

Estimating the Differential Effects of Purging Inactive Registered Voters¹

INCOMPLETE CONFERENCE DRAFT

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Abstract

Do registered voters have a right not to vote yet remain registered? This is a pressing question, one raised by a June 11, 2018, United States Supreme Court decision upholding the state of Ohio's authority to remove infrequent voters from the rolls if these lawfully registered voters failed to respond to a postcard sent to them by election officials. Here we consider the breadth of Ohio's registered voter purging process and in particular seek to estimate the number of individuals across the United States who might be vulnerable to a purging protocol akin to Ohio's. From approximately 20 million individual-level voter records in the Florida and North Carolina voter databases, we identify over 350 thousand infrequent voters in these two states who would be at risk of being purged from the voter rolls had they been registered in Ohio. This is equivalent to a purgability rate of slightly less than two percent. Our results illustrate not only the potential consequences of Ohio's registered voter purging process but also how racial/ethnic minorities, younger, and poorer registrants are at disproportionate risk of being purged from the voter rolls by policies that target infrequent voters.

Introduction

One of the responsibilities of state and local election officials in the United States is maintaining accurate and current voter registration databases. Under the National Voter Registration Act (1993) (NVRA) and the Help America Vote Act (2002) (HAVA), a key component of voter roll maintenance is removing from the rolls existing registrants who are no longer eligible to vote. Beyond removing registrants who pass away, move out of a jurisdiction, or who request to be stricken from the rolls, many states also remove registrants from voter lists upon a criminal conviction or an adjudication of mental incapacity. A handful of states go even further, removing otherwise eligible registrants from the voter rolls if they fail to turn out to vote and subsequently fail to respond to some form of official contact.

There are variations across the United States in the precise roles and responsibilities of election officials; this is an expression of American federalism and the decentralized way elections are administered in the country. Nonetheless, voter list maintenance is a feature of every state but North Dakota, which does not have voter registration at all, and it is far from a humdrum administrative exercise. Normatively speaking, one of the most recent and pressing matters associated with voter rolls is whether citizens—otherwise eligible and properly registered in a jurisdiction—have the right to remain on the rolls even if they regularly choose not to exercise their franchise. The removal of legally registered but infrequent voters from a state’s voter rolls is not simply a hypothetical matter. In a 5-4 decision promulgated on June 11, 2018, the Supreme Court of the United States upheld Ohio’s interpretation of Section 8 of the NVRA and through its opinion agreed with Ohio that the state has the authority to remove inactive voters from the rolls through its “Supplemental Process” to the NVRA. In principle, the Supreme Court’s 2018 decision in *Husted, Ohio Secretary of State v. A. Philip Randolph Institute, et al.* upholding the legality of Ohio’s Supplemental Process grants other states the latitude to follow Ohio’s lead.¹

¹*Husted* is United States Supreme Court, Case 16-980. The Court’s opinion is available at

Ohio's method of purging inactive voters, which exists ostensibly to assist local election officials in dealing with registrants who are longer eligible in their jurisdictions, is one of the most aggressive in the country. For more than a decade, Republican and Democratic Secretaries of State in Ohio have instructed local election officials to expunge from the rolls legally registered voters if they skip a federal election, fail to return a postcard notification sent post-election, and then fail to participate in two successive federal elections. Until an expunged voter re-registers anew, Ohio's voter list maintenance procedure prohibits a former registrant from casting a valid ballot in future elections.²

One way that we might evaluate the impact on the American franchise, broadly construed, of the closely-divided *Husted* decision is to assess the extent to which registered voters in the United States behave in a way that would make them vulnerable to an Ohio-like protocol for voter list maintenance, i.e., who skip voting in a string of federal elections and then seek to turn out later. While scholars have studied voter turnout from a variety of angles (Wolfinger and Rosenstone 1980; Rosenstone and Hansen 1993; Leighley and Nagler 2014), the question of intermittent or infrequent voting has not been a major research focus in the literature (Campbell 1960; Sigelman and Jewell 1986; Parry et al. 2008; Shino and Smith 2018).

Our primary objective here is addressing this lacuna. Ultimately, we are interested in estimating https://www.supremecourt.gov/opinions/17pdf/16-980_f2q3.pdf (last accessed July 15, 2018).

²Ohio Rev. Code Ann. §§ 3501.05(Q) and 3503.21 requires the state's 88 counties to conduct roll maintenance pursuant to both state law and directives issued by the Secretary of State. See, respectively, <http://codes.ohio.gov/orc/3501> and <http://codes.ohio.gov/orc/3503> (last accessed July 15, 2018) for the state's legal language. Of course, per HAVA, any purged Ohio voter who failed to register anew following being purged could cast a provisional ballot in some future election; such a ballot would be invalid, though, as it would have been cast by an individual who is not a registered voter.

ing how many registered voters across the country might be at risk of disenfranchisement due to infrequent electoral participation should Ohio’s aggressive “use it, or lose it” method of list maintenance be adopted nationwide. Using publicly-available, individual-level data from two states, we estimate how many registered voters skip three consecutive federal elections—even though they have not moved or become ineligible—and then turn out in a presidential election eight years later. Among other things, we are interested in determining whether expunging such inactive, but otherwise eligible, voters differentially affects various groups of registered voters, not only racial/ethnic minorities, but also partisans and nonpartisans as well as registrants living in wealthier and poorer zip codes.

We model the potential effects of Ohio’s voter list maintenance practice as if it were implemented in two battleground states, Florida and North Carolina. Neither the Sunshine nor the Tar Heel State currently utilizes Ohio’s Supplemental Process, but following the decision in *Husted* these two states—and any others—in principle could enact legislation to do so. Because of the public accessibility, reliability, coverage, and affordability of both Florida and North Carolina’s administrative records, these two states provide a trove of observational data from which we are able to draw in order to assess the overall magnitude, as well as possible disparate effects across demographic groups, should other states adopt Ohio’s policy of purging inactive voters.³

As a preview of our findings, we find that as many as 352,346 registered voters—177,609 in

³Although voter records in Ohio are also publicly accessible and easily affordable (they can be downloaded at no cost), they lack the coverage of Florida’s and North Carolina’s voter files. Ohio voter files do not include a separate field for registered voter race/ethnicity or party registration. In addition, we are unable to draw on the publicly available voter files in Ohio for our analysis because, by definition, under the state’s Supplemental Process, local election officials remove voters who do not respond to a postcard notification and skip two more federal elections after they miss a federal election. See <https://www6.sos.state.oh.us/ords/f?p=111:1> (last accessed July 17, 2018) for details on the coverage of Ohio voter files.

Florida and 174,737 in North Carolina—would have been at risk of being purged from the rolls prior to the 2016 presidential election for their infrequent voting, had the two aforementioned states implemented their own version of Ohio’s Supplemental Process. Put another way, we find that many thousands of Americans behave like the *Husted* plaintiff, Larry Harmon, whose inactivity led to his being removed from the Ohio voter rolls. Had these more than three hundred thousand registrants, like Harmon, not responded to an official postcard asking them to affirm that they wanted to remain registered after missing the 2010 midterm election, the properly registered citizens who then skipped the two successive federal elections would have been stripped from the voter lists in the two states. More dramatically, our results indicate that as many as 88,752 of these purgeable registered voters—46,324 in Florida and 42,428 in North Carolina—actually turned out to vote in the 2016 presidential contest, after lying dormant for eight years.

