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VOTE SUPPRESSION GOES NATIONAL—AND REPUBLICAN

The 1950s and 1960s witnessed significant advancements in voting rights. The decade also saw important tactical shifts in vote suppression. The most blatant Jim Crow voting laws disenfranchising African Americans that had persisted into the middle of the twentieth century were largely eradicated by passage of voting rights laws in this period. Yet this progress did not mark the end of efforts to disenfranchise certain groups of voters at the ballot box. The traditional tactic of playing games with voter registration and registration lists persisted. Moreover, new strategies were developed from well-established devices and soon became the preferred weapons for suppressing the vote of political opponents. In the narrow window prior to the passage of the Voting Rights Act of 1965 but after the 1964 Civil Rights Act, political dynamics had already started to shift. Given the strong Democratic tendencies of voters of color as a result of the New Deal and the civil rights movement, and given the backlash against civil rights, operatives in the Republican Party devised a strategy to suppress minority turnout, including now that of Latinos in places they were concentrated,¹

through means that, when employed presumably as intended by the law's authors, were legal: challenging voters' eligibility to vote at the polls.

Challenging Becomes Caging

Challenging a voter's right to vote—when used sparingly and judiciously, by those with specific knowledge of the voter's eligibility—can arguably serve as a legitimate check on ineligible persons voting. The Republicans' use of laws that allow for challenges at the polls, however, skirts the line of voter intimidation and racial discrimination. Sometimes it does more than skirt but crosses over the line. Carried out in an arbitrary and discriminatory manner, these challenges were not employed primarily for the purpose of ensuring the integrity of the vote, but rather as a broad strategy to suppress the vote. As such, these practices clearly violate the voter inclusion principle.

Of course, challenges have been used in various forms for vote suppression throughout American history. For example, interrogating African American voters about their race at the polls in Ohio was permissible under a state law enacted prior to the Civil War that allowed for the posting of challengers at the polls.² As we recounted earlier, challenges continued throughout the nineteenth century, especially with respect to immigrants, as voters at the polls who appeared to be of a particular ethnic group would be asked which party they were likely to support or where they lived, as presumably that would be an indication of their immigrant status. If the voter belonged to an ethnic group that tended to support the opposing party, his citizenship would be challenged at the polling place. If he was from a group that generally voted for the party represented by the party agent, that agent would ignore whether he had his papers or not or even encourage his voting regardless of whether he was legally eligible.³ The problem of indiscriminate challenges persisted into the 1920s throughout the country, particularly in urban areas with large immigrant populations.⁴

The 1960s and the following decades, however, saw vote challenging rise to an unprecedented level and scale, and the current version of this old game had a new wrinkle. Party operatives in many instances sent mass mailings to overwhelmingly minority and Democratic areas, putting anyone whose letter came back as undeliverable on a list of voters to

be challenged on Election Day. This practice has become known as “vote caging.”

A piece of undeliverable mail is obviously a flawed basis upon which to charge a voter as ineligible. A voter may have moved permanently yet still be in the same voting district and so remain eligible to vote. Returned mail is also occasioned by routine errors and mistakes: voter rolls suffer from typos and other clerical errors; a voter may be temporarily away from her permanent residence; mail may not be properly delivered; 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. Multiple-unit dwellings without names on mailboxes, houses or apartments occupied by roommates, families in which a spouse or children have a different family name—all circumstances of this sort can result in the U.S. Postal Service failing to deliver a letter because the addressee is determined to not be in residence. And while these are all common situations for hundreds of thousands of American voters, not a single one of these situations legally disqualifies a registered voter.⁵ Indeed, allegations based on vote caging often turn out to be completely illegitimate.⁶

