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FOR JUSTICE

PERMANENT VOTER  
REGISTRATION

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This is one in a series of white papers on Voter Registration Modernization. The first, Voter Registration Modernization, sets forth more detailed policy arguments in favor of modernizing America's voter registration system. The second, Expanding Democracy: Voter Registration Around the World, examines international methods of voter registration. All the white papers are available on the Brennan Center's website, at [www.brennancenter.org](http://www.brennancenter.org).

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## ACKNOWLEDGMENTS

The authors would like to thank the election officials and data management consultants nationwide whose willingness to share their knowledge made this report possible. Special thanks are due to the authors' Brennan Center colleagues for their contributions to this report — especially to Wendy Weiser, Susan Lehman, Jeanine Plant-Chirlin, Myrna Pérez, and Faiza Patel. The authors also benefited greatly from the research of Jenny Bindel and Craig Davis, who, as students at New York University School of Law, canvassed a voluminous body of state statutes while working as legal interns with the Brennan Center.

Generous grants from Carnegie Corporation of New York; The Education Foundation of America; the Ford Foundation; the Irving Harris Foundation; the Joyce Foundation; the Mitchell Kapur Foundation; the Open Society Institute; the Charles H. Revson Foundation; the Rockefeller Family Fund; the Tides Foundation; the Wallace Global Fund; and an anonymous donor supported the development and publication of this report. The statements made and the views expressed in this paper are solely the responsibility of the Brennan Center.

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## INTRODUCTION

Tens of millions of Americans — as many as one in six — change their address every year.<sup>1</sup> In any five-year period, approximately 45 percent of the U.S. population moves.<sup>2</sup> All this moving poses big challenges for election administrators — and voters.

Election officials process millions of change-of-address cards each year to keep voter registration lists up to date. This involves deciphering information written on millions of paper forms and laboriously inputting data. The administrative headache is hardly trivial: between 2004 and 2006, election officials in 35 states processed nearly 11 million forms submitted by already-registered voters to report address or name changes or updates to party affiliation. These updates accounted for at least 30% of all voter registration transactions during that period.<sup>3</sup> Not surprisingly, election officials report that dealing with address changes is the most challenging aspect of voter list maintenance.<sup>4</sup>

Americans' seemingly constant motion — and the paper they generate as they change addresses — has a real impact on our democracy. Millions of Americans who move can't vote unless they re-register at their new address shortly after they've moved there. This is true even when a registered voter relocates *within* the state in which he or she is already registered. Accordingly, the longer a citizen lives in the same address, the more likely he or she is to be registered — and to vote. And a citizen is less likely to vote if she has moved shortly before election.<sup>5</sup> Political scientists conclude that Americans' mobility plays a substantial role in our comparatively low voter turnout.<sup>6</sup> Indeed, political scientist Michael McDonald determined that if we allowed voters who move within a state to vote at their new addresses *without submitting a new registration*

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<sup>1</sup> In 2006, for example, about 50 million people — approximately 16% of all Americans — reported changing residences the previous year. See Haya El Nasser and Paul Overberg, Millions More Americans Move to New States, U.S.A. Today, Nov. 30, 2007; see also U.S. Census Bureau, American Factfinder: Residence 1 Year Ago by Age in the United States; 2006 American Community Survey (“*American Factfinder*”), available at <http://tinyurl.com/btwbne>. Of the 50 million Americans who moved in 2006, approximately 8 million moved from one state to another. See *American Factfinder*. Forty million made in-state moves; approximately 10 million of these voters relocated to another county, while nearly 30 million Americans moved within a single county. See *id.* The remaining nearly 2 million Americans who moved relocated from abroad. See *id.*

<sup>2</sup> See Professor Nathaniel Persily, Testimony before the U.S. Senate Rules Committee 2, Mar. 11, 2009 (“Persily Testimony”), available at <http://tinyurl.com/pwcrqe>.

<sup>3</sup> See Professor Stephen Ansolabehere, Testimony before the U.S. Senate Rules Committee 9-10, Mar. 11, 2009, available at <http://tinyurl.com/pnpkay>.

<sup>4</sup> See Myrna Pérez, *Voter Purges* 8 (2008), available at [http://www.brennancenter.org/content/resource/voter\\_purges](http://www.brennancenter.org/content/resource/voter_purges).

<sup>5</sup> See Persily Testimony at 1-2 (citing Benjamin Highton, *Residential Mobility, Community Mobility, and Electoral Participation*, Political Behavior 22:109 (2000)). Professor Persily notes that, according to the U.S. Census Current Population Survey, only 53 percent of respondents who lived in their residence for less than a year reported voting in 2004, while 75 percent of those who lived in their residence for five or more years reported voting. *Id.* (citing Kelly Holder, Current Population Reports, *Voting and Registration in the Election of November 2004*, March 2006, available at <http://222.census.gov/prod/2006pubs/p20-556.pdf>).

<sup>6</sup> See Persily Testimony at 1-2 (“The registration system is largely responsible for our comparatively low voter turnout. . . . [I]t is the interaction of our registration system with the high mobility of our population, the requirement that voters re-register each time they change address, and the limited role that government takes in affirmatively registering voters.”).

*form* — if, that is, we made registration “portable” — turnout would increase by as many as two million additional voters.<sup>7</sup>

But not every registered voter who moves will be unable to vote if she does not re-register before Election Day. Several states have established systems of portable or “permanent” registration under which registered voters who move within a state can cast ballots that count on Election Day — even if they don’t submit new registration forms at their new address before the voter registration deadline. Permanent registration systems increase electoral participation; in fact, states with permanent registration systems had some of the highest voter turnout rates in the 2008 election.<sup>8</sup>

Permanent registration systems offer additional advantages. They help elections run more smoothly and reduce burdens on election officials. They create a cost-effective means of ensuring more accurate voter rolls. And they reduce duplicate registrations that bloat voter rolls and may raise suspicions of voter fraud. Under a permanent registration system, voters’ addresses are more accurately reflected on the voter rolls come Election Day, making it easier for election officials to plan elections. For example, with accurate voter rolls, officials can more accurately predict how many ballots or voting machines should be allocated to a particular polling place. When voter rolls more accurately reflect voters’ addresses, voters are less vulnerable to challenge at the polls. And accurate registration records decrease the odds that particular voters will have to vote on a provisional, rather than a regular ballot.

Permanent registration isn’t just good policy and practice. It is also easily achievable across the country. Some system of permanent registration currently exists in 16 states. Eight states rely on systems that allow registered voters to update their addresses and vote on Election Day. Eight additional states have Election Day registration systems, under which already-registered voters who have moved can update their addresses at the polls at the same time they vote (along with first-time, previously unregistered voters who can also register and vote on Election Day).

Other states also already have the building blocks of permanent registration in place. Federal law requires all states to provide a type of permanent registration for that subset of voters who move within the same congressional district and election “jurisdiction” — usually, within the same county or city. And every state has the technology to extend statewide the protections that apply to in-county movers. All states now have statewide voter registration databases — centralized and interactive electronic voter lists covering all registered voters within the state. With these databases, states have the means to account for voters before and after they move anywhere within the state.

To assist states in bringing their voter registration systems into the twenty-first century, this report examines the permanent registration systems and the associated tools already in place across the country. First we define permanent registration and describe the elements of a system of permanent registration. Next, we lay out the technological and policy tools that facilitate permanent registration, noting the states in which these tools are already employed. We then describe the three basic models states have adopted to achieve

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<sup>7</sup> See Michael P. McDonald, *Portable Voter Registration*, *Political Behavior* 20(4): 499 (2008).

<sup>8</sup> The six states with the highest voter turnout in 2008 — Minnesota, Wisconsin, Maine, New Hampshire, Colorado and Iowa — all have some system of permanent registration, and 12 of the 17 states with the highest voter turnout are permanent registration states. See Nonprofit Voter Engagement Network, *America Goes to the Polls: A Report on Voter Turnout in the 2008 Election* 5 (2009).

permanent registration using Election Day tools. We also describe the techniques that some states employ to automatically update voters' addresses to move closer to permanent registration and achieve more accurate voter rolls on Election Day. Because of the substantial benefits to voters and election officials, we recommend that all states establish permanent registration. We conclude with recommendations for developing effective systems of permanent registration.

## I. WHAT IS PERMANENT REGISTRATION?

Under a statewide permanent registration system, once a voter registers in a state, she can move to a new address within the state or change her name and vote a ballot that counts in a subsequent election — without having to re-register each time she moves or takes affirmative steps to change her registration information. Simply put, with permanent registration, once a voter registers, she stays registered.<sup>9</sup>

Permanent registration systems can update voter addresses or names at two basic stages.

*First*, permanent registration systems can capture address or name changes through list maintenance procedures that automatically update voters' information on a regular basis before Election Day. Election officials can use other government records, so that if a voter updates her address with one government agency — say, the department of motor vehicles — the update is automatically shared with election officials, and the voter rolls are updated. Election officials can also use change of address data maintained by the U.S. Postal Service to update the voter registration rolls. Many state statutes specifically authorize this procedure, and it works reasonably well in the states that actually put it into practice. When election officials proactively update the voter rolls in this way, voters' registration records will reflect their proper addresses before Election Day; voters will receive pre-election mailings and notices of their proper polling place, and voters will be entitled to cast regular ballots on Election Day.

