

# The National Voter Registration Act of 1993 (NVRA)

## *Case Summaries*

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# Table of Contents

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## I Brief Analysis

## 7 Chart of Cases

## 13 Case Summaries

### Arizona

- 13 **Gonzalez v. Arizona**  
485 F.3d 1041 (9th Cir. 2007)

### Arkansas

- 13 **United States v. Pulaski County**  
No. 4-04-CV-389 SWW (E.D. Ark. April 19, 2004)

### California

- 14 **Wilson v. United States**  
878 F.Supp. 1324 (N.D. Cal. 1995)

### Colorado

- 14 **Common Cause v. Coffman**  
No. 08-cv-02321-JLK (D. Colo. Oct. 31, 2008)

### District of Columbia

- 15 **Nat'l Coal. for Students with Disabilities v. Miller**  
298 F. Supp. 2d 16 (D.D.C. 2002)

### Florida

- 15 **Nat'l Coal. for Students with Disabilities v. Bush**  
173 F. Supp. 2d 1272 (N.D. Fla. 2001)

- 15 **Diaz v. Hood**  
No. 04-22572 (S.D. Fla.), No. 04-15539 (11th Cir. 2008)

- 16 **NAACP v. Browning**  
N(N.D. Fla. Dec. 18, 2009) order granting preliminary injunction; rev'd, 522 F.3d 1153 (11th Cir. 2008)

### Georgia

- 17 **Charles H. Wesley Educ. Found., Inc. v. Cox**  
324 F. Supp. 2d 1358 (N.D. Ga. 2004), aff'd 408 F.3d 1349 (11th Cir. 2005)

- 18 **Ass'n of Cmty. Orgs. for Reform Now v. Cox**  
No. 1:06-cv-01891-JTC (N.D. Ga. Oct. 26, 2007), mandamus granted in part and denied in part, No. 07-15688, (11th Cir. Feb. 27, 2008), mandamus denied, No. 08-14419 (11th Cir. Sept. 24, 2008)

- 18 **Morales v. Handel**  
No. 1:08-cv-03172 (N.D. Ga. Oct. 27, 2008)

### Illinois

- 19 **Ass'n of Cmty. Orgs. for Reform Now v. Edgar**  
880 F. Supp. 1215 (N.D. Ill. 1995), aff'd as modified by 56 F.3d 791 (7th Cir. 1995), No. 95 C 174 (N.D. Ill. Aug. 5, 1996), appeal dismissed by 99 F.3d 261 (7th Cir. Oct. 31, 1996)

### Indiana

- 20 **U.S. v. Indiana**  
No. 1:06-cv-1000-RLY-TAB (S.D. Ind. 2006)

### Louisiana

- 20 **McKay v. Altobello**  
No. Civ.A. 96-3458 (E.D. La. May 16, 1997)

- 21 **McKay v. Fowler**  
No., Civ.A. 97-3127 (E.D. La. May 7, 1998)

- 21 **Ass'n of Cmty. Orgs. for Reform Now v. Fowler**  
178 F.3d 350 (5th Cir. 1999)

### Maine

- 22 **United States v. Maine**  
No. 06-86-B-W (D. Me. Apr. 4, 2007)

### Maryland

- 22 **Nat'l Coal. for Students with Disabilities Educ. and Legal Defense Fund v. Scales**  
150 F. Supp. 2d 845 (D. Md. 2001)

- 
- Michigan**
- 23 **Ass’n of Cmty. Orgs. for Reform Now v. Miller**  
912 F. Supp. 976 (W.D. Mich. 1995)
- 24 **U.S. Student Ass’n Found. v. Land**  
585 F. Supp. 2d 925 (E.D. Mich. 2008), motion for stay pending appeal denied by No. 2:08-CV-14019 (E.D. Mich. Oct. 24, 2008), and stay denied by No. 08-2352 (6th Cir. Oct. 29, 2008)
- Missouri**
- 25 **United States v. Missouri**  
535 F.3d 844 (8<sup>th</sup> Cir. 2006)
- 26 **United States v. City of St. Louis**  
No. 4:02-CV-1235 (E.D. Mo. 2002)
- 26 **Ass’n of Cmty. Orgs. for Reform Now v. Scott**  
No. 08-CV-4084-NKL (W.D. Mo. Jul. 15, 2008)
- Montana**
- 27 **Montana Democratic Party v. Eaton**  
581 F. Supp. 2d 1077 (D. Mont. 2008)
- 27 **New Jersey**  
**United States v. New Jersey**  
06-4889(ILL) (D.N.J. 2006)
- New Mexico**
- 28 **American Ass’n of People with Disabilities v. Herrera**  
580 F. Supp. 2d 1195 (D. N.M. 2008)
- 28 **United States v. Cibola County**  
No. 93-1134-LH/LFG (D.N.M. 2007)
- New York**
- 29 **United States v. New York**  
255 F. Supp. 2d 73 (E.D.N.Y. 2003)
- Ohio**
- 29 **Lucas County Democratic Party v. Blackwell**  
341 F. Supp. 2d 861 (N.D. Ohio 2004)

- 30 **Bell v. Marinko**  
367 F.3d 588 (6<sup>th</sup> Cir. 2004)
- 30 **Nat’l Coal. for Students with Disabilities v. Taft**  
No. 2:00-CV-1300 (S.D. Ohio, Aug. 2, 2002)
- 31 **Project Vote v. Blackwell**  
455 F. Supp. 2d 694 (N.D. Ohio 2006)
- 31 **Harkless v. Brunner**  
545 F.3d 445 (6<sup>th</sup> Cir. 2008)

### **Pennsylvania**

- 32 **Ass’n of Cmty. Orgs. for Reform Now v. Ridge**  
Nos. Civ.A. 95-382, Civ.A. 94-7671 (E.D. Pa. Oct. 6, 1995)
- 32 **United States v. Philadelphia**  
No. 06-4592 (E.D. Pa. 2007)

### **South Carolina**

- 33 **Condon v. Reno**  
913 F. Supp. 946 (D.S.C. 1995)

### **Tennessee**

- 33 **McKay v. Thompson**  
226 F.3d 752 (6<sup>th</sup> Cir. 2000)
- 33 **United States v. Tennessee**  
No. 3-02-0938 (M.D.Tenn. Oct. 15, 2002)
- 34 **Pepper v. Darnell**  
No. 01-5529 (6<sup>th</sup> Cir. Dec. 10, 2001)

### **Virginia**

- 34 **Nat’l Coal. for Students with Disabilities Educ. and Legal Def. Fund v. Gilmore**  
152 F.3d 283 (4<sup>th</sup> Cir. 1998)

### **36 Appendix**

**Appendix: National Voter Registration Act of 1993 (NVRA), 42 U.S.C. § 1973gg et seq**

# Brief Analysis

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This analysis of litigation under the National Voter Registration Act of 1993 (“NVRA” or “the Act”) covers key issues including: (1) the constitutionality of the NVRA; (2) public agency registration under Section 7; (3) voter list maintenance under Section 8; (4) designation of certain offices as mandatory agencies under Section 7; (5) voter registration processing; and (6) restrictions on third-party registration. The primary focus will be on whether the litigation cited advanced or restricted the interpretation of the NVRA.

## I. Constitutionality

Litigation on the issue of constitutionality uniformly resulted in decisions favorable to the NVRA. Early cases filed under the NVRA primarily involved state claims that the NVRA violated the Tenth Amendment. In *Wilson v. United States*, 878 F. Supp. 1324 (N.D. Cal. 1995), for example, the state of California challenged the NVRA on the grounds that it interfered with states’ rights guaranteed by the Tenth Amendment. The district court and the Ninth Circuit held that the NVRA did not run afoul of the Constitution, and that the Act was a lawful exercise of Congressional authority under the authority of U.S. Const., art. I, § 4, which grants Congress the power to regulate the time, place, and manner of conducting federal elections. In the state of Michigan, the governor went so far as to issue an Executive Order directing state public assistance agencies not to implement Section 7 of the NVRA until the federal funds were made available to fully fund the program. Advocacy groups filed suit to compel the state to comply with the NVRA in *ACORN v. Miller*, 129 F.3d 833 (6th Cir. 1997). The state defended its noncompliance on the grounds that the NVRA violated the Tenth Amendment by requiring state agencies to implement federal mandates without providing funding. Defendants also argued, unsuccessfully, that Congress exceeded its Article I, § 4 power in enacting the NVRA

because the Act regulated the qualifications of voters. The Sixth Circuit ultimately rejected both arguments and upheld the constitutionality of the NVRA. By the year 2000 the constitutionality of the NVRA was well established in case law.

The chart below lists cases involving constitutional challenges.

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### I. Constitutionality Cases

#### *Wilson v. California*

S. Ct. aff’d at 455 F. Supp. 2d 694 (*Voters Rights Coalition v. Wilson*)

#### *Wilson v. United States*

878 F. Supp. 1324 (N.D. Cal. 1995)

#### *Ass’s of Cmty. Orgs. for Reform Now v. Edgar*

880 F. Supp. 1215 (N.D. IL. 1995)

#### *Condon v. Reno*

913 F. Supp. 946 (D.S.C. 1995)

#### *Ass’s of Cmty. Orgs. for Reform Now v. Ridge*

Nos. Civ.A. 95-382, Civ.A. 94-7671 (E.D. Pa. Jan. 14, 2000)

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## 2. Public Assistance Voter Registration under Section 7 of the NVRA

Project Vote, ACORN, DEMOS, and the Lawyers’ Committee for Civil Rights Under Law have filed several lawsuits to compel state public assistance agencies to comply with Section 7 of the NVRA. Section 7 requires public assistance agencies and agencies serving persons with disabilities to provide voter registration opportunities and assistance to agency clients. Compliance with Section 7 has been markedly lacking nationwide. These cases have been successful to date in that they resulted in consent decrees or stipulated orders in which states agreed to implement the law. The evidentiary issue of whether the

state public assistance agencies had failed in their duty to provide voter registration services to clients was clear in these cases. Client surveys carried out in front of the agencies routinely revealed that clients were not being offered the opportunity to register during agency contact. Evidence of noncompliance was also clear according to state reports on voter registration required by the Election Assistance Commission. Issues of standing to sue sometimes presented a problem for plaintiffs, however. The primary issue to be settled in public assistance agency litigation was how to remedy state noncompliance.

Two lawsuits based on noncompliance with this provision of the NVRA are currently pending: *ACORN v. Scott*, No. 08-CV-4084-NKL (W.D. Mo. Jul. 15, 2008); and *Harkless v. Brunner*, 545 F.3d 455 (6th Cir. 2008). In *ACORN v. Scott*, the U.S. district court granted plaintiffs' motion for a preliminary injunction against the Missouri Department of Social Services. The court found that DSS had failed to comply with Section 7 and ordered that the DSS implement remedial action such as monitoring the number of in-person visits to agency offices and offers of registration; assigning an employee at each office to oversee NVRA compliance; and contacting voters who had left the office without being offered voter registration services in order to provide them with the service.

In *Harkless v. Brunner*, the district court dismissed plaintiffs' Section 7 suit on standing and on the grounds that the Ohio Secretary of State and the Ohio Job and Family Services agency lacked authority to compel county public assistance agencies to comply with the Act. The Sixth Circuit Court of Appeals overturned this ruling and the case is now pending in district court.

Courts also granted relief to plaintiffs alleging a failure to comply with Section 7 in *ACORN v. Miller*, 129 F.3d 833 (6th Cir. 1997); *ACORN v. Fowler*, 178 F.3d 350 (5th Cir. 1999); and *United States v. Tennessee*, No. 3-02-0938 (M.D. Tenn. Oct. 15, 2002).

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## 2. Section 7 Public Assistance Agency Registration Cases

*Ass'n of Cmty. Orgs. for Reform Now v. Miller*  
129 F.3d 833 (6th Cir. 1997)

*Ass'n of Cmty. Orgs. for Reform Now v. Fowler*  
178 F.3d 350 (5th Cir. 1999)

*United States v. Tennessee*  
No. 3-02-0938 (M.D. Tenn. Oct. 15, 2002)

*Ass'n of Cmty. Orgs. for Reform Now v. Levy*  
No. 08-CV-4084-NKL (W.D. Mo. Jul. 15, 2008)

*Harkless v. Brunner*  
545 F.3d 455 (6th Cir. 2008)

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## 3. Mandatory Designated Agencies under Section 7

Section 7 requires states to designate certain public assistance offices as mandatory voter registration agencies. Courts have generally ruled in favor of plaintiffs seeking to have student disability offices on public university campuses designated as mandatory Section 7 agencies. They have also ruled favorably on designating Medicaid counseling offices in public institutions such as hospitals as mandatory agencies.

The National Council of Students with Disabilities (NCSW) has had success with suits seeking to compel states to designate public student disability offices as mandatory agencies in Maryland, Ohio, Virginia, Florida, and the District of Columbia.

In *United States v. New York*, 255 F. Supp. 2d 73 (E.D.N.Y. 2003), the district court ruled that public state hospitals offering Medicaid counseling were mandatory agencies, but that private medical clinics, practitioners, and federal agencies were not.

### 3. Designating Mandatory Agencies under Section 7

Nat'l Coal. for Students with Disabilities Educ. and Legal Def. Fund v. Allen  
152 F.3d 283 (4th Cir. 1998)

Nat'l Coal. for Students with Disabilities Educ. and Legal Def. Fund v. Scales  
150 F.Supp. 2d 845 (D. Md. 2001)

Nat'l Coal. for Students with Disabilities Educ. and Legal Def. Fund v. Bush  
173 F.Supp. 2d 1272 (N.D. Fla. 2001)

Nat'l Coal. for Students with Disabilities Educ. and Legal Def. Fund v. Miller  
298 F.Supp. 2d 16 (D.D.C. 2002)

Nat'l Coal. for Students with Disabilities Educ. and Legal Def. Fund v. Taft  
No. 2:00-CV-1300 (S.D. Ohio, Aug. 2, 2002)

United States v. New York  
255 F.Supp. 2d 73 (E.D.N.Y. 2003)

## 4. Voter Registration List Maintenance

A significant number of NVRA cases have centered around Section 8 of the Act, the voter list maintenance provision, and litigants have been successful in the majority of cases. From 2002 through 2008, the Voting Rights Division of the U.S. Department of Justice (DOJ) filed several cases to enforce portions of Section 8 that require states to conduct regular programs to ensure that voter registration rolls are accurate and current and that ineligible voters are purged from the rolls. In some cases the DOJ sought to ensure that eligible voters were not unlawfully purged from the rolls. In general, the DOJ cases resulted in consent decrees in which states agreed to comply with Section 8.

DOJ Section 8 cases include *United States v. Philadelphia*, No. 06-4592 (E.D. Pa. 2007), in which the department successfully challenged the city's failure to remove deceased voters from the rolls. This suit included claims under the Help America Vote Act (HAVA) and Voting Rights Act of 1965 (VRA), alleging that the city failed to establish bilingual programs for Spanish-speaking voters. The parties entered into a settlement.

In *United States v. City of St. Louis*, No. 4:02CV1235 (E.D. Mo. 2002), the DOJ alleged that the city's methods of compiling lists of voters to be placed on inactive registration status, combined with its Election Day procedures, constituted an unlawful removal of the voters from the rolls in violation of Section 8. The parties in this case also entered into a consent decree in which the city agreed to follow procedures sought by the DOJ.

In *United States v. Pulaski County*, No. 4-04-CV-389 SWW (E.D. Ark. April 19, 2004), the department obtained a consent decree in which the county agreed to follow proper Section 8 procedures before removing voters from the registration rolls.

In two landmark 2008 cases, private plaintiffs in Michigan and Colorado won initial injunctions against state practices of removing voters from the rolls when their registration notices were returned as undeliverable or for other unlawful reasons, in violation of Section 8. Both cases, *United States Student Ass'n Foundation v. Land*, 585 F.Supp. 2d 925 (E.D. Mich. 2008), and *Common Cause v. Coffman*, No. 08-cv-02321-JLK (D. Colo. Oct. 31, 2008), remain pending at the time of this writing.

By contrast, an earlier Michigan case, *ACORN v. Miller*, 129 F.3d 833 (6th Cir. 1997), held that the state did not violate Section 8 when it struck registration applicants from the rolls if their registration notices were returned as undeliverable. The court held that under Michigan law, voters were not officially registered until the notices were mailed and were not returned. Since they were not yet officially registered at the time their registration notices were returned, the NVRA did not apply. The court in *USSAF v. Land*, *supra*, was faced with similar facts, but reasoned that because voters whose registration notices had not yet been returned could vote if they appeared at the polls, they were registered for purposes of Section 8.

and could not be purged without following procedures required by that section. The court granted an preliminary injunction against purging such voters.

In another case upholding voter protections under Section 8, *Montana Democratic Party v. Eaton*, 581 F. Supp. 2d 1077 (D. Mont. 2008), plaintiff asserted that challenges to voter registration that were based on a match with the United States Post Office Change of Address database violated Section 8 requirements to give notice to registrants on the list and allow two federal elections to pass without a response before cancelling their registration. The case was voluntarily dismissed after the challenges were withdrawn, but the court indicated that the challenges would have violated Section 8 if they had been carried out.

