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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>

October 3, 2007

The Honorable Peter D. Keisler  
Acting Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington DC, 20530

Dear Mr. Attorney General:

We write seeking answers to specific questions in order to follow up on requests by Members of Congress regarding the Department of Justice's handling of several significant instances of apparent voter suppression. These cases – the notorious "phone jamming" case that arose in New Hampshire in 2002 and the equally troubling activities of a firm known as Sproul & Associates during the 2004 election cycle – present extremely disturbing allegations of interference with voters' rights. Serious concerns remain, however, regarding whether the Department has adequately investigated and prosecuted these cases.

### A. New Hampshire Phone Jamming

The first matter is the jamming by Republican political operatives of telephones belonging to the New Hampshire Democratic Party and a Manchester Fire Fighters Association on election day 2002. This brazen disruption of get out the vote efforts and election day communications has led to civil litigation and the criminal prosecution of three of the perpetrators in New England, including Allen Raymond, the head of the Republican-affiliated firm that carried out the jamming, Charles McGee, the 2002 Executive Director of the New Hampshire Republican Party, and James Tobin, the 2002 Regional Political Director for the Republican National Committee and the New England Director for President Bush's 2004 reelection campaign.<sup>1</sup>

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<sup>1</sup> Klein, *White House Pressed on N.H. Tactic*, Boston Globe, Apr. 13, 2006.

Despite those efforts, however, serious questions have been raised by Members of Congress and the press about the Department's handling of this sensitive matter and, in particular, whether politics has improperly influenced the investigation.<sup>2</sup>

The most important open issue is whether the possible role of White House officials and Republican Party political leaders has been sufficiently investigated. Twenty-two phone calls were exchanged between New Hampshire Republican officials and the White House Office of Political Affairs starting at 11:20 am on election day 2002 and running past 2:00 am on election night, and one hundred and ten calls were placed between James Tobin and the White House in the two months surrounding the election.<sup>3</sup> Also, the Republican National Committee has paid millions in legal fees to defend Mr. Tobin, a decision that was apparently made in consultation with the White House and that is hard to square with any view of Mr. Tobin as a rogue operative.<sup>4</sup> Other troubling reports indicate that the funds used to pay for the phone jamming may have been funneled from Native American tribal donors to the New Hampshire Republican Party by disgraced GOP lobbyist Jack Abramoff and/or the fundraising machinery of former Representative Tom Delay.<sup>5</sup>

Despite this compelling evidence of Washington involvement in the election day jamming of Democratic phone lines, however, the FBI Special Agent working this matter allegedly was instructed not to follow investigative leads back to Washington.<sup>6</sup> In addition, the attorney for one of the phone jamming defendants has stated that he was told by a federal prosecutor that "all decisions in this case had to be made subject to the approval of the Attorney General himself, who had to sign off on all actions in this case," an unusual state of affairs for a criminal prosecution, particularly since neither Attorney General Ashcroft nor Attorney General Gonzales recused themselves from these matters, despite their connections to political and

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<sup>2</sup> September 18, 2007, Letter from Rep. Paul Hodes to Rep. John Conyers, Jr.; Editorial, *The New Hampshire Phone Scam*, New York Times, Sept. 17, 2007.

<sup>3</sup> Edsall & Fahrenthold, *2002 N.H. Scandal Shadows GOP Anew*, Washington Post, Apr. 14, 2006; Kiel, *GOP Jams Democracy*, In These Times, May 29, 2006.

<sup>4</sup> Cohen, *A Small-Time Crime With Hints of Big-Time Connections Lights Up The Net*, New York Times, Apr. 17, 2006; Edsall, *GOP Official Faces Sentence in Phone-Jamming*, Washington Post, May 17, 2006; Klein, *note 1 supra*.

<sup>5</sup> Hines, *Delay's Scandals: Maybe Not Just For Texas Anymore*, Houston Chronicle, Apr. 19, 2006; Cohen, *note 4 supra*; Kiel, *note 3 supra*.

<sup>6</sup> March 21, 2007, Letter from Kathleen Sullivan and Paul Twomey to Sen. Patrick Leahy and Rep. Paul Hodes at 5.

administration officials implicated by the matter.<sup>7</sup> It has also been reported that Department officials affirmatively blocked the taking of discovery in related civil litigation that may have shed light on these key issues.<sup>8</sup>

Finally, it has been asserted that Mr. Tobin's name was kept out of court filings made prior to the 2004 election, and that he was not actually indicted until several weeks after the election, even though the facts of his involvement in this election-related misconduct were well known to the Department throughout this period.<sup>9</sup> That decision allowed Mr. Tobin to work on the Bush Cheney campaign through virtually all of the 2004 election cycle, and would even have allowed him to serve the campaign on Election Day 2004 if he had not been identified as a participant in the phone jamming by a journalist, despite the apparently well-documented evidence possessed by the Department at that time that Mr. Tobin had previously participated in serious election-related misconduct.

