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§ 10.05 National Voter Registration Act (42 U.S.C. § 1973gg-10)

Congress enacted the National Voter Registration Act (NVRA) in 1993 to create national standards by which voters could register to vote in order to increase the number of participants in elections while also adopting measures to “protect the integrity of the electoral process[] and to ensure that accurate and current voter registration rolls are maintained.”¹²⁰ Among other things, the NVRA requires states to allow individuals to register to vote when they apply for or renew a driver’s license¹²¹ and registration by mail.¹²² While the statute only applies to federal elections, each state uses a unitary voter registration system, so the statute effectively governs all voter registration.

In addition to the prescribed registration procedures, the NVRA added new criminal provisions in [42 U.S.C. § 1973gg-10](#) related to intimidation of votes and conduct that would “deprive or defraud the residents of a State of a fair and impartially conducted election process.” One of the concerns expressed in Congress regarding the expanded methods of registering to vote was the potential for fraud, although it is not clear to what degree voters, acting alone, engage in any illegal activity.¹²³ In addition to the new criminal provisions, the statute also allowed the states to adopt reasonable programs designed to remove the names of those considered to be ineligible to vote.¹²⁴

The criminal provision prohibits two types of acts that undermine the integrity of an election: intimidation, threats, or coercion related to registering to vote or voting (§ 1973gg-10(1)), and fraud in an election as a result of the submission of false, fictitious, or fraudulent voter registration materials or ballots (§ 1973gg-10(2)). The statute authorizes a prison term up to five years for each violation. In order to prove a violation under the election fraud prong, the government must establish the following elements: (1) a knowing and willful, (2) (a) procurement or submission of voter registration applications, or (b) procurement, casting, or tabulation of ballots, (3) that is known by the person to be materially false, fictitious, or fraudulent under the laws of the state in which the election is held.

The statute contains two intent elements. The first, “knowingly and willfully,” applies to the voter registration materials or ballots as being improper. The second intent is knowledge that these items are “false, fictitious, or fraudulent” under state law. The reference to particular state laws appears to require proof that the defendant be aware of the relevant state laws related to voter registration or ballots. Proof that the documents or ballots were somehow incorrect without linking that to a particular state law requirement would not be sufficient to establish this second intent. A knowledge requirement does not require proof of an intent to violate a known legal duty, which is

¹²⁰ *Pub. L. No. 103-31, 107 Stat. 77* (1993).

¹²¹ [42 U.S.C. § 1973gg-3](#) provides: “Each State motor vehicle driver’s license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application.”

¹²² [42 U.S.C. § 1973gg-4](#) provides: “Each State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission pursuant to section 1973gg-7(a)(2) of this title for the registration of voters in elections for Federal office.”

¹²³ See Jocelyn Friedrichs Benson, *Voter Fraud or Voter Defrauded? Highlighting an Inconsistent Consideration of Election Fraud*, 44 Harv. C.R.-C.L. L. Rev. 1, 10–11 (2009) (“But the new policy also engendered fears that easing registration requirements might encourage voter-initiated fraud. These fears were not driven by a response to data. Scholars and election administrators cautioned Congress that incidents of voters acting fraudulently were ‘extremely rare,’ and noted that the vast majority of election fraud incidents were committed by election officials, candidates, and campaigns, rather than voters themselves.”).

¹²⁴ [42 U.S.C. § 1973gg-6\(a\)\(4\)](#). A subsequent law, the Help America Vote Act, [Pub. L. No. 107-252, 116 Stat. 1714](#) (2002) (codified at [42 U.S.C. § 15483](#)), also has provisions aimed at preventing fraudulent votes. However, the statute does not contain any criminal provisions.

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sometimes applied when a statute requires proof of willfulness, but by specifically referencing state law, Congress clearly intended to require the government at least prove the defendant's subjective appreciation that the registration material or ballots did not comply with the relevant state election law. While intent can be shown by circumstantial evidence, this more particularized intent requirement may allow for an ignorance defense, i.e., the defendant was not cognizant of state law and therefore did not have the requisite intent to commit the crime.

While § 1973gg-10(2) is similar to the false registration prong of § 1973i(c), the latter provision is limited to false statements regarding the registrant's name, address, and period of residence in the district. The NRVA prohibition covers *any* false statement on registration materials, and also covers a fraudulent statement, which means that even if the statement is not technically false, it may be sufficiently misleading to constitute a fraud.

In addition, § 1973gg-10(2) covers false or fraudulent ballots, which may allow prosecution for submitting a ballot that the person obtained by fraud because the ballot would not reflect the true intentions of the actual voter. This provision is broader than § 1973i(e)'s prohibition on voting more than once because the government does not have to prove that the person voted a second time, only that a fraudulent ballot was submitted. The statute's emphasis on protecting a "fair and impartially conducted election process" supports a broad reading of what constitutes a fraudulent ballot, so that schemes to obtain ballots by deceiving voters about who to vote for or tricking them into turning over ballots to allow another to vote them would violate § 1973gg-10(2).

There has only been one reported decision on a prosecution for violating § 1973gg-10. In *United States v. Prude*, the defendant had been convicted of forgery, a felony which deprived her of the right to vote and she had not had her civil rights restored. Although her probation officer informed her that she was not eligible to vote, and she signed a form indicating that fact, she nevertheless registered and voted by absentee ballot. The Seventh Circuit did not review the statute in any detail, and the issues in the case concern the admission of evidence to establish her knowledge of the prohibition on voting as a felon who did not have her civil rights restored, the procedures for withdrawing a previously cast ballot, and the proper jury instructions.¹²⁵ The case came about as a result of a federal investigation of voting fraud in Milwaukee, Wisconsin, and the defendant was the only person charged based on casting just a single improper ballot.¹²⁶

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¹²⁵ [489 F.3d 873 \(7th Cir. 2007\)](#).

¹²⁶ [489 F.3d at 876](#). The U.S. Attorney's Office for the Eastern District of Wisconsin brought approximately fourteen voter fraud cases after the 2004 election, and five resulted in convictions. Those cases represented approximately 10 percent of the voter fraud cases brought from 2002 through 2006. The defendant cast her first ballot in the election. See Bill Glauber, *Her First Vote Put Her in Prison*, Milwaukee Journal-Sentinel (May 21, 2007).