Finally, in *Bell v. Marinko*, 367 F.3d 588 (6th Cir. 2004), plaintiffs filed suit alleging that challenges to their voter registrations violated Section 8 change of address provisions. The appellate court ruled that this was not a case in which Section 8 applied. The challenges were based on claims that the plaintiffs were not lawful residents of the Ohio island jurisdiction in which they were registered because their primary residence was on the mainland. The court reasoned that because the plaintiffs, with the exception of Bell, had never been lawfully registered on the island, the NVRA did not apply.

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## 4. Section 8 List Maintenance Cases

**United States v. City of St. Louis**  
No. 4:02CV1235 (E.D. Mo. 2002)

**United States v. Pulaski County**  
No. 4-04-CV-389 SWW (E.D. Ark. April 19, 2004)

**Bell v. Marinko**  
367 F.3d 588 (6th Cir. 2004)

**United States v. Indiana**  
No. 1:06-cv-1000-RLY-TAB (S.D. Ind. 2006)

**United States v. Missouri**  
535 F.3d 844 (8th Cir. 2006)

**United States v. Philadelphia**  
No. 06-4592 (E.D. Pa. Nov. 7, 2007)

**United States v. Cibola County**  
No. 93-1134-LH/LFG (D.N.M. 2007)

**Common Cause v. Coffman**,  
No. 08-cv-02321-JLK (D. Colo. Oct. 31, 2008)

**U.S. Student Ass'n Found. v. Land**  
585 F. Supp. 2d 925 (E.D. Mich. 2008)

**Montana Democratic Party v. Eaton**  
581 F. Supp. 2d 1077 (D. Mont. 2008)

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## 5. Voter Registration Processing

Litigation challenges to state practices involving the processing of voter registration applications comprise one of the largest categories of NVRA cases and one of the categories in which plaintiffs who oppose restrictive handling of voter registration applications are the least successful.

One early example is the case of *Pepper v. Darnell*, No. 01-5529 (6th Cir. Dec. 10, 2001). The court ruled that the state did not have to accept the homeless plaintiff's voter registration application, which contained only a post

office box as the address, because state law requiring an actual residence did not violate the NVRA. In *NAACP v. Browning*, Case No. 4:07-cv-00402 (N.D. Fla. Dec. 18, 2007), the court dismissed plaintiffs' NVRA Section 8 claim, in which they asserted that the state's practice of denying registration applications unless the applicant's social security number or driver's license matched with external databases violated the NVRA requirement to ensure that eligible voters are registered if they timely submitted valid applications.

NVRA claims related to requirements involving voter citizenship status have also failed. In *Gonzalez v. Arizona*, 485 F.3d 1041 (9th Cir. 2007), the court ruled an Arizona statute requiring registrants to submit proof of citizenship did not violate NVRA provisions, including the requirement that states must "accept and use" the federal registration application.

In *Lucas Co. Dem. Party v. Blackwell*, 341 F. Supp. 2d 861 (N.D. Ohio 2004), plaintiffs claimed that a secretary of state directive ordering local boards of elections not to process in-person voter registration applications in which a check box was left blank violated the accept and use provision of the NVRA. The case was dismissed on the grounds that the plaintiffs had waited too long after the directive was issued before making their claims.

In *Diaz v. Hood*, No. 04-22572 (S.D. Florida), No. 04-15539 (11th Cir. 2008), a case based primarily on claims under the Help America Vote Act and the Voting Rights Act of 1965, the court dismissed an NVRA count alleging that a state practice of rejecting applications that do not check the citizenship box violates Section 9, which prohibits asking for information beyond that listed in 42 USC 1973gg-7(b)(2).

DOJ cases based on voter registration application processing have resulted in consent decrees in which the states agree to process regulations under terms requested by the department. Court rulings on the NVRA have generally not been issued in these cases.

## 5. Voter Registration Application Processing Cases

### *Pepper v. Darnell*

No. 01-5529 (6th Cir. Dec. 10, 2001)

### *Lucas Co. Dem. Party v. Blackwell*

341 F. Supp. 2d 861 (N.D. Ohio 2004)

### *United States v. New Jersey*

NO, 06-489 (D. N.J. Oct. 12, 2006)

### *Gonzalez v. Arizona*

485 F.3d 1041 (9th Cir. 2007)

### *NAACP v. Browning*

Case No. 4:07-cv-00402 (N.D. Fla. Dec. 18, 2009) order granting preliminary injunction; rev'd, 522 F.3d 1153 (11th Cir. 2008)

### *United States v. Cibola County*

No. 93-1134-LH/LFG (D.N.M. 2007)

### *Diaz v. Hood*

No. 04-22572 (S.D. Florida), No. 04-15539 (11th Cir. 2008)

### *Morales v. Handel*

No. 1:08-cv-03172 (N.D. Ga. Oct 27, 2008)

## 6. Restrictions on Third-Party Registration

Several lawsuits have been filed alleging that state actors violated the NVRA by enacting laws or adopting rules that place undue restrictions on voter registration drives by private third parties. Voting rights advocacy groups have had mixed results in this area.

For example, in *Charles H. Wesley Educ. Found., Inc. v. Cox*, 324 F. Supp. 2d 1358 (N.D. Ga. 2004), aff'd 408 F.3d 1349 (11th Cir. 2005), the court ruled that third parties had a protected right under the NVRA to conduct voter

registration drives, that states must accept and use the federal voter registration form, and that states had a duty to ensure that an eligible applicant was registered to vote if her valid application was received in a timely manner by the appropriate election official.

An Ohio district court struck down restrictions on third-party registration on grounds that some of the restrictions violated the NVRA and the First Amendment in *Project Vote v. Blackwell*, 455 F. Supp. 2d 694 (N.D. Ohio 2006).

On the other hand, in the pending case of *AAPD v. Herrera*, 580 F. Supp. 2d 1195 (D. N.M. 2008), the district court denied preliminary injunction on claims that substantial restrictions on third party registration, including registration of canvassers and a 48-hour turnaround time, violated the NVRA. Similarly, in *ACORN v. Cox*, (N.D. Ga. Oct. 26, 2007), (11th Cir. Feb. 27, 2008), the court ruled that the requirement that voter registration applications be sealed before being given to canvassers did not violate the NVRA.

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## 6. Third-Party Registration Restriction Cases

*Charles H. Wesley Educ. Found., Inc. v. Cox*  
324 F. Supp. 2d 1358 (N.D. Ga. 2004), aff'd 408 F.3d 1349  
(11th Cir. May 12, 2005)

*Project Vote v. Blackwell*  
455 F. Supp. 2d 694 (N.D. Ohio 2006).

*Ass'n of Cmty. Orgs. for Reform Now v. Cox*  
(N.D. Ga. Oct. 26, 2007), (11th Cir. Feb. 27, 2008)

*AAPD v. Herrera*  
580 F. Supp. 2d 1195 (D. N.M. 2008)

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## Conclusion

The above catalog of cases brought, in whole or in part, under the NVRA is intended to give the reader an overview of patterns of court rulings under the most heavily litigated provisions of the Act. For more information about this report, please contact Project Vote at (202) 546-4173. Alternatively, please email Teresa James at [tjames@projectvote.org](mailto:tjames@projectvote.org) or Nicole Kovite at [nkovite@projectvote.org](mailto:nkovite@projectvote.org).

# Chart of Cases

State	Case Name (and Citation)	Subject	Holding/Status
AR	<b>United States v. Pulaski County</b> No. 4-04-CV-389 SWW (E.D.Ark.April 19, 2004)	List Maintenance	DOJ filed suit to compel county to comply with voter protection elements of Section 8. The consent decree included remedial action.
AZ	<b>Gonzalez v. Arizona</b> 485 F.3d 1041 (9th Cir. 2007)	Voter Registration Processing	States can require additional information on citizenship status. Appeal pending.
CA	<b>Wilson v. United States</b> 878 F.Supp. 1324 (N.D. Cal. 1995)	Constitutional Challenge	Held: NVRA is constitutional. The 10th Amendment claim was denied.
CO	<b>Common Cause v. Coffman</b> No. 08-cv-02321-JLK (D. Colo. Oct. 31, 2008)	List Maintenance	Held: Improper purging enjoined.
DC	<b>Nat'l Coal. for Students with Disabilities Educ. v. Miller</b> 298 F.Supp. 2d 16 (D.D.DC. 2002)	Sec. 7 Mandatory Agencies	Claim to designate disability offices failed on standing.
FL	<b>Diaz v. Hood</b> No. 04-22572 (S.D. Florida), No. 04-15539 (11th Cir. 2008)	Voter Registration Processing	Primary claims based on HAVA and VRA. NVRA claim that rejecting applications without citizenship box checked violates Sec. 9 (which prohibits asking for information beyond that listed in 42 USC 1973gg-7(b)(2)), was dismissed.
FL	<b>NAACP v. Browning U.S. District Court, Northern District of Florida (Tallahassee)</b> Case No. 4:07-cv-00402 (D.C. N.D. FL (Tallahassee)); Case No, 07-15932, (11th Cir. 2007)	Voter Registration Processing	Court dismissed NVRA Sec. 8 claim that denying registration unless applicant's SSN or driver's license number matches violates requirement to ensure that eligible voters are registered if they timely submit valid applications.

State	Case Name (and Citation)	Subject	Holding/Status
FL	<b>Nat'l Coal. for Students with Disabilities Educ. v. Bush</b> 173 F.Supp. 2d 1272 (N.D. Fla. 2001)	Sec. 7, Disability Office Mandatory Agency	State agreed it would train agencies.
GA	<b>Ass'n of Cmty. Orgs. for Reform Now v. Cox</b> (N.D. Ga. Oct. 26, 2007), (11th Cir. Feb. 27, 2008)	Third Party Registration	Requirement that voter registration applications be sealed before being given to canvassers did not violate the NVRA.
GA	<b>Morales v. Handel</b> No. 1:08-cv-03172 (N.D. Ga. Oct 27, 2008)	Voter Registration Processing	A three-judge panel granted preliminary injunction on the VRA claim; the NVRA claim is still pending.
GA	<b>Wesley v. Cox</b> 324 F.Supp. 2d 1358 (N.D. Ga. 2004 aff'd 408 F.3d 1349 (11th Cir. May 12, 2005)	Third-Party Registration	Consent: Bundling rule violated NVRA.
IL	<b>Ass'n of Cmty. Orgs. for Reform Now v. Edgar</b> 880 F.Supp. 1324 (N.D. IL. 1995)	Constitutional Challenge	Held: NVRA constitutional.
IN	<b>United States v. Indiana</b> No. 1:06-cv-1000-RLY-TAB (S.D. Ind. 2006)	List Maintenance	Claim: Failure to purge ineligible voters. Consent Decree.
LA	<b>Ass'n of Cmty. Orgs. for Reform Now v. Fowler</b> 178 F.3d 350 (5th Cir. 1999)	Sec. 7 Public Assistance Agency Registration	Section 7 claim granted; Section 6 & 8 claims denied on standing.
LA	<b>McKay v. Altobello</b> No. Civ.A. 96-3458 (E.D. La. May 16, 1997)	Confidentiality of SSA	SSN confidentiality, NVRA claim denied.
LA	<b>McKay v. Fowler</b> No. Civ.A 97-3127 (E.D. La. May 7, 1998)	Confidentiality of SSA	SSN confidentiality, NVRA claim denied.

State	Case Name (and Citation)	Subject	Holding/Status
ME	<b>United States v. Maine</b> No. 06-86-8-W (D. Me. Apr. 4, 2007)	List Maintenance	DOJ and Maine consent decree; state agreed to comply with NVRA list maintenance provisions.
MD	<b>Nat'l Coal. for Students with Disabilities Educ. v. Scales</b> 150 F.Supp. 2d 845 (D. Md. 2001)	Sec. 7, Disability Office a Mandatory Agency	Denied motion to dismiss on standing, opinion dicta stated the disability offices were mandatory agencies under NCSD v. Gilmore.
MI	<b>U.S. Student Ass'n Found. v. Land</b> 585 F.Supp. 2d 925 (E.D. Mich. 2008)	List Maintenance, Purging	Held: purging was based on reasons that were unlawful under NVRA.
MI	<b>Ass'n of Cmty. Orgs. for Reform Now v. Miller</b> 129 F.3d 833 (6th Cir. 1997)	Sec. 7 Public Assistance Agency Registration; Sec. 8 List Maintenance & Constitutional Challenge	Held: NVRA is constitutional. Sec. 7 claim asking state to implement public assistance agency registration granted. Sec. 8 claim against purging registrants whose notices are returned as undeliverable denied.
MO	<b>Ass'n of Cmty. Orgs. for Reform Now v. Levy</b> No. 08-CV-4084-NKL (W.D. Mo. Jul. 15, 2008)	Sec. 7, Public Assistance Agency Registration	Preliminary injunction granted; parties are in settlement negotiations.
MO	<b>United States v. City of St. Louis</b> No. 4:02CV1235 (E.D. Mo. 2002)	List Maintenance	Consent on proper method to deal with inactive voters and purging under Sec. 8.
MO	<b>United States v. Missouri</b> 535 F.3d 844 (8th Cir. 2006)	List Maintenance	U.S. Claim of Section 8 non-compliance denied, on remand to the district court to evaluate local officials' compliance as it relates to state compliance.

State	Case Name (and Citation)	Subject	Holding/Status
MT	<b>MT Democratic Party v. Eaton</b> 581 F.Supp. 2d 1077 (D. Mont. 2008)	NVRA 90-Day Rule and List Maintenance; Sec. 8 Change of Address Provision	Held: Plaintiffs voluntarily dismissed after defendants withdrew voter eligibility challenges. In preliminary rulings court noted that challenges would have violated NVRA 90-day and change of address provisions.
NJ	<b>United States v. New Jersey</b> NO, 06-489 (D.C.N.J. Oct. 12, 2006)	Voter Registration Processing	Stipulated order. State must implement central VR database and require identifiers on VR apps. No court opinion.
NM	<b>United States v. Cibola County</b> No. 93-1134-LH/LFG (D.N.M. 2007)	Voter Registration Processing and List Maintenance	Claim: failed to timely process VR apps and improperly purged voters. Consent decree. No court opinion.
NM	<b>Am. Ass'n of People with Disabilities v. Herrera</b> 580 F.Supp. 2d 1195 (D. N.M. 2008)	Third-Party Registration	P.I. denied on plaintiffs' third party VR restriction claim. Case pending.
NY	<b>United States v. New York</b> 255 F.Supp. 2d 73 (E.D.N.Y. 2003)	Sec. 7, Medicaid Counseling Office is Mandatory Agency	Public hospitals offering Medicaid counseling were mandatory agencies; private and federal agencies were not.
OH	<b>Bell v. Marinko</b> 367 F.3d 588 (6th Cir. 2004)	Sec. 8 Claim Opposing Challenges to Voters' Lawful Residency	Claim: challenge to residence violated NVRA. Held: Defendants had never been lawfully registered in jurisdiction, therefore NVRA list maintenance provisions did not apply.

State	Case Name (and Citation)	Subject	Holding/Status
OH	<b>Harkless v. Brunner</b> 545 F.3d 455 (6th Cir. 2008)	Sec. 7, Public Assistance Agency Registration	Pending. Dismissed at district court level on standing and issue of SOS authority. Reversed and remanded by 6th Circuit upon appeal.
OH	<b>Nat'l Coal. for Students with Disabilities v. Taft</b> (S.D. Ohio, Aug. 2, 2002)	Sec. 7, Disability Office Mandatory Agency	Held: State must designate disability offices at universities as mandatory agencies under Sec. 7.
OH	<b>Lucas Co. Dem. Party v. Blackwell</b> 341 F.Supp. 2d 861 (N.D. Ohio 2004)	Voter Registration Processing	Claim: SOS memo not to process apps with no SSN or driver's license number violated NVRA "accept and use" provisions and was not uniform or discriminatory. Denied on procedural basis of laches.
OH	<b>Project Vote v. Blackwell</b> 455 F.Supp. 2d 694 (N.D. Ohio 2006)	Third-Party Registration	Held: third-party registration restrictions violated the NVRA and the First Amendment.
PA	<b>United States v. Philadelphia</b> No. 06-4592 (E.D. Pa. 2007)	List Maintenance	Consent decree. State agreed to comply with Section 8.
PA	<b>Ass'n of Cmty. Orgs. for Reform Now v. Ridge</b> Nos. Civ.A. 95-382, Civ.A. 94-7671 (E.D. Pa. Jan. 14, 2000)	Constitutional Challenge	Held: NVRA is constitutional.
SC	<b>Condon v. Reno</b> 913 F.Supp. 946 (D.S.C. 1995)	Constitutional Challenge	Held: NVRA is constitutional.
TN	<b>Pepper v. Darnell</b> No. 01-5529 (6th Cir. Dec. 10, 2001)	Voter Registration Processing	Held: State did not have to accept homeless plaintiff's voter registration application with a P.O. box as the address.

## Chart of Cases

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State	Case Name (and Citation)	Subject	Holding/Status
TN	<b>McKay v. Thompson</b> 226 F.3d 752 (6th Cir. 2000)	Confidentiality of SSA	Requiring SSN did not violate NVRA or the Privacy Act.
TN	<b>United States v. Tennessee</b> No. 3-02-0938 (M.D.Tenn. Oct. 15, 2002)	Sec. 7, Public Assistance Agency and Motor Vehicle Agency Registration	Consent decree: State will implement Section 7 in agencies and DMV.
VA	<b>Nat'l Coal. for Students with Disabilities v. Gilmore</b> 152 F.3d 283 (4th Cir. 1998)	Sec. 7, Disability Office a Mandatory Agency	Holding: DSS offices in college were mandatory agencies under the NVRA.

# Case Summaries

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## Arizona

### **Gonzalez v. Arizona** 485 F.3d 1041 (9th Cir. 2007)

#### **Complaint:**

Plaintiffs in these consolidated actions challenged Arizona's Proposition 200, under which voters were required to provide proof of citizenship in order to register to vote and were required to provide identification in order to vote. The case has been pending since May 9, 2006. In addition to constitutional claims that the challenged laws disparately impacted minorities, plaintiffs asserted that the requirement of proof of citizenship to register violated the NVRA. This summary will address only the NVRA claim.

#### **District Court:**

The district court denied injunctive relief as to all claims pending trial and found no violation of Section 8 of the NVRA, holding that the Act permitted states to require proof of citizenship in addition to the information on the registration application to register. Just before the November 2006 election, the Ninth Circuit issued an emergency interlocutory injunction enjoining enforcement of Proposition 200. The United States Supreme Court vacated the injunction on the grounds that the panel did not provide reasons for granting it.

#### **Ninth Circuit:**

On April 20, 2007, the Ninth Circuit affirmed the lower court's order denying a preliminary injunction. On the NVRA issue, the court held that the language of the NVRA did not prohibit documentation requirements in addition to the completion of a voter registration application. The court reasoned that under the NVRA eligibility to vote is clearly based on United States citizenship and that the Act permitted states, to some extent, to require their citizens to present evidence of citizenship when registering to vote. The court noted that the Act permits states to require "such identifying information...as is necessary to enable ...election official[s] to assess the eligibility of the applicant." The court ruled that the NVRA did not act as a ceiling to prevent states from enforcing their own laws on voter qualifications. Therefore, the court held that plaintiffs failed to demonstrate a likelihood of succeeding

on the merits of their claim that the NVRA preempted the challenged state laws.

#### **District Court:**

On Aug. 28, 2007, the district court granted defendant Secretary of State Jan Brewer's motion for partial summary judgment on the NVRA claims, among others. The court ultimately granted judgment in favor of all defendants on Aug. 20, 2008. As of this writing an appeal is still pending in the Ninth Circuit.

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## Arkansas

### **United States v. Pulaski County** No. 4-04-CV-389 SWW (E.D.Ark. April 19, 2004)

#### **Complaint:**

On April 16, 2004 the Department of Justice filed suit against Pulaski County and the county election board commissioners alleging that defendants had violated several provisions of the National Voter Registration Act, 42 U.S.C. § 1973gg et seq., including sec. 1973gg-6, the voter list maintenance section. Specifically, the United States charged that the county failed to ensure that all timely, valid voter registration applications, including hundreds of applications from the Laguna Pueblo, were processed in time for the 2004 federal election and that it cancelled voter registrations without legal cause.

#### **Consent Decree:**

On April 19, 2004, the parties entered into a consent decree in which defendants did not admit liability. The decree called for defendants to take corrective actions to bring the county's voter registration list maintenance practices in line with the NVRA. The specific actions included an agreement to not remove a registrant from the list of eligible voters (1) except at the registrant's request; (2) as provided by Arkansas law by reason of criminal conviction or mental incapacity; or (3) as provided in the NVRA at 42 USC § 1973gg-6. Defendants agreed to provide the United States with a list of all registrants listed as inactive in the county and to send confirmation cards to each registrant on the list, postage prepaid by forwardable mail, as part of a process intended to restore to the

active list any registrant who had been improperly purged and to prevent future improper removal from the voter rolls. The decree also required defendants to conduct certain pre-election mailing and media campaigns to provide information on registration and polling locations. Finally, the parties agreed that defendants would take actions on Election Day to ensure that poll workers had the tools to help voters vote in their correct precinct, correct their registration address, and cast a regular or provisional ballot.

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## California

**Wilson v. United States**  
878 F.Supp. 1324 (N.D. Cal. 1995)

**Complaint:**

California filed suit challenging the constitutionality of the National Voter Registration Act (NVRA) 42 U.S.C. § 1973gg et seq. The United States and a group of private citizens referred to as the Voting Rights Coalition filed a counter-claim and a third-party complaint seeking to compel the state to enforce the Act.

**District Court:**

On March 2, 1995, the court granted an injunction that ordered the state to enforce the NVRA. The court held that the Act was a constitutional exercise of congressional authority under U.S. Const. Art. I, sec. 4, which allows Congress to make or alter regulations on the time, place, and manner of holding elections for federal senators and representatives. That broad power, the court noted, had been extended to presidential elections and registration procedures. The court rejected California's argument that the Tenth Amendment prohibited Congress from requiring a state agency not otherwise designated as a voter registration agency to administer a federal voter registration program.

**Ninth Circuit:**

On July 24, 1995, the circuit court affirmed the judgment. The court agreed that U.S. Const. Art. I, sec. 4 and subsequent court decisions conferred upon Congress the power to pass legislation (1) to regulate the registration

of electors for federal elections; (2) to require state agencies to conduct registration services; and (3) to do so without providing compensation to the states. Finally, the court noted that implementation of the NVRA would necessarily impact the conduct of state and local elections, which raised Tenth Amendment concerns regarding state sovereignty. The court remanded the case with instructions to the district court to approach the implementation of the NVRA with a sensitivity to the principles of federalism.

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## Colorado

**Common Cause v. Coffman**  
No. 08-cv-02321-JLK (D. Colo. Oct. 31, 2008)

**Complaint:**

Common Cause, Mi Familia Vota ("Mi Familia"), and the Service Employees International Union (SEIU) sued the Secretary of State of Colorado on October 25, 2008, alleging that the state illegally purged voter registrations in violation of Section 8 of the National Voter Registration Act of 1993 (NVRA). As the election was imminent, plaintiffs requested only that no additional voters be wrongfully removed from the voter rolls between the date of filing and November 4, 2008, and that voters wrongfully purged be reinstated so that they could cast ballots that would count. Plaintiffs alleged (1) defendant removed tens of thousands of voters from the official voter rolls in Colorado within 90 days of a federal general or primary election in violation of the NVRA; and (2) defendant implemented a Colorado law requiring cancellation of new registrations if a non-forwardable notice sent by mail to the voter was returned as undeliverable within 20 days of receipt of the registration application, which violated Section 8 of the NVRA.

**District Court:**

U.S. District Court Judge John L. Kane granted plaintiffs' Motion for Preliminary Injunction on October 31, 2008. The court ordered the defendant to immediately cease and stop removing or redacting names of voters from the Colorado voter rolls within the 90-day period prior to the federal general election. The court further ordered

that no additional names were to be removed by the secretary of state or the clerk or recorders throughout Colorado through the general election.

## District of Columbia

### **Nat'l Coal. for Students with Disabilities v. Miller**

298 F. Supp. 2d 16 (D.D.C. 2002)

#### **Complaint:**

Plaintiffs, the National Coalition for Students with Disabilities (NCSD) and one of its members, sought a preliminary injunction compelling a District of Columbia official to designate the Washington Metropolitan Area Transit Authority (WMATA) disability services office as a designated voter registration site pursuant to sec. 1973gg-5(a)(2)(B) of the National Voter Registration Act, 42 U.S.C. § 1973gg et seq., and compelling a Maryland official to designate a Maryland WMATA disability access office as a sec. 1973gg-5(a)(2)(B) voter registration site. Additionally, plaintiffs sought a declaratory judgment stating that defendants were in violation of the NVRA.

#### **District Court:**

On October 30, 2002, the court dismissed plaintiffs' action against the District official for lack of standing. NCSD failed to establish associational standing in the District because it could not show that at least one of its members had standing to sue in the jurisdiction in her own right. There was no evidence that any member of the organization was an eligible District resident who had been deprived of an opportunity to register by any action or inaction of the District. The individual plaintiff, an NCSD member, did not have standing in the District because she resided in Maryland. The court also dismissed plaintiffs' action against the Maryland official for lack of personal jurisdiction over her under the District's long-arm statutes.

## Florida

### **Nat'l Coal. for Students with Disabilities v. Bush**

173 F. Supp. 2d 1272 (N.D. Fla. 2001)

#### **Complaint:**

Plaintiffs, a student organization and three named plaintiffs with disabilities, filed suit charging that the named plaintiffs were unable to register to or vote in the 2000 Florida presidential election due to defendants' failure to designate all appropriate state-funded disability offices as voter registration agencies under Section 7 of the NVRA. For relief, plaintiffs sought to block certification of the election, to compel a new special election for President at which disabled persons who did not vote on November 7, 2000, would be permitted to vote, and to require Florida officials to comply with all provisions of the NVRA.

#### **District Court:**

On Feb. 20, 2001, the district court denied plaintiffs' motion to dismiss the action, holding that (1) the NVRA provided a private right of action for violations of the Act; (2) that plaintiffs had stated a claim against defendants under the Act; (3) that the named plaintiffs established standing by a showing that defendants' failure to comply with NVRA provisions regarding disabled voters caused and contributed to their inability to register and to vote in the 2000 presidential elections; and (4) that the association had standing to assert the rights of its members. On November 27, 2001, while defendants' motions for summary judgment were pending, the court approved a settlement agreement that required the appropriate Florida agency to provide certain information and training to other Florida public entities regarding the mandates of the NVRA.

### **Diaz v. Hood,**

No. 04-22572 (S.D. Fla), No. 04-15539 (11th Cir. 2008)

#### **Complaint:**

Several citizens and labor unions, including the SEIU, AFL-CIO, and the Florida Public Employees Council, filed suit against the Florida Secretary of State and several county

elections supervisors. At issue was the state's refusal to register citizens who did not check boxes on their applications relating to citizenship, mental competency, and whether the applicant was a felon. Plaintiffs sought injunctive relief to compel defendants to place on the state voter database rolls citizens whose registrations were rejected for failure to check one of the boxes. The claims were based on the Voting Rights Act of 1965, 42 U.S.C. § 1973aa et seq.; 42 U.S.C. § 1983; claims for violation of the First and Fourteenth Amendments; the Due Process Clause; and the National Voter Registration Act (NVRA), 42 U.S.C. § 1973gg et seq. This summary will address the NVRA claim.

**District Court:**

The district court dismissed the NVRA claims in response to defendants' motion to dismiss plaintiffs' second amended complaint. Plaintiffs' NVRA claims were based on (1) the provision that the mail-in voter registration application may require only such information as is necessary to assess eligibility (sec. 1973gg-7(b)(1)); and (2) sec. 1973gg-3 (c)(2)(A), which provides that any voter registration application used at the Department of Motor Vehicles should contain only the amount of information necessary to determine eligibility. The district court found that the NVRA provisions cited by plaintiffs governed only "the content of the form, rather than...the ability of state and local officials to reject forms." The court also reasoned that the NVRA requires the application form to "include a statement that (A) specifies each eligibility requirement (including citizenship); (B) contains an attestation that the applicant meets each such requirement; and (C) requires the signature of the applicant, under penalty of perjury (sec. 1973gg-7(b)(2)). Read together with HAVA's requirement of a citizenship check box, the court held, "this directs states to design their forms much as Florida has done in this case." Thus, the court found no violation of the NVRA. Plaintiffs followed this order with a third amended complaint based on 42 U.S.C. § 1983, alleging violation of constitutionally protected rights. The NVRA issue was not raised on appeal to the Eleventh Circuit. Final judgment for defendants on remaining issues was granted on March 25, 2008.

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**NAACP v. Browning,**

Case No. 4:07-cv-00402 (N.D. Fla. Dec. 18, 2009) order granting preliminary injunction; rev'd, 522 F.3d 1153 (11th Cir. 2008)

**Complaint:**

Plaintiffs, the Florida State Conference of the NAACP, the Southwest Voter Registration Education Project, and the Haitian-American Grassroots Coalition, filed suit seeking declaratory relief and an injunction against enforcing Fla. Stat. § 97.053(6), a Florida voter registration statute that imposed a new verification process as a precondition of voter registration for first-time registrants. The statute required that new Florida residents must disclose their driver's license numbers or the last four digits of their social security numbers, and that the numbers had to match the state driver's license database or the Social Security Administration's database, respectively. Plaintiffs based their claims on the Help America Vote Act, 42 U.S.C. § 15301 et seq.; Title I of the Civil Rights Act of 1964, 42 U.S.C. § 1971, the Voting Rights Act of 1965 42 U.S.C. § 1973aa et seq, constitutional claims, and the National Voter Registration Act, 42 U.S.C. § 1973gg et seq. This summary will address the NVRA claim and holding.

**District Court:**

The district court granted a preliminary injunction against enforcing the new Florida voter registration statute on other grounds, but dismissed plaintiffs' NVRA claim. That claim cited sec. 1973gg-6(a)(1)(A)-(D), which provides that each state shall ensure that any eligible applicant is registered if his or her valid voter registration application is timely submitted. Plaintiffs also argued that the NVRA did not permit states to reject a voter's application because his or her identification number does not match another database. Citing *Charles H. Wesley Educ. Found. Inc. v. Cox*, 408 F.3d 1349, 1353 (11th Cir. 2005), the court found that while the NVRA "dictates the methods by which states should accept voter registrations," it sets minimum requirements but "does not encompass the panoply of methods available to states with regard to its voter registration." The court found that the NVRA did not specifically address how states are to define voter eligibility.

**Eleventh Circuit:**

The district court's ruling on the NVRA was not appealed. Ultimately, after an appeal on other grounds and remand to the district court, judgment was given for defendants.

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## Georgia

### **Charles H. Wesley Educ. Found., Inc. v. Cox**

324 F. Supp. 2d 1358 (N.D. Ga. 2004), *aff'd* 408 F.3d 1349 (11th Cir. May 12, 2005)

**Complaint:**

This action for declaratory and injunctive relief was filed by a charitable foundation, four volunteers, and a Georgia voter, alleging violations of their rights under the National Voter Registration Act (NVRA), 42 U.S.C. § 1973gg et seq., the Fourteenth and Fifteenth Amendments, and the Voting Rights Act, (VRA) 42 U.S.C. § 1971 et seq. The complaint alleged that Georgia's secretary of state had rejected registration forms that the foundation mailed to her on the grounds that (1) they were not collected by an authorized registrar as required by Georgia law; and (2) that the applications were bundled together in a single envelope contrary to the secretary's anti-bundling interpretation of a Georgia statute. Maintaining that the state's action violated the NVRA provision requiring that the states accept and use the federal mail-in registration, 42 U.S.C. § 1973gg-4, plaintiffs sought a preliminary injunction ordering the secretary of state to process the applications and enjoining her from violating the Act in the future.

**District Court:**

The district court granted plaintiffs' motion for a preliminary injunction ordering the state to process applications submitted by the foundation and enjoining defendants from rejecting any voter registration application on the grounds that it was mailed in a bundle or that it was collected by a person other than a registrar authorized under Georgia law. The court found that the Georgia voter, the foundation, and its volunteers all had standing to sue.

The foundation and its volunteers had standing because the state's actions deprived it of its ability to conduct a voter registration drive, a protected right under the NVRA. The voter had standing because the state's refusal to accept her change of address application prevented her from voting in her current precinct. The court reasoned that the Act mandated that each state was to accept and use either the federal mail voter registration application or a similar state form, sec. 1973gg-4(a)(1), (a)(2). Additionally, the court noted that under sec. 1973gg-6(a)(1)(D), the state was to ensure that an eligible applicant was registered to vote if her valid application was timely received by the appropriate election official. By this provision, the court added, Congress had effectively prevented states from imposing restrictions on the manner in which applications are submitted to the appropriate election official. To the extent that the Georgia statute conflicted with the NVRA, it was to be read as having been altered by the federal statute.

**Eleventh Circuit:**

On May 12, 2005, the Eleventh Circuit affirmed the district court's order. The court rejected defendants' argument on appeal that the foundation was not entitled to injunctive relief because it had not suffered harm to any legally protected right, as there was no right to conduct a registration drive. The court held that the foundation had a legally protected right to conduct registration drives under the NVRA. The Act did not prohibit or regulate voter registration drives; on the other hand it impliedly encouraged them in 42 U.S.C. § 1973gg-4(b), which requires states to make the federal registration form available with particular emphasis on making them available for third-party voter registration programs. The court also affirmed that the individual voter had standing. The voter did not have to be completely disenfranchised to show actual harm sufficient to grant a preliminary injunction; it was enough to show that she had been denied the right to vote in her new precinct and that the harm was directly traceable to the state's actions in rejecting her application to register at a new address.

