be required to provide proof of identity;
- The voter requested a vote-by-mail ballot, but cannot surrender his or her vote-by-mail ballot, AND your location cannot verify if the voter has already returned his or her voted vote-by-mail ballot, and cannot notate the voter's voter record accordingly;
- The voter is voting during polling place hours that have been extended by a state or federal court;
- The voter is registered to vote, but is attempting to vote in a precinct different from the one in which the voter is registered or assigned (this does not apply in counties that conduct elections using vote centers); or
- The voter is challenged and the challenge is not resolved in his or her favor.

In order to vote provisionally, the voter must sign a written affirmation of eligibility and registration on the provisional ballot envelope. After Election Day, county elections officials verify each provisional voter's registration and eligibility to vote and then count provisional ballots.

At the time a voter casts a provisional ballot, the elections official provides the voter with written information on how the voter can check whether his or her provisional ballot was counted. This can include visiting the Secretary of State's [My Voter Status](#) tool following the completion of the canvass.

Chapter 6

Recordkeeping and Reporting Requirements

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I. Overview

Section 8¹ of the NVRA requires states to keep and make available for public inspection for a period of two years, all records concerning the implementation of accurate and current voter registration lists. However, the NVRA requires records relating to a person's decision not to register to vote or the specific agency through which a person registered to vote to be kept confidential.

The records each state keeps under the NVRA must include lists of the names and addresses of voters who are sent confirmation notices and whether or not each voter responded to the confirmation notice.

Under the NVRA, as originally passed by Congress, states had reporting responsibilities to the Federal Elections Commission, which in turn reported biennially to Congress on the impact of the NVRA. With the passage of the Help America Vote Act (HAVA) of 2002, these reporting responsibilities were transferred from the Federal Election Commission to the United States Election Assistance Commission (EAC).

In order to meet its Congressional reporting responsibilities, the EAC has developed a state survey and requires the Secretary of State's office to submit its statewide report by March 31st of each odd-numbered year. The EAC survey gathers data on the number of voter registration applications by mail from motor vehicle offices, public assistance offices, offices providing state-funded programs primarily serving people with disabilities, Armed Forces recruitment offices, and other offices designated by states under the NVRA as voter registration agencies. States also report voter registration list maintenance information in response to the EAC survey every two years.

II. Information Collected and Reported

Federal regulations require the information below to be included in state reports to the EAC. The Secretary of State gathers this information from the counties and compiles one comprehensive report for the state of California. California's biennial reports to the EAC are found on the Secretary of State's website at www.sos.ca.gov/elections/voter-registration/nvra/reports/. Some of the categories of reporting include:

- A. The total number of registered voters statewide, including both active and inactive voters, in the federal general election two years prior to the most recent federal general election. HAVA requires that both are reported for those states that make a distinction between active and inactive voters.
- B. The total number of registered voters statewide, including both active and inactive voters, in the most recent federal election.
- C. The total number of new valid registrations accepted between the past two federal general elections, including all registrations that are new to the county

¹ Throughout this chapter, "Section 8" refers to 52 U.S.C. § 20507.

and re-registrations across county lines, but excluding all applications that are duplicates, rejected, or report only a change of name, address, or party preference within the same jurisdiction.

- D. The total number of registrants that were considered inactive at the close of the most recent federal general election.

County elections officials report to the Secretary of State the total number of voters who remain on the inactive section of the voter roll after the federal general election preceding their report. For example, this would be the number of voters in the inactive portion of the voter roll after re-activation of those inactive voters who voted a provisional ballot in that federal general election. (See Chapter 5 on provisional voting.)

- E. The total number of registrations that were cancelled from the registration list, including both active and inactive voters between the past two federal general elections.

County elections officials report to the Secretary of State the total number of voters removed from the voter rolls for any of the following reasons:

1. Death;
 2. Currently in state or federal prison or on parole for the conviction of a felony;
 3. Currently found to be mentally incompetent to vote by a court;
 4. Moved outside the state;
 5. Direct notice by the voter to the elections office, DMV, or other agency regarding a change of address outside the state or requesting removal from the voter roll; or
 6. NVRA Section 8(d)(2) notice and removal process. (See Chapter 4 on list maintenance.)
- F. The number of registration applications received (regardless of whether they were valid, rejected, duplicative, or indicated address, name or party preference changes) from or generated by each of the following categories:
1. Mailed VRCs - County elections officials report to the Secretary of State the number of Voter Registration Cards (VRC) from applicants residing in the county. The total number includes those VRCs forwarded from other county elections offices and the Secretary of State. This number does not include VRCs generated by the Department of Motor Vehicles (DMV) or other NVRA-designated voter registration agencies (VRAs).
 2. In-person
 3. Internet (via California's Online Voter Registration Application)

4. DMV - County elections officials report voter registrations received through DMV (See Chapter 2 for information on voter registrations completed at DMV.)
 5. Public Assistance Agencies (See Chapter 3 for listing of these VRAs.)
 6. State-Funded Agencies Primarily Serving Persons with Disabilities (See Chapter 3 for listing of these VRAs.)
 7. Armed Forces Recruitment Offices
 8. Other Agencies Designated by the State under NVRA
 - Franchise Tax Board offices
 - Department of Tax and Fees Administration offices
- G. The total number of duplicate registration applications received between the past two federal general elections in the appropriate elections office broken down by category.

For NVRA purposes, “duplicate” registration application means a VRC from a person already registered to vote at the same address, under the same name, and with the same political party preference.

- H. The number of confirmation notices mailed out between the past two federal general elections and the number of responses received to these notices during the same period. (See Chapter 4 on list maintenance.)

III. Tracking and Reporting Registrations at Voter Registration Agency Offices

- A. County elections officials distribute VRCs to the Voter Registration Agency (VRA) Offices. (Elec. Code, § 2405(b)(1).)
- B. County elections officials are responsible for tracking ranges of the serial numbers on the VRCs assigned to each VRA office. (Elec. Code, § 2405(b)(2).) The VRAs, in turn, may want to track which batch they provide to each of their programs or sites.
- C. County elections officials track the number of these completed cards that are returned from each VRA office and report those numbers to the Secretary of State’s office on a monthly basis. (Elec. Code, §§ 2405(b)(2), 2407.) This helps identify those VRAs that are doing well, and those that might need further training in providing the voter registration opportunity to their clients and/or assisting applicants to properly complete VRCs.

The NVRA requires that States ensure that the identity of the voter registration agency through which a voter is registered is not disclosed to the public. This provision requires that local elections officials and VRAs establish procedures to ensure that such disclosure does not take place. As authorized by state law,

voter records are provided to campaigns, journalists, academic institutions, or others upon request; however, information regarding the VRA a voter used to register to vote through is never provided.

- D. The Secretary of State's office completes the county elections officials' duties with respect to the following VRAs: offices serving students with disabilities at the campuses of University of California, California State University, and California Community Colleges, and the office of Services to the Blind, Assistance Dog Special Allowance Program.

Additionally, the Secretary of State complies a report of online registrations generated by unique URLs provided to VRAs.

IV. Information Maintained and Disclosed to the Public

The NVRA requires states to maintain for a minimum of two years and “make available for public inspection 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 official list of eligible voters, except to the extent that such records relate to a declination to register to vote or to identify a voter registration agency through which any particular voter is registered.” The NVRA provides that these records shall include “lists of the names and addresses” of all persons to whom NVRA Section 8(d)(2) notices have been sent and information concerning whether the person has responded to such notice. (For information on Section 8(d)(2) notices, see Chapter 4, Section V, “Address Confirmation Notices; Updating, Inactivating, and Cancelling Voter Registration Records.”)

V. Additional Information

In addition to the above information, the Secretary of State asks county elections officials to report, in narrative form, any comments or suggestions they may have for improving NVRA efforts to meet the goals and intent of the NVRA.

Chapter 7

The National Mail Voter Registration Form

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I. General Information and Background

The National Voter Registration Act of 1993 (NVRA) required the Federal Election Commission (FEC) to design a national mail voter registration form (National Form), in consultation with state elections officials. The NVRA also required states to accept voter registrations submitted by mail using the National Form.

In 1994, the FEC created the National Form after consulting with state and county elections officials, social service agencies, and advocacy groups. Since each state has its own voter registration requirements and forms, the FEC took into consideration the various paper sizes, voter information, and voter registration database technologies used in the states in designing the National Form. The National Form is similar to the California Voter Registration Card (VRC) but there are a number of differences detailed below.

The National Form can be printed from the Election Assistance Commission (EAC) website at www.eac.gov. The Secretary of State and county elections offices can make available paper copies of the National Form upon request.

The National Form may be used to register to vote in any state. The form includes general instructions as well as state-specific instructions on how to complete the form. Since the United States has no national or federal voter registration system, completed forms are sent to the appropriate county elections office and are processed in the same manner as the state VRC.

II. Use of the National Form

The vast majority of voters continue to use the state VRC to register to vote, and elections officials may continue to encourage use of the state VRC. However, elections officials must make the National Form available upon request and may wish to provide the National Form to organizations targeting outreach efforts to more than one state. Individuals and groups who may prefer to use the National Form include:

- College students who want to register to vote in the state where they permanently reside;
- Political party convention organizers;
- Travelers from out-of-state; and
- Military personnel.

III. Distribution of National Form to Counties

The Secretary of State provides both the state VRC and the National Form to counties upon request. However, since the National Form may be downloaded and printed directly from the EAC website, county elections officials typically only place orders for

supplies of the state VRC. The Secretary of State invites each county to place orders for VRC supplies four times a year, at the beginning of each quarter.

Additionally, the Secretary of State has designed a website that provides an online voter registration application at RegisterToVote.ca.gov. This application is available in English, Spanish, Chinese, Hindi, Japanese, Khmer, Korean, Tagalog, Thai, and Vietnamese.

IV. Items on the National Mail Voter Registration Form

The form requests the following information:

Name: Last, first, and middle, any suffix – such as “Jr.,” and any prefix – such as “Mr.” or “Ms.”

Home Address: Street address, Apt. Lot #, City/Town, State, Zip Code. The instructions direct applicants not to list a post office box or rural route without a box number. For applicants who live in rural areas or non-traditional homes, the National Form provides a space for people to draw a residence map.

Mailing Address: If different from home address.

Date of Birth: Month, day and year of birth.

Telephone Number: Optional.

ID Number: The California instructions for the National Form require applicants to provide either a California driver license or California identification card number (DL/ID), if the applicant has one, or the last four digits of their social security number, if any. If this information is not included, the applicant will be required to provide identification when they vote for the first time.

Choice of Party: Unlike the state VRC, which provides checkboxes for qualified political parties, the National Form simply provides a blank space to fill in the name of a political party. The California instructions for the National Form ask applicants to write the name of a political party, or “No Party Preference” to state” to indicate that the application does not have a party preference. The California instructions also encourage applicants to contact the Secretary of State at 1-800-345-VOTE (8683) or visit www.sos.ca.gov to get a list of qualified political parties and to learn which political parties allow voters with no political party preference to participate in presidential primary elections.

Race or Ethnic Group: Similar to the state VRC, the National Form provides a blank space for applicants to fill in a race or ethnic group. The California instructions for the National Form direct applicants to leave this field blank, because county elections officials do not enter data from this field into the voter registration database.

Signature: Applicants must sign and date the National Form and affirm that they:

1. Are a United States citizen,
2. Meet state eligibility requirements and subscribe to any state oath required; and
3. Have provided true information to the best of their knowledge under penalty of perjury.

The California instructions for the National Form clarify that to register in California, the applicant must be:

1. A U.S. citizen;
2. A resident of California;
3. At least 18 years old at the next election in order to vote;
4. Not currently in state or federal prison or on parole for the conviction of a felony;
and
5. Not currently found to be mentally incompetent to vote by a court.

Name, address, and phone of anyone who helped the applicant: If the applicant is unable to sign, the general instructions for the National Form provide a space at the end of the form for the name, address, and phone of the person who helped the applicant complete the form. This information must only be included if the applicant is unable to sign. [Note: Phone number is optional.] By contrast, the state VRC contains a space for the contact information of anyone who assists the applicant in completing *any part* of the VRC, regardless of whether the applicant is able to sign the VRC.

Change of name: The National Form provides a space for a prior name, if the form is used for a name change.

Change of address: The National Form provides a space for a prior address, if the form is used for an address change.

Map: As noted above, the National Form provides a space to draw a residence map for applicants who live in rural areas or non-traditional homes.

While the state VRC requests the additional information below, the National Form does **not** request the following:

- California county
- Foreign country
- U.S. state or foreign country of birth
- Vote By Mail Choice
- Email address
- Text messaging

- Language Preference
- Accessible format

V. Format and Layout of the National Form

The National Form fits onto regular 8.5" × 11" paper and can be printed from the Internet. The form includes General Instructions and specific State Instructions for each state on how to complete the form. Currently, the National Form is available in English, Spanish, Chinese, Japanese, Korean, Tagalog, Vietnamese, Hindi, Bengali, and Khmer. The National Form does not contain a return postage stamp.

By contrast, under current state law and regulations, the state VRC is printed on paper of a special size and weight and contains a unique affidavit number. The VRC also contains a return address of local elections officials or the Secretary of State, depending on the VRC and can be mailed without a postage stamp. These restrictions prevent the state VRC from being printable from the Internet.

Elections officials **must** accept copies of the National Form printed from a computer image of the form, as long as the form is completed and signed by the applicant and either hand-delivered or mailed with first class postage.

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B – Image of Voter Registration Card

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F – *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833 (2018)

A – Voter Preference Form (in English)

If you are not registered to vote where you live now, would you like to apply to register to vote here today?
(Check One)

- Already registered. I am registered to vote at my current residence address.
- Yes. I would like to register to vote. (Please fill out the attached voter registration form.)
- No. I do not want to register to vote.

NOTE: IF YOU DO NOT CHECK A BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME. YOU MAY TAKE THE ATTACHED VOTER REGISTRATION FORM TO REGISTER AT YOUR CONVENIENCE.

Applicant Name _____

Date _____

Important Notices

1. Applying to register or declining to register to vote will **not** affect the amount of assistance that you will be provided by this agency.
2. If you would like help in filling out the voter registration form, we will help you. The decision whether to seek or accept help is yours. You may fill out the voter registration form in private.
3. If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party preference or other political preference, you may file a complaint with the Secretary of State by calling toll-free (800) 345-VOTE (8683) or you may write to: Secretary of State, 1500 - 11th Street, Sacramento, CA, 95814. For more information on elections and voting, please visit the Secretary of State's website at www.sos.ca.gov.

B – Image of Voter Registration Card



California Voter Registration/Pre-Registration Application SOS

Print clearly using blue or black ink. Use this form if you: (1) are a new voter, (2) are pre-registering to vote, (3) have changed your name, (4) have moved and need to update your voter registration address, or (5) want to change your political party preference. **You can also register to vote online at RegisterToVote.ca.gov.**

Qualifications

1 I am a U.S. citizen and resident of California Yes No If "No," you CANNOT register.

I am 18 or older Yes No Only choose one.

I am 16 or 17 and want to pre-register Yes No

Your legal name

2 Mr. Ms. Mrs. Miss (optional)

First _____ Middle _____

Last (including suffix, such as Jr., Sr., III) _____

Identification

If you do not have a CA driver license or CA ID card, list the last 4 numbers of your Social Security Number (SSN), if you have one.

