



County of Union, Illinois  
Office of the Chief Information Officer  
309 W. Market—Room 115  
Jonesboro, IL 62952

Rollie Hawk, CIO  
(618) 925-2470  
cio@unioncountyl.gov  
@unioncountycio

August 14, 2018

[sent via email]

Kavitha Surana  
ProPublica

kavitha.surana@propublica.org

Dear Ms. Surana:

Please consider this our response to your attached Freedom of Information Act request, received via email on August 7, 2018 and summarized below:

*I am requesting copies of all correspondence between the Union County Clerk and the Public Interest Legal Foundation (aka Election Law Center) since Sept. 15, 2017. I also request copies of any emails since Sept. 15, 2017, mentioning the following key words: "J. Christian Adams," "Christian Adams," "PILF," "Public Interest Legal Foundation," "ELC" and/or "Election Law Center."*

Please find attached records responsive to your request.

We consider your request completed. If we can be of further assistance, please let me know.

Sincerely,

Rollie Hawk, Chief Information Officer

Enclosure

Cc: Tyler R. Edmonds, State's Attorney  
Vonda Benefield, County Clerk



August 7, 2018

Rollie Hawk  
Chief Information Officer  
309 W. Market  
Room 115  
Jonesboro, IL 62952  
618-833-UCIT (8248)  
cio@unioncountyil.gov

Dear Connie Simms,

Under the **Illinois Freedom of Information Act, 5 ILCS 140**, I am requesting copies of all correspondence between the **Union County Clerk** and the Public Interest Legal Foundation (aka Election Law Center) since Sept. 15, 2017.

I also request copies of any emails since Sept. 15, 2017, mentioning the following key words: "J. Christian Adams," "Christian Adams," "PILF," "Public Interest Legal Foundation," "ELC" and/or "Election Law Center."

I request the above records be provided in machine readable format and emailed to me at this address.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$25. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of J. Christian Adams and the Public Interest Legal Foundation's accusation that multiple non-citizens have registered to vote in your county. This information will be used to inform the public and is not being sought for commercial purposes.

The **Illinois Freedom of Information Act, 5 ILCS 140** requires a response to this request be made within five business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for assistance.

**Kavitha Surana**

ProPublica

155 Avenue of the Americas, 13th Floor

New York, New York 10013

Phone: (646)-463-1817

Email: [Kavitha.surana@propublica.org](mailto:Kavitha.surana@propublica.org)

[research@propublica.org](mailto:research@propublica.org)

155 Avenue of the Americas, 13th Floor New York, New York  
10013 212-514-5250 [propublica.org](http://propublica.org)

**From:** [Tyler R. Edmonds](#)  
**To:** "Rollie J. Hawk"; "Terry Bartruff"  
**Subject:** RE: DRAFT FOIA Response - Thomson Reuters - 2018-01-26  
**Date:** Friday, January 26, 2018 9:29:25 AM  
**Attachments:** [PILF 9-15-17.pdf](#)

---

Rollie - Please see attached. Sorry for the delay.

Terry - I would advise contacting this group asap to arrange the inspection.

Tyler

---

Tyler R. Edmonds  
Union County State's Attorney  
309 West Market Street, Room 239  
Jonesboro, Illinois 62952

Tel: (618) 833-7216  
Fax: (618) 833-3349

[tedmonds@unioncountyl.gov](mailto:tedmonds@unioncountyl.gov)

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-----Original Message-----

**From:** Rollie J. Hawk [<mailto:rhawk@unioncountyl.gov>]  
**Sent:** Friday, January 26, 2018 6:50 AM  
**To:** [tbartruff@unioncountyl.gov](mailto:tbartruff@unioncountyl.gov)  
**Cc:** Tyler R. Edmonds  
**Subject:** DRAFT FOIA Response - Thomson Reuters - 2018-01-26

Terry is looking for one more letter from Tyler and once I have that I'll send this out.

Rollie

--

Rollie Hawk

[rhawk@unioncountyl.gov](mailto:rhawk@unioncountyl.gov)

Union County Chief Information Officer  
309 West Market Street, Room 115  
Jonesboro, Illinois 62952

Tel: (618) 925-2470  
Fax: (618) 833-5496

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**From:** [Terry Bartruff](#)  
**To:** ["Rollie J. Hawk"](#)  
**Subject:** RE: FW: Illinois FOI request  
**Date:** Friday, January 26, 2018 7:46:49 AM

---

I emailed Sheri in Tyler's office but have not heard anything back from her.

---

**From:** Rollie J. Hawk [mailto:[rhawk@unioncountyl.gov](mailto:rhawk@unioncountyl.gov)]  
**Sent:** Friday, January 26, 2018 5:23 AM  
**To:** Terry Bartruff  
**Subject:** Re: FW: Illinois FOI request

Did you find Tyler's letter?

On Mon, Jan 22, 2018, at 8:13 AM, Terry Bartruff wrote:

Rollie,

I am attaching the information I have concerning this. There is a copy of a letter that Tyler wrote to them also.

I am still looking for a copy of that.

---

**From:** [Julia.Harte@thomsonreuters.com](mailto:Julia.Harte@thomsonreuters.com) [mailto:[Julia.Harte@thomsonreuters.com](mailto:Julia.Harte@thomsonreuters.com)]  
**Sent:** Friday, January 19, 2018 3:49 PM  
**To:** [Julia.Harte@thomsonreuters.com](mailto:Julia.Harte@thomsonreuters.com)  
**Subject:** Illinois FOI request

To the County Clerk & Recorder,

I am a reporter for Reuters. Under the Illinois Freedom of Information Act, 5 ILCS 140, I am writing to request copies of all correspondence between your office and any of the following groups since January 1, 2017, regarding your county's registered voter list:

- The Public Interest Legal Foundation
- True the Vote
- Judicial Watch
- The American Civil Rights Union
- The Minnesota Voters Alliance

To give you an example of the types of records I am seeking, the Public Interest Legal Foundation (PILF) said it sent a group of counties, including yours, the following letter in September, requesting disclosure and inspection of your voter list maintenance records: <https://publicinterestlegal.org/files/Sample-2017-notice.pdf> I would like to receive copies of any follow-up correspondence between your office and PILF. I would also like to receive copies of any similar correspondence between your office and the

other groups listed above. If you received similar letters from any groups not listed above, I would also like copies of those.

If your office was not the recipient of the PILF letter and other correspondence about maintenance of the county's voter list, please forward this letter to the appropriate person or let me know which person(s) has custody of these records.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$25.00. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of voter list maintenance activity across the country in this major election year. I am requesting similar information from counties in other U.S. states as well. This information is not being sought for commercial purposes.

I look forward to hearing from you in writing within five working days, as required by Act 5 ILCS 140(3). If access to the records I am requesting will take longer, please contact me with information about when I should expect copies of the requested records.

If you deny any portion, or all, of this request, please provide me with a written explanation of the reason(s) for your denial, including a citation to each specific statutory exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law. If you conclude that portions of the records that I request are exempt from disclosure, please release the remainder of such records for inspection and copying, redacting only the portion or portions that you claim are exempt.

Please contact me with any questions about my request. Thank you for your time.

Sincerely,

Julia

--

Julia Harte  
National Affairs Correspondent  
Thomson Reuters  
1333 H St NW, Sixth Floor  
Washington, DC 20005  
Office: 202-898-8312  
Mobile: 202-590-7402

Email had 3 attachments:

- Certified Letter from Judicial Watch.pdf  
962k (application/pdf)
- Lawyers Committee For Civil Rights.pdf  
2.1M (application/pdf)
- Letter to Judicial Watch.docx  
89k (application/vnd.openxmlformats-officedocument.wordprocessingml.document)

Rollie Hawk

[rhawk@unioncountyil.gov](mailto:rhawk@unioncountyil.gov)

Union County Chief Information Officer  
309 West Market Street, Room 115  
Jonesboro, Illinois 62952

Tel: (618) 925-2470

Fax: (618) 833-5496

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**From:** [Rollie J. Hawk](#)  
**To:** [Terry Bartruff](#)  
**Subject:** Re: FW: Illinois FOI request  
**Date:** Friday, January 26, 2018 5:23:10 AM

---

Did you find Tyler's letter?

On Mon, Jan 22, 2018, at 8:13 AM, Terry Bartruff wrote:

Rollie,

I am attaching the information I have concerning this. There is a copy of a letter that Tyler wrote to them also.

I am still looking for a copy of that.

---

**From:** [Julia.Harte@thomsonreuters.com](mailto:Julia.Harte@thomsonreuters.com) [mailto:[Julia.Harte@thomsonreuters.com](mailto:Julia.Harte@thomsonreuters.com)]  
**Sent:** Friday, January 19, 2018 3:49 PM  
**To:** [Julia.Harte@thomsonreuters.com](mailto:Julia.Harte@thomsonreuters.com)  
**Subject:** Illinois FOI request

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I am a reporter for Reuters. Under the Illinois Freedom of Information Act, 5 ILCS 140, I am writing to request copies of all correspondence between your office and any of the following groups since January 1, 2017, regarding your county's registered voter list:

- The Public Interest Legal Foundation
- True the Vote
- Judicial Watch
- The American Civil Rights Union
- The Minnesota Voters Alliance

To give you an example of the types of records I am seeking, the Public Interest Legal Foundation (PILF) said it sent a group of counties, including yours, the following letter in September, requesting disclosure and inspection of your voter list maintenance records: <https://publicinterestlegal.org/files/Sample-2017-notice.pdf> I would like to receive copies of any follow-up correspondence between your office and PILF. I would also like to receive copies of any similar correspondence between your office and the other groups listed above. If you received similar letters from any groups not listed above, I would also like copies of those.

If your office was not the recipient of the PILF letter and other correspondence about maintenance of the county's voter list, please forward this letter to the appropriate

person or let me know which person(s) has custody of these records.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$25.00. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of voter list maintenance activity across the country in this major election year. I am requesting similar information from counties in other U.S. states as well. This information is not being sought for commercial purposes.

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Please contact me with any questions about my request. Thank you for your time.