*Second*, a permanent registration system must have some mechanism in place to update voters' addresses on Election Day. Any registration list will inevitably have some errors. Some voters may not report address or name changes to other government agencies, and even the most robust program for automatic address updates will miss some voters' address changes or mistakenly catch some voters who do not move. Therefore, permanent registration states must have some safety net in place for voters whose addresses are not accurately reflected on the voter rolls come Election Day. Indeed, a state could effectively achieve permanent registration — even if it had no program for automatic address updates — if it had an effective stand-alone program for Election Day address or name changes.

Every state to have achieved permanent registration to date has implemented such a program of Election Day updates, although they have chosen different approaches to doing so. Some require voters who have moved to return to their old polling place and vote, while some permit voters to change their address information and cast a regular ballot at their new polling place. As we will detail in the pages that follow, this practice of allowing a voter to cast a regular ballot at the new polling place is the most effective means to ensure that a voter's ballot will count and that she can vote in all races for which she is eligible to vote, and to eliminate

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<sup>9</sup> Of course, under a system of permanent registration, a voter does *not* stay registered if she moves out of the state or becomes ineligible because of, *e.g.*, death, a disqualifying felony conviction, or mental incapacity.

needless administrative hold-ups. Other states permit voting at the new polling place, but use provisional rather than regular ballots. Whatever the specific policy prescription employed, each permanent registration state described in this report has put in place an effective safety net that guarantees no registered voter will be denied the right to cast a ballot that counts simply because she moved.

Based on our survey of state election administration practices, there are currently sixteen states that have statewide permanent registration. These states all accomplish permanent registration using Election Day procedures that follow four basic models:

**Three states allow voters who have moved anywhere within the state and have not updated their addresses to vote a regular ballot on Election Day from their new address.**

- In **Delaware** and **Florida**, voters present themselves at their new polling places, where they simultaneously vote a regular ballot and update their registration information.
- **Oregon** has a system of voting by mail, so voters do not travel to any new polling place. Rather, they can report an address change and request a ballot for their new address at any time through Election Day. Oregon voters who report address changes with sufficient time for a ballot to be mailed to them will receive, by mail, a regular ballot corresponding to their new address. If there is not sufficient time for a ballot to be mailed — usually, within five days of the election — a voter may pick up (and cast) a regular ballot at the county election office for her new residence. The voter may do this through 8 p.m. on Election Day.

**Three states allow voters who have moved anywhere within the state and have not updated their addresses to vote a provisional ballot from their new address.**

- In **Maryland** and **Ohio**, voters who have moved present themselves at their new polling place on Election Day, and simultaneously update their address information and vote a provisional ballot. These provisional ballots will count as long as the voter is otherwise eligible and has not also cast a ballot from her old address.
- In **Colorado**, voters can follow the same procedure, but they also have a second alternative. Colorado voters can also travel to the central election office for their new county, fill out an “emergency” registration affidavit listing their new address, and then, after taking the emergency registration affidavit to the polling place for their new address, they may cast a regular ballot.

**Two states allow voters who have moved but have not updated their addresses with election officials to vote regular ballots from their old addresses.**

- In **South Dakota**, voters who have moved may cast a regular ballot at their old polling place. Because these voters cast ballots corresponding to their old addresses, they can vote not only in federal and statewide races, but also in local races — even if they no longer reside in the relevant locality.
- In **Washington**, voters who have moved can cast a regular ballot corresponding to their old address — either when voting in person or, in the majority of Washington counties, when voting by mail. As in South Dakota, Washington voters can vote in local races for localities in which they no longer live.

Eight states have achieved permanent registration through Election Day registration procedures by which voters may update their registration information when voting — or register for the first time.

- **Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, Wisconsin and Wyoming** currently offer full systems of Election Day registration. In these states, if a voter has not registered, or if the voter has moved and not submitted a change of address update, the voter may register and vote simultaneously, ordinarily after providing documentation of her identity and residence. In six of the states (and in several Maine jurisdictions), voters may register and vote at the polling place. In Maine and Montana, voters may register on Election Day at the registrar's office.
- Two additional states offer a more limited form of same-day registration. **North Carolina** offers same-day registration and voting during a period of early voting, but does not permit registration on Election Day itself. **Ohio** currently offers same-day registration during a five-day period just before the registration deadline, when voters may register and simultaneously cast an in-person absentee ballot. (As detailed above, Ohio also allows address updates on Election Day for already-registered voters.)

## ELECTION DAY REGISTRATION

By permitting already-registered voters to re-register at a new address at the same time they cast their ballot, states with Election Day registration achieve permanent registration. On Election Day, no voter will be prevented from casting a ballot that counts simply because she has moved. Of course, Election Day registration systems go beyond permanent registration, because even first-time voters who have never been registered can register and vote on Election Day.

States with Election Day registration have developed various methods to verify applicants' identities and allow them to vote on Election Day without opening the door to voter fraud, even though many of these new voters have never registered before. That Election Day registration states are able to safely register entirely new, first-time voters at the same time they vote is strong evidence that it is possible to re-register *existing* voters at new addresses without threatening the integrity of elections.

This report catalogs the tools that make permanent registration possible and the policy choices states have made in using these tools to establish effective permanent registration. Because there is substantial literature on Election Day registration, the report focuses on the eight states that have implemented permanent registration by other means.

## II. EXISTING COMPONENTS OF PERMANENT REGISTRATION

Establishing statewide permanent voter registration is especially feasible now that the key building blocks of permanent registration are already in practice throughout the country. They include the following:

### Jurisdiction-Wide Permanent Registration under the NVRA

Every state without Election Day registration already has a limited form of permanent registration because, under federal law, voters who change addresses within the same “registrar’s jurisdiction” and congressional district are entitled to vote even if they have not updated their addresses with election officials. (The registrar’s jurisdiction is usually, but not always, the county.)

This requirement, set out in the National Voter Registration Act (“NVRA”),<sup>10</sup> provides that voters moving within their original jurisdiction can cast ballots that count on Election Day, even if they have not updated their addresses.<sup>11</sup> Given recent advances in election technology in every state, there is no reason why states cannot easily extend on a statewide basis the NVRA’s protections for voters who move within a jurisdiction.

Specifically, the NVRA currently requires states to use two procedures that protect voters who move within their jurisdiction.

*First*, the NVRA provides that if a voter moves to a new address covered by the same polling place as her last address, she is allowed to vote at that polling place after giving an oral or written affirmation of the change of address before an election official. She can do so even if she has not informed officials of the address change before the election.<sup>12</sup>

*Second*, the NVRA protects voters who move to a new address *not* covered by the same polling place as their last address, but within the same registrar’s jurisdiction and congressional district.<sup>13</sup> Even if such voters have not informed officials of their address change before the election, they may cast a ballot that will be counted. The NVRA requires that states permit voters to either (i) go to their old polling place and vote there, after informing election officials there of the new address; or (ii) go to their new polling place and vote there, after informing election officials of the new address.<sup>14</sup> The NVRA also permits states to give voters a third option, in which they can choose to go either to their old or new polling place *or* to go to a central location within the voter registrar’s jurisdiction and vote there.<sup>15</sup>

Some states — including Arkansas,<sup>16</sup> Connecticut,<sup>17</sup> Delaware,<sup>18</sup> Florida,<sup>19</sup> Hawaii,<sup>20</sup> Missouri,<sup>21</sup> Tennessee<sup>22</sup> and Vermont<sup>23</sup> — allow voters who move within the same jurisdiction to vote a regular ballot at the polling

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<sup>10</sup> 42 U.S.C. § 1973gg *et seq.*

<sup>11</sup> States that enacted Election Day Registration before August 1, 1994, are exempted from the NVRA’s requirements, *see* 42 U.S.C. § 1973gg-2(b)(2), but by virtue of their Election Day registration systems, these states already have permanent registration statewide.

<sup>12</sup> *See* 42 U.S.C. § 1973gg-6(e)(1).

<sup>13</sup> *See id.* § 1973gg-6(e)(2).

<sup>14</sup> *See id.*

<sup>15</sup> *See id.* § 1973gg-6(e)(2)(B).

<sup>16</sup> Ark. Code Ann. § 7-5-306(a).

<sup>17</sup> Conn. Gen. Stat. § 9-35(e); Conn. Agencies Regs. § 9-35-2.

place for their new address. (As detailed below, Delaware and Florida extend this protection beyond the jurisdiction or county boundaries, letting voters cast a regular ballot at their new polling place, even if they have moved outside the original jurisdiction.)<sup>24</sup>

Allowing voters who have moved to vote a regular ballot at their new polling place is the ideal way to handle such voters. When voters cast regular ballots that correspond to their new address, they are able to vote in every race for which they are eligible — and they can leave the polling place knowing that their vote will count. It also reduces administrative delays and costs that would result if such voters had to vote provisional ballots. And the states that provide these voters regular ballots have developed straightforward protocols for handling these voters at the new polling place. Arkansas and Connecticut provide illustrative examples. In both states, when a voter arrives at the new polling place (where her name will not appear on the precinct list), the poll worker at that precinct calls county election officials to confirm that the voter is already registered within the county. A county official, in turn, searches the statewide voter registration database and verifies that the voter is registered. The voter is then permitted to cast a regular ballot at the new polling place,<sup>25</sup> and simultaneously updates her registration information using a change of address form available at the polling place.<sup>26</sup>

Poll workers in many counties in Tennessee follow a similar protocol. In other counties in Tennessee, however, where poll workers use electronic poll books, they are able to confirm a voter's existing registration by running a countywide search on an electronic list of voters generated by the statewide voter registration database.<sup>27</sup> By eliminating the need to place a telephone call to county officials, electronic poll books increase efficiency and reduce delays on Election Day.

