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Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3961
judiciary.house.gov

June 9, 2022

The Honorable Bennie Thompson
Select Committee to Investigate the January 6th
Attack on the United States Capitol
U.S. House of Representatives
Washington, DC 20515

Dear Representative Thompson:

I received your letter dated May 31, 2022.¹ Your letter largely rehashes generic arguments about the Select Committee's authorities that are inapposite to your unprecedented attempt to compel testimony from a colleague.² You continue to ignore—and therefore I must assume, you concede—the concerns I raised in January and again in May about the Select Committee's abuses and pattern of due process violations. Even still, as another attempt to alleviate my concerns, I respectfully write again in further response to your letter of December 22, 2021, and your subpoena of May 12, 2022.

Since you first confronted me on December 22, 2021, with an unprecedented demand for testimony about my deliberations and decision-making process relating to a legislative matter pending before the House, I have sought to engage with you in good faith despite my fundamental concerns about your motivations and your authority to make such an extraordinary demand. Unfortunately, in the months since, you have declined to accommodate my well-founded concerns and have instead chosen confrontation and escalation.

On January 9, 2022, within eighteen days of your initial letter and over the Christmas holiday, I responded in detail to explain why your demand for testimony was without Constitutional basis, why I had no relevant information that would advance a legitimate legislative purpose, and why the Select Committee's conduct up to that point gave me concern about its commitment to fairness and due process.³ Among other concerns about the Select Committee's conduct, I noted:

¹ Letter from Rep. Bennie Thompson to Rep. Jim Jordan (May 31, 2022) [hereinafter "Thompson May 31 Letter"].

² Significant portions of your May 31 letter are identical to letters you sent to other Republican Members and to court pleadings filed by House General Counsel Douglas Letter. *See, e.g.*, Brief of the United States House of Representatives as Amicus Curiae in Support of the Department of Justice, *United States v. Bannon*, 21-670 (CJN) (D.D.C. May 10, 2022).

³ Letter from Rep. Jim Jordan to Rep. Bennie Thompson (Jan. 9, 2022) [hereinafter "Jordan Jan. 9 Letter"].

- How the Select Committee was only targeting Republican Members for testimony, and had not sought testimony from any Democrat Members with responsibility for or oversight of the security of the Capitol Complex;
- How Democrat Members had already prejudged the results of the Select Committee's work, calling Republicans "traitors" and accusing them of "sedition";
- How the Select Committee sought to examine my votes in objection to the Electoral College certification in certain states, even though you and other senior Democrats made the same Electoral College objections following the 2000, 2004, and 2016 presidential elections;
- How Speaker Pelosi had rejected Leader McCarthy's selection of Republican Members to serve on the Select Committee, in an unprecedented departure from longstanding practice;
- How the Select Committee had been investigating private citizens' political speech protected by the First Amendment; and
- How the Select Committee had attempted to gag telecommunications companies to prevent them from notifying subscribers that the Select Committee was seeking their private data.⁴

I also raised concerns about the Select Committee's habit of leaking cherry-picked information to create misleading public narratives and its attempts to alter and misrepresent nonpublic information in its possession.⁵ I cited three specific examples, including one in which Representative Schiff, a member of the Select Committee, had doctored a text message I had forwarded to the White House Chief of Staff and falsely represented it to the American people at a public meeting of the Select Committee as my own words.⁶ I explained to you that these actions gave me "no confidence that the Select Committee [would] fairly or accurately represent any information I could provide."⁷

Following my January 9 letter, despite your spokesperson's promise that you would respond "in more detail in the coming days," you abandoned the matter for 123 days. On May 12, without any intervening event or any further communication in response to my January 9 letter, you suddenly and drastically escalated the matter with a subpoena, the fact of which you leaked to the media before serving the subpoena on me.⁸ In your comments to the media, you seemed to suggest that the subpoena would function, in part, to "weaken[]" Republicans in the

⁴ *Id.* at 2-3.

⁵ *Id.* at 3-4.

