

HOWARD L. BERMAN, California  
RICK BOUCHER, Virginia  
JERROLD NADLER, New York  
ROBERT C. "BOBBY" SCOTT, Virginia  
MELVIN L. WATT, North Carolina  
ZOE LOFGREN, California  
SHERA JACKSON LEE, Texas  
MAXINE WATERS, California  
WILLIAM D. DELAHUNT, Massachusetts  
ROBERT WEXLER, Florida  
LINDA T. SANCHEZ, California  
STEVE COHEN, Tennessee  
HENRY C. "HANK" JOHNSON, JR., Georgia  
BETTY SUTTON, Ohio  
LUIS V. GUTIERREZ, Illinois  
BRAD SHERMAN, California  
TAMMY BALDWIN, Wisconsin  
ANTHONY D. WEINER, New York  
ADAM B. SCHIFF, California  
ARTUR DAVIS, Alabama  
DEBBIE WASSERMAN SCHULTZ, Florida  
KEITH ELLISON, Minnesota

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>

F. JAMES SENSENBRENNER, JR., Wisconsin  
HOWARD COBLE, North Carolina  
ELTON GALLEGLY, California  
BOB GOODLATTE, Virginia  
STEVE CHABOT, Ohio  
DANIEL E. LUNGREN, California  
CHRIS CANNON, Utah  
RIC KELLER, Florida  
DARRELL E. ISSA, California  
MIKE PENCE, Indiana  
J. RANDY FORBES, Virginia  
STEVE KING, Iowa  
TOM FEENEY, Florida  
TRENT FRANKS, Arizona  
LOUIE GOHMERT, Texas  
JIM JORDAN, Ohio

October 29, 2008

The Honorable Michael Mukasey  
Attorney General of the United States  
U.S. Department of Justice  
10<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20510

Dear Mr. Attorney General:

Allegations of serious voter intimidation efforts that we believe merit federal investigation have surfaced in several communities surrounding Hampton Roads, VA.<sup>1</sup> The media has reported that a fraudulent memo, copying letterhead from the Virginia State Board of Elections, advises Republicans to vote on November 4 and Democrats to vote on November 5, pursuant to a measure purportedly passed in emergency session by the state General Assembly to "ease the load on local electoral (sic) precincts and ensure a fair electoral (sic) process."<sup>2</sup> This tactic appears to have been designed to prey on the legitimate concerns of minority voters in the Hampton Roads area about long lines on election day and should be the subject of an immediate investigation by the Department of Justice. We are enclosing a copy of the flier for your information.

We believe that minority voters in Virginia have a legitimate concern about lines on election day. A recent report by the Advancement Project<sup>3</sup> raised this issue with respect to two Hampton Roads jurisdictions and, as you may be aware, the NAACP has sued the state to require the implementation of a plan to alleviate the risk of overcrowding in polling places in minority communities. Based on these matters, and the attempt to mimic official letterhead, this

---

<sup>1</sup> The Virginian-Pilot, October 28, 2008,  
[hamptonroads.com/2008/10/phony-flier-says-virginians-vote-different-days](http://hamptonroads.com/2008/10/phony-flier-says-virginians-vote-different-days)

<sup>2</sup> Id., see attached flier accompanying the press report.

<sup>3</sup> "The End of the Line? Preparing for a Surge in Voter Turnout in the November 2008 General Election", Advancement Project Report, October, 2008,  
[advancementproject.org/pdfs/vpp/PollingPlaceResourcesReport.pdf](http://advancementproject.org/pdfs/vpp/PollingPlaceResourcesReport.pdf)

The Honorable Michael Mukasey  
Page Two  
October 30, 2008

fraudulent memo has enough of a ring of truth to confuse voters and suppress turnout. While state officials have promised an investigation, the violation under state law is merely a misdemeanor and does not carry the weight of federal enforcement.<sup>4</sup>

The fraudulent memo has enough of a ring of truth to confuse voters and suppress turnout. While state officials have promised an investigation, the violation under state law is merely a misdemeanor and does not carry the weight of federal enforcement.<sup>5</sup>

There is ample precedent for a federal response. The Justice Department has utilized the Civil Rights Act of 1957, 42 U.S.C. § 1971(b), as recently as 1990, to halt similar tactics that were designed to confuse or intimidate African-American voters. Unlike other voting rights provisions, 42 U.S.C. § 1971(b) does not require that the intimidation be the result of the voter's race or ethnicity. In addition, interference with the right to vote has been defined broadly to include a wide range of conduct and would certainly encompass the misinformation campaign behind this kind of flier.

