

Revised Testimony of Dr. William Rittenberg for the Michigan Election Reform Alliance.Org to the National Commission on Voting Rights Michigan Hearing; Wayne State University Law School, January 9, 2014

The 2006 Michigan Voter Purge

In 2006 Michigan's Secretary of State initiated a large statewide program to cancel mistaken voter registrations on Michigan's computer voter list, a client-server database system called the Qualified Voter File (QVF). Effectively, a Michigan citizen's right to vote depends on the citizen's computer record in this database system. Even when a citizen meets Michigan legal requirements to vote and has submitted a valid application to register, if the citizen's registration information is not entered accurately or in a timely manner into the system, or if a citizen's database record is incorrectly purged or modified before an election, the citizen will be denied the right to cast a vote at the polls.

Shortly after the statewide Michigan voter purge began the Michigan Election Reform Alliance (MERA) saw worrisome blog posts about the program, which otherwise received scant media attention. Stimulated by the initial blog posts MERA undertook an in-depth, two year investigation of the program's origins, implementation, and outcomes. In 2009 it published a detailed report describing what actually happened in the voter purge, which is available with all the supporting evidence at <http://www.michiganelectionreformalliance.org/2006MIVoterPurge.pdf>.

Today's testimony summarizes MERA's findings and recommendations from this investigation. Based on numerous flaws in the Michigan program, MERA believes that **independent oversight is needed of the way local officials maintain state voter database systems**. Local list maintenance policies and practices which put citizens' right to vote at risk should not be permitted, and stronger federal guidelines would be highly desirable.

The 2006 Michigan Voter Purge Program

The 2006 voter list cleanup program began with a mass mailing of postcards to all 7,000,000 registered Michigan voters. About 680,000 postcards were returned to the Michigan Bureau of Elections (which reports to the Secretary of State) as undeliverable. These returned cards were then screened to identify voters who might no longer live in the jurisdiction where they were registered and whose registration might therefore be invalid under Michigan law. Special software was added to the state's voter

database (the QVF) to process the returned postcards. Using the new software, 230,000 voters were tagged on the QVF for eventual cancellation and were sent a federally mandated notice that their registration might be cancelled. After a grace period of two years (also mandated by federal law) voters on the initial cancellation list who had not voted in an intervening election or responded to the notice to clear up their registration status had their registrations cancelled by the QVF. Overall, the program cost \$2,000,000 in federal (HAVA) funds and cancelled the registration of 122,598 Michigan voters in the QVF.

In many respects this 2006 lists cleanup program was unprecedented in the history of Michigan election administration. Unlike any previous list maintenance efforts, the 2006 program was initiated, designed, and implemented centrally by the Bureau of Elections in the Secretary of State's office in a top-down fashion without consulting with affected voters, their elected representatives, or local clerks. The postcard used in the mass mailing was deliberately designed to hide the fact that it was the beginning of a voter purge. Voters (including individual clerks) who received it were not aware that their voter registration was being checked. The clerks whose traditional role it is to manage cancellation of registrations in their jurisdiction were also kept in the dark about the purge process until it was well underway. Even the final cancellation date was withheld from clerks and the public until the Bureau of Elections completed the cancellations of the 122,589 voter registrations. Effectively the centralized program usurped the legal role of Michigan's local clerks to correct mistakes in the Michigan voter list. The new software which the state Bureau of Elections added into the QVF to conduct the program transferred final control over cancellation of voter registration from local clerks to the Bureau. This same software was designed so the Bureau could conform to federal requirement under the National Voter Registration Act that voters be given notice and a two year grace period before having their registration cancelled. However, in two other respects, the program violated provisions of the NVRA. It failed to keep legally required records of which voters received or responded to the mandatory cancellation notice. It also failed to treat all returned postcards uniformly. Of the approximately 680,000 returned postcards, only 230,000 were processed and placed on the cancellation list, but another 110,000 additional returned pieces which should have been added to the cancellation list by the same criteria were ignored. MERA was unable to determine whether there was a pattern in processing the returned postcards that might be judged discriminatory, either geographically or otherwise.

As regards the program's effectiveness, when it was being planned, the Secretary of State told the Civil Rights Division of the Department of Justice that the program would cancel 800,000 invalidly registered voters from Michigan's voter list. In the end, the number of registrations that were actually cancelled was 122,598 voters. Among these cancelled voters MERA found that approximately 2,611 had valid voter registration and were cancelled by mistake—a 2.1% error rate. The program made no provision to detect or correct such errors and mistakenly deprived these validly registered Michigan citizens of their right to vote. Also the program proved wasteful and less cost-effective than other cooperative list cleanup efforts that were already underway with local clerks before the statewide program began. Thus, in the statewide program the Bureau spent \$2,000,000 million to tag 230,000 potentially invalid registrations for cancellation, at a cost of \$8.69 per record, while the cooperative local efforts reportedly spent \$361,000 to tag 229,000 potentially invalid registrations, at a cost of only \$1.58 per record.