⁶ *Id.* at 4.

⁷ *Id.*

⁸ Letter from Rep. Bennie Thompson to Rep. Jim Jordan (May 12, 2022). As I noted in my May 25 letter, the manner of service of your subpoena was highly concerning. House General Counsel Douglas Letter, the counsel of record for the Select Committee in ongoing litigation, volunteered to accept service on my behalf. Letter from Rep. Jim Jordan to Rep. Bennie Thompson (May 25, 2022) [hereinafter "Jordan May 25 Letter"]. Mr. Letter is unquestionably conflicted from accepting service of a subpoena that he reviewed and authorized as House General Counsel. The former House General Counsel for Speaker Tip O'Neill called Mr. Letter's unsolicited solicitation "remarkable," explaining: "It's like calling up your opponent in litigation and offering to accept service on their behalf. How does he do that since his role is on the other side of the case?" Tristan Justice, *House Counsel who subpoenaed McCarthy for Jan. 6 under fire for conflicts of interest*, THE FEDERALIST, May 13, 2022.

future if they do not submit to your demands, saying: “If Republicans choose not to, and then they take control of the House, then obviously they don’t have many legs to stand on.”⁹

Still, I sought to engage with you in good faith. On May 25, I again wrote you reiterating the concerns I expressed in January and noting how my concerns had grown in the intervening period due to the Select Committee’s continued leaks and its reported withholding of information about January 6 that contradicts its narrative.¹⁰ I articulated several points about the validity and constitutionality of your unprecedented subpoena upon a colleague for testimony in a non-ethics context.¹¹ I concluded by respectfully requesting that given the extraordinary and unprecedented nature of your subpoena, you demonstrate your commitment to fairness and due process by providing three discrete categories of material to allow me to further respond to the subpoena.¹²

Your May 31 letter is the first instance in which you have attempted to engage substantively to any extent about the matters I first raised on January 9. It is disappointing that you waited 142 days to do so and that you chose to engage only *after* you decided to escalate the matter with a subpoena. Unfortunately, there are several areas in which your May 31 letter fundamentally mischaracterizes points I made or makes erroneous assertions to which I must respond.

First, your letter wrongly asserts that I alleged “the Select Committee lacks a legitimate legislative purpose.”¹³ Your assertion is a straw man. As the Supreme Court explained in *Trump v. Mazars*, the analysis of the congressional subpoena authority properly centers on the legislative purpose of the subpoena—not on the legislative purpose of the broader investigation for which the subpoena was issued.¹⁴ “[A] congressional *subpoena*,” the Court explained, “is valid only if it is related to, and in furtherance of, a legitimate task of the Congress.”¹⁵ Additionally, the Court detailed, “Congress may not issue a *subpoena* for” an inappropriate purpose, including for “law enforcement,” “to try someone,” “to expose for the sake of exposure,” “for the personal aggrandizement of the investigators,” or for punishment.¹⁶ It is the particular subpoena, and not the broader investigation, that matters for purposes of this analysis.

As such, while some courts have recognized the Select Committee’s investigation as having a legitimate legislative purpose,¹⁷ it does not necessarily follow that the Select Committee’s subpoena to me is in furtherance of a legitimate legislative purpose. That is the distinction at issue here, and one over which you glossed in your May 31 letter. My May 25 letter stated that you have not demonstrated that the subpoena issued to me—not the

⁹ Luke Broadwater & Emily Cochrane, *Subpoenas for Republican raise new questions for Jan. 6 panel*, N.Y. TIMES, May 13, 2022.

¹⁰ Jordan May 25 Letter, *supra* note 8.

¹¹ *Id.* at 2-5.

¹² *Id.* at 6.

¹³ Thompson May 31, *supra* note 1, at 1.

¹⁴ *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019 (2020).

¹⁵ *Id.* at 2031 (citing *Watkins v. United States*, 354 U.S. 178, 187 (1957)) (emphasis added).

