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House of Representatives

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March 13, 2014

The Honorable John Boehner
Speaker
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Yesterday, I sent you a letter conveying an independent legal analysis from two of the nation's preeminent experts in Constitutional law and congressional contempt proceedings concluding that Oversight Committee Chairman Darrell Issa compromised any House contempt action against Lois Lerner when he rushed to adjourn the Committee's hearing last Wednesday.

This analysis was authored by Morton Rosenberg, who served for 35 years as a Specialist in American Public Law at the Congressional Research Service, and was joined by Stan Brand, who served as House Counsel from 1976 to 1983 and "fully subscribes" to Mr. Rosenberg's legal analysis and conclusions.

In the past 24 hours, I have received numerous additional opinions from other legal experts agreeing with this independent analysis and also identifying fatal Constitutional defects in the Oversight Committee's contempt proceedings.

Today, you held a press conference in which you stated: "I and the House Counsel reject the premise of Mr. Cummings's letter." When asked if you would provide a copy of the House Counsel opinion you referenced, you first directed reporters to ask "the appropriate people." When they explained that you are the appropriate person, you answered: "I am sure that we will see an opinion at some point."

Based on your comments, it is unclear whether you currently have an opinion from House Counsel that was drafted in preparation for last week's hearing, or whether you are now seeking one to support your political position after the fact.

I am not aware of, and I have not been provided a copy of, any House Counsel memorandum or opinion that was delivered to the Oversight Committee prior to last Wednesday's hearing relating to the specific procedures for holding Ms. Lerner in contempt despite the assertion of her Fifth Amendment rights.

The Honorable John Boehner

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I would find it very difficult to believe that House Counsel issued any memorandum advising Chairman Issa to disregard Supreme Court opinions, advising him against explicitly overruling Ms. Lerner's assertion of her Fifth Amendment rights, or advising him not to direct Ms. Lerner to answer his questions notwithstanding the assertion of her Fifth Amendment rights.

I am also not aware of any House Counsel opinion that was prepared after the hearing occurred last week. Chairman Issa has routinely excluded Democrats from meetings and discussions with House Counsel on this matter, has solicited opinions on a partisan basis, and has withheld opinions from Committee Members and the public.

If you are in possession of any House Counsel opinion on this matter, I request that you provide a copy to all Members of the Oversight Committee—including Democratic Members—as soon as possible so we can be fully apprised of the legal issues involved.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in blue ink that reads "Elijah E. Cummings". The signature is written in a cursive, flowing style.

Elijah E. Cummings
Ranking Member

cc: The Honorable Darrell E. Issa
Chairman, House Committee on Oversight and Government Reform