

### **Voter Purges in an Increasingly Vote-by-Mail World**

In response to the likely increase in mail voting due to Covid-19, the Brennan Center has created guidelines to ensure voter purges don't disenfranchise eligible voters.

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As Americans stay safe at home and election administrators grapple with [how](#) to conduct elections during a pandemic, anti-voter groups continue to bring lawsuits seeking to compel aggressive voter roll purges — with at least four lawsuits in the last five months — particularly in swing states and in areas with large populations of voters of color.

In every state but one, voters are required to be registered before being able to cast a ballot. State and local election administrators across the country regularly remove or “purge” voters from the rolls as a part of maintaining voters rolls that are accurate and up to date. But all too often, a purge is erroneous and goes wrong, and eligible voters are removed from the rolls, frequently with no notice or knowledge until they show up at the polls to vote. There was cause for alarm even before Covid-19 turned our election methods upside down. The country was purging more voters (an increase that outpaces increases in population and registration), and purge rates [had increased](#) in jurisdictions with a history of racial discrimination after the Supreme Court weakened federal protections against discrimination in voting.

Now, the risks posed by erroneous purges are exacerbated as election officials confront the novel coronavirus because state and federal proposals, such as they are, largely rely on vote-by-mail options. But under current vote-by-mail systems, voters who are wrongly purged from the rolls have less opportunity to rectify the error and cast their ballots than when voting in person (when provisional ballots are available), raising the risk that eligible voters will be denied their right to vote.

Under federal law, states may conduct systematic purges up until 90 days before a federal election. Given some states' primary schedules, there are still states that could be conducting large-scale purges in the coming weeks without running afoul of federal law.

To ensure that mail balloting systems do not increase purge-related disenfranchisements, election administrators should focus on: (1) reducing erroneous purges, (2) adapting in-person protections for purged voters to mail ballot systems, and (3) ensuring that eligible purged voters can still cast a ballot that counts at the polls.

## (1) Reduce Erroneous Purges

The completeness and quality of the voter registration list takes on increased importance in a mail ballot system because the list will form the basis of who gets a mail ballot. As such, election administrators must ensure they use smart practices when cleaning their rolls.

- *Use good source data.* The quality and accuracy of the information from other sources, like criminal conviction lists or data from interstate data sharing programs, should be routinely audited or checked. Some sources, like the Kansas-administered Crosscheck program or out-of-date lists of purported noncitizens, are too unreliable to use. For example, in 2019, a federal judge stopped Texas’s “[ham-handed](#)” attempt to purge more than 95,000 purported noncitizens from the rolls because the state failed to account for the thousands of Texans that become naturalized citizens every year.
  - [Consult back up.](#) Election administrators should test the accuracy of their sources by looking at different sources of information, rather than assuming one source is flawless. Even sources contemplated by Congress for purges, like the National Change of Address database or the Social Security Administration’s Death Master File, have error rates.
  - [Right-size the reliance.](#) Use of the list should be adjusted in accordance with the list’s reliability.
- *Use thoughtful matching criteria.* When purge lists are developed by matching names on the voter registration list to names from another source, false positive matches can arise. Texas [saw](#) this in 2012, when a comparison of the voter registration rolls to the Social Security Administration’s Death Master File resulted in an erroneous purge.
  - [Match across multiple fields.](#) To steer clear of false positive matches, election officials should require matches across many fields — like first name, last name, address, date of birth, social security number, and driver’s license number — before flagging as ineligible. A matching name and address are not sufficiently unique; neither are a matching name and birthday. Shared birthdays, for example, are [so common](#) that in a group of 180 people, it’s more likely than not that two people will have been born on the exact same day.
  - [Avoid list comparisons that use weak matches.](#) The controversial and currently [defunct](#) Interstate Crosscheck System used loose matching criteria (first name, last name, and date of birth) to create lists of voters who purportedly moved out of state.
- *Complete ALL systematic purges 90 days before any federal, state, or local election.* Federal law requires that any program to systematically remove ineligible voters from the rolls must take place no later than 90 days before a federal primary or general election. That’s because voters and election administrators need time to identify and correct any purge mistakes.
  - [Ninety days for all.](#) While federal law requires systematic maintenance to be completed by 90 days before *federal* elections, the logic behind that blackout period applies equally to state and local elections as well.

- Challenges also should occur far in advance. Purges by another name — for example, voter challenges — need to comply with the federal timeline for purging. For example, in North Carolina, a federal court [ruled](#) in 2016 that local boards of elections likely violated federal law when they systematically removed hundreds of voters through citizen-initiated challenge procedures less than 90 days before the general election.
- *Don't get rushed into a purge.* There has been an increase in activist groups threatening election administrators with legal action based on allegations that the jurisdiction is not purging aggressively enough. An unplanned and rushed purge in response to these threats does nothing to increase voter confidence in a state's purge practices.
- *Provide public and private notice of purges.* In order to remove a voter based on a change in residence, federal law requires that election administrators provide individualized notice and an opportunity to respond or vote that spans two federal elections before removal. Not only is individualized notice essential, but widespread public notice before undertaking a purge can prevent a state from making serious mistakes.

## **(2) Adapt In-Person Protections for Purged Voters to Mail Ballot Systems**

Because of the novel coronavirus, many more voters are expected to use vote-by-mail options this year. Indeed, one [survey](#) reports 66 percent of adults as saying they wouldn't feel comfortable going to a polling place to vote this year. As [calls](#) for expanded access to mail voting grow, election administrators must ensure that the turn to mail voting does not disenfranchise purged voters.

- *Affirmatively send mail ballot applications to inactive voters (and remember, if you're sending mail ballots to all registered voters, inactive voters are registered voters too).* States have different terms for voters who are on a pathway for removal but cannot be legally removed yet. Many states refer to these voters as “inactive voters.” Because these voters have not been removed, they remain eligible and still have time to adjust their status back to “active.” Therefore, they should not be penalized by being deprived of the opportunity to vote by mail in the middle of a health crisis.
  - If a voter is deemed inactive because of specific evidence that the voter is no longer eligible, states transitioning to mail voting should send *provisional* ballots to all such inactive voters who request a mail ballot.
- *Use mail ballot requests in numerous ways.* Eligible voters shouldn't have to fill out multiple forms to get on the rolls. And erroneously purged voters shouldn't bear the burden of a mistaken removal. A request for a mail ballot should qualify as:
  - An activity that moves a voter from the inactive list to the active list.
  - A response to an NVRA notice (*see* 52 U.S.C. § 20507(d)) sufficient to prevent the voter from being removed.
  - An application to register if submitted by a never-registered person and the mail ballot request is received before book closing and contains sufficient information

for registration. In states where the mail ballot application does not contain enough information for registration, the voter should be sent an application to register to vote or update their voter registration.

- Grounds to reinstate a voter purged for change of address, if the address provided on the mail ballot request is the same as the address provided when the voter was registered. This request is affirmative evidence that a voter did not move.
- *Account for changing circumstances when contemplating a purge.* Covid-19 has forced many people into new and temporary living situations at new addresses, and the pandemic is already [straining](#) the Postal Service.
  - Undeliverability should not result in removal. If a mail ballot or ballot application is undeliverable, do not purge a voter.
  - Reissue Notice. Any voter warned of their potential removal in a notice sent in 2020 pursuant to Section 8 of the National Voter Registration Act (52 U.S.C. § 20507(d)) should also receive notice in 2021.

### **(3) Polling Place Fail-Safes**

Even as increased access to vote-by-mail is a key part of the response to Covid-19, safe and healthy polling places are also [critical](#). Giving every voter access to a mail ballot option will not replace all polling place voting, and it should not come at the expense of access to polling places, particularly because communities and demographic groups with poor mail access are used to voting in-person, prefer to do so, and will not be willing or able to vote by mail. That means polling places still need to be prepared to assist purged voters who remain eligible in casting a ballot that counts.

Election administrators should:

- *Provide clear instructions and adequate training* to poll workers on the provisional balloting requirements of the Help America Vote Act. Poll workers should be familiar with the circumstances that trigger the use of provisional ballots, know how to walk a voter through the process, and understand that every provisional voter must be given information on how to check if their ballot was counted.
- *Never turn away voters from polls* because their names are not on the voter rolls. Under federal law, would-be voters who are not on the rolls or whose eligibility is in question always have the right to cast provisional ballots.
  - Inactive voters must be able to vote. Voters who remain eligible but have been transferred to a state's list of "inactive" voters should be able to cast a ballot that will count.
- *Make paper copies of purge lists and voting history available* at polling places so errors can be identified and poll workers can find the names of erroneously purged voters and allow them to cast regular ballots.

- *Ensure every polling place has adequate resources* to offer provisional voting, including enough poll workers (including bilingual poll workers where required) and a sufficient number of provisional ballot materials to accommodate a surge in provisional voting due to erroneous purges, hacking, or other Election Day disruptions.
  - Prepare for uncertainty. With policy changing rapidly to adjust to Covid-19, jurisdictions should prepare for a surge in provisional voting due to delays in processing of voter registration applications, delays in processing and delivery of mail ballot applications, voter confusion resulting from polling site closures and consolidation, and unfamiliarity with absentee voting.
  
- *Count provisional ballots* unless there's clear and convincing evidence someone is *not* eligible. When a voter attests to their eligibility, a designation of “canceled” (or “removed” or “purged”), standing alone, is not enough to reject a provisional ballot given inherent errors in list maintenance or other registration database disruptions.
  - Consult other evidence. Election administrators should look to other sources — like motor vehicle records, court records, or original registration applications — for evidence of ineligibility before rejecting any provisional ballot.