

# III. A Democratic Process

## *that Maintains an Accurate List of Citizens Who Are Qualified to Vote*

One of the most serious problems in America's elections is also one of the most basic—identifying who can vote. For some this is a problem of disfranchisement. For others this is a problem of the integrity of the voting system. The controversial effort to clean up voter rolls in Florida was itself a reaction to prior scandals, especially the 1997 election for mayor of Miami, an election invalidated by the courts due to widespread vote fraud.

The issue of voter lists now has well-drawn battle lines. Some argue that the “purging” of voter lists has been used to push minority voters off the rolls. Others maintain that “list maintenance” is essential to preventing fraud. A major development in this political struggle was the passage of the National Voter Registration Act of 1993, the “motor voter” law often referred to by its acronym, NVRA. This act strictly regulated the procedures that had to be followed before voters could be removed from lists and made such removals more difficult.

### **The Problem of Accurate Voter Lists**

State and local election administrators have testified to the Commission that they are generally comfortable with the NVRA and the Commission does not advocate making any changes to it. But, as a result of the law, administrators agree that their voter lists are now swollen with larger numbers of named voters who have moved, or died, or are no longer eligible to vote in the local jurisdiction where they are registered. Duplicate registration is also common. In Oklahoma, which gathers statewide data in its unitary election system, the number of inactive voters had averaged about 15% of the list.<sup>13</sup> After NVRA that percentage grew to 25%. As might be expected, a number of jurisdictions have compared their voter lists to census numbers and observed that they have thousands, sometimes tens of thousands, more registered voters than people.

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Some contend that swollen voter rolls are harmless, since the individuals have moved or died and therefore do not vote, and since poll worker scrutiny and signature verification can prevent fraud. We disagree:



Christopher Thomas, Michigan  
Director of Elections

- Significantly inaccurate voter lists add millions of dollars in unnecessary costs to already underfunded election administrators and undermine public confidence in the integrity of the election system and the quality of public administration.
- Significantly inaccurate voter lists invite schemes that use ‘empty’ names on voter lists for ballot box stuffing, ghost voting, or to solicit “repeaters” to use such available names. For generations these practices have been among the oldest and most frequently practiced forms of vote fraud. One of our Commissioners (President Jimmy Carter) has written a book mentioning his encounter with such practices early in his political career. The opportunities to commit such frauds are actually growing because of the trend toward more permissive absentee voting.<sup>14</sup>
- Significantly inaccurate voter lists often penalize poor or ill-educated voters. Among the most mobile citizens in the country, these voters find that even modest residential changes, within a state or county, will keep them from appearing on the list of eligible voters at their new residence.

Although we recognize the problem of accurately establishing who is eligible to vote, we do not simply endorse more aggressive measures to prune voter lists within the existing system. Rather than take a side in the ongoing partisan arguments, we think the problem needs to be recast in terms that can break away from the old controversies over “purging.” Instead we should look toward the more positive objective of accurately registering every eligible voter on lists that people can trust. To do that we need to step back for a moment and take a broader perspective of what has happened to voter registration in America.

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## Voter Registration, Past and Present

The U.S. Constitution does not provide a right to vote. It provides that state governments shall determine who is eligible to vote in either state or federal elections, though subsequent amendments offer guards against discrimination in the grant or denial of the franchise.<sup>15</sup> In the first half of the nineteenth century state governments established that they, not municipal governments, were the final arbiters of who could vote in the state.<sup>16</sup>

The registration of voters before Election Day was a more modern innovation, adopted in most states as a good government reform, especially for the growing cities, in the years after the Civil War. With most voter registration systems tied to local residence and set up for locally run elections, practically all these systems relied on local administration. Further, new registrations of voters were usually conducted every two or four years, requiring every voter to register anew at least that often—and more often if they had changed their address. What followed was a new decentralization of power to determine the eligibility of voters, devolving from state governments down to the local and county governments that managed this process and maintained the rolls. Those governments, in turn, often delegated the work directly to precinct officers. The results were various but, too often, dismally predictable. By the 1920s, voter turnout in the United States had reached an all-time low.<sup>17</sup>

Voter registration march, midway from Selma to Montgomery, Alabama, March 23, 1965.



The next wave of reform in voter registration concentrated on replacing periodic registration with permanent registration, to reduce costs and the opportunity for fraud. In subsequent decades almost every state adopted permanent registration. Meanwhile, voting rights laws and litigation of the 1960s reduced residency requirements and did away with some of the other more elaborate devices that were used by local officials to thwart registration and were used, in particular, against black Americans. The NVRA effectively forced every state to

offer voter registration in combination with the single civic act performed almost universally by American adults—obtaining a driver’s license.

