

The 2006 Michigan Voter Purge

A Report on a Statewide Program
to
Cancel Michigan Voter Registrations

Michigan Election Reform Alliance.Org

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Executive Summary

From July 2006 until June 2009 the Michigan Bureau of Elections conducted a statewide list maintenance program to cancel invalid voter registrations in the statewide voter registration list (the Qualified Voter File or QVF). Targeted were voters whose registered voting address was no longer current.

Since Fall of 2007 the Michigan Election Reform Alliance.Org (MERA) has been systematically investigating the statewide list maintenance program. MERA's findings are presented in this report.

1) How the Statewide List Maintenance Program Was Conducted

The program was initiated, designed, and administered centrally by the Bureau after giving conflicting signals to local clerks.

The program was very likely a response to partisan political pressure from the Voting Rights section of the Bush administration's Department of Justice.

The initial cancellation list was based solely on returned mail from a mass mailing to the registered voting addresses of virtually all Michigan voters (over 7,000,000) even though a voter's voting address may be different than the mailing address.

A software update to the QVF incorporated a "cancellation countdown device" that enabled centralized control in accordance with National Voter Registration Act (NVRA) rules on giving notice and a grace period before cancellation. While the NVRA compliant aspects of the software update were available to local clerks, other tools for managing the countdown were available only to the Bureau.

Notwithstanding the NVRA requirement that all voters' registrations be treated uniformly, the Bureau processed only a portion of the returned mail and then stopped. Out of approximately 680,000 pieces of returned mail, 260,000 were processed to form the cancellation list, but 30,000 of these were later dropped from consideration. Approximately 110,000 additional pieces should have been processed and added to the cancellation list by the same criteria, but were not.

Two NVRA requirements were met: Cancellation notices were mailed in August 2006 to voters placed on the cancellation list, and the grace period (two general federal elections) was observed before cancellation, which was finalized on June 4, 2009. One requirement was not met: no records were kept of whether voters responded to the cancellation notices.

2) The Results of the Statewide List Maintenance Program

The direct cost to the Bureau of Elections for the statewide program was approximately \$2,000,000.

MERA estimates that of the 230,000 voters placed on cancellation countdown in 2006, about 13,497 (5.9%) had valid registrations and were placed on countdown by mistake due to inaccuracies from using returned mail as the sole basis for determining residency.

Of the 230,000 voters originally placed on countdown, 122,598 were finally cancelled in June 2009. Many of the other 107,402 were presumably removed from the countdown by local clerks, the Bureau, or Department of State offices when their voting residency address was confirmed or changed, e.g. in the process of voting or renewing their driver's license.

Of the 122,598 voters cancelled in June 2009, MERA estimates that about 2,611 (2.1%) were cancelled erroneously.

3) Recommendations to Improve List Maintenance Practices

After reviewing current Michigan and Federal laws and promulgated rules on voter list maintenance, the State of Michigan should develop an explicit, updated policy on statewide voter list maintenance programs: When are such programs appropriate? Who should decide? How should the programs be conducted and how will they be transparent and accountable to the public?

The Michigan Department of State should use its web site in several ways to make voter list maintenance transparent to the public, including but not limited to

- publishing pertinent policies on voter list maintenance,
- educating voters on list maintenance practices and how they can keep their registration current,
- announcing all major list maintenance programs in advance and publishing the results of those programs after completion, and
- providing accessible means (searchable database and multilingual instructions) for voters to check for errors and correct errors that may have resulted from list maintenance.

The Bureau of Elections should strengthen local clerks' ability to prevent and remedy mistaken cancellations. QVF software capabilities available to the clerks should be improved in accordance with their needs, and the clerks should be provided more adequate advanced notification of impending cancellations.

The Bureau of Elections should practice due diligence to protect public confidence in the election system. In consultation with local clerks, it should develop guidelines for identifying and removing voters mistakenly placed on cancellation countdown and for training staff and poll workers to deal with possibly mistaken cancellations. Prior to any election, precinct chairs should be given lists of recently cancelled voters and instructions on how to work with voters on the lists in a way that respects their right to vote.

Michigan should invest in cost-effective, dynamic, tie-in approaches to list maintenance that capture new and updated voter registrations through school and employment registration, auto licensing and insurance, death certificates, and even registration for health care and other benefits.

Overview and Origins

1) Introduction

This report is the result of a two-year investigation into a 2006 statewide program of voter list maintenance undertaken by the Michigan Bureau of Elections in the Department of State.¹ It traces the story of what happened in the program, evaluates its strengths and weaknesses, and concludes with practical recommendations to strengthen Michigan voter list management practices in the future.

“List maintenance” is the term election officials use to refer to maintaining the list of eligible voters. The work includes adding and removing voters from the list, which constantly changes as voters come of age, die, move their residence and so forth.

By State law Michigan voter list management was decentralized with each local jurisdiction managing its own list, but in recent years the Michigan Bureau of Elections has come to play a much greater role. Since the mid 1990s the Bureau has been engaged in long-term efforts to improve Michigan's voter list and its maintenance practices. One milestone occurred in 1998 when the Bureau integrated the 1,516 separate local lists into a central computer database of all Michigan voters. This database system is called the Qualified Voter File or QVF.

The 2006 program examined in this report sought to improve the accuracy of the statewide voter registration list (QVF) by canceling registrations with voting addresses that were no longer valid. As documented below, the 2006 program had special characteristics that make it unique in the history of Michigan list maintenance:

- It was initiated, designed, and administered centrally by the Bureau. Before this program, local clerks administered list management.
- It involved a comprehensive mailing to all Michigan voters. This scale was unprecedented. All previous programs were limited to a few selected jurisdictions.
- In implementing the program, the Bureau made use of an important new feature of the QVF (the cancellation countdown device) that automated parts of the voter cancellation process.

Because the 2006 program involved these major innovations, and may have placed numerous valid registrations in jeopardy, it is important to examine closely how it was actually implemented and to evaluate it carefully.

2) The Qualified Voter File (QVF)

To understand the 2006 list maintenance program it is necessary to understand some features of the QVF, Michigan's statewide voter database. In 1994 the Michigan legislature mandated that the QVF be established to coordinate the many separate local voter lists that were then maintained on diverse platforms in Michigan's 1,516 local jurisdictions. After four years of development the statewide database was put into operation in 1998. Under the 1994 legislation, the Michigan Bureau of Elections is responsible for modifying and managing the QVF on behalf of local clerks and the public.

As a "distributed database system," the QVF software is loaded both on a central server in Lansing and on local servers in individual jurisdictions. Operating on an Oracle client-server platform, the system updates voter information via batch processes that merge changes from the central driver's license database, the central QVF server, and local QVF servers. The central QVF server is managed by the Bureau of Elections and maintains records about all Michigan voters. The local servers are managed by local clerks and maintain records about voters in the local jurisdiction (city, township, or county). Each night a process of database "replication" occurs via the internet so that any changes made in voter information during the day at one server are replicated at the others. The most recently entered material always overrides earlier material. The result is that each morning all information about voters at the central and local servers is up to date and exactly the same.

Local clerks depend on the QVF to maintain an accurate, up-to-date voter list and to organize elections in their jurisdiction. To help clerks use the QVF the Bureau of Elections conducts training, has a QVF helpdesk that clerks can call, and also publishes an online manual called "The QVF Desktop Reference."² The first screen a user sees after logging on to the database is "The QVF Main Desktop," where the user can open different sub-

screens to perform other actions connected with the voter list. For example, by clicking on the “File” tab in the Main Desktop and then selecting “Search by Voter” a user would open up the following Voter Registration Screen:

The screenshot shows a web-based form for voter registration. At the top, there are buttons for Search, Save, Delete, Clear, Close, and Help. The form is divided into several sections:

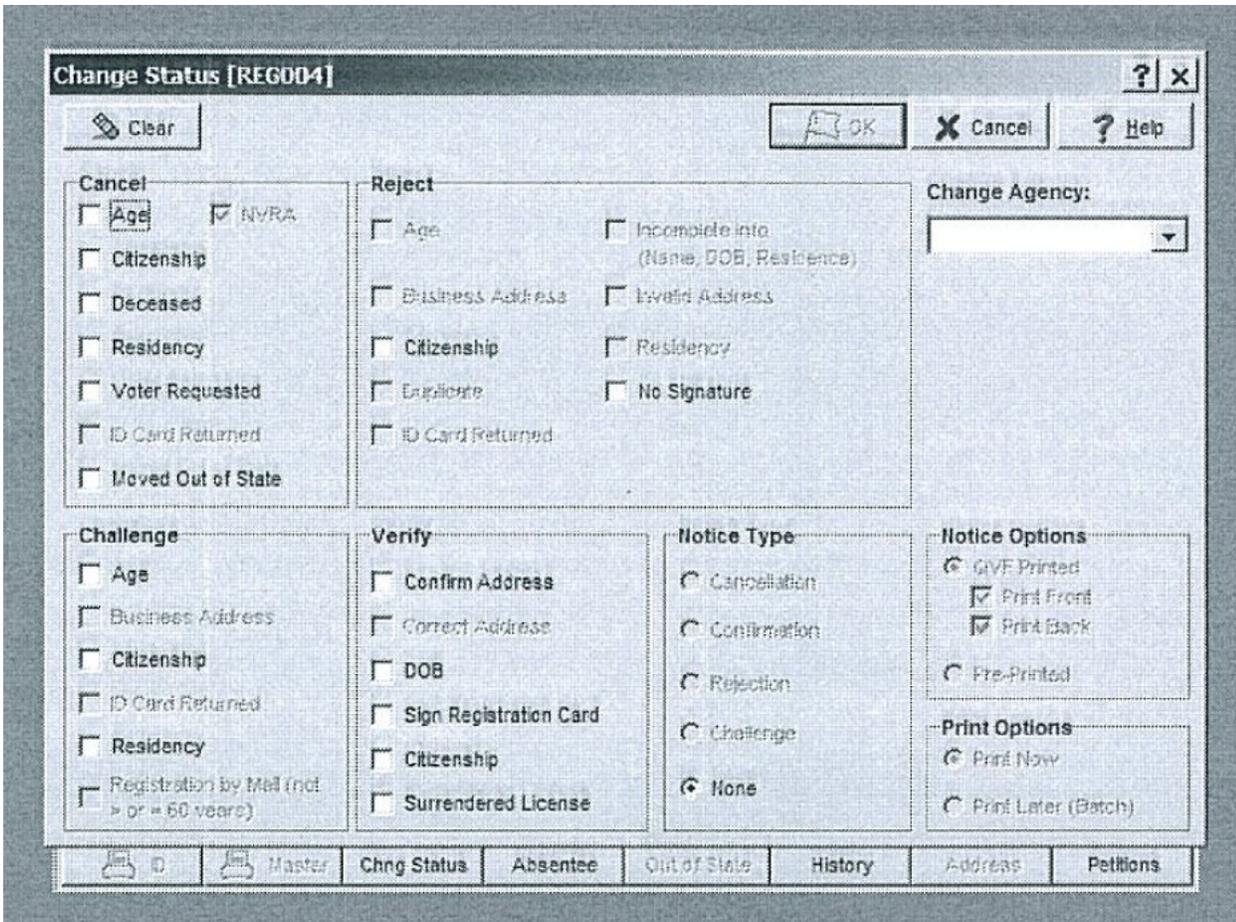
- Header Information:** Jurisdiction: PORTAGE CITY, County: KALAMAZOO, Status: ACTIVE, Reg Date: 01/31/1996, Ward/Precinct: 00015, EtH. From: 03/01/1996, Entry Date: 04/07/1998, Polling Location: NORTH MIDDLE SCHOOL, Through: (blank), Operator: DATAMAT2, Change Agency: (blank).
- Personal Information:** Inspector: (blank), Last Name: JONES, First Name: TOM, Middle Name: (blank), Suffix: (blank), Gender: M.
- Identification and Voting Options:** ID Confirmed (checked), Must Vote in Person (unchecked), SSN4: (blank), Cancellation Countdown Started (checkbox checked, highlighted with a red box), AV (unchecked), Comments, Signature.
- Address Information:** Residential Address (selected), NTH Address (unchecked), Number: 506, Suffix: (blank), Prefix: (blank), Street Name: NEW HAMPSHIRE, Type: DR, Suffix: (blank), Ext#: (blank), Post Office City: PORTAGE, State: MI, Zip Code: 49024.
- Navigation and Actions:** Voter Info, Districts, ID, Master, Chng Status, Absentee, Out of State, History, Address, Petitions.

The Voter Registration Screen gives access to all the information about the voter that is stored in the voter’s QVF record, including:

- Name, street address, city, zip code, date of birth
- Driver’s license, state ID, or other
- Jurisdictional information
- Precinct and ward numbers if any
- Voting history for the last five years
- History of changes in the voter’s registration

Each voter record in the QVF is designated with one of five statuses: Active, Verify, Challenge, Cancel, or Rejected. The current status is displayed in the upper left hand corner of the Voter Registration Screen. Clicking on the “Chng Status” button at the bottom of the screen opens the “Change Status” window shown below. The current status

can be changed by checking or unchecking boxes in this window. For example, to change a voter to “Verify” status one would place a new checkmark in one or more of the boxes under “Verify.””



When a new QVF record is created and all the information that is legally required to register the voter is complete, the record is listed as “Active.” In an election, the names of all Active voters appear on the precinct lists used at the polling places.

When doubts arise about whether a voter’s record is up-to-date or valid, the clerk is supposed to change the status of the voter’s record to “Verify.” The clerk may try to resolve the issue before the next election so the voter’s status can be changed back to “Active.” If the issue is not resolved before the election, then a code for “Verify” is printed next to the voter’s name on the precinct list. Such codes alert poll workers to question the voter directly to clarify the issue before allowing the voter to cast a ballot.

If investigation of a voter’s “Verify” status reveals that a voter no longer fulfills the legal requirements for voting in Michigan, then the status of the voter’s QVF record is supposed to be changed to “Cancel.” Under Michigan law only local clerks were authorized to cancel

a voter's registration in their jurisdiction. Among many questions raised by the 2006 list management program is whether the Bureau of Elections has the legal authority to change the status of a voter's QVF record to "Cancel" without verification from local clerks.

Changing the status of a voter's QVF record to "Cancel" immediately cancels the voter's registration in Michigan. The voter's name is not printed on the precinct list for the next election, but the voter's QVF record *is* retained in the QVF with "Cancelled" status.

Of course, mistakes in changing the status of a voter's QVF record can and do occur. When they do, it is the responsibility of the local clerk to investigate and provide such remedies as are warranted. An issue raised by the 2006 list maintenance program is what means exist to investigate and correct mistaken cancellations, particularly when a mistake originated outside the local clerk's office through a centralized process such as the 2006 program.

Along with voter records, the QVF also includes an inbox message system and report feature. The inbox message system allows the Bureau of Elections to send clerks a daily list of voters in their jurisdiction whose situation requires some kind of action by the clerk. The report feature allows clerks to generate computer reports listing selected voters with certain characteristics. Such reports are essential to the clerks' work. They enable clerks to communicate with selected voters on official business, for example, to send the voter a registration card or request verification of information in their QVF record.

Over time, as election officials gained experience with the QVF system, limitations in the QVF software and the need for improvements became apparent. Accordingly, the QVF software has not been static. Since its inception the QVF has evolved continuously, with the Bureau technical staff making many tweaks and changes. By 2005 (before the statewide list maintenance program) the software had already reached version 2.12. By June 2009, when the 2006 list maintenance program was completed, the software had reached version 2.55. Two recent modifications, which were essential to conducting the statewide list maintenance program, will be described below.

3) Overview of the 2006 Voter List Maintenance Program

Federal laws, including the National Voter Registration Act (NVRA) of 1993 and the Help American Vote Act (HAVA) of 2002, impose requirements on state management of voter lists.⁴ Compliance with federal requirements is monitored and enforced by the Voting Rights Section of the Civil Rights Division in the US Department of Justice.

The NVRA influenced how the Michigan 2006 list maintenance program was started and implemented. The NVRA requires states to make reasonable efforts to remove voters who

have become ineligible to vote by reason of dying or moving. However, the NVRA also regulates how the process of removal may be carried out. Two key requirements are that voters be given notice of impending cancellation and that a grace period of two general federal elections must pass before cancellation is completed. The Michigan Bureau of Elections took pains to comply with NVRA requirements, but in spite of considerable effort may not have fully succeeded.

The 2006 program was initiated by mailing a standard postcard to all registered Michigan voters. More than seven million postcards were sent at a cost of approximately \$1,960,000, paid with federal funds through the Help America Vote Act (HAVA).⁵

Following the mailing, a large number of the postcards were returned to the Bureau by the US Postal Service as undeliverable. Bureau staff reviewed the returned postcards to identify voters who had moved and might no longer be properly registered under Michigan law. Returned mail is a method allowed by the NVRA to initiate a voter registration cancellation process. It is utilized by many states to identify voters who may have moved and thus are candidates to be removed from voter lists.

