

CREW | citizens for responsibility and ethics in washington

October 7, 2007

The Honorable Gene Green, Chairwoman
The Honorable Doc Hastings, Ranking Minority Member
Committee on Standards of Official Conduct
HT-2, The Capitol
Washington, D.C. 20515

BY FAX: 202-225-7392

Re: Renewed Request for Investigation into Conduct of Rep. Heather Wilson (R-NM)

Dear Chairman Green and Ranking Member Hastings:

Citizens for Responsibility and Ethics in Washington (CREW) respectfully renews its March 2007 request that the Committee on Standards of Official Conduct commence an immediate investigation into whether Rep. Heather Wilson (R-NM) violated House rules by improperly contacting a sitting U.S. Attorney.

Since CREW's initial request, the Department of Justice Office of the Inspector General ("OIG") and Office of Professional Responsibility ("OPR") have issued a report, *An Investigation into the Removal of Nine U.S. Attorneys in 2006*, September 2008 [hereinafter "Report"]. That report details Rep. Wilson's efforts both to pressure New Mexico U.S. Attorney David Iglesias into prosecuting cases for political gain and to seek his removal for failing to engage in political prosecutions.

According to Rep. Wilson, on October 16, 2006, she emailed a newspaper article about public corruption prosecutions in other states to her chief of staff, campaign manager, another campaign aide and Senator Pete Domenici's (R-NM) chief of staff stating, "FBI or those close to them are talking about public corruption cases ongoing in other states." Sen. Domenici's chief of staff forwarded that email to the White House with the comment, "Seems like other USAttorneys (sic) can do their work even in the election season. And the FBI has already admitted they have turned over their evidence to the USA in NM and are merely awaiting his action . . ." The next day, Rep. Wilson telephoned Mr. Iglesias to ask about delays in public corruption prosecutions. Report at 177.

Rep. Wilson told investigators that a couple of days before she made the call, a constituent had complained to her that Mr. Iglesias was intentionally delaying public corruption prosecutions in the district. *Id.* Rep. Wilson said that the person, whom she refused to identify, told her that sealed indictments had been returned and that Mr. Iglesias was delaying them unnecessarily. *Id.* at 177-78. In fact, however, there were no sealed public corruption indictments at that time. *Id.* at 178.

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Mr. Iglesias denied that he was intentionally delaying corruption prosecutions. *Id.* He explained that the Assistant United States Attorney who handled corruption matters had been tied up with another trial. Rep. Wilson then asked if there were any delays in releasing sealed indictments, and Mr. Iglesias explained that while his office sometimes sealed national security or juvenile cases, public corruption matters would not necessarily be treated that way. Rep. Wilson closed the conversation by stating that she would take him at his word. *Id.*

It is also possible that Rep. Wilson telephoned then-White House Counsel Harriet Miers to complain about Mr. Iglesias's performance. According to a timeline of events prepared by White House Associate Counsel Michael Scudder, in approximately October 2006, Deputy Attorney General Paul McNulty received a telephone call from Ms. Miers explaining that she had received a call from Rep. Wilson complaining about Mr. Iglesias's performance. Report at 181. Rep. Wilson has denied making the call, but Mr. McNulty remembers Ms. Miers telling him that Rep. Wilson had, indeed, called her, although he recalls this taking place in November, rather than October 2006. *Id.* at 182.

Finally, on November 15, 2006, Rep. Wilson attended a breakfast meeting at the White House where she spoke with presidential advisor Karl Rove. Rep. Wilson told investigators she approached Mr. Rove as the meeting was breaking up and stated, "Mr. Rove, for what it's worth, the U.S. Attorney in New Mexico is a waste of breath." Mr. Rove responded by telling her, "That decision has already been made. He's gone." *Id.* at 185.

OIG and OPR concluded that Mr. Iglesias "was removed because of complaints to the Department of Justice and the White House by New Mexico Republican members of Congress and party activists about Iglesias's handling of voter fraud and public corruption cases." *Id.* at 187. New Mexico Republicans were dissatisfied with Mr. Iglesias's handling of alleged voter fraud and complained, first to Mr. Iglesias and later to the Department of Justice, Rep. Wilson, Sen. Domenici and the White House. *Id.* at 190. OIG and OPR found that both Sen. Domenici and Rep. Wilson requested Mr. Iglesias's removal, which is what led Kyle Sampson, Chief of Staff to the Attorney General, to place him on the list of U.S. Attorneys to be removed. *Id.* at 193.

