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November 29, 2021

Hon. Bennie G. Thompson, Chairman  
January 6th Select Committee  
U.S. House of Representatives  
Longworth House Office Building  
Washington, DC 20515

**Via Email**

**LIMITS ON THE COMMITTEE'S DEPOSITION POWER**

Dear Representative Thompson:

This letter is sent for two reasons: *first*, to note that based on our research regarding congressional powers, we have concluded that the current composition of this Committee precludes its use of deposition authority under the Committee's authorizing Resolution and the governing House Regulations for Use of Deposition Authority; *second*, to note that I am nonetheless willing to allow Mr. Clark to testify at a public Committee hearing (but not at a closed deposition) on two topics relating specifically to the January 6 events (see below) that do not implicate any of the privileges previously asserted.

- 1. The Committee's Current Composition and Genesis Precludes It from Wielding Deposition Authority Under the House's "Regulations on the Use of Deposition Authority."**

This Committee's purported use of deposition authority is *ultra vires*. That is true for numerous reasons, which we enumerate below:

CALDWELL, CARLSON,  
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Hon. Rep. Bennie G. Thompson

November 29, 2021

Page 2

A. The deposition rules contemplate that the “ranking minority member” of the Committee must be consulted before depositions can be taken. *See, e.g.*, Regulations for the Use of Deposition Authority, Cong Rec. H41, Rule 2 (Jan. 4, 2021) [hereinafter “Deposition Rules”] (“Consultation with the ranking minority member shall include three days’ notice before any deposition is taken”); *see also* Rules 3, 4, 5, and 9 (also requiring consultation with and participation by the “ranking minority member” or their designees).

Similarly, H. Res. 503, § 5(c)(6)—the Resolution creating the January 6 Committee—requires consultation with the ranking member in order to take a deposition:

(6) (A) The chair of the Select Committee, **upon consultation with the ranking minority member**, may order the taking of depositions, *including pursuant to subpoena*, by a Member or counsel of the Select Committee, in the same manner as a standing committee pursuant to section 3(b)(1) of House Resolution 8, One Hundred Seventeenth Congress.

(B) Depositions taken under the authority prescribed in this paragraph shall be governed by the procedures submitted by the chair of the Committee on Rules for printing in the Congressional Record on January 4, 2021.

H. Res. 503, § 5(c)(6) (all forms of emphasis added).

Thus, to take a deposition, you as Committee Chair are expressly and unambiguously required by H. Res 503, § 5(c)(6) to consult with the ranking minority member and to comply with the procedures specified in the Deposition Rules discussed above.

The first problem is that this Committee not only does not have a ranking minority member, it does not even purport to have a ranking minority member. Instead, it purports only to have Representative Cheney as a Vice Chair, but even that designation is flatly contrary to the Rules of the House. *See* January 6 Select Committee, *Chairman Thompson Announces Representative Cheney as Select Committee Vice Chair* (Sept.

CALDWELL, CARLSON,  
ELLIOTT & DELOACH, LLP

Hon. Rep. Bennie G. Thompson

November 29, 2021

Page 3

2, 2021), available at <https://january6th.house.gov/news/press-releases/chairman-thompson-announces-representative-cheney-select-committee-vice-chair> (Attachment A). The Deposition Rules are silent on Vice Chairs; neither they nor the Committee's enabling Resolution can be construed to treat Vice Chairs as if they are equivalent to ranking minority members.<sup>1</sup>

The Committee, lacking a minority ranking member, thus must take the bitter with the sweet. The sweet, in the view of the House's majority party, involves a gerrymander of the Committee's membership without the Republican Steering Committee's or Conference's participation or consent, and thus avoids the inconvenient complications and respect for minority prerogatives that would go along with true bipartisanship. Whereas the bitter is that, by proceeding in this manner, the Committee loses the ability to make use of deposition authority under H. Res. 503, § 5(c)(6) or the Deposition Rules. To do so, the Committee would have to be reconstituted.

