

LEGISLATIVE COMMITTEE MINUTES

# SB439

# Bill as Introduced

SB 439 - AS INTRODUCED

2018 SESSION

18-2883  
03/05

SENATE BILL        **439**

AN ACT        repealing the authority to share voter information or data with other states.

SPONSORS:     Sen. Lasky, Dist 13; Sen. Soucy, Dist 18; Sen. Woodburn, Dist 1; Sen. Watters,  
Dist 4; Sen. Kahn, Dist 10; Sen. Cavanaugh, Dist 16; Sen. Hennessey, Dist 5;  
Sen. Fuller Clark, Dist 21; Sen. D'Allesandro, Dist 20; Sen. Feltes, Dist 15; Rep.  
Cote, Hills. 31

COMMITTEE:    Election Law and Internal Affairs

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ANALYSIS

This bill repeals the authority to share voter information or data with other states.

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Explanation:    Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struckthrough~~].  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eighteen*

AN ACT                    repealing the authority to share voter information or data with other states.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

- 1        1 Repeal. The following are repealed:
- 2            I. RSA 654:45, VIII, relative to voter information or data sharing.
- 3            II. 2016, 175:2, relative to the Interstate Voter Registration Crosscheck Program.
- 4        2 Effective Date. This act shall take effect 60 days after its passage.

# Committee Minutes

# Senate Election Law and Internal Affairs Committee

*Tricia Melillo 271-3093*

**SB 439**, repealing the authority to share voter information or data with other states.

**Hearing Date:** January 16, 2018

**Members of the Committee Present:** Senators Birdsell, Gray, Sanborn, Soucy and Woodburn

**Members of the Committee Absent :** None

**Bill Analysis:** This bill repeals the authority to share voter information or data with other states.

**Sponsors:**

Sen. Lasky	Sen. Soucy	Sen. Woodburn
Sen. Watters	Sen. Kahn	Sen. Cavanaugh
Sen. Hennessey	Sen. Fuller Clark	Sen. D'Allesandro
Sen. Feltes	Rep. Cote	

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**Who supports the bill:** Senator Bette Lasky, Senator Martha Fuller Clark, Jeanne Hruska ACLU NH, Olivia Zink Open Democracy, Liz Wester America Votes, Shoshanna Kelly, Kyri Clafin, Representative Timothy Horrigan, Senator David Watters, Senator Jay Kahn, Melissa Hinebauch, Kathy Cahill, Sally Hatch, Elizabeth Corell, Deborah Bruss, Joseph Kwasnik, Denise Kwasnik, Kim Pooler, Gale Taylor, Marie Strauton, Janice Severana, Louise Spencer, Laura Aronson, Stephanie Kaligowski, Glenn Brackett, Ruth Heath, Ron Litalien, Ginny, Litalien

**Who opposes the bill:** Deputy Secretary of State David Scanlan

**Who is neutral on the bill:** None

**Summary of testimony presented in support:**

**Senator Bette Lasky – SD #13**

- This bill was signed into law by Governor Hassan in 2016
- It gave the Secretary of State the authority to establish and maintain a centralized voter database.
- It states that the voter database should be kept confidential.
- State joined the crosscheck program. A multi-state database a tool designed to catch voter fraud. Voters that were registered in multiple states. At the time it

was the best program and was being used by our neighbors Massachusetts and Vermont.

