

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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<http://oversight.house.gov>

February 22, 2016

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to respectfully request that you send a letter to Michigan Governor Rick Snyder, under the full authority of the Committee, requesting documents relating to the Flint water crisis that I originally requested with Rep. Brenda Lawrence on January 29, 2016—a request that Governor Snyder has completely ignored to date.

I commend you for your recent decision to call Governor Snyder to a hearing before our Committee in March. I also commend your decision to subpoena Darnell Earley, the Governor's former emergency manager for Flint. Mr. Earley obstructed our Committee's investigation, evaded our requests for his testimony, and recently made inaccurate public statements about your actions and the Committee's work in an op-ed. Your approach in this regard is a positive step towards obtaining the truth about what happened in Flint.

As I have stated many times, I believe the Committee must obtain information from all levels of government—local, state, and federal—in order to conduct a responsible and complete investigation. The purpose of this letter is to make the case for compelling Governor Snyder to turn over the documents we requested last month. The Governor's blatant refusal to cooperate stands in stark contrast to the actions of the Environmental Protection Agency (EPA), which responded promptly to the Committee's request, began providing documents almost immediately, and has been cooperating with our investigation.

Potential Executive Privilege Claim by Governor Snyder

During our meeting last week, you explained that you had spoken directly with Governor Snyder, and you suggested that one reason not to request documents from him is because he might claim that his communications about the Flint water crisis are protected by executive privilege. Although I was not a part of your conversation with Governor Snyder, any claim of executive privilege to withhold documents from Congress would be a surprising turn of events that directly contradicts the Governor's own promises of accountability to the people of Michigan.

During Governor Snyder's State of the State address in January, he apologized to the people of Flint and promised to tell the truth about what he and his administration have done. He stated:

I am sorry most of all that I let you down. You deserve better. You deserve accountability; you deserve to know the buck stops here with me. Most of all you deserve to know the truth and I have a responsibility to tell the truth, the truth about what we have done and what we will do to overcome this challenge.¹

It is difficult to understand how Governor Snyder's public claims of accountability would be consistent with an assertion of executive privilege over the documents we requested last month. As its name makes clear, the decision to assert executive privilege is just that—a privilege—and it is the Governor who decides whether to assert it rather than the Committee. Instead of withholding our request for documents based on the possibility that Governor Snyder might assert executive privilege, the Committee should make the request and allow the Governor to respond himself.

Treating Republican Governor Differently Than Democratic Governor

I believe that the Committee should apply the same standards for requesting documents to all governors, regardless of whether they are Democrats or Republicans. By declining to send any document request at all to Governor Snyder, the Committee is creating the perception of a double-standard in which it has requested documents from a Democratic governor, but not from a Republican governor.

As you know, for more than a year, the Committee has been investigating the State of Oregon's healthcare exchange, known as Cover Oregon, and its implementation under the Patient Protection and Affordable Care Act (PPACA). As part of that investigation, on February 13, 2015, the Committee sent a sweeping document request to Democratic Governor John Kitzhaber seeking the following broad categories of documents:

1. All communications to or from any current or former employee of the Governor's Office referring or relating to Cover Oregon, HealthCare.gov, or the PPACA, including, but not limited to, communications to or from:
 - a. any individual associated in any way with your re-election campaign, including but not limited to any employees, consultants, contractors or volunteers;
 - b. any current or former Cover Oregon employee, including, but not limited to, the Chief Executive Officer and the members of the Board of Directors; and

¹ Governor Rick Snyder, *2016 Michigan State of the State Address* (Jan. 19, 2016) (www.michigan.gov/documents/snyder/2016_Michigan_State_of_the_State_Transcript_511676_7.pdf).

- c. any current or former Cover State employee, contractors, or consultant.
2. All documents and communications relating or referring to meetings or phone calls regarding Cover Oregon, HealthCare.gov, or the PPACA, including, but not limited to, calendar appointments, meeting minutes, and notes.²

In response to this massive document request, the State of Oregon has made eight productions to the Committee to date, totaling 115,698 pages, and the Governor has made an additional four productions from his personal email account, totaling 2,056 pages. They produced these documents in response to the Committee's request even as they were producing documents in response to public records requests to the State.

There is no legitimate basis for treating governors differently based on their political parties, and I believe the Committee should insist on the same level of compliance from the Republican Governor of Michigan that it has required of the Democratic Governor of Oregon.

