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House of Representatives

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August 26, 2014

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I received your letter late yesterday afternoon requesting that I join you in sending letters to invite former Health and Human Services Secretary Kathleen Sebelius and former Labor Secretary Hilda Solis to a hearing on September 9, 2014.

Your letter argues that these invitations are related to the Committee's ongoing investigation of the White House Office of Political Strategy and Outreach (OPSO). As you wrote, "The Committee's long-standing interest in the White House political office is partially based on reports by the *Los Angeles Times* and *Politico* that two Cabinet members engaged in inappropriate political activity in support of President Obama's reelection campaign."¹

This argument makes little sense because both of the incidents you referred to in your letter occurred in 2012—well before the new Office of Political Strategy and Outreach was established in 2014.

For the past several months, it appears that you have been trying to implicate the new White House Office of Political Strategy despite the complete lack of evidence of any wrongdoing by David Simas, a senior advisor to the President and the Director of OPSO, or anyone in his office.

On July 24, 2014, Carolyn Lerner, the head of the U.S. Office of the Special Counsel (OSC), the independent federal agency charged with investigating Hatch Act violations, sent a letter explaining that, after reviewing all of the correspondence between you and the White House regarding OPSO, she concluded that:

¹ Letter from Chairman Darrell E. Issa to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (Aug. 25, 2014).

- “[I]t appears that the White House adhered to OSC guidance in determining the scope of activity for OPSO.”
- “OPSO appears to be operating in a manner that is consistent with Hatch Act restrictions.”
- “OSC has not received any allegations that Assistant to the President David Simas or anyone in OPSO has violated the Hatch Act.”
- “I have no reason to believe that OPSO’s activities exceed those set forth in formal communications between White House lawyers and the Oversight and Government Reform Committee.”²

With respect to your request yesterday that I join you in inviting former Secretaries Sebelius and Solis to testify next month, I was surprised by your newfound need for bipartisan support, particularly since you have repeatedly refused my requests to refrain from issuing baseless unilateral subpoenas in this investigation without any debate or vote by the Committee.

On July 11, 2014, you issued a unilateral subpoena to compel public testimony from Mr. Simas, the Director of OPSO, despite the fact that neither the Committee nor the Special Counsel had identified any evidence of inappropriate activity by Simas or the office he directs.³ You disregarded a detailed written request from me to allow the Committee to debate and vote on the proposed subpoena.⁴

Then, last Friday, you issued another unilateral subpoena to the White House, demanding documents from Chief of Staff Denis McDonough, relating to OPSO.⁵ Again, you issued this subpoena without any Committee debate or vote and without any evidence of wrongdoing by OPSO. In addition, you issued this subpoena despite the fact that the White House Counsel’s Office had already explained to your staff that it was preparing to send documents in response to your earlier request.

² Letter from Special Counsel Carolyn Lerner to Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform (July 24, 2014) (online at <http://democrats.oversight.house.gov/press-releases/us-office-of-special-counsel-identifies-no-inappropriate-activity-at-new-white-house-political-office/>).

³ Subpoena from House Committee on Oversight and Government Reform to David M. Simas (July 11, 2014).

⁴ Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (July 11, 2014) (online at <http://democrats.oversight.house.gov/press-releases/cummings-objects-to-issa-subpoena-binge-after-benghazi-taken-away-from-oversight-committee/>).

⁵ Subpoena from House Committee on Oversight and Government Reform to Dennis McDonough, White House Chief of Staff (Aug. 22, 2014).

Friday's unilateral subpoena marks your 103rd issued without any Committee debate or vote—more than all three previous Committee Chairmen combined.

I strongly believe that the Committee's investigations should be conducted in a bipartisan manner, by working together to fulfill the Constitutional obligations of this Committee in a responsible manner based on input and feedback from both sides. Your actions throughout this investigation have not followed that standard.

As a result, I will not join your invitation letters unless you agree to cease issuing unilateral subpoenas without my concurrence or, in a case in which I have a strong objection, without a full Committee debate and vote. That has been the standard of all previous Chairman—Republicans and Democrats—since Rep. Dan Burton chaired the Committee in the 1990s, and it is consistent with the approach you outlined at our first organizational meeting after you became Chairman in 2011:

If we cannot come to an agreement, a vote of the Committee may very well be the most legitimate way to resolve a difference of opinion between us. I don't see any of those here today. ... And if I want a subpoena, and you really object, I am going to take your thoughts on why you object seriously. To be honest, I will ask other members of my Committee, am I doing the right thing, and seek their guidance. And by the way, not just former Chairmen. I will also undoubtedly talk to other members on your side and say, am I nuts? Am I wrong? Is this somehow a subpoena that's outside the mainstream? So I don't intend on simply writing subpoenas endlessly.⁶

I truly hope this most recent request for bipartisan participation is sincere, and I look forward to your response.

Sincerely,



Elijah E. Cummings
Ranking Member

⁶ House Committee on Oversight and Government Reform, Business Meeting (Jan. 25, 2011) (online at www.youtube.com/watch?v=qC_cau_e5FE&list=UUXSlyao4qkUFiPqghptHtZA).