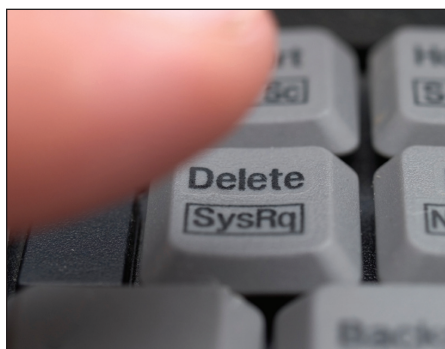


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Maintaining Current and Accurate Voter Lists



Every state is tasked with the duty to maintain current and accurate computerized statewide voter registration rolls, while at the same time ensuring that no eligible voters are wrongfully removed from the rolls.

This report discusses some of the challenges inherent in balancing these two goals, and offers recommendations for implementing best practices.

Overview of State Maintenance Issues

The Help America Vote Act (HAVA) requires statewide centralized voter databases to be maintained in accordance with the list-maintenance provisions of the National Voter Registration Act (NVRA). The NVRA mandates that states must conduct a general program that makes a reasonable effort to remove the names of voters who have become ineligible due to death or a change of address.¹ Additionally, most states remove voters from the rolls upon conviction of a felony, or upon a determination of mental incompetency. In addition to mandating that states maintain voter rolls that are accurate and up-to-date, HAVA requires that the states initiate safeguards to prevent the removal of eligible voters from the rolls. Any state program to protect the integrity of elections through the maintenance of accurate and current rolls must be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

Absence of clear and specific standards for list maintenance

In response to the enactment of the HAVA, the Election Assistance Commission (EAC) issued a report entitled Voluntary Guidance on Implementation of Statewide Voter Registration Lists, which broadly indicates that states are mandated to develop list maintenance procedures that are transparent, non-discriminatory and uniform.² This report, while helpful, does not recommend specific criteria for conducting list maintenance. In this regulatory vacuum, state legislative responses to HAVA's list maintenance provisions have been piecemeal and vague. Like HAVA itself, state regulation lacks clearly drawn specific purge criteria and adequate safeguards against the removal of eligible voters.

The result has been widely variable and poorly implemented voter list maintenance programs across the country that have disenfranchised thousands of eligible voters. In states that permit the removal of voters from the statewide list at the local level, there is also a wide variation between jurisdictions. African-American voters, other minorities, and the young have been particularly and disproportionately impacted by poorly conducted voter registration list purges.

The glaring disparities in list maintenance procedures between states became increasingly apparent just before the 2008 Presidential election, when election advocacy groups filed lawsuits against the secretaries of state in Michigan, Colorado and Missouri for purging voters whose

registration acceptance notices had been returned as undeliverable. In Michigan, the court ruled that this practice violated the NVRA, which provides that a voter whose registration is to be cancelled on the basis of a change of residence must be given notice, and that the registration may not thereafter be cancelled except upon the request of the voter or until two federal elections have passed without any response from the voter. In the Colorado suit, the court ruled that voters purged in violation of the NVRA were to be restored to the rolls. In Missouri, 86,000 voters had been stricken from the rolls as a result of the purge.

Purges based on flawed database matching programs

Many states undertake to remove ineligible voters by matching the statewide voter registration rolls with external databases, such as lists of persons convicted of a felony. However, purges based merely upon computerized database matching to external databases are inherently fallible, as clerical error in data entry alone can be expected to produce a ten percent error rate. Also, the likelihood that individuals in a large database may share the same name and date of birth is surprisingly high.

Reliable studies reported by the Brennan Center have found database matching error rates of between 20 and 32 percent. Errors in the external databases that are used for comparison inevitably cause false matches or failures to match regardless of the matching criteria used. For example, the Social Security

Administration has reported that between January 2004 and September 2005 it had added 23,366 *living* people to its Death Master File.³

When database matching is based on substantial matching criteria, as opposed to exact criteria across several data fields, eligible voters have been and will continue to be disenfranchised. Match criteria that take variations on a name, such as a nickname, into account are even more likely to produce unreliable results. In a 2008 EAC sponsored interim report on the challenges of maintaining state voter roll databases, the National Research Council concluded that matches based on comparison of the first and last names plus the birth date are subject to high rates of error.⁴ The report concluded that matches across more fields, such as the first and last names, date of birth, and the last four digits of the social security number are much more likely to be accurate. The report concluded that it is critical to conduct empirical testing of the procedures used for database matching before implementing the match, but such pre-testing is frequently omitted by states. The report also recommended that states develop exact standards for matching and urged publication of the standards to improve transparency.

