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BULLIES
AT THE BALLOT BOX

Protecting the Freedom to Vote Against Wrongful Challenges and Intimidation

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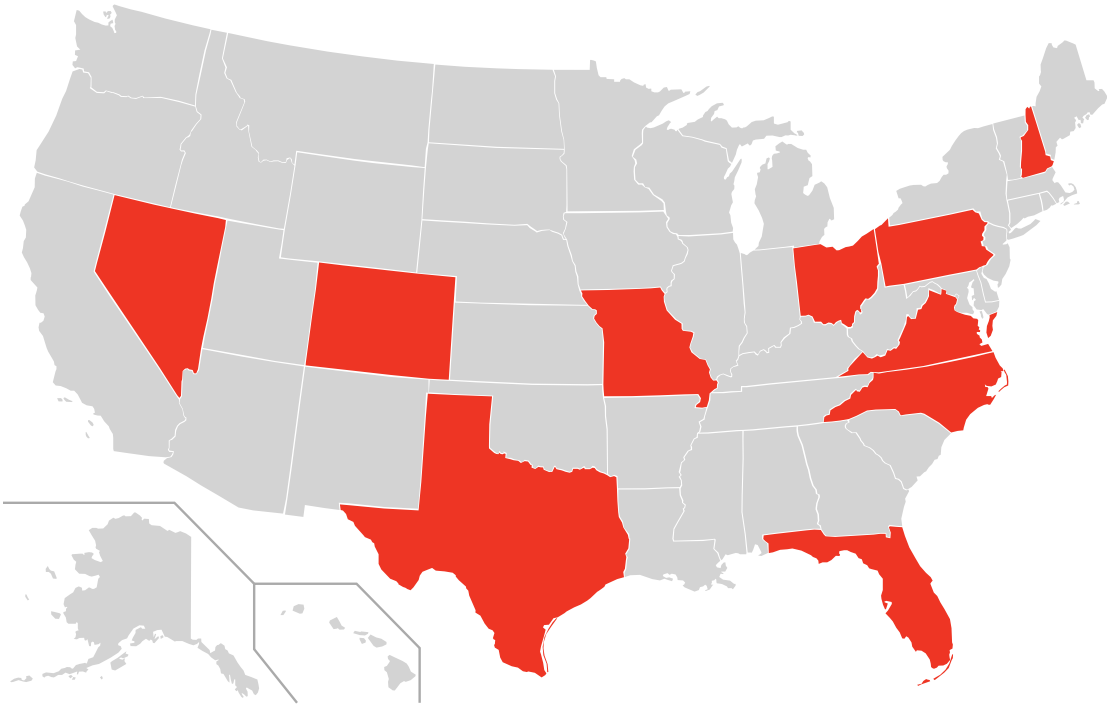

EXECUTIVE SUMMARY

They say they want to make the experience of voting "like driving and seeing the police following you."

Protecting the freedom to vote for all eligible Americans is of fundamental importance in a democracy founded upon the consent of the governed. One of the most serious threats to the protection of that essential right is the increase in organized efforts, led by groups such as the Tea Party affiliated True the Vote and others, to challenge voters' eligibility at the polls and through pre-election challenges. Eligible Americans have a civic duty to vote, and government at the federal, state, and local level has a responsibility to protect voters from illegal interference and intimidation.

As we approach the 2012 elections, every indication is that we will see an unprecedented use of voter challenges. Organizers of True the Vote claim their goal is to train one million poll watchers to challenge and confront other Americans as they go to the polls in November. They say they want to make the experience of voting "like driving and seeing the police following you."[1] There is a real danger that voters will face overzealous volunteers who take the law into their own hands to target voters they deem suspect. But there is no place for bullies at the ballot box.

Even in states with clear legal boundaries for challengers and poll watchers, too often these boundaries are crossed. Laws intended to ensure voting integrity are instead used to make it harder for eligible citizens to vote – particularly those in communities of color. Moreover, the laws of many states fall short when it comes to preventing improper voter caging and challenges. This should concern anyone who wants a fair election with a legitimate result that reflects the choices of all eligible Americans.

Clear rules that protect voters from improper removal from the rolls by voter caging and challenging, as well as from intimidating behavior at the polls, can help prevent interference with voter rights. This report describes the threat posed by potential voter challenges in the 2012 elections, and assesses the extent to which ten key states — Colorado, Florida, Missouri, Nevada, New Hampshire, North Carolina, Ohio, Pennsylvania, Texas and Virginia — are prepared to protect the rights of eligible voters to cast a ballot in the face of such challenges. The ten states examined here include states where races are expected to be competitive, which makes voters in those states particularly vulnerable to challenges. We also survey states where a history of aggressive voter challenge programs in recent elections threatened to intimidate voters or interfere with their access to the ballot.

OVERVIEW

This report first provides background on the current threat of overly aggressive voter challenge tactics and the history of such efforts in previous elections. The report then details what is permissible and legal when it comes to challenging a voter's eligibility, both before and on Election Day and inside and outside the polling place. We analyze laws in ten states governing:

- The process for challenging a registered voter's right to vote before Election Day and the use of voter caging lists;
- The process for challenging a registered voter's right to vote on Election Day;
- The behavior of poll watchers or observers at the polls on Election Day; and
- Protections for voters against intimidation, outside and inside the polls.

The report measures the extent to which each state's laws protects voters' rights in these areas, and assesses them in a set of comparative charts as satisfactory, mixed, or unsatisfactory. Each section includes recommendations for best practices in each of the areas we examine.[2]

FINDINGS

In examining the ten states' laws governing **challenges to voters' right to vote before Election Day**, including the use of voter lists created through **caging** or other unreliable practices, we find Colorado, Nevada, and Ohio are satisfactory, North Carolina and Texas are mixed, and Florida, Missouri, New Hampshire, Pennsylvania, Virginia - five out of the ten states - unsatisfactory.[3]

In assessing these states' laws governing **challenges to voter's right to vote on Election Day**, and procedures for determining those challenges, we find that while some of the ten states have practices that protect voters' rights, other states need improvement.[4]

- Texas does not allow for any voter challenges on Election Day, and Ohio only allows challenges by election officials; Colorado, New Hampshire, and North Carolina also have satisfactory protections for voters from improper Election Day challenges.
- Missouri, Nevada, and Virginia have laws that are mixed, with some provisions that protect voters' rights but also room for improvement.
- Florida and Pennsylvania have laws with unsatisfactory protections to guard against inappropriate Election Day challenges to voter eligibility.

Our analysis of these states' laws governing **poll watchers or observers and their conduct at the polls** shows they are also mixed in the extent to which they protect voters' rights. The laws of Colorado, Nevada, North Carolina, Ohio, and Virginia are satisfactory; Florida, Missouri, and New Hampshire are mixed. However, Pennsylvania and Texas allow behavior by poll observers or poll watchers that could endanger voting rights.[5]

We also summarize these states' laws **protecting voters from intimidation, both outside and inside the polls**. State and federal laws barring intimidation of voters can be used to protect voters from harassment.[6] However, the efficacy of these protections depends on robust enforcement by election administrators and law enforcement officials.

We call upon election administrators and officials with the Department of Justice to take steps in advance of and during the elections to protect voters from bullying at the ballot box. Our intent is to help minimize the level of activity that moves from positive civic engagement to voter intimidation and suppression. There must be zero tolerance for bullying behavior that stands between an eligible voter and her ballot.

GLOSSARY

CAGING – the practice of compiling a list of voters based on returned mail for the purpose of challenging their eligibility to vote. A caging list is compiled by conducting a mass-mailing and collecting the names of voters where the mail was returned. Lists may also be built by comparing different databases. Although many caging lists contain inaccuracies or are based on unreliable data, the list is often used to purge voters from registration rolls, or to challenge voters' eligibility.

CHALLENGE – a formal assertion that a person is not eligible to vote. Depending on the state, challenges may be made during a pre-election period or made in person on Election Day. States vary in terms of who may challenge a voter's eligibility and the process for determining a voter's eligibility once it is challenged. The potential for abusing voter challenges is high, particularly where organized groups seek electoral gain.

CHALLENGER – anyone who challenges a voter's eligibility to vote, whether on or before Election Day. Many states allow any registered voter in the appropriate jurisdiction to serve as a challenger, whereas other states have specific criteria and an official process for designating challengers.

DECEPTIVE PRACTICES – the intentional dissemination of false or misleading information about the voting process in order to prevent an eligible voter from casting a ballot, such as by providing misinformation about when or where to vote.

ELECTIONEERING – the act of campaigning for a particular candidate, issue, or party. Most states prohibit electioneering on Election Day in the area near the entrance to the polling place.

POLL WATCHER – a person, generally appointed by a candidate or a political party, authorized to observe the implementation of Election Day procedures at a polling place. In some jurisdictions, poll watchers are referred to as poll monitors or observers. States have different rules governing what these individuals can and can't do inside the polling place.

PROVISIONAL BALLOT – a ballot used to record a vote when election officials cannot determine a voter's eligibility or qualifications to vote on Election Day. A provisional ballot will be counted only if the voter's eligibility or qualifications are verified within a prescribed time after Election Day, through a process that may vary from state to state. In some states, individuals who are challenged on Election Day may be required to use provisional ballots. Provisional ballots often are not counted.

PURGING – when done properly, purging is the process of removing dead or ineligible voters from the voter roll so as to comply with the National Voter Registration Act (NVRA). Sometimes, purging leads to eligible voters being improperly removed from the registration rolls, for instance by using caging lists to remove names based on flawed data and inaccurate procedures.

VOTER INTIMIDATION – the use of threats, coercion, harassment or other improper tactics to interfere with the free exercise of the right to vote. Violence or the threat of violence is universally recognized as illegal forms of voter intimidation. There are significant differences across states as to which forms of non-physical voter confrontation and challenges rise to the level of intimidation or are otherwise unlawful. Many states prohibit private citizens or poll watchers from confronting or challenging voters within the polling place and/or making video, audio, and photographic recordings of voters within or around the polling place, or, more generally, from interfering with the proper conduct of the election.

INTRODUCTION

"In recent elections we have received disturbing reports and complaints about unacceptable, illegal behavior by observers."

Elections in America should be free, fair, and accessible. Eligible Americans should not have to overcome burdensome barriers to cast their ballots. Unfortunately voters in recent elections have encountered wrongful challenges and intimidation as partisan groups have launched organized efforts in key battleground states and targeted counties. Given the high stakes, voter challenges also are expected to be a major tool used by partisans in the November 2012 elections.

Unwarranted challenges to voters' eligibility can lead to problems at the polls for everyone seeking to cast a ballot by depleting resources, distracting election administrators and leading to longer lines for voters. Such activities present a real danger to the fair administration of elections and to the fundamental freedom to vote.

WRONGFUL CHALLENGES AND INTIMIDATION IN 2012: REASONS FOR CONCERN

Although voter challenges have been used for decades by partisans seeking electoral advantage,[7] a new threat emerged in 2010 when an organized and well-funded Texas-based organization with defined partisan interests, the King Street Patriots, through its project True the Vote, was observed intimidating voters at multiple polling locations serving communities of color during early voting in Harris County.[8] Members of this Tea Party-affiliated group reportedly interfered with voters — allegedly watching them vote, "hovering over" voters, blocking lines, and engaging in confrontational conversations with election workers.[9] Under Texas law, poll watchers are not allowed even to speak to a voter.

These activities have not been limited to Texas. In a 2011 special election in Massachusetts, a Tea Party group was reported to have harassed Latino voters and others at the polls in Southbridge, Massachusetts. The Southbridge town clerk protested these actions, reporting that targeted voters left saying, "I'll never vote again," while a retired judge witnessed "citizens coming from their voting experience shaken or in tears."[10]

In the June 2012 Wisconsin recall election, many students reported being challenged by True the Vote poll watchers, as the organization even mocked the students on Twitter.[11] The Wisconsin Government Accountability Board issued a statement saying "in recent elections we have received disturbing reports and complaints about unacceptable, illegal behavior by observers. Voters expect a calm setting in which to exercise their right to vote."[12]

Now active in 30 states, True the Vote has made it clear that it intends to ratchet up its activities in 2012.[13] The group is coordinating efforts throughout the country to purge the voter rolls, issue citizen challenges to registrations based on its own criteria and

recruit poll watchers for Election Day. At its annual 2012 conference, leadership of the group announced that it "anticipates training 1 million poll watchers around the country for this year's election."[14] In itself the training of poll watchers might not be worrisome, but the inflammatory language used to inspire this group of volunteer activists makes it so.

For instance, True the Vote's founder, Catherine Engelbrecht, has said "we see again with this administration . . . it's just stunning the assault on our elections that we're watching gain steam with every passing day, so we found ourselves to be unwittingly on the front lines of an issue that I think will be the inflection point for this election."[15] A reporter attending True the Vote's Colorado State Summit described how one speaker told the crowd that "they should enjoy bullying liberals because they were doing God's work. 'Your opposition are cartoon characters. They are. They are fun to beat up. They are fun to humiliate,' he intoned. 'You are on the side of the angels. And these people are just frauds, charlatans and liars.'"[16]

King Street Patriots has sponsored sweeping and unsubstantiated claims questioning the legitimacy of democratic participation by low-income persons and communities of color. For example, in 2011, King Street Patriots hosted a $100 plate dinner featuring Matthew Vadum, who has penned articles opining that it is un-American to register the poor to vote, writing, "how else can you justify a law that mandates that welfare recipients be given — be encouraged — to vote when they're there in the cheese line picking up their check?...You shouldn't be encouraging people to destroy the country, you shouldn't be encouraging people to vote themselves benefits from the government."[17] Tom Fitton, president of Judicial Watch, a close partner of True the Vote, said "I fear the Obama gang is setting themselves up to steal the election" with the "illegal alien vote"[18] and also accused the president of wanting "to register the food stamp army to vote for him."[19] In a letter sent to "Friends" this August he wrote "[a]s the scope of the Left's efforts to corrupt and steal the 2012 elections become even more clear, it is absolutely vital that lawful voters like you and thousands of other patriots have the tools at hand to blow the whistle on voter fraud."[20] With comments about the "illegal alien vote" and "the food stamp army," King Street Patriots and

VOTER INTIMIDATION & HARASSMENT IS ILLEGAL

To be clear, activities that intimidate voters are against the law. Section 11(b) of the Voting Rights Act prohibits intimidation, threats, or coercion with respect to the exercise of the right to vote, whether or not such intimidation or coercion is shown to be racially targeted.[27] Voter intimidation, coercion or threats interfering with the right to vote are also criminal offenses.[28] Sections 203 and 208 of the Voting Rights Act also protect the rights of language minorities, disabled persons or other individuals to receive assistance at the polls if needed to exercise the right to vote.[29] Even in states whose challenge procedures or poll watcher restrictions are lax and thus most vulnerable to abuse, the federal protections against intimidation and harassment can stand as a bulwark against abusive practices. Many states have their own legal prohibitions on voter intimidation or harassment.[30]

In the end, unfounded challenges and acts of harassment at the polls by politically motivated organizations threaten to disenfranchise eligible Americans. Such activities on a wide scale can impact election results and damage the integrity of our democracy and election institutions. Election administrators and law enforcement officials should carefully monitor such activities and bring enforcement actions when needed to protect against abuses.

Anyone experiencing or witnessing bullying of voters can call 1-866-OUR-VOTE, a hotline operated by a coalition of non-profit, non-partisan organizations, to report such incidents and request assistance or referrals. Complaints about such activities may also be reported to the U.S. Department of Justice by contacting the Voting Section of the Civil Rights Division at 1-800-253-3931. ■

their allies have created a climate of fear that voter fraud is rampant in minority precincts and used that fear to justify their discriminatory targeting of poll-watching efforts – again, without evidence to support the targeting.[21]

As recently as July 31, 2012, True the Vote reportedly mailed letters to 160 counties alleging that they were not compliant with the National Voter Registration Act ("NVRA") for failing to conduct voter registration list maintenance programs in advance of the November elections.[22] A True the Vote spokesperson stated that the organization did not "expect these [notices] to go ignored" and that it "expects the counties to take proper action to clean their voter rolls well before Election Day in November."[23] True the Vote demanded proof of compliance with their demand for vote-cleaning prior to the election otherwise they would commence litigation.[24]

There is nothing wrong with wanting accurate voter rolls. However, True the Vote's notices are at odds with the very statute they claim to be enforcing, because the NVRA requires that any general list maintenance program resulting in the systematic removal of names of ineligible voters must be completed no later than 90 days before Election Day.[25] The reason such list maintenance programs must be completed at least 90 days before the election is to ensure that removal notices do not confuse eligible voters about their registration status so soon before an election. To be clear, election officials in the counties where True the Vote "expects to take proper action … well before Election Day in November" would violate the NVRA should they conduct a purge within 90 days of the election.[26]

The repeated use of caging in recent election cycles, the emergence of private groups that organized to target communities of color for voter challenges in 2010, the avowed plans of the King Street Patriots and True the Vote to massively expand these activities in 2012, and the high stakes of the upcoming presidential election, all provide clear warning that pre-election and polling place challenges may see unprecedented use in this election year. No matter who is organizing or leading the charge, it is important that all participants understand the rules and respect the right of all Americans to vote free of intimidation or obstruction.

HISTORY OF WRONGFUL CHALLENGES AND INTIMIDATION

The practice of individuals challenging the rights of voters to cast a ballot at the polling place has a troubled history in American elections.[31] There was a serious resurgence of the practice in the 2004 election, and, in 2010, the confrontational approach of certain parts of the Tea Party movement moved dangerously into the polling areas. The following examples illustrate that all too often plans to challenge voters that are implemented in the name of voting integrity are really tactics meant to seek electoral advantage by manipulating the voter pool.

In 1982 the Democratic National Committee (DNC) alleged in a lawsuit against the Republican National Committee (RNC) that the RNC was engaging in discriminatory voter caging and voter intimidation efforts focused on predominantly African American and Latino neighborhoods.[32] The parties eventually entered into a consent decree, important parts of which remain in effect today, which forbade the national RNC from engaging in voter caging operations.[33]

In spite of the consent decree, Republicans were reportedly planning to use vote caging in 2004.[34] A document developed in part by a lawyer for the Bush-Cheney campaign and distributed for use by state GOP officials provided a template for vote caging; an email from the same lawyer noted that Nevada was one of the states where caging was possible, because they had a list which could be used for that purpose.[35] The effort to identify registered voters to challenge in states like Nevada was described by the Washington Post as "the most robust in recent history."[36] A former state Republican Party executive director attempted to cage and challenge over 17,000 voters in Nevada prior to Election Day, but election administrators rejected the mass challenge.[37]

After the 2004 election, detailed plans to challenge the eligibility of voters who were expected to support Democratic presidential candidate John Kerry in key swing states were discovered in 43 pages

of email sent between RNC employees and the Bush-Cheney campaign.[38] The emails showed that staffers had designed a plan to compile lists of voters to challenge, targeting likely-Democratic voters in New Mexico, Ohio, Florida, Nevada, and Pennsylvania.[39] The RNC planned to send letters to newly registered voters to see whether voters still lived at their registered addresses. If the letter could not be delivered, the name was added to the list of voters to be challenged on Election Day.[40] In emails that were made public, under the subject line "Voter Reg. Fraud Strategy conference calls," RNC staffers referred to the plan as a "goldmine" and suggested that the plan should be expanded to more states.[41] Another email, dated October 5, 2004, expressed concern that the plan ran the risk of having "GOP fingerprints"on it.[42]

In Ohio, the challenge list targeted predominantly minority, urban, and Democratic districts.[43] It was estimated that "in Ohio, all of the precincts in about a dozen counties that contain 91 percent of the state's black population—including urban areas like Cleveland, Cincinnati, Dayton, Toledo, and Akron" were targeted by Republican challengers.[44]

And in Wisconsin, the state Republicans "used the U.S. Postal Service software to scrutinize the addresses of over 300,000 registered voters"—but only in heavily Democratic Milwaukee.[45] The party challenged 5,600 Milwaukee voters.[46] After the Milwaukee city attorney reviewed the list, he found that many of the alleged nonexistent addresses actually did exist.[47] While party officials claimed that this new level of scrutiny was needed to thwart possible fraud, at least one Republican strategist was more candid after Election Day, telling the New York Times that the challenges were "a big head fake," a way to distract Democrats from getting out the vote at the crucial last hours.[48]

As discussed above and throughout the report, these problems have persisted in more recent election cycles. In 2010, Illinois GOP Senate candidate Mark Kirk was recorded talking about a massive poll watcher operation in minority communities.[49] In September 2010 the organization "One Wisconsin Now" obtained audio recordings of Tea Party leaders planning to work with the GOP to challenge voters on Election Day—largely in minority and student communities.[50]

In Minnesota, the Tea Party-backed "Election Integrity Watch" offered a $500 bounty to anyone who provides tips about fraud — perhaps encouraging already zealous activists to become over-zealous at the polls.[51] They also advised volunteers to look for non-citizen voters. It is unclear, however, how a poll watcher would know a voter's citizenship status — other than by judging a voter's appearance or questioning them in violation of the law. [52] This same organization urged its volunteers to take pictures and videotape voters at the polls — tactics that sometimes have been used improperly to intimidate voters over the last several decades.[53] The National Director for ResistNet, a Tea Party networking site, suggested that volunteers use concealed cameras; the site "admits that such tactics could be illegal but . . . suggests how activists might be able to skirt the rules: 'It is illegal to video the polling place, but you can video the birds on top of the polling place or the dog sitting in front of it. If your video of birds or dogs happens to include voter vans, well...'"[54]

Although many of these examples have involved activities by Tea Party or Republican groups, there was also an allegation of voter intimidation in Philadelphia by two members of the New Black Panther Party in 2008. The Department of Justice obtained a default judgment against one of the defendants who allegedly brandished a nightstick and made intimidating statements, enjoining him from engaging in future acts of intimidation,[55] but some critics have contended that the Department of Justice should have taken even stronger action and should not have dismissed claims against other defendants.[56]

In a high stakes political environment, the rules governing acceptable behavior at the polls need to be clearly understood by activists, by elections officials, and ultimately by voters. Eligible Americans who undertake to fulfill their civic duty of voting should have assurance that they will not be impeded in exercising their freedom to vote. ■

STATE LAWS ON CHALLENGING REGISTERED VOTERS BEFORE ELECTION DAY AND VOTER CAGING PRACTICES

One county election official said that she is "not sure that this group does understand state law . . . . Because a group comes out and says these individuals (should be off the rolls) based on research from Facebook and LinkedIn, that's just not an acceptable source."

