



SOUTH CAROLINA VOTER REGISTRATION ROLLS

June 2021

Concerns about the maintenance of voter registration rolls recur regularly but multiple investigations have produced no evidence that there is a problem leading to voting irregularities in South Carolina, or indeed nationally. The League of Women Voters of South Carolina has monitored this process in South Carolina for many years, including meetings with State Election Commission (SEC) officials to obtain information, and we believe that the SEC processes are sound and generally reflect best practices in this area as well as with the requirements of the National Voter Registration Act (NVRA).

Concerns about deceased voters have their roots in long-gone election practices. In a local precinct or ward in 1900, a candidate could monitor deaths in the area and find ways to get ballots in their names into the system. This is much more difficult today. To vote in person, an ID is required. To vote absentee, an applicant needs personal information including a birthdate and the last four digits of the Social Security number. In 2020 two such cases were reported nationally, both involving close relatives who would have had easy access to protected personal information.

We begin with an overview of voter rolls in South Carolina and of the recent history of inquiries into the South Carolina voter registration database. We follow with the statutory requirements associated with maintaining the database and with a description of South Carolina's procedures drawn from 2017 House of Representatives oversight hearings and with a description of the ERIC database, one of the tools used by SEC to maintain up-to-date registration rolls. Readers are also referred to www.scvotes.gov for additional information on SEC processes.

AN OVERVIEW OF THE ROLLS IN SOUTH CAROLINA

There are several reasons that persons are removed from active state voter registration rolls:

- Death
- Change of primary residence to another state
- Incarceration following conviction
- Mental incapacity

However, duplicate voter registration is not illegal. Many citizens fail to notify state election officials that they have changed their primary residence to a new state. Voting twice in the same election is, on the other hand, illegal under the Voting Rights Act (VRA).

HISTORY OF INVESTIGATIONS

2012-2013 ZOMBIE VOTER CLAIMS

In 2012 there was a “fever” of zombie voter claims in South Carolina. Public officials testified under oath and the State Election Commission (SEC) conducted a thorough investigation of the claims. Subsequently, the State Law Enforcement Division (SLED) also investigated the claims.

Reporter Corey Hutchins eventually had to file a FOIA request to get the SLED report. Hutchins wrote:¹

Responding to an open records request, the S.C. Law Enforcement Division today released its final report to Free Times, one day before a federal holiday. SLED found no indication of voter fraud.

For a while last year, you couldn't turn on Fox News without seeing S.C. GOP Attorney General Alan Wilson saying things like, “We know for a fact that there are deceased people whose identities are being used in elections in South Carolina.”

Attorney General Alan Wilson was unavailable for comment, but his spokesman, J. Mark Powell, passed along a statement.

“The initial claims reported to the Attorney General’s Office were alarming,” Powell said. “They were not vague allegations, but contained specific information. The state’s chief prosecutor cannot stand by when presented with such a situation. So SLED was asked to investigate this matter. We appreciate SLED’s hard work in preparing this report.”

A spokesman for SLED declined to comment on the nearly 500-page report.

Stoking the zombie-voter fire back then was a list of some 950 names that Republican Gov. Nikki Haley’s DMV director, Kevin Shwedo, said were those of dead people that appeared to have voted in recent elections.

“Well over 900 individuals appear to have voted after they died,” Shwedo said at one House hearing on the matter.

Horry County Republican Rep. Alan Clemmons, who took much interest in the dead voter drama, proclaimed gravely in another hearing, “We must have certainty in South Carolina that zombies aren’t voting.” (During the state’s battle over Voter ID legislation a year prior, Clemmons had sent a letter to the U.S. Department of Justice in support of the measure that read in part, “It is an unspoken truth in South Carolina that election fraud exists.”)

At the time, State Election Commission director Marci Andino said the agency had investigated a handful of cases where it appeared the names of deceased people had appeared on polling precinct signature rolls, but found nothing nefarious.

¹ Corey Hutchins, “18 Months Later, S. C. Law Enforcement Closes Case on ‘Zombie Voters,’ Finds No Fraud.” Free Times, Wednesday, 3 Jul 2013.

