

United States Senate
Committee on Rules and Administration Hearing
February 27, 2008
S. 2305 Caging Prohibition Act of 2007
Executive Summary of Testimony of J. Bradley King
Co-Director, Indiana Election Division of the Office of the Secretary of State of Indiana

- Federal and state laws need to strike the right balance between ensuring that each eligible voter has access to the ballot, while safeguarding the integrity of our elections.
- All election officials, whether Democratic, Republican, or neither, want clean voter registration lists.
- Ultimately voters benefit by having clean lists, and voter confidence in the integrity of the election process is increased.

- One of the “protections of the National Voter Registration Act of 1993” is to make certain that proper voter list maintenance is performed. Comprehensive voter list maintenance programs by election officials, including address confirmation mailings, are an essential tool to achieve that balance between access to the ballot and integrity of elections.
- A person can also be effectively denied his or her right to vote when their vote is “cancelled out” by a ballot cast by another individual who is not entitled to vote at that election.
- Bad voter registration lists, inflated with the names of deceased voters or voters who have moved away, carry the potential for fraud. Clean lists diminish these opportunities for fraud. This point was addressed by Justices during oral argument on Indiana’s photo ID law earlier this year.
- Voter registration list maintenance is already difficult due to 4 year time and 90 day pre-election constraints under NVRA; continued struggle for funding to keep rolls clean; partisan gridlock over how to perform voter list maintenance.
- Public confidence in the election process is undermined by bad lists. Voters who see names of former residents at their address still on the poll list, or who see names of deceased family members wonder if the election process is susceptible to corruption. Poll workers are frustrated when they see the same names of long-gone voters on their poll lists, election after election.

- S. 2305 strikes the wrong balance in seeking to apply additional constraints on election officials who are working to clean up, or maintain, accurate voter registration lists.
- Although application of some of its provisions is unclear, the clause that an “unverified list match” would include documents that do not contain sets of signatures, photographs, or unique identification number for individual is especially problematic. Is this intended to prevent inactivation when a voter registration acknowledgment card mailed to a new voter? What about death certificates, which would currently lack any of these pieces of information?
- Please make it easier to keep voter registration lists clean, not harder.

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Co-Director, Indiana Election Division of the Office of Secretary of State

Thank you, Madame Chair and members of the Committee. My name is Brad King. I serve as Co-Director of the Indiana Election Division, the state agency which helps voters, poll workers, and local officials conduct elections in Indiana.

My testimony can be summarized in a single sentence: please make it easier to keep voter registration lists clean -not harder.

Our laws need to strike the right balance between ensuring that each eligible voter has access to the ballot, while safeguarding the integrity of our elections. Comprehensive voter list maintenance programs, including address confirmation mailings, are an essential tool for us to use in achieving that balance.

All election officials, whether Democratic, Republican, or neither, want clean voter registration lists. Ultimately the voters benefit by having clean lists.

I have very limited knowledge regarding practice of "voter caging" by political organizations that this legislation seeks to address, and so I have no expert opinion to offer on that subject. However, I do know that bad registration lists, inflated with the names deceased voters or absent voters, carry the potential for fraud. Clean lists diminish opportunities for fraud.

S. 2305 does address an important concern: ensuring that every eligible voter can cast one, but only one, ballot. However, I respectfully suggest that this legislation attempts to cure a perceived symptom, but not the fundamental problem.

The fundamental problem here is the significant difficulties election officials already face to make (and keep) these registration lists accurate. To carry out this duty, election officials are compelled to stay between the inflexible, and sometimes ambiguous, lines drawn by the National Voter Registration Act (NVRA) and the Help America Vote Act. Their task is made more difficult by ongoing struggles to get the money they need to do this job. Finally, partisan gridlock can act as a ball and chain to hinder timely voter list maintenance and can even keep voter list maintenance from being done at all.

One difficulty in keeping voter lists clean results from how Americans live; voters are constantly on the move. If this voter is inclined to be dishonest, then the constraints on voter list maintenance will offer an opportunity for this former Hoosier to vote in **both** Indiana (by absentee ballot) and in person in South Dakota. This year, an individual might register to vote and legally cast a ballot in both the Indiana primary in May, and then in the South Dakota primary this summer.

However, unless this voter is both honest and conscientious, and provides previous address information, election officials must wait for the clock to run on the intricate procedures mandated by NVRA to perform voter list maintenance. As a result, this South Dakotan voter's name may remain on the Indiana registration rolls until after November 2010.

