



February 25, 2008

The Honorable Dianne Feinstein
Chairman, Senate Committee on Rules and Administration
United States Senate
305 Russell Office Building
Washington, DC 20510

The Honorable Robert Bennett
Ranking Member, Senate Committee on Rules and Administration
United States Senate
305 Russell Office Building
Washington, DC 20510

Dear Chairman Feinstein and Ranking Member Bennett:

On behalf of Project Vote, I would like to thank you for the opportunity to submit comments to the Committee regarding 2007 US 2305, the Caging Prohibition Act of 2007. We request that these comments be entered into the record of the Hearing on Protecting Voters at Home and at the Polls: Limiting Abusive Robocalls and Vote Caging Practices, scheduled for February 27, 2008.

Project Vote is a non-profit 503(c) organization that is a leading technical assistance and direct service provider to the civic participation community. Since its founding in 1982, we have provided professional training, management, evaluation and technical services on a broad continuum of key issues related to election administration, voter engagement and participation in low-income and minority communities. A primary mission of Project Vote is to promote increasing participation in the election process across all ethnic groups as well as within moderate to low-income communities.

The Caging Prohibition Act of 2007 represents an important step in preventing the unwarranted disenfranchisement of eligible citizens, particularly minorities. Vote caging represents the interference of partisan private interests in the official conduct of our elections. Under the National Voter Registration Act, each state must appoint a chief election officer to oversee and direct the administration of elections. In all states, the administration of elections is placed in the hands of non-partisan, or bi-partisan, public officials or bodies that are accountable for their actions and subject to state and federal laws and regulations. Elections, the foundation of our democracy rests in their hands. Chief among their duties are the maintenance of voter registration rolls and the conduct of state and federal elections. Voter registration roll maintenance is subject to the provisions of the National Voter Registration Act (NVRA), which was enacted to make registration available to all eligible citizens and to safeguard against the removal of individuals from those rolls except under certain clearly identified circumstances.

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In the last fifty years, and increasingly since the 2000 presidential election, organized political parties and groups or individuals associated with political parties, have sought to exert partisan control over governmental voter registration roll maintenance and the polling place. Most notably, this has been done by “voter caging,” the practice of sending out a mass mailing by non-forwardable mail and developing a “caging list” of those voters whose mail was returned. The mailing targets to minority communities and/or communities that voted primarily for the opposition party. The caging list is then used to file mass challenges under state laws to the registration or Election Day eligibility of such voters. At times, partisan groups have used computer database matching techniques, often poorly designed or outdated, to compile voter caging lists.

Self-described as “ballot security” programs by parties that use the scheme, voter caging takes advantage of voter challenge statutes on the books in nearly every state. Under such statutes a private citizen may challenge the right of an individual to remain registered or to vote. Many such statutes have their roots in the Post-Reconstruction Era, when they were used to disqualify newly enfranchised African Americans in the Southern states, and to a somewhat lesser extent in Northern states.

Voter challenge laws can be a useful adjunct to efficient election administration when applied by individual citizens who have specific first hand, reliable knowledge that a particular individual in his or her community is, in fact, not eligible to vote. However, they are grossly misused when a political party or its agents target certain ethnic communities or opposition strongholds for thousands of last minute challenges based on questionable data or a single mass mailing.

Project Vote strongly supports the section of Senate Bill US 2305 that mandates firsthand knowledge as the basis for a challenge. This will limit the use of challenge laws to a proper purpose, that of an adjunct to official election administration to be used when an individual citizen personally knows that a fellow citizen is not eligible. It will prevent partisan entities from hijacking the process of elections for partisan gains. We also encourage the Committee to recommend an amendment to section (c)(1) to add the requirement of firsthand knowledge to the list of mandatory elements of a formal challenge in addition to placing the requirement in the section heading.

The provisions of Senate Bill US 2305 which prohibit the use of voter caging lists as the basis of a challenge against voter eligibility will also go far toward preventing the misuse of state voter challenge laws for partisan purposes. Section 8 of National Voter Registration Act clearly mandates the steps that state elections officials must take before removing a registered voter from the rolls on the basis of a change of residence. States may not remove a voter from the registration list as a consequence of moving unless (1) the voter confirms in writing that the voter has moved outside the registrar’s jurisdiction or (2) the voter has failed to respond to “a postage prepaid, pre-addressed return card sent by forwardable mail” AND has not voted in two consecutive Federal elections following the date of the notice.¹ Partisan voter caging campaigns obviate the NVRA and short cut the process of official voter removal due to a change of address.

¹ 42 U.S.C. 1973gg-6 (d)(1), 42 U.S.C. 1973gg-6 (d)(2)

The carefully crafted safeguards put in place by the NVRA to avoid mistakes in purging voters from the rolls for a change of address are completely bypassed. Under the guise of ballot security, partisans seek to “privatize” the carefully regulated maintenance of our state voter registration rolls out of a patent desire to suppress the opposition vote. This is apparent from the fact that voter caging operations are not practiced on the general voting population, but on targeted groups.

State challenge laws have been increasingly co-opted in recent years by partisan political parties, groups and even individuals. All can agree that there is no place in the public administration of elections for partisan motives. Yet, by misuse of challenge laws and carefully timed media campaigns to publicize the mass challenges, partisan groups have repeatedly cast a monkey wrench into the increasingly challenging and costly process of conducting elections. In so doing they have created unnecessary chaos and frustration for election officials, helped establish an unwarranted mistrust in the conduct of elections, falsely created the impression that election fraud is rampant.

Project Vote urges the passage of the Caging Prohibition Act of 2007 as a means to prevent the misuse of state challenge laws as a tool to target opposition groups under the guise of ballot security. State challenge statutes were not designed to permit political parties to interject their own eleventh-hour “list maintenance” procedures into the public administration of elections. Elections officials have the tools, the resources and the expertise and the guidance under NVRA to conduct list maintenance on a non-partisan basis. The public entrusts this role to public officials who are then accountable for their decisions. Partisan groups are not subject to such accountability. By passing Senate Bill US 2305, this body can help to preserve state challenge laws for their proper purpose, as a means for individuals with specific knowledge to challenge the eligibility of others in their community whom they know to be ineligible based on first-hand knowledge.

