

# United States Senate

WASHINGTON, DC 20510

September 25, 2008

The Honorable Michael Mukasey  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, N.W., Suite 5111  
Washington, DC 20530

Dear Mr. Attorney General:

We greatly appreciate the Justice Department's commitment to safeguarding the voting rights of all eligible citizens and to ensure a fair electoral process in November. As you recently emphasized to a group of Department attorneys charged with enforcing federal voting laws, for Americans to have confidence in their democratic system, they must have confidence in the electoral process itself. You also emphasized in your July 2 remarks that, "[b]ecause elections are, by definition, political events, there is an obvious danger in all this that we ourselves can be drawn into partisan territory. We have to do everything in our power to resist that, to ensure that each of our decisions is driven by what the law and the facts require, and only by that." And you further noted, "[p]rotecting voting rights and combating voter fraud both are essential to maintaining the confidence of all Americans in our system of government."

In light of your comments, with which we wholeheartedly agree, we were disappointed to see a recent report that several attorneys in the Civil Rights Division, including the Section Chief of the Criminal Section, may be influenced by partisan political motivations and may be targeting certain fully legal political activities.<sup>1</sup> Ironically, at the same symposium where you gave your prepared remarks emphasizing the need for vigorous and nonpartisan enforcement of election laws, these attorneys suggested that political mailers that merely remind recipients that they must be U.S. citizens in order to vote in a federal election—an accurate and noncontroversial statement of the law—would be considered illegal. The attorneys further cited to numerous examples of "intimidation" or "vote suppression" by Republicans, but did not cite to a single such incident of intimidation or voter suppression by Democrats. This omission is remarkable given the multiple claims of voter intimidation and vote suppression that supporters of Senators Obama and Clinton made against each other during this year's Democratic primary. We believe that the article cited above raises serious concerns regarding the conduct of a few attorneys in the Criminal Section; we encourage you to consider this matter. Now is the time to ensure that the Department's 2008 election supervisory activities are conducted in a fair and non-partisan manner.

We also are concerned about the adequacy of the Department's efforts to protect poll watchers and monitors from intimidation in polling places. As you emphasized in your remarks, it is vital that the Department both ensure access to voting and that legitimate votes are not diluted by illegal votes. Poll watchers and monitors do both; they not only watch the polls to

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<sup>1</sup> See *Justice Department vs. Republicans*, Sept. 19, 2008, available at <http://pajamasmedia.com/blog/justice-department-vs-republicans/>.


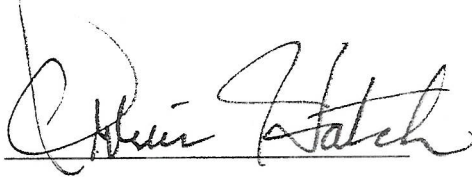
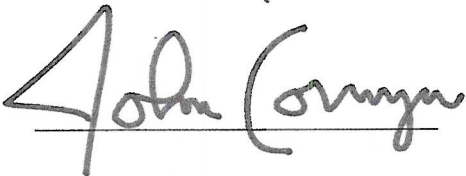

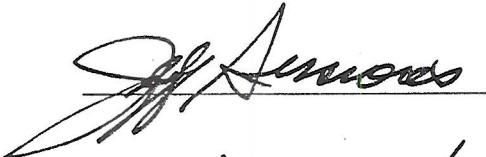
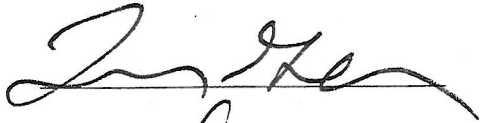


protect against discrimination and undue influence, they help to deter and detect voter fraud and other illegal conduct. Unfortunately, we have seen an ever increasing level of hostility and intimidation directed at these important players in the election process.

To cite one example, news organizations have recently reported that Governor Brian Schweitzer of Montana gave a speech where he discussed his orchestration of a 2006 scheme to remove, without legal justification, authorized poll-watchers on Indian reservations.<sup>2</sup> Governor Schweitzer's comments reflect a mindset that such poll watchers and monitors can be bullied and intimidated for political gain.

This mindset also has become practice in numerous jurisdictions throughout the country, including Philadelphia, Pittsburgh, and Detroit, where there have been credible reports that authorized poll watchers or monitors have been denied access to polling places and threatened with physical violence. The Department of Justice itself filed a lawsuit in Philadelphia in 2006 that stated that election judges in the city refused to allow even Department personnel to observe election procedures.<sup>3</sup> Such conduct clearly violates Section 11(b) of the Voting Rights Act, 42 U.S.C. § 1973i(b), and should be investigated, and, where appropriate, prosecuted. We respectfully request that the Department consider assigning federal monitors to cities and jurisdictions where there are poll watchers and observers at risk of intimidation and abuse.

Thank you for your prompt attention to these pressing matters.

Sincerely,

<sup>2</sup> See Kirk Johnson, "Montana Officials Chastise Governor Over Boasts in Speech to Lawyers' Group," *The New York Times*, September 11, 2008.

<sup>3</sup> See *United States v. City of Philadelphia*, No. 2:06-CV-04592 (E.D. Pa. filed Oct. 13, 2006).