

*2010 Issues in Election Administration***February 2010**

# Interstate Compacts

In recent years a number of states have decided to compare their voter databases in an effort to cancel out-of-date registrations. Since the Help America Vote Act (HAVA) of 2002 required states to create and maintain electronic statewide databases of all registered voters, an increasing number of states have joined interstate compacts to facilitate data sharing across a wide area. This memo summarizes which states are conducting interstate matching programs, how each state uses the resulting data, and the potential problems of using the information from crosschecking to cancel registrations.



The increasing mobility of the United States population,<sup>1</sup> the costs associated with carrying outdated registrations on voter registration rolls, and the National Voter Registration Act (NVRA) mandate that state's must maintain current voter and accurate registration rolls provide the impetus for states to identify voters who have moved out of their jurisdictions. (When moving from one state to another, people tend to notify friends and family, credit card companies, and the post office; few think to notify their former election boards.) The practice of comparing state databases has been growing in popularity, with more states agreeing to cross-check data and then remove voters from the rolls who appear to have moved and registered in a new state.

While there is nothing wrong with the states' sharing information in itself, complications arise from what the states do with the information they obtain. Some state election officials believe that they are justified in immediately

removing a voter from their rolls if the computerized interstate database comparison reveals an apparent match with a voter who has more recently registered out of state..

There are two problems with this procedure. First, it's unreliable. Second, it's illegal.

## Which States Have Interstate Compacts?

The first interstate compact formed to compare databases was the Midwest Group which ran its first interstate comparison in 2006. Iowa hosted the group, which also included Kansas, Missouri and Nebraska. As the host state, Iowa compiled and compared the state databases and reported apparent matches. The Midwest Group was later joined by Minnesota and South Dakota.

The South Central Group, formed in 2007, was hosted by Kansas. In 2009 this group included Kansas, Arizona, Arkansas, Colorado, Oklahoma, Louisiana, Kentucky, and Texas. Indiana also signed the South Central Memorandum of Understanding. In addition, Kentucky, South Carolina and Tennessee have a separate program to compare voter registration data.<sup>2</sup>

In 2010, the two groups merged into the Combined Midwest-Southcentral Crosscheck Group. Mississippi and Tennessee joined the group. Minnesota no longer participates. The combined interstate database match is hosted by Kansas.<sup>3</sup> The thirteen participating states are: Arizona, Arkansas, Colorado, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, Oklahoma, South Dakota and Tennessee.<sup>4</sup>

## Interstate Matching Is Unreliable

The reliability of a match process varies with the number and quality of data fields matched: the more information you have on Susan Smith from South Dakota and Susan Smith from Minnesota, the more assurance you have that they are indeed the same person. Unfortunately, some states are comparing only first name, last name, and date of birth in interstate matches, a process that leads to many false matches.

As outlined in the comprehensive 2006 Brennan Center report on database matching, differences in ethnic naming conventions, typographical and spelling errors, and other factors make database matches inherently unreliable, particularly when the data is matched across fewer fields. In 2004, New York City did a trial run of database matching; after the match an audit showed that up to 20% eligible new applicants would have been rejected solely because of data entry errors by election officials.<sup>5</sup> The unreliability of database matches was again demonstrated in 2009, when the Social Security Administration was ordered to pay over 500 million dollars to 80,000 recipients whose benefits had been wrongfully terminated as a result of a federal computerized search for felons who were ineligible for benefits. An additional 120,000 had been wrongfully denied benefits.<sup>6</sup>

## NVRA Sets the Rules

Fortunately, the National Voter Registration Act (NVRA) of 1993 provides precisely the safeguards that are needed to prevent wrongful disenfranchisement. Section 8 of NVRA requires that removal of the voter from the voter roll on the ground of a change of residence can only occur (a) if the voter confirms in writing that she has changed address, or (b) if she fails to respond to a forwardable notice and does not vote or appear to vote in the next two federal general elections. In other words, the law requires both an attempt by the state to communicate with the voter directly and the passage of two federal elections from the date the notice was sent in order to be satisfied that she has moved elsewhere. Nothing in HAVA supersedes the protocol provided by Section 8, and failure to abide by it is a clear-cut violation of the law.