In the next section, we provide an overview of Ohio’s Supplemental Process, the protocol that local officials in Ohio use to expunge from the voter rolls registrants who skip a federal election and whom election boards suspect have moved without updating their registration. We also outline the lawsuit filed by a coalition of voting rights groups that challenged Ohio’s voter list maintenance method, one that transcends what is required by the NVRA. We then offer theoretical guideposts for the right not to vote, assess the scholarship on infrequent voters, and offer comments on election administration of list maintenance. After describing our research design that simulates the implementation of Ohio’s Supplemental Process in Florida and North Carolina, we present estimates of how many registered voters, broken down by race/ethnicity, party, and income, could in principle be targeted for removal in these two states for a failure to return a postcard and then not vote in two more federal elections. We also document how many of the purgeable registrants in the two states actually showed up to vote in the 2016 General Election after spending eight years on the putative electoral sidelines. We make some tentative estimates on how many registered voters nationwide might be on account of infrequent political participation vulnerable to an Ohio-like Supplemental Process. Finally, we raise some normative concerns about the right to vote and the extent to which

this right can become imperiled for those who chose not to exercise their franchise.

Transcending the NVRA: Ohio's Supplemental Process

On November 3, 2015, Larry Harmon went to the polls in Kent, Ohio, to cast a ballot against a statewide medical marijuana ballot measure known locally as “Issue 3” (which, in the end, did not pass). Harmon, a Navy veteran and software engineer, registered to vote in Ohio in 1976 and, as of November 2015 had most recently voted in the 2008 General Election. Over the summer of 2015, Harmon, a life-long Ohioan, was one of the hundreds of thousands of infrequent voters purged by local election boards under what is known as the state's Supplemental Process.⁴

In 2011, after he failed to vote in the 2010 General Election, Harmon—who had not been convicted of a felony or adjudicated incompetent, had not moved his residence, nor had died or asked to be removed from the voter rolls—was purportedly sent a postcard by his local Board of Elections. The postcard asked him to confirm that his name and address printed on the notification were correct so as to remain on the voter rolls.

Harmon claims that he never received said postcard.⁵ Furthermore, Harmon says he was never informed that he had been purged from the voter rolls until he tried to vote in person at his local polling place in the November 2015 statewide election in Ohio. Harmon was understandably perturbed when he was told his name was not on the poll books, averring to a reporter, “Well, Jeez. You know I pay my taxes every year, and I pay my property taxes, and I register my car. So the

⁴For details on Harmon, see PBS NewsHour, “Why Ohio has purged at least 200,000 from the voter rolls,” July 31, 2016, available at <https://www.pbs.org/newshour/show/inside-ohios-fight-voting-rules> (last accessed July 21, 2018).

⁵This is an important point, as the impact of Ohio's Supplemental Process is conditioned by the rate at which registered voters receive postcards from, and return postcards to, local election officials confirming that they wish to remain registered. We touch upon this point later.

state had to know I'm still a voter. Why should we fight for the country if they're gonna be taking away my rights? I mean, I'm a veteran, my father's a veteran, my grandfather's a veteran, now they aren't giving me my right to vote, the most fundamental right I have? I just can't believe it."⁶

The reason Harmon and many of his fellow citizens were excised from the voter rolls in Ohio was not because they moved to another county within the state or to another state altogether; both of these actions constitute legitimate reasons for a registered voter to be removed from a given Ohio county's list of registered voters. Moreover, Harmon had not committed a felony nor was he adjudicated mentally incompetent prior to November 2015. Harmon had not asked to be removed from the voters rolls in Ohio and had surely not died. Rather, for more than a decade, under both Republican and Democratic Ohio Secretaries of State legally registered voters in Ohio were systematically removed from the rolls by local elections officials if they did not vote in one federal election, did not respond to an prepaid postcard asking them to confirm they wanted to remain registered, and then did not vote in two more federal elections.⁷

In April 2016, the American Civil Liberties Union (ACLU) of Ohio and Dēmos, a New York-based voting rights organization, filed a federal complaint on behalf of Harmon, the Ohio A. Philip Randolph Institute (APRI), and the Northeast Ohio Coalition for the Homeless, challenging Ohio's Supplemental Process.⁸ The plaintiffs claimed that, under the NVRA, registered voters may not be

⁶See fn. 4 for the source of this quote.

⁷Under Ohio's Supplemental Process, election boards mail a "confirmation notice" (formally, "SOS Form 10-S-1") to each registrant who does not vote for a two-year period (so, one federal election). The form instructs the voter to complete and return the mailer, confirming her address, even if she has not moved. The current version of Form 10-S-1 is available at <https://www.sos.state.oh.us/globalassets/elections/forms/10-S-1.pdf> (last accessed July 16, 2018).

⁸Formally, the complaint is *A. Philip Randolph Institute and Northeast Ohio Coalition for the Homeless v. Jon Husted, in his official capacity as Ohio Secretary of State*, United States District

removed from the rolls because they are assumed to have moved.⁹

At the time *Husted* was filed, Ohio was one of seven states that proactively removed inactive voters.¹⁰ The practice pushed the limits of systematic list maintenance set forth by the NVRA, a bipartisan act passed by Congress in 1993 and signed into law by President Bill Clinton on May 20, 1993. Under Section 8 of the NVRA, states are required to “conduct a general program that makes a reasonable effort to remove the names of” voters who have become ineligible “by reason of a change in residence.”¹¹ In addition, Section 8 requires list-maintenance procedures to be “reasonable, uniform, and nondiscriminatory.” Congress made it clear under Section 8(b) that the failure to vote is not a permissible basis for election officials to remove voters.¹² When conducting regular list maintenance, Ohio systematically matches registered voters against their own databases, such as those containing updated drivers license addresses, state rehabilitation and department of corrections records, federal felon records, court records, department of health records, and the Social Court for the Southern District of Ohio Eastern Division, Civil Action No. 2:16-cv-303, April 6, 2016. It is available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/COMPLAINT040616.pdf> (last accessed July 15, 2018).

⁹Under the NVRA, election authorities are prohibited from purging registrants solely for failing to vote in federal elections. NVRA, 42 U.S.C. § 1973gg-6(d). Text of the NVRA is available at <https://www.justice.gov/crt/title-42-public-health-and-welfare-chapter-20-elective-franchise-subchapter-i-h-national-voter> (last accessed July 16, 2018).

¹⁰The seven states exceeding the NVRA’s minimal guidelines for the removal of inactive voters from registration lists are Alaska, Georgia, Montana, Ohio, South Dakota, Tennessee, and West Virginia. See, “Plaintiff’s Opposition to Defendants Merits Brief,” *APRI v. Husted*. United States District Court for the Southern District of Ohio Eastern Division, Civil Action No. 2:16-cv-303, June 10, 2016.

¹¹NVRA, 52 U.S.C. § 20507(a)(4)(B).

¹²NVRA, 52 U.S.C. § 20507(b)(2).

Security Death Index (SSDI). In addition, states rely on the U.S. Postal Service's National Change of Address system (NCOA) to remove voters no longer residing in the jurisdiction in which they are registered. Also, as is permissible under the NVRA, local election authorities regularly utilize nonforwardable returned (i.e., undeliverable) mail to initiate their removal confirmation process of voters in their jurisdictions who have moved.

In an effort to identify voters who may have moved but who did not provide a forwarding address, and thus might not be identified by the NCOA system, Ohio's Supplemental Process goes beyond the typical system of list maintenance. Under the Process, Ohio identifies registrants who are inactive voters over a two-year period (by definition, who have not voted in a federal election). Election officials then target those individuals it suspects may have moved (but who were not captured by NCOA) by mailing them a simple prepaid postcard that the registered voter is instructed to return in order to remain on the rolls. If the postcard is not returned by the registrant, and if the registrant then misses the next two federal elections or does not initiate any changes to her existing registration, she is pruned from the rolls under the state's Supplemental Process. "If this is really important thing to you in your life, voting," Republican Secretary of State, Jon Husted, has argued, "you probably would have done so within a six-year period."¹³ Ohio's Supplemental Process permits local election boards to use a registrant's failure to vote as an indicator that she has moved from their jurisdiction, and thus is no longer an eligible registrant in said jurisdiction. In short, in Ohio, if you don't use the franchise, you lose it.

