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ONE HUNDRED TENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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October 20, 2008

The Honorable Michael B. Mukasey  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

The Honorable Robert M. Mueller  
Federal Bureau of Investigation  
U.S. Department of Justice  
935 Pennsylvania Avenue, NW  
Washington, DC 20535

Dear Mr. Attorney General and Director Mueller:

With national elections fifteen days away, we face no issue of greater importance than ensuring a fair and accurate vote that, whatever its outcome, has the full confidence of all Americans. For this reason, we write seeking further assurances that the full weight of the Justice Department and the Federal Bureau of Investigation will be brought to bear deterring anyone who would interfere with any person's right to vote or with citizens who serve our democracy by educating, registering, and turning out voters.

Stunning reports from every corner of the nation have heightened our concern about this critical matter in recent days. These include:

1. **Escalation of Attacks on ACORN and Others Seeking to Register and Turn Out Voters** – Since Chairman Conyers wrote you both about the improper leak of law enforcement information regarding ACORN last week, deeply troubling reports have surfaced about violence and threats against this group. According to a McClatchy News Service Report, an Ohio ACORN organizer recently received an email stating that she "is going to have her life ended." An ACORN staffer in Rhode Island reportedly received a threatening telephone call littered with racist language. ACORN offices in Boston and Seattle have apparently been vandalized.<sup>1</sup>

In Wisconsin, we have seen reports that a 58-year-old canvasser for Senator Barack Obama was assaulted by a homeowner apparently inflamed by the ACORN controversy. As reported by a local ABC affiliate, the canvasser stated: "The next thing I know he's telling us

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<sup>1</sup>Gordon, *Death Threat, Vandalism Hit ACORN After McCain Comments*, McClatchy Newspapers, Oct. 17, 2008.

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we're not his people, we're probably with ACORN, and he started screaming and raving[.] He grabbed me by the back of the neck. I thought he was going to rip my hair out of my head. He was pounding on my head and screaming. The man terrified me."<sup>2</sup>

If true, these reports appear to describe possible federal crimes such as criminal civil rights crimes including conspiracy to deprive the victims (and others) of federally protected constitutional rights, mail and wire offenses, and other more basic offenses such as assault and battery. Depending on the circumstances and the possible involvement of a group of individuals, the conduct also raises serious questions under the federal RICO law. While we appreciate that these reports may or not be accurate, they demand your utmost attention and action at this time, both to protect the individual victims, and in defense of our electoral process. Please assure us you have given these matters the highest possible priority.

2. **Public Attacks on Potential Voters** – In New Mexico last week, local Republicans held a press conference where they announced the names of a number of allegedly fraudulently registered voters.<sup>3</sup> A number of those named have since disputed the charge and demonstrated their bona fides. This report is deeply troubling for several reasons. First, by publicly announcing the names of allegedly fraudulent voters, at least some of whom were duly qualified to vote, is a clear effort to intimidate voters. Second, the article reports that the FBI met with local officials on this matter last week. While the FBI must and should investigate all appropriate reports of criminal activity, investigations such as the one described in this public report and carried out so close to an election raises significant concerns under Department principles – as Chairman Conyers described in his letter last week. Third, devoting Department resources to investigating apparently specious allegations is questionable at a time when, reports indicate, that the FBI is already overstretched and unable to find the resources needed to take on serious investigations such as those related to the ongoing economic crisis.<sup>4</sup>

Furthermore, it is deeply troubling that, just weeks after the Department's own watchdogs documented the role that specious agitating on alleged vote fraud matters by New Mexico Republicans played in the firing of United States Attorneys in 2006, in this controversy we see the same figures cropping up again and apparently obtaining a new FBI investigation just in time

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<sup>2</sup>WISN News, *Obama Campaign Worker Allegedly Attacked*, Oct. 18, 2008, available at <http://www.wisn.com/politics/17754232/detail.html>.

<sup>3</sup>Dabovich, *N.M. GOP Finds 28 Suspect Voters*, Santa Fe New Mexican, Oct. 17, 2008.

<sup>4</sup>Lichtblau et al, *F.B.I. Struggles to Handle Financial Fraud Cases*, New York Times, Oct. 18, 2008.