¹⁶ *Id.* at 2032 (internal citations omitted) (emphasis added).

¹⁷ Thompson May 31, *supra* note 1, at 1.

investigation writ large—is in furtherance of a legitimate legislative purpose.¹⁸ You have not addressed this point or explained with particularity how the information you seek to compel from me concerns “a subject on which legislation could be had.”¹⁹ And I have explained in detail why the subpoena appears instead designed to advance illegitimate political objectives—an inference that your most recent correspondence fortifies.

Second, you argue that “[t]he Select Committee was established in compliance with its authorizing resolution.”²⁰ This assertion is incorrect. The authorizing resolution, H. Res. 503, includes an imperative command—“shall”—requiring Speaker Pelosi to appoint 13 members to the Select Committee.²¹ The Select Committee would have had a full complement of 13 members but for Speaker Pelosi’s self-described “unprecedented” step of rejecting Leader McCarthy’s selection of Republican members to serve on the Select Committee.²² To the extent you now seek to excuse Speaker Pelosi’s unprecedented rejection of Republican members by arguing that “shall” is permissive and really means “may,” this post-hoc rationalization fails. The proper analysis is “what rules the House has established and whether they have been followed.”²³ Where, as here, the rules potentially bear upon the House’s authorization for an injury, the rules “must be strictly observed.”²⁴

It cannot be seriously disputed that the Select Committee’s composition without 13 members fails to “strictly observe[]” the rules of the House. H. Res. 503 is clear that the Speaker “shall” appoint a full complement of 13 members.²⁵ You point to the fact that the resolution contemplates that “vacancies” may arise.²⁶ But the vacancy provision assumes that any vacancy will occur after an “original appointment.”²⁷ Nothing in the resolution permitted the Select Committee to begin functioning without a full complement of 13 members. This failure to comply with H. Res. 503 cannot be “ratified,” in your words, by the House’s adoption of contempt resolutions in other matters, in part, because when liberty interests are stake, the Supreme Court has counseled that the House must “be . . . meticulous in obeying” its rules.²⁸

Your reliance on the House Select Committee to Investigate the Preparation for and Response to Hurricane Katrina as precedent is also misplaced.²⁹ While the Hurricane Katrina Select Committee issued subpoenas, it never sought to enforce those subpoenas. As such, potential objections to the subpoenas pertaining to the Select Committee’s composition were never fully considered, and the validity and constitutionality of the subpoenas were never fully

¹⁸ Jordan May 25 Letter, *supra* note 8, at 2-3.

¹⁹ *Mazars*, 140 S. Ct. at 2031-32 (citing *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 506 (1975)).

²⁰ Thompson May 31, *supra* note 1, at 1.

²¹ H. Res. 503, § 2(a), 117th Cong. (2021) (“The Speaker shall appoint 13 Members to the Select Committee, 5 of whom shall be appointed after consultation with the minority leader.”).

²² *Pelosi blows up her Jan. 6 Committee*, WALL ST. J., July 21, 2021.

²³ *Chistoffel v. United States*, 338 U.S. 84, 88-89 (1949).

²⁴ *Gojack v. United States*, 384 U.S. 702, 708 (1966) (citing *Yellin v. United States*, 374 U.S. 109 (1963)).

²⁵ H. Res. 503, *supra* note 21, § 2(a).

²⁶ Thompson May 31, *supra* note 1, at 2.

²⁷ H. Res. 503, *supra* note 21, § 2(c) (emphasis added).

²⁸ See *Yellin v. United States*, 374 U.S. 109 (1963).

²⁹ Thompson May 31, *supra* note 1, at 1.

tested.³⁰ The Hurricane Katrina Select Committee therefore is not the settled precedent you claim it to be.