Because it appears that Mr. Iglesias may have been dismissed for improper partisan political reasons "to influence voter fraud prosecutions in a closely divided state or to affect the timing of a public corruption case against a prominent Democrat in order to influence the outcome of the election," OIG and OPR recommended that the Attorney General appoint a special prosecutor to investigate the matter further. Report at 197. Although Rep. Wilson was interviewed by investigators, she refused to reveal the identity of the constituent who allegedly informed her that Mr. Iglesias had intentionally delayed public corruption prosecutions. *Id.* at 200. According to the report, "[a]n interview of that person could potentially provide evidence regarding Wilson's intent in calling Iglesias and complaining to others about him." *Id.*

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The report explains that if Rep. Wilson attempted to pressure Mr. Iglesias to accelerate a charging decision or initiate a voter fraud investigation to affect the outcome of the 2006 election, she may have committed obstruction of justice in violation of 18 U.S.C. § 1503(a) and honest services wire fraud in violation of 18 U.S.C. § 1346 and § 1349. *Id.* at 199.

By contacting Mr. Iglesias to discuss any aspect of a pending criminal matter, Rep. Wilson violated House rules. Although House ethics rules do not specifically discuss the issue of a member contacting a sitting U.S. Attorney, the rules do anticipate members contacting agency officials and judges. Chapter 7 of the House ethics manual prohibits certain off-the-record comments, known as *ex parte* communications, directed to executive or independent agency officials, on the merits of matters under their formal consideration. The ethics committee has also stated that such contacts should not be based on political considerations and that the direct or implied suggestion of either favoritism or reprisal in advance of, or subsequent to, action taken by the agency contacted is an unwarranted abuse of a member's role. House Ethics Manual, ch. 7.

In addition, the House has held that the Code of Ethics for Government Service applies to members of the House, requiring members, like all others in government service, to "uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion." Code of Ethics for Government Service, ¶ 2. The House Committee on Standards of Official Conduct has held that this provision "may be implicated if a House Member were to request that an executive branch employee engage in an activity having an impermissible political purpose . . . Such conduct by a Member may also implicate the fundamental requirement of the House Code of Official Conduct that a Member, officer, or employee 'shall conduct himself at all times in a manner that shall reflect creditably on the House.'" Memorandum from Chairman Joel Hefley and Ranking Minority Member Alan B. Mollohan, Recommendations for disposition of the complaint filed against Representative DeLay (108th Cong. Oct. 7, 2004); House Rule 23, cl. 1.

Moreover, as the report notes, Rep. Wilson may have violated federal criminal obstruction of justice and honest services fraud statutes by seeking Mr. Igelsias's removal to influence New Mexico elections. Undoubtedly, engaging in such criminal conduct would not reflect creditably on the House.

Despite clear indications that Rep. Wilson engaged in serious wrongdoing, if not outright criminal conduct, Rep. Wilson has recently stated that the Committee on Standards of Official Conduct contacted her in July and closed the investigation without public comment. Surprisingly, the committee neither spoke with Mr. Iglesias nor waited for the Department of Justice's report before dropping the matter. The committee's failure to act against this particularly egregious ethics violation further undermines the nearly flat-lined public confidence in the House ethics process.

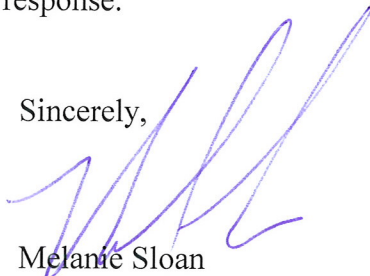
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As OIG and OPR noted, "If a U.S. Attorney must maintain the confidence of home-state political officials to avoid removal, regardless of the merits of the U.S. Attorney's prosecutorial decisions, respect for the Department of Justice's independence and integrity will be severely damaged and every U.S. Attorneys' prosecutorial decisions will be suspect." Report at 194.

Through her actions, Rep. Wilson has undermined the public trust in our criminal justice system, something all the more egregious given the public trust placed in her when she was elected to Congress. The committee should immediately reopen its investigation and sanction Rep. Wilson appropriately not only to punish her for her own conduct, but to make it abundantly clear to all members of Congress that interfering with U.S. Attorneys for political purposes simply will not be tolerated by the House of Representatives.

I look forward to your prompt response.

Sincerely,



Melanie Sloan
Executive Director