

Voter Suppression

New Hampshire's Response to a National Problem

PRS Policy Brief 0809-02
March 9, 2009

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This report was written by undergraduate students at Dartmouth College under the direction of professors in the Rockefeller Center. Support for the Policy Research Shop is provided by the Ford Foundation.

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EXECUTIVE SUMMARY

Voter suppression, defined in this report as any behavior intended to deter an eligible voter from casting a ballot, has been an ongoing concern in the debate surrounding election law and election administration. This report outlines the history, practices, and legislation surrounding major suppression tactics in four categories: direct threats or intimidation, disinformation or scare tactics, disruption of an opponent's lines of communication, and challenging someone's right to vote. The report attempts to acknowledge the blurred boundaries between lawful campaigning and fraud prevention activities and voter suppression. A brief discussion on policy recommendations focused on ways to deter and mitigate the damage associated with suppression concludes the analysis.

1. INTRODUCTION

Voter suppression is a perennial concern in American politics. Generally, voter suppression is any behavior intended to deter an eligible voter from casting a ballot. Voter suppression threatens the fundamental democratic right of citizens to elect their leaders. These tactics can sway the outcome of an election. Even without affecting the outcome of an election, denying citizens the ability to participate in the basic civil duty of electing representatives is a serious crime. Election law, especially where it intersects basic rights such as free speech, is a legally complex area, as illustrated by the 2002 New Hampshire phone jamming case (see section 3.1). Rather than exploring legal distinctions, this report attempts to review and categorize suppression tactics and New Hampshire legislation to answer the question, "How prepared is New Hampshire to combat voter suppression efforts?"

Acts of voter suppression can be classified into four categories of behavior: direct threats or intimidation, disinformation or scare tactics, disruption of an opponent's lines of communication, and challenging someone's right to vote. Direct intimidation is much less common today than it was in the Jim Crow South, thanks to federal and state laws criminalizing the practice. However, disinformation, communications disruption, and voter challenges continue to flourish in a legal grey area. At present, New Hampshire is one of very few states that explicitly bar most of these practices. Even with tough penalties for suppression, however, it is often very difficult to prove intent to suppress the vote and to counter the effects of disseminated disinformation.

In this report, we examine the practice of voter suppression and legislative attempts to combat it. Sections 2 through 5 cover each the four categories of voter suppression in depth, describing applicable federal and state laws, past incidents, and New Hampshire's specific vulnerability. Section 6 presents policy recommendations for how New Hampshire can more effectively combat voter suppression.

2. INTIMIDATION

Voter intimidation is defined as exerting undue influence on an individual to pressure him or her to vote or not to vote. However, there is no consensus over what constitutes voter intimidation in practice. While threatened or actual physical violence is universally considered voter intimidation, there is disagreement over which non-physical tactics constitute intimidation. Though it is nearly impossible to measure the full impact of intimidation tactics, as counting non-existent votes cannot be accomplished, anecdotal evidence suggests that intimidation does affect voting behavior.¹ Those targeted are overwhelmingly minorities, notably Black and Latino voters, often low income and often at inner-city polling places. They may also be targeted because these voters, along with students, are likely to be less informed about their rights and are more easily intimidated by the presence of law enforcement or threat of legal consequences.

2.1 The Voting Rights Act and State Intimidation Laws

Direct voter intimidation was made a crime by the federal Voting Rights Act of 1965.² Section 11(b) of the Voting Rights Act states that "no person... shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote."³ Many states have outlawed direct voter intimidation using language similar to that of the Voting Rights Act. For example, an Ohio statute states that "no person shall ... attempt by intimidation, coercion, or other unlawful means to induce [a person] to vote or refrain from voting ..."⁴ Some state laws define intimidation more closely in response to specific incidents. For instance, a Louisiana law, passed in 2004, prohibits the possession of firearms at a polling place.⁵ These laws put an end to the tactics of physical intimidation and coercion that flourished in the Jim Crow South. However, the laws do not clearly address tactics of non-physical intimidation, which have been evaluated on a case-by-case basis. For example, on the day of the 2004 election, a federal judge in South Dakota ruled that poll watchers who followed voters out of the polls and copied their license plate numbers were committing voter intimidation, while a federal judge in Ohio ruled that poll-watchers who checked voters' names against a list of registered voters were not committing voter intimidation.⁶

