United States Supreme Court Justice John Paul Stevens:

Public confidence "is closely related to the State's interest in preventing voter fraud, public confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process."

Source: Crawford et al. v. Marion County Election Board et al., 128 S.Ct. 1610, 1620 (2008)

AMERICAN OVERSIGHT

"A good registration list will ensure that citizens are only registered in one place, but election officials still need to make sure that the person arriving at a polling site is the same one that is named on the registration list. In the old days and in small towns where everyone knows each other, voters did not need to identify themselves. But in the United States, where 40 million people move each year, and in urban areas where some people do not even know the people living in their own apartment building let alone their precinct, some form of identification is needed."

Source: Commission on Federal Election Reform, Report, Building Confidence in U. S. Elections §2.5 (Sept. 2005), App. 136–137 (Carter-Baker Report) (footnote omitted)

AMERICAN OVERSIGHT

"There is no evidence of extensive fraud in U. S. elections or of multiple voting, but both occur, and it could affect the outcome of a close election. The electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters. Photo identification cards currently are needed to board a plane, enter federal buildings, and cash a check. Voting is equally important."

Source: Commission on Federal Election Reform, Report, Building Confidence in U. S. Elections §2.5 (Sept. 2005), App. 136–137 (Carter-Baker Report) (footnote omitted).

17-2361-A-003816

VOTES FOR PRESIDENT AS A % OF VOTING AGE POPULATION (VAP) 1952 - 2016

Presidential Election Year	US Turnout: Highest Office / VAP (%)
1952	63.8%
1956	58.3%
1960	62.8%
1964	61.9%
1968	60.8%
1972	55.2%
1976	53.5%
1980	52.6%
1984	53.3%
1988	50.3%
1992	54.7%
1996	48.1%
2000	50.0%
2004	55.5%
2008	56.9%
2012	53.6%
2016	54.7%

Sources:

Election Data Services, Inc.

United States Federal Election Commission

United States Elections Project; Dr. Michael McDonald

International Institute for Democracy and Electoral Assistance

Redbook: New Hampshire Manual for the General Court

United States Census Bureau - Voting Age Population (VAP)

Congressional Research Service

AMERICAN OVERSIGHT

VOTES FOR PRESIDENT AS A % OF VOTING AGE POPULATION (VAP) 1952 - 2016

Presidential Election Year	US Turnout: Highest Office / VAP (%)
1952	63.8%
1956	58.3%
1960	62.8%
1964	61.9%
1968	60.8%
1972	55.2%
1976	53.5%
1980	52.6%
1984	53.3%
1988	50.3%
1992	54.7%
1996	48.1%
2000	50.0%
2004	55.5%
2008	56.9%
2012	53.6%
2016	54.7%

1952-1968
Average: 61.5%

1972-2016
Average: 53.2%

Sources:

Election Data Services, Inc.

United States Federal Election Commission

United States Elections Project; Dr. Michael McDonald

International Institute for Democracy and Electoral Assistance

Redbook: New Hampshire Manual for the General Court

United States Census Bureau - Voting Age Population (VAP)

Congressional Research Service

AMERICAN OVERSIGHT

17-2361-A-003818

Voter Turnout Ranking of States: 1980 - 2016 Presidential Elections, Based on Vote for Highest Office Divided by Voting Age Population (VAP)

1980	%	1984	%	1988	%	1992	%	1996	%	2000	%	2004	%	2008	%	2012	%	2016	%
1 Minnesota	70.0%	1 Minnesota	68.6%	1 Minnesota	66.2%	1 Maine	73.1%	1 Maine	64.2%	1 Minnesota	66.6%	1 Minnesota	74.1%	1 Minnesota	73.2%	1 Minnesota	71.4%	1 Maine	69.4%
2 Idaho	67.9%	2 Montana	65.8%	2 Montana	63.7%	2 Minnesota	71.2%	2 Minnesota	63.1%	2 Maine	66.6%	2 Maine	72.5%	2 Maine	69.6%	2 Wisconsin	69.5%	2 Minnesota	69.4%
3 Wisconsin	67.4%	3 Maine	64.9%	3 North Dakota	63.2%	3 Montana	68.5%	3 Montana	62.3%	3 Alaska	64.9%	3 Wisconsin	71.8%	3 New Hampshire	69.6%	3 New Hampshire	67.8%	3 New Hampshire	69.1%
4 South Dakota	67.3%	4 South Dakota	63.8%	4 South Dakota	62.9%	4 Wisconsin	68.2%	4 South Dakota	60.3%	4 Wisconsin	64.7%	4 New Hampshire	68.8%	4 Wisconsin	69.3%	4 Iowa	67.1%	4 Wisconsin	66.2%
5 Montana	65.1%	5 Wisconsin	63.8%	5 Wisconsin	61.6%	5 Vermont	67.9%	5 Wyoming	59.9%	5 Vermont	63.5%	5 South Dakota	67.3%	5 Iowa	66.9%	5 Maine	67.0%	5 Iowa	65.1%
6 North Dakota	64.8%	6 North Dakota	63.5%	6 Maine	61.5%	6 South Dakota	66.1%	6 Vermont	58.2%	6 New Hampshire	60.9%	6 Iowa	67.3%	6 Michigan	66.4%	6 Colorado	64.5%	6 Colorado	64.6%
7 Utah	64.6%	7 Iowa	63.3%	7 Utah	60.5%	7 North Dakota	66.0%	7 Iowa	57.3%	7 Montana	60.8%	7 Oregon	67.1%	7 Vermont	66.0%	7 Ohio	62.7%	7 Vermont	62.3%
8 Maine	64.6%	8 Oregon	62.5%	8 Idaho	59.9%	8 Oregon	65.3%	8 Idaho	57.2%	8 Iowa	59.8%	8 Alaska	65.6%	8 Montana	65.1%	8 Michigan	62.0%	8 Michigan	62.0%
9 Iowa	62.9%	9 Utah	61.6%	9 Iowa	59.7%	9 Iowa	64.5%	9 Alaska	57.0%	9 North Dakota	59.8%	9 Ohio	65.3%	9 Ohio	65.1%	9 Montana	61.6%	9 Oregon	61.7%
10 Oregon	61.4%	10 Idaho	60.8%	10 Vermont	59.2%	10 New Hampshire	64.5%	10 New Hampshire	56.8%	10 Oregon	59.1%	10 Vermont	65.1%	10 Missouri	64.9%	10 Virginia	60.7%	10 Massachusetts	61.1%
11 Connecticut	61.0%	11 Vermont	60.5%	11 Oregon	58.5%	11 Connecticut	64.1%	11 Wisconsin	56.5%	11 Wyoming	58.3%	11 Michigan	64.4%	11 Colorado	64.7%	11 Massachusetts	60.2%	11 Ohio	61.0%
12 Michigan	60.0%	12 Connecticut	60.3%	12 Nebraska	57.8%	12 Idaho	63.8%	12 Louisiana	56.4%	12 Michigan	57.4%	12 Montana	63.3%	12 Montana	64.3%	12 North Carolina	60.1%	12 Pennsylvania	61.0%
13 Massachusetts	59.0%	13 Washington	58.6%	13 Colorado	57.3%	13 Alaska	63.6%	13 Oregon	56.3%	13 South Dakota	57.0%	13 North Dakota	63.0%	13 South Dakota	63.4%	13 Vermont	59.6%	13 Montana	60.8%
14 Missouri	58.8%	14 Alaska	58.6%	14 Connecticut	57.2%	14 Nebraska	62.6%	14 North Dakota	55.3%	14 Connecticut	56.7%	14 Missouri	62.9%	14 Oregon	62.7%	14 Missouri	59.6%	14 Virginia	60.8%
15 Rhode Island	58.6%	15 Michigan	58.0%	15 Massachusetts	56.7%	15 Kansas	62.3%	15 Kansas	55.3%	15 Missouri	56.3%	15 Wyoming	62.9%	15 Virginia	61.8%	15 Maryland	59.5%	15 North Carolina	60.2%
16 Illinois	57.8%	16 Ohio	58.0%	16 Missouri	55.5%	16 Utah	61.8%	16 Connecticut	55.1%	16 Washington	56.3%	16 Colorado	61.9%	16 North Dakota	61.7%	16 North Dakota	58.7%	16 Missouri	59.6%
17 Vermont	57.8%	17 Illinois	57.9%	17 New Hampshire	55.2%	17 Missouri	61.6%	17 Nebraska	55.1%	17 Massachusetts	55.5%	17 Washington	61.0%	17 Pennsylvania	61.3%	17 Oregon	58.7%	17 Maryland	59.5%
18 Indiana	57.7%	18 Missouri	57.8%	18 Wyoming	55.1%	18 Michigan	61.1%	18 Washington	54.3%	18 Ohio	55.4%	18 Pennsylvania	60.4%	18 Wyoming	60.9%	18 Washington	58.6%	18 North Dakota	59.3%
19 Washington	57.4%	19 Kansas	57.4%	19 Ohio	55.0%	19 Wyoming	60.6%	19 Ohio	54.2%	19 Delaware	55.1%	19 Nebraska	59.6%	19 Massachusetts	60.9%	19 Delaware	57.8%	19 Delaware	59.2%
20 New Hampshire	57.2%	20 Massachusetts	57.0%	20 Kansas	54.9%	20 Colorado	60.3%	20 Massachusetts	54.2%	20 Nebraska	55.0%	20 Connecticut	59.5%	20 North Carolina	60.7%	20 South Dakota	57.6%	20 Nebraska	58.8%
21 Alaska	57.1%	21 Nebraska	56.6%	21 Illinois	54.2%	21 Ohio	60.2%	21 Missouri	53.5%	21 Louisiana	54.2%	21 Delaware	59.1%	21 Delaware	60.6%	21 Mississippi	57.2%	21 Washington	58.3%
22 Kansas	56.8%	22 New Jersey	56.5%	22 Alaska	54.2%	22 Washington	59.8%	22 Michigan	53.4%	22 Kansas	54.0%	22 Massachusetts	59.0%	22 Maryland	60.6%	22 Pennsylvania	57.2%	22 Connecticut	58.3%
23 Nebraska	56.7%	23 Indiana	56.4%	23 Louisiana	54.2%	23 Massachusetts	59.8%	23 Colorado	51.4%	23 Colorado	53.6%	23 Idaho	58.9%	23 Connecticut	60.4%	23 Louisiana	57.0%	23 Alaska	57.4%
24 Colorado	55.9%	24 Delaware	55.9%	24 Michigan	54.2%	24 Oklahoma	58.8%	24 New Jersey	50.0%	24 Idaho	53.6%	24 Kansas	58.4%	24 Washington	60.3%	24 Nebraska	56.9%	24 Wyoming	57.3%
25 Ohio	56.4%	25 Colorado	55.7%	25 Washington	53.8%	25 Louisiana	58.4%	25 Rhode Island	49.9%	25 Pennsylvania	52.4%	25 Louisiana	57.5%	25 Nebraska	59.4%	25 Wyoming	56.4%	25 Florida	56.9%
26 New Jersey	54.9%	26 Louisiana	55.6%	26 Indiana	53.6%	26 Rhode Island	58.2%	26 Oklahoma	49.0%	26 Illinois	51.5%	26 Maryland	57.1%	26 Mississippi	58.9%	26 Alabama	56.0%	26 Louisiana	56.8%
27 Delaware	54.7%	27 Rhode Island	55.5%	27 New Jersey	52.5%	27 Illinois	58.1%	27 Indiana	48.6%	27 Maryland	51.0%	27 Kentucky	56.9%	27 Kansas	58.8%	27 Connecticut	55.6%	27 South Dakota	56.6%
28 Wyoming	53.4%	28 Wyoming	54.9%	28 Rhode Island	52.5%	28 New Jersey	55.7%	28 Pennsylvania	48.5%	28 Virginia	50.8%	28 Illinois	56.2%	28 Louisiana	58.7%	28 Idaho	55.6%	28 Alabama	56.3%
29 Louisiana	53.2%	29 Pennsylvania	54.3%	29 Mississippi	51.3%	29 Delaware	55.3%	29 Delaware	48.4%	29 Rhode Island	50.8%	29 Virginia	56.1%	29 Idaho	58.6%	29 Dist. of Columbia	55.5%	29 Kentucky	56.1%
30 West Virginia	52.8%	United States	53.3%	30 Delaware	51.0%	United States	54.7%	30 Illinois	48.3%	30 Kentucky	50.5%	30 Florida	55.8%	30 Alabama	58.4%	30 Alaska	55.3%	30 Illinois	56.1%
United States	52.6%	30 New Hampshire	53.1%	31 Oklahoma	50.9%	30 Alabama	54.5%	United States	48.1%	31 Utah	50.2%	31 Utah	55.8%	31 New Jersey	58.2%	31 Florida	55.1%	31 New Jersey	55.7%
31 Oklahoma	52.2%	31 Oklahoma	52.9%	United States	50.3%	31 Indiana	54.5%	31 Utah	47.7%	32 Alabama	50.2%	United States	55.5%	32 Florida	57.6%	32 South Carolina	53.6%	32 Dist. of Columbia	55.4%
32 Pennsylvania	52.0%	32 Mississippi	52.7%	32 Pennsylvania	50.2%	32 Pennsylvania	53.9%	32 Alabama	47.5%	33 New Jersey	50.1%	32 New Jersey	55.5%	33 Illinois	57.4%	United States	53.6%	33 Idaho	55.0%
33 Mississippi	51.9%	33 West Virginia	52.5%	33 New Mexico	49.8%	33 Maryland	53.7%	33 Virginia	47.3%	United States	50.0%	33 Oklahoma	55.2%	34 Rhode Island	57.1%	33 Kansas	53.5%	34 Rhode Island	54.7%
34 Arkansas	51.5%	34 Arkansas	52.3%	34 Kentucky	48.8%	34 Arkansas	53.1%	34 Kentucky	47.3%	34 Indiana	48.2%	34 Alabama	54.9%	35 Indiana	57.0%	34 Rhode Island	53.4%	United States	54.7%
35 New Mexico	50.9%	35 New Mexico	51.9%	35 Maryland	48.5%	35 Kentucky	53.0%	35 Maryland	46.7%	35 Tennessee	48.1%	35 Tennessee	54.2%	United States	56.9%	35 Kentucky	53.4%	35 South Carolina	54.2%
36 Maryland	50.0%	36 Kentucky	51.2%	36 Arkansas	48.2%	36 Virginia	52.7%	36 Arkansas	46.5%	36 Oklahoma	48.1%	36 Mississippi	54.0%	36 Kentucky	55.7%	36 Illinois	53.3%	36 Indiana	54.0%
37 Kentucky	49.9%	37 Maryland	51.1%	37 West Virginia	48.1%	37 Mississippi	52.2%	37 Tennessee	46.3%	37 Mississippi	47.9%	37 North Carolina	53.8%	37 Georgia	55.6%	37 New Jersey	53.2%	37 Kansas	54.0%
38 California	48.9%	38 New York	50.9%	38 Virginia	47.9%	38 Tennessee	52.0%	38 Florida	46.1%	38 Florida	47.8%	38 New Mexico	53.6%	38 South Carolina	55.3%	38 Indiana	52.9%	38 Mississippi	53.3%
39 Tennessee	48.8%	39 Virginia	50.7%	39 New York	47.5%	39 Arizona	51.3%	39 West Virginia	45.5%	39 New York	47.6%	39 West Virginia	53.0%	39 Dist. of Columbia	55.2%	39 Georgia	52.3%	39 Utah	52.8%
40 Alabama	48.7%	40 Alabama	50.3%	40 Alabama	46.7%	40 New Mexico	50.4%	40 New York	45.3%	40 North Carolina	47.4%	40 Indiana	53.0%	40 New Mexico	55.1%	40 Utah	51.4%	40 Georgia	52.6%
41 Florida	48.7%	41 Tennessee	49.4%	41 California	46.5%	41 New York	50.2%	41 Mississippi	45.0%	41 West Virginia	46.1%	41 Rhode Island	52.8%	41 Tennessee	54.5%	41 New Mexico	49.8%	41 New Mexico	50.2%
42 New York	48.0%	42 California	49.3%	42 Texas	45.7%	42 Florida	50.2%	42 New Mexico	44.5%	42 Arkansas	46.0%	42 Arkansas	50.9%	42 Oklahoma	52.8%	42 Tennessee	49.4%	42 New York	49.6%
43 Virginia	47.5%	43 Florida	48.3%	43 Tennessee	45.3%	43 North Carolina	49.7%	43 North Carolina	44.0%	43 South Carolina	45.7%	43 Georgia	50.8%	43 Utah	51.8%	43 Nevada	48.2%	43 Arkansas	49.4%
44 Texas	44.9%	44 Texas	47.4%	44 Arizona	44.9%	44 West Virginia	49.6%	44 California	43.4%	44 New Mexico	45.4%	44 New York	50.6%	44 New York	51.4%	44 Arkansas	47.7%	44 Nevada	49.4%
45 Arizona	44.4%	45 North Carolina	47.3%	45 Florida	44.6%	45 California	49.3%	45 Georgia	41.4%	45 California	44.1%	45 South Carolina	50.6%	45 Arkansas	50.0%	45 Arizona	46.5%	45 West Virginia	49.2%
46 Hawaii	43.6%	46 Arizona	45.3%	46 Hawaii	44.1%	46 Nevada	49.3%	46 Dist. of Columbia	41.3%	46 Dist. of Columbia	43.9%	46 Dist. of Columbia	49.6%	46 California	49.5%	46 Oklahoma	46.3%	46 Oklahoma	49.0%
47 North Carolina	43.4%	47 Hawaii	44.7%	47 North Carolina	43.5%	47 Texas	48.3%	47 Arizona	41.1%	47 Georgia	42.4%	47 Arizona	47.7%	47 West Virginia	49.1%	47 New York	46.1%	47 Arizona	48.9%
48 Georgia	41.3%	48 Georgia	41.9%	48 Nevada	42.5%	48 Dist.of Columbia	47.7%	48 South Carolina	40.8%	48 Texas	42.3%	48 California	47.3%	48 Arizona	49.1%	48 West Virginia	45.5%	48 Tennessee	48.6%
49 Nevada	41.1%	49 Dist.of Columbia	41.8%	49 South Carolina	39.4%	49 Georgia	45.9%	49 Texas	40.4%	49 Arizona	40.1%	49 Nevada	46.7%	49 Nevada	48.4%	49 California	45.1%	49 California	47.0%
50 South Carolina	40.4%	50 Nevada	41.1%	50 Georgia	39.1%	50 South Carolina	44.8%	50 Hawaii	40.2%	50 Nevada	40.0%	50 Texas	45.5%	50 Texas	45.5%	50 Texas	41.7%	50 Texas	43.4%
51 Dist. of Columbia	35.3%	51 South Carolina	40.9%	51 Dist. of Columbia	38.4%	51 Hawaii	43.0%	51 Nevada	36.5%	51 Hawaii	39.8%	51 Hawaii	43.6%	51 Hawaii	43.8%	51 Hawaii	39.9%	51 Hawaii	38.3%

Source: Dr. Michael P. McDonald, United States Elections Project, 1980 - 2016 Turnout Data Set, Date accessed: Sept. 5, 2017.

AMERICAN OVERSIGHT

Voter Turnout Ranking of States - 1980 - 2016 Presidential Elections, Based on Vote for Highest Office Divided by Voting Eligible Population (VEP)

1980	%	1984	%	1988	%	1992	%	1996	%	2000	%	2004	%	2008	%	2012	%	2016	%
1 Minnesota	71.2%	1 Minnesota	69.9%	1 Minnesota	67.9%	1 Maine	74.3%	1 Minnesota	66.1%	1 Minnesota	69.5%	1 Minnesota	78.4%	1 Minnesota	77.8%	1 Minnesota	76.0%	1 Minnesota	74.2%
2 Idaho	69.0%	2 Montana	66.4%	2 Montana	64.4%	2 Minnesota	73.7%	2 Maine	65.2%	2 Alaska	68.1%	2 Wisconsin	74.8%	2 Wisconsin	72.4%	2 Wisconsin	72.9%	2 New Hampshire	71.4%
3 Wisconsin	68.4%	3 Maine	65.8%	3 North Dakota	63.7%	3 Wisconsin	69.9%	3 Montana	63.1%	3 Wisconsin	67.6%	3 Maine	73.8%	3 New Hampshire	71.7%	3 Iowa	70.3%	3 Maine	70.5%
4 South Dakota	67.7%	4 Wisconsin	64.9%	4 South Dakota	63.4%	4 Montana	69.2%	4 Wyoming	61.3%	4 Maine	67.2%	4 Oregon	72.0%	4 Colorado	71.0%	4 New Hampshire	70.2%	4 Colorado	70.1%
5 Utah	66.0%	5 Oregon	64.3%	5 Wisconsin	62.8%	5 Vermont	69.0%	5 South Dakota	61.1%	5 Oregon	64.9%	5 New Hampshire	70.9%	5 Maine	70.6%	5 Colorado	69.9%	5 Wisconsin	69.4%
6 Montana	65.6%	6 South Dakota	64.3%	6 Maine	62.5%	6 Connecticut	68.6%	6 Alaska	59.8%	6 Vermont	64.1%	6 Iowa	69.9%	6 Iowa	69.4%	6 Maine	68.2%	6 Iowa	68.4%
7 Maine	65.4%	7 Iowa	64.1%	7 Utah	62.0%	7 Oregon	68.2%	7 Oregon	59.7%	7 New Hampshire	63.9%	7 Alaska	69.1%	7 Michigan	69.2%	7 Maryland	66.6%	7 Massachusetts	67.2%
8 North Dakota	65.2%	8 North Dakota	64.0%	8 Idaho	61.3%	8 South Dakota	66.7%	8 Connecticut	59.6%	8 Iowa	63.2%	8 South Dakota	68.2%	8 Alaska	68.0%	8 Virginia	66.1%	8 Maryland	66.6%
9 Connecticut	63.9%	9 Connecticut	63.8%	9 Connecticut	60.7%	9 North Dakota	66.6%	9 Idaho	59.3%	9 Connecticut	61.9%	9 Washington	66.9%	9 Oregon	67.7%	9 Massachusetts	65.9%	9 Oregon	66.4%
10 Iowa	63.6%	10 Utah	63.0%	10 Iowa	60.6%	10 Alaska	66.3%	10 Vermont	59.3%	10 Montana	61.6%	10 Ohio	66.8%	10 Missouri	67.6%	10 North Carolina	64.8%	10 Virginia	66.1%
11 Oregon	62.8%	11 Idaho	62.0%	11 Oregon	60.6%	11 New Hampshire	66.1%	11 Washington	58.9%	11 Washington	60.7%	11 Colorado	66.7%	11 Vermont	67.3%	11 Washington	64.8%	11 North Carolina	64.8%
12 Rhode Island	61.6%	12 Vermont	61.5%	12 Vermont	60.1%	12 Iowa	65.8%	12 Iowa	58.8%	12 North Dakota	60.3%	12 Michigan	66.6%	12 Maryland	67.0%	12 Michigan	64.7%	12 Washington	64.8%
13 Massachusetts	61.4%	13 Washington	61.3%	13 Massachusetts	60.0%	13 Idaho	65.6%	13 Massachusetts	58.4%	13 Massachusetts	59.9%	13 Vermont	66.3%	13 New Jersey	67.0%	13 Ohio	64.5%	13 Michigan	64.7%
14 Michigan	61.3%	14 Illinois	60.8%	14 Colorado	59.0%	14 Nebraska	64.2%	14 Wisconsin	58.4%	14 Michigan	59.9%	14 Wyoming	65.7%	14 Virginia	67.0%	14 Oregon	63.1%	14 Florida	64.6%
15 Illinois	60.4%	15 Alaska	60.5%	15 Nebraska	58.8%	15 Utah	64.0%	15 New Hampshire	58.3%	15 Wyoming	59.2%	15 Missouri	65.3%	15 Ohio	66.9%	15 Florida	62.8%	15 Delaware	64.4%
16 Washington	59.6%	16 New Jersey	60.5%	16 Illinois	57.3%	16 Washington	64.0%	16 Louisiana	57.8%	16 Delaware	59.0%	16 Connecticut	65.0%	16 Massachusetts	66.8%	16 Montana	62.5%	16 Connecticut	64.2%
17 Missouri	59.5%	17 Massachusetts	59.9%	17 New Jersey	57.0%	17 Kansas	63.9%	17 Kansas	57.3%	17 Missouri	58.2%	17 North Dakota	64.8%	17 Connecticut	66.6%	17 Delaware	62.3%	17 New Jersey	64.1%
18 Alaska	58.7%	18 Michigan	59.3%	18 Washington	56.8%	18 Massachusetts	63.8%	18 Nebraska	57.0%	18 South Dakota	57.7%	18 Florida	64.4%	18 Washington	66.6%	18 Missouri	62.2%	18 Vermont	63.7%
19 Vermont	58.7%	19 Ohio	58.8%	19 Missouri	56.6%	19 Missouri	63.1%	19 New Jersey	56.4%	19 Colorado	57.5%	19 Montana	64.4%	19 Montana	66.3%	19 Dist. of Columbia	61.5%	19 Pennsylvania	63.6%
20 Indiana	58.3%	20 Rhode Island	58.8%	20 Alaska	56.4%	20 Michigan	63.0%	20 North Dakota	56.0%	20 Idaho	57.2%	20 Delaware	64.2%	20 Florida	66.1%	20 New Jersey	61.5%	20 Ohio	62.9%
21 New Hampshire	58.1%	21 Missouri	58.7%	21 New Hampshire	56.4%	21 Colorado	62.9%	21 Ohio	55.4%	21 Nebraska	56.9%	21 Massachusetts	64.2%	21 Delaware	65.6%	21 Connecticut	61.3%	21 Nebraska	62.5%
22 New Jersey	58.1%	22 Kansas	58.4%	22 Rhode Island	56.1%	22 Rhode Island	62.8%	22 Michigan	55.3%	22 New Jersey	56.9%	22 New Jersey	63.8%	22 North Carolina	65.5%	22 Vermont	60.7%	22 Missouri	62.3%
23 Kansas	57.5%	23 Delaware	57.5%	23 Kansas	56.0%	23 Illinois	62.2%	23 Missouri	55.1%	23 Ohio	56.7%	23 Idaho	63.2%	23 South Dakota	64.7%	23 Nebraska	60.3%	23 Illinois	61.9%
24 Nebraska	57.5%	24 Nebraska	57.5%	24 Wyoming	56.0%	24 New Jersey	61.9%	24 Colorado	54.5%	24 Louisiana	56.4%	24 Maryland	62.9%	24 Idaho	63.6%	24 Louisiana	60.2%	24 Montana	61.8%
25 Colorado	57.2%	25 California	57.2%	25 Ohio	55.8%	25 Wyoming	61.9%	25 Rhode Island	54.4%	25 Illinois	56.2%	25 Nebraska	62.9%	25 Illinois	63.6%	25 Idaho	59.8%	25 Alaska	61.3%
26 Ohio	56.1%	26 Colorado	57.1%	26 California	55.7%	26 Ohio	61.3%	26 California	53.7%	26 Florida	55.9%	26 Pennsylvania	62.6%	26 Pennsylvania	63.6%	26 North Dakota	59.8%	26 Dist. of Columbia	60.9%
27 Delaware	56.0%	27 Indiana	57.0%	27 Michigan	55.5%	27 Oklahoma	60.6%	27 Illinois	52.5%	27 California	55.7%	27 Kansas	61.6%	27 Nebraska	62.9%	27 Pennsylvania	59.5%	27 North Dakota	60.9%
28 California	55.0%	28 Louisiana	56.5%	28 Louisiana	55.4%	28 California	60.3%	28 Florida	51.9%	28 Kansas	55.6%	28 Illinois	61.5%	28 Illinois	62.8%	28 Mississippi	59.3%	28 Louisiana	60.0%
United States	54.2%	29 Wyoming	55.8%	29 Indiana	54.3%	29 Louisiana	59.7%	29 New York	51.9%	29 Maryland	55.5%	29 Louisiana	61.1%	29 North Dakota	62.7%	29 South Dakota	59.3%	29 Wyoming	59.7%
29 Wyoming	54.1%	30 New York	55.6%	30 Delaware	52.9%	United States	58.1%	United States	51.7%	30 New York	55.1%	30 Virginia	60.6%	30 Georgia	62.5%	30 Georgia	59.0%	United States	59.3%
30 Louisiana	54.0%	United States	55.2%	United States	52.8%	30 Delaware	56.0%	30 Delaware	51.2%	United States	54.2%	United States	60.1%	31 Kansas	62.0%	31 Illinois	58.9%	30 Georgia	59.2%
31 Oklahoma	53.2%	31 Pennsylvania	55.1%	31 New York	52.7%	31 Maryland	57.7%	31 Oklahoma	51.0%	31 Rhode Island	54.2%	31 New Mexico	59.0%	32 Rhode Island	61.8%	32 Alaska	58.7%	31 Idaho	59.1%
32 West Virginia	53.2%	32 New Hampshire	54.1%	32 Oklahoma	52.1%	32 New York	56.6%	32 Maryland	50.4%	32 Pennsylvania	54.1%	32 Utah	58.9%	United States	61.6%	33 Alabama	58.6%	32 Rhode Island	59.0%
33 Pennsylvania	52.6%	33 Oklahoma	54.0%	33 Mississippi	52.0%	33 Florida	55.9%	33 Utah	50.2%	33 Virginia	54.0%	33 California	58.8%	33 Dist. of Columbia	61.5%	34 Wyoming	58.6%	33 Alabama	59.0%
34 Mississippi	52.4%	34 Maryland	53.8%	34 New Mexico	52.0%	34 Alabama	55.7%	34 Virginia	50.2%	34 Utah	53.8%	34 Kentucky	58.7%	34 Louisiana	61.2%	United States	58.0%	34 Kentucky	58.7%
35 New Mexico	52.3%	35 New Mexico	53.8%	35 Maryland	51.6%	35 Arizona	55.7%	35 Pennsylvania	49.7%	35 Kentucky	52.2%	35 Rhode Island	58.5%	35 Mississippi	61.0%	35 Rhode Island	58.0%	35 South Dakota	58.5%
36 Arkansas	52.0%	36 Mississippi	53.3%	36 Pennsylvania	51.0%	36 Indiana	55.4%	36 Indiana	49.6%	36 Alabama	51.6%	36 Oklahoma	58.3%	36 California	60.9%	36 Kansas	56.9%	36 Kansas	57.7%
37 Florida	52.0%	37 Arkansas	53.0%	37 Texas	50.1%	37 Virginia	55.4%	37 Alabama	48.8%	37 North Carolina	50.7%	37 New York	58.0%	37 New Mexico	60.9%	37 Nevada	56.4%	37 Nevada	57.3%
38 Maryland	52.0%	38 West Virginia	52.9%	38 Virginia	49.8%	38 Pennsylvania	54.9%	38 Kentucky	48.2%	38 Oklahoma	49.9%	38 North Carolina	57.8%	38 Alabama	60.8%	38 South Carolina	56.3%	38 New York	56.8%
39 New York	51.7%	39 Florida	52.4%	39 Kentucky	49.3%	39 Arkansas	54.3%	39 Arkansas	47.9%	39 Tennessee	49.9%	39 Alabama	57.2%	39 Indiana	59.1%	39 Kentucky	55.7%	39 South Carolina	56.7%
40 Kentucky	50.5%	40 Virginia	52.4%	40 Arkansas	49.0%	40 Texas	54.2%	40 Tennessee	47.5%	40 Indiana	49.3%	40 Tennessee	56.3%	40 New York	59.0%	40 Utah	55.5%	40 Utah	56.7%
41 Alabama	49.2%	41 Kentucky	51.8%	41 Florida	49.0%	41 Nevada	53.9%	41 New Mexico	47.4%	41 Texas	49.2%	41 Georgia	56.2%	41 South Carolina	58.0%	41 Indiana	55.2%	41 California	56.7%
42 Tennessee	49.2%	42 Texas	51.0%	42 West Virginia	48.5%	42 Kentucky	53.8%	42 Dist. of Columbia	46.6%	42 Mississippi	49.1%	42 Mississippi	55.7%	42 Kentucky	57.9%	42 California	55.1%	42 Indiana	56.4%
43 Virginia	48.7%	43 Alabama	50.9%	43 Hawaii	47.9%	43 Dist. of Columbia	53.3%	43 Texas	46.5%	43 New Mexico	48.5%	43 Nevada	55.3%	43 Nevada	57.0%	43 New Mexico	54.6%	43 Mississippi	55.6%
44 Texas	47.4%	44 Tennessee	50.1%	44 Arizona	47.7%	44 Tennessee	53.2%	44 North Carolina	46.3%	44 Dist. of Columbia	48.3%	44 Indiana	54.8%	44 Tennessee	57.0%	44 New York	53.1%	44 Arizona	55.0%
45 Hawaii	46.9%	45 Hawaii	48.4%	45 Alabama	47.5%	45 New Mexico	53.1%	45 Mississippi	45.9%	45 Arkansas	47.9%	45 Dist. of Columbia	54.3%	45 Arizona	56.7%	45 Arizona	52.6%	45 New Mexico	54.8%
46 Arizona	46.2%	46 North Carolina	48.2%	46 Tennessee	46.1%	46 Mississippi	52.9%	46 West Virginia	45.9%	46 South Carolina	47.0%	46 Arizona	54.1%	46 Utah	56.0%	46 Tennessee	51.9%	46 Arkansas	52.8%
47 North Carolina	44.1%	47 Arizona	47.7%	47 Nevada	45.6%	47 North Carolina	51.4%	47 Arizona	45.6%	47 West Virginia	46.6%	47 West Virginia	54.1%	47 Oklahoma	55.8%	47 Arkansas	50.7%	47 Oklahoma	52.4%
48 Nevada	43.3%	48 Dist. of Columbia	44.8%	48 North Carolina	44.5%	48 West Virginia	50.1%	48 Georgia	44.4%	48 Georgia	45.8%	48 Texas	53.7%	48 Texas	54.1%	48 Texas	49.6%	48 Texas	51.6%
49 Georgia	42.1%	49 Nevada	43.6%	49 Dist. of Columbia	42.5%	49 Georgia	48.5%	49 Hawaii	43.9%	49 Arizona	45.6%	49 Arkansas	53.6%	49 Arkansas	52.5%	49 Oklahoma	49.2%	49 Tennessee	51.2%
50 South Carolina	41.1%	50 Georgia	43.1%	50 Georgia	40.6%	50 Hawaii	46.9%	50 South Carolina	42.2%	50 Nevada	45.2%	50 South Carolina	53.0%	50 West Virginia	49.9%	50 West Virginia	46.3%	50 West Virginia	50.1%
51 Dist. of Columbia	37.2%	51 South Carolina	41.6%	51 South Carolina	40.2%	51 South Carolina	46.1%	51 Nevada	40.9%	51 Hawaii	44.2%	51 Hawaii	48.2%	51 Hawaii	48.8%	51 Hawaii	44.2%	51 Hawaii	42.2%

Source: Dr. Michael P. McDonald, United States Elections Project, 1980 - 2016 Turnout Data Set, Date accessed: Sept. 5, 2017.

AMERICAN OVERSIGHT

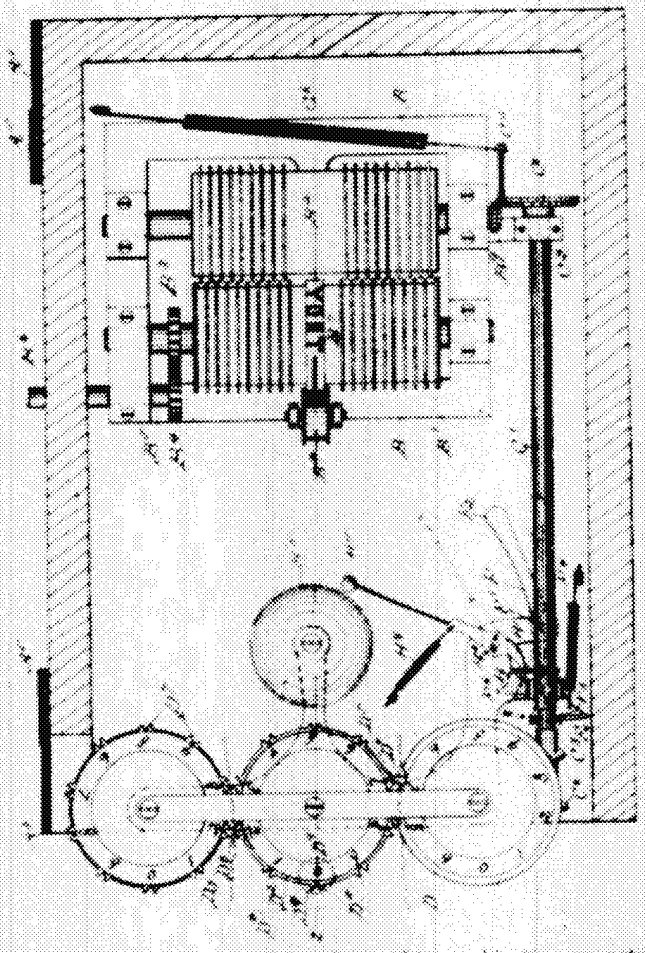
If it ain't broke, don't fix it

AMERICAN OVERSIGHT

17-2361-A-003821

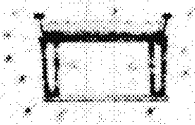
Claim.—In combination with the body of the ruler having the handle on its back face, which handle is inclined from the scribing-edge of the ruler and having in its front face the dovetailed grooves *a'* crossing the ruler transversely, and the rubber cushions secured in said grooves, as and for the purposes specified.

433,661. CANCELING AND REGISTERING BALLOT-BOX. LUCIAN M. FOSTER, Troy, N. Y. Filed Aug. 5, 1889. Serial No. 319,751. (No model.)



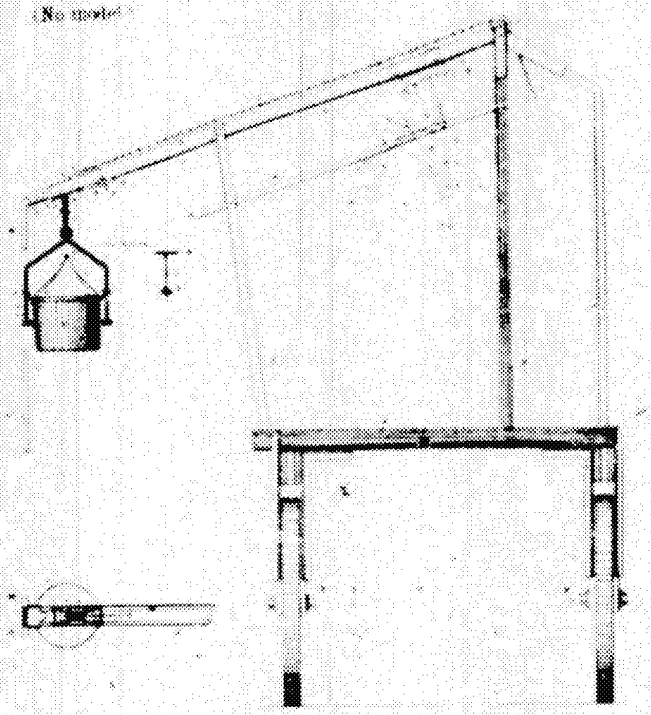
Claim.—In a registering ballot-box and in combination, an actuating-shaft B⁵, ballot-engaging rolls B' and B², gears B³ and B⁴, gears B⁶ and C', worm-shaft C², oscillatory at one end, worm gear C⁴ on its oscillatory end, peripherally slotted dial D, shaft-guides F⁶, and lever F⁷ fulcrumed upon a fixed support and provided with an operating-handle F⁸, a bearing-surface F⁹, and an inclined way F¹⁰ substantially as described.

Claim.—1. In a convertible sliding-seat carriage, the combination, with a forward seat, of a sliding rear seat made narrower and higher than the forward seat and adapted to move up to the same to form a dos-a-dos, or over the same to form a one-seated vehicle, substantially as described.



2. In a convertible sliding-seat carriage, the combination, with a forward seat having two slots entering it from its rear edge, of a sliding seat narrower and higher than the forward seat and mounted upon two supports adapted to enter the slots in the forward seat, over which the sliding seat is then adapted to be moved, substantially as described.

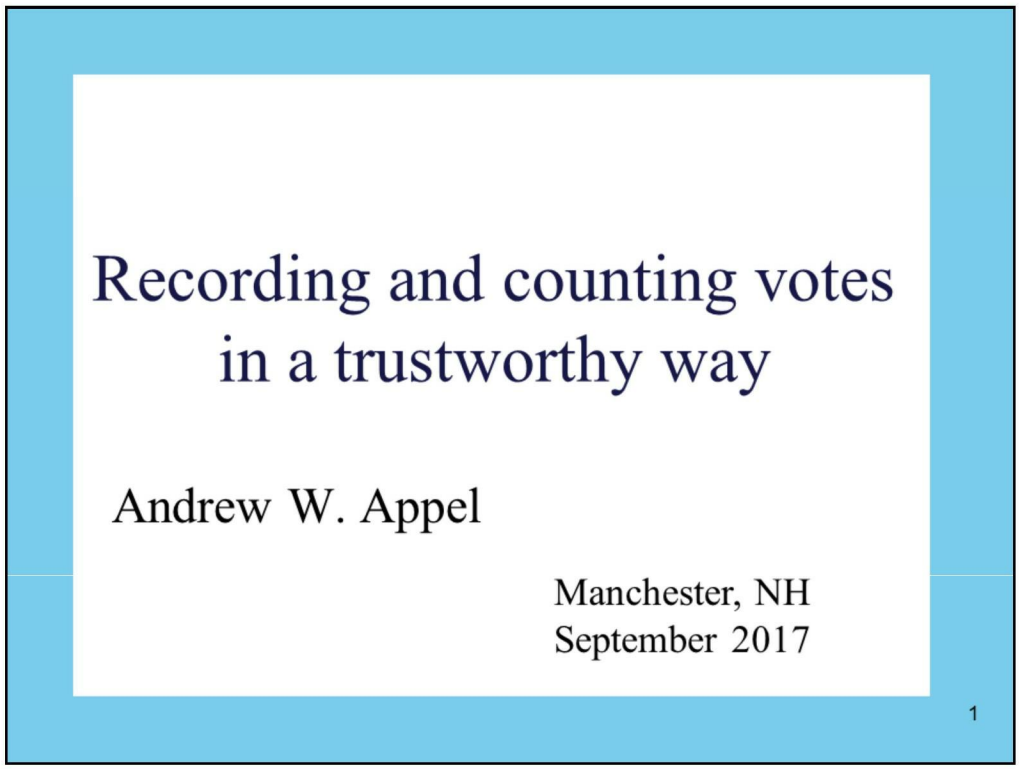
433,664. LOADING AND UNLOADING MECHANISM. NELSON E. GREEN, Minneapolis, Minn. Filed Feb. 27, 1888. Serial No. 265,459. (No model.)



Claim.—1. The combination of a hoisting-bucket having a bail pivotally connected thereto below its center of gravity, a locking device for locking said bucket from turning on its bail, and a tripping-lever pivoted to a suitable support adjacent to the bucket's dumping position adapted to be operated by the bucket to trip said locking device, substantially as described.

2. The combination, with a trolley track of a trolley movable thereon, a dumping-bucket supported from said trolley having a bail

AMERICAN OVERSIGHT
17-2361-A-003822



When voters go to the polls, how can they trust that their votes will be recorded accurately, counted accurately, and aggregated accurately? I will address the technological and organizational answers to that question.

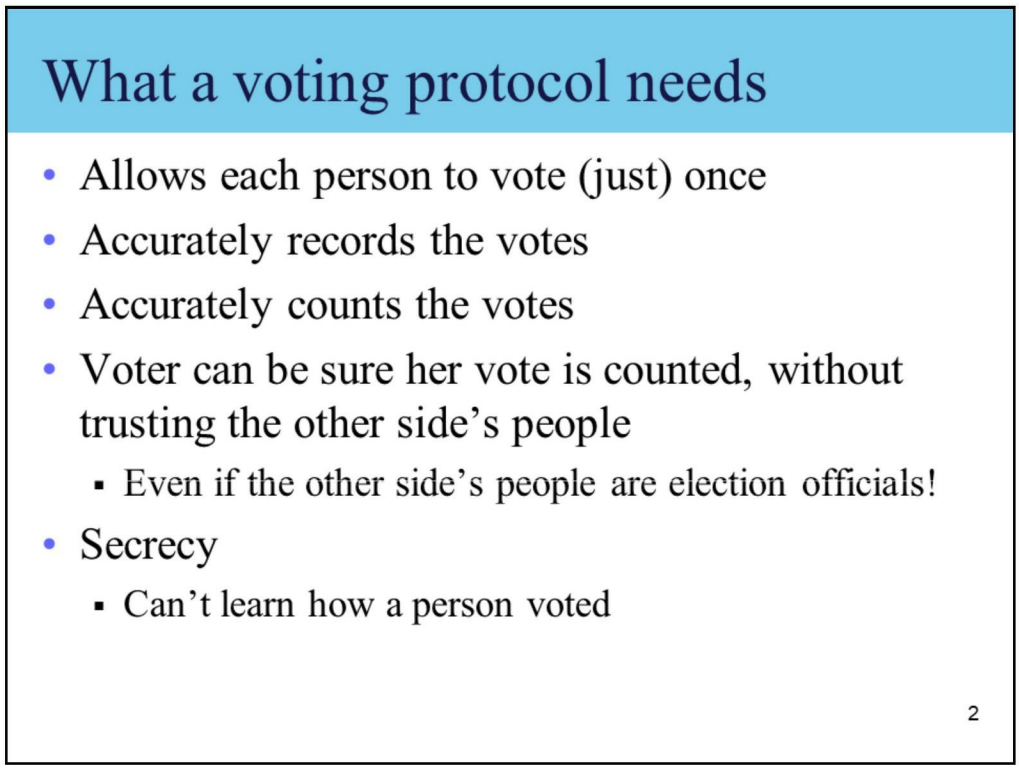
This is a summary of my testimony before the Presidential Commission on Election Integrity, in Manchester, New Hampshire, September 12, 2017. By background, I am a computer scientist with expertise in computer security and formal verification of software. But for the last 15 years I have also studied, and written about, elections and voting technology.

Andrew W. Appel

Professor of Computer Science

Princeton University

AMERICAN OVERSIGHT



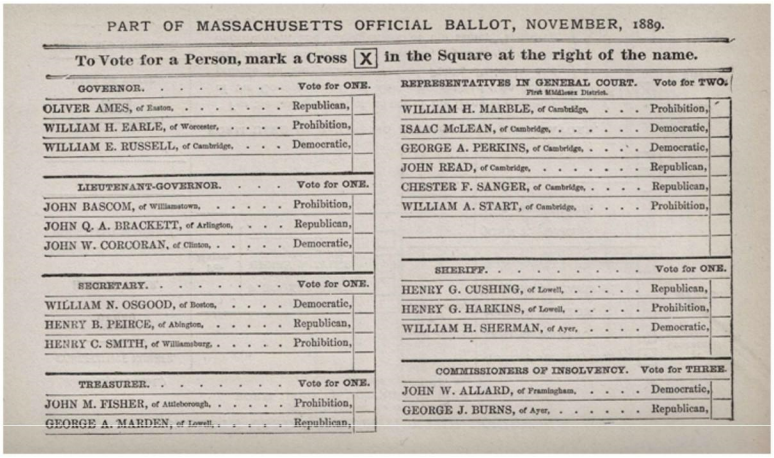
Every eligible voter should be allowed to cast one vote – but not more than one! Starting around 1890 in the U.S., voter registration combined with sign-in in the polling place (using "pollbooks") ensures that. Then, each vote should be counted – exactly once! Then, totals from each polling place or ballot box should be added up — correctly!

To make things even more challenging, in the U.S. we have the secret ballot. That's because, throughout the 19th century and even into the 20th century, there were many abuses: without the secret ballot, if a worker didn't vote the "right way" he might lose his job, if a small businessman didn't vote "the right way" he might lose customers, if a householder didn't vote "the right way" he might lose garbage collection and street repairs. Now, we take the secret ballot for granted—but it does make it harder to design an accurate and trustworthy election system.

AMERICAN OVERSIGHT

The "Australian Ballot"

adopted in U.S.A around 1890



PART OF MASSACHUSETTS OFFICIAL BALLOT, NOVEMBER, 1889.

To Vote for a Person, mark a Cross [X] in the Square at the right of the name.

GOVERNOR. . . . . Vote for ONE.

OLIVER AMES, of Easton, ... Republican,
WILLIAM H. EARLE, of Worcester, ... Prohibition,
WILLIAM E. RUSSELL, of Cambridge, . . . Democratic,

LIEUTENANT-GOVERNOR. . . . Vote for ONE.

JOHN BASCOM, of Williamstown, ... Prohibition,
JOHN Q. A. BRACKETT, of Arlington, . . . Republican,
JOHN W. CORCORAN, of Clinton, ... Democratic,

SECRETARY. . . . . Vote for ONE.

WILLIAM N. OSGOOD, of Boston, ... Democratic,
HENRY B. PEIRCE, of Abington, ... Republican,
HENRY C. SMITH, of Williamsburg, ... Prohibition,

TREASURER. . . . . Vote for ONE.

JOHN M. FISHER, of Attleborough, ... Prohibition,
GEORGE A. MARDEN, of Lowell, ... Republican,

REPRESENTATIVES IN GENERAL COURT. Vote for TWO.
First Middlesex District.

WILLIAM H. MARBLE, of Cambridge, . . . Prohibition,
ISAAC McLEAN, of Cambridge, ... Democratic,
GEORGE A. PERKINS, of Cambridge, ... Democratic,
JOHN READ, of Cambridge, ... Republican,
CHESTER F. SANGER, of Cambridge, ... Republican,
WILLIAM A. START, of Cambridge, ... Prohibition,

SHERIFF. . . . . Vote for ONE.

HENRY G. CUSHING, of Lowell, ... Republican,
HENRY G. HARKINS, of Lowell, ... Prohibition,
WILLIAM H. SHERMAN, of Ayer, ... Democratic,

COMMISSIONERS OF INSOLVENCY. Vote for THREE.

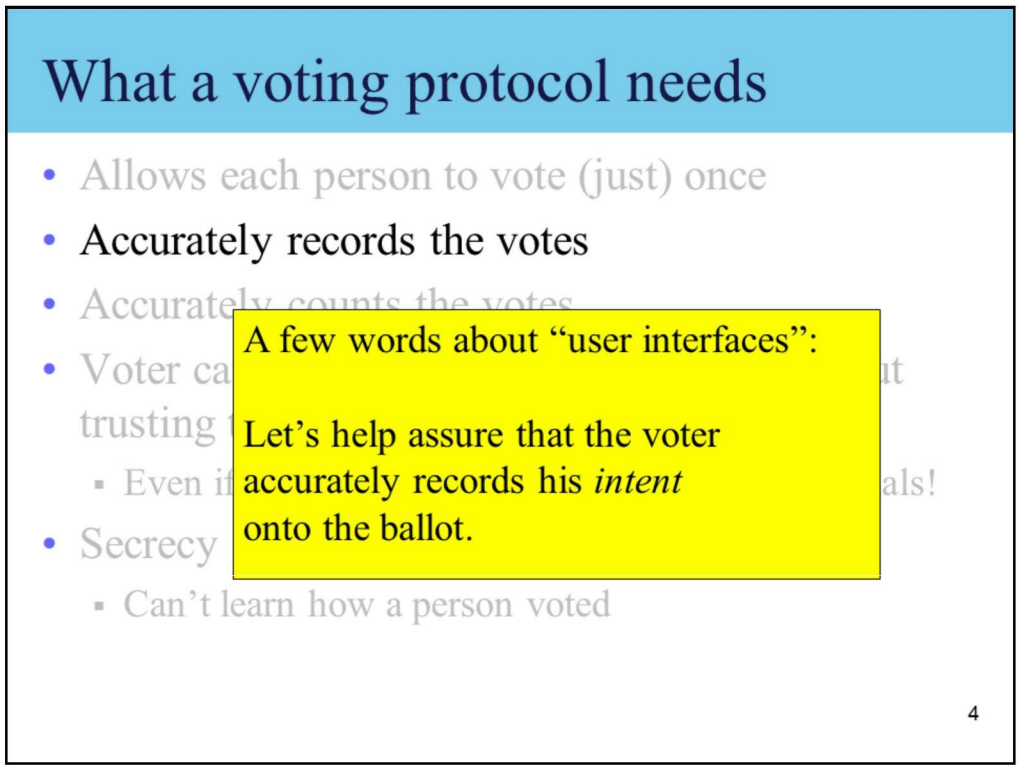
JOHN W. ALLARD, of Framingham, ... Democratic,
GEORGE J. BURNS, of Ayer, ... Republican,

From *ELEMENTS OF CIVIL GOVERNMENT*
by ALEX. L. PETERMAN, Kentucky State College, 1891

3

We take for granted that a ballot looks something like this. But before it was invented, in the late 19th century, people voted by just telling the election judge who they wanted to vote for. Or, they voted by writing down the names of their candidates on a piece of paper. Or by bringing a paper ballot with them preprinted with the names of the candidates they wanted. Or, unfortunately, by bringing a whole stack of paper ballots and trying to get away with inserting them all into the ballot box. The "Australian Ballot", where all the candidates are printed onto the ballot and the voter just marks an X, was an important technological invention. The preprinted ballots are in the possession of the poll workers, and they hand out just one blank ballot to each voter.

AMERICAN OVERSIGHT



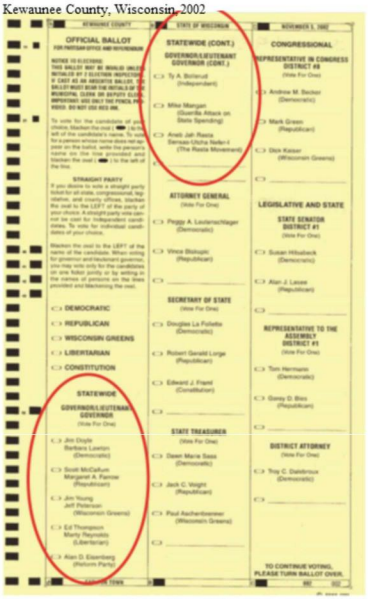
If the layout of the ballot isn't designed very well, or the technology for voting is clumsy and counterintuitive, then the voters may not properly translate their *intent* onto the ballot paper or onto the touchscreen. I'll give a couple examples of ballot-design failures.

