

VIA EMAIL

Molly M. Widen
Legal Counsel
Office of the Secretary of State
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January 7, 2020

Re: IAC 721-28.4 (ARC 4804C)

Dear Ms. Widen,

We write on behalf of the Brennan Center for Justice at New York University School of Law and the League of Women Voters of Iowa (“the League”) to comment on the amendments proposed by the Secretary of State to IAC 721-28.4 (ARC 4804C).

For the reasons that follow, we recommend:

- (1) IAC 721-28.4(3) be revised to require county registrars to conclude that the first name, last name, date of birth, *and* social security number of a person identified as having been convicted of a felony match each of those four criteria in I-VOTERS before a registration may be cancelled.**

This could be accomplished by making the following textual change to the proposed language of IAC 721-28.4(3):

Within ~~15~~ 30 days of the receipt of the list produced by the state registrar in accordance with subrule 28.4(1), the county registrar shall review the list of likely matches, determine the accuracy of the search results based on matches of first name, last name, date of birth and social security number and cancel the registrations of those voters found to be ineligible to vote. Date of birth and social security numbers must be exact matches. A short and long-form version of the same name may be treated as a first-name match. The last name must exactly match either the current last name or a previously used last name recorded in I-VOTERS. The county registrar may also utilize sex, Iowa driver’s license or nonoperator’s identification numbers, and previous

names, if available, to determine the accuracy of the search results. If the county registrar has questions regarding a felony conviction, the county registrar shall contact the court of conviction's clerk of court.

(2) the Office of the Secretary of State provide individualized notice to those who were improperly removed from the rolls and assist them with re-registration.

Secretary Pate has acknowledged the problem of inaccuracies in the database of disenfranchised individuals and has committed to a retrospective audit to correct such errors.¹ But an accurate database is not enough – it will not remedy the mistake of improper cancellations of voter registrations. To rectify those improper removals from the rolls, the Secretary of State's Office should notify voters whose registrations were erroneously canceled and help them to re-register.

The Importance of Accurate Voter Rolls

The Brennan Center and the League have worked for decades to ensure that eligible voters can cast their ballots in elections that are free, fair, and accessible. Proper and lawful voter list maintenance, including the cancellation of registrations when appropriate, helps to keep voter rolls clean and accurate, making election day less burdensome for election administrators and voters alike.

However, voter list maintenance must be conducted in accordance with federal law, including the National Voter Registration Act ("NVRA"). The NVRA sets forth clear standards that states must meet when undertaking a program or activity to ensure the maintenance of an "accurate and current" voter registration roll for elections for federal office, including that such programs or activities must be "uniform [and] nondiscriminatory."²

Voter list maintenance that results in registration cancellations—known as "purges"—primarily go wrong for one of two reasons: (1) bad information as about who should be removed, and (2) bad methods for removing people from the list of eligible voters. The Secretary's proposed changes to IAC 721-28.4 attempt to address the first issue—bad information. The Brennan Center and the League thus support the adoption of proposed changes to IAC 721-28.4. We believe they will enhance the accuracy of Iowa's voter rolls and diminish the likelihood that eligible voters are incorrectly removed from the rolls going forward.

But the proposed changes do not go far enough to remedy the potential for a bad method, namely, reliance on weak matching criteria.

¹ Press Release, Secretary of State Paul D. Pate, *Secretary Pate announces multi-tiered solutions for felon database*, (Nov. 20, 2010), https://sos.iowa.gov/news/2019_11_20.html; Rod Boshart, *Pate vows 'huge fix' to felon voting database*, *Sioux City Journal* (Nov. 20, 2019) https://siouxcityjournal.com/news/state-and-regional/pate-vows-huge-fix-to-felon-voting-database/article_e6804011-8336-58de-b3df-c1789ad87445.html.

² 52 U.S.C. § 20507(b)(1).

The Need for Strong Matching Criteria

Iowa counties have historically used weak criteria to compare those who have reportedly committed felonies with the list of eligible voters, resulting in false positive matches. In fact, the Secretary of State's Office expressly reminded county auditors and staff that discrepancies can arise because "I-Voters matches felony records with voter registration records based on *minimal* information (ex. First Name, Date of Birth)." ³

Bad matching criteria has caused erroneous removals in Iowa, ⁴ as it has in other states. ⁵ For example, in 2012, Texas officials conducted a purge of voters presumed to be dead. According to a representative from the Texas Secretary of State's office, the purge was driven by a comparison of Texas voters' information to the Social Security Administration's Death Master File. ⁶ According to one analysis, more than 68,000 of the 80,000 voters identified as possibly dead were weak matches. ⁷ This policy of flagging voters based on a weak match without further investigation was eventually changed when Texas settled litigation that had arisen on account of the bad purge. ⁸

IAC 721-28.4(3), if amended as the Secretary has proposed, would require county registrars to "review the list of likely matches, determine the accuracy of the search results based on first name, last name, date of birth and social security number and cancel the registrations of those voters found to be ineligible to vote." As indicated by your office, the rule as amended contemplates a "totality of the circumstances" analysis, ⁹ but would *not* require that county elections administrators actually conclude that there is a match of first name, last name, date of birth, and social security number.