Third, you argue that the Select Committee has followed the “ranking minority member” requirement of H. Res. 8 because you have designated Representative Cheney to serve as the Select Committee’s *de facto* ranking minority member with the honorary title “Vice Chair.”³¹ You ignored, however, your own statement from the Select Committee’s July 2021 public hearing that Representative Cheney “is not the ranking member of this Select Committee.”³² With respect, you cannot have it both ways: you cannot assert that Representative Cheney is not the ranking minority member for purposes of a public hearing and later argue that she is the *de facto* ranking minority member for purposes of complying with H. Res. 8. Your inconsistency has serious consequences for the Select Committee’s compliance with House rules, recognized in *Jefferson’s Manual* as “the only weapons by which the minority can defend themselves . . . from those in power” and “a strict adherence to which the weaker party can only be protected from these irregularities . . . which the wantonness of power is but too often apt to suggest to large and successful majorities.”³³ Your inconsistency on such a serious procedural point raises questions about whether the Select Committee has been “meticulous” in following House rules with respect to your subpoena.³⁴

Contrary to your assertion that “the House’s longstanding interpretation of ‘ranking minority member’” supports your assertion about Representative Cheney’s role as “Vice Chair,”³⁵ I am aware of no authority—and you have cited none—that allows a majority party chairman to unilaterally designate a minority party member to serve as ranking member or vice chair. Your appeal instead to an online glossary of legislative terms does not support your position.³⁶ The online glossary you cite defines “ranking member” as “the most senior (though not necessarily the longest-serving)” minority party member.³⁷ By your own definition, then, the Speaker’s selection of Representative Cheney as the “first”—that is, the longest-serving—minority party member does not necessarily make her the most senior minority member or the ranking minority member by virtue of her longevity. Indeed, each party has unique rules and

³⁰ Cf. H. Rpt. 109-377, at 23, 109th Cong. (2006) (explaining that the Hurricane Katrina Select Committee subpoenas returned documents).

³¹ Thompson May 31, *supra* note 1, at 2.

³² “*The Law Enforcement Experience on January 6th*”: Hearing before the H. Sel. Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, 117th Cong. (2021) (statement of Rep. Bennie Thompson).

³³ Constitution, *Jefferson’s Manual and Rules of the House of Representatives* § 284, H.R. Doc. No. 116-117, 117th Cong. (2021).

³⁴ *Yellin v. United States*, 374 U.S. 109, 123-24 (1963) (“[T]he witness’ reasonable expectation is that the Committee actually does what it purports to do, adhere to its own rules. . . . The Committee prepared the groundwork for prosecution in Yellin’s case meticulously. It is not too exacting to require that the Committee be equally meticulous in obeying its own rules.”).

³⁵ Thompson May 31, *supra* note 1, at 2.

³⁶ *Id.*

³⁷ Glossary of Legislative Terms, Congress.gov (last visited June 9, 2022) (definition of “Ranking Member”).

considerations in determining its selection of a ranking minority member (that is, the “most senior” member) on each committee that reflect more than mere time served.³⁸

The designation of a ranking minority member has been and is properly the responsibility of the respective parties’ membership.³⁹ For example, when the House passed H. Res. 10—which you cite in your letter—to designate the Republican ranking members for the 117th Congress, the resolution was offered on the House floor expressly “by direction of the Republican conference.”⁴⁰ The same holds true for previous Democrat ranking members. When the House passed H. Res. 7 in the 115th Congress to designate Democrat ranking members, the resolution was offered “by direction of the Democratic caucus.”⁴¹ In addition, each of the other House committees currently in operation—standing and select—have a ranking minority member who was chosen by the Republican conference or by the Republican Leader.⁴² The Select Committee’s reliance, therefore, on a ranking minority member not chosen by the minority party and instead unilaterally selected by the majority party chairman is not consistent with “the House’s longstanding interpretations”; it is, properly understood, a deviation from the House’s historical practice and an aberration among current House committees.

Your May 31 letter is also notable in what you did not address or acknowledge. I made several points in my correspondence to which you have not responded. I must conclude that you concede these points.

