

## APPENDIX 1: OHIO CASE STUDY

As of the 2006 election, Ohio had 7,860,052 registered voters,<sup>1</sup> and the state reported that 416,744 registrants (5.3% of total registrants) were deleted from the registration rolls in 2006.<sup>2</sup> With this many voters removed from the rolls, it is perhaps unsurprising that the press has reported a number of issues with purges in Ohio, including eligible voters being removed from the rolls in the months before the 2004 Presidential Election.<sup>3</sup>

### A. PRESS REPORTS ON PURGES

The media has been reporting voter purges in Ohio since at least the 1990s. The number of voters purged varies significantly, ranging from as low as 20,353 registrants removed between 1998 and 1999 in Franklin County for failure to vote in the previous four years or for moving out of the county,<sup>4</sup> to 170,000 names removed from the Cuyahoga County voter rolls in 2001 and 2002.<sup>5</sup>

- 1 Ohio Sec'y of State, *Voter Turnout: Official Results: Nov. 7, 2006*, available at <http://www.sos.state.oh.us/SOS/elections/electResultsMain/2006ElectionsResults/06-1107/turnout.aspx> (last visited Sep. 16, 2008).
- 2 U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2005-2006: A Report to the 110th Congress* 42 (June 30, 2007), available at [http://www.eac.gov/clearinghouse/docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006/attachment\\_download/file](http://www.eac.gov/clearinghouse/docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006/attachment_download/file) (last visited Sep. 16, 2008). Note, however, Ohio reported an even higher number of registrants — 689,530 — were removed from the rolls on response to a different question. See *id.* at 50.
- 3 Robert F. Kennedy Jr., *Was the 2004 Election Stolen? Republicans prevented more than 350,000 voters in Ohio from casting ballots or having their votes counted — enough to have put John Kerry in the White House*, ROLLING STONE, Jun. 1, 2006, available at [http://www.rollingstone.com/news/story/10432334/was\\_the\\_2004\\_election\\_stolen](http://www.rollingstone.com/news/story/10432334/was_the_2004_election_stolen) (last visited Sep. 16, 2008); Fritz Wenzel, *Challenges Filed Against 931 Lucas County Voters — Election Board Skeptical of Their Validity, Sets Saturday Hearing*, TOLEDO BLADE, Oct. 27, 2004, available at <http://www.toledoblade.com/apps/pbcs.dll/article?AID=/20041027/NEWS09/410270361/-1/NEWS> (last visited Sep. 16, 2008); Fritz Wenzel, *Purging of Rolls, Confusion Anger Voters — 41% of Nov. 2 Provisional Ballots Axed in Lucas County*, TOLEDO BLADE, Jan. 9, 2005, available at <http://toledoblade.com/apps/pbcs.dll/article?AID=/20050109/NEWS09/501090334&SearchID=73195662517954> (last visited Sep. 16, 2008); Jo Becker, *GOP Challenging Voter Registrations: Civil Rights Groups Accuse Republicans Of Trying to Disenfranchise Minorities*, THE WASH. POST, Oct. 29, 2004, at A05, available at <http://www.washingtonpost.com/wp-dyn/articles/A7422-2004Oct28.html> (last visited Sep. 16, 2008).
- 4 Mark Naymik, *Elections Board Seeks Help to Bury County's Dead Voters*, Cleveland Plain Dealer, Feb. 28, 2002, at B2. Between the 2000 and 2004 elections, Hamilton County, Ohio purged more than 100,000 registrants from its voter rolls for a variety of reasons, including change of address, death, and failure to vote in the previous six consecutive years. News Briefs, Cincinnati Enquirer, Oct. 1, 2004, at 1C.
- 5 *Election '99*, COLUMBUS DISPATCH, Oct. 31, 1999, at 1C. In 1999, Franklin County, Ohio purged another 38,000 names from the voter rolls. Lornet Turnbull, *Citizens Complain of Problems Tuesday at Polling Places*, COLUMBUS DISPATCH, Nov. 9, 2000, at 4D. In 2005, Franklin County, Ohio removed 113,827 registrants for moving or for failing to vote since the 1990s. Robert Vitale, *County Shrinks Its Pumped-Up Voter Rolls*, COLUMBUS DISPATCH, Jun. 25, 2005, at 01A.

## B. PURGING IN PRACTICE

### 1. *Change of Address*

There are many ways in Ohio, statutorily speaking, for the county boards of elections to discover that a registrant has changed her residence. When a registrant moves within the state, she must complete a change of address form.<sup>6</sup> Boards of elections must then respond to this form with a notice acknowledging the change of address. If the move is within the registrant's county, the registrant's registration record will be updated; otherwise, it will be cancelled.<sup>7</sup> Additionally, registrants can cancel their registration by reregistering elsewhere — when they do so, they will be asked to sign an authorization canceling their previous registration, which will be forwarded to the board of elections of their former residence.<sup>8</sup> Before cancelling the registration, boards must verify the registrant's signature and mail the registrant a notice at her current address.<sup>9</sup>

Even if a registrant does not notify the board of elections of a change in residence, the board may still find out that she has moved through processes provided by the Ohio election code. During each odd-numbered year, the Ohio Secretary of State is statutorily required to send voter registration information collected from local boards of elections to the national change of address service.<sup>10</sup> Using the list provided, the national change of address service must identify registrants who have moved within the last 36 months and inform the Secretary of State.<sup>11</sup> Ohio law requires local boards of elections to mail address confirmation notices to individuals identified through this process.<sup>12</sup> One county official, however, reported problems with using the national change of address service as a source of information on registrants who may have moved, because entire households were sometimes removed from the rolls when an address appeared on the national list in connection with one person from that household moving.<sup>13</sup> In addition to this process, the Secretary of State is statutorily afforded discretionary power to prescribe other procedures to identify and cancel the registrations of individuals who have moved outside their county of registration.<sup>14</sup> Any procedures under this section of the statute must be completed no later than ninety days before any primary or general federal election.<sup>15</sup>

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6 OHIO REV. CODE ANN. § 3503.16(A) (LexisNexis 2008).

7 OHIO REV. CODE ANN. §§ 3503.16(E), .21(A)(5) (LexisNexis 2008).

8 OHIO REV. CODE ANN. § 3503.33 (LexisNexis 2008).

9 *Id.*

10 OHIO REV. CODE ANN. § 3503.21(D) (LexisNexis 2008).

11 *Id.*

12 *Id.*

13 Another election official similarly reported inaccuracies in the national change of address information.

14 OHIO REV. CODE ANN. § 3503.21(B)(1) (LexisNexis 2008).

15 *Id.*

Boards of elections also identify registrants who may have changed addresses through practices that are not explicitly permitted by state statute. Two counties reported receiving information on changes of address from the board of motor vehicles and sending notices acknowledging the change of address. Additionally, election officials reported sending address confirmation notices that trigger the federal time period for purging in instances other than those described in state statute. Despite the absence of statutory authority, several county election officials reported that any mail returned as undeliverable — such as jury duty notices, precinct change notices, and pre-election notices — trigger the mailing of an address confirmation notice.

By failing to establish criteria for matching names from change of address source lists to the voter registration list, Ohio's statute gives counties latitude to develop their own procedures for matching registrants to lists of people who should be removed from the rolls. One county official reported matching the first name, middle name, last name, previous address, and sometimes the date of birth between records on the lists. However, even if the match is not exact — for example, if the middle initial does not match exactly — the county may consider the registrant a possible candidate for removal and send an address confirmation notice to the registrant.<sup>16</sup>

There is no consistent deadline for how much time a registrant has to respond to a confirmation notice. One county election official reported that if a response to an address confirmation notice is not received from the registrant within 30 or 60 days, the registrant's voter status will be changed to "inactive," which triggers the beginning of the federal time frame of two federal general elections in which the registrant must conduct some activity as a voter or be removed from the rolls. Another election official reported that there was not a deadline for responding to address confirmation notices.

## *2. Duplicates*

Ohio statutes do not provide guidance for addressing duplicate records and their removal from the voter registration list.<sup>17</sup> This is problematic because although many apparent duplicate registration records may be the result of changes of address not made known to election officials, apparent duplicate records may also represent distinct registrants who may share similar identifying information. Counties have commented on how the process for resolving suspected duplicate records identified by the Secretary of State is confusing and problematic. By way of example, one county reported problems with a prior computer system in 2004, which, when faced with two duplicate records, wholly deleted the latter record, causing the loss of one record's voter history. They expressed hope that the Secretary of State would both clarify and fix the process.

## *3. Death*

With respect to allegedly deceased registrants, local officials sometimes identify registrants for purges

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16 Interviews with county boards of election officials conducted during February-March, 2007.

17 OHIO REV. CODE ANN. § 3503.21(D) (LexisNexis 2008).

in ways not authorized by Ohio law. The statute dictates that, once a month, the chief health officer of each locality and the state director of health must submit lists of registrants who have died to the board of elections.<sup>18</sup> It also specifically states that such lists must include the name, date of birth, date of death, and residence of the deceased registrant.<sup>19</sup> In spite of the explicit requirements of the statute, some counties use other sources to identify deceased registrants, some of which do not include all of the statutorily required fields of information listed above. Election officials in two counties reported that the boards of elections staff remove voters based on the information obtained from local newspaper obituaries. The obituaries contain the name and date of birth of the deceased, but do not include the decedent's address.<sup>20</sup> Another county reported sending a letter to every funeral home in the county each month asking for a list of those who have died within the last month; names are then removed based on information obtained from responses. Additionally, one county official reported that family members of deceased registrants sometimes notify the board of elections.

Incomplete voter registration records exacerbate the difficulties inherent in purging deceased registrants. Registrants were not always required to provide their dates of birth at the time of registration.<sup>21</sup> As a result, the process of identifying deceased registrants by matching certain identifying information is complicated. One county official reported that in 2000, the registration records of 8,000 registrants did not have dates of birth.<sup>22</sup> Another county official reported that a match in the name, social security number, address, and date of birth warrants removal from the rolls. Where date of birth is not listed in the rolls for a registrant, two officials reported not canceling the registration.

Ohio law does not require election officials to send notice to registrants of their intention to remove them from the rolls for the reason of death, and the election officials interviewed for this report universally reported that they do not send notices prior to removing decedents from the voter registration list.

#### *4. Criminal Conviction*

In Ohio, individuals only lose their right to vote while incarcerated.<sup>23</sup> Accordingly, only registrants who are incarcerated should be removed from the voter registration list.<sup>24</sup> One election official, however, reported that some individuals who have served just an hour of time for committing a crime will be swept up into this policy. Compounding this problem is the fact that once people are released

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18 OHIO REV. CODE ANN. § 3503.18 (LexisNexis 2008).

19 OHIO REV. CODE ANN. §§ 3503.21(A)(2), .18 (LexisNexis 2008).

20 Of the 25 latest News-Herald obituaries viewed, none of them gave the address of the deceased. *See* Obituaries, THE NEWS HERALD, available at <http://www.news-herald.com/obituaries/> (last visited Sep. 16, 2008).

21 Interview with county board of election official conducted in March, 2007.

22 The Board of Elections sends out mailings in order to add dates of birth to the voter rolls so that as of early in 2007, there were only a few thousand voters on the rolls without date of birth noted.

