

**TESTIMONY OF
CHANDLER DAVIDSON
RADOSLAV TSANOFF PROFESSOR
OF PUBLIC AFFAIRS EMERITUS
RICE UNIVERSITY
BEFORE THE
UNITED STATES SENATE COMMITTEE
ON RULES AND ADMINISTRATION
February 27, 2008**

Executive Summary

This testimony consists of a summary of an academic research project three of my colleagues and I are conducting on the history of vote caging over the past fifty years. I define *vote caging* (or *voter caging*, as it is also called) as a process in which political operatives 1) send “do-not-forward” letters to registered voters of another party; 2) make a list of the names of those persons whose letters are returned unopened; and 3) use this “caging list” to challenge those persons if they appear in the election precinct at which they are officially registered, or to purge their names from the voter rolls in advance—the assumption being that they have changed their residence and are therefore not entitled to vote in their former precinct. I discuss the problems of using caging lists as accurate indicators of persons on the voter rolls who are ineligible to vote. I also note the tendency of vote cagers to focus on minorities and the poor, and in some cases to employ methods of intimidation.

A number of instances of vote caging efforts are discussed, beginning with those in Arizona in the 1950s and early 1960s, followed by notable cases in New Jersey in 1981, Louisiana in 1986, and North Carolina in 1990. Evidence is cited that the tempo of caging efforts has increased in the current century. According to the estimate of one student of the subject, “in 2004, political operatives targeted more than half a million voters in voter caging campaigns in nine states. At least 77,000 voters had their eligibility challenged between 2004 and 2006.”

Because of the inaccuracy of vote caging in identifying voters who cannot legally vote, and because of its partisan nature, I believe that vote caging should not be allowed. Surely in an advanced democratic society such as ours there are fair, effective, and efficient methods by which election officials, not party operatives, can ensure that the voter rolls are accurate.

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Madam Chairman and Ranking Member, thank you for inviting me to speak before your committee today. I am honored to do so. My purpose is to present a brief history of vote caging that my colleagues and I have written for a scholarly monograph in progress.*

The term *vote caging* is of recent vintage but it refers to a practice with roots in the post-Reconstruction Era of the Nineteenth Century.¹ In its modern form it has been in use at least since the 1950s. Its purpose is ostensibly to prevent ineligible persons from voting. It can nonetheless be used to prevent eligible voters of a party different from that of the vote cagers from casting their ballot.

I define *vote caging* (or *voter caging*, as it is sometimes called) as a process in which political operatives 1) typically send “do-not-forward” letters to registered voters of another party; 2) make a list of the names of those persons whose letters are returned

* My co-authors of that monograph are Tanya Dunlap, Ph.D.; Gale Kenny, Ph.D.; and Benjamin Wise, M.A.

¹ In 1878, the Florida legislature passed a law that gave local registrars the power to “correct” the registration lists by striking the names of voters who had died or moved away from the county in the preceding year. A correspondent for the *New York Times* reported, “Under this law the Commissioners in those counties where the negroes are in the majority claim to have arbitrary power to examine and purge the registration lists, and are striking off the names of Republican voters in sufficient numbers to carry out the Democratic plan to secure the defeat of...the Republican candidates for Congress.... In Leon County alone, where the negroes largely outnumber the whites, over 2,000 names are reported to have been stricken from the registration lists.... As in the other Gulf States, the election in Florida promises to be entirely harmonious and almost entirely unanimous. The Southern Democrats are at last conciliated.” (“General Political News: Disfranchising Republicans; The Florida Democratic ‘Plan’ For Disposing of Republican Majorities – Thousands of Names Stricken From the Voting Lists Under a Misconstruction of a State Law,” *The New York Times*, October 25, 1878, 1.) The preceding is taken verbatim from Frances Fox Piven, Lorraine C. Minnite, and Margaret Groarke, *“As Many As We Could”: Keeping the Black Vote Down in America*, forthcoming from The New Press. This nineteenth-century purging is not caging in the strict sense of our definition—no “do-not-forward” letters were sent by party operatives—but the motive behind some of the modern caging efforts is there, i.e., the desire by partisans arbitrarily to strike voters from the registration lists on the basis of race and party.