Inadequacy of Governor Snyder's Document Productions to Date

During our meeting, you suggested that another reason the Committee should not request documents from Governor Snyder is that he has produced some documents in response to Freedom of Information Act (FOIA) requests and that outside experts, such as Professor Marc Edwards of Virginia Tech, are generally satisfied with these productions. This is not a standard the Committee has ever used before in any other investigation, and in this case, it is not based on an accurate description of the facts.

Last week, my staff consulted with Dr. Edwards about this matter, and he conveyed that he fully supports the document request I sent to Governor Snyder with Rep. Lawrence on January 26, 2016. He also stated that he supports the document request the Committee sent to the EPA and that he would support additional document requests. Finally, he explained that he has requested key documents that the Governor's office has withheld to date.

As just one example, Dr. Edwards cited the need to obtain additional communications, including emails and text messages between Sara Wurfel, who served as Governor Snyder's spokeswoman until she resigned in November, and her husband Brad Wurfel, who was chosen by Governor Snyder to serve as the spokesman for the Michigan Department of Environmental Quality (MDEQ) until he resigned in December.³

According to one press report, Ms. Wurfel was responsible for some of the inaccurate statements about the cause of the crisis:

² Letter from Chairman Jason Chaffetz et al. to the Honorable John Kitzhaber, Governor of Oregon (Feb. 13, 2015) (online at <https://oversight.house.gov/wp-content/uploads/2015/05/2015-02-13-JEC-JJ-MM-WH-to-Kitzhaber-GovOR-PPACA-due-Feb.-27.pdf>).

³ Governor Rick Snyder, *Sara Wurfel to Serve as Snyder Press Secretary* (online at www.michigan.gov/snyder/0,1607,7-277-57577-249027--,00.html).

[I]t's hard to imagine Snyder was completely out of the loop for all this—especially when considering the fact that Wurfel of MDEQ is married to Snyder's former spokesperson Sara Wurfel. Some of you may know her—and her knowledge of Flint's water crisis—from the ACLU of Michigan's October video "Circle of Lies" in which she told journalists Curt Guyette and Kate Levy that "the Detroit Water and Sewer Department at the time back last spring said 'Hey, we're going to cut you off.'" As we now know, Detroit never said this. In fact in February 2014 it offered Flint the opportunity to continue purchasing water from DWSD.⁴

According to the same report, Mr. Wurfel was concerned about the public relations ramifications of the crisis:

Wurfel and his communication team ruffled feathers in October—following Snyder and the department's final acknowledgement of the damage that had been done in Flint—when he released a branding proposal request for the department. The request offered a company or individual \$100,000 to help DEQ rebrand itself following Wyant's acknowledgement that for 17 months DEQ was using the wrong federal requirements to assess Flint's water.⁵

Mr. Wurfel resigned after the Governor's own task force examining the Flint crisis concluded as follows:

What is disturbing about MDEQ's responses, however, is their persistent tone of scorn and derision. In fact, the MDEQ seems to have been more determined to discredit the work of others—who ultimately proved to be right—than to pursue its own oversight responsibility.⁶

To be clear, Dr. Edwards supports additional document requests to the EPA as well as to Governor Snyder, but the Committee has requested no documents at all from Governor Snyder, and his document disclosures in response to FOIA and other requests have been only a selective subset of documents that he has chosen to release—not a comprehensive response to a request from Congress.

⁴ *MDEQ Spokesperson Brad Wurfel Resigns Too*, Detroit Metro Times (Dec. 30, 2015) (online at www.metrotimes.com/Blogs/archives/2015/12/30/mdeq-spokesperson-brad-wurfel-resigns-too).

⁵ *Id.*

⁶ Letter from Flint Water Advisory Task Force to the Honorable Rick Snyder, Governor of Michigan (Dec. 29, 2015) (online at http://mediad.publicbroadcasting.net/p/michigan/files/201512/fwatf-snyder_letter_12-29-15.pdf?_ga=1.219286681.1083887443.1456069763).

Conclusion

You should be commended for inviting Governor Snyder to testify before the Committee, as well as for your efforts to compel the testimony of the Governor's emergency manager for Flint, Mr. Earley. However, when the Committee declines to send any document request to Governor Snyder, this inaction undermines our ability to investigate this crisis and creates an unfortunate and unnecessary perception of partisanship.