Considering such difficulties, it is natural to ask, why would Michigan's Secretary of State and state election officials undertake such a massive, expensive, time consuming effort when they had other pressing work to do. Though not ironclad, considerable evidence suggests the answer is that the program was instigated because of pressure on Secretary of State Land and the Bureau of Elections by partisan political appointees in the Civil Rights Division of Bush Department of Justice. Michigan's 2006

purge program seems to have been part of a national pattern, in which political appointees exerted pressure to initiate massive voter list cleanups in swing states in the lead up to the 2006 election. In some of these cases, the state initiatives were contested in the courts and found to be illegal. It is to the credit of Michigan election officials that they managed to follow at least some NVRA requirements while conducting the program under partisan pressure and probably avoided compromising any Michigan elections.

Recommendation #1 – Policy Development_

Existing federal and Michigan law define important but limited constraints on the voter list maintenance process in Michigan. Within those legal constraints, however, a single elected official – Michigan’s Secretary of State – is free to order major changes in the list maintenance process. MERA’s investigation suggests this governance arrangement leaves the Secretary of State and Michigan open to partisan pressures on its list maintenance effort. In the 2006 program, these partisan pressures appear to have encouraged hasty decisions, secrecy and other difficulties in the program

MERA recommends that Michigan should develop a well-considered and publicly promulgated policy about voter list maintenance that will help guide and protect the Secretary of State from such partisan pressures in the future. In consultation with the legislature the Secretary of State should appoint a broad, bipartisan, blue ribbon commission. The commission would include representatives from the Secretary of State’s office and Michigan Bureau of Elections, legislators from both parties, one or more representatives of third parties, nationally recognized legal and academic experts on election systems, plus representatives from the civil rights community and Michigan public interest groups. The commission would be charged to collect and analyze relevant information about list maintenance, develop proposals for broad Michigan list maintenance policies, seek public commentary on the policy proposals, and arrive at internal agreement on recommended policies to guide Michigan voter list management over the long term. Once developed, the policy recommendations should be posted on the Secretary of State’s webpage accompanied by as many endorsements from the legislature, the political parties, the civil rights and public interest groups as possible. Though not incorporated into formal legislation, the recommendations would provide the Secretary of State and Michigan Bureau of Elections with strong and helpful public guidance about voter list maintenance over the long term.

Recommendation #2 – Establish Regular Public Evaluation of Michigan List Maintenance Efforts

One flaw among others in the 2006 program was that it missed the chance to conduct a meaningful evaluation. Important data about the actual conduct of the program were not collected, and, so far as MERA knows, no evaluation of it was conducted or published. MERA believes the list maintenance process deserves careful evaluation. It affects fundamental democratic values such as the fairness of elections and the individual voter’s right to vote. Moreover, voter list maintenance in Michigan is a dauntingly complex task. How to ensure the accuracy of a constantly changing list of over 7,000,000 registered voters, that is maintained in 1,516 separate jurisdictions, supplied data by thousands of different election and postal workers, regulated by elaborate legal rules, and stored on complex frequently changing computer technology. No matter the commitment and skill of our election officials, In a list maintenance process of this scale and complexity mistakes and inefficiencies are going to occur, which means that there always will be room for improvement.

MERA therefore recommends that the Secretary of State and the Bureau of Elections should establish a formal, affordable, regularly scheduled and publicly reported evaluation program to identify problems and solutions to improve Michigan's list maintenance efforts. If evaluation is done properly, the results can be used to increase administrative efficiency, minimize mistakes that jeopardize individual rights to vote, and protect fairness of the list maintenance process. Regularly reporting results of the evaluations would demonstrate transparency and increase public trust that Michigan's voter list is being carefully managed.

Of course establishing an effective, affordable evaluation system for list maintenance would be no mean task. Some questions to consider, among others, might include

- * how to estimate the number of invalid registrations appear on Michigan's QVF at any given time
- * how efficient are present practices at maintaining the number of invalid registrations at a tolerable level, and how could the cost of such efforts be reduced
- * how to estimate the frequency of mistakes in cancelling valid registrations on the QVF during the list maintenance process, and how to minimize and correct their occurrence
- * how to improve the computer tools for conducting voter list clean up.

