

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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January 17, 2017

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
2175 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

We are writing to request that you immediately re-open the Committee's investigation into the Flint water crisis, which you suddenly and prematurely closed last month without consulting us or other Members of the Committee. We also request that the Committee take a number of concrete steps as part of this investigation, which are outlined below.

On Christmas Day, Ranking Member Cummings wrote a letter to nine-year-old Mari Copeny, also known as "Little Miss Flint," after she was quoted during an interview offering this message to America: "Don't forget about Flint." Ranking Member Cummings wrote to Miss Copeny: "I want you to know that I hear you. We hear you in Congress. Your voice makes a difference. Your spirit and determination inspire us to keep our promise to help fix these problems—and to hold those who caused them accountable."¹

We owe it to Mari Copeny and all of the other thousands of children of Flint to make good on our promises to investigate how this disaster occurred, hold accountable all of those who were responsible, and oversee the Flint recovery process which continues to be beset with delays. Nearly three years after this crisis began, the families of Flint are still unable to drink clean water from their taps.

Vote to Subpoena Governor Snyder

First, we request that Committee Members be allowed to debate and vote on a motion to subpoena Michigan Governor Rick Snyder to compel the production of key documents that he has been withholding from the Committee for the past year, including evidence relating to his destruction of emails.²

¹ Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Miss Mari Copeny (Dec. 25, 2016) (online at www.facebook.com/oversightdems/posts/10154907950024048).

² Email from Counsel to Governor Rick Snyder, to House Committee on Oversight and

On December 16, 2016, Ranking Member Cummings sent you a letter describing Governor Snyder's ongoing defiance of the document request that you and he signed together on February 26, 2016. The letter explained that the Governor has refused to provide—or even search for—documents we requested.³ In addition, Governor Snyder has refused to provide copies of all litigation holds relating to his emails and has denied the Committee access to any member of his information technology team.

As a result, the Committee is still unable to answer critical questions about what the Governor knew about the crisis as it unfolded, why he did not act on concerns about water quality even while his inner circle sounded repeated alarms, and why families in Flint continue to subsist on bottled water almost a year after he declared an emergency.

You did not respond to the Ranking Member's letter. Instead, you announced publicly that same day that you were closing our investigation, which had been bipartisan up to that point. During your investigation of former Secretary of State Hillary Clinton, you issued nearly a dozen unilateral subpoenas, but you issued only two during the entire Flint water investigation, both to compel testimony from former Flint Emergency Manager Darnell Earley.

We believe Committee Members should be allowed to decide for themselves and take a vote on a motion to subpoena Governor Snyder during the Committee's organizing meeting on January 24, 2017.

Criminal Referrals to U.S. Department of Justice

We request that the Committee refer former Flint Emergency Managers Darnell Earley, Gerald Ambrose, and Edward Kurtz to the Department of Justice for potential federal criminal prosecution.

As you have repeatedly pointed out, perjury, false statements, and obstructing Congress are serious crimes. Under 18 U.S.C. § 1621, a witness commits perjury if he or she, "having taken an oath ..., willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true." Under 18 U.S.C. § 1001, a witness commits a crime if he or she "knowingly and willfully" makes a statement "knowing the same to contain any materially false, fictitious, or fraudulent statement." Under 18 U.S.C. § 1505, a witness commits a crime if he or she "corruptly" "influences, obstructs, or impedes," or "endeavors to influence, obstruct, or impede," the "due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House."

Government Reform Staff (Mar. 16, 2016). *See also* Letter from Governor Rick Snyder, State of Michigan, to Chairman Jason Chaffetz, House Committee on Oversight and Government Reform (May 9, 2016).

³ Letter from Ranking Member Elijah E. Cummings to Chairman Jason Chaffetz, House Committee on Oversight and Government Reform (Dec. 16, 2016) (online at <https://democrats-oversight.house.gov/news/press-releases/cummings-asks-chaffetz-to-subpoena-michigan-governor-for-withheld-flint>).

Darnell Earley

Mr. Earley, who was appointed by Governor Snyder, testified before the Committee during a hearing on March 15, 2016.⁴ On December 19, 2016, the Michigan Attorney General filed criminal charges against Mr. Earley, citing his “misrepresentation” to the Committee when he claimed that he did not receive a critical letter from the former head of the Detroit Water and Sewer Department.⁵ If this allegation is accurate, Mr. Earley may have misled the Committee.

Gerald Ambrose

Committee staff conducted an interview with Mr. Ambrose on March 10, 2016, during which he was asked why he described a decision in 2015 by the Flint City Council to return to clean Detroit water as “incomprehensible.” He responded that it had “less to do with the vote that they took than with the manner in which they took it.”⁶ On December 19, 2016, the Michigan Attorney General filed criminal charges setting out the real reason Mr. Ambrose found the City Council’s decision “incomprehensible”—he allegedly participated in an illegal “sham transaction” to borrow tens of millions of dollars to reimburse the Karegnondi Water Authority for construction of a new water pipeline.⁷ If these allegations are accurate, Mr. Ambrose also may have misled the Committee.

