

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

MINORITY (202) 225-5051

<http://oversight.house.gov>

May 25, 2016

The Honorable Ellen F. Rosenblum
Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096

Dear Madam Attorney General:

Our Committee has nearly concluded its investigation into the Cover Oregon collapse, and we are referring the matter to your office for criminal investigation and prosecution. Given your role in the ongoing litigation and closeness to several of the prospective defendants, we expect you and any other similarly-conflicted aides will be recused, and a special prosecutor be appointed forthwith.

As you are aware, for more than a year, the Committee has investigated allegations Oregon officials misused \$305 million of federal taxpayer dollars awarded by the Department of Health and Human Services to create a state-based health insurance exchange under the Patient Protection and Affordable Care Act (PPACA).¹ The Committee obtained more than 170,000 pages of documents from the State of Oregon, the Centers for Medicare and Medicaid Services, the outside IT vendor Oracle, and testimony from five key witnesses.

The documents and testimony show Oregon State officials misused \$305 million of federal funds and improperly coordinated with former Governor John Kitzhaber's campaign advisers. Official decisions were made primarily for political purposes. Cover Oregon was established as an independent organization by the legislature, and was not intended to be a wholly controlled subsidiary of the Governor's political apparatus. Evidence obtained by the Committee shows, however, close coordination between Governor Kitzhaber, his official staff, his campaign advisers, and the supposedly independent Cover Oregon. The evidence we have uncovered implicates violations of State laws that restrict political activity by public employees.²

¹ Letter from Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, Jim Jordan, Chairman, Subcomm. on Health Care, Benefits and Administrative Rules, Mark Meadows, Chairman, Subcomm. on Gov't Operations, and Will Hurd, Chairman, Subcomm. on Information Technology, to Hon. John Kitzhaber, Governor of Oregon (Feb. 13, 2015).

² E.g., ORS 260.432, "Restrictions on Political Campaigning by Public Employees."

A staff report detailing the findings of the Committee’s year-long investigation is enclosed with this letter. Documents and testimony show former Governor Kitzhaber and a mixture of his official and campaign staff influenced and interfered with the Cover Oregon project for political purposes. In fact, at the first meeting of the Governor’s closest campaign advisers in advance of the 2014 gubernatorial election, the agenda included the “Cover Oregon 100 day plan.”³

The documents and testimony show the Governor’s staff and campaign advisers worked hand in hand on Cover Oregon and played key roles in the eventual decision to abandon it. These officials and advisers had no experience with technology or IT platforms. For example, in an email discussing “oversight of campaign/gov office coordination,” the Governor’s Chief of Staff, Michael Bonetto, wrote: “I do believe that the initial focus will need to be 90+% on Cover Oregon for the next few months.”⁴ Governor Kitzhaber’s top political operative, Patricia McCaig, responded that the focus on Cover Oregon was going to result in the campaign getting “behind in that parallel universe which is as important.”⁵

McCaig testified to the Committee that the Governor used “funds from his campaign . . . to assist him in his formal capacity.”⁶ Oregon campaign finance law prohibits mixing official State business and campaign activities.⁷ In this case, the Governor used campaign money to finance official activities related to Cover Oregon. This violates the law establishing Cover Oregon as an independent entity – a structure arranged to protect the project from being influenced by the whims of the Governor’s political objectives.

Documents and testimony also show Oregon officials attempted to thwart recordkeeping laws through the use of off-line mechanisms of communication. For example, Cover Oregon Executive Director Bruce Goldberg used his personal email account to communicate with the Governor’s Chief of Staff, Michael Bonetto.⁸ Many of the discussions regarding Cover Oregon were routinely conducted on personal email accounts. The routine use of personal, non-official email accounts to discuss Cover Oregon shows the Governor’s official staff were aware that their communications with the non-official, political staff were problematic.

Documents and testimony obtained by the Committee also show former Governor Kitzhaber’s top political advisers drove many official decisions related to Cover Oregon, including the decision to switch to the federal exchange, and lobbied you to institute litigation against the primary IT vendor, Oracle Corporation. For example:

³ Email from Cylvia Hayes to Tim Raphael, Dan Carol, Stephen Bella, Curtis Robinhold, Bill Wyatt, Patricia McCaig, Steve Marks, and Scott Nelson, copying John Kitzhaber (Mar. 30, 2014) (COGR_SHCBAR_KL_0826).

⁴ Email from Michael Bonetto to Patricia McCaig (Feb. 9, 2014) (RMBG2002621).

⁵ *Id.*

⁶ H. Comm. on Oversight and Gov’t Reform, Deposition of Patricia McCaig, Tr. at 43 (Feb. 25, 2016).

⁷ ORS 260.432(2), states “no public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder while on the job during working hours.”

⁸ *See, e.g.*, Email from Bruce Goldberg to Michael Bonetto, copying Sean Kolmer, Bruce Goldberg (March 24, 2014) (MBG2028022-33).