**B.** Each of the two parties in Congress has rules and procedures governing how their committee chairs and ranking minority members are designated. On the Republican side, the Conference Rules of the 117th Congress are relevant. Rule 2(d)(2) is

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<sup>1</sup> There is also serious controversy over whether Vice Chair Cheney even still qualifies as a Republican. The Wyoming Republican party no longer recognizes her as such. See e.g., Associated Press, *Wyoming Republican Party Stops Recognizing Liz Cheney as Member*, THE GUARDIAN (Nov. 16, 2021), available at <https://www.theguardian.com/us-news/2021/nov/15/liz-cheney-wyoming-republican-party-trump>. Speaking for herself, the Chair of the Republican National Committee argues that "she still considers Rep. Liz Cheney (R-Wyo.) to be a member of the party after the Wyoming GOP voted to no longer recognize the Republican congresswoman." Julia Manchester, *McDaniel Says She Still Considers Cheney a Republican Despite Wyoming GOP Vote*, THE HILL (Nov. 18, 2021), available at <https://thehill.com/homenews/house/582150-mcdaniel-says-she-still-considers-cheney-a-republican-after-wyoming-gop-vote> [hereinafter "Manchester Article"]. Former Speaker of the House Thomas "Tip" O'Neill is perhaps best known for political aphorism contained in the title of his book. See Thomas P. O'Neill & Gary Hymel, ALL POLITICS IS LOCAL: AND OTHER RULES OF THE GAME (1993). And, in that vein, even Chair McDaniel acknowledged: "The thing about that everyone should be taking note [of] is that a state party is the most grassroots body that the state has. These are people who are running in their district committee and they're going to their county convention and they're getting on their state committee and they really represent where the party is in their state." Manchester Article.

CALDWELL, CARLSON,  
ELLIOTT & DELOACH, LLP

Hon. Rep. Bennie G. Thompson

November 29, 2021

Page 4

a default rule that provides that references to Chairs equate to the Ranking Republican Member when the Republican party is in the House's minority, as now. *See* House GOP, Conference Rules of the 11<sup>th</sup> Congress, *available at* <https://www.gop.gov/conference-rules-of-the-117th-congress/> [hereinafter "House GOP Conference Rules"]. And Rule 14 provides that the Republican Steering Committee nominates its chairs/ranking minority members and they must be voted on by the full GOP House Conference. *See* House GOP Conference Rules at Rule 14(a)(1), (b). Such chairs/ranking members need not be the Republican member with the longest service on the Committee. *See id.*

By rule and the customs, traditions, and precedents of the House, it is the role of each party, in line with its own internal processes, to designate committee chairs and ranking members and thus that role cannot be usurped by the other party. The only way for a ranking Republican minority member to be designated is for the procedure in the House GOP Conference Rules to be followed. Representative Cheney thus can only be denominated the ranking minority member (which, again, is a pivotal role given how H. Res. 503, § 5(c)(6) and the Deposition Rules work) if the Republican Steering Committee has nominated her to that role and she is then confirmed by vote of the full Republican Conference.

Representative Cheney was neither nominated for the ranking minority member role on this Committee nor voted into that role by the full Republican Conference. It appears that she does not carry the title of Ranking Minority Member in silent recognition of this very fact. Instead, she carries only the title of Vice Chair, an appellation conferred on her solely by you as Chair. *See* Attachment A, entitled "*Chairman Thompson Announces Representative Cheney as Select Committee Vice Chair*"). And, as you are well aware, the history of this Committee leaves Representative Cheney owing her post on this Committee to Speaker Pelosi. *See* Associated Press, *Pelosi Appoints Cheney to Jan. 6 Committee*, NEW YORK TIMES (July 1, 2021), *available at* <https://www.nytimes.com/video/us/politics/100000007846056/pelosi-cheney-january-6-committee.html>. This makes her, in essence, a Democrat-appointed member of the Committee in the first instance *and* a Democrat-appointed leader acting in the capacity as Vice Chair of the Committee as well—*a doubly Democrat appointment*. Indeed, during our November 23, 2021 session at the Longworth House

CALDWELL, CARLSON,  
ELLIOTT & DELOACH, LLP

Hon. Rep. Bennie G. Thompson

November 29, 2021

Page 5

Building to review the draft November 5, 2021 transcript, Mr. Clark also specifically asked [REDACTED], your Parliamentarian, to confirm that Vice Chairs can be appointed by and be members of the majority party on this Committee and [REDACTED] confirmed that was accurate.

But even Rep. Cheney's appointment as the "Vice Chair" of the Committee is legally defective. The definition of a "Vice Chair[s]" under the Rules of the House clearly requires they be a member of the majority party. Rule XI(2)(d) provides in relevant part as follows:

**Temporary absence of chair**

(d) A member of the *majority party* on each standing committee or subcommittee thereof **shall be designated by the chair of the full committee as the *vice chair of the committee or subcommittee***, as the case may be, and shall preside during the absence of the chair from any meeting.