Having identified a large group of voters with doubtful registration using the postcards, the Bureau's next step was to tag those voters electronically on the QVF and put them on what is called a "cancellation countdown." This was done using a specially designed feature of the QVF, the "cancellation countdown device." A cancellation countdown is a structured process to determine whether voters who might have an invalid registration should in fact have their registration cancelled.

The NVRA regulates the details of the countdown process, which has three key elements. First, after receiving returned mail that suggests a voter's address has changed and tagging the QVF record for cancellation, election officials must send the voter a standard cancellation notice together with a stamped, pre-addressed reply form. (Appendix #19) The notice — variously called an NVRA notice, a Residency Confirmation Request, a "cancellation/confirmation" notice, or a cancellation notice — is supposed to alert voters that their registration is in doubt and ask them to complete a reply form to confirm whether they still reside at the address in question. When a voter returns a completed reply form, the information is used to verify the correct voting address and then either update or cancel the voter's registration in the QVF. Either way, receipt of the reply form normally results in the voter being removed from the cancellation countdown process.

Second, for all voters on countdown who do not respond to the NVRA notice, the NVRA requires that two general Federal elections (November of even-numbered years) must pass before the voters' registrations may be cancelled. If a countdown voter actually votes

during the grace period, the act of voting is treated as proof that the voter's registration is still valid, and the voter is supposed to be removed from the cancellation countdown.

The third and final step in the countdown process is canceling the registration of voters who remain on countdown after the grace period has elapsed. The NVRA mandates that a voter's registration may only be cancelled if the voter was sent the required NVRA notice, did not respond to it, and did not vote during the ensuing grace period of two general federal elections. In the 2006 list maintenance program, the cancellation of voters was executed on June 4, 2009. Among the more than seven million voters to whom the original postcards were mailed, a total of 122,598 were finally cancelled.⁶

TIMELINE OF THE 2006 CANCELLATION COUNTDOWN

July 6, 2006	Mailed postcards to all Michigan voters.
Aug 8, 2006 & ff	Placed some voters whose postcards were returned on countdown.
Aug 8, 2006 & ff	Mailed the required cancellation notice & reply form.
Aug 2006 & ff	Updated or cancelled the registration of voters who responded to the notice.
Nov 4, 2006	First general Federal election after cancellation countdown started.
Nov 2006 & ff	Removed from countdown voters who voted on Nov 4.
Nov 4, 2008	Second general Federal election after countdown started.
Nov 2008 & ff	Removed from countdown voters who voted on Nov 4.
June 4, 2009	Canceled the registration of all voters still on countdown.

The Bureau of Elections has said repeatedly that the 2006 program aimed to comply with the requirements of the NVRA. This overview shows that in many respects it did. Unfortunately, the fuller examination that follows reveals several aspects in which the conduct of the program failed to adhere to NVRA requirements.

4) The Origins of the 2006 Program

Under the provisions of State election law, Michigan's 1,516 cities, villages and townships each had a separate voter list managed by the local clerk. (See box below.) When moving between jurisdictions, individual voters were supposed to cancel their registration in the old jurisdiction and then re-register in the new jurisdiction. The old registrations, however, were frequently not canceled by voters and the clerks did not remove them until five years had passed without the voter voting. With minimal coordination between the 1,516 local lists and many voters moving frequently among them, large numbers of outdated registrations accumulated under this system.

Summary of Michigan Laws on Voter List Maintenance

- ❖ Local clerks have sole custody of their master voter files. (MCL 168.502)
- ❖ Local clerks are solely responsible for verifying the accuracy of lists in their jurisdiction, with the Secretary of State limited to the role of maintaining the computer system. (MCL168.509r)
- ❖ Local clerks are responsible for the registration of electors. (MCL 168.497)
- ❖ The Secretary of State or her/his agents at the Department of Motor Vehicles shall provide an opportunity to complete an application to register to vote, which shall be forwarded to the appropriate local clerk. (MCL 168.500a)
- ❖ The local clerk shall determine if the applicant is a qualified elector (MCL 168.500c) and issue a voter identification card.
- ❖ Local clerks may conduct programs to remove the names of registered voters who are no longer qualified to vote in their jurisdiction, provided the programs are conducted in a uniform manner and in compliance with the requirements of the NVRA. (MCL 168.509dd)
- ❖ The Secretary of State is responsible for coordinating compliance with the NVRA and providing information on the efficiency and effectiveness of the qualified voter file. (MCL 168.509n (c)(i))
- ❖ The Secretary of State is required to follow the Michigan Administrative Procedures Act whenever the Bureau of Elections issues rules. (MCL 168.31) ⁷

When the NVRA passed in 1993, the practice of removing voters solely because they had not voted for a number of years was made illegal. According to Michigan Bureau of Elections' Director Christopher Thomas, the NVRA imposed more complex requirements for removing voters that placed "a heavy burden" on the clerks. The decision to create the consolidated statewide voter list (the QVF) was in part, Thomas states, to simplify the administration of many lists and lighten the workload on local clerks.⁸ The QVF was also necessary to implement the new "Motor Voter" requirement in the NVRA, which mandated that citizens be permitted to register to vote when applying for a driver's license.⁹

When Michigan's QVF was put in service in 1998, it served for a time as a model for the nation. When it was first implemented, Thomas reports, the Bureau was able to remove 600,000 duplicate registrations from local lists.¹⁰ However, as Thomas notes, removing duplicates was only one step in cleaning up the local lists, which also included large numbers of inactive voters who had not voted for several years. Though most of these inactive voters probably had invalid registrations, NVRA rules prohibited the Bureau from canceling their registrations until the completion of two federal election cycles, so their names were carried over into the QVF.

In 2002, based upon the results of the Census of 2000, Michigan underwent major redistricting to reapportion voters in congressional, state legislative, and county voting districts. In response, local clerks mailed new voter IDs to the voters in the redrawn districts to advise them of changes in representation and polling location for the upcoming state primary. Large numbers of the new voter IDs were returned as undeliverable, indicating the voters' registrations were probably invalid. In some jurisdictions, the return numbers exceeded ten percent of the total list of registered voters.¹¹

To initiate the NVRA cancellation process, in 2002 or 2003 clerks in jurisdictions that had received returned voter IDs sent those voters an NVRA cancellation notice. At the time, no software tools existed in the QVF to uniquely identify such voters, so clerks had to keep hard copy lists to identify and track them for eventual cancellation. It appears that no count was ever compiled of the cancellations-in-process on these local paper lists, but the number was certainly very large. Under NVRA rules, all voters who were given notice of impending cancellation yet failed to vote or update their registration were subject to cancellation by their local clerks after the November 2006 election. Thus a large number of invalid voters who were on the QVF in 2005 might well have been cancelled by local clerks after November 2006.

In July 2005, Thomas estimated that 800,000 inactive "carry over voters," most likely with invalid registrations, were still in the QVF.¹² But Bureau staff could not determine from the QVF how many of these records had already been in the process of NVRA cancellation by local clerks. Nor, apparently, did they try to obtain from local officials a list or estimate of the numbers of in-process cancellations. In the letter cited, Thomas did not acknowledge that local clerks were already in the process of canceling a substantial but unknown portion of these invalid registrations.

Faced with an apparent invalid registration rate of more than 10% in the QVF (about 800,000 out of 7,000,000), the Bureau began working with local clerks to remove the invalid registrations in a manner keeping with NVRA requirements. Using census records, the Bureau identified local jurisdictions that appeared to have overly large numbers of inactive registrants and gave the clerks in those jurisdictions special HAVA funding to pay for list cleanup. In 2005 and 2006, local clerks in the targeted jurisdictions marked 229,000 voter records for potential cancellation, and the Bureau reimbursed them \$361,000 in HAVA funds for the list cleanup work.¹³

As far as MERA can determine, Secretary of State Land and Bureau Director Thomas made the decision to switch from list cleanups in targeted jurisdictions to an expanded list cleanup program in all jurisdictions across the state sometime between March 2005 and early Spring 2006. Given the unprecedented scale and expense of the statewide program, Land and Thomas must have conferred before making the decision. But they did not make

it solely on their own initiative. They made it under pressure from the Bush administration's Department of Justice.

On March 29, 2005, Joseph D. Rich, then Chief of the Voting Rights Section of the Civil Rights Division in the Justice Department, sent a letter (Appendix #1) to Secretary of State Land and Bureau Director Thomas. The letter reminded Land and Thomas of their responsibility under HAVA and the NVRA to maintain an accurate voter list in Michigan, and asked them what steps they intended to take to remove excess voters from the list. As the ostensible reason for pressing Land and Thomas on this question, Rich's letter pointed out that according to the US census the number of voters on the QVF exceeded the number of Michigan citizens of voting age in 38 Michigan counties. In other words, the letter suggested, a significant problem for list cleanup existed, as Director Thomas already understood and was working to alleviate.

Three months later on July 8, 2005 Thomas sent Michigan's reply to the Department of Justice letter. (Appendix #2) Since Thomas was responding to an inquiry from the Chief of the Voting Rights Section, he addressed his letter to the current Chief of the Section. Because he was writing on behalf of Secretary Land, he copied the letter to Land. In addition, and for reasons less apparent, Thomas also copied the letter to "Hans A. von Spakovsky, Counsel to the Assistant Attorney General."

To answer the DOJ's concerns, Thomas reviewed Michigan's past and ongoing accomplishments with list maintenance, including the implementation of the QVF and the targeted cooperation with local clerks. Thomas also stressed that the Bureau had recently added new software to the QVF which simplified the work of meeting the NVRA requirements to cancel voters, and he suggested that Michigan intended to use the software to broaden its list maintenance efforts to more jurisdictions across the state. Through "this new program," Thomas wrote, "a significant portion of the 'inactive' voters will be sent [NVRA] Confirmation/Cancellation Notices. It is anticipated that this will lead to a sizeable number of cancellations after the 2008 election." (p. 2)

Shortly after Thomas' letter was sent, Secretary Land explained the broadened list management program in a news article in the July 17, 2005 *Towne Courier*.¹⁴ (Appendix #3) Amplifying what Thomas had written to the Department of Justice, she stated that

- the program was being designed to "assist local clerks" in complying with NVRA,
- the program would follow up on local clerks' mailing of new voter ID cards in response to changes in voting districts in 2002,
- the program would use the returned mail to initiate an NVRA cancellation countdown process,

- the Secretary of State would use HAVA funds “to reimburse local officials for costs associated with the voter card mailing,” and
- the resulting cleanup would minimize “opportunities for fraud” in Michigan voting.

However, MERA has been unable to find any other public notice of this new program, nor any official alert to local clerks, until a year later — August 8, 2006, *News You Can Use* (Appendix #18) — when the 2006 statewide program was already well underway.

Returning to Thomas’ letter, a final question is what role Mr. Hans A. von Spakovsky played in the decision to undertake the 2006 statewide program? Why did Thomas consider it relevant to copy his letter to von Spakovsky, and what was von Spakovsky’s interest in Michigan’s management of its statewide voter list? It turns out that von Spakovsky was a controversial political appointee in the Bush Justice Department who in 2005 was engaged in a national, politically motivated campaign pressuring election officials in swing states to undertake statewide voter list cleanup programs. Courts blocked some of his partisan efforts. It appears that Michigan was one of the target states in von Spakovsky’s national effort, and that von Spakovsky’s pressure was a key factor that prompted the decision by Secretary of State Land and Bureau Director Thomas to undertake a broad statewide program. Had von Spakovsky and the Department of Justice not intervened, it is doubtful that the unprecedented 2006 Michigan voter list cleanup program would have occurred on the scale that it did.¹⁵

How the Program was Carried Out

1) The Decision to Centralize Management of the Program

The available information suggests Secretary of State Land and Bureau Director Thomas were uncertain at the inception of the voter list maintenance program what role local clerks would play.

In early 2005 Director Thomas attended a conference of the Michigan Association of Municipal Clerks. As Delhi Township Clerk Evan Hope recalls, at the session where Thomas gave his usual update he said that the Bureau was toying with the idea of sending out duplicate voter ID cards to all Michigan voters. The clerks immediately shot down this idea. They felt strongly that the plan infringed on their job and that they knew their residents best, for example, who is in Florida in the winter, and who is in Canada in the summer.¹⁶ According to Michigan Statute 168.499, the local clerk, not the Bureau, has the authority to send out voter IDs.

Later in August 2005, when Land and Thomas announced their plan for a broadened statewide list cleanup effort to the press, they made no mention of the Bureau sending out duplicate IDs (see Appendices #3 and #4 for the press accounts). Instead, Land indicated that local clerks would carry out the traditional functions of managing voter registration in their own jurisdictions. They would be responsible for mailing voter IDs to their voters and would use the returned mail and the Bureau's new software (the Cancellation Countdown Device) to conduct the NVRA cancellation process.¹⁷

As it turned out, the plan to work through the local clerks was never carried out. Sometime between August 2005 and July 2006 when a true statewide effort started, the method of implementation was changed. The idea to use voter IDs was dropped. Instead, a statewide mailing of "educational postcards" was used to initiate the list cleanup process. Moreover, the new plan had the Bureau of Elections managing almost all of the key elements of the program. It was the Bureau, not the local clerks, who would

- initiate the cleanup effort by mailing out educational postcards to all Michigan voters,
- use the new QVF software to process the returned postcards,
- send out the required NVRA cancellation notices, and
- implement cancellation of voters who did not respond to the notice or vote during the NVRA grace period.

In a telephone conversation with Thomas shortly after the centralized program started, Ingham County Commissioner Mark Grebner challenged Thomas' decision to take over the list cleanup from clerks, asserting that it was a violation of Michigan law. Thomas reportedly replied that Federal law "superseded" the provisions of state law.¹⁸ Legal or not, Land and Thomas' decision was unprecedented in Michigan history. Local clerks report that the Bureau has never before performed these functions of list maintenance based on returned mail. All previous efforts in Michigan have been initiated and administered by local clerks.

2) Designing the Postcards

The postcard (Appendix #11) that was used to initiate the list maintenance program was designed and printed in-house by employees in the Department of State.¹⁹

The Bureau's initial notification to local clerks about the postcards occurred in the July 7, 2006 *News You Can Use*. (Appendix #12) It began with the heading "Public Information Campaign Initiated by Department of State." Then it told clerks,

Please be advised that as a part of the Department of State's ongoing efforts to promote voter participation, the attached postcard will be mailed to every registered voter in the state prior to the August 8 primary. The postcard reminds voters of the upcoming election dates and encourages them to access the Michigan Voter Information Center for any informational needs they may have.

So the postcard was introduced to clerks as part of a public information campaign that sought to educate voters, ostensibly to promote voter participation in elections. Subsequently, officials and employees from the Bureau of Elections and Department of State, including Director Thomas (Appendix #13), Kelly Chesney (Appendix #14), and Rayan Anastor,²⁰ all reaffirmed that the primary purpose of mailing the postcard to over 7 million Michigan voters was to educate the voters.

Notwithstanding the official claim about the educational purpose of the postcard, the details of the card show that the Bureau actually designed it to serve a list maintenance function. In designing the card, whenever the Bureau had a choice between features that would educate voters and features that would assist list cleanup, the Bureau regularly selected the features that served the list cleanup program:

- 1) The postcards were sent to the registration address of the voters, not to their mailing address, which is different for many voters and is stored in their QVF record on request. Had the postcards been addressed to the mailing address of voters, it is more likely they would have received them. But if the

postcards had been so addressed, their return by the Post Office would not have provided evidence acceptable under the NVRA for starting the cancellation process. Since the postcards were sent to the registration address, not the mailing address, the intent of the mailing was clearly not to educate, but to verify registration addresses.

- 2) The postcards were sent with a special postal endorsement stating, “return service requested.” The Bureau of Elections had to pay for the endorsement as part of its business contract with the USPS. The endorsement was an instruction to mail carriers that if the addressee was not available to receive the card, then it should be returned to sender and not be forwarded, even if a forwarding address was on file. Clearly if the primary purpose of sending the postcards had been educational, then the Bureau would have wanted the postcard to be forwarded. Instead, the effect of the “return service requested” endorsement was to get the postcards returned if they could not be delivered at the registration address used on them. This provided evidence that could be used, according to the NVRA,²¹ to challenge the registration address as incorrect. Thus, the endorsement clearly shows that the central intent of the postcard mailing was to check registration addresses.
- 3) Immediately above the address printed on the postcard was a bar code which indicated the voter’s ID in the QVF. The bar code clearly had no educational value to voters, who would not have been aware of its meaning. Had the purpose of the postcard been purely educational, the bar code would have been dropped. Instead, the actual function of the bar code was to facilitate efficient processing of returned postcards in the list cleanup effort. Using a standard scanner, the bar code could be scanned to create a computer file of the voters whose cards had been returned. With a little additional programming, the file could then be used to automatically place those voters on cancellation countdown. In this way, the bar code helped the Bureau reduce labor costs and automate the process of putting voters on countdown status.
- 4) For the return address on the postcard, the Bureau used the Michigan Department of State’s address so that all returned postcards went to the Lansing office. The Bureau could have used the appropriate local clerk’s office as the return address. However, using return addresses of 1,516 different local clerks would have complicated the printing of over 7 million postcards. It also would have made the Bureau dependent on local clerks to receive and process the returned postcards. It’s clear that using the Bureau’s return address had nothing to do with the educational value of the card and everything to do with simplifying management of the list cleanup effort.