- Since 2016 we have more information to examine when considering our position in the Crosscheck program.
- Residents were dismayed when they learned that voter information would be given to the Presidents Commission on Voter Fraud.
- Nobody denies that New Hampshire wants clean elections but it is just as important to keep voter information secure and not vulnerable to outside tampering. The public needs to be secure in the knowledge that their information is kept confidential.
- Crosscheck has shown that its handling of voter information is not secure or reliable.
- Security experts have stated that Crosschecks data is on an insecure server that could be breached by a novice hacker. The system can be accessed without a password. Their passwords rarely change and are routinely transmitted through email.
- It only uses two points of data when searching for duplicate voter registrations. Last name and date of birth which could produce two people with the same last name and date of birth and not one voter registered in two states. This especially happens with common last names.
- Statistics show that out of 23 people there is a 50/50 chance that two people will share the same birthday.
- 2017 study showed that Crosscheck was wrong 99 percent of the time.
- In NH Crosscheck has a 50 percent error rate when telling election officials to remove voters from the check list because they are duplicates.
- Crosscheck has been shown to impact and disenfranchise minority voters.
- It is not free when you consider the valuable staff time used trying to fix Crosscheck errors.
- Due to these concerns Massachusetts and other states have removed themselves from the Crosscheck program.
- This bill removes NH from a program that is not safe or secure. We should be looking to make our voter file as clean as we can but Crosscheck does not accomplish that goal.
- Bill calls for removal from any program that compares voter data but open to NH entering into a more secure voter database system, ERIC.
- Would like to amend the bill to allow the Secretary of State to enroll NH in the more modern, secure system ERIC. Our neighbors Rhode Island and Connecticut are also members of ERIC.
- Instilling confidence in our voting system is a laudable goal and we should continue to try and achieve that.

## Jean Hruska – ACLU NH

- Here today to ask that you vote Ought to Pass on SB 439 so that Granite Staters' can rest assured that their voter data is secure and not vulnerable to hacking, tampering, and theft.
- As a state we put a premium on our right to privacy and any system that makes our voter data vulnerable must be closely scrutinized.
- The Crosscheck system leaves Granite Staters' vulnerable to hacking, tampering and theft.
- Security concerns have grown so much that many states are re-evaluating their participation in the program. Even Kansas has acknowledged the security concerns.
- Crosscheck is not accurate. It uses the two data points that are most likely to be shared by multiple people, last name and date of birth. The result is an abundance of false positives.
- Due to the litany of false positives, Crosscheck results in a financial and human resources burden on our state as we must re-examine the names that Crosscheck claims are duplicate voter registrations.
- It is not illegal to be registered to vote in more than one state. Crosscheck cannot confirm that the person is voting in more than one state only that they are registered.
- Crosscheck encourages the purging of voters and even sends states instructions on how to purge voters from their lists. Thousands of voters risk being disenfranchised merely because they are lawfully registered in more than one state or share a last name and date of birth with someone in another state.
- In September, the NH Secretary of State's office told supervisors of the checklist that they could remove voters flagged by Crosscheck without providing notification. This is a real concern.
- New Hampshire leaves its citizens vulnerable by continuing to participate in such an un-secure program.
- Senator Sanborn asked if the ACLU has done any testing to compare how often it happens that people have the same name and date of birth.
  - Have not done the research on our own but have studied the research by others and it happens more than you would think. There are a lot of names that are common with the date of birth for example people with children born in April will name them April, same for August.
- Senator Sanborn asked if the ACLU supports going from Crosscheck to ERIC.
  - Yes, we would support that.
- Senator Sanborn asked how ERIC is different from Crosscheck.



- ERIC uses more points of data which reduces the number of false positives.
- Senator Sanborn questioned why the ACLU would not be opposed to more points of personal data being checked.
  - Not be opposed if it was done in a secure place.

### **Liz Wester – America Votes**

- Urges the committee Ought to Pass so NH voters can be secure
- We should continue to lead the way of clean and accurate elections
- Crosscheck does not accomplish this due to security concerns and errors and only serves to purge and disqualify eligible voters.
- Granite Staters' do not want our voter information shared with others and Crosscheck does not keep it safe
- Many other states have opted out over security concerns and the time and cost of confirming the registration duplicates.
- ERIC is a product of Pew Charitable Trust and is more secure. It uses DMV records, social security, and post office records to ensure the accuracy of the voter information. The board is made up of participating states and not just a few of those states.
- Eighteen other states use the ERIC program.
- A Washington State audit of ERIC in 2014 found no cases in which people who were legally registered were falsified as ineligible.
- Oregon left Crosscheck because they found ERIC to be more secure and reliable.
- SB 439 is a proactive step in our shared goals of ensuring the integrity and security of our elections.
- Senator Sanborn asked if they support changing over to ERIC.
  - We do.
- Senator Sanborn questioned the fact that ERIC seems to be driven by motor voter something that NH does not participate in. He asked if she is advocating that the state of NH become a motor voter state.
  - We do not advocate becoming a motor voter state. Not sure how it will work not being a motor voter state.
- Senator Sanborn commented that ERIC is more of a voting advocacy organization. They state on their website that they actually will go out and contact voters to sign them up and provide education to states of how to register people electronically. This makes him a little uncomfortable because NH has never done motor voter and never looked to outside organizations to contact voters or register them. Asked how our state should support something like that.

