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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

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August 10, 2015

Ms. Lesley Weiss
Chair
Commission for the Preservation of America's Heritage Abroad
25 Massachusetts Ave. NW
Suite 300
Washington, DC 20001

Dear Ms. Weiss:

The Committee on Homeland Security and Governmental Affairs is conducting oversight of the U.S. Commission for the Preservation of America's Heritage Abroad (Commission). I write with serious concern about apparent misconduct, waste and personnel issues at the Commission. I ask your help in better understanding how the Commission utilizes its taxpayer-funded budget to ensure that these funds are well-spent.

Congress created the Commission in 1985 to “encourage the preservation and protection of the cemeteries, monuments, and historic buildings associated with the foreign heritage of United States citizens.”¹ The Commission is charged with identifying and listing cemeteries and other heritage sites in Eastern and Central Europe.² The Commission consists of twenty-one members and a small staff.³ The Commission's budget for fiscal year 2015 is \$644,000.⁴ In August 2013, the General Services Administration Office of Inspector General (GSA OIG) conducted an investigation into three specific allegations at the Commission, pursuant to a Memorandum of Understanding between GSA OIG and the Commission.⁵

What emerged was a bizarre tale in which an obscure federal agency tasked with making lists of cemeteries in Eastern and Central Europe morphed into the taxpayer-funded lobbying offices of an extravagantly-paid lobbyist. This lobbyist used federal personnel and resources to run a profitable personal business advancing the interest of foreign agents—all apparently with the knowledge of Commission leadership and the participation of taxpayer-funded support staff.

The Commission appears to have paid Jeffrey Farrow, its executive director, \$143,000 a year for four to eight hours of work a week—between \$344 and \$688 an hour for a low-profile

¹ Commission for the Preservation of America's Heritage Abroad of 1985 § 1303, 16 U.S.C. § 469j (2013).

² *Id.*

³ U.S. Comm'n for the Pres. of America's Heritage Abroad, about page, available at <http://www.heritageabroad.gov/About.aspx>. [hereinafter *Comm'n Website*].

⁴ Pub. L. 113-235, 128 Stat. 2130, 2582 (2014).

⁵ General Services Administration Office of the Inspector General, OIG File No. 1-13-H-4520 (2013) [hereinafter *GSA OIG File*].

job⁶ in which he supervised only three people⁷—while taxpayers also subsidized multiple private businesses, including the law practice of former Chairman Warren Miller, by providing them with an office, support staff and supplies.⁸ Today, almost three years after outside agencies brought these findings to your attention, the same staff remains in place and you appear to have taken steps to hide the findings from the media and Congress. Moreover, Mr. Farrow's salary was so high that it appears to have broken the law⁹—but after the GSA OIG report, instead of correcting it by appointing an appropriately-paid executive director, the Commission under your leadership successfully lobbied to change the law so that the four-person office is now permitted to pay people more than even the highest-ranking federal employees.¹⁰

Jeffrey Farrow's wasteful spending as the Commission's executive director, use of taxpayer funds to prop up a lobbying business, and misleading statements

Jeffrey Farrow has acted as the Commission's executive director since 2001.¹¹ Mr. Farrow is a registered lobbyist.¹² Entities associated with Puerto Rico paid \$820,000 last year, and are on pace to pay \$1.34 million this year, for the services of a group of seven lobbyists, with Farrow topping the list.¹³ Puerto Rico is seeking for Congress to rescue it from reckless spending that led to \$70 billion in debt.¹⁴

Previously, while working for the Commission, Mr. Farrow operated his own lobbying firm, which Puerto Rico paid between \$90,000 and \$120,000 a year.¹⁵ The Republic of Palau, an island nation north of Australia that is a former U.S. territory and which receives significant funding from the U.S., was also a client. It wanted to ensure that the assistance was renewed at the end of the contract's term.¹⁶

According to the GSA OIG, Mr. Farrow said he agreed to work one day a week at the Commission for \$104,000 in salary¹⁷ because the Commission could not afford to hire him full

⁶ Despite a salary and title commensurate with a high-level job, and his presumably integral role in its operations, Mr. Farrow's name appears nowhere on the Commission's website, phone directory, or reports.