2.2 Intimidation Tactics

Despite the passage of the Voting Rights Act and state legislation that prohibits physical intimidation, voter intimidation continues to be practiced in more subtle ways. The most common tactic involves dispatching poll monitors to intimidate voters. The political parties often dispatch monitors or poll-watchers on Election Day to look for potential vote fraud and to challenge illegal votes. While the parties have a legal right to monitor elections, poll-watching programs often exceed their legal bounds. Minority and low-income districts are targeted for strict scrutiny, and watchers have been accused of harassing voters, improperly interjecting themselves into the election administration (by handling ballots for instance), intentionally slowing the voting process in opposition precincts, spreading false information, and intimidating minority voters via big-brother-is-watching tactics.⁷

Poll-watching programs are almost always official actions of state parties and are not operated by fringe or cloaked groups. Before the Voting Rights Act, the Democratic Party kept African-American voters in Southern states away from the polls through threats and acts of violence. Since the 1950s, however, it has been the Republican Party which has most often dispatched poll-watchers to intimidate voters. One notable program, the National Ballot Security Task Force, was deployed to New Jersey precincts in 1981 by the Republican National Committee (RNC) and affiliated organizations. The watchers included off-duty but armed policemen amongst other volunteers all wearing official looking armbands.⁸ Signs were erected proclaiming "Warning. This area is being patrolled by the National Ballot Security Task Force. It is a crime to falsify a ballot or to violate election laws. If you are not registered, you cannot vote. ... You must vote in your own name. You may only vote one time."⁹ Although the signs were ordered down mid-afternoon by the state superior court, charges of minority intimidation and voter

suppression abounded.¹⁰ An investigation by New Jersey Attorney General Zazzali found violation of election law but found no individuals rendered unable to vote. As a result, no criminal charges were filed.¹¹

Intimidating poll-watching programs are not a thing of the past: similar tactics were used in the 2008 election. For example, the Wisconsin Republican Party called for poll-watchers (specifically “veterans, policemen, security personnel, firefighters etc.”) to monitor inner-city polling places,¹² which are typically minority and Democratic precincts. Poll-watchers were deployed to NH polling places, and in fact the state Republican Party successfully sued to confirm the right to observe same-day registration in the state.¹³

Though in-person intimidation usually happens at polling places, sometimes voters are confronted elsewhere. A private detective allegedly in the employ of Pat Rogers, a famed Republican lawyer, came to the house of two Latino voters in New Mexico to investigate and verify the legality of their registration. Those questioned reported feeling confused and intimidated. The ACLU filed suit in response, claiming that the Republican Party illegally used and disseminated personal information during the investigation.¹⁴

3. DISRUPTING COMMUNICATIONS

In order to suppress voter turnout, both major parties have occasionally resorted to hampering the opposition’s ability to communicate with voters. Because these tactics tend to involve attacking communication or transportation infrastructure, they are often illegal under harassment or property protection laws. Although the perpetrators of these acts of suppression have been successfully prosecuted, there are few election-specific laws which make these tactics legally different from any other form of property damage or harassment.

3.1 Phone Jamming

During the 2002 midterm elections in New Hampshire, the state Democratic Party set up call centers to facilitate a massive get-out-the-vote effort capable of raising turnout and answering voter’s questions. The Republican Party hired out-of-state call centers to repeatedly call the Democratic phone lines, essentially crashing the switch board and eliminating the effectiveness of the call center.¹⁵ The principal agent, Allen Raymond, claims in his autobiography of the incident that the RNC approved the operation and that he conversed with various leaders of the national and state party; the RNC adamantly denies these claims. Raymond served time for conspiracy to commit phone harassment,¹⁶ and a co-conspirator served time on similar conspiracy to harass charges.¹⁷ In response to the fact that Raymond was prosecuted under general phone harassment laws because there was no election specific statute, New Hampshire law has since been updated to make this tactic a class B felony.¹⁸ No other state has enacted a law explicitly outlawing communications disruption.

