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April 24, 2008

The Honorable Michael B. Mukasey
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Mukasey:

We write regarding the Department of Justice's efforts to enforce Section 7 of the National Voter Registration Act (NVRA). As you know, the NVRA was enacted in 1993 to "assist in reducing barriers, particularly government-imposed barriers, to applying for registration wherever possible."[1] The continuing importance of the NVRA is underscored by the fact that almost 64 million eligible voters (or 32 percent) are unregistered.

While the NVRA is best-known for its "motor voter" provision, requiring states to offer voter registration materials to those applying for (or renewing) a driver's license, an equally important provision is the requirement in Section 7 that state public assistance agencies offer voter registration materials to people applying for (or recertifying eligibility for) public assistance. Unfortunately, noncompliance with Section 7 is widespread. According to one recent estimate, voter registration at state public assistance agencies covered by the NVRA fell from a high of 2.6 million in 1995-1996 to just 550,000 in 2005-2006 – a decrease of 79 percent. In Missouri alone, Section 7 registration fell from 143,000 in 1995-1996 to less than 16,000 in 2005-2006. It is worth noting that this decline does not correspond with a similar decline in public assistance caseloads. Simply put, non-compliance with Section 7 is depriving low-income citizens of an important opportunity to participate in the democratic process.

Given the decline in Section 7 registrations, and evidence of noncompliance presented by witnesses at a recent hearing by the Subcommittee on Elections of the House Committee on Administration, we are concerned about the Department's enforcement of the statute. Indeed, since 2000, the Department has filed only one lawsuit to enforce Section 7 as it pertains to public assistance agencies. That suit, filed in 2002 against Tennessee, is instructive of the great potential of Section 7 and the value of strong enforcement: Prior to the suit, in 1999-2000, Tennessee received 49,636 voter registration applications through public assistance agencies; after settlement of the suit, in 2003-2004, that number jumped to 173,927. By 2005-2006, nearly 20 percent of all public assistance registrations *in the entire country* took place in Tennessee.

[1] H.R. REP. NO. 103-9, at 3 (1993).

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Our concern is heightened when we contrast the Department's aggressive enforcement of Section 8 of the NVRA, which governs the so-called "purging" of voter rolls. Indeed, since 2000, the Department has brought at least five cases against states and municipalities under Section 8, while paying comparatively little attention to Section 7. This creates the impression, whether founded or not, that the Department is more concerned with removing names from the voter rolls than adding them.

We understand that the Department mailed letters to a number of states last year, requesting information about their compliance with Section 7. As far as we are aware, however, those letters have led to no further action.

Given our concern about the Department's enforcement of this important statute, please provide us with a specific account of the steps taken to enforce Section 7 since you have taken office, the Department's plan for enforcement before the voter registration deadlines for the November, 2008 elections, and the Department's criteria for opening an investigation and bringing an enforcement action.

Sincerely,

Sheldon Whitehouse

Dianne Feinstein

Edward M. Kennedy

Russell Feingold

Charles Schumer

Richard Durbin

cc: Grace Chung Becker, Acting Assistant Attorney General, Civil Rights Division
Christopher Coates, Acting Chief, Voting Section, Civil Rights Division