



# Wisconsin can reform elections despite Motor Voter law

The National Voter Registration Act of 1993 (NVRA), 52 U.S.C. §20507, was enacted “to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office” while “ensur[ing] that accurate and current voter registration rolls are maintained” in order to “protect the integrity of the electoral process.” 52 U.S.C. §20501 (b)(3), (4). The NVRA does this by providing voters with the ability to register to vote by mail, requiring states to maintain clean and accurate voter registration records, and establishing standards for voter registrations submitted through government agencies such as the Department of Motor Vehicles—known as Motor Voter. While NVRA does impose certain procedural requirements on states, its scope is not so broad as to preempt the field entirely and preclude states from enacting commonsense election reforms.

## I. NVRA Scope and Requirements

The NVRA, in relevant part, consists of three major components: 1) mail-in voter registration; 2) Motor Voter registration; and 3) list maintenance processes. The statutory language sets forth the threshold standards for each policy, creating “floor” requirements with which states must comply and may not circumvent.

### **Mail-in Voter Registration Form.**

The NVRA expressly requires that states must accept and use mail-in voter registration forms for the registration of voters in federal elections. 52 U.S.C. § 20505(a). This federal form must include a list of all eligibility requirements (including citizenship), an attestation that the applicant meets each such requirements, the legal penalties for submission of a false voter registration application, statements regarding the confidentiality of the application, and the signature of the applicant, under penalty of perjury. 52 U.S.C. § 20508(b). The form may not include any requirement for notarization or other formal authentication, nor may it require any identifying or other information not necessary to enable the appropriate state election official to assess the applicant’s eligibility and administer voter registration and other parts of the election process. *Id.* The statute also permits states to develop and use their own mail-in voter registration forms for the registration of voters in federal elections, provided they comply with the requirements set forth above. 52 U.S.C. § 20505(a)(2). These forms must be made available for distribution through both governmental and private entities. 52 U.S.C. § 20505(b).

In addition, states are permitted to require an individual to vote in person in certain circumstances. With the exception of those entitled to vote absentee under either the Uniformed and Overseas Citizens Absentee Voting Act or the Voting Accessibility for the Elderly

and Handicapped Act, voters that registered to vote by mail in a particular jurisdiction **and** have not previously voted in that jurisdiction may be required to vote for the first time in person. 52 U.S.C. § 20505(c).

### **Voter Registrations Submitted Through Government Agencies.**

Perhaps most notably, the NVRA mandates that state motor vehicle authorities, such as the Department of Motor Vehicles, provide voter registration opportunities to anyone applying for a new or renewed driver's license or state identification card. 52 U.S.C. § 20504. Specifically, each state's driver's license application, renewal, or a portion thereof must serve as an application for voter registration if a voter so chooses. 52 U.S.C. § 20504(a), (c). Any change of address form submitted for purposes of a driver's license shall serve as notification of change of address for voter registration unless the registrant states otherwise. 52 U.S.C. § 20504(d). The completed voter registration application portion of an application for a driver's license, renewal, or update thereof must be made available to the appropriate state election official as provided by state law. 52 U.S.C. § 20504(c)(2)(E).

The NVRA also requires that state motor vehicle authorities transmit voter registration applications to the appropriate state election officials in a timely manner. Completed voter registration portions of applications for driver's licenses must be transmitted to state election officials not later than 10 days after the date of acceptance. 52 U.S.C. § 20504(e)(1). However, if a registration application is accepted within five 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 five days after the date of acceptance. 52 U.S.C. § 20504(e)(2).

The NVRA also requires states to designate as voter registration agencies other agencies that provide public assistance, such as those that administer food stamps, Medicaid, TANF, and WIC, and disability offices. 52 U.S.C. § 20506(a). These agencies are also bound by identical transmittal deadlines as those for state motor vehicle authorities—completed registration applications must be transmitted to state election officials not later than 10 days after the date of acceptance, but if a registration application is accepted within five days before the last day for registration to vote in an election, the application must be transmitted not later than five days after the date of acceptance. 52 U.S.C. § 20506(d).

### **List Maintenance Processes.**

In addition to registration procedures, the NVRA also addresses state voter list maintenance procedures for elections for federal office. 52 U.S.C. § 20507. Section 8 of the NVRA ("Section 8") in particular prescribes the conditions under which registrants may be removed from voter registration lists and the procedures that must be followed before making those removals. Id. Programs to maintain accurate and current voter registration lists must be uniform and nondiscriminatory, and they must comply with the Voting Rights Act. 52 U.S.C. § 20507(b)(1). Furthermore, programs to maintain accurate and current voter registration lists may not remove registrants by reason of a registrant's failure to vote, except as provided in the procedures under Sections 8(c) and (d). 52 U.S.C. § 20507(b)(2).

