

April 2, 2025

Secretary Diego Morales
Office of the Indiana Secretary of State Diego Morales
200 West Washington Street, Room 201
Indianapolis, IN 46204
Via Certified Mail and Email to General Counsel Jerold Bonnet (jbonnet@sos.IN.gov)

Co-Directors J. Bradley King and Angela M. Nussmeyer
Indiana Election Division
302 West Washington Street, Room E-204
Indianapolis, IN 46204
Via Certified Mail and Email (bjking@iec.IN.gov & anussmeyer@iec.IN.gov)

Re: Notice of Violation of National Voter Registration Act

Dear Secretary Morales and Co-Directors King and Nussmeyer:

We write on behalf of Common Cause Indiana, League of Women Voters of Indiana, Hoosier Asian American Power, and NAACP Indiana State Conference, members of those organizations, and other individuals and organizations similarly situated, regarding the application of Section 17 of Indiana Public Law 65-2024 (also known as 2024 HEA 1264, hereinafter “the Bureau of Motor Vehicles (“BMV”) Citizenship Crosscheck Provision” or “the Provision”), codified at I.C. 3-7-38.2-7.3. The undersigned include non-partisan organizations that advocate for the right of all eligible voters to freely participate in Indiana’s elections and include Indiana-based organizations serving and assisting eligible voters in exercising their right to vote. The BMV Citizenship Crosscheck Provision prescribes certain voter registration list maintenance procedures, which in effect require numerous voters to provide documentary proof of citizenship (“DPOC”). This letter serves as written notice pursuant to 52 U.S.C. § 20510(b) that the enforcement of the BMV Citizenship Crosscheck Provision violates Sections 5, 6, 7, 8, and 9 of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. §§ 20504–20508.

Only U.S. citizens may vote in state and federal elections, and the overwhelming evidence shows that non-citizens neither vote nor attempt to vote.¹ Every Indiana voter affirms their citizenship under penalty of perjury upon registering to vote. The BMV Citizenship Crosscheck Provision is one of several far-reaching, harmful, and unnecessary policies that Indiana has advanced or enacted in recent years to address unsubstantiated concerns of non-citizen voting. The

¹ Elizabeth DePompei, *Voter fraud is rare. 2 Indiana cases demonstrate how unusual it is.*, Indianapolis Star (Oct. 6, 2020), <https://www.indystar.com/story/news/politics/elections/2020/10/06/voter-fraud-indiana-cases-show-rarity-voter-fraud/3586956001> (reporting that voter fraud is rare both nationally and in Indiana and that the Secretary of State’s office stated clearly that Indiana’s elections are safe and secure); Michael Waldman, *Noncitizen Voting Is Already Illegal—and Vanishingly Rare*, Brennan Ctr. (Apr. 17, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/noncitizen-voting-already-illegal-and-vanishingly-rare> (stating that the “big rumor . . . that hordes of noncitizens are voting . . . [is] false. A lie. An urban myth.”); Alex Nowrasteh, *Noncitizens Don’t Illegally Vote in Detectable Numbers*, Cato Inst. (Nov. 25, 2020), <https://www.cato.org/blog/noncitizens-dont-illegally-vote-detectable-numbers> (finding that “there is no good evidence that noncitizens voted illegally in large enough numbers to actually shift the outcome of elections or even change the number of electoral votes.”).

BMV Citizenship Crosscheck Provision only complicates Indiana’s voting and voter registration processes to make both less accessible for Indiana voters by creating unnecessary hurdles that only naturalized citizens—and no U.S.-born citizens—have to endure to exercise their right to vote.

Beginning July 1, 2025, the BMV Citizenship Crosscheck Provision will require Indiana’s NVRA official to attempt to verify voter citizenship by comparing the statewide voter registration file with the Indiana Bureau of Motor Vehicles’ (the “BMV”) list of temporary credentials issued to individuals who were non-citizens at the time they obtained their credentials. If the BMV database identifies a registered voter as having had a temporary credential in the past, the NVRA official must notify county registrars, who then must send a notice to the voter requiring the voter to provide DPOC within 30 days. If the voter fails to respond and provide DPOC by the deadline, the registrar must cancel the voter’s voter registration.

It is our understanding that the BMV database is not an accurate and reliable record of which Indiana residents currently are non-citizens. This is because individuals who obtain driver’s licenses or state identification cards as non-citizens, and who subsequently become naturalized as United States citizens, are not required to notify the BMV when they gain citizenship because their previously-obtained driver’s licenses or identification cards remain valid until the expiration date, despite the change in the voter’s citizenship status. Accordingly, in many cases, the BMV will only be notified of an individual’s new citizenship when their license or identification card is renewed, which may occur years after naturalization. As a result, the process mandated by the BMV Citizenship Crosscheck Provision is likely to mis-identify numerous naturalized citizens as non-citizens and subject them to the additional requirement to provide DPOC or be removed from the voter rolls. This requirement is never imposed on U.S.-born citizens.

