

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II

THE KENTUCKY DEMOCRATIC PARTY

Plaintiff,

v.

**STATE BOARD OF ELECTIONS FOR THE
COMMONWEALTH OF KENTUCKY and
ALISON LUNDERGAN GRIMES, in her
official capacity as Chief Election Official for
the Commonwealth of Kentucky**

Defendants.

Civil Action No. 19-CI-1043

**UNITED STATES' EMERGENCY MOTION TO PARTICIPATE AS AMICUS,
TO FILE A STATEMENT OF INTEREST AND
TO WAIVE CERTAIN RULES AND REQUIREMENTS**

For the reasons set forth below, the United States of America hereby respectfully requests to waive Kentucky Supreme Court Rule 3.030(2) (setting forth requirements for attorneys not licensed in Kentucky) and Local Rule 4 (governing motions), and to be granted leave to participate as amicus by filing a statement of interest in this matter and to be heard at the hearing for a temporary restraining order in the above-captioned case, scheduled for 9 a.m. this Monday, October 14, 2019.

The United States is seeking to submit a Statement of Interest in this matter pursuant to 28 U.S.C. § 517, which authorizes the Attorney General to attend to the interests of the United

States in any pending lawsuit. This matter implicates the application of the National Voter Registration Act (NVRA), 52 U.S.C. § 20501 *et seq.*, a statute over which Congress accorded the Attorney General broad enforcement authority. *See* 52 U.S.C. § 20510(a). The United States has a substantial interest in ensuring that the NVRA is properly interpreted and uniformly enforced around the country. This matter also implicates a Consent Judgment ordered by the United States District Court for the Eastern District of Kentucky. *Judicial Watch v. Grimes*, No. 3:17-CV-94 (E.D. Ky. July 3, 2018) (order issuing consent judgment). The United States is a party to the Consent Judgment and as such has a substantial interest in ensuring that it is complied with. The United States also has an obligation to employ best efforts to defend the Consent Judgment. Consent Judgment ¶ 38. In addition, the Plaintiff here in its filing on October 10 has made certain representations about the views of the Department of Justice on this matter. Those representations are incorrect. The United States is entitled to an opportunity to respond to those representations.

These interests and obligation will be substantially impaired if the United States is not permitted to represent itself before this court when it considers the motion for a TRO. However, because the complaint and TRO were filed late on Thursday, October 10, and noticed for Monday, October 14, this does not leave time for the United States to comply with Local Rule 4 by filing a motion for leave to submit a statement of interest and noticing a hearing date for five or more business days later.

With regard to the State's *pro hac vice* rules, federal law authorizes the Attorney General of the United States to send any Department of Justice attorney into any court in the United States (including state courts) to attend to the interest of the United States. *See* 28 U.S.C. § 517; 28 C.F.R. § 77.1(b). A federal government attorney, however, "shall be subject to State laws and

rules . . . governing attorneys in each State where such attorney engages in that attorney’s duties, to the same extent and in the same manner as other attorneys in the State.” 28 U.S.C. § 530B(a). Consistent with that statutory obligation, government attorneys representing the United States in this case will fully comply with the ethical requirements of this Court and the Kentucky Bar, as set forth in 28 C.F.R. § 77.3.

Regulations implementing 28 U.S.C. § 530B, however, make clear that federal law does not subject a government attorney to “[a]ny statute, rule, or regulation which does not govern ethical conduct, such as rules of procedure,” and specifically does not require compliance with any “statute, rule, or regulation requiring licensure or membership in a particular state bar.” 28 C.F.R. § 77.2(h)(1), (3). Accordingly, federal law does not require a government attorney to be a member of the Kentucky Bar, nor does federal law require government attorneys to comply with procedural rules governing admission or appearances by out-of-state attorneys.

The United States Supreme Court has recognized that state law regulating the practice of law “must yield when incompatible with federal legislation.” *Sperry v. Florida*, 373 U.S. 379, 384 (1963) (internal quotation marks omitted); *see also United States v. Idaho*, 508 U.S. 1 (1993) (holding that principles of federal supremacy prohibit state courts from assessing litigation fees against the federal government, absent an express and specific waiver of sovereign immunity); *Johnson v. Maryland*, 254 U.S. 51, 55 (1920) (rejecting a state’s effort to require a federal government truck driver to obtain a state license, referring to the “immunity of the instruments of the United States from state control in the performance of their duties,” and emphasizing that a state may not “require[] qualifications in addition to those that the [federal] Government has pronounced sufficient”). Under these longstanding precedents, the Attorney General’s selection

of attorneys to represent the United States cannot be subject to additional licensing or other similar requirements under state law.

John A. Russ IV and Michelle Rupp are the government attorneys with principal responsibility for representing the United States in this litigation. Both attorneys are employed by the United States Department of Justice, Civil Rights Division, Voting Section. Mr. Russ is an active member of the California bar, and Ms. Rupp is an active member of the Virginia bar. Neither has ever been subject to any disciplinary action by a court or a bar regulatory authority. They will appear in this Court solely to represent the interests of the United States in this litigation.

For the foregoing reasons, the United States respectfully moves this Court to waive Kentucky Supreme Court Rule 3.030(2) and Local Rule 4, and to authorize attorneys employed by the United States Department of Justice (John A. Russ IV and Michelle Rupp) to represent the United States in this proceeding.

Respectfully submitted,

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Date: October 11, 2019

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2019, a true and correct copy of the foregoing document was served via email to counsel of record in the state court proceeding, as well as the federal lawsuit *Judicial Watch v. Grimes*, 3:17-cv-94 (E.D. Ky.).

/s/ Michelle Rupp

MICHELLE RUPP
Per 28 U.S.C. § 517

**COMMONWEALTH OF KENTUCKY
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Plaintiff,

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**STATE BOARD OF ELECTIONS FOR THE
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the Commonwealth of Kentucky**

Defendants.

Civil Action No. 19-CI-1043

**STATEMENT OF INTEREST OF THE UNITED STATES
IN OPPOSITION TO THE MOTION FOR A TEMPORARY RESTRAINING ORDER**

The United States respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517, which authorizes the Attorney General to attend to the interests of the United States in any pending lawsuit.

This matter implicates the application of the National Voter Registration Act (NVRA), 52 U.S.C. § 20501 *et seq.*, a statute over which Congress accorded the Attorney General broad enforcement authority. *See* 52 U.S.C. § 20510(a). The United States has a substantial interest in ensuring that the NVRA is properly interpreted and uniformly enforced around the country.

This matter also implicates a Consent Judgment ordered by the United States District Court for the Eastern District of Kentucky to ensure compliance with the requirements of the NVRA. *Judicial Watch v. Grimes*, No. 3:17-CV-94 (E.D. Ky. July 3, 2018) (order issuing Consent Judgment), attached as Attachment A (“CJ”). The United States is a party to the Consent Judgment and as such has a substantial interest in ensuring that the Commonwealth

defendants comply with that Judgment. The United States, like all parties to the Consent Judgment, is bound to “employ best efforts to defend [the Consent Judgment] against any legal challenge by non-parties to [it].” CJ ¶ 38.

In addition, the Plaintiff Kentucky Democratic Party (“KDP”), in its filing on October 10, 2019, has made certain representations about the views of the Department of Justice on this matter. Those representations are incorrect. The United States is entitled to an opportunity to respond to those representations.

The United States opposes Plaintiff’s motion for a temporary restraining order, as it would effectively stop Kentucky from complying with its obligations under the Consent Judgment and federal law, without a workable alternative in place. The Kentucky State Board of Elections’ (“SBE”) use of an inactive list is consistent with the requirements of the *Judicial Watch* Consent Judgment and with the requirements of federal law. This motion for a temporary restraining order represents a collateral attack on a federal court order, and even assuming *arguendo* that Plaintiff’s interpretation of state law is correct, it is preempted by federal law.

I. BACKGROUND

On July 3, 2018, the United States District Court for the Eastern District of Kentucky entered a Consent Judgment pertaining to the voter registration list maintenance provisions of the NVRA. The Kentucky SBE, Kentucky Secretary of State, and Commonwealth of Kentucky are all parties to that Consent Judgment and are bound by it, as are the United States and the private plaintiff, Judicial Watch.

As part of the Consent Judgment, the parties stipulated that the NVRA “requires states to conduct a general voter registration list maintenance program that makes a reasonable effort to remove persons from the voter list who have become ineligible by reason of . . . a change in

residence outside the jurisdiction” CJ ¶ 14. Pursuant to Kentucky law, the relevant “jurisdiction” is the county in which the registrant is registered to vote. *See* KRS § 116.112(2)-(4). Kentucky can remove registrants who are believed to have moved outside their county upon completion of the process set forth in Section 8(d) of the NVRA, which allows removal if: (a) the registrant fails to respond to a notice (“Section 8(d)(2) notice”) which asks the registrant to confirm or update their address, and (b) the registrant then fails to vote or appear to vote during the period ending on the day after the second federal general election subsequent to the Section 8(d)(2) notice being sent.¹ CJ ¶ 17; 52 U.S.C. § 20507(d).

The parties further stipulated that Kentucky had not mailed any Section 8(d)(2) notices under the change of address process since 2009. CJ ¶ 28. To remedy this deficiency, the Consent Judgment requires the SBE to take multiple actions. The SBE is required to send a nonforwardable “canvass mailing” intended “to identify registrants through mail returned as undeliverable who may have unreported moves since 2009.” CJ ¶ 34(c). As one of the follow-up measures, the SBE is required to send Section 8(d)(2) notices to those registrants whose canvass cards were returned as undeliverable without a forwarding address or with a forwarding address outside the county in which the person was registered. CJ ¶ 34(d)(ii). The SBE is required to maintain a list of registrants to whom Section 8(d)(2) notices are mailed. CJ ¶ 34(f). Registrants on the list must be permitted to cast a ballot if otherwise eligible and must be able to access information about their registration record online. CJ ¶ 34(f)(1)-(2). Any registrant who responds to the Section 8(d)(2) notice and affirms that they live in the same county, or who votes

¹ If a registrant appears to have moved within the same county, the registrar should update the registration to the new address and then send a different notice by which the registrant may verify or correct the address information. 52 U.S.C. § 20507(c)(1)(B)(i). As a result, any registrant whom the SBE has reason to believe may have moved within the same county should not be affected by the procedures at issue in this case.

or appears to vote or confirms or updates his or her registration address, must have their information updated in the voter registration database and be “returned to active status.” CJ ¶ 34(f)(3). Registrants must subsequently be removed from the rolls if they were mailed a Section 8(d)(2) notice, do not respond to the Section 8(d)(2) notice, and do not vote or appear to vote or otherwise have contact with election officials through the day after the second federal general election following the date on which the Section 8(d)(2) notice was mailed. CJ ¶ 34(g).

In June 2018, the SBE sent a canvass mailing to approximately 617,000 registrants who, as of 2014, had not voted or had any other contact with election officials. In June 2019, the SBE mailed Section 8(d)(2) notices to approximately 250,000 registrants whose canvass cards or other election mail were returned without a forwarding address. Approximately 167,000 of the Section 8(d)(2) notices were also returned without a forwarding address and scanned into the voter registration system before the state law “quiet period” began on August 7, 2019, which is 90 days before the state general election in November.² Those approximately 167,000 registrants were marked inactive in the voter registration system.

As publicly confirmed by the Chair of the SBE, registrants on the inactive list remain eligible to vote.³ The poll worker guide for the upcoming November 2019 election instructs

² The NVRA requires that any program to systematically remove ineligible voters from the rolls must be completed not later than 90 days before a primary or general election for Federal office. 52 U.S.C. § 20507(c)(2). Kentucky law has a similar provision that the Commonwealth applies to both state and federal elections. KRS § 116.112(6).

³ Ryland Barton, *Grimes: Elections Board Made Registration Changes ‘In The Dark of Night,’* 89.3 WFPL (Sept. 17, 2019), <https://wfpl.org/grimes-elections-board-made-registration-changes-in-the-dark-of-night> (“The most important thing is for everyone to realize that they are still eligible to vote even if they’re on a supplementary list, a secondary list of some sort, you still have the right to vote,” ([SBOE chair Joshua] Branscum said after the meeting. “You can go vote. And if you go and you’re on that list, those are just people that have information that needs to be updated in the system. They will be able to do that and they will be able to continue to vote.”)).

elections officials that inactive registrants must fill out a voter registration card, complete an Oath of Voter form, and sign the supplemental roster before being given a ballot. *See* Attachment B, Precinct Election Officers’ Guide, November 5, 2019 General at 13. This process allows the registrant to confirm or update his or her registration address, and it flags for election officials that they need to make any appropriate changes to the person’s voter registration address and return them to active status. Because the Section 8(d)(2) notices were mailed in the summer of 2019, no person on the inactive list will be eligible to be removed from the voter registration rolls until after the November 2022 election unless they confirm that they have moved outside the county.

II. ARGUMENT

The SBE is using an inactive list to track which registrants have been sent 8(d)(2) notices and have not (as yet) responded to those notices, voted or appeared to vote, or otherwise confirmed their registration address with election officials. This is consistent with the Consent Judgment, the NVRA, and practices utilized by states all around the country.

Plaintiff Kentucky Democratic Party (“KDP”) now comes before this court, seeking to collaterally attack the Consent Judgment via state law. Such a collateral attack is inappropriate under both state and federal law. Moreover, assuming *arguendo* that KDP’s interpretation of state law is correct, that state law is preempted by the NVRA.

A. **The SBE is Required to Maintain a List of Registrants Who Are Sent an 8(d)(2) Notice and Fail to Respond, to Update Their Address, and to Vote or Appear to Vote**

The NVRA requires states to conduct a list maintenance program to remove registrants from the voter registration rolls who become ineligible due to a change in residence. 52 U.S.C. § 20507(a)(4)(B). However, states may not remove a registrant from the rolls based on a change

in residence unless the registrant either confirms that they have moved outside of the registrar’s jurisdiction or fails to respond to a Section 8(d)(2) notice and then also fails to vote or appear to vote from the date of the notice through the second general election for Federal office occurring after the date of the notice. 52 U.S.C. § 20507(d)(1). If a registrant meets these criteria, that registrant must be removed from the voter registration rolls. *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833, 1841-42 (2018) (“Not only are States allowed to remove registrants who satisfy these requirements, but federal law makes this removal mandatory.”)

In order to ultimately remove these registrants who have become ineligible to vote due to an unreported move, states must necessarily have some method of determining which registrants meet the criteria for removal. The most obvious way to do this is by maintaining a list of such registrants, and indeed, the NVRA requires that states be able to make available “lists of the names and addresses of all persons to whom [Section 8(d)(2) notices] 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)(2). The Consent Judgment similarly requires that the SBE “maintain[] a list that includes all registrants identified . . . as voters who may have become ineligible due to a change in residence outside the jurisdiction, and are mailed notices conforming to Section 8(d)(2) of the NVRA,” though it further requires that “any registrant who responds to the notice and affirms that they remain in the jurisdiction or votes or appears to vote or confirms or updates his or her registration address is updated in the statewide database and returned to active status.” CJ ¶ 34(f).

B. The SBE’s Use of an Inactive List Is Consistent with the Consent Judgment, the NVRA, and Practices Around the Country

The word “inactive” does not appear anywhere in the NVRA, but the concept of an inactive list has always been understood to be consistent with the NVRA’s requirements, as it

allows states to track registrants who are believed to have moved outside of the registrar’s jurisdiction, have not responded to a Section 8(d)(2) notice, and need to confirm or update their voter registration address before being allowed to vote during the two federal general election cycles after the notice is sent.⁴ It is also a method by which states may comply with their public records obligation to make available a list of registrants who have been sent a Section 8(d)(2) notice. 52 U.S.C. § 20507(i)(2).

The House committee report on the NVRA explicitly permits placing registrants in an inactive status regarding Section 8(d)(2) notices. H.R. Rep. 103-9, 1993 U.S.C.C.A.N. 105, *120 (Feb. 2, 1993) (“Within the official list of eligible voters, notations (such as an asterisk or “I” for inactive status) may be made of those eligible voters who have failed to respond to a notice under Section 8(d)(2).”). The committee report notes that this process “permits the State to decline to use these names in performing the type of routine, administrative responsibilities that do not impair the right of such voters to vote” *Id.* at *120-21.

⁴ Counsel for the SBE has repeatedly represented to the United States that, given the way the voter registration system is designed, the only way for the SBE to automatically track registrants in the Section 8(d)(2) confirmation process is to mark them inactive. Plaintiff KDP has suggested moving inactive registrants to the Master List “with a flag denoting possible address correction if needed,” Complaint ¶ 69. However, such an alternative tracking method does not comply with the NVRA or the Consent Judgment unless (1) the voter registration system is capable of using a flag system, (2) the SBE is able to implement a flag system without losing information about when each person was sent a Section 8(d)(2) notice and whether they have responded, voted or appeared to vote, or otherwise updated their address, (3) registrants are able to confirm or update their address when appearing to vote, and (4) the flag is removed when the registrant responds to a Section 8(d)(2) notice, votes or appears to vote, or otherwise updates their address. Based on what the United States knows at this time, we are unaware of any workable alternative to the inactive list for tracking registrants going through the confirmation process. Given the allegations in the KDP Complaint pertaining to the SBE’s “substandard” system (¶¶ 77-82) and inability to easily move large numbers of registrants from inactive to active status (¶¶ 63-65), as well as SBE Counsel’s representations to the United States about the limitations of the voter registration system, the United States is deeply concerned about the SBE’s ability to modify its system so close to an election. *Cf. Purcell v. Gonzalez*, 549 U.S. 1 (2006) (cautioning against court-ordered changes made too soon before an election).

Likewise, three different Federal agencies have recognized that states may use an inactive list to track persons who have been sent Section 8(d)(2) notices. The Federal Election Commission (“FEC”) issued guidance to states in 1994, the year after the NVRA was enacted. That guidance recognized that states may designate registrants as inactive when they are mailed a Section 8(d)(2) notice and encouraged states to consider such questions as when to designate a registrant inactive and whether to send the names of inactive voters to the polling places. *See* Attachment C, FEC Guide to Implementing the NVRA: Chapter 5 – Voter Registration List Maintenance Provisions at 5-12 to 5-14. The FEC notes the legislative history described above and states that the NVRA “does not prohibit designating as ‘inactive’ those voters who have not responded to a confirmation mailing that was sent in accordance with Section 8(d)(2) to confirm whether or not the registrant continues to reside in the jurisdiction.” *Id.* The FEC guidance described three possibilities for when to designate a registrant inactive—as of the date of the Section 8(d)(2) mailing, at some arbitrary date afterward if no response has been received, or after the voter registration deadline for the next election. *Id.* at 5-13.

The U.S. Election Assistance Commission (EAC) defines “inactive voters” for purposes of its biannual NVRA survey of the states and report to Congress as “registrants who have been sent but have not responded to a confirmation mailing sent in accordance with [52 U.S.C. § 20507(d)] and have not since offered to vote.” 11 C.F.R. § 9428.2(d). The EAC’s June 27, 2019 report to Congress on implementation of the NVRA around the country notes:

[A]t times, a question arises as to whether a person still resides at his or her registration address. In these situations, the state or local election office may send the registrant a confirmation of address notice. In many states, if the person fails to return the form or the form is returned undeliverable, he or she is placed on a list of inactive voters. Inactive voters are still part of the voter rolls and included in the registration totals in most jurisdictions. However, before they can vote, inactive voters are typically required to show approved documentation of their

eligibility (most commonly, proof of living at an address within the voting jurisdiction).

EAC Election Administration and Voting Survey, 2018 Comprehensive Report at 40.⁵

Finally, the U.S. Department of Justice maintains a list of Questions and Answers on the NVRA, which includes in one of the answers that, where a jurisdiction has sent a registrant a notice under Section 8(d)(2) of the NVRA based on a possible move, “[t]he jurisdiction may designate the registrant as inactive if the registrant fails to return the card by the voter registration deadline for the next election after the notice is sent.”⁶

Many states have followed this guidance from the federal government since the NVRA was enacted in 1993 and have used inactive lists as a means to identify voters who may have become ineligible to vote due to a move and have been sent a Section 8(d)(2) notice. This enables the states to track such voters during the statutory two-federal-general-election waiting period, so that they can be returned to active status if they vote or appear to vote in an election during that time, and they can be removed if they do not reactivate their status during that time period.⁷ The EAC’s 2018 NVRA report to Congress shows that more than 21 million voters nationwide were on inactive lists in NVRA-covered states during the 2018 federal election cycle. 2018 EAC Report at 61.

⁵ This Report is available on the EAC’s website at <https://www.eac.gov/research-and-data/studies-and-reports/> and https://www.eac.gov/assets/1/6/2018_EAVS_Report.pdf.

⁶ UNITED STATES DEPARTMENT OF JUSTICE, *The National Voter Registration Act of 1993 (NVRA), Questions and Answers* at #34, <http://www.justice.gov/crt/national-voter-registration-act-1993-nvra>.

⁷ According to a 2017 report by the National Association of Secretaries of State, at least thirty-five states and the District of Columbia use an “inactive” list and two states use a “suspense” list, which has the same effect. NASS Report: Maintenance of State Voter Registration Lists, at 7 (Rev. Dec. 2017), available at <http://www.nass.org/sites/default/files/reports/nass-report-voter-reg-maintenance-final-dec17.pdf>. An additional six states are not covered by the NVRA because, on and continuously after August 1, 1994, they either did not have voter registration requirements or had election-day voter registration at polling places.

The Consent Judgment itself does not explicitly require that registrants be placed on an inactive list, but its requirement that registrants be “returned to active status” when they no longer meet the criteria for removal strongly suggests the parties understood that registrants would in fact be placed on an inactive list. Regardless, tracking registrants on an inactive list is consistent with the Consent Judgment’s requirement that the SBE maintain a list of registrants who may be ineligible to vote due to a change in residence. CJ ¶ 34(f). In addition, the SBE’s draft comprehensive plan of August 17, 2018 provided that the SBE would track such registrants by marking them inactive. *See Attachment D, Kentucky State Board of Elections Comprehensive List Maintenance Plan 2018* at 2, 3, 6-7.

C. This Lawsuit is a Collateral Attack on a Federal Court Order

The instant lawsuit is an impermissible collateral attack on the Consent Judgment issued by the United States District Court for the Eastern District of Kentucky. Under Kentucky law, a direct attack on a judgment can only be made “by prosecuting an appeal or by proceedings had under the Code and in the manner pointed out . . . for the modification or vacation of judgments. An attack made on a judgment in any other way is a collateral attack.” *Baker v. Baker, Eccles & Co.*, 173 S.W. 109, 113-14 (Ky. 1915). *See also Martin v. Cabinet for Health and Family Services*, ---S.W.3d---, 2019 WL 2063692, *5 (Ky. Ct. App. 2019) (citing *White v. White*, 172 S.W.2d 72, 74 (Ky. 1943)). As this lawsuit is not an appeal of the District Court’s order nor a proceeding under state law to modify or vacate the judgment, it is a collateral attack.

It is a “well-settled rule that domestic judgments rendered in a court of general jurisdiction cannot be collaterally attacked, unless want of jurisdiction appears on the record.” *Ratliff v. Childers*, 198 S.W. 718, 720-21 (Ky. 1917). “A judgment issued by a court acting outside its jurisdiction may be void and subject to collateral attack . . . [but] an erroneous

judgment issued by a court acting within its jurisdiction is not subject to collateral attack.” *Sitar v. Commonwealth of Kentucky*, 407 S.W.3d 538, 542 (Ky. 2013).

As with domestic judgments, so too with judgments issued by federal courts. “It is undeniable that a federal court judgment is entitled to full faith and credit in the state courts.” *Waddell v. Stevenson*, 683 S.W.2d 955, 958 (Ky. Ct. App. 1984). Even when there was a question as to whether a federal court had jurisdiction, Kentucky courts have refused to allow collateral attacks. *See, e.g., Clinger’s Adm’x v. Chesapeake & O. Ry. Co.*, 128 S.W. 1055 (Ky. 1910); *Tyson’s Adm’x v. Illinois Cent. R. Co.*, 151 S.W. 404 (Ky. 1912). There is no doubt that the District Court in *Judicial Watch v. Grimes* had jurisdiction to issue a judgment in a case about the NVRA, a federal law. *See* 28 U.S.C. § 1331 (“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”).

Kentucky courts have considered collateral attacks on non-Kentucky judgments more recently in the context of decisions by other state courts. Because those decisions are also based on the Full Faith and Credit Clause, U.S. Const. art. IV, § 1, they are instructive. Again, Kentucky courts have followed the same rule that they apply to domestic judgments, holding that collateral attacks will not be permitted where the non-Kentucky state court had jurisdiction. *See, e.g., Abbott v. Matranga*, 567 S.W.2d 312 (Ky. Ct. App. 1978) (rejecting a collateral attack where a Louisiana court had jurisdiction over the original case); *Hanshew v. Mullins*, 385 S.W.2d 186 (Ky. Ct. App. 1964) (upholding a collateral attack on a divorce judgment by a Georgia court where the judgment was obtained through fraud and Georgia courts frequently voided divorce judgments due to fraud).

If Plaintiff wants to challenge the SBE’s actions taken pursuant to the Consent Judgment, including but not limited to the use of an inactive list, the appropriate procedure is to move to intervene in *Judicial Watch v. Grimes* and file a motion for additional relief. See, e.g., *Black and White Children of Pontiac Sch. Sys. v. Sch. Dist. of City of Pontiac*, 464 F.2d 1030 (6th Cir. 1972) (affirming the dismissal of a collateral attack on a desegregation order and holding that plaintiffs should have filed “an application to intervene and a motion for additional relief in the principal case”).⁸

D. Either Plaintiff’s Interpretation of KRS 116.112(5) Is Incorrect or the NVRA Preempts KRS 116.112(5)

Plaintiff KDP invests significant argument on its interpretation of KRS 116.112(5). While the United States does not have a view on the ultimate state law question, the United States believes that the KDP’s interpretation is inconsistent with and pre-empted by federal law and appears inconsistent with the purpose of the state law provision and with certain other state law authority. The United States is unaware of anyone anywhere ever advancing such an interpretation of compliance with the NVRA as the one suggested by the KDP here.

KRS 116.112(5) was adopted in 1994 as part of an omnibus statute designed to bring the state into compliance with the NVRA, which was adopted by Congress in 1993. See 1994 Ky. Laws Chap. 393. As such, it is logical to read it in line with the purpose of complying with the NVRA and not in opposition to that purpose. Likewise, at least one state court has interpreted KRS 116.112 in a manner that is consistent with the process Kentucky is currently using in 2019.

⁸ Federal law also forbids collateral attacks on decisions by Federal courts, so as to prevent lawsuits that are “essentially filed in defiance of a federal court injunction. The Supreme Court has made emphatically clear that the integrity of the federal judiciary is threatened by circumventing the proper channels of the statutorily-defined appellate process.” *Pratt v. Ventas, Inc.*, 273 B.R. 108, 116 (W.D. Ky. 2002).

See Attachment E, *Stumbo v. SBE*, No. 06-CI-610, slip op. at 7-8 (Franklin Cir. Ct., Oct. 2, 2006) (holding that registrants in Kentucky who were “matched” to registrants in other states through an interstate matching program should not have been immediately removed from the voter rolls, but instead should be tracked in accord with KRS § 116.112, and that “[b]ased on our reading of KRS 116.112, after sending notice to the purged voters, the Board must place these voters on an inactive list, pursuant to KRS 116.112(5) for at least two general elections for Federal office.”). This seems quite analogous to the situation here, where the SBE has indirect evidence of a move outside the jurisdiction—this time in the form of returned mail sent to voters—and is proceeding with the Section 8(d)(2) notice and two-federal-general-election waiting period process, while tracking voters through the inactive list. Other provisions of state law adopted at the same time as KRS 116.112 also support the SBE’s actions here. For example, KRS 116.0452, which parallels language in Section 8 of the NVRA, provides that voters can properly be removed from the registration rolls (rather than simply be made inactive) if they fail to respond to a Section 8(d)(2) notice and fail to vote in two subsequent federal general elections.⁹

But even assuming *arguendo* that KDP’s interpretation of KRS 116.112(5) is correct, the state statute is then preempted by the NVRA under Article I, Section 4 of the U.S. Constitution, which states: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing

⁹ See KRS 116.0452 (“The name of a registered voter shall not be removed from the registration books except ... (c) Upon failure to respond to a confirmation mailing sent pursuant to KRS 116.112(3) and failure to vote or appear to vote and, if necessary, correct the registration record of the voter’s address in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.”)

Senators.” U.S. Const. Art. I § 4, cl.1. The Elections Clause “embrace[s] authority to provide a complete code for congressional elections,” including with regard to “[voter] registration.” *Smiley v. Holm*, 285 U.S. 355, 366 (1932). *See also Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 8-9 (2013) (applying the Elections Clause to registration matters under the NVRA).

“The power of Congress [under the Elections Clause] is paramount. It may be exercised as and when Congress sees fit to exercise it.” *Ex parte Siebold*, 100 U.S. 371, 384 (1879). “In ratifying Article I, Section 4, the states not only gave Congress plenary authority over federal elections but also explicitly ensured that all conflicts with similar state laws would be resolved wholly in favor of the national government.” *Harkless v. Brunner*, 545 F.3d 445, 454-55 (6th Cir. 2008). *See also Inter Tribal Council of Arizona, Inc.* at 14 (“When Congress legislates with respect to the “Times, Places and Manner” of holding congressional elections, it *necessarily* displaces some element of a pre-existing legal regime erected by the States”); *Ex parte Siebold* at 384 (“When exercised, the action of Congress, so far as it extends and conflicts with the regulations of the State, necessarily supersedes them.”). In short, “[w]hen it comes to time, place, and manner regulations for federal elections, the Constitution primarily treats states as election administrators rather than sovereign entities.” *Harkless* at 454.

For a federal and state law to conflict, at least one of two things must be true: either “compliance with both federal and state regulations is a physical impossibility” or “state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *State Farm Bank v. Reardon*, 539 F.3d 335, 342 (6th Cir. 2008) (citing *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 98 (1992)). “Regardless of the type of preemption at

issue, [a] court’s duty is to ‘determine whether state regulation is consistent with the structure and purpose’ of applicable federal law.” *Id.*

KDP’s interpretation of state law—that the SBE must send a Section 8(d)(2) notice, wait two Federal general elections, and then move the registrant to the inactive list—would lead to absurd results in trying to comply with both this view of state law as well as the NVRA and represents an obstacle to achieving the requirements of Section 8 of the NVRA—if not an actual impossibility. The NVRA and the Consent Judgment both require that registrants be removed from the rolls after two federal general elections if the registrants neither respond to the Section 8(d)(2) notice nor vote or appear to vote. Under the text of the NVRA itself, the Section 8(d)(2) notice must explicitly inform registrants that they “will be removed from the list of eligible voters” if they do not respond to the notice and also fail to vote between the date of the notice and the second Federal general election following the date of that notice. 52 U.S.C. § 20507(d)(2)(A). The Supreme Court has held that this removal is mandatory, *Husted*, 138 S. Ct. at 1841-42, and it is also mandated by the Consent Judgment, CJ ¶ 34(g).¹⁰

Under Plaintiff KDP’s interpretation of state law, the SBE would send a Section 8(d)(2) notice, wait two Federal general elections, and then move the registrant to the inactive list. Federal law, however, would then immediately require the removal of the registrant from the voter rolls. The result of having voters pass through a transitory state of being inactive for a mere moment before being removed from the rolls would clearly be an absurd result, which courts are warned to avoid when construing statutes. *See, e.g., United States v. Fitzgerald*, 906 F.3d 437, 447 (6th Cir. 2018) (“[A]bsurd results are to be avoided,” *United States v. Turkette*,

¹⁰ *See also* S. Rep. 103-6 at *19 (“If the registrant does not vote or appear to vote, his or her name will be removed from the list of eligible voters.”).

452 U.S. 576, 580, 101 S. Ct. 2524, 69 L.Ed.2d 246 (1981), and courts should not construe a statute to ‘produce an absurd result that we are confident Congress did not intend,’ *United States v. Underhill*, 813 F.2d 105, 112 (6th Cir. 1987).”).

Such a process would also then lead to a conflict with KRS 116.112(7), which states:

Voters placed on an inactive list are to be counted only for purposes of voting and not for purposes of establishing or modifying precincts, calculating the amount of reimbursement of county clerks by the State Board of Elections for certain election-related expenses, or reporting official statistics, except as provided by the Federal Election Commission’s regulations promulgated pursuant to the National Voter Registration Act of 1993.

Although this section of the statute does not specify how long a registrant must remain on the inactive list, it is clear that the registrant must remain on the inactive list for some length of time. Otherwise, it would be nonsensical to proscribe when inactive registrants must and must not be counted. Placing registrants on the inactive list after two election cycles pursuant to KRS 116.112(5) and then removing them immediately pursuant to the NVRA would render KRS 116.112(7) superfluous.

KDP’s interpretation of Kentucky law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *State Farm Bank* at 342. The NVRA balances the goals of increasing the number of registrants and voters while also protecting the integrity of the electoral process and ensuring accurate and current voter registration rolls. 52 U.S.C. § 20501(b). The Senate Report on the NVRA spends several pages exploring the balance that was struck in Section 8. In particular, the Report notes the concern that the practice of removing registrants solely for failure to vote had a disproportionate impact on some groups, and that there is also a “need to maintain the integrity of the election process by updating the voting rolls on a continual basis. The maintenance of accurate and up-to-date voter

registration lists is the hallmark of a national system seeking to prevent voter fraud.” S. Rep. 103-6 at *18.

Congress struck this balance by permitting registrants who were believed to have moved to remain eligible to vote for an additional two federal general elections: “As previously noted, one of the guiding principles of this legislation [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. Thus, when a registrant fails to return a card to the voting registrar, the voter must be permitted to vote if he or she appears at the polls within two general Federal elections after the date of the notice.” *Id.* at *19-20. Congress chose two election cycles as the period which best balanced its goals of both protecting registrants and ensuring accurate voting lists. Upsetting that balance in either direction—by shortening or lengthening the time period before a registrant may lawfully be removed from the rolls—necessarily privileges one goal over the other and thus undermines Congress’ purposes and objectives. Again, if Kentucky state law truly requires that registrants who have neither returned a Section 8(d)(2) notice nor voted or appeared to vote must nevertheless remain on the rolls for longer than two federal general elections, Kentucky state law is preempted by the NVRA.

