

THE WHITE HOUSE

WASHINGTON

July 10, 2014

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

Dear Chairman Issa:

I write in further response to your letters of March 18 and May 27, 2014, and to your most recent letter requesting testimony from Assistant to the President David Simas at a hearing regarding the White House Office of Political Strategy and Outreach (OPSO). Both my predecessor and I made significant efforts in our previous letters to accommodate your stated interest in this matter—namely, to understand better how OPSO is operating in compliance with the legal requirements of the Hatch Act. My last letter closed with an invitation to contact me should you have additional questions.

Instead of continuing that dialogue, you opted to seek testimony at a Committee hearing from an immediate advisor to the President, a request that you undoubtedly understand raises special concerns in light of the constitutional separation of powers. Accordingly, I write again to emphasize the salient features of OPSO and to ask that you provide an explanation of the specific questions concerning OPSO's compliance with the Hatch Act that the Committee believes remain unanswered. I am hopeful that we might together find a way to make additional information available to you that would answer any legitimate remaining questions, consistent with our respective constitutional interests.

Your prior correspondence suggests the Committee's interest in OPSO began as the result of its review of newspaper articles and the description of OPSO contained therein.¹ Even relying on these second-hand accounts, I did not read your letters to identify any reported OPSO activities that would violate the Hatch Act. But we did understand that the Committee would benefit from a better explanation of what OPSO does and, just as important, what it does not do. The previous letters we delivered to the Committee accordingly provided substantial information to that end.

First, regarding what OPSO does, the Office of Special Counsel (OSC) recognized in its 2011 report the appropriateness of having an office within the White House to provide the President with information about the current political environment and political issues nationwide. As we explained, OPSO therefore provides such information, along with advice and analysis regarding ongoing or contemplated policy initiatives. It also works with constituents

¹ Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Hon. Denis McDonough, Chief of Staff, The White House (March 18, 2014) at 2, 3.

and political groups to evaluate public support for Presidential policies and initiatives. Additionally, it communicates with these groups as well as Democratic organizations to remain informed about the current political environment to advise and assist Presidential decision-making. By way of note, it conducts these activities with a very small staff—currently Mr. Simas, two other senior commissioned officers, and one administrative assistant, and coordinates closely with staff in my office, White House Communications, and other components of the Executive Office of the President.

Second, regarding what OPSO does not do, it bears little resemblance to the prior Administration's Office of Political Affairs, which was the subject of substantial criticism by OSC and by the Committee under former Chairman Waxman. As you know from the investigative report you cited in your March 18 letter, the Committee began investigating the prior Administration's Office of Political Affairs after learning of a "midday political briefing" by the Deputy Director of that office at the General Services Administration (GSA).² According to the investigative report, that office's Deputy Director displayed slides to GSA officials describing "the top 36 House Republicans the White House wanted to defend in the 2008 election . . . [and] the top 20 House Democrats the White House wanted to defeat"; briefing attendees also testified that the GSA Administrator asked her employees "how 'we' could help 'our candidates' in the next election."³ In stark contrast to the Office of Political Affairs in the prior Administration, and consistent with the guidance in OSC's 2011 Report, it is worth again emphasizing the nature of OSPO's activities, as I explained them in my last letter to you:

[OPSO] has not been and does not intend to be[] operating a 'political boiler room' managing the 2014 midterm elections; providing political briefings to agency officials on targeted races or how to help candidates; coordinating political appointee travel to political events; tracking candidate fundraising; or encouraging political appointees to volunteer for political campaigns.

The letter we received last Thursday requesting testimony from Mr. Simas appears to be the Committee's response to the information we have provided thus far. Notably, the letter identifies no legitimate questions that remain unanswered after the Committee received the information we provided in our prior letters. Nor has the Committee identified any evidence that OPSO is operating contrary to our representations—and I trust you would bring any such evidence to my attention immediately. Rather, the letter expresses only a broad and undefined desire to question Mr. Simas on "the role and function of the White House Office of Political Strategy and Outreach," including on "whether the White House is taking adequate steps to ensure that political activity by Administration officials complies with relevant statutes"⁴ And it ostensibly seeks to justify this request by tersely mischaracterizing the Office's role and function as "handl[ing] coordination with local officeholders and Democratic Party committees

² Democratic Staff, H. Comm. on Oversight and Gov't Reform, 110th Cong., "The Activities of the White House Office of Political Affairs," Oct. 2008, available at <http://oversight-archive.waxman.house.gov/documents/20081015105434.pdf>.

