

August 12, 2015

www.advancementproject.org

**Questions & Answers:
Interstate Crosscheck Program (“Crosscheck”) &
Electronic Registration Information Center (“ERIC”)
*Based on publicly available information***

Question	Crosscheck	ERIC
1. What is it?	Launched in 2005, Crosscheck is a state-to-state “matching” program that compares a state’s voter list to lists from other participating states for the purpose of identifying “possible double votes,” meaning, voters who <i>allegedly</i> cast ballots in multiple states during the same election. Crosscheck also seeks to identify duplicate voting records. ¹	Launched in 2012, ERIC is also a data “matching” program that compares a state’s voter list to lists from other participating states. Additionally, ERIC compares a state’s voter list against a state’s own databases and other databases. ERIC’s purpose is “improve a state’s ability to identify inaccurate and out-of-date voter registration records, as well as eligible, but unregistered residents.” ²
2. Who runs it?	Crosscheck is managed and controlled by Kris Kobach, Kansas’ Secretary of State, who recently led a failed legal challenge against the U.S. Election Assistance Commission’s decision to <i>not</i> require documentary proof-of-citizenship on the federal mail-in voter registration form. ³ Participating Crosscheck states sign a MOU. ⁴	Initiated as a project of the Pew Charitable Trusts, ERIC is an independent, nonprofit organization owned, managed, and controlled by the participating states themselves. Participating ERIC states sign a Membership Agreement. ⁵
3. Who is in it?	As of December 2013, there were 28 participating states in Crosscheck. ⁶ However, to date, at least two of those 28 states (Florida and Oregon) have ended their participation in Crosscheck. ⁷ The remaining states are: Alaska, Arizona, Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Virginia, and Washington. ⁸	As of June 2015, 11 states and the District of Columbia participate in ERIC. Those states are: Colorado, Nevada, Connecticut, Oregon, Delaware, Utah, Louisiana, Virginia, Maryland, Washington, and Minnesota. ⁹

4. How does it work? What data does a participating state provide to the program?	Crosscheck requires each participating state to provide its voter list. ¹⁰	Likewise, ERIC requires participating states to provide their voter lists. Additionally, ERIC requires states to provide their motor vehicle licensee or identification data. ¹¹
5. How often do states have to provide data?	Once a year in January. ¹²	Every 60 days. ¹³
6. Is private and sensitive data protected?	Unclear. Crosscheck appears to use a free program for encryption. ¹⁴ However, privacy advocates have expressed “alarm” about “[Crosscheck’s] transmission of highly sensitive personal information of millions of citizens via a website that lacks proper protections.” ¹⁵	Yes. Private and sensitive information such as date of birth (“DOB”) and the last four digits of a Social Security number (“SSN”) are anonymized at the source—the state—and then transmitted to the ERIC data center where the data is anonymized again upon receipt. ¹⁶
7. What lists or data is matched against a state’s voter list?	Crosscheck matches a state’s voter list against lists from other participating states. ¹⁷	Similarly, ERIC matches a state’s voter list against lists from other member states. Additionally, ERIC matches a state’s data against other databases, including, the Social Security Administration master death index list, motor vehicle licensing agency data, and U.S. Postal Service data. ¹⁸
8. What reports or results are generated by the program?	Each participating Crosscheck state receives a report that shows “matches” or voters who appear to be registered to vote in more than one state. ¹⁹	Each participating ERIC state receives reports that show: “(1) voters who have moved within their state; (2) voters who have moved out of state; (3) voters who have died; (4) duplicate registrations in the same state; and (5) individuals who are potentially eligible to vote but are not yet registered.” ²⁰
9. What constitutes a “match” under the program?	Under Crosscheck, the procedure for identifying a “match” compares three fields: (1) First Name; (2) Last Name; and (3) Date of Birth (“DOB”). Other information, such as Middle Name, Name Suffix, and Last Four Digits of the Social Security Number (“Last Four SSN”) are included on the reports, but are <i>not</i> used to indicate a “match.” ²¹	ERIC matches more “data points” than Name and DOB, including the Last Four SSN, Mailing Address, and other data already linked through state motor vehicle agencies, though it is unclear how many more “data points” are used. ²² ERIC uses a “contextual matching system.” ²³
10. Are there accuracy and “false positives” issues?	Yes. Crosscheck openly admits in its Participation Guide that the program generates a high number of false positives: “Experience in the crosscheck program indicates that <i>a significant</i>	Due to the more detailed data matching (see above), there may be less false positives under ERIC than Crosscheck.