#### **B. Sproul & Associates**

The second matter of concern is the charge that a Republican-connected voter registration firm; Sproul & Associates, engaged in serious misconduct such as declining to register Democratic voters and destroying registration cards collected from Democratic voters in several states prior to the national elections in 2004.<sup>10</sup> Evidence of such misconduct was widely broadcast in the month prior to those elections, when a television news program in Nevada obtained destroyed registration cards from the trash and a former Sproul employee described in an affidavit being trained to register only Republicans and to tear up Democratic registrations in that state.<sup>11</sup> In Pennsylvania, Oregon, and West Virginia, former Sproul employees, as well as individuals who had refused to work for Sproul once the nature of the work was made clear to them, have similarly described destroying Democratic registration cards and being trained to

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<sup>7</sup> March 21, 2007, Letter from Kathleen Sullivan and Paul Twomey to Sen. Patrick Leahy and Rep. Paul Hodes at 3.

<sup>8</sup> Schweitzer, *Parties Call Foul over N.H. Phone-Jamming Suit*, Boston Globe, Oct. 23, 2004.

<sup>9</sup> March 21, 2007, Letter from Kathleen Sullivan and Paul Twomey to Sen. Patrick Leahy and Rep. Paul Hodes at 3.

<sup>10</sup> See Manjoo, *Sproul Play*, Salon, Oct. 21, 2004.

<sup>11</sup> Ritter, *Nevada Judge Declines to Reopen Voter Registration in Vegas Area*, Las Vegas Sun, Oct. 15, 2004; Manjoo, *note 10 supra*.

selectively register only Republican voters and to discourage Democrats from registering.<sup>12</sup> One such person stated that “fooling people was the key to the job” and that “canvassers were told to act as if they were nonpartisan, to hide that they were working for the RNC, especially if approached by the media.”<sup>13</sup> At the same time, public libraries around the country reported receiving requests to set up registration tables from the firm, which asserted it was working with or on behalf of the non-partisan organization “America Votes,” even though Sproul had no connection to that organization.<sup>14</sup>

The alleged misconduct described by the many witnesses quoted in these articles would clearly suppress votes and violate the law.<sup>15</sup> Because of the multiple jurisdictions involved and the proximity of this apparent misconduct to a major federal election, it is our understanding that the investigation would have been coordinated or handled by officials at Main Justice, and in particular the Public Integrity Section and its election crimes branch. Yet, to this point, we are not aware of any enforcement action, criminal or civil, by the Department on this matter.

### C. Open Questions

Congressional interest in these important cases is not new. Regarding the phone jamming scandal, Chairman Conyers wrote Attorney General Gonzales on May 12, 2006, calling for the appointment of an independent special counsel to investigate the controversy. That request was rejected by the Department with the bald statement that the Department would “take all steps necessary to insure public confidence in the fairness of [the phone-jamming] investigations.”<sup>16</sup> On the Sproul matter, in October 2004, Senators Leahy and Kennedy sent a detailed letter to Attorney General Ashcroft asking a series of specific questions.<sup>17</sup> That letter was not answered

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<sup>12</sup> Vartabedian, *GOP Consulting Firm Investigated for Voter Fraud Claims*, Los Angeles Times, Oct. 14, 2004; Roddy, *Voter Registration Workers Cry Foul*, Pittsburgh Post-Gazette, Oct. 20, 2004; Kuhn, *Vote Fraud Charges Out West*, CBS News, Oct. 14, 2004; Manjoo, *note 10 supra*.

<sup>13</sup> Manjoo, *note 10 supra*.

<sup>14</sup> Vartabedian, *note 12 supra*; Montini, “Shameful” To Some is Nathan Sproul’s “Badge of Honor,” Arizona Republic, Oct. 26, 2004.

<sup>15</sup> See *United States v Haynes*, 977 F.2d 583 (6th Cir. 1992) (affirming conviction of county Republican official who withheld and agreed to destroy Democratic and Independent voter registration cards obtained during registration drive under 18 U.S.C. §§ 241-42).

<sup>16</sup> July 3, 2006, Letter from Assistant Attorney General William E. Moschella to Rep. John Conyers, Jr.

<sup>17</sup> October 14, 2004, Letter from Sens. Patrick Leahy and Ted Kennedy to Attorney General John Ashcroft.

until after the 2004 vote was taken, and the eventual response was entirely perfunctory, declining to answer any of the Senators' questions and stating merely that "All such matters will be investigated and, where appropriate, prosecuted to the full extent of Federal law."<sup>18</sup>

These cursory assurances are clearly unsatisfactory in light of the specific concerns described above and the significant evidence that has emerged of politicization of Department functions, and in particular of political pressure regarding voting-related cases, revealed by the Judiciary Committee's investigation into the firing of United States Attorneys during 2006. While the Congress is still seeking critical information to fully understand the U.S. Attorney firings, it is clear that several were motivated at least in part by partisan displeasure with the fired prosecutors' approach to so-called "vote fraud" cases.<sup>19</sup> In the wake of these revelations, our concern that these vote-related matters may not have received sufficient attention is acute.