Voter purge programs in Florida in 2004 demonstrated how a flawed database match can disenfranchise thousands of eligible voters. The state sought to use a database matching program to purge voters who were ineligible because of felony convictions which included race as a factor. The program compared the

voter registration roll against the state's felony list, which had different race fields. The felony list did not include a category for Hispanics, while the state voter registration list did. Consequently, about 22,000 African American voters were scheduled to be purged from the Florida voter rolls, while only about 60 Hispanic voters were tagged for removal. In this case, strong public reaction convinced the state to discard the flawed purge list.

Interstate voter registration database matching

The existence of statewide computerized voter registration databases, created in response to HAVA, has enabled states to enter into interstate agreements to compare their voter registration databases in order to purge duplicate registrations. This practice has increased the likelihood that eligible voters may be disenfranchised due to database errors caused by data entry, applicant error, or actual illegibility are compounded exponentially when state A compares its list with states B, C, or D. State voter registration databases vary in degree of accuracy, the number and type of data fields collected, and the frequency with which they are updated.

The basis for removal of a voter in the event of a match between interstate databases is that the voter has theoretically moved to another state. When election officials have reason to believe that a voter has changed residences, Section 8 of NVRA requires the state to send a forwardable

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letter to the voter. If the voter does not respond, the state must remove the voter from the registration rolls only after two federal elections have ensued.⁵ When states remove voters merely on the basis of an interstate database match, they not only risk disenfranchising eligible citizens, they violate the NVRA. If interstate database matching is to be used, it should be used only as a tool to identify registrations that require further investigation, not to precipitously strike voters who appear to match a voter registration in another state.

Several states, including Missouri, Iowa, Nebraska, Minnesota, South Dakota, and Kansas have entered into a memorandum of understanding in which they agreed to compare voter registration databases to identify duplicate registrations. The state of Iowa serves as the central repository of the state databases. A voter is considered a match when the exact first, middle, and last names, along with the birth date, are matched. As pointed out in the NCR report above, there is a high error rate when just the name and birth-date are matched without matching with a unique identifier such as the last four digits of the social security number.

A 2007 purge of voter rolls in Louisiana demonstrates how an interstate database match may be used in a manner that risks the disenfranchisement of eligible citizens. Louisiana cross-checked registration information with other states and jurisdictions including San Diego, CA; Colorado; Florida; Georgia; Las Vegas, NV; New York, NY; Tennessee; and Texas. Subsequently, Louisiana

purged nearly 20,000 voters from the rolls. Project Vote contacted Secretary of State Jay Dardenne regarding the purge and was advised that Louisiana processed the matches under a state voter challenge law, La. R.S. 18:193, which provides an expedited procedure intended for the removal of voters who had “deliberately given an incorrect address.” Under that procedure election officials send notice to the address listed on the voter roll and voters must respond within a limited time to defend their registrations or be purged. This process violates the NVRA rules for purging voters on the basis of a change of address. The 20,000 voters were reportedly the first wave of a purge that is expected to continue, according to a spokesman for the secretary of state.

Lack of notice or opportunity to challenge removal

One way to avoid disenfranchising eligible voters due to errors in database matching or other errors is to give advance notice of removal to all affected voters. The NVRA only requires notice of pending removal to those who are to be stricken from the official list due to a change of residence. Thus, states may cancel registrations on the basis of a positive match with state or federal databases for death, felony convictions, or adjudications of incompetence, without giving notice to the voter.

Clearly, the cancellation of a voter’s registration due to a match with another state’s voter registration list calls for the NVRA notice

procedure for removal on the basis of residence change outlined above. For removal on other grounds it is important for states to recognize that federal legislation sets bare minimum standards for the protection of voter rights. States may exceed those standards and give notice to all voters who are to be removed from the official list in order to ensure that eligible voters are not purged.

