



Vanishing Voters

Why Registered Voters Drop Off the Rolls

U.S. PIRG

September 2008

Education Fund

Vanishing Voters: Why Registered Voters Fall Off the Rolls

The U.S. Public Interest Research Group Education Fund
September 2008

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U.S. PIRG Education Fund gratefully acknowledges the support of the Rockefeller Brothers Fund, Nancy Meyer and Marc Weiss, The JEHT Foundation, and the Democracy Alliance for their support of our work to educate and inform the public and public officials on potential challenges facing voters in the upcoming election.

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Executive Summary

In 1993, Congress passed the National Voter Registration Act (NVRA). Its primary purpose was to open up the voter registration process and enhance democratic participation. The law had several aims, but among them was protecting Americans from being carelessly or purposefully excluded from voting by being improperly dropped from voting rolls.

Specifically, the NVRA established two clear and simple directives regarding the maintenance of voter rolls:

1. Election administrators may systematically remove ineligible voters from voter rolls at any time except within 90 days of a federal election.
2. Election administrators must notify voters that they will be dropped from the rolls if the administrators believe that the voters have moved to another precinct.

Fifteen years after enactment of the NVRA, however, many states continue to appear unaware of the federal rules regarding voter roll purges. A survey of state laws and election officials shows that, on the eve of the 2008 general election, many voters across the country do not appear to enjoy the important voter protection provisions afforded by the NVRA.

Many states seem unaware of the federal rules against systematic voter list maintenance within 90 days of a federal election as evidenced by the following three findings:

1. Nineteen states do not have laws, regulations or systems in place to

properly implement the NVRA's 90-day ban on voter List maintenance. There is no apparent pattern to the states that lack these protections, and they cross both political and geographic boundaries.

2. Nine states claim that there is no deadline beyond which voters cannot be systematically dropped from the rolls, a direct contradiction of the terms of the NVRA.
3. Four states have their own deadlines written into state law -- all of which are less than the federally mandated 90 days.

In addition, we found that 11 states do not have the proper systems in place for notifying voters who have been removed from the rolls if they are believed to have moved out of the precinct.

Recommendations

1. States should assess their compliance with the NVRA and immediately take steps to ensure they are following federal law.
2. Each state's Secretary of State or chief election administrator should send a letter to election officers and local officials explaining and clarifying the rules.
3. The Department of Justice must enforce the NVRA, including the 90-window and the notification requirements.

4. States should properly train state and local employees who are responsible for managing voter rolls in order to reduce the likelihood of improper purging.
5. States should be prohibited from purging a voter from the rolls unless his or her name, address, sex, and phone number match the person whom should be removed.
6. Any state with a problem maintaining the rolls should be required to conduct an internal investigation.
7. Congress should expand the NVRA notification rule so that *all*

voters who are dropped from the rolls are notified rather than just those who are being dropped because they have moved.

8. States should post purged names on a public forum that is free to access, such as the Internet.

There are numerous ways in which states are in non-compliance with NVRA rules and, in so doing, jeopardizing the right of eligible voters to vote. By adopting these recommendations, government can promote the democratic process and help ensure that citizens who are entitled to vote have the opportunity to do so.

Introduction

The American election system has come under much criticism in the last decade. Former president Jimmy Carter, a man who has spent much of his post-presidential career monitoring elections throughout the world, has described the fairness of American elections as among the worst he has ever witnessed.ⁱ

High-profile problems in recent presidential elections have led to accusations of partisan misconduct. But regardless of whether the problems in our election system are the result of partisan manipulation or simple error, the fact remains that the United States has too often failed to live up to its responsibility to ensure the basic right of citizens to vote.

The 2000 federal elections brought the problems with our electoral system to public attention. Thomas Mann, a senior fellow in Governmental Studies at the Brookings Institution argues that public support for election reform was spurred on by the discovery of the antiquated, non-uniform, arbitrary, and error-prone aspects of American election procedures in the 2000 federal election.ⁱⁱ

Of the many problems with the 2000 election, one of the most appalling and least discussed was irresponsible purging of registered voters from the voting rolls. The problem was, and remains, significant. The Elections Assistance Commission, an independent, bipartisan commission created by the Help America Vote Act, reported that Arkansas incorrectly purged 3% of its voters between the 2004 federal election and 2006 mid-term elections.ⁱⁱⁱ Florida and Missouri struck over 100,000 legal voters from the eligible voters list before the 2000 federal

election. In Florida alone, 57,700 voters were dropped from the rolls leading up to the election, 90.2 percent of whom should have been left on.^{iv} Many voters were not allowed to cast their ballots merely because they shared a name with a felon and, in some instances, all people who shared a name with a felon were deleted from the list.^v These and similar findings^{vi, vii} highlight the need for electoral reform in order to address such voter roll problems.

