

**POTENTIAL REFORMS TO THE NATIONAL VOTER REGISTRATION
ACT (“NVRA”) AND HELP AMERICA VOTE ACT (“HAVA”)**

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Personal Background

My name is Michael T. Morley. I am the Sheila M. McDevitt Professor of Law at the Florida State University College of Law and Faculty Director of the FSU Election Law Center established by the Florida Legislature. *See* Fla. Stat. § 1004.421. I research and teach in the fields of Election Law, Federal Courts, Remedies, and Constitutional Law. My work focuses on election emergencies, post-election disputes in federal elections, the constitutional right to vote, the equitable powers of the federal courts, and justiciability. I graduated Princeton University’s Woodrow Wilson School of Public and International Affairs *magna cum laude* in 2000, and Yale Law School in 2003, where I was a Senior Editor on the *Yale Law Journal* and received the Thurman Arnold Prize for best oralist in the school’s moot court competition.

I clerked for Judge Gerald Bard Tjoflat of the U.S. Court of Appeals for the Eleventh Circuit. I have worked at Williams & Connolly LLP and the Critical Motions and Appeals group at Winston & Strawn LLP, both in Washington, D.C. I also served as Special Assistant to the General Counsel of the Army in the Pentagon, where I received the Meritorious Civilian Service Award and Army Staff Lapel Pin. From 2012 through 2014, I was a Climenko Fellow and Lecturer on Law at Harvard Law School. My work has been published in many of the nation’s leading law reviews including the *Virginia Law Review*, *Georgetown Law Journal*, *Northwestern University Law Review*, and *University of Chicago Law Review*. I have been cited by federal and state courts across the nation, including the U.S. Supreme Court. For the past four years, I have served as a member and then vice chair of the Florida Advisory Committee to the U.S. Commission on Civil Rights. It is my pleasure to have the opportunity to testify before this Committee.

Overview

A sound electoral system must be based on three fundamental principles. First, all eligible voters must have a reasonable opportunity to safely cast their ballots and have them counted without substantial burdens. Second, the system must ensure accurate results by minimizing the possibility of mistake, accident, irregularity, illegality, confusion, or fraud. Third, the system should bolster “public confidence in the accuracy and integrity of the election’s results.” Michael T. Morley, *Election Emergencies: Voting in Times of Pandemic*, 80 WASH. & LEE L. REV. 359, 362 (2023). The National Voter Registration Act (“NVRA”), Pub. L. No. 103-31, 107 Stat. 78 (May 20, 1993), and the Help American Vote Act (“HAVA”), Pub L. No. 107-252, 116 Stat. 1666 (Oct. 29, 2002), were adopted to promote these values. *See, e.g.*, 52 U.S.C. § 20501(b). The NVRA in particular helped promote voter registration by requiring states to offer a range of convenient ways to register. *See* 52 U.S.C. § 20503(a)(1)-(a)(3); *see also* Federal Election Comm’n, *The Impact of the National Voter Registration Act of 1993 on the Administration of Federal Elections* (June 1997). At the same time, these laws sought to enhance the electoral system’s accuracy and boost public confidence by requiring election officials to ensure the accuracy of their voter registration rolls. *See, e.g.*, 52 U.S.C. §§ 20507(a)(3)-(a)(4), 20183(a)(2), (a)(5).

As courts have interpreted and applied these statutes in a variety of circumstances, opportunities for further improvement have become apparent. In this testimony, it is helpful to identify three main types of problems which have arisen under these statutes which this Committee could address.