The history of “voter caging,” the term used by partisan groups within their own parties to refer to this voter purging program, demonstrates that it has increasingly become a part of a unfortunate “bag of tricks” designed to manipulate voter turnout among ethnic groups and supporters of opposition parties. As early as the 1950’s partisan political interests used targeted mailing campaigns to amass voter challenges against ethnic groups that traditionally voted for opposition parties in particular states. In 1964, a nationwide effort was conducted by the Republican National Committee (RNC). Dubbed “Operation Eagle Eye,” this campaign used mailing lists targeted at opposition groups. Mailings were not sent to areas with strong concentrations of Republican voters, thus undermining the claim that such programs are intended to prevent voter fraud. Both major political parties have been guilty of fraud-related scandals, it is not a one-sided phenomenon. Moreover, voter fraud, when encountered, rarely involves voter impersonation, the type of fraud that challenges are designed to prevent.²

² The Politics of Voter Fraud, Lorraine C. Minnite, Ph. D., Barnard College,
http://projectvote.org/fileadmin/ProjectVote/Publications/Politics_of_Voter_Fraud_Final.pdf

In the 1980's, the RNC entered into a consent decree in the New Jersey U.S. District Court in which it agreed not to target specific minority groups for vote caging and challenges. The consent decree was the outcome of litigation aimed at a New Jersey voter caging operation that targeted minority groups. The original consent decree was followed by a subsequent consent decree in which the committee agreed not to engage in any "ballot security" programs without prior court approval. This decree arose out of litigation filed in response to a Louisiana vote caging operation. In that instance, the proposed mailing was targeted at areas that had voted at least 75 percent for Democrats in the last election.³

In 2004, the misuse of state voter challenge laws reached its apogee with partisan challenge campaigns across the nation, in Ohio, Florida, Wisconsin, Michigan, Nevada, North Carolina, South Carolina, Georgia and Kentucky. Although pre-dominantly used by the Republican Party in national elections, voter caging has been employed by both parties. In King County, Washington, a 2005 voter caging operation led to strong voter reaction when members of one party used a vendor to create a caging list. The vendor used a poorly-designed database matching technique that failed to match the recipients' addresses correctly. As a result, even regular voters who had consistently voted at the same location for many years received challenge notices and election officials struggled to straighten out the resulting confusion and outrage in the weeks before an election.

Vote caging is not confined to federal elections. It has been also used by local officials to challenge supporters of their opponents in bitterly fought campaigns for local offices. Westchester County, New York, was the site of one such battle in 2006. The result was confusion and a great deal of unnecessary work on the part of election authorities in the busy days and weeks before an election. There are indications that it will be used again as a political tool in the 2008 Presidential election. The state challenger laws in Florida and Ohio have been amended since 2004 in ways that would make private, and inevitably partisan, voter challenges easier.

The passage of this act will go far to prevent such partisan intervention in elections. All members of Congress can agree that partisan politics, whether red or blue or any other political hue, have no place in the administration of elections.

Sincerely,



Maxine Nelson
Board President

³ Caging Democracy, a Fifty-Year History of Partisan Challenges to Minority Voters, Project Vote, p. 14
http://projectvote.org/fileadmin/ProjectVote/Publications/Caging_Democracy_Report.pdf

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Testimony of

**Justin Levitt, Counsel
Brennan Center for Justice at NYU School of Law**

**Submitted to the
United States Senate Committee on Rules and Administration**

Protecting Voters at Home and at the Polls

February 27, 2008

On behalf of the Brennan Center for Justice at New York University School of Law, I thank the Senate Committee on Rules and Administration for holding this hearing and for providing the opportunity to submit testimony regarding vote caging and other unreliable practices that threaten the voting rights of eligible citizens and the integrity of our voter registration lists. We have strongly supported measures that prevent the undue disenfranchisement of citizens based on inaccurate or unreliable information, and we are pleased to have the chance to do so again today, by supporting the Caging Prohibition Act of 2007.

The Brennan Center for Justice at New York University School of Law is a non-partisan public policy and legal advocacy organization that focuses on fundamental issues of democracy and justice. The Center's Democracy Program promotes reforms that foster full and equal political participation and responsive and responsible governance.

We have done extensive work on a range of voting issues, including voter registration and list maintenance practices. Our work on these topics has included the publication of studies and reports; assistance to federal and state administrative and legislative bodies with responsibility over elections; and, when necessary, participation in litigation to compel states to comply with their obligations under federal law and the Constitution. Most recently, we produced two short publications concerning caging practices that we have submitted with this testimony. In addition, we have secured federal court orders in both Washington and Florida enjoining barriers to registration caused by unreliable list maintenance procedures, and we have a study forthcoming of purge practices, including some practices predicated on unreliable information.

We share a widespread concern about the accuracy of voter registration lists, and about effective election administration that guarantees the integrity of the election process. Where registration is a prerequisite for voting, our voter rolls should accurately

reflect each and every eligible citizen who has registered to vote, and only those citizens. And our voting procedures should ensure that eligible citizens are able to vote without undue difficulty or unwarranted burdens.

We know that voter rolls must be diligently maintained to ensure their accuracy. Approximately 1 in 7 Americans moves each year; others pass on; still others become ineligible to vote. Congress has recognized that these changes impact the voter rolls, and several federal laws, including the Help America Vote Act of 2002 and the National Voter Registration Act of 1993 (“NVRA”), create or reinforce the obligation for states to maintain the registration lists accurately and in good condition. Both laws clearly recognize that the states must safeguard eligible voters as they purge the lists of ineligible ones. Conscientious elections officials across the country strive to maintain their voter rolls in a way that protects voting rights.