3.2 Physical Sabotage

Physical acts of sabotage have (rarely) been used to hamper get-out-the-vote operations. In 2004, volunteers for the John Kerry presidential campaign in Milwaukee slashed the tires of 25 vehicles rented by the Republican Party, which were to be used to transport poll-watchers and voters to polling places on Election Day.¹⁹ Although the perpetrators were paid employees, the Democratic Party was adamant that these were rogue acts and not approved or condoned by the party.²⁰ Four people served jail time on misdemeanor charges; although the judge called the acts voter suppression, no charges were brought under election laws.²¹

4. DISINFORMATION

Disinformation, defined as the dissemination of information known to be false or inaccurate, has a storied history in American elections. While some efforts appear simply absurd, others could potentially suppress turnout significantly. Like intimidation, the effects of disinformation campaigns are extremely hard to quantify. However, it is near certain that at least some voters have decided not to vote based on false or inaccurate information spread by disinformation campaigns.

4.1 Disinformation Tactics

Automatic calling systems have been used in recent elections to quickly spread false information designed to keep voters away from the polls. In the 2008 presidential election, Latino voters in Nevada received automated calls “informing” them that it would be possible to vote by phone.²² In the battleground state of Ohio voters were told via robo-calls that Democrats should vote on the 5th to avoid long lines, or received false information concerning the location of the polling places.²³ Text messages, similarly encouraging Democrats to wait to vote until the day after polls closed, were received in a number of swing states.²⁴ In previous years calls have misinformed voters about the necessity of identification, and in 2006 some voters were told via robo-calls that their registration to vote had expired and that attempting to vote would lead to arrest.²⁵

Fliers have also been used in disinformation campaigns to intimidate voters and spread false information. In the 2008 election fliers at various university and college campuses told potential voters that the election had been postponed a day.²⁶ Fliers at Drexel University in the swing state of Pennsylvania warned students that voting with a “prior criminal record” or unpaid parking tickets would result in immediate arrest.²⁷ In addition RNC fliers read “SKIP THIS ELECTION” in some areas of Virginia in 2006, prompting some voters to believe the election had been postponed or cancelled.²⁸ In another instance, thousands of fliers were mailed and posted in Virginia, stating that Democrats were supposed to vote on Wednesday to ease the expected heavy voter turnout on Tuesday. Though distributing false information to voters is a Class 1 misdemeanor in Virginia, state officials decided not to press charges against the source of the flyer, calling it a “joke that got out of control.”²⁹

There is an important difference between disinformation intended to suppress votes and misleading information intended to change a voter's opinion of a candidate. As long as it is not libelous, disseminating misleading information about a political candidate is protected under the First Amendment.³⁰ In 2006, the National Republican Congressional Committee (NRCC) funded repeated robo-calls in New Hampshire's Second District that began, "Hello, I'm calling with information about Paul Hodes."³¹ Though the end of the message revealed that the robo-call was paid for by the NRCC, many people hung up after the first line, believing the call was from Hodes, the Democratic candidate. Voters reported being annoyed by the persistent robo-calls they believed were coming from the Hodes campaign and formed a negative opinion of the candidate as a result. However, Assistant Attorney General James W. Kennedy said that robo-calls and push polls are legal in New Hampshire under RSA 664:16-a, provided that the organization funding the call is identified.³²

4.2 State Disinformation Laws

Only three states have passed laws that specifically outlaw disinformation. Kansas passed a law in 2001 that expands the definition of voter intimidation to include transmitting false information intended to prevent voters from casting ballots.³³ It also increased the penalty for voter intimidation from a misdemeanor to a felony.³⁴ Virginia passed a law in 2007 that made "knowing communication of false information to a voter" a misdemeanor.³⁵ Earlier this year, New Hampshire passed a law that defined voter suppression as "knowingly attempting to prevent or deter another person from voting or registering to vote based on fraudulent, deceptive, misleading, or spurious grounds or information."³⁶ The law also redefined election related bribery, intimidation, and suppression as Class B felonies.³⁷ An additional three states, Washington,³⁸ Texas,³⁹ and Missouri,⁴⁰ have pending legislation that would penalize disinformation.

