

United States Senate

WASHINGTON, DC 20510

September 16, 2008

Attorney General Michael B. Mukasey
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Dear Attorney General Mukasey:

We are extremely concerned about recent allegations regarding plans to challenge voters on Election Day based on lists of homeowners facing foreclosure. If officials in any jurisdiction plan or attempt such a tactic, it must be prevented. It would be simply a new variant of the destructive practice of voter “caging” and, like other forms of caging, we expect that its primary result would be to drive many eligible voters away from the polls. The consequences of such a disenfranchisement tactic would be especially severe in states with high foreclosure rates, such as California, Michigan, Ohio, Florida, Nevada and Arizona.

Foreclosures are devastating enough for affected families and neighborhoods without adding the outrage of disenfranchisement. Most, if not all, of the 1.25 million homes in foreclosure represent families stricken by the deteriorating economy or unscrupulous lending practices. Moreover, voter challenges based on foreclosure notices would heavily target economically disadvantaged voters, and therefore would be likely to disenfranchise a disproportionate number of minority voters. The Joint Economic Committee has reported that, during the subprime boom, African-American home-buyers were nearly three times more likely than whites to receive a high-cost, subprime mortgage.

Any campaign to challenge voters based on foreclosure lists would sweep in large numbers of voters who remain in their homes or who correctly registered at a new address, perhaps even discouraging them from going to the polls. Foreclosure is a time-consuming process, and does not always end in the homeowner’s departure. Indeed, federal, state and local governments are currently expending substantial resources to help homeowners who are behind on their mortgages to remain in their homes. As the rest of the country unites to help struggling homeowners, it is critical that we prevent any attempt to subject eligible, registered voters to needless harassment. It takes just a moment to level a challenge, but it would cost voters much time and trouble to overcome. Unnecessary delays caused by foreclosure-based challenges would generate long lines at polling places, causing hassle and lowering turnout for entire neighborhoods.

Voting is, as the Supreme Court declared over 120 years ago, “a fundamental political right, because [it is] preservative of all rights.” *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). In order to help ensure that homeowners with missed mortgage payments do not also miss the chance to exercise this precious right, we ask that you reassure us promptly as to the following questions:

1. What steps, if any, will you take to ensure that eligible voters are not intimidated or harassed at the polls because they are facing foreclosure?
2. Will you train federal election monitors to ensure that voters are not intimidated or harassed based solely on the fact that they have received a foreclosure notice, and to stop such tactics if they occur?

Thank you for your attention to this important matter. We look forward to your timely response.

Sincerely,

Chris Sch

Mr. T. Rubin

Harb. Kohn

Barack Obama

Ben Cardin

Nancy Fairbanks

Shirley

Jim D. Rubin

Dianne Feinstein

Rebecca Stenderow

J. R. Burns

Patrick Leahy

Carl Levin

Ped Kennedy