Unfortunately, however, we have seen a recent resurgence of tactics that jeopardize this objective, by using unreliable or inaccurate information to question individuals’ eligibility or registration status. Such techniques do not ensure the accuracy of the rolls. Indeed, these tactics place the burden of errors on voters, risking the disenfranchisement of eligible citizens. As a result, the integrity of the election process is undermined.

Vote caging is one such tactic, with a long and ignominious history. In its most common incarnation, nonforwardable mail is sent to registered voters. Some of this mail is returned as undeliverable, often for reasons unrelated to the voter’s legitimate registration address. For example, a trivial data entry error in the house number may cause mail to be returned as undeliverable. A voter who collects mail at a P.O. box may have mail sent to her house’s street address returned as undeliverable. A voter in group housing but not listed on the mailbox may have mail returned as undeliverable. As the NVRA recognizes, broad mailing operations may be useful starting points for maintaining the rolls, but they have serious limitations.

Caging operations, however, take the results of a mailing, errors and all, and use them to threaten individual rights. The undeliverable mail is used immediately to challenge the registration status of the voters in question, either with the local registrar, or worse, at the polls on Election Day.

Moreover, caging operations have too frequently been directed in partisan fashion, or worse, at minority communities. And too frequently, they have succeeded in jeopardizing the rights of wholly legitimate voters. Eligible voters have been caged because of typographical errors or clerical mistakes. Deployed military personnel have been caged. Members of Congress have been caged.

In 2004, after a promising hiatus, evidence of voter caging or preparation for voter caging operations surfaced in at least five states.

Moreover, new technologies — particularly, computerized databases of registered voters, and computerized databases of public health and safety records — provide new tools for maintaining the accuracy of the voter lists, but these tools can also be used in ways no more reliable than the flawed caging technique. Challengers try to “match” computerized lists of registered voters to computerized lists that show ineligibility, such as death or conviction records. Often, they match names, or names and birthdates — but the John Smith or Manuel Garcia who has died is not necessarily the same John Smith or Manuel Garcia on the rolls suddenly facing a challenge. The notoriously inaccurate purges in Florida in 2000 provide one example of purges premised on unreliable matching techniques. Similar problems plagued challenges in Milwaukee in 2004, and in Washington State in 2005.

Caging has a long history, whereas challenges based on list-matching techniques are somewhat more recent, but both can be unreliable, and both have been misused. Sometimes, the challenges are brought by individuals with sincere but unwarranted faith in the accuracy of the caging techniques. Sometimes they are brought by activists who are aware that the data is unreliable. Regardless of the motive, eligible voters suffer. Indeed, when caging or unreliable list-matching operations are executed through challenges at the polls, the election process can become bogged down for all voters in line, challenged and unchallenged alike.

For these reasons, we urge this Committee to support the Caging Prohibition Act of 2007. We believe that this bill strikes a sensible balance in ensuring that the rolls are accurately maintained, without undue threat to eligible citizens. It preserves every state’s obligation to follow the procedures outlined in the NVRA, tracking voters as they move and updating the rolls accordingly. It also preserves ample flexibility for both election officials and private citizens to challenge the eligibility or registration status of voters, as permitted by state law, using reliable information. However, the Caging Prohibition Act would prevent individuals from jeopardizing the voting rights of eligible citizens based on uncorroborated unreliable information — like the practices at the heart of the most notorious caging operations. We support this approach as a substantial step forward in ensuring that our elections are conducted with integrity.

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A Guide to Voter Caging

Justin Levitt and Andrew Allison
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“Voter caging” is again in the news,¹ following revelations that the practice was anticipated or used in five states in 2004 and that it may have been condoned or authorized by senior national campaign officials. Voter caging is a notoriously unreliable means of calling the voter rolls into question and can lead to unwarranted purges or challenges of eligible citizens. When it is targeted at minority voters (as it often is, unfortunately), it is also illegal. This guide helps to explain what voter caging is, how it has been used in the past, and why it is unreliable – and should not be used as the sole basis for any purges of the voter rolls or challenges to voter eligibility.

What Is Voter Caging?

“Caging” is a generic term that describes the sorting of returned direct-mail pieces – sometimes to process contributions, and sometimes to weed out unprofitable addresses. The term is reportedly derived from the postal cubby holes, resembling cages, that are used for sorting mail.² In many of its applications, “caging” is both standard practice and benign.

“Voter caging” is a distinct form of caging, and much more dangerous. Voter caging is the practice of sending mail to addresses on the voter rolls, compiling a list of the mail that is returned undelivered, and using that list to purge or challenge voters’ registrations on the grounds that the voters on the list do not legally reside at their registered addresses.

Supporters of voter caging defend the practice as a means of preventing votes cast by ineligible voters. Voter caging, however, is notoriously unreliable. If it is treated (unjustifiably) as the sole basis for determining that a voter is ineligible or does not live at the address at which he or she registered, it can lead to the unwarranted purge or challenge of eligible voters.

Moreover, these purges or challenges are seldom neutral. Voter caging is almost always pursued with partisan aims, and caging lists are often targeted expressly at

registered members of the opposing party. Moreover, the practice has often been targeted at minority voters, making the effects even more pernicious. In 1986, for example, a notorious memorandum unearthed in litigation, sent from one regional party political director to another, described the likely effect of a voter caging program on the upcoming Senate race in Louisiana:

I know this race is really important to you. 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.³

Voter caging programs are often challenged in lawsuits. Two of the best known lawsuits to date have resulted in consent decrees against the Republican National Committee, prohibiting racially targeted voter caging and requiring other ballot security programs to be pre-approved by a federal court.⁴

Moreover, Congress has recognized that voter caging is unreliable. It has, for example, strictly limited the extent to which states can use caging techniques to purge their voter rolls under the National Voter Registration Act (NVRA),⁵ better known as the Motor-Voter Law.