3 Date of birth

California driver license or ID card # _____ SSN (last 4 numbers) X X X - X X - _ _ _ _

U.S. state or foreign country of birth _____

The address where you live

Do not use a P.O. Box #

4 Home address _____ Apt or Unit # _____

City _____ State CA Zip _____ California county _____

If you do not have a street address, describe where you live including cross streets, Route, N, S, E, W, etc. _____

The address where you receive mail

Skip if same as address above.

5 Mailing address – if different from above or a P.O. Box # _____

City _____ State _____ Zip _____ Foreign country _____

Registration history

If you were previously registered or pre-registered to vote, fill out this section.

6 First name _____ Middle initial _____ Last name _____

Previous address _____ City _____

State _____ Zip _____ Previous county _____ Previous political party preference (if any) _____

Vote by mail

7 I want to get my ballot by mail before each election. Yes* No

*If "Yes," you will get your ballot by mail before each election but, if you want to vote in person, you must turn in your ballot or vote a provisional ballot.

Political party preference

If you choose "No Party/None," you may not be able to vote for some parties' candidates at a primary election for U.S. President, or for a party's central committee.

8 I want to choose a political party preference

American Independent Party

Democratic Party

Green Party

Libertarian Party

Peace and Freedom Party

Republican Party

Other (specify): _____

I do not want to choose a political party preference

No Party / None

Optional voter information

9 Email (optional) _____

() _____

Phone number (optional) _____

My language preference for receiving election materials is:

English Spanish Español Chinese 中文 Hindi हिंदी Japanese 日本語

Khmer ខ្មែរ Korean 한국어 Tagalog Thai ไทย Vietnamese Việt ngữ

Other language: _____

I want voting materials in an accessible format.

I want to be a poll worker.

My ethnicity/race is: _____

Affidavit

You must sign in the red box for your registration to be complete.

10 I swear or affirm that:
I am a U.S. citizen and a resident of California and at least 16 years old. I am not currently in state or federal prison or on parole for the conviction of a felony. I am not currently found mentally incompetent to vote by a court. I understand that it is a crime to intentionally provide incorrect information on this form. I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct.

X _____ / /

Signature Date Signed Month Day Year

Did someone help you fill out or deliver this form?

If "yes," the person who helped you must fill out and sign both parts of this blue box.

Signature _____ Date ____/____/____

Name, address, and phone #: _____

Org. name and phone #: _____

Signature _____ Date ____/____/____

Name, address, and phone #: _____

Org. name and phone #: _____

59 BI

(This part is the voter's receipt.)

The law protects your voter registration information against commercial use. Report any problems to the Secretary of State's Voter Hotline: (800) 345-8683.

Tear here and fold. Tape to seal. Do not staple. The bottom part is your receipt. Keep it until you receive a notice from your county elections official.

Fold 5.667"

Fold 5.667"

Fold 11.334"

Fold 11.334"

Perf 15.4141"

Perf 15.4141"

C – Guidance Document: Updating Voter Registration Dates



Guidance: Updating Voter Registration Dates

Issuance Date: June 24, 2016

Revision Date: July 22, 2019

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Purpose

The purpose of this document is to standardize and make consistent the process used by California counties to add and update voter registration dates.

VoteCal requires a standardized process for voter registration dates across the 58 counties to provide a consistent process for VoteCal to function as expected. This document provides guidance for the counties for adding and updating voter registration dates and related fields in VoteCal.

Guidance

Voter registration dates and related fields (registration source, form type, and delivery method) are to be updated, based on the tables below, whenever a registration, reregistration, or address change for a voter has been accepted and the voter record is updated. The VoteCal Official List extracts include voters eligible for an election based on the precinct and registration date associated with the voters' records. A voter is eligible for an election if they are registered on or before the election registration close date. When a voter's address is updated without a corresponding registration date update, the voter's eligibility to vote in a jurisdiction is determined based on the registration date on file, which may be a date prior to the change of address. The VoteCal public access website uses the same logic and as such may display that a voter is eligible for an election (after the registration close date) when in fact they are not eligible to vote. Additionally VoteCal uses the registration date (among other events) for determining match criteria and choosing the appropriate surviving record. Accordingly, harmonizing registration date update procedures is critical to facilitating a functioning statewide database.

Registration Date Updates

The VoteCal Project Team – working closely with the CACEO's Business Process Committee (BPC) - has identified the following process for adding and updating voter registration dates.

Table 1 - Voter Registration Dates provides guidance on what date to use when updating the Registration Date.

Note: The Elections Code (EC) sections and California Code of Regulations (CCR) sections cited below do not prescribe the specific guidelines as described in the following table. The EC and CCR sections provide supporting information and the premise for developing the below guidelines.

Table 1: Voter Registration Dates

Address Change Type	Standard Registration Date	Exception Registration Date
New Voter Registration Affidavits		
Completed Registration Affidavit (including paper and online (COVR) registrations) (EC §§ 2102, 2196; CCR § 19050.7)	Update the registration date to the date the affidavit is received by the Secretary of State (SOS) or County Elections Official (County).	If the registration is received in the mail after E-15 but postmarked prior to E-15, backdate the registration date to E-15.



Guidance: Updating Voter Registration Dates

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Address Change Type	Standard Registration Date	Exception Registration Date
<p>Unsigned Voter Registration Affidavit (including paper and online (COVR) registrations) (EC §§ 2102, 2153, 2154, 2196)</p> <ul style="list-style-type: none"> Signature Missing <p>Note: SOS recommends holding an incomplete Voter Registration Affidavit for up to 180 days to allow the registrant time to provide the information. If the information is not received within 180 days the County may reject the incomplete affidavit.</p>	<p>Once the signature is received by the County the following occurs:</p> <p>For Paper Affidavits: Update the registration date to the date the unsigned affidavit is initially received by the SOS or County (follow EC section 2102 on received date).</p> <p>For Online Registrations: Update the registration date to the electronic date the online registration was initially received by the County.</p>	<p>No exceptions</p>
<p>Pre-Registrations that are eligible for the election (with a complete registration)</p>	<p>When activating the voter, update the registration date to the date the voter turns 18. (EC § 2102(d))</p>	<p>If voter turns 18 within 60 days of the election, activate the voter and backdate the registration date to no later than E-15. The County shall liberally construe this exception in favor of the voter. (EC § 14312)</p>
<p>Incomplete Voter Registration Affidavit (including paper and online (COVR) registrations) (EC § 2154; CCR § 20108.18)</p> <ul style="list-style-type: none"> Date of Birth “PO Box” as Residence Address Business or Nonexistent Address – Entered in System Name Citizenship box <p>Note: SOS recommends holding an incomplete Voter Registration Affidavit for up to 180 days to allow the registrant time to provide the information. If the information is not received within 180 days, the County may reject the incomplete affidavit.</p>	<p>Update the registration date to the date the affidavit is complete and received by the County.</p>	<p>If the missing information is received E-14 through County certification of the election, back date the registration date to E-15.</p>



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Address Change Type	Standard Registration Date	Exception Registration Date
<p>Registrations from National Voter Registration Act (NVRA) Agencies (VRAs) & DMV (EC § 2102)</p>	<p>VRA: Update the registration date to the date the VRA accepted it.</p> <p>DMV: Update the registration date to the date the registration was submitted to DMV.</p>	<p>VRA: For paper affidavits: If not date stamped by VRA, update the registration date to the date the affidavit is received by the SOS or County.</p> <p>VRA: For COVR: Date/Time when voter hits submit</p> <p>DMV: The SOS receives and passes down the effective date. DMV populates the effective date depending on the source.</p> <p>Paper Change of Address Form (Mailed to or Dropped off at Field Office): Date of Field Office Stamp</p> <p>Paper Change of Address Form (Mailed to Headquarters): Date of DMV Headquarters Mail Room Stamp (or Date Received)</p> <p>Change of Address Form (Online): Date/Time when customer hits submit</p> <p>Driver License Renewal Form (Online): Date/Time when customer hits submit</p> <p>Driver License Form (Field Office Transactions [paper or electronic (EDL44) completed in Field Office]): Date DMV Customer visits field office and completes transaction</p> <p>Driver License Renewal Form (Mailed to Headquarters): DMV Vendor Delivers documents to the Remittance Section at DMV HQs</p>
<p>New Resident Affidavit (EC §§ 3400-3408) {follow code updates, anticipate deleting after 2019 Leg. Session}</p>	<p>Update the registration date to the date the affidavit is received by the SOS or County.</p>	<p>If the registration is received E-14 through E-7, back date the registration to E-15.</p>



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Address Change Type	Standard Registration Date	Exception Registration Date
New Citizen Affidavit (EC §§ 3500-3503) {follow code updates, anticipate deleting after 2019 Leg. Session}	Update the registration date to the date the affidavit is received by the SOS or County.	If the registration is received E-14 through the close of election day, back date the registration date to E-15.
First Party Address Changes		
Signed Request from the Voter to Change Address (i.e. letter, returned 8d2 card, returned RCP, ARC, VNC, CAN, Credit Reporting Agency, etc.) (EC § 2119)	Update the registration date to the date the notification was received by the County.	If received after E-15, but is postmarked with a date on or before, backdate the registration date to E-15. Otherwise use date the notification was received by the County.
Provisional Voting for Voters who Moved within the same County – also known as Failsafe Voting (EC § 14311)	If deemed valid, update the registration date to date received.	No exceptions
DMV Change of Address (DMV COA) (EC § 2263; C.C.R. § 20108.51)	Update the registration date to the DMV COA effective date. The effective date is the date embedded in each record.	No exceptions
Third Party Address Changes		
National Change of Address (NCOA) (EC § 2222) – Residential Address	Update the registration date to the date embedded in the record. Since NCOA only contains a month and year, apply the 1 st day of the month.	No exceptions
Electronic Address Change Service (ACS) notifications – Residential Address	Update the registration date to the date embedded in the record. Since ACS only contains a month and year, apply the 1 st day of the month.	No exceptions
Manual Address Change Service (ACS) notifications (NIXIE tabs) – Residential Address	If any residence address update: Update the registration date to the date the notification was received by the County. If no address update: No change to registration date.	If the notification is received in the mail between E-15 and Election Day, back date the registration date to E-15.
Residency Confirmation Postcard (RCP) Change of Address and Alternate Residency Confirmation Postcard (ARC) (EC §§ 2220, 2224)	Depending on info on returned card, follow either 1 st party or 3 rd party return rules.	If the RCP or ARC is received in the mail after E-15 but postmarked prior to E-15, back date the registration date to E-15.



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Address Change Type	Standard Registration Date	Exception Registration Date
Consumer Credit Reporting Agency (EC § 2227)	No Registration date change, depending on info returned from voter, follow either 1 st party or 3 rd party return rules.	No exceptions

Additional Registration Information Updates

In addition to updating the registration date, counties shall also update the registration source, registration form type, and registration delivery method any time the registration date is updated in order to support the NVRA reporting requirements and complete the bi-annual survey conducted by the Elections Assistance Commission (EAC).

Table 2: Corresponding Registration Date Fields provides the corresponding EMS field names and descriptions for each field.

Table 2: Corresponding Registration Date Fields

VoteCal Field Name	DFM Field Name	ESSVR Field Name	Description
Registration Source	Reg Source/Location	Source	The location where the registration originated. (Where did the form come from?)
Registration Form Type	Reg Form Type	Type	The type of voter registration form.
Registration Method	Reg Method	Delivery	The way in which the County received the registration. (How was the form delivered to the County?)

The VoteCal standard values for the registration source, registration form type, and registration delivery method are listed below. Due to specific EMS or county preferences, there may not be exact equivalents configured in your county for each value in the VoteCal standard values below. Counties are expected to select the option that most closely represents the appropriate registration source, registration form type, and registration method.

VoteCal Standard Values for Registration Source

- Address Change Service (ACS) Notifications
- Armed Forces Recruiting Centers
- California Department of Tax and Fee Administration
- California Health Benefit Exchange Email
- California Health Benefit Exchange Website
- Consumer Credit Reporting Agency
- County Health/ Social/ Human/ Family/ In-Home Services
- Deaf/Hard of Hearing Services



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- Department of Motor Vehicles
- Department of Motor Vehicles by Mail
- Department of Public Social Services
- Department of Rehabilitation
- Failsafe Provisional Envelope
- Federal Government Website (NVRA)
- Franchise Tax Board
- Independent Living Center
- Mental Health Services
- National Change of Address (NCOA)
- Office/In Person
- Online Voter Registration
- Other
- Other County Registrar
- Other Designated Agency not listed above
- Other Public Assistance Agency not listed above
- Other received by mail and not included above
- Regional Center
- Registration drives from advocacy groups or political parties
- Secretary of State
- Signed Request from Voter to Change Address
- State-assisted Disability Service Organizations
- Women, Infants, and Children

VoteCal Standard Values for Registration Form Type

- Affidavit Printed Online
- Affidavit (SOS)
- Alternate Residency Confirmation Postcard (ARC)
- Change of Address Notification
- DMV Notice of Change of Address
- Electronic (Online)
- Federal Form (NVRA)
- Federal UOCAVA Reg VBM Application Postcard
- Federal VRC (UOCAVA use only)
- Federal Write-in Vote-By-Mail Ballot (FWAB) (UOCAVA use only)
- Provisional Ballot
- Residency Confirmation Postcard (RCP) Change of Address
- State VRC (UOCAVA use only)
- 8D2 Confirmation Cards/Change of Address Notification (CAN)
- Other

VoteCal Standard Values for Registration Delivery Method

- DMV COA
- DMV DL/ID Renewal by Mail



Guidance: Updating Voter Registration Dates

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- DMV Field Office (DL44)
- Email
- Fax (military and overseas voters)
- In Person/In Office/ROV
- Mail (from Registration Drive)
- Mail (from SOS)
- Mail (must have a postmark)
- National Change of Address (NCOA)
- Online via the SOS Website
- Other
- Other Social Service Agencies (NVRA) (future use)
- Pluggable Voter Interface
- Polls
- Registration Drive (delivered by drive organizers)
- Secretary of State
- UOCAVA-Federal VRC
- UOCAVA-Federal Write-in Vote-By-Mail Ballot (FWAB)
- UOCAVA-Federal Registration/Vote-By-Mail Application Postcard
- UOCAVA-State VRC
- VoteCal Message

Contact Information

For questions or to report issues contact the SOS VoteCal Help Desk at 888-868-3225 or email VoteCalHelp@sos.ca.gov

D – Recommended Language for List Maintenance Mailings

Appendix D

Recommended Language for List Maintenance Mailings in Compliance with California Elections Code and Section 8d2 of the NVRA

Elections Code Section 2155 – Voter Notification Card (VNC):

VOTER NOTIFICATION

You are registered to vote. The party preference you chose, if any, is on this card. This card is being sent as a notification of:

1. Your recently completed affidavit of registration.

OR,

2. A change to your registration because of an official notice that you have moved. If your residence address has not changed or if your move is temporary, please call or write to our office immediately.

OR,

3. Your recent registration with a change in party preference. If this change is not correct, please call or write to our office immediately.

You may vote in any election held 15 or more days after the date on this card.

Your name will appear on the roster kept at the polls.

Please contact our office if the information shown on the reverse side of this card is incorrect.

