

Congress of the United States

Washington, DC 20515

January 14, 2024

Mr. Abbe D. Lowell
Winston & Strawn LLP
1901 L Street NW
Washington, D.C. 20036

Dear Mr. Lowell:

We received your letter dated January 12, 2024, indicating that your client, Robert Hunter Biden, is now willing to appear for a deposition under subpoena pursuant to the House's ongoing impeachment inquiry and the legislative oversight authorities of the Committee on the Judiciary and the Committee on Oversight and Accountability ("the Committees").¹ To be clear, contrary to the assertions in your letter and for the reasons explained below, the subpoenas issued to Mr. Biden on November 8 and November 9, respectively, are lawful and legally enforceable. Mr. Biden has asserted no valid constitutional or legal privilege excusing him from complying with these subpoenas. The Committees will not afford Mr. Biden special treatment.

On January 10, 2024, the Committees voted to recommend that the House hold Mr. Biden in contempt of Congress for his failure to comply with the Committees' duly authorized and issued subpoenas.² Prior to the consideration of the contempt reports, in correspondence with you, the Committees explained in detail the bases for the subpoenas and rejected Mr. Biden's request for special treatment with respect to the venue for his testimony.³ We informed Mr. Biden that his failure to comply with the legal obligations of the subpoenas would lead to the Committees initiating contempt of Congress proceedings.⁴

¹ Letter from Abbe D. Lowell, Partner, Winston & Strawn LLP, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability (Jan. 12, 2024) [hereinafter "January 12 Letter"].

² Ryan Tarinelli, *Two House panels recommend holding Hunter Biden in contempt of Congress*, ROLL CALL (Jan. 10, 2024).

³ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Abbe D. Lowell, Partner, Winston & Strawn LLP (Nov. 8, 2023); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Abbe D. Lowell, Partner, Winston & Strawn LLP (Dec. 1, 2023); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability to Abbe D. Lowell, Partner, Winston & Strawn LLP (Dec. 6, 2023). As we explained then, and as we maintain now, the Committees welcome Mr. Biden's public testimony at the appropriate time.

⁴ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Abbe D. Lowell, Partner, Winston & Strawn LLP (Dec. 6, 2023).

Despite the Committees' clear rejection of Mr. Biden's demand for special treatment and the unambiguous notice to him that failure to comply would result in him being held in contempt, Mr. Biden chose to defy the subpoenas in a particularly brazen manner. On December 13, the date of his deposition, Mr. Biden did not appear at the time and place commanded and instead chose to appear on the grounds of the Capitol to read prepared remarks about the topics under inquiry.⁵ Then, on the day that the Committees met to consider the contempt resolutions, Mr. Biden chose to flaunt his defiance of the subpoenas in a choreographed stunt reportedly filmed for an upcoming documentary.⁶ At no time in either setting did you or Mr. Biden indicate that the Committees' subpoenas were invalid; rather, you argued that Mr. Biden had "chosen" to testify only in public hearing—a "choice" the subpoena did not provide.

Your January 12 letter is the first instance in which you have asserted that the Committees' subpoenas are somehow legally invalid. This assertion is inaccurate and unpersuasive for several reasons.

First, you argued that the Committees' subpoenas are invalid because they were issued before the House voted to formally authorize an impeachment inquiry.⁷ Your only authority for this erroneous assertion is an opinion issued by the Department of Justice's Office of Legal Counsel (OLC) in 2020.⁸ Not only is this OLC memorandum non-binding on the Legislative Branch, it is at odds with an opinion issued by a federal court. Notably, in 2019, the U.S. District Court for the District of Columbia rejected the argument that a formal House resolution is required to begin an impeachment inquiry.⁹ Other federal courts, including the Supreme Court of the United States,¹⁰ have recognized that courts may not intrude on constitutional provisions granting the House the right to "determine the Rules of its Proceedings"¹¹ or exercise "the sole Power of Impeachment,"¹² including the manner in which the House initiates an impeachment inquiry.