- We would not be advocating that we change our registration process at all. We would just be looking to ERIC to keep our voter rolls.

### **Senator Bette Lasky – SD #13**

- Massachusetts has dropped out of Crosscheck in March of 2017
- Pennsylvania has dropped out with the Governor stating that ERIC has a more sophisticated process.
- Representative Bates is a supervisor of the check list and he mentioned in September that they were routinely being told to remove people from the voter rolls because of what Crosscheck was reporting without any additional investigation or notice.
- Secretary of State's office had to back track on the instructions of what to do with people flagged by the Crosscheck system because originally they stated voters could be removed without notification. The error was corrected.
- The city of Nashua had 50,000 to be removed, while the city of Manchester had 8,000. A logical person knows that those figures need to be looked into.
- We want our data looked at by a bi-partisan, non-partisan group and ERIC is run in conjunction with the Pew Charitable Organization. While Crosscheck is not run by people who are non-partisan or bi-partisan.
- The Crosscheck data has been shown to be wrong and other data points that need to be taken into consideration before someone is removed.

### **Summary of testimony presented in opposition:**

#### **David Scanlan – Deputy Secretary of State**

- It is in the public interest to keep our voter rolls as clean as possible and Crosscheck is a tool that allows us to do just that. It allows us to match our voting data after an election.
- The data is sent after an election within a certain period of time it is matched with other states and we get a report of duplicates and then the information is destroyed for that particular election
- That information is not added to our database until we can be certain that matches have been made.
- If there is an indication that a voter is living in another state they are not removed until we go through the process that allows that to happen. Part of that process is sending them a 30 day letter and them having the ability to respond.
- Even if a voter was accidentally removed from the list we have same day voter registration.

- We would welcome the possibility to participate in ERIC. It picks up other states and there are some states that do both programs.
- ERIC is used by our sister states of CT and RI.
- Maine and Massachusetts use Crosscheck.
- To get a complete picture we would need to participate in both.
- ERIC is more expensive while Crosscheck is relatively inexpensive and our experience so far with it has been just fine.
- Bud Fitch commented that the approach taken with the matches from Crosscheck is that there is a pair of voters that could be the same person or it might be a different person that shares a common last name and date of birth. Crosscheck does not tell us if it is the same voter. His task is to investigate if they are the same person or different people. The statute as he reads it gives the Secretary of State the general authority to pursue efforts to have clean records. No change in statute would be necessary for us to participate in ERIC or to coordinate efforts with other states to go over matched pairs.
- Senator Soucy commented that she is concerned about the cost in the Secretary of State's office if Crosscheck requires them to check the matches and send 30 day letters. Asked if they have done any cost analysis if there would be a savings using ERIC because we would be provided with more accurate data.
  - David Scanlan replied that they are in the middle of the process of doing that. The legislature did appropriate funds to allow this work to go forward. We will be prepared to give a report to the legislature when we get a handle on what that effort costs.
  - Bud Fitch added that it is important to think about the cost of the 30 day letters not as a cost of if; it is a cost of when. The expectation is that these people are going to show up in the ten year purges. What we will have is a huge accumulation of people that have moved out of state in that 10 year period that need to be purged from the rolls. This process that we are doing now is keeping the checklist more current on a year to year basis and also to benefit the municipalities by taking the deluge of work that they experience once every ten years and spread it out over time. We are also looking at what some of our colleagues in Massachusetts are doing in getting the voter to sign a form saying yes please keep me on the voter rolls in Massachusetts because I no longer live in NH. There are opportunities going forward to create more efficient ways of confirming voter registration between the states.
- Senator Woodburn commented that Massachusetts has ended its participation in the controversial voter system Crosscheck. It is run by Kansas Secretary of State who is very controversial. He questioned why they aren't they concerned about this outfit that we are doing business with.

