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Part 2A of a 5-part series on voter list data

## **20% of All 18-year Olds Omitted -- Data Entry Failure for Last-Minute Registration Forms to Blame**

There is still time to correct these problems by 2012. This story is not just about Shelby County, Tennessee, where I believe the elections commission is competently addressing these problems for 2012. Last-minute dumps of new voter registration forms was a national problem in 2008, and across America voters reported that when they showed up to vote, their name was missing from the list.

The 2008 presidential election brought millions of new voters to the polls, with enthusiasm especially high among youth and minority voters. Yet in Shelby County (the home of the great city of Memphis), over 15,000 voters, disproportionately young or Black voters, were omitted from the list of valid voters at the time of early voting; by Election Day, the names finally made it to the list.

These omissions correlate with an influx of last-minute voter registration forms. This study highlights the importance of third-party registration groups promptly submitting new registration forms. In some states, 48-hour submission is now a legal requirement, with somewhat draconian fines for failure to comply. Regardless of whether prompt submission is the law, it is important to emphasize the need to educate voter registration groups to promptly submit new registration forms. Like taking checks to the bank for your employer; like an insurance agent who must promptly submit forms for those he insures; like a real estate agent who has to submit bids immediately, voter registration groups have a fiduciary-like duty to the voter, who has every reason to believe they will be registered timely after signing forms and entrusting them to a responsible person.

In Memphis, approximately 30,000 new registration forms flowed in during the last five weeks before the 2008 presidential election. Only half of these made it onto the voter list by the start of early voting. Apparently, the number of new forms being submitted was greater than they could enter into the database on time.

### **OMISSION OF VALID VOTERS FROM "WHO CAN VOTE" LISTS**

In 2008, Actor Tim Robbins showed up to vote in New York, and was told he was not on the list. After asserting his right to vote, his registration was eventually located and he was allowed to vote a normal ballot.(1)

Reports flowing in to Black Box Voting indicate that the "Tim Robbins" problem happened all over America. In fact, it happened right next to me. When I went to vote, the woman beside me was told she was not on the voter list. She was deaf, and the poll worker made no attempt to explain anything comprehensible to her, so I assisted. Instead of telling her to vote a provisional ballot, the poll worker told her to register and come back next year. After I asserted her right to vote a provisional ballot, the poll worker found her registration after all and she was allowed to vote a normal ballot.

\*Registered voters who are told they are not on the voter list may vote a "provisional ballot", an important right, but provisionals are second-class ballots. Provisional ballots are examined after the election and if deemed legitimate, are counted. Unfortunately, poll worker errors sometimes cause these ballots to be rejected; also, poll workers sometimes fail to inform voters of their right to provisional ballots; and provisional ballots are not factored in to Election Night winner projections.

We have not been able to learn much about how these errors take place, or quantify how many people were left off the lists. Until now. I obtained 87 Shelby County voter lists from 2006 through 2010. Examining these lists reveals a staggering scope of voter list omissions. Two and a half percent -- 15,199 total voters -- were left off the early voting list. Of these, 9,080 weren't submitted until the last day of registration.

## **THE IMPORTANCE OF PUBLIC ACCOUNTING IN ELECTIONS**

As a self-governing people, we have the right to authenticate the basic accounting in our own elections. The most essential parts of this accounting are:

1. Who can vote (the voter list)
2. Who did vote (the participating voter list)
3. Chain of custody
4. The count

Obstructions or inaccuracies in any of these four areas can create an unfair election. Inaccuracies in the voter list will certainly affect the count if valid voters cannot vote, and may affect the count if invalid voters can vote (I will quantify invalid votes for 2008 in Part B of this report).

## **WHY WERE VOTERS LEFT OFF THE LIST?**

Voter lists show a "Registration Date." In Shelby County, the last day to register to vote for the 2008 presidential election was Oct. 6, 2008. The later the voter registration forms were submitted, the fewer voters made it on to the voter list at early voting:

Date form Submitted	# forms	# Omitted from Early Voting list	% Omitted
Oct. 6, 2008	9,156	8,671	94.7%
Oct 5, 2008	2	2	100%
Oct 4, 2008	892	752	84.3%
Oct 3, 2008	1,516	1,333	87.9%

## 15,000 Voters Left Off 2008 Voter List in Shelby County, Tennessee!

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Oct 2, 2008	1,344	1,040	77.4%
Oct 1, 2008	1,551	660	42.6%
Sept. 2008	16,064	2,150	13.4%
Aug. 2008	6,538	54	0.8%
Jan-Jul 2008	20,000	31	0.2%
Before 2008	596,854	99	0.02%

Clearly, submitting forms during the last few days puts voters at higher risk for being left off the list.

Omissions for earlier submissions are more difficult to explain. There was time to enter the September submissions, yet 2,150 of these were omitted, and 184 forms dated months or years earlier were also left off the early voting list.

Even more peculiar, 600 registration dates in the Election Day voter list are shown as later than the last day to register. Four-hundred and nine of these didn't make it into the Early Voting list. Twenty-six of these appear to be typos (examples: 9/23/3008; 10/6/2208). But the rest show registration dates in late October, 2008. If they registered too late, why do they show up on the voter list at all? Two hundred and fifty-four are shown as voting; perhaps they were provisional voters, but that doesn't explain 320 registered too late, who appeared on the Election Day voter list but did not vote.

