

DEMOCRACY AT RISK

Husted v. Randolph and Voter Suppression in 17 States

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EXECUTIVE SUMMARY

- The Supreme Court decision in *Husted v. A. Philip Randolph Institute* ruled constitutional Ohio's plan to implement large and unprecedented voter-file purges which will remove hundreds of thousands of eligible voters from Ohio's rolls.
- Seventeen states signed an amicus brief in the case, supporting Ohio's efforts. VVN modeled the effect of 16 of these states performing similar Husted purges and found that they would remove 10 million eligible voters from registration lists, comprising over 20% of registered voters, in a single election cycle.
- The largest purges will be those initiated by states after low-turnout midterm elections. We estimate that officials in the 17 Husted states would target up to 30% of eligible voters, 14 million citizens in all, for removal four years later.
- The Court did not adequately review the provision in the National Voter Registration Act requiring purges to be "uniform" and "nondiscriminatory." Husted purges will have a disproportionate impact on voters of color and younger voters.
- *Husted v. Randolph* represents a challenge for fair voting in the United States, and if implemented widely will negate the efforts of progressive groups to improve voter registration and turnout.
- VVN recommends several steps we can take to address the effects of Husted purges, first and foremost among them being identification of at-risk voters in affected states.

BACKGROUND

In order to vote in America, you must register with local election officials so that your name and address appear on voter rolls. Every state, each in its own way, performs file maintenance on voter registration lists to add new registrants, update information such as addresses, and remove deceased or otherwise disqualified voters.¹ Section 8 of the 1993 National Voter Registration Act (NVRA) provides states with general guidelines for periodically purging voters. States may consult the U.S. Postal Service National Change of Address Registry to find citizens who have reported moving, the Social Security Master Death File to determine citizens who have died, or state criminal records to discover new felony convictions.

In June 2018, the Supreme Court in *Husted v. A. Philip Randolph Institute* greatly expanded the ease

with which states may remove voters from rolls. The issue at hand in *Husted* was the manner in which Ohio conducted a purge of *eligible* voters. If a registrant did not vote over a period of two years, then Ohio sent the person a postcard. If the recipient failed to return the postcard, as did 80% of recipients, then a clock started. If four more years elapsed with no voter activity, then Ohio purged this eligible voter from voter rolls. One of the plaintiffs, Larry Harmon, had lived at the same address for over 20 years, voted in 2008, and then sat out several elections. Mr. Harmon never saw a Husted postcard and learned he was no longer registered only when he showed up to vote at his local precinct in 2015.²

VVN performed an analysis that simulates Husted purges in 17 states that supported the decision

¹ North Dakota does not require advance voter registration but is implementing a new voter identification law.

² "The Supreme Court has a chance to redeem itself on voting rights" in <https://www.washingtonpost.com/opinions/states-are-purging-people-from-voter-rolls-for-not-voting-the->

(Ohio plus 16 amici). The effects are potentially far reaching: the purges will put over 10 million eligible voters at risk of removal from voter rolls every two years.³

The Supreme Court decision allows states to use nonvoting as a trigger to remove eligible voters from rolls. Every state performs routine file maintenance on voter rolls. The Husted decision, however, permits states to remove large numbers of eligible but infrequent voters under the guise of housekeeping.

In its decision, the Supreme Court did not consider the racially discriminatory effects of a Husted purge or the pernicious partisan effects, or whether a postcard is the best way to contact people these days. The impact will fall disproportionately on those citizens who are young, poor, or have difficulty getting to the polls. Anyone who moves frequently (renters) or who does not vote regularly is at risk.⁴

METHODOLOGY

VVN performed this analysis using a commercial national voter database (Catalist) to examine voting participation in the years 2008 through 2016 (nine election cycles in total). Registration data and voting history are from state voter registration lists, but some data elements, notably age and race, are provided—at least in part—by the vendor. Our study population includes eligible voters 18 or older (some states allow pre-registration for 17 year-olds)

in 48 states and the District of Columbia.⁵ We focus this paper on Ohio and 16 (out of 17) states that signed the amicus brief in the Husted case as the most likely to implement Husted purges. (See Figure 1.) Seven of the Husted states were covered in whole or in part under the Voting Rights Act preclearance provision prior to *Shelby County v. Holder* (2013).⁶