4.3 Deceptive Practices and Voter Intimidation Prevention Act of 2009

First introduced in 2007, the Deceptive Practices and Voter Intimidation Prevention Act (S. 453) was sponsored by then Senator Barack Obama in order to protect Americans from tactics that intimidate voters and prevent them from exercising their right to vote.⁴¹ The legislation came about as a result of collected reports of deceptive practices or voter intimidation from more than 30 states after the 2006 elections. The Act would make it unlawful for anyone to knowingly communicate false election-related information, provided definitions of what constitutes a deceptive practice, outlined a system to help spread correct information to voters, created a reporting structure for incidents to help citizens address grievances, and called for the Department of Justice to work with voter protection organizations to address the widespread problem of voter suppression. The act imposed penalties of up to five years in prison or a \$100,000 fine on people who spread disinformation to keep voters away from the polls.⁴²

During the 110th Congress, the Deceptive Practices and Voter Intimidation Act (S.453) was introduced in the Senate, where it was referred to the Senate Committee on the Judiciary but never made it out of committee.⁴³ It has been reintroduced in the 111th

Congress as H.R. 97, the Deceptive Practices and Voter Intimidation Act of 2009, by Representative John Conyers and has been referred to the House Committee on the Judiciary.⁴⁴ The 2009 version is very similar to the previous version of the Act and institutes further measures to prevent and punish voter suppression tactics including: authorizing any person to report to the Attorney General false election information or intimidation of voters; requiring the Attorney General immediately after receiving a report to refer the matter to appropriate federal and state authorities for criminal prosecution or civil action; and mandating the establishment of a Voting Integrity Task Force to carry out the requirements of the Act.⁴⁵ If enacted, this Act would impose stricter regulations on voter suppression and set the tone for state debates over disinformation.

4.4 Voter Intimidation Restitution Fund (VIRF)

In 2007, following a disinformation campaign intended to suppress Latino voters, California passed a law establishing a Voter Intimidation Restitution Fund (VIRF).⁴⁶ The law establishes that anyone found guilty of voter intimidation may be ordered to pay a fine determined by the court, “commensurate with the seriousness of the offense,” that goes into the VIRF. The Secretary of the State is then authorized to use the money in the VIRF for “voter education campaigns addressing the specific crime committed by a person convicted of voter intimidation.”⁴⁷ California’s innovative approach to countering disinformation is budget-neutral since fines fund the voter education campaigns and cover the costs of implementation and administration.

5. CHALLENGING VOTER ELIGIBILITY

In the Jim Crow South, minorities were often denied the right to vote through the discriminatory application of literacy tests and poll taxes. Though the Voting Rights Act outlawed both of these tactics, political operatives continue to attempt to suppress the registrations of supporters of their opponents. Voter identification laws and voter purges, undertaken in the name of preventing voter fraud, can lead to the creation of barriers to voting for eligible citizens.

5.1 Voter Identification Laws

The debate regarding what constitutes proper identification for voting, or even if identification is necessary, is central to the issue of voter suppression and voter fraud. Different states have varying rules concerning the appropriate identification needed to register to vote and cast a ballot. Some states, like Florida and Georgia, only accept photo identification. Other states, like New Hampshire and Vermont, accept both photo and non-photo identification. The issue of requiring identification in order to vote has become a controversial, partisan issue. Republicans, who tend to support stricter voter identification laws, claim that a requirement for state photo identification cards will curb voter fraud by making it harder for someone to claim they are someone else. Democrats, on the other hand, view voter identification requirements as forms of voter suppression

that disproportionately affect minority, poor, and elderly voters who often lack the required forms of identification and tend to vote Democratic.⁴⁸

An important case to note is the Supreme Court decision in *Crawford v. Marion County Election Board* (2008). In this case, the Indiana Democratic Party, the Marion Democratic Central Committee, and the League of Women Voters challenged Indiana's new voter identification laws. In a 6-3 decision, the Supreme Court upheld the constitutionality of the Indiana law requiring voters to provide photo identification. Justice Stevens, in the leading opinion, stated, "A state law's burden on a political party, an individual voter, or a discrete class of voters must be justified by relevant and legitimate state interests 'sufficiently weighty to justify the limitation.'"⁴⁹ Therefore, it was deemed that requiring photo identification was not a sufficient burden on a voter to be considered a preventative measure or barrier to voting. Due to this decision, states continued to establish and enforce voter identification laws.