First, you did not substantively address any of the concerns I have raised—in both my January 9 letter and my May 25 letter—about the Select Committee’s abusive conduct, due process violations, leaks of cherry-picked information, and altering of nonpublic information in its possession.⁴³ You have not denied that the Select Committee is selectively targeting Republican Members and ignoring potentially fruitful testimony from Democrats responsible for the Capitol Complex’s security—a topic that is squarely within the Select Committee’s jurisdiction as passed by the House.⁴⁴ You have not answered why the Select Committee has

³⁸ Michael Greene, Cong. Research Serv., Rules Governing House Committee and Subcommittee Assignment Procedures 8 (May 5, 2021) (“[T]he [Democratic] Steering and Policy Committee is directed by caucus rules to factor in merit, committee service, commitment to the Democratic agenda, and overall diversity of the Caucus, while not having to adhere to seniority in making [ranking member] nominations.”); *id.* at 10 (“The [Republican] Steering Committee is not ultimately bound to nominate Members [for ranking member positions] based on their committee seniority.”).

³⁹ *See id.*; Judy Schneider, Cong. Research Serv., House Standing Committee Chairs and Ranking Minority Members: Rules Governing Selection Procedures (Aug. 31, 2017).

⁴⁰ 167 Cong. Rec. H37 (117th Cong. Jan. 4, 2021). In addition, H. Res. 9 in the 117th Congress, designating committee chairman—including you as the chairman of the Committee on Homeland Security—was offered expressly “by direction of the Democratic Caucus.” *Id.* at H36-H37.

⁴¹ 163 Cong. Rec. H28-29 (115th Cong. Jan. 3, 2017).

⁴² *See, e.g.*, H. Res. 9, 117th Cong. (2021); H. Res. 10, 117th Cong. (2021); Press Release, Leader McCarthy Appoints Congressman Michael Turner as Ranking Member of HPSCI (Dec. 30, 2021); Press Release, McCarthy Names House Republicans to Serve on Select Committees (July 19, 2021); Press Release, Graves Reappointed as Ranking Member of Climate Committee for 117th Congress (Feb. 23, 2021); Press Release, Timmons Named Vice Chair of Select Committee on the Modernization of Congress (Feb. 22, 2021).

⁴³ Jordan May 25 Letter, *supra* note 8; Jordan Jan. 9 Letter, *supra* note 3.

⁴⁴ H. Res. 503, *supra* note 21, § 4(a)(2).

been investigating Americans for protected First Amendment political speech activities, or why you have demanded that telecom and email companies not inform their customers that the Select Committee has sought private data. You have not explained why, when good-faith disputes over information have arisen, the Select Committee has chosen to punish through criminal contempt rather than litigate through a civil enforcement action. You have failed to accept responsibility for the Select Committee's pattern of misleading leaks, its altering of nonpublic information for public dissemination, and its spread of false and misleading information. Each of these points call into question your commitment to conducting a fair-minded and objective inquiry.

Given the Select Committee's unfortunate pattern of due process abuses and its misrepresentation of nonpublic information its possession, in my May 25 letter, I sought two categories of material in the Select Committee's possession or control that would help to demonstrate your commitment to fundamental fairness and due process. As I explained to you, because the subpoena represents an unprecedented and extraordinary use of a committee's compulsory process, and in light of the Select Committee's documented pattern of abuses, these categories of material would help to assuage the concerns I had articulated. Unfortunately, you did not honor these requests or even address them.

Second, your May 31 letter did not explain how your subpoena is consistent with the structure of the Constitution. In January 2022, you candidly admitted to reporters that "there are some questions" about the Select Committee's legal authority to compel testimony from colleagues.⁴⁵ You said at the time that the Select Committee was studying the matter.⁴⁶ Presumably, now that you have issued this subpoena following four months of study, you have developed a comprehensive analysis that answers the open "questions" about the Select Committee's authority to issue such a subpoena. In my May 25 letter, I asked that you provide the legal authority and legal analyses on which you rely for your subpoena given the unprecedented and extraordinary nature of your action. Here, too, you declined to do so. There is no valid reason for the Select Committee to withhold the legal analysis (if any) that has suddenly led the Select Committee to conclude that it possesses the unprecedented authority to subpoena fellow Members of Congress.