Sincerely,

Julia

--

Julia Harte  
National Affairs Correspondent  
Thomson Reuters  
1333 H St NW, Sixth Floor  
Washington, DC 20005  
Office: 202-898-8312  
Mobile: 202-590-7402

Email had 3 attachments:

- Certified Letter from Judicial Watch.pdf  
962k (application/pdf)
- Lawyers Committee For Civil Rights.pdf  
2.1M (application/pdf)
- Letter to Judicial Watch.docx  
89k (application/vnd.openxmlformats-officedocument.wordprocessingml.document)

Rollie Hawk

[rhawk@unioncountyil.gov](mailto:rhawk@unioncountyil.gov)

Union County Chief Information Officer  
309 West Market Street, Room 115  
Jonesboro, Illinois 62952

Tel: (618) 925-2470

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**From:** [Terry Bartruff](#)  
**To:** [Rollie Hawk](#)  
**Subject:** FW: Illinois FOI request  
**Date:** Monday, January 22, 2018 8:13:31 AM  
**Attachments:** [Certified Letter from Judicial Watch.pdf](#)  
[Lawyers Committee For Civil Rights.pdf](#)  
[Letter to Judicial Watch.docx](#)

---

Rollie,

I am attaching the information I have concerning this. There is a copy of a letter that Tyler wrote to them also.

I am still looking for a copy of that.

---

**From:** [Julia.Harte@thomsonreuters.com](mailto:Julia.Harte@thomsonreuters.com) [mailto:[Julia.Harte@thomsonreuters.com](mailto:Julia.Harte@thomsonreuters.com)]  
**Sent:** Friday, January 19, 2018 3:49 PM  
**To:** [Julia.Harte@thomsonreuters.com](mailto:Julia.Harte@thomsonreuters.com)  
**Subject:** Illinois FOI request

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True the Vote

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The American Civil Rights Union

The Minnesota Voters Alliance

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<https://publicinterestlegal.org/files/Sample-2017-notice.pdf> I would like to receive copies of any follow-up correspondence between your office and PILF. I would also like to receive copies of any similar correspondence between your office and the other groups listed above. If you received similar letters from any groups not listed above, I would also like copies of those.

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requesting similar information from counties in other U.S. states as well. This information is not being sought for commercial purposes.

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Please contact me with any questions about my request. Thank you for your time.

Sincerely,

Julia

--

Julia Harte  
National Affairs Correspondent  
Thomson Reuters  
1333 H St NW, Sixth Floor  
Washington, DC 20005  
Office: 202-898-8312  
Mobile: 202-590-7402

**From:** [Terry Bartruff](#)  
**To:** ["Rollie J. Hawk"](#)  
**Subject:** RE: FW: Obligations Under the NVRA  
**Date:** Monday, November 27, 2017 10:28:17 AM  
**Attachments:** [image001.png](#)

---

There were no changes in voter registration maintenance due to any correspondence from PILF nor any records provided to PILF.

TERRY BARTRUFF  
UNION COUNTY CLERK/RECORDER  
309 W. MARKET ST.  
RM 116  
JONESBORO,IL.62952

OFFICE # 618-833-5711  
FAX # 618-833-8712

---

**From:** Rollie J. Hawk [mailto:[rhawk@unioncountyil.gov](mailto:rhawk@unioncountyil.gov)]  
**Sent:** Monday, November 27, 2017 10:18 AM  
**To:** Terry Bartruff  
**Cc:** Tyler R. Edmonds  
**Subject:** Re: FW: Obligations Under the NVRA

This part definitely is.

We also formally request pursuant to 52 U.S.C. § 20507(i) and 5 ILCS 140/1 that all records provided to PILF in connection with its September 2017 letter, and all correspondence with PILF concerning the issues raised in its September 2017 letter be provided to us. We also request all records pertaining to any changes to list maintenance activities related to PILF's letter, including list of voters, if any, who were removed from the rolls. Please send the documents to [nvra@lawyerscommittee.org](mailto:nvra@lawyerscommittee.org). If there are any copying expenses, please let us know in advance at the email address or phone number listed above.

Do we have anything responsive to that?

On Mon, Nov 27, 2017, at 10:12 AM, Terry Bartruff wrote:

I suppose this is a FOIA request.

TERRY BARTRUFF  
UNION COUNTY CLERK/RECORDER  
309 W. MARKET ST.  
RM 116  
JONESBORO,IL.62952

OFFICE # 618-833-5711  
FAX # 618-833-8712

---

**From:** Marcia Johnson-Blanco [mailto:[mblanco@lawyerscommittee.org](mailto:mblanco@lawyerscommittee.org)]  
**Sent:** Tuesday, November 21, 2017 6:00 PM

To: [tbartruff@unioncountyil.gov](mailto:tbartruff@unioncountyil.gov)  
Subject: Obligations Under the NVRA

Dear Mr. Bartruff,

On behalf of the civil rights organizations on the attached letter and memorandum, I am writing to express concern and to offer assistance regarding the letter you received from the Public Interest Law Foundation (PILF) this past September. As noted in the attached documents, we stand ready to assist you in your efforts to implement Section 8 of the National Voter Registration Act. We also request all records pertaining to any changes you have made in your list maintenance activities in response to the letter you received from PILF.

Thank you for your attention to this matter.

Best regards,  
Marcia Johnson-Blanco

Marcia Johnson-Blanco  
Co-Director, Voting Rights Project  
Lawyers' Committee for Civil Rights Under Law  
1401 New York Avenue, NW, Ste. 400  
Washington, DC 20005  
[mblanco@lawyerscommittee.org](mailto:mblanco@lawyerscommittee.org)  
(202) 662-8346 (office)  
(202) 245-2588 (mobile)  
@mfjblanco (twitter)  
[www.lawyercommittee.org](http://www.lawyercommittee.org)

Email had 2 attachments:

- Election Official NVRA Memo Final.pdf  
775k (application/pdf)
- Union County NVRA.pdf  
449k (application/pdf)

Rollie Hawk

[rhawk@unioncountyil.gov](mailto:rhawk@unioncountyil.gov)

Union County Chief Information Officer  
309 West Market Street, Room 115  
Jonesboro, Illinois 62952

Tel: (618) 925-2470  
Fax: (618) 833-5496

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From: [Rollie J. Hawk](#)  
To: [Terry Bartruff](#)  
Cc: [Tyler R. Edmonds](#)  
Subject: Re: FW: Obligations Under the NVRA  
Date: Monday, November 27, 2017 10:18:25 AM  
Attachments: [image.png](#)

---

This part definitely is.

We also formally request pursuant to 52 U.S.C. § 20507(i) and 5 ILCS 140/1 that all records provided to PILF in connection with its September 2017 letter, and all correspondence with PILF concerning the issues raised in its September 2017 letter be provided to us. We also request all records pertaining to any changes to list maintenance activities related to PILF's letter, including list of voters, if any, who were removed from the rolls. Please send the documents to [nvra@lawyerscommittee.org](mailto:nvra@lawyerscommittee.org). If there are any copying expenses, please let us know in advance at the email address or phone number listed above.

Do we have anything responsive to that?

On Mon, Nov 27, 2017, at 10:12 AM, Terry Bartruff wrote:

I suppose this is a FOIA request.

TERRY BARTRUFF  
UNION COUNTY CLERK/RECORDER  
309 W. MARKET ST.  
RM 116  
JONESBORO,IL.62952

OFFICE # 618-833-5711  
FAX # 618-833-8712

---

**From:** Marcia Johnson-Blanco [<mailto:mblanco@lawyerscommittee.org>]  
**Sent:** Tuesday, November 21, 2017 6:00 PM  
**To:** [tbartruff@unioncountyil.gov](mailto:tbartruff@unioncountyil.gov)  
**Subject:** Obligations Under the NVRA

Dear Mr. Bartruff,

On behalf of the civil rights organizations on the attached letter and memorandum, I am writing to express concern and to offer assistance regarding the letter you received from the Public Interest Law Foundation (PILF) this past September. As noted in the attached documents, we stand ready to assist you in your efforts to implement Section 8 of the

National Voter Registration Act. We also request all records pertaining to any changes you have made in your list maintenance activities in response to the letter you received from PILF.

Thank you for your attention to this matter.

Best regards,  
Marcia Johnson-Blanco

Marcia Johnson-Blanco  
Co-Director, Voting Rights Project  
Lawyers' Committee for Civil Rights Under Law  
1401 New York Avenue, NW, Ste. 400  
Washington, DC 20005  
[mblanco@lawyerscommittee.org](mailto:mblanco@lawyerscommittee.org)  
(202) 662-8346 (office)  
(202) 245-2588 (mobile)  
@mfjblanco (twitter)  
[www.lawyercommittee.org](http://www.lawyercommittee.org)

Email had 2 attachments:

- Election Official NVRA Memo Final.pdf  
775k (application/pdf)
- Union County NVRA.pdf  
449k (application/pdf)

Rollie Hawk

[rhawk@unioncountyil.gov](mailto:rhawk@unioncountyil.gov)

Union County Chief Information Officer  
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e-mail.

**From:** [Terry Bartruff](#)  
**To:** [Rollie Hawk](#)  
**Subject:** FW: Obligations Under the NVRA  
**Date:** Monday, November 27, 2017 10:12:44 AM  
**Attachments:** [Election Official NVRA Memo Final.pdf](#)  
[Union County NVRA.pdf](#)

---

I suppose this is a FOIA request.

TERRY BARTRUFF  
UNION COUNTY CLERK/RECORDER  
309 W. MARKET ST.  
RM 116  
JONESBORO,IL.62952

OFFICE # 618-833-5711  
FAX # 618-833-8712

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**Sent:** Tuesday, November 21, 2017 6:00 PM  
**To:** [tbartruff@unioncountyil.gov](mailto:tbartruff@unioncountyil.gov)  
**Subject:** Obligations Under the NVRA

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Best regards,  
Marcia Johnson-Blanco

Marcia Johnson-Blanco  
Co-Director, Voting Rights Project  
Lawyers' Committee for Civil Rights Under Law  
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Washington, DC 20005  
[mblanco@lawyerscommittee.org](mailto:mblanco@lawyerscommittee.org)  
(202) 662-8346 (office)  
(202) 245-2588 (mobile)  
[@mfjblanco](https://twitter.com/mfjblanco) (twitter)  
[www.lawyercommittee.org](http://www.lawyercommittee.org)



**From:** [Marcia Johnson-Blanco](#)  
**To:** [tbartruff@unioncountyil.gov](mailto:tbartruff@unioncountyil.gov)  
**Subject:** Obligations Under the NVRA  
**Date:** Tuesday, November 21, 2017 6:00:11 PM  
**Attachments:** [Election Official NVRA Memo Final.pdf](#)  
[Union County NVRA.pdf](#)

---

Dear Mr. Bartruff,

On behalf of the civil rights organizations on the attached letter and memorandum, I am writing to express concern and to offer assistance regarding the letter you received from the Public Interest Law Foundation (PILF) this past September. As noted in the attached documents, we stand ready to assist you in your efforts to implement Section 8 of the National Voter Registration Act. We also request all records pertaining to any changes you have made in your list maintenance activities in response to the letter you received from PILF.

