Congress of the United States
Washington, DC 20515

May 11, 2010

The Honorable Claire McCaskill
Chairman, Senate Rule XI Impeachment Committee
United States Senate
Washington, D.C.

The Honorable Orrin Hatch
Vice Chairman, Senate Rule XI Impeachment Committee
United States Senate
Washington, D.C.

Dear Senator McCaskill and Senator Hatch:

We are writing to follow up on our earlier letter of April 15, 2010 (a copy of which is attached). We share the Senate's desire to move both carefully and expeditiously in this matter, and we believe that the time-frame set forth by Senator McCaskill, at the Senate Impeachment Trial Committee Organizational Meeting of April 13, is both realistic and fair. In particular, we share the Senate's desire to complete the trial by Congress's summer recess so that the full Senate can consider this matter in September. Given the Senate's busy schedule, particularly in the coming months, we would like to respectfully offer some thoughts and suggestions on how the parties might work to ensure that the Trial Committee's timeline is met.

MOTIONS SCHEDULE: The Managers await a proposed schedule from the Trial Committee for filing and ruling on all motions – dispositive and procedural/evidentiary. Given that early rulings will have a great effect on all phases of the proceedings thereafter, we suggest that all motions by both sides be filed no later than May 21, that all responses be due two weeks thereafter, and that replies (if any) be filed one week after that. We recommend a date for arguments be set as soon thereafter as practicable. Such a schedule would provide for dealing with dispositive motions and other motions that are essential to the trial preparation process, but would not preclude the possibility that either party might need to file last minute motions that may be decided shortly prior to or at trial.

STIPULATIONS: In an effort to expedite matters, the House has already sent proposed stipulations of fact and proposed stipulations as to authenticity of documents to counsel for Judge Porteous. We await responses from Judge Porteous to our proposals and await any proposed stipulations he may submit. We recommend that the Senate Committee direct the parties to either agree or to provide reasons to justify any refusal to agree. This will give the parties an

opportunity to discuss and perhaps resolve the issue. If the parties cannot resolve the issue, the Committee will be able to decide whether the refusal has merit.

We suggest that the stipulation process track the motions process: that all proposed stipulations be exchanged by the parties as of the date motions are due; all responses to the proposed stipulations be exchanged by the parties as of the date the responses to the motions are due; and the submission of the proposed stipulations as to which no agreement has been reached be submitted to the Committee for decision on the date the replies to the motions are due.

DISCOVERY: All statements of witnesses the House presently intends to call have already been provided to counsel for Judge Porteous. These statements were included in the discovery that was provided on March 23, 2010. We are generally aware of Judge Porteous's counsel's claim that there are thousands of pages of discovery. We refer you to our discussion of this claim that we set forth in our letter of April 13, where we pointed out that the vast majority of the documents that we anticipate using at trial were provided or made available to Judge Porteous years ago because a substantial portion of the factual issues in this Impeachment trial (Articles I and III) are identical with the factual issues that were previously litigated before the Fifth Circuit. Moreover, Mr. Westling is personally familiar with the statements of the Marcottes (Article II), having represented Louis Marcotte in 2004 when Louis Marcotte was interviewed by the FBI concerning his relationship with Judge Porteous. In those interviews Louis Marcotte made statements that he repeated in substance in his testimony before the House Committee on the Judiciary Impeachment Task Force.

The House will work diligently to accommodate all reasonable discovery requests by Judge Porteous.

OTHER PRE-TRIAL MATTERS: We request that as part of a scheduling order in this case, that one week prior to trial, both sides should be required to provide witness lists and proposed testimony in summary form, and to exchange binders with pre-marked exhibits which are anticipated to be used at trial.

TRIAL DATE: We understand the Senate Impeachment Trial Committee plans to hold the trial between August 2 and August 6, 2010. Based on the parties' estimates of the time necessary for trial, we fear there is a reasonable possibility the trial could not be completed in this time frame. Moreover, even if each side were to be held to 20 hours of trial time, scheduling trial for the week prior to the August recess would not allow any latitude for unforeseen events (including unrelated matters demanding the attention of Senators on the Committee) that might interfere with the ability to hold trial as scheduled or which might unexpectedly interfere with the parties' ability to properly present or defend their cases. We thus suggest that the Committee might consider whether it is preferable that trial be set to start in the prior week of July 25 or earlier.

CONFLICT OF INTEREST: There is a potential conflict of interest on the part of

Richard Westling, Esq., counsel for Judge Porteous.[1]

We urge the prompt resolution of this conflict of interest issue. In October of 2009 we brought the matter to counsel's attention and requested he obtain appropriate waivers from his clients – Judge Porteous and the Marcottes – at that time. Our concern is that the conflict not be made an excuse for Judge Porteous to seek to remove his attorney and thus obtain a delay of this trial. We note that Judge Porteous had two attorneys in succession in connection with the Fifth Circuit proceedings and that the latter of these attorneys withdrew approximately 2 weeks prior to the Hearing citing "irreconcilable differences" with Judge Porteous. After counsel withdrew, Judge Porteous then sought to postpone the Hearing (a request which was denied), which is why he ended up representing himself at that Hearing. We request that the Senate Committee direct Judge Porteous to provide a written waiver of any potential conflict that his attorney may have in representing Judge Porteous arising from his representation of Louis Marcotte and Lori Marcotte.

We look forward to working with the Senate Committee and Judge Porteous's counsel in this matter.

Respectfully,

Adam Schiff
House Impeachment Manager

Bob Goodlatte
House Impeachment Manager

Managers of the House of Representatives: Adam B. Schiff, Bob Goodlatte, Zoe Lofgren, Henry C. "Hank" Johnson, F. James Sensenbrenner, Jr.

cc: Morgan Frankel
Senate Legal Counsel

Attachment

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[1] This potential conflict was previously referenced at footnote 5 in our letter of April 13, 2010 to Senators McCaskill and Hatch.