Third, although you have cited ethics proceedings as precedent for your subpoena,⁴⁷ you have not contested the assertion that a subpoena issued in the context of a House ethics proceeding is materially different from a subpoena issued in this instance.⁴⁸ The Ethics Committee is a unique committee among House committees in its composition: equal membership of five Democrats and five Republicans.⁴⁹ It is also unique among House committees in its functions: investigating allegations of conduct that violate the standards of

⁴⁵ Jan Wolfe, *Jan. 6 committee studying whether it can subpoena U.S. Republican lawmakers – chairman*, REUTERS, Jan. 3, 2022.

⁴⁶ *Id.*

⁴⁷ Press Release, H. Sel. Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Select Committee Subpoenas Five Members of Congress (May 12, 2022).

⁴⁸ Jordan May 25 Letter, *supra* note 8, at 4-5.

⁴⁹ Rules of the House of Representatives, R. X(5)(a)(3), 117th Cong. (2021); H. Comm. on Ethics, Committee Members, <https://ethics.house.gov/about/committee-members> (last visited June 9, 2022).

official conduct.⁵⁰ While an Ethics Committee subpoena could be justified by the express Constitutional power of “Each House” to “punish its members for disorderly behavior,”⁵¹ the Select Committee’s subpoena, as you have publicly stated, is expressly for a different purpose.⁵²

Finally, you have not substantively addressed the repeated statements from members of the Select Committee suggesting an inappropriate and abusive purpose in the Select Committee’s subpoena and its investigation.⁵³ You may seek to dismiss these concerns as “specious” and “irrelevant” to the Select Committee’s subpoena,⁵⁴ but these statements by Select Committee members, which you have not publicly disavowed, speak loudly to the true goals of the Select Committee. You have not denied repeated statements by Select Committee members that its work will “bring justice,” “expose,” tell the “story of what happened,” and “lay[] out the full picture”—all improper motives of a congressional subpoena pursuant to Supreme Court precedent.⁵⁵ One member of the Select Committee, Representative Raskin, has even insultingly described Republicans as “cult” members in need of deprogramming.⁵⁶ Your reliance on *Watkins v. United States* to excuse these troubling statements is misplaced in that the Supreme Court in *Mazars* declined to endorse *Watkins*’s suggestion that “motives alone would vitiate an investigation”—despite the House litigants stressing this point in their brief to the Court.⁵⁷ Explaining that the House’s position “failed to take account of the significant” constitutional principles at issue,⁵⁸ the *Mazars* Court articulated a “balanced approach” of four factors: (1) whether Congress has exhausted “other sources” for the information sought; (2) whether the subpoena is “no broader than reasonably necessary”; (3) whether Congress has sufficiently explained how the subpoena “advances a legitimate legislative purpose”; and (4) the need for a “careful assessment” of the subpoena’s burdens.⁵⁹

In light of the above concerns, I will repeat again what I have informed you twice before: I have no relevant information that would advance a legitimate legislative purpose of the Select Committee. I cannot testify to the security posture at the Capitol Complex in the days in advance of January 6 or why former U.S. Capitol Police Chief Steven Sund said that “optics” contributed to the limited security response.⁶⁰ I had no role in or advance knowledge that violence would occur on January 6, but I have seen reporting suggesting that the violence was not part of an “organized plot to overturn the presidential election result.”⁶¹ At the time of the Capitol security

⁵⁰ Rules of the House of Representatives, *supra* note 49, R. XI(3).

⁵¹ U.S. Const. art. I, § 5, cl. 2.

⁵² See Press Release, *supra* note 47.

⁵³ Jordan May 25 Letter, *supra* note 8.

⁵⁴ Thompson May 31 Letter, *supra* note 1, at 4 n.11.

⁵⁵ See Jordan May 25 Letter, *supra* note 8.