New Hampshire has some of the most lenient voter identification laws in the nation. The state meets the minimum ID requirements of the federal Help American Vote Act of 2002 (HAVA) by requiring first-time voters who register by mail and do not provide ID verification with their registration to show identification before voting; both photo and non-photo IDs, such as current utility bills and bank statements, are accepted.⁵⁰ But the system also relies heavily on the trustworthiness of the voter. If the voter is able to show one form of identification, but not a proof of residency, the voter will fill out a domicile affidavit and sign a statement swearing that they are the person they claim to be. No one can really tell if someone is lying or not; this is all based on trust.⁵¹ Although acts of voter suppression and incidents of voter fraud are extremely rare in New Hampshire, several bills concerning voter identification are currently being considered in the state legislature. HB 265, sponsored by Representative David Pierce, establishes an age affidavit for people registering to vote who do not have proper documentation at the time of registration. This bill passed the house in the 2009 session.

5.2 Absentee Voting

There are a number of different options offered to voters for voting prior to Election Day. Some states offer the option of returning ballots by mail, referred to as absentee voting, while others states allow early voting where voters can cast their ballots in person at the offices of county clerks or at other locations.⁵² All states also permit members of the military who are stationed abroad to vote absentee. Thirty-one states offer some sort of early voting that allows voters to visit an election official's office and cast a vote in person without having to give an excuse for not being able to vote on Election Day. Early voting is conducted on the same equipment used in the regular election, as opposed to absentee voting which is done on mail-in paper ballots.⁵³ New Hampshire does not allow no-excuse, in-person early voting at election offices.

In regards to absentee voting, there is a lot of variation in states' procedures for casting an absentee ballot. For example, 28 states allow no-excuse absentee voting which allows any registered voter to cast an absentee ballot without requiring a reason for why the

voter is voting absentee.⁵⁴ This can make it easier for residents to vote by dismantling obstacles to voting. New Hampshire does not allow no-excuse absentee voting. New Hampshire voters may vote by absentee ballot if they will be absent on the day of the election from the county, city, or town in which they are registered to vote; if they will be unable to appear in public because of a religious observance; if they will be unable to vote in person because of physical disability; if they will be unable to appear at any time during polling hours because of an employment obligation; or if they will be unable to vote in person by reason of military service.⁵⁵ In order for the absentee ballot to be counted the voter must sign an affidavit affirming he/she is indeed entitled to vote by absentee ballot, complete the absentee ballot, and mail everything back to the town or city clerk by 5pm on the Election Day. Although voting absentee is an option for New Hampshire residents, the state prefers voters register in person. Challenges also arise when it comes to citizens and military personnel voting from abroad.

United States citizens abroad, both military and civilian, face a number of challenges when attempting to vote, including ballots that arrive late, missed registration deadline, and difficulties getting ballots witnessed or notarized.⁵⁶ In the 2008 elections, overseas voters requested thousands of ballots and it's suspected that many never made it back on time to be counted. Military members and citizens abroad are allowed to participate in absentee voting under the Uniformed and Overseas Citizen Absentee Voting Act. The law covers 1.4 million military service members and 3.7 million overseas citizens not affiliated with the government.⁵⁷ Overseas military voters from New Hampshire can fax their ballot *requests*, but the state requires the actual ballots to be transmitted to and from voters by postal mail. Unfortunately, survey data shows that a significant number of voters abroad, both civilian and military, did not cast ballots because they never received them or received them too late.⁵⁸ Difficulties with traditional mailing, address oversights, and the long periods of time it takes to send mail back to the states are all hurdles that can disenfranchise overseas voters, but there are several options that can remedy this.

According to the Pew Center on the States, the time needed for ballots to travel by mail takes longer than New Hampshire provides in its process and therefore military voters abroad would need an additional 28 days to have enough time to vote.⁵⁹ One step New Hampshire could take to ensure voters have enough time to vote is to send them blank ballots by fax, e-mail, or other electronic means. This would help voters get their ballots much faster and give them more time to return their completed ballots by postal mail. Another option would be to place a tracking feature on ballots mailed back to the U.S. in order to ensure confirmation of delivery.⁶⁰ Another option, although controversial, is the to use the Internet. A Web-based system for military users could allow them to cast a vote more quickly. The main problem with the Internet is that it is not secure and can pose several problems related to confidentiality. Finally, another option New Hampshire could consider is to send out blank ballots to voters earlier or extend the deadline by which completed ballots must be received to be counted.⁶¹ All of these are recommendations to ensure that all voters, whether they are abroad or at home, have a voice in the political process.

