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Attorney General Eric Holder
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Voting Rights Act Violations/Ban DREs

I am writing as an attorney and board member of Protect Our Elections.org to request that you take immediate action to require that all states, counties and other jurisdictions that use Direct Recording Electronic (DRE, usually touch-screen) voting systems in their federal elections immediately cease using them in for any future elections. I make this request under the Equal Protection and Due Process clauses of the Constitution and under various sections of the Voting Rights Act.

The case against 100% unverifiable DRE voting machines -- and that includes systems both with and without a so-called "Voter-Verifiable Paper Audit Trail" or "VVPAT" -- has been made by so many computer science and security experts, as well as elections officials, that I will not repeat that case here other than to say that they have been thoroughly discredited and found antithetical to American democracy time and again, in state after state and study after study.

<http://www.dailyprincetonian.com/2008/10/21/21867/>

Just three weeks ago, these 100% unverifiable machines were used in South Carolina's Democratic primary for the U.S. Senate between Vic Rawl and Alvin Greene. The validity of the results of that race has been called into question, with the Democratic Majority Whip in the U.S. House, Rep. James Clyburn, expressing his belief publicly on Fox News that the results were due to the election system having been electronically "hacked". Judge Rawl himself has said alleged that the results were due to "systemic software problems".

Virtually every expert -- both statisticians and computer experts alike -- who looked at the results found unexplained anomalies, such as a vast disparity in the paper-based absentee ballot results and those reported by the unverifiable e-vote systems used on Election Day. In county after county, Judge Rawl was found to have won, resoundingly, in absentee ballots, but lost by an inexplicable majority on the Election Day DRE tally. In some counties, Mr. Greene reportedly won by historical margins even though he never made a single campaign appearance, and didn't even have a campaign website or any literature, signs, or other evidence that he had actually spent any time campaigning for the Democratic nomination to the U.S. Senate. When an unverifiable election system is

used, secondary evidence such as this becomes crucial in detection of election crimes and anomalies.

South Carolina's Democratic Party Executive Board rejected Judge Rawl's contest of the election results because he provided no hard evidence to "prove" that the results were wrong. And why was there no hard evidence? Because the results were recorded on electronic voting machines rather than on paper ballots, and the forensic computer experts working on behalf of Rawl's campaign were disallowed the right to examine the hardware or software, the memory cartridges, hard-drive flash chips and audit logs, which might have offered tell-tale evidence of either malfunction or malfeasance.

The South Carolina election merely underscores the long, grave and well-documented threat that DRE voting systems pose to our democracy. Clearly, a single state, or even a county or precinct in one state that uses DREs can decide a presidential election, or any other, without any way of "proving" whether the results were accurate. The inaccuracy and unverifiability of unsecure DREs is why dozens of states -- including California, Maryland, Florida, New Mexico and Minnesota -- have decertified them and banned their use either partially or completely over the last several years.

The use of DREs is also discriminatory against minorities under the Voting Rights Act. Section 2 of the Act contains a general prohibition on voting discrimination, which Congress amended in 1982, prohibiting any **voting practice or procedure** that has a discriminatory result. The 1982 amendment provided that proof of intentional discrimination is not required. In New Mexico, a study was conducted of undervotes in the 2004 election using DREs and again in the 2006 election using paper ballots. The study by the non-partisan election integrity watchdog organization VotersUnite.org concluded that undervote rates plummeted in minority districts when paper ballots were used instead of unverifiable DREs.

http://www.votersunite.org/info/NM_UVbyBallotTypeandEthnicity.pdf
<http://www.votersunite.org/info/NM_UVbyBallotTypeandEthnicity.pdf> In South Carolina, the DREs discriminated, it appears, against the large minority community by causing results that were historically out of line and not able to be verified.

Another provision of the VRA is being violated by the use of DREs. Under 42 U.S.C. 1973f(d)(2), "Observers shall be authorized to - (2) enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote **are being properly tabulated.**" [emphasis supplied] However, an observer cannot "observe" the tabulation of any votes that are tabulated by a DRE machine because it is all done electronically. And, as South Carolina proved, there is no way of knowing, even with expert forensic analysis -- even had the experts been allowed to examine the DRE system and **its** sensitive programming and memory cartridges -- whether the votes tabulated by a DRE "are being properly tabulated."

It is strictly impossible to know that any vote ever cast during any election on any DRE

system, for any candidate or initiative on the ballot, has ever been recorded as per the intent of the voter. It is simply and scientifically impossible to present evidence of even one vote having been accurately recorded.

In addition, the use of DREs violates the constitutional protections of equal protection and due process. In South Carolina, thousands of voters were allowed to vote with an absentee ballot, which is a paper ballot. Those votes could be counted and verified to determine the intent of the voters who cast them. However, the voters who voted on the DREs cast votes that could not be verified even after the election was contested. The same rationale applies to voters in other states where some counties will use DREs and other counties will use paper ballots, or where paper ballots are used by some voters, while others use DREs for any number of reasons. Because all voters who vote in the same election have the right to due process and equal protection to have their votes counted to the same degree, the use of DREs — which undercount, delete, flip, lose votes and make all such votes impossible to verify as having been accurately counted — is tantamount to counting a percentage of a person for those votes. This lack of equal protection and due process amounts to a direct constitutional violation.

Our country has witnessed the failure of the DRE experiment, now time and time again, with South Carolina being the final straw. While many states have made the switch to verifiable, countable paper ballots, we cannot afford to let another major election be held on unverifiable DRE voting systems. In the decade since the 2000 Presidential Election, questions about the validity of results have occurred in election after election held on DREs. This is not acceptable in our democratic system and, I would argue, poses a grave threat to that very democracy.

You have the authority under the Constitution and the Voting Rights Act to ban the use of DREs across the country. If you act now, there will be time to put in place a paper ballot system before the November general elections. In Ohio, Secretary of State Jennifer Brunner made the switch in just a matter of months in one of Ohio's largest jurisdictions (Cuyahoga County) and was awarded the JFK Profiles In Courage Award for doing so in time for the 2008 election.

http://www.jenniferbrunner.com/index.php/news/index_new/2008/05/

I will hope you consider taking the same bold, important and courageous steps to help preserve democracy in the United States of America.

Sincerely,

Sincerely,

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