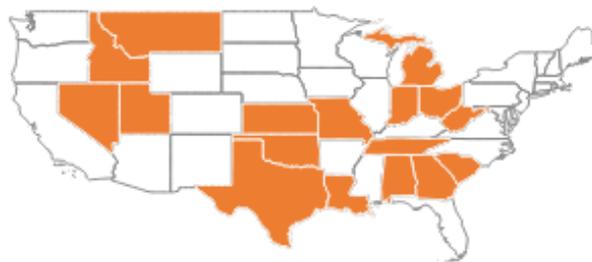


Figure 1 Map of 17 Husted States

VOTING FREQUENCY

To gauge voting frequency, VVN examined voter appearances in the five federal cycles during the period 2008–2016. We counted a vote cast in any even-year election (2008–2016) as a voter appearance. The results are generally consistent across 48 states and the District of Columbia. Based upon the number of appearances, we divided the electorate into six categories ranked from most active to least. The first two categories, “super” and “reliable” voters, combined make up somewhat less than half (45%) of registered voters nationally.

Super Voters: Individuals who voted in all five election cycles. These voters represent 31% of the total electorate.

Reliable Voters: Individuals who voted in four

[supreme-court-should-stop-it/2018/01/04/b5f13458-efc-11e7-97bf-bba379b809ab_story.html](https://www.vvn.org/supreme-court-should-stop-it/2018/01/04/b5f13458-efc-11e7-97bf-bba379b809ab_story.html)

³ Georgia and 16 other states signed the amicus curiae brief (AL, ID, IN, KS, LA, MI, MO, MT, NV, OK, SC, SD, TN, TX, UT and WV), but we excluded SD from this study because of incomplete voter history data. See “Brief of Georgia and 16 Other States as Amici Curiae Supporting Petitioner” (No. 16-980).

⁴ Justice Sotomayor’s opinion (page 4) noted that “low voter turnout rates, language-access problems, mail delivery issues, inflexible work schedules, and transportation issues, among other obstacles, make it

more difficult for many minority, low-income, disabled, homeless, and veteran voters to cast a ballot or return a notice, rendering them particularly vulnerable to unwarranted removal.” Ohio’s purge “has disproportionately affected minority, low-income, disabled, and veteran voters.”

⁵ We adjusted the universe of voters to include only those 18 or older for the time period in question.

⁶ In 2013, the Supreme Court struck down the provision of the 1965 Voting Rights Act that required preapproval from federal authorities for changes to voting procedures in Shelby County, AL and other covered jurisdictions.

out of five election cycles (14% of the electorate). A majority of eligible voters had three or fewer appearances between 2008 and 2016 and fall into one of the categories below.

Presidential Voters: Individuals who tend to vote only in presidential elections, making just three appearances, that is, once every four years (13% of the electorate).

Occasional Voters: Individuals casting ballots in two of five cycles (11% of the electorate).

One-Time Voters: Individuals who cast just one ballot in five cycles (15% of the electorate).

Never Voters: Individuals with no record of voting during the period 2008–2016 (16% of the electorate).

Members of the “infrequent majority” (with three or fewer appearances) are the most likely to be swept up in a Husted purge: by ending up on a postcard mailing list after skipping an election cycle and subsequently taking a four-year hiatus from voting. Note that the “never voters” represent 16% of the total nationally (and 12% of Ohio voters).

Figure 2 illustrates the steps of a Husted purge using 2012 as an example. After the 2012 election, Ohio sent postcards to 1.5 million eligible voters with no voter activity over the previous two years.⁷ Some 2.3 million Ohio voters sat out the 2012 election. Our analysis, which inspected voter history for the years 2011 and 2012, confirms that over 1.5 million eligible voters in Ohio were candidates to receive postcards after the 2012 election. We estimate that by 2016 over 1 million eligible voters in this cohort were at risk to be purged by Ohio officials simply because of no voter activity over the six-year period. Ohio officials released a statement indicating that they will perform this purge, now sanctioned by the Supreme Court, after the 2018 midterm election.⁸

This study focuses on Ohio and 16 states that signed the amicus brief as the ones most likely to execute Husted purges in the near future.⁹ The universe of eligible voters 18 and over in 2012 in these 17 states totals 65 million (see Table 1 below). If the Husted states had followed Ohio’s example and initiated a purge after the 2012

