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(Retired)

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August 6, 2018

Via E-mail:
Iris.Lan3@usdoj.gov

Rod J. Rosenstein, Deputy Attorney General
United States Department of Justice
c/o Iris Lan
Associate Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Grand Jury Investigation of Congressman Duncan D. Hunter

Dear Deputy Attorney General Rosenstein:

I represent Congressman Duncan D. Hunter in the above-mentioned grand jury investigation being conducted by the United States Attorney's Office for the Southern District of California. The investigation has been ongoing for more than two years, but we were recently informed – a mere four weeks after the June primary that my client won handily – that the investigation was concluding. Since then, the Southern District is rushing to indict Congressman Hunter under, in the prosecutors' own words, "artificial pressure" from above.

Because California employs a "jungle primary" process, an indictment brought just after the June primary but before the general election – which is what we understand the Southern District intends to do – will result in a solidly Republican district being handed to a Democratic candidate who garnered a mere 16 percent of the vote in the primary. Under California election law, these two candidates must appear on

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the ballot, and there is no mechanism for the Republicans to replace Congressman Hunter on the ballot after June 5th.¹

The Southern District's truncated process supports the conclusion that its prosecution of Congressman Hunter is politically motivated. Congressman Hunter was the first sitting member of Congress to endorse President Trump in February 2016, and he has been an outspoken supporter of the President ever since. As discussed in more detail in the attached Exhibits, key members of the prosecution team attended a private fundraiser for Hillary Rodham Clinton's presidential campaign (without making the contributions that all other attendees were required to make) prior to opening this investigation. The only way these two Assistant US Attorneys were able to attend was by use of their official positions as Department of Justice employees. The overt political leanings of two individuals intimately involved in the investigation, combined with, among other things, the Southern District's sudden, inexplicable rush to indict my client before the general election without affording him sufficient due process, create an actual and/or apparent conflict that cannot be ignored. More importantly, it gives the appearance that politics are a factor in the rush to indict. As you told the ABA Convention last Thursday:

The Department of Justice in which I serve must never be a partisan actor ... Our agents and prosecutors are obligated to make neutral decisions, preserve personal privacy, protect national security, and insulate investigations from the reality, **or the appearance, of political interference.**

¹ This is unlike many other states, which use different election laws that more fully embrace the two-party system.

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The facts and circumstances here contradict your aspirations. We urge your consideration.

By letter dated July 30, 2018, I wrote to United States Attorney Adam L. Braverman informing him of the actual and/or apparent conflict of interest in the investigation of Congressman Hunter as a result of the conduct of the two Assistant US Attorneys involved in the investigation. In my letter, I asked that his office be recused. The specific basis for the recusal request was set forth in a letter to Brian A. Benczkowski, Assistant Attorney General for the Criminal Division. (Copies of both letters are attached hereto as Exhibits 1 and 2). On August 3, 2018, United States Attorney Braverman responded via letter that he had reviewed my request and did not believe that the circumstances necessitated a recusal.² He stated that if additional review was requested, it should be made directly to you by August 6, 2018 by 9 a.m. EST (sic) (**6 a.m. PDT**).

I hereby request additional review of the decision by United States Attorney Braverman. An objective review of the facts forming the basis for the recusal request establishes that the United States Attorney's Office for the Southern District of California has lost its impartiality in its rush to indict Congressman Hunter. I further request the opportunity to meet with the decision-makers in Washington DC to address numerous substantive deficiencies in the anticipated indictment.

I ask only for fair consideration. There would be no harm in affording me the opportunity to present my client's case in Washington DC. If the prosecutors are confident in their case, it will be the same after an impartial review. However, if I am even partially correct, hearing out my concerns before an indictment will benefit both the administration of justice *and* the preservation of the electoral process. Indeed, if

² In his letter, US Attorney Braverman did not deny or contradict the underlying facts that formed the basis for my request that his office be recused.

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Congressman Hunter is indicted now under suspicious circumstances that could swing a solidly Republican seat in the mid-term elections, the harm to both my client and the democratic process will be grave and irreparable.⁴

Furthermore, because of the Southern District's rush to indict, Congressman Hunter has not been afforded an opportunity to address the substantive deficiencies of the case to an impartial audience. That would be the customary practice in the Southern District and elsewhere, and it was initially promised here. On July 20th, I specifically requested the opportunity to present substantive issues to relevant decision-makers in Washington DC. I now ask you directly for that meeting. The timetable is not of my making, but instead that of the conflicted prosecution team.

