

# LEGAL SERVICES

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## MEMORANDUM

February 24, 2026

**SUBJECT:** Voter information shared with the Department of Justice  
(CSSB 64(FIN) am; Work Order No. 34-LS0153\L.A)

**TO:** Senator Scott Kawasaki  
Chair of the Senate State Affairs Committee  
Attn: Joe Hayes

**FROM:** Andrew Dunmire   
Legislative Counsel

AS 15.07.195(a) provides that the following information in a voter's registration record is confidential:

- (1) the voter's age or date of birth;
- (2) the voter's social security number, or any part of that number;
- (3) the voter's driver's license number;
- (4) the voter's voter identification number;
- (5) the voter's place of birth;
- (6) the voter's signature.

A voter may also elect to keep their residential address confidential by providing a separate mailing address.<sup>1</sup> There is, however, an exception to this confidentiality rule: the Division of Elections (division) may provide confidential information to a federal agency in order to comply with federal law if the federal agency "use[s] the information only for governmental purposes authorized under law . . . ."<sup>2</sup>

The division recently signed a memorandum of understanding (MOU) with the Department of Justice (DOJ), under which the division provided Alaska's statewide voter registration list (VRL) to the federal agency. The VRL contains, for every voter, information that the statute above makes confidential. In the press release announcing that it gave this information to the DOJ, the division stated that the "Lieutenant Governor oversees the Alaska Division of Elections and is authorized under Alaska

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<sup>1</sup> AS 15.07.195(b).

<sup>2</sup> AS 15.07.195(c)(1).

Statute 15.07.195(c)(1) to provide confidential voter information to a federal agency, if that agency only uses it for government [sic] purposes authorized by law."<sup>3</sup>

You asked whether state law protects the information described above from being disclosed. The answer to your question hinges on whether DOJ requested the information "in compliance with federal law" and uses "the information only for governmental purposes authorized under law," as required under AS 15.07.195(c)(1).

### **Background**

On July 2, 2025, the DOJ sent a letter to the division requesting "information regarding the State's procedures for complying with the statewide voter registration list maintenance provisions of the National Voter Registration Act ('NVRA'), 52 U.S.C. § 20501 et seq."<sup>4</sup> In that letter, the DOJ asserted "that there are more registered voters listed as active in the State of Alaska than citizen voting age population in the State." The letter went on to assert that the NVRA requires each state to make available for inspection certain voting records and cited the following federal statute:

#### **(i) Public disclosure of voter registration activities**

(1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, 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, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.<sup>5</sup>

The DOJ requested a copy of the "most current or most updated electronic copy of the State of Alaska's computerized statewide voter registration list . . . as required by Section 303(a) of the Help America Vote Act." Under sec. 303 of the Help America Vote Act (HAVA) the state is required to maintain a single centralized electronic list "that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State."<sup>6</sup> The DOJ letter asked the division to provide "all fields contained within the" VRL, which would necessarily include material that is declared confidential under AS 15.07.195.

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<sup>3</sup> Division of Election press release, December 23, 2025, *Lt. Governor Submits Alaska Voter Registration List to the U.S. Department of Justice*.

<sup>4</sup> I have obtained this letter and all other correspondence referred to in this memorandum through publicly available media reports that provided access to the source documents. Our office will provide your office a copy of any of these documents upon request.

<sup>5</sup> 52 U.S.C. 20507(i)(1).

<sup>6</sup> 52 U.S.C. 21083(a).

The division sent the DOJ a response letter on August 4, 2025. That letter documented the state's efforts to maintain its voter list over the previous five years and explained "why Alaska reports more active registered voters than its citizen voting age population . . . ." The division's letter did not cite to the confidentiality requirement in AS 15.07.195, but it did say it was responding to DOJ's request "for records under the NVRA" by providing a "copy of the publicly available statewide voter registration list."

