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# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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May 31, 2011

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

Dear Mr. Chairman:

On May 2, 2011, I wrote to request that you schedule a Committee vote on H.R. 1144, the Transparency and Openness in Government Act.<sup>1</sup> This bill is a comprehensive compilation of five component pieces of legislation that passed the House last Congress with broad bipartisan support, including your own. Since I introduced H.R. 1144, 17 organizations supporting transparency and openness in government have endorsed the bill and called for swift, bipartisan action by our Committee.<sup>2</sup>

Given this broad level of support, I was surprised and disappointed that you categorically rejected any possibility of marking up the bill. In a letter to me on May 5, 2011, you stated flatly that you "do not intend to consider H.R. 1144 in Committee."<sup>3</sup>

This recent action follows other actions that disregard the views of organizations dedicated to bringing increased transparency and accountability to government operations. For example, at our Committee's May 12, 2011, hearing on corporate campaign contributions, you

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<sup>1</sup> Letter from Ranking Member Elijah E. Cummings to Chairman Darrell E. Issa (May 2, 2011) (online at [http://democrats.oversight.house.gov/index.php?option=com\\_content&task=view&id=5284&Itemid=49](http://democrats.oversight.house.gov/index.php?option=com_content&task=view&id=5284&Itemid=49)).

<sup>2</sup> Letter from John W. Curtis, Ph.D. et al. to Chairman Darrell E. Issa and Ranking Member Elijah E. Cummings (Apr. 18, 2011) (online at <http://democrats.oversight.house.gov/images/stories/FULLCOM/503%20pres%20records/Letter%20Supporting%20H%20R%20%201144%20docx-%20final.pdf>).

<sup>3</sup> Letter from Chairman Darrell E. Issa to Ranking Member Elijah E. Cummings (May 5, 2011).

refused to allow testimony from Fred Wertheimer, a recognized national leader on campaign finance issues, who would have testified on behalf of a coalition of 34 open government and other organizations that strongly support enhanced transparency.<sup>4</sup>

I am writing to ask that you reconsider your decision to refuse a Committee vote on H.R. 1144 and allow this important transparency legislation to move forward.

### **Endorsements and Bipartisan Support for H.R. 1144**

On April 18, 2011, a coalition of 17 open government and other organizations sent a letter to you and me endorsing H.R. 1144 and calling for “prompt action” by our Committee.<sup>5</sup> Their letter stated:

Our undersigned groups strongly support H.R. 1144, which we believe will make the government operate with more transparency and accountability.

The coalition’s letter explained:

H.R. 1144, “The Transparency and Openness in Government Act,” will enhance the effectiveness of federal advisory panels, provide more access to presidential records, secure electronic messages generated by Administration officials, ensure donations to presidential libraries are part of the public record, and give the Government Accountability Office more teeth.

Finally, the coalition’s letter stated:

The reforms in H.R. 1144 are ripe for bipartisan action and support, since they are commonsense, noncontroversial measures, all of which passed the House of Representatives in the 111th Congress with substantial bipartisan support. ... We hope we can work with you to ensure that this package of reforms receives bipartisan support and prompt action in the House.

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<sup>4</sup> Cf. Congressman Darrell Issa, *House Oversight Dems: The Show Must Go On* (June 8, 2007) (online at [http://issa.house.gov/index.php?option=com\\_content&task=view&id=310&Itemid=28&Itemid=4](http://issa.house.gov/index.php?option=com_content&task=view&id=310&Itemid=28&Itemid=4)) (“In a Democracy whose lifeblood is fueled by the market place of ideas, Committee practices that stifle or preclude full debate should be avoided at all cost”).

<sup>5</sup> Letter from John W. Curtis, Ph.D. et al. to Chairman Darrell E. Issa and Ranking Member Elijah E. Cummings (Apr. 18, 2011) (online at <http://democrats.oversight.house.gov/images/stories/FULLCOM/503%20pres%20records/Letter%20Supporting%20H%20R%20%201144%20docx-%20final.pdf>).

