

MAIL RETURNED AS UNDELIVERABLE IN LIST MAINTENANCE

I. INTRODUCTION

This memorandum is intended to inform efforts by voting rights advocates and election officials working to strengthen voter registration and list maintenance practices that avoid the erroneous removal of eligible voters. Specifically, this tool focuses on the **unreliability of using postal mail returned as undeliverable** as an indicator that a voter has moved or is otherwise no longer eligible to vote at their registered address. It discusses the Legal Framework for List Maintenance and Returned Mail (Section II), explains How Returned Mail Has Been Used in List Maintenance (Section III), outlines the Problems with Using Returned Mail as Indicator of Residency (Section IV), and provides Recommendations and Best Practices for Elections Officials (Section V).

Election officials, public officials, and activists purportedly concerned with maintaining “clean” voter rolls are increasingly promoting a variety of aggressive list maintenance tactics that threaten to—whether intentionally or inadvertently—disenfranchise eligible voters under the guise of electoral integrity. These efforts are not only misguided, but they fundamentally undermine the integrity of our elections by preventing eligible voters from exercising their right to vote without justification.

For example, beginning in early 2022, the Electronic Registration Information Center (ERIC)—a non-profit state membership organization established in 2012 with the goal of improving the accuracy of state voter rolls and facilitating the registration of eligible citizens through inter-state data sharing and communication—became the subject of a series of conspiracy theories rooted in election denialism.¹ As of August 2023, nine states had announced their withdrawal from ERIC in just over a year, with other states on the verge of leaving.² Especially in the context of

this significant and ongoing exodus from ERIC, advocates will need to be particularly wary of attempts by states to engage in faulty—and discriminatory—list maintenance practices, including those that rely on mail returned as undeliverable.³

Another threat of aggressive list maintenance comes from the increasingly widespread practice of state-sanctioned mass voter challenges that leave eligible voters vulnerable to potential disenfranchisement or burdens on maintaining their eligibility. In some instances, activists have sent third-party mailers to registered voters, often targeting Black and Brown voters specifically, and have used those returned as undeliverable as the basis for lodging a “challenge” to the voter’s eligibility. These activists have asked local election officials to change the voter registration status and/or discard the ballot of challenged voters.

In this environment, it is increasingly important for advocates to vocally support list maintenance practices that promote accurate voter rolls while ensuring eligible voters are not improperly disenfranchised. The public, and even well-meaning officials, may not be aware of the unreliability of using returned mail as an indicator of eligibility in list maintenance. This memorandum highlights best practices for using returned mail in list maintenance to ensure voter rolls are accurate and eligible voters are not disenfranchised.

Definitions

- **List Maintenance:** A program conducted by a state or county to systematically update its list of registered voters—including removing registered voters who have become ineligible.

1 See, e.g., Miles Parks, “Right-Wing Conspiracies Have a New Target: A Tool That Fights Actual Voter Fraud,” NPR (Feb. 9, 2022), <https://www.npr.org/2022/02/09/1076529761/right-wing-conspiracies-have-a-new-target-a-tool-that-fights-actual-voter-fraud>.

2 These states are Louisiana (Jan. 27, 2022), Alabama (Jan. 16, 2023), Florida (Mar. 6, 2023), Missouri (Mar. 6, 2023), West Virginia (Mar. 6, 2023), Ohio (Mar. 17, 2023), and Iowa (Mar. 18, 2023), Virginia (May 11, 2023), and Texas (July 20, 2023).

3 For example, a database called Crosscheck operated by Kansas had security errors and a high error rate that disproportionately affected racial and ethnic minority voters. See Roxana Hegeman, “Multistate Voter Database Suspended in Lawsuit Settlement,” AP (Dec. 10, 2019), <https://apnews.com/article/2c82eb782e578bbb81c121ec453fbee8>.

- **Voter Purge:** The improper removal of registered voters that disenfranchises eligible voters and may be unlawful. Wrongful purges often target and disproportionately impact voters of color, low-income voters, and young people. For more information, see the [Combatting Wrongful Voter Purges toolkit](#).
- **Returned Mail:** Mail that is returned to the sender as undeliverable to the attempted delivery address. In the context of voter list maintenance, returned mail is mail that is sent to a registered voter and is returned to the sender (e.g., election office) as undelivered.
- **Voter Caging:** The practice of sending mail to registered voters and using returned mail to purge or challenge the eligibility of those voters on the grounds that they do not reside at their registration address.

