

October 31, 2008

Attorney General Michael Mukasey
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Mukasey:

We are former attorneys with the Civil Rights Division and we write to ask you to assure the public that the Department is taking all steps necessary to protect the integrity of our election process by vigorously investigating and prosecuting fraudulent voter registration activities, including those allegedly undertaken by ACORN, as well as doing its utmost to enforce the Help America Vote Act of 2002 (“HAVA”).

In a letter dated October 24, 2008, other former employees of the Division wrote to you claiming that the activities of the Department before and after Election Day have essentially been limited to “placing federal observers to monitor elections pursuant to provisions of the Voting Rights Act.” This claim is inaccurate both as a matter of fact and established practice, as evidenced by the many lawsuits that have, over time, been filed by the Civil Rights Divisions before federal elections. In fact, just within the last month, the Division has filed two complaints and one amicus brief in three different election-related cases to enforce the Voting Rights Act and the Uniformed and Overseas Citizens Absentee Voting Act.

More specifically, during both this Administration and prior Administrations, the Civil Rights Division has filed lawsuits close to Election Day to remedy violations of all of the statutes it is responsible for enforcing, including the Voting Rights Act, the National Voter Registration Act, the Uniformed and Overseas Citizens Absentee Voting Act, and the Help America Vote Act. Information about these cases is available on the website of the Voting Section of the Civil Rights Division at <http://www.usdoj.gov/crt/voting/litigation/caselist.php>.

As these cases show, in more than four decades of operation, the Civil Rights Division has never hesitated to fulfill its responsibilities by filing lawsuits to enforce federal voting rights laws that govern access to the polls and the administration of elections even on the very eve of Election Day. Against this backdrop, the Division’s recent failure to act in the case filed by a private party against the Ohio Secretary of State in which two federal courts, including the Sixth Circuit Court of Appeals, have specifically found that the Secretary of State is not complying with the verification requirements of Section 303 of

HAVA, is difficult to fathom. Its similar lack of action in Wisconsin, where the state election board has also admitted that it is not complying with this provision of HAVA, is equally perplexing. This appears to be a dereliction of the Department's obligations to enforce federal law.

The authors of the October 24 letter also mistakenly claim that federal investigations by the Department of Justice in response to clear evidence of fraudulent voter registrations should be put on hold before an election because it will somehow have "a serious chilling effect on voters, especially minority voters." Precisely the opposite is true. It is the protection of legitimate voting activities that demands immediate and uncompromising pursuit of voter registration fraud by the Department especially during election cycles. Otherwise, the legitimate votes of both minority and non-minority voters will be threatened with vote dilution by those who fraudulently register and cast a fraudulent ballot. In truth, the only voters intimidated by strong enforcement of our election laws are those behaving fraudulently.

The idea that election crime prosecutions will intimidate voters is without foundation, and seems to assume that voters do not want to see fraud punished. We are frankly exceedingly disheartened to learn that some of our former Division colleagues feel compelled to importune the Attorney General to turn both a blind eye and a deaf ear to such reprehensible conduct at a time when the Department's protection of every individual's voting rights should be most vigilant.

As the Supreme Court recognized in its recent decision on Indiana's voter identification law, maintaining public confidence in the integrity and security of our election system is vital to our democracy. It is when law enforcement officials refuse to act that voters are intimidated and discouraged from voting because they perceive that their votes will not count due to fraud. The Department's own experience shows the truth of this - the successful federal prosecutions conducted by the Justice Department in Greene County, Alabama, in the mid-1990's in a predominantly African-American county, is but one recent case on point. Far from intimidating or chilling local black voters, those prosecutions led to higher turnout in the county as local citizens regained confidence in their election process.

The Criminal Division's election crimes prosecution manual reflects this truism, stating on page 9 that "[d]eterrence of future similar crimes is an important objective of [election] prosecutions." Nothing could be more important than deterring voter registration fraud that negates the votes of legitimate voters. The Department's policy is only intended to prevent prosecutions that could negatively affect the outcome of an election - such as the indictment of a candidate running for office prior to the voting process, since that could become an issue "both in the campaign and in the adjudication of any ensuing election contest." Those are obviously not relevant considerations in an investigation of a third party organization trying to engender fraudulent registration. Preventing fraudulent voter registration forms from being submitted cannot possibly chill "legitimate voting and campaign activities," but can only *positively* "affect the election itself" by fostering the appearance and reality of an honest election.

We hope that you will assure the American people that your Department intends to investigate and prosecute any and all instances of voter registration and other fraud occurring in the days leading up to the election, and that you will enforce all of the federal voting rights laws that are important to preserving the fairness and security of the election process.

Hans A. von Spakovsky
Former Counsel to the Assistant Attorney General for Civil Rights
Vienna, Virginia

Roger Clegg
Former Deputy Assistant Attorney General for Civil Rights
Fairfax, Virginia

Michael A. Carvin
Former Deputy Assistant Attorney General for Civil Rights
Washington, D.C.

Wm. Bradford Reynolds
Former Assistant Attorney General for Civil Rights
Washington, D.C.

Robert N. Driscoll
Former Deputy Assistant Attorney General for Civil Rights
Mt. Vernon, Virginia