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**Testimony of Kristen Clarke
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**Before the U.S. House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Civil Liberties**

**Oversight Hearing on Voter Suppression
February 26, 2008**

Founded under the direction of Thurgood Marshall, the NAACP Legal Defense and Educational Fund (LDF) is the nation's oldest civil rights law firm and has served as legal counsel for African Americans in a significant number of important federal voting rights cases over the course of the last several decades. Through extensive litigation, advocacy and public education efforts, particularly in the Deep South, LDF has developed significant expertise regarding barriers to political participation including the recent rise of voter suppression tactics that are the subject of today's hearing.

I currently serve as the Co-Director of LDF's Political Participation Group. Prior to joining LDF, I served for several years in the Civil Rights Division of the U.S. Department of Justice. Three of those years were spent handling matters arising under the Voting Rights Act of 1965, the National Voter Registration Act and other statutes as a Trial Attorney in the Voting Section of the Civil Rights Division. On behalf of LDF, I submit the following written testimony sharing our observations regarding the impact of voter suppression tactics and the threats that these tactics pose to the integrity of our nation's political process. Although the right to vote is widely recognized as a constitutionally-protected right, it can be rendered meaningless by actions that make it more difficult for citizens to access the ballot box.

LDF is pleased that the Subcommittee on the Constitution, Civil Rights and Civil Liberties is holding a hearing to study and examine problems of voter suppression. Quelling voter suppression tactics and improving voter access are important issues for LDF. Despite improvements in voter access in recent years, threats to full and equal minority voter access to the polls continue to stand, including: increased tensions in some communities where there have been growing numbers of Black, Latino and Asian voters; voter intimidation; and aggressive challenges mounted inside polling places. Many of these problems can be addressed through stronger enforcement by the U.S. Department Justice (DOJ) of existing federal civil rights statutes, including Section 11(b) of the Voting Rights Act and Section 1971 (b) of the Civil Rights Act of 1957. In addition, Section 5 of the Voting Rights Act continues to serve an

important role in those jurisdictions covered under the Act in ferreting out retrogressive and discriminatory voting changes that might otherwise expose minority voters to suppressive or intimidating conduct. Aggressive enforcement of these laws can help avoid future problems and guarantee access for larger numbers of our nation's citizens during the upcoming 2008 presidential election cycle and in future elections generally. Moreover, better leveraging of federal resources, including DOJ's federal observer program, can also help address problems that threaten the integrity of our political process.

II. Voter Suppression Tactics

A. Voter Intimidation

During recent elections, there have been significant incidents of voter intimidation directed against African-American and Latino, and Asian-American voters. These incidents, occurring in contests at the local, state and federal levels, make clear that voting discrimination continues to impede minority voters' access to the polls. Accordingly, it is important that the Department of Justice consider how existing laws can be used to reach those who use violence, the threat of violence, or intimidation to suppress the rights of minority voters.

Intimidating acts preceding an election can create an atmosphere that discourages voters, particularly minority voters, from freely participating in the political process. Too many of these acts are targeted at minority voters. Often, the acts of intimidation take place in the context of close elections between minority and non-minority candidates or in areas of the country where minority voters are on the verge of exercising political power.

To that end, LDF has urged that the Department of Justice investigate acts of racial intimidation that threaten minority voter access to the ballot box. One such example concerns a November 3, 2006, cross-burning incident in Grand Coteau, Louisiana. On the eve of a racially heated and hotly contested mayoral election, a five-foot cross was erected outside of the town hall's parking lot, placed in a wooden frame, doused with oil and lit on fire. Cross-burnings are a clear and unmistakable expression of racial animus and hatred. Because this particularly vile act of intimidation was staged on public property on the eve of a racially heated election, many African-American voters may have been discouraged from freely participating in the political process. African-American residents in the region believe that the cross-burning was a tool to intimidate minority voters from freely exercising their right to vote during the November 7, 2006 contested local election (in which the African-American candidate very narrowly lost). LDF has not yet received information regarding our request for an investigation into this matter.