These allegations also suggest a pattern of conduct that could implicate federal criminal civil rights statutes. For instance, § 241 of Title 18 of the U.S. Code prohibits conspiracies to injure, threaten or intimidate a person in the exercise or enjoyment of federally protected rights, including the right to vote. This section would clearly address tactics designed to obstruct voter access through misinformation. Importantly, this section does not require that one of the conspirators commit an overt act of conspiracy before a crime, only that an agreement is made. In addition, given the attempt to replicate official letterhead, these allegations may also implicate § 242 of Title 18, which protects against the deprivation of a person's federally protected rights "under color of law." This crime need not be motivated by animus toward the race, color, religion, sex, disability, familial status, or national origin of the victim, only proof of an unconstitutional abuse of authority.

These voter suppression attempts are an echo of the darkest days of our struggle for voting rights and we again request that they be referred to the Civil Rights Division for an immediate investigation to enjoin the distribution of this and similar fliers. Given the barriers to voting faced by African-Americans in the last two presidential election cycles and the Department's emphasis on fraud, we trust that this matter will be given the highest priority to

---

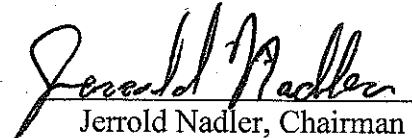
<sup>4</sup> See, id., The Virginian-Pilot, October 28, 2008.

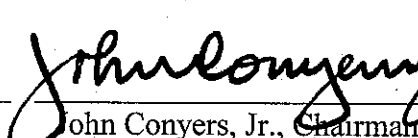
<sup>5</sup> See, id., The Virginian-Pilot, October 28, 2008.

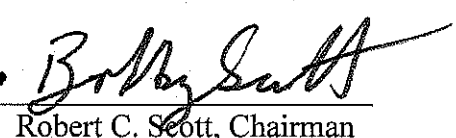
The Honorable Michael Mukasey  
Page Three  
October 30, 2008

ensure that all voters have equal access to the ballot box. Please contact my Judiciary Committee Staff at 202-225-3951 as soon as possible to discuss the status of the Department's investigation.

Very truly yours,

  
Jerrold Nadler, Chairman  
Constitution Subcommittee

  
John Conyers, Jr., Chairman  
House Judiciary Committee

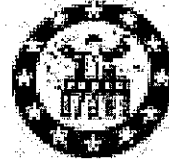
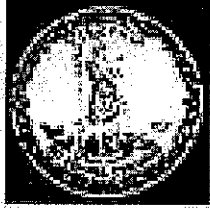
  
Robert C. Scott, Chairman  
Crime Subcommittee

Enclosure

cc: The Honorable Lamar Smith  
Grace Chung Becker, Acting Assistant Attorney General for Civil Rights

Virginia State Board of Elections

## Commonwealth of Virginia



### ***For Immediate Release:*** 10/24/09

*Due to the larger than expected voter turnout in this year's electoral process, an emergency session of the General Assembly has adopted the following emergency regulations to ease the load on local electoral precincts and ensure a fair electoral process.*

*All Republican party supporters and independent voters supporting Republican candidates shall vote on November 4th as prescribed by law.*

*All Democratic party supporters and independent voters supporting Democratic candidates shall vote on November 5th as adopted by emergency regulation of the Virginia General Assembly.*

*We are sorry for any inconvenience this may cause but felt this was the only way to ensure fairness to the complete electoral process.*

Virginia State Board of Elections - CONTACT US  
Suite 401, 200 North 9th Street, Richmond, Virginia 23219-4403  
Telephone: 804 864-8600 Toll Free: 800 522-3722 FAX: 804 374-0124