Accordingly, we seek complete answers to the following questions no later than October 19, 2007:

1. Please describe the course, scope, and current status of the Department's investigative and prosecutorial efforts regarding both the Phone Jamming matter and the Sproul matter described in this letter, including a description of all major investigative steps;
2. Please identify all federal criminal prosecutions or civil or administrative enforcement actions, if any, that have occurred related to the Phone Jamming matter or the Sproul matter, including both closed and open actions;
3. Please identify all Department offices, divisions, and entities involved in the Phone Jamming and Sproul investigations at any time;
4. Please describe all steps taken to determine whether or not any White House personnel, Bush/Cheney campaign personnel, or other officials or leaders of any Republican Party organization had any knowledge of, involvement in, or potential liability regarding the Phone Jamming or Sproul matters.

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<sup>18</sup> November 16, 2004, Letter from Assistant Attorney General William E. Moschella to Sen. Patrick Leahy.

<sup>19</sup> See July 24, 2007, Memorandum from Chairman Conyers to Members of the Committee on the Judiciary re Consideration of Report of the Refusal of Former White House Counsel Harriet Miers and White House Chief of Staff Joshua Bolten to Comply With Subpoenas By the House Judiciary Committee at 3-10.

5. Please identify any limitations or constraints placed by Administration or Department officials on the Phone Jamming and Sproul investigations, including limits on the scope of the investigations, on investigative techniques that could be employed, on permissible subjects or targets of the investigations, on geographic locus of the investigation, or any other limitations on the investigations' reach. In particular, specifically address the claims that a) the FBI agent investigating the Phone Jamming matter was told not to take any actions regarding persons or events in Washington D.C., and b) all case decisions regarding the Phone Jamming matter had to be personally approved by the Attorney General.
6. Please explain whether and how the Department prevented oral or written discovery from being taken in civil litigation regarding the Phone Jamming, matter including providing the rationale for such actions if they were taken, identifying the persons who made any such decision, and whether the Department's objections to civil discovery were ever lifted or resolved.
7. Please identify all contacts or communications regarding the Phone Jamming or Sproul matters, if any, between Department personnel at any level and
  - any White House personnel or officials;
  - any leaders, officials or operatives of state-level or national Republican party organizations or political campaigns, including any Bush Cheney campaign; or
  - any elected officials at any level of government.

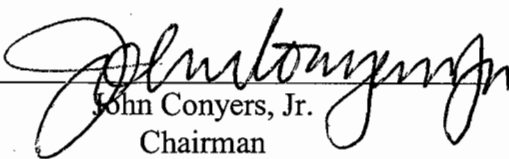
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Over forty years ago, the Supreme Court observed that "since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." Reynolds v. Sims, 377 U.S. 533, 562 (1964). Yet public concern about the fairness of our elections and the Department's commitment to protecting and enhancing all citizens' right to vote only seems to increase year after year, and election after election, and recent revelations about the Department's approach to voting matters have only exacerbated the problem. For this reason, we hope that you will join with us in clearing the air about the two especially notorious cases referenced in this letter, and that the Department will commit to working with the Congress to begin the process of rebuilding public confidence on this most important of issues.

The Honorable Peter D. Keisler  
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October 3, 2007

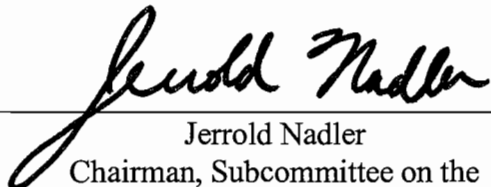
Please direct any questions to the staff at the House Judiciary Committee, 2138 Rayburn House Office Building, Washington, DC 20515 (tel: 202-225-3951; fax: 202-225-7680). Thank you for your cooperation, and we look forward to receiving your response by October 19th.

Sincerely,




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John Conyers, Jr.  
Chairman



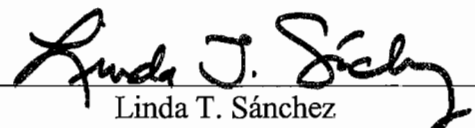
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Jerrold Nadler  
Chairman, Subcommittee on the  
Constitution, Civil Rights and Civil  
Liberties



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Robert C. "Bobby" Scott  
Chairman, Subcommittee on Crime,  
Terrorism and Homeland Security



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

cc: Hon. Lamar S. Smith  
Hon. Trent Franks  
Hon. J. Randy Forbes  
Hon. Chris Cannon  
Hon. Paul Hodes  
Hon. Brian Benczkowski