This method of caging, then, marks a more systematic use of the challenge process, which allows party operatives to compile larger lists of individuals and then, by means of this use of errors in postal delivery, to target minority populations. In addition to this important change, the use of caging by Republicans beginning in the 1960s is notable for its geographic scope and centralized direction. In previous eras, vote suppression tactics had been largely local or regional, and they were based on the particular political and racial dynamic of the place. Vote challenging as it emerged in the 1960s was often coordinated from the top and was carried out across the country. These offensives started out on a smaller scale in various states in the late 1950s, and then, in 1962, Arizona was a focus of such activity. Yet it was the presidential election of 1964 that marked the first national effort at partisan vote suppression. It was called Operation Eagle Eye. The approach was simple: to challenge voters, especially voters of color, at the polls throughout the country on a variety of specious pretexts. If the challenge did not work outright—that is, if the voter was not prevented from casting a ballot (provisional ballots were not in widespread use at this time)—the challenge would still slow down the voting process, create long lines at the polls, and likely discourage some voters who could

not wait or did not want to go through the hassle they were seeing other voters endure. A Republican memo, obtained by the Democratic National Committee (DNC) in 1964, outlined plans for challenging voters at the polls and described the tactics as including encouraging stalling on lines in Democratic districts, equipping poll watchers with cameras to “frighten off . . . Democratic wrong-doers,” enlisting the help of local police sympathetic to the Goldwater campaign, and charging that ineligible Democratic voters were on the registration rolls.⁷

The Lead-up to Operation Eagle Eye

Much of what we know about caging and challenge operations in the 1960 and 1962 elections emerged in the confirmation hearings of the late Supreme Court chief justice William Rehnquist. The role of Rehnquist in the 1964 Republican challenge scheme in Arizona has been reported by others in newspaper articles and in detail by political sociologist Chandler Davidson. As Professor Davidson details regarding events in the early 1960s,

Political operatives belonging to one party caged voters who were predominantly members of ethnic minority groups likely to vote for the other party. The caging consisted of using do-not-forward letters to identify people who might not be properly registered. Then, on election day, at least some of the partisan operatives—including lawyers—went beyond simply asking election officials to challenge the voters who were on the caging list. In some cases, the operatives attempted to apply literacy tests and were abrasive and threatening. Their intervention sometimes slowed the lines of voters. Moreover, they sometimes broke the election law by arrogating to themselves the roles of challenging the voters’ registration and of applying literacy tests when those roles were legally assigned to election officials.⁸

With Rehnquist’s death in 2005, however, FBI files from the background investigations for his 1971 confirmation as Supreme Court justice and 1986 confirmation as chief justice were released to the public. These documents provide new details about what has already been reported and underscore the breadth of the operation beyond the alleged efforts of Rehnquist and his cohorts in Arizona.

Some of the documents in the FBI files are redacted, making it difficult in some cases to establish founded assertions of the character of the strategies and who was responsible. The repetitive nature of the stories recorded in the FBI interviews, however, helps to fill in some gaps due to redaction and build an overall account that seems credible.

A 1986 memo from the director of the FBI, William Webster, to the Phoenix and San Diego FBI offices investigating Rehnquist's background provides a historical insight into what was going on in Phoenix during the 1962 election:

Two white republican voter challengers [one of whom was allegedly Rehnquist] confronted black and minority voters at the Bethune school voting precinct on November 6, 1962. They displayed a card with an excerpt from the constitution and asked blacks and minorities to prove they were literate by reading the excerpt aloud. The activity discouraged the black voters who then did not vote.

As the day progressed, Democratic poll watchers became incensed and telephoned party officials and law enforcement personnel, many of whom arrived at the scene and attempted to dissuade the Republican challengers. Finally, a scuffle ensued, and the Republicans departed.⁹

An FBI interview conducted by the Los Angeles office in August 1986 revealed the impetus behind these vote suppression efforts. The interviewee stated that Rehnquist, who was reportedly the head of a group of Republican lawyers in Arizona, had “‘designed a strategy’ that would clog the voting polls in heavily minority Democratic precincts by sending an Army of Challengers into these polling places at peak voting periods and thereby intimidate some voters and scare them away from voting or frustrate voters by causing such a time delay that they would give up and leave without voting.” The interviewee claimed that this was a strategy designed to help Republicans running for statewide office in close contests.¹⁰

One of the witnesses in the 1986 hearings and a politician on the scene back in 1962 had a similar assessment. Charles Pine, former chair of the Arizona Democratic Party, said he saw Rehnquist act as an aggressive challenger in 1962. Considering why Rehnquist would organize these “flying squads” to challenge voters in Democratic districts, Pine concluded that

if [Rehnquist] could disqualify a substantial number of votes, it conceivably could have an impact upon closely contested statewide races and we had many of them in those years. . . . Highly important offices, and some of these were very closely contested, and 300, 400, 500 votes could make a great difference. . . . And that was the obvious strategy of this. A young attorney told me, who is now a Democrat and was then a young Republican: I was addressed by a member of Rehnquist's group and was told, if we can disqualify enough blacks and enough Mexican Americans, we can elect Paul Fannin Governor in 1962.¹¹

