

June 1, 2007

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The Honorable Scott J. Bloch  
The Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 300  
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Re: OSC File No. HA-07-1160

Dear Special Counsel Bloch:

This letter is submitted on behalf of GSA Administrator Lurita A. Doan (“Administrator Doan” or “the Administrator”), whom we represent, in response to the May 18, 2007 report on the above-referenced case.

### I. Executive Summary

When the record is examined in an objective, impartial and, fair manner, it is clear that the conclusions of the OSC report are far off the mark and are based on tenuous inferences and careless leaps of logic. It also is evident that the report uses inflammatory and conclusory rhetoric to disparage Administrator Doan and to mask the deficiencies in its arguments. Upon closer examination, one is hard-pressed to conclude that the Administrator solicited or induced her employees to engage in any political activity. Similarly, the evidence that Administrator Doan sought to employ the “machinery of a government agency” for political reasons also is deficient.

Nor does the report provide any evidence of how the follow-up discussion at the meeting – apparently prompted by Administrator Doan’s alleged question – was connected in any way to any election or any candidate for office. Indeed, the only reference to specific, future election campaigns occurred during the formal presentation by the White House representative. If anything, it was that briefing, which OSC concedes Administrator Doan had no role in preparing or arranging, that may have violated the Hatch Act. However, rather than focusing on that presentation – which on its face raises Hatch Act concerns – the OSC has aimed its ire on a single comment the phrasing of which is disputed even among those who remember it being made at all.

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As detailed below, the objectivity, impartiality, and fairness of this report is seriously in question. This is a harsh report, clearly visceral in tone. The report goes out of its way to disparage Administrator Doan – in some instances gratuitously – by the selective use of her testimony and other evidence. The report inexplicably and unfairly omits clearly relevant portions of Ms. Doan’s testimony that is not disputed and easily could be corroborated. In an almost desperate effort to support a questionable conclusion based on insufficient evidence, the report relies on extraordinary exaggerations and inferences. This case is one of exceptional seriousness for Administrator Doan and it has not been examined with the objectivity, impartiality, and fairness such matters demand.

Finally, before proceeding with our substantive response, we must reiterate our extreme disappointment and outrage that the confidentiality of the report was not maintained until at the very least Administrator Doan had an opportunity to respond. We have detailed our very serious concerns about the leak of the draft and final versions of the report in our correspondence exchange with you, copies of which are included as Attachments 1-4. The premature release of this damaging information has been extraordinarily unfair to Administrator Doan, has seriously compromised the integrity of the process to the prejudice of the Administrator, and has only aggravated the lack of objectivity, impartiality, and fairness evident in the report. We request that you investigate this premature release immediately, if you have not done so already, and that you take appropriate disciplinary action against those responsible.

## II. THE PROCESS AND FUNDAMENTAL FAIRNESS

As you know, on May 21, 2007, we requested copies of the testimony of witnesses interviewed for this report, with the names redacted, in order to adequately respond to the report. Your office denied our request the next day. We thought then – and, in view of the unfair public disclosure already mentioned, believe even more strongly now – that fundamental fairness requires that Administrator Doan, and we as her counsel, be able to review the actual questions and answers used to build the report’s conclusions. Because an opportunity to review witness testimony is essential to the preparation of a thorough and complete response, Administrator Doan has not had a full and fair opportunity to respond to the serious allegations made against her.<sup>1</sup>

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<sup>1</sup> On page two, the report states that “numerous” (not defined further) presidential appointees are concerned that release of their names in the report could result in retaliation for providing testimony adverse to the Administrator. That is presumably one reason why the OSC will not release copies of their statements. It is important to note, however, that when we made our request for the witness statements, we asked for them with the names redacted to ameliorate such a concern. Further, at least some of the witnesses questioned are not now or have never been GSA presidential appointees. Thus, there would be no practical possibility of retaliation. Lastly,

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Further, while your office provided a compact disc recording of the nine-hour interview of Administrator Doan, our request for a transcript of that very lengthy interview has been denied. Given the reliance of the Office of Special Counsel ("OSC") on that testimony, Administrator Doan should be provided a copy as a matter of fundamental fairness.

We renew our request that you: 1) allow Administrator Doan an opportunity to review the witness testimony with identifying information redacted and to supplement her response appropriately and 2) provide Administrator Doan with a copy of the transcript of her own testimony.