³ *Id.*

⁴ Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to David Simas, Director, Office of Political Strategy and Outreach (July 3, 2014).

at taxpayer expense,”⁵ in contradiction of the descriptions of the Office that I and my predecessor provided in our prior letters to you (and that I have further provided in this letter).

We have already provided substantial information on the steps we have taken to ensure Hatch Act compliance. Thus, without an explanation from the Committee of its outstanding questions and continued interest in this matter, we are hindered in our ability to propose an appropriate accommodation of additional information. It is plain, however, that the extraordinary request for hearing testimony from Mr. Simas, which lacks a sufficient predicate and raises substantial separation of powers concerns, is not appropriate.

Administrations from both parties have long taken the position that congressional requests for information may impact important Executive Branch interests, especially requests that would undermine the President’s need for independence, autonomy and confidentiality in the conduct of his Office by discouraging his advisors from speaking candidly and openly with him and among themselves. These interests are especially acute when requests are directed at the President’s most senior advisors. As you know from over a decade of service in Congress, it is exceedingly rare that such individuals appear to testify before a Congressional Committee.

With regard to the request at hand for testimony from Mr. Simas, the combination of important Executive Branch confidentiality and other institutional interests and the corresponding absence of a sufficient predicate for his testimony presents a further difficulty. It raises the specter that the Committee’s desire for information may not be limited to OPSO’s compliance with the Hatch Act but instead may extend to internal information about Mr. Simas’ analysis and advice on the current political environment and how that informs the President’s development of policy and his other actions.

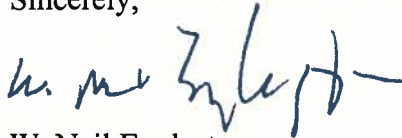
As articulated by former President Reagan in his 1982 Memorandum, this Administration believes that good-faith negotiations and the tradition of accommodation should continue as the primary means by which the Legislative and Executive Branches interact and resolve disagreements. Although you have not yet explained your outstanding questions and continued interest in this matter, in the spirit of that approach, I am providing with this letter certain documents that address specific questions you have raised in your letters. These include slides used in a mandatory Hatch Act training that was provided to White House staff this past spring and attended by all staff then and currently assigned to OPSO; a calendar invitation for a March 2014 meeting on the Hatch Act between members of the White House Counsel’s Office and lawyers from the Office of Special Counsel; email correspondence reflecting that the then and current OPSO staff received and were directed to review the reports by the Office of Special Counsel and the Committee on the prior Administration’s Office of Political Affairs in order to understand precisely what activities were permitted and what were not; and a memorandum that I sent to White House staff on July 9, 2014, reminding them of the law governing political activity by federal employees. As I trust you will appreciate, these documents demonstrate that we are applying the lessons of both OSC’s and the Committee’s reports, and will continue to do so going forward. As a further accommodation, and in order to address any other questions you have about OPSO, my staff would be pleased to brief the Committee on this issue. Please contact my office to arrange a time for that briefing. It is my hope that, taken together with the

⁵ *Id.*

information in this letter and the previous letters from me and my predecessor, these documents and the briefing will address your concerns or, at a minimum, aid you in determining whether you have any unanswered questions concerning OPSO that need to be addressed, so that we may work with you to answer those questions in a manner that appropriately reflects our respective interests.

In closing, I wish to assure you that it remains the policy of this Administration to comply with congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch. I look forward to moving forward on this matter in that spirit of cooperation, and I and my staff are at your disposal for that purpose.

Sincerely,

A handwritten signature in blue ink, appearing to read "W. Neil Eggleston", with a horizontal line extending to the right.

W. Neil Eggleston

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Carolyn Lerner, Special Counsel
U.S. Office of Special Counsel