Elections Code Section 2220(a) – Preelection Residency Confirmation Postcard:

We are requesting your assistance in correcting the addresses of voters who have moved and have not reregistered.

1. If you still live at the address noted on this postcard, your voter registration will remain in effect and you may disregard this notice.

2. If the person named on this postcard is not at this address, please return this postcard to your mail carrier.

Elections Code Section 2223 – County Voter Information Guide:

Address Correction Requested and Notice:

If the person named on the county voter information guide is not at the address, please help keep the voter rolls current and save taxpayer dollars by returning this county voter information guide to your mail carrier.

Elections Code Section 2225(b) –

We have received notification that you have moved to a new residence address in California. Your voter registration record has been updated to this new address. If this is correct, you do not have to take any action. If this is incorrect, you can notify our office by either returning the attached postage-paid postcard, or by calling toll free; you must notify us at least 15 days prior to the next election or you may be required to vote using a provisional ballot.

Elections Code Section 2225(c) –

See: Section 8(d)(2) of the NVRA

Elections Code Section 2227 – Consumer Credit Reporting Agency:

We have received notification that you have moved to a new residence address in _____ County. You will remain registered to vote at your old address unless you notify our office that the address to which this card was mailed is a change of your permanent residence. Please notify our office in writing by returning the attached postage-paid postcard. If this is not a permanent residence, and you do not wish to change your address for voting purposes, please disregard this notice.

Section 8(d)(2) of the NVRA:

To avoid cancellation of your voter registration, complete, sign and return the attached card confirming or updating your address.

DID YOUR ADDRESS CHANGE? We received information that your residence and/or mailing address has changed. Please confirm or correct these changes by completing that attached card and returning it to us **as soon as possible and at least 15 days before the date of the next election.**

IF YOU MOVED WITHIN [insert name of county] COUNTY OR TO ANOTHER CALIFORNIA COUNTY: Confirm your address using this card, and your voter registration will be updated to reflect your new address. You may also update your address by re-registering to vote online at RegisterToVote.ca.gov or by calling **[insert toll free number]**.

IF YOU MOVED OUT OF CALIFORNIA: Contact your local elections official to register to vote in your new state, or complete and return the National Mail Voter Registration Form available at: www.eac.gov/voters/national-mail-voter-registration-form

IF YOU DO NOT RETURN THIS CARD: You must return this card or update your address at least 15 days before the date of the next election or you may be required to confirm your address in order to vote. **If you do not return this card or update your address and if you do not vote in any election on or before the [insert date of federal general election two cycles from the date of printing] General Election, your voter registration will be cancelled. You will then need to re-register.**

[Attachment: Los Angeles County's Section 8(d)(2) mailing]



Los Angeles County
 Registrar-Recorder/County Clerk
 P.O. Box 30450
 Los Angeles, CA 90030-0450

PRESORTED
 FIRST-CLASS MAIL
 U.S. POSTAGE
 PAID
 LOS ANGELES, CA
 PERMIT NO. 36426



FORWARDING SERVICE REQUESTED

IMPORTANT VOTER NOTICE – RESPONSE NEEDED

DO WE HAVE YOUR CORRECT ADDRESS?

SAMPLE

VOTER NAME:

ADDRESS WHERE YOU LIVE:

YOUR MAILING ADDRESS:

VID:

Check **ONLY one box**

- The person named on this card no longer lives at this address.
- The address information above is correct. Please sign below and return this card.
- The address information above is wrong. Please provide the correct information below. Sign and return this card.

The address where I currently live is:

Street Number, Street Name, Apt #: _____

City, State, Zip Code: _____

My current mailing address is (if different from residence address above):

Street Number, Street Name, Apt #: _____

City, State, Zip Code: _____

Please sign and return by mail. No postage necessary.

This card cannot be processed without your signature.

Signature (DO NOT PRINT)

Telephone

Date



To avoid cancellation of your voter registration, complete, sign and return the attached card confirming or updating your address.

DID YOUR ADDRESS CHANGE? We received information that your residence and/or mailing address has changed. Please confirm or correct these changes by completing the attached card and returning it to us as soon as possible and at least 15 days before the date of the next election.



IF YOU MOVED WITHIN LOS ANGELES COUNTY OR TO ANOTHER CALIFORNIA COUNTY: Confirm your address using this card, and your voter registration will be updated to reflect your new address. You may also update your address by re-registering to vote online at RegisterToVote.ca.gov or by calling 1-800-815-2666 (Option 2).



IF YOU MOVED OUT OF CALIFORNIA: Contact your local elections official to register to vote in your new state, or complete and return the National Mail Voter Registration Form available at: www.eac.gov/voters/national-mail-voter-registration-form

IF YOU DO NOT RETURN THIS CARD: You must return this card or update your address at least 15 days before the date of the next election or you may be required to confirm your address in order to vote. **If you do not return this card or update your address and if you do not vote in any election on or before the November [redacted] General Election, your voter registration will be cancelled. You will then need to re-register.**

1-800-815-2666 (Option 2)

LAVote.net

voterinfo@rcc.lacounty.gov



NO POSTAGE
NECESSARY IF
MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO. 31128 LOS ANGELES, CA 90030

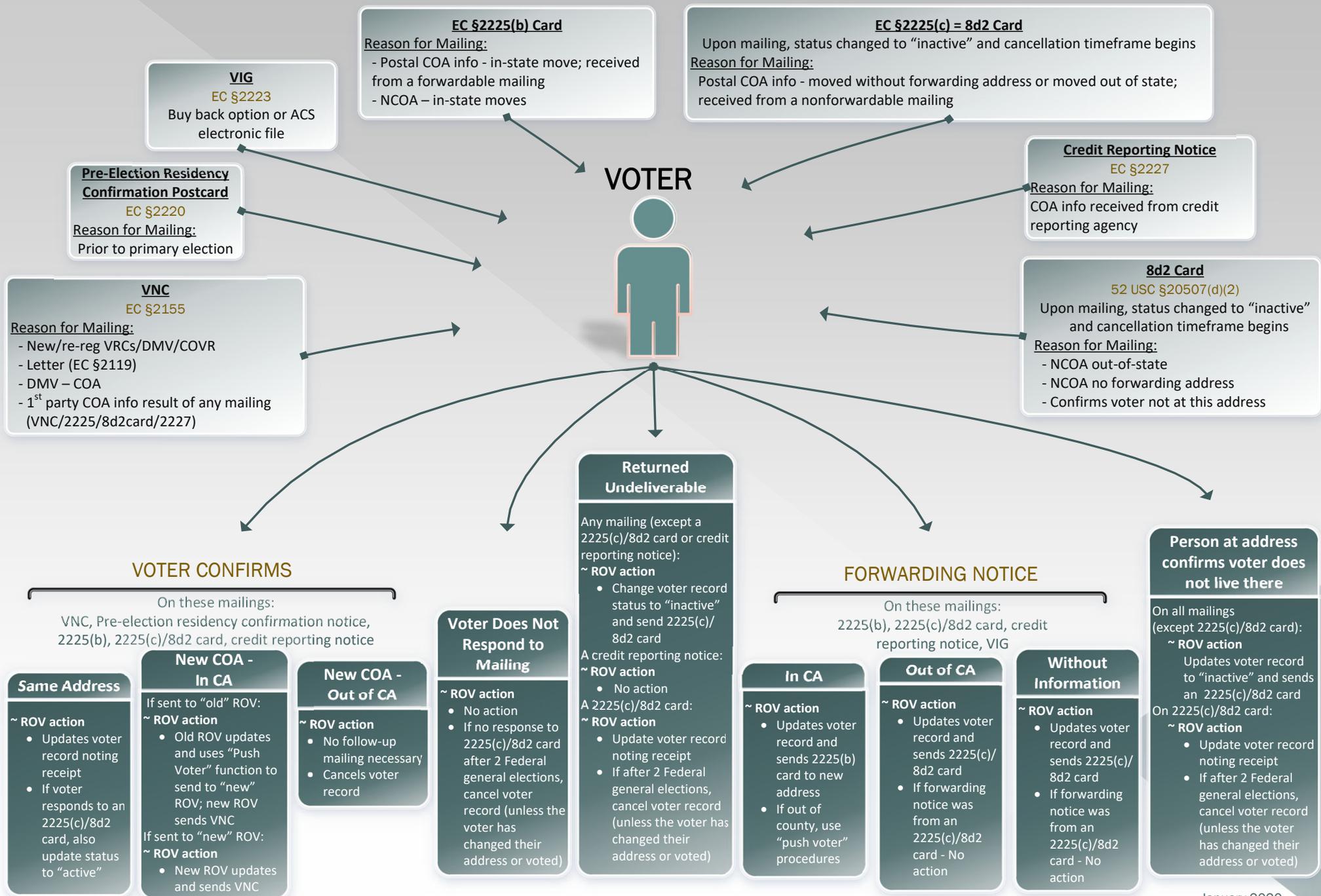
POSTAGE WILL BE PAID BY ADDRESSEE



LOS ANGELES COUNTY
REGISTRAR-RECORDER/COUNTY CLERK
P.O. BOX 30960
LOS ANGELES, CA 90099-9283

E – Diagram: List Maintenance Mailings

LIST MAINTENANCE MAILINGS



F – *Husted v. A. Philip Randolph Institute* (2018)

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

**HUSTED, OHIO SECRETARY OF STATE *v.* A. PHILIP
RANDOLPH INSTITUTE ET AL.****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT**

No. 16–980. Argued January 10, 2018—Decided June 11, 2018

The National Voter Registration Act (NVRA) addresses the removal of ineligible voters from state voting rolls, 52 U. S. C. §20501(b), including those who are ineligible “by reason of” a change in residence, §20507(a)(4). The Act prescribes requirements that a State must meet in order to remove a name on change-of-residence grounds, §§20507(b), (c), (d). The most relevant of these are found in subsection (d), which provides that a State may not remove a name on change-of-residence grounds unless the registrant either (A) confirms in writing that he or she has moved or (B) fails to return a preaddressed, postage prepaid “return card” containing statutorily prescribed content and then fails to vote in any election during the period covering the next two general federal elections.

In addition to these specific change-of-residence requirements, the NVRA also contains a general “Failure-to-Vote Clause,” §20507(b)(2), consisting of two parts. It first provides that a state removal program “shall not result in the removal of the name of any person . . . by reason of the person’s failure to vote.” Second, as added by the Help America Vote Act of 2002 (HAVA), it specifies that “nothing in [this prohibition] may be construed to prohibit a State from using the procedures” described above—sending a return card and removing registrants who fail to return the card and fail to vote for the requisite time. Since one of the requirements for removal under subsection (d) is the failure to vote, the explanation added by HAVA makes clear that the Failure-to-Vote Clause’s prohibition on removal “by reason of the person’s failure to vote” does not categorically preclude using nonvoting as part of a test for removal. Another provision makes this point even more clearly by providing that “no registrant

Syllabus

may be removed *solely* by reason of a failure to vote.” §21083(a)(4)(A) (emphasis added).

Respondents contend that Ohio’s process for removing voters on change-of-residence grounds violates this federal law. The Ohio process at issue relies on the failure to vote for two years as a rough way of identifying voters who may have moved. It sends these nonvoters a preaddressed, postage prepaid return card, asking them to verify that they still reside at the same address. Voters who do not return the card *and* fail to vote in any election for four more years are presumed to have moved and are removed from the rolls.

Held: The process that Ohio uses to remove voters on change-of-residence grounds does not violate the Failure-to-Vote Clause or any other part of the NVRA. Pp. 8–21.

(a) Ohio’s law does not violate the Failure-to-Vote Clause. Pp. 8–16.

(1) Ohio’s removal process follows subsection (d) to the letter: It does not remove a registrant on change-of-residence grounds unless the registrant is sent and fails to mail back a return card and then fails to vote for an additional four years. See §20507(d)(1)(B). Pp. 8–9.

(2) Nonetheless, respondents argue that Ohio’s process violates subsection (b)’s Failure-to-Vote Clause by using a person’s failure to vote twice over: once as the trigger for sending return cards and again as one of the two requirements for removal. But Congress could not have meant for the Failure-to-Vote Clause to cannibalize subsection (d) in that way. Instead, the Failure-to-Vote Clause, both as originally enacted in the NVRA and as amended by HAVA, simply forbids the use of nonvoting as *the sole criterion* for removing a registrant, and Ohio does not use it that way. The phrase “by reason of” in the Failure-to-Vote Clause denotes some form of causation, see *Gross v. FBL Financial Services, Inc.*, 557 U. S. 167, 176, and in context sole causation is the only type of causation that harmonizes the Failure-to-Vote Clause and subsection (d). Any other reading would mean that a State that follows subsection (d) nevertheless can violate the Failure-to-Vote Clause. When Congress enacted HAVA, it made this point explicit by adding to the Failure-to-Vote Clause an explanation of how the clause is to be read, *i.e.*, in a way that does not contradict subsection (d). Pp. 9–12.

(3) Respondents’ and the dissent’s alternative reading is inconsistent with both the text of the Failure-to-Vote Clause and the clarification of its meaning in §21083(a)(4). Among other things, their reading would make HAVA’s new language worse than redundant, since no sensible person would read the Failure-to-Vote Clause as prohibiting what subsections (c) and (d) expressly allow. Nor does

Syllabus

the Court’s interpretation render the Failure-to-Vote Clause superfluous; the clause retains meaning because it prohibits States from using nonvoting both as the ground for removal and as the sole evidence for another ground for removal (*e.g.*, as the sole evidence that someone has died). Pp. 12–15.

(4) Respondents’ additional argument—that so many registered voters discard return cards upon receipt that the failure to send cards back is worthless as evidence that an addressee has moved—is based on a dubious empirical conclusion that conflicts with the congressional judgment found in subsection (d). Congress clearly did not think that the failure to send back a return card was of no evidentiary value, having made that conduct one of the two requirements for removal under subsection (d). Pp. 15–16.

(b) Nor has Ohio violated other NVRA provisions. Pp. 16–21.

(1) Ohio removes the registrants at issue on a permissible ground: change of residence. The failure to return a notice and the failure to vote simply serve as *evidence* that a registrant has moved, not as the ground itself for removal. Pp. 16–17.

(2) The NVRA contains no “reliable indicator” prerequisite to sending notices, requiring States to have good information that someone has moved before sending them a return card. So long as the trigger for sending such notices is “uniform, nondiscriminatory, and in compliance with the Voting Rights Act,” §20507(b)(1), States may use whatever trigger they think best, including the failure to vote. Pp. 17–19.

(3) Ohio has not violated the NVRA’s “reasonable effort” provision, §20507(a)(4). Even assuming that this provision authorizes federal courts to go beyond the restrictions set out in subsections (b), (c), and (d) and strike down a state law that does not meet some standard of “reasonableness,” Ohio’s process cannot be unreasonable because it uses the change-of-residence evidence that Congress said it could: the failure to send back a notice coupled with the failure to vote for the requisite period. Ohio’s process is accordingly lawful. Pp. 19–21.

838 F. 3d 699, reversed.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, and GORSUCH, JJ., joined. THOMAS, J., filed a concurring opinion. BREYER, J., filed a dissenting opinion, in which GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. SOTOMAYOR, J., filed a dissenting opinion.