unopened; and 3) try to use this “caging list” either to challenge those persons if they appear in the election precinct at which they are officially registered, or to purge their names from the voter rolls in advance—the assumption being that they have changed their residence and are therefore not entitled to vote in their former precinct.²

Among the problems with caging is the fact that there are several reasons a do-not-forward letter may be returned: among them, unreliable mail delivery in high-poverty neighborhoods and mistakes by party operatives regarding both names and addresses of registrants.³ Justin Levitt and Andrew Allison list nine separate reasons why the practice of vote caging can lead to an inaccurate inference that the challenged voter is not qualified to vote.⁴ That vote caging is not simply a “good-government” nonpartisan effort to ensure fair elections is obvious from the fact that the do-not-forward letters are sent primarily to members of a party different from that of the vote cagers. Moreover, those voters most likely to be caged, often members of ethnic minorities, are disproportionately elderly or poor, or both, and may be intimidated when confronted with a challenge at the polls. Another problem with caging is that challenges at the polls slow the voting process, and if the lines outside the voting booth are long, many of those in line—also from the neighborhoods targeted by the cagers—may become discouraged and leave.

My colleagues and I, using standard scholarly sources, have identified a number of cases of vote caging since World War II, which either resulted in legitimate voters being prevented from voting or were brought to light before Election Day and enjoined from proceeding. However, we make no pretense that our list is comprehensive. It is impossible to obtain a scientific sample of caging efforts that have been carried out over the last half-century. Here are our findings.

- A series of caging incidents occurred in black and Latino precincts in Phoenix, Arizona, in various elections in the 1950s and 1960s. Republican operatives were involved in the Phoenix caging operations, although there was at least one case of Democrats responding to these operations in Republican precincts. Concomitant with the caging were acts of intimidation of minority voters, scuffles between challengers and voters, and failure of the cagers to comply with the law governing Election Day procedures.⁵
- The nationwide ballot-security program mounted by the Republican National Committee in 1964, called “Operation Eagle Eye,” printed

² See also Caging, Wikipedia, http://en.wikipedia.org/wiki/Caging_list.

³ On the problem of mail delivery, see Dayna L. Cunningham, “Who Are to be the Electors? A Reflection on the History of Voter Registration in the United States,” *Yale Law and Policy Review* 9 (1991): 393-4; See also John Chesnut, *Study of the U.S. Postal Service Reasons for Undeliverability of Census 2000 Mailout Questionnaires: Final Report* (Washington, D.C.: U.S. Census Bureau, September 30, 2003).

⁴ Justin Levitt and Andrew Allison, *A Guide to Voter Caging*, Brennan Center for Justice (June 2007), 3-7, available at http://www.brennancenter.org/dynamic/sub_pages/download_file_49608.pdf.

⁵ Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, *Republican Ballot Security Programs: Vote Protection or Vote Suppression—Or Both?* (2004), 17-24, available at http://www.votelaw.com/blog/blogdocs/GOP_Ballot_Security_Programs.pdf.

training materials recommending the use of first-class mailings with a return address and do-not-forward instructions in order to compile voter challenge lists.⁶

