

June 21, 2011

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

BY FAX: (202) 224-7416

Re: Complaint Regarding Senator David Vitter

Dear Chairwoman Boxer and Vice Chairman Isakson:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Senate Select Committee on Ethics investigate Senator David Vitter (R-LA) for bribery as a result of his threat to withhold Secretary of the Department of Interior Ken Salazar’s pay raise unless the secretary ordered the department to begin issuing new deepwater exploratory permits.

On May 23, 2011, Senator Vitter sent a letter to Secretary Salazar stating that he intended to block legislation granting the secretary's pay raise until the Department of Interior began issuing six permits for new deepwater exploratory wells each month. Only if Interior began issuing the permits at that rate would Senator Vitter support the secretary’s pay raise. In relevant part the letter reads:

Last Friday, I was asked to support legislation in the Senate to grant you a nearly \$20,000 salary increase. Given the completely unsatisfactory pace of your department's issuance of new deepwater exploratory permits in the Gulf, I cannot possibly give my assent. . .

[W]hen the rate of permits issued for new deepwater exploratory wells reaches pre-moratorium levels (so 6 per month), I will end my efforts to block your salary increase.¹

As you know, 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.”² 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

¹ Letter from Sen. David Vitter to Hon. Ken Salazar, May 23, 2011 (attached as Exhibit A).

² See 18 U.S.C. § 201(b)(1).

Honorable Barbara Boxer
Honorable Johnny Isakson
June 21, 2011
Page Two

misuse of public office.”³ Courts have recognized that the promise of higher-paying employment, as was offered here, is a “thing of value” for purposes of the statute.⁴

Sen. Vitter’s conduct is exactly the type of quid pro quo the bribery statute was intended to prevent. The senator offered the secretary something of substantial value – a \$19,600 salary increase – to induce Secretary Salazar to undertake a specific act.⁵ Because there is a clear link between the thing of value and the specific act for which it was given, it appears Sen. Vitter may have violated the bribery statute. One unnamed Washington defense attorney considering the matter noted Senator Vitter’s letter “reads like the bribery statute.”⁶

Secretary Salazar responded with a letter to Senate Majority Leader Harry Reid (D-NV) and Senate Minority Leader Mitch McConnell (R-KY), stating the idea that a senator would take “the position, in writing, that his vote on the issue [of the salary increase] is dependent upon the outcomes of his attempted coercion of public acts here at the Department . . . is wrong, and it must be made perfectly clear that his attempt cannot and will not affect the execution of the solemn legal responsibilities that the Department undertakes on behalf of the American people.”⁷

Based on Senator Vitter’s letter, the Committee should immediately undertake an investigation of the senator’s failed attempt to induce official action by the Secretary by offering to support legislation granting his \$19,600 pay raise. The Senate Ethics Manual specifically provides that violating the bribery statute may lead to disciplinary action by the Senate.⁸

³ *U.S. v. Williams*, 705 F.2d 603, 623 (2nd Cir. 1983) (citation omitted).

⁴ *See U.S. v. Gorman*, 807 F.2d 1299, 1305 (6th Cir. 1986).

⁵ *See Senate Ethics Manual* (2003 ed.) at 58 (describing “bribery” as conduct that “induces an official act”).

⁶ *See* David Rogers, Did David Vitter Overstep on Salazar Pay Raise?, *Politico*, May 25, 2011 (attached as Exhibit B).

⁷ Letter from Hon. Ken Salazar to Senate Majority Leader Harry Reid and Senate Minority Leader Mitch McConnell, May 24, 2011 (attached as Exhibit C).

⁸ *Senate Ethics Manual* at 58.

Honorable Barbara Boxer
Honorable Johnny Isakson
June 21, 2011
Page Three

In fact, the Select Committee on Ethics previously recommended the expulsion of a senator for violating the bribery statute.⁹

Even if the Committee does not believe Senator Vitter has committed the crime of bribery, the Senate Ethics Manual provides that “[c]ertain conduct has been deemed by the Senate in prior cases to be unethical and improper even though such conduct may not necessarily have violated any written law, or Senate rule or regulation. Such conduct has been characterized as improper conduct that may reflect upon the Senate.”¹⁰ This rule is intended to protect the integrity and reputation of the Senate as a whole.¹¹ The Ethics Manual explains that “improper conduct” is given meaning by considering “generally accepted standards of conduct, the letter and spirit of laws and Rules . . .”¹² Notably, the Senate may discipline a member for any misconduct, including conduct or activity that does not relate to official duties when that conduct unfavorably reflects upon the Senate as a whole.¹³

The Senate has disciplined other members for violating this prohibition in the past. In 1967, the Select Committee on Ethics investigated the first case of improper conduct involving Senator Thomas Dodd (D-CT), who was censured for converting campaign funds to personal use.¹⁴ In 1990, the Senate denounced Senator David Durenberger (R-MN), in part, based on his financial

⁹ See Senate Ethics Manual at 59, fn. 113 (citing *Investigation of Senator Harrison A. Williams, Jr.*, Report of the Select Committee on Ethics, United States Senate, to Accompany S. Res. 204, 97th Cong., 1st Sess. 7 (1981)).