AMERICAN OVERSIGHT

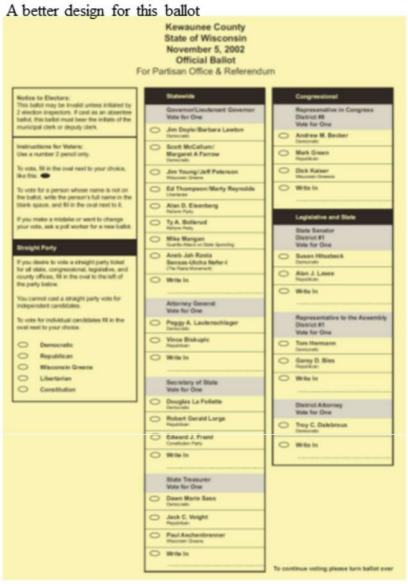
Misleading ballot design

can cause voters to waste their vote

Kewaunee County, Wisconsin, 2002



A better design for this ballot



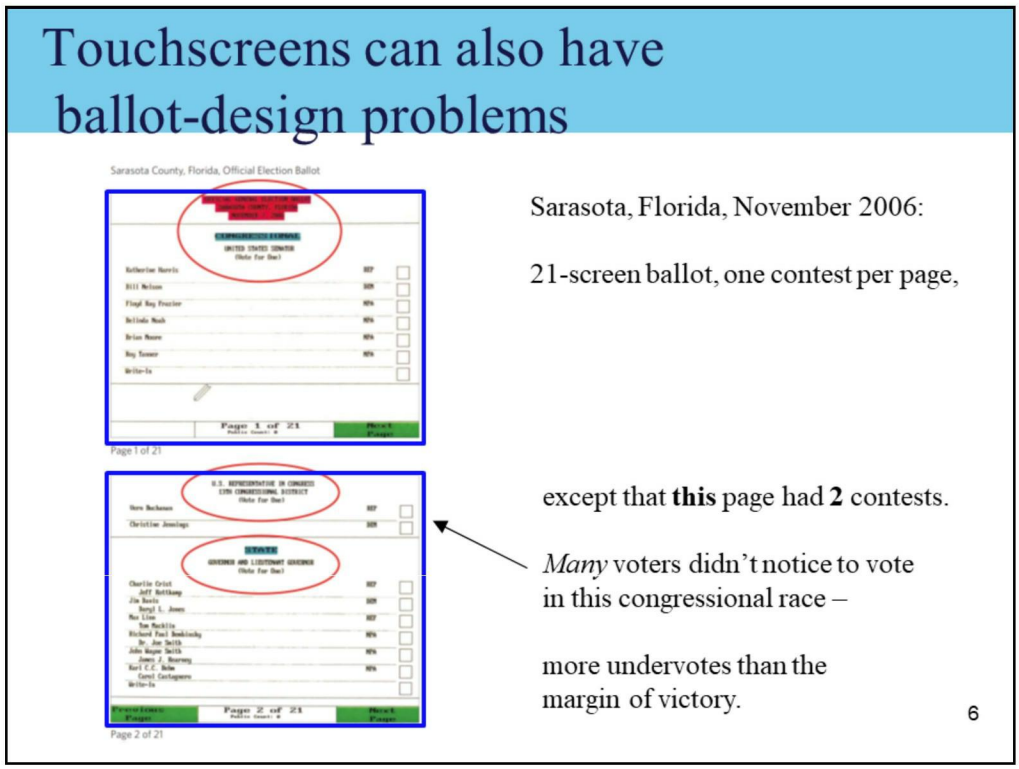
5

Images from: Better Ballots, by Lawrence Norden, David Kimball, Whitney Quesenbery, and Margaret Chen, 2008.

In this ballot at left, from Kewaunee County, Wisconsin in 2002, there are 8 candidates for Governor. That list of 8 starts near the bottom of the first column and continues at the top of the second column. Hundreds of voters misunderstood, and thought that there was a 5-person race in the first column, and a 3-person race in the second column; and those voters marked a candidate in each of those two contests. That meant they *overvoted* in the Governor contest, and therefore their choice didn't count.

A proposed better design for this ballot is shown at right. It has many typographical improvements that make it easier for voters to read and understand. In particular, it doesn't split the Governor candidates into two parts.

AMERICAN OVERSIGHT



In Sarasota, Florida in 2006, using touchscreen voting machines, there were so many contests on the ballot that it took 21 pages of touchscreen to show all the contests. But the ballot designers chose to put two contests on one page, as shown at the bottom of this slide. The race for U.S. House of Representatives, with only two candidates, took up so little space on the screen that hundreds of voters didn't notice it was there, and didn't cast a vote for Congress. That's bad design—if there's one contest per page, then they should have stuck to that consistently, to avoid confusing voters.

AMERICAN OVERSIGHT

Good ballot design is not an accident

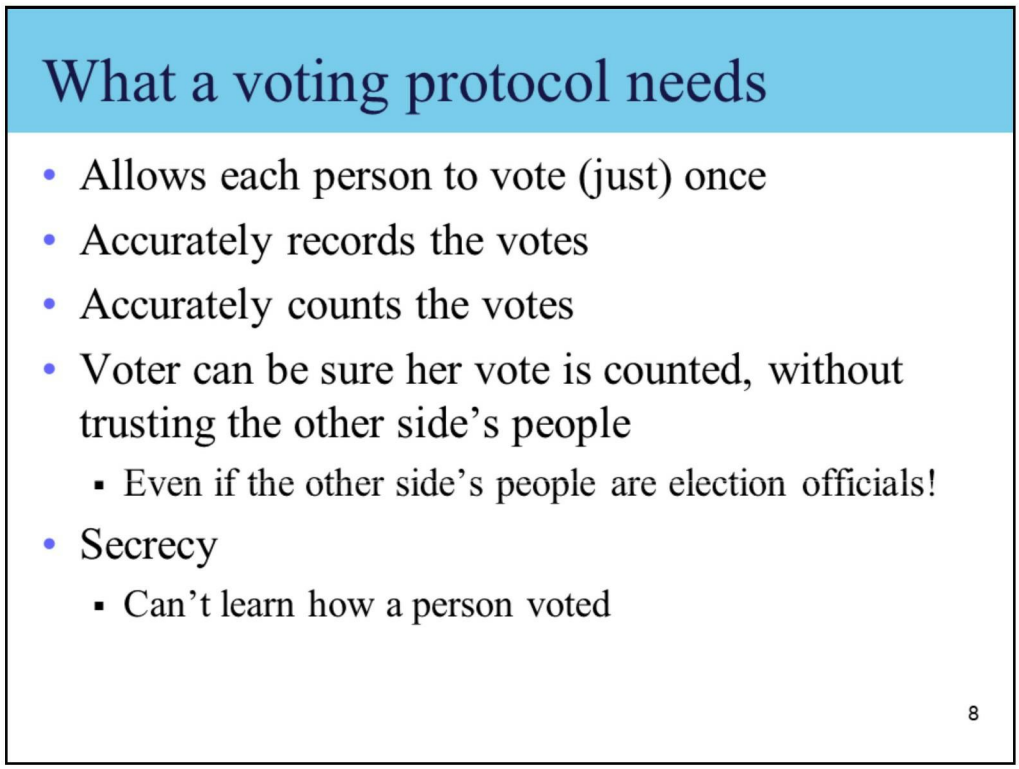
Good election administers use "best practices" in ballot design.

From: Center for Civic Design, civicdesign.org

7

User-interface design experts, such as the authors of the "Better Ballots" report cited on the previous page, and such as the authors of the booklets shown here, have developed guidelines and methods that election administrators can use in preparing ballots. Many professional election administrators in the U.S. are aware of these concepts, and are enthusiastic to improve the readability and usability of their ballot designs.

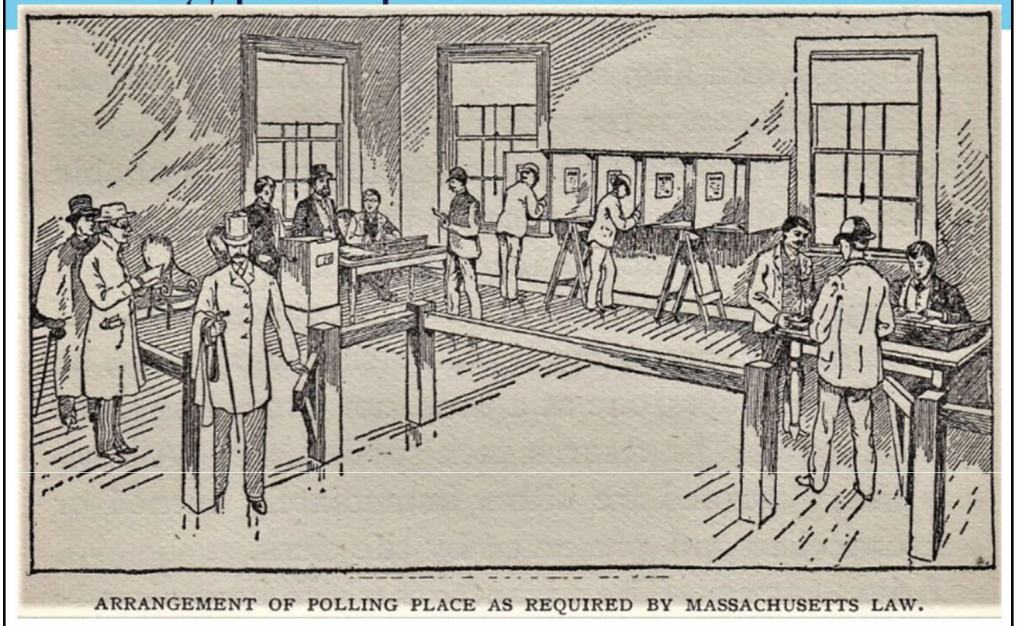
AMERICAN OVERSIGHT



Ballot design is a part of "Accurately records the votes." But how are all these other criteria ensured?

AMERICAN OVERSIGHT

Polling place procedures 1890



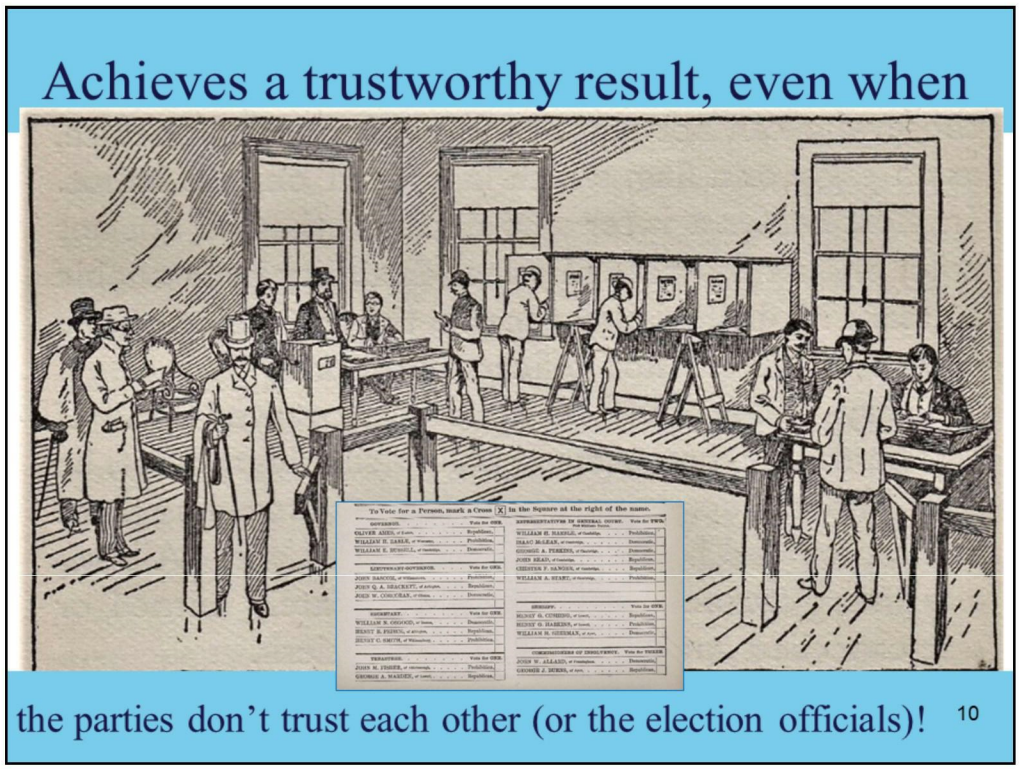
ARRANGEMENT OF POLLING PLACE AS REQUIRED BY MASSACHUSETTS LAW.

From PETERMAN 1891

Here's how, at least traditionally in the U.S. in the 20th century. You can see at right, the voter is signing in at the pollbook. Two election workers, or an election worker and a pollwatcher, are there behind the desk, checking for his name in the pollbook and matching his signature. Then they hand him a ballot, which he takes to the booths at center to mark in private, with nobody looking over his shoulder. Then he brings it to the ballot box—and look how many people are watching that ballot box, to make sure no unauthorized ballots are dropped in! You can just make out the curved lever on the left side of the ballot box; when the pollworker pulls that lever, it opens up the slot on the ballot box, *and* it rings a bell, so that everybody in the room can hear when a ballot is dropped in the box. That helps prevent cheating. And some people will cheat if they can—that's why there are all these safeguards.

There's nothing very surprising in this picture. We take it for granted that this is the way you organize a polling place. But it had to be *invented*, in response to the abuses of the 19th century.

AMERICAN OVERSIGHT



When you put together the Australian Ballot, marked by the voter with an X, with pollbooks and voting booths and a ballot box that's watched by witnesses from both parties, you get a system that works pretty well.

AMERICAN OVERSIGHT

Hand-counted paper ballots

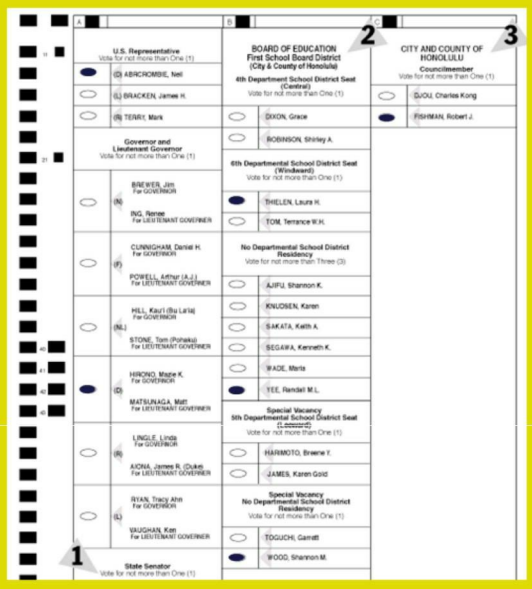
- On the whole, a good system
- Works well in many countries
  - where there's just one contest on the ballot
- **In U.S. elections, has a major flaw:**
  - **So many contests to count**
  - **hand counting difficult to do accurately**
  - difficult to find volunteers from both (all!) parties to supervise against cheating

11

But even by 1900, people noticed that it's hard to count paper ballots by hand. Actually, in Europe or Canada, it's not so hard, because in their parliamentary, nonfederal systems they have elections with only one contest on the ballot. And then you can count by hand, by just sorting the ballot papers into one pile for each candidate, and counting up the piles. But in an American election, there are many contests on the same ballot: President, Senator, Congressman, Governor, State Senator, State Rep., Mayor, Councilman, School Board, Dogcatcher, Judge retentions, propositions. To count those, at 8pm after a long election day, is hard to do consistently and accurately. So already by 1900 people were trying to design machines to count votes.

AMERICAN OVERSIGHT

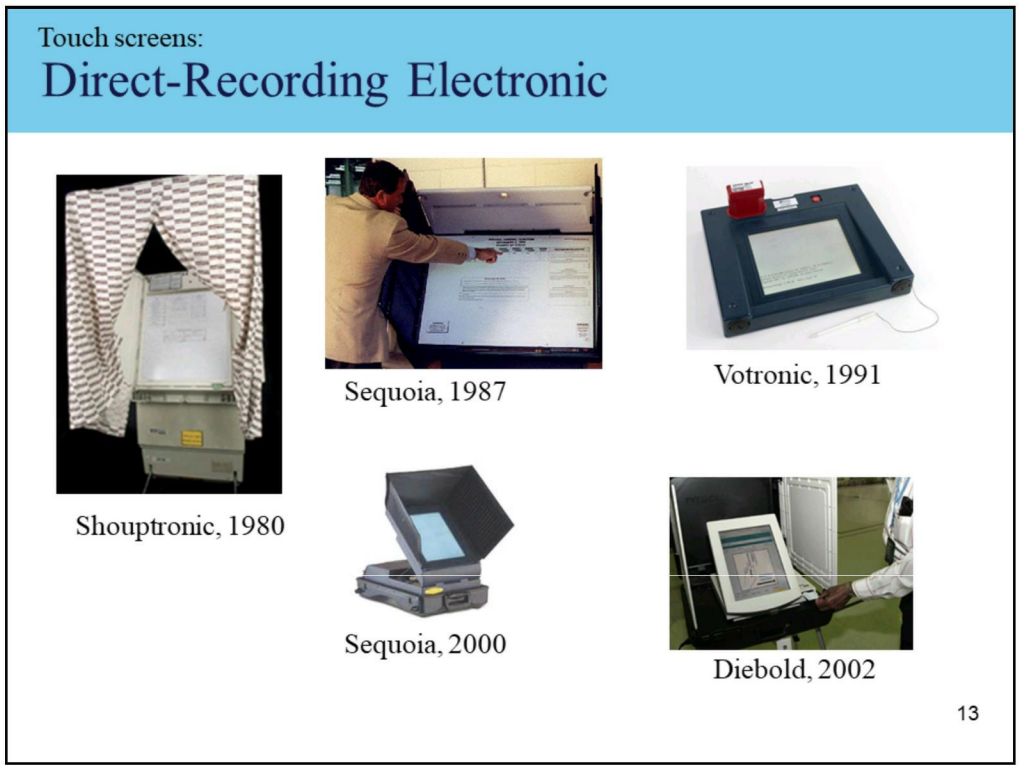
Precinct-count optical-scan



12

Optical-scan balloting was introduced in the U.S. about 1970. By the 1980s, precinct-count optical scan was already in use in some places. In the precinct-count system, the voter marks the ballot and feeds it directly into the scanner in the polling place. The computer (in the white box on top) counts the votes, and the ballot drops into a sealed ballot box (the blue box at bottom). With well designed ballots, precinct-count optical scan has proved to be a very accurate and trustworthy way of voting.

AMERICAN OVERSIGHT



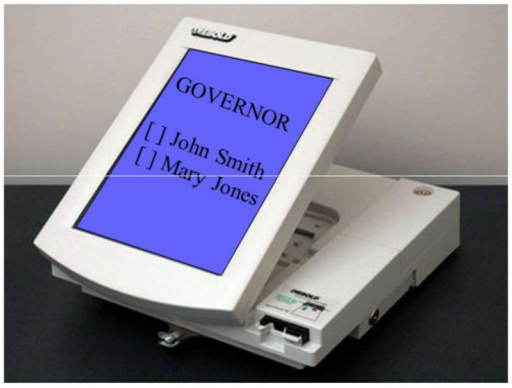
In the 1980s and 1990s, voting-machine vendors developed "direct-recording electronic" (DRE) voting computers. In this system, the voters indicate their choices on a touchscreen (or some other input device), and the computer records and counts the vote in its internal memory, and/or in an electronic memory cartridge. There's no paper record of the vote (but see note below). At the closing of the polls, the machine can print a cash-register-tape printout of the results; this along with the memory cartridge are transported to a central place for aggregation (adding up all the per-machine totals).

After the polls close, the machine can print out a list of every vote cast, from its internal memory; but that's not the same as a paper ballot that the voters can see, and if the computer is wrong (by accident or cheating), then the paper is just a printout of those wrong numbers.

Some DRE voting computers (in about 3 states of the U.S.) are outfitted with a "Voter Verified Paper Audit Trail" that the voters *can* see before they cast their vote, and that drops into a sealed ballot box that can be recounted by hand. That's an important check on the computer memory; but it still has many problems: most voters don't understand what that printout is for; and they don't check it very reliably; the thermal paper ("cash register tape") is hard to recount by hand. Better technology is now available, for example, voters that are unable to use pen-and-paper can use touch-screen Ballot Marking Devices (BMDs) that can produce optical-scan ballots to be counted by op-scan voting machines.

AMERICAN OVERSIGHT

Ballot definition files



14

How does the computer program in the voting machine "know" what candidates are on the ballot? The answer is that there is a "ballot definition file" prepared by election administrators, listing all the contests and candidates.

AMERICAN OVERSIGHT

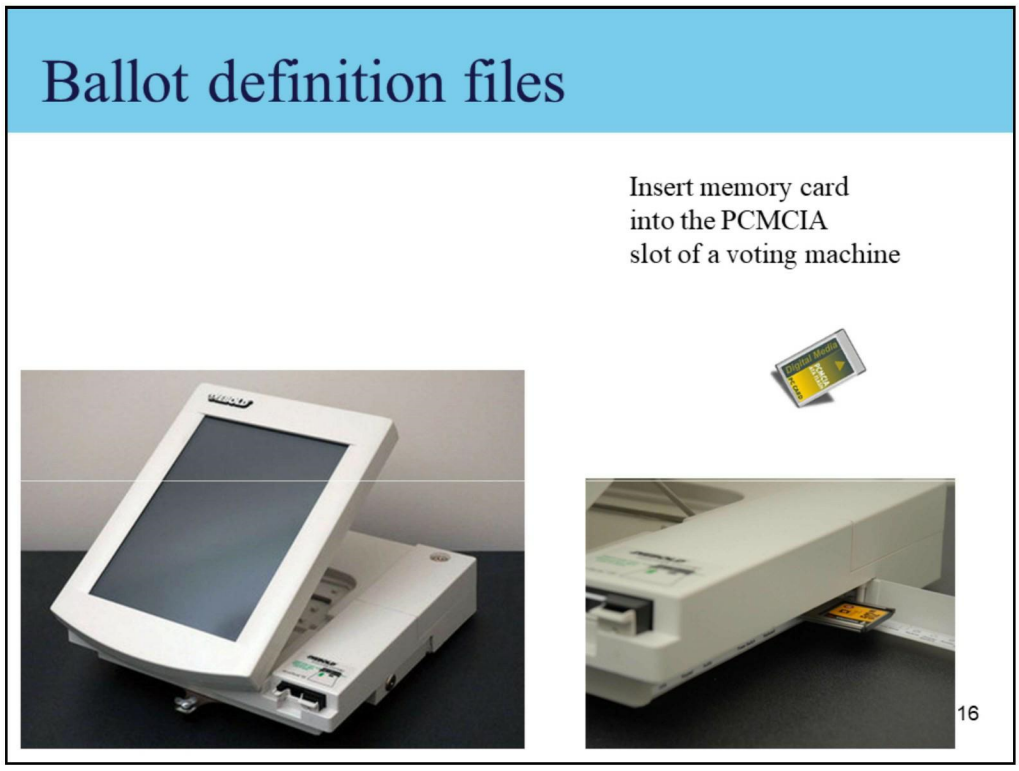
Election Management computer

Ballot Definition Cartridge

15

The election administrator (a county employee, or a contractor, etc.) uses software on an ordinary laptop or desktop computer to prepare the ballot definition file. Then the ballot definition is written to a removable memory cartridge (like a thumbdrive, or some similar technology). This is the "ballot definition cartridge."

AMERICAN OVERSIGHT



The ballot definition cartridge is then inserted into a slot on the voting machine. Here, you can see that the slot is down low on the right-hand side. Now the voting computer is ready for election day.

AMERICAN OVERSIGHT

Fundamental flaw of voting computers:

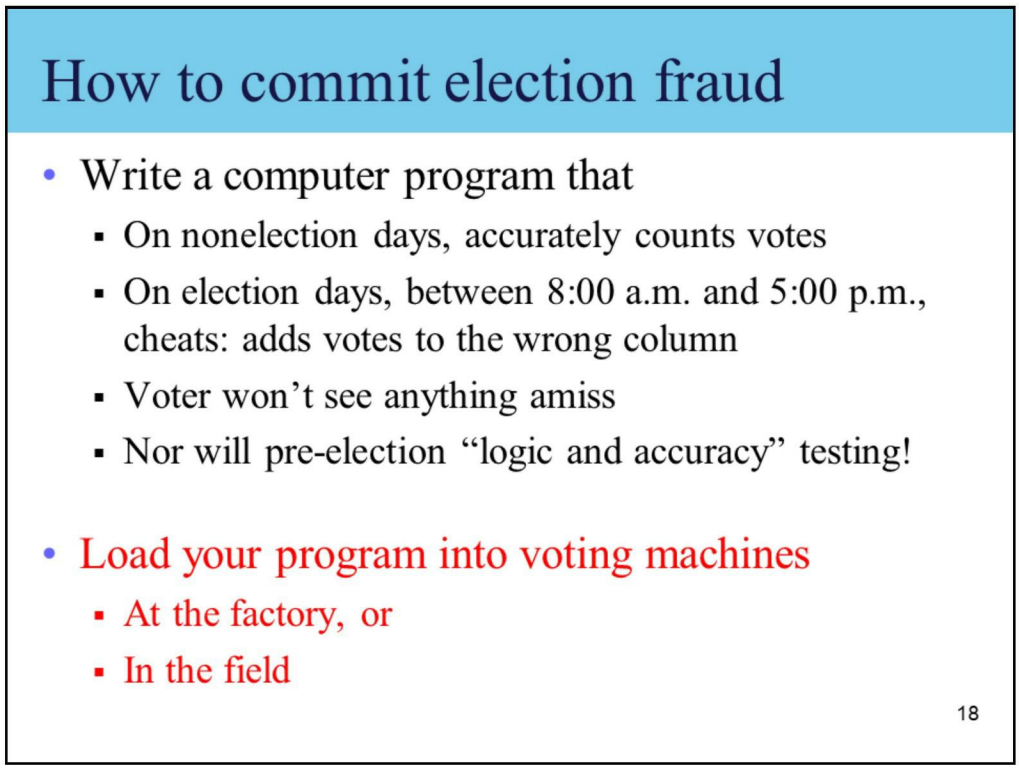
Whoever programs the computer,

decides what election results are reported by the computer program inside the voting machine

17

'nuff said.

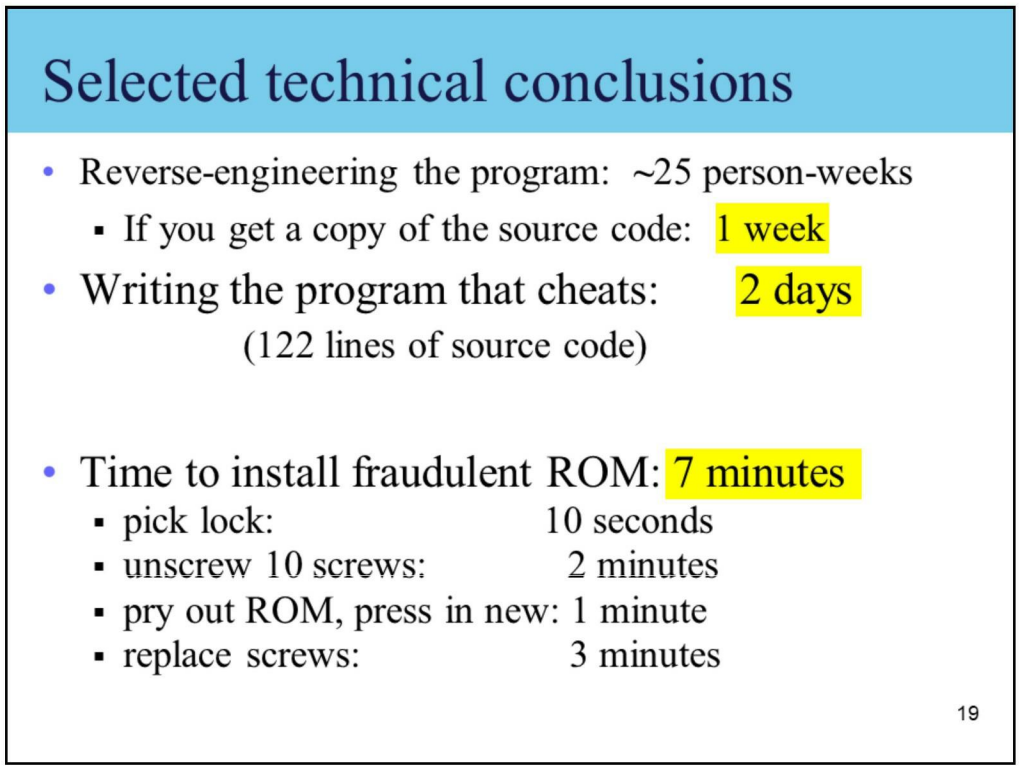
AMERICAN OVERSIGHT



Suppose someone wants to steal an election by hacking a voting machine. They can replace the legitimate vote-counting program inside the voting computer, with a fraudulent program that deliberately miscounts the votes. If you were doing this, you wouldn't make it *always* cheat, because the election administrators sometimes test the machines, before the election, by casting a few votes and then seeing the total. This is called "logic and accuracy testing," or LATA. LATA is good for some things—for example, making sure that the touchscreen isn't miscalibrated, or that the ballot definition is generally OK.

BUT, it's easy to make a cheating vote-stealing program that isn't detected by logic and accuracy testing! Every voting machine (just like any other kind of computer) has an internal clock, so it knows when it's election day. So you just make your cheating program cheat only on election day, after 8am. Since the LATA is done *before* election day, the cheating program will be on its "best behavior" when LATA is done.

AMERICAN OVERSIGHT

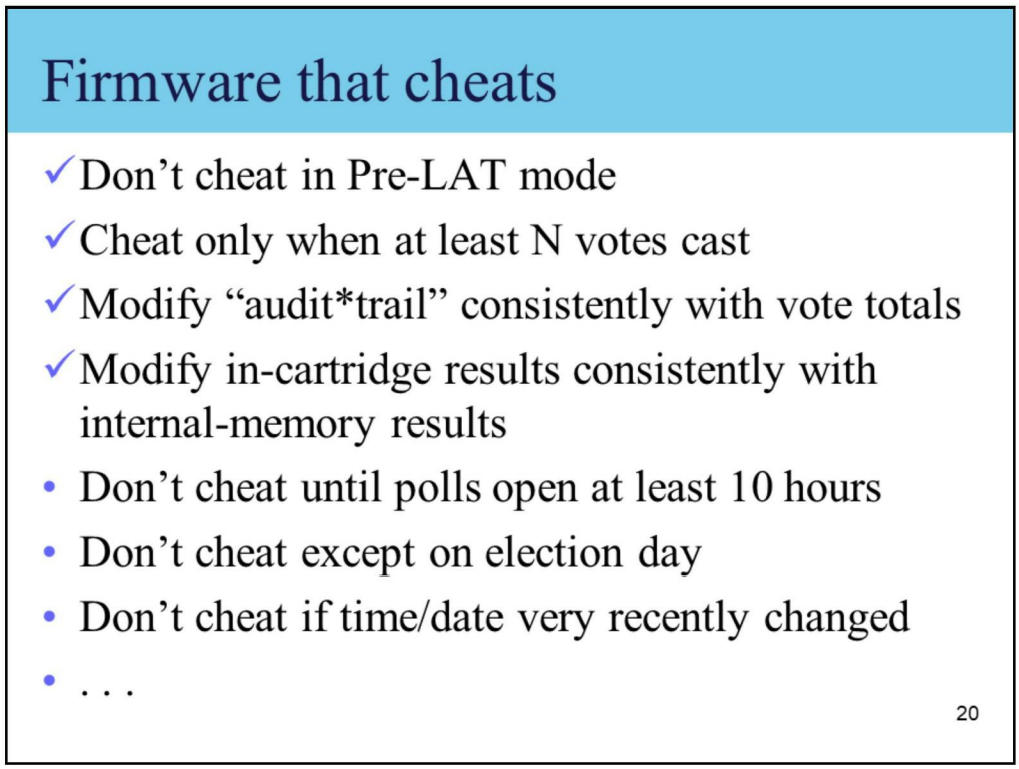


In connection with my expert-witness testimony in a court case in New Jersey (2008-2009), I did a forensic examination of New Jersey's "AVC Advantage" voting machines. As part of that study, I wrote a vote-stealing program. First, my team had to understand how the legitimate program works, before modifying it to cheat. This is called "reverse engineering." We tried it two ways: first, without the "source code," and second, with the "source code." It's much easier with the source code, of course, but either way it's well within the capabilities of a moderately qualified hacker.

Then, writing the vote-stealing program is easy—it took just a couple of days to write and test.

By the way, don't try this at home! It's a felony to install vote-stealing programs into a government owned voting machine that will be used in an election. I did mine as part of a court-ordered forensic study, inside a secure building at the New Jersey State Police headquarters. But an election hacker wouldn't have that kind of respect for the law.

AMERICAN OVERSIGHT



Here are some things my vote-stealing program did, so as to avoid detection. Basically, it waits until 8pm when the pollworker turns the key to shut down the election and print out the results. Just before printing out the results, my program shifts 20% of the votes from candidate A to candidate B. The computer program stores the votes redundantly in two different memories, so my program makes sure to cheat in both memories. The computer program has an "audit trail" in its electronic memory that's supposedly some sort of protection, so my computer program changes the audit too!

By the way, the Ballot Definition File has each candidate listed with his/her party affiliation (Democrat or Republican). So if you want to steal votes generically in favor of one party or the other, it's easy to program that up. Once you install that program in the voting computer, it will steal votes in election after election for many years to come.

AMERICAN OVERSIGHT

On 1990's era voting machines, you had to replace some ROM chips to install cheating software

(This machine is still used in NJ, LA, PA)

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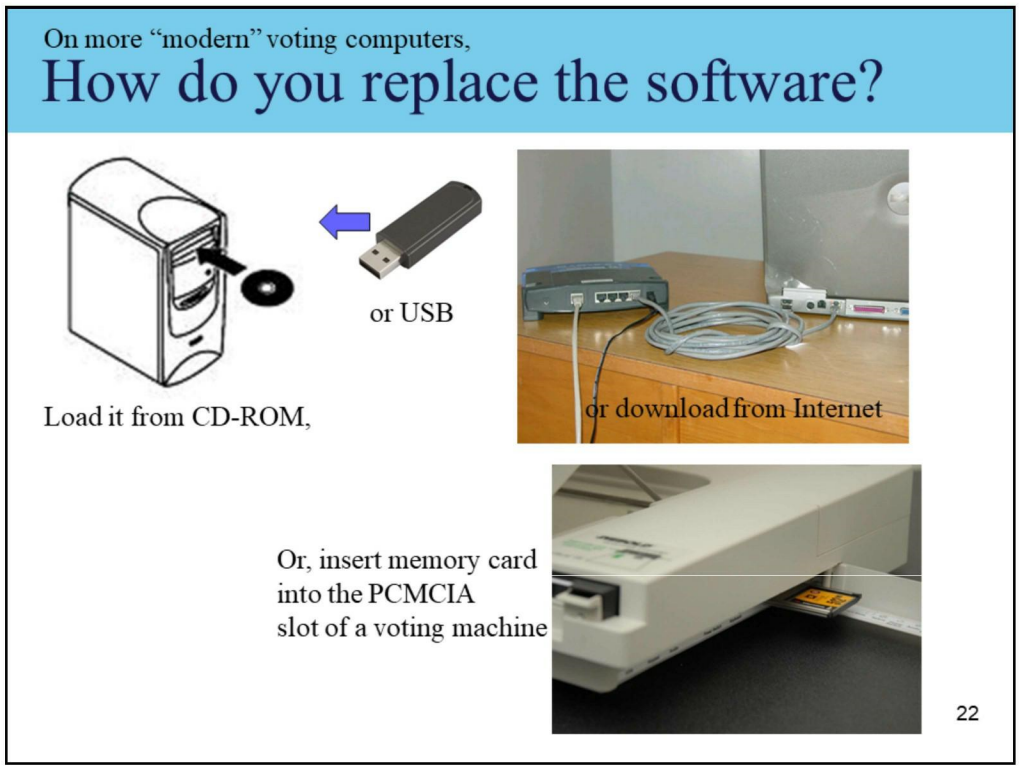
Then, to install that vote-stealing program in the AVC Advantage voting machine, I picked the lock on the back door of the machine. That's easy, it's a cheapo lock; I'm not at all an expert lock-picker, but I can pick this lock in about 10 seconds. Then I unscrew 10 screws on the panel that covers the motherboard. You can see the motherboard here, it's green. Those four computer chips with the white labels on them, hold the computer program that runs the election. Just replacing one of them, at lower right, is enough to install my vote-stealing program. The whole process takes about 7 minutes, using a screwdriver.

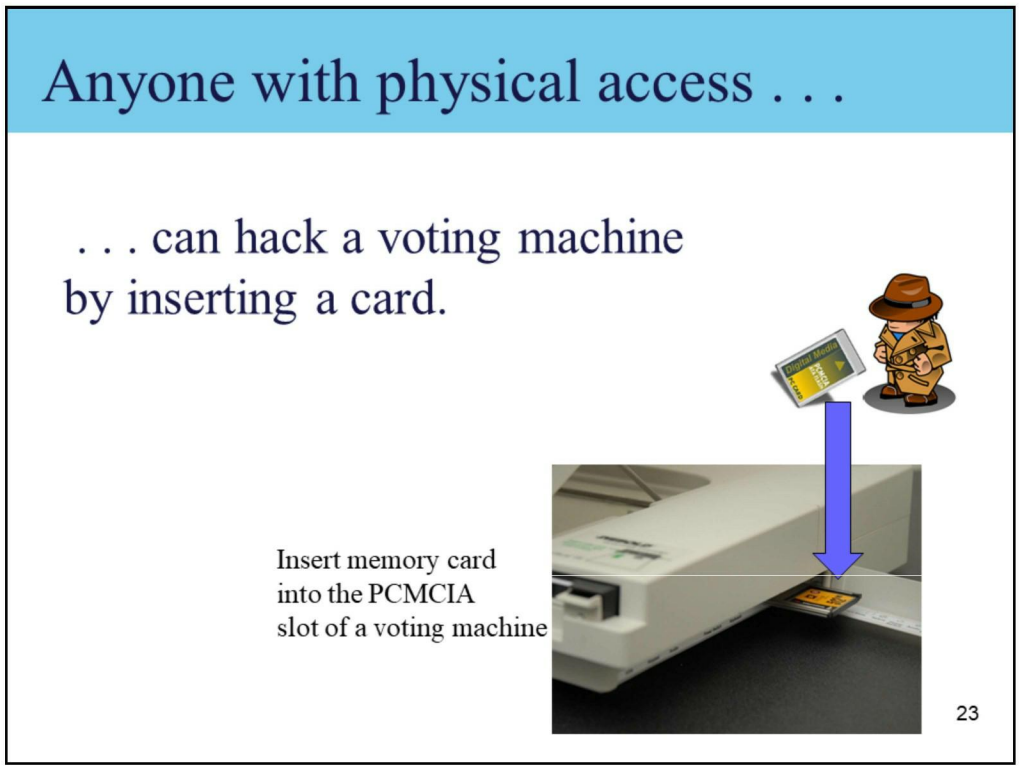
By the way, you might think that the state could install some tamper-evident security seals, and that would prevent the crooks from getting in there. But you would be wrong! Supposedly "tamper-evident" seals don't provide much protection. See my paper, "Security Seals on Voting Machines: A Case Study," by Andrew W. Appel. *ACM Transactions on Information and System Security,* vol. 14, no. 2, pages 18:1--18:29, September 2011.

AMERICAN OVERSIGHT



On most voting computers these days, you don't need a screwdriver to replace the vote-counting program. It's loaded in on a memory card, a removable media like a thumbdrive or the equivalent. In fact, on most voting machines, you use the same memory-card slot where the Ballot Definition Cartridge is inserted. If you put a card into that slot, that *instead* of the ballot definition, has a new vote-counting program, then the computer will replace its old vote-counting program with your new one.

AMERICAN OVERSIGHT



And therefore, if you can get unobserved access to a voting machine for just a minute or so, you can install vote-stealing software into it.

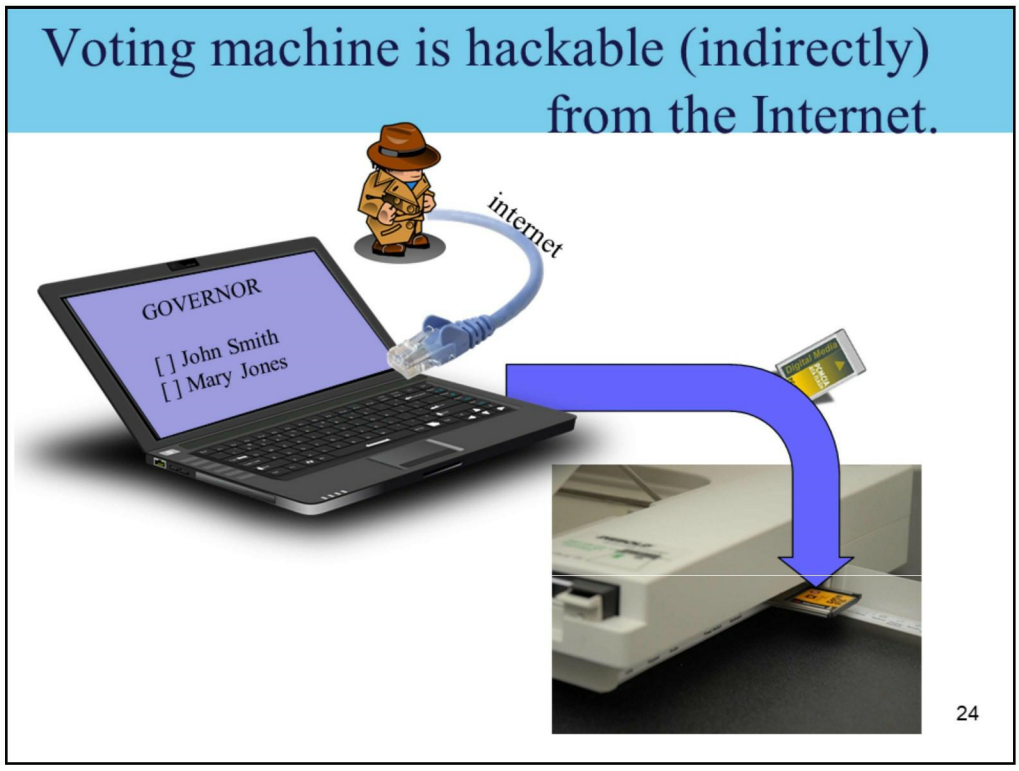
Between elections, voting machines are stored in warehouses. County employees have access to them, to perform maintenance such as replacing batteries. I'm sure 99.9% of those public servants are trustworthy and of the highest integrity. But we organize our elections so you shouldn't have to trust every single election worker. That's why there are witnesses in the polling places, and witnesses to recounts, and so on.

Right before an election, voting machines are delivered to the polling places: school gymnasiums, firehouses, churches, town-hall lobbies. There, in many cases, they are left unattended and unsecured. Anyone could get access to those machines and stick in a cartridge.

And what about *after* an election, before the voting machines are collected from the polling places? Hacking them at that point won't change the election that just happened, but it will make the machine cheat in the *next* elections, for years to come.

To steal a big election, the attacker would have to install cheating software in many voting machines, not just one. But surely that's well within the capabilities of a corrupt political machine—or even a freelance criminal who steals votes in favor of a candidate who's not even aware of the fraud.

AMERICAN OVERSIGHT



An election administrator may say, "our voting machines don't connect to a network, so they can't be hacked from the Internet." That's not true: even if a voting machine has no network connector, it *can* be hacked from the Internet.

And here's how to hack a voting machine from the Internet. The attacker hacks in to the election administrator's network, and gains access to the computer used for programming Ballot Definition Files. He hacks that computer so that, in addition to putting Ballot Definitions into the removable cartridge, the election management system computer also writes a fraudulent vote-counting (vote-stealing) program to the cartridge. The computer will put the vote-stealing program into every Ballot Definition cartridge destined for every voting machine. Then, when that cartridge is loaded into the voting machine, before the election, it will be installing the vote-stealing program.

This attack was first demonstrated in 2006, on a real voting machine:

Security Analysis of the Diebold AccuVote-TS Voting Machine, by Ariel J. Feldman, J. Alex Halderman, and Edward W. Felten. *Proceedings of the 2007 USENIX/ACCURATE Electronic Voting Technology Workshop (EVT'07),* August 2007.

AMERICAN OVERSIGHT

Conclusion: hackability of voting computers

Computers connected to the Internet, *even indirectly,* can be vulnerable to hacking.

Election officials should use good security practices to make their computers *less vulnerable,* but there is no way to make them *invulnerable.*

Therefore we should run our elections in a way that can detect and correct for computer hacking, without having to put all our trust in computers.

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AMERICAN OVERSIGHT

And therefore,

Don't use paperless touch-screen voting computers!

They are a *fatally flawed* technology.

And actually, everybody knows this now:

Only a few states still use them.

One by one, states are switching to optical-scan.

Since 2004, no states have switched *to* paperless voting.

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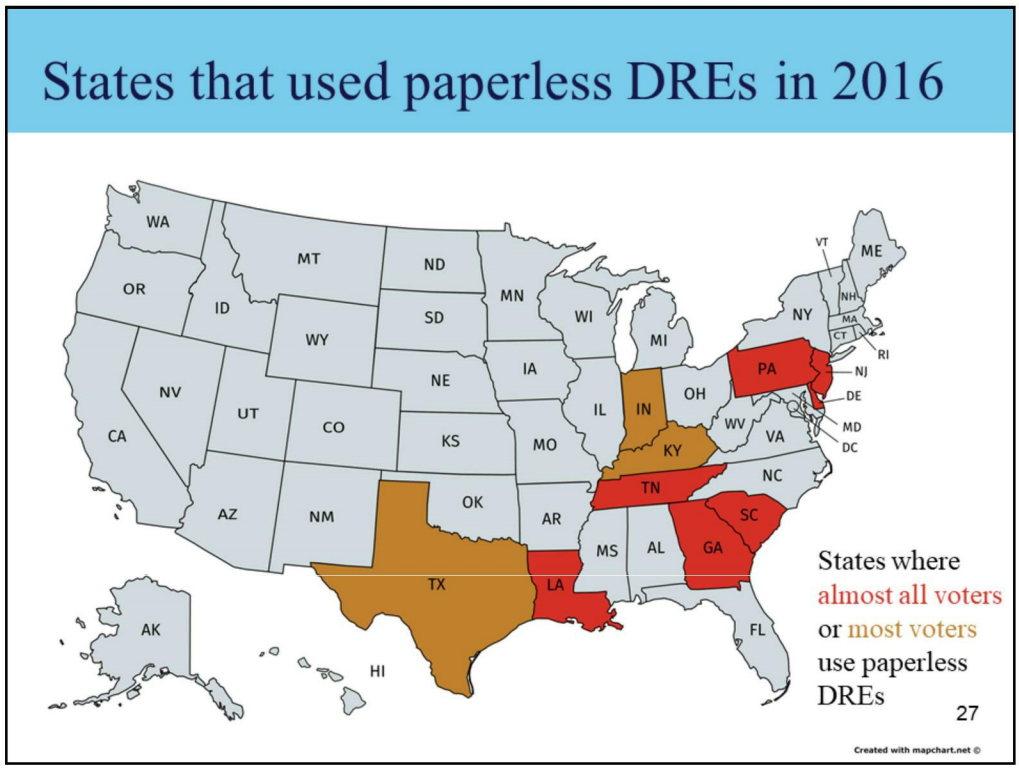
AMERICAN OVERSIGHT



About 10 states still use paperless direct-recording electronic (DRE) "touchscreen" voting computers, for most or all of their voters. Two or three states use touchscreen DREs with a "voter verified paper audit trail," which is not quite as bad. About 37 states use optical-scan balloting for almost all their voters.

AMERICAN OVERSIGHT

Precinct-count optical scan voting

(used in most states)

Voter marks op-scan ballot

Voter feeds ballot to scanner

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Here's a better idea: Voters mark their choices on a paper ballot, and feed the ballot into an optical-scan computer that counts it accurately.

AMERICAN OVERSIGHT

Optical scanners are computers too!

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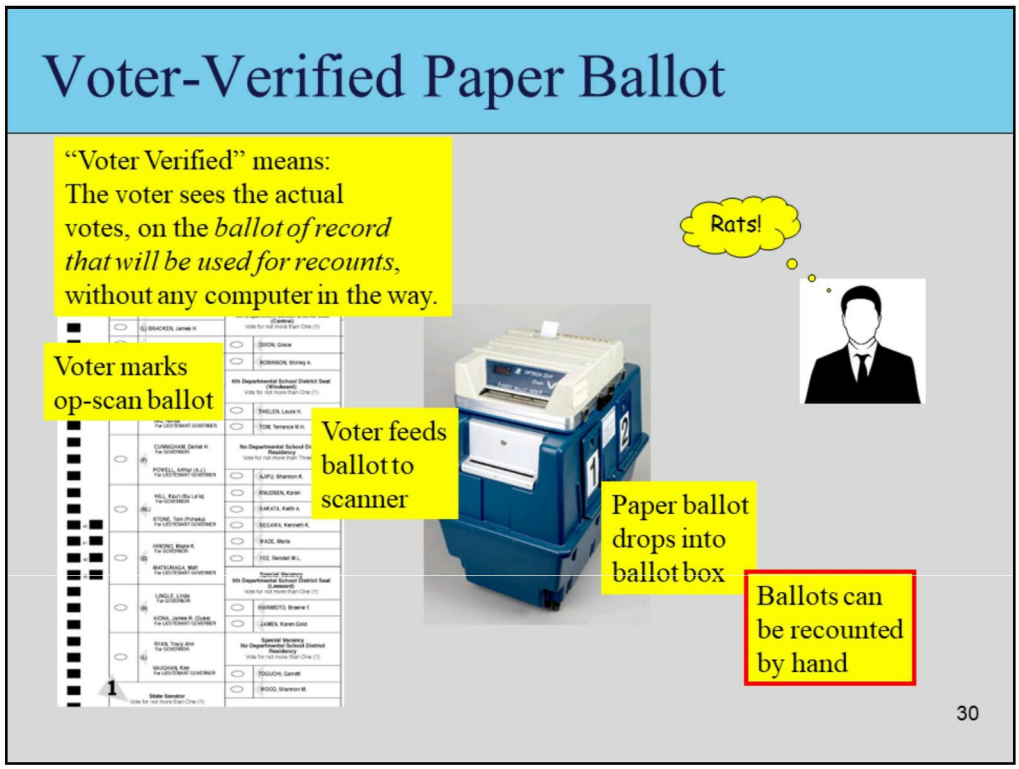
Well, that is, the op-scan computer counts it accurately *if the computer has not been reprogrammed to cheat!* So, why is that any better than a touchscreen DRE?



Here's why: You can recount the paper ballot *that the voter actually marked* by hand, in the presence of witnesses from both parties, without any computer "interpreting" the ballot to you.

AMERICAN OVERSIGHT

Random audits

- If you have to recount the ballots by hand, what's the point of having a computer?
- Solution: Recount a random sample of precincts!
  - If there's widespread computer fraud in many precincts, recounting paper ballots in just a few precincts will find evidence of a discrepancy
  - Besides "recount a random sample of the ballot boxes," there are other cost-effective methods for making "risk-limiting audits" a standard part of all elections prior to certification of final results.

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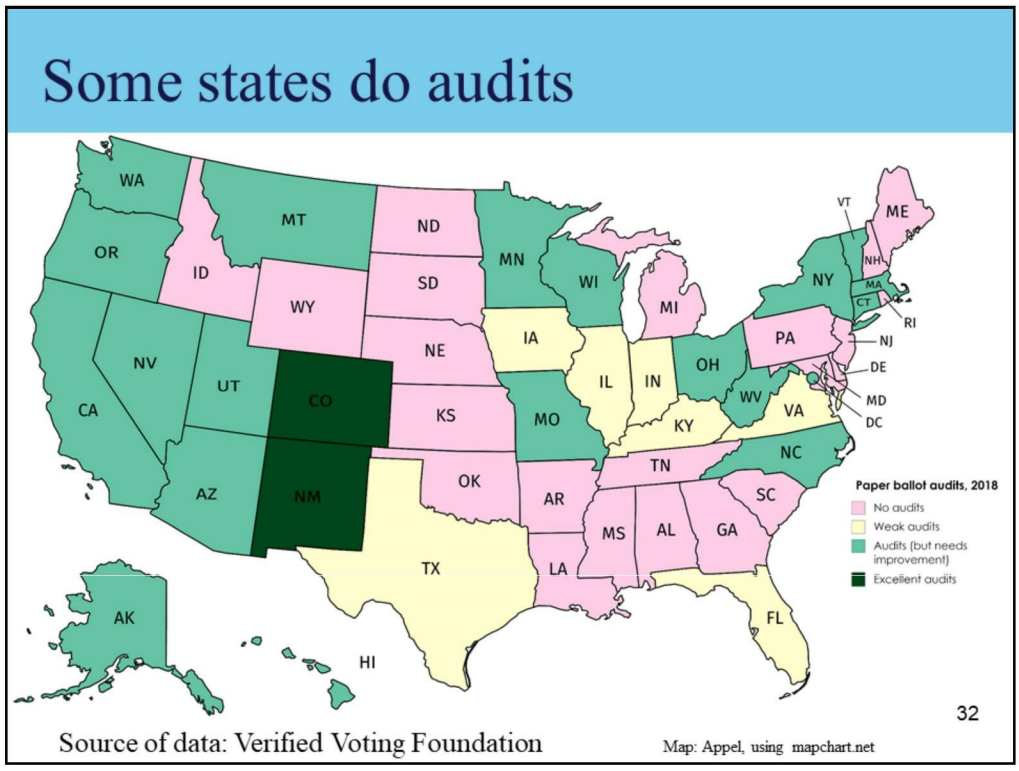
These audits help protect *not only* against cheating inside the voting computer. They also protect against accidental miscalibration, accidental mistakes in the layout of the Ballot Definition File, and so on.

AMERICAN OVERSIGHT



A few states do random audits, but unfortunately,

1. Not very many states do it (just the ones shown here in light green and dark green)
2. Even in most of the states that do audits, the audits are inadequate. They don't audit enough percentage of the ballot boxes to catch fraud (if it were to occur); or they do the audits *after the results are officially certified,* when it's too late; or they don't audit the actual paper ballots, which means that a cheating computer could still fool them.

Audits are the best way to protect against computerized election theft, but they have to be done well in order to provide protection. Colorado and New Mexico have models that other states should emulate.

Note: some states (IN, PA, NJ) have statutes requiring audits, but most of their voters use unauditable paperless DREs, so in practice they don't do ballot audits.

AMERICAN OVERSIGHT

Conclusion: hackability of voting computers

Computers connected to the Internet, *even indirectly,* can be vulnerable to hacking.

Election officials should use good security practices to make their computers *less vulnerable,* but there is no way to make them *invulnerable.*

Therefore we should run our elections in a way that can detect and correct for computer hacking, without having to put all our trust in computers.

