



March 16, 2017

**VIA ELECTRONIC MAIL & ONLINE PORTAL**

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Department of Justice  
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Online Request at FOIAonline

**Re: Expedited Freedom of Information Act Request**

Dear Freedom of Information Act Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, and the Department of Justice's implementing regulations, 28 C.F.R. Part 16, American Oversight makes the following request for records.

American Oversight promotes accountability in government through transparency, enforcing the public's right to know what the government is up to. With scores of new individuals joining the government in key, senior positions, it is essential to understand who they are and the backgrounds they bring to their work. Without such transparency, the public cannot have confidence that government decisions are shaped by the interests of the American people, not personal or

professional allegiances. To that end, American Oversight is seeking information regarding R. Alexander Acosta, President Donald Trump's nominee for Secretary of Labor.<sup>1</sup> To better understand who Mr. Acosta is, his prior service at the U.S. Department of Justice (DOJ), and Mr. Acosta's involvement in a 2004 matter that threatened voting access for African Americans, American Oversight seeks the following documents.

### Requested Records

American Oversight requests that DOJ produce the following within twenty business days and seeks expedited review of this request for the reasons identified below:

1. All records relating to the preparation of and the decision to send the 2004 letter from Mr. Acosta to U.S. District Judge Susan Dlott arguing that it would undermine the enforcement of state and federal election laws if individual citizens could not challenge voters' credentials, including any approval memorandum related to the letter; recommendations and analysis related to the arguments contained in the letter and the decision to send the letter; any clearance with DOJ leadership regarding the letter; any communications with the Office of Public Affairs regarding the letter, including preparation of messaging; and any communications with the media related to the letter. (See attached letter.)
2. All records relating to a 2007 press statement issued by Mr. Acosta regarding the letter to Judge Dlott. (See attached article citing statement.)

Please provide all responsive records from July 1, 2003, through December 31, 2007.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

For reference, Mr. Acosta served first in the Civil Rights Division as Principal Deputy Assistant Attorney General and Assistant Attorney General for Civil Rights Division at DOJ from August of 2003 to June of 2005, and then as U.S. Attorney for the Southern District of Florida from June of 2005 through June of 2009. In conducting your search, please note that Mr. Acosta has used different names professionally, and a search should include variations of his name including Rene Alexander Acosta, Rene Acosta, Alexander Acosta, and Alex Acosta.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms "record," "document," and

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<sup>1</sup> Alan Rappaport, *R. Alexander Acosta, Law School Dean, Is Trump's New Pick for Labor*, N.Y. TIMES, Feb. 16, 2017, <https://www.nytimes.com/2017/02/16/us/politics/alexander-acosta-labor-secretary-trump.html>.

“information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.<sup>2</sup> **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if the material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.**<sup>3</sup>

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered DOJ’s prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.**<sup>4</sup> Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, **now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files.** For example, a custodian may have deleted a responsive email from his or her email program, but the archiving tools of DOJ would capture that email under Capstone. Accordingly, American Oversight insists that DOJ use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is

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<sup>2</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

<sup>3</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

<sup>4</sup> Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), available at <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Agencies & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), available at <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

available to work with DOJ to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”<sup>5</sup> If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”<sup>6</sup> Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”<sup>7</sup> Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”<sup>8</sup>

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.<sup>9</sup> Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

**You should institute a preservation hold on information responsive to this request.** American Oversight intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, DOJ is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with DOJ before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and DOJ can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15<sup>th</sup> Street, NW, Suite B255, Washington, DC 20005. If it will accelerate release

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<sup>5</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

<sup>6</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>7</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>8</sup> *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

<sup>9</sup> *Mead Data Central*, 566 F.2d at 261.

of responsive records to American Oversight, please also provide responsive material on a rolling basis.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k), American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii).<sup>10</sup>

American Oversight requests a waiver of fees because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding” of government operations and is not “primarily in the commercial interest of the requester.”<sup>11</sup> The disclosure of the information sought under this request will document and reveal the operations of the federal government, including how public funds are spent and how officials conduct the public’s business.

To date, the Trump administration has not evidenced that it takes seriously the vetting of political appointees. Most recently, Andrew Puzder, the prior nominee to lead the U.S. Department of Labor, withdrew himself from consideration after questions were raised about his background months after he was first put forth.<sup>12</sup> Mr. Acosta’s nomination came just one day after Mr. Puzder’s withdrawal, raising questions about the scope of Mr. Acosta’s vetting.