II. LEGAL FRAMEWORK FOR LIST MAINTENANCE AND RETURNED MAIL

Federal law places some foundational requirements on list maintenance conducted by states and counties.⁴ States and localities may also have their own laws governing list maintenance, but they must always comply with federal law.

Federally, the **National Voter Registration Act (NVRA)** places basic guardrails around how a state may remove voters from the voter registration rolls when they believe a voter's residence has changed. The NVRA is codified in Title 52 of the United States Code.

States are required to conduct a general program to make reasonable efforts to remove voters from the rolls who have become ineligible due to a change in residence, but this program must adhere to a series of requirements to protect the rights of eligible voters. 52 U.S.C. § 20507(a)(4)(B).

First, any state voter list maintenance program must be “uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965,” which protects against racial discrimination in the voting process. 52 U.S.C. § 20507(b)(1).

Second, the NVRA prohibits systematic removal programs that remove voters from the rolls, including those based on a change in residency, from being carried out within 90 days of a federal primary or general election. 52 U.S.C. § 20507(c)(2).

Third, states may not remove registered voters from the rolls on the ground that the registrant has changed residence unless either (1) the voter confirms in writing that they have changed their residence to another jurisdiction, or (2) the voter has not responded to a mail notice sent by the registrar *and* has not voted or appeared to vote in two federal general elections.⁵ The notice sent by the registrar must include a postage prepaid and pre-addressed return card, be sent by forwardable mail, and provide an opportunity for the registrant to state their current address. 52 U.S.C. § 20507(d).

The NVRA does not address returned mail in detail, but it does explicitly permit the use of mail returned as undeliverable in list maintenance in one instance. If a notice regarding a mail voter registration application is “sent by nonforwardable mail and is returned undelivered,” the registrar can begin the process of removing the voter from the rolls by following the notice procedure in 52 U.S.C. § 20507(d) described above. 52 U.S.C. § 20505(d).

State laws may also regulate certain aspects of how the state or counties must perform list maintenance, but **few states have specific legal guidance outlining how returned mail may be used in list maintenance**. These gaps in federal and state law leave a large amount of discretion to county election officials—who send out countless election-related mailings to registered voters—to determine how that mail may be used in identifying voters who may no longer reside at their registration address and triggering the notification process under the NVRA.

BOTTOM LINE: The NVRA provides a notification process and waiting period before a state may remove voters from the official list of registered voters on the basis of a change in residence, but it generally does not instruct when or how a state may use returned mail to trigger the notification process. State legal frameworks may provide more specific guidance, but state laws and regulations are often silent as to when and how mail returned as undeliverable may be used in list maintenance. As a result, election officials in many states have a wide degree of discretion in determining the circumstances in which returned mail triggers the NVRA's notification process.

⁴ See additional discussion in the Combatting Wrongful Voter Purges toolkit: <https://southerncoalition.org/get-involved/combating-wrongful-voter-purges/>.

⁵ See *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833 (2018).

III. HOW RETURNED MAIL HAS BEEN USED IN LIST MAINTENANCE

A. Returned mail has been used by election officials to identify voters who may have changed their residence address.

Election officials communicate often with their voters. One of the most critical ways election officials communicate with voters is through direct mail. Election officials send voter registration cards, voter information guides, ballot applications (where required), official ballots, and official notices. Elections offices may also mail newsletters or postcards with critical communications to every residence in a community.⁶

Some mail, like voter information cards, mail ballots, and address confirmation final notices, are defined in statute. Other types of mail, like information guides that explain the voting process, are not. Some or all of these pieces could be mailed to any given voter in the same year.

Typical Election Mail

- **Official Mail Ballot:** the official votable ballot a voter can return to cast their vote (also called absentee ballot)
- **Voter Information Card:** information card containing the voter's name, residence and address and mailing address, districts/precinct assignment, and polling location
- **Sample Ballot:** guide to races on the ballot
- **Address Change Notice:** a follow-up mail piece after new address is received from a source other than the voter to confirm their new address
- **Address Confirmation Final Notice:** the last mail piece sent to a voter before being moved to an inactive status

Recommendations and best practices for election officials using returned mail in list maintenance can be found in Section V of this memorandum.