¹⁰ *Improper Conduct Reflecting Upon the Senate and General Principles of Public Service*, Senate Ethics Manual, Appendix E at 432 (108th Cong. 2003 ed.).

¹¹ *Id.*

¹² *Id.* at 433; and fn. 10, citing a 1964 investigation into the activities of Bobby Baker, then-Secretary to the Majority of the Senate, in which the Committee on Rules and Administration issued a report stating, “It is possible for anyone to follow the ‘letter of the law’ and avoid being indicted for a criminal act, but in the case of employees of the Senate, they are expected, and rightly so, to follow not only the ‘letter’ but also the ‘spirit’ of the law.” S. Rep. No. 1175, 88th Cong., 2d Sess. 5 (1964).

¹³ Senate Ethics Counsel, The Packwood Report at 28 (1995) (citing S. Rep. 2508, 83rd Cong., 2d Sess. 20, 22 (1954)).

¹⁴ Senate Ethics Manual at 434.

Honorable Barbara Boxer
Honorable Johnny Isakson
June 21, 2011
Page Four

arrangements in connection with a condominium he owned in Minneapolis and in 1991, Senator Alan Cranston was severely reprimanded for improperly linking fundraising and official activities.¹⁵ In 1995, the committee recommended Senator Robert Packwood be expelled for repeated sexual misconduct.¹⁶

In 2008, the committee issued letters of admonition to two senators, Larry Craig (R-ID) and Pete Domenici (R-NM) for improper conduct reflecting discreditably upon the Senate. In February, the Committee found Sen. Craig engaged in improper conduct by committing disorderly conduct in a public restroom, attempting to use his official position to influence the arresting officer, and attempting to withdraw his guilty plea to evade the legal consequences of his actions.¹⁷ Then in April 2008, the Committee found that by contacting a prosecutor about a pending corruption case that might have influenced an upcoming election, Sen. Pete Domenici created an appearance of impropriety that reflected unfavorably on the Senate.¹⁸

Most recently, the committee likely would have recommended the expulsion of Senator John Ensign (R-NV) had the senator not first resigned after a special counsel hired by the committee found evidence the senator violated numerous criminal statutes and engaged in improper conduct reflecting upon the Senate.¹⁹

The Select Committee on Ethics also has the option of criticizing Sen. Vitter's conduct. On some occasions, the Committee has stopped short of finding alleged conduct was "improper conduct reflecting upon the Senate," but has found "that the conduct should not be

¹⁵ *Id.* at 434-35.

¹⁶ *Id.* at 432.

¹⁷ Letter from Senate Select Committee on Ethics to Senator Larry Craig, February 13, 2008.

¹⁸ Letter from Senate Select Committee on Ethics to Senator Pete Domenici, April 24, 2008.

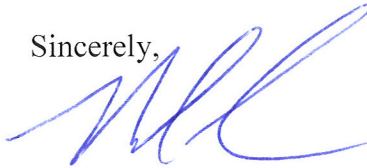
¹⁹ See Senate Ethics Special Counsel, *Report of the Preliminary Inquiry into the Matter of Senator John E. Ensign*, May 10, 2011, p. 68. See also Cong. Rec. S 2912 (daily ed. May 12, 2011) (statement of Sen. Boxer) ([according to the Special Counsel] "the evidence of Senator Ensign's wrongdoing would have been substantial enough to warrant the consideration of expulsion . . . That is why when former Senator Ensign resigned, the vice chairman and I put out a statement, and we said that he had made 'the appropriate decision.'")

Honorable Barbara Boxer
Honorable Johnny Isakson
June 21, 2011
Page Five

condoned or should otherwise be criticized in a public statement by the Committee.”²⁰ For example, the Committee has found that a senator’s “interven[tion] with regulators gave the appearance of being improper and was attended with insensitivity and poor judgment,” that a senator “exercised poor judgment in intervening with regulators,” and that another senator conducted office business “in an inappropriate manner . . .”²¹ In addition, the Committee severely admonished Senator Robert Torricelli (D-NJ) for creating at least an appearance of impropriety by accepting gifts in violation of the gift rules.²² Therefore, even if the Committee is not persuaded Senator Vitter engaged in bribery or that his actions reach the level of improper conduct, at the very least, the Committee should issue a public statement criticizing Senator Vitter’s conduct.