Congress enacted the NVRA to protect U.S. citizens from discriminatory and unfair registration laws and voter purge mechanisms, particularly those that have a “disparate impact” and negatively impact voter participation among historically marginalized groups. 52 U.S.C. §§ 20501(a)–(b); *see also Republican Nat’l Comm. v. N.C. State Bd. of Elections*, 120 F.4th 390, 407 (4th Cir. 2024) (“The NVRA’s legislative history confirms that Congress enacted the act . . . for the express purpose of combating racial discrimination.”). The BMV Citizenship Crosscheck Provision directly conflicts with this stated purpose of the NVRA because it will target eligible naturalized citizen voters for removal, who are disproportionately people of color.

I. The BMV Citizenship Crosscheck Provision Violates NVRA Sections 5, 6, 7, 8, and 9

a. The BMV Citizenship Crosscheck Provision Violates NVRA Section 6 by Failing to Comply with the Federal Form Requirement to Register Voters for Federal Elections and Violates NVRA Sections 5, 6, 7, and 9 Regarding Individuals Using the State Form to Register for Federal Elections

As you know, Indiana voters may register to vote using the National Mail Voter Registration Form (“Federal Form”) promulgated by the U.S. Election Assistance Commission

(“EAC”) pursuant to the NVRA.² Section 6 of the NVRA requires states to “accept and use” the Federal Form to register voters to vote in federal elections. 52 U.S.C. § 20505(a)(1). The Federal Form requires a voter attest to their U.S. citizenship, but the Federal Form does not require that they provide documentary proof thereof.³ States are “preclude[d] . . . from requiring a Federal Form applicant to submit information beyond that required by the form itself.” *Arizona v. Inter Tribal Council of Ariz.*, 570 U.S. 1, 20 (2013).

The BMV Citizenship Crosscheck Provision violates Section 6 by imposing an additional requirement on a subset of Indiana registrants that is not required by the Federal Form. Although the BMV Citizenship Crosscheck Provision provides for a voter registration list maintenance procedure, it effectively functions as a requirement that certain registrants—those who BMV records identify as having at some point been a non-citizen, even if they have since become naturalized—provide DPOC or have their voter registration cancelled. By requiring such DPOC, the BMV Citizenship Crosscheck Provision clearly imposes requirements beyond those of the Federal Form.

The NVRA also limits what information states may require from individuals registering to vote in federal elections using a state form. Section 6 allows states to use a state form for individuals to register for federal elections by mail, 52 U.S.C. § 20505(a)(2), so long as the form complies with the requirements of Section 9(b), 52 U.S.C. § 20508(b). Under Section 9(b), a state mail registration form may only require “information . . . necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.” Section 5(c)(2)(B) applies the same requirement to state registration forms used in conjunction with applications for driver’s licenses and identification cards. 52 U.S.C. § 20504(c)(2)(B). Section 7 requires that state forms provided at public assistance agencies be “equivalent” to the Federal Form. 52 U.S.C. § 20506(a)(6)(A)(ii).

In *Mi Familia Vota v. Fontes*, 129 F.4th 691, 719–20 (9th Cir. 2025), the Ninth Circuit recently held that state form registrants in Arizona may not be required to provide DPOC to vote in federal elections because that information exceeds the NVRA’s “necessary” limitation, since the Arizona state form mandates that applicants attest to their citizenship, which provides registrars with the requisite proof of citizenship. The Indiana state form also includes a citizenship attestation, and thus, requiring DPOC likewise violates the “necessary” limitation. The Ninth Circuit further held that Section 7 precludes Arizona from requiring that state form registrants at public assistance agencies provide DPOC because that is not consistent with the requirement that the state form be “equivalent” to the Federal Form. This analysis applies to registration at Indiana public assistance agencies as well.

In sum, the BMV Citizenship Crosscheck Provision effectively functions as a DPOC requirement and violates Sections 5, 6, 7, and 9 of the NVRA for voters who register using either the Federal Form or the Indiana state form.

² *Voter Registration*, Indiana Secretary of State Diego Morales, <https://www.in.gov/sos/elections/voter-information/register-to-vote/>.