As noted above, days before the 2004 presidential election, Mr. Acosta wrote a letter to U.S. District Judge Susan Dlott in Ohio arguing that it would undermine the enforcement of state and federal election laws if individual citizens could not challenge voters’ credentials.<sup>13</sup> (See attached.) These voter challenges, known as “vote caging,” have been described as “a notoriously unreliable means of calling the voter rolls into question and can lead to unwarranted purges or challenges of eligible citizens.”<sup>14</sup> In June 2007, the letter to Judge Dlott became part of an examination by the House Judiciary Committee as to “whether the Civil Rights Division took positions in support of a Republican agenda to suppress the votes of poor and elderly minorities who tend to vote for

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<sup>10</sup> See, e.g., *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

<sup>11</sup> 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k).

<sup>12</sup> Alan Rappeport, *Andrew Puzder Withdraws from Consideration as Labor Secretary*, N.Y. TIMES, Feb. 15, 2017, <https://www.nytimes.com/2017/02/15/us/politics/andrew-puzder-withdrew-labor-secretary.html>.

<sup>13</sup> Letter from Asst. Att’y Gen. R. Alexander Acosta to J. Dlott (Oct. 29, 2004), available at <https://web.archive.org/web/20080725115635/http://www.usdoj.gov/crt/voting/hava/spencer.pdf>.

<sup>14</sup> Justin Levitt & Andrew Allison, *A Guide to Voter Caging*, Brennan Center for Justice (June 29, 2007), <https://www.brennancenter.org/analysis/guide-voter-caging>.

Democrats.”<sup>15</sup> At the time, Mr. Acosta issued a statement discussing the content of the letter he had written two and a half years prior.<sup>16</sup> (See attached article citing statement.)

As Secretary of Labor, Mr. Acosta would oversee the agency tasked with holding federal contractors “responsible for complying with the legal requirement to take affirmative action and not discriminate on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin, disability, or status as a protected veteran.”<sup>17</sup> Given the questions regarding Mr. Acosta’s position on the rights of African Americans, the requested materials would significantly contribute to the public’s understanding of Mr. Acosta’s fitness to serve as Secretary of Labor.

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight’s financial interest. American Oversight’s mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight will also make materials it gathers available on our public website.

Accordingly, American Oversight qualifies for a fee waiver.

#### **Application for Expedited Processing**

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 28 C.F.R. § 16.5(b), (e)(1)(iv), American Oversight requests that the FBI expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief, that there is widespread and exceptional media interest and there exist possible questions concerning the government’s integrity, which affect public confidence. As discussed above, to date the Trump administration has not evidenced thorough vetting of its nominees. Only through careful vetting of senior officials can the public have confidence in the integrity of the federal government.

Mere days after Scott Pruitt was confirmed as Administrator of the Environmental Protection Agency, emails surfaced from his time as Oklahoma Attorney General reflecting close ties and coordination with the corporate entities he is now charged with overseeing.<sup>18</sup> The media has

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<sup>15</sup> Greg Gordon, *Ex-Justice Official Accused of Aiding Scheme to Scratch Minority Voters*, MCCLATCHY NEWSPAPERS, June 24, 2007, <http://www.mcclatchydc.com/latest-news/article24465595.html>.

<sup>16</sup> *See id.*

<sup>17</sup> OFFICE OF FED. CONT. COMPLIANCE PROGRAMS, MISSION STATEMENT, <https://www.dol.gov/ofccp/aboutof.html> (last visited Mar. 14, 2017).

<sup>18</sup> Coral Davenport & Eric Lipton, *The Pruitt Emails: E.P.A. Chief Was Arm in Arm With Industry*, N.Y. TIMES, Feb. 22, 2017, <https://www.nytimes.com/2017/02/22/us/politics/scott-pruitt-environmental-protection-agency.html>.

already demonstrated significant interest in Mr. Acosta's nomination.<sup>19</sup> Disclosure and analysis of Mr. Acosta's records prior to his committee hearing is necessary to avoid another confirmation as premature as that of Mr. Pruitt.

The requested documents will shed light on these issues of considerable interest to the public. The availability of Mr. Acosta's record from his time in public service while the U.S. Senate considers his nomination for Secretary of Labor is a quintessential example of "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence."<sup>20</sup>

Accordingly, American Oversight's request satisfies the criteria for expedition.

### Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with DOJ on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Cerissa Cafasso at foia@americanoversight.org or 202-869-5246. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,



Austin R. Evers  
Executive Director  
American Oversight

Atts.

cc: Sarah Isgur Flores, Director, Office of Public Affairs

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<sup>19</sup> Josh Dawsey & Eli Stokols, *Trump's 'Apprentice'-style Hiring Is Upending Washington*, POLITICO (Feb. 22, 2017, 06:43 PM), <http://www.politico.com/story/2017/02/donald-trump-apprentice-hiring-235281> ("Acosta was picked shortly after Puzder officially dropped out and wasn't at the 77-minute news conference where his nomination was announced. Trump didn't travel to Florida, where Acosta lives, to interview him. Acosta referred a request for comment to the White House."); John King et al., *Trump Names First Hispanic Cabinet Pick*, CNN (Feb. 16, 2017, 6:55 PM), <http://www.cnn.com/2017/02/16/politics/donald-trump-white-house-announcement/>; Barry Meier, *Labor Nominee's Role in Sex Case Could Draw Scrutiny*, N.Y. TIMES, Feb. 17, 2017, <https://www.nytimes.com/2017/02/17/business/alexander-acosta-jeffrey-epstein-case.html>; Yuki Noguchi, *Trump Chooses R. Alexander Acosta As New Labor Nominee*, NPR (Feb. 16, 2017, 4:31 PM), <http://www.npr.org/2017/02/16/515638102/trump-chooses-r-alexander-acosta-as-new-labor-nominee>.

<sup>20</sup> 28 C.F.R. § 16.5(e)(1)(iv).



U. S. Department of Justice

Civil Rights Division

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Office of the Assistant Attorney General

Washington, D.C. 20530

October 29, 2004

The Honorable Susan J. Dlott  
Judge of the United States District Court  
for the Southern District of Ohio  
Potter Stewart U.S. Courthouse  
Room 829  
100 East Fifth Street  
Cincinnati, OH 45202

**RE: *Spencer v. Blackwell*, Case No. 04CV738**

Dear Judge Dlott:


The United States writes to direct the court's attention to the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15301 et seq. Under this relatively new statute, state and local election officials must permit any individual whose name does not appear on the official registration list for the polling place or *whose eligibility to vote is called into question* to cast a provisional ballot if such individual declares that he "is a registered voter in the jurisdiction in which [he] desires to vote and that [he] is eligible to vote in an election for Federal office." 42 U.S.C. 15482(a). Thus, we emphasize that if voters are in fact challenged on November 2 under a statute like that in force in Ohio, as a matter of federal law those challenged voters must be given the opportunity to cast a provisional ballot even if they are unable to answer the specific questions posed by election judges.

We bring this provision to the court's attention because HAVA's provisional ballot requirement is relevant to the balance between ballot access and ballot integrity. Challenge statutes such as those at issue in Ohio are part of this balance. They are intended to allow citizens and election officials, who have information pertinent to the crucial determination of whether an individual possesses all of the necessary qualifiers to being able to vote, to place that information before the officials charged with making such determinations. Restricting the ability of citizens to make challenges when they have such information would undermine the ability of election officials to enforce their own state laws that govern the eligibility for voting and lessen their ability to examine potential voters under applicable federal standards for federal elections. See, e.g., 18 U.S.C. 611 (making it a federal crime for a non-citizen to vote in an election where a candidate for federal office is on the ballot).



In this regard, we observe that nothing in the Voting Rights Act facially condemns challenge statutes. Section 2 of the Act provides, in relevant part, that “[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” 42 U.S.C. 1973(a). Thus, a challenge statute permitting objections based on United States citizenship, residency, precinct residency, and legal voting age like those at issue here are not subject to facial challenge (as opposed to as applied challenge) under the Act because these qualifications are not tied to race. See *Mallory v. Eyrich*, 839 F.2d 275, 278 (6th Cir. 1988) (noting that Section 2 was intended “to banish the blight of racial discrimination in voting”).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Alexander Acosta', with a long horizontal line extending to the right.

R. Alexander Acosta  
Assistant Attorney General

cc Jim Petro  
Alphonse Gerhardstein

LATEST NEWS JUNE 24, 2007 4:05 PM

# Ex-Justice official accused of aiding scheme to scratch minority voters

## HIGHLIGHTS

Former Justice Department civil rights officials and election watchdog groups charge that a former Justice Department official's letter to a federal judge in Ohio sided with Republicans engaging in an illegal, racially motivated tactic known as "vote-caging" in a state that would be pivotal in delivering President Bush a second term in the White House.

Greg Gordon - McClatchy Newspapers

WASHINGTON — Four days before the 2004 election, the Justice Department's civil rights chief sent an unusual letter to a federal judge in Ohio who was weighing whether to let Republicans challenge the credentials of 23,000 mostly African-American voters.

The case was triggered by allegations that Republicans had sent a mass mailing to mostly Democratic-leaning minorities and used undeliverable letters to compile a list of voters potentially vulnerable to eligibility challenges.

