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Congress of the United States
House of Representatives

July 22, 2009

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave NW Rm 5111
Washington DC 20530

Dear Attorney General Holder:

Veteran civil rights activist Bartle Bull, who managed campaigns for Robert F. Kennedy in New York in1968 and other prominent Democratic state candidates, recently opined, "Martin Luther King did not die to have people in jack boots with billy clubs, block the doors of polling places… And neither did Robert Kennedy. It's an absolute disgrace." The disgrace Bull refers to is your unwarranted dismissal of *U.S. v. the New Black Panther Party for Self-Defense, Malik Zulu Shabazz, Minister King Samir Shabazz aka Maurice Heath, and Jerry Jackson.*

My commitment to voting rights is without question. In fact, in 1981 upon my vote for the Voting Rights Act, the *Richmond Times-Dispatch* published the enclosed editorial, "A More Offensive Law," castigating me for my vote when every other member of the Virginia congressional delegation opposed it. The editorial chastised me stating, "Mr. Wolf will be partly to blame [for federal voting rights oversight]."

During my meeting Monday with Ms. Loretta King and Mr. Steven Rosenbaum of the Civil Rights Divisions, they refused to answer my questions claiming the "privileged" nature of the information. I would remind you that such defenses do not apply to requests from members of Congress. The Freedom of Information Act (FOIA) includes a provision that states quite clearly that most of the FOIA exemptions – including deliberative process – do not apply to requests from Congress. *See* 5 U.S.C. § 552(d). This exemption has been affirmed by at least two D.C. Circuit opinions, which hold that FOIA requests from individual members of Congress satisfy the congressional request requirement and thus render any FOIA exemptions inapplicable. See *Murphy v. Department of the Army*, 613 F.2d 1151, 1157 (D.C. Cir. 1979); *FTC v. Owens-Corning Fiberglas Corp.*, 626 F.2d 966, 974 n.16 (D.C. Cir. 1980); see also *Rockwell Int'l Corp. v. U.S. Department of Justice*, 235 F.3d 598, 603 (D.C. Cir. 2001) (noting that disclosure of deliberative process memo to member of Congress did not waive FOIA exemption as to member of general public because FOIA carved out Congress from the statute's disclosure obligation exemptions).

Accordingly, I would respectfully reiterate my requests for the following information and documents:

1. Why am I being prevented from meeting with the trial team on this case?

2. What was the nature of Acting Assistant Attorney General for Civil Rights Loretta King's communication, if any, with you, Deputy Attorney General Ogden, or Associate Attorney General Perrelli's offices prior to the case dismissal?

3. Did you, Deputy Attorney General Ogden, or Associate Attorney General Perrelli approve (or express reservations about) the dismissal of this case and/or sign-off on any communication with regard to the dismissal? If so, will those communications be provided to members?

4. Mr. Ronald Weich's letter of July 13 states that Ms. King is a 30-year career employee and was acting in that capacity when the case was dismissed.

   However, I understand that the Vacancy Reform Act characterizes her position at the time, Acting Assistant Attorney General for Civil Rights, as a "Presidential appointment with Senate confirmation" (PAS) and in that capacity she would be acting in a political capacity, *assuming the Office of the Associate Attorney General, Deputy Attorney General or Attorney General also did not opine on the matter*. Could you please clarify?

5. The former attorney general was a signatory to the complaint. Are you a signatory to any legal document or internal directive regarding the dismissal of this case?

6. In an affidavit taken by your department, civil rights activist Bartle Bull states, "I have never encountered or heard of another instance in the United States where armed men blocked the entrance to a polling location," and "It would qualify as the most blatant form of voter intimidation I have encountered in my life."

   According to DOJ's own interpretation of 18 U.S.C. § 594 in its "Federal Prosecution of Election Offenses" manual (p. 56): "Section 594 prohibits intimidating, threatening, or coercing anyone, or attempting to do so, for the purpose of interfering with an individual's right to vote or not vote in any [federal] election."

   a. Do you believe that this and other witness testimony fails to support issues of "intimidation, threatening, or coercing" behavior on the part of the defendants?

   b. On what grounds did you find that the appearance of members of a widely recognized hate group wearing paramilitary-style uniforms did not constitute intimidation?

c. What precedent does this set for other like-minded groups -- whoever their target -- about federal enforcement of voter intimidation by hate groups outside of polling stations?

d. If showing a weapon, making threatening statements, and wearing paramilitary uniforms in front of polling station doors does not constitute voter intimidation, at what threshold of activity would these laws be enforceable?