She explained that of the initial batch of six names of allegedly dead voters on the DMV's list, one had cast an absentee ballot before dying; another was the result of a poll worker mistakenly marking the voter as his deceased father; two were clerical errors resulting from stray marks on voter registration lists detected by a scanner; and two others resulted from poll managers incorrectly marking the name of the voter in question instead of the voter above or below on the list.

The agency went on to investigate more than 200 other names on the dead voter list and found zero cases of illegal activity.

At that time, SEC spokesman Chris Whitmire noted that the baseless accusations hurt public confidence in elections. This continues to be an issue.

HOUSE SEC OVERSIGHT IN 2017

A House oversight committee chaired by Rep. Gary Clary explored in the functioning of the SEC and prepared a report containing 1104 pages of information.² This included comprehensive data on maintenance of rolls over a period of years. Table 9.2 shows that voters are regularly removed from the rolls as deceased or moved, including up to 180,000 voters in a year.

Committee recommendations related to registration rolls are noted in Table 14. The only recommendation for additional action associated with removal of individuals from rolls is recommendation #2, "Obtain notification when a court deems an individual mentally incapacitated so the agency may update the voter registration database."

SENATE OVERSIGHT OF SEC IN 2021

A subcommittee chaired by Senator Chip Campsen explored questions about the voter registration rolls during 2021 session hearings. At that time SEC Director Marci Andino testified (as she had many times in the past) that checks of SC voter registration rolls and voting histories showed no evidence of fraudulent voting. For example, reports of "zombie voters" have been traced to clerical errors.

A poll clerk might check off "John Doe, Sr.," a deceased individual, as having voted, when it was actually "John Doe, Jr.," very much alive, who voted. This has been confirmed as easily as looking at the signature in the poll book, signed by "John Doe, Jr."

COMPARATIVE DATABASES OF VOTERS

Information used to move voters to "inactive" status is obtained from many sources.

Social Security provides timely information on deceased voters, and information is also obtained from other sources within South Carolina.

² Legislative Oversight Committee: Study of the South Carolina State Election Commission, December 29, 2017.

<https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/ElectionCommission/Full%20Committee%20Study%20-%20SEC.pdf>. Accessed 3 Jun 2021.

The National Council of State Legislatures (NCSL) notes that all states can run checks against the U. S. Postal Service’s National Change of Address (NCOA) database. However, even if states share data, “it can be difficult to identify perfect matches and the number of so-called duplicate voters may be inflated.”

One system to identify duplicate voter registrations was maintained by Kris Kobach of Kansas. His multi-state program, the Interstate Voter Registration Crosscheck (IVRC) was found to be riddled with false positives for double-registration and to over-represent identification of minority voters as duplicate registrants. The Brennan Center noted that “his project’s principal result is to compound errors.”³

SC participates in the Electronic Registration Information System or ERIC. This program, developed by the nonpartisan Pew Foundation, provides the SEC with information about voters who match as potential registrants in other states. The SEC mails notification to the voter that information indicates the voter has registered in another state. The voter’s status is updated based on the voter’s response to the mailing. If the mail is returned undeliverable, the voter is made inactive. If no response is received, the voter remains registered. Twenty states currently participate in ERIC.

AN OBSOLETE METHOD OF ROLL MAINTENANCE

Among the methods used by South Carolina, there remains one that should be retired. The practice of moving voters to the “inactive” list when they have failed to vote in two general elections is both error prone and not needed. This has been recognized by many organizations, including the American Bar Association (ABA), which in 2020 observed that:⁴

Given these methods of cleansing the voting rolls, there simply is no justification for also using voter inactivity as an independent basis for eliminating registrations. But some states like Ohio and Georgia persist in canceling registrations of voters simply because they have not voted recently and failed to return a mailed notice. There is every reason to be concerned that this practice continues because it has a political skewing effect. Failure to vote regularly correlates with lower socioeconomic status and, at least in some places, with being a member of a racial minority. . . .

This kind of voter purge is outmoded and unjustified.

How do we know that? An assessment of the data supplied by the states themselves shows why purges based only on non-voting and non-return of a notice are guaranteed to dump a high percentage of people off the voting rolls who have not moved anywhere and otherwise remain

³ “Uncovering Kris Kobach’s Anti-Voting History,” Brennan Center for Justice, <https://www.brennancenter.org/our-work/analysis-opinion/uncovering-kris-kobachs-anti-voting-history>. Accessed 3 Jun 2021.