In an important respect, the report is remarkable in the information and context it fails to contain. Beyond the fundamental fairness issue described above, two other facts regarding the witnesses interviewed are of particular concern to Administrator Doan. One fact is not even mentioned in the report and the other, while mentioned, is discussed only in passing.

First, the report fails to note that a version of the allegations was publicly reported in the media, including on the internet, before at least some witnesses were interviewed by the OSC. It is reasonable to assume that if any witnesses had been exposed to such media coverage, they would have paid attention to it. The news reports involved the agency for which the witnesses worked, the head of that agency, and a meeting they themselves had attended. We do not know how any witnesses' testimony may have been affected by access to press reports prior to their interviews, but in the interest of objectivity and fairness, it is essential to find out. At the very least, the exposure of at least some witnesses to press reports prior to their interviews should have been noted to establish a more complete context in which to evaluate the testimony, in particular because the version of the allegations publicly reported is the same narrative of events ultimately adopted by those witnesses, at least as described in the OSC report. Omission of this fact is significant.

Second, the report fails to note the possible impact on the testimony of the OSC witnesses of an investigation into these very same allegations by the majority staff of the House Oversight and Government Reform Committee ("House Committee") prior to and close in time to the beginning of the OSC investigation. More specifically, it is important to consider how the

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while the possibility of retaliation might be a legitimate concern in a lower profile, confidentially-treated case, that is not the situation here. Administrator Doan is and has been for some time under extraordinary scrutiny by Congress, the press, and several investigative entities. There is virtually no possibility that she or someone on her behalf could engage in any act of retaliation without such an action becoming known almost immediately. For all these reasons, we believe there should be no real concern for retaliation against the witnesses, and that argument should not be relied on to justify the OSC's refusal to provide witness statements, with the names redacted, to Ms. Doan.

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testimony of witnesses interviewed for the OSC investigation may have been affected by prior questioning in the House Committee investigation.

Excerpts of the House Committee interviews were quoted in the Preliminary Staff Report of the Ranking Member of the Committee ("Preliminary Staff Report"), and they clearly evidence suggestive and overtly leading questioning by the majority staff. Perhaps most importantly, the House Committee investigators, before eliciting a response on the critical issue (i.e., words allegedly spoken by Administrator Doan) first told some number of witnesses what was purportedly said by other witnesses. Several examples appear on page thirty-three of the Preliminary Staff Report: Interview of Matthew Sisk - "Several witnesses have told us that, following the presentation, Doan addressed the group and she said something to the effect of how can we use GSA to help our candidates in the next election. Do you recall this?"; Interview of Michael Berkholtz - "At the end of the presentation, witnesses have told us that Administrator Doan addressed the group and said something to the effect of how can we use GSA to help our candidates in the next election. Do you recall words to that effect?"; and Interview of Dennis Smith - "Do you recall - other witnesses have told us that during the question and answer period Administrator Doan said something to the effect that how can we - what can the GSA do to help our candidates in the next election? Do you recall a comment like that, to that effect?" (emphasis added). See Attachment 5, p. 33.

We do not know the impact of this suggestive and leading questioning, but we believe it is reasonable to assume some effect on the testimony of those involved for the same reason leading questions generally are not permitted in a judicial forum. In this instance in particular, once the witness is informed that others purportedly have testified in a certain way, a witness may very well be influenced—consciously or subconsciously—to testify in the same or a similar way. In any event, this type of suggestive and leading questioning by another investigative body prior to the OSC interviews clearly could influence the witnesses' testimony as well as the objectivity and impartiality of the investigation. As was the case with the potential influence of published reports on witnesses' testimony, the fact that leading and suggestive questioning occurred in a prior proceeding should have been noted to set a more complete context in which to evaluate the testimony of the witnesses. Omission of this fact too is significant.

Given the reliance placed on the witnesses' testimony in this report, consideration of factors which might have influenced that testimony - such as exposure to news reports and prior questioning by the House Committee on the same issues in an overtly leading and suggestive way - is critical to any fair assessment. Failure to take note of these factors and their potential effect, as well as denying Administrator Doan the opportunity to review - with names redacted - the witness testimony on which the report relies, is inexplicable in what should be an objective, impartial, and fair investigation.