23 OHIO REV. CODE ANN. § 2961.01 (LexisNexis 2008).

24 Interviews with county boards of election officials conducted during February-March, 2007.

from prison, they must re-register to vote; they are not automatically restored to the rolls.<sup>25</sup>

Statutorily, there are no requirements for the minimum amount of identifying information that must be matched to ensure that the correct registrants are removed from the rolls due to incarceration.<sup>26</sup> Additionally, there is no statutory requirement that notice be provided to those the state intends to remove for being presently incarcerated. Election officials confirmed that no notice is sent.<sup>27</sup>

### *5. Adjudication of Mental Incapacitation*

Generally, election officials reported having little experience removing registrants from the rolls for the reason of adjudication of mental incompetence to vote.<sup>28</sup> Despite the infrequency of such removals, it is important that there be clear and consistent protocols governing this type of removal to ward off the temptation to purge inappropriately. Election officials reported requests for such purges, such as requests from a family member that a parent or elderly residents of a nursing facility be disenfranchised, as two county officials reported to occur, or at the initiative of board of elections staff when they visit nursing facilities to assist elderly voters, as one county official unapologetically reported had occurred, in contravention of state statute.<sup>29</sup>

### *6. Voter Inactivity*

At least one county official reported identifying registrants for removal because of inactivity. This county sends confirmation notices after each election to all those who did not vote in the election. The mailing of this notice marks the beginning of the federally required period of two federal general elections in which the registrant must vote or update her registration in order not to be removed from the rolls. In two other counties, the boards of elections send confirmation notices in odd years to any registrant who did not vote in the last two federal general elections. The mailing of these notices also marks the beginning of the period in which registrants must update their registrations or vote to avoid being purged from the rolls.<sup>30</sup>

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25 Interviews with county boards of election officials conducted during February-March, 2007.

26 Two election officials reported that the name, address, date of birth, and social security number (when available) must match to warrant removal from the rolls.

27 A registrant, therefore, possesses insufficient statutory protections against purges of this nature.

28 *See generally* OHIO REV. CODE ANN. § 3503.21(A)(4) (LexisNexis 2008) (providing for the removal of a registered elector upon an adjudication of incompetency). *See also* OHIO REV. CODE ANN. § 5122.301 (LexisNexis 2008) (prohibiting the denial or revocation of the right to vote based solely upon registrant's admission to a mental health facility, unless admission is based on a court order).

29 *See* OHIO REV. CODE ANN. § 3503.21(A)(4) (LexisNexis 2008) (providing for the removal of a registered elector upon an adjudication of incompetency). *See generally* OHIO REV. CODE ANN. § 5122.301 (LexisNexis 2008) (prohibiting the denial or revocation of the right to vote based solely upon registrant's admission to a mental health facility, unless admission is based on a court order).

30 OHIO REV. CODE ANN. § 3503.21 (LexisNexis 2008).

## APPENDIX 2: WASHINGTON CASE STUDY

Washington is made up of thirty-nine counties and has approximately 3.2 million registered voters.<sup>1</sup> The state launched its statewide voter registration database on January 1, 2006, combining thirty-nine separate county systems into one database overseen by the Secretary of State.<sup>2</sup>

Between the close of registration for the November 2004 federal elections and the close of registration for the November 2006 federal elections, Washington deleted 503,151 registrants (15.4% of total registrants) from the state voter rolls.<sup>3</sup>

### A. PRESS REPORTS ON PURGES

Press reports of voter purges in Washington have appeared regularly. Within the first few months of database implementation, two counties reported removing 1,630 and more than 3,300 registrants, respectively, for reasons of death, duplicate registrations, felony convictions, and changes of address.<sup>4</sup> Reports from 2007 indicated that, since the launch of Washington's statewide voter registration database on January 1, 2006, 353,000 registrants have been purged for the same reasons.<sup>5</sup> Later news reports suggested that that figure may be as high as 450,000.<sup>6</sup>

### B. PURGING IN PRACTICE

Washington's election statutes expressly articulate a policy of encouraging "every eligible person to register to vote and to participate fully in all elections."<sup>7</sup> The election statutes confer the authority to purge voters on both the Secretary of State and the county auditors, but, according to elections officials, in practice all removals other than those based on felony convictions are conducted at the county level. By

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- 1 Press Release, Office of the Wash. Sec'y of State, State's First Consolidated List of Registered Voters Combats Voter Fraud (Feb. 20, 2007), *available at* [http://www.secstate.wa.gov/office/osos\\_news.aspx?i=FenKyLcm7pnRO0P0kcR9kA%3d%3d](http://www.secstate.wa.gov/office/osos_news.aspx?i=FenKyLcm7pnRO0P0kcR9kA%3d%3d) (last visited Sept. 17, 2008).
  - 2 WASH. SEC'Y OF STATE, ELECTIONS DIVISION, 2006 ELECTIONS: REPORT TO THE LEGISLATURE 7 (2007), [http://www.secstate.wa.gov/elections/pdf/Elections\\_Report\\_to\\_Leg\\_2006\\_final.pdf](http://www.secstate.wa.gov/elections/pdf/Elections_Report_to_Leg_2006_final.pdf); Press Release, Office of the Wash. Sec'y of State, State's First Consolidated List of Registered Voters Combats Voter Fraud (Feb. 20, 2007), *available at* [http://www.secstate.wa.gov/office/osos\\_news.aspx?i=FenKyLcm7pnRO0P0kcR9kA%3d%3d](http://www.secstate.wa.gov/office/osos_news.aspx?i=FenKyLcm7pnRO0P0kcR9kA%3d%3d) (last visited Sept. 17, 2008).
  - 3 U.S. ELECTION ASSISTANCE COMM'N, 110TH CONG., THE IMPACT OF THE NATIONAL VOTER REGISTRATION ACT OF 1993 ON THE ADMINISTRATION OF ELECTIONS FOR FEDERAL OFFICE 2005-2006 42 (2007), [http://www.eac.gov/clearinghouse/docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006/attachment\\_download/file](http://www.eac.gov/clearinghouse/docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006/attachment_download/file).
  - 4 Brad Shannon, *State Sheds 55,000 Voters*, THE OLYMPIAN, May 13, 2006, at 1D; Kathie Durbin, *County Drops 3,372 People Off Voter Rolls*, THE COLUMBIAN, May 21, 2006, at C1.
  - 5 Brad Shannon, *Lawmakers to Push Voter Law*, THE OLYMPIAN, July 30, 2007, at 1B.
  - 6 Rachel La Corte, *Much Has Changed in Washington Elections Since 2004*, ASSOCIATED PRESS, September 4, 2008.
  - 7 WASH. REV. CODE ANN. § 29A.04.205 (LexisNexis 2008).

statute, purging officials must perform a general program of voter list maintenance at least once every two years and no later than ninety days before the date of a primary or general federal election.<sup>8</sup>

### *1. Change of Address*

The Secretary of State and county auditors are statutorily required to cooperate in setting up a general program to verify registrants' addresses.<sup>9</sup> In practice, they play complementary roles. The Secretary of State is authorized to use the national change of address service to identify registrants who may have changed their address within the state.<sup>10</sup> County auditors transfer the registrations of individuals identified through this process to election authorities of their new residence and send notice to the registrants informing them of the transfer of their registration.<sup>11</sup>

The Secretary of State also requires the counties to send every registrant a direct, non-forwardable mailing bearing the postal endorsement "Return Service Requested" at least ninety days before the primary election in evenly numbered years.<sup>12</sup> While Washington law requires county auditors to designate registrants who provide address corrections as "inactive" (and send these registrants a confirmation notice), it does not specify a deadline by which registrants must respond to these notices. Nor does state law mandate any actions taken by county auditors if registrants do not respond.<sup>13</sup> State law grants the Secretary of State and county auditors discretion to implement other nondiscriminatory list maintenance programs that are approved by the Secretary of State.<sup>14</sup>

Washington law lists a number of documents that, if returned as undeliverable, prompt the county auditor to mark a registrant as "inactive." After doing so, county auditors seek to confirm the voter's inactive status assignment by sending a notice to the registrant.<sup>15</sup> In practice, however, at least one election official reported that if any mail is returned as undeliverable, a registrant is marked as "inactive" — in contrast to state law, which specifies the "inactive" designation upon the return of certain mailings.

Registrants may also be marked as inactive if the state department of licensing, any other state agency that registers voters, or the United States Postal Service provides the county auditor with information indicating that the registrant has moved out of the state.<sup>16</sup> A registrant may be returned

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8 WASH. REV. CODE ANN. § 29A.08.605 (LexisNexis 2008).

9 WASH. REV. CODE ANN. § 29A.08.605(1) (LexisNexis 2008).

10 *Id.*

11 *Id.*

12 WASH. REV. CODE ANN. § 29A.08.605(2) (LexisNexis 2008).

13 WASH. REV. CODE ANN. § 29A.08.605, 635, 640 (LexisNexis 2008).

14 WASH. REV. CODE ANN. § 29A.08.605(3) (LexisNexis 2008).

15 WASH. REV. CODE ANN. § 29A.08.620(1) (LexisNexis 2008). The documents stated include: an acknowledgement of registration or address transfer, a vote-by-mail ballot, absentee ballot, or application for a ballot, notification to a voter of precinct reassignment, or notification to serve on jury duty, or any other document, other than a confirmation notice, required by statute to be mailed to the voter by the county auditor. *Id.*

16 WASH. REV. CODE ANN. § 29A.08.620(2) (LexisNexis 2008).

to “active” voter status if, by the second federal election after the mailing of a confirmation notice, the registrant responds, votes, or takes other action described in the statute.<sup>17</sup>

## 2. Duplicates

The Secretary of State is statutorily required to conduct an ongoing list maintenance program to detect duplicate voter registrations. The Secretary’s office searches the statewide voter registration list to identify registrants with the same dates of birth and similar names.<sup>18</sup> Duplicates are then confirmed through a comparison of the signatures on file.<sup>19</sup> In addition to date of birth and name, one county election official reported checking for matches of voters’ addresses and driver’s license numbers — even though this practice is not required by state statute. This ongoing program is supplemented by a system in which the statewide voter registration database automatically conducts self-screenings for duplicate registrations.<sup>20</sup> Counties can then view the flagged records and verify whether the registrations in question are, in fact, duplicates.<sup>21</sup> Although state law does not require that notice be sent to registrants who election officials believe are registered more than once, one county official reported sometimes sending such notice prior to deleting registrations believed to be duplicates.

## 3. Death

In addition to other list maintenance activity, Washington’s election code specifies three methods for identifying deceased registrants for removal from the rolls.<sup>22</sup>

*First*, the Secretary of State may identify deceased registrants by comparing a list, prepared by the state registrar of vital statistics, which contains the names of individuals for whom death certificates were filed.<sup>23</sup> The statewide voter registration database is also cross-checked with databases from the Department of Health and the Social Security Master Death Index for potential matches of registered voters and deceased registrants.<sup>24</sup> Possible matches are flagged, and after the counties deter-

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17 WASH. REV. CODE ANN. § 29A.08.630, 625(1) (LexisNexis 2008).

18 WASH. REV. CODE ANN. § 29A.08.610 (LexisNexis 2008).

19 *Id.*

20 WASH. REV. CODE ANN. § 29A.08.651(11)(b)-(c), (g) (LexisNexis 2008).

21 In January 2007, the Secretary of State established the Data Integrity Program, an initiative to search the voter registration database for possible duplicate registrations, among other things. Every month the state election staff uses this program to research every possible match and then helps the counties determine if there is a duplicate. Press Release, Office of the Wash. Sec’y of State, State’s First Consolidated List of Registered Voters Combats Voter Fraud (Feb. 20, 2007), *available at* [http://www.secstate.wa.gov/office/osos\\_news.aspx?i=FenKyLcm7pnRO0P0kcR9kA%3d%3d](http://www.secstate.wa.gov/office/osos_news.aspx?i=FenKyLcm7pnRO0P0kcR9kA%3d%3d) (last visited Sept. 17, 2008).

22 WASH. REV. CODE ANN. § 29A.08.510 (LexisNexis 2008).

23 WASH. REV. CODE ANN. § 29A.08.510(1) (LexisNexis 2008).

24 Confirmed by a state election official in an interview conducted during February–April, 2007. *See also* WASH. REV. CODE ANN. § 29A.08.510 (LexisNexis 2008); *See generally* Press Release, Office of the Wash. Sec’y of State, State’s First Consolidated List of Registered Voters Combats Voter Fraud (Feb. 20, 2007), *available at* [http://www.secstate.wa.gov/office/osos\\_news.aspx?i=FenKyLcm7pnRO0P0kcR9kA%3d%3d](http://www.secstate.wa.gov/office/osos_news.aspx?i=FenKyLcm7pnRO0P0kcR9kA%3d%3d) (last visited Sept. 17, 2008).

mine if the records flagged in the database do in fact belong to deceased registrants in the relevant county, the county deletes the registration records.<sup>25</sup>

*Second*, each county auditor may use newspaper obituary articles as a source of information to cancel a registration after matching the registrant's date of birth or address.<sup>26</sup> The county election officials interviewed for this report confirmed that they check the obituaries in their local newspapers regularly. County election officials also reported that, when identifying registrants for removal based on newspaper obituaries, they require a match of more identifying information than is statutorily required.<sup>27</sup>

*Finally*, registrations of deceased registrants can be canceled if another registrant submits a signed statement, under penalty of perjury, stating that she personally knows or believes that another registrant has died.<sup>28</sup> Thus, some county officials reported using information provided by relatives of the deceased to identify registrants for removal.<sup>29</sup>

Election officials are not statutorily required to send notice to registrants they intend to remove from the rolls for reason of death. Election officials interviewed neither confirmed nor denied this practice. State statutes do not describe how a registrant may return to the rolls if she is erroneously removed for the reason of death.