Between 2011 and 2016, according to evidence introduced during the discovery process of the *Husted* litigation, Ohio purportedly removed from its voter rolls more than two million registrants

¹³Andy Sullivan and Grant Smith, "Use it or lose it: Occasional Ohio voters may be shut out in November," *Reuters*, June 2, 2016, available at <https://www.reuters.com/article/us-usa-votingrights-ohio-insight-idUSKCN0Y019D> (last accessed May 31, 2018).

who had either moved or died.¹⁴ In 2015, for instance, Cuyahoga County sent 178,078 confirmation notices, and Franklin County 192,861 notices, in accordance with Ohio’s Supplemental Process. After skipping the 2010 election, many of these 370,939 registered voters failed to reply to a postcard mailed to them in 2011, and then did not vote in the following two federal elections (2012 and 2014).¹⁵ Like these registrants, Harmon took a hiatus from exercising his franchise. According to Harmon, he was not interested in voting for the candidates on the ballot, telling one reporter in 2012 that there was not “a box on the ballot that says ‘none of the above.’”¹⁶ As we discuss below, there are numerous reasons why some voters do not turn out to vote—work, illness, travel, indifference, or perhaps as a silent show of protest. The Supplemental Process, though, is agnostic to the reason for removal; after a registrant does not vote and does not reply to an address confirmation postcard, local elections administrators assume the registrant no longer resides at the address on the official registration list. The removal from the rolls of these infrequent voters leads directly to their disenfranchisement.

In July 2016, the Ohio voting rights coalition that filed *Husted* appealed a federal district judge’s ruling in favor of the Ohio Secretary of State, denying the plaintiffs’ motion for summary judgment and permanent or temporary injunction of the Supplemental Process. Two months later, however, a three-judge panel of the United States Court of Appeals for the Sixth Circuit ruled in favor of the plaintiffs. On September 23, 2016, on the eve of early voting commencing in Ohio, the Appellate Court reversed the district court’s decision, striking down Ohio’s Supplemental Process, ruling that it violated the NVRA’s prohibition that it removed registered voters from the rolls for failing to vote.¹⁷ The Sixth Circuit also entered an injunction that permitted registered voters

¹⁴See fn. 8.

¹⁵See p. 8, fn. 8.

¹⁶“He Didn’t Vote in a Few Elections. In the Next One, Ohio Said He Couldn’t,” *New York Times*, October 23, 2017, available at <https://www.nytimes.com/2017/10/23/us/politics/supreme-court-ohio-voter-purge.html> (last accessed May 31, 2018).

¹⁷The District Court’s “Order Denying Plaintiffs’ Motion for Summary Judgment and

removed from the rolls under the Supplemental Process to be able to cast a regular ballot in the 2016 General Election. As a result, some 7,500 voters in Ohio purged from the rolls under Ohio's Supplemental Process were able to cast regular ballots in the presidential election. However, in the Supreme Court's 2018 *Husted* decision, which hinged on a narrow interpretation of Section 8 of the NVRA, Justice Samuel Alito's opinion for the majority found that Ohio's method of removing inactive voters did not violate Section 8 of the NVRA.¹⁸

The Right Not to Vote?

Do otherwise eligible and registered citizens, such as Larry Harmon in Ohio, have the right not to cast a ballot in a series of elections, yet remain on the rolls? In contrast to right to vote, which the United States Supreme Court has upheld and expanded on numerous occasions (Keyssar 2009), this normative question concerning the right not to vote does not have the same jurisprudence pedigree. Phrased as a negative right, it is the obverse of how the franchise is typically framed; yet Permanent Injunction, and Entering Judgment for Defendant" (June 29, 2016) is available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/A.PhilipRandolphOrder062916.pdf> (last accessed June 17, 2018), and the Sixth Circuit Court's "Opinion Reversing District Court" (September 23, 2016) is available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/A.PhilipRandolphOpinion092316.pdf> (last accessed June 17, 2018).

¹⁸Following the Supreme Court's decision, Ohio Secretary of State Husted announced that, for now, no voters would be removed by the 88 county boards of elections using the Supplemental Process prior to the August primaries or November General Election in 2018. See "No Ohio voters will be purged before November election, secretary of state says," *Cleveland Plain Dealer*, June 12, 2018, available at http://www.cleveland.com/metro/index.ssf/2018/06/no_ohio_voters_will_be_purged.html (last accessed May 31, 2018).

arguably, the right not to vote may be just as fundamental to the democratic process as the right to vote (Blomberg 1995; Brennan 2011; Saunders 2018). Of course, voting in the United States, unlike in some other countries, is not compulsory (Hill 2006). Indeed, across the United States, in every election cycle millions of registered voters choose not to cast a ballot (Jackman 1987; Powell 1986; McDonald and Popkin 1987). For some, nonvoting “is a serious problem for any democracy” (Lardy 2004, p. 321). Even though they may be shirking their republican duties and free-riding on the participation of those more active than themselves (Lijphart 2001), registered voters in the United States nevertheless have the liberty to abstain from the electoral process. Arguably, then, the right not to vote is also a fundamental, albeit a more passive, right (but see (Douglas 2008)).

In contrast to the presumptive right of registrants not to turn out is the interest of state and local election officials keen on maintaining the integrity of voter lists. Although Congress designed the NVRA to protect the rights of eligible voters, it nonetheless recognized the need of states to remove ineligible registrants from the rolls. “Voter registration is the backbone of election administration,” Ansolabehere and Hersh (2014, p. 61) pronounce, as “[r]egistration lists are used to establish eligibility to vote, to determine the offices for which one can vote, to communicate to citizens when elections occur and where and how to vote, to validate people at the polls, and to audit elections after the fact.” In their efforts to cultivate and preserve up-to-date voter lists, election administrators routinely identify and remove ineligible, as well as inactive, registrants from the voter rolls. Although Congress periodically sets broad parameters on how and when states may or may not remove inactive voters from the rolls (as was the case with the passage of both NVRA and HAVA), election officials across the country have arrived at different interpretations of how list maintenance should be conducted.

The tension between election officials endeavoring to maintain accurate voter lists and registrants opting not to vote only occasionally raises a host of thorny normative questions. If non-voting is a right, do election officials have the authority to remove inactive voters from the rolls merely for opting not to exercise their franchise? Does a registered voter retain the franchised

only when she participates, only when an eligible registrant expressly exercises her right to cast a ballot? If an otherwise eligible registrant opts not to vote, does she tacitly renege her franchise? Or, should inactive registrants retain the franchise? If so, should we understand enfranchisement as latent participation? If the franchise must be exercised to be retained, what do we make of the registered voter who turns out to vote but does not fill in her ballot for any candidates or issues, or alternatively, intentionally (or unintentionally) spoils her ballot? By participating in an election—even without expressing a preference—does her franchise remain activated, thus retaining her on the rolls? If yes, how is this “active” voter functionally different from her twin sister, an equally eligible registrant who opts to not to turn out to vote in the same election? In practice, neither has expressed any preference for a candidate or an issue in the given election. Yet in Ohio, one sister remains an active voter, kept on the rolls by an election administrator and fully enfranchised for future elections, while the other is subject to removal from the rolls because by not turning out she did not activate her franchise.

