



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 The comments below refer specifically to the answers to questions 9 and 10 of the EAC’s proposed draft guidance, which concern, respectively, the frequency of synchronizing state and local databases, and the coordination of the statewide voter registration list with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,² it also requires states to protect voters’ rights by ensuring that

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
NATIONAL OFFICE
125 BROAD STREET, 18TH FL
NEW YORK, NY 10004-2400
T/212.549.2500
WWW.ACLU.ORG

OFFICERS AND DIRECTORS
NADINE SIROSSLIN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

KENNETH B. CLARK
CHAIR, NATIONAL
ADVISORY COUNCIL

RICHARD ZACKS
TREASURER

¹ 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.

² 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,³ and that “*only* voters who are *not* registered or who are *not* eligible to vote are removed” from the list.⁴

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.⁵ 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,⁶ 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);

³ *Id.* § 15483(a)(2)(B)(i) (emphasis added).

⁴ *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).

⁵ 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.

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

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
NATIONAL OFFICE
125 BROAD STREET, 18TH FL
NEW YORK, NY 10004-2400
1/212 549 2500
WWW.ACLU.ORG

OFFICERS AND DIRECTORS
NADINE STROSSEN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

KENNETH B. CLARK
CHAIR, NATIONAL
ADVISORY COUNCIL

RICHARD ZACKS
TREASURER