Indiana has struggled for years to keep its voter registration lists clean. County voter registration officials worked hard to keep the registration lists accurate, but still had to fight for the funds to do so, and to dispel the notion that election work was only required on two days out of the year.

Indiana enacted legislation to implement NVRA in 1995, but this occurred only after a federal court acted to end partisan gridlock between the state legislature and the governor's office over how to perform voter list maintenance. In other states across the nation, similar issue arose with regard to NVRA voter list maintenance requirements. These disputes were eventually resolved in the courts.

The court's order required the Election Division to perform only a limited amount of voter list maintenance: once a year, voters whose names appeared more than once on the registration rolls were sent confirmation mailings to determine if the names were truly those of "duplicate voters". The court order did not direct the Election Division to perform other essential tasks for voter list maintenance, such as identifying deceased voters, or identifying voters who may have moved entirely outside of Indiana, and whose names would therefore not appear on the state's "duplicate voter" list. As a result, these voter list maintenance tasks were not completed due to partisan gridlock.

In Indiana, the Election Division is headed by two Co-Directors. Each Co-Director is nominated by one of the two major political party chairs, and is then appointed by the Governor. Although the Election Division is, by its name, a division of "the office of the Secretary of State", in fact the Co-Directors work with the Secretary of State to help administer elections. The Secretary of State has no authority to supervise or direct the work of the office's "Election Division" or its Co-Directors. To complete the gridlock, neither the Secretary of State, nor the Governor, nor any other elected official has the power to simply "break a tie" when the two Co-Directors cannot agree on how to conduct voter list maintenance or make any other decision. If necessary, the courts are the only source for a remedy to end a partisan gridlock.

Indiana's Democratic Party appointee Co-Directors made it impossible to conduct any voter list maintenance beyond the limited scope of the "duplicate voter list". They would not agree to purchase the Social Security Administration's "Death Master File" to identify deceased voters. They would not agree to use the National Change of Address Program to identify voters who had moved. They certainly would not agree to conduct any kind of statewide mailing whatsoever.

As a result, Indiana's registration lists became increasingly bloated. During the course of the last decade, this lack of voter list maintenance led to ludicrous and alarming results: numerous counties in Indiana reported numbers of registered voters that approached, or even exceeded 100% of their voting age population. Some large counties had almost no voters whose registrations had been inactivated by using NVRA procedures.

Voter confidence in Indiana's elections began to be undermined when the media, using data readily available from public records, ran stories noting the large number of duplicate, deceased, or absent voter names that remained on the rolls.

Finally, during 2006, the U.S. Department of Justice notified the Co-Directors of the Election Division that Indiana was failing to comply with its voter list maintenance duties under NVRA, and that the Department would file a lawsuit to compel Indiana to meet these responsibilities. The Department made Indiana an offer: either enter into a consent decree, and act now to start cleaning up the registration lists, or face protracted litigation in the federal courts to get the job done.

Despite this call to action, the Democratic Party Co-Directors still would not agree to conduct voter list maintenance in accordance with the practices of other states. As the attached documents indicate, my then-colleague as Co-Director was unwilling to agree to Indiana's first statewide mailing of any kind to its voters. Only as Department of Justice attorneys were preparing to board a plane to Indianapolis to file their lawsuit in federal court did my colleague finally agree to sign the consent decree, and only after having been advised by the Indiana Democratic Party to do so.

As a result of the consent decree in the case, Indiana's Election Division sent more than 4.3 million post cards to the addresses listed on every Indiana voter record. The mailing was designed to automatically return-to-sender all registrations that are no longer accurate. This postcard was followed by a second mailing designed to confirm whether the returned postcards truly were from inaccurate records. While initial estimates were that 675,000 postcards would be returned to the state, the number posted by the deadline for response came to 1,018,008. Undeliverable postcards continued to roll in after that deadline, with more than 70,000 additional cards collected as of August 1, 2006. Unfortunately, due to delays in getting one of the state's two major political parties to sign off on the cleanup plan, the additional postcard records could not be removed until 2010.

As a result of this mailing, Indiana identified one in four of all the voter records in the state as potentially inaccurate.

All of the work by the state and county registration offices to update registration records based on this new information still had to be completed by August 10, 2006, when NVRA's "90 day deadline" before the general election cuts off many voter list maintenance activities.