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NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 16–980

JON HUSTED, OHIO SECRETARY OF STATE,
PETITIONER *v.* A. PHILIP RANDOLPH
INSTITUTE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[June 11, 2018]

JUSTICE ALITO delivered the opinion of the Court.

It has been estimated that 24 million voter registrations in the United States—about one in eight—are either invalid or significantly inaccurate. Pew Center on the States, Election Initiatives Issue Brief (Feb. 2012). And about 2.75 million people are said to be registered to vote in more than one State. *Ibid.*

At issue in today’s case is an Ohio law that aims to keep the State’s voting lists up to date by removing the names of those who have moved out of the district where they are registered. Ohio uses the failure to vote for two years as a rough way of identifying voters who may have moved, and it then sends a preaddressed, postage prepaid card to these individuals asking them to verify that they still reside at the same address. Voters who do not return this card *and* fail to vote in any election for four more years are presumed to have moved and are removed from the rolls. We are asked to decide whether this program complies with federal law.

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I
A

Like other States, Ohio requires voters to reside in the district in which they vote. Ohio Rev. Code Ann. §3503.01(A) (West Supp. 2017); see National Conference of State Legislatures, *Voting by Nonresidents and Noncitizens* (Feb. 27, 2015). When voters move out of that district, they become ineligible to vote there. See §3503.01(A). And since more than 10% of Americans move every year,¹ deleting the names of those who have moved away is no small undertaking.

For many years, Congress left it up to the States to maintain accurate lists of those eligible to vote in federal elections, but in 1993, with the enactment of the National Voter Registration Act (NVRA), Congress intervened. The NVRA “erect[s] a complex superstructure of federal regulation atop state voter-registration systems.” *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U. S. 1, 5 (2013). The Act has two main objectives: increasing voter registration and removing ineligible persons from the States’ voter registration rolls. See §2, 107 Stat. 77, 52 U. S. C. §20501(b).

To achieve the latter goal, the NVRA requires States to “conduct a general program that makes a reasonable effort to remove the names” of voters who are ineligible “by reason of” death or change in residence. §20507(a)(4).

¹United States Census Bureau, CB16–189, *Americans Moving at Historically Low Rates* (Nov. 16, 2016), available at <https://www.census.gov/newsroom/press-releases/2016/cb16-189.html> (all Internet materials as last visited June 8, 2018). States must update the addresses of even those voters who move within their county of residence, for (among other reasons) counties may contain multiple voting districts. Cf. *post*, at 12 (BREYER, J., dissenting). For example, Cuyahoga County contains 11 State House districts. See House District Map, Ohio House Districts 2012–2022, online at <http://www.ohiohouse.gov/members/district-map>.

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The Act also prescribes requirements that a State must meet in order to remove a name on change-of-residence grounds. §§20507(b), (c), (d).

The most important of these requirements is a prior notice obligation. Before the NVRA, some States removed registrants without giving any notice. See J. Harris, Nat. Munic. League, Model Voter Registration System 45 (rev. 4th ed. 1957). The NVRA changed that by providing in §20507(d)(1) that a State may not remove a registrant's name on change-of-residence grounds unless either (A) the registrant confirms in writing that he or she has moved or (B) the registrant fails to return a preaddressed, postage prepaid "return card" containing statutorily prescribed content. This card must explain what a registrant who has not moved needs to do in order to stay on the rolls, *i.e.*, either return the card or vote during the period covering the next two general federal elections. §20507(d)(2)(A). And for the benefit of those who have moved, the card must contain "information concerning how the registrant can continue to be eligible to vote." §20507(d)(2)(B). If the State does not send such a card or otherwise get written notice that the person has moved, it may not remove the registrant on change-of-residence grounds. See §20507(d)(1).²

While the NVRA is clear about the need to send a "return card" (or obtain written confirmation of a move) before pruning a registrant's name, no provision of federal law specifies the circumstances under which a return card

²The principal dissent attaches a misleading label to this return card, calling it a "last chance" notice." *Post*, at 6–7, 9–12 (opinion of BREYER, J.). It is actually no such thing. Sending back the notice does not represent a voter's "last chance" to avoid having his or her name stricken from the rolls. Instead, such a voter has many more chances over a period of four years to avoid that result. All that the voter must do is vote in any election during that time. See 52 U. S. C. §20507(d)(1)(B).

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may be sent. Accordingly, States take a variety of approaches. See Nat. Assn. of Secretaries of State (NASS) Report: Maintenance of State Voter Registration Lists 5–6 (Dec. 2017). The NVRA itself sets out one option. A State may send these cards to those who have submitted “change-of-address information” to the United States Postal Service. §20507(c)(1). Thirty-six States do at least that. See NASS Report, *supra*, at 5, and n. v (listing States). Other States send notices to every registered voter at specified intervals (say, once a year). See, e.g., Iowa Code §48A.28.3 (2012); S. C. Code Ann. §§7–5–330(F), 7–5–340(2)–(3) (2017 Cum. Supp.); see also S. Rep. No. 103–6, p. 46 (1993). Still other States, including Ohio, take an intermediate approach, see NASS Report, *supra*, at 5–6, such as sending notices to those who have turned in their driver’s licenses, e.g., Ind. Code §§3–7–38.2–2(b)(2), (c)(4) (2004), or sending notices to those who have not voted for some period of time, see, e.g., Ga. Code Ann. §21–2–234 (Supp. 2017); Ohio Rev. Code Ann. §3503.21(B)(2); Okla. Admin. Code §230:15–11–19(a)(3) (2016); Pa. Stat. Ann., Tit. 25, §1901(b)(3) (Purdon 2007); Wis. Stat. Ann. §6.50(1) (2017 West Cum. Supp.).

When a State receives a return card confirming that a registrant has left the district, the State must remove the voter’s name from the rolls. §§20507(d)(1)(A), (3). And if the State receives a card stating that the registrant has not moved, the registrant’s name must be kept on the list. See §20507(d)(2)(A).

What if no return card is mailed back? Congress obviously anticipated that some voters who received cards would fail to return them for any number of reasons, and it addressed this contingency in §20507(d), which, for convenience, we will simply call “subsection (d).” Subsection (d) treats the failure to return a card as *some evidence*—but by no means conclusive proof—that the voter has moved. Instead, the voter’s name is kept on the list

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for a period covering two general elections for federal office (usually about four years). Only if the registrant fails to vote during that period and does not otherwise confirm that he or she still lives in the district (*e.g.*, by updating address information online) may the registrant's name be removed. §20507(d)(2)(A); see §§20507(d)(1)(B), (3).

In addition to these specific change-of-residence requirements, the NVRA also imposes two general limitations that are applicable to state removal programs. First, all such programs must be “uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965.” §20507(b)(1). Second, the NVRA contains what we will call the “Failure-to-Vote Clause.” See §20507(b)(2).

At present, this clause contains two parts. The first is a prohibition that was included in the NVRA when it was originally enacted in 1993. It provides that a state program “shall not result in the removal of the name of any person . . . by reason of the person's failure to vote.” *Ibid.* The second part, added by the Help America Vote Act of 2002 (HAVA), 116 Stat. 1666, explains the meaning of that prohibition. This explanation says that “nothing in [the prohibition] may be construed to prohibit a State from using the procedures described in [§§20507](c) and (d) to remove an individual from the official list of eligible voters.” §20507(b)(2).

These referenced subsections, §§20507(c) and (d), are the provisions allowing the removal of registrants who either submitted change-of-address information to the Postal Service (subsection (c)) or did not mail back a return card and did not vote during a period covering two general federal elections (subsection (d)). And since one of the requirements for removal under subsection (d) is the failure to vote during this period, the explanation added by HAVA in 2002 makes it clear that the statutory phrase “by reason of the person's failure to vote” in the Failure-to-Vote Clause does not categorically preclude the use of

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nonvoting as part of a test for removal.

Another provision of HAVA makes this point more directly. After directing that “registrants who have not responded to a notice and . . . have not voted in 2 consecutive general elections for Federal office shall be removed,” it adds that “no registrant may be removed *solely* by reason of a failure to vote.” §21083(a)(4)(A) (emphasis added).

B

Since 1994, Ohio has used two procedures to identify and remove voters who have lost their residency qualification.

First, the State utilizes the Postal Service option set out in the NVRA. The State sends notices to registrants whom the Postal Service’s “national change of address service” identifies as having moved. Ohio Rev. Code Ann. §3503.21(B)(1). This procedure is undisputedly lawful. See 52 U. S. C. §20507(c)(1).

But because according to the Postal Service “[a]s many as 40 percent of people who move do not inform the Postal Service,”³ Ohio does not rely on this information alone. In its so-called Supplemental Process, Ohio “identif[ies] electors whose lack of voter activity indicates they may have moved.” Record 401 (emphasis deleted). Under this process, Ohio sends notices to registrants who have “not engage[d] in any voter activity for a period of two consecutive years.” *Id.*, at 1509. “Voter activity” includes “casting a ballot” in any election—whether general, primary, or special and whether federal, state, or local. See *id.*, at 1507. (And Ohio regularly holds elections on both even and odd years.) Moreover, the term “voter activity” is

³U. S. Postal Service, Office of Inspector Gen., MS-MA-15-006, Strategies for Reducing Undeliverable as Addressed Mail 15 (2015); see also Brief for Buckeye Institute as *Amicus Curiae* 10. Respondents and one of their *amici* dispute this statistic. See Tr. of Oral Arg. 46; Brief for Asian Americans Advancing Justice et al. as *Amici Curiae* 27–28.

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broader than simply voting. It also includes such things as “sign[ing] a petition,” “filing a voter registration form, and updating a voting address with a variety of [state] entities.” *Id.*, at 295, 357.

After sending these notices, Ohio removes registrants from the rolls only if they “fai[l] to respond” and “continu[e] to be inactive for an additional period of four consecutive years, including two federal general elections.” *Id.*, at 1509; see Ohio Rev. Code Ann. §3503.21(B)(2). Federal law specifies that a registration may be canceled if the registrant does not vote “in an election during the period” covering two general federal elections after notice, §20507(d)(1)(B)(ii), but Ohio rounds up to “four consecutive years” of nonvoting after notice, Record 1509. Thus, a person remains on the rolls if he or she votes in any election during that period—which in Ohio typically means voting in any of the at least four elections after notice. Combined with the two years of nonvoting before notice is sent, that makes a total of six years of nonvoting before removal. *Ibid.*

C

A pair of advocacy groups and an Ohio resident (respondents here) think that Ohio’s Supplemental Process violates the NVRA and HAVA. They sued petitioner, Ohio’s Secretary of State, seeking to enjoin this process. Respondents alleged, first, that Ohio removes voters who have not actually moved, thus purging the rolls of *eligible* voters. They also contended that Ohio violates the NVRA’s Failure-to-Vote Clause because the failure to vote plays a prominent part in the Ohio removal scheme: Failure to vote for two years triggers the sending of a return card, and if the card is not returned, failure to vote for four more years results in removal.

The District Court rejected both of these arguments and entered judgment for the Secretary. It held that Ohio’s

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Supplemental Process “mirror[s] the procedures established by the NVRA” for removing people on change-of-residence grounds and does not violate the Failure-to-Vote Clause because it does not remove anyone “*solely* for [their] failure to vote.” App. to Pet. for Cert. 43a, 57a, 69a–70a.

A divided panel of the Court of Appeals for the Sixth Circuit reversed. 838 F. 3d 699 (2016). It focused on respondents’ second argument, holding that Ohio violates the Failure-to-Vote Clause because it sends change-of-residence notices “based ‘solely’ on a person’s failure to vote.” *Id.*, at 711. In dissent, Judge Siler explained why he saw the case as a simple one: “The State cannot remove the registrant’s name from the rolls for a failure to vote only, and Ohio does not do [that].” *Id.*, at 716.

We granted certiorari, 581 U. S. ___ (2017), and now reverse.

II

A

As noted, subsection (d), the provision of the NVRA that directly addresses the procedures that a State must follow before removing a registrant from the rolls on change-of-residence grounds, provides that a State may remove a registrant who “(i) has failed to respond to a notice” and “(ii) has not voted or appeared to vote . . . 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” (about four years). 52 U. S. C. §20507(d)(1)(B). Not only are States allowed to remove registrants who satisfy these requirements, but federal law makes this removal mandatory. §20507(d)(3); see also §21083(a)(4)(A).

Ohio’s Supplemental Process follows subsection (d) to the letter. It is undisputed that Ohio does not remove a registrant on change-of-residence grounds unless the

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registrant is sent and fails to mail back a return card and then fails to vote for an additional four years.

B

Respondents argue (and the Sixth Circuit held) that, even if Ohio’s process complies with subsection (d), it nevertheless violates the Failure-to-Vote Clause—the clause that generally prohibits States from removing people from the rolls “by reason of [a] person’s failure to vote.” §20507(b)(2); see also §21083(a)(4)(A). Respondents point out that Ohio’s Supplemental Process uses a person’s failure to vote twice: once as the trigger for sending return cards and again as one of the requirements for removal. Respondents conclude that this use of nonvoting is illegal.

We reject this argument because the Failure-to-Vote Clause, both as originally enacted in the NVRA and as amended by HAVA, simply forbids the use of nonvoting as *the sole criterion* for removing a registrant, and Ohio does not use it that way. Instead, as permitted by subsection (d), Ohio removes registrants only if they have failed to vote *and* have failed to respond to a notice.

When Congress clarified the meaning of the NVRA’s Failure-to-Vote Clause in HAVA, here is what it said: “[C]onsistent with the [NVRA], . . . no registrant may be removed *solely* by reason of a failure to vote.” §21083(a)(4)(A) (emphasis added). The meaning of these words is straightforward. “Solely” means “alone.” Webster’s Third New International Dictionary 2168 (2002); American Heritage Dictionary 1654 (4th ed. 2000). And “by reason of” is a “quite formal” way of saying “[b]ecause of.” C. Ammer, American Heritage Dictionary of Idioms 67 (2d ed. 2013). Thus, a State violates the Failure-to-Vote Clause only if it removes registrants for no reason other than their failure to vote.

This explanation of the meaning of the Failure-to-Vote Clause merely makes explicit what was implicit in the

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clause as originally enacted. At that time, the clause simply said that a state program “shall not result in the removal of the name of any person from the [rolls for federal elections] by reason of the person’s failure to vote.” 107 Stat. 83. But that prohibition had to be read together with subsection (d), which authorized removal if a registrant did not send back a return card and also failed to vote during a period covering two successive general elections for federal office. If possible, “[w]e must interpret the statute to give effect to both provisions,” *Ricci v. DeStefano*, 557 U. S. 557, 580 (2009), and here, that is quite easy.

The phrase “by reason of” denotes some form of causation. See *Gross v. FBL Financial Services, Inc.*, 557 U. S. 167, 176 (2009). Thus, the Failure-to-Vote Clause applies when nonvoting, in some sense, causes a registrant’s name to be removed, but the law recognizes several types of causation. When a statutory provision includes an undefined causation requirement, we look to context to decide whether the statute demands only but-for cause as opposed to proximate cause or sole cause. See *Holmes v. Securities Investor Protection Corporation*, 503 U. S. 258, 265–268 (1992). Cf. *CSX Transp., Inc. v. McBride*, 564 U. S. 685, 692–693 (2011).