Thank you for your attention to this matter.

Best regards,  
Marcia Johnson-Blanco

Marcia Johnson-Blanco  
Co-Director, Voting Rights Project  
Lawyers' Committee for Civil Rights Under Law  
1401 New York Avenue, NW, Ste. 400  
Washington, DC 20005  
[mblanco@lawyerscommittee.org](mailto:mblanco@lawyerscommittee.org)  
(202) 662-8346 (office)  
(202) 245-2588 (mobile)  
@mfjblanco (twitter)  
[www.lawyercommittee.org](http://www.lawyercommittee.org)

**From:** [Terry Bartruff](#)  
**To:** ["Tyler R. Edmonds"](#)  
**Subject:** Public Interest Legal Foundation  
**Date:** Monday, October 02, 2017 2:25:20 PM  
**Attachments:** [Public Interest Legal Foundation.pdf](#)

---

Tyler,

This is a letter I received after you sent the certified mail to them concerning our voter rolls and our purge of the voter registration system.

TERRY BARTRUFF  
UNION COUNTY CLERK/RECORDER  
309 W. MARKET ST.  
RM 116  
JONESBORO,IL.62952

OFFICE # 618-833-5711  
FAX # 618-833-8712



**Judicial  
Watch®**  
*Because no one  
is above the law!*

June 28, 2017

*VIA USPS CERTIFIED MAIL AND EMAIL*

The Honorable Steve Sandvoss  
Executive Director  
Illinois State Board of Elections  
2329 S. MacArthur Blvd.  
Springfield, Illinois 62704

**Re: Violations of Section 8 of the National Voter Registration Act, 52 U.S.C. § 20507**

Dear Director Sandvoss:

I write as legal counsel for John Bergholz, Ron Ewing, Larry Tidrick, Michael Grash, Guillermo Jaile, Benny Thome, Joyce Thome, Diane Harwood, Mike McEvoy, Elizabeth Press, and Kenneth M. Steffen, in their individual capacity as registered Illinois voters, to bring your attention to violations of Section 8 of the National Voter Registration Act (“NVRA”) in Illinois. From public records obtained, twenty-four (24) counties in Illinois have more total registered voters than adult citizens over the age of 18 living in that county as calculated by the U.S. Census Bureau’s 2011-2015 American Community Survey. This is strong circumstantial evidence that these Illinois counties are not conducting reasonable voter registration record maintenance as mandated under the NVRA.

NVRA Section 8 requires states to do reasonable list maintenance so as to maintain accurate lists of eligible voters for use in conducting federal elections.<sup>1</sup> As you may know, Congress enacted Section 8 of the NVRA to protect the integrity of the electoral process. Allowing the names of ineligible voters to remain on the voting rolls harms the integrity of the electoral process and undermines voter confidence in the legitimacy of elections. As the U.S. Supreme Court has stated, “[P]ublic confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process.”<sup>2</sup>

This letter serves as statutory notice that John Bergholz, Ron Ewing, Larry Tidrick, Michael Grash, Guillermo Jaile, Benny Thome, Joyce Thome, Diane Harwood, Mike McEvoy, Elizabeth Press, and Kenneth M. Steffen, in their individual capacity as registered Illinois voters, will bring a lawsuit against you and, if appropriate, against the counties named in this letter, if

<sup>1</sup> In Illinois, responsibility to coordinate statewide NVRA Section 8 compliance lies with the Executive Director of the State Board of Elections. See 26 Ill. Adm. Code § 216.100; 52 U.S.C. § 20509.

<sup>2</sup> *Crawford et al. v. Marion County Election Board*, 553 US 181, 197 (2008).

you do not take specific actions to correct these violations of Section 8 within 90 days.<sup>3</sup> In addition, by this letter we are asking you and, to the extent that they keep records separately, the counties named in this letter, to produce certain records to us which you are required to make available under Section 8(i) of the NVRA.<sup>4</sup> We hope that litigation will not be necessary to enforce either of these claims.

As the top election official in Illinois, it is your responsibility under federal law to coordinate Illinois' statewide effort to conduct a program that reasonably ensures the lists of eligible voters are accurate. The following information explains how we determined that your state and the named counties are in violation of NVRA Section 8 and the remedial steps that must be taken to comply with the law.

**1. Twenty-Four Illinois Counties Have More Total Registered Voters Than Citizen Voting Age Population.**

Based on our review of 2014 Election Assistance Commission (EAC) data, the 2011-2015 U.S. Census Bureau's American Community Survey, and the November 2014 total voter registration records, Illinois is failing to comply with the voter registration list maintenance requirements of Section 8 of the NVRA. For example, a comparison of the five-year American Community Survey conducted by the U.S. Census Bureau and 2014 EAC data shows there were more total registered voters than there were adult citizens over the age of 18 living in 24 of the following 25 counties: Alexander, Bureau, Cass, Clark, Cook, Crawford, DuPage, Franklin, Grundy, Hardin, Henderson, Jefferson, Jersey, Massac, McHenry, Mercer, Monroe, Pulaski, Rock Island, Sangamon, Scott, Union, Wabash, Washington, and White.

The situation in Illinois has, if anything, gotten worse since the publication of that report. An examination of recent articles shows the number of registered voters in Illinois is increasing.<sup>5</sup> Further, 21 out of the 25 counties identified above have more total voter registrants from 2014 than citizens eligible to vote from the U.S. Census Bureau's most recent study, beyond the five-year margin of error.

This failure to maintain accurate, up-to-date voter registration lists has created the risk that the 2018 federal elections will lack the integrity required by federal law and by the expectations of Illinois citizens, and will therefore undermine public confidence in the electoral process.

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<sup>3</sup> Judicial Watch, Inc. gave its statutory notice on April 11, 2017. Nothing in this current letter is intended to withdraw that notice, and Judicial Watch, Inc. reserves the right to sue as the named plaintiff in any future lawsuit.

<sup>4</sup> 52 U.S.C. § 20507(i).

<sup>5</sup> See *Illinois Has Highest Number of Registered Voters Since 1970*, The Chicago Tribune, Oct. 25, 2016, available at <https://goo.gl/Giwdv6>

## **2. The NVRA Requires You to Undertake Reasonable Efforts to Maintain Accurate Lists of Eligible Registered Voters**

Under Section 8 of the NVRA, Illinois, and each county identified in this letter, is required to undertake a uniform, nondiscriminatory voter registration list maintenance program that complies with the Voting Rights Act of 1965.<sup>6</sup> Specifically, Section 8 requires states to make a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters due to (A) “the death of the registrant” or (B) “a change in the residence of the registrant” to a place outside the jurisdiction in which he or she is registered.<sup>7</sup> Section 8 also requires states to ensure noncitizens are not registered to vote.<sup>8</sup>

The list maintenance obligations of Section 8 of the NVRA were elaborated upon by the Help America Vote Act (“HAVA”), which requires states to “ensure that voter registration records in the State are accurate and updated regularly” and undertake 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.”<sup>9</sup> HAVA also requires each state to coordinate its computerized statewide voter registration list with state agency death records.<sup>10</sup> Finally, HAVA requires all states to remove convicted felons from the voter rolls if felons cannot vote under state law.<sup>11</sup>

As the chief state election official for Illinois, you are required to lead and direct voter list maintenance efforts in your state, and you must conduct an active oversight program to monitor local county election officials’ list maintenance activities.<sup>12</sup> If your oversight reveals that counties have failed to adequately execute list maintenance tasks, you must either change the state’s program to ensure county compliance, or assume direct responsibility over the failing counties’ list maintenance tasks.<sup>13</sup>

## **3. Failure to Comply with NVRA Subjects You to Lawsuits and Financial Costs**

In passing the NVRA, Congress authorized a private right of action to enforce the provisions of the NVRA, including Section 8. Accordingly, private persons may bring a lawsuit under the NVRA if the violations identified herein are not corrected within 90 days of receipt of

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<sup>6</sup> 52 U.S.C. § 20507(b)(1).

<sup>7</sup> 52 U.S.C. § 20507(a)(4).

<sup>8</sup> *U.S. v. Florida*, 870 F. Supp. 2d 1346, 1351 (N.D. Fla. 2012) (“For noncitizens, the state’s duty is to maintain an accurate voting list . . . A state can and should . . . block[] a noncitizen from registering in the first place”).

<sup>9</sup> 52 U.S.C. §§ 21083(a)(4) and 21083(a)(4)(A).

<sup>10</sup> 52 U.S.C. § 21083(a)(2)(A)(ii)(II).

<sup>11</sup> 52 U.S.C. § 21083(a)(2)(A)(ii) and (ii)(I).

<sup>12</sup> *U.S. v. Missouri*, 535 F.3d 844, 850-851 (8th Cir. 2008).

<sup>13</sup> *U.S. v. Missouri*, 535 F.3d 844, 851 (8th Cir. 2008).

this letter.<sup>14</sup> You are receiving this letter because you are the designated chief state election official under the NVRA.

Congress also authorized awards of attorney's fees, including litigation expenses and costs, to the prevailing party.<sup>15</sup> Consequently, if a lawsuit is initiated under the NVRA and the court finds you in violation, you will be responsible for paying our attorneys' fees, costs, and litigation expenses.

#### **4. Avoiding Litigation**

We hope you will promptly initiate efforts to comply with Section 8 so that no lawsuit will be necessary. We ask you and, to the extent that they wish to respond separately, each county identified in this letter, to please respond to this letter in writing no later than 45 days from today informing us of the compliance steps you are taking. Specifically, we ask you to: (1) conduct or implement a systematic, uniform, nondiscriminatory program to remove from the list of eligible voters the names of persons who have become ineligible to vote by reason of a change in residence; and (2) conduct or implement additional routine measures to remove from the list of eligible voters the names of persons who have become ineligible to vote by reason of death, change in residence, or a disqualifying criminal conviction, and to remove noncitizens who have registered to vote unlawfully.

