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November 24, 2014

The Honorable Candice S. Miller
Chairman
Committee on House Administration
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Miller,

Thank you for sharing with the minority a copy of the contract which you have approved, on behalf of the committee, between the House General Counsel and the latest lawyer the Republican Leadership has retained to prosecute their lawsuit concerning implementation of the Affordable Care Act. We certainly believe that the committee should have considered this contract in open session, which would have allowed us to debate the proposal in regular order. Since we had no opportunity to be heard before the committee approved the contract, we are posing the following questions below:

1. Under Paragraphs 2 and 3 of the contract, Jonathan Turley is to be paid \$500 an hour for his time and reimbursed for expenses, subject to a cap of \$350,000. Under Paragraph 9, the duration of the contract, however, extends at most only to Noon on January 3, 2015. The contract appears to contemplate that Mr. Turley will perform all the work individually since Mr. Turley expressly agrees not to pay law students for their services. Paying Mr. Turley \$350,000 for a month and two weeks of labor is equivalent to annual compensation of more than \$3 million or more than 60 times more than the average American makes in an entire year (median household income in the United States in 2013 was \$51,939). What steps has the House Administration Committee undertaken to ensure that the entire cap is not expended in this extremely short time frame? And after January 3, 2015, would the cap carry over and would expenses accrued to that date be credited to the cap? Or would a new and larger cap be authorized? In addition, the January 3, 2015 expiration date of the contract effectively limits Mr. Turley's reporting of time and expenses to a single report on December 20, 2014. Given this very short time frame and the extraordinary amount of money that Mr. Turley is being paid, would it not be more appropriate for Mr. Turley to report his time and expenses on a weekly basis?

2. The previous two contracts that the House Administration Committee Chair approved in the attempts to secure legal representation to file the lawsuit against the President refer to a “blended rate of \$500 per hour.” The contract to Mr. Turley provides for \$500 per hour, not for a “blended rate.” In addition, the previous two contracts called for 75 per cent of the customary rate for all the time of non-attorneys, but not in the contract with Mr. Turley. Why were these terms in the previous contracts left out?
3. Under Paragraph 4 of the contract, Mr. Turley agrees to refrain from making statements, granting interviews or otherwise conferring with any member of the media or any media organization. However, given that Mr. Turley extensively participates in various media forums, including writing his own blog, would it not be better to prohibit Mr. Turley from making any media appearances in which he comments on the extent of the executive authority of the President in any context whatsoever during the pendency of this case? Moreover, since the limitation appears to be in force only for the life of the contract, would it not better protect the interests of the House if Mr. Turley was prohibited from making statements, granting interviews or otherwise conferring with any member of the media or media organization for a period of years following the conclusion of this case?
4. Under Paragraph 4 of the contract, Mr. Turley is permitted to subcontract or assign elsewhere any of the work or services required by the agreement if he gets prior written consent from the General Counsel. This is an extraordinarily broad grant of authority to the General Counsel whose consent is not limited by any conditions or standards nor is it subject to any review by the House of Representatives. Knowing the Majority’s concern about overbroad grants of authority to individuals, would it not better protect the interests of the House to require the review of any consent granted by the General Counsel by the House Administration Committee? Paragraph 8 contains a similar broad grant of authority to the General Counsel without any requirement of Congressional review or approval. Like Paragraph 4, the interests of the House would be better protected with a requirement that the House Administration Committee approve any consent to outside experts, consultants or attorneys by the General Counsel.
5. Paragraph 8 of the contract also permits, with the approval of the House General Counsel, the use of George Washington University law students to assist Mr. Turley, provided that each law student involved agrees to be bound by the terms of the contract and Mr. Turley does not bill the House for any time that the law students expend on the lawsuit. This provision appears to contemplate the use of law students who will not be paid and could be exploited, and who have not passed the bar or any required ethics exams to practice law. Will the House Administration Committee seek to modify the contract to provide that if law students are used, that Mr. Turley shall report the names and hours of the law students who have worked without pay, and provide for the instruction by a professor of legal ethics, including covering Rule 3.1 of the DC Rules of Professional Conduct, which requires that there be a basis in law and in fact for a legal proceeding to commence.

6. Paragraph 4(f) of the contract does not explicitly prohibit Mr. Turley from discriminating against individuals on the basis of sexual orientation and gender identity. However, the nondiscrimination policies of Mr. Turley's employer, George Washington University, forbid discrimination on the basis of sexual orientation and gender identity. Will the House Administration Committee seek to modify the contract to forbid discrimination against individuals on the basis of sexual orientation and gender identity, so that the contract's nondiscrimination provision comports with George Washington University's nondiscrimination policies?
7. Given recent media reports indicate that House Republicans plan to sue the President on his Immigration Accountability Executive Actions, are House Republicans negotiating with or plan to negotiate with Mr. Turley to represent them in their planned immigration lawsuit?
8. If the House Republicans' planned immigration lawsuit is in the works, will the cap on ACA lawsuit apply or are House Republicans planning a separate and higher cap for the immigration lawsuit? For the planned immigration lawsuit, are House Republicans planning to offer \$500 an hour to attorneys to represent them – or will they offer even more?

I look forward to discussing these issues with you in greater detail.

Sincerely,



Robert A. Brady
Democratic Ranking Member