Not satisfied with receiving the publicly available information, on August 14 the DOJ sent a letter to the Lieutenant Governor demanding "*all fields*, including the registrant's full name, date of birth, residential address, his or her state driver's license number or the last four digits of the registrant's social security number . . . ." <sup>7</sup> This letter asserted that the DOJ needed the information "to assess [Alaska's] compliance with the statewide VRL maintenance provisions of the" NVRA. The letter also stated that DOJ's request was brought "pursuant to the Attorney General's authority under Section 11 of the NVRA to bring enforcement actions." <sup>8</sup>

As additional authority for its demand to access Alaska's VRL, the DOJ letter also cited sec. 401 of HAVA, <sup>9</sup> and Title III of the Civil Rights Act of 1960 (CRA). <sup>10</sup> The letter asserted that these three federal laws required the division to share the requested information and reiterated that Alaska's entire VRL (including confidential information) should be provided:

Pursuant to the foregoing authorities, including the CRA, the Attorney General is demanding an electronic copy of Alaska's complete and current VRL. The purpose of the request is to ascertain Alaska's compliance with the list maintenance requirements of the NVRA and HAVA.

When providing the electronic copy of the statewide VRL, Alaska must ensure that it contains *all fields*, which includes the registrant's full name, date of birth, residential address, his or her state driver's license number or the last four digits of the registrant's social security number as required under [HAVA] to register individuals for federal elections. <sup>11</sup>

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<sup>7</sup> Emphasis in source.

<sup>8</sup> This sentence in the DOJ letter erroneously cites 52 U.S.C. 20501(a). Sec. 11 of the NVRA is codified at 52 U.S.C. 20510(a).

<sup>9</sup> Codified at 52 U.S.C. 21111.

<sup>10</sup> Codified at 52 U.S.C. 20701 – 20706.

<sup>11</sup> Emphasis in source.

That quoted passage of the letter contained a footnote that asserts state privacy laws cannot prevent states from providing the requested information to DOJ:

In charging the Attorney General with enforcement of the voter registration list requirements in the HAVA and in the NVRA, Congress plainly intended that Justice Department be able to conduct an independent review of each state's list. Any statewide prohibitions are clearly preempted by federal law.

After receiving this letter, the division agreed to DOJ's request. On December 19, 2025, Lieutenant Governor Dahlstrom sent a letter to the DOJ stating that AS 15.07.195(c)(1)—the confidentiality statute described at the very beginning of this memorandum—authorized the division to disclose Alaska's entire VRL:

Per your written request dated August 14, 2025, the State of Alaska agrees to provide the Department of Justice a complete list of eligible, registered voters, including dates of birth, residential addresses, and driver's license numbers or the last four digits of social security numbers, in accordance with the attached memorandum of understanding, entered at the request of the Department of Justice, and AS 15.07.195(c)(1). This statute allows the Division of Elections to share voters' confidential information with a federal government agency, such as the Department of Justice, provided it uses 'the information only for governmental purposes authorized under law.'

As stated in the memorandum of understanding, the Department of Justice will use Alaska's voter list to test, analyze, and assess the State's compliance with federal laws, including the [NVRA] and [HAVA]. The Department of Justice and any other recipients of the voter list will comply with the Privacy Act of 1974. Alaska will continue to comply with all state and federal laws while implementing this memorandum of understanding.

The MOU largely summarized the legal arguments recounted above. It asserted that the DOJ is entitled to Alaska's complete voter registration list under the NVRA, HAVA, and the CRA. The MOU also stated that the DOJ will analyze Alaska's voter list for irregularities and notify the state of its findings:

The Justice Department is requesting your state's VRL to test, analyze, and assess states' VRLs for proper list maintenance and compliance with federal law. In the event the Justice Department's analysis of a VRL results in list maintenance issues, insufficiency, inadequacy, anomalies, or concerns, the Justice Department will notify your state's point of contact of the issues to assist your state with curing.

The self-declared purpose of the MOU was "to establish the parties' understanding as to the security protections for data transfer and data access by the" DOJ of the data contained in Alaska's VRL. To that end, the MOU contains a number of provisions relating to data access and security.

With that background, we can turn to your first question: whether state law protects the VRL from being disclosed to the DOJ.

### **Legal Analysis under the NVRA, HAVA, and the CRA**

The DOJ's request for state voter data is unprecedented. When the division agreed in December 2025 to give Alaska's VRL to the DOJ, there was no caselaw interpreting the NVRA, HAVA, or the CRA in a manner that supported DOJ's demand to access the data. But neither did any caselaw exist that refuted the DOJ's position. Instead, DOJ's demand for voter information relied upon a novel interpretation of the text of those three federal laws.

