

A Misreading of the National Voter Registration Act Is Preventing States from Using DMV Data to Stop Duplicate Voter Registration in Multiple States

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KEY TAKEAWAYS

A registered voter's application for a driver's license is written proof that he is now a legal resident of the state in which he is applying for the license.

Documentation received from a DMV that a registered voter now holds a driver's license in a different state proves that his eligibility to vote is in the new state.

Such certification is written proof under the NVRA that a voter should be removed from his previous state's voter registration list.

Maintaining accurate voter registration rolls is not only essential to securing election integrity, but also a requirement of federal law. Yet a misreading of the National Voter Registration Act of 1993 (NVRA) is preventing states from using relevant information from their departments of motor vehicles (DMVs) to remove individuals who have certified in writing that they now reside in another state. The failure to remove those individuals from the voter rolls provides those individuals with the opportunity to register and vote unlawfully in multiple states or for others to misuse their registration to cast fraudulent votes. State election officials should act immediately to correct this problem.

This paper, in its entirety, can be found at <https://report.heritage.org/lm351>

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Applicable Federal Statutes

Section 8 of the NVRA requires that “in the administration of voter registration for federal elections, each State shall...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” to another state.¹

If a state receives information from the U.S. Postal Service’s National Change of Address System (NCOA) that a registered voter has moved out of the state, election officials are obligated to use a notice provision outlined in the NVRA to confirm that the registered voter has moved.² The same notice procedure must be used before individuals can be removed because they have not voted in one or more elections in the state.

States cannot remove the registered voter for not voting or after receiving notice from the NCOA that the individual has moved unless the voter “confirms in writing that the registrant has changed residence” to another state or at least two federal elections have passed since the registered voter was sent a notice by the state asking the registrant to confirm that he or she has moved.³

The Help America Vote Act of 2002 (HAVA) also requires states “to ensure that voter registration records in the State are accurate and updated regularly.”⁴ Among numerous additional requirements, the HAVA mandates that state election officials “enter into an agreement” with the state’s “motor vehicle authority” (DMV) to “match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.”⁵

Information Received from a State’s DMV

It is a standard requirement under state law that an individual establish residency in a state in order to obtain a driver’s license. For example, in Virginia, an applicant for a driver’s license must provide “documents to prove identity, legal presence, *Virginia residency*, and, if you have one, Social Security number (SSN).”⁶ The “Driver’s License and Identification Card Application” for Virginia has a “Certification” at the end of the form in which the applicant certifies and affirms that he is “a resident of Virginia.”⁷ Similarly, in the neighboring state of Maryland, an applicant must provide “proof of identity and residency” in Maryland.⁸

Under the HAVA, state election officials are able to obtain information from their state DMV when driver's license holders who are also registered voters change their residential address within a state on their driver's license, which is relevant to the residential address an individual claims for purposes of voting within the state. States also require an individual to surrender the driver's license from a prior state when that individual establishes residency in the new state. For example, Pennsylvania requires that all new residents with a driver's license "from another state in the United States must get a Pennsylvania Driver's License within 60 days after moving to PA and surrender their out-of-state driver's license and/or ID card."⁹

Establishing that you are a resident of a state is a basic requirement not only to obtain a driver's license, but also to be eligible to vote in a state.¹⁰ To vote in Virginia, for example, the state's constitution requires you to "be a resident of the Commonwealth," and that requires you to establish "both domicile and a place of abode."¹¹

In 1972, the Supreme Court of the United States held in *Dunn v. Blumstein* that states can impose a "uniformly applied requirement of *bona fide* residence" as a precondition for voting within a state because that is "necessary to preserve the basic conception of political community."¹² The Court held that while states cannot impose a *durational* residency requirement such as a requirement that an individual must be a resident of the state for a year before he or she is eligible to vote,¹³ they can require an individual to establish that he or she is in fact a resident of a state as long as any registration requirement is no longer than 30 days prior to the election. The Court determined that 30 days is "an ample period of time for the State to complete whatever administrative tasks are necessary to prevent fraud."¹⁴

