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Chairman Patrick McHenry
Subcommittee on TARP, Financial Services
and Bailouts of Public and Private Programs
Committee on Oversight and Government Reform
House of Representatives
Washington, DC

May 26, 2011

Dear Chairman McHenry:

On Tuesday May 24, you twice accused Professor Elizabeth Warren, Special Assistant to the President and Special Advisor to the Secretary of the Treasury, of dishonesty in her statements to a congressional committee. The public record contains no evidence to support the allegations. It is unbecoming a member of Congress—not least the chairman of an important oversight subcommittee—to accuse someone of lying to a congressional committee without adequate basis. On behalf of more than 225,000 Public Citizen members and supporters, I write to request that you clarify this matter by disclosing records that will permit the public to evaluate your accusations.

Professor Warren is charged with standing up the Consumer Financial Protection Bureau (CFPB), the agency created in the summer of 2010 to protect consumers from unfair, deceptive, and abusive practices in markets for financial services. If it operates well, the agency will prevent not just individual abuses, but also the economic instability that arises from them—like the predatory mortgage practices at the root of the current financial crisis and recession. This mission is laudable—indeed, critical—and Professor Warren has advanced it with skill, ingenuity, and openness.

There exists on Capitol Hill a silly and shameful campaign to discredit Professor Warren and weaken the CFPB, which your actions have advanced. In addition to your unsupported accusations against Professor Warren, you have made untruthful claims about the CFPB. For example, you have said the agency has “virtually unchecked discretion” even though it has a severe, unprecedented check on its discretion in the form of veto power by other financial regulators (including the very banking regulators who have been too cozy with banks and failed to prevent the current financial crisis). You also have said the agency’s “budgetary authority” is “unparalleled” because it does not derive from annual appropriations. But the Federal Reserve’s budget also does not derive from annual appropriations. Moreover, unlike the CFPB’s, the Federal Reserve’s budget is unlimited.

In light of these statements, one cannot help forming the impression that you might not be taking your job seriously, and that you might be serving your campaign contributors rather than your constituents. Your top contributor is Wells Fargo. Also among your top twenty are Bank of America, the American Bankers Association, and the National Association of Realtors.

I urge you to change course. You should clarify these matters immediately and leave no reasonable person to question whether you are committed to serving the public and engaging in an honest exchange of ideas about policy.

There are two accusations in question, both arising out of Tuesday's oversight hearing. First, in your opening statement, you said that you had "concerns about the veracity" of Professor Warren's earlier testimony that her role in mortgage fraud settlement negotiations was "limited to 'advice.'" The only support you offered for the accusation was that Professor Warren was in "dozens of meetings with federal and state officials about these settlements" and that the CFPB produced a PowerPoint presentation about settlement possibilities.

Neither attending meetings nor producing a PowerPoint slideshow is inconsistent with giving advice. In fact, attending meetings and committing thoughts to paper are sensible activities for someone advising others on an important matter.

During the hearing, you added to this accusation by implying that Professor Warren had been dishonest when she previously stated that she was providing advice to federal officials because she was also providing advice to state officials. In response, Professor Warren read aloud a letter that she had sent you over two months ago, which stated that she was advising both federal and state officials, to which you did not respond.

Second, when Professor Warren stated that she had an agreement with your staff that she would attend yesterday's hearing for only one hour, you stated flatly, "You're making this up." This accusation was particularly jarring. To a third-party observer, it seems exceedingly unlikely that Professor Warren would simply fabricate an agreement with your staff. It is much more likely that you did not know the details of your staff's communications with her, or that she and your staff had a misunderstanding. The speed and casualness with which you accused her of lying—under oath, no less—was breathtaking. It was shameful behavior for a sitting member of Congress, unless you have a strong basis for the accusation.

In a subsequent press statement, you added another accusation—also unsupported, seemingly even sillier than the initial one—that Professor Warren tried to "dictate a one hour time limit for her testimony." It is only reasonable, given the multiple changes of schedule for the hearing and your open attempts to bully a busy public servant with a full schedule, that Professor Warren or her staff might try to reach an understanding with your staff regarding the boundaries of her obligation to you on a given date. You have provided the public no reason to think Professor Warren thought she could "dictate" the duration of

her testimony, rather than merely negotiate it or simply try to reach a firm, reliable understanding of it.

You also have released three emails, apparently in an attempt to substantiate your claim that Professor Warren “made up” the notion of an agreement. The emails fall short for two reasons: First, there is no reason to believe they are an exhaustive account of relevant communications. In fact, one of them refers to an earlier telephone conversation. There may have been later telephone conversations or later emails. More important, the emails do not rule out the possibility of a misunderstanding rather than a lie. There could have been a misunderstanding between Professor Warren’s staff and your staff, or between her staff and herself. They fall far short of proving that Professor Warren “made up” what she said to you about an agreement.

Please provide the public evidence to support your claims:

1. Please provide evidence of a role Professor Warren has played in settlement negotiations that is inconsistent with giving advice. Equally important, please state clearly what non-advising role you believe Professor Warren has played—for example, has she claimed authority over the negotiators?—with evidence to support that claim.

2. Please release records or any other information sufficient to support your accusation that Professor Warren fabricated the claim that she had an agreement with your staff—that she had neither an agreement nor a misapprehension regarding an agreement.

If you are unwilling or unable to provide the evidence requested, I urge you to retract your accusations immediately. It is deeply inappropriate for a powerful member of Congress to level a baseless accusation that an individual has perjured herself before a congressional committee. You should be as committed to telling “the truth, the whole truth, and nothing but the truth,” just as you require of witnesses you swear in.

Sincerely,



David Arkush
Director
Public Citizen’s Congress Watch division

cc:
Ranking Member Mike Quigley