

PROTECTING SURVIVORS' RIGHT TO VOTE: WHY VOTER REGISTRATION INFORMATION SHOULD NOT BE PUBLIC

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Every election cycle, some Americans are forced to choose between exercising their right to vote and protecting their personal safety. In 2020, after going on a seemingly lovely date, Gabrielle Perry began receiving alarming texts from her date that included detailed personal information she had not shared with him – her parents' names and birthdays, the make and model of her car, and other undisclosed details about herself.¹ The situation quickly escalated to stalking and receiving death threats.² As it turned out, the man accessed all of this information from public voter registration rolls.³

Unfortunately, Perry's harrowing experience is far from unique. Our current system of public voter rolls needlessly creates the potential for such abuse, and these privacy concerns present survivors of abuse with significant obstacles to safely casting their ballot. Some domestic violence survivors report deciding to abstain from voting altogether in order to prevent their abusers from having access to their personal information.⁴ The outcomes of this policy may have staggering effects on enfranchisement, as according to the National Coalition Against Domestic Violence, 1-in-4 women and 1-in-9 men experience severe intimate partner physical violence, sexual violence, and/or stalking.⁵

In order to eliminate these barriers, states should implement confidentiality laws preventing the general public from accessing personal information from voter files. Currently, Address Confidentiality Programs (ACPs) are the primary form of protection for survivors of domestic abuse seeking to keep their information private.⁶ However, such programs are insufficient due to their underinclusive eligibility standards, as well as overwhelming barriers to entry.⁷ Instead, there is a pressing need to impose broader restriction on public access of personal voter information in order to ensure privacy concerns do not serve as a form of voter

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¹ See Scottie Andrew, *For Abuse Victims, Registering to Vote Brings a Dangerous Tradeoff*, CNN (Oct. 27, 2020), <https://www.cnn.com/2020/10/27/us/domestic-violence-voting-election-privacy-trnd/index.html>.

² *Id.*

³ *Id.*

⁴ See Jessica Klein, *They Survived Intimate Partner Violence – Now They Can't Vote Safely*, THE FULLER PROJECT (Oct. 28, 2020), <https://fullerproject.org/story/they-survived-intimate-partner-violence-now-they-cant-safely-vote/>.

⁵ *Statistics*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/STATISTICS> (last visited Nov. 29, 2020).

⁶ See Klein, *supra* note 4; Charles J. Pults, *America's Data Crisis: How Public Voter Registration Data Has Exposed the American Public to Previously Unforeseen Dangers and How to Fix It*, 105 IOWA L. REV. 1363, 1378-79 ("many states have taken the incremental steps toward protecting victims in the form of 'Address Confidentiality Programs'").

⁷ Pults, *supra* note 6, at 1379. See discussion *infra* Section I.

suppression.⁸ However, such reforms, either at the state or federal level, must be carefully drafted and robustly implemented in order to address exploitable loopholes that would allow for continued risk of abuse.⁹

I. Address Confidentiality Programs (ACPs) and Their Shortcomings

In most states, basic voter registration information – name, address, party affiliation – is available to the public.¹⁰ This presents serious privacy concerns, particularly for survivors of domestic violence who cannot risk their abusers having access to their address and other personal information.¹¹ In an attempt to ameliorate this problem, thirty-nine states have adopted some type of Address Confidentiality Program (ACP), making these programs the most popular solution to survivor’s privacy concerns.¹² ACPs provide survivors with a substitute address for public purposes, typically a P.O. box, so that they can register to vote without potentially endangering themselves and/or their families.¹³

However, these programs fall short of guaranteeing sufficient protection as the eligibility standards for the exemptions vary and leave many uncovered.¹⁴ For instance, Colorado is one of several states that requires ACP participants to present evidence of their victimization and show they have moved within the past 90 days, or be planning to relocate, in order to qualify for the program.¹⁵ These onerous requirements leave out many people who could benefit from such confidentiality programs.¹⁶ Some survivors may not have documented evidence of the abuse, such as a protective order.¹⁷ Or others may have relocated several months ago, but they are still hiding their address from their abuser and may need to do so indefinitely.¹⁸ This structural under-inclusivity limits the effectiveness of ACPs.

Furthermore, ACPs are largely inaccessible even to the populations they do cover. First, these programs are not adequately publicized, and thus, do not sufficiently

⁸ *Id.*

⁹ See discussion *infra* Section II.

¹⁰ See *Access to and Use of Voter Registration Lists*, NAT’L CONFERENCE OF STATE LEGISLATURES (Aug. 5, 2019), <https://www.ncsl.org/research/elections-and-campaigns/access-to-and-use-of-voter-registration-lists.aspx>.

¹¹ Klein, *supra* note 4.