⁷ *GSA OIG File, supra* note 5.

⁸ *Id.*

⁹ The Commission's authorizing statute prevents it from paying a daily rate higher than what the highest-ranking federal Senior Executive Service employees make. SES salaries top at about \$180,000, or \$87 an hour. *see* 16 U.S.C. § 469j (2013).

¹⁰ *See* Pub. L. 113-235, 128 Stat. 2130, 2582 (2014).

¹¹ *GSA OIG File, supra* note 5.

¹² Senate lobbying disclosures, *available at* <http://soprweb.senate.gov/index.cfm>.

¹³ *Id.*

Mr. Farrow's lobbying is on the upswing. In the second quarter, in addition to two Puerto Rican advocacy entities, a company, Empresas Fonalledas, paid \$240,000 to a group of lobbyists for work on the Puerto Rican bankruptcy issue, with Mr. Farrow topping the list. *See* Center for Responsive Politics, Lobbying profile, *available at* <http://www.opensecrets.org/lobby/lobbyist.php?id=Y0000038785L&year=2015>.

¹⁴ Seung Min Kim & Burgess Everett, *Congress Balks at Lifeline for Puerto Rico*, Politico, July 8, 2015, *available at* http://www.politico.com/story/2015/07/congress-balks-at-lifeline-for-puerto-rico-119876.html?hp=r3_4.

¹⁵ Senate lobbying disclosures, *available at* <http://soprweb.senate.gov/index.cfm>.

¹⁶ *Id.*

¹⁷ This salary grew over time to \$143,000 in 2013 *see GSA OIG File, supra* note 5.

time.¹⁸ Warren L. Miller, a lawyer who currently sits on the Commission and was its chair at the time of Mr. Farrow's hiring, apparently agreed to this arrangement,¹⁹ to which the Commissioners, who meet twice a year, presumably have consented each year since.

Mr. Miller was aware that Mr. Farrow used his taxpayer-funded office to conduct lobbying operations for foreign governments. Mr. Farrow told the OIG that Mr. Miller's only instructions were to use a separate Internet and phone line for that work.²⁰ Mr. Miller apparently allowed Mr. Farrow to use Commission office space, which was until recently on K Street in downtown Washington, D.C., and thereby afforded Mr. Farrow a business address that was attractive to clients.²¹

In 2013, Mr. Farrow had paid himself \$83,192 by July 24²²—a rate of \$143,000 a year for one day a week's work, or an hourly wage of \$344, equivalent to \$715,000 at full time.²³ However, a Commission staff member told the GSA OIG that Mr. Farrow did not even spend eight hours a week on Commission work.²⁴ She said that "approximately 90% of Mr. Farrow's weekly time is devoted to his lobbying practice, which he predominantly conducts from the Commission's office, using government resources such as printers, fax machines, and supplies."²⁵ That would mean that Mr. Farrow was drawing \$143,000 a year in taxpayer funds for conducting four hours of Commission work a week—\$688 *an hour or equivalent to nearly \$1.5 million a year at full time*²⁶—in addition to having expenses covered for his lobbying business.

Mr. Farrow repeatedly filed disclosures with the Department of Justice identifying himself as a foreign agent acting to influence the government on other nations' behalf.²⁷ These disclosures, designed to closely monitor foreign governments' activities, require detailed itemization of the lobbyists' actions. In a 3.5-year period, the government of Palau paid Mr. Farrow \$409,666, most commonly paying him some \$70,000 every 6 months.²⁸ Mr. Farrow's disclosures show more than 1,000 contacts on behalf of the government of Palau in a two-year

¹⁸ GSA OIG File, *supra* note 5.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Memorandum of Understanding between GSA OIG & the Commission, June 17, 2013.

²² GSA OIG File, *supra* note 5.

²³ The estimated annual salary is as follows. Mr. Farrow's pay of \$83,192 by July 24 equals more than \$11,884 per month, or \$143,000 per year. The Commission agreed to pay him that salary for one day of work per week. That means the Commission believed that Mr. Farrow's skills were so valuable that for a standard five-day workweek, he would command about \$713,000 annually.

²⁴ GSA OIG File, *supra* note 5.

