

HEARING ON PROTECTING VOTERS AT HOME AND AT THE POLLS:

LIMITING ABUSIVE ROBOCALLS

AND VOTE CAGING PRACTICES

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WEDNESDAY, FEBRUARY 27, 2008

United States Senate,

Committee on Rules and Administration,

Washington, D.C.

The committee met, pursuant to notice, at 10:04 a.m., in Room SR-301, Russell Senate Office Building, Hon. Dianne Feinstein, Chairman of the committee, presiding.

Present: Senators Feinstein and Bennett.

Staff Present: Howard Gantman, Staff Director; Adam Ambrogi, Professional Staff; Veronica Gillespie, Professional Staff; Lynden Armstrong, Chief Clerk; Sue Wright, Chief Clerk; Justin Perkins, Staff Assistant; Mary Jones, Republican Staff Director; Shaun Parkin, Republican Deputy Staff Director; Michael Merrell, Republican Counsel; and Rachel Creviston, Professional Staff.

Chairman Feinstein. The meeting will come to order, and we have some very pleasant business this--perhaps somebody can turn down the mike a little bit.

We have some very pleasant business this morning. Senator Bennett and I are pleased to present Christopher Schunk with his pin for 30 years of

service to the United States Senate. Christopher, if you would come forward and stand just between us.

[Laughter.]

Chairman Feinstein. Chris began his career in the Senate in 1974 as a clerk in the Disbursing Office. He stayed in that job until 1977 when he left to live and study in Texas.

He returned to this area in 1981 and, lucky for us, there was an opening for an auditor on the Rules Committee, and he got the job.

Over the years, he advanced to the position of Senior Auditor. In 2003, he was promoted to his current job as Director of Administration and Policy for the Committee.

Over these 30 years, Chris has seen the Senate advance from entering numbers in columns in ledger books to the electronic filing of vouchers.

He is our Committee's financial expert. From auditing vouchers to reviewing personal office expenditures, to handling the biennial Senate Committee budgets.

On behalf of the Committee, Chris, both Senator Bennett and I wish to present you with your 30-year pin. I just did this in California last week, and I had trouble opening this, but--sorry, I should have had this pre-prepared. Here we go. No, that is not it. That is not it. Surprise.

[Laughter.]

Chairman Feinstein. There we go. Congratulations. Much of the best.

Congratulations.

Mr. Schunk. Thank you.

[Applause.]

Chairman Feinstein. And we will give you this for 30 years of service.

Thank you. Thank you, Chris. Take care. And we have a retirement. We wish to express a fond farewell to Sue Wright--she is the Committee's Chief Clerk--upon her retirement from the Senate after 20 years of service. I was just speaking with her. Her husband is a professor, and she is going to Dalian, China, which is a city that I have visited, which is a very interesting city. And I think she will understand it. I think she will enjoy it.

She began her career in the Senate in 1988 on Senator Moynihan's staff. After almost a decade of service in that office, she joined Senator Levin's staff in 1997. In late 2000, she transferred to the office of then-freshman Senator Bill Nelson and helped start up his office.

In the summer of 2001, she joined the Rules Committee in the dual role of Coordinator of IT Policy and Systems Administrator. And she became Committee Clerk in 2003.

So on behalf of the Committee, I would like to thank Sue for her dedication and service to this institution. She will be missed, and we extend our best wishes to her as she travels across the Pacific Ocean, a very challenging arena, and that will be in China.

So we also would like to welcome Sue's replacement, the new Chief

Clerk, Lynden Armstrong. He comes to the Committee after many years of service in the office of our colleague and actually my neighbor in the Hart Building, Senator Domenici. So, Sue, Senator Bennett and I have a small token for you to say thank you--

Ms. Wright. Thank you very much.

Chairman Feinstein. --so much--

Ms. Wright. Thank you, Senator.

Chairman Feinstein. --for your service.

Ms. Wright. It has been a pleasure. I thank you.

Chairman Feinstein. Thank you.

Ms. Wright. And for both of you. Thank you so much.

Senator Bennett. Thank you.

Ms. Wright. And we are getting direction.

[Applause.]

Chairman Feinstein. Thank you. All right. Now the fun part is over.

We will go to the business part.

OPENING STATEMENT OF CHAIRMAN FEINSTEIN

Chairman Feinstein. Good morning, everyone. I would like to welcome our Ranking Member and our witnesses today. We are going to receive testimony today on two important issues.

The first is how to protect the public from abusive robocalls that interrupt people in the privacy of their home, sometimes in the wee hours of the morning,

and can actually discourage citizens from participating in the political process.

I learned about them some time ago, Senator Bennett, when I agreed to do a robocall for a candidate. I did it. I was assured that the call would only be placed during daytime hours, and then the phone began to ring. And I had hundreds of phone calls from people who said how dare you call me at three o'clock in the morning.

And I learned my lesson. I do not now do robocalls, but they have become for many people very invasive when they come sometimes eight to 10 times a day and sometimes in the middle of the night.

The second item is how to ensure that members of vulnerable populations are not targeted from disenfranchisement by political campaigns.

I think we all believe that political speech is essential and should be protected. And the vast majority of technological developments benefit the democratic process because they promote a greater interchange of information and ideas.

And I think we all understand the First Amendment and the rights that the First Amendment gives.

The question in the legislation that I have introduced, along with a couple of my colleagues, Senator Inouye and Senator Durbin and Senator Specter, is how we can maintain the First Amendment right and at the same time create some order so that people are not intruded upon when they do not want that intrusion.

The Robocall Privacy Act of 2008 would ban political robocalls to any person from 9:00 p.m. at night to 8:00 a.m. in the morning. It would ban more than two political robocalls from a given campaign to the same telephone number for each day. And it would stop the caller from blocking the caller identification number. And it would require an announcement at the beginning of the call identifying the individual or organization making the call and the fact that it is a recorded message.

Now this is to prevent shenanigans and also misinformation. The shenanigans are when an opposing campaign presents the robocall, and you do not know who it is that actually organized the robocall until the end of it.

In this case, you would know right up front where the call is emanating from.

The bill does not apply to personal calls, issue advocacy, official member communications, like Telecom Halls or a determination of truth in the content of the robocall. It simply provides the information that an individual needs to make their own decision.

The restrictions are limited to 30 days prior to a primary election and 60 days prior to the general election, when these calls often become real nuisances.

Now some have suggested that we remove the political exemption from the Do-Not-Call Register. I would support working on efforts to examine that option, but with over 140 million numbers on that list, I am unsure whether

Congress would support removing that avenue of outreach.

I understand there will be concerns about any limitation of political speech, no matter how a bill is drafted. So we have drafted this very carefully not to trod on First Amendment grounds.

Our second panel is focused on ways to ensure that minority, disadvantaged, and other vulnerable communities are not unfairly targeted by campaigns seeking to selectively disenfranchise them.

The issue came to light during the investigation of the firing of several U.S. Attorneys, when Monica Goodling testified that Tim Griffin, a former Republican National Committee Research Director, who was subsequently named Interim U.S. Attorney in Arkansas, had engaged in the practice in Florida.

Typically, vote caging involves a political party sending mail marked "do not forward," and "return to sender" to a targeted list of registered voters--often minorities, or those who live in poor areas--and then challenging those voters whose letters were returned as undeliverable. The list is referred to as a caging list.

Senator Whitehouse, who is also a member of the Judiciary Committee, recently introduced S.2305, the Caging Prohibition Act, which I have co-sponsored. He will be our first witness on the second panel to discuss his bill, to describe it, and tell you a little bit about the problem in greater detail.

Now I'd like to turn to the Ranking Member for any comments he might

wish to make.

OPENING STATEMENT OF SENATOR BENNETT

Senator Bennett. Thank you very much, Madam Chairman. I, too, have had an experience with robocalls, where people came back to complain. I recorded a message on behalf of a candidate for the House, and people started calling my office and saying you are intruding in my business. You called my business number, and it is inappropriate for you to do that. You should call my home number.

And I called the candidate for the House and said will you please stop using my calls for this purpose, and he said oh, the people that get upset is a minor percentage and we need your voice and your endorsement to the majority.

And I insisted that my name be--my calls be taken off until they could guarantee me that they would, in fact, not go into any business.

Now we have never had any experience of people calling in the middle of the night. And I think the possibility of an opposing campaign causing all these calls to come in the middle of the night and then leaving the impression that it was your campaign is clearly something that is beyond my control, and I would like to see it stopped.

So I appreciate your effort on this. And in my case, whenever I make such a recording, I always identify myself first because if, in fact, my endorsement means something, they ought to know who it is that is doing the endorsing, and I do not have any objection at all to that requirement.

So I will be happy to listen to the testimony and see what we do with respect to the first panel where we go on this one.

The second one, of course, is a tension that is as old as the republic. On the one hand, we want everyone who should be eligible to vote to vote.

On the other hand, we do not want dead people or people who, for a variety of reasons, are ineligible to vote to vote. And that is the whole reason why you register in advance--get your name on the registration rolls so a check can be made to determine whether or not you are a legitimate voter; and if you are not, challenge it.

