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The Public Advocate's Voting Rights Project submits this report on the Department's activities during the November 4, 2008, Presidential election.

In February 2008, Public Advocate Chen announced his determination that the Department would activate all available attorneys for Election Day assistance to voters, primarily involving the representation of voters in county courthouses. This determination was promptly shared with state government officials, voting advocates, and the public at large. In the weeks preceding the election, we developed training materials and trained fifty attorneys and five other staff to be deployed to county courthouses and four attorneys and eight other staff to be located at DPA headquarters for the election.

We sent attorneys to Bergen, Burlington, Hudson, Mercer, Middlesex, Monmouth, Morris, Passaic and Union Camden, Ocean, Somerset, and Gloucester Counties.

During Election Day, our attorneys appeared in approximately 508 cases, either directly on behalf of a prospective voter, or as an *amicus curiae* ("friend of the court") supporting the right to vote. Prospective voters prevailed in approximately 439 of those cases (an 86 percent success rate), with the courts awarding them the right to vote which had been denied earlier in the day.

Most of the individuals we assisted at county courthouses had been turned away from the polls; others had called county election officials, learned there were problems, and been directed to court. In general, the applicants we assisted fell into one of five categories:

1. **Individuals who had registered to vote by the October 14 deadline, but whose names did not appear in the polls books at their precincts.** As was known before the election, with a deluge of approximately 264,000 new registrations received in October, some county election boards could not enter all the information in time to be printed in the poll books. In addition, a substantial number of individuals indicated that their registration paperwork had gone missing after an attempt to register, whether at a motor vehicle agency, a voter drive, or by some other lawful method. Judges generally accepted that voters who credibly demonstrated a good-faith attempt to register should be allowed to vote and should not be disenfranchised because of administrative lags or errors.
2. **Individuals denied the mandatory registration opportunity at a motor vehicle agency.** Under federal and state law, eligible voters must be offered a voter registration opportunity when applying for or renewing a driver's license or nondriver ID card. MVC offices are steadily coming into compliance with this

law as a result of our office's March 2008 Memorandum of Understanding with MVC and the Division of Elections; In cases where potential voters were denied this registration opportunity, judges generally accepted the position of the Public Advocate that otherwise qualified applicants should be permitted to vote based on credible testimony that (1) they were denied a registration opportunity at MVC; (2) they would have taken advantage of such an opportunity; and (3) they did not receive a letter from the Secretary of State offering them an alternative opportunity to register. Of the four appellate cases involving this issue of which we are aware, the appeals judges allowed the applicants to vote in three of them and denied the right to vote in one.

3. **Individuals whose voting address of record was not changed after a successful change of their motor vehicle address of record.** Another requirement of state and federal law is that voters successfully changing their address with MVC should have their voting address of record automatically changed. A number of voters we represented did not have their voting records updated, even though they appeared with a driver's license bearing an official change of address sticker. We believe that all the cases presenting this issue were resolved in the voter's favor.
4. **Inappropriate purges of voters.** Our attorneys also successfully represented a few voters whose names had been purged from voting rolls. While the reason for these isolated purges is not clear, the voters we assisted were generally successful in getting a judicial order to vote when this issue presented itself.
5. **Voter capacity.** Our attorneys successfully contested a challenge in Mercer County to thirty-four voters whose ability to vote was questioned on the grounds of mental incapacity. Existing case law and the constitutional amendment passed last year make clear that such Election Day challenges are improper; only a prior judicial finding, based on expert testimony that a person cannot understand the act of voting, can justify disenfranchisement on the ground of incapacity. A Morris County judge, unfortunately, issued an order allowing three individuals whose capacity he had questioned in an impromptu competency hearing to vote by provisional ballot only.

At headquarters Department staff took calls from the general public, totaling approximately 100 calls. Throughout the day, attorneys at headquarters handled multiple requests for technical and legal advice from attorneys deployed in the field. In addition, Department attorneys were involved in at least five proceedings before appellate judges.

Overall, the Election Day deployment was successful. Public Advocate Chen has observed that this was an election marked by relatively few glitches, given the number of ballots cast. He added that the massive effort to educate voters and election workers about their rights and responsibilities in the weeks leading up to this election clearly made a difference.