

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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<http://oversight.house.gov>

September 28, 2016

Mr. Kenneth F. Eichner  
The Eichner Law Firm  
3773 Cherry Creek Drive North  
West Tower, Suite 900  
Denver, CO 80209

Dear Mr. Eichner:

On September 23, 2016, you advised by letter that your clients Paul Combetta and Treve Suazo will not comply with *subpoenas duces tecum* issued to them pursuant to the Committee's investigation into the implications of former Secretary Hillary Clinton's use of a private email server for official State Department business. In that letter, you also indicated that going forward all Platte River Networks (PRN) personnel, including Mr. Combetta and Mr. Suazo, will refuse to cooperate with any further requests for documents or testimony.

Your letter referred generically to the Fourth and Fifth Amendments; however, it did not address the fact that PRN as a "collective entity" does not have a valid Fifth Amendment privilege to assert with respect to the company's documents covered by the subpoena. The Fourth Amendment is similarly inapplicable here because the subpoenas issued to your clients are legally valid and in furtherance of a legitimate legislative function.

***Subpoena duces tecum* issued to Mr. Combetta on September 11, 2016**

The subpoena issued to Mr. Combetta on September 11, 2016, covered documents and communications related to his immunity and proffer agreements with the Department of Justice. With respect to that subpoena, the only concern you raised was that producing those materials places "PRN personnel in a position to compromise their Fifth Amendment privilege."<sup>1</sup>

The Fifth Amendment privilege may only be asserted when there is reasonable apprehension on the part of the witness that he might furnish some evidence upon which he could be convicted of a criminal offense.<sup>2</sup> Your letter did not address how the production of Mr. Combetta's immunity and proffer agreements could possibly raise Fifth Amendment concerns. Indeed there are no such concerns, especially given that Attorney General Loretta Lynch announced the government's investigation of the matter is closed "and that no charges [will] be brought against any individuals within the scope of the investigation."<sup>3</sup>

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<sup>1</sup> Letter from Kenneth F. Eichner to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform (Sept. 23, 2016) at 2.

<sup>2</sup> *United States v. Jaffee*, 98 F. Supp. 191, 193-94 (D.D.C. 1951); see also *Simpson v. United States*, 241 F.2d 222 (9th Cir. 1957) (privilege inapplicable to questions seeking basic identifying information, such as the witness's name and address).

<sup>3</sup> Eric Bradner, *AG Loretta Lynch declines to press charges against Clinton*, CNN, July 6, 2016.

### ***Subpoena duces tecum* issued to Mr. Suazo on September 16, 2016**

The subpoena issued to Mr. Suazo on September 16, 2016, covered five narrow categories of records related to services that PRN provided to former Secretary Clinton and the Clinton Executive Services Corporation. The subpoena was directed to Mr. Suazo in his capacity as the company's Chief Executive Officer.

To the extent that your letter attempts to assert the Fifth Amendment's "act of production" privilege, it is unavailable to PRN. The Supreme Court has held that PRN – as a corporation registered in the State of Colorado – is a "collective entity" and, therefore, cannot assert the "act of production" privilege.<sup>4</sup> Here, because the subpoena (i) was directed to Mr. Suazo in his official capacity as the CEO of PRN and (ii) clearly seeks company records and not his personal records, there is no Fifth Amendment privilege against their production<sup>5</sup> and, therefore, no concern that producing the documents will "create the appearance that PRN is waiving its Fifth Amendment privilege."<sup>6</sup>

The records responsive to the Committee's subpoena relate to whether PRN employees were instructed to delete or otherwise destroy federal records. Recent media accounts describe the possibility that Mr. Combetta sought advice on the social network and discussion website Reddit as to how he could delete or alter some of those emails.<sup>7</sup> These allegations are relevant to the Committee's investigation and they underscore the pertinence of the Committee's inquiry with respect to PRN and its employees.

### **The legal obligation to comply with the subpoenas remains in effect**

Your letter states that the Committee's investigation "goes beyond the scope of Congress's investigatory power and, more specifically, the jurisdiction of this committee."<sup>8</sup> This assertion is erroneous. The House, through its rules, has delegated relevant substantive

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<sup>4</sup> See *Bellis v. United States*, 417 U.S. 85, 88 (1974) ("an individual cannot rely upon the [Fifth Amendment] privilege to avoid producing the records of a collective entity which are in his possession in a representative capacity, even if these records might incriminate him personally."); see also *id.* at 90 ("[N]o artificial organization may utilize the personal privilege against compulsory self-incrimination . . ."); see also *Fisher v. United States*, 425 U.S. 391, 411 (1976) ("This Court has also time and again allowed subpoenas against the custodian of corporate documents or those *belonging* to other collective entities such as unions and partnerships . . ." (emphasis added)); *United States v. White*, 322 U.S. 694, 699 (1944) ("Such records and papers [of collective entities] are not the private records of the individual members or officers of the organization.").