The details of the postcard show that the Bureau designed it to check registration addresses and facilitate a statewide, centrally managed list cleanup effort.

Though designed for list maintenance purposes, the postcard's contents omitted any reference to those aims. Accordingly, most of the citizens who received it had no idea it was intended to check the validity of their voter registration. List maintenance efforts using returned mail normally are based on mailing voter IDs, which are easily recognized as important official documents connected with voter registration. By using "educational postcards," the Bureau effectively masked the fact that the postcards were part of a voter list purge.

Similarly, the Bureau omitted any reference to the list maintenance program in its initial announcement about the postcards to local clerks. (Appendix #12) Like voters who received the cards, many of the clerks who received the Bureau's formal notification had no idea the postcard mailing was the first step in the Bureau's assumption of their role in managing list maintenance.

3) Mailing the Postcards and Forming the Cancellation List

As nearly as MERA can determine, the approximately 7,000,000 postcards were mailed in batches to voters across the state in early July 2006. Local mail carriers attempted to deliver them at least from July 7th through July 14th. The total cost of the mailing was \$1,960,000, of which \$1,500,000 was for postage.²²

a) Processing Returned Postcards

The postal endorsement "return service requested" printed on the postcards was an instruction to mail carriers that they should return to sender all cards whose recipient was not currently in residence or that were not deliverable for some other reason. When returning a postcard, carriers were expected to make a note, place a forwarding address sticker, check an item on a stamped checklist, or give some other indication of the reason for return. Sometimes this information was illegible or got detached from the cards, but most of the returned cards had some USPS information affixed about the reason for return. For example (Appendix #15):

- “Temporarily away” (since it was July, some voters were on vacation at alternative residences)
- Yellow Forwarding Sticker (with voter’s new address)
- “Moved, Left No Forwarding Address” (MLNFA)
- “Forwarding Order Expired” (FOE)
- “Bad Address” (Q)
- “Dog on premises”
- “No Mail Receptacle” (NMR, a common problem)
- “Return to Sender” (RTS, no details on reason for return)

Starting in early July large numbers of returned postcards from the mailing began arriving at the Department of State offices in downtown Lansing. Though the Bureau did not count the returned cards, an interested third party, Practical Political Consulting, used the standard post office and business method of weighing a sample of the cards to estimate the total. By their estimate roughly 680,000 postcards were returned from the 7,000,000 plus mailing, a return rate of about 10%.

Rayan Anastor, who managed the mailing for the Bureau of Elections, told MERA that as the returned cards arrived, the Bureau created a document, “Sorting Statewide Mailing Postcards,” which defined criteria and procedures for sorting the cards. (Appendix #23) Anastor said that the Bureau staff followed the document in sorting the returned cards into two piles:²³

- The “Yes” pile consisted of cards that had been marked by a postal worker to indicate the voter had moved from the registered voting address.
- The “No” pile consisted of cards which the Bureau decided lacked sufficient information to indicate a change of address had occurred.

Cards in the “Yes” pile would be processed to tag the voters QVF records for possible cancellation under NVRA rules.

After the returned postcards were sorted at the Bureau offices, Anastor told MERA that the Bureau moved the cards to the Michigan Department of State warehouse. At the warehouse the Bureau had temporary employees scan the bar codes of cards in the “Yes” pile. Each bar code represented one voter’s unique QVF ID. The scanner decoded the bar code to identify and store the voter’s QVF ID in a computer file. According to Anastor, the temps scanned a total of 260,000 distinct QVF IDs from returned cards.

b) Grebner Gets Involved in Processing Returned Postcards

In the meantime, while the Bureau of Elections was receiving, sorting, and then scanning some of the returned cards, a private consulting firm — Practical Political Consulting (PPC) — also got involved in processing the returned cards but for quite different reasons than the Bureau. PPC is a political list brokerage business that collects and sells information about Michigan voters to political candidates and parties for use in election campaigns.

Like other citizens, PPC Co-owner and Ingham County Commissioner Mark Grebner had no knowledge about the statewide mailing prior to receiving the postcard that was addressed to him as a Michigan voter. However, when he received the postcard, Grebner recognized immediately that it was part of a larger voter list maintenance program, and he saw an opportunity to get valuable political information for his business.

To obtain the desired voter information — the bar-coded QVF Ids on returned postcards — Grebner submitted a FOIA on behalf of PPC to the Bureau asking to “inspect and copy” the cards. When the Bureau offered PPC a copy of the computer file of all voters whose cards it had scanned and tagged for cancellation, Grebner declined. He insisted instead that PPC employee Ryan Fellows be permitted to scan the returned postcards directly. He explained to MERA: “The [Bureau’s] CD only included the [voters] . . . the department scanned [But] it was clear [that the Bureau temps] hadn’t scanned all the [returned cards], just hadn’t scanned them, and so there was a large pile of unscanned postcards. So my interest wasn’t in scanning the ones they scanned, it was in scanning the ones they hadn’t scanned.”²⁴

In the end Grebner threatened a lawsuit to get direct access to the cards. His staff member, Fellows, then went to the warehouse to scan cards in August 2006. Grebner’s instructions to Fellows were to

- examine only cards that the Bureau’s temps didn’t scan,²⁵
- look at the affixed mail carrier information about the reason the card had been returned,
- scan cards only where the reason for return suggested the voter had changed addresses, and
- not scan cards where the reason for non-delivery either was not stated or did not indicate a change of address.²⁶

Fellows and other PPC staff scanned the QVF IDs from a total of 110,000 postcards at the warehouse. When MERA obtained the computer file of the 110,000 voters and compared it with the file of the voters the Bureau had scanned, we found only 1,900 voters had been

included in both files.²⁷ This minimal overlap shows unequivocally that although the Bureau temps indeed scanned a large number of returned cards from the “Yes” pile, they did not finish the job. At some point for some reason the temps stopped scanning cards in the “Yes” pile. Grebner’s staff then took over and scanned more cards from the “Yes” pile.

The conclusion is clear: the Bureau’s processing of the returned postcards was not uniform.²⁸ It processed only 260,000 of the returned cards of voters who apparently had moved and later tagged 230,000 of them for cancellation. It neglected to process at least another 110,000 returned cards of voters who also apparently had moved. The Bureau could have asked Grebner for his list of the second group, but the Bureau never did. So the Bureau treated the two groups quite differently.

c) Errors in the Bureau’s Cancellation List

Many voters with valid registrations were included by mistake in the Bureau’s cancellation list. One example is the case of Mr. George Griffiths, a former Mayor of East Lansing. Griffiths has voted regularly for decades at the same precinct, but for some reason²⁹ his name was included on the cancellation list and the Bureau sent him an NVRA cancellation notice.

The formation of the cancellation list was a complex process, involving contributions by numerous people and requiring the correct functioning of computer programs and other tools. The sheer scale of the statewide program – involving over 7 million voters – combined with the complexity of the list formation process pretty much guaranteed that a significant number of voters would be placed on the cancellation list by mistake. Many different factors could have caused mistakes. For example, mistakes could have occurred because of errors in data entry, glitches in updating voting records, mechanical or computer errors in printing the postcards, USPS errors in returning postcards, errors in forwarding notices, omission of reasons for non-delivery on returned postcards, errors in reasons indicated for non-delivery, errors in interpreting the USPS information on the returned cards and sorting the returned cards, errors in scanning postcards, and so on.

One group of mistakes occurred because data entry errors or printing errors resulted in mistaken addresses being printed on some postcards. Such cards would have been returned to the Bureau with a USPS note “undeliverable at this address” stamped on the card. The Bureau’s sorting guidelines instructed its staff to sort such cards into the “Yes, scan this card” pile (Appendix #15), and when the Bureau temps scanned those cards, the voters would have been placed on the cancellation list. The result was that voters with valid registrations were placed on the cancellation list, not because they actually had moved

from their registration address but because an incorrect address had been printed on their postcard.

Another group of mistakes involved returned postcards with these USPS return notes:

UTF	Unable to forward
UAA	Undeliverable
NDA	Non Deliverable Address
FOE	Forwarding Order Expired
MLNA	Moved, Left No Address
MNA	Moved, No Address
MLNFA	Moved, Left No Forwarding Address
VACANT	No one residing at the house

Though all such USPS notes established that the voter had moved, none of them provided crucial information about whether the move was inside or outside the voting jurisdiction. Under Michigan and federal law a voter's registration only becomes invalid and legally subject to cancellation if the voter has moved outside the jurisdiction more than 60 days before an election. If a voter moves to a new address inside the jurisdiction, the voter's registration remains valid. The Bureau's practical problem was that in the massive statewide list cleanup effort it would have been prohibitively expensive to investigate each card with one of these notes to determine whether the voter had moved inside or outside the jurisdiction. In the end, the Bureau made no attempt to distinguish different kinds of moves and simply instructed its staff to sort all these cards into the "Yes, scan the card" pile. (Appendix #15) The result was that some voters who had moved to a new address inside the jurisdiction and still had valid registrations were put on the Bureau's cancellation list erroneously.

A third class of mistakes, pointed out by Grebner, concerned voters whose returned postcards had yellow forwarding address stickers. Errors can arise from information on forwarding address stickers because postal boundaries and voting jurisdiction boundaries do not match neatly in Michigan. For example, "East Lansing," "Williamston," "Perry," and "Meridian Township" are the legal names of four contiguous governmental and voting jurisdictions in mid Michigan. But "East Lansing," "Perry," and "Williamston" are also the names used in postal addresses in three contiguous postal areas covering the same portion of mid Michigan. The problem for the statewide program was that some of the territory for "East Lansing," "Williamston," and "Perry" postal addresses happens to be located in the Meridian township voting jurisdiction.

In this situation it was possible, for example, for a voter who moved inside of Meridian Township to have a returned postcard that indicated the voter had moved from an East

Lansing address to a Williamston address. Because the postal boundaries don't match the voting jurisdiction boundaries, Bureau staff who sorted the returned postcards could not have known accurately for a card showing a move between East Lansing, Williamston, and Perry postal addresses

- which voting jurisdiction the voter's original address was in,
- which voting jurisdiction the voter's new address was in, or
- whether the voter had moved inside or outside of their original jurisdiction.

Extrapolating from this example, it is unlikely that Bureau staff would have known enough about the many other postal vs. jurisdictional mismatches across Michigan's 1,516 voting jurisdictions to determine accurately whether returned postcards with forwarding address stickers involved moves inside or outside of a jurisdiction. Each card with a sticker would have required investigation to make the determination accurately, and that would have been prohibitively expensive.

Instead, the Bureau's sorting guidelines simply instructed its staff to sort all returned postcards with forwarding stickers into the "Yes, scan this card" pile. (Appendix #15) The result was that some voters who had moved inside their jurisdiction, and who had legally valid registrations, were placed on the cancellation list in error.

How many voters with valid registration were placed on the cancellation list by mistake? One way to get an estimate is to determine how many voters on the original cancellation list ended up voting at their original jurisdiction in the November 2006 or November 2008 general elections. The NVRA requires that the registration of such voters be treated as valid, notwithstanding the return of their postcards. MERA used this fact to do two studies of the cancellation list error rate.

In the first study MERA analyzed the QVF "inbox message" of East Lansing voters whom the Bureau had tagged for cancellation.³⁰ It turned out adequate data was only available for half of the tagged voters. For this group, however, the result was startling: 26% of the voters on the cancellation list either voted subsequently in East Lansing or moved to a new address in the East Lansing voting jurisdiction. A rough estimate of the number of mistakes in this small portion of the total statewide cancellation list is therefore 26%.³¹

In the second study MERA was able to determine, for a large subset of voters from the Bureau's initial cancellation list,³² how many voters with one of those IDs voted in November 2006 or November 2008. Analysis of the data indicates that an estimated total of 13,497 voters from the Bureau's initial cancellation list of 230,000 had valid registrations and were tagged for cancellation by mistake. That is an error rate of 5.9%.³³

4) The Cancellation Countdown Device

Having created the initial cancellation list by sorting and scanning the returned postcards, the Bureau's next step in the statewide program required the use of the "Cancellation Countdown Device." The Cancellation Countdown Device is a special program within the QVF system devoted to managing cancellation of voter registrations according to NVRA requirements.

The original version of the QVF software in 1998 failed to provide clerks with adequate software tools to administer the NVRA requirements. As Director Thomas explained, when "clerks administered the ... list maintenance procedures required by NVRA, they did not possess an efficient tool to keep track of voters over the period of two federal general elections before cancellation. When this period elapsed, the clerks were forced to search through their files to find the voters in question or maintain a file outside of the QVF to keep track of these voters." (Appendix #2) Specifically, the original QVF software provided

- no way to record the fact that a clerk had sent the voter an NVRA notice,
- no way to record when the notice was sent,
- no way to track the situation of the voters who received the notice to determine if and when it was appropriate under NVRA rules to cancel their registration, and
- no way to cancel registrations efficiently in batches (clerks had to cancel one voter at a time).

Lacking suitable software tools, conscientious clerks had to use improvised measures and invest extra effort to comply with NVRA requirements. Some clerks told MERA they didn't bother doing the added work needed to remove voters and simply left them in the QVF as "dead wood." Other clerks complained to the Bureau and asked them to improve the software.³⁴

To fix such problems, on July 7, 2005 the Bureau rolled out an upgraded version of the QVF which contained an important new program, the Cancellation Countdown Device (CCD). (Appendix #17) The CCD went into operation shortly before Director Thomas wrote to the DOJ announcing Michigan's planned statewide list cleanup effort. Thomas told the DOJ he would use the new CCD software in the statewide effort. Without this software, managing the cancellation list of 230,000 voters would have been prohibitively difficult, and the program could not have been carried out. The CCD was therefore the foundation of the program.

Because the Bureau's published explanation of the CCD is incomplete and misleading in important respects, a more complete and accurate description is provided here.³⁵ The CCD included the following features:³⁶

1. The CCD added a new "Cancellation Countdown Started" field in the Voter Registration Screen of voters' QVF records. (See page 10 for a picture of this field on the Voter Registration Screen.)
2. Clerks can enter the date on which they send a voter an NVRA notice into this field.
3. Once a date is entered into the "Cancellation Countdown Started" field, the voter is effectively placed on cancellation countdown, i.e. the voter's record is electronically tagged for cancellation after two general federal elections have passed.
4. During the grace period, whenever new information is entered into the voter's record which indicates the voter is properly registered (history of voting, change of address, etc.), the CCD automatically removes the date from the "Cancellation Countdown Started" field, and the voter is no longer at risk of cancellation.
5. The CCD treats as a group all voters tagged for cancellation prior to a particular general federal election. The entire group can be cancelled once that election and the next general federal election have passed.
6. After the grace period and before cancellations can be executed, the Bureau must enter a specific cancellation date. Local clerks can not modify this date.
7. Once the Bureau has entered a suitable date and the date arrives, the CCD automatically cancels the registration of all voters on countdown whose grace period has elapsed. The process of cancellation removes the date from the "Cancellation Countdown Started" field in the voters' QVF records and changes the status of each record to "Cancel."
8. The 2005 CCD software provided Bureau staff with tools to
 - create QVF reports about voters placed on countdown status, indicating their ID, name, address, jurisdiction, precinct, and countdown started date,
 - export QVF reports into other computer formats, such as .dbf and Excel,
 - manipulate reports electronically to create sub reports according to different criteria, and
 - use reports to print address labels and notices to the voters, and hence to communicate *en masse* with the entire set of countdown voters or selected subgroups among them, possibly in different jurisdictions.
9. While providing report-generating tools to the Bureau (8), the original CCD design did not enable local clerks in the same way. Lacking the ability to create reports, the clerks were not able to identify or communicate readily with voters in their jurisdiction who were tagged for cancellation under the statewide program.

5) Implementing the Cancellation Countdown List

Having created the initial cancellation list by sorting and scanning 260,000 returned postcards, the Bureau's next step in the statewide program was to place 230,000 of the scanned voters on cancellation countdown status in the QVF and to mail each voter an NVRA cancellation notice.

a) Placing Voters on Cancellation Countdown

The initial cancellation list consisted of computer files from scanning the returned postcards. The files contained voters' QVF IDs but no addresses or other information. The next task was to use these files to tag the corresponding voter records in the QVF. To save time, labor and expense, the Bureau created a special computer program to do the work.

Judging from details of files obtained from the Bureau, the program seems to have operated in the following way:

- First it selected a particular QVF ID from the output file from scanning.
- Next it searched through the QVF database to find the record with the corresponding ID.
- Then, having found the record, the program entered the date August 8, 2006, into the Cancellation Countdown Started field.
- Thereafter the program went on to perform the same operations successively for each of the other 230,000 QVF IDs on the initial cancellation list.