7. Mr. Weich's letter cites uncertainty as to the outcome of "default judgments" as your justification for dismissal of the charges against Jerry Jackson, Malik Zulu Shabazz, and the New Black Panther Party.

   The letter also alleges that the body of evidence amassed further informed your decision to dismiss this case. Will you provide Members with:

   a. Copies of the sworn statements by witnesses?

   b. An inventory of video evidence?

   c. Examples of such evidence that influenced dismissal?

   d. The names of individuals and third-party groups contacted and any documents that they provided in prosecuting this case?

8. Did the department contact the Southern Poverty Law Center and/or Anti-Defamation League, which list the New Black Panther Party as a hate group along with the KKK and American Nazi Party? If so, with whom did the department speak?

9. Is certainty of favorable judgment a new precedent for this department?

10. Did the signatories of the complaint concur with your decision to dismiss?

11. Mr. Weich's letter cites the local police officer's decision not to remove Jerry Jackson because he was a resident of the apartment building and certified by city officials as a poll watcher.

    It has come to my attention that your justification that Jackson lived at the building where the polling place was located is false. The polling place was at a high-rise at 1221 Fairmount Street in Philadelphia, a senior living facility called the Guild House. Jackson, I understand, resides at 813 North Parks Street in Philadelphia and has never resided at 1221 Fairmount Street.

a. Please explain this discrepancy. Did your office do its due diligence before dismissing this case or responding to members?

b. Do you believe that Jerry Jackson's affiliation, uniform, statements, and behavior at 1221 Fairmont Street on November 4 are justified since he was a registered poll watcher?

c. Is it the policy of this Justice Department that any individual registered as a poll watcher may wear any form of uniform, brandish weapons, make unsolicited comments to voters, or loiter at the polls?

d. Does the Department believe that the possession of papers allowing one to be present at a polling place also allows the holder to violate Section 11(b) of the VRA?

e. Was Jerry Jackson registered as a poll watcher with a particular political party or campaign? If so, which one?

f. Was that political party or campaign interviewed with regard to Jackson's role in this complaint? If so, were they aware and did they condone his appearance on November 4?

g. In a video of the event, Jackson and Shabazz state that they are providing "security" for the polling precinct. Who authorized them to provide these services and under what authority?

12. Mr. Weich's letter states that the dismissal was based, in part, on the view that the New Black Panther Party's publicly announced plan to position several hundred of its members at polling places on Election Day did not violate Section 11(b) of the VRA because the announcement did not go so far as to expressly call on party members to "display weapons" at the polls.

    How do you justify this response given that a violation of Section 11(b) does not require the use of weapons, or even the threat to use weapons?

13. Mr. Weich's letter asserts that evidence does not support the complaint regarding Malik Zulu Shabazz and the party "endorsing" or directing the "behavior, actions, and statements" of Shabazz and Jackson.

    However, it would seem that the confession *on national television* by Malik Zulu Shabazz on November 7, 2008, flatly contradicts your assertion. Mr. Shabazz unequivocally claims that his activities in Philadelphia were part of a nationwide effort

involving hundreds of party members, and that the use of the weapons was a necessary part of the Black Panther deployment.

a. Given Jackson and Shabazz's open membership in Malik Zulu Shabazz's New Black Panther Party, how do you justify that post-event endorsement of their actions is not sufficient to impose Section 11(b) liability?

b. Even if this connection is not entirely certain, why would you not allow the court to render judgment on this to make such a determination?

14. Specifically, you cite the Party's "disavowal" of Shabazz and Jackson actions on its Web site as your justification for dismissing these charges.

a. Was this disavowal posted on the Web site before or after DOJ filed its complaint?

b. On what date was the disavowal posted and who was the author?

c. How does this disavowal negate Malik Zulu Shabazz's earlier public declarations that his party coordinated efforts to have party members posted in front of polling locations?