According to the National Conference of State Legislatures, "[t]hroughout the nation, citizens can only register and vote in one jurisdiction for federal elections."¹⁵ Individuals cannot claim for voting purposes in state and federal elections that their legal residence is in two different locations, so their residential address for the purposes of obtaining a driver's license and registering to vote must be identical. As the Supreme Court pointed out in *Dunn*, "objective information" that is "relevant to the question of *bona fide* residence" includes where an individual holds a "driver's license," something that "is easy to doublecheck, especially in light of *modern communications*."¹⁶

Information Received from Other State DMVs

The DMVs of 39 states are members of the American Association of Motor Vehicle Administrators, a nonprofit organization that runs an information

clearinghouse called the State-to-State Verification Service.¹⁷ By using this system, members can “electronically check with all other participating states to determine if the applicant currently holds a driver license or identification card in another state.” Through the system, a state can “send a request to another state to surrender or invalidate” a driver’s license or identification card. The system and its members limit “a person to one driver license.”¹⁸

Thus, state DMVs that are participants in this driver’s license verification system are receiving information that informs them when a license holder in their state has moved to another state, established legal residency there, and obtained a new driver’s license in his or her new state of residence. Such information is obviously relevant to the voter registration status of the holder of the driver’s license.

In order to avoid errors, “when a duplicate license is discovered the states involved will collaborate to determine who holds the most recent record.” Another failsafe is that:

If a customer visits an agency to apply for a license and the agency discovers a record already exists in another state, they will give the customer the option for continuing with their new application, in which case the state will request the state holding the record to transfer the record to the new state, or, the customer can decline to move forward with the new application and retain their license in their previous state.¹⁹

The Misreading of the NVRA

The misreading of the NVRA involves information that state election officials receive from their state DMVs (which receive the information through the “modern communications” of the State-to-State Verification Service) that an individual has moved out of state and applied for and obtained a driver’s license in a different state.

Apparently, state election officials are misreading the NVRA’s requirement that they cannot remove a registered voter unless the “registrant confirms in writing that the registrant has changed residence” to mean that *only* a written notice received by election officials *directly* from the registrant is sufficient to meet this requirement. As a result, election officials are not removing individuals from their state’s voter registration list even when the state DMV informs them that a driver’s license holder who is also a registered voter has completed the written application process and obtained a driver’s license in a new state, thus establishing legal residency in that new state.

This is an error. When the NVRA was passed, the U.S. House of Representatives' Committee on House Administration, which has jurisdiction over election issues, issued a report on the application of the NVRA.²⁰ The report's summary of Section 8 states that in applying the language allowing election officials to remove a registered voter "from the official list of eligible voters...at the request of the registrant," such a "request" can include "a change-of-address notice [provided by the registered voter] through the driver's license process that updates the voter registration."²¹

Note that the language in the House report does not limit the effect of the registered voter's use of the driver's license process to change his residential address only to the state in which the voter currently is registered and holds a driver's license. It seems obvious that if a voter moves to another state and obtains a driver's license in that state—a process that requires him to establish legal residency there and surrender his driver's license from his now former state of residence—this should act as a change-of-address notice to his former state's DMV under this provision of the NVRA, according to which he is no longer an eligible voter in his former state and should no longer be registered to vote there.

The written application process that a registered voter goes through when applying for a driver's license in a new state, by providing that state with his or her new residential address, acts as written confirmation for voter registration purposes that the individual has changed his address and moved to a new state and can therefore be removed from the voter registration list in his former state. Notices received through the State-to-State Verification Service for driver's licenses should be sufficient to meet the requirements of Section 8 of the NVRA according to the House report.

This is confirmed on page 18 of the same House report, which states that an underlying purpose of this section is to ensure that a voter remains registered "so long as the individual remains eligible to vote in that jurisdiction." When a registered voter certifies in writing through the driver's license process in another state that he is a legal resident of that state, that individual is no longer eligible to vote in his former state where he is registered to vote. Notice received by election officials in his former state through the DMV process satisfies the Section 8 requirement of confirmation "in writing that the registrant has changed residence to a place outside the registrar's jurisdiction."

