



**U.S. ELECTION ASSISTANCE COMMISSION**  
1335 East West Highway, Suite 4300  
Silver Spring, MD 20910

February 22, 2016

The Honorable Richard J. Leon  
District Court for the District of Columbia  
333 Constitution Avenue, NW  
Washington, DC 20001

VIA FAX and HAND DELIVERY

Your Honor,

As you know, today, the Election Assistance Commission (EAC) is appearing before the Court on a Motion for a Temporary Restraining Order. Pursuant to 28 U.S.C. § 516, the Department of Justice (the DOJ) is appearing on the behalf of the agency. Unfortunately, the DOJ has determined that the initial action taken by the Executive Director is contrary to their interpretation of the law and the previous positions argued by the DOJ, thus they have informed the EAC that they are unable to defend the action, which is their duty and obligation. Accordingly, the DOJ has filed a response that reflects the interests and position of the DOJ and not of the defendants.

The conduct of litigation in which the United States, an agency, or an officer thereof is a party is reserved to the Department of Justice, under the direction of the Attorney General. Standing on that authority, the DOJ has also informed the EAC that it is prohibited from obtaining outside counsel. We also believe it is important to bring to the Court's attention that DOJ may have a conflict, because it was intimately involved with actions dealing with the same matters that the Commission took during the time the Commission was vacant and prior to appointment of the current Commissioners.

We will abide by the federal statute as it relates to representation of the United States by the Attorney General; however, as named defendants, we wanted the Court to be aware of why there is a sudden change in position by the Agency from the initiation of the Executive Director's initial action leading up to the culmination of events before this Court today.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Christy A. McCormick".

Christy A. McCormick, Chairwoman

A handwritten signature in blue ink that reads "BDN".

Brian D. Newby, Executive Director

cc via email: Amelia J. Schmidt, Michael C. Keats, Wendy R. Weiser, Susan M. Davies, Attorneys for the Plaintiffs the League of Women Voters of the United States, the League of Women Voters of Kansas, the League of Women Voters of Alabama, the League of Women Voters of Georgia; Jon M. Greenbaum, Linda Stein, Attorneys for Plaintiffs the Georgia State Conference of the NAACP, and Georgia Coalition for the People's Agenda; Dale E. Ho, Doug Bonney, Attorneys for Plaintiffs Marvin Brown and JoAnnBrown; John A. Freedman, Michelle Kantor Cohen, Attorneys for Plaintiffs Project Vote; Galen N. Thorp; Counsel for Defendants Brian D. Newby and the Election Assistance Commission; Kris W. Kobach, Dale L. Wilcox, Counsel for Proposed Intervenor-Defendant Kansas Secretary of State; Kaylan L. Phillips, J. Christian Adams, Counsel for Proposed Intervenor Public Interest Legal Foundation