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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

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April 21, 2010

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530-0001

Dear General Holder:

I am writing to request that you name a special prosecutor pursuant to 28 U.S.C. §§ 510<sup>1</sup> and 515<sup>2</sup> to conduct a formal investigation into whether a crime was committed when White House officials attempted to secure Rep. Joe Sestak's withdrawal from Pennsylvania's Democratic Primary for the United States Senate. This request follows attempts I have made to obtain more information from the White House. I have written two letters asking some basic questions.<sup>3</sup> To date, the White House has not responded.

The lack of response by the White House is very significant. This White House has a long track record of mounting a considerable defense when it believes it has a basis

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<sup>1</sup> 28 U.S.C. § 510. Delegation of authority. The Attorney General may from time to time make such provisions as he considers appropriate authorizing the performance by any other officer, employee, or agency of the Department of Justice of any function of the Attorney General.

<sup>2</sup> 28 U.S.C. § 515. Authority for legal proceedings; commission, oath, and salary for special attorneys.

(a) The Attorney General or any other officer of the Department of Justice, or any attorney specially appointed by the Attorney General under law, may, when specifically directed by the Attorney General, conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrate judges, which United States attorneys are authorized by law to conduct, whether or not he is a resident of the district in which the proceeding is brought.

(b) Each attorney specially retained under authority of the Department of Justice shall be commissioned as special assistant to the Attorney General or special attorney, and shall take the oath required by law. Foreign counsel employed in special cases are not required to take the oath. The Attorney General shall fix the annual salary of a special assistant or special attorney.

<sup>3</sup> Letter from Rep. Darrell Issa, Ranking Member, H. Comm. on Oversight and Gov't Reform, to Robert Bauer, Counsel to the President, March 10, 2010; Letter from Rep. Darrell Issa, Ranking Member, H. Comm. on Oversight and Gov't Reform, to Robert Bauer, Counsel to the President, March 22, 2010.

for one.<sup>4</sup> Here, their silence is virtually an admission that they do not quarrel with Rep. Sestak's account. The White House's unwillingness to clearly and emphatically deny Rep. Sestak's allegations of criminal conduct leads me to conclude that his account is accurate, reliable and truthful.

On February 18, 2010, Rep. Joe Sestak acknowledged that the White House offered him a high ranking federal job – believed to be Secretary of the Navy – in exchange for bowing out of the Senate race. Since Sestak's initial admission, he has reiterated on numerous occasions that indeed he was offered a high level position in the Administration if he agreed to exit the race. If the Congressman is telling the truth – and no evidence has surfaced to the contrary – then a crime has been committed.<sup>5</sup>

According to the *Philadelphia Inquirer*, Rep. Sestak made the disclosure that the White House offered him a high ranking federal job in exchange for his commitment to withdraw from the Senate race. Rep. Sestak's disclosure came during an interview with veteran Philadelphia newsman Larry Kane for a news show for the Comcast Network. According to the *Inquirer*:

Rep. Joe Sestak (D., Pa.) said yesterday that the White House offered him a federal job in an effort to dissuade him from challenging Sen. Arlen Specter in the state's Democratic primary.

\* \* \*

Sestak would not elaborate on the circumstances and seemed chagrined after blurting out 'yes' to veteran news anchor Kane's direct question.

\* \* \*

Sestak said he recalled the White House offer coming in July, as he was preparing to formally announce his Senate candidacy in August.

\* \* \*

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<sup>4</sup> As for one example, approximately one year ago, in response to questions I raised about the flyover of lower Manhattan by an aircraft used as Air Force One, the Counsel's office provided a memorandum prepared by an Associate White House Counsel for the White House Deputy Chief of Staff. The seven-page memo, subject "Internal Review Concerning April 27, 2009 Air Force One Flight," details the White House's internal investigation of the flyover. The memo included a list of people interviewed and documents reviewed in the course of that investigation, going so far as to include sensitive information about personnel responsible for arranging the flyover.

<sup>5</sup> See 18 U.S.C. §§ 211, 595, and 600.

'I'm not going to say who or how and what was offered,' Sestak said in an interview. 'I don't feel it's appropriate to go beyond what I said,' because the conversation was confidential.

\* \* \*

'He asked me the question, and I had to answer it honestly,' Sestak said of his exchange with Kane.

\* \* \*

Still, Sestak's account was startling.

'Clearly, the offers are made,' said Ross Baker, a Rutgers University political science professor who specializes in Congress. 'When a White House wants to preempt a challenge, they'll dangle something. But it is almost never uttered.'

In addition, Baker said, conversations in such cases are nuanced, and savvy operators know not to use explicit quid pro quo language.