²⁵ *Id.*

²⁶ The estimated annual salary is as follows. If, as a Commission staffer (one of only a few people who would have full knowledge of his activities) told the GSA OIG, Mr. Farrow spent 90% of time spent on lobbying, he spent only four hours of a standard 40-hour workweek to official Commission work. If he was paid at a rate of \$143,000 per year for only 10 percent of a workweek, the implication is that Mr. Farrow's skills were worth of \$1.43 million for full-time work.

²⁷ Department of Justice, Supplemental Statement Pursuant to the Foreign Agents Registration Act, *available at* <http://www.fara.gov/docs/5938-Supplemental-Statement-20110707-5.pdf>

²⁸ Sunlight Foundation, Foreign Influence Explorer, *available at* <http://foreign.influenceexplorer.com/reg-profile/5938>

period alone,²⁹ including emails, calls and in-person meetings with government officials, all with the goal of extracting taxpayer dollars for the nation.³⁰ These activities take place every day of the week, making it impossible that he worked one full day a week at the Commission on any set schedule without also conducting lobbying work throughout the day.³¹

To assist on Palau lobbying efforts, Mr. Farrow hired Jerry Weller, a former member of Congress, who left office amidst a scandal involving Latin America.³² Foreign agent records show that Mr. Farrow spent large portions of his workweeks corresponding with Mr. Weller.³³ Mr. Farrow's use of Commission facilities and resources enabled his lobbying business with Mr. Weller to keep costs down, since they did not need to pay for an office, supplies or support staff.

Mr. Weller is married to the daughter of former Guatemalan dictator Efraim Rios Montt; his wife, Zury Rios Montt, is the longtime number two official of her father's political party and member of the legislature, has worked to reinstate her father, and is herself now running for president.³⁴ During Montt's bloody 1982-1983 rule 1,700 indigenous Mayans were tortured, raped and murdered because of their ethnicity. Montt was convicted of genocide and crimes against humanity in 2003 (the conviction was overturned on a technicality and he was found incompetent to stand a second trial last month).³⁵ Some 90 percent of Maya Ixil villages were

²⁹ Sunlight Foundation, Foreign Influence Explorer, http://foreign.influenceexplorer.com/contact-table?reg_id=5938&client_id=130029. While 9 semi-annual disclosures were filed on paper with the Department of Justice, only four have been digitized by the Sunlight Foundation, and thus the 1,165 contacts in this spreadsheet took place over only two years. This averages multiple contacts every single business day, and does not include any work done for his larger lobbying client, Puerto Rico.

³⁰ Emails in which Mr. Farrow attempts to insert tens of millions of dollars for the island into major legislation, where it might not be noticed, despite being told that it was not a priority for the administration or Congress, are available here: <http://www.fara.gov/docs/5938-Supplemental-Statement-20130630-9.pdf>.

³¹ Sunlight Foundation, Foreign Influence Explorer, available at <http://foreign.influenceexplorer.com/reg-profile/5938>.

³² Chicago Tribune, "Inside Rep. Weller's Nicaragua land deal," Sept. 7, 2007, available at <http://www.chicagotribune.com/news/nationworld/chi-wellersep07-story.html#page=1>;
Baltimore Sun, "Weller makes '22 most corrupt' list," Sept. 18, 2007, available at http://weblogs.baltimoresun.com/news/politics/blog/2007/09/weller_makes_22_most_corrupt_1.html;

A new lawsuit also says that Mr. Weller has failed to pay \$41,000 he owes to a bank (<http://patch.com/illinois/plainfield/former-congressman-jerry-weller-stiffed-lender-out-4148506-lawsuit-0>).

³³ Sunlight Foundation, Foreign Influence Explorer, available at <http://foreign.influenceexplorer.com/reg-profile/5938>.

³⁴ TelesurTV, "Guatemalan Ex-Dictator Rios Montt's Daughter Runs for President," April 20, 2015, available at <http://www.telesurtv.net/english/news/Guatemalan-Ex-Dictators-Daughter-Cleared-to-Run-for-President-20150723-0004.html>;

TelesurTV, "Guatemalan Ex-Dictator's Daughter Cleared to Run for President," July 23, 2015, available at <http://www.telesurtv.net/english/news/Guatemalan-Ex-Dictators-Daughter-Cleared-to-Run-for-President-20150723-0004.html>;

Stephen Kinzer, "The Illinois Congressman and the Dictator's Daughter," New York Times, July 10, 2004, available at <http://www.nytimes.com/2004/07/10/national/10illinois.html>.