- David Scanlan replied there is no question that Secretary of State Kobach is a bit of a lightning rod when it comes to elections. It is up to each state to determine how they are going to use the information they get from the program. From our perspective it is a reasonable way to check our lists and we are using it in the appropriate way for the state of New Hampshire.
- Bud Fitch replied that after the Help America Vote Act was introduced Crosscheck was created by a collaborative effort of many Secretaries of State to make it easy to compare voter lists. This was not something one Secretary of State created and has evolved over time.
- Senator Sanborn asked how many names they got back from the last election where roughly 680 thousand people voted and where are they in processing those matches. Also asked if we have on our registration forms an area that the voter can confirm if they are on another registry in another state.
  - Bud Fitch replied that we do have that on our forms and within the state it is somewhat automatic that if a person registers in one town they will be removed from the other town's registry. Current law only has a notice sent out in New England States if someone registers in another state you can automatically remove them from your check list. That process is working but a lot of voters do not fill out that part of the form. Also stated that they are not prepared to confirm how many matched pairs they have as they are still working through them.
- Senator Sanborn asked if there was a way to not accept a registration unless the voter completes that section that proves where they are coming from.
  - We do a lot of training with officials on the proper way to fill out the form. There is constant turnover in those positions but we do try and stay on top of that.

**Neutral Information Presented: None**

**Future Action: Pending**

# Speakers



# Senate Election Law & Internal Affairs Committee

## SIGN-IN SHEET

Date: 01/16/2018 Time: 9:20 a.m.

SB 439 AN ACT repealing the authority to share voter information or data with other states

Name/Representing (please print neatly)

Name/Representing	Support	Oppose	Speaking?	Yes	No
Sen. Fuller Clark SD#21	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
<del>Barry W Perry Liberty Lobby LLC</del>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
* Sen Jasky SD#13	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
* Jeanne Hruska ACLU-NH	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
* DAVID SCANLAN DEPUTY SECRETARY OF STATE	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Olivia Zink Open Democracy	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
* Liz Wester America Votes	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Shoshanna Kelly, Nashua Alderwoman at large	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Kyri Clafin Concord NH	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
<del>Harold Lynde Pelham NH</del>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Timothy Horgan Strafford	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. David Watters SD#4	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. Jay Kahn SD#10	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
MELISSA HINEBAUCH KSC	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Kathy Cahill Concord/KSC	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sally Harter Concord/KSC	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Elizabeth Corell Concord	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Deborah Bruss Concord	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
JOSEPH KWASNIK Concord	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>

# Testimony





**Statement by Jeanne Hruska, ACLU-NH**  
**Senate Election Law and Internal Affairs Committee**  
**Senate Bill 439**  
**January 16, 2018**

I submit this testimony on behalf of the American Civil Liberties Union of New Hampshire (ACLU)—a non-partisan, non-profit organization working to protect civil liberties throughout New Hampshire for over forty-five years. I am here today to ask that you recommend that the Senate vote *ought to pass* on SB439, so that Granite Staters can rest assured that their voter data is secure and not vulnerable to hacking, tampering, and theft.

As a state, we put a premium on our right to privacy. We have gone above and beyond other states in ensuring individual privacy protections. So **any system that knowingly leaves people's individualized data vulnerable to hacking, tampering, and theft must be closely scrutinized.**

The Interstate Voter Registration Crosscheck System does exactly that; it leaves Granite Staters' voter records vulnerable to hacking, tampering, and theft. **Individualized data provided to Crosscheck is hosted on an "unsecure server" that is unencrypted, vulnerable and outdated.**<sup>1</sup> Security experts have said that Crosscheck's server can be breached by a "novice hacker." Reinforcing this, Crosscheck's system appears to have been anonymously accessed without a password.<sup>2</sup> These known vulnerabilities should raise serious concerns for Granite Staters, and beg the question of why we are still participating in this program.