#### *4. Criminal Conviction*

Washington law provides two methods for identifying registrants rendered ineligible to vote by criminal convictions. First, a county auditor is statutorily required to cancel a registrant's registration upon receiving official notice of the registrant's conviction of a felony in state or federal court.<sup>30</sup> Although not specified in state law as a permitted official source, one county official reported also receiving monthly updates on people with new criminal convictions from the department of corrections. Second, state law requires the Secretary of State to coordinate with other state agencies — such as the Department of Corrections — to compare the statewide voter registration list with a list of convicted felons every quarter.<sup>31</sup> Three Washington counties reported that they receive information from the Department of Corrections through the Secretary of State; one of those counties also reported receiving information directly from the Department of Corrections.

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25 Confirmed by a state election official in an interview conducted during February-April, 2007. Press Release, Office of the Wash. Sec'y of State, *State's First Consolidated List of Registered Voters Combats Voter Fraud* (Feb. 20, 2007), *available at* [http://www.secstate.wa.gov/office/osos\\_news.aspx?i=FenKyLcm7pnRO0P0kcR9kA%3d%3d](http://www.secstate.wa.gov/office/osos_news.aspx?i=FenKyLcm7pnRO0P0kcR9kA%3d%3d) (last visited Sept. 17, 2008).

26 WASH. REV. CODE ANN. § 29A.08.510(2) (LexisNexis 2008).

27 In some counties, date of birth, address, and name must match.

28 WASH. REV. CODE ANN. § 29A.08.510(3) (LexisNexis 2008).

29 Signed letters from relatives are attached to the deceased's registration file.

30 WASH. REV. CODE ANN. § 29A.08.520(1) (LexisNexis 2008).

31 WASH. REV. CODE ANN. § 29A.08.520(1) (LexisNexis 2008).

Washington law does not specify what identifying information must be included on the lists of individuals with convictions that are sent to election officials. One county official reported that the notice received from the court system contains only the name and date of birth of the individual. Although a match in name and date of birth between records on the felon list and the registration list is statutorily sufficient to warrant suspension of a registrant's registration,<sup>32</sup> one county official erred on the side of caution in this matching process by sending notice to registrants requesting confirmation of voter eligibility if a match between records could not be confirmed or was unclear.

State law provides detailed requirements for the notices that are sent to registrants with criminal convictions, but the notice provisions are inconsistently administered. Before canceling the registration of an individual with a felony conviction, state law requires the Secretary of State or county auditor to send a notice of the intended cancellation to the registrant's last known voter registration address.<sup>33</sup> The notice must also explain the requirements for restoring the right to vote once all terms of sentencing have been completed.<sup>34</sup> If, within thirty days, the person does not respond to the notice, the registration must be canceled.<sup>35</sup> In practice, despite the statutory requirement, one county official reported never sending notice to registrants whom she intends to remove for disenfranchising convictions. However, the same official confirmed that the Secretary of State does send notices to registrants identified for removal during the state's quarterly list comparison.

### *5. Adjudication of Mental Incapacitation*

Under Washington law, a court's adjudication of incompetence with respect to voting warrants removal from the registration rolls. It vests county election officials with responsibility for these removals.<sup>36</sup> In addition to notice received from the court system, state statute requires that the statewide voter registration database be coordinated with other agency databases — such as that maintained by the office of the administrator of the courts — to help to identify registrants to be removed on the basis of incompetence.<sup>37</sup>

County election officials reported conducting removals for mental incapacity only infrequently. One county reported that when these removals are made, they do so only after matching the first name, middle name, last name, date of birth, and past addresses with lists of those adjudged incompetent — this even though the state statute is silent on what matching criteria to conduct accurate removals. Moreover, if there is some mismatch in the process, a notice is sent to the registrant prior to removal — another practice not expressly required by state statute.<sup>38</sup>

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32 WASH. REV. CODE ANN. § 29A.08.520(1) (LexisNexis 2008).

33 WASH. REV. CODE ANN. § 29A.08.520(1) (LexisNexis 2008).

34 *Id.*

35 *Id.*

36 WASH. REV. CODE ANN. § 29A.08.515 (LexisNexis 2008).

37 WASH. REV. CODE ANN. § 29A.08.651(5), (11)(d) (LexisNexis 2008).

38 Confirmed by a county board of elections official in an interview conducted during February-April, 2007.

## APPENDIX 3: NEVADA CASE STUDY

According to recent census numbers, Nevada has an estimated population of 2.5 million.<sup>1</sup> Its sixteen counties and one independent city serve as election jurisdictions.<sup>2</sup> By the end of 2006, Nevada had 1.23 million registered voters, of whom 991,000 were active.<sup>3</sup> In the 2006 elections, 59.16% of registered voters cast ballots.<sup>4</sup> Between the close of registration for the November 2004 federal elections to the close of registration for the November 2006 federal elections, Nevada deleted 130,771 names from the voter rolls – 13.2% of total registrants.<sup>5</sup>

NevVoter, the statewide voter registration system maintained by the Secretary of State, was implemented in 2006.<sup>6</sup> The statewide list has the capability to verify voter registration information against the department of motor vehicles and department of vital statistics records to identify those who may potentially be ineligible to register or to vote.<sup>7</sup> A bottom-up database, NevVoter is updated daily with information sent by counties.<sup>8</sup>

Despite the existence of the statewide list, state officials do not provide local officials with much direction regarding standards to use for the removal of names based on ineligibility. One county clerk stated that the Secretary of State has historically played a small role in providing guidance in list maintenance. As a result, the lack of uniform standards statewide has left the burden of list maintenance on the shoulders of county clerks.

### A. PRESS REPORTS ON PURGING

Much of the press coverage of politically motivated purge activity occurred in 2004 when the country was focused on Nevada's swing state status.<sup>9</sup> The majority of news outlets reported on ef-

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1 U.S. Census Bureau, Nevada QuickFacts, *available at* <http://quickfacts.census.gov/qfd/states/32000.html> (2006 population estimate: 2,495,529).

2 Nevada's most populous election jurisdictions are: Clark County with 1,777,539 people, Washoe County with 396,428 people, Carson City with 55,289 people, and Lyon County with 51,231 people. *Id.*

3 In 2006, Clark County had 832,000 registrants, 648,000 of which were active voters, Douglas County had 29,000 registrants, of which 27,000 were active voters, and Carson City had 27,000 registrants, of which 25,000 were active voters. Nev. Sec'y of State Website, <http://sos.state.nv.us/elections/voter-reg/2006/> (last visited September 17, 2008).

4 See Nev. Sec'y of State, 2006 Statewide General Election Reports: Voter Turnout Report, *available at* <http://sos.state.nv.us/elections/results/2006StateWideGeneral/VoterTurnout.asp>.

5 See U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2005-2006: A Report to the 110th Congress* 42 (June 30, 2007), *available at* [http://www.eac.gov/clearinghouse/docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006/attachment\\_download/file](http://www.eac.gov/clearinghouse/docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006/attachment_download/file).

6 Nev. Sec'y of State, *Annual Report: Fiscal Year 2006*, 13, *available at* <http://sos.state.nv.us/information/news/annualreports/docs/2006AnnualReport.pdf>

7 *Id.*

8 Confirmed by an interview conducted with a county clerk in March 2007.

9 See, e.g., *Bid to Purge Dems from Nevada Rolls Fails*, MSNBC.com, Oct. 13, 2004, <http://www.msnbc.msn.com/id/6239767/>.

forts to clean Clark County's voter rolls, one of only three Democratic leaning counties in the state. Although Clark County clerk designated more than 100,000 registrants as "inactive" that year,<sup>10</sup> he received pressure in the weeks before the election from the former head of the state GOP to cancel the registrations of thousands of inactive voters.<sup>11</sup>

## B. PURGING IN PRACTICE

Nevada's election statutes expressly require the Secretary of State to maintain the statewide voter registration list in consultation with each county and city clerk.<sup>12</sup> The Secretary of State is responsible for entering into agreements with the Department of Motor Vehicles such that information in the databases possessed by both can be matched.<sup>13</sup> The county and city clerks are responsible for entering the data into the statewide voter registration database and providing information needed by the Secretary of State to maintain the database.<sup>14</sup> State statute directs that any program to purge ineligible registrants from the rolls must be completed at least ninety days before the next primary or general election.<sup>15</sup>

### 1. *Change of Address*

As the primary administrators of elections, county clerks have wide statutory discretion to "use any reliable and reasonable means . . . to determine whether a registered voter's current residence is other than that indicated on his application to register to vote."<sup>16</sup> Among the many methods at the disposal of county clerks to identify registrants who may have moved is the mailing of address confirmation notices.<sup>17</sup> Because state statute does not specify what events trigger the mailing of such notices, it is apparently at the discretion of county clerks. County election officials reported that non-forwardable voter registration cards mailed annually, if returned as undeliverable trigger the mailing of an address confirmation notice. If registrants fail to respond to the notice within thirty days, their registrations will be designated "inactive."<sup>18</sup> If registrants also fail to vote in either of the two subsequent federal general elections following the mailing of the notice,<sup>19</sup> the

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10 In January 2004, 69,138 registrants were designated "inactive." See, e.g., Geoff Dornan, *Voter Registration Total Drops Sharply*, NEV. APPEAL, Feb. 23, 2004, available at <http://www.nevadaappeal.com/article/20040223/News/102230009/0/ARCHIVES>. Another 35,000 names were designated "inactive" by May 2004. See, e.g., *Fewer Voters in State After Rolls Purged*, NEV. APPEAL, May 21, 2004, available at <http://www.nevadaappeal.com/article/20040521/NEWS/105210013/0/ARCHIVES>.

11 *Bid to Purge Dems from Nevada Rolls Fails*, MSNBC.com, Oct. 13, 2004, available at <http://www.msnbc.msn.com/id/6239767/>.

12 NEV. REV. STAT. ANN. § 293.675(1) (LexisNexis 2008).

13 *Id.* § 293.675(4).

14 *Id.* § 293.675(3).

15 *Id.* § 293.503(4).

16 *Id.* § 293.530(1).

17 *Id.* § 293.530(3). Election officials interviewed confirmed the use of such notices to identify registrants who may have changed their addresses.

18 NEV. REV. STAT. ANN. § 293.530(7). The statute does not address the ramifications of being designated "inactive."

19 *Id.* § 293.530(4).

county clerk will cancel the registration of the registrant.<sup>20</sup>

The latitude afforded county clerks by state statute has likely resulted in the use of additional sources of information to identify registrants who may have moved. One election official reported the use of jury mailings to identify registrants for possible removal. If the registrant does not respond to a letter requesting updated information, they are designated “inactive.”<sup>21</sup> By contrast, another county official reported never using jury duty notices for these purposes. A county clerk also reported that his office follows up on information candidates provide if they have walked their district and listed individuals who have moved.