He said he could not, off hand, think of another instance in which a candidate has divulged an approach from White House officials.<sup>6</sup>

The only public statement the White House has made about Rep. Sestak's allegations has raised more questions. On March 16, 2010, White House Press Secretary Robert Gibbs stated publicly that he – the press secretary – personally met with several White House staffers about the criminal allegations raised by the Congressman. Gibbs stated:

I've talked to several people in the White House. I've talked to people who have talked to others in the White House . . . I'm told that whatever conversations have been had, are not problematic. I think Congressman Sestak has discussed that this is – whatever happened is in the past and he is focused on this primary.<sup>7</sup>

The Mark McGwire defense – not wanting to talk about what happened in the past – is not going to cut it here.

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<sup>6</sup> Thomas Fitzgerald, *Sestak Says Federal Job Was Offered to Quit Race*, PHILA. INQUIRER, Feb. 19, 2010.

<sup>7</sup> Fred Lucas, *White House Says Whatever Conversation It Had With Rep. Sestak Was 'Not Problematic'*, CNSNews.com, Mar. 17, 2010; Thomas Fitzgerald, *Gibbs: White House Conversations With Sestak Clean*, Commonwealth Confidential Blog, Philly.com, Mar. 16, 2010.

Gibbs's statements – namely that he is collecting direct evidence from witnesses – imply that the White House is allowing its communications staff to carry out investigative tasks ordinarily conducted by legal professionals in the Counsel's office. As I am sure you would agree this is no way to conduct a credible investigation.

A number of legal observers have questioned the legality of the White House's tactics to clear the field for party-switching, Senator Arlen Specter.<sup>8</sup> On March 4, 2010, former senior Justice Department official Hans A. von Spakovsky wrote for the *National Review* that such an arrangement may violate three sections of Title 18 – the federal criminal code.<sup>9</sup> Specifically von Spakovsky cited section 211, which proscribes bribery; section 595, which prohibits interference by government employees into nominations or elections of candidates for office; and section 600, which deals with corrupt government officials who use federal jobs for political purpose.

The full text of the criminal and penal code sections are as follows:

18 U.S.C. § 211 – Acceptance or solicitation to obtain appointive public office

**Whoever solicits or receives**, either as a political contribution, or for personal emolument, any money or thing of value, **in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined under this title or imprisoned not more than one year, or both.**

**Whoever solicits or receives any thing of value in consideration of aiding a person to obtain employment under the United States either by referring his name to an executive department or agency of the United States** or by requiring the payment of a fee because such person has secured such employment **shall be fined under this title, or imprisoned not more than one year, or both.** This section shall not apply to such services rendered by an employment agency pursuant to the written request of an executive department or agency of the United States.<sup>10</sup>

18 U.S.C. § 595 – Interference by administrative employees of Federal, State, or Territorial Governments

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<sup>8</sup> To complicate matters, according to the *Washington Post*, Robert Gibbs recently shared high-priced seats at a baseball game with Senator Specter – Opening Day for the Washington Nationals on April 5 in Owner Ted Lerner's box. See Roxanne Roberts and Amy Argetsinger, *VIPs Dare to Dream on Nationals Opening Day*, WASH. POST., Apr. 6, 2010 (“[Nationals Owner Ted Lerner] invited the President to the owner's box with Commissioner Bud Selig, press secretary Robert Gibbs, and Sen. Arlen Specter.”).

<sup>9</sup> Hans A. von Spakovsky, *Interference!*, NATIONAL REVIEW ONLINE, The Corner, Mar. 4, 2010.

<sup>10</sup> 18 U.S.C. § 211 (emphasis supplied).



**Whoever, being a person employed in any administrative position by the United States**, or by any department or agency thereof, or by the District of Columbia or any agency or instrumentality thereof, or by any State, Territory, or Possession of the United States, or any political subdivision, municipality, or agency thereof, or agency of such political subdivision or municipality (including any corporation owned or controlled by any State, Territory, or Possession of the United States or by any such political subdivision, municipality, or agency), in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or any department or agency thereof, **uses his official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate for the office** of President, Vice President, Presidential elector, **Member of the Senate**, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, **shall be fined under this title or imprisoned not more than one year, or both.**

This section shall not prohibit or make unlawful any act by any officer or employee of any educational or research institution, establishment, agency, or system which is supported in whole or in part by any state or political subdivision thereof, or by the District of Columbia or by any Territory or Possession of the United States; or by any recognized religious, philanthropic or cultural organization.<sup>11</sup>

18 U.S.C. § 600 – Promise of employment or other benefit for political activity

**Whoever**, directly or indirectly, **promises any employment, position**, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, **to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in connection with any general or special election to any political office**, or in connection with any primary election or political convention or caucus held to select candidates for any political office, **shall be fined under this title or imprisoned not more than one year, or both.**<sup>12</sup>

<sup>11</sup> 18 U.S.C. § 595 (emphasis supplied).

<sup>12</sup> 18 U.S.C. § 600 (emphasis supplied).

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The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X.

After you have reviewed this matter, I would appreciate it if you would let me know how the Department plans to proceed. If the Department has any questions about this request, please contact Steve Castor of the Committee staff at 202-225-5074.

Thank you for your attention to this matter.

Sincerely,



Rep. Darrell Issa  
Ranking Member

cc: Chairman Edolphus Towns