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Hearing on "Voting in America: The Potential for Voter List Purges to Interfere with Free and Fair Access to the Ballot"

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Key takeaways

- Engaging in high-quality voter registration list maintenance is crucial to fulfilling the dual mandates of election administration: making voting accessible while ensuring the integrity of our elections.

- Election administrators frequently receive inconclusive evidence suggesting that a registered voter may no longer be eligible to vote at their address of registration.

- Seemingly small details about how election administrators use such evidence to conduct list maintenance can have important consequences for how often list maintenance is initiated against a registrant who does, in fact, remain eligible to vote at their address of registration.

- While the National Voter Registration Act of 1993 (NVRA) provides protections that reduce the number of cases in which a registration of an eligible registrant is immediately canceled, it does not prevent poorly conceived list-maintenance protocols from reducing the accessibility of voting by inactivating the registrations of eligible registrants.

- My research demonstrates that minority registrants are more likely than White registrants to be incorrectly identified as no longer eligible to vote at their address of registration.

- My research finds that the number of votes impeded by poorly conceived list-maintenance protocols is large relative to incidence of fraud that this list-maintenance seeks to prevent.

I. Introduction

Chairman Butterfield, Ranking Member Steil, and Members of the Committee, thank you for the opportunity to testify before you today.

The management of voter registrations is one of the most challenging tasks that our election administrators engage in. At the heart of this challenge is the fact that registrants inevitably become ineligible to vote at a given address, either because they move, die, or are otherwise no longer eligible to vote. The decentralized nature of American election administration makes it particularly hard to recognize when registrants move to a new address, especially when that new address is located in a different state.

Research by myself and other political scientists can help inform the processes used by election administrators to update voter registrations, which is sometimes referred to as list maintenance. There often is uncertainty about whether a registrant remains eligible to vote at their address of registration. In such cases, there are negative consequences both when failing to initiate list-maintenance on the registrations of those who are no longer eligible to vote and when initiating list-maintenance on the registrations of those who are in fact eligible. Keeping ineligible registrations on the rolls increases the cost of election administration and leaves open the possibility that an invalid vote could be cast using an ineligible registration. Conversely, initiating list-maintenance on eligible registrations can reduce these registrants' trust in the electoral system and impede them from casting a ballot. Political science research helps us better understand the expected frequency of such errors and the consequences of these errors for political participation and electoral integrity.

My testimony is organized as follows. Section II describes some of the challenges of using administrative data to determine whether a registrant remains eligible to vote. Section III highlights what protections the National Voter Registration Act of 1993 (NVRA) provides against poorly conceived list-maintenance protocols. Section IV presents the findings of my research showing that list maintenance is more likely to be wrongly initiated against minority registrants than White registrants. Section V discusses how a poorly conceived list-maintenance protocol can impede many votes relative to number of fraudulent votes it may prevent. Section VI concludes.

II. Administrative Data and List Maintenance

Election administrators often are uncertain about whether a registrant remains eligible to vote at their address of registration when deciding about whether to initiate list maintenance on the registration. Few registrants immediately contact an election administrator in the jurisdiction where they used to live and inform them when they move. Instead, election administrators are left to piece together clues contained in administrative data that are often collected for purposes besides managing voter registrations to make decisions that affect whether a registration remains on the registration rolls.

Political science research is particularly helpful for improving our understanding of the consequences of the record-linkage protocols used in the process of list maintenance. In the domain of list maintenance, record-linkage protocols refer to the methods used to identify information about a registrant in other databases that election administrators have access to. For example, an election administrator may want to link a registrant to their driver's license record because a difference between an address of registration and the address on a driver's license is a clue suggesting that a registrant may no longer reside at their address of registration. When trying to uncover information about registrants in another database, it helps when both the registration rolls and the other database contain a linking variable, or variables, that make it easy to bring together information about the same individual in the two different databases. For example, linking a registration record to the registrant's information in a driver's license database is simple when both always contain accurate information on an individual's driver's license number. But it may be significantly harder when at least some voter registration records do not contain information on the registrant's driver's license number or contain an inaccurate

representation of their driver's license number. In such circumstances, election administrators have to look for less obvious linking variables. They may, for example, try to identify a registrant's record in a driver's license database by searching for a driver's license record with the same name and date of birth as the registrant.

