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Congress of the United States

House of Representatives

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May 2, 2011

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

Dear Mr. Chairman:

I am writing to request that you schedule as soon as possible a Committee business meeting to consider and vote on H.R. 1144, the Transparency and Openness in Government Act. As you know, H.R. 1144 is a package of five bills that overwhelmingly passed the House last Congress with broad, bipartisan support. I introduced H.R. 1144 on March 17, 2011, along with every Democratic member of the Committee. Although you declined to become an original cosponsor at that time, you supported all five underlying bills last Congress. Since the Committee has nothing scheduled this Thursday, I propose that we use this day to pass this legislation out of our Committee and send it to the floor.

Since I introduced this legislation in March, it has been endorsed by a wide array of open government organizations. On April 18, 2011, a coalition of 17 organizations sent a letter to you and me expressing their strong support for the bill. Their letter stated: "Our undersigned groups strongly support H.R. 1144, which we believe will make the government operate with more transparency and accountability."¹ The letter also said: "We hope we can work with you to ensure bipartisan support and prompt action in the House."²

Tomorrow, the Committee will hold a hearing on updating the Presidential Records Act and other federal recordkeeping statutes. H.R. 1144 directly addresses this critically important issue. Title IV of the bill is the Electronic Message Preservation Act, which would modernize the Presidential Records Act and the Federal Records Act to ensure that the White House and federal agencies preserve emails and other electronic messages. This legislation had such significant bipartisan support last Congress that it passed the House by voice vote during Sunshine Week on March 17, 2010. Representative Bilbray gave a strong statement in support of this bill during the floor debate. He stated:

¹ Letter from John W. Curtis, Ph.D. et al. to Chairman Darrell E. Issa and Ranking Member Elijah E. Cummings (Apr. 18, 2011).

² *Id.*

Madam Speaker, this is a classic example of trying to work together to open up the system, allow the transparency that the American people are demanding, and I strongly support its intention and its execution.³

Mr. Bilbray emphasized the bipartisan cooperation that led to House passage of the bill last Congress. He stated:

Madam Speaker, I would like to close by thanking the ranking member and full committee chairman for allowing the minority to participate in the formation of this bill. There are so many committees that aren't allowing the minority to participate. I think this is really a nice example of the cooperation that I think the American people want to see and don't see enough of. I want to thank the chairman and ranking member for allowing us to participate in the process.⁴

Additionally, the Archivist of the United States, David Ferriero, issued a statement in support of this legislation. He stated:

The Government cannot be open and accountable if it does not preserve—and cannot find—its records. I applaud the leadership of Chairman Towns and Representatives Hodes, Issa, Clay, and McHenry on this important issue of managing and protecting the records of our Government.⁵

Title II of H.R. 1144 also would improve the Presidential Records Act by ensuring that presidential records are released in a timely manner. This title incorporates the Presidential Records Act Amendments, which passed the House last Congress by a vote of 359 to 58 on January 7, 2009. This legislation would establish a process for handling executive privilege claims by requiring the current president and former presidents to raise any objections to the release of records within 90 business days. The bill also would make clear that the right to claim executive privilege must be made personally by the current or a former president.

During consideration of the Presidential Records Act Amendments on the House floor last Congress, you made this statement strongly supporting the bill:

³ U.S. House of Representatives, Debate on H.R. 1387 (Mar. 17, 2010).

⁴ *Id.*

⁵ National Archives and Records Administration, *National Archives Supports Goals of H.R. 1387 – The Electronic Message Preservation Act* (Mar. 17 2010) (online at www.archives.gov/press/press-releases/2010/nr10-74.html).

I want to thank the chairman today because as we bring three votes from our committee, each of these was shared with the other in consultation, each of them was agreed were necessary and could be moved in a timely fashion today. Each of them will be presented to our conferences as noncontroversial, and in fact, ones that should pass unanimously or near unanimously. This is a great start.⁶

H.R. 1144 also includes several other provisions to improve the transparency of the executive branch. Title I of the bill would incorporate the Federal Advisory Committee Act Amendments, which would make federal advisory committees more transparent and accountable and close loopholes in the implementation of the Act. The Federal Advisory Committee Act Amendments passed the House last Congress by a vote of 250 to 124 on July 26, 2010. This bill received bipartisan support on the floor. For example, Representative Jo Bonner made this statement:

H.R. 1320 provides strong protections against conflicts of interest and robust transparency into the workings of these committees. The bill also closes a loophole that many agencies were using to get around financial disclosure requirements and ethics requirements for members of those committees. I commend Mr. Clay, Chairman Towns, Ranking Member Issa, and other distinguished members of the committee for their hard work and desire to make the Federal Government more transparent and open and accountable to the American people.⁷

Title III of H.R. 1144 incorporates the Presidential Library Donation Reform Act. This bill would increase the transparency of presidential libraries by requiring organizations that raise funds to build those libraries to disclose information about their donors. This legislation passed the House last Congress by a vote of 388 to 31 on January 7, 2009. During debate on the House floor, you expressed your support for this legislation, stating:

Madam Speaker, I join with the chairman in recommending swift passage through the House for at least the third time. This bill has passed under multiple authors, both Republican and Democrat. It is, by nature, one in which we believe we are appropriately asserting a daylight requirement on past and future Presidents and would certainly hope that we would view this bill as noncontroversial in most areas.⁸

Title V of H.R. 1144 is the Government Accountability Office Improvement Act. This bill would strengthen GAO's authority to access agency records and to pursue litigation if access is improperly denied. This bill passed the House last Congress by voice vote on January 13,

⁶ U.S. House of Representatives, Debate on H.R. 35 (Jan. 7, 2009).

⁷ U.S. House of Representatives, Debate on H.R. 1320 (July 26, 2010).

⁸ U.S. House of Representatives, Debate on H.R. 36 (Jan. 7, 2009).

2010. During the House floor debate, Representative Luetkemeyer explained the importance of this legislation. He stated:

Madam Speaker, Congress looks to the GAO to assist with the investigative and oversight functions vested in the legislative branch. This bill is intended to increase the effectiveness of GAO by ensuring that the agency is not unnecessarily restricted in its efforts to secure necessary information when performing these necessary and important functions. I urge my colleagues to support this legislation.⁹

H.R. 1144 is a strong open government bill, and its five component bills garnered wide bipartisan support in the last Congress. There is no reason we should not pass this legislation out of our Committee this week and on to the floor for consideration by the full House as soon as possible. Moving this legislation will send the message that this Committee is committed to working in a bipartisan manner to make the federal government more transparent and accountable.

Sincerely,



Elijah E. Cummings
Ranking Member

⁹ U.S. House of Representatives, Debate on H.R. 2646 (Jan. 13, 2010).