15. Can you provide an example of another case, whether civil rights, tax, anti-trust, or criminal enterprise, when the defendants' post-behavior disavowal resulted in the department similarly dismissing the case?

16. It is my understanding that Mr. Steven Rosenbaum brought a voter intimidation case against the North Carolina Republican Party in 1992 based on misleading postcards.

Could you please provide the complaint, justification memo, and consent decree in this case as well as any additional documents that discuss First Amendment implications?

17. Mr. Weich's letter states that you believe the injunction against Samir Shabazz "is tailored appropriately to the scope of the violation" – enjoining Shabazz from "displaying a weapon within 100 feet of any open polling location on Election Day in the City of Philadelphia."

The letter also states that "Section 11(b) does not authorize other kinds of relief, such as monetary damages or civil penalties."

a. Why is the injunction from displaying weapons in front of polling places only limited to the City of Philadelphia and not extended to other cities that fall within

the Eastern District of Pennsylvania, such as Allentown, Reading, Lancaster and Bethlehem?

b. What will happen if Shabazz brandishes a weapon at a polling place in another city?

c. Is it true that this injunction stands only through Election Day 2012?

d. What is the precedent for limiting this injunction to one geographic location?

Please consider these questions as an addendum to my July 17 letter with House Judiciary Committee Ranking Member Lamar Smith.

Sincerely,

Frank R. Wolf
Member of Congress

Cc: Nelson Hermilla, Chief
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Washington, DC 20530

Richmond Times-Dispatch

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Thursday, October 15, 1981

A More Offensive Law

A recent news story from Washington reported that Tenth District Republican Rep. Frank R. Wolf didn't want to talk about his vote in favor of extending the odious federal Voting Rights Act. No wonder. There is absolutely no way that he can justify his endorsement of a measure that officially brands Virginia a second-class state and denies Virginians some of their most precious political rights. Mr. Wolf was the only Virginia congressman to support the bill when it moved through the House of Representatives last week.

Grossly unfair in its present form, the Voting Rights Act would be made even more offensive by changes the House approved. The despicable pre-clearance provision, which now is subject to periodic reconsideration, would become a permanent feature of the law. Under this provision, covered states and localities must obtain federal approval of any law, action or decision that might affect the voting rights or strength of minorities, especially blacks. The House's new version outlines a procedure by which a state might, theoretically, purify itself and gain exemption from the act, but the process is so cumbersome and vague that it is likely to prove to be worthless. One important aspect of the act that would remain unchanged in the House version is its inequitable selectivity. The law's harsh impact would continue to fall mainly on the South. Efforts to persuade the House to apply the act uniformly throughout the nation were unsuccessful.

Indeed, the House was unwilling to make even the slightest gesture toward fairness. As the bill had emerged from the House Judiciary Committee, it provided that any state or locality seeking to obtain exemption from its coverage would have to win the approval of the United States District Court in Washington. Sixth District Republican Rep. M. Caldwell Butler, one of the principal leaders of the valiant but vain fight against the act, offered an eminently sensible amendment that would have permitted states and localities to sue for relief in a local federal district court. The necessity to go to Washington, he argued, would be so costly and cumbersome that many communities would be discouraged from even attempting to obtain an exemption. But the House [illegible] rejected his proposal.

Not in many years has Virginia tolerated the kinds of restrictive voting practices that originally inspired the Voting Rights Act. Not in many years has Virginia attempted to abridge the right of its black citizens to vote. Yet, if the House bill prevails, Virginia, and most of the South, will continue to be treated as wards of the federal government and denied political rights that the rest of the nation freely exercises. And Mr. Wolf will be partly to blame.

Fortunately, the House bill [illegible] opposition in the Senate, and Virginia's two representatives in that body — Senators Harry F. Byrd Jr. and John Warner — can be counted on to support, enthusiastically and aggressively, efforts to transform the Voting Rights Act from a selectively punitive measure into a fair and reasonable law.