

## **A Guide to Voter Caging**

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

### **What Is Voter Caging?**

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

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

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

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

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

I know this race is really important to you. I would guess that this program will eliminate at least 60-80,000 folks from the rolls. . . . If it's a close race, which I'm assuming it is, this could keep the black vote down considerably.<sup>3</sup>

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

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

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

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

## **Why Is Voter Caging Unreliable?**

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

### *1. Voter rolls suffer from typos and other clerical errors*

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

If familiar names like this can be so frequently misspelled, it is not surprising to find various other errors in the registration records, any of which may prevent mail from being delivered. For example, a controversial 2004 caging list compiled from undelivered Florida mailings contained records for voters at “5959 Fort Caloline Road,” “5959 Fort Caroline Road,” and “5959 Port Caroline Road”; only one of these exists, but the other two are obviously typographical errors. Similarly, in Milwaukee in 2004, extensive allegations of fraud instead revealed extensive data entry errors on the registration lists. In one spot-check of a list of allegedly invalid addresses, about 20% of the addresses checked were attributed to data entry error.<sup>9</sup> Victor Moy was listed on the rolls as living at 8183 W. Thurston Avenue, but he actually resided at number 8153.<sup>10</sup> “3130 S. 15th Place” was incorrectly listed as “3130 S. 15th St.,” and “S. 68th St.” was incorrectly listed as “S. 63rd St.”<sup>11</sup> In other cases, “a check of the original handwritten registration cards showed digits had been transposed by clerks. . . .”<sup>12</sup> Still other addresses were missing digits, “so otherwise valid addresses showed up as non-existent.”<sup>13</sup> Other states have experienced similar problems. In Ohio in 2004, for example, mail that one voter never received was incorrectly addressed with the name of the neighboring town.<sup>14</sup>

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

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

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

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

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

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

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

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

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

6. *Mail may not be properly delivered*

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

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

Mail sent to a listed registration address may be returned as undeliverable because the street name may have changed since the voter registered, even though the voter remains in the same residence. In Milwaukee in 2006, for example, when street addresses were checked against a postal service address program, city officials reviewing the list of discrepancies found that some addresses were flagged because of a change to the street name itself.<sup>27</sup> The same apparently happened to some challenged voters in Louisiana in 1986.<sup>28</sup>

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

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

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

Mail sent to a listed registration address may be returned as undeliverable because the voter has moved – but remains wholly eligible to vote without re-registration.<sup>30</sup> Each state has different rules determining when a voter who has moved must inform election officials of her new address. At a minimum, however, federal law provides that if a voter has moved within the same area covered by a given polling place – if, for example, a voter moves from one apartment to another within the same apartment complex, as a 2000 Oregon voter did<sup>31</sup> – she may legitimately vote at that polling place even if she has not yet notified a registrar of her move.<sup>32</sup> Similarly, a voter who has moved within the same registrar’s jurisdiction and congressional district may return to vote at her former polling place without re-registering.<sup>33</sup> Especially in urban areas where there is high mobility within a particular neighborhood, undeliverable mail may simply reflect the recent move of a voter who remains fully eligible to vote.

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

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

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

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

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

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

<sup>7</sup> ASSOCIATION FOR COMPUTING MACHINERY, STATEWIDE DATABASES OF REGISTERED VOTERS 21 (Feb. 2006), available at [http://www.acm.org/usacm/PDF/VRD\\_report.pdf](http://www.acm.org/usacm/PDF/VRD_report.pdf).

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

<sup>9</sup> Greg J. Borowski, *Over 1,200 Voters’ Addresses Found Invalid*, MILWAUKEE J. SENTINEL, Jan. 25, 2005; Brennan Center for Justice, Wisconsin 2004, [http://www.truthaboutfraud.org/case\\_studies\\_by\\_state/wisconsin\\_2004.html](http://www.truthaboutfraud.org/case_studies_by_state/wisconsin_2004.html).

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

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

<sup>12</sup> *Id.*; see also Borowski, *supra* note 9.

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

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