EXHIBIT 18
Part 1
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The Voting Rights and Elections Project works to expand the franchise, to ensure that every eligible American can vote, and to ensure that every vote cast is accurately recorded and counted. The Center’s staff provides top-flight legal and policy assistance on a broad range of election administration issues, including voter registration systems, voting technology, voter identification, statewide voter registration list maintenance, and provisional ballots.

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EXECUTIVE SUMMARY

Voter registration lists, also called voter rolls, are the gateway to voting. A citizen typically cannot cast a vote that will count unless her name appears on the voter registration rolls. Yet state and local officials regularly remove — or “purge” — citizens from voter rolls. In fact, thirty-nine states and the District of Columbia reported purging more than 13 million voters from registration rolls between 2004 and 2006.1 Purges, if done properly, are an important way to ensure that voter rolls are dependable, accurate, and up-to-date. Precise and carefully conducted purges can remove duplicate names, and people who have moved, died, or are otherwise ineligible.

Far too frequently, however, eligible, registered citizens show up to vote and discover their names have been removed from the voter lists. States maintain voter rolls in an inconsistent and unaccountable manner. Officials strike voters from the rolls through a process that is shrouded in secrecy, prone to error, and vulnerable to manipulation.

While the lack of transparency in purge practices precludes a precise figure of the number of those erroneously purged, we do know that purges have been conducted improperly before. Over the past several years, every single purge list the Brennan Center has reviewed has been flawed. In 2004, for example, Florida planned to remove 48,000 “suspected felons” from its voter rolls. Many of those identified were in fact eligible to vote.2 The flawed process generated a list of 22,000 African Americans to be purged, but only 61 voters with Hispanic surnames, notwithstanding Florida’s sizable Hispanic population. To compound the problem, the purge list over-represented African Americans and mistakenly included thousands who had had their voting rights restored under Florida law.3 Under pressure from voting rights groups, Florida ordered officials to stop using the purge list.4 To compound the problem, the purge list over-represented African Americans and mistakenly included thousands who had had their voting rights restored under Florida law.

In New Jersey in 2005, the Brennan Center worked with a political science professor to analyze a purge list prepared by a political party using “matching” techniques. We found that the list was compiled using a number of faulty assumptions and that it would have harmed eligible voters if used as the basis for a purge. In 2006, the Secretary of State of Kentucky attempted to purge the state’s rolls based on a flawed attempt to identify voters who had moved from Kentucky to neighboring South Carolina and Tennessee. A resulting lawsuit uncovered the fact that eligible voters who had not, in fact, moved out of the state of Kentucky were caught up in the purge; a state court ordered the state to reverse the purge.

The purges reviewed for this report give no greater grounds for comfort. While the reasons vary from state to state, no state reviewed in this report uses purge practices or procedures that are free from risk of error or manipulation, that have sufficient voter protections, or that have adequate procedures to catch and correct errors.

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The secret and inconsistent manner in which purges are conducted make it difficult, if not impossible, to know exactly how many voters are stricken from voting lists erroneously. And when purges are made public, they often reveal serious problems. Here are a few examples recent examples:

• In Mississippi earlier this year, a local election official discovered that another official had wrongly purged 10,000 voters from her home computer just a week before the presidential primary.

• In Muscogee, Georgia this year, a county official purged 700 people from the voter lists, supposedly because they were ineligible to vote due to criminal convictions. The list included people who had never even received a parking ticket.

• In Louisiana, including areas hit hard by hurricanes, officials purged approximately 21,000 voters, ostensibly for registering to vote in another state. A voter could avoid removal if she provided proof that the registration was cancelled in the other state, documentation not available to voters who never actually registered anywhere else.

FINDINGS

This report provides one of the first systematic examinations of the chaotic and largely unseen world of voter purges. In a detailed study focusing on twelve states, we identified four problematic practices with voter purges across the country:

Purges rely on error-ridden lists. States regularly attempt to purge voter lists of ineligible voters or duplicate registration records, but the lists that states use as the basis for purging are often riddled with errors. For example, some states purge their voter lists based on the Social Security Administration’s Death Master File, a database that even the Social Security Administration admits includes people who are still alive. Even though Hilde Stafford, a Wappingers Falls, NY resident, was still alive and voted, the master death index lists her date of death as June 15, 1997. As another example, when a member of a household files a change of address for herself in the United States Postal Service’s National Change of Address database, it sometimes has the effect of changing the addresses of all members of that household. Voters who are eligible to vote are wrongly stricken from the rolls because of problems with underlying source lists.