When you respond to this letter, you, and, to the extent that they wish to respond through separate counsel, each county identified in this letter, should identify all the steps taken or planned, in detail, and advise us of the results of those efforts or the target implementation date for each identified activity or program. If you plan to begin taking new steps in 2017 to comply with your obligations, please outline them to us in your response, providing specific dates for completion of each activity. In order to avoid litigation, we may seek certain reasonable assurances that Illinois will affirmatively undertake the steps outlined, up to and including the execution of a settlement agreement. You may wish to consult Judicial Watch's recent settlement agreement with the State of Ohio for examples of certain activities which tend to show compliance with NVRA Section 8.<sup>16</sup> You should also evaluate whether your office is communicating and coordinating effectively for list maintenance purposes with the various federal, state, and local entities listed immediately below in Section 5 of this letter.

#### **5. Production of Records**

Finally, pursuant to your obligations under the NVRA,<sup>17</sup> your office and, to the extent that they keep records separately from your office, each county named in this letter, should make

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<sup>14</sup> 52 U.S.C. § 20510(b)(2).

<sup>15</sup> 52 U.S.C. § 20510(c).

<sup>16</sup> A copy of the Settlement Agreement between Judicial Watch and Ohio is available at <http://www.judicialwatch.org/wp-content/uploads/2014/01/01-14-Ohio-Voter-Rolls-Settlement.pdf>.

<sup>17</sup> 52 U.S.C. § 20507(i).

available to us all pertinent records concerning “the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency” of Illinois’ official eligible voter lists during the past 2 years. Please include these records with your response to this letter. These records should include, but are not limited to:

1. Copies of the most recent voter registration database from each Illinois county and city mentioned in this letter, including fields indicating name, date of birth, home address, most recent voter activity, and active or inactive status.
2. Copies of all email or other communications internal to the office of the Illinois State Board of Elections, including any of its divisions, bureaus, offices, third party agents, or contractors, (hereinafter, collectively “State Board of Elections”) relating to the maintenance of accurate and current voter rolls.
3. Copies of all email or other communications between the State Board of Elections and all Illinois County voter registration officials concerning:
  - a. Instructions to the counties concerning their general list maintenance practices and obligations;
  - b. Instructions to the counties for the removal of specific noncitizens and deceased, relocated, or convicted persons identified by the State Board of Elections; and
  - c. Notices to the counties concerning any failure to comply with their voter list maintenance obligations under Illinois’ program.
4. Copies of all email or other communications between the State Board of Elections and the Illinois State Department of Health, the Illinois State Department of Corrections, the Illinois Department of Motor Vehicles, and the Illinois State Judiciary concerning obtaining information about deceased, relocated, convicted, or noncitizen registered voters for the purpose of updating Illinois’ voter registration lists.
5. Copies of all email or other communications between the State Board of Elections and the U.S. Attorney(s) for Illinois, the U.S. District Court for Illinois, the U.S. Social Security Administration, the U.S. Postal Service, the U.S. Citizenship and Immigration Services, and the U.S. Department of Homeland Security concerning the National Change of Address database, the Systematic Alien Verification for Entitlements database, or any other means of obtaining information about deceased, relocated, convicted, or noncitizen registered voters for the purpose of updating Illinois’ voter registration lists.
6. Copies of all email or other communications between the State Board of Elections and the Interstate Voter Registration Cross-Check Program, the Electronic Registration Information Center, the National Association for Public Health Statistics and Information Systems, the American Association of Motor Vehicle Authorities, and any other U.S. State concerning information about deceased or relocated registered voters for the purpose of updating Illinois’ voter registration lists.

Robert D. Popper  
June 28, 2017  
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If these records are not produced within 45 days, or if you fail to otherwise advise us that you are making them available to us at specified times and locations, you will be deemed to be in violation of the NVRA and subject to litigation.

\* \* \* \* \*

I hope that the concerns identified in this letter can be resolved amicably. However, if we believe you do not intend to correct the above-identified problems, a federal lawsuit seeking declaratory and injunctive relief against you may be necessary. We look forward to receiving your prompt response.

Sincerely,

**JUDICIAL WATCH, INC.**

*s/ Robert D. Popper*

Robert D. Popper  
Attorney, Judicial Watch, Inc.

By: United States Postal Service Certified Mail and Email

cc: Robert D. Popper, Esq., Judicial Watch; Ellen Henderson Bigham, Alexander County Clerk; Kami Hieronymus, Bureau County Clerk; Shelley Wessel, Cass County Clerk; Carrie Downey, Clark County Clerk; David Orr, Cook County Clerk; Fayrene Wright, Crawford County Clerk; Jessica Stachniak, DuPage County Election Commission; Greg Woolard, Franklin County Clerk; Kay Olson, Grundy County Clerk; Jill Cowsert, Hardin County Clerk; Amanda Rousonelos, Henderson County Clerk; Connie Simmons, Jefferson County Clerk; Pam Warford, Jersey County Clerk; John Taylor, Massac County Clerk; Mary E. McClellan, McHenry County Clerk; Phyllis A. Bewley, Mercer County Clerk; Dennis Knobloch, Monroe County Clerk; Julie Hancock, Pulaski County Clerk; Karen Kinney, Rock Island County Clerk; Don Gray, Sangamon County Clerk; Sandra Hankins, Scott County Clerk; Terry Bartruff, Union County Clerk; Janet L. Will, Wabash County Clerk; Nancy Heseman, Washington County Clerk; Paula Dozier, White County Clerk



**TO: Elections Officials**  
**FROM: Lawyers' Committee for Civil Rights Under Law, Brennan Center for Justice, and Demos**  
**DATE: November 21, 2017**  
**RE: Voter List Maintenance and NVRA Compliance**

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## **Introduction**

This memorandum provides guidance on state and county elections officials' obligations under the National Voter Registration Act (NVRA). The Public Interest Legal Foundation (PILF) has sent threatening and misleading letters to hundreds of local election officials in jurisdictions around the country urging actions that could in fact violate these legal requirements, creating an urgent need for clarification.<sup>1</sup> PILF's goal of removing voters from registration lists is inconsistent with the primary purpose of the NVRA, its claims of improper list maintenance are baseless, and its demands are not required by federal law.

### **A. The NVRA Was Enacted to Increase Voter Registration and Participation.**

The NVRA was enacted first and foremost to “*increase* the number of eligible citizens who register to vote.” 52 U.S.C. § 20501(b)(1) (emphasis added). Thus, contrary to the tenor of PILF's letters, the purpose of the NVRA is *not* for states and localities to eliminate voters from the rolls. As the Third Circuit Court of Appeals has explained,

[o]ne of the NVRA's central purposes was to dramatically expand opportunities for voter registration and to ensure that, once registered, voters could not be removed from the registration rolls by a failure to vote or because they had changed addresses. To achieve this purpose, the NVRA strictly limited removal of voters based on change of address and instead required that, for federal elections, states maintain accurate registration rolls by using reliable information from government agencies....

*Welker v. Clarke*, 239 F.3d 596, 598–99 (3d Cir. 2001).

List maintenance is, of course, important. Accurate and up-to-date voter lists reflecting all eligible individuals benefit both election administrators and voters. But accuracy

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<sup>1</sup> See Sample September 2017 “NVRA Violation” letter, available at <https://publicinterestlegal.org/files/Sample-2017-notice.pdf> (last visited October 25, 2017).

requires ensuring that eligible voters are not erroneously removed from the rolls while removing voters who have become ineligible. Removing the names of legitimate voters compromises the integrity of the voter rolls just as much—or more so—as leaving a voter’s name on the rolls when the person is no longer eligible to vote. To avoid putting legitimate voters at risk, efforts to remove ineligible voters from the rolls must be carried out in accordance with the NVRA and with appropriate protections against wrongful deletions. Hastily crafted removal programs based on unsupported allegations of bloated voter rolls, on the other hand, carry the risks of violation of federal law and disenfranchisement.

#### **B. PILF’s Allegations of Improper List Maintenance Are Baseless.**

Using an unreliable and inaccurate assessment of voter registration rates, PILF wrongly asserts that the jurisdictions it has targeted have more voters on the rolls than eligible residents. It then falsely claims these high registration rates alone provide strong evidence that a jurisdiction is not fulfilling its obligation to maintain accurate voter rolls.

United States Census data, which PILF apparently relies on to estimate the eligible voting population, is neither designed to measure eligible voters nor does in fact do so. Population for Census purposes is not the same as eligible population for voting purposes. For example, students, service members and others are eligible to vote in jurisdictions where they currently live, even if the Census may count them as part of the population in other areas.

The figures PILF relies on to estimate registration rates fare no better. These reflect only the high-water mark rates at “book closing,” the period immediately before an election when there are typically large numbers of new registrants, and when election officials are restricted from removing people from the rolls.

Even if a jurisdiction had more registered voters on its rolls than eligible population, there are many reasons why this might be proper and, indeed, evidence of compliance with the law. For example, when a registrant is thought to have changed residence, the law explicitly prohibits the removal of the voter’s name from the rolls unless either the voter has confirmed the change in writing *or* a sufficient waiting period has elapsed. A state complying with this requirement, then, will necessarily have ineligible voters on the rolls for a limited period of time. Likewise, in the three months prior to any federal election, states must halt most of their voter-removal efforts. At the same time, as the election approaches, new voters are registering in high numbers. This, too, will result in high registration rates when they are evaluated close to a federal election.

#### **C. The Actions PILF Demands Are Not Required by the NVRA.**

PILF demands that the targeted jurisdictions, regardless of their existing procedures, quickly take unspecified actions to reduce their voter registration rates or risk litigation. However, maintaining voter rolls in compliance with the NVRA requires careful attention. The NVRA allows certain actions while prohibiting others.

First, the NVRA does not mandate a particular registration rate and does not require rushed adoption and completion of removal efforts prior to any particular election; to the contrary, it merely requires “a reasonable effort” pursuant to a “general program” of list maintenance and permits removal only for enumerated reasons. Second, the NVRA places several restrictions on any efforts a jurisdiction makes to comply with its general list maintenance obligation. These include prohibiting programs that remove voters on non-uniform or discriminatory grounds and requiring confirmation before removing voters who the jurisdiction believes have changed residence. *See, e.g.*, 52 U.S.C. §§ 20507(b), (d). Third, the NVRA establishes a “safe harbor” program that is sufficient to fully satisfy a jurisdiction’s list-maintenance obligations. Finally, the NVRA requires this reasonable effort only with respect to those who have died or have changed residence. 52 U.S.C. § 20507(a)(4). It merely permits, but does not require, States to make an effort to remove those with criminal convictions or mental incapacity. *See* 52 U.S.C. § 20507(b).

