

THE WHITE HOUSE

WASHINGTON

July 15, 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 response to your letter of July 15, 2014, and the subpoena you issued to David Simas, Assistant to the President and Director of the White House Office of Political Strategy and Outreach (OPSO). My office has undertaken significant steps to accommodate the Committee's interest in understanding the operations of OPSO and its efforts to ensure compliance with the Hatch Act. Notwithstanding these accommodations, which are extraordinary under the circumstances, you have refused my request that you lift the subpoena.

It is regrettable that you have chosen this course of action, instead of working together constructively to resolve whatever oversight issues you believe remain. As I stated in my letter to you yesterday, the Committee's effort to compel Mr. Simas's testimony threatens longstanding interests of the Executive Branch in preserving the President's independence and autonomy, as well as his ability to obtain candid advice and counsel to aid him in the discharge of his constitutional duties. In light of those principles, and for reasons set forth below, Mr. Simas is immune from congressional compulsion to testify on matters relating to his official duties and will not appear at the July 16, 2014 hearing.

The legal support for this position is set forth in the enclosed opinion that we received today from the Department of Justice's Office of Legal Counsel. *See* Memorandum to W. Neil Eggleston, Counsel to the President from Karl R. Thompson, Acting Assistant Attorney General (July 15, 2014). The opinion describes in detail the basis for the longstanding position of Administrations of both political parties that the President's immediate advisers are immune from congressional testimonial subpoenas. *See, e.g.*, Letter to Fred F. Fielding, Counsel to the President, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel (Aug. 1, 2007); *Immunity of Former Counsel to the President from Compelled Congressional Testimony*, 31 Op. OLC __ (July 10, 2007) ("Bradbury Opinion"); *Assertion of Executive Privilege with Respect to Clemency Decision*, 23 Op. O.L.C. 1 (1999) ("*Assertion of Executive Privilege*"); Letter to Rudolph W. Giuliani, Associate Attorney General, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, *Re: Congressional Demand for Deposition of Counsel to the President Fred F. Fielding* (July 23, 1982); Memorandum for the Honorable John D. Ehrlichman, Assistant to the President for Domestic Affairs, from William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, *Re: Power of Congressional Committee to Compel Appearance or Testimony of "White House Staff"* at 7 (Feb. 5, 1971).

As the Department's opinion points out, "[t]his immunity is rooted in the constitutional separation of powers, and in the immunity of the President himself from congressional compulsion to testify." Op. at 1-2. "[J]ust as the President 'may not compel congressmen to appear before him,' '[a]s a matter of separation of powers, Congress may not compel him to appear before it.'" Op. at 2, citing *Assertion of Executive Privilege*, 23 Op. O.L.C. at 4 (quoting Memorandum to Edward C. Schmults, Deputy Attorney General, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel at 2 (July 29, 1982)). As a corollary to the President's immunity, the Department's longstanding view has been that "the President's immediate advisers must likewise have absolute immunity from congressional compulsion to testify about matters that occur during the course of discharging their official duties." Op. at 2. This is because the President's immediate advisers "are in many ways an extension of the President himself." Op. at 2. Consequently, "a congressional power to compel the testimony of the President's immediate advisers would interfere with the President's discharge of his constitutional functions and damage the separation of powers" by threatening the President's "independence and autonomy from Congress," and by "threaten[ing] executive branch confidentiality, which is necessary (among other things) to ensure that the President can obtain the type of sound and candid advice that is essential to the effective discharge of his constitutional duties." Op. at 3 (citations omitted). As the Department's opinion explains, Mr. Simas has this constitutional immunity because he is an immediate adviser to the President. Op. at 8.

This office's extensive previous correspondence to you regarding this matter, dated March 26, June 13, and July 10, 2014, has provided the Committee with a significant amount of detail about the operations of OPSO and the measures we have adopted to ensure compliance with the Hatch Act. Just this morning, on the expedited schedule you had requested, my staff briefed Committee staff on these matters in great substantive detail. The briefing lasted 75 minutes, and my staff answered all of the Committee's questions. While your letter describes this briefing as "helpful," you state that we did not answer all questions. To the contrary, my staff stayed until the Committee staff determined that they had completed their questioning – responding to over forty questions in total. You had previously stated that your interest in OPSO was focused on its compliance with the Hatch Act. Thus, among other things, my staff discussed the White House's Hatch Act compliance program, including summarizing the content of our mandatory staff trainings, the structure and function of OPSO, and the types of activities the OPSO staff do and do not undertake on behalf of the White House. Your staff had no unanswered questions about these topics.

Your letter this afternoon, however, expresses displeasure that we were unable to "say whether or not the White House pursued corrections" to news articles or what "officials were involved in the decision to reopen the" office. Whether the White House communications staff asked for a correction to a news article, or who specifically determined that OPSO should be created, is plainly not relevant to your stated interest in OPSO's compliance with the Hatch Act as expressed in your several letters on this subject. Moreover, as my team explained in great detail, although your letter characterizes OPSO as the reopening of the Office of Political Affairs (OPA), OPSO is in fact a different office, with a different set of limited responsibilities. Lastly, as you know, my office is the appropriate place to discuss your request for documents, and as I have repeatedly stated, we are committed to working with the Committee to respond to

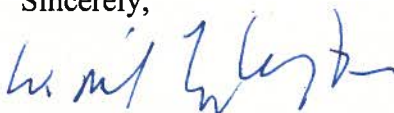
its legitimate requests. That the Hatch Act specialist who briefed your staff today did not discuss this during his 75-minute briefing does not have a bearing on whether the Committee has a legitimate interest in obtaining Mr. Simas's live testimony. As I trust you recognize, Mr. Simas would not be able to provide information about document production either – at your hearing or otherwise.

You have made no effort to justify your extraordinary demand that one of the President's immediate advisers testify at a Committee hearing. Indeed, your most recent letters merely reiterate with no elaboration your previous, broadly stated and generalized interest in the operations of OPSO and in Mr. Simas's role. Your hasty decision to subpoena Mr. Simas is all the more unfounded because the Committee has been unable to point to any indication that OPSO has violated the Hatch Act or even operated contrary to our explanations. This White House takes compliance with the Hatch Act extremely seriously, and there are material differences between the operations of OPSO and the operations of the OPA under the Bush Administration. Simply put, unlike the Committee's previous investigation into the Bush Administration's OPA, the Committee's current interest in OPSO lacks any predicate of wrongdoing or misconduct. Moreover, former Chairman Waxman's investigation was conducted without resorting to live testimony at a hearing from any then-current immediate advisers to the President.

In the spirit of accommodation between co-equal branches of our government, I remain committed to working with you to address any remaining legitimate oversight concerns about OPSO. As I have stated before, I 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.

If you are interested in discussing this matter further, please ask your staff to contact my staff.

Sincerely,



W. Neil Eggleston

Enclosure

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

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