Voters are purged secretly and without notice. None of the states investigated in this report statutorily require election officials to provide public notice of a systematic purge or even individual notice to those voters whose names are removed from the rolls as part of the purge. Additionally, with the exception of registrants believed to have changed addresses, many states do not notify individual voters before purging them. In large part, states that do provide individualized notice do not provide such notice for all classes of purge candidates. For example, our research revealed that it is rare for states to provide notice when a registrant is believed to be deceased. Without proper notice to affected individuals, an erroneously purged voter will likely not be able to correct the error
before Election Day. Without public notice of an impending purge, the public will not be able to detect improper purges or to hold their election officials accountable for more accurate voter list maintenance.

**Bad “matching” criteria leaves voters vulnerable to manipulated purges.** Many voter purges are conducted with problematic techniques that leave ample room for abuse and manipulation. State statutes rely on the discretion of election officials to identify registrants for removal. Far too often, election officials believe they have “matched” two voters, when they are actually looking at the records of two distinct individuals with similar identifying information. These cases of mistaken identity cause eligible voters to be wrongly removed from the rolls. The infamous Florida purge of 2000 — conservative estimates place the number of wrongfully purged voters close to 12,000 — was generated in part by bad matching criteria. Florida registrants were purged from the rolls in part if 80 percent of the letters of their last names were the same as those of persons with criminal convictions. Those wrongly purged included Reverend Willie D. Whiting Jr., who, under the matching criteria, was considered the same person as Willie J. Whiting. Without specific guidelines for or limitations on the authority of election officials conducting purges, eligible voters are regularly made unnecessarily vulnerable.

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**NO EFFECTIVE NATIONAL STANDARD GOVERNS VOTER PURGES. THIS MAKES THE RISK OF BEING PURGED UNPREDICTABLE AND DIFFICULT TO GUARD AGAINST.**

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**Insufficient oversight leaves voters vulnerable to manipulated purges.** Insufficient oversight permeates the purge process beyond just the issue of matching. For example, state statutes often rely on the discretion of election officials to identify registrants for removal and to initiate removal procedures. In Washington, the failure to deliver a number of delineated mailings, including precinct reassignment notices, ballot applications, and registration acknowledgment notices, triggers the mailing of address confirmation notices, which then sets in motion the process for removal on account of change of address. Two Washington counties and the Secretary of State, however, reported that address confirmation notices were sent when any mail was returned as undeliverable, not just those delineated in state statute. Since these statutes rarely tend to specify limitations on the authority of election officials to purge registrants, insufficient oversight leaves room for election officials to deviate from what the state law provides and may make voters vulnerable to poor, lax, or irresponsible decision-making.
POLICY RECOMMENDATIONS

No effective national standard governs voter purges; in fact, methods vary from state to state and even from county to county. A voter’s risk of being purged depends in part on where in the state he or she lives. The lack of consistent rules and procedures means that this risk is unpredictable and difficult to guard against. While some variation is inevitable, every American should benefit from basic protections against erroneous purges.

Based on our review of purge practices and statutes in a number of jurisdictions, we make the following policy recommendations to reduce the occurrence of erroneous purges and protect eligible voters from erroneous purges.

A. Transparency and Accountability for Purges

States should:

- **Develop and publish uniform, non-discriminatory rules for purges.**

- **Provide public notice of an impending purge.** Two weeks before any county-wide or state-wide purge, states should announce the purge and explain how it is to be conducted. Individual voters must be notified and given the opportunity to correct any errors or omissions, or demonstrate eligibility before they are stricken from the rolls.

- **Develop and publish rules for an individual to prevent or remedy her erroneous inclusion in an impending purge.** Eligible citizens should have a clear way to restore their names to voter rolls.

- **Stop using failure to vote as a trigger for a purge.** States should send address confirmation notices only when they believe a voter has moved.

- **Develop directives and criteria with respect to the authority to purge voters.** The removal of any record should require authorization by at least two officials.

- **Preserve purged voter registration records.**

- **Make purge lists publicly available.**

- **Make purge lists available at polling places.** Purge lists should be brought to the polls on Election Day so that errors can be identified and pollworkers can find the names of erroneously purged voters and allow them to vote regular ballots.
**B. Strict Criteria for the Development of Purge Lists**

States should:

- **Ensure a high degree of certainty that names on a purge list belong there.** Purge lists should be reviewed multiple times to ensure that only ineligible voters are included.

- **Establish strict criteria for matching voter lists with other sources.**

- **Audit purge source lists.** If purge lists are developed by matching names on the voter registration list to names from other sources like criminal conviction lists, the quality and accuracy of the information in these lists should be routinely “audited” or checked.

- **Monitor duplicate removal procedures.** States should implement uniform rules and procedures for eliminating duplicate registrations.

**C. “Fail-Safe” Provisions to Protect Voters**

States should ensure that:

- **No voter is turned away from the polls because her name is not found on the voter rolls.** Instead, would-be voters should be given provisional ballots, to which they are entitled under the law.

- **Election workers are given clear instructions and adequate training as to HAVA’s provisional balloting requirements.**

**D. Universal Voter Registration**

States should:

- **Take the affirmative responsibility to build clean voter rolls consisting of all eligible citizens.** Building on other government lists or using other innovative methods, states can make sure that all eligible citizens, and only eligible citizens, are on the voter rolls.