Security concerns have grown so much in recent months that states, including Idaho and Indiana, are re-evaluating their participation in the program. Even Kansas has acknowledged these security concerns and the need to re-evaluate security protocol. However, the Kansas Election Director has expressed uncertainty over whether his state's taxpayers will support paying to properly upgrade the program.

In addition to the serious security vulnerabilities, **Crosscheck is not accurate.** There are many ways to identify a person. The two most inaccurate data points – meaning the two points most likely to be shared by multiple people – are name and date of birth. And yet those are exactly the two, and the only two, data points that Crosscheck uses. It fails to use middle names or initials, partial social security numbers, or suffixes. Not surprisingly, **the result is an abundance of false positives.**

Due to the litany of false positives, **Crosscheck results in a significant financial and human resources burden on our state, as we must perform our own due diligence.** For instance, researchers at Stanford, Harvard, the University of Pennsylvania, and Microsoft found that Crosscheck "would eliminate about 200 registrations used to cast legitimate votes for every one

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<sup>1</sup> <https://www.propublica.org/article/crosscheck-the-voter-fraud-commission-wants-your-data-keep-it-safe>

<sup>2</sup> <https://www.propublica.org/article/crosscheck-the-voter-fraud-commission-wants-your-data-keep-it-safe>

registration used to cast a double vote.”<sup>3</sup> To prevent such massive purging of eligible voters, our state must expand our own resources to compare names that Crosscheck claims are duplicates with other data points. We know the Secretary of State’s office is currently spending staff time and resources to try to confirm whether “matches” from Crosscheck actually reflect unlawful voters.

Even if Crosscheck rightfully identifies that a person is registered in more than one state, it cannot confirm that that person is voting in more than one state. **It is not illegal to be registered in more than one state.** When people move, they notify their new state in order to acquire a new driver’s license and such, but rarely do they notify their former state that they are moving, and no law requires that they do otherwise. It is illegal to vote in two states during the same election, but merely knowing that a name – even if it is the same person – is registered in two states is not itself indicative of any wrongdoing and is insufficient data to act upon.

**Crosscheck encourages the purging of voters and even sends states instructions on how to purge voters from their list.** Kris Kobach, the Kansas Secretary of State, and promoter of Crosscheck, has repeatedly advised that any double registrant be purged from the voter rolls, regardless of whether there is any data of wrongdoing. If states comply with this, thousands of voters risk being disenfranchised merely because they are lawfully registered in more than one state, or worse because someone with their same first and last names and birthdate lives in a different state.

This is a real concern in New Hampshire. In September, the NH Secretary of State’s office erroneously told supervisors of the voter checklist that they could remove voters flagged by Crosscheck without providing notification.

As we prepare for the 2018 mid-term elections, we should care about the state of our voter rolls, but we should also put a premium on protecting our voter data. **If the last couple of years have demonstrated anything, it is the array of malicious actors out there who spend day after day trying to access personalized data on American citizens.** New Hampshire leaves its citizens vulnerable by continuing to participate in such an unsecure and vulnerable program. We urge this Committee to recommend to the Senate floor that this bill *ought to pass*.

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<sup>3</sup> <https://www.dropbox.com/s/fokd83nn4x6wuw9/OnePersonOneVote.pdf?dl=0>

# Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Tuesday, February 6, 2018

THE COMMITTEE ON Election Law and Internal Affairs

to which was referred **SB 439**

AN ACT

repealing the authority to share voter information  
or data with other states.

Having considered the same, the committee recommends that the Bill

IS INEXPEDIENT TO LEGISLATE

BY A VOTE OF: 3-1

Senator Andy Sanborn  
For the Committee

Tricia Melillo 271-3093