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September 27, 2011

The Honorable Thomas E. Perez
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
Washington, DC 20530

Dear Assistant Attorney General Perez:

We write to express our concerns about the rights of voters in Colorado and to ask you to look into the situation there, in particular the potential disenfranchisement of eligible voters in the City and County of Denver, Colorado. With Colorado's next election barely a month away, this is a pressing concern.

On September 21, 2011, Colorado Secretary of State Scott Gessler petitioned the Denver District Court for an injunction which would the Denver Clerk and Recorder's office from mailing ballots to eligible voters who did not vote in the last general election, as the Clerk has done in the past five mail elections. It is surprising to see Secretary Gessler base his petition on Section 1-7.5-107(3)(a)(I) of the Colorado Election Code as its purpose is to protect the right to vote rather than to deny it. The requirement that "the designated election official shall mail to each active registered elector" is plainly designed to insure that no active voter fails to receive a ballot. There is nothing in the law that would preclude officials from mailing ballots to eligible voters who had been unable or chose not to vote in a previous election. Had they so desired, the Colorado legislature could very easily have created such a prohibition by adding the word "only". It would also have made the law unconstitutional, which may be one reason that they did not. Regardless, that they chose not to do so makes clear that this was not their intention.

Secretary Gessler's citation of Section 1-7.5-108.5(2)(b) is equally puzzling. That section required the mailing of ballots to voters who had missed a preceding election. While uncertain what the Secretary believes this provision to indicate, its import is clear to us. As Secretary Gessler himself writes, the legislature enacted this provision to ensure that voters were not disenfranchised merely because they had not voted in the previous election. If the legislature interpreted the aforementioned section as the Secretary does, this mandate to mail ballots to inactive voters would surely have included a clause saying, "notwithstanding Section 1-7.5-107(3)(a)(I)" or words to that effect. That they did not is further evidence that this provision sets forth a minimum, rather than a maximum, standard for the group to whom ballots *must* be mailed. It is equally clear that the Colorado legislature is comfortable and, indeed, encourages that ballots be mailed to inactive voters when doing so help to ensure access to the polls. This is

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not only a reasonable interpretation of the language but a reasonable choice for the law. Jurisdictions typically seek to increase voter participation in elections, and Section 1-1-103 of the Colorado Election Code makes this explicit.

If Debra Johnson, Clerk and Recorder for the City and County of Denver – who should know her constituents, their voting habits, and their election needs as well as anyone – feels that mailing these ballots out is appropriate, we can think of nothing that should stop her. Rather, she should be commended for taking steps to protect the franchise and encourage civic participation. What Secretary Gessler suggests is likely to disenfranchise eligible voters and should be condemned therefore.

Nor is this the first action by Secretary Gessler to raise concerns about the potential for disenfranchisement of eligible voters in Colorado. In March of this year, at a hearing of the Committee on House Administration's Subcommittee on Elections, Mr. Gonzalez, the Ranking Member of the Subcommittee, cautioned him about his use of a poorly conceived and executed report to gin up support for legislation allowing him to purge voters from the rolls. One would hope that this experience would lead to introspection. Instead, the Secretary has moved from trying to purge voter rolls to trying to deny ballots directly. This is a disturbing pattern.

Title 2 of the Voting Rights Act of 1965 prohibits any voting practice or procedure that results in discrimination based on race, color, or membership of certain language minority groups, regardless of its intent. Given the diversity of the state of Colorado, and particularly that of Denver County, there is a high likelihood that the barrier to voting Secretary Gessler seeks to impose on these eligible citizens and registered voters will have such a discriminatory result in violation of the Voting Rights Act. We are also worried that the Secretary's action might make participation particularly hard for disabled Coloradans, who may have been unable to make it to the polls in 2010 as a result of their disability, in potential violation of the American with Disabilities Act, and for Americans who were overseas in 2010, including those deployed on active duty in Iraq or Afghanistan.

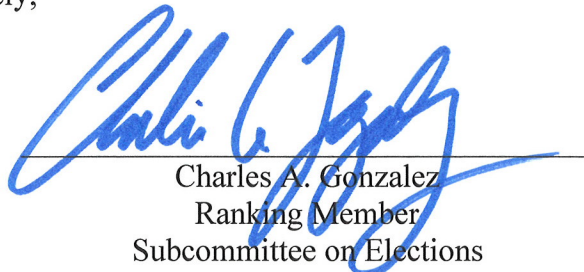
We request, therefore, that the Department of Justice investigate Secretary Gessler's actions to ensure that there has been no violation of the Voting Rights Act, the Americans with Disabilities Act, or any other applicable law and to ensure that no eligible voter's right to participate in our democracy is abridged.

We look forward to seeing the results of your investigation.

Sincerely,



Robert A. Brady
Ranking Member
Committee on House Administration



Charles A. Gonzalez
Ranking Member
Subcommittee on Elections

cc: The Honorable Scott Gessler, Colorado Secretary of State
The Honorable Debra Johnson, Denver Clerk and Recorder
The Honorable Diana DeGette, Member of Congress
The Honorable Ed Perlmutter, Member of Congress