The Virginia Board of Elections, for example, advises election officials to send a notice of cancellation to voters about to be purged with information on how to challenge the removal and/or restore voting rights.⁶ Washington has passed legislation that calls for quarterly list maintenance on the basis of death or felony convictions. Most states, however, still do not provide notice of cancellation beyond that required by federal law.

Recommendations

Develop specific standards for database matching

State legislatures or rule-making authorities should pass laws or regulations that specify the use of exact, not merely “substantial,” database matching criteria for purposes of purging registrations. Before implementing the standards, states should conduct certification tests to determine if the standards are effective and publish the results.

Suggested specific criteria include a requirement that a positive match must be based on the voter’s first, middle, and last name, birth date, *and* a unique identifier number. Multiple layers of checks should be instituted, such as checking positive matches against other databases, and requiring a manual check of any purge list produced by a computerized database match.

Provide notice and an opportunity to be heard to all voters scheduled to be purged

States should expand notice requirements to include all voters who are to be purged from the rolls for any reason. Notice should be mailed at least 30 days before the intended action. Additionally, such voters should be given an opportunity to respond, in person or by mail, to correct any misinformation or defect within 30 days after the date of the notice.

Increase transparency

States should provide advance notice of their voter list maintenance schedules for all types of voter list purges.

Implement universal voter registration

Universal registration is one solution to the problems that plague states in their efforts to maintain current voter registration rolls while safeguarding against the removal of eligible registrants. Currently, the burden is

placed upon the voter to become and to remain registered, while rules for registering have become increasingly onerous. This is not the case in at least 24 other democratic nations in which voters are automatically registered under varying programs.

Improve portability of registrations

State laws may be enacted allowing registered voters to update their registrations up to and including Election Day under appropriate safeguards. In Florida, for example, a voter who moves from one precinct in the state to any other precinct in the state may update his or her registration and cast a regular ballot at any time up to and including Election Day. The NVRA⁷ and the Voting Rights Act⁸ (42 U.S.C. § 1973aa-1(e)) each provide for minimal registration portability under certain circumstances, but states are not prohibited from enacting broader standards.

Conclusion

There is much that states can do to reconcile their dual obligations to maintain current and accurate voter rolls and to safeguard against the removal of eligible voters. It is hoped that these suggestions may assist states in their efforts to meet those obligations.

Notes

¹ 42 U.S.C. § 1973gg-6(a)(4).

² EAC Voluntary Guidance on Implementation of Statewide Voter Registration Lists, July, 2005, p. 5, http://www.eac.gov/election/docs/statewide_registration_guide-lines_072605.pdf/attachment_download/file last accessed November 18, 2008.

³ Brennan Center for Justice, Voter Purges, Myrna Perez, p. 20, citing: Office of the Inspector General, Social Security Administration, Audit Report 2, p. 2 (Sept. 2006), available at <http://www.ssa.gov/oig/ADOBEPDF/A-06-06-26020.pdf>. Last visited November 19, 2008.

⁴ Committee on State Voter Registration Databases, National Research Council, State Voter Registration Databases: Immediate Actions and Future Improvements, Interim Report, National Academies Press, December 2008, available at http://www.eac.gov/clearinghouse/docs/state-vrd-interim-report.pdf/attachment_download/file.

⁵ 42 U.S.C. § 1973gg-6(d).

⁶ Advancement Project, Virginia Voter Protection Laws in a Nutshell, from the Virginia General Registrar and Electoral Board Manual.

⁷ 42 U.S.C. § 1973gg-6(e).

⁸ 42 U.S.C. § 1973aa-1(e).

For Additional Information

See <http://projectvote.org/voter-rolls.html>

Project Vote's Model Bill on Voter List Maintenance

http://projectvote.org/images/publications/ModelBills/List_Maintenance_Model_Bill.pdf

Project Vote is a national nonpartisan, nonprofit organization that promotes voting in historically underrepresented communities. Project Vote takes a leadership role in nationwide voting rights and election administration issues, working through research, litigation, and advocacy to ensure that our constituencies can register, vote, and cast ballots that count.

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