Which form of causation is required by the Failure-to-Vote Clause? We can readily rule out but-for causation. If “by reason of” in the Failure-to-Vote Clause meant but-for causation, a State would violate the clause if the failure to vote played a necessary part in the removal of a name from the list. *Burrage v. United States*, 571 U. S. 204, 211 (2014). But the removal process expressly authorized by subsection (d) allows a State to remove a registrant if the registrant, in addition to failing to send back a return card, fails to vote during a period covering two general federal elections. So if the Failure-to-Vote Clause were read in this way, it would cannibalize subsection (d).

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Interpreting the Failure-to-Vote Clause as incorporating a proximate cause requirement would lead to a similar problem. Proximate cause is an elusive concept, see *McBride, supra*, at 692–693, but no matter how the term is understood, it is hard to escape the conclusion that the failure to vote is a proximate cause of removal under subsection (d). If a registrant, having failed to send back a return card, also fails to vote during the period covering the next two general federal elections, removal is the direct, foreseeable, and closely connected consequence. See *Paroline v. United States*, 572 U. S. 434, 444–445 (2014); *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U. S. 639, 654 (2008).

By process of elimination, we are left with sole causation. This reading harmonizes the Failure-to-Vote Clause and subsection (d) because the latter provision does not authorize removal solely by reason of a person’s failure to vote. Instead, subsection (d) authorizes removal only if a registrant also fails to mail back a return card.

For these reasons, we conclude that the Failure-to-Vote Clause, as originally enacted, referred to sole causation. And when Congress enacted HAVA, it made this point explicit. It added to the Failure-to-Vote Clause itself an explanation of how it is to be read, *i.e.*, in a way that does not contradict subsection (d). And in language that cannot be misunderstood, it reiterated what the clause means: “[R]egistrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed *solely* by reason of a failure to vote.” §21083(a)(4)(A) (emphasis added). In this way, HAVA dispelled any doubt that a state removal program may use the failure to vote as a factor (but not the sole factor) in removing names from the list of registered voters.

That is exactly what Ohio’s Supplemental Process does.

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It does not strike any registrant solely by reason of the failure to vote. Instead, as expressly permitted by federal law, it removes registrants only when they have failed to vote *and* have failed to respond to a change-of-residence notice.

C

Respondents and the dissent advance an alternative interpretation of the Failure-to-Vote Clause, but that reading is inconsistent with both the text of the clause and the clarification of its meaning in §21083(a)(4)(A). Respondents argue that the clause allows States to consider nonvoting only to the extent that subsection (d) requires—that is, only *after* a registrant has failed to mail back a notice. Any other use of the failure to vote, including as the trigger for mailing a notice, they claim, is proscribed. In essence, respondents read the language added to the clause by HAVA—“except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d)” —as an exception to the general rule forbidding the use of nonvoting. See Brief for Respondents 37. And the Sixth Circuit seemed to find this point dispositive, reasoning that “‘exceptions in statutes must be strictly construed.’” 838 F. 3d, at 708 (quoting *Detroit Edison Co. v. SEC*, 119 F. 2d 730, 739 (CA6 1941)).

We reject this argument for three reasons. First, it distorts what the new language added by HAVA actually says. The new language does not create an exception to a general rule against the use of nonvoting. It does not say that the failure to vote may not be used “except that this paragraph does not prohibit a State from using the procedures described in subsections (c) and (d).” Instead, it says that “nothing in this paragraph *may be construed*” to have that effect. §20507(b)(2) (emphasis added). Thus, it sets out not an exception, but a rule of interpretation. It

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does not narrow the language that precedes it; it clarifies what that language means. That is precisely what Congress said when it enacted HAVA: It added the “may not be construed” provision to “[c]larif[y],” not to alter, the prohibition’s scope. §903, 116 Stat. 1728.

Second, under respondents’ reading, HAVA’s new language is worse than superfluous. Even without the added language, no sensible person would read the Failure-to-Vote Clause as prohibiting what subsections (c) and (d) expressly allow. Yet according to respondents, that is all that the new language accomplishes. So at a minimum, it would be redundant.

But the implications of this reading are actually worse than that. There is no reason to create an exception to a prohibition unless the prohibition would otherwise forbid what the exception allows. So if the new language were an exception, it would seem to follow that prior to HAVA, the Failure-to-Vote Clause *did* outlaw what subsections (c) and (d) specifically authorize. And that, of course, would be nonsensical.

Third, respondents’ reading of the language that HAVA added to the Failure-to-Vote Clause makes it hard to understand why Congress prescribed in another section of the same Act, *i.e.*, §21083(a)(4)(A), that “no registrant may be removed solely by reason of a failure to vote.” As interpreted by respondents, the amended Failure-to-Vote Clause prohibits any use of nonvoting with just two narrow exceptions—the uses allowed by subsections (c) and (d). So, according to respondents, the amended Failure-to-Vote Clause prohibits much more than §21083(a)(4)(A). That provision, in addition to allowing the use of nonvoting in accordance with subsections (c) and (d), also permits the use of nonvoting in any other way that does not treat nonvoting as the sole basis for removal.

There is no plausible reason why Congress would enact the provision that respondents envision. As interpreted by

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respondents, HAVA would be like a law that contains one provision making it illegal to drive with a blood alcohol level of 0.08 or higher and another provision making it illegal to drive with a blood alcohol level of 0.10 or higher. The second provision would not only be redundant; it would be confusing and downright silly.

Our reading, on the other hand, gives the new language added to the Failure-to-Vote Clause “real and substantial effect.” *Husky Int’l Electronics, Inc. v. Ritz*, 578 U. S. ___, ___ (2016) (slip op., at 4) (internal quotation marks omitted). It clarifies the meaning of the prohibition against removal by reason of nonvoting, a matter that troubled some States prior to HAVA’s enactment. See, e.g., FEC Report on the NVRA to the 106th Congress 19 (1999).

Respondents and the dissent separately claim that the Failure-to-Vote Clause must be read to bar the use of nonvoting as a trigger for sending return cards because otherwise it would be “superfluous.” *Post*, at 17 (opinion of BREYER, J.); see Brief for Respondents 29. After all, subsection (d) already prohibits States from removing registrants because of a failure to vote alone. See §20507(d)(1). To have meaning independent of subsection (d), respondents reason, the Failure-to-Vote Clause must prohibit other uses of the failure to vote, including its use as a trigger for sending out notices.

This argument is flawed because the Failure-to-Vote Clause has plenty of work to do under our reading. Most important, it prohibits the once-common state practice of removing registered voters simply because they failed to vote for some period of time. Not too long ago, “[c]ancellation for failure to vote [was] the principal means used . . . to purge the [voter] lists.” Harris, *Model Voter Registration System*, at 44. States did not use a person’s failure to vote as evidence that the person had died or moved but as an independent ground for removal. See

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*ibid.*⁴ Ohio was one such State. Its Constitution provided that “[a]ny elector who fails to vote in at least one election during any period of four consecutive years shall cease to be an elector unless he again registers to vote.” Art. V, §1 (1977).

In addition, our reading prohibits States from using the failure to vote as the sole cause for removal on *any* ground, not just because of a change of residence. Recall that subsection (d)’s removal process applies only to change-of-residence removals but that the Failure-to-Vote Clause applies to *all* removals. Without the Failure-to-Vote Clause, therefore, States could use the failure to vote as conclusive evidence of ineligibility for some reason other than change of residence, such as death, mental incapacity, or a criminal conviction resulting in prolonged imprisonment.

D

Respondents put forth one additional argument regarding the Failure-to-Vote Clause. In essence, it boils down to this. So many properly registered voters simply discard return cards upon receipt that the failure to send them back is worthless as evidence that the addressee has moved. As respondents’ counsel put it at argument, “a notice that doesn’t get returned” tells the State “absolutely nothing about whether the person has moved.” Tr. of Oral Arg. 41, 58. According to respondents, when Ohio removes registrants for failing to respond to a notice and failing to vote, it functionally “removes people solely for non-voting” unless the State has additional “reliable evidence” that a registrant has moved. *Id.*, at 49, 71.

This argument is based on a dubious empirical conclu-

⁴See, e.g., Haw. Rev. Stat. §11–17(a) (1993); Idaho Code Ann. §34–435 (1981); Minn. Stat. §201.171 (1992); Mont. Code Ann. §13–2–401(1) (1993); N. J. Stat. Ann. §19:31–5 (West Supp. 1989); Okla. Stat., Tit. 26, §4–120.2 (1991); Utah Code §20–2–24(1)(b) (1991).

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sion that the NVRA and HAVA do not allow us to indulge. Congress clearly did not think that the failure to send back a return card was of no evidentiary value because Congress made that conduct one of the two requirements for removal under subsection (d).

Requiring additional evidence not only second-guesses the congressional judgment embodied in subsection (d)'s removal process, but it also second-guesses the judgment of the Ohio Legislature as expressed in the State's Supplemental Process. The Constitution gives States the authority to set the qualifications for voting in congressional elections, Art. I, §2, cl. 1; Amdt. 17, as well as the authority to set the "Times, Places and Manner" to conduct such elections in the absence of contrary congressional direction, Art. I, §4, cl. 1. We have no authority to dismiss the considered judgment of Congress and the Ohio Legislature regarding the probative value of a registrant's failure to send back a return card. See *Inter Tribal*, 570 U. S., at 16–19; see also *id.*, at 36–37 (THOMAS, J., dissenting); *id.*, at 42–43, 46 (ALITO, J., dissenting).

For all these reasons, we hold that Ohio law does not violate the Failure-to-Vote Clause.

III

We similarly reject respondents' argument that Ohio violates other provisions of the NVRA and HAVA.

A

Respondents contend that Ohio removes registered voters on a ground not permitted by the NVRA. They claim that the NVRA permits the removal of a name for only a few specified reasons—a person's request, criminal conviction, mental incapacity, death, change of residence, and initial ineligibility. Brief for Respondents 25–26; see 52 U. S. C. §§20507(a)(3), (4).⁵ And they argue that Ohio

⁵We assume for the sake of argument that Congress has the constitu-

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removes registrants for other reasons, namely, for failing to respond to a notice and failing to vote.

This argument plainly fails. Ohio simply treats the failure to return a notice and the failure to vote as evidence that a registrant has moved, not as a ground for removal. And in doing this, Ohio simply follows federal law. Subsection (d), which governs removals “on the ground that the registrant has changed residence,” treats the failure to return a notice and the failure to vote as evidence that this ground is satisfied. §20507(d)(1).

If respondents’ argument were correct, then it would also be illegal to remove a name under §20507(c) because that would constitute removal for submitting change-of-address information to the Postal Service. Likewise, if a State removed a name after receiving a death certificate or a judgment of criminal conviction, that would be illegal because receipt of such documents is not listed as a permitted ground for removal under §20507(a)(3) or §20507(a)(4). About this argument no more need be said.

B

Respondents maintain, finally, that Ohio’s procedure is illegal because the State sends out notices without having any “reliable indicator” that the addressee has moved. Brief for Respondents 31. The “[f]ailure to vote for a mere two-year period,” they argue, does not reliably “indicate that a registrant has moved out of the jurisdiction.” *Id.*, at 30; see also, *e.g.*, Brief for State of New York et al. as *Amici Curiae* 13–28.

This argument also fails. The degree of correlation between the failure to vote for two years and a change of residence is debatable, but we know from subsection (d) that Congress thought that the failure to vote for a period

tional authority to limit voting eligibility requirements in the way respondents suggest.

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of two consecutive general elections was a good indicator of change of residence, since it made nonvoting for that period an element of subsection (d)'s requirements for removal. In a similar vein, the Ohio Legislature apparently thought that nonvoting for two years was sufficiently correlated with a change of residence to justify sending a return card.

What matters for present purposes is not whether the Ohio Legislature overestimated the correlation between nonvoting and moving or whether it reached a wise policy judgment about when return cards should be sent. For us, all that matters is that no provision of the NVRA prohibits the legislature from implementing that judgment. Neither subsection (d) nor any other provision of the NVRA demands that a State have some particular quantum of evidence of a change of residence before sending a registrant a return card. So long as the trigger for sending such notices is "uniform, nondiscriminatory, and in compliance with the Voting Rights Act," §20507(b)(1), States can use whatever plan they think best. That may be why not even the Sixth Circuit relied on this rationale.

Respondents attempt to find support for their argument in subsection (c), which allows States to send notices based on Postal Service change-of-address information. This provision, they argue, implicitly sets a minimum reliability requirement. Thus, they claim, a State may not send out a return card unless its evidence of change of residence is at least as probative as the information obtained from the Postal Service. See Tr. of Oral Arg. 56.

Nothing in subsection (c) suggests that it is designed to play this role. Subsection (c) says that "[a] State may meet" its obligation "to remove the names" of ineligible voters on change-of-residence grounds by sending notices to voters who are shown by the Postal Service information to have moved, but subsection (c) does not even hint that it imposes any sort of minimum reliability requirement for

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sending such notices. §§20507(a)(4), (c). By its terms, subsection (c) simply provides one way—the minimal way—in which a State “*may* meet the [NVRTA’s] requirement[s]” for change-of-residence removals. §20507(c) (emphasis added). As respondents agreed at argument, it is not the only way. Tr. of Oral Arg. 53.

C

Nothing in the two dissents changes our analysis of the statutory language.

1

Despite its length and complexity, the principal dissent sets out only two arguments. See *post*, at 7–8 (opinion of BREYER, J.). The first is one that we have already discussed at length, namely, that the Failure-to-Vote Clause prohibits any use of the failure to vote except as permitted by subsections (c) and (d). We have explained why this argument is insupportable, *supra*, at 12–16, and the dissent has no answer to any of the problems we identify.

The dissent’s only other argument is that Ohio’s process violates §20507(a)(4), which requires States to make a “reasonable effort” to remove the names of ineligible voters from the rolls. The dissent thinks that this provision authorizes the federal courts to go beyond the restrictions set out in subsections (b), (c), and (d) and to strike down any state law that does not meet their own standard of “reasonableness.” But see Brief for United States as *Amicus Curiae* 28–29. The dissent contends that Ohio’s system violates this supposed “reasonableness” requirement primarily because it relies on the failure to mail back the postcard sent to those who have not engaged in voter activity for two years. Based on its own cobbled-together statistics, *post*, at 12–13, and a feature of human nature of which the dissent has apparently taken judicial notice (*i.e.*, “the human tendency not to send back cards received

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in the mail,” *post*, at 13), the dissent argues that the failure to send back the card in question “has no tendency to reveal accurately whether the registered voter has changed residences”; it is an “irrelevant factor” that “shows nothing at all that is statutorily significant.” *Post*, at 13–14, 17.

Whatever the meaning of §20507(a)(4)’s reference to reasonableness, the principal dissent’s argument fails since it is the federal NVRA, not Ohio law, that attaches importance to the failure to send back the card. See §§20507(d)(1)(B)(i), (d)(2)(A). The dissenters may not think that the failure to send back the card means anything, but that was not Congress’s view. The NVRA plainly reflects Congress’s judgment that the failure to send back the card, coupled with the failure to vote during the period covering the next two general federal elections, is significant evidence that the addressee has moved.