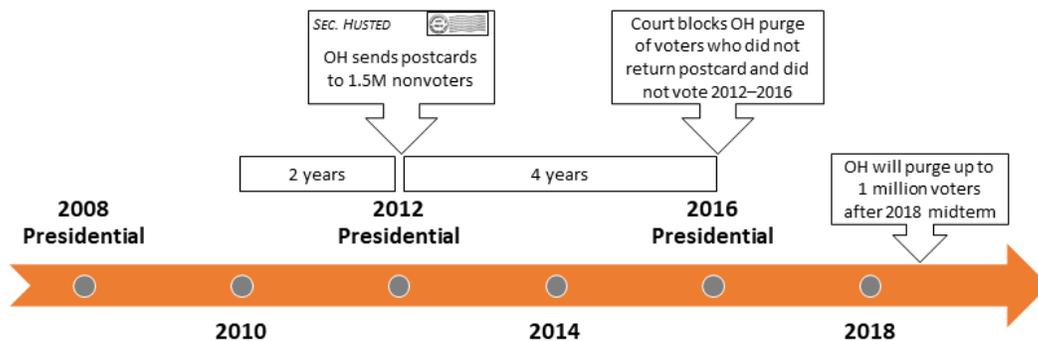


Figure 2 Ohio 2012 Husted Purge Timeline

⁷ See page 10 of the Justice Breyer et al. dissent. Of the 1.5 million postcards Ohio election officials sent out, 60,000 were returned saying “I moved” and another 235,000 were returned saying “I have not moved.” The mailing response rate was 20%.

⁸ Our estimate may somewhat overstate the number of at-risk Ohio voters, because we cannot account for some forms of voter activity that stop the 4-year clock, including returning the postcard, signing a petition, and others. However, we assess that voting itself is the primary means by which voters meet the Ohio definition of voter activity. We also consider it likely that the

~20% of Ohio registrants who returned the 2012 postcards are also those most likely to preserve their eligibility through other forms of voter activity. As noted earlier, most Americans are in the “infrequent majority” for whom voting (or signing a petition) is an occasional thing. See also the list of state ballot measures and signature requirements at https://ballotpedia.org/Ohio_2018_ballot_measures.
⁹ South Dakota signed the amicus brief, but its vote history data for the 2008–2016 study period were incomplete.

election, then 22 million postcards would have gone out to nonvoters—a boon for the U.S. Postal Service but a sad day for democracy. This means that 35% of eligible voters in the Husted states would begin a four-year probationary period in 2012 and be at risk of being disenfranchised four years later. At the low end, Nevada would have sent a postcard to 19% of people on the voter rolls in 2012, and West Virginia would have targeted an astonishing 46% of voters. The wide range is attributable to turnout. Battleground states such as Nevada and Ohio generally have higher turnout, which suppresses the number of postcards sent. Conversely, low-turnout states such as West Virginia and Texas would amplify the effect of postcard mailings.

We examined the voting history of the postcard recipients, that is, those registrants who could have been targeted with postcards after not voting in 2012, to determine their fate after the four-year clock started. In the Husted states, approximately 14 million (of 22 million) postcard registrants did not vote in the subsequent four years and therefore would have been subject to a purge. If we generously assume that one-fourth of this cohort preserved their eligibility by returning their postcards, this still means a Husted purge targeting 2012 non-voters would result in the striking of some 10 million citizens from voter rolls in 17 states *in a single year*.

The 2012 purge in Ohio began after a presidential election—a high-turnout year—which lowered the number of targeted non-voters. Voter participation throughout the U.S. is reliably lower in midterm than in presidential elections. Figure 3 shows turnout as a percentage of registered voters nationally with the corresponding percentage of potential postcard recipients. Presidential turnout typically runs close to 70%, while midterm turnout hovers over 40%. The number of potential postcard recipients, as a percentage of registered voters, is the inverse of turnout: approximately 30% of the electorate in a presidential cycle and 50% or over

after a midterm. Thus Husted postcards will follow an up-down cycle: a large mailing to non-voters following the midterm, and then two years later a smaller mailing after the presidential. The 30% of voters in 17 states who would have been recipients of Husted postcards is not an anomaly; rather, it is what we would expect to see following the 2012 election given turnout trends. The cyclical effect carries through to the eventual purge four years later. The largest purges will be those initiated on the basis of a (low-turnout) midterm election. To measure this effect, we examined the 2010 midterm election in 17 Husted states. The results