³⁵ CNN, "Guatemala's Rios Montt guilty of genocide," May 13, 2013, available at <http://www.cnn.com/2013/05/10/world/americas/guatemala-genocide-trial/>;

The Guardian, "Guatemalan ex-dictator Efraim Rios Montt mentally unfit for genocide retrial," July 8, 2016, available at <http://www.theguardian.com/world/2015/jul/08/guatemalan-ex-dictator-efrain-rios-montt-mentally-unfit-for-genocide-retrial>.

razed during Montt's rule, leaving them in an identical position of those who the Commission is charged to protect--cases where the utter destruction of an entire people in one area leaves no one to care for their history, such as burial grounds.³⁶ Mr. Weller was married at and has stayed at the dictator's compound and he and his wife appear to have campaigned for each other, despite the fact that her campaign includes denying the genocide and saying that her father is her "inspiration."³⁷ Thus, taxpayer funds intended to honor the victims of genocide may have been used instead used to prop up the lucrative lobbying business of someone tied to a genocidal regime. The fact that—from his Commission office—Mr. Farrow would hire Mr. Weller and make him his closest business associate casts serious doubt on whether Mr. Farrow, the executive director of the Commission, shares any personal investment in the important mission of the Commission; instead, his taxpayer-funded job at the Commission seems to have been merely one more source of income for him.

In addition, for a time the Commission also operated a nonprofit called "Associates of the CPAHA through which some of its money flowed, and according to nonprofit tax filings, on six separate occasions Mr. Farrow misrepresented that he worked far more than eight hours a week on Commission business.³⁸ On each of the annual nonprofit disclosures to the Internal Revenue Service—which prospective donors often examine to weigh whether a non-profit organization is efficiently run—Mr. Farrow swore under penalty of perjury that he worked 30 hours a week,³⁹ though both he and Mr. Miller later admitted to GSA OIG that that was never true.⁴⁰ In addition to misleading donors by hiding the group's extremely high overhead rate, an official who is convicted of lying on a tax form can face criminal penalties.⁴¹

Moreover, a Commission employee informed GSA OIG investigators that Mr. Farrow submitted hourly invoices to the Commission even when he was in Puerto Rico or Palau on business related to his lobbying practice.⁴² Mr. Farrow also directed the Commission's

³⁶ Guatemala Human Rights Commission, "Genocide in the Ixil Triangle," available at <http://www.ghrc-usa.org/our-work/important-cases/genocide-cases/genocide-in-the-ixil-triangle/>.

³⁷ Josh Kraushaar, "Weller could be next Republican to bow out," Politico, Sept. 19, 2007, available at http://www.politico.com/blogs/thecrypt/0907/Is_Weller_the_next_Republican_to_bow_out.html; Graciela Pedraza, "80 years in prison for Efraín Ríos Montt | Guatemala, traces of genocide", Prensared, May 18, 2013, available at <http://www.prensared.org.ar/12909/80-anos-de-carcel-para-efrain-rios-monttguatemala-las-huellas-del-genocidio>;

Federal Election Commission, Advisory Opinion 2004-26, <http://saos.fec.gov/aodocs/2004-26.pdf>; Mr. Weller can be seen by her side at political events, such as for this announcement regarding her presidential run: <https://twitter.com/ZuryxGuate/status/621845065908924416/photo/1>; BBC, "US son-in-law for ex-coup leader," Nov. 21, 2004, available at <http://news.bbc.co.uk/2/hi/americas/4029499.stm>.

³⁸ The nonprofit was presumably created to make it easier for private donors to support the Commission's mission, but it attracted little non-governmental support, and the nonprofit disbanded around 2008.

³⁹ Associates of the US Comm'n for the Pres. of America's Heritage Abroad Forms 990, available at <http://citizenaudit.org/521711614/>.

⁴⁰ GSA OIG File, *supra* note 5.