B. Returned mail has been used by private individuals seeking to challenge the eligibility of registered voters.

Laws in many states allow private citizens to challenge the eligibility of an unlimited number of voters. The laws vary, but in general, they allow an individual to allege that registered voters on the voter roll are ineligible to vote—for example, because they do not reside at their registration address—and submit evidence to county election officials. The election officials will then review the evidence and determine whether any action should be taken under state law regarding the registration status of the challenged voters.

Voter caging is one particular method by which individual challengers may seek to gather evidence that registered voters are not properly registered at particular residences. They may send mail pieces to a list of registered voters, and if any mail is returned as undelivered, they may use this as evidence to support a challenge.

Laws allowing an unlimited number of private voter challenges have already been weaponized to target racial minority voters and overwhelm election officials. In 2016, volunteers with the Voter Integrity Project in North Carolina used returned mail to launch thousands of voter challenges that targeted Black voters.⁷ In 2020, Texas-based True the Vote used United States Postal Service (USPS) change-of-address lists to challenge the eligibility of more than 364,000 registered voters in Georgia just ahead of the U.S. Senate runoff election.⁸ In the 2022 midterm elections, thousands more mass challenges in Georgia overwhelmed election offices in the lead up to Election Day.⁹ Some challengers have cited change in address data and mail returned as undeliverable to support their challenges.

6 See Election Assistance Commission, Election Management Guidelines, 35, https://www.eac.gov/sites/default/files/electionofficials/EMG/EAC_Election_Management_Guidelines_508.pdf.

7 *N. Carolina State Conf. of NAACP v. N. Carolina State Bd. of Elections*, 283 F. Supp. 3d 393, 398 (M.D.N.C. 2017); "North Carolina's Voter Challenge Process Seems 'Insane,' Judge Says," CBS News (Nov. 2, 2016), <https://www.cbsnews.com/news/north-carolina-voter-challenge-process-seems-insane-judge/>.

8 Mark Niesse, "Eligibility of 364,000 Georgia Voters Challenged Before Senate Runoff," *Atlanta J.-Const.* (Dec. 22, 2020), <https://www.ajc.com/politics/eligibility-of-364000-georgia-voters-challenged-before-senate-runoff/3UIMDOVRFVERXOJ3IBHYWZBWYI/>; Mark Niesse, "Georgia Voter Challenges Fall Short, With Few Ballots Thrown Out," *Atlanta J.-Const.* (Jan. 15, 2021), <https://www.ajc.com/politics/georgia-voter-challenges-fall-short-with-few-ballots-thrown-out/SNPHXD4YXVB7LMIL5N5L3RZPLA/>.

9 Doug Bock Clark, "Close to 100,000 Voter Registrations Were Challenged in Georgia — Almost All by Just Six Right-Wing Activists," *ProPublica* (July 13, 2023), <https://www.propublica.org/article/right-wing-activists-georgia-voter-challenges>.

IV. PROBLEMS WITH USING RETURNED MAIL AS INDICATOR OF RESIDENCY

Even when voters and election officials do everything right, eligible voters can be removed from the rolls due to election officials' reliance on returned mail as an indicator the voter may have moved. This is because the USPS can return mail as undeliverable for a variety of reasons, only some of which actually indicate the voter may have moved.

Every mail piece has to follow strict rules defined by the USPS. These rules govern the shape, weight, and dimensions of mail. Furthermore, disclosures in recent litigation around mail-in ballots reveal there are other issues of unreliable mail delivery that could also cause eligible voters to be erroneously tagged as having undeliverable addresses. Together, these factors indicate that reliance on non-delivery of mail by the USPS is not a sufficiently reliable indicator of whether a voter still resides at their registered address, and thus list maintenance practices that rely solely on whether mail is returned as undeliverable are likely erroneously removing eligible voters during list maintenance.

A. USPS Mail Handling

The USPS provides seven reasons as to why a mail piece might be returned as undeliverable. The reasons are listed in the Domestic Mail Manual (DMM) available on the USPS website:¹⁰

1. No postage.
2. Incomplete, illegible, or incorrect address.
3. Addressee not at address (unknown, moved, or deceased).
4. Mail unclaimed.
5. Mail refused by the addressee at time of delivery.
6. Mail refused by the addressee after delivery when permitted.
7. Minimum criteria for mailability not met.