The Committee has never accepted this practice as an adequate standard of investigation, and we should not do so now. Governor Snyder and his staff are central figures in the decision-making process that led to the poisoning of Flint residents, and the Committee owes it to these residents to conduct a comprehensive and bipartisan investigation.

In order to give the Committee sufficient time to obtain and review documents from the state before our hearing with Governor Snyder, I respectfully renew my request that you send to the Governor, under the authority of the Committee, the document request I sent with Representative Lawrence on January 29, 2016. I have attached a copy of this letter for your reference.

Thank you very much for your consideration of this request.

Sincerely,



Elijah E. Cummings
Ranking Member

Enclosure

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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<http://oversight.house.gov>

January 29, 2016

The Honorable Rick Snyder
Governor, State of Michigan
111 South Capitol Avenue
P.O. Box 30013
Lansing, MI 48909

Dear Governor Snyder:

We are writing to request documents relating to the decision to switch the source of drinking water in the City of Flint and the response to the health crisis that has ensued.

The contamination of Flint's drinking water followed decisions by state government officials, acting under emergency authorities passed by the State Legislature in 2011, to switch Flint away from a decades-old contract with the Detroit Water and Sewerage District to a newly-created water authority, and to rely during the transition on water drawn from the Flint River.

Responsibility for enforcing state and federal safe drinking water laws belongs to the state, in accordance with federal regulations dating from 1976. Although testing by experts found elevated levels of lead in Flint's water, state-appointed officials provided reassurances to the public about the safety of Flint's drinking water through 2014 and 2015.

It appears that the Michigan Department of Environmental Quality, at the direction of Dan Wyant, failed to promptly and properly respond to the Flint water crisis, and that he resigned for that reason. His sudden departure, however, raises serious questions about the state's response to the Flint crisis. In order for the Committee to better understand this issue, please make Mr. Wyant available for a transcribed interview as soon as possible.

In addition, we request that you provide the following documents:

- (1) For the period from January 2013 to the present, please provide all documents relating to the drinking water supply in Flint, including the decision to switch Flint's source of water, the Karegnondi Water Authority, and the Detroit Water and Sewerage Department, and including emails sent to or received by:
 - (a) you or members of your staff;

- (b) former State Treasurers Andy Dillon, Kevin R. Clinton, Nick A. Khouri, or members of their staffs; and
 - (c) former Flint Emergency Managers Edward J. Kurtz, Darnell Earley, Michael Brown, and Gerald Ambrose or members of their staffs.
- (2) For the period from April 2014 to the present, please provide all documents relating to the drinking water supply in Flint, public complaints about Flint water quality, test results and testing of Flint water, legionella/legionellosis/ legionnaires' disease, steps taken or considered to inform the public about the detection of lead and other contaminants in the water, and remedial steps that could be undertaken by the public, and including emails sent to or received by:
- (a) Dan Wyant, former Director, Michigan Department of Environmental Quality, or members of his staff; and
 - (b) employees of the Michigan Department of Health and Human Services.
- (3) For the period from January 2011 to the present, please provide all documents relating to the drinking water supply in Flint, the decision to switch Flint's source of water, the Karegnondi Water Authority and/or the Detroit Water and Sewerage Department, and including emails sent to or received by:
- (a) Howard Croft, former Director, Flint Department of Public Works, and members of his staff.

Please provide these documents as soon as possible, but by no later than noon on February 11, 2016.

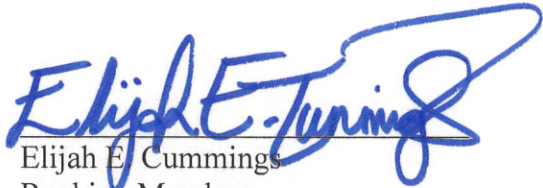
The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

When producing documents to the Committee, please deliver production sets to the Majority staff in room 2157 of the Rayburn House Office Building and the Minority Staff in room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.


The Honorable Rick Snyder, Governor of Michigan
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Please contact Beverly Britton Fraser at (202) 225-5051 with any questions about this request. Thank you for your attention to this matter.

Sincerely,



Elijah E. Cummings
Ranking Member



Brenda Lawrence
Ranking Member
Subcommittee on Interior

cc. The Honorable Jason E. Chaffetz, Chairman
The Honorable Cynthia Lummis, Chairman, Subcommittee on Interior