<sup>5</sup> See, e.g., *Amato v. United States*, 450 F.3d 46, 50-51 (1st Cir. 2006) ("[T]he collective-entity doctrine focuses on . . . the status of the records, i.e., corporate or individual . . . [R]epresentatives of collective entities . . . possess no Fifth Amendment privilege to refuse to produce records that belong to collective entities, including corporate records."); *In re Grand Jury Proceedings*, 727 F.2d 941, 944 (10th Cir. 1984) (*Bellis* "repeated[ly] emphasi[z]ed . . . the absence of an ownership interest" in the documents, which were "not subject to the exclusive control of the person to whom the subpoena was issued").

<sup>6</sup> Letter from Kenneth F. Eichner to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform (Sept. 23, 2016) at 2.

<sup>7</sup> See, e.g., Steven Nelson, *Computer Specialist Who Deleted Clinton Emails May Have Asked Reddit For Tips*, U.S. NEWS & WORLD REPORT, Sept. 19, 2016.

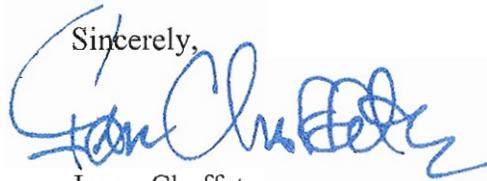
<sup>8</sup> Letter from Kenneth F. Eichner to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform (Sept. 23, 2016) at 2.

legislative jurisdiction and investigative authority to the Committee.<sup>9</sup> The Committee's substantive legislative jurisdiction includes, *inter alia*, "[g]overnment management and accounting measures generally," "management of government operations and activities, including Federal procurement," "[n]ational archives," as well as "[p]ublic information and records."<sup>10</sup> Additionally, the Committee is the principal investigative committee of the House and, as such, "may *at any time* conduct investigations of *any matter* . . . ."<sup>11</sup> In other words, contrary to your assertion, the Committee's oversight jurisdiction is coterminous with Congress's oversight jurisdiction. Accordingly, there is no question that the Committee's investigation is within its jurisdiction.

Your letter makes clear that Mr. Combetta and Mr. Suazo are in possession of information that is highly relevant to the Committee's investigation. PRN employees helped the Federal Bureau of Investigation "understand the configuration, maintenance, administration, and security of the technology under PRN's management, as well as supplying valuable IT expertise."<sup>12</sup> This is precisely the sort of information the Committee is seeking from PRN.

In light of the foregoing, the subpoenas for your clients remain in effect. The fact that PRN produced relevant documents to other investigative entities has no bearing on the status of Mr. Combetta's and Mr. Suazo's compliance with the Committee's subpoenas.

Your various threats against my staff will not alter the Committee's course of action. Aside from being baseless and futile, those tactics themselves may run afoul of the Rules of Professional Conduct for the District of Columbia, wherein threatening to file a bar complaint to gain an advantage in a disputed matter is itself a violation of Rule 8.4(g).<sup>13</sup> If Mr. Combetta and Mr. Suazo continue to refuse to comply with the subpoenas duly issued to them, the Committee will proceed to consider all its options to enforce the subpoenas.

Sincerely,  


Jason Chaffetz  
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member

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<sup>9</sup> See generally Rules of the House of Representatives, 114th Cong. (2015) ("House Rules"), available at <http://clerk.house.gov/legislative/house-rules.pdf>.

<sup>10</sup> House Rule X.1(n)(4), (6), (7), (10).

<sup>11</sup> House Rule X.4(c)(2) (emphases added).

<sup>12</sup> Letter from Kenneth F. Eichner to Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform (Sept. 23, 2016) at 1.

<sup>13</sup> Threats to file disciplinary charges, either against an attorney with Bar Counsel or against a non-attorney with a relevant professional board, for the sole purpose of gaining advantage in a civil matter are a violation of the Rules of Professional Conduct. See D.C. Bar Ethics Opinion 220 (1991).