



Congress of the United States
House of Representatives

July 5, 2022

The Select Committee to Investigate
the January 6th Attack on the U.S. Capitol
Longworth House Office Building
Washington, DC 20515

The Honorable:
Bennie Thompson, Rayburn 2466
Zoe Lofgren, Longworth 1401
Adam Schiff, Rayburn, 2309
Pete Aguilar, Cannon 109
Stephanie Murphy, Longworth 1710
Jamie Raskin, Rayburn 2242
Elaine Luria, Cannon 412
Liz Cheney, Cannon 416
Adam Kinzinger, Rayburn 2245

Dear Chairman Thompson & Other Committee Members:

This letter is sent with a full reservation of all rights. No rights are waived.

I herein respond to your June 22, 2022 letter (“Committee Letter”) and attached subpoena (“Subpoena”) from the Select Committee to Investigate the January 6th Attack on the United States Capitol (“Committee”) (served on me in the Rayburn House Office Building on June 24, 2022).

As an overview, and notwithstanding that the Committee’s subpoena is invalid pursuant to the reasons expressed hereinafter, I sent you a letter (“Brooks Letter”) on June 23, 2022 stating I would voluntarily appear and submit to a Committee deposition provided five reasonable requirements were met:

- 1. The deposition is public (after all, the Committee purports to do the public’s business).*
- 2. The deposition is conducted by Committee Members (if it is important enough for a Congressman to attend, it is important enough for Congressmen who are Members of the Committee to attend).*
- 3. Deposition questions are limited to matters relating to the attack on the Capitol on January 6, 2021.*
- 4. The Committee provides seven days’ advance delivery to me of any documents it wishes to ask me about.*

5. *The deposition occurs on a day on which the House of Representatives is voting.*

I have yet to receive a reply by the Committee to my offer to voluntarily testify.

Should the Committee refuse to accept my offer to voluntarily testify on the terms stated, I hereby incorporate by reference the legal objections to the Committee offered by other Congressmen who have been subpoenaed and objected to the subpoenas.

By way of illustration but not limitation, I quote extensively from objections to Committee subpoenas made by my Congressional colleagues.

Subpoena Overview

Congress has a constitutional obligation to conduct rigorous oversight as part of this country's founding principles of checks and balances and separation of powers. The Supreme Court of the United States has confirmed that the issuance of subpoenas "has long been held to be a legitimate use by Congress of its power to investigate."¹ This power is essential to a legislative function and is as "penetrating and far-reaching as the potential power to enact and appropriate under the Constitution."²

Of course, Congress's subpoena authority is not without limitation. Indeed, the Supreme Court has stated that "[a]lthough the power to investigate is necessarily broad it is not unlimited."³ When Congress's power of inquiry "is justified as an adjunct to the legislative process, it is subject to several limitations."⁴ Among those is the requirement that a committee have a valid legislative purpose. And it is not enough that a committee have a valid legislative purpose as a general matter; rather, every inquiry that the committee makes must also satisfy that legal requirement.⁵

As such, all valid and lawfully issued subpoenas must be respected and honored.

Invalid and Unlawful Use of Congress' Subpoena Power.

Unfortunately, the words and actions of the Committee and its members have made it clear that it is not exercising a valid or lawful use of Congress' subpoena power. In fact, the Committee is not even operating in compliance with the rules its own members voted to put in place.

¹ *McGrain v. Dougherty*, 273 U.S. 135 (1927)

² *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 504 n.15 (1975) (quoting *Barenblatt v. United States*, 360 U.S. 109, 111 (1959))

³ *Eastland*, 421 U.S. at 504 n.15

⁴ *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020)

⁵ *Kilbourn v. Thompson*, 103 U.S. 169, 204 (1880), *Wilkinson v. United States*, 365 U.S. 399, 408-09 (1961), highlighting that in order for a subpoena to be valid, the underlying investigation must meet three general criteria, that the Committee's investigation of the broad subject matter area must be authorized by Congress; the investigation must be pursuant to "a valid legislative purpose," and that the specific inquiries must be pertinent to the broad subject matter areas that have been authorized by Congress.