An unnamed Phoenix civil rights leader interviewed by the FBI in 1971 had a similar recollection.¹² The file for the full investigation shows Rehnquist to have been associated with vote caging as early as 1962. That association, well documented in the file, did not, however, hamper his confirmation as chief justice, and Rehnquist denied that he had been personally engaged in challenging the credentials of any voter. Rehnquist's assertion was supported by testimony from Vincent Maggiore, then chairman of the Phoenix-area Democratic Party, who stated that he had never heard any negative reports about Rehnquist's Election Day activities.¹³

As interesting as witnesses' retelling of events during these early 1960s elections is the justification for their actions described by those who participated as poll watchers: vague allegations of fraud. An active Arizona Republican who served as a challenger during the 1960 election told FBI officials in 1986 that the "group of attorneys [organized to engage in voter challenges] was established to help combat the growing amount of election frauds that had occurred in previous election years." He went on to explain how the party would know about this supposed fraud: by sending out letters to registered voters in very particular areas and challenging the voting eligibility of anyone whose letter had been returned to them as undeliverable¹⁴—in short, by vote caging. The supposition among Republican poll watchers appears to have been that if the Democratic Party was not perpetrating fraud by getting illegal voters to the polls, then the Democrats were still benefiting from votes illegally cast. A 1986 FBI interview with a man who had organized a challengers' committee for the 1962 election underlines the partisan motivations. He said that "the Democratic Party was very strong in the early 1960s and Republicans were concerned about challenging 'any and all fraudulent voters' in the 1962 election." In discussing what had happened in the precinct where Rehnquist was

alleged to have stopped people to make them read an excerpt from the Constitution in order to vote, he said, "Some of the voters happened to be blacks and other minorities and several of them became discouraged from voting. [REDACTED] suggested that one of the reasons these voters did not vote was because they were aware their illegal status had been discovered by [REDACTED] and other poll watchers."¹⁵

In his 1971 confirmation hearing, Rehnquist revealed how partisanship coupled with generalized fear of fraud motivated Republican Party operatives. In responding to a question, posed by Democratic senator Birch Bayh, about how the party would send out letters to minorities and then challenge voters whose letters were returned to them, Rehnquist stated openly that they were going after Democrats in areas where—for whatever reason—they believed there might be irregularities:

MR. REHNQUIST. It was not devoted to minority group areas as such; it was devoted again to areas in which heavy Democratic pluralities were voting together, with some reason to believe that tombstones were being voted at the same time. And this was one of the principal means used to try to find letters returned with the addressee unknown and then to challenge the person on the basis of residence if he appeared to vote. I might say that the Democrats made equal use of the same device.

SENATOR BAYH. As I read these newspaper clippings, it does not mention anything about the Democrats doing that. I suppose that does not mean they did it or did not do it, but at least the newspaper reporters did not catch it. If I were a Republican, I would want to keep as many Democrats from voting as I could, I suppose, and vice versa. But this is done in some areas, and I am familiar with this, in those areas that are not just Democratic, but minority groups primarily, whether it is Chicano or black or whatever it might be, where there is more movement back and forth across the street and from one part of the community to another. Can you give me any reason why the NAACP would make this assessment, or did they just have something in for you?

MR. REHNQUIST. I simply cannot speak for them. I know of my own conduct in these matters, and that the letters were mailed out on the basis of mathematical calculations of Democratic votes in precincts together with areas in which there was some reason to believe that there actually were tombstone or absentee voting, and I know from my trips to polling places, as a member of the Lawyers Committee, that some of the precincts certainly had a number of blacks, a number of Chicanos, and many of them were totally white.

The purpose of the scheme was not then to root out fraud, wherever it might come from or be carried out. It was planned to single out particular types of voters for interrogation, many of whom were black or Hispanic and were most certainly suspected Democrats. What he meant by targeting “absentee voting areas” is completely unclear. In any case, 1962 was just a warm-up.

Operation Eagle Eye

The Republicans made no effort to hide their plans to go big with the caging and challenges in 1964. In fact, the party launched an unprecedented nationally organized operation that would exploit existing election laws for partisan advantage. It was not surprising that this effort would arise in a year in which Republican Barry Goldwater ran on an anti-civil rights campaign platform against Lyndon Johnson, who had recently succeeded the assassinated John F. Kennedy as president.

A Democratic National Committee press release from October 27, 1964, explained the Democrats’ perception of what was happening that year:

Under the guise of setting up an apparatus to protect the sanctity of the ballot, the Republicans are actually creating the machinery for a carefully organized campaign to intimidate voters and to frighten members of minority groups from casting their ballots on November 3rd. . . . It is an organized effort to prevent the foreign born, to prevent Negroes, to prevent members of ethnic minorities from casting their votes by frightening and intimidating them at the polling place. . . . Operation Eagle Eye . . . is a program to cut down the vote in predominantly Democratic areas by harassing, frightening, and confusing the voters. . . . The strategy is to help Senator Goldwater by cutting down the vote in large cities in states with many electoral votes.

The press release backs up these charges by discussing a Republican memo outlining planned tactics of challenging voters at the polls, encouraging stalling on lines in Democratic districts, equipping poll watchers with cameras to “frighten off . . . Democratic wrong-doers,” enlisting the help of local police sympathetic to the Goldwater campaign, and charging that ineligible Democratic voters are on the registration rolls. Although it is unclear how the DNC obtained this memo, Republicans were not shy about

flatly announcing what they planned to do. The national director of Eagle Eye, Charles Barr, told the *New York Times* he expected the operation to challenge or deter from voting 1.25 million voters all over the country, sparing no corner. This led to numerous recriminations in the days leading up to Election Day. As the *Times* put it: "Senator Hubert H. Humphrey of Minnesota, the Democratic Vice-Presidential candidate, denounced the Republican 'Operation Eagle Eye' as an indication that the G.O.P. leadership was determined to 'harass those who are going to vote. . . . It should be called Operation Evil Eye.'"¹⁶

Throughout the fall of 1964, Republicans sent out 1.8 million pieces of mail to the entire registration list in many of the "suspect" precincts in key cities.¹⁷ Barr was frank in describing the tactic to reporters, who recorded his prediction just before the election that "100,000 poll watchers in 35 cities will take part, and he expects 1.25 million voters to be either successfully challenged or discouraged from going to the polls."¹⁸ The chairman of the GOP, Dean Burch, said that Republicans trained "in the ways of detecting common fraudulent election practices will man the precinct teams." Operatives would make a list of voters to challenge by going door to door checking people's addresses¹⁹—an even less accurate and certainly more intimidating technique than sending out mailers.

One of the more blatant instances of the GOP using election procedures to disenfranchise Democrats occurred in Minnesota. In the month before the election, reporters uncovered a "kit" prepared for party poll watchers. The materials in the kit explicitly told the poll watcher that he or she was representing the Republican Party, stating baldly, "Your job is partisan. . . . The Republican voters in this state are relying upon you to see to it that the DFL [Democratic Farmer Labor Party] candidates do not receive one more vote in totals in your precinct than those to which they are legally entitled. Let the DFL look out for their own interest." Moreover, poll watchers were further directed, when a question arose at the polls, the challenger should only "(when it's in your party's interest) insist that the law be followed." According to press reports,

included among poll-watchers' duties in the GOP program are: . . . *Discouraging* election judges in DFL dominated precincts from volunteering assistance to voters. . . . *Watching* for stalling in voting booths in GOP-dominated precincts only. . . . *In DFL precincts*, challenging ballots before they are

deposited if two people enter a voting booth together and vote, particularly in cases where the voters are known not to be Republicans. . . . *Raise a challenge* when certain supposedly improper assistance is given to the voter “and you have good reason to believe these are not Republicans.”²⁰