That way is: Voter-Verified Paper Ballots, counted by computer, audited by direct inspection (independent of hackable computers), of a statistically appropriate random sample.

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AMERICAN OVERSIGHT

Can voters trust op-scan + audits?

- Voters can see what they wrote on the ballot, and
- deposit the ballot directly into the scanner/ballot-box
- Integrity of the ballot box at the polling place and until the audit/recount is an important chain-of-custody issue, addressed via witnesses and seals.*
- Audits should be performed immediately after polling, before election results are certified.
- Written procedures for audits should be published, so voters, candidates, parties, experts can understand them.
- The audit itself (like a recount) should be performed in public.

*Don't put *too much* faith in tamper-evident seals; they're hackable too!
Security Seals on Voting Machines: A Case Study, by Andrew W. Appel. *ACM Transactions on Information and System Security* vol. 14, no. 2, pages 18:1--18:29, September 2011.

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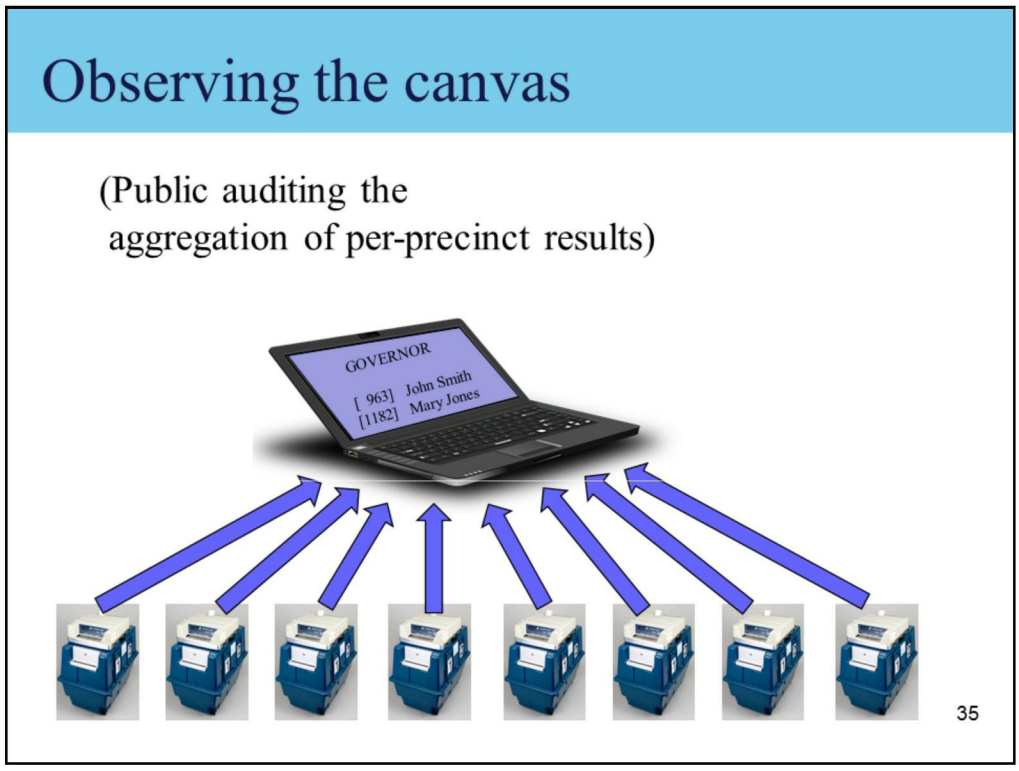
AMERICAN OVERSIGHT



Up to now, I've been talking about cyberfraud that happens *inside the voting machine*. Now let me turn to a different phase of the election. The *canvass* is the procedure of getting the results from every polling place, and adding them up. Can we trust the canvass? What if there's a cheating computer program in the Election Management System computer (the laptop computer shown here) that adds up the votes from all the precincts?

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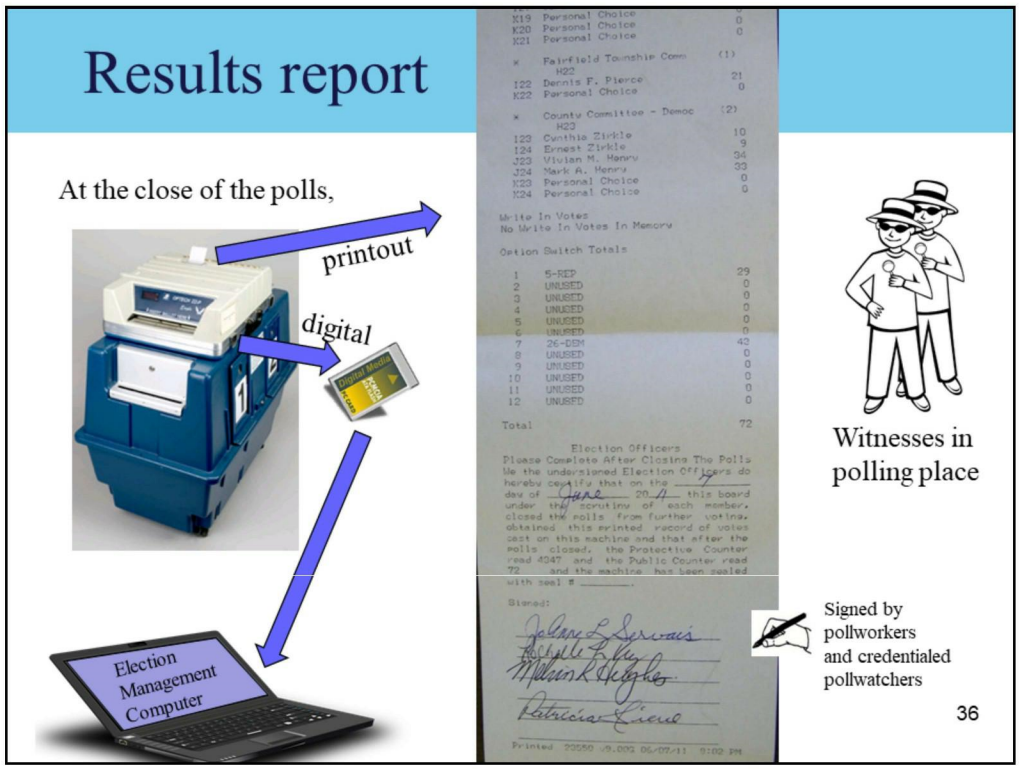
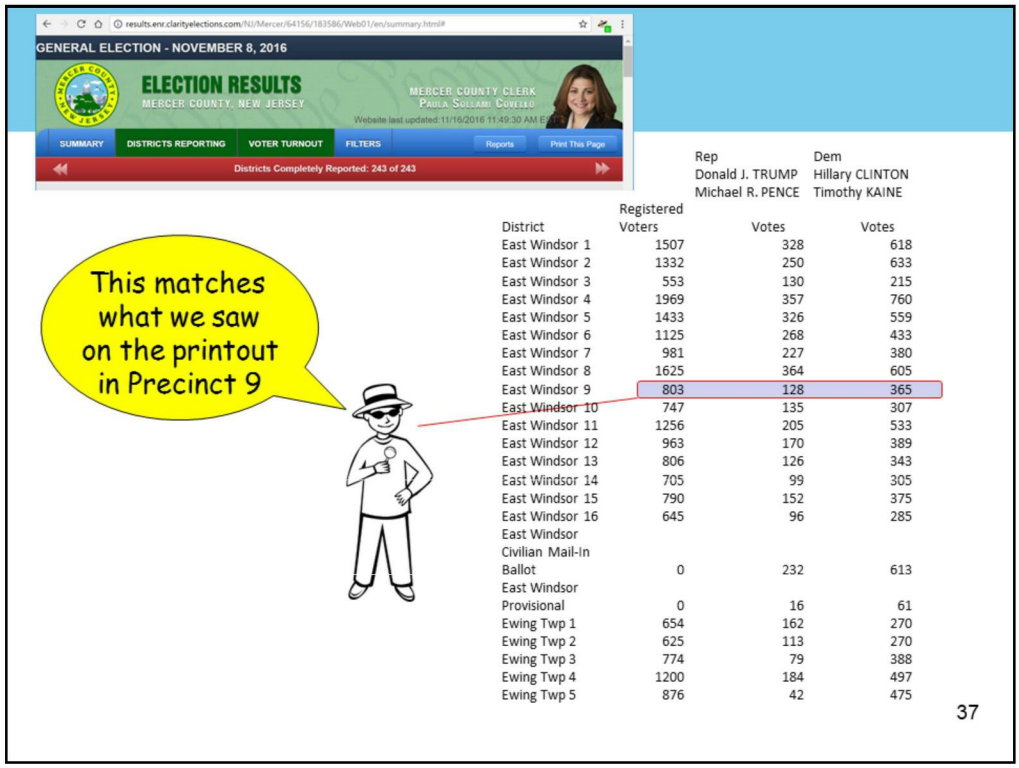


In the polling place, at the close of the polls, the voting computer writes its results—how many votes each candidate got—in two ways: to a removable memory cartridge, and printed on a cash-register tape. Shown here is an actual "Results Report" printout from an election in New Jersey. This printout is made in the presence of witnesses—poll workers hired by the county, poll watchers representing the political parties, and any members of the public who want to watch the process. Anyone is allowed to see the numbers, and copy them down into their own notebook.

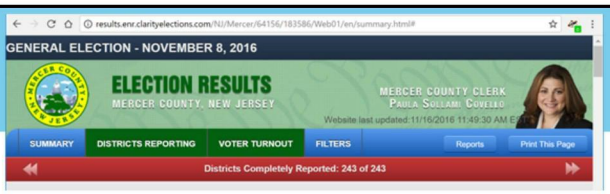
Then, if the political party is well organized, their poll watchers will bring those numbers from every precinct back to the candidates' "victory party," and compare with the official returns.

AMERICAN OVERSIGHT



Here are some official returns posted on the internet by the County Clerk in my county, right after the 2016 presidential election. The witnesses in the polling places can compare the numbers with what they saw on the results-report tapes.

AMERICAN OVERSIGHT



District	Registered Voters	Rep Donald J. TRUMP Michael R. PENCE Votes	Dem Hillary CLINTON Timothy KAINE Votes
East Windsor 1	1507	328	618
East Windsor 2	1332	250	633
East Windsor 3	553	130	215
East Windsor 4	1969	357	760
East Windsor 5	1433	326	559
East Windsor 6	1125	268	433
East Windsor 7	981	227	380
East Windsor 8	1625	364	605
East Windsor 9	803	128	365
East Windsor 10	747	135	307
East Windsor 11	1256	205	533
East Windsor 12	963	170	389
East Windsor 13	806	126	343
East Windsor 14	705	99	305
East Windsor 15	790	152	375
East Windsor 16	645	96	285
East Windsor Civilian Mail-In Ballot	0	232	613
East Windsor Provisional	0	16	61
Ewing Twp 1	654	162	270
Ewing Twp 2	625	113	270
Ewing Twp 3	774	79	388
Ewing Twp 4	1200	184	497
Ewing Twp 5	876	42	475

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How well does this work?

Works well when...

- Assignment of voters to precincts is clear
- Spreadsheet from county clerk *is meant to match* polling-place results tapes

Complicated when...

- Early voting,
- vote centers,
- absentee voting,

makes the correspondence of results tapes to spreadsheet entries difficult to understand

Election administrators should find ways to improve the accountability/transparency of canvassing/aggregation.

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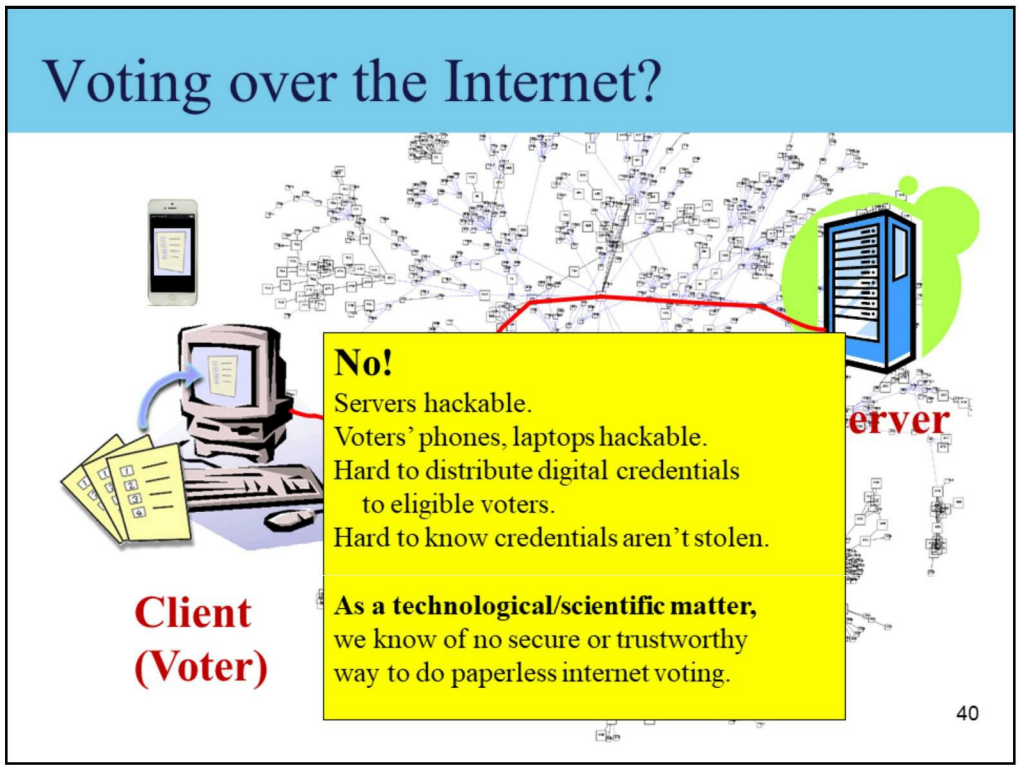
AMERICAN OVERSIGHT



Some people ask, isn't voting-in-person obsolete? Shouldn't we vote via the Internet, from our smartphones, like we do everything else in life?

The answer is no! Computer scientists don't know of any way to make Internet voting secure and trustworthy. There's some excellent research along these lines, but no results yet that solve the whole problem. For more information, see:

"Internet Voting? Really?" 21-minute TEDx talk by Andrew Appel, https://www.youtube.com/watch?v=abQCqIbBBeM

"If I can shop and bank online, why can't I vote online?" by David Jefferson, 2011, https://electionlawblog.org/wp-content/uploads/jefferson-onlinevoting.pdf

AMERICAN OVERSIGHT

Conclusion

Members of the public should be empowered to observe, verify, and (therefore) trust,

- what's recorded on their own ballot,
- adding the ballots in each precinct,
- adding up the precincts

The way to do this is

- voter-verified paper ballots
- random audits before results are certified
- transparency in reporting

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AMERICAN OVERSIGHT

State of New Hampshire

House of Representatives

Speaker Receives Voter Registration Statistics Requested of Departments of State and Safety

CONCORD – Late yesterday, New Hampshire House Speaker Shawn Jasper (R-Hudson) received a response to an inquiry of the NH Department of State and Department Safety. The inquiry, sent August 16, 2017, sought statistical information on the efforts of both departments to match voter checklist information with records of the Department of Safety. Speaker Jasper sought the information to benefit the legislature in its assessment of the effectiveness of our current election laws as well as future legislation that could improve our voter registration and verification processes. Speaker Jasper offered the following statement upon initial review of the response to his inquiry, "I appreciate the work our state agencies do to ensure they meet the requirements of our existing election laws, and maintain these important statistics."

Among the information provided by the departments are the following statistics:

6540 individuals registered to vote on November 8th, 2016 using an out-of-state driver's license.

As of August 30th, 2017, only 1014 (15.5%) of those voters had been issued a New Hampshire driver's license.

As of August 31, 2017, of the remaining 5526 individuals, only 3.3% had registered a motor vehicle in New Hampshire.

As of August 31, 2017, 5313 (81.2%) of the individuals who used an out-of-state driver's license had neither held a New Hampshire driver's license nor had registered a vehicle in New Hampshire.

196 names on the checklist are being investigated as possibly having voted in New Hampshire and one other state.

AMERICAN OVERSIGHT

GARDEN STATE GOTCHA

HOW OPPONENTS OF CITIZENSHIP VERIFICATION FOR VOTING ARE PUTTING NEW JERSEY'S NONCITIZENS AT RISK OF DEPORTATION

AMERICAN OVERSIGHT

17-2361-A-003865

PUBLIC INTEREST

LEGAL FOUNDATION

September 2017

AMERICAN OVERSIGHT

Introduction

Noncitizens are registering to vote across the United States. Some are voting. There are a variety of reasons this is happening, but until the problem is taken seriously, and the defects in the system are examined, the problem of alien voting will continue. This report reveals information obtained about alien registration and voting from election officials in New Jersey. The report documents a subset of alien registration and voting that, as far as we can tell, no one has ever sought to obtain before this report.

New Jersey has statewide elections in 2017. Unfortunately, there is no time to implement solutions. Worse, both federal and state solutions are needed. Federal statutes impose mandates on states regarding voter registration, but those federal laws have proven inadequate to prevent alien registration. States like New Jersey could utilize more tools to detect alien registrations, but are not. Regardless, the first step to fixing the problem is to gather more facts about alien registration.

Summary of Findings

The Public Interest Legal Foundation (PILF) conducted county-by-county surveys of voter registration records seeking records of aliens who registered to vote and later self-reported their status or were otherwise detected by the minimal procedures in place in New Jersey. The PILF survey revealed startling faults and findings across the Garden State regarding foreigners successfully registering to vote.

In this limited survey, PILF found:

- **616 admitted and officially recorded noncitizens in 11 counties engaged on some level with the statewide voter registration system. These were only the noncitizens who essentially self-reported.**
- **Nine percent of the aliens who self-reported their alien status also cast ballots.** When a noncitizen puts pen to paper on a voter registration application, they open the door to additional scrutiny and worse—should they choose to later become a naturalized citizen.
- **Seventy-six percent of noncitizens found in New Jersey's voter registration system admitted their immigration status at the outset yet were processed anyway.**
- Seventy-five **percent of alien voter registration applicants were offered the opportunity to register during Motor Voter transactions.** The lifespan of a noncitizen in New Jersey's voter registration system varies between levels of engagement. **On average, it takes at least two years for a noncitizen to register, be discovered, and officially be "deleted" from the system.** But despite being "deleted," their immigration and naturalization challenges are still ahead of them.

The range of documents recovered vary between counties—even voters—depending on individual circumstances. Unlike PILF's previous work in Virginia[1], researchers were not given uniform reports of voters cancelled for reasons related to noncitizenship generated from a single database. Instead, PILF accessed handwritten letters, archived voter registration forms, interagency communications, and official mailings within voters' files that lay out individual fact patterns ranging from the initial application to record deletion. Reviewers could regularly discern motives for why an ineligible voter came forward to correct the record. Most often, noncitizens would reveal themselves in advance of or in reaction to their naturalization application being flagged amid the threat of a denial.

Equally surprising as the figures themselves are the starkly different responsive records reportedly maintained by the counties. Six jurisdictions (Hudson, Morris, Sussex, Union, Passaic, Camden) told PILF they had zero records indicating where noncitizens either engaged with or admitted to participating in the statewide voter registration system. **Another four counties (Essex, Middlesex, Mercer, and Salem) still have yet to release any records (or declare to have none) since originally requested in March 2017.** Failure to release information subjects these counties to a lawsuit by PILF under public records provisions of Motor Voter.

AMERICAN OVERSIGHT

Broken System: Motor Voter's Victims

News organizations across the spectrum recently made note of the unfortunate case of Margarita Fitzpatrick, a Peruvian national previously living in Illinois with her American husband. In 2005, she visited her local driver's license office—presenting her foreign passport and Green Card to identify herself. As she tells it, despite first documenting that she did not want to register to vote, the DMV clerk offered again in the same transaction—leaving a confused Fitzpatrick to accept and later vote multiple times without incident. Years later, her actions resurfaced when working through the naturalization process, which set her on a track to eventually receive a one-way ticket back to Peru.

In her many media appearances, Fitzpatrick put blame in a variety of places. She said the DMV clerk "misled" her. She said the system failed her: "Non-citizens should not be asked this question — period." Her family attacked the National Voter Registration Act (Motor Voter), as a tool for "entrapment."[2]

Multiple news organizations reported on their failed attempts to better quantify the number of Margarita Fitzpatricks not garnering sympathetic headlines across the nation by requesting access to Department of Homeland Security data. PILF hit the same wall in 2017.[3]

Are there more Margaritas out there? Did they get "trapped" by Motor Voter? Can your naturalization track be derailed even if you do not successfully register and vote? PILF decided to work toward answering these questions in New Jersey in 2017 after finding Virginia had cancelled more than 5,550 registrants for citizenship defects.[4]

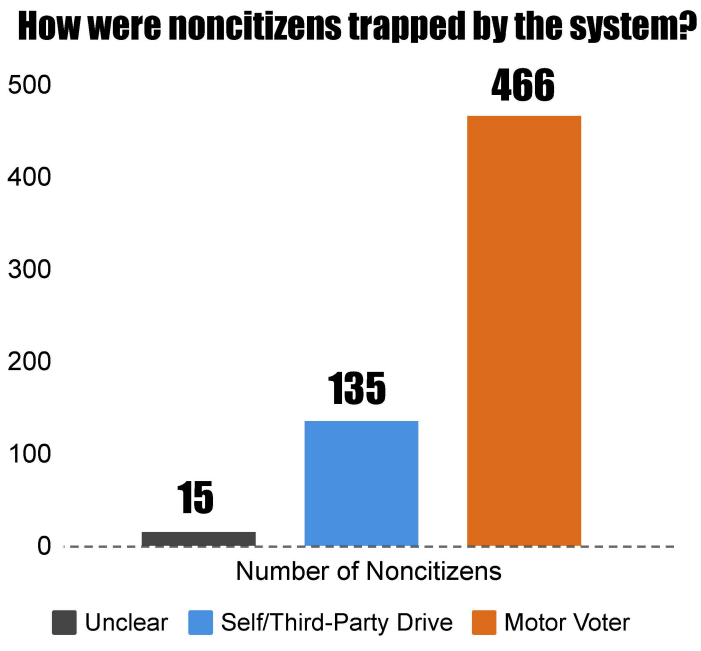
New Jersey, like Virginia, will hold statewide elections in November 2017—the only two to do so. With critical races comes pressure to register more voters quickly and move numbers to the polls. Agencies tasked with Motor Voter obligations know their registration rates will be watched closely and will not wish to invite a federal lawsuit for registration rates some special interest groups deem too low. Canvassers will knock on doors for new voters. Campaign ads will flood the airwaves. In the fog of these contests, noncitizens will face confusing invitations and pressure to participate. Nobody knows whether their ballots will help decide close races in November. What is certain is that their legal troubles will follow them for years.

Margarta Fitzpatrick is not alone. PILF found hundreds like her in New Jersey, aliens who have registered to vote in a broken system. In every case, their personal legal jeopardy could have been mitigated with common-sense solutions, and the integrity of our elections would also benefit.

A Broken System of Patchwork Maintenance

Having now combed through records in New Jersey and Virginia, PILF can declare with great certainty that the two states' approaches for identifying and eventually removing noncitizen voters have few commonalties between them. Whereas Virginia maintains some lines of communication between the motor vehicle agencies and voter registrars to help scrub ineligible voters, New Jersey remains in a passive, reactionary posture waiting for maintenance leads to arrive from third parties when voters themselves are not declaring ineligibility. This has led to aliens getting on the voter rolls, and staying on the rolls.

New Jersey's only defense to alien registration is the hope that aliens who get on the voter rolls will self-report. Without proactive verification mechanisms built into the voter registration application process, cascading negative consequences are sure to follow for eligible and ineligible voters alike.

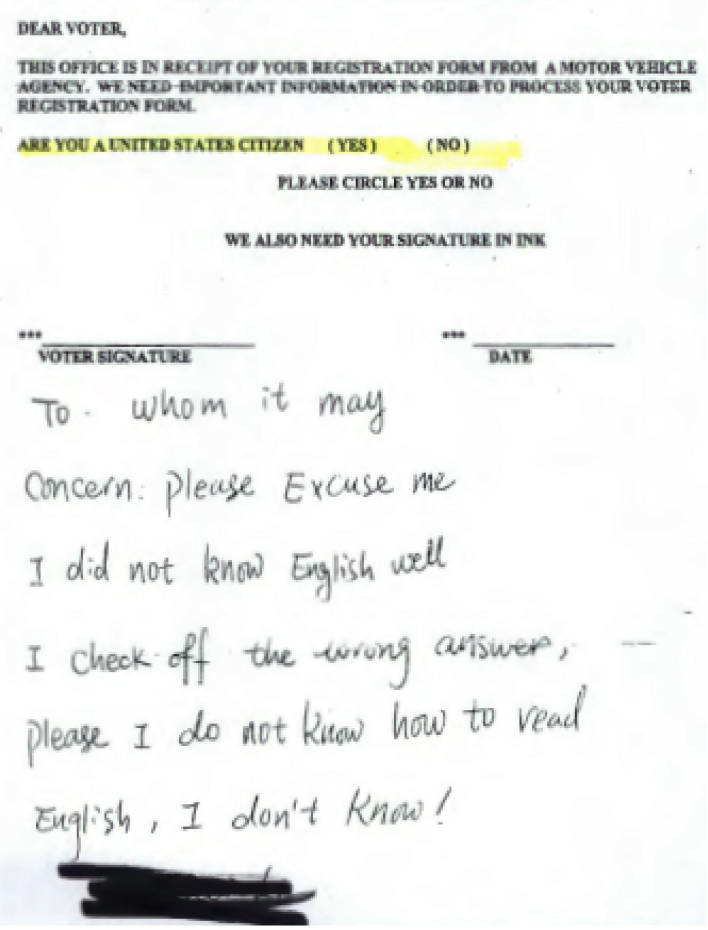


AMERICAN OVERSIGHT

Methodology

PILF consolidated more than a dozen triggers and channels that helped identify noncitizens within the voter registration system into four primary categories. The first are voters who declared their noncitizenship from the outset. In essence, election officials are forwarded voter registration applications, usually from a Motor Voter office, containing either a plain statement of noncitizenship, or a non-response to the citizenship question.

Second, other aliens self-reported their status to election officials in an effort to get off the voter rolls and we obtained these documents in a number of counties in New Jersey. The immigration process has a question on the citizenship application whether the applicant ever registered to vote or actually voted. This question awakens some alien registrants to the fact they have illegally participated in our elections.



DEAR VOTER,

THIS OFFICE IS IN RECEIPT OF YOUR REGISTRATION FORM FROM A MOTOR VEHICLE AGENCY. WE NEED IMPORTANT INFORMATION IN ORDER TO PROCESS YOUR VOTER REGISTRATION FORM.

ARE YOU A UNITED STATES CITIZEN (YES) (NO)

PLEASE CIRCLE YES OR NO

WE ALSO NEED YOUR SIGNATURE IN INK

*** _____ *** _____

VOTER SIGNATURE DATE

To whom it may
Concern: Please Excuse me
I did not know English well
I check off the wrong answer,
please I do not know how to read
English, I don't Know!

[redacted]

Burlington County voter record.

These alien registrants commonly claimed that a mistake was made—either their own or on the part of an official—when the voter application was executed. Language barriers, errant checked boxes, and even pushy DMV employees were repeatedly-used explanations. Outside of Motor Voter transactions, some said they had no memory of submitting an application and would sometimes claim fraud. The available records did not specifically indicate that naturalization applications were pending for this category. However, the apparent urgency of requests and carefully worded letters of those professing poor English comprehension suggest that naturalization is an unwritten motive for seeking removal in most cases. Third, voter registrars were sometimes tipped off by the United States Citizenship and Immigration Services. Rather than a voter coming forward, researchers from the Department of Homeland Security and USCIS contacted county officials seeking information on a potential alien registrant, which can eventually set a path toward deleting them from the statewide database.

Finally, a smaller but clearly defined cohort of registrants is identified as noncitizens thanks to jury clerks sharing their declination data with the appropriate county officials. The most common source of information came from federal district courts throughout the state. We sought and obtained these records from a number of counties.

What is 'Motor Voter'?

The problems with the voter rolls in New Jersey and other states can be traced to 1993. Within months of assuming the Presidency, Bill Clinton signed into law the National Voter Registration Act ("NVRA"), a sweeping piece of legislation that proponents claimed would increase the number of registered voters and participation in our elections. One thing is for sure—defects in the legislation also increased the number of ineligible voters on voter rolls.

The NVRA, commonly known as "Motor Voter," requires each state to offer voter registration to any individual that applies for a driver's license. This provision of the law requires the applicant to swear to his or her citizenship under penalty of perjury, but does not explicitly authorize (nor explicitly deny) the state's ability to verify citizenship through formal documentation. Instead, the law provides that the states "may require only the minimum amount of information necessary to . . . enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process."

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Findings

Attempts by various states to require registrants to provide documentary proof of citizenship during registration for federal elections have been thwarted by lawsuits brought by left-leaning groups. Like other states, New Jersey requires applicants to only check a box in order to "prove" their citizenship status. It's the honor system.

The honor system has proven to be inadequate. This honor system not only risks corrupting the voter file, but exposes noncitizens to potential legal difficulties later in life.

The victims of this honor system are both any unwitting alien registrant and also the integrity of our elections. The only beneficiaries of failures in the honor system are the politicians who receive the votes of these aliens and the interests that support them.

Election officials must also "maintain for at least 2 years" and "make available for public inspection . . . all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters." Nothing in federal law prevents records from being kept longer than two years. As detailed below, this two year requirement can pose additional difficulty for voters whose files are destroyed well before USCIS requires they be produced to keep a naturalization application from stalling, even declined.

At some point, state voter registration policies and procedures must be based on common sense. New Jersey's Motor Vehicle Commission (MVC) and election officials in New Jersey must improve their policies and procedures to prevent aliens from registering to vote.

When a New Jersey noncitizen engages with state offices conducting voter registration, particularly when seeking a new driver's license, there are helpful cues to ascertain their current immigration status. The MVC requires that such customers follow a "6 Point ID Verification" protocol, demanding documents like foreign passports, alien registration cards, refugee documents, and re-entry permits be shown to help establish identity.[5] A wide array of secondary documents must also be provided—leaving effectively no room for doubt on the immigration status for the person before them.

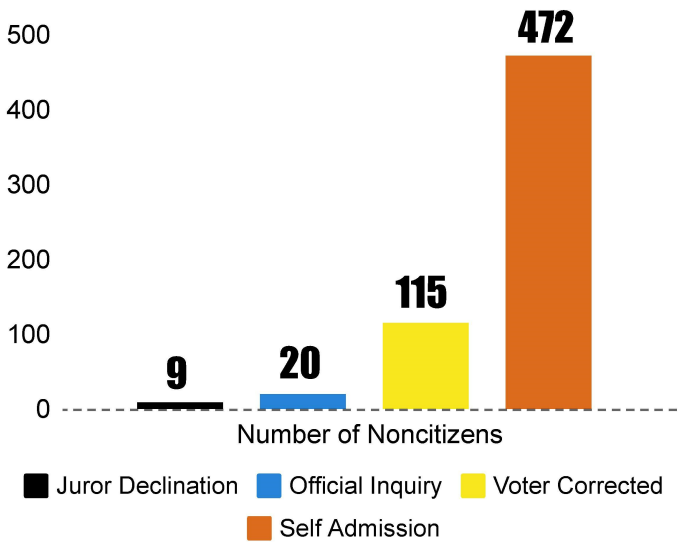
After handling a person's valid foreign passport, asking them if they are a United States citizen interested in registering to vote invites genuine confusion, at best.

The Motor Voter Trap

Recall Margarita Fitzpatrick, the alien voter who faces deportation for registering and voting. Despite her initial objections, she still completed a registration form and went on to participate in multiple federal elections before immigration authorities seized on her voting record. An immigrant in New Jersey looking for a driver's license need only take some preliminary steps—usually at the prompting of an official—to expose themselves to a similar fate.

Noncitizen voter registration experiences can follow a few different tracks. A common Motor Voter example is when a noncitizen is prompted to register and either indicates noncitizenship on the application or ignores the question altogether. The information is eventually transmitted to the county voter registrar where the person is enrolled, either as one declaring noncitizenship or holding an incomplete registration, pending follow-up mailings to confirm their status. At this point, a unique voter identification number is assigned to the person regardless of the application's outcome. If a voter later answers the question of U.S. citizenship in the negative, their record is marked as such and kept within the system. Should that noncitizen later choose to naturalize, the encounters could be called into question, whether they disclosed them or not.

How were noncitizens discovered?



If a noncitizen checks "Yes" to the citizenship question in any setting, they are simply enrolled without any further verification, even if they presented a Green Card to identify themselves at the time of registration. It is incumbent on the ineligible voter or the limited patchwork of maintenance referral systems to correct records after the fact.

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When applying for naturalization, the USCIS asks a short series of questions regarding previous claims of citizenship and voter participation.[6] The form asks Yes/No if the applicant "registered to vote in any Federal, state, or local election" and if they ever "voted" in the same. Any answer in the affirmative requires an explanation on separate sheets of paper.

Though PILF is unable to access individual naturalization applications, investigators did study numerous documents where noncitizens claimed to have no previous knowledge of registering or they explained how they felt pressured to do the same. Included in many voter registration files were correspondence between USCIS, noncitizen voters, and local election officials. After a voting investigation by USCIS is triggered, applicants typically saw form letters bearing their file and alien numbers, stating that "examination of your N400 application shows that additional information, documents, or forms are needed," within 30 days after the letter was printed.

"Failure to do so may result in the denial of your application," the letter also stresses that timely and full submission "does not guarantee that this case will be approved." Recipients are required to provide voter records indicating the status of removal and voting history. Applicants are also instructed to "provide a handwritten affidavit indicating how your name became registered for voting eligibility and whether you have voted in an election."

The typical naturalization applicant does not have the required documents on hand where voting is concerned, particularly when they are claiming prior unawareness to their status. Voter records regularly contained communications and handwritten side notes by local registrars indicating when a noncitizen came forward seeking their data. In turn, county officers printed letters showing dates of registration, removal, and whether they cast ballots. Some letters noted that not all USCIS-required files could be reproduced since they were generated well beyond retention statutes under Motor Voter.[7]

Case Studies

Following are a few of the real life examples that the Public Interest Legal Foundation uncovered in this Garden State Gotcha investigation. For additional examples, the complete investigation file has been made available.[8]

Name: Kiran B. Shah[9]
County: Bergen
Registration Year: 2012
Deletion Year: 2013
Method: Motor Voter
Citizenship Checkbox Choice: Unspecified

Shah registered in 2012 and later updated his residential address via Motor Voter. After registering, he began receiving election mail, particularly a sample ballot in 2013. A Bergen County letter reports that he tried to address his ineligible voter registration status by visiting the polling place to which he was assigned. There, poll workers reportedly told him that since he was receiving such mail, he was indeed eligible to vote—and ended up voting. Shah later made contact with the superintendent of elections and was advised "he voted illegally" and should expect to address the episode again if he applies for U.S. citizenship.

Name: Oscar Trujillo[10]
County: Atlantic
Registration Year: 2000
Deletion Year: 2012
Method: Self/Third Party
Citizenship Checkbox Choice: No

Oscar Trujillo filled a voter registration form in February 2000 and remained on the rolls without incident until December 2012 when he opted to naturalize. Records indicate that he successfully changed his residential address in 2005. Due to record retention caps, the county registrar could not reproduce his voter registration form. A letter to USCIS from Atlantic County reported that he did not ever believe he was registered, despite the fact that his name and signature were kept on file. The County adds that "from time to time persons have signed voter registration application forms out on the street, not aware of what they are signing." Trujillo later managed to successfully naturalize in 2016.

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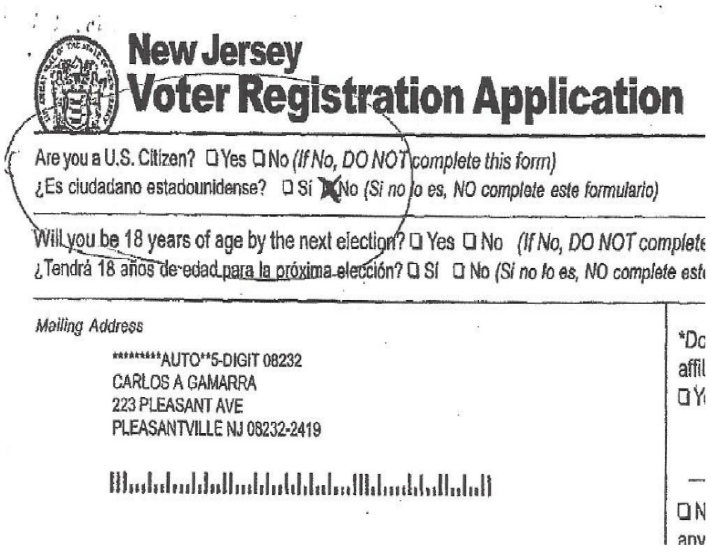
Name: Carlos Gamarra[11]
County: Atlantic
Registration Year: 2008
Deletion Year: 2012
Method: Self/Third Party
Citizenship Checkbox Choice: No

In September 2008, Carlos Gamarra completed a voter registration application that was later mailed to his local voter registrar's office for processing. Despite answering "No" to the question about U.S. citizenship, he was registered anyway and remained on the rolls until September 2012, at which point Gamarra was pursuing naturalization. After receiving a letter from USCIS demanding more information about his voting record, the Atlantic County Commissioner of Registration's office reported, "he did not realize that he had registered to vote" and "was never aware that he was a registered voter." The letter and supplemental records indicated to PILF that he never attempted to vote in the interim.



New Jersey
Voter Registration Application

Are you a U.S. Citizen? ☐ Yes ☐ No *(If No, DO NOT complete this form)*
¿Es ciudadano estadounidense? ☐ Sí ☒ No *(Si no lo es, NO complete este formulario)*

Will you be 18 years of age by the next election? ☐ Yes ☐ No *(If No, DO NOT complete*
¿Tendrá 18 años de edad para la próxima elección? ☐ Sí ☐ No *(Si no lo es, NO complete est*

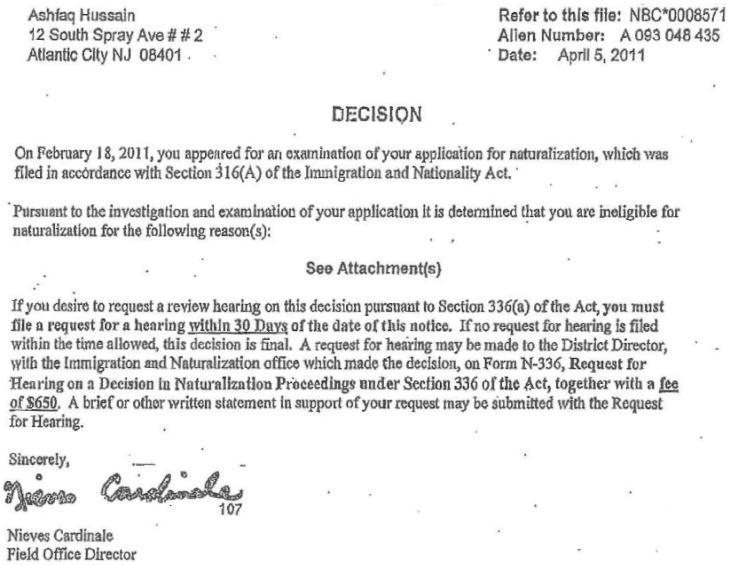
Mailing Address

**********AUTO**5-DIGIT 08232
CARLOS A GAMARRA
223 PLEASANT AVE
PLEASANTVILLE NJ 08232-2419

*Dc
affil
☐ Y
☐ N
any

Name: Ashfaq Hussain[12]
County: Atlantic
Registration Year: 2004
Deletion Year: 2011
Method: Self/Third Party
Citizenship Checkbox Choice: Yes

Mr. Hussain submitted a voter registration form in 2004 and was deleted in 2011. He later began the naturalization process around 2011. Paperwork indicates that he was rejected for citizenship that same year. A county letter dated in 2016 to USCIS reports that Hussain "did not recall" completing a registration application and never attempted to cast a ballot. It is unclear according to available records if his second attempt was successful. Atlantic County does not have a record of voter reinstatement following any naturalization.



Ashfaq Hussain
12 South Spray Ave # # 2
Atlantic City NJ 08401

Refer to this file: NBC*0008571
Alien Number: A 093 048 435
Date: April 5, 2011

DECISION

On February 18, 2011, you appeared for an examination of your application for naturalization, which was filed in accordance with Section 316(A) of the Immigration and Nationality Act.

Pursuant to the investigation and examination of your application it is determined that you are ineligible for naturalization for the following reason(s):

See Attachment(s)

If you desire to request a review hearing on this decision pursuant to Section 336(a) of the Act, you must file a request for a hearing within 30 Days of the date of this notice. If no request for hearing is filed within the time allowed, this decision is final. A request for hearing may be made to the District Director, with the Immigration and Naturalization office which made the decision, on Form N-336, Request for Hearing on a Decision in Naturalization Proceedings under Section 336 of the Act, together with a fee of $650. A brief or other written statement in support of your request may be submitted with the Request for Hearing.

Sincerely,

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Nieves Cardinale
Field Office Director

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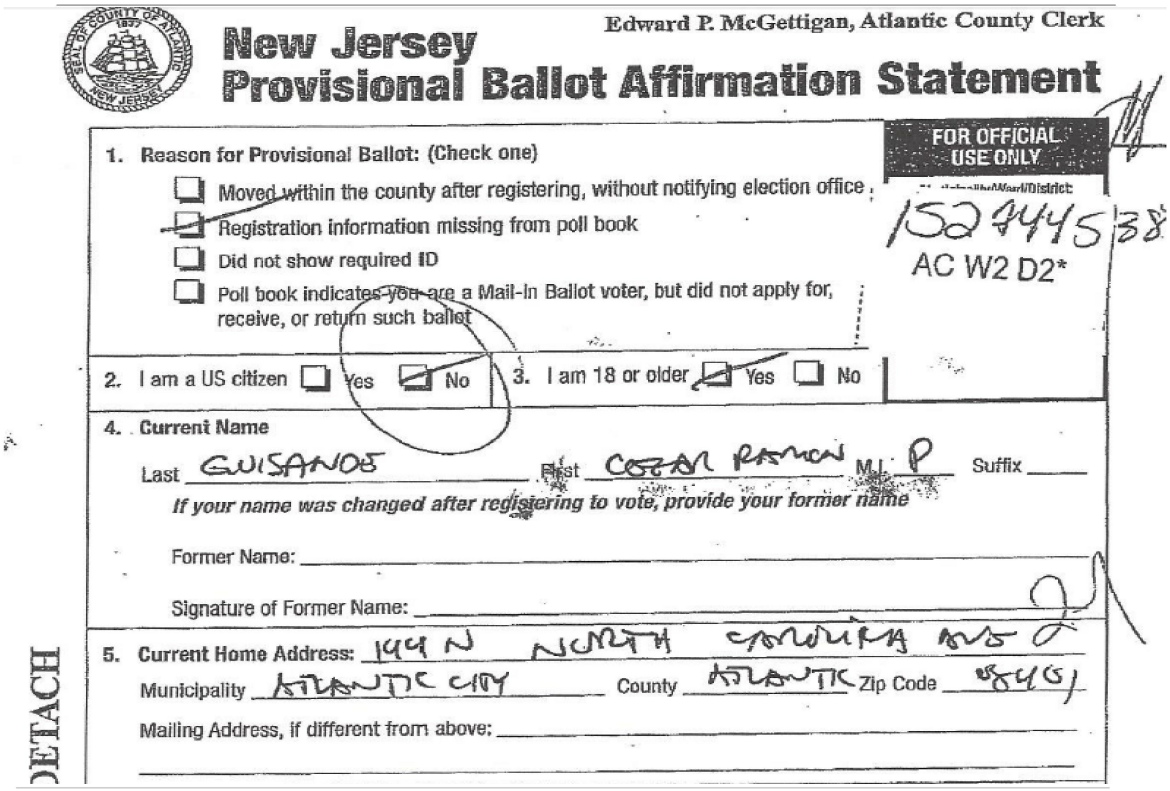
Name: Cezarramo Guisande[13]
County: Atlantic
Registration Year: 2014
Deletion Year: 2014
Method: Motor Voter
Citizenship Checkbox Choice: Yes

Cezarramo Guisande presents one of the most disturbing cases reviewed in this effort. Accompanied by his mother, he visited a local driver's license office and was offered the opportunity to become a registered voter, despite the fact he presented his Green Card to identify himself. An Atlantic County letter to USCIS reports that his mother discouraged him from completing the form, saying he was ineligible. The letter continues: "However, the Division of Motor Vehicles employee told you that you could register to vote with a Green Card and that is the only reason you signed the voter registration form…" Guisande later tried to vote in the 2014 midterms but was stopped when his pollbook record contained incorrect address information—leading him to complete a provisional ballot. Without the pressure of others, he documented that he was not a citizen and was removed from the active registry shortly thereafter.



Edward P. McGettigan, Atlantic County Clerk

New Jersey Provisional Ballot Affirmation Statement

1. **Reason for Provisional Ballot: (Check one)**
   - ☐ Moved within the county after registering, without notifying election office
   - ☑ Registration information missing from poll book
   - ☐ Did not show required ID
   - ☐ Poll book indicates you are a Mail-In Ballot voter, but did not apply for, receive, or return such ballot

FOR OFFICIAL USE ONLY
152 445 38
AC W2 D2*

2. I am a US citizen ☐ Yes ☑ No
3. I am 18 or older ☑ Yes ☐ No

4. **Current Name**
   Last GUISANDE First CESAR RAMON M.I. P Suffix
   If your name was changed after registering to vote, provide your former name
   Former Name:
   Signature of Former Name:

5. **Current Home Address:** 144 N NORTH CAROLINA AVE
   Municipality ATLANTIC CITY County ATLANTIC Zip Code 08401
   Mailing Address, if different from above:

DETACH

17-2361-A-003873

Name: Hector R. Guerro-Bernabel[14]
County: Atlantic
Registration Year: 2014
Deletion Year: 2017
Method: Motor Voter
Citizenship Checkbox Choice: Unspecified

Mr. Guerro-Bernabel's naturalization application was held up when it was discovered he was a registered voter. The paper trail for this specific file is thin because the county reported to USCIS that no actual voter registration application could be reproduced because there was none. Mr. Guierro-Dernabel became a voter through an online registration prompt, jeopardizing his naturalization track "simply by checking a box" in a different government transaction.

Name: Yuan Vergera[15]
County: Bergen
Registration Year: 2012
Deletion Year: 2012
Method: Motor Voter
Citizenship Checkbox Choice: Disputed

Yuan Vergera claimed in a letter to Bergen County that while he was renewing his driver's license as a noncitizen, an MVC employee "erroneously filled out a voter registration form with my information without my consent" after telling the clerk verbally that he was not interested in voting. Ms. Vergara asked that the application be disregarded and the record cancelled. It is unclear if he had naturalization paperwork pending at the time.

Name: Jheiny Rodriguez-Gonzales[16]
County: Bergen
Registration Year: 2014
Deletion Year: 2014
Method: Motor Voter
Citizenship Checkbox Choice: Unspecified

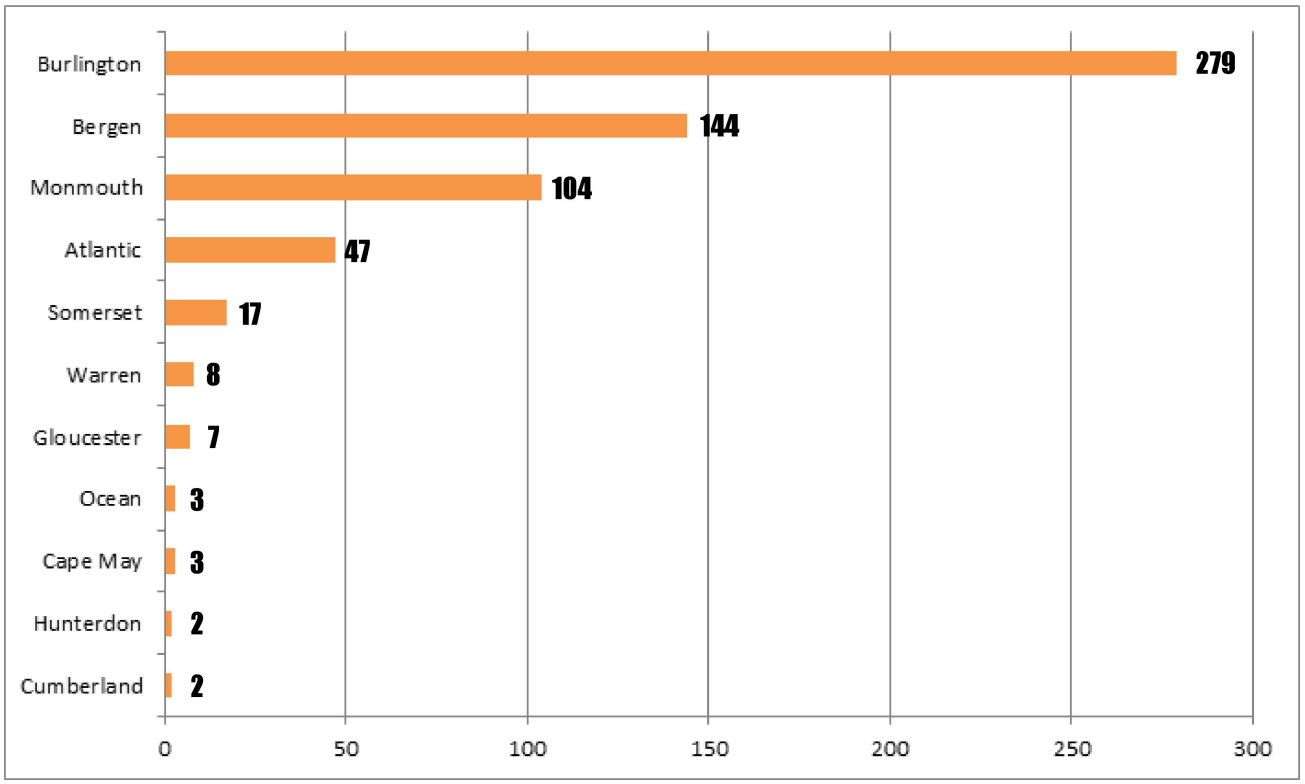
Ms. Rodriguez-Gonzales was applying online to be a student at Bergen County Community College when she says she mistakenly clicked prompts that registered her to vote in June/July 2014. She requested removal in August after she began receiving official election mailings and correspondence from her state assemblywoman. The legal permanent resident clarified her status promptly. It is unclear if she had naturalization paperwork pending at the time.

Name: Anna Jasinska[17]
County: Bergin
Registration Year: 2016
Deletion Year: 2016
Method: Motor Voter
Citizenship Checkbox Choice: Unspecified

Ms. Jasinska promptly reported that a "mistake" was made when she was registered to vote while at a driver's license office. Her letter claimed she is not a fluent English speaker and even presented her Green Card prior to registration. It is unclear if she had naturalization paperwork pending at the time.

AMERICAN OVERSIGHT

County Numbers



Data Limitations

The Public Interest Legal Foundation originally cast the widest nets possible when seeking records from counties, asking they search for "all registrants who were identified as potentially not satisfying the citizenship requirements for registration from any information source … and actions taken regarding the registrant's registration."

Six jurisdictions (Hudson, Morris, Sussex, Union, Passaic, Camden) claimed they had zero records indicating where noncitizens either engaged with or admitted to participating in the statewide voter registration system.

Another four counties (Essex, Middlesex, Mercer, and Salem) still have yet to release any records. The vast gulf in response between counties like Bergen and Hudson, especially where jurisdictions claim to have absolutely zero cases to share seems dubious, at best.

Sanctuary Counties

Some New Jersey voting jurisdictions have joined the "sanctuary" trend for illegal aliens. The Garden State currently contains three counties which refuse to cooperate with immigration officials unless various conditions are met—depending on the severity alleged criminal's unlawful actions.

Union, Middlesex, and Ocean Counties each declared such statuses in July/August 2014. With respect to aliens caught in the Motor Voter system and casting ballots, the sanctuary status could inform the stark differences in available data as opposed to nearby non-sanctuary jurisdictions. Union County, near New York City, claims to have zero records indicating ineligible noncitizens were found anywhere in the voter registration system. Ocean County could only identify three (3) similar cases. Middlesex, however, has yet to fully respond to PILF's inquiries.

AMERICAN OVERSIGHT

How can we fix this?

There are several reforms and procedural changes that New Jersey should consider going forward.

- Institute a model for detecting more noncitizens caught in the voter registration system to address records before they vote or opt to naturalize. Virginia's model of establishing clear lines of communication between state agencies serving noncitizens and registrars to help scrub rolls—not fill them—can serve as a first step.
- The State of New Jersey should review procedures step-by-step within its Motor Voter system to identify efficiencies and keep ineligible voters out in the first place.
- Local clerks should review record retention procedures and discern better ways to help document cases where voters appear to be caught in a voter registration system despite their wishes in order to better help explain their activities before USCIS.
- The registration process must be changed. The check box honor system most states are using is a complete failure and is facilitating voter fraud. All states should require voter applicants to provide documentary proof of citizenship at the outset. Alternatively, states should utilize federal databases like SAVE to help identify noncitizens more quickly. States should use all available data, including jury recusal information, to help maintain accurate and current voter rolls.
- The database, known as E-Verify, that is being used by U.S. employers to check the citizenship status of prospective employees should be made available to election officials and administrators to better identify registered voters and pending applicants who are not actually citizens.
- The U.S. Department of Homeland Security should open new information-sharing channels between agencies to include Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), Citizenship and Immigration Services (USCIS) and Homeland Security Investigations (HSI) with state and local election officials to more easily identify non-citizens coming into contact with the federal immigration system.
- Law enforcement at both the federal and state level should exercise their authority to prosecute cases of voter fraud.

Conclusion

The time has come to treat our voter registration system as we would any other government service, by verifying and validating the eligibility of those seeking to take advantage. Introducing citizenship verification serves two clear purposes: it reduces the risk of ballot dilution by those who would vote illegally; and protects immigrants who will mistakenly interact with the voter registration system, which only generates a paper trail that will haunt them later.

Some of the case examples given above may seem outlandish. Some excuses for registering and voting might even prove false. But the same checkbox honor system that let them in, is the same one that allows lets them walk free with a story of their choosing—until immigration officers begin calling.

Let's stop setting up our nation's newcomers to fail. Citizenship verification in voter registration protects us all.