⁴¹ Internal Revenue Service, "Filing Requirements and Required Disclosures: Penalties", available at <http://www.irs.gov/publications/p557/ch02.html>.

⁴² GSA OIG File, *supra* note 5.

accountants to donate \$1,000 in Commission funds to Palau Community College and Palau Community Hospital.⁴³

Warren Miller's abuse of government resources as Commission member and former Chairman

Warren Miller was appointed to the Commission in 1992, and served as Chairman from 2001 until 2013.⁴⁴ He remains a member of the Commission. Mr. Miller is not paid for his Commission duties, but he is provided with an office and supplies, which he used to conduct a "limited" law practice.⁴⁵ According to the GSA OIG, Mr. Miller used Commission facilities to meet with clients and also tasked the Commission's paid staff with drafting legal memos for his firm.⁴⁶ In addition, Commission staff told the GSA OIG that Mr. Miller billed taxpayers for at least six trips to Vienna, Austria, between 2003 and 2011, and that the trips were not related to Commission work; that the Commission pays for parking for Mr. Miller and Mr. Farrow; and that the Commission continues to pay for Mr. Miller's cell phone even though he is no longer chairman.⁴⁷

The Commission's broader problems with personnel and resource practices

The GSA OIG noted broader concerns about the Commission's personnel practices and resource management. The OIG found that the Commission also has one official federal employee—a "project manager"—and a number of other staffers who are paid as contractors, including the executive director, an "administrative and financial services" person, and a secretary.⁴⁸ The project manager makes \$88,224 a year and is a GS-12, a relatively high level employee.⁴⁹ The Commission allowed the staffers—whether employee or contractor—to bill their own time. Federal personnel records show that no vacation days were taken between 2004 and 2007, according to the GSA OIG.⁵⁰ Mr. Miller admitted to the OIG that "he allowed the Commission's contractor employees to take leave and bill the Commission for those hours."⁵¹

Invoices were designed to consume the maximum amount of taxpayer dollars that could be allocated.⁵² In addition, "[c]ontractor rates were temporarily increased at the end of each fiscal year to consume unexpended appropriations," the GSA OIG found.⁵³ None of the contractors, including Mr. Farrow, had written contracts—a deficiency that not a single member of the

⁴³ *Id.* (Mr. Farrow produced a check he wrote to the Commission from his personal account in the amount of \$1,000 and explained that he was attempting to lower his personal tax bill by routing the donation through the Commission.)

⁴⁴ *Comm'n Website*, *supra* note 3, see Mr. Miller's biography on Commission, available at <http://www.heritageabroad.gov/Members/WarrenLMiller.aspx>.

⁴⁵ *GSA OIG File*, *supra* note 5.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Asbury Park Press, Federal Salaries database, available at http://php.app.com/fed_employees14/results.php.

⁵⁰ *GSA OIG File*, *supra* note 5.

⁵¹ *Id.*

⁵² General Services Administration Office of the Inspector General, Letter to the Commission, August 15, 2013.

⁵³ *Id.*

twenty-one-member Commission managed to correct during its biannual meetings.⁵⁴ To sidestep personnel rules, the Commission agreed to pay its executive director, Mr. Farrow, as a contractor through a company that he had set up to manage finances for his family, named the Oliver Group.⁵⁵ That the Commission decided to allow its top staffer to be a part-time contractor—instead of hiring a full-time federal employee, which it easily could have done for the same money—became even more troublesome because commissioners abdicated their financial management role and put government contractors in charge of deciding how to spend dollars appropriated by Congress.