Our former colleague, Senator Sarbanes, used to tell the story about the two workers in Chicago who were going through--election workers--who were going through the cemetery at the early morning writing down names so that they could register the people to vote. And as it got towards dawn, one of the workers said, "Look. It's getting light. We had better get out of here before we got caught--get caught." And the second worker said, "the people in this line of cemetery are just as entitled to vote as the people in your line of the cemetery, and I am going to stay here until I get all their names."

Perhaps the method that has become to be known as voter caging is the wrong way to clean the rolls. But there is no question but what there is an enormous amount of deadwood on the rolls, and the temptation to use those names in vote fraud is very strong.

So it is a legitimate issue that we should be looking at, but we should

remember that in an effort to make sure that everybody who should vote is able to vote, we still ought to do what we can to prevent those who should not vote from voting.

I have been a member of the Governmental Affairs Committee when Senator Lieberman was the chairman of that committee previously, and he held a hearing on this, and we had examples of some pretty blatant vote fraud that occurred with people coming into court. The one that strikes my mind is the court application. The lawyer said, referring to the gentleman that was--in whose name the lawsuit was brought, he is in the courtroom and is prepared to testify. And the judge, who had already been prepared to know what it was he wanted to rule, said that will not be necessary. I will give you the order.

And then we found out that the gentleman would indeed have had a difficult time testifying because he was dead. And he was clearly not in the courtroom, but his name was being used to somehow subvert the voting activity in the State of Missouri, particularly in St. Louis.

So dealing with this tension, we want everybody who's eligible to vote to vote without any impediment, but we want to make sure that the registration rolls are accurate so that the additional names that represent deadwood are not used to commit vote fraud. And I look forward to the panel to discuss both issues.

Chairman Feinstein. Thank you very much, Senator.

We will now proceed with the panel. And I would ask Attorney General Roy Cooper, James Bopp, Jr., and Mr. Shaun Dakin to please take their seats,

and I will begin the introduction with the Attorney General.

North Carolina Attorney General Cooper has a long and distinguished career in public service. He attended the University of North Carolina at Chapel Hill as a Morehead Scholar. And after graduating from law school, he went back to practice law with his family law firm.

Before becoming Attorney General in 2001, Mr. Cooper had a strong record of service as a state legislator, a lawyer, a civic leader, and a community volunteer.

The second person to testify is James Bopp, Jr. Mr. Bopp serves as General Counsel for the James Madison Center for Free Speech. That is an organization that supports litigation and public education on First Amendment issues. He serves as a principal partner in the law firm of Bopp, Coleson & Bostrom. He is an active member of the Supreme Court Bar, and was lead attorney in Wisconsin Right to Life v. Federal Election Commission, a First Amendment Supreme Court case.

Mr. Shaun Dakin is CEO and Founder of the non-profit National Political Do Contact Registry, which I will have to find out more about. I do not know what that is. He has an MBA from Thunderbird and over 15 years of management and legislative experience in the private sector, working for e-business teams for FEDEX and Fannie Mae. He was a volunteer on political campaigns for many years, and has experiences which have led him to focus on the harm of political robocalls.

So welcome, gentlemen. We are delighted to have you. We will begin with the Attorney General, and I would like to ask each of you to try to confine your remarks to five minutes. We have your written testimony and can read it. And so if you would summarize it, it will give us more time for discussion. Thank you very much. Mr. Cooper, please begin.

STATEMENT OF ROY COOPER, ATTORNEY GENERAL, STATE
OF NORTH CAROLINA

Mr. Cooper. Thank you, Chairman Feinstein. I appreciate the opportunity to talk with you today about political robocalls.

Chairman Feinstein. Now your microphone does not seem--you have it on?

Mr. Cooper. Now I have it on.

Chairman Feinstein. Good.

Mr. Cooper. Thank you.

Chairman Feinstein. You might have to pull it a bit closer.

Mr. Cooper. Okay. How is that?

Chairman Feinstein. That is much better.

Mr. Cooper. Is that better?

Chairman Feinstein. Thank you.

Mr. Cooper. Thank you very much, Chairman Feinstein and Ranking Member Bennett, for inviting me to talk to you today about political robocalls.

As the chief law enforcement officers of our States and the enforcers of the do-not-call laws, state attorneys general are really on the front lines of this issue.

I work to pass do-not-call legislation, and my office was one of the first to enforce it.

North Carolina has tight restrictions on commercial robocalls. Those

restrictions, along with the Do-Not-Call Registry and strong enforcement, have led to consumers getting fewer telemarketing calls, and, in fact, since the Registry was started our complaints on telemarketing calls have been reduced by one-half.

Due to the increase in complaints about political robocalls, I have asked our state legislature to enact a new law that would require political candidates and parties to abide by the Do-Not-Call Registry when making these calls because consumers are finding that robocalls from telemarketers are being replaced by robocalls from politicians.

That legislation is still pending. So in the meantime, I have asked the state chairs of both political parties to abide by the Do-Not-Call Registry.

We see--and thank you for looking into this--a clear need for restrictions on political robocalls. Many consumers are sick of them, and they believe that the Do-Not-Call Registry that they have signed up for should stop them.

At best, these calls interrupt home life and family life, and, at worst, the calls can cut access to emergency help and medical assistance. A telephone can be a lifeline to those in need of help.

Robocalls often keep a phone line tied up and cannot be disconnected until the call is over. Police and fire stations are vulnerable to having phone lines frozen. In one case that we brought, a robocaller repeatedly disrupted a hospital's phone system as staff members tried in vain to disconnect hundreds of calls into the hospital.

In another case, a cancer patient with a telephone lifeline device was unable to call out when a robocall came in. And in New York, a mother desperately trying to call for medical help for her sick child could not because her line was tied up by a robocall.

Robocalls burden the elderly and disabled. Our seniors tell us that it is especially difficult for them to get up repeatedly to answer the phone. Robocalls disrupt businesses. As more people work from home, the FCC has found that robocalls interfere with Internet usage and with phone lines. Robocalls tie up fax machines. They can fill up an entire tape of an answering machine, and they can eat up cell phone minutes. And, yes, robocalls are coming to people's cell phones.

In addition to these measurable harms, robocalls do immeasurable damage by distracting people from family meals and quiet time at home. When a telephone rings, it demands our attention because it can be a family member in need, a work associate, or a friend.

People are particularly frustrated because these messages are delivered by a machine. There is no human being on the other line--on the other end of the line to interrupt and say, "do not call me anymore." There is no way to complain. There is no way you can disconnect the call. People feel frustrated and powerless.

Last year, we stopped and fined that same robocaller who placed more than 400 calls to patient rooms and the emergency room in that county hospital.

Chairman Feinstein. Wow.

Mr. Cooper. Fortunately, no patients suffered or died, but they could have. And that same company tied up 150 phone lines of an automobile parts manufacturing company in our state.

We brought even more cases when consumers complained of repeated calls within the same week, the same day, and sometimes the same hour. The number of calls into North Carolina reached the millions until we put a stop to it.

When investigating these cases, we found something interesting. During election season, these companies shifted the same automated calling systems from commercial robocalls to political robocalls. Political robocalls need to be reigned in just like the commercial ones. It is the same equipment and the same problems with safety and privacy.

I believe, members of the Committee, that policy makers must find a way to control or eliminate these unwanted political robocalls just like we did with unwanted telemarketing calls.

In our battle with telemarketers over the Do-Not-Call Registry, we told them there were many ways to contact people--TV, radio, e-mail, the Internet. The list goes on for politicians.

We are not--this is not a speech issue. This is a privacy issue. I commend your Committee's work on this, and I will be glad to answer any questions that you might have.

[The prepared statement of Mr. Cooper follows:]

Chairman Feinstein. Thank you very much, General. I appreciate your testimony. Mr. Bopp?

STATEMENT OF JAMES BOPP, JR., GENERAL COUNSEL,
JAMES MADISON CENTER FOR FREE SPEECH

Mr. Bopp. Thank you very much, Madam Chairman. Thank you for the opportunity to testify.

My most recent 25 years of law practice has concentrated on campaign finance and the First Amendment representing advocacy groups, political parties, PACs, and candidates. My practice focuses on ensuring a robust opportunity for the participation of citizens in our political process, and has resulted in dozens of lawsuits representing clients, ultimately being successful in 90 percent of my campaign finance lawsuits, and four of the five cases I have argued in the United States Supreme Court.

That is because the founders of our country, in adoption of the First Amendment, wanted to put outside of the authority of the government the ability to regulate citizens' participation in our democracy. Our founders knew that if you gave the government generally, and incumbent politicians particularly, the power to regulate the ability of citizens to participate, and particularly to criticize, the government or incumbent politicians, that they would use governmental power to stop it. And so they passed the First Amendment, which says "Congress shall make no law abridging the freedom of speech", placing the Constitution firmly on the side of citizens' participation in our political system and their ability to communicate with fellow citizens about political activities.

In fact, the First Amendment was the world's most profound, dramatic,

and radical campaign finance reform.

Now this hearing involves an issue of core political speech; that is, political phone calls made using computer technology.

First, a few things about this technology. First, they emulate a human being; that is, that not only with voice recognition technology and artificial intelligence can the computer recognize the answer to questions, they can also recognize statements that are made. For instance, if a caller would, say, hang up, the computer can be programmed to hang up.

If the person says do not call again, the computer can be programmed never to call that number again.