If given the opportunity to meet you, I will focus on several concerns about anticipated charges that reflect an overly aggressive prosecution intent on criminalizing conduct that is civil in nature. The prosecutors' July 20th presentation of the supposed evidence against my client revealed that they have misconstrued facts and misunderstand the relevant legal framework, including the rules and regulations of the Federal Election Commission (FEC). In light of the deficiencies in this presentation, I question whether the FEC or other election law experts were sufficiently consulted in this process. Any such consultation would have confirmed that supposedly "criminal" transactions involving the Congressman actually fall into FEC grey areas or are altogether permissible.

This is true even for personal indiscretions of the Congressman that the prosecutors seem intent on charging. (The prosecutors even said they have "pictures" to prove it). The supposed reason given for

⁴ This criticism of the rush to indict comes not from a partisan Republican, but from a Democrat. I was nominated to the position of United States Attorney for the Southern District of California by President Clinton.

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including these details is that they reflect spending of campaign funds for extramarital infidelities and excessive drinking. While there may be evidence of infidelity, irresponsibility, or alcohol dependence, once properly understood, the underlying facts do not equate to criminal activity; these allegations are, however, intended to embarrass and humiliate the Congressman shortly before a crucial election, and also to alienate him from his wife, the only other person under investigation and his intended co-defendant.

I simply ask for the Department of Justice to postpone the indictment of my client for a limited amount of time to permit an impartial review of the Congressman's conduct. I request this in lieu of allowing a hurried indictment to be returned less than three months before Election Day without sufficient due process for Congressman Hunter. I respectfully suggest that my client is entitled to that process in keeping with the fundamental values of the Department of Justice that you lead. I appreciate your consideration of this request and am available to discuss it at your convenience.

Sincerely,



Gregory A. Vega
Seltzer Caplan McMahon Vitek
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Enclosures

EXHIBIT 1

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July 30, 2018

VIA U.S. MAIL & HAND DELIVERY

Adam L. Braverman, Esq.
United States Attorney
Southern District of California
880 Front Street, Room 6293
San Diego, CA 92101

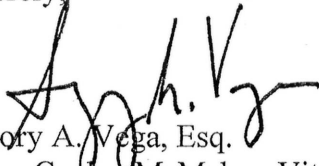
Re: Grand Jury Investigation of Congressman Duncan Hunter
Our File: 19294.75853

Dear Mr. Braverman:

I represent Congressman Duncan D. Hunter in the above-mentioned investigation. Upon review of your office's conduct in the investigation, it appears that the United States Attorney's Office for the Southern District of California has an actual and/or apparent conflict of interest and must be recused.

Attached hereto is a letter sent to Brian A. Benczkowski, Assistant Attorney General for the Criminal Division, setting forth the facts that warrant the recusal of your office.

Sincerely,



Gregory A. Vega, Esq.
Seltzer Caplan McMahon Vitek
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July 30, 2018

Brian A. Benczkowski, Esq.
Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: In re Grand Jury Investigation of Congressman Duncan D. Hunter

Dear Assistant Attorney General Benczkowski:

I am the former United States Attorney for the Southern District of California and the attorney representing Congressman Hunter and I do not write this letter lightly. I write to you regarding the Grand Jury Investigation of Congressman Duncan D. Hunter, an investigation being conducted by the United States Attorney's Office for the Southern District of California.¹ I seek review by the appropriate senior Department of Justice officials based on two grounds. First, serious concerns of an actual and/or perceived conflict of interest by the United States Attorney's Office based on conduct by the Former Acting United States Attorney (currently the First Assistant United States Attorney) and an Assistant US Attorney who is a member of the team investigating Congressman Hunter. Second, I seek review on policy considerations for self-reporting to the Federal Election Commission (FEC). Based on the facts set forth below, I ask that prosecution of Congressman Hunter be declined or, in the alternative, that the United States Attorney's Office for the Southern District of California be recused from any prosecution of Congressman Hunter and his wife and that the matter be transferred to another US Attorney's Office for an impartial investigation.

Actual and/or Perceived Conflict of Interest

By way of background, on Friday, August 7, 2015, a political fundraiser was held at a private home in La Jolla, California for Presidential candidate Hillary R. Clinton. The fundraiser was from 9:00 a.m. until approximately noon, and contributors paid from \$1,000 to \$2,700 to attend. Present at the fundraiser were

¹ Congressman Hunter's spouse, Margaret Hunter, is also being investigated.