- **Ensure that voters stay on the voter rolls when they move within the state.**

- **Provide a fail-safe mechanism of Election Day registration for those individuals who are missed or whose names are erroneously purged from the voter rolls.**
I. INTRODUCTION

In 1959, the local Citizens Council, a white supremacist group with an organizational mission of maintaining racial segregation, together with a local election official removed 85% of the African American voters from the registration rolls of Washington Parish, Louisiana, under the guise of removing from the rolls all persons illegally registered.\textsuperscript{11}

In 2007, almost 50 years after a court found that the Washington Parish purge was unconstitutional both in purpose and effect, election officials in Louisiana removed more than 21,000 people from the voter registration rolls, the majority from areas most devastated by Hurricane Katrina a year earlier.\textsuperscript{12} Almost a third of those removed were from Orleans Parish,\textsuperscript{13} which has a majority African American population.\textsuperscript{14} A voter could avoid removal if she provided proof that the registration was cancelled in the other state, documentation not available to voters who never actually registered anywhere else.\textsuperscript{15}

While we may be past the days in which election officials are complicit with those who intentionally seek to target persons of color for removal from the voter rolls, the way in which voter registration lists are maintained in this country may sometimes have a similar effect.\textsuperscript{16}

Voter registration lists are the gateway to voting. In most instances,\textsuperscript{17} a citizen can only vote and have her vote count if her name appears on the registration rolls. Yet officials regularly remove, or “purge,” citizens each day from voter registration lists. In fact, at least 13 million people were purged from voter rolls between the close of registration for the 2004 federal general election and the close of registration for the 2006 federal general election. A voter has been “purged” if her registration status has changed such that she is no longer listed on the registration list as a person who is able to cast a regular ballot or a ballot that will be counted.

Dependable, accurate, and up-to-date voter registration lists increase the integrity of our elections in many ways. They let candidates and get-out-the-vote groups work more efficiently. Dependable lists also reduce confusion at the polls, make turnout numbers more precise and election misconduct easier to detect and deter. To the extent that they help insure that registration lists correctly reflect eligible registrants, precise, carefully conducted purges are important.

Unfortunately, many of the voter purges in this country are performed in a slipshod manner and leave ample room for abuse and manipulation. When purges go wrong, eligible voters are removed from the rolls, frequently with no notice or knowledge until they show up at the polls to vote.
This report examines what goes wrong with those purges, how voter purges are conducted, and how to minimize the risk that eligible voters will be incorrectly purged across the county. Our analysis is based on a review and examination of state statutes, regulatory materials, and news reports in the following twelve states, representing a cross-section of regions, election systems, and purge practices: Florida, Kentucky, Indiana, Michigan, Missouri, Nevada, New York, Ohio, Oregon, Pennsylvania, Washington, and Wisconsin. In five states — Kentucky, Missouri, Nevada, Ohio, and Washington — we also conducted extensive interviews with state and local election officials charged with the maintenance of voter registration lists.

Due to the secret nature of purges, it is difficult to know the full extent of the problem, or the exact number of people who have been wrongfully kept from voting. What we do know is that in the states studied, purge practices are unnecessarily secretive and in need of improvement. When purges are made public, they reveal serious problems. Given the margins by which elections are won, these purges matter greatly, and there is reason to believe that the number of people wrongfully purged makes a difference. There is no reason for purges to be kept secret — they undermine confidence in elections, and cast doubt on our concept of fairness.

The Brennan Center is dedicated to investigating the precise nature of these purges conducted behind closed doors. We encourage election officials, legislators, advocates and concerned members of the public to use this report to improve voter purge practices and ensure that the rights of eligible voters are not jeopardized.

II. Types of Voter Purges

Purges occur as part of a process of “list maintenance” that states and localities use to update and clean their voter registration lists. Depending on the state, purges are conducted by local officials, state officials, or both. Voters are generally purged on one of the following grounds: (1) changes of address, (2) death, (3) disenfranchising criminal conviction, (4) duplication of other records, (5) inactivity or failure to vote, and (6) mental incapacitation.

Three statutes provide the bulk of the few existing federal requirements and voter protections for conducting purges — the National Voter Registration Act of 1993 (“NVRA”), the Help America Vote Act of 2002 (“HAVA”), and the Voting Rights Act of 1965. Under the NVRA, any state purge practice must be “uniform, non-discriminatory, and in compliance with the Voting Rights Act of 1965.” The NVRA also imposes certain limitations on election officials as to when and how registrants can be removed from the voter rolls on account of change of address, which afford some protections against one type of purge. HAVA emphasizes that voter purges must be done in accordance with the NVRA, and requires that the process for maintaining statewide computerized voter registration databases, which HAVA requires, include minimum standards of accuracy to ensure that registration records are accurate and regularly updated.
Purges can be “systematic,” meaning that they are large-scale and done in an organized and pre-planned fashion, or they can be “routine,” meaning that they affect an individual voter and are based on individualized information. A systematic purge is one in which all people believed to be deceased are removed from the registration rolls; a routine purge is one in which a son brings his mother’s death certificate to the local registrar and asks that she be removed from the rolls. Routine purges can have serious consequences for individual voters, but given the sheer number of persons affected, it is especially important to ensure that systematic purges are done well, with adequate protections for affected voters.