There is no case law over the use by state election officials of information received directly from the DMVs of other states. The closest case (but one that is not directly on point because it deals with information received from a "third-party database" set up by the Kansas and Missouri Secretaries of State) is the Seventh Circuit's 2019 decision in *Common Cause Indiana v. Lawson*.²²

The database, which was known as the Crosscheck system but which no longer exists, “aggregate[d] data from [the voter registration lists of] multiple states to identify potential duplicate voter registrations.” Under the Indiana law that was challenged, Indiana would automatically “remove a voter from the rolls if the voter was identified as a database ‘match’” with a registration in another state with “no provision for contacting the voter or confirming her wish permanently to change domicile and cancel her Indiana registration.”²³

The court held that this law violated the NVRA because when a state “suspects that the voter has moved,” it must follow the notice procedure in Section 8 that applies to individuals who have not voted in prior elections or who the U.S. Postal Service says have moved.²⁴ The court emphasized that under these circumstances, it was the registered voter who “must inform the state about the change in residence.”²⁵

However, the Seventh Circuit panel’s decision did not cover information received directly from a state DMV. The NVRA provides a specific exception to this general notice and voter confirmation requirement by requiring all state DMVs to accept an application for a driver’s license “as an application for voter registration” unless the applicant refuses to become registered.²⁶ Any application submitted for voter registration through a driver’s license application “shall be considered as updating any previous voter registration by the applicant.”²⁷

The statute applies to “*any* previous voter registration” and is not limited only to a previous voter registration in the state where the individual is now applying for a new driver’s license. In other words, an application for a driver’s license and voter registration in a new state indicating that the applicant has moved to that state can be “considered as updating” his “previous voter registration” in his former state of residence.²⁸ This application of the law is bolstered by the fact that a “change of address form” submitted by a registered voter and driver’s license holder to the DMV “shall serve as notification of change of address for voter registration” unless the voter/driver specifically informs the DVM that the “change of address is not for voter registration purposes.”²⁹

The court in the Indiana case also focused erroneously on whether being registered to vote in multiple states was prohibited by state criminal law rather than on the *eligibility* of an individual to vote in a particular state, which is dependent, as the Supreme Court said, on that individual’s *bona fide* residency. You must be a resident of a state in order to be eligible to vote in that state, and when an individual certifies in writing as part of the driver’s license process that he or she is now a resident of a different state,

that individual is no longer eligible to vote in his or her former state, and that state has the right to cancel the voter registration.

There is no authority in the NVRA for a court to force a state to continue to maintain the registration of an individual when it has received documentary proof—a written certification signed by a voter submitted in a different state—that the individual is claiming legal residence in that other state and is therefore no longer eligible to vote in his or her former state. Any contrary holding would raise serious questions about the constitutionality of Section 8 of the NVRA because Section 2 of Article I of the Constitution gives states complete authority to determine the qualifications (i.e., the eligibility) of individuals to vote for Members of Congress.

Similarly, because Section 1 of Article II gives them power over the appointment of electors for the Electoral College, the states also have complete authority to determine the qualifications of voters for presidential elections. Clause 2 of Section 1 provides that “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors....”

As the U.S. Supreme Court said in 1892 in *McPherson v. Blacker* and repeated in 2000 in *Bush v. Gore*, “the state legislature’s power to select the manner for appointing electors is plenary.”³⁰ Legislatures can choose the electors, which was the method used by a number of states after the Constitution was ratified, although that quickly changed to the modern system in which every state legislature has delegated “the right to vote for President in its people.”

That gives a state legislature the authority to determine which of “its people” are qualified to vote in the presidential election as long as it does so in a manner in which “equal weight” is “accorded to each vote” and “equal dignity” is accorded to each voter as required by the Equal Protection Clause of the Fourteenth Amendment.³¹ Even with this delegation, however, state legislatures retain the right “to resume the power at any time, for it can neither be taken away nor abdicated.”³²

Any interpretation of the NVRA that would force a state to keep an unqualified, ineligible individual on its voter rolls when that individual has certified in writing that he or she is now a resident of a different state through the driver’s license process would likely render Section 8 unconstitutional.

Conclusion

When a registered voter applies for a driver’s license, that voter is asserting in writing that he has changed his address and is a legal resident of the

state in which he is applying for the driver's license. Documentation that state election officials receive through their DMV that a registered voter has applied for and been issued a driver's license in a different state acts as a written certification by the voter that his or her legal residence and eligibility to vote are in the new state. Such certification is sufficient to meet the requirements of the NVRA as written proof that a previously registered voter is no longer eligible to vote in that state and should therefore be removed from that state's voter registration list.