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17-2361-A-003876

PUBLIC INTEREST

LEGAL FOUNDATION

The Public Interest Legal Foundation relies on small contributions to conduct research and develop findings like those in this report. PILF is the only organization performing this level of work with respect to voter registration system integrity. Time, travel, and technology help deliver new insights in our election systems to better educate regular citizens and policymakers alike. We also bring lawsuits to pry this information from government officials when necessary. None of this is possible without your support. Please help us expand our efforts by visiting www.publicinterestlegal.org/donate to offer your fully tax-deductible gift today.

September 2017

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17-2361-A-003877

[1] PILF: Alien Invasion II: The Sequel to the Discovery and Cover-up of Non-citizen Registration and Voting in Virginia (May 29, 2017), https://publicinterestlegal.org/blog/alien-invasion-ii-sequel-discovery-cover-non-citizen-registration-voting-virginia/

[2] NBC News; Grandmother Deported for Voter Fraud Leaves U.S. in Tears (August 5, 2017), https://www.nbcnews.com/politics/immigration/grandmother-deported-voter-fraud-leaves-u-s-tears-n789766

[3] Breitbart News; Immigration Officials Fail to Track Illegal Voting Rates, Say Reports (June 6, 2017), http://www.breitbart.com/texas/2017/06/06/immigration-officials-fail-track-illegal-voting-rates-say-reports/

[4] PILF; Alien Invasion II: The Sequel to the Discovery and Cover-up of Non-citizen Registration and Voting in Virginia (May 29, 2017), https://publicinterestlegal.org/blog/alien-invasion-ii-sequel-discovery-cover-non-citizen-registration-voting-virginia/

[5] State of New Jersey Motor Vehicle Commission; 6 Point ID Verification (Accessed September 5, 2017), http://www.state.nj.us/mvc/Licenses/6PointID.htm

[6] USCIS Form N-400, Part 12 Questions 1-3

[7] 52 U.S.C. 20701

[8] Records uncovered from the various counties may be reviewed here: https://publicinterestlegal.org/garden-state-gotcha/

[9] Kiran B. Shah voter file exhibit: https://publicinterestlegal.org/files/Kiran-Shah.pdf

[10] Oscar Trujillo voter file exhibit: https://publicinterestlegal.org/files/Oscar-Trujillo.pdf

[11] Carlos Gamarra voter file exhibit: https://publicinterestlegal.org/files/Carlos-Gamarra.pdf

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[12] Ashfaq Hussain voter file exhibit: https://publicinterestlegal.org/files/Ashfaq-Hussain.pdf

[13] Cezarramo Guisande voter file exhibit: https://publicinterestlegal.org/files/Cezarramo-Guisande.pdf

[14] Hector R. Guerro-Bernabel voter file exhibit: https://publicinterestlegal.org/files/Hector-Guerro.pdf

[15] Yuan Vergera voter file exhibit: https://publicinterestlegal.org/files/Yuan-Vergera.pdf

[16] Jheiny Rodriguez-Gonzales voter file exhibit: https://publicinterestlegal.org/files/Jheiny-Rodriguez-Gonzales.pdf

[17] Anna Jasinska voter file exhibit: https://publicinterestlegal.org/files/Anna-Jasinska.pdf

AMERICAN OVERSIGHT

Presidential

Election Integrity Commission

Submitted by

Judge Alan L. King

September 6, 2017

TO: Hon. Andrew Kossack, EOP/OVP

Hon. Vice President Mike Pence, *Chair*, c/o Hon. Andrew Kossack; Hon. Kris Kobach, *Vice-Chair*; Hon. Connie Lawson; Hon. Bill Gardner, Hon. Matthew Dunlap; Hon. Ken Blackwell; Hon. Christy McCormick; Hon. David Dunn; Hon. Mark Rhodes; Hon. Hans von Spakovsky; Hon. J. Christian Adams

STATEMENT OF ISSUES/RECOMMENDATIONS

An Executive Order was entered by President Donald Trump on May 11, 2017, which set out the "Mission" of the Commission as, among other things, identifying "Sec. 3(b) those laws, rules, policies, activities, strategies, and practices that enhance the American peoples' *confidence* in the integrity of the voting process used in federal elections.

Over one million American soldiers have either been killed or maimed for life, not only afflicting them but their families, in defense of our nation in World War I, World War II, Korea, Vietnam, two Iraq Wars, and Afghanistan while on duty in conflicts or during peace time. Hundreds of thousands of Soldiers, Sailors, National Guard and Reserve are presently on duty to protect America.

Our soldiers, men and women, fought for all of us, and our American way of life. Those who fought and died were injured for freedom. And voting is the very essence of freedom. To deprive ANY of our citizens of the right to vote is the most severe travesty of justice imaginable.

This Commission, and we as a people, should be expanding the rights of our citizens to vote, instead of arguably looking for ways to keep people from voting.

AMERICAN OVERSIGHT

17-2361-A-003880

I wish to submit ten (10) areas that, if not addressed by this Commission and the President and U.S. Congress, will severely undermine the *confidence* in federal elections as we move forward as a democracy and as the greatest nation on Earth. They are:

1. Funding in excess of $5 billion is needed and warranted every ten years by the U.S. Congress for distribution to the 50 states for the states, in turn, to distribute to counties for upgrades in voting equipment.

   Technology is moving faster than civilization. Voting in the Unites States is dependent on technology. The Help America Vote Act (HAVA) in 2002 distributed over $4 billion to the states for the purchase/upgrades of voting equipment.

   Since 2002, there have been newer models of voting machines by multiple vendors, and some counties have been able to afford to upgrade their equipment and/or purchase new equipment; however, many counties cannot afford to do so, so they "make do" with outdated equipment. Unfortunately, many if not most states cannot afford to assist their counties or parishes in this regard. As we move forward as a nation, there has to be a funding source to keep up with the technological advances in conducting elections. (See attachments from BallotPedia and NCSL).

2. Enact federal statutes that make it a crime for any person or state to suppress the right of ALL Americans, regardless of their race, creed, color or level of affluence to vote in federal elections.

3. Engage three statistical experts from accredited colleges/universities to independently study whatever data, if any, is submitted to the Commission for the 2016 Presidential Election, and have them testify in person before this Commission.

   Some parts of our electorate wish to beat their chests on so-called "voter fraud," and there may be some isolated instances of people voting in their state of residence, perhaps by absentee ballot, and also, perhaps, voting where their beach house or lake house or mountain cabin is located. And there may be a few instances no doubt on

AMERICAN OVERSIGHT

both sides of the aisle, Republican and Democratic, where overzealous voters wish to vote twice. But, I would venture to say, thousands upon thousands more people are stricken from voter rolls without justifiable cause or have their vote suppressed.

The reality is that the less affluent in our society are more prone to move and more prone to have a diminished economic position in life, just to survive. But that does not mean that officials in government should "game the system" to deprive the less affluent from voting, simply because they may have moved from one election to another only to be stricken from the active voter list.

In Alabama, for instance, 340,000 voters have been stricken from the active voting list and moved to the inactive voting list in the past few months. This was based on a mailing that, as I understand it, was returned as undeliverable. The reality is that people move, and the post office only forwards mail for a limited number of months. To move voters from active to inactive based on a flawed system is unconscionable.

4. Reaffirm and enact legislation that sets out that each individual state is responsible for conducting their elections. But states need the resources to do so. Democracy and this great nation will fall from within unless government is funded at an adequate level.

5. Enact federal regulations that make it a felony for a voter to be registered to vote in more than one county or parish, regardless of whether they vote in more than one location on election day or not.

6. Enact federal legislation for any candidate or person who cooperates with a foreign government in connection with a U.S. election to be prosecuted for treason. (Please see attachment).

7. Enact federal legislation that makes it a felony offense for any person or organization to "hack" any voting machine, system, or e-poll book or any voting apparatus in the United States of America.

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E-poll books are now used in 20-30 states. It has been reported that e-poll books were "hacked" by the Russians in North Carolina that affected "about 90,000 voter registration records."

Again, this goes back to advances in technology. This nation has to provide a secure voting experience for our citizens if we are to enhance "confidence" in our elections which is our mission.

8. Secretary Kobach has a voter registration group, the Interstate Voter Registration Crosscheck Program (Interstate Crosscheck), which is used in approximately 30 states. This system is reported to use "matches" to remove voters from voting lists.

   There is another group named the Electronic Records Information Center (ERIC) that has secure servers. Approximately 20 states and the District of Columbia have voluntarily joined ERIC and share information.

   If states are to share data, which, arguably, is a serious invasion of privacy, whether Interstate Crosscheck or ERIC, the voter information needs to be on secure servers (the technology issue again) and the system(s) need to be governed and operated by advanced business practices and not driven by partisan philosophical beliefs.

9. Engage independent, knowledgeable technological "hacking" experts and have them testify before this Commission. Recent reports are that on-site "hackers" at a recent technology event in Las Vegas successfully "hacked" into a well-known election vendor's voting machine in approximately 20 minutes. If independent "hackers" can do so in a short period of time; imagine what foreign governments can do with all of the resources at their disposal.

10. Focus every available American resource on the alleged Russian "hacking" of the 2016 Presidential Election and disclose all findings to the American people. (see attachment from the New York Times Magazine).

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It is my sincere hope and prayer that this Commission will focus on the real election issues facing the Unites States of America, including alleged "hacking" by the Russians, instead of spending precious time focusing on non-issues to deprive American citizens from voting. The ten (10) issues deserve our nation's most earnest attention if we are truly to instill *confidence* in our future elections.

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BALLOTPEDIA The Encyclopedia of American Politics Search Ballotpedia

Help America Vote Act (HAVA) of 2002

The Help America Vote Act (HAVA) is a major federal election reform law. The legislation, which was approved by the 107th United States Congress and signed into law by President George W. Bush in 2002, created the Election Assistance Commission, provided for the replacement of outmoded voting equipment, and established new minimum administration standards for federal elections. The law was written, in substantial part, as a response to the controversy surrounding the contentious presidential election of 2000.[1]

HIGHLIGHTS

- The Help America Vote Act appropriated federal funds to be disbursed to the states for the purpose of updating voting equipment and election administration procedures. As of October 1, 2015, approximately $3.3 billion had been awarded under the act.
- The law established the Election Assistance Commission, which disburses HAVA funds to the states and assists in ensuring compliance with the law.
- The law also mandated that any new registrant must provide either a driver's license number or the last four digits of his or her Social Security number at the time of registration.

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Background

In 2000, Al Gore (D) and George W. Bush (R) faced off in a historically competitive presidential contest. Th hinged on the state of Florida and its 25 electoral votes. Bush narrowly won Florida, but the margin of vic that a series of recounts took place. Ultimately, the United States Supreme Court halted the recounts. Bu winner in Florida; the state's 25 electoral votes brought Bush's total to 271, winning him the presidency.[2

In August 2001, the National Commission on Federal Election Reform, chaired jointly by former President and Jimmy Carter (D) released a report analyzing the 2000 presidential election and proposing the followi

> 1. Every state should adopt a system of statewide voter registration.
> 2. Every state should permit provisional voting by any voter who claims to be a qualified voter i
> 3. Congress should enact legislation to hold presidential and congressional elections on a natio
> 4. Congress should adopt legislation that simplifies and facilitates absentee voting by uniforme overseas citizens.
> 5. Every state should allow for restoration of voting rights to otherwise eligible citizens who hav convicted of a felony once they have fully served their sentence, including any term of probat
> 6. The state and federal governments should take additional steps to assure the voting rights o

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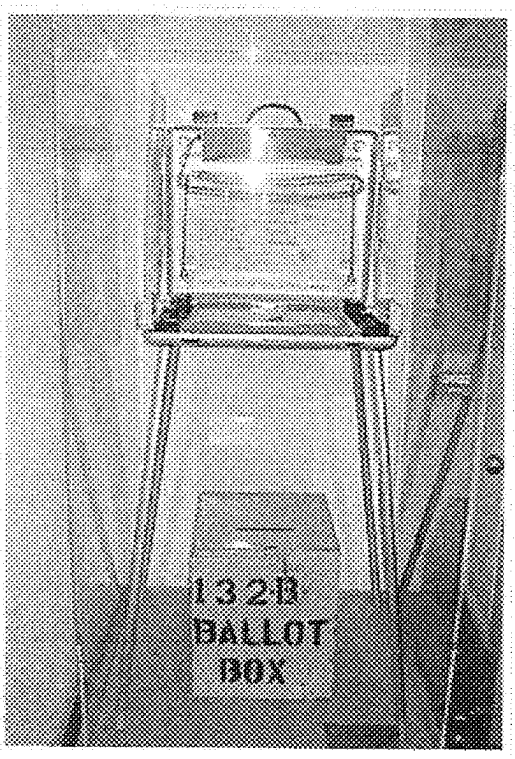

A voting stand, ballot, and ballot box used in Palm Beach County, Florida, in the 2000 presidential election

and to enforce the principle of one person, one vc

Legislative history

The Help America Vote Act was introduced in the United States House of Representatives by Robert Ney (R) on November 14, 2001. On December 12, 2001, the bill passed the House 362-63. The U.S. Senate approved an amended version of the bill unanimously on April 11, 2002. A joint conference committee was convened to reconcile differences between the two bills.[5]

On October 10, 2002, the House adopted the conference committee version of the bill by a vote of 357-48. The Senate followed suit on October 16, 2002, by a vote of 92-2. On October 29, 2002, President George W. Bush (R) signed the Help America Vote Act into law. Bush made the following statement regarding the law:[5][6]

> [The] Act appropriately respects the primacy of State anc governments in the administration of elections, while hel ensure the integrity and efficiency of voting processes in elections by providing Federal governmental support for endeavor.[4]
>
> —Presic

Key provisions

Funds disbursed to the states

The Help America Vote Act appropriated federal funds to be disbursed to the states for the purpose of up equipment and election administration procedures. The funds were intended, in part, to incentivize state card and lever voting machines. The law did not, however, explicitly prohibit states from using these kind machines.[1]

As of October 1, 2015, approximately $3.3 billion had been awarded to the states under the Help America below depicts award amounts by state. To see specific figures, hover over a state. A lighter shade of red ir award amount; a darker shade of red indicates a larger award amount.[7]

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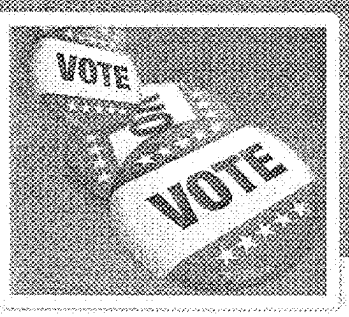
NCSL
THE CANVASS
STATE ELECTION REFORM

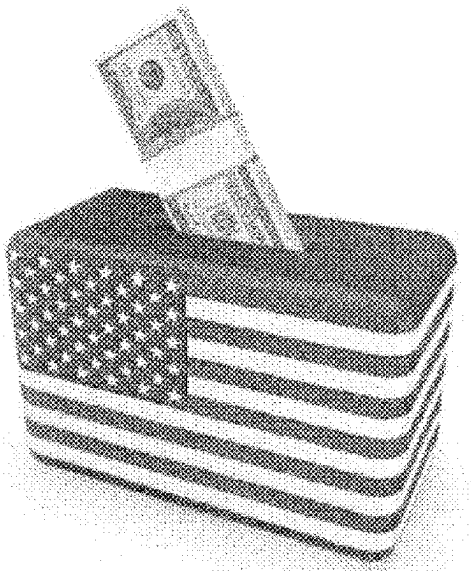
Issue 64 | November-December 2016



Compilation of election returns and validation of the outcome that forms the basis of the official results by a political subdivision.

---U.S. Election Assistance Commission Glossary of Key Election Terminology

Election Funding for 2020 and Beyond



As jurisdictions across the country are preparing for 2016's big election, many are already thinking of the *next* presidential election—2020 and beyond. This is especially true when it comes to the equipment used for casting and tabulating votes.

Voting machines are aging. A September report by the Brennan Center found that 43 states are using some voting machines that will be at least 10 years old in 2016. Fourteen states are using equipment that is more than 15 years old. The bipartisan Presidential Commission on Election Administration dubbed this an "impending crisis."

To purchase new equipment, jurisdictions require at least two years lead time before a big election. They need enough time to purchase a system, test new equipment and try it out first in a smaller election. No one wants to change equipment (or procedures) in a big presidential election, if they can help it.

Even in so-called off-years, though, it's tough to find time between elections to adequately prepare for a new voting system. As Merle King, executive director of the Center for Election Systems at Kennesaw State University, puts it, "Changing a voting system is like changing tires on a bus… without stopping." So if election officials need new equipment by 2020, which is true in the majority of jurisdictions in the country, they must start planning now.

Here's the catch: nationwide, officials report that they're not quite sure where the money for new machines will come from. The machines that they're replacing were mostly paid for in the mid-2000s by federal funds through the Help America Vote Act of 2002 (HAVA)—but there's little hope of federal funding this time around.

HAVA drastically changed the landscape of voting technology. Not only did it shift the country away from lever and punch card voting machines by paying for replacement equipment, it also altered the elections equipment market. For one thing, because so much of the nation's equipment was bought at the same time, a majority of the country's machines will need replacement around the same time as well. HAVA also made local jurisdictions more dependent on funds coming from the feds rather than on their county coffers. A whole generation of county commissioners has come of age in an era when they haven't had to budget for voting equipment, as was the norm in the pre-2000 era.

Elections are critical infrastructure, as important to the functioning of the country as roads. As such, what are some funding options? And what questions are states asking?

Should every jurisdiction in the state have the same equipment?

Even before HAVA, a few states moved to a uniform voting system, with every jurisdiction using the same equipment. For instance, this is required in Georgia by statute. In Georgia, having a uniform system allows machine testing and maintenance to be done on the state level by the Center for Election Systems at Kennesaw State University.

(cont. on page 2)

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(Election Funding for 2020 and Beyond, cont. from page 1)

Georgia estimates that it saves about $1 million a year by doing its own maintenance, as opposed to paying for a voting system vendor to perform maintenance. Having a uniform system also helps with contingency planning. If a county has a large-scale problem with its machines—a fire in its warehouse, for example—machines can be borrowed from adjacent counties. Training for election officials can be done statewide, and the state can better assist with trouble-shooting technical problems on Election Day.

Maryland also has a uniform system across the state and obtained new equipment in 2015. The state and counties split the cost of the system 50/50 and Maryland has chosen to lease its new system rather than purchase it outright.

New Mexico is the most recent state to choose a single system. Prior to HAVA, New Mexico had a variety of voting systems in use and provided a revolving fund in the secretary of state's office that counties could draw on at no interest. The counties chose from a menu of options certified by the state. After HAVA, however, New Mexico moved to a statewide system. New machines were purchased last year, with funds allocated by the legislature in two appropriations. The state negotiated the contract with the vendor and machines are maintained at the state level. As New Mexico Senator Daniel Ivey-Soto notes, "If the state owns the rules governing elections, we thought it made sense to also own the hardware and software that implement those rules."

Colorado does not yet have a uniform voting system, but may be moving to one. A working committee has been studying the issue for the last two years, and in November pilots of four different systems were conducted across the state. The state plans to decide which of these systems to choose for a statewide contract by the end of the year. Not all of Colorado's 64 counties will purchase new equipment right away, but more than one-third have expressed interest in making a purchase and rolling out new equipment in 2016. Funds for the new equipment would come from individual counties, but they would be able to secure a low-interest loan from the state to make initial purchases, taking advantage of the purchasing power of the state.

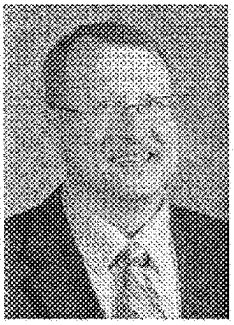
In addition to the states mentioned above, Alabama, Connecticut, Delaware, Louisiana, Maine, Nevada, New Hampshire, North Dakota, Rhode Island, South Carolina, Utah and Vermont also use the same machines statewide.

If the same machines aren't used statewide, can the state still help its jurisdictions purchase new equipment?

By contrast, Kansas, Minnesota and Wisconsin are highly decentralized. In Wisconsin, elections are run at the municipal level in 1,853 jurisdictions. Many of the smaller jurisdictions count paper ballots by hand. Within a given county, there may be different machines used in different municipalities, making the state a true hodge-podge of voting equipment. Even though elections are run at the municipal level, counties still play a role and may assist municipalities with purchasing new equipment. The state, however, does not play a role in funding voting equipment.

In Minnesota, counties own and purchase voting equipment, and many different systems are in use. A recent survey of counties showed that almost all of them need to replace equipment by 2020, and almost none know where the funding will come from. Some of the larger counties have made purchases already, but it is the counties with fewer resources that could most benefit from some state assistance.

The situation is similar in Kansas, where Senator Mitch Holmes notes a divide between urban and rural counties in the voting technology used, and the ability to find funds for new equipment. In a decentralized state like Kansas, the rural counties are at a disadvantage, and as Holmes says, "Change is tough in elections—there's no room for errors!" Several of the larger counties in Kansas recently got together to issue an RFP for new equipment, in a regional collaboration that has also been discussed in other states.


Sen. Mitch Holmes (KS)

If you're going to go regional, some argue, why stop at the state line? Regional cooperatives could be made between states that are looking at buying similar equipment, increasing their purchasing power. Collaboration could also focus on services—counties that aren't necessarily adjoining but have similar service or maintenance requirements could get together to share resources and negotiate favorable contracts with vendors.

Where do the funds come from?

Some states are discussing a statewide bulk purchase to take advantage of economies of scale and potentially get a better deal on new elections equipment. Others are telling the counties that they must continue to be responsible for funding new equipment.

States are looking at a variety of sources. Among the options being discussed are:

- A direct appropriation for voting equipment statewide. A variation on this theme would be to split the cost between the state and counties.
- Setting up a grant program or a low-interest loan program for counties that need to purchase equipment, with funds appropriated by the legislature and administered by the secretary of state or board of elections.
- Entering into agreements with counties to buy equipment in

(cont. on page 3)

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(Election Funding for 2020 and Beyond, cont. from page 2)

bulk. In this scenario the counties would provide the funds, but the state would negotiate the contract.

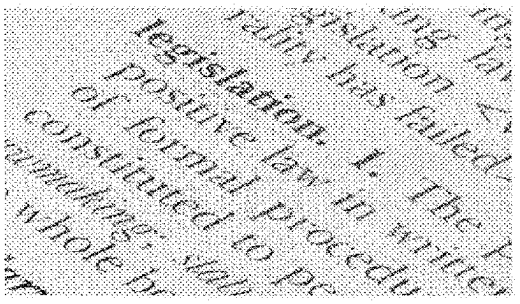
- Leaving the purchasing and decision-making in the hands of local jurisdictions, where funding could come from local appropriations or through bonds. A few jurisdictions have a capital expense line item for elections equipment, and funds build up over a few years to make major purchases.
- Dedicated revenue through fees. In states where the secretary of state is the chief election official, this could be through fees administered by the business side of the office.
- Working with private firms to design brand new equipment or open source software that can be run on off-the-shelf devices. Some of the larger jurisdictions in the country such as Los Angeles, San Francisco and Travis County, Texas (where Austin is located) are exploring this option.

Or, jurisdictions may be able to carve out funds for new equipment by creating efficiencies elsewhere in the process. This is dependent on collecting good data—jurisdictions need to know where they are spending their money in order to identify potential areas for savings. As Amber McReynolds of the Denver Elections Division notes, "First you should eliminate waste and create efficiencies, and only then look at adding new technology and equipment."

States are undoubtedly facing some changes in voting equipment in the comings years. As King notes, "States should see change as an opportunity to make elections more efficient." And we're in a better position to deal with this change than we were in 2000. Charles Stewart III, a professor at MIT who studies election administration, notes that the country has come a long way in developing professional standards and best practices in election administration: "We're going to be able to dive into any problems that might arise more quickly and comprehensively than ever before."

Legislative Action Bulletin

- 7 legislatures are in session.
- 2,355 election-related bills have been introduced.
- 241 bills in 46 states have been enacted.
- 37 bills in seven states have been vetoed.



Qualifications for poll workers got more attention than usual this year, with 124 bills introduced in 32 states. Many of these bills are intended to provide relief to election officials, who often say their biggest headache is finding enough poll workers.

Enactments of note: California AB 554 permits students to serve as election officials if they are lawful permanent residents. California already allows youth to serve as poll workers. New Hampshire HB 140 gives state party officials responsibility for appointing local election officials, instead of local party officials. Indiana HB 1140 allows counties to decide if one person can serve as an inspector for more than one precinct at the same location. Virginia HB 1333 allows state party officials to sign forms designating authorized representatives of political parties for elections, when local level party officials can't do so. Montana HB 69 allows required training to be offered online or through teleconferences.

Vetoes were big, too. New Jersey's governor vetoed New Jersey AB 2906, which would have excluded compensation paid to Election Day poll workers from inclusion in gross income for tax purposes. Virginia HB 1473 would have permitted general registrars to be appointed from adjacent jurisdictions and was vetoed by the governor who argued jurisdictions should intensify their recruitment search if they are having difficulties finding candidates for the position. Texas HB 2381, which related to the appointment and duties of election officers, was vetoed because of concerns about elected county clerks overriding the party's selection of candidates.

One big number

75%

75 percent. That is the approximate percentage of voters nationwide who cast their ballots in a designated polling place, either in a traditional precinct polling place or a vote center, in the 2014 elections according to Managing Polling Places Resources, the latest report from the Caltech/MIT Voting Technology Project. From that number it's clear that all the attention to mail voting has not changed the fact that Americans are still voting in traditional brick and mortar polling places, not just on Election Day but in the days leading up to it. The report details basic facts about waiting to vote, what leads to lines at polling places and how election officials can gather and analyze data to prepare for the 2016 election. It also has a roadmap for reducing lines permanently. An essential read for the upcoming election season.

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The New York Times https://nyti.ms/2wXMSnS

POLITICS

Russian Election Hacking Efforts, Wider Than Previously Known, Draw Little Scrutiny

By NICOLE PERLROTH, MICHAEL WINES and MATTHEW ROSENBERG SEPT. 1, 2017

The calls started flooding in from hundreds of irate North Carolina voters just after 7 a.m. on Election Day last November.

Dozens were told they were ineligible to vote and were turned away at the polls, even when they displayed current registration cards. Others were sent from one polling place to another, only to be rejected. Scores of voters were incorrectly told they had cast ballots days earlier. In one precinct, voting halted for two hours.

Susan Greenhalgh, a troubleshooter at a nonpartisan election monitoring group, was alarmed. Most of the complaints came from Durham, a blue-leaning county in a swing state. The problems involved electronic poll books — tablets and laptops, loaded with check-in software, that have increasingly replaced the thick binders of paper used to verify voters' identities and registration status. She knew that the company that provided Durham's software, VR Systems, had been penetrated by Russian hackers months before.

"It felt like tampering, or some kind of cyberattack," Ms. Greenhalgh said about the voting troubles in Durham.

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There are plenty of other reasons for such breakdowns — local officials blamed human error and software malfunctions — and no clear-cut evidence of digital sabotage has emerged, much less a Russian role in it. Despite the disruptions, a record number of votes were cast in Durham, following a pattern there of overwhelming support for Democratic presidential candidates, this time Hillary Clinton.

But months later, for Ms. Greenhalgh, other election security experts and some state officials, questions still linger about what happened that day in Durham as well as other counties in North Carolina, Virginia, Georgia and Arizona.

After a presidential campaign scarred by Russian meddling, local, state and federal agencies have conducted little of the type of digital forensic investigation required to assess the impact, if any, on voting in at least 21 states whose election systems were targeted by Russian hackers, according to interviews with nearly two dozen national security and state officials and election technology specialists.

The assaults on the vast back-end election apparatus — voter-registration operations, state and local election databases, e-poll books and other equipment — have received far less attention than other aspects of the Russian interference, such as the hacking of Democratic emails and spreading of false or damaging information about Mrs. Clinton. Yet the hacking of electoral systems was more extensive than previously disclosed, The New York Times found.

Beyond VR Systems, hackers breached at least two other providers of critical election services well ahead of the 2016 voting, said current and former intelligence officials, speaking on condition of anonymity because the information is classified. The officials would not disclose the names of the companies.

Intelligence officials in January reassured Americans that there was no indication that Russian hackers had altered the vote count on Election Day, the bottom-line outcome. But the assurances stopped there.

Government officials said that they intentionally did not address the security of the back-end election systems, whose disruption could prevent voters from even casting ballots.

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questions than answers.

Neither VR Systems — which operates in seven states beyond North Carolina — nor local officials were warned before Election Day that Russian hackers could have compromised their software. After problems arose, Durham County rebuffed help from the Department of Homeland Security and Free & Fair, a team of digital election-forensics experts who volunteered to conduct a free autopsy. The same was true elsewhere across the country.

"I always got stonewalled," said Joe Kiniry, the chief executive and chief scientist at Free & Fair.

Still, some of the incidents reported in North Carolina occur in every election, said Charles Stewart III, a political scientist at the Massachusetts Institute of Technology and an expert on election administration.

"Election officials and advocates and reporters who were watching most closely came away saying this was an amazingly quiet election," he said, playing down the notion of tampering. He added, though, that the problems in Durham and elsewhere raise questions about the auditing of e-poll books and security of small election vendors.

Ms. Greenhalgh shares those concerns. "We still don't know if Russian hackers did this," she said about what happened in North Carolina. "But we still don't know that they didn't."

Disorder at the Polls

North Carolina went for Donald J. Trump in a close election. But in Durham County, Hillary Clinton won 78 percent of the 156,000 votes, winning by a larger margin than President Barack Obama had against Mitt Romney four years earlier.

While only a fraction of voters were turned away because of the e-poll book difficulties — more than half of the county cast their ballots days earlier — plenty

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of others were affected when the state mandated that the entire county revert to paper rolls on Election Day. People steamed as everything slowed. Voters gave up and left polling places in droves — there's no way of knowing the numbers, but they include more than a hundred North Carolina Central University students facing four-hour delays.

At a call center operated by the monitoring group Election Protection, Ms. Greenhalgh was fielding technical complaints from voters in Mississippi, Texas and North Carolina. Only a handful came from the first two states.

Her account of the troubles matches complaints logged in the Election Incident Reporting System, a tracking tool created by nonprofit groups. As the problems mounted, The Charlotte Observer reported that Durham's e-poll book vendor was Florida-based VR Systems, which Ms. Greenhalgh knew from a CNN report had been hacked earlier by Russians. "Chills went through my spine," she recalled.

The vendor does not make the touch-screen equipment used to cast or tally votes and does not manage county data. But without the information needed to verify voters' identities and eligibility, which county officials load onto VR's poll books, voters cannot cast ballots at all.

Details of the breach did not emerge until June, in a classified National Security Agency report leaked to The Intercept, a national security news site. That report found that hackers from Russia's military intelligence agency, the G.R.U., had penetrated the company's computer systems as early as August 2016, then sent "spear-phishing" emails from a fake VR Systems account to 122 state and local election jurisdictions. The emails sought to trick election officials into downloading malicious software to take over their computers.

The N.S.A. analysis did not say whether the hackers had sabotaged voter data. "It is unknown," the agency concluded, whether Russian phishing "successfully compromised the intended victims, and what potential data could have been accessed."

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VR Systems' chief operating officer, Ben Martin, said he did not believe Russian hackers were successful. He acknowledged that the vendor was a "juicy target," given that its systems are used in battleground states including North Carolina, Florida and Virginia. But he said that the company blocked access from its systems to local databases, and employs security protocols to bar intruders and digital triggers that sound alerts if its software is manipulated.

On Election Day, as the e-poll book problems continued, Ms. Greenhalgh urged an Election Protection colleague in North Carolina to warn the state Board of Elections of a cyberattack and suggest that it call in the F.B.I. and Department of Homeland Security. In an email, she also warned a Homeland Security election specialist of the problems. Later, the specialist told her Durham County had rejected the agency's help.

When Ms. Greenhalgh, who works at Verified Voting, a nonprofit dedicated to election integrity, followed up with the North Carolina colleague, he reported that state officials said they would not require federal help.

"He said: 'The state does not view this as a problem. There's nothing we can do, so we've moved on to other things,'" Ms. Greenhalgh recalled. "Meanwhile, I'm thinking, 'What could be more important to move on to?'"

An Interference Campaign

The idea of subverting the American vote by hacking election systems is not new. In an assessment of Russian cyberattacks released in January, intelligence agencies said Kremlin spy services had been collecting information on election processes, technology and equipment in the United States since early 2014.

The Russians shied away from measures that might alter the "tallying" of votes, the report added, a conclusion drawn from American spying and intercepts of Russian officials' communications and an analysis by the Department of Homeland Security, according to the current and former government officials.

The most obvious way to rig an election — controlling hundreds or thousands

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of decentralized voting machines — is also the most difficult. During a conference of computer hackers last month in Las Vegas, participants had direct access and quickly took over more than 30 voting machines. But remotely infiltrating machines of different makes and models and then covertly changing the vote count is far more challenging.

Beginning in 2015, the American officials said, Russian hackers focused instead on other internet-accessible targets: computers at the Democratic National Committee, state and local voter databases, election websites, e-poll book vendors and other back-end election services.

Apart from the Russian influence campaign intended to undermine Mrs. Clinton and other Democratic officials, the impact of the quieter Russian hacking efforts at the state and county level has not been widely studied. Federal officials have been so tight-lipped that not even many election officials in the 21 states the hackers assaulted know whether their systems were compromised, in part because they have not been granted security clearances to examine the classified evidence.

The January intelligence assessment implied that the Russian hackers had achieved broader access than has been assumed. Without elaborating, the report said the Russians had "obtained and maintained access to multiple U.S. state and local election boards."

Two previously acknowledged strikes in June 2016 hint at Russian ambitions. In Arizona, Russian hackers successfully stole a username and password for an election official in Gila County. And in Illinois, Russian hackers inserted a malicious program into the Illinois State Board of Elections' database. According to Ken Menzel, the board's general counsel, the program tried unsuccessfully "to alter things other than voter data" — he declined to be more specific — and managed to illegally download registration files for 90,000 voters before being detected.

On Election Day last year, a number of counties reported problems similar to those in Durham. In North Carolina, e-poll book incidents occurred in the

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counties that are home to the state's largest cities, including Raleigh, Winston-Salem, Fayetteville and Charlotte. Three of Virginia's most populous counties — Prince William, Loudoun, and Henrico — as well as Fulton County, Georgia, which includes Atlanta, and Maricopa County, Arizona, which includes Phoenix, also reported difficulties. All were attributed to software glitches.

Senator Mark Warner, Democrat of Virginia and vice chairman of the Senate intelligence committee, argued for more scrutiny of suspicious incidents. "We must harden our cyber defenses, and thoroughly educate the American public about the danger posed" by attacks," he said in an email. "In other words: we are not making our elections any safer by withholding information about the scope and scale of the threat."

In Durham County, officials have rejected any notion that an intruder sought to alter the election outcome. "We do not believe, and evidence does not suggest, that hacking occurred on Election Day," Derek Bowens, the election director, said in a recent email.

But last month, after inquiries from reporters and the North Carolina State Board of Elections and Ethics Enforcement, Durham county officials voted to turn over laptops and other devices to the board for further analysis. It was not clear which government agency or private forensics firm, would conduct the investigation.

Ms. Greenhalgh will be watching closely. "What people focus on is, 'Did someone mess with the vote totals?'" she said. "What they don't realize is that messing with the e-poll books to keep people from voting is just as effective.'"

Follow Nicole Perlroth, Michael Wines, and Matthew Rosenberg on Twitter.

A version of this article appears in print on September 2, 2017, on Page A1 of the New York edition with the headline: Little Effort to Investigate in States Targeted by Election Hacking.

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Evidence of Voter Fraud and the Impact that Regulations to Reduce Fraud have on Voter Participation Rates

John R. Lott, Jr. [1]
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Abstract

The results provide some evidence of vote fraud and that regulations that prevent fraud can actually increase the voter participation rate. It is hard to see any evidence that voting regulations differentially harm either minorities, the elderly, or the poor. While this study examines a broad range of voting regulations, it is still too early to evaluate any possible impact of mandatory photo IDs on U.S. elections. What can be said is that the non-photo ID regulations that are already in place have not had the negative impacts that opponents predicted. The evidence provided here also found that campaign finance regulations generally reduced voter turnout.

JEL codes: D73, D72

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[1] Senior Research Scholar. Michael Munger, Alex Tabarrock, and Clark Bensen provided helpful comments. I would like to thank John Matsusaka for providing me with his Initiative and Referendum Institute's Initiatives Database. The data on voter turnout in general elections; the margin of victories by state for presidential, gubernatorial, and US Senate races; and per capita income by county were provided by Clark Bensen. Roger Lott and Ryan Lott also provided very helpful research assistance on this paper.

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Introduction

Regulations to ensure the integrity of the voting process can reduce voter participation rates by making it more costly for people to vote. But to the extent that the regulations increase people's confidence that their votes will be properly counted, these regulations can actually encourage more people to vote. The trade-offs are everywhere. For example, absentee ballots make voting much more convenient, increasing the rate at which people vote, but some view them as "notorious" sources of voter fraud.[2,3] Although there has been some bi-partisan support for stricter registration and ID requirements (e.g., the Carter-Baker commission),[4] Democrats are concerned that stricter rules will discourage voters, while Republicans think that stricter rules are needed to ensure confidence in the voting process.[5] At the time of this writing, vigorous court battles are being waged in states from Arizona, Georgia, Indiana, and Missouri over exactly what is the impact of voter IDs.[6]

Almost 100 countries require that voters present a photo ID in order to vote.[7] Many directly tie voter registration with provision of an ID and only allow an ID that is specifically issued for voting.[8] Some countries either do not allow or greatly restrict absentee ballots.[9]

For example, all voters in Mexico must present voter IDs that include not only a photo but also a thumbprint. The IDs themselves are essentially counterfeit-proof, with special holographic images, imbedded security codes, and a magnetic strip with still more security information. As an extra precaution, voters' fingers are dipped in indelible ink to prevent people from voting multiple times.

Mexican voters cannot register by mail; they have to personally go to their registration office and fill out forms for their voter ID. When a voter card is ready three months later, it is not mailed to the voter as it is in the U.S. Rather, the voter must make a

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[2] Editorial, "Voter Suppression in Missouri," New York Times, August 10, 2006.

[3] The fraud itself can increase turnout as any "brought" votes are more easily checked and thus worth more. For example, past research found that when states introduced secret ballots during the 1882 to 1950 there was an 8 to 12 percent drop in turnout (Lott and Kenny, 1999, p. 1196). Without the ability to determine how people had voted, there was not the same return to paying them to vote.

[4] A survey done for John Fund (2004, p. 5) by Rasmussen Research indicates that 82 percent of all Americans, including 75 percent of Democrats, agree with the statement that "people should be required to show a driver's license or some other form of photo ID before they are allowed to vote."

[5] Democrats have also been concerned that the choice of voting machines will cause votes for some offices not to be recorded. This does not apply to our general election results since, as I will explain later, the data used here is generally the total number of voters turning out and not the number of votes recorded in a particular race. For a discussion of the literature see Lott (2003 and 2005).

[6] David Lieb, "Missouri Voter ID Law Latest in National Test Cases," Associated Press, August 20, 2006 (http://www.belleville.com/mld/belleville/news/state/15320528.htm) and Reuters, "Supreme Court Allows Arizona Voter ID Law," Reuters News Wire, October 20, 2006 (http://www.washingtonpost.com/wp-dyn/content/article/2006/10/20/AR2006102001203.html).

[7] Building Confidence in U.S. Elections, p. 5.

[8] Ibid.

[9] For example, as a result of fraud in their 1988 Presidential election, absentee ballots were not allowed in Mexico until 2006 (see Associated Press, "Mexican Senate approves mail-in absentee ballots for Mexicans living abroad," AZcentral.com, April 28, 2005 (http://www.azcentral.com/specials/special03/articles/0428mexicovote-ON.html).

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second trip to a registration office to pick it up. The 2006 election was the first since the 1991 reforms in which absentee ballots were available, but only for voters who requested a ballot at least six months prior to the election.[10]

In the U.S. during 2006, three states -- Georgia, Indiana and Missouri -- have adopted regulations requiring that a photo ID be presented before a person is allowed to vote. Other states are considering following suit, generating heated debate and court cases. Some claim that such a requirement would prevent "many people" from voting,[11] but the evidence so far is scant. The primary evidence presented measures the portions of the population who do not possess driver's licenses (Overton, 2006 and Pawasarat, 2005). The National Commission on Electoral Reform (2001, p. 77) claims that about 92 percent of the voting age population have driver's licenses and that other photo IDs -- such as student IDs, military IDs, employee IDs, and passports – "probably" only increases this percentage "slightly." Yet, this provides only a very crude measure of whether photo ID requirements will prevent people from voting. Some people without driver's licenses will not vote even when there are no photo ID requirements and others will go out to get a photo ID in order to vote. Just because an individual does not have a photo ID at some point in time (when they may not have any reason to have such an ID), does not imply that they will not get one when they have a good reason to do so.

A better measure of how difficult it is to meet the ID requirement is the percent of registered voters who have driver's licenses (Brace, 2005). But even this measure ignores that people can adjust their behavior and that some of those who currently do not have a photo ID might acquire one once it is required. Others have pointed out that even these estimates are unnecessarily alarmist because the lists of registered voters have not been updated to remove people who have died or moved away, and the statistics thus exaggerate the number of voters who are listed by motor vehicle bureaus as not currently having driver's licenses (Bensen, 2005).

There is also the question of the disparate impact on different groups. Would minorities or the elderly, people who are said to be less able to bear the costs of getting photo IDs, be particularly discouraged? The courts, the media, and Democratic governors who have vetoed photo ID requirements have raised concerns over this impact.[12] Again, the existing evidence involves either comparing the percent of adults with photo IDs or the percent of registered voters with driver's licenses.

There is some evidence from other countries, such as Mexico, that strict anti-fraud regulations have actually been associated with increases in voter turnout.[13] Nevertheless, it

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[10] The United Kingdom faced claims of widespread vote fraud from "postal votes" during the 2005 election. Zoe Hughes, "Reform call after postal votes row," The Journal (Newcastle, UK), May 21, 2005, p. 4.
[11] Editorial, "Voter Suppression in Missouri," New York Times, August 10, 2006.
[12] Wisconsin Democratic Governor Jim Doyle vetoed attempts at requiring photo IDs for voting three times and argued that "an ID requirement would keep poor people and the elderly who lack identification from the polls" (Associated Press, "Rule allow votes without license," The Capital Times (Madison, Wisconsin, August 5, 2006 http://www.madison.com/tct/mad/topstories//index.php?ntid=93713). See also Editorial, "Judge Blocks Requirement in Georgia for Voter ID," New York Times, July 8, 2006.
[13] Since the 1991 election reforms in Mexico, there have been three presidential and four congressional elections. In the three presidential elections since the 1991 reforms, 68 percent of eligible citizens have voted, compared to only 59 percent in the three elections prior to the rule changes. However, there is only a very

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is difficult to measure the effect of mandatory photo IDs in the United States for a simple reason: there has been only one primary election in just one state, Indiana, during which a photo ID requirement was in place. The Georgia and Missouri mandatory photo ID laws have not yet gone into effect. Florida, Hawaii, Louisiana, Oklahoma, and South Carolina all had non-mandatory photo ID laws by 2004, with South Dakota joining the group by 2006. In these states, voters are asked to present a photo IDs, but if the voter does not have a photo ID, he or she is still allowed to voter if they meet one of a wide range or requirements such as providing non-photo IDs or signing a pledge that the voter is who they say that they are. It remains to be seen whether the mere threat of asking for a photo ID has any effect on voting behavior. So far no one has investigated the impact of these or other laws on voting participation rates.

Similar concerns have been raised about regulations requiring non-photo IDs. For example, Tova Andrea Wang with The Century Foundation notes that "for those who do not have the kinds of up-to-date non-photo ID necessary—and many minority and urban voters, for example those who live in multiple family dwellings, simply will not—getting identification from the government will present costs and burdens for voters who simply want to exercise their constitutional right to vote."[14]

The general question remains as to the extent to which other restrictions might affect voter participation rate and whether the impacts are different across different groups of voters. In the following sections, I will briefly discuss how to test how voting regulations affect turnout and then provide some empirical evidence.

Voter IDs on Voter Participation Rates

Ensuring integrity of the voting process can either increase or decrease voter participation rates. Eliminating fraud may appear to reduce the voter participation rate simply because there will be fewer "false" votes.

These distinct theories regarding potential impact are as follows:

1) **The Discouraging Voter Hypothesis:** This hypothesis sets forth the possible explanation that, with little or no fraud to eliminate, the regulations discourage legitimate voters from voting. This hypothesis predicts that, to the extent that regulations have any effect, they will reduce the number of people who vote. Critics of stricter regulations argue that minorities, the elderly, and the poor are most affected.
2) **The Eliminating Fraud Hypothesis:** This hypothesis sets forth the possible explanation that, if there is indeed substantial fraud and the regulations eliminate it,

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trivial increase for congressional elections. Comparing the four congressional elections prior to the reforms with the four afterwards produces only a one percent increase from 56 to 57 percent. See Klesner (2003) for the turnout data up through the 2003 elections.

[14] Tova Andrea Wang, "ID and Voting Rights," The Century Foundation, August 29, 2005 (http://www.tcf.org/list.asp?type=TN&pubid=1084). Maria Cardona, a spokeswoman for the Democratic National Committee, is quoted as saying that "ballot security and preventing voter fraud are just code words for voter intimidation and suppression" (Fund, 2004, p. 3).

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the measured voter participation rate will decline even though actual lawful participation levels are not truly affected. Votes that shouldn't have been recorded will now no longer be recorded and voter participation will appear to decline.

3) **The Ensuring Integrity Hypothesis:** This hypothesis sets forth the possible explanation that greater confidence that the election is fair and that votes will be counted accurately encourages additional voter participation.[15] (Similarly, if the regulations reduce confidence, depending on the extent of the drop in participation suggested by the two previous hypotheses, this hypothesis of greater participation may be true even if overall voter participation declines.)

Any or all of these effects may be occurring at the same time. The difficult task becomes determining how to disentangle the possible effects that voting regulations can have. Both the Discouraging Voter and Eliminating Fraud hypotheses predict that to the extent that voting regulations have any effect, they will reduce the voter participation rate. While the Ensuring Integrity hypothesis may exist even if voter participation declines after the regulations are enacted, it is the only hypothesis that can explain increased voter participation.

Obviously, the simplest test is whether different voting regulations alter voter participation rates. However, as just noted, this test can only disentangle the hypotheses if voter participation increases.

There are two other possible ways of analyzing the data. The first is determining whether there are systematic differences in who is affected by the voting regulations. Even if the total voting participation rate does not show a statistically significant change, it is possible that certain groups -- such as minorities, the elderly or the poor -- face declines in participation rates and it is possible that such declines will occur systematically. In other words, do African-Americans face reductions in voter participation or is it particular random segments of African-Americans that appear to be more related to randomness than to any type of systematic discrimination.

The second and more powerful test is to examine what happens to voter participation rates in those geographic areas where voter fraud is claimed to be occurring. If the laws have a much bigger impact in areas where fraud is said to be occurring, that would provide evidence for the Eliminating Fraud and/or Ensuring Integrity hypotheses. The point would be that the laws per se were not discouraging African-Americans or the elderly or the poor from participating, but that the change in participation in high fraud areas indicate that any drop was primarily due to eliminating fraudulent votes rather than the general impact of the voting regulations on certain types of citizens.

Over the 1996 to 2006 period studied here, there are a range of different regulations that

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[15] Sherry Swirsky, co-chair of Philadelphia Mayor Ed Rendell's Election Reform Task Force, noted in 1993 that "[But] the obsessive concern with fraud is what depresses voter turnout and registration in Philadelphia. It contributes to this ultimately destructive view that 'My vote doesn't matter, the whole system is corrupt.' The *Inquirer* has done a grave disservice to democracy and to this city. They have exaggerated the pervasiveness of fraud in elections." Scott Farmelant, "Dead Men Can Vote: Voting Fraud is alive and well in Philadelphia," Philadelphia City Paper, October 12-19, 2005 (http://www.citypaper.net/articles/101295/article009.shtml).

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can affect the cost of voting: photo IDs, non-photo IDs, same day registration, registration by mail, pre-election day in-poll voting, absentee ballot obtained without requiring an excuse, whether there is a closed primary, provisional ballots, and voting by mail (see Table 1).[16,17] During the period there were particularly large changes in the number of states with non-photo IDs, absentee ballots with no excuses, provisional ballots, and pre-election day in poll voting. The existing ID requirements, while not as strict as the mandatory photo IDs recently enacted by Georgia, Indiana and Missouri, may still make it more difficult for some people to vote. Only Indiana's rules had gone into effect during the time period studied here so it was simply not possible to test mandatory rules.

Other reforms, such as same day voter registration, absentee ballots without an excuse, and voting by mail, make it easier for people to vote and should increase voter participation rates but they may also make fraud easier. Same day voter registration makes it more difficult to accurately determine whether people are who they claim to be. Both Democrats and Republicans agree that the problems of vote fraud involved with absentee ballots and vote-by-mail are due to the difficulties in monitoring who ordered ballots and filled them out.[18] Election results have been overturned as a result of this type of fraud.[19] The New York Times has editorialized that "If the Legislature really wanted to deter fraud, it would have focused its efforts on absentee ballots, which are a notorious source of election fraud . . . ."[20] Even Democratic legislators have complained about fraudulent absentee ballots being used against them in Democratic primaries: "The problem I had seen was where these vote harvesters would go to old folks homes and bring empty ballots -- and vote for the actual voter . . . ."[21]

Likewise, provisional ballots also make voting easier; in theory, they allow a voter, who

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[16] John Fund (2004) has an extensive discussion about the fraud issues involved with each of these different types of regulations.

Motor Voter is not listed here because it was already adopted nationally prior to the 1996 general election. The timing for these laws were primarily obtained from the Republican National Committee's "Summary of State Voting Laws and Procedures" from November 1996 to July 2006. Electionline.org's Election Reform: What's Changed, What Hasn't and Why 2000-2006 (February 2006). Information on in-person absentee voting was obtained from a Nexis/Lexis search.

[17] A range of other types of regulations have also been previously examined for their impact on voter turnout including poll taxes, literacy tests, secret ballots, and woman's suffrage (Filer, Kenny, and Morton, 1991; Husted and Kenny, 1997; and Lott and Kenny, 1999).

[18] Signatures are required on these mail-in ballots, but as the bi-partisan National Commission on Election Reform noted "for practical reasons, most states do not routinely check signatures either on applications or on returned ballots, just as most states do not verify signatures or require proof of identity at the polls."

[19] "In 1993, a federal judge had to overturn a special state Senate election in which Democratic precinct workers had gone door to door with absentee ballot forms and "helped" voters fill them out." John Fund, "The Voter Integrity Project:
How to stop fraud and suppression? Ashcroft showed the way in 2002."

*Tuesday, September 30, 2003 (*http://www.opinionjournal.com/diary/?id=110004084).

[20] Editorial, "Voter Suppression in Missouri," New York Times, August 10, 2006.

[21] Polly Ross Hughes, "Texas Vote Fraud Law Under Fire," San Antonio Express-News, September 17, 2006 (posted on web)
(http://www.mysanantonio.com/news/metro/stories/MYSA091806.01B.voterfraud.2c76b68.html). Examples of this type of vote fraud are contained in Glenn R. Simpson and Evan Perez, "'Brokers' Exploit Absentee Voters; Elderly are Top Targets for Fraud," Wall Street Journal, December 19, 2000.

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has been the victim of some type of bureaucratic error (where their registration information has been misplaced) to be allowed to vote. Yet, there is the potential for fraud, when provisional ballots are issued to people for voting outside the precinct where they are registered and the possibility of voting in many different precincts. Some, such as John Fund (2004), claims, "We might have a Florida-style dispute spilling into the courts in several states where the presidential race is close, with one side calling for all provisional ballots to be tabulated ('Count Every Vote') and the other demanding that the law be scrupulously observed."

Again, just as with IDs, all these other rules could either increase or decrease voter participation. For example, lax absentee ballot rules can make it easier for some people to vote, but they can also increase fraud and thus discourage others from participating.

Other factors that determine voter participation rates include the closeness of races, the presence of initiatives and major races on the ballot, and income and demographic characteristics (e.g., Cox and Munger, 1989; Matsusaka, 1992 and 1993; and Gerber and Green, 2002).[22] The closer the races and thus the greater the interest in races, the more likely people will be to participate. For the general election data, data has been collected on the absolute percentage point differential between the top two finishers of that state's presidential race as well as for any gubernatorial or U.S. senatorial races. The Initiative and Referendum Institute's Initiatives Database is used to identify the number and types of initiatives that have appeared on general and primary election ballots from 1996 through 2004. Twenty-five different types of initiatives are identified ranging from those on abortion to Veteran's Affairs.[23]

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[22] This paper uses Matsusaka's distinction between initiatives and legislative measures. While I only have data on the initiatives on the ballot, presumably legislative measures matter also, though Matsusaka (1992) finds that initiatives are much more important in explaining voter turnout than are legislative measures. Matsusaka states that an "initiative" is a proposed law or constitutional amendment that has been put on the ballot by citizen petition. By contrast, a "legislative measure" or "legislative referendum" or "legislative proposition" is a proposed law or constitutional amendment that has been put on the ballot by the legislature.

The only variable that I did not follow Cox and Munger specification and use was campaign spending. In part I did this because they were examining turnout for only congressional races in a non-presidential election year. It is not clear how one would distribute presidential campaign spending across counties, especially since presidential campaigns target their expenditures. Given that I am using county level turnout data, similar concerns exist for gubernatorial and senate campaign expenditures. I hope that the margin of victory that I am using for presidential, gubernatorial, and US Senate campaigns as well as county fixed effects will pick up much of what these expenditures would measure. This is partly true if only because the level of expenditures is related to the margin of victory.

[23] The source of the information related to the Voting Age Population and general elections is the master election files of Polidata (www.polidata.org). Polidata compiles election-related information from state and local election officials around the country, year-by-year, on an ongoing basis, but only for general elections. This information includes registration and turnout statistics when available and election results by party, by office, by state and bycounty. In cases in which the election officials do not collect, compile or report the actual number of voters who requested ballots, the turnout is determined by the partisan race in the state that generated the highest number of votes. In a handful of cases this turnout may be the result of non-statewide races, such as those for the U.S. House or the State Legislature. There are several projections and estimates for the Voting Age Population, some released before an election and some released long after the election year. The Voting Age Population numbers used here are estimates based upon methodology developed by Polidata reflecting annual state-level estimates of the population released by the Bureau of the Census.

County level data on per capita income were obtained from the Regional Economic Information System (REIS). Nominal values were converted to real values by using the Consumer Price Index. State level

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The Evidence

The data here constitute county level data for general and primary elections. The general election data goes from 1996 to 2004. For the primary election, the data represents the time period from July 1996 to July 2006 for the Republican and Democratic primaries. However, the data does not go back to 1996 for all states because this analysis relies on primary data supplied by state Secretaries of State. Because of this limit on primary data, most of the estimates here will focus on the general election data.