It is not our prerogative to judge the reasonableness of that congressional judgment, but we note that, whatever the general “human tendency” may be with respect to mailing back cards received in the mail, the notice sent under subsection (d) is nothing like the solicitations for commercial products or contributions that recipients may routinely discard. The notice in question here warns recipients that unless they take the simple and easy step of mailing back the preaddressed, postage prepaid card—or take the equally easy step of updating their information online—their names may be removed from the voting rolls if they do not vote during the next four years. See Record 295–296, 357. It was Congress’s judgment that a reasonable person with an interest in voting is not likely to ignore notice of this sort.

2

JUSTICE SOTOMAYOR’s dissent says nothing about what is relevant in this case—namely, the language of the

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NVRA—but instead accuses us of “ignor[ing] the history of voter suppression” in this country and of “uphold[ing] a program that appears to further the . . . disenfranchisement of minority and low-income voters.” *Post*, at 5. Those charges are misconceived.

The NVRA prohibits state programs that are discriminatory, see §20507(b)(1), but respondents did not assert a claim under that provision. And JUSTICE SOTOMAYOR has not pointed to any evidence in the record that Ohio instituted or has carried out its program with discriminatory intent.

* * *

The dissents have a policy disagreement, not just with Ohio, but with Congress. But this case presents a question of statutory interpretation, not a question of policy. We have no authority to second-guess Congress or to decide whether Ohio’s Supplemental Process is the ideal method for keeping its voting rolls up to date. The only question before us is whether it violates federal law. It does not.

The judgment of the Sixth Circuit is reversed.

It is so ordered.

THOMAS, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 16–980

JON HUSTED, OHIO SECRETARY OF STATE,
PETITIONER *v.* A. PHILIP RANDOLPH
INSTITUTE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[June 11, 2018]

THOMAS, J., concurring.

I join the Court’s opinion in full. I write separately to add that respondents’ proposed interpretation of the National Voter Registration Act (NVRA) should also be rejected because it would raise significant constitutional concerns.

Respondents would interpret the NVRA to prevent States from using failure to vote as evidence when deciding whether their voting qualifications have been satisfied. Brief for Respondents 25–30. The Court’s opinion explains why that reading is inconsistent with the text of the NVRA. See *ante*, at 7–18. But even if the NVRA were “susceptible” to respondents’ reading, it could not prevail because it “raises serious constitutional doubts” that the Court’s interpretation avoids. *Jennings v. Rodriguez*, 583 U. S. ___, ___ (2018) (slip op., at 2).

As I have previously explained, constitutional text and history both “confirm that States have the exclusive authority to set voter qualifications and to determine whether those qualifications are satisfied.” *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 29 (2013) (THOMAS, J., dissenting). The Voter-Qualifications Clause provides that, in elections for the House of Representatives, “the Electors in each State shall have the Qualifica-

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tions requisite for Electors of the most numerous Branch of the State Legislature.” U. S. Const., Art. I, §2, cl. 1. The Seventeenth Amendment imposes an identical requirement for elections of Senators. And the Constitution recognizes the authority of States to “appoint” Presidential electors “in such Manner as the Legislature thereof may direct.” Art. II, §1, cl. 2; see *Inter Tribal Council of Ariz.*, 570 U. S., at 35, n. 2 (opinion of THOMAS, J.). States thus retain the authority to decide the qualifications to vote in federal elections, limited only by the requirement that they not “establish special requirements” for congressional elections “that do not apply in elections for the state legislature.” *Id.*, at 26 (quoting *U. S. Term Limits, Inc. v. Thornton*, 514 U. S. 779, 865 (1995) (THOMAS, J., dissenting)). And because the power to establish requirements would mean little without the ability to enforce them, the Voter Qualifications Clause also “gives States the authority . . . to verify whether [their] qualifications are satisfied.” 570 U. S., at 28.

Respondents’ reading of the NVRA would seriously interfere with the States’ constitutional authority to set and enforce voter qualifications. To vote in Ohio, electors must have been a state resident 30 days before the election, as well as a resident of the county and precinct where they vote. Ohio Rev. Code Ann. §3503.01(A) (Lexis 2015); see also Ohio Const., Art. V, §1. Ohio uses a record of nonvoting as one piece of evidence that voters no longer satisfy the residence requirement. Reading the NVRA to bar Ohio from considering nonvoting would therefore interfere with the State’s “authority to verify” that its qualifications are met “in the way it deems necessary.” *Inter Tribal Council of Ariz.*, *supra*, at 36. Respondents’ reading thus renders the NVRA constitutionally suspect and should be disfavored. See *Jennings*, *supra*, at ___ (slip op., at 2).

Respondents counter that Congress’ power to regulate

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the “Times, Places and Manner” of holding congressional elections includes the power to impose limits on the evidence that a State may consider when maintaining its voter rolls. See Brief for Respondents 51–55; see also Art. I, §4, cl. 1 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators”). But, as originally understood, the Times, Places and Manner Clause grants Congress power “only over the ‘when, where, and how’ of holding congressional elections,” not over the question of who can vote. *Inter Tribal Council of Ariz., supra*, at 29 (opinion of THOMAS, J.) (quoting T. Parsons, Notes of Convention Debates, Jan. 16, 1788, in 6 Documentary History of the Ratification of the Constitution 1211 (J. Kaminski & G. Saladino eds. 2000) (Massachusetts ratification delegate Sedgwick)). The “‘Manner of holding Elections’” was understood to refer to “the circumstances under which elections were held and the mechanics of the actual election.” 570 U. S., at 30 (quoting Art. I, §4, cl. 1). It does not give Congress the authority to displace state voter qualifications or dictate what evidence a State may consider in deciding whether those qualifications have been met. See 570 U. S., at 29–33. The Clause thus does not change the fact that respondents’ reading of the NVRA is constitutionally suspect.

The Court’s interpretation of the NVRA was already the correct reading of the statute: The NVRA does not prohibit a State from considering failure to vote as evidence that a registrant has moved. The fact that this reading avoids serious constitutional problems is an additional reason why, in my view, today’s decision is undoubtedly correct.

BREYER, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 16–980

JON HUSTED, OHIO SECRETARY OF STATE,
PETITIONER *v.* A. PHILIP RANDOLPH
INSTITUTE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[June 11, 2018]

JUSTICE BREYER, with whom JUSTICE GINSBURG,
JUSTICE SOTOMAYOR, and JUSTICE KAGAN join, dissenting.

Section 8 of the National Voter Registration Act of 1993 requires States to “conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of . . . a change in the residence of the registrant.” §8(a)(4), 107 Stat. 82–83, 52 U. S. C. §20507(a)(4). This case concerns the State of Ohio’s change-of-residence removal program (called the “Supplemental Process”), under which a registered voter’s failure to vote in a single federal election begins a process that may well result in the removal of that voter’s name from the federal voter rolls. See *infra*, at 7. The question is whether the Supplemental Process violates §8, which prohibits a State from removing registrants from the federal voter roll “by reason of the person’s failure to vote.” §20507(b)(2). In my view, Ohio’s program does just that. And I shall explain why and how that is so.

I

This case concerns the manner in which States maintain federal voter registration lists. In the late 19th and early 20th centuries, a number of “[r]estrictive registration laws and administrative procedures” came into use across the

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United States—from literacy tests to the poll tax and from strict residency requirements to “selective purges.” H. R. Rep. No. 103–9, p. 2 (1993). Each was designed “to keep certain groups of citizens from voting” and “discourage participation.” *Ibid.* By 1965, the Voting Rights Act abolished some of the “more obvious impediments to registration,” but still, in 1993, Congress concluded that it had “unfinished business” to attend to in this domain. *Id.*, at 3. That year, Congress enacted the National Voter Registration Act “to protect the integrity of the electoral process,” “increase the number of eligible citizens who register to vote in elections for Federal office,” and “ensure that accurate and current voter registration rolls are maintained.” §20501(b). It did so mindful that “the purpose of our election process is not to test the fortitude and determination of the voter, but to discern the will of the majority.” S. Rep. No. 103–6, p. 3 (1993).

In accordance with these aims, §8 of the Registration Act sets forth a series of requirements that States must satisfy in their “administration of voter registration for elections for Federal office.” §20507. Ohio’s Supplemental Process fails to comport with these requirements; it erects needless hurdles to voting of the kind Congress sought to eliminate by enacting the Registration Act. Four of §8’s provisions are critical to this case: subsections (a), (b), (c), and (d). The text of each subsection is detailed and contains multiple parts. Given the complexity of the statute, readers should consult these provisions themselves (see Appendix A, *infra*, at 21–24) and try to keep the thrust of those provisions in mind while reading this opinion. At the outset, I shall address each of them.

A

1

We begin with subsection (a)’s “Reasonable Program” requirement. That provision says that “each State shall”:

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“conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of . . . a change in the residence of the registrant, in accordance with subsections (b), (c), and (d).” §20507(a)(4).

This provision tells each State that it must try to remove ineligible voters from the rolls, that it must act reasonably in doing so, and that, when it does so, it must follow the rules contained in the next three subsections of §8—namely, subsections (b), (c), and (d).

2

Subsection (b)’s “Failure-to-Vote” Clause generally forbids state change-of-residence removal programs that rely upon a registrant’s failure to vote as a basis for removing the registrant’s name from the federal voter roll. Before 1993, when Congress enacted this prohibition, many States would assume a registered voter had changed his address, and consequently remove that voter from the rolls, simply because the registrant had failed to vote. Recognizing that many registered voters who do not vote “may not have moved,” S. Rep. No. 103–6, at 17, Congress consequently prohibited States from using the failure to vote as a proxy for moving and thus a basis for purging the voter’s name from the rolls. The Failure-to-Vote Clause, as originally enacted, said:

“Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office . . . shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person’s failure to vote.” 107 Stat. 83; see §20507(b)(2).

As I shall discuss, Congress later clarified that “using

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the procedures described in subsections (c) and (d) to remove an individual” from the federal voter roll is permissible and does not violate the Failure-to-Vote Clause. See §8(b)(2) of the National Voter Registration Act, 107 Stat. 83, and as amended, 116 Stat. 1728, 52 U. S. C. §20507(b)(2).

3

Subsection (c), which is entitled “Voter Removal Programs,” explains how “[a] State may meet the requirement of subsection (a)(4).” §20507(c)(1). Because subsection (a)(4) itself incorporates all of the relevant requirements of subsections (b), (c), and (d) within it, see §20507(a)(4), subsection (c) sets forth one way a State can comply with the basic requirements of §8 at issue in this case (including subsection (b)). A State’s removal program qualifies under subsection (c) if the following two things are true about the program:

“(A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

“(B) if it appears [that] the registrant has moved to a different residence address not in the same registrar’s jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) to confirm the change of address.” §20507(c)(1).

The upshot is that subsection (c) explains one way a State may comply with subsection (a)’s Reasonable Program requirement without violating subsection (b)’s Failure-to-Vote prohibition. It is a roadmap that points to a two-step removal process. At step 1, States first *identify* registered voters whose addresses may have changed; here, subsection (c) points to one (but not the only) method a State may use to do so. At step 2, subsection (c) explains, States must “*confirm* the change of address” by using a special notice procedure, which is further described in

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subsection (d).

4

Subsection (d) sets forth the final procedure, which Ohio refers to as the “Confirmation Procedure.” Brief for Petitioner 7. The statute makes clear that a State must use the Confirmation Procedure to “confirm” a change of address in respect to any registered voter it initially identifies as someone who has likely changed addresses. It works as follows: the State must send the registrant identified as having likely moved a special kind of notice by forwardable mail. That notice must warn the registrant that his or her name will be removed from the voter roll unless the registrant either returns an attached card and confirms his or her current address in writing or votes in an election during the period covering the next two federal elections. In a sense, the notice a State is required to send as part of the Confirmation Procedure gives registered voters whom the State has identified as likely ineligible a “last chance” to correct the record before being removed from the federal registration list. The Confirmation Procedure is mandatory for all change-of-residence removals, regardless of the method the State uses to make its initial identification of registrants whose addresses may have changed. In particular, subsection (d) says:

“A State shall not remove the name of a registrant from the official list of eligible voters . . . on the ground that the registrant has changed residence unless the registrant [either]—

“(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

“(B)(i) has failed to respond to a notice described in [subsection (d)(2)]; and (ii) has not voted [in two subsequent federal elections].” §20507(d)(1).

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Subsection (d)(2) then goes on to describe (in considerable detail) the “last chance” notice the State must send to the registrant. In particular, the notice must be sent by *forwardable* mail so that the notice will reach the registrant even if the registrant has changed addresses. It must include a postage-prepaid, preaddressed “return card” that the registrant may send back to the State to confirm or correct the State’s record of his or her current address. And, the notice must warn the registrant that unless the card is returned, if the registrant does not vote in the next two federal elections, then his or her name will be removed from the list of eligible voters.

* * *

In sum, §8 tells States the following:

- In general, establish a removal-from-registration program that “makes a reasonable effort” to remove voters who become ineligible because they change residences.
- Do not target registered voters for removal from the registration roll because they have failed to vote. However, “using the procedures described in subsections (c) and (d) to remove an individual” from the federal voter roll is permissible and does not violate the Failure-to-Vote prohibition.
- The procedures described in subsections (c) and (d) consist of a two-step removal process in which at step 1, the State uses change-of-address information (which the State may obtain, for instance, from the Postal Service) to identify registrants whose addresses may have changed; and then at step 2, the State must use the mandatory “last chance” notice procedure described in subsection (d) to confirm the change of address.
- The “last chance” confirmation notice must be sent by forwardable mail. It must also include a postage-

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prepaid, preaddressed “return card” that the registrant may send back to the State verifying his or her current address. And it must warn the registrant that unless the card is returned, if the registrant does not vote in the next two federal elections, then his or her name will be removed from the list of eligible voters.

B

The Supplemental Process, Ohio’s program for removing registrants from the federal rolls on the ground that the voter has changed his address, is much simpler. Each of Ohio’s 88 boards of elections sends its version of subsection (d)’s “last chance” notice to those on a list “of individuals who, according to the board’s records, have not engaged in certain kinds of voter activity”—including “casting a ballot”—for a period of “generally two years.” Record 1507. Accordingly, each board’s list can include registered voters who failed to vote in a single federal election. And anyone on the list who “continues to be inactive” by failing to vote for the next “four consecutive years, including two federal elections,” and fails to respond to the notice is removed from the federal voter roll. *Id.*, at 1509. Under the Supplemental Process, a person’s failure to vote is the sole basis on which the State identifies a registrant as a person whose address may have changed and the sole reason Ohio initiates a registered voter’s removal using subsection (d)’s Confirmation Procedure.

II

Section 8 requires that Ohio’s program “mak[e] a reasonable effort to remove” ineligible registrants from the rolls because of “a change in the residence of the registrant,” and it must do so “in accordance with subsections (b), (c), and (d).” §20507(a)(4)(B). In my view, Ohio’s program is unlawful under §8 in two respects. It first

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violates subsection (b)'s Failure-to-Vote prohibition because Ohio uses nonvoting in a manner that is expressly prohibited and not otherwise authorized under §8. In addition, even if that were not so, the Supplemental Process also fails to satisfy subsection (a)'s Reasonable Program requirement, since using a registrant's failure to vote is not a reasonable method for identifying voters whose registrations are likely invalid (because they have changed their addresses).

First, as to subsection (b)'s Failure-to-Vote Clause, recall that Ohio targets for removal registrants who fail to vote. In identifying registered voters who have likely changed residences by looking to see if those registrants failed to vote, Ohio's program violates subsection (b)'s express prohibition on "[a]ny State program or activity [that] result[s] in the removal" of a registered voter "by reason of the person's failure to vote." §20507(b)(2) (emphasis added). In my view, these words are most naturally read to prohibit a State from considering a registrant's failure to vote as part of any process "that is used to start, or has the effect of starting, a purge of the voter rolls." H. R. Rep. No. 103-9, at 15. In addition, Congress enacted the Failure-to-Vote Clause to prohibit "the elimination of names of voters from the rolls solely due to [a registrant's] failure to respond to a mailing." *Ibid.* But that is precisely what Ohio's Supplemental Process does. The program violates subsection (b)'s prohibition because under it, a registrant who fails to vote in a single federal election, fails to respond to a forwardable notice, and fails to vote for another four years may well be purged. Record 1508. If the registrant had voted at any point, the registrant would not have been removed. See *supra*, at 7; *infra*, at 11-14.

Ohio does use subsection (d)'s Confirmation Procedure, but that procedure alone does not satisfy §8's requirements. How do we know that Ohio's use of the Confirma-

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tion Procedure alone cannot count as statutorily significant? The statute’s basic structure along with its language makes clear that this is so.

In respect to language, §8 says that the function of subsection (d)’s Confirmation Procedure is “to *confirm* the change of address” whenever the State has already “identif[ied] registrants whose addresses may have changed.” §§20507(c)(1)(A), (d)(2). The function of the Confirmation Procedure is *not* to make the initial identification of registrants whose addresses may have changed. As a matter of English usage, you cannot *confirm* that an event happened without already having some reason to believe at least that it might have happened. Black’s Law Dictionary 298 (6th ed. 1990) (defining “confirm” as meaning “[t]o complete or establish that which was imperfect or uncertain”).

Ohio, of course, says that it has a ground for believing that those persons they remove from the rolls have, in fact, changed their address, but the ground is the fact that the person did not vote—the very thing that the Failure-to-Vote Clause forbids Ohio to use as a basis for removing a registered voter from the registration roll.

In respect to structure, two statutory illustrations make clear what the word “confirm” already suggests, namely, that the Confirmation Procedure is a *necessary* but not a *sufficient* procedure for removing a registered voter from the voter roll. The first illustration of how the Confirmation Procedure is supposed to function appears in subsection (c), which describes a removal process under which the State first *identifies* registrants who have likely changed addresses and then “*confirm[s]*” that change of residence using the Confirmation Procedure and sending the required “last chance” notice. §20507(c)(1) (emphasis added). The identification method subsection (c) says a State may use is “change-of-address information supplied by the Postal Service.” §20507(c)(1)(A). A person does not notify the Postal Service that he is moving unless he is

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likely to move or has already moved. And, as the Registration Act says, “if it appears from change-of-address provided by the Postal Service that . . . the registrant has moved to a different residence not in the same registrar’s jurisdiction,” the State has a reasonable (hence acceptable) basis for “us[ing] the notice procedure described in subsection (d)(2) to confirm the change of address.” §20507(c)(1)(B).

The second illustration of how the Confirmation Procedure is supposed to function appears in a portion of the statute I have not yet discussed—namely, §6 of the National Voter Registration Act, which sets out the rules for voter registration by mail. See §6, 107 Stat. 80, 52 U. S. C. §20505. In particular, §6(d), entitled “Undelivered Notices,” says that, “[i]f a notice of the disposition of a mail voter registration application . . . is sent by *nonforwardable* mail and is returned undelivered,” at that point the State “may proceed in accordance with section 8(d),” namely, the Confirmation Procedure, and send the same “last chance” notice that I have just discussed. §20505(d) (emphasis added).

Note that §6(d) specifies a *nonforwardable* mailing—and not a *forwardable* mailing, like one specified in §8(d). This distinction matters. Why? If a person moves, a *forwardable* mailing will be sent along (*i.e.*, “forwarded”) to that person’s new address; in contrast, a *nonforwardable* mailing will not be forwarded to the person’s new address but instead will be returned to the sender and marked “undeliverable.” And so a *nonforwardable* mailing that is returned to the sender marked “undeliverable” indicates that the intended recipient may have moved. After all, the Postal Service, as the majority points out, returns mail marked “undeliverable” if the intended recipient has moved—not if the person still lives at his old address. *Ante*, at 6, and n. 3.

Under §6(d), the Registration Act expressly endorses

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nonforwardable mailings as a reasonable method for States to use at step 1 to identify registrants whose addresses may have changed *before* the State proceeds to step 2 and sends the *forwardable* notice required under subsection (d)'s Confirmation Procedure. Specifically, §6(d) explains that, if a State sends its registrants a mailing by *nonforwardable* mail (which States often do), and if “[that mailing] is returned undelivered,” the State has a fairly good reason for believing that the person has moved and therefore “may proceed in accordance with” §8(d) by sending the “last chance” *forwardable* notice that the Confirmation Procedure requires. §20505(d). In contrast to a *nonforwardable* notice that is returned undeliverable, which tells the State that a registrant has likely moved, a *forwardable* notice that elicits no response whatsoever tells the State close to nothing at all. That is because, as I shall discuss, most people who receive confirmation notices from the State simply do not send back the “return card” attached to that mailing—whether they have moved or not.

In sum, §6(d), just like §§8(a) and 8(c), indicates that the State, as an initial matter, must use a reasonable method to identify a person who has likely moved and then must send that person a confirmatory notice that will in effect give him a “last chance” to remain on the rolls. And these provisions thus tend to deny, not to support, the majority’s suggestion that somehow sending a “last chance” notice is itself a way (other than nonvoting) to identify someone who has likely moved.

I concede that some individuals who have, in fact, moved do, in fact, send a return card back to the State making clear that they have moved. And some registrants do send back a card saying that they have *not* moved. Thus, the Confirmation Procedure will sometimes help provide *confirmation* of what the initial identification procedure is supposed to accomplish: finding registrants

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who have probably moved. But more often than not, the State fails to receive anything back from the registrant, and the fact that the State hears nothing from the registrant essentially proves nothing at all.

Anyone who doubts this last statement need simply consult figures in the record along with a few generally available statistics. As a general matter, the problem these numbers reveal is as follows: Very few registered voters move outside of their county of registration. But many registered voters fail to vote. Most registered voters who fail to vote also fail to respond to the State’s “last chance” notice. And the number of registered voters who both fail to vote and fail to respond to the “last chance” notice exceeds the number of registered voters who move outside of their county each year.

Consider the following facts. First, Ohio tells us that a small number of Americans—about 4% of *all* Americans—move outside of their county each year. Record 376. (The majority suggests the relevant number is 10%, *ante*, at 2, but that includes people who move within their county.) At the same time, a large number of American voters fail to vote, and Ohio voters are no exception. In 2014, around 59% of Ohio’s registered voters failed to vote. See Brief for League of Women Voters et al. as *Amici Curiae* 16, and n. 12 (citing Ohio Secretary of State, 2014 Official Election Results).

Although many registrants fail to vote and only a small number move, under the Supplemental Process, Ohio uses a registrant’s failure to vote to identify that registrant as a person whose address has likely changed. The record shows that in 2012 Ohio identified about 1.5 million registered voters—nearly 20% of its 8 million registered voters—as likely ineligible to remain on the federal voter roll because they changed their residences. Record 475. Ohio then sent those 1.5 million registered voters subsection (d) “last chance” confirmation notices. In response to

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those 1.5 million notices, Ohio only received back about 60,000 return cards (or 4%) which said, in effect, “You are right, Ohio. I have, in fact, moved.” *Ibid.* In addition, Ohio received back about 235,000 return cards which said, in effect, “You are *wrong*, Ohio, I have *not* moved.” In the end, however, there were *more than 1,000,000 notices*—the vast majority of notices sent—to which Ohio received back *no* return card at all. *Ibid.*

What about those registered voters—more than 1 million strong—who did not send back their return cards? Is there any reason at all (other than their failure to vote) to think they moved? The answer to this question must be no. There is no reason at all. First, those 1 million or so voters accounted for about 13% of Ohio’s voting population. So if those 1 million or so registered voters (or even half of them) had, in fact, moved, then vastly more people must move each year in Ohio than is generally true of the roughly 4% of *all* Americans who move to a different county nationwide (not all of whom are registered voters). See *Id.*, at 376. But there is no reason to think this. Ohio offers no such reason. And the streets of Ohio’s cities are not filled with moving vans; nor has Cleveland become the Nation’s residential moving companies’ headquarters. Thus, I think it fair to assume (because of the human tendency not to send back cards received in the mail, confirmed strongly by the actual numbers in this record) the following: In respect to change of residence, the failure of more than 1 million Ohio voters to respond to *forwardable notices* (the vast majority of those sent) shows nothing at all that is statutorily significant.

To put the matter in the present statutory context: When a State relies upon a registrant’s failure to vote to initiate the Confirmation Procedure, it violates the Failure-to-Vote Clause, and a State’s subsequent use of the Confirmation Procedure cannot save the State’s program from that defect. Even if that were not so, a nonreturned con-

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firmation notice adds nothing to the State’s understanding of whether the voter has moved or not. And that, I repeat, is because a nonreturned confirmation notice (as the numbers show) cannot reasonably indicate a change of address.

Finally, let us return to §8’s basic mandate and purpose. Ohio’s program must “mak[e] a *reasonable effort* to remove the names of ineligible voters” from its federal rolls on change-of-residence grounds. §20507(a)(4) (emphasis added). Reasonableness under §8(a) is primarily measured in terms of the program’s compliance with “subsections (b), (c), and (d).” §20507(a)(4)(B). That includes the broad prohibition on removing registrants because of their failure to vote. More generally, the statute seeks to “protect the integrity of the electoral process” and “ensure that accurate and current voter registration rolls are maintained.” §§20501(b)(3), (4). Ohio’s system adds to its non-voting-based identification system a factor that has no tendency to reveal accurately whether the registered voter has changed residences. Nothing plus one is still one. And, if that “one” consists of a failure to vote, then Ohio’s program also fails to make the requisite “reasonable effort” to comply with subsection (a)’s statutory mandate. It must violate the statute.

III

The majority tries to find support in two provisions of a different statute, namely, the Help America Vote Act of 2002, 116 Stat. 1666, the pertinent part of which is reprinted in Appendix B, *infra*, at 25–26. The first is entitled “Clarification of Ability of Election Officials To Remove Registrants From Official List of Voters on Grounds of Change of Residence.” §903, *id.*, at 1728. That provision was added to the National Voter Registration Act’s Failure-to-Vote Clause, subsection (b)(2), which says that a State’s registrant removal program “shall not result in the removal of the name of any person from the official list

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. . . by reason of the person’s failure to vote.” §20507(b)(2); see *supra*, at 3. The “Clarification” adds:

“except that nothing in this paragraph may be construed to prohibit a State *from using the procedures described in subsections (c) and (d)* to remove an individual from the official list of eligible voters if the individual—(A) has not either notified the applicable registrar (in person or in writing) or responded . . . to the [confirmation] notice sent by the applicable registrar; and then (B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office.” §903, *id.*, at 1728 (emphasis added).

This amendment simply clarified that the use of nonvoting specified in subsections (c) and (d) does not violate the Failure-to-Vote Clause. The majority asks why, if the matter is so simple, Congress added the new language at all. The answer to this question is just what the title attached to the new language says, namely, Congress added the new language for purposes of *clarification*. And the new language clarified any confusion States may have had about the relationship between, on the one hand, subsection (b)’s broad prohibition on any use of a person’s failure to vote in removal programs and, on the other hand, the requirement in subsections (c) and (d) that a State consider whether a registrant has failed to vote at the end of the Confirmation Procedure. This reading finds support in several other provisions in both the National Voter Registration Act and the Help America Vote Act, which make similar clarifications. See, *e.g.*, §20507(c)(2)(B) (clarifying that a particular prohibition “shall not be construed to preclude” States from complying with separate statutory obligations); see also §§20510(d)(2) (similar rule of construction), 21081(c)(1), 21083(a)(1)(B), (a)(2)(A)(iii), (b)(5), (d)(1)(A)–(B); 21084.

The majority also points out that another provision of

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the Help America Vote Act, §303. See §303(a)(4), 116 Stat. 1708, 52 U. S. C. §21083(a)(4). That provision once again reaffirms that a State’s registration list-maintenance program must “mak[e] a *reasonable effort* to remove registrants who are ineligible to vote” and adds that “*consistent with the National Voter Registration Act of 1993 . . .* registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed *solely* by reason of a failure to vote.” §21083(a)(4)(A) (emphasis added).

The majority tries to make much of the word “solely.” But the majority makes too much of too little. For one thing, the Registration Act’s Failure-to-Vote Clause under subsection (b) does not use the word “solely.” And §303 of the Help America Vote Act tells us to interpret its language (which includes the word “solely”) “consistent with the” Registration Act. §21083(a)(4)(A). For another, the Help America Vote Act says that “nothing in this [Act] may be construed to authorize or require conduct prohibited under [the National Voter Registration Act], or to supersede, restrict or limit the application of . . . [t]he National Voter Registration Act.” §21145(a)(4).

The majority’s view of the statute leaves the Registration Act’s Failure-to-Vote Clause with nothing to do in respect to change-of-address programs. Let anyone who doubts this read subsection (d) (while remaining aware of the fact that it requires the sending of a confirmation notice) and ask himself or herself: What *else* is there for the Failure-to-Vote Clause to do? The answer is nothing. Section 8(d) requires States to send a confirmation notice for all change-of-address removals, and, in the majority’s view, failing to respond to that forwardable notice is always a valid cause for removal, even if that notice was sent by reason of the registrant’s initial failure to vote.

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Thus the Failure-to-Vote Clause is left with no independent weight since complying with subsection (d) shields a State from violating subsection (b). To repeat the point, under the majority’s view, the Failure-to-Vote Clause is superfluous in respect to change-of-address programs: subsection (d) already accomplishes everything the majority says is required of a State’s removal program—namely, the sending of a notice.

Finally, even if we were to accept the majority’s premise that the question here is whether Ohio’s system removes registered voters from the registration list “solely by reason of a failure to vote,” that would not change anything. As I have argued, Part II, *supra*, the failure to respond to a forwardable notice is an irrelevant factor in terms of what it shows about whether that registrant changed his or her residence. To add an irrelevant factor to a failure to vote, say, a factor like having gone on vacation or having eaten too large a meal, cannot change Ohio’s sole use of “failure to vote” into something it is not.

IV

JUSTICE THOMAS, concurring, suggests that my reading of the statute “raises serious constitutional doubts.” *Ante*, at 1 (quoting *Jennings v. Rodriguez*, 583 U. S. ____, ____ (2018) (slip op., at 2)). He believes that it “would seriously interfere with the States’ constitutional authority to set and enforce voter qualifications.” *Ante*, at 2. At the same time, the majority “assume[s]” that “Congress has the constitutional authority to limit voting eligibility requirements in the way respondents suggest.” *Ante*, at 16, n. 5. But it suggests possible agreement with JUSTICE THOMAS, for it makes this assumption only “for the sake of argument.” *Ibid.*

Our cases indicate, however, that §8 neither exceeds Congress’ authority under the Elections Clause, Art. I, §4, nor interferes with the State’s authority under the Voter

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Qualification Clause, Art. 1, §2. Indeed, this Court’s precedents interpreting the scope of congressional authority under the Elections Clause make clear that Congress has the constitutional power to adopt the statute before us.

The Elections Clause states:

“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.” U. S. Const., Art. I, §4, cl. 1.

The Court has frequently said that “[t]he Clause’s substantive scope is broad,” and that it “empowers Congress to pre-empt state regulations governing the ‘Times, Places and Manner’ of holding congressional elections.” *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U. S. 1, 8 (2013). We have long held that “[t]he power of Congress over the ‘Times, Places and Manner’ of congressional elections ‘is paramount, and may be exercised at any time, and to any extent which it deems expedient; and so far as it is exercised, and no farther, the regulations effected supersede those of the State which are inconsistent therewith.’” *Id.*, at 9 (quoting *Ex parte Siebold*, 100 U. S. 371, 392 (1880)).

The words “‘Times, Places, and Manner,’” we have said, are “‘comprehensive words’” that “‘embrace authority to provide a complete code for congressional elections.’” *Tribal Council, supra*, at 8–9 (quoting *Smiley v. Holm*, 285 U. S. 355, 366 (1932)). That “complete code” includes the constitutional authority to enact “regulations relating to ‘registration.’” *Ibid.*; see also *Cook v. Gralike*, 531 U. S. 510, 524 (2001) (same); *Roudebush v. Hartke*, 405 U. S. 15, 24–25 (1972). That is precisely what §8 does.

Neither does §8 tell the States “*who* may vote in” federal elections. *Tribal Council*, 570 U. S., at 16. Instead, §8 considers the *manner* of registering those whom the State

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itself considers qualified. Unlike the concurrence, I do not read our precedent as holding to the contrary. But see *id.*, at 26 (THOMAS, J., dissenting). And, our precedent strongly suggests that, given the importance of voting in a democracy, a State’s effort (because of failure to vote) to remove from a federal election roll those it considers otherwise qualified is unreasonable. Cf. *Carrington v. Rash*, 380 U. S. 89, 91–93, 96 (1965) (State can impose “reasonable residence restrictions on the availability of the ballot” but cannot forbid otherwise qualified members of military to vote); see also *Kramer v. Union Free School Dist. No. 15*, 395 U. S. 621, 625 (1969) (“States have the power to impose *reasonable* citizenship, age, and residency requirements on the availability of the ballot” (emphasis added)); *Harper v. Virginia Bd. of Elections*, 383 U. S. 663, 668 (1966) (“To introduce wealth or payment of a fee as a measure of a voter’s qualifications is to introduce a capricious or irrelevant factor”).

For these reasons, with respect, I dissent.

Appendix A to opinion of BREYER, J.

APPENDIXES

A

The National Voter Registration Act of 1993

“SEC. 2. FINDINGS AND PURPOSES.

“(a) FINDINGS.—The Congress finds that—

“(1) The right of citizens of the United States to vote is a fundamental right;

“(2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and

“(3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation . . . , including racial minorities.

“(b) PURPOSES.—The purposes of this Act are—

“(1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;

“(2) to make it possible for Federal, State, and local governments to implement this Act in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;

“(3) to protect the integrity of the electoral process; and

“(4) to ensure that accurate and current voter registration rolls are maintained.” 107 Stat. 77.

“SEC. 5. SIMULTANEOUS APPLICATION FOR VOTER REGISTRATION AND APPLICATION FOR MOTOR VEHICLE DRIVER’S LICENSE.

“(d) CHANGE OF ADDRESS.—Any change of address form submitted in accordance with State law for purposes of a State motor vehicle driver's license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant in-

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volved unless the registrant states on the form that the change of address is not for voter registration purposes.” *Id.*, at 79.

“SEC. 6. MAIL REGISTRATION.

“(d) UNDELIVERED NOTICES. If a notice of the disposition of a mail voter registration application under section 8(a)(2) is sent by nonforwardable mail and is returned undelivered, the registrar may proceed in accordance with section 8(d).” *Id.*, at 80.

“SEC. 8. REQUIREMENTS WITH RESPECT TO ADMINISTRATION OF VOTER REGISTRATION.

“(a) IN GENERAL—In the administration of voter registration for elections for Federal office, each State shall—

“(1) ensure that any eligible applicant is registered to vote in an election—

“(2) require the appropriate State election official to send notice to each applicant of the disposition of the application;

“(3) provide that the name of a registrant may not be removed from the official list of eligible voters except—

“(A) at the request of the registrant;

“(B) as provided by State law, by reason of criminal conviction or mental incapacity; or

“(C) as provided under paragraph (4);

“(4) conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of—

“(A) the death of the registrant; or

“(B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d);

“(b) CONFIRMATION OF VOTER REGISTRATION.—Any State program or activity to protect the integrity of the

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electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office—

“(1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U. S. C. 1973 et seq.); and

“(2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person’s failure to vote.

“(c) VOTER REMOVAL PROGRAMS.—(1) A State may meet the requirement of subsection (a)(4) by establishing a program under which—

“(A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

“(B) if it appears from information provided by the Postal Service that—

“(i) a registrant has moved to a different residence address in the same registrar’s jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

“(ii) the registrant has moved to a different residence address not in the same registrar’s jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) to confirm the change of address.

“(2)(A) A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.

“(B) Subparagraph (A) shall not be construed to pre-

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clude—

“(i) the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a); or

“(ii) correction of registration records pursuant to this Act.

“(d) REMOVAL OF NAMES 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

“(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.

“(2) A notice is described in this paragraph if it is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:

“(A) If the registrant did not change his or her residence, or changed residence but remained in the registrar’s jurisdiction, the registrant should return the card not later than the time provided for mail registration under subsection (a)(1)(B). If the card is not returned, affirmation or confirmation of the registrant’s address may be required before the registrant is permitted to vote in a Federal election during the period beginning on the date of the notice and ending on the day after the date of the second

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general election for Federal office that occurs after the date of the notice, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters.

“(B) If the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered, information concerning how the registrant can continue to be eligible to vote.

“(3) A voting registrar shall correct an official list of eligible voters in elections for Federal office in accordance with change of residence information obtained in conformance with this subsection.” *Id.*, at 82–84.

Appendix B to opinion of BREYER, J.

B

The Help America Vote Act of 2002

“SEC. 303. COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS AND REQUIREMENTS FOR VOTERS WHO REGISTER BY MAIL.

“(a) COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS.—

“(4) MINIMUM STANDARD FOR ACCURACY OF STATE VOTER REGISTRATION RECORDS.—The State election system shall include provisions to ensure that voter registration records in the State are accurate and are updated regularly, including the following:

“(A) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

“(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.”
116 Stat. 1708–1710.

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“SEC. 903. CLARIFICATION OF ABILITY OF ELECTION OFFICIALS TO REMOVE REGISTRANTS FROM OFFICIAL LIST OF VOTERS ON GROUNDS OF CHANGE OF RESIDENCE.

“Section 8(b)(2) of the National Voter Registration Act of 1993 . . . is amended by striking the period at the end and inserting the following: “, except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual—

“(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

“(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office.” *Id.*, at 1728.

“SEC. 906. NO EFFECT ON OTHER LAWS.

“(a) IN GENERAL.— . . . [N]othing in this Act may be construed to authorize or require conduct prohibited under any of the following laws, or to supersede, restrict, or limit the application of such laws [including]:

“(4) The National Voter Registration Act of 1993.” *Id.*, at 1729.

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SUPREME COURT OF THE UNITED STATES

No. 16–980

JON HUSTED, OHIO SECRETARY OF STATE,
PETITIONER *v.* A. PHILIP RANDOLPH
INSTITUTE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

[June 11, 2018]

JUSTICE SOTOMAYOR, dissenting.

I join the principal dissent in full because I agree that the statutory text plainly supports respondents’ interpretation. I write separately to emphasize how that reading is bolstered by the essential purposes stated explicitly in the National Voter Registration Act of 1993 (NVRA) to increase the registration and enhance the participation of eligible voters in federal elections. 52 U. S. C. §§20501(b)(1)–(2). Congress enacted the NVRA against the backdrop of substantial efforts by States to disenfranchise low-income and minority voters, including programs that purged eligible voters from registration lists because they failed to vote in prior elections. The Court errs in ignoring this history and distorting the statutory text to arrive at a conclusion that not only is contrary to the plain language of the NVRA but also contradicts the essential purposes of the statute, ultimately sanctioning the very purging that Congress expressly sought to protect against.

Concerted state efforts to prevent minorities from voting and to undermine the efficacy of their votes are an unfortunate feature of our country’s history. See *Schuette v. BAMN*, 572 U. S. 291, 337–338 (2014) (SOTOMAYOR, J., dissenting). As the principal dissent explains, “[i]n the late 19th and early 20th centuries, a number of

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‘[r]estrictive registration laws and administrative procedures’ came to use across the United States.” *Ante*, at 1–2 (opinion of BREYER, J.). States enforced “poll tax[es], literacy tests, residency requirements, selective purges, . . . and annual registration requirements,” which were developed “to keep certain groups of citizens from voting.” H. R. Rep. No. 103–9, p. 2 (1993). Particularly relevant here, some States erected procedures requiring voters to renew registrations “whenever [they] moved or failed to vote in an election,” which “sharply depressed turnout, particularly among blacks and immigrants.” A. Keyssar, *The Right To Vote* 124 (2009). Even after the passage of the Voting Rights Act in 1965, many obstacles remained. See *ante*, at 2 (opinion of BREYER, J.).

Congress was well aware of the “long history of such list cleaning mechanisms which have been used to violate the basic rights of citizens” when it enacted the NVRA. S. Rep. No. 103–6, p. 18 (1993). Congress thus made clear in the statutory findings that “the right of citizens of the United States to vote is a fundamental right,” that “it is the duty of the Federal, State, and local governments to promote the exercise of that right,” and that “discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation . . . and disproportionately harm voter participation by various groups, including racial minorities.” 52 U. S. C. §20501(a). In light of those findings, Congress enacted the NVRA with the express purposes of “increas[ing] the number of eligible citizens who register to vote” and “enhanc[ing] the participation of eligible citizens as voters.” §§20501(b)(1)–(2). These stated purposes serve at least in part to counteract the history of voter suppression, as evidenced by §20507(b)(2), which forbids “the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person’s failure to vote.” *Ibid.*

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Of course, Congress also expressed other objectives, “to protect the integrity of the electoral process” and “to ensure that accurate and current voter registration rolls are maintained.” §§20501(b)(3)–(4).^{*} The statute contemplates, however, that States can, and indeed must, further all four stated objectives. As relevant here, Congress crafted the NVRA with the understanding that, while States are required to make a “reasonable effort” to remove ineligible voters from the registration lists, §20507(a)(4), such removal programs must be developed in a manner that “prevent[s] poor and illiterate voters from being caught in a purge system which will require them to needlessly re-register” and “prevent[s] abuse which has a disparate impact on minority communities,” S. Rep. No. 103–6, at 18.

Ohio’s Supplemental Process reflects precisely the type of purge system that the NVRA was designed to prevent. Under the Supplemental Process, Ohio will purge a registrant from the rolls after six years of not voting, *e.g.*, sitting out one Presidential election and two midterm elections, and after failing to send back one piece of mail, even though there is no reasonable basis to believe the individual actually moved. See *ante*, at 14 (BREYER, J., dissenting). This purge program burdens the rights of eligible voters. At best, purged voters are forced to “needlessly reregister” if they decide to vote in a subsequent election; at worst, they are prevented from voting at all because they never receive information about when and where

^{*}The majority characterizes these objectives as ones to “remov[e] ineligible persons from the States’ voter registration rolls,” *ante*, at 2, but maintaining “accurate” rolls and “protecting the integrity of the electoral process” surely encompass more than just removing ineligible voters. An accurate voter roll and fair electoral process should also reflect the continued enrollment of eligible voters. In this way, the NVRA’s enhanced-participation and accuracy-maintenance goals are to be achieved simultaneously, and are mutually reinforcing.

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elections are taking place.

It is unsurprising in light of the history of such purge programs that numerous *amici* report that the Supplemental Process has disproportionately affected minority, low-income, disabled, and veteran voters. As one example, *amici* point to an investigation that revealed that in Hamilton County, “African-American-majority neighborhoods in downtown Cincinnati had 10% of their voters removed due to inactivity” since 2012, as “compared to only 4% of voters in a suburban, majority-white neighborhood.” Brief for National Association for the Advancement of Colored People et al. as *Amici Curiae* 18–19. *Amici* also explain at length how low voter turnout rates, language-access problems, mail delivery issues, inflexible work schedules, and transportation issues, among other obstacles, make it more difficult for many minority, low-income, disabled, homeless, and veteran voters to cast a ballot or return a notice, rendering them particularly vulnerable to unwarranted removal under the Supplemental Process. See Brief for Asian Americans Advancing Justice | AAJC et al. as *Amici Curiae* 15–26; Brief for National Disability Rights Network et al. as *Amici Curiae* 17, 21–24, 29–31; Brief for VoteVets Action Fund as *Amicus Curiae* 23–30. See also Brief for Libertarian National Committee as *Amicus Curiae* 19–22 (burdens on principled nonvoters).

Neither the majority nor Ohio meaningfully dispute that the Supplemental Process disproportionately burdens these communities. At oral argument, Ohio suggested that such a disparate impact is not pertinent to this case because respondents did not challenge the Supplemental Process under §20507(b)(1), which requires that any removal program “be uniform, nondiscriminatory, and in compliance with the Voting Rights Act.” Tr. of Oral Arg. 23. The fact that respondents did not raise a claim under §20507(b)(1), however, is wholly irrelevant to our assessment of whether, as a matter of statutory interpretation,

SOTOMAYOR, J., dissenting

the Supplemental Process removes voters “by reason of the person’s failure to vote” in violation of §20507(b)(2). Contrary to the majority’s view, *ante*, at 20–21, the NVRA’s express findings and purpose are highly relevant to that interpretive analysis because they represent “the assumed facts and the purposes that the majority of the enacting legislature . . . had in mind, and these can shed light on the meaning of the operative provisions that follow.” A. Scalia & B. Garner, *Reading Law* 218 (2012). Respondents need not demonstrate discriminatory intent to establish that Ohio’s interpretation of the NVRA is contrary to the statutory text and purpose.

In concluding that the Supplemental Process does not violate the NVRA, the majority does more than just misconstrue the statutory text. It entirely ignores the history of voter suppression against which the NVRA was enacted and upholds a program that appears to further the very disenfranchisement of minority and low-income voters that Congress set out to eradicate. States, though, need not choose to be so unwise. Our democracy rests on the ability of all individuals, regardless of race, income, or status, to exercise their right to vote. The majority of States have found ways to maintain accurate voter rolls without initiating removal processes based solely on an individual’s failure to vote. See App. to Brief for League of Women Voters of the United States et al. as *Amici Curiae* 1a–9a; Brief for State of New York et al. as *Amici Curiae* 22–28. Communities that are disproportionately affected by unnecessarily harsh registration laws should not tolerate efforts to marginalize their influence in the political process, nor should allies who recognize blatant unfairness stand idly by. Today’s decision forces these communities and their allies to be even more proactive and vigilant in holding their States accountable and working to dismantle the obstacles they face in exercising the fundamental right to vote.