	<p><i>number of apparent double votes are false positives and not double votes.</i> Many are the result of errors—voters sign the wrong line in the poll book, election clerks scan the wrong line with a barcode scanner, or there is confusion over father/son voters (Sr. and Jr.).”²⁴</p> <p>The inaccuracy of Crosscheck’s data appears to be reason why some states have left the program. For example, a spokesperson from the Oregon Secretary of State recently explained: “We left [Crosscheck] because the data we received was unreliable and we felt joining the ERIC project would better meet our needs.”²⁵</p>	
<p>11. Are member states required to take action on the results generated by the program?</p>	<p>No. Under Crosscheck, states are not required to act upon the results generated by the program.</p> <p>Despite this lack of a requirement, states <i>have</i> gone ahead and taken action based on Crosscheck reports. For example, some states “improperly interpret a Crosscheck ‘match’ to be a request by the registrant to be immediately removed from the rolls.”²⁶ Given the high number of false positives, these actions have often resulted in the <i>unlawful purging</i> of eligible voters from the voting rolls.²⁷</p> <p>Moreover, some states may not be outright purging voters, but instead, wrongfully designating eligible voters as “inactive” based on Crosscheck’s faulty results, a designation which may lead to negative consequences and may lead to purging. For example, such voters may be deprived of a mail-ballot application in states where mail-ballots are not sent to voters on the “inactive” list.²⁸</p>	<p>Yes, in two ways: (1) ERIC states are required to contact voters whose registration information is identified as inaccurate or outdated and educate those voters on how to update their records; and (2) ERIC states are also required to contact eligible, but unregistered people and “educate them on the most efficient means to register to vote.”²⁹ Registering the unregistered is mandatory. Indeed, ERIC states are required to initiate contact with at least 95 percent of people identified by ERIC who are eligible or potentially eligible to vote. Failure to comply results in <i>automatic removal</i> of the state from ERIC membership.³⁰</p>
<p>12. Does the program make an effort to protect voters from being unlawfully purged and denied their fundamental right to vote?</p>	<p>No. Crosscheck does <i>not</i> require its participating states to conduct their voter registration list maintenance activities (based on Crosscheck results) under the strict guidelines of the National Voter Registration Act (“NVRA”).³¹ The NVRA</p>	<p>Yes. ERIC requires its member states to conduct their voter registration list maintenance activities (based on ERIC results) under the strict guidelines of the NVRA.³²</p>

	sets forth important legal protections against being unlawfully purged from a voter list.	
13. Are people of color more likely to be identified as “matches” under the program?	Possibly. At least one reporter, Greg Palast, has concluded that people of color are disproportionately “at risk of having their names scrubbed from the voter rolls [by Crosscheck].” ³³ Palast’s review of data from various states indicates Crosscheck results are “heavily weighted with names such as Jackson, Garcia, Patel, and Kim.” ³⁴ He asserts that Crosscheck has put 1 in 7 African Americans, 1 in 8 Asian Americans, 1 in 8 Latino voters, and 1 in 11 white voters at risk of being unlawfully purged. ³⁵	To date, we have not located any materials regarding the racial impact of ERIC.
14. How much does the program cost?	While Crosscheck states that the program is free of charge, voting rights advocates believe there are “hidden costs.” Given the high number of false positives due to faulty data, states must expend considerable staff time wading through Crosscheck reports. ³⁶ Crosscheck itself warns states that processing the data “requires a commitment of time at the state and local levels” and recognizes that “some states may not be able to commit the resources to process the results in a given year.” ³⁷	ERIC members pay a one-time fee of \$25,000. ERIC’s annual operating expenses are spread equitably between the member states, as determined by the Board. Dues for most states are expected to be between \$25,000 and \$50,000 a year, depending on population size of the state. As more states join ERIC, the per-state share of the operating expenses will decrease. ³⁸ ERIC asserts that it saves states money: “Efficient and effective data matching and cleaner voter rolls will result in such efficiencies as less returned mail, fewer provisional ballots on election day, shorter lines at polling places, etc. In addition, ERIC uses resources such as the Social Security Death Index and data from the U.S. Post Office that states now buy on their own. ERIC states share these purchases when they pay their annual dues.” ³⁹ Finally, from time to time, the Pew Charitable Trusts provides grants to new ERIC states to help defray the initial costs of membership. ⁴⁰

