



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 28, 2008

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter, dated October 16, 2008, regarding an Associated Press article reporting that the Federal Bureau of Investigation (FBI) has opened an investigation into the Association for Community Organizers for Reform Now (ACORN) and whether it is involved in nationwide voter fraud.

To be clear, neither the FBI nor the Department has confirmed the existence of such an investigation. Longstanding Department policy provides that we generally do not comment on the existence or non-existence of any investigation, and we cannot deviate from that policy, especially in such close proximity to a Presidential election. The appearance of these press reports is problematic, however, and we caution against attributing significance to a story sourced to two unnamed "senior law enforcement officials" speaking on condition of anonymity. Any such disclosure—accurate or not—by a Department employee would not only be a breach of policy but also would frustrate considerable efforts undertaken by the Department to meet its responsibility to facilitate a fair election. For this reason, we share your frustration regarding the appearance of the article and have referred the article to the Office of the Inspector General and the Office of Professional Responsibility for whatever action they deem appropriate.

In the Attorney General's testimony before your committee on July 23, 2008, he identified two primary areas of focus for the remainder of his term, one of which was ensuring a fair election. He also has made abundantly clear that politics will play no role in the Department's enforcement of federal election laws, and we can assure you that the Department has followed the Attorney General's mandate. We have endeavored to keep the oversight committees informed of our efforts in this regard through testimony and periodic briefings of committee members or their staffs. These efforts have included the aforementioned testimony of the Attorney General and briefings of or testimony before the House Judiciary Committee by the Criminal Division and/or the Civil Rights Division on at least five occasions since September 2007, with another briefing scheduled for today. The Department's efforts to ensure a fair election have included:

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- On March 5, 2008, the Attorney General sent a memorandum to all Department employees regarding election year sensitivities, instructing, “[l]aw enforcement officers and prosecutors may never select the timing of investigative steps or criminal charges for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party.” A copy of that memorandum is attached.
- The March 5 memo also reminded Department employees of their obligations to consult the Public Integrity Section regarding “all criminal matters that focus on violations of federal and state campaign-finance law, federal patronage crimes, and corruption of the election process,” because of the sensitivity of those matters.
- On July 1-2, 2008, the Department held its 7th annual Ballot Access and Voting Integrity Symposium to provide training for District Election Officers (DEOs) from 93 United States Attorneys’ Offices, specially designated Election Crime Coordinators from each FBI field office, and attorneys from the Public Integrity Section and Civil Rights Division. The Attorney General spoke and reaffirmed that “politics must play no role in the decisions of investigators or prosecutors as to any investigations or criminal charges; that law enforcement officers and prosecutors may never select the timing of investigative steps or criminal charges for the purpose of affecting any election; and that we must not do anything for the purpose of giving an advantage or disadvantage to any candidate or political party.”
- On July 2, 2008, the Department issued a fact sheet describing the Department’s plan for Protecting Voting Rights and Preventing Election Fraud and also setting forth prior enforcement efforts. A copy of the fact sheet is attached.
- On September 22, 2008, the Department’s Public Integrity Section sent a memorandum to the DEOs in each of the United States Attorneys’ Offices. The memorandum followed up on the symposium, and once again reminded the DEOs of their obligations and responsibilities regarding the Ballot Access and Voting Integrity Initiative and the 2008 Election Day Program. A copy of the memorandum is attached.
- On September 17, 2008, the FBI sent similar guidance to its field offices. The guidance instructed agents regarding the special sensitivities regarding allegations of election crimes and the investigative restrictions regarding investigation of such allegations in the weeks preceding an election.
- On October 22, 2008, we sent a reminder to all United States Attorneys of their obligation under the United States Attorneys’ Manual to notify the Executive

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Office for United States Attorneys regarding contacts from Members of Congress, including when they are notified of potential election crimes.

In sum, the unfortunate appearance of the article referenced in your letter and other reports that followed occurred despite the existence of clear contrary guidance from the Attorney General and other senior Department leadership and despite our significant efforts to reinforce Department policies. From time to time, we receive letters from Members pressing us to conduct investigations or to refrain from conducting investigations but, with all respect for the Members who write to us, our law enforcement decisions are not predicated upon their interests. Those decisions are based upon credible information indicating violations of federal law within our purview. You can be assured that we are committed to following the facts wherever they may lead, to taking appropriate action, if any is warranted, independent of partisan political considerations, and to meeting fully and fairly our responsibilities in the upcoming election.

We hope that this information is helpful. Please do not hesitate to contact this office if you would like additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith B. Nelson", with a stylized flourish at the end.

Keith B. Nelson
Principal Deputy Assistant Attorney General