E. Plaintiff Does Not Accurately Represent the United States’ Views

In its October 10 filing, Plaintiff KDP represents that in creating the inactive list, the SBE staff have violated an “explicit agreement” with the Department of Justice, and “have taken illegal actions in derogation of the advice of” the Department of Justice. See Complaint at 7, 32. These assertions are completely inaccurate.

The Department of Justice, on behalf of the United States, filed a complaint in federal court in 2018 against the Commonwealth of Kentucky, the SBE, and the Secretary of State,

because for many years the Commonwealth had not undertaken the NVRA-required general program to identify and eventually remove voters who had become ineligible to vote due to their having moved outside the jurisdiction. Based on extensive negotiations, the United States, the Commonwealth Defendants, and the private plaintiff Judicial Watch submitted a consent order that the federal court ultimately adopted as its Judgment. The SBE undertook the first round of canvass mailings in 2018 in an effort to begin the process of identifying voters who may have moved outside the jurisdiction. The SBE was also supposed to complete the second step of that process prior to the 90-day quiet period before the 2018 general election—namely, the mailing of the Section 8(d)(2) notice to registrants whose canvass mailing was returned as undeliverable. If that had happened in a timely manner, registrants would have been placed in a tracking process, i.e., the inactive list, prior to the November 2018 federal general election and would have been eligible for removal after the November 2020 federal general election. Because it did not happen in a timely way, that process is now delayed.

Nevertheless, the parties in the federal case have continued to spend considerable time discussing the Commonwealth's efforts to come into compliance with the NVRA and the Consent Judgment. The SBE has invested significant effort into processing the data from the first step canvass mailing, preparing the second step Section 8(d)(2) mailing, processing the results of the Section 8(d)(2) mailing, and creating an inactive list for tracking voters where the results of the mailings indicate they may have moved. The SBE's efforts to create an inactive list that the Plaintiff KDP attacks here are the very efforts of the SBE to comply with the Consent Judgment in the federal case entered more than a year ago.

Based on everything known to the United States, the efforts of the SBE staff to create the inactive list in 2019 have been undertaken in a good faith effort to comply with the Consent

Judgment in the federal case and the NVRA. The United States is aware of no evidence whatsoever to suggest that the SBE is undertaking an effort to disenfranchise anyone through creation of the inactive list. Indeed, all available evidence and information indicates the SBE has taken care to try to ensure that all eligible voters can vote in the 2019 state general election, such as by completing the general program 90 days before the election and preparing guidance to local election officials about how to ensure that voters on the inactive list can vote. Overall, the efforts of the SBE in creating the inactive list here are broadly consistent with longstanding federal guidance about compliance with the NVRA and how other states seek to comply with the NVRA, namely, placing registrants who may have moved on an inactive list for tracking purposes for two federal general election cycles once the Section 8(d)(2) notice has gone out.

Likewise, in the United States' view, it is unwarranted and inappropriate to characterize the SBE's actions here as part of some secretive effort. The Consent Judgment was entered on the public docket in federal court, describing the work that the Commonwealth would undertake in its renewed list maintenance efforts, and it received significant publicity. There has also been publicity on mailings made by the SBE under the terms of the Consent Judgment. Yet Plaintiff here makes no acknowledgement of the Consent Judgment in the federal case in its filing.

The United States expects there will be various aspects of the SBE's efforts to comply with the NVRA and the Consent Judgment that ultimately will have to be addressed by the parties in the federal court case. *See, e.g., Judicial Watch v. Grimes*, ECF 45 (Judicial Watch October 10 motion to modify and enforce the Consent Judgment). For example, the Commonwealth's efforts to comply here have fallen behind the schedule envisioned in the Consent Judgment, since the Commonwealth should have been at this point before the 2018 general election, rather than before the 2019 general election.

In sum, the United States respectfully requests that this court deny the requested temporary restraining order. Entry of the order that Plaintiff KDP requests here would frustrate the efforts of the SBE to come into compliance with federal law in the NVRA and the federal court Consent Judgment, and would render the Commonwealth even further behind than it already is in its efforts to come into compliance. Likewise, entry of the order that the KDP requests here is not warranted because the SBE has taken considerable steps to ensure that eligible voters have an opportunity to vote in the upcoming November state election.

III. CONCLUSION

For the foregoing reasons, the United States opposes Plaintiff's motion for a temporary restraining order. This Court should deny Plaintiff's motion.

Respectfully submitted,

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Date: October 11, 2019

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2019, a true and correct copy of the foregoing document was served via email to counsel of record in the state court proceeding, as well as the federal lawsuit *Judicial Watch v. Grimes*, 3:17-cv-94 (E.D. Ky.).

/s/ Michelle Rupp

MICHELLE RUPP, *Per* 28 U.S.C. § 517

**Attachment A to the
Statement of Interest of the United States
in Opposition to the Motion for a Temporary Restraining Order**

Consent Judgment issued in
Judicial Watch v. Grimes, No. 3:17-CV-94 (E.D. Ky. July 3, 2018)

The parties stipulate and agree to the following:

1. The Court has jurisdiction over this action pursuant to 52 U.S.C. § 20510(a) and 28 U.S.C. §§ 1331 and 1345.
2. Venue is proper in this district pursuant to 28 U.S.C. §§ 97(a) and 1391(b).
3. The NVRA authorizes the Attorney General of the United States to bring a civil action for such declaratory or injunctive relief as is necessary to carry out the Act. 52 U.S.C. § 20510(a).
4. Judicial Watch brings suit under the NVRA's private right of action, 52 U.S.C. § 20510(b), and this Court has subject matter jurisdiction over its claims, which arise under federal law. 28 U.S.C. § 1331.
5. The Commonwealth of Kentucky, Commonwealth of Kentucky State Board of Elections, and Kentucky Secretary of State are proper parties in this action.
6. The Commonwealth of Kentucky is one of the States of the United States of America and is subject to the requirements of the NVRA. 52 U.S.C. §§ 20502(4), 20503, 20507.
7. The Commonwealth of Kentucky, through its State Board of Elections, is responsible for administering Kentucky's election laws and supervising the registration and purging of registrants within the State. KRS § 117.015(1). The Secretary of State is the *ex officio* chair of the Kentucky State Board of Elections and Kentucky's chief State election official, and is responsible for coordinating the State's responsibilities under the NVRA. See 52 U.S.C. § 20509; KRS § 117.015(2).
8. The NVRA was enacted "to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office" while "ensur[ing] that accurate and current voter registration rolls are maintained." 52 U.S.C. § 20501(b)(1), (4).

9. Section 8 of the NVRA (“Section 8”) addresses state voter list maintenance procedures for elections for federal office. 52 U.S.C. § 20507

10. Section 8 prescribes the conditions under which registrants may be removed from voter registration lists and the procedures that must be followed before making those removals. 52 U.S.C. § 20507.

11. Programs to maintain accurate and current voter registration lists must be uniform and nondiscriminatory, and they must comply with the Voting Rights Act. 52 U.S.C. § 20507(b)(1).

12. Programs to maintain accurate and current voter registration lists may not remove registrants by reason of a registrant’s failure to vote, except as provided in the procedures under Sections 8(c) and (d). 52 U.S.C. § 20507(b)(2).

13. Section 8 permits states to remove the name of a person from the voter registration lists upon the request of the registrant, and, if state law so provides, for mental incapacity or for criminal conviction. 52 U.S.C. § 20507(a)(3)(A)–(B).

14. Section 8 also requires states to conduct a general voter registration list maintenance program that makes a reasonable effort to remove persons from the voter list who have become ineligible by reason of death or a change in residence outside of the jurisdiction, in accordance with procedures set forth in the NVRA. 52 U.S.C. § 20507(a)(4).

15. Section 8 further specifies the two circumstances under which a registrant may be removed from the voter registration list because the registrant has moved to another jurisdiction. 52 U.S.C. § 20507(d)(1).

16. First, a state can remove the name of a person from the voter registration list on grounds of a change of residence based upon the registrant's written confirmation of a change of address to a location outside of the registrar's jurisdiction. 52 U.S.C. § 20507(d)(1)(A).

17. Second, a state can remove the name of a person from the voter registration list on grounds of a change of residence upon completion of the process set forth in Section 8(d), 52 U.S.C. § 20507(d), which allows removal if: (a) The registrant fails to respond to a notice ("Section 8(d)(2) notice") which includes a postage prepaid and preaddressed return card sent by forwardable mail, on which the registrant may state his or her current address, and which contains specific instructions and information, 52 U.S.C. § 20507(d)(1)(B)(i), (d)(2), and (b) The registrant then fails to vote or appear to vote during the period ending on the day after the second federal general election subsequent to the Section 8(d)(2) notice being sent. 52 U.S.C. § 20507(d)(1)(B)(ii).

18. Section 8(f) provides that when a registrant has a change-of-address to an address within the same jurisdiction, the voter registration list must be updated accordingly and the registrant's name may not be removed except as provided in Section 8(d). 52 U.S.C. § 20507(f).

19. Section 8 also provides an example of a list maintenance program that constitutes a reasonable effort to remove registrants who have become ineligible due to a change of residence. 52 U.S.C. § 20507(c)(1). Under this program, a state uses information from the United States Postal Service National Change of Address (NCOA) program to identify registrants who may have changed residence. 52 U.S.C. § 20507(c)(1)(A). Where it appears from that information that a registrant has moved to a new address in the same jurisdiction, the registration record is updated to show the new address and the registrant is sent a notice of the change by forwardable mail that includes a postage-prepaid, pre-addressed return form by which

the registrant may verify or correct the address information. 52 U.S.C. § 20507(c)(1)(B)(i).

Where it appears from the NCOA information that a registrant has moved to a new address in a different jurisdiction, the procedure set out in Section 8(d) and described above is used to confirm the address change. 52 U.S.C. § 20507(c)(1)(B)(ii).

20. Section 8 requires states to complete any program, the purpose of which is to systematically remove the names of ineligible registrants from the official list of eligible voters, not later than 90 days prior to the date of a primary election or general election for federal office. 52 U.S.C. § 20507(c)(2)(A).

21. Kentucky law requires the Kentucky State Board of Elections to establish a voter registration removal program using the change-of-address information supplied by the United States Postal Service through its licensees or other sources to identify registrants whose addresses may have changed. KRS § 116.112(1).

22. If it appears that a registrant has moved within the same county, the Kentucky State Board of Elections is required to provide the county board of elections with the information necessary to change the registration record. The Kentucky State Board of Elections is also required to send to the new address 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. KRS § 116.112(2).

23. If it appears that a registrant has moved to a different county or state, the Kentucky State Board of Elections is required to send to the address at which the registrant was last registered, by forwardable mail, a notice with a postage-prepaid and pre-addressed return card on which the registrant may state his or her current address. KRS § 116.112(3).

24. A registrant may not be removed from the registration records on the ground that the registrant has changed residence unless the registrant: (a) Confirms in writing that the registrant has changed residence to a place outside the county; or (b) Has failed to respond to the mailed notice and has not voted or appeared to vote and, if necessary, correct the registrant's address, in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice. KRS § 116.112(4).

25. As part of its list maintenance program, the Kentucky State Board of Elections is required by state law to maintain an inactive list. State law provides that when the State Board sends the notices described in KRS § 116.112(3) to registrants identified as having moved to a new county or state, the registrants who do not respond to the notice and do not vote or appear to vote for two federal election cycles are maintained on an inactive list. KRS § 116.112(5). When the State Board last sent such notices in 2009, those registrants who did not respond to the notice and did not vote or appear to vote for two federal election cycles were included on an inactive list and ultimately 67,743 individuals were removed from the registration list.

26. Kentucky law permits registrants on the inactive list to vote, but not to be counted for other purposes such as creating precincts or calculating the state funding provided to county clerks based on the number of registered voters in the county. KRS § 116.112(7).

27. Kentucky law requires the Kentucky State Board of Elections to complete, not later than ninety days prior to the date of a primary or general election, any program the purpose of which is to systematically remove the names of ineligible voters from the registration records. KRS § 116.112(6).

28. The Kentucky State Board of Elections maintains and follows a registration removal program that since 2011, has removed 424,429 individuals from Kentucky's voter rolls due to an individual's death, felon status, mental incompetence, move out of state with their written confirmation, or at their request. The Kentucky State Board of Elections has been unable to secure sufficient funding to implement its list maintenance procedures as to registrants who have moved without notifying election or motor vehicle authorities, despite seeking funding from the General Assembly for these efforts in every budget request since 2008. Currently, there are no registrants on an inactive list or in the process set out in Section 8(d) of the NVRA and KRS § 116.112. Since 2009, no forwardable notices have been mailed to registrants under the change of address process contemplated by Section 8(d) of the NVRA and KRS § 116.112. Since 2015, no registrants who have become ineligible due to change of residence have been removed as contemplated by the procedures set out in Section 8(d) of the NVRA and KRS § 116.112.

29. Due to this lack of funding, the practices currently in place in Kentucky do not comply with the NVRA's requirement that states conduct a general voter registration list maintenance program that makes a reasonable effort to remove ineligible persons from the voter rolls due to a change in residence outside of the jurisdiction. 52 U.S.C. § 20507(a)(4)(B).

30. The parties agree to work in a fair, reasonable, and collaborative fashion under the terms of this Agreed Order set forth below.

Where the parties having freely given their consent, and the terms of this Agreed Order being fair, reasonable, and consistent with the NVRA's requirements, it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** as follows:

31. The Kentucky State Board of Elections shall develop and implement a general program of statewide voter list maintenance that makes a reasonable effort to remove from the statewide voter registration list the names of registrants who have become ineligible due to a change in residence in accord with section 8 of the NVRA, 52 U.S.C. § 20507, and KRS §

116.112. The general program:

- (a) Shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act, 52 U.S.C. § 10301 et seq.;
- (b) Shall not result in the removal of any registrant from the statewide voter registration list by reason of the registrant's failure to vote, except as provided under sections 8(c) and (d) of the NVRA;
- (c) Shall comply with the standards and procedures set out in sections 8(b)-(d) of the NVRA and KRS § 116.112;
- (d) Shall require all systematic list maintenance activities relating to the removal of registrants due to a change in residence to be completed at least 90 days prior to the next primary or general election for federal office as provided in section 8(c)(2)(A) of the NVRA (with the exceptions noted in section 8(c)(2)(B) of the NVRA) and KRS § 116.112(6); and
- (e) Shall base removals due to a change in residence only on either: (1) the registrant's written confirmation of a change of address outside the jurisdiction, or (2) the registrant (a) failing to respond to a forwardable notice sent by the Kentucky State Board of Elections or its designee, which meets the requirements of section 8(d)(2) of the NVRA and KRS § 116.112(3), and (b) failing to vote or

appear to vote during the period ending on the day after the second federal general election subsequent to the notice being sent.

Comprehensive Plan

32. To assist in the establishment of the general program described above, the Kentucky State Board of Elections shall create a Comprehensive Plan and implement and adhere to its terms.

33. Within 45 days of the effective date of this Agreed Order, the Kentucky State Board of Elections shall provide counsel for the parties with its draft Comprehensive Plan. The parties shall have 30 days to respond. If the parties cannot in good faith agree upon the terms of an appropriate Plan within 30 days of the date the last response, the parties may seek a resolution from the Court. Responses to any such request for resolution shall be filed with the Court within 10 days of the request. Any agreed upon Comprehensive Plan shall be filed with the Court and, if deemed appropriate by the Court, so ordered. The Kentucky State Board of Elections will proceed with the actions described in subparagraph 34(c) below regarding a canvass mailing in the stated timeframes regardless of whether a Comprehensive Plan is in place.

34. The Comprehensive Plan shall include a detailed description of all procedures to be followed by the Kentucky State Board of Elections for maintaining an accurate statewide voter registration list, including procedures to identify registrants who have become ineligible due to change in residence. The descriptions shall include a step-by-step account of all actions to be undertaken and the expected timeframe and frequency of such actions. At a minimum, the Comprehensive Plan shall include the following:

- (a) **Procedures.** Procedures for a general program of list maintenance for registrants who may have become ineligible due to a change of residence that has

not been reported to election officials, including procedures that can be implemented in 2018 (bearing in the mind the 90-day quiet period before federal elections), procedures going forward in subsequent years, and procedures for reaching back to identify registrants who may have become ineligible due to an unreported change of residence since 2009.

(b) **Sources of Information Used Regularly.** Procedures to identify registered voters who may have moved without reporting such move to election officials, including procedures for obtaining, processing, and reliably matching information to the statewide voter registration database:

- i. data from the U.S. Postal Service National Change of Address (NCOA) program;
- ii. mail sent by the Kentucky State Board of Elections or local election officials returned as undeliverable with or without forwarding address;
- iii. lists from the Kentucky Transportation Cabinet of former Kentucky residents who have surrendered Kentucky driver licenses or other state issued identification to motor vehicle authorities in another state;
- iv. data from other states indicating that a Kentucky registrant may have moved to that state; and
- v. reliable evidence of address changes from the Electronic Registration Information Center

For each source of information, the Plan shall include the expected date by which the data will first be obtained and the frequency with which such data will be obtained and used in the future, including a plan to obtain and use change-of-

address information from either NCOA data or the Electronic Registration Information Center at least once per year.

(c) **Canvass Mailing**. Procedures for sending a nonforwardable canvass mailing to identify registrants through mail returned as undeliverable who may have unreported moves since 2009, excluding any already identified through the Kentucky State Board of Elections' initial use of the information listed in subparagraph (b), including the expected date(s) between May 23 and August 8, 2018, on which the canvass mailing will be sent. Where such nonforwardable canvass mailing is returned as undeliverable with or without forwarding address, this would include procedures for moving ahead during the time period between May 23 and August 8, 2018 as set forth in subparagraphs (d)(i), d(ii), and (e) below.

(d) **Registration List Updates**. Procedures for using the data that is successfully matched to the statewide voter registration list under subparagraphs (b) and (c) to update the registration list, including:

- i. procedures to be followed where data obtained from the sources of information outlined in subparagraphs (b) and (c) above indicate that registrants may have an unreported move inside the registrar's jurisdiction, which shall include updating the registrants' records in compliance with sections 8(c)(1)(B)(i) and 8(f) of the NVRA and sending appropriate notices of such updates, as described in section 8(c)(1)(B)(i);
- ii. procedures to be followed where data obtained from the sources of information outlined in subparagraphs (b) and (c) above indicates that

registrants may have an unreported move outside the registrar's jurisdiction, which shall include sending the specific forwardable notice described in section 8(d)(2) of the NVRA to confirm the registrants' changes in residence, waiting for two federal general elections for the registrant to respond or vote or appear to vote, and failing that, to remove them from the statewide voter registration database according to the procedures set forth in section 8(d) of the NVRA; and

iii. the form and content of all notices to be sent to registrants as part of the list maintenance activities described in the Comprehensive Plan.

(e) **Timing of Notices and Updates.** The expected date(s) between May 23 and August 8, 2018 when notices will be sent under sections 8(c)(1)(B)(i) or 8(d)(2) of the NVRA and updates carried out under section 8(f) of the NVRA, and the expected timeframes in future years (not within 90 days of an upcoming primary or general election for federal office) when such notices will be sent and updates carried out.

(f) **List of Registrants to Whom Notices Have Been Sent.** Procedures for maintaining a list that includes all registrants identified through subparagraphs (b) or (c) as voters who may have become ineligible due to a change in residence outside the jurisdiction, and are mailed notices conforming to section 8(d)(2) of the NVRA, including procedures to ensure that (1) any registrant on the list who appears to vote and is otherwise eligible is permitted to cast a ballot, (2) any registrant on the list can access and review information about his or her registration record and status through Kentucky's web-based voter portal, and (3)

any registrant who responds to the notice and affirms that they remain in the jurisdiction or votes or appears to vote or confirms or updates his or her registration address is updated in the statewide database and returned to active status.

(g) **Removals.** Procedures for removing from the statewide voter registration list any registrant who is mailed a notice conforming to section 8(d)(2) of the NVRA who does not respond to the notice and who does not vote or appear to vote or otherwise have contact with election officials through the day after the second federal general election following the date on which the registrant was mailed the section 8(d) notice, including:

- i. a commitment to remove the registration of any registrant who meets the conditions prescribed by KRS § 116.112(4), and
- ii. the expected timeframe when such removals will be carried out (not within 90 days of an upcoming primary or general election for federal office).

(h) **Database Management.** A description of databases to be used in list maintenance activities and a plan to consult with relevant database managers, assess the quality of data to be used in list maintenance activities, and develop sound and reliable matching criteria to be used in list maintenance activities (to ensure that the persons identified as having a possible move are properly matched up with the same persons registered in the statewide voter registration database).

(i) **Record-Keeping.** Procedures for maintaining and making available for inspection and copying the records concerning implementation of the general

program activities outlined in this decree, in accord with section 8(i) of the NVRA and KRS § 116.112(8).

- (j) **Local Election Officials**. A detailed description of any role that local election officials may play in list maintenance activities.
- (k) **Public Outreach**. Practices to be followed to educate voters regarding the importance of confirming their registration status, including efforts to be made before the close of registration for each federal general election that follows the removal of registrants on the list described in subparagraph (f).

Reporting

35.

- (a) Within 30 days of the date of this Agreed Order, the Kentucky State Board of Elections will make publicly available on its website, any written procedures relevant to list maintenance, including memos, manuals, training materials, informal guidance, administrative regulations, etc., that exist as of the date of this Agreed Order, and it will make publicly available on its website any such documents subsequently released or revised at the time of such release or revision. These documents shall include any guidance to county clerks regarding implementation of registration updates based on change-of-address data. At the time the information is made public, the State Board will provide a copy or link to counsel for Judicial Watch and the United States.
- (b) The Kentucky State Board of Elections will make the results of its efforts of information collection and list maintenance outlined in subparagraphs 34(b)–
- (g) above publicly available on its website by September 30, 2018, and will

update such publicly available information at least once per year by September 30 of each year. At the time the information is made public, the State Board will provide a copy or link to counsel for Judicial Watch and the United States.

(c) The publicly available information described in subparagraph (b) above and provided to counsel for Judicial Watch and the United States will include the following:

- i. Number of registrants identified who may have moved, by source of information listed in subparagraph 34(b) revealing the possible move;
- ii. Number of registration records updated;
- iii. Number of registrants to whom notices conforming to section 8(c)(1)(B)(i) of the NVRA were sent;
- iv. Number of notices conforming to section 8(c)(1)(B)(i) that were returned as undeliverable;
- v. Number of notices conforming to section 8(c)(1)(B)(i) that were returned by the registrant confirming or correcting registration information;
- vi. Number of registrants to whom notices conforming to section 8(d)(2) of the NVRA were sent;
- vii. Number of notices conforming to section 8(d)(2) returned by the registrant confirming or correcting registration information;
- viii. Number of notices conforming to section 8(d)(2) returned as undeliverable;
- ix. Number of notices conforming to section 8(d)(2) to which no response was received;

- x. Total number of removals from the statewide voter registration list, with a breakdown by reason for removal, as defined by the U.S. Election Assistance Commission's 2016 Election Administration and Voting Survey;
- xi. Number of removals from the statewide voter registration list due to a move out of jurisdiction, as defined by the U.S. Election Assistance Commission's 2016 Election Administration and Voting Survey, with a breakdown by the source of information relied on;
- xii. Number of active registered voters as of the date of the report; and
- xiii. Number of registrants on the list described in subparagraph 34(f) as of the date of the report.

36. All data reported under the above requirements shall include any list maintenance activity conducted by local election officials.

37. The Kentucky State Board of Elections will report to the U.S. Election Assistance Commission the voter registration data required by the Commission's biennial Election Administration and Voting Survey, during the term of this Agreed Order.

Enforcement and Term

38. The parties to this Agreed Order must employ best efforts to defend this Agreed Order against any legal challenge by non-parties to this agreement.

39. The parties will work cooperatively as the Kentucky State Board of Elections seeks to ensure compliance with the terms of this Agreed Order and the NVRA.

40. This Agreed Order shall take effect once it has been approved by the Court and entered upon the docket ("the effective date").

41. This Agreed Order shall remain in effect through October 31, 2023, on which date the agreement will terminate automatically unless the parties mutually agree to extend it or the Court determines that the Defendants have not achieved substantial compliance with its terms.

42. Until the termination of this Agreed Order, the Court shall retain jurisdiction over this action to enter such further relief as may be necessary for the effectuation of the terms of this Agreed Order.

43. Each party shall bear its own costs and fees.

This the 3d day of July, 2018.



Gregory F. Van Tatenhove
United States District Judge

**Attachment B to the
Statement of Interest of the United States
in Opposition to the Motion for a Temporary Restraining Order**

State Board of Elections
Precinct Election Officers' Guide
November 5, 2019 General
(Rev. September 2019)



STATE BOARD OF ELECTIONS
PRECINCT ELECTION
OFFICERS' GUIDE
NOVEMBER 5, 2019 GENERAL

Last Revised: September 2019

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RESPONSIBILITIES OF ALL PRECINCT ELECTION OFFICERS

1. Open the polling place for voting at 6:00 a.m. Please arrive at the precinct at least by 5:30 a.m. to allow yourself enough time to prepare the polling place before 6:00 a.m.
2. Set up all voting equipment, including the accessible voting machine. All equipment must be set up by 6:00 a.m. This includes the accessible voting equipment.
3. Assist in the opening, examination, and closing of the voting machines.
4. Ensure the voting equipment is set up to maintain a voter's privacy.
5. Ensure that Election Day posters and notices are posted.
6. Ensure that only registered voters enter the voting machine to cast a ballot.
7. Throughout the day, compare the ballot face of the machine with the sample ballot to be sure that there have been no alterations on the ballot face. For counties using paper ballots, ensure you are providing the correct ballot to each voter.
8. If a problem should arise with a voting machine, immediately contact your county clerk for instructions.
9. Ensure that the election laws are obeyed and that any potential violation is reported to the Precinct Sheriff for his/her entry and signature on form SBE 53, Precinct Sheriff's Post-Election Report.
10. All voters must produce an acceptable form of identification or be a personal acquaintance of the precinct election officer and sign the Precinct Signature Roster (EPB or Paper) or form SBE 25, Supplemental Precinct Signature Roster, before casting a ballot. A voter who does not produce an acceptable form of identification or is not a personal acquaintance of a precinct election officer may request a hearing before the county board of elections or vote a provisional ballot.
11. Completely fill in the oval in the "ID Type" column on the paper roster. The precinct election officer verifies the identity of the voter by affixing his/her initials in the "Clerk Initials" column of the EPB, Precinct Signature Roster or form SBE 25, Supplemental Precinct Signature Roster. Do not write in any other areas on the Precinct Signature Roster.
12. If a voter's name does not appear on the EPB or Precinct Signature Roster, verify that the voter is in the correct precinct by reviewing the voter's address with maps/information provided by the county clerk.
13. You must confirm the eligibility of a voter whose name does not appear on the Precinct Signature Roster or form SBE 25, Supplemental Precinct Signature Roster, but claims to be in the correct precinct, by:
 - Contacting your county clerk, or

- Contacting the toll-free State Board of Elections' Voter Registration Verification System. (See pages 25 and 26). The telephone number will be provided in your Election Day supplies.
14. If you can confirm the eligibility of a voter whose name is not on the Precinct Signature Roster or form SBE 25, Supplemental Precinct Signature Roster, the voter must complete form SBE 32, Oath of Voter, a new voter registration card indicating the new address, and form SBE 25, Supplemental Precinct Signature Roster, before casting a ballot on the voting machine. If the voter's name is on the list of voters who must confirm their information, have them complete the same.
 15. Any precinct election officer may complete and sign the bottom portion of form SBE 32, Oath of Voter, when it is used. Make sure you completely fill out the reason for requiring the oath on the "Reason for Requiring Oath" portion of form SBE 32, Oath of Voter.
 16. If the voter's eligibility cannot be confirmed, the voter cannot vote at the precinct on the voting machine. The precinct election officer must instruct the individual of the option to request a hearing before the county board of elections to determine eligibility.
 17. Instruct voter, when requested, how to operate the voting machine:
 - a. Do not enter the voting machine privacy area after the voter has entered this area.
 - b. Do not make any comments that might be considered in favor of any party, candidate, or public question.
 - c. Do not hover in the voting privacy area after providing instructions to the voter.
 - d. Do not attempt to view the voter's selections as he or she votes.
 18. Any precinct election officer may complete and sign the bottom portion of form SBE 31, Voter Assistance Form, when it is used.
 19. If voters are waiting in line to use a voting machine, no voter shall have more than two minutes in which to vote, except that voters with disabilities may have extra time to cast a ballot on any voting machine of their choice.
 20. Any voter may vote on the accessible voting machine regardless of whether the voter has a disability.
 21. Sign return sheets and post-election results at the polling place at the end of the day.
 22. At the close of the polls, on the "Summary Page" of your paper Precinct Signature Roster write the total the number of voters who signed the Precinct Signature Roster (do not include absentee voters) and write the total number of voters who signed form SBE 25, Supplemental Precinct Signature Roster, and calculate the grand total. (See page 54.) Your county clerk may provide a different form for EPB totals.
 23. Complete and sign the Ballot Accountability Statement if using paper ballots.
 24. Properly fill out all required forms including Precinct Signature Rosters. Use ink pens only. Do not use markers or pencil.

- 25. Duties for additional precinct election officers will be assigned by the county board of elections.
- 26. Your county board of elections will provide detailed training on how to set up, use, and close the voting machines for your precinct.

Procedure when a voting machine becomes unusable on Election Day (KRS 117.215)

If a voting machine malfunctions on Election Day, the precinct election officers are instructed to follow these procedures (KRS 117.215 and KRS 117.225):

PROCEDURE FOR ELECTRONIC MACHINES

WHEN A RESERVE VOTING MACHINE IS AVAILABLE

- The precinct election officers should call the county clerk to determine if a reserve voting machine is available.
- Upon the direction of the county clerk, the precinct election officers should lock and seal the malfunctioning machine and record the numbers shown on the public counter on the malfunctioning machine’s Verification Sheet.
- The reserve voting machine should be prepared and made ready for use by the precinct election officers. The county clerk should ensure that the precinct name and number is assigned on the reserve machine’s Verification Sheet before delivery to the precinct.
- When the polls close, both the original and the reserve machine should be examined and the votes counted. The sum of the total number of votes cast on both machines for each candidate will be certified as the results of the election in that precinct.

These procedures should be noted on form SBE 53, Precinct Sheriff’s Post-Election Report, on form SBE 54, County Board of Elections Post-Election Report, and in the minutes of the county board of elections.

PROCEDURE FOR SCANNER MACHINES

As stated above, KRS 117.215 mandates the procedures for when an electronic voting machine becomes unusable on Election Day and you have a reserve machine available. However, the law is silent as to how to handle the situation when a scanner machine becomes unusable.

Your county board of elections should seek the advice of your county attorney before deciding on a course of action to address the unique factual situations that may arise in your county on Election Day. However, the State Board of Elections has developed the following suggestions of procedures that may be helpful.

If a scanner machine becomes unusable on Election Day, please be sure to note the procedures you follow on form SBE 53, Precinct Sheriff’s Post-Election Report, form SBE 54, County Board of Elections Post-Election Report, and in the minutes of the county board of elections.

WHEN A RESERVE MACHINE IS AVAILABLE

- The precinct election officers should direct voters to vote on the electronic accessible voting machine in the precinct.
- The precinct election officers should call the county clerk to determine if a reserve scanner is available.
- The voting machine technician or county board of election designee should be called to the precinct to replace the machine.
- With both precinct judges present, the technician should:
 - break the seal on the scanner and unlock the door;
 - place all already scanned ballots that are in the bottom of the tub into an envelope, seal it, and leave the sealed envelope in the black tub;
 - pull out the black drawer that is located in the tub (there could be ballots in this drawer, which will be scanned once the replacement scanner is mounted onto the tub);
 - remove the malfunctioning scanner from the tub; and
 - place the reserve scanner on the tub and continue with start-up procedures including printing a zero tape that should be signed by the witnessing precinct election officers.
- Each county should develop a service call sheet to be completed by the technician and signed by two precinct election officers of differing political parties that includes the following:
 - County, date, machine number, time of service and precinct;
 - Space for the technician to detail the need for the service call, any repairs made, or replace of malfunctioning machine;
 - Public counter numbers and seal numbers on malfunctioning machine and replacement machine; and
 - Signature lines for the technician and the two precinct election officers of differing political parties.
- The two precinct officers of differing political parties should then scan any ballots that were placed in the black drawer immediately making sure all ballots are scanned.
- The technician will return the malfunctioning scanner to the county clerk's office. If votes were placed on the malfunctioning scanner, the Mobile Ballot Box ("MBB") should not be removed until polls are closed and it is time to run the tally of the votes.

PROCEDURE FOR ALL VOTING MACHINES

WHEN NO RESERVE MACHINE IS AVAILABLE

- The precinct election officers should call the county clerk to determine if a reserve voting machine is available.
- The precinct election officers should direct voters to the electronic accessible voting machine, if such machine is available.
- The county clerk should provide supplemental paper ballots for use at the precinct and a ballot box in which to deposit the voted ballots, along with a ballot accountability statement.

- The precinct election officers should lock or seal the malfunctioning machine and record the numbers shown by the public counter on the malfunctioning machine's Verification Sheet.
- If supplemental paper ballots are used, the voter takes the supplemental paper ballot with stub intact and goes alone to the voting booth. After voting the paper ballot, the voter must remove the numbered stub, hand the stub to a precinct election officer and deposit the voted ballot in the locked ballot box. The ballot box must be locked with two (2) locks and the judges of the precinct must each hold the key to one lock.
- If supplemental ballots are used, the precinct election officers should return the voted supplemental paper ballots to the county board of elections and tally the votes cast on the voting machine at the precinct. The county board of elections will count the voted supplemental paper ballots and will add the supplemental paper ballot tally to the tally of the votes from the voting machine. The sum of these votes will be certified as the results of the election in that precinct.

