

February 3, 2015

Karen Hass
Clerk of the U.S. House of Representatives
Room H154
U.S. Capitol
Washington, DC 20515

Mila Kofman
Executive Director
D.C. Health Benefit Exchange Authority
1225 Eye St. NW, Suite 400
Washington, DC 20005

Ilena Garcia
Financial Clerk, Senate Disbursing Office
127 Hart Senate Office Building
Washington, DC 20510

Dear Ms. Haas, Ms. Garcia, and Ms. Kofman,

I write to you today seeking information concerning documents submitted by Congress to the District of Columbia Health Benefits Exchange (DCHBE).

Specifically, it appears as though certain false information may have been filed with DCHBE that inaccurately indicates the U.S. Congress would meet any rational definition of a "small business." Because DCHBE allowed that determination to be made, Congress is now able to keep their taxpayer funded employer contribution while purchasing health plans on the DCHBE. This federal taxpayer subsidy is unavailable to any other American under the Affordable Care Act.

Jurisdiction of the U.S. Senate Committee on Small Business and Entrepreneurship includes oversight responsibilities affecting or related to small businesses. According to the application DCHBE approved, that now includes Congress in this matter. Allowing Congress to determine itself as a "small business" should not have passed the common sense test.

As each of you is aware, on October 15, 2014, Judicial Watch filed a lawsuit against the District of Columbia Health Benefit Exchange Authority regarding its decision to allow Congress to participate in D.C.'s Small Business Exchange.¹ In its complaint Judicial Watch cites several applications filed by the U.S. House of Representatives and U.S. Senate that misrepresented material information including fake names, the number of full-time equivalent employees, and a definition of Congress as a "state/local government."²

¹ Vining v. DC Health Benefits Exchange, No. 14-0006496 (Super. Ct. D.C. filed Oct. 15, 2014).

² Letter from Mary Senkewicz, Associate General Counsel and Policy Advisor, DC Health Benefit Exchange Authority, to Michael Bekesha, Judicial Watch, Inc. (Sept. 5, 2014), <http://www.judicialwatch.org/wp->

These documents, that have been made public, prove that someone within Congress knowingly falsified information in order for Congress to keep their Obamacare subsidy. We need to know who, immediately, so we can fix this injustice and eliminate the unfair practice.

Under the Employer Information section of the D.C. Health Link application, the Primary Business address indicates that the Office of the Clerk of the U.S. House of Representatives (House Clerk) and the U.S. Senate Disbursing Office (Senate Disbursing) were responsible for submitting these applications. Employees of these two offices carry out the administrative functions of both chambers. The individuals who submitted these documents would be well aware that Congress employs nearly 16,000 individuals, not 45 employees as the application ridiculously claims. They would also be aware that Congress serves as part of the Legislative Branch of the federal government, not as a state or local government. Finally, the House Clerk and Senate Disbursing employees who signed under the electronic signature claimed that they provided “correct answers to all questions.”³

Documents submitted to the court appear to include significant redactions, including, but not limited to, names, contact information, and federal employee identification number (EIN). This, of course, leaves out information that would otherwise inform the public who is responsible for facilitating such a disingenuous outcome. Accordingly, I have the following specific requests that require immediate attention:

- 1) DCHBE expeditiously facilitate a meeting in my office or over the phone to discuss your role in approving Congress’s “small business” health care applications.
- 2) The House Clerk and U.S. Senate Disbursing Offices confirm from which offices they were instructed to falsify these applications.
- 3) That DCHBE produce electronic and/or paper copies of any and all applications and other documents that were previously produced by DCHBE/DC Exchange Authority to Judicial Watch as part of a Judicial Watch Freedom of Information Act (FOIA) request in their original, unaltered form without any redactions, omissions or deletions whatsoever.
- 4) Cooperate with the Senate Small Business and Entrepreneurship Committee in its request to uphold federal law and only allow businesses with 50 or fewer full-time equivalent employees to participate in the D.C. Small Business Exchange.

As you are well aware, if any business in the United States were to knowingly provide false information when applying for a state or federal program, it would likely face severe penalties. As the operator of the D.C. Exchange, DCHBE has a responsibility to hold Congress to the same standard as any other business in the District of Columbia, and I ask that you comply with these requests no later than Friday, February 13, 2015. We ask that the documents produced in

[content/uploads/2014/10/Vining-v-DC-Health-Benefit-Exchange.pdf](https://www.fda.gov/oc/ohrt/2014/10/Vining-v-DC-Health-Benefit-Exchange.pdf) (as on pages 4, 7, and 10 of the pdf file where names of employees are either listed as “Twenty Congress” or “first last”; as on pages 2, 4, 5, 7, 8 and 10 of the pdf file where number of employees for the U.S. House of Representatives or the U.S. Senate are cited as “45” or the confirmation is cited as “I attest that I employ 50 or fewer full time equivalent employees”; as on pages 2, 5, and 8 of the pdf file where employer type is cited as “State/local government”).

³ *Id.*

response to request 3 be delivered to the majority office of the Senate Committee on Small Business and Entrepreneurship, Room 428A of the Russell Senate Office Building. Should you have any questions, please contact my staff, at 202-224-5175.

Thank you,

A handwritten signature in blue ink that reads "David Vitter". The signature is written in a cursive style and is positioned above a horizontal line.

David Vitter

Chairman

Committee on Small Business and Entrepreneurship