In fact, it can do things that human beings cannot do, such as change language; recognizing that the caller is speaking a different language, the computer can then respond in that language.

It is cheap. Fifteen cents is one estimate versus \$2.25 for a live call.

It is rapid. One vendor, Free Eats, testified that they can do 1,700,000 calls in seven hours, where a live caller can only do about 20 per hour.

They are very effective. In fact, there was a May 3rd, 2007 dear colleague letter sent by Congressman Michael Conaway of Texas who used this technology to survey his own constituents, and he said in the dear colleague letter "I can honestly tell you that this was the most effective constituent communication tool I have ever used."

Well, when we talk about this being core political speech, it means that it

has the highest protection under the First Amendment.

Commercial calls enjoy only intermediate scrutiny, where political activity enjoys strict scrutiny. And part of the First Amendment is that it protects a person's right not only to advocate their cause, but also to select what they believe to be the most effective means in doing so.

Now, of course, this has run square up against the tendency of incumbent politicians and the government not to want people to criticize them. And so, we have seen efforts by government to prohibit many specific means of communication. If all these had been prohibited, as you will soon see, there would be almost no means of communication remaining. And incumbent politicians seem willing to do this. Examples are prohibiting residential signs, prohibiting distribution of pamphlets within a community, prohibiting handbills on a public street, prohibiting door-to-door distribution of literature, prohibiting residential picketing.

In all these cases, the U.S. Supreme Court struck down these efforts to limit speech activity when it was applied to political speech.

Now the sole exception is the *McConnell versus FEC* case, which upheld a broadcast band within 30 days of a primary and 60 days of a general election, but only after it was determined that this was the functional equivalent of a expressly advocating the election or defeat of a candidate, and certainly the decision last year in *Wisconsin Right to Life versus FEC* has established that such regulations can only be applied to communications that actually call for a

vote of candidate.

And in this respect, the fact that S.2624 targets any computer-generated call which "promotes, supports, attacks, or opposes a candidate for federal office" indicates that it is unconstitutional. It is not limited to communications, only calling for a vote for or against a candidate, but, in fact, does encompass issue advocacy that would be made by individuals, calls regarding upcoming votes in Congress. In fact, it is rare that a politician does not think that when people are talking about them, they are either criticizing them or praising them, and attacking them or promoting them. And so, actually, this law goes way beyond any possible constitutional warrant.

[The prepared statement of Mr. Bopp follows:]

Chairman Feinstein. Thank you, Mr. Bopp. Mr. Dakin.

STATEMENT OF SHAUN DAKIN, CEO AND FOUNDER, THE
NATIONAL POLITICAL DO NOT CONTACT REGISTRY

Mr. Dakin. Thank you, Chairman Feinstein and Ranking Member Bennett.

I am humbled and appreciate this opportunity to testify before this committee on the critically important issue of political robocalls and their harmful impact on the American voter.

I first want to acknowledge Chairman Feinstein for her leadership in introducing the Robocall Privacy Act.

While we do not advocate for specific legislative remedies to deal with this epidemic, we are encouraged that this committee, on a bipartisan basis, has recognized that this is a national problem that is crying out for leadership at the federal level. Let me be clear: voters on both sides of the aisle and those in between have had enough of robocalls.

As one political do-not-contact registry member, a young mother, from Ohio wrote recently: "I find it very frustrating. I tend to get calls at the worst time. I have a one-year-old daughter at home, and it never fails that the phone will ring when I put her down for bed."

Another e-mail from California came in this week: "My 85-year-old mother, who has had a stroke, sometimes is at home alone. And when these phone calls come in, it confuses her, and gets her upset when someone does not listen to her. She does not understand that it is an automated phone call."

We have also received many e-mails from seniors, like the Attorney General mentioned, who live in fear of a health emergency occurring when a robocall comes in, and their fear of not being able to call their doctor as their phone line is tied up.

This morning, I would like to tell you about the scope of the problem, more on how it impacts voters and their lives, and what we at the National Political Do-Not-Contact Registry have put into place as potential solution that gets around First Amendment issues to this national epidemic.

So first, the scope. It continues to astound me that, according to the Pew Center for Research, during the 2000 election, two-thirds of the American voters received robocalls. That is over 90 million people.

Pew then did a follow-up study in 2007 looking specifically at New Hampshire, South Carolina, and Iowa and the caucuses and primaries and found that in Iowa, 81 percent of voters received robocalls; and in New Hampshire 68 percent and 40 percent in South Carolina.

Remember this is in November. This is a good six to eight weeks before the Election Day.

So what is the impact on the voter? Every day we receive hundreds of e-mails from voters who are frustrated to no end by robocalls. And our members, in turn, represent a fraction of the millions of voters that will have received hundreds of millions of robocalls across the country this year, according to USA Today.

To make this more real, I would like to share with you some comments from our members. These are actual comments from our members, and many I cannot read aloud in mixed company.

I have submitted thousands of member comments in my written testimony--actually 3,384 written comments. And this represents a fraction of my membership. I would like to ask that this be put in the official record, if you can?

Chairman Feinstein. Without objection, they will be.

[The information follows:]

/ COMMITTEE insert

Chairman Feinstein. Thank you.

Mr. Dakin. Thank you. Here are just a few examples from voters. So voter number one: "Tonight my grandmother was taken to the hospital by an ambulance. Instead of my family being able to reach me, they were directed to my voice mail because I was too busy answering automated phone calls for political reasons."

Another voter: "I work nights and sleep during the day. Recently, I have had five to seven calls each day waking me up and asking me for money."

The third voter: "Automated phone messages are annoying. It is phone harassment. And with it being automated, you can't tell them to stop calling. On the caller ID, it reads all zeros, so you can't call them back." So you have heard there is no end to this frustration from all voters about this epidemic.

So what is the National Political Do-Not-Contact Registry doing about robocalls? The Registry, launched in October of last year, is a non-partisan, non-profit organization that is modeled on the incredible success as the federal do-not-call list. It is a citizen-led movement that is voluntary for both the voter and the politician, and it is specifically designed not to trigger First Amendment issues around regulating political speech.

So how does it work? Voter simply go to stoppoliticalcalls.org, register their phone number for free, and that is it. We also have a paid membership option for a very nominal \$1.24 to help us meet expenses that allows voters to both opt out of and opt into political communications by offering control over who

they hear from, how they are communicated to, and what issues they care about the most.

Politicians would then license the Registry, receive the voter list, and ensure that their campaigns do not robocall voters on the list.

As of today, one member of Congress, a leader on this issue, Representative Virginia Foxx of North Carolina, has taken the Do-Not-Robocall pledged and licensed the voter registration database that we have. We commend Representative Foxx on her bold leadership and her--on this important issue, and expect to have many other members participate in the registry to help reduce the number of robocalls voters receive during election cycles.

So to conclude, Chairman Feinstein and Ranking Member Bennett, I appreciate the opportunity to provide the Committee information on the scope and impact of robocall epidemic on voters, as well as the chance to inform you about the Political Do-Not-Contact Registry.

We are encouraged by the much needed attention that the introduction of the Robocall Privacy Act by Chairman Feinstein brings to this important non-partisan issue. Thank you for this opportunity, and I look forward to your questions.

[The prepared statement of Mr. Dakin follows:]

Chairman Feinstein. Well, thank all of three of you for very interesting testimony, and I thank you for being concise as well.

Mr. Dakin, I think you heard the testimony of Attorney General Cooper about the Do-Not-Call List. We have not included the Do-Not-Call List prohibition--in other words, that you would have to observe it--in our bill, and I just asked the Attorney why we did not, and he said because he did not think the Senate would agree to it.

I think we should. What do you think?

Mr. Dakin. Yes. I think so as well. You know, I personally--we would not have formed this organization if voters were given the chance to voluntarily opt out of political communications when they register on the federal Do-Not-Call Registry.

And I think that would be, you know, that would be the ideal solution. Like your Attorney mentioned, I think that would be very difficult, you know, particularly this election year, to see that happen. But I think in the out years, I could see that foreseeably happening in the future, and think that would be, you know, a great opportunity, particularly since I believe--and I am not a constitutional scholar by any stretch of the imagination--that voluntarily participating--you know, opting out of political communication by a voter would not hit First Amendment issues. But I am not an expert.

Chairman Feinstein. Well, I tend to think you are right, because, I mean, this is a privacy issue, as someone said, and it seems to me that if take the time

to call and register yourself on a federal Do-Not-Call Registry, you do not want your privacy interrupted for one reason or another. And this is a little different than a TV, which you can turn off. You cannot turn off that ring in the middle of the night. You cannot turn off the ring in the middle of an important business conversation. You cannot turn off the ring when you are sick. You cannot turn off the ring when you have someone infirmed in the house that it bothers.

And so it is I think a privacy issue. Attorney General, do you have anything else to add on that particular subject.

Mr. Cooper. We believe this would pass constitutional muster. Unlike Mr. Bopp, I believe that this involves intermediate scrutiny, because it is content neutral. We are not regulating the content of speech, and, in fact, Indiana has this law that says that political robocalls cannot be made to homes that are on the Do-Not-Call List.

A federal district court judge said that this was constitutional and required intermediate scrutiny. It was appealed to the Seventh Circuit. The Seventh Circuit upheld, but on different grounds; did not get to the constitutional issue.