It took the computer program two or three days in early August 2006 to complete this work for all 230,000 voters on the cancellation list. Thanks to the CCD upgrade and the special additional program, the whole process occurred in a highly efficient, cost effective fashion. The process would have been logistically unworkable before the CCD upgrade.

Once the August 8, 2006 date had been entered to tag the 230,000 voters for eventual cancellation, the Bureau was then able to create a QVF report, which contained the registration addresses of the tagged voters. The address information was then used to create address labels to mail voters the legally required NVRA cancellation notices. The Bureau stated that it mailed the notices on August 8, 2006.

In its QVF Desktop Reference manual and the December 2007 *News You Can Use*,³⁷ the Bureau instructs local clerks that whenever they send out NVRA notices to voters, they must change the status of the voters' QVF record to "Verify."

However, when the Bureau sent out NVRA notices for the 2006 program and put 230,000 voters on countdown, it ignored its own instructions and did not change the status of the records to “Verify.” The Verify status would have allowed local clerks to output lists of voters based on that field, and thus allowed efficient communication with those voters. The verify status would also have appeared on the precinct lists next to voters’ names in each election and would have been a flag for poll workers and voters that something was going on.

b) Announcing the Voter List Cleanup Program to Local Clerks

Up to August 8, 2006 the Bureau had given clerks no clue that a statewide program was underway. Its earlier *News You Can Use* notice (July 7, 2006) about the “educational” postcards had hidden their true list cleanup function. But after the Bureau mailed NVRA notices and placed 230,000 voters on countdown status on August 8, 2006, it needed the clerks’ cooperation to complete the rest of the voter list cleanup effort. At this point the Bureau had no choice but to inform the clerks about the existence of the program. It did this in the August 8, 2006 issue of *News You Can Use*. (Appendix #18)

The August 8, 2006 *News You Can Use* indicated that the “educational postcard” the Bureau had unveiled a month earlier was actually the beginning of a Bureau-initiated statewide voter list cleanup effort. Never before had the Bureau started such a program. Nor had the Bureau ever created its own cancellation list based on returned mail. Previously, as mandated in Michigan law, local clerks conducted list cleanup efforts.

The *News You Can Use* informed clerks that the Bureau had sent voters on its cancellation list the required NVRA notice and reply form. Again, never before had the Bureau itself sent out NVRA notices, received NVRA reply forms, or stated its intention, as it did in this *News You Can Use*, to process the returned reply forms. Previously, this had been the function of local clerks.

The *News You Can Use* also informed clerks that the Bureau had put the voters involved on countdown status. It explained that barring other developments the voters would be subject to automatic cancellation after the November 2008 general election. Again, it was completely unprecedented that the Bureau would use the QVF system to place voters on cancellation countdown. Previously, it had been the role of Michigan’s local clerks to track and cancel voters after sending them NVRA cancellation notices.

Finally, the NYCU informed the clerks that the Bureau would soon send them a QVF “inbox message” with a list of voters in their jurisdiction that the Bureau had tagged for possible cancellation.³⁸

The August 8, 2006 *News You Can Use* was the Bureau's first communication to clerks about an unprecedented, statewide, Bureau-initiated voter list cleanup in which the Bureau was assuming functions of voter list management for which the local clerks had previously been responsible. The Bureau delivered this news to the clerks as a *fait accompli*, after the program was already underway.

6) Managing the Cancellation Countdown

After a voter is sent an NVRA notice, the law defines a period of two general federal elections in which it is possible to gather new evidence to determine whether the voter's registration is valid. In the 2006 statewide program, this "countdown" period lasted from August 8, 2006 through November 4, 2008. During this time, it was necessary to keep track of the QVF records of each of the 230,000 countdown voters, in case new evidence about the validity of their registration should arise. When such evidence emerged, the QVF record was to be updated accordingly.

Some local clerks told MERA that they wanted to communicate with their countdown voters from the statewide program. They said they would like to have mailed additional notices or explanations or taken other actions with those voters to protect them from mistaken cancellation or answer their questions. However, the Bureau's countdown was implemented in such a way that clerks were unable to easily identify or communicate with those countdown voters.³⁹ Effectively, the Bureau's actions prevented clerks from being proactive in assisting tagged voters in their jurisdiction.

As required by law, the Bureau had enclosed a pre-stamped, pre-addressed reply form with the NVRA cancellation notices it sent to countdown voters. (Appendix #19) By completing and returning the reply form, voters could confirm their correct address, and thereby remove their name from the cancellation list. When asked through a FOIA request, the Bureau was unable to tell MERA the number of returned reply forms it received.⁴⁰ Apparently it kept no such records. Bureau staff later confirmed that no records had been kept about the number of NVRA notices that were returned as non-deliverable.⁴¹ However, it appears that a large proportion of the NVRA notices, and the reply forms enclosed with them, were never delivered. MERA investigators saw large numbers of them marked as non-deliverable at the Department of State warehouse.

In response to NVRA cancellation notices that were successfully delivered, one of three things likely happened:

Some voters became confused or concerned about the notices, which threatened possible cancellation of their registration, and called their local clerks for clarification about what was going on.⁴² The first sentence of the Bureau's notice informed voters, "we have been

advised that you no longer live at the address recorded on your registration.” Without explaining the source of “advice,” such a blunt assertion might have been particularly upsetting to the estimated 13,497 voters who received the notice by mistake and who knew perfectly well that they still lived at their registration address. Being threatened with the possible cancellation of their voter registration could not have given them much confidence in the operation of the election system

Other voters who received the notices responded by returning the reply forms to the Bureau with new information about their current address. The Bureau then bundled the returned reply forms by jurisdiction and sent them with a cover letter of instructions⁴³ to the local clerks for processing. In an interview one clerk said he had received a packet of reply forms one or two inches thick, roughly 10% of about 5,000 voters whom the Bureau had tagged for cancellation in his jurisdiction. A second clerk in a medium sized jurisdiction received 146 reply forms, or 7.6 % of 1,910 countdown voters in that jurisdiction. A deputy clerk also reported that the return rate of NVRA reply forms in her jurisdiction was typically low. The information from these three clerks indicates that the return rate for the reply forms was low, possibly on the order of five to ten percent.

The final group of voters who received the NVRA notices ended up not responding at all. Judging from the apparently low return rate of reply forms, it is possible that the most common voter response to receiving the NVRA notice was to do nothing. MERA has been unable to ascertain with any certainty how many NVRA notices were returned, because apparently no record of responses to the reply forms was kept by the Bureau.⁴⁴ In addition, we do not know the extent to which local clerks acted on returned reply forms. One clerk MERA interviewed had not acted on the reply forms two years after receiving them. When we questioned several other local clerks they had no memory of even receiving the reply forms. Thus we can draw no conclusion about the effect of returned reply forms in reducing the number of voters on countdown.

Because the reply form return rate was presumably low, new address information from reply forms was available for only a small percentage of the 230,000 countdown voters. It is likely that much more evidence about countdown voters’ registrations came to light during the grace period from other sources.

Many old registrations of countdown voters may have been cancelled, when election officials were presented with

- evidence the voter had died,
- a written cancellation request from the voter,
- evidence the voter had registered out of state, or
- renewal of the voter’s driver’s license at an address in a new jurisdiction.

MERA does not know how many of the 230,000 voters were removed from the original cancellation list in this way. The Bureau has published no information about this. However, the number is likely in the tens of thousands.

Other countdown voters likely had their registrations validated when the voter

- independently notified the local clerk of their correct address,
- voted at the original jurisdiction during the grace period, or
- renewed their driver's license with an address within the jurisdiction (same or new).

In each of these cases, the voter would have been removed from the cancellation countdown and would no longer be at risk of having their registration cancelled.

As new evidence about the original list of 230,000 countdown voters came to light, the number of voters who remained at risk of cancellation progressively declined. As of August, 2008 only 165,000 of the original 230,000 were still on countdown status.⁴⁵ As of June 2009, after the history of those who voted in the November 2008 election had been entered into the QVF, only 122,598 of the original 230,000 were still on countdown status and subject to cancellation.⁴⁶

7) Final Cancellation

The Cancellation Countdown Device (CCD) was the essential tool for finally cancelling the voter registrations that remained on countdown at the end of the statewide program. The CCD requires that the Bureau must enter a specific date for executing the cancellations. To comply with the NVRA, the Bureau had to select a cancellation date that occurred after the November 4, 2008 general election. Also, it had to delay the date sufficiently after the election so that local clerks would have time to record in the QVF who voted on November 4. Once voters on countdown were recorded as having voted, the CCD would automatically remove them from the cancellation list.

Once the Bureau entered the cancellation date into the CCD, the software was not designed to display the cancellation date to local clerks, and the Bureau chose not to announce the date to clerks in advance of the actual cancellation. Accordingly, after the November 4, 2008 election some clerks were uncertain about when cancellation would occur, or indeed whether it would occur at all. One clerk told MERA before the election that he did not know the cancellation date but he expected from the Bureau's past practice that it would occur in January or February 2009 after clerks had had time to enter voter history from the election. That expectation proved to be wrong, however. In May 2009

another clerk confirmed that the cancellation still had not occurred. Eventually, the Bureau selected the cancellation date of June 4, 2009, months later than expected.

After the Bureau entered the June 4, 2009 date into the QVF, the CCD did the work of canceling the registrations of voters remaining on countdown. Barring other actions, these voters' names will not appear on the precinct lists of eligible voters for the next election. The voters' records, however, were not actually erased from the QVF. The act of "cancelling" by the CCD only changed the contents of the voter records by removing the Cancellation Started date and changing the status to "Cancel." As of September 4, 2009 all records of cancelled voters from the statewide program were present in the QVF and visible to local clerks.

After the cancellations were done, the Bureau used the QVF inbox message system to tell local clerks which voters had been cancelled.⁴⁷ So it was only after their voters were cancelled that the clerks finally learned the cancellation date.

a) Minimization of the Clerks' Role in the Cancellation Process

The statewide program reduced local clerks' control over the final cancellation of voter registrations in their jurisdiction and transferred control almost entirely to the Bureau of Elections.

In the program the key to the transfer of control from clerks to the Bureau was the design of the CCD. Before it was rolled out in June 2005, the Bureau staff had no direct role in the key tasks of the NVRA cancellation process, and the clerks controlled those tasks completely. The tasks included

- placing voters on cancellation countdown and sending them NVRA notices,
- monitoring and communicating with voters on cancellation countdown,
- dropping voters from cancellation countdown as new evidence emerged about their registration status,
- setting a date for final cancellation, and
- cancelling registrations once the cancellation date arrived.

Although the clerks had previously controlled this work, their original QVF tools for doing it had been very primitive, so the work was time consuming and inefficient. The quality of the QVF tools for performing NVRA tasks improved markedly when the CCD was implemented in June 2005. The CCD automated some tasks entirely. It allowed other tasks that formerly had to be performed on one record at a time to be performed efficiently on groups of records. However, as the power of the software tools increased, so did the Bureau's control over the tasks.

For certain actions, the original software was designed so that only the Bureau staff could perform the action and clerks were excluded entirely. Even when both clerks and the Bureau could perform the same actions, the CCD allowed Bureau staff to work efficiently on groups of voter records, while the clerks still had to work on one record at a time. For example, in the statewide program the Bureau efficiently put a group of 230,000 voters on countdown status, but when individual clerks used the CCD to put other voters on countdown status during the same period, they had to do it one record at a time. Unlike the Bureau, the clerks did not and still do not have the software tools to put groups of voters on countdown status all at once.

Similarly, during the statewide program the CCD software allowed the Bureau to create reports about groups of voters who were on countdown status. Though it chose not to, the Bureau could have monitored changes and communicated with these voters *en masse*. In contrast, however, the design and implementation of the 2005 CCD software prevented clerks from creating reports to monitor which voters in their jurisdiction were on countdown status or, because the “verify” status wasn’t used, from communicating with those voters as a group.

Although local clerks had previously known when voters in their jurisdiction would be cancelled, in the statewide program the design of the CCD software gave the Bureau sole control over the cancellation date and did not permit clerks to change or remove the date. Moreover, the CCD did not display the cancellation date, and thus left it entirely up to the Bureau whether or not to give clerks advanced notice of the date on which their voters would be cancelled. In the 2006 statewide program, the Bureau chose not to notify clerks in advance.

For the 2006 statewide program, once the Bureau performed its unprecedented action of putting 230,000 voters on cancellation countdown, the CCD software combined with the Bureau’s other practices effectively shut out the local clerks. They were unable to monitor fully which of their voters had been placed on cancellation countdown. They were unable to communicate efficiently with those voters about their status. They had no control over when their voters would be cancelled and were completely in the dark about the date of final cancellation. Under previous conditions, prior to the rollout of the CCD in 2005, the clerks would have been in charge of all these matters.

Shortly before the statewide program concluded, in early Spring of 2009, the Bureau installed a new edition of the CCD software, which allows clerks to create convenient computer reports about voters on countdown. However, the Bureau did not announce or explain the new software until June 5, 2009, the day after voters on statewide countdown had already been cancelled. (Appendix #20) The improved CCD certainly will be helpful

to clerks going forward. But it does not make up for their loss during most of the statewide program of a way to effectively monitor and communicate with their voters on cancellation countdown. Nor does it restore local clerks' control over the cancellation of their own voters.

b) Detecting and Correcting Mistaken Cancellations

The NVRA requires that voters who are tagged for cancellation but who vote during the countdown period must be dropped from the cancellation list. This NVRA "voting safeguard" prevents many mistaken cancellations but it only works if the mistakenly tagged voters turn out to vote. In November 2008 voter turnout was 67%, the highest in 40 years. In less historic elections with lower voter turnout, such as November 1996 (turnout 54%) and 1998 (turnout 43%), the number of mistakenly targeted voters who slipped by the NVRA voting safeguard would have been greater (the higher the turnout rate, the more effective the safeguard).

MERA estimates that 13,497 out of the 230,000 voters in the statewide program were put on the initial cancellation list by mistake.⁴⁸ Among the 13,497 voters, 10,886 probably voted during the countdown period and were dropped from the countdown list. The remaining 2,611 voters, however, probably did not vote, and hence were not removed from the countdown list by virtue of voting. It is possible some of these voters were removed for other reasons during the countdown period, but it is likely that nearly all of them ended up having their registrations cancelled by mistake on June 4, 2009.

For the estimated 2611 voters whose registrations were mistakenly cancelled by the statewide program, each one is a citizen whose basic right to vote was compromised by an error in voter list maintenance.

What is the likelihood that such mistaken cancellations will be detected and corrected in the future?

Except for NVRA notices, the Michigan system of election administration lacks any means to alert voters to the possibility that their registration might be mistakenly cancelled. It is also questionable whether NVRA notices provide an effective warning to voters. Many are never delivered. Many are simply ignored, as is suggested by the low return rate for reply forms. The wording of the Bureau's version of the notices was not easy to comprehend, especially for poorly educated or illiterate voters, or voters for whom English is a second language. No attempt has been made to educate voters about issues of list maintenance and the possibility of errors. Consequently, it is very likely that most of the voters who were mistakenly cancelled in the statewide program have no awareness of the possibility of mistaken cancellation and wrongly believe they are still properly registered.

Concerned that voters had no notice of potential disenfranchisement, MERA worked to prevent mistaken cancellations. In January, 2009, before the final cancellation in June, and in cooperation with the Advancement Project, MERA posted online the August 2008 list of voters still on countdown. A free long distance number was also provided for voters to find out if they were on cancellation countdown. Voters were encouraged to contact their local clerk with any concerns about their voter registration.

As far as MERA knows, the Bureau presently has no intention of doing anything to detect mistaken cancellations from the 2006 program. Instead, Bureau staff have shown an understandable wish to believe NVRA safeguards are sufficient to protect voters. Given that this was clearly not the case, the belief in these inadequate procedures remains a serious danger to mistakenly cancelled voters, present and future.

If the Bureau takes no action, how else might mistaken cancellations actually come to light?

If mistaken cancellations are detected, it will happen almost always on election day when mistakenly cancelled voters go to their polling place and a poll worker tells them that their name is no longer on the precinct list. The poll worker might then contact the local clerk's office for guidance and the clerk might initiate an investigation of the voter's situation. This should be encouraged. The clerk has available a Statewide Lookup feature of the QVF that can be used to see if a voter is registered in another jurisdiction. If the clerk finds the voter is not registered elsewhere, the clerk can then look up the voter's cancelled QVF record and ask the voter directly to correct any misinformation about their registration. If the clerk finds that the voter's cancellation was mistaken, the clerk has the authority and means to reactivate the voter's registration on the spot (though the means have been partially blocked and a workaround may be necessary).⁴⁹

It is likely that a certain number of the estimated 2,611 mistaken cancellations will not be detected or corrected. Each such case represents a serious infringement of a citizen's right to vote and a serious problem for Michigan's election administration.