³ April 3, 2017 email from Mike Sievers, Election Division, Office of the Secretary of State, to County Auditors and Staff (on file with the Brennan Center for Justice) (emphasis added).

⁴ Jason Clayworth, *'This is wrong': Iowa's flawed felon list has been disqualifying legitimate voters for years*, Des Moines Register (Jan. 14, 2019), <https://www.desmoinesregister.com/story/news/investigations/2019/01/13/iowa-election-felon-voting-rights-ban-voters-polling-place-how-register-vote-state-rejected-votes-ia/2359082002/> (noting a Clay County case where a man was wrongfully denied the right to vote because of confusion in court filings between him and a defendant with a similar name, and a Polk County case where a father and son share the same name, and the father was wrongly identified as having a felony conviction).

⁵ See Jonathan Brater et al., *Voter Purges: A Growing Threat to the Right to Vote*, Brennan Center for Justice (July 20, 2018), <https://www.brennancenter.org/our-work/research-reports/purges-growing-threat-right-vote>; Myrna Pérez, *Voter Purges*, Brennan Center for Justice (Sept. 30, 2008), https://www.brennancenter.org/sites/default/files/2019-08/Report_Voter-Purges-2008.pdf.

⁶ See Julián Aguilar, *Voter Purge Bill Raises Concerns After Living Flagged as Possibly Dead*, The Texas Tribune (Sept. 12, 2012), <https://www.texastribune.org/2012/09/12/concerns-raised-after-living-voters-flagged-dead/>.

⁷ Lise Olsen, *Texas' voter purge made repeated errors*, Houston Chronicle (Nov. 2, 2012), <https://www.chron.com/news/politics/article/Texas-voter-purge-made-repeated-errors-4001767.php>.

⁸ See Notice to the Court of Rule 11 Agreement, *Moore v. Morton*, No. D-1-GN-12-002923 (Dist. Ct. Travis Cnty. Tex. Oct. 3, 2012); Chuck Lindell, *State Settles Lawsuit on 'Dead' Voter Purge*, Austin American-Statesman, (Oct. 3, 2012) <https://www.statesman.com/article/20121004/NEWS/310049617>.

⁹ Telephone Conversation with Molly Widen, Legal Counsel, Office of the Secretary of State of Iowa (Dec. 3, 2019).

Therefore, nothing in the proposed rule would prohibit reliance on precisely the kind of weak matches used in the past, so long as all four criteria are reviewed.

To avoid the risk of bad matches, before cancelling a registration, county registrars should be required to conclude that the first name, last name, date of birth, and social security number of a person with a felony conviction match the same four criteria in I-VOTERS.

Accordingly, as noted above, the Brennan Center and the League request that the Secretary of State's office amend IAC 721-28.4(3) as follows:

Within ~~15~~ 30 days of the receipt of the list produced by the state registrar in accordance with subrule 28.4(1), the county registrar shall review the list of likely matches, determine the accuracy of the search results based on matches of first name, last name, date of birth and social security number and cancel the registrations of those voters found to be ineligible to vote. Date of birth and social security numbers must be exact matches. A short and long-form version of the same name may be treated as a first-name match. The last name must exactly match either the current last name or a previously used last name recorded in I-VOTERS. The county registrar may also utilize sex, Iowa driver's license or nonoperator's identification numbers, and previous names, if available, to determine the accuracy of the search results. If the county registrar has questions regarding a felony conviction, the county registrar shall contact the court of conviction's clerk of court.

The changes we propose would minimize the risk of bad matches, while allowing for flexibility to accommodate the use of nicknames (e.g., Billy for William, Joe for Joseph), and last name changes that are recorded in I-VOTERS (e.g., resulting from a change of name after marriage).

Notice to Erroneously Removed Voters

Your office has acknowledged finding “numerous errors” after conducting a review of the list of people with felony convictions provided by the Iowa Judicial Branch.¹⁰ Commendably, Secretary Pate has committed to remedying these errors by conducting an audit of that list.

But this review—on its own—will not fix the problem of having erroneously removed Iowa voters from the rolls. In fact, it is common for voters—even those erroneously purged—to not learn of their purge until they try to vote. Moreover, purged voters may not receive helpful election mailings. As such, the Brennan Center and the League urge the Secretary of State's Office to commit to notifying those whose registrations were erroneously cancelled, and assisting such persons with re-registration by providing them with digital and or paper voter registration forms. Such notice and assistance would help to rectify past errors, mitigate confusion on election day, and minimize frustration and disillusionment in the voting process.

¹⁰ December 27, 2019 Memorandum from Molly Widen to County Auditors, Deputies, and Staff (on file with Brennan Center for Justice).

Conclusion

The Brennan Center and the League believe that Iowans with past convictions who are living and working in the community should regain the right to vote. But, so long as Iowa's criminal disenfranchisement policy remains in effect, Iowa must improve its voter list maintenance procedures with respect to persons with felony convictions.

For the reasons articulated above, the Brennan Center and the League support the proposed amendments to IAC 721-28.4 (ARC 4804C). However, we urge the Secretary to further amend the rule to require that county registrars find a match of first name, last name, date of birth, *and* social security number before a registration may be cancelled. And we request that the Secretary commit to giving notice and assistance to those voters erroneously purged from the rolls because of past inaccuracies.

Sincerely,

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