To begin, the Speaker has failed to act in accordance with the Rules of the United States House of Representatives (“Rules of the House” or “House Rules”) she put forth, and as a result, the Committee has operated both in composition and manner that deviates from the duly authorized Resolution that created it.

Objection 1: Failure to Allow Required Minority Representation.

The Committee failed this mandate from the outset when Speaker Pelosi violated 232 years of continuous precedent by refusing to allow the minority party to its representation on the committee.

It has since engaged in a series of actions that further distance it from its authorizing resolution in violation of the House Rules and precedents. At no time in the history of the House has the majority denied the minority the right to its representation nor constituted a Congressional committee in violation of the Rules of the House. And at no time in the history of the House has the majority failed to honor the House’s deposition and subpoena authority.

To be sure, the Constitution grants broad authority for the House to draft its own rules. Specifically, Article I, Section 5, Clause 2 states, “[e]ach House may establish the Rules of its proceedings.” And rightly so. Of course, once established, the idea that the separation of powers or the Rulemaking clause itself allow the House to toss aside the rules it drafts, debates, and passes is as nonsensical as it is undemocratic.

Specifically, the Committee’s authorizing resolution, H.Res. 503, states that the “Speaker shall appoint 13 members to the Committee, 5 of whom shall be appointed after consultation with the minority leader.” The Speaker did not appoint 13 members to the Committee. The Speaker did not appoint five members after consultation with the minority leader.

To be clear, while it is undemocratic to not allow the minority party to its representation on the Committee, the violation of the Rules of the House did not occur until the Speaker failed to adhere to the Resolution passed by the House.

H.Res. 503 is a brief resolution, and the section on Composition is unambiguous. There is no justifiable excuse for the Committee or the Speaker to fail to adhere to the required “Appointment of Members” clause.

Federal courts, including the Supreme Court, have confirmed that “[t]he competence of the tribunal must be proved as an independent element,”⁶ and that “[a] tribunal that is not competent is no tribunal....”⁷

Objection 2: Failure to Comply with Ranking Member Requirements.

In addition to the failure of the Speaker to properly constitute the Committee within the structure voted on and approved by the majority of the House, the subsequent decisions to deny the minority even the patina of representation of a Ranking Minority Member makes compliance with the Committee’s subpoena issuing authority and subsequent deposition authority of the House impossible. Specifically, for the Committee to issue a subpoena, H.Res. 503 provides, “[t]he Chair of

⁶ United States v. Reinecke, 524 F2d 435 (D.C. Cir 1975) (citing Christoffel v. United States, 338 U.S. 84, 90 (1949)).

⁷ Id.

the 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 Committee, in the same manner as a standing committee pursuant to Section 3(b)(1) of House Resolution 8, One Hundred Seventeenth Congress.” You have named Representative Cheney as the Vice Chair of the Committee, as she was appointed as one of the original eight appointments by the Speaker and not appointed in consultation with the minority leader – and she is clearly not the ranking minority member. In order for you, as the Chair of the Committee, to comply with the dictates of H.Res. 503, it is unclear which member of the Committee you consulted with in accordance with H.Res. 503 prior to issuing the subpoena for deposition testimony.

Once a subpoena for a deposition has been properly issued, House Resolution 8 (“H.Res. 8”) outlines the requirements and procedures in place for House depositions. Specifically, H.Res. 8 states, “[d]epositions taken under the authority prescribed in this subsection shall be subject to regulations issued by the Chair of the Committee on Rules and printed in the Congressional Record.” The 117th Congress’ Regulations for the Use of Deposition Authority (“House Deposition Regulations”) require “consultation with the ranking minority member shall include three days’ notice before any deposition is taken.”⁸ Yet it is unclear whether you, as the Chair of the Committee, complied with the dictates of H.Res. 8 and the House Deposition Regulations, because it is unknown which member of the Committee, if any, you consulted with, for purposes of House Deposition Regulation 2.

