



October 19, 2016

Ken Detzner  
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500 South Bronough Street  
Tallahassee, Florida 32399-0250  
SecretaryofState@DOS.MyFlorida.com  
*Via U.S. mail and email*

RE: *Compliance with Section 5 of the National Voter Registration Act*

Dear Mr. Detzner:

We write representing the League of Women Voters of Florida, persons eligible to register to vote that this organization represents, and others similarly situated to notify you that the State of Florida is not in compliance with Section 5 of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20504. Section 5 requires states, including Florida, to provide individuals a meaningful opportunity to register to vote or to update their voter registration when they interact with the appropriate state motor vehicle authority, which in Florida is the Department of Highway Safety and Motor Vehicles (“DHSMV”).

Substantial evidence demonstrates that Florida is failing to provide mandatory voter registration services required by the NVRA. The violations include: (1) the failure to ensure that every application submitted through the DHSMV’s online portal for renewal of a driver’s license<sup>1</sup> serves as an application for voter registration, and (2) the failure to update the voter registration address of each individual who submits a change of address in person, by mail, or online to the DHSMV and does not decline the voter registration update.

We urge you, as Florida’s chief elections official, to take immediate steps to bring the state into compliance with Section 5. We are ready and eager to work with you to develop a plan for compliance with the NVRA.

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<sup>1</sup> The NVRA defines a “motor vehicle driver’s license” as including “any personal identification document issued by a State motor vehicle authority.” 52 U.S.C. § 20502(3). This definition which encompasses all state-issued non-driver identification cards. Any reference to a driver’s license application, renewal, or change of address in this letter, therefore, includes state-issued identification cards.



## I. The Requirements of Section 5 of the NVRA

Section 5 of the NVRA requires that the DHSMV provide individuals with voter registration services whenever they apply for, renew, or change their address on a driver's license or state-issued identification card. 52 U.S.C. § 20504(a)(1) & (d); *see also* 52 U.S.C. § 20502(3). These services must be provided regardless of whether a covered transaction takes place in person at a DMV office or remotely via phone, mail, email, or internet.<sup>2</sup>

First, the NVRA requires the DHSMV provide a voter registration opportunity simultaneously with any driver's license application, renewal, or change of address. Specifically, each application for a driver's license submitted to the DHSMV, including any renewal application, "shall serve as an application for voter registration ... unless the applicant fails to sign the voter registration application." 52 U.S.C. § 20504(a)(1). If the voter is already registered, the application or renewal "update[s] any previous voter registration by the applicant." *Id.* § 20504(a)(2). As part of this application, the state may collect additional information necessary to register the applicant to vote, but the voter registration portion of the application "may not require any information that duplicates information required in the driver's license portion of the form," except for a second signature and an attestation of eligibility. *Id.* § 20504(c)(2)(A)-(C). The voter registration portion of the form must also include disclosures related to voter eligibility and restrictions on the use of information provided on the voter registration form. *Id.* § 20504(c)(2)(C)-(D).

Second, the NVRA requires that any driver's license change of address form "shall serve as notification of change of address for voter registration ... unless the registrant states on the form that the change of address is not for voter registration purposes." *Id.* § 20504(d). In other words, Section 5 mandates that during a driver's license address change, an update of the voter registration address is the default option, and motor vehicle authorities must effect the update unless the voter affirmatively opts-out of the update. Further, because Section 5 does not distinguish between moves within a county or moves to a new county, a voter's registration address must be updated wherever she moves within a state. *Id.* § 20504(d).

Finally, anytime an individual registers to vote or updates her registration information through the DHSMV, her registration information must be "transmitted to the appropriate State election official" within 10 (or in some cases 5) days. 52 U.S.C. § 20504(e).

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<sup>2</sup> *See, e.g.*, U.S. Department of Justice, The National Voter Registration Act of 1993 (NVRA): Questions and Answers, Q4, *available at* <http://www.justice.gov/crt/national-voter-registration-act-1993-nvra>.



## II. Florida's Violations of Section 5 of the NVRA

### a. Florida's Online Driver's License Renewal Process Violates the NVRA

Drivers in Florida may renew their driver's license by mail, in person at the DHSMV, or through Florida's GoRenew.com Internet portal.<sup>3</sup> The GoRenew.com portal does not comply with Section 5's requirement that an application for a driver's license renewal "serve as an application for voter registration. ..." 52 U.S.C. § 20504(a)(1). The process does not include a question asking if the applicant would like to register to vote, and does not otherwise provide an opportunity to register to vote. Indeed, the only reference to voter registration in the online driver's license renewal process is a statement, seen in the screenshot below, that any change to an individual's driver's license address that is submitted online "**will not** update" that individual's voter registration address:

**Disclaimer Regarding Voter Registration:**

Changes to your address **will not** update your address on file with the Department of State or your county Supervisor of Elections in regards to voting. To update your address for voting purposes, please visit [Florida Department of State](#).

Email Address:

The GoRenew.com portal facially violates the NVRA. An applicant using the portal who wants to register to vote or update her voter registration must, on her own, obtain a voter registration form, complete it, and submit it to an appropriate election official—a process that violates the requirement that an online renewal simultaneously "serve as" a voter registration application. Furthermore, in completing the separate form, an individual necessarily must provide information that duplicates that which she already provided during the online renewal process. *See id.* § 20504(c)(2)(A). Additionally, Florida's GoRenew.com portal fails to provide the confidentiality statements required by Section 5(c)(2)(D).

Florida's failure to provide a simultaneous, non-duplicative and compliant voter registration process when applicants apply to renew a driver's license online is an ongoing violation of the NVRA that must be immediately remedied.