Recommendation #3 – Engage Citizens in Contributing to Voter List Maintenance

In many ways the 2006 program reduced individual Michigan voters to passive objects of bureaucratic processing. Thus, the postcard used in the initial mass mailing was deliberately designed so the voters would not realize its purpose was to check the validity of their registration. Also, the federally required notification to voters who were tagged for cancellation did not work effectively. The Bureau of Elections did mail a federally required notice to the registration addresses of the 230,000 voters it had placed on its QVF cancellation list in order to alert them that their registration was at risk of being cancelled. However, a large percentage of those notices were returned undeliverable and never reached the at-risk voters. MERA saw stacks and stacks of these undeliverable notices at the Secretary of State's warehouse. Even when notices were successfully delivered to the registration address, it is doubtful whether many of the at-risk voters actually received, opened, or understood them. Other persons at the address probably opened them in many cases, if they were opened at all, and might not have passed them on to the voter. Also, the notice itself was worded in clumsy bureaucratic language that would have been difficult for poorly educated voters or non-English speakers to understand, even if such voters did get and open the notice. Under such conditions, a large percentage of the 230,000 voters who were tagged for cancellation in the program never learned at any point in the process that their right to vote was at risk. In the end, when the Bureau cancelled the registrations for 122,589 the voters, it did not take any additional steps to notify them of the cancellation. The estimated 2,611 voters who were cancelled by mistake would only have learned of the mistaken cancellations if and when they arrived at their polling place and were turned away.

The cumulative effect of these features of the 2006 program was to keep millions of individual Michigan voters ignorant of what was being done to their right to vote, and to deprive them of the ability to protect it against mistaken cancellation. With today's web technology MERA believes this is entirely unnecessary and should not be repeated in the future. With proper web information and web tools voters can be empowered to protect their individual registration from mistaken cancellation and contribute to the accuracy of future voter list maintenance efforts. To accomplish this, MERA

recommends that a new section be created under “Elections in Michigan’ on the Department of State webpage to include the following elements:

Basic information for the Michigan public about voter list maintenance

- * A brief introduction to the QVF
- * Statistics on (a) the total number of Michigan registered voters on the QVF; (b) the number of new voters added and old voters dropped in the previous year and (c) the estimated number of invalid registrations currently on the system
- * A short synopsis of federal and Michigan laws governing cancellation of voter with invalid registrations
- * A summary of Michigan policies regarding voter list maintenance
- * Department of State periodic reports evaluating the effectiveness of Michigan’s list maintenance efforts

Web tools for citizens to protect the accuracy of their individual voter registration on the QVF

- * Instructions how to check for and correct errors in their registration record on the QVF
- * Timely advanced notice of all impending voter list cleanup programs whether conducted by the state Bureau of Elections or local clerks, including expected cancellation dates
- * A searchable database of all voters on the QVF whose registration is currently tagged for cancellation together with multilingual instructions about what voters should do if they find they are mistakenly tagged for cancellation

Recommendation #4 – Strengthen Cooperation between the Michigan’s Bureau of Elections and Local Clerks

In MERA’s view a breakdown of effective cooperation between Michigan’s local clerks and the Bureau of Elections was another major problem in the 2006 program. This breakdown became possible because of software changes the Bureau made in the QVF in 2006. As a client-server database system, the QVF was originally designed so the state Bureau of Elections would maintain the software while the local clerks would use it to perform their legally mandated role of maintaining the accuracy of QVF records in their respective jurisdictions. Over the years the QVF software has evolved as the Bureau introduced patches and tweaks to make it a more effective tool for managing Michigan’s voter list. In 2006 the Bureau introduced software changes into the system that for the first time enabled the Bureau acting alone with no input from the clerks to tag QVF voter registrations en mass for cancellation and to execute those cancellations en mass following the provisions of federal law. This change was probably a violation of Michigan law and certainly of Michigan traditions. It effectively transferred control over cancellations from the clerks to the Bureau, and thereby enabled the Bureau to implement the 2006 program independent of the clerks, and prevented clerks from intervening in the list maintenance process to protect their voters from mistaken cancellation.

MERA believes Michigan has much to gain from more effective cooperation between the Bureau and the clerks. Fundamentally what is needed is a more “collaborative software design” which engages clerks and the Bureau together more effectively in managing maintenance of the voter list. On the one hand, the clerks are locally elected or appointed by locally elected officials; they are close to the voters in their jurisdiction, know the local circumstances, have staff who can help in list maintenance, and often are

highly motivated to serve their voters. Providing them better designed QVF tools can empower them to contribute to the accuracy and the efficiency of the list maintenance process. On the other hand, it certainly makes no sense for each of the 1,516 clerks to perform the same routine list maintenance tasks when the Bureau could perform those tasks more efficiently at the state level. The Bureau staff has the computer expertise to achieve such economies of scale, and it should be empowered to achieve them. In this context, where both the clerks and the Bureau have potentially important contributions to make to the list maintenance effort, MERA recommends four measures to improve cooperation between the Bureau and the clerks in maintaining the list:

- 1) The Bureau should consult with local clerks to develop guidelines on what clerks can do to prevent mistaken cancellations from list maintenance activities. The Bureau should also develop guidelines on how clerks can deal with voters who may have been mistakenly cancelled, e.g. clerks should give each precinct chair a list of all voters in the precinct who have been recently cancelled, with instructions on how to work with them if they come to the polling place to vote.

