



507 Fourteenth Street N.W.  
Washington, D.C. 20005-2003  
PHONE: 202.628.6600  
FAX: 202.434.1590  
www.perkinscoie.com

Robert F. Bauer  
PHONE: (202) 434-1602  
FAX: (202) 654-9104  
EMAIL: RBauer@perkinscoie.com

October 17, 2008

The Honorable Michael B. Mukasey  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-001

Special Prosecutor Nora R. Dannehy  
Acting United States Attorney  
District of Connecticut  
Office of the US Attorney  
450 Main Street, Room 328  
Hartford, CT 06103

Dear Attorney General Mukasey and Special Prosecutor Dannehy:

I write about recent and serious developments with a direct bearing on the matters before Special Prosecutor Nora Dannehy, appointed by the Attorney General to investigate, among other things, the commission of prosecutable criminal offenses associated with the removal of U.S. Attorneys or the testimony of any witness related to these Attorney removals.

The Dannehy investigation concerns, most fundamentally, abuse of the law enforcement process to advance, in the name of combating "voting fraud", a partisan political agenda. The appointment of a Special Prosecutor was required because the Department's leadership was the focus of the investigation and unable to credibly undertake an independent, professional and credible inquiry.

Now, on the emerging evidence of recent conduct undertaken by Bush Administration officials, Republican Party officials, and representatives of the McCain-Palin campaign, it appears that further misconduct of the same nature, directly relevant to the work of the Special Prosecutor, requires that the scope of the Special Prosecutor's assignment be expanded.

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Accordingly, I request that Special Prosecutor Dannehy's inquiry include a review of any involvement by Justice Department and White House officials in supporting the McCain-Palin campaign and the Republican National Committee ("RNC")'s systematic development and dissemination of unsupported, spurious allegations of vote fraud. It is highly likely that the very sort of politically motivated conduct identified in the Department's investigation to date, necessitating the appointment of a Special Prosecutor, is repeating itself, and for the same reason: unwarranted and politically motivated intervention in the upcoming election. An investigation must be entrusted to government officials who do not have an improper political motivation or a conflict of interest, either in fact or appearance.

**I. Background: The Department's Ongoing Investigation Establishes The Connection Between Bogus Claims of Vote Fraud and the Firing of U.S. Attorneys.**

The Special Prosecutor's appointment stems, of course, from the September 29, 2008 Report of an Investigation into the Removal of Nine U.S. Attorneys in 2006 ("DOJ Report"), authored by the Justice Department's Offices of Inspector General and Professional Responsibility. The DOJ Report concluded that "the process the Department used to select the U.S. Attorneys for removal was fundamentally flawed." DOJ Report at 325. According to the Report, "[t]he most serious allegations that arose were that the U.S. Attorneys were removed based on improper political factors, including to affect the way they handled certain voter fraud or public corruption investigations and prosecutions." *Id.* (emphasis added).

In particular, the DOJ Report concluded that "[t]he most troubling example was David Iglesias, the U.S. Attorney in New Mexico," as "complaints from New Mexico Republican politicians and party activities about Iglesias's handling of voter fraud and public corruption cases caused his removal." *Id.* at 326. As the Report observed, these and other actions "severely damaged the credibility of the Department and raised doubts about the integrity of Department prosecutive decisions." *Id.* at 358.

As detailed in the following Section, recent activities by Republican Party officials and operatives nationwide are of precisely the same kind as the activities that led to the improper firings of U.S. Attorneys as concluded by the DOJ Report and as referred to the Special Prosecutor for further investigation.

The current surge of improper Republican activity must be understood, first and most fundamentally, in context of years of concerted partisan activities to use bogus claims of "vote fraud" to suppress voting and to influence elections in the eleventh hour by pressuring federal and local officials – including the Justice Department – to investigate and prosecute allegations of vote fraud where none exists. In 2002, then-Attorney General Ashcroft created the Voting

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Access and Integrity Initiative, in which federal officials including U.S. Attorneys were to work with state officials to combat vote fraud. This marked the beginning of an era of intensified commitment by certain Republican officials and operatives nationwide, acting in concert with the Department of Justice, in the generation of “vote fraud” claims serving a partisan political purpose. At no time was credible support given for the assertions of widespread fraud, or for the commitment of substantial resources to this initiative.