In particular, Congress recognized that voters move, and that the voter rolls may become outdated; it also recognized that there are many reasons why mail may go awry. The NVRA therefore carefully regulates the conditions under which a state may purge a registered voter based only on undelivered mail. Mail used for this purpose must be forwardable, with a notice to the voter to return an enclosed postage-paid card to the relevant registrar. If the voter does not return the card, she can be flagged – but she remains eligible to vote, and need only confirm her address before voting. Once the mail is sent, the voter has at least two federal elections to show up, confirm her address, and vote, before a purge can take effect.

The NVRA presented a sensible compromise between the need to maintain accurate rolls and the need to protect voters from unwarranted disenfranchisement due to common errors in the caging process. Unfortunately, aggressive caging programs often ignore the needs of voters that Congress sought to protect.

Why Is Voter Caging Unreliable?

Voter caging is closely related to other techniques that use unreliable data to draw undue conclusions concerning voters' eligibility and then seek to use those conclusions to justify blunt and sweeping purges and challenges. Based on extensive study of various threats to citizens' voter registration status, the Brennan Center has determined that voter caging lists are highly likely to include the names of many voters who are in fact eligible to vote. Several common flaws with the caging technique account for eligible voters' unwarranted presence on voter caging lists.⁶

1. Voter rolls suffer from typos and other clerical errors

Mail sent to a listed registration address may be returned as undeliverable because of a typo or other data entry error. Large government databases are notoriously vulnerable to such flaws.⁷ Numbers and names may be mistyped or transposed. Portions of addresses – apartment numbers or house numbers or directional indicators (e.g., “S.” Main St. or “N.” Main St.) – may be dropped. Unusual addresses may be entered incorrectly (e.g., 21½ Main St. becomes 211-2 Main St.). One study found that as many as 26% of records in a Florida social service database included city names that were spelled differently from the same names on a master list, including more than 40 spelling variations of “Fort Lauderdale,” one of the largest cities in the state.⁸

If familiar names like this can be so frequently misspelled, it is not surprising to find various other errors in the registration records, any of which may prevent mail from being delivered. For example, a controversial 2004 caging list compiled from undelivered Florida mailings contained records for voters at “5959 Fort Caloline Road,” “5959 Fort Caroline Road,” and “5959 Port Caroline Road”; only one of these exists, but the other two are obviously typographical errors. Similarly, in Milwaukee in 2004, extensive allegations of fraud instead revealed extensive data entry errors on the registration lists. In one spot-check of a list of allegedly invalid addresses, about 20% of the addresses checked were attributed to data entry error.⁹ Victor Moy was listed on the rolls as living at 8183 W. Thurston Avenue, but he actually resided at number 8153.¹⁰ “3130 S. 15th Place” was incorrectly listed as “3130 S. 15th St.,” and “S. 68th St.” was incorrectly listed as “S. 63rd St.”¹¹ In other cases, “a check of the original handwritten registration cards showed digits had been transposed by clerks. . . .”¹² Still other addresses were missing digits, “so otherwise valid addresses showed up as non-existent.”¹³ Other states have experienced similar problems. In Ohio in 2004, for example, mail that one voter never received was incorrectly addressed with the name of the neighboring town.¹⁴

2. A voter may not be listed on the mailbox of her residential voting address

Mail sent to a listed registration address may be returned as undeliverable because the United States Postal Service does not know that the voter actually lives at the address listed. Couples, or roommates, or family members may list only one or two members of the residential unit on the mailbox. Particularly when the unlisted members of the unit do not share the same surname as the listed member, the postal delivery person may simply presume that the individual in question does not live at the listed address.

3. A voter may live at a non-traditional residence

Mail sent to a listed registration address may be returned as undeliverable because the voter does not live at a traditional address. Homeless individuals, for example, have the right to register and vote in every state.¹⁵ Depending on the law of the state, these citizens may list a homeless shelter or government building as their legal voting residence, even if the institution listed will not accept their mail. Indeed, on the 2004 “caging” list in Florida, dozens of voters were registered at either City Rescue Mission, a Christian recovery ministry and homeless shelter, or the Sulzbacher Center for the Homeless. More than a thousand voters who had listed homeless shelters were similarly found on caging lists in Ohio.¹⁶

4. A voter may be temporarily away from her permanent residence

Mail sent to a listed registration address may be returned as undeliverable because the voter is temporarily away from her permanent residence, and does not receive mail there. For example, a college student may legally reside at her parents’ home address, and register to vote there while she is away at school, even though she does not receive mail at her parents’ house. A voter may be on an extended vacation and have canceled or transferred mail service, or may have done the same for a temporary job transfer.¹⁷ Indeed, in one notorious Louisiana case, a Congresswoman who received her mail in Washington rather than at her home address in her district was challenged after a letter to her home was returned as undeliverable.¹⁸

A citizen living overseas, but registered to vote at her last domestic residence, might also receive no mail at her registered address; for example, mail sent to one such voter in New Hampshire was returned undelivered despite the fact that the voter was eligible to vote.¹⁹ Similarly, a member of the armed forces, stationed away from his voting residence, could illegitimately end up on a caging list if mail is sent to that residential address. (Dozens of the names on the 2004 “caging” list in Florida were registered at the Naval Air Station in Jacksonville – the third largest naval installation in the country – and may have had this problem; other reports identified military members stationed out of state as those among the voters on caging lists in Ohio in 2004.)²⁰

5. *A voter's permanent mailing address may differ from her residential voting address*

Mail sent to a listed registration address may be returned as undeliverable because the voter receives mail elsewhere. When individuals register to vote, they list their physical residence – but not all Americans receive mail at their residential address.²¹ For example, voters like 2004 caging victim Raven Shaffer in Ohio may receive all of their mail at a post office box, but be placed on a caging list when mail is instead addressed to their homes.²²