⁵⁶ See Mary Papenfuss, *Jamie Raskin says he has consulted cult experts to communicate with extremist colleagues*, HUFF. POST, Apr. 23, 2022.

⁵⁷ See Brief in Opposition for Respondent Committee on Oversight and Reform, U.S. House of Representatives, *Mazars*, No. 19-715 (U.S. Dec. 11, 2019).

⁵⁸ See *Mazars*, 140 S. Ct. at 2033.

⁵⁹ *Id.* at 2035-36.

⁶⁰ Carol D. Leonnig et al., *Outgoing Capitol Police chief: House, Senate security officials hamstrung efforts to call in National Guard*, WASH. POST, Jan. 10, 2021.

⁶¹ Mark Hosenball & Sarah N. Lynch, *Exclusive: FBI finds scant evidence U.S. Capitol attack was coordinated – sources*, REUTERS, Aug. 20, 2021.

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breach, I was in the House chamber participating in debate pursuant to 3 U.S.C. § 15. I publicly condemned the violence and encouraged support for law enforcement as the violence occurred.⁶² You still have not contested any of these basic facts.

The topics of inquiry you identify in your May 31 letter relate to the performance of my official duties. As I explained to you in my May 25 letter, I joined my colleagues in conducting constitutional oversight of election integrity measures in advance of the 2020 election as a result of last-minute and unconstitutional changes to election laws in some states.⁶³ Many of the changes we highlighted in September 2020 did prove to contribute to uncertainty and delay in the results in certain states. My official interest in matters surrounding the 2020 election, as informed by my oversight of the last-minute and unconstitutional changes in certain states, is not evidence of the nefarious plot you imply it to be. If it was, your past statements calling into question “faith in the fairness” of the 2016 presidential election and your embrace of debunked allegations of Russian collusion in the 2016 election would make you—and other House Democrats who spread falsehoods about Russian collusion—similarly culpable.⁶⁴

It is telling that in support of your demand for testimony you cite as fact various media reports with anonymous sources, one-sided “fact checks,” and similar material.⁶⁵ Indeed, you cite without any qualification a dubious claim from one author who has been the subject of criticism for his credibility and accuracy.⁶⁶ Your tactic seems to be one of lodging unfounded and salacious allegations and then challenging me to respond to clear my name. This tactic is not indicative of a fair-minded investigation, and it only adds to the concerns I have expressed before.

You seem to believe that you have the authority to arbitrate the scope of a colleague’s official activities. Respectfully, I do not answer to you or the other members of the Select Committee. I am accountable to the voters of Ohio’s Fourth Congressional District who I have the privilege to represent in the House of Representatives. You take the position that the Select Committee may pry into my deliberations and considerations informing my votes because “the

⁶² See Tweet by Rep. Jim Jordan, Twitter.com (Jan. 6, 2021, 3:02 p.m.), https://twitter.com/Jim_Jordan/status/1346909940812664834.

⁶³ Jordan May 25 Letter, *supra* note 8, at 5 (citing H. COMM. ON THE JUDIC. & H. COMM. ON OVERSIGHT & REFORM, HOW DEMOCRATS ARE ATTEMPTING TO SOW UNCERTAINTY, INACCURACY, AND DELAY IN THE 2020 ELECTION (Sept. 23, 2020) (Republican staff report)).

⁶⁴ See Tweet of Rep. Bennie Thompson, Twitter.com (Feb. 14, 2018, 8:15 a.m.), <https://twitter.com/benniegthompson/status/963763564833013761>; Rep. Bennie Thompson, Democratic Weekly Address (July 14, 2017) (“And this week, in Donald Trump Jr.’s emails, we saw the first public evidence that the Trump campaign eagerly intended to collude with Russia. . . . We must get the truth about Russia’s meddling and the full extent of the Trump campaign complicity.”); Deborah Barfield Berry, *Thompson pushes probe on Russia: ‘I want the committee to do its job,’* CLARION-LEDGER (Jackson, Miss.), Apr. 9, 2017 (“I want the committee to do its job – as it relates to the conduct of and tampering with our systems of elections.”); Press Release, Thompson Statement on Trump Shutdown (Jan. 20, 2018) (“And over a year since Russia interfered in our election – a direct attack on our democracy – he seems to have done nothing to prevent it from happening again.”).

