

The Honorable Sheldon Whitehouse, R.I.

United States Senate

Author of S.2305, "Caging Prohibition Act of 2007."

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Madam Chairman, Mr. Ranking Member, members of the Committee, I am pleased to come before the Rules Committee today to testify about the *Caging Prohibition Act*.

It is an unfortunate reality that, with so much at stake in the ballot box, organized efforts to suppress the vote go nearly as far back as the right to vote itself. These efforts have cast a shadow over what Chief Justice Earl Warren called “the essence of a Democratic society”: the right to vote freely for the candidate of one’s choice.

In recent years, we have witnessed the re-emergence of an especially nefarious voter suppression tactic, which has come to be known as “vote caging.” As Professor Davidson, who will testify later this morning, has noted, caging is a three-step process. First, a campaign identifies a geographic area with a disproportionate number of registered voters who belong to the opposite party – sometimes, but not always, taking the ethnic or racial makeup of that area into account. Second, the campaign sends “do not forward/return to sender” letters to voters in that area. Third, the campaign challenges the right to vote of those citizens whose mail was returned “undelivered” – on the grounds that the voter does not live at the registered address.

Of course, there are many reasons why a piece of mail might be “returned to sender” that have nothing whatsoever to do with a voter’s eligibility. For example, a voter might be an active member of the armed forces and stationed far from home, or a student who is lawfully registered at his parents’ address. Even a typographical error during entry of the voter’s registration information might result in a “false negative.” Nevertheless, these individuals end up facing a challenge at the polls, and possibly losing their right to vote. It is especially galling that those who engage in vote caging often portray it as an *anti*-fraud measure, when it is really just the opposite: a nefarious way to compile obviously unreliable lists that will be used to challenge legitimate voters.

Caging came into the media spotlight this summer, during Congress’ investigation into the politicization of the Department of Justice and the dismissal of United States Attorneys, but the practice is neither new nor rare. Indeed, vote caging was used as early as 1960 in Arizona and continued, in fits and starts, through the 2004 elections – when evidence surfaced that voter caging lists were being compiled. While not every voter caging effort is successful in disenfranchising large numbers of voters, the failure of a voter suppression effort is no excuse for its legality. Indeed, Minnesota, California, and my home state of Rhode Island have enacted state laws prohibiting vote caging.

Accordingly, I have introduced the *Caging Prohibition Act*, which would prohibit (in any federal election) challenging a person’s eligibility to vote (or to register to vote) based on a caging list. Simply put, eligible voters should not fear their right to vote might be challenged at the polls because a single piece of mail never reached them. The bill would

also require any private party who challenges the right of another citizen to vote (or register to vote) to set forth in writing, under penalty of perjury, the specific grounds for the alleged ineligibility. The principle here is simple: if you are going to challenge a person's fundamental right to vote, you should at least have cause and be willing to stand behind it. Finally, the bill would prohibit purging voters from the rolls based on unreliable data – by requiring any list used to purge voters to include a signature, photograph, or unique identifying number, in order to make sure that eligible voters are not inadvertently struck from the rolls. This would prevent unreliable voter purges of the sort that occurred during the 2000 election in Florida.

Before concluding, I would like to take a brief moment to note the extraordinary group of Senators who have agreed to be original cosponsors of this legislation: Senators Leahy, Feinstein, Dodd, Harkin, Kerry, Feingold, Schumer, Nelson of Florida, Clinton, Obama, Menendez, Brown, and Klobuchar. I was also proud to work closely with the Brennan Center for Justice and the Lawyers Committee for Civil Rights Under Law to develop this bill.

Madam Chairman, in the 1964 case of Reynolds v. Sims, the Supreme Court stated: “the right to exercise the franchise in a free and unimpaired matter is preservative of other basic civil and political rights. . .” In other words, every right we have depends upon the right to vote. Organized voter suppression efforts, including “vote caging” schemes, infringe on this right and undermine our democracy. Congress should rise to the occasion and say “enough is enough” to “vote caging.”