Conclusion

MERA's investigation of the 2006 statewide program has revealed an effort to clean up invalid voter registration addresses while meeting NVRA requirements to give notice and observe a grace period before cancellation. The effort utilized software improvements to the QVF to increase efficiency and ultimately induced further refinements in the software.

In the end, however, the program was expensive with limited effectiveness and a high error rate. Because it used returned mail as the sole basis for placing voter registrations on cancellation countdown, and did not work effectively with local clerks, the program interfered with the voting rights of large numbers of voters whose registrations were valid, ultimately cancelling many inappropriately.

The program also failed to treat voters uniformly as required by the NVRA.⁵⁰ A large amount of the returned mail that was the basis for initiating cancellation was simply never processed. MERA has not been able to determine whether there was a pattern in processing the mail that might be judged discriminatory, either geographically or otherwise.

The program appears to have been instigated by partisan political pressure from the Voting Rights Section of the Bush Department of Justice. Its startup was fraught with deception and misdirection. Local clerks were kept in the dark, until it was well underway. The public never received official notice, and attempts to bring information about the program to public light, by MERA and other groups, were regularly resisted. Even the final cancellation date was withheld until after the cancellations were carried out. The program, in short, was anything but transparent in its intent, operation and outcome.

This report is an effort to bring a measure of accountability to the 2006 statewide program. The assessment is developed below in more detail. Practical steps to improve list maintenance are also suggested and the overall account is placed in a larger national context.

1) Issues

a) Partisan Influence on Michigan Voter List Maintenance

Though not ironclad, considerable circumstantial evidence indicates that the statewide program was instigated because of pressure on Secretary of State Land and the Bureau of Elections by partisan political appointees in the Bush Department of Justice. It appears the statewide program was 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.⁵¹ 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. Nevertheless, the program did compromise the voting rights of a considerable number of Michigan citizens.

Partisan pressure is the most parsimonious hypothesis to explain many of the shortcomings of the program. The Bureau of Elections

- abandoned its previously successful strategy of working cooperatively with local clerks to target list cleanups in selected jurisdictions,
- undertook to manage a large statewide program at a time when Bureau staff must have been stretched to their limits by preparations for the 2006 general election,
- centralized control over the program in an unprecedented fashion and kept its conduct largely secret from the public, and initially, even from the local clerks themselves,
- did not process all the returned postcards uniformly,
- failed to keep appropriate and federally required records of responses to NVRA reply forms, and
- did not conduct or publish an evaluation of the program.

Though the program cost at least \$2,000,000 of taxpayer funds, it failed to achieve the objective announced to the Department of Justice of removing a large portion of the estimated 800,000 invalid entries on the QVF, but instead only removed 122,598 voters, considerably fewer than the less expensive, cooperative list cleanup programs that the Bureau had already initiated with local clerks in targeted jurisdictions.

Although the 2006 statewide program was not particularly effective, under pressure from the Department of Justice, Michigan's state-level election officials chose by mounting the program to participate in a partisan attempt to manipulate the election system with minimal regard for voters' rights or the responsibilities of local clerks. This is disturbing and needs to be addressed so that similarly flawed programs are not instigated again in the future.

b) Keeping Records to Evaluate and Improve Voter List Maintenance

Because voter list maintenance affects the fairness of elections and the individual voter's right to vote, better maintenance is important. Improving list maintenance requires election officials to keep suitable data about list maintenance programs so their strengths and weaknesses can be evaluated in a meaningful way. The data and the evaluation should be reported to the public and appropriate action should be taken to implement best practices (see below).

MERA has no documented evidence that the Secretary of State requested the Bureau of Elections to conduct a formal evaluation of the unprecedented statewide list management program, nor is there any indication that the Bureau has conducted or intends to conduct such an evaluation.

MERA had considerable difficulty collecting information on the 2006 statewide program. The Bureau's public explanations of relevant QVF software (e.g. the CCD) have been sketchy and incomplete, and Freedom of Information Act requests were often resisted. For the statewide program, the Bureau kept no records on how many postcards were returned, how many were not processed and why, how many cancellation notices were undeliverable, how many NVRA reply forms were returned, what the reply responses were and the follow-up actions taken.

MERA urges keeping more complete data on list maintenance programs at all levels as the basis for future improvement.

c) Protecting Public Confidence in the Election System

Whether founded or not, fears, rumors, and accusations about partisan manipulation of voter lists are a recurring issue in elections. In that connection MERA is concerned with the Bureau's secretive management of the program. It centralized control, limited communication with clerks to a bare minimum, mailed a deceptive postcard to voters, and never announced the program to the general public or allowed voters to check whether they were on the cancellation list. All of these actions created suspicion that something improper was taking place.

There was also a lack of attention to preventing mistaken cancellations during the program and no assistance for clerks or voters to correct mistakes when they did occur. Mistaken cancellations can easily lead affected individuals to question the fairness of elections. MERA urges that more care be taken to identify and correct errors in list management.

d) Upgrading QVF Software and the Role of Local Clerks

According to Michigan election law, the 1,516 local clerks are responsible for cancelling voters and managing voter lists in their jurisdictions. But the Bureau of Elections controlled list management in the 2006 statewide program. Computer technology was a key factor in the shift. The Cancellation Countdown Device transferred control over the cancellation date and the statewide programs' final cancellations to the Bureau, while withholding from clerks the reporting tools they needed to monitor and communicate with their countdown voters from the program.

Local clerks' current software tools unnecessarily limit their potential contribution to voter list maintenance. The clerks have special resources to contribute to list maintenance that the Bureau lacks – local staff, knowledge of local circumstances, relationships with local voters, and a commitment and willingness to be proactive on behalf of voters in their jurisdictions. MERA urges software improvement to enable clerks to make better use of these special strengths and contribute more actively to the effectiveness of list maintenance.

e) Preventing and Correcting Mistakes

Managing the Michigan voter list is a responsibility of daunting complexity – how to ensure the accuracy of a constantly changing list of over 7,000,000 registered voters, maintained in 1,516 separate jurisdictions, regulated by elaborate legal rules, based on complex and constantly evolving computer technology, and dependent on the contributions of thousands of different election and postal workers. In a process of this scale and complexity, some mistakes are unavoidable.

An estimated 13,497 voters were put on the initial cancellation list in the statewide program by mistake. It is true that the NVRA provides safeguards to catch and drop mistakenly tagged voters from the final cancellation list. But the NVRA safeguards are not fully effective, especially when voter turnout is low during the grace period before final cancellation. In the 2006 statewide program, more than 2,000 voters were probably cancelled mistakenly, and that was after a very high turnout federal election in 2008.

Every citizen's right to vote is precious and deserves protection. MERA is concerned that little or no attention was paid to preventing mistakes in the statewide program. Even if some mistaken cancellations are unavoidable, serious attention should be paid to preventing them when possible and correcting those that do occur.

f) Cost-effective voter list maintenance

In an era of scarce public resources, it is appropriate to ask what approaches to voter list maintenance are cost-effective. The centralized approach of the 2006 statewide program was clearly not cost-effective: the Bureau spent at least \$2 million in direct costs to tag 230,000 records at a cost of \$8.69 per record. It cancelled 122,598 records, at a cost of \$16.31 per record. In comparison, when the Bureau worked in a decentralized manner to assist local clerks in list clean-up, the cost was only \$1.58 per record to tag 229,000 records.⁵²

Large scale, specialized list maintenance programs based on returned mail are not likely to be cost effective even in the best of circumstances. There is too much uncertainty in the reasons for returned mail and too little chance of reaching voters at the same returned address for this approach to be very efficient.

MERA urges consideration of a more cost-effective approach: an integrated, dynamic, tie-in strategy for voter list maintenance. Rather than separate voter list cleanup activities from new voter registration, as in the 2006 program, this strategy would address the tasks of registering new voters and updating the registrations of continuing voters simultaneously in an integrated way. The approach would be “dynamic” because the process of registering, updating, or canceling voters would go on continuously, rather than episodically, as in large scale list maintenance programs or massive registration drives conducted once every four years. The key to the new approach is to “tie” registration activities into ongoing governmental processes, like driver’s license renewal, but using processes that occur more frequently than every of four years. Voter registration could be tied to high school and college registration, employment registration, auto insurance and license registration, death certificates, and registration for health care and other benefits.

For such data capture, software at driver’s license branches in Michigan must be improved to insure a seamless process of changing voter registration every time a driver’s or auto license is changed. Currently the clerk must remember to offer an application for voters to change their registration. If this is overlooked, voters may think they have changed both, but wind up with a cancelled voter registration.

The cost savings would arise because large and expensive voter registration drives and list maintenance programs would be replaced by minor modifications of other tasks that have to be done in any case. A sufficient number of properly chosen tie-in venues could assure the frequent cancellation of old, invalid QVF records.

2) Practical Steps to Strengthen Michigan Voter List Maintenance

a) Policy Development

The legislature and Secretary of State should appoint a commission of qualified experts, officials, and citizens to review Michigan and Federal election law and practice and develop an updated, formal, and explicit policy on voter list maintenance. Better policy can help to protect Michigan from partisan manipulation of its voter list. Taking account of the requirements of Federal and State law, the policy should define

- the conditions under which it is appropriate to conduct statewide voter list maintenance,
- who should participate in the decision to undertake such programs, and
- how the programs should be conducted and reported to the public.

b) Using the Web to Inform and Engage Citizens

A subsection on voter list maintenance should be created under “Elections in Michigan” on the Department of State webpage and publicized widely. It should

- describe Michigan’s policies on voter list maintenance.
- provide a readable introduction to voter list maintenance for the Michigan public that includes:
 - statistics on the size and turnover in the QVF,
 - descriptions of the work of the Bureau and local clerks to update the QVF,
 - an explanation of NVRA requirements and the cancellation countdown process, and
 - an acknowledgement of possible mistakes, especially when returned mail is used to initiate a cancellation countdown.
- announce in advance all major voter list maintenance programs.
- declare the Bureau and clerks’ commitment to minimize mistakes and help voters protect their registration from mistaken cancellation.
- describe the measures in place to detect and remedy mistakes that do occur.
- post a searchable database of all voters currently tagged for cancellation, whether by clerks or the Bureau, and include the expected final cancellation dates and multilingual instructions on how to use the search function and what voters should do if their name is in the database.

c) Strengthening Local Clerks' Ability to Prevent and Remedy Mistaken Cancellations

The Bureau should consult with local clerks to identify software changes in the QVF and CCD systems that would help them manage the cancellation process more actively and efficiently. They should include means for clerks to efficiently place large numbers of voters on countdown status, to set or modify cancellation dates, and to execute cancellations for voters in their jurisdictions.

The Bureau should send a QVF inbox message to local clerks one month in advance of the date for executing the cancellation of any voters in their jurisdiction. The inbox message should announce the cancellation date and list each voter in the jurisdiction who is scheduled for cancellation.

d) Protecting Public Confidence in the Election System

In consultation with local clerks, the Bureau should develop guidance on what the clerks can do in the month prior to cancellation to avoid mistaken cancellations.

The Bureau should also develop guidelines on how to train poll workers to deal with voters who may have been mistakenly cancelled. For every election, each precinct chair should be given a list of all voters in the precinct who have been recently cancelled, with instructions on how to work with the voters if they come to the polling place to vote.

e) Cost Effective List Maintenance

Michigan should invest in cost-effective, dynamic, tie-in approaches to list maintenance that capture new and updated voter registrations through school and employment registration, auto licensing and insurance, death certificates, and even registration for health care and other benefits.

3) The Importance of the 2006 Program

It could be argued that the outcomes of the 2006 Michigan list maintenance program have not had great consequence, since it seems to have had no effect on the outcome of any Michigan election. In other swing states which also conducted statewide voter list cleanups under the same partisan pressure, the consequences may have been more severe.

The Michigan program sought to follow NVRA requirements. It made scrupulous use of notice and observance of the grace period before cancellation, and these measures certainly ameliorated much of the damage that might have been done. Because of the failure to

process returned mail uniformly and keep records of responses to reply forms,⁵³ however, the Michigan program's legal compliance with the NVRA is questionable.

The Michigan program also demonstrates the same vulnerability to partisan pressure that was revealed in other states. Indeed, without the effort embodied in this report, it is doubtful that public light would ever have been cast on this less than stellar episode in the history of Michigan's election administration.

The overt aim of the federally instigated state voter list purges before the 2006 election was to prevent "voter fraud" or people voting, or attempting to vote, without being registered. If the experience in Michigan is any indication, the covert effect was to cancel the registrations of thousands of validly registered voters. It is a sad and ironic state of affairs that virtually no evidence of voter fraud has ever surfaced in association with statewide list purges, while evidence abounds of such programs' interference with the legitimate voting rights of thousands of citizens. The case in Michigan is the same.

The primary importance of the Michigan program, then, lies not in the very modest improvement in list accuracy that it may have accomplished, but rather in the examples it presents of what not to do and what practices to avoid when maintaining voter lists, if voting rights are to be respected and honored.

Particularly egregious is the practice of using returned mail as the sole basis for initiating cancellations, a conclusion shared by the recent Brennan Center report on voter purges.⁵⁴ Equally egregious, and also underscored by findings of that report, is the pervasive failure of the Michigan program to be transparent. Transparency is essential in democratic processes everywhere and nowhere is it of greater importance than in election administration. The reason is simple: without transparency there is no public accountability.

The Michigan Election Reform Alliance.Org therefore urges all citizens and all elected officials to take this report to heart and join with us in the search for non-partisan remedies that will strengthen the administration of elections and, consequently, public confidence in them.

Resources

Abbreviations and Glossary of Key Terms

NVRA	The National Voter Registration Act of 1993; includes federal law regarding voter registration and voter list maintenance
RCR	Residency Confirmation Request, a warning notice of possible cancellation of voter registration that the NVRA requires to be sent to a voter when placed on cancellation countdown.
HAVA	The Help America Vote Act of 2002 Mandates that states establish centralized voter lists and use electronic voting machines; provides federal funding to states for such purposes.
The Bureau	The Michigan Bureau of Elections, Chris Thomas Director Situated in the MI Dept of State; reports to MI Secretary of State Terri Lynn Land; helps manage MI elections.
DOJ	US Department of Justice
MI SOS	Michigan Secretary of State
Local clerks	Locally elected or appointed officials; authorized and responsible under MI law for maintaining voter lists and administering elections in Michigan counties, townships, and cities
QVF	MI “Qualified Voter File”: distributed database system of MI’s legally mandated official voter list; jointly maintained by BE & local clerks
QVF ID	The unique identifying number of an individual voter in the Michigan voter database
QVF Record	The database record of information about an individual voter in the Michigan voter database
NYCU	<i>News You Can Use</i> - a periodic electronic newsletter from the Bureau to local clerks

Inbox message An email message from the Bureau to local clerks generated by QVF software and containing information about changes of status of particular registered voters.

Cancellation Countdown A legally defined procedure in which voters are marked to be purged from the QVF after a certain period of time if certain conditions aren't met.

CCD Cancellation Countdown Device, an update to the QVF software that added programming to manage voters on cancellation countdown.

Appendices

Contents

Appendices #1 - #9 available at

<http://www.MichiganElectionReformAlliance.Org/Apnd1-9.2006MIVoterPurge.pdf>

Appendix #1 — Letter Dated March 28, 2005 from Joseph Rich, Chief, Voting Section, Civil Rights Division, Department of Justice to Terri Lynn Land, Michigan Secretary of State

Appendix # 2 — Letter dated July 8, 2005 from Christopher Thomas, Michigan Director of Elections, to John Tanner, Chief Voting Section, Civil Rights Division, Department of Justice

Appendix #3 — “Land to ‘scrub’ voter lists,” *Towne Courier*, July 17, 2005

Appendix # 4 — “Trimming of voter lists to get scrutiny,” *Ann Arbor News*, August 11, 2005; and “Plan to clean up voter rolls reasonable and required,” *Kalamazoo Gazette*, Reproduced in *Ann Arbor News*, August 15, 2005

Appendix #5 — June 11, 2007 letter, Rich *et al.*

Appendix #6 — June 18, 2007 letter, Rich *el al.*

Appendix #7 — July, 11, 2007 *Campaign Legal Center* blogpost, J. Gerald Hebert

Appendix #8 — July 19, 2007 *TalkingPointsMemo* Blogpost, Paul Kiel

Appendix #9 — Sept 26, 2007 article on Hans von Spakovsky *Think Progress*

Appendices #10 — #23 available at

<http://www.MichiganElectionReformAlliance.Org/Apnd10-23.2006MIVoterPurge.pdf>

Appendix #10 — November 1, 2009 Memorandum to File, Jan BenDor

Appendix #11 — A copy of the postcard

Appendix #12 — July 7, 2006 NYCU

Appendix #13 — Letter dated September 5, 2008 from Christopher Thomas, Director Michigan Bureau of Elections, to Nancy Bedell, MERA Cancellation Countdown Committee

Appendix #14 — Email exchange August 1, 2008 between Kelly Chesney, Michigan Department of State, and Nancy Bedell, MERA Cancellation Countdown Committee

Appendix #15 — Bureau of Elections' Criteria for Sorting Returned Postcards

Appendix # 16 — July 17, 2006 *MichiganLiberal.Com* Blogpost, Mark Grebner

Appendix #17 — June 7, 2005 NYCU (Cancellation Countdown Device)

Appendix #18 — August 8, 2006 NYCU

Appendix #19 — NVRA Notice and Reply Form

Appendix #20 — June 5, 2009 NYCU

Appendix #21 — December 7, 2007 NYCU

Appendix #22 — August 7, 2008 MERA FOIA to Bureau

Appendix #23 — Bureau's Memo to Clerks about Processing Voter Reply Forms from the Postcard Purge

Endnotes

¹ Sources and Methods of Investigation.

Essential evidence from the investigation is reproduced in the appendices:

<http://www.MichiganElectionReformAlliance.Org/Apnd1-9.2006MIVoterPurge.pdf>

and

<http://www.MichiganElectionReformAlliance.Org/Apnd10-23.2006MIVoterPurge.pdf>

Written material about the program was collected from newspaper articles, blog posts, postal regulations, legal codes, and especially, from the press releases, correspondence, reports and online material of the Michigan Department of State and Bureau of Elections.

Interviews were conducted with local clerks, attorneys, county officials around Michigan, postal employees, private sector database consultants, and others.

The committee visited the Department of State storage warehouse to observe the returned postcards from the program, and local clerks' offices to observe demonstrations of how the QVF is used in editing voters' records.

MERA submitted Freedom of Information Act (FOIA) requests to obtain voter lists and other information that pertained to the program from the Michigan Bureau of Elections.

All of these diverse materials were taken into account, cross checked, analyzed and interpreted to construct this account of what happened in the program. Gaps remain in the story, however, and some of the information is contradictory or difficult to interpret in a conclusive way, so the report points out what is not known or obscure as well as the facts.

The investigation actively sought information about the program from the Michigan Department of State and Bureau of Elections. The Committee requested face-to-face meetings to discuss the program with the Bureau's Director but was told to submit written questions instead. In response the committee submitted a detailed questionnaire to which the Bureau made a brief, incomplete response about three months later. The Committee was also invited to join an already confirmed meeting with the Bureau set up by the Advancement Project, but the Bureau cancelled the meeting. The committee submitted a total of seven Freedom of Information Act requests. After denying two requests, the Bureau did provide an electronic list of voters who had been placed on cancellation status. While the information the Bureau provided was valuable, it is also fair to say that the Bureau's cooperation with this investigation was quite limited.

² The QVF Desktop Reference is posted on the Michigan Department of State webpage at http://www.michigan.gov/sos/0,1607,7-127-1633_11976_12001---,00.html

³ The Change Status window lists all statuses for QVF records except for “Active.” It provides boxes to check for the reasons for selecting a given status. Thus, if a voter’s record is on “Verify” status then one of the boxes under “Verify” would be checked. If a voter’s record is on “Cancel” status, one of the boxes under “Cancel” would be checked. To change a voter’s status, the user simply has to make changes in which boxes are checked. Clicking on a checkmark in a box removes it. When an empty box is clicked, a checkmark is placed in it. Thus to change a voter’s record from “Verify” to “Cancel” the user would first remove the checkmark from the box under “Verify” and add a checkmark in the appropriate box under “Cancel.” After changing the checkmarks, the user must save the result to complete the change of status, and the new status is then automatically displayed at the upper left hand corner of the voter’s Voter Registration Screen (see page 9). If all checkmarks are removed from the boxes in the Change Status window, the QVF automatically assigns the voter’s record to “Active” status, and “Active” is shown in upper left hand corner of the Voter’s Registration Screen.

⁴ For the full text of the National Voter Registration Act of 1993 as it pertains to voter list maintenance, see http://www.usdoj.gov/crt/voting/42usc/subch_ih.php#anchor_1973gg section 6. For the text of the Help America Vote Act of 2000, see <http://www.fec.gov/hava/hava.htm>

⁵ Personal communication from Mark Grebner, March 20, 2009. The figure of \$1,960,000 appeared on a Michigan Department of State itemized statement about the cost of the statewide program that Mark Grebner obtained through a FOIA.

⁶ MERA submitted a FOIA to the Department of State in July, 2009 which requested an electronic list of all voters who were put on cancellation countdown on August 8, 2006 and subsequently cancelled on June 4, 2009. The Bureau provided a list of 122,598 voters.

⁷ Copies of Michigan laws can be seen at: www.michiganlegislature.org Two current laws are excerpted here since they clearly apply to actions of the Secretary of State discussed in this report. According to the State Office of Administrative Hearings and Rules, the only rules regarding “Electronic Voting Systems” (R 168.771) were issued in 1979. These rules were written to apply to punch card systems. <http://www.state.mi.us/orr/emi/admincode.asp?admincode=Department&Dpt=ST> No rules related to voter registration list maintenance have been promulgated, as required by MCL 168.31.

MICHIGAN ELECTION LAW (EXCERPT) Act 116 of 1954, 168.502 Sec. 502
Registration cards; township, city or village clerk; custody of files. The master file and the precinct files shall at all times remain in the custody of the township, city or village clerk, as the case may be, except that the precinct files shall be delivered on election day to the inspectors of election in the several precincts who shall have custody of the same during any election or primary election and who shall return such files to the clerk immediately thereafter.

MICHIGAN ELECTION LAW (EXCERPT) Act 116 of 1954, 168.31 Sec. 31
Secretary of state; duties as to elections; rules;

(1) The secretary of state shall do all of the following:

- (a) Subject to subsection (2), issue instructions and promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the conduct of elections.

⁸ The point is mentioned in a letter dated July 8, 2005 from Christopher Thomas, Director Michigan Bureau of Elections, to John Tanner, Chief, Voting Rights Section, Civil Rights Division, Department of Justice:

The National Voter Registration Act (NVRA) placed a heavy burden on local election officials with the restrictions placed on file maintenance. Before the NVRA, registration files were maintained by sending a cancellation notice to voters with no activity on their file during the previous five years. The NVRA ended that practice. The NVRA's prohibition against subjecting voters to cancellation proceedings for inactivity was, in fact, one of the essential reasons why the QVF program was adopted. (p. 1)

For the full letter, see Appendix #2.

⁹ The NVRA required states to institute voter registration at Department of Motor Vehicle offices, which in turn required major readjustment of state practices to integrate election administration and driver's license administration. Database coordination proved critical. Initially, in the absence of a voter database that could "talk to" the driver's license database, paper applications had to be mailed to local clerks for processing. Establishing the QVF reduced paperwork by allowing the voter's application and information to be transmitted electronically first to the QVF, and then to the local clerk's voter list.

¹⁰ *Ibid.* p. 2: "When we created the QVF database in 1998, we matched the records of 1,514 cities and townships against each other and against the Michigan driver's license file. . . . Despite these challenges, we identified and eliminated over 600,000 duplicate records."

¹¹ Jan BenDor related to Bill Rittenberg the following information in a telephone interview on May 7, 2009. BenDor became Pittsfield Deputy Clerk in 2000.

Redistricting based on the 2000 census occurred in 2002. The Bureau of Elections coordinated a massive project to reclassify every street in the affected jurisdictions into the new voting boundaries. Local clerks had to print out their QVF Street Index, recode the political district numbers for each street by hand, and fax the changes to the Bureau for data entry into the QVF. After review and correction, the clerks rushed to print and mail new Voter Identification cards in advance of the 2002 August Primary Election. This process produced thousands of returned/undeliverable Voter ID cards in the affected jurisdictions.

In Pittsfield Township Approx.1500 Voter IDs were returned. The QVF records of these voters were coded Verify V21. Using the code and the date range, a list and labels were printed out in order to mail to this group. Pittsfield sent out a NVRA Residence Confirmation Request (RCR) to all these voters. The staff kept a copy of the output list used to produce address labels and mail to these voters.

More than 95% of the 1,500 RCRs came back as undeliverable. A handful of voters confirmed they were still at the original address and that the mail return was a mistake. A few wrote that they had moved and authorized cancellation.

As a result of the many RCRs that were returned, BenDor and the Pittsfield staff were faced with a problem, how to keep track of the rest of the 1,500 voters over two general elections and how to cancel afterwards. The QVF software provided no means for tracking these voters' QVF records or to identify them for later cancellation according the NVRA requirements. The Bureau of Elections told the local clerks to keep their own lists of the voters in question. BenDor and her staff improvised a "work around" and used the "comments field" of the QVF record for each of the 1500 voters to enter manually a note "confirmation card returned ___" with the date in the blank.

As the 2004 general election approached and the NVRA waiting period neared ending, BenDor called the Bureau and said "how are we going to cancel these 1,500 voters if they have not voted in Nov. 2004?" No QVF tools existed to cancel the voters efficiently as a group. BenDor said: "I don't want my staff to have to do the cancellations manually, one record at a time. We don't have time to do this. This is what computers are for. You [Bureau] should do it for us." She sent the Bureau a copy of the list of the voters with the request that the programmer cross match to the RCR note in the comments field.

The Bureau delayed and sat on the request, claiming they had no staff to handle the request. Eventually they cancelled the voters' registration. It took them six months.

BenDor guesses that this exchange might have helped prompt the Bureau to come up with the Cancellation Countdown Device (CCD) and add it to the QVF. BenDor guesses that the Bureau heard from other clerks about this problem of tracking and cancellation of voters in compliance with the NVRA requirements. In his response to MERA's questions about the 2006 list management project (Appendix #13), Bureau Director Thomas said that the CCD was created at the request of local clerks.

¹² *Ibid.* pp. 2, 3:

We believe that most of the "inactive" records currently in the QVF database are tied to data inaccuracies received when we created the database. It is important to note that these inaccuracies were not sufficient to initiate the cancellation procedures under the NVRA. After the 2000 and 2002 federal elections, we performed targeted electronic matches within the QVF and sent the results to cities and townships for verification. The jurisdictions targeted were those whose voter registration totals exceeded census estimates of voting age population. This process eliminated many obsolete records. We recently queried the database and determined that more than 800,000 voters have registration dates prior to 1998 and have not voted in any election held in 1998 or later. While some of these registrants have chosen not to vote, we believe that many of these records are simply people who no longer live in Michigan, have changed their names or are deceased.

¹³ Two press releases described the work, giving emphasis to Detroit:

“Land presents Detroit with nearly \$116,000 as reimbursement for verifying registered voters,” June 7, 2006, Michigan Secretary of State Press Release, http://www.michigan.gov/sos/0,1607,7-127-1640_9150-144863--,00.html,

“Secretary of State Land Presents Nearly \$116,000 Check to Detroit City Clerk for Identifying 75,000 Obsolete Voter Records,” June 7, 2006, City of Detroit Press Release, <http://www.highbeam.com/doc/1P3-1050755581.html>

¹⁴ Related news coverage also appeared in the August 15, 2005 *Ann Arbor News* and the August 15, 2005 *Kalamazoo Gazette*. (Appendix #4)

¹⁵ How Partisan Pressure from the Department of Justice Probably Instigated the Michigan 2006 Statewide Voter Purge Program

In the Bush era considerable tension arose between political appointees who headed the Department of Justice and some of the long-time civil service professionals who formed the core staff of the department. A case in point was the relationship between Joseph Rich, the ostensible author of the DOJ's 2005 letter to Michigan, and Hans A. von Spakovsky, a political appointee. Rich, a long-time career civil servant, was a Civil Rights Division attorney in the Department of Justice from 1968-2005 and Chief of the Voting Section from 1999 to 2005. From early 2003 until December, 2005 von Spakovsky was Voting Counsel to the Assistant Attorney General of the Civil Rights Division, in which position he oversaw the Voting Rights Section headed by Rich and spent "virtually all his time on voting matters" (Rich *et al.*, June 11, 2007, Appendix #5).

As the DOJ's Voting Counsel from 2003-2005, von Spakovsky became a partisan lightning rod who generated intense public controversy. The specific nature of his controversial activities came into full public view in 2007, when then President Bush nominated him to the Federal Elections Commission, and when the Senate Committee on Rules and Administration held hearings to consider his qualifications to fill the post. Some of the revelations that emerged about von Spakovsky during his nomination can be found in Appendices #5-9. Particularly important are the June 11th and 18th letters, written jointly by Rich and five other former career Voting Rights Section staff to Senator Diane Feinstein, Chair of the Senate Rules and Administration Committee. In them Rich and his colleagues gave a detailed first-hand account of von Spakovsky's partisan activities as Voting Counsel in 2003-2005 and urged the Senate Committee to deny von Spakovsky's nomination. In the end, the Senate Committee denied von Spakovsky's appointment to the FEC, basically on the grounds of his partisan record from 2003-2005. The Senate Committee's decision was influenced by the letters of Rich *et al.*, which seem to have had considerable credibility, at least to a majority of the committee members.

In the context of this report, the significance of the nomination materials is the light they shed on the probable origins of the 2006 Michigan voter list maintenance program. To see their relevance to the program, it's necessary to examine them more closely.

How von Spakovsky Likely Pressured Rich to Pursue His Partisan Agenda

The fact that Joseph Rich signed the 2005 DOJ letter to Michigan does not by itself prove that Rich was the sole author of the letter, that he approved of its contents, or that he sent it voluntarily. In fact, the nomination materials imply that Rich disapproved of the letter's contents and couldn't have been happy about sending it. It is very likely that Rich was pressured to send the letter against his better professional judgment by von Spakovsky.

At the time the letter went out, the nomination material reports, Rich was only the titular head of the Voting Rights Section, and von Spakovsky was the de facto head. In effect at the time, Rich was reporting to von Spakovsky and was controlled to a large extent by him. As Rich and colleagues wrote:

During his three years in the front office of the Civil Rights Division, Mr. von Spakovsky assumed primary responsibility for the day to day operation of the Voting Section. His superiors gave him the authority to usurp many of the responsibilities of the career section chief [i.e. Rich] and institute unprecedented policies (Rich *et al.* June 11, 2007, p. 2)

[From 2003 to 2005 von Spakovsky]. . . assumed the role of de facto Voting Section chief replacing the career Section Chief [Rich] in most of his statutory responsibilities and traditional duties managing the Section. (Rich *et al.* June 18, 2007, p. 1)

Furthermore, it is clear from Rich's written testimony that he was not happy that Spakovsky had usurped his statutory responsibility and traditional duties. In fact, not long after the DOJ letter to Michigan was sent out under his name, Rich resigned from his long-time position as Chief of the Voting Rights Section.

In their joint written testimony, Rich and the other five career civil servants described and registered their strong objection to the partisan policy agenda that von Spakovsky was pursuing as de facto head of the Voting Rights Section. They wrote, for example:

. . . [von Spakovsky] changed the enforcement direction of the Department regarding the National Voter Registration Act. In 2005, Mr. von Spakovsky introduced a new initiative to target states to demand that they purge their voter lists under Section 8 of the Act. This was done despite a lack of evidence that registration deadwood leads to invalid votes and instead of enforcing important federal requirements that states make voter registration more accessible to all its [sic] citizens. Moreover, the cases filed seeking large-scale purges were in states with a tight partisan split - like Missouri and New Jersey - rather than states like Texas and Utah where the rolls were equally or more inflated. (Rich *et al.* June 11, 2007, p. 5)

In light of the allegations in the Rich *et al.* letters, consider now the following features of the 2005 DOJ letter to Land and Thomas about problems with Michigan's voter list:

- The recipient of the letter, Michigan, was a swing state, and as Rich *et al.* described it, von Spakovsky's partisan voter purge initiative was focused on swing states.

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- The DOJ letter to Michigan was sent in 2005, and, as Rich *et al.* described it, von Spakovsky undertook his voter purge initiative in 2005.
 - The DOJ letter to Michigan reminded SOS Land and Director Thomas that the NVRA required states to periodically conduct list cleanup programs to remove invalid voter names from voter lists; and, as Rich *et al.* described it, von Spakovsky's 2005 voter list purge initiative involved a shift in NVRA enforcement policy to use the NVRA as a tool to pressure states to undertake voter list purges
 - The DOJ letter to Michigan argued that Michigan's voter list contained an excessive number of voters; and, as Rich *et al.* described it, von Spakovsky justified his voter list purge initiative under NVRA by pointing to "registration deadwood" on voter lists.
 - To summarize, the written testimony makes clear that von Spakovsky's 2005 purge initiative was undertaken "despite a lack of evidence that registration deadwood leads to invalid voting;" that its implementation involved a shift in DOJ NVRA enforcement priorities from expanding to limiting access to the vote; and that this new national "vote limiting" enforcement effort was targeted on swing states in the run-up to the 2006 elections and so was partisan.

The pattern of evidence sketched above strongly suggests that Joseph Rich had serious principled objections to the contents of the 2005 DOJ letter to Michigan. But why would he send such a letter that was deeply contrary to what he considered to be the spirit of the law and the mission of the Voting Rights Section? The likely answer is that von Spakovsky pressured Rich to send the letter.