**Consent Decree:**

On March 2, 2006, the parties entered into a consent decree in which the district court resolved plaintiffs' NVRA claims and their 42 U.S.C. § 1983 claims for the deprivation of federal rights secured under the NVRA. Under

the decree the court (1) declared that private entities have the right to conduct voter registration activity in Georgia and that defendants could not place unreasonable burdens on that right; (2) declared that it was a violation of the NVRA to reject voter registration applications on the basis that they were submitted in a bundle, or by someone who was not a registrar or deputy registrar; and (3) enjoined defendants from rejecting mail-in voter registration applications on either basis. Plaintiffs dismissed the remainder of their claims with prejudice.

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### **Association of Community Organizations for Reform Now v. Cox**

No. 1:06-cv-01891-JTC (N.D. Ga. Oct. 26, 2007), mandamus granted in part and denied in part, No. 07-15688, (11<sup>th</sup> Cir. Feb. 27, 2008), mandamus denied, No. 08-14419 (11<sup>th</sup> Cir. Sept. 24, 2008)

#### **Complaint:**

Plaintiffs, the Association of Community Organizations for Reform Now, Project Vote/Voting for America, Inc., Georgia Coalition for the People's Agenda, Inc., Georgia State Conference of NAACP branches, and an individual filed suit against Cathy Cox as Secretary of State and Chairperson of the Georgia State Board of Elections and members of the Board, asserting that voter registration rules promulgated by the Board violated the NVRA and the First and Fourteenth Amendments. The rules provided that each completed application had to be sealed separately before being handed to a private voter registration canvasser and that applications could not be copied. The regulations imposed a fine up to \$5,000 for infractions of the rules. State statutes provided for fines and incarceration for violations of the election code.

#### **District Court:**

On August 14, 2006, the district court denied a preliminary injunction on plaintiffs' NVRA claim but granted a preliminary injunction on the First Amendment claim, holding that plaintiffs did not have a likelihood of succeeding on the merits of the NVRA claim. Plaintiffs argued that by restricting their ability to (1) register eligible voters, (2) ensure that the applications they collected were accurate and complete, and (3) encourage the new registrants to vote, the regulations conflicted with the

stated goals of the NVRA and were therefore preempted. They also argued that the prior Eleventh Circuit decision of *Wesley Educ. Foundation Inc. v. Cox*, 324 F. Supp. 2d 1358 (11<sup>th</sup> Cir. 2005) recognized that third parties had a federally protected right to engage in voter registration activities and barred the state from enacting regulations that imposed additional restrictions on the dissemination, collection, and submission of voter registration applications. Nevertheless, the district court disagreed ruling that the NVRA did not prohibit state regulation of the form and manner of conducting voter registration drives that was not in conflict with the NVRA. The court reasoned that the facts were different than those in *Wesley v. Cox*. In this case the state would accept all valid applications regardless of whether they were sealed and not copied. In *Wesley v. Cox*, election officials refused to process applications that were bundled.

#### **Eleventh Circuit:**

The district court case was stayed pending resolution of a mandamus in the U.S. Court of Appeals of the Eleventh Circuit regarding a discovery dispute. Mandamus was denied on September 4, 2008. The preliminary injunction was vacated in the district court, and plaintiffs' complaint was dismissed without prejudice on November 10, 2008.

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### **Morales v. Handel**

No. 1:08-cv-03172 (N.D. Ga. Oct. 27, 2008)

#### **Complaint:**

On October 9, 2008, plaintiff Jose Julian Morales filed a class-action lawsuit on behalf of himself and citizens of the United States and of the state of Georgia who had timely submitted a voter registration form and who had been or who would in the future be flagged as non-citizens during a citizenship status check performed using databases maintained by both the Georgia Department of Driver Services (DDS) and the Social Security Administration. The complaint alleges violations of both Section 5 of the Voting Registration Act of 1965 (VRA), 42 U.S.C. § 1973c and the National Voter Registration Act of 1993 (NVRA), 42 U.S.C. § 1973gg et seq. At issue was (1) whether the defendant instituted a change in voting practice or procedure without obtaining necessary preclearance from either the United States Attorney General or the United States District Court for the

District of Columbia; and (2) whether the defendant was performing a list maintenance program within 90 days of a federal general or primary election in violation of the NVRA by systematically checking the citizenship of at least some voters and directing counties to take action against those who were subsequently flagged during the time immediately before the November 4, 2008, general election. Plaintiff requested declaratory injunctive relief. Plaintiff filed a motion for preliminary injunction, temporary restraining order (TRO), and to convene a three-judge court to consider the Section 5 claims along with his Complaint.

**District Court:**

The district court granted plaintiff's motion to convene a three-judge court on October 10, 2008, and sent a letter to the Chief Judge of the Eleventh Circuit Court of Appeals, notifying the court of plaintiff's request and that the case was appropriate for a three-judge panel. The district court denied plaintiff's TRO motion on October 16, 2008, finding that plaintiff provided no evidence that he would be unable to supply the county registrar with the proper documentation to verify his citizenship and certify his eligibility to vote before the three-judge court was to hear the VRA Section 5 claim on October 22, 2008. The court concluded that the plaintiff would therefore suffer no irreparable harm pending the convening of the three-judge court. The court ultimately found that the deciding factor was that the public interest would be harmed if the state was prevented from removing disqualified voters from the voting list. In weighing the interests of the parties, the court concluded that the secretary of state's interest in maintaining reliable voter lists was paramount to that of the individuals who would be inconvenienced by having their eligibility questioned on the grounds of citizenship. The court also opined that the entry of a TRO at a time so close to the election would result in significant voter confusion. A three-judge panel of the Eleventh Circuit granted plaintiff's motion for preliminary injunction on October 27, 2008. In its order, the court concluded that implementation of the database matching system did constitute a change that required preclearance under Section 5 of the VRA. There was no dispute that Georgia did not obtain preclearance for that change. The court did not rule on the NVRA claim in the temporary restraining order or preliminary injunction opinions. The claim is pending.

## Illinois

### **Ass'n of Cmty. Orgs. for Reform Now v. Edgar**

880 F. Supp. 1215 (N.D. Ill. Mar. 31, 1995), aff'd as modified by 56 F.3d 791 (7<sup>th</sup> Cir. June 5, 1995), No. 95 C 174 (N.D. Ill. Aug. 5, 1996), appeal dismissed by 99 F.3d 261 (7<sup>th</sup> Cir. Oct. 31, 1996)

**Complaint:**

In consolidated actions the United States and three public interest organizations sought declaratory and injunctive relief to compel the State of Illinois to implement and comply with the National Voter Registration Act of 1993, 42 U.S.C. 1973gg et seq. Plaintiff United States initially moved for a preliminary injunction, then filed a motion for summary judgment in which the remaining plaintiffs joined by oral motion. Defendants did not deny that they had refused to implement the NVRA, but alleged that the NVRA violated state rights guaranteed by the Tenth Amendment.

**District Court:**

In March 1995 the district court ruled that the NVRA was a lawful, constitutional exercise of Congress's power to regulate the time, place, and manner of holding federal elections under U.S. Const., Art. I, sec. 4. The act did not regulate the qualifications of voters, a power reserved to the states. In its order, the court (1) declared that defendants were not in compliance with the NVRA; (2) declared that all provisions of Illinois law that conflicted with the Act were preempted by the Act; and (3) enjoined defendants from refusing to comply with the Act. Defendants were ordered (a) to designate a chief election official to coordinate the state's responsibilities under the Act, sec. 1973gg-8; (b) to take steps to allow individuals to register as part of the application for a driver's license or applications for assistance at specified agencies, sec. 1973gg-3, sec. 1973gg-5; (c) to take steps to ensure that voter registrations in federal elections were not cancelled for failure to vote, sec. 1973gg-6(b)(2) and to comply with other NVRA voter list maintenance requirements, sec. 1973gg-6; and (d) to ensure that voters who moved within the same registrar's jurisdiction remained eligible to vote in federal elections even if they had not notified

the registrar before the election, sec. 1973gg-6(c).

**Seventh Circuit:**

In June 1995 the Seventh Circuit affirmed the district court's rulings that the NVRA did not violate the U.S. Constitution, that defendants were not in compliance with the NVRA, and that provisions of Illinois law in conflict with the NVRA were preempted by the Act. The appellate court modified the relief granted to plaintiffs, however, holding that the district court's declarations that (1) defendants were not in compliance with the Act; (2) that state law in conflict with the law was preempted by the Act; and (3) that defendants were to comply with the Act, were sufficient. The court struck the section of the district court's order that specifically set forth the state's duty under the NVRA, finding that it unnecessarily reiterated sections of the NVRA and that differences between the language of the order and the Act could cause confusion and further litigation.

order in which defendants agreed that the state had violated Section 8 of the NVRA by failing to implement a program to effectively remove ineligible voters from the voter registration database. The parties agreed to specific procedures to give notice to more than 29,000 registrants who were believed to be deceased and to 290,000 voters who apparently had duplicate registrations. Defendants agreed to make a determination on these disputed registrations, with notices as required by the Act, by August 2, 2006, and report to the United States. The decree also required the defendants to send a non-forwardable mailing to all registered voters. The state was to institute the follow-up notices and waiting procedures required by sec. 1973gg-6(c) and (d). On March 2, 2009, the district court granted the United States' motion to amend the consent decree to require the state to make available to the United States its entire statewide voter registration list, including names, social security numbers, addresses, identification numbers, driver's license number, race, voter status, and voting history.

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## Indiana

**United States v. Indiana**

No. 1:06-cv-1000-RLY-TAB (S.D. Ind. June 27, 2006)

**Complaint:**

On June 27, 2006, the United States filed an action for declaratory and injunctive relief against the State of Indiana and the Co-Directors of the Indiana Election Division alleging violations of the National Voter Registration Act (NVRA) 42 U.S.C. § 1973gg et seq., at Section 8 (sec. 1973gg-6), the voter registration list maintenance requirements. Specifically, the United States alleged that defendants failed to establish a program to remove ineligible voters from the state voter database (sec 1973gg-6(a)(4)) and failed to establish a program to immediately remove voters based on death, conviction of a disqualifying crime, or a request of the voter. The United States cited evidence that certain Indiana counties had registration rates greater than 100 percent of the county population.

**District Court:**

Simultaneously, the parties filed a consent decree and

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## Louisiana

**McKay v. Altobello**

No. Civ. A. 96-3458 (E.D. La. May 16, 1997)

**Complaint:**

Plaintiff sought injunctive and declaratory relief against state officials to compel them to accept his voter registration application without requiring him to list his mother's maiden name and his social security number as required by state law. His request for relief was based upon the Privacy Act of 1974, 5 U.S.C. § 552(a) (the Privacy Act) and the provisions of the NVRA at sec. 1973gg-3(c)(2)(B) and sec. 1973gg-7(b)(1).

**District Court:**

On May 16, 1997, the district court granted injunctive relief to plaintiff in part and denied it in part. Under the Privacy Act, defendants were enjoined from enforcing state law that required plaintiff to provide his social security number on the voter registration application. The court ruled that defendants could require plaintiff to provide his mother's maiden name on the form. The court reasoned

that state officials had discretion to determine what identifying information was necessary to assess the eligibility of the applicant and to administer the election process. The basis for the decision on necessity was unique to each state, and Louisiana had a history of duplicate registrations, alleged voter fraud, and other issues that led the state to require that information.

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### **McKay v. Fowler**

No. Civ.A. 97-3127 (E.D. La. May 7, 1998)

#### **Complaint:**

In a prior action plaintiff obtained a judgment against defendant Fowler, the Louisiana Commissioner of Elections, under the 1974 Privacy Act, 5 U.S.C. § 552(a), enjoining him from requiring plaintiff to provide his social security number in order to register to vote. Plaintiff's NVRA claim in that suit was denied. Plaintiff filed the instant suit against defendant citing violations of 42 U.S.C. § 1983 and the NVRA. The § 1983 claim had been dismissed in a prior action; before the court was defendant's motion to dismiss the remaining claim.

#### **District Court:**

On May 7, 1998, the court dismissed plaintiff's claim on the grounds of res judicata. The claims under § 1983 were decided at an earlier stage in the proceedings. The claims under the NVRA at § 1973gg-9(c) related to attorney fees and costs. Both claims were precluded because plaintiff had already received attorney fees in the earlier action. Claim preclusion applied not only to claims raised but also to claims that could have been raised as part of the earlier claim.

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### **Ass'n of Cmty. Orgs. for Reform Now v. Fowler**

178 F.3d 350 (5th Cir. 1999)

#### **Complaint:**

Plaintiff, a non-profit organization, filed suit for declaratory and injunctive relief against defendants, Louisiana state officials, alleging that they violated the National Voter Registration Act, 42 U.S.C. § 1973gg et seq. by (1) using a mail-in form for renewal of drivers' licenses that did not also simultaneously permit voter registration (§ 1973gg-

4); (2) improperly removing registered voters from voter rolls (sec. 1973gg-6); and (3) failing to provide registration at certain public agencies (sec. 1973gg-5). Plaintiff filed for partial summary judgment and defendants filed for summary judgment on the issue of standing.

#### **District Court:**

On February 3, 1998, the district court granted summary judgment to defendants on plaintiff's claims that defendants had violated the provisions of the NVRA relating to voter list maintenance, voter registration with mail-in driver's license applications, and voter registration at public agencies. The court held that ACORN as an organization and as the representative of its members lacked standing to bring the suit because it had not demonstrated that it suffered actual harm that was traceable to any action of defendants. The court reasoned that as the organization could not vote, it could not establish standing. The court further reasoned that the organization also lacked standing as the representative of its members because it had not shown that any one of its individual members had been harmed by defendants' failure to implement the provisions of the NVRA cited in Plaintiff's complaint.

#### **Fifth Circuit:**

On June 10, 1999, the Fifth Circuit Court of Appeals reversed judgment for defendants on their claim that ACORN lacked standing on the issue of defendants' failure to implement public assistance agency voter registration under Section 7 of the NVRA (sec. 1973gg-5). The court reasoned that ACORN had established standing on this claim because the organization had conducted registration drives at public agencies in Louisiana at least once a year, an expenditure of resources that would not have been necessary if defendants had complied with the Act. The court affirmed judgment for defendants on plaintiffs' claims that they failed to comply with the provisions of the NVRA related to providing voter registration simultaneously with applications for drivers' licenses, (sec. 1973gg-3) and the voter list maintenance provisions (sec. 1973gg-6). The court found plaintiff did not demonstrate that it expended any more resources in registering voters as a result of defendants' failure to implement these two NVRA provisions than it would otherwise have expended in its daily operations.

## Maine

### **United States v. Maine**

No. 06-86-B-W (D. Me. Apr. 4, 2007)

#### **Complaint:**

The United States filed a complaint naming the State of Maine and its Secretary of State, Matthew Dunlap, as defendants on July 28, 2006. The United States alleged that Maine violated the Help America Vote Act of 2002 (HAVA), 42 U.S.C. § 15511 and the National Voter Registration Act of 1993 (NVRA), 42 U.S.C. § 1973gg et seq. by failing to comply with Sections 301(a) and 303(a)(3) of HAVA, and Section 8 of the NVRA. With respect to the NVRA claims, the complaint alleged Maine had violated Section 8 by failing to ensure that local registrars eliminated duplication in voter registration records across municipal jurisdictions in federal elections.

#### **Consent Decree:**

The United States and the State of Maine agreed to a consent decree that was approved and entered by the district court on August 1, 2006. The parties later approved a modification to the terms of that consent decree that was filed in the district court on October 26, 2006. Defendants received an extension of the deadlines in the consent decree. Defendants were still not in compliance as of April 4, 2007, when the court considered and entered a new consent decree specifically addressing problems with the implementation of a HAVA-compliant statewide voter registration system. Defendants admitted that because of delays in the implementation of the statewide voter registration system, the state still did not have adequate means of identifying voter records of ineligible voters and that therefore the state was not in compliance with list maintenance provisions of Section 8 of the NVRA (§ 1973gg-6). The new consent decree requires Maine to implement procedures to identify and resolve voter records of ineligible voters in order to come into compliance with Section 8 and to provide reports for the purpose of compliance monitoring and recordkeeping.

## Maryland

### **Nat'l Coal. for Students with Disabilities Educ. and Legal Def. Fund v. Scales**

150 F. Supp. 2d 845 (D. Md. 2001)

#### **Complaint:**

Plaintiff, a non-profit advocacy group, filed suit for declaratory and injunctive relief against defendants, the director of a university disability support services office (DSS) and others, alleging that defendants failed to provide voter registration services to disabled students at the DSS in violation of a provision of the National Voter Registration Act, 42 U.S.C. § 1973gg et seq. (NVRA). There was no dispute that DSS was a designated agency under Section 7 of the act (§ 1973gg-5), but defendants provided only mail-in voter registrations to students that came into the DSS offices, and only if they affirmatively asked for them. The DSS also did not deliver applications to local election officials. Defendants filed a motion to dismiss the case or for summary judgment on the grounds that plaintiff lacked standing to sue and that it failed to provide notice of suit as required by the NVRA.