The NVRA's protections are very useful for voters who move short distances, but they rarely help voters who move across county or district lines. This geographical limitation on the NVRA's provisions for permanent

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<sup>18</sup> Del. Code Ann. tit. 15, § 2047.

<sup>19</sup> Fla. Stat. Ann. § 101.045(2)(a).

<sup>20</sup> Haw. Rev. Stat. § 11-21(c).

<sup>21</sup> Mo. Rev. Stat. § 115.165.2.

<sup>22</sup> Tenn. Code Ann. §§ 2-7-140(c); 2-7-141; 2-2-229(2)(B).

<sup>23</sup> Vt. Stat. Ann. tit. 17, § 2149(b)(2).

<sup>24</sup> Oregon allows voters who have moved within the same jurisdiction to vote a regular ballot from their new address, but because Oregon's system is entirely vote by mail, voters do not cast ballots at a polling place. Oregon voters who have moved may report a change of address even after the registration deadline; if they do so with sufficient time for a ballot to be mailed, officials will mail them a ballot corresponding to their new address. If they report address changes with insufficient time for ballots to be mailed — usually within five days of the election — voters can travel to a county election office, where they can simultaneously update their address and receive a regular ballot.

<sup>25</sup> Telephone Interview with Ruth Raines, Deputy Director, Arkansas State Board of Elections (Mar. 19, 2009); Telephone Interview with Michael Kozik, Director of Elections, Connecticut State Board of Elections (Mar. 19, 2009).

<sup>26</sup> Numerous other states permit voters who move within the same jurisdiction to vote at their new polling place by provisional or otherwise limited ballots. Those states include Alabama, Arizona, California, Colorado, Kansas, Kentucky, Maryland, Massachusetts, Mississippi, Nebraska, New Jersey, New Mexico, New York, Ohio, Utah and West Virginia. (Colorado, Maryland and Ohio extend this protection beyond the jurisdiction or county boundaries, letting voters cast a provisional ballot at their new polling place, even if they have moved outside the original jurisdiction.)

<sup>27</sup> Telephone Interview with Beth Henry Robertson, Assistant Coordinator of Elections, Tennessee (Apr. 7, 2009).

registration is, in large part, a product of history. In 1993, when the NVRA was adopted, most voter rolls were maintained at the county or city level, not the state level. At the time, only a few outlier states had developed uniform, statewide lists. Thus, for the vast majority of states, it would have been technologically difficult, if not impossible, to implement an efficient program of statewide permanent registration: election officials in different counties lacked access to each other's registration lists, and so election officials in one county lacked the means to confirm that a relocated voter was already registered in another county. But that is no longer the case.

States are now required to maintain their voter registration databases at the state level. This means that county election officials in any given county have access to the registration rolls of any other county, and can confirm a relocated voter's existing registration. As explained below, this makes it possible for states to expand the NVRA's county level protections to the state level — as several states have already done.

### **Statewide Voter Registration Databases**

With the exception of North Dakota, all states currently have in place “a single, uniform, official, centralized, interactive computerized statewide voter registration list.”<sup>28</sup> Most states developed these statewide databases pursuant to the Help America Vote Act of 2002 (“HAVA”),<sup>29</sup> and while some states encountered delays in developing HAVA databases, by 2008, every state had a fully functional statewide voter database.

As noted above, in those states that have implemented the NVRA by letting voters who move within their registrar's jurisdiction cast ballots at their new polling place, poll workers at the new polling place rely on the statewide voter registration database to look up information on the voter in question. The protocol is straightforward. The election official accesses the statewide voter registration database to confirm that a voter who moved is already registered within the same jurisdiction. To achieve permanent registration, election officials could use the statewide database in the same way for voters who move outside the jurisdiction. The only difference is that in a permanent registration state, election officials search the database to verify that the voter is already registered anywhere within the state, not within the same jurisdiction.

There is no technological difficulty preventing states from using their statewide voter registration databases in precisely this way — that is, to confirm that voters who move are already registered in *another* jurisdiction. Indeed, the several states that have implemented permanent registration have done exactly that, in a process practically identical to the one used in states that comply with the NVRA by allowing in-county movers to cast ballots at their new polling place.

There is also no good policy reason why states should not expand the permanent registration treatment of voters who move within counties to voters who move anywhere within the state. Approximately 75% of all Americans who move in-state do so within the same county, while those who cross county lines make up only 25% of all movers.<sup>30</sup> Thus, states that permit voters who move in-county to vote at their new polling place

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<sup>28</sup> 42 U.S.C. § 15483(a)(1)(A). North Dakota, uniquely, does not have a voter registration system of any sort; voters there need not register to vote.

<sup>29</sup> *Id.* § 15301 et seq.

<sup>30</sup> See *supra* note 1 (in 2006, 30 million Americans moved within the same county and 10 million moved to a different county within the same state). While the precise numbers fluctuate year to year, the trend is stable. In 2007, 73% of voters moving within state stayed in the same county, and in 2004, 76% of statewide movers remained within county.

already offer this benefit to three-quarters of all voters who have moved within the state. Extending permanent registration protection to every registered voter in the state, therefore, would only require implementing a new procedure for the additional 25% of movers not currently covered.

### **Electronic Poll Books**

Electronic poll books, in use in some states, are a twenty-first century version of the paper poll books in which election officials have traditionally listed voters' names at the polling place. In essence, they are a computerized, electronic version of the list of voters registered in a particular precinct, but they offer functionality that paper poll books do not.

The electronic poll books in use in different jurisdictions across the country vary substantially in terms of their functionality. Some electronic poll books allow poll workers to search the records of all voters registered in a particular jurisdiction, such as a given county. Other electronic poll books permit officials to search a state's complete statewide voter registration database; such technology permits officials at any given polling place to confirm whether any voter who arrives at a precinct is registered anywhere within the state. Some electronic poll book software even equips poll workers with residential street maps so that, if a voter arrives at the wrong polling place for her address, officials can direct the voter to the correct polling place.<sup>31</sup>

The most efficient electronic poll books would allow poll workers not only to search the statewide voter registration database, but to update the registration lists in real time on Election Day or during early voting. If a voter moved and arrived at her new polling place without having updated her registration information beforehand, poll workers could submit changes to the statewide database through the electronic poll book (for later review and confirmation by election officials), offering a "one-stop-shop" solution at the polling place.

### **Polling Place Locators**

To vote in person, voters must know where to go. A voter who has moved but not updated her registration record ordinarily will not receive notice and may not know where her polling place is located. Several tools exist which can help voters locate the proper polling place. Traditionally, states have permitted voters to call election officials to inquire where their polling place is located — either by calling local officials or a statewide hotline. More recently, states have developed automated Internet and telephone voter registration "portals" that provide voters with the address of their polling place. In addition, non-partisan organizations and political campaigns have created Internet voter portals and phone hotlines that serve the same function as those created by the states. These tools help voters and reduce burdens on election officials. In developing methods of informing voters of their polling place locations, states must ensure that such sources of information are available to voters with disabilities.

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*See* U.S. Census, American Factfinder, Residence 1 Year Ago by Age in the United States, 2004 American Community Survey, *available at* <http://tiny.cc/Vrh1Z>; 2007 American Community Survey, *available at* <http://tiny.cc/7AwLr>.

<sup>31</sup> Telephone Conversation Ross J. Underwood, GM ExpressPoll Division, Premier Election Solutions, Inc. (Feb. 6, 2009); Telephone Interview with Katie Brown, Director, Baltimore County Board of Elections (Feb. 2, 2002).

### III. UPDATING VOTERS' ADDRESSES ON ELECTION DAY

Every state that has implemented a permanent registration system to date has put in place some mechanism for citizens whose addresses are not accurately reflected on the voter rolls to correct their addresses on Election Day. In permanent registration states, these voters may simultaneously correct their addresses and cast a ballot that counts.

Besides the states that permit Election Day registration, eight additional states have established effective forms of permanent registration. These states follow one of three basic protocols, under which voters can either:

- (1) cast a regular ballot in the jurisdiction corresponding to their new address;
- (2) cast a provisional (or special) ballot in the jurisdiction corresponding to their new address; or
- (3) cast a regular ballot in the jurisdiction corresponding to their old address.

We outline these three protocols below, giving particular attention to how each treats the following four concerns:

- **Confirming a Voter's Registration**

Officials need to be able to confirm the voter's existing registration before issuing a ballot. If the voter is voting at her old polling place, she will appear in the poll book, and confirming her registration will be routine (though additional steps will have to be taken to ensure her address information is updated). If the voter is voting at her new polling place, officials can confirm the registration by accessing the statewide voter registration database. If the voter is voting by mail, officials confirm her registration before issuing a mail-in ballot.

- **Preventing Double Voting**

Though double voting — when a voter casts more than one ballot from different addresses — has not been proven to occur with any frequency, any system of permanent registration should provide safeguards to deter and prevent it.

- **Ensuring that a Voter Knows Where to Vote**

If a voter who has moved is voting at her former polling place, presumably she will know where the polling place is located. If a state directs voters who have moved to vote at their new polling places, however, the voters will have to be able to find out where to vote — usually either by calling an election hotline or information line, or by accessing an Internet voter portal operated by the state or a third party.

- **Updating the Voter's Registration Record in the Voter Registration Database**

Enabling a voter whose address is not accurately reflected in the statewide voter registration database to vote on Election Day is only half the challenge facing election officials; they must also update the address for subsequent elections. Generally, states with permanent registration have the voters complete a new registration application, change of address form or affidavit at the same time they cast a ballot, and process the change of address after Election Day, although in vote-by-mail systems, the voter's address is updated in the voter registration database before a new ballot is issued.