⁴ Paul M. Smith. “Use it or Lose It” The Problem of Purges from the Registration Rolls of Voters Who Don’t Vote Regularly.” American Bar Association Human Rights Magazine, Vol. 45, No. 1: Voting Rights. 20 Feb. 2020. https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-rights/-use-it-or-lose-it---the-problem-of-purges-from-the-registration0/

eligible to vote in some future election. Those data are collected and published annually by the federal Election Assistance Commission.

This was expanded upon in another ABA article, in which numerous longstanding deficiencies of using the Postal Service for this purpose are itemized.⁵ It was shown in *Common Cause New York v. Brehm* that “voters were moved to inactive status and their name was omitted from poll books even though they still lived in the same place and had done nothing wrong.” This was shown to have affected 45,000 New York voters in the 2016 presidential election.

The League of Women Voters strongly recommends that South Carolina cease to use this outdated and error-prone method to move voters to an “inactive” list.

CONSTITUTIONAL PROTECTION

Voters on the inactive list can still vote. The SEC ensures that the inactive rolls are on the electronic poll books along with the active list.

This is an important constitutional protection consistent with a recent federal court ruling. In January 2020 the U. S. District Court for the Southern District of New York held in the case *Common Cause New York v. Brehm* that failing to provide inactive voter lists at polling places violates the Equal Protection Clause by causing confusion and delays that burden all votes and prevent some from voting altogether.⁶

A voter’s record is archived only if the elector fails to vote in four consecutive general elections, and even in that case the elector can still vote after poll workers verify the archived record through the county election office.

STATE ELECTION COMMISSION (SEC) PROCEDURES

SC STATUTORY REQUIREMENTS

The statutory requirements for SC Voter Registration rolls are found in §7-3-20:

SECTION 7-3-20. Executive director of State Election Commission.

(C) The executive director shall:

(3) maintain a complete master file of all qualified electors by county and by precincts;

(4) delete the name of any elector:

(a) who is deceased;

⁵ John Powers, “Common Cause New York v. Brehm Is the Canary in the Coal Mine When It Comes to Voting by Mail in the Coronavirus Age.” *American Bar Association Human Rights Magazine* Vo. 45 No. 3.

https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-in-2020/common-cause-new-york-v--brehm-is-the-canary-in-the-coal-mine-wh/

⁶ *Ibid*

(b) who is no longer qualified to vote in the precinct where currently registered;

(c) who has been convicted of a disqualifying crime;

(d) who is otherwise no longer qualified to vote as may be provided by law; or

(e) who requests in writing that his name be removed;

(5) enter names on the master file as they are reported by the county boards of voter registration and elections;

(6) furnish each county board of voter registration and elections with a master list of all registered voters in the county, together with a copy of all registered voters in each precinct of the county, at least ten days prior to each election. The precinct copies shall be used as the official list of voters;

(7) maintain all information furnished his office relating to the inclusion or deletion of names from the master file for four years;

(8) purchase, lease, or contract for the use of such equipment as may be necessary to properly execute the duties of his office, subject to the approval of the State Election Commission;

(9) secure from the United States courts and federal and state agencies available information as to persons convicted of disqualifying crimes;

(10) obtain information from any other source which may assist him in carrying out the purposes of this section;

(11) perform such other duties relating to elections as may be assigned him by the State Election Commission;

(12) furnish at reasonable price any precinct lists to a qualified elector requesting them;

(13) serve as the chief state election official responsible for implementing and coordinating the state's responsibilities under the National Voter Registration Act of 1993;

(14) serve as the chief state election official responsible for implementing and enforcing the state's responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), as set forth in the U.S.C., Title 42, Section 1973ff, et seq.; and

(15) establish and maintain a statewide voter registration database that shall be administered by the commission and made continuously available to each county board of voter registration and elections and to other agencies as authorized by law.

AND

SECTION 7-3-30. Notice of deletion of elector's name from roster of electors; appeal by elector; restoration of name.

(a) The executive director shall notify by mail each elector at the address last filed in the office, whose name has been deleted for the reasons of conviction or a change in the residence of a qualified voter. The notice shall state the reason for the deletion and inform the elector of his right to appeal to the county board of voter registration and elections and the time in which to perfect his appeal. A copy of the notice must be forwarded to the appropriate county board of voter registration and elections.

