



Project Vote is the leading technical assistance and direct service provider to the voter engagement and civic participation community. Since its founding in 1982, Project Vote has provided professional training, management, evaluation and technical services on a broad continuum of key issues related to voter engagement and voter participation activities in low-income and minority communities.

## MAINTAINING CURRENT AND ACCURATE VOTER LISTS

The Help America Vote Act (HAVA) introduced sweeping changes to federal election administration laws. Among the changes was a requirement that states create a computerized, centralized statewide database of all eligible voters. HAVA and the National Voter Registration Act (NVRA) provide that states shall periodically remove ineligible voters from the statewide official voter list. States are required to develop specific standards for implementing a list maintenance program that is transparent, consistent and not discriminatory. A lack of clear and specific state criteria for performing list maintenance programs has resulted in inconsistent standards between states and within states for federal elections. Poorly developed and executed programs for matching voter lists to external databases have led to the disenfranchisement of eligible voters in many states. Frequently, the disenfranchisement has a disparate impact on minorities.

This policy brief explores the federal law relating to list maintenance, presents an overview of problems that have arisen as a result of the implementation of federal list maintenance provisions, and gives specific recommendations for minimizing or eliminating list maintenance errors that adversely impact voters.

### Federal Law Mandating Voter Registration List Maintenance

Section 303(a) of HAVA requires states to implement, in a uniform and nondiscriminatory manner, a single, centralized, computerized statewide voter registration list to be maintained and administered at the state level. States subject to HAVA were required to create the statewide database by January 1, 2006. In addition, Section 303(a) mandates that states are to perform periodic list maintenance to ensure that duplicate names and ineligible voters are removed from the list. While HAVA requires removal of ineligible voters as a result of death, felony conviction, mental incompetency and change of residence, it also

739 8th Street, SE  
Suite 202  
Washington, D.C. 20003

2101 South Main Street  
Little Rock, AR 72206  
1-800-546-8683

[www.projectvote.org](http://www.projectvote.org)

## Maintaining Current And Accurate Voter Lists

Issues in Election Administration: Policy Brief Number 11

12.22.06



mandates that the states ensure that eligible voters are not removed from the list in error. HAVA calls for coordination with state death and felony databases to meet this requirement. The Election Assistance Commission (EAC) recommends that states also coordinate with relevant federal databases, such as the U.S. Postal Service National Change of Address and Social Security Death Index databases, as well as criminal conviction records from U.S. Attorneys and federal courts.

HAVA provides that list maintenance must be performed in accordance with the provisions of the NVRA. Section 8 of the statute requires states to conduct a “general program that makes a reasonable effort to remove the names of ineligible voters” from the official voter list by reason of the death of the registrant, a felony conviction, or an adjudication of incompetency in the manner provided by state law. For voters whose names are to be removed from the voter list used in federal elections because of a change in residence Section 8 mandates specific notification procedures.

Election officials must complete any systematic programs to remove ineligible voters not later than 90 days before a federal election. States may remove voters from the rolls during the 90-day period before an election upon request of the voters or because of a report of death, an adjudication of incompetence, or a felony conviction. Although there is no express requirement in the NVRA or HAVA to notify of voters who will be removed from the official voter list by reason of a duplicate registration, death, felony conviction, or adjudication of mental incompetence, no federal statute prohibits the states from providing such notification. NVRA and HAVA requirements are minimum standards; states are free to develop more exacting standards where such standards further the purpose of the act. One clear purpose of the act is to ensure that all eligible registered voters are on the statewide voter database and able to vote.

### **Overview of Problems with State List Maintenance Programs**

#### **Lack of transparent, specific criteria for conducting purges**

HAVA does not provide specific standards and methods for conducting purges of ineligible voters. The EAC issued a Guidance report on implementing HAVA that, while helpful, does not recommend specific criteria and procedures for developing database matches and conducting list maintenance.

The Guidance provides that states are mandated to develop provisions for list maintenance that are transparent, non-discriminatory and uniform. As a result, states have been left to fill the void. Poorly designed and executed voter list maintenance programs have led to the disenfranchisement of thousands of eligible voters. State legislation and regulations in response to HAVA’s list maintenance provisions have been piecemeal and broadly drafted, lacking clearly drawn specific purge criteria and adequate procedures to safeguard against removal of eligible voters in error.