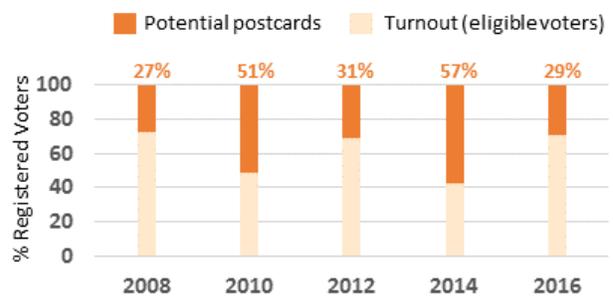


Figure 3 Turnout (Percentage of Registered Voters)

are shown in Table 2 below. The total 2010 registration stood at 63 million, and turnout in the midterm election was 46%. This would have put approximately 33 million eligible voters, over half the electorate, on the receiving end of a postcard. In low-turnout states such as Indiana and Texas, up to 56% of registrants would have gone on the four-year clock. Texas alone would have mailed out some 8 million postcards.

In 10 states, we used voter history to investigate the fate of the 2010 postcard recipients. Eligible voters who sat out the 2009–2010 election season form the cohort of potential Husted postcard recipients. We tracked these same voters to find who would be at risk four years later, that is, did not vote in the years 2011 through 2014. We found that after the 2014 election, officials in these states would have been potentially striking some 30% of eligible voters. Extending these results to 17 Husted states, and even allowing that one-fourth of postcard recipients preserved their eligibility through various means,

we estimate that *14 million people in 17 states would have been at risk of removal from voter rolls* for the act of non-voting during the period 2009–2014.¹⁰

VVN also measured the impact of Husted purges by race. Briefs submitted to the Supreme Court provide ample evidence to address this concern. Persistent barriers to voter registration up to the present day have resulted in an electorate skewed toward white voters. Only one-third of U.S. states have raised black voter registration to parity with the percentage of blacks in the citizen voting-age population (CVAP).¹¹ Nationally, blacks make up 13% of CVAP but only 11% of registered voters. Conversely, whites are 69% of the CVAP but represent 75% of registered voters. White voters also tend to be more consistent, a legacy of racial discrimination reaching back to Reconstruction.¹²

We found that Husted purges will exacerbate the racial gap in voter registration and result in a disproportionate number of blacks being removed.

For example, a Husted purge initiated in 2012 in Ohio would target one-fourth (24%) of black registrants for removal but only one-seventh (15%) of whites. In numbers, this means that in a single pass, Ohio officials could remove an additional 50,000 black voters. Husted purges will serve to increase the racial disparity in voter registration. Black citizens of Ohio are already underrepresented by 130,000 in the voter rolls; the Husted purge will push this number even higher.

The racial disparity in other states follows the same pattern as in Ohio: Our study found that the purge rate of black voters exceeds that of whites in every state. (See the chart in Figure 4, which illustrates the effect of purging black voters in each of the seventeen Husted states.) VVN estimates that it would take 2 million black voter registrations nationally just to achieve demographic parity. To reach the levels of white registration would take even more. Husted purges would aggravate this racial disparity by moving the U.S. further in the wrong direction.¹³

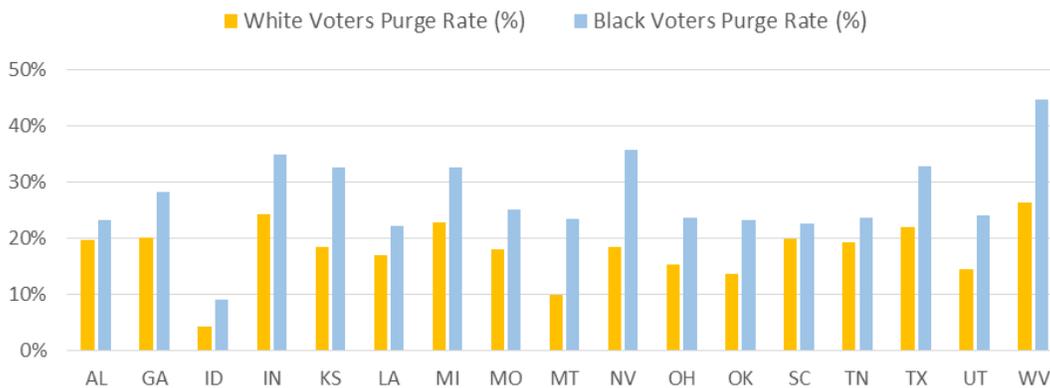


Figure 4 Racial Disparity in Husted Purges

¹⁰ Voter history in 10 states (GA, KS, LA, MI, NV, OK, SC, TN, TX and WV) provided the basis for this estimate. The 25% deduction from the at-risk total is to make allowance for those who retained their voting rights by returning a postcard or other means. In Ohio, official numbers indicate a 20% response rate for the postcard mailing. The deduction also allows for voter history attenuation due to churn.