The accuracy of voter lists directly affects who can vote. You cannot extract a voted ballot from an voter who should not be on the list from the count after it has been cast, and you cannot recover votes from persons left off the list unless they manage to vote a valid provisional ballot -- by no means a guarantee, even for voters who are eligible. Inaccurate voter lists alter the count.

### SOME VOTER GROUPS AFFECTED MORE THAN OTHERS OBAMA VOTERS APPEAR TO BE DISPROPORTIONATELY LEFT OFF THE LIST

Because valid voters left off the early voting list were disproportionately Black or under age 30, omissions are likely to have especially affected voters for Obama (based on the 2008 political trends). I have attached the list of these voters to this article, and would be interested in learning voter experiences for any who tried to vote early.

Approximately one-fifth of all registered 18-year old voters were left off the list as of the beginning of early voting. The total number of 18-year-old voters on the final list was 7,840, or 1.2% of all 2008 registered voters. However, 1,544 of the 7,840 18-year old voters were omitted from the valid voter list at early voting, a stunningly high percentage!

Those left off the list were highly motivated: 958 of these managed to vote (64%); surprisingly, 374 of the omitted 18-year-olds managed to vote early even though their names were missing from the valid voter list when early voting began.

Now, that sounds like they weren't so badly affected, until you look at the 18-year-old vote

patterns for those who were NOT omitted from the valid vote list at early voting. Early voting for those left off the list was depressed by 21%, and overall voting was down by 3%.

The college kids were hit hard by having their forms submitted late. Out of 35,802 college-aged voters on the final 2008 list, 4,472 (12.5%) were left off the valid voters list at early voting. This depressed their early voting by 18 percent. Clearly highly motivated, most of the young voters unable to early vote tried again, going to the polls on Election Day. Overall turnout was only slightly depressed. However: Hardly any of the young voters who were omitted from the early voting list ever voted again.

Age	# voters	# omitted	% of age pool omitted
Age 18	7,840	1,544	19.69%
Age 19	9,381	1,155	12.31%
Age 20	9,198	963	10.47%
Age 21	9,383	810	8.63%

% Black Voters on Election Day	% Omitted
37.6%	4
	3.3%

**THE CLUE OF BUTTER AND TICKLE**

Enter Earnestine Butter and Blake Tickle, whose unusual voter histories in Shelby County shed more light on what happened to voters who were omitted from the list.

Eighteen-year old Blake Tickle shows a voter registration date of Oct. 30 at early voting, as does 52-year old Earnestine Butter. What is odd about their records, however, is that both are shown as voting about the same time as they registered. Some states have same-day registration, but Tennessee does not. The last day to register to vote was Oct. 6, 2008, and early voting started Oct. 16. Their names did not appear on the early voting list, yet they voted. It was too late to register, yet they were registered.

It appears that in Shelby County, election workers made special efforts to find and process forms for voters trying to vote early whose names were not on the list. This was heroic, but not good enough. Overall, the percentage of early votes among all voters left off the list was depressed by 20%, indicating that these voters faced real obstacles. Thousands had to return on Election Day in order to vote.

Leaving names off the list places voters to an unequal playing field, which can be exploited by partisans. If the voter is the wrong color, has a voter history connected with the wrong party, or the poll worker is just too harried or impatient to help the voter navigate through extra administrative steps needed to vote, that voter can be disenfranchised. And running around finding forms in a pile when voters aren't on the list enters legally murky waters.

**EARLY VOTING PERCENTAGES WERE DEPRESSED FOR THOSE LEFT OFF THE LIST**

According to the Statement of Votes Cast for this election, only 821 provisional ballots were cast

including both early and Election Day votes. A total of 15,199 voters listed on the Election Day voter list were omitted from the early voting and of these, only 43% managed to early vote vs a 63% early vote rate for voters not omitted from the list.

Clearly, like Blake Tickle and Earnestine Butter, thousands voted early even though they weren't on the early voting list, but as evidenced by the depressed percentage of early votes in the omitted group, thousands had difficulty voting early.

### **TRACING THE PROBLEM TO DATA ENTRY LOGISTICS**

Enter the next piece of evidence in this small mystery: I found a 2004 worksheet produced by Democratic then-administrator of elections James Johnson, showing the maximum number of voter forms they had been able to enter into the database each day. In 2008, over 14,000 new registration forms needed to be processed in six days, with 9,000 of these submitted the very last day. Based on the 2004 worksheet, the maximum number of forms they were capable of processing per day was smaller than the number of registrations needing to be processed.

If we assume that a Democratically-controlled election administration would be extra-friendly towards getting lots of new Black and college-age registrations entered, it's hard to understand why they didn't. Hiring large numbers of temporary workers isn't a particularly good solution and is likely to increase data entry errors in a database that must be absolutely accurate to protect voting rights.