For those states that permit removal of voters from the official lists at the local level, there is also a wide disparity between jurisdictions within a state in the methods used to perform list maintenance. A recent survey of Ohio county election boards, for example, revealed that list maintenance varies from jurisdiction to jurisdiction. List maintenance programs are also carried out without transparency under standards and schedules that are not made known to the public.

#### **Purges based on flawed database matching programs**

Creating database-matching programs for list maintenance has been a challenge for state elections officials. In the absence of specific guidelines for conducting HAVA matching for purposes of list maintenance individual states have failed to legislate specific matching standards, which has inevitably led to the disenfranchisement of thousands of eligible voters. Purges based on computerized database matching are inherently fallible, clerical error alone can be expected to lead to a ten percent error rate. The likelihood that individuals in a large database may share the same name and date of birth is high. Reliable studies have found database matching error rates of between 20 and 32 percent. Where database matching is based on “substantial” matching criteria as opposed to exact matching criteria across several data fields, eligible voters have been, and will continue to be, disenfranchised.

Overbroad database matching criteria of names with a felon database were used in Florida before the 2000 election and resulted in the denial of the right to vote to thousands of Florida voters. Such results serve to undermine public faith in elections. In 2004, Florida expanded its matching criteria to include race when it developed a program to purge voters who were ineligible because of felony convictions, but the two databases that it used in the program were incompatible. The state’s records of felony convictions did not specify Hispanic as a specific race, while the official statewide



voter registration list did. As a result of the database incompatibility approximately 22,000 African American voters were scheduled to be purged from the official Florida voter database, while just slightly more than 60 Hispanic voters were tagged for removal. In this case, extensive news coverage of the purging program and a strong public reaction convinced the state to discard the flawed purge list.

**Lack of notice or an opportunity to challenge removal from voter list**

States have been charged with the exacting task of developing list maintenance programs under HAVA and the NVRA while also meeting their mandate to ensure that eligible voters are not disenfranchised. One of the most useful means to avoid unlawful disenfranchisement is to give notice of a pending removal to all voters whose names are to be purged.

NVRA requires notice to one class of voters, those who are to be removed from the official list because of a change of address. Voters may not be removed from the list because they have moved unless they (1) have requested removal in writing or (2) failed to respond to a notice of removal and not voted in two federal elections. The notice must be sent by a forwardable postage prepaid and pre-addressed return card. If a registrar finds that the voter has moved but stayed within the registrar's jurisdiction, she may change the records to show the new address and give the voter notice of the change. With the exception of this notice of removal on the basis of an address change, no federal statute requires states to notify voters of their removal from the official voter list. Thus, removal on the basis of a positive match with state or federal databases on death, felony convictions or adjudications of incompetence may be carried out without any notice to the voter in most jurisdictions. This is true whether such removals take place before or after the 90-day deadline. Without notice and an opportunity to challenge their removals from the official list, eligible voters may be disenfranchised without due process of law.

It is important for states to recognize that federal legislation sets minimum standards for the protection of voter rights; States are not precluded from enacting stronger provisions such as notice to all voters who are to be removed from the official list to further that end.

Some states have provided for notice of removal to other classes of voters. Virginia law, for example does not require

notice to felons by law but the Virginia Board of Elections advises elections officials to send a notice of cancellation to such voters that includes information on how to challenge the removal and/or restore voting rights. The State of Washington has passed legislation that calls for quarterly list maintenance for cancellation based on death or felony convictions. The law also provides for notice to voters whose registrations are to be cancelled because their information has been matched with that of a person listed in a state or federal felons database.

Most states do not provide for notice of cancellation beyond that required by HAVA and NVRA. For example Michigan law, which provides for an expansive official voter list under its Qualified Voter File provisions, nevertheless does not provide notice to voters whose registrations are to be cancelled except for those who will be cancelled because they moved. Michigan permits local jurisdictions to perform periodic "postcard purges" in which voters whose postcards from the elections boards are returned as undeliverable are considered to have moved.

