

LEGAL SERVICES

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MEMORANDUM

August 7, 2026

SUBJECT: Inactivating voters' registrations due to perceived citizenship status
(Work Order No. 35-LS0044)

TO: Representative Ky Holland
Attn: Ayden Nichol

FROM: Andrew Dunmire 
Legislative Counsel

You asked what authority, if any, allows the Division of Elections (division) to change a voter's registration status to "inactive" and whether changing a voter's status to inactive implicates state or federal law.

According to recent media reports and testimony given at a joint meeting of the House Judiciary Committee and House State Affairs Committee, the division has recently sent letters to registered voters that the division suspects may not be U.S. citizens. The letters inform the voters that their registration has been inactivated and will remain inactive unless and until the recipient contacts the division and affirms that they are a U.S. citizen. It appears that the division has sent letters to—and consequently inactivated the registration of—voters who are in fact U.S. citizens.

Under state law, only U.S. citizens are qualified to vote.¹ The other qualifications are that a person be at least 18 years of age and a resident of the state (and the applicable house district) for at least 30 days before the election.² Every person who meets those qualifications "is entitled to be registered as a voter . . ."³ When a person who is entitled to be registered as a voter submits a completed registration form, "the voter's name shall immediately be placed on the master register."⁴

¹ AS 15.05.010; *see also* art. 5, sec. 1, Constitution of the State of Alaska and *Park v. State*, 528 P.2d 785, 786 (Alaska 1974) ("The plain meaning of [art. 5, sec. 1] limits the voting privilege to citizens of the United States.").

² *Id.*

³ AS 15.07.030(a). *See also* AS 15.07.160(a) ("[A] registration official may not refuse to register a person who is qualified to vote . . .").

⁴ AS 15.07.070(b).

This state law requirement to maintain a list of all eligible voters is paralleled by federal law. The Help America Vote Act of 2002 (HAVA) requires Alaska to maintain a list of every legally registered voter:

[E]ach State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State⁵

Consequently, state and federal law require the division to place the name of every qualified voter who registers to vote on the master register. Each time an election occurs, the division director must use the master register to prepare a list that identifies all the eligible voters for that election:

Sec. 15.07.125. Official registration list. The director shall prepare an official registration list for each election consisting of the names of (1) all voters whose registrations are not inactive; and (2) all voters whose names are required to be placed on the list by AS 15.07.070(c) or (d). A list of persons eligible to vote in each precinct at that election shall be prepared from the official registration list.⁶

If a person's name appears on the official registration list, they are entitled to vote at the election under AS 15.07.010:

Sec. 15.07.010. Who may vote. The precinct election officials at any election shall allow a person to vote whose name is on the official registration list for that precinct and who is qualified under AS 15.05. A person whose name is not on the official registration list shall be allowed to vote a questioned ballot.⁷

The division has a continuing duty to maintain the master register by removing voters who are not eligible to vote in Alaska. For example, AS 15.07.130(c) imposes a monthly requirement for the director to obtain a certified list from the bureau of vital statistics of all residents over 18 who have died and then cancel the registration of those deceased voters. And AS 15.07.130(a) requires the director to, "no less frequently than in January of each calendar year," examine the master register and mail a notice to each voter whose mail has been returned to the division, who has not contacted the division in the last two

⁵ 52 U.S.C. 21083(a).

⁶ AS 15.07.125. The category of voters who fall under (2) is not relevant to this memo.

⁷ AS 15.07.010.

years, or who has not voted or appeared to vote in the last two general elections.⁸ After that notice has been sent, state law and sec. 8 of the National Voter Registration Act of 1993 (NVRA) prescribe a procedure by which the division may cancel the voter's registration.⁹

But while the statutes tell the director to remove dead voters and give the director a method to cancel the registration of people who move to another state, there is no statute or regulation that explicitly grants the director authority to inactivate a voter's registration based on a question about U.S. citizenship. The only authority under which the director may inactivate a voter's registration can be found in AS 15.07.130(b), which provides:

(b) If a registered voter has not, within the preceding four calendar years, contacted the division and has neither voted nor appeared to vote in a local, regional school board, primary, special, or general election during the last four calendar years and a notice sent to the voter under (a) of this section was returned as undeliverable, the voter shall be advised by a notice sent by forwardable mail to the voter's last known address that registration will be inactivated unless the voter responds to the notice no later than 45 days after the date of the notice sent under this section. The director shall maintain on the master register the name of a voter whose registration is inactivated. The director shall cancel a voter's inactive registration in accordance with the procedures set out in 42 U.S.C. 1973gg-6 (sec. 8, National Voter Registration Act of 1993) after the second general election that occurs after the registration becomes inactive if the voter does not contact the division or vote or appear to vote.¹⁰

As you can see, the plain text of this statute does not authorize the director to inactivate a voter's registration simply based on a belief that the voter may not be a U.S. citizen. Instead, the statute only authorizes the director to inactivate a voter's registration if the voter has not contacted the division or appeared to vote during the previous four calendar years, a notice sent under AS 15.07.130(a) was returned as undeliverable, *and* the voter fails to respond to a second notice sent by forwardable mail to their last known address. Based on the director's testimony at the joint committee hearing in July and media reports describing the division's letters, it does not appear that the division relied upon or complied with the procedures in AS 15.07.130 when it inactivated voters' registrations. I

⁸ AS 15.07.130(a).

⁹ AS 15.07.130(b) and 52 U.S.C. 20507(a)(4)(B), (b), (c), and (d). The NVRA (52 U.S.C. §§ 20501–20511) is also known as the "Motor Voter Act," as distinct from the Voting Rights Act of 1965 (VRA).

¹⁰ The citation to 42 U.S.C. 1973gg-6 is outdated. Section 8 of the National Voter Registration Act was editorially reclassified as 52 U.S.C. 20507. The revisor of statutes is aware of this issue.

have researched the entirety of Title 15 and the relevant administrative regulations (6 AAC 25) but have not identified authority that specifically authorizes the division to inactivate the registration of voters based "on suspicion that they may not be [U.S.] citizens." You may wish to ask the director to identify the legal authority the division relied on in taking this action.¹¹

Additionally, conducting systematic list maintenance at this time may violate the "quiet period" required by the NVRA. Under sec. 8 of the NVRA, states are prohibited from carrying out systematic list maintenance to remove the names of ineligible voters within 90 days of a federal election:

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.¹²

The United States Court for Appeals, Eleventh Circuit, considered this statute in a case with a fact pattern that is similar to the issue at hand.

Concerned that noncitizens would vote in the 2012 primary and general elections, the Florida Secretary of State engaged in two programs to identify and remove noncitizens from the voter rolls.¹³ The "first program began in advance of the primary election and used records from" Florida's DMV.¹⁴ The Secretary compiled a list of registered voters who had presented identification documents to the DMV—including green cards and foreign passports—that suggested they may be noncitizens. He then sent a portion of his list to the election supervisor in each county and instructed them to "(1) review the names on the list, (2) conduct additional research using 'whatever other sources you have,' and (3) initiate a notice and removal process."¹⁵ The program continued into May and June, which was within 90 days of the primary election. The effort "to identify non-citizens

¹¹ At the joint committee hearing on July 22, 2026, the director testified that "the division cannot reveal deliberative, executive, or attorney-client privileged communications." (Hearing at 1:09 pm.) The director made similar statements at prior hearings during the most recent legislative session. Please note that this assertion is not correct: the division may waive its privilege and share with the legislature legal advice that it received from its attorney (the Department of Law). *See, e.g.*, Alaska Rule of Evidence 503(b) and (c).

¹² 52 U.S.C. 20507(c)(2)(A). This 90-day ban contains exceptions that allows states to remove people at their own request, due to a disqualifying criminal conviction or mental incapacity, due to death, or to correct registration records. *See* 52 U.S.C. 20507(c)(2)(B).

¹³ *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335 (11th Cir. 2014).

¹⁴ *Id.* at 1339.

¹⁵ *Id.*

was far from perfect" and resulted in U.S. citizens being removed from the voter rolls.¹⁶

Nevertheless, the Secretary began a second program ahead of the 2012 general election. Rather than using DMV records, this second program relied on the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) database.¹⁷ It occurred within 90 days of the election.