Research conducted by political scientists, including myself, show that even seemingly minor details about record linkage could have important consequences for how often election administrators wrongly cancel the registration of an eligible registrant. One specific issue that my research addresses is the possibility of registration doppelgängers. Registration doppelgängers occur when an election administrator uses a record-linkage process that causes a registrant to link to a different individual's record in another database. In the aforementioned driver's license example, there are occasionally registration doppelgänger in a driver's license database that share the same first name, last name, and date of birth as a registrant.[1] When a record-linkage protocol links a registrant to this registration doppelgänger in the driver's license database, it will be linking the registrant to a different person. The registrant's address of registration is going to differ from the linked driver's license address when this happens, but not because the registrant has moved from their address of registration. Thus, when list maintenance is initiated on registrations when these two addresses differ, it will be initiated on an eligible registrant when they are linked to a registration doppelgänger.

My research shows that record linkage done by the Interstate Voter Registration Crosscheck Program (henceforth Crosscheck), which a number of states used to assist in list maintenance within the last ten years, generated a substantial number of registration doppelgängers.[2] Crosscheck was a consortium in operation between 2005 and 2019 to assist in identifying cases in which the same person was registered to vote in two members states. At one point in time there were 29 member states in Crosscheck, with many of these states using the data provided by Crosscheck in their list-maintenance protocols. Linking together the registration records of people who are registered to vote in two different states is a challenging task because few fields are consistently reported in different states' registration rolls. What Crosscheck provided to each member state were the cases in which a registrant in their state shared the same first name, last name, and date of birth as a registrant in another member state. My research showing that many of these matches were registration doppelgängers shares the same underlying logic as something known as the birthday problem.[3] The birthday problem refers to the likelihood that two individuals in a room will share the same birthday as a function of the number of people in the room. When the birthday problem was taught in my high school math class, I remember being surprised that it is more likely than not that two people in the same room will share the same birthday once there are about 23 people in the room. After all, the chance that any pair of individuals would be born on the same day is quite small, roughly 1 in 365. The key point of the birthday problem is that as you add more people into the room, you end up generating more and more pairings – 5 people generate 10 pairings, 10 people generate 45

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[1] Ansolabehere, Stephen and Eitan Hirsch. 2017. "ADGN: An Algorithm for Record Linkage Using Address, Date of Birth, Gender, and Name." *Statistics and Public Policy* 4(1): 1-10.

[2] Goel, Sharad, Marc Meredith, Michael Morse, David Rothschild, and Houshmand Shirani-Mehr. 2020. "One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections." *American Political Science Review* 114(2): 456-469.

[3] See also Michael P. McDonald and Justin Levitt. 2008. "See Double Voting: An Extension of the Birthday Problem." *Election Law Journal: Rules, Politics, and Policy* 7(2): 111-122.

pairings, and 15 people generate 96 pairings. Each additional person that comes into the room creates more pairings than the last. As you keep adding more people into the room, eventually one of those pairings is going to share the same birthday.

Applying this same logic to the Crosscheck data, there will be cases in which two different registrants share the same first name, last name, and date of birth if you start comparing enough registrations. The probability that any two distinct registrants share the same first name, last name, and date of birth is exceedingly tiny. But even an exceedingly tiny probability can generate a substantial number of cases once you are considering trillions of pairings. My research shows, for example, that over a million pairings of different voters in the 2012 presidential election shared the same first name, last name, and date of birth.[4] In practice, this means that a substantial share of the pairings returned to states by Crosscheck represented cases in which two different registrants shared the same first name, last name, and date of birth instead of the same person being registered to vote in two different states.

Lack of concern about registration doppelgängers resulted in Crosscheck data being used to impede the ability of eligible registrants to vote. An implication of my research is that more information is needed, such as information about whether the registrations share a common middle name or last four digits of a social security number (SSN4), before the existence of a registration with the same first name, last name, and date of birth should be used to initiate list maintenance. However, research by political scientist Michael McDonald into Indiana's use of Crosscheck data shows that county elections officials did not always understand this when conducting list maintenance between 2015-2017.[5] McDonald's research shows that list-maintenance actions were initiated by numerous counties on nearly all the registrations flagged by Crosscheck, even in the absence of auxiliary information supporting the conclusion that these were not registration doppelgängers. McDonald's analysis suggests that Indiana's use of Crosscheck data likely triggered list-maintenance against thousands of eligible registrants who continued to reside at their address of registration, but who had the misfortunate of sharing the same first name, last name, and date of birth of a registrant in another Crosscheck member state.