These weaknesses in the voter registration process can potentially affect election outcomes. The margin of victory for President Bush in Florida was 537 votes.^{viii} Thus, if Florida's 52,000 disenfranchised voters had been able to vote, there could have been a different outcome.

Regardless of which political party is disadvantaged by improper voter roll purges, the denial of the right to vote — especially if done without notification or recourse — is an unacceptable violation of America's democratic principles. The elected officials that lead America derive “their just powers from the consent of the governed.”^{ix} Improper voter roll purges strike at the heart of the essential social contract between the governed and the government in several ways.

1. Disenfranchisement: It is simply not fair when the right to vote is wrongly taken away from a voter. While the disenfranchisement of even a single voter is problematic, improper voter roll purges raise questions about the potential for systematic disenfranchisement of members of particular groups, such

as disfavoring voters of a particular party, age group or ethnicity.

2. Legitimacy: When there are voters who have been disenfranchised, the election that results may not provide a legitimate outcome. The legitimacy of elected officials is of paramount importance to effective government.
3. Civic participation: When voters lose confidence in their elected officials, government, and in civic participation generally, it results in the problem of low civic

participation. This problem not only has consequences for the political process, it potentially has far-reaching impacts for the general welfare of the nation.^x

These are weighty reasons to guard against the improper purging of voters from the rolls. Federal law intends to protect the accuracy of voter registries. Among the most important federal laws that fulfill this function is the National Voter Registration Act.

The National Voter Registration Act

The National Voter Registration Act (NVRA), passed by Congress in 1993, provides an avenue by which registered voters can regain their eligibility to vote if they are improperly taken off of the rolls. The NVRA was created in order to make the voter registration process more accessible to every American.^{xi}

The act gives two simple and clear directives regarding the maintenance of voter rolls:

1. “A state shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.”^{xii}
2. Election administrators must notify voters before they are to be dropped from the rolls if they are going to be dropped as a result of an address change.^{1, xiii}

These directives, if properly carried out, result in the timely notification of some of those who have been dropped from the rolls, and, if the deletion was made in error, give voters sufficient time to appeal the decision

¹ As outlined in section 8, subsections (c) (B) (ii) and (d) (B) (ii) of the NVRA, the registrar sends notices only to those whom he/she believes have moved out of that voting precinct. A voter can be taken off of the registered voter list without consent when the voter does not respond to the notification, vote, or appear to vote in an election in the period beginning with the notification and ending when two federal elections have passed.

and reregister in time for the next federal election.

In the wake of the 2000 election, Congress enacted the Help America Vote Act (HAVA) of 2002, which was intended to address many of the problems with America’s electoral system. The law, among other things, mandates that provisional ballots be given to people who claim that they have been erroneously stricken from the rolls. The addition of provisional ballots was another attempt to deal with the issue of improper purging. Depending on the circumstances, voters have up to three days to prove that they should have been registered.

However, the system is flawed. Fewer than 70% of provisional ballots were counted in 2004.^{xiv} Nationwide, a total of 850,000 ballots were cast that were never counted.^{xv} Twenty-nine states will not count provisional ballots if they are cast in the wrong precinct, which in the case of many urban areas means dropping the ballot off on the wrong table in the correct room—a common occurrence.^{xvi} Finally, and even more alarmingly, HAVA does not require that provisional ballots be counted; thus, states do not always count them.^{xvii} This occurs even when the ballots could affect the election results. For example, in the 2004 presidential election, the number of provisional ballots not counted in New Mexico outnumbered the margin of victory for George W. Bush.^{xviii}

The problems with provisional ballots would not have as great an impact if voter rolls were being properly maintained, and if most voters dropped from the rolls were notified of that fact and given ample time to sort out

their registration status well before Election Day. In other words, strong and consistent enforcement of the provisions of the National Voter Registration Act could reduce the chances of problems on Election Day and help ensure that every eligible voter has a say in the outcome.