<p>15. Does the program result in the reduction of unlawful double voting?</p>	<p>Unclear. To date, voting rights advocates “know of no examples where a voter has been successfully prosecuted for double voting pursuant to Crosscheck data.”⁴¹ Crosscheck’s promotional materials only refer to the number of potential double voters <i>charged or referred to prosecution</i>.⁴²</p>	<p>ERIC’s purpose is not to reduce the number of alleged double voters.</p>
--	--	---

¹ Presentation by Kansas Secretary of State Kris W. Kobach to the Presidential Commission on Election Administration (Sept. 30, 2013) (“The Kansas Project Presentation”) at 1, *available at* <https://www.supportthevoter.gov/files/2013/09/SOS-Kris-Kobach-Interstate-Crosscheck-PCEA-.pdf>. This and all other information used herein are drawn from publicly available sources.

² ERIC: Technology and Security Overview (Mar. 3, 2015) (“ERIC Technology Brief”), *available at* http://www.ericstates.org/images/documents/ERIC_Tech_and_Security_Brief_v2.1.pdf.

³ Simone Pathé, Voting-Rights Advocates Get Win at Supreme Court, *Roll Call* (June 29, 2015), *available at* <http://atr.rollcall.com/supreme-court-victory-for-voting-rights-advocates/>.

⁴ The Kansas Project Presentation, *supra* note 1 at 3.

⁵ See Membership Agreement, Exhibit A, Electronic Registration Information Center, Inc. Bylaws (last updated on May 21, 2015) (“ERIC Bylaws”) at 15, *available at* http://www.ericstates.org/images/documents/ERIC_bylaws_05_21_2015.pdf.

⁶ Interstate Voter Registration Data Crosscheck, 2014 Participation Guide (Dec. 2013) (“2014 Participation Guide”) at 1, *available at* https://wei.sos.wa.gov/agency/osos/en/press_and_research/weekly/Documents/Participation%20Guide%20with%20Comments.pdf

⁷ John Greenberg and Amy Sherman, Florida No Longer Part of Controversial National Voter Data Project, *Miami Herald* (Apr. 11, 2014) (“Greenberg and Sherman”), *available at* <http://miamiherald.typepad.com/nakedpolitics/2014/04/florida-no-longer-part-of-controversial-national-voter-data-project.html>.

⁸ 2014 Participation Guide, *supra* note 6 at 1.

⁹ ERIC Frequently Asked Questions (“ERIC FAQ”) at 1, *available at* <http://www.ericstates.org/faq>.

¹⁰ 2014 Participation Guide, *supra* note 6 at 3.

¹¹ ERIC Technology Brief, *supra* note 2 at 1.

¹² 2014 Participation Guide, *supra* note 6 at 3.

¹³ ERIC: Summary of Membership Guidelines and Procedures (“ERIC Summary”), *available at* http://www.ericstates.org/images/documents/ERIC_Membership_Summary_v1.0.pdf.

¹⁴ 2014 Participation Guide, *supra* note 6 at 8.

¹⁵ Lawyers’ Committee for Civil Rights Under Law, *Concerns About Interstate Crosscheck* (2015) (“LC 2015”) at 2, *available at* http://www.thewheelerreport.com/wheeler_docs/files/0427od2020concerns.pdf.

¹⁶ ERIC Technology Brief, *supra* note 2 at 1-2.

¹⁷ The Kansas Project Presentation, *supra* note 1 at 1-2.

¹⁸ ERIC at Work, Statistics (as of Aug. 10, 2015), *available at* <http://www.ericstates.org/statistics>.