(b) Each elector whose name has been deleted has twenty days from the date the notice is mailed to appeal. The appeal must be to the county board of voter registration and elections from whose master file the deletion has been made. If the board determines that the elector's name should not have been deleted, it shall instruct the executive director to restore his name to the registration books; however, if the deletion is for conviction, the appeal must be to the Executive Director of the State Election Commission.

AND

SECTION 7-3-40. Reports to be furnished by Bureau of Vital Statistics.

The Bureau of Vital Statistics must furnish the executive director a monthly report of all persons eighteen years of age or older who have died in the State since making the previous report. All reports must contain the name of the deceased, county of residence, his social security or other identification number, and his date and place of birth. The bureau must provide this information at no charge.

AND

SECTION 7-3-50. Information to be furnished by boards.

Each county board of voter registration and elections must furnish the executive director information as may be requested by him concerning each registered elector by the fifteenth day of each month and within five days after closing of the books prior to an election.

AND

SECTION 7-3-60. Clerks and magistrates shall report persons convicted of certain offenses.

The clerks of the courts of common pleas and general sessions and every magistrate in the State must, annually on or before June first, make out under their respective hands and seals and report to the executive director a complete list as shown by the records of their respective offices for the preceding calendar year of all persons convicted in that year of felonies or crimes against the election laws, together with the social security or identification numbers of these persons and the month of conviction. Where there is no person to be reported, the report shall so state. Any clerk of the court or magistrate who fails or neglects to make any report required by this section must forfeit and pay to the county in which he holds office the sum of fifty dollars for each failure or neglect to make the report.

AND

SECTION 7-3-70. Reports furnished by Department of Motor Vehicles.

(a) The Department of Motor Vehicles must furnish the executive director a monthly report of all persons eighteen years of age or older who have surrendered their driver's license or identification card and obtained a driver's license or identification card in another state. All reports must contain the name of the driver or identification cardholder, social security number, date of birth, South Carolina county where previously a resident, and the state in which the license or identification card was surrendered. The department must provide this information at no charge.

(b) The Department of Motor Vehicles must furnish the executive director a monthly report of all persons eighteen years of age or older who were reported as deceased by Social Security Administration. All reports must contain the name, social security number, date of birth, and date of death. The department must provide this information at no charge.

SEC PROCESS DOCUMENTED FOR HOUSE OVERSIGHT COMMITTEE

Two questions were presented to the SEC by the House Oversight Committee. The following presents those questions and the SEC response.

Voter Eligibility & Removal from Voter Lists

1. What information would be required, and who would need to provide it, for the Election Commission to decide an individual is no longer a qualified voter within a particular county, because the individual does not live in the county?

South Carolina Code § 7-3-20(C)(4) charges the Executive Director of the SEC with the deletion of any elector who is no longer qualified to vote in the precinct where currently registered, who is otherwise no longer qualified to vote as may be provided by law or who has requested in writing that his name be removed. The SEC receives notification from various sources regarding individuals who are no longer qualified voters within a particular county.

With the exception of information provided by the South Carolina Department of Motor Vehicles (DMV), the information is not required to be provided to the SEC in a set format; only in a manner that allows the SEC to identify the voter in question.

- The SEC receives notifications from other states and jurisdictions when a voter registers in that state or jurisdiction, and the voter indicates that they were registered in S.C.
- Returned mail sent by county boards to voters that has been returned as undeliverable
- State law allows for the SEC to enter into agreements to share information or data with other states or groups of states. The SEC participates in the Interstate Crosscheck program [Note: This has changed since 2017 and SC no longer participates in the discredited Crosscheck program. SC participates in the Electronic Registration Information System or ERIC]. The program provides the SEC with information about voters who match as potential registrants in other states. The SEC mails notification to the voter that information indicates the voter has registered in another state. The voter's status is updated based on the voter's response to the mailing. If the mail is returned

undeliverable, the voter is made inactive. If no response is received, the voter remains registered.