In this section, we examine how the laws in ten states apply to challenges to voter registration before Election Day, often on the basis of building lists of voters to challenge through caging, database comparisons, or list-combing and comparisons to public records.[57] Specifically, voter caging is the practice of sending non-forwardable mail to registered voters and using any returned mail as the basis for building lists of voters to challenge. Challengers, often motivated by a partisan interest in suppressing turnout of key constituencies, may rely on other dubious investigatory methods and data that are wholly inadequate (and inapplicable) to voter eligibility. True the Vote, for example, is reported to "allow[] volunteers to scour voter registration records for irregularities" by providing "a database to compare voter rolls with other public records."[58]

True the Vote's software and vetting standards "draw[] on the power of Internet organizing and Tea Party networks."[59] Participants look for inconsistencies between driver's license databases and voter registration databases or even jury lists.[60] Lists are compiled based on a number of reasons – "[i]f they don't like the way a person's signature varies from form to form, it is flagged as suspicious. If they see that too many voters are registered at an address, it is flagged."[61] True the Vote's national research director explained that "[w]hen you find 80 [registered] at an empty lot, you push a button and all 80 people get challenged."[62] One volunteer told reporters that she has used the database with her own state "election integrity" group, and has used social media and websites like whitepages.com and peoplefinders.com to research voters.[63] Such tactics prompted one county election official to say that she is "not sure that this group does understand state law . . . . Because a group comes out and says these individuals (should be off the rolls) based on research from Facebook and LinkedIn, that's just not an acceptable source."[64]

As noted in the examples of described above, abusive caging and list-building practices can improperly disenfranchise eligible voters when these lists are used to target voters for removal from the voting rolls. This section summarizes each state's laws that regulate challenges to voters' eligibility before Election Day. It points out areas that may need clarification or improvement in order to protect voters' rights and improve the fairness of the process.

COLORADO

Colorado's procedures for challenging registered voters include some of the most specific statutory protections of the ten states we examined. Importantly, pre-Election Day challenges to voter registration must be filed with the county clerk and recorder no later than sixty days before any election.[65] This

should guard against extensive last-minute scrambles in the few weeks before Election Day.[66] Grounds for challenge include citizenship, residency, and age.[67] Challenges must be made in writing and include the basis for the challenge, the supporting facts, and "some documentary evidence to support the basis for the challenge."[68] This requirement is helpful because it requires more than mere allegations, thereby decreasing the risk that frivolous challenges will affect too many voters. However, anyone registered to vote in Colorado is entitled to challenge any person whose name appears in a county registration record.[69] This is problematic, because it could allow large-scale challenges by a few coordinated actors state-wide.

Hearings are required in Colorado, which provides important protections for challenged voters. No later than thirty days after filing the challenge, the county clerk and recorder must hold a hearing at which the challenged registrant is entitled to appear.[70] Critically, the challenger is required to appear and bears the burden of proof of the allegations in the written challenge.[71] Within five days of the hearing, the county clerk and recorder must make a decision based on the sufficiency of the evidence to reject the challenge, accept the challenge and cancel the elector's name from the registration book or mark the voter as "inactive," which triggers Colorado's procedures concerning voters who fail to vote in a general election.[72] Marking the voter "inactive" occurs if the county clerk and recorder "finds some evidence but not sufficient evidence to support the allegations in the challenge."[73]

Colorado's law protects the rights of voters by requiring that the person who brings the challenge show up and prove his or her allegations before the challenged voter is kicked off the registration rolls. It is also laudable that challenges are not all-or-nothing, and that insufficient evidence does not result in automatic cancellation of a voter's registration.[74] However, there is room within Colorado law to clarify what it means for a county clerk to "find[] some evidence but not sufficient evidence to support" allegations, particularly if the remedy for that situation is marking the voter as "inactive."[75] Colorado should also restrict the people that can make pre-Election Day challenges to only voters registered within the same precinct.

To Bill Internicola, a 91-year-old World War II veteran and bronze star recipient who has been voting in Florida for fourteen years, it was "like an insult" to be told he had 30 days to prove he was a citizen or he would be removed from the voting rolls."

FLORIDA

Since 2000, Florida remains a prominent battleground state. Florida also has the highest foreclosure inventory after the financial crisis of 2008.[76] The subsequent changes in residency makes Florida particularly fertile ground for challenges to voter registration based on residency. Unfortunately, Florida's procedures for voter eligibility challenges before Election Day are insufficiently voter protective.

Florida law requires pre-Election Day voter challenges by private citizens to be filed no sooner than 30 days before an election.[77] Any registered elector in Florida may challenge the right of a person to vote, but they may only challenge other voters registered in the same county, which is an important limitation.[78] Further, the challenge must be in writing and contain an oath that is specifically prescribed by the statute

KICKING YOU OFF THE VOTING ROLLS:
Florida Purge 2012

Recently, Florida Governor Rick Scott has used motor vehicle databases to compile lists of voters that were suspected of being non-citizens, and threatened to remove them from these voters from the registration rolls unless they can prove their citizenship.[85] As the Miami Herald reported, the motor vehicle databases "had limited and often-outdated citizenship information that carried a high risk of making lawful voters look like noncitizens."[86] Initially the list had over 180,000 voters, and 87% of those targeted to be removed from registration lists were people of color.[87] Some fear that this is a repeat of the 2000 presidential election, in which then Secretary of State Katherine Harris oversaw a purge of purported felons that disenfranchised thousands of eligible voters in an election that is on the books as having been decided by 537 votes.[88]

Then-Secretary of State Kurt Browning "didn't feel comfortable" utilizing this process and said that "[s]omething was telling me this isn't going to fly. We didn't have our I's dotted and T's crossed."[89] He refused to release the lists to county supervisors because he "wanted to make sure the data was good if it went out under [his] name."[90] That did not stop Browning's successor, however, from continuing the purge. Secretary of State Ken Detzner sent a list of 2,700 suspected non-citizens to county election supervisors and asked them to verify citizenship.[91] County election officials were asked to send letters to the suspected non-citizen registrants and give them 30 days to verify citizenship or their names would then be dropped from voter rolls.[92] Alarmed by the unreliable data that the State relied upon to establish its lists, Florida's 67 county election supervisors stopped moving forward with the purge.[93] Miami-Dade County, for example, determined that 514 of the listed individuals were, in fact, citizens.[94] To Bill Internicola, a 91-year-old World War II veteran and bronze star recipient who has been voting in Florida for fourteen years, it was "like an insult" to be told he had 30 days to prove he was a citizen or he would be removed from the voting rolls.[95]

governing voter challenges, including the reasons for which the challenger believes a registered voter is "attempting to vote illegally."[79] Florida law provides that making a frivolous challenge to any person's right to vote is a first degree misdemeanor, which carries the potential for prison time and fines.[80]

The grounds for challenge are not explicitly outlined under Florida law other than that the challenger must give a valid "reason" the voter is "attempting to vote illegally."[81] The clerk must then deliver to the challenged voter a copy of the oath and reasons for challenge.[82] However, there is no requirement that hearings be held, and no specific provision ensuring that the registered voter is presumed to be eligible unless proven ineligible. The processes for resolving a pre-election voter challenge should be clarified.

A challenged voter retains the right to vote provisionally.[83] Unfortunately, for that provisional ballot to count, a voter must deliver evidence supporting their eligibility to the supervisor of elections within two days of the Election. This process unduly burdens the rights of eligible voters. A voter who is challenged on the basis of her residence only has the chance to prove her eligibility at the polls – which would allow her to vote a regular ballot - in order to vote a regular ballot under very limited circumstances, i.e., she moved precincts within the original county of registration or is a uniformed military voter.[84] These limited circumstances are far too narrow and restrictive, and could force many challenged voters to vote provisionally.

MISSOURI

Unlike other states discussed in this report, Missouri law does not provide a step-by-step process for adjudicating pre-Election Day challenges to voter registration status. Instead, a broadly worded statute grants election authorities a blanket right to "investigate the residence or other qualifications of any voter at

In June 2012, the Department of Justice (DOJ) filed a lawsuit against the State of Florida and Florida's Secretary of State asserting that Florida is violating federal law with a voter purge.[96] Because of the timing of the purge, DOJ asserted that this process violated federal law and that any systematic purging program within the 90-day quiet period before an election for federal office violates Section 8 of National Voter Registration Act (NVRA).[97] Further, the DOJ alleged that the compiled lists of voters are based on inaccurate and unreliable data, in violation of Section 8(b)(1) of the NVRA, which requires that verification procedures be "uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965."[98] Although the court denied the DOJ's motion for a temporary restraining order in part because the program had been halted, it found that "[t]here were major flaws in the program" including the Secretary's compilation of "the list in a manner certain to include a large number of citizens."[99] Federal litigation is ongoing. Florida has sued the federal government for denying Florida access to its citizen database.[100] Voting rights advocates, including the Advancement Project, Fair Elections Legal Network, Project Vote, Latino Justice, ACLU, Mi Familia Vota Education Fund, and the Lawyers' Committee for Civil Rights Under Law have all sued Florida for violating the Voting Rights Act.[101]

Ultimately, this is a government-sponsored purge – a coordinated effort instigated by the Governor's administration, rather than by overzealous citizen activists. But private actors may also build lists of voters based on unreliable data and challenge voters' registration status, as there is no law in Florida that explicitly prohibits voter caging. Their actions could be far more discrete than a statewide purge and targeted at specific counties. These efforts have a greater chance of flying under the radar, but would still jeopardize the voting rights of eligible, registered Americans. Election administration officials must be as cognizant of unreliable data used by private citizens in challenging voters as they were in resisting Governor Scott's state-sponsored voter purges. ■

any time it deems necessary."[104] Election officials are required to investigate challenges to voter qualifications if the challenges are brought more than ten days before an election; investigations "may" be deferred to after an election if they are raised within ten days of Election Day.[105] The law requires election authorities to investigate "material affecting any voter's qualifications brought to [their] attention from any source." Importantly, implicit in the statute is a requirement that challengers must provide more than mere lists of voters, because the law requires election officials to investigate "material" concerning a voter's qualifications provided by any source. Authorities should consider strengthening this requirement to something like the supporting "documentary evidence" requirement in Colorado. They should also require hearings before cancelling registrations, and require challenges to be brought in writing, under oath, and based on personal knowledge of the challenger. Missouri law should make clear that the burden of proving ineligibility lies on the challenger, not the registered voter, and there should be penalties for frivolous challenges. Legislation banning the practice of using caging lists to strike voters from the registration rolls was introduced in Missouri in 2008[106] and 2009[107], but did not become law.

NEVADA

Nevada law generally does a good job protecting registered voters from improper pre-Election Day challenges. In Nevada, a voter may only challenge the registration status of any other voter registered to vote in the same precinct.[108] This jurisdictional requirement of precinct-level commonality between the challenger and the challenged voter is an important safeguard against widespread voter challenge campaigns that lack precinct-level organization. There is also a narrow six-day window for written challenges to take place before Election Day. Written challenges must be signed by the challenger, include the grounds for challenge, and must be based on personal knowledge.[109] This provision could be improved by requiring that challenges be made under oath. Within 5 days

of a challenge being filed, the county clerk must mail a notice to the person whose right to vote is challenged.[110] Fortunately, Nevada law requires the clerk to include the following sentence in the mailed notice: "Even though your right to vote has been challenged, you are still registered and eligible to vote. Please contact this office immediately for information concerning how you may respond to the challenge."[111] This is an extremely good provision, as it makes clear that a failure to respond will not result in automatic cancellation. If the person fails to appear "within the required time" or doesn't cast a vote by the end of the second general election after the notice is mailed, the clerk is required to cancel the person's registration.[112] This provision is protective of voters' rights, because it allows voters the opportunity to cure a challenge at the polls within two subsequent general elections, which is a generous period of time.

Challenges in Nevada may be based on a variety of grounds, including identity and residence.[113] To overcome a challenge and vote a regular ballot at the polls, the challenged voter must swear or affirm, under penalty of perjury, information concerning her eligibility to vote.[114] For certain non-residence challenges, the voter can affirm her identity and vote a regular ballot.[115] However, if the challenge concerns the residence of a registered voter, that registered voter may not vote a regular ballot unless she "furnishes satisfactory identification which contains proof of the address at which the person actually resides."[116] Otherwise she must vote at a "special polling place."[117] Many voters may lack the "satisfactory identification" to quickly restore their status as duly-registered voters.

NEW HAMPSHIRE

In New Hampshire, the law governing pre-Election Day challenges is problematic. There are two procedures that could be used. First, any citizen may file a complaint in superior court stating that another citizen is "illegally" on a voter roll.[118] Then a judge must order that a copy of the complaint be served upon the town election supervisors and challenged citizen with a time and place for "an immediate hearing."[119] The judge hearing the case can then order the name removed from the checklist "as justice requires" after the hearing.[120]

Alternatively, New Hampshire allows anyone to submit a "request for correction of the checklist [voter roll] to the supervisors of the checklist or to the town or city clerk based upon evidence that a person listed on the checklist is not qualified as a voter in the town or ward."[121] Then, election supervisors (elected individuals responsible for maintaining voter rolls) must "determine whether or not it is more likely than not that the person's qualifications are in doubt."[122] If so, the supervisors must send a notice to the challenged voter granting 30 days to "provide

KICKING YOU WHEN YOU'RE DOWN:

Targeting voters in foreclosure proceedings

The 2008 presidential election came in the midst of the Great Recession, when foreclosure proceedings were on the rise. At that time, Missouri was the subject of a *New York Times* story concerning foreclosure and voter registration, with confusion over changing residences stoking fear that "many voters [would] be disqualified at the polls because, in the tumult of their foreclosure, they neglected to tell their election board of their new address," which would lead to "poor voters [being] singled out."[102] In Michigan, Democrats filed a lawsuit seeking a court order barring Republicans from using lists of people facing mortgage foreclosure proceedings as a basis for challenging their voting eligibility. Michigan Republicans denied using foreclosure lists to cast doubt about voters' qualifications. And in Ohio, then Secretary of State Jennifer Brunner advised county election boards that foreclosure lists should not be considered proof that voters have changed residences, saying "Ohioans faced with the pain and turmoil of a home foreclosure should not be targeted by the forces of disenfranchisement on Election Day."[103] ■

proof" of qualifications to vote.[123] Failure to respond to the 30-day-notice or failure to provide proof results in removal from the checklist.[124] There is no requirement that the challenger be from the same town or district, or even from New Hampshire, which could give rise to frivolous challenges from out-of-state challengers. There is also no requirement that the notice be sent by forwardable first-class mail, so there is a risk that a challenged voter might not even properly have notice that his or her registration was challenged. Finally, there is no statutory requirement for a hearing before a voter is removed from the rolls; instead, the burden of proof shifts entirely to the challenged voter to provide evidence as to why they should remain on the rolls.

New Hampshire law has weak protections for voters facing pre-Election Day challenges. A lot of discretion lies with the election supervisors who make the determination as to whether any individual challenge meets the standard that it is "more likely than not" that a voter's eligibility is in doubt.[125] Elections supervisors should have high standards for what is acceptable "evidence" that a registered voter "is not qualified as a voter," particularly in the case of mass challenges based on caging lists.

NORTH CAROLINA

In North Carolina, the law provides strong protection for voting against improper pre-Election Day challenges. Any registered voter of a county may challenge the registration of any other voter in the county, but there are important safeguards against abuse.[132] No challenges are allowed after the 25th day before an election (other than on Election Day itself).[133] Challenges must be in writing, under oath, and must specify the reasons why someone should not be entitled to remain registered to vote.[134] These are important protections for voters, as these procedural requirements will make it harder for frivolous challenges to create havoc. Grounds for challenge include residency, age, felony conviction, citizenship, or that the person is not who he or she appears to be.[135] Once challenged, the board of election must schedule a hearing and take testimony under oath concerning the challenge.[136] Importantly, the burden of proof is on the challenger.[137] Fortunately, North Carolina law specifies that "[c]hallenges shall not be made indiscriminately" and the challenge must be substantiated by affirmative proof.[138] This is particularly important because having substantiated proof, instead of simply making a claim as to why a voter should be challenged, places accountability on the challenger and prevents many frivolous challenges at an early stage. What is unfortunate, however, is North Carolina's statutes specify that the "presentation of a letter mailed by

KICKING YOU WHEN YOU'RE YOUNG:

Targeting student voters

Students are often singled out to have their voting rights attacked. Last year the Speaker of the House in New Hampshire explained that he wanted to make it more difficult for students to register and vote because young people are "foolish," lack "life experience" and "just vote their feelings" - "voting as a liberal. That's what kids do."[126]

In 2004, the RNC sent letters to students of Edward Waters College, a historically black college in Jacksonville, Florida.[127] The letters were sent during the summer when there was little chance that any of them would be received. A number of the letters bounced back and thirty-one students were listed as potentially ineligible voters.[128] Similarly, many letters sent to men and women serving in the United States military were undeliverable, presumably because the recipients were overseas on military duty.[129]

In 2008, the County Clerk of El Paso, Colorado's most populous county, sent incorrect information to Colorado College administrators, to be distributed to students, falsely stating that many of them were not eligible to register to vote or to vote in Colorado. Democratic officials accused the clerk of attempting to disenfranchise college students who disproportionately supported Obama; the clerk merely deemed it a mistake.[130] The clerk was also accused of planning to challenge every new voter's registration in an effort to disenfranchise Democrats.[131] ■

AFTER TROUBLE:
Ohio makes improvements

In 2004, the Ohio Republican Party challenged 35,000 newly registered voters just two weeks before the election.[150] Most of the voters lived in urban, Democratic-leaning neighborhoods.[151] The 35,000 names were identified through a classic caging operation: the Party used mail returned as undeliverable as the basis for challenge.[152] Two individual voters and the Ohio Democratic Party filed suit, alleging that the pre-Election Day challenges violated the National Voter Registration Act and the Due Process Clause.[153] The court granted the plaintiffs' request for a temporary restraining order, finding that the voters' constitutional rights were indeed in danger of being abridged by the challenges and the lack of opportunity for a hearing in the immediate run-up to the election.[154] Additionally in 2004 a last minute court decision allowed partisan poll watchers inside Ohio polling places to challenge voters' eligibility at the polls on Election Day.[155] The large numbers of challengers in Ohio was one of many problems that caused massive wait times for voters in many urban districts.[156]

Because Ohio experienced such serious difficulties with challenges at the polling places on Election Day in 2004 the legislature amended the law to require that any challenge to a registered elector's right to vote had to be made at least 20 days prior to an election.[157] Only election officials are allowed to challenge voter eligibility on Election Day.[158] Challenges must be made in writing, "signed under penalty of election falsification."[159] Under current law, if the board of elections is unable to determine the outcome of a challenge, a hearing must be held within 10 days of the challenge, and a notice must be sent to the registered voter at least three days prior to the hearing.[160] If the challenge is filed within 30 days of an election, the board has the option of postponing the hearing until after the election, though the voter may have to cast a provisional ballot which will only be counted if the subsequent hearing determines they were eligible.[161]

Ohio also changed its law so that any individual who declares that they desire to vote and that they are eligible to vote, but whose name "does not appear on the list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote" shall be allowed to cast a provisional ballot.[162] In the 2004 election, Ohio Secretary of State Ken Blackwell attempted to limit provisional ballot access severely, in contravention of federal law, because Ohio regulations allowed for such limits.[163] It should be noted that provisional ballots are not a cure-all. Ohio in particular has had a high rate of not counting provisional ballots. A recent court decision requiring Ohio to count provisional ballots that are cast in the wrong precinct due solely to poll worker error will lead to a higher rate of provisional ballots being counted.[164] ■

returnable first-class mail … and returned because the person does not live at the address shall constitute prima facie evidence that the person no longer resides in the precinct."[139] While there are procedural protections in place, including hearings, this particular provision of North Carolina law renders voters vulnerable to caging.[140]

OHIO

In Ohio, a state at the heart of caging controversies in 2004, any registered voter may challenge another voter's right to vote prior to the nineteenth day before the election.[141] Although this is not ideal, there are formalities that a challenger must follow that make frivolous challenges more difficult. The challenge may be made in person or by a letter addressed to the board of elections, must state the ground upon which the challenge is made, and must be signed by the challenger giving the challenger's address and voting precinct.[142]

In August 2012, the Ohio Secretary of State issued a new directive providing valuable guidance for administering Ohio's pre-Election Day challenge statutes.[143] It largely mirrors a 2008 directive.[144] Accordingly, hearings are required before cancelling a voter's registration.[145] Further, the directive grants election boards discretion over whether challenges are "facially sufficient" enough to hold a hearing in the first place.[146] This is important because it provides at

least one additional screen from frivolous challenges by requiring an initial assessment by the boards of elections. Furthermore, the directive states that mail returned as "undeliverable" is insufficient grounds to grant a challenge.[147] The directive also states that evidence of a foreclosure action is also insufficient to grant a challenge.[148] These are outstanding and important safeguards against voter caging, because they explicitly prohibit the use of undeliverable mail to challenge voter rights. Widespread caging campaigns frequently use this technique, which can produce inaccurate and flawed results. These protections safeguard the rights of voters facing foreclosures in the wake of the largest recession in a generation.