How did these voter regulation impact voter participation rates? As a first crude measure, I only considered states that had changed their laws over time and compare how the participation rates changed when the laws changed (Table 2). Obviously this simple comparison ignores that many other factors are simultaneously changing. The analysis compares data from a single over time. The simple mean voter participation rates, with and without photo IDs, indicate that adopting photo IDs produced a drop in voter participation of 1.5 percentage points, a statistically insignificant change. On the other hand, a similar breakdown for non-photo IDs, absentee ballots with no excuses, provisional ballots, pre-election day in-poll voting, same day registration, registration by mail, and voting by mail all show statistically significant increases in voter participation rates. These other changes are much larger and indicate an increase of at least 4 percentage points. For registration by mail, an increase of 11.5 percentage points. (The raw means for all the data are shown in the appendix.)

Table 3 provides the first regression estimates. They are constructed to account for all the different types of voting regulations mentioned earlier: the closeness of presidential, gubernatorial, and U.S. Senate races, geographic and demographic differences. the number and types of voter initiatives, as well as national changes over time in voter participation rates. Six specifications are reported: three each examining the voter participation rate and the natural log of the voter participation rate. While all the estimates account for geographic and year fixed effects, the estimates report different combination of the other control variables. Specifications (1) and (4) examine only the ID requirements as well as the margin of victory for the presidential, gubernatorial, and U.S. Senate races. Specifications (2) and (5) include all the other variables except for information on the topics of individual initiatives. Finally, because of Matsusaka's (1992) evidence -- that the impact of initiatives on voter turnout vary dramatically with the issues that the initiative deals with -- specifications (3) and (6) include all dummy variables indicating the type of initiative being voted on. The regressions were run using ordinary least squares with clustering of counties by state and robust standard errors.

The results indicate only minimal support for the notion that IDs -- whether photo IDs with substitution or non-photo IDs -- reduce voting participation rates. Indeed, most voting regulations, in the vast majority of estimates, seem to have no statistically significant effects. In only one of the six specifications does requiring non-photo IDs imply a statistically significant effect. In that one case, specification (4) with the most minimal use of control variables, non-photo IDs are associated with a 3.9 percent reduction in voting

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unemployment rates were obtained from the Bureau of Labor Statistics. Poverty rate data was obtained from U.S. Department of Commerce.

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rates. Accounting for all the other factors in specification (6), drives this estimate down to about 2.2 percent.

Of the other voting regulations considered, only one - pre-election day voting - is consistently and significantly related to decreased voting rates. It implies about a 1.5 to 1.8 percentage point reduction in voting participation as the result of the law. This result is consistent with the Ensuring Integrity Hypothesis. The Discouraging Voter or Eliminating Fraud Hypotheses would imply that pre-election day voting should increase voting participation rates, either because the cost of voting has been reduced or because there is more fraud. The Ensuring Integrity Hypothesis can explain the drop in voting rates because increased fraud discourages others voting. Only one of the voting regulations considered implies a statistically significant impact and that is only for one specification. In that one specification, same day registration implies a 2.4 percentage point increase in voting rates, and that result is consistent with all three hypotheses.

Presidential election margins are the most instructive of any of the races in explaining voter turnouts. Among the initiatives, topics on abortion, animal rights, campaign finance, education, labor reform, and taxes get voters the most excited. By contrast, initiatives on business regulations almost put people to sleep, reducing voter participation by 12 percentage points. Hispanics vote at about a half of a percentage point lower rate than whites. In addition, much more of the adjusted-R^2 is explained when the simple percentage rate voter participation rate is used.

A few other specifications were also tried. For example, I included state specific time trends and squared values for the winning margins in presidential, gubernatorial, and senate races.[24] The results showed little change from those already presented. Because Florida from the 2000 election on and Ohio in 2004 have been singled out as either preventing or discouraging people from voting, a simple dummy variable was included for those state general elections. However, the coefficient was not statistically significant and actually positive (indicating that those states had slightly higher turnout during those elections, the opposite from what others have claimed).[25]

I also tried using data that I had available up until 2002 on most campaign finance regulations. Proponents of campaign finance regulations worry that the perception of corruption created by campaign donations discourage people from voting.[26] If so, campaign finance regulations should increase voter participation rates. Yet, the results imply that the regulations reduce voter turnout and their inclusion does not change the

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[24] See for example Cox and Munger (1989) for analogous specifications involving squared winning margins. I did also try including total county population (given that county size remains constant this will measure density as done by Cox and Munger) as well as the state poverty rate, but including these variables in specifications 3 and 6 did not cause any of the voting regulations to change from being significant to not significant nor cause the reverse to happen. The state level poverty rate will again be discussed later.

[25] For these types of claims regarding Florida and Ohio see Art Levine, "Salon's Shameful Six," Salon.com, August 15, 2006 (http://www.salon.com/news/feature/2006/08/15/states/index.html).

[26] Allan Cigler (2004) notes that "But the breakdown of the existing system of campaign finance regulation started to attract the attention of a number of additional interests, particularly foundations and think tanks disturbed by voter cynicism and concerned with the lack of voter participation in elections and the erosion of civic responsibility generally. Enhancing democracy through the lessening of the impact of money in politics was typically the goal of these organizations."

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estimated effects of voting regulations on voter participation shown in specifications (3) and (6) (see Table 4).[27] Limits on corporate donations to gubernatorial campaigns, political action committees, or political parties as well as limits on total gubernatorial campaign expenditures all reduce voter participation rates. Limits on these types of campaign expenditures by individuals are very highly correlated with the limits on corporations and unions and drop out of the specifications. Only limits on union donations to political parties are associated with high voter participation rates. Given previous analysis that implies that campaign finance regulations lower the rate at which incumbents are defeated, increase their win margins, and decrease the number of candidates running for office (Lott, 2006), it is not particularly surprising that these regulations also discourage people from voting.[28]

Finally, the dummy variables for photo IDs and non-photo IDs are replaced with trends for before and after these laws. Past research has shown that the changes in the cost of voting will only gradually change the voter participation (Lott and Kenny, 1999). Because of this looking at simply the before and after average voter participation rates can be quite misleading. For example, suppose that the voter participation rate was rising before IDs were required and falling afterwards and that these before and after changes were perfectly symmetrical. If that were the case, the simple dummy variables used earlier that measure the before and after averages would imply no change in voting participation rates even though voting participation rates fell after the laws were enacted as either the Discouraging Voter or Eliminating Fraud Hypotheses predicted. In fact, redoing specifications 3 and 6 in Table 3 imply that voter participation rates were falling before photo IDs were adopted and rising afterwards and that voter participation rates were falling both before and after non-photo IDs were adopted.[29] However, in neither case were the before and after trends statistically significantly different from each other.[30] This test clearly shows that the marginally significant drop in the natural log of voter participation after non-photo IDs are adopted is merely a continuation of a pre-existing trend.

Tables 5 and 6 attempt to see whether the different voter regulations have a differential impact across African-Americans, Hispanics and whites. Table 5 shows the coefficient estimates for percentage of the voting age population represented by each of the races interacted with the various voting regulations. Table 6 examines whether the coefficients

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[27] See Lott (2006) for a detailed discussion of this data. Using these variables reduces the sample size by 23 percent so they are included separately and were not included in the regressions reported in Table 3.

[28] Matsusaka (1993), Matsusaka and Palda (1993), and Cox and Munger (1989) have recognized that the impact of campaign finance laws on how competitive races are could either increase or decrease turnout. See also Milyo (1997) and Primo and Milyo (2006).

[29] The before trend is the absolute number of elections prior to the law (e.g., 4 elections before, 3 elections before, etc.). Similarly, the absolute number of elections after the law (e.g., 1st election after the law, 2nd election after the law, etc.). For specification 3 from Table 3, the coefficient for the before Photo ID trend is .0087 (t-statistic = 2.15) and for the after Photo ID trend is .0052 (t-statistic =0.76). For specification 6 from Table 3, the coefficient for the before Photo ID trend is .0087 (t-statistic = 2.15) and for the after Photo ID trend is .0052 (t-statistic =0.76). See Lott (2000, Chp. 9) for a discussion of why these before and after trends are preferable to looking at the before and after averages.

[30] For specification 3 from Table 3, the F-test for Photo IDs (Photo ID Trend Before Law = - Photo ID Trend After Law) is 0.00 (Prob > F = 0.9837) and Photo IDs (Photo ID Trend Before Law = - Photo ID Trend After Law) is 2.39 (Prob > F = 0.1225). For specification 6 from Table 3, the F-test for Photo IDs (Photo ID Trend Before Law = - Photo ID Trend After Law) is 0.69 (Prob > F = 0.4056) and Photo IDs (Photo ID Trend Before Law = - Photo ID Trend After Law) is 0.52 (Prob > F = 0.4718).

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for any particular regulation are statistically different between the different races. With two exceptions, it is very difficult to see any differential impact across these racial groups. Voting by mail increases African-Americans' voting rates relative to whites and lowers Hispanics' voting rates relative to whites. Absentee ballots also increase the voting rate of African-Americans relative to Hispanics. But none of the other voting regulations impacts these different races differently.

Table 7 tries a similar breakdown by voter age and again it is difficult to see many significant differences between different age groups. The F-tests shown in the last column compare age groups from 20 to 29, 30 to 39, 40 to 49, and 50 to 64 year olds with the estimates for 65 to 99 year olds. In all these estimates only the differences between 50 to 64 year olds and 65 to 99 year olds are significantly different from each other and that is true for non-photo IDs, absentee ballots without an excuse, provisional ballots, and pre-election day in-poll voting or in-person absentee voting regulations. But all these results are much more indicative of 50 to 64 year olds being different from any of the other age groups than it is an indication that 65 to 99 year olds are adversely affected. There is no evidence that any of these voting regulations impact those over 65 years of age in a manner that differs from the impact on voters from 20 to 50 years of age.

Figures 1 and 2 are a result of a regression that breaks down the estimates by both race, age and gender. The regression that generated these figures corresponded to specification (3) in Table 3 that interacts those factors with just photo ID requirements. Again it is hard to see these regulations as differentially harming either the elderly, African-Americans, Hispanics, or women. In Figure 1, the one standout estimate is African-American females 50 to 64 years of age, a group that shows a big drop in their share of the voting age population from photo IDs. But this contrasts sharply with African-American females who are 40 to 49 and 65 to 99 years of age. It does not appear that there is anything systematic about being either African-American, female or elderly that causes one to be adversely impacted by photo IDs. The estimates in Figure 2 similarly show a random pattern by race and age. Interestingly in this case it is white males between 65 and 99 who appear to be most adversely affected by photo IDs.

Figures 1 and 2 can be redone for other voting regulations, but whether it is same day registration, pre-election day in poll voting/in person absentee voting, or voting by mail, it is very difficult to observe systematic differences by race, age, or gender.

To test whether poor people are impacted differently from others by these different voting regulations, I tried interacting the voting regulations shown in specification (3) from Table 3 first by county income and then separately by state level poverty rates. In none of these cases were these coefficients statistically significant. This implies that none of the voting regulations either adversely affected or improved poor people's voter participation rates.

Separating out the different hypotheses

The American Center for Voting Rights provides what appears to be the only comprehensive national list of voter fraud "hot spots." Their 2005 report lists six major "hot spots": Cuyahoga County, Ohio; St. Clair County, Illinois; St. Louis County, Missouri; Philadelphia, Pennsylvania; King County, Washington; and Milwaukee County, Wisconsin. If anti-fraud regulations only reduce turnout in counties with high level of

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fraud but not in the other counties in the country, it would be hard to argue that the anti-fraud regulations generally significantly raise the cost of non-fraudulent voters to vote. The impact of anti-fraud regulations in high fraud counties allows one to differentiate Eliminating Fraud and Ensuring Integrity hypotheses, while the changes in voter turnout in counties without much fraud, should help identify the Discouraging Voter hypothesis.

Again I started with specification (3) in Table 3 but added in variables that interacted the voting regulations with a dummy variable equaling 1 for these six counties. Table 8, Section A reports just the coefficients from this regression for these interactions and each of the voting regulations by themselves.

As shown earlier, ID requirements have no significant impact on voting participation rates when all the counties for which they are imposed are examined. However, most telling, non-photo IDs increased voting participation in the "hot spots," supporting the Ensuring Integrity hypothesis. Neither of the other theories can explain why requiring IDs increases voter participation. The same also holds true for increasing the length of the registration deadline; it, too, increases voter turnout despite making voting more difficult. The results for pre-election day in-poll voting also imply that vote fraud is occurring. In general, pre-election day in-poll voting is associated with reduced turnout, consistent with the Ensuring Integrity hypothesis. The fact that turnout increases in the fraud "hot spots" when pre-election day in-polling is allowed implies that the "hot spots" are exploiting this rule for vote fraud.

Ironically, while Republicans have been the ones pushing hardest for the new regulations, it appears as if the Democrats might actually be the ones who gain the most. These fraud "hot spots" that experience the biggest increase in turnout tend to be heavily Democratic.

These results shed some light on the possible endogeniety of these voting regulations. In particular, whether the adoption of these regulations occurs because of anticipated changes in voter participation rates. This endogeniety is not an obvious concern as there is no effect on average when voter regulations are adopted (the effect only appears in those counties identified as "hot spots"). To get the result that the IDs are associated with a higher voter turnout rate because of fraud, one would have to believe that the legislation was passed because legislators anticipated even more fraud to be occurring in the future. Yet, news discussions about adopting an ID requirement raise concerns about fraud, but they do not point to expectations of fraud getting even worse. More importantly, these are statewide laws where the effect is only observed in one county and it is necessary to believe that the expected change in turnout in just one county drove the adoption of the state law. In addition, most of the states with these regulations did not even have a "hot spot."[31]

Replacing the non-photo ID variable interacted with the county fraud hot spot dummy with the before and after trends times the fraud dummy produced strong and statistically significant results. The results show that the voting participation rate was falling by .8%

[31] Nor is it obvious that these state level regulations should have been adopted because of anticipated voter turnout changes in just one county in the state, just these "hot spot" counties. In addition, a regression that replaced the dummy for the "hot spot" counties with a dummy for the states containing these "hot spots" did not show statistically significant relationships.

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(t-statistic = 0.62) each election prior to the law and rising by a statistically significantly 4.3% (t-statistic = 1.81) per election after it. The F-statistic for the difference in trends was 6.47 (Prob > F = 0.011).

Table 8, Section B takes these interactions one step further and interacts these voting regulations interacted with the "hot spots" dummy with first the closeness of the gubernatorial and then the closeness of the senate elections. Presumably if fraud is to occur, it will most likely occur in these "hot spots" when there are close elections. These results make it possible to disentangle the Discouraging Voter and Eliminating Fraud hypotheses as a negative coefficient just in fraud "hot spots" with close elections seems only consistent with the Eliminating Fraud hypothesis since it is not clear why there should only be a relative drop voting rates in hot spots with close races if the Discouraging Vote hypothesis was correct.

These new interactions show support for both the Eliminating Fraud and Ensuring Integrity hypotheses. Most voting regulations affect turnout in hot spots when closer gubernatorial or senate elections. For senate elections, non-photo IDs, provisional ballots, pre-election day in-poll, the length of registration deadlines, and same day registration are all associated with statistically significant and imply the possibility of fraud. For gubernatorial elections, the statistically significant results for absentee ballots with no excuses, provisional ballots, and the registration deadline are also only consistent with the Ensuring Integrity hypothesis. The coefficient for non-photo IDs is also only consistent with the Eliminating Fraud hypothesis, but the estimate is not statistically significant.

What is most interesting with the results in sections A and B is that as one looks more closely at areas where fraud is most likely to occur more and more of the coefficients become statistically significant and the size of the t-statistics become fairly large. When looking at all counties, only one coefficient is statistically significant. When looking at "hot spots" three of the six coefficients are statistically significant. When looking at "hot spots" and accounting for the tightness of the race, eleven of the fourteen coefficients are statistically significant at least at the 10 percent and seven are statistically significant at least at the 1 percent level.

Table 9 provides some simple estimates for U.S. Senate primaries by party.[32] The sample here was only a third of the size of the general election estimates. Overall, Democratic primary turnout rates seem to be much more affected by voting regulations than do Republican turnout rates. However, the only results that are related to fraud involve provisional ballots. Both specifications for the Democratic primary produce coefficients that imply the Ensuring Integrity Hypothesis: despite the lower cost of voting from provisional ballots, there is a statistically significant 4.4 percentage point drop in the voting rate. For Republicans the coefficients are of the opposite sign and statistically significant. Thus, the results do not allow us to disentangle the alternative hypotheses.

Finally, it is doubtful that there will be as much fraud in the primaries as in the general election. This is likely if only because fraudulent voting against members of one's own

[32] The county level on votes by U.S. Senate race was obtained by going online at the different Secretary of State websites (http://www.nass.org/sos/sosflags.html). Some states only had this data available back to 2000 and others did not have the data available by race at the county level.

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party is more likely to expose the methods publicly.[33] To test this, I again included another set of variables that interacted the voting regulations with counties that were identified as being "hot spots" of fraud. Possibly because of the fewer number of observations, it was only possible to test the interaction for non-photo IDs, but that interaction was never statistically significant, thus indicating that there was no fraud occurring in either the Democratic or Republican senate primaries.

Conclusion

There is some evidence of vote fraud. Regulations meant to prevent fraud can actually increase the voter participation rate. It is hard to see any evidence that voting regulations differentially harm minorities, the elderly, or the poor. While this study examines a broad range of voting regulations, it is still too early to evaluate any possible impact of mandatory photo IDs on U.S. elections. What can be said is that the non-photo ID regulations that are already in place have not had the negative impacts that opponents predicted.

One particularly valuable finding is that voting regulations have a different impact on turnout in counties where fraud is alleged to be rampant. These results indicate that while these voting regulations have little impact on turnout generally, certain regulations do significantly impact turnout in these so-called "hot spots."

Contrary to the claims that campaign finance regulations will encourage voter participation by reducing the perception of political corruption, campaign finance regulations reduced voter participation rates.

Following other recent work showing that campaign finance regulations entrench incumbents, reduce the number of candidates running for office, and increase win margins (all factors associated with less exciting campaigns), these results find that campaign finance regulations usually reduce voter turnout.

[33] I would like to thank Ryan Lott for mentioning this point to me.

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References

American Center for Voting Rights Legislative Fund, "Vote Fraud, Intimidation, and Suppression in the 2004 Presidential Election," American Center for Voting Rights Legislative Fund, Washington, DC, August 2, 2005.

Associated Press, "Primary systems used in the 50 states," Associated Press, June 26, 2000.

Bensen, Clark H., "Indiana Voter Identification Requirement," Polidata – Political Data Analysis, October 2005.

Brace, Kimball W., "Report of the Matching of Voter Registration and Driver's License Files in Indiana Democratic Party et al. v. Todd Rokitz et al.," Electronic Data Services, September 2005.

Commission on Federal Election Reform, **Building Confidence in U.S. Elections**, American University, September 2005.

Cox, Gary and Michael C. Munger, "Closeness, Expenditures, and turnout in the 1982 US House Elections," ***American Political Science Review***, vol. 83 (1989): 217-231.

Cigler, Allan J., "Enron, a perceived crisis in public confidence, and the Bipartisan Campaign Reform Act of 2002," ***The Review of Policy Research***, March 1, 2004, Vol. 21, p. 233.

Filer, John E.; Lawrence W. Kenny; and Rebecca B. Morton, "Voting Laws, Educational Policies, and Minority Turnout," ***Journal of Law and Economics***, Vol. 34 (October 1991): 371-393.

Fund, John, "Stealing Elections: How Voter Fraud Threatens Our Democracy," Encounter Books: New York, New York, (2004).

Husted, Thomas A., and Lawrence W. Kenny, "The Effect of the Expansion of the Voting Franchise on the Size of Government," ***Journal of Political Economy***, Vol. 105 (February 1997): 54-82.

Klesner, Joseph L., "The Not-So-New Electoral Landscape in Mexico," Working Paper, Department of Political Science, Kenyon College, September 15-16, 2003.

Lott, John R., Jr., and Lawrence W. Kenny, "Did Women's Suffrage Change the Size and Scope of Government," ***Journal of Political Economy***, 107 (December 1999): 1163-1198.

Lott, John R., Jr., "Nonvoted Ballots and Discrimination in Florida," ***Journal of Legal Studies*** 32 (January 2003): 181-220.

AMERICAN OVERSIGHT

Lott, John R., Jr., "Campaign Finance Reform and Electoral Competition," ***Public Choice***, forthcoming 2006.

Man, Anthony, "Lines, Accusations Put All Sides on Edge," ***Sun-Sentinel*** (Fort Lauderdale, Fl.), November 2, 2004, p. 1A.

Matsusaka, John G., "Election Closeness and Voter Turnout: Evidence from California Ballot Propositions," ***Public Choice***, Vol. 76 (1993): 313-334.

Matsusaka, John G., "Economics of Direct Legislation," ***Quarterly Journal of Economics***, Vol. 107, no. 2 (May 1992): 541-571.

Matsusaka, John G. and Filip Palda, "The Downsian Voter Meets the Ecological Fallacy," ***Public Choice***, Vol. 76 (1993): 855-878.

Milyo, Jeffrey, "The economics of campaign finance," ***Public Choice***, Vol. 93 (1997): 245-270.

National Commission on Electoral Reform, "To Assure Pride and Confidence in the Electoral Process," Miller Center of Public Affairs, University of Virginia and the Century Foundation, August 2001.

Overton, Spencer, "Voter Identification," ***Michigan Law Review***, December 2006: forthcoming.

Pawasarat, John, "The Driver License Status of the Voting Age Population in Wisconsin," Employment and Training Institute, University of Wisconsin-Milwaukee, June 2005.

Primo, David M. and Jeffrey Milyo, "Campaign Finance Laws and Political Efficacy: Evidence from the States," ***Election Law Journal***, Vol. 5 (2006).

Republican National Committee, "Summary of State Voting Laws and Procedures," compiled by Republican National Committee: Washington D.C. (volumes released every two years from 1996 to 2006).

Steitzer, Stephenie, "Bill would let all vote in primaries," ***Cincinnati Enquirer***, January 24, 2002, p. 1B.

Zorn, Eric, "Polling Place Privacy Pared in Primary," ***Chicago Tribune***, March 17, 1998, p. 1.

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Table 1: Number of States with Different Voting Regulations from 1996 to July 2006						
Regulation	Year					
Voting Regulation	1996	1998	2000	2002	2004	2006
Photo ID (Substitutes allowed, the one exception was Indiana in 2006, which did not allow substitutes)	1	2	4	4	6	8
Non-photo ID	15	14	10	25	44	45
Absentee Ballot with No Excuse	10	14	21	21	24	27
Provisional Ballot	29	29	26	36	44	46
Pre-election day in poll voting/in-person absentee voting	8	10	31	31	34	36
Closed Primary	21	19	22	29	30	24
Vote by mail*	0	0	1	1	1	2
Same day registration	3	3	4	4	4	6
Registration by mail	46	46	46	46	49	50
Registration Deadline in Days	22.94	23.45	23.49	23.00	22.75	22.31

* Thirty-four of Washington State's counties will have an all-mail primary election in 2006, but it is after the period studied in this paper. "In the counties with operational poll sites for the public at large, which include King, Kittitas, Klickitat, Island, and Pierce, an estimated 67 percent of the electorate will still cast a mail ballot." US State News, "Office of Secretary of State Warns: Be cautious with your primary ballots – splitting tickets to cost votes," US State News (Olympia, Washington), August 29, 2006.

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Table 2: The Average Voter Turnout Rate for States that Change Their Regulations: Comparing When Their Voting Regulations are and are Not in Effect (Examining General Elections from 1996 to 2004)			
	Average Voter Turnout Rate During Those Elections that the Regulation is not in Effect	Average Voter Turnout Rate During Those Elections that the Regulation is in Effect	Absolute t-test statistic for whether these Averages are Different from Each Other
Photo ID (Substitutes allowed)	55.31%	53.79%	1.6154
Non-photo ID	51.85%	54.77%	7.5818***
Non-photo ID (Assuming that Photo ID rules are not in effect during the years that Non-photo IDs are not in Effect)	51.92%	54.77%	7.0487***
Absentee Ballot with No Excuse	50.17%	54.53%	10.5333***
Provisional Ballot	49.08%	53.65%	12.9118***
Pre-election day in poll voting/in-person absentee voting	50.14%	47.89%	3.8565***
Same day registration	51.07%	59.89%	7.3496****
Registration by mail	50.74%	62.11%	13.8353***
Vote by Mail	55.21%	61.32%	3.7454***

*** F-statistic statistically significant at the 1 percent level.
** F-statistic statistically significant at the 5 percent level.
* F-statistic statistically significant at the 10 percent level.

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Table 3: Explaining the Percent of the Voting Age Population that Voted in General Elections from 1996 to 2004 (The various control variables are listed below, though the results for the county and year fixed effects are not reported. Ordinary least squares was used Absolute t-statistics are shown in parentheses using clustering by state with robust standard errors.)

	Endogenous Variables					
	Voting Rate			Ln(Voting Rate)		
Control Variables	(1)	(2)	(3)	(4)	(5)	(6)
Photo ID (Substitutes allowed)	-0.012 (0.6)	-0.0009 (0.1)	0.0020 (0.2)	-0.0407 (0.9)	-0.0195 (0.5)	-0.0164 (0.4)
Non-photo ID	-0.011(1.50)	-0.010 (1.3)	-0.0050 (0.6)	-0.039 (2.0)	-0.034 (1.62)	-0.0215 (1.0)
Absentee Ballot with No Excuse		0.0015 (0.2)	-0.0002 (0.0)		0.0063 (0.4)	-0.0003 (0.0)
Provisional Ballot		0.0081 (1.4)	0.0076 (1.2)		0.0139 (0.9)	0.0120 (0.7)
Pre-election day in poll voting/in-person absentee voting		-0.0183 (2.4)	-0.0145 (1.7)		-0.0520 (2.8)	-0.0453 (2.2)
Closed Primary		-0.005 (0.8)	-0.0036 (0.5)		-0.0037 (0.2)	0.0047 (0.2)
Vote by mail		0.0167 (1.7)	-0.0145 (0.4)		0.0107 (0.4)	-0.0803 (0.9)
Same day registration		0.0244 (2.0)	0.0221 (1.6)		-0.0004 (0.0)	-0.0093 (0.2)
Registration by mail		-0.002 (0.1)	0.0122 (0.5)		-0.0333 (1.2)	0.0143 (0.3)
Registration Deadline in Days		-0.0003 (0.3)	-0.0005 (0.5)		-0.0006 (0.3)	-0.0013 (0.5)
Number of Initiatives		0.0002 (0.1)	-0.0054 (1.7)		-0.0022 (0.5)	-0.0195 (2.0)
Real Per Capita Income		-8.60E-07 (0.4)	-9.84E-09 (0.0)		-5.30E-06 (1.3)	-3.68E-06 (1.1)
State unemployment rate		-0.0010 (0.2)	0.0003 (0.1)		-0.0067 (0.6)	0.0000 (0.0)
Margin in Presidential Race in State	-0.0011 (2.2)	-0.0010 (2.1)	-0.001 (1.8)	-0.0022 (1.6)	-0.0020 (1.6)	-0.0023 (1.5)
Margin in Gubernatorial Race	-0.0005 (1.6)	-0.0004 (1.3)	-0.0005 (1.7)	-0.0012 (1.2)	-0.0012 (1.3)	-0.0015 (1.4)
Margin in Senate Race	-0.0001(1.0)	-0.0001(0.8)	-0.0001 (0.7)	-0.0001(0.3)	-0.0001 (0.2)	-0.0001 (0.3)
Initiatives by Subject						
Abortion			0.0552 (1.7)			0.1702 (2.3)
Administration of Gov			0.0090 (0.5)			0.0433 (0.9)
Alien Rights			-0.0088 (0.5)			0.0269 (0.7)
Animal Rights			0.0295 (2.6)			0.0922 (3.0)
Bonds			-0.0039 (0.1)			0.0283 (0.3)
Business Regulations			-0.1202 (3.3)			-0.2925 (3.1)
Campaign Finance			0.0205 (1.7)			0.0559 (1.7)
Civil Rights			-0.0031 (0.2)			-0.0120 (0.4)
Death Penalty			(dropped)			(dropped)
Drug policy			0.0082 (0.3)			0.0258 (0.6)
Education			0.0244 (2.0)			0.0589 (1.8)
Election Reform			0.0234 (1.9)			0.0523 (1.3)
Environmental			0.0090 (0.9)			0.0315 (1.3)
Gaming			-0.0045 (0.3)			0.0030 (0.1)
Gun regulation			-0.0465 (1.6)			-0.0970 (1.2)
Health/medical			-0.0035 (0.3)			0.0250 (0.7)
Housing			(dropped)			(dropped)
Initiatives and Referendum Reform			-0.0018 (0.1)			-0.0142 (0.4)
Labor Reform			0.1890 (2.6)			0.4700 (2.6)
Legal Reform			0.0094 (0.5)			0.0502 (0.9)
Taxes			0.0649 (2.2)			0.1233 (1.8)

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Term Limits			0.0475 (1.5)			0.0563 (0.6)
Tort Reform			0.0339 (1.6)			0.1570 (2.5)
Utility Regulations			0.0115 (0.6)			0.0287 (0.6)
Veterans Affairs			0.0072 (0.7)			0.0189 (0.8)
% population 10 to 19		0.3865 (1.6)	0.1826 (2.3)		1.0608 (1.9)	0.4018 (2.0)
% population 20 to 29		-0.0745 (0.4)	-0.1375 (1.7)		-0.4571 (1.0)	-0.3354 (1.6)
% population 30 to 39		-0.2022 (0.6)	-0.0409 (1.5)		-0.3992 (0.6)	-0.0836 (1.3)
% population 40 to 49		0.2875 (0.8)	-0.0098 (0.5)		0.9769 (1.4)	-0.0149 (0.3)
% population 50 to 64		0.2997 (1.3)	0.5242 (2.5)		0.2354 (0.5)	0.7475 (1.6)
% population 65 to 99		0.1799 (0.8)	0.3475 (1.4)		0.4590 (1.1)	0.7881 (1.7)
% population Black		-0.0057 (1.9)	-0.0033 (1.1)		-0.0166 (2.2)	-0.0117 (1.5)
% population White		-0.0027 (1.1)	-0.0006 (0.2)		-0.0108 (1.7)	-0.0065 (1.0)
% population Hispanic		-0.0081 (5.4)	-0.0075 (5.4)		-0.0189 (6.1)	-0.0185 (6.0)
% population male		-0.2717 (1.2)	-0.3864 (1.7)		-0.5616 (1.2)	-0.7971 (1.8)
Adj R-squared	.8719	.8828	.8890	0.7958	0.8118	0.8189
F-statistic	117.45	260.55	13852387	75.89	164.02	7429623.34
Number of Observations	16028	14962	14962	16028	14962	14962
Fixed County and Year Effects	Yes	Yes	Yes	Yes	Yes	Yes

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Table 4: Including information on Campaign Finance Regulations Over General Elections from 1996 to 2002 (The regressions follow specifications (3) and (6) in Table 2 with the inclusion of the various campaign finance regulations reported below. All the variables reported below are dummy variables for whether the laws are in effect. A detailed discussion of these laws is provided in Lott (2006). The other coefficients shown in specifications (3) and (6) are not reported. Absolute t-statistics are shown in parentheses using clustering by state with robust standard errors.)

	Voting Rate		Ln(Voting Rate)	
	Coefficient	Absolute t-statistic	Coefficient	Absolute t-statistic
Photo ID (Substitutes allowed)	0.0170	0.41	0.0414	0.35
Non-photo ID	-0.0028	0.2	-0.0012	0.03
Absentee Ballot with No Excuse	-0.0002	0.02	0.0107	0.51
Provisional Ballot	0.0084	0.99	0.0124	0.56
Pre-election day in poll voting/in-person absentee voting	-0.0112	0.95	-0.0460	1.7
Closed Primary	-0.0051	0.42	-0.0039	0.12
Vote by mail	-0.0510	0.78	-0.0641	0.35
Same day registration	0.0837	3.17	0.1539	2.04
Registration by mail	(dropped)		(dropped)	
Registration Deadline in Days	-0.0004	0.2	-0.0024	0.34
Limits on Individual Donations to Gubernatorial Races	0.0168	0.86	0.0443	0.81
Limits on Corporate Donations to Gubernatorial Races	-0.0409	2.96	-0.0778	2.23
Limits on Union Donations to Gubernatorial Races	-0.0191	1.84	-0.0396	1.48
Limits on Individual Political Action Committee Donations to Gubernatorial Races	(dropped)		(dropped)	
Limits on Corporate Political Action Committee Donations to Gubernatorial Races	-0.0611	2.48	-0.1398	2.14
Limits on Union Political Action Committee Donations to Gubernatorial Races	(dropped)		(dropped)	
Limits on Individual Donations to Political Parties	(dropped)		(dropped)	
Limits on Corporate Donations to Political Parties	-0.0220	0.98	-0.1560	2.25
Limits on Union Donations to Political Parties	0.0558	4.56	0.1971	5.61
Campaign Expenditure Limits on Gubernatorial Races	-0.0786	2.76	-0.1987	2.35
Adj R-squared	0.8803		0.8064	
F-statistic	180253.79		8040.31	
Number of Observations	11630		11630	
Fixed County and Year Effects	Yes		Yes	

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Table 5: Do the voting regulations impact different racial groups differently: Interacting racial composition of the electorate with the different voting regulations using the specification in Table 2, column 1 (Absolute t-statistics are shown in parentheses using clustering by state with robust standard errors)		
Percent of the Voting Age Population that is African-American times the following regulations	Coefficient	t-statistics
Photo ID (Substitutes allowed)	0.0010	1.22
Non-photo ID	-0.0002	0.93
Absentee Ballot with No Excuse	0.0009	1.74
Provisional Ballot	0.0009	1.46
Pre-election day in poll voting/in-person absentee voting	-0.0008	1.16
Closed Primary	0.0001	0.21
Vote by mail	0.0077	5
Same day registration	0.0024	1.74
Registration by mail	-0.0003	0.24
Registration Deadline in Days	-0.0001	0.99
Percent of the Voting Age Population that is Hispanic times the following regulations		
Photo ID (Substitutes allowed)	-0.0014	0.99
Non-photo ID	0.0007	0.63
Absentee Ballot with No Excuse	-0.0015	1.3
Provisional Ballot	0.0000	0.04
Pre-election day in poll voting	0.0003	0.29
Closed Primary	0.0001	0.14
Vote by mail	-0.0020	2.56
Same day registration	-0.0034	1.35
Registration by mail	0.0001	0.87
Registration Deadline in Days	-0.0097	1.43
Percent of the Voting Age Population that is White times the following regulations		
Photo ID (Substitutes allowed)	0.0000	0.2
Non-photo ID	-0.0001	0.43
Absentee Ballot with No Excuse	0.0000	0.02
Provisional Ballot	0.0000	0.08
Pre-election day in poll voting	-0.0001	0.83
Closed Primary	-0.0001	1.3
Vote by mail	0.0011	2.3
Same day registration	0.0003	1.54
Registration by mail	0.0005	1.59
Registration Deadline in Days	0.0000	0.09

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Table 6: Comparing the Differential Impact of the Shares of the Population that are Black, Hispanic and White and Voting Regulations: Interacting the Population Shares of Different Racial Groups and Voting Regulations (absolute t-statistics are shown in parentheses using clustering by state with robust standard errors)

	Differences between interacting the percent of the voting age population that is African-American and separately the percent of the voting age population that is white with the different voting regulations		Differences between interacting the percent of the voting age population that is Hispanic and separately the percent of the voting age population that is white with the different voting regulations		Differences between interacting the percent of the voting age population that is African-American and separately the percent of the voting age population that is Hispanic with the different voting regulations	
	Coefficient for African-Americans – the coefficient for whites	F-statistic for difference in coefficients for African-Americans and whites	Coefficient for Hispanics – the coefficient for whites	F-statistic for difference in coefficients for Hispanics and whites	Coefficient for African-Americans – the coefficient for Hispanics	F-statistic for difference in coefficients for African-Americans and Hispanics
Photo ID (Substitutes allowed)	0.0010	1.47	-0.0014	0.77	0.0024	2.25
Non-photo IDs	-0.0002	0.51	0.0007	0.43	-0.0009	0.63
Absentee Ballot with No Excuse	0.0009	2.48	-0.0015	1.51	0.0023	3.73*
Provisional Ballot	0.0009	1.91	0.00005741	0	0.0009	0.38
Pre-election day in poll voting/in-person absentee voting	-0.0007	1.03	0.0003	0.14	-0.0010	0.76
Closed Primary	0.0002	0.28	0.0003	0.08	-0.0001	0
Vote by mail	0.0066	20.75***	-0.0031	12.17***	0.0098	34.06***
Same day registration	0.0021	2.41	-0.0037	2.06	0.0059	2.77
Registration by mail	-0.0008	0.43	-0.0004	2.16	-0.0004	1.91
Registration Deadline in Days	-0.00006	0.9	-0.0097	0.74	0.0097	1.54

*** F-statistic statistically significant at the 1 percent level.
** F-statistic statistically significant at the 5 percent level.
* F-statistic statistically significant at the 10 percent level.

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Table 7: Comparing the Differential Impact of the Shares of the Population by Age and Voting Regulations: Interacting the Population Shares of Different Racial Groups and Voting Regulations (absolute t-statistics are shown in parentheses using clustering by state with robust standard errors)				
Type of Voting Regulation	Percent of the Population	Coefficient	Absolute t-statistic	F-test comparing the coefficient for the 65 to 99 year old group with the other age groups
Photo ID (Substitutes allowed)	20 to 29 Years of Age	-0.162	0.79	0.37
	30 to 39 Years of Age	0.417	0.81	0.78
	40 to 49 Years of Age	0.123	0.23	0.08
	50 to 64 Years of Age	-0.189	0.51	0.08
	65 to 99 of Age	-0.032	0.15	
Non-photo ID Required	20 to 29 Years of Age	-0.074	0.46	0.26
	30 to 39 Years of Age	-0.334	1.21	1.35
	40 to 49 Years of Age	0.987	1.53	2.13
	50 to 64 Years of Age	-0.672	1.88	2.86*
	65 to 99 of Age	0.015	0.12	
Absentee Ballot with No Excuse	20 to 29 Years of Age	0.112	0.86	2.27
	30 to 39 Years of Age	-0.011	0.04	1.22
	40 to 49 Years of Age	0.211	0.5	0.17
	50 to 64 Years of Age	-0.631	1.86	5.07**
	65 to 99 of Age	0.377	2.6	
Provisional Ballot	20 to 29 Years of Age	0.105	0.85	2.50
	30 to 39 Years of Age	0.162	0.42	2.69
	40 to 49 Years of Age	-0.639	1.55	0.44
	50 to 64 Years of Age	0.657	2.11	4.28**
	65 to 99 of Age	-0.314	1.69	
Pre-election day in-poll voting	20 to 29 Years of Age	-0.007	0.08	1.99
	30 to 39 Years of Age	-0.318	0.83	0.00
	40 to 49 Years of Age	-0.130	0.28	0.13
	50 to 64 Years of Age	0.625	1.95	4.54**
	65 to 99 of Age	-0.324	1.89	
Closed Primary	20 to 29 Years of Age	-0.148	0.66	0.20
	30 to 39 Years of Age	-0.049	0.09	0.15
	40 to 49 Years of Age	0.453	0.95	1.62
	50 to 64 Years of Age	(dropped)		
	65 to 99 of Age	-0.258	1.51	
Vote by mail	20 to 29 Years of Age	-0.069	0.21	0.34
	30 to 39 Years of Age	0.057	0.12	0.28
	40 to 49 Years of Age	0.879	1.24	0.31
	50 to 64 Years of Age	-0.682	0.74	0.47
	65 to 99 of Age	0.417	0.56	
Same day registration	20 to 29 Years of Age	-0.083	0.16	1.16
	30 to 39 Years of Age	-1.086	1.66	2.70
	40 to 49 Years of Age	0.254	0.34	0.49
	50 to 64 Years of Age	0.227	0.24	0.82
	65 to 99 of Age	1.188	1.31	
Registration by mail	20 to 29 Years of Age	-0.234	0.99	0.72
	30 to 39 Years of Age	0.266	0.49	0.04
	40 to 49 Years of Age	0.038	0.05	0.03
	50 to 64 Years of Age	-0.013	0.02	0.04
	65 to 99 of Age	0.157	0.51	
Registration Deadline in Days	20 to 29 Years of Age	0.002	0.16	0.00
	30 to 39 Years of Age	-0.002	0.14	0.06
	40 to 49 Years of Age	-0.007	0.32	0.16

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	50 to 64 Years of Age	0.001	0.08	0.00
	65 to 99 of Age	0.002	0.16	

*** F-statistic statistically significant at the 1 percent level.
** F-statistic statistically significant at the 5 percent level.
* F-statistic statistically significant at the 10 percent level.

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Figure 1: The Change in Voting Participation Rates from the Adoption of Photo IDs by Race for Women

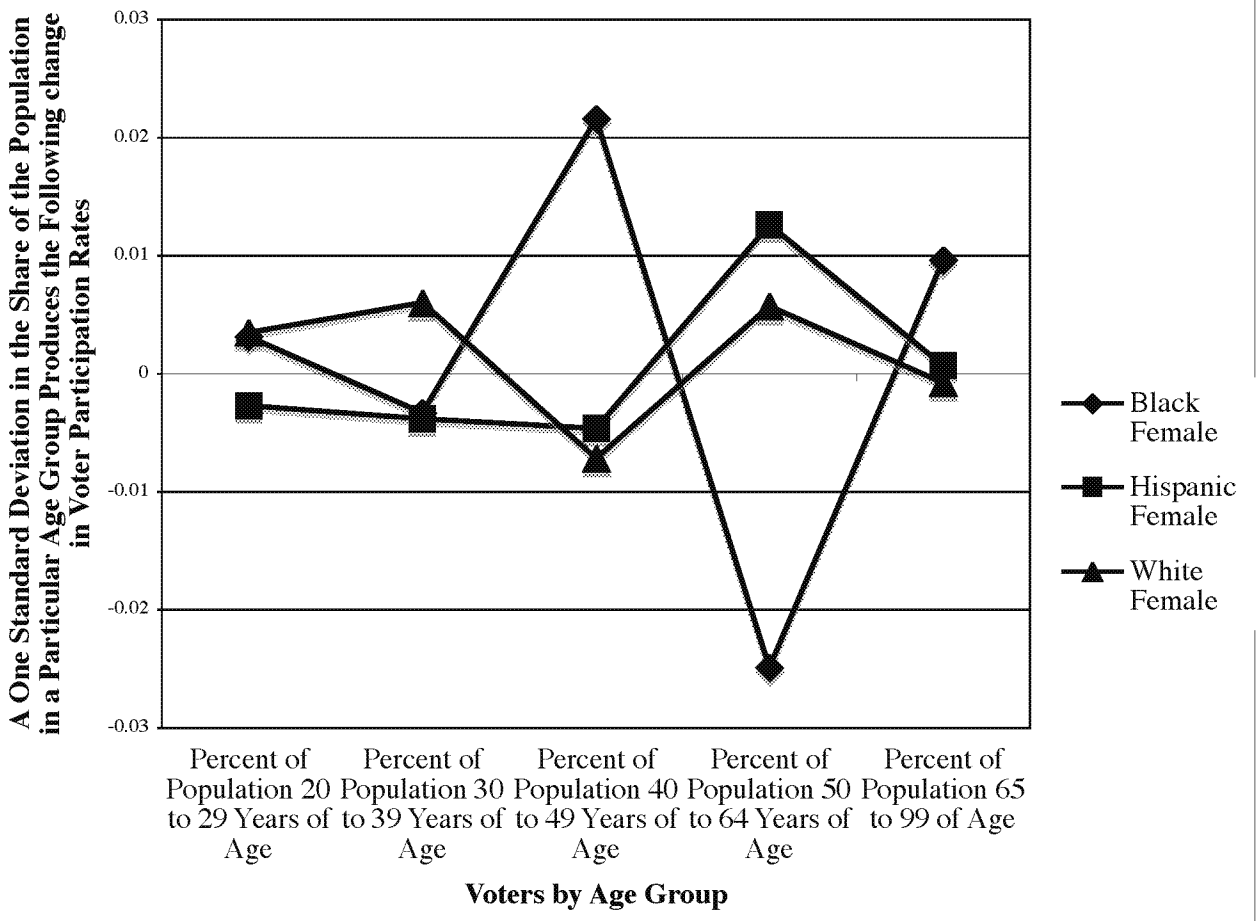

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Figure 2: The Change in Voting Participation Rates from the Adoption of Photo IDs by Race for Men

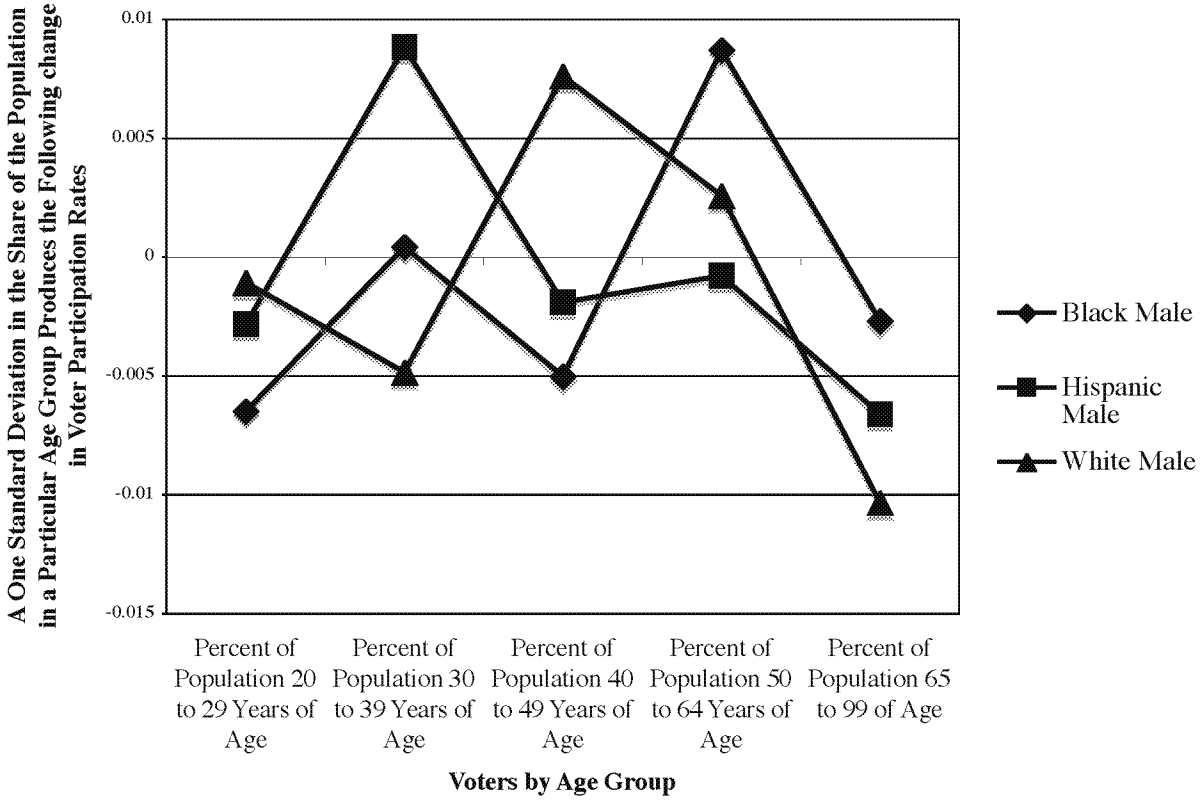

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Table 8: Separating Out the Discouraging Voter and Eliminating Fraud Hypotheses: Examining Whether the Six "Hot Spots" Counties Identified by the American Center for Voting Rights Have the Most Fraud. The Voting Regulations are interacted with the six "Hot Spots" Using Specification 3 in Table 2. (The six "hot spots" are Cuyahoga County, Ohio; St. Clair County, Illinois; St. Louis County, Missouri; Philadelphia, Pennsylvania; King County, Washington; and Milwaukee County, Wisconsin. Absolute t-statistics are shown in parentheses using clustering by state with robust standard errors.)

A) Interacting Voting Regulations with Fraud "Hot Spots" – These coefficients are from one regression

	Impact of Voting Regulations in "Hot Spots"		Impact of Voting Regulations for All Counties	
Voting Regulations that can Effect Fraud	Coefficient	Absolute t-statistic	Coefficient	Absolute t-statistic
Photo ID (Substitutes allowed)	Dropped		0.002	0.17
Non-photo ID Required	0.031	1.95*	-0.005	0.61
Absentee Ballot with No Excuse	0.003	0.2	0.0002	0.03
Provisional Ballot	0.006	0.4	0.008	1.14
Pre-election day in poll voting/in-person absentee voting	0.033	2.26**	-0.014	1.73*
Closed Primary			-0.004	0.46
Vote by mail	Dropped		-0.014	0.39
Same day registration	-0.005	0.28	0.022	1.57
Registration by mail	Dropped		0.012	0.52
Registration Deadline in Days	0.022	2.03**	-0.001	0.54
Adj R-squared	0.8890			
F-statistic	120907.07			
Number of Observations	14962			
Fixed County and Year Effects	Yes			

B) Interacting Voting Regulations with Fraud "Hot Spots" as well as Interacting with the Closeness of the Gubernatorial and Senate Races (Closeness is measured by the negative value of the difference the share of the votes between the top two candidates)

	Impact of Voting Regulations in "Hot Spots" Interacted with Closeness of Senate Races		Impact of Voting Regulations in "Hot Spots" Interacted with Closeness of Gubernatorial Races		Impact of Voting Regulations for All Counties	
Voting Regulations that can Effect Fraud	Coefficient	Absolute t-statistic	Coef.	Absolute t-statistic	Coef.	Abs. t-statistic
Photo ID (Substitutes allowed)	Dropped		Dropped		0.0021	0.17
Non-photo ID Required	-0.0023	3.98***	-0.0017	0.78	-0.0051	0.61
Absentee Ballot with No Excuse	-0.0012	1.12	-0.0055	3.58***	-0.0002	0.02
Provisional Ballot	-0.0030	1.69*	0.0026	1.83*	0.0076	1.16
Pre-election day in poll voting/in-person absentee voting	0.0026	3.75***	0.0064	1.88*	-0.0145	1.73*
Closed Primary					-0.0035	0.44
Vote by mail	Dropped		Dropped		-0.0145	0.4
Same day registration	-0.0046	2.28**	0.0237	6.48***	0.0221	1.58
Registration by mail	-0.0008	0.28	-0.0025	2.91***	0.0124	0.52
Registration Deadline in Days	0.0001	1.71*	0.0001	1.67*	-0.0005	0.54
Adj R-squared	0.8891					
F-statistic	600520.5					
Number of Observations	14962					
Fixed County and Year Effects	Yes					

*** t-statistic statistically significant at the 1 percent level for a two-tailed t-test.
** t-statistic statistically significant at the 5 percent level for a two-tailed t-test.
* t-statistic statistically significant at the 10 percent level for a two-tailed t-test.

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Table 9: Estimating the Impact of Voting Regulations on Voter Turnout in US Senate Primaries from 1996 to July 15, 2006 (Using specifications 2 and 4 in Table 2. Absolute t-statisics are reported.)								
	Vote Difference in Democratic Senate Primaries		Vote Difference in Republican Senate Primaries		ln(Vote Difference in Democratic Senate Primaries)		ln(Vote Difference in Republican Senate Primaries)	
	coefficient	t-statistic	coefficient	t-statistic	coefficient	t-statistic	coefficient	t-statistic
Photo ID (Substitutes allowed)	-0.007	0.13	-0.037	0.42	-0.125	0.37	0.639	0.71
Non-photo ID Required	-0.022	0.73	-0.038	1.6	-0.298	1.06	-0.638	2.22
Absentee Ballot with No Excuse	-0.027	1.59	-0.017	0.59	-0.330	1.89	-0.052	0.14
Provisional Ballot	-0.044	2.69	0.014	0.54	-0.265	1.78	0.467	1.87
Pre-election day in poll voting	0.000	0.01	-0.017	0.77	-0.139	0.65	-0.074	0.23
Closed Primary	-0.093	2.05	-0.013	0.51	-0.631	2.32	-0.213	0.72
Vote by mail	0.006	0.19	-0.009	0.23	0.274	1.49	0.137	0.34
Same day registration	(dropped)		(dropped)		(dropped)		(dropped)	
Registration by mail	-0.005	0.1	-0.102	3.33	0.157	0.57	-0.929	2.18
Registration Deadline in Days	0.001	0.61	0.003	0.72	0.013	0.91	-0.028	0.82
Adj R2	0.8070		0.8172		0.8357		0.8349	
F-statistics	550.84		542.38		155.62		1221.33	
Number of Observations	4807		4517		4803		4508	

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Data Appendix			
Variable	Number of Observations	Mean	Standard Deviation
Voter Turnout Rate	17428	0.5000424	0.1353909
Margin in Presidential Race in State	17428	6.461738	9.33715
Margin in Gubernatorial Race	17428	6.400746	11.24475
Margin in Senate Race	17428	12.88982	17.49234
Photo ID (Substitutes allowed)	16028	0.0505366	0.2190562
Non-photo ID	16028	0.4842151	0.4997664
Absentee Ballot with No Excuse	15782	0.3056647	0.460703
Provisional Ballot	15689	0.7011919	0.4577501
Pre-election day in poll voting/in-person absentee voting	17428	0.4666628	0.4989017
Closed Primary	15660	0.3690294	0.4825573
Vote by mail	16028	0.0067382	0.0818121
Same day registration	16028	0.0560893	0.2301014
Registration by mail	16028	0.9332418	0.2496105
Registration Deadline in Days	16028	24.0544	7.722113
Number of Initiatives	17428	0.9427932	2.186753
Real Per Capita Income	16937	13311	3453.604
State unemployment rate	17428	4.756009	1.139538
State poverty rate	17270	12.63536	3.50314
Types of Initiatives			
Abortion	17428	0.0093528	0.0962591
Administration of Gov	17428	0.0299518	0.1704593
Alien Rights	17428	0.0008607	0.0293256
Animal Rights	17428	0.0617397	0.2406891
Bonds	17428	0.003328	0.0575942
Business Regulations	17428	0.0063691	0.0795541
Campaign Finance	17428	0.0383291	0.1919951
Civil Rights	17428	0.0442392	0.2056319
Death Penalty	17428	0.003328	0.0575942
Drug policy	17428	0.0404521	0.1970228
Education	17428	0.0461327	0.2097784
Election Reform	17428	0.0262796	0.15997
Environmental	17428	0.0591577	0.2359263
Gaming	17428	0.0652972	0.2470567
Gun regulation	17428	0.0055658	0.0743982
Health/medical	17428	0.0527312	0.2235028
Initiatives and Referendum Reform	17428	0.0184186	0.1344635
Judicial Reform	17428	0.0020656	0.0454037
Labor Reform	17428	0.0379275	0.1910264
Legal Reform	17428	0.0245582	0.1547787
Taxes	17428	0.0743631	0.2623684
Term Limits	17428	0.0576658	0.2331171
Tort Reform	17428	0.0071724	0.084388
Transportation	17428	0.0038444	0.0618856
Utility Regulations	17428	0.007115	0.0840522
Veterans Affairs	17428	0.0030411	0.0550637
Demographics			
% population 10 to 19	17345	0.1489322	0.0197387
% population 20 to 29	17345	0.1213164	0.0341395
% population 30 to 39	17345	0.1388913	0.0212235
% population 40 to 49	17345	0.1492473	0.0173433
% population 50 to 64	17345	0.1597476	0.0253207
% population 65 to 99	17345	0.1471236	0.0407621
% population Black	17333	8.036701	12.63859
% population White	17333	78.76029	13.17825

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% population Hispanic	17345	4.681539	9.453796
% population male	17345	0.4254129	0.0315461
Total population by county	58148	93918	29443
Campaign Finance Regulations			
Limits on Individual Donations to Gubernatorial Races	13545	0.5963824	0.4906406
Limits on Corporate Donations to Gubernatorial Races	13545	1.724695	1.251119
Limits on Union Donations to Gubernatorial Races	13545	1.301292	1.128532
Limits on Individual Political Action Committee Donations to Gubernatorial Races	13545	0.560945	0.4962901
Limits on Corporate Political Action Committee Donations to Gubernatorial Races	13545	0.5663344	0.4955985
Limits on Union Political Action Committee Donations to Gubernatorial Races	13545	0.5663344	0.4955985
Limits on Individual Donations to Political Parties	13902	0.2593871	0.4383141
Limits on Corporate Donations to Political Parties	13902	0.2376636	0.4256673
Limits on Union Donations to Political Parties	13902	0.2517623	0.434041
Campaign Expenditure Limits on Gubernatorial Races	13902	0.0845921	0.2782838

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Bellitto v. Snipes

United States District Court for the Southern District of Florida

October 25, 2016, Decided; October 26, 2016, Entered on Docket

Case No. 16-cv-61474-BLOOM/Valle

Reporter
221 F. Supp. 3d 1354 *; 2016 U.S. Dist. LEXIS 148234 **; 2016 WL 6248602

ANDREA BELLITTO and AMERICAN CIVIL RIGHTS UNION, Plaintiffs, v. BRENDA SNIPES, in her official capacity as the Supervisor of Elections of Broward County, Florida, Defendant, v. 1199SEIU UNITED HEALTHCARE WORKERS EAST, Intervenor Defendant.