Political scientists have not focused much attention on these normative questions, perhaps because prior to the *Husted* decision, the issue of registered voters being purged from the rolls for infrequent voting has not nearly been as important of a topic of inquiry as examining who turns out to vote (Rosenstone and Wolfinger 1978; Leighley and Nagler 2014). The classic pluralist position on nonvoting is that it is an implicit expression of satisfaction with the status quo. In a political system where resources are unequally distributed, those who are beneficiaries of the system should be the least likely to express their preferences at the polls. For pluralists, nonvoting can be understood as an expression of satisfaction (Dahl 1956). Since the registration status of nonvoters has been rather uncontroversial until the *Husted* litigation, scholars understandably have focused instead on the affirmative right of qualified individuals to cast a ballot. By extension, they have scrutinized overt threats to obtaining the franchise. Across a range of election administration jurisdictions and procedures, numerous studies have assessed the impact of institutional reforms on the ability of eligible citizens to register to vote (Erikson 1981; Highton and Wolfinger 1998;

Brains and Grofman 2001; Hanmer 2009; Biggers and Hanmer 2015; Hicks, McKee and Smith 2016; Griffin et al. 2017).

There is also a growing literature on the obligations of state actors to ensure the integrity of the voter rolls. Election authorities, of course, have the obligation to maintain their voter rolls. Indeed, Congress has made it clear that states election officials have the authority to remove ineligible voters from their registration lists.¹⁹ As Burden, and Stewart III (2014, pp. 30-31) observe, registration rates in the states are beginning to garner more scrutiny as they are often “too easily taken at face value” due to the “combination of bureaucratic inertia, antiquated administrative procedures, and provisions of the NVRA that conspires to produce registration lists that are bloated by the presence of deadwood.”

Surprisingly little scholarship, however, examines the processes used by election authorities to remove registrants from the rolls if they have not engaged in the electoral process. As Ansolabehere and Hersh (2014) note, there are numerous legitimate reasons for individuals to be removed from a jurisdiction's voter rolls. Most obviously, election officials may remove deceased individuals or individuals who moved out of the jurisdiction in which they are registered. Election authorities also may purge registrants who request to be taken off the rolls, or, depending on the jurisdiction, are convicted of a felony or are adjudicated mentally incompetent. In North Carolina, for example, an individual convicted of a felony and currently serving a sentence, either in prison or on probation or parole for a felony conviction, is not eligible to vote and, if registered, would ordinarily be slated to be removed from the rolls.

To be sure, election administrators face numerous obstacles trying to maintain accurate voter lists. For starters, to the best of our knowledge there is no existing database of United States citizens, legal or undocumented, American-born or naturalized. Matching voter registration lists with a state's Division of Motor Vehicles database or the United States Department of Homeland

¹⁹See National Voter Registration Act of 1993, 42 U.S.C. §1973gg-6(a)(4) and the Help American Vote Act, 42 U.S.C. § 15483(a)(4)(B).

Security's Systematic Alien Verification for Entitlements Program (SAVE) database—absent of considerable investigative efforts of individual registrants—may not be able to identify accurately improperly registered noncitizens. Although election administrators are able to match voter lists with state and federal databases of felons serving their sentences (or, in some states, ex-felons who have served their sentences but who have not had their voting rights restored), these processes are not failsafe. There are plentiful examples of either false positive or false negative database matches when state elections administrators draw on multiple sources in their efforts to maintain voter rolls (McDonald and Levitt 2008).

Questions of temporality also plague the efforts of election administrators. For example, it is possible for an individual to legally register before becoming a convicted felon and cast her ballot before being sentenced because she remains on the voter rolls. Conversely, a citizen may have signed an affidavit and successfully registered to vote. Years earlier, however, when he had applied for his driver's license, he was not yet a citizen. A subsequent data audit by an election administrator with the DMV's database—because the citizenship information is not updated—would likely indicate that the registrant, now a citizen, should be removed from the rolls, a false negative Biggers and Smith (2018).

There are good reasons for stringent regulation of list maintenance when it comes to purging voters from the rolls. Pettigrew and Stewart III (2016, p. 31) estimate that “the average degree of deadwood on a voter registration list with an average list maintenance program should be 11.2%.” Before Congress passed the NVRA, there was considerable variation in list maintenance practice across the states. Prior to 1993, for example, some states would “purge as often as every 2 years, whereas other states never purge for nonvoting, although they often verify the lists” (Rhine 1996, p. 418). More problematic was that many states that engaged in regular purging of their voter rolls were removing substantial numbers of qualified registrants, disproportionately disenfranchising minority voters (Barber et al. 1988). Indeed, if discriminatory intent can be shown in a list maintenance program to remove registrants from the voter rolls, or if a list maintenance program

can be shown to have a disparate impact or is selectively applied to a set of registered voters, there may well be a Fifteenth Amendment equal protection claim under the United States Constitution. With this in mind, we now turn to the potential effect of Ohio's Supplemental Purge if it were to be adopted in Florida and North Carolina.

Research Design

Our analysis draws on Florida and North Carolina, in part due to the richness of their publicly available statewide voter files. In both states, these registration files provide individual-level data on registrant's address, race/ethnicity, age, political party registration, and registration date. Equally important, individual voter records can be linked back in time as well as to vote history files via a unique voter identification number. The voter files we use here for the two states are dated January, 2009 and January, 2017.

We are interested in assessing the extent to which registered voters cast votes infrequently. In keeping with the guidelines of Ohio's Supplemental Process, we define infrequent voters as those who voted in the 2008 General Election and then did not turn out in the 2010, 2012, and 2014 November elections. By this definition, a voter in Florida who turned 18 in 2013, say, cannot be an infrequent voter; this individual was not even eligible to vote in November 2008.

Given our data, we cannot identify infrequent voters who moved between states within our time window of interest. Consider a North Carolina registered voter who voted in 2008 but then left the state in 2009; this individual was not eligible to vote in North Carolina following moving. Such an individual might be an infrequent voter if, for example, she moved to Illinois and voted in neither 2010, 2012, nor 2014. However, we will not identify this person as such given her move out of North Carolina.

As such, the universe of individuals we consider under our definition of infrequent voting consists of registered voters who were eligible to vote in 2008 in Florida or North Carolina and

remained eligible in these states through November 2016. We say that such voters are *analyzable*. The set of analyzable registered voters in Florida (similarly, North Carolina) in November 2016 is a subset of the set of registered voters who were on the rolls in Florida (North Carolina) as of this date. Our results should not be biased, as our methodology excludes registrants who remained in the state but who changed addresses between 2009 and 2017 (either self-reported or through a NCOA notification), who updated their voter registration, or who were properly removed from the voter rolls by a local election official for some other valid reason, such as being convicted of a felony or passing away. Thus, of our analyzable voters in each state, we identify the individuals who voted in 2008; did not vote in 2010, 2012, nor in 2014; and had the same address, gender, race, and party affiliation in January 2009 as in January 2017. We call this set of registered voters *purgeable*.

The reason that we require purgeable voters to have the same addresses in January 2009 as in January 2017 is because voters who move and update their voter registrations must have had some contact with an election official around the time of their moves. Our goal here is to be conservative in our counting individuals in Florida and North Carolina would might be vulnerable to being purged were Ohio's Supplement Process at work in their state, and hence we do not count these individuals who interacted with an election official in our set of purgeable voters.

With regard to regular list maintenance, unlike in Ohio where local election boards mail registrants a postcard after they skip a *single* federal election to affirm they have not moved and want to remain registered, county Supervisors of Elections and boards of elections in Florida and North Carolina, respectively, send mailings in odd-numbered years to all registrants who have had not voted and have had no contact with election officials over *two* federal elections. As in Ohio, "contact" with a registrant in the two states extends beyond turning out to vote in the county; it entails other activities confirming the registrant's address in the county, including submitting an updated voter registration form, serving as a poll worker, signing a petition, or running for office. The main difference in the list maintenance activities of the states, beyond the additional federal election cy-

cle in which the registrant did not vote, then, is the means by which voters who miss an election are contacted. Unlike Ohio, county election officials in the two states mail a non-forwardable registration verification card with a postage prepaid, pre-addressed return card to those registrants who are inactive over two federal election periods. If the returned card is not returned as undeliverable, the election board deems the registrant's address as verified, and the registrant remains active.²⁰

Of the purgeable voters in Florida and North Carolina, some cast votes in November 2016 and others did not. The extent that some purgeable registrants did vote in 2016 is *ipso facto* a measure of the extent to which some registered voters exercise their franchise, temporarily drop out of electoral life, and then reassert their franchise.