Of the seven reasons the USPS provides that can lead to returned mail, only two appear related to a voter's potential eligibility to vote in a particular jurisdiction: the voter either provided an incorrect address that does not exist, or the voter does not actually live at the address provided.

In fact, most of the factors causing non-delivery of mail are entirely beyond the voter's control. It is the government election agency that has ultimate control over whether a mailing will have correct postage, a legible address, and the "minimum criteria for mailability." These design standards also help define the class and how those pieces should be handled. For example, larger sized pieces, also referred to as flats, are more difficult to sort by the USPS, and could lead to issues with voters receiving them. There is also the risk that the government election agency will put the incorrect address on its mailings, as has happened in the past.¹¹ The voter has no control over these factors, and thus any administrative error in properly preparing the address list to meet mailing standards risks removing voters from voter rolls through no fault of their own.

The remaining reasons that mail may be returned as undeliverable are likewise not indicative of eligibility to vote. Voters who are temporarily away from their permanent residence (for sickness, school, work, or otherwise) may have mail go unclaimed—and thus undeliverable—even if they have not permanently moved. Similarly, if a voter who resides at a location refuses delivery for any reason, this does not legally affect eligibility to vote based on residency.

In addition to these factors, there are also a substantial number of addresses in the United States assigned to Carrier Route R777 by USPS, meaning they are physical addresses that exist but are not eligible for mail delivery. These routes are also known as "Phantom Routes." It is entirely possible a voter can list their residence without providing a valid mailing address and thus be prevented from staying on the voter rolls.

Given the array of mail pieces an election office could send, along with the different reasons for mail being undeliverable to a particular address, traditional mail should be used very sparingly to trigger the list maintenance process. More importantly, bulk mailing should not be used to confirm a voter's address. Otherwise, issues like mail piece design and address quality can lead to voters being moved off of the voter rolls, with potentially disenfranchising effects. For example, part of the design of a mail piece requires choosing an ancillary service endorsement. The endorsement dictates what the USPS should do when a mail piece is returned as undeliverable. Without clear direction from law or administrative policy, election officials can apply the endorsements unevenly to the mail causing some pieces to return to their offices that simply should have been discarded.

¹⁰ See U.S. Postal Service, "507 Mailer Services," <https://pe.usps.com/text/dmm300/507.htm>.

¹¹ See "Absentee Ballot Requests Pile in at County Elections Office," *Statesboro Herald* (Apr. 9, 2020), <https://www.statesboroherald.com/local/absentee-ballot-requests-pile-county-elections-office/> ("[T]he state office apparently addressed the mass mailing of application forms to street addresses instead of mailing addresses.")

B. The USPS may have further issues that cause mail to be returned despite a valid address being provided by an eligible voter.

Recent evidence from voting rights litigation indicates that the USPS may have additional issues in the services it provides that cast doubt on the appropriateness of relying on USPS deliverability to determine residence.

In a 2020 decision, Judge Nathan of the Southern District of New York found credible the testimony of Michael Ryan, the Executive Director (and former Commissioner) of the New York City Board of Elections, stating that Postal Service data is an unreliable proxy for voter movement. See *Common Cause/ New York v. Brehm*, 432 F. Supp. 3d 285, 295 (S.D.N.Y. 2020).

Executive Director Ryan described several issues, including that:

- The USPS method of coding undelivered mail can be arbitrary and cryptic.
- If one notice is returned as undeliverable due to postal worker error, subsequent notices are likely to suffer the same fate.
- The USPS has returned completed confirmation cards months after the voter sent them.
- His office observed systematic issues for voters who live in multi-unit buildings.

Id. at 295-97.

Overall, Executive Director Ryan testified the USPS often returns mail as undeliverable even though the voter continues to reside at the same location, and that there was a “poor quality and . . . lack of consistency of the post office.” *Id.* at 295. This testimony was reinforced by additional testimony of other election officials in New York. *Id.* at 297.¹²

In North Carolina, a federal judge granted a Temporary Restraining Order shortly before the 2016 general election, reversing the removal of thousands of voters’ registrations in three North Carolina counties. These registrations had been removed after private individuals challenged registrations *en masse* based upon postcards sent to the voters that were returned as undeliverable. See *N.C. State Conference of the NAACP v. N.C. State Bd. of Elections*, No. 1:16CV1274, 2016 U.S. Dist. LEXIS 153249 (M.D.N.C. Nov. 4, 2016).