Prior History: *Bellitto v. Snipes, 2016 U.S. Dist. LEXIS 128840 (S.D. Fla., Sept. 20, 2016)*

Counsel: **[**1]** For Andrea Bellitto, Plaintiff: H. Christopher Coates, LEAD ATTORNEY, Public Interest Legal Foundation, Plainfield, IN; J. Christian Adams, LEAD ATTORNEY, PRO HAC VICE, Public Interest Legal Foundation, Plainfield, IN; Joseph A. Vanderhulst, LEAD ATTORNEY, PRO HAC VICE, Publix Interest Legal Foundation, Plainfield, IN; Mathew Daniel Gutierrez, LEAD ATTORNEY, Foley, Lardner LLP, Miami, FL; William Earl Davis, Foley & Lardner, LLP, Miami, FL.

For American Civil Rights Union, Plaintiff: H. Christopher Coates, LEAD ATTORNEY, Public Interest Legal Foundation, Plainfield, IN; J. Christian Adams, LEAD ATTORNEY, PRO HAC VICE, Public Interest Legal Foundation, Plainfield, IN; Mathew Daniel Gutierrez, LEAD ATTORNEY, Foley, Lardner LLP, Miami, FL; William Earl Davis, Foley & Lardner, LLP, Miami, FL.

For Brenda Snipes, in her official capacity as the Supervisor of Elections of Broward County, Florida, Defendant: Burnadette Norris-Weeks, LEAD ATTORNEY, Fort Lauderdale, FL; Michelle Austin Pamies, LEAD ATTORNEY, PRO HAC VICE, Burnadette Norris-Weeks PA, Fort Lauderdale, FL.

For 1199SEIU United Healthcare Workers East, Intervenor Defendant: Cameron Bell, Scott Novakowski, Stuart C. Naifeh, LEAD ATTORNEYS, **[**2]** PRO HAC VICE, Demos, New York, NY; Catherine M. Flanagan, Michelle Kanter Cohen, LEAD ATTORNEYS, PRO HAC VICE, Project Vote, Washington, DC; Kathleen Marie Phillips, LEAD ATTORNEY, Phillips Richard & Rind, Miami, FL; Nicole G. Berner, LEAD ATTORNEY, PRO HAC VICE, Service Employees International Union, Deputy General Counsel, Washington, DC; Trisha Pande, LEAD ATTORNEY, PRO HAC VICE, Service Employees International Union, Washington, DC.

Judges: BETH BLOOM, UNITED STATES DISTRICT JUDGE.

Opinion by: BETH BLOOM

Opinion

[*1357] ORDER ON MOTIONS TO DISMISS

THIS CAUSE is before the Court upon Defendant Brenda Snipes's Second Motion to Dismiss, ECF No. [16] ("Defendant's Motion"), and Intervenor Defendant 1199SEIU United Healthcare Workers East's Motion to Dismiss, ECF No. [36], ("1199SEIU's Motion") (collectively, the

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"Motions"). The Court has reviewed the Motions, all supporting and opposing filings, the record in this case, and is otherwise fully advised in the premises. For the reasons that follow, Defendant's Motion is granted in part and denied in part, and 1199SEIU's Motion is denied.

I. BACKGROUND

Plaintiff American Civil Rights Union, Inc. ("ACRU") is a non-profit corporation "which promotes election integrity, compliance **[**3]** with federal election laws, government transparency, and constitutional government." ECF No. [12] ¶ 4 ("Amended Complaint"). Plaintiff Andrea Bellitto ("Bellitto") is a registered voter in Broward County and member of the ACRU. *See id.* ¶ 5. Defendant Brenda Snipes ("Snipes" or "Defendant") is the Supervisor of Elections of Broward County, Florida, and Intervenor Defendant 1199SEIU United Healthcare Workers East ("1199SEIU") is a labor union that represents approximately 25,000 healthcare workers and an additional 7,400 retired members in the State of Florida. *See id.* ¶ 6; ECF No. [23] at 6-7.

Plaintiffs ACRU and Bellitto (collectively, "Plaintiffs") initiated these proceedings on June 27, 2016 and filed an Amended Complaint thereafter, bringing two claims against Defendant under the *National Voter Registration Act of 1993 ("NVRA")*, *52 U.S.C. § 20507*.[1]

In Count I, Plaintiffs claim that Defendant "has failed to make reasonable efforts to conduct voter list maintenance programs, in violation of *Section 8 of NVRA*, *52 U.S.C. § 20507* and *52 U.S.C. § 21083(a)(2)(A)* [*Help America Vote Act ("HAVA")*]." Amended Complaint ¶ 28. In Count II, Plaintiffs claim that Defendant "has failed to respond adequately to Plaintiffs' written request for data, failed to produce or otherwise **[**4]** failed to make records available to Plaintiffs concerning Defendant's implementation of programs and activities for ensuring the accuracy and currency of official lists of eligible voters for Broward County, in violation of Section 8 of the NVRA, *52 U.S.C. § 20507(i)*." *Id.* ¶ 33. Plaintiffs seek an order from this Court (1) declaring that Defendant is in violation of Section 8 of the NVRA; (2) ordering Defendant to implement reasonable and effective registration list maintenance programs to cure failures to comply with the NVRA and ensure that non-citizens and ineligible registrants are not on Defendant's rolls; (3) ordering Defendant to substantively respond to Plaintiffs' written request for records concerning her implementation of programs and **[*1358]** activities to ensure the accuracy and currency of Broward County's voter registration list and provide access to election records; and (4) additional relief. *See id.* at 9-10.

Defendant filed a Motion to Dismiss Plaintiffs' Amended Complaint on August 18, 2016, moving to dismiss these proceedings in their entirety under *Rules 12(b)(1)* and *12(b)(6)* of the Federal Rules. Thereafter, 1199SEIU filed a motion to **[**5]** intervene, which the Court granted. *See* ECF Nos. [23], [29], [53]. 1199SEIU filed its own Motion to Dismiss on September 21, 2016, moving to dismiss Count I only of the Amended Complaint. Both Motions are now ripe for adjudication. *See* ECF Nos. [21], [22], [54], [63].

II. LEGAL STANDARD

A. *Rule 12(b)(1)*

"Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994)* (internal citations omitted). "It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Id.* (citing *Turner v. Bank of North*

[1] As do the parties, the Court refers to *52 U.S.C. § 20507* interchangeably as "Section 8," reflecting the statute's original location at ***Section 8 of Pub. L. 103-31, May 20, 1993, 107 Stat. 77***.

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America, 4 U.S. (4 Dall.) 8, 11, 1 L. Ed. 718, 4 Dall. 8 (1799)* and *McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 182-183, 56 S. Ct. 780, 80 L. Ed. 1135 (1936)*. A *Rule 12(b)(1)* motion challenges the district court's subject matter jurisdiction and takes one of two forms: a "facial attack" or a "factual attack." "A 'facial attack' on the complaint 'require[s] the court merely to look and see if [the] plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion.'" *McElmurray v. Consol. Gov't of Augusta-Richmond Cnty., 501 F.3d 1244, 1251 (11th Cir. 2007)* (quoting *Lawrence v. Dunbar, 919 F.2d 1525, 1529 (11th Cir. 1990)*). "A 'factual attack,' on the other hand, challenges the existence of subject matter jurisdiction based on matters outside the pleadings." **[**6]** *Kuhlman v. United States, 822 F. Supp. 2d 1255, 1256-57 (M.D. Fla. 2011)* (citing *Lawrence, 919 F.2d at 1529*); *see Stalley ex rel. U.S. v. Orlando Reg'l Healthcare Sys., Inc., 524 F.3d 1229, 1233 (11th Cir. 2008)* ("By contrast, a factual attack on a complaint challenges the existence of subject matter jurisdiction using material extrinsic from the pleadings, such as affidavits or testimony."). "In assessing the propriety of a motion for dismissal under *Fed. R. Civ. P. 12(b)(1)*, a district court is not limited to an inquiry into undisputed facts; it may hear conflicting evidence and decide for itself the factual issues that determine jurisdiction." *Colonial Pipeline Co. v. Collins, 921 F.2d 1237, 1243 (11th Cir. 1991)*. As such, "[w]hen a defendant properly challenges subject matter jurisdiction under *Rule 12(b)(1)*, the district court is free to independently weigh facts and 'may proceed as it never could under *Rule 12(b)(6)* or *Fed. R. Civ. P. 56*.'" *Turcios v. Delicias Hispanas Corp., 275 F. App'x 879, 880 (11th Cir. 2008)* (citing *Morrison v. Amway Corp., 323 F.3d 920, 925 (11th Cir. 2003)*).

B. *Rule 12(b)(6)*

Rule 8 of the Federal Rules requires that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief." *Fed. R. Civ. P. 8(a)(2)*. Although a complaint "does not need detailed factual allegations," it must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)*; *see Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, [*1359] 173 L. Ed. 2d 868 (2009)* (explaining that *Rule 8(a)(2)*'s pleading standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation"). In the same vein, a complaint may not rest on "'naked assertion[s]' devoid of 'further factual enhancement.'" **[**7]** *Iqbal, 556 U.S. at 678* (quoting *Twombly, 550 U.S. at 557* (alteration in original)). "Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly, 550 U.S. at 555*. These elements are required to survive a motion brought under *Rule 12(b)(6) of the Federal Rules of Civil Procedure*, which requests dismissal for "failure to state a claim upon which relief can be granted."

When reviewing a motion under *Rule 12(b)(6)*, a court, as a general rule, must accept the plaintiff's allegations as true and evaluate all plausible inferences derived from those facts in favor of the plaintiff. *See Chaparro, 693 F.3d at 1337*; *Miccosukee Tribe of Indians of Fla. v. S. Everglades Restoration Alliance, 304 F.3d 1076, 1084 (11th Cir. 2002)*; *AXA Equitable Life Ins. Co. v. Infinity Fin. Grp., LLC, 608 F. Supp. 2d 1349, 1353 (S.D. Fla. 2009)*. However, this tenet does not apply to legal conclusions, and courts "are not bound to accept as true a legal conclusion couched as a factual allegation." *Twombly, 550 U.S. at 555*; *see Iqbal, 556 U.S. at 678*; *Thaeter v. Palm Beach Cnty. Sheriff's Office, 449 F.3d 1342, 1352 (11th Cir. 2006)*. A court considering a *Rule 12(b)* motion is generally limited to the facts contained in the complaint and attached exhibits, including documents referred to in the complaint that are central to the claim. *See Wilchombe v. TeeVee Toons, Inc., 555 F.3d 949, 959 (11th Cir. 2009)*; *Maxcess, Inc. v. Lucent Technologies, Inc., 433 F.3d 1337, 1340 (11th Cir. 2005)* ("[A] document outside

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the four corners of the complaint may still be considered if it is central to the plaintiff's claims and is undisputed in terms of authenticity.") (citing *Horsley v. Feldt, 304 F.3d 1125, 1135 (11th Cir. 2002)*).

"On a *Rule 12(b)(6)* motion to dismiss, '[t]he moving party bears the burden to show that the complaint should be dismissed.'" *Sprint Sols., Inc. v. Fils-Amie, 44 F. Supp. 3d 1224, 1228 (S.D. Fla. 2014)* (quoting *Mendez—Arriola v. White Wilson Med. Ctr. PA, 2010 U.S. Dist. LEXIS 95091, 2010 WL 3385356, at *3 (N.D. Fla. Aug. 25, 2010)*). "The movant must support its arguments **[**8]** for dismissal with citations to legal authority." *Id.* (citing *S.D. Fla. L. R. 7.1(a)(1)*). "Where a defendant seeking dismissal of a complaint under *Rule 12(b)(6)* does not provide legal authority in support of its arguments, it has failed to satisfy its burden of establishing its entitlement to dismissal." *Id.* (citing *Superior Energy Servs., LLC v. Boconco, Inc., 2010 U.S. Dist. LEXIS 30196, 2010 WL 1267173, at *5-6 (S.D. Ala. Mar. 26, 2010)* and *United States v. Vernon, 108 F.R.D. 741, 742 (S.D. Fla. 1986)*). It is through these lenses that the Court considers the Motions.

III. DISCUSSION

Defendant Snipes argues that the Court must dismiss the Amended Complaint because Plaintiffs (1) have not alleged a cognizable claim over which the Court has subject-matter jurisdiction; (2) have failed to state a claim upon which relief can be granted; and (3) lack standing to bring their claims. Defendant's Motion at 9. 1199SEIU also moves the Court to dismiss Count I for Plaintiffs' failure to state a claim, arguing that Plaintiffs lack a cause of action because Defendant has fully complied with the NVRA's "explicit safe harbor procedure." 1199SEIU's Motion at 1. As the issues relate to this Court's jurisdiction, the Court first reviews Defendant's arguments that the Court lacks subject matter jurisdiction over Plaintiffs' **[*1360]** claims, and that Plaintiffs lack standing to file suit.

A. Subject Matter Jurisdiction

*1. [**9] Failure to include necessary party*

Defendant argues that the Court lacks subject matter jurisdiction because Plaintiffs failed to sue Florida's Secretary of State or the State of Florida. Defendant claims that these are the only entities that a private party can sue under the NVRA. *See* Defendant's Motion at 9. Relatedly, Defendant argues that Plaintiff ACRU lacks standing because it did not provide pre-suit notice to Florida's Secretary of State, and that Plaintiff Bellitto lacks standing because she did not provide pre-suit notice at all. *See id.* Unsurprisingly, Plaintiffs acknowledge that they only filed suit against Defendant Snipes, the Supervisor of Elections of Broward County, Florida, but argue that the NVRA requires nothing more. Under the circumstances of this case, the Court agrees.

At Count I of the Amended Complaint, Plaintiffs bring a claim against Defendant under Section 8 (*52 U.S.C. § 20507*) of the NVRA, a statute that provides requirements for the "administration of voter registration for elections for Federal office." *52 U.S.C. § 20507(a)*. *Section 20507(a)(4)* mandates that each state "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason **[**10]** of -- *(A)* the death of the registrant; or *(B)* a change in the residence of the registrant, in accordance with *subsections (b)*, *(c)*, and *(d)*." *52 U.S.C. § 20507(a)(4)*. At Count II of the Amended Complaint, Plaintiffs bring a claim under *52 U.S.C. § 20507(i)*, which provides that:

> (1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

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> (2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

52 U.S.C. § 20507(i). Section 20510 of the NVRA governs the civil enforcement of Section 8, providing for enforcement by:

> (a) Attorney General -- The Attorney General may bring a civil action in an appropriate district court for such **[**11]** declaratory or injunctive relief as is necessary to carry out this chapter.
> (b) Private right of action --
> 1. A person who is aggrieved by a violation of this chapter may provide written notice of the violation to the chief election official of the State involved.
>
> 2. If the violation is not corrected within 90 days after receipt of a notice under paragraph (1), or within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.
>
> **[*1361]** 3. If the violation occurred within 30 days before the date of an election for Federal office, the aggrieved person need not provide notice to the chief election official of the State under paragraph (1) before bringing a civil action under paragraph (2).

52 U.S.C. § 20510. This Court's jurisdiction, therefore, stems directly from § 20510(b), and Plaintiffs' standing to bring suit depends upon compliance with the statute.

"The NVRA centralizes responsibility in the state and in the chief elections officer, who is the state's stand-in." Scott v. Schedler, 771 F.3d 831, 839 (5th Cir. 2014). Under the NVRA, "[t]he chief elections officer is 'responsible for coordination of **[**12]** State responsibilities.'" *Am. Civil Rights Union v. Martinez—Rivera, 166 F. Supp. 3d 779, 792 (W.D. Tex. 2015)* (quoting 52 U.S.C. § 20509). And, in order to bring a private action under § 20510, a party must notice "the chief election official of the State involved," which in Florida, is the Secretary of State. *See* Fla. Stat. § 97.012 ("The Secretary of State is the chief election officer of the state"). Defendant argues that based on § 20510 and the NVRA's overall structure, Plaintiffs can only file suit against the State of Florida or Florida's Secretary of State. *See* ECF No. [22] at 2. Defendant, however, has not cited to a single case that expressly supports this position. Unaware of any contrary authority, the Court finds persuasive the Honorable Alia Moses's recent analysis in a similar case filed in the Western District of Texas. In *Martinez-Rivera, infra*, Judge Moses analyzed the same statutory provisions and relevant case law relied upon by the parties in this case, and found that "the NVRA itself is . . . silent on the subject of necessary parties," and that *Scott v. Schedler, infra*, "did not say that the Secretary of State is a necessary party to an NVRA suit." *Id. at 793* (citing 52 U.S.C. § 20510(b) and Scott, 771 F.3d at 833, 839). Reviewing Texas law, the court went on to find that the local defendant in that case — the Zavala County, **[**13]** Texas Tax Assessor-Collector — "has certain obligations under the NVRA as the designated voter registrar and state official." *Id.* Accordingly, and "[i]n the absence of a holding to the contrary," Judge Moses declined "to dismiss the . . . Complaint on standing grounds for failure to join the Secretary of State." *Id.*; *see* Ass'n of Cmty. Organizations for Reform Now v. Scott, 2008 U.S. Dist. LEXIS 101778, 2008 WL 5272059, at *2 (W.D. Mo. Dec. 17, 2008) ("The Secretary's absence from this litigation does not affect this court's ability to accord complete relief among existing parties. Plaintiffs have sued local election authorities . . . for their *own* violations of the NVRA and Missouri's implementing statutes." (analyzing 52 U.S.C. § 20506) (emphasis in the original)).

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The Court similarly finds that Defendant Snipes has certain obligations under the NVRA. Defendant is the Supervisor of Elections for Broward County, Florida. In that position, Defendant is designated by Florida law to maintain the voter rolls in Broward County. *See* Fla Stat. § 98.015(3) ("the supervisor shall update voter registration information"). As Plaintiffs allege and Defendant does not challenge, list maintenance obligations in Florida are placed predominantly, and in many instances exclusively, on the Supervisors of Elections. *See, e.g.*, Fla. Stat. §§ 97.021(43) ("voter registration official" is defined as **[**14]** the supervisors of elections); 97.052(6) (supervisors are responsible for following up on inadequate voter registration forms); 97.0525(4)-(6) (online applications, regardless of where received, are forwarded and processed by supervisors); 97.071 (voter information cards are provided by the supervisors); 97.1031 (changes of address are received and processed by the supervisors); 98.015 (describing **[*1362]** the office and duties of the supervisors, including custody of registration-related documents); 98.035(2) (the statewide system enables the supervisors to "provide, access, and update voter registration information"); 98.045(1) (supervisors responsible for determining eligibility of applicants); 98.045(2) (supervisors responsible for removal of registrants); 98.045(3) (supervisors responsible for maintaining and providing public access to "records concerning implementation of registration list maintenance programs and activities"); 98.045(4) (street address information is provided by the supervisors to the department); 98.075(1)-(6) (supervisors remove deceased, criminal, and other ineligible registrants upon receiving information from the secretary of state); 98.075(7) (describing procedures **[**15]** that must be followed by supervisors for removal of registrants upon receiving notice or information of ineligibility); 98.081(1) (original registration applications are in the custody of the supervisors); 98.093(3) (supervisors have a duty to perform list maintenance regarding ineligible voters). In fact, a Florida Supervisor is required to "conduct a general registration list maintenance program to protect the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records in the statewide voter registration system." Fla. Stat. § 98.065(1). And, while the Florida Secretary of State is tasked with "coordinat[ing] the state's responsibilities under the [NVRA] . . . The secretary may delegate voter registration duties and records maintenance activities to voter registration officials. Any responsibilities delegated by the secretary shall be performed in accordance with state and federal law." Fla. Stat. § 97.012(7), (11); *see* United States v. Missouri, 535 F.3d 844, 849 (8th Cir. 2008) ("By its plain language, [Section 8] . . . envisions the states will actively oversee a general program wherein many of the duties not specifically assigned to the states may be delegated.").

Accordingly, the Court finds that Defendant Snipes, like the Tax Assessor-Collector of Zavala **[**16]** County, Texas, has certain responsibilities under Florida law. As the Florida official directly responsible for voter list maintenance in Broward County, Defendant enables the Florida Secretary of State to maintain accurate and current voter registration rolls as mandated by the NVRA. *See* 52 U.S.C. § 20507; *see also Martinez—Rivera, 166 F. Supp. 3d at 792*. In this case, the alleged violation occurred as a direct result of Defendant's actions in Broward County, and so, "[i]f the Defendant has failed to meet her obligations, ACRU can bring a civil suit against her." *Martinez—Rivera, 166 F. Supp. 3d at 793*.

2. Standing

Defendant also challenges Plaintiffs' standing to bring suit, on account of Plaintiffs' alleged failure to send pre-suit notice as required by § 20510(b)(1). "Whether a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy is what has traditionally been referred to as the question of standing to sue." Sierra Club v. Morton, 405 U.S. 727, 731-32, 92 S. Ct. 1361, 31 L. Ed. 2d 636 (1972). "The plaintiff has the burden to clearly and specifically set forth facts sufficient to satisfy Art.

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III standing requirements." *Id.* (internal quotations and alternations omitted). In the context of standing to bring a private action pursuant **[**17]** to 52 U.S.C. § 20510(b), "failure to provide notice is fatal." Scott, 771 F.3d at 836.

Defendant concedes that Plaintiffs have standing assuming they provided proper notice within the meaning of 52 U.S.C. § 20510(b)(1). As to Plaintiff ACRU, the Court need not decide whether notice to Defendant suffices because ACRU sent a copy of the Notice to the **[*1363]** Florida's Secretary of State, the "chief election official" of Florida. *See* Amended Complaint ¶ 18; ECF Nos. [12-1] (the "Notice")[2]

at 2 ("This letter serves as the statutory notice to your county, required by 52 U.S.C. § 20510(b) . . . ."); [21] at 19; *see also Martinez—Rivera, 166 F. Supp. 3d at 807* (adopting Magistrate's Report and Recommendation stating notification properly "sent to the Zavala County Clerk and copied to Defendant and the Texas Secretary of State"). Regarding Plaintiff Bellitto, Plaintiffs concede that Bellitto did not send notice herself, arguing instead that as a member of the ACRU, Bellitto derives standing through ACRU's notice. *See* ECF No. [21] at 20. Bellitto has the burden to clearly and specifically establish standing to bring suit, *see* Sierra Club, 405 U.S. at 731-32, but has cited only to *Scott, infra*, in support of her position. *Scott*, however, found that an individual plaintiff *lacked* standing to sue for failure to send **[**18]** notice, and that said plaintiff could not "piggyback on the NAACP's notice." 771 F.3d at 836. Bellitto appears to cite *Scott* in an effort to distinguish it, stating that there is "no indication that the individual plaintiff in the *Scott* case was a member of the organizational plaintiff." ECF No. [21] at 20. However, while it may be true that an "association has standing to bring suit on behalf of its members" under certain circumstances, Hunt v. Washington State Apple Advert. Comm'n, 432 U.S. 333, 343, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1977), it does not necessarily follow that a *member* confers standing through her membership in that organization.

Under the facts of this case, the Court finds the analysis in *Scott* persuasive and analogous to the issue of Bellitto's standing to bring a Section 8-based claim. As in *Scott*, Bellitto did not herself comply with § 20510(b)(1)'s notice prerequisite. Like the notice in *Scott*, the ACRU's letter did not mention Bellitto "by name" or even refer to ACRU members, and thus, the Court finds the "notice letter . . . too vague to provide . . . an opportunity to attempt compliance as to [Bellitto] before facing litigation." Scott, 771 F.3d at 836 (internal quotations omitted); *see* ECF No. [12-1] at 1 ("Dear Ms. Snipes: I am writing on behalf of the American Civil Rights Union . . . ."). Accordingly Bellitto "has no basis for relief because [s]he did not file notice." Scott, 771 F.3d at 836; *see Martinez—Rivera, 166 F. Supp. 3d at 794* n.10 ("Although the Plaintiff attempts to take credit for communication sent by third parties to the Defendant as early as 2012, it appears from the Complaint that the September 12, 2013 letter represents the first contact between the Plaintiff and the Defendant. . . . Therefore, the Court disregards the earlier communication." (citing Scott, 771 F.3d at 836)). Bellitto has failed **[**20]** to meet her burden to establish standing to bring suit. Thus, Defendant's Motion is granted as to Plaintiff Bellitto's claims.

[*1364] B. Failure To State A Claim

Defendant also moves to dismiss the Amended Complaint under Rule 12(b)(6), arguing that the

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[2] "In ruling upon a motion to dismiss, the district court may consider an extrinsic document if it is (1) central to the plaintiff's claim; and (2) its authenticity is not challenged." SFM Holdings, Ltd. v. Banc of Am. Sec., LLC, 600 F.3d 1334, 1337 (11th Cir. 2010) (citing Day v. Taylor, 400 F. 3d 1272, 1276 (11th Cir. 2005). Here, Plaintiffs specifically refer to the Notice, and the document is central to Plaintiffs' claims. *See* Amended Complaint ¶ 18. In any event, "[w]hen a defendant properly challenges subject matter jurisdiction under Rule 12(b)(1) the district court is free to independently weigh facts, and 'may proceed as it never could under Rule 12(b)(6) or Fed. R. Civ. P. 56.'" Turcios, 275 F. App'x at 880 (citing Morrison, 323 F.3d at 925); *see* ***Martinez—Rivera, 166 F. Supp. 3d at 794*** ("To determine whether a party has provided adequate notice, a Court is not limited to the complaint **[**19]** alone, but may look to documents incorporated into the complaint by reference.").

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Amended Complaint "fail[s] to state how, if at all, Defendant failed to comply with any records requests," and fails to "account for the discretionary methods used by states for removal of registrants." Defendant's Motion ¶ 18; ECF No. [22] at 6. 1199SEIU similarly argues that the Court must dismiss Count I for Plaintiff's[3]

failure to state a claim, as the record shows that Defendant has exercised her discretion in a manner entirely consistent with the NVRA's "safe harbor" provision at 52 U.S.C § 20507(c)(1). *See* 1199SEIU Motion at 1-2. The Court addresses the movants' arguments jointly, as appropriate.

In the Amended Complaint, ACRU claims that "Defendant has failed to make reasonable efforts to conduct voter list maintenance programs, in violation of Section 8 of NVRA, 52 U.S.C. § 20507 and 52 U.S.C. § 21083(a)(2)(A)." Amended Complaint ¶ 28 (Count I). Plaintiff also claims that "Defendant has failed to respond adequately **[**21]** to Plaintiffs' written request for data, . . . in violation of Section 8 of the NVRA, 52 U.S.C. § 20507(i)." *Id.* ¶ 33 (Count II). Section 8 "provides an exhaustive list of circumstances justifying removal" of registered voters, and places restraints on a states' authority to remove individuals from voter lists. *A. Philip Randolph Inst. v. Husted, 838 F.3d 699, 2016 U.S. App. LEXIS 17378, 2016 WL 5328160, at *4 (6th Cir. Sept. 23, 2016)* (hereinafter, "*APRI*"). While Count I does not list the specific subsection of Section 8 Defendant allegedly violated, Count I is entitled "Failure to Conduct List Maintenance," and Plaintiff's claims are premised on Defendant's alleged failure to use a "reasonable effort" to comply with the NVRA. ACRU's claims, therefore, fall under § 20507(a)(4) of the NVRA, requiring that election officials "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters *by reason of* -- (A) the death of the registrant; or (B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d)." 52 U.S.C. § 20507(a)(4) (emphasis added). Under § 20507(c):

> A State may meet the requirement of subsection (a)(4) by establishing a program under which --
>
> **(A)** change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and
>
> **(B)** if it appears from information provided **[**22]** by the Postal Service that --
>
> **(i)** a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or
>
> **(ii)** the registrant has moved to a different residence address not in the same registrar's jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) to confirm the change of address.

[*1365] 52 U.S.C. § 20507(c)(1) ("subsection (c)(1)"). In addition to these explicit NVRA provisions, the parties dedicate extensive argument to the unwritten expanse of § 20507(a)(4) and HAVA's alleged effect on Section 8. However, for the purposes of the instant Motions, the Court finds dismissal improper because Plaintiff has alleged that Defendant failed to make a reasonable effort to remove ineligible voters by reason of death or

[3] As Defendant's Motion is granted as to Plaintiff Bellitto, the Court refers only to Plaintiff ACRU in the remainder of this Order.

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change of address.[4]

See 52 U.S.C. § 20507(a)(4)(A), (B). In particular, Plaintiff alleges that

> On information and belief, Defendant has been given reliable information regarding registered voters who *have either died or no longer reside at the [**23] address listed in their registration and has taken no action* to remove them as required by Florida Statutes § 98.075. On information and belief, in the Wynmoor community of Coconut Creek, for example, Defendant has received information regarding over 200 registered voters who have either died or who no longer reside in the community. . . . By failing to implement a program which takes reasonable steps to cure these circumstances, Defendant has violated NVRA and other federal list maintenance statutes.

Amended Complaint ¶¶ 13-14 (emphasis added). The Court finds this factual allegation and other claims made in the Amended Complaint are sufficient to state a claim under Section 8.

Both Defendant and 1199SEUI argue that ACRU's pleadings notwithstanding, Defendant complied with subsection (c)(1), a "safe harbor provision" that bars the claims at Count I. The parties' Motions cite to little authority in support of this position, **[**24]** and no authority has been presented to support dismissal at the pleading stage based on a defendant's stated compliance with subsection (c)(1). *See* 1199SEUI'S Motion at 6-7 (citing only to guidance from the Department of Justice at https://www.justice.gov/crt/national-voter-registration-act-1993-nvra , and Dobrovolny v. Nebraska, 100 F. Supp. 2d 1012, 1020 (D. Neb. 2000) (providing a general overview of the NVRA)). However, last month, the Sixth Circuit explicitly referred to subsection (c)(1) as the "so-called 'safe-harbor' procedure," noting that it "provide[s] states with an example of a procedure for identifying and removing voters who had changed residence *that would comply* with the NVRA's mandates and accompanying constraints." *APRI, F.3d , 2016 U.S. App. LEXIS 17378, 2016 WL 5328160, at *5* (emphasis added). Lacking guidance from the Eleventh Circuit, the Court finds persuasive the Sixth Circuit's reasoning in *APRI*, and finds that full compliance with subsection (c)(1) "would comply with the NVRA's mandates and accompanying constraints." *Id.* 1199SEUI claims that a letter from Defendant, attached to the Amended Complaint at Exhibit B, establishes that Defendant fully complied with subsection (c)(1), and that Exhibit B is sufficient "to defeat Plaintiff['s] claim that a legal violation has occurred." ECF No. [63] at 5 (citing *APRI*). *APRI*, however, addressed material distinct claims under Section 8 in the context of a motion for a permanent injunction. In this case, **[**25]** Plaintiff does not concede that Defendant fully complied with subsection (c)(1), but rather, specifically pleads that "[b]y failing to implement a program which takes reasonable steps to cure these circumstances, Defendant has violated NVRA and other federal list maintenance statutes." Amended Complaint ¶ 14. ACRU **[*1366]** has plead sufficient facts to support its claim that Defendant inadequately removed the names of registrants who have died or changed their address; whether Exhibit B establishes Defendant's full compliance with subsection (c)(1) and defeats Plaintiff's claims is a fact-based argument more properly addressed at a later stage of the proceedings. *See* Jackson v. BellSouth Telecommunications, 372 F.3d 1250, 1277 (11th Cir. 2004) (court properly considers defense only where "the complaint affirmatively and clearly shows the *conclusive applicability* of the defense to bar the action" (emphasis added) (internal quotations omitted)). Relatedly, the Court finds the factual explanation proffered by 1199SEUI in its Motion, while plausible, is insufficient to warrant dismissal of Count I, particularly as the Court must evaluate all plausible inferences in favor of Plaintiff. *See* 1199SEUI's Motion at 9-10; *Chaparro, 693 F.3d at 1337*; Miccosukee Tribe of Indians of Fla., 304 F.3d at 1084; *see also Martinez—Rivera, 166 F. Supp. 3d at 794*. Accordingly, ACRU's claims in Count I

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[4] The Court notes that the Sixth Circuit recently held that "[b]y the HAVA's own terms, however, [its] language is not to 'be construed to authorize or require conduct prohibited under . . . or to supersede, restrict, or limit the application of . . . [the NVRA]." *APRI, F.3d , 2016 U.S. App. LEXIS 17378, 2016 WL 5328160, at *4* (alternations added and in the original) (citations omitted).

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survive. **[**26]**

The Court also finds that Plaintiff has sufficiently stated a claim in Count II. Plaintiff asserts that Defendant "failed to respond adequately to Plaintiffs' written request for data . . . in violation of Section 8 of the NVRA, *52 U.S.C. § 20507(i)*." While Defendant argues that Plaintiff failed to state "how" Defendant did not comply with Plaintiff's requests, *§ 20507(i)(1)* requires, with exception, that Defendant "make available for public inspection . . . *all records* concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters . . . ." *52 U.S.C. § 20507(i)* (emphasis added). Although the Amended Complaint does not specifically state that Defendant failed to provide *all* relevant records, the Court finds that Plaintiff's allegations, in conjunction with the attached Notice documenting in detail the information requested, is sufficient to state a plausible claim for relief under *§ 20507(i)*.

IV. CONCLUSION

For all of the reasons stated herein, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant Snipes's Motion to Dismiss, **ECF No. [16]**, is **GRANTED** as to Plaintiff Bellitto's claims only;

2. 1199SEUI's Motion to Dismiss, **ECF No. [36]**, is **DENIED**;

3. Defendant Snipes has until **November [**27] 4, 2016** to file an Answer to the Amended Complaint.

DONE AND ORDERED in Miami, Florida, this 25th day of October, 2016.

/s/ Beth Bloom

BETH BLOOM

UNITED STATES DISTRICT JUDGE

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Am. Civ. Rights Union v. Martinez-Rivera

United States District Court for the Western District of Texas, Del Rio Division

March 30, 2015, Decided; March 30, 2015, Filed

Civil Action No. DR-14-CV-0026-AM/CW

Reporter
166 F. Supp. 3d 779 *; 2015 U.S. Dist. LEXIS 177883 **

AMERICAN CIVIL RIGHTS UNION, Plaintiff, v. TAX ASSESSOR-COLLECTOR CINDY MARTINEZ-RIVERA, Defendant.

Prior History: *Am. Civ. Rights Union v. Martinez-Rivera, 2015 U.S. Dist. LEXIS 177891 (W.D. Tex., Feb. 20, 2015)*

Case Summary

Overview

HOLDINGS: [1]-Tax assessor was not entitled to dismissal of complaint alleging a violation of the *National Voter Registration Act*, *52 U.S.C.S. §§ 20501-20511*, by failing to make a reasonable effort to conduct voter list maintenance programs because an injury in fact and causation was sufficiently alleged, at the current stage of the litigation, plaintiff was not required to prove a redressable injury, and plaintiff alleged a plausible claim for relief.

Outcome

Motion to dismiss and motion for leave denied.

Counsel: For American Civil Rights Union, Plaintiff: H. Christopher Coates, LEAD ATTORNEY, PRO HAC VICE, Law Office of H. Christopher Coates, Charleston, SC; J. Christian Adams, LEAD ATTORNEY, Election Law Center, PLLC, Alexandria, VA; Craig Stephen Wolcott, Craig Wolcott, PLLC, Kerrville, TX; Eric Matthew Bayne, Attorney at Law, Del Rio, TX.

For Cindy Martinez-Rivera, Defendant: Chad W. Dunn, LEAD ATTORNEY, Brazil & Dunn, Houston, TX; Donato D. Ramos, LEAD ATTORNEY, Donato D. Ramos, Jr., Law Offices of Donato D. Ramos, PLLC, Laredo, TX.

Judges: [**1] ALIA MOSES, United States District Judge.

Opinion by: ALIA MOSES

Opinion

[*784] **ORDER**

Pending before the Court are the Defendant's Motion to Dismiss (Mot. to Dismiss, ECF No. 13) and the Plaintiff's Opposed Motion for Leave to File First Amended Complaint (Mot. to Amend, ECF No. 32). On March 6, 2015, the Honorable Collis White, United States Magistrate Judge, filed a Report and Recommendation (Report, ECF No. 34) in which he recommends that both motions be denied. The Defendant timely filed Objections (Objections, ECF No. 36) and the Plaintiff responded (Response, ECF No. 38). For the reasons stated below, this Report and Recommendation will be **ADOPTED**. Accordingly, the Defendant's Motion to Dismiss and the Plaintiff's Opposed Motion for Leave to File First Amended Complaint are **DENIED**.

I. BACKGROUND

On March 27, 2014, Plaintiff American Civil Rights Union ("Plaintiff" or "ACRU") filed suit against Defendant Tax Assessor-Collector Cindy Martinez-

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Rivera ("Defendant") in her official capacity. (Complaint, ECF No. 1.) The Complaint alleges that the Defendant violated the National Voter Registration Act ("NVRA"), 52 U.S.C. §§ 20501-20511,[1]

by failing to make a reasonable **[*785]** effort to conduct voter list maintenance programs.[2]

ACRU is a nonprofit corporation, "which promotes election integrity, compliance with federal election laws, government transparency and constitutional government." (Complaint, ECF No. 1 at 2, para. 4.) Pursuant to this goal, ACRU filed the instant **[**3]** Complaint in its individual and corporate capacities, and on behalf of its members who are registered to vote in the State of Texas. (*Id.*) The Complaint names the Tax Assessor-Collector as defendant because, under ACRU's interpretation of the NVRA and Texas Election law, she is the official responsible for ensuring that Zavala County complies with the list-maintenance provisions of the NVRA. (Id. at 2-4, paras. 5-9.)

According to the Complaint, the voter rolls for Zavala County have more registered voters than there are citizens in the County who are eligible to vote. (Id. at 4, para. 10.) The Complaint supports this claim by comparing two figures: the number of Zavala County citizens eligible to vote in 2010-8,205 people—and the number of people actually registered to vote in Zavala County in March of 2014-8,623 people.[3] (*Id.*) The Plaintiff argues that these figures demonstrate an "implausible" registration rate of 105%. (*Id.*) According to the Plaintiff's calculations, Zavala County has failed to maintain accurate voter rolls since at least 2008, when the County's registration rate was 102%. (Id. at 5, para. 10.)

The Plaintiff's efforts to improve Zavala County's registration rate began in September 2013, when ACRU sent the Zavala County Clerk a letter stating that the County's registration rolls have too many registered voters and requesting additional information. (Id. at 5-6, paras. 12-15.) Thereafter, the Plaintiff engaged in "numerous discussions" with the Defendant, and members of ACRU visited the Defendant's offices. (Id. at 6, para. 16.) When Zavala County's registration rate failed to improve, the Plaintiff brought suit, alleging that the Defendant's failure "to make a reasonable effort to conduct voter list maintenance programs in elections for federal office" violates Section 8[4] of the NVRA. (See id at 8, paras. 24-28.) The Plaintiff contends that this violation has caused it harm by: (1) undermining the confidence that ACRU and its members, including those registered to vote in Texas, place in the integrity and legitimacy of the electoral process; (2) creating the risk of vote dilution; and (3) causing ACRU to engage in a months-long process to help bring Zavala County into compliance with **[*786]** the NVRA. (Id. at 5, para. 12; 6, para. 16; 8-9, paras. 26-27.) The Complaint seeks declaratory **[**5]** and injunctive

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[1] The Complaint also briefly **[**2]** references the Help America Vote Act of 2002 ("HAVA"), codified at 52 U.S.C. § 21083. However, as Judge White notes in his Report, the Fifth Circuit has held that HAVA does not provide declaratory relief. *See* Morales-Garza v. Lorenzo-Giguere, 277 F. App'x 444, 446 (5th Cir. 2008) ("HAVA does not itself create a private right of action." (citation omitted)). The Plaintiff has not objected to this recommendation and this Court finds that it is not in clear error. *See* Douglas v. United Servs. Auto. Ass'n, 79 F.3d 1415, 1429 (5th Cir. 1996); United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir. 1989). Therefore, this Order will only consider the Plaintiff's claims under the NVRA.

[2] The Complaint also alleges that the Defendant failed to provide information in response to the Plaintiff's written requests and failed to produce records concerning the implementation of programs and activities to ensure the accuracy and currency of official lists of eligible voters for Zavala County, in violation of 52 U.S.C. § 20507(i). (Complaint, ECF No. 1 at 9, paras. 29-33.) On January 28, 2015, the parties stipulated to the dismissal of this count. (Stipulation, ECF No. 31.)

[3] This figure includes 508 people who had been placed on the State's suspense list, as they are still **[**4]** eligible to vote. (Complaint, ECF No. 1 at 4 n.1.)

[4] This Order refers to 52 U.S.C. § 20507 as "Section 8" of the NVRA, as the provision appeared under section 8 when the NVRA was enacted as a session law. National Voter Registration Act of 1993, Pub. L. No. 103-31, § 8, 107 Stat. 77 (1993).

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relief as well as attorneys' fees and costs. (*Id. at 9-10, paras. 1-4*.)

On June 4,2014, the Defendant filed the instant Motion to Dismiss, which presents two grounds for dismissing the Complaint. (Mot. to Dismiss, ECF No. 13.) First, the Defendant claims that the Complaint should be dismissed for lack of subject matter jurisdiction under *Federal Rule of Civil Procedure 12(b)(1)* because the Plaintiff can demonstrate neither organizational nor associational standing under Article III. (*Id. at 6-10*.) Second, the Defendant urges the Court to dismiss the Complaint for failure to state a claim under *Rule 12(b)(6)* because: (1) ACRU did not fulfill the *NVRA's* notice requirement before filing suit and (2) the Complaint fails to allege specific acts by the Defendant that amount to a violation of the *NVRA*. (*Id. at 10-11,12-15*.) The Plaintiff filed a Response in Opposition. (Resp. to Mot., ECF No. 14.)

On February 18, 2015, the Plaintiff filed an Opposed Motion for Leave to File First Amended Complaint. (Mot. to Amend, ECF No. 32.) The Plaintiff sought to amend its original complaint in order to (1) add a member of **[**6]** ACRU who is registered to vote in Texas as a plaintiff and (2) conform the pleadings to a stipulation of dismissal of Count Two of the original complaint. (*Id.*)

On February 23, 2015, Judge White filed a Report and Recommendation that recommended denying both the Defendant's Motion to Dismiss and the Plaintiff's Motion to Amend the Complaint. (Report, ECF No. 34.) The Defendant timely filed Objections to the Report (Objections, ECF No. 36) to which the Plaintiff responded (Response, ECF No. 38).

II. ANALYSIS

A. Standard of Review

Where no party objects to a magistrate judge's report and recommendation, the Court need not conduct a de novo review. *See 28 U.S.C. § 636(b)(1)*. In such cases, the Court need merely review the report and recommendation to ensure that it is neither clearly erroneous nor contrary to law. *United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.1989)*. However, when a party objects to the findings or conclusions made in a report and recommendation, the Court is required to make a de novo determination of the portions of the report to which an objection was made. *28 U.S.C. § 636(b)(1)*. This review calls upon the Court to independently examine the record and assess the applicable law. The Court is not required to conduct a de novo review when the objections are frivolous, **[**7]** conclusive, or general in nature. *Battle v. United States Parole Comm'n., 834 F.2d 419, 421 (5th Cir.1987)*. In the case at bar, Judge White's Report recommended that the Defendant's Motion to Dismiss be denied. The Defendant objected to five of the Report's conclusions: (1) ACRU established that it has organizational standing; (2) the Tax Assessor-Collector is the proper defendant; (3) ACRU may use United States census data to demonstrate that the Defendant violated the *NVRA*; (4) ACRU adequately stated a claim for relief under *Federal Rule of Civil Procedure 12(b)(6)*; and (5) ACRU alleged sufficient notice, as required under the *NVRA*. (Objections, ECF No. 36.) The Court will review these conclusions de novo. However, neither party objected to the conclusion that ACRU does not have associational standing or the recommendation that the Plaintiff's Motion to for Leave to Amend the Complaint be denied. Therefore, the Court will review those portions of the **[*787]** Report for clear error. Lastly, the Report provides a clear explanation of the *NVRA* and the pertinent portions of the Texas Election Code. (Report, ECF No. 34 at 4-6.) For the sake of brevity, that portion of the Report will not be reproduced in this Order, but incorporated into this Order by reference.

B. Motion to Dismiss

1. Article III Standing [**8]

Constitutional standing is an issue of subject matter jurisdiction, *Cobb v. Cent. States, Sw. & Se. Areas Pension Fund, 461 F.3d 632, 635 (5th Cir. 2006)*,

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which must be resolved as a threshold matter because "when [jurisdiction] ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause," *Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998)* (citation omitted).[5]

As the party seeking to invoke federal jurisdiction, the plaintiff has the burden to demonstrate standing "with the manner and degree of evidence required at the successive stages of the litigation." *Lujan v. Defenders of Wildlife, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)*. At the pleading stage, a court looks to the complaint in which the plaintiff must make general factual allegations that indicate that standing is plausible. *Id.* ("[O]n a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" (citation omitted)); *Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)*. To determine whether the plaintiff has met this burden, the court may consider "(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Ramming v. United States, 281 F.3d 158, 161 (5th Cir. 2001)* (citation omitted).

An organization can demonstrate standing in two ways: associational standing and organizational standing. In the instant case, ACRU alleged both associational and organizational standing.

An organization that establishes associational standing can bring suit on behalf of its members even in the absence of injury to itself. *Hunt v. Wash. St. Apple Adver. Comm '11, 432 U.S. 333, 342, 97 S. Ct. 2434, 53 L. Ed. 2d 383*. To do so, the organization must demonstrate that: (1) "its members would otherwise have standing to sue in their own right;" (2) "the interests it seeks to protect are germane to the organization's purpose; and" (3) "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Id. at 343*. Judge White's Report concluded that ACRU failed to demonstrate the first element because the injuries alleged in the complaint—undermined voter confidence and potential vote dilution—merely amount to generalized grievances about the government, which do not give rise to associational standing. (Report, ECF No. 34 at 15.) The Plaintiff did not object to this recommendation, so this Court reviews it for clear error. *United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir. 1989)*. After carefully reviewing the record, the Court **[**10]** is of the opinion that ACRU lacks associational standing.

An organization, like an individual, can establish standing to sue on its own behalf by demonstrating three elements: (1) the organization suffered an injury in fact this is both "concrete and particularized, **[*788]** and actual or imminent, not conjectural or hypothetical;" (2) the injury is "fairly traceable to the challenged action of the defendant;" and (3) it is likely, "as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan, 504 U.S. at 560-61* (footnote, citations, and internal quotation marks omitted); *Havens Realty Corp. v. Coleman, 455 U.S. 363, 378-79, 102 S. Ct. 1114, 71 L. Ed. 2d 214 (1992)*. The Defendant objected to the Report's conclusion that ACRU had sufficiently alleged all three elements.

The first element of constitutional standing requires a plaintiff to demonstrate a concrete and demonstrable injury. Therefore, allegations of injuries that merely amount to "generalized grievances about the conduct of Government," *Schlesinger v. Reservists Comm. To Stop the War, 418 U.S. 208, 217, 94 S. Ct. 2925, 41 L. Ed. 2d 706 (1974)*, or "setback[s] to the organization's abstract social interests," *Havens Realty, 455 U.S. at 379*,

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[5] This Order refers to *52 U.S.C. § 20507* as "*Section 8*" of the *NVRA*, as the provision appeared under *section 8* when the *NVRA* **[**9]** was enacted as a session law. National Voter Registration Act of 1993, ***Pub. L. No. 103-31, § 8, 107 Stat. 77 (1993)***.

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will not suffice.

An organization can demonstrate injury "by [alleging] that it had diverted significant resources to counteract the defendant's conduct; hence, the defendant's conduct significantly and 'perceptibly impaired' **[**11]** the organization's ability to provide its 'activities—with the consequent drain on the organization's resources.'" *N.A.A.C.P. v. City of Kyle, Tex., 626 F.3d 233, 238 (5th Cir. 2010)* (quoting *Havens Realty, 455 U.S. at 379*). At the pleading stage, an organization need only broadly allege such an injury. *Havens Realty, 455 U.S. at 379*. For example, the Supreme Court in *Havens Realty* held that the plaintiff—organization had sufficiently alleged standing based upon a short description in the complaint: "Plaintiff HOME has been frustrated by defendants' racial steering practices in its efforts to assist equal access to housing through counseling and other referral services. Plaintiff HOME has had to devote significant resources to identify and counteract the defendant's *[sic]* racially discriminatory steering practices." *Id.* (alteration in original).

However, [n]ot every diversion of resources to counteract the defendant's conduct . . . establishes an injury in fact." *City of Kyle, 626 F.3d at 238*. "[S]elf-inflicted injuries" cannot be used to establish standing because they are not fairly traceable to a defendant's conduct. *Ass 'n of Comm. Orgs. For Reform Now ("ACORN") v. Fowler, 178 F.3d 350, 358 (5th Cir. 1999)*. Therefore, resources expended in pursuit of litigation, including those spent compiling statistical evidence, do not give rise to organizational standing. *Id. at 358*; *Ass 'n for Retarded Citizens of Dall. v. Dall. Cnty. Mental Health & Mental Retardation Ctr. Bd. of Trs., 19 F.3d 241, 244 (5th Cir. 1994)* ("The mere fact that **[**12]** an organization redirects some of its resources to litigation and legal counseling in response to actions or inactions of another party is insufficient to impart standing upon the organization.") Moreover, "general allegations of activities related to monitoring the implementation of the *NVRA*" that are not paired with an allegation that such costs are fairly traceable to the defendant's conduct, fail to confer organizational standing. *Fowler, 178 F.3d at 359*.

The presence of a conflict between the defendant's conduct and the organization's mission is "necessary—though not alone sufficient—to establish standing;" importantly, an organization's claim to standing cannot rest on allegations of such a conflict alone. *See id. at 361* (citation omitted); *see also Schlesinger, 418 U.S. at 225-26* ("[T]he essence of standing is not a question of motivation but of possession of the requisite interest **[*789]** that is, or is threatened to be, injured by the unconstitutional conduct.").

In the present case, the Report finds that ACRU alleged three distinct injuries in the Complaint: (1) the Defendant's failure to remedy inaccurate voter rolls has undermined ACRU's and its members' confidence in the electoral system; (2) created the risk of vote dilution; and (3) the Defendant's **[**13]** continuing violation of the *NVRA* has caused ACRU to expend resources to compel compliance. (Report, ECF No. 34 at 7.) The Report concludes that the first two injuries, undermined voter confidence and the risk of vote dilution, are speculative and, as such, are more akin to a generalized grievance about the government than an injury in fact. *(Id. at 13-15.)* Neither party objected to this conclusion, and this Court finds that it is not clearly erroneous.

The source of the controversy is the Report's third conclusion: that ACRU sufficiently alleged an injury based upon diverted resources. (Report, ECF No. 34 at 10.) The Report's conclusion relies on the following facts set out in the Complaint: (1) ACRU sent Zavala County election officials a "statutory notice letter;" (2) ACRU and the Defendant conducted "numerous discussions over seven months" in an attempt to resolve the dispute; and (3) members of ACRU made "multiple visits" to the Defendant's offices. (Complaint, ECF No. 1 at 5, para. 13; 6, para. 16.) "These allegations," the Report concludes, "sufficiently allege that Plaintiff, in promoting its core mission, has faced roadblocks

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that have required it to expend substantial resources to counteract **[**14]** what it perceives are violations of the NVRA." (Report, ECF No. 34 at 10.)

The Defendant vigorously contests the Report's conclusion. Importantly, the Defendant does not refer to ACRU's activities in the language used in the Complaint and the Report: sending a notice letter, conducting discussions, and visiting the Defendant's offices. Instead, the Defendant argues that ACRU's allegations of injury are based on: (1) monitoring Zavala County, (2) compiling statistics, and (3) conducting settlement discussions. (Objections, ECF No. 36 at 3, 4.) The Defendant proceeds to argue that monitoring costs do not demonstrate injury in fact under the Fifth Circuit's interpretation of injury in fact in Fowler. (Id.) Further, the Defendant characterizes compiling statistical evidence and conducting settlement discussions as litigation-related activities that also do not fulfill the injury in fact requirement under Fowler. (Id. at 3-4.) Finally, the Defendant argues that ACRU has not alleged an injury because it has not "conducted any on-the-ground activity in Zavala County apart from gearing up for and filing this" suit; namely, it has not identified any ineligible voters on Zavala County's registration rolls **[**15]** and sought their removal. (Id. at 5.)