Unfortunately, the 2012 directive failed to carry over language from the 2008 directive that explicitly required the challenger to bear the burden of proving why the challenge is justified with "clear and convincing evidence."[149] Also, the challenger should be required to make the challenge under oath.

PENNSYLVANIA

The laws in Pennsylvania are problematic and among the worst examined for this report. First, Pennsylvania law has two procedures. One allows pre-Election Day challenges by affidavit, and the other by petition.[165] As for the affidavit procedure, the law is silent as to when the challenge must be made.[166] This could lead to serious administrative burdens if mass voter challenges are filed in the immediate run-up to Election Day. For challenges by petition, those must be filed no later than 10 days before the election.[167] In both cases, Pennsylvania law is challenger-friendly and does not adequately protect the rights of those challenged inappropriately.

Any voter in Pennsylvania may be challenged through an affidavit by a "commissioner, registrar or clerk or by a qualified elector of the municipality."[168] The challenger is required to file the affidavit explaining the "reason" for that challenge but is under no obligation to provide any documentary evidence or anything to substantiate the allegations.[169] This is problematic because it could lead to indiscriminate and flimsy reasons for a challenge even though the complaint takes the form of an affidavit. Moreover, once an affidavit challenge is made the burden shifts to the challenged voter to justify why she should stay on the rolls. The challenged voter must respond in a written, sworn statement, and must produce "such other evidence as may be required to satisfy the registrar or commissioner as to the individual's qualifications as a qualified elector."[170] This is highly problematic. While the challenger is under no obligation to provide any documentary evidence to support an allegation that a voter is improperly registered other than an affidavit, a challenged voter must produce evidence over and above an affidavit to satisfy a government official that she is lawfully registered. This could provide onerous for voters who are targets of caging or other frivolous challenges, with little to no burden on the challenger. Only if the "challenged individual establishes to the satisfaction of the commission" her right to be registered is the matter is resolved in favor of remaining registered.[171] Otherwise, the registration shall be cancelled.[172]

Similarly, for challenge by petition, any qualified elector may petition the commission to cancel or suspend the registration of any other elector but must do so under oath or affirmation.[173] The petition must set forth "sufficient grounds for the cancellation," and include either a) notice of the time and place when the petition would be given personally to the challenged elector at least 24 hours prior to filing; or b) a statement that the challenged voter "could not be found" at the challenged voter's residence and listing the person that lives at that residence who "has declared that the person was well acquainted" with the name of everyone living at the residence and the challenged voter no longer resided at that address.[174] Then, upon receipt of the petition, the commission is required to cancel or suspend the registration "unless the registered elector so registered appears and shows cause why this action should not be taken."[175] Again, this is highly problematic and rife with opportunities for disenfranchisement. It is good that personal service or a sworn oath attesting to hearsay about an individual's residence is required to be made in the petition. However, automatic cancellation procedures and shifting the burden of proof to the challenged voter, are unacceptable. These procedures may lead a

voter to be kicked off the rolls without an opportunity to be heard.

TEXAS

In Texas, any registered voter may challenge the registration of another voter of the same county at a hearing before the registrar.[176] If the grounds for challenge is based on residence, it must be filed at least 75 days before the election otherwise the registrar will wait to follow the challenge procedures until after the election (unless the challenged voter submitted a registration application after the 75th day and prior to the 30th day before the election, in which case this deadline does not apply).[177] For other grounds, Texas law provides no set timetable for when a challenge must be filed. The challenger must file a sworn statement that states the specific qualification for registration that the challenged voter has not met.[178] The challenge must be "based on the personal knowledge of the voter desiring to challenge the registration," which could reduce the number of challenges by widespread caging campaigns so long as "personal knowledge" does not become a pro forma statement based on a cursory review of unreliable data.[179] Unfortunately, whether a voter may attend a hearing before having her name removed from the rolls depends on the grounds for challenge. If the challenge is based on residence, the registrar is required to send a confirmation notice to the challenged voter.[180] If the voter fails to send a response back to the registrar, the registrar is mandated to place the challenged voter on the "suspense list" that may ultimately result in a voter's removal from the voter registration rolls for failing to vote in subsequent elections.[181] If the challenge is based on any ground other than residence, the registrar must hold a hearing on the challenge.[182]

VIRGINIA

Virginia's law is problematic in many respects as it applies to pre-Election Day challenges. First, challenges are based on whether a voter is "improperly registered."[183] The law is not clear about what makes a registration improper but fortunately does exclude residency from a reason for challenge.[184] This significantly reduces the risk of challenges that rely solely on challenges to residency, which are usually a product of flawed caging operations, but it does not prevent challenges based on categories such as citizenship, age, or identity. The voter registration challenge process requires either the general registrar, or "any three qualified voters of the county or city" to make the challenge.[185] Ordinarily, in an election system without sophisticated caging and challenge operations taking place in the state, this might present an important brake on the process, because it requires three voters to make the challenge, lessening the risk of one sole bad actor challenging in bad faith. However, as voter caging becomes more sophisticated, with organizations building caging teams that rely on unreliable data in choosing whom to challenge,[186] Virginia could be faced with many three-person challengers. Once challenged, the registrar is required by Virginia law to post at the courthouse or publish in a county or city newspaper the name of registered voters that are to be cancelled by the general registrar. The list of names must be certified by the registrar and delivered to the county or city chair of political parties.

Fortunately, Virginia law requires the registrar to send the challenged voter, by mail, the reasons for cancellation, facts upon which the cancellation is based, and a time the registrar will hear testimony for or against the right of a challenged voter to remain on the rolls. The hearing must be during regular hours and cannot occur earlier than ten days after mailing the notice and "in no event within sixty days of the general election in November or within thirty days of any other election in the county or city."[187] Unfortunately, a registered voter's failure to appear and "defend his right to be registered" results in automatic cancellation of the voter's registration.[188] This is highly problematic. Virginia should establish failsafe mechanisms that do not result in automatic cancellation based solely on a registered voter's failure to appear at a pre-ordained hearing for which they may not have received adequate notice or may legitimately not be able to attend.

RECOMMENDATIONS FOR ADDRESSING CAGING & PRE-ELECTION DAY CHALLENGES

Pre-Election Day challenges are rife with opportunities for mischief that will disenfranchise voters. States considering an overhaul to their pre-Election Day challenge regimes should require the challenger to maintain the burden of proof throughout any administrative hearing process and should require the challenger to provide documentary evidence supporting the specific grounds for challenge. Such challenges should be based on first-hand personal knowledge and be written sworn statements. Making frivolous challenges should be a misdemeanor, and a voter should only be able to challenge the rights of another voter registered in the same precinct.

Moreover, jurisdictions should consider requiring "preliminary" reviews of challenges to determine if a hearing is even required. Most jurisdictions appear to require automatic hearings when challenges are filed with no requirement to conduct a cursory review of a challenge to determine if it is with merit before scheduling a hearing. In other words, the grounds for challenge must be plausible before a hearing takes place and election officials should be granted the discretion to determine when a hearing appears warranted.

Jurisdictions should also require challenges to be filed within a specific period of time before an election, such as 60 or more days before an election. This will ensure that the administrative burdens of challenge hearings are not arduous and will lead to the orderly administration of the election. The immediate run-up to an election is fertile grounds for deceptive election practices that aim to confuse voters about the time, place, manner, or qualifications of voting, and election officials must have the resources and capability to respond to those sorts of activities without being distracted by strategically timed mass voter challenges.

Finally, voters should be given an opportunity to appear at a hearing before their registration is cancelled. Voters should also have the opportunity to vote regular or provisional ballots if failure to appear at a hearing results in automatic cancellation of registration and an opportunity to cure a challenge at the polls. Returned mail should not be considered prima facie evidence to sustain a challenge.

STATE LAWS ON CHALLENGING REGISTERED VOTERS ON ELECTION DAY AND POLL WATCHER BEHAVIOR

This section discusses the interactions of people inside the polling place on Election Day who are neither election officials nor there simply to cast a vote. We analyze the laws regarding who can be at the polls and who can challenge voters and the process by which a challenge can be made and the validity of the challenge is decided. Some states allow poll watchers to be present inside the polls to observe the election but do not allow poll watchers to interact with voters. Other states allow any registered voter to challenge another voter's eligibility when he or she shows up at the poll to vote. A voter's eligibility to vote can be challenged on Election Day in Colorado, Florida, Missouri, Nevada, New Hampshire, North Carolina, Ohio (but only by an election official) Pennsylvania, and Virginia, but not in Texas.

We also make recommendations for best practices in regulating Election Day challenges. States must protect voters' rights in the face of organized attempts to police polling places in ways that may intimidate eligible voters or unfairly target particular groups of voters for exclusion.

COLORADO

Colorado's laws preventing improper Election Day challenges are excellent. In Colorado, voter challenges are permitted on Election Day by any poll watcher, election judge, or eligible elector of the same precinct.[189] Challenges must be must be made in the presence of the person being challenged[190] and must be made in writing, under oath and signed by the challenger under penalty of perjury.[191] The challenger must set forth the specific factual basis for the challenge.[192] Under Colorado law, the bases for a challenge are citizenship, age, residency, and "all other questions to the person challenged as may be necessary to test the person's qualifications as an eligible elector."[193]

Depending on the basis for a challenge, a voter challenged on Election Day may be asked questions as prescribed by law.[194] If the challenged voter answers satisfactorily and signs an oath attesting to her eligibility to vote, the voter may vote a regular ballot. If the voter does not answer the questions he may still vote a provisional ballot.[195] Colorado law is pro-voter because the law provides for stringent requirements for challenges that provide some accountability. It is helpful that the law is specific about the process for determining the challenge. It sets out the questions to be asked of the voter, and by answering these questions under oath any eligible voter may cast a ballot that will be counted.

In Colorado, any eligible elector other than a candidate who has been designated by appropriate party officials can serve as a poll watcher.[196] A poll watcher doesn't have to be a resident of the county in which he is designated as long as he is an eligible elector in the Colorado.[197] Poll watchers and persons other than the election officials and those admitted for the purpose of voting are not permitted within the immediate voting area or within six feet of the voting equipment or voting booths and the ballot box, except by authority of the election judges or election officials and then only when necessary to enforce the law.[198] Poll watchers are not allowed to have cell phones, cameras, recording devices, laptops, or PDAs (Palm Pilot, Blackberry, etc.) in the polling place.[199]

In addition to poll workers, poll watchers, and voters, the only other people who may be present in the polling station are an Official Observer, who is appointed by the Secretary of State or the federal government and approved by the Secretary of State,

and a media observer with valid media credentials.[200] Political party attorneys are not permitted in the polling place unless they have been duly appointed as poll watchers. Poll watchers must swear an oath that they are eligible electors whose name has been submitted to the designated election official, and they must present the election judges or designated official a certificate of appointment.[201] Poll watchers have the right to maintain a list of eligible electors who have voted, to witness and verify each step in the election's conduct, to challenge ineligible electors, and to assist in correcting discrepancies.[202] Poll watchers may observe polling place voting, early voting, and the processing and counting of ballots. It is a misdemeanor intentionally to interfere with a poll watcher discharging her duties.[203]

Poll watchers may not disrupt or interrupt any stage of the election or interfere with the election's orderly conduct.[204] They may track the names of electors who have cast ballots by using their previously maintained lists, but they may not write down any ballot numbers or any other identifying information about the electors. The watchers may not handle the poll books, official signature cards, ballots, or ballot envelopes, or voting or counting machines. Poll watchers may not interact with election officials or election judges, except that the designated election official in each precinct shall name at least one person at each polling place to whom watchers may direct questions.[205] Poll watchers who commit, encourage, or connive in any fraud in connection with their duties, who violate any of the election laws or rules, who violate their oath, or who interfere with the election process may be removed by the designated election official.[206]

FLORIDA

Florida law permits any elector or poll watcher in his or her county to challenge the right of any voter to vote on Election Day in writing and under oath.[207] The challenge must be filed with the clerk or inspector at the polls and describe why the challenger believes the voter is attempting to vote illegally.[208] Importantly, Florida law provides for a penalty for a voter or poll watcher who files a frivolous charge – any one filing a challenge not in good faith commits a first degree misdemeanor.[209] Unfortunately, a voter who is challenged must vote provisionally, and their provisional ballot will only be counted if the voter provides written proof that she is entitled to vote by five o'clock two days following the election.[210] This requirement is overly burdensome and may endanger an eligible voter's ability to vote.

Florida law requires that all watchers be allowed to enter and watch polls in all polling rooms and early voting areas in the counties where they have been designated, so long as each political party and each candidate has only one watcher in each polling room or early voting area at any time during the election.[211] Each poll watcher must be a qualified and registered elector of the county in which she is appointed.[212] No law enforcement officer may serve as a designated poll watcher.[213] Designations must be made by a political party or candidate in writing on an official form to the supervisor of elections.[214] The designation must be in writing, on an official form, submitted before the second Tuesday preceding the election, and poll watchers must be approved by the supervisor of elections on or before the Tuesday before the election.[215] Florida could improve its law by adopting specific rules governing the behavior of poll watchers within the polls. For example, poll watchers should not be allowed to communicate with voters, and should be prohibited from videoing or taking photos. Florida should also specify that elections officials have grounds to eject any poll watchers that are interfering with the orderly conduct of the election or otherwise harassing voters.

MISSOURI

Missouri allows voter challenges on Election Day. Only a registered voter who has been designated by the chair of the county committee of a political party named on the ballot may challenge a voter's identity or voting qualifications.[216] The designee must also be registered in the jurisdiction in which he or she will work as a challenger.[217] The grounds for challenges include citizenship status, residency, age, incapacity, and certain categories of felon status.[218] If a voter is challenged, it is up to a majority of the election

judges at a polling place to determine whether she will be allowed to vote a regular ballot.[219] The voter may be required to execute an affidavit affirming her voting qualifications.[220] Making false statements in the affidavit is punishable by fine or imprisonment.[221] Voters are entitled to cast a provisional ballot upon executing an affidavit, even if election authorities determine a voter is ineligible.[222] Unfortunately, the law does not provide specificity regarding the manner in which election judges are to determine whether a challenged voter should be allowed to vote. The law is pro-voter in that it only allows designated challengers to make a challenge when he believes the state election laws have been or will be violated.[223] However, there do not appear to be requirements that challenges be made in written form, nor does there appear to be any method of accountability for challenges made in bad faith.[224]

In Missouri, each political party may designate a watcher for each place votes are counted, and watchers must be registered voters in the jurisdiction where the watcher will serve.[225] However, no watcher may be substituted for another on Election Day.[226] Watchers are authorized to observe the counting of votes and to report any election law violations or complaints of irregularity to the election judges or the election authority if not satisfied with the decision of the election judges.[227] Watchers are prohibited from reporting the name of any person who has or has not voted to anyone.[228]

If any watcher or challenger interferes with the orderly process of voting, or is guilty of misconduct or any law violation, the election judges shall ask the watcher or challenger to leave the polling place or cease the interference.[229] If the interference continues, the election judges shall notify the election authority, which shall take such action as it deems necessary, and it is the duty of the police, if requested by the election authority or judges of election, to exclude any watcher or challenger from the polling place or the place where votes are being counted.[230]

NEVADA

In Nevada, a voter may be challenged on Election Day by another voter registered in the same precinct.[236] A challenger must submit a signed affirmation stating the basis for the challenge and that the challenge is based on personal knowledge.[237] The requirements that challenges be made by voters within the precincts, in writing, and based on personal knowledge may discourage abuse of the challenge system by deterring large scale mass challenges.

Unfortunately, once a voter has been

AFTER TROUBLE:
Missouri Tries to Get It Right

There is recent history of what would seem to have been partisan voter challenges in Missouri. In 2004, a Republican official challenged numerous voters in at least one predominantly black precinct in Boone County. This resulted in significant delays for other voters at that precinct.[231] Robin Carnahan, the Missouri Secretary of State, encouraged local election officials to increase the number of poll workers to deal with Election Day challenges in 2008 in order to avoid the delays experienced in 2004, but this did little to address voter caging practices in the state.[232] Legislation was introduced in Missouri in 2009 and 2010 to address the issues of voter caging and challenges, but it did not pass either year. The 2009 bill would have prohibited the use of voter caging lists (discussed in the proceeding section) and would have required that challengers be registered voters in the precinct in which the challenge is made.[233] It also would have implemented best practices on voter challenge procedures by requiring that the challenges be written, made under oath, and supported by personal, first-hand knowledge of the grounds for ineligibility.[234] The 2010 legislation would require that any challenge to a voter's qualifications be made in writing and include a statement as to which qualification the challenged voter was lacking, which has to be based on personal knowledge of the challenger.[235] ■

challenged, the process for determining the challenge is excessively burdensome for the voter, potentially confusing for poll workers, and could result in eligible registered voters being denied their right to vote. In all cases the challenged voter must execute an oath or affirmation of his eligibility to vote,[238] but the exact procedure depends on the grounds on which the voter was challenged.[239] A person challenged on residency grounds must also show "satisfactory identification which contains proof of the address at which he actually resides."[240]

A person challenged on the basis that he is not the person he claims to be must show official photo identification or have a person vouch for the challenged voter's identity; the vouching person must themselves be at least 18 years old and have photo identification, though there is not a requirement that they be registered.[241] This is very problematic, as many people will lack the necessary identification, or not have it with them at the poll. As a result, many eligible voters may not be able to cast a vote that will be counted, unless they are vouched for successfully, under oath, by someone else over the age of 18.[242] If a voter is successfully challenged on grounds of residency, he or she may only vote at a "special polling place" in the county clerk's office or at such other locations as the county clerk deems necessary during each election.[243] Such persons may only submit a vote for a limited subset of offices and questions.[244] Moreover, these lengthy procedures are likely to result in longer wait times in precincts where voters are being challenged, imposing burdens on the other voters in the precinct.

Nevada also allows members of the general public to observe the conduct of voting at a polling place.[245] Members of the general public are not permitted to photograph the conduct of voting at a polling place, nor may they make audio or video recordings of photograph the conduct of voting.[246] Before any person will be permitted to observe the conduct of voting, he or she must sign a form stating that, during the conduct of voting, the person:

- may not talk to voters within the polling place;
- may not use a mobile phone or computer within the polling place;
- may not advocate[247] for or against a candidate, political party or ballot question;
- may not argue for or against or challenge any decisions made by county election personnel;
- may not interfere with the conduct of voting; and
- may be removed from the polling place by the county clerk for violating the election laws or any of the above.[248]

Nevada's laws prohibiting observers from speaking with voters in the polling place are clear and are protective of voters' rights and privacy. A person observing the conduct of voting may remain in a designated area to observe activities conducted at the polling place so long as he or she does not interfere with voting.[249] The designated area must allow for meaningful observation but may not be located anywhere that would infringe on the privacy of a voter's ballot.[250]

NEW HAMPSHIRE

New Hampshire's laws are very protective of voting rights. In New Hampshire, any voter may be challenged by an election official, a designated challenger, or any other voter registered in the town or ward in which the election is held.[251] Challengers may be designated either by the attorney general,[252] or by a state, city, or town committee of a political party.[253] A statement signed by either the attorney general or the appropriate chairman of a political committee is sufficient evidence of the authority of any such challenger.[254] Challengers are "assigned by the moderator or other election officer presiding at the polling place to such position or positions within the polling place as will enable him to see and hear each voter as he offers to vote."[255] The New Hampshire statutes that regulate the appointment of challengers are clear that an appointed challenger may not be deprived of his or her authority to challenge a voter.[256]

All challenges, whether from designated challengers, officials, or members of the public, must be signed, under oath, and submitted in writing to a moderator.[257] Upon receipt of a written challenge, the moderator must determine if the challenge to the ballot is well grounded.[258] If the moderator determines that

the challenge is well grounded, the moderator must reject the vote of the person challenged unless the voter submits an affidavit affirming, under penalty of voter fraud, that he is whoever he represents himself to be and that he is a duly qualified voter and resident of the appropriate town or ward.[259] If the moderator determines that the challenge is not well grounded, the moderator must permit the voter to proceed to vote.[260] However, no voter or designated challenger is permitted to challenge a person's qualifications to be a voter at the election day voter registration table,[261] which affords some protection to voters seeking to use the state's Same Day Registration program.