These procedures should be noted on form SBE 53, Precinct Sheriff's Post-Election Report, on form SBE 54, County Board of Elections Post-Election Report, and in the minutes of the county board of elections.

SPECIAL DUTIES OF PRECINCT CLERK

Check (✓) when Complete	DUTIES
	The county clerk must deliver the machines and all voting supplies to the precincts at least one hour before the polls open. The county clerk should designate a secure location within the precinct polling location for the storage of these items until your arrival. However, your county clerk may direct you to pick up all election supplies for the precinct prior to Election Day and deliver election supplies to the precinct polling location on Election Day.
	Examine the voting machine and compare the ballot face of the machine with the sample ballot prior to opening the polling place or check to ensure the correct paper ballots have been sent to your precinct. Immediately report any discrepancies to the county clerk.
	Check to ensure that you have the correct precinct signature roster for your precinct. *If using EPB, See Addendum to Duties.
	Examine your Precinct Signature Rosters to determine if those persons who have applied for Absentee Ballots have been identified. If this task has not been done, you should take form SBE 33A, List of Voters Issued Absentee Ballots, (See page 53), and compare it to your Precinct Signature Roster, stamping <u>ABSENTEE</u> in the signature space on the roster by the name of any voter listed. No person who has applied for an absentee ballot may vote in person at the polling place on Election Day, unless you receive the following: <ul style="list-style-type: none"> • Form SBE 26, Authorization to Vote at Precinct; or • Court order
	Search the Precinct Signature Roster to find the voter's name. Registered voters in your precinct will be listed in the Precinct Signature Roster,

	alphabetical by last name, with each Address Confidentiality Program ("ACP") participant listed on a separate page immediately following the alphabetical listing by voter's last name. (See page 27).
	If the individual's name is not found on the Precinct Roster, they may be listed on a separate list of voters who are eligible to vote, but must confirm their information prior to signing form SBE 25, Supplemental Precinct Roster. If their name is listed on this separate list, have them complete a new Voter Registration Card, sign the Oath of Voter and then sign form SBE 25, Supplemental Precinct Signature Roster.
	If the individual's name is not found in any of the rosters, call the county clerk immediately.
	Before a voter signs the Precinct Signature Roster or form SBE 25, Supplemental Precinct Signature Roster, confirm the voter's identity.
	Verify the identification of each voter by one of the following methods: <ul style="list-style-type: none"> • Personal acquaintance with an election officer; • Driver's license (does not have to be a Kentucky-issued driver's license); • Any identification card with picture and signature of voter ("Other ID"); • Any United States government-issued identification card ("Other ID"); • Any Kentucky state government-issued identification card with picture ("Other ID"); • Social Security card; or • Credit card.
	Request the current address of the voter to determine if the voter remains qualified to vote in the precinct before allowing the voter to sign the Precinct Signature Roster or form SBE 25, Supplemental Precinct Signature Roster, and vote.
	Do not turn voters away who are not on the Precinct Signature Roster or form SBE 25, Supplemental Precinct Signature Roster, without first contacting the county clerk's office or contacting the toll-free State Board of Elections' Voter Registration Verification System. These voters may be eligible to vote. Instruct the individual of the option to request a hearing before the county board of elections to determine eligibility
	Completely fill in the oval in the "ID Type" column on the roster. The precinct officer verifying the identity of the voter will sign his or her initials in the "Clerk Initials" column of the Precinct Signature Roster or form SBE 25, Supplemental Precinct Signature Roster. Do not write in any other areas of the Precinct Signature Rosters or form 25, Supplemental Precinct Signature Roster.
	Ask each voter to choose the type of voting machine he or she would like to use to cast their ballot. Any voter may vote on the accessible voting machine regardless of whether the voter has a disability.
	Attest the signature of any person who assists a voter on form SBE 31, Voter Assistance Form.
	Verify that the voter signed the Precinct Signature Roster on the correct line. If the voter does not sign on the correct line, note the error on form SBE 53, Precinct Election Sheriff's Post-Election Report.
	If using paper ballots, complete and sign the Ballot Accountability Statement, a form created by the county clerk. (See Samples of Election Day Forms).

At the close of the polls, on the "Summary Page" of your Precinct Signature Roster write the total the number of voters who signed the Precinct Signature Roster (do not include absentee voters) and write the total number of voters who signed form SBE 25, Supplemental Precinct Signature Roster, and calculate the Grand Total. (See page 54.)

ADDENDUM – EPB PRECINCT CLERK DUTIES

Check (✓) when Complete	DUTIES
	If using MIFI in precinct, turn MIFI on and then plug into outlet.
	Plug EPB into outlet using charging cord and EPB will automatically turn on. If not plugged into outlet, EPB can be turned on by pressing the button on the side and holding for 10 seconds.
	Touch the red, white and blue icon to launch the EPB application. Verify the correct County, date-of-election and precinct are identified.
	Press the Green Start button and enter your full first and last name. Select Continue and Unlock Device.
	If you are using the MIFI device, ensure the absentee delta files have downloaded to the device. (Bottom Center of Home Screen). If updates have not been received, you will receive instructions from your County Clerk regarding getting information to the EPB. This will include updating the absentee voters via manual scan. No person who has received an absentee ballot may vote in person at the polling place on Election Day, unless you receive the following: <ul style="list-style-type: none"> • Form SBE 26, Authorization to Vote at Precinct; or • Court order
	Search the EPB by either scanning the driver's license or selecting the Identification Type and entering their identification requested.
	If the individual's name is not found on the EPB, call the county clerk immediately.
	Before a voter signs the EPB or form SBE 25, Supplemental Precinct Signature Roster, confirm the voter's identity.
	After confirming the voter, you will select whether the voter is receiving a paper ballot or voting on an electric machine and get the voter's signature on the EPB. Other potential status' for the voter include: <ul style="list-style-type: none"> • Absentee Ballot sent: voter cannot be issued a regular ballot. If voter disputes, CONTACT YOUR COUNTY CLERK. • Military Absentee: voter cannot be issued a regular ballot UNLESS he/she provides an Authorization to Vote issued by the County Clerk's office. If voter disputes, CONTACT YOUR COUNTY CLERK. • Voter in Wrong Location: You will either redirect them to correct location or have them sign the supplemental roster. CONTACT YOUR COUNTY CLERK • Confidential Voter: home address NOT listed.

	<ul style="list-style-type: none"> • Needs Assistance: the voter has a permanent assistance agreement. You will still need to attest the signature of any person who assists a voter on form SBE 31, Voter Assistance Form. • Voter Already Voted: voter cannot be issued a regular ballot. If voter disputes, CONTACT YOUR COUNTY CLERK. • INACTIVE voter: Voter must fill out a voter registration card, complete an Oath of Voter and sign the supplemental roster before being provided the ballot.
	Ballots can be spoiled and reissued by selecting the menu on the right upper screen and selecting "Spoil Ballot."
	<p>Closing the Election: If you are not using MIFI, you will turn the EPB off by holding down the button on the side for 10 seconds and power off.</p> <p>If you are using the MIFI:</p> <ul style="list-style-type: none"> • Touch top right menu button and select Logout. • Select "Close the Election." • You will see a warning screen. Select "Yes." • An orange box will appear while synchronization occurs. • You may see "XX transactions pending" • Do not turn off until you see "Device Locked" in green under the BACK button.
	Note any errors on form SBE 53, Precinct Election Sheriff's Post-Election Report.
	If using paper ballots, complete and sign the Ballot Accountability Statement, a form created by the county clerk. (See Samples of Election Day Forms). This form may also request the Grand total of voters who signed EPB and Supplemental Roster.

SPECIAL DUTIES OF PRECINCT JUDGES

Check (✓) when Complete	DUTIES
	Ask each voter to choose the type of voting machine he or she would like to use to cast their ballot. Any voter may vote on the accessible voting machine regardless of whether the voter has a disability.
	Inform the Precinct Sheriff of any election law violations, potential election law violations, irregularities and suggestions for improvement or other comments.
	Examine the voting machine and compare the ballot face of the machine with the sample ballot prior to opening the polling place for voting or check to ensure the correct paper ballots have been sent to your precinct. Immediately report any discrepancies to your county clerk.

	<p>Sign form SBE 31, Voter Assistance Form, and render assistance to any voter who meets the legal requirements for assistance in operating the voting machine if the voter does not bring someone to assist him or her or does not select someone at the polling place other than the precinct judges. [see "Voter Needs Assistance in Voting" section of this Precinct Election Officers' Guide for details on when the precinct judges may offer assistance.] Voters must meet one of the following conditions rendering him unable to vote without assistance, in order to be eligible to receive voting assistance:</p> <ul style="list-style-type: none"> ● Inability to read English; ● Physical disability; or ● Blindness.
	Regularly check the voting machine screens to make sure they are clean and without stray marks left by voters.
	Seal and lock the voting machine after the polls have closed.
	Sign the voting machine Verification Form for each voting machine in your precinct, a form created by the county clerk. (See Samples of Election Day Forms).
	Attest the signature of any person who assists a voter on form SBE 31, Voter Assistance Form.
	If using paper ballots, sign the Ballot Accountability Statement, a form created by the county clerk. (See Samples of Election Day Forms).
	Return all election supplies and results of the election to the county board of elections.

SPECIAL DUTIES OF PRECINCT SHERIFF

Check (✓) when Complete	DUTIES
	Compare the ballot face of the machine with the sample ballot prior to opening the polling place or check to ensure the correct paper ballots have been sent to your precinct. Immediately report any discrepancies to the county clerk.
	Display American flag at the entrance to polling place and install temporary accessibility devices, when instructed by the county clerk. This includes installing handicap-parking signs, parking cones for creating the accessible parking spaces, doorknob adapters, ramps, etc.
	Maintain order at the polling place. No person, except for challengers, is permitted to have paper, telephone, cellphones, computers or other technology systems in the voting room for the purpose of creating check-off lists or to record the identity of any voter. Voters may have cellphones in their possession and take ballot selfies in accordance with 31 KAR 4:170(2).
	Ensure only those persons allowed by law to be in the voting room are granted access.
	If media appear, immediately contact the county clerk. Members of the news media are allowed in the voting room for the limited purpose of filming the

	voting process. The media may not film the identity of the voters, conduct interviews with voters inside the voting room, or disrupt the voting process.
	Report any potential election law offenses to the county clerk, county sheriff, and/or the State Police.
	Note all election law violations, potential election law violations, irregularities, and suggestions for improvement or other comments on form SBE 53, Precinct Sheriff's Post-Election Report. Sign form SBE 53, Precinct Sheriff's Post-Election Report, and include with the election supplies on election night. A supplement to this report may be filed with the county clerk within three (3) days of the election.
	Synchronize all clocks and promptly at 6:00 p.m., station yourself at the end of the line of persons waiting to vote. <ul style="list-style-type: none"> • All voters in line by 6:00 p.m. must be allowed to vote regardless of how long it takes. • No person who joins the line after the precinct sheriff shall be allowed to vote. • If your precinct is sharing a voting location, each precinct must close at the same time unless there is a line in the precinct.
	Attest the signature of any person who assists a voter on form SBE 31, Voter Assistance Form.
	If using paper ballots, sign the Ballot Accountability Statement. (See Samples of Election Day Forms).

BALLOT AND VOTING MACHINE FORMS

BALLOT ACCOUNTABILITY STATEMENT (SEE PAGE 56)

(Only applies to counties using paper ballots in the precinct)

GENERAL ELECTION: An accounting of the total number of each type of ballot submitted to the precinct.

Contains:

- An oath for the county clerk to sign attesting to the accuracy of the information provided on the statement;
- An accounting of the total number of ballots used, unused, and spoiled on Election Day to be completed by the precinct election clerk and signed by all four (4) precinct election officers;
- An accounting of the total number of ballots returned to the county clerk at the end of the Election Day to be completed by the precinct election clerk;
- A section that allows for the precinct election clerk to explain any discrepancies;

- An oath for all four of the precinct election officers to sign attesting to the accuracy of the information provided on the statement; and
- The signatures of all four precinct election officers.

ESCAN VERIFICATION FORM (SEE PAGE 49)

ONE VERIFICATION FORM PER VOTING MACHINE:

Contains:

- The assigned precinct name and number, if applicable;
- The serial numbers of the voting system components;
- The seal numbers;
- Counter number at the beginning of the election, if applicable;
- Counter number at the end of the election, if applicable;
- Signature line for the program administrator who sealed the voting system after the accuracy test; and
- Signature lines for the two precinct election judges to sign on Election Day.

ELECTION SECURITY PLAN

Election Day security is largely in your hands. Each county must have a security plan in place. Your county board of elections must train you on your county’s procedures to ensure security of the voting equipment and election materials. Below are procedures to follow in every county to ensure security.

MACHINE DELIVERY

THE COUNTY CLERK MUST DELIVER THE MACHINES AND ALL VOTING SUPPLIES TO THE PRECINCTS AT LEAST ONE HOUR BEFORE THE POLLS OPEN. THE COUNTY SHOULD DESIGNATE A SECURE LOCATION WITHIN THE PRECINCT FOR THE STORAGE OF THESE ITEMS UNTIL YOUR ARRIVAL. MAKE SURE YOU KNOW WHERE TO FIND YOUR ELECTION MATERIALS IF YOU DO NOT ALREADY HAVE THEM.

MACHINE PLACEMENT

After you have inspected all equipment and supplies and made sure the equipment and supplies are ready for use, begin the setup of each polling place. When you set up your precinct, the following must be guaranteed:

- Voters should not be able to access the voting devices’ power control, counter controls, and results storage media.
- You should maintain control of all administrator and ballot activation devices.

- You should verify date, time, and precinct on the voting devices.

Make sure that the precinct, as well as the accessible voting machine, remains accessible to all voters with disabilities.

PAPER BALLOTS AT THE PRECINCT

If your county uses paper ballots, count and verify the number of ballots you have received on the proper forms.

Ensure that you secure all paper ballots throughout the day. Do not leave a stack of ballots unattended at any time during the day or allow voters access to the paper ballots unless voting a ballot.

POLLING LOCATION AND PROCESS SECURITY

You should secure the area around the voting devices at all times.

Only precinct election officers and other legally authorized personnel and registered voters waiting to vote should be allowed in this area. Each precinct election officer should have a clearly defined role so voters are able to identify the precinct election officers and their particular responsibilities.

- The precinct judges should maintain control of the ballot activation device and, if issued to the voter, only issue the device when a voting machine is available for the voter's use.
- Precinct election officers must be vigilant to make sure the voting devices have not been damaged or tampered with.

You should occasionally compare the following:

- The number of votes recorded on the voting device.
vs.
- The number of signatures in the EPB, Precinct Signature Roster and form SBE 25, Supplemental Precinct Signature Roster.

If these numbers do not match, the precinct election officers should immediately contact the county clerk.

Important security concerns may be avoided if you do the following:

- Arrange the voting machines or privacy booths so that the flow of traffic is not passing behind the voters as they are casting their ballots.
- Manage the flow of voters within the polling area so that lines are minimal and occur at the registration table and not at the machine.

- Do not let voters sign the EPB, Precinct Signature Roster or form SBE 25, Supplemental Precinct Signature Roster, until a voting device is ready. Do not let a line develop at the voting device. Keep the line at the registration table.
- Wear identification tags so that the voters will recognize you as being a precinct election officer at the polling location.
- Call the county clerk immediately when a problem occurs.

SECURITY FOR ELECTION DAY CLOSING

WHEN TO CLOSE THE POLLS, RECORDING THE RESULTS, AND SECURING THE EQUIPMENT AFTER CLOSING THE POLLS

After all voters who were in line by 6:00 p.m. have cast their ballots, it is time for the precinct election officers to close the voting devices and tabulate the votes.

General Election Reminder: The governing authority of each political party, each candidate for member of board of education, nonpartisan candidate, independent candidate, or independent ticket may designate a representative to the county board of elections to witness and check the vote count. Representatives of the news media may also witness the vote count.

WHEN CLOSING THE POLLS, YOU SHOULD FOLLOW THE PROCESS BELOW:

- You should validate the number of voter activation devices and secure them in a transport case for return to the local election office.
- The voting devices should be secured by using the numbered closing seals.
- You should complete and sign the proper paperwork to be returned to the county clerk, county board of elections, and grand jury.
- The public and protective counter numbers should be recorded on the return envelopes along with device serial number and seal numbers on the Verification Forms.
- The print out totals for each voting device used should be recorded on the proper paperwork, posted at the precinct, and then returned to the county clerk and county board of elections.
- The precinct judges should return the devices and materials to the county clerk and county board of elections, making certain to properly seal all devices before transport begins. Do not put these materials inside the voting machine. The voting machine is to be locked for thirty (30) days after the election and can only be opened by court order.
- The county clerk should verify receipt of all devices and confirm that all devices are properly sealed.

AT THE END OF THE DAY, THE PRECINCT ELECTION OFFICERS SHOULD COMPARE THE FOLLOWING NUMBERS:

- The number of votes recorded on the voting device.
vs.
- The number of signatures in the EPB, Precinct Signature Roster and form SBE 25, Supplement Precinct Signature Roster.

NOTE: After the equipment is sealed after the election, the precinct election officers should secure the voting equipment in the location in which it was left prior to the election.

POSTERS AND NOTICES REQUIRED TO BE POSTED AT PRECINCT

It is the duty of all precinct election officers to make sure these posters and notices are posted in a visible area inside the polling place by 6:00 a.m. on Election Day.

Check (✓) when posted	Form Number	Poster or Notice Title
	SBE 52	VOTE BUYING & SELLING ARE ILLEGAL (KRS 117.030(2))
	SBE 52B	CLERICAL ERROR (KRS 117.030(3))
	SBE 52C	VOTER RIGHTS & RESPONSIBILITIES (KRS 117.030(1))
	SBE 52D	PROHIBITION AGAINST CHECK-OFF LISTS IN THE PRECINCTS (KRS 117.236)
	NO NUMBER	SAMPLE BALLOT (KRS 117.175)
	NO NUMBER	INSTRUCTIONS ▶ METHOD OF VOTING BY USE OF MACHINE, AND ▶ PROPER METHOD OF CASTING A WRITE-IN VOTE. (KRS 117.175 and KRS 117.255(1))
	NO NUMBER	SIGN NEAR EACH VOTING MACHINE IDENTIFYING THE PRECINCT FOR WHICH THE MACHINE HAS BEEN DESIGNATED, when 2 or more are sharing a facility. (KRS 117.195(2))
	SBE/SOS/05	NOTICE OF CANDIDATE WITHDRAWAL, IF ANY FILED WITH COUNTY CLERK PRIOR TO ELECTION DAY. (KRS 118.212(5) AND KRS 118A.150(7))

VOTER'S NAME IS ON THE LIST OF VOTERS ISSUED ABSENTEE BALLOTS

At the beginning of Election Day, examine your Precinct Signature Rosters to determine if those persons who have applied for absentee ballots have been identified. If this task has not been done, you should take form SBE 33A, List of Voters Issued Absentee Ballots, (see page 53) and compare it to your Precinct Signature Roster, stamping "ABSENTEE" in the signature space on the roster by the name of any voter listed.

If using EPBs, make sure the absentee delta files have downloaded to the device, or the County Clerk has provided you cards for updating the absentee voters.

If a voter has an "ABSENTEE" stamp on the Precinct Signature Roster, the EPB indicates the voter voted absentee, or is listed on form SBE 33A, List of Voters Issued Absentee Ballots, contact the county clerk before turning the voter away from the precinct.

No person who has applied for an absentee ballot may vote in person at the polling place on Election Day, unless the precinct election officers receive the following:

- Form SBE 26, Authorization to Vote at Precinct (See page 50);
or
- Court order.

PRECINCT, SUPPLEMENTAL, AND EPB SIGNATURE ROSTERS

The Precinct Signature Roster, form SBE 25, Supplemental Precinct Signature Roster, and EPB Electronic Signatures, serve as a record that an individual voter voted in an election. The rosters are also used to give the individual voter credit for voting in a particular Primary or General Election in the voter registration system. By following the procedures listed below for paper rosters, the voter will be given credit for voting in the voter registration system. "Voter Credit" means the record of the voter's attendance at the election and does not mean the ballot cast by the voter.

- Use ink pens only.
- Do not attach tabs to the roster pages because they will tear the roster when removed for scanning.
- Do not use paper clips, staples, and loose pieces of paper, post-it notes, or any other type of note on the roster pages.
- Do not use correction fluid ("white out") to correct any line in which someone signed in the wrong area. Note any such errors on a separate sheet of paper and on form SBE 53, Precinct Election Sheriff's Post-Election Report, and return to the county board of elections.

- Do not place a check "v" mark or put an "X" mark through the ID type. You will need to completely fill in the oval for the voter to receive proper credit.

ID Type					Clrk Init
FILL in ONE box ONLY					
PA <input type="radio"/>	DL <input checked="" type="radio"/>	OI <input type="radio"/>	SS <input type="radio"/>	CC <input type="radio"/>	CK
PA <input type="radio"/>	DL <input checked="" type="radio"/>	OI <input type="radio"/>	SS <input type="radio"/>	CC <input type="radio"/>	CK
PA <input type="radio"/>	DL <input checked="" type="radio"/>	OI <input type="radio"/>	SS <input type="radio"/>	CC <input type="radio"/>	CK

- Do not mark a line through the voter's name if the person is deceased or moved out of the county. Note the name of the voter and change on a separate sheet of paper and on form SBE 53, Precinct Election Sheriff's Post-Election Report, and return to the county board of elections.
- If a person signed form SBE 32, Oath of Voter, but did not sign form SBE 25, Supplemental Precinct Signature Roster, note the name of the voter on a separate sheet of paper, and on form SBE 53, Precinct Election Sheriff's Post-Election Report, and return to the county board of elections so that the person may receive voter credit.
- At the close of the polls, on the "Summary Page" of your Precinct Signature Roster write the total the number of voters who signed the Precinct Signature Roster (do not include absentee voters) and write the total number of voters who signed form SBE 25, Supplemental Precinct Signature Roster, and calculate the Grand Total. (See page 54.) The county clerks may provide their own for Summary for EPB.

GENERAL ELECTION PAPER PRECINCT SIGNATURE ROSTERS

In general elections each county who is not using EPBs will receive an alphabetical master list of all registered voters within the county, one (1) Precinct Signature Roster of all registered voters in each precinct on which each voter's party affiliation is identified, and two (2) lists of all registered voters in each precinct (party copies).

You will find the Paper Precinct Signature Rosters, form SBE 25, Supplemental Precinct Signature Roster, and form SBE 35, Provisional Ballot Precinct Signature Roster, in your precinct materials provided to you by the county clerk. Every voter must sign one of the signature rosters or the EPB before voting.

Registered voters in your precinct will be listed in the Paper Precinct Signature Rosters, alphabetical by last name, with each participant of the Address Confidentiality Program ("ACP") listed on a separate page immediately following the alphabetical listing by voter's last name.

If the individual's name is not listed in the EPB or Paper Precinct Signature Rosters (and is not listed as an ACP participant at the end of the alphabetical listing), look in form SBE 25, Supplemental Precinct Signature Roster or the list of voters who MUST confirm their information prior to voting. If the individual's name is listed on form SBE 25, Supplemental Signature Roster, let the individual sign on form SBE 25, Supplemental Signature Roster signature line and vote. If the Voter is on the list of voters who must confirm their information prior to voting, let the voter sign on form SBE 25, Supplemental Signature Roster AFTER they complete a voter registration card and Oath of Voter.

You must fill in only one oval for identification (ID) Type [PA=Personal Acquaintance; DL=Driver's License; OI=Other Identification; SS=Social Security Card; or CC=Credit Card] and affix your initials on the Precinct Signature Roster, form SBE 25, Supplemental Precinct Signature Roster, or form SBE 35, Provisional Ballot Precinct Signature Roster, before the voter signs the Precinct Signature Roster, form SBE 25, Supplemental Precinct Signature Roster, or form SBE 35, Provisional Ballot Precinct Signature Roster.

PRECINCT SIGNATURE ROSTER – SAMPLE

003 ANDERSON
A101 EAST LAWRENCEBURG

Precinct Roster
Commonwealth of Kentucky - State Board of Elections

2016 General Election
11/8/2016

Voter's Name and Address	Birth Date	Sex	Voter's ID Number	Party	Voter's Signature	Cong Hs Sen			ID Type				Clerk Infill	
						City	School		FILL IN ONE box ONLY					
ARNEY, MARY CATHERINE 208 E WOODFORD ST # 4	7/23/1953	F	[Barcode]	Dem	MARY CATHERINE ARNEY	X	6	053	07	PA	DL	OT	SS	CC
ADAMS, CHRISTOPHER E 317 E COURT ST	2/5/1990	M	[Barcode]	Dem	CHRISTOPHER E ADAMS	X	6	053	07	PA	DL	OT	SS	CC
ADAMS JR, RALPH E 317 E COURT ST	10/14/1948	M	[Barcode]	Dem	RALPH ADAMS JR	X	6	053	07	PA	DL	OT	SS	CC
ADKINS, DEBORAH LYNN 1356 VERSAILLES RD	10/21/1956	F	[Barcode]	Dem	DEBORAH LYNN ADKINS	X	6	053	07	PA	DL	OT	SS	CC
ADKINS, GREGORY CHADWICK 1356 VERSAILLES RD	7/29/1980	M	[Barcode]	Dem	GREGORY CHADWICK ADKINS	X	6	053	07	PA	DL	OT	SS	CC
ADKINS, J JUSTIN 1356 VERSAILLES RD	1/14/1985	M	[Barcode]	Dem	J JUSTIN ADKINS	X	6	053	07	PA	DL	OT	SS	CC
ADKINS, JAMES K 1356 VERSAILLES RD	4/22/1946	M	[Barcode]	Dem	JAMES K ADKINS	X	6	053	07	PA	DL	OT	SS	CC
ADKINS, JEREMY 1028 ALEXANDRIA DR	6/4/1979	M	[Barcode]	Dem	JEREMY ADKINS	X	6	053	07	PA	DL	OT	SS	CC
AGEE, CHELSEA LEIGH 1403 HARRODSBURG RD	5/31/1988	F	[Barcode]	Dem	CHELSEA LEIGH AGEE	X	6	053	07	PA	DL	OT	SS	CC
AGEE, DEBRA K 1403 HARRODSBURG RD	8/19/1962	F	[Barcode]	Dem	DEBRA K AGEE	X	6	053	07	PA	DL	OT	SS	CC
AGEE, RICHARD CAROL 1403 HARRODSBURG RD	5/8/1956	M	[Barcode]	Dem	RICHARD CAROL AGEE	X	6	053	07	PA	DL	OT	SS	CC
ALBERS, VIOLET ANN 551 S MAIN ST	3/24/1978	F	[Barcode]	Dem	VIOLET ANN ALBERS	X	6	053	07	PA	DL	OT	SS	CC
ALDRIDGE, DALE B 1045 FORREST HILL DR	4/4/1968	M	[Barcode]	Dem	DALE B ALDRIDGE	X	6	053	07	PA	DL	OT	SS	CC

FORM SBE 25, SUPPLEMENTAL PRECINCT SIGNATURE ROSTER - SAMPLE COMPLETED

COMMONWEALTH OF KENTUCKY
STATE BOARD OF ELECTIONS

PAGE ____ of ____

SUPPLEMENTAL PRECINCT SIGNATURE ROSTER

TO BE SIGNED BY VOTERS QUALIFIED TO VOTE BUT NOT ON PRECINCT ROSTER

ELECTION DATE 5/22/2018

COUNTY NAME & CODE Wartford - 120

PRECINCT NAME & CODE Pinkard - H103

VOTER NAME (PRINT NAME)	ADDRESS	PHONE NUMBER	DATE OF BIRTH	GENDER	ID TYPE					SIGNATURE
					PA	DL	OE	SS	CC	
Kent, Clark	150 Locust St	Clark Kent	1/1/1959	D	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	S.M.
Parker, Peter	1600 Spruce Ct	Peter Parker	3/15/15	D	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	S.M.
Wayne, John	100 Malberry St	John Wayne	3/10/78	R	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	S.M.
					<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
					<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
					<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
					<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
					<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
					<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
					<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
					<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	

ID Types: PA = Personal Acquaintance DL = Driver's License OE = Other Identification SS = Social Security Card CC = Credit Card

* ID card with signature and picture / US government-issued ID card / Kentucky state government-issued ID card

SBE 25 (06/2015)

SAMPLE

72CF707F-8D22-488C-B2E3-A4EB336E1770 : 000071 of 000182

IDENTIFICATION OF VOTERS

Before a voter signs the EPB, **Paper** Precinct Signature Roster or form SBE 25, Supplemental Precinct Signature Roster, you must confirm a voter’s identity and address. You must completely fill in the oval designating the proper code as the means of identification of the voter and enter your initials in the “Clerk Initials” column of the roster (See chart below).

VOTERS MAY CONFIRM THEIR IDENTITY BY MEANS OF:		ROSTER CODE
1.	Personal Acquaintance with an election officer▶	PA
2.	Driver’s License (does not have to be a Kentucky issued DL)▶	DL
3.	Social Security Card▶	SS
4.	Credit Card▶	CC
5.	“Other ID”▶ <ul style="list-style-type: none"> • Any ID card with picture and signature of voter; • Any Kentucky state government-issued ID card; and • Any United States government-issued ID card. 	OI

Do not allow the voter to sign the EPB, Paper Precinct Signature Roster or form SBE 25, Supplemental Precinct Signature Roster, before confirming his or her identification.

- If a voter’s name is on the Precinct Signature Roster but the voter does not have an acceptable source of identification, the voter may leave to get identification and then return to vote.
- If the individual does not produce an acceptable form of identification, do not allow that individual to sign form SBE 32, Oath of Voter, or form SBE 25, Supplemental Precinct Signature Roster, and do not allow that individual to vote on the voting machine.
- If an individual refuses to produce an acceptable form of identification, that individual's option is to request a hearing before the county board of elections.

IMPORTANT: If there is a long line at the voting booth, do not permit an individual to sign the roster while waiting. Once the individual signs the roster and leaves the polling place because the voter does not want to wait, that individual cannot return to vote at a later time.

VOTER REGISTRATION VERIFICATION SYSTEM

You are instructed to contact the county clerk's office to verify an individual's voter registration status. However, you also can telephone the Voter Registration Verification System. The Voter Registration Verification System is a dedicated telephone line maintained by the State Board of Elections that you may use to verify if an individual is registered to vote. Dial **844-246-0806** and an attendant at the State Board of Elections will receive your telephone call to verify whether the individual is registered to vote. If the line is busy, try again.

Prior to each election, the State Board of Elections mails each county clerk the Voter Registration Verification System Information Page below for the precinct election officers' use on Election Day. The Voter Registration Verification System Information page below **should not** be posted at the polling location, but merely located at your workstation.

In general elections, if a voter registration is found you will be informed of the individual's county of registration, precinct assignment, and polling location name and address.

**November 5, 2019
PRIMARY ELECTION**

**DO NOT POST IN THE PRECINCT
FOR PRECINCT ELECTION OFFICER USE ONLY**

**Voter Registration
Verification System**

**Precinct Election Officer
Dial ► 844-246-0806**



- ▶ An attendant at the State Board of Elections will receive your call to verify whether the individual is registered.
- ▶ If a voter registration record is found, you will be informed of the
 - County of registration;
 - Party affiliation;
 - Individual's eligibility to vote in that party's primary;
 - Precinct assignment; and
 - Polling location name and address.
- ▶ If busy, please try again.

PARTICIPANTS OF ADDRESS CONFIDENTIALITY PROGRAM

Victims of certain crimes, including domestic violence, abuse, and sex crimes have the opportunity to apply for the Kentucky Address Confidentiality Program ("ACP"). The ACP is administered by the Kentucky Secretary of State's Office. Participants in the ACP are permitted to vote by mail-in absentee or may appear in the polling place on Election Day.

If your county has ACP participants, each ACP participant will be listed in the EPB with an address of the Capital, on a separate page immediately following the alphabetical listing by voter's last name in the Paper Precinct Signature Roster or form SBE 25, Supplemental Precinct Signature Roster (each ACP participant listed on a separate page). When you locate the ACP participant's name in the Precinct Signature Roster, you should do the following:

ACP PARTICIPANT LISTED IN PRECINCT SIGNATURE ROSTER	
1.	Confirm ACP participant's identity;
2.	Fill in only one oval for identification (ID) Type; [PA=Personal Acquaintance; DL=Driver's License; OI=Other Identification; SS=Social Security Card; or CC=Credit Card]
3.	Affix your initials on the Precinct Signature Roster before allowing the voter to sign;
4.	Direct ACP participant to sign the Precinct Signature Roster; and
5.	Allow ACP participant to vote.

VOTER'S NAME IS NOT ON THE PRECINCT SIGNATURE ROSTER

If the individual's name does not appear on the Precinct Signature Roster, check the individual's address to determine if he/she lives in your precinct. Remember to check the list of registered voters who must update their voter registration.

- If voter does not live in your precinct, call the county clerk to verify the voter is a registered voter in your county and direct the voter to the correct precinct and polling location.
- If the voter lives in your precinct and is a registered voter, have the voter complete a new voter registration card reflecting the new address, complete form SBE 32, Oath of Voter, and sign form SBE 25, Supplemental Precinct Signature Roster, before being permitted to vote.

If the individual's address puts that individual in your precinct and the voter's name is not on the Precinct Signature Roster, form SBE 25, Supplemental Precinct Signature Roster, or the list of registered voters who must update their voter registration, contact your county clerk.

- If the individual is not a registered voter in your county, the voter may ask for a hearing before the county board of elections

- If the county board of elections determines that the individual is eligible to vote, the county board of elections will issue the voter form SBE 26, Authorization to Vote at Precinct, and the voter will present that to you and sign form SBE 25, Supplemental Precinct Signature Roster, before being permitted to vote.

VOTER'S NAME IS DIFFERENT FROM NAME ON PRECINCT SIGNATURE ROSTER

If a voter shows identification that has a different last name than the one on your Precinct Signature Roster the voter must complete a new voter registration card reflecting the name change and be permitted to vote.

In many instances, a female voter changes her name on her driver's license, but will fail to update her voter registration record. The voter is eligible to vote and should sign the Precinct Signature Roster and cast her ballot. After the election, the county clerk will update her voter registration information.

