

## RECENT VOTER SUPPRESSION INCIDENTS

By Wendy Weiser  
*October 22, 2008.*

*The Brennan Center will be updating and re-posting this document regularly between now and Election Day.*

### NO MATCH, NO VOTE

*Some states will not register voters or will purge them from the voter rolls if election officials cannot match their voter registration information against information in other government databases. The problem is the computer match processes states use are inherently unreliable. Between 15% and 30% of all match attempts fail because of typos, other administrative errors, and minor discrepancies between database records, such as a maiden name in one record and a married name in another or a hyphen in one record and not another. No match, no vote policies can block hundreds of thousands of voters through no fault of their own. More information on no match, no vote policies is available [here](#). This year, no match, no vote efforts across the country, if successful, could have a significant impact on the election, affecting tens of thousands of new voters.*

- Ohio: On September 26, 2008, the Ohio Republican Party asked a federal court to issue an emergency ruling requiring the state to generate a list of more than 200,000 new voters whose information did not match other state records, presumably so those voters could be purged from the rolls right before the election, forced to vote provisional ballots, or challenged at the polls. They asked the court before the absentee ballots cast by new registrants were opened and counted. A federal court granted the temporary restraining order, and after a three-judge panel on the U.S. Court of Appeals for the Sixth Circuit stayed that order, the full appeals court, sitting *en banc*, [reinstated](#) it. On emergency review, the U.S. Supreme Court vacated the TRO on October 17, 2008, preventing chaos in the election in Ohio and [protecting](#) hundreds of thousands of Ohio citizens from disenfranchisement-by-typo. That same day, the Ohio Republican Party filed a virtually identical suit with the Ohio Supreme Court, seeking essentially the same relief they lost in the federal courts. They also seek to

prevent the counting of absentee ballots cast by unmatched voters unless or until the mismatches are cleared. The Republican fundraising consultant who brought the lawsuit has [voluntarily dismissed](#) his case. Ohio Republican Party Chairman Robert T. Bennett said he asked the plaintiff David Myhal to drop the case and plans to meet on October 22, 2008 with Attorney General Nancy H. Rogers, representing Secretary Brunner, to discuss an out-of-court solution to the dispute. Regardless of the outcome, non-matching voters may still face challenges on Election Day by partisan election workers. Further details can be found [here](#).

- Florida: On September 8, 2008, the Florida Secretary of State instructed election officials to reject voter registration applications that do not pass an error-prone computer match process. In the first three weeks of the policy, 15% of registrations were initially bounced because of failed computer matches; election officials were able to catch and correct obvious typos in about  $\frac{3}{4}$  of these cases, but to date, [more than 9,000](#) voters are being kept off the rolls. An analysis of the list reveals that African Americans make up 39% of blocked voters, and Latinos make up 34% of blocked voters. There will likely be not enough time for election officials to correct the errors in the tens of thousands of registrations that came in right before the deadline. More information about “no match, no vote” in Florida, including the pending lawsuit filed by the Brennan Center in 2007, is available [here](#).
- Wisconsin: After the Wisconsin Government Accountability Board (the state’s election board) [rejected](#) a proposal in July to retroactively implement a no “match, no vote” policy for all voters who registered since 2006, on September 10, the Attorney General [sued](#) the board seeking to force such a policy right before the election. The Board conducted an audit of its voter rolls and found a 22% match failure rate, including for 4 of the 6 members of the board. The court has not yet ruled. More information can be found [here](#).
- Other states: No match, no vote policies are in place also in Louisiana, Iowa, and South Dakota pursuant to policies adopted well before the 2008 elections. Tens of thousands of voters have been denied registration in those states. Evidence suggests that Colorado also may be treating some voter registrations that fail to match as incomplete.