New Hampshire does not give poll watchers or observers special legal status, but individuals are allowed inside the polls to observe the conduct of the vote.[262] However, no person not authorized by law may stand or sit within 6 feet of the ballot clerk for purposes of observing the check-in of voters without the express permission of the moderator.[263] Additionally, New Hampshire prohibits any person from interfering with any voter when the voter is "within the guardrail," and violations are a misdemeanor.[264] To improve its laws, New Hampshire should specifically prohibit watchers or observers from communicating with or recording voters.

NORTH CAROLINA

North Carolina also has strong laws on its books to protect voters. In North Carolina, only an individual registered to vote in a precinct may challenge a voter at that precinct on Election Day.[265] This is helpful in that it limits the ability to launch large-scale voter challenge operations. Grounds for challenges on Election Day include: residency, citizenship, ineligibility due to felony conviction, whether a voter has already voted in the election, or whether the voter is not who she claims to be.[266] North Carolina law requires that challenges "shall not be made indiscriminately," and a challenge can only be made if a challenger "knows, suspects, or reasonably believes [the challenged individual] not to be qualified and entitled to vote."[267] Each challenge must be made separately, in writing, under oath and on forms prescribed by the State Board of Elections, and the challenge must specify the reasons why the challenged voter should not be entitled to register.[268]

Once a challenge proceeding is initiated, elected officials are empowered to administer oaths to any person testifying as to the qualifications of the challenged voter, which could include the challenger at the discretion of the official.[269] Challenges must be heard and decided by judges of election in the precinct before the polls close.[270] Officials must explain the qualifications for voting and may then examine the voter and his or her qualifications.[271] A challenged voter must make an oath or affirmation regarding her eligibility to vote; otherwise the challenge will be sustained.[272] However, even once a challenger has done so, the elections officials may still refuse to allow the individual to vote a regular ballot "unless they are satisfied that the challenged registrant is a legal voter."[273] In all challenges, the presumption is that the voter is properly registered, and any challenge must be supported by affirmative proof.[274] While it is good that the voter may proceed to vote upon swearing an affidavit, elections officials ought to have clear standards upon which they base their decision. The fact that the presumption is that the voter is properly registered and that the challenger has the burden of proof is very protective of voters. Moreover, mail returned as undeliverable is not admissible as evidence in a challenge hearing on Election Day.[275] This is an important protection as undeliverable mail is notoriously unreliable as evidence of lack of qualification to vote and has been used in many partisan and racially motivated voter caging and challenge operations in the past.

Officially designated observers may also be present at the polling location on Election Day. Observers must be registered voters of the county for which they are appointed and must have "good moral character."[276] The chair of each political party in the county shall have the right to designate two observers to attend each voting place.[277] The chair or the judges for each affected precinct may, however, reject any appointee for cause and require another be appointed.[278] Observers must be appointed in writing to the county board of elections five days before the election.[279]

Observers may not electioneer at the voting

place.[280] They may not impede the voting process, nor may they interfere or communicate with or observe any voter casting a ballot.[281] This prohibition on communicating with voters is helpful. Observers are also not allowed to videotape voters. According to a former North Carolina Attorney General, that would be "outside the permissible activities and inconsistent with the constitutional and statutory principles insuring unfettered elections for voters."[282] Subject to these restrictions, the chief judge and judges shall permit the observer to "make such observation and take such notes as the observer may desire."[283] Each observer is entitled to obtain a list of persons who have voted in the precinct so far that day at times specified by the State Board of Elections.[284] The chief judge and judges of election may eject any challenger or witness for violation of any provisions of the election laws.[285] These are excellent protections for voters on Election Day.

OHIO

In Ohio, only judges of the election may challenge a registered voter on Election Day.[286] This prohibition on Election Day challenges by individuals other than election officials, which was established in 2006, is an important protection for Ohio voters. It prevents partisan or biased challenges and avoids confusion and delay at the polls. Challenges can be based on age, citizenship, or residency.[287] Depending on the grounds for challenge, the official asks certain questions and request identification and documentation.[288] The grounds for presenting a challenge include: (1) The person is not a citizen of the United States; (2) The person is not a resident of the state for thirty days immediately preceding election; (3) The person is not a resident of the precinct where the person offers to vote; (4) The person is not of legal voting age.[289] Voters who are able to provide the election official with proof or documentation of their eligibility may vote a regular ballot.[290] Others must vote by provisional ballot.[291]

In Ohio, a poll observer must be a qualified elector in the state but not necessarily in the county in which she serves.[292] Observers must be appointed either by a political party, a group of five or more candidates, or a ballot issue committee.[293] The Board of Elections shall be notified of the names and addresses of the appointed observers and the precincts in which they will serve.[294] The initial appointments must be made on official forms not less than eleven days before the election, and those forms may be amended until the afternoon before the election.[295] Observers must present their certificates of appointment to the presiding judge of the precinct the night before or at the precinct on Election Day. Upon filing a certificate, the person named as observer in the certificate shall take an oath, to be administered by one of the election judges. The observer shall be permitted to be in and about the polling place for the precinct during the casting of the ballots and shall be permitted to watch every proceeding of the judges of elections from the time of the opening until the closing of the polls.[296]

Observers may move about within a precinct polling place "to the extent they do not disrupt or interfere with the election, take any action so as to intimidate voters, or put themselves in any position that could violate either the secrecy of the ballot or a voter's privacy."[297] This is very protective of voters. Observers who serve during the casting of the ballots are only permitted to watch and listen to the activities conducted by the precinct election officials and the interactions between precinct election officials and voters. Observers may only watch as long as they do not delay election officials in conducting their official duties or "cause any delay to persons offering to vote."[298] Observers are permitted to take notes of their observations but may not make any photographic, video, or audio recordings that impede, interfere with, or disrupt an election, or in any way intimidate a voter or risk violating the secrecy of the ballot or voter privacy.[299]

No observer who serves during voting may interact with any precinct election official or voter while inside the polling place, within the area between the polling place and the small flags leading to the polling place, or within ten feet of any elector in line waiting to vote. An observer does not violate this section as a result of an incidental interaction with a voter or a precinct election official, such as an exchange of greetings.[300]An observer violating this rule must be warned once, and the presiding judge at that

polling place may remove an observer for subsequent violations.[301] If an observer is removed from the polling place, the presiding judge may request the observer's certificate of appointment and return it to the Board of Elections indicating that the observer was removed from the polling location.[302]

PENNSYLVANIA

In Pennsylvania, election judges, "overseers of election," election officers, and qualified electors may challenge a registered voter.[303] A person can be challenged if attempting to vote outside the election district in which he or she resides, if he or she is not properly registered in the election district (except by court order).[304] Pennsylvania's laws do not contain sufficient protections for eligible registered voters. The law states that if a voter is challenged as to his identity or residence, the voter must present a witness – who is a qualified elector of the district – to swear to the voter's qualifications.[305] While a voter who is challenged is allowed to vote provisionally,[306] this does not alleviate the concern that many voters will not go to the polls in pairs. The lack of restrictions on who may challenge a voter's eligibility is also troublesome. Pennsylvania should improve its laws to limit the number of people who can challenge a voter's eligibility, and improve the process for determining a challenge so that it is less burdensome and less likely to disenfranchise eligible registered Pennsylvanians.

Each candidate at any election may appoint two watchers for each election district in which he or she is running, and each political party that has nominated candidates may appoint three watchers at any general, municipal or special election for each election district in which its candidates are competing.[307] Each watcher must be a qualified registered elector of the county in the election district.[308] It is not required that a watcher be a resident of the election district for which he or she is appointed.[309] Only one watcher for each candidate at primaries and for each party at general, municipal or special elections may be present in the polling place, from the time the election officers meet until the counting of votes is complete and the district register and voting checklist are sealed.[310] All watchers present are required to remain outside the enclosed space.[311] After the close of the polls, while the ballots are being counted or the voting machine is being canvassed, all the watchers are permitted in the polling place, as long as they remain outside the enclosed space.

Each watcher receives a certificate from the county board of elections, stating his name and the name of the candidate, party or political body he represents and is required to show the certificate upon request.[312] Watchers may keep a list of voters and shall be entitled to challenge any prospective voter and to require proof of his or her qualifications to vote.[313] The judge of elections must permit watchers to inspect (but not mark) the voting check list and either of the numbered lists of voters maintained by the county board.[314]

Pennsylvania also has a category of people allowed at the polls in an official capacity called "overseers of election" who supervise the proceedings of election officers, as well as poll watchers.[315] Overseers of the election are appointed, following a petition of five or more registered electors of any election district, or by the court of common pleas of the proper county.[316] That court is authorized to appoint two "judicious, sober and intelligent electors" of the district belonging to different political parties to supervise the proceedings of election officers. These overseers must be qualified to serve on election boards and must be sworn or affirmed by the judge of election.[317] Overseers have the right to be present with the election officers during the entire time the election is held and to observe the votes counted and returns made out and signed by the election officers. Overseers may keep a list of voters.[318] Overseers may also challenge any person attempting to vote, examine the voter's papers, and ask the voter and the voter's witnesses, under oath, about his or her right to vote in that election, and they are responsible for signing election returns.[319] Whenever the members of an election board differ in opinion, the overseers may decide the question if they are in agreement.[320] Election officers are required to provide overseers with "every convenience and facility for the discharge of their duties."[321]

It is a problematic feature of Pennsylvania's law, that watchers and overseers can challenge voters

and request proof of eligibility. Giving the watcher the discretion to initiate challenges on the basis of a voter list poses a large risk of discriminatory challenges. Particularly in light of Pennsylvania's newly passed Voter ID law, the power to examine a voter's papers and otherwise interrogate voters gives watchers and overseers a lot of power in an interaction with a voter, which could prove troublesome.

TEXAS

Texas law does not allow a person to challenge a person's registration or ability to vote at a polling place on Election Day.[322]

In Texas, poll watchers can be appointed to observe the conduct of election.[323] To be eligible to serve as a watcher, a person must be a qualified voter of the county and political subdivision in which he or she will serve in a statewide election.[324] Candidates, chairs of political parties, or, in the case of a write-in candidate, a group of registered voters may appoint two watchers for each voting location.[325] The appointment must be in writing, and the appointing officials or voters must issue a certificate of appointment to the appointee and obtain an affidavit stating that the appointee will not have possession of a device capable of recording images or sound or that the appointee will disable or deactivate the device while serving as a watcher.[326] This provision is good. The watcher must deliver the certificate of appointment to the presiding judge at the polling place and must counter-sign it to verify that the watcher is the same person who signed the certificate.

A watcher is entitled to be near the election officers at the polls, and members of the counting team when votes are being counted, inspect the returns, and make written notes while on duty.[327]An election judge at a central counting station must allow watchers to perform the activities described in the Texas Election Code, but the judge also has the authority to limit excessive or disruptive activity.[328]

A watcher is entitled to observe any activities conducted at the location he or she is serving, except that the watcher may not be present at the voting station when a voter is preparing a ballot without assistance from an election officer.[329] However, watchers are entitled to be present at the voting station when a voter is being assisted by an election officer and are entitled to examine the ballot before it is deposited in the ballot box to determine whether it is prepared in accordance with the voter's wishes.[330] This is very problematic. This inspection requirement endangers the secrecy of a voter's ballot.

While on duty, a watcher may not converse with an election officer regarding the election, except to call attention to an irregularity or violation of law, nor may they converse with voters or communicate in any manner with a voter regarding the election.[331] It is protective of voting rights to prohibit voter communication by the poll watchers. Of course, for this provision to be effective, enforcement is critical. As noted, troubling allegations about poll watcher behavior in Harris County, Texas makes this obvious.[332]

A watcher may bring any occurrence that the watcher believes to be an irregularity or violation of law to the attention of an election officer.[333] The watcher may discuss the matter with the officer, and the officer may refer the watcher to the presiding officer at any point in the discussion.[334] In that case, the watcher may no longer discuss the occurrence with the

TROUBLE IN TEXAS:
The need for enforcement

In 2010, reports surfaced that "[p]oll watchers in Harris County … were accused of 'hovering over' voters, 'getting into election workers' faces' and blocking or disrupting lines of voters who were waiting to cast their ballots."[339] The county attorney's office and the county clerk's office took no action beyond initial investigations.[340] Fortunately, other reports indicate that the Department of Justice was investigating the matter, including witness interviews.[341] In a public statement, the Department's Civil Rights Division confirmed its efforts to gather information about Harris County poll watcher intimidation, but charges were never brought.[342] ■

subordinate officer unless the presiding officer invites the discussion.[335] It is a Class A misdemeanor offense for an official to knowingly prevent an authorized watcher from observing an activity the watcher is entitled to observe.[336] And it is a third-degree felony for any person in a polling place for any purpose other than voting to knowingly communicate any information obtained at the polling place about how a voter has voted to a third person.[337] It is also illegal for poll workers or watchers to reveal any information about the results or the names of who has and has not voted at any time before the polls have closed.[338]

VIRGINIA

In Virginia, any qualified voter may challenge another voter at the polls on Election Day, which leaves the voters of Virginia at the mercy of anyone who may want to show up at the polls and be disruptive. However, at least any challenge must be in writing. The challenger must fill out a form, subject to penalties, stating that the challenged voter is not a citizen, a resident, of age, has already voted elsewhere, is disqualified by the state (e.g. due to a felony conviction), or is not who she represents herself to be.[343] The challenged voter can sign a statement that she is eligible and may then vote a regular ballot.[344] However, if the challenged voter refuses to sign the statement, he or she won't be able to vote even using a provisional ballot.[345] The Virginia legislature improved its law in 2007 by requiring any Election Day challenges to be on a written form. This is protective of voting rights as it creates a measure of accountability for someone making a challenge. However, Virginia should improve its laws further by requiring an stronger evidentiary basis for a challenge.

Election officials must permit at least one authorized representative for each political party or candidate in the room in which the election is being conducted at all times. Election officials have the discretion to permit as many as three representatives of each political party or independent candidate to remain in the room in which the election is being conducted.[346] Authorized representatives must be qualified Virginia voters. Each authorized representative must present to the officers of election a written statement (or copy), signed by the party chairman or candidate, designating him as the party's or candidate's representative.[347] Authorized representatives are allowed to use wireless communications devices, but they are not permitted to use the camera or video function on those devices.[348] The officers of election may prohibit the use of cellular telephones or other handheld wireless communications devices if such use will unlawfully impede, influence, or intimidate voters.[349]

Authorized representatives must be allowed, whether in a regular polling place or central absentee voter precinct, to be close enough to the voter check-in table to be able to hear and see what is occurring.[350] However, such observation shall not violate the secrecy of the ballot protected by the Virginia state constitution.[351] Thus, they may move about the polling place to observe the election so long as they do not "hinder or delay a qualified voter or the officers of election, provide or exhibit campaign materials, attempt to influence a person voting, or otherwise impede the orderly conduct of the election."[352] Officers of election have the authority to remove any representative who does not adhere to the applicable guidelines.[353] It is good that Virginia has a statutory basis for removing representatives that are disturbing the orderly conduct of elections.

RECOMMENDATIONS FOR ADDRESSING ELECTION DAY CHALLENGES AND POLL WATCHERS

By allowing individuals to challenge voters' eligibility to vote at the polls on Election Day, states run the risk that challenges will be used as a suppressive tactic for partisan gamesmanship. Challenges have been deployed against specific populations, often communities of color, in a way that is truly un-American and hearkens back to some of our country's darkest days. Moreover, when voters face challenges at the polls, it can slow down the process for everyone else at the polling place.

Although some states' laws are better than others, many are too vague and unclear and make it too easy for baseless challenges which throw up barriers to the voting rights of eligible, fully qualified registered voters. In order properly to protect voters' rights to be able to cast their vote free of inappropriate

challenges, rules governing the challenge process should be very clear and procedural safeguards should be in place.

As a general recommendation, challenges should not be allowed on Election Day. If they are, then ideally, only elections officials should have the authority to challenge a voter's eligibility. Any challenge should be in writing and include the basis for the challenge and the facts supporting the challenge. States should also require some documentary evidence supporting the challenge as well. At minimum, there should be a standard requiring the challenger to have personal knowledge of the facts upon which the challenge is being made. Properly implemented, this requirement would prevent wholesale voter challenges based on speculation or possibly incorrect lists. A challenger should have to sign an oath under penalty of perjury, which will deter frivolous or ill-intentioned efforts. The grounds for challenge should be limited to citizenship, residency, identity, and age. There should be a penalty for filing a frivolous challenge.

Procedurally, the burden of proof must be on the challenger to show by clear and convincing evidence that the person challenged is ineligible to vote. The benefit of the doubt must go to the duly registered voter. This is very important – it should be the person doing the challenging who must prove that the voter is ineligible, not the other way around. The challenged voter should be able to vote a regular ballot if she answers the poll workers questions regarding eligibility or signs an affidavit affirming her eligibility. Returned mail should not be considered prima facie evidence to sustain a challenge. Provisional ballots should not be deemed an adequate substitute for casting a regular ballot if a challenge is not supported by personal knowledge, evidence, and a process that provides full protection to duly registered voters.

States should adopt laws that protect voters from inappropriate behavior by poll watchers. Poll watchers should be prohibited from communicating with voters. They should not be allowed to videotape or photograph voters. The privacy of voters should be protected by prohibiting poll watchers from watching voters vote. Under no circumstance should a poll watcher be able to observe a voter's ballot. Poll watchers should not impede the voting process or interfere or communicate with or observe any voter casting a ballot. Because rules around poll watchers do not afford enough protections against inappropriate behavior, only eligible voters in the same precinct should be able to serve as poll watchers in that district.

Whether individuals are designated as challengers, poll watchers, or poll observers, elections officials should have statutory authority to eject anyone interfering with the orderly conduct of elections.

STATE LAWS ADDRESSING VOTER INTIMIDATION, INSIDE AND OUTSIDE THE POLLS

This section focuses on activities that occur in the areas surrounding polling places on Election Day and broader laws concerning voter intimidation. Over the past few years, there has been concern about a number of groups who send volunteers to the polls to challenge the eligibility of voters under the guise of preventing electoral fraud who have no official status but simply appear outside polling sites.

Many of the states that we surveyed for this report have laws on the books prohibiting voter intimidation. As referenced in the introduction, the Voting Rights Act bars intimidation in the voting process in any state. Law enforcement can and should apply these statutes to behavior at the polling places that has the effect of intimidating voters about their eligibility to vote, including outside of polling locations. There is still room for legislators in these states to better protect voters from intimidation tactics by passing stronger legislation and increasing the penalties for those engaging in voter intimidation. However, as a starting point, the laws discussed below should be used if confrontations around poll site locations, such as those conducted by True the Vote in Harris County in 2010, occur again.

COLORADO

Colorado has voter intimidation statutes, but the laws are written narrowly and ambiguously. Colorado law contains a voter intimidation statute that only explicitly references voter intimidation in the title, as opposed to the text, of the statute.[354] Colorado law makes it a misdemeanor "for any person directly or indirectly . . . to impede, prevent, or otherwise interfere with the free exercise of the elective franchise."[355] It is also unlawful for any person to attempt to induce any voter to show how he marked his ballot.[356]

FLORIDA

Florida law has two statutes that directly address voter intimidation. First, Florida law makes it unlawful for any person, acting under color of law or otherwise, to intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or not to vote as that person may choose.[357] Second, Florida's "Voter Protection Act" makes it unlawful for any person to "directly or indirectly use or threaten to use intimidation or any tactic of coercion or intimidation to induce or compel an individual to vote or refrain from voting, vote or refrain from voting for any particular individual or ballot measure, refrain from registering to vote, or refrain from acting as a legally authorized election official or poll watcher."[358] Florida law also includes some important protections for voters at the polling place itself. It specifically prohibits individuals – including groups or organizations – from "solicit[ing]" voters within 100 feet of the entrance to a polling place or early voting site.[359] Soliciting is defined to include "seeking or attempting to seek any vote, fact, opinion, or contribution," and is therefore broader than a prohibition on electioneering. It would also appear to prohibit the harassing conduct experienced in recent elections, such as hovering over voters.

