Congress of the United States
Washington, DC 20515

July 11, 2018

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Trey Gowdy
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Goodlatte and Chairman Gowdy:

We are writing to strongly object to the manner in which you are conducting the partisan, repetitive, and dangerous investigation by our two Committees of the decision by the Department of Justice (DOJ) not to charge Secretary Clinton with a crime relating to her email usage.

You originally described your review as an "investigation regarding charging decisions in the investigation surrounding Secretary Clinton's email server in 2016." Today, it has morphed into a partisan, abusive, and improper inquisition of Special Counsel Mueller's investigation of President Trump's campaign and its connections to Russia.

This investigation has been conducted in an unfair and biased manner, in violation of Committee and House Rules. For these reasons, we also object to holding the joint hearing scheduled for tomorrow, which does not comport with our rules as it is not operating under a Memorandum of Understanding agreed to by unanimous consent.

We have identified many of these concerns in a series of letters to which you have not responded. These concerns include:

1. Improper, Arbitrary, and Invalid Issuance of Subpoenas: Chairman Goodlatte has issued numerous unilateral subpoenas as part of this investigation. Committee rules require him to "provide a full copy of the proposed subpoena" as part of the consultation process with the Ranking Member. However, Chairman Goodlatte issued a subpoena on March 22 that directly contravened these rules because it varied materially from the one he provided to Ranking Member Nadler. In addition, when the Judiciary Committee altered its rules to allow the Chair to issue unilateral subpoenas, Chairman Goodlatte committed to using this extreme unilateral authority only "during a period of recess" or in

"extraordinary circumstances." This has not been the case for any of these unilateral subpoenas. There is no exigency justifying these actions.

Your unilateral subpoena to former FBI Agent Lisa Page offers a case in point. Notwithstanding the fact that she had agreed to cooperate and be interviewed by the Committee, Chairman Goodlatte sought to force Ms. Page to be deposed earlier today even though she was unable to obtain access to the FBI documents she would be asked about during the interview. Chairman Goodlatte refused numerous requests to accommodate her schedule to allow her to review these materials. Instead, he asserted that Ms. Page has "no excuse for her failure to appear" and threatened to "use all the tools at his disposal to obtain her testimony." During the planned deposition, Chairman Goodlatte refused to allow Ranking Member Cummings to speak and could not explain why the Committee simply does not allow her to be voluntarily interviewed next week after she has had an opportunity to review the relevant documents.

2. Violation of Rules and Practices Regarding Resolution of Inquiry: The consideration of H. Res. 938, a Resolution of Inquiry to force the Justice Department to respond to broad and overreaching requests, also violated House Rules. During the June 26 Judiciary Committee markup, Republicans overruled the correct parliamentary ruling of the Chair that an amendment offered by Rep. Jim Jordan expanding the scope and changing the nature of the Resolution of Inquiry was non-germane and out of order. With various Democratic amendments still pending, the Majority then chose to "move the previous question" on the measure, shuttering further debate and undercutting both bipartisan comity and past Committee practice.

3. Selectively Disclosing Information and Leaking Misinformation: Despite warnings by Chairman Goodlatte that Members should not publicly release information obtained during the investigation, Republican Members have engaged in a pattern of selectively disclosing information from interviews and documents. Following the interview of former FBI Deputy Director Andrew McCabe, Rep. Matt Gaetz appeared on *Fox News* and stated: "Andrew McCabe gave testimony yesterday behind closed doors. ... Andrew McCabe was present when the FBI's senior leadership hatched a scheme to deprive Donald Trump the presidency both before and after the election." Rep. Gaetz's statement did not accurately describe Mr. McCabe's interview.

   Similarly, following an interview of FBI Agent Peter Strzok, Rep. John Ratcliffe publicly announced that Mr. Strzok stated "that he drafted the initial investigative plan on the Russia collusion investigation, that he made investigative decisions and took actions … in both the Trump/Russia matter and the special counsel probe" and that "neither Special Counsel Mueller or anyone on his team asked him about the text or his expressed hatred of Donald Trump." This selective release of information—while refusing our requests to release the full unclassified transcript—prevents the public from obtaining a complete and accurate account of Mr. Strzok's statements.

Documents obtained as part of the investigation have also been leaked. On June 14, *Fox News* reported that "'Foreign Actors' obtained access to some of former Secretary of State Hillary Clinton's emails—including at least one email classified as 'secret'—according to a new memo from two GOP-led House Committees and an internal FBI email." Similarly, on July 6, *The Hill* reported: "Memos the FBI is now producing to the Department of Justice (DOJ) inspector general and multiple Senate and House committees offer what sources involved in the production, review or investigation described to me as 'damning' or 'troubling' evidence." Both of these leaks were misleading and selective.

4. Improper Exclusion of Minority from Investigative Determinations: Democrats on our Committees have not been included at any point in the selection of individuals to interview or testify, or documents to request or subpoena. Our many requests have been ignored, including requests for hearings and documents regarding the ongoing threat of Russian interference in the 2018 elections and reports that senior advisors to President Trump had knowledge of, and may have been accessories to, Russian efforts to attack Secretary Clinton's campaign before the 2016 election.

   We have not been included in meetings to discuss resolving your requests with representatives of DOJ, the FBI, or the Inspector General, and we have not been made privy to any "agreements" reached regarding these requests. In some cases, we have not even received notification of requests made by our Committees.

   As recommended by the House Parliamentarian's office, we have repeatedly requested the adoption of clear and defined protocols to govern this joint investigation. You have ignored these requests—and our investigation is now governed by a series of confusing, inconsistent, and arbitrary decisions. As one example, you have noticed depositions to Judiciary Committee Members with no clarity whatsoever about whether Oversight Committee Members may attend or participate.

You promised repeatedly that you would not interfere in any way with Special Counsel Mueller's ongoing criminal investigation. For example:

- On December 6, 2017, Chairman Gowdy wrote that he "specifically communicated to Special Counsel Robert Mueller I would not wittingly or unwittingly interfere with an ongoing probe."

- On March 18, 2018, Chairman Gowdy declared on *Fox News Sunday,* "I don't know what Mueller has found. I've been really very clear, leave him alone. Let him do his job."

- On June 28, 2018, Chairman Goodlatte stated that he and Chairman Gowdy "had no intention of interfering with the substantive investigation of Mr. Mueller."

Contrary to your claims, that is exactly what you are doing. You are pressuring the Justice Department to disclose documents and information concerning the Special Counsel's ongoing criminal investigation, and you are issuing subpoenas that would compel Justice Department officials to violate their own protocols and disclose exactly this type of information.

The fact that this joint investigation is proceeding absent any agreed-upon protocols, with decisions regarding scope, timing, and procedures being decided on an ad hoc and self-serving basis, only compound our concerns. Conducting this investigation in this flawed, chaotic manner is problematic in and of itself. The fact that it is also occurring in direct and repeated violation of Committee and House Rules has placed our Members in an untenable position, forcing us to undertake efforts to protect our rights.

Sincerely,

Jerrold Nadler
Ranking Member
Committee on the Judiciary

Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform