

November 15, 2005

Hans von Spakovsky
Civil Rights Division
Room 7254 - NWB
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530

Dear Mr von Spakovsky,

I am seeking clarification on the mandates of the National Voter Registration Act as modified by the Help America Vote Act. My specific question regards the ability of election jurisdictions to remove voters who are known to be registered in another election jurisdiction, even if that voter has not affirmatively transmitted that information to their previous registration jurisdiction.

The National Voter Registration Act specifically limits the ability of registrars to remove voters from the registration rolls.

(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;...

The Help America Vote Act however established a mandate to election officials.

(B) Conduct.--The list maintenance performed under subparagraph (A) shall be conducted in a manner that ensures

(i) the name of each registered voter appears in the computerized list;

(ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and

(iii) duplicate names are eliminated from the computerized list. (Emphasis added)

The mandate to election officials that duplicate names are eliminated from the computerized list is difficult to carry out if the National Voter Registration Act is so strictly interpreted as to allow for the removal of a duplicate voter only when the voter himself affirmatively informs the election authority from his previous registration jurisdiction.

More sensible, and I believe more in keeping with the spirit of both the National Voter Registration Act and the Help America Vote Act, is to use the statewide voter registration database to identify possible duplicate voters and to remove them from the registration rolls of their previous address. Under this interpretation, the application to register in the other jurisdiction would satisfy the "confirms in writing" clause of NVRA.

As the officer with the responsibility over voter registrations in Champaign County, Illinois I want to know the following:

1. Can I remove a voter from my registration rolls upon confirming that a voter with the same name, birth date, and identification number (either Social Security or Driver's License) registered in another jurisdiction in the state after having registered in my jurisdiction?
2. If the above is not acceptable, can I remove a voter under the above circumstances if I have additionally confirmed that the signature on their application to register in the other jurisdiction matches the signature in my records?

I appreciate your attention to these questions which I believe are of interest to election officials around the country.

Sincerely,

Mark Shelden
Champaign County Clerk

June 1, 2006

Thomas Wilkey
United States Election Assistance Commission
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

Dear Mr Wilkey,

I am seeking clarification on the mandates of the National Voter Registration Act as modified by the Help America Vote Act. My specific question regards the ability of election jurisdictions to remove voters who are known to be registered in another election jurisdiction, even if that voter has not affirmatively transmitted that information to their previous registration jurisdiction.

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I would also point you to the Memorandum of Understanding between the U.S. Department of Justice and the State of California as a practical way of addressing this issue.

I appreciate your attention to these questions which I believe are of interest to election officials around the country.

Sincerely,

Mark Shelden
Champaign County Clerk

August 2, 2006

Juliet Thompson
General Counsel
United States Election Assistance Commission
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

VIA Fax,

Dear Ms. Thompson,

I want to follow up on my letter to Mr. Wilkey of June 1, 2006 which I understand was passed on to you. I believe that additional information has come up that I believe strengthens the case for the EAC to construe NVRA and HAVA together in a way that gives election authorities more tools to remove duplicate registrations.

In my original letter, I mentioned the consent decree with the state of California as indicating the Department of Justice's opinion regarding the removal of duplicate registration under both HAVA and NVRA. One relevant portion of the California consent decree is as follows:

§20108.60. Duplicate Registration Records. (a) Beginning January 1, 2006, the Secretary of State shall conduct weekly checks within the Calvoter statewide registration list to identify potential duplicate registrations for the same voter within that list, based on established rotating criteria. Upon identification of potential duplicate registration records, the Secretary of State shall automatically send an electronic notice to the county with the record that has the oldest date of registration.

(b) Within five (5) business days of receipt of a notice of potential duplicate registration the elections official shall take all necessary steps to determine whether or not the registration record is a duplicate of an existing newer registration, and if a duplicate registration is confirmed, shall cancel the older duplicate registration and submit a registration

update file or full load file to Calvoter in accordance with Section 20108.15 and Section 20108.40.

Another consent decree is with the state of Arkansas in 2004. A relevant portion of that is as follows:

8. During the pendency of this decree, Defendant Staley shall not remove any registered voters from the voter rolls on the ground that the registrant has changed residence unless:

b) Defendant Staley receives notice of registration from the registrar in another county or state;

Most recent is the consent decree this year with the state of Indiana. A relevant portion of that decree is as follows:

The State shall require each county voter registration office to make a determination, consistent with all notice requirements mandated by law, on these potentially invalid registrations by August 2, 2006, including the removal from the list of eligible voters of any voter registration that has been positively identified as being from a deceased voter or as a duplicate registration.

The totality of these consent decrees points clearly to an interpretation of NVRA and HAVA together that gives election authorities the right to remove voters when the election authority has persuasive evidence of their registration in another jurisdiction, regardless of whether the registrant directly communicates to their former jurisdiction of registration.

Guidance from the EAC on this matter would be very beneficial to election authorities across the country and would foster greater uniformity in the interpretation of these statutes.

I look forward to your answer.

Sincerely,

Mark Shelden
Champaign County Clerk



U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

August 14, 2006

Mark Shelden
Champaign County Clerk
1776 East Washington Street
Urbana, IL 61802

FILED
AUG 18 2006
Mark Shelden
CHAMPAIGN COUNTY CLERK

RE: Removal of Registered Voters

Dear Mr. Shelden:

Thank you for your letter of June 1, 2006 regarding the ability of election jurisdictions to remove voters who are known to be registered in another election jurisdiction, even if that voter has not affirmatively transmitted that information to their previous registration jurisdiction. The U.S. Election Assistance Commission was formed to provide assistance and guidance to the states in implementing the provisions of the Help America Vote Act (HAVA) and the National Voter Registration Act (NVRA). In your letter you asked the following questions:

1. "Can I remove a voter from my registration rolls upon confirming that a voter with the same name, birth date, and identification number (either Social Security or Driver's License) registered in another jurisdiction in the state after having registered in my jurisdiction?"
2. In accordance to the first question "...can I remove a voter if I have additionally confirmed that the signature on their application to register in the other jurisdiction matches the signature in my records?"

NVRA prohibits removing the name of a voter from the list of eligible voters

"on the ground that the registrant has changed residence unless the registrant confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered..." [Section 8(d)(1)(A)].

There are three ways the registrar can receive such written confirmation from the voter:

1. The voter may spontaneously send a notice informing the registrar of their change of address outside the jurisdiction.

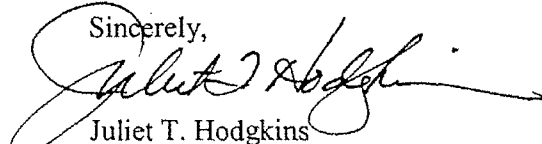
2. Any action from the voter that result in the voter being registered at a new address, such as registering in another jurisdiction or providing a change-of-address notice through the driver's license process that updates the voter registration. In return, cancellation notices received from voter registrars in other jurisdictions and motor vehicle departments/agencies would be sufficient for removing a registrant's name.
3. Through information provided by the Postal Service either through the National Change of Address program or else upon return of any election mailing.

Implementing the National Voter Registration Act of 1993: Requirements, Issues, Approaches, and Examples, pp. 5-7 and 5-8.

In the case of a voter who moves to and registers to vote in another state, the voter has taken affirmative action to confirm in writing the change of address and notify the election official in the new jurisdiction of the voter's intent to register in that location. It is common practice for the election official in the new jurisdiction to notify the election official in the jurisdiction where the voter was previously registered of the new registration. Notification from the registrar of voters in the new jurisdiction is sufficient to remove the voter. However, there may be provisions of state or federal law that limit this authorization, such as 42 U.S.C. §1973aa-1(e), which permits a voter who changed residence less than 30 days before a Presidential election to vote in his/her previous jurisdiction for the offices of President and Vice-President. Based on my review of the NVRA and previous agency interpretation of the NVRA, the NVRA would permit a voter to be removed based upon such notification.

I trust that this information answers your question regarding the ability of election jurisdictions to remove voters who are known to be registered in another election jurisdiction. If you have any further questions or need further additional information, please do not hesitate to call me.

Sincerely,



Juliet T. Hodgkins
General Counsel

September 5, 2006

Juliet Hodgkins
U.S. Election Assistance Commission
1225 New York Avenue, N.W. Suite 1100
Washington, DC 20005

Dear Ms. Hodgkins

Thank you for your letter of August 14, 2006 but unfortunately my question was not answered. Let me try to restate the problem.

It can be presumed that every registrar in the country is aware of the ability to remove a registrant upon receipt of a cancellation notice from another jurisdiction. That has never been an issue.

The issue is whether a jurisdiction can remove a voter when they have no cancellation notice and their only proof of registration is the information from the statewide voter registration database.

HAVA contains strong language demanding the removal of duplicate registrations. NVRA contains some impediments to the removal of voters. What I seek, and I believe many other jurisdictions, is how to legally meet both obligations.

Your letter to me states

2. *Any action from the voter that result in the voter being registered at a new address, such as registering in another jurisdiction or providing a change of address notice through the driver's license process that updates the voter registration.*

If I took that statement alone I might find justification for removing a voter based solely on information discovered on the statewide voter registration database. However, you continue with this, which I can't say I understand.

In return, cancellation notices received from voter registrars in other jurisdictions and motor vehicle departments/agencies would be sufficient for removing a registrant's name.

Is the part of (2.) contained after "In return" putting more restrictions on the first sentence or is it another point within (2.)?

Thank you for your time. I once again look forward to hearing from you.

Sincerely,

Mark Shelden
Champaign County Clerk