#### **District Court:**

On July 5, 2001, the court denied defendants' motion to dismiss plaintiff's NVRA claim, holding that plaintiff had standing to sue defendants for their failure to provide registration services to disabled students at the DSS (sec. 1973gg-5(a)(2)(b)). Limited to considering only the allegations of the complaint at this stage of the suit, the court reasoned (1) that defendants' noncompliance frustrated plaintiff's goals of strengthening the rights of disabled students attempting to vote; (2) that plaintiff therefore expended resources it would otherwise not have expended in assisting the registration of disabled students; (3) that this alleged an actual or threatened injury that was traceable to defendants; and (4) that the injury was likely to be redressed by injunctive relief. The court ruled that plaintiff was not required to provide notice of suit, citing sec. 1973gg-9(b)(3), because the complaint alleged that defendants' specific failures to comply with the NVRA occurred within 30 days of an election. Lastly, the court granted defendants' motion to dismiss plaintiff's 42 U.S.C.

§ 1983 claims on the ground that the organization lacked prudential standing.

## Michigan

### **Ass'n of Cmty. Orgs. for Reform Now v. Miller**

912 F. Supp. 976 (W.D. Mich. 1995)

#### **Complaint:**

In consolidated actions, plaintiffs sought declaratory relief and an order compelling defendants to comply with the National Voter Registration Act of 1993 (NVRA or Act), 42 U.S.C. § 1973gg et seq. The actions were filed after the governor of Michigan issued an executive order mandating that the state not implement a state law requiring voter registration services at public agencies (as mandated by the NVRA) until federal funds were granted to cover the costs. The parties filed cross motions for summary judgment.

#### **District Court:**

The court granted plaintiffs' motions for summary judgment in part and denied them in part, ruling (1) that the NVRA does not violate the Tenth Amendment; (2) that the NVRA is a valid exercise of Congressional power under Art. I sec. 4; (3) that the NVRA was binding on defendants; and (4) that defendants were not in compliance with the Section 7 (§ 1973gg-5) requirement of the Act to provide registration and registration assistance at public agencies. In finding that the NVRA does not violate the Tenth Amendment, the court noted that the law does not require a state to pass legislation. Moreover, the court reasoned that, even if the NVRA did violate the Tenth Amendment, it would still pass Constitutional muster under the Fourteenth and Fifteenth Amendments because those amendments aimed at erasing preexisting discrimination just as the NVRA was aimed at disproportionately lower voting participation by racial minorities. The court ordered defendants to comply with the NVRA within a certain period and found that the NVRA creates an enforceable right under 42 U.S.C. § 1983. The court denied partial summary judgment to plaintiffs on their claim that a Michigan statute violated § 1973gg-6(d) of

the NVRA by calling for the removal of a voter from the rolls if his or her non-forwardable voter identification card was returned as undeliverable. The court reasoned that under Michigan law voters were not registered until they received their identification cards. Voters who never received their cards were never registered, thus they could not be removed from the rolls. The ultimate resolution of this challenge to the state law after the district court denied summary judgment is not indicated in the district or appellate court opinions. Partial summary judgment was also denied on plaintiffs' claims that certain of defendants' forms did not comport with the NVRA, and on the issue of which state offices were to be designated as registration agencies under § 1973gg(5)(a)(3).

#### **Sixth Circuit:**

On November 3, 1997, the Sixth Circuit affirmed the district court's judgment that the NVRA was constitutional and that those plaintiffs that had not sent notice-to-sue letters to defendants under sec. 1973gg-9(b) were not under an obligation to do so. Defendants' argued that the NVRA violated the Tenth Amendment by directing states to legislate for a federal purpose and forcing states to bear the financial burden of enacting a federal program. The court reasoned that although Congress could not force states to pass legislation in cases in which Congress had merely been granted the authority to require or prohibit a certain act (as under the Commerce Clause), Congress had been granted the express authority not only to make laws, but also to alter laws under Art. I sec. 4, the Elections Clause. Thus, the Elections Clause granted Congress the authority to force states to alter their regulations affecting federal elections. The court found that this authority is not conditioned on financing of the changes to state law and that it extends to regulations affecting registration. On the notice issue, the court held that (1) under sec. 1973gg-9(a), the United States was not required to provide notice of suit; (2) the individual plaintiffs were relieved from the duty to give notice under the facts of this case because to do so would require a futile act; and (3) an intervener in the ACORN case did not have to provide notice, because the notice requirement applied to those who initiated suit.

**U.S. Student Ass’n Found. v. Land** 585 F. Supp. 2d 925 (E.D. Mich. 2008), motion for stay pending appeal denied by No. 2:08-CV-14019 (E.D. Mich. Oct. 24, 2008), and stay denied by No. 08-2352 (6<sup>th</sup> Cir. Oct. 29, 2008)

**Complaint:**

Plaintiffs United States Student Association Foundation (USSAF), American Civil Liberties Union Fund of Michigan, and American Civil Liberties Union of Michigan filed suit against Michigan Secretary of State Terri Lynn Land, Michigan Director of Elections Christopher M. Thomas, and City Clerk for the City of Ypsilanti, Frances McMullen in their official capacities on September 17, 2008. The complaint alleged (1) illegal purging in violation of Section 8 of the National Voter Registration Act of 1993 (NVRA), 42 U.S.C. § 1973gg et seq. (establishing safeguards against removal of voters from the rolls within 90 days of a federal general or primary election); (2) illegal purging in violation of Michigan’s election laws, Michigan Comp. Laws (MCL) § 168.509aa (codifying NVRA safeguards in Michigan law); (3) illegal cancellation in violation of the NVRA; (4) illegal cancellation in violation of the Civil Rights Act and 42 U.S.C. § 1983; (5) illegal cancellation in violation of the “materiality provision” of the Civil Rights Act, Section 8(d) of the NVRA and 42 U.S.C. § 1983; and (6) illegal cancellation in violation of the First and Fourteenth Amendments of the U.S. Constitution and 42 U.S.C. § 1983.

Plaintiffs brought the purging claims in response to Michigan’s practice of immediately removing voters’ names from the voter rolls without providing the requisite notice and without waiting the requisite period of two federal election cycles whenever defendants receive information that a voter has applied for an out-of-state driver’s license. Plaintiffs brought the cancellation claims in response to MCL §§ 168.499(3) and 168.500(c), which provided for immediate removal of a voter from the list of eligible voters if the voter’s original voter identification (ID) card is returned as nondeliverable. Plaintiffs requested preliminary and permanent injunctions as well as declaratory relief. The Michigan State Conference of NAACP Branches was added as an additional plaintiff in the first amended complaint filed on October 7, 2008.

**District Court:**

U.S. District Court Judge Stephen J. Murphy, III issued an order on October 13, 2008 granting in part and denying in part plaintiffs’ Motion for Preliminary Injunction. The court granted a preliminary injunction prohibiting defendants from rejecting or cancelling voter registrations due to returned voter identification cards, but the court denied a preliminary injunction with respect to cancelling voter registrations when the voter applied for an out-of-state driver’s license for lack of standing.

The court found that plaintiffs were likely to succeed on the merits on both issues. In considering the undeliverable identification cards, the court noted that the legality of the undeliverable ID card practice boiled down to whether the voter was considered a “registrant” under the NVRA at the time of cancellation. The court opined that the voters in question were registrants under the NVRA because they were able to cast a vote as soon as their voter registration applications were processed and before it could be determined whether the voter identification card would be returned as “undeliverable.” The court concluded that plaintiffs had shown a strong likelihood that the voter ID practice violated the NVRA because Michigan was placing voters in a status that allowed them to vote and then “rejecting” them at a later date. The court then considered Michigan’s practice of immediately cancelling voter registrations as soon as it receives information that the voter has applied for an out-of-state driver’s license, finding the practice in violation of the NVRA. The court reasoned that an application for an out-of-state driver’s license does not constitute written confirmation of an address change and therefore cannot justify cancellation of an applicant’s Michigan voter registration under the NVRA. The court also noted that the kind of “residence” that any given state requires for driver licensing is not necessarily the same as the kind of “residence” required for voting purposes.

The court finally turned to the issue of standing and found that plaintiffs were likely to successfully establish representational standing on the undeliverable ID issue, but not on the driver’s license application issue. While it may not be difficult for plaintiffs to identify one or more organizational members who have registered recently enough that they are still in doubt as to whether their registration was wrongfully cancelled because their ID

was mistakenly returned as undeliverable, potential victims of the out-of-state driver's license application cancellation would be much more difficult to find. The court found that the only persons who even had the potential of being harmed by the practice were those who either applied for an out-of-state driver's license (and suspended their Michigan licenses) despite not meeting the residency requirement in the state of application, or who applied for a driver's license in states where they satisfied the residency requirement for receiving a driver's license, but not for voting. The court concluded that it did not have any confidence that plaintiffs would be able to find such a person in their membership and therefore denied the motion for preliminary injunction against the driver's license application practice based on standing. The court did not enjoin the defendant, Clerk for the City of Ypsilanti, based on her representations to the court that she did not intend to remove any additional voters from the rolls pursuant to the undeliverable ID practice due to staff and budget shortages.

Defendants filed a motion to stay pending appeal of the court's order granting in part and denying in part plaintiff's motion for preliminary injunction on October 17, 2008. The court denied defendants' motion to stay on October 24, 2008.

#### **Sixth Circuit:**

Defendants filed a Motion for Expedited Review by the Court of Appeals for the Sixth Circuit as well as an emergency motion to stay the district court's preliminary injunction. The Court of Appeals granted the motion for expedited review and denied the emergency motion to stay on October 30, 2008. This case remains pending at the court of appeals.

## Missouri

### **United States v. Missouri** 535 F.3d 844 (8th Cir. 2006)

#### **Complaint:**

The United States filed suit against the State of Missouri and its Secretary of State in her official capacity, alleging

that Missouri violated the voter list maintenance provisions of the National Voter Registration Act (NVRA), 42 U.S.C. § 1973gg et seq. by (1) failing to conduct a program to remove voters who had moved or were deceased; (2) failing to implement a program that was uniform, non-discriminatory, and in compliance with the Voting Rights Act; (3) failing to implement a program to prevent the removal of voters from the list for failure to vote; and (4) failing to conduct a program to remove ineligible voters from the list at least 90 days before a primary or election. Defendants sought summary judgment.

#### **District Court:**

The district court ultimately granted summary judgment to defendants on all claims. The court found that Missouri had met its NVRA obligation to make a reasonable effort to conduct a general program of voter list maintenance, and, to the extent that some NVRA violations existed, those violations were the responsibility of the state's individual local election authorities (LEAs). The court found that Missouri was not directly responsible for enforcement of the NVRA against the LEAs. The court first granted summary judgment on "any claim by the United States which seeks to hold Missouri responsible for enforcement of the NVRA against local election authorities" but allowed additional discovery for the United States to make its case that Missouri's efforts did not rise to the level of "reasonable" under the law. After discovery, the District Court found that Missouri had reasonably met its obligations to "conduct a general program under the NVRA" and granted summary judgment on all claims. The United States appealed the ruling, arguing that the district court erred in its interpretation of the NVRA. The United States also challenged the court's decision to exclude survey responses from the LEAs on hearsay grounds. (The district court allowed the survey statements only for the limited purpose of showing Missouri's knowledge of possible NVRA violations by the LEAs.)

#### **Eighth Circuit:**

The circuit court affirmed in part and reversed in part and remanded for reconsideration. The court reviewed the granting of summary judgment de novo, but reviewed the district court's evidentiary rulings for clear abuse of discretion, which warrants reversal only when an improper evidentiary ruling affects a party's substantial right or has more than a slight influence on the verdict. Both

parties agreed the district court ruling was the functional equivalent of a bench trial. The circuit court agreed with the district court that Missouri could not be held responsible for enforcement of the NVRA against LEAs because the state is not one of the two categories of potential plaintiffs under the act—the United States or a “person” aggrieved by a violation of the NVRA. The court noted that “any lack of LEA compliance remains relevant to determining whether or not Missouri is reasonably ‘conduct[ing] a general program.’” On this issue, the court reversed and remanded for consideration of any lack of LEA compliance and a determination of whether any such noncompliance rendered Missouri’s effort to “conduct a general program” to remove ineligible voters “unreasonable.” The court stated that the district court was not bound to come to a conclusion different than its original decision in which it found Missouri’s efforts to be “reasonable.” The court of appeals affirmed the district court’s evidentiary rulings.

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**United States v. City of St. Louis**  
No. 4:02CV1235 (E.D. Mo. 2002)

**Complaint:**

In 2002, the United States filed suit against the Board of Election Commissioners for the City of St. Louis and the City of St. Louis for violations of Section 8 of the NVRA, the voter list maintenance section. Specifically, the United States charged that the board’s procedure for placing eligible voters on inactive status, when combined with the Election Day procedures that inactive voters were required to follow in order to restore their active voter status and vote during the November 2000 and March 2001 elections, constituted a removal of those voters from the voter registration rolls in violation of Section 8.

**Consent Decree:**

The parties entered into a consent decree that required the city to take corrective actions to resolve the violations and called for the city’s compliance to be monitored until January 2005. No interim court opinion was entered.

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**Ass’n of Cmty. Orgs. for Reform Now v. Levy**

No. 08-CV-4084-NKL (W.D. Mo. 2009)

**Complaint:**

The Association for Community Organizations for Reform Now (ACORN) and individual Dionne O’Neal filed suit against the Missouri Department of Social Services (DSS) and its director, Deborah E. Scott, and the director of the Family Support Division of DSS, Janel R. Luck, as well as the Boards of Election Commissioners in Kansas City, Jackson County, and St. Louis City on April 23, 2008. The complaint alleged that “Missouri’s public assistance offices routinely fail to provide the required voter registration opportunities to persons seeking public assistance” pursuant to Section 7 of the National Voter Registration Act of 1993 (NVRA), 42 U.S.C. § 1973gg et seq. Plaintiffs sought declaratory and injunctive relief to redress past and ongoing violations of the obligations imposed by Section 7 of the NVRA. Plaintiffs filed a motion for preliminary injunction on the same day.

**District Court:**

On July 15, 2008, U.S. District Court Judge Nanette Laughrey granted plaintiffs’ motion for a preliminary injunction as to the DSS. In its order, the court found that plaintiffs had provided evidence that DSS employees failed to provide voter registration applications to each client who applied for services in person. The court stated that this failure was due in part to DSS’s failure to monitor NVRA compliance and failure to ensure that it could meet the basic, material requirements of supplying local offices with a sufficient number of forms. The court ordered that DSS comply with the requirements of the NVRA and implement a monitoring system to count in-person visits to each local DSS office and offers of registration. The court also ordered that DSS identify a person in each local office and its main office to be responsible for gathering data about NVRA compliance for enforcement of DSS’s stated NVRA policy. Finally, the court ordered that if it comes to the attention of DSS that a client has visited an office and left without being made an offer to register to vote, DSS must contact that client and offer to register that client to vote. The court denied plaintiffs’ motion for preliminary injunction as to the Boards of Election Commissioners.

In the wake of Judge Laughrey's order, voter registrations at Missouri DSS offices skyrocketed. In June of 2009 the parties filed a settlement agreement with the court, stipulating that (1) DSS offices would collect and submit detailed monthly reports on their compliance efforts; (2) DSS would designate statewide and office-specific NVRA coordinators; (3) local DSS offices would institute mandatory NVRA training for employees; and (4) DSS would be required to provide voter registration opportunities in conjunction with regular client mailings, with client transactions by phone or over the internet, and to any client whom it determines was not offered a registration opportunity during a previous transaction. The settlement was finalized on June 25, 2009.

## Montana

### **Montana Democratic Party v. Eaton** 581 F. Supp. 2d 1077 (D. Mont. 2008)

#### **Complaint:**

The Montana Democratic Party and two of its members sought declaratory and injunctive relief against the Montana Republican Party, individuals, and Secretary of State Brad Johnson arising out of Republican Party challenges to the voting rights of almost 6,000 registered voters under a state voter challenge law, upon the grounds that the voters were ineligible due to a change in residence. The challenges were based on comparisons of the voter registration database with United States Postal Service change of address lists. Plaintiffs asserted that the mass voter challenges violated the Equal Protection Clause and the NVRA. The NVRA claim was based on Section 8, which prohibits the cancellation of voter registrations on the basis of a suspected change of residence except upon the request of the voter or upon notice followed by the passage of two federal elections without action on the part of the voter.

#### **District Court:**

On October 8, 2008, the district court denied plaintiffs' motion for a temporary restraining order in light of the secretary of state's instruction to local election officials

to refrain from sending the challenge letters out to affected voters at that time. The court noted that if the state had attempted the action that defendants sought to achieve by their challenges, the state would be in violation of an NVRA provision that prohibits systematic purging of voter registration rolls in the 90 days preceding an election, and of the NVRA provisions on cancelling voter registrations due to change of address. The court stated that the NVRA makes it illegal to deny an elector his or her vote based on a change of address, subject to limited exceptions not present in this case. "A voter cannot be required to confirm his or her address under these circumstances. The elector must be allowed to vote by regular ballot, or there is a violation of the National Voter Registration Act." A hearing on the preliminary injunction was set for October 14, 2008. On October 10, 2008, plaintiffs voluntarily dismissed their complaint.

