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July 27, 2005

Honorable Richard Shelby, Chairman  
Honorable Paul Sarbanes, Ranking Member  
U.S. Senate Committee on Banking, Housing, And Urban Affairs  
534 Dirksen Senate Office Building  
Washington, D.C., 20510

**Re: Omissions and potential perjury in testimony of Rep. Chris Cox**

Dear Senators Shelby and Sarbanes:

Yesterday, you asked Congressman Chris Cox to explain his role in a lawsuit concerning an investment scheme that swindled investors out of \$130 million, as part of the Committee's questioning of President Bush's nominee to become Chairman of the Securities and Exchange Commission. This Ponzi scheme involved a web of companies, known collectively as First Pension and controlled by William E. Cooper and his associates. Senator Shelby asked:

"Congressman Cox, several press accounts have described your involvement in a lawsuit arising from your time when you were in private practice of law. I think the outcome, if I recall, of that lawsuit was in your favor. But would you just, for the record, clarify your role in this litigation, how it was resolved, and so forth?"

Representative Cox had the following response and exchange with Chairman Shelby:

**Cox:** I did preliminary work on a small SEC-registered public offering...

But I also did not work at the law firm at the time that the one small limited partnership offering, which was not the subject of the fraud indictment, took place. And for those reasons, the court dismissed all of the counts against me.

**Chairman Shelby:** Well, basically, it terminated in your favor, is that correct?

**Cox:** Yes, I had the entirety of the complaint dismissed against me, and there was no settlement of the matter either I prevailed on the claim in the court.

This exchange occurred under oath and it was false in two respects and misleading in its entirety.

First, Rep. Cox's engagement in the First Pension matter involved at least three substantial corporate matters that were directly related to the First Pension conspirators' effort to hold off broader regulatory investigation into the companies; his work was not limited to "preliminary work on a small" offering. It involved, for example, drafting and reviewing communications to investors who were relying on these communications to make financial decisions. One of these three transactions involved a corporate restructuring, the purpose of which was to convince multiple regulatory agencies that various First Pension-related entities were independent of each other, when, in fact, they were not.

Secondly, Cox participated in a three-party settlement of the direct claims against him, under which the plaintiffs agreed to drop him as a defendant in exchange for an agreement by his law firm, Latham & Watkins, and their insurers to accept liability for Cox's actions.<sup>1</sup> According to news reports and the litigation docket, the investor claims against Cox survived numerous motions to dismiss prior to the settlement that transferred liability for his actions to Latham and its insurers. After Cox's initial settlement the same claims survived summary judgment motions by Latham & Watkins. Neither Cox nor Latham ever prevailed on the merits of this action. Ultimately, Latham settled the claims against Cox for an undisclosed amount of money. In this second settlement of the claims arising from Cox's conduct, money was paid to victims, we believe, based in part upon whether victims made investment decisions during the time of Latham and Cox's involvement with the First Pension companies.

### **The Senate Has Not Reviewed Key Documents**

In the remainder of this letter we will list documents that we believe exist and would tell this tale in full. There is no question, based on our review of the extant documents, that Congressman Cox made knowingly false statements under oath to the committee.

Over the years, some documents related to this investor scheme have surfaced, including the Fourth Amended Class Action Complaint in the case of *Murray v. Belka*,<sup>2</sup> which reveals the litany of documents uncovered during discovery. ("Belka" refers to Glen Belka, an executive involved with the First Pension scandal.) Most of the documents have remained secret. The terms of the final settlement apparently bar plaintiffs from sharing documents or the terms of the settlement, however, we do not believe that the defendants, including Representative Cox or Latham & Watkins, are under any such restriction. They would be free to provide the documents that are identified in the *Murray* complaint if they wished.

The documents identified in the Fourth Amended Complaint have never been seen by the public. Rep. Cox has refused to disclose this crucial information concerning his involvement with First Pension and his liability in the scandal based on a belief that no one will ever see these documents.

The Senate must review these crucial documents.

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<sup>1</sup> "In return for dropping Cox from the case he [plaintiff's attorney Michael Aguirre] secured an agreement that Cox's actions could be imputed to Latham in assessing its legal liability." From "Cox's Past Ties to Con Man Raises Questions," by Michael Hiltzik, *Los Angeles Times*, June 9, 2005. See also: "Cox was defendant in suit led by Aguirre," by Dean Calbreath, *San Diego Union Tribune* June 3, 2005, and

<sup>2</sup> The complaint is available at <http://www.consumerwatchdog.org/resources/4thComplaint.pdf>

The complaint indicates that Chris Cox drafted, reviewed, or was addressed over 25 letters and documents concerning First Pension Corporation and the investment schemes that led to its eventual downfall. It is our understanding, that only one of these documents has come to light to date: a letter to California regulators regarding an offering by VestCorp, which was part of the First Pension companies.<sup>3</sup> This letter is one element of Cox's work for First Pension related to the offering that he acknowledged during testimony. There are more documents related to that transaction that have never been made public. Furthermore, as we set forth below, there are many more documents and information about Cox's involvement that have not been reviewed by the Committee or ever seen by the public.