In addition to any methods developed at the discretion of the county clerks, state statute also establishes other methods of identifying registrants with changes of address. First, county clerks are statutorily permitted to use the national change of address service for these purposes.<sup>22</sup> Prior to removal under this section, county clerks are statutorily required to send registrants identified through this process address confirmation notices as described above with the same consequences for failure to respond or vote.<sup>23</sup> One county election official reported using the national change of address service to update voter registration records, though the process is vulnerable to errors, such as moving the registrations of all members of a household instead of a single member.<sup>24</sup> Second, state statute sets forth a process by which individuals may file an affidavit with the county clerk attesting to personal knowledge that a registrant is no longer a resident of the county and therefore no longer eligible to be registered.<sup>25</sup> Registrants identified through this process must also be provided notice as described above.<sup>26</sup>

Because state statute does not specify any matching criteria for identifying registrants who have changed their addresses, counties have developed criteria of their own. One county uses confidence levels to make matches, which can range from an exact match to a “substantial match” of first name, last name, middle initial and address. While one county reported matching the name, date of birth, and last four digits of the social security number, another county reported a preference for using the driver’s license number. The wide variance in matching criteria used by county clerks results in inconsistent administration of relevant sections of the statute.

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20 *Id.* § 293.530(3).

21 *Id.*

22 NEV. REV. STAT. ANN. § 293.5303 (LexisNexis 2008).

23 *Id.* § 293.5307.

24 In odd-numbered years, the active voters list is compared to the national change of address service records. (Another official reported the same concern with removing a Jr. or a Sr. in the same household. If there is a question, then they send a letter or call the voter to confirm.)

25 NEV. REV. STAT. ANN. § 293.535(1)(b) (LexisNexis 2008). None of the election officials interviewed reported experience with identifying and removing registrants through this process.

26 *Id.* § 293.535(2).

Failure to update one's registration record after a change of address does not necessarily prevent one from voting in an election. State statute permits a registrant who has moved within a county but may not have updated her voter registration record to vote in the precinct where she previously resided upon written or oral affirmation of her new address.<sup>27</sup> If a registrant moves and registers to vote in another county within the state, the county clerk of the registrant's current residence is statutorily required to send a cancellation notice to the county clerk of the registrant's former residence. Upon receipt, the registrant's former registration record will be cancelled.<sup>28</sup> One county election official confirmed that this practice occurs, reporting that the former registration record and voting history are deleted.

## 2. Duplicates

Potentially duplicate registrations across counties appear to be eliminated efficiently through three processes set forth by state statute. First, when registrants move and re-register in a new county, the county clerk is prompted to notify the county clerk of the registrant's former place of residence to cancel the old registration.<sup>29</sup> Second, state statute also grants county clerks authority to check existing registration records at the time of application to avoid the creation of duplicate records.<sup>30</sup> Third, although not statutorily specified, county clerks reported that the statewide voter registration database flagged potential duplicate registration records for counties to resolve.

Because state statute does not specify how a county clerk verifies that apparent duplicate registration indeed belong to the same individual and not to distinct registrants, the process is left up to the discretion of county clerks, resulting in inconsistent administration of this section of state statute. For example, county clerks reported varying criteria to determine a match. One county reported requiring an exact match in date of birth, driver's license number, and social security number,<sup>31</sup> and another county reported just checking date of birth. A third county reported that it could compare registrants' electronically stored signatures. Additionally, state statute does not specify the provision of any notice to registrants identified as possessing suspected duplicate registrations. However, one county apparently contacts such registrants. State statute also does not specify which record should be removed if two records are indeed duplicates, although one county reported a practice of deleting the older registration record.

## 3. Death

State statute specifies only one source by which deceased registrants may be identified for removal. Yet in practice, other sources are also used. The county clerk is statutorily required to cancel the registration of a registrant if she has personal knowledge that the registrant has died or if an authenticated

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27 NEV. REV. STAT. ANN. § 293.525(1) (LexisNexis 2008). Any updated address information provided by the registrant under this section is used to update the registrant's registration record. *Id.* § 293.525(4).

28 NEV. REV. STAT. ANN. § 293.527 (LexisNexis 2008).

29 NEV. REV. STAT. ANN. § 293.527 (LexisNexis 2008).

30 *Id.* § 293.540(9).

31 An inexact match warrants further investigation, during which the registrant remains on the rolls.

certificate of death for the registrant was filed with her office.<sup>32</sup> The statewide voter registration database is statutorily required to coordinate with the databases of other government agencies,<sup>33</sup> which presumably includes agencies that possess death records. One county reported that the state receives information on the deceased from the social security administration, the department of motor vehicles, and the department of vital statistics. By contrast, other counties interviewed suggested that they receive information from sources directly and only specified that the department of vital statistics is used.<sup>34</sup> The reliability of government sources is also questionable. One county clerk reported that the department of vital statistics is months delayed in inputting information into its database, while another county clerk reported that the list reports the age instead of date of birth of the deceased, which is of little use to county clerks. County clerks additionally reported using sources not specified in state statute. One county reported using obituaries and the coroner's list to identify deceased registrants,<sup>35</sup> while another county made clear that obituaries are not used, and a third county reported accepting notification from a relative of a decedent as grounds for removal.<sup>36</sup>

State statute also suffers from lack of specificity with respect to criteria for matching in the process of identifying decedents on the registration rolls for removal, resulting in inconsistent and varied processes across counties. One county reported requiring a match in first name, last name, date of birth, and social security number to warrant removal. By contrast, another county that uses only information provided by the department of vital statistics (which only includes name and age) reported matching only the address or age of the decedent to registration records.

Although no notice is statutorily required to be sent to registrants prior to removal under this section, one county that uses obituaries and the coroner's list to identify deceased registrants reported attempts to verify deaths.<sup>37</sup>

#### *4. Criminal Conviction*

According to statute, no person is entitled to vote if she has been convicted of a felony.<sup>38</sup> If the conviction is overturned or if civil rights are restored by the state in which the individual was convicted, she may reregister.<sup>39</sup> Additionally, the statute does not specify what type of information must be provided. Finally, the statute does not provide matching criteria to ensure that the correct person is removed.

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32 NEV. REV. STAT. ANN. § 293.540(1) (LexisNexis 2008).

33 *Id.* § 293.675(2)(f).

34 Another county reported that they do not use information from the social security administration.

35 One county does not use obituaries because it only provides the name and date of birth of the decedent, which the county clerk believes is too little information to make a match.

36 The county clerk did not specify what information was provided by relatives of a decedent to verify that the correct registrant was removed.

37 One county reported calling or mailing a letter to the address of the decedent identified in an obituary.

38 NEV. REV. STAT. ANN. § 293.540(3) (LexisNexis 2008).

39 *Id.* § 293.543(2).

40 *Id.* Generally, the county clerk reported that the U.S. Department of Justice list contains too little identifying information to warrant removal.

Because state statute does not specify the sources county clerks should use to identify registrants who have committed disenfranchising crimes counties' various sources are of questionable quality, resulting in uneven administration of this statutory requirement. None of the county clerks interviewed reported use of department of corrections information. One county clerk reported that because the department of corrections information is incomplete due to persistent delays in data entry, he uses only a county-wide system. Of the two counties reported receiving information from the U.S. Department of Justice, one reported that information is received monthly while the other reported that information is received quarterly. One of the counties that utilizes information provided by the U.S. Department of Justice reported that list, not organized by county, only provides name and date of birth, making it difficult to verify that the correct registrant is removed.<sup>40</sup> In addition to lists provided by government agencies, one county reported receiving information on new convictions from local courts, and another reported using the responses to jury questionnaires to which respondents must indicate if they have been convicted of a felony.<sup>41</sup>

State statute does not provide for notice to registrants the state intends to remove for reason of disenfranchising criminal convictions, however, some county clerks reported providing such notice. Two county clerks reported that if a match is discovered, letters are sent to the affected registrants who have 10 days or 15 days to respond before they are removed.

State statute does not specify criteria for matching names from lists of ineligible people with felony convictions to the registration list, resulting in an area in which county clerks also utilize discretionary power. The county that uses only its county-wide system reported matching the name and address of the individual. Other counties did not specify what information is matched to warrant potential removal from the rolls.

### *5. Adjudication of Mental Incapacitation*

State statute requires the county clerk to cancel the registration of registrants adjudicated insane or mentally incompetent.<sup>42</sup> The district court in which a registrant is adjudicated is statutorily required to send a certified copy of the order or judgment to the county clerk of the jurisdiction in which the person is a resident within thirty days. Notice is not provided to the cancelled voter.

County clerks interviewed reported having little experience with the removal of registrants adjudicated for mental incapacitation. However, one county clerk reported that if a third party reports that a registrant is incapacitated, local officials inactivate the record. If they receive a court order stating the person is incompetent, then the record is cancelled.

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41 The annual jury survey receives 17,000 responses.

42 NEV. REV. STAT. ANN. §§ 293.540(2), 293.542 (LexisNexis 2008).

43 *Id.* § 293.542.

## APPENDIX 4: MISSOURI CASE STUDY

Missouri has a population of 5.8 million,<sup>1</sup> and is divided into 116 election jurisdictions, including both counties and cities.<sup>2</sup> Between 2005 and 2006, Missouri deleted 416,478 names from the voter rolls, representing 10.4% of the registered population in the state. At the end of 2006, Missouri had 4,007,174 registered voters.<sup>3</sup>

Fifty-three percent of Missouri's registered voters cast a ballot in the 2006 election,<sup>4</sup> the first election in which Missouri had implemented all of HAVA's provisions — including those providing for a new voting machines and a statewide voter registration database.<sup>5</sup> The centralized voter registration database was designed to enable counties to keep track of registered voters, eliminate duplicate registrations, and prevent fraud as well as make it easier to remove deceased and otherwise ineligible voters from the registration rolls.<sup>6</sup>

### A. PRESS REPORTS ON PURGING

Missouri election officials first came under fire for their purge practices in 2000. Purges in Missouri took place against a background of media reports on bloated registration rolls: one news outlet reported that one in every ten voters in St. Louis City had duplicate registrations in other jurisdictions.<sup>7</sup>

Amidst reports of bloated registration rolls, during the 2000 elections, numerous St. Louis voters

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- 1 U.S. Census Bureau Missouri QuickLinks, <http://quickfacts.census.gov/qfd/states/29000lk.html> (last visited Sept. 16, 2008) (2007 Missouri population estimate: 5,878,415); U.S. ELECTION ASSISTANCE COMM'N, 110TH CONG., THE IMPACT OF THE NATIONAL VOTER REGISTRATION ACT OF 1993 ON THE ADMINISTRATION OF ELECTIONS FOR FEDERAL OFFICE 2005-2006 42 (2007), [http://www.eac.gov/clearinghouse/docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006/attachment\\_download/file](http://www.eac.gov/clearinghouse/docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006/attachment_download/file).
  - 2 U.S. Census Bureau Missouri QuickLinks, <http://quickfacts.census.gov/qfd/states/29000lk.html> (last visited Sept. 16, 2008) (Missouri's most populous election jurisdictions are: St. Louis County with 1,000,510 people, Jackson County with 664,078 people, St. Louis city with 347,181, and St. Charles County with 338,719 people).
  - 3 Mo. Sec'y of State, Registered Voters in Missouri: 2000-2006, <http://www.sos.mo.gov/elections/registeredvoters.asp?rvmID=0004> (last visited Sept. 16, 2008) (St. Louis County had 738,775 registered voters, St. Louis City had 246,473, Kansas City had 235,459, and Jackson County had 228,673).
  - 4 MO. SEC'Y OF STATE, VOTERS FIRST: AN EXAMINATION OF THE 2006 MIDTERM ELECTION IN MISSOURI 3 (2007), <http://www.sos.mo.gov/elections/VotersFirst/VotersFirst-FINAL.pdf>.
  - 5 *Id.* at 3.
  - 6 *Id.* at 14.
  - 7 *1 in 10 Voters Hold Duplicate Registration in St. Louis*, JEFFERSON CITY NEWS TRIB., Apr. 9, 2001, <http://www.newstribune.com/articles/2001/04/09/export211450.txt>.
  - 8 *Election Board May Trim Voter Rolls in St. Louis*, JEFFERSON CITY NEWS TRIB., July 6, 2001, <http://www.newstribune.com/articles/2001/07/06/export41783.txt>.

had gone to the polls only to find out that they were not on the registration rolls, but had been placed on a separate inactive list. To vote, these voters had to get an Election Board confirmation that they were legitimately registered, but designated inactive.<sup>8</sup> It turned out that the St. Louis City Election Board had sent out 70,000 notices to inactive voters, 63,000 of which had been returned as undeliverable, and placed voters on “inactive” status as a result of returned mail. In response to reports of these voters being deemed “inactive,” the US Department of Justice filed suit against the Missouri Secretary of State to enforce HAVA and state laws by forcing the local jurisdictions to purge their voter registration rolls.<sup>9</sup>

More recently, press coverage of the purge issue in Missouri has died down.