¹² *Id.*

¹³ *Id.*

¹⁴ See *Address Confidentiality Laws by State*, NAT’L NETWORK TO END DOMESTIC VIOLENCE (Sep. 2016), https://nnedv.org/wp-content/uploads/2019/07/Library_Safety_Net_ACP_Chart_April_2020.pdf; Klein, *supra* note 4.

¹⁵ NAT’L NETWORK TO END DOMESTIC VIOLENCE, *supra* note 14; COLO. REV. STAT. § 24-30-2105.

¹⁶ See Pults, *supra* note 6, at 1379.

¹⁷ *Id.*

¹⁸ For example, someone may have moved within the past year, but if they did not apply to the program within the arbitrarily-set 90-day period, they would seemingly be unable to satisfy the ACP’s requirements.

reach their intended audience.¹⁹ Instead, advocates have urged officials to partner with domestic violence organizations in developing and implementing their outreach programs.²⁰ As domestic violence groups interact closely with the people who need these services, their help could be instrumental disseminating information to survivors about the existence of ACPs and their benefits.²¹

Second, enrolling in an ACP requires survivors to advocate for themselves, a daunting task made more difficult by the many bureaucratic hurdles and recalcitrant government officials.²² For example, as these programs are not highly utilized, government employees often do not even know of their existence, placing the burden on the impacted individual to educate the official on the other side of the phone.²³ One survivor professed she “worries that some women who are facing the toughest battle of their lives in trying to escape an abusive situation might not have the wherewithal to keep fighting and to keep asking for the next supervisor.”²⁴ Moreover, stringent application requirements, such as proof of abuse or documentation of moving, are not only onerous, but also can potentially retraumatize the victim as they are forced to prove their trauma to those charged with protecting them.²⁵ In order to be truly accessible, the enrollment process should be simple and approachable, with officials trained in trauma-informed approaches.

Finally, ACPs only assist people who proactively seek their protection and are eligible due to their past experiences.²⁶ Their provisions do not provide any help to someone who has not previously faced interpersonal violence, but may now be at risk of future harm, as demonstrated by the date-gone-wrong scenario where an abuser accessed the public records to stalk an unknowing victim.²⁷ A guarantee of protection only after the trauma has occurred is not sufficient. Instead, information privacy protections should be extended *ex ante* to everyone since abuse is a problem that could affect anyone at any time.

In addition, ACPs do not address the threat to the safety of survivors posed by sensitive information on voter registration rolls other than home addresses. In

¹⁹ See Danielle Root, *Obstacles to Voting for Survivors of Intimate Partner Violence*, CTR. FOR AM. PROGRESS (Nov. 1, 2018), <https://www.americanprogress.org/issues/democracy/reports/2018/11/01/460377/obstacles-voting-survivors-intimate-partner-violence/>.

²⁰ *Id.*

²¹ *Id.*

²² See Darla Slipke, *Bill Would Allow Survivors in Address Confidentiality Program to Sign Petitions*, THE OKLAHOMAN (Jan. 27, 2020), <https://oklahoman.com/article/5653340/bill-would-allow-survivors-in-address-confidentiality-program-to-sign-petitions>; Pults, *supra* note 6, at 1378-80 (attributing administrative problems in many states to a “lack of good training,” including instances of victims educating election and DMV officials on the existence of the program).

²³ Slipke, *supra* note 22.

²⁴ *Id.*

²⁵ See LORI HASKELL & MELANIE RANDALL, DEP’T OF JUST. OF CAN., *THE IMPACT OF TRAUMA ON ADULT SEXUAL ASSAULT VICTIMS* 26 (2019).

²⁶ See *Address Confidentiality Laws by State*, *supra* note 14.

²⁷ See Andrew, *supra* note 1.

many states, party affiliation and voter history are also public record.²⁸ While the secret ballot is universal in the United States, shielding the candidate whom you voted for from the public record, it is still public *which elections* you voted in, including in *which party's primary* you chose to participate.²⁹ This information can be used to reveal a voter's political choices, and in turn, leaving them vulnerable to coercion by an abusive partner.³⁰ The Center for American Progress reports that “domestic abusers may threaten to restrict access to children, cut off financial support, or intimidate survivors with physical or sexual abuse if they vote or do not vote a specific way.”³¹ Removing party registration and voting history from public internet access would make survivors much less susceptible to this type of intimidation.

II. The Need for Comprehensive Reform

Given the myriad of lapses and gaps, as well as administrative hurdles, it is clear ACP programs cannot protect voters from increased vulnerability to interpersonal violence. In order to ensure no one is deterred from voting out of fear for their safety – and to prevent future abuse – states should go beyond ACP programs and pass legislation to restrict public access to personal information contained in voter rolls.

