



May 25, 2005

Juliet Thompson, General Counsel  
U.S. Election Assistance Commission  
1225 New York Avenue  
Washington, DC 20005

**Re: Comments on Election Assistance Commission’s “Proposed Voluntary Guidance on Implementation of Statewide Voter Registration Lists”**

Dear Ms. Thompson,

Thank you for the opportunity to submit comments to the Election Assistance Commission (EAC) on the agency’s “Proposed Voluntary Guidance on Implementation of Statewide Voter Registration Lists” under Section 303(a) of the Help America Vote Act of 2002 (HAVA). My name is Laleh Ispahani and I work on felon re-enfranchisement for the American Civil Liberties Union, an organization that works to defend and preserve the Bill of Rights. I have worked intensively on felony disfranchisement for three years, writing and speaking frequently on the issue. Last Fall, I wrote Purged!, a report examining the procedures 15 states use to purge people from their voter rolls. The comments below refer specifically to the answers to questions 9 and 10 of the EAC’s proposed draft guidance, which concern, respectively, the frequency of synchronizing state and local databases, and the coordination of the statewide voter registration list with other agency databases.

The EAC suggests in its guidance on question 9 that state and local databases be synchronized at least once every 24 hours, and in question 10, in relevant part, that “coordination between the statewide voter registration list and other government sources of information (e.g., death and felony records) is equally critical. States should take all steps necessary to provide for regular coordination of their statewide voter registration lists with death and felony records so as to assure that the statewide voter registration list is current.”

HAVA mandates that states implement a “single, uniform, official, centralized, interactive computerized statewide voter registration list”. The primary purpose of HAVA’s statewide database requirements is to ensure that states maintain a list of registered voters that is as complete and as accurate as possible. While the statute requires each state to take steps to remove duplicate records and those of ineligible voters from its list,<sup>2</sup> it also requires states to protect voters’ rights by ensuring that

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<sup>1</sup> The ACLU has operated a voting rights project since 1966, which has done extensive work over the years on disfranchising laws, including those for conviction of crimes. The ACLU is also a member of the Right to Vote campaign, which engages in scholarship, litigation and advocacy on felon disfranchisement policies.

<sup>2</sup> 42 U.S.C. §§ 15483(a)(2)(A)(ii), (a)(2)(B)(iii) & (a)(4)(A).



“the name of each registered voter appears” on the list,<sup>3</sup> and that “*only* voters who are *not* registered or who are *not* eligible to vote are removed” from the list.<sup>4</sup>

In states’ efforts to purge their voter lists of ineligible people with felony convictions, we have encountered enormous errors resulting in the disfranchisement of thousands of eligible voters, including those who should have been restored to the voter rolls.<sup>5</sup> Likewise, ineligible people with felony convictions have voted in recent elections because of confusing state laws and procedures and inaccurate guidance from local boards of elections, and because of flaws in the operation of voting lists. In order to guard against inaccurate purges of eligible persons, and to ensure that the five million temporarily disfranchised by felony convictions are restored to the rolls in a timely manner, states must take into account the causes of these errors and adjust the operation of their databases accordingly. We recommend states take two sets of actions, the first set covering all states and the second directed at states based on their disfranchisement policy.

In conducting empirical research into the purge procedures of 15 states representing the variety of state disfranchisement laws, we noted serious problems concerning:

- (1) Individual counties entering felony conviction data that were inconsistent in type and amount (which they in turn collected from various sources);
- (2) The lack of a regular mechanism to adjust individuals’ disfranchisement status when their convictions are overturned;
- (3) Counties and states matching felon and voter data without reference to any specified or standardized matching criteria;
- (4) Infrequent data updates,<sup>6</sup> increasing the likelihood of inaccurate purges based on outdated information; and
- (5) Lack of pre-removal notice to those purged, depriving officials and voters of the opportunity to rectify improper purges.

