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ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

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February 10, 2014

The Honorable Carolyn Lerner
U.S. Office of Special Counsel
1730 M Street NW
Suite 218
Washington, D.C. 20036-4505

Dear Ms. Lerner:

I am writing to request documents related to the recent decision by the White House to reopen the White House Office of Political Affairs (OPA).[1] Reestablishing OPA raises serious concerns about the illegal use of taxpayer funds to support congressional campaigns during the 2014 midterm elections.

On January, 24, 2014, the White House announced the reinstatement of OPA.[2] Apparently, the reasoning behind reopening OPA is "defending Democratic control of the Senate and taking back the House from Republicans."[3] The new OPA has been described as "a one-stop shop for all things midterms."[4] White House officials reportedly stated that "it makes more sense to have a political office during a congressional year to focus attention on candidate needs, including fund-raising."[5] The reopening of OPA comes just three years after OSC rebuked OPA for inappropriate uses of taxpayer funds.[6]

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[1] 5 U.S.C. § 1216 (a)(2).
[2] The White House, Press Release, *President Obama Announces Key White House Posts* (Jan. 24, 2014), *available at* http://www.whitehouse.gov/the-press-office/2014/01/24/president-obama-announces-key-white-house-posts (last visited Jan. 31, 2014).
[3] Michael D. Shear, *White House Comeback for Political Affairs Office*, N.Y. TIMES, Jan. 24, 2014, *available at* http://www.nytimes.com/2014/01/25/us/politics/white-house-comeback-for-political-affairs-office.html?_r=0 (last visited Jan. 31, 2014) [hereinafter *Comeback for Political Affairs Office*].
[4] Edward-Isaac Dovere, *White House to Launch New Political Office*, POLITICO, Jan. 24, 2014, *available at* http://www.politico.com/story/2014/01/white-house-office-of-political-strategy-outreach-102582.html (last visited Jan. 31, 2014) [hereafter *White House to Launch New Political Office*].
[5] *Comeback for Political Affairs Office*, *supra* note 3.
[6] *See* U.S. Office of Special Counsel, *Investigation of Political Activities by White House and Federal Agency Officials During the 2006 Midterm Elections* (Jan. 2011), *available at* https://www.judicialwatch.org/files/documents/2011/2006MidTermElectionWHPolActivities.pdf (last visited Jan. 31, 2014) [hereafter OSC Report].

During the 2008 presidential election, then-Senator Barack Obama often criticized the political focus of the George W. Bush White House,[7] stating that "the days of using the White House as another arm of the Republican National Committee are over."[8] Despite the rhetoric, OPA continued operating during the first two years of the Obama Administration. In anticipation of the 2012 election, OPA operations were moved to the Democratic National Committee (DNC).[9] In fact, the DNC and OPA were so closely aligned that the White House political director took over the "day-to-day duties of running the Democratic National Committee."[10] President Obama reportedly eliminated OPA to prevent duplication with the DNC and Obama reelection campaign.[11]

The Hatch Act prohibits federal employees from engaging in certain types of political activities.[12] In particular, it prohibits federal employees from using their official authority or influence for the purpose of interfering with or affecting the results of an election.[13] When acting in an official government capacity, the Hatch Act prohibits an employee from activity directed at the success or failure of a political party, candidate for partisan political office, or partisan political group.[14] Select officials who are permitted by exception to engage in political activity cannot use U.S. Treasury funds to pay for political activities.[15]

This Committee has a long, bipartisan history of examining Hatch Act enforcement. For example, in 2007, former Committee Chairman, Rep. Henry A. Waxman, initiated a series of investigations into allegedly improper political activity in the Executive Branch.[16] Those investigations focused on presentations given by White House political staffers on the current political environment to the President's political appointees at various departments and agencies.[17] The investigations also centered around allegations that the White House political staff coordinated the travel of senior administration officials such as Cabinet secretaries.[18] At the end of the Committee's

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[7] *Comeback for Political Affairs Office*, *supra* note 3.
[8] *See* Josh Gerstein, *New Obama Politics Shop Faces Old Questions*, POLITICO, Jan. 30, 2014, *available at* http://www.politico.com/story/2014/01/barack-obama-administration-white-house-office-of-political-affairs-102881.html (last visited Jan. 31, 2014) [hereafter *Politics Shop Faces Old Questions*].
[9] Jeff Zeleny, *Obama Will Move Political Operations to Chicago*, N.Y. TIMES, Jan. 20, 2011, *available at* http://www.nytimes.com/2011/01/21/us/politics/21obama.html (last visited Jan. 31, 2014).
[10] *Id.*
[11] *Id.*
[12] 5 U.S.C. §§ 7321-632.
[13] 5 U.S.C. § 7323(a)(1).
[14] U.S. Office of Special Counsel, *Less Restricted Employees – Political Restrictions and Prohibited Activities*, *available at* http://www.osc.gov/haFederalLessRestrisctionandActivities.htm (last visited Dec. 6, 2013).
[15] 5 U.S.C. § 7324(b); *see also* OSC Report at 74, *supra* note 6 (stating that "although the plain language of the Hatch Act and its regulations place no limitations on the extent to which § 7324(b) employees can engage in political activity on duty and in the federal workplace as long as the costs are reimbursed, OSC maintains that imposing no restraints at all goes beyond what Congress intended).
[16] Democratic Staff, H. Comm. on Oversight and Gov't Reform, 110th Cong., *The Activities of the White House Office of Political Affairs* (Oct. 2008).
[17] *Id.*
[18] *Id.*