Multiple states refused DOJ's request, which has resulted in litigation that is now working its way through federal courts across the country. So far, three district courts have substantively ruled on the issue, and all three rejected DOJ's argument that it is entitled to state VRLs.<sup>12</sup>

In California, the DOJ filed a lawsuit against the Secretary of State (Shirley Weber) seeking the state's complete VRL. Just like it did in Alaska, the DOJ there asserted that it was entitled to the unredacted information under the NVRA, HAVA, and the CRA. But the court found that Congress passed those laws to protect the right to vote, not to give the federal government access to confidential information about voters:

The pieces of legislation at issue in this litigation were not passed as an unrestricted means for the Executive to collect highly sensitive information about the American people. It is not for the Executive, or even this Court to authorize the use of civil rights legislation as a tool to forsake the privacy rights of millions of Americans. That power belongs solely to Congress.<sup>13</sup>

The California federal court then engaged in a detailed analysis of all three laws.

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<sup>12</sup> A fourth court, the U.S. District Court for the Middle District of Georgia, dismissed DOJ's case on procedural grounds. *United States v. Raffensperger*, No. 5:25-CV-00548-CAR, 2026 WL 184233 at \*4 (M.D. Ga. Jan. 23, 2026) ("[T]his Court finds it lacks subject matter jurisdiction over this action and dismisses this action without prejudice." (emphasis omitted)).

<sup>13</sup> *United States v. Weber*, No. 2:25-CV-09149-DOC-ADS, 2026 WL 118807, at \*1 (C.D. Cal. Jan. 15, 2026).

The NVRA, the court found, "only permits investigations into states' policies regarding reasonable voter roll maintenance. Nothing in the statute suggests as acceptable the deep level of intrusive digging DOJ is proposing in its request for line-by-line voter roll data. The DOJ makes no persuasive argument for why this large amount of unredacted voter information is necessary to evaluate state policies. Therefore, the DOJ's NVRA claims fail."<sup>14</sup>

The court further found that California's privacy law—which is stronger than Alaska's privacy law—was not preempted by the NVRA:

Even if disclosure of records was required, California's privacy laws would not be preempted. California law requires that 'the California driver's license number, the California identification card number, the social security number, and any other unique identifier used by the State of California for purposes of voter identification . . . , are confidential and shall not be disclosed to any person.' . . .

The NVRA and California's privacy protections can coexist because the latter does not obstruct the former. Nothing in the NVRA prevents redaction of sensitive voter information as California law requires. Furthermore, courts have routinely allowed for the redaction of sensitive voter information under the NVRA.<sup>15</sup>

Thus, the court ruled, the NVRA did not entitle the DOJ to access to California's VRL.

The court similarly rejected DOJ's claims under HAVA. It first noted that HAVA does not contain any language that requires states to disclose data.<sup>16</sup> While it is true that the Attorney General has authority to enforce HAVA, she cannot use that authority to go on "fishing expeditions" for violations of HAVA. Yet that is exactly what DOJ attempted to do, according to the court. DOJ "simply fail[ed] to allege any violation of HAVA. Even the federal government is not permitted to sue first, obtain discovery, and finalize its allegations later. This appears to be a telltale 'fishing expedition.' District courts do not 'condone the use of discovery to engage in fishing expeditions' when the Plaintiff has no

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<sup>14</sup> *Id.* at \*13.

<sup>15</sup> *Id.* at \*13–14 (cleaned up).

<sup>16</sup> *Id.* at \*15 ("Without a statutory provision allowing for disclosure or inspection authority, a government agency—like the DOJ—cannot claim to have that remedy tacked on to the text of the statute. . . . HAVA simply contains no such provision. This ends the inquiry.").

basis other than 'gross speculation' to support their claims."<sup>17</sup> The court, accordingly, found that HAVA—like the NVRA—does not preempt California's privacy law.<sup>18</sup>