ACRU filed a Reply, in which it argues that the Defendant's reliance on Fowler is misplaced because that case addressed organizational standing in the context of a motion for summary judgment. (Reply, ECF No. 38 at 3.) ACRU goes on to differentiate the discussions it conducted with the Defendant from litigation related activities by pointing to the Report's finding that the goal of these discussions was to bring Zavala County into compliance with the NVRA. (Id. at 4.) Further, ACRU argues that it is inappropriate to compare its activities to those of organizations that brought suit under Section 7 of the NVRA because organizations suing under Section 8 will have different organizational goals than those suing under Section 7 (Id. at 5.) Lastly, ACRU argues that it has properly alleged causation because it would not have conducted discussions with and visited the Defendant if the Defendant had **[*790]** been properly maintaining the voter rolls. (Id. at 5-6.)

The Court agrees with the Report; ACRU has sufficiently alleged injury in fact and causation. The Court first notes that this issue arose in the context of a motion to dismiss. At this stage in litigation, "general factual allegations of injury resulting from the defendant's **[**16]** conduct may suffice, for on a motion to dismiss we presume[e] that general allegations embrace those specific facts that are necessary to support the claim." Fowler, 178 F.3d at 357 (alteration in original) (citation omitted). Here, ACRU alleged that it conducted discussions with the Defendant that spanned seven months. The Court will not presume, as the Defendant urges, that these were settlement discussions. While the Defendant remains free to present evidence that these discussions merely amount to "litigation costs" under Fowler on a motion for summary judgment, such an argument on a motion to dismiss is premature. Furthermore, the Court is unwilling to hold that an organization must conduct some "on-the-ground" activity as a prerequisite to bringing suit under the NVRA. Although the organization in Fowler established standing based on voter registration campaigns it had conducted, the Fowler court focused less on the nature of the effort than on the fact that the effort was targeted at areas in which the state had failed to implement the NVRA. Id. at 361. Like the organization in Fowler, ACRU has also targeted one area of Texas, Zavala County, that has allegedly failed to comply with the NVRA. In sum, the Court finds that **[**17]** ACRU's allegations that it conducted discussions with the Defendant and visited the Defendant's offices in an effort to bring Zavala County into compliance with the NVRA are sufficient to establish both injury in fact and causation. The Defendant's objections are overruled.

The Defendant raised three objections to the Report's conclusion that the alleged injury is redressable by a favorable decision: (1) it is not appropriate to rely upon statistics from the United States Census Bureau to conclude that the Plaintiff alleged a redressable

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injury; (2) the alleged injury is not redressable because any injunction the Court could order would merely direct the Defendant to comply with the NVRA; and (3) a County Tax Assessor-Collector is not in a position to redress the alleged injury and therefore is not a proper party in an action brought pursuant to Section 8 of the NVRA.[6] (Objections, ECF No. 36 at 6 n.1, 9.) The Court will examine these objections in the order presented.

At this stage in the **[**18]** litigation, ACRU cannot point to any specific instances in which the Defendant or her predecessor violated the NVRA. (See Response, ECF No. 14 at 10-11.) Instead, the Complaint relies on a comparison between the number of citizens eligible to vote in Zavala County—gleaned from the 2010 Census—and the number of citizens who were actually registered to vote in the County at the time ACRU filed its Complaint.[7] (Complaint, ECF No. 1 at 5.) According to the Complaint, the latter number divided by the former yields an "implausible" registration rate of 105% and gives rise to the strong inference that the Defendant violated [*791] Section 8 of the NVRA. (Id. at 4-5.) Judge White's Report found that Census data is reliable, took judicial notice of certain statistics from the United States Census Bureau, and concluded that a favorable decision that lowered the registration rate would redress ACRU's injury. (Report, ECF No. 34 at 11-12.) The Defendant objected to the Report's use of statistical data "to the extent that such data might be used as a factual finding in this litigation and to the extent such data is not in evidence." (Objections, ECF No. 36 at 9.)

The Court agrees with the Report's conclusion that United States Census data is reliable and properly subject to judicial notice. A court "may take judicial notice at any stage of the proceeding." Fed. R. Evid. 201(d). A "court may judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). The Fifth Circuit has recognized that figures from the United States Census are properly subject to judicial notice. Hollinger v. Home State Mur. Ins. Co., 654 F.3d 564, 571-72 (5th Cir. 2011) ("United States census data is an appropriate and frequent subject of judicial notice." (citations omitted)); *accord, e.g.*, United States v. Bailey, 97 F.3d 982, 985 (7th Cir. 1996); United States v. Esquivel, 88 F.3d 722, 726-27 (9th Cir. 1996). Moreover, by taking judicial notice of facts not subject to reasonable dispute, a Court does not convert a motion to dismiss into a motion for summary judgment. Norris v. Hearst Trust, 500 F.3d 454, 461 n.9 (5th Cir. 2007) ("[I]t is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record." (citation omitted)). Therefore, the Defendant's objection to the use of Census data is overruled.

The Court also agrees with the Report's conclusion **[**20]** that the Plaintiff's injury would be redressed by a favorable decision. The Report found that "[t]he voting-age population of Zavala County in 2013 was approximately 8,448, yet there were 8,623 people registered to vote in 2014," yielding a registration rate of 102%. (Report, ECF No. 34 at 12.) The Report concluded that injunctive relief ordering the Defendant to properly maintain voter rolls would likely improve Zavala County's registration rate and allow ACRU to direct its resources elsewhere. (Id.) The Defendant objected to this conclusion, arguing that the Plaintiff failed to allege a violation of the NVRA that an injunction could correct. (Objections, ECF No. 36 at 6-7.) According to the Defendant, the NVRA does not require counties to attain a specific registration ratio and does not supply a cause of action for the failure

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[6] See Scott v. Schedler, 771 F.3d 831, 834 n.5 (5th Cir. 2014) (characterizing the Louisiana Secretary of State's argument that it is not a proper party to an NVRA suit because it lacks authority to enforce the NVRA as "part of the standing question related to redressability").

[7] This figure includes both the people on Zavala County's voter registration **[**19]** rolls and those on the County's suspense list, who are still entitled to vote, as noted above in Footnote 3. (Complaint, ECF No. 1 at 4 n.1.)

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to meet some yet-to-be-defined benchmark. *(Id.)* The Defendant misinterprets the Report's conclusion. The Report found that significantly high registration rates, like those in Zavala County, give rise to the inference that a county is not properly implementing a program to maintain an accurate and current voter registration roll, in violation of the NVRA. (Report, **[**21]** ECF No. 34 at 12.) The Report did not state that a high registration rate, alone, demonstrates such a violation. The Plaintiff is not required, at this stage of the litigation, to prove a redressable injury; it is enough to make the allegation. *See* Lujan, 504 U.S. at 561. The Court finds the Plaintiff has done so. Accordingly, the Defendant's objection is overruled.

The Court now proceeds to the Defendant's last objection, that the Plaintiff failed to sue the proper party: the Texas Secretary of State. As previously noted, the NVRA requires each state to "ensur[e] the maintenance of an accurate **[*792]** and current voter registration roll for elections for Federal office" by, *inter alia*, "conduct[ing] a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters" after a registrant dies or changes residence. 52 U.S.C. § 20507(a)(4), (b). "The NVRA centralizes [compliance] responsibility in the state and in the chief elections officer, who is the state's standin." Scott v. Schedler, 771 F.3d 831, 839 (5th Cir. 2014). The chief elections officer is "responsible for coordination of State responsibilities under" the NVRA. 52 U.S.C. § 20509.

Under Texas law, the chief elections officer is the Secretary of State. Tex. Elec. Code Ann. § 31.001. The Secretary may assign "any function relating **[**22]** to the administration of elections that is under the Secretary's jurisdiction" to the staff in the elections division, and must assist and advise these election authorities on the application, operation, and interpretation of the election laws. *Id.* §§ 31.001, 31.004. However, the Secretary is ultimately responsible for maintaining "uniformity in the application, operation, and interpretation" of the election laws. *Id.* § 31.003. If the Secretary determines that the actions of an election authority are impeding the "free exercise of a citizen's voting rights," the Secretary may order the authority to correct the offending conduct and, if that fails, seek enforcement of the order by a temporary restraining order or a writ of injunction or mandamus. *Id.* § 31.005.

Among these election authorities are the county tax assessor-collectors, who act as voter registrars for each county. *Id.* § 12.001. The registrar's duties include maintaining a suspense list of voters, *Id.* § 15.081, and correcting the voter registration records, "including, if necessary, deleting a voter's name from the suspense list," *Id.* § 15.022(a). Under the NVRA, the voter registrar has the additional duty of "correct[ing] an official list of eligible voters in elections for Federal office in **[**23]** accordance with change of residence information." *Id.* § 20507(d)(3). By fulfilling these duties, the county tax assessor-collectors enable the Texas Secretary of State to maintain accurate and current voter registration rolls, as mandated by the NVRA. *See* 52 U.S.C. § 20507.

In the present case, ACRU brought suit against the Zavala County Tax Assessor-Collector for "failing to implement a program" to reduce the number of ineligible voters on the county's registration rolls, in violation of NVRA Section 8. (Complaint, ECF No. 1 at 5.) However, ACRU neglected to join the Texas Secretary of State as a defendant. The Defendant argues that this failure warrants dismissal of the Complaint because, under the NVRA, she does not have the authority to implement a program to remove ineligible voters from the rolls. (Objections, ECF No. 36 at 6, n.1.) In its Response, ACRU argues that the NVRA does impose the duty on voter registrars to use data from the United States Postal Service to update voter rolls. (Response, ECF No. 38 at 13.) Additionally, ACRU notes that Texas election law imposes a host of other duties on county voter registrars. *(Id. at 14.)*

As the chief elections officer, the Texas Secretary of State has the power to enforce the NVRA

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and **[**24]** the "ongoing role" of remedying NVRA violations. Scott, 771 F.3d at 839. In the Scott case, that curiously both parties failed to cite, the Fifth Circuit held that the Texas Secretary of State is a proper party to an NVRA suit. *See* id. at 833 (holding that the NVRA "gives the Secretary of State enforcement authority" and imposes the "obligation to require . . . state agencies to comply with" the Act). Indeed, *Scott* highlights the role the Secretary of State plays in ensuring the state complies with the NVRA, although **[*793]** it also notes that the obligation is to cause the State agents comply with the Act.[8]

Id. at 833, 839. However, the *Scott* court did not say that the Secretary of State is a necessary party to an NVRA suit. The NVRA itself is also silent on the subject of necessary parties. *See* 52 U.S.C. § 20510(b). In the absence of a holding to the contrary, this Court is unwilling to dismiss the instant Complaint on standing grounds for failure to join the Secretary of State. As previously noted, the Tax Assessor-Collector has certain obligations under the NVRA as the designated voter registrar and state official. If the Defendant has failed to meet her obligations, ACRU can bring a civil suit against her. The Defendant's objection is overruled.

2. Failure to State a Claim

The Defendant also moved to dismiss the Complaint for failure to state a claim, under Rule 12(b)(6). The Defendant argues again that high registration rates do not demonstrate an NVRA violation; in essence, that the facts in the Complaint do not plausibly demonstrate that ACRU is entitled to relief. (Mot. to Dis., ECF No. 13 at 12-15.) Judge White's Report concludes that the following allegations, contained in the Complaint, sufficiently plead a cause of action: (1) Texas election law and the NVRA impose upon the Defendant the duty to maintain accurate and current registration rolls; (2) voter rolls maintained by the Defendant contain more voters registered to vote than there are citizens eligible to vote; (3) an implausible 105% registration rate gives rise to the strong inference that the Defendant failed to conduct a reasonable voter list maintenance program; and (4) ACRU's members are injured because of the resulting risk of voter fraud and vote dilution. (Report, ECF No. 34 at 18.) The Defendant objected, arguing that a high registration rate might be consistent with illegal conduct, but it is equally consistent with a "wide swath" **[**26]** of legal conduct. (Objections, ECF No. 36 at 9-10); *see* Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 554, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007).

The Court is unconvinced by the Defendant's objection. Under Federal Rule of Civil Procedure 12(b)(6), a court may dismiss a complaint that "[fails] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). Because motions to dismiss are "viewed with disfavor ,and . . . rarely granted," Kaiser Alum. & Chem. Sales, Inc. v. Avondale Shipyards, Inc., 677 F.2d 1045, 1050 (5th Cir. 1982) (internal quotations omitted), a court must liberally cons favor, draw all inferences in favor of the plaintiff's claims, and take as true all factual allegations contained in the complaint. *See* Campbell v. Wells Fargo Bank NA., 781 F.2d 440, 442 (5th Cir. 1986). A complaint will survive a motion to dismiss if it "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (*quoting* Twombly, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id.

The Report concludes, and this Court agrees, that the Plaintiff alleged a plausible claim for relief. The high registration rate in Zavala County creates a strong inference that the Defendant has neglected her duty to maintain an accurate and current voter registration roll. The Defendant's argument that registration rates **[**27]** exceeding **[*794]** 100% could be the

[8] Counties and **[**25]** their officials are state officials.

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result of the County having a "reasonable purge system but an excellent registration system" or an "imperfect" purge system hampered by flawed data provided by the United States Postal Service is unconvincing. (Objections, ECF No. 36 at 10.) While these factors may certainly contribute to an inflated registration rate, it is more likely that the Defendant's failure to maintain the voter rolls caused the registration rate to climb. The Court agrees with the Report that this "strong inference of a violation of the NVRA" is adequate to survive a motion to dismiss under Rule 12(b)(6). The Defendant's objection is overruled.

3. Notice

Lastly, the Defendant objects to the Report's conclusion that the Plaintiff complied with the NVRA's notice requirement. (Objections, ECF No. 36 at 10-11.) The NVRA requires[9]

potential plaintiff's to "provide written notice of the violation to the chief election official of the State involved." 52 U.S.C. § 20510(b)(1). "If the violation is not corrected within 90 days after receipt of a notice" the aggrieved person may file a civil suit. 52 U.S.C. § 20510(b)(2). The Report noted the lack of case law in the Fifth Circuit interpreting the notice provision, but found that the "language and legislative **[**28]** history of the NVRA 'indicate that Congress structured the notice requirement in such a way that notice should provide states in violation of the Act an opportunity to attempt compliance before facing litigation." (Report, ECF No. 34 at 19-20); Ass'n of Community Orgs. For Reform Now ("ACORN") v. Miller, 129 F.3d 833, 838 (6th Cir. 1997); *see also* Schedler, 771 F.3d at 836 (citing Miller favorably).

To determine whether a party has provided adequate notice, a Court is not limited to the complaint alone, but may look to documents incorporated into the complaint by reference. *See* Tellabs, Inc. v. Makor Issues & Rights, Ltd, 551 U.S. 308, 322, 127 S. Ct. 2499, 168 L. Ed. 2d 179 (2007) ("[C]ourts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." (citation **[**29]** omitted)). The document in question, a letter from ACRU to the Defendant, is attached to the Defendant's Answer (Answer, ECF No. 12 Exhibit 1) and was filed simultaneously with the Motion to Dismiss. *See* Collins v. Morgan Stanley Dean Witter, 224 F. 3d 496, 498-99 (5th Cir. 2000) (noting a court may consider documents attached to a motion to dismiss).

ACRU sent the letter to the Zavala County Clerk[10]

stating that the County was **[*795]** "in apparent violation of Section 8 of the National Voter Registration Act." (Letter, ECF No. 12-1.) The letter went on to paraphrase and cite the provision of Section 8 that the Defendant was allegedly violating: "election officials [must] conduct a reasonable effort to maintain voter registration lists free of dead voters, ineligible voters and voters who have moved away." *(Id.)* The letter set out the evidence concerning the violation: Zavala County "has significantly more voters on the registration rolls than it has eligible live voters." *(Id.)* The letter urged the recipient to work toward full compliance with the

[9] Although the language in the NVRA suggests that notice is not mandatory, "[a] person who is aggrieved by a violation of this chapter *may* provide written notice of the violation," 52 U.S.C. § 20510(b)(1), the Fifth Circuit has held that notice is mandatory. Scott v. Schedler, 771 F.3d 831, 835 (5th Cir. 2014). The NVRA notice provision is nonjurisdictional. *See* Leeson v. Transamerica Disability Income Plan, 671 F.3d 969, 976-77 (9th Cir. 2012). Therefore, when a plaintiff fails to fulfill the notice provision the complaint should be dismissed pursuant to Rule 12(b)(6), not Rule 12(b)(1). *See* Harold H. Huggins Realty, Inc. v. FNC, Inc., 634 F.3d 787, 795 n.2 (5th Cir. 2011).

[10] Although **[**30]** the Plaintiff attempts to take credit for communication sent by third parties to the Defendant as early as 2012, it appears from the Complaint that the September 12, 2013 letter represents the first contact between the Plaintiff and the Defendant. (Complaint, ECF No. 1 at 5.) Therefore, the Court disregards the earlier communication. *See* Scott, 771 F.3d at 836 (holding that one plaintiff who failed to give the defendant notice could not "piggyback" on the notice given by a second plaintiff in the same case).

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NVRA, warning that the failure to do so could result in a lawsuit and citing the provision of the NVRA that allows a private party to bring suit. *(Id.)* Furthermore, it stated "[t]his letter serves as the statutory notice to your county." *(Id.)*

The Defendant maintains that ACRU's letter was too vague to provide notice of an NVRA violation because the "circumstance"—voter rolls containing more names than there are citizens eligible to vote—is not an NVRA violation. (Objections, ECF No. 36 at 11.) This argument is misplaced. The letter does not claim that a high registration rate is, in itself, a violation. Instead, it indicates that having too many registered voters on county registration rolls is *evidence* that the County has violated *Section 8 of the NVRA*. The letter gives the Defendant enough information to diagnose the problem. At that point it was the Defendant's responsibility to attempt to cure the violation. Accordingly, the Defendant's objection that notice was **[**31]** inadequate is overruled.

C. Motion to Amend Complaint

The Plaintiff moved to amend the Complaint, seeking to add an additional plaintiff and to remove Count 2. (Mot. to Amend, ECF No. 32.) The Report recommended that the motion be denied for several reasons. (Report, ECF No. 34 at 22-23.) First, it is **not** necessary to amend a complaint after the parties stipulate to the dismissal of one of the counts. *(Id. at 22.)* Second, the additional plaintiff did not provide the requisite notice to bring suit under the NVRA, and would be subject to immediate dismissal if she were joined as a plaintiff. *(Id.)* Third, the additional plaintiff does not have Article III standing to bring a claim because she did not sufficiently allege an injury in fact. *(Id.)* Neither party objected to the Report's recommendation and this Court does not find that it is erroneous. The Plaintiff's Motion to Amend is denied.

III. CONCLUSION

For the above reasons, the Court **ADOPTS** the Report and Recommendation prepared by Judge White. (ECF No. 34.) Accordingly, it is **ORDERED** that the Defendant's Motion to Dismiss (ECF No. 13) is **DENIED** and the Plaintiff's Opposed Motion for Leave to File First Amended Complaint (ECF No. 32) is **DENIED [**32]** .

SIGNED and ENTERED on this 30th day of March 2015.

/s/ Alia Moses

ALIA MOSES

United States District Judge

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Bellitto v. Snipes

United States District Court for the Southern District of Florida

July 11, 2017, Decided; July 12, 2017, Entered on Docket

Case No. 16-cv-61474-BLOOM/Valle

Reporter
2017 U.S. Dist. LEXIS 107355 *; 2017 WL 2972837

ANDREA BELLITTO and AMERICAN CIVIL RIGHTS UNION, Plaintiffs, v. BRENDA SNIPES, in her official capacity as the Supervisor of Elections of Broward County, Florida, Defendant, v. 1199SEIU UNITED HEALTHCARE WORKERS EAST, Intervenor, Defendant.

Prior History: *Bellitto v. Snipes, 2016 U.S. Dist. LEXIS 128840 (S.D. Fla., Sept. 20, 2016)*

Counsel: **[*1]** For Andrea Bellitto, American Civil Rights Union, Plaintiffs: H. Christopher Coates, LEAD ATTORNEY, Public Interest Legal Foundation, Plainfield, IN; J. Christian Adams, LEAD ATTORNEY, PRO HAC VICE, Public Interest Legal Foundation, Plainfield, IN; Joseph A. Vanderhulst, Kaylan L. Phillips, LEAD ATTORNEYS, PRO HAC VICE, Public Interest Legal Foundation, Indianapolis, IN; Mathew Daniel Gutierrez, Foley, Lardner LLP, Miami, FL; William Earl Davis, Foley & Lardner, LLP, Miami, FL.

For Brenda Snipes, in her official capacity as the Supervisor of Elections of Broward County, Florida, Defendant: Burnadette Norris-Weeks, LEAD ATTORNEY, Fort Lauderdale, FL; Michelle Austin Pamies, LEAD ATTORNEY, PRO HAC VICE, Burnadette Norris-Weeks PA, Fort Lauderdale, FL; Kathleen Marie Phillips, Phillips Richard & Rind, Miami, FL.

For 1199SEIU United Healthcare Workers East, Intervenor Defendant: Cameron Bell, Stuart C. Naifeh, LEAD ATTORNEYS, PRO HAC VICE, Demos, New York, NY; Carrie F. Apfel, Jessica Ring Amunson, Kali N. Bracey, Marina K. Jenkins, LEAD ATTORNEYS, PRO HAC VICE, Tassity S. Johnson, Jenner & Block LLP, Washington, DC; Catherine M. Flanagan, Michelle Kanter Cohen, LEAD ATTORNEY, PRO HAC VICE, **[*2]** Project Vote, Washington, DC; David Slutsky, LEAD ATTORNEY, PRO HAC VICE, Levy Ratner PC, New York, NY; Katherine Roberson-Young, LEAD ATTORNEY, SEIU, Miami, FL; Kathleen Marie Phillips, LEAD ATTORNEY, Phillips Richard & Rind, Miami, FL; Trisha Pande, LEAD ATTORNEY, PRO HAC VICE, Service Employees International Union, Washington, DC; Lucia Piva, Phillips, Richard, Rind, P.A., Miami, FL.

Judges: BETH BLOOM, UNITED STATES DISTRICT JUDGE.

Opinion by: BETH BLOOM

Opinion

ORDER ON MOTIONS FOR PARTIAL SUMMARY JUDGMENT AND MOTION TO EXCLUDE OPINIONS AND TESTIMONY

THIS CAUSE is before the Court upon Plaintiff American Civil Rights Union's ("Plaintiff" or "ACRU") Motion for Partial Summary Judgment on Count II of the First Amended Complaint, ECF No. [117] ("ACRU's Motion"), Defendant Brenda Snipes' ("Defendant" or "Snipes") Motion for

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Summary Judgment as to Count II of Plaintiff's First Amended Complaint, ECF No. [145] ("Snipes' Motion"), and Snipes and Intervenor Defendant 1199SEIU United Healthcare Workers East's ("Intervenor Defendant" or "United") Motion for Summary Judgment on Count I of Plaintiff's Amended Complaint, ECF No. [142] (the "Snipes/United Motion"). United has also filed a Motion to Exclude Opinions and Testimony **[*3]** of Proposed Experts, ECF No. [144] (the "*Daubert* Motion"). The Court has carefully reviewed the Motions, the record, all supporting and opposing filings, the exhibits attached thereto, and is otherwise fully advised in the premises. For the reasons that follow, ACRU's Motion, Snipes' Motion, and the Snipes/United Motion are denied. United's *Daubert* Motion is granted in part and denied in part.

I. BACKGROUND

ACRU is a non-profit corporation "which promotes election integrity, compliance with federal election laws, government transparency, and constitutional government." ECF No. [12] at ¶ 4. Snipes is the Supervisor of Elections of Broward County, Florida and has been since November 2003. United is a labor union that focuses on representing healthcare workers and those who work in healthcare facilities.[1]

Defendant Snipes' and Defendant-Intervenor United's Statement of Undisputed Material Facts in Support of their Motion for Summary Judgment, ECF No. [143] ("Snipes/United Count I Supporting SOF") at ¶¶ 2-3.[2]

A. ACRU's Initial Requests and the Commencement of this Lawsuit

On January 26, 2016, the President of ACRU, Susan A. Carleson ("Carleson"), sent a letter to Snipes notifying **[*4]** her that, based on ACRU's research, Broward County was "in apparent violation" of the *National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20507*.[3]

ECF No. [12-1]. The letter explained that based on ACRU's "comparison of publicly available information published by the U.S. Census Bureau [("Census Bureau")] and the federal Election Assistance Commission [("EAC")]," Broward County at the time "ha[d] an implausible number of registered voters compared to the number of eligible living citizens." *Id.* at 2. The letter expressed ACRU's hope that the Broward County Supervisor of Elections' Office ("BCSEO") would work toward compliance with *Section 8 of the NVRA* as well as ACRU's intention to file a lawsuit under the statute if such compliance was not achieved. *Id.* at 3. The letter also stated that if the information referenced therein was no longer accurate, "it would be helpful if [Snipes] could provide" documents related to the following: updated registration data since the publication of information reported by the EAC for 2014 from the November 2014 election (the "2014 EAC Report"); records obtained or received from federal and state courts, including jury recusal forms, regarding lack of citizenship, death, or relocation; the number of **[*5]** ineligible voters removed by category and by date; the source agency that provided the identifying information of the removed deceased and when the data was provided; the number of notices sent to inactive voters since the publication of the 2014 EAC Report, including the date, scope, and contents of any mailing sent to all registered voters; the names of the staff responsible for conducting list maintenance obligations; the number of ineligible voters removed for criminal conviction, together with the underlying data and communications with law enforcement agencies; the total number of voters registered in

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[1] On September 19, 2016, United filed a motion to intervene, which the Court granted on September 20, 2016. *See* ECF Nos. [23], [29]; *see also* ECF No. [53].

[2] Where a fact, as it is specifically incorporated herein, is uncontroverted by the opposing party, the Court cites only to the originating statement of facts.

[3] As do the parties, the Court refers to *52 U.S.C. § 20507* interchangeably as "*Section 8*," reflecting the statute's original location at ***Section 8 of Pub. L. 103-31, May 20, 1993, 107 Stat. 77***.

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Broward County as of the date of any response; any records indicating the use of citizenship or immigration status for list maintenance activities; and all list maintenance records including federal voter registration forms containing citizenship eligibility questionnaires for the previous 22 months. *Id.* at 3-4. Citing *Section 8 of the NVRA*, the letter informed Snipes of the requirement that her office "make available for public inspection all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters." *Id.* at 4. The **[*6]** letter invited Snipes to call Carleson in order to arrange a time to discuss the matter and to arrange an inspection. *Id.*

On February 8, 2016, Snipes responded to ACRU's letter with a letter of her own. *See* ECF No. [12-2] at 1-2. Snipes' letter refuted as "implausible" the assertion that Broward County's voter rolls were filled with more voters than living persons residing in the county, advising ACRU that the State of Florida "has a statewide database" and that Broward County "adheres strictly to the State of Florida guidelines regarding management of the voter rolls." *Id.* The letter included two forms of certifications spanning the previous several years—"Address List Maintenance Activities" certifications and "Eligibility Records Maintenance" certifications—which it characterized as "documenting actions taken by [Snipes'] office to manage removal of voters no longer eligible to vote in Broward County." *Id.* at 2; *see also id.* at 3-23. The letter also stated that Broward County "follows up on information received from credible sources that a person may no longer be eligible to vote." *Id.* at 2. The letter closed by directing ACRU to BCSEO's General Counsel "[s]hould [ACRU] require further information" and BCSEO's website **[*7]** as "an additional source of information." *Id.* at 3.

About two months after the exchange of letters, legal representatives of ACRU contacted Snipes via telephone on April 5, 2016, "offer[ing] to set up a meeting to discuss [ACRU's] letter and inspect the requested records." Plaintiff's Statement of Undisputed Material Facts Supporting Motion for Partial Summary Judgment on Count II, ECF No. [118] ("ACRU Count II Supporting SOF") at ¶ 6. According to Snipes, during that phone call she "provided the contact information for [her] General Counsel in order to coordinate inspection and follow-up" and mentioned that there would be a cost for "technology time." Defendant Snipes' Response to Plaintiff's Statement of Material Facts, ECF No. [128] ("Snipes Count II Response SOF") at ¶ 6. ACRU asserts, however, that Snipes "refused to meet to discuss remedies and permit inspection of records[,] . . . stat[ing] that she would meet with ACRU's representatives only if election officials from six other Florida counties were also present at the meeting." ACRU Count II Supporting SOF at ¶ 7 (emphasis omitted). Snipes denies that she ever refused to provide documents or allow for an inspection of records, asserting that she "explained **[*8]** that an inspection meeting needed to be coordinated with [General Counsel] given the threat of litigation and the fact that the caller was an attorney." Snipes Count II Response SOF at ¶ 7.

Nearly three months later, on June 27, 2016[4]

—and apparently without any further communications having taking place between ACRU and Snipes—ACRU and Andrea Bellitto ("Bellitto"),[5]

one of ACRU's members, initiated these proceedings, bringing two claims against Snipes under *Section 8 of the NVRA*. *See* ECF No. [1]. Under Count I of its Amended Complaint, ACRU claims that Snipes "has failed to make reasonable

[4] As a matter of timing, the NVRA requires a potential plaintiff to "provide written notice of [a] violation [of this chapter] to the chief election official of the State involved." *52 U.S.C. § 20510(b)(1)*. "If the violation is not corrected within 90 days after receipt of [the] notice[,]" the aggrieved person may file a civil suit. *52 U.S.C. § 20510(b)(2)*.

[5] On October 26, 2016, the Court dismissed all claims brought by Bellitto after finding that Bellitto lacked standing to bring suit. *See* ECF No. [64].

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efforts to conduct voter list maintenance programs, in violation of Section 8 of NVRA, 52 U.S.C. § 20507 and 52 U.S.C. § 21083(a)(2)(A) [Help America Vote Act ("HAVA")]." ECF No. [12] at ¶ 28. Under Count II of the Amended Complaint, ACRU claims that Snipes "has failed to respond adequately to Plaintiffs' written request for data, [and] failed to produce or otherwise failed to make records available to Plaintiffs concerning Defendant's implementation of programs and activities for ensuring the accuracy and currency of official lists of eligible voters for Broward County, in violation of Section 8 of the NVRA, 52 U.S.C. § 20507(i)." *Id.* at ¶ 33. For relief, ACRU seeks an order from this Court (1) declaring that Snipes is **[*9]** in violation of Section 8 of the NVRA; (2) ordering Snipes to implement reasonable and effective registration list maintenance programs to cure failures to comply with the NVRA and ensure that non-citizens and ineligible registrants are not on Broward County's voter rolls; (3) ordering Snipes to substantively respond to ACRU's written request for records concerning her implementation of programs and activities to ensure the accuracy and currency of Broward County's voter registration list and providing access to election records; and (4) additional relief. *See id.* at 9-10.

B. BCSEO Records Produced throughout Discovery

Following this case's inception, the discovery conducted by the parties revolved primarily around ACRU's records requests. First, on October 31, 2016, ACRU served discovery requests on Snipes requesting admissions and responses to interrogatories regarding list maintenance activities as well as any new documents. ACRU Count II Supporting SOF at ¶ 9. In response to ACRU's discovery requests, Snipes did not produce any new documents other than the certifications she had provided with her February 8, 2016 letter, though Snipes did offer to allow an inspection of BCSEO's voter registration database. ***[*10]*** *See id.* at ¶¶ 12-13.

On January 13, 2017, ACRU conducted an in-person inspection of BCSEO's voter registration database. *Id.* at ¶ 14. Certain categories of documents were not available during the inspection because they were either not contained in the registration database or required "additional assembly" before they could be made available. *Id.* Shortly thereafter, on January 26, 2017, Snipes provided ACRU with a CD containing a PDF file of a current active voter roll for Broward County and a PDF file of a table list of mailings sent out by BCSEO. *Id.* at ¶ 15.

On February 1, 2017, Snipes supplemented its initial response to ACRU's October 31, 2016 discovery requests. *See* ECF No. [111-2]. In the supplemental response, "which did not include any additional documents, [Snipes] objected to 'the production of documents dating back beyond a period of two years from the date of the filing of subject Complaint' and asserted that responsive documents 'within the last two years [] have already been made available for public inspection and copying on January 13, 2017.'" ECF No. [126] at 2-3 (quoting ECF No. [111-2] at 3).[6]

On February 9, 2017, Snipes provided ACRU with two CDs **[*11]** containing a number of different responsive documents. *See* ACRU Count II Supporting SOF at ¶ 17. Additionally, on March 8, 2017, Snipes provided ACRU with amended versions of the certifications she had initially provided with her February 8, 2016 letter. *See id.* at ¶ 18 (citing ECF No. [111-4]). Discovery closed on March 10, 2017.

C. BCSEO's Voter Registration and List Maintenance Procedures

Along with Snipes, BCSEO's responsibilities relating to voter registration and list maintenance are primarily carried out by Jorge Nunez ("Nunez"), BCSEO's Information Technology Director who

[6] Snipes and ACRU disagree as to the scope of an agreement that took place between them at the January 13, 2017 inspection. *See generally id.* at 4-6. According to Snipes, ACRU agreed to limit *all* documents contemplated in its discovery request to records spanning the previous two years. *See id.* at 5.

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maintains BCSEO's voter registration database; Mary Hall ("Hall"), BCSEO's Voter Services Director who helps maintain the voter rolls; and Sonia Cahuesqui ("Cahuesqui"), a voter registration clerk. Snipes/United Count I Supporting SOF at ¶¶ 4-7.

In accordance with requirements of the Florida Department of State's ("DOS") Division of Elections ("DOE"), Nunez prepares twice-yearly certifications summarizing Snipes' list maintenance activities, which are in turn signed and certified by Snipes and then provided to DOE. *Id.* at ¶ 6; Plaintiff ACRU's Opposition to Defendant Snipes' and Defendant-Intervenor United's **[*12]** Statement of Undisputed Material Facts in Support of their Motion for Partial Summary Judgment, ECF No. [160] ("ACRU's Count I Response SOF") at ¶ 6. The two types of certifications include: (1) "Certification of Address List Maintenance Activities" that reports the actions taken by Snipes to identify registrants who have changed residence, cancel the registrations of individuals who no longer reside in Broward County, and update the registrations of individuals who have moved within Broward County; and (2) "Certification of Eligibility Records Maintenance" that reports the actions taken by Snipes to remove registrants who are or have become ineligible because of death, felony conviction, mental incapacity, or a lack of United States citizenship. Snipes/United Count I Supporting SOF at ¶ 14. Nunez is also responsible for placing orders with, and sending data files to, Commercial Printers, Inc. ("Commercial Printers"), the third-party vendor that performs printing and mailing services related to Snipes' list maintenance. *Id.* at ¶ 6.

With respect to voter registration generally, BCSEO asserts that, like most other Florida counties, Broward County uses a voter registration database system **[*13]** commonly referred to as the "VR System" that was developed by VR Systems, Inc. ("VR Systems"), an outside vendor with which BCSEO contracts. *Id.* at ¶¶ 9-10. According to Snipes, the VR System "interfaces directly with" the Florida Voter Registration System ("FVRS"), a statewide voter registration database that Florida maintains pursuant to HAVA. *Id.* at ¶¶ 8-9. With respect to new voter registration applications, BCSEO sends applications it receives to DOE, which runs certain clearance checks—including screening for duplicate registrations by checking the new applicant's information against the FVRS—before advising BCSEO that the applicant has been cleared for registration. *Id.* at ¶ 11. In addition, DOE regularly provides Florida's election supervisors, including Snipes, with lists of current registrants who are deceased or have been convicted of a felony. *Id.* at ¶ 15. In turn, BCSEO uses that information, which is transmitted electronically by way of direct interaction between FVRS and VR Systems, to update Broward County's voter registration database and to remove voters who have become ineligible. *Id.*

In total, between January 1, 2014 and December 31, 2016, Snipes removed approximately **[*14]** 240,028 registrants from Broward County's voter rolls. *Id.* at ¶ 39. Between January 7, 2015 and January 10, 2017, Snipes removed approximately 192,157 registrants from Broward County's voter rolls. *Id.* at ¶ 40. With respect to other updates unrelated to registrant removal, approximately 148,645 registered voters living within Broward County who were registered as of January 7, 2015 and who were still registered in Broward County as of January 10, 2017 updated their address on record to a new address within Broward County. *Id.* at ¶ 41.

1. Procedures Relating to Residence Changes

According to Snipes, BCSEO uses the following three mailings—all of which are conducted by Commercial Printers—to identify and update or remove voters from the Broward County voter rolls when voters have changed residence: (1) notifications to voters who have filed a forwarding address with the United States Postal Service ("USPS"); (2) mailings related to voting matters to all registrants in the county; and (3) targeted mailings to registrants who have not voted for a

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certain period of time.[7]

Id. at ¶¶ 16-17.

BCSEO certifications produced by Snipes reflect that Snipes utilized information received from USPS's National **[*15]** Change of Address ("NCOA") program as part of her list-maintenance activities in 2009, 2011, 2013, and 2015.[8]

Id. at ¶ 19. "To identify voters with changes of address, Defendant sends voter data from VR Systems to Commercial Printers, which is licensed and certified by [USPS] to use a program called NCOALink. Using NCOALink, Commercial Printers receives updated, computerized change-of-address information on a regular basis." *Id.* at ¶ 20 (internal citation omitted). Snipes then receives an "updated file" from Commercial Printers, which it "imports into a software program called Voter Focus." *Id.* at ¶ 21. From there, BCSEO's Voter Services team processes records identified based on the "data comparison" as having changes in accordance with VR System's instructions, and "a forwardable notice is automatically scheduled to be sent to the appropriate voters[.]" *Id.* If a voter does not respond to a "Final Notice" within 30 days, the voter's status is changed from "active" to "inactive" in the VR System database. *Id.* at ¶ 22. If the voter does not vote or contact BCSEO in two general election cycles, the voter's status is changed to "ineligible" and the voter is no longer registered to vote. **[*16]** *Id.* at ¶ 23. The most recent "NCOA comparison" was conducted in May 2015. *Id.* at ¶ 24.

2. Procedures Relating to Deceased Voters

On a daily basis, DOE provides Snipes through FVRS with a verified electronic list of voters who have recently died. *Id.* at ¶ 26. Upon receipt of such lists, Snipes then cancels the relevant voter registration records. *Id.* On an occasional basis, Snipes receives information indicating that a registrant is deceased from sources other than DOE. *Id.* at ¶ 27. In those cases, BCSEO will make efforts to obtain a copy of the death certificate before removing the registrant from the voter rolls. *Id.* If BCSEO is unable to obtain a copy of the death certificate, BCSEO will send additional notices to the registrant's last known address and will request DOE to investigate the voter's status. *Id.* Between January 1, 2014 and December 31, 2016, Snipes removed 37,095 registrants from Broward County's voter rolls that were determined to be deceased. *Id.* at ¶ 28.

3. Procedures Related to Duplicate Registrations and Felony Convictions

On a daily basis, BCSEO receives notifications of potential duplicate registrations from DOE via FVRS, and then consolidates the registration so **[*17]** that only one registration is active. *Id.* at ¶ 29. BCSEO determines the correct county of residence by the most recent update to the voter's record. *Id.* Between January 1, 2014 and December 31, 2016, Snipes removed more than 9,000 duplicate registrants. *Id.* at ¶ 30.

Similarly, on a daily basis, BCSEO also receives an electronic list of individuals with a felony conviction from DOE. *Id.* at ¶ 32. BCSEO then generates a letter to mail to each registrant on those lists, which a registrant has 30 days to reply to by either confirming or contesting the information contained in the notice.[9]

Id. If no reply is received within 30 days, BCSEO publishes a notice in the newspaper. *Id.* If no reply is received within 30 days from the newspaper

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[7] ACRU disputes "whether Defendant updates the addresses of registrants before sending out address change notices[,]" asserting that "[a]t the very least, no records have been produced showing [USPS National Change of Address] database information received so that the registrations could be updated first." ACRU's Count I Response SOF at ¶ 16 (citing ECF No. [160-2] at 12).

[8] ACRU asserts that "[t]he source of the supposed NCOA database information are 'yellow stickers' on returned mail and not from the NCOA database." ACRU's Count I Response SOF at ¶ 16 (citing ECF No. [160-3] at 6).

[9] The mailings to individuals convicted of a felony are handled by BCSEO directly, rather than by Commercial Printers. *Id.*

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publication, the registrant is automatically removed from the voter rolls. *Id.* Between January 1, 2014 and December 31, 2016, Snipes removed 5,102 registrants from Broward County's voter rolls that were determined to have a felony conviction. *Id.*

4. Procedures Related to Non-Citizens

Like the National Voter Registration Form, Florida's voter registration form requires applicants to affirm their citizenship under penalty of perjury. *Id.* at ¶ 35. Occasionally, **[*18]** the U.S. Department of Homeland Security sends individuals applying for United States citizenship to BCSEO in order to obtain documentation indicating whether or not they have registered to vote as non-citizens. *Id.* The individuals found to have registered to vote as non-citizens are removed from the voter rolls. *Id.* Between January 1, 2014 and December 31, 2016, Snipes removed four registrants from Broward County's voter rolls as non-citizens. *Id.* at ¶ 37.

II. LEGAL STANDARDS

A. Expert Testimony

Federal Rule of Evidence 702 governs the admissibility of expert testimony. When a party proffers the testimony of an expert under *Rule 702*, the party offering the expert testimony bears the burden of laying the proper foundation, and that party must demonstrate admissibility by a preponderance of the evidence. *See Rink v. Cheminova, Inc., 400 F.3d 1286, 1291-92 (11th Cir. 2005)*; *Allison v. McGhan Med. Corp., 184 F.3d 1300, 1306 (11th Cir. 1999)*. To determine whether expert testimony or any report prepared by an expert may be admitted, the Court engages in a three-part inquiry, which includes whether: (1) the expert is qualified to testify competently regarding the matters he intends to address; (2) the methodology by which the expert reaches his conclusions is sufficiently reliable; and (3) the testimony assists the trier of fact, through the application **[*19]** of scientific, technical, or specialized expertise, to understand the evidence or to determine a fact in issue. *See City of Tuscaloosa v. Harcros Chems., Inc., 158 F.3d 548, 562 (11th Cir. 1998)* (citing *Daubert, 509 U.S. at 589*). The Eleventh Circuit refers to each of these requirements as the "qualifications," "reliability," and "helpfulness" prongs. *United States v. Frazier, 387 F.3d 1244, 1260 (11th Cir. 2004)*. While some overlap exists among these requirements, the Court must individually analyze each concept. *See id.*

An expert in this Circuit may be qualified "by knowledge, skill, experience, training, or education." *J.G. v. Carnival Corp., 2013 U.S. Dist. LEXIS 26891, 2013 WL 752697, at *3 (S.D. Fla. Feb. 27, 2013)* (citing *Furmanite Am., Inc. v. T.D. Williamson, 506 F. Supp. 2d 1126, 1129 (M.D. Fla. 2007)*; *Fed. R. Evid. 702*). "An expert is not necessarily unqualified simply because [his] experience does not precisely match the matter at hand." *Id.* (citing *Maiz v. Virani, 253 F.3d 641, 665 (11th Cir. 2001)*). "[S]o long as the expert is minimally qualified, objections to the level of the expert's expertise go to credibility and weight, not admissibility." *See Clena Investments, Inc. v. XL Specialty Ins. Co., 280 F.R.D. 653, 661 (S.D. Fla. 2012)* (citing *Kilpatrick v. Breg, Inc., 2009 U.S. Dist. LEXIS 76128, 2009 WL 2058384 (S.D. Fla. June 25, 2009)*). "After the district court undertakes a review of all of the relevant issues and of an expert's qualifications, the determination regarding qualification to testify rests within the district court's discretion." *J.G., 2013 U.S. Dist. LEXIS 26891, 2013 WL 752697, at *3* (citing *Berdeaux v. Gamble Alden Life Ins. Co., 528 F.2d 987, 990 (5th Cir. 1976)*).

When determining whether an expert's testimony is reliable, "the trial judge must assess whether the reasoning or methodology underlying the testimony is scientifically valid and whether that reasoning or methodology **[*20]** properly can be applied to the facts in issue." *Frazier, 387 F.3d at 1261-62* (internal formatting, quotation, and citation omitted). To make this determination, the district court examines: "(1) whether the expert's theory can be and has been tested; (2) whether the theory has been subjected to peer review and publication; (3) the known or potential rate of error of the particular

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scientific technique; and (4) whether the technique is generally accepted in the scientific community." *Id.* (citing *Quiet Tech. DC-8, Inc. v. Hurel-Dubois, UK Ltd., 326 F.3d 1333, 1341 (11th Cir. 2003)*). "The same criteria that are used to assess the reliability of a scientific opinion may be used to evaluate the reliability of non-scientific, experience-based testimony." *Id. at 1262* (citing *Kumho Tire Co. v. Carmichael, 526 U.S. 137, 152, 119 S. Ct. 1167, 143 L. Ed. 2d 238 (1999)*). Thus, the aforementioned factors are non-exhaustive, and the Eleventh Circuit has emphasized that alternative questions may be more probative in the context of determining reliability. *See id.* Consequently, trial judges are afforded "considerable leeway" in ascertaining whether a particular expert's testimony is reliable. *Id. at 1258* (citing *Kumho, 526 U.S. at 152*)).

The final element, helpfulness, turns on whether the proffered testimony "concern[s] matters that are beyond the understanding of the average lay person." *Edwards v. Shanley, 580 F. App'x 816, 823 (11th Cir. 2014)* (quoting *Frazier, 387 F.3d at 1262*) (formatting omitted). "[A] trial court may exclude **[*21]** expert testimony that is 'imprecise and unspecific,' or whose factual basis is not adequately explained." *Id.* (quoting *Cook ex rel. Estate of Tessier v. Sheriff of Monroe Cnty., Fla., 402 F.3d 1092, 1111 (11th Cir. 2005)*). To be appropriate, a "fit" must exist between the offered opinion and the facts of the case. *McDowell v. Brown, 392 F.3d 1283, 1299 (11th Cir. 2004)* (citing *Daubert, 509 U.S. at 591*). "For example, there is no fit where a large analytical leap must be made between the facts and the opinion." *Id.* (citing *General Electric Co. v. Joiner, 522 U.S. 136, 118 S. Ct. 512, 139 L. Ed. 2d 508 (1997)*).

Under *Daubert*, a district court must take on the role of gatekeeper, but this role "is not intended to supplant the adversary system or the role of the jury." *Quiet Tech., 326 F.3d at 1341* (internal quotations and citations omitted). Through this function, the district court must "ensure that speculative, unreliable expert testimony does not reach the jury." *McCorvey v. Baxter Healthcare Corp., 298 F.3d 1253, 1256 (11th Cir. 2002)*. "[I]t is not the role of the district court to make ultimate conclusions as to the persuasiveness of the proffered evidence." *Quiet Tech., 326 F.3d at 1341* (internal quotations and citations omitted). Thus, the district court cannot exclude an expert based on a belief that the expert lacks personal credibility. *Rink, 400 F.3d at 1293, n.7*. To the contrary, "vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence." *Quiet Tech., 326 F.3d at 1341* (quoting *Daubert, 509 U.S. at 596*); *see Vision I Homeowners Ass'n, Inc. v. Aspen Specialty Ins. Co., 674 F. Supp. 2d 1321, 1325 (S.D. Fla. 2009)* (quoting **[*22]** *Jones v. Otis Elevator Co., 861 F.2d 655, 662 (11th Cir. 1988)* ("On cross-examination, the opposing counsel is given the opportunity to ferret out the opinion's weaknesses to ensure the jury properly evaluates the testimony's weight and credibility.")).

B. Summary Judgment

A court may grant a motion for summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Fed. R. Civ. P. 56(a)*. The parties may support their positions by citation to the record, including, *inter alia*, depositions, documents, affidavits, or declarations. *See Fed. R. Civ. P. 56(c)*. An issue is genuine if "a reasonable trier of fact could return judgment for the non-moving party." *Miccosukee Tribe of Indians of Fla. v. United States, 516 F. 3d 1235, 1243 (11th Cir. 2008)* (quoting *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)*). A fact is material if it "might affect the outcome of the suit under the governing law." *Id.* (quoting *Anderson, 477 U.S. at 247-48*). The Court views the facts in the light most favorable to the non-moving party and draws all reasonable inferences in the party's favor. *See Davis v. Williams, 451 F.3d 759, 763 (11th Cir. 2006)*. "The mere existence of a scintilla of evidence in support of the [non-moving party's] position will be insufficient; there must be

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evidence on which a jury could reasonably find for the [non-moving party]." *Anderson, 477 U.S. at 252*. The Court does not weigh conflicting evidence. *See Skop v. City of Atlanta, Ga., 485 F.3d 1130, 1140 (11th Cir. 2007)* (quoting *Carlin Comm'n, Inc. v. S. Bell Tel. & Tel. Co., 802 F.2d 1352, 1356 (11th Cir. 1986)*).

The moving party shoulders **[*23]** the initial burden to demonstrate the absence of a genuine issue of material fact. *See Shiver v. Chertoff, 549 F.3d 1342, 1343 (11th Cir. 2008)*. If a movant satisfies this burden, "the nonmoving party 'must do more than simply show that there is some metaphysical doubt as to the material facts.'" *Ray v. Equifax Info. Servs., L.L.C., 327 Fed. Appx. 819, 825 (11th Cir. 2009)* (quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986)*). Instead, "the non-moving party 'must make a sufficient showing on each essential element of the case for which he has the burden of proof.'" *Id.* (quoting *Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)*). The non-moving party must produce evidence, going beyond the pleadings, and by its own affidavits, or by depositions, answers to interrogatories, and admissions on file, designating specific facts to suggest that a reasonable jury could find in the non-moving party's favor. *Shiver, 549 F.3d at 1343*.

A district court's disposition of cross-motions for summary judgment, like the cross-motions filed with respect to Count II in this case, employs the same legal standards applied when only one party files a motion. *See United States v. Oakley, 744 F.2d 1553, 1555 (11th Cir. 1984)* ("Cross-motions for summary judgment will not, in themselves, warrant the court in granting summary judgment unless one of the parties is entitled to judgment as a matter of law on facts that are not genuinely disputed.") (quoting *Bricklayers Int'l Union, Local 15 v. Stuart Plastering Co., 512 F.2d 1017, 1023 (5th Cir. 1975)*).[10]

A court must consider each motion on its own merits, "resolving **[*24]** all reasonable inferences against the party whose motion is under consideration." *S. Pilot Ins. Co. v. CECS, Inc., 52 F. Supp. 3d 1240, 1243 (N.D. Ga. 2014)* (citing *Am. Bankers Ins. Group v. United States, 408 F.3d 1328, 1331 (11th Cir. 2005)*). "Cross-motions may, however, be probative of the absence of a factual dispute where they reflect general agreement by the parties as to the controlling legal theories and material facts." *Id.* (citing *Oakley, 744 F.2d at 1555-56*); *see also Bricklayers, 512 F.2d at 1023*.

III. DISCUSSION

With this backdrop in mind, United moves for summary judgment on Count I (ACRU's claim for failure to make reasonable efforts to conduct voter list maintenance programs), and ACRU and Snipes, respectively, move for summary judgment on Count II (ACRU's claim for failure to disclose). In addition, United moves to strike ACRU's two proposed expert witnesses who it appears will, if allowed, offer testimony that supports ACRU's claim under Count I. The Court will therefore address ACRU's *Daubert* Motion first, and will then turn to the parties' respective motions for summary judgment.

A. United's *Daubert* Motion[11]

United seeks to exclude ACRU's proposed experts, Dr. Steven Camarota ("Dr. Camarota") and Scott Gessler ("Gessler"), on the bases that both are unqualified to offer any opinion in this case and that the entirety of their respective opinions is unreliable, **[*25]** speculative, and/or unhelpful. For

[10] In *Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981)* (*en banc*), the court adopted as binding precedent all decisions of the Fifth Circuit issued prior to October 1, 1981.

[11] The Court notes that United failed to meet and confer with ACRU prior to filing its *Daubert* Motion as required by *Local Rule 7.1(a)(3)* and this Court's initial Scheduling Order, ECF No. [127] at 2—an independent basis for denial. The Court will nevertheless consider the *Daubert* Motion on the merits.

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the most part, the Court disagrees.[12]

1. Dr. Camarota

United challenges the testimony of Dr. Camarota under the first two elements of *Daubert*—that is, qualifications and reliability. In United's view, because Dr. Camarota "is not versed in voter registration policy and is not a statistician, he is [] wholly unqualified to offer an opinion—let alone an expert opinion—on the issues in dispute in this case." ECF No. [144] at 2. United's assessment, however, misconstrues the primary purpose for which ACRU seeks to introduce Dr. Camarota's testimony and, in turn, understates Dr. Camarota's credentials to that effect. As ACRU correctly points out, the essence of Dr. Camarota's expert opinion is an assessment, based in part on data provided by the U.S. Census Bureau, of the ratio in Broward County of the total number of registered voters to the voting-eligible citizen population as a whole, compared to the same ratios elsewhere in Florida and throughout the country. *See id.* at 34 ("Taken at face value, these numbers indicate that nearly every eligible person in Broward County is registered to vote. . . . In sum, the registration rates for Broward **[*26]** County . . . are much higher than the rates in Florida, the nation, and any other state."). It is with this specific purpose in mind that the Court will measure the qualifications of Dr. Camarota and the reliability of his testimony.