¹¹ Data on the citizen voting-age population are from five-year (2012–2016) and one-year (2017) American

Community Survey tabular datasets. We calculated voter registration totals as the sum of eligible (active and inactive) voters in each state.

¹² Our analysis of voter appearances found that blacks are underrepresented among “super voters” in 48 states.

¹³ U.S. Census Bureau county-level 2011–2015 American Community Survey mobility data downloaded August, 2018 from <https://www.census.gov/data/tables/2015/demo/geographic-mobility/county-to-county-migration-2011-2015.html>

Husted purges will also place large numbers of young voters (those in the age range 18–34) at risk of removal. VVN modeled the effects of a 2012 Husted purge by voter age and found that it would fall heavily on voters under 35. In Ohio, the 2012 purge places 29% of the young-voter cohort at risk. Even if we assume one-fourth of this group retains their eligibility, Ohio election officials alone would purge registration rolls of 400,000 young eligible voters.

The damage to young voters is widespread: Over one-third of voters 18–34 years old in 2012 would have been at risk of falling off voter rolls four years later if 17 other Husted states had followed Ohio’s example. Figure 5 demonstrates this scenario. The 2012 purge would target a total of some 22 million eligible voters with postcards (see Table 1); four years later 34% of the 18–34 cohort would be at-risk of removal. That is twice the rate (17%) of older voters impacted. In this scenario, the 17 Husted states would put over 5 million young voters at risk of removal. One explanation for this

disparity is mobility. The U.S. Census Bureau reports that one-third of young adults move every year. In and of itself, this should not be a barrier to voting for most of this group. Census mobility data indicate that 4 out of 5 moves in Ohio are within the state.¹⁴ A registered voter who moves within the state can go to their new polling location and cast a provisional ballot if they remain on the voter rolls. However, eligible voters who move frequently are more likely to miss a postcard and get caught up in a Husted purge. The end result is an inordinate number of young people losing the right to vote provisionally.

VVN tracked state voter file maintenance following both the 2014 and 2016 elections. In Table 3 we show purge rates for nine states after the 2016 cycle. The range of 1% to 8% is typical. Texas, one of the egregious examples cited in a Brennan Center report on post-Shelby purges, trimmed 9% of their list post-2014. The scale of the potential Husted purges, running up to 20% or more of the electorate, has no recent precedent.

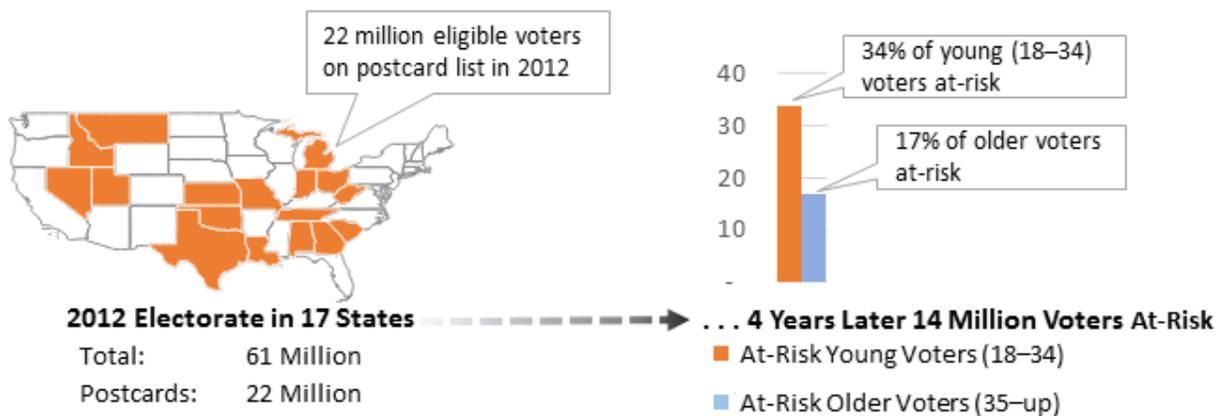


Figure 5 Young Voters Targeted by Husted Purges (17 States)

¹⁴ U.S. Census Bureau county-level 2011–2015 American Community Survey mobility data downloaded

August, 2018 from <https://www.census.gov/data/tables/2015/demo/geographic-mobility/county-to-county-migration-2011-2015.html>

CONCLUSION

We should anticipate that the states actively implementing barriers to voting—in particular, the 17 states that signed the amicus brief in the Husted case—will move aggressively to implement purges modeled on that of Ohio. The mechanics are simple, and the effects are far reaching.