In his letter to U.S. District Judge Susan Dlott of Cincinnati, Assistant Attorney General Alex Acosta argued that it would "undermine" the enforcement of state and federal election laws if citizens could not challenge voters' credentials.

Former Justice Department civil rights officials and election watchdog groups charge that his letter sided with Republicans engaging in an illegal, racially motivated tactic known as "vote-caging" in a state that would be pivotal in delivering President Bush a second term in the White House.

Acosta's letter is among a host of allegedly partisan Justice Department voting rights positions that could draw scrutiny on Capitol Hill in the coming weeks as congressional Democrats expand investigations sparked by the firing of at least nine U.S. attorneys.

Acosta, now the U.S. attorney in Miami, said in a statement that his letter was aimed at advising the court that a new Ohio law allowing challenges was "permissible," so long as no challenge was based on race. He said it also was intended to make clear that anyone whose eligibility was questioned had a right to file a provisional ballot.

Justice Department spokeswoman Cynthia Magnuson said that the Civil Rights Division "does not coordinate actions with any political party" and that any such suggestion would be "entirely unfounded."

But Robert Kengle, former deputy chief of the department's Voting Rights Section who served under Acosta, said the letter amounted to "cheerleading for the Republican defendants."

"It was doubly outrageous," he said, "because the allegation in the litigation was that these were overwhelmingly African-American voters that were on the challenge list."

Joseph Rich, a former chief of the department's Voting Rights Section, called the Ohio scheme "vote caging."

Acosta declined during the weekend to say whether Hans von Spakovsky, the division's voting counsel at the time, had any role in writing the letter. Von Spakovsky has been besieged with allegations of partisanship as he tries to win Senate confirmation to a full term on the Federal Election Commission.

Federal courts and Ohio Secretary of State Kenneth Blackwell ultimately barred Republicans from posing the challenges in a frenzied legal battle that ran up to election eve.

The House Judiciary Committee plans soon to begin examining whether the Civil Rights Division took positions in support of a Republican agenda to suppress the votes of poor and elderly minorities who tend to vote for Democrats, said an aide to the panel who requested anonymity because the new line of inquiry has yet to be announced officially. It's not yet clear whether the examination will include vote caging.

The tactic entails sending mail stamped "do not forward" to voters' homes and requiring a return receipt. Voters who do not sign for the letters or postcards can then be challenged at the polls or in pre-election hearings on grounds such as whether they meet legal residency or age requirements.

J. Gerald Hebert, a head of the Voting Rights Section in the early 1990s and now executive director of the nonprofit Campaign Legal Center, says the tactic is unfair for multiple reasons: it is often racially motivated; voters may be out of town or refuse to sign return receipts on letters from the GOP, and addresses may be inaccurate.

Rich said that challenges of caged voters have been stopped when brought to light before an election. The question is, he said, whether caging and subsequent challenges have occurred "and somebody didn't bring it to light."

The new Ohio law permitted challenges in 2004 but required political parties to list targeted voters in advance of the election. The Ohio Republican Party notified election authorities in the fall of 2004 that it planned to challenge more than 35,000 voters at the polls, a figure it later trimmed to 23,000.

Democrats sued in Cincinnati to block the challenges and before U.S. District Judge Dickinson Debevoise in Newark, N.J., who had issued a consent decree barring the tactic in 1982 after finding the GOP illegally targeted minority voters in the state's gubernatorial race the previous year.

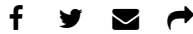
The Justice Department was not a party to either case. Nor did Judge Dlott solicit the federal government's views. But Acosta weighed in anyway.

Challenges, he wrote, "help strike a balance between ballot access and ballot integrity."

Republicans' use of caging has been a contentious issue ever since Debevoise's ruling 26 years ago. In 1986, the judge found that Louisiana Republicans had violated the consent decree. In 1990, another consent decree was issued after the Republican Party of North Carolina and the re-election campaign of Republican Sen. Jesse Helms sent 125,000 postcards to mostly black voters to compile a list of voters to challenge.

Nor was Ohio the only scene of an alleged GOP caging scheme in 2004. Former Republican National Committee and White House operative Tim Griffin has been dogged by allegations that he tried to cage mostly African-American voters in Jacksonville, Fla. Rich said that scheme became public before the election and Republicans did not pursue challenges.

Last week, Democratic Sens. Edward Kennedy of Massachusetts and Sheldon Whitehouse of Rhode Island sought an internal Justice Department investigation into whether department officials knew about Griffin's alleged caging before he was named interim U.S. attorney for Arkansas. Griffin, who has denied any impropriety, resigned that post earlier this month.



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