

會台字第9433號等聲請案 專家諮詢意見

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選舉權的住民資格限制

- 選舉權的群體性、集合性
- 真實居住（bona fide residence）v. 一定期間之居住（durational residence）
- 選舉法上真實居住的概念與認定，應該與時俱進，而非全盤揚棄。

Am I eligible to vote?

Each state has slightly different rules for who is eligible to vote. Generally, you must be:



A citizen of the United States



A resident of the community where you would like to vote (sometimes for a minimum amount of time)



At least 18 years old (in some communities, people under the age of 18 can register and vote in certain local or primary elections)

In some states, but not all, individuals may be disqualified from voting due to a felony conviction, judicial ruling, or other procedure. Contact your state or local election officials if you have questions about your eligibility to vote. To find your local election officials, you can go to www.vote.gov.

選舉行政與虛偽選民登記的可刑罰性

1.12-戶政管理及便民服務案件 Offense and Service Cases of Population Administration

單位：件；人 Unit：Cases, Persons

年(月)別	戶政管理案件數 Service Cases of Population Administration						
	合計	虛報遷入(出)登記	無戶籍人口	重複戶籍	未接受戶籍校正	發現不法取得、冒用、變造國民身分證 Illegal Obtained, Fake or Mutilation of Identity Card	受理公文件數
Year (Month)	Total	False Register of Migration	Resident Not Registered	Register Reduplicated	Not Correct Register		The Amount of Handled Documents
八十三年 1994	7,622	2,871	27	15	4,709	...	...
八十四年 1995	5,689	2,203	41	22	3,423	...	...
八十五年 1996	1,916	1,079	20	8	809	...	...
八十六年 1997	1,472	570	23	105	774	...	...
八十七年 1998	11,471	4,311	27	77	7,056	...	...
八十八年 1999	2,872	673	14	140	2,045	...	...
八十九年 2000	1,246	496	10	9	731	...	...
九十年 2001	1,386	926	18	11	431	...	...
九十一年 2002	2,979	2,779	4	16	180	...	...
九十二年 2003	1,394	1,280	12	9	93	...	...
九十三年 2004	812	747	9	7	49	...	...
九十四年 2005	1,057	962	8	13	74	...	...
九十五年 2006	1,444	1,324	60	7	53	...	...
九十六年 2007	1,452	1,381	1	29	41	...	...
九十七年 2008	817	721	4	77	15	...	...
九十八年 2009	709	589	12	106	2	...	...
九十九年 2010	488	427	12	46	3	...	...
一〇〇年 2011	883	327	6	49	1	...	...
一〇一年 2012	249	213	12	23	1	...	...
一〇二年 2013	285	265	-	17	3	...	...
一〇三年 2014	651	607	9	30	5	...	...
一〇四年 2015	1,348,564	582	5	27	8	71	1,347,871
一〇五年 2016	1,350,936	542	9	27	1	94	1,350,263
一〇六年 2017	1,265,472	165	6	23	1	56	1,265,221
一〇七年 2018	1,235,451	149	2	30	1	124	1,235,151
一〇八年 2019	1,191,937	144	11	21	-	60	1,191,701
一〇九年 2020	1,158,912	163	5	16	-	75	1,158,653
一一〇年 2021	1,169,382	199	8	20	-	137	1,169,018
一一一年 2022	1,128,985	277	8	26	3	88	1,128,589

- 我國的戶籍登記制度，具有相當於選民登記（voter registration）的功能意義。
- 選民登記，只是落實、貫徹投票權所受資格限制的一種選舉行政程序，所以不會更易投票資格的任何實體法條件。

選舉行政與虛偽選民登記的可刑罰性

Voter Registration Application
Before completing this form, review the General, Application, and State specific instructions.