The House Deposition Regulations similarly require that when depositions are conducted by committee counsel, there shall be no more than two committee counsel permitted to question a witness per round.⁹ One of the committee counsels shall be designated by the chair and the other by the ranking minority member per round. In order for you, as the Chair of the Committee, to conduct proceedings that comply with the dictates of House Rules, it is unclear which counsel was designated by the ranking minority member, given the fact that the letters from the Committee and attached subpoena appear to fail this requirement at every turn. But to be clear, while many House Rules and accompanying regulations allow for Rules to be waived when there is an agreement between a Chair and Ranking Member, or when there is a vote of the committee, the Deposition Regulations contain no such provision. This is because the House Deposition Regulations were not drafted for the convenience of the Chair issuing the deposition, but to protect and defend the rights of the minority and the rights of the deponent. Here, those institutional protections and defenses seem to be ignored.¹⁰

The principle that a Congressional committee must adhere to its applicable rules in pursuit of the enforcement of its subpoenas has resulted in convictions for contempt of Congress being overturned. In *Yellin v. United States*, 734 U.S. 109, the Supreme Court reversed a conviction for contempt of Congress when it determined that the Congressional committee failed to adhere to its own rules regarding procuring witness testimony: “The committee prepared the groundwork for prosecution in

⁸ 117th Congress Regulations for Use of Deposition Authority, Committee on Rules, House of Representatives, Jan. 4, 2021. See <chromeextension://efaidnbmninnibpcjpcglclefindmkaj/https://rules.house.gov/sites/democrats.rules.house.gov/files/Regulation%20for%20the%20Use%20of%20Deposition%20Authority%20117th.pdf> (visited on May 18, 2022).

⁹ *Id.* at Regulation 5.

¹⁰ We also note that the place of testimony for the May 31, 2022 deposition included in the subpoena simply states, generically, “United States Capitol Building, Washington, DC 20515.” May 12 Letter, at Subpoena Attachment.

Yellin’s case meticulously. It is not too exacting to require that the Committee be equally meticulous in obeying its own rules.” Id.

How then does the Committee justify its investigation considering Speaker Pelosi’s failure to compose the Committee within the confines of H.Res. 503? Why has the Committee engaged in the deprivation of minority rights to such an unprecedented nature and failed to follow the House Deposition Regulations?

Objection 3: Committee Does Not Engage in Valid Legislative Tasks.

With respect to the legislative purposes analysis, Committee members have repeatedly confirmed the goals the Committee has been pursuing are ones that the Supreme Court has determined are not valid legislative tasks. For instance, numerous Committee members have said that their goal is to tell the American public a story about the events on January 6. Committee Member Jamie Raskin has stated, “We will expose every facet ... and support the story of the worst presidential political offense”¹¹ and that “we are systematically breaking it down and figuring out the kinds of relationships and connections that need to be exposed,”¹² so that “we can tell a complete story to the American people about how this took place.”¹³

Committee Vice Chair Liz Cheney has similarly stated, “we’re telling the American people the story of what happened . . . laying out the full picture of what really happened . . . , is going to be what our focus is,”¹⁴ and “[w]e must know what happened every minute of that day. . . every phone call every conversation. . .”¹⁵ Committee Member Adam Kinzinger has likewise stated: “Looking forward to getting a full accounting of everything that happened in the Trump White House on, before, and after January 6th. And we’re just getting started.”¹⁶

Indeed, when describing the purpose of the Committee’s investigation, you yourself stated, “[w]e’ll tell the story about what happened . . .”, “[p]eople send us here to make sure we present the facts,”¹⁷ and “the hearings will work to tell a story of what happened on Capitol Grounds”¹⁸

However, the Supreme Court has made clear that exposure for purposes of telling a story is not a valid legislative purpose, and not a valid use of the subpoena authority granted to Congress under the Constitution.

