

May 8, 2007

The Honorable Patrick Leahy  
Chairman, Senate Judiciary Committee  
433 Russell Senate Office Building  
Washington, DC 20510

The Honorable Arlen Specter  
Ranking Member, Senate Judiciary Committee  
711 Hart Building  
Washington, DC 20510



Dear Chairman Leahy and Senator Specter:

We are writing you to request that the Senate Judiciary Committee investigate the Justice Department's enforcement of the National Voter Registration Act (NVRA). Specifically, we are concerned that the Justice Department's Voting Section is ignoring the primary purpose of the NVRA to "establish procedures that will increase the number of eligible citizens who register to vote in elections for federal office." Instead, the Voting Section is concentrating its NVRA enforcement priority on pressuring states to conduct massive purges of their voter rolls.

As we saw in Florida in the run up to the 2000 election, when thousands of eligible voters were wrongly removed from the voter rolls, aggressive purges have the potential to unfairly disenfranchise American citizens. Widespread removal of names from the voter registration rolls has the potential to repeat this injustice as we move into another critical federal election cycle. The Department of Justice must demonstrate a commitment to the NVRA's mission of expanding the franchise to the most vulnerable Americans by focusing its enforcement efforts on ensuring that all states are providing Americans with the registration opportunities provided under the law.

A recent letter to the Executive Director of the North Carolina Board of Elections, Gary Bartlett, from the Chief of the Voting Section, John Tanner, precipitates our concern.

On April 13, Mr. Tanner wrote to Mr. Bartlett that, "As part a nationwide effort to assess compliance with Section 8 of the NVRA, we conducted an analysis of each state's total voter registration numbers as a percentage of citizen voting age population." Mr. Tanner then claims, "voter registration actually exceeded the total citizen voting age population in 10 percent or more of the jurisdictions within your State." He asks Mr. Bartlett for a current voter file and expresses his intention to compare it with a North Carolina voter file from before the 2006 election in order to assess whether or not voters were removed.

Kentucky received a similar letter. On May 10, 2005, Mr. Tanner wrote to Kentucky's Secretary of State, Trey Grayson, informing him that, "Our review of data from both Kentucky's voter registration records as well as the United States Census Bureau, indicates that 33 counties in Kentucky currently have more persons registered to vote than there were citizens of voting age according to the 2000 Census." The Justice Department refused a request from Kentucky's Attorney General to explain its methodology.

We understand that the program to compare voter registration lists with Census information on voting age population was initiated in January 2005 by Hans von Spakovsky, who held the position of Special Counsel to the Assistant Attorney General for Civil Rights.

These letters, only two of which we know about, are in addition to lawsuits brought against four states—Indiana, New Jersey, Maine and Missouri—as well as the City of Philadelphia for allegedly failing to

purge voters with sufficient vigor. While three states and Philadelphia accepted consent decrees, Missouri did not. A federal judge dismissed the resulting lawsuit, writing:

*It is also telling that the United States has not shown that any Missouri resident was denied his or her right to vote as a result of deficiencies alleged by the United States. Nor has the United States shown that any voter fraud has occurred. Increased voter participation and elimination of fraud were the primary goals of Congress when it mandated that the States make reasonable efforts to maintain accurate voter registration lists. The absence of evidence of fraud or voter suppression during the relevant time period weighs heavily in favor of a finding that the Defendants' efforts have been reasonable.*

The Justice Department's enforcement of Section 8's requirement to "conduct a general program that makes reasonable efforts to remove the names of ineligible voters" stands in marked contrast to its inaction with respect to enforcing the public assistance agency registration requirements of Section 7.

According to a report based on federal data by the NVRA Implementation Project—a collaboration between Project Vote, Dēmos and ACORN—registration at public assistance agencies declined from over 2.5 million applicants in 1995-1996 to just over 1 million applicants in 2003-2004. This represents a national decline of 59 percent; 11 states experienced declines of over 80 percent during the same time frame. In addition, the project documented through interviews with public assistance agents, election officials and public assistance clients that the decline in registration was largely due to states' failure to implement voter registration as required.

The NVRA Implementation Project presented information to Voting Section personnel regarding states' failure to comply with the public assistance agency requirements of Section 7 on August 16, 2004, and again on September 9, 2004. Representatives from Project Vote and Dēmos met with Mr. Von Spakovsky, Joseph Rich, then Chief of the Voting Section, and staff attorney Chris Herren on September 10, 2004. On January 5, 2005, the project sent the Voting Section an advance copy of its report detailing declines in public assistance agency registration. On February 23, 2005, the project responded to a Voting Section request and sent a memorandum detailing more of the project's findings of noncompliance.

To date, we are aware of only one enforcement action initiated by the Voting Section during the past six years to encourage states' compliance with the public assistance requirements of Section 7.

The selective enforcement of the NVRA in ways that raise rather than dismantle barriers to voting is contrary to the historic mission of the Voting Section. In light of news coverage that the department may have worked to erect legal barriers to voting to further the partisan interests of the administration, we respectfully request you investigate the Voting Section's "national effort" to enforce Section 8 and its decision to overlook the public assistance agency registration requirements of Section 7 compliance.

Sincerely,

Maxine Nelson  
President  
Project Vote

Maude Hurde  
President  
ACORN

Miles Rapoport  
President  
Demos

Barbara Arnwine  
Executive Director  
Lawyers Committee for  
Civil Rights