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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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November 11, 2013

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reforms
2157 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

We are writing to request that you withdraw the unnecessary and misguided subpoena you issued last week to compel U.S. Chief Technology Officer Todd Park to testify before the Committee in response to your unfounded accusations that he lied to the American people about the status of the Healthcare.gov website. The evidence before our Committee demonstrates that Mr. Park is an honest and exemplary public servant, and your unsubstantiated public attacks against his integrity are a deficient basis on which to justify a subpoena against him. Rather than denigrate Mr. Park's reputation and impede his time-sensitive work, we request that the Committee accept his reasonable offer to testify before the Committee in December.

Your Unfounded Accusations Against Mr. Park

Last Wednesday, on November 7, 2013, you appeared on Fox News and made very serious allegations against Mr. Park, accusing him of engaging in a "pattern of interference and false statements" to the American people.¹ Specifically, you asserted that a document you released earlier that day proved, according to your press release, that the Healthcare.gov website "Could Only Handle 1,100 Users Day Before Launch."² As evidence of Mr. Park's alleged duplicity, you cited a statement he made on October 6, 2013, in which he explained that officials planned for Healthcare.gov to draw approximately 60,000 simultaneous users.³

¹ *The Real Story*, Fox News (Nov. 7, 2013) (online at <http://video.foxnews.com/v/2816698439001/issa-obamacare-site-was-a-failure-that-they-knew-about/>).

² Chairman Darrell E. Issa, House Committee on Oversight and Government Reform, *Press Release: ACA Testing Bulletin: HealthCare.gov Could Only Handle 1,100 Users Day Before Launch* (Nov. 7, 2013) (online at <http://oversight.house.gov/release/aca-testing-bulletin-healthcare-gov-handle-1100-users-day-launch/>).

³ *Id.*

Contrary to your narrative, it appears that you either misunderstood or mischaracterized the document you released to the press and conflated the results of a much smaller testing environment with final production testing of the system at full capacity.⁴ According to Henry Chao, the Deputy Chief Information Officer at the Centers for Medicare and Medicaid Services, who was interviewed by Committee staff on November 1, 2013, the estimates for the full website environment were considerably higher. In response to detailed questioning from your staff, Mr. Chao explained that officials estimated that up to 58,000 virtual users could get through the full production website application, which is almost precisely the figure cited by Mr. Park.⁵

Although you obtained this information before you made your public accusations against Mr. Park, you nevertheless used Mr. Park's alleged "false statements" to demand his urgent testimony before the Committee this week. You stated:

We're going to have Todd Park and a number of other political appointees who were part of this pattern of interference and false statements related to this site. And we are going to try to get to the bottom of why politics went ahead of best practices and good technology. Something the American people expect, that didn't happen in this case. And it's the tip of iceberg, that we're worried about, is if they are willing to put politics into a website, what will they put into your health care?⁶

The Committee has obtained absolutely no evidence that Mr. Park has engaged in any pattern of interference during this investigation, and we certainly have identified no evidence that Mr. Park made any "false statements" relating to Healthcare.gov or any other matter. To the contrary, he has been praised widely as one of the most talented and productive technology leaders in his generation. For example, Jonathan Bush, cousin of former President George W. Bush and co-founder of Athenahealth with Mr. Park, praised his former partner:

Todd is uniquely thoughtful, dedicated and precise. He's a manic problem solver, blind to partisanship. If there's anyone who can fix the problems with the exchanges, it's Todd.⁷

⁴ See Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (Nov. 8, 2013) (online at <http://democrats.oversight.house.gov/press-releases/cummings-releases-evidence-contradicting-issa-claims-about-healthcaregov-testing/>).

⁵ House Committee on Oversight and Government Reform, Transcribed Interview of Henry Chao, Deputy Chief Information Officer, Centers for Medicare and Medicaid Services (Nov. 1, 2013).

⁶ *The Real Story*, Fox News (Nov. 7, 2013) (online at <http://video.foxnews.com/v/2816698439001/issa-obamacare-site-was-a-failure-that-they-knew-about/>).

⁷ *Can Entrepreneur Todd Park Fix ObamaCare?*, Fox Business (Oct. 21, 2013) (online at <http://smallbusiness.foxbusiness.com/entrepreneurs/2013/10/21/can-entrepreneur-todd-park-fix-obamacare/>).

Based on these facts alone, we believe you should withdraw your unilateral subpoena and issue a public apology to Mr. Park.

Negative Effects of Subpoena on Website Improvement Work

There is a second, more significant reason we believe you should withdraw your subpoena. At the request of the President of the United States, Mr. Park has been a key leader in around-the-clock efforts to improve the functionality of the Healthcare.gov website, and diverting Mr. Park's energies at this moment could seriously impair those efforts.