The denial of notice and an opportunity to challenge removal from official voter lists was demonstrated in a recent plan by Kentucky election officials to purge voters who appeared to have registered in another state merely on the basis of a match with official voter databases in two other states, Tennessee and South Carolina. The plan did not include incorporating the change of residence notice provisions mandated by the Kentucky laws (which implemented the notice provisions of the NVRA). In a very broad interpretation of the state laws, Kentucky officials concluded that voters whose names later appeared on the Tennessee or South Carolina voter databases had implicitly requested removal from the Kentucky voter list. This list of cancelled voters was generated not by notification from elections officials in other jurisdictions that the person had registered in that jurisdiction, but by a simple voter database match. As Kentucky deemed that those voters requested removal from the voter rolls, the Kentucky election officials determined that these voters were not entitled to notice of their removal. The Kentucky Attorney General filed suit to stop the purge program. The Kentucky Franklin Circuit Court ruled in favor of the attorney general finding that the Defendants had conducted an illegal purge under Kentucky law.



## Recommendations

### Pass laws with specific criteria for database matching in list maintenance programs.

State legislatures or rule-making authorities should pass laws or regulations that specify database matching criteria that are exact and include multiple checks, when a positive match results in removal from the voter registration list.

Suggested specific criteria are:

- A positive match must be based on multiple criteria including the voter's name, birth date, a unique identifier such as a driver's license or the last four digits of the social security number, and an address where applicable.
- Name matching should include all of the letters of the voter's first and last names in addition to any suffix such as junior or senior.
- Multiple layers of checks should be instituted, such as checking positive matches against other databases and requiring a manual check of the purge list produced by a computerized database match.
- Require the agreement of two election officials of different parties before a voter may be purged from the voter rolls
- Designate a specific election officer to be responsible for overseeing list maintenance statewide.
- Establish a state commission tasked with studying list maintenance programs to determine best practices. Open the commission's proceedings to the public and invite public comment on programs developed by the commission.
- Enact sanctions against election officials who knowingly engage in reckless or unlawful acts related to list maintenance that cause the disenfranchisement of eligible voters.

### Provide for notice to all persons before removal from voter rolls and provide an opportunity to challenge the removal.

- Expand notice requirements to include voters who are to be purged for any reasons other than a change of address.
- Notice should be sent by certified and forwardable mail to the voter's last known address.
- Notice should contain the voter's identifying data, the reason for the removal, the deadline for challenging the removal, the information required to make the challenge and the procedure.

### Provide for open and transparent voter list purge programs.

- Establish a date-specific voter purge schedule for all types of voter list purges, for example, the first Monday of January, April, July, and October.
- Provide public notice of the voter list purge schedule.
- Halt all purge activity during the period between close of registration and elections.
- Maintain records of voters purged from the rolls for a minimum period of two years.

## Conclusion

By failing to enact sufficiently specific criteria for voter purge programs and by relying heavily on inherently unreliable database matching to implement such programs, states have failed to meet federal statutory requirements to ensure that eligible voters are not removed from the statewide voter lists mandated by HAVA. In so doing, states have denied the right to vote to eligible voters and undermined public confidence in state and federal elections. A lack of transparency in conducting list maintenance programs lists has further undermined public confidence. By passing legislation or regulations that provide for more exacting purging criteria and by opening the process to public scrutiny, states can avoid the disenfranchisement of eligible citizens and began to restore public confidence in election results.

## End Notes

<sup>1</sup> 42 U.S.C. § 15483(a)

<sup>2</sup> 42 U.S.C. § 15483(a)(2)(B), § 15483(a)(4)(B),

<sup>3</sup> EAC Voluntary Guidance on Implementation of Statewide Voter Registration Lists, July, 2005

<sup>4</sup> 42 U.S.C. 1973gg et seq.

<sup>5</sup> 42 U.S.C. § 1973gg-6 (c)(2).

<sup>6</sup> 42 U.S.C. § 1973gg-6 (c)(2)(B)

<sup>7</sup> EAC "Voluntary Guidance on Implementation of Statewide Voter Registration Lists," July, 2005

<sup>8</sup> Ohio, Tennessee, California, Washington, Arizona and California have botteom up registration lists. See [electionline.org](http://electionline.org) Briefing, Assorted Rolls, Statewide Voter Registration Databases under HAVA.

<sup>9</sup> Project Vote, "Ohio Election Registration and List Maintenance Survey," June 2006.

<sup>10</sup> Brennan Center, "Inaccurate Purges of the Voter Rolls," September 2006.

<sup>11</sup> 42 U.S.C. § 1973gg-6(d).

<sup>12</sup> Advancement Project, Virginia Voter Protection Laws in a Nutshell, from the Virginia General Registrar and Electoral Board Manual.

<sup>13</sup> RCW 29A.08.520

<sup>14</sup> MCL 168.509aa , 168.509.dd