Even before the U.S. Attorneys’ firing scandal, the post-2002 “vote fraud” agenda had dangerous consequences. For example, then- interim U.S. Attorney for the Western District of Missouri Bradley Schlozman – a key figure in issues still under investigation by the Justice Department, *see* DOJ Report at 1 n.3 – improperly attempted to influence the 2006 election by bringing indictments of alleged voter registration fraud on the eve of the election, in violation of longstanding Department policy and practice.

This partisan “vote fraud” agenda is in large part responsible for the fact that “Department leaders abdicated their responsibility to ensure that prosecutorial decisions would be based on the law, the evidence, and Department policy, not political pressure.” DOJ Report at 187. For example, as you no doubt know, the DOJ Report concluded that U.S Attorney “Iglesias was removed because of complaints to the Department of Justice and the White House by New Mexico Republican members of Congress and party activities about Iglesias’s handling of voter fraud and public corruption cases.” *Id.* “[T]he complaints from the New Mexico Republicans reached the highest levels of the White House, including Karl Rove.” *Id.* at 190.

In a striking parallel to the events unfolding in this election cycle, “[i]n October 2006, shortly before the elections, the complaints about Iglesias intensified” – such as that Iglesias “was not prosecuting voter fraud cases before the election.” *Id.* at 191. The DOJ Report made clear that Department officials displayed “a troubling dereliction of their responsibility to protect the integrity and independence of prosecutorial decisions by the Department” by firing Iglesias based on such complaints. *Id.* at 193. Indeed, to the extent that Department officials bowed to pressure from Republican officials and operatives who sought “to influence the initiation or the timing of an investigation or prosecution for political gain,” *id.* at 194, all officials may have violated federal criminal statutes, *id.* at 198-99.<sup>1</sup>

As Mr. Iglesias has since made clear, the “vote fraud” that Republican officials and operatives were pressuring him to investigate and prosecute did not exist. According to Mr. Iglesias:

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<sup>1</sup> As the DOJ Report explained, “pressuring a prosecutor to indict a case more quickly to affect the outcome of an upcoming election could be a corrupt attempt to influence the prosecution in violation of the obstruction of justice statute,” 18 U.S.C. § 1503(a), and pressuring a prosecutor “to take partisan political considerations into account in his charging decision . . . could violate the wire fraud statute,” 18 U.S.C. § 1343. DOJ Report at 199, 200.

“After an exhaustive examination of the facts, I felt that I had dispelled the phantoms of voter fraud in New Mexico. But some people had wanted a different result, whether or not it was warranted by the facts.” David Iglesias, *In Justice, Inside the Scandal that Rocked the Bush Administration* (2008), at 89. Mr. Iglesias has described the “methods” that key Republican operatives within the White House and the Department “had adopted to deal with obstreperous or uncooperative or simply inconvenient Justice Department personnel . . . . First would come spurious allegations of voter fraud, then unvarnished legal manipulations to sway the elections, followed by a rigorous insistence on absolute and unquestioning obedience, and, finally, a phone call (of dismissal) from out of the blue.” *Id.* at 75.

As recommended by the DOJ Report, the Attorney General appointed the Special Prosecutor for the purposes of “work[ing] with” those who produced the DOJ Report “to conduct further investigation and ultimately to determine whether the totality of the evidence demonstrates that any criminal offense was committed.” *Id.* at 326. Among other things, the Special Prosecutor’s appointment was necessary to further investigate the “serious allegations that [Iglesias] was dismissed for improper partisan political reasons – namely, to influence voter fraud prosecutions in a closely divided state . . . in order to influence the outcome of the election.” *Id.* at 197 (emphasis added). As the DOJ Report noted, if Republican Party officials and operatives “attempted to pressure Iglesias . . . to initiate voter fraud investigations to affect the outcome of the upcoming election, their conduct may have been criminal” – for example, under the obstruction of justice and wire fraud statutes. *Id.* at 199 (emphasis added); *see supra* n.2.