(all forms of emphasis added). This rule is applicable to the January 6 Select Committee because (1) Rule X(10)(b) makes Rule XI(2)(a) applicable to Select Committees; (2) Rule XI(2)(a) requires the Committee to adopt rules; (3) H. Res. 503 § 5(c) specifically states that "Rule XI of the Rules of the House of Representatives shall apply to the Select Committee except as follows"; and (4) clause 2(d) of Rule XI is not one of the listed exceptions.

Therefore, to the extent she is a member of the minority party, Representative Cheney cannot be a "Vice Chair" as that term is used and defined in the Rules of the House. Representative Cheney, it seems, is thus neither fish nor fowl.

Contrary to the Associated Press's suggestion, the law and procedures governing this Committee are not a matter of "close enough," like "horseshoes and hand grenades." See *Pelosi Appoints Cheney to Jan. 6 Committee*, NEW YORK TIMES ("Ms. Cheney's appointment appeared to be an attempt by Democrats to bring *a degree of bipartisanship* to the investigation.") (emphasis added). Representative Cheney cannot be considered a Republican appointee to this Committee because she was not appointed

CALDWELL, CARLSON,  
ELLIOTT & DELOACH, LLP

Hon. Rep. Bennie G. Thompson

November 29, 2021

Page 6

in accord with Republican processes, and is not a “ranking minority member,” and this precludes the Committee making use of deposition processes because use of those processes requires the presence on the Committee of a ranking minority member.

C. This problem is a further reflection of the overarching fact that this Committee is misstructured because it was formulated as a political monolith. *See* MacDougald Letter, at 5-6 (Nov. 12, 2021); Memo. Re: Clark Subpoena, at 13-14 (Nov. 12, 2021); MacDougald Letter, at Att. B (Nov. 8, 2021). Minority Leader McCarthy’s designees for this Committee, especially Representatives Banks and Jordan, were rejected by the Speaker of the House. *See* Mike Lillis, *Pelosi Rejects Jordan, Banks for Jan. 6 Committee*, THE HILL (July 21, 2021), available at <https://thehill.com/homenews/house/564122-pelosi-rejects-jordan-banks-for-jan-6-committee>. We explain in our separate letter, also carrying today’s date and addressed to procedural and other issues, how our November 5, 2021 letter objections were repeatedly misconstrued by the Committee and its lawyers. Related to that set of problems for the Committee, we note here that it is hard to imagine that Representatives Banks or Jordan would have allowed our November 5 objections to be mischaracterized and then ruled on as they were mis-framed, at least not without making a strong record objecting to proceeding in such an unlawful fashion.<sup>2</sup> Accordingly, how minority party Members of the Committee, especially the ranking minority member leader thereof, come to be designated and whether that process has been hijacked by the majority party is a matter of great significance and not a mere technicality.

D. Additionally, under the Deposition Rules, the ranking minority member can designate committee counsel to conduct a deposition. Those rules establish a balance requirement in that “[o]ne of the committee counsel shall be designated by the chair and the other by the ranking minority member per round.” Deposition Rules at Rule 5. Indeed, Rule 6 specifically states as follows:

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<sup>2</sup> As I note in our other letter dated today, we will be responding separately to your November 17, 2021 letter, which is relevant to these points.

CALDWELL, CARLSON,  
ELLIOTT & DELOACH, LLP

Hon. Rep. Bennie G. Thompson

November 29, 2021

Page 7

Deposition questions shall be propounded in rounds. The length of each round shall not exceed 60 minutes per side, *and shall provide equal time to the majority and the minority*. In each round, the member(s) or committee counsel designated by the chair shall ask questions first, and the member(s) or committee counsel designated by the ranking minority member shall ask questions second.

Deposition Rules at Rule 6. This scrupulously ensures balance between the majority and minority lawyers in their role of propounding deposition questions. Yet, there is no minority counsel for this Committee that has been properly designated by the ranking minority member, because the Committee lacks a ranking minority member for the reasons explained above.