The secretary argued that the NVRA's quiet period did not prohibit removing noncitizens from the voter roll, and that he could accordingly do so within 90 days of an election. But two naturalized U.S. citizens sued after they were wrongly identified as noncitizens. Although the plaintiffs were never prevented from voting, the Eleventh Circuit found "they were directly injured . . . when they were wrongly identified" as noncitizens, and therefore had standing to challenge the program.¹⁸

The appellate court considered whether these two programs violated the quiet period mandated by sec. 8. It began by analyzing the plain language of the statute.¹⁹

First, the plain language of sec. 8 prohibits systematic programs to remove "ineligible voters." The court noted that the NVRA "is premised on the assumption that citizenship is one of the requirements for eligibility to vote."²⁰ Consequently, the court reasoned, a program to remove noncitizens from voter rolls is a program to remove "ineligible voters."²¹

Second, while the NVRA provides no definition of "systematically," Florida's "program

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 1341 ("Even though they were ultimately not prevented from voting, an injury like theirs is sufficient to confer standing."). The appellate court also held that organizational plaintiffs had standing to challenge the program because the organizations had missions that included voter registration and education.

¹⁹ *Id.* at 1343 ("As in all cases involving statutory construction, our starting point must be the language employed by Congress, and we assume that the legislative purpose is expressed by the ordinary meaning of the words used." (citing *Am. Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982))).

²⁰ *Id.* at 1344. For example, the court pointed out that the NVRA requires a voter registration application portion of an application for a driver's license to "include a statement that . . . includes each eligibility requirement (including citizenship)" 52 U.S.C. 20504(c)(2)(C)(i).

²¹ *Id.*

was a 'systematic' program under any meaning of the word."²² It "did not rely upon individualized information or investigation to determine" who should be removed:

Rather, the Secretary used a mass computerized data-matching process to compare the voter rolls with other state and federal databases, followed by the mailing of notices. Certainly, it is telling that the database that Secretary Detzner used before the general election—SAVE—stands for *Systematic* Alien Verification for Entitlements.²³

Third and finally, the court found that the phrase "any program" in sec. 8 should be given a broad meaning:

In *United States v. Gonzales*, the Supreme Court noted that read naturally, the word 'any' has an expansive meaning, that is 'one or some indiscriminately of whatever kind.' In the same way, this Court has held that when Congress does not add any language limiting the breadth of that word, 'any' means all. This long history of established meaning is important, because we readily presume that Congress knows the settled legal definition of the words it uses, and uses them in the settled sense. The fact that the provision now before us applies to 'any program' strongly suggests that Congress intended the 90 Day Provision to encompass programs of any kind, including a program like [Florida's] to remove non-citizens.²⁴

Consequently, Florida's attempt to identify and remove noncitizens from voter rolls within 90 days of an election was held to violate sec. 8's plain language prohibition against "any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters." Moreover, the appellate court said its plain-text interpretation was buttressed by the "statutory context and policy of the NVRA."²⁵

²² *Id.*

²³ *Id.* (emphasis in source).

²⁴ *Id.* (cleaned up).

²⁵ *Id.* at 1344–46. The purposes of the NVRA are codified in 52 U.S.C. 20501(b) as follows:

- (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 chapter 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

The Eleventh Circuit explicitly rejected the Secretary of State's argument that when Congress drafted the language enacting the quiet period it "only contemplated the removal of people who were once entitled to vote, not the removal of people who never had eligibility (like non-citizens)."²⁶ Instead, the court held that it was the judiciary's "job is to honor the broad statutory language in the 90 Day Provision, which unambiguously covers programs like" Florida's.²⁷

Thus, the court held that while "individualized removals are safe to conduct at any time" because they are "based on individual correspondence or rigorous individualized inquiry," Congress "decided to be more cautious" for programs that systematically remove voters:

At most times during the election cycle, the benefits of systematic programs outweigh the costs because eligible voters who are incorrectly removed have enough time to rectify any errors. In the final days before an election, however, the calculus changes. Eligible voters removed days or weeks before Election Day will likely not be able to correct the State's errors in time to vote. This is why the 90 Day Provision strikes a careful balance: It permits systematic removal programs at any time *except* for the 90 days before an election because that is when the risk of disfranchising eligible voters is the greatest.²⁸

Consequently, Florida's secretary of state violated the NVRA's 90-day quiet period when he attempted to remove noncitizens from Florida's voter rolls.

