

**AMENDMENT TO THE AMENDMENT IN THE NATURE OF A
SUBSTITUTE TO THE COMMITTEE REPORT FOR THE RESOLUTION
RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES FIND
MARK ZWONITZER IN CONTEMPT OF CONGRESS FOR REFUSAL TO
COMPLY WITH A SUBPOENA DULY ISSUED BY THE COMMITTEE ON
THE JUDICIARY**

Offered by M . _____

On page 10, after the sentence that begins “This letter repeated and restated the same concerns” begin a new paragraph and INSERT the following:

“On June 25, 2024, just two days before the start of the Committee’s meeting to consider a report recommending that Zwonitzer be held in contempt of Congress, the Committee received a letter from Mr. Edward Siskel, Counsel to President Biden, informing the Committee that the subpoenaed information and materials are “the personal information of the sitting President[,]” and, accordingly, “raise ‘significant separation of powers issues.’”¹ On the same day, the Committee also received a letter from Zwonitzer’s attorney, stating that the White House informed Zwonitzer that he “is not authorized to provide any of the President’s information until it has been reviewed for Executive Branch confidentiality concerns and a resolution of the[] constitutional issues between the two branches has been reached.”² Also attached to that correspondence was a June 25, 2024, letter from Mr. Siskel to Zwonitzer’s attorney, stating that the Committee’s subpoena “seeks broad swaths of personal information that President Biden provided to [Zwonitzer] in confidence as part of the process for writing his memoirs[,]” and “[t]he vast majority of th[e] information is private.”³

Despite the fact that the Committee has already heard and responded to similar arguments from Zwonitzer, Zwonitzer continues to use these arguments in an effort to flout the Committee’s subpoena.”

¹ Letter from Mr. Edward N. Siskel, Counsel to the President, The White House, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, at 2 (June 25, 2024) (“In addition, it is my understanding that the Committee’s sweeping subpoena encompasses information—such as details about confidential and non-public conversations among senior presidential advisors—that Congress, the Executive Branch, and the Supreme Court have long protected against unwarranted disclosure in order to safeguard the ‘complete candor and objectivity’ of presidential advisors.”).

² Letter from Mr. Louis M. Freeman, Esq., Counsel for Mr. Mark Zwonitzer, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, at 1 (June 25, 2024) (hereinafter “Zwonitzer June 25 Letter”).

³ Letter from Mr. Edward N. Siskel, Counsel to the President, The White House, to Mr. Louis Freeman, Counsel for Mr. Mark Zwonitzer, at 2 (June 25, 2024) (hereinafter “Siskel June 25 Letter to Zwonitzer”) (“[Y]our client has no authority to resolve the separation-of-powers concerns at issue.”).

On page 14, STRIKE the sentence that begins “Zwonitzer argues that he is reluctant to comply with the Committee’s subpoena” and INSERT in its place the following:

“To avoid complying with the Committee’s subpoena, only two days before the Committee’s meeting to consider a report recommending that Zwonitzer be held in contempt of Congress, Zwonitzer invoked the Fifth Amendment right against self-incrimination.⁴”

On page 15, STRIKE the heading of subsection “D” and INSERT in its place the following:

“D. *Mazars* is inapplicable to the subpoena to Zwonitzer and any assertion of executive privilege would be invalid.”

On page 15, after the sentence that begins “The *Mazars* framework thus only applies to personal information about the President held by third parties” begin a new paragraph and INSERT the following:

“Despite the White House’s position that “the Committee seeks to avoid the analysis required by *Mazars*—and the invalidity of its subpoena that would unavoidably result under such analysis[,]”⁵ the Committee determined, based on the actual holding of *Mazars*, that its framework is inapplicable to the subpoena at bar.”

On page 15, STRIKE the sentence that reads “Finally, Zwonitzer lacks standing to raise an argument based on *Mazars* here.”

On page 15, after the sentence that begins “Accordingly, the *Mazars* framework is inapplicable” begin a new paragraph and INSERT the following:

“Turning to the White House’s invocation of Executive Branch confidentiality interests, the Committee has numerous concerns about the validity of the White House’s assertions both to the Committee and to Zwonitzer’s attorney. First, the White House does not cite any legal or persuasive authority or support for its proposition that executive privilege somehow applies to conversations between

⁴ Zwonitzer June 25 Letter, *supra* note 2, at 4.

⁵ Siskel June 25 Letter to Zwonitzer, *supra* note 3, at 2 (The Committee’s subpoena “necessitate[s], on the advice of counsel, an assertion of the constitutional privilege against self-incrimination.”).

a former Vice President and a private citizen.⁶ Second, in the unlikely event that such authority or support exists, any assertion of executive privilege has been waived. Specifically, since President Biden provided such material to and created such material with Zwonitzer for the purpose of writing a book, allowed Zwonitzer to keep the material after the book project was over, and apparently did not have any contract with Zwonitzer requiring him to keep the material confidential, any assertion of executive privilege would be without merit. This is also bolstered by the fact that the White House apparently did not assert executive privilege over the material before it was disclosed to Special Counsel Hur and his team.⁷ Consequently, the White House's last-minute decision to raise the prospect that executive privilege could apply is baseless and serves no purpose other than to further impede the Committee from carrying out its duties.”

⁶ *See id.* at 3 (“Your client is not authorized to provide any of the President’s information until it has been reviewed for Executive Branch confidentiality concerns . . .”).

⁷ Letter from Mr. Robert K. Hur, Special Counsel, Dep’t of Justice, to Hon. Merrick B. Garland, Att’y Gen., U.S. Dep’t of Justice, at 2 (Feb. 5, 2024) (“The White House Counsel has not conveyed to me the President’s decision as to assertions of executive privilege.”).