Left unrectified, these problems will continue to lead to inaccurate purges with the deleterious effect of treating similarly situated voters unequally. These problems require that states:

- (1) Develop protocols for and require sources to provide uniform felony conviction data. States might use as a guide the National Voter Registration Act of 1993 (NVRA), specifically 42 U.S.C. Sec. 1977gg-6(g), requiring U.S. attorneys to send standardized felony conviction data to the states (requiring provision of name, age, residence, date of entry of judgment, description of offenses for which individual was convicted and sentence imposed);

<sup>3</sup> *Id.* § 15483(a)(2)(B)(i) (emphasis added).

<sup>4</sup> *Id.* § 15483(a)(2)(B)(ii) (emphasis added). HAVA further requires states to establish “[s]afeguards to ensure that eligible voters are not removed in error” from the list, *id.* § 15483(a)(4)(B), to ensure that the removal of any name be done in accordance with the protections of the National Voter Registration Act, *id.* §§ 15483(a)(2)(A)(i) & (a)(4)(A), and to ensure that “voter registration records ... are accurate and updated regularly,” *id.* at § 15483(a)(4).

<sup>5</sup> In 2000, for example, Florida mistakenly disfranchised 8,000 misdemeanants, and in 2004, the state’s purge contained only 61 Hispanic names despite the state’s sizable Hispanic population, and also included thousands who had had their right to vote restored.

<sup>6</sup> For example, some California counties presently update conviction data just twice a year.

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- (2) Develop a mechanism whereby an individual's disfranchisement status is adjusted when that individual's conviction is overturned.<sup>7</sup>
- (3) Develop uniform, non-discriminatory, and transparent standards by which felon and voter data are matched.
- (4) Update information in real time.
- (5) Notify a voter before removing any name from the computerized list.<sup>8</sup> Provide the voter an opportunity to correct any errors or omissions in that voter's record. Provide the person the opportunity to inform election officials that he or she is not the person they have identified.<sup>9</sup> This requirement follows from HAVA's prohibition against removing the records of any eligible voter, coupled with the fact that there is no reliable method of generating accurate lists of ineligible voters or of duplicate records. This requirement is also essential to ensure that citizens are not denied their fundamental right to vote without due process of law.

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The second set of recommendations, below, concerns the linkages the databases in each state must make to other agencies, based on each state's unique disfranchisement laws.<sup>10</sup> While each state has its own, unique disfranchisement policy, for present purposes state disfranchisement policies can be grouped into the following five categories.

### ***1. States That Automatically Restore The Right To Vote Upon Completion Of Sentence***

In states that automatically restore the right to vote upon completion of sentence, the statewide voter registration database must link the Board of Elections with the Department of Corrections (including parole and probation departments), so that release information is transmitted from there to the Board of Elections. This communication should occur ideally in real time, so that individuals who have served their sentences and are thus immediately eligible to vote without further process are permitted to register to vote, or to vote if state law does not require that they re-register.<sup>11</sup> These states are: Georgia, Idaho, Kansas, Minnesota, Missouri, New Jersey, New Mexico, Oklahoma, Rhode Island, West Virginia and Wisconsin.

<sup>7</sup> Pursuant to the NVRA, U.S. attorneys routinely send notices of overturned convictions to state officials (42 U.S.C. Sec. 1977gg-6(g)(4)). This is a first step that allows a restoration mechanism to be put in place, but of course, without follow-up, the name does not get restored to the state's voter rolls.

<sup>8</sup> Notification should be made by a certified, forwardable letter to the voter's last known address, along with a postage pre-paid response card.

<sup>9</sup> This recommendation is similar to that made by the Midwestern Legislative Conference of the Council of State Governments in its August 2002 report (recommending that "[p]rocedures governing the purging of duplicate registrations should include sufficient notice to affected voters and an opportunity to correct errors in a timely fashion").