5.3 HAVA Requirements on Statewide Voter Databases

In the aftermath of the 2000 elections and the many logistical issues that were highlighted, the Help America Vote Act (HAVA) was passed to reform many facets of the voting process and increase voter education and turnout. In addition to provisions requiring replacement of voting machines, voter registration reform, better access to voting for the handicapped, and poll worker training, HAVA requires each Secretary of State to create, maintain, and secure a centralized voter registration database.⁶² HAVA requires that the voter list be “coordinated with other agency databases within the State.”⁶³ The reason for mandating this coordination is to allow names and identifying information on the voter list to be matched with entries in state motor vehicles or Social Security databases. When an entry in the voter database cannot be matched with an entry in one of the other databases, it is liable to be purged. HAVA provides no guidelines for conducting matches or purges, so each state has been free to develop its own matching and purging policies.

5.4 Voter Purges

Purges of the voter registration database have varied widely state by state. In some states, up to 15 percent of voters were automatically purged from the rolls as a result of the switch to a centralized system, while in others, none were.⁶⁴ The difference in numbers of voters purged resulted from differing matching criteria. Some states, including perennial swing state Florida, have implemented “No Match, No Vote” policies, whereby a name is purged from the rolls if it does not exactly match an entry in another government database.⁶⁵ Possible reasons for a mismatch include a change in address, last name, or a typographical error by the person inputting the information. Under such a policy, many voters are disenfranchised through no fault of their own.

A secondary issue is the timing of purges. In October 2008, Michigan and Colorado conducted voter purges within 90 days of the presidential election, in violation of federal law.⁶⁶

5.5 New Hampshire Policies on Purges

Unlike many other swing states, New Hampshire did not undergo voter purges in the weeks leading up to the 2008 election. Assistant Secretary of State Daniel J. Cloutier explained that his office did not conduct a statewide voter purge because it does not have the authority to do so.⁶⁷ Voters are only matched with the Department of Safety Motor Vehicles database when they are first entered into the system; that is, when they register to vote.⁶⁸ A town supervisor of the checklist or city registrar enters the registrant’s driver’s license number into the statewide voter database. Software matches the entered driver’s license number with an extract of the Department of Safety, Division of Motor Vehicles Driver License database, returning only the address if there is a match. If the registrant does not provide a driver’s license number, their Social Security number is checked against the Social Security database. If there is no match, the voter’s registration

is flagged for the Secretary of State's office. However, the flag does not affect the voter's registration status, since the Secretary of State does not have the authority to add or remove any names from the rolls.⁶⁹

Since town supervisors of the checklist and city registrars are charged with maintaining their voter lists, eliminating voters who have died or moved away, it is theoretically possible that a voter may be removed from the rolls by mistake, says Cloutier. However, since New Hampshire allows same-day voter registration at polling places, the voter is not disenfranchised as that voter would be able to re-register and vote with a regular ballot on Election Day.

5.6 Voter Caging

Even if public officials act in good faith when conducting voter list maintenance, a voter can still see his registration challenged by partisan operatives through a tactic known as voter caging. Voter caging consists of sending mail to addresses on voter rolls, compiling a list of mail returned as undelivered, and using the list as a basis to purge or challenge voters' registrations.⁷⁰ Proponents of the practice argue that they have a right to challenge voters whose registrations contain invalid mailing addresses. However, ascertaining whether an address is valid through voter caging is notoriously unreliable. There are many legitimate reasons why mail may be returned as undeliverable, such as clerical errors in the voter database, temporary absence, not having one's name listed on a mailbox, or having different residence and mailing addresses.⁷¹ Recognizing the unreliability of caging, the National Voter Registration Act (NVRA) prohibits states from purging voters based solely on non-forwardable mail returned as undeliverable.⁷²