However, we filed an amicus brief with a number of other States, and believe that this is not a speech issue. It is a privacy issue and that someone who has gone to the trouble, as you say, to say do not call me at home, they should not be called at home.

You can turn off the TV. You can turn off the radio. You can refuse to take the leaflet. You can refuse to go to your door at a door-to-door campaign.

You have to pick up that telephone, and you are forced to. So if you want to sign up for the Do-Not-Call Registry to say do not call me at home, you ought to be able to do it, and politicians should have to apply by the same rules as telemarketers who are peddling their wares.

Chairman Feinstein. Mr. Bopp, would you like to respond to that?

Mr. Bopp. Sure. I think there are two points to be made there.

First, the Supreme Court has held that generally applicable laws--an example is a law that prohibits all residential yard signs--could not constitutionally be applied to political yard signs. And they did that--

Chairman Feinstein. But is not this very different than a yard sign? A yard sign is a benign instrument. A telephone is not.

Mr. Bopp. Well, you know, the--

Chairman Feinstein. --there is a ring. You are forced to answer it. Every--every one of the cases I talked about--door-to-door solicitation, broadcast ads, handing out handbills on a sidewalk, residential picketing--have all been justified based upon the claim that citizens are annoyed. They are annoyed to have to answer the door to a door-to-door solicitor. They are annoyed when people picket in front of their house in a residential setting. They are annoyed by seeing billboards alongside of the road. And, of course, they have also been justified by saying that it is a safety issue. People's attention--as they are driving along the road are distracted -- because they are looking at a billboard, and they could get into an automobile accident.

So, these are common typical type of claims that are made to justify specific restrictions on speech that the Supreme Court has already rejected.

Now the second point is this bill is fatally flawed no matter how many things you hang on to it. It is fatally flawed because it applies to any communication that attacks, promotes, supports, or opposes a candidate. That is unconstitutionally vague, and unconstitutionally overbroad. It goes way beyond communications calling for vote for or against a candidate; would apply to grassroots lobbying; would apply to issue advocacy. And I do not think the Supreme Court will countenance a bill that is triggered on such a vague and overbroad definition of speech.

Chairman Feinstein. Thank you. That was very spirited. My time is up.

Senator Bennett?

Senator Bennett. Thank you very much.

Attorney General Cooper, listening to you and then listening to Mr. Bopp on the technology, I have a sense that the specifics you give us of people who have found these calls significantly detrimental to them are behind the technology, and the technology now exists to get around that.

Mr. Bopp is nodding that I right, and you are nodding that I am wrong.

Mr. Cooper. No.

Senator Bennett. Can we address that?

Mr. Cooper. No. There may be technology out there that uses voice commands. Sometimes they work. Sometimes they do not. The complaints

that we get from consumers on these robocalls is that when the calls come, they often last several minutes, because there is a lot of information that people want to get to the person, and they grab the line. And even when you hang up, you pick it back up, and they are still there.

Senator Bennett. My question is--

Mr. Cooper. They will not go away.

Senator Bennett. --is that still true? Or, and, Mr. Bopp, you are saying that it is not?

Mr. Bopp. No. I talked yesterday to someone I know who does this sort of work for some of my clients, and it is much more sophisticated than what is being described here. If a person just spontaneously says, I do not want to get more calls from you. The voice recognition technology can--and with the computer--will program that computer not to call that number, and it goes into the system.

Senator Bennett. The question is is that technology being used? I would think General Cooper would agree the technology exists, but it is not being used?

Mr. Bopp. Well, it is being used by the largest one that I know of that is doing this activity. And secondly, the market will deal with this. People who are doing these calls have no desire to alienate or offend anyone. They cannot persuade someone of their message by alienation, and--

Senator Bennett. That gets to the next point that I want to--I want to

explore. Why would any politician want to use something that turns off his voters? My own experience, as I say, when I found out that people were being offended by calls that were being made with my voice on it, I took steps to stop it.

Mr. Bopp. You did not need the government. You did not need some prosecutor or attorney general to come in and make you call the person that was using your voice?

Senator Bennett. My concern is, because I think you are right about the market saying, you know, Senator Bennett, if you are offending every voter in the State of Utah by these calls being made in your name, you are pretty stupid if you are going to continue to pay money to somebody to offend voters.

But the most recent example we have had in the last run up for the nomination, for the 2008 presidency, was complaints by Mitt Romney about his opponent making robocalls in ways that reflect--that led people to believe that the Romney campaign was behind these particular calls.

Chairman Feinstein. That is right.

Senator Bennett. And that is one where the market is not going to correct it.

Mr. Bopp. Well, the press dealt with that issue.

Senator Bennett. And can we decide how--how do we deal with that?

Mr. Bopp. Well, the press dealt with that issue. I mean, that was a very well publicized and investigated issue. And so the press was alerted and, it was

widely condemned, as it should have been widely condemned.

Senator Bennett. Well, my concern there is that the people who got the message from the telephone may not have read the newspaper the next day to find out about it. When your communication comes in one channel, it is not automatic that you get the correcting communication from another channel.

Mr. Bopp. But that is equally true of a newspaper ad, of a direct mail piece, of a broadcast ad, of any possible means of communication. They can--some politicians will push the envelope and try to mislead people. And what we use--

Senator Bennett. No, we never--

Mr. Bopp. --I said some. And so what we use to guard against that is speech; that is, speech through the press, through opposing candidates, i.e., Governor Romney was not exactly shy about bringing this to people's attention. And that is the robust First Amendment free market that we have.

Senator Bennett. Let me go to the provision in the Chairman's bill that would require the identification up front of who it is that is making the call. I do not see that as different from the current requirement, which seems to have been upheld by the Supreme Court that requires me to say I am Bob Bennett, and I approve this ad somewhere in the ad.

Now it is at the end of the ad usually. It is up to me where I put it on the television ad or the radio ad. But her requirement would say that every robocall would require such identification up front. Would, in your view, Mr. Bopp, would

that be acceptable before the Supreme Court?

Mr. Bopp. I think there are two modest time, place, and manner things that are potentially constitutional as long as they apply to the proper set of ads, not as broadly as this bill does, and that is identification--prior identification--I mean, initial identification of the caller and secondly, no calls between 9:00 p.m. and 8:00 a.m.

But I think each requirement is going to require strict scrutiny, and this is a very highly protected area, where anonymous speech in the McIntyre case was found constitutionally protected, so there is a caveat there in terms of even the prior identification of the caller.

Senator Bennett. Thank you. My time is up as well. Do we want another round?

Chairman Feinstein. Thank you. Yes, I would. I know Senator Whitehouse is here. Are you all right for another, say, 10 minutes?

Senator Whitehouse. Sure.

Chairman Feinstein. Thank you very much. I want to just make the point in reading a concurring opinion of Judge Felix--Justice Felix Frankfurter in the 1949 case Kovax v. Cooper regarding abusive noise from political sound trucks. In this concurring opinion, he said the following: "The various forms of modern so-called mass communications raise issues that were not implied in the means of communication known or contemplated by Franklin and Jefferson and Madison. Nor is it for this Court to devise the terms on which sound trucks

should be allowed to operate, if at all. These are matters for the legislative judgment, controlled by public opinion. So long as a legislature does not prescribe what ideas may be noisily expressed and what may not be, nor discriminate among those who would make inroads upon the public peace, it is not for us to supervise the limits the legislature may impose in safeguarding the steadily narrowing opportunities for serenity and reflection."

So there is an analogy between the bull horns of 1949 and the constant ringing of 2008.

Mr. Dakin, you wanted to respond to Mr. Bopp and did not have a chance to. So I would like to give you that opportunity.

Mr. Dakin. Sure. Thank you. I think, the issue of technology--technology can always bring us to the next level, but the bottom line is that people do not want the phone to ring at all.

Chairman Feinstein. That is right.

Mr. Dakin. So whether you have some very sophisticated technology that allows you to voice activate it, and I know he was talking about Free Eats, and they talk about artificial intelligence and the success of that. The bottom line is that most robocalling is done by a \$5,000 to \$8,000 machine you can buy on e-Bay, and you can plug into your, you know, phone system, and you can start making hundreds of thousands of phone calls, you know, on a dime really, you know, on a very cheap dime.

And the bottom line is that our members do not want any phone calls at

all. If you are a senior at home, and you have a health emergency, you do not want a phone call. If you are a mother with a baby at home that is sleeping, whether there is technology on the other end of the phone, it does not matter. The phone call is going to come in.

And so, when I do talk to members about this, they say well, you know, people can turn the phone off. Well, you know, that is not a very good answer to most Americans, to you. I mean, to turn the phone off when you expect your family members to be able to call you is not an answer. There is technology you can buy as an individual citizen to block robocalls. You have caller ID. You are addressing the caller ID issues, but that is an additional expense to the American voter that they should not have to make.

So, you know, it is our position that, you know, technology does not matter. It is, you know, it is the fact that you need to stop these phone calls. It is a privacy issue.

Chairman Feinstein. Yes. I actually think that Justice Frankfurter makes the point in that these calls have now become a substantial irritation to people. And these people want the regulation, and there are a lot of people that want the regulation.

Attorney General Cooper, why do not we--do you have any other comments to make about the bill?