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### III. SELECTIVE USE OR OMISSION OF ADMINISTRATOR DOAN'S TESTIMONY AND OTHER EVIDENCE

The report's use of Administrator Doan's testimony is noteworthy as much for what it does not include as for what it does. The selective use or omission of her testimony fails to provide a complete and accurate context that an objective, impartial, and fair investigation requires. Several examples follow.

#### A. Administrator Doan's State of Mind When Going into the January 26 Meeting

The report states that "Administrator Doan was extremely busy during the week of the January 26 meeting." The Administrator's work pace, however, routinely is "extremely busy." The responsibility and obligations attendant to running an agency as large as the GSA make it so. More important, however, during that week Administrator Doan had to devote attention to other very serious non-routine priority matters that were a significant distraction from the type of material presented in the January 26<sup>th</sup> meeting, a fact to which she testified.

Although not mentioned in the report, the Administrator explained in detail in her testimony to the OSC investigators why these time consuming issues were on her mind when she went into this "brown bag" lunch meeting for GSA presidential appointees - a meeting arranged and organized not by her but by a member of her staff. During this time, the Administrator also had to deal with other important and time consuming issues, including preparing the response to a document production demand from the House Committee.

This type of document demand was a first for Administrator Doan and her staff and it was only part of the fall-out from a severely damaging - and in key respects inaccurate - news report published just a week earlier. Although the documents were not due to the House Committee until the following week, the internal deadline was advanced due to document labeling and reproduction requirements and the need for the Office of Management and Budget to review the documents prior to submission. In effect, the document production review had to be essentially complete by January 26<sup>th</sup> - the same day as the "brown bag" lunch in question.

Notwithstanding these other pressing demands, Administrator Doan - wisely or not - attended the "brown bag" lunch because she committed to attending in support of her team of presidential appointees.

#### B. Administrator Doan's Explanation of What She Did and Did Not Remember

Administrator Doan has testified that she does not have an independent recollection of the slide presentation given on January 26<sup>th</sup>. Since we have not been permitted to review the statements of

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other witnesses, we do not know how much they may or may not have recalled from the presentation. In addition, Administrator Doan had no role in preparing the slides or arranging for their presentation. Nevertheless, the Administrator explained why the circumstances and the subject matter of the slides would not have been compelling to her. Her explanation, not recounted in any meaningful detail in the report, is important because it also sets forth a more complete context in which to evaluate the allegations of "soliciting" the presidential appointees for partisan political activities.

Administrator Doan testified that in addition to her general lack of enthusiasm for PowerPoint slide presentations, she also is not "passionate" about polls and past election results – the subject of the vast majority of the slides presented at the lunch. More specifically, she explained to investigators that her personal circumstances as a mid-second term appointee had a significant bearing on her view. When she assumed her duties as the Administrator, she understood and it was emphasized in her confirmation process – that she had a limited time to deal with a number of serious issues at the agency. At the time of the January 26<sup>th</sup> meeting, Administrator Doan had less than two years remaining in her tenure. The 2008 elections were – and still are – a long way off in political terms, and she fully expects that she will not remain in her current position no matter which party prevails in the 2008 presidential election. The new President – Republican or Democrat – will choose his or her own team of new appointees. In any event, the Administrator's focus had to remain on doing her job and dealing with the many significant challenges faced by the GSA.

#### C. Corroboration of Administrator Doan's Blackberry Use in the January 26 Meeting

The way in which the OSC report addresses its attempt at corroboration of Administrator Doan's e-mail activity during the January 26<sup>th</sup> meeting is another example of the larger problem of the lack of objectivity, impartiality, and fairness in the way this investigation was approached. This is clear in both what the report says and what it does not say about why Administrator Doan was "distracted" going into and during the January 26<sup>th</sup> meeting.

For the reasons explained above, Administrator Doan was focused on other important priorities during the meeting and the content of the PowerPoint presentation was not a subject that would have held her attention. Under these circumstances, it is not surprising that Administrator Doan would do something she normally would not do or tolerate at a meeting – that is, turn at least some of her attention to her Blackberry e-mail.

The report states that the OSC was unable to corroborate Administrator Doan's testimony regarding her Blackberry use, but the evidence referred to in the report is incomplete in this regard. It is correct that the documentation produced shows only one message received and nine

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sent on the day of the meeting up until 1:08 p.m. The report fails to mention, however, other significant evidence of a backlog of received e-mails in Administrator Doan's e-mail account. Administrator Doan and the GSA provided the OSC investigators with records demonstrating that *she had received approximately 220 e-mails in the forty-eight hours prior to the meeting*. A backlog of this magnitude would provide ample material for reading during the meeting. Further, it is well documented that the Administrator reads and ultimately responds to virtually all of her e-mails personally. The report also fails to mention other information provided to OSC investigators which suggests that the volume of e-mails currently available from the January 26th time frame may be understated. That information included the possibility of some level of system failure which may have eliminated some GSA e-mail records and personal e-mail account features which may have eliminated some personal e-mails depending on how they were filed or temporarily stored. Even if the OSC ultimately discounted these explanations, an objective, impartial, and fair report would at least put them forward and explain why the OSC did not credit them.

#### D. Administrator Doan's Nonpartisanship in the Execution of Her Duties

On the issue of political partisanship – or nonpartisanship – Administrator Doan specifically asked the investigators to consider her pattern of practice as Administrator in evaluating the allegations against her. As others at the GSA also would attest, it is essential that GSA approach its mission – particularly in its building program – in a nonpartisan way. Support across political lines is critical for program success.

Administrator Doan has keenly understood this need from the beginning of her tenure. Consequently, she has made a concerted effort to ensure even-handedness in her work with the Congress. When the Republican Party was in the majority, she made sure project briefings were made available to both the majority and minority Members and their staffs. Since the majority shifted to the Democratic Party, she has followed the same approach.

More importantly, Administrator Doan's nonpartisan approach went beyond project briefings to her active support for the funding of projects. She makes funding decisions on the project's merits and has supported multiple projects of particular interest to Democratic elected officials.

Yet, Administrator Doan's explanation of her nonpartisan approach in her actions as recounted above is not mentioned in the report. Instead, in footnote six on page five, the report focuses on the issue of political donations and attempts to subtly paint the Administrator as someone so unthinkingly partisan that she makes substantial donations to the Republican Party without knowing why. The text of this footnote is lacking in context as well as facts.

First, there is some illogic in pointing to Administrator Doan's and her husband's political donations to question the lack of importance she places on past election polls. The political

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donations discussed were made in the past, and the slide presentation – including post election polling information – was uninteresting “old news” to Administrator Doan. The report claims that Administrator Doan failed to explain why she gave any money to Republican organizations, but the answer would seem clear that donations are an expression of support for the receiving party. That fact should not have been a surprise to the OSC investigators since they either attended or were aware of Administrator Doan’s expression of support for the President when the subject of her donations was raised in the March 28<sup>th</sup> hearing before the House Committee. More importantly, Administrator Doan should not have to justify exercising her constitutionally protected rights that preceded any government service. The report also fails to mention Administrator Doan’s testimony that she has given donations to Democratic candidates as well.

Second, the subject of Administrator Doan’s and her husband’s political donations came up in the context of her being questioned in regard to things about which she was or was not “passionate” – the adjective she used when explaining the relative importance to her of certain events or issues. For the reasons explained above, in the discussion about the subject matter of the January 26<sup>th</sup> PowerPoint slides, she testified that polls and past election results were not important to her – she was not “passionate” about them. When pressed on how the amount of the donations – which were given over a period of several years – could reflect a lack of interest, Administrator Doan cited her much more substantial educational and cultural donations as examples of those causes about which she is passionate – such as her alma mater and the Shakespeare Theater. Indeed, Administrator Doan’s donations to these educational and cultural entities dwarf the amount she gave to the Republican Party and were given over a shorter period of time. Given the issue under discussion at that point in the interview, the explanation of relative giving by the Administrator was reasonable and appropriate and should have been viewed as clarifying rather than mystifying.

E. Corroboration of Administrator Doan’s Testimony  
Regarding the San Francisco Federal Building Opening

The report states “... not one of the of the attendees interviewed by OSC testified that the Administrator asked Mr. Jennings about how GSA could help the cabinet liaison understand that the San Francisco federal building opening is the perfect event for President Bush to attend.” That statement may be correct with respect to witness statements (which, again, Administrator Doan has not been allowed to review), but it fails to mention more reliable documentary evidence that corroborates some discussion at the meeting on this point. In an e-mail sent to the GSA White House Liaison and Administrator Doan later that afternoon, Regional Administrator Peter G. Stamison wrote, “... Lurita, thanks for expressing my (and I’m sure the other RAs) exasperation (during today’s call) in not getting the [White House] to recognize all the good GSA does around the country for the Nation’s taxpayer and federal agencies and that we are as



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successful as we are because we are following the President's agenda. He and his Administration are NOT getting proper recognition for this..." See Attachment 6.

This e-mail was provided to OSC investigators, but it is not mentioned in the report. Its omission is important for several reasons. First, while the report recounts, in part, the testimony of witnesses whose memories vary as to what may or may not have been said at the January 26<sup>th</sup> meeting, it does not identify, and we do not know of, any other document which could be considered a contemporaneous written record of any part of the discussion. Although the content of the message does not track precisely with Administrator Doan's testimony, it clearly evidences a discussion of some type about the importance of increasing the awareness of the White House, and perhaps the President, about the activities of the GSA. This contemporaneous written record of some part of the discussion at the January 26<sup>th</sup> meeting should be considered more compelling than the admittedly limited recollections of some of the meeting participants, given months after the fact, and yet it received no mention in the report.

#### F. Gratuitous Comments on Irrelevant Portions of Administrator Doan's Testimony

On page eight, the report states, "Administrator testified that she could neither recall nor remember asking how can we or GSA help our candidates. [Administrator] Doan did not, however, categorically deny such an inquiry." In a footnote to this sentence, the report goes out of its way to disparage the Administrator based on an exchange with investigators that is irrelevant to the issue addressed, or for that matter, any issue in the case.

It should be noted that Administrator Doan was interviewed by OSC investigators for a total of approximately nine hours— a three hour session on April 16, 2007, and a six hour session on May 3, 2007. Given the length of these interviews and the very serious subject matter, it is understandable that, at times, the interview exchanges became contentious. In footnote eight, the report takes Administrator Doan to task for an exchange that took place well into the six-hour session on May 3<sup>rd</sup> for no apparent reason other than to damage and embarrass her. The bottom line for her testimony as to what she allegedly said or did not say is that she does not remember. That was her testimony before the House Oversight and Government Reform Committee in the March 28, 2007 hearing and it was her testimony to the OSC investigators, and the remainder of the contentious exchange is irrelevant.

#### G. Potential Bias of Some Witnesses

The report omits noting that the issue of the potential bias of some witnesses was first raised by OSC investigators and Administrator Doan responded. She was specifically asked whether some witnesses— including some specifically named by investigators— might have reason to be biased.

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The Administrator responded that she believed some presidential appointees did have reason to be biased, principally based on dissatisfaction with performance evaluation ratings.

There are further problems as well. Based on a review of performance evaluation records, the report concludes that a claim of witness bias is not supported by the evidence. The report reaches this conclusion based on the premise that a numerical performance rating of at least “3”— indicating “Meets performance expectations”— is not officially an “unfavorable” rating, and, presumably, would not cause any dissatisfaction in the person so rated. The report does not indicate, however, whether any of the witnesses were questioned about their performance ratings since Administrator Doan assumed her duties, and whether they had any dissatisfaction with their evaluations. More specifically, for the witnesses who may have received a “Meets performance expectations,” did they consider that rating favorable and fair under the circumstances? Further, for any witness who received a “3”, was this rating lower than the one they received in the last rating period and did he or she consider the reduction in the rating score unfavorable and a cause for dissatisfaction?<sup>2</sup> The report, however, is simply incomplete on this point.

This section of the report also includes an extremely serious charge that Administrator Doan’s statements concerning the performance of some witnesses may have been “purposely misleading and false.” That charge, however, is not supported by the record, and it is not even supported by the accompanying footnote. The Administrator’s comments in the text referred to performance evaluations. The text in the footnote refers to “reprimands” and “written disciplinary action.” Administrator Doan testified that if an employee were “reprimanded, written up, or possibly released,” such an instance would “probably” come to her attention. She made no such representation about unfavorable performance evaluations, the report is wrong to conclude as such and egregiously wrong in suggesting that the Administrator was “misleading and false” on this point. To the contrary, it is the report which is misleading.