Mr. Miller authorized Mr. Farrow to sign legal documents and make major financial decisions on behalf of the Commission and another contractor also had fiscal powers.⁵⁶ When the GSA noted that this arrangement is illegal because Mr. Farrow is a contractor, Mr. Farrow began forging Mr. Miller's signature, with his knowledge and approval, explaining that Mr. Miller "did not want to sign them."⁵⁷

Yet, for all of this money, it is unclear what the staff did throughout the day. A speech by the chairman in Romania, for example, was preceded by seemingly extravagant expenditures on additional contractors to prepare the speech.⁵⁸ Mr. Miller traveled to New York to meet with a professional writer, then paid for the writer to travel to Washington for two and a half days, and continued paying him later, in order to write the speech and perform other work.⁵⁹ The Commission also outsources its accounting services.⁶⁰ The GSA OIG found that in 2008, the Commission hired several temporary employees through an employment agency apparently run by Mr. Farrow's cousin.⁶¹

When the Commission also operated a nonprofit arm, Mr. Farrow—a contractor, and not the Chairman—was listed on tax documents as the person in charge of its funds, and at the time of its final filing with the Internal Revenue Service, it possessed \$67,000.⁶² Commission staff alleged to the GSA OIG the leftover money was spent on "improper purposes" including extravagant meals.⁶³

⁵⁴ *Id.*

⁵⁵ *GSA OIG File, supra* note 5. See also The Oliver Group, available at http://www.theolivergroupinc.com/about/jeffrey_farrow.html.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Despite the existence of an "administrative and financial services" staffer, in the OIG report, Mr. Farrow has the accounting firm of Rubin, Kasnett & Associates make routine financial transactions.

⁶¹ *GSA OIG File, supra* note 5.

⁶² Associates of the US Commission for the Preservation of America's Heritage Abroad IRS Form 990 filed February 2008, available at http://pdfs.citizenaudit.org/2008_03_EO/52-1711614_990EZ_200712.pdf.

⁶³ *GSA OIG File, supra* note 5.

The Commission's failures to be transparent and accountable—and continuing misconduct

In addition to these serious issues surrounding the operations of the Commission, the Commission appears to have practiced evasion to shield itself from scrutiny. The IG wrote that “[a]fter receiving a Freedom of Information Act (FOIA) request or requests in June of 2012, Commission staff allegedly began rushing to ‘retire’ files to the National Archives to avoid producing them in response to the requests.”⁶⁴ The National Archives confirmed that the Commission made contact at about that time to begin a transfer, but then cancelled it.⁶⁵ Transferring files to the National Archives does not alleviate an agency’s duty to produce material under FOIA.⁶⁶

You began serving on the Commission in 2011, two years before the inspector general’s report, and were appointed chair in January 2013.⁶⁷ In September 2012, the Office of Special Counsel, which deals with prohibited personnel practices, contacted the agency with concerns, and in response, in May 2013 you asked the GSA OIG to look into the situation.⁶⁸

You told the GSA-OIG, nearly a year after the Office of Special Counsel first alerted you to the situation, that you “[have] no knowledge of [Mr. Farrow] using Commission resources for side businesses.”⁶⁹ With him filing public disclosures showing him making hundreds of lobbying contacts, at best, you have failed to monitor the government body you are tasked with supervising.

In August 2013, the GSA OIG presented its findings to you, noting that it had no power to discipline and that it would be up to you to take action. Just as troubling, the OIG did not pursue many facts and allegations⁷⁰ because your letter limited the scope of its review, instructing the OIG that “additional allegations (relating to non-compliance with federal workplace regulations) could be resolved without an Inspector General investigation.”⁷¹ Additionally, the first provision of the agreement you drafted with GSA OIG prohibited the OIG from referring findings for criminal prosecution, leaving that to you.⁷² Considering the severity of the evidence, and his own admissions, in the GSA-OIG report, I was shocked to discover that you have retained Mr. Farrow in his role as executive director.⁷³

⁶⁴ General Services Administration Office of the Inspector General, Letter to the Commission, August 15, 2013.

⁶⁵ In fact, despite a records retention plan that calls for the regular transfer to, and long-term storage of records at, the National Archives, the Commission has never followed through, and none of its records have been preserved for posterity or made available to the public there.

⁶⁶ Emails from Nat’l Archives to Committee staff (June 23-24, 2015).

⁶⁷ *Comm’n Website*, *supra* note 3 available at <http://www.heritageabroad.gov/Home.aspx>.

⁶⁸ General Services Administration Office of the Inspector General, Letter to the Commission, August 15, 2013.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *GSA OIG File*, *supra* note 5.

⁷² Memorandum of Understanding between GSA OIG & the Commission (June 17, 2013).