The testimony on von Spakovsky's FEC nomination and the associated investigative reporting of the time detail how von Spakovsky used his power as Voting Counsel to pursue his agenda and deal with resistance to it by other officials. In several instances, von Spakovsky hid his identity or sent out communications under the name of others in pursuit of his agenda. When challenged, he successfully used his political connections in the White House to block the reappointment of at least one official who had criticized and exposed his partisan efforts. He also used his power to unfairly bias the performance evaluations of career officials in the Civil Rights Division whom he disliked. In the end, it was because of this pattern of partisanship that he was denied appointment to the FEC in 2007.

(Summarized in Paul Kiel's July 19, 2007 blogpost, Appendix #8.)

Von Spakovsky's documented partisan mode of operation shows him to have been fully capable of pursuing his 2005 voter purge agenda by pressuring Rich to send the Michigan letter, even though Rich disapproved of it.

How von Spakovsky Likely Pressured Thomas and Land to Undertake the 2006 List Maintenance Program

Three months after receiving the DOJ's letter, Bureau Director Thomas posted a reply on behalf of SOS Land. Because the DOJ's original letter had officially come from the Chief of the Voting Rights Section, Thomas addressed his reply to the Chief of the section; but by the time of the reply on July 8, Joseph Rich had already resigned as section chief. So Thomas addressed Michigan's reply to the new section chief, John Tanner. Thomas appropriately copied his letter of reply to SOS Land. Significantly, he also copied his reply to "Hans von Spakovsky, Counsel to the Assistant Attorney General." (Appendix #2)

The fact that Thomas addressed Michigan's reply to John Tanner and copied the letter to von Spakovsky indicates that Thomas had some awareness of von Spakovsky's role in the Voting Rights Section. More than a year after the Michigan statewide program was started, when Thomas was asked at a public meeting of local clerks why he had undertaken the statewide program, he is reported to have answered, "The Feds made me do it." A month before the program started, at a similar public meeting, he "indicated that he had been reluctant to engage in the project, but that he was under heavy pressure from the federal government, and alluded to possible DOJ legal action against Michigan if he were to resist the pressure." (Jan BenDor, Memorandum to File, November 1, 2009, Appendix #10.)

On the face of it, taking Chris Thomas' point of view, the contents of the DOJ letter itself hardly seem like coercive statements that would force Thomas or Land to do anything except respond to the letter. As far as the contents of the DOJ letter were concerned, Thomas proved himself quite able to answer in his reply, showing that Michigan's voter list problem as described in the letter was exaggerated and at any rate that Michigan had long been working, and working effectively, on the issue of cleaning up old "registration deadwood" from its voter list.

Considering the mild contents of the DOJ letter itself, the Bureau of Elections' ongoing, targeted list cleanup efforts, and the heavy work pressure on Bureau staff to handle an upcoming election in November 2006, it is puzzling why Thomas and Land would undertake a massive and unprecedented statewide list cleanup effort in late Summer of 2006, or indeed at all. Hence, an adequate explanation of why they did indeed undertake the statewide program needs to take into account of the role von Spakovsky and his relationship to Bureau Director Thomas.

We can be sure on two counts that Thomas knew and had some kind of working relationship with von Spakovsky.

First, as Bureau Director, Thomas was responsible for Michigan's compliance with federal voting laws. The DOJ's Voting Rights Section, whose *de facto* head at the time was von Spakovsky, was responsible for enforcing state compliance with federal law. Since Thomas copied his letter to von Spakovsky and had to work with him regarding Michigan's compliance, Thomas was clearly aware of von Spakovsky's role in enforcing compliance.

Second, Thomas had a working relationship with von Spakovsky through their involvement with the Election Assistance Commission (EAC). The EAC is an independent agency of the U.S. government created by the Help America Vote Act of 2002 (HAVA). It serves as a national resource for administering federal elections, creates standards for voting systems (including electronic voting equipment), and disburses and audits HAVA funds to the states. In 2004, it had a budget of \$1.5 billion, much of which was distributed to states, including Michigan.

In 2005, both von Spakovsky and Thomas were appointed to the EAC Advisory Board and served on a search committee to evaluate new candidates for the EAC. Through a FOIA request (January 6, 2009) MERA obtained email correspondence between Thomas and von Spakovsky connected with the work of this committee. At the time both men had a significant institutional interest in the EAC. Michigan had received significant HAVA funding through the EAC, which was used, for example, to pay for electronic voting machines and support local clerks' voter list cleanup efforts. Notably, HAVA funds were also used to finance the 2006 statewide list maintenance program.

For his part, von Spakovsky was appointed to the EAC Advisory Board as the statutory representative of the DOJ's Voting Rights Section. He was involved in various conflicts with EAC Commissioners over turf issues and the pursuit of his partisan agenda. The conflicts are documented in testimony and investigative reporting pursuant to the Senate hearings on his nomination to the FEC. (Appendices #6 – 8) As detailed there, von Spakovsky attempted to pressure EAC Commissioners to take his side in controversial actions, and he used his connections to the White House to deny reappointment to an EAC Commissioner who opposed him.

Thomas' multifaceted work relationship with von Spakovsky in 2005 is highly significant in the context of this report. Being engaged practically with von Spakovsky both through the Voting Rights Section and the EAC, Thomas was likely aware of von Spakovsky's partisan agenda and aggressive mode of operation. Moreover, von Spakovsky had a clear interest in Thomas' behavior both in regard to implementation of a voter purge in Michigan and in regard to the EAC search committee's recommendations about new appointments to the Commission. It is therefore quite probable that von Spakovsky put direct pressure on

Thomas to undertake a statewide voter purge in Michigan and not at all surprising that Thomas later told local clerks, “The Feds made me do it.”

It is very probable, then, that Land and Thomas decided to undertake the unprecedented 2006 statewide voter purge in response to partisan political pressure from the DOJ. This conclusion is supported by a detailed and internally consistent web of evidence. The point man in exerting this pressure was Mr. Hans von Spakovsky. Von Spakovsky used his position in the Voting Rights Section to pressure Joseph Rich to act contrary to his own professional standards by sending Michigan the letter urging voter list clean-up. It is very likely that von Spakovsky followed up on the DOJ letter by putting additional pressure on Thomas to implement the 2006 statewide voter purge, probably in the form of a threat of a federal law suit. Hence, as Thomas reportedly said to local clerks in 2007, “The Feds made me do it.”

¹⁶ December 17, 2008 telephone interview with Evan Hope.

¹⁷ SOS Land and Director Thomas’ position about the extent of the voter list cleanup effort evolved between receipt of the DOJ letter in March 2005 and the actual beginning of the statewide program in July 2006.

The early report in the *Towne Courier* (Appendix #3), from a Department of State press release, describes a voter list cleanup effort based on return of duplicate voter IDs in *all* Michigan jurisdictions. It was implied that *all* clerks would be involved in the effort and would use new QVF software (the “cancellation countdown device”) to process returned IDs according to NVRA requirements.

The implied involvement of all local clerks, however, was not a realistic expectation. The QVF was updated with the new software just six weeks before the *Towne Courier* press release. Not all clerks would have been familiar with it. While the Bureau had been successful in engaging a few jurisdictions in using the software, it lacked the authority to force all clerks to use it and it also lacked the capacity to negotiate cooperation with each of the 1,516 distinct jurisdictions in Michigan. Moreover, clerks in some smaller jurisdictions did not then and do not today have direct access to QVF terminals. Clerks in some jurisdictions, MERA has been informed, work as volunteers. So Land’s early claim that *all* clerks would participate in “voter list scrubbing” and use the new software was never plausible.

On the other hand, Thomas’ claim in his July 8, 2005 letter to the DOJ (Appendix #2) about the extent of the new list cleanup effort was much less definitive and more nuanced than Land’s. Thomas initially hedges about the extent of the list cleanup effort by saying

“we are using HAVA funds to reimburse the costs involved to *those* [emphasis added] communities that have processed and posted Confirmation/Cancellation Notices to the QVF as a result of the Voter Identification Cards returned as ‘undeliverable.’” The implication of “those” is that the while some communities might use the new software, other communities might not.

At the end of the passage Thomas is ambiguous about the extent of the list cleanup effort. In the second to last sentence he writes: “Through this new program a significant portion of the ‘inactive’ voters will be sent Confirmation/Cancellation Notices. It is anticipated that this will lead to a sizeable number of cancellations after the 2008 election.” The ambiguity lies in the reference to “the ‘inactive’ voters.” Which inactive voters did Thomas intend to refer to? Given the other portions of Thomas’ letter, the DOJ was encouraged to read “the ‘inactive’ voters” to mean all inactive voters statewide. By reading Thomas in this way, the DOJ would have gotten the impression that Michigan’s new list maintenance efforts would be focused on *all* inactive voters statewide.

This is exactly the kind of impression that Thomas would want the DOJ monitors of Michigan’s HAVA compliance to form and also the impression fostered by Land’s press release published in the *Towne Courier*. However, an alternative reading that is more in keeping with the facts would see the new list clean up efforts as focused only on jurisdictions that actually use the new software. Thomas appears to have been careful not to exclude this more defensible reading.

In the end, Land and Thomas went with a program with a true statewide reach, but to achieve it they had to largely abandon the plan of using local clerks and centralize control in the Bureau.

¹⁸ Grebner summarized the telephone conversation with Thomas on July 17, 2006 in a widely read political blog, *MichiganLiberal.com*. (Appendix #16) He reported that Land and Thomas

intend to completely ignore the role set out for local Clerks in Michigan law, and just run the program themselves. This is mainly a reaction to the lack of cooperation they've gotten from local Clerks. Chris [Thomas]'s claim was that Federal law supersedes the provisions of State law. I don't believe that (we're both attorneys) but since the Republicans control the courts, I suppose their version might prove triumphant, if the question is ever litigated.

¹⁹ September 30, 2008 interview with Rayan Anastor, MI Dept of State, at Michigan Department of State warehouse, Sunset and Willow, Lansing.

²⁰ Interview with Rayan Anastor, *ibid*.

²¹ The NVRA permits the use of information from the USPS in list clean up: “change-of-address information supplied by the Postal Service through its licensees . . . [may be] used to identify registrants whose addresses may have changed.”
http://www.usdoj.gov/crt/voting/42usc/subch_ih.php#anchor_1973gg section 6(c)(1)(A)

²² Personal communication from Mark Grebner, March 20, 2009. The figure of \$1,960,000 appeared on a Michigan Department of State itemized statement about the cost of the statewide program that Mark Grebner obtained through a FOIA.

²³ Interview with Rayan Anastor, *ibid*. During the interview Anastor only mentioned the “Yes” and “No” piles of returned cards. However, the Department of State’s guidelines for sorting the cards -- “Sorting Statewide Mailing Postcards” (Appendix #15) – suggest the possibility that the Bureau staff might also have created four subsidiary piles during the sorting process. However, three of these possible subsidiary piles (#s 3, 4, 5 in the document) clearly fell into the “No, do not scan” category. And the fourth subsidiary pile (#6 in the document) contained cards that needed further attention before they could be sorted into the “No” or “Yes” category. So whether there were two piles at the Bureau offices, as Ms. Anastor suggested to us orally, or six, as suggested in the Bureau’s document, effectively there were two categories “Yes” (to be scanned and tagged for cancellation) and “No” (not to be scanned or tagged for cancellation).

²⁴ MERA would not have undertaken its investigation of the 2006 list maintenance program had it not been for PPC’s Grebner. Grebner recognized very early that the Bureau of Elections was conducting a large list maintenance program. His blogpost on MichiganLiberal.com (July 14, 2006, Appendix #16) broke the story to the Michigan public and is where MERA first learned about the list maintenance program. MERA conducted three interviews with Grebner. The quotations in the body come from a March 10, 2009 interview, which was tape-recorded.

²⁵ Fellows told us independently that he asked the temps at the warehouse to show him the cards which they had not or would not scan.

²⁶ For example, as Grebner confirmed, Fellows was not supposed to scan cards with attached USPS explanations such as “a dog on premises,” “no physical address corresponding to the address on the card,” “no mail receptacle” at the address, or a note or sticker saying “temporarily away.” “The point is,” said Grebner, “if [the card] had been returned for some reason that indicated it wasn't a real move, I'm not interested in the information.”

²⁷ Copies of all the database files relevant to this report are all available from the MERA Cancellation Countdown Committee at ccc@michiganelectionreformalliance.org.

²⁸ The NVRA requires “Any State program or activity 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 – (1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965”
http://www.usdoj.gov/crt/voting/42usc/subch_ih.php#anchor_1973gg section 6b.

²⁹ Telephone conversation with Mr. Griffiths on December 2, 2007. Mr. Griffith’s account was summarized as part of a follow up email sent on December 2, 2007. The relevant passages from the email are:

December 2, 2007

Dear George Griffiths,

Thank you for talking to me just now and for your information and offer of assistance. . . . As I just mentioned in our phone call a few minutes ago, I originally thought to call you about this because I happened to know from our previous meeting that you were one of the Michigan voters who received SOS Land's July 2006 postcard. As I understand it (please correct me if I'm wrong), the card was sent to your home address in Delhi Township where you are duly registered to vote. However, when the card actually arrived at your official residence it turns out that you had put in a change of address request to the Post Office to forward your mail to your vacation home where you were staying during the summer. The SOS mailing, however, was designed for "no forwarding," so your postcard was returned to the Michigan Bureau of Elections. The Bureau of Elections then responded by sending the SOS followup letter about the status of your voter registration. . . . Receiving this, you went to your local clerk, Mr. Evan Hope, in Delhi Township. Fortunately, you said, you have known Mr. Hope for many years and he was able to straighten out your registration for you. . . . However, you also said, you were annoyed because you felt other voters who received the letter might not have such a good relationship or indeed any relationship with their local clerk, and they might have had more difficulty in straightening out their registration.

Bill Rittenberg

³⁰ **East Lansing Countdown List Error Rate**

Methods:

MERA submitted a FOIA in early August 2008 to the East Lansing City Clerk, and obtained:

- a) a paper copy of the Bureau's inbox message to the East Lansing Clerk listing all voters in East Lansing that the Bureau had placed on cancellation countdown on August 8, 2006.
- b) an excel file of all East Lansing registered voters as of August 20, 2008.

All confidential voter information was omitted. MERA also obtained information about which voters on the inbox list voted in East Lansing in the November 2006 election.

Mark Grebner ran queries for MERA on the number of East Lansing (EL) voters on countdown who voted in the period from November 2006 to August 2008.

Breakdown of data:

28,072 registered voters in EL as of 8/20/08.

1,919 EL voters put on countdown on 8/8/06. Of these voters,

925 were no longer registered in EL on 8/20/08, and

994 were still registered in EL on 8/20/08. Of the ones still registered in EL,

797 were registered at the same EL address and

58 voted between 8/8/06 and 8/20/08.

197 of those still registered in EL were registered at a new EL address, and

105 voted between 8/8/06 and 8/20/08.

92 (197 – 105) of those registered at a new EL address did not vote between 8/8/06 and 8/20/08

163 Total of EL countdown voters (58 + 105) who voted in EL between 8/8/06 and 8/20/08

Estimated error rate: Out of 994 EL countdown voters who were still registered in EL as of 8/20/08, 92 were registered at a new EL address but hadn't voted and 163 did vote either at their old or a new EL address. So, 255 (i.e. 92 + 163) of the 994 (26%) had valid registrations: they either voted after being placed on countdown or were registered to vote at a new EL address.

³¹ It should be noted that as a college town, East Lansing has an especially high rate of change in residency, so the error rate for this area is likely to be higher than that for the State as a whole.

³² **The Bureau's CD of the Initial Cancellation Countdown List**

The SOS told the Advancement Project that the Bureau put 230,000 voters on countdown status for cancellation on August 8, 2006. Rayan Anastor, who handled the mailing and processing of returned postcards for the Bureau, also told MERA that the Bureau originally tagged 230,000 voters for possible cancellation. Anastor said the Bureau originally scanned 260,000 returned postcards but dropped 30,000 from the countdown.

Project Vote submitted a FOIA to the Bureau in the Fall of 2006 to obtain a CD of all voters on the original countdown list. Grebner, the Advancement Project, the Michigan Democratic Party, and others obtained the same CD. MERA received a copy from a Project Vote staff person. The Advancement Project, Jan BenDor (MERA), and Grebner all said the CD contained a large number of different files of different types. The CD contained no clarification of how the different files related to the card scanning process or to the 230,000 voters who were eventually placed on countdown on the QVF. The Advancement Project and BenDor said the CD was confusing and difficult or impossible to work with. Grebner also confirmed that his copy contained a lot of “junk” and said he cleaned it away before loading the relevant information into his system. A database expert and MERA volunteer, Julie Griess, examined and worked with the material on the CD for MERA. Among other files she described two important subgroups.