Thus we have created a system where voter registration is relatively easy and permanent but is still usually recorded and maintained in the separate files of the nearly 13,000 local election jurisdictions of the United States. There is no authoritative list of American citizens maintained by the federal government. Passport records cover only a fraction of the citizen population. Federal tax and social security records, whatever their value, are also insulated by law against inquiries from, or data sharing with, state and local election officials.

At the same time Americans have become a remarkably mobile society. About one-sixth of the population moves every year. The more local the database of permanently registered voters, the more likely it is that the voter will have moved into or out of it.<sup>18</sup>

### **A Better Way: Statewide Voter Registration Systems**

Our preference for permanent voter registration and our observation of constant voter mobility prompt this conclusion:

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★ ★ **Policy Recommendation** ★ ★ ★

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**Every state should adopt a system of statewide voter registration.**

1. The statewide computerized voter file should be networked with and accessible to every election jurisdiction in the state so that any level can initiate registrations and updates with prompt notification to the others. It should include provisions for sharing data with other states.
  2. When a citizen either applies for a driver’s license or registers to vote, each state should obtain residential address and other information, such as a digitized signature, in a form that is equally usable for both the motor vehicle and voter databases. The address information can then be linked to a statewide street index.
  3. Each state’s driver’s license and voter registration applications should require applicants to provide at least the last four digits of their Social Security number. States should also ask applicants if they are registered in another state so that that state can be notified of the new registration.
  4. Each state’s voter registration applications should require a separate and specific affirmation that the applicant is a U.S. citizen.
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Eleven states and the District of Columbia have already implemented statewide registration systems that cover all their jurisdictions. Seven more states have adopted them and are in the process of implementing them; three more are close to adoption. A statewide registration system was part of the reform program adopted earlier this year in Florida. These 21 states and D.C. include 39.2% of the voting-age population in the United States. In its June 2001 report to Congress, the bipartisan Federal Election Commission, after consulting with state and local election officials, recommended that states “1) develop and implement a statewide computerized voter registration database; 2) insure that all local registration offices are computerized; and 3) link their statewide computerized system, where feasible, with the computerized systems of the collateral public agencies relevant to the NVRA (motor vehicle offices, public assistance offices, etc.)”<sup>19</sup>

With a sense of how voter registration has evolved over the past century, we believe four factors weigh heavily in favor of placing the core responsibilities for voter registration in the hands of state governments.

*The constitutional allocation of responsibilities.* Under the U.S. Constitution, voter qualifications are defined primarily by state governments. So it makes sense to center registration responsibility at this same level of government. Local issues and ballots may vary, but a resident of a given state, voting in a state or presidential election, will find the same voter eligibility rules and the same candidates at the top of the ballot anywhere within the state.

*The nature of the data.* The most important source of applications for new voter registration has become the application for a driver’s license. This is already a statewide database, and it is estimated that 92% of all registered voters also have a driver’s license. The most effective systems have made DMV (Department of Motor Vehicles) information congruent, and thus interoperable, with the voter information called for by the state’s election code. When people move within a state, they are still in the database even if they are slow to get a new license. When they move from one state to another, one of the first—and perhaps the only—civic act they must accomplish is to get a driver’s license valid for that state. DMV change-of-address information is thus considered even more comprehensive and reliable than the useful National Change of Address database maintained by the U.S. Postal Service.<sup>20</sup>

*Accuracy can mean access.* People are mobile, but more than three-quarters of all moves are within the same state. An effective statewide database can therefore be quite useful, including its capacity to address such common issues as the registration of in-state college students and people with second homes within a state. But perhaps the most important beneficiaries of statewide registration systems will be members of lower-income groups, who are more likely to move than higher-income groups

and, when they do move, are much more likely to move from one place to another within the same state. They are thus more likely to fall off local voter rolls and bear the burden of re-registration.

*Accountability.* A clear statewide registration system will be more transparent and accountable to outside scrutiny. Some advocates for disadvantaged groups are uneasy about statewide registration proposals, fearing that these will turn into still more powerful tools for “purging.” Yet one of the clearest findings from the U.S. Civil Rights Commission’s investigation in Florida is that, with purely local administration of list maintenance, local variations on statewide guidelines can be critical yet difficult to track.



Georgia Secretary of State  
Cathy Cox.

Beyond the general recommendation in favor of statewide registration systems, several specific policy issues deserve mention. One is the question of whether to require voters to display some proof of identification at the polls.

