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October 17, 2008

Attorney General Michael Mukasey
United States Department of Justice
Robert F. Kennedy Building
950 Pennsylvania Avenue, NW
Room 5111
Washington, DC 20530

Dear Attorney General Mukasey:

On behalf of the Leadership Conference on Civil Rights (LCCR), we, the undersigned groups, are writing to highlight urgent priorities for the upcoming November 2008 general election. We appreciate your statement at the September 8, 2008 meeting with voting rights groups held at the Department of Justice committing to make election protection your highest priority. We urge the Department of Justice to follow through publicly, in a widely distributed public letter and/or statement, on those assurances regarding actions the Department will take in advance of the upcoming election. We believe such a letter and/or statement by DOJ will help ensure that rights of all voters, including minority voters, to participate in the election free of intimidation or harassment will be protected.

We are pleased that, in response to concerns we raised with Acting Assistant Attorney General Becker regarding the use of criminal prosecutors as election monitors, the DOJ announced on September 23 that the Department will not use criminal prosecutors as election monitors in the upcoming election. This is an important first step in creating an environment free of intimidation. However, we believe more must be done to ensure a fair and intimidation free election this November. **The election is less than three weeks away and it is crucial that the Department of Justice act immediately to protect voters from discriminatory interference in their right to participate in this election.**

This letter will serve as our third request to the Department to take action on these issues. Time is running out. Since our last meeting with Assistant Attorney General Becker on October 6, we have seen no response from DOJ to any of our requests or concerns. In that same time period, we have seen reports of serious purging issues in six states, and, to our knowledge, DOJ has not taken action in any of them. The DOJ must immediately take the steps necessary to fulfill your promise to make election protection your highest priority. We have identified several specific ways that we believe you can implement this commitment and we urge you to act quickly on these recommendations:

1. It is crucial that the Department respond to racially discriminatory vote suppression tactics of vote caging, challenges, and deceptive practices widely reported over the past several elections in the same manner that is done with respect

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to other election crimes. We reiterate our request that you issue a national press statement in advance of the upcoming election affirming DOJ's intention to investigate and enforce the federal civil rights statutes that prohibit minority voter suppression schemes, such as racially motivated caging and voter intimidation. An effective statement would make publicly clear that, for example, vote caging and challenges that are discriminatory or are meant to intimidate voters are a violation of the law and will be pursued aggressively by DOJ. The statement should also spell out that intentional dissemination of discriminatory misinformation regarding the voting process that is meant to intimidate and keep voters from the polls are actions that the Department will both investigate and pursue. Further, we would like to receive assurances that this statement will be immediately and widely disseminated in time to have a meaningful deterrent effect this election cycle. We stand ready to assist by distributing such a statement as widely as possible.

2. Recent threats to challenge the registration of any voter whose address appears on a list of foreclosed homes is quite alarming and the DOJ must respond. We are disappointed that the Department did not immediately issue a public rebuke of this threat by the Macomb County, Michigan Republican Party in order to send a clear message across the country that such practices will not be tolerated. However, we are even more disturbed that, in testimony before a joint House Judiciary and Committee on House Administration panel, Ms. Becker indicated that the Department of Justice's investigation into this situation was satisfied by the mere assertions of the Republican Party that they would not pursue this strategy. Ms. Becker testified that, while the Department will continue to "monitor" the situation, the Department has determined that there is no need for any investigation of the situation at this time. We strongly believe that a thorough investigation, and not merely an acceptance of meaningless and unverified assertions, is necessary to determine the real intentions of Party officials, to resolve resulting confusion regarding the legitimacy of any plan purporting to use foreclosure lists as a basis for challenging voter eligibility, and to ensure that such practices are not allowed to continue. Further, a statement by the Department specifically identifying that foreclosure lists are an unacceptable basis for purging or challenging voter registration would be an important step towards clarifying the misinformation currently facing voters.

3. We believe that letters to the Secretaries of State, which AAG Becker mentioned are currently being drafted, is an important step as well. Any such letter to state election officials should include reference to the National Voter Registration Act (NVRA) requirements for the timely processing of voter registrations. In addition, the letter should discuss NVRA's limits on any program purporting to remove voters from the registration rolls, particularly in those jurisdictions with significant numbers of minority voters and where DOJ is aware of state election officials' slow processing of registration applications in previous elections. Moreover, this letter should be made public to have both a deterrent effect and to send a strong signal about the Department's priorities.