To assess states awareness of, and compliance with the NVRA, we collected

information from states regarding the degree to which the states adhere to the NVRA provisions. This report does not accuse any state of breaking the law. However, our research shows that many state election officials appear to be unaware of the provisions of the NVRA and that the election laws and regulations of some states appear to be inconsistent with federal law.

Findings

U.S. PIRG reviewed compliance with both the 90-day rule and the citizen notification rule defined above. See the Methodology section for details of the study methodology.

The 90-day Deadline for Voter Roll Cleanup

We found the following regarding the 90-day pre-election deadline for completing the process of systemic cleaning the voter rolls:

- Of the 50 states included in our survey, 19 states appear to be unaware of the 90-day requirement; the state statutes made no mention of the deadline and the election officials were unaware of one.²

In Figure 1, below, we compare the total number of registered voters in these 19 states to the number of registered voters in the remaining states.

As one can see from Figure 1,^{xix} the lack of enforcement of NVRA laws affects a great number of voters. Over 40 percent of the nation's registered voters live in states that have no laws enforcing the directive and election officials who are unaware of one.

Of the 19 states that do not appear to abide by the 90-day rule:

- Four states have statutes that

² The 19 states that fall into this category are Alabama, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Kansas, Maryland, Massachusetts, Nebraska, Nevada, New Jersey, New York, Ohio, Oklahoma, Rhode Island, Texas, and Washington.

directly contradict the 90-day rule by specifying deadlines that are less than 90 days before a federal election.³

In Connecticut, for example, state law specifically allows a cleaning of the rolls no later than 35 days before the election. Section 9-35 (a) of the general statutes states that “the registrars of voters, on the Tuesday of the fifth week before each regular election, shall complete a list of all electors who will be entitled to vote at such election.” This provision in state law directly contradicts the NVRA directive.

- Nine states' election representatives states that the rolls can be changes at any time, with no deadlines at all.⁴

A typical conversation with the representatives of these states was startling. The representative for Rhode Island “didn't think there was any deadline for systematic purges.” Another representative echoed this sentiment. However, the most common response among these states, given by six of the states, when asked the question “Is there a date after which there can be no systematic purges of the voter rolls?” was the simple one-word answer, “No.”

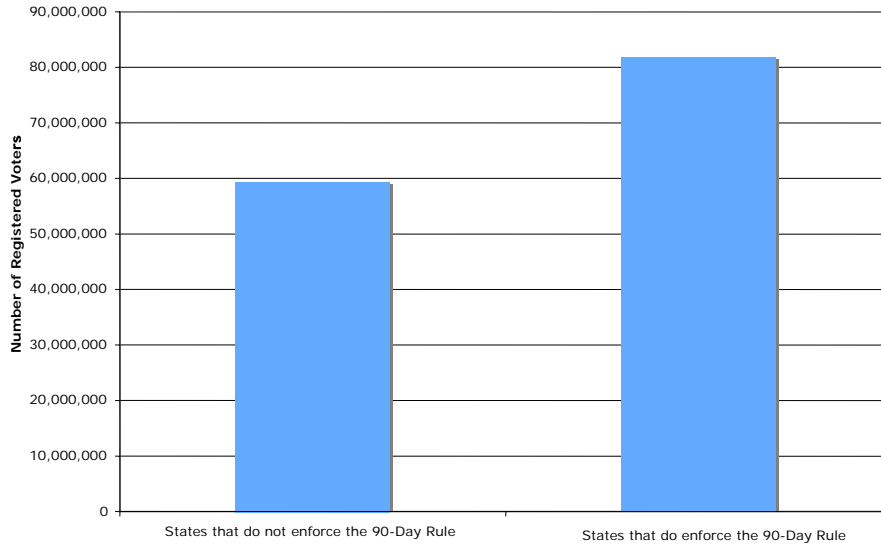
- Two states' election representatives provided dates beyond which the

³These four states are Colorado, Connecticut, Ohio, and Rhode Island.

⁴ The nine states are Maryland, Massachusetts, Nebraska, New Jersey, New York, Ohio, Oklahoma, Rhode Island, and Washington.

⁶ They are Alabama (10 days) and Delaware (20 days).

Figure 1: Comparison of Number of Voters Affected by the 90-Day Rule



rolls could not be changed but the dates were informal and not mandated in the state’s statutes.⁶

However, both states assured interviewers that they did stick to their own informal rules. “We don’t update 10 days before an election; names turned in within that period aren’t taken off of the rolls,” reported a member of the State Board of Elections from Alabama.

