JOHN CONYERS, JR., Michigan
CHAIRMAN

HOWARD L. BERMAN, California
RICK BOUCHER, Virginia
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
WILLIAM D. DELAHUNT, Massachusetts
ROBERT WEXLER, Florida
LINDA T. SÁNCHEZ, California
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
BETTY SUTTON, Ohio
LUIS V. GUTIERREZ, Illinois
BRAD SHERMAN, California
TAMMY BALDWIN, Wisconsin
ANTHONY D. WEINER, New York
ADAM B. SCHIFF, California
ARTUR DAVIS, Alabama
DEBBIE WASSERMAN SCHULTZ, Florida
KEITH ELLISON, Minnesota

ONE HUNDRED TENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6216

(202) 225–3951
http://www.house.gov/judiciary

LAMAR S. SMITH, Texas
RANKING MINORITY MEMBER

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
STEVE CHABOT, Ohio
DANIEL E. LUNGREN, California
CHRIS CANNON, Utah
RIC KELLER, Florida
DARRELL E. ISSA, California
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TOM FEENEY, Florida
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio

October 16, 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:

It is with shock and disappointment that I read today's Associated Press report that the Federal Bureau of Investigation has opened and leaked an investigation into whether ACORN, a longstanding and well regarded organization that fights for the poor and working class, is involved in nationwide voter fraud.

As an initial matter, it is simply unacceptable that such information would be leaked during the very peak of the election season. Such leaks of information about ongoing criminal investigation matters are always inappropriate, and likely violate the provisions of the U.S. Attorney manual governing release of information about ongoing investigations (and which, in any event, would require approval from the responsible U.S. Attorney or Department division before release[1]). More significant in this case, however, they also run afoul of valuable Department traditions regarding the need for cautious and sensitive handling of election-related matters during the run up to voting (or, as here, while early voting is underway). Indeed, I note with dismay that this sort of release likely would have violated the traditional principles stated in the Department's Election Crimes Manual, such as the requirement that prosecutors "must refrain from any conduct which has the possibility of affecting the election itself," and that "most, if not all, investigation of an alleged election crime must await the end of the election to which the allegation relates," but those provisions were removed by the Department in May 2007 as the U.S. Attorney controversy was unfolding and it was learned that former U.S. Attorney Brad Schlozman had apparently improperly brought enforcement action against ACORN volunteers during the run up to the 2006 national elections.

---

[1]U.S. Attorneys Manual 1-7.530.

Moreover, this news is all the more troubling in light of the proven wrongdoing at the Justice Department in the United States Attorneys scandal. As you are aware, there is extensive evidence that political operatives improperly pressured United States Attorneys to investigate and prosecute spurious claims of vote fraud in close proximity to an election. When some did not, they were terminated. Thus, one must view the timing of this extraordinary leak with added suspicion, given that it comes less than 24 hours after the Republican Presidential candidate raised these allegations in a nationally televised debate.

I know that it has become a right-wing cottage industry to cry wolf over alleged "voter fraud" during an election season (only to have such claims evaporate after the election has concluded). Indeed, using superlatives that would make P.T. Barnum blush, Senator John McCain, the Republican Presidential candidate, said in the debate last night, that ACORN "is now on the verge of maybe perpetuating one of the greatest frauds in voter history in this country, maybe destroying the fabric of democracy." One would hope the Justice Department and FBI would more skeptically examine such sensational accusations than some cable news outlets. And this is particularly true where the allegations, even given their fullest reading, simply do not support such alarmist and unreasonable claims.

The facts as I understand them are these. A longstanding and well regarded organization that fights for the poor and working class has come under partisan fire for its voter registration acitvities. This organization has registered more than one million voters. There are allegations that some paid workers essentially cheated ACORN by filling out registration forms with bogus names and incorrect information. This of course would have harmed ACORN since ACORN pays to register potential voters, not phantoms, but – critically – does not deprive any person of their own right to vote or result in any unauthorized or fraudulent votes being cast. As one expert in this field has explained, "Mickey Mouse may show up on a registration list, but he's not likely to vote."

Furthermore, despite a long partisan campaign to stir up fears regarding so-called "voter fraud," they have been unable to produce any credible examples of meaningful fraudulent voting that could have a tangible impact on any election. Just this week, in fact, the Republican Governor of Florida, Charlie Crist, said - with respect to his state - that such allegations are "less than is being discussed" and ascribed these types of allegations to "some who enjoy chaos." Similarly, the Republican Secretary of State has indicated that he does not believe that ACORN is engaged in systematic voting fraud. Indeed, such allegations repeatedly dissolve under fair scrutiny.[2]

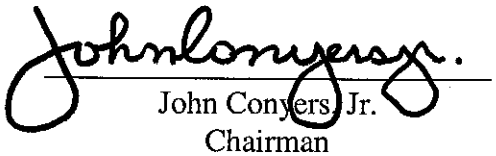
---

[2]Lipton, *In 5-Year Effort, Scant Evidence of Voter Fraud*, New York Times, April 12, 2007.

At the same time, numerous allegations have emerged that political operatives are engaged in supression of eligible voters and this activity has apparently failed to receive the intense attention that the federal government is now reportedly devoting to ACORN. For example, there are reports that the chairman of the Republican Party in Macomb County, Michigan, a key swing county in a key swing state, has planned to use a list of foreclosed homes to block people from voting in the upcoming election as part of the state GOP's effort to challenge some voters on Election Day. Additionally, the Columbus Dispatch reports that the Ohio GOP in Franklin County, "has not ruled out challenging voters before the election due to foreclosure-related address issues."[3]

Accordingly, I condemn the leak of this sensitive information and remind you both of your and your agencies' obligations to handle election-related matters in an appropriate and non-political matter as the election season proceeds. In addition, please let me know no later than Thursday, October 23, 2008, if the release of information and all other actions taken regarding this investigation are consistent with the US Attorneys Manual and the Election Crimes Manual and, if not, what action has been taken in response. Please direct your response to the Judiciary Committee Office at 2138 Rayburn House Office Building (tel: 202-225-3951, fax: 202-225-7680).

Sincerely,



John Conyers, Jr.
Chairman

cc: Hon. Lamar S. Smith
Richard Powers
Keith B. Nelson

---

[3] Eartha Jane Mezler, *Lose Your House, Lose Your Vote*, MICHIGAN MESSENGER, Sept. 10, 2008.