

DARRELL E. ISSA, CALIFORNIA  
CHAIRMAN

ONE HUNDRED THIRTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND  
RANKING MINORITY MEMBER

JOHN L. MICA, FLORIDA  
MICHAEL R. TURNER, OHIO  
JOHN J. DUNCAN, JR., TENNESSEE  
PATRICK T. McHENRY, NORTH CAROLINA  
JIM JORDAN, OHIO  
JASON CHAFFETZ, UTAH  
TIM WALBERG, MICHIGAN  
JAMES LANKFORD, OKLAHOMA  
JUSTIN AMASH, MICHIGAN  
PAUL A. GOSAR, ARIZONA  
PATRICK MEEHAN, PENNSYLVANIA  
SCOTT DESJARLAIS, TENNESSEE  
TREY GOWDY, SOUTH CAROLINA  
BLAKE FARENTHOLD, TEXAS  
DOC HASTINGS, WASHINGTON  
CYNTHIA M. LUMMIS, WYOMING  
ROB WOODALL, GEORGIA  
THOMAS MASSIE, KENTUCKY  
DOUG COLLINS, GEORGIA  
MARK MEADOWS, NORTH CAROLINA  
KERRY L. BENTIVOLIO, MICHIGAN  
RON DESANTIS, FLORIDA

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
FACSIMILE (202) 225-3974  
MINORITY (202) 225-5051

<http://oversight.house.gov>

CAROLYN B. MALONEY, NEW YORK  
ELEANOR HOLMES NORTON,  
DISTRICT OF COLUMBIA  
JOHN F. TIERNEY, MASSACHUSETTS  
WM. LACY CLAY, MISSOURI  
STEPHEN F. LYNCH, MASSACHUSETTS  
JIM COOPER, TENNESSEE  
GERALD E. CONNOLLY, VIRGINIA  
JACKIE SPEIER, CALIFORNIA  
MATTHEW A. CARTWRIGHT, PENNSYLVANIA  
L. TAMMY DUCKWORTH, ILLINOIS  
ROBIN L. KELLY, ILLINOIS  
DANNY K. DAVIS, ILLINOIS  
PETER WELCH, VERMONT  
TONY CARDENAS, CALIFORNIA  
STEVEN A. HORSFORD, NEVADA  
MICHELLE LUJAN GRISHAM, NEW MEXICO  
VACANCY

LAWRENCE J. BRADY  
STAFF DIRECTOR

July 11, 2014

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

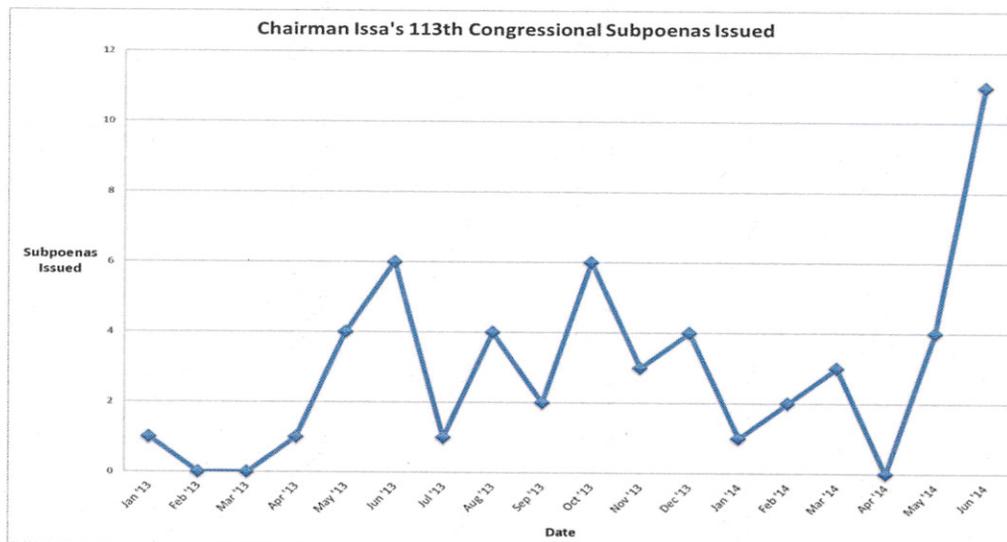
Earlier today, your staff informed my office that you are planning to issue a unilateral subpoena to compel hearing testimony next Wednesday regarding the federal Hatch Act from David Simas, who serves as an Assistant to the President and the Director of the Office of Political Strategy and Outreach. I believe issuing this subpoena would be an abuse of authority because the Committee has obtained no evidence of any wrongdoing relating to this official or the office he directs. I am writing to urge you not to issue this subpoena. If you choose to disregard my opinion, I request that you schedule a business meeting so all Committee Members may consider your proposed subpoena and hold a vote, as you promised to do more than three years ago.