Although the Special Prosecutor’s appointment centered on the matters elaborated in the DOJ Report, the Attorney General critically noted in announcing the Special Prosecutor’s appointment that “[t]he Justice Department has an obligation to the American people to pursue this case wherever the facts and law require.” Justice Department Release, Sept. 29, 2008, *available at* <http://www.usdoj.gov/opa/pr/2008/September/08-opa-859.html> (emphasis added).

It has become clear, in these remaining weeks of the Presidential campaign, that “the facts and law require” the Special Prosecutor’s urgent attention to recent partisan Republican activities throughout the country. As detailed in the following Section, these activities seek both to suppress the vote and to unduly influence investigations and prosecutions through baseless allegations of vote fraud – exactly as in the 2006 election cycle, in the manner laid bare by the DOJ Report.

## II. Current Bogus Claims of Vote Fraud and the McCain-Palin Campaign's Attempts to Involve U.S. Attorneys and the Department of Justice.

History is repeating itself. As Election Day approaches – just as in 2004 and 2006 – Republican Party officials and operatives nationwide, including the candidates themselves, are fomenting specious vote fraud allegations, and there are disturbing indications of official involvement or collusion.<sup>2</sup> What we have seen, each step connecting to and reinforcing the other, are:

- A. High level party claims of “fraud,” including those made by the Republican Presidential and Vice Presidential nominees—including the entirely unsupported assertion by John McCain to a national television audience that vote fraud threatened to tear at the very “fabric of democracy.”<sup>3</sup>
- B. Republican party officials reinforcing and sensationalizing this message by repeating it at the state and local level and initiating actions in violation of the law to harass voters and impede their exercise of their rights;<sup>4</sup>
- C. Republican officeholders calling on the Department of Justice to initiate investigations of these manufactured allegations of “fraud”—including, remarkably, direct appeals to US Attorneys;<sup>5</sup> and

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<sup>2</sup> Voter registration impropriety does not constitute actual vote fraud. Indeed, despite strenuous effort, there is not documented evidence of anything but isolated and sporadic instances of voter fraud. See Lipton, *In 5-year Effort, Scant Evidence of Voter Fraud*, New York Times, April 12, 2007.

<sup>3</sup> Senator McCain's running mate, Governor Sarah Palin, has taken up the claims in similarly hyperbolic and unsupportable forms: “‘In this election, it's a choice between a candidate who won't disavow a group committing voter fraud, and a leader who won't tolerate voter fraud,’ Palin said.” Associated Press, October 16, 2008, available at <http://ap.google.com/article/ALeqM5jQBGxUYE4AW6bb0H5UgHkKvipTJwD93RPSOG0>.

<sup>4</sup>Of many examples: in Michigan, the Macomb County Republican party chair revealed a plan to challenge voters whose homes have been foreclosed, which does not make voters ineligible to vote. And in Montana, the Executive Director of the state Republican Party mounted challenges to more than 6,000 lawfully registered voters based on nothing more than postal change of address information—which indicates neither fraud nor the voter's lawful residence, but simply where the voter receives mail. And in Ohio, the Republicans pursued an aggressive voter challenge program, suing repeatedly on specious legal theories—until today, when the United States Supreme Court intervened with a unanimous opinion to put an end to it once and for all. See *Brunner v. Ohio Republican Party*, No. 08A332, 555 U.S. \_\_\_ (Oct. 17, 2008) (*per curiam*).

<sup>5</sup> In the last week, several members of Congress who are officially affiliated with the McCain-Palin campaign have written to the Attorney General and U.S. Attorneys pressuring them to investigate ACORN. Among the McCain-

D. Emerging indications of official Departmental involvement or collusion, as leaks of an investigation have now begun in violation of Departmental policy.