MISSOURI

A number of surveyed states do not have laws that explicitly address voter intimidation, although these states have broad voting laws that might be sufficient to cover such practices. Missouri, for example, prohibits using or threatening to use "force, violence or restraint . . . in order to induce or compel such person to vote or refrain from voting at any election."[360] Missouri also prohibits "impeding or preventing, or attempting to impede or prevent, by abduction, duress or any fraudulent device or contrivance, the free exercise of the franchise of any voter."[361] While this statute addresses certain problematic Election Day activities, the statute is written in a way that makes its exact scope unclear. For example, the statute does not explain what constitutes a "fraudulent device or contrivance." Missouri law also prohibits a number of other specific election related offenses, such as

tampering with a voter's ballot, providing inducements to voters, creating a breach of the peace, preventing one's employees from voting, or otherwise interfering or attempting to interfere with any voter inside a polling place.[362]

NEVADA

Nevada law prohibits the use or threat of use of "force, intimidation, coercion, violence, restrain or undue influence" in connection with any election.[363] And as described above, it is unlawful for members of the general public to photograph or record people who are in the process of voting.[364] It is a felony under Nevada law to interfere with the conduct of an election or otherwise remove, receive, or display any ballot that has been prepared by a voter before the polls are closed.[365]

NEW HAMPSHIRE

New Hampshire law makes it unlawful to "use or threaten force, violence, or any tactic of coercion or intimidation to knowingly induce or compel any other person to vote or refrain from voting, vote or refrain from voting for any particular candidate or ballot measure, or refrain from registering to vote."[366] New Hampshire also makes it a misdemeanor for individuals to knowingly interfere or attempt to interfere with a voter in the space within the guardrail. This prohibition includes any effort to induce a voter to show how he marks or has marked his ballot before he or she has voted.[367]

NORTH CAROLINA

North Carolina law is strong. First, it makes it illegal for any person to interfere with or attempt to interfere with any voter when inside the voting enclosure or when marking his ballots.[368] One possible shortcoming with this law is that it relies on narrow definitions of "voting place" and "voting enclosure."[369] North Carolina law does, however, specify that each county board of elections must specify a "buffer zone" around the polling place where it is prohibited to hinder or harass voters and where no electioneering activities may occur.[370] The buffer zone may not be more than 50 feet or less than 25 feet from the entrance of the polling place.[371] This is a commendable statute and one that other states should consider adopting. Further, North Carolina requires the chief judge and judges of election to "enforce peace and good order in and about the place of registration and voting," including keeping "open and unobstructed the place at which voters or persons seeking to register or vote have access to the place of registration and voting."[372] North Carolina officials interpret "in and about" very broadly.[373] These officials are charged with "prevent[ing] and stop[ping] improper practices and attempts to obstruct, intimidate, or interfere with any person in registering or voting."[374]

TROUBLE IN NORTH CAROLINA: *The Need for Enforcement*

Examples of voter intimidation in North Carolina illustrate the importance of these strong statutes. For example, in 2008 supporters of Barack Obama were heckled and harassed at an early voting center in Fayetteville, North Carolina by a group of protesters as they went in to vote.[375] Others report that protesters from both sides escalated this matter into a shouting match, although there were no reports of physical violence.[376] One journalist noted that nearly all of the early voters were black and that nearly all of the protesters were white.[377] Harassment of this sort must be addressed, as it is likely to intimidate and possibly disenfranchise voters. North Carolina law enforcement has the tools to stop this voter intimidation, but they must be used to protect voters. ■

OHIO

Ohio law makes it illegal for any person to "attempt by intimidation, coercion, or other unlawful means to induce such delegate or elector to register or refrain from registering or to vote or refrain from voting at a primary, convention, or election for a particular person, question, or issue."[378] It is also prohibited under Ohio law to remove or deface property that

relates to the conducting of an election from a polling place, and it is illegal to intimidate an election officer or otherwise interfere with the conduct of an election.[379] Ohio law is also explicit that no person may "loiter" or "congregate" "within the area between the polling place and the small flags" that officials place 100 feet from the polling place.[380] Finally, in Ohio is illegal to "hinder or delay an elector in reaching or leaving" the polling place."[381]

PENNSYLVANIA

Pennsylvania law prohibits any manner of intimidation or coercion in order to induce or compel persons to vote or refrain from voting at any election.[382] Pennsylvania's anti-intimidation statute specifically prohibits restraining, threatening, or using any force that interferes with any person's efforts to cast a ballot.[383] The law also makes it illegal to use any fraudulent device that interferes with voters or induces a voter to give his or her vote for or against any particular person at any election.[384] Any individual or corporation, whether for profit or not for profit, who violates these provisions faces a fine of up to $5000 and up to two years of imprisonment.[385]

TEXAS

Texas law prohibits a person from indicating to a voter in a polling place "by word, sign, or gesture how the person desires the voter to vote or not vote."[386] It is a misdemeanor in Texas to loiter or electioneer for or against any candidate, measure, or political party during the voting period within 100 of an outside door.[387] It is also a misdemeanor for a person not engaged in activities specifically permitted by the Election Code to be in the polling place "from the time the presiding judge arrives there on Election Day to make the preliminary arrangements until the precinct returns have been certified and the election records have been assembled for distribution following the election."[388]

VIRGINIA

Virginia makes it a crime for any person (i) to loiter or congregate within 40 feet of any entrance of any polling place; (ii) within such distance to give, tender, or exhibit any ballot, ticket, or other campaign material to any person or to solicit or in any manner attempt to influence any person in casting his vote; or (iii) to hinder or delay a qualified voter in entering or leaving a polling place.[389] Virginia law further prohibits attempts to influence a person's vote by "threats, bribery, or other means in violation of the election laws."[390] It is a misdemeanor for any person to hinder or delay a qualified voter or election officer, to give a ballot, ticket, or other campaign material to any person, to solicit or influence any person in casting his vote, or otherwise impede the orderly conduct of the election.[391]

RECOMMENDATIONS RELATED TO STATE VOTER INTIMIDATION LAWS

Many state laws discussed above are clearly applicable to a wide range of intimidation tactics, including "True the Vote"-like tactics of "hovering" around voters and disrupting voting lines snaking around outside of polling places.[392] There are, however, a number of things that can be done to provide even more protection from harassment masquerading as citizen law enforcement. We recommend that legislators take steps to provide more clarity with regard to rules relating to voter intimidation outside of the polling place. Many of the surveyed laws are broadly drafted, rendering their application to certain behaviors ambiguous.

We might consider analogizing these practices to electioneering. Electioneering generally involves handing out campaign materials, displaying signs, and otherwise advocating for the support or defeat of a candidate by using the candidate's name. All ten states surveyed for this report have laws prohibiting electioneering within specific distances of polling places on Election Day because the states believe that some solicitation-free zones are necessary to protect voters from confusion and undue influence and to preserve the integrity and dignity of the election process.[393] These rules are consistently upheld by the courts, including when the Supreme Court upheld a Tennessee electioneering law that prohibited electioneering within one hundred feet of a polling place.[394]

Another analogy to consider are the laws that

restrict protests within a certain area surrounding medical facilities that provide abortions, in order to protect doctors and patients from intimidation and harassment by protesters.[395] The Supreme Court recognized the government's interest in protecting the "privacy interest in avoiding unwanted communication" and the right of individuals "to be let alone."[396] The Court reasoned that "the First Amendment does not demand that patients at a medical facility undertake Herculean efforts to escape the cacophony of political protests."[397] We might think about polling places as a similar harassment free zone to guard against voter intimidation and harassment at the polls. Specifically, voter intimidation laws could create a protected zone around polling places in which non-official inquiries into or challenges of a voter's qualifications or ability to vote would be prohibited – just as electioneering is prohibited within certain distances of polling places – in order to ensure the integrity of the election.

Statutes that provide zones of protection would help address situations where voters are asked by people other than election officials whether they have valid identification or where voters are told that voters with outstanding traffic tickets could be arrested if they try to vote. Intimidating and disruptive behavior should be curtailed by laws that prohibit people from impeding the orderly conduct of the election within these protected areas.

CONCLUSION

The state laws analyzed in this report vary in the protections they afford voters. In too many states, voters are vulnerable to removal from the rolls or not having their ballots counted because challengers can base their charges on unreliable data. Too many jurisdictions fail to provide challenged voters with the full protections they should be afforded, such as a right to a hearing and a presumption of compliance with the laws governing qualifications.

Jurisdictions still have time to implement policies and procedures that will more adequately protect voters during this upcoming election without the need for legislation, such as the directive issued by Ohio's Secretary of State that specifically prohibits justifying a voter challenge on returned mail alone.[398] Another critical step states can take between now and the elections is to make sure their poll workers and elections officials are well-versed in their procedures and effectively trained to protect voters from wrongful challenges and intimidation. State leaders and advocates should work to strengthen their laws in upcoming legislative sessions as well.

Federal legislation has been introduced to address standards for voter challenges and to guard against insidious voter caging practices. The Voter Empowerment Act would, among other things, prohibit voter caging and improper challenges.[399] It would protect eligible voters from being denied the right to register or vote based on the fact that mail was returned as undeliverable.[400] The bill would also require that any voter challenge be backed up by independent evidence, and if someone other than an election official challenges a registered voter's right to vote their challenge must be made on the basis of personal knowledge.

The Department of Justice should engage in vigorous enforcement of the Voting Rights Act and other protections against discrimination and intimidation. The Department of Justice should monitor developments leading up to the election and at the polls on Election Day and stand ready to step in to protect voters from intimidation.

We strongly encourage election officials and state law enforcement to be aware of possible voter intimidation activity at the polls and aggressively enforce anti-intimidation laws to ensure all eligible voters can vote without interference. We must all remain vigilant and allow zero tolerance for bullying at the ballot box.

1. STATE LAWS GOVERNING PRE-ELECTION DAY CHALLENGES

STATE	WHO CAN CHALLENGE BEFORE ELECTION DAY?	WHAT MUST A CHALLENGER DO TO FILE A CHALLENGE?	HOW IS THE CHALLENGE RESOLVED?	ASSESSMENT: ARE VOTERS PROTECTED?
COLORADO	Anyone registered to vote in Colorado can challenge any person whose name appears in a county registration record. COLO. REV. STAT. § 1-9-101(1)(a)	Must be in writing, include the basis for challenge, and include documentary evidence. Filed with the county clerk and record no later than 60 days before election. COLO. REV. STAT. § 1-9-101(1)(a)	A hearing must take place no later than 30 days after a challenge is filed. Challenged voter is entitled to appear. The challenger is required to appear and bears the burden of proof. COLO. REV. STAT. § 1-9-101(1)(a). A decision to be issued within five days of the hearing. COLO. REV. STAT. § 1-9-101(1)(b)	**SATISFACTORY** Colorado law has some excellent provisions – for example, it requires the challenge to be in writing accompanied by documentary evidence, hearings, and it requires the challenger to bear the burden of proof. Colorado could improve its laws by requiring challengers to file under oath and indicate personal knowledge of the alleged deficiency.
FLORIDA	Any registered voter in Florida can challenge another voter's eligibility to vote, providing the challenger is from the same county. FLA. STAT. § 101.111(1)(a)	Must be written under oath, specifying the reason for the challenge. Must be filed within 30 days immediately before an election. A voter can be challenged on any ground, providing there is reason to believe the challenged voter is voting "illegally." FLA. STAT. § 101.111(1) Anyone that files a "frivolous challenge" commits a first degree misdemeanor. FLA. STAT. §101.111(2)	The challenged voter must be provided with a copy of the challenge. FLA. STAT. § 101.111 For challenges based on a question of residency, the challenged voter can cast a regular ballot by proving residency at the polls only if she is a member of the active uniformed services or moving within the same county. FLA. STAT. § 101.045(2)(b) Otherwise, the voter may cast a provisional ballot. FLA. STAT. § 101.111(2)(c) For a provisional ballot to be counted, written evidence supporting eligibility must be presented to the supervisor of elections by 5 p.m. on the 2nd day after the election. FLA. STAT. § 101.048(1)	**UNSATISFACTORY** Florida could improve its laws by requiring hearings and by limiting challenges in the days immediately prior to the election. Further, other than for uniformed service members and those who have moved within the same county, the only avenue to cure a challenge is to vote provisionally and then seek to have the provisional ballot counted. The burden of proof should instead rest on the challenger. Florida has one exemplary provision, specifying that frivolous challenges are first degree misdemeanors.

STATE	WHO CAN CHALLENGE BEFORE ELECTION DAY?	WHAT MUST A CHALLENGER DO TO FILE A CHALLENGE?	HOW IS THE CHALLENGE RESOLVED?	ASSESSMENT: ARE VOTERS PROTECTED?
MISSOURI	Election authorities are required to investigate material brought to their attention "from any source". REV. STAT. MO. § 115.191	Missouri law lacks a step-by-step process for pre-election challenges. However, election authorities have broad authority to investigate residence or other qualifications of any voter at any time. REV. STAT. MO. § 115.191	Missouri law lacks a step-by-step process for pre-election challenges. Local election authorities are required to investigate voter qualification material brought to their attention at any time in any manner the local election authority directs. Investigations "may" be deferred until after an election if raised within ten days of Election Day. REV. STAT. MO. § 115.191	**UNSATISFACTORY** Missouri should adopt provisions to protect voters from wrongful pre-Election Day challenges. They should require challenges to be in writing, under oath, supported by evidence and based on personal knowledge. Hearings should be required before a registration in cancelled, with the burden of proof on the challenger. Voters should be able to vote after affirming their qualifications at the polls. Filing a frivolous charge should be a misdemeanor.
NEVADA	Any registered voter may challenge the registration status of any other registered voter, provided both individuals are registered to vote in the same precinct. NEV. REV. STAT. ANN. §§ 293.303, 293.547	Challenges must be in writing, signed by the challenger, include the grounds for challenge and must be based on "personal knowledge." Written challenges must be submitted after the 30th day but not later than the 25th day before any election. NEV. REV. STAT. ANN. § 293.547	Within 5 days of a filed challenge, the county clerk must mail a notice to the challenged voter. The voter may still vote in the upcoming election, but a failure to respond, and a failure to vote before the second general election after the notice is mailed, will result in the registration being cancelled. NEV. REV. STAT. ANN. § 293.547 If the challenge concerns residency, then proof of residence must be demonstrated to be able to continue to vote. Other challenges require the voter to swear or affirm, under penalty of perjury, information concerning their eligibility to vote. NEV. REV. STAT. ANN. § 293.303	**SATISFACTORY** Nevada law is good in that the challenges must be signed and in writing, and based on personal knowledge. Also, notice to the challenged voter is required. It is very good that challenged voters can resolve their challenge at the polls and vote upon affirming their qualifications. Nevada laws could be improved by requiring challengers to submit their claims under oath, and making frivolous challenges a misdemeanor.

STATE	WHO CAN CHALLENGE BEFORE ELECTION DAY?	WHAT MUST A CHALLENGER DO TO FILE A CHALLENGE?	HOW IS THE CHALLENGE RESOLVED?	ASSESSMENT: ARE VOTERS PROTECTED?
NEW HAMPSHIRE	Any voter can challenge any other voter that is registered in the town or ward in which the election is held. N.H. REV. STAT. § 659:27	There are two procedures: 1 – Challenger files a complaint in superior court stating that another citizen is "illegally" on a voter roll. N.H. REV. STAT. § 654.42 2 – Challenger files a written request with the supervisors of the checklist or to the town or city clerk, providing evidence that a person is not qualified. N.H. REV. STAT. § 654:36-a	1 – Complaint in superior court: The complaint is served on the town election supervisors and challenged voter, with a time and place for "an immediate hearing". The judge hearing the case may order the name removed from the checklist "as justice requires". N.H. REV. STAT. § 654.42 2 - Written request with the supervisors of the checklist: Election supervisors make a determination whether it is "more likely than not" that a voters qualifications are in doubt. If so, the supervisors must give a written 30-day notice for the voter to provide proof. Failure to respond or to provide proof results in the voter being removed from the checklist. The burden of proof is on the challenged voter to demonstrate their eligibility. N.H. REV. STAT. § 654:36-a	**UNSATISFACTORY** New Hampshire could improve its laws by requiring challengers to submit challenges under oath, and requiring that the challenger bear the burden of proof.
NORTH CAROLINA	Any registered voter of a county may challenge the registration of any other voter in the same county. N.C. GEN. STAT. ANN. § 163 85	Challenges must be in writing, be signed under oath, and include specific reasons why the voter's registration is challenged. No challenges allowed after the 25th day before an election. N.C. GEN. STAT. ANN. § 163 85	The board of election must schedule a hearing and take testimony under oath. The burden of proof is on the challenger. Presentation of a returned undeliverable letter mailed to a voter, shall "constitute prima facie evidence that the person no longer resides in the precinct." N.C. GEN. STAT. ANN. § 163 85	**MIXED** North Carolina has relatively protective challenger laws, in that it requires that challenges be in writing and signed under oath, requires hearings, and the burden of proof is on the challenger. However, its provision allowing undeliverable mail as prima facie evidence that a person no longer resides in a precinct could give rise to voter caging and should be changed.

STATE	WHO CAN CHALLENGE BEFORE ELECTION DAY?	WHAT MUST A CHALLENGER DO TO FILE A CHALLENGE?	HOW IS THE CHALLENGE RESOLVED?	ASSESSMENT: ARE VOTERS PROTECTED?
OHIO	Any registered voter may challenge any other person's right to vote. OH. REV. CODE ANN. § 3505.19	A challenge may be made in person or in writing, must state the grounds upon which the challenge is made, and must be signed by the challenger giving their own address and voting precinct. OH. REV. CODE ANN. § 3505.19 Challenges must be "signed under penalty of election falsification." OHIO REV. CODE ANN. § 3503.24.	Election boards have discretion over whether to hear a challenge, but hearings are required before cancelling a voter's registration. Mail returned as "undeliverable", or evidence of a foreclosure action, are both insufficient grounds by themselves to grant a challenge and cancel a voter's registration. Directive 2012-30: Pre Election Voter Challenges	**SATISFACTORY** Ohio is exemplary in requiring hearings before cancelling a registration, and specifying that returned mail and evidence from foreclosure proceedings is insufficient by themselves to warrant a challenge. Although Ohio has made great strides in its election administration, particularly concerning pre-Election Day challenges, it should clarify that the burden of proof remains on the challenger. Its 2008 directive (2008-79) required the challenger to bear the burden of proof to justify a challenge "by clear and convincing evidence." Ohio should restore this requirement.
PENNSYLVANIA	Any qualified voter may challenge a voter by petition. 25 PA. STAT. ANN. § 1509 Only a commissioner, registrar, clerk or a qualified elector in the same municipality as the voter, may challenge by affidavit. 25 PA. STAT. ANN. § 1329	There are two procedures: 1 - Challenge by petition: The challenger submits under oath or affirmation, a petition that sets forth "sufficient grounds" for the cancellation of a voter's registration. Must be filed no later than 10 days prior to the election. This must include either a) a notice of when and where the petition will be personally given to the challenged voter by the challenger, within 24 hours prior to filing; or b) a statement that the challenged voter "could not be found" at the challenged voter's recorded residence, and that they no longer live at that address. 25 PA. STAT. ANN. § 1509 2 - Challenge by affidavit: The challenger is required to file an affidavit explaining the "reason" for the challenge, but is under no obligation to provide any documentary evidence. The law does not set a pre-election filing deadline. 25 PA. STAT. ANN. § 1329.	1 - Challenge by petition: Upon receipt of the petition, the commission is required to cancel or suspend the registration "unless the registered elector so registered appears and shows cause why this action should not be taken." 25 PA. STAT. ANN. § 1509. 2 - Challenge by affidavit: The challenged voter must respond in a written, sworn statement, and must produce "such other evidence as may be required to satisfy the registrar or commissioner as to the individual's qualifications as a qualified elector." 25 PA. STAT. ANN. § 1329	**UNSATISFACTORY** Pennsylvania's laws do not adequately protect an eligible registered voter from being wrongfully kicked off the voting rolls. could improve its laws by requiring hearings for challenges by affidavit. It should require the challenger, not the voter, to bear the burden of proof.

STATE	WHO CAN CHALLENGE BEFORE ELECTION DAY?	WHAT MUST A CHALLENGER DO TO FILE A CHALLENGE?	HOW IS THE CHALLENGE RESOLVED?	ASSESSMENT: ARE VOTERS PROTECTED?
TEXAS	Any registered voter may challenge the registration of another voter of the same county. TEX. ELEC. CODE ANN. § 16.091	The challenger must file a sworn written statement, stating the specific qualifications not met by the challenged voter. Must be based on "personal knowledge" of the challenger. TEX. ELEC. CODE ANN. § 16.092 If challenge is based on residence, it must be filed at least 75 days before the election (with exceptions for voter applications after this date). TEX. ELEC. CODE ANN. § 16.0921. For other grounds, Texas law provides no set timetable for filing a challenge.	For challenges based on residence, the challenged voter will receive a notice from the registrar. Failure to respond to this will result in the voter being included on the "suspense list." This may ultimately result in a voter's removal from the voter registration rolls for failing to vote in subsequent elections. If the challenge is based on any ground other than residence, the registrar must hold a hearing on the challenge. TEX. ELEC. CODE ANN. § 16.093.	**MIXED** Texas could improve its laws by requiring challenges based on grounds other than residency to be made further in advance of Election Day. Also, Texas should make it clear that the challenger, not the voter, bears the burden of proof. Texas law is good in requiring challengers to file sworn statements based on personal knowledge.
VIRGINIA	The general registrar, or any three voters of the county or city can challenge a voter's eligibility. VA. CODE ANN. § 24.2-429.	Not prescribed within the statute.	The registrar must post at the courthouse or publish in a county or city newspaper the names of registered voters that are to be cancelled. Registrar will mail a notice to the challenged voter, indicating the reasons for cancellation, the factual basis, and details for the hearing. At least ten days notice of the hearing must be provided. No hearings in the 60-day period prior to the general election, or in the 30-day period before other elections. Failure to attend the hearing will result in automatic cancellation of the voter's registration. VA. CODE ANN. § 24.2-429	**UNSATISFACTORY** Virginia's laws do not adequately protect voters' rights. A voter's registration should not be automatically cancelled if she misses a hearing. Virginia should provide more guidance for how challenges are adjudicated, and require the challenger to bear the burden of proof.