The Court found these removals likely violated the NVRA’s prohibition on systematic removals within 90 days of an election, observing that “[t]here are a number of reasons why such mailings might be returned as undeliverable, including

the fact that a voter may receive mail at a PO Box rather than a physical address” as did one of the plaintiffs. *Id.* at *30. The United States filed a Statement of Interest stating that the NVRA “recognizes that second-hand evidence such as mail returned as undeliverable may not actually reflect a change of residence impacting a citizen’s eligibility to vote in a jurisdiction.” *Id.* The Court later granted partial summary judgment to Plaintiffs and enjoined the challenged provision. See *N.C. State Conference of the NAACP v. Bipartisan State Bd. of Elecs. & Ethics Enft.*, No. 1:16CV1274, 2018 U.S. Dist. LEXIS 134228, at *22 (M.D.N.C. Aug. 8, 2018).

V. RECOMMENDATIONS AND BEST PRACTICES FOR ELECTION OFFICIALS

A. Election officials should create good working relationships with their local USPS representatives.

Election officials should work proactively with the USPS to ensure deliverability issues do not cause voters to be mistakenly removed. A good way for election officials to build relationships with local USPS representatives is to participate in the [Postal Customer Council](#) (PCC). According to the USPS, the local PCC offers these benefits:

- **Knowledge** – Gain knowledge about postal products, services, and tools to improve mail quality, as well as earn a professional certificate
- **Innovative Ideas** – Learn about promotions and incentives that raise awareness of innovative mail uses
- **Expert Advice** – Hear about how to integrate and expand your marketing through the mail
- **New Sources** – Find new sources for acquiring mailing lists
- **Networking** – Network with other mailers, business mail service providers, and USPS executives and hear first-hand from others about how they use mail to be more efficient and profitable, as well as face the same challenges you face
- **Best Practices** – Leverage best practices to improve mailing effectiveness, efficiency, and profitability

Through the PCC, the USPS can guide elections officials before a mass mailer is sent out to ensure that the mail is designed correctly, correct postage is applied, and that addressing standards are met. This step will help to limit the amount of mail returned as undeliverable.

¹² See also John Powers, *Common Cause New York v. Brehm is the Canary in the Coal Mine When it Comes to Voting by Mail in the Coronavirus Age*, 45 ABA Human Rights Magazine 3: Voting in 2020 (June 25, 2020), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-in-2020/common-cause-new-york-v--brehm-is-the-canary-in-the-coal-mine-wh/.

B. Election officials should carefully consider which mailings need to trigger list maintenance.

Mail can trigger list maintenance, but it shouldn't always do so. Some mail pieces, like mail ballots, may be required by statute to be returned if undeliverable. For pieces that do not carry specific guidance in state law or procedure, all efforts should be taken to avoid the return of a mail piece. Other informational pieces, like sample ballots or voting guides, should not be used to trigger list maintenance; these pieces should not carry endorsements that will return the mail piece to the election office. When possible, election officials should mail informational pieces to households instead of individual voters.

The following chart provides an illustrative example of the manner in which certain mail pieces may be handled by election officials, depending on local context.

Mail Types	Trigger List		Mailed to:
	Statute	Maintenance	
Official Mail Ballot	Y	Y	mailing address
Voter Information Card	Y	N	registration address
Sample Ballot	Y	N	mailing address
Address change notice/request	Y	Y	mailing address
Address confirmation final notice	Y	N/A	registration address
Informational piece - i.e., explaining the voting process	N	N	mailing address

C. Election officials need to take extra care in the design of each mail piece to avoid errant handling and processing.

The USPS has specific guidelines for the shape and weight of mail. Mail piece design choices are important. These choices

not only impact the postage rate of the piece, but also affect how the piece is handled. No matter how an election mail piece is designed it should always carry the Official Election Mail logo.¹³

Size – The dimensions of a mail piece impact both the postage rate and the processing times. Mail can be, from smallest to largest: postcard sized, letter sized, or flats. Postcards and letters are easier for the USPS to process. Flat mail is oversized and can add extra handling and time.