### Recent Subpoena Binge

Over the past several weeks—ever since House Speaker John Boehner took the Benghazi investigation away from the Oversight Committee and transferred it to the new Select Committee—you have been engaged in a subpoena binge, issuing more unilateral subpoenas than at any point during your tenure, and all with no debate or votes by our Committee.

Since you became Chairman in 2011, you have issued nearly 100 subpoenas—more than all three previous Committee chairmen combined—in less than half the time. In the eight years from 2003 to 2010, former Republican and Democratic Chairmen Tom Davis, Henry A. Waxman, and Edolphus Towns issued a combined total of 78 subpoenas. With only rare exceptions, they issued all of their subpoenas with the concurrence of the Ranking Member or a vote of the Committee. In contrast, over the past three and a half years, you have issued 96 subpoenas without any debate or a vote of the Committee.

Your unilateral subpoena activity spiked sharply after the House established the Benghazi Select Committee in May and eliminated the Oversight Committee's ability to conduct that investigation. In June alone, you issued 11 subpoenas, more than any previous month in the 113th Congress (see chart below).



### Unwarranted and Abusive Subpoenas

Because of this recent surge in the number of unilateral subpoenas you have issued without consideration by the Committee, many have been misdirected, unnecessary, and without any legitimate legal foundation.

For example, on May 2, 2014—the same day Speaker Boehner announced that the House would be establishing the Benghazi Select Committee—you issued a unilateral subpoena to compel Secretary of State John Kerry to testify before the Oversight Committee.<sup>1</sup> You had not previously sent a letter requesting the Secretary’s testimony, and you had not previously contacted his office to determine whether he would be available.

On May 15, 2014—a week after the House voted to establish the Benghazi Select Committee—you issued another unilateral subpoena to Secretary Kerry after realizing that he would be out of the country on the hearing date specified in your first subpoena. You also withdrew this second subpoena after Republican House leaders made clear that it would interfere with the work of the Benghazi Select Committee:

Issa faced criticism from Republicans over the timing of the Kerry subpoena. On Friday, Republican Deputy Whip Rep. Peter Roskam (Ill.) said it was a “procedural snafu.”

“I think the way I would characterize it is that the Benghazi Select Committee is going to be dealing exclusively with these jurisdictional questions in the House.”<sup>2</sup>

---

<sup>1</sup> Speaker of the House John Boehner, *Boehner to Establish Select Committee on Benghazi* (May 2, 2014) (online at [www.speaker.gov/press-release/boehner-establish-select-committee-benghazi](http://www.speaker.gov/press-release/boehner-establish-select-committee-benghazi)).

<sup>2</sup> *Darrell Issa Forfeits John Kerry Appearance on Benghazi*, Politico (May 30, 2014) (online at [www.politico.com/story/2014/05/darrell-issa-john-kerry-benghazi-subpoena-107266.html](http://www.politico.com/story/2014/05/darrell-issa-john-kerry-benghazi-subpoena-107266.html)). See also Dana Milbank, *Rep. Darrell Issa’s Subpoena Mania*, Washington Post (June 23, 2014) (online at [www.washingtonpost.com/opinions/dana-milbank-rep-darrell-issa-](http://www.washingtonpost.com/opinions/dana-milbank-rep-darrell-issa-)

Shifting to the Internal Revenue Service, on June 17, 2014, you issued a unilateral subpoena in an unseemly and unsuccessful attempt to hold the first public hearing on the crash of Lois Lerner's computer in 2011.

On that day, Rep. Dave Camp, the Chairman of the House Committee on Ways and Means, announced that he would be holding a hearing with Commissioner John Koskinen on June 24, 2014. About ten minutes later, you issued a unilateral subpoena to compel the Commissioner to testify before the Oversight Committee at 7 p.m. the night before.<sup>3</sup> In response, Chairman Camp simply moved his hearing up to Friday, June 20, causing commentators to criticize these efforts:

A mere 10 minutes after Camp's announcement, House Oversight Committee Chairman Darrell Issa announced that HIS committee had subpoenaed Koskinen to appear at its own hearing. This would be a rare night-time session, at 7 p.m. on June 23. That timing would put Issa a few hours ahead of the hearing announced by Camp, and would make Issa the star. Not to be outdone, Camp then announced that he was moving his committee's hearing to June 20. ... When last night's hearing did take place, Issa berated, attacked and attempted to humiliate Koskinen, much as Camp had attempted to do, but he did so with considerably less publicity and with no success at changing the basic narrative.<sup>4</sup>

After losing this race to Chairman Camp, you rushed to issue another unilateral subpoena on the evening of June 23, 2014, to compel Jennifer O'Connor, a former IRS employee who started work at the White House Counsel's office less than a month earlier, to testify before the Committee the next morning.

Although you suggested that Ms. O'Connor's testimony was critical to understanding how Ms. Lerner's computer crashed in 2011, her testimony demonstrated that she was the wrong witness for this topic. Committee Member Steven Horsford established through questioning that Ms. O'Connor did not work at the IRS when employees in Cincinnati used inappropriate search terms or when the Inspector General issued his report identifying these activities, that she left the IRS before recent discoveries this Spring about Ms. Lerner's email, and that she started her new position with the White House Counsel's office only after they had already been informed about potential problems with Ms. Lerner's email.<sup>5</sup>

---

keeps-witness-in-hot-seat-and-spotlight-on-himself/2014/06/23/00a5efaa-fb39-11e3-8176-f2c941cf35f1\_story.html).

<sup>3</sup> *Everyone Wants a Piece of This*, Politico (June 17, 2014) (online at [www.politico.com/morningtax/0614/morningtax14317.html?ml=ae\\_1](http://www.politico.com/morningtax/0614/morningtax14317.html?ml=ae_1)).

<sup>4</sup> Jay Bookman, *GOP Chairmen Elbow for Right to Be Lead Clown*, Atlanta Journal-Constitution (June 24, 2014) (online at [www.ajc.com/weblogs/jay-bookman/2014/jun/24/gop-chairmen-elbow-right-be-lead-clown/](http://www.ajc.com/weblogs/jay-bookman/2014/jun/24/gop-chairmen-elbow-right-be-lead-clown/)).

<sup>5</sup> *Rapid Response: Oversight Dems Condemn "Unwarranted and Abusive" Subpoena to White House Attorney on Lerner Emails* (June 24, 2014) (online at <http://democrats.oversight.house.gov/press-releases/rapid-response-oversight-dems-condemn-unwarranted-and-abusive-subpoena-to-white-house-attorney-on-lerner-emails/>).

CNN reported after the hearing: “As the White House foretold, she shed no light on the Lerner hard drive crash.”<sup>6</sup>

In a related example, on June 24, 2014, you issued a unilateral subpoena compelling the Federal Election Commission to produce all emails to or from Lois Lerner since 1986—26 years ago. Apart from having no legitimate connection to any ongoing Committee investigation, this unilateral subpoena demanded emails from a time period before email existed at the Commission. One press report observed that in 1986, “there was no such thing as the Tea Party, email was not generally used, and Ronald Reagan was president.”<sup>7</sup>

### **Proposal to Subpoena Senior Advisor to the President**

Issuing a congressional subpoena to a senior advisor to the President is not an action to be taken unilaterally, with no debate, and without adequate foundation. In the case of Mr. Simas, you have not demonstrated any valid justification for this extreme action. As a result, it appears that this subpoena is the latest in a string of misguided and increasingly desperate efforts to retain the spotlight while lobbing unsubstantiated attacks against the White House.

You have written to the White House twice this year seeking information about the Office of Political Strategy and Outreach.<sup>8</sup> The primary basis for your inquiry appears to be that a different office operating during the Bush Administration, the White House Office of Political Affairs, engaged in political activities prohibited by the Hatch Act. However, the Committee has obtained no evidence that the current office has been engaging in these types of activities.

In 2008, former Chairman Henry Waxman issued a report finding a “gross abuse of the public trust” by the Bush Administration Office of Political Affairs in its effort to “orchestrate an aggressive strategy to use taxpayer-funded trips to help elect Republican candidates for public office.”<sup>9</sup> In the 11 months before the 2006 election, cabinet secretaries and other senior administration officials travelled to more than 300 events with Republican candidates for office that had been recommended by the Office of Political Affairs, many of which were funded by

---

<sup>6</sup> *Fed Official: IRS Did Not Follow the Law*, CNN (June 24, 2014) ([www.cnn.com/2014/06/23/politics/irs-e-mails/](http://www.cnn.com/2014/06/23/politics/irs-e-mails/)).

<sup>7</sup> *Darrell Issa Wants to See Every Lois Lerner Email Since 1986*, Salon (June 26, 2014) (online at [www.salon.com/2014/06/26/darrell\\_iss\\_a\\_wants\\_to\\_see\\_every\\_lois\\_lerner\\_e\\_mail\\_since\\_1986/](http://www.salon.com/2014/06/26/darrell_iss_a_wants_to_see_every_lois_lerner_e_mail_since_1986/)). See also *Oversight Chair Darrell Issa Subpoenas 28 Years of Records*, CNN (June 25, 2014) (online at <http://politicalticker.blogs.cnn.com/2014/06/25/oversight-chair-darrell-issa-subpoenas-28-years-of-records/>).

<sup>8</sup> Letter from Chairman Darrell E. Issa, House Committee on Oversight and Government Reform, to Denis McDonough, White House Chief of Staff (Mar. 18, 2014); Letter from Chairman Darrell E. Issa, House Committee on Oversight and Government Reform, to Denis McDonough, White House Chief of Staff (May 27, 2014).

<sup>9</sup> House Committee on Oversight and Government Reform, *The Activities of the White House Office of Political Affairs* (Oct. 2008) (<http://oversight-archive.waxman.house.gov/documents/20081015105434.pdf>).

taxpayers. Chairman Waxman called on the White House to eliminate the Office of Political Affairs or restructure its activities “to ensure that the office serves the interests of the taxpayer rather than the political party of the President.”<sup>10</sup>

In 2011, the Office of Special Counsel issued a report confirming that White House employees during the Bush Administration had committed numerous violations of the Hatch Act.<sup>11</sup> The report found that the Office of Political Affairs essentially served as an extension of the Republican National Committee by devoting a significant portion of employee time to encouraging high-level political appointees to attend events in support of Republicans in close races, tracking Republican candidates’ fundraising efforts, and coordinating the travel of political appointees to both political and official events with Republican candidates. The report concluded that the Office of Political Affairs’ use of “U.S. Treasury funds to finance such activity, including employees’ salaries, violated the Hatch Act.”<sup>12</sup>

No such activity has been identified in the current Office of Political Strategy and Outreach. To the contrary, the White House has responded to both of your letters with detailed information about this office and its functions.

For example, White House Counsel Neil Eggleston sent a letter on June 13, 2014, explaining how the current office differs from the Bush Administration’s Office of Political Affairs. He wrote that the current office is not operating a “political boiler room.” He also explained that the current office will not be “providing political briefings to agency officials on targeted races or on how to help candidates; coordinating political appointee travel to political events; tracking candidate fundraising; or encouraging political appointees to volunteer for political campaigns.”<sup>13</sup>

Obviously, significant separation of powers issues are raised when Congress seeks testimony from senior advisors to the President. In this case, since there are no allegations of any wrongdoing on the part of Mr. Simas, the White House sent another letter yesterday further accommodating the Committee’s interests by offering a briefing and by providing documents to answer any outstanding questions the Committee may have.<sup>14</sup>

---

<sup>10</sup> *Id.*

<sup>11</sup> Office of Special Counsel, *Investigation of Political Activities by White House and Federal Agency Officials During the 2006 Midterm Elections* (Jan. 2011) (online at <http://democrats.oversight.house.gov/uploads/2006MidTermElectionWHPolActivities.pdf>).

<sup>12</sup> *Id.*

<sup>13</sup> Letter from W. Neil Eggleston, Counsel to the President, to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (June 13, 2014).

<sup>14</sup> Letter from W. Neil Eggleston, Counsel to the President, to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (July 10, 2014).

### Conclusion

The subpoenas you have issued over the past several weeks have been abusive, overbroad, and in at least one case, issued to the wrong person. Issuing a unilateral subpoena with no legitimate justification undermines the credibility of this Committee and, if challenged, is unlikely to be upheld by a court of law. For these reasons, I urge you not to issue a unilateral subpoena in this case.

Under House and Committee Rules, you have authority as Chairman of this Committee to disregard my views and issue unilateral subpoenas without a Committee vote. However, you promised at the Committee's first business meeting in 2011 that you would consult with Committee Members before issuing subpoenas. You stated:

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. ... 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 is outside the mainstream? So I don't intend on simply writing subpoenas endlessly.<sup>15</sup>

You also said this:

[I]f 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.<sup>16</sup>

To date, you have not held a single vote on any of your 96 unilateral subpoenas. In this case, I request that you fulfill the commitment you made in 2011.

Sincerely,



Elijah E. Cummings  
Ranking Member

---

<sup>15</sup> Transcript of Organizational Meeting, House Committee on Oversight and Government Reform (Jan. 25, 2011).

<sup>16</sup> *Id.*