## VOTER PURGES

*Election officials across the country routinely purge millions of names from the voter rolls. Although purging is necessary to keep the voter rolls up to date and accurate, a recent Brennan*

Center [study](#) demonstrates that the processes states use for purging are prone to error and vulnerable to manipulation. Purges are typically done without notice to affected voters or the public, and without any public scrutiny whatsoever. As a result, thousands of registered voters show up at the polls each election year only to find that they are not on the rolls and cannot cast a ballot that will be counted. This year, unreliable and possibly illegal purges could keep thousands of votes from being counted.

- Possible Illegal Purges Reported by New York Times: According to a recent [front-page article](#) by the New York Times, several states have been illegally purging their voter rolls this year, including Colorado, Georgia, Indiana, Louisiana, Michigan, Ohio, and Nevada. (The Brennan Center has not independently verified all these purges.)
- Michigan: Michigan illegally purged its voter rolls this year within 90 days of an election and using non-forwardable mailings to recently registered voters, according to a recent federal court [ruling](#). The court [ordered](#) the restoration of about 1,400 voters who had been removed because their voter identification cards were returned as undelivered.
- Colorado: In response to a New York Times [article](#), the Colorado Secretary of State admitted that at least 2,454 voters were purged illegally within 90 days of a federal election. Several thousand additional records were purged as potential “duplicates” within 90 days of the election, also in violation of federal law. Another several thousand were illegally purged based on non-forwardable mailings to newly registered voters.
- Georgia naturalized citizens: Georgia recently began using an unreliable matching process to purge the voter rolls of alleged non-citizens. The process they use misses naturalized citizens because it only checks the citizenship documents used to obtain driver’s licenses, no matter how long ago, and those records are not updated when legal residents become naturalized. A federal court refused to block this practice in a recent [lawsuit](#) filed by the Mexican American Legal Defense and Education Fund and the Lawyers’ Committee for Civil Rights Under Law.
- Muscogee, Georgia: Earlier this year, a county election administrator in Muscogee County, Georgia [purged](#) 700 people who were supposedly ineligible because of criminal convictions. The purge was highly inaccurate and included people who never received even a parking ticket.
- Mississippi: About a week before the Mississippi primary, an election administrator in Madison County, Mississippi improperly purged [approximately](#)

[10,000](#) voters, reportedly from her home computer. Reportedly, the purge was detected when it was discovered that a local candidate was removed from the voter rolls. By all accounts, the Secretary of State's staff successfully reinstated the erroneously purged voters in time for the primary.

## VOTER CHALLENGES

*Political operatives sometimes challenge voters' eligibility either before Election Day or at the polls, based on names culled from unreliable [caging lists](#) or other lists they develop. While the rules and procedures for voter challenges vary from state to state, these challenges can lead to voter intimidation, long lines at the polls, and disenfranchisement of eligible voters.*

*[Historically and in recent years](#), caging and challenge operations have targeted minority communities, students, and homeless citizens. Widespread challenges are expected across the country on Election Day. Recent incidents include:*

- **Montana:** The Republican Party of Montana challenged the registrations of over 6,000 voters in 7 counties based on change of address information. Many were [service members](#) and students eligible to vote in Montana but who had their mail forwarded to where they were serving or going to school. Under Montana's challenge rules, these voters would have had to answer the challenges to the satisfaction of election officials before being allowed to vote. After a public outcry—including [criticism](#) by the Republican Lieutenant Governor—the party [abandoned](#) the challenges. For more information, click [here](#). In a resulting lawsuit brought by the Montana Democratic Party, on October 10, 2008, a federal judge [found](#) that the challenges were frivolous and that it would violate federal law for state election officials to deny anyone the ability to vote based on these challenges.
- **No home, no vote:** The Chairman of the Republican Party of Macomb County, Michigan reportedly told an [online publication](#) that the party planned to mount challenges to voters whose names appeared on foreclosure lists. After public criticism and [instructions](#) by the Michigan Director of Elections that these challenges are insufficient under Michigan law, the Chairman [denied](#) that there were such plans (and even sued the publication for libel). There have been fears and [reports](#) that similar challenges will be mounted in other states, particularly battleground states such as Ohio where [more than 5%](#) of homes are currently in the foreclosure process. Similar challenges are possible across the country on Election Day unless election officials take immediate steps to ensure that those in danger of losing their homes do not also lose their vote. On October 20, 2008, the Democratic and Republican parties [agreed](#) that appearance on a foreclosure

list is not a reasonable basis to challenge a voter and that no voter will be challenged on that basis.