E. Relatedly, we note that the brief instances where ██████ ostensible minority counsel, participated in the November 5 proceedings (*i.e.*, the deposition itself, and the sessions held after Mr. Clark and I departed that day) reinforce that these proceedings are not being conducted in true bipartisan fashion. ██████ spoke when we were present only to urge us not to leave the deposition when it became unproductive in light of the fact that the Committee and staff had not yet fully digested my November 5 letter. *See* Dr. Tr. at 37:10-13.<sup>3</sup> Nor did he push back on a single point made or position taken by any majority party Member of the Committee or ██████, majority investigative counsel. All of this is consistent with Representative Banks' view of ██████ participation.<sup>4</sup> And it also appears ██████ declined to state anything for the record in the first session held outside of our presence on November 5, let alone

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<sup>3</sup> All citations to the Draft Transcript (Dr. Tr.) are to the version Mr. Clark reviewed on November 23, 2021 at the Longworth House Office Building and that I simultaneously reviewed, connected to Mr. Clark by Webex, from an Atlanta federal building.

<sup>4</sup> *See Mollie Hemingway, J6 Committee Misleading Witnesses About Republican Staff Presence* (Nov. 10, 2021) (arguing that ██████ and Representative Cheney, in the context of this Committee's operations, both work for the Democrat Party and that according to Representative Banks, at least some witnesses are being misled "about the motives and the position of the person questioning them."), *available at* <https://thefederalist.com/2021/11/10/j6-committee-misleading-witnesses-about-republican-staff-presence/> (Attachment B), *incorporated by reference into* Memo. Re: Clark Subpoena, at 14 & n.15 (Nov. 12, 2021).

CALDWELL, CARLSON,  
ELLIOTT & DELOACH, LLP

Hon. Rep. Bennie G. Thompson

November 29, 2021

Page 8

anything that would call in question the majority's January 6 narratives, or whether the Committee is proceeding in conformity with the House Rules and its own enabling Resolution. *See id.* at 44:24.<sup>5</sup>

None of these points are designed to impugn ██████ personally, especially because he and Mr. Clark were once colleagues together in private practice and in the Bush Administration.<sup>6</sup> But, as the design of the Appointments Clause of the United States Constitution recognizes, loyalty flows structurally from the authority that makes any given appointment and can terminate it,<sup>7</sup> and here it is clear that ██████ was appointed by you as Chair of the Committee, Representative Thompson. Accordingly, ██████ is here serving your interests and those of your political party, not those of the minority party. *See* January 6 Select Committee, *Thompson & Cheney Announce Senior Investigative Counsel for the Select Committee* (Sept. 17, 2021), available at <https://january6th.house.gov/news/press-releases/thompson-cheney-announce-senior->

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<sup>5</sup> We acknowledge there is some lack of clarity in our notes about the relevant person speaking (hampered, as we were, by not having a transcript we could take with us on November 23 and by the threshold problems encountered on November 23 as we described in our letter to you that evening). If page 44, line 24 of the deposition transcript is not ██████ speaking, we apologize for that error stemming from our hastily written-up notes. But if that is in error, it would only underscore why we should be given the opportunity to review the transcript again before it is finalized—preferably by receiving a physical copy of the finalized transcript or, at the very least on that follow-up occasion, not being hampered by the threshold problems that created time pressure for our transcript review on November 23.

<sup>6</sup> The same is true as to the points made in this letter concerning Representative Cheney's participation on the Committee as currently structured—the points are legal in nature, not personal.

<sup>7</sup> *See, e.g.,* Jennifer Nou, *Subdelegating Powers*, 117 COLUM. L. REV. 473, 512 (2017) ("The core concern is that the President, in whom the Constitution vests the 'executive Power' and who must 'take Care' to 'faithfully execute' the laws, will lose control of an unelected bureaucracy. To mitigate this possibility, the Appointments Clause and other constitutional provisions ensure that the President is able to hire loyalists in key positions and fire insubordinates.") (footnote omitted). Of course, the principal obligation of any Executive Branch official is to his Oath to the Constitution as a whole, which Mr. Clark takes very seriously. But it is undeniable that the President cannot function properly and ensure that the branch functions in a unitary fashion without the ability to select his own appointees, subject to Senate confirmation for high-ranking officials.

Hon. Rep. Bennie G. Thompson

November 29, 2021

Page 9

investigative-counsel-select-committee. ██████████'s past appointments by President George W. Bush notwithstanding, he was not appointed here pursuant to a consultation with Minority Leader McCarthy, *et al.* or the designated ranking minority member on the Committee. Of course, while ██████████ served in the Executive Branch more than a decade ago, the structure of the Constitution ensured his loyalty to President Bush. But as to his service with this Committee, the manner of his appointment ensures his loyalty to you as Chair.