VVN’s analysis finds that in any of the 17 states where election officials execute Husted purges, we can expect to see unprecedented reductions in voter rolls. For many citizens, Husted purges will create friction and serve to discourage the exercise of their right to vote. By removing infrequent voters from registration lists without their knowledge, these purges will disqualify citizens who otherwise could cast provisional ballots.

The number of citizens potentially affected by Husted purges is alarming. VVN estimates that election officials in the 17 states included in this analysis would drive 10 million of their eligible voters off rolls if they had carried out a 2012 purge. The impact is even greater after midterm elections, where 60% of the electorate may sit out. Initiating a purge based on the 2010 election would mean that over half of the electorate would end up on a postcard list. Four years later, some 30% of the electorate would find themselves at risk of removal. The end result of a purge kicked off in a midterm year would be the elimination of 14 million eligible voters from registration lists in those 17 states.

The discriminatory impacts of Husted purges are pernicious. VVN’s analysis shows that as Husted purges proceed, the electorate will shrink and become older and whiter and less representative of the voting-age citizen population. In 48 states we found that a Husted purge would remove a disproportionate number of eligible black voters. The purges will thus exacerbate the long-standing and persistent underrepresentation of blacks in the electorate in all 17 of the Husted states included in this analysis.

The impact on young voters is also national in scope. If the 16 other Husted states included in this analysis had followed Ohio’s example, one-third of young voters 18–34 years old in 2012 would be at risk of removal from voter rolls four years later. Even allowing that a quarter of this cohort preserves their eligibility, these purges would remove a total of 5 million young voters.

VVN proposes two countermeasures.

The most urgent remedy is to reach out to at-risk voters who were on the Ohio 2012 postcard list and have no record of voter activity since then. VVN can identify those individuals and determine if they are still in Ohio as well as their voter status and propensity. For the 80% of postcard recipients who likely remain at risk: If they have not moved, the message is simply “Get out and vote!” If they have moved (within the state), the message to these at-risk voters is “Update your Ohio voter registration!”

The second remedy must be aimed at the group of 2018 nonvoters. Our results from examining the 2010 midterm are indicative of what may occur after the 2018 election cycle. Nationally, we can expect some 40% of registered voters to participate in November. This means that the 17 Husted states could send postcards to *30 million eligible voters* in 17 states and start the four-year clock for their eventual removal. VVN has the data analytics capability to drive a campaign to keep these voters on the rolls. We can build lists of likely postcard recipients in each state, county, or precinct, and track over time those who have retained voting eligibility or moved (within or out of state).

Without these countermeasures, Husted purges will swamp current voter registration efforts and disproportionately remove large numbers of youth, people of color, and economically disadvantaged voters from registration rolls.

ABOUT THE AUTHORS

Michael Agosta is an expert in voter file data and demographics. As Managing Director of VVN, he provides voter targeting and demographic research for the State Voices and America Votes coalitions. Prior to VVN, Michael served as Technology Director for the League of Conservation Voters; as an independent campaign consultant on over 75 Congressional and presidential campaigns; as a fundraising analyst for progressive non-profits at Public Interest Data, Inc.; and as a child care cost analyst at Child Care Aware.

Peter Kokopeli is a Senior Data Analyst at VVN, focusing on U.S. Census Bureau data and voting demographics. Previously, Peter worked as CIO at Climate Decision, LLC; as a Senior Analyst for the Environmental Protection Agency in the Clean Air Markets Division; as a programmer at Potomac Electric Power Company (PEPCO); and, as a database analyst at CTSG working with the first releases of Help America Vote Act electronic voter files.