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First Assistant US Attorney Alana Robinson and Assistant US Attorney Emily W. Allen.² In light of subsequent events and the state of the criminal investigation, their attendance at this event raises significant concerns regarding a conflict of interest and/or a loss of impartiality. Questions must be asked, including why were they in attendance having not made contributions, why were they at the event during work hours, and did they take annual leave to attend?³ Regardless of the answers to these questions, and even if there are benign explanations, it is only logical to conclude that they attended primarily because they wanted to be at an intimate event with candidate Clinton, show their support for her candidacy, and have an opportunity to meet her.⁴ Their subsequent conduct calls into question the impartiality of the investigation of Congressman Hunter and at a minimum creates the appearance of a conflict of interest.

Within months of the fundraiser, on February 24, 2016, Congressman Duncan D. Hunter became the first sitting member of Congress to publicly endorse the candidacy of Donald J. Trump for President. The investigation of Congressman Hunter by the United States Attorney's Office for the Southern District of California began shortly after his public endorsement of candidate Trump. Even more troubling than an investigation having begun is the fact that within weeks of Alana Robinson becoming the Acting US Attorney for the Southern District of California on January 5, 2017, and one month after President Trump's inauguration, federal search warrants were executed on Congressman Hunter's home, Congressional office, storage locker, and the offices of his campaign treasurer during the week of February 22, 2017. Assistant US Attorney Emily Allen and Acting US Attorney Alana Robinson were intimately involved in the decision to seek the execution of search warrants.

The United States Attorney's Manual provides that when a United States Attorney becomes aware of an actual or apparent conflict of interest that could require a recusal and the "***conflict of interest exists or there is an appearance of a loss of impartiality***", the United States Attorney must notify the General Counsel of the Executive Office of United States Attorneys (EOUSA). *USAM 3-1.140*. Here,

² Publicly available campaign finance records do not indicate either individual made a contribution to candidate Clinton's campaign.

³ It is not a violation of the Hatch Act (5 U.S.C. §§ 7321-7326) to attend political fundraisers or make political contributions so long as it is not done while on duty and not acting in official capacity. Whether gift rules were implicated is unclear. See March 10, 2016 *Memorandum for all Department of Justice Career Employees* by Deputy Attorney General Sally Q. Yates at p. 3, subpara. K ("passive participation is allowed and means merely attending a fund-raising or campaign event; acceptance of a gift of free or discounted attendance may be approved if it meets an exception to the gift rules").

⁴ A campaign photographer took pictures of the attendees with candidate Clinton.

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the appearance of the loss of impartiality cannot be clearer. The former Acting US Attorney for the Southern District of California and the Assistant US Attorney actively investigating Congressman Hunter both attended a fundraiser for candidate Clinton during work hours and shortly thereafter both were involved in initiating an investigation of the first Congressman to endorse candidate Trump. These facts alone warrant recusal.

However, even more troubling is the political nature of the timing of an anticipated indictment of Congressman Hunter. Both First Assistant US Attorney Alana Robinson⁵ and Assistant US Attorney Emily Allen remain actively involved in the investigation of Congressman Hunter and are pushing for his immediate indictment. The investigation of Congressman Hunter has been ongoing for over 2 years. But only four weeks after the June 5, 2018 primary election, we were informed the investigation was concluding. And now there is a sudden urgency to indict, with the general election 3 months away. Congressman Hunter finished first in the primary with 49% of the vote; a Democrat finished a very distant second with 16% of the vote. Unlike most other states, California uses a “jungle primary” system, in which the top two finishers, irrespective of party affiliation, appear on the ballot in the general election.⁶

The attorneys for Margaret Hunter and I were given notice that the investigation was concluding the first week of July, 2018. As is the custom in the Southern District of California in long-term fraud and political corruption investigations, we were offered an opportunity to meet with the prosecution team to have a fulsome discussion of the investigation.⁷ However, shortly thereafter we were informed that the discussion the prosecution team envisioned was being truncated because of “artificial pressure”. Under these circumstances, defense counsel are not being provided a sufficient opportunity to address the charges, as would normally be done, consistent with the gravity of the potential charges, the office’s normal practice, and representations from the prosecution team.