While it is unclear what happened at the polls in Minnesota on November 3, 1964, the very existence of such instructions is disturbing enough. We do have evidence, however, that the Republican plan was executed in polling places all across the country. On Election Day, for instance, the *New York Times* reported that “in several areas of the South, Republicans had obtained registration lists in Negro precincts and mailed letters to all on the list. The Republicans said that a number of the letters were returned, indicating the voters were illegally registered. In Atlanta, the Republicans used these letters to challenge 2,000 voters. After a hearing, however, the Fulton Board of Registrars ruled that the letters were not proof of improper registration and rejected the challenges.”²¹ Similar fates awaited Democratic voters in Miami. The *Miami Herald* reported that “voters by the hundreds, perplexed and downright scared, were snarled yesterday in partisan poll-watching. Over-zealousness and challenges to Negroes dissuaded voters from entering booths, delayed their vote and otherwise disrupted normal procedure.” Others who might have been perceived as natural Democratic constituents were also targeted. “Elderly couples, living in Florida in retirement, also were challenged. In Miami, many were so upset that they fled back home without bothering to vote.”²² The polls got so unruly in Miami that a circuit court judge ordered an injunction against the Republicans banning “illegal mass challenging without cause, conducted in such manner as to obstruct the orderly conduct of this election.”²³

Reports of similar activity came in from across the country. In Chicago, according to the *Chicago Daily News*, Eagle Eye had 10,000 challengers in that city alone.²⁴ The president of the Los Angeles County Young Republicans told the local registrar that his organization was going to assign watchers only to a heavily African American district, where, he claimed, “we have first-hand knowledge of election code violations.” In St. George, South Carolina, the NAACP asked the FBI to investigate after finding that every third African American voter was being challenged at the polls; he “added that some white people believed to be supporting the Democratic

presidential ticket were also being challenged without cause.”²⁵ In Louisiana, Republicans were not limiting themselves to the efforts of their own volunteers. In that state, the head of the Republican ballot security program instructed workers to “make every effort to obtain the cooperation of the sheriff and local police and law enforcement officers on Election Day. . . . We are advised that all sheriffs in the state of Louisiana, except one, are sympathetic with Sen. Goldwater’s election. We should take full advantage of this situation.”²⁶

There was trouble in the nation’s capital, as well. The GOP chairman in Washington, DC, Carl Shipley, announced that he would be putting three poll watchers in each precinct and also hired forty private detectives to monitor the polls. As the *Washington Post* tartly observed, “In a statement which elevated him to a new level of felicity, moreover, Mr. Shipley made it plain that he did not mean to insult the public generally: well-dressed persons will not be challenged, he announced the other day, only ‘the kind of a guy you can buy for a buck or a bottle of booze.’” Presumably Mr. Shipley was referring to lower-income voters who he might have also suspected—correctly, according to data—would likely be Democrats. Clearly these were not appropriate standards for whose voting rights should be challenged.

Although Goldwater lost the 1964 election, Operation Eagle Eye was largely successful. The Republican Party had shown that vote suppression could be carried out nationally and the tactics could be employed by volunteers from all over the country. While there is no available information on any massive vote-caging schemes in the elections in the later 1960s and 1970s, the Republican Party used these first organized efforts as a blueprint for elections in the 1980s and 1990s. By that time, they had the operation down to a routine. As Professor Davidson explains, “They focus on minority precincts almost exclusively. There is often only the flimsiest evidence that vote fraud is likely to be perpetrated in such precincts. In addition to encouraging the presence of sometimes intimidating Republican poll watchers or challengers who may slow down voting lines and embarrass potential voters by asking them humiliating questions, these programs have sometimes posted people in official-looking uniforms with badges and side arms who question voters about their citizenship or their registration.”²⁷ Since the 1960s, this playbook has figured prominently in many closely fought elections.