Our country’s criminal laws apply to everyone, including senators. There is no exception to the bribery law allowing a senator to influence a department secretary’s official acts by withholding compensation. CREW therefore requests that the Committee immediately investigate Senator Vitter’s failed attempt to induce official action by Secretary Salazar by offering to support legislation granting his \$19,600 pay raise. Further, if it finds evidence Senator Vitter violated the bribery statute, the Committee should refer this matter to the Department of Justice for potential criminal prosecution.

Sincerely,



Melanie Sloan
Executive Director

Encls.

²⁰ *Id.* at 435.

²¹ *Id.*, fn. 19.

²² Letter from Senate Select Committee on Ethics to Senator Robert Torricelli, July 30, 2002.

EXHIBIT A



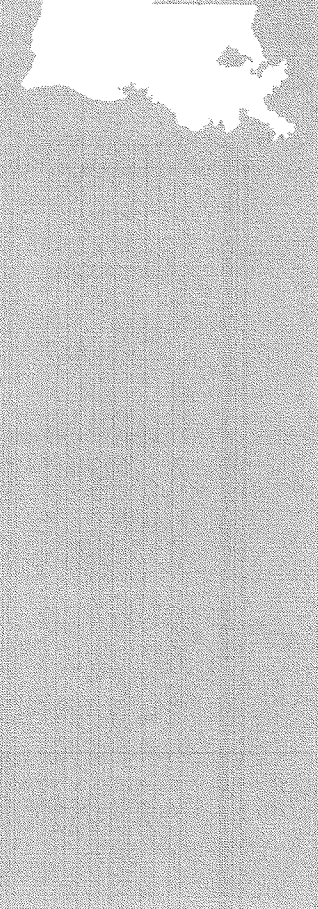
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PRESS RELEASES

May 23, 2011

Vitter will Block Interior Sec. Salazar's Pay Raise Until Permits Issued at Pre-BP Rate

(Washington, D.C) - U.S. Sen. David Vitter today sent a letter to Interior Secretary Ken Salazar announcing that he is holding up legislation in the U.S. Senate that would give Salazar a \$19,600 per year pay raise. In light of BOEMRE Director Michael Bromwich's recent admission that his department has only issued one new deepwater exploratory drilling permit since the moratorium was formally lifted in October, Vitter said that he will continue blocking the raise until Interior resumes issuing new permits at the same rate as before the Deepwater Horizon oil spill.

"It's just my way of keeping the 'boot on the neck' of Interior until they get the job done. Surely the secretary can appreciate that approach," said Vitter.

Vitter emphasized that he is asking the Interior Department to speed up the pace of issuing new permits and will not count the reissuance of permits issued before the Deepwater Horizon oil spill, but later rescinded.

Vitter recently introduced 3-D: The Domestic Jobs, Domestic Energy, and Deficit Reduction Act of 2011, which would create more than 2 million jobs, \$10 trillion in economic activity and \$2 trillion in federal tax receipts (conservative 30-year estimates) by unleashing America's vast domestic energy potential.

The full text of Vitter's letter is below.

May 23, 2011

The Honorable Ken Salazar
 Secretary of the Interior
 1849 C St., NW
 Washington, DC 20240

Dear Secretary Salazar:

Last Friday, I was asked to support legislation in the Senate to grant you a nearly \$20,000 salary increase. Given the completely unsatisfactory pace of your department's issuance of new deepwater exploratory permits in the Gulf, I cannot possibly give my assent.

The history behind your pay raise proposal and the insider support it may have here in Washington is irrelevant. Mr. Secretary, the fact is your policies and your department's mismanagement of permits is causing more Gulf energy workers literally to lose their jobs every day.

Your current pace of permitting is abysmal by any reasonable measure whether based on the historical pace, based on the unemployment rate along the Gulf, based on \$4/gallon gasoline, or based on the President's claims to support domestic energy production.

In a moment of clarity and honesty, Director Bromwich testified last week before the Senate Energy and Natural Resources Committee that of the 14 deepwater permits to drill that have been issued since the BP disaster, only one was for a truly new well. The other deepwater exploratory permits are actually reissuances — they had been issued prior to the moratorium and then revoked.

Obviously, this one over the last three months (the period since deepwater permitting has reinitiated) is a pace well below the six per month issued prior to the moratorium.

Accordingly, when the rate of permits issued for new deepwater exploratory wells reaches pre-moratorium levels (so 6 per month), I will end my efforts to block your salary increase.

Sincerely,

David Vitter

NEWSLETTER SIGN UP

Stay informed with Senator Vitter's newsletter.

BALANCED BUDGET AMENDMENT

FROM DAVID'S DESK

YOUR ENERGY BOTTOM LINE

\$3.77 / GAL

HURRICANE PREPAREDNESS

LEARN MORE

BORDER SECURITY

LEARN MORE

EXHIBIT B



Did Vitter overstep on Salazar pay?