Of course, the timing of the opening of this investigation and leaking of this information is damning, 19 days before the general election—and less than 24 hours after the Republican Presidential nominee announced the advent of fraud so pervasive that it threatened the very “fabric of democracy”.

Tellingly, even the media reports of the leak of the investigation plainly recognize the inappropriateness of such a leak. *See, e.g., FBI investigates ACORN for alleged fraud, available at <http://www.msnbc.msn.com/id/27220798>* The report states:

A senior law enforcement official confirmed the investigation to The Associated Press. A second senior law enforcement official says the FBI was looking at results of recent raids on ACORN offices in several states for any evidence of a coordinated national scam. Both officials spoke on condition of anonymity because Justice Department regulations forbid discussing ongoing investigations particularly so close to an election.” (emphasis added)

It is apparent that the sources of these leaks are “senior law enforcement officials”. The leaking is not the work of agents: senior officials are speaking with the press, in violation of Departmental policy and in the service of improper political objectives. That two such senior officials are communicating with the press on these matters indicates a level of coordination in the achievement of these illicit purposes—just as we saw in the case of the orchestrated pressures put on US Attorneys and ending in their subsequent dismissals. And these senior officials are acting, as the report makes clear, with full knowledge that their actions are improper: in the words of the press report, “*both officials spoke on condition of anonymity because Justice Department regulations forbid discussing ongoing investigations particularly so close to an election.*” *Id.* (emphasis added).

Thus, there is an imminent risk that precisely the sort of improper influence identified in the DOJ Report and presently under investigation by the Special Prosecutor – is repeating itself, with the same destructive and anti-democratic results. That we have come once again to this point has

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Palin surrogates and campaign officials who have written such a letter are: Senator George Voinovich (R-OH), Senator John Cornyn (R-TX), Rep. Michelle Bachmann (R-MN), Rep. Roy Blunt (R-MO), Rep. Paul Ryan (R-WI). Such efforts in the days leading up to the election are precisely the sort of politically-motivated efforts to influence the Department’s investigative and prosecutorial efforts that were roundly condemned by the DOJ Report and which remain under investigation by the Department.

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not been lost on former U.S. Attorney Iglesias, who informed the press today that what he called this new "scare tactic" mirrors precisely what he observed at close quarters in 2004 and 2006. "It stands to reason", he stated, that politics has intruded once again in the law enforcement process. Zachary Roth, *Iglesias: 'I'm Astounded' by DOJ's ACORN probe*, Talking Points Memo, October 17, 2008, available at [http://tpmmuckraker.talkingpointsmemo.com/2008/10/iglesias\\_im\\_astounded\\_by\\_dojs.php](http://tpmmuckraker.talkingpointsmemo.com/2008/10/iglesias_im_astounded_by_dojs.php)

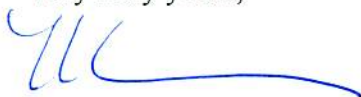
### III. Requested Action

The conduct described in this letter is directly relevant to the scope of the Special Prosecutor's investigation. In light of the impending election, it is imperative that an impartial investigator safeguard both the democratic and prosecutorial process. Accordingly, I call on you and Special Prosecutor Dannehy to expand her investigation to include these matters, all of them entirely consistent with the pattern of misconduct already within her charge.

Once is more than enough. The Department has yet to recover its credibility after the calamitous politicization of its mission in this Administration and the documented misconduct, now being investigated by Special Prosecutor Dannehy, that resulted from the corrupt injection of politics into federal law enforcement. Only by providing for a thorough, independent and immediate review, can the Department demonstrate that it will not countenance a recurrence of those events of the last years that severely stained its reputation and corrupted, for partisan political gain, the impartial administration of our laws.

I request a meeting with you to determine whether we can expect action consistent with this request. Please contact me as soon as possible to schedule a day and time.

Very truly yours,



Robert F. Bauer  
General Counsel  
Obama for America