## B. PURGING IN PRACTICE

Missouri law provides that the statewide voter registration database be coordinated to conduct list maintenance activities, including removals, in accordance with NVRA.<sup>10</sup>

### *1. Change of Address and Inactivity*

Missouri law specifies several methods by which registrants who have moved may be identified. First, it provides that if a registrant files a change of address application noting a move within the election jurisdiction, either in person or by written notice, local election officials may change the address on the registration record after comparing and verifying the signature.<sup>11</sup>

Second, Missouri law permits election officials to identify registrants who may have moved by conducting a house-to-house or mail canvass of registrants who did not vote in the last general election.<sup>12</sup> During a house-to-house canvass, if it is discovered that a registrant does not live at the registration address, the canvassers are statutorily required to notify election officials “immediately.”<sup>13</sup> Following a house-to-house canvass, registrants found not to reside at their registration addresses will be mailed address confirmation notices,<sup>14</sup> to which they must respond. If they fail to do so, or if they otherwise fail to vote within two federal general elections, they will be removed from the

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9 David Lieb, *Justice Department Sues Missouri for Voting Violations*, JEFFERSON CITY NEWS TRIB., Nov. 23, 2005, [http://www.newstribune.com/articles/2005/11/23/news\\_state/1123050031.txt](http://www.newstribune.com/articles/2005/11/23/news_state/1123050031.txt).

10 MO. REV. STAT. § 115.158(2)(1) (2008).

11 MO. REV. STAT. § 115.165(1) (2008). If a registrant has not filed a change of address application for a move within a jurisdiction before the time of an election, she may file a change of address application before an election official or election judge and vote at a central polling place or at her new polling place with written or oral affirmation of her new address. MO. REV. STAT. § 115.165(2) (2008).

12 MO. REV. STAT. § 115.181 (2008).

13 MO. REV. STAT. § 115.185(3) (2008).

14 MO. REV. STAT. §§ 115.187, .193(2)-(3) (2008).

15 MO. REV. STAT. § 115.193(1)(2) (2008).

rolls.<sup>15</sup> If notices are returned as undeliverable, or if registrants fail to respond within thirty days, registrants are designated “inactive.”<sup>16</sup>

Third, in lieu of the types of canvassing permitted by statute, election officials may use postal service change of address information to identify registrants who may have moved.<sup>17</sup>

In addition to these methods, election officials are also statutorily permitted to “investigate the residence...of any voter at any time it deems necessary...[and to] investigate material affecting any voter’s qualifications brought to its attention from any source.”<sup>18</sup> Most Missouri officials reported that they did not go beyond the statutorily prescribed practices described above to identify registrants that may have moved. One election official, however, reported that if any of the sample ballots that are mailed to registrants before every election (generally three or four mailings each year) is returned as undeliverable, an address confirmation notice is mailed, triggering the process described above that may lead to eventual removal. State election officials also reported that if other election notices mailed to registrants are returned as undeliverable, the time period of two federal general elections for response prior to removal is also triggered.

The Missouri election code does not specify the criteria for matching names on the voter registration list with other list, as, for example, with the use of the national change of address service. One election official reported requiring the first name, last name, social security number, and date of birth to match. Other officials may consider a date of birth off by one month or one day to be a match, and a match in three of the above fields and lack of voter activity also warrant consideration for removal.

Missouri law only mandates sending address confirmation notices to be sent to registrants identified by canvassing;<sup>19</sup> notice is not required to be sent to registrants identified through comparison of the voter registration list to the national change of address service. At least one election official confirmed the practice of not sending notices to registrants identified through the national change of address service.

One local elections official stated that, although Missouri law authorizes removals for changed addresses under a broad set of circumstances, for practical reasons officials’ actions are limited. Another noted, for example, that the jurisdiction where the official works is so large that the board of elections office would never be able to do a house-to-house canvassing. This local election official does attempt to purge voters who have changed addresses, however, by engaging in a wholesale

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16 MO. REV. STAT. § 115.193(5) (2008). Inactive registrants may be restored to “active” status by responding to the address confirmation notice, updating their registration addresses, or providing written affirmation that they have not changed residence. MO. REV. STAT. § 115.193(5)(1)-(3) (2008).

17 MO. REV. STAT. § 115.189 (2008).

18 MO. REV. STAT. § 115.191 (2008).

19 MO. REV. STAT. §§ 115.187, .193(2), (3) (2008). An election official confirmed that notices are mailed to registrants identified through the canvassing.

mailing every two years. If there is no response, then the inactive procedures are followed and another notice is mailed.

The Secretary of State has heralded the voter registration database for allowing counties to keep better track of registered voters. When a voter moves from one jurisdiction to another within the state and reregisters, the move is recorded and kept on file.<sup>20</sup> Additionally, the Secretary of State and election officials in neighboring states including Iowa, Nebraska, Kansas, and Minnesota have partnered to share information from their respective voter registration databases in an attempt to identify voters who have moved from state to state.<sup>21</sup>

## 2. Duplicates

The Missouri election statute attempts to prevent problems of duplicate registrations through the provisions on changed addresses described above, as well as other provisions. Thus, the state statute requires that the statewide voter registration database be capable of identifying and eliminating duplicate registrations.<sup>22</sup> Moreover, prior to registering anyone who was previously registered in another jurisdiction within the state or in another state, local election officials are statutorily required to provide notice to the election officials of the applicant's former jurisdiction so that the old registration record may be removed.<sup>23</sup> Upon receipt of any such notice, election officials are required to determine if the individual in question was indeed registered in their jurisdiction, and if so, to remove them from the rolls.<sup>24</sup> One election official also reported attempting to head off duplicates by checking for duplicates upon receipt of an application for registration; he does not add a new record if an old record already exists.

Missouri law does not specify criteria for matching records to determine if records are indeed duplicative, and, consequently, localities have developed their own criteria. One election official reported requiring a signature match to warrant removal. If the official suspects, then, that a record is a duplicate, the official keeps it on file with a copy of the voter registration application and any affidavits to the effect that the record is not duplicative but rather distinct. Another election official reported requiring the first name, last name, social security number, and date of birth to match. Alternatively, a date of birth off by one month or one day may be considered a match by some local officials, and others consider a match in three of the above fields, combined with a lack of voter activity, to warrant possible removal.<sup>25</sup>

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20 MO. SEC'Y OF STATE, *VOTERS FIRST: AN EXAMINATION OF THE 2006 MIDTERM ELECTION IN MISSOURI* 3 (2007), <http://www.sos.mo.gov/elections/VotersFirst/VotersFirst-FINAL.pdf>.

21 *Id.*

22 MO. REV. STAT. § 115.158(2)(4) (2008).

23 MO. REV. STAT. § 115.165(3) (2008).

24 MO. REV. STAT. § 115.165(4) (2006).

25 See interviews with officials from city and county boards of election conducted in 2007.

### 3. Death

Missouri law requires election officials to remove deceased voters from the voter registration list.<sup>26</sup> Information on deceased registrants may be obtained in two ways. First, the state or local office of vital statistics is statutorily required to provide local election officials and the Secretary of State with lists of voting-age decedents at least once a month.<sup>27</sup> The list should include names and addresses, if known.<sup>28</sup> Second, the statewide voter registration database is coordinated with other agency records on deaths,<sup>29</sup> such as those maintained by the Social Security Administration.<sup>30</sup> State election officials reported comparing the Social Security Administration's master death list to the voter registration database and flagging potential matches for localities to investigate and act on.

State law permits election officials to “investigate...[the] qualifications of any voter at any time it deems necessary,” and requires them to “investigate material affecting any voter’s qualifications brought to its attention by any source.”<sup>31</sup> Consequently, local election officials reported the varying use of other sources to obtain information on potentially deceased registrants. In addition to the statutorily specified government sources listed above, one county reported receiving information on decedents from the department of health and senior services once a month.<sup>32</sup> Another election official reported accepting personal knowledge of elections staff and notification by relatives of a decedent. One county reported thoroughly investigating reports of deaths offered by individuals. And while one county reported use of newspaper obituaries to identify deceased registrants, another county reported never using them at all. Despite concerted efforts to efficiently and accurately identify and remove deceased registrants, state election officials pointed out that the process is imperfect, since it cannot account for deaths of residents that occur out of state.

Missouri’s election code does not specify any matching criteria, and thus permits localities to adopt varying criteria. Two local election officials reported matching names, dates of birth, and the last four digits of the social security number. In addition to this identifying information, another election official reported also checking the address. One election official reported that if this information is not available, the office takes the time to investigate and gather the information before removing the registrant. The official also reported that during this investigation period, the registration record is unaltered. Although the statute does not specify the time frame in which a registration must be removed, the official explained this as a daily exercise.

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26 MO. REV. STAT. § 115.199 (2008).

27 MO. REV. STAT. § 115.195(1) (2008).

28 *Id.*

29 MO. REV. STAT. § 115.158(2)(1) (2008).

30 MO. SEC’Y OF STATE, *VOTERS FIRST: AN EXAMINATION OF THE 2006 MIDTERM ELECTION IN MISSOURI* 3 (2007), <http://www.sos.mo.gov/elections/VotersFirst/VotersFirst-FINAL.pdf>.

31 MO. REV. STAT. § 115.191 (2008).

32 State election officials confirmed that every local election official is supplied a weekly list of new deaths from the department of health and senior services.

Although notices are not statutorily required to be sent to potentially deceased registrants, one county reported a practice of sending notices.

#### *4. Criminal Conviction*

According to the Missouri election statute, no person is entitled to vote if she is confined under a prison sentence, on parole, or on probation for a felony until discharged from parole or probation.<sup>33</sup> Accordingly, the statewide voter registration database must be capable of coordinating with other government agency records on felony status.<sup>34</sup>

Under Missouri law, individuals ineligible to vote for criminal convictions may be identified by three enumerated methods. At least once a month, the clerk of the local circuit court must provide local election officials and the Secretary of State a list of voting-age residents who are convicted of disenfranchising felonies or misdemeanors.<sup>35</sup> This list must include the names and addresses, if known, of each person.<sup>36</sup> The Secretary is also charged with transmitting to local election officials data from the U.S. Attorney on individuals convicted in federal court.<sup>37</sup> Although state law clearly specifies that ineligible registrants under this section must be removed,<sup>38</sup> some election officials reported that their records are not removed, but rather that their registration statuses are changed to indicate that the individual is a felon and ineligible to vote.

Election officials are permitted to “investigate...[the] qualifications of any voter at any time it deems necessary...[and] material affecting any voter’s qualifications brought to its attention from any source,”<sup>39</sup> and thus may utilize other sources and methods for identifying registrants with disqualifying criminal convictions. Though not specifically contemplated by state statute, two local election officials reported receiving information on people with disqualifying convictions from the state corrections department. This information is verified by checking court records, as only the case number and name are provided by the department of corrections. State election officials also reported the use of information from the department of corrections in updating the statewide voter registration database, noting that information is provided on a weekly basis.<sup>40</sup>

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33 MO. REV. STAT. §115.133(2) (2008).

34 MO. REV. STAT. § 115.158(2)(1) (2008).

35 MO. REV. STAT. §115.195(2) (2008). One county clerk confirmed receiving information from the courts regarding criminal convictions regularly.

36 MO. REV. STAT. § 115.195(2) (2008).

37 MO. REV. STAT. § 115.136(5) (2008).

38 MO. REV. STAT. § 115.199 (2008).

39 MO. REV. STAT. § 115.191 (2008).

40 See MO. SEC’Y OF STATE, *VOTERS FIRST: AN EXAMINATION OF THE 2006 MIDTERM ELECTION IN MISSOURI 3* (2007), <http://www.sos.mo.gov/elections/VotersFirst/VotersFirst-FINAL.pdf>.