6. *Mail may not be properly delivered*

Sometimes, of course, mail sent to a listed registration address is returned as undeliverable because it was not delivered properly, through no fault of the voter.²³ Mail can be lost or misrouted, causing it to be returned to the sender.²⁴ Or in larger group residential homes, the voting residence may quite properly list the street address, but mail will not be delivered without a unit number. And erratic mail problems can be quite significant. In the 1990 census, for example, the *New York Times* reported that “[a]lthough at least 4.8 million [census] forms were found to be undeliverable by the Postal Service, 1.8 million of those were later delivered by hand.”²⁵ Moreover, studies of the distribution of census surveys and tax forms show that ineffective mail delivery is more common in poor and minority communities.²⁶

7. *A voter's street name may have changed*

Mail sent to a listed registration address may be returned as undeliverable because the street name may have changed since the voter registered, even though the voter remains in the same residence. In Milwaukee in 2006, for example, when street addresses were checked against a postal service address program, city officials reviewing the list of discrepancies found that some addresses were flagged because of a change to the street name itself.²⁷ The same apparently happened to some challenged voters in Louisiana in 1986.²⁸

8. *A voter may refuse to accept certain mail*

Mail sent to a listed registration address may be returned as undeliverable because the voter refuses to accept the piece of mail in question. There is no requirement that an individual accept a piece of mail offered for delivery, rather than sending it back with the delivery person. Catherine Herold of Ohio, for example, reported that she refused to accept delivery of a partisan mailing – which was returned undelivered and then used as purported evidence of her allegedly invalid registration.²⁹

9. *A voter may have moved permanently, but nevertheless remains eligible to vote*

Mail sent to a listed registration address may be returned as undeliverable because the voter has moved – but remains wholly eligible to vote without re-registration.³⁰ Each state has different rules determining when a voter who has moved must inform election officials of her new address. At a minimum, however, federal law provides that if a voter has moved within the same area covered by a given polling place – if, for example, a voter moves from one apartment to another within the same apartment complex, as a 2000 Oregon voter did³¹ – she may legitimately vote at that polling place even if she has not yet notified a registrar of her move.³² Similarly, a voter who has moved within the same registrar’s jurisdiction and congressional district may return to vote at her former polling place without re-registering.³³ Especially in urban areas where there is high mobility within a particular neighborhood, undeliverable mail may simply reflect the recent move of a voter who remains fully eligible to vote.

¹ Dahlia Lithwick, *Raging Caging*, SLATE, May 31, 2007, <http://slate.com/id/2167284>.

² Paul Kiel, TPMuckraker.com, *Cage Match: Did Griffin Try to Disenfranchise African-American Voters in 2004?*, <http://www.tpmuckraker.com/archives/003523.php> (June 26, 2007, 11:21 EDT).

³ Thomas B. Edsall, “*Ballot Security*” *Effects Calculated*, WASH. POST, Oct. 24, 1986, at A1; Martin Tolchin, *G.O.P. Memo Tells of Black Vote Cut*, N.Y. TIMES, Oct. 25, 1986, at 17.

⁴ Democratic National Committee v. Republican National Committee, Civil Action No. 81-3876 (D.N.J. Nov. 1, 1982) (consent order); Democratic National Committee v. Republican National Committee, Civil Action No. 86-3972 (D.N.J. July 27, 1987) (settlement stipulation and order of dismissal); United States v. Republican Party of North Carolina, Civil Action No. 92-161-CIO-5F (E.D.N.C. Feb. 27, 1992).

⁵ National Voter Registration Act of 1993, PUB L. NO. 103-31 (May 20, 1993).

⁶ See also Domestic Mail Manual § 507, available at <http://pe.usps.gov/text/dmm300/507.htm> (listing reasons why mail may be undeliverable).

⁷ ASSOCIATION FOR COMPUTING MACHINERY, STATEWIDE DATABASES OF REGISTERED VOTERS 21 (Feb. 2006), available at http://www.acm.org/usacm/PDF/VRD_report.pdf.

⁸ NANCY COLE & ELLIE LEE, ABT ASSOCS., INC., FEASIBILITY AND ACCURACY OF RECORD LINKAGE TO ESTIMATE MULTIPLE PROGRAM PARTICIPATION, VOL. III, RESULTS OF RECORD LINKAGE 20 (Econ. Research Serv., Elec. Publ’ns from the Food Assistance & Nutrition Research Program, 2004).

⁹ Greg J. Borowski, *Over 1,200 Voters’ Addresses Found Invalid*, MILWAUKEE J. SENTINEL, Jan. 25, 2005; Brennan Center for Justice, Wisconsin 2004, http://www.truthaboutfraud.org/case_studies_by_state/wisconsin_2004.html.

¹⁰ Greg J. Borowski, *GOP Fails To Get 5,619 Names Removed From Voting Lists*, MILWAUKEE J. SENTINEL, Oct. 29, 2004, at 1.

¹¹ Greg Borowski, *GOP Demands IDs of 37,000 in City*, MILWAUKEE J. SENTINEL, Oct. 30, 2004.

¹² *Id.*; see also Borowski, *supra* note 9.

¹³ Greg J. Borowski & Steven Walters, *Vote Inquiry Sharpens Focus*, MILWAUKEE J. SENTINEL, Oct. 30, 2004, at 1.