Under Section 8 states are subject to a number of permissive and mandatory list maintenance processes. Section 8 permits states to remove the name of a person from the voter registration lists upon the request of the registrant, and, if state law so provides, for mental incapacity or for criminal conviction. 52 U.S.C. § 20507(a)(3)(A)-(B). Section 8 also requires states to conduct a general voter registration list maintenance program that makes a reasonable effort to remove persons from the voter list who have become ineligible by reason of death or a change in residence outside of the jurisdiction, in accordance with procedures set forth in the NVRA. 52 U.S.C. § 20507(a)(4).

Section 8 specifies the two circumstances under which a registrant may be removed from the voter registration list because the registrant has moved to another jurisdiction. 52 U.S.C. § 20507(d)(1). A state can remove the name of a person from the voter registration list on grounds of a change of residence based upon the registrant's written confirmation of a change of address to a location outside of the registrar's jurisdiction. 52 U.S.C. § 20507(d)(1)(A). If a person has changed residence outside of the registrar's jurisdiction without written confirmation, a state can only remove the name of that person from the voter registration list upon completion of an additional process. 52 U.S.C. § 20507(d). In such a circumstance, removal is permitted if the registrant fails to respond to a notice ("Section 8(d)(2) notice") which includes a postage prepaid and preaddressed return card sent by forwardable mail, on which the registrant may state his or her current address, and which contains specific instructions and information. 52 U.S.C. § 20507(d)(1)(B)(i), (d)(2). Further, the registrant must also fail to vote or appear to vote during the period ending on the day after the second federal general election subsequent to the Section 8(d)(2) notice being sent in order for the state to then remove him or her from the voter registration list. 52 U.S.C. § 20507(d)(1)(B)(ii). Additionally, when a registrant has a change of address to an address within the same jurisdiction, the voter registration list must be updated accordingly, and the registrant's name may not be removed except as provided in the two-step process. 52 U.S.C. § 20507(f).

Section 8 also provides an example of a list maintenance program that constitutes a reasonable effort to remove registrants who have become ineligible due to a change of residence. 52 U.S.C. § 20507(c)(1). Under this program, a state uses information from the United States Postal Service National Change of Address ("NCOA") program to identify registrants who may have changed residence. 52 U.S.C. § 20507(c)(1)(A). Where it appears from that information that a registrant has moved to a new address in the same jurisdiction, the registration record is updated to show the new address and the registrant is sent a notice of the change by forwardable mail that includes a postage-prepaid, pre-addressed return form by which the registrant may verify or correct the address information. 52 U.S.C. § 20507(c)(1)(B)(i). Where it appears from the NCOA information that a registrant has moved to a new address in a different jurisdiction, the procedure set out in Section 8(d) and described in the preceding paragraph is used to confirm the address change. 52 U.S.C. § 20507(c)(1)(B)(ii).

Any program to systematically remove the names of ineligible registrants from the official list of eligible voters must be completed at least 90 days prior to the date of a primary election or general election for federal office. 52 U.S.C. § 20507(c)(2)(A).

## II. NVRA and Commonsense Election Reforms.

While the NVRA does impose certain procedural requirements on states relative to voter registration and list maintenance, its scope is not so broad as to hamstring a state from constitutionally regulating its elections or otherwise preclude the enactment of commonsense legislation altogether simply because it touches election-related issues. The NVRA requires states to provide certain voter registration options; namely mail-in registration for federal elections and the ability to register when applying for or updating a driver's license. It also establishes procedures by which a voter may be lawfully removed from those registration lists. Nowhere in the NVRA, however, are provisions relating to a right to vote absentee, registering to vote absentee, or the mailing and collecting of absentee ballots.<sup>1</sup> Moreover, the mail-in registration provisions only apply to registrations to vote in federal elections; they impose no requirements for state-specific, mail-in registration forms or procedures. In the absence of express federal law on these specific matters, the states are free to regulate as they see fit.

As for other election-related issues, such as ballot custody and security, counting and curing procedures, voter registration windows, the clarity and uniformity of election procedures, the enforcement of such procedures, and any other matter of state and/or local election administration, they simply do not fall within the scope of the NVRA and, accordingly, are not preempted by it. Indeed, the state has a constitutional right to institute laws, policies, and procedures to ensure a secure, reliable and trustworthy democratic process for its citizens in a manner otherwise consistent with federal law. Nothing in the NVRA should be read to preclude that.

### REFERENCE

1. This sentence refers to absentee voting other than that provided for by the Uniformed and Overseas Citizens Absentee Voting Act or the Voting Accessibility for the Elderly and Handicapped Act.