The Rules of the Republican Conference make this point explicit. A member's designation as the ranking Republican member of a Committee comes only through nomination by the Steering Committee and election by the Conference. Conference Rule 14(d)(1) concomitantly requires, among other things, that Republican ranking members "ensure that each measure on which the Republican Conference has taken a position is managed in accordance with such position on the floor of the House of Representatives."

F. These problems with the absence of both a minority ranking member and a counsel chosen by a properly constituted ranking minority member cannot be retroactively fixed. They render the November 5 deposition of Mr. Clark *ultra vires* and preclude its use for any follow-on purpose.

**2. Proposal for Testimony on a Limited Topic to the Full Committee in a Public Hearing.**

The Committee and its staff have repeatedly mischaracterized our position as claiming blanket privilege for Mr. Clark. We have not done so. Our position has instead emphasized prudence in awaiting, at the very least, full resolution of *Trump v. Thompson* so that the boundary points for testimony are clearer. Nevertheless, to serve the interests of the historic inter-branch accommodation process related to executive privilege disputes, I am willing to offer Mr. Clark's testimony in a public hearing before the full Committee (not in a closed-door deposition, including for the reasons given above about why use of the Deposition Rules here is *ultra vires*) on defined topics. *See, e.g.,* Dawn Johnsen, *Executive Privilege Since United States v. Nixon: Issues of Motivation and Accommodation*, 83 MINN. L. REV. 1127 (1999) (referring to "the accommodation process"

CALDWELL, CARLSON,  
ELLIOTT & DELOACH, LLP

Hon. Rep. Bennie G. Thompson

November 29, 2021

Page 10

as “a central feature of executive branch policy in this area and the process actually used to negotiate with Congress to seek to accommodate the legitimate needs of both branches”).<sup>8</sup>

As you know, we learned only on November 23 of two sessions held as part of the November 5 proceedings that occurred without either me or Mr. Clark present. At one of those sessions, Representative Schiff stated as follows: Mr. Clark “refus[ed] even to answer questions about his statements about January 6th made to the press at least strike this member as not in good faith ....” Dr. Tr. 46:5-7.<sup>9</sup>

Respectfully, we believe it was *always clear* from what was actually said on November 5 (both in writing and orally) that Mr. Clark was not refusing to ever testify about his remarks to a *Bloomberg Law* reporter on January 6. But that he was only urging, as a matter of proceeding in an orderly fashion, the Committee to await the conclusion of the *Trump v. Thompson* litigation before we discussed how to agree about testimony on any topic—all while inviting a dialogue with the Committee.<sup>10</sup> Nevertheless, to avoid any implication (even an unfair one) that Mr. Clark is not proceeding in good faith, I can now agree to allow Mr. Clark appear in a public meeting of the full Committee to testify about the following topics that do not implicate any of the privileges asserted and are also appropriately tailored to the Committee’s mission under H. Res. 503:

(1) Mr. Clark’s questioning by and responses to a *Bloomberg Law* reporter interviewing him after January 6 about events at the Capitol, and (2) his role, if any, in planning, attending, responding to, or investigating January

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<sup>8</sup> Professor Johnsen was the Acting Assistant Attorney General for the Office of Legal Counsel at the start of the Biden Administration.

<sup>9</sup> Again, this citation is drawn from our notes since we lack access to a copy of a final transcript, though we have again requested we be given one in our other later dated today.

<sup>10</sup> A dialogue which at all times it appears the Committee has refused to enter, insisting on Mr. Clark’s testimony on a smorgasbord of more than 20 topics, including Mr. Clark’s conversations with President Trump. See Dr. Tr. at page 41 (Mr. Heaphy listing topics without Mr. Clark or me present in the room).

CALDWELL, CARLSON,  
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Hon. Rep. Bennie G. Thompson

November 29, 2021

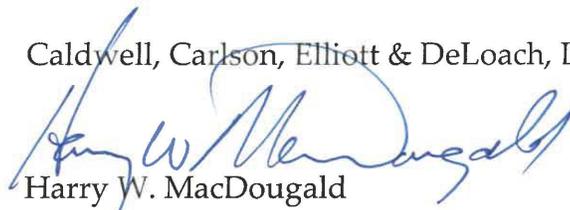
Page 11

6's events or former President Trump's speech on the Ellipse that same day.