VVN is located in Washington, DC. <http://vvnstates.org/>

TABLES

TABLE 1: Effects of a 2012 Husted Purge in 17 States					
State	Registered Voters 2012	Voted in General 2012	Potential Husted Postcards (No vote 2012)¹⁵	Est. Husted Purge (No vote 2013–2016)	Est. Husted Purge (Percentage of registered voters)
AL	3,166,202	2,064,699	1,068,458	630,345	20%
GA	5,191,182	3,919,355	1,233,672	1,426,181	27%
ID	896,234	666,290	223,046	30,753	3%
IN	4,555,257	2,663,368	1,835,132	1,010,981	22%
KS	1,771,252	1,182,771	570,827	349,073	20%
LA	2,965,751	1,994,065	942,535	532,366	18%
MI	7,454,553	4,780,701	2,593,636	1,649,176	22%
MO	4,191,778	2,757,323	1,391,421	695,729	17%
MT	681,608	491,966	183,953	62,887	9%
NV	1,258,409	1,016,664	234,493	328,212	26%
OH	7,987,203	5,634,017	2,282,590	1,196,070	15%
OK	2,114,489	1,334,872	756,228	284,221	13%
SC	2,875,121	1,981,516	866,797	628,362	22%
TN	4,008,654	2,479,733	1,483,053	724,682	18%
TX	13,646,226	7,993,851	5,482,804	3,852,934	28%
UT	1,283,526	1,028,786	247,098	241,447	19%
WV	1,246,559	670,438	558,837	294,216	24%
TOTAL	65,294,004	42,660,415	21,954,581	13,937,635	21%

¹⁵We lowered the “Potential Husted Postcard” count by 3% to account for voters who voted in a 2010 primary or special election but not in the general election.

TABLE 2: Effects of a 2010 Husted Purge in 17 States¹⁶

State	Registered Voters 2010	Voted in General 2010	Potential Husted Postcards (No vote 2010) ¹⁵	Est. Husted Purge (No vote 2010–2014)	Est. Husted Purge (Percentage of registered voters)
AL	2,965,453	1,483,800	1,437,203		
GA	5,032,354	2,622,527	2,337,532	1,618,658	32%
ID	790,676	457,748	322,940		
IN	4,329,153	1,786,213	2,466,652		
KS	1,725,012	857,631	841,360	412,008	24%
LA	2,933,532	1,297,653	1,586,803	612,757	21%
MI	7,276,237	3,226,088	3,928,645	2,260,880	31%
MO	4,137,545	1,943,898	2,127,838		
MT	651,335	367,096	275,712		
NV	1,119,366	723,515	383,975	305,882	27%
OH	8,037,806	3,956,045	3,959,308		
OK	2,038,620	1,034,767	973,737	466,322	23%
SC	2,631,459	1,365,480	1,228,000	827,792	31%
TN	3,921,527	1,620,542	2,231,955	1,018,421	26%
TX	13,269,233	4,979,870	8,040,682	4,342,752	33%
UT	1,267,250	653,274	595,557		
WV	1,198,921	529,948	648,904	387,139	32%
TOTAL	63,325,479	28,906,095	33,386,802	12,252,611	30%

TABLE 3: Purge Rate in Nine States (post-2016 election cycle)

State	Eligible Voters Before Purge	Eligible Voters After Purge	Purge Rate
IN	4,675,632	4,321,575	8%
CO	3,827,430	3,656,098	4%
SC	3,387,195	3,268,118	4%
HI	730,049	704,424	4%
WA	4,688,669	4,552,910	3%
FL	13,879,978	13,572,670	2%
WV	1,243,173	1,227,832	1%
MD	4,160,708	4,125,355	1%
IA	2,139,220	2,121,746	1%

GLOSSARY

At risk means an eligible voter whom election officials target for removal from registration rolls because of inactivity.

Husted purge means the process by which state or county election officials 1) identify eligible voters with no voter activity over the past two years, 2) send them a postcard, 3) and remove them from rolls if they

¹⁶ Vote history data was not available for 6 states.

do not return the postcard and do not vote or update their registration during the subsequent four-year period. In Ohio, the local Boards of Elections perform these steps.

Midterm means any election (special, primary, or general) in a midterm year.

NVRA is the National Voter Registration Act of 1993.

Presidential means any election (special, primary, or general) in a presidential election year.

Voter activity in Ohio means casting a ballot in any election (federal, state, or local), signing a petition, filing a voter registration form, or updating a voting address at a variety of state offices. Note that the Ohio definition of activity is more lenient than required under the NVRA.

Voter file means the electronic record of eligible voters. It may include inactive and pending registrations, but we excluded those records from this study.

Voter file maintenance means the process employed by state or county election officials to update the records of eligible voters and remove those deemed ineligible.