First Group

First was a group of 8 files in .txt format each preceded by a date stamp. The record count for the combined files was 192,304. The column headings for the data were:

TrackingString
VoterID
BarcodedVoterID
JurisdName
VoterName
MailAddress1
MailAddress2
MailAddress3
MailAddress4
MailAddress5
CANCELCDSTARTED.

MERA independently converted one of these files into Excel format and found data in all columns except MailAddress2, 3, 4, and 5, which were blank. For each voter record, the numbers in VoterID and BarcodedVoterID were identical. When sorted, the data in TrackingString and CANCELCDSTARTED were in the form:

TrackingString

CANCELCDSTARTED

8/1/2006 08:38:33 C39:201368 ZIP:XXXXX-XXXX-XX	8/1/2006 15:43
8/1/2006 08:38:34 C39:200805 ZIP:XXXXX-XXXX-XX	8/1/2006 15:43
8/1/2006 08:38:48 C39:200788 ZIP:XXXXX-XXXX-XX	8/1/2006 15:43
8/1/2006 08:38:49 C39:200963 ZIP:XXXXX-XXXX-XX	8/1/2006 15:43

For this particular converted file, the dates in CANCELCDSTARTED and TrackingString were all 8/1/2006. For CANCELCDSTARTED the specific times ran from 15 hours and 42 seconds through 15 hours and 59 seconds up through 16 hours and 11 seconds. For TrackingString the times went through a different but largely consistent chronological progression.

MERA is confident from the information in these files that they represented 192,304 of the voters whose cards had been scanned by the Bureau and whose QVF records had been placed on Cancellation Countdown.

Second Group

The second group of files on the Bureau's CD that our database expert examined were a confusing miscellany, including:

- 1) A set called "(date stamp)mail.txt" which appears to contain a tracking string, status type and overseas flags, and additional mailing address data, such as some overseas and military addresses. These are not large files.
- 2) A set called "(date stamp)res.txt" which contains similar information but not the detailed addresses. It wasn't clear if these voters were the same as others in the first group or not.
- 3) A set of error files with voter ids (apparently) and error messages such as "320208 VOTER IS INVOLVED IN A STAGE MOVE" or "1760985 VOTER IS NO LONGER ACTIVE."

Some of the data in these files might have pertained to additional voters who were put on countdown, but because the status of the files was uncertain, MERA decided not to include them in the study of the countdown voters' voting behavior and the statewide countdown list's error rate (below).

³³ **Statewide Countdown List Error Rate**

MERA was able to identify 192,304 of the 230,000 voters whom the Bureau of Elections had placed on countdown status. Using public information obtained from the Michigan Department of State, Mark Grebner assisted MERA by running queries on PPC voter files to determine that among the 192,304 countdown voters, the following turned out to vote

Voted in Nov 08 or Nov 06 (inclusive)	9,102
Voted in November 2006	5,638
Voted in November 2008	8,134

To extrapolate these results for the subgroup of 192,304 voters on the cancellation countdown list to the full group of 230,000 voters on the list, MERA assumed that the same proportions turned out to vote in both groups. Applying that assumption, the estimated voter turnout for the full group of 230,000 is as follows:

Voted in '06 or '08:	$(9,102 / 192,304) (230,000) = 10,886$
Voted in '06:	$(5,638 / 192,304) (230,000) = 6,743$
Voted in '08:	$(8,134 / 192,304) (230,000) = 9,728$

All of the estimated 10,886 voters who voted in Nov '06 or '08 represent mistakes on the countdown list according to the NVRA. The NVRA mandates that because they voted, they had valid registrations and they shouldn't have been placed on the list in the first place. The NVRA also requires that they be removed from the cancellation list before the cancellations are actually executed. It is highly probable that this occurred: once Michigan clerks enter information that a voter has voted in the QVF record, the Bureau's cancellation software automatically removes the voter from the cancellation list.

The above estimate of 10,886 mistakes in the initial countdown list only takes account of voters who turned out to vote in '06 or '08. In addition, there were mistakes on the list among the voters who did not turn out to vote in '06 or '08. From data posted on the Secretary of State's web site, the fraction of registered voters who actually voted in '06 and '08 was:

'06: voted / registered	= 0.5364
'08: voted / registered	= 0.6745

Assuming these turnout numbers apply to the mistakenly cancelled voters on the cancellation countdown list, we can estimate the total number of voters who were mistakenly placed on list, including both those who voted in the 2006 and 2008 elections

and those who did not. Let “M” represent the total number of voters who were mistakenly placed on the list. Then

$$M \times (\text{Turnout rate for the election}) = (\text{Number of mistaken countdown voters who voter in the election})$$

and

$$M = (\text{Number of mistaken countdown voters who voted in the election}) / (\text{Turnout rate for the election})$$

Entering the numbers for the two elections, we get two estimates:

$$M = 6,743 / 0.5364 = 12,571 \quad (\text{data from '06 election})$$

$$M = 9,728 / 0.6745 = 14,423 \quad (\text{data from '08 election})$$

The two estimates suggest that the total number of voters mistakenly placed on the cancellation countdown list was in the range from 12,571 to 14,423. To have a single number rather than a range, we use the average of the two numbers, namely: 13,497.

**Breakdown of Voters with Valid Registration
Mistakenly Placed on the Cancellation Countdown
List**

Voted in '06 or '08	10,886
Did not vote in '06 or '08	2,611
Total	13,497

The 13,497 mistakes represent 5.9% of the 230,000 voters on the original cancellation list. Among these 13,497 voters 10,886 or 80.7% were removed from the list before cancellation was executed. Another 2,611 were not removed and were probably canceled in error. They represent 2.1% of the 122,598 voters who were finally canceled.

³⁴ See endnote #11.

³⁵ The description of the CCD properties is derived from these sources: (a) the Bureau’s published explanation (Appendix #17); (b) Director Thomas’ comments in a letter to MERA (Appendix #13); (c) a phone conversation with Bureau technical staff; (d) the Bureau’s use of the CCD during the statewide program, and (e) direct observations of QVF records before and after cancellation with the CCD.

³⁶ The nine features of the CCD were derived as follows:

Regarding Features 1-3 of the CCD: The Bureau explained the June 2005 version of the Cancellation Countdown Device (CCD) to clerks in the June 7, 2005 issue of *News You Can Use*. (Appendix #17) Attached to the text was a .pdf file containing detailed pictures of the pertinent QVF screens with further instructions for use of the CCD. When the Bureau upgraded the CCD in June 2009, it explained the upgrade to clerks in the June 5, 2009 issue of NYCU (Appendix #20) which also contained an attached file with relevant QVF screens and further instructions for use. As far as MERA has been able to ascertain with FOIA requests, these two issues of NYCU represent the totality of the information that the Bureau has published about the Cancellation Countdown Device. The June 7, 2005 issue of NYCU is the source for the features 1-3.

Regarding Feature 4 of the CCD: The feature was mentioned by Bureau Director Christopher Thomas in a letter of September 5, 2008 replying to some of MERA's questions about the statewide list maintenance program. (Appendix #13) As explained there, "Voters [on countdown status] who vote, change their address, sign a petition [to election officials] or have any other activity on their file have the countdown designation accurately and promptly removed." (p. 2) In other words, if information that shows a voter is properly registered is entered into the QVF record, the CCD is designed to automatically remove the record from the cancellation countdown and the voter is no longer at risk of cancellation.

Regarding feature 5 of the CCD: As the Bureau explained in the June 2005 NYCU, once a voter is put on countdown, the CCD "calculates the date upon which the record may be cancelled," or more precisely, calculates the earliest possible date upon which the record may be legally cancelled. In October 2009 Stuart Talsma, a technical staff member at the Bureau, told MERA that the Bureau does cancellations with the CCD once every two years. Usually, Talsma said, the cancellation day occurs in February or March but in 2009 it occurred in June. This implies that the CCD is designed to identify all of the countdown voters who are eligible for cancellation on a particular day and to cancel them together as a group, even though they may have been put on countdown status at different times.

Regarding feature 6 of the CCD: The use of the term "automatic" in the June 2005 NYCU to describe the execution of cancellations is misleading. It suggests that the entire process of cancellation is automatic and occurs by computer with no human intervention. In fact all the NVRA or CCD do is define the earliest possible date when cancellation can occur. Neither the NVRA nor the CCD define in advance the specific date when the cancellations actually will occur. They leave the actual execution date open to choice. Usually, Talsma said, the Bureau sets the cancellation date in February or March, but in 2009 it set the date in June, much later than usual. In other words, the cancellations don't occur automatically.

Before they can occur, the CCD requires that the Bureau must choose the specific cancellation date and enter it into the QVF. Once the Bureau selects the date, the clerks can't change it.

Regarding feature 7 of the CCD: After the Bureau has entered the cancellation date, when that date actually arrives, the CCD automatically executes cancellations of voters who have been on countdown status for the requisite period. MERA made observations of the records of countdown voters before and after cancellation by the statewide program. The observations show that when the cancellations are executed, the CCD removes the date from the Cancellation Countdown Started field in the voters' records and changes the status of the records to "Cancel."

Regarding feature 8 of the CCD: The Bureau nowhere publicly describes its abilities to generate QVF reports about countdown voters. Nevertheless, MERA has documented that during the statewide program the Bureau performed all these actions:

- It addressed, printed, and mailed NVRA notices to 230,000 countdown voters.
- It composed and sent a separate customized inbox message via the QVF to each local clerk listing the voters in the clerk's jurisdiction that the Bureau had put on countdown, along with their countdown started state and a hyperlink to their QVF records, and
- It created database and excel files of countdown voters in response to FOIA requests from different citizens groups.

These actions clearly show the Bureau was able to generate from the QVF reports or lists of various types of information about different categories of countdown voters. So the CCD must be designed with the capacity for Bureau staff to generate reports about countdown voters. On the other hand, some local clerks expressed regrets to MERA that they were unable to generate reports about voters in their jurisdictions on countdown from the statewide program. So the 2005 CCD apparently did not enable local clerks with the same report generating capacities that were available to Bureau staff.

³⁷ Excerpt from the December 7, 2007 *News You Can Use* (Issue 339). (Appendix #21)

If an "updated" Voter Identification Card or other mail directed to a voter within your jurisdiction is returned by the post office as undeliverable and you are provided with a forwarding address that is outside your jurisdiction, immediately send the voter a postage prepaid and preaddressed Confirmation Notice (Notice of Cancellation) and reply card which the voter can use to confirm or correct the address information. The voter has until the second November general election following the issuance of the notice to respond. For convenience, the QVF "Cancellation Countdown" feature can

be used to flag the record for automatic cancellation in the event the voter does not respond to the notice or participate in an election during the countdown period. *Change the voter's status to "VERIFY - RESIDENCE."* (emphasis added)

If an "updated" Voter Identification Card or other mail directed to a voter within your jurisdiction is returned by the post office as undeliverable and you are provided with a forwarding address that is inside your jurisdiction, enter the new address in your QVF and send the voter a corrected Voter Identification Card along with a postage prepaid and preaddressed Confirmation Notice and reply card which the voter can use to confirm or correct the address information. *Change the voter's status to "VERIFY - RESIDENCE."* (emphasis added)

³⁸ The "Inbox" message was the Bureau's sole notification to clerks about which voters it had put on countdown in their jurisdiction. But the inbox messages could not be saved electronically or used to generate electronic reports about voters. The messages could only be printed out in paper form on the day they were received. After 24 hours they were automatically deleted from the Inbox.

³⁹ Local clerks were unable to create electronic reports on the Bureau's countdown voters via the QVF and the expected "Verify" status in the tagged voters' records had been omitted. The only way the clerks could identify and communicate with the Bureau's countdown voters from their jurisdictions was to rely on a paper printout of the one-time "Inbox" message. By referring to the inbox list, they could search the QVF for the countdown voters one voter at a time and then print address labels to communicate with them. This was a cumbersome and time consuming process, especially in comparison with the QVF reporting tools available to the Bureau but not shared with the local clerks.

⁴⁰ MERA submitted a FOIA to the Bureau on August 7, 2008 for information about the voters that the Bureau had put on cancellation countdown in the statewide program. (Appendix #22) Among other things, the FOIA contained requests 3 and 5 below, but the Bureau responded to neither of them (the term used for an NVRA cancellation notice in the FOIA was "Residency Confirmation Request"):

3. We ask for the voter identification number, name, address, and jurisdiction of every voter to whom the Department of State sent a Residency Confirmation Request letter on August 8, 2006. The name, address, and jurisdiction we request here are those recorded in the Qualified Voter File as of August 8, 2006.

5. For each registered voter who responded to a Residency Confirmation Request letter sent on August 8, 2006 by returning the reply form, we ask for the voter's identification number and the new address indicated in the voter's reply form, if any.

In effect, we are asking here for a list of the subset of voters specified in #3 who returned the reply form and their new address if indicated in the reply form.

⁴¹ Interview with Rayan Anastor, September 20, 2008, MI Dept of State, at Michigan Department of State warehouse, Sunset and Willow, Lansing

⁴² See endnote 29.

⁴³ In the August 8, 2006 issue of *News You Can Use* (Appendix #18), the Bureau stated that it would process the information from the reply forms and remove the voters from countdown when appropriate. But in the actual event, when the Bureau received the returned forms, it sent them to clerks to process along with the cover letter found in Appendix #23.

⁴⁴ See endnote 40.

⁴⁵ MERA submitted a FOIA to the Bureau on August 7, 2008 (Appendix #22) asking for information about the voters the Bureau had put on countdown in the statewide program. In response, the Bureau sent MERA an electronic file listing all voters from the program who were still on countdown as of August 8, 2008. The total was 165,000.

⁴⁶ See endnote 6.

⁴⁷ Each clerk received an inbox message which separately listed each cancelled voter in the jurisdiction. Along with the date of the message, the entry for each voter included the voter's QVF ID, name and address, date of birth, gender, precinct, plus a note of the action toward the voter, namely: "CHANGED TO CANCEL – NVRA".

⁴⁸ See endnote 33.

⁴⁹ To reactivate the voter's registration on the spot, the normal method is to go to the Change Status window of the voter's record and remove the checkmark in the box that is checked under Cancel. In the case of the statewide program, the CCD placed the cancellation checkmark in the box under Cancel that is labeled "NVRA." Normally, it would be a simple matter to go to the Change Status window of a mistakenly cancelled voter and click to remove this checkmark. However, shortly after cancellation of the voters in the statewide program on June 4, 2009, the Bureau decommissioned the NVRA checkbox. The box is now grayed over on the computer display in the Change Status window to indicate it is no longer in use (see picture, page 10). Clerks are therefore blocked from reactivating voters simply by clicking to remove the checkmark.

Two local clerks demonstrated to MERA, however, that it is possible to workaroud this blockage and reactivate mistakenly cancelled voters registrations from the statewide program. The first step is go to the Change Status window in the voter’s record and place a second checkmark in an alternative box under Cancel, such as “age.” The next step is then to click to remove the second checkmark that was just inserted. Immediately when the second checkmark is removed, the checkmark in the grayed over NVRA box is also removed, thereby reactivating the voter who then can vote.

Perhaps assuming that all cancellations in the statewide program were valid, and hence that there would be no need to reactivate the registration of any cancelled voter, the Bureau has not informed local clerks how to overcome the blockage to reactivate voters. Though it is not difficult to discover the workaround, whether clerks who find they need to reactivate a voter from the statewide program will discover it in the midst of the demands of a busy election day remains to be seen.

⁵⁰ See endnote 28.

⁵¹ See endnote 15.

⁵² At least \$2,000,000 was invested to cancel 122,598 voter registrations or \$16 per cancellation in the statewide program. According to the Bureau’s press releases it invested \$361,000 in HAVA funds to tag 229,000 registrations in cooperative efforts with targeted jurisdictions. So far as MERA can determine, however, the Bureau has never reported publicly how many of those 229,000 voters were actually cancelled. With its targeted local list cleanups, as with the statewide program, the Bureau was clearly deficient in collecting and reporting data on actual results. Through a combination of FOIA requests (Grebner about costs and MERA about numbers) MERA can report that the Bureau spent at least \$2,000,000 to tag 230,000 voters for cancellation of whom 122,598 were eventually cancelled with a 2% mistaken cancellation rate. The following table compares the cost effectiveness of these two list cleanup strategies (centralization vs targeted local cooperation):

Centralized vs Locally Targeted List Cleanups

	Total Cost	Number Tagged for Cancellation	\$/Record tagged	Number Actually Cancelled	\$/Record cancelled
2006 Locally Targeted Programs	\$361,000	229,000	\$1.57	Not reported	Not reported

2006 Centralized Statewide Program	\$2,000,000	230,000	\$8.69	122,598	\$16.31
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⁵³ The NVRA requirements for public disclosure and record keeping include specifically that “(2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) of this section are sent [cancellation notices], 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.” http://www.usdoj.gov/crt/voting/42usc/subch_ih.php#anchor_1973gg section 6i.

⁵⁴ Myrna Perez, *Voter Purges*. Brennan Center for Justice at the New York University School of Law. September 30, 2008. http://www.brennancenter.org/content/resource/voter_purges/