## New Jersey

### **United States v. New Jersey** 06-4889(ILL) (D. N.J. 2006)

#### **Complaint:**

The United States filed suit against the State of New Jersey, alleging that the state had not met its duty under the Help America Vote Act (HAVA), 42 U.S.C. § 15301-1 5545 because it had not fully implemented its computerized statewide voter registration database. The suit also alleged that the state had violated Section 8 of the National Voter Registration Act (NVRA) 42 U.S.C. § 1973gg et seq. because it had not completed programs to remove deceased voters from the registration database or to identify registered voters who have changed residences. This summary addresses the NVRA claim.

#### **District Court:**

The parties entered into a stipulation and order on October 12, 2006, under which the state agreed to implement Title III of HAVA and Section 8 of the NVRA as it relates to completing a program to remove deceased voters from the rolls and identify voters who have changed addresses. The state agreed to provide a report

of the status of its Section 8 list maintenance by July 15, 2007.

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## New Mexico

### **American Ass'n of People with Disabilities v. Herrera**

580 F. Supp. 2d 1195 (D. N.M. 2008)

#### **Complaint:**

Plaintiffs, the American Association of People with Disabilities, Federation of Women's Clubs Overseas, New Mexico Public Interest Research Group Education Fund, and Southwest Organizing Project, filed suit in the state court on July 24, 2008, against New Mexico Secretary of State Mary Herrera, alleging that New Mexico statutes that placed restrictions on third-party voter registration drives violated the First and Fourteenth Amendments, the National Voter Registration Act, and the New Mexico Constitution. Specifically, the complaint challenged state provisions that, inter alia, required third-party registrations to be submitted within 48 hours of receipt, required registration groups to put an identification number on the forms, and imposed a fifty card limit on the number of cards that could be requested. The case was removed to the U.S. District Court of New Mexico.

#### **District Court:**

On September 17, 2008, the district court denied plaintiffs' motion for a preliminary injunction against enforcement of the challenged statutes, holding that plaintiffs were not likely succeed on the merits. In addition to their constitutional arguments, the plaintiffs argued that the New Mexico statutes were in conflict with and preempted by the NVRA, which seeks to enhance opportunities for voter registration, including the development of the federal voter registration form, and to encourage third-party voter registration. Plaintiffs argued that the challenged law conflicted with the NVRA even if applied to registration efforts using the state registration form, but that the state also imposed its third-party voter registration restrictions on efforts using the federal voter registration form, on which such restrictions did not ap-

ply. On the NVRA claim, the district court held that the challenged provisions did not conflict with the NVRA's stated goals of enhancing voter registration and ensuring the integrity of the voter registration process. An order granting an extension of time to file the "Joint Status Report and Provisional Discovery Plan and to Reschedule the Rule 16 Conference" was entered on December 17, 2008. The report is due April 17, 2009.

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### **United States v. Cibola County**

No. 93-1134-LH/LFG (D.N.M. 2007)

#### **Complaint:**

The United States filed an action against the County of Cibola, New Mexico, and the Cibola Board of Commissioners, alleging that the county violated the National Voter Registration Act (NVRA), 42 U.S.C. § 1973gg et seq., by failing to ensure that all timely submitted, valid voter registration applications, including applications from residents of the Laguna Pueblo, were processed in time for the November 2004 general election, and by improperly purging voters (sec. 1973gg-6). Additionally, the United States' NVRA claims included a charge that the county failed to develop and implement procedures to ensure that voters' names were not removed from the official list of registered voters without following the procedures set forth in sec. 1973gg-8(d) (the change of address provision) and that the county improperly placed voters on the inactive list simply because of a failure to vote, (sec. 1973gg-6(b)). The United States also alleged violations of the Help America Vote Act (HAVA), 42 U.S.C. § 15301 et seq., and the Voting Rights Act of 1965, 42 U.S.C. § 1973aa et seq. The NVRA issue will be addressed in this summary.

#### **Joint Stipulation:**

Simultaneous with the filing of the complaint the parties entered into a stipulated order in which the county agreed to remedy the NVRA and HAVA violations, and the county stipulated that its voting procedures and practices had violated sec. 1973gg-6 of the NVRA. The stipulated order calls for the county to bring its practices into compliance with the NVRA by January 15, 2009. This action was the latest filing in a series of actions over 13 years designed to bring the county into compliance.

## New York

### **United States v. New York** 255 F. Supp. 2d 73 (E.D.N.Y. 2003)

#### **Complaint:**

The United States brought an action alleging that not all offices in New York that provided public assistance had been designated as mandatory voter registration agencies (VRAs) as required by Section 7 of the National Voter Registration Act (NVRA) at sec. 1973gg-5(a)(2)(A). In a related action, Disabled in Action challenged a New York City agency, alleging that all hospitals that provide Medicaid applications were required to be designated as mandatory VRAs under the Act. The two actions were combined for the purposes of discovery.

#### **District Court:**

Both plaintiffs moved for partial summary judgment seeking a declaratory judgment that defendants (the Human Resources Administration of the City of New York and the State of New York) are required to designate as voter registration sites the approximately 1,600 public and private hospitals, nursing homes, clinics, and other community-based organizations that process Medicaid applications in New York City, thus ensuring that the facilities offer all Medicaid applicants the full range of voter registration services mandated by the NVRA. The court ruled that the subject facilities were not “offices in the State that provide public assistance” within the meaning of the law, and therefore defendants had not violated the NVRA by failing to designate the subject facilities as mandatory VRAs. The court reasoned that the NVRA expressly distinguished between state and local government offices, which had to be designated as mandatory VRAs, and federal and private offices, which could be designated as discretionary VRAs. Defendants’ motion for partial summary judgment was granted.

#### **Second Circuit:**

The Second Circuit considered an appeal of the District Court decision in *Disabled in Action of Metropolitan New York v. Hammons*, 202 F.3d 110 (2<sup>nd</sup> Cir. 2000). The court affirmed the lower court’s order in part and denied it in part, ruling that the public offices required to be

designated as mandatory VRAs under Section 7 did not include federal or private offices. Section 1973gg-5(b) required only federal offices to cooperate with agency-based registration to the greatest extent practicable, and merely encouraged private offices to cooperate. The court ruled that mandatory VRA provisions of Section 7 did, however, apply to state and local offices that provided public assistance, including New York’s public hospitals and certain other clinics with offices that processed Medicaid applications.

#### **District Court:**

On remand, the Eastern District of New York addressed the issue of whether the New York State Office of Temporary and Disability Assistance and the New York State Office for the Aging had a duty to enforce compliance in the local district offices. *United States v. New York*, 255 F. Supp. 2d 73 (E.D.N.Y. 2003). The court ruled that these agencies were responsible for ensuring that the local district offices complied with their duty to provide registration assistance to applicants under Section 7 of the NVRA. The court reasoned that state agencies could not shirk their responsibility after they had designated certain offices as district offices to carry out the duties of their agencies.

## Ohio

### **Lucas County Democratic Party v. Blackwell**

341 F. Supp. 2d 861 (N.D. Ohio 2004)

#### **Complaint:**

The Lucas County Democratic Party sought injunctive and declaratory relief, charging that Secretary of State, J. Kenneth Blackwell’s memorandum advising county elections boards not to process in-person voter registration applications in which “Box 10” was left blank violated the NVRA and that this practice was not yet compelled in Ohio by HAVA. Box 10 of the applications called for a driver’s license number or the last four digits of the applicant’s social security number. It was marked as “required” on the application .

**District Court:**

On October 21, 2004, the Northern District of Ohio entered a sua sponte order denying plaintiffs' motion for a preliminary injunction, primarily on the ground of laches. The court reasoned that plaintiff had waited too long by challenging the secretary of state's December 2003 memorandum just 18 days before the national election. The court ruled that there was no appropriate remedy available to plaintiffs. There was no way of determining before the election whether any applicants who were entitled to be registered had not been registered, and the court could not order election boards to register people who may have overlooked or intentionally disregarded their obligation to provide information that they did in fact have. One notable fact is that if registrants entered "none" on Box 10, as opposed to leaving it blank, they were to be registered according to the memorandum. This was a requirement of HAVA, which had not yet been implemented in Ohio. Mail-in applicants who left Box 10 blank would have the opportunity to cure the omission at the polls; "in person" applicants would not have that option.

**Subsequent Action:**

On December 30, 2004, plaintiffs dismissed without prejudice.

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**Bell v. Marinko**  
367 F.3d 588 (6th Cir. 2004)

**Complaint:**

Plaintiffs, registered voters on a Lake Erie island, brought this action against Ohio election officials, alleging that Ohio statutes that permitted voters to challenge other voters' eligibility to vote violated the Section 8 list maintenance provisions of the National Voter Registration Act (NVRA) 42 U.S.C. § 1973gg et al. The district court entered summary judgment for defendants. Plaintiffs appealed the decision.

**Sixth Circuit:**

Plaintiffs' eligibility to vote in the island precinct was challenged on the grounds that they were not residents for purposes of registering to vote in Ohio. In response, plaintiffs filed suit in the Northern District of Ohio, arguing that Section 8 of the NVRA, at sec. 1973gg-6,

provided the exclusive reasons for which a state could remove a voter from the registration rolls and the procedures that were to be followed before cancelling a voter registration. They asserted that cancelling their registrations without following the NVRA procedures for removing voters who have changed addresses violated the Act.. The court affirmed judgment for defendants, finding that the plaintiffs, with the exception of Bell, had never lawfully established residence on the island for purposes of voting. Their lawful residences were on the mainland, therefore they were on the rolls unlawfully and the NVRA did not apply to them. The NVRA registration removal provisions, the court reasoned, applied only to "lawful" registrants, and plaintiffs had not been lawful registrants. Ohio was free to take reasonable steps to assure that all applicants for registration to vote actually fulfilled the requirement of bona fide residence, including making an inquiry into the residence of the voter's spouse. In creating a list of reasons for removal, Congress did not intend to bar removal of names from the registration rolls if they were improperly placed on the rolls in the first place.

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**Nat'l Coal. for Students with Disabilities v. Taft**  
No. 2:00-CV-1300 (S.D. Ohio, Aug. 2, 2002)

**Complaint:**

In this action for injunctive and declaratory relief, NCSD and four individuals sought to compel the Secretary of State, J. Kenneth Blackwell, to designate the disability services offices of Ohio public colleges and universities as voter registration agencies, as required by the National Voter Registration Act, 42 U.S.C. § 1973gg et seq.

**District Court:**

On August 2, 2002, Judge Edmund A. Sargus ruled in favor of the NCSD, ruling that the offices in question were disability services offices within the meaning of sec. 1973gg-5(a)(2)(B) and that the secretary was obligated to designate them as such. The court rejected the secretary's argument that he lacked the authority to so designate the offices pursuant to the Higher Education Amendments of 1998, 20 U.S.C. § 1094(a)(23), holding that nothing in the Amendments superseded the NVRA. The secretary designated the disability services offices in question as voter registration offices during the course of the proceedings,

while maintaining that he was not obligated to do so. Then the secretary of state argued that the issue was now moot and that declaratory relief was no longer warranted. The court ruled that the fact that a defendant has voluntarily ceased the allegedly unlawful conduct did not render an action moot, the defendant must also demonstrate that there was no reasonable expectation that the wrong will be repeated.

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### **Project Vote v. Blackwell** 455 F. Supp. 2d 694 (N.D. Ohio 2006)

#### **Complaint:**

On July 6, 2006, plaintiffs, Project Vote, the American Association of People with Disabilities, the Association of Community Organizations for Reform Now, People for the American Way Foundation, Common Cause, Community of Faith Assemblies Church, and three individuals sought declaratory and injunctive relief in an action against Ohio Secretary of State, J. Kenneth Blackwell, and certain local public officials, asserting that newly enacted state provisions that restricted third-party registration activities violated the NVRA and the First Amendment. Specifically, the challenged laws required pre-registration and state training of paid, but not volunteer, registration canvassers, required canvassers to sign each voter registration, return applications only to the boards of election, and provide an affirmation that they had complied with this procedure with each batch of applications they submitted. Significant criminal penalties were imposed for any violation of the provisions.

#### **District Court:**

On September 8, 2006, the district court ruled in favor of plaintiffs and granted a preliminary injunction, holding that the challenged state restrictions on third-party registration drives were not uniform or non-discriminatory, as required by the NVRA, because they applied only to paid registration canvassers and because they only permitted training on the Internet. There was no evidence that compensated canvassers were any more likely to need such training and restrictions than volunteer canvassers. Moreover, the state had failed to show how the restrictions advanced any state-articulated interest in preventing voter fraud. The court noted that the restrictions had a chilling effect on conducting third party voter registration

activities with compensated canvassers. On February 11, 2007, the district court granted partial summary judgment for plaintiff on their First Amendment and NVRA claims, and entered a partial final judgment declaring that the challenged provisions violated the First Amendment and violated the NVRA in that they impeded the purpose and intent of the act. The court did not enjoin enforcement of a state law that required canvassers to submit completed applications within 10 days, holding that this provision did not violate the First Amendment or the NVRA.

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### **Harkless v. Brunner** 545 F.3d 445 (6th Cir. 2008)

#### **Complaint:**

Plaintiffs, two individuals and the Association of Community Organizations for Reform Now (ACORN), filed suit against then Secretary of State Kenneth Blackwell (Secretary of State Jennifer Brunner was later substituted as defendant) and the director of the Ohio Department of Job and Family Services (ODJFS), seeking declaratory and injunctive relief on the grounds that defendants were in violation of Section 7 of the NVRA, which required state public assistance agencies to provide voter registration assistance to agency clients.

#### **District Court:**

On December 28, 2006, the district court granted defendants' motion to dismiss. Although the court found that there was an ongoing failure on the part of defendants to provide voter registration services at ODJFS as required by Section 7 of the NVRA, it held (1) that ACORN lacked standing to sue on its own behalf because it had not shown sufficient harm to its interests; (2) that ACORN lacked associational standing because it had failed to show that any of its members had suffered a concrete harm; (3) that the secretary of state was not a proper party because state law did not give the secretary the authority to compel ODJFS to comply with Section 7; and (4) that the director of ODJFS was not a proper party because no Ohio law or regulation required the director to compel county offices of the agency to comply with Section 7. ACORN filed a motion to amend its complaint, with an amended complaint attached thereto, which the district court did not rule upon.

**Sixth Circuit:**

On October 28, 2008, the Sixth Circuit reversed and remanded the district court's dismissal of the complaint. As the court interpreted applicable provisions, each state must designate voter registration agencies and ensure that the agencies complete required tasks. As the state's chief election officer, the secretary was responsible for implementation and enforcement of Section 7. Under Ohio law, the Ohio county DJFS agencies were separate from the state ODJFS. Despite this distinction, the court held, both Ohio and federal law gave the state ODJFS director authority to direct county offices to comply with Section 7. Finally, the court declined to rule on the issue of ACORN's standing and instead ruled that ACORN's motion to amend its complaint should have been granted and that the amended complaint established ACORN's standing to sue on its own behalf and that of its members.

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## Pennsylvania

**Ass'n of Cmty. Orgs. for Reform Now v. Ridge**

Nos. Civ.A. 95-382, Civ.A. 94-7671 (E.D. Pa. Oct. 6, 1995)

**Complaint:**

Plaintiff filed an action for declaratory and injunctive relief requesting that the court declare the National Voter Registration Act (NVRA), 42 U.S.C. § 1973gg et seq., to be a constitutional exercise of congressional power and enjoin defendants from violating the Act. The parties stipulated that the Commonwealth was not in compliance with the NVRA. The court held a non-evidentiary hearing on the constitutional issue and on the parties' cross-motions for summary judgment.

**District Court:**

On March 30, 1995, the court entered a declaratory judgment finding that the NVRA did not violate the Constitution. The court reasoned that U.S. Const. art. I, § 4, granted Congress the power to enact the NVRA by providing that Congress could regulate the time, place, and manner of holding federal elections. The court rejected defendants' claim that state rights under the Tenth

Amendment were a bar to the exercise of this power or that the NVRA impermissibly legislated the qualifications of voters, a power that was expressly reserved to the states. The court found that several provisions of Pennsylvania law violated the NVRA, including, among others, (1) the provisions on mail-in registration, sec. 1973gg-4; (2) the removal of voters from the rolls, sec. 1973gg-6; and (3) the provision requiring illiterate voters to have their legal mark notarized, sec. 1973gg-7(b)(3). The court denied injunctive relief, holding that it did not have power on the evidence before it at that point to grant an injunction pursuant to case law in the district that stood for the proposition that the irreparable harm necessary to enjoin violations of a particular Act could not be presumed merely upon a showing that the Act was violated. A status conference was set to determine a date for further hearings on the issue of necessary and proper relief.