The Republican South and the Reagan Realignment

Unlike Goldwater and Nixon's earlier efforts, Reagan's 1980 campaign was not obviously based on a southern strategy that sought to appeal to southern whites through the rhetoric of race, nor is there research to demonstrate mass caging activity during this presidential election. Much of Reagan's strength among southern whites was due to his messages on cutting taxes, religious values, and building up the military. Nevertheless, his emphasis on keeping the federal government out of people's lives sent a clear message that he was not in favor of imposing a federal civil rights agenda, including busing and affirmative action, on the states. Although he would later change his view, as a political aspirant connected with the Goldwater campaign Reagan had opposed both the Civil Rights Act and the Voting Rights Act, and as governor of California he had refused to criticize George Wallace's advocacy of segregation during his 1968 presidential campaign. Most infamously, Reagan began his 1980 general presidential campaign with a rally in Philadelphia, Mississippi, where civil rights workers had been killed in 1964—a signal to certain white southerners that he had their interests in mind.²⁸

The success of Reagan over incumbent president Jimmy Carter in 1980 marked the turning point when, for the first time, more southern whites identified as Republicans than Democrats. Exit polls from 1988 show that, in the eleven southern states, on average 45 percent of southern white voters identified themselves as Republicans, nearly double the average in 1982. Only 34 percent of southern white voters still called themselves Democrats. Based on this evidence, historians of the South, Earl and Merle Black, found that "Reagan's performance in office had allowed the Republicans to displace the Democrats as the new plurality party among southern white voters."²⁹ The demographic and ideological shifts that began in the 1950s led to a new political landscape. After 1980, southern Republicans started reliably winning congressional contests, whereas previously it was only in presidential elections that Republicans could expect to fare well.

Until 1980, southern congressional seats had been dominated by conservative Democratic officeholders who opposed civil rights and continued to attract white conservative voters.³⁰ It wasn't just their stance on civil rights that allowed Democrats to hold on to power in the South—they also opposed organized labor and supported low taxes. Perhaps most important,

incumbent Democrats were able to exploit all the advantages of years in office and of being part of the majority party in Congress, which allowed them to deliver resources and services to their districts. Over the course of the two decades after passage of the Voting Rights Act, Democrats finally began to realize that it would be easier for white Democrats—especially given the trend of white southerners toward the Republican Party—to win by going after African American votes and building biracial coalitions. As a result, the party began to be politically more moderate, such as by supporting extensions of the Voting Rights Act in the 1970s and taking liberal positions on some issues and a conservative stance on others, such as economic issues. It was through these biracial coalitions of voters that the Democratic Party was able to continue to dominate legislative politics in the South even into the 1980s. As long as 90 to 95 percent of African Americans voted Democratic, Democratic candidates never needed a majority of white votes.³¹

Some officeholders simply abandoned the Democratic Party for the Republicans during this period, including Phil Gramm, Strom Thurmond, Jesse Helms, and Lauch Faircloth. Then there were broader demographic patterns that saw an influx of conservative white northerners to the South, while African Americans continued to migrate out of the South. All these factors came together, and Republicans started to win congressional elections. After Reagan took the presidency, GOP wins came by huge white majorities—a trend that would reach its acme in the 1990s.³²

Republican Vote Suppression and Democratic Lawsuits

By the 1980s it was fully in the Republican Party's interest to target easily identifiable Democratic-leaning voters throughout the country—primarily African Americans and low-income Americans of all races, since poorer people also tend to vote for Democrats. As a result, caging and challenges continued throughout the country unabated. One of the most documented instances was the “antifraud” initiative that accompanied New Jersey's 1981 gubernatorial contest between Republican Thomas Kean and Democrat James Florio. The national Republican Party formed a National Ballot Security Force that mailed 200,000 letters to registered Democrats in predominantly minority neighborhoods in New Jersey. In part because

the Republican operatives used outdated lists, 45,000 letters were returned as undeliverable, and these were brought forward as bases for challenging the voting rights of people on the registration list.³³ The party also dispatched off-duty police officers in official-looking garb to heavily minority districts, posted signs that warned that polls were being patrolled by security force members and offered a \$1,000 reward to anyone giving information on election law violators.³⁴ As usual, Republicans justified these measures by raising the specter of fraud. The head of the state Republican Party, Philip Kaltenbacher, pronounced, “Anyone opposed to ballot security obviously must be supportive of election fraud.”³⁵

In 1981 the Democratic National Committee and the New Jersey Democratic Party sued their Republican counterparts, alleging violations of the Fourteenth and Fifteenth amendments, as well as provisions of the Voting Rights Act, and in 1982 the Republican committees were forced into a consent decree that barred them from engaging in such activities. In a consent decree, a court-ordered settlement, the court orders an injunction against the defendant and continues to oversee the case to ensure the injunction is followed. If the defendant does not follow the order, other penalties are available to the judge. The key provisions of this consent decree were:

2. The RNC and RSC . . . agree that they will in the future, in all states and territories of the United States: . . .

(e) refrain from undertaking any ballot security activities in polling places or election districts where the racial or ethnic composition of such districts is a factor in the decision to conduct, or the actual conduct of, such activities there and where a purpose or significant effect of such activities is to deter qualified voters from voting; and the conduct of such activities disproportionately in or directed toward districts that have a substantial proportion of racial or ethnic populations shall be considered relevant evidence of the existence of such a factor and purpose; . . .

