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Voter Intimidation And Caging

The right to vote has been one of the most challenged individual rights in the history of this country. Unfortunately, illegal and cynical attempts to suppress the vote and manipulate voters persist to this day. Among the strategies used are voter intimidation and caging.

Voter Intimidation

Most commonly, voter intimidation efforts have attempted to suppress the voices of low-income and minority voters.

Voter intimidation is any concerted effort or practice by an individual or group on behalf of a party or candidate to coerce the voting behavior of a particular class or demographic of voters. Most commonly, voter intimidation efforts have attempted to suppress the voices of low-income and minority voters.

What Constitutes Voter Intimidation?

The most flagrant example of voter intimidation is the commission of violence, or the threat of violence, against a particular group of voters. Polling places in low-income and minority areas, or in neighborhoods where voting predominantly favors one party, may be targeted for vandalism or destruction, causing both psychological and physical impediments to voting. Voters are also intimidated through false threats and misinformation—for example, that they will be arrested at the polling place if they owe child support or have outstanding parking tickets.¹

Economic voter intimidation also exists, where an employer or supervisor threatens a person's job if he votes for a particular candidate or party against the wishes of the company or union. Former felons suffer intimidation when they are told that they are ineligible to vote when they are in fact eligible.

While it is common to dismiss intimidation schemes as theatrical “dirty tricks,” they have profound impacts on the most vulnerable voters.

(Conversely, in Florida during the 2000 presidential election, almost 20,000 people with names similar to felons were disenfranchised when an error-ridden list of “felons” was used to bar them from voting.²) In the 2004 presidential election, voters received phone calls with false information about changes in voting locations, or misinforming them that they should vote on Wednesday instead of Tuesday.³

Recent Examples of Voter Intimidation

The 2008 presidential election was one of the most competitive elections in our history, which led to many instances of voter intimidation. In October 2008, the ACLU of New Mexico and Project Vote filed a lawsuit charging a Republican New Mexico State Representative and a private investigator with voter intimidation and invasion of privacy. Newly-registered minority voters were declared in a press conference by the NM State Representative to have fraudulently voted in the state primary elections. After evidence was presented that these voters were in fact properly registered, a private investigator was allegedly hired by a party official to go to the homes of these voters and interrogate them about their citizenship status.⁴

After a rally in Fayetteville, North Carolina, supporters of Barack Obama went to a nearby early voting center, where they were heckled and harassed by a group of protesters as they went in to vote. Nearly all of the early voters were black, and nearly all of the protesters were white.⁵ In Virginia, students at Virginia Tech were told that if they registered to vote in Virginia, it could affect their scholarship or tax dependency status and would obligate them to change their car registration and driver’s license to their Virginia address.⁶ Finally, a poll worker in Dearborn, Michigan was perceived to be intimidating Muslim Americans, of which Dearborn has a large concentration. Two Michigan precincts also reported the presence of police scanning the long lines for voters with outstanding warrants, with one person being arrested.⁷

Currently, there are federal laws that make voter intimidation illegal, but their lenient penalties have inspired some lawmakers to introduce legislation with more teeth. The Voting Rights Act of 1965 and the National Voter Registration Act of 1993 prohibit persons from intimidating or attempting to intimidate, threaten, or coerce another person for the purpose of interfering with their right to vote freely in federal elections.⁸ However, the maximum penalty for conviction on a charge of voter intimidation under federal guidelines is a fine and/or no more than one year in prison, which has hardly deterred voter intimidation schemes in the past.⁹

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Recommendations for Deterring Voter Intimidation

The laws of each state should be strict in their punishment of persons convicted of voter intimidation so that they may serve as a deterrent to prevent other from intimidating voters:

1. States should expand and clarify what practices and tactics constitute voter intimidation, including, for example, the dissemination of false or misleading election information.
2. The penalties for convictions of voter intimidation should be increased to a maximum of five years in prison and a \$100,000 fine, with each incident constituting a separate crime. Any attempt or conspiracy to intimidate voters should be punished equally harshly.
3. State and federal prosecutors should devote investigative and prosecutorial resources to bringing cases of intimidation.
4. Finally, the Attorney General should be required to report to Congress with a compilation of voter intimidation incident reports within 90 days of a federal election.

