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# Congress of the United States

## House of Representatives

### Select Committee on Benghazi

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114<sup>TH</sup> CONGRESS

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STAFF DIRECTOR

March 6, 2015

The Honorable Trey Gowdy  
Chairman  
Select Committee on the Events Surrounding  
the 2012 Terrorist Attack in Benghazi  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

We are writing to object to the very partisan and political turn the Select Committee has taken this week, when you and the Republican Members decided to issue a congressional subpoena to former Secretary of State Hillary Clinton—with no consultation, no debate, no vote and no notice—despite the Secretary's complete cooperation with our Committee to date. Democratic Members only learned about your subpoena by reading about it in the *Washington Post*.

You have long been aware that Secretary Clinton used a personal email account. She provided her emails—55,000 pages of them—to the State Department, which in turn provided to the Committee those relevant to Benghazi. You are also aware, as we are, having read the responsive emails, that they are consistent with the findings of the nonpartisan Accountability Review Board. And you are aware that Secretary Clinton and her counsel have cooperated with the Select Committee in every way they have been asked, including the Secretary's willingness to come back to Congress and testify yet again.

We urge you to withdraw the ill-considered subpoena—whose issuance to a cooperating witness serves only to highlight the increasingly partisan nature of the Committee's focus—and to immediately publish the Secretary's emails in their entirety, as she has requested. Allowing these emails to be made public will help clear up any misperceptions and will also help return the Committee to its original purpose, investigating the tragic events in Benghazi, rather than allowing it to become a surrogate for the Republican National Committee.

#### **Secretary Clinton's Cooperation with Select Committee**

On September 18, 2014, one day after our Committee's first hearing, an entity known as the Stop Hillary PAC delivered more than 264,000 signatures to the Select Committee insisting that you issue a subpoena to compel Secretary Clinton to testify, despite the fact that she had already testified before the House and Senate about Benghazi and answered more than 200 questions for the record.

The day after receiving these petitions, you began speaking with Ranking Member Cummings about requesting former Secretary Clinton to testify before the Committee. Ultimately, you asked the Ranking Member to help facilitate this process by contacting Secretary Clinton on your behalf to determine whether she would testify voluntarily. You asked the Ranking Member to take this step before proposing an investigative plan, before issuing any requests for new documents, and before conducting a single joint interview of any witness.

As a courtesy, the Ranking Member contacted Secretary Clinton, and she responded that she was willing to testify at a public hearing to answer the Select Committee's questions. She agreed without hesitation, and she offered to testify as early as December 2014.

The Ranking Member personally communicated all of this information to you in October 2014. On November 12, 2014, in a joint phone call with both Republican and Democratic staff, Secretary Clinton's attorney again confirmed her cooperation and willingness to testify in a public hearing before the Committee as early as December. But instead of obtaining Secretary Clinton's testimony in December, you decided to delay her testimony, explaining that you first wanted to obtain all of her documents relating to Benghazi.

Six days after the Committee's call with Secretary Clinton's counsel, on November 18, 2014, you sent a letter to the State Department requesting documents, including emails to and from Secretary Clinton, relating to the attacks.<sup>1</sup> Two weeks later, on December 2, 2014, you sent an additional letter directly to Secretary Clinton's attorney requesting documents from her personal email account.<sup>2</sup>

On December 29, 2014, Secretary Clinton's attorney responded by sending a letter notifying the Committee that the emails you requested had been produced to the State Department. The letter stated:

Thank for your letter dated December 2, 2014. I have referred it to the State Department, which will be responding to your request, as it is in a position to produce any responsive emails.<sup>3</sup>

In fact, the Secretary had produced to the State Department 55,000 pages of emails from her personal account relating to a number of topics, including Benghazi. On February 13, 2015, the State Department reviewed those 55,000 pages and produced to the Select Committee

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<sup>1</sup> Letter from Chairman Trey Gowdy, Select Committee on Benghazi, to Secretary John Kerry, Department of State (Nov. 18, 2014).

<sup>2</sup> Letter from Chairman Trey Gowdy, Select Committee on Benghazi, to David Kendall, Williams & Connolly LLP (Dec. 2, 2014).

<sup>3</sup> Letter from David Kendall, Williams & Connolly LLP, to Chairman Trey Gowdy, Select Committee on Benghazi (Dec. 29, 2014).