- A particularly noteworthy instance of caging occurred in the 1981 New Jersey gubernatorial election. In addition, operatives working for the RNC sent off-duty law enforcement officials to the polls and put posters in heavily black neighborhoods warning that violating election laws was a crime. This led to a consent decree in the court of Judge Dickinson R. Debevoise prohibiting the RNC (and the DNC as well, although it was not implicated) from engaging in some of the more egregious forms of vote suppression, including racial targeting.⁷
- In 1986, a caging effort by Republicans in a Louisiana senatorial race was enjoined by a federal judge, which led to the RNC being required to appear before Judge Debevoise once again and agree to submit all its future ballot security programs to his court for approval—an agreement still in effect.⁸ There was ample evidence that the vote caging was racially targeted. An operative in Louisiana wrote to a co-worker while the caging operation was under way, “I would guess that this program will eliminate at least 60-80,000 folks from the rolls. . . . If it’s a close race . . . which I’m assuming it is, this could keep the black vote down considerably.”⁹
- Another widely noted example of attempted caging occurred in the 1990 North Carolina general election contest between U.S. Senator Jesse Helms and his African-American challenger, Harvey Gantt. In that contest, the state Republican apparatus in conjunction with the Helms campaign sent out two mailings of first-class mail postcards containing false and threatening information. The first (81,000 cards) was sent to precincts in which 94 percent of the voters were black, and the second (44,000 cards) was sent exclusively to black voters. The Gantt campaign reported instances in which biracial couples received cards addressed only to the black member of the family. One purpose of both mailings was to obtain a list of black registrants whose cards were returned as undeliverable, in order to challenge them at the polls on election day—a plan that was frustrated at the last minute by Justice Department intervention.¹⁰

⁶ *Ibid.*, 28.

⁷ *Ibid.*, 48–51. See Consent Order, Democratic National Committee. v. Republican National Committee, Civ. No. 81-3876 (D.N.J. Nov. 1, 1982).

⁸ *Ibid.*, Davidson *et al.*, 60-1.

⁹ Thomas B. Edsall, “‘Ballot Security’ Effects Calculated; GOP Aide Said Louisiana Effort ‘Could Keep the Black Vote Down’,” *The Washington Post*, Oct. 24, 1986, A1.

¹⁰ Davidson, *et al.*, *op. cit.*, 73-4; Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, “Vote Caging as a Republican Ballot Security Technique,” *William Mitchell Law Review*, Vol. 34:2 (2008), 560.

The Brennan Center for Justice has recently published a chronological account of vote caging from the early years in Arizona mentioned above to five instances in 2004 in Ohio, Nevada, Pennsylvania, Florida, and Wisconsin.¹¹ Other actual or intended voter challenges in 2002 or later, which may have involved caging lists derived from techniques other than direct mail, are mentioned by Teresa James in a recent publication by Project Vote. She documents instances in Wisconsin in 2002 and 2004; North Carolina, South Carolina, Georgia, and Kentucky in 2004; Washington in 2005; and New York in 2006. James asserts that in 2004, political operatives targeted more than half a million voters in caging campaigns.¹²

Events in Wisconsin in 2004 indicate a new twist to caging techniques, which James calls “virtual caging.” As she describes it:

In lieu of an expensive and time-consuming direct mail caging operation, the 2004 Wisconsin Republican operation was unique in that it used a computer program to identify and scrutinize registered voters. The Republican group first used freedom-of-information laws to obtain the names of new voters, and then ran background checks on them, according to a contemporary *Wall Street Journal* report. Republicans checked the addresses of more than 300,000 people registered to vote in Milwaukee with a software program used by the U.S. Postal Service to determine if addresses were valid. Armed with the results of the virtual caging operation, the Republican Party filed challenges against the registrations of about 5,600 Milwaukee voters just three minutes before the deadline. As in other states, the party then launched a major media campaign to disclose its findings and lodge charges of voter fraud. [A subsequent investigation revealed that there were 33 cases of substantiated vote fraud in that election in Milwaukee, out of 277,565 votes cast. According to an expert in election law, “the vast majority of these allegations would have been addressed by adequate implementation of existing law.”]¹³

What have been the results of caging efforts over the years? It is impossible to answer this question with confidence. As noted earlier, a systematic, scientific sample of vote caging efforts is impossible to obtain. Moreover, some of the instances of caging efforts we have identified were discovered by the press or by members of the opposing party and stopped before caged voters could be challenged or purged. Theresa James estimates that “in 2004, political operatives targeted more than half a million voters in voter caging campaigns in nine states. At least 77,000 voters had their eligibility challenged between 2004 and 2006.”¹⁴

¹¹ Justin Levitt and Andrew Allison, *Reported Instances of Vote Caging*, Brennan Center for Justice (June 2007), 1-5, available at http://www.brennancenter.org/dynamic/subpages/download_file_49609.pdf.

¹² Teresa James, *Caging Democracy: A 50-Year History of Partisan Challenges to Minority Voters* (Washington, D.C.: Project Vote, September 2007), 4, available at http://projectvote.org/fileadmin/ProjectVote/Publications/Caging_Democracy_Report.pdf.

¹³ *Ibid.*, 21. Justin Levitt, *The Truth About Voter Fraud* (New York: Brennan Center for Justice, 2007), 31-32.

¹⁴ *Ibid.*, 4.

This, in very brief compass, constitutes our findings regarding vote caging over the years. While the cases we have identified in the post-World War II era have with one exception involved Republicans caging Democratic votes, it is possible that our research has overlooked instances of Democratic caging.

It is my considered judgment that vote caging, whether by Democrats or Republicans, is not a fair or effective way to determine the accuracy of voter rolls, not only because of its well-known methodological flaws but particularly because it is without exception a partisan enterprise aimed at removing members of the other party than that of the cagers from the rolls. More often than not, the targets belong to the same groups—ethnic and racial minorities—that have traditionally been victims of disfranchisement in America. Surely in an advanced democratic society such as ours there are fair, effective, and efficient methods by which election officials, not party operatives, can ensure that the voter rolls are accurate.

Biography of Chandler Davidson January 2008

Chandler Davidson, Research Professor and Radoslav Tsanoff Professor of Public Affairs Emeritus at Rice University, was honorably discharged from the U.S. Navy in 1962. He received the B.A. degree from the University of Texas at Austin and the Ph.D. degree from Princeton University. He taught at Rice University from 1966 to 2003, during which time he won a number of university-wide teaching prizes. He was a founder of the Rice Sociology Department in the early 1970s and later held a joint appointment in the Political Science Department. His works have been cited in several federal court opinions, including nine by the U.S. Supreme Court.

Davidson has written or edited books and articles on race, politics, and inequality. *Biracial Politics* was published in 1972. His edited collection, *Minority Vote Dilution*, published in 1984, was the first book-length scholarly treatment of that topic and was named to the Howard University Press Classic Library Series in 2004. *Controversies in Minority Voting*, co-edited with political scientist Bernard Grofman, was chosen as an Outstanding Book on Human Rights in the United States by the Gustavus Myers Center for the Study of Human Rights in 1993. *Quiet Revolution in the South*, also edited with Grofman, reports the results of a National Science Foundation-funded project they directed to determine the effects of the Voting Rights Act in the South; it won the Richard F. Fenno prize given by the American Political Science Association for the best book published in 1994 on legislative behavior; in 2005-06 it was widely cited in the debate over reauthorization of the non-permanent features of the Voting Rights Act. The book was entered in the record of the hearings on reauthorization held by the Judiciary Committee of the U.S. House of Representatives.

His monograph, *Race and Class in Texas Politics*, was published by Princeton University Press in 1990. He is also the primary author of a report published in 2006 under the auspices of the National Commission on the Voting Rights Act, of which he was a member, *Protecting Minority Voters: The Voting Rights Act at Work, 1982-2005*. (<http://www.votingrightsact.org>) This report, too, was cited during the 2006 debate over reauthorization of the Act and was entered in the congressional hearings record. Davidson was invited by the U.S. Senate Judiciary Committee to testify on the Act's reauthorization in May 2006. He had also submitted testimony in 1982 during that year's congressional hearings on reauthorization of the non-permanent features of the Act and was invited to appear at the "Voting Rights Roundtable" sponsored by the Subcommittee on Civil and Constitutional Rights, Judiciary Committee, U.S. House of Representatives, in May 1994.