4. During our recent meetings with Ms. Becker, we have raised concerns about purge programs and the timely processing of voter registration applications in light of the increases in registration rates in many places around the country. **To that end, we call on you to quickly investigate recent allegations concerning eleventh hour efforts to remove voters from the registration rolls in several states including Alabama, Louisiana, Mississippi, Colorado, Indiana, Ohio,**



Michigan, Nevada and North Carolina.¹ It appears that these efforts are untimely, improper and may violate provisions of the Help America Vote Act (HAVA) and the NVRA. Any outreach to these states should include efforts to ensure that these states properly interpret the limited verification requirements for first-time voters contained within HAVA, particularly in light of a recent announcement from the Social Security Administration which suggests that many of these states are misapplying requirements of the Act.²

5. We understand that the Voting Section will work with the Office of Personnel Management to deploy federal observers and attorney monitors to a number of jurisdictions around the country to ensure that voters are able to freely cast their ballots. **We hope that the Department will take into account the requests that have been made from civil rights organizations on where these deployments would be most appropriate and useful to ensuring equal minority voter access on Election Day.**

6. While we were encouraged by the Department's recognition of the federal requirements for assistance for those with limited English proficiency and those with disabilities, we implore the Department to be more proactive about compliance with these laws. Despite claims that federal observers are not supposed to interfere with Election Day procedures, it is not acceptable for representatives of the Department of Justice to stand idly by as voters are disenfranchised at the polling place because of inaccessible voting machines, polling places, or lack of properly translated voting materials. **In order to protect voters, we implore you to provide more comprehensive and definitive guidance to observers on their abilities to ensure that state and local election officials more effectively comply with federal law on Election Day, and not simply after the violations have occurred.**

7. Over the past several years, we have seen a shift in the focus of DOJ resources away from enforcement of federal civil rights statutes that prohibit discriminatory voter suppression and toward criminal prosecution of isolated instances of individual voter fraud. The Department's disproportionate focus on voter fraud could create an atmosphere of intimidation leading to potential suppression of voter participation this November. **As a result, we urge you to suspend any further fraud prosecutions in the few weeks left before the upcoming election because of the chilling effect that such actions may have on voter participation, and to shift the Department's limited resources to preventing improper or illegal voter suppression activities that will have the effect of disenfranchising large numbers of people.**

The Civil Rights Division of the Department of Justice serves a critical, historic role in protecting minority voting rights. We urge you to make all efforts to ensure that the Department continues to honor that role. As voting rights advocates, we work with the DOJ before and on Election Day to ensure that voters' rights are not violated. We hope the Department will work with our groups and support those of us assisting voters at the polling place. As you are aware, federal law enables voters to seek assistance at the polling place for various reasons and our goal,

¹ See Ian Urbina, *States' Actions to Block Voters Appear Illegal*, N.Y. TIMES at A1 (October 8, 2008), available at http://www.nytimes.com/2008/10/09/us/politics/09voting.html?_r=1&ei=5070&emc=eta-1&oref=slogin

² See Social Security Administration News Release, *Social Security Asks Six States to Review Voter Registration Verification Procedures to Ensure Compliance with Federal Law*, (October 6, 2008), available at <http://www.ssa.gov/pressoffice/pr/voter-reg-procedures-pr.htm>



like the Department's, is to help voters exercise their constitutional right to vote without undue restrictions.

We are hopeful that you will act quickly to respond to our concerns. If you have any questions, please feel free to contact Lisa Bornstein, LCCR Senior Counsel at (202) 263-2856 or Kristen Clarke, Co-Director, Political Participation Project NAACP LDF at (202) 216-5569.

Sincerely,

Leadership Conference on Civil Rights (LCCR)
American Association of People with Disabilities (AAPD)
American Civil Liberties Union (ACLU)
American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)
Asian American Justice Center (AAJC)
Brennan Center for Justice at New York University School of Law
Campaign Legal Center
Common Cause
DEMOS
FairVote
Lawyers' Committee for Civil Rights Under Law
League of United Latin American Citizens (LULAC)
League of Women Voters of the United States
Mexican American Legal Defense and Educational Fund (MALDEF)
NAACP Legal Defense and Educational Fund (NAACP LDF)
National Association for the Advancement of Colored People
National Council of La Raza (NCLR)
National Education Association
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CC: Grace Chung Becker, Assistant Attorney General for Civil Rights Division (Acting)
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