This section examines the statutes, policies, and procedures employed by states and localities for purging voters, and explains the policy choices that may affect the ability of voters to cast ballots which count. The particulars of how purges are conducted reveal how purge practices vary dramatically from jurisdiction to jurisdiction, how there is also a lack of consistent protections for voters, and how there are opportunities for mischief in the purge process.

A. CHANGE OF ADDRESS

Twenty-nine million voting-age Americans move each year. Accordingly, it is no surprise that changes of name and address accounted for 43% of all voter registration transactions for the time period between the close of the 1996 elections to right after the close of the 1998 elections. From the close of the 2004 elections to the close of the 2006 elections, changes of name, address, and political party accounted for more than 30% of all voter registration transactions.

Election officials we interviewed reported that changes of address are the most difficult aspect of list maintenance. A number of election officials believe that changes of address account for the bulk of duplicate registrations on the voter rolls because people who have moved often re-register at their new places of residency without notifying election officials in their former places of residence of the address change.

Under federal law, election officials may purge a registrant believed to no longer be a resident of the election jurisdiction if two conditions are satisfied. First, the registrant must fail to respond to an address confirmation notice from the relevant election office in the time period designated under state law. The notice must be sent by forwardable mail and include a postage prepaid, pre-addressed response card. Second, the registrant must fail to vote in two federal general elections following the mailing of the address confirmation notice. The sending of these notices starts the running of the clock for the time period in which a person must vote in two subsequent federal general elections or be removed from the rolls in those states that conduct purges.
Address confirmation card sent to voter.

Card returned by voter.

Yes

Registration updated.

No

Vote in federal election?

Yes

Registration updated.

No

Vote in federal election?

Yes

Registration updated.

No

Purged.

Timeline not drawn to scale.
In spite of this federal mandate, there are great discrepancies in the methods states and localities use to implement purges based on changes of address, including: differences in which events trigger the mailing of a notice seeking address confirmation; which information sources are used to identify registrants who have moved; how registrants’ addresses are verified; and how officials proceed when a person does not respond to an address confirmation notices.

1. Post Card Purges and other Triggers for Address Confirmation Notices

The most common triggers causing a local election official to send an address confirmation notice include: the return of a mailing sent to the person from the election office; an acceptable source provides information suggesting that the person has moved; or the election office undertakes a program to verify addresses and finds an address that appears questionable.

In several states, officials are given the authority to send an address confirmation notice to a registrant if other undeliverable mail is returned to the election office in certain circumstances. States, and even counties within states, vary in the type of mail that can trigger the mailing of a confirmation notice. Some states or counties will send an address confirmation notice based on the return of a mailing sent to all registered voters designed to ferret out bad addresses. This is sometimes referred to as a “canvass.” In other jurisdictions, a wider array of undeliverable election mail may trigger the mailing of an address confirmation notice, such as absentee ballots, registration acknowledgement notices, and precinct reassignment notices.

If a purge arises from a mass mailing, typically a non-forwardable postcard, it is referred to as a “postcard purge.” In some cases, a postcard mailing is part of a jurisdiction’s canvassing efforts. When postcards are returned as undeliverable, the jurisdiction usually sends an address confirmation notice to the voter. If the voter does not respond to the notice and fails to vote in two subsequent federal elections, the voter can be lawfully purged from the voter registration list, provided that the removal does not take place within 90 days of a federal election. If a jurisdiction uses undeliverable mail from a mass mailing as the sole basis for purging a voter, it breaks federal law. A Michigan law is legally vulnerable on this ground because if the original “voter identification” card — the card sent to new registrants — is returned as undeliverable to the local clerk, the clerk cancels the registration.