VOTER DOES NOT RESIDE IN YOUR PRECINCT OR ADDRESS HAS CHANGED

If an individual gives you an address other than the one shown on the Precinct Signature Roster and it is in a different precinct within your county, then:

- The individual must vote in the precinct in which he or she lives. Call the county clerk for the polling location of his/her correct precinct or review the maps and precinct materials provided by the county clerk and direct the voter to the correct polling location for that precinct.

If the individual gives you an address other than the one shown on the Precinct Signature Roster and it is in another county:

- If the individual moved to a different county while the voter registration books are closed [October 8, 2019 through November 5, 2019], then the individual should be permitted to vote in his old county of residence for one (1) election only. The individual should be instructed to register in his or her new county of residence. The individual should be given a voter registration card to complete and mail to the county clerk in the new county.

or

- If the individual moved to a different county before the voter registration books closed on October 8, 2019, and failed to change his or her registration, then the individual is not eligible to vote in the old county or the new county of residence. The individual should be instructed to register in his or her new county of residence so that he/she

will be eligible to vote in the next election. The individual should be given a voter registration card to complete and mail to the county clerk in the new county.

COMPLETING FORM SBE 32, OATH OF VOTER

Once the county board of elections has instructed you to allow the voter to complete form SBE 32, Oath of Voter, and vote at the precinct, please do the following:

1. Voter completes all sections of form SBE 32, Oath of Voter.
2. You provide the reason on form SBE 32, Oath of Voter, in the "Reason for Requiring Oath" section at the bottom of the card. Ask the county clerk's office for the reason if you are unsure. Some possible reasons include:
 - Not on roster because voter's address has changed;
 - Not on roster because voter is "Inactive"; and
 - Not on roster because voter was improperly removed from voter registration.
3. Use the (09/2016) version of form SBE 32, Oath of Voter, (blue in color).
4. Do not use form SBE 32, Oath of Voter, to allow someone with no identification to vote.

See "Sample of Election Day Forms" to view a completed example of form SBE 32, Oath of Voter.

FORM SBE 32, OATH OF VOTER – SAMPLE BLANK (BLUE IN COLOR)

SBE 32 (09/2016)

COMMONWEALTH OF KENTUCKY
STATE BOARD OF ELECTIONS

OATH OF VOTER

When a voter has moved to a new precinct within the same county and is not listed on the current precinct roster, when the officers of an election disagree as to the qualifications of a voter, or when a voter's right to vote is disputed by a challenger, the voter shall sign the following oath as to his qualifications before he is permitted to vote.

I, _____, hereby state, under oath, that I am duly registered as
(Name: Please Print)
a _____ voter in this precinct in _____ County,
(Political Party Preference) (County)

Kentucky and that I currently reside at _____. My previous address
(Current Residence Street Address, City, and Zip Code)
was _____ in this county. I know of no legal disqualifications which should
(Previous Residence Street Address, City, and Zip Code)
prevent my vote from being cast and counted at this election and I affirm that I have not voted and will not vote in another precinct or by absentee ballot in this state during this election.

I understand that any person who falsely signs and verifies any form requiring verification shall be guilty of perjury and subject to the penalties therefore. I further understand that if I execute the Oath and am not a registered voter at the current address stated above, I have committed a criminal act.

Voter must sign here Date of Birth _____ Date _____
This Oath shall be returned to the County Clerk who shall deliver it to the Commonwealth's Attorney for investigation.

Reason for Requiring Oath _____ Precinct Name or No. _____
Signature of Precinct Election Officer or Challenger _____

WRITE-IN VOTING PROCEDURE

On August 16, 2018, the Office of the Attorney General issued an Opinion, OAG 18-011, in response to a request by the Secretary of State for clarification of KRS 117.265(5) and KRS 117.265(6); specifically, whether certified lists of write-in candidates may be provided to voters and, if so, under what circumstances. The Opinion ultimately concluded that the decision as to whether certified list of write-in candidates may be provided to voters was left to the discretion of the Kentucky State Board of Elections.

On August 21, 2018, the Kentucky State Board of Elections met and voted unanimously to maintain the past pattern and practice; that is, election officials may distribute a certified list of write-in candidates only to those who request the list. You may not post the list at the precinct location for all voters to view.

If a voter asks you how to cast a write-in vote, two (2) precinct election officers of opposing parties must instruct the voter on how to cast a write-in vote.

- If a voter asks for write-in instructions BEFORE entering the voting booth, direct the voter to the write-in option on the sample ballot, which (sample ballot is required signage to be posted in the polling location) and allow voter to view the certified list of write-in candidates.
- If a voter asks you for write-in instructions AFTER entering the voting booth, you may give verbal direction as to the location of the write-in option on the ballot, but you MUST NOT enter the voting booth and assist the voter in any way.
- If a voter asks you for write-in clarification BEFORE OR AFTER voting STRAIGHT PARTY TICKET, you may advise that if the voter votes a straight party ticket and votes for an opposing candidate in a specific race, the vote shall be counted for the opposing candidate or write-in candidate for that specific race and the remaining votes on the ballot shall be counted for the straight party ticket. This is not an overvote, as an overvote is when a voter makes more than the permitted number of selections in a single race.

VOTER NEEDS ASSISTANCE

VOTER WITH DISABILITIES HAS TWO (2) OPTIONS AT THE POLLING PLACE

1. The voter may vote without assistance on any voting machine of his/her choosing, including the accessible voting machine, and does not need to fill out form SBE 31, Voter Assistance Form. The county board of elections will give you detailed instructions on operating the accessible voting machine.

or

2. The voter may have voter assistance by the voter and the assistant completing and signing form SBE 31, Voter Assistance Form, listing the specific reason for assistance (see page 51), and vote on any voting machine. The precinct clerk will swear the assistant to operate the voting machine or complete the ballot in accordance with the directions of the voter. The sworn assistant will enter the voting booth or ballot completion area and operate the voting machine or complete the ballot for the voter as the voter directs.

WHY VOTER MAY HAVE ASSISTANCE?

1. Blindness (does not include those voters who forgot to wear their glasses or contacts).
2. Physical disability.
3. Inability to read English.

WHO MAY ASSIST THE VOTER?

1. Any person of the voter's choice except:
 - the voter's employer or agent of that employer; or
 - an officer or agent of the voter's union.
2. A voter who does not bring someone to assist him or her at the polls, or does not select someone at the polling place other than the precinct judges, shall be assisted by both precinct judges. One judge shall, in the presence of the other judge and the voter, operate the voting machine or complete the ballot as the voter directs.

APPLICATION FOR PERMANENT ASSISTANCE TO VOTE

There is a portion of form SBE 31, Voter Assistance Form, where the voter may request that the county board of elections certify that the voter needs permanent assistance due to blindness or physical disability.

If the county board of elections approves the voter's request, the voter will have permanent certification relieving only the voter from the responsibility of signing form SBE 31, Voter Assistance Form. Thereafter, the EPB will indicate permanent assistance or the Paper Precinct Signature Roster will have "PA" in the "Assist" column on the Precinct Signature Roster so designating the voter.

Even if a voter is certified for permanent assistance, the person assisting the voter and the precinct clerk must complete and sign their portion of the Oath on form SBE 31, Voter Assistance Form. (See page 51).

Violations of the laws regarding voter assistance should be reported to the county board of elections immediately and be noted on form SBE 53, Precinct Election Sheriff's Post-Election Report. (See page 57).

PERMANENT ASSISTANCE ("PA") ON PRECINCT SIGNATURE ROSTER - SAMPLE

Voters who have been certified for permanent assistance will have "PA" in the "Assist" column on the Precinct Signature Roster. Even if the voter is certified for permanent assistance, they have the option to vote without assistance.

034 FAYETTE A106 CARDINAL VALLEY		Precinct Roster Commonwealth of Kentucky - State Board of Elections										2015 General Election 11/3/2015				
Voter's Name and Address	Assist	Birth Date	Sex	Voter's ID Number	Party	Voter's Signature	Cong	Hs	Sen	ID Type					Clerk Init	
							City	School	FILL in ONE box ONLY							
POE, KELLY E 225 CREEKSIDE CT APT B		7/14/1967	F	[Barcode]	Dem	[Signature]	X	b	077	22	PA	DL	0I	SS	CC	
PONCE, SARAH M 2028 DORSET DR		7/3/1988	F	[Barcode]	Dem	[Signature]	X	b	077	22	PA	DL	0I	SS	CC	
PRESNELL, JAMES T 1913 CAMBRIDGE DR APT B		4/19/1943	M	[Barcode]	Dem	[Signature]	X	b	077	22	PA	DL	0I	SS	CC	
QUINTOS, REMEDIOS B 2032 DUNKIRK DR		1/24/1974	F	[Barcode]	oth	[Signature]	X	b	077	22	PA	DL	0I	SS	CC	
RAWLINGS, DARIAN PAUL 2143 DEAUVILLE DR		04/15/1974	M	[Barcode]	Dem	[Signature]	X	b	077	22	PA	DL	0I	SS	CC	
REEVES, CRYSTAL L 200 NEWCASTLE CT	PA	4/9/1976	F	[Barcode]	Rep	[Signature]	X	b	077	22	PA	DL	0I	SS	CC	

The individual who assists the voter, including an individual who assists a certified permanent assistance voter, must complete the portion of form SBE 31, Voter Assistance Form, declaring that the assistor will operate the machine as directed by the voter. A precinct election officer must also sign the Oath on form SBE 31, Voter Assistance Form.

REPORTING VIOLATIONS

The precinct sheriff is responsible for reporting all violations on form SBE 53, Precinct Election Sheriff's Post-Election Report" by completing, signing, dating, and filing with the chairman of the county board of elections AND with the local grand jury within three (3) days after any election. All voter assistance forms are also turned over to the grand jury.

DISABILITY AWARENESS GUIDANCE

Provided by: Kentucky Protection and Advocacy
 For further information, please contact:
 KY Office of the ADA Coordinator (or) KY Protection and Advocacy
 502-564-3850 | 1-877-423-2933 502-564-2967 | 1-800-372-2988

The following guidance is provided by the Kentucky Office of the ADA Coordinator and Kentucky Protection and Advocacy.

Individuals with disabilities are people who may do things differently than a person with no disability. While some disabilities are readily apparent and visible to others, most disabilities are not visible. Because of this, use of the accessible voting machine should be offered to every voter, not just those who you believe may have a disability.

GENERAL INFORMATION

- Always ask if a voter with a disability needs assistance before you help.
 - Since each person and situation is unique, the best advice is to ask the voter with a disability:
 - If he/she would like assistance, and
 - The best way you can assist him/her.
 - It is the person's right to choose whether or not to accept assistance.
- Speak directly to the voter and not "about" the voter to a person who may have accompanied him/her to the polling place.
- Do not speak louder to a voter who has a visible disability. Just because someone may have a physical disability, please do not assume there are other disabilities as well.
- Be aware about your physical contact with a voter. He/she may have:
 - Heightened sensitivity to physical contact, or
 - Balance issues that may be thrown off even with the most well-intended contact.
- The voter with a disability is a person first. When you need to refer to a voter with a disability, use Person First Language. Example: Voter with a learning disability.
- Have a large pen on hand for those individuals who may have difficulty gripping.
- If needed, you may use writing materials like a dry erase board or pen/paper to assist with communication.
- If possible, do not place the voter registration table directly in front of a window or light source.

SENSITIVE USE OF LANGUAGE

- Do not refer to the disability unless it is relevant.
- Do not sensationalize a disability by saying "victim of" or "afflicted with," etc.
- Avoid emotional descriptions:
 - "Uses a wheelchair" not "confined to a wheelchair;"
 - "Walks with crutches" not "is crippled"
- People with disabilities use words such as "see," "hear," "run" and "walk."
- When speaking with a person with a speech impairment and you don't understand, feel free to ask him/her to repeat or rephrase the statement.
- Remember: American Sign Language ("ASL") is a language itself. English is considered as a second language for someone whose primary language is ASL.
- Remember: speech impairment doesn't always mean intellectual disability.

MOBILITY DISABILITIES

- People who use crutches, canes or walkers should never be grabbed. They use their arms for balance.
- Do not hang or lean on the wheelchair. It is an extension of the user's personal space.
- Get on person's eye level by sitting down when having a discussion.

DEAF AND HARD OF HEARING

- People with varying levels of hearing loss communicate via sign language, ASL (or another type of sign language), or spoken English.
- Hearing aids may be used. Remember that not all hearing aids allow individuals to hear speech; they may be used to hear loud sounds.
- If needed, a person may use a certified American Sign Language ASL interpreter.
- When speaking with a person who uses an interpreter, maintain eye contact with the individual, not the interpreter.
- Get the voter's attention by tapping on shoulder or arm.
- Keep hands or objects away from mouth.
- Do not exaggerate gestures or mouth movements.
- Use short sentences.
- Do not assume ability to read your lips; the average accuracy of lip reading is about 30%.

VISUAL IMPAIRMENT

- People have varying levels of visual functioning. Not everyone with visual impairments is considered "blind." Do not assume level of functioning.
- Not all people with visual impairments read Braille. Some may use large print or audio versions of materials. Offer him/her the use of audio ballot.
- Announce when you enter or leave a room.
- Do not place items on the floor that may impede the person's movement about the room.
- Guiding a person who is visually impaired is best accomplished by offering your arm or shoulder.
- When walking with a voter with a visual impairment to a chair:
 1. Walk to the side of the chair
 2. Take his/her hand from your arm and place it on the back of the chair.
- Do not pat or play with a guide dog when he/she is working; always ask the owner first.
- Walk on the side opposite the guide dog.
- Read written information if asked.

LEARNING DISABILITIES

- Individuals have average or above-average intelligence.
- Learning disabilities may occur in:
 - spoken language | written language | arithmetic | reasoning | organizational skills
- People with dyslexia may need verbal instruction.
- Ask how the individual wants to receive information.
- Have headphones for audio ballots readily available for the voter.

PSYCHOLOGICAL DISABILITY

- Making quick decisions may be difficult; allow time for a response.
- Do not assume that the person is dangerous based on diagnosis.
- Do not assume that accounts of events are delusions.
- People may have different reactions to questions/situations than what you would expect (example: may need extra time to process information).

INTELLECTUAL DISABILITY

- The term “mentally retarded” is no longer acceptable.
- Speak in clear, short sentences.
- Do not use baby talk.
- Making quick decisions may be difficult; allow time for a response.
- People with intellectual disabilities rely on familiar situations. A change in their routine may require additional time and patience.

BRAIN INJURY

- People whose brains were injured in accidents, strokes, medication interactions, substance abuse, during military service, etc.
- People may have visible disability (mobility, vision, etc.) that resulted from the injury, but not always.
- Speech and decision-making may be affected; allow time for a response.
- People with brain injuries rely on familiar situations. A change in their routine may require additional time and patience.
- Memory (short-term or long-term) may be affected. You may need to repeat yourself.
- Depending on where the brain was injured, people may display more emotions (crying, speak angry words, etc.).

SERVICE ANIMALS

- Under the ADA Amendment Act, a service animal is defined as a:
 - Dog (always) and a Miniature horse (on a case-by-case basis)
- No other animal is recognized by the ADA as a service animal.
- Under the ADA, a service animal is individually trained to perform tasks that the individual cannot perform for themselves.

Examples:

- Guiding people who are blind
- Alerting people who are deaf
- Alerting people who have seizures
- Performing other tasks
- Animal must be on a leash.
- Providing “emotional support” or comfort is not a task. Animals that only do this are not service animals.
- A service animal is permitted in all areas of a facility open to the public, including but not limited to:

restaurants	hotels	taxis	buses	shuttles
grocery stores	hospital	theaters	jail	zoos
medical offices	health clubs	parks	stores	polling places

VOTER NEEDS INSTRUCTION ON USE OF THE VOTING MACHINE

One precinct election officer from each political party should be present when a voter is instructed on the use of the voting machine. In your instructions, carefully avoid any comment that might be considered favorable to any party, candidate, public question, or constitutional amendment.

Precinct election officers have two (2) ways in which to instruct the voter:

1. Using the sample ballot which includes instructions on the use of the voting machine (posted in a visible area inside the polling place), if the voter so requests.

2. Using the voting machine, if the voter so requests:

- Explain to the voter that a visual or verbal indicator will designate the offices and questions the voter is eligible to vote for on the electronic voting machines.
- The voter may be visually or verbally instructed as to the location of the "Vote" button to record his/her vote.
- The voter may be visually or verbally instructed how to use the accessible devices for the voting machine.

IMPORTANT: DO NOT enter the voting machine privacy area after the voter has entered the voting machine privacy area; and you must avoid hovering after providing instructions to the voter.

VOTER'S RIGHT TO VOTE IS CHALLENGED

Any precinct election officer or properly certified challenger may "challenge" or dispute the qualifications of a voter. When the precinct election officer asks to see a challenger's credentials, the certified challenger must present his/her written appointment. A certified challenger must be trained by the county board of elections. Without credentials, a challenger may not question any voter's right to vote or remain in the polling place except to cast his/her own vote.

If a voter's qualifications are questioned or challenged:

- The precinct election officer should advise the voter of the reason for the challenge.
- If the voter states that his qualifications are in order:

- The voter should be advised that he/she must sign form SBE 32, Oath of Voter, and that completing it will allow him/her to vote.
- The voter should be informed that the completed form SBE 32, Oath of Voter, will be turned over to the Commonwealth's Attorney for investigation.
- The voter should then complete and sign form SBE 32, Oath of Voter, and vote.
- The challenger shall not talk directly to the voter. Contact the county clerk if the challenger persists in this activity.
- The person questioning the voter's qualifications (whether a precinct election officer or a certified challenger) must complete and sign the bottom portion of form SBE 32, Oath of Voter, stating the reason for the challenge.

All information on form 32, Oath of Voter, must be completed in full before the voter is allowed to vote. (See page 52). Form 32, Oath of Voter, may be used in two (2) instances:

1. When a certified challenger or precinct election officer challenges the qualifications of the voter.
2. When a voter has moved to a new precinct within your county and is not listed on the Precinct Signature Roster or form SBE 25, Supplemental Precinct Signature Roster.

CHALLENGERS

CHALLENGER DO'S

- Challengers must produce written appointment to precinct election officers on demand.
- Challengers may question the eligibility of a voter who presents himself at the polls.
Reasons a challenger may dispute a voter may include:
- The voter is not a duly registered voter in the precinct;
- The voter is not a resident of the precinct;
- The voter is a convicted felon who has not had his civil rights restored; or
- The voter is not the person he claims to be.
- If the challenger attempts to challenge a person's right to vote, he must explain his challenge only to the precinct election officer, not to the voter.
 - The challenged voter will then need to sign form SBE 32, Oath of Voter, before being allowed to follow the normal procedures for voting.
 - The challenger will sign the bottom portion of form SBE 32, Oath of Voter, and state his/her reason for challenging the voter's right to vote in that precinct.
- Challengers are the only persons permitted to have a check-off list in the form of paper, cellphones, computers, or any other electronic device to record the identity of a voter within the voting room.
- Challengers are entitled to stay in the voting room all hours during Election Day.
- Challengers may come and go from the voting room throughout the day.

CHALLENGER DON'TS

- Electioneer or campaign on behalf of any candidate, issue or political party;
- Handle election materials (except the signing of form SBE 32, Oath of Voter, for challenged voters);
- Attempt to intimidate or harass, verbally or otherwise, any voter who is being challenged or any precinct election officer;
- Behave in any manner to disrupt activities at the polling place; or
- Attempt to interfere with the proper conduct of the election.

A precinct election officer may order the challenger to leave the precinct after one warning if the individual violates any of the above-mentioned Don'ts. A challenger who is ordered from the polling site shall be prohibited from serving as a challenger in any precinct in any election for a period of five (5) years.

WHO MAY OBSERVE THE VOTE COUNT IN THE PRECINCT

Once the polls close, the following persons are permitted to witness the vote count in each precinct:

1. In regular elections, the governing authority to each political party, each candidate for member of board of education, nonpartisan candidate, independent candidate, or independent ticket.
2. In any election, members of the news media authorized by the county board of elections may witness the vote count.

PERSONS ALLOWED IN THE VOTING ROOM

Kentucky law is very specific about who may be in the voting room during the hours the polls are open for voting. The only persons who may legally be in the voting room are:

- Precinct election officers;
- Voters;
- Anyone assisting a voter;
- Voting machine technicians allowed by the county board of elections;
- A minor may accompany the voter into a voting booth or other private area provided for casting a vote, at the voter's discretion;
- Duly appointed challengers who have presented their written appointment;
- Law enforcement officers – federal, state and local; and
- Members of the news media – for the limited purpose of filming the voting process.

- The media may not conduct interviews with voters inside the voting room, record the identity of voters, or disrupt the voting process. If the news media appear, you should immediately contact the county clerk's office.

During the hours the polls are open, unless they are in the voting room to cast their own votes or assist a voter, the following may not be in the voting room:

- Candidates and/or their family members;
- Campaign workers – either for a candidate or for a question on the ballot;
- Exit pollers;
- General “onlookers” or “well-wishers”;
- Members of political parties, political organizations, or political groups who are not duly appointed challengers; and
- Any other individuals not listed in the section above.

The precinct sheriff should require unauthorized persons to leave. If they fail to leave when requested or if persistent violations occur, these violations should be reported to the county clerk and all violations are reported on form SBE 53, Precinct Sheriff's Post-Election Report. (See page 57).

BALLOT SELFIES

Kentucky law does not prohibit a voter from taking a “ballot selfie.” 31 KAR 4:170(2) and OAG 16-007.

Voters may possess and use their cellphones in the voting room to take a “ballot selfie.” 31 KAR 4:170(2).

“Ballot selfies” are limited to a picture of oneself and their personal ballot inside the voting room.

While law permits “ballot selfies”, voters should exercise caution in the practice of taking a “ballot selfie” to refrain from inadvertently recording the identity of other voters or other voter's ballots in the voting room, as this would violate KRS 117.236(2). Furthermore, voters should refrain from communicating their support or nonsupport of a candidate, party, or measure on the ballot to other voters in the voting room as this may violate KRS 117.235(4).

The precinct sheriff should document any possible violations on form SBE 53, Precinct Election Sheriff's Post-Election Report.

ELECTIONEERING

No person may electioneer within one hundred (100) feet of a polling place. However, this restriction does not apply to private property unless it is being used as a voting location, exiting polling, or bumper stickers on vehicles that are present for a reasonable amount of time in which to vote. KRS 117.235.

A bumper sticker is defined as measuring within **14 inches by 5 inches (14" x 5")**, affixed to a person's vehicle while parked within or passing through a distance of one hundred (100) feet of any entrance to the building in which a voting machine is located if that entrance is unlocked and is used by voters during the hours voting is being conducted in the building for a reasonable amount of time in which to vote.

DO NOT TURN ANY ELIGIBLE, REGISTERED VOTER AWAY FROM THE POLLS BEFORE GIVING THE VOTER A CHANCE TO CAST A BALLOT.

If you, as precinct election officer, witness **ANY** electioneering on Election Day, you must notify or warn the individual of the prohibition on electioneering. If you believe a voter has violated the electioneering law, the precinct sheriff should contact the county clerk's office and report such violation on form SBE 53, Precinct Sheriff's Post-Election Report. (See page 57).

Enforcement of the electioneering statute is the responsibility of the precinct election officers, county clerk, deputy county clerk, or other law enforcement official. You, as precinct election officer, **SHOULD NOT** enter upon private property to remove electioneering materials.

EXIT POLLING

KENTUCKY REVISED STATUTES ALLOW EXIT POLLING ON ELECTION DAY. Exit pollers do not have to register or have credentials, and there is no limit as to a distance they must keep from the polls. However, exit pollers are not allowed to be located within the voting room and are not allowed to disrupt the election process.

VOTERS ARE NOT OBLIGATED TO PARTICIPATE IN THE EXIT POLLING. Exit pollers may only talk to voters as they leave the polling place after the voter has already voted.

PROHIBITION AGAINST CHECK-OFF LISTS

No person allowed in the voting room, including the precinct election officers, may use paper, telephones, personal communication devices, computers, or other information technology systems to create a check-off list or record the identity of voters, except for the official use of the Precinct Signature Rosters or form SBE 25, Supplemental Precinct Signature Roster, furnished by the State Board of Elections, and challengers. However, the news media may use cameras for the limited purpose of filming the voting process, but they may not record the identity of voters.

ELECTIONS EMERGENCY CONTINGENCY PLAN

The Governor may reschedule an election due to a state of emergency. The election must be held within thirty-five (35) days from the date of the suspended or delayed election.

PROCEDURES WHEN AN ELECTION IS RESCHEDULED ON ELECTION DAY

SUSPEND GENERAL VOTING

The county board of elections must instruct the precinct election officers to:

- Secure all voting machines until the rescheduled election. The precinct election officers must ensure all seals on the voting machines are intact prior to storage in a secure location;
- Not close out or tally the votes;
- Record the public counter number on the form furnished by the county board of elections and signed by all present precinct election officers; and
- Return all election materials to the county board of elections.

SECURE VOTING MATERIALS

All election materials must be secured in a locked storage container, these election materials include:

- Paper ballots;
- Precinct Signature Rosters and/or EPBs;
- Form SBE 25, Supplemental Precinct Signature Rosters;
- Form SBE 35, Provisional Ballot Precinct Signature Roster; and
- All related materials

The county clerk will instruct precinct election officers about the emergency procedures specific to your county and how to conduct a rescheduled election.

ELECTION CRIMES

The following is a summary of election law violations as they relate to the county clerk, the county board of elections, the precinct election officers, and the general public.

These statutes are meant to reinforce the importance of maintaining security of the vote and integrity in the election process.

RELATING TO COUNTY CLERKS

- **KRS 117.995(2):** any county clerk or member of the county board of elections who knowingly and willfully violates any of the provisions of this chapter, including furnishing applications for absentee ballots to persons other than those specified by the provisions of this chapter and failure to type the name of the voter on the application form as required by the provisions of this chapter, shall be guilty of a **Class D felony**.
- **KRS 119.015:** any county clerk or deputy county clerk who falsely or fraudulently registers the name of any person, or permits any person to register knowing that the person is not entitled to register, or who fails or refuses to deliver copies of the registration records to a person entitled thereto, shall be guilty of a **Class D felony**.
- **KRS 119.076:** any county clerk who willfully and knowingly refuses or fails to have the name of any candidate printed upon the official ballot in the manner provided by law shall be guilty of a **Class D felony**.
- **KRS 119.115(3):** any election official, or other person entrusted with the custody or control of any voting machine who, with intent to cause or permit any voting machine to fail to correctly register votes cast thereon, tampers with or disarranges such machine in any way, unlawfully opens such voting machine, prevents or attempts to prevent the correct operation of such voting machine or causes such voting machine to be used or consents to it being used for any election with knowledge of the fact that the machine is not in order, or not perfectly set and adjusted to correctly register all votes cast thereon, or removes, changes, or mutilates any ballot label on a voting machine shall be guilty of a **Class D felony**.
- **KRS 119.195(7):** any county clerk who knowingly and willfully opens any ballot box and removes any official ballot therefrom, or removes, destroys, or tampers with a ballot box and official ballots left in his care and custody, or permits any other person to do so, during the period the boxes are required to remain locked in his office, shall be guilty of a **Class D felony**.

RELATING TO THE COUNTY BOARD OF ELECTIONS

- **KRS 117.187(2):** the county board of elections shall provide special training before each primary and regular election, and any special election held during a year in which no elections are scheduled, to all election officers, alternates, and certified challengers regarding their duties and the penalties for failure to perform. Election officers, including alternates, and certified challengers shall attend the training session, unless excused by the county board of elections for reason of illness or other emergency. Any person who fails to attend a training session without being excused shall be prohibited from serving as an election officer or challenger for a period of five (5) years. The training provided by the county board of elections shall include but not be limited to the following:
 - (a) Operation of the voting machine or ballot cards;
 - (b) Posting of necessary signs and notices at the polling place;
 - (c) Voter assistance;

- (d) Maintaining precinct rosters;
- (e) Confirmation of a voter's identity;
- (f) Challenge of a voter;
- (g) Completing changes of address or name at the polling place;
- (h) Qualifications for voting in a primary election;
- (i) Electioneering and exit polling;
- (j) Write-in voting procedures;
- (k) Persons who may be in the voting room;
- (l) Election violations and penalties;
- (m) Assistance which may be provided by law enforcement officers;
- (n) Election reports;
- (o) Disability awareness;
- (p) Provisional voting process;
- (q) Election emergency contingency plan; and
- (r) Elections and voting equipment security plan.

- **KRS 117.995(8):** the members of a county board of elections that fail to provide the training precinct election officers required by **KRS 117.187(2)** shall be subject to removal by the State Board of Elections.
- **KRS 119.225:** any member of a county board of elections who refuses to permit an inspector designated under **KRS 117.275** and **117.315** to exercise free and full action in witnessing the count of the ballots, or interferes with the right of such an inspector to have a free and full opportunity to witness the count of the ballots, shall be guilty of a **Class A misdemeanor**.
- **KRS 119.245:** any member of the State Board of Elections or of a county board of elections who willfully and knowingly violates any provision of the statutes relating to his duties, or fails to execute faithfully any of the duties imposed upon him by law, for which no other penalty is provided, shall be guilty of a **Class B misdemeanor**.
- **KRS 119.255:** any person who, by threat of violence or in any other manner, intimidates or attempts to intimidate the election officers, the State Board of Elections or a county board of elections in the performance of their duty and any persons who conspire together and go forth armed for the purpose of intimidating said officers, shall be guilty of a **Class D felony**.
- **KRS 119.265:** any public officer who willfully neglects to perform a duty imposed upon him under the election laws, for which no other penalty is provided, or who willfully performs such duty in a way that hinders the objects of the election laws, shall be guilty of a **Class B misdemeanor**.
- **KRS 119.307:** the county board of elections shall present to the grand jury next convening subsequent to each election the names of those election officials who failed to appear and serve at the election and who had not been properly excused. Any such person may be subpoenaed and inquiry made of his absence, and if no good cause be shown, he shall be subject to prosecution.

RELATING TO PRECINCT ELECTION OFFICERS

- **KRS 117.995** in part provides the following violations of precinct election officers:
 - (1) Any person appointed to serve as an election officer but who shall knowingly and willfully fail to serve and who is not excused by the county board of elections for the reasons specified in this chapter shall be guilty of a violation and shall be ineligible to serve as an election officer for a period of five (5) years.
 - (3) Any officer who willfully fails to prepare or furnish ballot labels or absentee ballots or fails to allow a qualified voter to cast his or her vote on the machine as required of the voter by this chapter shall be guilty of a **Class A misdemeanor**.
 - (4) Any election officer who knowingly and willfully violates any of the provisions of this chapter, including failure to enforce the prohibition against electioneering established by **KRS 117.235**, shall be guilty of a **Class A misdemeanor** for the first offense and a **Class D felony** for each subsequent offense.
- **KRS 119.145:** any election officer who refuses to permit any challenger of any political party having a ticket to be voted for at an election, who has been duly appointed and presents a duly attested certificate of appointment, to perform his duties as challenger, shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500).
- **KRS 119.175:**
 - (1) Except as provided in subsection (2) of this section, any officer of election who receives, assents to receive or records a vote at an election at a time or place known by him not to be the time and place lawfully appointed, or who knowingly receives the vote of any person other than a qualified voter, or refuses to receive the vote of a qualified voter, shall, for each offense, be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), and shall forfeit any office he holds and be disqualified from ever holding any office.
 - (2) Any judge of a primary election who knowingly receives a vote of an elector who is not qualified to vote in the primary election under **KRS 116.055** shall be fined one hundred dollars (\$100) for each offense.
- **KRS 119.185:** any person who willfully disobeys any lawful command of an election officer, given the execution of his duty as such at an election, shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500).
- **KRS 119.195 Tampering with Ballot Box:**
 - (4) Any election officer, or other person entrusted with the custody or control of any official ballot, either before or after it has been voted, who in any way marks, mutilates, or defaces any official ballot or places any distinguishing mark thereon, for the purpose of vitiating the official ballot, shall be guilty of a **Class C felony**.
 - (6) Any election officer who mutilates or tampers with any of the seals, or destroys or removes any official ballots required to be preserved, shall be guilty of a **Class D felony**.
- **KRS 119.305:** Election officers shall give information of all infractions of the election laws to the grand jury, Commonwealth's Attorney, Attorney General and the Registry of Election Finance. The election officers shall cooperate in any investigation or prosecution

of election law violations. When there is reason to fear that an offender will escape out of the county before indictment, any election officer may procure his immediate apprehension.

RELATING TO ELECTION DAY

- **KRS 117.0865:** any person who aids another in completing an absentee ballot shall not solicit or encourage that person to vote for or against any candidate, party, or issue. Any person who violates this section shall be guilty of a **Class D felony**.
- **KRS 117.995** sets out the following violations relating to Election Day:
 - (5) Any person who signs a name other than his or her own on an application for an absentee ballot or on the verification form for the ballot or on an emergency absentee ballot affidavit, or any person who votes an absentee ballot other than the one issued in his or her name, or any person who applies for the ballot for the use of anyone other than himself or herself or the person designated by the provisions of this chapter, or any person who makes a false statement on an application for an absentee ballot or on an emergency absentee ballot affidavit shall be guilty of a **Class D felony**.
 - (6) Any person who violates any provision of **KRS 117.235 or 117.236** related to prohibited activities during absentee voting or on election day, after he or she has been duly notified of the provisions by any precinct election officer, county clerk, deputy county clerk, or other law enforcement official, shall, for each offense, be guilty of a **Class A misdemeanor**.
 - (7) Any person who knowingly and willfully prepares or assists in the preparation of an inaccurate or incomplete voter assistance form or fails to complete a voter assistance form when required shall be guilty of a **Class A misdemeanor** for the first offense and a **Class D felony** for each subsequent offense; however, if a voter has been permanently certified as requiring voting assistance, there shall be no offense for the failure of the voter to complete the form.
- **KRS 119.095:** any printer of ballots, or person employed in printing ballots, who prints or permits to be printed any ballot in any other form than the one prescribed by law, or with any name or device placed, spelled or arranged thereon other than as authorized and directed by the county clerk, or who gives or delivers, or knowingly permits to be taken, any ballot by any person other than the county clerk for whom the ballots are being printed, shall be guilty of a **Class C felony**.
- **KRS 119.105 Removal or destruction of election supplies or booths:**
 - (1) Any person who steals or willfully destroys any of the election supplies required to be furnished by the county clerk shall be fined not less than fifty dollars (\$50) nor more than two hundred dollars (\$200), and imprisoned in the county jail for not less than one (1) month nor more than six (6) months.
 - (2) Any person who, during an election, knowingly and willfully removes or defaces the cards printed for the instruction of the voters, or destroys or removes any booth or other convenience provided for the election, or induces or attempts to induce any person to commit any such act, shall be imprisoned in the county jail for not less than six (6) months nor more than one (1) year.