Historically, partisan voter caging schemes have disproportionately targeted minority voters, particularly African–Americans.

Voter Caging

Conducted under the rubric of “ballot integrity,” voter caging is a tactic that has been used extensively by partisan operatives to suppress the votes of those who have a history of voting for the opposing party. Historically, partisan voter caging schemes have disproportionately targeted minority voters, particularly African–Americans.

What is Voter Caging?

In its most common form, voter caging consists of sending non-forwardable mail to targeted populations, and using the returned mail to compile lists of voters to be challenged on the basis of residence under state law. Armed with no other evidence than returned mail, partisan operatives abuse state laws to file targeted mass challenges to voters. This is done despite state and federal laws that permit voters to update their registration addresses before or even on Election Day.

Over time, political operatives have developed other means of compiling caging lists, such as matching voter rolls against private databases. A few states prohibit the abuse of state challenge laws through voter caging. Ohio Secretary of State Jennifer Brunner, for example, issued a 2008 directive that pointed out that the practice of granting a challenge based solely on returned mail violates the National Voter Registration Act (NVRA).¹⁰ Minnesota, Rhode Island, and California have also passed legislation to prohibit the use of returned mail as grounds

Voter Intimidation And Caging

for challenging a voter's eligibility. As part of this encouraging trend towards prohibiting partisan voter caging, an anti-caging bill is currently pending in both houses of Congress.¹¹

Other federal laws in addition to the NVRA serve to prohibit voter caging. Challenging an elector's right to vote on the basis of racial or ethnic profiling violates the First, 14th, and 15th Amendments to the United States Constitution. Caging also violates the Voting Rights Act of 1965 (VRA), which prohibits voting practices and procedures that discriminate on the basis of race or membership in a language minority group. Section 11 of the VRA prohibits persons acting under color of law from refusing to permit eligible persons to exercise their right to vote.¹²

Voter caging first emerged as a political tactic in 1958 in Arizona. In 1964, the practice went national. The Republican National Committee (RNC) and state Republican parties carried out "Operation Eagle Eye," the first nationwide voter caging program, which disproportionately targeted minority voters in large metropolitan areas in key states. In 1982, partisan voter caging and intimidation tactics in New Jersey led to litigation in which the Democratic National Committee (DNC) obtained a consent decree prohibiting the RNC from engaging in voter caging and intimidation in any state.¹³ The decree, however, was not binding on state Republican parties.

In 1986, the DNC returned to the New Jersey federal court, alleging that the RNC violated

the 1982 decree by running a voter caging campaign aimed at minority voters in Louisiana. Evidence showed that the Midwest RNC political director sent a memo to his Southern counterpart, saying "I would guess this program will eliminate at least 60,000 to 80,000 folks from the rolls...If it's a close race...this could keep the black vote down considerably."¹⁴ This lawsuit led to a second consent decree under which the RNC is required to obtain court approval before operating or assisting in the operation of alleged "ballot security" programs.¹⁵

Recent Examples of Voter Caging

Not restrained by the DNC v. RNC consent decrees, state Republican parties staged the most egregious and large-scale voter caging program to date during the 2004 presidential election. Emails between state party employees and the RNC suggest close cooperation between the national organization and state parties. Their caging operations disproportionately targeted minorities in Ohio, Florida, Pennsylvania, Wisconsin, Florida, Michigan, Colorado, North Carolina, South Carolina, Georgia, and Kentucky. Between 2004 and 2006, partisans challenged more than 77,000 American voters in targeted communities.