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- ¹⁴ Bill Sloat, *Judge Blocks Voter Eligibility Hearings*, CLEVELAND PLAIN DEALER, Oct. 28, 2004, at A1; Miller v. Blackwell, Case No. 1:04CV735 (S.D. Ohio, Oct. 27, 2004) (declaration of Mindi Haddix).
- ¹⁵ NAT'L COALITION FOR THE HOMELESS, STATE-BY-STATE CHART OF HOMELESS PEOPLE'S VOTING RIGHTS, <http://www.nationalhomeless.org/getinvolved/projects/vote/chart.pdf>; cf. SEC'Y OF STATE OF MO., MANDATE FOR REFORM: ELECTION TURMOIL IN ST. LOUIS, NOVEMBER 7, 2007 27 (2001), available at <http://bond.senate.gov/mandate.pdf>.
- ¹⁶ Sandy Theis, *Fraud-busters Busted*, CLEVELAND PLAIN DEALER, Oct. 31, 2004, at H1; Miller v. Blackwell, Case No. 1:04CV735 (S.D. Ohio, Oct. 27, 2004) (declaration of Rick Taylor).
- ¹⁷ Steve Suo, *Some Inactive Voters Aren't*, THE OREGONIAN, Aug. 27, 2000, at C1.
- ¹⁸ Jon Margolis, *GOP Sued Over Voters Tactic*, CHI. TRIBUNE, Oct. 8, 1986, at C9.
- ¹⁹ Memorandum from Bud Fitch, Deputy Att'y Gen., N.H. Dep't of Justice, to Robert Boyce, Chairman, N.H. Sen. Internal Aff. Comm., et al. 3 (Apr. 6, 2006), available at http://doj.nh.gov/publications/nreleases/pdf/040606wrongful_voting.pdf.
- ²⁰ Robert Vitale, *GOP Misfiled Some Voter Challenges, Board Says*, COLUMBUS DISPATCH, Oct. 24, 2004, at 1A; Theis, *supra* note 16.
- ²¹ Memorandum from Bud Fitch, *supra* note 19.
- ²² Vitale, *supra* note 20; Theis, *supra* note 16.
- ²³ Steve Suo, *supra* note 17; *More Mail Undelivered*, FT. LAUDERDALE SUN-SENTINEL, Apr. 16, 1994, at 3A; CHANDLER DAVIDSON ET AL., REPUBLICAN BALLOT SECURITY PROGRAMS: VOTE PROTECTION OR MINORITY VOTE SUPPRESSION—OR BOTH? 18 (2004), available at http://www.votelaw.com/blog/blogdocs/GOP_Ballot_Security_Programs.pdf.
- ²⁴ See, e.g., James Barron, *Sign of Approval, But Will It Bring Mail?*, N.Y. TIMES, Aug. 2, 2004, at B1.
- ²⁵ Felicity Barringer, *Cities Seek Bush's Backing to Avert Census "Crisis,"* N.Y. TIMES, Apr. 18, 1990, at A17.
- ²⁶ See Dayne L. Cunningham, *Who Are To Be the Electors? A Reflection on the History of Voter Registration in the United States*, 9 YALE L. & POL'Y REV. 370, 393-94 & nn.134-35 (1991).
- ²⁷ Larry Sandler & Greg J. Borowski, *Parties Spar Over City Voter Lists*, MILWAUKEE J. SENTINEL, Oct. 27, 2006, at B1; see also Tom Kertscher, *Landlord Sees a Lot in a Name*, MILWAUKEE J. SENTINEL, June 8, 2004.
- ²⁸ Thomas M. Burton, *Democrats Sue Over GOP Bid to Mail Down the Vote*, CHI. TRIBUNE, Sept. 25, 1986, at C1.
- ²⁹ John Riley, *Complications, Challenges Abound*, N.Y. NEWSDAY, Oct. 31, 2004, at A37; Theis, *supra* note 16.
- ³⁰ J. Gerald Hebert, Campaign Legal Center Blog, *Inside the Vote Cage: Griffin, Goodling and McNulty (No, Not Another Lawfirm)*, http://www.clcblog.org/blog_item-138.html (June 20, 2007).
- ³¹ Steve Suo, *supra* note 17.
- ³² 42 U.S.C. § 1973gg-6(e)(1).
- ³³ 42 U.S.C. § 1973gg-6(e)(2)(A)(i).

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Reported instances of voter caging

compiled by Justin Levitt and Andrew Allison
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Voter caging is the practice of sending mail to addresses on the voter rolls, compiling a list of the mail that is returned undelivered, and using that list to try to purge or challenge voters' registrations on the grounds that the voters on the list do not legally reside at their registered addresses. The following is a compilation of reported instances of voter caging or attempted voter caging. As we become aware of further examples, we will add summaries to the compilation below.

1958 In 1958, nonforwardable campaign literature was sent to 18,000 registered Democrats.¹ The mail that was returned undelivered was used to generate a list of voters to be challenged at the polls.² Contemporary reports on the challenge program noted that challengers using these lists were active in certain precincts – but the precincts mentioned were those with substantial minority populations.³

1960 In 1960, postcards were sent to 349 registered Republicans in one particular Arizona district.⁴ These postcards specifically warned of “punishment” if the voters had moved but voted in the precinct in which they were formerly registered.⁵ A list of the postcards returned undelivered was compiled, presumably for challenges at the polls.⁶

1964 In 1964, a partisan campaign named “Operation Eagle Eye” sent 1.8 million pieces of mail to voters in what the campaign called “many of the more suspect precincts in 15 key cities, such as Chicago, Philadelphia, Detroit, Kansas City and St. Louis” – all cities with substantial minority populations.⁷ The undeliverable mail was returned to a local address, and – an anomaly in most voter caging programs – local campaign workers were instructed to make “personal checks” at the suspect addresses.⁸ Program officials stated that at least 2,963 names in Chicago alone were purged from the rolls before the election based on the caging lists generated by this campaign.