Although returned postcards from mass mailings probably form the most common basis for supposed changes of address, this kind of returned mail is not a reliable indicator that a person has moved for the reasons set forth below. Several of the factors that make this method unreliable affect voters in poor and minority communities more than those in other communities. Before presuming that returned mail means a person has moved, states and localities should consider the following sources of error:

a. Voter registration lists suffer from typos and other clerical errors

Mail sent to a listed registration address may be returned as undeliverable because of a typo or other data entry errors on the voter rolls. Large government databases are notoriously vulnerable to
such flaws. One study found that as many as 26% of records in a Florida social service database included city names that were spelled differently from the same names on a master list, including more than 40 spelling variations of Fort Lauderdale, one of the largest cities in the state. Address numbers and names may be mistyped or transposed. Portions of addresses apartment numbers or house numbers or directional indicators (e.g., S. Main St. or N. Main St.) may be dropped. Addresses may be entered incorrectly (e.g., 211-2 Main St. becomes 21 Main St.).

b. A voter may not be listed on the mailbox of her residential voting address

Mail sent to a listed registration address may be returned as undeliverable because the United States Postal Service does not know that the voter actually lives at the address listed. Couples, roommates, or family members may list only one or two members of the residential unit on the mailbox. Particularly when the unlisted members of the unit do not share the same surname as the listed member, the postal delivery person may simply presume that the individual in question does not live at the listed address.

c. A voter may live at a non-traditional residence

Mail sent to a listed registration address may be returned as undeliverable because the voter does not live at a traditional address. Homeless individuals, who have the right to register and vote in every state, are a prime example of this problem. Depending on the law of the state, these citizens may list a homeless shelter or government building as their legal voting residence, even if the institution listed will not accept their mail.

d. A voter may be temporarily away from her permanent residence

Mail sent to a listed registration address may be returned as undeliverable because the voter is temporarily away from her permanent residence, and does not receive mail there. For example, an active duty member of the military may have difficulty receiving mail. In one notorious Louisiana case, a member of Congress who received her mail in Washington D.C. rather than at her home address in her district was challenged after a letter to her home was returned as undeliverable.

e. A voter’s permanent mailing address may differ from her residential voting address

Mail sent to a listed registration address may be returned as undeliverable because the voter receives mail elsewhere — at a post office box, for example. When individuals register to vote, they list their physical residences, but not all Americans receive mail at their residential addresses.

f. Mail may not be properly delivered

Sometimes, of course, mail sent to a listed registration address is returned as undeliverable because it was not delivered properly, through no fault of the voter. Mail can be lost or misrouted, causing
it to be returned to the sender. Erratic mail problems can be quite significant. In the 1990 census, for example, the New York Times reported that “[a]lthough at least 4.8 million [census] forms were found to be undeliverable by the Postal Service, 1.8 million of those were later delivered by hand.” Moreover, ineffective mail delivery is more common in poor and minority communities.

g. A voter’s street name may have changed

Mail sent to a listed registration address may be undeliverable because the street name may have changed since the voter registered, even though the voter remains in the same residence. In Milwaukee in 2006, for example, when street addresses were checked against a postal service address program, city officials reviewing the list of discrepancies found that some addresses were flagged because of changes to the street names themselves.

h. A voter may refuse to accept certain mail

Mail sent to a listed registration address may be undeliverable because the voter refuses to accept the piece of mail in question. There is no requirement that an individual accept a piece of mail offered for delivery, rather than sending it back with the delivery person. Catherine Herold of Ohio, for example, reported that she refused to accept delivery of a partisan mailing — which was returned undelivered and then used as purported evidence of her allegedly invalid registration.

i. A voter may have moved permanently, but nevertheless remains eligible to vote

State rules differ as to when a voter who has moved must inform election officials of her new address. At a minimum, however, federal law provides that if a voter has moved within the same area covered by a given polling place — if, for example, a voter moves from one apartment to another within the same apartment complex — she may legitimately vote at that polling place even if she has not yet notified a registrar of her move.

Federal law prohibits systematic purges within 90 days of an election. Voter advocacy groups have criticized jurisdictions which have sent or have contemplated sending a mass mailing as the first step to confirm addresses when the initial mailing has taken place within 90 days of an election. Mass mailings of this kind are inadvisable not only because undelivered mail is an unreliable indicator that a person has moved (as explained above), but also because of timing. Election officials are busiest in the 90 days preceding an election: they must process new registrations, update registration records, identify polling locations, prepare voting materials, and more. Without the time to exercise due care, data entry and other mistakes are more likely, subjecting eligible voters to the risk of a purge.

2. Information Sources Used to Identify Registrants Who Have Moved

Often voters do not tell election officials they have moved out of a jurisdiction, and so it is hard for officials to identify invalid records on voter registration lists. States, therefore, turn elsewhere to
identify voters who have moved. Given the NVRA’s explicit authorization to do so, it is no surprise that states often rely heavily on information provided by the United States Postal Service, its licensees, and the USPS’s National Change of Address database. This method, though, has its own problems, including inaccuracies in postal service data and cost to election officials. Some states use information gained in connection with jury notices and information from other departments, such as the bureau of motor vehicles to identify address changes. For example, in Kentucky, one election official used information on changes of address for updating driver’s licenses to update addresses in the voter registration list.

In some states, individuals can provide information about someone else’s change of address that is then acted upon by election officials. In Nevada, county clerks can send an address confirmation notice based on information gained from another voter or other “reliable person” who submits an affidavit stating that a particular voter has moved outside the county with the intent to abandon her residence.

