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May 11, 2016

Dear Colleague:

I have placed a hold on the nomination of Beth Cobert to become the Director of the Office of Personnel Management (OPM) in light of OPM's illegal rule regarding health care for Members of Congress and their staff under Obamacare.

I write to clearly lay out the reasons for my hold.

On December 23, 2009, the U.S. Senate adopted a floor amendment to Obamacare mandating that Members of Congress and their staff get their health care on the Obamacare exchange, just like millions of Americans would have to do. Both the specific language and the intent of this amendment were crystal clear: Congress should live under the same laws it passes on everyone else, in this case those Americans on the Obamacare exchange.

No special provision was made in the amendment for a federal government/employee contribution apart from the income-based subsidies available to all Americans on the Obamacare exchange. In fact, such a federal government/employee contribution was included in other proposals which were defeated and blocked.

Obamacare was passed and signed into law with this provision intact.

When this provision was focused on after the fact, it caused significant consternation on Capitol Hill. This led to a frenzied, bipartisan lobbying effort to have the Obama Administration adopt a rule to get around this provision.

OPM did so effective October 2, 2013. This rule is clearly illegal (contrary to statute) in two major respects.

First, in a convoluted attempt to recreate out of thin air a federal government/employee contribution, the rule allows members and staff to enroll in the DC Small Business Exchange even though that exchange is explicitly reserved under the statute for employers of either 100 or 50 persons or fewer (DC chose 50 under the law).

Second, the rule allows members to categorize any or all of their taxpayer-funded employees as "non-official", in which case those employees can remain in the very attractive FEHBP (which covered all members and employees previously). This entirely negates and erases the floor amendment for those congressional employees.

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Beth Cobert has supported and executed this rule as Acting OPM Director and has indicated that she would continue to do so if confirmed.

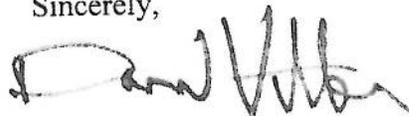
Congress, under Republican House leadership and Democratic Senate leadership when the rule was issued, also was fully complicit in this fraud. Most notably, both the House and the Senate, through unnamed staff, officially certified in writing that each body employed 45 persons in order to qualify for the DC Small Business Exchange (See attached exhibits).

This is an outrageous act of fraud. And the OPM rule is patently illegal. It's all exactly the sort of Washington insider self-dealing that Americans are so sick and tired of.

In fact, it is so egregious that OPM, under Beth Cobert, has responded to my written questions by asserting, among other things, that it never took the position that the House and Senate are small businesses of 50 employees or fewer eligible for the DC Small Business Exchange. However, that is exactly the position that the OPM rule promotes by pushing the House and Senate to the DC Small Business Exchange, which led to the House and Senate officially certifying in writing that they each employ 45 persons.

I would welcome this being corrected either legislatively or administratively, and I've suggested numerous ways in which this can be done. In the meantime, I will maintain my hold on the nomination of Beth Cobert to become Director of OPM.

Sincerely,

A handwritten signature in black ink, appearing to read "David Vitter". The signature is written in a cursive, somewhat stylized font.

David Vitter

Attachment