Although state law does not provide matching criteria to ensure that the correct person is removed,<sup>41</sup> counties have developed their own standards for removal. One county reported requiring a match in first name, last name, social security number, and date of birth to warrant consideration for removal.

Despite the appearance of broad authority to purge, Missouri law does provide some protection from erroneous removal by qualifying this authority through the requirement that election officials “determine the voting qualifications of those reported convicted or pardoned.”<sup>42</sup> Consequently, election officials must also engage themselves with records regarding the restoration of voting rights to people who have completed all terms of their incarceration, probation, and parole,<sup>43</sup> or who have been pardoned by the governor.<sup>44</sup> Two election officials reported that people who wish to be restored to the voter rolls must provide documentation of their eligibility to elections office staff.

One official reported receiving a list once a month; however, the only information provided is the name and case number. This official has many procedures in place to safeguard voters’ rights. For example, in addition to matching name, date of birth, and last four digits of social security number, the official’s office gathers and validates information through court records. They access court records by using Casenet, an online database of public court records. Additionally, even after the felon is identified, the voter is not removed from the registration list, but simply reclassified as a felon. This protects voters from being erroneously removed and makes it easier for the local election official to restore voting rights after the person provides documents showing her rights have been restored. One issue identified by the official is that no date parameters are available on court records. It is therefore difficult to make sure the correct person is being removed.

### *5. Adjudication of Mental Incapacitation*

Missouri prohibits persons adjudged incapacitated from registering to vote or voting.<sup>45</sup> The clerk of the probate division of circuit court is statutorily required to provide local election officials and the Secretary of State on a monthly basis with a list of voting-age individuals who have been adjudged incapacitated.<sup>46</sup> Despite a directive that courts provide the lists to localities, one election official reported having to be proactive about obtaining such information and request it from the courts. Additionally, one county election official reported that once in the past, the courts erroneously provided a list of individuals with court-appointed guardians for removal from the registration rolls, although Missouri law does not disenfranchise such individuals.

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41 The closest requirement is that the list must include name and address, *if known*. [emphasis added] MO. REV. STAT. §115.195(2) (2008).

42 MO. REV. STAT. § 115.199 (2008).

43 MO. REV. STAT. § 115.133(2)(2) (2008).

44 By state statute, the governor shall provide a list of all persons pardoned to election officials no later than October 10th of each year. MO. REV. STAT. §115.197 (2008).

45 MO. REV. STAT. § 115.195(3) (2008).

46 *Id.*

As discussed above, election officials are statutorily required to “investigate material affecting any voter’s qualifications brought to its attention from any source.”<sup>47</sup> In practice, election officials apply their authority in varying ways with respect to identifying mentally incapacitated voters. One county election official confirmed that any information which is not provided by the court is not used, citing as an example the denial of requests for removal by the children or grandchildren of elderly registrants. In contrast, another election official reported receiving and using information from the state department of health and senior services to identify registrants for removal under this section, despite the fact that these practices are not contemplated by state statute.

By statute, the courts’ list must contain “the name and address, if known,”<sup>48</sup> of individuals adjudicated incapacitated. However, one election official reported that the information provided by the courts can be unreliable and may produce unreliable matches. Additionally, because court lists provide very little identifying information, and because matching criteria are not specified by state statute, some election officials make an effort to corroborate the information on the lists. Although state election officials reported that court lists include the name and date of birth, they also affirmed the questionable quality of the information provided by the courts by noting that addresses are not included on such lists and that secretary of state staff must conduct research in order to attempt to associate accurately the courts’ lists to registrants’ records.<sup>49</sup>

Missouri’s election statute does not impose any notice requirements or other procedures that local election officials must follow before or after removing names from the registration list once identified. However, one county election official reported a practice of sending letters to registrants identified for removal due to incapacitation and requiring a response within thirty days or be removed.

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47 MO. REV. STAT. § 115.191 (2008).

48 MO. REV. STAT. § 115.195 (2008).

49 One county reported investigating potential matches to ‘satisfaction’. ‘Satisfaction’ includes name, date of birth, and last four digits of the Social Security number. The registrant’s record is not altered during the investigation period.

## APPENDIX 5: KENTUCKY CASE STUDY

Kentucky's 120 counties were home to a total of 2,766,288 registered voters,<sup>1</sup> out of a population of 4,206,074,<sup>2</sup> at the time of the November 2006 general elections. Between 2005 and 2006, 148,023 registrants were deleted from state voter lists, representing 5.4% of the registered population.<sup>3</sup>

Kentucky was selected as a case study because it is somewhat unusual in two respects: first, a large number of purges are conducted by statewide actors. Second, Kentucky permanently disenfranchises all people with felony convictions unless the state government approves individual rights restoration.

### A. PRESS REPORTS ON PURGES

In 2006, shortly before the Kentucky primary election, the Secretary of State authorized a purge of over 8,000 voters from the rolls.<sup>4</sup> State officials identified these voters for purging by comparing Kentucky's voter rolls with those of South Carolina and Tennessee, and concluded that these voters had more recently registered in South Carolina and Tennessee, and should be purged in Kentucky. Some of these voters, indeed, had moved from Kentucky, but many had returned to Kentucky in the intervening period and were purged in error;<sup>5</sup> other voters may have been identified for purging based on erroneous matches. Indeed, no records indicated that any voter had cast ballots in two states.<sup>6</sup> After the mistake became public, officials declared that any person on the list who attempted to vote in the primary would be allowed to vote if he or she presented proof of residency,<sup>7</sup> but after a lawsuit filed on behalf of the purged voters, a Kentucky court ordered the voters to be placed back on the voter registration list, reversing the purge in time for the general election.<sup>8</sup> The

- 1 KY. STATE BD. OF ELECTIONS, VOTER REGISTRATION STATISTICS REPORT, <http://www.elect.ky.gov/NR/rdonlyres/9B962D0A-E25D-43DE-8DE6-8603346E3433/159148/statcnty1.txt> (last visited Sept. 17, 2008).
- 2 U.S. Census Bureau Kentucky QuickLinks, <http://quickfacts.census.gov/qfd/states/21000lk.html> (last visited Sept. 16, 2008) (2007 Kentucky population estimate: 4,206,074).
- 3 U.S. ELECTION ASSISTANCE COMM'N, 110TH CONG., THE IMPACT OF THE NATIONAL VOTER REGISTRATION ACT OF 1993 ON THE ADMINISTRATION OF ELECTIONS FOR FEDERAL OFFICE 2005-2006 42 (2007), [http://www.eac.gov/clearinghouse/docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006/attachment\\_download/file](http://www.eac.gov/clearinghouse/docs/the-impact-of-the-national-voter-registration-act-on-federal-elections-2005-2006/attachment_download/file).
- 4 Ryan Alessi, *State Cuts Thousands from Its Voter Rolls*, LEXINGTON HERALD-LEADER, Apr. 23, 2006, at A1; *All Things Considered: Kentucky Grapples with Confusion on Voter Lists* (NPR radio broadcast Oct. 9, 2006)(transcript on file with NPR).
- 5 Adam Cohen, *American Elections and the Grand Old Tradition of Disenfranchisement*, N.Y. TIMES, Oct. 8, 2006, at 11; *All Things Considered: Kentucky Grapples with Confusion on Voter Lists* (NPR radio broadcast Oct. 9, 2006)(transcript on file with NPR).
- 6 Roger Alford, *Purge of Kentucky Voters Challenged*, EVANSVILLE COURIER & PRESS, May 6, 2006, at B3.
- 7 Joe Biesk, *Wrongly Purged Ky. Voters May Vote*, EVANSVILLE COURIER & PRESS, May 16, 2006, at B1.
- 8 Adam Cohen, *American Elections and the Grand Old Tradition of Disenfranchisement*, N.Y. TIMES, Oct. 8, 2006, at 11.

order commanded the state to place the voters on an inactive list and wait two elections cycles before removing them from the rolls.<sup>9</sup>

## B. PURGING IN PRACTICE

Kentucky law vests the state board of elections with the responsibility to purge voters from the rolls for reason of death, felony conviction, mental incapacitation, or change of address.<sup>10</sup> State law prohibits the purging of any voters within ninety days of a primary or general election.<sup>11</sup>

A voter may appeal a purge on the basis of death, declaration of mental incompetence, or conviction of a disenfranchising crime by filing a protest with the county board of elections, which then must hear the protest at its next regular monthly meeting.<sup>12</sup> A decision in favor of the voter results in the restoration of the voter's registration.<sup>13</sup> If the board decides against the voter, the voter may appeal the decision to the circuit court within ten days of the board's decision.<sup>14</sup> If the county board finds for the voter within ninety days of an election, when the registration books are closed, the board must issue the voter an "Authorization to Vote" for the upcoming election.<sup>15</sup> The board will then restore the voter's registration after the election.<sup>16</sup>

### 1. *Change of Address*

As noted, Kentucky law assigns the responsibility to purge voters from the rolls on account of change of address to the state board of elections.<sup>17</sup> The election code enumerates a number of sources from which election officials may learn of changes of address. First, the registrant may notify the county clerk of an address change, which leads the clerk to transfer her registration record to the correct precinct.<sup>18</sup> Local election officials reported that voters notify the county in person, or by e-mail or fax. Second, changes of address may be received through the department of motor vehicles.<sup>19</sup> Most of the four counties studied confirmed that they received information from the state board of elections or the department of motor vehicles. Third, the state board of elections

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9 *Voter Rolls Can't Be Purged Yet*, KY. POST, Oct. 3, 2006, at A6.

10 KY. REV. STAT. ANN. §§ 116.112-.113 (LexisNexis 2008).

11 KY. REV. STAT. ANN. § 116.112(6) (LexisNexis 2008).

12 KY. REV. STAT. ANN. § 116.113(4) (LexisNexis 2008).

13 *Id.*

14 KY. REV. STAT. ANN. § 116.135 (LexisNexis 2008).

15 KY. REV. STAT. ANN. § 116.113(4) (LexisNexis 2008).

16 *Id.*

17 KY. REV. STAT. ANN. § 116.112 (LexisNexis 2008).

18 KY. REV. STAT. ANN. § 116.085(1) (LexisNexis 2008).

19 KY. REV. STAT. ANN. § 116.0455(4) (LexisNexis 2008).

may use information from the national change of address service or “other sources.”<sup>20</sup> In a move not specifically contemplated by Kentucky’s election statute, one election official reported receiving notifications from other counties once a voter has moved and registered there.

Although most of the procedures for identifying and removing registrants because of a changed address occur at the state level, the statute also provides that county boards of elections may initiate a change-of-address purge, provided they receive authorization from the state.<sup>21</sup> Such purges are only to be carried out when a registrant either confirms her change of address in writing, or fails to either (i) respond to a confirmation notice (sent after the state or local government receives information suggesting the registrant has moved); (ii) update her registration information; or (iii) vote in the two federal general elections following the date of notice.<sup>22</sup> The confirmation notice must be forwardable, prepaid, and preaddressed.<sup>23</sup>

After the mailing of the confirmation notice but before the purge, the Kentucky statute provides that the voter be placed on an inactive list.<sup>24</sup> One county reported sending address confirmation notices to active registrants every four years, shortly before a presidential election. Unlike the procedure outlined in the statute,<sup>25</sup> this mailing does not appear to be predicated on information that a registrant has moved; rather, it is a blanket mailing. If the notice is returned undeliverable, the county mails a second notice. If that notice is also returned as undeliverable, the county places the voter on an inactive list, removes the registrant after two federal elections, and notifies the registrant of the removal. In this county, these notices are not mailed to inactive voters.