¹¹ Jamie Raskin Says June Hearings ‘Will Expose Every Facet’ of Insurrection (newsweek.com)

¹² See https://www.cnn.com/2021/09/22/politics/january-6-committee-investigationlatest/index.html?utm_source=twCNNp&utm_medium=social&utm_content=2021-09-22T18%3A34%3A05&utm_term=link (visited on May 18, 2022).

¹³ Rep. Jamie Raskin Says Jan. 6 Committee Will Drag ‘Trump Confidants’ In Front of Cameras in Primetime, and Soon (msn.com) (visited on May 18, 2022).

¹⁴ See https://www.cnn.com/2021/09/22/politics/january-6-committee-investigationlatest/index.html?utm_source=twCNNp&utm_medium=social&utm_content=2021-09-22T18%3A34%3A05&utm_term=link (visited on May 18, 2022).

¹⁵ See <https://www.rollingstone.com/politics/politics-news/cheney-investigate-trump-capitol-attackcommunications-1203084/> (visited on May 18, 2022).

¹⁶ See <https://twitter.com/RepKinzinger/status/1441195207135948811?s=20> (visited on May 18, 2022).

¹⁷ Jan. 6 committee to hold public hearings in June - ABC News (go.com) (visited on May 18, 2022).

¹⁸ Jamie Raskin Says June Hearings ‘Will Expose Every Facet’ of Insurrection (newsweek.com) (visited on May 18, 2022).

If those objectives qualified as valid legislative purpose, then Congress's subpoena power would be limitless.

But as the Supreme Court has determined, Congress has no "general power to inquire into the private affairs and compel disclosure."¹⁹ The Court made clear that Congress cannot use the power to compel disclosure to expose for the sake of exposure.²⁰ So when you, Representatives Raskin, Cheney, Kinzinger, and others state the Committee's purpose is to tell people a story about what happened, they are conceding that the Committee is pursuing a purpose that the Supreme Court has determined is not a valid use of Congressional subpoena authority.

The other purposes that Committee members have articulated similarly run headlong into Supreme Court cases that define valid legislative tasks. Representative Raskin has stated, "it's an overwhelming task because we're talking about one of the largest crimes in American history, involving thousands of people and thousands of potential offenses,"²¹ and that the Committee will issue a report that will be "profuse in setting forth crimes that have not yet been alleged."²²

Representative Adam Schiff went so far as to indicate that the constitutionally independent Department of Justice under the direction of Attorney General Garland would act at the behest of Congress by stating, "we have additional tools now that we didn't before, including a Justice Department that may be willing to pursue criminal contempt when people deliberately flout compulsory process."²³

But this is not a valid legislative purpose either, as Supreme Court precedent makes clear.

Indeed, Congress has no power of law enforcement and may not issue a subpoena for the purposes of "law enforcement" because "those powers are assigned under our Constitution to the Executive and the Judiciary."²⁴ And rightly so, every person who committed lawless violence on our Capitol on January 6th should be prosecuted. It is exclusively the province of the executive branch and the judicial branch to conduct those proceedings in accordance with the law.²⁵

While Committee members make clear that they are pursuing purposes through the subpoena tool that the Supreme Court has determined are not valid legislative purposes, it is also clear that the Committee is operating outside the bounds of the rules that the members of Congress voted to put in place.

¹⁹ *McGrain*, 273 U.S. at 173–74; *Trump*, 140 S. Ct. at 2032.

²⁰ *Watkins v. United States*, 354 U.S. 178, 200 (1957), *Trump*, 140 S. Ct. at 2032

²¹ See https://www.cnn.com/2021/09/22/politics/january-6-committee-investigationlatest/index.html?utm_source=twCNNp&utm_medium=social&utm_content=2021-09-22T18%3A34%3A05&utm_term=link (visited on May 18, 2022).

²² Post Politics Now: Raskin expects 'crimes that have not yet been alleged' in Jan. 6 report (msn.com) (visited on May 18, 2022).

²³ See <https://www.axios.com/adam-schiff-january-6-committee-witness-testimony-cb094b7c-6cb5-42bd-997dfcf8e7035145.html> (visited on May 18, 2022).

