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OFFICE OF THE
SECRETARY OF STATE

MEMORANDUM

To: Nevada County Clerks & Registrars
From: Mark Wlaschin, Deputy Secretary of State for Elections
Date: April 26, 2024
Subject: Memo 2024-006 – External Parties and List Maintenance – Subsequent Guidance

In response to further questions following Memo 2024-004, the following is provided for consistent and clear guidance regarding the ability of external parties to contribute to the voter registration list procedures as required by federal and state law.

[Nevada Revised Statute 293.530\(1\)\(a\)](#) provides county clerks with the discretion to “use any reliable and reasonable means available to correct the portions of the statewide voter registration list which are relevant to the county clerks and to determine whether a registered voter’s current residence is other than that indicated on the voter’s application to register to vote.”¹ The question has been presented whether NRS 293.530(1)(a) affords clerks discretion to utilize information gathered by external parties, as referenced in Memo 2024-004, in making residence determinations.

The Secretary of State opines that NRS 293.530(1)(a) does not permit clerks to rely on external sources, meaning non-governmental sources of information, without performing further investigation into whether the information is (1) reasonable and reliable and (2) whether its use is uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965. This is particularly true in light of federal law requiring that any list maintenance activity be “uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965,” 52 U.S.C. § 20507(b)(1). Pursuant to [NRS 293.530\(1\)\(b\)](#), any such further investigation by a clerk requires board of county commissioner approval. In other words, clerks may not rely on information from external sources absent further investigation into whether such information complies with state

¹ [NRS 293.530\(1\)\(b\)](#) provides county clerks broader authority to “make investigations of registration in the county by census, by-house-to-house canvass or by any other method” “with the consent of the board of county commissioners.”

and federal law, and such further investigation must be approved by their respective board of commissioners.

This conclusion flows from several sources of law. First, information provided by private parties does not enjoy the same legal presumption of regularity or verifiability as governmental records.² Governmental records are routinely relied upon as reliable sources for the information they contain, including for purposes of section 293.530. *See, e.g.*, NRS 293.5732 (information collected by Nevada Department of Motor Vehicles may be used “for the purpose of correcting the statewide voter registration list pursuant to NRS 293.530”); A.B. No. 432 (2021) (information provided by certain governmental agencies and tribes for may be used for “purpose of correcting the statewide voter registration list pursuant to NRS 293.530”); *see also* NRS 51.155 (public records exception to Nevada’s hearsay rule); Fed. R. Evid. 803(8) (public records exception to federal hearsay rule). For governmental records, the methods used to collect the information generally are publicly available and can be easily examined to ensure that the information is suitable for the purpose for which it is used and is collected in a uniform and non-discriminatory manner, as required by law. *See, e.g.*, 52 U.S.C. § 20507(b)(1); Office of the Attorney General, Opinion No. 85-3, 1985 Nev. Op. Atty. Gen 12 (Mar. 14, 1985).

Moreover, clerks’ existing, routine list maintenance procedures already fulfill their obligations under both the National Voter Registration Act and NRS 293.530. Unlike other Nevada statutory processes,³ [NRS 293.530\(1\)\(a\)](#) does not require additional action from county clerks, including with respect to information received from an external party. The Nevada Legislature has provided a clear statutory process allowing non-government actors to challenge electors with a County Clerk and the Legislature cannot have intended to allow clerks to use their NRS 293.530 discretion to avoid the statutory processes of NRS 293.535 and 293.547 without approval from the Board. On the other hand, there is significant legal risk to relying on potentially unreliable sources of information, particularly where individuals may be attempting to use the procedures of NRS 293.530 to avoid the requirements of NRS 293.535 and 293.547.