Please let us know if this proposal is agreeable to the Committee, or otherwise continue the dialogue with us, consistent with the Committee's obligation to seek accommodation in good faith in cases involving invocations of executive privilege.

Sincerely,

Caldwell, Carlson, Elliott & DeLoach, LLP



Harry W. MacDougald

Encls.

cc: Jeffrey Bossert Clark (w/ enclosures)

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# CHAIRMAN THOMPSON ANNOUNCES REPRESENTATIVE CHENEY AS SELECT COMMITTEE VICE CHAIR

Sep 2, 2021

**Bolton, MS**—Chairman Bennie G. Thompson today announced that he has named Representative Liz Cheney (R-WY) to serve as the Vice Chair of the Select Committee.

Chairman Thompson said, “Representative Cheney has demonstrated again and again her commitment to getting answers about January 6th, ensuring accountability, and doing whatever it takes to protect democracy for the American people. Her leadership and insights have shaped the early work of the Select Committee and this appointment underscores the bipartisan nature of this effort.”

House Resolution 503 established the Select Committee to investigate and report upon the facts, circumstances, and causes related to the January 6th attack and interference with the peaceful transfer of power.

“Every member of this committee is dedicated to conducting a non-partisan, professional, and thorough investigation of all the relevant facts regarding January 6th and the threat to our Constitution we faced that day. I have accepted the position of Vice Chair of the committee to assure that we achieve that goal. We owe it to the American people to investigate everything that led up to, and transpired on, January 6th. We will not be deterred by threats or attempted obstruction and we will not rest until our task is complete,” said Vice Chair Cheney.

Chairman Thompson continued, “It’s important to everyone that the Select Committee’s leadership reflect the bipartisan effort we are engaged in and I’m pleased that Ms. Cheney has agreed to serve as the select committee’s Vice Chair. We are fortunate to have a partner of such strength and courage, and I look forward to continuing our work together as we uncover the facts, tell the American people the full story of January 6th, and ensure that nothing like that day ever happens again.”

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releases/chairman-thompson-announces-representative-cheney-select-committee-vice-chair)  ([https://twitter.com/intent/tweet?url=/news/press-releases/chairman-thompson-announces-representative-cheney-select-committee-vice-chair&text=Chairman Thompson Announces Representative Cheney as Select Committee Vice Chair](https://twitter.com/intent/tweet?url=/news/press-releases/chairman-thompson-announces-representative-cheney-select-committee-vice-chair&text=Chairman%20Thompson%20Announces%20Representative%20Cheney%20as%20Select%20Committee%20Vice%20Chair))  ([mailto:?subject=Chairman Thompson Announces Representative Cheney as Select Committee Vice Chair&body=/news/press-releases/chairman-thompson-announces-representative-cheney-select-committee-vice-chair](mailto:?subject=Chairman%20Thompson%20Announces%20Representative%20Cheney%20as%20Select%20Committee%20Vice%20Chair&body=/news/press-releases/chairman-thompson-announces-representative-cheney-select-committee-vice-chair))

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CORRUPTION

## J6 Committee Misleading Witnesses About Republican Staff Presence

*'If this was a real investigation, that'd land you in jail for prosecutorial misconduct,' Rep. Jim Banks said.*

Wyoming Rep. Liz Cheney **ran to CNN** a few weeks ago to **accuse** conservative stalwart Rep. Jim Banks of falsely presenting himself as the Jan. 6 commission's ranking member. Banks is, in fact, congressional Republicans' choice to be their top investigator on the committee, but he has been prevented from fulfilling his duties by Speaker of the House Nancy Pelosi.

However, it's Cheney who appears to be misrepresenting herself as the ranking member — that is, the top Republican — on the committee.

January 6 Select Committee staff have been falsely telling witnesses that Republican staff will be present for interviews, according to multiple eyewitness sources and documents. In fact, not a single Republican-appointed member of Congress nor a single staff member representing the Republican conference is part of the controversial committee.

Witnesses are being told that **John Wood**, a **longtime friend and ally** of the Cheney family, will represent Republicans when witnesses testify. But neither Cheney nor her friend is representing the Republican conference. In fact, Cheney was **appointed to the committee in early July by Pelosi herself**.

