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# Congress of the United States

## House of Representatives

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### Statement Opposing Issa Resolution on Assistant to the President David Simas

**July 25, 2014**

Thank you very much, Mr. Chairman, and good morning.

Let me say at the outset that I strongly oppose Executive Branch assertions of “absolute immunity.” I disagreed with them in the Harriet Miers case, and I disagree with them here. But one key difference is that, in this case, the Committee has identified no evidence that David Simas, who is a senior advisor to the President, or anyone else in his office engaged in any inappropriate activity or conduct that violates the Hatch Act. As a result, I strongly oppose this resolution.

I would like to ask unanimous consent to enter into the record a letter that we just received last night from Carolyn Lerner, the head of the U.S. Office of Special Counsel (OSC). OSC is the independent federal agency charged with investigating Hatch Act violations, and it is the same office that investigated violations by the White House Office of Political Affairs under the Bush Administration.

This letter, which all of the Members should now have, explains that the Special Counsel reviewed all of the correspondence between Chairman Issa and the White House regarding the new Office of Political Strategy and Outreach (OPSO), which was established six months ago. Based on that review, the Special Counsel concluded as follows, and I quote:

- “[I]t appears that the White House adhered to OSC guidance in determining the scope of activity for OPSO.”
- “OPSO appears to be operating in a manner that is consistent with Hatch Act restrictions.”
- “OSC has not received any allegations that Assistant to the President David Simas or anyone in OPSO has violated the Hatch Act.”
- “I have no reason to believe that OPSO’s activities exceed those set forth in formal communications between White House lawyers and the Oversight and Government Reform Committee.”

Again, these conclusions are from the top official at the independent agency with the core mission of enforcing the federal Hatch Act.

Chairman Issa originally invited the Special Counsel to testify at the Committee's hearing on July 16. Two days before that hearing, the Special Counsel submitted a written statement indicating that she planned to testify that her office had identified no evidence of improprieties. But the Chairman cut that hearing short, which prevented her from testifying.

The Chairman invited her again to testify at today's hearing. But again, he cancelled the hearing, and again, she did not testify. So that is why today, I am making public the letter we received from her last night.

Now, the Chairman sent his own letter to the White House last night raising concerns about the actions of two cabinet secretaries, Labor Secretary Hilda Solis and Health and Human Services Secretary Kathleen Sebelius. But the actions he described both occurred in 2012—nearly two years before this new office was established in January of 2014.

To my colleagues on the other side of the aisle, let me say this. We are all Members of this House, and we should all be concerned with its credibility and its authority. As I said at the beginning of my statement, I opposed the assertion of absolute immunity by the Bush White House in the *Miers* case. I agreed with the district court judge who concluded that the assertion was invalid.

And today, even though this assertion is based on the longstanding practice of both Republican and Democratic Administrations, I respectfully disagree with this White House assertion of absolute immunity as well.

But this is the worst possible case to try to test our position. As the Special Counsel said in her letter, we do not even have an allegation of wrongdoing. The judge in the *Miers* case wrote that a committee's actions had to be "legitimate," and here there is no legitimate reason to create an unnecessary constitutional confrontation.

I believe the House of Representatives made significant gains as an institution in the *Miers* case—once-in-a-generation gains—but I am deeply concerned that our Committee's actions here could threaten to reverse those gains if we pursue this case, with absolutely no foundation, no basis, and no predicate whatsoever.

So I urge my colleagues on both sides of the aisle not to support this resolution based on these meager facts. Instead, let's try to see what remaining questions Members may still have about this new office—even after all of the letters and the White House briefing and the documents we have reviewed. And then let's work together to get answers to those questions without resorting to these kinds of unnecessary and counterproductive actions.

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