Classifying and counting registered voters in Florida and North Carolina vulnerable under Ohio's Supplemental Process

So, who are Florida and North Carolina's nonvoters who might be vulnerable to removal under Ohio's Supplemental Process? Furthermore, are some voter types more prone to be purged for nonvoting than others? And, does the purging of eligible but irregular voters have a differential impact on minorities, those registered with a particular political party (or who are unaffiliated with a party), younger or older voters, or those living in poorer or wealthier neighborhoods?²¹

²⁰For North Carolina, see NCGS §163A-877(d)(2), "List maintenance," available at https://www4.ncleg.net/enactedlegislation/statutes/html/bychapter/chapter_163a.html (last accessed May 31, 2018). For Florida, see F.S. 98.065, "Registration list maintenance programs," available at http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0098/Sections/0098.065.html (last accessed July 12, 2018).

²¹As mentioned above, any estimate of how many registered voters might be expunged under Ohio's Supplemental Purge is conditional upon registrants both receiving and responding to

Race/ethnicity and vulnerability to an Ohio-like purge

We start by considering the racial/ethnic breakdown of the registered voter pools in Florida and North Carolina. The top row of Table 1 provides the racial/ethnic composition of Florida's more than 12 million black, Hispanic, and white registered voters in January 2017 ("Voter File"). These three groups constitute approximately 93 percent of Florida's registered voter pool. Table 2 and its top row are analogous for North Carolina and its roughly 8 million black and white registered voters who, as of January 2017, constituted approximately 92 percent of registered voters. While there are other racial/ethnic groups in Florida and North Carolina beyond those listed in Tables 1 and 2, these groups are relatively small and we do not engage them here.

The second row in Tables 1 and 2 describes the breakdown of analyzable voters in Florida and North Carolina, respectively. Recall that this category excludes registrants who died after January 2009, were convicted of a felony or adjudicated mentally incompetent, or moved from the state.²² a postcard mailed to them by a local elections official. The response rate, of course, ranges from zero percent to 100 percent. In a study conducted in 2014 for the State of Washington, Mann and Pryor (2014) find that roughly five percent of eligible voters not registered in the state (but who were previously registered in another state before moving to Washington) responded to a notice informing them that they were eligible to register to vote. They report that this rate is substantially higher than the success rate of third party voter registration efforts, such as those conducted by the Voter Participation Center, which mails a paper voter registration application to eligible voters in select states. For our purposes, it appears that most (approximately 95 percent) individuals who were previously registered in another state do not respond to a unsolicited mailing asking them to register in their new state of residence. Report available at https://www.sos.wa.gov/_assets/elections/2013-eric-voter-registration-in-washington-state-final-3-20-2014.pdf (last accessed July 16, 2018).

²²For a Florida registered voter to be classified as analyzable, the voter status field for this indi-

Table 1: Race/ethnicity and voter type in Florida

Type	Black	Hispanic	White
Voter file	13.77	16.95	69.28
Analyzable	13.17	13.82	73.01
Purgeable	12.84	17.49	69.67
Purgeable 2016 voters	9.20	20.91	69.89
Purgeable 2016 non-voters	14.12	16.29	69.59

Table 2: Race and voter type in North Carolina

Type	Black	White
Voter file	24.07	75.93
Analyzable	23.14	76.86
Purgeable	22.08	77.92
Purgeable 2016 voters	13.60	86.40
Purgeable 2016 non-voters	24.82	75.18

The third row of Tables 1 and 2 displays, respectively, the racial/ethnic and party breakdown of the registrants who voted in the 2008 General Election in Florida (177,609) or in North Carolina (174,737), remained registered at the same address in January 2009 and January 2017, but who skipped the 2010, 2012, 2014, and 2016 General Elections. These are the purgeable registered voters as we have defined them, as so-called purgeables constitute the universe of registered voters who would have been targeted for removal if Ohio’s Supplemental Process were in place in Florida and North Carolina had they not responded to a simple postcard asking them to affirm their address and that they wanted to stay on the voter rolls.

In the fourth row of Tables 1 and 2, we provide the breakdown of a further subset of purgeable registered voters: registrants who could have been expunged from the voter rolls after not voting in 2010 but who actually turned out to vote in the 2016 General Election. Our simulations reveal that as many as 88,752 purgeable registered voters—46,324 in Florida and 42,428 in North Carolina—vidual must not be denoted “PRE” in either the January 2009 or the January 2017 voter files. Similarly, for a North Carolina registered voter to be denoted as analyzable, the field “voter_status_desc” must be either “ACTIVE” or “INACTIVE” in both the January 2009 or the January 2017 voter files.

turned out to vote in the presidential election. We refer to this subset as *purgeable 2016 voters*, that is, registrants who under Ohio's system would have been removed for skipping three consecutive federal elections after voting in 2008, but who cast a ballot in 2016 after eight years of sitting on the sidelines. Finally, in the fifth row of both Tables, we identify the subset of purgeable registrants who last voted in 2008, remained registered at the same address over the eight year period and who did not vote in a federal election during that time span, and who failed to vote again in 2016. We refer to this subset as *purgeable 2016 non-voters*. Habitual voters these are not, as the last federal general election in which they cast a ballot was in 2008. Yet, there is no evidence that these registrants over the eight year tie span have moved, been convicted of a felony or adjudicated incompetent, or died.

To understand the potential differential impact an Ohio-like Supplemental Purge system of voter removal would have in Florida, we begin with an examination of the variance within the race/ethnic category, across voter types. We limit our analysis to a universe of registered voters in Florida who are black (13.8 percent), Hispanic (17.0 percent), and white (69.3 percent), circa 2017. Of analyzable voters in Florida, 13.2 percent are black, 13.8 percent are Hispanic, and 73.0 percent are white. This indicates that white registrants make up a higher percentage of those who are analyzable, relative to blacks, and especially relative to Hispanics who are registered voters. Although we do not know why there is such a steep drop in the percentage of Hispanics who were registered in 2009 but who are no longer in this subset in 2017, the drop suggests that Hispanic registrants are dying, moving, being convicted of a felony or adjudicated incompetent, or voluntarily taking themselves off the rolls at a higher of rate than white or black registrants.

When looking at registrants who could be potentially purged in Florida, approximately 12.8 percent are black, 17.5 percent Hispanic, and 69.7 percent white. The composition of the pool of purgeable voters who are white is three percentage points fewer than that of the pool of analyzable registered voters; it is only slightly lower for black purgeable registrants. However, Hispanic voters in Florida's pool of purgeable registrants account for a much greater share than their relative share

in the analyzable universe of registered voters. If we assume that the three racial/ethnic groups in Florida might have equivalent postcard response rates following the 2010 General Election (and who subsequently skipped the 2012 and 2014 federal elections), we find that lay Hispanic voters would be more likely to be purged in Florida than white or black registered voters, assuming that an Ohio-like Supplemental Process were implemented there.