- On May 24, 2014, the Governor wrote to Bonetto and McCaig and complained that “Cover Oregon has derailed any forward momentum” and that “we can’t seem to compete with the free independent expenditure campaign that the Cover Oregon issue is giving to [Republican opponent] Dennis Richardson.”⁹
- On May 25, 2014, McCaig stated she was working on “specific actions which will form the basis for the Governor’s announcement of his intent to pursue Oracle.” The proposed actions included a letter to your office requesting a lawsuit against Oracle.¹⁰
- On May 27, 2014, Bonetto set up a call with McCaig and others to discuss “where we are with letters.” Bonetto “attached the latest draft letters to the AG (thanks PMc). . . .” One of the attachments was titled “Dear Attorney General Rosenblum.”¹¹
- On May 28, 2014, McCaig emailed the Governor and asked him to review a draft version of the letter asking you to sue Oracle. McCaig stated she hoped “to get a call scheduled with you and AG Rosenblum between 10-11 as you drive up from Roseburg tomorrow. We need to know the AG’s reaction before we proceed any further.”¹²
- On May 29, 2014, Governor Kitzhaber sent your office a letter asking for immediate legal action against Oracle.¹³ It was substantially similar to the version drafted by his campaign advisers.
- On May 29, 2014, McCaig emailed members of the Governor’s campaign team, Area 51, to let them know “Today Governor Kitzhaber asked Oregon’s attorney general and the US inspector general to initiate legal action to recover costs and damages from Cover Oregon’s primary website contractor, Oracle.”¹⁴ Cylvia Hayes praised McCaig’s work: “It was indeed a good day. A move back to being on offense. Great work.”¹⁵

⁹ Email from John Kitzhaber to Michael Bonetto and Patricia McCaig (May 24, 2014) (MBG2002872-74).

¹⁰ Email from Patricia McCaig to John Kitzhaber, copying Michael Bonetto, Sean Kolmer, and Tim Raphael (May 25, 2014) (MBG2000397).

¹¹ Email from Michael Bonetto to Patricia McCaig, Tim Raphael, Duke Shepard, Dmitri Palmateer, Nkenge Harmon Johnson, and Sean Kolmer (May 27, 2014) (MBG2000711-17). There appears to be inconsistent time stamps on some of the materials produced by Michael Bonetto and therefore this email may have been sent at 7:47 PM on May 26, 2014 rather than on May 27, 2014 at 2:55 AM. The timestamp inconsistency does not have any meaningful impact on the timeline discussed in this letter. See Email from Patricia McCaig to Michael Bonetto (May 27, 2014) (MBG2000950).

¹² Email from Patricia McCaig to John Kitzhaber copying Mike Bonetto and Tim Raphael (May 28, 2014) (MBG2002385).

¹³ *Gov. Kitzhaber seeks lawsuit over Cover Oregon health exchange*, ASSOC. PRESS, May 29, 2014; Letter from John Kitzhaber to Ellen Rosenblum (May 29, 2014).

¹⁴ Email from Cylvia Hayes to Patricia McCaig, John Kitzhaber, Bill Wyatt, Curtis Robinhold, Tom Imeson, Steve Marks, Stephen Bella, Scott Nelson, Dan Carol, Tim Raphael, Mike Bonetto, copying Mark Wiener and Mike Marshall (May 30, 2014) (MBG2005487-88).

¹⁵ *Id.*; see also, email from Dan Carol to Patricia McCaig, copying Cylvia Hayes, John Kitzhaber, Bill Wyatt, Tom Imeson, Curtis Robinhold, Stephen Bella, Steve Marks, Tim Raphael, Scott Nelson, Michael Bonetto, Mark Wiener, Mike Marshall (May 30, 2014) (MBG2005425-26).

The Honorable Ellen F. Rosenblum

May 25, 2016

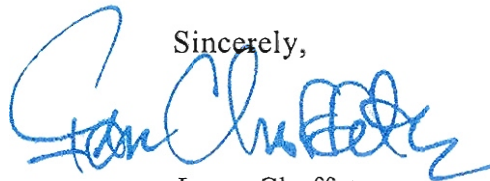
Page 4

- Later that summer—just months in advance of the 2014 election—McCaig requested a conference call to discuss “Oracle lawsuit follow-up—critical dates for possible actions between now and the election.”¹⁶

We trust you will appoint a special counsel to review the evidence of criminal activity described herein. The Cover Oregon collapse demands to be appropriately and thoroughly investigated by an unbiased, neutral special counsel. In light of the fact that you are currently managing the State’s litigation here against the IT vendor, we formally request that you recuse yourself and your closest aides from any role in the investigation of unlawful campaign activity by State employees.¹⁷

Thank you for your attention to this important matter. Please contact Committee staff at (202) 225-5074 with any questions about this request, or any of the Committee’s findings with respect to Cover Oregon.

Sincerely,



Jason Chaffetz
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

Mr. Elliot S. Berke, Berke Farah LLP

¹⁶ Email from Michael Bonetto to Sean Kolmer (Aug. 25, 2014) (MBG2049394).

¹⁷ An additional cause of concern and fact counseling recusal comes in the form of a letter dated May 10, 2016 on your behalf from Berke Farah LLP, the same outside counsel to several witnesses in the Committee’s investigation, many of whom are key witnesses and potential future criminal defendants in state actions. With the obvious conflicts, it is not clear how Berke Farah properly represents, the State of Oregon, you as Attorney General, plus other witnesses. *See*, Letter from Elliot S. Berke, Berke Farah LLP, to Hon. Jason Chaffetz, Chairman, and Hon. Elijah Cummings, Ranking Member, H. Comm. on Oversight and Gov’t Reform (May 10, 2016).