2. STATE LAWS GOVERNING ELECTION DAY CHALLENGES

STATE	WHO CAN CHALLENGE ON ELECTION DAY?	LEGAL BASIS FOR CHALLENGING A VOTER'S ELIGIBILITY	PROCEDURES FOR MAKING AND DETERMINING VALIDITY OF CHALLENGES	ASSESSMENT: ARE VOTERS PROTECTED?
COLORADO	Any poll watcher, election judge, or eligible elector of the same precinct. COLO. REV. STAT. § 1 9 201	Grounds for challenging include: U.S. citizenship, age, residency within the precinct for more than 30 days, and "all other questions to the person challenged as may be necessary to test the person's qualifications as an eligible elector." COLO. REV. STAT. § 1 9 203	Challenges must be made in writing, under oath and signed by the challenger under penalty of perjury and must contain a "specific factual basis for the challenge." COLO. REV. STAT. § 1 9 202 Challenges must be made in the presence of the person whose right to vote is challenged. COLO. REV. STAT. § 1 9 201 A challenged voter may be asked follow-up questions prescribed by law. If the challenged voter answers satisfactorily and signs an oath attesting to her eligibility to vote, the voter may vote a regular ballot. If the voter does not answer the questions he may still vote a provisional ballot. COLO. REV. STAT. § 1 9 203	**SATISFACTORY** It is excellent that challenges must be made in writing under oath, and that voters have an opportunity to respond. Another protective feature of Colorado law is that challenged voters may vote a regular ballot after signing an affidavit. Colorado also limits excessive challenges by only allowing individuals from the same precinct to serve as challengers. Colorado could improve its laws by requiring that a challenge be based on personal knowledge, supported by documentary evidence, and that the burden of proof is on the challenger. There should also be a penalty for making a frivolous challenge.
FLORIDA	Any elector or poll watcher from the county may challenge the voter. FLA. STAT. § 101.111	Grounds for challenging an elector include age, citizenship, legal residence in the state and the appropriate county, and the voter's registration status. FLA. STAT. § 101.048	The challenge must be filed with the clerk or inspector at the polls. Challenges must be in writing under oath and describe why the challenger believes the voter is attempting to vote illegally. FLA. STAT. § 101.111 There is a penalty for a voter or poll watcher who files a frivolous charge. See FLA. STAT. §§ 104.011; 775.082; 775.083; 775.084 Challenged voters may only vote provisionally and have until two days after the election to submit evidence of their eligibility. The challenged voter's provisional ballot will be counted unless the canvassing board determines by a preponderance of the evidence that the person was not entitled to vote. FLA. STAT. § 101.048	**UNSATISFACTORY** Florida has some good provisions: only electors from the same county may challenge; challenges must be in writing under oath; and there are penalties for filing a frivolous charge. However, it is very problematic that all challenged voters are required to vote provisionally. This could endanger the rights of any challenged Florida voter from casting a ballot that will be counted. Challenged voters should be able to vote a regular ballot upon signing an affidavit affirming their qualifications at the polls.

STATE	WHO CAN CHALLENGE ON ELECTION DAY?	LEGAL BASIS FOR CHALLENGING A VOTER'S ELIGIBILITY	PROCEDURES FOR MAKING AND DETERMINING VALIDITY OF CHALLENGES	ASSESSMENT: ARE VOTERS PROTECTED?
MISSOURI	A challenger must be a registered voter in the precinct and must be designated by the chair of the county committee of a political party named on the ballot. MO. REV. STAT. § 115.105	Grounds for challenging an elector include age, citizenship, legal residence in the state and the appropriate county, and the voter's registration status. FLA. STAT. § 101.048 The grounds for challenges include citizenship status, residency, age, identity, incapacity, and certain categories of felon status. MO. REV. STAT. §§ 115.429, 115.133	Once a voter has been challenged, a majority of the election judges at a polling place must determine whether he or she will be allowed to vote a regular ballot. If a decision cannot be reached, the question shall be decided by an election authority. MO. REV. STAT. § 115.429(3) The voter may be required to execute an affidavit under penalty of perjury affirming her voting qualifications. MO. REV. STAT. § 115.429(3), (5) Voters are entitled to cast provisional ballots, upon executing an affidavit, even if election authorities determine a voter is ineligible. MO. REV. STAT. § 115.430	**MIXED** The requirement that challengers must be from the same precinct helps prevent excessive challenges. It is also good that a challenged voter can vote after affirming her voting qualifications through an affidavit. However, Missouri should improve its law by requiring that challenges be in writing under oath, based on personal knowledge, and supported by evidence. Missouri should also provide guidance as to how election judges should resolve challenges. It should be clarified that the burden of proof is on the challenger, and a voter who signs an affidavit affirming her qualifications is able to vote a regular ballot.
NEVADA	Any other voter registered in the same precinct. NEV. REV. STAT. § 293.303	A voter may be challenged on the following grounds: the voter does not belong to the political party designated upon the register or the party which they claim to belong to; the voter does not reside at the address listed as his or her residence in the election board register; the voter previously voted a ballot for the election; or the voter is not the person he or she claims to be. NEV. REV. STAT. § 293.303	A challenger must submit a signed affirmation stating the basis for the challenge and that the challenge is based on personal knowledge. NEV. REV. STAT. § 293.303 The challenged voter must execute an oath or affirmation of his or her eligibility to vote. NEV. REV. STAT. § 293.303 The exact procedures will depend on the grounds on which the voter was challenged. For instance, a person challenged on the basis that he is not the person he claims to be must show official photo identification or have a person vouch for the challenged voter's identity; the vouching person must themselves be at least 18 years old and have photo identification, though there is not a requirement that they be registered. NEV. REV. STAT. § 293.303 If a voter is successfully challenged on grounds of residency, he or she may only vote at a "special polling place" in the county clerk's office or at such other locations as the county clerk deems necessary during each election. The challenged voter must also state under oath that they have satisfied the appropriate eligibility requirements. NEV. REV. STAT. § 293.303	**MIXED** It is good that Nevada requires personal knowledge and an affidavit from challengers. The detailed provisions for responding to challenges are very thorough. However, these rules are potentially burdensome for voters and confusing for poll workers. This complexity could result in eligible, registered voters being denied their right to vote.

STATE	WHO CAN CHALLENGE ON ELECTION DAY?	LEGAL BASIS FOR CHALLENGING A VOTER'S ELIGIBILITY	PROCEDURES FOR MAKING AND DETERMINING VALIDITY OF CHALLENGES	ASSESSMENT: ARE VOTERS PROTECTED?
NEW HAMPSHIRE	A registered voter in the town or ward in which the election is held, an election official, or a challenger designated by the attorney general or a political party state, city, or town committee. N.H. REV. STAT. §§ 659:27; 666:4	Grounds for challenging a voter include the following: the person seeking to vote is not the individual whose name he or she has given; the person has already voted in the election; the person seeking to vote is disqualified for violating the elections laws; the person is under 18 years of age; the person seeking to vote is not a United States Citizen; the person seeking to vote is not domiciled in the town or ward where he or she is seeking to vote; the person seeking to vote does not reside at his or her listed address; the person is an incarcerated convicted felon who is currently sentenced to incarceration; the person is not a declared member of the party he or she claims to be affiliated with (in a primary only); the person is ineligible to vote because of a state or federal law or constitutional provision. N.H. REV. STAT. § 659:27-a	All challenges, whether from designated challengers, officials, or members of the public, must be signed, under oath, and submitted in writing to a moderator. N.H. REV. STAT. §§ 659:27; 659:27-a No voter or designated challenger is permitted to challenge a person's qualifications to be a voter at the Election Day voter registration table. N.H. REV. STAT. §§ 659:27 The moderator must determine if the challenge is well grounded. If the moderator determines the challenge is well grounded, the moderator must reject the vote of the person challenged unless the voter submits an affidavit affirming his or her identity and qualifications under penalty of voter fraud. If the moderator determines that the challenge is not well grounded, the moderator must permit the voter to proceed to vote. N.H. REV. STAT. §§ 659:27; 659:30; 659:31	**SATISFACTORY** New Hampshire has exemplary requirements that challenges be made in writing under oath. It is very good that challenged voters can vote as long as they submit an affidavit affirming their qualifications. This is very protective of voters and allows eligible voters to ensure their vote is counted. New Hampshire could improve its laws by adopting a penalty for frivolous challenges and requiring that they be made on the basis of personal knowledge.

STATE	WHO CAN CHALLENGE ON ELECTION DAY?	LEGAL BASIS FOR CHALLENGING A VOTER'S ELIGIBILITY	PROCEDURES FOR MAKING AND DETERMINING VALIDITY OF CHALLENGES	ASSESSMENT: ARE VOTERS PROTECTED?
NORTH CAROLINA	Any individual registered to vote in the precinct. N.C. GEN. STAT. § 163-87	Grounds for challenges on Election Day include residency, citizenship, ineligibility due to felony conviction, whether a voter has already voted in the election, or whether the voter is not who she claims to be. N.C. GEN. STAT. §§ 163-85; 163 87	Each challenge shall be made separately, in writing, under oath and on forms prescribed by the State Board of Elections, and shall specify the reasons why the challenged voter is not entitled to register. N.C. GEN. STAT. §§ 163-85 A challenge can only be made if a challenger "knows, suspects, or reasonably believes [the challenged individual] not to be qualified and entitled to vote." N.C. GEN. STAT. §§ 163-90.1 Challenges are heard and decided by judges of election in the challenged registrant's precinct before the polls are closed. Those officials must explain the qualifications for registration and voting and may then examine the voter as to his or her qualifications to be registered and to vote. N.C. GEN. STAT. § 163-88 A challenged voter must make an oath or affirmation regarding her eligibility to vote. However, even once the voter has done so, elections officials may still refuse to allow the individual to vote a regular ballot "unless they are satisfied that the challenged registrant is a legal voter." The presumption is that the voter is properly registered, and any challenge must be supported by affirmative proof for it to be sustained. N.C. GEN. STAT. § 163-88 A letter or postal card mailed by returnable mail and returned by the United States Postal Service purportedly because the person no longer lives at that address or because a forwarding order has expired shall not be admissible evidence in a challenge. N.C. GEN. STAT. § 163-88	**SATISFACTORY** North Carolina's laws are exemplary: challenges must be in writing under oath, and based on personal knowledge. It is very protective of voters that evidence is needed to support a challenge and that the presumption favors the registrant. Another excellent provision is that returned mail cannot be used as evidence for a challenge. This protects voters from potentially frivolous and burdensome challenges based on caging practices. One provision is less than optimal: election officials may reject a ballot even after a voter takes an oath. But the presumption in favor of the voter and the provision requiring affirmative proof for a challenge helps mitigate this weakness.

STATE	WHO CAN CHALLENGE ON ELECTION DAY?	LEGAL BASIS FOR CHALLENGING A VOTER'S ELIGIBILITY	PROCEDURES FOR MAKING AND DETERMINING VALIDITY OF CHALLENGES	ASSESSMENT: ARE VOTERS PROTECTED?
OHIO	Only an elections judge may challenge a registered voter on Election Day. OHIO REV. CODE § 3505.20	The grounds for presenting a challenge include: (1) The person is not a citizen of the United States; (2) The person is not a resident of the state for thirty days immediately preceding election; (3) The person is not a resident of the precinct where the person offers to vote; (4) The person is not of legal voting age. OHIO REV. CODE § 3505.20; Boustani v. Blackwell, 460 F.Supp.2d 822 (N.D.Ohio, 2006)	Depending on the grounds for challenge and voters' responses to the election judges' questions, election judges are instructed to either ask follow up questions or request documentation, identification, or a statement under oath from the voter attesting to his or her qualifications. If the election official is unable to verify that the voter qualifications have been met, they must provide a provisional ballot, which will only be counted once the board of elections determines that the voter is properly registered and eligible to vote. OHIO REV. CODE § 3505.20 Voters who are able to provide the election official with proof or documentation of their eligibility may vote a regular ballot. Those who cannot must vote by provisional ballot. OHIO REV. CODE § 3505.20	**SATISFACTORY** Ohio's laws are protective of voters' rights because eligibility may only be challenged on Election Day by an elections judge. However, Ohio could improve its laws by specifying that the burden of proof is not on the voter, and by allowing the voter to vote a regular ballot once she or he signs an affirmation that she or he is eligible to vote.
PENNSYLVANIA	Election judges, "overseers of election," election officers, and qualified electors may challenge a registered voter. 25 PA. STAT. ANN. §§ 2685; 3050	A person can be challenged if attempting to vote outside election district in which he or she resides, if he or she is not properly registered in the election district (except by court order). 25 PA. STAT. ANN. § 3050	If a voter is challenged as to his or her identity or residence, he or she shall produce at least one qualified elector of the election district as a witness, who can make an affidavit of his or her identity or continued residence in the election district. 25 PA. STAT. ANN. § 3050 An overseer may challenge any person attempting to vote. The overseer may "examine" the voter's papers and ask the voter and the voter's witnesses, under oath, about his or her right of to vote in that election. 25 PA. STAT. ANN. § 2685 A voter who is challenged or who is unable to produce proof of identification is permitted to cast a provisional ballot. 25 PA. STAT. ANN. § 3050	**UNSATISFACTORY** It is extremely burdensome that challenged voters must either produce papers or a witness or be forced to vote provisionally. Pennsylvania could also improve its laws by limiting the number of people who can challenge voters' eligibility. Pennsylvania should require that a challenge be in writing under oath, based on personal knowledge and accompanied by supporting evidence, with penalties for frivolous challenges.

STATE	WHO CAN CHALLENGE ON ELECTION DAY?	LEGAL BASIS FOR CHALLENGING A VOTER'S ELIGIBILITY	PROCEDURES FOR MAKING AND DETERMINING VALIDITY OF CHALLENGES	ASSESSMENT: ARE VOTERS PROTECTED?
TEXAS	Texas does not permit Election Day challenges.		While Texas law does not allow legal challenges to voter eligibility, Texas does allow watchers inside the polling place on Election Day. See Appendix 3.	**SATISFACTORY** The elimination of Election Day challenges is very protective of voters' rights and guards against wrongful challenges to voters' eligibility on Election Day. However, the continued presence of watchers inside the polling place may still result in violations of voters' rights on Election Day. See Appendix 3.
VIRGINIA	Any qualified voter and any officer of the elections. VA. CODE ANN. § 24.2-651	Grounds for challenging include whether a voter is a U.S. citizen, a resident of the state, and 18 years of age or older. The voter may not have already voted elsewhere, and may not be disqualified by the state (e.g. due to a felony conviction). The voter must be who she represents herself to be. VA. CODE ANN. § 24.2-651(1)-(8)	The challenger must fill out a form, subject to penalties, stating that it is "known or suspected" that the challenged voter is not a citizen, a resident, of age, has already voted elsewhere, is disqualified by the state (e.g. due to a felony conviction), or is not who she represents herself to be. VA. CODE ANN. § 24.2-651 The election offices may examine the challenged voter's qualifications. The challenged voter then has the opportunity to sign a statement, subject to felony perjury charges, that he or she meets all of the qualifications for voting in the state. Upon signing the statement, the voter shall be permitted to vote on the voting system in use at the precinct. If he or she refuses to sign the statement, he or she is not permitted to vote. VA. CODE ANN. § 24.2-651	**MIXED** Allowing any voter to challenge other voters eligibility to vote may burden an individuals' right to vote. It is preferable to limit challengers to those individuals who reside in the precinct. Additionally, the evidentiary requirements for initiating challenges in Virginia are too low. However, Virginia law does have good procedural protections: any challenged voter can vote a regular ballot upon signing a sworn statement affirming her voter qualifications.

3. STATE LAWS GOVERNING POLL WATCHERS AND POLL OBSERVERS

STATE	WHO IS ELIGIBLE TO SERVE AS A WATCHER OR OBSERVER?	PROCEDURES FOR DESIGNATING POLL WATCHERS AND OBSERVERS	PERMITTED AND PROHIBITED CONDUCT BY POLL WATCHERS AND OBSERVERS	ASSESSMENT: ARE VOTERS PROTECTED?
COLORADO	A poll watcher in Colorado is any eligible elector, other than a candidate, who has been designated by appropriate party officials. A poll watcher does not have to be a resident of the county in which he is designated. COLO. REV. STAT. § 1-1-104(51)	A watcher must be designated "by a political party chairperson on behalf of the political party, by a party candidate at a primary election, by an unaffiliated candidate at a general, congressional vacancy, or nonpartisan election, or by a person designated by either the opponents or the proponents in the case of a ballot issue or ballot question." COLO. REV. STAT. § 1-9-201(1)(b).	Poll watchers have the right to maintain a list of eligible electors who have voted, to witness and verify each step in the election's conduct, to challenge ineligible electors, and to assist in correcting discrepancies. Poll watchers may observe polling place voting, early voting and the processing and counting of ballots. It is a misdemeanor intentionally to interfere with a poll watcher discharging her duties. COLO. REV. STAT. § 1-7-108(3) Poll watchers may not disrupt or interrupt any stage of the election, or interfere with the election's orderly conduct. 8 CCR 1505-1, Rule 8.8.1. Poll watchers who commit, encourage, or connive in any fraud in connection with their duties, who violate any of the election laws or rules, who violate their oath, or who interfere with the election process may be removed by the designated election official. 8 CCR 1505-1, Rule 8.15. Poll watchers are not permitted within the immediate voting area, or within six feet of the voting equipment or voting booths and the ballot box, except by authority of the election judges or election officials, and then only when necessary to enforce the law. COLO. REV. STAT. § 1-5-503; see also 8 CCR 1505-1, Rule 8.6 Poll watchers are not allowed to have cell phones, cameras, recording devices, laptops or PDAs (Palm Pilot, Blackberry, etc.) in the polling place. 8 CCR 1505-1, Rule 8.4	**SATISFACTORY** Colorado law protects voters by prohibiting poll watchers from interfering with the election process, and by allowing officials to remove any poll watchers that are disruptive. Also, Colorado does not allow watchers into the voting area and prohibits the recording of individuals in the polling place, which is protective of voter privacy and the secrecy of the ballot. Colorado law could be better if it more clearly prohibited watchers from communicating with voters.

STATE	WHO IS ELIGIBLE TO SERVE AS A WATCHER OR OBSERVER?	PROCEDURES FOR DESIGNATING POLL WATCHERS AND OBSERVERS	PERMITTED AND PROHIBITED CONDUCT BY POLL WATCHERS AND OBSERVERS	ASSESSMENT: ARE VOTERS PROTECTED?
FLORIDA	Each poll watcher must be a qualified and registered elector of the county in which she is appointed. FLA. STAT. § 101.131	Law enforcement officers or candidates may not serve as a designated poll watcher. FLA. STAT. § 101.131 Each party, political committee, and candidate may designate poll watchers for each polling room on Election Day. The designation must be in writing, on an official form, submitted before the second Tuesday preceding the election. Poll watchers must be approved by the supervisor of elections on or before the Tuesday before the election. FLA. STAT. § 101.131	Each political party and each candidate is permitted to have one watcher at a time in each polling room or early voting area during the election. FLA. STAT. § 101.131 All poll watchers must be allowed to enter and watch polls in all polling rooms and early voting areas within the county in which they have been designated, but only if the number of poll watchers at any polling place does not exceed the number provided in this section. FLA. STAT. § 101.131 No photography is permitted in the polling room or early voting area. FLA. STAT. § 102.031	**MIXED** It is good that only a limited number of watchers are permitted in the polling place at any time, that photography is prohibited, and that poll watchers must be approved by the supervisor of the elections before Election Day. Florida law could be improved by having stronger restrictions on poll watcher behavior, such as prohibiting watchers in the voting area, and prohibiting communication with voters. Election officials should have explicit authority to eject watchers who interfere with the orderly conduct of the election.
MISSOURI	In Missouri, the term 'watcher' refers only to individuals who observe the counting of votes and not those individuals who are in the polling place on election day. See MO. REV. STAT. §§ 115.107(4); 115.085 Missouri does permit individuals who have been designated as challengers in the polling place on Election Day. See Appendix 1.	Laws governing those individuals who observe the counting of the vote can be located at MO. REV. STAT. §§ 115.107; 115.085.	Laws governing those individuals who observe the counting of the vote can be located at MO. REV. STAT. §§ 115.107; 115.085. If any watcher or challenger interferes with the orderly process of voting, or is guilty of misconduct or any law violation, the election judges shall ask the watcher or challenger to leave the polling place or cease the interference. If the interference continues, the election judges shall notify the election authority, which shall take such action as it deems necessary. It shall be the duty of the police, if requested by the election authority or judges of election, to exclude any watcher or challenger from the polling place or the place where votes are being counted. If any challenger is excluded, another may be substituted by the designating committee chairman. MO. REV. STAT. § 115.111 Prior to the close of the polls, challengers may list and give out the names of those who have voted. The listing and giving out of names of those who have voted by a challenger shall not be considered giving information tending to show the state of the count. MO. REV. STAT. § 115.105	**MIXED** It is good that there are specific processes for ejecting challengers and watchers who interfere with the orderly process of voting. Missouri could strengthen its laws by clearly prohibiting photography or recording voters and by more explicitly defining a space where voters may not be observed or communicated with.