As for those registered voters in Florida's purgeable pool who chose to exercise their franchise and turned out in the 2016 election, the white share again remains stable; the share of black registrants, however, drops significantly (down more than three percentage points), to just nine percent of the purgeable pool of registrants who voted after eight years of dormancy. More notably, the Hispanic share of purgeable registrants in Florida who voted in 2016 increased to nearly 21 percent, a rate much higher than either their share of analyzable or purgeable registered voters. This indicates that, of those voters in Florida who could have been expunged from the rolls because of inactivity for eight years, Hispanics were much more likely to exercise their franchise in 2016 than blacks. Had Ohio's Supplemental Process been in effect in Florida, if any of these dormant voters not returned a post card after the 2010 election affirming they wanted to remain on the rolls, and then skipped the following two elections, they would not have been permitted to vote in 2016. Conversely, our Florida results reveal that black purgeable voters who last voted in 2008 were much less likely to vote in 2016 than comparable white or Hispanic purgeable registrants.

We find similar patterns for black and white registered voters in North Carolina. Black and white registrants in the state account for roughly the same percentage of registered voters, analyzable registrants, and purgeable registrants, as shown in Table 2. Blacks, however, comprise a much smaller percentage of purgeable registrants who turned out to vote in 2016, indicating that white registrants who had last cast a ballot in 2008, and who hypothetically could have been at risk of being purged from the rolls had they not returned a postcard after skipping the 2010 General Election, were much more likely to vote in the 2016 presidential election.

Party affiliation and vulnerability to being purged

Beyond race/ethnicity, we also are interested in the partisan breakdown of registered voters in Florida and North Carolina who, hypothetically, would be vulnerable to being excised from the voter rolls in the two states if they had implemented Ohio's Supplemental Process. To the extent that a voter purging protocol has partisan consequences for a given electorate, it can have consequences for election winners as well. Due to ballot secrecy, we cannot observe whether any given voter in Florida or North Carolina voted for a Democratic or Republican candidate in any election. However, we can observe voters' self-selected partisan affiliations, and we turn to them now.

The top row of Table 3 provides voter file percentages in Florida of registered Democrats, Republicans, and those unaffiliated with a party. Table 4 does the same for North Carolina.²³

Table 3: Party and voter type in Florida

Type	Democratic	No party	Republican
Voter file	38.21	25.19	36.61
Analyzable	39.95	18.64	41.40
Purgeable	44.58	23.51	31.90
Purgeable 2016 voters	41.63	24.88	33.49
Purgeable 2016 non-voters	45.63	23.03	31.35

Table 4: Party and voter type in North Carolina

Type	Democratic	Republican	Unaffiliated
Voter file	39.42	30.58	30.00
Analyzable	43.25	33.26	23.49
Purgeable	44.05	26.78	29.17
Purgeable 2016 voters	39.27	29.93	30.80
Purgeable 2016 non-voters	45.59	25.77	28.64

²³As of January 2017, the three most common party affiliations in Florida are Democratic (approximately 37.1 percent), Republican (35.6 percent), and No Party Affiliation (24.6 percent). In North Carolina, the three most common affiliations are Democratic (40.3 percent), Republican (30.0 percent), and Unaffiliated (29.2 percent).

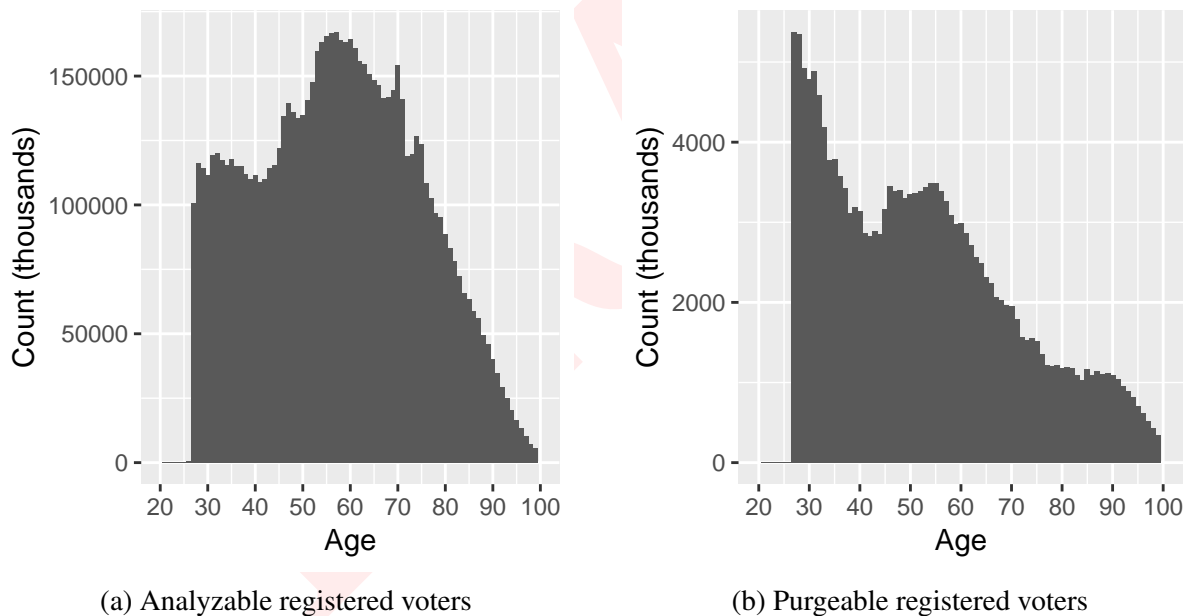
In Florida, as Table 3 reports, relative to our pool of registered voters who are analyzable, Democratically-affiliated registered voters (44.6 percent) and registered voters with no party affiliation (23.5 percent) comprise a much greater share of purgeable voters than Republican-affiliated registered voters (31.9 percent) under an Ohio-like Supplemental Process. Indeed, nearly 10 percentage points fewer Republicans would be in an Ohio-like purgeable pool in Florida, compared to their share of the analyzable pool of registered voters (41.4 percent). However, with regard to the party registrations of those who actually voted in the 2016 General Election, Republicans and those not affiliated with a party comprise a slightly greater share (33.5 percent and 24.9 percent, respectively), and Democrats a slightly smaller share (41.6 percent), relative to their associated shares of purgeable registrants.

In North Carolina, we find similar patterns across party registrations of analyzable and purgeable voters. Republicans account for a larger share (33.3 percent) of those in our analyzable pool (relative to their share in the voter file), but they account for a considerably smaller share of party registrants who are purgeable (26.8 percent). In contrast, registrants unaffiliated with a party comprise 23.5 percent of the analyzable pool, but 29.2 percent of those who could have been purged had North Carolina had an Ohio-like Supplemental Process in place. The share of Democrats who are purgeable (44.1 percent) is only slightly higher than the share of Democrats in the analyzable pool (43.3 percent). As for the registrants who would have been purged in North Carolina if they did not respond to a postcard following the 2010 election who voted in 2016 for the first time in eight years, Democrats comprised a much smaller share (39.3 percent) of the purgeable voter pool than their share in the purgeable pool of registrants (44.1 percent), while the share of Republican registrants who voted exceed their share in the purgeable pool. The unaffiliated share in both the purgeable and purgeable voter pools remained relatively stable.

Age and vulnerability to being purged

Drawing on the voter files of the two states, we are also able to assess the age distribution of registered voters in Florida and North Carolina who would be vulnerable to being purged under an Ohio-like Supplemental Process system. Figure 1 displays the age distribution (by year) of registered voters in Florida's pools of analyzable and purgeable voters. As the figure reveals, the distribution of registrants in the purgeable pool differs considerably from the analyzable pool, most notably, that registrants who would be purged prior to the 2016 General Election because they failed to vote in a federal election since 2008 are much more likely to be younger voters (26 through 34 years old). We see a very similar pattern in North Carolina, as Figure 2 displays.