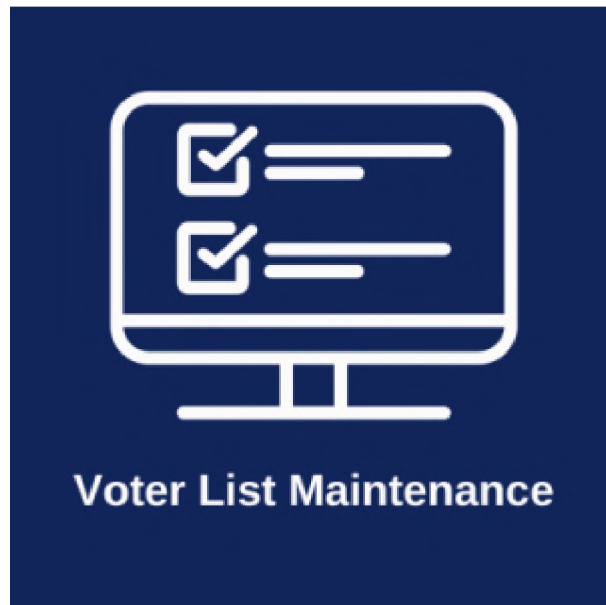
Are you a citizen of the United States of America? Will you be 18 years old on or before election day? If you checked "No" in response to either of these questions, do not complete form. (Please see state-specific instructions for rules regarding eligibility to register prior to age 18.)		This space for office use only.	
1 <input type="checkbox"/> Mr. <input type="checkbox"/> Miss <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms. Last Name		First Name Middle Name(s) <input type="checkbox"/> Jr. <input type="checkbox"/> II <input type="checkbox"/> Sr. <input type="checkbox"/> III <input type="checkbox"/> IV	
2 Home Address		Apt. or Lot #	City/Town State Zip Code
3 Address Where You Get Your Mail If Different From Above		City/Town	State Zip Code
4 Date of Birth Month Day Year	5 Telephone Number (optional)	6 ID Number - (See item 6 in the instructions for your state)	
7 Choice of Party (see item 7 in the instructions for your State)	8 Race or Ethnic Group (see item 8 in the instructions for your State)		
9 I have reviewed my state's instructions and I swear/affirm that: ■ I am a United States citizen ■ I meet the eligibility requirements of my state and subscribe to any oath required. ■ The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States. Please sign full name (or put mark) ▲ Date: / / Month Day Year			

If you are registering to vote for the first time: please refer to the application instructions for information on submitting copies of valid identification documents with this form.

■ 在美國法上，明知並運用不實之住址資訊登記取得選民資格的行為，會被論以選民登記詐欺（voter registration fraud）。

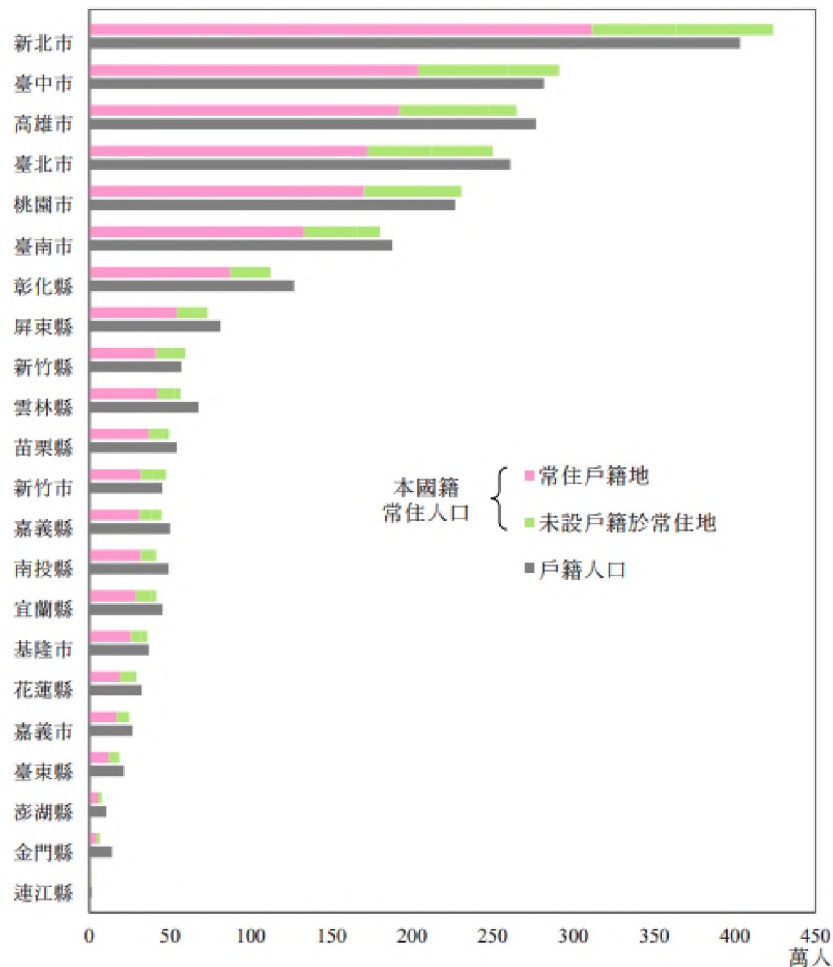
■ 系爭規定二所要處罰的行為人，除了(a)違反選民登記上的真實義務，還(b)實際參與了一個他其實無權參與的選舉程序。

虛遷戶籍投票罪的不可替代性



虛遷戶籍投票罪的平等審查

圖 10 109 年各縣市本國籍常住人口與戶籍人口比較



- 對於《戶籍法》第48條第1項所定申請義務的消極不履行，並無法也不應該被評斷為一種選民登記詐欺。
- 主要非為選舉目的而將戶籍地址登記於非真實居住地的情形，可以不算是選民登記詐欺。
- 系爭規定二未處罰所有[類型C]的行為人，是否構成違憲，還有討論空間。