“John Wood works for the Democrat Party, just like Liz Cheney, who was appointed by Pelosi and is not the Ranking Member of the Select Committee. She is misleading witnesses, before they testify under penalty of law, about the motives and the position of the person questioning them,” said Banks, who has continued leading Republicans’ investigation of the federal government’s handling of the Jan. 6 riot at the Capitol. Cheney’s work with CNN was designed to prevent him from being able to gain answers to the questions the select committee was ostensibly set up to answer.

Cheney was given six days to explain whether she considers herself just the Democrat-appointed vice-chair of the committee or also the Republican ranking member, as is being represented to key witnesses. She has not responded to multiple requests for comment.

The misrepresentation to witnesses is key because the absence of any ranking member — meaning, in this case, any Republican-appointed member — or minority party staff means the committee appears to be failing to adhere to ironclad rules for its work.

Pelosi “**blew up**” the Jan. 6 committee when she took what she herself admitted was the “**unprecedented**” step of refusing to seat multiple Republican-appointed members, including the highly respected Navy officer and Indiana Republican Banks, who was to be the committee’s ranking member. She also banned Rep. Jim Jordan of Ohio, who currently serves as the top Republican on the Judiciary Committee.

Pelosi chose two of her key Republican allies and anti-Trump obsessives to fill two

of her slots for the committee. As such, they do not represent the Republican conference, which opposed their selection, but the Democrat conference, which supported their selection.

Cheney was promoted to vice-chair in September in thanks for her stalwart work on Pelosi's behalf. Cheney, who has been **censured by Wyoming Republicans** for working against Republican voters and their interests, and who lost her position as House Conference chair for hijacking multiple briefings for Republican policy initiatives to talk about her **personal vendetta against Trump**, is facing precipitously low poll numbers and a challenge from popular **Republican Harriet Hageman**.

Cheney was joined by lame-duck Adam Kinzinger of Illinois, who recently announced his retirement rather than facing certain defeat from Illinois constituents who don't share his anti-Trump obsession. Kinzinger was appointed by Pelosi in late July to make the committee appear more bipartisan after she'd vetoed Banks and Jordan. Cheney, her selection for vice-chair, was brought in for the sole purpose of helping Democrats with their tribunal.

The **resolution establishing the committee**, purportedly to investigate the federal government's role in detecting, preventing, preparing for, and responding to the Jan. 6 riot, says depositions taken by the select committee must follow House rules.

**Those rules** clearly state, "Consultation with the ranking minority member shall include three days' notice before any deposition." Also, "A deposition shall be conducted by any member or committee counsel designated by the chair or ranking minority member of the Committee that noticed the deposition. When depositions are conducted by committee counsel, there shall be no more than two committee counsel permitted to question a witness per round. One of the committee counsel shall be designated by the chair and the other by the ranking minority member per round."

Additionally, the rules say, “Deposition questions shall be propounded in rounds. The length of each round shall not exceed 60 minutes per side and shall provide equal time to the majority and the minority. In each round, the member(s) or committee counsel designated by the chair shall ask questions first, and the member(s) or committee counsel designated by the ranking minority member shall ask questions second.”

The point of these rules is to structure depositions so the minority and the majority counsel have the same opportunity to question witnesses and gather information for their separate reports. That’s why they rotate and why they’re allotted equal time. Having questions alternate from one hostile lawyer to another hostile lawyer who is working with the first makes a mockery of the provisions. It also means that the hostile lawyers can coordinate and cherry-pick which information to leak or publish, and which to conceal from the public because it contradicts their preferred narrative.

The rules do not envision the circumstances that accompany Pelosi’s uni-party select committee. The House Rules “become nonsensical in a situation like this,” said one congressional aide, adding, “This isn’t just a partisan investigation — it’s a coverup.”

For the select committee to be in accordance with the rules regarding consultation for depositions, Cheney must be considered simultaneously the ranking member for the minority party while also being the vice-chair for the majority party.

Hill lawyers say Pelosi’s handling of the committee casts doubt on its adherence to the rules. Because she vetoed the ranking member from the committee, it has no ranking member. But the committee rules require consultation with the ranking member before taking certain basic actions, such as taking depositions, including those pursuant to subpoenas.

“So how can you consult with the ranking member when you don’t have one?”

asked one Hill attorney.

The multiple sources consulted for this article include a document which confirmed January 6 Committee staff represented to a witness that Wood would be the Republican counsel during their interview.

“If this was a real investigation, that’d land you in jail for prosecutorial misconduct,” Banks said of the false representation. “Fortunately for Liz, this is a sham investigation,” he added.

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