<sup>10</sup> Of the 5 million disfranchised, approximately 1.6 million are ex-offenders in the permanent disfranchisement states. Most (about 2/3) of the 5 million who are disfranchised at any given time will have their rights automatically restored upon leaving prison or completing their sentence, the first 3 categories of states discussed here.

<sup>11</sup> Surveys in 12 states, including Minnesota and Rhode Island which fall into this category of states, have revealed massive confusion and lack of knowledge on the part of state corrections and elections officials of their respective states' laws on restoration of voting rights for people with felony convictions. Just last week, advocates announced that 9 New Jersey counties were illegally requiring proof of release from



**2. States That Restore The Right To Vote Upon Completion Of Sentence But Request Documentation of Release**

In states that restore the right to vote upon completion of sentence but request documentation of release, the statewide voter registration database must link the Board of Elections with the Department of Corrections (including parole and probation agencies), so that release information is electronically transmitted from there to the Board of Elections. Similarly, the discharging agency, department or court must also be linked to the Board of Elections so that it may communicate that proof of discharge has been provided to the ex-offender. This communication should occur ideally in real time, so that individuals who have served their sentences, and been issued the appropriate documentation evidencing it, may register to vote, or vote where re-registration is not required, without having to submit any documents themselves. These documents often do not reach the ex-offender where he or she had moved, and are easily misplaced.<sup>12</sup> These states are: Alaska, Arkansas, Louisiana, North Carolina, South Carolina and Texas.<sup>13</sup>

**3. States That Restore The Right To Vote Upon A Grant Of Parole**

In those states that restore the right to vote upon a grant of parole, the statewide database must link the Department of Corrections and the Board of Elections. Here, the Department of Corrections must convey the date of an individual’s parole grant to the Board of Elections, ideally in real time, to prevent any disfranchisement. These states are: Illinois, Massachusetts, North Dakota, Oregon, Hawaii, Indiana, New Hampshire, Ohio, Pennsylvania, South Dakota and Utah.

**4. Partial or Total Permanent Disfranchisement States**

In partial permanent disfranchisement states, where the right to vote may only be restored for certain ex-felons at the discretion of an official body, or in permanent disfranchisement states where the right to vote for all ex-felons may only be restored at the discretion of an official body, the database must link to the Board of Elections and the agency that has the authority to restore the right to vote. These communications should be independent of the ex-offender, as these restoration processes are already cumbersome, and the state should place no further obstacles to re-eligible voters’ participation in the democratic process. These states are: Alabama,

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people who had completed sentences and were automatically eligible without any papers. New Jersey officials, confronted with this fact, agreed to revise their procedures.

<sup>12</sup> The American Correctional Association believes that a model statewide list management system is North Carolina’s Statewide Election Information Management System. With SEIMS, that state has a single, consistent, and up-to-date register of legal voters. The state’s 100 counties still perform voter registration functions including verification-related functions, but they now do so using a centralized computer system and software that allows sharing of voter information. As counties enter the information into their workstations, the data is automatically entered into the state’s central database. Changes made on the rolls in one county appear on the statewide rolls automatically.

<sup>13</sup> While North Carolina, South Carolina, and Texas state law is silent on this, we are aware that officials have required ex-offenders to produce documentation of release/eligibility to register and/or vote. This conduct may be illegal which is all the more reason that the burden not be placed on the ex-offender to provide any such documentation.



Arizona, Delaware, Florida, Iowa, Kentucky, Maryland, Mississippi, Nebraska, Nevada, Tennessee, Virginia Washington, and Wyoming.

5. *“Waiting Period” States*

For those states in which an individual is restored to the rolls after a waiting period following completion of sentence, the Department of Corrections must convey the date of an individual’s release to the Board of Elections with instructions that the individual appear as eligible on the rolls in x number of years. Calculating these periods can be confusing and the burden of tracking this waiting period should not fall on the voter. These states are: Arizona, Delaware, Maryland, Nebraska, Virginia and Wyoming.

Thank you for your consideration of our comments.

Sincerely,

  
Laleh Ispahani

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