B. Aggressive Challenges to Voter Eligibility

Aggressive challenges inside polling places can create an intimidating atmosphere that discourages voters from freely participating in the political process. Moreover, in the context of hotly contested elections where voters are closely divided, the aggressive challenging of voters may very likely be a carefully targeted campaign aimed at locking certain voters out.

One recent example illustrating the impact of aggressive challengers inside polling places concerns Greenwood, Mississippi -- a small town located in the Mississippi Delta with a Black population of 65.4 percent, according to 2000 Census data. Greenwood became the subject of an

intensely debated and racially-heated mayoral contest following a May 2006 mayoral contest. Election-night results indicated that a Black challenger had successfully ousted the long-term, white incumbent. However, the following morning, those results changed and the white incumbent had been declared the winner after a series of alleged problems yielded a margin of victory for the white candidate. Perkins brought a successful challenge to the election that eventually led the State Supreme Court to order that a new election be conducted. The court found substantial irregularities in the delivery and counting of absentee ballots, among other problems. The second election garnered significant attention and observation by LDF, DOJ and others.

During the newly scheduled election, partisan challengers were deployed at predominately Black precincts throughout the small town of Greenwood. In many instances, these challengers were overzealous and their conduct was deemed intimidating by both voters and poll workers. In fact, one white challenger was ultimately removed from one polling place. However, instead of stripping this particular challenger of his authority to remain stationed inside the polls, he was merely shuttled to another majority Black precinct where he continued to challenge and intimidate voters. At the new site, the challenger aggressively cited to various provisions in the state's election code, and ordered that the poll manager rearrange the positioning of tables so that he could easily view the registration list and mount challenges against voters. His conduct was found so disruptive by the poll manager that both DOJ federal observers and members of the State Board of Elections were ultimately called to the site to remove the challenger.

Indeed, state laws vary widely with respect to the limits placed on the conduct of the challenger and the burden of proof placed on those challenging an individual's eligibility to vote. Moreover, election officials inside polling places often wield tremendous discretion in determining whether the challenger has presented sufficient evidence to deny a voter the right to cast his or her ballot. We urge deployment of federal observers, where permitted, to ensure that these challenge laws are not being used to intimidate or deny eligible voters the right to cast their ballots, particularly during federal elections. In addition, these laws should also be examined to ensure that they do not extend unwarranted levels of discretion to poll officials. In our experience, placing unfettered levels of discretion in the hands of officials invites the kind of abuse that could inhibit minority voter access to the polls.

C. Voter Purging

Although it is both appropriate and legal to institute voter registration roll maintenance programs, in recent years there has been an emergence of various purge and matching programs aimed at removing presumptively ineligible voters from registration rolls. These programs, often inconsistent in their approach and flawed in their methodology, threaten the fragile gains that have been made with respect to registration rates among minority voters. Indeed, new or re-emergent barriers to voter registration move the nation in the wrong direction and the recent problems suggest the need to strengthen compliance with and enforcement of the various voter registration requirements and purge program restrictions that are codified within the National Voter Registration Act (NVRA). Most recently, we have learned of a pending Mississippi law that would essentially subject voters to the burden of reregistering to vote – a law that bears striking resemblance to other laws that have drawn Section 5 objections by DOJ in the past.

The NVRA was passed, in part, to create uniform procedures for registering to vote in federal elections and to eliminate the discriminatory and burdensome registration practices that existed in many states. Congress determined that the Act's uniform, nationwide procedures were necessary to remedy these practices after finding that problems surrounding the registration status of minority voters were often the direct result of abuse of discretion by election officials; lack of access to forms; inconsistent purging; discrimination in the appointment of registrars and other election officials; inadequately trained poll workers; and antiquated election machinery.

Despite the important achievements of the NVRA, there is significant evidence that suggests that new and more sophisticated obstacles have emerged that stand as contemporary barriers to electoral participation today. For example, recent steps to remove voters from the registration rolls in Louisiana through a voter registration cancellation program provide a stark illustration of efforts that serve to undermine the goals of the NVRA.

