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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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October 24, 2008

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Chairman Leahy:

This responds to your October 21, 2008, letter to us. In that letter, you characterized the widely reported allegations of rampant voter registration fraud by ACORN as not “anything amounting to actual voter fraud.” Your letter did not seem to appreciate the urgent need to ensure the integrity of our election process. Instead, you concluded summarily that allegations of election fraud are a “myth.”

We respectfully disagree. The allegations of systematic nationwide registration fraud by ACORN are very serious, and, if proven, would be federal crimes. In your reply, you do not deny the core assertion of our letter to you—that there have been widespread allegations and reports of voter registration fraud committed by ACORN. We believe that, when faced with such widespread allegations of systematic violations of federal law, which undermine the voting rights of all of our citizens, it is the duty of this Committee to investigate and ask tough questions. We agree with your call to keep partisan politics out of law enforcement, and are asking for nothing more than a neutral and public airing of the facts and an honest discussion of the law. And, as you often note, the Committee’s oversight responsibilities include ensuring that the Department of Justice enforces federal voting laws regardless of the political consequences.

We were thus disappointed that, though not contesting the widespread allegations of registration fraud, your letter trivialized the alleged criminal violations and changed the subject by accusing us of pursuing a partisan agenda. We take strong exception to your accusation, which is belied by the facts. Contrary to your claim that there is “a pattern” of “Republican politicians” seeking investigations, the facts indicate that there is widespread concern, regardless of political party, with protecting the integrity of our election process. Indeed, earlier this month Nevada Attorney General Ross Miller and Secretary of State Catherine Cortez Masto, both Democrats, initiated a law enforcement raid on ACORN’s Las Vegas office due to mounting suspicion of wrongdoing. In addition, the bipartisan Cuyahoga County Board of Elections (Cleveland, Ohio) voted

unanimously to ask the county prosecutor to investigate ACORN, providing further support that the unease surrounding voter fraud is shared by both sides of the aisle.

When seemingly daily press accounts and investigations in at least 14 states allege widespread election fraud, this Committee has a duty to investigate the allegations before dismissing them as “myth.” In order to ignore this issue, one would have to either believe that systematic violations of federal law by a taxpayer-funded group are not important enough for this Committee’s attention, or believe that the numerous allegations of fraud by ACORN are not credible. Neither belief is tenable.

Registration fraud is a crime, and should not be blithely ignored. The Voting Rights Act of 1965 (“Voting Rights Act”) made it a federal crime to give false information “for the purpose of establishing [] eligibility to register” or to “conspire[] with another individual for the purpose of encouraging [] false registration.” 42 U.S.C. 1973i(c). The National Voter Registration Act of 1993 (“NVRA”) made it a crime to deprive “the residents of a State of a fair and impartially conducted election process by the procurement or submission of voter registration applications that are known . . . to be materially false, fictitious, or fraudulent” 42 U.S.C. 1973gg-10(2)(a) (internal formatting omitted). These crimes are both punishable by up to 5 years in prison.

Your letter seems to argue that a violation of these prohibitions against registration fraud is not “actual voter fraud” because it is not “in-person voter fraud” or “voter impersonation fraud.” This is a red herring. Registration fraud, in-person voter fraud, and voter impersonation fraud are all covered by federal election fraud laws. Indeed, both the Voting Rights Act and the NVRA distinguish between registration fraud and voting fraud, and criminalize both. It is no defense to registration fraud that the party is innocent of in-person voter fraud, just as it is no defense to burglary that the party is innocent of robbery.

Registration fraud is a crime because registration fraud threatens the integrity of our elections. As testimony before our Committee has demonstrated, registration fraud makes it possible to commit vote fraud in a way that is almost completely undetectable. Once fraudulently registered, one can vote under color of law without committing any further fraud or leaving any more clues. Once fraudulently registered, an individual can request an absentee ballot and fraudulently vote by mail without committing in person voter fraud or voter impersonation fraud. Indeed, despite your focus on “in-person voter fraud,” the bipartisan Commission on Federal Election Reform (the “Bipartisan Commission”), co-chaired by President Jimmy Carter and made up of leaders such as Tom Daschle and Lee Hamilton, concluded that “[a]bsentee ballots remain the largest source of potential voter fraud.” (Section 5, Improving Ballot Integrity, available at http://www.american.edu/ia/cfer/report/CFER_section5.pdf).