Turning to the DOJ's CRA claim, the court found that the historical purpose of Title III of the CRA was to detect racial discrimination in voting. In contrast, DOJ claimed the purpose behind its CRA request was "voter roll maintenance enforcement and compliance."<sup>19</sup> The court rejected that argument, noting that the CRA was enacted 33 years before the NVRA, and uniform, centralized voter lists "were not even required until the passage of HAVA in 2002."<sup>20</sup> Consequently, DOJ's stated purpose was outside the scope of what Congress intended the CRA to be used for. (Furthermore, even if it was in the scope, the DOJ did not justify that it was entitled to an unredacted VRL, because the relevant part of the CRA "was meant to provide the DOJ access to 'public records which ought ordinarily to be open to legitimate reasonable inspection.' [It] was not conceived by Congress to provide access to 'confidential, private papers and effects.'"<sup>21</sup>)

In addition to rejecting the DOJ's claims under the NVRA, HAVA, and the CRA, the district court found that DOJ violated the federal Privacy Act when it requested California's VRL. Congress passed the Privacy Act "in 1974 amidst concerns over the Executive accumulating and centralizing Americans' personal information . . ."<sup>22</sup> Congress was specifically concerned that "the increasing use of computers and sophisticated information technology . . . has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information."<sup>23</sup> The Privacy Act, among other safeguards, prohibits federal agencies from maintaining "a system of records" that "describ[es] how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to

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<sup>17</sup> *Id.* at \*15. (quotation and citation omitted).

<sup>18</sup> *Id.* at \*17 ("Even if California had been alleged to violate HAVA and even if it was required to disclose its voter registration list, there is nothing in HAVA that would require California to produce an unredacted copy of this list. California law mandates that any such voter registration list be properly redacted and indeed prohibits the production of an unredacted voter list. HAVA contains no disclosure provision.").

<sup>19</sup> *Id.* at \*9.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at \*17.

<sup>23</sup> Pub. L. 93-579, sec. 2(a)(2), codified as a note to 5 U.S.C. 552a.

and within the scope of an authorized law enforcement activity . . ."24 The district court held that this prohibition applies to the voter records that DOJ requested.

The Privacy Act bars DOJ's request for California's unredacted voter roll because fulfillment of that request would include information regarding previous election participation and party affiliation. And voter registration, participation in elections, as well as party affiliation are all types of political expression protected by the First Amendment. The Privacy Act prevents federal agencies from collecting records regarding Americans' First Amendment activities. Further, none of the exceptions that would allow for agencies to collect information falling under the First Amendment apply in the present case.<sup>25</sup>

Furthermore, the court found that even if the DOJ was generally authorized to request California's VRL under the Privacy Act, it would still be barred from doing so in this case because it had not satisfied the requirement—found in 5 U.S.C. 552a(e)(4)—that federal agencies provide public notice and an opportunity for public comment before seeking that type of data:

The Privacy Act requires that [public notice] be published in the Federal Register before 'establishing or revising' a 'system of records.' If millions of Americans' private information is to be collected by the federal government, they deserve the ability to comment and voice their concerns before this collection occurs. The Privacy Act's public notice and comment structure is an essential component of the Act and an essential piece of American democracy. Americans deserve to know the nature, scope, and routine uses of the records before they are collected by the federal government . . .<sup>26</sup>

Consequently, the Privacy Act prohibited DOJ from accessing California's VRL:

The Court is concerned that the very issues that animated Congress to pass the Privacy Act—threats to American democracy amidst erosion of public trust regarding the Executive's use of sensitive data—will play out again if the DOJ is given license to ignore the guardrails created by Congress in the Privacy Act. Congress passed the Privacy Act to prevent the creation of 'formal or de facto national data bank' or 'centralized Federal information systems' because of the risks posed to the privacy of individual Americans. Congress wanted to prevent 'interagency computer

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<sup>24</sup> 5 U.S.C. 552a(e)(7).

<sup>25</sup> *United States v. Weber*, at \*17 (citations omitted).