1. *The NVRA Prohibits Removal of Registrants Except for Enumerated Reasons, and Imposes Limited Affirmative List Maintenance Obligations.*

Section 8 of the NVRA requires states to place eligible voters on the rolls when they submit a complete and valid voter registration application, and it prohibits states from removing validly registered voters unless the voter requests removal or has become ineligible for one of four enumerated reasons: death, change in residence, felony conviction, or mental incapacity. 52 U.S.C. §§ 20507(a)(3)-(4). It does not mandate a particular registration rate or require additional list maintenance on account of any registration rate, nor does it require continual efforts to scour the rolls to identify and remove registered voters the instant they become ineligible. It only affirmatively requires states to adopt a “general program” that makes a “reasonable effort” to remove voters who are ineligible by reason of death or change in residence. *Id.* The NVRA does not mandate that particular procedures or sources of information be included as part of this general program, but rather, leaves states with a level of discretion to design their list-maintenance programs. That discretion is not unlimited, however, and, in order to reduce the chance that citizens eligible to vote will be removed from the rolls, several other provisions of Section 8 impose limits and requirements on a state’s list-maintenance programs.

2. *Voter Removal Programs Must Comply with the NVRA’s Requirements.*

The NVRA requires that voter removal programs be uniform, non-discriminatory, and in compliance with the Voting Rights Act of 1965, and it prohibits programs that result in removal of voters simply because they fail to vote. These restrictions prohibit, for example, relying on unsubstantiated information from third parties claiming that certain voters on a jurisdiction’s rolls are ineligible, because there is no way for the jurisdiction to verify that the information was obtained uniformly across the jurisdiction or that it was obtained in a non-discriminatory way. Likewise, they prohibit presuming that a voter who

fails to vote is ineligible for one of the valid bases for removal without some affirmative evidence of ineligibility.

In addition, the NVRA provides that “a State *shall not remove* the name of a registrant . . . on the grounds that the registrant has changed residence unless” (i) he or she “confirms in writing” that he or she has changed residence to one outside the election official’s jurisdiction, or (ii) he or she has failed to respond to an address-change confirmation notice *and* has failed to vote in an election in a time period running from the date of the notice to the day after the second consecutive federal general election thereafter. *Id.* § 20507(d)(1) (emphasis added). This means there will often be a legally mandated delay in many circumstances before removing registrants who has become ineligible.

Further, any list-maintenance program must be completed ninety days before any federal election. The NVRA prohibits States from conducting any program “the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters” during the ninety-day period preceding an election—including the period preceding a primary, special, or runoff election. 52 U.S.C. § 20507(c)(2); *Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1344 (11th Cir. 2014). Any removal of voters for alleged ineligibility during this ninety-day period must be based “upon individualized information or investigation.”<sup>2</sup> *Arcia*, 772 F.3d at 1344. Under the NVRA’s clear requirements, then, the removal of *any* names from the voter rolls within ninety days of a federal election must be based on specific, individualized information.

These strict requirements effectuate Congress’s “concern that [removal] programs can be abused and may result in the elimination of names of voters from the rolls solely due to their failure to respond to a mailing.”<sup>3</sup>

As noted above, these restrictions on a State’s ability to simply remove the name of voters from the voter rolls as soon as it suspects the voter has changed residence will inevitably result in voters being on the rolls after they have moved while they are in the process of being removed. It is therefore unsurprising to find that there are more names on the voter rolls in some jurisdictions than there are eligible citizens—especially in jurisdictions with highly transient populations, such as college towns, areas dependent on seasonal or periodic labor (for example, where the economy is based on mineral or petroleum extraction), or those with large numbers of part time residents. As one court explained, “The NVRA makes it inevitable that voter registration lists will be inflated because of its requirement that States wait to remove a voter’s name who has not responded to an [NVRA Section] 8(d)(2) notice until that voter fails to vote in two successive federal elections.” *United States v. Missouri*, No. 05-4391-CV-C-NKL, 2007 WL 1115204, at \*4 n.7 (W.D. Mo. Apr. 13, 2007), *aff’d in part, rev’d in part and remanded*, 535 F.3d 844 (8th Cir. 2008).

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<sup>2</sup> The U.S. Court of Appeals for the Eleventh Circuit recently interpreted this prohibition to broadly apply to “any program”—not merely ones aimed at removing “voters who have moved.” *Arcia*, 772 F.3d at 1349. In fact, the Court rejected efforts by Florida to systematically remove alleged noncitizens from the voter rolls during the 90-day period pursuant to this provision. *Id.*

<sup>3</sup> H. Rep. No. 103-9, at 15, *reprinted in* 1993 U.S.C.C.A.N. 105.

3. *For Registrants Who Have Moved, States Can Use Change-of-Address Information from the U.S. Postal Service but Must Still Comply with the NVRA's Notice Provisions.*

The NVRA provides a model procedure, sometimes called the NVRA's "safe harbor," by which a State may remove the names of registrants who have changed residence. Under that procedure, the state begins with change-of-address information obtained through the Postal Service's National Change of Address system. *Id.* § 20507(c)(1)(A); *see also Welker*, 239 F.3d at 598–99.

Even when the State has received change-of-address information from the Postal Service, however, and even when the information indicates that individuals have moved out of the jurisdiction, the NVRA prohibits States from simply removing these individuals. The State still must confirm the change by following a specific procedure set forth in the statute. 52 U.S.C. §§ 20507(c)(1), (d).

- *First*, if it appears the registrant has moved *within* the same jurisdiction in which he or she is already registered to vote, the election official is to "change[] the registration records to show the new address and send[] the registrant a notice . . . by which the registrant may verify or correct the address information." *Id.* §§ 20507(c)(1)(B)(i). The obligation is to correct the voter registration list, not to remove the voter from the list.
- *Second*, if it appears based on reliable second-hand information, such as information received through the Postal Service's National Change of Address program, that the voter has moved *outside* the election official's jurisdiction, the NVRA sets forth specific notice requirements intended to verify the data from the Postal Service. *See id.* § 20507(c)(1)(B)(ii). The notice must include a pre-paid return card allowing the voter to confirm the change or correct the address information from the Postal Service. *See id.* § 20507(d)(2)(A). If the card is not returned, the registrant "may" be required to provide affirmation or confirmation of residence in order to vote the next time she appears, but the registrant *may not* be removed from the list of registered voters.<sup>4</sup> *See id.* The State may remove the registrant from the voter rolls only if the voter fails to respond to the notice and then fails to vote in any election during the next two consecutive federal general cycles. *See id.* The notice must also inform the registrant about how he or she may continue to be eligible to vote if he or she has in fact moved outside the jurisdiction.

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<sup>4</sup> The NVRA sets forth detailed procedures governing the circumstances in which a voter who has failed to respond to an address confirmation must be permitted to vote. *See* 52 U.S.C. § 20507(e).

A jurisdiction that complies with these requirements has fully satisfied its obligation to conduct a reasonable effort to remove voters who are ineligible due to a change in residence and need do no more.

4. *The NVRA Does Not Require States to Remove Voters Convicted of Felonies or Adjudged Mentally Incompetent.*

The NVRA “reasonable effort” requirement applies only with respect to those who are ineligible by reason of death or changed residence. 52 U.S.C. § 20507(a)(4). It permits, but does not require, states to make an effort to remove those with criminal convictions and those declared mentally incompetent. *See* 52 U.S.C. §20507(b). States can—and some do—choose to allow those with criminal convictions to remain eligible to vote, and if the States make them ineligible, it is up to the States to determine what, if any, effort they will make to remove them from the rolls. *See ACRU v. Philadelphia*, No. 16-3811, slip op. (3<sup>rd</sup> Cir. Sep. 25, 2017).

**Conclusion**

PILF’s allegations of poor list maintenance in hundreds of jurisdictions around the country is baseless. Jurisdictions are not required under the NVRA or any other federal statute to take the actions PILF urges. Indeed, hasty and ill-considered list-maintenance programs are more likely to give rise to violations of the NVRA, and could put voters at risk of improper removal and, ultimately, disenfranchisement.



**TO:** Elections Officials  
**FROM:** Lawyers' Committee for Civil Rights Under Law, Brennan Center for Justice, and Demos  
**DATE:** November 22, 2017  
**RE:** Voter List Maintenance and NVRA Compliance

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## Introduction

This memorandum provides guidance on state and county elections officials' obligations under the National Voter Registration Act (NVRA). The Public Interest Legal Foundation (PILF) has sent threatening and misleading letters to hundreds of local election officials in jurisdictions around the country urging actions that could in fact violate these legal requirements, creating an urgent need for clarification.<sup>1</sup> PILF's goal of removing voters from registration lists is inconsistent with the primary purpose of the NVRA, its claims of improper list maintenance are baseless, and its demands are not required by federal law.

### A. The NVRA Was Enacted to Increase Voter Registration and Participation.

The NVRA was enacted first and foremost to “*increase* the number of eligible citizens who register to vote.” 52 U.S.C. § 20501(b)(1) (emphasis added). Thus, contrary to the tenor of PILF's letters, the purpose of the NVRA is *not* for states and localities to eliminate voters from the rolls. As the Third Circuit Court of Appeals has explained,

[o]ne of the NVRA's central purposes was to dramatically expand opportunities for voter registration and to ensure that, once registered, voters could not be removed from the registration rolls by a failure to vote or because they had changed addresses. To achieve this purpose, the NVRA strictly limited removal of voters based on change of address and instead required that, for federal elections, states maintain accurate registration rolls by using reliable information from government agencies....

*Welker v. Clarke*, 239 F.3d 596, 598–99 (3d Cir. 2001).

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requires ensuring that eligible voters are not erroneously removed from the rolls while removing voters who have become ineligible. Removing the names of legitimate voters compromises the integrity of the voter rolls just as much—or more so—as leaving a voter’s name on the rolls when the person is no longer eligible to vote. To avoid putting legitimate voters at risk, efforts to remove ineligible voters from the rolls must be carried out in accordance with the NVRA and with appropriate protections against wrongful deletions. Hastily crafted removal programs based on unsupported allegations of bloated voter rolls, on the other hand, carry the risks of violation of federal law and disenfranchisement.