⁷³ Though curiously, his name appears nowhere on recent Commission materials, my staff confirmed his continued employment after reaching him by phone.

Further, you have been uncooperative with this Committee's informal inquiries into the operations of the Commission. After Committee staff requested a copy of the GSA OIG report from your staff via telephone, you called the GSA seeking advice on how to withhold the report from the Committee. The GSA rightfully informed you that you could not withhold the report.⁷⁴ You then told my staff that you would provide the report to me only if I wrote you with a promise that I would not reveal its contents publicly.⁷⁵ My staff then asked your staff for basic public work products, such as any brochures and reports describing the Commission's recent accomplishments, and your staff did not respond.⁷⁶ This behavior only underscores the perception that the Commission is hiding these serious problems from Congress and the American taxpayers.

Recently—well into your tenure—the Commission lobbied Congress to change the law so that it could pay people more than even the most highly-paid government employees.⁷⁷ The Commission's authorizing legislation says that its pay for contractors or consultants is “not to exceed the daily equivalent of the maximum annual rate of basic pay then in effect for grade GS-18 of the General Schedule.”⁷⁸ However, the fiscal year 2015 appropriations bill removed this requirement,⁷⁹ changing the law so that the Commission could pay people “notwithstanding” a certain provision of the law—the one that capped contractors' pay. The existing cap was hardly restrictive: GS-18 is what is now known as the Senior Executive Service (SES), with pay rates of about \$180,000.⁸⁰ SES employees often manage hundreds of employees, yet the Commission felt it necessary to petition Congress to allow it to pay people more than that for their work at a group with only four employees.⁸¹

The Commission has not published a report detailing its spending and activities in six years. The Commission's authorizing statute requires it to submit annual reports to Congress, but this requirement was terminated in 2000.⁸² It was re-established last year.⁸³ Though it is common for organizations to produce annual reports for the benefit of donors, observers and board members regardless of legal mandate, the Commission has not produced any such report since 2009. Even that report fails to discuss the state of the Commission staff, the Commission's

⁷⁴ Call from General Services Administration to Committee staff (May 19, 2015).

⁷⁵ Call between Lesley Weiss & Committee staff.

⁷⁶ Email to Commission staff (July 10, 2015).

⁷⁷ The Commission asked for the pay cap to be removed in the budget request it submitted to appropriators. The House refused, while the Senate reluctantly agreed, saying that “the Commission shall consult with the Committees on Appropriations prior to exercising such authority.” See S. Rept. 113-195 - 113th Cong. (2014) available at <https://www.congress.gov/113/crpt/srpt195/CRPT-113srpt195.pdf>.

⁷⁸ Public Law 99-83, available at <http://www.heritageabroad.gov/Portals/0/Home%20PDFs/LawPL99-83.pdf>

⁷⁹ Pub. L. 113-235, 128 Stat. 2130, 2582 (2014) available at <https://www.congress.gov/113/plaws/publ235/PLAW-113publ235.pdf>.

⁸⁰ See Office of Personnel Management, salary tables, available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2015/ES.pdf>.

⁸¹ S. Rept. 113-195 - 113th Cong. (2014) available at <https://www.congress.gov/113/crpt/srpt195/CRPT-113srpt195.pdf>.

⁸² Public Law 99-83, available at <http://www.heritageabroad.gov/Portals/0/Home%20PDFs/LawPL99-83.pdf>.

⁸³ See H.R. 1068, 113th Cong. (2014), available at <http://www.gpo.gov/fdsys/search/pagedetails.action?packageId=BILLS-113hr1068enr>.

financials, or the cost of any of the Commission's work—and much of the report merely recounts work performed earlier in the Commission's history.⁸⁴

Possible violations of federal law

From the information available to the Committee, it appears that the Commission has shown a disregard for the rule of law by forging signatures, fabricating timesheets, and more. In many cases, its violations appear to be serious crimes. Potential violations of federal law identified in the course of the Committee's oversight include:

- A. The Commission's decision to pay Mr. Farrow a daily wage in excess of that of a GS-18 employee, as stipulated in its authorizing statute.⁸⁵
- B. Mr. Farrow misstating on the Commission's associated nonprofit tax forms the amount of hours he worked on Commission business.
- C. Mr. Farrow's use of Commission resources for his lobbying work. The Anti-Lobbying Act states that "[n]o part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation."⁸⁶
- D. Mr. Farrow's use of Commission office space, office supplies and Commission employees' time for his lobbying practice may have violated the prohibition on personal use of government property.⁸⁷
- E. The Commission hired Mr. Farrow as a contractor and then authorized him to make major financial decisions, including hiring other contractors, both under his own name and by falsely signing Mr. Miller's name. The FAIR Act prohibits contractors from making "inherently governmental" decisions, including "the making of value judgments in making decisions for the Federal Government, including judgments relating to monetary transactions."⁸⁸
- F. The Commission's decision to allow all of its contractors to work without written contracts for over a decade (with no evidence of competitive bidding) may have violated the Federal Acquisition Regulations.⁸⁹

⁸⁴ See USCPAHA, *Report to the Congress and the President of the United States of America* (2009), available at http://heritageabroad.gov/Portals/0/documents/agreements/USCPAHA_AnnualReport_2009.pdf.

⁸⁵ Public Law 99-83, <http://www.heritageabroad.gov/Portals/0/Home%20PDFs/LawPL99-83.pdf>.

⁸⁶ Anti-Lobbying Act, 18 USC 1913.

⁸⁷ Personal use of Government Property, 28 C.F.R. 45.4.

⁸⁸ Federal Activities Inventory Reform Act of 1998, 105th Cong, Public Law 105-270.

⁸⁹ Federal Acquisition Regulations, 48 CFR 1.

For all the reasons herein, I have serious concerns about apparent misconduct, waste, personnel issues, and potential violations of federal law at the Commission. Accordingly, please provide the following information as soon as possible but no later than 5:00 p.m. on August 24, 2015:

1. An accounting of all the Commission's expenditures (regardless of source of funds) from January 1, 2012 to the present. This accounting should include the payee, amount, date, and memo line for all expenditures over \$500 and any smaller sums for which records are readily available.
2. An itemization of every trip taken in connection with official Commission business and funded with Commission dollars from January 1, 2012 to the present, including all associated travel vouchers, reimbursements, receipts, and per diems. For each trip, please provide a narrative explanation and documentation of the events.
3. The names, compensation packages, employment contracts, job description, and timesheets for all Commission contractors and employees from January 1, 2012 to the present.
4. Bank or other records showing the disposition of the funds possessed by the Associates of the CPAHA nonprofit at the time it was shut down around 2008.
5. Annual financials breaking down the source of funds, such as appropriated dollars and private donations, and expenses for major categories such as rent, fundraising, travel, and personnel for each year between 2010 and the present.
6. An Outlook export of all emails sent to or from the @heritageabroad.gov addresses of the four employees of the Commission and the generic uscommission@heritageabroad.gov address from January 1, 2013, to the present.
7. Minutes of all Commissioner meetings from January 1, 2010 to the present.
8. Please explain the daily work of Commission staff during a typical week and the smallest number of full-time employees that you believe could reasonably do this work.
9. Please explain whether you referred any conduct related to the Commission to prosecutors for possible criminal prosecution and if not, why not.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate "the efficiency, economy, and

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effectiveness of all agencies and departments of the Government.”⁹⁰ Additionally, S. Res. 73 (114th Congress) authorizes the Committee to examine “the efficiency and economy of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices.”⁹¹ For purposes of this request, please refer to the definitions and instructions in the enclosure.

If you have any questions about this request, please contact [REDACTED] of the Committee staff at (202) 224-4751. Thank you for your cooperation.

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Thomas R. Carper
Ranking Member

Commission members:

Ned W. Bandler
Herbert Block
Abba Cohen
Tyrone C. Fahner
Emil A. Fish
Jules Fleischer
Martin B. Gold
Brian Greenspun
Michael B. Levy
Rachmiel Liberman
Harley Lippman
Warren L. Miller
Jonathan J. Rikoon
Harriet Rotter
Eric D. Schwerin
Lee R. Seeman
Joan E. Silber
Richard Weisberg
Gary P. Zola

⁹⁰ S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

⁹¹ S. Res. 73 § 12, 114th Cong. (2015).