3. Address Verification Procedures

Some state statutes permit broad canvasses to confirm voters’ addresses. For example, some states allow local election officials to conduct door-to-door canvasses to find voters. In actuality, however, a local election official we interviewed reported that this was not a widespread practice.

Some state statutes permit localities to initiate their own efforts to identify registrants who have moved. In some cases, the acceptable methods are unspecified or unlimited. Missouri law grants election officials broad authority and wide latitude to verify a person’s address. The statute reads, in relevant part: “[t]he election authority may investigate the residence or other qualifications of any voter at any time it deems necessary. The election authority shall investigate material affecting any voter’s qualifications brought to its attention from any source, and such investigations shall be conducted in the manner it directs.”

4. Voter Classification After an Address Confirmation Notice is Sent

While the details of the process differ, after sending address confirmation notices states tend to follow one of two schemes: states designate any voter who is sent an address confirmation notice as “inactive,” while others do not designate a voter as “inactive” until after the voter fails to respond to the address confirmation notice in a timely matter. This distinction is relevant because in some states, the voting experience of someone designated “inactive” may be different from, and more difficult than, that of an “active” voter. In Massachusetts, for example, inactive voters shoulder additional identification burdens when they show up to vote. In Oregon, where all elections in the state are allowed to be conducted by mail, inactive voters are not statutorily required to be given ballots by mail. Additionally, some polling stations are reported to have a list of inactive voters that is separate and apart from the active voter list. There is at least some anecdotal evidence that sometimes the lists of inactive voters are not available at the polling stations, putting inactive voters at a disadvantage when attempting to vote.
B. DEATH

Both HAVA and the NVRA address the removal of deceased voters from the voter rolls. Under the NVRA, states must make a “reasonable effort” to remove those who have died from the registration rolls. HAVA directs each state to coordinate its voter registration database with state death records for the purposes of removing names of deceased persons from the voter rolls.

Different agencies in different states maintain records of deaths, and so election officials get information about deceased registrants from varying sources. In some states, the department of health sends a list to election officials. Elsewhere, local and state registrars or departments of vital statistics send a list of deceased persons to voting officials. Still other states do not designate which agency is charged with providing information on decedents.

Some states permit election officials to consider sources other than data from state agencies in gathering information on decedents. In some states, for example, election officials are permitted to use newspaper obituaries to identify deceased registrants. In Washington State, a registrant may be removed from the registration rolls if another registered voter signs a statement of personal knowledge or belief that the registrant is deceased. Elsewhere, state law authorizes the use of other sources, without specifying what sources may be considered.

C. DISENFRANCHISING CRIMINAL CONVICTIONS

State have a blizzard of varying laws regarding the voting rights of people with criminal convictions. Kentucky and Virginia permanently disenfranchise all people with felony convictions unless their rights are specifically restored by the government, while in Maine and Vermont, people with criminal convictions do not lose their voting rights at all — even prisoners are permitted to vote. Most state laws, however, fall somewhere in between those two positions.

Thirteen states and the District of Columbia automatically restore voting rights to formerly incarcerated persons upon their release from prison. In contrast, eight states permanently disenfranchise citizens convicted of certain crimes unless the government approves individual rights restoration. Five states allow probationers to vote and automatically restore the voting rights of persons with criminal convictions after release from prison and discharge from parole. It is most common for a state to restore an individual’s voting rights upon completion of his sentence, including prison, parole, and probation.

Federal law provides little guidance or voter protections in this area. The NVRA permits states to purge people with felony convictions from the voter rolls consistent with state law. HAVA requires states to “coordinate the computerized list with State agency records on felony status” to remove registrants made ineligible by criminal convictions. As with other types of purges addressed in this report, state purge practices for people ineligible because of felony convictions are varied in numerous ways.
1. Authority and Responsibility

The responsibility for purging people with disenfranchising convictions differs from state to state. In some states, like Kentucky, the statutory responsibility rests with state election officials. In other states, like Nevada, local officials are responsible. There are also hybrid systems for removing people with disenfranchising convictions: in Washington, for example, local officials remove some people convicted of felonies while state officials remove others. In Florida, local officials are required to conduct removals, but do so in accordance with information provided by state officials. In other cases, state election law does not clearly delineate which officials are responsible for removing ineligible persons with felony convictions.

2. Sources of Information

Under federal law, United States Attorneys are required to notify states’ chief election officials of felony convictions in federal court. State election officials, then, in turn notify relevant local election officials. In addition to the provision of information by U.S. Attorneys, some state statutes provide that election officials are to obtain information on people with disenfranchising convictions from a number of other sources. State statutes, however, do not always provide clear guidance as to what sources election officials can rely on in gathering information about registrants rendered ineligible by criminal convictions. Consequently, sources vary on a county-by-county basis.