Volunteers were also instructed to challenge voters on the caging list at the polls on Election Day.⁹ The national director of Operation Eagle Eye claimed that program participants expected “to successfully challenge or discourage from voting 1,250,000 persons.”¹⁰ At least some of these challenges may have been racially motivated: in Washington, D.C., for example, one coordinator said that his challengers would “keep an eye out for ‘people who look like they don’t belong in the community or are not the kind of people who would register and vote.’”¹¹

1981

In 1981, the Republican National Committee sent mailings to New Jersey voters in predominantly African-American and Latino neighborhoods.¹² The 45,000 letters that could not be delivered were used to compile “a challenge list to remove those voters from the rolls.”¹³ As a result of a lawsuit filed against the effort, the Republican National Committee and New Jersey Republican State Committee entered into a consent decree with their Democratic party counterparts, prohibiting most racially targeted voter caging. In the decree, they agreed, in relevant part, to:

refrain from undertaking any ballot security activities in polling places or election districts where the racial or ethnic composition of such districts is a factor in the decision to conduct, or the actual conduct of, such activities there and where a purpose or significant effect of such activities is to deter qualified voters from voting¹⁴

1986

In 1986, the Chicago Board of Election Commissioners sent mailings to all registered voters in Chicago.¹⁵ 116,541 pieces could not be delivered.¹⁶ The corresponding voters were to be checked in a door-to-door canvass, and if their registration status remained in doubt, they were to be purged from the rolls.¹⁷ The extent to which voters were actually purged from the rolls is not clear from published reports.

Later in the year, the Republican National Committee hired a vendor known as Ballot Integrity Group Inc. to carry out a voter caging effort in Louisiana, Indiana, and Missouri; further efforts were apparently planned for Michigan.¹⁸ In Louisiana, the program entailed sending nonforwardable envelopes with emergency contact numbers to 350,000 voters registered in heavily Democratic districts.¹⁹ Most districts that fit the profile were African-American neighborhoods, and in at least one instance, the office producing the data for the mailing list was asked specifically for the listings of African-American voters.²⁰

An internal memorandum to the RNC’s southern regional political director recognized the effect of the caging program on the upcoming Senate race in Louisiana:

I know this race is really important to you. 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.”²¹

Ultimately, 30,000 letters were returned undelivered in Louisiana; as predicted, most of the returned letters were addressed to African-Americans.²² These letters were turned over to election officials with a request to purge the voters from the rolls; the letters were also compiled onto a list for investigation by law enforcement and for challenge at the polls.²³

A Louisiana state court judge enjoined the program, finding that the clear intent was “to remove blacks from the voting rolls.”²⁴ The national party organizations also returned to federal court in New Jersey, in litigation filed under the 1981 consent decree described above. In the short term, the RNC stipulated that it would not compile voter challenge lists or challenge voters on the basis of direct mail returned as undelivered.²⁵ Ultimately, the case again settled, with a modification of the 1981 decree prohibiting the RNC from undertaking any “ballot security” program without the court’s consent.²⁶

1990

In 1990, the Republican Party of North Carolina and Senator Jesse Helms’ re-election campaign committee mailed postcards to 125,000 voters; 81,000 cards were mailed to registered Democrats in precincts that were 94% African-American, and 44,000 cards were mailed to African-American voters exclusively.²⁷ Undelivered cards were then used to create a list of voters to be challenged.²⁸ The U.S. Department of Justice filed suit, again ending in a consent decree. This agreement prohibited the state party from targeting voters based on their “racial minority status,” and required it to obtain prior court approval for its anti-fraud activities.²⁹

2004

Evidence of voter caging or of preparation for voter caging surfaced in at least five states in 2004. In Ohio, letters were sent to all voters who registered between January 1 and August 31 of 2004; the 35,427 letters that were returned undelivered were used to create a challenge list.³⁰ The list included names from “mostly urban and minority areas,” including 17,717 challenges in Cuyahoga County.³¹ Some challenges were executed before Election Day, and others were withdrawn; due in part to an extended court challenge, almost no voters on the list were ultimately challenged at the polls.³²

In Nevada, a businessman “looking to take Democrats off the voter rolls” challenged 17,000 registered Clark County voters who had been sent mail that was returned undelivered.³³ The county’s Registrar of Voters denied all of the challenges.³⁴

In Pennsylvania, letters were sent to 130,000 newly registered Philadelphia voters.³⁵ Ten thousand letters allegedly could not be delivered, and were used to compile a challenge list.³⁶ There were no reports that the list was actually used for challenges on Election Day.

In Florida, letters were sent to newly registered voters in Duval County, and 2,663 voters for whom letters were returned as undeliverable were placed on a controversial list.³⁷ 1,833 of these voters were attached to disclosed emails labeled “caging,” and sent by Florida campaign staff to political and research staff at the Republican National Committee; Tim Griffin, the national research director for the RNC, acknowledged receipt.³⁸ No explanation has been given for why the list was forwarded to RNC headquarters. Later analysis using registration records coded for race showed that the list disproportionately captured minority voters.³⁹ State campaign spokespersons claimed that the list was not intended to be used for challenging voter eligibility, though they also acknowledged that the names were forwarded to county officials;⁴⁰ a Department of

Justice attorney sent to Florida in 2004 helped procure an agreement that voters would not be challenged at the polls using any such list.⁴¹

Wisconsin saw a variant of voter caging, relying not on undeliverable mail, but on a technological equivalent: attempts to match the addresses on Milwaukee's voter rolls to the U.S. Postal Service's database of street addresses.⁴² (Mail sent to these addresses would presumably have been returned as undeliverable.) 5,619 voters were challenged, with questions raised about approximately 31,500 additional entries.⁴³ The bipartisan Milwaukee Election Commission found insufficient evidence that the registrations were invalid, and rejected the challenges.⁴⁴

¹ CHANDLER DAVIDSON ET AL., REPUBLICAN BALLOT SECURITY PROGRAMS: VOTE PROTECTION OR MINORITY VOTE SUPPRESSION—OR BOTH? 17 (2004), available at http://www.votelaw.com/blog/blogdocs/GOP_Ballot_Security_Programs.pdf.

² *Id.*

³ *See id.* at 18-19.

⁴ *Id.* at 17 n.14.

⁵ *Id.*

⁶ *Id.*

⁷ Cabell Phillips, *G.O.P. Opens Drive to Prevent Fraud*, N.Y. TIMES, Oct. 30, 1964, at 25.

⁸ *Id.* There is little readily available information to determine whether these personal follow-up checks were actually conducted – and if so, the means by which they were conducted.