<sup>26</sup> *Id.* at \*18 (cleaned up).

data banks' so it made it 'legally impossible for the Federal Government in the future to put together anything resembling a '1984' personal dossier on a citizen,' and to ensure 'proper regard for individual privacy, the confidentiality of data, and the security of the system.' Now, the Executive stands at the precipice of making Congress' fears come to life. But the Privacy Act remains a protection for the American people. Because the DOJ has not fulfilled its requirements under the Privacy Act, it cannot collect the sensitive, unredacted voting records of millions of Californians.<sup>27</sup>

In addition to finding that DOJ's request for data was improper under federal law, the court found that representations made by DOJ outside of the litigation painted "a starkly different picture" that called into question DOJ's in-court representations.<sup>28</sup> The DOJ, according to the court, "obfuscate[d] its true motives in the present matter."<sup>29</sup>

Having rejected all three bases underlying the DOJ's request—and finding that the request violated the Privacy Act—the court held that DOJ was not entitled to California's unredacted VRL.

A couple weeks later, on February 5, the U.S. District Court for the District of Oregon issued a similar ruling. In *United States v. State of Oregon*, the DOJ once more sued a secretary of state seeking access to his state's unredacted VRL.<sup>30</sup> As in California and Alaska, the DOJ raised claims under the NVRA, HAVA, and the CRA.

The Oregon court, like the California court, ruled against the DOJ on all three claims. To very briefly summarize the court's opinion, it found that (1) nothing in the NVRA requires the disclosure of sensitive personal information;<sup>31</sup> (2) the DOJ failed to identify any provision of HAVA that Oregon violated when it failed to produce an unredacted list;<sup>32</sup> and (3) that the CRA does not require Oregon to disclose "Sensitive Voter Data," and that the DOJ failed to "state a claim that Oregon violated [the CRA] by failing to

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at \*10 ("Representations by the DOJ itself show that their requests to states for voter roll data go beyond their purported compliance check with the NVRA and into the territory of comprehensive data collection.").

<sup>29</sup> *Id.* at \*12.

<sup>30</sup> No. 6:25-CV-01666-MTK, 2026 WL 318402 (D. Or. Feb. 5, 2026).

<sup>31</sup> *Id.* at \*6.

<sup>32</sup> *Id.* at \*7.

produce an unredacted copy of its voter registration list."<sup>33</sup> Having found that DOJ could not access the voter data under the NVRA, HAVA, or the CRA, the Oregon court did not reach the Privacy Act question.

However, just like the California court, this federal district court was troubled by statements DOJ made outside the litigation.<sup>34</sup> The Oregon court, in fact, was so troubled by DOJ's conduct that it held the presumption of regularity (a legal doctrine under which courts presume public employees lawfully discharge their duties) no longer applied to the DOJ.<sup>35</sup> Ultimately, the court held that the DOJ was not entitled to an unredacted state voter list.

Most recently, the U.S. District Court for the Western District of Michigan came to the same conclusion and ruled that neither the NVRA, HAVA, nor the CRA authorize the DOJ to access confidential state voter information.<sup>36</sup> This decision, however, had a different reason for rejecting DOJ's claim under the NVRA. Rather than finding an expectation of privacy in that federal law, the court looked to the text of 52 U.S.C. 20507(i)(1). That statute (which is quoted in full near the beginning of this memorandum) declares that states "shall make available for public inspection . . . *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 . . ." (emphasis added). The Michigan court focused on the italicized language and held that a voter registration file—which includes confidential personal data—is not a "record

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<sup>33</sup> *Id.* at \*12.

<sup>34</sup> *Id.* at \*13 ("Lastly, [DOJ's] words and actions outside of the four corners of its Complaint in this case, including statements that it intends to create a nationwide database of confidential voter information and use it in unprecedented ways, including immigration enforcement efforts, is chilling. The possibility that Oregon's voter registration list could be used to further these efforts in the absence of congressional action, may very well lead to an erosion of voting rights and voter participation.").

<sup>35</sup> *Id.* at \*11 ("Plaintiff's conduct and written demands on states for disclosure of their highly sensitive voter information should not be ignored. . . . The presumption of regularity that has been previously extended to Plaintiff that it could be taken at its word—with little doubt about its intentions and stated purposes—no longer holds. When Plaintiff, in this case, conveys assurances that any private and sensitive data will remain private and used only for a declared and limited purpose, it must be thoroughly scrutinized and squared with its open and public statements to the contrary.").