All states hope that precinct officials and poll watchers will have at least some familiarity with the residents of their precincts. Seven states, all but one of them rural, do nothing more. In the rest, the most common practice now is to require voters to sign their names in an official registry or on a ballot application. About a third of the states require poll workers to check signatures against those provided at registration.

Fourteen states insist that voters produce some form of identification.<sup>21</sup>

Most states that have histories of strong party rivalry or election fraud require signature verification or voter identification at the polls. Signature verification puts an extra burden upon administrators, and especially on often ill-trained poll workers practicing a very subjective, often impossible, task while voter lines lengthen. Also, many polling places lack the means to provide poll workers with accurate copies of the voter’s actual signature (the one the voter used in order to register) and a signature may change over time.

One alternative, favored by several Commissioners, is to require those who are registering to vote and those who are casting their ballot to provide some form of official identification, such as a photo ID issued by a government agency (e.g., a driver’s license). A photo ID is already required in many other transactions, such as check-cashing and using airline tickets. These Commissioners point out that those who register and vote should expect to identify themselves. If they do not have photo identification then they should be issued such cards from the government or have available alternative forms of official ID. They believe this burden is reasonable, that voters will understand it, and that most democratic nations recognize this act as a valid means of protecting the sanctity of the franchise.

A small percentage of adults, perhaps about 5 to 7%, do not possess a driver's license or other photo identification. They are disproportionately poor and urban (since they may use public transit rather than drive a car). Some Commissioners also object to requiring voters to produce a photo ID or some alternative form to verify their identity because some members of minority groups believe such a process can be used to intimidate voters or turn them away in a racially discriminatory fashion.



Election Day, Gloucester, MA,  
November 7, 2000.

We believe that an assessment of how to strike the right balance between administrative burden and voter responsibility turns too much on the assessment of local conditions to be amenable to any categorical recommendation by this Commission. We do believe, however, that states should be able to verify a voter's identity.

In recommending the adoption of statewide voter registration systems, we looked at the experience of those states that have adopted them. The outstanding models appear to be Michigan and Kentucky. Michigan deserves particular scrutiny because it is the most populous state to have fully implemented such a system and it is also a state with a larger number of separate election jurisdictions, more than 1600, than any other. The Michigan system is new, having been put in place just in the last few years, and it passed the test of the 2000 election with flying colors. The software solution developed in Michigan has been inexpensive and is not exclusive to a particular vendor. Any state can copy it. A more complete description of the Michigan voter registration system is attached in Appendix B to this report.<sup>22</sup>

Any state adopting a statewide voter registration system will confront the problem of uniquely identifying voters, figuring which Joseph Smith is the same as that Joe Smith. That is why, following the Michigan example, we recommend obtaining residential addresses, with the DMV and voter registration address required in identical form.

An added identifier is desirable, given the various spellings and the clerical errors that frustrate reliance only on a given name and address. For this purpose some numeric identifier can be useful. Given the danger from overuse of entire Social Security Numbers as an individual identifier we suggest that states obtain the last 4 digits of this number as an added identifier.<sup>23</sup> The Federal Election Commission has made the same recommendation.



Commissioner John Seigenthaler

Some states also seek added identifiers, such as information on the place of birth and prior residential address. We take no position on the value of having this added information, but we do believe that federal law and regulations should be amended over time where state experience provides evidence that a change is needed. Used cumulatively, this information could improve the accurate exchange of information affecting voter eligibility and help avoid mistaken voter removals like those that occurred in Florida.

Our policy recommendation need not require any immediate amendment of the NVRA. The NVRA specifies how voters can be registered. In general, those provisions will benefit from and work much more effectively with a statewide registration system. The NVRA also specifies how voter lists should be maintained. We believe those provisions do not take adequate account of the kind of statewide voter registration system we recommend. But we see no need to amend the list of

maintenance provisions of the NVRA either to add more safeguards or pare them back until more and wider experience with new systems can give us more evidence about just what is needed.

All states require voters to declare, by their signature, that they are U.S. citizens and meet other criteria for eligibility to vote. Twelve states require applicants at least to check a box specifically affirming they are a citizen, though most of these accept the national mail-in and NVRA forms that do not have such a box. Inability to verify citizenship is a weakness in every state's voter registration system. The problem is not hypothetical. Non-citizens do vote, albeit illegally.<sup>24</sup> We therefore recommend that a specific enforceable affirmation of citizenship be included in all voter registration applications. Combined with enforcement of the relevant state and federal vote fraud laws, this should be sufficient to contain this potential problem.