⁹ *Id.*

¹⁰ *Democrats Charge G.O.P. Poll Watch Today Will Harass the Negroes and the Poor*, N.Y. TIMES, Nov. 3, 1964.

¹¹ *Id.*

¹² CHANDLER DAVIDSON ET AL., *supra* note 1, at 50; PEOPLE FOR THE AM. WAY FOUND. & NAACP, THE LONG SHADOW OF JIM CROW: VOTER INTIMIDATION AND SUPPRESSION IN AMERICA TODAY 14 (2004), available at http://www.pfaw.org/pfaw/dfiles/file_462.pdf; Jo Becker, *GOP Challenging Voter Registrations*, WASH. POST, Oct. 29, 2004, at A5.

¹³ Becker, *supra* note 12.

¹⁴ *Democratic National Committee v. Republican National Committee*, Civil Action No. 81-3876 (D.N.J. Nov. 1, 1982 (consent order)).

¹⁵ John Kass, *116,000 Chicago Voters Warned They Must Re-Register*, CHI. TRIBUNE, Feb. 17, 1986, at C7.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ CHANDLER DAVIDSON ET AL., *supra* note 1, at 60; PEOPLE FOR THE AM. WAY FOUND. & NAACP, *supra* note 12, at 12; Bernard Weinraub, *Suit Charging G.O.P. Sought To Cut Black Vote Is Settled*, N.Y. TIMES, July 24, 1987, at A15; Martin Tolchin, *The Political Campaign*, N.Y. TIMES, Oct. 26, 1986, at B19; Martin Tolchin, *G.O.P. Memo Tells of Black Vote Cut*, N.Y. TIMES, Oct. 25, 1986, at 17; Thomas B. Edsall, *"Ballot Security" Effects Calculated*, WASH. POST, Oct. 24, 1986, at A1.

¹⁹ CHANDLER DAVIDSON ET AL., *supra* note 1, at 60; PEOPLE FOR THE AM. WAY FOUND. & NAACP, *supra* note 12, at 12; Weinraub, *supra* note 18; Jon Margolis, *GOP Agrees to Limits on "Ballot Security" Plan*, CHI. TRIBUNE, July 24, 1987, at C6.

²⁰ Thomas M. Burton, *Democrats Sue Over GOP Bid to Mail Down the Vote*, CHI. TRIBUNE, Sept. 25, 1986, at C1.

²¹ Tolchin, *G.O.P. Memo Tells of Black Vote Cut*, *supra* note 18; Edsall, *supra* note 18.

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- ²² CHANDLER DAVIDSON ET AL., *supra* note 1, at 60.
- ²³ Edsall, *supra* note 18.
- ²⁴ *Id.*
- ²⁵ Democratic National Committee v. Republican National Committee, Civil Action No. 86-3972 (D.N.J. Oct. 20, 1986) (stipulation)(valid until March 1, 1987, at the latest).
- ²⁶ Weinraub, *supra* note 18; *see* Democratic National Committee v. Republican National Committee, Civil Action No. 86-3972 (D.N.J. July 27, 1987) (settlement stipulation and order of dismissal).
- ²⁷ ADVANCEMENT PROJECT, REPORT TO STATE AND LOCAL ELECTION OFFICIALS ON THE URGENT NEED FOR INSTRUCTIONS FOR PARTISAN POLL WATCHERS (2004); PEOPLE FOR THE AM. WAY FOUND. & NAACP, *supra* note 12, at 3.
- ²⁸ ADVANCEMENT PROJECT, *supra* note 27.
- ²⁹ *Id.* (citing United States v. Republican Party of North Carolina, Civil Action No. 92-161-CIO-5F (E.D.N.C. Feb. 27, 1992); CHANDLER DAVIDSON ET AL., *supra* note 1, at 75.
- ³⁰ Robert Vitale, *GOP Misfiled Some Voter Challenges, Board Says*, COLUMBUS DISPATCH, Oct. 24, 2004, at 1A.
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- ³² John Riley, *Complications, Challenges Abound*, N.Y. NEWSDAY, Oct. 31, 2004, at A37; Sandy Theis, *Fraud-busters Busted*, CLEVELAND PLAIN DEALER, Oct. 31, 2004, at H1; Summit County Democratic Central & Executive Comm. v. Blackwell, 388 F.3d 547 (6th Cir. 2004); Democratic National Committee v. Republican National Committee, No. 04-4186 (3d Cir., Nov. 2, 2004) (*en banc*).
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- ³⁴ Neff, *supra* note 33.
- ³⁵ ADVANCEMENT PROJECT, *supra* note 27; Becker, *supra* note 12.
- ³⁶ ADVANCEMENT PROJECT, *supra* note 27; Suzette Parmley et al., *Voting Access, Challenges Debated With Hours To Go*, PHILA. INQUIRER, Nov. 2, 2004; Kate Zernike & William Yardley, *Charges of Dirty Tricks, Fraud and Voter Suppression Already Flying in Several States*, N.Y. TIMES, Nov. 1, 2004, at A16; Tom Infield, *Both Parties Complain of Vote Fraud*, PHILA. INQUIRER, Oct. 25, 2004, at B1.
- ³⁷ Joni James & Tamara Lush, *Gov. Bush: Poll Watchers Can, Should Challenge Voters*, ST. PETERSBURG TIMES, Oct. 28, 2004.
- ³⁸ GeorgeWBush.org, Dead Letter Office, <http://2004.georgewbush.org/deadletteroffice/index.asp> (last visited June 19, 2007).
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- ⁴⁰ Greg Palast, *New Florida Vote Scandal Feared*, BBC NEWS, Oct. 26, 2004, <http://news.bbc.co.uk/1/hi/programmes/newsnight/3956129.stm>; John M. Glionna, *The Race for the White House*, L.A. TIMES, Oct. 28, 2004, at A18; Tim Reynolds, *Parties Trade Pre-Election Accusations in Florida*, PITTSBURGH POST-GAZETTE, Oct. 29, 2004, at A12.
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