

BRENNAN  

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FOR JUSTICE

VOTER PURGES

EXECUTIVE SUMMARY

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## ABOUT THE BRENNAN CENTER FOR JUSTICE

The Brennan Center for Justice at New York University School of Law is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. Our work ranges from voting rights to redistricting reform, from access to the courts to presidential power in the fight against terrorism. A singular institution – part think tank, part public interest law firm, part advocacy group – the Brennan Center combines scholarship, legislative and legal advocacy, and communications to win meaningful, measurable change in the public sector.

## ABOUT THE BRENNAN CENTER'S VOTING RIGHTS AND ELECTIONS PROJECT

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

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# EXECUTIVE SUMMARY

Voter registration lists, also called voter rolls, are the gateway to voting. A citizen typically cannot cast a vote that will count unless her name appears on the voter registration rolls. Yet state and local officials regularly remove — or “purge” — citizens from voter rolls. In fact, thirty-nine states and the District of Columbia reported purging more than 13 million voters from registration rolls between 2004 and 2006.<sup>1</sup> Purges, if done properly, are an important way to ensure that voter rolls are dependable, accurate, and up-to-date. Precise and carefully conducted purges can remove duplicate names, and people who have moved, died, or are otherwise ineligible.

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

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

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

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

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

- In Mississippi earlier this year, a local election official discovered that another official had wrongly purged 10,000 voters from her home computer just a week before the presidential primary.
- In Muscogee, Georgia this year, a county official purged 700 people from the voter lists, supposedly because they were ineligible to vote due to criminal convictions. The list included people who had never even received a parking ticket.
- In Louisiana, including areas hit hard by hurricanes, officials purged approximately 21,000 voters, ostensibly for registering to vote in another state. A voter could avoid removal if she provided proof that the registration was cancelled in the other state, documentation not available to voters who never actually registered anywhere else.

## FINDINGS

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

**Purges rely on error-ridden lists.** States regularly attempt to purge voter lists of ineligible voters or duplicate registration records, but the lists that states use as the basis for purging are often riddled with errors. For example, some states purge their voter lists based on the Social Security Administration's Death Master File, a database that even the Social Security Administration admits includes people who are still alive.<sup>5</sup> Even though Hilde Stafford, a Wappingers Falls, NY resident, was still alive and voted, the master death index lists her date of death as June 15, 1997.<sup>6</sup> As another example, when a member of a household files a change of address for herself in the United States Postal Service's National Change of Address database, it sometimes has the effect of changing the addresses of all members of that household. Voters who are eligible to vote are wrongly stricken from the rolls because of problems with underlying source lists.

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

before Election Day. Without public notice of an impending purge, the public will not be able to detect improper purges or to hold their election officials accountable for more accurate voter list maintenance.

**Bad “matching” criteria leaves voters vulnerable to manipulated purges.** Many voter purges are conducted with problematic techniques that leave ample room for abuse and manipulation. State statutes rely on the discretion of election officials to identify registrants for removal. Far too often, election officials believe they have “matched” two voters, when they are actually looking at the records of two distinct individuals with similar identifying information. These cases of mistaken identity cause eligible voters to be wrongly removed from the rolls. The infamous Florida purge of 2000 — conservative estimates place the number of wrongfully purged voters close to 12,000 —

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

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was generated in part by bad matching criteria.<sup>7</sup> Florida registrants were purged from the rolls in part if 80 percent of the letters of their last names were the same as those of persons with criminal convictions.<sup>8</sup> Those wrongly purged included Reverend Willie D. Whiting Jr., who, under the matching criteria, was considered the same person as Willie J. Whiting.<sup>9</sup> Without specific guidelines for or limitations on the authority of election officials conducting purges, eligible voters are regularly made unnecessarily vulnerable.

**Insufficient oversight leaves voters vulnerable to manipulated purges.** Insufficient oversight permeates the purge process beyond just the issue of matching. For example, state statutes often rely on the discretion of election officials to identify registrants for removal and to initiate removal procedures. In Washington, the failure to deliver a number of delineated mailings, including precinct reassignment notices, ballot applications, and registration acknowledgment notices, triggers the mailing of address confirmation notices,<sup>10</sup> which then sets in motion the process for removal on account of change of address. Two Washington counties and the Secretary of State, however, reported that address confirmation notices were sent when any mail was returned as undeliverable, not just those delineated in state statute. Since these statutes rarely tend to specify limitations on the authority of election officials to purge registrants, insufficient oversight leaves room for election officials to deviate from what the state law provides and may make voters vulnerable to poor, lax, or irresponsible decision-making.