### *A. Florida, Delaware and Oregon: Voters May Cast a Regular Ballot from Their New Address*

In Florida, Delaware and Oregon, voters who have moved anywhere in the state may cast a regular ballot from their new address, even if they have not updated their registration information before Election Day.

In **Florida**, if a voter has moved but not updated her address, she may vote at the polling place for her new address. There, she will fill out a change-of-address form affirming her current address and sign an oath in the precinct register. The election official processing this transaction at the polling place then calls the office of the appropriate county supervisor of elections, where officials access the statewide voter registration database.<sup>32</sup> When the county officials verify that the voter is in fact registered to vote within the state, the voter is given a regular ballot.<sup>33</sup> County officials simultaneously provide the poll worker with any voter information relevant to the transaction — typically, party affiliation (during primaries), voter identification number, eligibility, and registration status.<sup>34</sup> Florida law does not impose any proof of residence requirement for voters seeking to cast a regular ballot at the new polling place, beyond the signed oath; although voters must comply with Florida’s statewide photo identification requirement, this is strictly for identification purposes and does not serve as proof of residency.<sup>35</sup>

The process is similar in **Delaware**, where election officials at any of the polling places throughout the state are instructed to direct voters who have moved to the polling place for the voter’s new address.<sup>36</sup> If a voter shows up at her old polling place, a poll worker instructs her to fill out an eligibility affidavit and gives her the location of the correct polling place. The election officer then annotates the poll book at the old polling place, noting that the voter has signed an eligibility affidavit and proceeded to the new polling place.<sup>37</sup> After arriving at the new polling place, the voter casts a ballot in much the same way a Florida voter would: on a regular ballot accompanied by a form (in this case, the so-called eligibility affidavit) attesting to her identity, residence address, and eligibility. Voters do not face additional identification requirements at the new polling place.<sup>38</sup>

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<sup>32</sup> See Fla. Stat. Ann § 101.045(2)(a) (“An elector who moves from the precinct in which the elector is registered may be permitted to vote in the precinct to which he or she has moved his or her legal residence, provided such elector completes an affirmation.”); Telephone Interview with Ion Sancho, Supervisor of Elections, Leon County Board of Elections (Jan. 30, 2009).

<sup>33</sup> See Fla. Stat. Ann § 101.045(2)(d) (“[S]uch affirmation, when completed and presented at the precinct in which such elector is entitled to vote, and upon verification of the elector’s registration, shall entitle such elector to vote as provided in this subsection.”).

<sup>34</sup> Telephone Interview with Ion Sancho, *supra* note 32.

<sup>35</sup> See Fla. Stat. Ann § 101.043 (stating statewide voter identification requirements); Telephone Interview with Ion Sancho, *supra* note 32.

<sup>36</sup> See Del. Code Ann. tit. 15, § 2047(1) (“election official shall direct the person to go to the polling place for the person’s new permanent place of residence”); Telephone Interview with Elaine Manlove, State Election Commissioner, Delaware; Howard G. Sholl, Jr., Deputy Administrative Director, New Castle Department of Elections; Ken McDowell, Administrative Director, Sussex Board of Elections; & Jean Turner, Deputy Administrative Director, Sussex Board of Elections (Dec. 10, 2008).

<sup>37</sup> Del. Code Ann. tit. 15, § 2047(1) (“[T]he election officer shall place the completed eligibility affidavit in an envelope . . . give the envelope to the person, direct the person to go to the polling place for the person’s new permanent place of residence and annotate the poll list to show that the person has been sent to another polling place.”).

<sup>38</sup> See *id.* tit. 15, § 4937; Del. Code Ann. tit. 15, § 2047 (describing procedures at the polling place for voters reporting a change of address within the state); Telephone Interview with Elaine Manlove *et. al.*, *supra* note 36.

In Delaware, if a voter shows up at her new polling place in the first instance, the protocol is much the same as the one used by states like Arkansas and Connecticut for voters who have moved within the county. The poll worker at the new precinct calls county election officials, who access the statewide voter registration database and verify that the voter is already registered in the state. The voter is then issued a regular ballot.

Both in NVRA-compliant states like Arkansas, and permanent registration states like Delaware, the poll worker at a voter's new precinct calls a central office to confirm the existing voter's registration, and then issues the voter a regular ballot. The only difference is that, in Arkansas, the voter is eligible to receive a regular ballot only if officials confirm that the voter is already registered *within the county*; in Delaware, as in Florida, the voter will receive a regular ballot as long as she is registered *within the state*. Otherwise, the protocol is identical.

Oregon's election system also permits voters to cast a regular ballot from their new address, but Oregon's implementation of permanent registration is tailored to that state's vote-by-mail system. Oregon voters are able to report address changes, and request ballots corresponding to their new address, at any time through Election Day — that is, even after the registration deadline for first-time voters has passed.<sup>39</sup> They must do so by submitting a new registration card, on which they state their old and new addresses. If a voter submits her address change with sufficient time before the election for a ballot to be mailed,<sup>40</sup> election officials in the voter's new jurisdiction will mail a regular ballot. If there is not sufficient time for a ballot to be mailed, a voter may pick up her ballot from the county election office in her new county of residence. She may do so at any time through 8 p.m. on Election Day.<sup>41</sup>

With the proper tools in place, a system that permits voters to cast a regular ballot from their new address can readily address all the issues necessary for a secure system of permanent registration.

Confirming a Voter's Registration. Generally speaking, if a voter appears at a new polling place without updating her address, her name will ordinarily not appear on that precinct's poll book. Accordingly, poll workers will need to confirm that the voter is already registered at another precinct within the state. Florida, Delaware, and Oregon all have systems in place that allow them to do so.

As noted, in Florida and Delaware, election officials confirm a voter's existing registration by contacting a central county office, where officials access the statewide voter registration database.<sup>42</sup> In Delaware and

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<sup>39</sup> Email from Dave Franks, HAVA and Centralized Voter Registration Manager, Oregon, to Jonathan Blitzer, Research Associate, Brennan Center (Mar. 24, 2009).

<sup>40</sup> Voters may submit their address changes by mail, email, or hand delivery. Email from Dave Franks, HAVA and Centralized Voter Registration Manager, Oregon, to Jonathan Blitzer, Research Associate, Brennan Center for Justice (Mar. 27, 2009).

<sup>41</sup> See *Voting in Oregon Guide*, Oregon Secretary of State, available at [http://www.uhavavote.org/votingguide/Voting\\_in\\_Oregon\\_Guide.pdf](http://www.uhavavote.org/votingguide/Voting_in_Oregon_Guide.pdf); Email from Dave Franks, HAVA and Centralized Voter Registration Manager, Oregon, to Jonathan Blitzer, Research Associate, Brennan Center for Justice (Mar. 24, 2009).

<sup>42</sup> Telephone Interview with Ion Sancho, *supra* note 32; Telephone Interview with Elaine Manlove *et. al.*, *supra* note 36; see also Fla. Stat. Ann § 101.045(2)(d) (stating that elector shall vote “upon verification of the elector’s registration”); Del. Code Ann. tit. 15, § 2047(3) (“[E]lection officers shall obtain authorization for the person to vote from the Department of Elections.”).

Florida, although the registration database is used to confirm an existing registration, officials do not simultaneously update the database as these calls transpire;<sup>43</sup> the updates are done after Election Day.

Requiring poll workers to call central election offices when voters present themselves to vote imposes administrative costs in time and personnel. In Florida, county officials have the discretion and autonomy to allocate resources as necessary to meet these costs. In Leon County, Florida, for example — where voter registrations are frequently in a state of flux due to the presence of three academic institutions that, together, account for between 50-70,000 voting eligible students — there are two sets of staff dealing with calls on Election Day. One group dispenses information to voters about polling place locations and related concerns, while the other handles provisional ballots and registration confirmations for voters who have moved.<sup>44</sup>

In Oregon, because voters do not report to a polling place, their address updates are submitted directly to county election officials — either before or on Election Day. If there is sufficient time before Election Day — generally five days — an Oregon voter may mail, e-mail or hand deliver a registration card indicating her new address to county officials, who then confirm the voters' existing registration; update her address information; and issue a regular ballot by mail.<sup>45</sup> If there is insufficient time for ballots to be mailed, voters may submit address updates (and complete and submit ballots) at county election offices, where the process is the same.

Preventing Double Voting. All three states that allow voters to cast a regular ballot from their new address have mechanisms in place to prevent double voting.

In Delaware and Florida, if a voter presents herself at her old precinct and is then directed to her new polling place, election officials at the old polling place annotate the precinct poll book indicating that they have sent the voter along to the new polling place.<sup>46</sup> When a voter presents herself at the new polling place (whether or not she has first gone to the old precinct), poll workers inform election officials at the centralized election office that the voter has voted at the new polling place. This creates a record of the voter's casting a ballot at the new polling place, so if any voter attempts to vote both at her old polling place (without informing officials that she has moved), and at her new polling place, a clear record of the voters' double voting is created, allowing for easy detection (and prosecution).

In Oregon's vote-by-mail system, a notation is made in the voter registration database whenever a ballot is sent to a voter, and if a voter requests a ballot for a new address after a ballot has already been sent to the voter's old address, that fact is noted in the database. When election officials received ballots, they scan the envelopes containing each ballot, and, in any case where a voter has received more than one ballot, the database flags that voter's ballot when the envelope is scanned; any attempt at double voting will be immediately detected at this stage.<sup>47</sup>

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<sup>43</sup> Email from Howard G. Sholl, Jr., Deputy Administrative Director, New Castle County Department of Elections, to Jonathan Blitzer, Research Associate, Brennan Center for Justice (Feb. 4, 2009) (“[T]he departments do not make any annotation in the State’s Election Management System when verifying that a person is registered to vote because there is no capability to do so.”).