- State and federal laws allow the SEC to send Confirmation Cards to voters who have not voted in the past two General Elections or any other election occurring during that time. If a confirmation card is returned as undeliverable, the voter is made inactive. If the card is not returned, the voter is made inactive and is eventually removed from voter registration lists if the voter fails to vote in two future consecutive general elections or any intervening election. This serves as notification to the SEC that the voter is no longer residing in a county. S.C. Code Ann. § 7-5-330 and 52 U.S.C. § 20501, et seq. (1993).
- The SEC also receives information from clerks of courts throughout the state when a jury notification is returned or when the potential juror notifies the clerks' office that they no longer reside in the county.
- The DMV is required by S.C. Code of Laws §7-3-70(a) to submit monthly reports to the SEC of all persons eighteen years of age or older who have surrendered their driver's license or identification card and obtained a driver's license or identification card in another state. The report must include the name, social security number, date of birth, county where previously a resident, and the state where the license or identification card was surrendered. This process is currently in the implementation phase.
- Section 7-5-230 of the South Carolina Code of Laws establishes the provisions for voter registration challenges to a county board of voter registration and elections in the county of registration. This Section also provides for an appeal process to any court of common pleas of the county or subsequently to the South Carolina Supreme Court. The results of any voter registration challenge adjudicated by a county board of voter registration and elections or any court is provided to the SEC.

2. Please outline the steps taken by the Election Commission prior to removing an individual from a voter list, including, but not limited to, how far in advance notice is provided, if notice is provided, before an upcoming election in which the individual would otherwise be able to vote.

South Carolina Code § 7-5-160 states, in part, that voter registration in SC is permanent unless the voter is removed from the registration list for cause. A voter is removed from the active list of registered voters by changing statuses from active to inactive or archived. All voter records remain in the voter registration database permanently.

- Batch voter registration removals must be completed no later than ninety days before the date of a statewide primary, general, or federal election
- Individual voter-specific removals can occur at any time South Carolina Code § 7-3-20(C)(4) charges the Executive Director of the SEC with the deletion of any elector who is no longer qualified to vote in the precinct where currently registered, who is otherwise no longer qualified to vote as may be provided by law or who has requested in writing that his name be removed. The SEC receives notification from various sources regarding individuals who are no longer qualified voters within a particular county.
- South Carolina Code § 7-3-20(C)(9) charges the Executive Director of the SEC to secure from the United States courts and federal and state agencies available information as to persons convicted of disqualifying crimes.

- South Carolina Code § 7-3-30(a)(b) charges the Executive Director of the SEC, in part, to notify electors whose name has been deleted for reasons of conviction or a change in the residence of a qualified voter. Notification is mailed to the address last filed in the voter registration and elections office and the elector has twenty days from the date the notice is mailed to appeal to the county board of voter registration and elections.
- South Carolina Code § 7-5-330(F) provides that the SEC may not remove a voter from the active list unless a confirmation card, mailed by the SEC, is returned as undeliverable and the voter fails to vote in two consecutive general elections. This must be completed no later than ninety days before the date of a statewide primary, general, or federal election.

THE ELECTRONIC REGISTRATION INFORMATION SYSTEM (ERIC)

South Carolina participates in ERIC.

Information on ERIC is available at <https://ericstates.org>. It was formed with the assistance of the Pew Charitable Trusts and is not regarded as partisan. As of March 2020, there were 30 states and D.C. participating in ERIC, including South Carolina: Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nevada, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin. The District of Columbia.

The data made available for comparison: “Each member submits at a minimum its voter registration and motor vehicle licensee data. The data includes names, addresses, date-of-birth, last four digits of the social security number. Private data such as date of birth and the last four digits of the Social Security number are protected using a cryptographic one-way hash and then transmitted to ERIC. An explanation of how the hashing process works, how it is used in the ERIC data matching process, and how privacy is protected is in the Technology and Security Overview.”

Each member state receives reports that show voters who have moved within their state, voters who have moved out of state, voters who have died, duplicate registrations in the same state and individuals who are potentially eligible to vote but are not yet registered.

The member states. Each state pays annual dues, which are determined by a formula approved by the ERIC membership. The formula includes citizen voting age population as a factor. Large states pay more than small states. The annual budget for FY 2019-20 is approximately \$947,000.

ERIC helps states save money: “Efficient and effective data matching and cleaner voter rolls will result in such efficiencies as less returned mail, fewer provisional ballots on election day, shorter lines at polling places, etc. In addition, ERIC uses resources such as the Social Security death index and data from the US Post Office that states now buy on their own. ERIC states share these purchases when they pay their annual dues.”