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for the 2008 elections. Thus, a New Mexico lawyer named Pat Rogers – described in the local press as “an attorney who advises the state GOP” – is apparently playing a key role in pressing these current claims.<sup>5</sup> Mr. Rogers, however, appears repeatedly in the report on the U.S. Attorney firings prepared by the Department’s Offices of the Inspector General and Professional Responsibility, which documented his actions making flawed claims of voter fraud and bringing unwarranted pressure to bear on law enforcement officials, including Mr. Iglesias, in 2006.<sup>6</sup>

Similarly, there are reports out of Ohio that local prosecutors have used their powers to subpoena records of people who have submitted early or absentee votes in the current election.<sup>7</sup> One of these prosecutors is reportedly a local campaign chair for Republican presidential candidate John McCain, and the other is reportedly a former law partner of the chair of Mr. McCain’s Ohio Campaign. Once again, the risks of voter intimidation with this sort of law enforcement activity are obvious – and those risks reach extreme levels when the fact of this sort of investigative activity is leaked to the press at the height of election season and while voting is actually underway.

We urge the Department to look closely at these incidents, both with regard to its own allocation of investigative resources and with respect to the lawfulness of publicly accusing registered voters of fraud without a sufficient factual basis – if that is what occurred – and the other activities described above.

3. **Other Actions** – Other reports around the country raise concern about coordinated efforts to discourage voter participation or to suppress votes, and about the federal response to these actions. From California, we see reports that a Republican-affiliated organization has been accused of secretly switching voters’ party registration from Democrat to Republican and also changing voters’ registration status from in-person to absentee.<sup>8</sup> If the voter did not learn of this change and showed up at the polls unaware of her absentee status, she could possibly be unable to vote or might be shunted to a provisional ballot for no good reason.

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<sup>5</sup>Dabovich, *N.M. GOP Finds 28 Suspect Voters*, Santa Fe New Mexican, Oct. 17, 2008.

<sup>6</sup>*An Investigation Into the Removal of Nine US Attorneys in 2006*, Offices of the Inspector General and Professional Responsibility, September 2008, at 149-200.

<sup>7</sup>Majors, *Deters Subpoenas Voter Records*, Associated Press, Oct. 18, 2008; *County Officials Seeking Ohio voters’ Records*, Associated Press, Oct. 9, 2008.

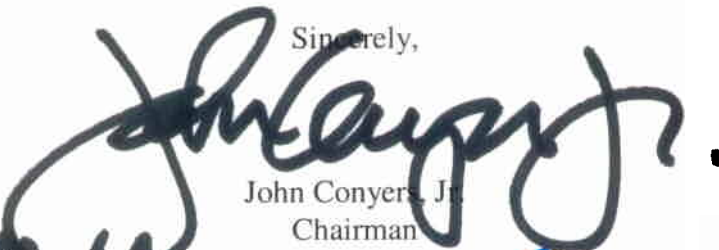
<sup>8</sup>Halper and Rothfeld, *Voters Say They Were Duped Into Registering as Republicans*, Los Angeles Times, Oct. 18, 2008.

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According to the most recent reports, state and local law enforcement recently arrested the owner of this firm, yet there is no mention of any federal involvement in the matter. While that may be entirely appropriate, in the wake of recent controversies regarding the intrusion of partisan politics into Department business, it is troubling to repeatedly learn of repeated federal involvement in apparently dubious investigations against Democratic-affiliated or liberal organizations, but to see no sign of federal concern over an apparently legitimate and serious matter of true fraud that risks concrete electoral impact.

In closing, we must say that we cannot begin to express our feelings that the Attorney General has repeatedly declined Chairman Conyers' request for regular ongoing staff-level meetings on protecting the right to vote that would have allowed for informal exchanges regarding exactly these sorts of matters. However, with a critical election just two weeks away, we cannot sit by and allow matters such as these to go unaddressed. Accordingly, please respond to the questions posed in this letter immediately. Normally, we would hesitate to seek a response in such short time, but these matters simply cannot wait.

Sincerely,



John Conyers, Jr.  
Chairman



Jerrold Nadler  
Chairman, Subcommittee on the  
Constitution, Civil Rights, and Civil Liberties



Linda T. Sánchez  
Chair, Subcommittee on Commercial and  
Administrative Law

cc: Hon. Lamar S. Smith  
Hon. Trent Franks  
Hon. Louie Gohmert  
Hon. Chris Cannon  
Richard Powers  
Keith B. Nelson