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MEMORANDUM

To: Nevada County Clerks & Registrars
From: Mark Wlaschin
Date: August 27, 2024
Subject: Memo 2024-026 – Personal Knowledge

The following guidance is provided to clarify the "personal knowledge" required to challenge to a registered voter pursuant to NRS 293.535 and NRS 293.547.

I. Written Challenge Statutes

Nevada law permits two forms of written challenge to voter eligibility, one under NRS 293.535, and the other under NRS 293.547. Both types of challenge require the challenger to attest that they have personal knowledge of the facts relating to voter eligibility supporting the challenge.

Under NRS 293.535, a challenger may file an affidavit stating either that the registrant (1) is not a citizen of the United States, or (2) has moved outside the boundaries of the county where they are registered and established a new residence with the intention of remaining in there indefinitely and abandoning their previous residence. In either case, the challenger must state that they have "personal knowledge" of the facts alleged.

To bring a valid written challenge under NRS 293.547, a registered voter must be registered to vote in the same precinct as the person whose right to vote is challenged and base the challenge on their personal knowledge.

The Secretary has issued regulations interpreting and implementing NRS 293.547. NAC 293.416 defines "personal knowledge" as used in NRS 293.547 to mean "firsthand knowledge through experience or observation of the facts upon each ground that the challenge is based." NAC 293.416(3). This is consistent with the general understanding of the term. "Personal knowledge" is most commonly understood to be "[k]nowledge gained through firsthand observation or experience," distinguishable from secondhand knowledge that is, for example, "based on what someone else has said." See Personal Knowledge, BLACK LAW'S DICTIONARY (12th ed. 2024).

II. Legislative History

Further clarity on "personal knowledge" can be found in the legislative history of prior amendments to NRS 293.547. First, the legislature amended NRS 293.547 in 1991 through Assembly Bill 652 (AB 652) to require that a challenge under the statute must be brought either by a registered voter of the same precinct or district as the challenged voter or on the basis of personal knowledge. See AB 652 § 29. Comments considered by the Legislative Counsel Bureau (LCB) suggest the amendment was intended to root out voter challenges based on review of databases like Department of Motor Vehicles records. Ex. C at 7 to Minutes of the Nev. Legis. Assemb. Comm. on Legis. Functions & Elections (May 14, 1991) . This commentary notes that challenges were increasingly filed based on comparison of DMV addresses against voter registration records, "becom[ing] nothing short of intimidation," and that the requirement of "personal knowledge" was meant to preclude challenges based on such comparisons. Id. LCB described the then-proposed amendment as "restor[ing] the original intent of challenging a voter based upon personal knowledge that the voter is not qualified to vote." Id.

Then, in 2007, the legislature amended NRS 293.547 through Assembly Bill 569 (AB 569) to require that challenges under the statute must both be brought by a registered voter of the same precinct as the challenged voter and be made on the basis of personal knowledge. See AB 569 § 54. The legislative history indicates that the amendment was intended to rectify the fact that as then codified NRS 293.547 did not "require the challenger to have any personal or first-hand knowledge of why he or she is challenging a particular voter." Minutes of the Assemb. Comm. on Elections, Procedures, Ethics, & Constitutional Amendments at 3–4 (Apr. 3, 2007) (statement of Larry Lomax, Registrar of Voters, Clark County). The minutes show the amendment was written to root out "blind, scattered challenges" and requires firsthand knowledge, knowledge "a person who, through his own experience, knows . . . to be true[,]" for all challenges under the statute. Id. at 4. The amendment, therefore, proposed adding "a requirement that a person actually have knowledge of the person being challenged or the reason the challenge is being made." Id.

While "personal knowledge" is not explicitly defined under NRS 293.535 or implementing regulations, the Secretary views the term to mean the same thing in both statutes. See, e.g. Clark County Office of the Coroner/Medical Examiner v. Las Vegas Review-Journal, 136 Nev. 44, 61, 458 P.3d 1048, 1061 (2020) (citing Savage v. Pierson, 123 Nev. 86, 94, 157 P.3d 697, 702 (2007) ("[W]hen the same word is used in different statutes that are similar with respect to purpose and content, the word will be used in the same sense, unless the statutes' context indicates otherwise[.]")). There is no reason to think that the Legislature intended "personal knowledge" to differ across these two statutes, which are similar in content and context.

III. The National Voter Registration Act of 1993 (NVRA)

The NVRA requires, among other things, that a state "conduct a general program that makes a reasonable effort to remove the names" of voters who may be ineligible based on a change of residence. 52 U.S.C. § 20507(a)(4). The general program must be "uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965." 52 U.S.C. § 20507(b)(1). One way to

satisfy the general program requirement is to rely on change-of-address information supplied by the U.S. Postal Service (NCOA Data). 52 U.S.C. § 20507(c)(1).

A state must complete its general program to remove voters who may have changed residence "not later than 90 days prior to the date of a" federal election. 52 U.S.C. § 20507(c)(2). This 90-day blackout period does not apply to removal actions based on individualized information. See Arcia v. Fla. Sec'y of State, 772 F.3d 1335, 1348 (11th Cir. 2014). The Secretary's opinion is that challenges under NRS 293.535 or 293.547 that are based on NCOA data, not "personal knowledge," are not based on individualized information.

A state cannot use NCOA Data to inactivate or remove voters during the 90 days before a federal election through its general removal program, and challenges based on NCOA Data made during the 90 days before a federal election would open an untenable loophole to the NVRA's 90-day blackout period.

IV. Conclusion

Recently, individuals have submitted challenges based on their "personal knowledge" obtained from their review of data from databases or compilations of information. It is the opinion of the Secretary of State that such challenges do not meet the requirement of "personal knowledge" of facts supporting the challenge required by NRS 293.535 and 293.547. As the legislative history from 1991, noted above, confirms, review of databases and information compilations do not provide "firsthand knowledge through experience or observation" of the challenged individual's eligibility status. County clerks who receive these challenges should reject them and instruct challengers that personal knowledge gained through firsthand experience or observation of the facts relating to a voter's eligibility is necessary to file a valid challenge under either statute. In the absence of such firsthand, personal knowledge showing a voter's eligibility, these challenges should be rejected.

It is worth noting that, even where a challenge is properly raised under NRS 293.535, clerks are still required to follow the notice and return postcard process required by the National Voter Registration Act and NRS 293.530. 52 USC § 20507(d); see also NRS 293.535(2) and Memo 2024-006.

If you have any questions regarding this guidance, please contact the Office of the Secretary of State at NVElect@sos.nv.gov.

Respectfully,

Francisco V. Aguilar
Secretary of State

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