The list of inactive registrants exists at the state level, but counties may, with the authorization of the state board of elections, also maintain a local inactive list.<sup>26</sup> Practices for placing registrants on inactive lists vary significantly between the state and counties, as well as between the counties themselves. One county official reported placing registrants on inactive lists after two returned mailings, but an official from another county said that she places registrants on inactive lists after a single mailing. That same official reported that if the local board of elections receives an incomplete or illegible application, it notifies the registrant to contact the board within sixty days. According to the official, if the registrant fails to do so, the registrant is registered, but flagged as inactive. With respect to voting experience, two counties reported that if an inactive

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20 KY. REV. STAT. ANN. § 116.112(1) (LexisNexis 2008).

21 KY. REV. STAT. ANN. § 116.112(4) (LexisNexis 2008).

22 KY. REV. STAT. ANN. § 116.112(3)-(4) (LexisNexis 2008).

23 KY. REV. STAT. ANN. § 116.112(2)-(3) (LexisNexis 2008).

24 KY. REV. STAT. ANN. § 116.112(5) (LexisNexis 2008).

25 KY. REV. STAT. ANN. § 116.112 (LexisNexis 2008).

26 KY. REV. STAT. ANN. § 116.112(5) (LexisNexis 2008). The inactive list is composed of registrants who were mailed address confirmation notices and failed to respond or to vote within two federal general elections. KY. REV. STAT. ANN. § 116.112(4) (LexisNexis 2008).

registrant appears at the polls to vote, she is permitted to do so only after completing an affidavit affirming identity/address.

None of the county clerks interviewed reported relying on information from the national change of address service. One county official stated that his county had used such information in the past, but discontinued using it because the information did not enable the board to determine which member of the household has moved. That official also reported that the information compiled by the postal service does not match the criteria his county uses to identify voters. The election official said that when the board receives a change of address notice from the postal service, it follows up by calling or writing the voter. According to the official, this correspondence does not count towards the determination of inactivity.

## *2. Duplicates*

Kentucky law does not specifically set forth procedures for dealing with duplicate registration records. Our interviews with election officials, however, revealed that localities have developed their own practices for resolving them. Two counties reported that identical entries are flagged and that the local board of elections examines the registration cards of the records to determine the cause of duplication, whether it is a change of address or a change of party identification. While they go through the same procedures to investigate apparent duplicate registrations, county officials appear to disagree as to who is responsible for conducting the purge. One official reported that the responsibility rests with the state, while another official said it rests with the local clerk's office.

State law does not specify any criteria for matching apparent duplicate records. Counties, however, appear to have developed their own criteria. One county official reported matching the name, date of birth, and complete social security number. Another county reported that the key identifier when conducting a search for duplicates is the social security number.

County officials recognize that there are many causes of apparent duplicate registration records. One county official reported that the search for duplicates occasionally turns up two people with identical names, and the official admitted that typographical errors in the records sometimes lead to the deletion of the wrong person from the voting rolls. As a check against such problems, when registrants move without reporting their changes of address, the same official stated that the local board of elections calls the registrant's new county to confirm that the person flagged is indeed the same person registering in the new county.

## *3. Death*

Kentucky law provides that the state board of elections is responsible for purging deceased registrants from the rolls.<sup>27</sup> The state board of elections is authorized to receive notification of a death from the

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27 KY. REV. STAT. ANN. § 116.113 (LexisNexis 2008).

cabinet for health and family services “or other reliable sources.”<sup>28</sup>

By law, the state board of elections must remove deceased registrants identified by this section within five days of the notice, except during the period in which registration books are closed for elections.<sup>29</sup> The county clerk then has ten days to update county records to reflect the change.<sup>30</sup> Election officials interviewed did not comment on the time period in which these purges are completed.

In practice, various sources are used by county officials to identify deceased voters. Three counties reported that the state board of elections receives vital statistics reports and bears responsibility for purging deceased voters. However, one of those county officials claimed that the vital statistics reports can be erroneous and are sometimes delayed. Two county officials also said that the local board of elections reports any information that it receives about deceased voters to the state, and one of those officials said that that information can come from the decedent’s family.

#### *4. Criminal Conviction*

Kentucky permanently disenfranchises individuals who commit disqualifying crimes. The administrative office of the courts is statutorily charged with notifying the board of elections of a registrant’s felony convictions.<sup>31</sup> Counties reported that the state board of elections receives information about disqualifying convictions from a variety of sources, including vital statistics reports, the administrative office of the courts, and local boards of elections. Despite these multiple sources, however, one county official asserted that gaps in the system result in undercounting out-of-state convictions. Another official also admitted that if the courts identify the wrong person for removal, there is no way to remedy the situation.

The board of elections is required to cause the removal of registrants identified through this process within five days of receipt of the notification, except when registration books are closed during elections.<sup>32</sup> As with purges of deceased and mentally incompetent registrants, county clerks are required to update the county voter registration records within ten days of notification from the state board of elections of the purge.<sup>33</sup> None of the election officials interviewed commented on the time frame for purging registrants with disenfranchising criminal convictions.

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28 KY. REV. STAT. ANN. § 116.113(1) (LexisNexis 2008).

29 KY. REV. STAT. ANN. § 116.113(1) (LexisNexis 2008).

30 KY. REV. STAT. ANN. § 116.113(4) (LexisNexis 2008).

31 KY. REV. STAT. ANN. § 116.113(3) (LexisNexis 2008).

32 KY. REV. STAT. ANN. § 116.113(3) (LexisNexis 2008).

33 KY. REV. STAT. ANN. § 116.113(4) (LexisNexis 2008).

### *5. Adjudication of Mental Incapacitation*

Kentucky law obligates the clerk of the circuit court to notify the board of elections of any declarations of mental incompetence.<sup>34</sup> Contrary to state law, however, one county official stated that a probate court must determine that a person is incapable of voting before that person is removed from the rolls. One official said, though, that the probate court can only take action over persons with assets. Another local board of elections official reported a belief that assisted living centers also provide information on mental incapacitation to the state board of elections. Despite the statutory requirement to remove registrants who are declared mentally incompetent, one county official reported that it takes no action at all with respect to this issue.

The board of elections is required to remove individuals declared mentally incompetent within five days of receipt of notice from the circuit court, except when registration books are closed during elections.<sup>35</sup> As stated above, county clerks must update county registration records within ten days of notification of the purge.<sup>36</sup>

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34 KY. REV. STAT. ANN. § 116.113(2) (LexisNexis 2008).

35 KY. REV. STAT. ANN. § 116.113(2) (LexisNexis 2008).

36 KY. REV. STAT. ANN. § 116.113(4) (LexisNexis 2008).

## APPENDIX 6: COMPUTERIZED STATEWIDE VOTER REGISTRATION DATABASES AND PURGES

The federal Help America Vote Act (HAVA) mandated that all states create and use computerized, statewide voter registration databases as their official voter registration list by January 1, 2006.<sup>1</sup> These databases have the potential to improve state purge processes but can also introduce new complications and problems for voters. The database systems currently in place in those states that comply with HAVA's requirements differ in a number of respects related to design, purge authority, and the information contained in each record.

Several factors affect purges of statewide voter registration databases: the requirements of the National Voter Registration Act (NVRA), and the architecture of each state's database, which affects how states can purge names from the voter rolls.

### A. WHO IS RESPONSIBLE FOR PURGING?

The NVRA contains several protections against error-prone hasty purges of the voter rolls, as detailed in the body of this report. It also requires states to designate a "chief State election official," a state officer or employee, who is charged with managing the responsibilities imposed upon states by the NVRA.<sup>2</sup> To some extent, therefore, the designated official is responsible for ensuring compliance with the law's purge provisions. States differ as to who is given this designation. Most state laws indicate that the state Secretary of State is the chief election official.<sup>3</sup> The chief election official of some states, however, is designated in conjunction with a state board or commission responsible for election administration. For example, effective July 1, 2007, Wisconsin law requires that the government accountability board designate an employee of the board to serve as chief election officer.<sup>4</sup> In Hawaii, the chief election officer is an individual appointed by the elections commission to supervise state elections.<sup>5</sup>

States assign authority to purge names from the voter rolls in one of three ways: (1) primarily local control,<sup>6</sup> (2) primarily state control, of which Kentucky appears to be an example,<sup>7</sup> or (3) joint control, of which Washington is an example. Those states that conduct purges on a local level differ with respect to which local officials have the authority to purge names. For example, the authority

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1 42 U.S.C. § 15483 (2006).

2 42 U.S.C. § 1973gg-8 (2000).

3 *See, e.g.*, FLA. STAT. ANN. §§ 97.012, 98.035 (LexisNexis 2008); OR. REV. STAT. § 246.110 (2006); MO. REV. STAT. § 115.136(1) (2007).

4 WIS. STAT. ANN. § 5.05(3g) (LexisNexis 2008).

5 HAW. REV. STAT. ANN. § 11-1 (LexisNexis 2008).

6 Confirmed by interviews with local boards of election officials in Nevada conducted in 2008. All interviews are on file at the Brennan Center.

7 KY. REV. STAT. ANN. § 116.112-113. (LexisNexis 2006)

to conduct purges apparently rests with the county supervisor of elections in Florida,<sup>8</sup> county commissions in Pennsylvania,<sup>9</sup> county clerks in Oregon,<sup>10</sup> and at the municipal level Wisconsin.<sup>11</sup>

## B. DATABASE DESIGN STRUCTURES AND PURGES

Database design structures are commonly distinguished by their construction: “top-down” or “bottom-up.” Top-down databases have been defined as those “in which a unified database is maintained by the state with information supplied by localities.”<sup>12</sup> Bottom-up databases have been defined as those “whereby counties and cities retain their own registration lists and submit information to a state compilation of local databases at regular intervals.”<sup>13</sup> While the majority of state databases use a top-down structure, some state databases, such as those in Ohio and Washington, have bottom-up designs.<sup>14</sup>

The local and statewide voter registration databases also differ in the amount of voter information retained. For example, county officials in one of Nevada’s large counties report using a database that does not remove names entirely from the system; instead, the records of those people no longer in good standing are filed in an archive folder. Some state statutes specify the manner and time period for which paper documents related to a purged voter must be preserved, but do not make similar specifications for electronic information.<sup>15</sup>

The variations among state database systems make it difficult to identify all the benefits and drawbacks of statewide databases for purging. Having centralized voter information can help prevent improper purges, particularly when the database is designed to allow for: (a) more transparency and greater accountability, (b) controls and tracking systems, and (c) enhanced record keeping, allowing for easy restoration of inaccurately purged names. The technological tools that make these improvements possible, however, also carry the risk of facilitating wider-scale purges on illegitimate grounds, or enabling officials to hide the occurrence of a purge.

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8 See FLA. STAT. ANN. § 98.093 (LexisNexis 2008).

9 See 25 PA. CONS. STAT. ANN. § 1203 (LexisNexis 2008).

10 See OR. REV. STAT. § 247.555(1) (2008).

11 See WIS. STAT. ANN. § 6.325 (Westlaw 2008).

12 See Electionline.org, *Assorted Rolls: Statewide Voter Registration Databases under HAVA* 3 (June 2005), available at [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/News/Press\\_Releases/Election\\_reform/electionline\\_0605.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/News/Press_Releases/Election_reform/electionline_0605.pdf).

13 *Id.*

14 *Id.* at 21, 24.

15 See, e.g., 25 PA. CONS. STAT. ANN. § 1511 (LexisNexis 2008).

### C. DATABASE INTEROPERABILITY: A NEW CHALLENGE

As states continue to develop their centralized computer voter registration databases, there has been increasing interest in making state databases interoperable with other databases containing information on citizens. Under HAVA, states are required to coordinate their voter registration databases with felony conviction databases and death records for the purpose of conducting purges, as well as with databases maintained by motor vehicle authorities and the Social Security Administration.<sup>16</sup>

Several clusters of states have also begun to compare voter registration databases across state lines and initiate voter purges based on matches found between records in a different states' voter registration databases, under the assumption that those matches reflect individuals who have moved from one state to another but neglected to notify their original state before registering to vote in a new one.

Those who seek increased interoperability between voter registration databases and other databases tout the potential for highly efficient methods of removing duplicate records or ineligible people from the voter registration list. They claim that automating the process of database purges (based on matches among different state databases or between a single state's voter and felony databases, for example) will present several benefits.