²⁴ *Quinn v. United States*, 349 U.S. 155, 161 (1955), *Trump*, 140 S. Ct. at 2032.

²⁵ Reporting indicates that the Department of Justice has thoroughly pursued its constitutional obligation and more than 775 defendants have been arrested and more than 225 have pleaded guilty so far. See <https://www.nbcnews.com/politics/justice-department/fbi-names-hundreds-jan-6-rioters-doj-needs-lawyersprosecute-rcna22384> (visited on May 18, 2022).

The Committee's failure in this regard is fatal to its attempt to compel compliance with this subpoena. As noted above, the oversight and ancillary subpoena authority of any committee is rooted solely in its legislative purpose.

Here, the House voted to create the Committee and empowered it with a specific and precise purpose. H.Res. 503 was established to investigate the facts, circumstances, and causes related to the January 6, 2021 attack on the Capitol. Specifically, H.Res. 503 granted the Committee the following purpose:

- (1) To investigate and report upon the facts, circumstances, and causes relating to the January 6, 2021, domestic terrorist attack upon the United States Capitol Complex (hereafter referred to as the "domestic terrorist attack on the Capitol") and relating to the interference with the peaceful transfer of power, including facts and causes relating to the preparedness and response of the United States Capitol Police and other Federal, State, and local law enforcement agencies in the National Capital Region and other instrumentalities of government, as well as the influencing factors that fomented such an attack on American representative democracy while engaged in a constitutional process.
- (2) To examine and evaluate evidence developed by relevant Federal, State, and local governmental agencies regarding the facts and circumstances surrounding the domestic terrorist attack on the Capitol and targeted violence and domestic terrorism relevant to such terrorist attack.
- (3) To build upon the investigations of other entities and avoid unnecessary duplication of efforts by reviewing the investigations, findings, conclusions, and recommendations of other executive branch, congressional, or independent bipartisan or nonpartisan commission investigations into the domestic terrorist attack on the Capitol, including investigations into influencing factors related to such attack.

The House, through a vote of its members in the House Chamber, established a committee, dictated its composition, and described its purposes and functions. The Committee has no more and no less power than that entrusted to it through the vote of the full House that created it. Unfortunately, as described more fully below, the Committee Letter and attached Subpoena fail to comport with the authorities vested by the House through H.Res. 503.

The Committee Letter and Subpoena do not describe any specific inquiries that are pertinent to the broad subject matter areas entrusted to the Committee's investigative authority as required by House Rules and relevant Supreme Court precedent.

The Committee Letter advises "pursuant to the authorities set forth in House Resolution 503 and the Rules of the House of Representatives, the Select Committee to Investigate the January 6th Attack on the United States Capitol hereby transmits a subpoena that compels you to appear for a deposition on July 6, 2022."

The Committee's Subpoena incorporates by reference a May 2, 2022 letter that asks for a voluntary interview of me concerning conversations I had with Donald J. Trump after the January 6, 2021 attack on the Capitol:

President Trump asked me to rescind the 2020 elections, immediately remove Joe Biden from the White House, immediately put President Trump back in the White House, and hold a new special election for the presidency. As a lawyer, I've repeatedly advised President Trump that January 6 was the final election contest verdict and neither the U.S. Constitution nor the U.S. Code permit what President Trump asks. Period.

There is nothing in the foregoing Subpoena inquiry scope that has anything to do with the purpose for which the Committee allegedly was created, to-wit: investigating the January 6, 2021 Capitol attack.

Further, on its face, the Subpoena and accompanying letters fail to give any reason why the Committee believes I have any information bearing on any valid investigative or legislative purpose that is within the confines of the authority granted to the Committee by the establishing resolution.

Without any indication of a nexus between the information the Committee seeks from me and a valid legislative purpose, it is unclear from your correspondence how the Committee is acting within the bounds of the purpose bestowed on it by the full House.

Looking closely at the Committee's May 2, 2022 Letter, there are no topics, categories, or subject areas listed at all that the Committee specifically requests to learn from me that remotely relate to the January 6, 2021 Capitol attack.