1. **First Pension Newsletters Sent To Investors.** Cox appears to have had a hand in drafting First Pension newsletters that were issued between 1984 and 1985. They were sent to First Pension investors concerning their investment. The newsletters that Cox had a hand in drafting include the July 1984, and April, July and November 1985 newsletters. Newsletters issued between 1983 and mid-1984 before Latham & Watkins represented First Pension, but likely reviewed by Cox, would also help shed light on Cox's awareness of the investment schemes.
2. **Cox's Latham & Watkins Billing Records.** Cox reportedly logged more than 150 separate time entries concerning work involving First Pension companies and principles. These entries may indicate whether or not Cox was improperly representing both the investment company and the investors in the company, based on evidence addressed in the case.
3. **Full Documentation From the Offering On Which Cox Acknowledges Working.** The 1985 filing with the Department of Corporations is but one element of Cox's involvement in the development of the offering he acknowledged during testimony. In that one available document, Cox argued that an offering by one of the First Pension companies would be low-risk (while undisclosed documents indicate that Cox must have known this to be false) and, for a variety of reasons, should not be subject to certain regulatory oversight. In this letter Cox also withheld key information about other government investigations into the companies' practices and actions against its executives including the suspension of the real estate license of the William Cooper, who was later convicted and sent to prison for the swindle. This letter came at a crucial time and appears to have been key, insofar as it convinced regulators to refrain from further investigation, allowing the larger fraud at First Pension to move forward. The Committee should retrieve all documents related to this offering.
4. **Murray v Belka Court Documents.** Cox's representations of his minimal role in the investor lawsuit should be verified by case documents, including:
  - Cox's deposition, which we believe to have been video taped;
  - The depositions of Latham and Watkins attorneys Gary Mendoza and John Stahr, and First Pension/VestCorp executives Glen Belka and William Cooper;

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<sup>3</sup> The letter is available at [http://www.consumerwatchdog.org/resources/coxletter\\_85.pdf](http://www.consumerwatchdog.org/resources/coxletter_85.pdf)

- Cox’s dismissal from the case, reportedly on condition that Latham & Watkins assume all liability for his actions;
  - The settlement agreement between plaintiffs and Latham & Watkins.
5. **Communications to First Pension Firms Concerning Corporate Restructuring.** Cox reputedly wrote numerous communications to First Pension, VestCorp and their principals regarding the corporate restructuring of the companies that may have been a mechanism used to deceive regulators about the growing Ponzi scheme, including:
- July 1984 memo on restructuring First Pension entities and three August 1984 letters and draft proposals for First Pension executive Glen Belka and accountholders discussing the restructuring;
  - An August 1984 letter written in conjunction with Latham attorney Mendoza entitled “Ownership of VestCorp, First Pension and Providence—Holding Company”;
  - September 1984 prospectus sent by Mendoza to fund “Working Group” (including Cox), and October 1984 memo or letter with attachments from Mendoza regarding the restructuring;
  - An October 1984 letter written by Cox and another drafted by Cox, Mendoza and Stahr concerning the restructuring;
  - November 1984 letter to Belka - a draft letter explaining the situation to First Pension investors, and a final letter to VestCorp accountholders.
6. **1984 letter to Cox Concerning Potential First Pension Violations and Efforts to Avoid “Run on the system.”** Cox received a letter from Belka in November 1984 regarding investor communications. The letter included the following statements:
- “(1) should these communications (as is) **fall into the hands of the following regulating agencies**, i.e., the Department of Labor, the SEC, the IRS, the Department of Corporations, the Department of Real Estate and the State Banking Department; **what violations do we commit** (if any) and **what are the penalties** (if any). (emphasis added)
- “Our objective is to inform our clients of the **changes that have occurred in the system** that meet the proper fiduciary disclosure requirements **without causing a run on the system.**” (emphasis added)

This is a striking indication that Cox knew or should have known that something was seriously wrong at First Pension.

7. **Other Communications.** Cox and Latham & Watkins were involved additional interactions related to the securities schemes, including:
- July 1984 “Summary of Essential Terms” for an unnamed public offering and a calendar of events for that offering;
  - October 1984 draft agreement written by Cox concerning the proposed acquisition of Citizens National Bank;
  - October 1984 letter written with Mendoza to auditors Cooper and Lybrand
  - December 1984 letter from Mendoza to the California Department of Corporations (CDOC), January 1985 Cox and Mendoza letter to CDOC, and February 1985 Cox letter to CDOC

- January 1985 IRA/Keough VestCorp Investment System Brochure 11 possibly drafted by Latham & Watkins

**8. William Cooper's May 1988 letter to Latham & Watkins regarding Cox's performance.** In a letter indicating how important Chris Cox was to First Pension, later-to-be-convicted executive William Cooper wrote:

“As you know, our relationship started based upon personal referral and the reputation of your firm. Our mutual work on the fund and the service provided through the initial period of time, was satisfactory. However, things changed when Chris Cox left the firm, leaving our very crucial project in the hands of people who have proven to be inexperienced.”

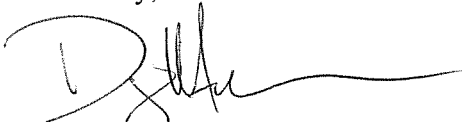
That Representative Cox has come before your committee and withheld crucial information about his involvement in a scandal of such proportion as First Pension, just as he withheld crucial information from regulators on behalf of the First Pension companies when he was in private practice, must be considered. Cox's duty, were he to become Chairman of the SEC, would be to oversee the industry that holds the retirement accounts, college education funds, and nest eggs of Americans. He will be in charge of prosecuting people and companies for failure to disclose material facts. His own failures to disclose material facts to your Committee, while under oath, call into serious doubt his fitness to fulfill the responsibilities of Chairman of the SEC.

There are documents that exist that contradict Cox's testimony before your committee. The attorneys who presented these documents were under the strictest obligations to provide truthful information. There was an eventual settlement of the case against Representative Cox and we have no reason to believe that the documents referenced above do not exist.

It is your obligation to find and review these documents and recall Representative Cox to your Committee in order to fully understand the depth of his involvement in this scandal and the possibility that he perjured himself before your committee in yesterday's testimony.

It is your duty to assure the public that whoever becomes the next Chairman of the SEC deserves the full confidence of the American people.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Heller', with a long horizontal flourish extending to the right.

Douglas Heller, Executive Director