Voter caging and threats of caging emerged in the final month of the 2008 presidential campaign. In Montana, the Republican Party matched the statewide voter database with the

USPS National Change of Address database,¹⁶ and filed challenges against 6,000 voters in Democratic strongholds, even though Montana voters who have moved may legally vote in one election at their old precinct.¹⁷ A strong public outcry and a lawsuit filed by the Democratic Party prevented the scheme from going forward.

The mortgage foreclosure crisis also provided fertile ground for caging schemes. In Michigan, the Obama campaign filed suit against the state Republican Party to enjoin the use of foreclosure lists as the basis for mass challenges against voters. The suit was triggered by alleged statements from the chair of the Macomb County Republican Party that it intended to challenge any voter who attempted to vote from a foreclosed address.¹⁸ The suit settled with an agreement not to use foreclosure lists as the basis of challenges. Similarly, in Volusia County, Florida, Marion County, Indiana, and Franklin County, Ohio, party officials threatened to use foreclosure lists as the basis for caging programs. In each case, a lawsuit or administrative action prevented the “foreclosure caging” from mar- rying the 2008 general election.

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Recommendations to Prevent Voter Caging

Voter caging is made possible by the misuse of state voter challenge statutes, many of which have their roots in the Jim Crow era when barriers to voting by newly enfranchised African-Americans were prevalent. While a private person’s ability to challenge the voting rights of another may serve a legitimate purpose under limited circumstances, challenge laws must be carefully redrafted to avoid partisan abuse. State legislators, election officials, and advocates should propose legislation or regulation that significantly reduces the risk of voter caging. The following changes are recommended:

1. Prohibit private partisan challenges at the polls. Challenges at polls should be permitted only by election officials for specified reasons.
2. Pre-election challenges to voter registrations should be based upon personal knowledge.
3. The burden of proving a voter’s ineligibility should fall upon the challenger.
4. Prohibit the granting of challenges that are based solely on returned mail lists or database matching.
5. “Registration portability” laws should allow voters who have moved within the state to vote on Election Day, with appropriate proof of identity and residence.

Voter Intimidation And Caging

6. Penalties should be imposed on those who challenge voters falsely, frivolously, or without personal knowledge.¹⁹

Voter intimidation, groundless challenges, and partisan caging are tactics that should be relics of another era. Yet they persist to an alarming degree. Project Vote urges the adoption of whatever legislative and policy reforms are necessary to rid our voting systems of these unjust historical anomalies.

Notes

- ¹ In 2008, fliers were distributed in predominantly African-American neighborhoods in Philadelphia warning that people with outstanding warrants or unpaid parking tickets could be arrested if they showed up at the polls to vote on Election Day. Fresh Air from WHYY. "Voter Intimidation Efforts in Philadelphia." National Public Radio, October 8, 2008. <http://www.npr.org/templates/story/story.php?storyId=95509946>.
- ² "Restoration of Voting Rights: Questions & Answers." Reform-Elections.org: A Project of the Century Foundation. <http://www.reformelections.org/feature.asp?menuid={2C21F24C-F920-4FAE-81E2-715512C100BA}>.
- ³ Hoholik, Suzanne. "As Election Draws Near, Beware Of Dirty Tricks." The Columbus Dispatch, Nov. 2, 2004. <http://web.archive.org/web/20060210111239/http://www.ac4vr.com/reports/072005/republicanincidents.html>, FN 22. In Virginia in 2006, many Democratic voters received phone calls incorrectly telling them that they would be subject to arrest if they voted on Election Day or that their voting location had changed when it remained the same. "Sec. of Virginia State Board of Elections Finds Widespread Incidents of Voter Suppression." American Chronicle, Nov. 6, 2006. <http://www.americanchronicle.com/articles/16105>; Arena, Kelli and Ronni Berke. "FBI launches probe of Virginia pre-election calls." CNN, Nov. 7, 2006. <http://www.cnn.com/2006/POLITICS/11/07/deceptivecalls.va/>. Fliers paid for by the Republican Party stating "Skip This Election!" were also distributed in an effort to intimidate and suppress the voter turnout, particularly in African-American communities. Id. Finally, a similar instance also occurred in 2008 in the Hampton Roads region of Virginia. Walker, Julian. "Phony flier says Virginians vote on different days". The Virginian-Pilot, Oct. 28, 2008. <http://hamptonroads.com/2008/10/phony-flier-says-virginians-vote-different-days>.

