

3. STATEWIDE VOTER REGISTRATION DATABASES

BACKGROUND

As of the November 2004 elections, at least seventeen states had some form of statewide voter registration list in use. By January 1, 2006, all states must have databases in place as required by the Help America Vote Act of 2002.¹⁹ While the act requires the databases to perform certain functions, for the most part how they are to be built and implemented has been left to the states.

Statewide databases have a number of potential advantages. They can link to correctional databases and courts and smooth the process of both taking felons off the list of eligible voters and restoring the franchise of ex-felons. Links to social service agencies' databases can enfranchise people that have historically had low participation rates, get their information into the registration system accurately, and keep it updated. Duplicate registrations can be prevented by more accurately purging voters who have moved out of the state or by quickly changing registration information for voters who move within state. The potential for fraud is lessened by deleting dead voters from the rolls by expediting the flow of information from health and vital statistics departments. Finally, an up-to-date, clean voter roll could reduce the number of eligible voters whose names are not in the poll book, diminishing the need for what should be the very last option, that of the provisional ballot.

Kentucky and Michigan are two states that have what are considered to be model statewide registration systems.²⁰ The state of

Kentucky created one of the first such systems in 1973. Legislation had been passed the previous year providing for a statewide database and requiring that every voter reregister to start with a clean database. In 1986, the system was upgraded to have a real-time, online database that allowed each county to take over its own data-entry duties. It was updated once again in 1995 after the enactment of the National Voter Registration Act (NVRA).²¹

Kentucky county election officials have access to the database, which is on a mainframe system, from local terminals. The state uses the full Social Security number as the unique identifier. It does not allow for more than one record per Social Security number. Voters who move within Kentucky and reregister have their old record automatically purged from their former county. The state provides daily reports to every county clerk with updates to registrants' records. To ensure privacy, the numbers are not printed on any public documents.

The database has a direct, real-time link to the state's driver's license database and a "nightly batch" link with social services agencies' databases: these include food stamps, Medicaid, and the Kentucky Transitional Assistance Program (K-TAP, formerly known as Aid for Families with Dependent Children). Other information received by but not directly connected to the database comes from the Special Supplemental Nutritional Program for Women, Infants, and Children (WIC) and disability offices.

Information also comes via electronic files from the Department of Vital Statistics twice a month. The names of the deceased are matched with the registration database and then purged. Also, twice a month files of convicted felons are received from U.S. attorneys, and once a month, from the Administrative Office of the Courts. That information is matched with the database for purging purposes.

State law allows a voter to file a protest over being purged. The county board then hears the protest of the voter at the next regular monthly board meeting. If the board finds in favor of the voter, the voter's registration record is restored.

In the 2004 presidential election, Kentucky had a very small number of provisional ballots issued—1,494 out of 1.8 million ballots cast—of which 221 were counted. This could be attributed in part to the accuracy and timeliness of the state's voter registration database.

Like Kentucky, Michigan's election officials saw an opportunity to revamp their registration system completely after NVRA was passed. State law in 1994 required the creation of a statewide voter

registration database. In addition to the passage of NVRA, an additional incentive for action was that Michigan's registration system was more decentralized than most states—it was managed by approximately two thousand local officials at the county, city, and township level.

In 1998, the state implemented the Michigan Qualified Voter File (QVF). As with the Kentucky database, it was built in-house. It was put together using a compilation of voter files maintained at the local level and every registered voter whose name appeared on the Department of State's driver's license/personal identification file.²² While costly to set up—the state bought all the hardware and software for about \$7.6 million—state officials believed the initial costs would be recouped quickly in reduced paperwork and the streamlining of registration maintenance.

In Michigan's database, each registrant is identified by a driver's license number or personal identification card number—this is the state's unique identifier. If a registrant has neither, one can be generated and assigned. The QVF is linked to the state's driver's license database.

The linkage of the voter registration file and the driver's license database file allows for adjustments to be made to registration information when a voter either makes a driver's license change or registration change. Every "motor-voter" transaction is forwarded to the appropriate local election official, and the local official determines the acceptability of the registration. In the case of Michigan, the state has the advantage of the secretary of state's office being in charge of both the voter registration database and the driver's license database. This means if a voter who is already registered moves to a new county and makes the appropriate change to his or her driver's license, the voter registration is automatically updated without the voter needing to reregister. Eighty-five percent of the state's registrations are via driver's license transactions. Recent state law requires all drivers to use their voter registration address for their driver's license, which helps keep the two records synchronized.