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United States Census data, which PILF apparently relies on to estimate the eligible voting population, is neither designed to measure eligible voters nor does in fact do so. Population for Census purposes is not the same as eligible population for voting purposes. For example, students, service members and others are eligible to vote in jurisdictions where they currently live, even if the Census may count them as part of the population in other areas.

The figures PILF relies on to estimate registration rates fare no better. These reflect only the high-water mark rates at “book closing,” the period immediately before an election when there are typically large numbers of new registrants, and when election officials are restricted from removing people from the rolls.

Even if a jurisdiction had more registered voters on its rolls than eligible population, there are many reasons why this might be proper and, indeed, evidence of compliance with the law. For example, when a registrant is thought to have changed residence, the law explicitly prohibits the removal of the voter’s name from the rolls unless either the voter has confirmed the change in writing *or* a sufficient waiting period has elapsed. A state complying with this requirement, then, will necessarily have ineligible voters on the rolls for a limited period of time. Likewise, in the three months prior to any federal election, states must halt most of their voter-removal efforts. At the same time, as the election approaches, new voters are registering in high numbers. This, too, will result in high registration rates when they are evaluated close to a federal election.

**C. The Actions PILF Demands Are Not Required by the NVRA.**

PILF demands that the targeted jurisdictions, regardless of their existing procedures, quickly take unspecified actions to reduce their voter registration rates or risk litigation. However, maintaining voter rolls in compliance with the NVRA requires careful attention. The NVRA allows certain actions while prohibiting others.

First, the NVRA does not mandate a particular registration rate and does not require rushed adoption and completion of removal efforts prior to any particular election; to the contrary, it merely requires “a reasonable effort” pursuant to a “general program” of list maintenance and permits removal only for enumerated reasons. Second, the NVRA places several restrictions on any efforts a jurisdiction makes to comply with its general list maintenance obligation. These include prohibiting programs that remove voters on non-uniform or discriminatory grounds and requiring confirmation before removing voters who the jurisdiction believes have changed residence. *See, e.g.*, 52 U.S.C. §§ 20507(b), (d). Third, the NVRA establishes a “safe harbor” program that is sufficient to fully satisfy a jurisdiction’s list-maintenance obligations. Finally, the NVRA requires this reasonable effort only with respect to those who have died or have changed residence. 52 U.S.C. § 20507(a)(4). It merely permits, but does not require, States to make an effort to remove those with criminal convictions or mental incapacity. *See* 52 U.S.C. § 20507(b).

1. *The NVRA Prohibits Removal of Registrants Except for Enumerated Reasons, and Imposes Limited Affirmative List Maintenance Obligations.*

Section 8 of the NVRA requires states to place eligible voters on the rolls when they submit a complete and valid voter registration application, and it prohibits states from removing validly registered voters unless the voter requests removal or has become ineligible for one of four enumerated reasons: death, change in residence, felony conviction, or mental incapacity. 52 U.S.C. §§ 20507(a)(3)-(4). It does not mandate a particular registration rate or require additional list maintenance on account of any registration rate, nor does it require continual efforts to scour the rolls to identify and remove registered voters the instant they become ineligible. It only affirmatively requires states to adopt a “general program” that makes a “reasonable effort” to remove voters who are ineligible by reason of death or change in residence. *Id.* The NVRA does not mandate that particular procedures or sources of information be included as part of this general program, but rather, leaves states with a level of discretion to design their list-maintenance programs. That discretion is not unlimited, however, and, in order to reduce the chance that citizens eligible to vote will be removed from the rolls, several other provisions of Section 8 impose limits and requirements on a state’s list-maintenance programs.

2. *Voter Removal Programs Must Comply with the NVRA’s Requirements.*

The NVRA requires that voter removal programs be uniform, non-discriminatory, and in compliance with the Voting Rights Act of 1965, and it prohibits programs that result in removal of voters simply because they fail to vote. These restrictions prohibit, for example, relying on unsubstantiated information from third parties claiming that certain voters on a jurisdiction’s rolls are ineligible, because there is no way for the jurisdiction to verify that the information was obtained uniformly across the jurisdiction or that it was obtained in a non-discriminatory way. Likewise, they prohibit presuming that a voter who

fails to vote is ineligible for one of the valid bases for removal without some affirmative evidence of ineligibility.

In addition, the NVRA provides that “a State *shall not remove* the name of a registrant . . . on the grounds that the registrant has changed residence unless” (i) he or she “confirms in writing” that he or she has changed residence to one outside the election official’s jurisdiction, or (ii) he or she has failed to respond to an address-change confirmation notice *and* has failed to vote in an election in a time period running from the date of the notice to the day after the second consecutive federal general election thereafter. *Id.* § 20507(d)(1) (emphasis added). This means there will often be a legally mandated delay in many circumstances before removing registrants who has become ineligible.

Further, any list-maintenance program must be completed ninety days before any federal election. The NVRA prohibits States from conducting any program “the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters” during the ninety-day period preceding an election—including the period preceding a primary, special, or runoff election. 52 U.S.C. § 20507(c)(2); *Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1344 (11th Cir. 2014). Any removal of voters for alleged ineligibility during this ninety-day period must be based “upon individualized information or investigation.”<sup>2</sup> *Arcia*, 772 F.3d at 1344. Under the NVRA’s clear requirements, then, the removal of *any* names from the voter rolls within ninety days of a federal election must be based on specific, individualized information.

These strict requirements effectuate Congress’s “concern that [removal] programs can be abused and may result in the elimination of names of voters from the rolls solely due to their failure to respond to a mailing.”<sup>3</sup>

As noted above, these restrictions on a State’s ability to simply remove the name of voters from the voter rolls as soon as it suspects the voter has changed residence will inevitably result in voters being on the rolls after they have moved while they are in the process of being removed. It is therefore unsurprising to find that there are more names on the voter rolls in some jurisdictions than there are eligible citizens—especially in jurisdictions with highly transient populations, such as college towns, areas dependent on seasonal or periodic labor (for example, where the economy is based on mineral or petroleum extraction), or those with large numbers of part time residents. As one court explained, “The NVRA makes it inevitable that voter registration lists will be inflated because of its requirement that States wait to remove a voter’s name who has not responded to an [NVRA Section] 8(d)(2) notice until that voter fails to vote in two successive federal elections.” *United States v. Missouri*, No. 05-4391-CV-C-NKL, 2007 WL 1115204, at \*4 n.7 (W.D. Mo. Apr. 13, 2007), *aff’d in part, rev’d in part and remanded*, 535 F.3d 844 (8th Cir. 2008).

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<sup>2</sup> The U.S. Court of Appeals for the Eleventh Circuit recently interpreted this prohibition to broadly apply to “any program”—not merely ones aimed at removing “voters who have moved.” *Arcia*, 772 F.3d at 1349. In fact, the Court rejected efforts by Florida to systematically remove alleged noncitizens from the voter rolls during the 90-day period pursuant to this provision. *Id.*

<sup>3</sup> H. Rep. No. 103-9, at 15, *reprinted in* 1993 U.S.C.C.A.N. 105.

3. *For Registrants Who Have Moved, States Can Use Change-of-Address Information from the U.S. Postal Service but Must Still Comply with the NVRA's Notice Provisions.*

The NVRA provides a model procedure, sometimes called the NVRA's "safe harbor," by which a State may remove the names of registrants who have changed residence. Under that procedure, the state begins with change-of-address information obtained through the Postal Service's National Change of Address system. *Id.* § 20507(c)(1)(A); *see also Welker*, 239 F.3d at 598–99.

Even when the State has received change-of-address information from the Postal Service, however, and even when the information indicates that individuals have moved out of the jurisdiction, the NVRA prohibits States from simply removing these individuals. The State still must confirm the change by following a specific procedure set forth in the statute. 52 U.S.C. §§ 20507(c)(1), (d).

- *First*, if it appears the registrant has moved *within* the same jurisdiction in which he or she is already registered to vote, the election official is to "change[] the registration records to show the new address and send[] the registrant a notice . . . by which the registrant may verify or correct the address information." *Id.* §§ 20507(c)(1)(B)(i). The obligation is to correct the voter registration list, not to remove the voter from the list.
- *Second*, if it appears based on reliable second-hand information, such as information received through the Postal Service's National Change of Address program, that the voter has moved *outside* the election official's jurisdiction, the NVRA sets forth specific notice requirements intended to verify the data from the Postal Service. *See id.* § 20507(c)(1)(B)(ii). The notice must include a pre-paid return card allowing the voter to confirm the change or correct the address information from the Postal Service. *See id.* § 20507(d)(2)(A). If the card is not returned, the registrant "may" be required to provide affirmation or confirmation of residence in order to vote the next time she appears, but the registrant *may not* be removed from the list of registered voters.<sup>4</sup> *See id.* The State may remove the registrant from the voter rolls only if the voter fails to respond to the notice and then fails to vote in any election during the next two consecutive federal general cycles. *See id.* The notice must also inform the registrant about how he or she may continue to be eligible to vote if he or she has in fact moved outside the jurisdiction.

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<sup>4</sup> The NVRA sets forth detailed procedures governing the circumstances in which a voter who has failed to respond to an address confirmation must be permitted to vote. *See* 52 U.S.C. § 20507(e).

A jurisdiction that complies with these requirements has fully satisfied its obligation to conduct a reasonable effort to remove voters who are ineligible due to a change in residence and need do no more.

4. *The NVRA Does Not Require States to Remove Voters Convicted of Felonies or Adjudged Mentally Incompetent.*

The NVRA “reasonable effort” requirement applies only with respect to those who are ineligible by reason of death or changed residence. 52 U.S.C. § 20507(a)(4). It permits, but does not require, states to make an effort to remove those with criminal convictions and those declared mentally incompetent. *See* 52 U.S.C. §20507(b). States can—and some do—choose to allow those with criminal convictions to remain eligible to vote, and if the States make them ineligible, it is up to the States to determine what, if any, effort they will make to remove them from the rolls. *See ACRU v. Philadelphia*, No. 16-3811, slip op. (3<sup>rd</sup> Cir. Sep. 25, 2017).

**Conclusion**

PILF’s allegations of poor list maintenance in hundreds of jurisdictions around the country is baseless. Jurisdictions are not required under the NVRA or any other federal statute to take the actions PILF urges. Indeed, hasty and ill-considered list-maintenance programs are more likely to give rise to violations of the NVRA, and could put voters at risk of improper removal and, ultimately, disenfranchisement.