⁵ When Adam Braverman was appointed acting United States Attorney in November of 2017, Ms. Robinson resumed her previous role as First Assistant United States Attorney.

⁶ See Cal. Elec. Code § 8141.5 (“[O]nly the candidates for a voter-nominated office who receive the highest or second highest number of votes cast at the primary election shall appear on the ballot as candidates for that office at the ensuing general election. More than one candidate with the same party preference designation may participate in the general election pursuant to this subdivision.”).

⁷ I, on behalf of Congressman Hunter, and attorneys Thomas W. McNamara and Logan Smith, on behalf of Margaret Hunter, have been in periodic communication with the prosecution team. More than one year ago, we requested an opportunity to meet with the prosecution team prior to charging decisions being made and were assured that opportunity would be forthcoming.

Brian A. Benczkowski, Esq.

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Thus, the sudden rush to indict reflects a loss of impartiality and appears to be an effort to de-rail Congressman Hunter's reelection in the November 6, 2018 general election. Congressman Hunter represents a very conservative district. An indictment of Congressman Hunter less than 3 months before the general election seems intended to ensure that a Democrat (the only other person on the ballot) will be elected. Furthermore, the specific timing here raises additional concerns of a lack of impartiality, because the rush to indict happened only after the June primary. Indeed, under California election law, there is no mechanism to replace a candidate on the ballot after the primary has taken place.⁸ The same is not necessarily true for other states.⁹

The Department of Justice is charged with not interfering with the election process. A rushed indictment of Congressman Hunter will result in the Democrat challenger winning in a historically Republican district, which has been represented by either Congressman Hunter or his father since 1981. Charging Congressman Hunter now will politicize the democratic process. The Department's guidelines on the prosecution of federal election offenses states "any criminal investigation by the Department must be conducted in a way that minimizes the likelihood that the investigation itself may become a factor in the election." Federal Prosecution of Election Offenses (8th Edition, December 2017) at pg. 9. Here, a rushed indictment will become not a factor but the factor in deciding this election. The policy implications for the Department cannot be graver. An indictment of Congressman Hunter now – shortly after the jungle primary locked in the two candidates and with only 3 months until the general election – will corrupt the election process and cause the public to truly question the impartiality of the United States Department of Justice.

At this point, the United States Attorney's Office for the Southern District of California should, at a minimum, be recused. Failing to do so in light of the above facts will damage the public's perception of the impartiality of federal law enforcement.

⁸ See Cal. Elec. Code § 8801 ("No candidate nominated at any primary election may withdraw as a candidate at the ensuing general election."), § 8803(b) ("No vacancy on the ballot for a voter-nominated office at a general election shall be filled."), *et seq.*

⁹ As one example of a differing election law regime, New Jersey law permitted Frank Lautenberg to replace U.S. Senator Robert Torricelli on the ballot in 2002.

Brian A. Benczkowski, Esq.
Assistant Attorney General
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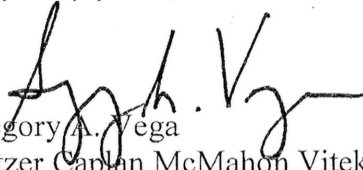
The Chilling Effect on Self Reporting to the FEC

An impartial look at the investigation here is also necessary because of the overlap between the criminal investigation and the FEC's own regulation and investigation of the same conduct. Based on our present understanding of potential allegations in the indictment, it appears that the United States Attorney's Office for the Southern District of California intends to charge as criminal conduct numerous instances that have historically been handled by the FEC as civil violations. This would have widespread policy implications.

Furthermore, Congressman Duncan D. Hunter's campaign committee, Duncan D. Hunter for Congress, self-reported to the FEC that campaign funds were used for personal expenditures in violation of FEC regulations. It was noted that the expenditures were made in error and that the campaign would be reimbursed for the improper expenditures. This is exactly the type of conduct that the Department of Justice should encourage and not penalize. Bringing an indictment against Congressman Hunter for self-reporting to the FEC will have a chilling effect on other members of Congress. It will de-incentivize members of Congress from reporting personal expenditures made in error for fear of being criminally prosecuted by politically motivated prosecutors.

I thank you in advance for your attention to this matter and am available to meet if you have any questions.

Very truly yours,



Gregory A. Vega
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cc: General Counsel, Executive Office of the United States Attorney
Ms. AnnaLou Tirol, Acting Chief, Public Integrity Section
Mr. John Cronan, Principal Deputy Assistant Attorney General