In 1985, the Nevada Attorney General opined on the limits of [NRS 293.530](#) discretion. There, the Attorney General stated that while information contained in or noted on juror questionnaires “may be one reasonable means of determining whether a voter’s current residence is other than that indicated on the affidavit of registration, it is not always reliable information, particularly with respect to armed services personnel and students.”⁴ Under such circumstances, the

² Governmental records include information provided by the Electronic Records Information Center (ERIC), which is composed of information from governmental records. *See ERIC Bylaws, Exhibit A*, <https://ericstates.org/wp-content/uploads/documents/ERIC-Bylaw-MA-FINAL.pdf>.

³ [NRS 293.535](#) (affidavit process no later than 30 days before an election; [NRS 293.547](#) (written, signed, and verified challenge process between 25 to 30 days before an election).

⁴ Office of the Attorney General, Opinion No. 85-3, 1985 Nev. Op. Atty. Gen 12 (Mar. 14, 1985). Residency issues associated with armed services personnel and students remains a significant issue under federal and state law in present times. *See, e.g., Bellitto v. Snipes*, 935 F.3d 1192, 1208 (11th Cir. 2019) (noting that students, military personal, and others who only live part of the year in a state may be properly registered in that state).

Attorney General opined that “county clerks must use means that are reasonable and reliable as sources of this type of information.”⁵ Accordingly, clerks “should consult other reasonable and reliable sources of information and, if necessary, conduct investigations, approved by the board of supervisors to determine that the information ... reasonably and reliably indicates that a voter’s current residence is other than that indicated on the affidavit of registration.”⁶

Absent approval by a county commission, no county clerk can conduct investigations contemplated under NRS 293.530(1)(b). The 1985 opinion considered a scenario triggered by available information to clerks, specifically returned clerk-issued jury summonses. Even based on reasonable government information, the 1985 opinion contemplated the need to conduct investigations approved by the board of supervisors.

Here, any additional steps a county clerk would need to take to determine the reliability of non-governmental information would have to be authorized by a county commission. NRS 293.530(1)(b). Effectively, by allowing non-governmental external parties to make investigatory information “available” to county clerks, it eliminates a county commission’s statutory right to approve whether and by what method a county clerk could investigate voter registration, subject to other state and federal statutes. It would also circumvent the Legislature’s determination that external parties may participate in the voter registration process by making challenges subject to affidavit support pursuant to NRS 293.535 and NRS 293.547, subject to additional state and federal requirements for notice to the challenged registered voter.⁷

Under such circumstances, the Secretary of State opines that county clerks may not consider information from non-governmental external parties absent NRS 293.530(1)(b) commission approval for conducting an investigation, and even then only subject to other state and federal statutes that may, themselves, disallow their use for residency determinations.

Further, even if external party information is considered, because there is no mandatory duty under NRS 293.530(1) to accept any information from an external party absent a determination it is “reasonable and reliable” and to be consistent with the Nevada Attorney General’s 1985 opinion, the Secretary of State opines that county clerks must “consult other reasonable and reliable sources of information,” such as the governmental records provided by the Electronic Registration Information Center (ERIC), election mail returned undeliverable, other Nevada state agencies, and federal agencies, before instituting the NRS 293.530(1)(c) cancellation process and the NRS 293.530(1)(g) inactivation process.

The Secretary of State further notes that any general programs to remove deceased individuals or individuals who have changed residence must “be uniform, nondiscriminatory, and in

⁵ Id. (emphasis added in part).

⁶ Id.

⁷ Specifically, NRS 293.535(2) and NRS 293.547 (5) require written notice to be submitted to the challenged registered voter. The NVRA prohibits the removal of a registered voter absent failing to vote in two second general elections for federal office. 52 U.S.C. § 20507(d)(1).

compliance with the Voting Rights Act of 1965.” 52 U.S.C. § 20507(b)(1). If a county election official decides to use information from non-governmental external parties as part of these general programs, the Secretary of State recommends the following actions should be taken:

- County election officials may ask for an affidavit from the external party, signed under penalty of perjury, detailing the methods used to select voter records for investigation and investigate those voter records.
- County election officials should review a statistically appropriate percentage of the information to ensure that the information provided is not limited to one political party, one subsection or specific jurisdiction of their county, or one demographic which would indicate a nonuniform and discriminatory manner of identification.
- If any information provided is found to be nonuniform or discriminatory, the county should determine that the third party is not reliable, and decline to use further information provided by the third party until not earlier than 30 days after the canvass of the next general election and until the third party has undertaken procedural changes to address the insufficiency of the information it is providing.

