

**BRENNAN
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Testimony of

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Protecting Voters at Home and at the Polls

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

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

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

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

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

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

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

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

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

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

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

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

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

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