- Six states’ statutes did specify a date by which voters could not be removed from the rolls.⁸

Data on the Notification Rule

We found the following regarding the notification requirement:

- Eleven states do not enforce the notification rule properly. They either do not require notices to be

⁸ They are Hawaii, Illinois, Iowa, Kansas, Nevada, and Texas

sent or do not require them to be sent to all those mandated by the NVRA to receive them.⁹

In some states, local officials do make efforts to notify voters who have been dropped from the rolls. A representative from Ohio told us, “there are no notification rules, though many counties do notify some voters before they are removed.” In other cases, however, there is no notification. When a representative of New Jersey’s elections was asked if there was notification, he stated that there was not because “there are not statutory requirements.” And once again, the most common response among these states to the question, “Is there any public or individual notification provided to voters that have been purged from the rolls?” was simply, “No.”

Although more states follow the notification rules than adhere to the 90-day window,

⁹ They are Alabama, Colorado, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Nebraska, New Jersey, Ohio, and Texas. As noted above, each of these states also has inadequate compliance with the 90-day rule.

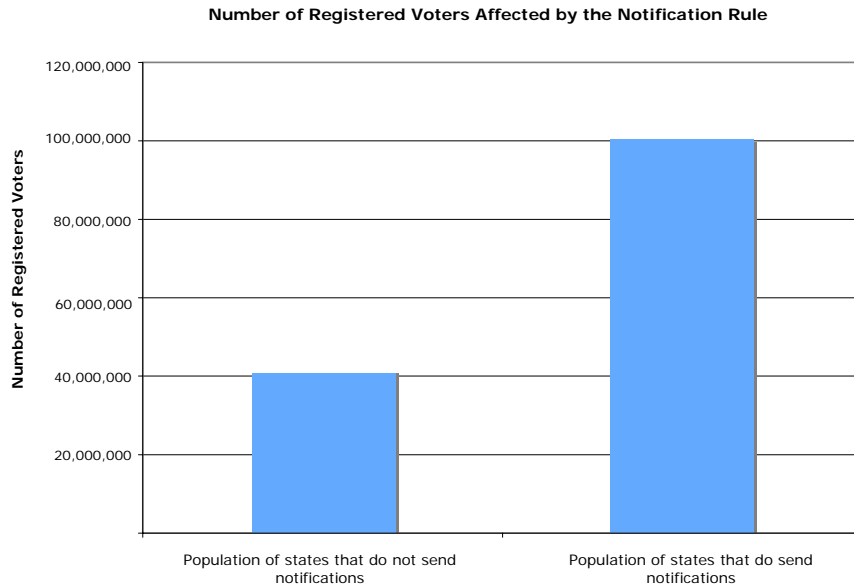


Figure 2 shows that there are still over 40 million voters, or a shade under 30% of America’s registered voters, whose states do not afford the protection that the NVRA promises.

Some states’ notification procedures went further than the NVRA requires:

- Three states provide multiple notices.¹⁰

- Three states publish removed names in a local newspaper.¹³
- Some precincts in Nevada post a list of registered voters on the Internet.
- Three states notify felons when they are going to be removed from the rolls.¹⁴

¹⁰ They are Iowa, Arizona and Florida.

¹³ They are Alabama, Alaska and Florida.

¹⁴ They are Alabama, Nebraska, and Washington.

Conclusions

These findings show that states are not uniformly implementing and enforcing the NVRA provisions created to protect the rights of voters. As a result, citizens in a significant number of states are at risk of being improperly removed from voter rolls and, in the case of mistakes, may not receive adequate notification and may have limited avenues for redress and re-registration. These findings support data and information contained in other reports and articles.

Not only does the evidence suggest non-compliance with federal law, it points to a possible cause of voter disenfranchisement. The exact number of voters erroneously purged from the rolls cannot be known with certainty, but there are many examples that illustrate the importance of conforming to the NVRA. In 2006, Kentucky had a very public example of illegal voter roll maintenance. The office of the Secretary of the State purged the rolls of 8,105 registered voters, of which 196 attempted to exercise their right to vote, but were denied. After the incident, the Secretary of State and the Attorney General discussed appropriate action and both decided that it would be best to follow the notification rules set forth in the NVRA.