The legality of cancelling voter registrations solely on the basis of an interstate voter database match was tested in Kentucky. In 2006, the Attorney General challenged a purge of voters based on an interstate voter registration database match between Kentucky, South Carolina, and Tennessee upon the ground that it violated a state law that closely tracked Section 8 of the NVRA. Kentucky had purged approximately 8,105 voters from the rolls.<sup>7</sup> The court found that the database match had a 10 percent error rate and agreed with the Attorney General, holding that the systematic list maintenance contemplated by the interstate match was subject to the procedures enacted to implement

Section 8, and not governed by a state law that permitted cancellation “at the request of the voter.” The court did not issue a formal injunction against the Secretary of State, stating that it was confident that the Secretary would comply with the law as outlined in the opinion.<sup>8</sup>

As mentioned previously, interstate compacts to match voter registration databases seem to be a growing trend, and there is substantial concern that some states may be processing the interstate matches in a manner that violate NVRA list maintenance provisions. Project Vote and other advocacy groups are in discussions with several states to advocate for compliance with the NVRA.

Project Vote and Fair Elections Legal Network (FELN) have joined together in a program to assess how states are using data compiled from interstate database matches and to work with states to ensure compliance with Section 8. From data collected in 2008 (FELN) and 2009 (Project Vote), it appears that several states from which data was obtained either do not cancel voter registrations on the basis of a match or use the information appropriately to trigger the NVRA Section 8 notice procedure. In 2009, Project Vote sent public document requests to twelve states, including Kansas and Arizona, to determine how they were processing their voter registration database matches. The initial findings are summarized in the chart below.

Project Vote and FELN recently had productive discussions with the office of the Secretary of State in Kansas on the issue of interstate database

## Interstate Compacts

matching. In February 2010 Secretary of State Thornburg issued new instructions to Kansas county election officials providing that they should process interstate cross-matches in the same manner as they process USPS change of address notifications, under a Kansas law that was passed to implement Section 8 of NVRA.<sup>9</sup> Counties are permitted, but not required, to utilize the cross-match information for list maintenance. The updated Kansas cross-match policy also permits counties to cancel registrations if they receive notice from another state that the matched voter indicated on the new voter registration application that the voter was previously registered in that matched an address on file for that voter in the Kansas county.

State	Does the State Comply with NVRA Section 8 Notice Procedures?
Arizona	No, the state requests copies of registrations from other states to confirm that data is correct before cancelling.
California	Yes, the State reports it is not using results of a match to remove voters.
Colorado	Yes.
Iowa	Yes, the current Secretary of State reports that he is not using the match list to remove voters.
Kansas	In February 2010 the Kansas Secretary of State's office issued new instructions that direct county election officials to follow NVRA notice procedures before cancelling voter registrations.
Minnesota	Yes, Minnesota reports not using results of match list to remove registered voters.
Missouri	Yes.
Nevada	Yes, the state reports that it does not currently participating in interstate matching.
New York	Yes, the state reports not using results of match list to remove registered voters.
South Dakota	Yes.
Tennessee	Tennessee has not responded to date.
Texas	The state's esponse did not include instructions on how it processes matches.

## Notes

- <sup>1</sup> In 2008, 11.9 percent of the United States population moved. Among those who moved, 65 percent moved within the county, 18 percent moved to a different county in the same state, 13 percent moved to a different state, and 3 percent moved abroad. See *Residential Mover Rate in U.S. is Lowest Since Census Bureau Began Tracking in 1948*, U.S. Census Bureau News, April 22, 2009. [http://www.census.gov/Press-Release/www/releases/archives/mobility\\_of\\_the\\_population/013609.html](http://www.census.gov/Press-Release/www/releases/archives/mobility_of_the_population/013609.html). Last visited Feb. 10, 2010.
- <sup>2</sup> NASS Report: Maintenance of State Voter Registration Lists, last update October 6, 2009.
- <sup>3</sup> The South Central Group began its 2010 matching process on January 15, in time to complete the process before the NVRA 90-day pre-election deadline for systematic list maintenance.
- <sup>4</sup> Office of the Kansas Secretary of State Interstate Voter Registration Data Crosscheck Instructions for County Election Officers, February 2010.
- <sup>5</sup> “Making the List Database Matching and Verification Processes for Voter Registration, Justin Levitt, Wendy R. Weiser, and Ana Muñoz, Brennan Center for Justice. Mar. 1, 2006. [http://www.brennancenter.org/content/resource/making\\_the\\_list\\_database\\_matching\\_and\\_verification\\_processes\\_for\\_voter\\_regi](http://www.brennancenter.org/content/resource/making_the_list_database_matching_and_verification_processes_for_voter_regi)
- <sup>6</sup> Annie Gowan, *Social Security to Pay 500 Million to 80,000 Victims of Database Error*, Washington Post, August 12, 2009.
- <sup>7</sup> *Commonw. of Ky., Office of the Attorney Gen. v. Commonw. of Ky., State Bd. of Elections*, No. 06-CI-610, slip op. at 6 (Ky. Franklin Cir. Ct. Oct. 2, 2006), fn. 1.
- <sup>8</sup> *Id.*
- <sup>9</sup> K.S.A. 25-2316c(e)

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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