Mr. Cooper. I think it is just important to continue to reiterate that we are not regulating the content of speech. I think the cases that Mr. Bopp is

mentioning were prohibiting door-to-door and prohibiting these signs. This is a voluntary issue.

If you sign up for the Do-Not-Call Registry, you do not get the calls. If you do not sign up for the Do-Not-Call Registry, you do get the calls. It just--it is just a voluntary thing here that citizens ought to be able to enjoy.

Chairman Feinstein. Thank you. Senator, more questions?

Senator Bennett. Thank you very much. Mr. Bopp, how do you react to that last comment, when voluntarily, I can say I do not want calls so that I am not imposing my view on my neighbor or on the politician. I am just saying I do not want a call.

How would you react to that for a constitutional question?

Mr. Bopp. Well, I think there is a couple of points. First is, you know, an individual has multiple opportunities to decide whether or not to accept a call. And, in fact, the technology, I mean, I keep--

Senator Bennett. But in this specifically, you are--you are not deciding to accept the call. You are going on a list that says do not even make the call.

Mr. Bopp. That is right, and then you are enlisting the government and the government is then enlisting Attorney General Cooper or some governmental agency to investigate, fine, or punish you. That is why the First Amendment issue applies; that is, it applies when government seeks to limit activity that is protected by the First Amendment. And it does not matter that some private person wants the government to do that.

Senator Bennett. Okay. Let me in the time move on. As I say, I cannot conceive of any politician paying money to somebody that is going to do something that is going to damage his campaign. I would never ever pay for anybody to make calls on my behalf more than once per election, let alone once per day. I--one call into the home saying this is Bob Bennett, I hope you come out and vote for me is all I would ever, ever do, because my experience tells me that is the only thing that is effective and even that can be annoying, as we have found. So I am not going to deliberately annoy my voters. That is a really dumb thing for you to pay consultants to do on your behalf.

Mr. Bopp. And this is the--

Senator Bennett. So let me ask this question, Mr. Bopp: suppose the bill says you have to identify yourself up front. I always do. Whenever I make a call, the first thing I say is hi, this is Bob Bennett, so everybody knows who is calling. And number two, time controls--calling in the middle of the night is really stupid, but okay, if some machines do it and then government wants to prevent them from doing that, I guess I do not have a problem with that; and controlling the number that you cannot do more than X in a 24-hour period or something. I would automatically do that on behalf of anyone of my campaigns. So I do not see it as a restriction on my ability to communicate with my constituents if the government puts those kinds of commonsense circumstances on it.

You have spent a lot of time in this area and have some very strong opinions. How would you react if the bill went in those three directions, which

seem to me to be responsive to the concerns that Mr. Dakin and General Cooper have raised?

Mr. Bopp. The most likely constitutional, in my view, is the 9:00 p.m. to 8:00 a.m. prohibition on calling in the middle of the night.

I think there is authority--constitutional authority on both sides of the question of whether or not you can require identification of the caller. There are cases that say no; cases that say yes.

Senator Bennett. Well, the precedent is what we have in the television and radio ad right now.

Mr. Bopp. Yes. Well, but also in the McIntyre case, which struck down the requirement that Mrs. McIntyre identify herself the source of a pamphlet that she was distributing regarding a bond issue, and so in protecting speech.

So and the third, the number of calls, I do not know any authority one way or the other on the number of calls, but I think you are again going to have to show a compelling governmental interest on, three calls meets some vital interest that the government is protecting.

And by the way, this bill does not apply to the live calls, live caller calls. I do not know why--I mean, other than it is--computer-generated calls are more effective because they are cheaper to be done. I do not know why the distinction. It is like the only things that the government seems to want to regulate, like broadcast ads or computer-generated calls, are things that are effective. If people are not doing them, like we used to be concerned about

door-to-door solicitation, which have all these features you are talking about.

You got to answer the door. People do not seem to want to prohibit it anymore, because people do not go door-to-door.

Senator Bennett. Yes. My time is up. Did you want to comment, Mr. Dakin?

Mr. Dakin. Yes, I just wanted to comment on the effectiveness versus the efficiency. I do not agree with Mr. Bopp. Almost every consultant and candidate I talk to and the data that I see show that robocalls are particularly efficient; i.e., they are very cheap. They are very easy to get out. But when I ask consultants and I ask robocall vendors how do you know whether they are effective? Are you doing what you want them to do? There is no data. They cannot provide me or anybody with that kind of data.

And the only data I will leave you with is there was a 2004 study between Brookings and Yale. It is the only kind of non-partial, non-partisan group that I have ever seen. They looked at 2004 election. They looked at all the voter contact strategies you could use, from door-to-door canvassing to direct mail, to voter--you know, phone calls, automated, volunteer phone calls, and they found that the only mechanism that worked was door-to-door canvassing in terms of lifting get out the vote, and that robocalls were absolutely--you know, there was no data to show that they provide any effectiveness at all.

Senator Bennett. If they provide no effectiveness at all, you are really stupid if you pay for them. The mark--

Mr. Bopp. Exactly. Exactly.

Senator Bennett. --the market should take care of that.

Chairman Feinstein. I would like to thank the panelists. I think this has been a very good discussion. I am going to modify the bill pursuant to the Attorney General's comments to provide that the federal Do-Not-Call List be enforced with respect to robocalls. If somebody calls and says I want to go on this list. I do not want to get these calls that that is effectively respected.

I would also like to insert the following documents into the hearing record: letters from the Colorado Attorney General, William Suthers; the Georgia State Senator and President pro tem, Eric Johnson; Pennsylvania State Senator and Majority Leader Dominic Pillegi; Kentucky State Representative Jimmy Higdon; Connecticut State Representative William Tong; and Nebraska State Senator DiAnna Schimek. And also letters received from UCLA Professor of Election Law, Dan Lowenstein; Bob Edgar, the President of Common Cause--excuse me--and Cal State, Sacramento Professor and Director of the Institute for the Study of Media and Politics Barbara O'Connor; and would like to submit for the record a Congressional Research Service Report entitled "Automated Political Telephone Calls in Federal Campaigns: Overview and Policy Objections."

Without objection, those will be entered into the record.

[The information follows:]

Chairman Feinstein. And I thank the panel, and we will replace you with a very distinguished United States Senator. I have the pleasure of serving on two committees with Senator Whitehouse. First is Judiciary, and the second is Intelligence and have come to have a great respect for him.

He is a graduate of Yale University and the University of Virginia School of Law. He was nominated by President Clinton to be Rhode Island's U.S. Attorney. He was elected State Attorney General in 1998, a position which he served from 1999 to 2003. On November 7th, 2006, Rhode Islanders elected him to the United States Senate, and we are delighted to have him here today to testify on the voter caging bill that he has introduced. Welcome, Senator Whitehouse.

STATEMENT OF HON. SHELDON WHITEHOUSE, A UNITED
STATES SENATOR FROM THE STATE OF RHODE ISLAND

Senator Whitehouse. Thank you so much, Chairman Feinstein, Ranking Member Bennett. It is a pleasure to be here. It has been a while since I have been on this side of the microphone. But I am enjoying particularly what looks like a view of Rhode Island over your heads.

Thank you very much for scheduling this hearing on 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, or an organization working on behalf of a campaign, identifies a geographic area with a disproportionate representation of the other side's registered voters, 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 defined geographic area.

Third, the campaign then 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 services and stationed far from home. A voter might be a student lawfully registered at his parents' address. Even a typographical error during the entry of a 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 antifraud measure, when it is really just the opposite: a nefarious way to compile obviously unreliable lists that will be used to challenge legitimate voters for a partisan purpose.

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 has 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 such a voter suppression effort is no argument for its legality.

Indeed, Minnesota, California, and my home state of Rhode Island have enacted state laws prohibiting vote caging.

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 made it to 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 your challenge.

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, such as a driver's license or Social Security 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.

In conclusion, I would like to briefly note the exceptional group of Senators who have agreed to be original co-sponsors of this legislation: Senator Leahy; our Chairman in the Rules Committee, Chairman Feinstein; Senator Dodd; Senator Harkin; Senator Kerry; Senator Feingold; Senator Schumer; Senator Nelson of Florida; Senator Clinton; Senator Obama; Senator Menendez; Senator Brown; and Senator Klobuchar.

I was also proud to work very 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 underlying right to vote.

Organized voter suppression efforts, including "vote caging" schemes, infringe on this right and undermine our democracy. I believe Congress should rise to the occasion and say enough is enough to the practice of vote caging.

Thank you very much for the time with you this morning. [The prepared statement of Senator Whitehouse follows:]

Chairman Feinstein. Thank you very much, Senator Whitehouse.

Senator Bennett, do you have some--any questions of the Senator?

Senator Bennett. I would simply repeat what I said in my opening statement, and I am not sure you were here, Senator, when I made that, that the tension between keeping ineligible people from voting, which is the reason why we have registration lists, and the desire to see that everybody who has the ability to vote should be able to vote without harassment goes all the way back to the beginning of the Republic.