Moreover, the vagueness of the Committee requested subject matter asks no questions, lists no subject areas of interest, provides no dates of inquiry, and contains no limitation of subject areas and, as such, does not meet the obligation of Congress to take its compulsory process seriously. In sum, the correspondence to me does not adequately provide notice on any specific relevant subjects to be questioned in any meaningful way.

Indeed, as the Supreme Court has held, "[i]t is obvious that a person compelled to [testify] is entitled to have knowledge of the subject to which the interrogation is deemed pertinent" and that the knowledge of those lines of inquiry "must be made available with the same degree of explicitness and clarity that the Due Process Clause requires."²⁶

The Committee, as described and created through H.Res. 503, allegedly has a valid legislative purpose to look into the attack on the United States Capitol and help to determine why the Capitol was so unprepared, and even to recommend changes to the overly politicized security apparatus to ensure that such an attack does not happen again. However, there is not even an attempt in the Committee letters to me to connect a valid legislative purpose of the Committee with the information you claim to need from me to achieve the tasks set forth by H.Res. 503.

I have no information about the security preparedness in the days and weeks leading up to the attack on the Capitol as Speaker Pelosi led the decision-making process during that time period. The lack of a subpoena to Speaker Pelosi and her senior staff who would have such knowledge further speaks volumes about the chasm between the purpose that H.Res. 503 empowered the Committee and the purpose the Committee is actually pursuing.

²⁶ *Watkins v. United States*, 354 U.S. 178, 215 (1957) (visited on May 18, 2022).

In this instance, it is clear Committee exceeds its constitutional constraints to exercise its power of inquiry as decreed by our Founding Fathers, as further defined by the Supreme Court, and as assigned by H.Res. 503.

But the Committee's abuse of power does not begin or end with Members of Congress it seeks to question. Indeed, as the Supreme Court made clear in a long line of cases involving congressional overreach and going back nearly 100 years, from McGrain to Watkins and Quinn to the recent political and legal negligence by this congressional majority in the McGahn and Mazars cases, the power of congressional compulsion is limited and must have a valid legislative nexus.²⁷

While Congress maintains a vast and awesome power of constitutional oversight to serve as an important piece of our system of checks and balances and separation of powers, it is undemocratic for a majority party to attempt to use the full force of the federal government to attack perceived political rivals. Nevertheless, the Committee has demanded testimony from staffers who validly applied for First Amendment permits.²⁸ It has subpoenaed the call records of private citizens and their financial records from banks while demanding secrecy of those requests not supported by law.²⁹ It has lied about the contents of documents it has received.³⁰ It has held individuals in contempt of Congress for exercising their Constitutional right to avail themselves of judicial proceedings.³¹ It has subpoenaed former Trump Administration officials in blatant violation of Executive Privilege.³²

Additionally, the Committee continues to mislead the public about historical and factual matters – as recently as May 12, 2022, in a press release discussing another Member subpoena, the Committee stated “[w]hile Members of Congress typically testify voluntarily before committees when asked, in recent years the House Ethics Committee has issued a number of subpoenas to Members of Congress for testimony or documents. Historically, members have also been subpoenaed to provide information in other House investigations.”³³ The Ethics Committee is the only committee in the House with an even bipartisan makeup, and specifically tasked with the authority to police members for alleged code of conduct violations, and as you are no doubt aware, there is only one instance in the modern era of the Ethics Committee subpoenaing a Member of Congress.

Therefore, in composition, in conduct, in press releases, public statements, interviews, and correspondence, the Committee is clearly not acting within the confines of any legislative purpose. Its only objective appears to be to attempt to score political points or damage its political opponents – acting like the Democratic Congressional Campaign Committee one day and the Department of Justice the next.

Objection 4: The Subpoena Does Not State the Deposition Place.

²⁷ McGrain, 273 U.S. at 173–74; Watkins, 354 U.S. 178, 200; Quinn, 349 U.S. 155, 161; Trump, 140 S. Ct. at 2032.