- ⁴ Weiner, Rachel. "New Mexico GOP Sued For Voter Intimidation." The Huffington Post, Oct. 27, 2008. http://www.huffingtonpost.com/2008/10/27/new-mexico-gop-sued-for-v_n_138199.html.
- ⁵ Bellantoni, Christina. "McCain supporters heckle early voters." The Washington Times, Oct. 20, 2008. <http://www.washingtontimes.com/weblogs/bellantoni/2008/Oct/20/mccain-supporters-call-early-voters-ch/>.
- ⁶ Litten, Kevin. "Student voting raises concerns." The Roanoke Times, Aug. 30, 2008. <http://www.roanoke.com/news/nrv/wb/175015>. Students at the University of New Hampshire had similar problems registering to vote during the 2000 presidential primary election. Associated Press, "Some students discouraged from registering in Durham", Primary Monitor, Feb. 1, 2000. <http://fairvote.org/righttovote/primarymonitor.htm>.
- ⁷ Tullottes, Momie. "Presidential Election: 2008 Voter Intimidation Incidents." AP, Nov. 4, 2008. http://www.associatedcontent.com/article/1179703/presidential_election_2008_voter_intimidation.html?page=2&cat=8.
- ⁸ 42 U.S.C. § 1973i(b), 2003; See also 42 U.S.C. § 1973gg-10, 2007; 42 U.S.C. § 1971(b), 2008.
- ⁹ 28 U.S.C. § 594, 2008.
- ¹⁰ Directive 2008-79, available at <http://www.sos.state.oh.us/SOS/Upload/elections/directives/2008/Dir2008-79.pdf>.
- ¹¹ "A Bill To Prevent Voter Caging," S. 2305, 2007.
- ¹² 42 U.S.C. § 1973i (a).
- ¹³ Democratic National Committee v. Republican National Committee, Civil Action No. 81-3876. N. J. District Court.
- ¹⁴ Edsall, Thomas B. "'Ballot Security' Effects Calculated - GOP Aide Said Louisiana Effort 'Could Keep The Black Vote Down,'" Washington Post, Oct. 25, 1986.
- ¹⁵ Democratic National Committee v. Republican National Committee, Civil Action No. 86-3972, (D.N.J. 1986).
- ¹⁶ Secretary of State Brad Johnston instructed county boards of election to ignore the challenges and the Democratic filed suit to enjoin further challenges. Moy, Chelsea, "State GOP challenges eligibility of voters," Missoulian.
- ¹⁷ Brown, Matthew, "Judge knocks voter challenges," AP, Oct. 9, 2008. <http://www.greatfallsribune.com/apps/pbcs.dll/article?AID=/20081009/DC5/810090358>.
- ¹⁸ Melzer, Eartha Jane, "Lose your house lose your vote," Michigan Messenger, September 10, 2008 <http://michiganmessenger.com/4076/lose-your-house-lose-your-vote>.
- ¹⁹ For additional reading on the subject of voter caging and voter challenge laws, see the following: Project Vote Voter Caging Map, <http://projectvote.org/images/publications/Voter%20Caging/VoterCagingMap.pdf>; and Caging Democracy: A 50-Year History of Partisan Challenges to Minority Voters, http://projectvote.org/images/publications/Voter_Caging/Caging_Democracy_Report.pdf; DNC v. RNC 1982 Consent Decree, <http://big.assets.huffingtonpost.com/1982ConsentDecree.pdf>.

Project Vote is a national nonpartisan, nonprofit organization that promotes voting in historically underrepresented communities. Project Vote takes a leadership role in nationwide voting rights and election administration issues, working through research, litigation, and advocacy to ensure that our constituencies can register, vote, and cast ballots that count.

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