To complete this voter list maintenance task, county officials spent many additional evening and weekend hours to individually review thousands of voter records. But some could not overcome the effect of years of voter list maintenance neglect within the short time allowed. One county determined that more than 5,000 of the registrations on its list should be designated as “inactive voters”, but missed the iron-clad 90 day NVRA deadline to enter its data into the voter registration system by just a few hours. As a result, these 5,000 voter names remained as active voters on the 2006 general election rolls.

Although Indiana continues to make progress in cleaning up its bad registration rolls, hundreds of thousands of “inactive” registrations remain on the lists, waiting for up to four years to pass before NVRA permits these registrations to be cancelled. Indiana’s record of ongoing problems with ensuring accurate registration lists were referenced several times during last month’s oral arguments before the United States Supreme Court in the Indiana photo ID cases. The plaintiff in one of these cases, *Indiana Democratic Party v. Rokita*, had previously advised its nominee as Indiana Election Division Co-Director to steadfastly oppose any statewide mailing as part of a comprehensive registration maintenance program.

Thanks to Indiana’s new statewide voter registration system, the Election Division can now monitor county progress in completing voter list maintenance tasks. Every large group of individuals includes some who are diligent, most who are competent, a few who are neither. Indiana’s voter registration officials are no different than any other group in this respect. But we have moved past the day when a newly elected voter registration official could, without warning, discover that her predecessor had bequeathed her stack after stack of unprocessed returned registration list mailings.

S.R. 2305, as currently written, appears to make it more difficult for state and local election administrators both in Indiana and throughout the nation to perform their already difficult task of voter list maintenance. Reliance on the information obtained from statewide mailings by election administrators has been the cornerstone of making progress in cleaning up registration lists, even within the legislative confines imposed by NVRA and HAVA.

Bad voter registration lists not only frustrate anyone involved in the election process – they undermine voter confidence in the accuracy and integrity of our elections. A voter who is also a parent simply does not understand why the name of her daughter remains on the precinct polling list years after the daughter moved away to college. At the university, the daughter may be astonished to discover that a dozen past students are registered to vote at her dormitory room’s address. Worst of all, a voter who continues to see the name of a deceased spouse on the rolls election after election is not encouraged by this painful reminder to turn out to vote next time.

Likewise poll workers, the under-appreciated and over-stressed women and men who faithfully serve all of us as voters, are frustrated by bad registration lists. They cannot understand why the government doesn’t respond when they volunteer the same

information year after year in the spirit of making their own precinct's voter list more accurate. They ask whether the government isn't listening when they write on the poll list that their neighbors have moved away, or whether the government doesn't trust them. Neither question encourages these critically needed poll workers to continue to serve.

Inflated voter registration lists also have an economic impact that ripples through the election process. To plan and ensure that **all** voters named on the list have access to the ballot, election officials must spend their limited funds for contingencies that will not occur. Additional voters require additional precincts, additional poll workers, additional voting machines, and additional printed poll lists, all at additional cost.

Why do so many state and local election administrators, poll workers and voters care about accurate voter registration lists? Because despite widespread suspicion and cynicism about the election process, they share a belief which is at the core of the American experiment in democracy: elections matter.

Thank you very much for the privilege of addressing the Committee today.

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Biography of J. Bradley King
Co-Director, Indiana Election Division of the Office of the Secretary of State of Indiana

- Born September 2, 1957, Noblesville, Indiana. A native of Omega, Indiana (population 50), where “mayor” is an honorary title, not an elected office

- B.A., Indiana University, 1978, in History and Political Science (honors)
- J.D., College of William and Mary, 1981

- Admitted to the Bar of the State of California, 1982
- Admitted to the Bar of the State of Indiana, 1985
- Admitted the Bar of the United States Supreme Court, 2008

- Senior Staff Attorney, Indiana Legislative Services Agency (a nonpartisan agency providing legal drafting and committee counsel services to the Indiana General Assembly).
 - Served as counsel for the Indiana Senate Elections Committee, Indiana House Elections Committee, Indiana Senate Judiciary Committee, and Indiana House Judiciary Committee, 1985-1990
 - Assisted with recodification of Indiana Election Code, 1986-1987.