⁶⁵ Thompson May 31 Letter, *supra* note 1, at 3-5.

⁶⁶ *Id.* at 5. See Erik Wemple, *Michael Wolff’s credibility, in one table*, WASH. POST, May 29, 2019; Michael Calderone, *Journalists scrutinize Michael Wolff’s credibility*, POLITICO, Jan. 4, 2018.

electoral certification process is unmistakably within the remit of our Committee.”⁶⁷ But if you believe that this topic is a matter on which legislation could be had,⁶⁸ then it certainly follows that my deliberations and information-gathering relating to the electoral certification process is well within the remit of the official activities of a Member of Congress.

You also suggest that the Select Committee may compel testimony about my deliberations and considerations informing my votes pursuant to 3 U.S.C. § 15 because Congress may decide to amend that statute.⁶⁹ This assertion is a radical expansion of Congress’s investigative power with no limiting principle. It would not only violate the institutional prerogatives of the House and its Members, but also unalterably change the nature of this body. Under your logic, the House’s majority party could compel testimony from any minority party member about any subject merely by virtue of the House potentially voting on that topic. Such a tyranny of the majority cannot stand and is fundamentally inconsistent with the practice and traditions of the House.

The penultimate paragraph of your letter gives away your true goals. You wrote that testimony before the Select Committee would be an “opportunity to resolve, on the record, inconsistencies in [my] public statements about the events of January 6th” and “clarify these statements for [the Select Committee].”⁷⁰ As a foundational matter, I disagree with your assertion about inconsistent statements or the need to “clarify” any of my statements. But setting that aside, there can be no legitimate legislative purpose for using Congress’s compulsory authority as an “opportunity” to question a member for the purpose of “resolv[ing] . . . inconsistencies.” Your statement is, instead, another indication that you seek my testimony for purposes of harassment, embarrassment, the self-aggrandizement of the Select Committee members, and to “weaken[]” my position in the future.⁷¹

Your May 31 letter has not alleviated the concerns I expressed to you in my January 9 and May 25 letters or resolved the matters relating to the constitutionality and validity of your May 12 subpoena. As such, because your subpoena is an unprecedented and extraordinary use of a committee’s compulsory authority against another member, and as a third attempt to assuage my concerns about your commitment to fundamental fairness and due process, I again respectfully ask for the following material so that I may adequately further respond to your subpoena:

1. Because the Select Committee has withheld information that contradicts Democrat narratives about January 6, I ask that you provide all documents, videos, or other material in the possession of the Select Committee that you potentially anticipate using, introducing, or relying on during questioning.

⁶⁷ Thompson May 31 Letter, *supra* note 1, at 4.

⁶⁸ *Mazars*, 140 S. Ct. at 2031-32 (citing *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 506 (1975)).

⁶⁹ Thompson May 31 Letter, *supra* note 1, at 4.

⁷⁰ *Id.* at 5.

⁷¹ *Broadwater & Cochrane*, *supra* note 9.

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2. Because members of the Select Committee have altered and publicly misrepresented nonpublic information concerning my actions, I ask that you provide all documents, communications, testimony, and other material in the possession of the Select Committee in which my name appears or in which I am referenced.
3. Because you have acknowledged that there are open “questions” about the Select Committee’s authority to issue this subpoena, I ask that you provide all legal authorities and legal analyses in the possession of the Select Committee or the office of House of Representatives General Counsel pertaining to the constitutionality of a non-ethics congressional subpoena to a Member of Congress.

I hope that you will provide the entirety of this material without any further unnecessary delay.

Sincerely,



Jim Jordan