- **KRS 119.115 Tampering with voting machine or election supplies:**
 - (1) Any unauthorized person found in possession of any key to a voting machine to be used or being used in any primary, general, or special election shall be guilty of a **Class A misdemeanor**.
 - (2) Any person who, during or before any primary, general, or special election, willfully tampers with or attempts to tamper with, disarrange, deface, or impair in any manner whatsoever, injures, or destroys any ballot label, or destroys any such voting machine while in use at an election or at any other time, or who shall, after such machine is locked and sealed in order to preserve the record of the vote, tamper with or attempt to tamper with the record of the vote, or who aids or abets with intent to destroy or change the record of the vote shall be guilty of a **Class D felony**.
- **KRS 119.125:** any sheriff who willfully fails to cause an election to be held, as required by law, shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Any sheriff who willfully fails to perform any other duty concerning an election, for which there is no penalty specifically prescribed, shall be fined not less than twenty dollars (\$20) nor more than two hundred dollars (\$200).
- **KRS 119.155 Interfering with election:**
 - (1) Any person who unlawfully prevents or attempts to prevent any voter from casting his ballot, or intimidates or attempts to intimidate any voter so as to prevent him from casting his ballot, or who unlawfully interferes with the election officers in the discharge of their duties, shall be guilty of a **Class D felony**.
 - (2) Any person who, by himself or in aid of others, forcibly breaks up or prevents, or attempts to break up or prevent, or obstructs or attempts to obstruct, the lawful holding of an election, shall be guilty of a **Class A misdemeanor**.
- **KRS 119.165 False personation of a voter:**
 - (1) Any person who falsely personates a registered voter, and receives and casts a ballot by means of such personation, shall be guilty of a **Class D felony**. An attempt at such personation shall constitute a **Class A misdemeanor**.
 - (2) Any person who, by means other than falsely personating a registered voter, votes at an election in this state when he is a resident of another state or country, or votes more than once at an election, or votes by use of the naturalization papers of another person, shall be guilty of a **Class D felony**. Any person who knowingly votes or attempts to vote in a precinct other than the one in which he resides shall be guilty of a **Class A misdemeanor**, unless by voting in a precinct in which he does not live he is enabled to vote in a race or on a matter in which he could not vote in his proper precinct in which case he shall be guilty of a **Class D felony**. Any person who lends or hires his or another's naturalization papers to be used for the purpose of voting shall be subject to the same penalty.
 - (3) Any resident of this state who, by means other than falsely personating a registered voter, votes at a regular or special election before he has resided in this state thirty (30) days, or in the county and precinct where the election is held the time required by law, or before he has attained full age, or before he has become a citizen, shall be guilty of a **Class B misdemeanor**.

- (4) Any person who, by means other than falsely personating a registered voter, votes in a primary election knowing that he is not qualified as provided in **KRS 116.055**, shall be guilty of a violation.
- (5) Any person who applied for or received a ballot at any voting place other than the one at which he is entitled to vote, under circumstances not constituting a violation of any of the provisions of subsections (1) to (4) of this section, shall be guilty of a **Class A misdemeanor**.

➤ **KRS 119.195 Removing or tampering with ballots:**

- (1) Any person who, during an election, knowingly and willfully removes or attempts to remove an official ballot from the election room, or has in his possession outside the election room any official ballot, either genuine or counterfeit, shall be guilty of a **Class D felony**.
- (2) Any voter who attempts to leave the election room with an official ballot in his possession shall at once be arrested on demand of either of the judges of election and shall be guilty of a violation, unless the act was done knowingly in which event he shall be guilty of a **Class A misdemeanor**.
- (3) Any person who takes or removes in any manner, feloniously or with the consent or permission of the custodian, any official ballot from any place where it may lawfully be, or knowingly and willfully has in his possession or custody any such official ballot, except as an officer or custodian under the law or while within the polling place for the purpose of voting, and any custodian or officer who permits any official ballot to be removed or carried away from the place where it may lawfully be by any person other than the officer or custodian whose duty it is to receive it, shall be guilty of a **Class C felony**.
- (5) Any person who unlawfully destroys or attempts to destroy any official ballot box used, or any official ballot deposited, at any election, or who unlawfully, by force, fraud, or other improper means, obtains or attempts to obtain possession of any ballot box or any official ballot therein deposited, while the voting at any election is going on or before the official ballots are duly taken out and counted according to law, shall be guilty of a **Class D felony**.
- (8) Any person who removes, mutilates, or destroys, or adds any new official ballots to, the regular official ballots that have been counted and prepared for preservation, or that have already been preserved, so that the result of the election in the precinct or county is changed, shall be guilty of a **Class D felony**.
- (9) Any person who tampers with or changes the official ballots, or opens the receptacles in which the official ballots are contained without the order of the court, after the ballots have been sent to the Franklin County courthouse in connection with the contest of a constitutional amendment, shall be guilty of a **Class D felony**.

➤ **KRS 119.205 Vote buying and petitions.**

- (1) Any person who makes or offers to make an expenditure to any person, either to vote or withhold his vote, or to vote for or against any candidate or public question at an election shall be guilty of a **Class D felony**.
- (2) Any person who solicits, accepts, or receives any such expenditure as payment or consideration for his vote, or the withholding of his vote, or to vote for or against any candidate or public question at an election shall be guilty of a **Class D felony**.

(3) Any person who makes or offers to make an expenditure to any person to sign a petition to have a public question placed on the ballot, or any person who solicits, accepts, or receives any such expenditure as payment or consideration to sign a petition to have a public question placed on a ballot, shall be guilty of a **Class B misdemeanor**.

➤ **KRS 119.235:** any person who willfully alters, obliterates, secretes, suppresses or destroys a stub book, return or certificate of election, and any officer who makes, aids in making or authorizes the making of any false or fraudulent stub book, certificate of election or election return, shall be guilty of a **Class D felony**.

SAMPLES OF ELECTION DAY FORMS

eSCAN VERIFICATON FORM – SAMPLE BLANK

Your county may have a different version of this form. This form is merely provided for illustration purposes only. The State Board of Elections makes no assurance as to the validity or legal sufficiency of this document pursuant to 31 KAR 2:020.

This form must be completed and returned to the COUNTY CLERK.

eSCAN VERIFICATION FORM

ELECTION JUDGES TO VERIFY INFORMATION BEFORE OPENING POLLS

Judges' Initials

Precinct name: _____	_____	_____
eScan Serial Number: _____	_____	_____
eScan Seal Number: _____	_____	_____
Yellow Seal Number: _____	_____	_____
Blue Seal Number: _____	_____	_____
PVT Count - Start: _____	_____	_____
Red Ballot Bag Lock Seal: _____	_____	_____

Signed _____
Program Administrator who sealed eScan

ELECTION JUDGES TO COMPLETE WHEN CLOSING POLLS

Print three (3) paper tapes and have all four officers sign the tapes. Two (2) tapes are to be returned to the County Clerk in the Result Tape Envelope and the third to be posted at the precinct.

eScan Protective Counter Number (PVT Count) _____

Signed _____
Democratic Judge

Signed _____
Republican Judge

ACCURACY TEST CHECKLIST

Firmware Version Identification 4.3.1, 4.2.13, 1.3.14 Polling ID Number _____

- Visual inspection of eScan as well as all working parts checking for damage and defects.
- Visual inspection of screen, power cord, plugs, and MBB card slot.

Accuracy Test was performed: On voting system On individual voting machine
 Completion of errorless test deck

Name of Person completing Accuracy Checklist _____

Signature of Person Completing Accuracy Checklist _____

Date and Time _____

Help Representative

COMMONWEALTH OF KENTUCKY
STATE BOARD OF ELECTIONS

SAMPLE

AUTHORIZATION TO VOTE AT PRECINCT

TO THE ELECTION OFFICERS OF Capital D104 PRECINCT

This is to certify that a voter registration record is on file in the County Clerk's office for:

<u>Sam Quick</u>	<u>XXX-XX-XXXX</u>
Name of Voter	Social Security Number
<u>Democrat</u>	<u>16 Oak St Apt#4</u>
Party	Address

Please add this name to the Supplemental Precinct Roster with all information required and permit this person to sign the roster and vote.

COUNTY CLERK'S USE ONLY	
<input type="checkbox"/>	Improper Removal
<input checked="" type="checkbox"/>	Wrong Precinct Code
<input type="checkbox"/>	Failure to make proper change reported
<input type="checkbox"/>	Absentee Ballot cancelled

Susan Allen
Chairman, County Board of Elections or Authorized Agent

Franklin County

11-7-2006 Date

KRS 117.085(7)
SBE 26 (4/00)

White – County Clerk
Canary – Precinct

FORM SBE 31, VOTER ASSISTANCE FORM – SAMPLE COMPLETED

COMMONWEALTH OF KENTUCKY
STATE BOARD OF ELECTIONS

Sample

VOTER ASSISTANCE FORM

NOTE: A voter requiring assistance may be assisted by the two precinct judges or a person of the voter's choice who is not an election officer, except that the voter's employer, an agent of that employer, or an officer or agent of the voter's union shall not assist a voter.

NAME OF VOTER	<i>John Doe</i>	DATE OF BIRTH (MM/DD/YYYY)	<i>06/12/1970</i>
RESIDENTIAL ADDRESS	<i>214 Ash Court</i> <small>Complete Street Address</small>	<i>Lawrenceburg</i> <small>City</small>	<i>40342</i> <small>Zip Code</small>
PRECINCT NAME OR PRECINCT NUMBER	<i>A102</i>	<i>Duncan</i>	
Check <input checked="" type="checkbox"/> one:	<input type="checkbox"/> Voter has been certified as requiring assistance on a permanent basis as indicated on precinct roster. The following oath must be signed by the person assisting the voter and be witnessed by the precinct clerk/officer. <input checked="" type="checkbox"/> Voter is NOT certified as requiring assistance on a permanent basis. Both of the following oaths must be completed and signed by the voter, the person assisting the voter, and be witnessed by the precinct clerk/officer.		

OATH FOR VOTER NOT CERTIFIED AS REQUIRING ASSISTANCE ON A PERMANENT BASIS

(Voter certified as requiring assistance on a permanent basis as indicated on precinct roster need not sign this oath section.)

I hereby state, under oath (or affirmation), that I am a qualified voter in the precinct indicated above, and that the reason I require assistance in voting is (check one):
 Blindness Physical disability Inability to read English

John Doe
Signature or "mark" of voter

Witness (two witnesses required if "mark" is used)

Witness (two witnesses required if "mark" is used)

OATH FOR PERSON ASSISTING VOTER

(THIS PORTION MUST BE COMPLETED BY THE PERSON ASSISTING THE VOTER BEFORE ANY VOTER CAN RECEIVE ASSISTANCE)

I hereby state, under oath (or affirmation), that I will operate the voting machine in accordance with the directions of the voter requiring assistance. I further state that I am not the voter's employer, an agent of that employer, or an officer or agent of that voter's union.

Name of person assisting voter (PLEASE PRINT)	Signature of person assisting voter
<i>Emily Doe</i>	<i>Emily Doe</i>

APPLICATION REQUEST FOR PERMANENT ASSISTANCE

Voter who requires assistance on a permanent basis due to Blindness (or) Physical disability hereby applies for certification for permanent assistance.

SECTION TO BE COMPLETED BY PRECINCT ELECTION OFFICER

The parties hereto have subscribed and sworn (or affirmed) these Oaths before me this *8th* day of *November*, 20*16*.

Barbara Smith
Signature of Precinct Election Officer

KRS 116.165	Provides that "any person who falsely signs and verifies any form requiring verification shall be guilty of perjury and subject to penalties therefor."		
KRS 117.255			
KRS 117.365		WHITE:	Grand Jury
KRS 117.995		CANARY:	County Clerk
SBE 31 (08/2016)		PINK:	County Board of Elections

FORM SBE 32, OATH OF VOTER – SAMPLE COMPLETED

SBE 32 (09/2016)

COMMONWEALTH OF KENTUCKY
STATE BOARD OF ELECTIONS

OATH OF VOTER

SAMPLE

When a voter has moved to a new precinct within the same county and is not listed on the current precinct roster, when the officers of an election disagree as to the qualifications of a voter, or when a voter's right to vote is disputed by a challenger, the voter shall sign the following oath as to his qualifications before he is permitted to vote.

I, Tally Mathis, hereby state, under oath, that I am duly registered as
(Name: Please Print)
a Democrat voter in this precinct in Daviess County,
(Political Party Preference) 10028 Locust St (County)

Kentucky and that I currently reside at Whitesville, 42378. My previous address
160 Haynes Station Rd (Current Residence Street Address, City, and Zip Code)
was Whitesville, 42378 in this county. I know of no legal disqualifications which should
(Previous Residence Street Address, City, and Zip Code)

prevent my vote from being cast and counted at this election and I affirm that I have not voted and will not vote in another precinct or by absentee ballot in this state during this election.

I understand that any person who falsely signs and verifies any form requiring verification shall be guilty of perjury and subject to the penalties therefore. I further understand that if I execute the Oath and am not a registered voter at the current address stated above, I have committed a criminal act.

Tally Mathis 12-31-1969 11-8-2016
Voter must sign here Date of Birth Date

This Oath shall be returned to the County Clerk who shall deliver it to the Commonwealth's Attorney for investigation.

Reason for Requiring Oath Address Change Precinct Name or No. F101

Signature of Precinct Election Officer or Challenger John Smith

FORM SBE 33A, LIST OF VOTERS ISSUED ABSENTEE BALLOTS – SAMPLE COMPLETED

COMMONWEALTH OF KENTUCKY
STATE BOARD OF ELECTIONS

PAGE 14 OF 45
8/24/2018

LIST OF VOTERS ISSUED ABSENTEE BALLOTS

County	Election (Primary or General)	Date of Election
GREENUP 45	2016 General Election (G)	11/8/2016

RU SSELL #2 [A109]

Name of Voter	1st Ballot	2nd Ballot	Ballot returned	Voted in Clerk Office
ISON, PATRI	10/17/2016		11/2/2016	
KEELIN, KAT				10/29/2016
KIMPSTON, P				11/2/2016
KOVACS, CH	10/3/2016		11/3/2016	
LAPOINTE, A				11/3/2016
LAPOINTE, V				11/2/2016
LAUDER, LA	10/17/2016		10/27/2016	
LESLIE, LEA				11/3/2016
LESLIE, PHIL				11/3/2016
MAYNARD, L	9/19/2016		11/5/2016	
MILLER, PA				10/26/2016
MOLLI, NI				10/14/2016
NAUGHGLE,	10/24/2016		11/1/2016	
NAUGHGLE,	10/24/2016		11/1/2016	
NULL, VOND				11/2/2016
PARSLEY, BA				10/10/2016
PARSLEY, LO				10/10/2016
PENNINGTO	10/19/2016		10/24/2016	
POWELL, PA				11/4/2016
RAICH, CHRI				10/18/2016
RICE, KYLIE	10/31/2016		11/2/2016	
ROBERTS, S				11/4/2016
ROBINSON, I	9/19/2016		11/2/2016	
ROBINSON, I	9/20/2016		11/2/2016	
ROBINSON, I	9/19/2016		10/31/2016	
ROBINSON, I				11/1/2016
SAVAGE, HE	10/17/2016		10/26/2016	
SCHRADER,				11/1/2016
SIMPSON, ER	9/19/2016		10/11/2016	
SIMPSON, KE	11/1/2016			
SMITH, KENN				11/1/2016
SORRELL, D	10/17/2016		11/5/2016	
SPURLOCK,				10/18/2016
SPURLOCK,	10/3/2016		10/20/2016	
STEPHENSO	11/7/2016		11/7/2016	
STEPHENSO	11/7/2016		11/7/2016	
STEVENS, BR				10/25/2016
STEVENS, LA	10/3/2016		10/6/2016	
STURGILL, B				10/31/2016
STURGILL, P				10/31/2016
TENNANT, C	9/19/2016		10/24/2016	
TENNANT, E	9/19/2016		10/24/2016	

NOT TO BE POSTED AT PRECINCT OR COUNTY CLERK'S OFFICE

County Clerk _____

KRS 117.085
KRS 117.086

SBE 33A (03/2014)

White – Grand Jury
Canary – Precinct
Pink – State Board of Elections
Goldenrod – County Clerk

PRECINCT SIGNATURE ROSTER SUMMARY PAGE – SAMPLE COMPLETED

030 DAVISS
G162 MACEO

Precinct Roster
Commonwealth of Kentucky - State Board of Elections

2016 General Election
11/8/2016

Summary Page

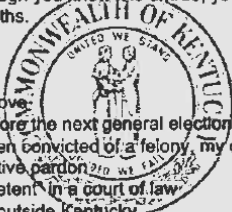
Sample

Precinct Total Registrants	926
Total number voting in person on Precinct Signature Roster (do not include absentee voters)	<u>481</u>
Total number voting in person on form SBE 25, Supplemental Precinct Signature Roster	<u>33</u>
Grand Total (This number should match the number of votes recorded on the voting device)	<u>514</u>

Page 74 of 74.

ID types: PA=Personal acquaintance DL=Driver's license O=Other identification* SS=Social security CC=Credit card
* ID card with signature and picture / US government-issued ID card / Kentucky state government-issued ID card

VOTER REGISTRATION CARD - SAMPLE BLANK

SBE 01 (01/03)		You MUST answer questions A & B below before completing this form.			5041503	
A. Are you a citizen of the United States of America?		<input type="checkbox"/> YES <input type="checkbox"/> NO		If you checked "no" in response to either of these questions, do not complete this form.		
B. Will you be 18 years of age on or before election day?		<input type="checkbox"/> YES <input type="checkbox"/> NO				
Check one:		FOR CLERK USE ONLY				
<input type="checkbox"/> New Registration	<input type="checkbox"/> Address Change	PRECINCT CODE	PRECINCT NAME	TOWN	OTHER CODE	
<input type="checkbox"/> Party Change	<input type="checkbox"/> Name Change					
Social Security Number		Date of Birth (M-D-Y)	County (where you live)	Work Phone	Home Phone	
<input type="checkbox"/> Female <input type="checkbox"/> Male	Last Name	First Name	Middle Name	Suffix (circle one) Jr. Sr. II III IV		
Address where you live (do not give PO Box address):			Apt #	City	Zip Code	
Address where you get your mail (if different from above):			Apt #	City	Zip Code	
Party Registration – check one box		<p>WARNING: If you sign this statement even though you know it is untrue, you can be convicted and fined up to \$500 and/or jailed up to 12 months.</p> <p>Voter Declaration – read and sign below</p> <p>I swear or affirm that:</p> <ul style="list-style-type: none"> • I am a U.S. citizen • I live in Kentucky at the address listed above. • I will be at least 18 years of age on or before the next general election • I am not a convicted felon, or if I have been convicted of a felony, my civil rights must have been restored by executive pardon • I have not been judged "mentally incompetent" in a court of law. • I do not claim the right to vote anywhere outside Kentucky 				
<input type="checkbox"/> Democratic Party <input type="checkbox"/> Republican Party <input type="checkbox"/> Other _____ <small>(write name above)</small>						
<p>If you select "Other" as your party affiliation, you are eligible to vote for only nonpartisan offices in any primary election. You may vote for any candidate in all general or special elections. Only persons timely registered shall have the right to vote.</p>						
<p>NOTE: You may change your political party affiliation at any time on or before December 31* to remain eligible to vote in the following primary election.</p>		<input checked="" type="checkbox"/> Signature _____		Date _____		
		TWO WITNESSES REQUIRED IF "MARK" IS USED				
		Witnessed By: _____		Witnessed by: _____		

72CF707F-8D22-488C-B2E3-A4EB336E1770 : 000103 of 000182

PRECINCT BALLOT ACCOUNTABILITY STATEMENT – SAMPLE BLANK

Your county may have a different version of this form. This form is merely provided for illustration purposes only. The State Board of Elections makes no assurance as to the validity or legal sufficiency of this document pursuant to 31 KAR 2:010.

PRECINCT BALLOT ACCOUNTABILITY STATEMENT

COUNTY	DATE OF ELECTION	PRECINCT NAME	PRECINCT CODE #

	FACE 1	FACE 2	FACE 3	FACE 4	FACE 5	FACE 6	FACE 7
QTY. PADS ISSUED							
STARTING NO.							
ENDING NO. <small>(THE NUMBER OF THE NEXT BALLOT YOU WOULD HAVE GIVEN OUT)</small>							
SPOILED BALLOT COUNT AREA							
<small>EXAMPLE: <i>WHT 11</i></small>							
TOTAL BALLOTS USED							

REASON FOR DISCREPANCIES: _____

NOTES: _____

We, the undersigned, do hereby certify that the above information is accurate and complete.

Precinct Clerk _____ Precinct Sheriff _____

Precinct Judge _____ Precinct Judge _____

County Clerk _____

Harp Enterprises, Inc. - Item #144 - Ballot Accountability Statements - Revised 05/2010

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FORM SBE 53, PRECINCT SHERIFF'S POST-ELECTION REPORT – SAMPLE COMPLETED

Commonwealth of Kentucky
State Board of Elections

**PRECINCT SHERIFF'S
POST-ELECTION REPORT**

KRS 117.355(1) Within three (3) days after any primary or general election, the precinct election sheriff shall file a report with the chairman of the county board of elections and with the local grand jury. The report shall include any irregularities observed and any recommendations for improving the election process.

County	ANY
Date Of Election	11-6-2007
Precinct	A101 - FRANKLIN ELEMENTARY
Name Of Precinct Election Sheriff (Please Print)	PETER PARKER

IRREGULARITIES OBSERVED: (If you observed any irregularities, describe in your own words with as many details as possible, including names of alleged violators of election laws. Reported violations should include, but not be limited to violations of KRS 117.255 relating to assisting voters and execution of the voter assistance forms, adjusting the voting machine in primary elections to enable the voter to vote for only persons for whom the voter is entitled to vote, voting more than once, and voting supplemental paper ballots. Violations of KRS 117.235 relating to electioneering must also be reported. If more space is required, attach additional sheets as necessary. If no violations are observed, so indicate.)

JOHN DOE WAS OBSERVED HANDING OUT CAMPAIGN LITERATURE WHILE WAITING IN LINE TO VOTE, I INFORMED MR. DOE THAT HIS ACTIONS WERE NOT PERMITTED AND WAS A FORM OF ELECTIONEERING. HE APPOLOGIZED AND STOPPED HIS ACTIONS IMMEDIATELY. NO OTHER PROBLEMS OR VIOLATIONS OBSERVED.

RECOMMENDATIONS FOR IMPROVING THE ELECTION PROCESS: (Describe recommendations in your own words. If more space if required, attach additional sheets as necessary.)

NO RECOMMENDATIONS AT THIS TIME.

11-6-2007

Date Signed

Peter Parker

Signature of Precinct Election Sheriff

KRS 117.255
KRS 117.355
SBE 53 (4/00)

White - Grand Jury
Canary - County Board of Elections
Pink - Precinct Election Sheriff

PRECINCT ELECTION OFFICERS' REVIEW

STATEMENTS

ANSWER "TRUE" OR "FALSE" TO STATEMENTS (*see pages 71-75 for ANSWERS*)

1.	All precincts must close at 6:00 p.m., unless there are voters waiting in line at 6:00 p.m. to vote.
2.	If a voter registered in your county has recently moved to your precinct and is not listed on the Precinct Signature Roster, he/she must vote at his/her old precinct.
3.	Campaign workers for any candidate may witness the vote count after the polls have closed.
4.	Voters who have been approved for permanent voter assistance do not have to sign the Precinct Signature Roster and can only use the accessible voting machine.
5.	Only a person whose name appears on the Precinct Signature Roster may vote in your precinct.
6.	Spouses are not permitted to accompany each other into the voting booth without first qualifying for voter assistance and completing form SBE 31, Voter Assistance Form.
7.	Members of the news media may not conduct interviews with voters inside the voting room.
8.	If a minor goes into the voting booth with a voter and accidentally casts the ballot on the voting machine, the judges should reset the machine and permit the voter to vote again.
9.	All voters are allowed only two minutes to vote if other voters are in line waiting to vote.
10.	A candidate may assist a voter in the voting booth if that voter qualifies for assistance.
11.	Even if one of the precinct election officers knows a voter, each voter must confirm his or her current address as listed on the Precinct Signature Roster.
12.	A voter who has been challenged by an election officer or challenger can vote after completing form SBE 32, Oath of Voter, and by signing the Precinct Signature Roster.
13.	A college student who temporarily resides outside the county of their residence and who has applied for an absentee ballot decides on Election Day to vote in person at the polling place.
14.	If a voter is not known by one of the precinct election officers and does not present a type of ID at the polls, he is not allowed to vote on the voting machine.
15.	Only the two precinct judges are required to be able to set up a voting machine at the beginning of the Election Day.
16.	Persons assisting voters who have been approved for permanent voting assistance still need to sign form SBE 31, Voter Assistance Form.

	17.	The voter with a visual impairment or voter with a disability must vote on the voting machine specifically designed to accommodate the voter with disabilities.
	18.	No one allowed in the voting room may use paper, telephone or a computer to create a check-off list or record the identity of voters.
	19.	A voter can use a Tennessee driver's license as a form of identification at the polls.
	20.	The certified list of write-in candidates provided to you by the county clerk should not be posted in the polling location. You may distribute the certified list of write-in candidates only to those voters who request the list.

ANSWERS

<u>TRUE</u>	1.	<p>All precincts must close at 6 p.m., unless there are voters waiting in line at 6 p.m. to vote.</p> <p>At 6 p.m., the sheriff shall stand at the end of the line of those voters who arrived by 6:00 p.m. and that voter shall be the last voter permitted to vote. The precinct sheriff shall wait in line with the last voter until he has voted. Any voters who arrive after the last voter in line at 6:00 p.m. shall not be permitted to vote. When the last voter in line by 6:00 p.m. has voted, the polls shall then be closed. (See pages 12 and 13).</p>
<u>FALSE</u>	2.	<p>If a voter registered in the county is not on the Precinct Signature Roster in your precinct but has recently moved to your precinct, he must vote at his old precinct.</p> <p>All voters registered in the county must vote in the precinct in which they live even if they are not listed on the Precinct Signature Roster or form SBE 25, Supplemental Precinct Signature Roster. If a voter is not listed on the Precinct Signature Roster or form SBE 25, Supplemental Precinct Signature Roster, but is registered and lives in your precinct, he can vote after completing form SBE 32, Oath of Voter, a new voter registration card, and by signing form SBE 25, Supplemental Precinct Signature Roster. A voter who moved to another county after the registration books close MAY return to his old precinct and vote in this one election. (See page 27). A voter who moved to another county before the registration books closed MAY NOT vote in either county for that election.</p>
<u>FALSE</u>	3.	<p>Campaign workers for any candidate may witness the vote count after the polls have closed.</p> <p>In regular elections, the governing authority to each political party, each candidate for member of board of education, nonpartisan candidate, independent candidate, or independent ticket. Members of the news media MAY also observe the vote count. General</p>

		onlookers or well-wishers MAY NOT observe the vote count at the end of the day. (See page 42).
<u>FALSE</u>	4.	<p>Voters who have been approved for permanent voter assistance do not have to sign the Precinct Signature Roster and can only use the accessible voting machine.</p> <p>Voters who have been approved for permanent voting assistance DO NOT have to sign form SBE 31, Voter Assistance Form, or list the reason assistance is needed. However, all voters who vote MUST sign the Precinct Signature Roster or form SBE 25, Supplemental Precinct Signature Roster, and can use any voting machine of their choice whether or not they have been approved for permanent assistance. (See pages 35, 36, and 54).</p>
<u>FALSE</u>	5.	<p>Only a person whose name appears on the Precinct Signature Roster may vote in your precinct.</p> <p>There are many reasons that may result in a qualified voter's name being omitted from the voter rolls. If a person's name does not appear on the Precinct Signature Roster, follow the procedures listed on page 27.</p>
<u>TRUE</u>	6.	<p>Spouses are not permitted to accompany each other into the voting booth without first qualifying for voter assistance and completing form SBE 31, Voter Assistance Form.</p> <p>The only person(s) that may enter the voting booth with a voter is the person(s) assisting a voter who qualifies for voting assistance and a minor child at the voter's discretion. (See pages 34 and 42).</p>
<u>TRUE</u>	7.	<p>Members of the news media may not conduct interviews with voters inside the voting room.</p> <p>Members of the news media may conduct interviews outside the door of the voting room as long as they do not interfere with the election process. Members of the news media may not conduct interviews inside the room where the voting machine is located. News media may film the voting process in the room where the voting machine is located as long as they do not record the identity of voters or interfere with the election process. (See page 42).</p>
<u>FALSE</u>	8.	<p>If a minor goes into the voting booth with a voter and accidentally casts the ballot on the voting machine, the judges should reset the machine and permit the voter to vote again.</p> <p>Once the vote is cast, the voter cannot vote again. A voter may cast only one vote. Voters who take minor children into the voting booth with them should be warned of this situation. (See page 42).</p>
<u>FALSE</u>	9.	<p>All voters are allowed only two minutes to vote if other voters are in line waiting to vote.</p>

		Voters with a disability must be given a reasonable amount of time to cast their ballot. Voters who do not need extra time due to a disability are limited to two minutes in the voting booth only if other voters are waiting in line to use the voting machine. KRS 117.255(7). (See page 6).
<u>TRUE</u>	10.	<p>A candidate may assist a voter in the voting booth if that voter qualifies for assistance.</p> <p>Voters who are eligible to receive assistance may be assisted by any person of their choice, including a candidate, as long as the person assisting the voter is not the voter's employer, an agent of that employer, or an officer or agent of the voter's labor union. If a voter does not bring someone with him, or does not choose someone at the polls to assist him, then the two precinct election judges may assist the voter. (See page 35).</p>
<u>TRUE</u>	11.	<p>Even if one of the precinct election officers knows a voter, each voter must confirm his or her current address.</p> <p>The precinct election clerk should always verify the current address of a voter, even if one of the precinct election officers knows that voter personally. It is possible that the identifying precinct election officer is unaware that the voter moved or that the address has been updated due to 911 address system upgrades. (See pages 5, 10, 24 and 25).</p>
<u>TRUE</u>	12.	<p>A voter who has been challenged by an election officer or challenger can vote after completing form SBE 32, Oath of Voter, and by signing the Precinct Signature Roster.</p> <p>A voter who has been challenged by precinct election officers or challenger must complete form SBE 32, Oath of Voter, before he/she will be permitted to vote on the voting machine. After form SBE 32, Oath of Voter, has been completed, the voter must sign the Precinct Signature Roster or form SBE 25, Supplemental Precinct Signature Roster. (See pages 40, 41, and 55).</p>
<u>FALSE</u>	13.	<p>A college student who temporarily resides outside the county of their residence and who has applied for an absentee ballot decides on Election Day to vote in person at the polling place.</p> <p><u>If the college student has received an absentee ballot by mail but knows at least seven (7) days before the date of the election that he/she will be in the county on Election Day and who has not voted the absentee ballot shall cancel his/her absentee ballot by returning the unvoted absentee ballot to the county clerk. The county clerk shall remove the voter's name from the list of persons who were sent absentee ballots (or marked "ABSENTEE" on the Precinct Signature Roster) and the voter may vote in the precinct in which he/she is properly registered.</u></p>

<u>TRUE</u>	<p>14. If a voter is not known by one of the precinct election officers and does not present a type of ID at the polls, he/she is not allowed to vote on the voting machine.</p> <p>Before a person is allowed to vote on the voting machine in the precinct, a voter must show identification or be personally known by one of the precinct election officers. The voter is permitted to leave the polling place to get his ID if he/she has not already signed the Precinct Signature Roster. However, if the voter refuses to get his/her ID, the voter may vote a provisional ballot. (See pages 5, 10, and 24).</p>
<u>FALSE</u>	<p>15. Only the two precinct judges are required to be able to set up a voting machine at the beginning of the election day.</p> <p>All officers need to be able to open a voting machine in case one or both judges are late or absent. Not understanding this could prevent the precinct from opening on time. (See page 5).</p>
<u>TRUE</u>	<p>16. Persons assisting voters who have been approved for permanent voting assistance still need to sign form SBE 31, Voter Assistance Form.</p> <p>The individual assisting the voter MUST always sign form SBE 31, Voter Assistance Form. (See pages 34, 35 and 54).</p>
<u>FALSE</u>	<p>17. The voter with a visual impairment or voter with a disability must vote on the voting machine specifically designed to accommodate the voter with disabilities.</p> <p>The voter with a visual impairment or voter with a disability may vote on any voting machine the voter chooses and request assistance. (See pages 10, 34 and 54).</p>
<u>FALSE</u>	<p>18. No one allowed in the voting room may use paper, telephone or a computer to create a check-off list or record the identity of voters.</p> <p>No election officer, voter, or other person permitted by law within the voting room, can use paper, telephone, a personal telecommunications device, or a computer or other information technology system for the purpose of creating a check-off list or otherwise recording the identity of voters within the voting room, except for the official use of the Precinct Signature Roster and Challengers. (See page 44).</p>
<u>TRUE</u>	<p>19. A voter can use a Tennessee driver's license as a form of identification at the polls.</p> <p>A voter may present a driver's license from Kentucky or any other state as his or her form of identification as long as the identity of the voter can be confirmed from the identification provided. (See page 24).</p>

TRUE

20. The certified list of write-in candidates provided to you by the county clerk should not be posted in the polling location. You may distribute the certified list of write-in candidates only to those voters who request the list.