McDonald's research on Georgia's use of the National Change of Address (NCOA) data highlights how these data also can generate registration doppelgängers.[6] NCOA data are compiled from the reports people file with the United States Postal Service (USPS) when they want their mail held or forwarded. While these data are not collected with the purpose of supporting list maintenance, many election officials use NCOA data in their list-maintenance protocol. Because supporting list maintenance is not the purpose of NCOA data, they do not contain all of the identifying information, like date of birth, that they would ideally contain to reduce the potential for registration doppelgängers. McDonald investigates the consequence of this by comparing how often two large voter registration firms that specialize in record linkage, L2 and TargetSmart, agree with Georgia's assessment that a given registrant's record is contained in the NCOA data. In 14 percent of cases, McDonald finds that these firms do not

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[4] Ibid 2.

[5] See Expert Report of Michael P. McDonald in *Common Cause Indiana v. Lawson* (Case 1:17-cv-03936-TWP-MPB).

[6] See Expert Report of Michael P. McDonald in *Fair Fight Action, Inc. v. Brad Raffensperger* (Case 1:18-CV-5391-SCJ).

agree with Georgia's conclusion that a given registrant is contained in the NCOA data. The broader takeaway is that linking registrations to NCOA data is challenging, and improperly using NCOA data can potentially generate a substantial number of registration doppelgängers.

Improper interpretation of a record linkage can also impede the ability of eligible registrants to vote even when a registrant is correctly linked to their own record in another database. One issue that my research highlights is that it can be hard to determine a registrant's current address when a record linkage process determines that the same registrant is registered to vote at two locations. For example, Crosscheck suggested that election administrators initiate list maintenance on the registration with the earlier registration date when its data showed that the same registrant was registered to vote in two different states. However, my research shows that it is not always the case that a registrant is voting at the address with the more recent registration date.[7] One of the challenges here is that states sometimes are reporting slightly different information in a field like registration date, making it so that registrants sometimes currently reside at the address with the earlier registration date. More broadly, this finding illustrates that election administrators need to think about the quality of the data being linked, in addition to the quality of the record linkage, when evaluating the likelihood that a registrant who remains eligible to vote is impeded from doing so because of a list-maintenance protocol. Failing to recognize the limitations of the data commonly used in these protocols can initiate list maintenance against a substantial number of registrants who remain eligible to vote.

III. NVRA and List Maintenance

Under the NVRA, a registrant must be given notice and the opportunity to vote in the next two general elections before their registration is canceled, unless the registrant authorizes the cancelation. Typically, this means that when a jurisdiction initiates list maintenance on a registration, the registration moves from active to inactive status, with the jurisdiction attempting to notify the registrant of this status change, usually using a postcard. The registrant must be given two federal elections to confirm their registration status before the registration is canceled. It was this provision that ultimately caused SEA 442 (2017) – which permitted Indiana counties to cancel the registrants flagged by Crosscheck without notice and without waiting through two general election cycles with no voter activity – to be struck down in the courts.[8]

While the NVRA provides protections from some list maintenance policies that could be especially disenfranchising, these protections are not sufficient to prevent poorly contrived list-maintenance protocols from unnecessarily disenfranchising voters. First, litigation only blocked a policy like Indiana's SEA 442 (2017) once it had already been passed. Second, the NVRA does not stop Indiana or any other state from using flawed data, like Crosscheck data, to move registrants from active to inactive status. Moving eligible registrations from active to inactive status could reduce voter turnout in a number of ways. First, having an eligible registration moved from active to inactive may reduce a registrant's confidence in the electoral system. Second, many states only send certain forms of election mail that may mobilize registrants, such as sample ballots, to active registrants. Likewise, campaigns often exclude inactive registrants from their get out the vote efforts. Third, moving an eligible registration from active to inactive

[7] Ibid 2.
[8] *Common Cause Indiana v. Lawson*, 937 F.3d 944, 958-59 (7th Cir. 2019).

status may eventually result in an eligible registration being canceled as a significant number of registrants exercise their right to abstain from voting in two successive federal elections. For example, there were about 90,000 registrants who voted at their address of registration in the 2016 presidential election in Florida and North Carolina who had not cast a vote at that address of registration since the 2008 presidential election.[9] Finally, some states are exempted from the NVRA because of their longstanding use of Election Day registration. While Election Day registration provides an important safeguard if a poorly contrived list-maintenance protocol is implemented, Election Day registration is not a perfect substitute for remaining registered for many of the same reasons why it is disenfranchising to move eligible registrations from active to inactive status.

One factor that makes it more problematic when list maintenance is initiated based on flawed data, like Crosscheck data, is that few eligible registrants confirm their address when they are mailed a notification informing them that list maintenance has been initiated. This is demonstrated by a study that I conducted examining registrants who were incorrectly flagged as potential movers in Wisconsin by the Electronic Registration Information Center (ERIC) in late 2017.[10] ERIC is a non-profit corporation governed by member states, which currently assists 30 states and the District of Columbia in list maintenance efforts.