Secretary Clinton's emails related to Benghazi from March 3, 2011, to December 21, 2012, which consisted of approximately 850 pages, or about 300 emails.<sup>4</sup>

These documents include no evidence to suggest that Secretary Clinton ordered the Secretary of Defense to "stand down," no evidence to suggest that she was personally involved in denying requests for security for Benghazi, and no evidence to suggest that she ordered the destruction of documents. Nothing in these emails contradicts or calls into question the findings of the independent Accountability Review Board.

### **Unilateral and Unnecessary Subpoena**

Despite the fact that Secretary Clinton and her counsel have fully cooperated with every aspect of the Committee's investigation, you suddenly issued a unilateral subpoena this week demanding that she produce documents from her personal email account. Although you stated previously that you would hold a hearing with Secretary Clinton within 30 days after the Committee obtained her emails relating to Benghazi, you changed course dramatically after the *New York Times* published an article this week about the Secretary's use of a personal email account—a fact that you and other Members of the Committee have known for months.

For example, on January 27, 2015—before the Committee received the Secretary's emails—you stated:

[W]hat I'm not going to do, is ask my colleagues to question her when they don't have all of the relevant documents—her emails, from either account, from how many accounts she had—we don't have the emails. So, we're not going to do that. It's up to them [the State Department] how quickly we can do it. I said we would do it within 30 days of you producing the information we need.<sup>5</sup>

In addition, on February 18, 2015—after the Committee received the Secretary's emails—you reiterated your position:

Gowdy told *The Greenville News* following the breakfast that some Clinton emails are among 900 documents that the special committee received recently from the State Department, but he doesn't know if the committee has all of the Clinton emails it asked for.

Gowdy said he'll ask State Department officials when they appear before the committee again at the end of February whether the committee has received all of the emails it asked for.

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<sup>4</sup> Letter from Julia Frifield, Department of State, to Chairman Trey Gowdy, Select Committee on Benghazi (Feb. 13, 2015).

<sup>5</sup> Press Availability with Chairman Trey Gowdy, Select Committee on Benghazi (Jan. 27, 2015) (online at [democrats.benghazi.house.gov/sites/democrats.benghazi.house.gov/files/documents/2015\\_01\\_27\\_Gowdy\\_Post\\_Hearing\\_3\\_Re\\_Clinton\\_Emails.m4a](http://democrats.benghazi.house.gov/sites/democrats.benghazi.house.gov/files/documents/2015_01_27_Gowdy_Post_Hearing_3_Re_Clinton_Emails.m4a)).

“And if they say yes, under oath, if they say, ‘You have it all,’ then we’ll schedule a date convenient for her” to testify, Gowdy said.<sup>6</sup>

On February 27, 2015, during a meeting with Select Committee staff, State Department officials confirmed that they had completed their production of Secretary Clinton’s emails relating to the Benghazi attacks.

Based on your statements, the Committee’s next step should have been to hold a hearing with Secretary Clinton in March. Instead, this week, you rushed to issue a unilateral subpoena to Secretary Clinton with no debate, no vote, and no deliberation whatsoever by Committee Members.

Contrary to your statements warning against the disclosure of internal Committee information, the *Washington Post* ran a story about your subpoena before you informed a single Democratic Member that it was under consideration.<sup>7</sup> It seems obvious that someone on the Republican side of the Committee provided this information to an individual outside the Committee before you told any Democratic Members.

You also held a press conference, conducted nationally televised interviews, and made a misstatement about the Secretary’s emails this week. For example, during a press conference with only Republican Committee Members, you stated that Secretary Clinton “had more than one private email account.”<sup>8</sup> Your claim led to several stories that Clinton used multiple personal email accounts as Secretary of State.<sup>9</sup> But the next day, Secretary Clinton’s counsel corrected the record, explaining that she only “used one email account” during her service as Secretary.<sup>10</sup>

At that same press conference, you stated that “the Committee is going to have to go to her and her attorneys and her email providers to ensure we have access to everything.” You also stated that the best way to confirm that the Committee has all of the responsive documents “is to

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<sup>6</sup> *Trey Gowdy Says He’s Waiting for Hillary Clinton’s Emails in Benghazi Investigation*, Greenville News (Feb. 18, 2015) (online at [www.greenvilleonline.com/story/money/business/2015/02/18/benghazi-trey-gowdy-jeff-duncan-mick-mulvaney-hilary-clinton/23632885/](http://www.greenvilleonline.com/story/money/business/2015/02/18/benghazi-trey-gowdy-jeff-duncan-mick-mulvaney-hilary-clinton/23632885/)).