And regardless of how I may or not feel about your bill, I would hope you would help us think about this tension and give us whatever suggestions you might have to help clean up registration lists that are filled with deadwood so that we can, in fact, make sure that everybody who is eligible to vote does vote without harassment or intimidation, everybody who should not vote does not vote without--does not vote and participate in vote fraud. That is what obviously we want to try to do. We want the registration lists to be as accurate as possible and complete as possible, and we want everybody who should vote--who can vote to register, but we want to make sure that the registration lists is accurate and complete as possible so that people who do not belong on it do not get on it and then if someone shows and tries to vote in an improper name gets stopped. That is the goal that we are all trying to reach here.

Senator Whitehouse. Senator Bennett, your point is well taken, and the tension you reference is a longstanding one. The bill endeavors to reach the

proper balance in that tension by requiring a measure of specificity before an individual voter can have their name struck from the rolls.

I am reminded of my lawyering days when fraud had to be pled with specificity in the same way we demand in this legislation some specific identifying information before an individual can be challenged so that these sort of categorical sweeps do not pick up legitimate voters because there has not been sufficient specificity to determine, you know, where this is a legitimate challenge, and where this is a legitimate voter caught up in a kind of general sweep.

Senator Bennett. Yes. Is it not true that under HAVA if someone is challenged by virtue of a voter caging list, he or she still can cast a provisional vote?

Senator Whitehouse. Legally, but the experience I think and the reason for the voter caging practice has been that if you can intimidate voters at the polls, discourage them from going through the effort, turn them away or cause them to fear some consequence, they will not exercise rights that they may have.

Every voter does not come to the voting booth with a lawyer and a full appreciation of--

Senator Bennett. I do not think you need a lawyer. You simply say, gee, I am eligible to vote, and you are told well, you can cast a ballot, but it is a provisional ballot.

Senator Whitehouse. Yes, and if that worked every time, I suspect that the vote caging practice would never have

developed.

Senator Bennett. Thank you.

Chairman Feinstein. Thank you very much, Senator Whitehouse, and again thank you for being so patient. I appreciate it.

Senator Whitehouse. It's a pleasure to be here.

Chairman Feinstein. Thank you.

Senator Whitehouse. I thank the Chairman and the Ranking Member.

Chairman Feinstein. Thank you. And now if the panelists--witnesses will come forward, please? I will introduce them beginning with Chandler Davidson. He is the Research Professor and Tsanoff Chair of Public Affairs Emeritus of Rice University. His work on voting rights and election procedures has been cited in multiple U.S. Supreme Court opinions. In 2005-2006, Professor Davidson served on the National Commission on the Voting Rights Act as the primary drafter of the Commission's 2006 Report, "Protecting Minority Voters." He had just finished drafting a law review article on vote caging practices, which we would like to receive as soon as possible, professor.

Mr. Jay Bradley King is a native of Omega, Indiana, and throughout his career, he has had the privilege of advising and assisting county election officials, candidates, and political party officials throughout Indiana. His career has spanned numerous positions, including counsel to the Marion City Board of Voter Registration, co-general counsel to the Indiana Election Commission, State Election Director for the Secretary of State of Minnesota, and is current service

as co-director of the Indiana Election Division of the Office of Secretary of State.

And finally, last but not least, Judith A Browne-Dianis. She is the Co-Director of the Advancement Project. That is a policy, communications, and legal action group committed to racial justice. She began her civil rights career at the NAACP Legal Defense and Education Fund, and through recent advancement project initiatives, she is advocating justice and equity for displaced New Orleans residents. We would welcome our witnesses. I would then ask you to contain your remarks to the five minutes, and we will begin with Dr. Davidson.

STATEMENT OF CHANDLER DAVIDSON, PROFESSOR
EMERITUS, RICE UNIVERSITY

Mr. Davidson. Madam Chairman and Ranking Member, thank you for inviting me to speak before your committee today. I am honored to do so.

Vote caging is a process in which political operatives typically send do not forward letters to registered voters of another party, make a list of the names of persons whose letters are returned, and use this caging list to challenge those persons at the election precinct at which they are registered or to purge their names from the rolls in advance on the assumption they have changed their residence and are not entitled to vote.

Scholars have listed nine separate reasons why vote caging can lead to an unfounded challenge. For example, there are several reasons a do not forward letter may be returned, such as unreliable mail delivery in high poverty neighborhoods and mistakes by party operatives regarding names and addresses of registrants.

That vote caging is not simply a good government effort to ensure fair elections is obvious from the fact that the letters are targeted to members of an opposing party. Moreover, voters most likely to be caged, often members of ethnic minorities, are disproportionately elderly or poor, and may be intimidated when challenged. Two, challenges can slow the voting process and voters may become discouraged and leave.

In a book we are preparing, my co-authors and I have identified various

cases of vote caging. A number of them occurred in Black and Latino precincts in Phoenix in the 1950s and 1960s. Republican operatives oversaw them, although in one case, Democrats responded in kind. Concomitant with the caging were intimidation of minority voters, scuffles between challengers and voters and failure of the cagers to comply with the law.

The nationwide ballot security program mounted by the Republican National Committee in 1964 called Operation Eagle Eye recommended sending do not forward letters to compile voter challenge lists.

Caging in minority areas occurred in the 1981 New Jersey gubernatorial election. In addition, operatives working for the RNC sent off-duty uniformed policemen to the polls and posted signs in Black neighborhoods warning that violating election laws was a crime. Subsequently, Judge Dickinson R. Debevoise oversaw a consent decree prohibiting both the RNC and the DNC from engaging in some of the more egregious forms of vote suppression, including racial targeting.

In 1986, a Republican caging effort in a Louisiana senatorial race was enjoined by a federal judge, and the RNC was required to appear again before Judge Debevoise and to submit all its future ballot security programs to his court for approval.

An operative in Louisiana had written to a co-worker, "I would guess that this program will eliminate at least 60,000 to 80,000 folks from the rolls. If it is a close race, which I am assuming it is, this could keep the Black vote down

considerably."

In the 1990 North Carolina contest between Senator Jesse Helms and his African American challenger, Harvey Gantt, the state Republican apparatus, in conjunction with the Helms campaign, sent out two mailings of first class mail postcards almost entirely to Blacks containing false and threatening information. One purpose was to create a challenge list, but the plan was frustrated at the last minute by the Justice Department.

Other actual or intended voter challenges from 2002 to 2006 are mentioned by Teresa James of Project Vote, including those in Wisconsin, Ohio, North Carolina, South Carolina, Georgia, Kentucky, Washington, and New York.

In 2004, caging operatives targeted more than half a million voters. The year 2004 also witnessed a new twist called virtual caging.

Wisconsin Republicans used Freedom of Information laws to identify new voters and then ran a computerized background check on more than 300,000 Milwaukee registrants. They then challenged about 5,600 and launched a media campaign to lodge charges of voter fraud.

According to Ms. James, in 2004 political operatives targeted more than half a million voters in vote caging campaigns in nine states. At least 77,000 voters had their eligibility challenged between 2004 and 2006.

In exceedingly brief compass, this constitutes our findings regarding vote caging. While the cases we have identified have with one exception involved Republicans caging Democratic votes, it is possible that we have overlooked

instances of Democratic gaging.

Vote gaging, whether by Democrats or Republicans is not, I believe a fair way to determine the accuracy of voter rolls due both to its methodological flaws and the fact that it is a partisan enterprise aimed at preventing only members of the other party from voting.

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, there are fair and efficient methods by which election officials, not party operatives, can ensure that the voter rolls are accurate.

[The prepared statement of Mr. Davidson follows:]

Chairman Feinstein. Thank you very much. Mr. King?

STATEMENT OF J. BRADLEY KING, CO-DIRECTOR, INDIANA
ELECTION DIVISION

Mr. King. Thank you, Chairman Feinstein, Ranking Member Bennett. It is a pleasure and a privilege to be able to speak to you this morning regarding S.2305, the Caging Prohibition Act of 2007.

I speak as the Co-Director of the Indiana Election Division, the state agency that is charged with helping voters, poll workers, county election officials, and others administer elections in Indiana, so I do not bring the perspective that other witnesses might have regarding the activities of political organizations and parties regarding what has been described in this bill as vote caging.

My purpose today is to convey to the Committee the concerns that many state and local election administrators have with what are perhaps some unintended consequences of the language currently in S.2305.

In particular, let me begin by noting that 2305 contains what I view as a standard savings clause in Subsection D, which says, "the bill is not intended to override any of the protections set forth in the National Voter Registration Act."

And I think those protections are important, but I would note that the National Voter Registration Act also protects against voter dilution by ensuring that voter list maintenance is performed by state and local officials in a timely and proper manner. That is also a protection that needs to be safeguarded.

With regard to some specific examples of how 2305 might have, again, perhaps unintended impacts on the difficult task of voter list maintenance, with

regard to the provision regarding unverified list matches, as Senator Whitehouse indicated in his remarks, either a signature, photograph, or unique identification number would be required for certain documents to be used for that purpose.

My office began receiving fairly recently death certificates from the Medical Examiner of Cooke County, Illinois, for Indiana residents who may have died in a Chicago hospital. And obviously those Medical Examiner death certificates did not contain the signature or photograph of the voter, nor did they contain any identification number that would have been suitable.

So again, this is an unexpected complication that I am not sure the bill intends to have.

Likewise, the bill applies to individuals who apply to register to vote so that, for example, if I were to submit an application to become a registered voter, the local voter registration office would process it.