In late 2017, the Wisconsin Elections Commission (WEC) mailed out postcards to 341,855 registrants that ERIC flagged as potential movers asking them to confirm their registration to avoid having their registration canceled. 6,153, or about 1.8 percent, of the registrants mailed a postcard confirmed their registration.[11] My study estimates that at least double that amount voted at their address of registration during one of the four statewide elections that Wisconsin held in 2018.[12] This means that, at a minimum, 2 out of 3 registrants who continued to reside at their address of registration failed to confirm their registration after being sent a postcard asking them to do so. Some of the reasons why this occurred is because registrants never saw the postcard sent by WEC, and those that did failed to understand its significance for the status of their registration. Importantly, my research uncovered no evidence suggesting there were any extenuating circumstances surrounding the mailing of postcards that would have caused recipients to be more or less likely to respond to them in this case than in other contexts.

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[9] Herron, Michael C and Daniel A. Smith. 2018, "Estimating the Differential Effects of Purging Inactive Registered Voters." 2018 Election Sciences, Reform, and Administration Conference University of Wisconsin-Madison (available from https://esra.wisc.edu/wp-content/uploads/sites/1556/2020/11/herron.pdf).

[10] Huber, Gregory, Marc Meredith, Michael Morse, Katie Steele. 2021. "The Racial Burden of Voter List Maintenance Errors: Evidence from Wisconsin's Supplemental Movers Poll Books." Science Advances 7(8).

[11] Wisconsin Elections Commission. 2019. "Assessment of Wisconsin's Electronic Registration Information Center (ERIC) Participation." (available from https://elections.wi.gov/sites/elections.wi.gov/files/2019-03/Open%20Session%20Commission%20Meeting%20Materials%20AMENDED%203.11.2019.pdf).

[12] Ibid 10.

IV. Race, Ethnicity and List Maintenance

One primary focus of my study focusing on registrants flagged by ERIC in Wisconsin in 2017 is to investigate whether there is any evidence that minority registrants flagged by ERIC were more likely to reside at their address of registration than White registrants flagged by ERIC. Previous research highlights cases in which minority registrations are more likely to be removed than White registrations,[13] as well as evidence that removing the protections of Section 5 of the Voting Rights Act caused an increase in registration removals.[14] But examining whether registrants who are minority are more likely than registrants who are White to vote at the registration address flagged by ERIC is a more direct test of differential burden.

My study finds minority registrants are substantially more likely than White registrants to vote at the address flagged by ERIC.[15] The differences are not only statistically significant, but also substantively important with minority registrants being about twice as likely as White registrants to be vote at their address of registration. Even larger differences are found when focusing specifically on the differences between White and Black registrants. Importantly, this happened even though Wisconsin was relying on ERIC data, which is generally thought to be high quality and is used in many states' list-maintenance protocols. This was the first time that Wisconsin used ERIC data to assist in list maintenance, and one of the issues highlighted by the WEC in its postmortem were unexpected data-quality issues with the data provided by the Wisconsin DMV.[16] This highlights the potential for new list-maintenance protocols to impede a substantial number of eligible registrants, and particularly eligible minority registrants, when they are first enacted.

While the data do not allow me to tease out exactly why minority, and especially Black registrants, are more likely to be incorrectly flagged as moving, I believe that residential mobility is an important part of the story. It may be more challenging to identify the current address of minority registrants than White registrants using administrative records because data show that minorities are more likely than Whites to live at addresses for short amounts of time.[17] Election administrators report that they are better able identify the address that someone is moving from and the address that someone is moving to in ERIC data the longer that someone lives at an address.[18] I also theorize that there may be circumstances when people from multi-unit buildings and multi-generational households are more likely to be incorrectly flagged as moving, both of which could disproportionately affect minority registrants, although I do not find evidence that this happened in this case.

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[13] Morris, Kevin and Myrna Perez. 2018. "Florida, Georgia, North Carolina Still Purging Voters at High Rates." Brennan Center for Justice Technical Report (available from https://www.brennancenter.org/our-work/analysis-opinion/florida-georgia-north-carolina-still-purging-voters-high-rates).

[14] Feder, Catalina and Michael G Miller. 2020. "Voter Purges After Shelby." *American Politics Research* 48(6):687-692.

[15] Ibid 10.

[16] Ibid 11.

