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COMMITTEE ON EDUCATION
 AND THE WORKFORCE
 U.S. HOUSE OF REPRESENTATIVES

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November 23, 2011

The Honorable Brian Hayes
 Board Member
 National Labor Relations Board
 1099 14th St. N.W.
 Washington, D.C. 20570-0001

Dear Member Hayes:

I respectfully request that you provide me and the Committee on Education and the Workforce with information regarding any requests, recommendations, or demands that you or your office have received calling upon you to resign from, obstruct, or otherwise incapacitate the National Labor Relations Board ("the Board"), as well as any offers or discussions regarding future employment.

As you are fully aware, the Board is an independent federal agency that administers and enforces the National Labor Relations Act for both employers and employees.¹ A functioning Board is critical to stable labor relations in this country. The U.S. Supreme Court has ruled² that the Board must have a three-member quorum in order to execute many of its responsibilities. You took an oath to fulfill those responsibilities. During the Senate confirmation process, you affirmed under oath your intention to serve the full term to which you were appointed. If you resign before the President can appoint, or the Senate can confirm, a Member to the Board to replace you, you will effectively shut down the Board's ultimate decision-making authority.

I have read reports of special interest organizations and individuals calling on you to resign precisely to incapacitate the Board. I am also in receipt of a November 21, 2011, letter from Board Chairman Pearce to you, indicating that you have indeed threatened to resign. The open calls to resign, followed by the threats you allegedly have made, raise the specter of private requests as well. I am concerned that any decision to resign prematurely will be the result of objectionable motives or improper influence.

These open calls for you to cripple the Board began at least as early as August 2011. The website LaborUnionReport.com³ urged you "to resign your position as a member of the National Labor Relations Board," asserting that "[i]f you resign your position, the NLRB will become incapacitated." LaborUnionReport.com added that "your resignation will help incapacitate the NLRB until after the 2012 elections."⁴ It is my understanding that this website is owned by a union avoidance consulting firm called Kulture, LLC. Around the same time, South Carolina Governor Nikki Haley announced that she too

¹Pub. L. 74-198, 49 Stat. 452.

² On June 17, 2010, the Supreme Court ruled in *New Process Steel vs. the NLRB* (130 S. Ct. 2635), that the two-member Board lacked the authority to decide cases.

³ <http://www.laborunionreport.com/portal/2011/08/an-open-letter-to-gop-nlr-member-brian-hayes-please-resign-immediately/>

⁴ Id.

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supports your resignation in order to shut-down the Board.⁵ According to Chairman Pearce's letter, you made your threat to resign in mid-October 2011.

Short of resignation, there are indicia of other behaviors that appear designed to incapacitate the Board or otherwise obstruct its business. For example, your November 18, 2011, letter to Chairman Kline indicates that you believe you can single-handedly shut down any action of the Board, by merely withholding your consent from the Board to act, though you offer no plausible legal argument for such power. Additionally, your November 18 letter complains that you have been excluded from a rulemaking process. To the contrary, Chairman Pearce's November 21, 2011, letter to you provides numerous examples of your alleged failure to attend briefings, have your staff participate in comment reviews, engage other members of the Board about the substance of proposals or the process, respond to requests from other members of the Board to provide your views, or attend regularly scheduled meetings of the Board.

All of these developments – from the public calls for your resignation to the behaviors described in Chairman Pearce's letter – paint a troubling picture of your activity – or inactivity – at the Board. The integrity and viability of the Board depend upon the good faith execution of its Members' responsibilities. Threatening to shut down the Board itself if fellow Members make policy choices with which you disagree is, to my knowledge, unprecedented behavior from a Member of the Board.

Because I am less aware of the private requests or enticements that you may have received to resign prematurely, threaten to do so, or otherwise obstruct or incapacitate the Board, I have attached a specific list of requested information to shed light on those communications. I have also included specific instructions as to how you should produce that information to me and the Committee no later than Friday, December 2, 2011.

If you have questions regarding this request, please contact me or direct your staff to contact the Committee's Investigative Counsel, Kate Ahlgren, who may be reached at (202) 225-3725. I appreciate your attention to this matter.

Sincerely,



GEORGE MILLER
Senior Democrat
Committee on Education and the Workforce

cc: Chairman John Kline
Enclosures

⁵ <http://dailycaller.com/2011/09/01/s-c-gov-supports-crippling-un-american-nlr-including-resignation-of-lone-gop-member/>

Schedule

1. A list of all communications between the Honorable Brian Hayes and any parties external to the National Labor Relations Board (“the Board) regarding Member Hayes’ resignation from the Board or future employment from December 1, 2010, through the date of this request. The list shall include the date and description of each such communication and the identities of the individuals involved.
2. All documents related to such communications from December 1, 2010, through the date of this request.
3. All documents related to the Board’s required ethics training completed by the Honorable Brian Hayes from June 29, 2010, through the date of this request.
4. A copy of the Honorable Brian Hayes’ executed *Ethics Commitment by Executive Branch Personnel* pursuant to Executive Order 13490 (January 21, 2009).

Instructions & Definitions

In responding to this document request, please apply the instructions and definitions set forth below.

Instructions

1. Produce a copy of all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Also produce documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. If you know that any entity, organization, or individual denoted in this request has been, or is currently, known by any name other than that herein denoted, the request should be read also to include such alternative identification.
3. Produce each document sequentially bates-stamped and in a form that renders the document capable of being copied.
4. Identify each item number in the Schedule to which each document is responsive.
5. Produce responsive documents together with copies of file labels, dividers or identifying markers with which they were associated when this request was issued.
6. Produce every responsive document even if another person or entity also possesses a non-identical or identical copy of the same document.
7. If any of the requested information is stored in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you should consult with Committee counsel to determine the appropriate format in which to produce the information.
8. If any document responsive to this request was, but no longer is, in your possession, custody, or control, to the best that you are able, identify the document (stating its date, author, subject

and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.

9. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voicemails, microfiche, microfilm, videotape, recordings and motion pictures), and electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs memory sticks, and recordings) and other written, printed typed, or other graphic or recorded matter of any kind of nature, however or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft of non-identical copy is a separate document within the meaning of this term.
2. The term “related,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent, to that subject.
3. The terms “you” or “your” refer to the entity to which the request is addressed, to the custodian of documents for the entity, or both, as the context most broadly construed allows or requires.

4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The term "communication" means each manner or means of disclosure or exchange of information, regardless of the method used, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.