When Mr. Park received your invitation to testify, his immediate response, as conveyed by the Office of Science and Technology Policy, was to agree to testify before the Committee, but to request a short delay while the lion's share of fixes to Healthcare.gov are being implemented in November. He did not request a delay of months, but of weeks, stating that he "looks forward to continuing to work with the Committee to find a mutually agreeable date in December."⁸ His office explained the reasons for his request:

Mr. Park is central to the work to improve the healthcare.gov shopping experience as quickly as possible, and he is devoting nearly all of his attention and expertise to assisting CMS in that critical effort. Pulling him away from that work even for a short time at this stage would be highly disruptive and would risk slowing the progress that has been made thus far to fix identified issues with the website. As all understand, appearing at a hearing before Congress is not a matter to be taken lightly, nor one that requires simply showing up on the appointed day. Rather, substantial preparation is required to draft and review written testimony, and to be ready, to the extent possible, to respond to questions on a variety of topics.⁹

In addition to offering to testify in December, Mr. Park also offered to provide a briefing this month in order to discuss these important issues with Committee Members.¹⁰

On November 7, 2013, you responded to Mr. Park by ignoring his offer to testify before the Committee. Instead, you mischaracterized his response as a "refusal to testify" and threatened "the use of compulsory process to require your attendance."¹¹ You did not consult with Mr. Park, hear his concerns about his workload over the next two weeks, accept his offer for

⁸ Letter from Donna M. Pignatelli, Assistant Director for Legislative Affairs, Office of Science and Technology Policy, to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (Nov. 6, 2013) (online at <http://democrats.oversight.house.gov/uploads/OSTP%20to%20Issa%2011-06-13.pdf>).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Letter from Chairman Darrell E. Issa, House Committee on Oversight and Government Reform, to Todd Park, U.S. Chief Technology Officer (Nov. 7, 2013) (online at <http://democrats.oversight.house.gov/uploads/Issa%20to%20Park%2011-07-13.pdf>).

a briefing, or entertain any reasonable accommodation that would have served the interests of both Mr. Park and the Committee.

On November 8, 2013, the Office of Technology Policy wrote back reiterating Mr. Park's offer to testify before the Committee and requesting that you reconsider your approach:

Such a quick rush to a confrontational approach without any effort at accommodating Executive Branch interests is disheartening. Your insistence that Mr. Park appear at this critical juncture—with no justification for why he must testify next week—would divert resources from the important task now at hand: to do all we can to improve healthcare.gov as quickly as possible. We have offered to make Mr. Park available early next month, and notwithstanding your latest letter, we hope that you will agree to schedule Mr. Park's appearance at a time that poses a lesser risk of slowing the progress being made to improve healthcare.gov.¹²

Again, you did not contact Mr. Park in order to hear and evaluate his concerns directly, you did not accept his offer to brief the Committee, and you issued yet another letter ignoring his offer to testify in December while mischaracterizing his position as "unwilling to appear voluntarily."¹³

Accompanying your November 8, 2013, letter was a subpoena that you had signed on November 7, 2013—the day before you received Mr. Park's response.¹⁴ Based on the totality of these actions, it appears that your subpoena to Mr. Park was part of a predetermined political strategy rather than a constructive effort to conduct responsible oversight. Unfortunately, rather than promoting improvements to the Healthcare.gov website, your subpoena could have precisely the opposite effect.

Conclusion

We agree that the Committee has a responsibility to conduct robust oversight of the implementation of the Healthcare.gov website, but there is no legitimate reason our oversight must interfere with efforts to provide millions of Americans with the quality, affordable health insurance coverage they deserve.

¹² Letter from Donna M. Pignatelli, Assistant Director for Legislative Affairs, Office of Science and Technology Policy, to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (Nov. 8, 2013) (online at <http://democrats.oversight.house.gov/uploads/OSTP%20to%20Issa%2011-08-13.pdf>).

¹³ Letter from Chairman Darrell E. Issa, House Committee on Oversight and Government Reform, to Todd Park, U.S. Chief Technology Officer (Nov. 8, 2013) (online at <http://democrats.oversight.house.gov/uploads/Issa%20to%20Park%2011-08-13.pdf>).

¹⁴ Subpoena from House Committee on Oversight and Government Reform to Todd Park, U.S. Chief Technology Officer (Nov. 7, 2013) (online at <http://democrats.oversight.house.gov/uploads/Issa%20Subpoena%20to%20Park%2011-07-13.pdf>).

By all accounts, Mr. Park is an incredibly committed, honest, and dedicated public servant, and he does not deserve to be slandered for his efforts or unnecessarily impeded in his work. With the support of many others in the technology community, we respectfully request that you reverse your confrontational approach and accept Mr. Park's offer to testify before the Committee next month.

Rather than forcing Mr. Park to curtail his time-sensitive work by compelling him to testify on Wednesday, we believe the Committee should focus instead on areas of common ground, such as federal information technology (IT) acquisition reform initiatives. Hearings held by this Committee earlier this Congress to examine federal IT challenges have been serious and substantive. Our findings from those hearings have informed our efforts to develop the bipartisan Federal Information Technology Acquisition Reform Act. In fact, if the Committee's oversight has revealed anything to date, it is that federal IT procurement initiatives may have too few leaders like Todd Park.

We strongly urge you to return to the spirit of pragmatism and bipartisan cooperation that, until recently, characterized our Committee's approach to federal IT procurement reform.

Sincerely,



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



Gerald E. Connolly
Ranking Member
Subcommittee on Government Operations