BRENNAN CENTER  
FOR JUSTICE  
TWENTY YEARS  
*at New York University School of Law*

**Demos**  
AN EQUAL SAY AND AN  
EQUAL CHANCE FOR ALL

*By E-Mail and U.S. Mail*

November 21, 2017

Terry Bartruff  
Clerk & Recorder  
Union County  
309 W. Market St, Rm. 116  
Jonesboro, IL 62952

**Re: Obligations Under National Voter Registration Act to Prevent Purging of the Voter Registration Rolls**

Dear Mr. Bartruff,

On behalf of the undersigned civil rights organizations, we write both to express concern and to offer assistance regarding a letter you received from the Public Interest Law Foundation (PILF) in September of this year, which threatened your county with legal action for purported violations of Section 8 of the National Voter Registration Act (“NVRA”) and demanded certain information about your county’s “list maintenance” activities. Although we believe that responsible list maintenance is important to ensure accurate and up-to-date voter lists, initiating a voter purge based on the unsubstantiated claims in PILF’s letter would risk disenfranchising eligible voters and may itself violate Section 8 of the NVRA, which mandates certain protections for voters as states and localities perform their list maintenance activities.

PILF’s letter to you, one of 248 delivered to local jurisdictions across the country, does not provide a sufficient basis for establishing that your current list maintenance practices are inadequate. In fact, we observe several errors and deficiencies with both the data and methodology used in the letter. A rudimentary comparison between U.S. Census Bureau data and election statistics does not prove—or even suggest—that a jurisdiction is failing to remove ineligible voters from registration lists. Nor does it prove that the voter rolls are inflated. The Census data PILF relies on to estimate the eligible voting population is neither designed for that purpose nor does it in fact measure the number of eligible voters; for example, those data often exclude students, military service members and others who are eligible to vote in a jurisdiction. In addition, the figures PILF relies on to estimate registration rates reflect only the high-water mark rates at “book closing,” the period immediately before an election when there are

typically large numbers of new registrants, and when election officials are restricted from removing people from the rolls.

In part because of the PILF letter's gross misrepresentations and deficiencies, we are concerned that it was sent with the intention of bullying or inducing counties into undertaking action to institute unnecessary and potentially unlawful voter purge programs that could result in the removal of eligible voters from the rolls. We are also concerned that such voter purge programs may have a disproportionate effect on African Americans, Latinos, students, military voters and other minority communities.

The primary purpose behind the NVRA is to "*increase* the number of eligible citizens who register to vote." 52 U.S.C. §§ 20501(b)(1) (emphasis added). The NVRA further seeks to "enhance[] the participation of eligible citizens as voters." 52 U.S.C. §§ 20501(b)(2). This critical federal law sets forth a framework that allows states to conduct responsible list maintenance activities while promoting those purposes. The NVRA framework includes procedures that would reduce the chance that citizens eligible to vote will be removed from the rolls. For example, the NVRA restricts who can be removed and on what grounds, requires notice and a waiting period before certain removals, and blocks certain removals during the period before an election. *See* 52 U.S.C. § 20507. We provide more detail on these requirements in our accompanying legal memo.

Accordingly, we offer our assistance to Union County in its efforts to maintain clean and accurate voter rolls in a lawful manner. Please contact Marcia Johnson-Blanco at [mblanco@lawyerscommittee.org](mailto:mblanco@lawyerscommittee.org), or 202.662.8346, if we can be of service.

We also formally request pursuant to 52 U.S.C. § 20507(i) and 5 ILCS 140/1 that all records provided to PILF in connection with its September 2017 letter, and all correspondence with PILF concerning the issues raised in its September 2017 letter be provided to us. We also request all records pertaining to any changes to list maintenance activities related to PILF's letter, including list of voters, if any, who were removed from the rolls. Please send the documents to [nvra@lawyerscommittee.org](mailto:nvra@lawyerscommittee.org). If there are any copying expenses, please let us know in advance at the email address or phone number listed above.

Localities should always be thoughtful and careful when performing list maintenance activities. Efforts that are too aggressive or undertaken without basis risk violating federal law and disenfranchising eligible voters. We stand at the ready to assist you to uphold federal law and protect the voting rights of the eligible citizens in your jurisdiction.

Sincerely,



Marcia Johnson-Blanco  
Ezra Rosenberg  
Jon Greenbaum  
Lawyers' Committee for Civil Rights Under Law  
1401 New York Avenue NW, Suite 400  
Washington, D.C. 20005  
(202) 662-8600  
[mblanco@lawyerscommittee.org](mailto:mblanco@lawyerscommittee.org)

Wendy Weiser  
Myrna Pérez  
Jonathan Brater  
Brennan Center for Justice at NYU School of Law  
120 Broadway, Suite 1750  
New York, NY 10271  
(646) 292-8310  
[jonathan.brater@nyu.edu](mailto:jonathan.brater@nyu.edu)

Brenda Wright  
Stuart Naifeh  
Dēmos  
80 Broad Street, 4th Floor  
New York, New York 10004  
(212) 485-6055  
[snaifeh@demos.org](mailto:snaifeh@demos.org)



***Terry Bartruff***  
UNION COUNTY CLERK AND RECORDER  
Union County Court House

Phone: (618) 833-5711  
Fax: (618) 833-8712

309 W. Market St.  
Room 116  
Jonesboro, IL. 62952

Robert D Popper  
Judicial Watch, Inc.  
425 Third Street, SW Suite 800  
Washington DC 20024

Mr. Popper,

Union County, Illinois performs the required maintenance to the best of our ability to maintain accurate voter rolls in our county pertaining to NVRA Section 8. I am including a letter from our states attorney that was sent to you on August 9, 2017.

You are more than welcome to visit our office to see the extent of the work that is performed first hand in this endeavor.

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Terry Bartruff  
Union County Clerk/ Recorder  
tbartruff@unioncountyil.gov

# PUBLIC INTEREST

— LEGAL FOUNDATION —

September 15, 2017

VIA FIRST CLASS MAIL

Union County Clerk & Reporter  
Ms. Terry Bartruff  
309 W. Market Rm 116  
Jonesboro, IL 62952-1239

Dear Ms. Bartruff:

I am writing on behalf of the Public Interest Legal Foundation to (1) notify you that based on our research your jurisdiction is in apparent violation of Section 8 of the National Voter Registration Act (NVRA), 52 U.S.C. § 20501 *et seq.*, and, (2) request disclosure and inspection of voter list maintenance records pursuant to the public inspection provision of the NVRA (the requested records are detailed below).

The Public Interest Legal Foundation is a nonpartisan, nonprofit, public-interest law firm that specializes in legal and public policy matters affecting elections, voting, and other political processes of the nation and providing the public with information regarding efforts to damage the integrity of American elections.

Voter rolls across America contain substantial numbers of ineligible or inaccurate registrations, resulting in the possible disenfranchisement of legally eligible voters through ballot dilution that threatens to taint the integrity of the electoral process.

Federal law requires election officials to conduct a reasonable effort to maintain voter registration lists free of dead voters, ineligible voters, and voters who have moved away. 52 U.S.C. §§ 20503 and 20507. Based on our comparison of publicly available information published by the U.S. Census Bureau and the federal Election Assistance Commission, it appears that your jurisdiction is failing to comply with these federal law requirements.

In short, your county has significantly more voters on the registration rolls than it has eligible, living, citizen voters.

This letter serves as the statutory notice to your jurisdiction, required by 52 U.S.C. § 20510(b) prior to the commencement of any lawsuit in order to enforce provisions of Section 8 of the NVRA, 52 U.S.C. § 20507 for failure to conduct adequate list maintenance. We would welcome a discussion that could result in concrete remedial measures to address this circumstance.

Section 8 of the NVRA requires your office to also make available for public inspection “all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i); *See also, Project Vote v. Long*, 682 F.3d 331, 334-335 (4th Cir. Va. 2012).

Pursuant to this section of the law, we request the opportunity to inspect all records concerning your county’s list maintenance practices. However, if your county satisfactorily provides the

information requested below we might be able to dispense with the need to visit your office in person to inspect these records. In particular, we request that your office provide the following information and records:

- (a) registration totals (whether active or inactive) since June 29, 2017;
- (b) records your office obtained or received from state or local court clerks, United States District Court clerks or other sources regarding individuals who were ineligible to serve on juries because of a lack of American citizenship, death or relocation out of the jurisdiction, including but not limited to records concerning juror qualification questionnaires—whether completed via the Internet or returned through the mail—on which the individual that completed the questionnaire indicated that he or she is not a United States citizen. Please include subsequent list maintenance records generated or produced pursuant to inquiries based on this information;
- (c) the number of ineligible registrants removed from the voter rolls by category (e.g., dead, duplicate, ineligible) and by date since December 1, 2011, and any records reflecting these removals;
- (d) the number of notices sent to inactive registrants since December 1, 2011, including the date, scope and contents of any countywide mailing to all registrants;
- (e) the names of the staff in your office responsible for conducting list maintenance obligations who may appear on list maintenance records or who alter list maintenance records in furtherance of the duties of the office;
- (f) the number of ineligible registrants removed for criminal conviction, if applicable, since December 1, 2011 and the date of the most recent dataset containing criminal convictions against which you compared registrant lists, including communications with other agencies regarding criminal convictions;
- (g) any records indicating the use of citizenship or immigration status for list maintenance activities, including but not limited to the Systematic Alien Verification for Entitlements (SAVE) Program database. Any other records produced in reliance on other sources of citizenship verification data and all records related to the review or cancellation of potential noncitizens;
- (h) all list maintenance records including federal voter registration forms containing citizenship eligibility questionnaires including the names and reasons for removal for particular registrants, records of National Change of Address (NCOA) data reviews, NCOA related mailings, and NCOA related actions;
- (i) all list maintenance records indicating the number of records re-classified as INACTIVE and/or cancelled due to NCOA database comparisons derived from private data sources including the names of those registrants;
- (j) all list maintenance records indicating removals or potential removals of registrants for the reason of death, including use of the Social Security death index or derivative data, and the date of the same, and whether you rely on the cumulative social security death index for this purpose;
- (k) all documents and records of communication received by your office from registrants, legal counsel, claimed relatives, or other agents since January 2011

requesting a removal or cancellation from the rolls for any reason related to non-U.S. citizenship/ineligibility;

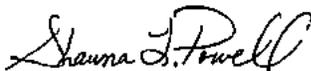
- (l) all records received from third parties concerning complaints regarding list maintenance or offering voter roll maintenance leads and any records reflecting maintenance actions taken as a result; and,
- (m) records indicating processes, policies, or procedures governing the detection and handling of registration records that appear to be duplicated.