First, neither statute allows, much less requires, states to implement safeguards to ensure non-citizens do not register to vote. Non-citizens are prohibited from voting in federal elections, *see* 18 U.S.C. § 611, and states generally specify U.S. citizenship as a voter eligibility requirement,

see Joshua A. Douglas, *The Right to Vote Under State Constitutions*, 67 VAND. L. REV. 89, 101 (2014). The registration process might nevertheless be initiated for a non-citizen—particularly during a lawful transaction at a state motor vehicle agency or other designated government office where voter registration is a potential part of the process, see 52 U.S.C. §§ 20504(a)(1), (c)(1), 20506(a)(2), (a)(3)(A), (a)(6)—as the result of scrivener’s errors, misunderstandings, mistakes of law, language barriers, errors in automatic voter registration systems, inadvertent markings on forms, erroneous advice or assistance, indifference, literacy challenges, or even fraud. And HAVA allows a person to register even if they lack both a social security card and a driver’s license, see 52 U.S.C. § 21083(a)(5)(A)(ii) (of course, even driver’s licenses do not necessarily demonstrate U.S. citizenship).

To be sure, the extent to which non-citizen voting has actually occurred has sometimes been exaggerated in public debates. When states have identified potential cases of non-citizens being registered to vote, they invariably involve a fraction of 1% of all voter registrations in the jurisdiction. See *Map Shows States Where Migrants Are Being Purged from Voter Rolls*, NEWSWEEK (Aug. 27, 2024).¹ Nevertheless, in a nation with approximately 28 million non-citizen residents, see Stephanie Kramer & Jeffrey S. Passel, *What the Data Says About Immigrants in the U.S.*, PEW RESEARCH CTR. (Aug. 21, 2025),² it is reasonable for the public to expect steps to be taken to ensure non-citizens are not added to the federal voter registration rolls. Even a few hundred or thousand votes can impact the outcome of a federal election, see *Bush v. Gore*, 531 U.S. 98 (2000) (per curiam), to say nothing of state-level races.

¹ <https://www.newsweek.com/map-states-migrants-purged-voter-rolls-1944995>.

² <https://www.pewresearch.org/short-reads/2025/08/21/key-findings-about-us-immigrants/>

As the Supreme Court has explained, a government’s “power to exclude aliens from participation in its democratic political institutions [is] part of the sovereign’s obligation to preserve the basic conception of a political community.” *Foley v. Connelie*, 435 U.S. 291, 295-96 (1978) (internal quotation marks omitted). “The exclusion of aliens from basic governmental processes is not a deficiency in the democratic system but a necessary consequence of the community’s process of political self-definition.” *Cabell v. Chavez-Salido*, 454 U.S. 432, 439 (1982).

The NVRA allows states to seek only information which is “necessary” to determine a voter’s eligibility and administer the election process. 52 U.S.C. § 20508(b)(1). This restriction applies to the federally created mail registration form, *id.* § 20508(a)(2), the voter registration portion of driver’s license applications, *id.* § 20504(c)(2)(A), and state-created registration forms, *id.* §§ 20505(a)(2), 20506(a)(6)(A)(ii). The NVRA also specifies these forms shall require voters to attest under penalty of perjury that they satisfy the state’s eligibility requirements, including U.S. citizenship. *See id.* §§ 20504(c)(2)(C), 20508(b)(2). Many courts have held that, because applicants are stating under oath that they are citizens, it is presumptively unnecessary—and therefore illegal—for states to require them to submit additional information to confirm their citizenship status unless the state can prove a substantial number of non-citizens have registered to vote. *See, e.g., Fish v. Schwab*, 957 F.3d 1105, 1144 (10th Cir. 2020); *Fish v. Kobach*, 840 F.3d 710, 738 (10th Cir. 2016); *Kobach v. U.S. Election Assistance Comm’n*, 772 F.3d 1183, 1197-98 (10th Cir. 2014). This “necessity” standard seems unnecessarily stringent. A state should not have to wait until a substantial problem has developed with its voter registration rolls to take reasonable steps to ensure their accuracy. The NVRA should be amended to instead allow states to request information reasonably related to confirming an applicant’s eligibility, particularly when an

applicant does not provide the last four digits of their Social Security number and their citizenship cannot be confirmed through motor vehicle or other available records.