- Ohio mailer: Ohio election officials sent a non-forwardable mailer to voters on the rolls, and over 600,000 were returned as undeliverable. The list was provided to the political parties, and there were fears that this list would be the basis of challenges. After concerns were raised, the Ohio Secretary of State issued a [directive](#) explaining that returned mail alone is not a sufficient basis to sustain a challenge. More information on why returned mail is an unreliable indicator of residence or eligibility can be found [here](#).

## TECHNICAL BARRIERS TO VOTER REGISTRATION AND VOTING

*In the Jim Crow era, technical barriers to voter registration and voting were common. In the 1960s, Congress [tried to put an end](#) to these types of barriers, prohibiting officials from denying the right to vote based on any immaterial “error or omission” on voting-related paperwork or records. In this election cycle, there has been a resurgence of technical barriers based on the failure to check unnecessary boxes on forms.*

- Colorado registrations. Colorado is treating applications missing unnecessary checkmarks to indicate that the registrant lacks a driver’s license as incomplete. [Thousands](#) of recent registrations are already affected, and there will likely be [more](#) as counties process new forms.
- Florida registrations. Florida [still](#) rejects voter registration forms submitted without checkmarks in check boxes that are duplicative of other information on the forms. Thousands of votes were lost in prior federal elections because of this practice.
- Ohio absentee ballots. In September 2008, the Ohio Secretary of State announced the election officials must reject absentee ballot requests made by voters whose eligibility was not in serious doubt because of their failure to check an unnecessary check box. A federal court [ordered](#) the Secretary of State to process those ballot requests.

## STUDENT VOTING BARRIERS

*Students who attend school away from their homes often fulfill residency and other requirements to be able to register and vote in the communities in which they attend school, but there are obstacles and efforts to discourage them to register and vote. Across the country,*

*there have been reports of widespread misinformation about student voting rights, misleading and intimidating statements, and registration and residency barriers unique to students. The fact that students are readily identifiable at their college community polling stations also makes them easy targets for partisan challengers or voter intimidation efforts. The [result](#) is a disproportionate number of student voters being challenged at the polls, discouraged from voting, or prematurely told to cast a provisional ballot.*

- [Dorm room addresses](#). Local registrars in several states, including in [Virginia](#), were denying registration to students who provided dorm room addresses even though those are valid registration addresses.
- [Misleading and intimidating information](#). A registrar in Montgomery County, Virginia, affecting Virginia Tech University, issued a memo giving incorrect and intimidating information to students about the consequences of registering to vote, including possible loss of financial aid and tax dependence status. Similarly, a county clerk in Colorado Springs, Colorado incorrectly told students at Colorado College that they could not vote at school if their parents claimed them as dependents on their federal tax returns. The websites of the [Virginia](#) and Indiana Secretary of States still contain misleading information that [could dissuade](#) eligible student voters.
- [Prairie View, Texas](#). On October 10, 2008, the registrar of Waller County, Texas entered into a [consent decree](#) with the U.S. Department of Justice to stop imposing unfair and illegal [barriers](#) to student voting.
- [Restrictive Residency Rules](#). Several states make it very difficult for students to establish residency for voting purposes. In Idaho and Tennessee, for example, students cannot establish voting residency unless they have affirmative plans to remain in the state after graduation. Virginia and Indiana also make it difficult for students to establish residency.
- [Restrictive Absentee Voting](#). Michigan and Tennessee require all first-time voters who registered by mail to vote in person; they cannot vote absentee. This makes it nearly impossible for college students (a great percentage of whom are young, first-time voters) to vote in their hometowns.
- [Intimidation Aimed at Students](#). A [flier](#) recently disseminated on the campus of Drexel University in Philadelphia warned that undercover officers would be present at the polls, looking for voters with outstanding warrants or parking violations.