In addition, voter caging is often an explicitly partisan practice. Targeted at registered members of the opposing party, especially minorities, voter caging often aims to lower the vote count of a political opponent. Sometimes, the effect of these operations can be massive. Consider this leaked memo from a political operative conducting a voter caging program in advance of the 1986 Louisiana Senate race:

I know this race is really important to you. I would guess that this program will eliminate at least 60-80,000 folks from the rolls. . . . If it's a close race, which I'm assuming it is, this could keep the black vote down considerably.⁷³

In 1982, a consent decree was issued that prohibited voter caging targeted at specific racial groups.⁷⁴ As the above quote illustrates, it had little immediate effect, and voter caging has since continued unabated. In 2004, nearly half a million voters in nine states were targeted for voter caging, and between 2004 and 2006, 77,000 voters nationwide had their registrations challenged.⁷⁵ In 2008, a federal court in Michigan ordered elections officials to restore the registrations of 1,438 voters purged from the voter database through caging.⁷⁶ Fortunately, New Hampshire Assistant Attorney General James W. Kennedy confirms that there have been no reported cases of voter caging in New Hampshire.⁷⁷

5.7 Voter Registration Challenges

In New Hampshire, the majority of challenges occur at the same-day registration table on Election Day. Under current law, anyone can challenge the registration of any voter, forcing the voter to sign a challenge affidavit before being allowed to cast a ballot.⁷⁸ In other states, challenged voters are given provisional ballots, which are counted at the discretion of elections officials, but in New Hampshire, challenged voters are given a regular ballot. Nevertheless, since the challenger does not incur any penalty, there is an incentive for political operatives to mount frivolous challenges to discourage supporters of their opponents from voting. In the 2008 election, all of the handful of voter suppression allegations reported to the Office of the Attorney General involve claims of harassment by partisan poll-watchers who challenged voters without cause.⁷⁹

HB 276, currently in committee, would require challengers to sign an affidavit stating specific grounds for their challenge. Knowingly challenging a voter on fraudulent or spurious grounds or engaging in mass, indiscriminate, and groundless challenges would become a class A misdemeanor.⁸⁰ Assistant Attorney General James W. Kennedy agreed that a law that creates a burden of proof on the challenger may protect voters from frivolous challenges while it protects the right to challenge voters when there is legitimate reason to believe a person is ineligible to vote.⁸¹

6. POLICY RECOMMENDATIONS

New Hampshire has a record of relatively clean elections, but that doesn't guarantee that some or all of the above methods of voter suppression have not and will not be attempted. The one infamous exception, the phone jamming scandal, has been aggressively legislated against.⁸² Further, a recently enacted New Hampshire voter suppression law represents some of the most aggressive legislation in the union.⁸³ However, it can be difficult to catch those making interstate or even international robo-calls, or distributing fliers anonymously at unusual hours. Legislation may not be able to end all acts of voter suppression, but changes can help address the problem.

6.1 Changes to Existing Legislation

NH RSA 659:40 bans most tactics of suppression that have been employed across the nation by using very broad language. Clarification might be necessary to ban efforts to mislead voters using technically true information, such as the "Skip This Election" campaign. The current bill also does not make sabotaging get-out-the-vote efforts illegal under election law. The bill prohibits suppressing individual voters, but not organizations that enable voting by providing reminders and rides to the polls. Although tire slashing, for instance, still remains a crime in and of itself, its use in suppressing votes specifically is not reflected in current legislation.

6.2 Voter Education

Because not everyone guilty of suppressing the vote will be caught, and often the damage will have already been done, an education response to misinformation campaigns will be necessary to ensure fair elections. The National Network for Election Reform suggests that such education programs may be best legislated at the state level and handled via the election authorities and existing structures.⁸⁴ Since the main portal for elections information in New Hampshire is the Secretary of State's website, it may be worthwhile to determine how information on the website may be made more easily accessible.⁸⁵

6.3 Voter Intimidation Restitution Fund

California recently passed legislation setting up a Voter Intimidation Restitution Fund.⁸⁶ The law allows the court to impose a fine (in addition to any other penalty) on those found guilty of voter intimidation. The fund (located within the State Treasury) can then be appropriated by the legislature to the Secretary of State to attempt to undo the crime via education programs. The legislation is revenue neutral as the fines cover the costs of implementation and administration. Other states, New Hampshire included, should consider this option as a way to create more disincentives to voter suppression and as a way to pay for voter education programs.