Appearance – Envelopes are usually white but other colors can be used. Caution must be taken to make sure the envelope color does not interfere with the machines that read the address characters on the mail piece. Envelopes that have windows must adhere to strict measures of reflectance and transparency for the same reason.

Self-mailers – Self-mailers (postcard or letter sized) have no outer envelope housing the mail piece. They are folded in a way that allows the address to appear on the outside. Self-mailers can cut overall mailing costs. Sometimes folded pieces can cause additional issues in processing machines. Tabs or gum strips can come loose and jam the pieces in machines leading to lost or returned mail.

D. Election officials should take additional steps to confirm address quality before placing voters into inactive status or removing them from the voter registration list.

To the extent possible, election officials should attempt to contact voters and confirm their residency by methods other than postal mail before conducting list maintenance activities through the USPS (e.g., NCOA list matching, email, or phone). This is especially the case if election officials notice particular irregularities. For example, when mail is returned as undeliverable from a large number of voters at the same street address, it is more likely a problem with mail delivery at that address and not an indication that the voters have moved. Third-party mail-houses may inadvertently alter voter addresses when processing NCOA or Coding Accuracy Support System (CASS) for discounts. Additionally, elections officials should never accept nor use information provided to them by third-party mailers returned as undeliverable to trigger any address quality checks or general list maintenance.

When time-sensitive mail, like vote-by-mail ballots, is

¹³ See U.S. Postal Service, "Election Mail," <https://about.usps.com/what/government-services/election-mail/>.

returned, elections officials should consider contacting voters directly to confirm the address and deliverability of mail at their location. This step should take place before the voter's record is put into the confirmation process. Proactively contacting a voter when election mail—particularly a ballot—is returned as undeliverable can help ensure accurate list maintenance, but it also requires adequate staffing.

E. Election officials should be aware that relying on returned mail adds costs and inefficient work processes to elections offices.

Elections offices send traditional mail regularly as normal operations require. Normal volumes of mail sent week-over-week will be returned at predictable rates. Large volumes of mail sent to test all voter addresses in a bulk mailing will lead to corresponding high volumes of returned mail. Returned mail has to be processed individually by hand. The USPS will apply a yellow sticker to each piece with the reason for the return. Staff will make determinations on how to deal with each piece and code the voter's record accordingly. This is very time-intensive; sometimes the reasons are unclear or the sticker is missing altogether. A mass mailing to many voters must be timed in a manner that will not impact other important elections operations. This is especially true as the calendar draws near to Election Day when competing priorities become intense. Election officials should ensure that staffing needs to deal with returned ballots and other election mail are planned and accounted for in advance.¹⁴

F. Elections officials should work closely with community groups and voting rights advocates to ensure multi-partner education outreach to voters is achieved.

Election officials should tailor voter outreach materials and communication strategies with state-based civil society organizations to enhance transparency, especially with the implementation of new election administration legislation. Specifically, the set of elements triggering removal of a voter from the voter list should be accessible and provided with clarity. Election officials should offer visual examples of all mailings used for list maintenance. The set of elements that trigger list maintenance should reference local statutes and the NVRA.

VI. CONTACT INFORMATION

For more information, please reach out to:

- [All Voting is Local](mailto:data@allvotingislocal.org) | data@allvotingislocal.org
- [Fair Elections Center](mailto:info@fairelectionscenter.org) | info@fairelectionscenter.org
- [Lawyers' Committee for Civil Rights Under Law](mailto:press@lawyerscommittee.org) | press@lawyerscommittee.org
- [Southern Coalition for Social Justice](mailto:communications@scsj.org) | communications@scsj.org
- [VoteFlare](mailto:joshvisnaw@hks.harvard.edu) | joshvisnaw@hks.harvard.edu

¹⁴ See Cybersecurity and Infrastructure Security Agency Elections Infrastructure Government Coordinating Council and Sector Coordinating Council's Joint COVID Working Group, "The Importance of Accurate Voter Data When Expanding Absentee or Mail Ballot Voting," https://www.eac.gov/sites/default/files/electionofficials/vbm/Accurate_Voter_Record_041720.pdf.