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Endnotes

1. 52 U.S.C. § 20507(a)(4).
2. 52 U.S.C. § 20507(c).
3. 52 U.S.C. § 20507(d).
4. 52 U.S.C. § 21083(a)(4).
5. 52 U.S.C. § 21083(a)(5)(B)(i).
6. “Driver License Eligibility Requirements,” Virginia Department of Motor Vehicles, <https://www.dmv.virginia.gov/licenses-ids/license/applying/eligibility> (emphasis added).
7. “Driver’s License and Identification Card Application,” Virginia Department of Motor Vehicles, <https://www.dmv.virginia.gov/sites/default/files/forms/dllp.pdf>.
8. “New Drivers,” Maryland Department of Transportation, Motor Vehicle Administration, <https://mva.maryland.gov/about-mva/Pages/info/26300/26300-37T.aspx>.
9. “Identification and Residency Requirements for U.S. Citizens,” Pennsylvania Department of Transportation, <https://www.dot.state.pa.us/public/dvsubforms/bdl/bdl%20publications/pub%20195us.pdf>.
10. See *Husted v. A. Philip Randolph Institute*, 138 S.Ct. 1833 (2018) (“Like other States, Ohio requires voters to reside in the district in which they vote. When voters move out of that district, they become ineligible to vote there.” *Id.* at 1838 (citations omitted)).
11. Constitution of Virginia, Art. II, Sec. 1, <https://law.lis.virginia.gov/constitution/article2/section1/#:~:text=Virginia%20Law&text=In%20elections%20by%20the%20people,vote%20pursuant%20to%20this%20article>.
12. *Dunn v. Blumstein*, 405 U.S. 330, 343–344 (1972). The plaintiff in that case, Professor James Blumstein, was the author’s constitutional law professor at the Vanderbilt University School of Law.
13. *Id.* at 346–347.
14. *Id.* at 348.
15. “Voting by Nonresidents,” National Conference of State Legislatures (Dec. 31, 2023), <https://www.ncsl.org/elections-and-campaigns/voting-by-nonresidents>. Two states allow nonresident voting in certain municipal or town elections, and 10 states allow nonresidents to vote in certain special district elections, but *all* states require residency for federal and state elections. *Id.*
16. *Dunn*, 405 U.S. at 348 (emphasis added).
17. “About,” American Association of Motor Vehicle Administrators, <https://www.aamva.org/about>. California, Connecticut, the District of Columbia, Kentucky, Nevada, Illinois, New Jersey, New York, Maine, Oklahoma, and Vermont are not members. “IT Systems Participation Map,” American Association of Motor Vehicle Administrators, <https://www.aamva.org/it-systems-participation-map?id=576>.
18. “State-to-State (S2S) Verification Service,” American Association of Motor Vehicle Administrators, [https://www.aamva.org/technology/systems/driver-licensing-systems/state-to-state-verification-service-\(s2s\)](https://www.aamva.org/technology/systems/driver-licensing-systems/state-to-state-verification-service-(s2s)).
19. “S2S Frequently Asked Questions: What happens when a state discovers that a person has more than one license?” American Association of Motor Vehicle Administrators, <https://www.aamva.org/technology/systems/driver-licensing-systems/s2s-frequently-asked-questions>.
20. National Voter Registration Act of 1993, Report 103-9, U.S. House of Representatives, 103rd Cong., 1st Sess. (Feb. 2, 1993).
21. *Id.* at 14–15.
22. 937 F.3d 944 (7th Cir. 2019).
23. *Id.* at 948–949.
24. *Id.* at 947.
25. *Id.* at 948.
26. 52 U.S.C. § 20504 (a)(1).
27. 52 U.S.C. § 20504 (a)(2).
28. *Id.* (emphasis added).
29. 52 U.S.C. § 20504 (d).
30. *Bush v. Gore*, 531 U.S. 98, 105 (2000), citing *McPherson v. Blacker*, 146 U.S. 1 (1892).
31. *Gore*, 531 U.S. at 105.
32. *Id.* (citation omitted).