Registration fraud thus renders in-person voter fraud and voter impersonation fraud unnecessary. Once an identity is fraudulently placed on the voter rolls, it becomes almost impossible to know whether or when a fraudulent vote is cast. Voters in the “vulnerable populations” cited in your letter have their votes diluted by votes cast by fraudulently registered voters just as much as any other voters.

Standing alone, the allegations of registration fraud would merit investigation by this Committee. However, the evidence increasingly indicates that your belief that registration fraud does not lead to the casting of fraudulent votes is mistaken. Last week, the *New York Post* reported that an Ohio man, who had registered to vote numerous times through ACORN, cast an illegal ballot, which was noticed by alert election officials and tossed out. The matter was referred to the local prosecutor. As the *Las Vegas Journal Review* editorialized on October 10, 2008, in connection with Nevada’s own ACORN registration scandal, “[t]he question isn’t whether such loose voter registration practices lead to election fraud. The question is exactly how much fraud results.”

We are aware of your longstanding belief that voter fraud is a “myth.” This belief dates back at least to your March 12, 2008, testimony to that effect before the Senate Rules Committee. However, in the six months since you delivered that testimony, multiple instances of registration fraud by ACORN have been widely reported in the press, and have been investigated by state and local as well as federal authorities in at least fourteen states. These reports continue to pour in on a seemingly daily basis. Indeed, yesterday’s *New York Times* reported that an internal report by ACORN’s own lawyer “raises questions about whether the web of relationships among its 174 affiliates may have led to violations of federal laws.” A Lexis search of “ACORN” and “Fraud” reveals 482 mentions in major newspapers since your March 12, 2008, testimony. We believe that it would be an error to conclude that voter fraud is a “myth” without at least investigating the alleged new evidence to the contrary.

The Bipartisan Commission clearly rejected the belief that voter fraud is a myth, reporting that “[w]hile election fraud is difficult to measure, it occurs.” Their report noted that investigations have resulted in charges for many crimes, including multiple voting — a crime that is directly linked to multiple registration.

A cynic could argue that, when a group known to favor one party over the other engages in nationwide registration fraud, both parties have a partisan political interest. If the group succeeded in committing election fraud, presumably the group’s political opponents would suffer and the group’s political allies would benefit. Thus, the group’s political opponents would have an interest in airing the facts, enforcing the law, and preventing the fraud, and the group’s political allies would have an interest in looking the other way.

Your letter insinuates that we are attempting "to create a panic in the electorate" by raising these concerns. To the contrary, we are asking for a hearing so that the widespread concerns within the electorate can be addressed and alleviated. If you are correct that the allegations do not undermine the integrity of the election system, then a hearing could assuage the many voters with deep concerns about the process. If, on the other hand, voters' concerns about the process are valid, then it is incumbent on the Committee to hold a hearing to investigate. If anyone should be panicked, it should be the small minority of the electorate who plan election fraud, not the law-abiding citizens who want their votes counted in a fair and legal process.

The Bipartisan Commission concluded that "[f]raud in any degree and in any circumstance is subversive to the electoral process. The best way to maintain ballot integrity is to investigate all credible allegations of election fraud and otherwise prevent fraud before it can affect an election." We agree.

For these reasons, we respectfully renew our call for immediate hearings before the upcoming election into the reports of widespread voter registration fraud by ACORN. With less than two weeks before Election Day, the American people have a right to know that their votes will be counted according to law and to the bedrock principle of one person, one vote as embodied in the Constitution and the Voting Rights Act. This Committee has a long and proud tradition of protecting the civil rights of all Americans. In the face of the serious allegations of improprieties in the voting process across America, this Committee has a duty to ensure that the facts surrounding alleged voter registration fraud are fully aired, and the voting rights of all Americans are protected.

Sincerely,

Alex DeLoach

Jon Kyl

John Cornyn

Sam Brownback

Orin Hatch

L. J. Gohmert