Accordingly, the *Arcia* precedent, while not binding in Alaska or the Ninth Circuit, is a very strong indication that it may violate the NVRA for the state to engage in "any program the purpose of which is to systematically remove" noncitizens from the official list of eligible voters this close to the primary election. *Arcia* would also support the proposition that a U.S. citizen who is erroneously removed from Alaska's official registration list would have standing to sue the state.

However, ten years after the Eleventh Circuit decided *Arcia*, the state of Virginia systematically removed the names of noncitizen voters during the NVRA's quiet period leading up the 2024 general election. In a court challenge, Virginia argued that the quiet period "does not cover noncitizens at all, so even the most systematic efforts to remove

(4) to ensure that accurate and current voter registration rolls are maintained.

²⁶ *Id.* at 1347.

²⁷ *Id.*

²⁸ *Id.* at 1346 (emphasis in source).

noncitizens from voter registration lists within 90 days of a federal election are immune from judicial scrutiny."²⁹ Both the trial court and the Fourth Circuit Court of Appeals rejected that interpretation and prohibited the state from systematically removing perceived noncitizens from the voter list within 90 days of that year's federal elections.

The Fourth Circuit found the argument that the quiet period does not apply to noncitizens to be "strained," and it held that any systematic attempt to remove noncitizens from the voter roll must occur before the NVRA's quiet period. Accordingly, the Fourth Circuit upheld a preliminary injunction that prohibited Virginia from conducting its list maintenance so close in time to the election. But the United States Supreme Court stayed execution of that preliminary injunction in a one-page order issued through the non-merits docket.³⁰

Because the Supreme Court's order contained no reasoning, it is unclear whether the justices agreed with Virginia's argument that the quiet period does not protect voter roll maintenance targeted at noncitizens. However, that open question will be answered next year in another case that the Supreme Court agreed to hear.

In *Mi Familia Vota v. Fontes*, the Ninth Circuit court of appeals considered whether Arizona could conduct systematic citizenship checks of voters during the quiet period.³¹ That state had enacted a law, H.B. 2243, requiring county recorders to conduct monthly citizen checks in SAVE of registered voters who the county recorders have "reason to believe are not United States citizens"³² Paralleling analysis found in *Arcia*, the Ninth Circuit held that conducting these types of checks within the 90-day quiet period before a federal election violates the NVRA.

In that case, the appellants argued that "because 'the NVRA does not discuss a State's authority to remove noncitizens from the voter rolls,' the NVRA does not regulate the periodic cancellation of registrations and does not forbid removal of noncitizens from voter rolls."³³ The appellants also argued that the 90-day quiet period only prohibits

²⁹ *Virginia Coal. for Immigrant Rts. v. Beals*, No. 24-2071, 2024 WL 4601052, at *1 (4th Cir. Oct. 27, 2024) (quotation omitted).

³⁰ Available at https://www.supremecourt.gov/orders/courtorders/103024zr_f2ah.pdf. The non-merits docket is also referred to as the "interim docket" or "shadow docket". See Congressional Research Service, "The 'Interim Docket' or 'Shadow Docket': Non-Merits Matters at the Supreme Court", February 2, 2026, <https://www.congress.gov/crs-product/LSB11391>.

³¹ 129 F.4th 691 (9th Cir. 2025).

³² Arizona H.B. 2243, page 6, lines 6 - 13. Available at <https://www.azleg.gov/legtext/55leg/2R/laws/0370.pdf>.

³³ *Mi Familia Vota*, 129 F.4th at 715 (cleaned up).