7. CONCLUSION

New Hampshire is a state generally known for clean and well-run elections, other than the highly publicized phone jamming scandal of 2002. This may be the case because New Hampshire does not have areas densely populated with minorities, the common targets of suppression efforts. On the other hand, New Hampshire does have a large student population and is more vulnerable to suppression efforts due to the overall small number of eligible voters. Using general language, New Hampshire law prohibits most of the tactics used to suppress voters around the country. However, there are a number of steps that can be taken to further deter voter suppression and limit the impact of illegal tactics: expanding the definition of voter suppression to include actions targeting get-out-the-vote efforts, making elections information more easily accessible online, and establishing a voter intimidation restitution fund.

APPENDIX A. PROPOSED NEW HAMPSHIRE LEGISLATION RELATING TO VOTER SUPPRESSION

Source: New Hampshire General Court

<http://www.gencourt.state.nh.us/index/>

Category: Absentee Voting

Proposed Legislation	Brief Summary	Status
HB 573-FN (Rep. Borden)	“This bill eliminates the requirement that a person be absent from the city, town, or unincorporated place or unable to appear because a religious observance or physical disability in order to vote by absentee ballot.” <i>No-Excuse Absentee Voting</i>	House Election Law Committee (Report Filed – Inexpedient to Legislate)

Category: Age Requirements

Proposed Legislation	Brief Summary	Status
CACR 4 (Rep. B. Browne) SB 21 (Sen. Reynolds)	“This constitutional amendment concurrent resolution provides that 17-years-olds may vote in primaries if they will be 18 years of age on the date of the general election.”	House Election Law Committee (Miscellaneous) Senate Election Law and Veterans’ Affairs Committee (In Committee)
HB 265 (Rep. Pierce)	“This bill establishes an age affidavit for persons registering to vote and modifies the affidavit of a challenged voter.”	House Election Law Committee (Passed / Adopted).

Category: Challenging Voters

Proposed Legislation	Brief Summary	Status
HB 276-FN (Rep. Pierce)	“This bill establishes additional requirements for challenging voters, including a challenge affidavit, and establishes penalties for prohibited challenges.”	House Criminal Justice and Public Safety Committee (In Committee)

HB 386 (Rep. Fields)	“This bill establishes requirements for challenging a voter, including a challenge affidavit.”	House Election Law Committee (Inexpedient to Legislate).
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Category: Domicile

Proposed Legislation	Brief Summary	Status
HB 614 (Rep. Pierce)	“This bill authorizes students to claim domicile for voting purposes in the town or city of the student’s institution of learning.”	House Election Law Committee (Report Filed – Ought to Pass Amended).

Category: Photo Identification

Proposed Legislation	Brief Summary	Status
HB 626-FN (Rep. Boutin)	“This bill requires that a voter present a valid photo identification to vote in person. Voters without photo identification may vote by provisional ballot. This bill also eliminates the fee for nondriver’s picture identification cards.”	House Election Law Committee (In Committee).

Category: Requirements

Proposed Legislation	Brief Summary	Status
HB 258 (Rep. Vaillancourt)	“This bill eliminates the requirement that an undeclared voter register as a member of a party in order to vote in a primary election.”	House Election Law Committee (Inexpedient to Legislate)
HB 513 (Rep. Pierce)	“This bill clarifies the prohibition on voting in more than one state.”	(Report Filed – Ought to Pass).
SB 118 (Sen. Houde)	“This bill modifies the eligibility requirements for receiving assistance in voting.”	Senate Election Law and Veterans’ Affairs (Passed)

Category: Telephone Calls

Proposed Legislation	Brief Summary	Status
HB 432-FN (Rep. Pierce)	“This bill makes it a class B felony for a person to commit telephone harassment by making calls to a telephone number used to facilitate transportation of voters or otherwise to support voting or registering to vote.”	House Criminal Justice and Public Safety Committee (In Committee).
HB 667-FN (Rep. Pierce)	“This bill prohibits misrepresenting the origin of a campaign call.”	House Election Law Committee (Passed/Adopted with Amendment)

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