Edward Kurtz

On November 29, 2016, Committee staff conducted a transcribed interview with Mr. Kurtz, during which he claimed: “I never made a decision to use Flint River water in the interim.”⁸ According to the Michigan Attorney General’s Office, former Flint Mayor Dayne Walling will testify during the pending prosecution that “Mr. Kurtz ultimately decided to use the Flint River as an interim water source.”⁹ Mr. Kurtz admitted to Committee staff during his

⁴ House Committee on Oversight and Government Reform, *Hearing on Examining Federal Administration of the Safe Drinking Water Act in Flint, Michigan, Part 2* (Mar. 15, 2016).

⁵ Office of Special Counsel, Michigan Attorney General, *Complaint and Warrant for Attorney General Case No. 16-0003* (Dec. 19, 2016) (online at www.michigan.gov/documents/ag/FINAL_Earley_et_al_Complaint_and_Warrant_121916_546055_7.pdf).

⁶ House Committee on Oversight and Government Reform, Interview of Gerald Ambrose (Mar. 10, 2016).

⁷ Office of Special Counsel, Michigan Attorney General, *Complaint and Warrant for Attorney General Case No. 16-0003* (Dec. 19, 2016) (online at www.michigan.gov/documents/ag/FINAL_Earley_et_al_Complaint_and_Warrant_121916_546055_7.pdf).

⁸ House Committee on Oversight and Government Reform, Interview of Edward Kurtz (Nov. 29, 2016).

⁹ Michigan Attorney General Office of Special Counsel, *Complaint and Warrant for Attorney General Case No. 16-0003* (Dec. 19, 2016) (online at

interview: “I included [Mayor Walling] in everything we did.”¹⁰ If these allegations are accurate, Mr. Kurtz also may have misled the Committee.

Additional Transcribed Interviews

At the outset of this investigation, we requested transcribed interviews with 15 officials involved in the Flint water crisis, but Governor Snyder refused to make any of them available.¹¹ Over the past twelve months, the Committee has conducted only three transcribed interviews—with Mr. Ambrose, Mr. Kurtz, and Mr. Wyant. During that same period, the Michigan Attorney General has filed criminal charges against 13 state and local officials and filed a total of 35 felony charges so far. We previously requested interviews with two of the charged officials, Liane Schekter Smith and Mike Prysby. We also requested interviews with Wayne Workman, who the Michigan Attorney General identified as participating in the “sham transaction” with Mr. Ambrose,¹² and Nick Lyon, who has also been identified as a target by the Attorney General.¹³

Based on the scope of the criminal activity identified over the past year, we request that the Committee conduct transcribed interviews with all 15 of the officials we requested last year. We are providing copies of the transcripts of the interviews already conducted by Committee staff to the Michigan Attorney General and, as discussed with your staff, we are making select quotes from those interviews available to the public.

www.michigan.gov/documents/ag/FINAL_Earley_et_al_Complaint_and_Warrant_121916_546055_7.pdf).

¹⁰ House Committee on Oversight and Government Reform, Interview of Edward Kurtz (Nov. 29, 2016).

¹¹ See Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, and Ranking Member Brenda Lawrence, House Committee on Oversight and Government Reform, Subcommittee on the Interior (Mar. 16, 2016) (online at <https://democrats-oversight.house.gov/news/press-releases/15-current-and-former-michigan-officials-refuse-to-cooperate-with-congress-in>).

¹² Office of Special Counsel, Michigan Attorney General, *Complaint and Warrant for Attorney General Case No. 16-0003* (Dec. 19, 2016) (online at www.michigan.gov/documents/ag/FINAL_Earley_et_al_Complaint_and_Warrant_121916_546055_7.pdf).

¹³ *Michigan Health Director Lyon Targeted in Flint Water Probe*, Detroit Free Press (Oct. 18, 2016) (online at www.freep.com/story/news/local/michigan/flint-water-crisis/2016/10/18/nick-lyon-flint-water-subpoena/92370664/).

Conclusion

During Governor Snyder's State of the State address a year ago, he apologized to the people of Flint and promised to tell the truth about what he and his administration have done. He stated:

I am sorry most of all that I let you down. You deserve better. You deserve accountability; you deserve to know the buck stops here with me. Most of all you deserve to know the truth and I have a responsibility to tell the truth, the truth about what we have done and what we will do to overcome this challenge.¹⁴

Governor Snyder's actions over the past year do not match the commitments he made to the people of Michigan.

When you traveled to Flint on March 12, 2016, you said you wanted to know "who knew what and when and what did they do."¹⁵ Unfortunately, prematurely closing the investigation last month without obtaining key documents and hearing from dozens of officials contradicts this promise. We ask you to reconsider your decision and to join us in taking the steps we have outlined above.

Thank you for your consideration of this request.

Sincerely,



Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform



Brenda Lawrence
Ranking Member
Subcommittee on the Interior

¹⁴ Governor Rick Snyder, *2016 Michigan State of the State Address* (Jan. 19, 2016) (www.michigan.gov/documents/snyder/2016_Michigan_State_of_the_State_Transcript_511676_7.pdf).

¹⁵ *Chaffetz Tours Flint Over Water Crisis, Raises Concerns*, Detroit Free Press (Mar. 12, 2016) (online at www.freep.com/story/news/local/michigan/flint-water-crisis/2016/03/12/flint-water-congressional-hearings-open-house/81697776/).