

ONE HUNDRED FIFTH CONGRESS

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT  
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March 10, 1997

The Honorable Dan Burton  
Chairman  
Committee on Government Reform and Oversight  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

Pursuant to House rule XI clause 2(c)(2), we are writing to request that you convene a special meeting of the Committee to establish fair procedures and approve an appropriate scope and budget for the Committee's investigation into alleged campaign finance abuses.

As the minority members of the Committee, we wish to work with you and the other majority members in investigating alleged campaign finance abuses. As a prerequisite to bipartisan cooperation, however, the Committee must adopt impartial procedures for the conduct of the investigation; the investigation must avoid pursuing a strictly partisan agenda; and the minority must be provided adequate resources to participate actively in the investigation. Unfortunately, without seeking the approval of the Committee, you have implemented procedures that are unfair to the minority and have established a partisan scope and budget for the investigation.

The ranking minority member has written you on January 24, February 3, February 18, February 20, February 26, and March 7 of this year to raise these issues and make suggestions for more appropriate ways to proceed. The ranking minority member has also met privately with you on February 4 and February 27 to raise our concerns directly with you. These efforts have been to no avail. Despite the minority's many requests, you have determined to proceed in a manner that vests unprecedented power in the chair and that unfairly prejudices the minority.

At this point, we have no alternative but to appeal your decisions to the full Committee. For this reason, we request that you call a special meeting of the Committee under House rule XI clause 2(c)(2) at which we will ask the Committee to vote on whether the procedures, scope, and budget that you have set for the investigation are appropriate. The traditions of the House -- as well as principles of fundamental fairness -- dictate that we should be afforded the opportunity to bring our concerns before the Committee for decision by Committee vote.

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At the special meeting, we would raise the following three matters: (1) whether the "Protocol for Documents" that you have announced, which gives you the unilateral authority to release Committee documents, is a fair protocol; (2) whether you should have the authority to issue subpoenas unilaterally, without seeking either the concurrence of the ranking minority member or a Committee vote; and (3) whether the scope of the investigation and the budget requests that you have submitted to the Committee on House Oversight are appropriate.

Our concerns regarding each of these three fundamental issues are described in more detail below.

### The Protocol for Documents

Late last month, you announced a "Protocol for Documents" that "sets forth the procedures to be followed by the House Committee on Government Reform and Oversight for the obtaining, handling and releasing of documents and other materials during investigations conducted by the Committee." Under this protocol, you "retain the discretion" to release Committee documents "to the media ... or to any other person" without the prior consent of the Committee. Indeed, you assert that you may even release to the media -- without the approval of the Committee -- confidential and privileged documents obtained by the Committee through subpoena.

The unilateral authority that you assert to release Committee documents, including privileged and confidential documents, is an extraordinary and unprecedented power. It far exceeds the power of the chair in other similar investigations, such as the Iran-Contra investigation, House ethics investigations, and the Senate Whitewater investigation.

The unilateral implementation of the "Protocol for Documents" is also inconsistent with the House rules. We have consulted extensively with the House Parliamentarian about this matter. After careful consideration, the Parliamentarian has advised us that the unilateral implementation of the Protocol -- without the approval of the Committee -- is not consistent with the House rules.

House rule XI clause 2(e)(2) provides that "[a]ll committee hearings, records, data, charts, and files shall be kept separate and distinct from the congressional office records of the Member serving as chairman of the committee; and such records shall be the property of the House." According to the Parliamentarian, the documents submitted to the Committee pursuant to Committee requests or subpoenas become part of the Committee records and files. As such, they must be handled under procedures adopted by the Committee -- not under procedures announced unilaterally by the chair.

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House rule XI clause 2(m)(2)(A), which provides committees with their subpoena authority, is also relevant. This rule provides that the power to issue subpoenas resides in the Committee. Under this rule, the chair can issue a subpoena only when the authority to do so has been expressly "delegated" by the Committee to the chair. Under this rule, according to the Parliamentarian, all documents received under a subpoena belong to the Committee. Even when a chair has been delegated authority to issue subpoenas, the chair's delegated authority under the rule is limited to the issuance of the subpoena. The documents that are received pursuant to the subpoena belong to the Committee and must be handled under procedures adopted by the Committee.

The Parliamentarian's advice makes it clear that it is the Committee -- not the chair acting on its own -- that must decide how the documents received during the investigation will be handled. It is necessary, therefore, that a Committee meeting be called at which this issue can be resolved by Committee vote. At such a meeting, we intend to propose that privileged and confidential documents received by the Committee must be kept confidential until their release is authorized by the Committee.