Regarding qualifications, Dr. Camarota received a master's degree in political science from the University of Pennsylvania and a doctorate in public policy analysis from the University of Virginia. While completing his doctorate, Dr. Camarota "was focused on analysis of primarily Census Bureau data . . . looking at . . . issues associated with U.S. immigration." *Id.* at 70. Dr. Camarota is currently the Director of Research for the Center for Immigration Studies (CIS)—a research institute that focuses on examining the consequences of immigration on the United States—where he has worked since completing his doctorate. Notably, Dr. Camarota has previously served as an expert witness in a number of lawsuits, at least one of which required him to analyze "population estimates and Census Bureau data[.]" *See id.* at 80-81. Dr. Camarota has also "served as the lead researcher on a contract with the Census Bureau examining the quality of immigration data in the [Census Bureau's] American **[*27]** Community Survey [("ACS")]." *Id.* at 27. As is evident, Dr. Camarota has extensive experience and familiarity with analyzing data provided by the Census Bureau, including the Census Bureau's ACS. In light of that experience, the Court is satisfied that Dr. Camarota is at least minimally qualified. *See Furmanite, 506 F. Supp. 2d at 1129* ("An expert is not necessarily unqualified simply because [his] experience does not precisely match the matter at hand."). Specifically, it is a Census Bureau ACS estimate—namely, the total number of voting-eligible citizens in Broward County—that serves as the denominator of the voter registration rates from which Dr. Camarota intends to testify. Although United is not wrong to point out that Dr. Camarota is not a statistician and "has no formal statistical training outside of a three-month [course] he attended . . . during graduate school[,]" *id.* at 6, the voter registration rates he seeks to offer constitute a straightforward division calculation. Above the denominator mentioned above, the numerator purports to be the total number of actual

[12] The merits aside, ACRU argues that because this case is set for a bench trial, United's *Daubert* Motion is inappropriate, and that "the prudent course is to permit ACRU's experts to offer testimony during trial, where its relevance and reliability can be judged in the context of ACRU's legal arguments in support of its claims." ECF No. [156] at 2-4. However, none of the cases ACRU cites to in support of this proposition involved evidentiary determinations made in contemplation of summary judgment. Here, by contrast, resolution of the Snipes/United Motion turns in part on the admissibility of ACRU's proposed experts. It is axiomatic, as explained by the Eleventh Circuit, that "[e]vidence inadmissible at trial cannot be used to avoid summary judgment." *Corwin v. Walt Disney Co., 475 F.3d 1239, 1249 (11th Cir. 2007)* (quoting *Broadway v. City of Montgomery, Ala., 530 F.2d 657, 661 (5th Cir.1976))* (alteration in original); *see also Fed. R. Civ. P. 56(c)(1)(B)* ("A party asserting that a fact . . . is genuinely disputed must support the assertion by . . . showing that . . . an adverse party cannot produce admissible evidence to support the fact."); *Fed. R. Civ. P. 56(c)(2)* ("A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence."). Thus, the Court finds it both appropriate and necessary to consider United's *Daubert* Motion.

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registered voters—an EAC Election Administration Voting Survey ("EAVS") estimate that is based on data compiled and submitted by state and local election officials **[*28]** themselves. *See* ECF No. [144] at 2-3. In this sense, the Court finds Dr. Camarota's statistical background, or lack thereof, to be largely irrelevant. Dr. Camarota is therefore qualified to offer testimony as to the purported voter registration rates he has compiled.

That said, Dr. Camarota's lack of statistical expertise is relevant insofar as Dr. Camarota intends to take his voter registration rates a step further by testifying as to their overall accuracy. In defending Dr. Camarota's qualifications, ACRU initially contends that his testimony "is *simply* what the publically available data, including statements by the Defendant herself, *show the ratio of registrants over eligible voters to be*." *Id.* at 16 (emphasis added). But even ACRU recognizes that Dr. Camarota intends to testify to more than that. *See id.* (characterizing the "subject matter" of Dr. Camarota's testimony as "repeating publically available registration and demographic data *and why they are reliable*") (emphasis added). This concern with the reliability of the voter registration rates speaks to opinions offered by United's expert, Dr. Daniel A. Smith ("Dr. Smith"). Dr. Smith asserts that population counts from the ACS should **[*29]** not be used to calculate registration rates because the ACS, being a survey, contains sampling error. *See* ECF No. [150] at 9-10. In an effort to rebut that position, Dr. Camarota opines that the margins of error for the ACS estimates are easily quantifiable and small, thereby rendering the ACS estimates accurate overall. *See* ECF No. [144] at 34-35. Dr. Camarota may be right about this, but the statistical nature of this opinion, which is obvious, renders it beyond the scope of his expertise. *See id.* at 9 ("[A] survey's natural imprecision can be quantified using *basic statistics* to produce a *confidence interval* around any particular estimate. . . . Table 2 and Table 3 report confidence intervals using *margins of error* at different *significance levels*. The margins of error are small, and subsequently the variation in likely registrations rates in the county is also small.") (emphasis added). Thus, although Dr. Camarota is qualified to offer testimony as to the purported voter registration rates he has compiled (e.g., presenting the figures themselves and comparing them to similar figures related to other localities), he is not qualified to offer testimony as to the degree of accuracy of those **[*30]** rates—a statistical inquiry. *See, e.g., Increase Minority Participation by Affirmative Change Today, Inc. v. Firestone, 893 F.2d 1189, 1192, 1195 (11th Cir. 1990)* (finding no error in excluding testimony from a political scientist regarding statistical disparities in employment decisions where the witness did not have training or significant experience as a statistician); *Malletier v. Dooney & Bourke, Inc., 525 F. Supp. 2d 558, 642 (S.D.N.Y. 2007)* ("While [the excluded expert] may have used statistics in his work (as most people do to one extent or another) this does not mean that he is sufficiently qualified to testify to the statistical significance of [his proposed expert findings].").[13]

Turning to reliability, United challenges the reliability of Dr. Camarota's testimony by attacking the methods he employed to calculate the voter registration rates and, to an extent, some of the underlying data upon which he relied for those calculations. *See* ECF No. [144] at 16-19. United asserts: "Simply put, the analysis used by [] Dr. Camarota . . . compares different sets of numbers reflecting different periods of time, which therefore are not at all comparable." *Id.* at 19. The Court does not share United's reliability concerns.

First, United calls into question the reliability of Dr. Camarota's testimony on the basis that there is no evidence that Dr. Camarota's methodology has been subject to peer **[*31]** review, used by other

[13] ACRU also argues that "if a degree in statistics was necessary to opine on the voter registration and population data relevant to this case, [Dr. Smith] would need to be disqualified[] [because he] is not a statistician and his credentials are similar to Dr. Camarota. . . ." ECF No. [156] at 16. However, for purposes of this Order, it is Dr. Camarota's testimony, not Dr. Smith's, that is under scrutiny.

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statisticians, or involves reliable, recognized statistical techniques. *Id.* at 16. With respect to peer review and use by other statisticians, the Court does not find the absence of such to be dispositive under the circumstances. *See Am. Gen. Life Ins. Co. v. Schoenthal Family, LLC, 555 F.3d 1331, 1338 (11th Cir. 2009)* ("Standards of scientific reliability, such as testability and peer review, do not apply to all forms of expert testimony. For nonscientific expert testimony, 'the trial judge must have considerable leeway in deciding in a particular case how to go about determining whether particular expert testimony is reliable.'") (quoting *Kumho, 526 U.S. at 151*) (internal citation omitted); *see also Frazier, 387 F.3d at 1262*. What Dr. Camarota has essentially done is take publically available data that was compiled by governmental agencies and perform straightforward division calculations with that data. Dr. Camarota then seeks to offer figures reflecting those calculations. In the Court's view, this does not necessarily require peer review.

As for the purported lack of recognized statistical techniques in Dr. Camarota's methodology, there is a presumption that the data sets used by Dr. Camarota—particularly the Census Bureau's ACS voting-eligible population estimates—are accurate and involve reliable **[*32]** statistical techniques. *See, e.g., Johnson v. DeSoto Cty. Bd. of Comm'rs, 204 F.3d 1335, 1341-42 (11th Cir. 2000)* ("The presumption is that census figures are continually accurate. . . . And, this court has previously said, in a voting rights case, that statistical evidence derived from a sampling method, using reliable statistical techniques, is admissible on the question of determining the relevant population.") (citing *Negron v. City of Miami Beach, Florida, 113 F.3d 1563, 1570 (11th Cir. 1997)*; *Voter Integrity Project NC, Inc. v. Wake Cty. Bd. of Elections, 2017 U.S. Dist. LEXIS 23565, 2017 WL 684185, at *5 (E.D.N.C. Feb. 21, 2017)* ("The court notes that there is nothing inherently wrong with VIP-NC's reliance on census data to support its claim.") (citing *Am. Civ. Rights Union v. Martinez-Rivera, 166 F. Supp. 3d 779, 791 (W.D. Tex. 2015)*. United argues that Dr. Camarota's comparison of the EAVS registration number to the ACS population estimate is flawed because it compares "an *actual* registration number to an *estimated* population number[.]" ECF No. [144] at 18 (emphasis in original). As such, United appears to take issue with the use of *estimates* in Dr. Camarota's figures. Contrary to what United suggests, however, there is nothing inherently problematic with the use of a population estimate in measuring data, especially where, as here, there is no indication that the estimate was tainted in any way. The Eleventh Circuit has explained in another voting rights case:

> [W]e would [] uphold the district court's consideration **[*33]** of the citizenship statistics, even though those statistics are based on sample data. The use of sample data is a long-standing statistical technique, whose limits are known and measurable. We will not reject the citizenship statistics solely because they are based on sample data without some indication that the sample was tainted in some way. There were no arguments before the district court that the sample was skewed in a statistically significant way due to improper sampling method, small sample size, or sheer random error.

Negron, 113 F.3d at 1570 (recognizing that because the challenged Miami Beach citizenship information from the Census Bureau was "based upon a sample population, it [could not] be as precise as [] census data[] . . . based upon the entire population[,]" but nevertheless rejecting the plaintiff's attempt to call into question the accuracy of that information). Thus, to the extent that the ACS population estimates used by Dr. Camarota do not lend to the kind of precision an exact value might, such a concern speaks to the weight of Dr. Camarota's figures, not their admissibility. *See Johnson, 204 F.3d at 1342* ("If the evidence is admissible, that voter registration data might not be as reliable as some other measures **[*34]** of population goes to the weight of the evidence, but does not preclude use of the figures by the district court.").

Second, United argues that Dr. Camarota's

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comparison of the EAVS registration number to the ACS population estimate is flawed because it compares "a registration number at *a single point in time* when registration rates are highest to an average population number over a five-year period." ECF No. [144] at 18 (emphasis in original). Regarding that five-year period, Dr. Camarota's "five-year" ACS data—which include five-year estimates reported in 2010, 2012, and 2014—reflects information collected during the five-year period of time that ends in the respective reporting year that is then "totaled back and weighted to a midyear control point." *See id.* at 29 n.8; *id.* at 48; *id.* at 49-50 ("[T]hink of it this way: [the five-year ACS data] has basically the same effect as if you were to take all the years and average them together. . . . So you can think of it as the midyear of that year."). United contends that it is problematic that Dr. Camarota, in calculating the voter registration rates, "divide[d] the EAVS registered voter figure by ACS eligible population estimates *for the same year*." *Id.* at 18 (emphasis in original). "In other **[*35]** words, the 2006-2010 5-year ACS estimate, the median year of which is 2008, should not be used as a denominator for a 2010 EAVS numerator." *Id.* According to United, "the 2010 EAVS numerator should be compared against a denominator that more closely estimates the 2010 population, which would come from the 2008-2012 5-year ACS data." *Id.* Importantly, however, Dr. Camarota used "single-year ACS data" as well, which appears to do just that—that is, offer a denominator that more closely estimates the EAVS numerator. *See id.* at 33 (calculating voter registration rates based on both one-year and five-year ACS eligible population estimates for the years 2010, 2012, and 2014). The Court notes that United makes no mention of Dr. Camarota's use of single-year ACS data. To the extent that Dr. Camarota will testify as to voter registration rates he calculated using both single-year ACS data and five-year ACS data, the Court believes that "vigorous[] cross-examin[ation]" and the testimony of United's own witnesses, such as that of Dr. Smith, are the proper vehicles to address United's concerns. *Quiet Tech., 326 F.3d at 1341*.

Based on the foregoing, the Court concludes that the testimony Dr. Camarota seeks to offer is admissible, but with one qualification. **[*36]** Dr. Camarota may testify as to the voter registration rates that he has calculated (as reflected in his expert report), but he may not testify as to the degree of accuracy of those rates.

2. Gessler

After reviewing Florida's law on voter list maintenance and the evidence in this case related to the voter list maintenance practices utilized by BCSEO, *see* ECF No. [144] at 4-12, Gessler opines that Snipes "has not . . . taken reasonable steps to address well-known or easily identified problems with its list maintenance programs[,]" including "[b]loated voter rolls"—which "serve as a warning sign that problems exist"—and the presence of deceased voters on the voter rolls, *id.* at 49, ¶¶ 42, 45; *id.* at 55, ¶ 75. Gessler concludes his proposed expert report with recommendations of "reasonable steps Broward County should take in order to develop a general program and maintain the accuracy of the county voter rolls." *Id.* at 57, ¶ 87. United challenges the testimony of Gessler on all three prongs of *Daubert*.

Turning first to qualifications, Gessler's general credentials include a law degree from the University of Michigan and an M.B.A. from Northwestern University. *Id.* at 38, ¶ 4. More pertinent to the issues involved in this case, Gessler **[*37]** served as Colorado's Secretary of State from January 2011 to January 2015. *Id.* at 39, ¶ 5. In that capacity, Gessler was Colorado's chief election officer, a position that required him to oversee election officials in Colorado counties, review the election practices and procedures of Colorado counties, maintain the voter database and voter registration systems for Colorado, and maintain Colorado's voter rolls. *Id.* Additionally, Gessler handled "statewide coordination and compliance with all federal election laws, including the [NVRA] [and] the [HAVA] . . . ." *Id.* Gessler details in his expert report his experience in identifying, creating, and

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implementing list maintenance policies and practices as well as his experience identifying and responding to perceived deficient policies and practices related to the voter registration lists he oversaw—including responding to the threat of a lawsuit alleging noncompliance with *Section 8 of the NVRA*. *See generally id.* at 39, ¶¶ 9-10.

Despite the particular experiences of Gessler as the chief elections officer of Colorado, United argues that Gessler "is unsuited to provide an expert opinion in this case." *Id.* at 3. The primary rationale for that argument is that Gessler "lacks any knowledge **[*38]** of Broward County's voting registration policy or voter roll maintenance, the voting policy of any state other than Colorado, or the implementation of such policy at the county level[.]" *Id.* at 2-3. United elaborates that, "[e]xcluding his preparation for this case, Mr. Gessler has little—if any—knowledge of Florida's or Broward County's voter registration and voter roll maintenance systems[,]" and emphasizes that in Colorado, "the duty of implementing election policy belongs to the state's counties." *Id.* at 9. Nevertheless, the Court finds that Gessler is at least minimally qualified to offer an expert opinion in this case (with one caveat, as explained below) given the apparent overlap between his unique experiences as Colorado's Secretary of State and the issues in this case. Most notably, Gessler's knowledge and expertise in the field of voter roll list maintenance are tied directly to the same federal standard under the NVRA with which Snipes is required to comply. In the Court's view, the particular concerns raised by United speak to the level of Gessler's expertise, and therefore the weight to be afforded his opinions. *See* *Fed. R. Evid. 702* (basing qualifications on a proposed expert's "knowledge, skill, experience, training, **[*39]** or education"); *Frazier, 387 F.3d at 1260-61* (explaining that, in addition to scientific training or education, "experience in a field may offer another path to expert status"); *Waite v. AII Acquisition Corp., 194 F. Supp. 3d 1298, 1304 (S.D. Fla. 2016)* ("[S]o long as the expert is minimally qualified, objections to the level of the expert's expertise go to credibility and weight, not admissibility.") (quoting *Clena Investments, Inc. v. XL Specialty Ins. Co., 280 F.R.D. 653, 661 (S.D. Fla. 2012))* (alteration in original).

That said, the Court notes that like Dr. Camarota's expert report, Gessler's expert report compares Census Bureau ACS data with EAVS data to support some of the opinions stated therein, such as the following: "An unusually high percentage of registered voters serves as one of the main indicators that a jurisdiction does not take reasonable steps to maintain voter registration lists. Broward County is a classic example of a jurisdiction that has alarmingly high voter registration rates . . . ." ECF No. [144] at 49, ¶ 43. The Court is not convinced that Gessler has the requisite expertise in analyzing this kind of data to offer opinions that make assessments as to Broward County's voter registration rates. By comparison, ACRU has shown that Dr. Camarota has extensive experience in analyzing Census Bureau data, like the ACS, and other population related data. **[*40]** No comparable showing has been made with respect to Gessler, a lawyer by trade. Thus, although Gessler is certainly qualified to offer opinions concerning the specific list maintenance policies and procedures utilized (and not utilized) by Snipes, the Court does not find that he is qualified to offer data-driven opinions relating to Broward County's voter registration rates.

With respect to reliability, United contends: "No clear methodology is discernible from Mr. Gessler's opinion. He appears to have arrived at his conclusions by simply applying his personal knowledge of Colorado's voter registration system at the state level and his review of Florida law to the information about Broward County found in documents produced and the data sources generated for this case." *Id.* at 10. Importantly, United's reliability attacks focus almost entirely on Gessler's opinions concerning Broward County's voter registration rates—a subject that in any event Gessler is unqualified to testify about. *See, e.g., id.* at 10 (describing Gessler's methodology as "rel[ying] on two data sets drawn from calculations and analysis of population statistics"); *id.* at 11

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(emphasizing that "Mr. Gessler is not a statistician[,]" "has little familiarity **[*41]** with EAVS data[,]" and "has no basis for determining at what level a registration rate becomes potentially problematic"); *id.* at 16 (collectively addressing "Dr. Camarota's and Mr. Gessler's methodology" by noting, among other things, that "the methodology used in both reports" lacks evidence of an "error rate" and "reliable, recognized statistical techniques"); *id.* at 17 (stating that "Dr. Camarota's and Mr. Gessler's methodology consists of a flawed comparison between dissimilar data points"). The only discernible challenge by United as to the reliability of Gessler's opinions concerning the list maintenance policies and procedures employed by Snipes—a subject that Gessler is qualified to testify about—is that Gessler "[cites] no comparative studies of state voter registration systems, no national guidelines, and no widely accepted best practices . . . [and offers] no explanation of how his limited Colorado experience suffices as support for his opinions on Broward County's practices." *Id.* at 14. However, the Court finds that Gessler's testimony is sufficiently reliable based "upon [his] personal knowledge [and] experience." *Kumho, 526 U.S. at 151*. He has formed his opinions based on his personal experiences in attempting to maintain **[*42]** compliance with the NVRA as Colorado's chief elections officer and his review of the evidence in this case. The Court does not find that Gessler's testimony is rendered unreliable simply because he has not served as an election official in Florida or Broward County or cited comparative studies or national guidelines. *See Maiz v. Virani, 253 F.3d 641, 669 (11th Cir. 2001)* ("[Defendants] assert that Schwartz's testimony is not reliable because it is based largely on his personal experience rather than verifiable testing or studies. Although *Daubert* applies to all expert testimony, . . . there is no question that an expert may still properly base his testimony on 'professional study or personal experience.' Defendants' objection is unfounded on this record. . . . Defendants' objections plainly go to the weight and sufficiency of Schwartz's opinions rather than to their admissibility.") (quoting *Kumho, 526 U.S. at 151*) (internal citations omitted).

Finally, United argues that Gessler's testimony will not assist the factfinder, but will instead "improperly usurp[] the role of the fact-finder." ECF No. [144] at 19. Specifically, United suggests that Gessler has merely weighed the evidence in this case by "review[ing] only the documents and sources of data prepared for or **[*43]** generated by this litigation, and evaluat[ing] the veracity of statements made by Dr. Snipes and other witnesses regarding Broward County's voter registration and voter roll maintenance practices." *Id.* But Gessler's expert report purports to do more than just simply weigh the evidence in this case. For example, Gessler intends to identify list maintenance practices that in his opinion Snipes should employ, but does not. *See, e.g., id.* at 50, ¶¶ 48-52 (use of driver license data); *id.* at 51, ¶¶ 53-55 (use of jury notices). In doing so, Gessler will opine on industry practices he is familiar with, what he perceives as deficiencies in BCSEO's list maintenance program, and how he believes such deficiencies can be remedied. *See id.* at 51-57. In the Court's view, this kind of testimony, though not scientific, is "beyond the understanding of the average lay person" and will lend assistance to the factfinding in this case. *Frazier, 387 F.3d at 1262*.

However, as United correctly points out, Gessler also provides an opinion on the ultimate legal question raised by ACRU's claim under Count I. *See* ECF No. [144] at 41, ¶ 12 (opining that Snipes "has failed to conduct a general program and has failed to take reasonable steps to maintain the accuracy of the county **[*44]** voter rolls"). Gessler is precluded from giving testimony that ultimately states legal conclusions. *See Cordoves v. Miami-Dade County, 104 F. Supp. 3d 1350, 1365 (S.D. Fla. 2015)* ("[A]n expert may offer his opinion as to facts that, if found, would support a conclusion that the legal standard at issue was satisfied, but he may not testify as to whether the legal standard has been satisfied.") (citation omitted) (alteration in original).

Based on the foregoing, the Court concludes that the

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testimony Gessler seeks to offer is admissible, so long as that testimony does not relate to Broward County's voter registration rates or to any legal conclusions.

B. Summary Judgment Motions

1. Claim for Failure to Make Reasonable Efforts to Conduct Voter List Maintenance Programs (Count I)

a. The Snipes/United Motion[14]

"Congress' stated purposes in enacting the NVRA were, *inter alia*, 'to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office; ... [and] to ensure that accurate and current voter registration rolls are maintained." *A. Philip Randolph Inst. v. Husted, 838 F.3d 699, 705 (6th Cir. 2016)*, cert. granted, *198 L. Ed. 2d 254, 2017 WL 515274 (U.S. 2017)* (quoting *52 U.S.C. § 20501(b)*). "These purposes counterpose two general, sometimes conflicting, mandates: To expand and simplify voter registration processes so that more individuals **[*45]** register and participate in federal elections, while simultaneously ensuring that voter lists include only eligible . . . voters." *Common Cause of Colo. v. Buescher, 750 F. Supp. 2d 1259, 1274 (D. Colo. 2010)*. "Those sometimes conflicting mandates are reflected in the language of *Section 8 of the NVRA* . . . ." *Husted, 838 F.3d at 705*.

Subsection (a) of Section 8 states that "[i]n the administration of voter registration for elections for Federal office, each State shall . . . provide that the name of a registrant may not be removed from the official list of eligible voters except" under certain circumstances. *52 U.S.C. § 20507(a)(3)*; *see also* S. Rep. No. 103-6, at 19 (1993) ("[O]ne of the guiding principles of [the NVRA is] to ensure that once registered, a voter remains on the rolls so long as he or she is eligible to vote in that jurisdiction."); H.R. Rep. No. 103-9, at 18 (1993). *Section 8* then provides an exhaustive list of the circumstances justifying removal: "criminal conviction or mental incapacity as provided by state law, the death of the registrant, or . . . a change of the registrant's residence." *U.S. Student Ass'n Found. v. Land, 546 F.3d 373, 376 (6th Cir. 2008)* (citing *52 U.S.C. §§ 20507(a)(3)-(4)*). Under *subsection (a)(4)*—which ACRU's claim under Count I is brought pursuant to—states are required to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of (A) the **[*46]** death of the registrant; or (B) a change in the residence of the registrant[.]" *52 U.S.C. § 20507(a)(4)*.

Finally, as noted by the Sixth Circuit in *Husted*, "in *subsection (c)(1) of Section 8*, Congress provided states with an example of a procedure for identifying and removing voters who had changed residence that would comply with the NVRA's mandates and accompanying constraints. That subsection provides that '[a] State *may* meet the requirement of *subsection (a)(4)* by establishing a program under which' voters who appear to have moved based on information contained in the NCOA database are sent *subsection (d)* confirmation notices."[15]

838 F.3d at 707 (quoting *52 U.S.C. § 20507(d)(1)*) (alteration and emphasis in original). This procedure, which the Snipes/United Motion relies upon first and foremost, has been come to known as the "'safe-harbor' procedure." *Id.; see* ECF No. [142] at 3 ("Because the undisputed facts of this case

[14] Although Snipes and United have requested a hearing, *see* ECF No. [142] at 19, the Court finds the matters presented in the Snipes/United Motion suitable for a determination on the papers and without oral argument.

[15] *Subsection (d)* establishes that states "shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence" without first subjecting the registrant to the confirmation notice procedure outlined in that subsection. *52 U.S.C. § 20507(d)(1)*. That mandatory confirmation notice procedure is as follows: "a forwardable postage prepaid and pre-addressed form is sent to a voter, and the voter is removed from the rolls if (1) he or she does not respond to the confirmation notice or update his or her registration, and (2) he or she does not subsequently vote during a period of four consecutive years that includes two federal elections." *Husted, 838 F.3d at 707* (citing *52 U.S.C. § 20507(d)*).

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demonstrate that Defendant is implementing the NCOA program in accordance with the safe harbor provision, the county's program meets the requirements of subsection (a)(4). For this reason alone, summary judgment is warranted on Count I.").

As a preliminary matter, both Snipes and United initially raised the safe-harbor provision when they previously moved to dismiss Count I. *See* Bellitto v. Snipes, 221 F. Supp. 3d 1354, 1365-66 (S.D. Fla. 2016). Agreeing with the **[*47]** Sixth Circuit's reasoning in *Husted*, this Court noted that "full compliance with subsection (c)(1) [(the safe-harbor provision)] would *comply* with the NVRA's mandates and accompanying constraints." Id. at 1365 (citing Husted, 838 F.3d at 707) (internal quotation marks omitted) (emphasis added). The Court nonetheless declined to dismiss Count I on the basis of the safe-harbor provision, explaining that whether Snipes fully complied with the safe-harbor provision "is a fact-based argument more properly addressed at a later stage of the proceedings." Id. at 1366. Even in addressing Snipes and United's reliance on the safe-harbor provision at this stage of the proceedings, however, the Court does not take the view that, as a matter of law, full compliance with the safe-harbor provision necessarily absolves an election official of any liability under subsection (a)(4) of Section 8.

As the Sixth Circuit explained in *Husted*, "Section 8's language pairs the mandate that states maintain accurate voter rolls with multiple *constraints* on how the states may go about doing so." 838 F.3d at 705-06 (emphasis added). In this Court's view, the Sixth Circuit's attentiveness to the constraints imposed upon election officials in their efforts to maintain accurate voter rolls directly informed its treatment of the safe-harbor **[*48]** provision. More specifically, the Sixth Circuit viewed the safe-harbor provision as Congress having provided states with "an example" of a residence-change procedure "that would *comply* with the NVRA's mandates and accompanying *constraints*." Id. at 707 (emphasis added). But the Sixth Circuit did not appear to view the safe-harbor provision—though an example of a procedure that *complies* with the NVRA (including its constraints on election officials)—as an example of a procedure that *satisfies* all of an election official's duties under subsection (a)(4). Indeed, quite the contrary, the Sixth Circuit appeared to take a much more limited view, merely recognizing that the defendant's NCOA process, in mirroring the safe-harbor procedure, "is thus *permissible* under the NVRA." *Id.* (emphasis added). It is also worth noting that *Husted* concerned alleged violations of Section 8 based on the removal of (as opposed to a failure to remove) registered voters from the subject voter rolls—in particular, removals that were based only on changes of residence. *See* id. at 706.

Here, with no authority having been presented to suggest otherwise, this Court holds that although an election official's particular NCOA process for identifying and removing **[*49]** voters who have changed their residence is "permissible under the NVRA" if it mirrors the safe-harbor provision outlined in subsection (c)(1) of Section 8, such a process does not necessarily demonstrate full satisfaction of all the duties owed by that election official under subsection (a)(4). *Id.* Subsection (a)(4) contemplates removal of ineligible voters from a state's voter rolls based on two specific circumstances: a registrant's change of residence *and* the death of a registrant. *See* 52 U.S.C. § 20507(a)(4). As "an example" of a "permissible" change-of-residence procedure under the NVRA, Husted, 838 F.3d at 707, the safe-harbor provision says nothing of an election official's "mandates and accompanying restraints" as they relate to deceased registrants. Husted, 838 F.3d at 707. The point is made especially apparent in this case, as the Amended Complaint specifically alleges that Snipes inadequately removed the names of registrants who have died. *Cf.* id. at 706 ("This case concerns the final circumstance justifying removal—change of residence—which is subject to its own mandate and accompanying constraints."). Accordingly, even if Snipes has fully complied with Section 8's safe-harbor provision—a determination the Court need not make at this point—such compliance does not in

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and of itself entitle her to judgment as a matter **[*50]** of law on Count I.

Compliance with *Section 8*'s safe-harbor provision aside, Snipes and United also move for summary judgment on Count I on the basis that the undisputed facts definitively establish that Snipes' removal program is "reasonable under the statutory standard."[16]

ECF No. [142] at 13. Snipes and United emphasize the evidence pertaining to all of the list maintenance activities that Snipes employs, and those activities are undoubtedly extensive. *See id.* at 14-15 (e.g., receiving and acting on daily updates from DOE; soliciting responses from registrants with felony convictions; reviewing and consolidating registration records identified as duplicates; employing specific procedures for registrants who appear to have died). Snipes and United further contend that "[t]he objective results of Defendant's general program and list maintenance activities demonstrate that her program has a real, substantial outcome in terms of the removal of registrants deemed ineligible". They point out that Snipes removed from the Broward County voter rolls over 240,000 registrants between January 1, 2014 and December 31, 2016, and 192,000 registrants between January 7, 2015 and January 10, 2017. *Id.* at 15.

Notwithstanding the extensiveness **[*51]** of Snipes' removal efforts and the substantial amount of removals that those efforts have resulted in, ACRU has presented admissible evidence—by way of the analyses of Dr. Camarota—of very high voter registration rates in Broward County compared to voter registration rates throughout the country. *See* ECF No. [144] at 26-36. In some instances, according to Dr. Camarota, Broward County has had more or close to the same amount of persons registered to vote as it has had voting-age citizens in total. *See id.* at 33-4 (calculating rates in Broward County at 108.5% in 2010 and 96.7% in 2014, and opining that, "[t]aken at face value, these numbers indicate that nearly every eligible person in Broward County is registered to vote"). As for the voter registration rates nationally and in Florida as a whole, according to Dr. Camarota's expert report: "Nationally, the [Census] Bureau reported 65.1% of voting-age citizens were registered in 2010, 71.2% were registered in 2012 (a presidential election year), and 64.6% in 2014. In Florida as a whole, the corresponding figures for these same years were 63%, 68.3%, and 62.6%." *Id.* at 34. Of course, Dr. Smith—Snipes and United's expert witness—claims that Dr. Camarota's analyses are misleading. But, **[*52]** in addressing whether Snipes and United are entitled to summary judgment on Count I, the Court must accept the evidence provided by ACRU, the non-movant, and draw all reasonable inferences in its favor. *See Montgomery v. Noga, 168 F.3d 1282, 1289 (11th Cir. 1999)*. Other than moving to exclude Dr. Camarota and his expert report, Snipes and United do not address the voter registration rates in Dr. Camarota's expert report other than to say, without any supporting authority, that "the NVRA has no outcome-based criteria for compliance." ECF No. [142] at 16. The Court does not agree with Snipes and United that outcomes bear no significance whatsoever when it comes to determining whether an election official has met her duties under a statute through which one of Congress' stated purposes is to "ensure that accurate and current voter registration rolls are maintained." *Husted, 838 F.3d at 705* (quoting *52 U.S.C. § 20501(b)*). In any event, such a position undercuts Snipes and United's own emphasis on the amount of registered voters that BCSEO has removed—which this Court also deems relevant to such a determination.

Ultimately, taking ACRU's evidence as true, the voter registration rates extrapolated from Broward County's voter rolls at the very least create a reasonable inference that Snipes, **[*53]** despite all of the stated list maintenance efforts she has

[16] Notably, Snipes and United make no effort to identify exactly what that statutory standard for reasonableness is and what its parameters are.

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undertaken, has failed to meet the reasonableness requirement under *subsection (a)(4) of Section 8*. *See, e.g., Martinez—Rivera, 166 F. Supp. 3d at 793-94* ("The high registration rate in Zavala County creates a strong inference that the Defendant has neglected her duty to maintain an accurate and current voter registration roll."); *Wake Cty. Bd. of Elections, 2017 U.S. Dist. LEXIS 23565, 2017 WL 684185, at *4-5* (drawing inference in favor of the plaintiff alleging an NVRA violation where the plaintiff alleged that "voter rolls maintained by [the defendant] contain or have contained more registrants than eligible voting-age citizens" and disregarding at the motion to dismiss stage the "potentially reasonable explanation for the high registration rate"). As such, the Court finds that Snipes and United have not shown the absence of a genuine issue of material fact as to whether Snipes, in light of those voter registration rates, has conducted a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of a registrant's death or a resident's change in residence. *See* *52 U.S.C. § 20507(a)(4)*. As such, Snipes and United are not entitled to judgment as a matter of law with respect **[*54]** to Count I.

2. Claim for Failure to Disclose (Count II)

Subsection 8(i)(1) of the NVRA mandates public disclosure of all records related to voter registration and list-maintenance activities. It provides in relevant part as follows: "Each State shall maintain for at least 2 years and shall make available for public inspection . . . all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters . . . ." *52 U.S.C. § 20507(i)(1)*. "This language embodies Congress's conviction that Americans who are eligible under law to vote have every right to exercise their franchise, a right that must not be sacrificed to administrative chicanery, oversights, or inefficiencies." *Project Vote/Voting for America, Inc. v. Long, 682 F.3d 331, 334-35 (4th Cir. 2012)*.

In moving for summary judgment on Count II, ACRU argues that Snipes has failed to comply with this public disclosure mandate by failing to provide or make available for inspection the following categories of documents it requested in its January 26, 2016 letter:

> (1) updated registration data since the publication of information reported by the EAC for 2014 from the 2014 EAC Report;
>
> (2) the number of notices sent to inactive voters since the publication **[*55]** of the 2014 EAC Report, including the date, scope, and contents of any mailing sent to all ("not just [] active") registered voters;
>
> (3) the total number of voters registered in Broward County as of the date of any response;
> (4) any records indicating the use of citizenship or immigration status for list maintenance activities; and
>
> (5) all list maintenance records including federal voter registration forms containing citizenship eligibility questionnaires for the previous 22 months, which, according to ACRU, contemplates the following: (a) copies of all invoices and statements from any outside vendors Snipes works with in doing list maintenance mailings; (b) records of complaints received regarding list maintenance issues; (c) communications from and to the DOS office; (d) records related to USPS NCOA database requests and usage; and (e) a current list of all registered voters (active and inactive).

ECF No. [117] at 14-15. Snipes counters in her motion for summary judgment on Count II by emphasizing that "thousands of public records have been produced" to ACRU thus far, and further claiming that "there are no documents requested and available from Defendant Snipes that has not already **[*56]** been provided." ECF No. [145] at 2-3. The Court will address each motion and their respective arguments in turn.

As a preliminary matter, however, insofar as ACRU

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seeks under Count II a declaration from the Court that Snipes has violated the public disclosure requirement under subsection 8(i)(1) of the NVRA, *see generally* ECF No. [12] at 9 (praying for a declaration "that Defendant is in violation of Section 8 of the NVRA"), the Court considers the operative time period to be the time between ACRU's January 26, 2016 letter and the filing of this suit on June 27, 2016. Under 52 U.S.C. § 20510(b)(2), a potential defendant is allowed 90 days following receipt of a notice of a purported NVRA violation to correct that violation before the potential plaintiff may bring suit. In this case, that notice was the January 26, 2016 letter, and so Snipes had at least 90 days from the date she received that letter to correct the potential public disclosure violation identified therein.[17]

It is precisely that claimed violation—which encompasses all of the communications and interactions that took place between ACRU and Snipes from January 26, 2016 to June 27, 2016—and Snipes alleged failure to correct it up to the commencement of this suit that **[*57]** is reflected in the Amended Complaint. *See, e.g.*, ECF No. [12] at ¶ 33 ("Defendant has failed to respond adequately to Plaintiff's written request for data, failed to produce or otherwise failed to make records available to Plaintiffs concerning Defendant's implementation of programs and activities for ensuring the accuracy and currency of official lists of eligible voters for Broward County, in violation of Section 8 . . . . *Defendant has rebuffed efforts to meet to discuss and implement remedial plans to cure this violation.*") (emphasis added). To the extent that the Court considers the efforts undertaken by Snipes since the filing of this suit—which seems to be the primary focus of ACRU's and Snipes' respective motions for summary judgment on Count II—the Court does so only for the purposes addressing ACRU's request for an injunction requiring Snipes to "substantively respond to [ACRU's] written request for records concerning her implementation of [list maintenance] programs and activities . . . and provide access to election records." ECF No. [12] at 10.

a. ACRU's Motion

At the outset, the Court notes that ACRU's Motion is premised on Snipes' alleged failure to provide **[*58]** records throughout the course of this litigation. *See* ECF No. [117] at 14-15. With that in mind, the Court makes a seemingly obvious but nevertheless important—indeed dispositive—observation. In support of its motion for summary judgment, ACRU cites to Project Vote/Voting for America, Inc. v. Long, 682 F.3d 331, 334-35 (4th Cir. 2012). *See* ECF No. [117] at 10-13. In *Long*, the Fourth Circuit affirmed the district court's granting of summary judgment in favor of the plaintiff organization that sought records under the NVRA, whereby the district court concluded that Section 8's public disclosure requirement applies to completed voter registration applications. 682 F.3d at 333. The

[17] The parties appear to be in agreement that the January 26, 2016 letter constituted sufficient notice for purposes of ACRU's failure to disclose claim under Count II. Nonetheless, and despite the issue having not been raised on summary judgment or at any other time during these proceedings, the Court questions whether the letter can constitute sufficient notice for purposes of ACRU's claim for failure to make reasonable efforts to conduct voter list maintenance programs under Count I *and* ACRU's failure to disclose claim under Count II. Specifically, the letter contemplated one potential NVRA violation, the violation claimed under Count I. *See* ECF No. [12-1] at 2 ("[T]he list maintenance requirements of Section 8 of the NVRA [] ensure that ineligible voters are not participating in the political process . . . . The American Civil Rights Union has [] taken on the task of notifying you of your county's violation."). The letter did not contemplate the NVRA violation claimed under Count II, nor could it have; being the first correspondence between ACRU and Snipes, the letter represents the first time ACRU requested list maintenance records from Snipes. In other words, although the letter notified Snipes of a potential NVRA violation for her alleged failure to make reasonable efforts to conduct voter list maintenance programs, as far as public disclosure is concerned, the letter merely requested for the first time Snipes' list maintenance records. *See id.* at 4 ("We would like to discuss with your office how to implement a remedial plan which could cure what appears to be a violation of Section 8 of the NVRA. We *also request* the opportunity to inspect the list maintenance documents outlined above.") (emphasis added). It would seem to follow, then, that Snipes was never provided written notice of the potential NVRA violation claimed under Count II or afforded 90 days after such written notice by which to cure the potential violation—the lapse of which gives rise to the private cause of action. *See* 52 U.S.C. §§ 20510(b)(1), (2).

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plaintiff organization had specifically requested from the defendant—a city official responsible for processing voter registration applications—all voter registration applications submitted during a certain time period, but the defendant repeatedly denied the request. *See id. at 333-34*. The defendant's denial was based on her contention that the text of *Section 8(i)(1)* does not require public disclosure of completed voter registration applications, but instead applies only to records concerning programs and activities "related to the *purging* of voters from the list of registered voters." *Id. at 335* (emphasis added). The Fourth Circuit rejected that interpretation, **[*59]** concluding that "the phrase 'all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters' unmistakably encompasses completed voter registration applications[.]" *Id. at 336* (quoting *52 U.S.C. § 20507(i)(1)*). Similarly, in *Project Vote v. Kemp, 208 F. Supp. 3d 1320 (N.D. Ga. 2016)*, also cited to by ACRU, *see* ECF No. [117] at 13-14, the Northern District of Georgia rejected the argument that records stored in electronic form are not subject to *Section 8*'s public disclosure requirement. The court reasoned: "Interpreting 'records' to exclude information contained within electronic databases also would allow States to circumvent their NVRA disclosure obligations simply by choosing to store information in a particular manner. Given the ubiquity and ease of electronic storage, this would effectively render *Section 8(i)* a nullity." *Kemp, 208 F. Supp. 3d at 1336*.

In relying on *Long* and *Kemp*, ACRU appears to imply that Snipes has withheld the production of certain relevant records on the bases that such records either exceed the NVRA's two-year retention period or are stored only in electronic form. ECF No. [117] at 13. More specifically, ACRU asserts as follows:

> The same reasoning [in *Long*] should apply to the two-year retention **[*60]** requirement. That is a floor, not a ceiling. If an election official maintains records for longer than two years, they must be subject to disclosure.
>
> Finally, electronic records housed within databases are also subject to the public disclosure and inspection provisions of the NVRA. To the extent that any records that have not been disclosed by Defendant Snipes are housed electronically, they are subject to the NVRA's disclosure provision.

Id. However, other than these vague assertions, ACRU offers no clarity whatsoever as to which specific category of records it has requested that Snipes has refused to produce *expressly on account of the above mentioned bases*. Quite the contrary, Snipes' opposition to ACRU's Motion—as well her own motion for summary judgment on Count II—posits that no documents requested by ACRU have been withheld. *See* ECF No. [129] at 7 ("Snipes has made no attempt to be uncooperative in the production of documents. There has been no refusal or objection to providing any document(s). Even where Plaintiff was not clear in its litigation discovery request, . . . the documents were still provided. Thousands of documents have been provided to date."); ECF No. [145] at 3 **[*61]** ("At this time, there are no documents requested and available from Defendant Snipes that has not already been provided."). In other words, Snipes—unlike the defendants in *Long* and *Kemp*—does not concede that she has refused to provide records that ACRU has requested, let alone offer an express rationale justifying any refusal on her part to provide such records. In this sense, this case is very different from those cases. In both *Long* and *Kemp* there was no dispute that a certain and definitive category of records had been withheld from the requesting plaintiffs—i.e., voter registration applications and all information contained within electronic databases—and the defendants maintained their reasoning for refusing disclosure of the requested records throughout the respective litigations in unequivocal fashion. The courts' respective rulings were specific to those circumstances. *See Long, 682 F.3d at 332-33* ("The question here is whether *Section 8(i)(1)* . . . applies to completed voter

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registration applications."); *Kemp, 208 F. Supp. 3d at 1335-41* (rejecting defendant's "implicit[] argu[ment] that the Requested Records maintained in electronic format on the Database are not 'records'[under *Section 8(i)(1)*] because that term is limited to physical documents"). The same simply cannot **[*62]** be said here. To that extent, ACRU's reliance on *Long* and *Kemp* is inapposite.

Importantly, the distinction illuminates what amounts to a factual dispute that is material with respect to the injunctive relief ACRU seeks under Count II—that is, an injunction "commanding Defendant to permit inspections of election records pursuant to *52 U.S.C. § 20507(i)*." ECF No. [12] at ¶ 1. Down to its simplest form, the parties dispute whether in fact Snipes has provided all of the records requested by ACRU—a dispute that goes to the heart of the relief ACRU seeks in under its *Section 8(i)(1)* claim. *See* *52 U.S.C. § 20507(i)(1)* (requiring that each State "make available for public inspection . . . all records" concerning programs and activities related to voter registration and list maintenance). As alluded to earlier, Snipes claims that she has fully complied with ACRU's records requests, having handed over to ACRU thousands of BCSEO documents. To the extent that there are requests by ACRU that have gone unfulfilled, Snipes contends that some of the requests in ACRU's January 26, 2016 letter required "the creation of new records . . . or required the reviewer to guess the nature of the [request]." ECF No. [129] at 5. ACRU contends, on the other hand, that **[*63]** the January 26, 2016 letter "did not call for the creation of new records or require any guessing as to what was requested. . . . [and] outlined specific categories of list maintenance records."[18] ECF No. [130] at 3. However, it is not for the Court to weigh at the summary judgment stage the competing interpretations as to the achievability or clarity of ACRU's requests. Rather, in this context, the Court must draw all reasonable inferences against ACRU, whose motion for summary judgment is under consideration. *See* *Group, 408 F.3d at 1331*. Other than its own conclusory assertions, ACRU has made no meaningful attempt to explain why Snipes' contention that some of ACRU's requests call for records that are not in existence or are otherwise unclear is an unreasonable one. And the Court does not consider such an inference unreasonable given the circumstances, especially in light of the fact that ACRU has received from Snipes—through substantial discovery—documents numbering in the thousands. For example, ACRU offers no explanation as to why or how the thousands of documents that Snipes has provided are not responsive to any of the categories of documents that ACRU maintains that Snipes has continued to withhold. **[*64]** Nor has ACRU specified whether any of those categories of documents are indeed both in existence and in the possession of Snipes. *See generally* *United States v. Dunkel, 927 F.2d 955, 956 (7th Cir. 1991)* ("Judges are not like pigs, hunting for truffles buried in briefs."); *Chavez v. Sec'y Florida Dep't of Corr., 647 F.3d 1057, 1061 (11th Cir. 2011)* ("Likewise, district court judges are not required to ferret out delectable facts buried in a massive record.") (citing *Dunkel, 927 F.2d at 956*).

Accordingly, the Court is satisfied that, with respect to ACRU's Motion on Count II, Snipes has raised a material issue of fact as to whether she has, throughout the course of this litigation, sufficiently provided all of the records requested by ACRU as required under *Section 8(i)(1)* so as to potentially render moot ACRU's request for an injunction requiring Snipes to substantively and completely respond to its written request for records.

b. Snipes' Motion

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[18] To be sure, ACRU does not argue in its motion for summary judgment on Count II that Snipes has, in addition to allegedly failing to provide requested records, failed to *maintain* any records that *Section 8* requires the maintenance of. *See generally* *Kemp, 208 F. Supp. 3d at 1343 n.35* ("Whether a record is required to be maintained is different from a claim that a maintained record is required to be disclosed. The question whether Defendant failed to maintain one or more records is not presently before the Court.").

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The Court begins with another obvious observation. Inexplicably, despite aptly describing the material issue of fact outlined above as a "tremendous factual dispute" in arguing against ACRU's Motion, ECF No. [129] at 6, Snipes makes an about-face in her own motion for summary judgment, asserting that "there are no genuine issues of material fact related to Count II[,]" ECF No. [145] at 1-2. **[*65]** As mentioned, Snipes claims that she has provided all of the records requested by ACRU. According to Snipes, ACRU has "attempt[ed] to 'game' the NVRA law by seeking and pursuing less [sic] information than is actually available and then claiming that Snipes is somehow negligent in her duty to produce documents." ECF No. [145] at 3. Overall, Snipes' Motion does not alter the Court's view that Count II is not without at least one genuine issue of material fact.

First, with respect to the interactions that occurred prior to the commencement of this suit, Snipes asserts that following ACRU's January 26, 2016 letter, "[a]t no time did [she] refuse to provide documents or allow for an inspection of documents." *Id.* at 6. This assertion speaks to the phone call that took place between Snipes and ACRU's legal representative on April 5, 2016. *See generally* ECF No. [12] at ¶ 24 (alleging that on the April 5, 2016 phone call Snipes "declined to set up [] a meeting" to discuss remedial steps and the current status of the voter rolls). According to Snipes, during that phone call she "provided the contact information for [her] General Counsel in order to coordinate inspection and follow-up." ECF No. [145] at 6 (citing ECF **[*66]** No. [129-2] at 2-3). According to ACRU's counsel, however, the phone call went as follows:

> I just got off the phone with Brenda Snipes. The general theme of the call was "why are you singling out Broward when you sent letters to 6 other counties." She even said that Miami-Dade has more people. That aside, *she declined to meet with us to discuss only Broward*. She said she would meet only if representatives from the other 6 counties were included.

ECF No. [131-1] at 3 (emphasis added); *see also* ECF No. [118-1] at 3, ¶ 12 ("*Defendant refused to meet to discuss remedies and permit inspection of records*. Defendant Snipes suggested that ACRU should focus on Miami-Dade County instead . . . .") (emphasis added). But Snipes denies that she ever refused to provide documents or allow for an inspection. *See* ECF No. [129-2] at 3, ¶¶ 7-8. As ACRU correctly points out, then, "[t]he characterization of that phone call differs profoundly between the parties . . . ." ECF No. [157] at 10. Importantly, the nature of that phone call is germane to ACRU's claim under Count II, as the Amended Complaint specifically alleges under Count II that Snipes "failed to produce or otherwise failed to make records available **[*67]** . . . . [and] rebuffed efforts to meet to discuss and implement remedial plans to cure this violation." ECF No. [12] at ¶ 33. Relatedly, ACRU argues that Snipes' February 8, 2016 letter in response to ACRU's January 26, 2016 letter, which only provided to ACRU certain certifications, constituted a "less-than-complete response to ACRU's record request." ECF No. [157] at 11. Given that Snipes has since produced thousands of more records throughout discovery in response to ACRU's initial requests in the January 26, 2016 letter, such an inference is far from unreasonable. In any event, whether Snipes' initial response in her February 8, 2016 letter and her alleged refusal to arrange a meeting with ACRU during the April 5, 2016 phone call—both occurring before this suit was ever filed—would constitute an insufficient response for purposes of Section 8's public disclosure requirement remains a material issue of fact to be determined at trial.[19]

[19] ACRU takes this point a step further in its opposition to Snipes' Motion by arguing that it entitles ACRU to summary judgment on Count II. *See id.* ("Defendant Snipes's violation of the NVRA is readily apparent: not only did she not produce all records requested, she refused to meet with ACRU to permit inspection of records. On this record, ACRU is entitled to judgment as a matter of law."). However, the factual dispute concerning Snipes' alleged refusal to permit an inspection aside (which ACRU itself recognizes), ACRU did not, in its motion for summary judgment on Count II, raise this

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Second, with respect to the discovery conducted as part of this litigation, Snipes asserts that "[a]ny documents that Plaintiff believes it does not have are a part of the VR System for which Plaintiff has not performed any due diligence to understand." **[*68]** ECF No. [145] at 3. Snipes then elaborates on how ACRU, in making "little effort to determine how the VR System stores computer documents relating to NVRA[,]" has elected not to "take depositions of anybody associated with the computer system operations" (such as Nunez) and declined to "conduct a computer inspection of the VR System containing a great majority of the records related to NVRA disclosure requirements" at the January 13, 2017 inspection, despite having the opportunity to do so. *Id.* at 3-4. Implicit in Snipes' focus on records stored electronically in the VR System is the notion that Snipes is not required to (perhaps because she is unable to) produce such records.[20]

See id. at 3(citing ECF No. [111-2] at 8); *see also* ECF No. [111-2] at 8 (Snipes' objection to ACRU's request for production relating to written policies and manuals: "[U]ser guides are contained within the VR System for which *the VR System third party contracted vendor considers confidential and proprietary information requiring court intervention for a final determination*.") (emphasis in original). However, Snipes does not cite to any supporting case law, nor has the Court found any, to indicate that records stored within the database **[*69]** of a third party whom a NVRA records holder contracts with necessarily fall outside the scope of *Section 8*'s public disclosure requirement.

Finally, Snipes asserts that ACRU abandoned the requests it made in its January 26, 2016 letter when it filed suit, apparently because ACRU has since "[taken] no effort to request or clarify documents that were referenced and a part of [the letter]." ECF No. 145 at 8. Snipes once again argues that "the letter was deficient in its request for documents that would require creation (not in existence)" and further argues, without supporting authority, that "NVRA's 'public disclosure' of voter registration activities requirement relates to records that are actually in existence." *Id.* However, as already discussed, for purposes of the injunction sought by ACRU under Count II, the Court will not weigh at the summary judgment stage the competing interpretations as to whether ACRU's requests sought documents not in existence or were otherwise unclear in nature.

Based on the foregoing, the Court finds that neither ACRU nor Snipes has demonstrated through their respective motions that they are entitled to judgment as a matter of law with respect to Count II. To sum **[*70]** up, and for the sake of clarity moving forward, there exists a genuine factual issue as to whether Snipes indeed refused during the April 5, 2016 phone call to arrange a meeting with ACRU for an inspection of BCSEO's office and records, as ACRU alleges. If true, Snipes' pre-suit refusal along with her initial production of BCSEO certifications in her February 8, 2016 response letter—only to be followed by her production of thousands of admittedly responsive documents *after* this suit was filed—could support a finding that Snipes did violate the NVRA's public disclosure requirement under subsection 8(i)(1) before this suit was filed. *See* *52 U.S.C. § 20507(i)(1)*. Conversely, Snipes may have never refused to arrange an inspection meeting with ACRU, but instead may have advised ACRU that such a meeting would need to be arranged through her General Counsel, as Snipes alleges. If true, and if ACRU declined to follow up on that invitation for the nearly three months that passed before ACRU filed suit in June 2016, ACRU's inspection of BCSEO's office and records and Snipes' production of thousands of responsive documents following the commencement of this suit could support a finding that Snipes did not violate

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specific argument. *See* ECF No. [117] at 9-15. The Court will not afford ACRU a second bite at the apple by attempting to, in seeking summary judgment, rely on an argument that it raises in opposition to Snipes' Motion but that it did not raise in its own motion for summary judgment filed months earlier.

[20] To be sure, however, nowhere does Snipes claim that BCSEO does not have access to records contained within the VR System.

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the [*71] NVRA's public disclosure requirement under subsection 8(i)(1) before this suit was filed. It is the time period between ACRU's January 26, 2016 letter and the filing of this suit—which includes the 90 day curative period contemplated by *52 U.S.C. § 20510(b)(2)*, the lapse of which gives rise to the private cause of action—that the Court deems operative in determining whether Snipes violated *subsection 8(i)(1)*'s public disclosure requirement. With respect to the specific injunction ACRU seeks under Count II, to the extent that ACRU claims that Snipes continues to withhold records in her possession that are responsive to its January 26, 2016 letter, ACRU will have to at a minimum (1) itemize with particularity those records and (2) explain how and why the thousands of records that have been produced do not satisfy its purportedly outstanding requests.

IV. CONCLUSION

For the foregoing reasons, it is **ORDERED AND ADJUDGED** as follows:

1. ACRU's Motion, **ECF No. [117]**, is **DENIED**.

2. Snipes' Motion, **ECF No. [145]**, is **DENIED**.

    a. ACRU's Motion to Strike Defendant Brenda Snipes's Partial Motion for Summary Judgment on Count II, **ECF No. [149]**, is **DENIED as moot**.[21]

3. The Snipes/United Motion, **ECF No. [142]**, is **DENIED**.

    a. Snipes [*72] and United's Motion to Strike Plaintiff's Summary Judgment Evidence, **ECF No. [164]**, is **DENIED as moot**.[22]

4. United's *Daubert* Motion, **ECF No. [144]**, is **GRANTED in part** and **DENIED in part**, as set forth in this Order.

DONE and ORDERED in Miami, Florida, this 11th day of July, 2017.

/s/ Beth Bloom

BETH BLOOM

UNITED STATES DISTRICT JUDGE

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[21] ACRU's Motion to Strike Defendant Brenda Snipes's Partial Motion for Summary Judgment on Count II seeks the same relief as did the motion ACRU filed at ECF No. [153], which the Court denied on June 5, 2017. *See* ECF No. [154].

[22] Snipes and United's Motion to Strike Plaintiff's Summary Judgment Evidence requested that the Court strike evidence ACRU submitted in support of its opposition to the Snipes/United Motion that, ultimately, this Court did not consider in denying the Snipes/United Motion.

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