On August 16, 2018, the Office of the Attorney General issued an Opinion, OAG 18-011, which concluded that the decision as to whether certified lists of write-in candidates may be provided to voters was left to the discretion of the Kentucky State Board of Elections ("SBE"). On August 21, 2018, the SBE met and voted unanimously to maintain the past pattern and practice; that is, precinct election officers may distribute a certified list of write-in candidates only to those voters who request the list. Precinct election officers may not post the list at the polling location for all voters to view. (See page 30).

**Attachment C to the
Statement of Interest of the United States
in Opposition to the Motion for a Temporary Restraining Order**

Federal Election Commission
Implementing the National Voter Registration Act of 1993:
Requirements, Issues, Approaches, and Examples
Chapter 5 – Voter Registration List Maintenance Provisions
(1994)

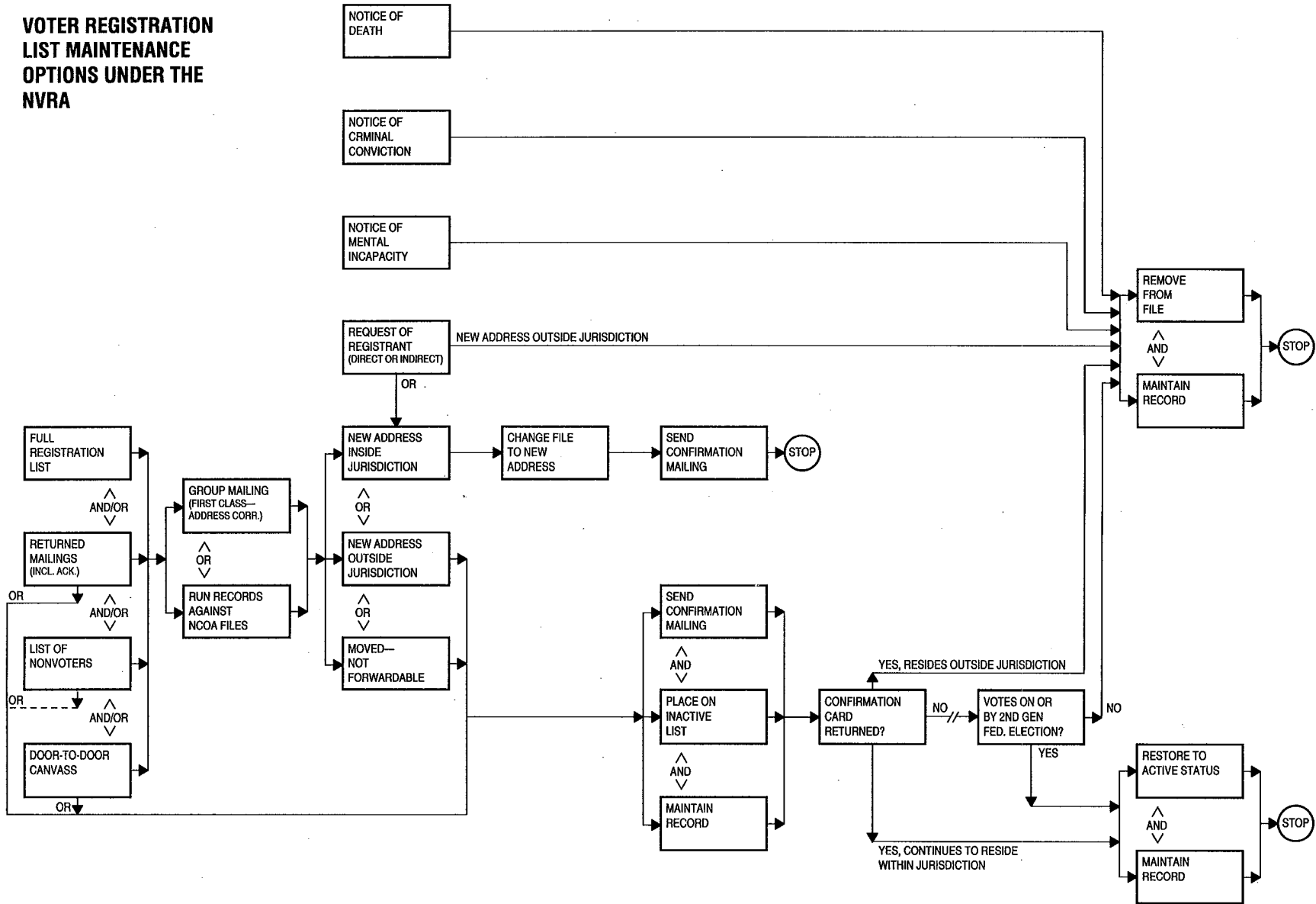


Implementing the National Voter Registration Act of 1993: Requirements, Issues, Approaches, and Examples

List Maintenance

VOTER REGISTRATION LIST MAINTENANCE OPTIONS UNDER THE NVRA

5 - 1



CHAPTER 5 - VOTER REGISTRATION LIST MAINTENANCE PROVISIONS

The National Voter Registration Act contains several features that will fundamentally alter the way voter registration lists are maintained in most jurisdictions. These features include:

- a slight change in the date by which valid voter registration applications must be accepted by the registrar [Section 8(a)(1)]
- a requirement that registrars “send notice to each applicant of the disposition of the application” [Section 8(a)(2)]
- a change (for most jurisdictions) in the rules for removing individual names from the voter registration list [Sections 8(a)(3) and (4), Section 8(b)(2), and Sections 8(c) and 8(d)]
- a change (for most jurisdictions) in the rules for changing a registrant’s address information [Sections 8(c), 8(d), and 8(f)], and
- a requirement that States “conduct a general program” the purpose of which is “to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office” [Sections 8(a)(4) and 8(b)].

IMPORTANT ISSUES IN VOTER REGISTRATION LIST MAINTENANCE

The voter registration list maintenance requirements of the Act are fairly complex but permit the States considerable latitude in designing appropriate procedures. In doing so, there are important issues to consider:

- the date by which valid voter registration applications must be accepted
- the rules for removing names from the voter registration list
- the rule for changing a registrant’s address information, and
- the administration of the file maintenance program.

The Date By Which Valid Voter Registration Applications Must Be Accepted

Most election offices currently accept and process voter registration applications up until their registration deadline. A few, as in California, accept mail registration applications for a few days after the deadline. States will need to revise these practices because the Act effectively applies the State's voter registration deadline (or the Act's 30 days before the election deadline, whichever is later) to when the form was submitted by the applicant rather than to when it is received by the election office.

The Act permits motor vehicle and agency offices up to five days to transmit to the election office any applications they receive on the last day of voter registration. (See the "Transmittal of Forms" portion of Chapters 2 and 4). Therefore, election offices must accept and process motor voter and agency voter registration applications up until at least five (5) days *past* the deadline for registration [Sections 8(a)(1)(A) and (C) along with Sections 5(e), and 7(d)].

The Act also requires election offices to accept and process mailed voter registration applications that are postmarked not later than the State's voter registration deadline (or the Act's 30 days before the election deadline, whichever is later) [Section 8(a)(1)(B)]. (See the "Transmittal of Forms" portion of Chapter 3 above).

As a practical matter, however, postmarks are not always applied by the Postal Service. And even when they are, they are not always readable. States may therefore want to consider accepting "any voter registration application that is postmarked not later than the deadline for voter registration or else is received in the mail not later than five days after the deadline for voter registration." Such an arrangement yields a single deadline for receiving *all* registration applications except those that are clearly postmarked before the close of registration but seriously delayed in the mails.

States might also want to establish rules and procedures to be followed in the event that motor voter or agency applications are, for some reason, *not* transmitted to the appropriate election official within the legal time frame.

The Rules for Removing Names from the Voter Registration List

The NVRA *prohibits* removing the names of any individuals from the voter registration list solely for:

- **failure to vote** [Section 8(b)(2)], or
- **change of address** to another location **within the registrar's jurisdiction** (even if they fail to notify the registrar of the move) [Section 8(f)].

The Act *permits*, however, removing the names of individuals:

- upon **the request of the registrant** [Section 8(a)(3)(A)]
- for **mental incapacity** (as provided in State law) [Section 8(a)(3)(B)], or
- upon **criminal conviction** (as provided in State law) [Section 8(a)(3)(B)]

The Act also *requires* States to conduct a general program that makes a reasonable effort to remove the names of ineligible voters:

- upon their **death** [Section 8(a)(4)(A)]
- upon their **written confirmation of a change of address** to a location **outside the registrar's jurisdiction** [Sections 8(a)(4)(B) and 8(d)(1)(A)], and
- upon their **failure to respond to certain confirmation mailings** *and* their **failure to offer to vote in any election within two subsequent general federal elections** [Sections 8(a)(4)(B) and 8(d)(1)(B)].

No Removal for Failure to Vote

Although most jurisdictions currently remove the names of individuals from the voter registration list after their failure to vote within a specified time frame, the NVRA prohibits this practice [Section 8(b)(2)]. It does so in accordance with “an underlying purpose of the Act; that once registered, a voter should remain on the list of voters so long as the individual remains eligible to vote in that jurisdiction” [Hse. Rpt., Section 8, page 18].

No Removal for Change of Address within the Registrar's Jurisdiction

For exactly the same reason as quoted above, the Act prohibits removing names of individuals from the voter registration list simply because they changed residences *within* the registrar's jurisdiction [Section 8(f)]. If such a change of address comes to the attention of the registrar, the registrar may proceed in accordance with the “rules for changing a registrant's address” described below in this Chapter. If such a change of address does not come to the attention of the registrar, then the place and manner in which the individual votes is described in Chapter 6 on fail-safe voting procedures.

Removal by Request of the Registrant

Individuals may request that their names be removed from the voter registration list. The Act permits States to honor such requests [Section 8(a)(3)(A)]. It is also important to note that “A ‘request’ by a registrant would include actions that result in the registrant being registered at a new address, such as registering in another jurisdiction or providing a change-of-address notice through the driver's license process that updates the voter registration” [Hse. Rpt., Section 8, page 14]. (See also The Format and Content of the Form to be Used in the Driver's License Change of Address Process in Chapter 2.)

Removal for Mental Incapacity

Although the Act permits removing the names of individuals from the voter registration list by reason of mental incapacity, it does not define “mental incapacity.” Nor does it describe the process through which the registrar is to be informed of such a development. Instead it defers to State law [Section 8(a)(3)(B)]. States that have such provisions may want to take this opportunity to establish procedures whereby registrars are systematically informed of any declarations of mental incapacity — either directly or, perhaps more practicably, through the chief State election official. Research suggests that States with the most effective programs require the agencies responsible for maintaining records of declarations of incompetence (e.g.; clerks of court, district courts, etc.) to report on a scheduled basis (usually monthly) rather than an “as occurs” basis. The reports are made to both the local registration official and the State election official. The State election official, in turn, disseminates the information to the local jurisdiction for review and cross check against reports received from local agencies. State officials may either identify incompetency declarations by address and notify the appropriate official or send the entire report to all local jurisdictions. (See also that portion of Chapter 1 regarding the role of the chief State election official).

Removal for Criminal Conviction

The Act permits removing names of individuals from the voter registration list for reason of criminal conviction, but once again defers to State law [Section 8(a)(3)(B)].

To assist States that have such provisions, the Act requires U.S. Attorneys to give written notice of a felony conviction in federal court to the chief election official of the person’s State of residence including:

- the name of the offender
- the offender’s age and address
- the date of entry of the judgment
- a description of the relevant offense(s)
- the sentence imposed by the court

and, upon the request of the chief State or local election official, any additional information the attorney may have regarding the offender or the offense. The U.S. Attorney is required to notify the chief State election official in writing if any such conviction is overturned. Finally, the Act requires the chief State election official to convey any such information to the local registrar of the offender’s jurisdiction of residence [Section 8(g)].

The Act does not require State or local courts to provide the chief State election official with information regarding disqualifying criminal convictions; however, States that disenfranchise for certain crimes may want to consider such a provision.

Research suggests the States that require such notification be provided to the State election official on a regularly scheduled basis (e.g.; monthly) have more effective programs because reporting at the local level tends to be sporadic. The State, in turn disseminates the information to local jurisdictions either by notifying those local election officials appropriate to the addresses on the list, or by sending the entire report to all local jurisdictions.

Removal by Reason of Death

The Act requires that States make a reasonable effort to “remove the names of ineligible voters from the official lists of eligible voters by reason of the death of the registrant...” [Section 8(a)(4)(A)]. It does not, however, specify the procedures for doing so. Because obtaining information about deaths of registrants has proved so difficult in the past, States might want to develop a more systematic approach.

One such approach might be requiring the State office in charge of vital statistics (e.g.; Bureau of Vital Statistics, Department of Health, or Division of Human Resources) to inform the chief State election official of all deaths of State residents on a monthly basis (in parallel to notices of court convictions). States may also want to establish what other sources of information about registrants who may have died are permitted and how to verify them, when necessary. These other sources may prove especially important for border jurisdictions whose registrants may seek medical attention from nearby hospitals in another State. These “unofficial” sources might include newspaper obituaries, contact with the deceased’s relatives, or personal knowledge of an employee in the office charged with administering voter registration.

Removal by Reason of a Written Confirmation of a Change of Address outside the Registrar’s Jurisdiction

The Act prohibits removing the name of a registrant from the list of eligible voters “on the ground that the registrant has changed residence unless the registrant confirms in writing that the registrant has changed residence to a place outside the registrar’s jurisdiction in which the registrant is registered...” [Section 8(d)(1)(A)].

There are three ways in which a registrar might receive such written confirmation from the registrant.

First, the registrant may spontaneously send a notice informing the registrar of their change of address outside the jurisdiction (although this is an extremely rare practice). Still, should it happen, registrars need obtain no further confirmation.

The second way includes any actions by the registrant “that result in the registrant being registered at a new address, such as registering in another jurisdiction or providing a change-of-address notice through the driver’s license [or agency] process that updates the voter registration” [Hse. Rpt., Section 8, page 14]. This suggests that cancellation notices received from voter registrars in other jurisdictions would be sufficient for removing a registrant’s name. And by the same token, notices received from motor vehicle departments and agencies regarding a registrant’s

change of address for voting purposes to a location outside the registrar's jurisdiction would appear sufficient for removing a registrant's name. The reasoning here appears to be that registrars need obtain no further confirmation in these instances because the registrants initiate such actions or notices and, unless they specifically declare to the contrary, are indicating that the change applies to voter registration. Registrars might want to have, or at least have access to, the registrant's original signature on such notices.

The third way in which registrars might obtain written confirmation of a registrant's change of address to a location outside the registrar's jurisdiction is in response to the "confirmation" mailing described later in this chapter and in Section 8(d)(2) of the Act.

Briefly (though it is described in greater detail below), the confirmation process permits registrars to initiate a mailing to any registrant whom the registrar has legitimate reason to believe has changed address. These reasons must be uniformly applied to all registrants but may include any change-of-address information supplied by the Postal Service either through their National Change of Address files or else through their return of any election mailing (such as the acknowledgment notice described above, sample ballots, or the like) [Hse. Rpt., Section 8, pages 15 and 16]. Reasons may also include information from the courts regarding returned jury duty notices or information on driver's licenses surrendered in other states.

The reasoning here appears to be that because this kind of change-of-address information is second hand, rather than originating from the registrant, the election official must seek to confirm it directly with the registrant. This is done by sending a forwardable mailing to registrants that contains a postage prepaid and pre-addressed return notice on which registrants state their current address. If registrants return the notice confirming an address outside the registrar's jurisdiction, their names can then be removed from the voter registration file. (It should also be noted that a record of such transactions must be maintained as explained in Chapter 7). If registrants do not return the notice, then registrars must follow the procedure described immediately below.

Removal for Failure to Respond to Certain Confirmation Mailings and Failure to Offer to Vote in Any Election within Two Subsequent General Federal Elections

The Act provides for two types of confirmation notices. The content and format of both types of notices are addressed in more detail at the end of this chapter. The first type is sent when the Postal Service provides information that the registrant may have moved *within* the jurisdiction [Section 8(c)(1)(B)(i)]. This notice is discussed further in the next section of this chapter.

The second type of notice is sent when there is an indication that the registrant may no longer live in the registrar's jurisdiction [Section 8(d)(2)]. The Act provides that names of registrants may be removed from the voter registration list if they:

- fail to respond to the *second* type of notice (i.e.; sent because there was an indication that the registrant no longer resides in the registrar's jurisdiction); *and*
- have not voted or appeared to vote "in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice" [Section 8(d)(1)(B)].

Both conditions (failure to respond to the second type of notice and failure to appear to vote) are required for removal.

(NOTE: If registrants fail to respond to such a confirmation mailing, they may be placed in an "Inactive" status as explained in Administering the File Maintenance Program at the end of this chapter. Moreover, records of all confirmation mailings and responses must be maintained as explained in Chapter 7.)

This procedure allows for the possibility that the change-of-address information received second hand was in error, the possibility that the registrant did not receive (or take notice of) the confirmation mailing, and the possibility that the registrant may be one of those "presidential voters" who vote only once every four years. Even if all three possibilities pertain, the registrant's right to vote is still preserved.

The Rule for Changing a Registrant's Address Information

The rule for changing a registrant's address information pertains, of course, only to changes of address *within* the registrar's jurisdiction (since if they are changes of address outside the registrar's jurisdiction, registrants will be removed from the voter registration list according to one of the two procedures outlined immediately above).

The Act provides that "In case of a change of address, for voting purposes, of a registrant to another address within the same registrar's jurisdiction, the registrar shall correct the voting registration list accordingly, and the registrant's name may not be removed from the official list of eligible voters except [when the individual confirms in writing that he or she no longer resides in the jurisdiction, or fails to respond to a Section 8(d)(2) notice and fails to vote or appear to vote in an election within a period up to the second general federal election after that notice] [Section 8(f)].

There are at least five ways in which a registrar might receive information about a registrant's change of address within the jurisdiction.

First, the registrant may spontaneously send a note (or a mail registration form) informing the registrar of their move. Should that happen, the registrar need not seek further confirmation before changing the registrant's address in the voter registration file. And although the law does not specifically require it, it would seem appropriate to inform the registrant of this action as well as of the location of the registrant's polling place.

The second way is if the registrant files a change-of-address notice with the motor vehicle office or through an agency designated to register voters under the Act, unless the registrant declares that the change of address is not for voting purposes. Because these notices are also initiated by the registrant, the registrar need not seek further confirmation before changing the registrant's address on the voter registration list (and, presumably, sending an appropriate notice to the registrant).

The third way in which registrars may learn of a registrant's change of address within their jurisdiction is through information provided by the Postal Service either through the National Change of Address program or else upon return of any election mailing.

"[I]f it appears from information provided by the Postal Service that 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" [Section 8(c)(1)(B)(i)].

(NOTE: Even if registrants who have moved within the jurisdiction fail to respond to this type of confirmation mailing, they should *not* be designated as inactive and cannot be removed from the registration list. Moreover, records of all confirmation mailings and responses must be maintained as explained in Chapter 7.)

The reasoning behind this procedure appears to be that because Postal Service change-of-address information is second hand, rather than originating from the registrant, the election official must seek direct, first-hand confirmation.

The fourth way in which registrars might obtain written confirmation of a registrant's change of address to a location within the registrar's jurisdiction is through responses to one of the two confirmation notices described earlier in this chapter and in Sections 8(c)(1)(B)(i) and 8(d)(2) of the Act.

The fifth way in which registrars may learn of a change of address within the jurisdiction is through changes of address made by registrants at the polls on election day. (See Fail-Safe Voting Provisions in Chapter 6.)

Administering the File Maintenance Program

Important aspects of administering a voter registration list maintenance program include:

- the need to ensure uniformity and compliance with the Voting Rights Act of 1965, as amended
- addressing confirmation notices

- monitoring “inactive” voters
- identifying duplicate registrations
- the deadline for completing list maintenance activities
- the accountability of list maintenance activities
- the need to appoint someone to be in charge of list maintenance activities, and
- the need to train local registration officials.

Ensuring Uniformity and Compliance with the Voting Rights Act

The Act specifies that “Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration role ... shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.)” [Section 8(b)(1)].

According to the House, “This requirement may not be avoided by a registrar conducting a purge program or activity based on lists provided by other parties where such lists were compiled as the result of a selective non-uniform, or discriminatory program or activity.” Also, the requirement effects “any activity that is used to start, or has the effect of starting a purge of the voter rolls, without regard to how it is described or to whether it also may have some other purpose. For example, the mailing of sample ballots is clearly a program that has another purpose but might provide the basis for a remove of voter rolls.” [Hse. Rpt., page 15].

The Senate expanded on this concern by noting that list maintenance programs “must be scrutinized to prevent poor and illiterate voters from being caught in a purge system which will require them to needlessly reregister. Such processes must be structured to prevent abuse which has a disparate impact on minority communities” [Sen. Rpt., page 18].

The National Voter Registration Act of 1993 is specifically intended to be complementary to rather than contradictory to the Voting Rights Act of 1965. Section 11(d)(1) states, in part, that “neither the rights and remedies established by this section nor any other provision of this Act shall supersede, restrict, or limit the application of the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.)”. Section 11(d)(2) states “Nothing in this Act authorizes or requires conduct that is prohibited by the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.)”. The Senate notes that “Merely because a program was conducted under the National Voter Registration Act would not be a defense to any claim which might be asserted under the Voting Rights Act ... The States must comply with the National Voter Registration Act in a manner which does not violate the Voting Rights Act” [Sen. Rpt., page 18].

States should note that Section 2 of the Voting Rights Act applies to all States and prohibits any State or political subdivision from imposing or applying election laws

or procedures which discriminate against individuals on account of race, color, or language minority status [42 U.S.C. 1973]. It follows, then, that whatever list maintenance procedures that States adopt, they must be nondiscriminatory in both intent and effect.

Furthermore, those jurisdictions that are subject to the preclearance or bilingual requirements of the Voting Rights Act must continue to adhere to these provisions when implementing the NVRA voter list maintenance provisions.

Finally, the removal of the names of registrants who were registered by federal examiners under the U.S. Office of Personnel Management (OPM), in accordance with 42 U.S.C. 1973d, would be subject to the same restrictions as established prior to the NVRA (i.e.; approval must be obtained from OPM before such names can be deleted from the rolls).

Addressing Confirmation Notices

Although the Act requires that confirmation mailings be sent to registrants “by forwardable mail” [Sections 8(c)(1)(B)(i) and 8(d)(2)], it does not specify to which address these mailings should be sent. In some cases (such as when a mailing to a registrant has been returned as undeliverable with no forwarding address), the registrar will have only one address. In other cases, however, (such as when notified by the Postal Service of a change of address), the registrar will have a choice of mailing to the old address on file, to the new address provided by the Postal Service, or to both.

When faced with a choice, the advantage in mailing to the old address is that those registrants who have *not* permanently changed address may receive it at the old address and have an opportunity to respond accordingly (whereas they would not receive the mailing if it were sent to the new address). A disadvantage to using the old address is that if the registrant has moved, the notice may not be received through postal forwarding — since most local post offices retain change-of-address records for only 12 or 18 months.

The advantages and disadvantages of mailing to the new address are almost the reverse. If the registrant has moved, the notice will probably be received. If the new address is in error, the registrant would never receive it.

These problems can be overcome if notices are mailed to both addresses, but at the cost of increased printing and postage for the production and mailing of additional mailings plus the potential of voter confusion at receiving both mailings.

States may want to consider establishing a consistent statewide procedure for addressing confirmation mailings.

Monitoring “Inactive” Voters

The Act does not prohibit designating as “inactive” those voters who have not responded to a confirmation mailing that was sent in accordance with Section 8(d)(2)

to confirm whether or not the registrant continues to reside in the jurisdiction. (Note: This appears to exclude notices mailed in accordance with Section 8(c)(1)(B)(i) for the purpose of confirming information provided by the Postal Service concerning a change of address *within* the jurisdiction.)

Indeed, the House specifically notes that “Within the official list of eligible voters, notations (such as an asterisk or “I” for inactive status) may be made of those eligible voters who have failed to respond to a notice under Section 8(d)(2).” Such a procedure “permits the State to decline to use these names in performing the type of routine, administrative responsibilities that do not impair the right of such voters to vote as set forth in the Act, and as protected by the Voting Rights Act. For example, those who have failed to respond to a Section 8(d)(2) notice need not be included for administrative purposes in determining the number of signatures that may be required under State law for ballot access, the number of precincts that may be needed to service voters, or the number of ballots or voting machines that may be required in the administration of the voting process” [Hse. Rpt., Section 8, pages 16 and 17]. States should consider carefully the full impact of including or ignoring “inactive” voters for each of these purposes.

States will have to decide *when* to designate recipients of such confirmation mailings as “Inactive.” There appear to be at least three possibilities:

- upon the date of the outgoing confirmation mailing — to be restored to active status (or removed as appropriate) upon receipt of a response to the confirmation notice,
- at some arbitrary date (such as thirty days) after the outgoing confirmation notice if no response has been received — again to be restored to active status (or removed as appropriate) upon receipt of a response to the confirmation return notice, or
- after the closing date for receiving voter registration applications before the next election.

It should be noted that none of these possibilities has any practical consequence on the registrant who either will or will not respond.

States must also decide whether to send the names of “inactive” voters to the polling places. Not sending them, as a cost saving strategy, might complicate and delay the fail-safe voting procedures described in Chapter 6. If they are sent, States then must decide whether they should be on a separate list or should be combined with the “active” voters using an asterisk or “I” as a designation. The decisions here are likely to be driven by the technology available to local jurisdictions.

Election officials at either the State or local level will need to consider how to track the names of individuals who have failed to respond to an 8(d)(2) confirmation

notice during the intervening period prior to removal from the list. During this tracking period, jurisdictions must be alert to:

- any appearance to vote;
- any changes of address subsequently received from the registrant either directly or through the Department of Motor Vehicles or another agency, or from another jurisdiction in which the individual re-registered; and
- any attempt to reregister in the same jurisdiction.

States may want to consider whether or not the signature of an “inactive” registrant on a petition for a candidate or ballot issue would be sufficient to return the individual to active status, provided the registrant continues to reside in the same registrar’s jurisdiction. States may also want to consider the costs and benefits of sending a final notice of removal (which is not required under the Act, but may result in less voter confusion) upon the expiration of the “inactive” period. Some States have found it helpful to publish in area newspapers a list of names scheduled to be deleted.

Identifying Duplicate Registrations

Duplicate registrations (as opposed to registrations submitted to report changes of name, address, or political party affiliation) can threaten the integrity of the election process and increase the cost of administering elections. Therefore, although not specifically mentioned in the Act, States may want to require the establishment of programs to identify and remove duplicate registrations.

Research suggests that States with the most effective programs for identifying duplicate registrations require the State as well as local jurisdictions play a part in the process. The local jurisdictions check for duplicates within their jurisdiction and the State checks for duplicates across jurisdictional boundaries within the State. Such State involvement is only possible, however, where registries have been computerized within the State and the State election official has access to these records on electronic media.

Approaches to identifying duplicate registrations include:

- manual review of hard copy files either on a regularly scheduled basis or, if workload permits, as applications are received;
- review of computer files as applications are received and being logged into the system, as workload permits;
- regularly scheduled review of computer-generated lists of possible duplicate registrations; or
- a combination of these methods.

States might want to require that a notice be sent when duplicates are identified, explaining that the applicant need not continue to reregister. When duplicates are identified upon receipt of the application, this notice could be incorporated in the acknowledgment notice. When duplicates are identified after they have been added to the voter registry, a separate notice would have to be sent. In the case of duplicate registrations across jurisdictional boundaries, the notice should explain which registration is scheduled to be deleted and why. (An example of a notice based on duplicate registration across jurisdictional boundaries is provided in Figure 5D.)

States should consider requiring local jurisdictions to maintain records of duplicate registrations, regardless of whether the duplicates are discovered upon receipt of the application or after being added to the list of voters. (See the discussion of recordkeeping and reporting requirements in Chapter 7.)

The Deadline for Completing List Maintenance Activities

The Act requires States to “complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the lists of eligible voters” [Section 8(c)(2)(A)]. This would apply to confirmation notices mailed on the basis of the NCOA or other list maintenance programs. And according to the House, this requirement also applies to any “State outreach activity such as a mailing or a door to door canvas and requires that such activity be completed by the 90-day deadline” [Hse. Rpt., page 16].

The Act does *not*, however, apply this 90-day deadline to removing names from the voter registration list at the request of the registrant, by reason of criminal conviction or mental incapacity (as provided by State law), or by reason of the registrant’s death [Section 8(c)(2)(B)(i)]. Nor does the Act apply the deadline to changing the address information of a registrant who has changed voting residence within the registrar’s jurisdiction [Section 8 (c)(2)(B)(ii)]. The Act also would not prohibit verifying incoming voter registration applications within the 90-day period before the election.

Finally, the Act does not appear to prohibit using routine mailings sent out within 90 days before a federal election (sample ballots, voter pamphlets, etc.) and returned undeliverable to the election office as a trigger for sending out a confirmation mailing *provided* that the confirmation mailing is sent out (and any subsequent removal of a name is performed) *after* the election and not within the 90 days prior to it. But States contemplating such a strategy might first want to obtain the opinion of their Attorney General.

The Accountability of List Maintenance Activities

The Act requires voter registration officials to maintain and to make available for public inspection (and, where available, for 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” *for*

at least 2 years [Section 8(i)(1)]. And according to Section 8(i)(2), these records are to include:

- lists of the names and addresses of all persons to whom confirmation mailings were sent, and
- information concerning whether or not each such person responded to the mailing as of the date that the records are inspected.

As a matter of prudence, though not as a requirement of the Act, States might also want to retain for the same time period all records of removals from the voter registration list — the date and the reason. (See the reporting requirements outlined in Chapter 7.)

Similarly, States might want to consider retaining the information provided to them by the NCOA (either on tape or printout copies) in order to demonstrate, if challenged, the source of change-of-address information.

Putting Someone in Charge

Experience suggests that tasks are better accomplished when carried out under the authority and control of a single person. This is especially true for the complex task of voter registration list maintenance and record keeping.

Election offices might want to consider designating one individual to be in charge of and responsible for all list maintenance activities. Such a designation might facilitate meeting the reporting requirements discussed in Chapter 7.

Training Local Registration Officials

Because this portion of the Act will fundamentally alter the way in which most jurisdictions maintain their voter registration lists, States may want to consider developing a training program for local registration officials — including job aids or procedures manuals for daily reference. These may prove crucial during the first few years of implementation.

APPROACHES TO DESIGNING A PROGRAM FOR MAINTAINING AN ACCURATE AND CURRENT VOTER REGISTRATION LIST

The Act requires States to “conduct a general program that makes a reasonable effort to remove that names of ineligible voters from the official lists of eligible voters...” [Section 8(a)(4)].

It further requires that such a program “shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.)” [Section 8(b)(1)]. “This requirement may not be avoided by a registrar conducting a purge program or activity based on lists provided by other parties where such lists were compiled as the result of a selective, non-uniform, or discriminatory program or activity” [Hse. Rpt., Section 8, page 15.]

And finally, it requires that States “complete not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters” [Section 8(c)(2)(A)]. This 90-day deadline does not, however, apply to the removal of names from the voter registration list at the request of registrants, by reason of criminal conviction or mental incapacity (as provided for in State law), or by reason of a registrant’s death [Section 8(c)(2)(B)(i)]. Nor does the 90-day deadline apply to changing a registrant’s address information [Section 8(c)(2)(B)(ii)].

Except for establishing this deadline, the Act does not specify either how or when list maintenance activities are to be undertaken. These decisions are left to the States.

In designing a program for maintaining an accurate and current voter registration list, States may want to review the costs and benefits of the following approaches:

- making individual or “spot” changes to the voter registration list
- conducting mass confirmation mailings
- conducting targeted confirmation mailings
- conducting a door-to-door canvass.

For several reasons, States may want to consider adopting a combination of the first three approaches.

Making Individual or “Spot” Changes to the Voter Registration List

One approach to maintaining a voter registration list is to rely solely on incoming information whenever it arrives, as a basis for making changes to the voter registry. Such sporadic incoming information would include:

- direct requests from registrants to be removed from the list
- change-of-address notices from driver’s license or other designated agency offices
- information on driver’s licenses surrendered in other states (followed by a confirmation mailing)
- mailings returned to the election office (followed by a confirmation mailing)

- declarations of mental incapacity (depending on State law)
- notices of criminal conviction (depending on State law)
- death notices
- information from courts regarding returned jury duty notices (followed by a confirmation mailing)
- notices of cancellation of registration from other jurisdictions, and
- election day changes

NOTE: Caution is advised when considering the use of lists provided by candidates, political parties, or certain other persons as sources of information for updating the registry. There have been incidents in which such lists were compiled on a selective, non-uniform, or discriminatory basis.

Although this approach captures some important information, there are problems with relying solely on it.

It may not meet the requirements of the Act to “conduct a general program that makes a reasonable effort to remove the names of ineligible voters” [Section 8(a)(4)]. It will not, for example, capture information on registrants who have moved without filing a change-of-address with the Postal Service. And it may not even capture information on those who have filed a change of address (since local post offices do not maintain records of these changes longer than 12 to 18 months, and most election mailings are not first class and are thus not entitled to “return if undeliverable — address correction requested” services from the Post Office).

Moreover, notices of death, criminal conviction, or mental incapacity tend to be irregular and are seldom timely. And, as a practical matter, few jurisdictions send notices of cancellation of registration to the new registrant’s former jurisdiction.

For these reasons, States would be well advised to combine this “spot changes” approach with a more active mass confirmation approach. And States or local jurisdictions that do not already do so may want to adopt the practice of routinely notifying the registrant’s former jurisdiction (both within and outside the State) of new registrations. This can be accomplished by either mailing a photocopy of the new registration (if it contains information on the former address) or sending a cancellation notice to the State election official or local registrar in the jurisdiction of former residence. (See an example of a cancellation notice that may be used when an individual registers in person in Figure 5A.)

States may also want to consider establishing a statewide computerized voter registry to help account for intrastate re-registrations and cancellations of prior registrations.