Specifically, H.R. 1144 includes five bills that passed the House last year with broad, bipartisan support. They are:

- **The Presidential Records Act Amendments**, which increase public access to presidential records by establishing statutory procedures for handling executive privilege claims prior to FOIA releases (passed the House on January 7, 2009, by a vote of 359 to 58).
- **The Electronic Message Preservation Act**, which modernizes the Federal Records Act and the Presidential Records Act to ensure that White House and agency email records are preserved electronically (passed the House on March 17, 2010, by a voice vote).
- **The Government Accountability Office Improvement Act**, which strengthens the authority of GAO to access agency records in order to audit or investigate agencies on behalf of Congress (passed the House on January 13, 2010, by a voice vote).
- **The Presidential Library Donation Reform Act**, which requires quarterly reporting to Congress and the National Archives of donations to presidential libraries of \$200 or more (passed the House on January 7, 2009, by a vote of 388 to 31).
- **The Federal Advisory Committee Act Amendments**, which require agencies to disclose more information about advisory committees and closes existing loopholes (passed the House on July 26, 2010, by a vote of 250 to 124).

#### **Your Reasons for Refusing a Committee Vote on H.R. 1144**

In your letter to me on May 5, 2011, you provided two reasons for refusing to schedule a Committee vote on H.R. 1144. First, you suggested that, despite passing the House with broad, bipartisan support, none of the five component bills passed the Senate last Congress. You wrote:

I would note that the Senate last Congress failed to approve any of the individual provisions constituting H.R. 1144, when presented with the opportunity of adopting each as stand-alone bills.<sup>6</sup>

Obviously, if these bills had passed both the House and Senate, they would have been sent to the President for signature.

In fact, significant progress was made in the Senate on many of these component bills. For example, the Senate Committee on Homeland Security and Governmental Affairs approved

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<sup>6</sup> *Id.*

the Presidential Records Act Amendments on April 1, 2009, and it was poised for Senate passage until Senator Sessions placed a hold on it.<sup>7</sup> The Senate Committee on Homeland Security and Governmental Affairs also approved the Government Accountability Office Improvement Act on July 28, 2010, and in the previous Congress approved the Presidential Library Donation Reform Act.

It often takes years of sustained effort to pass strong, bipartisan legislation. For example, the Freedom of Information Act was first introduced in the 85th Congress. In the 88th Congress, the Senate passed legislation, but the House did not act. It was not until the 89th Congress that the legislation cleared both chambers and President Johnson signed it into law. We should not abandon our efforts because they have not yet been successful.

Your second argument was that H.R. 1144—which combines five component bills into a single piece of legislation to enhance transparency, openness, and accountability across the federal government—was not “comprehensive” enough to go forward with a Committee vote. Instead, you argued that “any attempt to comprehensively improve transparency” should include government-wide “data standards.”<sup>8</sup>

I support additional efforts to enhance government transparency, including through federal financial data standards, but the Committee is not limited to considering only one piece of open government legislation per year. In the 111th Congress, the Committee considered at least 18 bills aimed at making the government more transparent. You could schedule a mark-up now on H.R. 1144 and a mark-up later on additional legislation to improve federal financial data standards.

To move forward on legislation regarding federal financial data standards, I have asked my staff to provide your staff with a discussion draft of legislation that Legislative Counsel prepared at my request. On June 4, 2009, our Committee approved H.R. 2392 which you introduced on May 13, 2009. The Committee also incorporated these provisions into S. 303, the Federal Financial Assistance Management Improvement Act of 2009, which passed the House on December 14, 2009. Since that time, Committee staff have made significant progress negotiating in a bipartisan manner with the Senate Committee on Homeland Security and Governmental Affairs and the Office of Management and Budget. The discussion draft I am sharing includes additional input provided by the National Institute of Standards and Technology at the end of last Congress and represents the most up-to-date version of this legislation.

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<sup>7</sup> *Activist Archivist*, National Journal (July 10, 2010).

<sup>8</sup> Letter from Chairman Darrell E. Issa to Ranking Member Elijah E. Cummings (May 5, 2011).

The Honorable Darrell E. Issa  
Page 5

I propose that our staffs meet to discuss the current status of this legislation and develop a work plan to move forward expeditiously. I strongly believe this could be an area of bipartisan cooperation for our Committee, and I am open to any suggestions you have for moving forward in a way that maximizes our chances for successful legislation.

### **Request for Reconsideration**

I strongly believe the Committee should move forward now—five months is too long to wait without action. Passing H.R. 1144 out of our Committee and sending it to the House floor expeditiously will send a clear message that this Committee is committed to working in a bipartisan manner to improve the transparency and accountability of the federal government. This view is supported by a host of open government and other organizations that have called for swift action on this legislation. For these reasons, I request that you reconsider your decision and hold a Committee vote on H.R. 1144. I also request that our staffs meet to discuss a bipartisan path forward on federal data standards legislation.

Sincerely,

A handwritten signature in blue ink that reads "Elijah E. Cummings". The signature is stylized and written in a cursive-like font.

Elijah E. Cummings  
Ranking Member