Additionally, the Secretary of State believes county clerks should report the use of external party information to the Secretary of State. The report should include the name of the external party providing information, as well as information on individuals identified, including name, age, party registration, and address, and the steps that the clerk has taken to verify that (1) the information provided is reasonable and reliable and (2) the use of the information is uniform, non-discriminatory, and complies with the Voting Rights Act of 1965.

Clerks should also be aware that Section 8 of the NVRA requires States to complete any program the purpose of which is to systematically remove the names of ineligible voters from the official list of eligible voters not later than 90 days prior to the date of a primary election or general election for federal office. List maintenance activities under NRS 293.530 may fall within this requirement. 52 USC § 20507(c)(2)(A).

Note that the NVRA also requires that challenge processes undertaken pursuant to NRS 293.535 and NRS 293.547 follow the notice and return postcard process set out in NRS 293.530. 52 USC § 20507(d); *see also* NRS 293.535(2) and NRS 293.547(5). To the extent that anything in Memo 2024-004 could be construed to the contrary, the Secretary wishes to issue this clarification.

Clerks should also bear in mind other relevant provisions of federal and state law, including provisions criminalizing interference with a person’s right to vote. For instance, federal statute provides that whoever “intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose [in a federal election]” “shall be fined under this title or imprisoned

not more than one year, or both.”⁸ Similarly, [NRS 293.710\(d\)](#) makes it unlawful to “(i)mpede or prevent, by abduction, duress or fraudulent contrivance, the free exercise of the franchise by any voter...”⁹ To the extent unclear, information obtained through violation of criminal statutes neither constitutes “reasonable” nor “reliable” means for correcting voter registration information pursuant to [NRS 293.530\(1\)\(a\)](#). If necessary, consistent with the 1985 opinion, [NRS 293.530\(1\)\(b\)](#) provides county clerks broader authority to “make investigations of registration in the county” “with the consent of the board of county commissioners.” After obtaining the required statutory consent, clerks can conduct additional investigations to the extent consistent with federal and state law from information derived by an external party.

Finally, [Nevada Administrative Code 293.412](#) requires county clerks to maintain inactive voter lists and to provide information to the Secretary of State upon request. To effectively monitor the efficacy of external party information, county clerks must provide the Secretary of State updates on 1) [NRS 293.530\(1\)](#) correction requests, 2) [NRS 293.530\(1\)](#) corrections resulting in [NRS.530\(1\)\(c\)](#) mailings to registered voters, and 3) [NRS 293.530\(1\)](#) corrections resulting in deactivation of voter registrations on a monthly basis. These monthly reports describing external party efforts to contribute to the voter registration list maintenance process must be provided to the Office of the Secretary of State not later than close of business at the end of the first business day of each month, reporting the information requested above as conducted in the previous month.

This report is not necessary if list maintenance based on third party information does not occur.

Please provide this reporting related to third-party information used between January 2, 2023 and the date of receipt of this letter, should it exist, no later than close of business on May 31, 2024.

If there are any questions about this guidance, please call or email the Deputy for Elections at (775) 684-5705 or mwlaschin@sos.nv.gov.

Respectfully,

Francisco V. Aguilar
Secretary of State

By: Mark Wlaschin
Mark Wlaschin, Deputy Secretary for Elections

⁸ 18 U.S.C. § 594.

⁹ See also [NRS 293.800\(1\)-\(2\)](#) (making criminal willful election law violations by public officials).