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July 31, 2007

## BY E-MAIL AND HAND DELIVERY

Hon. John Conyers, Jr.  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

Re: RNC Subpoena

Dear Chairman Conyers:

We write on behalf of the Republican National Committee ("RNC") in response to your July 17, 2007 letter. In your letter, you requested that the RNC produce by today documents responsive to the Committee's subpoena or, in the alternative, a privilege log listing the documents that the RNC is withholding.

The RNC has already produced close to 1,000 pages of responsive documents and will be producing another set of responsive documents to the Committee tomorrow. Since the RNC's original production on July 11, the White House has re-reviewed the documents that were withheld and determined that certain documents are not privileged and, therefore, has authorized the RNC to produce them to the Committee. The RNC respectfully requests that the Committee exercise discretion with regard to any public disclosure of the documents, to the extent they contain any personal information, including e-mail addresses.

With respect to the remaining documents that the RNC has identified as responsive, the RNC is continuing to withhold them based on instructions received today from the White House in the attached letter. The White House also has instructed the RNC not to provide a privilege

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log to the Committee. Given the important constitutional issues at stake, the RNC intends to comply with the White House's direction.

As we have discussed with Committee staff, the RNC is also withholding certain documents reflecting communications between individuals and their personal counsel or family members. We understand that the Committee has agreed that the RNC need not produce those documents with respect to Scott Jennings. At the Committee's suggestion, we have asked counsel for the other individuals whose documents have been withheld on this same basis to contact Committee staff directly to discuss the ultimate disposition of those documents.

Finally, we note that, as you wrote in your July 13, 2007 letter, the RNC has engaged in "productive and cooperative" negotiations with the Committee concerning the collection and review of the emails that are responsive to the Committee's requests. We emphasize, however, that the dispute over production of the emails ultimately is between the Legislative and Executive branches. If the Committee and the White House reach a negotiated settlement concerning that dispute, the RNC expects to abide by the settlement. If the Committee seeks to resolve its dispute with the White House in a court of law through a civil action, the RNC would of course abide by any final order of the court.

We are available for further discussions regarding these issues at your staff's convenience.

Respectfully submitted,



Robert K. Kelner

cc: Hon. Lamar S. Smith

THE WHITE HOUSE  
WASHINGTON

July 31, 2007

Dear Mr. Kelner:

I write to follow up on my July 17, 2007 letter to you concerning White House documents in the form of White House e-mails sent or received on Republican National Committee (RNC) e-mail accounts that have been subpoenaed by the House Committee on the Judiciary.

That letter distinguished between two categories of White House documents. The first category consists of documents called for and covered by the Committee's June 13, 2007 subpoena to the White House ("Category One documents").<sup>1</sup> The second category contains documents which, although not called for by the June 13 subpoena to the White House, are nevertheless official White House records relating to the performance of official duties involving communications between or among White House officials and between White House officials and other persons ("Category Two documents").

As we have previously notified you, the Category One documents fall within the terms of the June 27, 2007 opinion from the Acting Attorney General, and are covered by the President's June 28, 2007 assertion of Executive Privilege. The RNC is again directed not to disclose these materials without prior White House authorization. Given the considerable detail contained in the Acting Attorney General's June 27 letter, and for the reasons stated in the July 9, 2007 letter from Counsel to the President Fred Fielding to the Chairmen of the House and Senate Judiciary Committees, the RNC also is directed not to provide privilege-log information relating to these documents to the Committee.

As to the Category Two documents, the White House has now had an opportunity to review them, and again instructs the RNC not to disclose these documents to the Committee without prior White House authorization. The justification for this instruction differs from that presently applicable to the Category One documents and, we think, calls for a few words of explanation. I note that representatives of this Office requested a meeting with Committee staff to explain the nature of the Category Two documents. That meeting was held yesterday.

As we explained to Committee staff, the Category Two documents consist of material relating to candidates for the United States Attorney position in three judicial districts: the Central District of California, the Middle District of Tennessee, and the District of Montana. More specifically,

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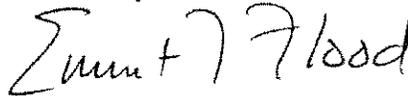
<sup>1</sup> That subpoena seeks "documents in the possession, custody or control of the White House related to the Committee's investigation into . . . the hiring and firing of United States Attorneys" and explicitly "instruct[s]" the White House to produce, among other things, "documents that the [White House] ha[s] a legal right to obtain [or] to copy, or to which [the White House] ha[s] access . . . ."

the documents consist of emails relating to potential U.S. Attorney candidates, candidate resumés, and candidate letters of recommendation. These documents do not relate to U.S. Attorney evaluations or U.S. Attorney dismissals, and they do not concern the replacement of any U.S. Attorneys considered for dismissal.

As noted above and as stated in our prior correspondence, the materials in this category are communications involving White House officials conducting official White House business. Indeed, the Category Two documents involve the process of implementing a core, Presidential constitutional prerogative: the power to nominate United States Attorneys. For that reason, such materials presumptively fall outside the Committee's investigative authority, which is limited to areas in which Congress may legislate. At this point, the Committee has identified no concrete need for information relating to U.S. Attorney candidates in these three districts. If the Committee were to demonstrate that information relating to U.S. Attorney candidates for the above-mentioned districts is needed for its legislative functions, we would give further consideration to the question of how to accommodate such needs. Absent such a demonstration, however, we must direct the RNC not to disclose these materials to the Committee or to any other person without prior authorization of the White House.

Please telephone me at (202) 456-1019 if you have any questions about this matter.

Sincerely,

A handwritten signature in black ink that reads "Emmet T. Flood". The signature is written in a cursive, slightly slanted style.

Emmet T. Flood  
Special Counsel to the President

Robert K. Kelner, Esq.  
Covington & Burling LLP  
1201 Pennsylvania Ave. N.W.  
Washington D.C. 20004

cc: The Honorable John Conyers, Jr.  
The Honorable Linda Sánchez  
The Honorable Lamar Smith  
The Honorable Chris Cannon