"general programs" to remove registered voters who became ineligible due to conviction, death, or change in residence.³⁴

The Ninth Circuit rejected both of those arguments, finding that the NVRA allows a state to remove noncitizens – it just cannot do so as part of a systematic program during the 90 days before a federal election. And, like the Eleventh Circuit did, the Ninth Circuit held that Congress's ban against "any program" should be given an expansive meaning.³⁵ Consequently, the court held, Arizona's systematic program to remove noncitizens from the voter roll during the quiet period violated the NVRA.³⁶ Arizona could engage in *non-systematic* removal programs during the quiet period.³⁷

(The Ninth Circuit also found that Arizona's program raised issues under the Civil Rights Act of 1964. Specifically, the mandate under state law to periodically search a registrant's citizenship status if the county recorder had "reason to believe" the registrant was not a U.S. citizen treated naturalized citizens differently than native-born citizens. Running a citizen check through SAVE requires an immigration number, which native-born U.S. citizens do not have.³⁸ That, the court held, violates the Civil Rights Act's mandate that when determining whether a person is qualified to vote, no state may "apply any

³⁴ *Id.*

³⁵ *Id.* at 715 ("Based on the ordinary meaning of 'any,' 'program' should be construed to have an expansive meaning. . . . The Supreme Court has commented that the word 'any' has an expansive meaning, namely, 'one or some indiscriminately of whatever kind.' (citations and quotation omitted)).

³⁶ *Id.* at 717 ("In light of the purposes of the 90-day Provision and the NVRA, the periodic cancellation of registrations required by Arizona's law is precisely the type of systematic cancellation program that the 90-day Provision was meant to preclude. The periodic cancellation of registrations is based on the systematic comparison of registered voters to various databases, which will likely cause inaccurate removals.").

³⁷ *Id.* at 716 ("A non-systematic or 'individualized' removal program relies on 'individualized information or investigation' to determine removal of ineligible voters from voting rolls rather than cancelling batches of registrations based on a set procedure such as 'us[ing] a mass computerized data-matching process to compare the voter rolls with other state and federal databases, followed by the mailing of notices.'" (quoting *Arcia*, 772 F.3d at 1344)).

³⁸ *Id.* at 723 ("Because SAVE contains no information on U.S.-born citizens, however, the district court found that the 'reason to believe' provision 'solely' impacts naturalized citizens and cannot be used if the subject of the inquiry is a U.S.-born citizen. By requiring the use of SAVE to check citizenship status whenever the county recorder is suspicious about citizenship, rather than a method that could be applied to both naturalized and U.S.-born citizens, [the Arizona statute] limits the 'reason to believe' provision to a subset of the electorate: persons with immigration numbers.").

standard, practice, or procedure different from the standards, practices, or procedures applied . . . to other individuals . . . who have been found by State officials to be qualified to vote" ³⁹ I am flagging this issue because that federal law—which is referred to as the Different Standards, Practices, and Procedures Provision (or the DSPP Provision) of the Civil Rights Act—may implicate the division's actions in the present case. However, at this point I do not have enough knowledge of the division's actions to know if the federal law would be relevant to a court's review.)

Unlike *Arcia*, this decision from the Ninth Circuit is binding in Alaska, but in June 2026 the United States Supreme Court agreed to hear an appeal in that case. In *Republican National Committee v. Mi Familia Vota*, the Supreme Court will decide next year whether the NVRA prohibits systematic programs to remove noncitizens within 90 days of a federal election. ⁴⁰

Given that procedural posture, the status of the NVRA's quiet period is an open question. The Supreme Court might use *RNC vs. Mi Familia Vota* to grant states the authority to systematically conduct citizenship verification programs during the quiet period, but even if that happens it is worth noting that the Arizona case remains distinguishable from Alaska. The Arizona State Legislature enacted a law that compels elections officials to conduct monthly citizenship checks in SAVE and to cancel the registration of a person after "confirm[ing] that the person registered is not a United States citizen." ⁴¹ In contrast, AS 15.07.130(b) only authorizes the director to inactivate a voter's registration if the voter has not appeared to vote or contacted the division within four calendar years, and a notice sent under AS 15.07.130(a) is returned as undeliverable. It is unclear what authority the division relied upon when it began its current citizenship verification program. You may wish to ask the division directly for that information. I will gladly review any response you receive and provide an updated legal opinion.

ASD:mis
26-285.mis

³⁹ 52 U.S.C. 10101(a)(2)(A).

⁴⁰ <https://www.supremecourt.gov/docket/docketfiles/html/public/25-1017.html>.

⁴¹ H.B. 2243, page 4, lines 5 - 10; Ariz. Rev. Stat. Ann. § 16-165(A)(10).