D. DUPLICATE RECORDS

Often when voters move within a state, they register to vote in a new neighborhood without canceling their registration in the old one. Or, accidentally, a voter can register from the same address multiple times. Federal law says that state systematic purge programs should screen for and eliminate duplicate names from the centralized state voter registration list. But the federal law gives no specific guidance on how states should identify such duplicate records, or what processes should be followed. As a result, from state to state and county to county, officials remove duplicates in an inconsistent and confusing manner. There is not even any uniformity as to how duplicate registration records should be resolved once they are detected. For example, while a number of officials, when encountering what they presume to be duplicate registrations for the same person, presume that the more recent registration is the accurate one, one election official in Michigan reported a practice of removing the newer registration when confronted with a duplicate.

Given the errors and inconsistencies in the records on state voter rolls, it may be impossible to tell with certainty whether two records indeed refer to the same person and therefore are duplicates — unless the affected individuals are contacted and can confirm the duplication. States and localities therefore typically rely to some extent on approximation and assumptions, which may not be accurate in some circumstances.

Some statewide list maintenance programs identify potential duplicate records automatically, but rely on local election officials to sort through the flagged records. These registrars are supposed to
purge only actual duplicates, while leaving untouched any records falsely flagged as duplicates. The process is often confusing and time-consuming. For example, Missouri law gives local election officials explicit authority to identify and remove duplicate records, but it does not specify how duplicates should be identified or what evidence is enough to remove a voter. As a result, different county election officials in Missouri follow very different procedures for identifying duplicate records. In one county, election officials request confirmation from voters for possible duplicate records, and the duplicate record is purged if the voter does not respond or appear to vote in the following election. In a different county, election officials simply flag possible duplicates and monitor for voting fraud but take no further action.

Most state statutes, in fact, offer very little guidance to local election officials and do not specify what identifying characteristics should be verified, or what degree of approximation is permitted. One election official in Ohio stated that their ability to identify duplicates is further complicated by, among other things, name changes after marriage and poorly programmed registration software that slows down the process. When local election offices become busy with processing large numbers of new registrations prior to elections, they tend to relax the level of scrutiny they pay to checking the accuracy of duplicate matches.

Despite vague laws and scarce resources, local election officials reported increased pressure from state officials to “clean” the voter registration list of duplicate records. Such pressure, in the absence of counterbalancing restrictions or guidelines, is likely in the future to result in larger numbers of improperly purged registrants.
Possible duplicate record flagged by statewide database

County 1 receives notification of possible duplication
County 2 receives notification of possible duplication

County 1 independently investigates record to determine the source of duplication
County 2 independently investigates record to determine the source of duplication

County 1 reaches conclusion about the cause of duplicate notice and must coordinate resolution with County 2
County 2 reaches (potentially different) conclusion and must coordinate resolution with County 1

Voter’s registration is restored only if both counties agree to same resolution and take coordinated sequential steps to update voter’s record from both counties. Otherwise, voter will not be properly registered and may not be able to vote a regular ballot.

E. INACTIVITY/FAILURE TO VOTE

Federal law explicitly states that a person cannot be purged merely for a failure to vote — a basic protection for registered voters who may only vote sporadically. This protection ensures that a voter does not lose her right to vote simply because she chooses not to exercise that right in a particular election. Accordingly, federal law prevents election officials from relying on the fact that a voter has not voted for some time to conclude that she moved, died, or otherwise becomes ineligible and then to cancel her registration based on that conclusion.

Election officials are, however, permitted to remove voters pursuant to the NVRA’s change of address process. Under the NVRA, states must send forwardable address confirmation notices to voters believed to have moved with a postage prepaid and pre-addressed response card to either confirm a continuing address or update the state with a new address. If the card is not returned, the state cannot remove the voter unless the voter not only does not return the card confirming her address, but also does not vote in at least one of the two general federal elections following the notice’s mailing.

1. Inadequate Guidance

Voters who have not voted for a designated period of time, or have not responded to an address confirmation notice, nor presented themselves to vote in the subsequent elections are often referred to as “inactive voters.” Most of the state statutes surveyed for this report fail to provide clear guidance on how to meet the NVRA’s requirements relating to “inactive voters.”

The Kentucky statute, for example, reiterates the NVRA requirement outlined above, but does not provide any guidance on how an inactive voter should be allowed to vote (for example, by signing a written affidavit confirming her address). As a result, local election officials impose inconsistent requirements for inactive voters who turn up at the polls on Election Day. One Kentucky county requires inactive voters to sign an affidavit before being allowed to vote, whereas another county requires an election officer at the polling place to call a central election office to confirm the registration before allowing inactive voters to receive a ballot.