By David Rogan
May 21, 2011 6:59 AM EDT

Was this a Senate hold —or heist?

That's the question left hanging in the air after Sen. **David Vitter** (R-La.) this week blocked a nearly \$20,000 pay adjustment due Interior Secretary **Ken Salazar**, demanding that his former Senate colleague first agree to use his Cabinet post to accelerate deepwater drilling permits in the Gulf of Mexico.

It was Washington politics at its rawest, but Vitter's actions also tread close to federal statutes which make it a crime to offer anything of value to a public official "to influence any official act."

In a letter to Salazar, Vitter explicitly said "I will end my efforts to block your salary increase" only when the rate of permits for deepwater wells had been increased by Interior to six per month. "It reads like the bribery statute," said a Washington defense attorney with long experience dealing with such cases. And in a letter provided Tuesday to Capitol newspapers including POLITICO, Salazar— a former state attorney general in Colorado— asked that the pay bill be withdrawn rather than give in to what he saw as Vitter's "attempted coercion of public acts here at the Department."

"That position is wrong," Salazar wrote to Majority Leader **Harry Reid** (D-Nev.) and Minority Leader **Mitch McConnell** (R-Ky.). "And it must be made perfectly clear that his attempt cannot and will not affect the execution of the solemn legal responsibilities that the Department undertakes on behalf of the American people."

A Harvard-educated former Rhodes Scholar, Vitter typically maintains a low profile in the Senate where he seems to be still living down his celebrated connections to the D.C. Madam.. But the oil drilling issue touches an emotional chord in Louisiana, still recovering from the BP oil spill last summer. And the standoff left the senator jubilant, and his office defiant.

"I urge the Obama administration to prosecute," spokesman **Luke Bolar** told POLITICO. "They'll make fools of themselves in court and make my boss a Louisiana folk hero at the same time."

In a separate statement, the senator himself steered clear of the coercion issue raised by Salazar. "I'm glad the secretary has dropped his push for a pay raise," Vitter said. "It was truly offensive to Gulf energy workers who are struggling under his policies."

But Reid, who was close to Salazar during their time together in the Senate, is clearly disturbed by the outcome and stressed that the pay adjustment—which would bring the Interior secretary's pay back up to the level of other Cabinet posts—followed past practice for the Senate.

"I have worked with Minority Leader **Mitch McConnell** on this issue for weeks," Reid said in a statement Wednesday, "And it is wrong for Sen. Vitter to try to get something in return

for moving forward on a matter that the Senate has considered routine for more than a century. “

“Ken Salazar is extremely well-qualified, hard-working cabinet secretary, and deserves better than to be strong armed while trying to do an important job for the American people.”

Indeed the pay issue only arises for Salazar because of his past service in the Senate and how the so-called “emoluments clause” in the Constitution impacts those in the legislative branch who move directly to executive posts.

The Founding Fathers sought to draw a sharp line to protect the independence of the legislative branch as well as prevent lawmakers from feathering their nests by voting higher pay for a post and then moving into it. For this reason, senators who move into Cabinet posts are typically paid at the lower Senate salary level until their last elected six-year term expires.

For Salazar, elected to the Senate in 2004, this was in January; Secretary of State Hillary Clinton, also a former senator, has a longer wait since she was last elected from New York in 2006.

The bill to reconcile Salazar’s pay with most other Cabinet secretaries would raise his Senate-based salary of about \$180,000 by \$19,600 to almost \$200,000.

“The Secretary of the Interior’s salary should be equal to that of other Cabinet members,” said the department’s press secretary, Kendra Barkoff. “It is that simple, no more, no less.”

EXHIBIT C



THE SECRETARY OF THE INTERIOR
WASHINGTON

May 24, 2011

Honorable Harry Reid
Senate Majority Leader
United States Senate
Washington, DC 20510

Honorable Mitch McConnell
Senate Minority Leader
United States Senate
Washington, DC 20510

Dear Leader Reid and Senator McConnell:

I appreciate the good faith effort of Members of the Senate to make the salary of the Interior Secretary equal to that of other members of the Cabinet. However, I respectfully request that you set aside any effort to address this inequity.

At the Department of the Interior, our oversight and regulation of offshore energy production is and will continue to be - guided by principles of integrity, the public interest, and much-needed safety and environmental standards. The public deserves nothing less.

These legal and ethical principles have always, and will always, guide me in all my work on behalf of the Department of the Interior. Yet, as the Senate has considered the disparity of Cabinet salaries relating to the Emoluments Clause, a Member of the Senate has taken the position, in writing, that his vote on the issue is dependent upon the outcomes of his attempted coercion of public acts here at the Department. That position is wrong, and it must be made perfectly clear that his attempt cannot and will not affect the execution of the solemn legal responsibilities that the Department undertakes on behalf of the American people.

Sincerely,

Ken Salazar