<sup>36</sup> *United States v. Benson*, No. 1:25-CV-1148, 2026 WL 362789 (W.D. Mich. Feb. 10, 2026).

concerning the implementation" of a program to ensure "the accuracy and currency of official lists of eligible voters:"

In sum, a natural reading of § 20507(i) suggests that it requires states to disclose information regarding the process by which they maintain their voter registration list but not the list itself.<sup>37</sup>

And so the Michigan court became the third federal court to reject DOJ's argument under the NVRA, although it ruled on a different basis than the other two.

On the other two arguments (HAVA and the CRA), the Michigan court reached the same conclusion as the California and Oregon courts and ruled against the DOJ. (The Michigan court did not conduct an analysis under the Privacy Act.) For the sake avoiding repetition, I will not summarize its analysis under those claims, but I encourage you to review the Michigan court's opinion because I believe that out of the three judicial opinions so far, it most clearly frames and analyzes the issues.

With that summary of the current state of litigation, we can turn to your question. Does state law protect Alaska confidential voter data—contained in the state's VRL—from being disclosed to the DOJ?

AS 15.07.195(c)(1) only permits the division to share confidential voter data with federal agencies when two conditions are met: (1) the disclosure must be "in compliance with federal law," and (2) the receiving agency must "use the information only for governmental purposes authorized under law." When the Division of Elections agreed to provide Alaska's VRL to the DOJ in December, no court had ruled that DOJ was barred from obtaining the confidential information. But the DOJ has since filed lawsuits against the 24 states that rejected its records requests.<sup>38</sup> At this point, every federal court that has issued a substantive ruling has rejected DOJ's claims. No federal court has ruled in favor of the DOJ. Consequently, it appears that judges are not finding DOJ's interpretation of federal law persuasive. If those laws do not authorize disclosure, then providing the state's VRL to DOJ was not "in compliance with" the NVRA, HAVA, or the CRA, and the first requirement of AS 15.07.195(c)(1) was not met.

Similarly, as detailed above, some federal courts are finding that the DOJ is not seeking confidential VRLs "for governmental purposes authorized under law," but is instead

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<sup>37</sup> *Id.* at \*6.

<sup>38</sup> Those states are Arizona, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin.

"obfuscate[ing] its true motives"<sup>39</sup> and "engag[ing] in conduct raising suspicion about the purposes for which it seeks statewide unredacted voter registration lists."<sup>40</sup> If those findings are found to be true and the DOJ is not using Alaska's VRL for "governmental purposes authorized under law," then the second requirement of AS 15.07.195(c)(1) was also not met.

However, please keep in mind that none of the three judicial opinions discussed above are binding in Alaska, and the law on this topic is sure to develop further as more decisions are published and the ongoing cases are appealed. If you would like to monitor developments in these cases, the National Conference of State Legislatures maintains an active webpage on the topic.<sup>41</sup>

### **DOJ assistance in "curing" the state's VRL**

You noted that the MOU states that DOJ will "test, analyze, and assess" Alaska's VRL "for proper list maintenance and compliance with federal law. In the event the Justice Department's analysis of [the] VRL results in list maintenance issues, insufficiency, inadequacy, anomalies, or concerns, the Justice Department will notify [the Lieutenant Governor] of the issues to assist your state with curing." You asked whether any law allows the DOJ to direct the state to remove voters from the permanent register. I am not aware of any federal law that allows the DOJ to force the state to remove voters from its VRL, but federal law does provide certain guardrails on when and how a state may remove a voter from its voter registration list.

For example, the NVRA requires that a state must complete any program "to systematically remove the names of ineligible voters from the official lists of eligible voters" no later than 90 days before a primary or general election for federal office.<sup>42</sup> Under that same law, Alaska cannot remove a person from its VRL on the basis of the person moving out of state unless the person either (1) confirms in writing that they have moved out state; or (2) fails to respond to a notice sent with a postage prepaid and pre-addressed return card containing certain information AND fails to vote or appear to vote during any election during a period of time that includes the next two general elections for federal office that occur after the date of notice.<sup>43</sup> (In plain English, that

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<sup>39</sup> *United States v. Weber*, at \*12.

<sup>40</sup> *United States v. State of Oregon*, at \*11.