Michigan's system is a "distributed database." The state has a central file located in Lansing that is on a UNIX-based computer. Local clerks have computers and printers with the QVF installed by the state. Local installations are connected to the state file through an Internet account that also was provided by the state, but the databases can stand alone in each jurisdiction when not connected to the

Internet. Replication updates go both ways via the Internet connection: the local file updates Lansing, and Lansing updates the local file.

The Department of Community Health gives information to the Department of State on a regular basis about drivers who have died. If the voter was registered, the record is marked deceased, and the local election official is notified.²³

The Michigan system, like Kentucky's, allows for uniformity: all voters are registered using the same standards. It also allows for a more accurate database. The state claims it correctly purged 800,000 duplicate registrations in building the database.²⁴

RECOMMENDATIONS

- 3.1 States should take all appropriate measures to protect the privacy rights of voters when constructing and utilizing the statewide voter registration database. This includes establishing an exclusive list of who has access to voter information and what voter information can be made public and/or be exchanged among state agencies. States also should make clear that information from the database may be used only for voter registration and elections purposes.
- 3.2 Databases should be, at a minimum, connected interactively with the state's Department of Motor Vehicles, courts, Department of Corrections, and Department of Vital Statistics. Optimally, the database should be connected interactively with as many state agencies as possible to ensure the timely and accurate updating of voter information and the most accurate matching and verification of voter registration information (as is the case in Kentucky).
- 3.3 Under HAVA, all voters, including first-time voters registering by mail, who provide a DMV identification number or the last four digits of their Social Security number on their voter registration forms are exempt from HAVA's identification requirements if the state can verify their information with an existing state database.

- 3.4 When computer verification finds records that match some but not all voter information, these “near matches” should be audited for transposed characters, inverted names, or other frequent errors.
- 3.5 When adding voters, states should adopt a substantial match standard that verifies those applicants who have a significant part of their records verified within state databases. If, for example, an applicant’s name and date of birth match a record in a state database but that person has made a minor error such as transposing a pair of the digits on his or her driver’s license, the record should count as being verified. In another example, since some Asian voters customarily reverse the order of their surname and family names, if their date of birth and driver’s license number match, then their record should be verified. Enactment of a substantial match standard also would alleviate the problem of a minor incorrect entry of voter information by an elections office. States should endeavor, through legislation or regulations promulgated well in advance of the election, to specify criteria for implementation of this “substantial match” standard so as to avoid the potential for postelection disputes over whether particular cases count as a “substantial match.”
- 3.6 If it is impossible for the board or elections office to make a match using these standards, unless there is some additional evidence of fraud, the registration should not be automatically rejected. Rather, the voter should be notified in an effective and timely manner and given the opportunity to amend or correct. If there is evidence of fraud, the elections office should make further inquiries and, when appropriate, refer the case to the proper authorities.
- 3.7 Counties should maintain control over adding new registrants to the voter registration rolls. While counties should keep control as well over identifying voters for removal from the registration lists when required by law to do so, rather than automatic removal, the name to be purged should be double-checked by a state or second county elections administrator from another party before final removal. Local administrators should maintain

primary control, as they are in the best position to know their constituents and the particulars of their own jurisdictions.

- 3.8 Before removing any name from the computerized list, a state should notify the voter and provide that person an opportunity to correct any errors or omissions in the record, including errors caused by election officials. Notification should be made by a certified, forwardable letter to the last known address, along with a postage-prepaid response card.²⁵
- 3.9 Statewide databases should preserve electronic records of all their transactions, including those to remove names from the list. These electronic records should indicate the date and time of each transaction, the identities of the persons who removed or modified records, the identities of the persons who authorized the transaction, and the reason any record was removed from the list. The databases should be capable of generating reports of all such transactions to facilitate state oversight and public monitoring of list maintenance activities.²⁶
- 3.10 Ideally, statewide databases should be updated in real time. In any case, states should establish uniform and binding timing standards for processing and entry of voter registration information to ensure such data is immediately reflected in the database.
- 3.11 We encourage states to explore opportunities for interstate compatibility in their database software and communications systems.