Second, relatedly, the NVRA and HAVA do not appear to contemplate the erroneous addition of voter registration records to the database. The NVRA allows records to be removed only due to changes in circumstances. The registrant must ask for their registration to be cancelled, be convicted of a crime or declared incompetent, die, or move. 52 U.S.C. § 20507(a)(3)-(a)(4); *see also id.* § 21083(a)(2)(A). The NVRA does not expressly provide for the removal of records of people who were ineligible at the outset and should not have been registered in the first place. *See Arcia v. Sec’y of Fla.*, 772 F.3d 1335, 1345 (11th Cir. 2014); *see also United States v. Florida*, 870 F. Supp. 2d 1346, 1349-50 (N.D. Fla. 2012). This Committee should amend the NVRA to allow election officials to remove ineligible voters (including non-citizens), as well as people who have subsequently registered to vote in another state, after affording them notice and an opportunity to submit evidence. Likewise, when states conduct their NVRA-mandated list maintenance programs, *see* 52 U.S.C. § 20508(a)(4), they should be required to attempt to identify voters who are ineligible on any basis, rather than only people who have died or moved as the NVRA currently requires, *see Bellitto v. Snipes*, 935 F.3d 1192, 1200-01 (11th Cir. 2019); *Am. Civil Rights Union v. Phila. City Comm’rs*, 872 F.3d 175, 182 (3d Cir. 2017).

Finally, the NVRA and HAVA fail to offer specificity with regard to some key terms, giving courts little guidance in construing them. For example, the NVRA prohibits election officials from implementing a “program” to “**systematically** remove the names of ineligible voters” during the 90-day period before a federal election. 52 U.S.C. § 20507(c)(2)(A) (emphasis added). This prohibition includes the systematic removal of apparent non-citizens from the registration database

during that timeframe. *See Mi Familia Vota v. Fontes*, 129 F.4th 691, 715-17 (9th Cir. 2024), *reh’g en banc denied*, 152 F.4th 1153 (9th Cir. 2025); *Arcia*, 772 F.3d at 1345.

There are several things this Committee could do to clarify congressional intent concerning the meaning of these terms. For example, it could clarify that the term “removal” does not include shifting a voter to the “inactive” list. A voter recently moved to the inactive list may still vote in an impending election so long as they confirm their identity, address, citizenship, or eligibility, as appropriate, including at the polling place. The Committee could likewise specify that the term “systematically” does not include measures election officials take in response to information suggesting that particular voters in the database may be ineligible. It should further specify that, when a jurisdiction violates § 20507(c)(2)(A)’s “quiet period,” a court may grant prospective relief but may not require the State to restore an ineligible person to the voter registration database, thus allowing them to vote.

The NVRA and HAVA, in several places, also require States to treat voters in a “uniform and nondiscriminatory manner.” 52 U.S.C. §§ 20507(b)(1), 21083(a)(1)(A), (b)(1). Again, neither statute defines these key terms. Some courts have given them a sweeping interpretation, barring states from applying certain requirements only to particular voters even when there was otherwise no need—and sometimes even no way—for the state to apply them to everyone. *See, e.g., Mi Familia Vota*, 129 F. 4th at 715; *Va. Coal. for Immigrant Rights v. Beals*, No. 1:24-cv-1778 (PTG/WBP), 2025 U.S. Dist. LEXIS 157029, at *42 (E.D. Va. Aug. 12, 2025); *Tenn. Conf. of the NAACP v. Lee*, 730 F. Supp. 3d 705, 723, 740 (M.D. Tenn. 2024), *rev’d on other grounds*, 139 F.4th 557 (6th Cir. 2025); *Ga. Coal. for the Peoples’ Agenda, Inc. v. Raffensperger*, No. 1:18-cv-4727-ELR, 2022 U.S. Dist. LEXIS 252479, at *53 (N.D. Ga. Sept. 29, 2022); *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 706 (N.D. Ohio 2006). This Committee should define the terms

“uniform” and “nondiscriminatory,” clarifying that election officials do not violate those requirements by acting in response to information that particular voters may be ineligible to vote or have outdated/inaccurate records.

The NVRA and HAVA are critical parts of the legal infrastructure underlying our electoral system. By updating these statutes, this Committee can ensure the voting process remains accessible to all eligible voters, while safeguards ensure the accuracy of results and preserve public confidence in the system.