## VOTER REGISTRATION ACCESS

*According to the [U.S. Census Bureau](#), 30% of Americans were not registered to vote in 2006. A range of barriers to voter registration access could affect registration rates in certain communities. Several states have enacted laws that impose unnecessary burdens on organized efforts to register voters, which target communities that have the greatest barriers to registration. Threats of criminal penalties and crippling civil fines for failure to comply with requirements have forced community groups to stop or substantially cut down on registering voters. A policy brief on restrictions to voter registration drives can be found [here](#).*

- Veterans. The Department of Veterans' Affairs denied voter registration access to residents and patients of its facilities, refusing to allow election officials or nonpartisan groups to offer voter registration services, and failing to provide such services itself. A last-minute [change](#) in policy offered only a partial fix to this problem. More information is available [here](#).
- Voter registration drive restrictions. Several states, including [New Mexico](#) and [Florida](#), have enacted restrictive laws that interfere with the ability of groups to do voter registration drives. The Florida law was tied up in litigation filed by the Brennan Center and so has not been in effect for this election season. A court refused to block the New Mexico law, and a number of community groups, especially those that work with volunteers, have not been able to register new voters.
- Noncompliance with federal voter registration law. A number of states have not been providing voter registration services at social service agencies, as [required](#) by the federal Motor Voter law. Recent lawsuits filed by [Project Vote](#) and [Demos](#) seek to enforce states' compliance with the implementation of the NVRA.

## VOTER INTIMIDATION AND DECEPTIVE PRACTICES

*In recent elections, robo-phone calls and misleading flyers, often targeting minority and low-income communities, have spread false information regarding elections and voting qualifications. For examples of such documents, click [here](#).*

- Philadelphia fliers. Deceptive fliers about the consequences of voting were [distributed](#) in a predominantly African American neighborhood in Philadelphia.
- Greene County, Ohio: A law enforcement officer in Greene County, Ohio sought the names of 300 voters who registered and voted at the beginning of Ohio's early voting period in a town made up largely of students. The effort,

which was later [withdrawn](#), was criticized as an effort to intimidate student voters and deter others from voting.

- Hamilton County, Ohio: In a move that could intimidate and deter voters, Hamilton County Prosecutor Joe Deters recently [requested](#), via subpoena, personal information for 40% of the voters who registered and immediately cast a ballot during the weeklong period in which Ohio allows same-day registration and voting.

## POOR BALLOT DESIGN

*Poorly designed ballots—remember butterfly ballots?—can lead to the loss of thousands of votes. A recent Brennan Center [report](#) demonstrates that ballot design problems are still widespread and can threaten many votes. Already, there have been problems relating to November’s election:*

- Mississippi Senate race: Mississippi election officials were sharply criticized, in a New York Times [editorial](#) and in a [letter](#) sent by the Brennan Center, for their decision to place the Wicker-Musgrove U.S. Senate race at the bottom of Mississippi’s ballot. This “ballot trick” placed the Senate race far below the other federal races listed in the 2008 election, creating a confusing layout for the ballot, one that could potentially mislead and disenfranchise hundreds of thousands of Mississippi voters in that race, particularly low-income and minority voters. More information can be found [here](#).
- Twelve Ohio counties: Twelve Ohio counties released sample paper ballots that split the presidential contest over two columns for this November’s election. As the Brennan Center’s [study](#) found, this particular layout often confuses voters and causes them to double-vote, an action which ultimately results in an uncounted ballot. On September 17, 2008, the Brennan Center sent a [letter](#) to the board of elections in all Ohio counties, urging them to reconsider their ballot layout and place the presidential contest in a single column on the paper ballot. The Ohio Secretary of State forwarded the letter to all county board of elections as well. Further details can be found [here](#).