²⁸ House Jan. 6 committee subpoenas 11 individuals, including Pierson and Mick Mulvaney's niece (cnbc.com) (visited on May 18, 2022).

²⁹ Congress's 1/6 Committee Claims Absolute Power as it Investigates Citizens With No Judicial Limits (substack.com) (visited on May 18, 2022).

³⁰ Jan. 6 committee admits to altering text message between Mark Meadows and Jim Jordan (msn.com) (visited on May 18, 2022).

³¹ Scavino, Navarro held in contempt of Congress in 1/6 probe - ABC News (go.com) (visited on May 18, 2022).

³² Meadows contempt vote poses thorny questions for DOJ | The Hill (visited on May 18, 2022).

³³ Committee Subpoenas Five Members of Congress | Select Committee to Investigate the January 6th Attack on the United States Capitol (house.gov) (visited on May 18, 2022).

A facially sufficient subpoena “shall specify the . . . place of examination.” 117th Congress Regulations for Use of Deposition Authority [hereafter the “Deposition Regulations”], § 1, 167 Cong. Rec. H41-01 (Jan. 4, 2021); see also H. Res. 8, § 3(b), 167 Cong. Rec. H13-06, H15 (Jan. 4, 2021); H. Res. 503, § 5(c)(6)(A) (applying the deposition procedures promulgated pursuant to House Resolution 8 to the Committee). The subpoena states that the deposition will occur at the “United States Capitol Building, Washington, DC 20515, or by videoconference.” Its provision for two mutually exclusive modes of appearance notwithstanding, the subpoena neither specifies where within the 1.5 million square foot expanse of the Capitol it desires Congressman Biggs to present, nor provides any means of accessing or locating a videoconference platform. Because it does not designate any reasonably identifiable “place of examination,” the subpoena is legally insufficient.

Objection 5: Minority Party Excluded from Depositions.

In addition, our understanding is that the Committee is not allocating questioning time equally between counsel for the Committee and counsel for the minority Members, as mandated by the governing rules. See Deposition Regulations § 6. Cardinal notions of fairness demand that the Committee be “held to observance of its rules,” *Yellin v. United States*, 374 U.S. 109, 114 (1963), particularly given that the consultation and equal time directives serve as moderating mechanisms that “assure a witness fair treatment,” *id.* at 115. When, as here, the Committee has asserted an extraordinary entitlement to subpoena a sitting Member of Congress, “[i]t is not too exacting to require that the Committee be . . . meticulous in obeying its own rules,” *id.* at 124.

In light of the above-described deficiencies, it is unclear how the Committee believes it is operating within the bounds of law or even within the confines of the authorizing resolution. However, in an effort to better understand how it is that the Committee believes it has the authority to request testimony in light of constitutional restrictions and the House-passed resolutions and rules, please provide information and answers to the following questions:

1. A list of subject and topics the Committee would like to discuss with me, and the constitutional and legal rationale justifying the request.
2. A copy of all documents the Committee would like to ask me about or otherwise discuss with me, and the constitutional and legal rationale justifying the request.
3. Who was the Ranking Minority Member you consulted in advance of issuing subpoenas as required by H.Res. 503, and in advance of depositions as required by H.Res. 8?
4. Who is the Ranking Minority Member and who is the minority counsel designated by the Ranking Minority Member for any deposition as required by the Deposition Regulations of the House, attached to the Subpoena and made part of the Rules of the 117th Congress by H.Res. 8.
5. Has the Committee and will the Committee adhere to H.Res. 8 Deposition Regulations by limiting questioning to one hour per side and alternating between majority and minority counsel?

Finally, let me emphasize that my offer to voluntarily appear before the Committee pursuant to the terms and conditions stated in my letter of June 23, 2022 to all Committee members still stands.

Please let me know if you wish to pursue my voluntary cooperation on the terms and conditions previously stated.

Sincerely,

A handwritten signature in blue ink that reads "Mo Brooks". The signature is written in a cursive style with a horizontal line underneath it.

Congressman Mo Brooks (AL-05)