³ *National Mail Voter Registration Form*, United States Election Assistance Commission, <https://www.eac.gov/voters/national-mail-voter-registration-form>.

b. The BMV Citizenship Crosscheck Provision Violates NVRA Section 8(b) by Imposing Non-Uniform and Discriminatory List Maintenance Procedures

The BMV Citizenship Crosscheck Provision also violates NVRA Section 8(b). Section 8(b) requires that list maintenance programs be “uniform” and “nondiscriminatory.” 52 U.S.C. § 20507(b)(1). A list maintenance program violates the NVRA’s uniform and nondiscriminatory requirements when the program is not applied in the same manner to all registered voters. *See, e.g., Ind. State Conf. of Nat’l Ass’n for Advancement of Colored People v. Lawson*, 326 F. Supp. 3d 646, 657–58 (S.D. Ind. 2018) (enjoining voter list maintenance law pertaining to the now dismantled Crosscheck system as non-uniform and discriminatory), *aff’d sub nom. on other grounds, Common Cause Ind. v. Lawson*, 937 F.3d 944 (7th Cir. 2019).

The BMV Citizenship Crosscheck Provision violates Section 8(b) by requiring a comparison of voter rolls with BMV data that would erroneously flag only naturalized, and not U.S.-born, citizens, as potential “noncitizens,” triggering the additional requirement to provide DPOC. Federal courts have looked unfavorably on other programs similar to the BMV Citizenship Crosscheck Provision, which target and disproportionately burden only naturalized citizens. *See Mi Familia Vota*, 129 F.4th at 714–15 (Arizona requirement that registrars crosscheck Federal Form registrants against a database maintained by the U.S. Citizenship and Immigration Services violated Section 8(b) because only naturalized citizens, not U.S. born citizens, were targeted); *United States v. Florida*, 870 F. Supp. 2d 1346, 1350 (N.D. Fla. 2012) (finding a Florida program nearly identical to the BMV Citizenship Crosscheck Provision likely violated Section 8(b) because the “methodology made it likely that the properly registered citizens who would be required to respond and provide [citizenship] documentation would be primarily newly naturalized citizens,” which “was likely to have a discriminatory impact on these new citizens”). For the same reasons, the BMV Citizenship Crosscheck Provision also violates the Different Practices Provision of the Civil Rights Act, which prohibits applying different standards, practices, or procedures for determining voter eligibility to different individuals. *Mi Familia Vota*, 129 F.4th at 723; *see* 52 U.S.C. § 10101(a)(2)(A).

In sum, the BMV Citizenship Crosscheck Provision prescribes a nonuniform and discriminatory list maintenance process that violates Section 8(b) of the NVRA.

c. The BMV Citizenship Crosscheck Provision Risks Violating NVRA Section 8(c)(2) Because the Provision Provides No Deadline for Completing Its Systematic Program of Removal Before Federal Elections

The BMV Citizenship Crosscheck Provision also risks violating NVRA Section 8(c)(2). Section 8(c)(2) requires that any systematic program of removal of registered voters from the voter rolls must be completed no later than 90 days before a primary or general election for federal office. 52 U.S.C. § 20507(c)(2)(A). In enacting the NVRA, Congress sought to ensure that eligible voters will not have their right to vote interfered with on the eve of an election by administrative error or discriminatory or unfair list maintenance procedures.

Yet the BMV Citizenship Crosscheck Provision provides no deadline for completing the removal process. The purpose of the 90-day deadline is to ensure that eligible voters “have enough time to rectify any errors” after being erroneously removed from the rolls in time to be able to vote

successfully in federal elections. *See Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1346 (11th Cir. 2014). While I.C. 3-7-38.2-2(a)(3) separately provides that list maintenance programs “must . . . be completed not later than ninety (90) days before a primary or general election,” there is nothing in the BMV Citizenship Crosscheck Provision that requires its systematic program of removal program to be fully completed 90 days before an election—which includes not only the comparison of the voter rolls to the BMV list of temporary credentials, and the notification of voters by county officials, but also the 30-day window for the voter to respond as well as the actual cancellation of the voter’s registration by the county. Under the BMV Citizenship Crosscheck Provision, if any voter identified through the systematic comparison of the voter rolls to the BMV list is removed from the rolls within the 90-day quiet period, that would be a violation of Section 8(c)(2) of the NVRA. Therefore, lacking any designated deadline for removal, the BMV Citizenship Crosscheck Provision contains no safeguards against and poses a significant risk of violating the 90-day requirement of the NVRA.