Mass Confirmation Mailings

The idea behind mass confirmation mailings is to identify all persons who have changed address with the Postal Service and then to send each such person one of the confirmation notices described previously in this chapter. There are two ways to identify those persons who have filed a change of address with the Postal Service:

- by using the Postal Service's National Change of Address files (NCOA), or
- by a direct, non-forwardable, first class, "return if undeliverable — address correction requested" mailing to all registrants.

The National Change of Address (NCOA) Program

The Postal Service's National Change of Address (NCOA) program is specifically permitted by the Act as a means of updating the voter registry [Section 8(c)(1)(A)].

Using the NCOA files, however, presupposes a computerized voter registry and a list of no less than 100 names. States should consider giving local jurisdictions the option of using NCOA when some, but not all local jurisdictions, have computerized registries. As an alternative, States might require all local jurisdictions to computerize their registries and employ the NCOA program. As another alternative, States might choose to develop a statewide computerized voter registration list and regularly compare this list against NCOA files.

Under the NCOA program, all changes of address submitted by Postal customers are telecommunicated daily to the U.S. Postal Service National Customer Support Center (NCSC) in Memphis, Tennessee. The NCSC consolidates and standardizes the information. The resulting NCOA master file is provided to 24 private companies operating under a licensing agreement with the U.S. Postal Service. These licensees receive master file updates from the NCSC every two weeks. Prices of the service and the formats required vary by licensee. Jurisdictions would do well to obtain format information and price quotes from many vendors before choosing one.

The objectives of the NCOA program are: to reduce the volume of undeliverable mail, improve address quality on mail, encourage timely and accurate address list updates, and provide cost avoidance for the U.S. Postal Service and its customers. The program features the following:

- All change-of-address actions are maintained on the computer files for *three years* rather than for the twelve to eighteen months normally available from the local postmaster's records.
- All addresses submitted for matching are standardized and ZIP+4 coded.
- Change-of-address information is provided whenever a match is made between addresses submitted and addresses maintained on the NCOA files.

- Address lists may be submitted in virtually any electronic medium (disk, tape, etc.) and virtually any format, depending on the licensee.
- A uniform method for delivering address lists is provided.

Jurisdictions that have employed the NCOA program (such as the Kentucky, Louisiana, and several local jurisdictions in California) found it helpful in maintaining clean, up-to-date voter lists because the program:

- is less expensive than a mass mailing to all registrants;
- permits voter registration files to be updated by computer rather than by hand for changes of address within the jurisdiction;
- provides new addresses for many voters who have moved outside the jurisdiction which can then be used when sending the required Section 8(d)(2) confirmation mailing; and
- provides a standardized, ZIP+4 mailing list that can be used for informational mailings to all eligible voters in the jurisdiction.

Jurisdictions using the NCOA program should, however, understand the logic that the program uses to match names. There are rigid standards for what is considered a match when the names and addresses in the registry are compared against the NCOA file. Even small variations in name or address can result in a failure to match. Some NCOA vendors have a secondary NIXIE file of possible matches which applies looser standards, but this file may also result in many that are not true matches. (Sacramento County ran a test of a NIXIE file and sampled 100 matches. None of them were true matches.)

Jurisdictions should also bear in mind that the NCOA data file will be flawed because:

- the data provided by the public may not correctly note whether just one individual or whether the whole family moved;
- the data provided by the public may not correctly note whether the move is temporary or permanent;
- occasionally errors in entering data from the change of address forms can occur; and
- the date of the change of address (which can be as old as 36 months) may predate the latest transaction on the voter registration file.

States or local jurisdictions employing the NCOA program will need their own software to translate the input from the NCOA licensee. This software should provide for the automatic updating of addresses for registrants who have moved within

the jurisdiction. States or local jurisdictions should be sure that this software compares the date of the NCOA address change with the last address transaction date on the voter registry and that it defaults to the later date.

Confirmation notices to both those who have changed address within the jurisdiction and those who appear to have moved outside the jurisdiction should be sent soon after the lists have been compared since the information can quickly become outdated.

States or local jurisdictions should consider providing a telephone number (preferably toll-free) or an address on the confirmation mailing so that registrants can contact the election office to discuss any errors.

Finally, it should be said that the NCOA program is not useful in identifying those who have died, those who have moved without filing a change of address, or those who may be ineligible because of criminal conviction or mental incapacity.

For further information on the NCOA program, refer to *Innovations in Elections 4: Using NCOA Files for Verifying Voter Registration Lists*, authored by Charlotte G. Mullins for the Federal Election Commission's National Clearinghouse on Election Administration. This publication is available by contacting the FEC Clearinghouse. Also contact the Postal Service's National Address Information Center in Memphis, Tennessee on 1-800-238-3150 or 1-800-331-5746.

A First Class Mailing to All Registrants

There is an alternative to using the NCOA files for identifying persons who have filed a change of address with the postal service. The procedure is to send a direct, non-forwardable, first class, "return if undeliverable — address correction requested" mailing to all registrants. As a practical matter, however, such a mailing should be sent well before the 90 day deadline. This allows sufficient time for a confirmation mailing to those whose first mailing was returned. (The FEC has been advised by the Postal Service that, because of the relatively low volume of mail in January and February, these would be ideal months to mail.)

Instead of a preliminary non-forwardable mailing, some States have considered sending just the forwardable Section 8(d)(2) confirmation notice to all registrants. The problem with such an approach is that many are not likely to respond in writing. As a consequence, many people will be designated as inactive even though they have not changed their address. And this, in turn, could create serious problems at the polls on election day when they avail themselves of the fail-safe voting procedures described in Chapter 6. Moreover, those who do not attempt to vote over an extended time period will be removed from the registry, even when they continue to reside in the jurisdiction. Such a procedure would run afoul of the provisions of the Act, and might also violate Section 2 of the Voting Rights Act. States might therefore want to ponder the practical and legal consequences of such a strategy.

There are several disadvantages to using the first class mailing approach:

- Although the cost of this process might be somewhat alleviated by combining the initial mailing with some sort of informational mailing, a direct first class mailing is still likely to be considerably more expensive than the NCOA program — not only in terms of printing and mailing costs, but also in terms of staff time and record keeping.
- The Postal Service is likely to deliver mail marked “nonforwardable” to bona fide addresses even though the individual no longer lives there, unless the individual filed a change of address with the post office within the past year or so. To account for this practice, States might want to consider requiring a check box on the front of the initial mailing encouraging the current resident to return the card to the registrar when the addressee either has passed away or otherwise no longer lives there. (An example of such a notice is provided in Figure 5B.)
- Post offices usually maintain records of address changes for only twelve to eighteen months (compared to the 36 months under NCOA). Thus, mass mailings would have to be conducted at least annually.

Finally, it should be noted that a mass mailing would not identify those who have moved but not filed a change of address with the post office, those who have died, or those who are ineligible due to criminal conviction or mental incapacity.

Targeted Confirmation Mailings

Neither the passive approach nor the mass confirmation approach identify those who have moved without filing a change of address with the post office. Nor, as a practical matter, are the death notices obtained in the passive approach likely to be complete and timely. As a result, “deadwood” in the voter registration list is bound to accumulate over time.

For this reason, some States have considered targeting confirmation efforts on individuals who have failed to vote over an extended period of time — either by:

- Sending the list of non-voters a nonforwardable notice, followed by the appropriate forwardable confirmation notice to those who appear to have moved from their address of record;
- Running the list of non-voters against the NCOA files, followed by the appropriate confirmation notices to those who appear to have moved from their address of record; or
- Sending the forwardable confirmation notice provided for in Section 8(d)(2) based on the assumption that failure to vote over an extended period of time may indicate that the registrant no longer lives in the jurisdiction.

States should note that the last of these three options is considered by some advocates to violate the provisions of the Act because the ultimate effect of the action would be to remove people for failure to vote, including those who may still reside in the same jurisdiction. And the second of the above options is not useful in identifying registrants who have failed to file a change of address or have died.

The use of the non-voters list also would not identify those who are ineligible by reason of criminal conviction or mental incapacity. It will not assist in the removal of names of those who have died if another person continues to vote in the name of the deceased. Furthermore, targeting those who have failed to vote may disproportionately affect minority groups, the poor, and illiterate. Thus if States rely solely on "failure to vote" as the trigger for confirmation mailings, they may run afoul of the non-discriminatory provisions of the National Voter Registration Act as well as of Section 2 of the Voting Rights Act.

States that permit such targeted confirmation mailings may therefore want to consider combining it with the other methods of confirming the voter registry described above. States permitting this approach should consider establishing a period of time for non-voting (i.e. within four years, eight years, or the like) before any notice to the registrant is triggered. And States might want to determine whether or not other indicia of activity (e.g.; changes of address within the jurisdiction received from the motor vehicle department or designated agencies, changes in name or party affiliation submitted by the registrant, signatures on petitions, attempts to reregister) occurring during this time period are valid reasons not to follow-up on non-voters.

Door-to-Door Canvass

Some jurisdictions prefer to rely on a door-to-door canvass to confirm the voter registration list. In doing so, they hope to account for those who may no longer reside at a listed address and for those who may have died.

Door-to-door canvassing may be helpful to some jurisdictions; however, the approach does not yield accurate results if canvassers are not thorough, persistent, and non-partisan (or at least bipartisan). In addition, door-to-door canvassing does not identify registrants who are ineligible to vote due to criminal conviction or declaration of mental incompetence, and it may not reliably account for deaths.

Furthermore, because the information on those who may no longer reside in the jurisdiction is received "second hand", it appears that registrars would have to verify reported deaths and follow up with a forwardable confirmation notice to registrants who appear to have moved. Most jurisdictions will therefore find this approach to be both costly and impractical.

FORMS NEEDED FOR VOTER REGISTRATION LIST MAINTENANCE

The Act requires that States employ at least three forms in the list maintenance process: the acknowledgment notice reporting the disposition of each application, the outgoing confirmation notices, and the return notice for responding to confirmation mailings. In addition, although not required by the Act, States may want to require a final notice of removal for those whose names have been deleted from the registry.

In developing these forms, States should consider the following:

- the format and content of the acknowledgment notice to all applicants;
- the format and content of the outgoing confirmation mailing(s);
- the format and content of the confirmation return notices; and
- the format and content of the final notice of removal.

States will also want to be sure to take into account the needs of certain special populations noted in Chapter 1 when designing these notices.

The Format and Content of the Acknowledgment Notice to All Applicants

The Act requires voter registration officials to “send notice to each applicant of the disposition of the application” [Section 8(a)(2)]. As noted in the definitions portion of the Introduction and in Chapter 3 above, we at the FEC have come to call this notice the “acknowledgment notice” even though in some cases it may inform the applicant that the application is incomplete or, for some reason, denied. Please also note in Chapter 3 the important distinction between what we term a “verification mailing” and the acknowledgment notice — a distinction that hinges on whether the applicant is added to the voter registration list before or after the item is mailed.

The following are important aspects of the acknowledgment notice:

- the *format* of the notice, and
- the *content* of the notice.

The Format of the Acknowledgment Notice

The Act does not specify the format of the acknowledgment notice — leaving this to the discretion of the States. But as a practical matter, States might want to consider a standard, preprinted, first class, “return if undeliverable - address correction requested”, 12 x 6 inch with a fold crease four inches from the top, a perforation eight inches from the top, and perhaps a fold-over sealing flap at the top. (See postal

specifications in Appendix F below). This would provide a 6 x 8 inch field for the message to the registrant, as well as a 6 x 4 inch detachable pre-addressed response card, if needed.

This approach would permit registrants to use the response card to indicate the following:

- their need for information on the accessibility of their polling place
- their need for voting assistance
- their need for materials in a language other than English
- their willingness to work as a poll worker

All this valuable information (and possibly more) could thus be gathered on an acknowledgment return card without burdening the registration form.

States should consider allowing the chief State election official to design the form. Local offices could then print the form, adding their own return addresses and telephone numbers to a camera-ready copy. Alternatively, States may want to permit local jurisdictions to use simple postcards or letters for the acknowledgment notice.

The Content of the Acknowledgment Notice

The Act does not specify the content of the acknowledgment form except to state that it should advise the applicant of the "disposition" of their application. But as a practical matter, States might want to consider pre-printing messages that the local registration official can check off as appropriate. Perhaps something like:

.....

_____ Your application to register to vote has been received and accepted.
Your polling place is located at:

_____ Your application to register to vote has been received incomplete.
Please contact our office at the telephone number or address listed below.

_____ Your application to register to vote has been rejected because
(and list here the standard reasons why applications are rejected)

_____ Other _____

If you have any questions about this notice, please contact (*local election official's title and phone number*).

.....

Alternatively, local jurisdictions could program their computers to provide acknowledgment notices with responses appropriate to the individual applicant. This information could occupy the top two thirds of the card.

At a minimum, the form should provide the telephone number and address of the election office so recipients can contact the office in the event that either the second or third items above are checked. The form could also provide additional information regarding, for example, the political districts the person is eligible to vote in, the availability of services to persons with disabilities, how to request an absentee ballot, or the like.

The Format and Content of the Outgoing Confirmation Mailing(s)

If a registrant notifies the registrar of a change of voting residence either directly, or else indirectly through the Department of Motor Vehicles or other designated agency, the Act permits the registrar to take appropriate action without further confirmation (whether removing the registrant's name from the voter registration list or changing the registrant's address information) [Sections 8(a)(3)(A) and 8(f)].

If, on the other hand, the registrar only has reason to believe (either through information supplied by the Postal Service or because of some other uniformly applied measure) that the registrant *may* have changed address, then the Act requires the registrar to seek, *by forwardable mail*, address confirmation in writing from the registrant [Sections 8(c) and 8(d)].

Remember, the Act requires registrars to maintain for two years a record of all outgoing confirmation mailings [Section 8(i)(2)]. (See Chapter 7 for further record keeping requirements.)

The following are important elements of these outgoing confirmation mailings:

- the *format* of the mailing, and
- the *content* of the mailing.

The Format of the Outgoing Confirmation Mailing

The format of the outgoing confirmation mailing is left to the discretion of the States. But States might want to consider using a standard, preprinted, first class, forwardable, 12 x 6 inch format with a fold crease four inches from the top, a perforation eight inches from the top, and perhaps a fold-over sealing flap at the top. (See postal specifications in Appendix F below).

Such a format would accommodate enclosing the confirmation return notice (as a 4 x 6 inch postcard constituting the perforated bottom third of the mailing that could be folded up into the outgoing mailing). It would also provide a 6 x 8 inch field for the message to the registrant.

States should consider allowing the chief State election official to design the form. Local offices could then print the form, adding their own return addresses and telephone numbers to a camera-ready copy.

The Content of the Outgoing Confirmation Mailing

The content of the outgoing confirmation mailing may vary depending on the reason for the mailing. There are two scenarios:

- the registrar has received information from the Postal Service indicating that a registrant has moved to a different residence address within the same registrar's jurisdiction.

- the registrar questions whether or not the registrant continues to reside in the same jurisdiction (i.e.; either the Postal Service has disclosed that the registrant has moved outside of the jurisdiction or the registrant's continued residence within the jurisdiction otherwise needs to be confirmed).

When the Postal Service provides information indicating that the registrant has moved *within* the same jurisdiction, the Act requires the registrar to send a "form by which the registrant may verify or correct the address information" [Section 8(c)(B)(i)]. The Act does not specify the content of this outgoing mailing.

The Act, however, does require that the confirmation mailing to those whose continued residence within the jurisdiction is in question contain words to the effect that:

- if the registrant has *not* changed address or changed address within the jurisdiction, then they should return the response card not later than the close of registration (See *Date by Which Valid Voter Registration Applications Must Be Accepted* at the beginning of this chapter).
- if the card is not returned, then affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in any subsequent federal election up to the second general federal election after the confirmation mailing
- if the card is not returned and the registrant does not offer to vote by the second general federal election, then the registrant's name will be removed from the voter registration list
- if the registrant has changed address to a location outside the voter registrar's jurisdiction, information on how the registrant may register in their new jurisdiction [all above in Section 8(d)(2), also referenced in Section 8(c)(B)(ii)].

As a practical matter, in accordance with Section 8(f), States also may want to consider adding:

- a note that if the registrant has changed address within the registrar's jurisdiction, that change will be made in the voter registration list and (if it is the courteous practice of the registration office) the registrant will be informed of their new polling place.

In order to satisfy both categories of registrants who will be receiving confirmation mailings, States might want to consider adopting a single, all-purpose confirmation form such as:



___ IF, IN THE PAST ___ YEAR(S), YOU HAVE PERMANENTLY CHANGED THE ADDRESS WHERE YOU LIVE TO A LOCATION WITHIN (*jurisdiction*)

- Please detach, complete, and return the postcard at the bottom not later than _____ **even if this notice was mailed to your correct current address.** This change will be recorded in the voter registration list and you will be informed by mail of your correct polling place.
- If this card is not returned, affirmation or confirmation of your current address may be required at the polls on election day.
- If this card is not returned and you do not vote by the (*month and year*) general election, then your name may be removed from the voter registration list.

___ IF YOU HAVE PERMANENTLY MOVED TO AN ADDRESS OUTSIDE (*jurisdiction*) WITHIN THE PAST ___ YEAR(S)

- Please detach, complete, and return the postcard at the bottom **even if this notice was mailed to your correct current address.**
- Please note that in order to vote, you will have to register with the voter registration office in your new location (Consult your telephone directory).

___ IF YOU HAVE NOT PERMANENTLY MOVED TO A NEW ADDRESS WITHIN THE PAST ___ YEAR(S)

- Please detach, complete, and return the postcard at the bottom no later than _____.
- If this card is not returned, affirmation or confirmation of your current address may be required at the polls on election day.
- If this card is not returned and you do not vote by the (*month and year*) general election, then your name may be removed from the voter registration list.

If you have any questions about this notice, please contact (*local election official's title and phone number*).



Such an all-purpose approach would reduce costs. Election office records, however, would have to differentiate between notices sent to registrants who appear to have moved within the jurisdiction versus those sent to persons whose continued residence within the jurisdiction is questioned and whose name will be removed from the registry if they neither respond nor vote within the time period specified by the Act.

Alternatively, States may choose to develop two different notices to reflect the two different purposes for the confirmation mailing.

The Format and Content of Confirmation Return Notices

The Act requires that the confirmation mailings discussed above contain a *postage prepaid pre-addressed return form* [Sections 8(c)(B) and 8(d)(2)].

It should also be noted that the Act requires registrars to maintain for two years a record of all responses to confirmation mailings [Section 8(i)(2)]. (See Chapter 7 for further record keeping requirements).

Important aspects of the confirmation return notice include:

- the *format* of the card, and
- the *content* of the card.

The Format of the Confirmation Return Notice

Other than requiring that the confirmation return notice be a postage paid, pre-addressed card, the Act does not specify the format of the notice. Yet if States opt for something resembling the format of the confirmation mailing as described immediately above, then the confirmation return notice would take the form of a standard 4 x 6 inch postcard that, as a practical matter, seems the least expensive and most easily filed option. Its front side should, of course, be within postal specifications (See Appendix F).

The Content of the Confirmation Return Notice

Although the reasons for the confirmation mailing may vary according to the two scenarios described above, the content of the confirmation return notice could be standardized to satisfy both purposes. States may therefore want to consider adopting a single, all-purpose confirmation return notice containing something like the following:



FULL NAME _____
DATE OF BIRTH _____
IDENTIFICATION NUMBER (optional) _____
TELEPHONE NUMBER (optional) _____

THE ADDRESS WHERE I LIVE IS:

THE ADDRESS WHERE I RECEIVE MY MAIL IS (only needed if different from address where you live)

(Signature)

(Date)



The receiving registrar could then use this information according to either purpose of the confirmation mailing.

States might also include a reminder of the penalties for providing false voter registration information.

The Format and Content of the Final Notice of Removal

Although not required by the Act, States may want to require a final notice of removal from the voter registry:

- upon expiration of the “inactive” period;
- when information is received from the motor vehicle department or designated agencies that a person has moved from the registrar’s jurisdiction;
- when information is received from another election official that a registrant has subsequently registered in another jurisdiction;
- when information is received from a program to identify duplicate registrations that cross local jurisdictional boundaries; and
- upon request from the voter.

Such a notice may help avoid voter confusion on election day. This is so especially when an individual is removed based on change of address information obtained through the motor vehicle department or designated agency because the registrant may not know that they have crossed jurisdictional boundaries and must reregister.

As with other notices, important aspects of the final notice of removal include:

- the format of the notice, and
- the content of the notice.

The Format of the Final Notice of Removal

Jurisdictions that provide a final notice of removal have used either a standard preprinted or computer-generated letter, foldover mailer, or postcard format. Many jurisdictions courteously provide a means by which a registrant may respond to the notice in cases of error. This response section may be a detachable section of the letter or a pre-addressed response card or, at the very least, the telephone number of the local election official. (Examples of final notices are provided in Figures 5C and 5D.)

The Content of the Final Notice of Removal

The content of the notice of removal may vary depending upon the reason for the mailing. Alternatively, States may want to consider preprinting messages that the local registration official can check off as appropriate. Possibly something like:

.....

This is to let you know that your name has been removed from the list of voters who may vote in (*jurisdiction*) because:

_____ You have requested that we remove your name from the list. If you continue to live in (*jurisdiction*) and wish to vote in future elections, you must reregister. Contact (*local election official*.)

_____ We have received information from the (*motor vehicle department or agency*) that you have moved from (*jurisdiction*). If this is in error and you continue to live in (*jurisdiction*), please contact (*local election official*).

_____ You have registered to vote in another jurisdiction. If this is in error and you continue to live in (*jurisdiction*), please contact (*local election official*).

_____ You have not responded to our notice asking you if you still live in (*jurisdiction*) and you have not voted since we sent you that letter. If you continue to live in (*jurisdiction*) and wish to vote in future elections, you must reregister. Contact (*local election official*.) If you have moved from (*jurisdiction*) and wish to vote in future elections, you must register with the registration office where you live. (Look for the number in your telephone directory.)

If you have any questions, please contact (*local election official's title and phone number*).

.....

And perhaps also in a perforated response section:

.....

Dear (*Title of Local Registration Official*)

Please replace my name on the voting list of (*jurisdiction*) for the following reason:

I swear that the reason stated above is true.

Signature _____

Address _____

.....

SAMPLE FORMS USED IN LIST MAINTENANCE

**FIGURE 5A
SAMPLE NOTICE TO CANCEL REGISTRATION
IN FORMER JURISDICTION**

This notice provides for a carbon copy. The original is sent to the former jurisdiction. The copy is retained by the new jurisdiction and attached to the registration card.

THE ORIGINAL & CARBON COPY OF THIS FORM MUST BE SENT TO THE
GRANVILLE COUNTY BOARD OF ELECTIONS BY THE REGISTRATION OFFICIAL

CANCELLATION OF PREVIOUS REGISTRATION

I am now registered as an elector in Granville County, North Carolina and hereby authorize the cancellation of my previous registration in the City of _____ Date _____

State of _____, my last registration address therein being _____

Date of Birth _____ Present Address of Voter _____

Signature of Voter _____ Printed Name of Voter _____

Registration Official _____

FIGURE 5B
SAMPLE NONFORWARDABLE NOTICE TO CONFIRM
CONTINUED RESIDENCE WITHIN THE JURISDICTION

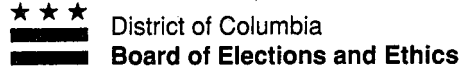
This notice includes check boxes on the front to encourage current residents to return cards mailed to registrants no longer living at that address.

Front

<p> ★ ★ ★ ████████ District of Columbia ████████ Board of Elections and Ethics P.O. Box 731, Washington, DC 20044-0731 Do Not Forward Address Correction Requested </p> <hr/> <p align="center"><i>D.C. Voter: Do We Have Your Correct Address?</i></p> <hr/> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Important! ⇒</p> <p>If this person does not live at the address shown, please check:</p> <p><input type="checkbox"/> <i>does not live here</i></p> <p><input type="checkbox"/> <i>has passed away</i></p> <p>Drop this card back in the mail. Thank you!</p> </div>	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;"> <p> <small>PRESORTED FIRST CLASS MAIL US POSTAGE PAID WASHINGTON, DC Permit No. 8577</small> </p> </div>
--	---

72CF707F-8D22-488C-B2E3-A4EB336E1770 : 000152 of 000182

Back




Do We Have Your Correct Address?

In order for you to vote, your voter registration must show the address where you now live. This is D.C. law. We are sending you this post card to check that we have your correct address.

- If your name and address are correct on this card, you do not need to do anything. Your voter registration is OK.
- If you have moved and this card was sent on to you, you need to send us your new address, in writing. By sending us your new address, you will bring your voter registration up to date and assure your right to vote in future elections.
- Use the form below to send us your new address.
- If the person this card was sent to does not live at the address shown, please check the correct box on the front of this card and drop it in the mail. Thank you!

En español: 727-2525
TDD: 639-8916

Questions? Call 727-2525

 **Address Change Form**

Name _____		Date of Birth _____
New Address _____		

Date _____	Signature _____	Telephone _____

Put in envelope and mail to: D.C. Board of Elections and Ethics,
P.O. Box 731, Washington, DC 20044-0731

72CF707F-8D22-488C-B2E3-A4EB336E1770 : 000153 of 000182

**FIGURE 5C
SAMPLE OF A LETTER OF FINAL REMOVAL FROM VOTER REGISTRY**

This is an example of a letter listing the specific reason the registrant is being removed from the registry and providing a means for the addressee to request that his or her name be replaced on the voting list.

TOWN OF GORHAM

270 Main Street
Gorham, Maine 04038

Tel. 207-839-5037

April 1, 1993

This is to advise you that your name has been removed from the voting list of the Town of Gorham for the following reason:

You no longer reside at the address shown above and have not notified us of a new address within the Town of Gorham

Your failure to reply within thirty (30) days will be deemed to indicate your agreement with this action.

BOARD OF VOTER REGISTRATION
Gorham, Maine

Dear Board of Voter Registration

I respectfully request that my name be replaced on the voting list of the Town of Gorham for the following reason:

I swear that the reason stated above is true.


Signature _____

Address _____

72CF707F-8D22-488C-B2E3-A4EB336E1770 : 000154 of 000182

FIGURE 5D
SAMPLE OF A LETTER OF FINAL REMOVAL
FROM THE VOTER REGISTRY

This is an example of a letter sent based on a computer-generated list of possible duplicate registrations within the state, prepared by the State election official. The review by the local jurisdiction indicated that the registrant probably registered in a new jurisdiction without canceling the registration in the former jurisdiction.

<p>Helen Purcell Recorder</p> <p>Cherie Pennington Chief Deputy Recorder</p>		<p style="text-align: right;">Office of The Maricopa County Recorder</p>
<p>TO:</p> <p>FROM: HELEN PURCELL, MARICOPA COUNTY RECORDER</p> <p>SUBJECT: VOTER REGISTRATION</p> <p>DATE: JANUARY 07, 1993</p>		
<p>In an effort to better serve the public and maintain accurate voter registration rolls, Arizona law provides a voter registration matching system to reveal duplicates.</p> <p>Arizona Revised Statute §16-168.I. states that the Secretary of State shall prepare a list of all duplicate registrations throughout the State. If a person is registered in more than one County, the County Recorder shall cancel the person's earlier registration and allow the most current registration to remain valid.</p> <p>A search of the voter registration files indicates that you were registered in Maricopa County on 05-05-89. Further, the files indicate that you are additionally registered in COCHISE County as of 06-19-92.</p> <p>For the reasons indicated above, your voter registration has been cancelled in Maricopa County. If you have changed residence since you registered in COCHISE County, you must re-register. If you have any questions, please call the COCHISE COUNTY RECORDER at (602) 432-9270.</p>		
<p>111 South 3rd Avenue • Phoenix, Arizona 85003-2281 • (602) 506-3535 • (Fax) 506-3069 • (TDD) 506-4028</p>		

**Attachment D to the
Statement of Interest of the United States
in Opposition to the Motion for a Temporary Restraining Order**

Kentucky State Board of Elections
(Proposed) Comprehensive List Maintenance Plan
2018

Kentucky State Board of Elections Comprehensive List Maintenance Plan 2018

Pursuant to KRS 117.015(1), the Kentucky State Board of Elections (“Kentucky SBE”) is charged with administering Kentucky’s election laws and supervising the registration and purgation of voters within the Commonwealth. Several Kentucky Revised Statutes, enacted in response to the National Voter Registration Act of 1993 (“NVRA”), address voter registration and voter purgation. The NVRA was enacted “to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office” while “ensur[ing] that accurate and current voter registration rolls are maintained.” 52 U.S.C. § 20501(b)(1) and (4). Specifically, Section 8 of the NVRA addresses voter list maintenance procedures and conditions under which registrants may be removed from voter registration lists and the procedures that must be followed before any removal may occur.

KRS 116.112 establishes the Commonwealth of Kentucky’s voter registration purge program and inactive voter lists and in 2015 the Kentucky SBE passed a Purge Program, incorporated herein by reference.

INITIAL MAILING AND SECOND MAILING

Pursuant to Section 8 of the NVRA and KRS 116.112, in the summer of 2018, the Kentucky SBE commenced an initial mailing. Recipients of this mailing will necessarily include voters, who, in addition to not voting in the last two primary and general federal elections, have not voted in a Kentucky primary or general election in a non-federal election year during the same time period. The initial mailing postcard, which is not forwardable, will indicate to the recipient that no action is needed if the name and address on the card appears to be correct. (See Exhibit A, attached). This postcard will not affect the registered voter's status if the postcard is not returned. The Kentucky SBE will identify those voters who are sent the initial mailing postcard in Kentucky's Voter Registration System ("VRS").

If the initial mailing postcard is returned to the Kentucky SBE either with a forwarding address or no forwarding address, a "return mail date" will be entered in the VRS. The VRS will be programmed to "pull" voter files with a return mail date to trigger a request to the Kentucky SBE's third-party mail vendor for a second mailing postcard to be issued. No second mailing postcards will be issued during the 90 days preceding any primary or general election. If the second mailing postcard is returned to the Kentucky SBE as undeliverable, upon receiving the undeliverable second mailing postcard, the Kentucky SBE will mark the voter in the VRS as "inactive."

The second mailing postcard will differ from the initial mailing postcard in that it will be forwardable and will request that the voter *confirm* his/her mailing address. (See Exhibit B, attached). There will be four prompts from which the voter may choose:

- 1) Name and address preprinted on the card is correct;
- 2) I have moved within the same county;

- 3) I have moved out of the county, but within Kentucky and wish to remain a registered Kentucky voter; or
- 4) I no longer live in Kentucky and request my registration be canceled.

The second mailing postcard will also include language provided in the NVRA that indicates that if the voter does not vote or return the postcard before the next two federal general elections, the voter's registration may be removed from the Commonwealth of Kentucky's VRS. (See Exhibit B, attached).

SECOND MAILING POSTCARD

If the second mailing postcard is returned, the following may occur:

- 1) If the voter indicates his/her name/address is correct, the voter will not be marked *inactive*.
- 2) If the voter indicates the address change is within the **same** county, the postcard will be forwarded to the county clerk to make appropriate changes within the VRS and the voter will not be marked *inactive*.
- 3) If the voter indicates the address change is **outside** the county, the voter will be removed as a registered voter from the VRS. The voter is given the instruction to visit govoteky.com or their *new* county clerk to reregister in their new county.
- 4) If the voter indicates the address change is **outside** the state, the voter will be removed from the VRS. The voter is instructed to either return the card, with their signature, or visit govoteky.com, where the voter can enter a special code, verify their identity and remove their registration.

If the second mailing postcard is *not* returned **or** is returned to SBE as "no forwarding address," the voter will be marked *inactive* in the VRS. After two federal general elections have passed and the voter did not vote or update their registration information, the voter will be removed from the VRS. A voter's status can be returned to *active* prior to the deadline above by voting and/or changing their information through a voter registration agency or by visiting govoteky.com.

The second mailing postcard, if returned, will be attached as an image to the voter's profile in the VRS. The physical copy will not be retained. (See Exhibit C, attached).

As stated above, the Kentucky SBE will conduct an initial mailing in the summer of 2018 (mailings/inactive status will be placed on "hold" from August 8 until the General Election on

November 6, 2018). Thereafter, the initial mailing based on other sources of information will occur in odd years, following federal general elections.

SOURCES OF INFORMATION

The Kentucky SBE will attempt to use several sources of information in order to identify registered voters who have moved without reporting the move to election officials. The timing of accessing the following sources of information will vary.

1. United States Postal Service (“USPS”): The Kentucky SBE will develop procedures, as well as direct county clerks to follow procedures, to follow when mail is returned to their offices by the USPS. In general, when mail sent by the Kentucky SBE or the county clerk is returned to sender, the following procedure will be followed:
 - a. If a county clerk receives returned mail where there is an address provided by the USPS that indicates a move **within** the **same** county, the county clerk will make the appropriate changes in the VRS. (USPS/National Change of Address (“NCOA”) is recognized by NVRA as a reliable source for change of address). Once a change is made by the county clerk, the voter will be sent a notification card verifying the change.
 - b. If the Kentucky SBE receives returned mail where there is an address provided by the USPS that indicates a move **within** the **same** county, the mail will be forwarded to the appropriate county clerk to make the change referenced in subsection (a) above.
 - c. If any mailing returned to sender (either the Kentucky SBE or county clerk) indicates a move outside the county, outside the state or with no forwarding address,

the registered voter will have a “return mail date” entered into the VRS and be added to the third-party mail vendor queue to be sent a second mailing postcard.

This process of mailing will be placed on “hold” during the 90 days preceding any primary or general election.

2. The Kentucky Transportation Cabinet: The Kentucky SBE will develop a Memorandum of Agreement with the Kentucky Transportation Cabinet for sharing lists of potential registered voters who have moved. Currently, no such agreement is in place, and the Kentucky Transportation Cabinet does not share with the Kentucky SBE any information regarding Kentucky residents who have surrendered Kentucky driver’s licenses or other state-issued identification to motor vehicle authorities in other states. Once an agreement is reached, the Kentucky SBE will follow the second mailing postcard procedure as detailed above.
3. The Kentucky SBE currently receives data/lists from other states that report when a Kentucky resident has registered to vote in a new state. Currently, a letter is sent to the voter’s former address requesting their signature to be removed from the Voter Registration System. The Kentucky SBE will alter the process to enter a “return mail date” for the voters for whom it receives notice of registration to vote in another state. The SBE will then follow the second mailing postcard procedure as detailed above.
4. The Kentucky SBE will join the Electronic Registration Information Center (“ERIC”) within the next six months and will use the information provided through ERIC to identify registered voters who may have moved to another state. The SBE will then follow the second mailing postcard procedure as detailed above.