FELON PURGES

BACKGROUND

The problems that occurred with respect to felon purges in Florida in 2000 have become election lore. Just before that election, the state removed thousands of actually eligible voters, primarily African Americans, from the rolls. Unfortunately, in 2004, Florida and other states again encountered all sorts of trouble when it came

to adding and subtracting voters accurately from the registration rolls according to their criminal status. In Florida, the state was forced to withdraw its purge list after news media investigations revealed that the list contained thousands of people who, again, were eligible to vote. Moreover, the list clearly included a disproportionate number of African-American voters relative to Hispanic voters. Indeed, the felon list provided by the state would have disqualified 22,000 African Americans (more likely to be Democrats) and only 61 Hispanics (more likely to be Republicans).²⁷

For those states that choose to maintain felon disenfranchisement laws, it is critical that determinations about whom to purge be accurate and that those subject to purges be accorded due process. Many states still have not taken appropriate measures to ensure their felon purge and re-enfranchisement process works accurately and effectively.

According to a recent survey of the purge processes of fifteen states with a wide variety of disenfranchisement laws by the ACLU,

- ◆ One-quarter of the states surveyed compile their purge lists without reference to any legislative standards whatever, while half the states surveyed do so using only an individual's name and address
- ◆ No state surveyed has codified any specific or minimum set of criteria for its officials to use in ensuring that an individual with a felony conviction is in fact the same individual who is being purged from the voter rolls.
- ◆ Two-thirds of the states surveyed do not require elections officials to notify voters when they purge them from the voter rolls, denying these voters an opportunity to contest erroneous removals.²⁸

RECOMMENDATIONS

3.12 Though HAVA does not mandate specific rules concerning the re-enfranchisement of felons who have completed their incarceration, parole, or probation, best practices require that states

make re-enfranchisement automatic or no more burdensome than the process required for any new registrant. At the very least, the re-enfranchisement process should be clear and straightforward. If ex-felons must reregister in the same way as would an individual returning to the state after living in a different state for several years, the law and relevant procedures should be clear that an ex-felon need do no more than any other new or renewing registrant. If an ex-felon must do more than simply reregister, the law should specify exactly what additional information and/or procedures are necessary for re-enfranchisement.

Elimination of barriers to ex-felons' ability to register or reregister to vote can have dramatic impacts. After Texas removed its two-year waiting period for felon re-enfranchisement, an estimated 316,981 former felons regained the right to vote.²⁹

- 3.13 As long as the ex-felon completes all necessary steps specified by law, re-enfranchisement should be ministerial (that is, mandatory), not discretionary. Otherwise, there is the potential for litigation over abuse of discretion or unlawful discrimination in deciding which ex-felons are permitted to vote and which are not.
- 3.14 In states where re-enfranchisement is automatic upon completion of a felon's sentence (such that the ex-felon is under no obligation to reregister), it is necessary for states—in order to avoid potential errors in their voter rolls—to establish procedures whereby the requisite information is transmitted expeditiously and accurately to the relevant election officials for inclusion in the state's centralized voter registration database. If states neglect to update their rolls in this way, then ex-felons will need to vote using provisional ballots, which will qualify for counting (since, by definition, in a state with automatic re-enfranchisement these ex-felons are registered voters, even though the rolls do not accurately reflect this fact).
- 3.15 States should adopt statutes that specify and standardize matching criteria. These statutes should prescribe the use of numerous matching criteria, require exact matches of felony conviction and voter registration data, and require that matches be double-checked at

state and county levels. Matching criteria should include first name, middle name, last name, gender, maiden name, date of birth, place of birth, and driver's license number, if any.³⁰

- 3.16 Purges should be done year-round but should end ninety days before the election so that anyone purged is given due notice and opportunity to contest the state's determination. As is the practice in New York, any individual to be purged should first be mailed a certified, forwardable notification letter to the last known address. The individual in question ought to have a certain number of days to respond (in the case of New York it is fourteen days, but states should consider making it twenty-one). The letter that New York administrators send includes a postage-prepaid card that asks the person to list any reasons why he or she should not be removed. If the individual does not respond, the state sends out a second letter with information about re-enfranchisement.³¹
- 3.17 With respect to felons currently incarcerated, we recommend that the state send the notification to the prison where the individual is being held.