<sup>41</sup> Available at <https://www.ncsl.org/elections-and-campaigns/federal-requests-for-statewide-voter-lists>.

<sup>42</sup> 52 U.S.C. 20507(c)(2).

<sup>43</sup> 52 U.S.C. 20507(d)(1). This federal requirement is codified in the Alaska Statutes at AS 15.07.130(b), which cites to 42 U.S.C. 1973gg-6, but that federal law was editorially reclassified as 52 U.S.C. 20507.

means it would take over two years to remove a voter, unless the voter responds to the notice and confirms they moved out of state.)

Similarly, when Congress enacted HAVA and required states to adopt a computerized list, it required states to follow those NVRA requirements and imposed additional requirements.<sup>44</sup> An overarching requirement of list maintenance under HAVA is that the state must "cure" its voter roll in a manner that ensures that "only voters who are not registered or who are not eligible to vote are removed . . . ."<sup>45</sup>

I am not aware of any federal law that would allow the DOJ to command that the Division of Elections remove certain individual voters. Nor am I aware of any federal law that would permit the state (or the DOJ) to disregard the laws discussed above.

#### **Severability in the MOU**

You also noted that the severability clause of the MOU states that nothing in the "MOU is intended to conflict with current law or regulation or the directives of Department, or the your state [sic]. If a term of this MOU is inconsistent with such authority, then that term shall be invalid but, to the extent allowable, the remaining terms and conditions of this MOU shall remain in full force and effect." You asked what information the division should provide to DOJ based upon this clause. As discussed above, courts have rejected DOJ's assertion that the NVRA, HAVA, and the CRA override state confidentiality laws. Both the California and the Oregon courts rejected DOJ's argument that federal law preempted those states' privacy statutes. With the three federal court opinions that are now available, it appears that the division unjustifiably relied on AS 15.07.195(c)(1) when it gave confidential information to the DOJ. But I do not know what effect—if any—the MOU's severability clause will have, as DOJ already has the information it sought.

#### **Confidentiality of the MOU**

Finally, you noted that the MOU has a confidentiality clause. That clause states that to "the extent allowed by applicable law, this MOU, its contents, and the drafts and communications leading up to the execution of this MOU are deemed by the parties as 'confidential.' Any disclosures therefore could be made, if at all, pursuant to applicable laws or court orders requiring such disclosures." Although it was placed in quotes, the term "confidential" is not defined in the MOU—nor does the MOU cite to a federal law requiring the described items to be made confidential. You asked whether this requirement of confidentiality extends to the legislature or the general public.

As noted above, communications between the DOJ and the state have already been made public through news articles. Additionally, the division of elections must comply with the

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<sup>44</sup> Sec. 303 of HAVA, enacted at 52 U.S.C. 21083.

<sup>45</sup> 52 U.S.C. 21083(a)(2)(B)(ii).

Alaska Public Records Act (AS 40.25.100 - 40.25.295). That state law generally requires that "the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours."<sup>46</sup> Communications between the division and DOJ appear to be "public records" under that law.<sup>47</sup> The Alaska Public Records Act contains an exception for "records required to be kept confidential by a federal law or regulation or by state law," but (as noted above) the MOU does not cite any federal law that recognizes these communications as confidential.<sup>48</sup> To the contrary, the NVRA probably requires these communications be made public. That law requires that Alaska "maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, 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 . . . ."<sup>49</sup>

Therefore, based on the information I have available, I do not believe that any law makes the communications between the state and the DOJ confidential.<sup>50</sup> You may wish to ask the division and the Department of Law whether either of those entities believes that these communications fall under an exception to the Public Records Act.

Please call me if you have further questions.

ASD:boo  
26-067.boo

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<sup>46</sup> AS 40.25.110(a).

<sup>47</sup> AS 40.25.220(3) defines the term "public records" to mean "books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics, that are developed or received by a public agency . . . and that are preserved for their informational value or as evidence of the organization or operation of the public agency . . . ." The division is a "public agency" under AS 40.25.220(2).

<sup>48</sup> AS 40.25.120(a)(4).

<sup>49</sup> 52 U.S.C. 20507(i)(1).

<sup>50</sup> Of course, the personal voter information that the division transmitted to DOJ remains confidential under AS 15.07.195.