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VIA FACSIMILE

September 11, 2008

Honorable Haley Barbour
Governor of Mississippi
P.O. Box 139
Jackson, MS 39205

Honorable Delbert Hosemann
Secretary of State of Mississippi
P.O. Box 136
Jackson, MS 39205

Honorable Jim Hood
Attorney General of Mississippi
P.O. Box 220
Jackson, MS 39205

Dear Governor Barbour, Secretary Hosemann, and Attorney General Hood:

We read with alarm an editorial in today's *New York Times* ("Mississippi's Ballot Trick," A24) that describes your decision to place the Wicker-Musgrove U.S. Senate race in this November's election at the bottom of Mississippi's ballot. We urge you, as members of the State Board of Election Commissioners, to reconsider this decision. Failure to do so will likely confuse, mislead and disenfranchise hundreds of thousands of voters in Mississippi.

The Brennan Center, with the assistance of the nation's leading usability experts, political scientists, election officials, and designers who have closely studied the effect of ballot design on lost votes, recently completed a comprehensive study of ballot design mistakes and their impact on voters over the last decade. A key finding of the study is that poor ballot design — such as placing a U.S. Senate race at the bottom of a ballot, when all other federal races are at the top — frustrates voters, undermines confidence in the electoral process, and often results in the loss of a large number of votes.

In *Better Ballots* we found that placement of a contest on a ballot has a tremendous impact on whether voters' choices are accurately recorded. When a contest is not placed where voters expect it to be placed, those voters are more likely to make errors — and in

particular, to miss the contest altogether. For instance, in 2006 in Sarasota County, the contest for Congressional District 13 was displayed on the touch-screen machines' ballot in a place that made it difficult for many voters to find. The result was that approximately 15% of voters using these machines did not record a vote in the Congressional race, compared to just 2.5% of voters who voted on absentee ballots (which did not use the confusing design).

In general, the further down on a ballot a contest is placed, the less likely voters are to vote on it. We can see this by looking at the number of voters who did not record votes in the final contest on ballots in Mississippi in 2002 and 2004. According to research performed by Professor David Kimball of the University of Missouri and a co-author of *Better Ballots*, approximately 3% — or 18,000 — of all voters failed to record votes in Congressional races at the top of the ballot in Mississippi in 2002. By contrast 21% — or more than 140,000 voters — did not have votes counted on a statewide Amendment, located at the bottom of most ballots that same year. Similarly, in 2004, 7% — or 88,000 voters — failed to record a vote on a widely publicized Amendment related to gay marriage.

Low-income and minority voters are likely to be disproportionately impacted by your decision to move the U.S. Senate contest to the bottom of the ballot; several studies have shown that voters from these communities are even more likely than others to fail to vote in contests down ballot. For instance, Professor Kimball finds that only 3.5% of voters in counties with median incomes of greater than \$32,500 failed to vote on the gay marriage Amendment in 2004; that number increased to 5.8% for counties with median incomes between \$25,000 and \$32,500, and jumped again to 10.6% for counties with median incomes below \$25,000. Similarly, just 4.7% of voters in counties with less than 30% African American population failed to cast a vote on the gay marriage Amendment; in counties with more than 30% African Americans, that number was 9.2%.

We do not believe that your placement of local special election contests at the end of the ballot in recent years should have any impact on where to place the Wicker-Musgrove U.S. Senate contest this year. Local contests are always at or near the bottom of the ballot in Mississippi, regardless of whether they are part of a special election. In the special race to fill the remainder of Trent Lott's term, the Wicker-Musgrove race, most voters will expect to find it near the top of the ballot, with other federal and statewide contests. We can think of no legitimate public purpose in designing a ballot that will conflict with those expectations. For that reason, and to prevent widespread voter confusion and disenfranchisement in this Senate race, we strongly urge you to reverse your decision and place the Wicker-Musgrove race on the same portion of the ballot as all other federal contests.

Sincerely,



Lawrence Norden
Counsel, Democracy Program