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WASHINGTON, DC 20510

September 13, 2013

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The Honorable Barbara Boxer, Chair
The Honorable Johnny Isakson, Vice Chair
Senate Select Committee on Ethics
Hart Building, Room 220
Washington, DC 20510

Re: Request for Investigation of Senator Harry Reid, Senator Barbara Boxer, and their respective staffs

Dear Chairwoman Boxer and Vice Chairman Isakson:

I respectfully request that the Senate Select Committee on Ethics investigate whether Senator Harry Reid, Senator Barbara Boxer, and their respective staffs violated the Committee's Rules by proposing and circulating through the press legislation that ties Members' personal healthcare benefits to their performance of specific acts and votes. This is attempted bribery, and the exact sort of behavior that the Senate Ethics Committee has previously condemned.

News reports indicate that Senator Reid, Senator Boxer, and their staffs took the above concrete actions, thereby threatening their colleagues in the Senate with increased personal healthcare costs if they do not vote a certain way on a particular amendment proposed by me concerning the 2010 Affordable Care Act. As more fully explained below, Senator Reid's and Senator Boxer's offering of such a quid pro quo arrangement to their Senate colleagues is a violation of this Committee's Rules and flies in the face of its enforcement policies articulated in previous ethics matters.

Questions for Senators Reid and Boxer, and Their Staffs

If Senators Reid and Boxer, and their staffs, assert that they have not been involved in this Democratic intimidation and payoff scheme, then they should be forced by your Committee to answer the following questions under threat of perjury:

- 1) When did you become aware of the Democratic-lead plan to tie Senators' personal healthcare benefits to their official actions? Have you, as Senate Majority Leader and Chair of the Senate Select Committee on Ethics, taken any actions to prevent this bribery scheme from being implemented?
- 2) The news organization *Politico* has reported that this scheme was "drafted by staff in response to requests by several Democratic senators...it was discussed at a Senate

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Democratic lunch on Thursday.” Who are the Democratic staff members that drafted this legislation?

- 3) Who specifically are the “several Democratic senators” who requested that this legislation be drafted?
- 4) Did Senators Reid and Boxer attend the referenced Senate Democratic lunch where this legislation was discussed? If yes, were either or both of them a part of such discussion?
- 5) Was ethics guidance requested from this Committee by the involved staffers and/or the several Democratic Senators who proposed this bribery scheme? If so, what guidance was provided?

Request for Chair Boxer’s Recusal

The Chair of the Ethics Committee is in a position of unique importance, and her integrity and credibility must be beyond reproach. Until sworn answers are provided to the above outlined questions that prove she was not in any way involved in the development of the outlined intimidation tactics, I respectfully request that Chair Boxer recuse herself from this matter. It is absurd on its face to think that the Committee can fairly and impartially address the potential ethics violations outlined herein when the Committee’s Chair and her staff appear to have orchestrated them in the first place, or at best were aware of them and did nothing to stop the violations, therefore becoming co-conspirators.

This situation is especially egregious because news reports indicate that the Democratic scheme includes use of the Senate Ethics Committee process to intimidate senators and influence their official actions and votes.

Upon proof or Senator Boxer’s complicity in this scheme, the minimum consequence for such behavior should be her removal from the Committee.

Facts and Precedent

In response to my proposal and call for a vote on my amendment to reverse the Office of Personnel Management’s Congressional exemption from the Affordable Care Act, Senator Reid and Boxer have apparently lead an effort to employ political scare tactics, personal attacks, and threats that would affect each Senator’s personal finances (i.e. bribery). News reports indicate that one of these proposals would prohibit the employer contribution to any “Member of Congress who has offered an amendment in the House of Representatives or the Senate that would prohibit such contributions on behalf of other individuals, or who has voted for the adoption of such an amendment.” Such an arrangement, whereby the Senate Majority Leader and the Chair of this Committee are threatening to take away their colleagues’ healthcare coverage subsidy if they do not vote a certain way, at worst constitutes bribery and a quid pro quo arrangement, and at best amounts to improper conduct reflecting discreditably on the Senate.

Even if the proposed amendment is not actually introduced, the fact that such legislation has not only been drafted, but also released to the press, has already induced the intended intimidating effect. *Politico* described the scheme as “a hardball move” by the perpetrators, and the ethics violation has now occurred.

The Senate Ethics Manual makes clear that personal financial penalties may not be used to induce Senators to take an official act. In addition, this Committee has been clear that Senators may not hold government officials captive by tying their personal finances or benefits to their official acts. As recently as 2012, this Committee explained:


As stated in the Code of Ethics for Government Service, “public office is a public trust.” A government employee must not be influenced by extraneous factors when making decisions and “never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.”

In this case, Senator Reid's and Senator Boxer's tying Senators' personal healthcare benefits to their official actions undermines these principles. If a senator voted for Senator Reid's and Senator Boxer's favored amendment, and against my amendment, it would appear that his or her decision was based on personal interests, and not the public interest.

In addition, the federal bribery statute makes it a crime to “directly or indirectly, corruptly give[], offer[] or promise[] anything of value to any public official ... with intent ... to influence any official act.” The phrase ‘anything of value’ in bribery and related statutes has consistently been given a broad meaning, to carry out the congressional purpose of punishing misuse of public office.” Just as Courts have recognized that the promise of higher-paying employment is a “thing of value” for purposes of the statute, the employer contribution that is being threatened to be withheld from Members who do not vote the way that Senators Reid and Boxer prefer is clearly also a “thing of value,” and therefore subjects the members and staff involved in this scheme to potential bribery prosecution.

I request that the Committee immediately investigate Senator Reid's and Senator Boxer's attempt to induce official action by their Senate colleagues by threatening to take away their healthcare benefits if they do not vote for their proposal and against my amendment.

Respectfully submitted,

A handwritten signature in black ink that reads "David Vitter". The signature is written in a cursive style with a large, stylized "D" and "V".

David Vitter
United States Senate