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## United States v. Philadelphia

No. 06-4592 (E.D. Pa. 2007)

**Complaint:**

The United States filed an action against the City of Philadelphia alleging that it had violated Section 8 of the National Voter Registration Act (NVRA) 42 U.S.C. § 1973gg et seq., by failing to remove deceased voters from the rolls. The United States also sought relief for the city's failure to provide alternative-language information pursuant to Help America Vote Act, 42 U.S.C. § 15301 et seq., failure to establish an effective Spanish bilingual program, and for denying limited-English proficient voters their assistor of choice, as required by the Voting Rights Act of 1965, 42 U.S.C. § 1973aa et seq.

**Consent Decree:**

The settlement agreement requires the city to undertake an effective program of voter list maintenance. It also requires the defendants to establish an effective bilingual program, including bilingual interpreters and alternative-language information; to allow persons with limited English proficiency to use assistants of choice; and to provide alternative-language information. The U.S. District Court for the Eastern District of Pennsylvania retained jurisdiction to enforce the settlement agreement until July 1, 2009.

## South Carolina

### **Condon v. Reno**

913 F. Supp. 946 (D.S.C. 1995)

#### **Complaint:**

The State of South Carolina and its officials filed suit to enjoin the enforcement of the National Voter Registration Act, 42 U.S.C. § 1973gg et seq., upon the grounds that it violated state rights guaranteed by the Tenth Amendment. In a separate suit, the United States and private plaintiffs sought to require South Carolina to comply with the Act, particularly those provisions relating to registration at driver's license agencies and public agencies. The court consolidated the actions and granted class certification to one of the private plaintiffs in *Grass Roots Leadership v. Beasley*.

#### **District Court:**

On December 12, 1995, the district court denied injunctive relief to the state and entered judgment on behalf of plaintiffs, finding that the NVRA did not violate the constitution and enjoining the state from refusing to comply with the Act. The court reasoned that the Act did not violate the Tenth Amendment as advocated by the state because U.S. Const. art. I, § 4 delegated to Congress the power to regulate the time, place, and manner of conducting federal elections. This power, the court noted, was augmented by the enforcement clauses of the Fourteenth and Fifteenth Amendments, which gave Congress broad power to pass legislation to enforce the rights guaranteed by the amendments, including protections against racial discrimination in voting. Congress expressly found, in sec. 1973gg(a)(3) of the NVRA, that discriminatory registration practices disproportionately harmed racial minorities. In enacting the NVRA, Congress acted within its authority to achieve a legitimate end by appropriate means. The court found that the costs of implementing the Act had no bearing on a discussion of the Act's constitutionality. The state was ordered to file a proposal for full implementation of the NVRA within 30 days.

## Tennessee

### **McKay v. Thompson**

226 F.3d 752 (6th Cir. 2000)

#### **Complaint:**

Plaintiff filed suit against Tennessee elections officials, charging that an administrative decision to require a social security number as a condition for registering to vote violated the Privacy Act of 1974, 5 U.S.C. § 552a, the National Voter Registration Act (NVRA), 42 U.S.C. § 1973gg et seq., and other federal laws. The district court granted summary judgment to defendants. Plaintiff sought review.

#### **Sixth Circuit:**

On September 18, 2000, the court affirmed the district court's order. The court reasoned that the state's requirement that voter's must provide a social security number in order to register did not violate the Privacy Act because existing records were grandfathered in under the Act and the state had maintained a system of such records before January 1, 1975, the effective date of the Act. The court noted that this fact distinguished the case from *McKay v. Altobello*, No. Civ.A. 96-3458 (E.D. LA), which ruled that the Privacy Act prevented Louisiana from requesting such information. The social security number requirement was not prohibited under sec. 1973gg-(c)(2)(B), which did not specifically forbid the use of social security numbers. The Privacy Act's specific grandfather provision survived the more general provisions of the later-enacted NVRA.

### **United States v. Tennessee**

No. 3-02-0938 (M.D. Tenn. Oct. 15, 2002)

#### **Complaint:**

The United States filed suit charging that the State of Tennessee violated the National Voter Registration Act (NVRA), 42 U.S.C. § 1973gg et seq., by failing to implement voter registration opportunities in state public assistance offices, a violation of Section 7 (sec. 1973gg-5), and by failing to provide that an application for a driver's

license also served as an application for voter registration for federal elections, a violation of Section 4 (sec. 1973gg-3(a)).

**Consent Decree:**

On October 15, 2002, the district court entered a consent decree in which Tennessee agreed to: (1) implement uniform procedures for the distribution, collection, transmission, and retention of voter registration applications at public assistance agencies and motor vehicle agencies; (2) implement mandatory, annual NVRA training programs for all counselors and employees whose responsibilities included providing Tennessee driver's licenses, public assistance, or services to residents with disabilities; and (3) ensure the timely collection of voter registration applications and transmittal to the appropriate county election officials.

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**Pepper v. Darnell**

No. 01-5529 (6th Cir. Dec. 10, 2001)

**Complaint:**

A pro se plaintiff, who lived in his automobile, sought declaratory, injunctive, and monetary relief under 42 U.S.C. § 1983 and the National Voter Registration Act (NVRA), 42 U.S.C. § 1973gg et seq. at sec. 1973gg-9(b), on the grounds that Tennessee officials improperly refused to permit him to register to vote.

**District Court:**

The district court denied plaintiff's motion for class certification and entered summary judgment in favor of the officials, ruling that applicable Tennessee law accurately reflected the requirements of the NVRA and that the state properly refused to accept a rented mailbox as plaintiff's address for purposes of registering. Plaintiff argued that his Tennessee automobile registration, which contained his rented mailbox as his address, provided sufficient proof of residency under the NVRA. Tennessee law prohibited the use of a rented mailbox as the address of a voter.

**Sixth Circuit:**

The Sixth Circuit, finding that oral argument was not necessary, ruled that Tennessee did not have a duty under

the NVRA to permit plaintiff to register to vote unless he provided a specific physical location as his address. The court found that the Tennessee statute essentially tracked a federal regulation promulgated under the NVRA, 11 C.F.R. § 8.4(a)(2), which expressly excluded post-office boxes from its definition of the address information that a voter must provide in order to register.

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## Virginia

**Nat'l Coal. for Students with Disabilities Educ. and Legal Def. Fund v. Gilmore**

152 F.3d 283 (4th Cir. 1998)

**Complaint:**

Plaintiff, the National Coalition for Students with Disabilities (NCSd) filed this action for declaratory and injunctive relief against defendants, the Governor of Virginia and state elections and education officials seeking to redress defendants' failure to provide voter registration opportunities in disabled student services (DSS) offices in public colleges in violation of Section 7 of the National Voter Registration Act (NVRA), 42 U.S.C. § 1973gg et seq. Defendants filed a motion for summary judgment and the NCSd filed a cross-motion for partial summary judgment.

**District Court:**

The district court ruled in favor of the state and granted Virginia's motion for summary judgment, holding that the DSS offices in state-funded colleges were not "offices" as contemplated by sec. 1973gg-5(a)(2)(B) of the NVRA. That section provides that each state must designate as voter registration agencies all offices in the state that offer state-funded programs primarily designed to provide services to persons with disabilities. The court agreed with Virginia's argument that Virginia state colleges were not subject to sec. 1973gg-5(a)(2)(B) because state colleges as a whole were not primarily engaged in providing assistance to the disabled.

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**Fourth Circuit:**

On July 24, 1998, the appellate court reversed the lower court judgment, holding that DSS offices in state colleges were subject to the NVRA requirement that they had to be designated as voter registration agencies. Applying basic principles of statutory construction, the court noted that the statute was to be given the meaning of its plain language unless there was a clear legislative intent to the contrary or if to do so would frustrate the intent of the statute. The court reasoned that the “offices” under consideration included the departments or sub-divisions of the college whose primary functions were to provide services to disabled students. The court remanded the case with instructions to grant partial summary judgment to plaintiff, declaring that the offices specified in the complaint qualified as mandatory voter registration agencies under sec. 1973gg-5(a)(2)(B) of the NVRA.

# Appendix

## The National Voter Registration Act (NVRA) of 1993

### SUBCHAPTER I-H - NATIONAL VOTER REGISTRATION

#### § Sec. 1973gg Findings and purposes

##### (a) Findings

The Congress finds that -

- (1) the right of citizens of the United States to vote is a fundamental right;
- (2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and
- (3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

##### (b) Purposes

The purposes of this subchapter are -

- (1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;
- (2) to make it possible for Federal, State, and local governments to implement this subchapter in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;
- (3) to protect the integrity of the electoral process; and
- (4) to ensure that accurate and current voter registration rolls are maintained.

(Pub. L. 103-31, Sec. 2, May 20, 1993, 107 Stat. 77.)

#### REFERENCES IN TEXT

This subchapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 103-31, May 20, 1993, 107 Stat. 77, as amended, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

#### EFFECTIVE DATE

Section 13 of Pub. L. 103-31 provided that: “This Act (see Short Title note) set out under section 1971 of this title shall take effect -

“(1) with respect to a State that on the date of enactment of this Act [May 20, 1993] has a provision in the constitution of the State that would preclude compliance with this Act unless the State maintained separate Federal and State official lists of eligible voters, on the later of -

“(A) January 1, 1996; or

“(B) the date that is 120 days after the date by which, under the constitution of the State as in effect on the date of

enactment of this Act, it would be legally possible to adopt and place into effect any amendments to the constitution of the State that are necessary to permit such compliance with this Act without requiring a special election; and  
“(2) with respect to any State not described in paragraph (1), on January 1, 1995.”

#### SHORT TITLE

This subchapter is known as the “National Voter Registration Act of 1993”, see Short Title note set out under section 1971 of this title.

#### PROOF OF CITIZENSHIP

Pub. L. 104-132, title IX, Sec. 902, Apr. 24, 1996, 110 Stat. 1317, provided that: “Notwithstanding any other provision of law, a Federal, State, or local government agency may not use a voter registration card (or other related document) that evidences registration for an election for Federal office, as evidence to prove United States citizenship.” Similar provisions were contained in section 117 of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, and as enacted into law by Pub. L. 104-91, title I, Sec. 101(a), Jan. 6, 1996, 110 Stat. 11, as amended by Pub. L. 104-99, title II, Sec. 211, Jan. 26, 1996, 110 Stat. 37.

#### § Sec. 1973gg-1 Definitions

As used in this subchapter -

- (1) the term “election” has the meaning stated in section 431(1) of title 2;
- (2) the term “Federal office” has the meaning stated in section 431(3) of title 2;
- (3) the term “motor vehicle driver’s license” includes any personal identification document issued by a State motor vehicle authority;
- (4) the term “State” means a State of the United States and the District of Columbia; and
- (5) the term “voter registration agency” means an office designated under section 1973gg-5(a)(1) of this title to perform voter registration activities.

(Pub. L. 103-31, Sec. 3, May 20, 1993, 107 Stat. 77.)

#### § Sec. 1973gg-2. National procedures for voter registration for elections for Federal office

##### (a) In general

Except as provided in subsection (b) of this section, notwithstanding any other Federal or State law, in addition to any other method of voter registration provided for under State law, each State shall establish procedures to register to vote in elections for Federal office -

- (1) by application made simultaneously with an application for

a motor vehicle driver's license pursuant to section 1973gg-3 of this title;

(2) by mail application pursuant to section 1973gg-4 of this title; and

(3) by application in person -

(A) at the appropriate registration site designated with respect to the residence of the applicant in accordance with State law; and

(B) at a Federal, State, or nongovernmental office designated under section 1973gg-5 of this title.

#### **(b) Nonapplicability to certain States**

This subchapter does not apply to a State described in either or both of the following paragraphs:

(1) A State in which, under law that is in effect continuously on and after August 1, 1994, there is no voter registration requirement for any voter in the State with respect to an election for Federal office.

(2) A State in which, under law that is in effect continuously on and after August 1, 1994, or that was enacted on or prior to August 1, 1994, and by its terms is to come into effect upon the enactment of this subchapter, so long as that law remains in effect, all voters in the State may register to vote at the polling place at the time of voting in a general election for Federal office.

(Pub. L. 103-31, Sec. 4, May 20, 1993, 107 Stat. 78; Pub. L. 104-91, title I, Sec. 101(a), Jan. 6, 1996, 110 Stat. 11, amended Pub. L. 104-99, title II, Sec. 211, Jan. 26, 1996, 110 Stat. 37.)

#### REFERENCES IN TEXT

Upon the enactment of this subchapter, referred to in subsec.

(b)(2), means the date of enactment of Pub. L. 103-31, which was approved May 20, 1993.

#### CODIFICATION

Amendment by Pub. L. 104-91 is based on section 116(a) of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, which was enacted into law by Pub. L. 104-91.

#### AMENDMENTS

1996 - Subsec. (b). Pub. L. 104-91, as amended by Pub. L. 104-99, substituted "August 1, 1994" for "March 11, 1993" wherever appearing.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 116(b) of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, and as enacted into law by Pub. L. 104-91, title I, Sec. 101(a), Jan. 6, 1996, 110 Stat. 11, as amended by Pub. L. 104-99, title II, Sec. 211, Jan. 26, 1996, 110 Stat. 37, provided that: "The amendments made by subsection (a) [amending this section] shall take effect as if included in the provisions of the National Voter Registration Act of 1993 [Pub. L. 103-31]."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15482, 15483 of this title; title 20 section 1094.

### **§ Sec. 1973gg-3 Simultaneous application for voter registration and application for motor vehicle driver's license**

#### **(a) In general**

(1) Each State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application.

(2) An application for voter registration submitted under paragraph (1) shall be considered as updating any previous voter registration by the applicant.

#### **(b) Limitation on use of information**

No information relating to the failure of an applicant for a State motor vehicle driver's license to sign a voter registration application may be used for any purpose other than voter registration.

#### **(c) Forms and procedures**

(1) Each State shall include a voter registration application form for elections for Federal office as part of an application for a State motor vehicle driver's license.

(2) The voter registration application portion of an application for a State motor vehicle driver's license -

(A) may not require any information that duplicates information required in the driver's license portion of the form (other than a second signature or other information necessary under subparagraph (C));

(B) may require only the minimum amount of information necessary to -

(i) prevent duplicate voter registrations; and

(ii) enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(C) shall include a statement that -

(i) states each eligibility requirement (including citizenship);

(ii) contains an attestation that the applicant meets each such requirement; and

(iii) requires the signature of the applicant, under penalty of perjury;

(D) shall include, in print that is identical to that used in the attestation portion of the application -

(i) the information required in section 1973gg-6(a)(5)(A) and (B) of this title;

(ii) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used

only for voter registration purposes; and  
(E) shall be made available (as submitted by the applicant, or in machine readable or other format) to the appropriate State election official as provided by State law.

**(d) Change of address**

Any change of address form submitted in accordance with State law for purposes of a State motor vehicle driver's license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes.

**(e) Transmittal deadline**

(1) Subject to paragraph (2), a completed voter registration portion of an application for a State motor vehicle driver's license accepted at a State motor vehicle authority shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.

(Pub. L. 103-31, Sec. 5, May 20, 1993, 107 Stat. 78.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1973gg-2, 1973gg-6 of this title.

**§ Sec. 1973gg-4 Mail registration**

**(a) Form**

(1) Each State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission pursuant to section 1973gg-7(a)(2) of this title for the registration of voters in elections for Federal office.

(2) In addition to accepting and using the form described in paragraph (1), a State may develop and use a mail voter registration form that meets all of the criteria stated in section 1973gg-7(b) of this title for the registration of voters in elections for Federal office.

(3) A form described in paragraph (1) or (2) shall be accepted and used for notification of a registrant's change of address.

**(b) Availability of forms**

The chief State election official of a State shall make the forms described in subsection (a) of this section available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.

**(c) First-time voters**

(1) Subject to paragraph (2), a State may by law require a person to vote in person if -

(A) the person was registered to vote in a jurisdiction by mail; and

(B) the person has not previously voted in that jurisdiction.

(2) Paragraph (1) does not apply in the case of a person -

(A) who is entitled to vote by absentee ballot under the Uni-

formed and Overseas Citizens Absentee Voting Act [42 U.S.C. 1973ff et seq.];

(B) who is provided the right to vote otherwise than in person under section 1973ee-1(b)(2)(B)(ii) of this title; or

(C) who is entitled to vote otherwise than in person under any other Federal law.

**(d) Undelivered notices**

If a notice of the disposition of a mail voter registration application under section 1973gg-6(a)(2) of this title is sent by non-forwardable mail and is returned undelivered, the registrar may proceed in accordance with section 1973gg-6(d) of this title.

(Pub. L. 103-31, Sec. 6, May 20, 1993, 107 Stat. 79.)

**REFERENCES IN TEXT**

The Uniformed and Overseas Citizens Absentee Voting Act, referred to in subsec. (c)(2)(A), is Pub. L. 99-410, Aug. 28, 1986, 100 Stat. 924, as amended, which is classified principally to subchapter I-G (Sec. 1973ff et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 1971 of this title and Tables.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1973gg-2, 1973gg-6 of this title.

