

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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November 2, 2017

The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Ranking Member Cummings:

In a recent letter, and accompanying press release, you requested six motions for subpoenas be placed on the Committee's business meeting agenda. The subpoenas you described are inconsistent with a responsible investigative process. In fact, there once was a time where you decried using subpoenas and pursuing conflict solely for the sake of publicity.¹ We have worked together before, are now in a number of areas, and it is my belief and hope we will continue to do so.

As you know, and have even said yourself, it is irresponsible to use "the coercive power of subpoenas" except "as a last resort."² I tend to agree with that approach. If you look at the Committee's—mostly bipartisan—work to date on these issues in full context, it is clear subpoenas are premature in each case. With that in mind, I urge you to reconsider your requests to issue the following subpoenas:

Subpoena to the White House for Documents Related to Lt. Gen. Michael Flynn's Foreign Contacts

The Committee investigated Flynn's speaking engagements and appearances and found evidence some were paid for by, or on behalf of, foreign governments or their agents, potentially in violation of the constitutional prohibition against certain types of emoluments and related Department of Defense guidelines. A significant portion of that evidence was provided by the Defense Department, including the documents you wish to subpoena from the White House. This matter is currently being adjudicated by the Department of the Army, in response to a referral from the Committee, and there is no indication that any documents relevant to that process are

¹ Statement from Hon. Elijah E. Cummings (May 2, 2014), *available at* <https://democrats-oversight.house.gov/news/press-releases/cummings-responds-to-issa-subpoena-to-secretary-of-state-0>. In response to a subpoena issued by Chairman Darrell Issa, you said "These actions are not a responsible approach to congressional oversight, they continue a trend of generating unnecessary conflict for the sake of publicity, and they are shockingly disrespectful to the Secretary of State."

² Letter from Hon. Elijah E. Cummings, et al., to Members of the U.S. House of Representatives (Feb. 10, 2015).

being withheld. Moreover, for reasons we have previously discussed—and many Democrats agree with—no Committee of Congress should engage in any act that wittingly or unwittingly has the potential to interfere with the Office of Special Counsel’s investigation.

Subpoena to the White House for Documents Related to Jared Kushner’s and Others’ Private Email Use

The Committee requested information related to the use of non-official email accounts from twenty-four agencies, including the White House. The White House provided a written response on October 10, 2017 and three White House lawyers provided additional information during a briefing on October 18, 2017. Among other things, the briefers described the White House’s internal investigation and committed to provide additional information when it is complete. Still, you are urging the Committee to issue a subpoena to a top White House official. In a 2014 letter you wrote “[i]ssuing a congressional subpoena to a senior advisor to the President is not an action to be taken . . . without adequate foundation.”³ That is still the case. Moreover, in the past you routinely implored Congressional Committees to wait until internal executive branch investigations were complete.

Subpoena to the White House for Documents Related to the Federal Government’s Hurricane Response

In October, Trump Administration officials responding to Hurricanes Harvey, Irma, and Maria provided a series of briefings to Members of the Committee. High-ranking officials from the Federal Emergency Management Agency, the Department of Defense, the Army Corps of Engineers, and the Department of Health and Human Services described the recovery efforts in the areas affected by the storms, with an emphasis on the conditions in Puerto Rico and the U.S. Virgin Islands. Fewer and fewer Democrats attended those briefings—seven at first, then four, and finally, just one. Meanwhile, you requested a subpoena to the White House for information that appears to have little to do with the urgent questions about the conditions on the ground in the areas that were hit hardest.

Subpoena to Governor Snyder for Documents Related to the Flint Water Investigation

Committee Republicans released findings related to the federal government’s response to the crisis in a series of letters last year. Meanwhile, there are numerous related ongoing investigations and legal proceedings, including a U.S. Department of Justice investigation; 69 pending civil cases ranging from federal circuit court to Michigan state courts to Genesee County Circuit Court; the Michigan Legislature’s Joint Select Committee on the Flint Water Emergency; the Michigan Civil Rights Commission; and the Flint Water Advisory Task Force. Special Prosecutor Todd Flood is running an investigation in conjunction with the Office of Genesee County Prosecuting Attorney, and there are criminal charges against 15 people to date. Investigations by the Michigan Office of the Auditor General and the Inspector General of the

³ Letter from Hon. Elijah E. Cummings to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov’t Reform (July 11, 2014).

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Michigan Department of Health and Human Services have been suspended, at the request of the state attorney general and U.S. Department of Justice, pending the outcome of the Flood prosecutions. A subpoena request to Governor Snyder may potentially interfere with those prosecutions. Additionally, Governor Snyder has publicly released and posted online hundreds of thousands of documents in response to requests made by the Committee.

Subpoena to the Kushner Companies for Documents Related to Maryland Rental Units

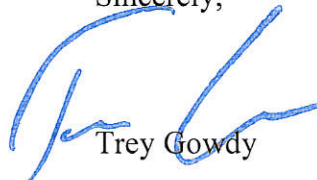
The allegations the Kushner Companies failed to comply with quality standards established by the Department of Housing and Urban Development at certain properties in Maryland are indeed serious. Those allegations are the subject of a lawsuit filed by two tenants, and, according to a spokesperson, the company is cooperating with a probe by the state.⁴ Issuing a subpoena that could affect a Maryland landlord-tenant dispute would be at odds with the Committee's historical preference to avoid interfering with litigation between private parties.

In the past, you routinely urged chairmen to pursue non-compulsory methods to the greatest extent possible throughout the investigative process, as opposed to issuing subpoenas. The Committee's approach to the various matters you cited in your letter is consistent with your previous posture towards investigations. It is reasonable to allow the White House to complete its internal review regarding email use and to brief the Committee on the findings. It would be unreasonable to stop working on a voluntary basis with the agencies that are managing the federal government's hurricane response efforts. And it would be contrary to your stated intention not to "interfere with his investigation" if we issue subpoenas that touch on matters within the scope of Special Counsel Robert Mueller's ongoing probe.⁵

While it may not always be politically advantageous to allow external investigative processes to make findings before the Committee takes additional steps, as former practicing lawyers, we both know and appreciate the importance of adhering to investigative norms as fundamental to due process and likely to result in the most amount of information from which we can then continue to investigate.

I remain hopeful you will be a willing partner on many of the important issues before our Committee. We have a constitutional duty to uncover the truth and enact reforms that benefit this country. I hope we can be strong allies in this process. If you ever have any questions, concerns, or other thoughts about the Committee's work, I am always available to you on my cell phone, on the Floor, or in my office at 2418 Rayburn.

Sincerely,



Trey Gowdy

⁴ Cristiano Lima, *Kushner Companies says it's cooperating with Maryland housing probe*, POLITICO, Oct. 30, 2017.

⁵ Elijah E. Cummings statement to ABC News, May 19, 2017, available at <https://grabien.com/story.php?id=105747>.