<sup>7</sup> *House Committee Subpoenas E-mails from Clinton’s Personal Account*, Washington Post (Mar. 4, 2015) (online at [www.washingtonpost.com/politics/house-committee-to-subpoena-clintons-private-emails/2015/03/04/b4cec61c-c29b-11e4-9ec2-b418f57a4a99\\_story.html](http://www.washingtonpost.com/politics/house-committee-to-subpoena-clintons-private-emails/2015/03/04/b4cec61c-c29b-11e4-9ec2-b418f57a4a99_story.html)).

<sup>8</sup> Press Conference with Republican Members, Select Committee on Benghazi (Mar. 3, 2015).

<sup>9</sup> *See, e.g., Benghazi Committee Says Hillary Used Multiple Personal Email Accounts*, Politico (Mar. 3, 2015) (online at [www.politico.com/story/2015/03/benghazi-hillary-clinton-multiple-personal-email-accounts-115722.html](http://www.politico.com/story/2015/03/benghazi-hillary-clinton-multiple-personal-email-accounts-115722.html)).

<sup>10</sup> Email from David Kendall, Williams & Connolly LLP, to Committee Staff, Select Committee on Benghazi (Mar. 4, 2015).

put someone who has access to the information under oath and have him or her aver that it has been a complete production.”<sup>11</sup>

Despite these statements, you took neither of these steps. Instead, your fellow Republican Members publicly announced plans to expand the Committee’s inquiry and extend its duration. As Bloomberg’s Josh Rogin and Eli Lake stated:

The panel’s Republican House members are seizing on the revelations regarding Clinton’s private e-mail domain to expand their committee’s mandate, delay Clinton’s testimony and extend their investigation indefinitely.<sup>12</sup>

### **Conclusion**

Issuing a subpoena to Secretary Clinton was completely unnecessary and unfounded given the level of cooperation she and her counsel have provided the Committee over the past year. Issuing this subpoena unilaterally with no deliberation by Committee Members, leaking information about the subpoena before informing Democratic Members, and providing inaccurate information at a press conference all contribute to a perception that this Committee is now targeting Secretary Clinton for political reasons rather than to clarify any remaining facts relating to the attacks in Benghazi.

For these reasons, we request the following three actions:

- (1) Withdraw the subpoena to Secretary Clinton. If Committee Members have questions about the documents that have been produced or the process that was used to produce them, present those questions to Secretary Clinton’s attorney, who has been very accessible to the Committee throughout this entire process.
- (2) Follow through on your commitment to hold a hearing with Secretary Clinton within 30 days, at which point Members can ask her—under oath—whether she has produced all documents responsive to the Committee’s requests.
- (3) As soon as possible, make public all of Secretary Clinton’s emails relating to Benghazi that the Committee has in its possession.

Thank you for your consideration of these requests.

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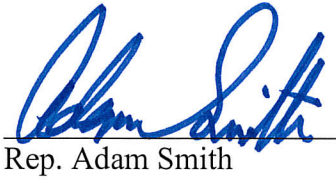
<sup>11</sup> Press Conference with Republican Members, Select Committee on Benghazi (Mar. 3, 2015).

<sup>12</sup> *Benghazi Panel Wants More Than Clinton’s E-Mail*, Bloomberg Views (Mar. 5, 2015) (online at [www.bloombergview.com/articles/2015-03-05/clinton-s-e-mail-won-t-appease-benghazi-panel](http://www.bloombergview.com/articles/2015-03-05/clinton-s-e-mail-won-t-appease-benghazi-panel)).

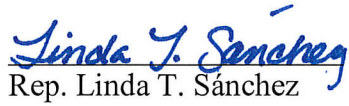


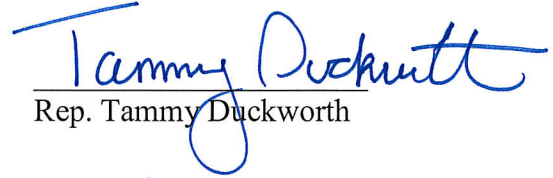
Sincerely,

  
Rep. Elijah E. Cummings  
Ranking Member

  
Rep. Adam Smith

  
Rep. Adam B. Schiff

  
Rep. Linda T. Sánchez

  
Rep. Tammy Duckworth