- Assistant Corporation Counsel, City of Indianapolis Legal Division, 1990-1992
Served as counsel for Marion County Board of Voter Registration

- General Counsel to the Indiana State Election Board (following agency reorganization, served as Co-General Counsel to the Indiana Election Division, Office of the Secretary of State), 1992-1999

- State Election Director, State of Minnesota, 1999-2002
 - Supervised upgrade of existing statewide voter registration system

- Co-Director of the Indiana Election Division of the Office of the Secretary of State, 2002 to present
 - Supervised creation of state’s first statewide voter registration system

- Indiana state representative, United States Election Assistance Commission Standards Board, 2007 to present

- Secretary to Executive Board, National Association of State Election Directors (NASED), 2008 to present

We now stand at a unique point in our state's history. We have the tools and the funding, available through HAVA, to conduct a comprehensive statewide voter registration maintenance program. Voter list maintenance can now move beyond the limited scope performed by the Election Division in previous years through the "Duplicate Voter Registration Elimination Project" to identify other voters whose registration address is now inaccurate. For example, the name of a voter who moved to another address, but did not re-register or who moved out of Indiana entirely would never have appeared on any list of potentially duplicate voter registrations prepared since 1995. As a result, I believe that the large number of Indiana counties who have more than 100% of their voting age population listed as registered voters points out the critical need for a comprehensive state level voter list maintenance program.

I propose that the NVRA Officers act under current state law, and in accordance with NVRA, to conduct a residency confirmation and outreach procedure (Indiana Code 3-7-38.2-16). Under this procedure, a voter education and outreach mailing would be sent to every voter in Indiana. The Election Division would then send a confirmation notice to any voter whose initial mailing is returned by the United States Postal Service as the result of an inaccurate or outdated address.

In addition to their voter list maintenance responsibilities as the state's NVRA officials, the Co-Directors of the Indiana Election Division are also required by Indiana law to jointly consent to the expenditure of HAVA funds for voter list maintenance or other purposes. I write today to urge that you and your party's Co-Director recognize both the value and necessity of conducting a comprehensive voter registration list mailing by consenting to the expenditure of HAVA funds for this purpose. Conducting this program will both ensure that Indiana fully complies with NVRA's requirements, and begin the ongoing process of state monitoring and oversight of county voter registration list maintenance.

Federal law requires that county voter registration officials complete their NVRA voter list maintenance work by making any changes to their lists based on this information no later than 90 days before an election. As a result, this deadline falls on August 9, 2006 for any voter list maintenance program conducted this year.

If we are unable to conduct a state level voter list maintenance program in time to permit county voter registration officers to act on this information by the August 9th deadline, the ability to fully clean up Indiana's voter registration rolls would be delayed another two years. Any voter whose registration address is identified by the United States Postal Service as currently incorrect, and who does not respond to the follow-up notice, or vote at that registration address during the 2006, 2007, or 2008 elections would remain on the registration rolls until December 2008. If that voter did not vote by the 2008 General Election, he would then be removed entirely. However, if no timely voter list maintenance program is conducted and completed in 2006, then these inaccurate or outdated registrations will remain on the rolls until after the November 2010 election, at the earliest. That would further waste taxpayers' money and continue to contribute to the potential for election fraud.

The county voter registration officials will need adequate time to process any registration information that comes from such a comprehensive mailing. As a practical matter, we must begin preparing for these mailings immediately by reserving mailing equipment and

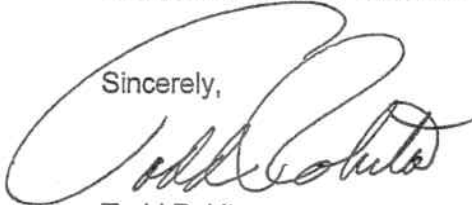
services so that 4.3 million Hoosier voters can receive this educational and outreach mailing in time for the voter list maintenance program to be completed in accordance with federal law.

As a result, I ask that you communicate your support concerning this matter to the Co-Director affiliated with your party no later than Wednesday, April 18th as this would allow the Co-Directors the time necessary to make arrangements for this educational and outreach mailing to be sent out to the voters beginning on or about May 9th and would be able to finish the project by August 9, 2006.

Together, we can leverage the new Statewide Voter Registration System, and available federal funds, to achieve what has never before been possible in Indiana. Both political parties stand to gain from more accurate voter registration lists, and for more secure and fair elections that would result from fulfilling our State's voter list maintenance responsibilities under federal and state law.

I thank you for your consideration, and encourage your support in improving our electoral process to which we all owe a great debt. Please do not hesitate to contact me, at 232-6536, if I can be of further assistance in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Todd Rokita".

Todd Rokita
Indiana Secretary of State

Cc:

J. Bradley King, Co-Director, Indiana Election Division
Kristi Robertson, Co-Director, Indiana Election Division
Mr. John Tanner, U.S. Department of Justice, Civil Rights Division, Voting Section
Mr. Eric Eversole, U.S. Department of Justice, Civil Rights Division, Voting Section