

**Hearing of the Senate Judiciary Committee
“Executive Nomination”
Tuesday, March 11, 2008**

**Response to Question Submitted by Senator Sheldon Whitehouse
to Grace Chung Becker**

Will the Department of Justice support S. 2305, the Anti-Caging Prohibition Act? If not, why not?

Answer: The legislation is under review by the Department. I am firmly committed to vigorously enforcing all of the federal civil rights laws. If confirmed, I would be willing to work with the Committee on any civil rights legislation.

If confirmed, I will ensure that the Civil Rights Division investigates any credible allegations that voters are being discriminated against on the basis of their race, and that it enforces the statutes within its jurisdiction to ensure equal access to the polls for all citizens. To the extent that “vote caging” may violate voters’ rights under existing federal law, I will ensure that the Civil Rights Division enforces the statutes currently within its jurisdiction that could be used to prevent unlawful disenfranchisement.

First, the Department is charged with enforcing the National Voter Registration Act of 1993 (NVRA). As you know, the NVRA specifies voter registration procedures for federal elections. Specifically, Section 8 of the NVRA provides that the name of a registrant may be removed from the official list of eligible voters in only a few circumstances: (i) at the voter’s request; or (ii) as provided by State law, by reason of criminal conviction or mental incapacity; or (iii) under a program conducted by the State, as required by the NVRA, to remove ineligible voters who have died or have moved. Moreover, even a voter who is thought to have moved may only be removed from the voter rolls if he or she has failed to respond to a confirmatory mailing from the State and has failed to vote in two consecutive federal general elections. 42 U.S.C. 1973gg-6. Therefore, under federal law, a voter may not be removed from a voter registration list merely for failing to vote or because a private mailing sent to the voter was returned as undeliverable. If States remove voters from the registration rolls without following the protections afforded by the NVRA, I will ensure that the Division takes appropriate action.

Second, the Department of Justice also enforces certain provisions of the Help America Vote Act of 2002 (HAVA). The Department is charged with enforcing Section 302(a) of HAVA, which provides that if an individual’s name does not appear on the voter registration list, or if an election official asserts that the individual is not eligible to vote, but the individual asserts he or she is a registered voter and eligible to vote in a federal election, the individual is entitled to cast a provisional ballot in that election. If the appropriate State or local election official then determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted in that election in accordance with State law. Additionally, States are required to establish a

system by which individuals who cast provisional ballots may determine whether their ballots were counted. 42 U.S.C. 15482(a). If States fail to afford voters their rights under HAVA, I am committed to taking appropriate action.

Third, pursuant to the Voting Rights Act of 1965, the Department of Justice monitors elections in various parts of the country with Department of Justice personnel and federal observers. 42 U.S.C. 1973a, 1973g. Our election monitoring program is a major component of our work to protect against illegal discrimination at the polls. Each year, the Department coordinates the deployment of hundreds of federal government employees in counties, cities, and towns across the country to monitor elections and ensure equal access to the ballot. In 2006, the Department deployed a record number of Department monitors and federal observers from the Office of Personnel Management to jurisdictions across the country for the mid-term election. In total, more than 800 federal personnel monitored the polls in 69 political subdivisions in 22 States during the November 7, 2006, election. Overall, in calendar year 2006, we sent over 1,500 federal personnel to monitor elections, doubling the number sent in 2000, a presidential election year. If the Division detects discrimination on the basis of race, color or membership in a language minority group in voting practices or procedures, the Division is authorized to conduct an investigation and file suit under Section 2 of the Voting Rights Act. 42 U.S.C. 1973.