The inconsistent requirements at different polling places can lead to the de facto disenfranchisement of inactive voters who should, instead, be protected by the NVRA. For example, in locations where telephone confirmations are required before inactive voters are allowed to vote, the polling places are sometimes not equipped with sufficient telephone lines to keep up with the high volume of voters in heavy turnout precincts, effectively forcing precincts to turn away inactive voters rather than allowing them to vote. Thus, voters who would otherwise have been classified as active again could instead find themselves purged for failure to vote, despite attempting to do so. This problem reportedly occurred to inactive voters in St. Louis County in 2006.

2. Programs Targeting Voters who Failed to Vote

Some jurisdictions’ policies stretch compliance with the NVRA’s prohibition against purging a
voter merely for failure to vote. For example, in Ohio, though not required to do so by law, many jurisdictions send address confirmation cards exclusively to registered voters who did not vote in the most recent election, rather than to all registered voters, as many other states do. Ninety days following each general election in Wisconsin, state election officials are required to identify persons who have not voted within the previous four years and mail them a notice that informs the addressees that their registration will be “suspended” unless they apply to continue their registration. Thus, the simple failure to vote in these jurisdictions is sufficient to trigger a process that could ultimately result in being purged from the voter registration list.

F. INCAPACITATION

Federal law offers even fewer guidelines for removing voters from the registration rolls because of mental incapacitation. In contrast to its references to purges based on felony convictions or death, HAVA does not mention the removal of persons adjudged incapacitated. The NVRA simply provides that states must comply with state law in removing names from the registration list of voters because of mental incapacity.

1. Varying Rights

State laws vary with respect to the voting rights of persons who are mentally incapacitated. Pennsylvania, Michigan and Indiana, for example, do not by statute disenfranchise persons who are adjudged mentally incapacitated. In fact, Pennsylvania’s statute goes as far as specifying the means for determining the residency of individuals who live at institutions for mentally ill patients expressly for the purpose of voter registration. Indiana’s law specifies that the “[d]etention or commitment of an individual…does not deprive the individual of . . . [t]he right to . . . [v]ote.” Like Pennsylvania, Indiana law specifies the residency of persons who are committed so that they may be able to vote. In contrast, the Oregon Constitution contains a disenfranchising provision that renders ineligible those specifically adjudicated incompetent to vote.

The statutory practices for purging voters for mental incapacitation similarly vary. States like Missouri and New York provide only the most general standards for disenfranchising persons on account of mental incapacitation, providing that persons who are declared incapacitated may be removed from the rolls. Similarly, Nevada requires cancellation of a registration when “the insanity or mental incompetence of the person registered is legally established.” By contrast, states like Florida indicate that the declaration of mental incapacitation must be specifically with respect to voting before a person can be removed from the voter rolls.

The experience of election officials suggests that the public is not always informed as to the state voting protections for persons perceived to be mentally incapacitated. For example, local officials in Nevada and Ohio reported that they have had removal requests made by individuals relating to another voter on the grounds of mental incapacitation even when there was no court adjudication.
2. Sources for Identifying Individuals

In a number of states, like Kentucky, election officials are supposed to receive, pursuant to statute, lists indicating the names of persons who may no longer be eligible to vote on account of mental incapacity from state circuit or probate courts, district courts, or in the case of some states, for example, Washington and New York, the office of the court administrator. These practices are consistent with the policy of not depriving a person of the franchise absent court adjudication. In practice, however, the lists of those ineligible to vote on account of mental incapacitation do not always come from the court system. At least one locality in Missouri claims to receive incapacitation lists from the state Department of Health and Human Services. One county election official in Ohio reported that local board of elections staff, sent to nursing facilities to help the elderly vote, sometimes determine that a particular person is incapable of voting.

III. PROBLEMS WITH PURGES

Our review of state purge practices reveals a number of shortcomings. Across the country, problems occur because the lists used to identify people to be purged are unreliable, purges are done in secret, election officials use bad matching criteria, and purges are conducted with insufficient oversight.

A. SOURCE LISTS ARE RIDDLED WITH ERRORS

States regularly purge their voter registration lists of ineligible voters or duplicate registration records, but the lists states use as the basis for purging voters are often riddled with errors, which result in the removal of many eligible voters. For example, some states purge voter registration rolls of individuals based on the Social Security Administration’s Death Master File, a database of 77 million deaths, dating back to 1937. Unfortunately, even the Social Security Administration admits there are people in its master death index who are not actually dead. The master death index lists the date of death of Hilde Stafford, a Wappingers Falls, NY resident, as June 15, 1997. The 85-year-old’s response: “I’m still alive,” Stafford said, “I still vote.” Indeed, from January 2004 to September 2005, the Social Security Administration had to “resurrect” the records of 23,366 people wrongly added to its Death Master File, meaning that the Administration was presented with irrefutable evidence that it had incorrectly listed 1,100 people a month, or more than 35 a day, as deceased.

Lists can be inaccurate because they are overbroad, lack specificity, or simply contain errors. For example, when a member of a household files a change of address for herself in the United States Postal Service...