



February 25, 2008

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

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

Dear Chairman Feinstein and Ranking Member Bennett:

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

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

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

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

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

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

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

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

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<sup>1</sup> 42 U.S.C. 1973gg-6 (d)(1), 42 U.S.C. 1973gg-6 (d)(2)

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

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

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

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

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<sup>2</sup> The Politics of Voter Fraud, Lorraine C. Minnite, Ph. D., Barnard College,  
[http://projectvote.org/fileadmin/ProjectVote/Publications/Politics\\_of\\_Voter\\_Fraud\\_Final.pdf](http://projectvote.org/fileadmin/ProjectVote/Publications/Politics_of_Voter_Fraud_Final.pdf)

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

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

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

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

Sincerely,



Maxine Nelson  
Board President

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<sup>3</sup> Caging Democracy, a Fifty-Year History of Partisan Challenges to Minority Voters, Project Vote, p. 14  
[http://projectvote.org/fileadmin/ProjectVote/Publications/Caging\\_Democracy\\_Report.pdf](http://projectvote.org/fileadmin/ProjectVote/Publications/Caging_Democracy_Report.pdf)