The current public nature of voting information stems from a belief in promoting transparency, combatting fraud, and the general presumption, reflected in open records laws, that government information should be available to the public.³² While transparency is indeed valuable in many contexts, it is unclear how such government accountability goals are furthered by allowing citizens' access to other peoples' voter files.

The case for such legislative reform far outweighs its costs. Without such reforms, disclosure of voter information is required by the National Voter Registration Act (NVRA),³³ and critically, cannot be not be bypassed at the discretion of a state administrator.³⁴ The enactment of a state law requiring safeguarding of sensitive information, however, could modify those requirements. One federal court has

²⁸ *Access to and Use of Voter Registration List*, *supra* note 10.

²⁹ *See id.*

³⁰ *See Root*, *supra* note 19.

³¹ *Id.*

³² *See* Brian Fung, *D.C. Makes It Shockingly Easy to Snoop on Your Fellow Voters*, WASH. POST (Jun. 14, 2016), <https://www.washingtonpost.com/news/the-switch/wp/2016/06/14/d-c-s-board-of-elections-makes-it-shockingly-easy-to-snoop-on-your-fellow-voters/>.

³³ *See* 52 U.S.C. § 20507(i)(2) (2020).

³⁴ *See* *Judicial Watch, Inc. v. Lamone*, 455 F. Supp 3d 209, 225 (D. Md. 2019) (holding administrators cannot “bypass the [NVRA] by unilaterally revising the Application” to withhold information that “appear[s] on completed voter registration applications”).

already indicated a willingness to uphold such statutes preventing the disclosure of personal information due to privacy concerns.³⁵

Some states have already adopted laws reflecting a more reasonable balancing of privacy and transparency interests that can serve as a model legislation to protect survivors from disenfranchisement.³⁶ In particular, Massachusetts has set an ideal standard for protecting citizens' privacy and safety.³⁷ In Massachusetts, names and addresses of registered voters are not public information.³⁸ Rather, this information is only disseminated to entities that may reasonably need it, such as political parties, candidates, and ballot question committees.³⁹ In this way, Massachusetts' law strikes the right balance between the needs of certain parties to access voter files in order to effectively campaign for public office and the privacy interests of Massachusetts voters.

Alternatively, a federal law could set a national standard for disclosures of voter information. For example, one scholar has argued Congress could pass a law limiting access to voter registration information to political committees, non-profits, and academic researchers.⁴⁰ Such a law would protect the privacy of American voters and circumvent the need for waiting on each individual state legislature to pass similar protections.⁴¹

Whether at the state or federal level, however, it is critical that new legislation be both effectively enforced and carefully drafted to avoid loopholes that may be exploited to circumvent its purpose. For example, Massachusetts' statutory scheme, while comprehensive in theory, has proven imperfect in practice. Members of the public can still access an individual's voter file, including address and party enrollment, by using the voter registration online lookup tool on the Massachusetts Secretary of State's website if they know the voter's full name, date of birth, and zip code.⁴² The webpage features a warning to users the tool is intended only for individual voters to determine their registration status and attempts to access others' information may be subject to criminal prosecution.⁴³ However, it is doubtful such a warning will be effective in guarding against abusers. A more secure system would ideally involve a password protected login. This requirement should be written into any future laws to prevent poor implementation with glaring loopholes.

³⁵ See *id.* at 224 (holding that the State is required to disclose voter birth dates as part of the voter registration list, but noting that the case would have come out differently if Maryland had a statute mandating the redaction birth dates from voter files).

³⁶ See Pults, *supra* note 6, at 1376. See also MASS. ANN. LAWS ch. 51 § 47C (LexisNexis 2020); CAL. ELEC. CODE § 17001 (LexisNexis 2020).

³⁷ See Pults, *supra* note 6, at 1376.

³⁸ *Access to and Use of Voter Registration Lists*, *supra* note 10.

³⁹ MASS. ANN. LAWS ch. 51 § 47C (LexisNexis 2020).

⁴⁰ Pults, *supra* note 6, at 1392.

⁴¹ See *id.*

⁴² See *Elections and Voting*, OFF. OF THE SEC'Y OF STATE OF MASS., <https://www.sec.state.ma.us/voterregistrationsearch/myvoterregstatus.aspx>.

⁴³ *Id.*

III. Conclusion

With ACPs proven to be an inadequate remedy, it is evident that action must be taken to protect the right to vote. Legislatures have a responsibility to respond to these needs by passing stronger and more comprehensive protections to safeguard voters' personal information. Despite having the most pro-privacy voter registration law of any state, Massachusetts' shortcomings illustrate the drafting precision that must go into protecting against the particular vulnerabilities of abuse survivors in order to avert such easy circumvention of the law. Nevertheless, whether at the state or federal level, viable models exist for straightforward but thoughtful reform.