Under the National Voter Registration Act, they would then send me what is referred to as a notice of disposition to say your application has been approved or rejected.

Under the provisions of 2305, as I understand it, if that notice of disposition is returned by the U.S. Postal Service to the county voter registration office, the county office would be precluded from acting on that, and, as a result, could not either deny the application or even if the voter was placed on inactive status, the voter would remain there for up to two federal general elections, a period of four years.

I think that in general bad voter registration lists that are inflated with the names of voters who are deceased or have moved away present an opportunity for corruption, a potential for fraud.

Clean lists diminish the opportunities for fraud. And this point, for example, was discussed by the Justices of the U.S. Supreme Court earlier this year during their oral arguments on Indiana's photo identification law.

I would want to emphasize that voter registration list maintenance is already complex and difficult for the people who administer it. NVRA has some very strict deadlines, such as a 90-day freeze on conducting voter list maintenance programs before a primary or general election.

One Indiana jurisdiction, Hancock County, missed that 90-day deadline by a matter of hours in 2006, and, as a result, the names of 5,000 voters, who should properly have been designated inactive, remain active and on the voter registration rolls during the election of 2006.

I think the other important piece to note is that public confidence is diminished by bad voter registration lists. Voters when they go to the polls simply do not understand why the name of their daughter, who has graduated from college, or their neighbor, who has moved away, still shows up on the voter registration list at that precinct year after year.

Likewise, the poll workers who administer the elections do not understand why individuals they know are deceased or have left the community continue to appear despite the poll workers noting that fact on the poll list in a good faith

effort to help keep the list clean.

I would conclude by urging the Committee in its consideration of 2305 to keep these factors in mind so that the process of voter list maintenance can be made easier and not harder. Thank you.

[The prepared statement of Mr. King follows:]

Chairman Feinstein. Thank you very much, Mr. King. Ms.--is it
De-ANH-is?

Ms. Browne-Dianis. Yes. Dianis.

Chairman Feinstein. Please proceed.

STATEMENT OF JUDITH A. BROWNE-DIANIS, CO-DIRECTOR,
THE ADVANCEMENT PROJECT.

Ms. Browne-Dianis. Good morning, Chairwoman Feinstein and Senator Bennett. Thank you for having me here and having the opportunity to address this important issue of vote caging, an issue that is especially timely in this election season.

The Advancement Project is a racial justice organization. We have been nationally recognized for our voter protection program, which eliminates barriers to voting in advance of elections.

Since serving as counsel on behalf of Black Floridians in 2000, we have worked with voter protection coalitions and election officials in 12 states towards a just democracy.

In short, voter caging by individuals and political parties should be prohibited by law. While some may call such practices as voter fraud prevention, the practice of caging has its roots in voter suppression and intimidation, particularly targeted at minority voters.

Existing law provides clearly delineated procedures to ensure accurate and current voter rolls. To permit others to engage in caging permits a free for all for voter suppression tactics. Immediate action is needed by Congress to ensure that such action does not impede civic participation in this historic election cycle where turnout is unprecedented, especially among voters of color.

Professor Davidson has given the history of voter caging, and so I wanted to give a more recent example from 2004.

In 2004, caging was used in conjunction with Reconstruction-era challenge statutes in order to disenfranchise voters, particularly minority voters. Caging practices identified potential voters for disenfranchisement, and statutes permitting voters or party representatives to challenge the eligibility of voters were used to purge them immediately prior to and on Election Day. Prior to Election Day in Ohio, 35,000 challenges were filed, disproportionately in urban areas. Poll observers registered in unprecedented numbers with the intent to engage in massive challenges inside polling places.

In light of the potential impact on minority voters, Advancement Project filed an action to prevent the discriminatory use of challenges based upon illegal caging practices.

On behalf of Ebony Malone, a first-time African American voter in Cuyahoga County, whose name appeared on the Republican challenge list, we intervened in the New Jersey DNC versus RNC case to enforce the consent decree that prohibited the RNC's implementation of fraud or ballot security programs without the court's consent.

The evidence successfully demonstrated that the RNC was in violation of this consent decree. The RNC participated actively in a joint effort with the Ohio Republican Party to use return mailings to challenge the right of thousands of newly registered voters to cast ballots on November 2nd.

On August 10th, 2004, the RNC mailed over 49,000 letters to newly registered voters in Cuyahoga County. The mailing was done by the RNC, but undeliverable mail was returned to the Ohio Republican Party, who then shared the list of returned letters with the RNC.

While the RNC claimed that the purpose of the mailing was simply to "welcome all newly registered voters," the list was, in fact, analyzed by the RNC for voter fraud.

The evidence placed this case squarely within the DNC-RNC case. Again, in September another list was compiled by the Ohio Republican Party and shared with the RNC. This time letters were sent to newly registered voters in Cuyahoga County, Franklin, Summit, Hamilton, and Montgomery Counties. The list produced more than 15,000 undeliverable letters. The RNC investigated this list.

While a party official represented during a deposition that RNC personnel did not discuss voter fraud with the Ohio Republican Party because the consent decree forbade it, e-mails showed that these strategies were discussed on a regular basis internally and with officials in Ohio. In fact, the RNC hosted voter registration fraud strategy conference calls that included State Chairmen and discussed Nevada, Ohio, New Mexico, and Pennsylvania.

The staff also suggested cross checking absentee ballots against the return mail in Nevada, Florida, Pennsylvania, New Mexico, and Ohio.

These actions indicated participation and assistance by the RNC in efforts

to identify the challenged--and challenged newly registered voters in direct violation of the consent decree.

The evidence also showed that the challenge list constituted a disproportionate number of African American voters. For example, in Hamilton County, voters in precincts with highest concentration of Black voters were eight times more likely to be challenged than voters in most heavily non-Black precincts.

In Cuyahoga, similarly situated voters were three times more likely to be challenged. Ultimately, the district court in New Jersey issued an order prohibiting the use of this list.

In closing, in light of the history of caging as a tool for voter suppression, it should be prohibited. To the extent voter rolls are inaccurate, election officials should employ the provisions of the NVRA, the National Voter Registration Act of 1993, which is carefully drafted and provides protections to ensure that purging is not discriminatory or used as a last minute mechanism of voter suppression and intimidation.

Challenges have the chilling effect on participation, especially for new voters; creates disruption and confusion, and generates long lines. Election officials are charged with list maintenance, and they should be the ones to handle this issue and that would avoid the consequences and make sure that voter suppression does not happen. Thank you.

[The prepared statement of Ms. Browne-Dianis follows:]

Chairman Feinstein. Thank you very much, and let me thank all of you for being concise. It is very much appreciated.

I have a question and maybe I see Senator Whitehouse is still here. Can I ask you a question?

On page two of the definitions section, you define a vote caging document as any unforwardable document that is sent to an individual at the address at which such individual is registered or seeking to become as a voter in federal election that is returned to the sender or to a third party as undelivered or undeliverable.

Well, does not that also include anything that a registrar of voters might send out to cleanse a list? It is I guess--you do not need to answer now. I was just reading it, and the thought occurred--

Senator Whitehouse. I am sorry. Where are you?

Chairman Feinstein. --it is on page two of your bill, and it is line one to line six. I just think that the definition is so broad that we might want to look at it. And if you would like to comment at another time, that is fine, too.

Senator Whitehouse. I think the short answer is that because it--

Chairman Feinstein. Could you grab a microphone or come sit up here? Why do you not come join us? We are always looking for members.

Senator Whitehouse. Hold on. Senator Bennett, do you mind if I join this side?

Chairman Feinstein. We would love it. Come right in. Oh, yes.

Senator Bennett. We would be delighted.

Chairman Feinstein. Yes.

Senator Whitehouse. I think because the conduct under the National Voter Registration Act is exempted, then the conduct of officials who are conducting those activities is exempted. There is also a place in which activities by elected officials and by officials charged with election regulation is exempted. So I do not--

Chairman Feinstein. Would you--

Senator Whitehouse. --I think we worked our way through that problem in the bill.

Chairman Feinstein. --would you give me that--cite that line. I cannot find the bill again.

Senator Whitehouse. The final subsection, Subsection D, National Voter Registration Act exemption.

Chairman Feinstein. What page?

Senator Whitehouse. It is the very last paragraph, Subsection D, of the bill, at the very end.

Chairman Feinstein. So page two?

Senator Whitehouse. Well, on mine, it is page three, but.

Chairman Feinstein. Oh, conduct by an election official?

Senator Whitehouse. Well, the first would be the exemption which is paragraph D, at the very end of the bill. Nothing in this section shall be

construed to override the protections of the National Voter Registration Act. So those would--National Voter Registration Act authorized or controlled activities would continue.

Chairman Feinstein. All right. We think we need to talk about it a little bit further, because it does not really respond to my question, but.

Senator Whitehouse. And then we exempt in Subsection C no person other than a State or Local election official shall submit a formal challenge.

Chairman Feinstein. Subsection what?

Senator Whitehouse. C.1.

Chairman Feinstein. Subsection.

Senator Bennett. You mean the poll watchers that are appointed by both parties are rendered neutral are neutered; that the Republican cannot challenge a Democratic or the Democrat cannot challenge a Republican issue with respect to a voter?

Senator Whitehouse. Not without setting forth--

Senator Bennett. That is the reason you have watchers from both parties.