<sup>44</sup> Telephone Interview with Ion Sancho, *supra* note 32.

<sup>45</sup> Telephone Interview with John Lindback, Director of Elections, Oregon (Apr. 3, 2009).

<sup>46</sup> See Del. Code Ann. tit. 15, § 2047(1) (“[T]he election officer shall . . . annotate the poll list to show that the person has been sent to another polling place.”); Telephone Interview with Elaine Manlove *et. al*, *supra* note 36.

<sup>47</sup> Telephone Interview with John Lindback, *supra* note 45.

Ensuring That a Voter Knows Where to Vote. Delaware, Florida, and Oregon use various means to inform voters where (and how) to vote. In each of these states, voters can receive this information by calling election officials.

The states also have various online resources for voters. Delaware's Internet voter portal demands that the voter enter her full name (including suffix) and zip code.<sup>48</sup> The portal then provides the address of the polling place based on the voter's existing registration. Of course, if a Delaware voter has not yet updated her registration information then the portal offers little help in locating the new polling place: if the voter enters the zip code for her old address, the portal will provide her old polling place, and if the voter enters the zip code for her new address, the portal will not locate her registration record. For a system that allows voters to vote at their new polling place, then, a better Internet portal would allow the voter to enter her *current* address and provide the polling place location accordingly. Such portals have been developed by various political campaigns and third party organizations, as well as some states, including Ohio and Rhode Island.<sup>49</sup> Florida does not have a readily accessible voter portal on its website, but it does make available on a single page a list of phone numbers for every county supervisor of elections office statewide.<sup>50</sup> In Oregon, voters can easily learn of the address for the county elections office corresponding to their new address through the Secretary of State's website, [www.oregonvotes.org](http://www.oregonvotes.org).

Updating the Voter's Registration Record in the Voter Registration Database. Florida and Delaware update voters' registration records after Election Day, while Oregon processes address updates before issuing ballots.

In Florida, officials manually enter the information voters provide on the change of address forms they fill out at the polls into the relevant county database; the county and statewide databases are synched so that changes made to a county list automatically populate the state database. (Essentially, updates are made to county and state databases simultaneously.) Once the update is successfully made, the system generates a voter identification card, which the county then sends to the voter's new address by non-forwardable mail.<sup>51</sup>

Delaware also processes address changes after Election Day. Delaware currently still relies on the physical transfer of paper voter registration files from the old county to the new county of residence. The state is in the process of moving away from paper records altogether as it embarks on a project to digitize all voter records. But at present, inter-county transfers of information remain physical and hard-copy driven.<sup>52</sup>

In Oregon, address changes are made to a voter's registration record in the centralized statewide voter registration database before the voter is issued a ballot corresponding to the voter's new address.

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<sup>48</sup> See Delaware Department of Elections – Polling Place Locator, at <http://pollingplace.delaware.gov/>.

<sup>49</sup> A typical example of such a portal can be found on the website of Vote 411, *available at* <http://www.vote411.org/pollfinder.php>. Ohio's Internet portal is found at <http://www.sos.state.oh.us/SOS/pollinglocation.aspx>; Rhode Island's is found at <http://www.sec.state.ri.us/vic/>.

<sup>50</sup> See website of Florida State Board of Elections, *available at* [http://election.dos.state.fl.us/SOE/supervisor\\_elections.shtml](http://election.dos.state.fl.us/SOE/supervisor_elections.shtml).

<sup>51</sup> Telephone Interview with Ion Sancho, *supra* note 32.

<sup>52</sup> Email from Howard G. Sholl, Jr., *supra* note 43.

## *B. Colorado, Maryland and Ohio: Voters May Cast a Provisional Ballot from Their New Address*

Maryland and Ohio have implemented permanent registration systems in which voters may appear at their new polling place and vote by casting a provisional ballot, rather than a regular ballot. Colorado allows voters to do so as well, but Colorado also permits voters to cast a regular ballot at the new polling place if they first travel to the central county election office and fill out an “emergency” registration.

In **Maryland**, if the voter is registered in the state, votes in the correct polling place for her new address, and signs an oath upon filling out the provisional ballot, her provisional ballot will be counted.<sup>53</sup>

In **Ohio**, a previously registered voter can cast a provisional ballot that will count at her new polling place so long as she signs a change of address form and an affidavit stating her intent to cast a provisional ballot (and pledging not to vote again at another location).<sup>54</sup>

In **Colorado**, voters who have moved anywhere within the state and have not updated their addresses with election officials have two choices for voting on Election Day.<sup>55</sup> First, such voters may vote a provisional ballot that will count at the polling place for their new address. Second, they may travel to the central election office for their county, where they can fill out an emergency registration affidavit with their new address. After completing the emergency registration affidavit, the voter may vote a regular ballot at the polling place for their new address.<sup>56</sup>

Confirming a Voter’s Registration. In Maryland, Ohio and Colorado, before a voter’s ballot is counted, election officials confirm through the statewide voter registration database that a voter is in fact registered within the state.

In Colorado, this check can occur at the county elections office if the voter takes advantage of the emergency registration option, or after Election Day, when provisional ballots are processed.

In Ohio and Maryland, a voter’s existing registration is confirmed when the provisional ballot is processed, not before the voter casts her ballot. In Ohio and Maryland, the voter writes her old and new addresses on

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<sup>53</sup> See Md. Code Ann. § 11-303(d)(4) (defining eligibility to cast a provisional ballot), Md. Code Ann. § 11-303(e)(1) (outlining methods for counting provisional ballots). See Lawyers’ Committee for Civil Rights under Law, 2008 Election Protection Manual: Maryland 21-23 (Oct. 22, 2008), *available at* <http://tinyurl.com/c4t86h>. See generally, Md. Code Ann. § 9-404 (specifying requirements for casting provisional ballots).

<sup>54</sup> See Ohio Rev. Code Ann. § 3503.16(C) (stating that any elector moving from one county to another within the state on or prior to election day who is not otherwise registered to vote in the county to which he has moved may vote consistent with the entirety of the statute). See also Jennifer Brunner, Ohio Secretary of State, Directive No. 2007-06 (Apr. 4, 2007) (reinforcing the statutory language that voters moving outside of county are entitled to vote by provisional ballot), *available at* <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2007/Dir2007-06.pdf>.

<sup>55</sup> See Colo. Rev. Stat. § 1-8.5-107(2)(a) (“A registered elector who moves from the county in which the elector is registered to another county in the state . . . but fails to register to vote in the new county of residence before the close of registration may complete an emergency registration form at the office of the county clerk and recorder . . . or may cast a provisional ballot at a polling place . . .”); *id.* § 1-2-217.5 (describing emergency registration at the office of the county clerk or recorder). See also Colo. Code Regs. § 1501-1, Rule 26 (Nov. 30, 2007) (providing acceptance codes for the counting of provisional ballots).

<sup>56</sup> Telephone Interview with Liz Olson, Manager, El Paso County Board of Elections (Feb. 26, 2009).

the envelope of the provisional ballot, and election officials check the voter's eligibility (using the statewide voter registration database) before separating the ballot from the envelope.<sup>57</sup> In Maryland, officials also check to make sure that the address listed on the envelope corresponds to the election district in which the voter cast his ballot.<sup>58</sup>

Confirming voters' existing registration after Election Day, when provisional ballots are being tabulated, has the advantage of eliminating the need for poll workers at the new polling place to call a central election office before issuing the voter a ballot. But while the use of provisional ballots may save some time at the polling place, it increases the administrative burdens after the election, by requiring additional time processing provisional ballots.

Preventing Double Voting. When voters cast provisional ballots at their new polling places, election officials can prevent a voter who moved from voting twice, because the provisional ballot will not be counted if the voter also cast a ballot at her old polling place. Ohio, Maryland and Colorado all have mechanisms in place to accomplish this. But this processing of provisional ballots can add administrative expense. In Franklin County, Ohio, for example, officials from the old and new counties communicate — most often by fax — to ensure that the voter has only voted once.<sup>59</sup> This back-and-forth is a cumbersome process: time-consuming, costly, rife with administrative hold-ups, and prone to occasional errors.<sup>60</sup>

Ensuring That a Voter Knows Where to Vote. In Ohio, Maryland and Colorado, voters can call election officials to ask for the location of their new polling places. The states also have alternative mechanisms for informing voters where to vote.

Poll workers in Ohio and Maryland are instructed to direct voters to vote at the polling place corresponding to their new address if the voters present themselves at their old polling place. In some counties, officials are trained to draw out any information from a voter about a possible move. Election officials in Franklin County, Ohio, for instance, ask a voter first for her name and address.<sup>61</sup> In Baltimore County, Maryland, by contrast, election officials recite the voter's address as it appears on the precinct register, and simply ask the voter to confirm.<sup>62</sup>

Voters in Ohio, Maryland and Colorado may also use Internet resources to locate their polling places. Ohio's voter portal allows voters simply to enter their current address, and provides the location of the polling place associated with that address.<sup>63</sup> Maryland's site demands more from voters — requesting their full name, date

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<sup>57</sup> See Ohio Rev. Code Ann. § 3505.183(B)(1) (“[T]o determine whether a provisional ballot is valid and entitled to be counted, the board shall examine its records and determine whether the individual who cast the provisional ballot is registered and eligible to vote.”); Md. Code Ann. § 11-303(b) (“[A] local board may not open an envelope of a provisional ballot until the local board has approved the provisional ballot application.”); Telephone Interview with Matthew Damschroder, Director, Franklin County, Ohio Board of Elections (Jan. 30, 2009); Telephone Interview with Katie Brown, *supra* note 31.