All 30 states in compliance with the NVRA have taken different routes toward this goal. This highlights the fact that there are few barriers preventing states from achieving full NVRA implementation. States that violate the NVRA statutes should look at the examples provided by states that have already come into compliance and choose the path that is best suited for them.

Voting is the bedrock of America's democracy. The NVRA was written to

protect a citizen's right to vote and states must come into compliance in order to safeguard the rights of their own voters.

Recommendations

To improve the integrity of U.S. elections, the state and federal governments should improve enforcement of the NVRA and take additional steps to ensure the fair and adequate management of voter rolls.

1. States should assess their own compliance and immediately take steps to ensure they are following the law. States that are not currently complying with the NVRA should observe how other states' have done so in order to transition to compliance in the most efficient way.
2. Each state's Secretary of State or chief election administrator should send a letter to election officers and local officials explaining and clarifying the rules.
3. The Department of Justice must enforce the NVRA.
4. States must properly train registration staff in order to reduce the likelihood of improper purging.
5. States should be prohibited from purging a voter from the rolls unless his or her name, address, sex, and phone number match the person whom should be removed.
6. Any state with a problem

maintaining the rolls should be required to conduct an internal investigation.

7. The NVRA should be amended to require the government to notify each person before they are stricken from the rolls (unless they are deceased or asked to be removed) and again immediately afterward, in all instances, to both confirm that they have been removed and to notify those who may have been incorrectly purged.
8. States should post purged names on a public forum that is free to access, such as the Internet.

Removing a legal voter from the rolls is a suspension of that voter's civil liberties. The 90-day window for voter roll purges and notification requirements in the NVRA are essential safeguards that states must enforce in order to protect the rights of their citizens, ensure the legitimacy of elections, and encourage citizen participation.

But the NVRA itself can be improved. States should have to notify all those who

are taken off of the rolls immediately after they have been removed. This would give a chance for those who have been improperly removed to appeal the decision or reregister.

Additionally, in order to help ensure that people are not unjustly removed from the rolls in the first place, U.S. PIRG recommends the NVRA includes a requirement that no person may be removed unless there is an exact match with the name on the list of those who should be disqualified from voting and that this would include not only confirmation of exact name, but also date of birth and address. This would ensure that people who share the same name as a felon are allowed to vote.

The state and federal governments should avoid relying solely on better software and other advances in technology to provide accurate lists. Even with improved methods of list maintenance, all lists are still exposed to human error, noted Thomas Wilkey,^{xxii} the U.S. Election Assistance Commission's executive director. Improvements in technology should be seen as a complement to laws such as the NVRA, and not as a substitute for compliance with them.

Methodology

To study the degree to which states have been following the two directives regarding maintenance of voter rolls, two sets of information were used. First, a representative from each state was contacted and interviewed regarding the relevant laws and procedures employed. Acceptable interviewees included: Secretaries of State, members of the state's Elections Commission, or an election lawyer within the state's elections office. These representatives were asked four questions:

1. What are the rules for maintaining the voter rolls in you state?
2. Is there a date after which no names can be systematically removed from the rolls?
3. Is there any public or individual notification provided to voters that have been purged from the rolls?
4. What are the notification rules?

Most interactions occurred over the phone with the remaining interviews conducted through e-mail between March 1 and May 31, 2008. All names of interviewees as well as the date and time of each interview or e-mail exchange are on record.

In each instance, U.S. PIRG Education Fund provided all information requested including, but not limited to information regarding U.S. PIRG Education Fund, the subject of the report, when it will be

released, and how it will be released. All contacts received full disclosure of U.S. PIRG Education Fund's intentions.

Second, information regarding the two directives was taken from state laws. These laws were accessed typically from state websites, and in some instances, printed text. In the cases where election laws were not included in state statutes or statutes were not specific, separate election codes were also consulted.

Information from both methods was recorded and compared in order to determine the actual practices of the specific states.

All figures regarding the number of registered voters from each state were taken from http://statemaster.com/red/graph/gov_200_tot_reg_vot-2004-election-total-registered-voters.

The seven states that have election-day registration are counted for the purposes of this report as following both rules. These seven states are Idaho, Maine, Minnesota, Montana, New Hampshire, Wisconsin, and Wyoming. This report treats North Dakota similarly, as it does not have a requirement for voter registration. Puerto Rico and Guam were not included in this study.

The research conducted for this report and the report itself was prepared entirely by U.S. PIRG Education Fund without external influence.

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