II. Request for Records

The NVRA requires that Indiana, upon request, produce “all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i)(1). Accordingly, we request copies of the following records:

1. Individualized voter information for all registered voters currently listed in the bureau of motor vehicles list of temporary credentials issued under I.C. 9-24-11-5(c) or I.C. 9-24-16-3(f) as provided by I.C. 3-7-38.2-7.3(b);
2. Any and all communications, instructions, advisories, or any other guidance provided to or exchanged with county officials regarding implementation of any aspect of I.C. 3-7-38.2-7.3;
3. Any and all communications, instructions, advisories, or any other guidance provided or exchanged within your offices regarding the development or implementation of any aspect of I.C. 3-7-38.2-7.3; and
4. All records regarding any steps taken by your offices or by other state, county, or local officials to determine, prior to initiating the removal process provided by I.C. 3-7-38.2-7.3, whether any of the registered voters listed in “the bureau of motor vehicles list of temporary credentials issued under I.C. 9-24-11-5(c) or I.C. 9-24-16-3(f)” are, in fact, naturalized citizens.

We expect that any charge for these records will be a “reasonable cost,” as required under the NVRA’s Public Disclosure Provision. 52 U.S.C. § 20507(i)(1). Please inform us of the expected cost prior to delivery if it exceeds \$100.

We agree to maintain the confidentiality of individualized voter information and prevent any disclosure or distribution of individualized voter information to the general public. This information will be used by the undersigned organizations to assist these identified voters who are at risk of harm from the BMV Citizenship Crosscheck Provision.

If any responsive documents or communications are in your possession or in the possession of any employee of your offices on computers or other electronic devices, including personal devices, or in paper copy, please include copies of such documents and communications in your production.

If any record or portion of a record responsive to this request is contained in a record or portion of a record deemed unresponsive to the request, we would like to inspect the entire (electronic) document.

If any records or portions of records are withheld, please state the exemption on which you rely, the basis on which the exemption is invoked, and the address to which an appeal should be addressed.

If you believe any responsive records would be kept by other public bodies, please notify us of the same and forward this request to the appropriate personnel in those bodies.

We request that you send all records in electronic format via email or other electronic method, if possible, to the email addresses provided in the signatures. If this is not possible, we can confer about other ways to access these records.

III. Request for Correction of These NVRA Violations

The Secretary of State of Indiana is the State's Chief Elections Officer, I.C. 3-11-8-15(a)(14), and the Co-Directors of the Indiana Election Division are jointly designated the chief state election official responsible for coordination of state responsibilities under the NVRA, I.C. 3-7-11-1. As such, the Secretary of State of Indiana and the Co-Directors of the Indiana Election Division are responsible for ensuring Indiana's compliance with the NVRA. *See* 52 U.S.C. § 20509. This letter constitutes notice pursuant to 52 U.S.C. § 20510(b) that your enforcement of the BMV Citizenship Crosscheck Provision will violate 52 U.S.C. §§ 20505(a)(1) and 20507(b)(1). If the violations identified above are not corrected within 90 days of your receipt of this notice letter, the undersigned may proceed with litigation and seek declaratory or injunctive relief to remedy the violation. *See* 52 U.S.C. § 20510(b)(2) ("If the violation is not corrected within 90 days after receipt of the notice . . . the aggrieved person may bring a civil action . . .").

Measures purporting to protect the integrity of elections should be designed to address actual, substantive concerns and must conform with laws protecting voters' rights. The BMV Citizenship Crosscheck Provision fails on both fronts. We look forward to your response and ask that you direct all communications to Ami Gandhi, Director of Midwest Voting Rights Program at Chicago Lawyers' Committee for Civil Rights by e-mail to agandhi@clccrul.org.

Sincerely,

Common Cause Indiana
P.O. Box 1603
Indianapolis, IN 46206

League of Women Voters of Indiana
1500 North Delaware Street

Indianapolis, IN 46202

Hoosier Asian American Power
334 North Senate Avenue
Indianapolis, IN 46204

NAACP Indiana State Conference
P.O. Box 47903
Lafayette, IN 47903

Aneel Chablani
Ami Gandhi
Rachel Habliston
Conner Kozisek
Chicago Lawyers' Committee for Civil Rights
100 North LaSalle Street, Suite 600
Chicago, IL 60602
(312) 630-9744

Ryan Snow
Javon Davis
Grace Thomas
Samantha Heyward
Lawyers' Committee for Civil Rights Under Law
1500 K Street NW, Suite 900
Washington, DC 20005
(202) 662-8600

William R. Groth
Daniel Bowman
Bowman & Vlink, LLC
911 East 86th Street, Suite 201-M
Indianapolis, IN 46240

cc:

Matthew Kestian, General Counsel
Indiana Bureau of Motor Vehicles
Indiana Government Center North
100 North Senate Avenue, Room 403
Indianapolis, IN 46204
Via Certified Mail and E-mail (mkestian1@bmv.in.gov)