Senator Whitehouse. --not without being able to set forth in writing specific grounds for the ineligibility of the individual who's the subject of the challenge.

Senator Bennett. You are effectively saying the poll watchers cannot function?

Senator Whitehouse. Unless they can set forth in writing specific grounds for the ineligibility of the individual.

Senator Bennett. With the--

Senator Whitehouse. They have to have a basis that they can articulate in writing at the time.

Senator Bennett. --yes, with a \$50,000 fine hanging over them if they happen to make a mistake.

Chairman Feinstein. Well, we will have to talk about this.

Mr. King, if I can, I would like to ask you a quick question.

I understand that Indiana was sued by DOJ because of inflated voter registration lists. And according to the DOJ complaint, a computer program intent on identifying deceased registered voters found 29,000 possible deceased on the list.

Part of your state's consent decree involved identifying how many actual voters were deceased. What did your report to DOJ conclude?

Mr. King. Thank you, Senator Feinstein. Yes, that is correct. The DOJ consent decree that was entered into after litigation filed by the Department against Indiana under the National Voter Registration Act did require us to identify potential deceased voters. Under Indiana statutes, the county voter registration officers, presumably with more knowledge about many of the individuals on those lists, were asked to identify which of those 29,000 were more than potential, but were actual matches in terms of deceased voters.

The counties were provided with a report that matched items such as date of birth, name of voter, and others to help them make that determination.

I do not have the exact figure available, but my recollection is that approximately one-half to two-thirds of those identified as deceased or potentially deceased were, in fact, confirmed as deceased by the county voter registration offices.

Chairman Feinstein. So, in other words, you were required to have accurate data before taking someone off the rolls.

Mr. King. Yes, that is correct.

Chairman Feinstein. Which really is what this bill, as I understand what Senator Whitehouse just said, is attempting to do?

Mr. King. Yes, Senator, and my concern, as I expressed it, is it is not that--counties are particularly concerned not to remove potential deceased voters unless they are as sure as they possibly be that the voter is, in fact, deceased.

Nothing is more embarrassing or heart rending than having an individual stand before a poll worker and insist that they are, in fact, not deceased.

But the steps taken by the Indiana voter registration officials were done with information that might not have met the requirements of 2305 in terms of having signature, photograph, or voter ID number, which I think is the concern that many election administrators would have.

Chairman Feinstein. Could I ask this question? When was this done?

Was it done directly prior to an election or was it done at a neutral time.

Mr. King. Senator, it was done in compliance with the consent decree, which was filed in the spring of 2006. There is a window in between Indiana's May primary election and the November general election which meets the 90-day requirement of NVRA. That is when this work was done.

Chairman Feinstein. I see. So it was not done within 90 days of an election?

Mr. King. No, it was not.

Chairman Feinstein. All right. Let me ask a question of Professor Davidson. Is there any evidence that there is any electoral impact based on these challenge provisions? Has your historical research shown that caging has prevented illegitimate voters from voting or has it shown that caging practices have discouraged legitimate voters?

Mr. Davidson. Senator, there is very little good evidence on that subject, in part, because looking over the history of it, this has only become a national concern I think fairly recently, and there has been no scientific way in which people have been able to get a scientific sample of the precincts where the cagers show up or the challengers show up and I am just not aware of any hard data that would answer that question.

My surmise is that there are a number of people, especially in low-income areas, people with little education or people who are easily intimidated, who have turned away, but I just cannot give you a figure on that.

Chairman Feinstein. Okay. Senator, would you like to ask some questions?

Senator Bennett. Thank you very much. There may not be any evidence of actual intimidation producing changes, but there is very firm evidence of people trying to get names on the registration list for the purpose of expanding the list and potential vote fraud.

Three employees of the advocacy group Acorn have been sentenced for their roles in what has been described the biggest voter registration fraud scheme in Washington history. That is Washington State.

There are eight additional voter registration workers employed by Acorn in Missouri, who have been recently charged with multiple counts of election fraud for submitting false voter registration forms. The effort to get false registrations is organized, specific, and quantifiable.

So there is activity on the other side that is causing people to say maybe what we are calling voter caging here is necessary to combat that kind of activity.

A news source has investigated in 2004--discovered that 46,000 New York City residents were registered to vote both in New York City and in Florida. And they have been able to identify close to a thousand actual voters who voted twice, once in each place. They were unable to get beyond that, but statistically the evidence suggests that there is-that there were more than did that.

So vote fraud is going on and is being pursued vigorously, and people are going to jail for it now. So we must understand that the biggest problem here is

the problem of bloated registration lists that can be exploited for vote fraud.

And the effort by a political party to try to do something about that, if the party feels they are being disadvantaged--it is being disadvantaged by that effort is a legitimate activity on the part of that party.

Now let us go to this question of the use of mail as the way to determine--to purge voter lists. If I can go to your testimony, Mr. King, on page three, and read this. "Indiana's election division sent more than 4.3 million postcards to addresses listed on every Indiana voter record. The mailing was designed to automatically return to sender all registrations that are no longer accurate. In other words, you as the state, not a party seeking to identify minorities or others, simply as a state seeking to purge your list of all non-registered voters are using this technique.

I go back to the quote. You say, "this postcard was followed by a second mailing designed to confirm whether the return 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 1st, 2006. Unfortunately, due to delays in getting one of the State's two major political parties to sign off on the clean up 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."

Now my question is if you as a State official, not as a party official, have determined that this is a legitimate way to purge the registration records, why should we say that individuals who are concerned about voter fraud with a very definite interest, political parties, either one, cannot use the same method to inform their poll watchers as to who might be challenged and who might not? I would be happy for response from anyone of the three of you.

Mr. King. Senator Bennett, I can respond just briefly by saying, yes, the information that you have read is accurate. The State, under the Department of Justice consent decree, did send a mailing to every name on the Indiana voter registration list, period.

Senator Bennett. You did not target any one ethnic group or one neighborhood?

Mr. King. No. Every Hoosier voter received a postcard, and, if they were registered in more than one place, they would have received one at both addresses.

Senator Bennett. And you determined that one in four is improperly registered?

Mr. King. Senator, one in four were returned--

Senator Bennett. Returned.

Mr. King. --as undeliverable. We then, in accordance with the restrictions under NVRA sent a forwardable what is called a D-2 notice to the

voters whose postcard was confirmed just to make certain that there was not a problem with regard to the forwarding of the mail reaching the person and giving that person an opportunity to update their voter registration record.

Senator Bennett. Well, this is completely neutral, not tipped toward one political party of the other, run by the State rather than by a Republican or a Democratic National Committee. And I find it startling that the registration lists have one in four, 25 percent, of the names on the registration list are possibly inaccurate.

That opens a huge opportunity for vote fraud, and that is probably what is stimulating people like Acorn to go out and try to take advantage of it.

Chairman Feinstein. Well, if I could, Senator?

Senator Bennett. Yes.

Chairman Feinstein. Let me just say one thing on Acorn, because this came up in the Judiciary Committee with one of the U.S. Attorneys.

Acorn actually turned in the canvassers. They assisted in the prosecution. So I just the record to reflect that.

Senator Bennett. Well, I am delighted that they did, but the fact remains that their people still were tempted by the bad registration lists to try it. It is to their credit that the organization said we are going to blow the whistle on our own operatives, but it is a demonstration of the temptation that is out there that its operatives were trying to participate in the registration fraud.

Chairman Feinstein. Right. I would like to give Ms. Browne-Dianis--

Ms. Browne-Dianis. Thank you.

Chairman Feinstein. --an opportunity to respond and I understand you have done some work in Louisiana with post-Katrina people and voting--

Ms. Browne-Dianis. --right.

Chairman Feinstein. --and perhaps you could tell us a little bit about that and how the vote caging would relate to that?

Ms. Browne-Dianis. Sure. Well, actually, first I just wanted to respond to Senator Bennett's comments. I think that the point of my testimony really is that the National Voter Registration Act has procedures in place. It was a delicate balance to ensure that election officials could do their job and at the same time that voters could be protected, because again the fundamental right to vote must be protected.

And so what--the position that we are taking is that the National Voter Registration Act is sufficient. It is adequate. Election officials should do their job under the National Voter Registration Act, and what it does is that it allows you for two election cycles to keep those people, federal election cycles, to keep those people on the rolls and then to do the list maintenance.

And because of the history of using vote caging by political parties and individuals for voter suppression, especially against minority voters, it should be left to the election officials to do this job.

Secondly, to address your question about Louisiana in particular. As you know, I mean, because of the displacement of so many voters, there are

hundreds of thousands of voters who are going to be purged probably from the list in Louisiana. And again, the National Voter Registration Act is providing protection for those voters, but also providing a roadmap for election officials to understand what their duties are to ensure that they are not taking the vote away from those people who are going--who continue to be residents of the State of Louisiana and who will be returning to Louisiana and want to participate in elections in Louisiana because they have a stake in what happens in that State.

Thank you.

Chairman Feinstein. Thank you. I think this has been a very helpful hearing, Senator.

I want to thank our three witnesses. I want to thank the Senator, and if you do not have other questions, I think I will adjourn the hearing.

Thank you.

[The information for the record follows:]

[Whereupon, at 11:52 a.m., the Committee was adjourned.]