Although voter removal programs are generally aimed at preserving the integrity of the election rolls by identifying presumably unqualified voters, such programs also run the risk of disqualifying large numbers of qualified registrants. Moreover, these programs place the burden of re-registration squarely on impacted citizens, potentially discouraging voters from participating in the electoral process. Thus, voter removal programs should be carefully assessed and scrutinized to ensure that they are not over-inclusive with respect to the scope of persons targeted for removal. Without more DOJ monitoring and enforcement in this area, voters would be subject to the burdensome task of having to reregister to voter in order to access the ballot box on Election Day. Reregistration requirements have been deemed discriminatory and/or retrogressive in effect and have drawn objections by DOJ in the past. *See e.g.* DOJ Objection Letter re Jasper County, Texas “reregistration” measure (June 8, 1971); DOJ Objection Letter re Texas “reregistration” law (December 10, 1975). These problems are particularly compounded by the standing hurdles that civil rights organizations have faced as of late in attempting to mount challenges to these laws. As the one bearing primary enforcement responsibility for federal voting rights laws, we hope that the Attorney General will be more aggressive with respect to litigation in this area, particularly given the fact that he does not face the same standing hurdles.

III. Need for More Aggressive Enforcement of Relevant Federal Statutes

There are two underutilized federal statutes that can reach conduct deemed intimidating or obstructive to voters. For example, Section 11(b) of the Voting Rights Act bars conduct deemed intimidating, threatening or coercive to voters. Specifically, Section 11(b) of the Voting Rights Act states that "no person [...] shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote." However, since the Act's initial passage in 1965, the Justice Department has filed suit under Section 11(b) in only three instances. Section 11(b) is one statutory tool available to the Justice Department that can be and should be used to address ongoing acts of voter intimidation, particularly those acts that have a racial dimension. Even one or two high-profile prosecutions under this statute would send an important deterrence signal nationwide.

In addition, Section 1971 (b) of the Civil Rights Act of 1957, applicable during federal elections, states that no person "shall intimidate, threaten or coerce ... any other person for the purpose of interfering with the right of such other person to vote." Cases that have been brought under this provision of the Voting Rights Act have also been exceedingly rare. The Justice Department should consider using this statute as a mechanism to reach the various voter suppression tactics of the type that we have witnessed during recent elections.

The Justice Department should also continue to identify problems in those jurisdictions covered under Section 5 of the Voting Rights Act, and interpose objections to discriminatory voting changes that are likely to worsen the position of minority voters. Indeed, it is critical that the Justice Department carefully examine and assess proposed voting changes by soliciting the input of affected individuals and organizations with knowledge of the impact of voting changes in covered jurisdictions. The perspectives presented by community contacts must also be sought to ensure that jurisdictions satisfy their burden under the revitalized standards adopted by Congress during the recent 2006 reauthorization of Section 5.

Moreover, so long as voter suppression tactics persist, there remains the potential for intimidation to emerge on Election Day. The Justice Department's federal observer program serves an important oversight function that can help protect minority voters' access to the ballot box. The resources of DOJ's federal observer program should be carefully leveraged and appropriately distributed in covered jurisdictions to help discourage and deter the kind of suppression tactics that would likely emerge in the absence of federal oversight.

Finally, voter suppression tactics and acts of voter intimidation continue to be significant factors in our electoral process. These tactics stand in the way of full and equal participation on the part of African-American, Latino and other minority voters. More aggressive enforcement of relevant federal civil rights statutes and continued deployment of federal observers can help quell the threat posed by these voter suppression tactics. It is critical that the Justice Department focus its enforcement efforts on schemes used to discourage minority voter participation during elections including, but not limited to: voter intimidation; aggressive challenges mounted by groups and/or individuals inside polling places on Election Day; and purge programs that threaten to remove eligible citizens from our registration rolls.