Based on pure speculation and no evidence of record, the report translates the Administrator’s comments about witnesses’ performance evaluations as a possible indication that she might use her position to threaten anyone who would come forward to testify or to retaliate against those who do. The report attempts to qualify this very serious charge by using the words “arguably indicates,” but to make such a statement without any evidence to support it is simply reckless. It is particularly so when, as stated above, the comments were made in direct reply to a question asked of Administrator Doan during the OSC interview.

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<sup>2</sup> Administrator Doan declines to cite names in this section of the report, and is dismayed that the OSC chose to publicly release the names of employees discussed in this section. Administrator Doan discussed this issue after being assured that the OSC would treat the discussion confidentially. There is no reason that these names could not have been redacted from the report.

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#### H. Administrator Doan's Comments on the Variations in the Witnesses Testimony

Beginning on page twelve, the report quotes statements by the Administrator in which she challenges the witnesses' recollections based on their varied accounts of what she allegedly said. The accounts varied from "How can we help our candidates?" to "How can we use GSA to help our candidates?" The report dismisses these variations as slight, but they are in fact significant. The first statement could be understood as applying to individuals while the second implies the use of GSA resources— a clearly more serious allegation.

Further, the report again goes out of its way to disparage Administrator Doan by suggesting that by questioning the variation in the witnesses' testimony, she is somehow attempting to exonerate herself. That argument fails for several reasons.

First, Administrator Doan has been charged with a serious violation. The witnesses have not. As the person accused and subject to possible disciplinary action, she has a right to test the evidence against her in all respects. Focusing on the variations in the statements that constitute the core of the allegations against her is entirely proper. To suggest otherwise would effectively eviscerate the response process.

Second, under the circumstances of this case, a challenge to the variations in the witnesses' statement is particularly appropriate. Since the Administrator has not been allowed to review the witness testimony in any form, and since we have no idea how early press coverage and the prior investigation by the House Committee may have affected the witnesses testimony, it is all the more important to exercise whatever remaining options exist to carefully scrutinize the evidence.

#### I. Possibility of Mitigation

Administrator Doan made clear to the investigators that if a potential Hatch Act violation had been brought to her attention at the time that she may have violated the Hatch Act, she would have been fully prepared to take whatever mitigating actions were necessary. Understanding that once a violation occurs, it cannot be undone, the impact of such an action nevertheless could be minimized.

In this instance, no one— neither the presenter from the White House nor any GSA attendee— even suggested to Administrator Doan or her senior management staff after the meeting that she may have crossed the line in what she allegedly said. If there had been an opportunity to minimize any damage, it was immediately after the instance— as close in time to the questioned action as possible. The Administrator understands that remedial action would not cure the violation or preempt an investigation, but it would appear to be in the interest of the GSA

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presidential appointees to have had such remedial action take place— to serve at least as a reference point for the future.

#### **IV. Analysis of the Report's Conclusion and Supporting Evidence**

##### The Hatch Act Violation

In your May 18, 2007 notice letter, you concluded that Administrator Doan committed a “serious” violation of the Hatch Act “by soliciting [her] subordinate employees to participate in political activity.” More specifically, you determined that Administrator Doan “violated the Hatch Act’s prohibition against using [her] official authority or influence for the purpose of interfering with or affecting the result of an election when [she] solicited over thirty subordinate employees to engage in political activity,” presumably “political brainstorming” in support of the 2007 and 2008 Gubernatorial, Congressional, and Presidential elections.

Based on available evidence, however, it is hardly clear that Administrator Doan solicited these employees— all of whom were presidential appointees— to do so or that they understood her alleged words as such.<sup>3</sup> Several factors raise substantial questions about the correctness of this conclusion.

First, there is no dispute at this point that the “brown bag” lunch meeting on January 26<sup>th</sup> was not Administrator Doan’s meeting. She did not direct or request attendees to be present. The event was organized and hosted by GSA’s White House Liaison.

Second, there is no dispute that Administrator Doan— just as virtually all other attendees— did not receive an advanced briefing about the presentation to be made by Mr. Scott Jennings of the White House staff and she did not see his PowerPoint slides beforehand. The first time Administrator Doan and most other attendees had an opportunity to see those slides was during the presentation itself. It was this presentation that had several slides addressing future elections. Significantly, the report does not discuss the witness’ recollection of these key slides.