Federal law does not permit election officials to charge requesting parties for anything other than the "reasonable cost" of "photocopying" the requested records. Federal law also permits us to physically inspect these records. If you believe compliance with our request will require photocopying of records, we prefer to inspect the potentially compliant documents in person to assess whether they are responsive to our request before any photocopying takes place.

It is our hope that your county will work quickly to provide for inspection of all records related to your list maintenance practices, by the date requested, including provision of the requested information and records. If not, according to federal law, a lawsuit under the NVRA may be filed within 90 days after the failure to permit inspection or failure to provide the documents. If you are within 120 days of a federal election, that time period shrinks to only 20 days. 52 U.S.C. § 20510(b). For any lawsuits initiated by a private party, an award of attorney's fees, expenses and costs incurred are available under 52 U.S.C. §20510(c).

Thank you for your time and attention to this matter. Please feel free to call to arrange a convenient time to discuss and arrange an inspection by contacting me at the below phone number, address or email.

Sincerely,



Shawna Powell, Secretary  
Public Interest Legal Foundation  
32 E. Washington Street, Suite 1675  
Indianapolis Indiana 46204  
317-203-5599  
contact@publicinterestlegal.org

CC:

Illinois State Board of Elections  
Chairman William M. McGuffage  
2329 S. MacArthur Blvd.  
Springfield, IL 62704

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# PUBLIC INTEREST

— LEGAL FOUNDATION —

September 15, 2017

VIA FIRST CLASS MAIL

Union County Clerk & Reporter  
Ms. Terry Bartruff  
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In short, your county has significantly more voters on the registration rolls than it has eligible, living, citizen voters.

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- (b) records your office obtained or received from state or local court clerks, United States District Court clerks or other sources regarding individuals who were ineligible to serve on juries because of a lack of American citizenship, death or relocation out of the jurisdiction, including but not limited to records concerning juror qualification questionnaires—whether completed via the Internet or returned through the mail—on which the individual that completed the questionnaire indicated that he or she is not a United States citizen. Please include subsequent list maintenance records generated or produced pursuant to inquiries based on this information;
- (c) the number of ineligible registrants removed from the voter rolls by category (e.g., dead, duplicate, ineligible) and by date since December 1, 2011, and any records reflecting these removals;
- (d) the number of notices sent to inactive registrants since December 1, 2011, including the date, scope and contents of any countywide mailing to all registrants;
- (e) the names of the staff in your office responsible for conducting list maintenance obligations who may appear on list maintenance records or who alter list maintenance records in furtherance of the duties of the office;
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- (g) any records indicating the use of citizenship or immigration status for list maintenance activities, including but not limited to the Systematic Alien Verification for Entitlements (SAVE) Program database. Any other records produced in reliance on other sources of citizenship verification data and all records related to the review or cancellation of potential noncitizens;
- (h) all list maintenance records including federal voter registration forms containing citizenship eligibility questionnaires including the names and reasons for removal for particular registrants, records of National Change of Address (NCOA) data reviews, NCOA related mailings, and NCOA related actions;
- (i) all list maintenance records indicating the number of records re-classified as INACTIVE and/or cancelled due to NCOA database comparisons derived from private data sources including the names of those registrants;
- (j) all list maintenance records indicating removals or potential removals of registrants for the reason of death, including use of the Social Security death index or derivative data, and the date of the same, and whether you rely on the cumulative social security death index for this purpose;
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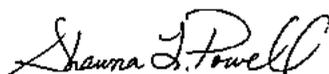
- (l) all records received from third parties concerning complaints regarding list maintenance or offering voter roll maintenance leads and any records reflecting maintenance actions taken as a result; and,
- (m) records indicating processes, policies, or procedures governing the detection and handling of registration records that appear to be duplicated.

Federal law does not permit election officials to charge requesting parties for anything other than the "reasonable cost" of "photocopying" the requested records. Federal law also permits us to physically inspect these records. If you believe compliance with our request will require photocopying of records, we prefer to inspect the potentially compliant documents in person to assess whether they are responsive to our request before any photocopying takes place.

It is our hope that your county will work quickly to provide for inspection of all records related to your list maintenance practices, by the date requested, including provision of the requested information and records. If not, according to federal law, a lawsuit under the NVRA may be filed within 90 days after the failure to permit inspection or failure to provide the documents. If you are within 120 days of a federal election, that time period shrinks to only 20 days. 52 U.S.C. § 20510(b). For any lawsuits initiated by a private party, an award of attorney's fees, expenses and costs incurred are available under 52 U.S.C. §20510(c).

Thank you for your time and attention to this matter. Please feel free to call to arrange a convenient time to discuss and arrange an inspection by contacting me at the below phone number, address or email.

Sincerely,



Shawna Powell, Secretary  
Public Interest Legal Foundation  
32 E. Washington Street, Suite 1675  
Indianapolis Indiana 46204  
317-203-5599  
contact@publicinterestlegal.org

CC:

Illinois State Board of Elections  
Chairman William M. McGuffage  
2329 S. MacArthur Blvd.  
Springfield, IL 62704

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BRENNAN CENTER  
FOR JUSTICE  
TWENTY YEARS  
*at New York University School of Law*

**Demos**  
AN EQUAL SAY AND AN  
EQUAL CHANCE FOR ALL

*By E-Mail and U.S. Mail*

November 21, 2017

Terry Bartruff  
Clerk & Recorder  
Union County  
309 W. Market St, Rm. 116  
Jonesboro, IL 62952

**Re: Obligations Under National Voter Registration Act to Prevent Purging of the Voter Registration Rolls**

Dear Mr. Bartruff,

On behalf of the undersigned civil rights organizations, we write both to express concern and to offer assistance regarding a letter you received from the Public Interest Law Foundation (PILF) in September of this year, which threatened your county with legal action for purported violations of Section 8 of the National Voter Registration Act (“NVRA”) and demanded certain information about your county’s “list maintenance” activities. Although we believe that responsible list maintenance is important to ensure accurate and up-to-date voter lists, initiating a voter purge based on the unsubstantiated claims in PILF’s letter would risk disenfranchising eligible voters and may itself violate Section 8 of the NVRA, which mandates certain protections for voters as states and localities perform their list maintenance activities.

PILF’s letter to you, one of 248 delivered to local jurisdictions across the country, does not provide a sufficient basis for establishing that your current list maintenance practices are inadequate. In fact, we observe several errors and deficiencies with both the data and methodology used in the letter. A rudimentary comparison between U.S. Census Bureau data and election statistics does not prove—or even suggest—that a jurisdiction is failing to remove ineligible voters from registration lists. Nor does it prove that the voter rolls are inflated. The Census data PILF relies on to estimate the eligible voting population is neither designed for that purpose nor does it in fact measure the number of eligible voters; for example, those data often exclude students, military service members and others who are eligible to vote in a jurisdiction. In addition, the figures PILF relies on to estimate registration rates reflect only the high-water

mark rates at “book closing,” the period immediately before an election when there are typically large numbers of new registrants, and when election officials are restricted from removing people from the rolls.

In part because of the PILF letter’s gross misrepresentations and deficiencies, we are concerned that it was sent with the intention of bullying or inducing counties into undertaking action to institute unnecessary and potentially unlawful voter purge programs that could result in the removal of eligible voters from the rolls. We are also concerned that such voter purge programs may have a disproportionate effect on African Americans, Latinos, students, military voters and other minority communities.

The primary purpose behind the NVRA is to “*increase* the number of eligible citizens who register to vote.” 52 U.S.C. §§ 20501(b)(1) (emphasis added). The NVRA further seeks to “enhance[] the participation of eligible citizens as voters.” 52 U.S.C. §§ 20501(b)(2). This critical federal law sets forth a framework that allows states to conduct responsible list maintenance activities while promoting those purposes. The NVRA framework includes procedures that would reduce the chance that citizens eligible to vote will be removed from the rolls. For example, the NVRA restricts who can be removed and on what grounds, requires notice and a waiting period before certain removals, and blocks certain removals during the period before an election. *See* 52 U.S.C. § 20507. We provide more detail on these requirements in our accompanying legal memo.

Accordingly, we offer our assistance to Union County in its efforts to maintain clean and accurate voter rolls in a lawful manner. Please contact Marcia Johnson-Blanco at [mblanco@lawyerscommittee.org](mailto:mblanco@lawyerscommittee.org), or 202.662.8346, if we can be of service.

We also formally request pursuant to 52 U.S.C. § 20507(i) and 5 ILCS 140/1 that all records provided to PILF in connection with its September 2017 letter, and all correspondence with PILF concerning the issues raised in its September 2017 letter be provided to us. We also request all records pertaining to any changes to list maintenance activities related to PILF’s letter, including list of voters, if any, who were removed from the rolls. Please send the documents to [nvra@lawyerscommittee.org](mailto:nvra@lawyerscommittee.org). If there are any copying expenses, please let us know in advance at the email address or phone number listed above.

Localities should always be thoughtful and careful when performing list maintenance activities. Efforts that are too aggressive or undertaken without basis risk violating federal law and disenfranchising eligible voters. We stand at the ready to assist you to uphold federal law and protect the voting rights of the eligible citizens in your jurisdiction.

Sincerely,



Marcia Johnson-Blanco  
Ezra Rosenberg  
Jon Greenbaum  
Lawyers' Committee for Civil Rights Under Law  
1401 New York Avenue NW, Suite 400  
Washington, D.C. 20005  
(202) 662-8600  
[mblanco@lawyerscommittee.org](mailto:mblanco@lawyerscommittee.org)

Wendy Weiser  
Myrna Pérez  
Jonathan Brater  
Brennan Center for Justice at NYU School of Law  
120 Broadway, Suite 1750  
New York, NY 10271  
(646) 292-8310  
[jonathan.brater@nyu.edu](mailto:jonathan.brater@nyu.edu)

Brenda Wright  
Stuart Naifeh  
Dēmos  
80 Broad Street, 4th Floor  
New York, New York 10004  
(212) 485-6055  
[snaifeh@demos.org](mailto:snaifeh@demos.org)