- 2) The Bureau should consult more actively with clerks to strengthen the QVF. It should institute a regular process to get input from clerks about problems they have in using the QVF and upgrades that could make their work easier. If the Bureau had consulted with the clerks about the software changes it made in 2006, MERA is confident the changes would have been much more effective.

- 3) Most important for the future, MERA recommends that the QVF software should be upgraded to bring clerks' tools for managing cancellations up to par with those of the Bureau. Below is a suite of QVF capabilities that MERA believes both parties should share to do this. Some of these tools do not presently exist, so far as MERA knows, and others are currently held only by the Bureau.
 - **Tagging voter registrations for eventual cancellation.** The upgraded software should enable both the local clerks and the Bureau to tag groups of QVF registrations for cancellation en masse, instead of having to tag them "manually" one record at a time. When the Bureau or a clerk tags a voter's QVF registration for eventual cancellation, the QVF should automatically calculate and display the earliest possible date under federal law when it is permissible to execute the cancellation in the voter's QVF record. On the day that a registration record is tagged for cancellation, the QVF should automatically notify both the voter's local clerk and the Bureau of that fact via the QVF "in box" message system. Both the clerks and the Bureau should be able at any time to create a sortable database report of all voters in the jurisdiction who are tagged for eventual cancellation.

 - **Executing cancellations of voter registrations.** The upgraded QVF software should enable both the clerks and the Bureau to order cancellation of a tagged voter's registration on the QVF, and it also should enable both parties to change or remove cancellation orders which have already been entered into the system. The upgraded software should enable both parties to perform such actions en masse for groups of voter records, rather than have to do it "manually" one record at a time. The actual QVF procedure for ordering cancellation of a voter's registration should be to enter a cancellation date into a registered voter's QVF record. The upgraded software should require that this cancellation date must always occur at least 30 days after the current date when the order is placed. The software should also require that on any day that a clerk or the Bureau places a cancellation order, the QVF should automatically notify the other party via the QVF "inbox" message system. Finally, once a cancellation date actually arrives for a group of registrations, the QVF software should then automatically cancel all the registrations.

4) With the foregoing suite of QVF tools, both a local clerk and the Bureau could enter, modify, or remove cancellation orders in the QVF for voters in the clerk's jurisdiction, and each party would have at least 30 days to review and correct mistakes in the cancellation orders of the other. Consistent with Michigan traditions, cancellation of a particular voter's registration would depend on decisions by both the clerk and the Bureau, not just the Bureau. To cooperate effectively in this situation, MERA recommends, the parties should deliberate carefully together to arrive at agreement how to use the upgraded software in a way that optimizes both efficiency and accuracy of cancellations. This would be an agreement about the optimal division of labor in using the upgraded software. For the sake of efficiency, the parties might agree that the Bureau should do as much as possible centrally sparing clerks unnecessary, duplicative work. For the sake of accuracy and accountability, however, sufficient agreed time would have to be set aside for clerks to review cancellation lists and take local measures to eliminate mistakes before cancellations are executed.

Recommendation #5 – Adopt a More Cost-Effective Approach to Voter List Maintenance

In an era of scarce resources, it is important to consider which types of list maintenance are cost effective. As mentioned, the centralized 2006 list maintenance program based on returned mail proved much more expensive in tagging voters for cancellation than the Bureau's more decentralized work to assist local clerks with list cleanup. Also, the use of returned mail in a large program produced errors which would have been prohibitively expensive to avoid because of uncertainty about the reasons for returned mail and the difficulty of reaching the voters with the federally required cancellation notices.

MERA accordingly recommends that Michigan should abandon future centralized mega list maintenance programs based on returned mail. It should continue to use the traditional less costly, smaller scale cooperative efforts between Bureau and local clerks, which already have served Michigan well. And, also, it should invest in piggy backing voter registration and list cleanup on other regularly occurring tasks, like school and employment registration, auto licensing and insurance, death certificates, and even registration for health care and other benefits. Relatively minor modifications could be made in such processes to capture both new registrations and update old ones. A sufficient number of properly selected venues could assure frequent cancellation of old, invalid registrations. The key to effective piggy backing would be effective electronic coordination of the election and other databases. The cost savings would arise because large, expensive voter drives once every four years and massive list maintenance programs based on returned mail would be replaced by other tasks that have to be done in any case.

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In these different ways, MERA believes, the difficult experience of the 2006 voter purge points to ways in which Michigan can significantly improve the way it manages its voter list. By specific changes, some of them with minimum cost, it should be possible to

- discourage future partisan meddling with list maintenance,
- increase efficiency and accuracy of the list maintenance process, and
- increase transparency and civic confidence in the fairness and accuracy of the list.