Third, it appears that Administrator Doan’s alleged question at the end of the presentation was not directed to the GSA presidential appointees but to Mr. Jennings. It is difficult to conclude, as does the report, that such a question to the presenter would be perceived as “soliciting” the presidential appointees present without relying on very tenuous inferences. Even if some of the

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<sup>3</sup> Moreover, even if the alleged conduct did violate the Hatch Act, it is much more aptly described as a *de minimis* violation rather than a “serious” one.

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political appointees present, rather than Mr. Jennings, responded to the alleged question, that would not mean the speaker *intended* that result.

Fourth, the variations in the witnesses' testimony as to the words allegedly spoken by Administrator Doan are not insignificant. Footnote four on page four of the report quotes four versions of the alleged question or comment: (1) "How can we help our candidates?"; (2) "What can we do to help our candidates?"; (3) "How can we use GSA to help our candidates?"; and (4) "How can we use GSA to support our candidates?" Although the report cavalierly dismisses these variations as "slight", these differences—though subtle—are, in fact, important. The addition of the words that specifically include the "use" of the GSA infers institutional involvement more serious than otherwise might be implied.

Fifth and perhaps most important is the substance of the discussions which purportedly followed. Those discussions concerned opening ceremonies for federal buildings in San Francisco and Miami—events GSA deals with routinely and in a nonpartisan manner—and did not explicitly or implicitly suggest help for any political candidates. While the report describes these discussions as "political brainstorming," it does not explain how the discussions demonstrated an effort to help political candidates. Nor is there any suggestion that discussions were linked to any of the races highlighted in the PowerPoint presentation. No Republican candidate is named in the discussion of the San Francisco event. Administrator Doan recalls talking about encouraging the President to attend, but the President, of course, will not be a candidate in 2007 or 2008. As stated above, a follow-up e-mail from the Regional Administrator in charge of planning that event supports Administrator Doan's testimony regarding the substance of the conversation.

With respect to the Miami ceremony, the report observes that "[Senator Mel] Martinez's importance as a United States Senator and also as co-chair of the Republican National Committee should not be overlooked." The report, however, fails to explain how this GSA event in Miami would assist Senator Martinez or any other Republican candidate in 2007 or 2008. Senator Martinez will not be a candidate in either year. His term in the Senate will run until 2010. More to the point, as a senior elected official of the state, he would be invited to such an event as a matter of course—just as Speaker Pelosi was invited to the San Francisco opening—and a discussion emphasizing the importance of inviting him was both reasonable and appropriate.

Administrator Doan testified that it is in the GSA's interest to approach ceremonial openings and building projects in general on a nonpartisan basis, and it is the GSA's practice to do so. Support across political lines is essential for projects to succeed, and Administrator Doan's actions have been consistent in seeking to achieve that goal through a nonpartisan approach that keeps Congressional Members across party lines fully informed on the status of projects in their

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districts and in seeking support for projects regardless of the sponsoring member's party affiliation. Administrator Doan has held fast to this approach honoring the priorities and requests of GSA's many government customers. The report does not contradict this testimony, nor do we know of any evidence that would do so.

This portion of Administrator Doan's testimony, however, is not included in the report, and its omission raises questions about the impartiality and objectivity of the report. This omission of this evidence also is unfair to Administrator Doan because it would establish the larger context in which her alleged words should be considered. Actions do speak louder than words, and Administrator Doan's nonpartisan approach in executing the important missions of the GSA certainly should be a consideration in determining whether—by some alleged words at the conclusion of a meeting—she was, in fact, soliciting presidential appointees to engage in a partisan political activity.