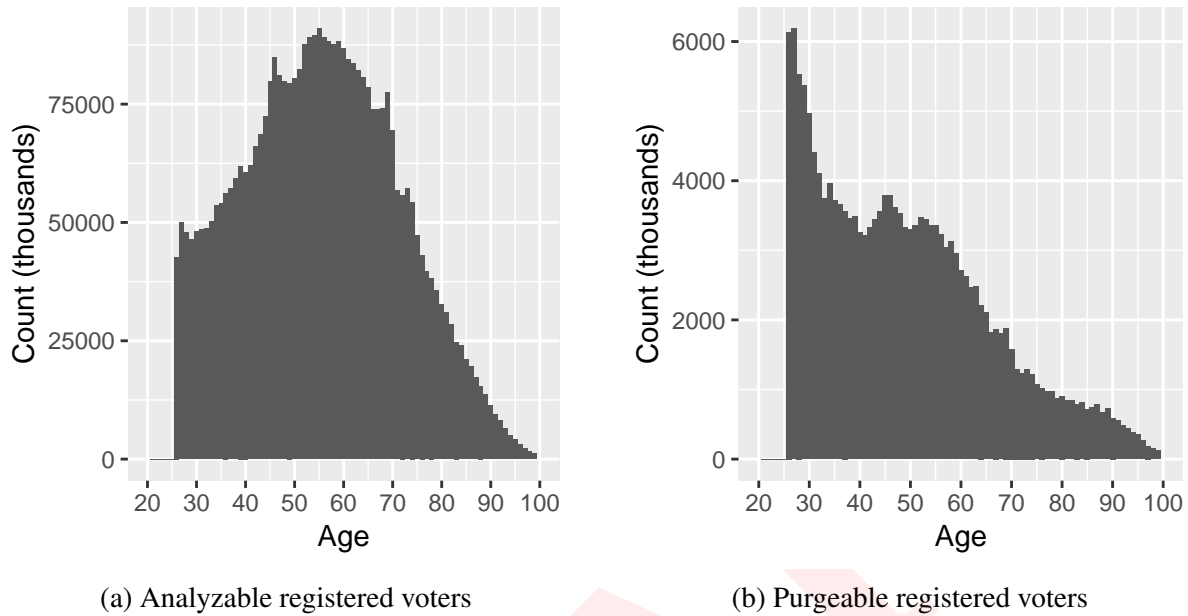
Figure 1: Age in Florida for analyzable and purgeable registered voters



Wealth and vulnerability to being purged

While containing details about the race/ethnicity, party, and age of registrants, Florida and North Carolina voter files do not contain data on registered voter income and/or wealth. Accordingly, we

Figure 2: Age in North Carolina for analyzable and purgeable registered voters

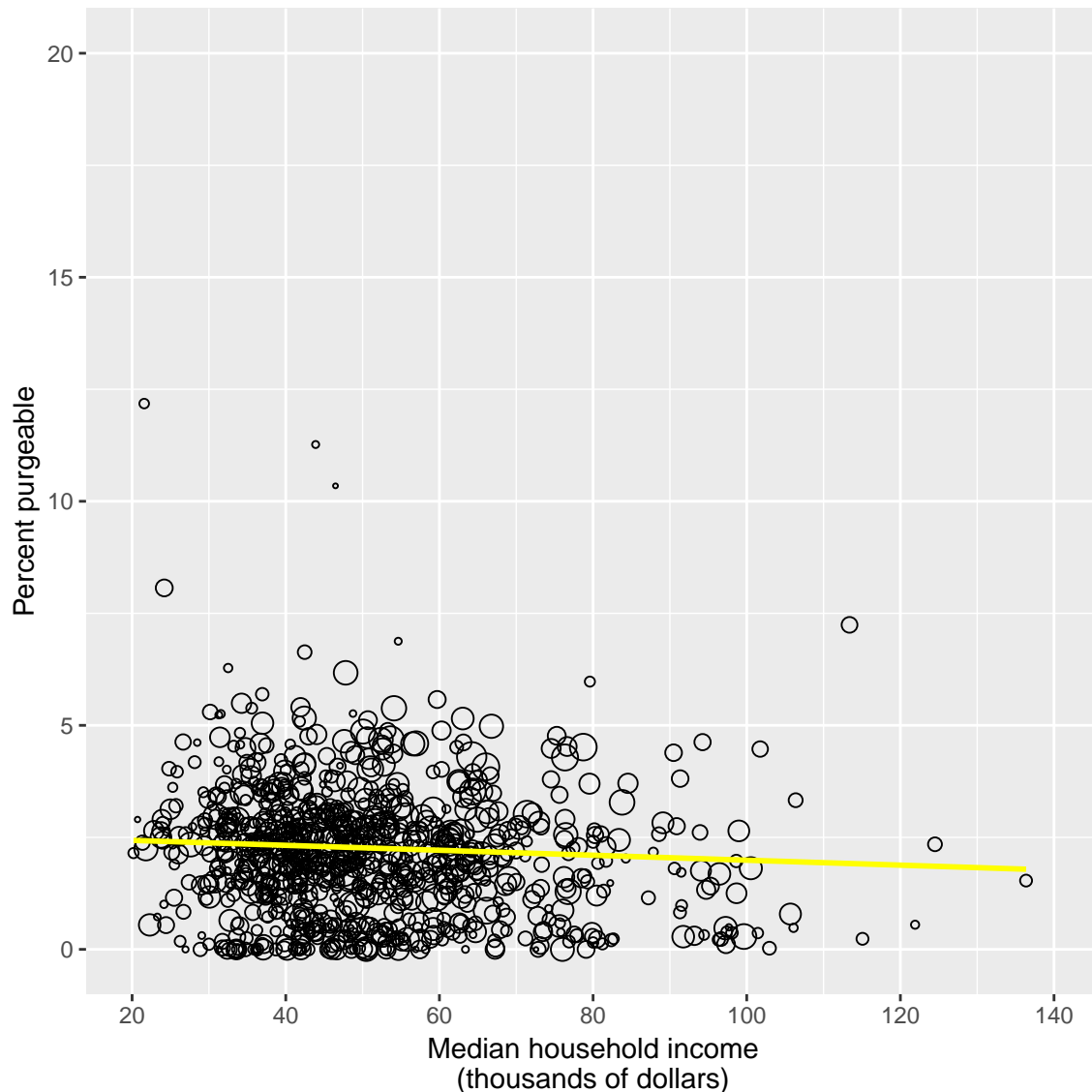


merge zip code-level registered voter data with United States Census figures on median household income in 2016.²⁴ For each zip code in Florida and North Carolina, we calculate the percentage of analyzable registered voters who are purgeable, and we plot this against median household income reported in the 2016 census (ignoring zip codes with fewer than ten analyzable registered voters). Results for Florida and North Carolina are in Figure 3 and 4, respectively.²⁵

²⁴In particular, we purchased zip code data from Cubit Planning Inc. <https://www.incomebyzipcode.com> (last accessed July 15, 2018) and merged the column titled “Median household income in the past 12 months (in 2016 inflation-adjusted dollars” using the zip code field titled “Zip (ZCTA).” The corresponding zip code fields in the Florida and North Carolina voter files are, respectively, “ResidenceZipcode” and “zip_code.”

²⁵In Florida, there are 1,008 (912) zip codes with analyzable (purgeable) registered voters. Requiring at least ten analyzable voters and a valid figure for median household income yields 936 usable zip codes. In North Carolina, there are 850 (815) zip codes with analyzable (purgeable) registered voters. Requiring at least ten analyzable voters and a valid figure for median household income yields 772 usable zip codes.