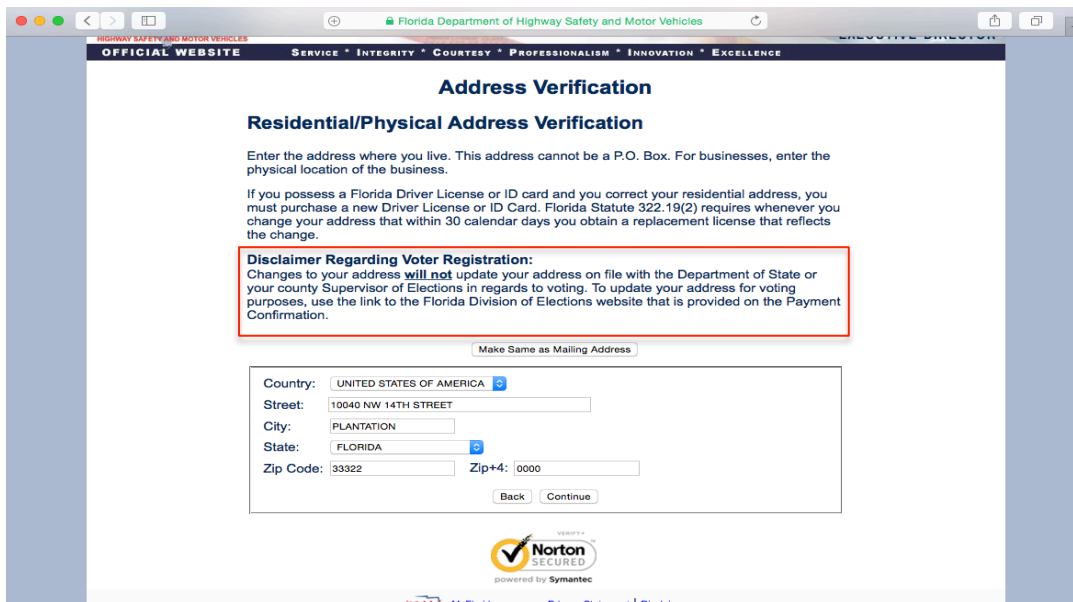
### b. Florida's Driver's License Change-of-Address Processes Violate the NVRA

DHSMV's online, in-person, and mail change-of-address transactions fail to comply with Section 5's requirement that such transactions serve to update a voter's registration information unless the voter affirmatively opts out. 52 U.S.C. § 20504(d).

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<sup>3</sup> Florida Department of Highway Safety and Motor Vehicles, Welcome to GoRenew.com!, <https://services.flhsmv.gov/virtualoffice/Lobby.aspx?AspxAutoDetectCookieSupport=1> (last visited Sept. 15, 2016).

Florida drivers may report a change of address to DHSMV using any one of three methods: through the GoRenew.com online portal,<sup>4</sup> by mail using a DHSMV form,<sup>5</sup> or in-person at a DHSMV office. The online change-of-address process contains a “disclaimer,” identical to the text in the Internet renewal process, that notifies DHSMV customers that the driver’s license change of address “**will not** update” the driver’s voter registration address. A screenshot from the portal (with the relevant portion outlined in red) is below:



The screenshot demonstrates that DHSMV online change-of-address procedures violate the requirements of Section 5. Rather than transmitting change-of-address information to the appropriate election official, DHSMV attempts to shift its responsibility under Section 5 to the voter by directing the voter to the website of the Florida Division of Elections, where she will find instructions about how to submit change-of-address information to her Supervisor of Elections. Accordingly, individuals are not given the opportunity to opt out of having their voter registration address updated as Section 5 requires, because the state does not perform the update. The DHSMV’s failure to implement procedures to ensure that an online change of address serves as notification of an address change for voter registration purposes unless the individual opts out constitutes an ongoing NVRA violation.

Similarly, the DHSMV’s mail-in change-of-address form, the “Driver License or Identification Card Address Changes Form,” is not compliant with the NVRA. The form makes no mention of voter registration, thus confirming that the state is not sending address change information to election officials from which an individual would opt out.

<sup>4</sup> *Id.*

<sup>5</sup> “Driver License or Identification Card Address Change Form.”



Moreover, our investigation indicates that when individuals conduct in person changes of address, DHSMV is using an opt-in system in which frontline staff may ask the individual if she wishes to change her voter registration address. This converts the statutory scheme of the NVRA from an opt-out to an opt-in process. In cases where the question is skipped, the voter misses entirely the opportunity to update her voter registration address.

### **III. Ensuring Compliance with the NVRA**

The Florida DHSMV is engaged in continuing violations of the NVRA. The violations result in widespread deprivation of many Floridians' right to register (or to update their voter registration record) and to vote. As Florida's chief election official, you are responsible for ensuring that DHSMV offices are complying with the NVRA. FLA. STAT. ANN. § 97.102(7).

Florida must ensure that all of its citizens are guaranteed the right to vote and that the NVRA is properly implemented. To do so, the state must develop and implement procedures to ensure that individuals who choose to renew their driver's license online, or change their address in person, online, or by mail, are offered the voter registration opportunities mandated by the NVRA.

This letter serves as notice pursuant to 52 U.S.C. § 20510(b) of violations by Florida of Section 5 of the NVRA, 52 U.S.C. § 20504. We are prepared to meet with you and other state officials, at your earliest convenience, to assist in your development of a comprehensive plan that addresses the problems identified in this letter. In the absence of such a plan, we will have no alternative but to initiate litigation at the conclusion of the statutorily mandated waiting period.

Sincerely,

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