STATE	WHO IS ELIGIBLE TO SERVE AS A WATCHER OR OBSERVER?	PROCEDURES FOR DESIGNATING POLL WATCHERS AND OBSERVERS	PERMITTED AND PROHIBITED CONDUCT BY POLL WATCHERS AND OBSERVERS	ASSESSMENT: ARE VOTERS PROTECTED?
NEVADA	Members of the general public are allowed to observe the conduct of voting at a polling place. NEV. REV. STAT. § 293.274(1)	The county clerk shall allow members of the general public to observe the conduct of voting at a polling place. NEV. REV. STAT. § 293.274(1) The general public does not include anyone who: gathers information for communication to the public, is employed by or contracted with the press, or is acting solely within his or her professional capacity. NEV. REV. STAT. § 293.274(3)	Members of the general public are not permitted to photograph the conduct of voting at a polling place, nor may they make audio or video recordings of photograph the conduct of voting. NEV. REV. STAT. § 293.274(2) Before any person will be permitted to observe the conduct of voting, he or she must sign a form stating that, during the conduct of voting, the person: • may not talk to voters within the polling place; • may not use a mobile phone or computer within the polling place; • may not advocate for or against a candidate, political party or ballot question; • may not argue for or against or challenge any decisions made by county election personnel; • may not interfere with the conduct of voting; and • may be removed from the polling place by the county clerk for violating the election laws or any of the above. NEV. ADMIN. CODE § 293.245 A person observing the conduct of voting at a polling place may remain in an area designated by the chair of the election board to observe the activities conducted at the polling place without interfering with the voting. The designated area must allow for meaningful observation, but must not be located in an area that would allow an observer to infringe on the privacy and confidentiality of the ballot of the voter. NEV. ADMIN. CODE § 293.245 (6)	**SATISFACTORY** It is good that Nevada does not permit photographing or recording within the polling area. There is a designated area beyond which watchers may not pass, which helps protect voter privacy, and the form that observers must sign also contains a number of strong voter protections. Especially good are the explicit prohibition against interfering with the conduct of elections and the authority to remove observers who violate the rules. Nevada could improve its laws by limiting the number of individuals who are permitted to observe the conduct of voting.

STATE	WHO IS ELIGIBLE TO SERVE AS A WATCHER OR OBSERVER?	PROCEDURES FOR DESIGNATING POLL WATCHERS AND OBSERVERS	PERMITTED AND PROHIBITED CONDUCT BY POLL WATCHERS AND OBSERVERS	ASSESSMENT: ARE VOTERS PROTECTED?
NEW HAMPSHIRE	In New Hampshire, observers or watchers have no special status in law. However, New Hampshire does allow these individuals to be present in the polling place on Election Day.		No person not authorized by law may stand or sit within 6 feet of the ballot clerk for purposes of observing the check-in of voters without the express permission of the moderator. N.H. REV. STAT. § 659:13-a No person shall interfere or attempt to interfere with any voter when such voter is in the space within the guardrail or endeavor to induce any voter before voting to show how he marks or has marked his ballot. Whoever knowingly violates this section shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person. N.H. REV. STAT. § 659:37	**MIXED** New Hampshire should improve its law by limiting who is permitted to observe voters on election day and by creating more detailed voter protections. In addition, New Hampshire should prohibit photographing and recording of voters within the polling place. It is good that interfering with a voter within the guardrail is a misdemeanor.
NORTH CAROLINA	Observers must be registered voters of the county for which they are appointed and must have "good moral character." N.C. GEN. STAT. § 163-45.	The chair of each political party in the county shall have the right to designate two observers to attend each voting place. Observers must be appointed in writing to the county board of elections five days before the election. The chair or the judges for each affected precinct may, however, reject any appointee for cause and require another be appointed. N.C. GEN. STAT. § 163-45	Observers may not electioneer at the voting place. Observers may not impede the voting process or interfere or communicate with or observe any voter casting a ballot. N.C. GEN. STAT. § 163-45 The chief judge and judges of election may eject any challenger or witness for violation of any provisions of the election laws. The chief judge and judges shall permit the observer to "make such observation and take such notes as the observer may desire." N.C. GEN. STAT. §§ 163-45; 163-48 Videotaping of voters by election observers would be outside the permissible activities and inconsistent with the constitutional and statutory principles insuring unfettered elections for voters; however, there are not the same legal concerns with the use of cellular telephones. Op.Atty.Gen., Nichols, Oct. 22, 1998.	**SATISFACTORY** It is very good that North Carolina limits observers from interfering with the vote and specifically grants authority to eject observers who are impeding the voting process. The attorney general's opinion stating that North Carolina would not permit videotaping is very protective of voter's privacy. The legislature should adopt this in the law and add protections in light of smartphones and other mobile devices.

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OHIO	A poll observer must be a qualified elector in the state but not necessarily in the county in which she serves. OHIO REV. CODE § 3505.21	Observers must be designated either by a political party, a group of five or more candidates, or a ballot issue committee. The Board of Elections must be notified of the names and addresses of appointed observers and the precincts in which they will serve. Appointments must be made on official forms not less than eleven days before the election, and observers must present certificates of appointment to the presiding judge of the precinct the night before or on Election Day. OHIO REV. CODE § 3505.21	The observer shall be permitted to be in and about the polling place or precinct during voting. Observers are permitted to watch every proceeding of the election judges for as long as the polls are open. Observers may move about the precinct polling place as long as they do not disrupt or interfere with the election. Observers may not take any action to intimidate voters or put themselves in any position that could violate the secrecy of the ballot or a voter's privacy. OHIO REV. CODE § 3505.21	**SATISFACTORY** It is good that Ohio law prohibits disrupting or interfering with the election. Ohio could be more explicit that phones, video cameras, and other recording devices may not be used to record voters in the polling place. Ohio could also improve its law by only allowing electors in the precinct to serve as observers.
PENNSYLVANIA	Each watcher must be a qualified registered elector of the county in the election district. 25 PA. STAT. ANN. § 2687 Pennsylvania also has "overseers of the election" who supervise the proceedings of election officers and poll watchers and may challenge voters. These individuals are appointed and must be electors from the precinct they will serve. 25 PA. STAT. ANN. § 2685	Each candidate at any election may appoint two watchers for each election district in which he or she is running, and each political party that has nominated candidates may appoint three watchers at any general, municipal or special election for each election district in which its candidates are competing. 25 PA. STAT. ANN. § 2687 Each watcher receives a certificate from the county board of elections, stating his name and the name of the candidate, party or political body he represents. Watchers are required to show certificates upon request. 25 PA. STAT. ANN. § 2687 Overseers of the election are appointed on the petition of five or more duly registered electors of any election district. The court of common pleas of the proper county must then appoint two judicious, sober and intelligent electors of the said district belonging to different political parties. 25 PA. STAT. ANN. § 2685	Only one watcher for each party at general, municipal or special elections, may be present in the polling place from the time the election officers meet prior to the opening of the polls until the counting of votes is complete and the voting checklist is sealed. 25 PA. STAT. ANN. § 2687 Watchers may keep a list of voters and shall be entitled to challenge any prospective voter and to require proof of his or her qualifications to vote. The judge of elections must permit watchers to inspect but not mark the voting check list and either of the numbered lists of voters maintained by the county board. 25 PA. STAT. ANN. § 2687 Overseers of the election are also permitted to challenge any person attempting to vote, examine the voter's papers, and ask the voter and the voter's witnesses, under oath, about his or her right to vote in that election. 25 PA. STAT. ANN. § 2687	**UNSATISFACTORY** It is positive that only one watcher per party may be in the polling place during voting. However, it is problematic that overseers and watchers can challenge voters and request proof of eligibility, but that there aren't substantive limitations on the activities of watchers or overseers. Watchers and Overseers should not be able to photograph or videotape voters, or communicate with voters. Election judges should have authority to remove watchers and overseers who interfere with the orderly conduct of the election

STATE	WHO IS ELIGIBLE TO SERVE AS A WATCHER OR OBSERVER?	PROCEDURES FOR DESIGNATING POLL WATCHERS AND OBSERVERS	PERMITTED AND PROHIBITED CONDUCT BY POLL WATCHERS AND OBSERVERS	ASSESSMENT: ARE VOTERS PROTECTED?
TEXAS	A watcher must be a qualified voter of the county and political subdivision in which he or she will serve in a statewide election. TEXAS ELECTION CODE § 33.031	Candidates, chairs of political parties, or, in the case of a write-in candidate, a group of registered voters, may appoint two watchers for each voting location. The appointment must be in writing, and the appointing officials or voters must issue a certificate of appointment to the appointee and obtain an affidavit stating that the appointee will not have possession of a device capable of recording images or sound or that the appointee will disable or deactivate the device while serving as a watcher. TEXAS ELECTION CODE § 33.006	A watcher may call the attention of an election officer to any occurrence that the watcher believes to be an irregularity or violation of law and may discuss the matter with the officer. An officer may refer the watcher to the presiding officer at any point in the discussion. In that case, the watcher may not discuss the occurrence further with the subordinate officer unless the presiding officer permits. TEX. ELEC. CODE ANN. § 33.058 A watcher may observe any activities conducted at the location, except that the watcher may not be present at the voting station when a voter is preparing a ballot without assistance from an election officer. A watcher is entitled to: • sit or stand near the election officers conducting the observed activity; • sit or stand near enough to a member of the counting team who is announcing or tallying votes to verify that ballots are read and tallied correctly; • inspect returns and other records prepared by election officers at the location; • make written notes while on duty. TEXAS ELECTION CODE § 33.056 An election judge must allow watchers to perform activities described in the Texas Election Code, but the judge may limit excessive or disruptive activity. Election Law Opinion No. JH-2 (1991) While on duty, a watcher may not: • converse with an election officer regarding the election, except to call attention to an irregularity or violation of law; • converse with a voter; or • communicate in any manner with a voter regarding the election. TEXAS ELECTION CODE § 33.058 A watcher may not be present at the voting station when a voter is preparing the voter's ballot or is being assisted by a person of the voter's choice.	**UNSATISFACTORY** Texas has many good restrictions on watchers that help protect voters from intimidation and preserve their privacy. However, it is extremely troubling that Texas allows watchers to inspect a voter's ballot if the voter receives assistance from an election officer. This greatly compromises the secrecy of the voter's ballot and could lead to voter intimidation, particularly for language minorities, the elderly, and disabled persons. Watchers should not be permitted within several feet of the voting area and should never have the right to examine a voter's ballot.

			A watcher is, however, entitled to be present at the voting station when a voter is being assisted by an election officer, and the watcher is entitled to examine the ballot before it is deposited in the ballot box to determine whether it is prepared in accordance with the voter's wishes. TEXAS ELECTION CODE § 33.057	
VIRGINIA	Virginia only permits "authorized representatives" to observe the conduct of elections. Authorized representatives must be qualified Virginia voters. VA. CODE ANN. § 24.2-604(C)	Authorized representatives are designated by a party chairman or candidate. Each authorized representative must present to the officers of election a written statement (or copy), signed by the party chairman or candidate, designating him as the party's or candidate's representative. VA. CODE ANN. § 24.2-604(C) No candidate whose name is on the ballot shall serve as an authorized representative. VA. CODE ANN. § 24.2-604(C)	Election officials must permit at least one authorized representative for each political party or candidate in the room in which the election is being conducted at all times. Election officials have the discretion to permit as many as three representatives of each political party or independent candidate to remain in the room in which the election is being conducted. VA. CODE ANN. § 24.2-604(C) Authorized representatives must be allowed, whether in a regular polling place or central absentee voter precinct, to be close enough to the voter check-in table to be able to hear and see what is occurring. However, such observation shall not violate the secrecy of the ballot protected by the Virginia state constitution. VA. CODE ANN. § 24.2-604(C); VA. CONST. ART. 2, § 3 Authorized representatives may not "hinder or delay a qualified voter or the officers of election, provide or exhibit campaign materials, attempt to influence a person voting, or otherwise impede the orderly conduct of the election." Officers of election have the authority to remove any authorized representative who does not adhere to the applicable guidelines. VA. CODE ANN. § 24.2-604 Authorized representatives are allowed to use wireless communications devices, but they are not permitted to use the camera or video function on those devices. Officers of election may prohibit the use of cellular telephones or other handheld wireless communications devices if such use will unlawfully impede, influence, or intimidate voters. VA. CODE ANN. § 24.2-604(C)	**SATISFACTORY** Virginia law protects voters against intimidation and violations of their privacy. The law prohibits electioneering, interference with voters, and any devices that could be used to record voters. It is good that Virginia has a statutory basis for removing representatives that are disturbing the orderly conduct of elections. Virginia could improve its laws by restricting the individuals who can become authorized representatives to members of the precinct.

4. STATE LAWS FOR ADDRESSING VOTER INTIMIDATION, INSIDE AND OUTSIDE THE POLLS

NOTE: We have not provided assessments for these statutes. In general, they should be broadly construed to apply to harassing, intimidating or otherwise inappropriate behavior in and around polling places that burdens or interferes with a voter's right to vote. Importantly, there are Federal protections against intimidating voters as well.
We strongly encourage election officials and law enforcement officials to monitor activity at the polls closely and to enforce these laws aggressively to ensure all eligible voters can vote without interference.

STATES	LAWS REGULATING VOTER INTIMIDATION, INCLUDING ACTIVITY OUTSIDE OF THE POLLS
COLORADO	Prohibits any person from directly or indirectly impeding, preventing, or otherwise interfering with the free exercise of the vote. COLO. REV. STAT. § 1-13-713
FLORIDA	Prohibits threatening or coercing any person for the purpose of interfering with that person's right to vote. FLA. STAT. ANN. § 104.0515 Prohibits using or threatening to use intimidation or coercion to compel a person to vote or not vote. FLA. STAT. ANN. § 104.061 Prohibits soliciting for "facts" or "opinions" within 100 feet of a polling place. FLA. STAT. ANN. § 102.031
MISSOURI	Prohibits using or threatening to use force, violence or restraint in order to induce or compel a person to vote or refrain from voting at any election. MO. REV. STAT. § 115.635 Prohibits impeding or preventing, or attempting to impede or prevent, by abduction, duress or any fraudulent device or contrivance, the free exercise of the franchise of any voter. MO. REV. STAT. § 115.635 Prohibits a number of specific election related offenses, such as tampering with a voter's ballot, providing inducements to voters, creating a breach of the peace, preventing one's employees from voting, or otherwise interfering, or attempting to interfere, with any voter inside a polling place. See MO. REV. STAT. § 115.637
NEVADA	Prohibits using or threatening to use force, intimidation, coercion, violence, or undue influence in connection with any election or petition. Nev. Rev. Stat. § 293.710 It is a felony under Nevada law to interfere with the conduct of an election or otherwise remove, receive, or display any ballot that has been prepared by a voter before the polls are closed. Nev. Rev. Stat. § 293.730
NEW HAMPSHIRE	Prohibits using or threatening to use force, violence, or any tactic of intimidation to compel a voter to vote for a particular candidate, refrain from voting, or refrain from registering to vote. N.H. Rev. Stat. § 659:40 No person shall interfere or attempt to interfere with any voter when such voter is in the space within the guardrail or endeavor to induce any voter before voting to show how he marks or has marked his ballot. Whoever knowingly violates this section shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person N.H. Rev. Stat. § 659:37

STATES	LAWS REGULATING VOTER INTIMIDATION, INCLUDING ACTIVITY OUTSIDE OF THE POLLS
NORTH CAROLINA	Prohibits interfering with or attempting to interfere with any voter inside the voting enclosure or when marking his ballots. N.C. GEN. STAT. § 163-273 Prohibits harassment within a "buffer zone" around a polling place, which shall not be more than 50 feet or less than 25 feet from the entrance to a polling place. N.C. GEN. STAT. § 163-166.4 Requires the chief judge and judges of election to "enforce peace and good order in and about the place of registration and voting," including keeping "open and unobstructed the place at which voters or persons seeking to register or vote have access to the place of registration and voting." Judges are charged with preventing and stopping "improper practices and attempts to obstruct, intimidate, or interfere with any person in registering or voting." N.C. GEN. STAT. § 163-48
OHIO	Prohibits attempting to induce any person to vote or refrain from voting by intimidation, coercion, or other unlawful means. OHIO REV. CODE ANN. § 3599.01(A)(2) Prohibits loitering or congregating 100 feet from polling place, or hindering an elector from reaching or leaving the polling place. OHIO REV. CODE ANN. § 3501.35 Prohibits removing or defacing property that relates to the conducting of an election from a polling place. OHIO REV. CODE ANN. § 3599.24(2) Prohibits intimidating or attempting to intimidate or prevent an election officer from conducting his or her duties, and prohibits otherwise interfering with the conduct of a registration or election. OHIO REV. CODE ANN. § 3599.24(3),(5)
PENNSYLVANIA	Prohibits any manner of intimidation or coercion in order to compel a person to vote or refrain from voting at any election. 25 PA. STAT. ANN. §§ 3547
TEXAS	Prohibits indicating to a voter inside a polling place by word, sign, or gesture how the voter should vote or not vote. TEX. ELEC. ANN. § 61.008 Prohibits loitering during the voting period within one hundred feet of an outside door of the polling place. TEX. ELEC. ANN. § 61.003 Prohibits persons not engaged in activities specifically permitted by the Election Code to be in the polling place during the election process. TEX. ELEC. ANN. § 61.001
VIRGINIA	Prohibits attempting to influence a person's vote by threats, bribery, or other means. VA. STAT. ANN. § 24.2-1005 Makes it a crime for any person to loiter or congregate within 40 feet of any entrance of any polling place or to hinder or delay a qualified voter in entering or leaving a polling place. VA. STAT. ANN. § 24.2-604(A) It is a misdemeanor for any person to hinder or delay a qualified voter or election officer, to give a ballot, ticket, or other campaign material to any person, soliciting or influencing any person in casting his vote, or otherwise impeding the orderly conduct of the election. VA. STAT. ANN. § 24.2-604(D)

ENDNOTES

1. Brentin Mock, "How the Right's Building a 'Poll Watcher' Network for November," Colorlines.com, August 23, 2012, available at http://colorlines.com/archives/2012/08/true_the_votes_large_and_growing_far-right_network.html (quoting True the Vote National Elections Coordinator Bill Ouren).
2. See infra pp. 17, 26, and 30.
3. See Appendix 1, State Laws Governing Pre-Election Day Challenges.
4. See Appendix 2, State Laws Governing Election Day Challenges.
5. See Appendix 3, State Laws Governing Poll Watchers and Poll Observers.
6. See Appendix 4, State Laws Addressing Voter Intimidation, Inside and Outside the Polls.
7. See infra Section on History of Wrongful Challenges and Intimidation, page 6.
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23. Id.
24. Id.
25. 42 U.S.C. § 1973gg-6(c)(2)(A).
26. Id.
27. 42 U.S.C. § 1973i(b). This provision states, in part: "No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote. The legislative history of this provision makes it clear that voter intimidation is unlawful even if it is not racially motivated. H. Rep. No. 439, 89th Congress, 1st Sess. 30 (1965). Moreover, actions that are reasonably likely to intimidate a voter are unlawful under this provision even in the absence of a subjective intent to cause intimidation. Id. Moreover, actions under color of law that are targeted against groups or individuals based on race or color are prohibited under 42 U.S.C. § 1971.
28. See 18 U.S.C. § 594; 42 U.S.C. § 1973gg-10(1). In addition, under 18 U.S.C. §§ 241 & 242, actions that intimidate persons from exercising any constitutionally protected right may be criminally prosecuted.
29. Section 203 of the Voting Rights Act ensures that members of language minorities may receive voting assistance in their native languages. See 42 U.S.C. § 1973aa-1a. Efforts to interfere with such assistance are subject to penalties. 42 U.S.C. § 1973aa-3. Section 208 of the Voting Right Act requires that people who need assistance due to blindness, disability, or inability to read or write are to be given assistance by a person of the voter's choice, other than the voter's employer or agent of the employer or officer or agent of the voter's union. See 42 U.S.C. § 1973aa-6. These provisions are important because persons receiving legally protected assistance at the polling place sometimes have been improperly targeted for challenges. See Tom Driscoll, "The Lady Doth Protest Too Much, Methinks," April 17, 2011, supra n. 10.
30. See Section on State Laws Addressing Voter Intimidation, Inside and Outside the Polls, infra page 28; see also Appendix 4.
31. It started at the turn of the 19th century but saw a real heyday in the 1960s when the Republican Party launched "Operation Eagle Eye" in which thousands of challengers were sent to the polls to challenge the eligibility of voters, primarily in communities of color. Chandler Davidson, Tanya Dunlap, Gale Kenny and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression or Both?" 2004, available at http://www.votelaw.com/blog/blogdocs/GOP_Ballot_Security_Programs.pdf.
32. Brennan Center for Justice, "DNC v. RNC Consent Decree," available at http://www.brennancenter.org/content/resource/dnc_v_rnc_consent_decree/; see also Amended Complaint, Democratic Nat'l Comm. v. Republican Nat'l Comm., Civ. No. 81-3876 (D.N.J. 1982), available at http://brennan.3cdn.net/753e62cd3c89a985c8_uzm6id7ot.pdf.
33. Specifically, the RNC agreed that neither it nor its agents or parties acting in concert with the RNC would "conduct a direct-mail campaign in the future directed at names appearing on a voter registration list in order: (1) to use the letter returned as undeliverable to compile voter challenge lists; (2) to make such challenges; or (3) to deter registered voters from voting[.]" Stipulation, Democratic Nat'l Comm. V. Republican Nat'l Comm., Civ. No. 86-3972 (D. N.J. 1986) available at http://www.projectvote.org/images/publications/Voter%20Caging/DNC_v_RNC_1986_Consent_Decree_1.pdf. Other party committees acting independently from the RNC did not have to enter into this decree. In the 1982 consent decree and its 1987 successor, the

RNC agreed to have federal courts review any proposed ballot security measures. In 2008, however, the RNC attempted to dissolve it. Though a federal judge refused to dissolve the decree as the RNC asked, the judge did modify the ruling. The activities prohibited by the consent decree were limited to efforts that are aimed at preventing potential voters from casting a ballot. Democratic Nat'l Comm. v. Republican Nat'l Comm., 671 F. Supp. 2d 575 (D.N.J. 2009). In 2012 the RNC lost an appeal before the Third Circuit Court of Appeals seeking again to vacate the consent decree. DNC v. RNC, 09-4615 (3d Cir. 2012).