investigation, both Rep. Waxman and then-Ranking Member Tom Davis concluded that legislation to eliminate OPA was necessary.[19]

In 2007, during the Waxman investigation, OSC simultaneously began investigating potential Hatch Act violations in the George W. Bush Administration.[20] OSC released the findings of its OPA Hatch Act investigation in the form of a 118-page final report on January 21, 2011 – two years after the Administration ended and nearly five years after the 2006 midterm elections.[21] The report called into question the existence of OPA and found that political activity undertaken by OPA violated the Hatch Act.[22] Specifically, OSC found that OPA violated the Hatch Act by working with the RNC to develop a "target list" of Republicans in close congressional races, encouraging high-level political appointees' travel to events with Republicans candidates, and keeping track of Republican candidates' fundraising efforts.[23] The report found those activities constituted "political activity" because they were directed at the electoral success of Republican candidates and the Republican Party.[24] The report also found that although senior employees at OPA were exempt from the Hatch Act, they unlawfully used taxpayer funds for political purposes.[25]

The rebranded version of OPA appears to be undertaking precisely the same political activities with which OSC found fault in its 2011 report. While the new OPA has been renamed the "Office of Political Strategy and Outreach," OSC previously found that simply renaming OPA is not a "viable solution under the law."[26] Apparently, the new OPA will focus on the needs of Democratic candidates for congress, including fundraising.[27] OPA will even sign-off on "direct mail and email blasts."[28] Further, according to White House officials, the new political director will be permitted to engage in "overtly partisan activity" on White House grounds.[29]

The reasoning behind the Obama White House reopening OPA is particularly troubling. An "overtly partisan" office in the White House that coordinates with congressional candidates seems to be precisely the type of "political boiler-room" prohibited by the Hatch Act. In fact, OSC wrote in its Hatch Act report that "strategically

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[19] Democratic Staff, H. Comm. on Oversight and Gov't Reform, 110th Cong., "The Activities of the White House Office of Political Affairs," Oct. 2008, *available at* http://oversight-archive.waxman.house.gov/documents/20081015105434.pdf .
[20] *See* Stephen Barr, *That Whistle's Been Blowing for Two Years*, WASH. POST, Oct. 12, 2007, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2007/10/11/AR2007101102396.html (last accessed Jan. 31, 2014).
[21] OSC Report, *supra* note 6.
[22] *See id.* at 75.
[23] *Id.* at 44.
[24] *Id.*
[25] *Id.* at 74.
[26] *Id.* at 75.
[27] *Comeback for Political Affairs Office*, *supra* note 3.
[28] *White House to Launch New Political Office*, *supra* note 5.
[29] *Politics Shop Faces Old Question*, *supra* note 7.

supplying targeted candidates with administration support to secure electoral gains" violates the Hatch Act.[30]

So the Committee can effectively consider whether taxpayer money is being used to advance the interests of Democratic Congressional candidates and the Democratic Party, please produce the following documents and information as soon as possible, but by no later than noon on February 17, 2014:

> All documents and communications, including e-mails, between OSC and the White House referring or relating to the Office of Political Strategy and Outreach or the reopening of the Office of Political Affairs.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

Please deliver your responses to the Majority Staff Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers to receive all documents in electronic format.

Thank you for your attention to this matter. Please contact Lamar Echols of the Committee staff at (202) 225-5074 with any questions about this matter.

Sincerely,

Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah Cummings, Ranking Minority Member

[30] *See* OSC Report, *supra* note 6, at 67.

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WASHINGTON, DC 20515–6143

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Minority (202) 225-5051

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.

3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

4. Documents produced in electronic format should also be organized, identified, and indexed electronically.

5. Electronic document productions should be prepared according to the following standards:

   (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

   (b) Document numbers in the load file should match document Bates numbers and TIF file names.

   (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

   (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

   BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT,CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.

8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.

11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.

12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.

15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.

16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.

18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

7. The term "employee" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.