**§ Sec. 1973gg-5 Voter registration agencies**

**(a) Designation**

(1) Each State shall designate agencies for the registration of voters in elections for Federal office.

(2) Each State shall designate as voter registration agencies -

(A) all offices in the State that provide public assistance; and

(B) all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities.

(3)(A) In addition to voter registration agencies designated under paragraph (2), each State shall designate other offices within the State as voter registration agencies.

(B) Voter registration agencies designated under subparagraph

(A) may include -

(i) State or local government offices such as public libraries, public schools, offices of city and county clerks (including marriage license bureaus), fishing and hunting license bureaus, government revenue offices, unemployment compensation offices, and offices not described in paragraph

(2)(B) that provide services to persons with disabilities; and

(ii) Federal and nongovernmental offices, with the agreement of such offices.

(4)(A) At each voter registration agency, the following services shall be made available:

(i) Distribution of mail voter registration application forms in accordance with paragraph (6).

(ii) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance.

- (iii) Acceptance of completed voter registration application forms for transmittal to the appropriate State election official.
- (B) If a voter registration agency designated under paragraph (2)(B) provides services to a person with a disability at the person's home, the agency shall provide the services described in subparagraph (A) at the person's home.
- (5) A person who provides service described in paragraph (4) shall not -
- (A) seek to influence an applicant's political preference or party registration;
  - (B) display any such political preference or party allegiance;
  - (C) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or
  - (D) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.
- (6) A voter registration agency that is an office that provides service or assistance in addition to conducting voter registration shall -
- (A) distribute with each application for such service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance -
    - (i) the mail voter registration application form described in section 1973gg-7(a)(2) of this title, including a statement that -
      - (I) specifies each eligibility requirement (including citizenship);
      - (II) contains an attestation that the applicant meets each such requirement; and
      - (III) requires the signature of the applicant, under penalty of perjury; or
    - (ii) the office's own form if it is equivalent to the form described in section 1973gg-7(a)(2) of this title, unless the applicant, in writing, declines to register to vote;
  - (B) provide a form that includes -
    - (i) the question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";
    - (ii) if the agency provides public assistance, the statement, "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.";
    - (iii) boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote (failure to check either box being deemed to constitute a declination to register for purposes of subparagraph (C)), together with the statement (in close proximity to the boxes and in prominent type), "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.";
    - (iv) the statement, "If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may

fill out the application form in private.";

(v) the statement, "If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with \_\_\_\_\_", the blank being filled by the name, address, and telephone number of the appropriate official to whom such a complaint should be addressed; and

(C) provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance.

(7) No information relating to a declination to register to vote in connection with an application made at an office described in paragraph (6) may be used for any purpose other than voter registration.

**(b) Federal Government and private sector cooperation**

All departments, agencies, and other entities of the executive branch of the Federal Government shall, to the greatest extent practicable, cooperate with the States in carrying out subsection (a) of this section, and all nongovernmental entities are encouraged to do so.

**(c) Armed Forces recruitment offices**

(1) Each State and the Secretary of Defense shall jointly develop and implement procedures for persons to apply to register to vote at recruitment offices of the Armed Forces of the United States.

(2) A recruitment office of the Armed Forces of the United States shall be considered to be a voter registration agency designated under subsection (a)(2) of this section for all purposes of this subchapter.

**(d) Transmittal deadline**

(1) Subject to paragraph (2), a completed registration application accepted at a voter registration agency shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.

(Pub. L. 103-31, Sec. 7, May 20, 1993, 107 Stat. 80.)

**EX. ORD. NO. 12926. IMPLEMENTATION OF NATIONAL VOTER REGISTRATION ACT OF 1993**

Ex. Ord. No. 12926, Sept. 12, 1994, 59 F.R. 47227, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to ensure, as required by section 7(b) of the National Voter Registration Act

of 1993 (42 U.S.C. 1973gg) (42 U.S.C. 1973gg-5(b)) (“the Act”), that departments, agencies, and other entities of the executive branch of the Federal Government cooperate with the States in carrying out the Act’s requirements, it is hereby ordered as follows:

**Section 1. Assistance to States.** To the greatest extent practicable, departments, agencies, and other entities of the executive branch of the Federal Government that provide, in whole or in part, funding, grants, or assistance for, or with respect to the administration of, any program of public assistance or services to persons with disabilities within the meaning of section 7(a) of the Act shall:

- (a) provide, to State agencies administering any such program, guidance for the implementation of the requirements of section 7 of the Act, including guidance for use and distribution of voter registration forms in connection with applications for service;
- (b) assist each such State agency administering any such program with the costs of implementation of the Act (42 U.S.C. 1973gg et seq.), consistent with legal authority and the availability of funds, and promptly indicate to each State agency the extent to which such assistance will be made available; and
- (c) designate an office or staff to be available to provide technical assistance to such State agencies.

**Sec. 2. Armed Forces Recruitment Offices.**

The Secretary of Defense is directed to work with the appropriate State elections authorities in each State to develop procedures for persons to apply to register to vote at Armed Forces recruitment offices as required by section 7(c) of the Act.

**Sec. 3. Acceptance of Designation.** To the greatest extent practicable, departments, agencies, or other entities of the executive branch of the Federal Government, if requested to be designated as a voter registration agency pursuant to section 7(a)(3)(B)(ii) of the Act, shall: (a) agree to such a designation if agreement is consistent with the department’s, agency’s, or entity’s legal authority and availability of funds; and (b) ensure that all of its offices that are located in a particular State will have available to the public at least one of the national voter registration forms that are required under the Act to be available in that State.

William J. Clinton.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1973gg-1, 1973gg-2, 1973gg-6 of this title.

**§ Sec. 1973gg-6 Requirements with respect to administration of voter registration**

**(a) In general**

In the administration of voter registration for elections for Federal office, each State shall -

- (1) ensure that any eligible applicant is registered to vote in an election -
  - (A) in the case of registration with a motor vehicle ap-

plication under section 1973gg-3 of this title, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(B) in the case of registration by mail under section 1973gg-4 of this title, if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and

(D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

- (2) require the appropriate State election official to send notice to each applicant of the disposition of the application;
- (3) provide that the name of a registrant may not be removed from the official list of eligible voters except -

(A) at the request of the registrant;

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

(C) as provided under paragraph (4);

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

(A) the death of the registrant; or

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

- (5) inform applicants under sections 1973gg-3, 1973gg-4, and 1973gg-5 of this title of -

(A) voter eligibility requirements; and

(B) penalties provided by law for submission of a false voter registration application; and

- (6) ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.

**(b) Confirmation of voter registration**

Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office -

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

- (2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person’s failure to vote, except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) of this section to remove an individual from the official list of eligible voters if the individual -

- (A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then
- (B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office.

**(c) Voter removal programs**

- (1) A State may meet the requirement of subsection (a)(4) of this section by establishing a program under which -
- (A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and
  - (B) if it appears from information provided by the Postal Service that -
    - (i) a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or
    - (ii) the registrant has moved to a different residence address not in the same registrar's jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) of this section to confirm the change of address.
- (2)(A) A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.
- (B) Subparagraph (A) shall not be construed to preclude -
- (i) the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a) of this section; or
  - (ii) correction of registration records pursuant to this subchapter.

**(d) Removal of names from voting rolls**

- (1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant -
- (A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or
  - (B)(i) has failed to respond to a notice described in paragraph (2); and
  - (ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.
- (2) A notice is described in this paragraph if it is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:
- (A) If the registrant did not change his or her residence, or

changed residence but remained in the registrar's jurisdiction, the registrant should return the card not later than the time provided for mail registration under subsection (a)(1)(B) of this section. If the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in a Federal election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters.

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

(3) A voting registrar shall correct an official list of eligible voters in elections for Federal office in accordance with change of residence information obtained in conformance with this subsection.

**(e) Procedure for voting following failure to return card**

(1) A registrant who has moved from an address in the area covered by a polling place to an address in the same area shall, notwithstanding failure to notify the registrar of the change of address prior to the date of an election, be permitted to vote at that polling place upon oral or written affirmation by the registrant of the change of address before an election official at that polling place.

(2)(A) A registrant who has moved from an address in the area covered by one polling place to an address in an area covered by a second polling place within the same registrar's jurisdiction and the same congressional district and who has failed to notify the registrar of the change of address prior to the date of an election, at the option of the registrant -

(i) shall be permitted to correct the voting records and vote at the registrant's former polling place, upon oral or written affirmation by the registrant of the new address before an election official at that polling place; or

(ii)(I) shall be permitted to correct the voting records and vote at a central location within the same registrar's jurisdiction designated by the registrar where a list of eligible voters is maintained, upon written affirmation by the registrant of the new address on a standard form provided by the registrar at the central location; or

(II) shall be permitted to correct the voting records for purposes of voting in future elections at the appropriate polling place for the current address and, if permitted by State law, shall be permitted to vote in the present election, upon confirmation by the registrant of the new address by such means as are required by law.

(B) If State law permits the registrant to vote in the current election upon oral or written affirmation by the registrant of the new address at a polling place described in subparagraph (A)(i) or (A)(ii)(I), voting at the other locations described in subparagraph (A) need not be provided as options.

(3) If the registration records indicate that a registrant has moved from an address in the area covered by a polling place, the registrant shall, upon oral or written affirmation by the registrant before an election official at that polling place that the registrant continues to reside at the address previously made known to the registrar, be permitted to vote at that polling place.

**(f) Change of voting address within a jurisdiction**

In the case of a change of address, for voting purposes, of a registrant to another address within the same registrar's jurisdiction, the registrar shall correct the voting registration list accordingly, and the registrant's name may not be removed from the official list of eligible voters by reason of such a change of address except as provided in subsection (d) of this section.

**(g) Conviction in Federal court**

(1) On the conviction of a person of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the chief State election official designated under section 1973gg-8 of this title of the State of the person's residence.

(2) A notice given pursuant to paragraph (1) shall include -

- (A) the name of the offender;
- (B) the offender's age and residence address;
- (C) the date of entry of the judgment;
- (D) a description of the offenses of which the offender was convicted; and
- (E) the sentence imposed by the court.

(3) On request of the chief State election official of a State or other State official with responsibility for determining the effect that a conviction may have on an offender's qualification to vote, the United States attorney shall provide such additional information as the United States attorney may have concerning the offender and the offense of which the offender was convicted.

(4) If a conviction of which notice was given pursuant to paragraph (1) is overturned, the United States attorney shall give the official to whom the notice was given written notice of the vacation of the judgment.

(5) The chief State election official shall notify the voter registration officials of the local jurisdiction in which an offender resides of the information received under this subsection.

**(h) Omitted**

**(i) Public disclosure of voter registration activities**

(1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

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

**(j) "Registrar's jurisdiction" defined**

For the purposes of this section, the term "registrar's jurisdiction" means -

- (1) an incorporated city, town, borough, or other form of municipality;
- (2) if voter registration is maintained by a county, parish, or other unit of government that governs a larger geographic area than a municipality, the geographic area governed by that unit of government; or
- (3) if voter registration is maintained on a consolidated basis for more than one municipality or other unit of government by an office that performs all of the functions of a voting registrar, the geographic area of the consolidated municipalities or other geographic units.

(Pub. L. 103-31, Sec. 8, May 20, 1993, 107 Stat. 82.; Pub. L. 107-252, title IX, Sec. 903, Oct. 29, 2002, 116 Stat. 1728.)

REFERENCES IN TEXT

The Voting Rights Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89-110, Aug. 6, 1965, 79 Stat. 437, as amended, which is classified generally to subchapters I-A (Sec. 1973 et seq.), I-B (Sec. 1973aa et seq.), and I-C (Sec. 1973bb et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

CODIFICATION

Section is comprised of section 8 of Pub. L. 103-31. Subsec. (h) of section 8 of Pub. L. 103-31 enacted section 3629 of Title 39, Postal Service, and amended sections 2401 and 3627 of Title 39.

AMENDMENTS

2002 - Subsec. (b)(2). Pub. L. 107-252 inserted before period at end ", except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) of this section to remove an individual from the official list of eligible voters if the individual - "(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then "(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1973gg-3, 1973gg-4, 1973gg-7 of this title.

**Sec. 1973gg-7 Federal coordination and regulations**

**(a) In general**

The Election Assistance Commission -

- (1) in consultation with the chief election officers of the States, shall prescribe such regulations as are necessary to carry out paragraphs (2) and (3);
- (2) in consultation with the chief election officers of the States, shall develop a mail voter registration application form

for elections for Federal office;

(3) not later than June 30 of each odd-numbered year, shall submit to the Congress a report assessing the impact of this subchapter on the administration of elections for Federal office during the preceding 2-year period and including recommendations for improvements in Federal and State procedures, forms, and other matters affected by this subchapter; and

(4) shall provide information to the States with respect to the responsibilities of the States under this subchapter.

**(b) Contents of mail voter registration form**

The mail voter registration form developed under subsection

(a)(2) of this section -

(1) may require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process;

(2) shall include a statement that -

(A) specifies each eligibility requirement (including citizenship);

(B) contains an attestation that the applicant meets each such requirement; and

(C) requires the signature of the applicant, under penalty of perjury;

(3) may not include any requirement for notarization or other formal authentication; and

(4) shall include, in print that is identical to that used in the attestation portion of the application -

(i) the information required in section 1973gg-6(a)(5)(A) and (B) of this title;

(ii) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

(iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(Pub. L. 103-31, Sec. 9, May 20, 1993, 107 Stat. 87; Pub. L. 107-252, title VIII, Sec. 802(b), Oct. 29, 2002, 116 Stat. 1726.)

**AMENDMENTS**

2002 - Subsec. (a). Pub. L. 107-252 substituted "Election Assistance Commission" for "Federal Election Commission" in introductory provisions.

**EFFECTIVE DATE OF 2002 AMENDMENT**

Amendment by Pub. L. 107-252 effective upon appointment of all members of the Election Assistance Commission under section 15323 of this title, see section 15534(a) of this title.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1973gg-4, 1973gg-5, 15329, 15532 of this title.

**§ Sec. 1973gg-8 Designation of chief State election official**

Each State shall designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under this subchapter.

(Pub. L. 103-31, Sec. 10, May 20, 1993, 107 Stat. 87.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1973gg-6, 15403 of this title.

**§ Sec. 1973gg-9 Civil enforcement and private right of action**

**(a) Attorney General**

The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as is necessary to carry out this subchapter.

**(b) Private right of action**

(1) A person who is aggrieved by a violation of this subchapter may provide written notice of the violation to the chief election official of the State involved.

(2) If the violation is not corrected within 90 days after receipt of a notice under paragraph (1), or within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.

(3) If the violation occurred within 30 days before the date of an election for Federal office, the aggrieved person need not provide notice to the chief election official of the State under paragraph (1) before bringing a civil action under paragraph (2).

**(c) Attorney's fees**

In a civil action under this section, the court may allow the prevailing party (other than the United States) reasonable attorney fees, including litigation expenses, and costs.

**(d) Relation to other laws**

(1) The rights and remedies established by this section are in addition to all other rights and remedies provided by law, and neither the rights and remedies established by this section nor any other provision of this subchapter shall supersede, restrict, or limit the application of the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(2) Nothing in this subchapter authorizes or requires conduct that is prohibited by the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(Pub. L. 103-31, Sec. 11, May 20, 1993, 107 Stat. 88.)

**REFERENCES IN TEXT**

The Voting Rights Act of 1965, referred to in subsec. (d), is Pub. L. 89-110, Aug. 6, 1965, 79 Stat. 437, as amended, which is classified generally to subchapters I-A (Sec. 1973 et seq.), I-B (Sec. 1973aa et seq.), and I-C (Sec. 1973bb et seq.) of this chapter. For

complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

**§ Sec. 1973gg-10 Criminal penalties**

A person, including an election official, who in any election for Federal office -

(1) knowingly and willfully intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, any person for -

(A) registering to vote, or voting, or attempting to register or vote;

(B) urging or aiding any person to register to vote, to vote, or to attempt to register or vote; or

(C) exercising any right under this subchapter; or

(2) knowingly and willfully deprives, defrauds, or attempts to deprive or defraud the residents of a State of a fair and impartially conducted election process, by -

(A) the procurement or submission of voter registration applications that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held; or

(B) the procurement, casting, or tabulation of ballots that are known by the person to be materially false, fictitious, or fraudulent under the laws of the State in which the election is held,

shall be fined in accordance with title 18 (which fines shall be paid into the general fund of the Treasury, miscellaneous receipts (pursuant to section 3302 of title 31), notwithstanding any other law), or imprisoned not more than 5 years, or both.

(Pub. L. 103-31, Sec. 12, May 20, 1993, 107 Stat. 88.)

## About Project Vote

Project Vote is a national nonpartisan, nonprofit organization that promotes voting in historically underrepresented communities. Project Vote takes a leadership role in nationwide voting rights and election administration issues, working through research, legal services, and advocacy to ensure that our constituencies are not prevented from registering and voting.

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