3. The party committees agree that they shall, as a first resort, use established statutory procedures for challenging unqualified voters.³⁶

Unfortunately, this consent decree and the attendant spotlight on their campaign activities did not stop Republicans from continuing to engage

in vote challenges and caging. These deliberately discriminatory practices continued to occur over coming decades, leading the Democratic Party to return to the same court for relief under the consent decree later on.

The next occasion of note was 1986. In Louisiana, Republicans sent mailings to 350,000 voters in districts that had voted heavily for the Democratic presidential candidate in 1984, and 30,000 came back, mostly from black voters. The RNC then used the returned letters to demand that elections officials purge the voters from the rolls.³⁷ Once again, the Democrats filed a lawsuit under the 1981 consent decree. During the litigation, a memo from Kris Wolfe, the Republican Party's Midwest director, to its southern political director Lanny Griffith emerged that read, "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."³⁸ The court ultimately issued a restraining order against the Republican Party. The judge characterized the caging activities as "an insidious scheme by the Republican Party to remove blacks from the voting rolls. . . . The only reasonable conclusion is that they initiated this purge with the specific intent of disenfranchising blacks and their right to vote."³⁹ Unfortunately, Louisiana was only the tip of the iceberg, as vote suppression through caging and challenge was now firmly established as a centralized, national strategy for partisan gain.

In 1986, the GOP actually hired an outside company to manage its ballot security program.⁴⁰ That outfit claimed it had found voter fraud in Indiana, Pennsylvania, Missouri, New Jersey, and Louisiana—although fraud was never reported or verified in any of these states. The DNC accused the RNC of ramping up the ballot security program to disenfranchise mostly minority voters in Georgia, California, Michigan, and elsewhere.⁴¹ In these states, the Republicans used their faulty lists to plan vote challenges at the polls, and then turned the names over to the FBI for investigation.⁴² In Houston, Republicans planned to put partisan poll watchers solely in inner-city precincts, the so-called minority precincts. In denying any racial basis for the choice of locations, the county Republican chairman explained, "If you plot those on a map, they are all in the inner city, and that's where the Democratic vote is going to be 90 to 95 percent straight ticket. That's where the abuses are going to happen. They are not going to happen

in [the predominantly white areas of] west Harris County, in Clear Lake City or Kingwood.”⁴³

The chief counsel of the Republican Party readily admitted that they had spent a “substantial” amount of money on ballot security programs throughout the country because, he said, “We don’t think dead people should be allowed to vote. They’ve been voting for a long time and we think they vote for Democrats most of the time.”⁴⁴ That message, of course—echoed throughout the ranks of Republicans that year—came from the top. The chair of the Republican Party, Frank Fahrenkopf, had called voter fraud a “national plague.” And he saw no problem with efforts to check the voting eligibility of minority voters. He insisted that “he did not think a voter being called by an FBI agent about their voting eligibility would be intimidating.”⁴⁵

The lawsuit forcing a halt to these activities, based on violations of the New Jersey–based 1981 agreement, was formally settled on July 23, 1987.⁴⁶ Even this second consent decree did not stop operatives in the Republican Party from launching effort after effort to abuse election procedures for partisan gain, all in the name of preventing fraud. Yet these two consent decrees provided the foundation for the Democratic Party and others to return to court repeatedly to try to put a stop to this form of vote suppression.