INACTIVE LIST MAINTENANCE

The Kentucky's VRS will create an "inactive" status of registered voters, as it did in 2009 when voters were sent the NVRA mailing. As detailed in the "second mailing postcard" procedure, once the Kentucky SBE receives a second mailing postcard that is returned as undeliverable, the registered voter will have their registration coded/marked as "inactive." This coding will not remove the registered voter from the VRS; rather, the voter is still be able to vote and/or update their voter registration. A voter would be removed only after a period encompassing two federal general elections in which they did not vote or update their voter registration. An inactive voter's status will be restored to active if he/she performs any one of the following during the two federal elections cycle: (1) vote or appear to vote in any election; (2) update their voter registration information at the county clerk's office; (3) update their voter registration information through govoteky.com; or (4) update their voter registration information at any social service agency that accepts voter registration.

The inactive voters will not appear on the regular precinct roster of registered voters for primary, general or special elections. Rather, an inactive voter will be asked to complete SBE Form 32 - Oath of Voter, fill out a new Voter Registration card, and sign the supplemental roster. If the precinct where the inactive voter appears to cast a ballot has adopted electronic pollbooks, the electronic pollbooks will "flag" these voters; the poll worker will be directed to have the voter update their information and complete an Oath of Voter prior to casting their vote. Upon completion of an Oath of Voter form, the voter is removed from the inactive list.

REMOVAL

A Kentucky registered voter who returns the second mailing postcard, with a signature, indicating they have moved out of the county or state will be removed from the VRS.

Registered voters who remain on the inactive list the day after two federal general elections have passed will be removed from Kentucky VRS. However, as one final safeguard, a query will be run prior to any removals to ensure there has been no activity by the voter since the inactive date was set.

Data regarding the removed voter will be archived in the VRS.

DATABASE MANAGEMENT

The Kentucky SBE will determine how to create uniform queries, how to match fields from comparative lists shared with the SBE, and how to move registered voters to a different status within the system (*e.g.*, inactive, removed, etc.).

LOCAL OFFICIALS

Several of the functions set forth above will fall within the purview of the local county clerks. These include, but are not limited to:

1. If the second mailing postcard is returned by the voter and indicates a new address within the same county, the county clerk must update the voter registration information in VRS. SBE will monitor updates made after the inactive date and remove inactive the designation from updated records.
2. If the second postcard mailing is returned indicating an updated address outside the registered county, the county clerk must communicate with the registered voter. (This information would be sent to the NEW county).

3. If the county clerk receives returned mail indicating the voter has moved OUTSIDE their jurisdiction, the county clerk should enter a “return mail date” in the VRS. This will trigger a second mailing postcard as outlined above.
4. Kentucky law allows county clerks to request authorization from the Kentucky SBE to send address confirmation notices. If a county clerk requests authorization to initiate a mailing from their office, they may conduct their own mailing as outlined in this document.

PUBLIC OUTREACH/MARKETING

The Kentucky SBE will work with the communications director for the Secretary of State, Chief Election Official and Chair of the Kentucky SBE, to establish and implement an education and outreach program for Kentucky citizens, both registered voters and unregistered voters and they will also communicate with and educate the county clerks regarding Kentucky’s list maintenance endeavors. (See Exhibits E & F, attached).

At a minimum, upon the mailings to registered voters, identified above, being conducted, the communications director will provide press releases to the media detailing the purpose of the mailing. (See Exhibit G, attached). The communications director will also, throughout the year, utilize social media to inform registered voters of the need to update their information if it has changed. (These notifications will also highlight Kentucky law as it applies to party changes, eligibility to vote and closed primary elections).

EXHIBIT "A" – First Postcard

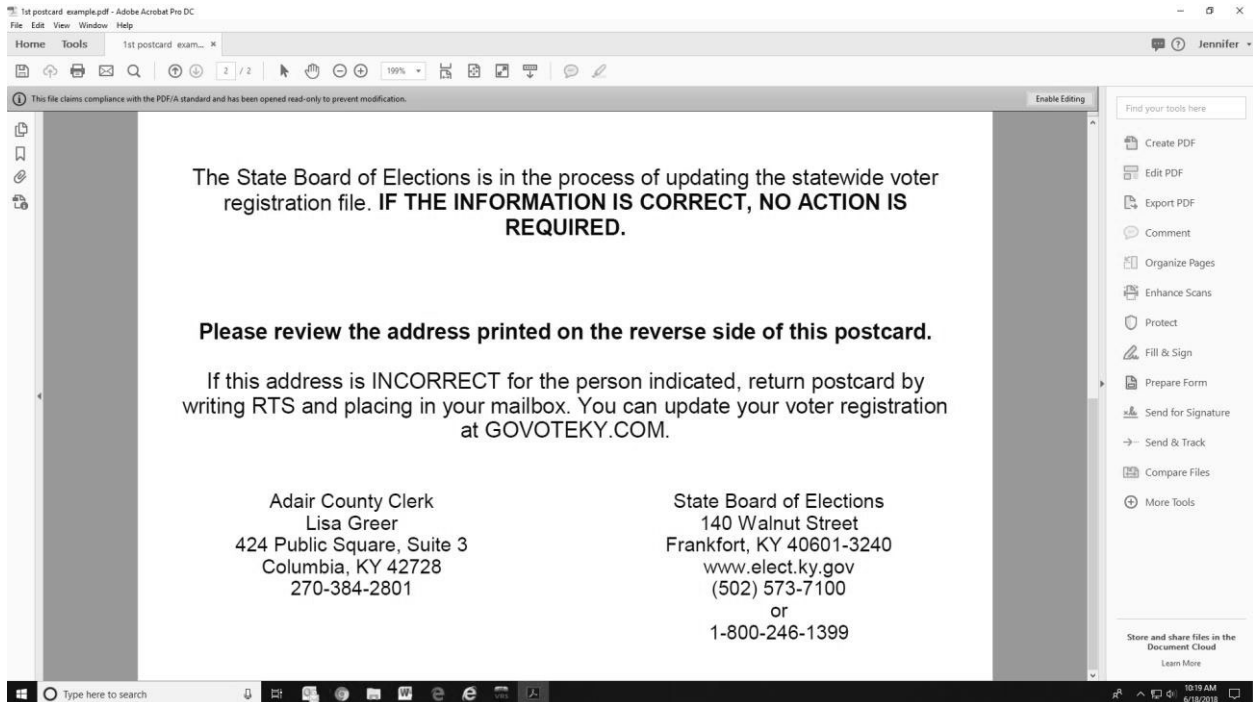
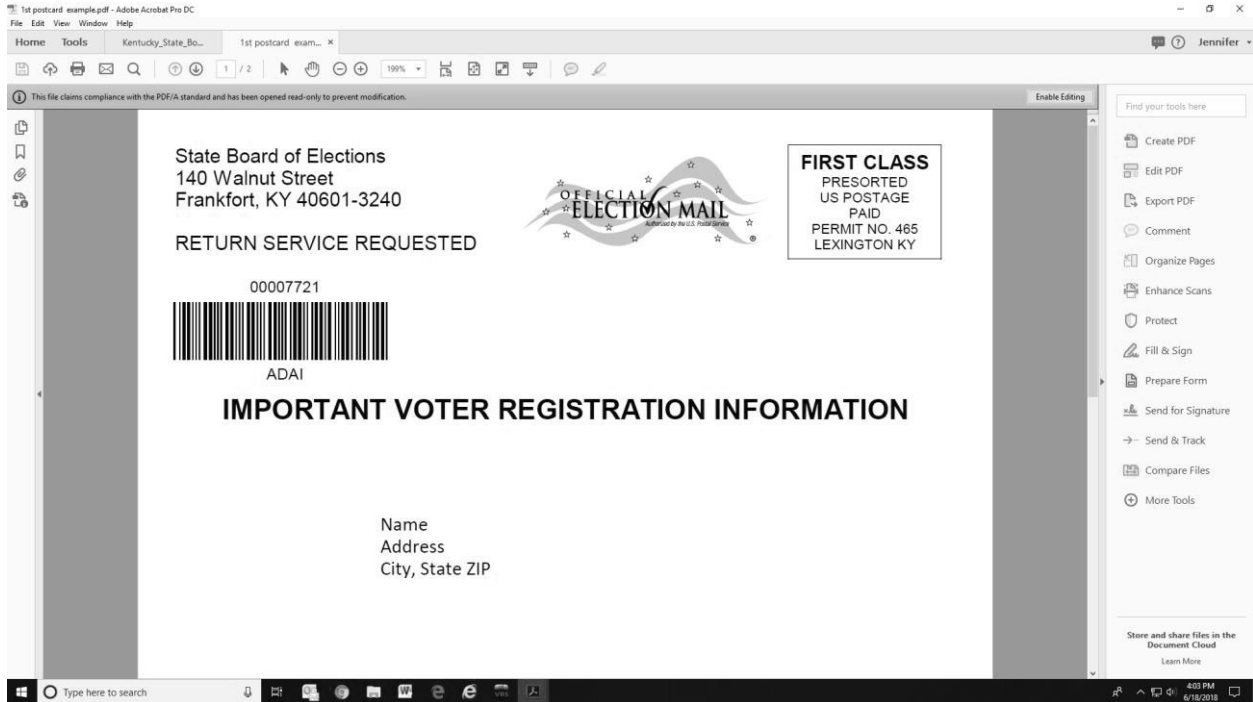


EXHIBIT "B" – Second Postcard



Kentucky
State Board of Elections
 140 Walnut Street
 Frankfort, KY 40601-3240



FIRST CLASS
 US Postage
PAID
 Lexington, KY
 Permit #465

IMPORTANT VOTER REGISTRATION INFORMATION

TI P1
 0123456

John Q. Public
 123 Main St Apt 456
 Anytown, KY 12345-6789



TO MAINTAIN YOUR PRIVACY, PLEASE FOLD OVER AND SECURE WITH TAPE

**PLEASE FILL IN THE CIRCLE APPLICABLE TO YOU,
 THEN FOLLOW INSTRUCTIONS TO COMPLETE.**

- Name and address preprinted on the card is correct.** **Pin: 12345678**
Please print your full name below, sign, date and return.
- I have moved within the same county.** *Please make changes below, sign, date and return OR visit GoVoteKy.com to make changes to your voter registration.*
- I have moved out of the county, but within Kentucky and wish to remain a registered Kentucky voter.** *Please visit GoVoteKy.com to make changes to your voter registration OR contact your NEW county clerk. Returning this card will not update your registration in your new county.*
- I no longer live in Kentucky and request my registration be canceled.** *Please print your full name below, sign, date and return OR visit this website: <https://vrsws.sos.ky.gov/ovc>.*

LAST NAME FIRST NAME MIDDLE NAME SUFFIX (CIRCLE ONE) JR. SR. II III IV

ADDRESS WHERE YOU LIVE (DO NOT GIVE P.O. ADDRESS) APT. NO. CITY ZIP

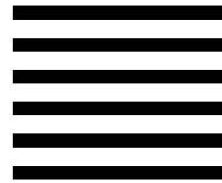
ADDRESS WHERE YOU GET MAIL (IF DIFFERENT FROM ABOVE) APT. NO. CITY ZIP

WORK PHONE (INCLUDING AREA CODE) HOME PHONE (INCLUDING AREA CODE)

VOTER'S SIGNATURE DATE



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO. 1007 FRANKFORT, KY

POSTAGE WILL BE PAID BY ADDRESSEE

STATE BOARD OF ELECTIONS
140 WALNUT ST.
FRANKFORT, KY 40601-9866



IMPORTANT VOTER REGISTRATION INFORMATION

1. TO ENSURE THE ACCURACY OF KENTUCKY'S VOTER REGISTRATION LISTS, **IT IS IMPORTANT THAT YOU RESPOND TO THIS NOTICE.**
2. **YOU ARE RECEIVING THIS NOTICE BECAUSE THE KENTUCKY STATE BOARD OF ELECTIONS HAS BEEN NOTIFIED BY ONE OR MORE MEANS THAT YOU NO LONGER RESIDE AT THE ADDRESS LISTED IN OUR VOTER REGISTRATION RECORDS.**
3. IF YOU DID NOT CHANGE YOUR RESIDENCE OR IF YOU HAVE MOVED WITHIN THE SAME COUNTY, **PLEASE RETURN THIS CARD NO LATER THAN 28 DAYS BEFORE THE NEXT ELECTION.** IF YOU DO NOT RETURN THIS CARD BY THAT DATE, CONFIRMATION OF YOUR ADDRESS MAY BE REQUIRED BEFORE YOU CAN VOTE.
4. **VOTER REGISTRATION ADDRESS CHANGES MAY BE MADE BY RETURNING THIS FORM OR VISITING GOVOTEKY.COM. RETURNING THIS CARD WILL NOT UPDATE YOUR REGISTRATION IN YOUR NEW COUNTY.**
5. IF THIS FORM IS NOT RETURNED AND YOU DO NOT VOTE BY THE SECOND GENERAL FEDERAL ELECTION FROM THE DATE OF THIS NOTICE, **YOUR NAME MAY BE REMOVED FROM THE KENTUCKY VOTER REGISTRATION LIST.**
6. IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, PLEASE CONTACT THE STATE BOARD OF ELECTIONS AT **1-800-246-1399.**

DATE OF NOTICE:
MM/DD/YYYY

EXHIBIT “C” – Voter Registration System Mapped process

VRS List Maintenance
6/6/2018 v. 1.4

REVISED	FULL FILENAME
6/22/2018	D:\DOCUMENTATION\ACTIVITYDIAGRAMSPAGE1.VSDX

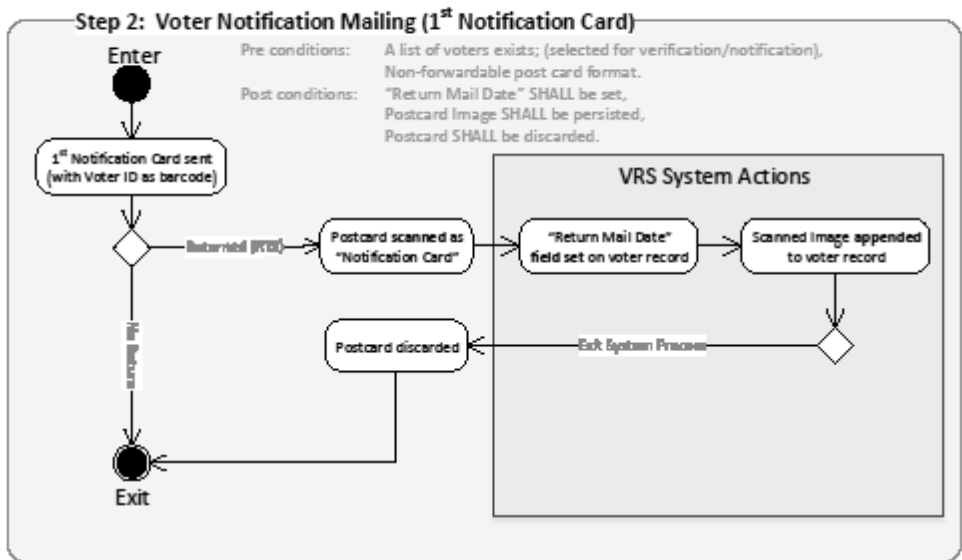
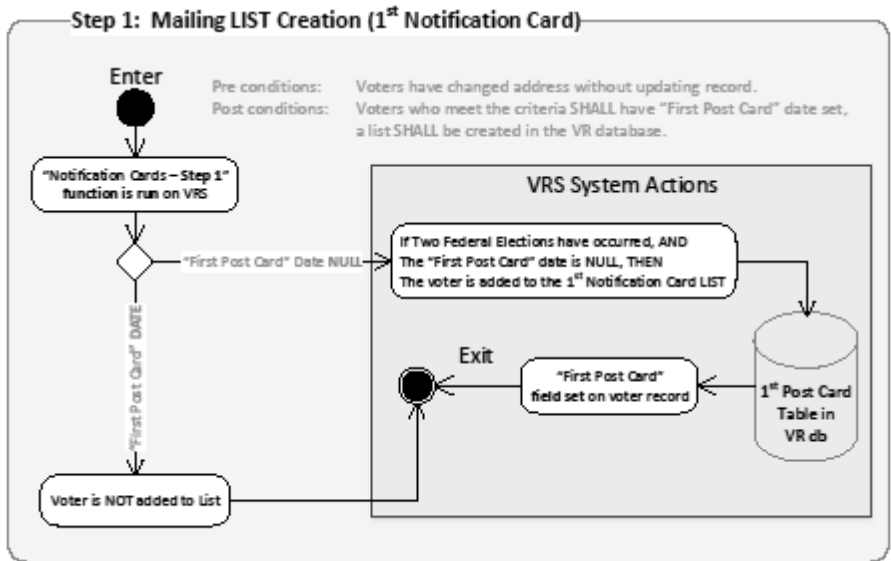


EXHIBIT “D” – ERIC bylaws

Last updated on March 28, 2014; May 21, 2015; October 28, 2015; December 16, 2016

**ELECTRONIC REGISTRATION INFORMATION CENTER,
INC.**

BYLAWS

72CF707F-8D22-488C-B2E3-4EB336E1770 : 000169 of 000182

EXHIBIT “E” – Memorandum to County Clerks about first postcard mailing



COMMONWEALTH OF KENTUCKY
STATE BOARD OF ELECTIONS
ALISON LUNDERGAN GRIMES
Secretary of State & Chief Election Official

MEMORANDUM

SBE 18-26

To: County Clerks

Via: E-mail and Fax

From: Allison Lundergan Grimes, Secretary of State and Chief Election Official
Jared Dearing, Executive Director
Jenni Scutchfield, Assistant Director

Date: June 20, 2018

Re: Address Verification Postcard Mailing

The State Board of Elections is in the process of mailing out approximately 617,000 postcards to voters who may have moved out of their county or out of the Commonwealth of Kentucky. The Address Verification Card mailing is part of our commitment to follow the requirements of Kentucky and Federal statutes relating to voter list maintenance.

The instructions on the postcard direct anyone who receives the card whose address information is incorrect to contact their local county clerk's office, the State Board of Elections, or visit GoVoteKY.com to correct the error. A copy of the front and back of this postcard is attached.

Postcards returned with a forwarding address within the same county will be sent from SBE to your attention to make changes to the Voter Record to indicate the voter's correct address.

Feel free to direct voters with any questions about this mailing to SBE.

If you have questions or concerns, please do not hesitate to contact us.

Attachment

140 WALNUT STREET
FRANKFORT, KY 40601-3240

The logo for the Kentucky State Board of Elections, featuring the word "Kentucky" in a stylized font with a horse head silhouette above it, and "STATE BOARD OF ELECTIONS" below. Below the logo is the text "AN EQUAL OPPORTUNITY EMPLOYER M/F/D".
AN EQUAL OPPORTUNITY EMPLOYER M/F/D

(502) 573-7100
Fax (502) 573-4369 or (502) 696-1952
Website: www.elect.ky.gov

EXHIBIT “F” – Memorandum to County Clerks about first postcard mailing



COMMONWEALTH OF KENTUCKY
STATE BOARD OF ELECTIONS
ALISON LUNDERGAN GRIMES
Secretary of State & Chief Election Official

MEMORANDUM

SBE 18-27

To: County Clerks
Via: E-mail and Fax
From: Alison Lundergan Grimes, Secretary of State and Chief Election Official
Jared Dearing, Executive Director
Jenni Scutchfield, Assistant Director
Date: July 10, 2018
Re: Address Verification Card Responses

Please review the following scenarios of calls your office may be receiving regarding the "Address Verification" postcards that have been mailed in the last few weeks. This mailing will help us to maintain a high level of accuracy on the Voter Registration Database.

- Caller states they received a card for a deceased individual.
Ask the caller to provide the confirmation of the person's death to the county clerk. List the pertinent information on form SBE-03, Deceased Voter Notice, and fax, email or mail to SBE. SBE will receive the information and remove the voter as deceased in the Voter Registration System.
- Caller states they received a card for someone they know has moved out of state (usually son or daughter).
Ask the caller to notify the person who has moved to contact SBE via email, (vrshelpdesk@ky.gov), or send SBE a note, including their date of birth and signature, asking to be removed from the voter registration. Once the note is received and the record is located on the Voter Registration System, the person can be removed from the database. If the caller states the person who moved out of state will not do the above, request they write "Return to Sender" (RTS), "Moved out of State" or "Not at this Address" on the card and put back in the mail.

140 WALNUT STREET
FRANKFORT, KY 40601-3240


AN EQUAL OPPORTUNITY EMPLOYER M/F/D

(502) 673-7100
Fax (502) 673-4309 or (502) 696-1952
WEBSITE: www.elect.ky.gov

EXHIBIT "G" – Press release regarding List Maintenance

Scutchfield, Jennifer

From: Queen, Bradford (SOS)
Sent: Friday, June 22, 2018 3:12 PM
Subject: State Board of Elections Initiates Voter Mailing



June 22, 2018

FOR IMMEDIATE RELEASE

Bradford Queen
Office of the Secretary of State
502.782.7407

State Board of Elections Initiates Voter Mailing

FRANKFORT, Ky. (June 22, 2018) – Some Kentucky registered voters may receive an address verification card in their mailbox over the next few days, Secretary of State Alison Lundergan Grimes announced Friday.

In an effort to ensure accurate records, the State Board of Elections sent an address verification mailing this week to voters who may have moved. Postcards were mailed to the addresses on file for approximately 600,000 registered voters – people who have not voted in the past four years nor made any updates or changes to their voter registration during the same time.

"Voters who receive the card are absolutely still eligible to vote. As long as I am Secretary of State and Kentucky's chief election official, the state will never unilaterally remove voters from our registration lists. This mailing is an effort to satisfy requests of the federal government," said Grimes.

Voters who receive the card can still vote. If the postcard contains their correct address, they do not need to do anything at all.

Any person who receives a card with incorrect information should mark "Return to Sender" on the card and place it back in the mail.

If the State Board of Elections receives undeliverable cards from the mailing, another postcard will be mailed as required by law. If a voter does not respond to a second mailing, a waiting period of two federal elections begins to see if the voter casts a ballot or updates their information during that time.

"I want to reassure all Kentucky voters, while I am chief election official, we will absolutely not remove any voter without due process. I will fight any effort to suppress the vote in Kentucky by unilateral purging of the voter rolls," Grimes said.

Voters who wish to verify or check their registration should visit GoVoteKY.com.

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**Attachment E to the
Statement of Interest of the United States
in Opposition to the Motion for a Temporary Restraining Order**

Order Denying Injunction and Granting Partial Summary Judgment
Stumbo v. State Board of Elections, No. 06-CI-610 (Franklin Cir. Ct. Oct. 2, 2006)

<p>ENTERED</p> <p>OCT 02 2006</p> <p>FRANKLIN CIRCUIT COURT SALLY JUMP, CLERK</p>
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COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL BRANCH
II DIVISION

COMMONWEALTH OF KENTUCKY
ATTORNEY GENERAL GREGORY STUMBO

PETITIONER

v.

Case No. 06-CI-610

COMMONWEALTH OF KENTUCKY
STATE BOARD OF ELECTIONS

RESPONDENTS

and

COMMONWEALTH OF KENTUCKY
SECRETARY OF STATE

ORDER DENYING INJUNCTION AND GRANTING

PARTIAL SUMMARY JUDGMENT

This case is before the Court on Petitioner and Respondents' reciprocal Motions for Summary Judgment.

Facts

The facts in this case are not in dispute. In August of 2005, the Executive Director of the State Board of Elections, Sara Ball Johnson, began discussing the possibility of participating in a "state data match" (or, "pilot project") with South Carolina and Tennessee. These states were motivated by a desire to clean up their voter rolls by identifying individuals who were registered to vote in more than one state. Kentucky, South Carolina, and Tennessee were advantageously situated to work with each other because they shared both geographical proximity and were among only five states that used a nine-digit social security number to distinguish among unique voters. The idea behind the "pilot project" would be to use various fields in a computer program,

among them the nine-digit social security number, to compare voters on the three states' voter rolls and isolate those individuals who were registered in more than one state. The states reached no agreement as to what each state would do with the information the matching program produced.

Secretary Grayson informed the State Board of Elections of the August conference call and the "proposal to participate in a matching of voter registration data with Tennessee and South Carolina." September 20, 2005 State Board of Elections Meeting Minutes. No member of the Board moved for a formal vote, and no formal vote was taken on the proposal.

In the months following the meeting, representatives from Kentucky sent formatted voter data to representatives in South Carolina. The South Carolina Secretary of State's office used a program to "match" the Kentucky voter rolls with those of Tennessee and South Carolina. After running the program, the South Carolina computer programmers sent two files back to Kentucky containing the voters who were registered in both Kentucky and either Tennessee or South Carolina. In February of 2006, Secretary Grayson updated the Board of Elections on the progress of the voter matching program. The record reflects that the board members were in collective agreement about participating and, again, no member moved for a formal vote.

In April of 2006, Kentucky, using the information provided by South Carolina, had identified those people on the voter rolls who were registered more recently in either South Carolina or Tennessee. On April 10th and 11th, the Secretary of State's office removed 2,110 voters who were registered in both Kentucky and South Carolina and 5,995 who were registered in Kentucky and Tennessee. These voters were placed in a

“year-to-date” file available to county clerks to help clarify a voter’s status during election day challenges. Ms. Johnson reported the voters’ removal at the April 18th, 2006 meeting of the State Board of Elections. No notice was given to these voters prior to the May 16th primary.

After the Secretary of State’s office issued a press release touting the pilot project as a way of maintaining better voter rolls, the Attorney General’s office filed an Open Records Request for all records pertaining to this program. Upon receipt of the records, this suit, seeking a Declaration of Rights and a Permanent Injunction, was filed. The Secretary of State’s office sent notice to the 8,105 removed voters in August.

Applicable Law

Petitioners are seeking a permanent injunction enjoining the Secretary of State and the State Board of Elections to restore the voters removed from the rolls as a result of the pilot project. They seek another injunction prohibiting the Secretary and the Board from conducting a purge of voters due to a change of residence without following the statutory requirements of KRS 116.112. They also seek a declaration of rights. Both parties have moved for summary judgment.

The Court grants summary judgment when no issues of material fact exist for which the law provides relief. CR 56.03. Only when it appears from the facts that the nonmoving party cannot produce evidence at trial in favor of a judgment on his behalf should summary judgment be granted. Steelevest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476, 480 (1991). The record must be viewed in light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor. Id. “The inquiry should be whether, from the evidence of record, facts exist

which would make it possible for the non-moving party to prevail.” Welch v. Am. Publ'g Co. of Ky., 3 S.W.3d 724,730 (1999).

This Court “may make a binding declaration of rights” when the parties have presented an actual controversy to the Court. KRS 418.040. This rule requires only an “actual controversy,” thus, the most elemental requirements of justiciability are all the parties must show the Court. The parties in this case have satisfied the requirements of justiciability: the case is ripe and is not moot.

Analysis

Essentially, the Secretary of State and Attorney General disagree on what statute governs the Secretary and the State Board of Elections when they endeavor to “clean up” the voter rolls by matching interstate databases to identify those voters registered in more than one state. The Secretary of State and the Board believes the program is legal under KRS 116.0452 which authorizes removal of a registered voter “upon request of the voter.” KRS 116.0452. They argue that registering to vote in another state amounts to an implicit, if not explicit, “request” to be removed from Kentucky’s voter rolls. They cite to a U.S. House of Representatives Committee Report finding that “a ‘request’ by a registrant would include actions that result in the registrant being registered at a new address, such as registering in another jurisdiction....” Respondents’ Motion for Summary Judgment, p. 16.

The Attorney General, however, believes that this sort of matching program is governed by KRS 116.112, outlining the requirements for a “voter registration purge program.” KRS 116.112(1). This program is designed to provide the State Board of Elections another vehicle by which to maintain accurate voter rolls by helping “identify

voters whose addresses may have changed,” but also provides the voters with more notification of their imminent purgation from the voter rolls in their county. This program uses “the change-of-address information supplied by the United States Postal Service thorough its licensees or other sources” to identify those voters who may be inaccurately registered. The statute, however, prohibits removing a voter from a county’s voter rolls unless the Board first provides notice and the voter confirms in writing a change of address or fails to respond to the notice and then fails to vote in two general elections for federal office following notice. KRS 116.112(3) & (4). The Attorney General argues that the interstate database matching program constitutes “other sources” analogous to “information supplied by the USPS” and therefore the Board must provide voters with the notice protections outlined in KRS 116.112.

At the outset of our decision, it is important to note that we believe malicious or partisan intent motivated neither the State Board of Elections nor the Secretary of State. Rather, we believe all parties in this case are striving to carry out their various constitutional and statutory mandates. The State Board of Elections is statutorily required to supervise the registration and purgation of the voters within Kentucky. We believe the “pilot program” was an innovative way to work with other states to produce more accurate voter rolls. That innovation should be commended.

However, it is clear to this Court that the program was an effort to systematically purge voters from the registration rolls. We do not intend that to connote a nefarious intent, but rather to say that the Board and the Secretary created a system by which thousands of voters were removed from Kentucky’s election rolls. This was done through a process of matching data formatted in various ways using various computer

programs across various platforms. The resulting “match” was used to justify a voter’s purgation from Kentucky’s voter rolls. This “match” is not a “request of the voter,” as the Respondents argue. Rather, the “match” constitutes “other information” as used in KRS 116.112. This idea is clearly enunciated in the Amicus Curiae brief:

The information on which Kentucky relied was simply a list of matches that did not contain any specific request for removal of any specific voter. The program was carried out on the assumption that the names matched by running a computer program on separately compiled databases represent the same person, and therefore, a primary record must exist signed by that voter. The Respondents conclude then the match should be construed to be a request for removal from the voter registration list. To the contrary, the match only provides the inference of a request. It is not proof, much less the evidence of a request for removal.

These matches are, indeed, “inferences of a request.” No doubt, these inferences should be rigorously pursued by the Board and the Secretary, but these matches are “other information” and not a “request of the voter.” Therefore, the State Board of Elections and the Secretary of State must conduct future purges of voter rolls based on such database matching according to the dictates of KRS 116.112.

Before readers begin to believe this Court to be Luddites, we will reiterate that we believe database matching to be a necessary tool to maintain accurate voter registration information in our increasingly mobile world. However, the Court notes that at least 259 purged voters showed up to vote in Kentucky during the May primary. This indicates up to a 10% error rate in Kentucky’s first attempt to match interstate data with our voter rolls.¹ Petitioner’s Motion for Summary Judgment, p. 12. No doubt this alleged error rate will decrease as states gain increasing experience with database matching, but this Court believes that the notice provided by KRS 116.112 will drastically reduce the

¹ $8,105 \text{ voters purged} \times 0.31 \text{ voter turnout} = 2,512.85$. $2,512.85 \div 259 \text{ purged eligible voters} = 10.3\% \text{ error rate}$.

number of purgation errors before elections and confusion at the polls on Election Day. So, beyond being statutorily required because database matching information qualifies as "other information" under KRS 116.112, this Court approvingly notes that the notice the Respondents have agreed to provide in the future is a good idea.

As to the Petitioner's complaint that the Secretary of State acted without approval from the State Board of Elections, we find this argument to be without merit. Whether it would be *advisable* to seek a formal vote from the Board before proceeding to purge over 8,000 voters from Kentucky's rolls is not the issue. Rather, the question is whether a formal vote is necessary. It is not. KRS 61.805(3) defines "action taken" by a public agency to mean "a collective decision, a commitment or promise to make a positive or negative decision, or an actual vote by a majority of the members of the governmental body." Clearly, there are more ways than one for a committee to take action than by formal vote. The minutes of the State Board of Elections clearly reflect that the Board reached a "collective decision" to proceed with the interstate database matching program. Thus, the Secretary's actions were not an unconstitutional, *ultra vires* exercise of power. On this point, the Attorney General's Motion for Summary judgment fails.

In light of our holding that the purgation of voters based on the fruits of any interstate database matching efforts must comply with KRS 116.112, the question regarding what to do with the 8,105 already-purged voters remains. The Secretary of State and Board of Elections has done much by voluntarily notifying the purged voters in August of the Board's action. However, compliance with the dictates of KRS 116.112 requires the Board and the Secretary to take additional action. Based on our reading of KRS 116.112, after sending notice to the purged voters, the Board must place these

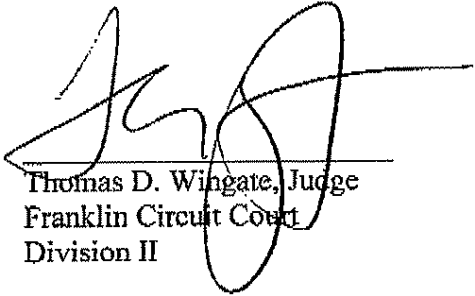
voters on an inactive list, pursuant to KRS 116.112(5) for at least two general elections for Federal office.

At this point, we believe an injunction ordering such compliance to be unnecessary. We believe the Board and Secretary will do what is necessary to act in accordance with our Declaration of Rights by Election Day. Furthermore, we believe a permanent injunction requiring the Board and Secretary's compliance with KRS 116.112 in the future would be not only unnecessary, but also patronizing, as we have full confidence that the Respondents will conform their future behavior to what the law requires now that the law regarding how to conduct a purgation of voters based on database matching has been clarified.

As stated above, the facts are not in dispute. No issue of material fact exists in this case. Thus, based our holding that KRS 116.112 governs the purgation of voters who have been "matched" through a database matching program, Petitioner's Motion for Summary Judgment is GRANTED in part and DENIED in part and Respondent's Motion for Summary Judgment is DENIED. The Petitioner's Motion for Permanent Injunction is DENIED.

This is a FINAL and APPEALABLE order and there is NO JUST CAUSE for delay.

SO ORDERED, this 2 day of October, 2006.



Thomas D. Wingate, Judge
Franklin Circuit Court
Division II

Distribution

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