Figure 3: Income and percent purgeable across zip codes in Florida



Note: each dot represents a zip code in Florida that has at least ten analyzable registered voters. Dot size is proportional to number of analyzable registered voters in each zip code, and the superimposed yellow line is a linear regression weighted by number of analyzable registered voters.

Zip code areas, which for simplicity we call zip codes, are aggregate units, and this limits our ability to draw individual-level conclusions from them. Nonetheless, we observe in Figure 3 that, in Florida, there is a negative correlation between the fraction of a zip code that is purgeable with

the median household income in the zip code. This is consistent with the idea that individuals who have disproportionately greater income are disproportionately less likely to be purgeable. Of course, the potential ecological fallacy here is one in which neighbors of high income individuals, who themselves do not have high income, are not purgeable. We find a similar relationship between income and purgeability in North Carolina, which is summarized in Figure 4.

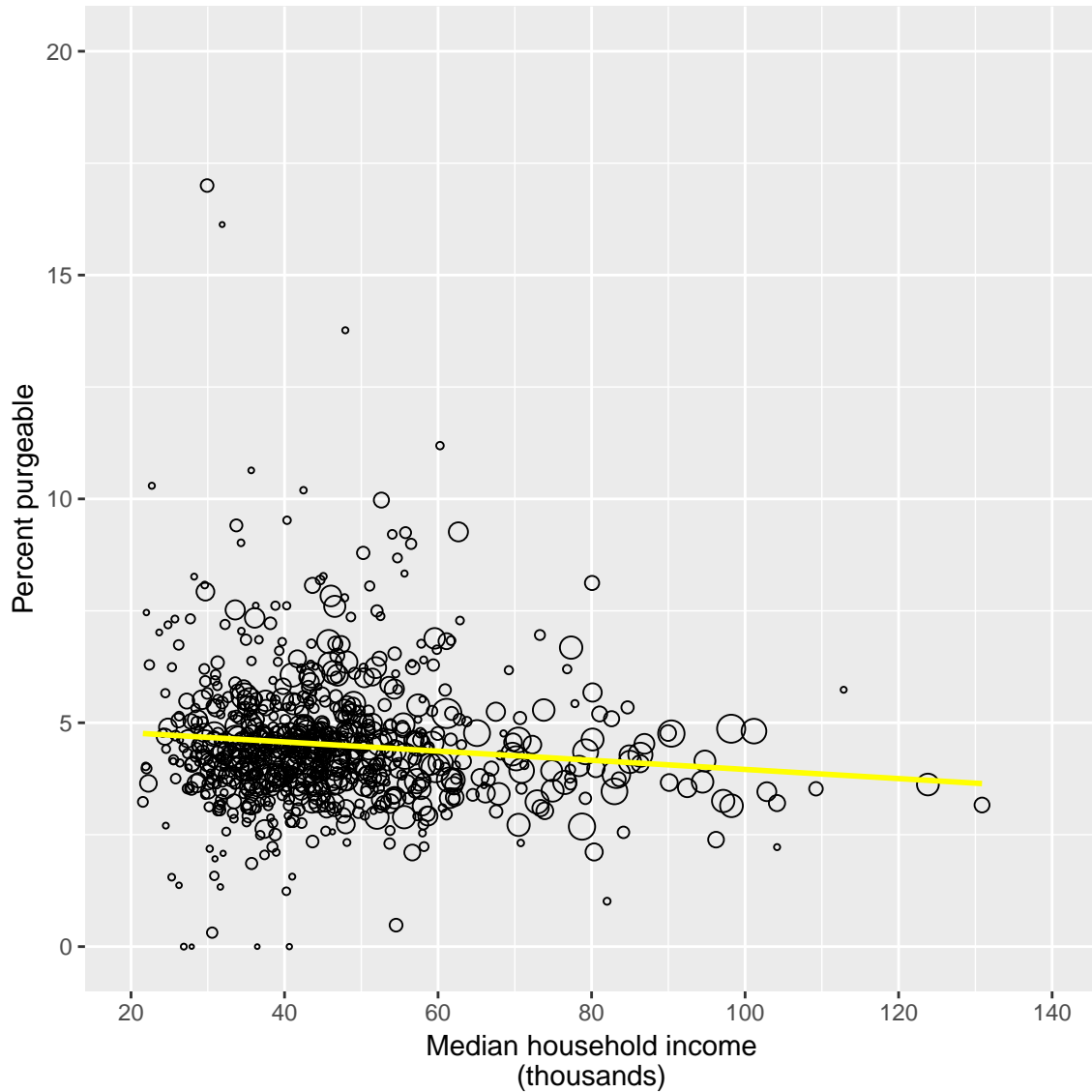
Conclusion

What are the effects of purging infrequent voters from the rolls? Extrapolating from our results that rely on individual-level voter records from Florida and North Carolina, if Ohio's Supplemental Process were to be implemented across the country, potentially millions of registered voters who do not move, do not otherwise become ineligible to vote, fail to respond to a non-certified postcard notification, and then skip several more federal elections, could be targeted for removal from a jurisdiction's voter rolls. As our findings reveal, many of these infrequent voters actually do eventually chose to vote, if only every other presidential election. Our results suggest as well that the impact of adopting Ohio's Supplemental Process in other states might not only have the potential effect of disenfranchising many infrequent voters, but that such a regime could disproportionately impact minority voters, younger voters, and those residing in poorer neighborhoods.

Some caveats are in order. First, at this time it is unclear that our findings are necessarily generalizable beyond Florida and North Carolina. For instance, registrants purged by a Supplemental Process in a state that allows Same Day or Election Day Registration could re-register if they turned out, like Larry Harmon did, and were informed by pollworkers that they were no longer on the rolls.²⁶ Second, our main result—that some 350 thousand registered voters in Florida and

²⁶A list of states with Same Day Registration is available at <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx> (last accessed July 21, 2018).

Figure 4: Income and percent purgeable across zip codes in North Carolina



Note: each dot represents a zip code in North Carolina that has at least ten analyzable registered voters. Dot size is proportional to number of analyzable registered voters in each zip code, and the superimposed yellow line is a linear regression weighted by number of analyzable registered voters.

North Carolina were vulnerable to being purged were a supplemental list maintenance system like Ohio's been in place in these two states, and that nearly 90 thousand of these infrequent voters turned out in the 2016 General Election after not voting in the previous three General Elections—

is conditioned on how many of these inactive registrants would have not responded to a postcard after skipping the 2010 General Election. Third, our findings regarding the impact that a supplemental purge protocol might have on racial/ethnic groups, partisans and nonpartisans, younger and older registrants, and poorer and wealthier individuals, may be conditioned by the particular eight-year timespan of our analysis. The various compositions in the two states of analyzable, purgeable, and purgeable registered voters who voted in 2016 might look different if our analysis ran from, say, January 2007 through January 2015, as other kinds of registrants may have voted in the 2006 midterm elections, skipped the 2008 presidential election, not returned a postcard confirming an address, and then skipped the 2010 and 2012 general elections.

Leaving aside normative concerns of who should or should not vote be permitted to cast a ballot (Brennan 2011), the question remains as to whether otherwise qualified registrants who abstain from casting a ballot for some time should be permitted to remain on the voter rolls. As the United States Supreme Court recently ruled, the right not to vote does not appear to have the same sanctity as the constitutional right to vote, as granted under the Fifteenth Amendment. In an effort to maintain accurate voter registration lists, election authorities have the power to purge eligible registrants, including those, such as Ohio's Larry Harmon, who might be exercising their right not to cast a ballot. As our preliminary analysis shows, however, the effort by local election boards to clean voter rolls of registrants they suspect are no longer eligible to vote—ostensibly to prevent election fraud and maintain clean vote rolls—risks disenfranchising legal registrants, many of whom have taken a hiatus from federal elections but who may want to exercise their franchise in a future election.

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