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35. Id.
36. Jo Becker, "GOP Challenging Voter Registrations; Civil Rights Groups Accuse Republicans of Trying to Disenfranchise Minorities," The Washington Post, October 29, 2004, p. A05.
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38. "Voter Caging & Housing Works," Now. PBS, New York, July 27, 2007. Transcript. Available at http://www.pbs.org/now/shows/330/index.html; Jason Leopold and Matt Renner, "Emails Detail RNC Voter Suppression in 5 States," Truthout, July 26, 2007, available at http://archive.truthout.org/article/exclusive-emails-detail-rnc-voter-supression-5-states.
39. Id.
40. The letters were stamped "Do Not Forward" in order to increase the likelihood they would be returned "Voter Caging & Housing Works," supra note 38.
41. Exhibit 7, Democratic Nat'l Comm. v. Republican Nat'l Comm., Civ. No. 81-3876 (D.N.J. 1982), available at http://www.pbs.org/now/shows/330/DNC-Memo-RNC-emails.pdf.
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52. Id.
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54. Id.
55. Order and Judgment, United States of America v. New Black Panther Party for Self-Defense, No. 2:09-cv-00065, (E.D. Pa. May 18, 2009), available at http://www.slideshare.net/LegalDocs/findlaw-voting-rights-new-black-panther-party-figure-shabazzs-weapons-order.
56. See, e.g., New Black Panther Party voter intimidation case, http://en.wikipedia.org/w/index.php?title=New_Black_Panther_Party_voter_intimidation_case&oldid=505387921 (last visited Sept. 3, 2012).
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58. See A.J. Vicens and Natasha Khan, "Voters Feel Intimidated by Election Observers," News 21, Aug. 12, 2012, available at http://votingrights.news21.com/article/poll-watchers/.
59. Steven Rosenfeld, "Going Undercover at the GOP's Voter Vigilante Project to Disrupt the Nov. Election, Alternet, Aug. 24, 2012, available at http://www.alternet.org/news-amp-politics/going-undercover-gops-voter-vigilante-project-disrupt-nov-election?paging=off.
60. Id.
61. Id.
62. Id.
63. See Vicens & Khan, supra note 58.
64. See id.
65. Colo. Rev. Stat. § 1-9-101(1)(a).
66. However, Colorado does allow voter challenges on Election Day.
67. Colo. Rev. Stat. § 1-9-203.
68. Id.
69. Colo. Rev. Stat. § 1-9-101(1)(a).
70. Id.
71. Id.
72. Colo. Rev. Stat.at § 1-9-101(1)(b).
73. Id.
74. While these protections extend to voters being challenged through these procedures, the problem of government purges still exists. For example in 2008 Colorado's Secretary of State purged thousands of voters from the rolls within 90 days of the election, violating the National Voter Registration Act; he continued to do so even after reaching a settlement with a voter protection organization. Naomi Zeveloff, "Federal Judge Rails at Secretary of State Coffman to Stop Purges," Colorado Independent, Oct. 31, 2004, available at http://coloradoindependent.com/13576/federal-judge-rails-at. Election protection organizations, including Common Cause, sued the Colorado Secretary of State for cancelling newly registered voters' registrations whose voting cards were returned undeliverable, again contravening the National Voter Registration Act. Pls.' Mot. for Prel. Inj., Common Cause of Colorado v. Buescher, (2010) Civil No. 08-CV-02321-JLK (2010). The lawsuit continued into 2010. See A.J. Vicens and Natasha Khan, supra note 58; Naomi Zeveloff, "Federal Judge Rails at Secretary of State Coffman to Stop Purges," Colorado Independent, Oct. 31, 2004, available at http://coloradoindependent.com/13576/federal-judge-rails-at; Felisa Cardona, "A Win for Purged Voters," Denver Post, Oct. 30, 2008, available at http://www.denverpost.com/breakingnews/ci_10851260.
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78. Fla. Stat. § 101.111.
79. Id.
80. See Fla. Stat. § 101.111.
81. See id.
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84. Id.; Fla. Stat. § 101.045.
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90. Id.
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92. Lizette Alvarez, "Florida Steps Up Effort Against Illegal Voters," The New York Times, May 17, 2012, available at http://www.nytimes.com/2012/05/18/us/florida-attempts-to-scrub-illegal-voters.html?_r=1.
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167. 25 Pa. Cons. Stat. Ann. § 1509.
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175. Id.
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177. Tex. Elec. Code Ann. § 16.0921.
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179. Id.
180. Tex. Elec. Code Ann. § 16.0921.
181. Id.
182. Tex. Elec. Code Ann. § 16.093.
183. Va. Code Ann. § 24.2-429.
184. See id.
185. Id.
186. Pam Fessler, "Tea Party Spawns New Effort Against Voter Fraud," supra note 13.
187. Id.
188. Va. Code Ann. § 24.2-429.
189. Colo. Rev. Stat. § 1-9-201.
190. Id.
191. Colo. Rev. Stat. § 1-9-202.
192. Id.
193. Colo. Rev. Stat. § 1-9-203.
194. See Id. For example, if a person is challenged as being ineligible to vote because of his or her citizenship, an election judge shall ask: "Are you a citizen of the United States?"
195. Colo. Rev. Stat. § 1-9-201(1)(b). A watcher must be designated "by a political party chairperson on behalf of the political party, by a party candidate at a primary election, by an unaffiliated candidate at a general, congressional vacancy, or nonpartisan election, or by a person designated by either the opponents or the proponents in the case of a ballot issue or ballot question."
196. Colo. Rev. Stat. § 1-1-104(51).
197. Id.
198. Colo. Rev. Stat. § 1-5-503; see also 8 CCR 1505-1, Rule 8.6
199. 8 CCR 1505-1, Rule 8.4.
200. 8 CCR 1505-1, Rule 8.1.2.
201. 8 CCR 1505-1, Rule 8.2.
202. Colo. Rev. Stat. § 1-7-108(3).
203. Colo. Rev. Stat. § 1-7-108(3).
204. 8 CCR 1505-1, Rule 8.8.1.
205. 8 CCR 1505-1, Rule 8.8.
206. 8 CCR 1505-1, Rule 8.15.
207. Fla. Stat. § 101.111.
208. Id.
209. See Fla. Stat. §§ 104.011; 775.082; 775.083; 775.084.
210. See Fla. Stat. § 101.048; Grounds for challenging an elector include age, citizenship, legal residence in the appropriate state and county, and the voter's registration status.
211. Fla. Stat. § 101.131.
212. Id.
213. Id.
214. Id.
215. Id.
216. Mo. Rev. Stat. § 115.105.
217. Id.
218. Mo. Rev. Stat. § 115.429; 115.133.
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221. Mo. Rev. Stat. § 115.429(5).
222. Mo. Rev. Stat. § 115.430.
223. Mo. Rev. Stat. § 115.105.
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226. Mo. Rev. Stat. § 115.107(2).
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231. Ian Urbina, "As Homes Are Lost, Fears That Votes Will Be, Too," N.Y. Times, Sept. 24, 2008, available at http://www.nytimes.com/2008/09/25/us/politics/25voting.html.
232. Id.
233. H.B. 192 (Mo. 2009) (amending Mo. Rev. Stat. s 115 to add s 115.192).
234. H.B. 192 (Mo. 2009) (amending Mo. Rev. Stat. s 115 to add s 115.192).
235. H.B. 1952 (Mo. 2010) (amending Mo. Rev. Stat. s 115.142) s A.
236. Nev. Rev. Stat. §§ 293.547; 293.303.
237. Id. Though challenges made on Election Day may be made orally, the challenger must then make a written a rmation.
238. Nev. Rev. Stat. § 293.303(2).
239. Nev. Rev. Stat. § 293.303.
240. Nev. Rev. Stat. § 293.303(7).
241. Nev. Rev. Stat. § 293.303(8).
242. Id.
243. Nev. Rev. Stat. 293.304.
244. Id.
245. Nev. Rev. Stat. § 293.274(1).
246. Id. at (2).
247. "'Advocate' includes, without limitation, speaking, displaying or disseminating written material and wearing identifying clothing, buttons or other paraphernalia." Nev. Admin. Code § 293.245(7).
248. Nev. Admin. Code § 293.245 at (2).
249. Id. at (5).
250. Id. at (6).
251. N.H. Rev. Stat. §659:27.
252. N.H. Rev. Stat. § 666:5.
253. "The state committee of a political party may appoint a person to act as challenger of voters at any polling place in the state at a state election. A city or town committee of such a party may appoint a person to act as such challenger at any polling place in such city or town at a town election, business meeting, or city election." N.H. Rev. Stat. § 666:4.
254. N.H. Rev. Stat. §§ 666:4; 666:5.
255. Id.
256. Id.
257. N.H. Rev. Stat. §§ 659:27; 659:27-a.
258. N.H. Rev. Stat. §§ 659:27. Grounds for challenging a voter include any of the following: the person seeking to vote is not the individual whose name he or she has given; the person has already voted in the election; the person seeking to vote is disqualified for violating the elections laws; the person is under 18 years of age; the person seeking to vote is not a United States Citizen; the person seeking is not domiciled in the town or ward where he or she is seeking to vote; the person seeking to vote does not reside at his or her listed address; the person is an incarcerated convicted felon who is currently sentenced to incarceration; the person is not a declared member of the party he or she claims to be affiliated with (in a primary only); the person is ineligible to vote because of a state or federal law or constitutional provision. N.H. Rev. Stat. § 659:27-a. It is noteworthy that a letter or postal card mailed by returnable mail and returned by the U.S. Postal office because the person purportedly no longer lives at that address is not admissible evidence in a challenge. N.C. Gen. Stat. § 163-88.
259. Id; N.H. Rev. Stat. § 659:30; N.H. Rev. Stat. § 659:31.
260. N.H. Rev. Stat. §§ 659:27.
261. Id.
262. See New Hampshire Department of State, "New Hampshire Election Procedure Manual: 2010-2011," available at http://sos.nh.gov/WorkArea/DownloadAsset.aspx?id=12408.
263. Id.
264. N.H. Rev. Stat. §§ 659:37.
265. N.C. Gen. Stat. § 163-87.
266. N.C. Gen. Stat. §§ 163-85; 163-87.
267. N.C. Gen. Stat. §§ 163-90.1.
268. N.C. Gen. Stat. §§ 163-85.
269. N.C. Gen. Stat. § 163-88.
270. Id.
271. Id.
272. Id.
273. Id.
274. N.C. Gen. Stat. § 163-90.1.
275. N.C. Gen. Stat. § 163-88.
276. N.C. Gen. Stat. § 163-45.

277. Id.
278. Id.
279. Id.
280. N.C. Gen. Stat. § 163-45.
281. Id.
282. Op.Atty.Gen., Nichols, Oct. 22, 1998.
283. N.C. Gen. Stat. § 163-45.
284. Id.
285. N.C. Gen. Stat. § 163-48.
286. Ohio Rev. Code § 3505.20.
287. Id. The provisions of Ohio Rev. Code § 3505.20 which would have required naturalized citizens to provide naturalization documents, but did not require native-born citizens to provide documentation of their citizenship, was struck down as unconstitutional in 2006. See Boustani v. Blackwell, 460 F.Supp.2d 822 (N.D. Ohio 2006).
288. See Ohio Rev. Code § 3505.20. The statute has an exception for individuals whose parents were naturalized citizens: "If the person states under oath that, by reason of the naturalization of the person's parents or one of them, the person has become a citizen of the United States, and when or where the person's parents were naturalized, the certificate of naturalization need not be produced."
289. Id. In Boustani v. Blackwell, supra note 287, a district court held the proof of citizenship requirements in Ohio Rev. Code § 3505.20(2), (3), and (4) unconstitutional and prohibited challenges on that basis. A challenger affidavit form available on the Ohio Secretary of State's website describes the four currently permissible forms of Election Day challenges. See Form 10-U Prescribed by the Secretary of State (10-06), available at http://www.sos.state.oh.us/sos/upload/elections/forms/10-U.pdf.
290. Ohio Rev. Code § 3505.20. Depending on voters' responses to the election judges' questions, election judges are instructed to either ask follow up questions or request documentation, identification, or a statement under oath from the voter attesting to his or her qualifications. If the election official is unable to verify that the voter qualifications have been met, they must provide a provisional ballot, which will only be counted once the board of elections determines that the voter is properly registered and eligible to vote.
291. Id.
292. Ohio Secretary of State, Directive 2012-21. "Observers," available at http://www.sos.state.oh.us/SOS/Upload/elections/directives/2012/Dir2012-21.pdf; Ohio Rev. Code § 3505.21.
293. Id.
294. Id.
295. Id.
296. Id. Directive 2012-21. "Observers," supra note 292.
297. Ohio Secretary of State, Directive 2008-29, "Observers," available at http://www.sos.state.oh.us/SOS/Text.aspx?page=1835&AspxAutoDetectCookieSupport=1.
298. See id.; Ohio Rev. Code § 3505.21.
299. Directive 2012-21. "Observers," supra note 292.
300. Id.; Ohio Rev. Code § 3501.30(A)(4).
301. Id.
302. Directive 2012-21. "Observers," supra note 292.
303. 25 Pa. Stat. Ann. §§ 2685; 3050.
304. Id.
305. 25 Pa. Stat. Ann. § 3050.
306. Id.
307. 25 Pa. Stat. Ann. § 2687.
308. Id.
309. Id.
310. Id.
311. Id.
312. Id.
313. Id.
314. Id.
315. 25 Pa. Stat. Ann. § 2685.
316. Id.
317. Id.
318. Id.
319. Id.
320. Id.
321. 25 Pa. Stat. Ann. § 2686.
322. "The Texas provision permitting Election Day challenges was repealed effective January 1, 2004, in HB 1549," Project Vote, The Role of Challengers in Elections: Issues in Election Administration: Policy Brief Number 10, (Jan. 3, 2008), available at http://projectvote.org/images/publications/Policy%20Briefs/PB10_ElectionChallenger2.pdf.
323. Texas Elec. Code § 33.001.
324. Texas Elec. Code § 33.031.
325. Texas Elec. Code § 33.007.
326. Texas Elec. Code § 33.006.
327. Texas Elec. Code § 33.056. Before permitting a watcher who made written notes at a precinct polling place to leave while the polls are open, the presiding officer may require the watcher to leave the notes with another person on duty at the polling place, selected by the watcher, for retention until the watcher returns to duty.
328. Election Law Opinion No. JH-2 (1991).
329. Texas Elec. Code § 33.057
330. Texas Elec. Code § 33.057.
331. Texas Elec. Code § 33.058.
332. Chris Moran, "New Voter Intimidation Complaints Surface at Harris Polls," Houston Chronicle, Oct. 21, 2010, available at http://www.chron.com/news/houston-texas/article/New-voter-intimidation-complaints-surface-at-1709902.php ("Allegations continued to surface on Thursday of poll watchers intimidating voters and of poll watchers themselves being harassed."); Texas Elec. Code § 33.058.
333. Id.
334. Id.
335. Id.
336. Texas Elec. Code § 33.061.
337. Texas Elec. Code § 61.006.
338. Texas Elec. Code § 61.007.
339. Ryan J. Reilly, "DOJ Probes TX Voter Intimidation Complaints During Tea Party Anti-Voter Fraud Drive," Talking Points Memo, Oct. 19, 2010, available at http://tpmmuckraker.talkingpointsmemo.com/2010/10/the_texas_democratic_party_expanded.php.
340. See Chris Moran, "New Voter Intimidation Complaints Surface at Harris Polls," supra note 332; Ryan J. Reilly, "County Clerk's Office Dismisses Voter Intimidation Allegations in TX," Talking Points Memo, Oct. 22, 2010, available at http://tpmmuckraker.talkingpointsmemo.com/2010/10/county_clerks_office_dismisses_voter_intimidation_allegations_in_tx.php; Erik Barajas, "What are Poll Watchers Supposed to Do?," KTRK-TV, Oct. 27, 2010, http://abclocal.go.com/ktrk/story?section=news/politics&id=7750142.
341. See Ryan J. Reilly, "DOJ Probes TX Voter Intimidation Complaints During Tea Party Anti-Voter Fraud Drive," supra note 339.
342. See id.
343. Va Code Ann. § 24.2-651(1)-(8).
344. Va Code Ann. § 24.2-651.
345. Id.
346. Va. Code Ann. § 24.2-604(C).
347. Id.
348. Id.
349. Id.
350. Id. Op. Va. Att'y Gen. 11-028 (Oct. 6, 2011).
351. Id. See also Va. Code Ann. § 24.2-604(C); Va. Const. Art. 2, § 3.
352. Va. Code Ann. § 24.2-604(C).
353. Va. Code Ann. § 24.2-607.
354. Colo. Rev. Stat. § 1-13-713.
355. Id.
356. Colo. Rev. Stat. § 1-13-712.
357. Fla. Stat. Ann. § 104.0515.
358. Fla. Stat. Ann. § 104.0615.
359. Fla. Stat. Ann. § 102.031 (4).
360. Mo. Rev. Stat. § 115.635.
361. Id.
362. Mo. Rev. Stat. § 115.637.
363. Nev. Rev. Stat. § 293.710.
364. Nev. Rev. Stat. § 293.274.
365. Nev. Rev. Stat. § 293.730.
366. N.H. Rev. Stat. § 659:40.
367. N.H. Rev. Stat. § 659:37.
368. N.C. Gen. Stat. § 163-273..
369. N.C. Gen. Stat. § 163-165.
370. N.C. Gen. Stat. § 163-166.4.
371. Id.
372. N.C. Gen. Stat. §§ 163-48; 163-47.
373. See Email from Don Wright, General Counsel, North Carolina State

Board of Elections to Nick Surgey, August 16, 2012 at 9:05 a.m. (on file with authors).
374. N.C. Gen. Stat. § 163-48.
375. Project Vote, "Voter Intimidation," http://www.projectvote.org/voter-intimidation.html.
376. See Email from Don Wright, General Counsel, North Carolina State Board of Elections to Nick Surgey, August 16, 2012 at 9:05 a.m. (on file with authors).
377. Christina Bellantoni, "McCain supporters heckle early voters," The Washington Times, Oct. 20, 2008, available at http://www.washingtontimes.com/weblogs/bellantoni/2008/Oct/20/mccain-supporters-call-early-voters-ch/.
378. Ohio Rev. Code Ann. § 3599.01(A)(2).
379. Ohio Rev. Code Ann. § 3599.24.
380. Ohio Rev. Code Ann. § 3501.35.
381. Id.
382. 25 P.S. §§ 3547.
383. Id.
384. Id.
385. Id.
386. Tex. Elec. Ann. § 61.008.
387. Tex. Elec. Ann. § 61.003.
388. Tex. Elec. Ann. § 61.001.
389. Va. Code Ann. § 24.2-604(A).
390. Va. Stat. Ann. § 24.2-1005.
391. Va. Code Ann. § 24.2-604(D).
392. Ryan J. Reilly, "DOJ Probes TX Voter Intimidation Complaints During Tea Party Anti-Voter Fraud Drive," Talking Points Memo, October 19, 2010, available at http://tpmmuckraker.talkingpointsmemo.com/2010/10/the_texas_democratic_party_expanded.php.
393. See Citizens for Police Accountability Political Committee, 572 F.3d 1213, 1221 (11th Cir. 2009).
394. See Burson v. Freeman, 504 U.S. 191 (1992).
395. See e.g. Colo. Rev. Stat. § 18-9—122(3).
396. See Hill v. Colorado, 530 U.S. 703, 715, 716 (2000).
397. See id. at 716.
398. Ohio Secretary of State, Directive 2012-30, "Pre-Election Voter Challenges," available at http://www.sos.state.oh.us/SOS/Upload/elections/directives/2012/Dir2012-30.pdf.
399. H.R. 5799 (112th Cong.).
400. Id.

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