The report also glosses over the fact that every one of the GSA employees who attended the briefing—and whom Administrator Doan allegedly “solicited” to engage in political activity—was also a presidential appointee as opposed to career civil servants. This is important—and yet omitted—context for the report's discussion of the Hatch Act's legislative history and purpose as well as the magnitude of any alleged violation. The report states that one of the Act's “primary purposes” is “to protect federal employees from pressure and from express or tacit invitations to perform political chores in order to curry favor with their superiors rather than to act out their own beliefs.” While important with respect to civil service employees, this simply is not as great a concern when those employees are *political* appointees and, one may assume, any such political activity likely would be in line with “their own beliefs.” Indeed, as the report itself notes, “*each* of the witnesses testified that they interpreted the term ‘our candidates’ to mean ‘Republican candidates’ because they are all republican political appointees.” (emphasis added). In addition, the report notes that many of the political appointees in attendance had *volunteered* for the Republican Party during the 2006 campaign and that Administrator Doan was aware of this fact. (emphasis added). This is important for two reasons. First, it belies the report's conclusion that Administrator Doan's alleged comment “was inherently coercive” for supposedly encouraging the political appointees present at the meeting to engage in political activity and/or volunteer their services for political activity. These political employees already had engaged in such volunteer activity on their own and did not need to be solicited to do so. Second, it again points to why the differences in the witnesses' variations of the alleged comment are important. Specifically, if there was no mention of GSA, the comment – if made – could have been interpreted as a question about volunteering time *outside* of government duties – a much less pernicious result than the report otherwise concludes.

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In regard to Administrator Doan's alleged comment itself, the conclusions of one report paragraph, in particular, deserve special comment. The third paragraph on page eighteen characterizes Administrator Doan's actions in the following terms:

Administrator Doan induced her subordinates to engage in a type of political brainstorming session that is prohibited from occurring while political appointees are on duty or in a federal workplace. The GSA Administrator displayed no reservations in her willingness to commit GSA resources, including human capital, to the Republican Party. Her actions, to be certain, constitute an obvious misuse of her official authority and were made for the purpose of affecting the result of an election. One can imagine no greater violation of the Hatch Act than to invoke the machinery of an agency, with all its contracts and buildings, in the service of a partisan campaign to retake Congress and the Governors' mansions.

Based on the evidence in the report, this paragraph is breathtaking in its overstatement and, as such, is terribly unfair to Administrator Doan and far from an objective, impartial, and accurate conclusion. The suggestion, based on the Administrator's alleged words, that Administrator Doan invoked "... the machinery of an agency, with all its contracts and buildings, in the service of a partisan campaign to retake Congress and the Governors' mansions" is a remarkable and unsupportable statement based on the evidence and it is thoroughly inconsistent with an impartial and objective investigative report. Moreover, it points again to the importance of the discrepancies between the four versions of the alleged comment, since the above conclusion simply is not possible if the alleged comment did not include the word "GSA." Even if the alleged comment was, at worst, an encouragement for political appointees who were known to have volunteered in the past to volunteer again—outside of work—that does not involve *any* "GSA resources, including human capital" and in no way involves "the machinery of a [government] agency." Importantly, the term "GSA" is present in only half of the variations put forward by the witnesses.

In addition, the report does not mention how any of the conversation related to affecting the result of any election. Finally, the report's conclusion that "One can imagine no greater violation of the Hatch Act..." is pure hyperbole and completely out of place in a purportedly objective, impartial, and fair report. Even if Administrator Doan made the alleged comment, she did so in a meeting attended exclusively by presidential appointees and the conversation ceased shortly thereafter. If anything, this was a *de minimis* violation of the Hatch Act not worthy of the overblown rhetoric used in the report.

For all these reasons, the report's conclusion that Administrator Doan "violated the Hatch Act's prohibition against using [her] official authority or influence for the purpose of interfering with

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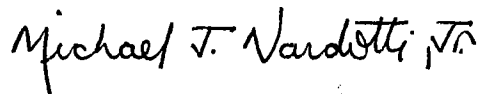
or affecting the result of an election when [she] solicited over thirty subordinate employees to engage in political activity" should be rejected.

#### VI. CONCLUSION

Based on the extensive comments provided above, we believe it is clear that the manner in which this investigation was conducted and the report prepared, together with the premature and prejudicial provision of the draft and final reports to the media all demonstrate a clear lack of objectivity and impartiality on the part of the OSC and have resulted in an extraordinary unfairness to Administrator Doan. The OSC has an obligation to avoid even the appearance of impropriety, and a fair and impartial consideration of the facts and circumstances of this case indicate it has not done so here. No action by the OSC now could erase the stigma of impropriety that now overshadows this case.

We request that the Office of the President disapprove this report and submit this matter for consideration by an appropriate entity outside the OSC.

Sincerely,



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Major General, U.S. Army, Retired

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