Logistics for entering tens of thousands of new voter registration forms at once can be daunting. In King County Washington, I observed boxes of registration forms labeled "not entered yet." Then-elections chief Dean Logan had told the press that all new voter registrations had been entered into the system. When an employee saw me looking at those boxes, he hid these boxes under a desk.

In late October 2008, the Georgia Secretary of State's office began an investigation into who threw more than 75,000 Fulton County voter registration cards into a trash bin. After getting a call from a resident, officials found more than 30 boxes of voter registration application cards in a construction trash bin at Atlanta Technical College. (2)

Election officials have told me that when everyone is extra-diligent, putting as many new registrations as they can into the system, it can crash the statewide database.

The bottom line is this: When the government requires data entry using deadlines that are impossible to implement, the result can turn into lies, employee misconduct and cover-ups. Submitting new registration forms immediately is the best way to protect voting rights. This will give us more complete voter rolls, better data quality, with fewer errors, and is the best way to make sure the voters you just registered can actually vote.

### **BUT CAN'T THEY JUST VOTE PROVISIONAL?**

Saying "they can always vote provisional" is like saying "false arrest is okay because you can

always prove you are innocent." The right to vote with a provisional ballot does not substitute for getting all valid voters onto the rolls in time; being left off the voter list puts voters on unequal footing, and when these omissions disproportionately affect specific voting groups, you can end up with unfair elections.

SOLUTIONS:

## **1. SUBMIT VOTER REGISTRATION FORMS WITHIN 48 HOURS**

Regardless of what the law says, ethics and duty to the voter say voter forms should be submitted to the elections office within 48 hours.

We hear heartfelt stories of people just trying to do good works, like the teacher in Florida who failed to abide by Florida's law requiring 48-hour submission of voter registration forms. The 48-hour submission law provides important protections for voting rights, though the fines in states with these laws are a little over the top. States requiring 48-hour submission definitely need one more thing: They need to print the 48-hour submission requirement on the voter form itself.

Even if your state does not require 48-hour submission, real advocates for voting rights will push hard towards education and quality control to get those forms in immediately. Voters depend on timely submission of these forms for their right to vote.

## **THINK OF IT LIKE TIMELY DEPOSIT OF CHECKS**

If your employer gives you a stack of checks to take to the bank, you shouldn't drive around with them in the back seat of your car for two weeks. You have a fiduciary duty to promptly deposit the checks, before they can get lost, torn, fly out the window on a windy day, or fall on the floor to get hidden under the seat.

Voter registration groups have a fiduciary-type duty to the voter, who rightfully believes that he is registered to vote after filling out his voter registration card and giving it to a supposedly responsible person. Let's not fight for the right to be slipshod with someone else's voting rights. Instead, I am hoping that all groups involved in voter registration will see the need to protect their voter's rights with prompt, responsible, 48-hour submission of new registrations.

## **2. MAKE IT A FIRING OFFENSE TO FAIL TO DISCLOSE IMPORTANT PROBLEMS**

States like Tennessee oversee their elections administrators with an election commission. This is a good quality control measure (but doesn't replace public oversight). Active election commissions like that in Shelby County function like a board of directors, with election employees answerable to the commission.

Too many times, we see election officials fail to disclose known problems likely to adversely affect voters. The late data entry for 15,199 voters in Shelby County should have been disclosed to the commission and to the public.

Most states don't have active bipartisan election commissions. The public has to rely solely on a couple of administrators to tell the full truth about what's going on, and fearing for their jobs, they often choose to cover up rather than disclose. In such cases, citizen groups need to be especially assertive and obtain accounting for essential functions.

### **3. ADD A FIELD TO VOTER DATABASES, AND PROVIDE DATABASES UPON REQUEST**

I am not a fan of adding more reports to already busy election administration tasks. One way to improve quality control would be to require a daily statistical report on voter registration status. But that's a lot of extra paperwork for everyone. Instead, a streamlined method would be to add "date received" and "date entered" fields to the voter registration database.

### **4. ASK FOR THE DATABASES**

Public interest groups and certainly political parties should ask for the valid voter list at three points in time: 1) Date absentees are first mailed out 2) Date early voting begins and 3) Election Day. Also, the list of participating voters should be published for absentee and early votes on a daily basis, and the list of participating voters for Election Day within 72 hours. You can very quickly bump these lists up against each other to spot problems.

Beginning now, I recommend obtaining the valid voter list and/or the voter history list each month. These come in text files, with commas or tabs separating data so that it can also be opened in database programs like Excel, MS Access, or Filemaker. The cost of these discs should not be excessive -- \$25 per disc is reasonable.

### **NOTES**

(1) Nov. 4, 2008, Actor Tim Robbins Finds His Name Was Removed From Voter List  
cityroom.blogs.nytimes.com/2008/11/04/tim-robbins-encounters-confusion-at-the-polls/  
Archived at: <http://www.bbvforums.org/forums/messages/160/78782.html>

(2) ATLANTA (AP) -- The Georgia Secretary of State's office began an investigation into who threw more than 75,000 Fulton County voter registration cards into a trash bin  
www.firstcoastnews.com  
Archived at: <http://www.bbvforums.org/forums/messages/138/78474.html>