For example, the year of 1990 in North Carolina rivaled 1981 in New Jersey for the breadth and audacity of Republican efforts. The senatorial election, with Senator Jesse Helms defending his seat against African American Democrat Harvey Gantt, was already racially charged when Republicans announced their latest ballot security program. In that atmosphere, the Republican Party proceeded to send out 150,000 postcards in Democratic, nearly exclusively African American, areas. The postcards warned recipients that “When you enter the voting enclosure, you will be asked to state your name, residence and period of residence in that precinct. . . . It is a federal crime, punishable by up to five years in jail, to knowingly give false information about your name, residence, or period of residence to an election official.” The postcards went on to intentionally misinform voters of their voting rights by claiming that if a voter had moved within thirty days of the election, he or she could not vote.⁴⁷

Even the Republicans had trouble defending this tactic. According to the *Washington Post*, Jack Hawke, the chairman of the state GOP, “contended the postcards were sent to voters who had recently moved, but he

acknowledged that an indeterminate number were sent to voters—many of them black—who had not moved in years.”⁴⁸

The Democrats filed suit again on the day before the election, but the judge held that he could not find a violation of the consent decrees because they applied only to the national Republican Party, not a state party. The Department of Justice investigated and found that black voters constituted 97 percent of the voters targeted.⁴⁹ The department filed suit, charging the Republicans had intimidated voters in violation of the Civil Rights Act and Voting Rights Act. The Republicans and the Helms campaign were forced into yet another consent decree in 1992 that enjoined them from intimidating voters or engaging in any ballot security program “directed at qualified voters in which the racial minority status of some or all of the voters is one of the factors in the decision to target those voters.” From 1992 to 1996, the state Republican Party was required by the DOJ to obtain court approval before implementing any other ballot security programs.⁵⁰

Despite the lawsuit and accompanying publicity, the Republicans went ahead and made the usual trouble—there were complaints throughout Election Day that Republicans were challenging and intimidating voters.⁵¹ Similar enterprises would continue in various states and municipalities throughout the 1990s and 2000s.

Caging and the Harm to Voter Inclusion

Challenges to certain groups of voters for partisan purposes was an idea hatched in the nineteenth century, reintroduced in the 1950s, and perfected in the 1960s. In the 1980s and the early 1990s, the tactic was deployed expansively throughout the United States. The evidence that the Republican Party has systematically used it as a plan of action to swing voting margins has only grown in recent years. When more blatant forms of vote exclusion—such as the poll tax (barred by the Twenty-fourth Amendment to the Constitution in 1964 and with respect to the states held unconstitutional by the U.S. Supreme Court in 1966)⁵² and literacy tests (suspended by the Voting Rights Act in 1965)—were barred by law and could no longer be used, there was pressure from within the Republican Party to find another tactic at a more sophisticated level, possibly within the technical

outer limits of the law but clearly designed to disenfranchise. Even after the Republican National Party was forced into a consent decree in the early 1980s barring it from engaging in these types of activities, vote challenges, facilitated by caging, continued to be an important weapon at the polls.

Partisan caging and challenging cannot be accepted by a healthy democracy. These tactics may distort election results and have the potential to skew the makeup of the electorate. That we continue to allow these abuses to go on so frequently—that the laws still make these strategies possible, if not fully permissible—sends the wrong message, especially to targeted communities, about the United States' democratic values.

Because just elections demand equal respect for all citizens, caging and challenges when used in this way flatly fail the test. The arbitrary, racially targeted manner of these vote-challenge operations flouts their own rationale as a measure intended to prevent fraud and denies the equal standing of citizens; the flimsy evidence upon which the challenges rest makes them patently disrespectful. Republican participants might say it is their right to question eligibility as a necessary function of the democratic system. But they do not do it in a way that helps to increase the fairness of elections or legitimize them. They carry out these practices in ways that stretch and sometimes break the law, attempting to suppress the participation of certain segments of society. This violates the principle of equal access to the election process. These partisan programs also fail the test of balancing liberties where a conflict might exist. Even if we accept the right to challenge another voter's eligibility—which, when done by a partisan rather than an informed and trained election worker, for example, is dubious—plainly the way in which the Republicans have carried out these challenges for decades is much more detrimental to the process than beneficial.

Most important, having one's right to vote challenged unfairly at the polls, without a strong basis for suspicion or evidence of ineligibility and often due solely to the color of one's skin, harms a voter's sense of citizenship and democratic pride individually and undermines the value of and our collective interest in an equal and just democracy.