¹⁹ 2014 Participation Guide, *supra* note 6 at 3-5.

²⁰ ERIC FAQ, *supra* note 9 at 1-2.

²¹ 2014 Participation Guide, *supra* note 6 at 4-5.

²² Reid Wilson, Here’s How To Clean Up Messy Voter Rolls, *Washington Post* (Nov. 3, 2013), *available at* <http://www.washingtonpost.com/blogs/govbeat/wp/2013/11/03/heres-how-to-clean-up-messy-voter-rolls/> (quoting David Becker, Pew’s director of election initiatives: “It’s impossible for [states], based on only a name and birth date, to keep their lists up to date and identify when some has died, for example.”); *see also* Shane Hamlin and Erika Haas, ERIC Presentation from the Pew Registration Summit (July 2014) at 30-37, *available at* http://www.ericstates.org/images/documents/ERIC_July_2013_VR_Conference_Notes.pdf

²³ Bland, G., & Burden, B.C., Electronic Registration Information Center, Stage 1 evaluation, Report to the Pew Charitable Trusts, Research Triangle Park, NC: RTI International (Dec. 2013) at 23, *available at* <http://www.rti.org/publications/abstract.cfm?pubid=21769>.

²⁴ 2014 Participation Guide, *supra* note 6 at 5.

²⁵ Greenberg and Sherman, *supra* note 7.

²⁶ LC 2015, *supra* note 15 at 1.

-
- ²⁷ For example, Ada County, Idaho was forced to reinstate more than 750 voters after removing them erroneously using Crosscheck's name and date of birth matching program. See Cynthia Sewell, *Ada County Mistakenly Revokes 765 Voter Registrations*, *Idaho Statesman* (Aug. 29, 2014), available at <http://www.idahostatesman.com/2014/08/29/3346833/ada-mistakenly-revokes-765-voter.html>. Similarly, Chesterfield County, Virginia encountered a 17 percent error rate among active voters matched through Crosscheck. See Jim Nolan, *Chesterfield Registrar Delays Purge of Voter Rolls*, *Richmond Times-Dispatch* (Oct. 9, 2013), available at http://www.richmond.com/news/local/chesterfield/article_162e36b5-0be7-5dc8-af9f-48876a167b43.html
- ²⁸ See 2014 Participation Guide, *supra* note 6 at 4; see also Ohio Sec. of State Jon Husted's Directive 2014-15 (May 21, 2014), available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/Ohio425.pdf> (excluding "inactive" status Ohio voters from statewide mailing of absentee ballots).
- ²⁹ ERIC Summary, *supra* note 13.
- ³⁰ ERIC Bylaws, *supra* note 5 at 15.
- ³¹ See Memorandum of Understanding for Interstate Voter Registration Data Comparison (Jan. 2013) ("Crosscheck MOU"), available at http://www.aclupa.org/files/5413/9715/1471/DOS_RTK_cover_letter_3-10-141.pdf.
- ³² ERIC Summary, *supra* note 13.
- ³³ Greg Palast, *Jim Crow Returns: Millions of Minority Voters Threatened by Electoral Purge*, *Al Jazeera America* (Oct. 29, 2014), available at <http://projects.aljazeera.com/2014/double-voters/>.
- ³⁴ *Id.*
- ³⁵ *Id.*
- ³⁶ LC 2015, *supra* note 15 at 1.
- ³⁷ *Id.* at 1 (citing Crosscheck's 2015 Participation Guide).
- ³⁸ ERIC Summary, *supra* note 13.
- ³⁹ ERIC FAQ, *supra* note 9 at 2.
- ⁴⁰ See ERIC Mailing Assistance Program, available at <http://www.pewtrusts.org/en/projects/election-initiatives/about/eric/eric-mailing-assistance-program>.
- ⁴¹ LC 2015, *supra* note 15 at 1.
- ⁴² See Interstate Voter Registration Crosscheck Program, National Association of State Election Directors Presentation by the Office of the Kansas Secretary of State Kris Kobach (Jan. 26, 2013) at 13, available at http://www.aclupa.org/files/5413/9715/1471/DOS_RTK_cover_letter_3-10-141.pdf.