First, interoperable databases can exchange data much more quickly than human operators, and without introducing data-entry error. Theoretically, speed and automation let states better match new felony convictions and voter lists. Also, states could notify one another automatically when a registered voter moved.<sup>17</sup> Second, interoperable databases can use automated matching software to standardize the matching process and more comprehensively match records even when some degree of error or variation exists between separate records. For example, a voter may be registered as "Thomas J. Smith" with an incorrect birth date of "05201491," but may have been recorded in the state death records as "Tom Smith" with a correct birth date of "05201941." An improperly trained or rushed human operator attempting to search for and remove this record from the voter registration database may not conduct the necessary search variations to identify the match, while a sophisticated matching algorithm could be programmed to correct for such predictable variations.<sup>18</sup> Without additional information, however, it is impossible to tell whether Thomas J. Smith and Tom Smith are indeed the same person.

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16 42 U.S.C. § 15483(a)(5)(B).

17 See R. MICHAEL ALVAREZ & THAD E. HALL, IBM CTR. FOR THE BUS. OF GOV'T., *THE NEXT BIG ELECTION CHALLENGE: DEVELOPING ELECTRONIC DATA TRANSACTION STANDARDS FOR ELECTION ADMINISTRATION 20-21* (2005), available at <http://www.vote.caltech.edu/media/documents/AlvarezReport.pdf>.

18 See COMMITTEE ON STATE VOTER REGISTRATION DATABASES, NATIONAL RESEARCH COUNCIL, *STATE VOTER REGISTRATION DATABASES: IMMEDIATE ACTIONS AND FUTURE IMPROVEMENTS, INTERIM REPORT 10* (2008) ("Human-based matching is generally less consistent than computer-based matching but may be better in other areas, such as comparing signatures.").

Under careful scrutiny, however, voter database interoperability replicates many of the same problems as traditional voter registry management. Moreover, because it is computer-run and therefore “foolproof,” it can breed false confidence. Without strict safeguards and steady human scrutiny, may mean that interoperability might actually pose a greater threat to the right to vote than traditional methods of record coordination.

**Database interoperability problems can be grouped in four categories:**

- (1) problems with underlying data in the voter databases or the databases with which they are interoperable,
- (2) problems with software matching,
- (3) problems with data security, and
- (4) perception problems that lead to over-inclusive purges that sweep in legitimate voters.

These problems — discussed briefly below — all underscore the necessity of the recommendations put forward in this report.

*1. Problems with Underlying Data in Databases*

The problem of data laundering arises from the simple fact that a database is only as good as its underlying data. As state election officials begin to rely on other state agencies for records of felony convictions, deaths, and address changes, they expose the voter registration records to any errors in those other databases. Simply, felony conviction records or address changes recorded with the state department of motor vehicles are not always carefully compiled. They may lack the kinds of precise and standardized records required by voter registrations.<sup>19</sup> Sloppy record-keeping by the DMV, for example, could undercut the fundamental right to vote. Further, this weakness is obscured by an assurance of error-free data transfers.

*2. Matching Problems*

Data-matching software designed to correct for inconsistent records can compound these problems. Any software program capable of connecting non-identical records will necessarily generate false-positive matches.<sup>20</sup> We thus return to the example of Tom Smith given above. The software that matches “Tom Smith” born on “05201941” with “Thomas J. Smith” born on “05201491” might also identify “Tomas Smith” born on “05021941,” a completely different person who, in a state’s haste to clean its voter rolls, could easily be disenfranchised because his name and birth date are similar

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<sup>19</sup> *Id.* at 32.

<sup>20</sup> *Id.* at 29-31.

to those of another voter in question. Record-matching software may ultimately prove a boon, but experience suggests that convenience and cost drive election officials to opt for simplicity instead of accuracy, almost always at the expense of voters' rights— hence the need for strict oversight.

### *3. Security Problems*

These records may be insecure. Since computerized voter records are connected to external sources, the security of the voter registration database is vulnerable to intrusion or corruption from external sources.<sup>21</sup> An example of security concerns with electronic databases was seen in Mississippi where an election official illegally purged thousands of voters in violation of federal law. This example is applicable to all electronic databases, regardless of interoperability, although the potential for this kind of illegal access to voter registration and even politically motivated violations is greatly increased with interconnected voter registries. Voter records also contain sensitive information, including Social Security numbers in some states, sensitive addresses, such as those police officers and domestic violence victims, and a range of other personally identifying information. Increased interoperability means increased access to a greater number of people to that sensitive information, and increased opportunity for the information to be misused or fall in the wrong hands.

### *4. Over-confidence and Over-purging*

In fact, the availability of computerized interoperable lists has changed election officials' attitudes, and not always for the better. Previously, in a time of decentralized paper lists, all assumed some overlap— duplication and inaccuracy was inevitable— an acceptable price to pay for widespread suffrage in a decentralized country. Now, many officials seem to believe that absolute accuracy is within reach, even if it means disenfranchising a fraction of legitimately registered voters.

This kind of thinking appears to have been behind the recent voter purge of Hurricane Katrina victims in Louisiana who have been temporarily displaced to other states.<sup>22</sup> Having compared the voter registration list with those of neighboring states, Louisiana state officials began the process of purging some 53,000 voters who had been evacuated from New Orleans following the hurricane and who may have registered to vote in other neighboring states while they awaited resolution of their living situations in New Orleans. This particular purge would not have been possible prior to state computerized voter registration records. Fast and inexpensive access to greater quantities of data has swung the pendulum from one extreme — that of retaining a high percentage of inaccurate voter records — to the other, this one characterized by zeal to purge first and ask questions later.

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21 See *Developments in the Law – Voting and Democracy: Voting in Times of Crisis*, 119 HARV. L. REV. 1176, 1186 n.60 (2006) (“Electronic voter registration databases are not free from security concerns. Without proper security measures, servers can be destroyed and data can be illegally accessed”).

22 See *NAACP Challenges Louisiana Voter Purge*, USA TODAY (ONLINE), Aug. 31, 2007, available at [http://www.usatoday.com/news/nation/2007-08-31-naacp-louisiana\\_N.htm](http://www.usatoday.com/news/nation/2007-08-31-naacp-louisiana_N.htm).

These problems do not originate with interoperable databases, but are likely to be worsened by them. The solution is not a return to sloppy paper record keeping. Thus, our recommendations that there be regular and thorough audits of all data, greater safeguards against invisible changes to records, and increased transparency of procedures are even more important given the increasing state efforts to rely on interoperable systems and automatic purge processes.

## APPENDIX 7: UNDELIVERABLE MAIL

When states rely on mail-back notices (or non-forwardable mailings) to conduct list maintenance, they risk disproportionately purging eligible voters from low-income, minority communities.

In fiscal year 1998, the U.S. Postal Service (USPS) estimated that 5.4 billion pieces of mail, approximately 3% of all mail volume, were undeliverable-as-addressed (UAA)<sup>1</sup>. By 2005, the amount of UAA mail had risen to almost 10 billion pieces.<sup>2</sup> The type of mail most often used for government notices is also the type of mail that is most often undeliverable: in 1998, for example, the majority of UAA mail—fifty-eight percent—was mailed First Class, the type of mail most often used for mailings done for purge purposes.<sup>3</sup>

Some mail is undeliverable because the addressee has moved. Often the mail never finds its recipient because the address is incomplete, illegible, or incorrect.<sup>4</sup> Indeed, a 2005 study by the USPS found that 30% of all U.S. mail contains addressing errors.<sup>5</sup> In practical terms, this means that a voter's failure to put her apartment number on a voter registration form, or errors in data entry at their local election office, can prevent an eligible voter from receiving notice that she will be removed from the voter rolls. Recipients may also fail to receive mail for any one of the following three reasons: the addressee refuses or fails to claim the mail; the addressee is unknown or deceased; or postage has not been paid.<sup>6</sup>

An eligible voter's failure to put her apartment number on a voter registration form, or errors in data entry at their local election office, can prevent her from receiving a mailing from election officials that triggers a purge, as well as from receiving a notice that she will be removed from the voter rolls.

Significantly, voters who are most likely to fail to receive mail are from low-income, minority communities. The USPS has done little research into who is especially affected by UAA mail. However, studies of jury summonses provide some insight. Jury summonses, much like notices to voters, are sent by mail, and voter registration rolls are sometimes used to generate the list of addresses for summons mailings.<sup>7</sup> Unfortunately, these summonses often fail to reach people

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1 U.S. POSTAL SERVICE, UNDELIVERABLE-AS-ADDRESSED (UAA) MAIL COST STUDY-EXECUTIVE SUMMARY (1999), available at <http://ribbs.usps.gov/files/UAA/UAASUM.PDF> [hereinafter UAA SUMMARY].

2 Nancy DeDeimar, *Helping the USPS Reduce Undeliverable Mail*, 30 QUICK PRINTING 52 (2007).

3 UAA SUMMARY.

4 *Id.*

5 Press Release, PR NEWSWIRE U.S., "Undeliverable as Addressed" Mail Costs USPS \$1.8 Billion Annually; Nearly One-Third of U.S. Mail Contains Addressing Errors (August 12, 2005), available at <http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=104&STORY=/www/story/08-12-2005/0004087486&EDATE=>.

6 UAA SUMMARY.

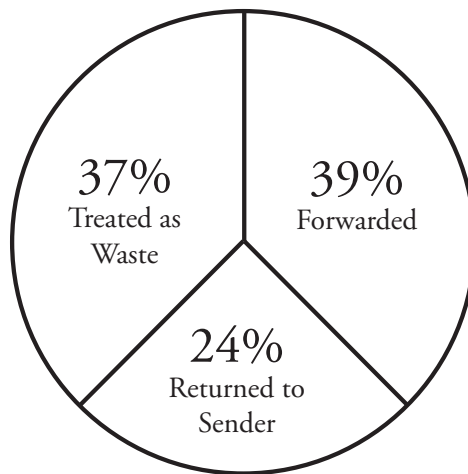
7 Leslie Ellis and Shari Seidman Diamond, *Race, Diversity, and Jury Composition: Battering and Bolstering*

in low-income, minority communities. For example, a 2000 study by the *Southern Methodist University Law Review* and *The Dallas Morning News* found that a disproportionate percentage of jury summonses that were returned as undeliverable were addressed to Latinos.<sup>8</sup> Similarly, a far higher percentage of jury summonses to black neighborhoods are returned as undeliverable or unanswered, as compared with white suburban areas.<sup>9</sup> UAA mail tends disproportionately to affect those living in households earning less than \$35,000 each year.<sup>10</sup> While some of these disparities occur because minorities and low-income individuals tend to move more often, they also occur because mail delivery tends to be less reliable in urban areas which typically have higher concentrations of these populations.<sup>11</sup>

In addition to sending non-forwardable mail to identify purge targets, some states attempt to provide affected voters with notice that their names will be removed from the voter rolls using forwardable mail. Unfortunately, however, as the chart below illustrates, most UAA mail is not forwarded to a new address, but is either returned-to-sender or discarded.

In either case, the voter will not receive timely notice of the imminent purge of her record from the voter rolls, either because the notice is discarded by the post office or is returned to the local election board without ever reaching the voter.

USPS HANDLING OF UNDELIVERABLE-AS-ADDRESSED MAIL



*Legitimacy*, 78 CHI.-KENT L. REV. 1033, 1053 (2003).

8 Robert Walters and Mark Curriden, *A Jury of One's Peers?: Investigating Underrepresentation in Jury Venues*, 43 JUDGES' JOURNAL 17, 19 (2004); Ted Eades, *Revisiting the Jury System in Texas: A Study of the Jury Pool in Dallas County*, 54 SMU L. REV. 1813, 1815 (2001).

9 Peter S. Canellos, *In Prosecuting Federal Crime, Jury Pool can be an Issue of Race*, Boston Globe, September 20, 2005, at A3.

10 Eades, *Revisiting the Jury System in Texas*, at 1815.

11 John P. Bueker, *Jury Source Lists: Does Supplementation Really Work?*, 82 CORNELL L. REV. 390, 425 (1997), citing *United States v. Ortiz*, 897 F. Supp. 199, 204 (E.D. Pa. 1995).