<sup>58</sup> See Md. Code Ann. § 11-303(e) (listing the circumstances under which a provisional ballot may be counted); Telephone Interview with Katie Brown, *supra* note 31.

<sup>59</sup> Telephone Interview with Matthew Damschroder, *supra* note 57.

<sup>60</sup> *Id.*

<sup>61</sup> Telephone Interview with Matthew Damschroder, *supra* note 57.

<sup>62</sup> Telephone Interview with Katie Brown, *supra* note 31.

<sup>63</sup> See Find Your Polling Location, at <http://www.sos.state.oh.us/SOS/pollinglocation.aspx>.

of birth, and zip code of their existing registration — and then gives them the address for their old registration address.<sup>64</sup> Colorado’s portal is similar; it asks voters to provide their name, date of birth, and zip code, and provides the polling place associated with the voter’s existing registration address.<sup>65</sup> Thus, the voter portals in Maryland and Colorado are less useful to voters who have moved than is Ohio’s.

Updating the Voter’s Registration Record in the Voter Registration Database. In the states where voters who move are able to cast provisional ballots that will be counted at their new polling places, they are asked to simultaneously fill out a change of address form or affidavit. The address changes are then processed after Election Day, when provisional ballots are counted. Depending on the type of voter registration database used, the new address as listed on the change of address form is entered either directly into the statewide database, as is the case in Maryland, or into the appropriate countywide database, as in Ohio.

In 2005, the Maryland voter registration database was redesigned so that election officials could enter or modify voter information directly onto the statewide database; changes made by election officials at the county level are thus reflected on a centralized database containing all the statewide voter registration information. When a voter’s address is updated in the statewide database, the new county of residence electronically “pulls in” a voter’s previous registration record into the new county, and all the information associated with that voter’s record — such as the voter’s party affiliation, voting history, etc. — is maintained with the registration record. In addition, officials add a scanned image of the provisional ballot envelope submitted at the new polling place to the registration record.<sup>66</sup>

Ohio’s statewide registration database is structured somewhat differently, with each county maintaining its own database. All these databases are then separately linked to the single, comprehensive statewide database. Within this database, a voter’s registration in the old county of residence is not immediately canceled when a new registration (for her new address) is entered into the database for the voter’s new county. This temporarily creates a duplicate registration, and necessitates cancelling the old registration record, thus creating challenges to accurate list maintenance. When the state runs its list-maintenance process, the registration will appear as a duplicate entry, and the two counties in question must communicate to resolve the duplication.<sup>67</sup>

### *C. South Dakota and Washington: Voters May Cast a Regular Ballot from Their Old Address*

South Dakota and Washington State allow a voter who has moved but not updated her address information to vote a last time — by full, regular ballot — from her old address, before updating her registration address for future elections.

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<sup>64</sup> See Verify Voter Registration, at <http://www.mdelections.org/voter-registration/status/>.

<sup>65</sup> See Registered Voter Search, at <https://www.sos.state.co.us/Voter/secuVoterHome.do>.

<sup>66</sup> Telephone Interview with Katie Brown, *supra* note 31.

<sup>67</sup> Telephone Interview with Matthew Damschroder, *supra* note 57.

**South Dakota**<sup>68</sup> and Pierce County, Washington<sup>69</sup> — the only county in Washington that still employs in-person voting — protect voters who have moved within the state by issuing them regular ballots at their old polling place. (That is, a voter who is registered to vote in Pierce County and moves, either within or outside Pierce County, may return to her original polling place to vote.)

**Washington's** other 38 other counties, which have moved entirely to a vote-by-mail system, also facilitate permanent registration, but by mailing voters' ballots to their new addresses while allowing them to vote from their old address — much the same way absentee balloting functions in other jurisdictions. Some counties, like King County, instruct the postal service to forward citizens' ballots from their (old) registration addresses to their new addresses when a forwarding order is on file with the postal service.<sup>70</sup> In other counties such as Clark County, ballots are not sent by forwardable mail, but voters may request by phone that a ballot be sent to their new address. Voters can make these requests after the registration deadline for updating the registration address has passed — even up to a few days before an election.<sup>71</sup> A final option sometimes utilized by Washington voters is to vote in person at a central county location in the county where they are registered (i.e., for their old address). This option is available to voters even in counties that have vote-by-mail systems.<sup>72</sup>

With respect to voters who vote in person, the obvious advantage of a system that allows voters who have moved to cast a ballot from their old address is that voters' names will appear in the poll books, and they will ordinarily be familiar with the polling place.

But there are also obvious downsides. First, when voters who move are required to vote from their old addresses, it may require them to travel significant distances. Voters who have moved only a mile or two may be able to return to their old polling place with little difficulty, but it is far from an ideal solution for a voter who has moved from one end of a state to another.<sup>73</sup> Second, when a voter is given a regular ballot at his or

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<sup>68</sup> See South Dakota Combined Laws § 12-18-7.1 (“any person whose name appears on the precinct registration list may vote at that election”). See also Telephone Interview with Kea Warne, Election Supervisor, Office of South Dakota Secretary of State and Chris Nelson, South Dakota Secretary of State (Feb. 13, 2009).

<sup>69</sup> Wash. Rev. Code § 29A.08.430 (describing transfers on Election Day). See also Telephone Interview with Michael Rooney, Elections Supervisor, Pierce County Auditor (Feb. 6, 2009).

<sup>70</sup> Telephone Interview with Andy Greeley, Administrative Specialist, Voter Services Department, King County Board of Elections (Feb. 16, 2009).

<sup>71</sup> Telephone Interview with Tim Likness, Supervisor of Elections, Clark County Board of Auditors (Feb. 18, 2009); Telephone Interview with Andy Greeley, *supra* note 70. In King County, although ballots can be forwarded — which, in some circumstances, obviates the need for voters who have moved to independently contact election officials — voters may also call or e-mail the county elections office to request that they send a ballot to a new address.

<sup>72</sup> Telephone Interview with Tim Likness, *supra* note 71.

<sup>73</sup> Rhode Island employs a protocol similar to those in place in Washington and South Dakota, but only for voters who have moved less than six months before an election. Such voters can vote a full ballot at the board of canvassers office of their old city or town. See R.I. Gen. Laws § 17-9.1-16(2) (“a voter who remains within the state, although he or she fails to register in the city or town to which the voter has moved within time to vote in the city or town, shall be permitted to vote by special paper ballot...only during the six months, less one day, next preceding an election or primary”); Telephone Interview with Melissa D’Amore, Supervisor of Voter Registration, Providence Board of Canvassers (Jan. 29, 2009). Other states also have time-limited protections for certain voters who move. For example, Louisiana voters who move within three months of an election can return to their old polling place, cast a regular ballot, and update their address information. See La. Rev. Stat. Ann. § 18:110(C). Virginia allows voters who move to vote at their old polling place for up to one federal election following their move. Va. Code Ann. § 24.2-401.

her old polling place (or a mail-in ballot associated with their old address), she may have the ability to vote in local races for localities in which she no longer lives (in addition to voting in federal and statewide races). This occurs both in South Dakota<sup>74</sup> and Washington.<sup>75</sup>

Confirming a Voter's Registration. Confirming a voter's existing registration in a state that allows voters who have moved to vote in their old polling place functions the same as confirming any other registered voter's registration. Voters' names will appear in the poll books for their former precinct, and election officials will be able to confirm their registrations before allowing them to vote.

Preventing Double Voting. In states where voters who move are permitted to vote at their old polling place, permanent registration does not present any additional concerns in terms of the potential for double voting. Because such states do not permit voters to cast a ballot at the polling place for their new address, voters are only permitted to cast ballots from a single address — their existing registration address.

Ensuring That a Voter Knows Where to Vote. As a general matter, when voters are permitted to vote at their old polling places, additional measures are not needed to inform voters of their polling place. Voters who do not know or do not recall their polling place must be able to learn the address of their polling place through calling election officials or by accessing a voter portal that gives them a polling place location based on their existing registration. South Dakota's voter portal uses such technology; rather than asking voters for their current address, the portal requires a voter to provide her name (first and last) and date of birth to receive confirmation of her registration status and polling place.<sup>76</sup>

Updating the Voter's Registration Record in the Voter Registration Database. When voters who have moved vote at their former polling place, they are asked to complete change of address forms or affidavits at the same time they vote. These changes are then processed after Election Day. The change of address form used requires that voters list their old address so that it can be cancelled simultaneously to the address update in the new county. South Dakota election officials note that if a voter fails to list her old address, her old, duplicate registration will be cancelled pursuant to regularly scheduled list maintenance activities designed to detect duplicate registrations.<sup>77</sup>

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<sup>74</sup> Telephone Interview with Kea Warne, Election Supervisor, Office of South Dakota Secretary of State and Chris Nelson, South Dakota Secretary of State (Feb. 13, 2009).

<sup>75</sup> Telephone Interview with Andy Greeley, *supra* note 70.

<sup>76</sup> See Voter Information Portal, at <https://apps.sd.gov/applications/st25cers/>.

<sup>77</sup> Telephone Interview with Kea Warne, Election Supervisor, South Dakota Board of Elections (Jan. 27, 2009).