## POLICY RECOMMENDATIONS

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

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

### *A. Transparency and Accountability for Purges*

States should:

- **Develop and publish uniform, non-discriminatory rules for purges.**
- **Provide public notice of an impending purge.** Two weeks before any county-wide or state-wide purge, states should announce the purge and explain how it is to be conducted. Individual voters must be notified and given the opportunity to correct any errors or omissions, or demonstrate eligibility before they are stricken from the rolls.
- **Develop and publish rules for an individual to prevent or remedy her erroneous inclusion in an impending purge.** Eligible citizens should have a clear way to restore their names to voter rolls.
- **Stop using failure to vote as a trigger for a purge.** States should send address confirmation notices only when they believe a voter has moved.
- **Develop directives and criteria with respect to the authority to purge voters.** The removal of any record should require authorization by at least two officials.
- **Preserve purged voter registration records.**
- **Make purge lists publicly available.**
- **Make purge lists available at polling places.** Purge lists should be brought to the polls on Election Day so that errors can be identified and pollworkers can find the names of erroneously purged voters and allow them to vote regular ballots.

### *B. Strict Criteria for the Development of Purge Lists*

States should:

- **Ensure a high degree of certainty that names on a purge list belong there.** Purge lists should be reviewed multiple times to ensure that only ineligible voters are included.
- **Establish strict criteria for matching voter lists with other sources.**
- **Audit purge source lists.** If purge lists are developed by matching names on the voter registration list to names from other sources like criminal conviction lists, the quality and accuracy of the information in these lists should be routinely “audited” or checked.
- **Monitor duplicate removal procedures.** States should implement uniform rules and procedures for eliminating duplicate registrations.

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

States should ensure that:

- **No voter is turned away from the polls because her name is not found on the voter rolls.** Instead, would-be voters should be given provisional ballots, to which they are entitled under the law.
- **Election workers are given clear instructions and adequate training as to HAVA’s provisional balloting requirements.**

### *D. Universal Voter Registration*

States should:

- **Take the affirmative responsibility to build clean voter rolls consisting of all eligible citizens.** Building on other government lists or using other innovative methods, states can make sure that all eligible citizens, and only eligible citizens, are on the voter rolls.
- **Ensure that voters stay on the voter rolls when they move within the state.**
- **Provide a fail-safe mechanism of Election Day registration for those individuals who are missed or whose names are erroneously purged from the voter rolls.**

## ENDNOTES

- 1 U.S. Election Assistance Comm'n, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2005-2006: A Report to the 110<sup>th</sup> Congress*, 50 (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).
- 2 Ford Fessenden, *Florida List for Purges of Voters Proves Flawed*, N.Y. TIMES, July 10, 2004, at A02.
- 3 *Id.*
- 4 *Florida Scraps Flawed Felon Voting List*, ASSOC. PRESS, USA TODAY, July 10, 2004.
- 5 John Ferro, *Deceased Residents on Statewide Voter List*, POUGHKEEPSIE JOURNAL, Oct. 29, 2006.
- 6 *Id.*
- 7 Adam C. Smith, *No Telling if Voter Rolls are Ready for 2004*, ST. PETERSBURG TIMES, Dec. 21, 2003.
- 8 Gregory Palast, *The Wrong Way To Fix the Vote*, WASH. POST, June 10, 2001, at B1.
- 9 *Id.*
- 10 WASH. REV. CODE ANN. § 29A.08.620 (2008).

## SELECTED BRENNAN CENTER PUBLICATIONS

*Better Ballots*

LAWRENCE NORDEN, ET. AL

*A Return to Common Sense: Seven Bold Ways to Revitalize Democracy*

MICHAEL WALDMAN

(Sourcebooks 2008)

*Fair Courts: Setting Recusal Standards*

JAMES SAMPLE

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