#### The Unilateral Issuance of Subpoenas

We also object to the issuance of subpoenas by the chair without a Committee vote or the concurrence of the ranking minority member. We believe that our Committee rules should be modified to provide that the chair may issue a subpoena without a Committee vote or the concurrence of the ranking minority member only in emergency situations, such as when relevant documents may be destroyed before a Committee vote can be held.

We recognize that the chair of the Government Reform and Oversight Committee has for many years had the authority under Committee rules to issue subpoenas unilaterally. Under Democratic chairmen, however, this power was never exercised. Instead, as a matter of prudence, your Democratic predecessors always asked for a Committee vote or the concurrence of the ranking minority member before issuing subpoenas. This practice provided a procedural safeguard designed to insure that the subpoena power was not abused for partisan political purposes.

Unfortunately, you have decided not to follow the traditional practice of the Committee. Since the Committee organized on February 12, you have issued 46 subpoenas -- without once seeking either Committee approval or the concurrence of the ranking minority member. The result has been an abuse of the Committee's subpoena power. As the ranking minority member described in his letter of March 7, the unilateral subpoenas you have issued compel the production of extraordinarily sensitive national security and foreign policy documents that have no apparent connection to any alleged fundraising abuse. The subpoenas would also require the production of purely personal information about the Clintons, such as a record of doctor visits to the White

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House, as well as copies of confidential Democratic political strategies developed as a legitimate part of the last Presidential campaign.

The issuance of a subpoena is an exceptionally serious step that compels the person subpoenaed to provide documents to the Committee against his or her will, often at great personal sacrifice and expense. It is clear to us that except in emergency circumstances, it should be the Committee -- not the chair acting unilaterally -- that determines when a subpoena should be issued and what its scope should be.

### The Investigation's Scope and Budget

Finally, we have three fundamental objections to the Committee budgets that you have submitted to the Committee on House Oversight. We believe that the Committee should also meet to resolve these issues.

First, the supplemental \$3.8 million budget that you submitted to the Committee on House Oversight last week proposes that the scope of the investigation be limited to alleged Democratic fundraising abuses. Specifically, it provides that the supplemental budget would be used to investigate:

The DNC and allegations of illegal or unethical fundraising activities, misuse of the White House and White House personnel, the questionable political activities of John Huang and other Commerce Dept. personnel, questionable political activities of Clinton appointees in connection with DNC fundraising at numerous Government Agencies and Departments including, but not limited to, Department of Commerce, Department of State, Export-Import Bank, Office of Trade Representative, Department of Interior, Office of Comptroller General.

This scope is partisan. It focuses the investigation on the White House and the DNC and ignores fundraising abuses in congressional campaigns. It is also inconsistent with your pledge at our organizational meeting that "[w]e would apply equally the investigative procedures of this committee to whomever, Republican or Democrat." We believe that the Committee investigation should focus on all illegal or improper fundraising activity, including illegal or improper fundraising activity by the Presidential campaigns, Democratic and Republican fundraising organizations, and individual House and Senate campaigns.

Second, the budgets you have proposed would provide the minority with no more than -- and likely substantially less than -- 25% of the staff available to the Committee. As the ranking minority member has explained in correspondence with you and at the House Oversight hearing on March 6, this allocation is not sufficient to allow the minority to participate effectively in the campaign finance investigation. It is also in violation of House policy, which provides that the

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minority should receive at least 33% of the Committee's resources.

Finally, the Committee budgets were developed in violation of Committee rules. On February 12, the Committee adopted a rule that requires the chair to develop a Committee budget only "after consultation with ... the minority." Two days later, however, you submitted a budget to the House Oversight Committee with no consultation with the minority. On March 5, you submitted a "supplemental" budget to the House Oversight Committee seeking an additional \$3.8 million for the campaign finance investigation -- again with no consultation with the minority. These are serious violations of our Committee rules. They should be rectified by bringing the Committee budgets before the Committee for vote.

Conclusion

For the reasons set forth above, we respectfully request that you schedule a special meeting of the Committee within seven calendar days at which the matters discussed above may be resolved by Committee vote.

Sincerely,

<u>Henry A. Waxman</u>	<u>Carol B. Maloy</u>	<u>Tom</u>
<u>Tom Barrett</u>	<u>Eliz E. Cummings</u>	
<u>Rod R. Blagojevich</u>	<u>Tom Allen</u>	
<u>Elaine O. Holmes</u>	<u>Tom Lantos</u>	<u>Bill Wira</u>
<u>Bill S. Rosen</u>	<u>Jim Jaraman</u>	<u>Tim Holden</u>
<u>Danny K. Davis</u>	<u>Chase Lubin</u>	<u>Jeff F. Kingston</u>
<u>Dennis J. Kucinich</u>	<u>Paul E. Kanjorich</u>	