## IV. LIST MAINTENANCE AND AUTOMATIC UPDATES: MOVING VOTERS' REGISTRATION RECORDS WHEN VOTERS MOVE

Though the states that have developed permanent registration systems have focused on implementing procedures that permit voters to submit address changes at the same time they vote, states can reduce the number of address updates that must be processed on Election Day by developing an effective system to update voter addresses *before* Election Day.

### NVRA Address Updates

It is widely known that the NVRA, often referred to as the “motor voter” law, requires states to allow voters to register to vote when they apply for driver’s licenses and for other government services, like welfare benefits.<sup>78</sup> Less well known is the fact that the NVRA also establishes a mechanism whereby voters may update their addresses with election officials when they update their addresses with motor vehicle agencies. The NVRA requires that any state motor vehicle agency’s change of address form simultaneously serve to update voters’ addresses in the voter registration database, unless voters check a box indicating that they do not wish to update their voting address.<sup>79</sup> States have approached this requirement differently. In some states, hard copies of voter address change forms must be sent to election officials, while other states have developed protocols for electronically transmitting that information.

Michigan and Arizona have developed innovative practices with respect to their voter registration databases that facilitate efficient address updates. In those two states, election officials share a unified database with those states’ motor vehicle agencies. Because the databases are integrated, any address update made to a voter’s driver’s license record is automatically reflected in her voter registration record — and vice versa. These simultaneous, electronic updates enable real-time updates of the voter rolls when citizens update their driver information, and they reduce the likelihood that address changes voters submit to motor vehicle authorities either will not be transmitted to election officials, or will be lost in the process of transmission.

Kansas does not have a fully integrated voter and motor vehicle database, but it has developed an automated mechanism for updating voter’s registration addresses. In Kansas, drivers can submit address changes to the Kansas division of motor vehicles using a simple Internet form, and can simultaneously update their voter record by checking a box that says “I’m already registered to vote. Update my voting address.”<sup>80</sup>

Regardless of the mechanisms states authorize for updating the voter registration database address with changes that voters submit to the state motor vehicle agency — not to election officials specifically — the

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<sup>78</sup> See 42 U.S.C. § 1973gg-5 (a)(2)(A).

<sup>79</sup> See *id.* § 1973gg-3 (d).

<sup>80</sup> See Kansas Department of Revenue, Division of Vehicles, Change of Address on Kansas Driver’s License, at <https://www.kdor.org/dl/default.aspx>. The online form used in Kansas requires voters to opt-in if they wish to have the address they provide to motor vehicle authorities shared with election officials. This online form therefore is not consistent with the NVRA’s *opt-out* requirement for address changes submitted to motor vehicle authorities, see 42 U.S.C. § 1973gg-3 (d). The hard-copy address change form used in Kansas, by contrast, is fully consistent with the NVRA, providing a check box with the following legend: “This form will result in a change of address for voter registration unless you check here.” See Change of Address Form, Kansas Department of Revenue, *available at* <http://tiny.cc/ZZ6YX>.

NVRA mandates that each state establish means for doing so. In spite of the NVRA’s unambiguous mandate, however, the record of state compliance with these automatic update provisions is less than stellar, and some states’ change of address forms are non-compliant on their faces.<sup>81</sup>

One state that has not complied with the NVRA’s address update requirement to date, but that is taking steps to achieve compliance, is Ohio. Historically, Ohio drivers could not update their voting address by filing a change of address form with the Bureau of Motor Vehicles (“BMV”); instead, they had to submit a separate form.<sup>82</sup> The end result was that many Ohio drivers who updated their addresses with the motor vehicle authorities did not simultaneously update their voting records. These voters’ addresses were not accurately reflected in the voter rolls on Election Day, and therefore had to vote provisional ballots, increasing administrative expenses, creating delays at the polling place, and reducing the overall efficiency of Ohio’s elections.<sup>83</sup> Fortunately, the Office of Legal Services for the Ohio Department of Public Safety (which oversees the BMV) has pledged that the BMV will work with the Ohio Secretary of State to ensure that, in the future, when a voter fills out a change of address form for her driver’s license, it will also serve to change her address for voter registration purposes, unless the voter has specifically indicated on the form that it should not.<sup>84</sup> Other states that have not fully implemented the NVRA should follow Ohio’s lead in moving toward compliance.

### Postal Change of Address Data

Aside from the NVRA’s federal requirements, states may use other tools to glean information on voters’ address changes. The most notable source of address change information is that maintained by the U.S. Postal Service. State statutes more than half the states, for example, authorize election officials to update address information in voters’ registration records based on information from the postal service (typically, data from the postal service’s National Change of Address — or “NCOA” — database). The laws in more than a dozen of these states contemplate the use of NCOA data only to update moves within the same county, though other states permit the use of postal address change data to update registration records regarding moves anywhere within the state, including moves from one county to another. Though state laws

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<sup>81</sup> Even a cursory survey of DMV change of address forms demonstrates that several states do not comply with the NVRA’s mandate. Some states, like Missouri and Rhode Island, do not provide voters any indication that the change of address form can also serve as an address update for voting purposes. *See* Change of Address Form, Missouri Department of Revenue, *available at* <http://tiny.cc/18inr>; Change of Address Form, Rhode Island Division of Motor Vehicles, *available at* <http://tiny.cc/WEHel>. Other states, such as Nevada, instruct the voter to check a box if she would like the state board of elections to send him a *separate* address update form for her voting address, but do not provide that the DMV form itself can be used to update voting address. *See* Change of Address Form, Nevada Department of Motor Vehicles, *available at* <http://tiny.cc/dkoSQ>. New York’s DMV address change form is non-compliant with the NVRA in two respects: it requires the voter to check the box in order to request that the address information be shared with county election authorities — that is, the voter must opt-in — and cannot be used for address updates involving moves to a new county. *See* Change of Address Form, New York Department of Motor Vehicles, *available at* <http://tiny.cc/KT5WJ>. Others states — such as Colorado — also require the applicant to opt-in, thus falling short of the NVRA mandate of an opt-out form. *See* Change of Address Form, Colorado Department of Revenue, *available at* <http://tiny.cc/apGnl>.

<sup>82</sup> *See* Lawrence Norden, *Final Report: 2008–2009 Ohio Election Summit and Conference 4-5* (2009) (“Ohio Final Report”), *available at* <http://tinyurl.com/ccerau>; *see also* Mark Niquette, *Report: Ohio Must Update Voter Lists*, Columbus Dispatch, Apr. 8, 2009.

<sup>83</sup> *See* Ohio Final Report at 5.

<sup>84</sup> *See id.*

in a majority of states authorize the use of postal data for updating the voter rolls, many election officials report that, in practice, they do not take advantage of postal data to the extent that state law would permit — often citing the perceived costs related to using this data as a reason the procedure goes unused.

Some states, however, do regularly use NCOA data to update voter address data. Oregon is an example. The state runs a biannual cross-check of the NCOA database and automatically modifies the voter registration information of voters who have moved.<sup>85</sup> The voters are then informed by mail that their information has been updated in the voter registration database. The cost of obtaining NCOA data — \$3,000 per check, or, \$6,000 per year for Oregon — is relatively insubstantial and is shouldered by the state, not the individual counties.<sup>86</sup> Of course, these figures do not include the administrative and personnel costs associated with processing NCOA data, but these additional costs are borne by election officials because maintaining current addresses is particularly crucial in Oregon’s vote-by-mail system.

Minnesota also regularly uses the NCOA database to automatically update its voter registration rolls. Under a provision of state law adopted in 2008, the Minnesota Secretary of State is required, at least once a month, to obtain a list of Minnesotans who filed a change of their permanent address with the postal service.<sup>87</sup> The Secretary of State then forwards notice of the changed address to the county auditor for the county where the new address is located, and the county auditor then updates the voter’s address in the voter registration database. The auditor then sends the voter notice that her registration address has been changed and that she must notify the county auditor within 21 days if the new address is not her correct voting address.<sup>88</sup> If the NCOA database indicates that a voter has moved out of state, the Secretary of State forwards notice to the county auditor in the county where a voter is registered. That auditor then sends notice to the voter saying that their registration will be changed to “inactive” status if the voter does not respond in 21 days and state that she intends to remain registered at her old address.<sup>89</sup>

The Minnesota Secretary of State’s office put this protocol into effect on April 30, 2009.<sup>90</sup> Each cross-check costs around \$750 per month, lower than initial projections made earlier in the year; this expense is shouldered by the Secretary of State’s office.<sup>91</sup> Each county, in turn, pays for the confirmation mailings sent to voters (including the attendant personnel and administrative costs). However, these costs incurred by the county are precisely what the county would have paid had an individual updated her registration herself;<sup>92</sup> therefore, they simply reflect the administrative cost of maintaining accurate voter rolls.

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<sup>85</sup> See Dave Franks, Testimony before the U.S. Election Assistance Commission on the subject of Oregon’s Centralized Voter Registration (OCVR) Database (Mar. 11, 2009), at <http://www.eac.gov/News/docs/dave-franks-testimony.pdf>.

<sup>86</sup> See Telephone Interview with Dave Franks, HAVA and Centralized Voter Registration Manager, Oregon (Mar. 19, 2009).

<sup>87</sup> Minn. Stat. § 201.13(3)(a).

<sup>88</sup> *Id.* § 201.13.3(3)(a).

<sup>89</sup> *Id.* § 201.13.3(3)(b).

<sup>90</sup> Email from Beth Fraser, Director of Governmental Affairs, Minnesota Secretary of State, to Jonathan Blitzer, Research Associate, Brennan Center for Justice (May 20, 2009).

<sup>91</sup> Telephone Interview with Beth Fraser, Director of Governmental Affairs, Minnesota Secretary of State (June 11, 2009). Initial estimates put the cost at \$2,000 per cross-check. See Telephone Interview with Beth Fraser, Director of Government Affairs, Minnesota Secretary of State (Apr. 6, 2009).

<sup>92</sup> Telephone Interview with Beth Fraser, Director of Governmental Affairs, Minnesota Secretary of State (Apr. 6, 2009), *supra* note 91.

Whether potential address changes are identified from NCOA data or any other sources, sound policy requires that voters are informed of any potential changes to their registration information, and allowed the opportunity to confirm, clarify or contest any changes that election officials have made — or are considering making. Ideally, states that attempt automatic address updates should send forwardable confirmation mailings to the voters — preferably both to their old and new addresses — to let voters confirm their address changes. This type of policy is mandated by statute and administrative rule, for example, in Florida.<sup>93</sup>

Providing voters with the chance to clarify their address information (and correct any incorrect changes in their registration records) is important given the possibility of flaws in the NCOA database (as, for example, when a single member of a household moves, but the NCOA database indicates, inaccurately, that the other members of the household have also relocated).<sup>94</sup> Providing ample notice also protects against inappropriate changes of address on the voter rolls, as might result when voters are having their mail forwarded, but do not wish to have their registration address changed. This can result when, for example, a college student attends school in one part of the state, but wishes to continue voting at a permanent home address, or when a member of the armed forces is temporarily stationed away from home, but wishes to continue voting from their permanent home.

## V. MODERNIZING VOTER REGISTRATION THROUGH PERMANENT REGISTRATION: CONCLUSION AND RECOMMENDATIONS

Establishing statewide permanent registration is a readily achievable goal across the nation. Every state without a full statewide permanent registration system already has a limited form of permanent registration under the NVRA — ordinarily on a county-wide scale — and these systems already protect a majority of voters who move. Moreover, every state already has in place a centralized, statewide voter registration database as mandated by HAVA, and every state is already required to implement the NVRA’s mandate that address updates submitted to motor vehicle authorities be shared with election officials. Other tools, like Election Day registration and electronic poll books, are readily attainable goals for some states, and existing realities in others.

When properly implemented, statewide permanent registration protects voters, furthers the goal of robust electoral participation, and streamlines election administration, easing burdens on election officials at their busiest times. There is no reason why it cannot be accomplished in the majority of states today, and every reason states should strive to achieve it.

To implement permanent registration in the states that have not yet achieved it, we offer the following recommendations:

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<sup>93</sup> See Fla. Stat. § 98.065; Fla. Admin. Code R. 1S-2.041.

<sup>94</sup> See Myrna Pérez, *Voter Purges 20-21* (2008), available at [http://www.brennancenter.org/content/resource/voter\\_purges](http://www.brennancenter.org/content/resource/voter_purges).

## Recommendations for Federal Reforms

1. *Congress should extend the NVRA's limited form of permanent registration and require states to adopt programs for statewide permanent registration.*

Under the NVRA, states must allow voters who move to cast ballots that count if the voters move within the same registrar's jurisdiction and congressional district. As demonstrated above, the geographical limitation set forth in the NVRA is outdated and does not reflect the technological advances made in recent years. Because of HAVA, each state has a computerized statewide voter registration database, giving election officials access to a list of all voters registered within the state. In states without permanent registration, a voter must re-register when she moves to a new county, and while this policy was reasonable when each county kept an independent list of eligible voters, it makes little sense now that statewide databases are the norm.

2. *The Department of Justice should monitor state compliance with NVRA provisions concerning changes of address— and bring enforcement actions where there is non-compliance.*

To date, the Department of Justice has not prioritized enforcement of the NVRA's provisions for automatic address updates. Not surprisingly, then, compliance with these requirements has been far from universal. Even a cursory investigation reveals that many states do not comply with the NVRA's requirement that change of address forms filed with the DMV allow voters to simultaneously update their voter registration information.

When the voter registration rolls are updated with address information collected by other state agencies, the result is more accurate voter lists — and reduced problems on Election Day. As an important step in achieving these important goals, the Department of Justice should ensure that states guarantee that when an individual fills out a change of address form with the DMV, she must be able to simultaneously update her voter registration information.

3. *Federal law should require that the U.S. Postal Service provide NCOA data to state election officials at least once every year in which there is a federal election, and should require the postal service to modify its change of address form to provide an opportunity for movers to confirm whether a change of mailing address is also intended to serve as a change of voting address.*

Many states do not currently utilize NCOA data to update voters' address information because of concerns about the cost of obtaining such data. A federal mandate that the Postal Service provide NCOA data to state election officials would resolve this concern. Moreover, a simple change to the postal service's change of address form would improve the accuracy of NCOA data. Because not every American who forwards their mail intends to change their permanent voting address, election officials now face challenges when using postal service data to update the voter rolls: they have no way to know which address changes filed with the postal service are only intended to change a mailing address, and which reflect changes to a voter's permanent mailing address. This situation would be easily resolved, however, by a minor change to the postal change of address form. On the form, voters should be given an opportunity to opt out of a change of address for voting purpose; a simple checkbox on the form would suffice — *e.g.*, "Check this box if you do not want to change the address where you are registered to vote. Unless you check this box, your address change will be reported to your state's election agency."

## Recommendations for State Reforms

1. *States should expand permanent registration protections to the approximately 25% of movers who move across county lines and allow registered voters who move anywhere within the state to submit address corrections and cast a regular ballot from their new address on Election Day.*

States need not wait for federal reform mandating statewide permanent registration; those without permanent registration should adopt it without delay. States implementing permanent registration systems should establish systems like those in place in Florida and Delaware, in which voters may vote a regular ballot in the polling place associated with their new addresses. Though such a system may initially require poll workers to contact a central state or county office to confirm a voter's registration in another precinct, the increased use of electronic poll books can eliminate this requirement and give poll workers in any precinct the ability to search the full database. It is important to note that, as states develop more robust programs of automatic address updates, the number of voters who must take advantage of an Election Day address correction procedure will be reduced significantly.

2. *States should change opt-in address updates to opt-out ones on DMV change of address forms, and should require other state agencies to similarly report address changes to election officials.*

Currently, many states that have check boxes on DMV change of address forms have opt-in check boxes. That is, if a voter wants the DMV to forward her address update to the election authorities, she must take the affirmative step of checking the box. Unfortunately, many voters overlook this check box, thus missing an opportunity to update their address information for voting purposes. As is required by the NVRA, states should use instead a change of address form in which a voter must check a box in order *not* to update her information for voting purposes. By presuming that an address change should be reported to election authorities unless the voter chooses to opt-out, election authorities will capture more address changes, creating more accurate voter rolls.

States should also require agencies other than their motor vehicle agencies — including social service and disability agencies — to report change of address data to election officials. States should mandate that these agencies, too, use opt-out boxes on their change of address forms.

3. *States should automatically update voters' addresses by using the U.S. Postal Service data.*

States that do not currently utilize postal data to update voters' addresses should begin to do so. Until such time as the postal service's change of address form is modified to indicate whether address changes are for voting purposes, states must develop effective policies for determining whether to treat postal change of address notices as changes of voting addresses.

In states that have implemented an effective policy for allowing voters to submit address corrections on Election Day, we recommend that election officials treat address changes submitted to the Postal Service as changes of voting address. These states should, therefore, update voters' addresses — while giving the voters a chance to opt-out of the address change. This will correctly change voter address data in the majority of cases, while preserving the opportunity for voters to correct any erroneous address changes.

A system in which election officials notified voters of suspected address changes, but waited for voter confirmation before updating the voter's registration record, would result in less accurate voter rolls (because of voters who do not respond to notices), and would require more administrative resources (because of additional mailings and follow up communications that would be needed).

A procedure for automatically updating voters' addresses will make the voter rolls more accurate before Election Day. This would facilitate election administration, allowing officials to more accurately plan and allocate resources for Election Day. In addition, without automatic updates, voters who move may not be notified of the correct polling place associated with their voting residence. Automatic address updates mean that voters who move will receive mailings sent to registered voters, including mailings by election officials and those by campaigns. Automatic address updates eliminate duplicate or deadwood records that result when registered voters move and eliminate the need to purge the rolls of outdated records corresponding to voters who moved. Finally, automatic address updates will spread the administrative burden of updating the rolls throughout the year, dramatically reduce the number of individuals who use the Election Day correction procedure, and ultimately reduce costs.

4. *States should make it easier on voters to update their address information from home by developing telephonic and online tools for registration updates. These online resources should also allow voters to confirm their registration information and look up the polling places associated with their new addresses.*

States should provide automated systems with which voters can check and update registration status. Automated telephone and online tools would permit voters to access voting information beyond the working hours of local election officials, and would reduce the burden of voters' calls to officials during those working hours. Voters should also be permitted to submit requests for new registration or changes using the same interfaces, in order to correct errors immediately when voters are aware of them.

The interface of an automated system could facilitate corrections and new registrations either directly or indirectly; if states wished to make election officials intermediaries for any and all changes, the interface could simply generate a phone transfer or email message to the relevant officials with the appropriate information.

States could also use the registration-correction portal to collect other information helpful to election officials. For example, states might collect voters' updated contact information (e.g., telephone and email addresses) to reduce the cost of future notices to the voters in question.

Finally, states should develop telephone and online portals that voters can use to look up the polling place associated with their current address, even if they have not yet updated their registration address. Such technology has already been adapted by numerous states, as well as political campaigns and third party organizations, and should be adopted in states that do not currently employ it.