[17] For evidence that minorities are more likely to frequently move than Whites, see National Survey of Children's Health. 2016 (available from https://www.nschdata.org/browse/survey/results?q=5225&g=606).

[18] Brater, Jonathan, Kevin Morris, Myrna Perez and Christopher Deluzio. 2018. "Purges: A Growing Threat to the Right to Vote." Brennan Center for Justice Technical report (available from https://www.brennancenter.org/our-work/research-reports/purges-growing-threat-right-vote).

V. Election Integrity and List Maintenance

Political science research is also helpful for thinking about the consequences of false negatives when conducting list maintenance. False negatives in this context refer to cases in which a list maintenance is not initiated despite a registrant no longer being eligible to vote at their address of registration. While there are other costs to keeping ineligible registrations on the rolls, arguably the most salient concern is that ineligible registrations could be used to cast fraudulent votes.

One concern about ineligible registrations is that registrants with two or more registrations may commit voter fraud by casting a vote using each of these registrations. My research explicitly addresses this possibility and tries to estimate the number of cases in which the same person cast a ballot in two states in the 2012 presidential election.[19] I conclude that double voting is extremely rare, particularly when compared to number votes that would be impeded by the list-maintenance protocols that would be needed to remove the registrations that may have been used to cast two ballots. One strategy suggested by Crosscheck was to initiate list maintenance on the registration with the earlier registration date. I find that doing this would impede approximately 300 legitimate votes for each double vote that potentially would be prevented. Overall, my research finds substantially fewer than 1 in every 4,000 voters cast two ballots, with the exact estimate depending how often registrations were inaccurately marked as being used to vote. While I do not know exactly how often this occurs, an audit that I conducted of Philadelphia poll books suggests it happens with enough frequency so that it likely explains a significant portion, if not nearly all, of the cases in which two registrations belonging to the same individuals were both marked as being used to vote in the 2012 presidential election.

Another concern about ineligible registrations is that they can be used in efforts to commit election fraud. In this context, election fraud refers to supporters of a candidate or candidates casting votes using ineligible registrations with a goal of increasing the vote share of their preferred candidate or candidates. The registration records of registrants who are known to be deceased may be particularly attractive to use when committing election fraud, because none of these registrants will show up to vote and discover that their registration has already been used. However, there is no evidence that the registrations of deceased registrants systematically are used to cast ballots. One study focusing specifically on Washington State between 2011-2018 estimated a grand total of 14 votes were cast using the registration of a deceased voters over this time period.[20]

Ultimately, research finds little evidence that ineligible registrations are used to commit voter fraud or election fraud. This is consistent with the broader political science research that

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[19] Ibid 2.

[20] Jennifer Wu, Chenoa Yorgason, Hanna Folsz, Cassandra Handan-Nader, Andrew Myers, Tobias Nowacki, Daniel M. Thompson, Jesse Yoder, and Andrew B. Hall, 2020. "Are Dead People Voting by Mail? Evidence from Washington State Administrative Records." Stanford University working paper (available from https://stanforddpl.org/papers/wu_et_al_2020_dead_voting/).

finds little evidence of either election or voter fraud of any form.[21] This does not mean we should not engage in list maintenance, as there are other reasons besides preventing fraud for removing ineligible registrations. But it further emphasizes why electoral integrity is bolstered when there are policies that protect eligible registrants from having list-maintenance initiated against their registration based on flawed data or methods.

VI. Conclusion

It is essential that election administrators conduct high quality list maintenance to ensure that voting remains accessible and maintain our electoral integrity. My testimony highlights the limitations of the data used in list-maintenance protocols that makes this one of the most challenging elements of an election administrator's job. When an election administrator fails to recognize these limitations, it can jeopardize a registrant's ability to vote even though they remain eligible to vote at their address of registration. While the protections of the NVRA help to prevent some of the negative consequences of poorly conceived list-maintenance protocols, these protections have proven to be insufficient in recent years to prevent data from being improperly used to initiate list-maintenance against a substantial number of eligible registrants. This is especially problematic given my research showing that minority registrants may be more likely than White registrants to be incorrectly identified as being no longer eligible to vote at their address of registration. As such, more federal oversight over list-maintenance protocols is justified to ensure these protocols are not reducing the political participation of groups who have historically faced greater barriers to accessing the polls.

[21] Cottrell, David, Michael C Herron, and Sean J Westwood. 2018. "An Exploration of Donald Trump's Allegations of Massive Voter Fraud in the 2016 General Election." *Electoral Studies* 51: 123-142; Minnite, Lorraine C. 2010. *The Myth of Voter Fraud*. Ithaca, NY: Cornell University Press.