Historical precedent further supports the position that the House need not vote on a formal resolution before beginning an impeachment inquiry. In the 1980s, the House did not vote to authorize the impeachment inquiries involving Judge Harry Claiborne, Judge Alcee Hastings, or Judge Walter Nixon.¹³ Similarly, in 1973, the Judiciary Committee began the "preliminary

⁵ Hunter Biden Statement on Subpoena and Investigation, C-SPAN (Dec. 13, 2023), <https://www.cspan.org/video/?532415-1/hunter-biden-statement-subpoena-investigation>.

⁶ Steven Nelson, *Hunter Biden storms out of House hearing after showing up unexpectedly in chaotic Capitol Hill scene*, N.Y. POST (Jan. 10, 2024).

⁷ January 12 Letter, *supra* note 1, at 2-4.

⁸ *Id.* at 3-4 (citing House Committees' Authority to Investigate for Impeachment, 44 Op. O.L.C. 1, 17-19 (Jan. 19, 2020)).

⁹ *In re Application of Comm. on the Judiciary*, 414 F. Supp. 3d 129, 168 (D.D.C. 2019) ("Even in cases of presidential impeachment, a House resolution has never, in fact, been required to begin an impeachment inquiry."), *aff'd*, 951 F.3d 589 (D.C. Cir. 2020), *vacated and remanded sub nom. on other grounds DOJ v. House Comm. on the Judiciary*, 142 S. Ct. 46 (2021).

¹⁰ *See id.* at 169 (listing cases).

¹¹ U.S. CONST. art. I, § 5, cl. 2.

¹² *Id.* at art. I, § 2, cl. 5.

¹³ TODD GARVEY, CONG. RSCH. SERV., R45983, CONGRESSIONAL ACCESS TO INFORMATION IN AN IMPEACHMENT INVESTIGATION, at 5 (2019).

phases of an inquiry into [the] possible impeachment” of President Nixon months before the House voted to authorize such an inquiry.¹⁴ More recently, in 2019, the then-Speaker of the House announced the beginning of a formal impeachment inquiry into President Trump more than a month before the full House voted to authorize it.¹⁵ The relevant case law and historical precedent, therefore, do not support your assertion about the validity of the subpoenas with respect to the manner in which the impeachment inquiry was initiated.

Moreover, the full House of Representatives has made clear that the subpoenas issued by the Committees to Mr. Biden were within their authority and that, contrary to your letter, no additional delegation from the House was needed. In House Resolution 917, the full House expressly affirmed that “[t]he authority provided by clause 2(m) of Rule XI of the Rules of the House of Representatives to the Chairs of the Committees . . . included, from the beginning of the existing House of Representatives impeachment inquiry . . . the authority to issue subpoenas on behalf of such Committees for the purpose of furthering the impeachment inquiry.”¹⁶ And the House further “ratif[ie]d and affirm[ed] any subpoenas previously issued . . . by the Chairs of the Committees on Oversight and Accountability, Ways and Means, or the Judiciary as part of the impeachment inquiry,”¹⁷ which includes the subpoenas issued to Mr. Biden. Indeed, on June 12, 2023, and August 11, 2023, resolutions setting forth articles of impeachment against President Biden related to Mr. Biden’s business activities were introduced and referred to the Committee on the Judiciary, placing the issue squarely within the Committee’s jurisdiction.¹⁸

Further, you asserted in your January 12 letter that the Committees’ only legitimate basis on which to interview Mr. Biden is as part of the impeachment inquiry and that the Committees’ appeal to our legislative oversight authority was “[d]isapproved” by the same OLC memorandum.¹⁹ This assertion, too, lacks any merit. Even assuming that the OLC memorandum you cite is an authoritative text in this setting and an objective account of the law,²⁰ which it is not, it emphasized that the Democrat-led Committees in that impeachment inquiry only provided “token invocations of ‘oversight and legislative jurisdiction,’ [and their] the letters offered no hint of any legislative purpose.”²¹ Here, conversely, in our correspondence with you and in our contempt reports, the Committees have provided lengthy, detailed explanations of our legislative purpose.²² Our detailed explanation of the Committees’ legislative purpose can hardly be deemed

¹⁴ TODD GARVEY, CONG. RSCH. SERV., LSB11051, LEGAL ISSUES IN IMPEACHMENT INVESTIGATIONS, PART I: AUTHORIZATION, at 2 (2023).

¹⁵ *Id.*

¹⁶ H.R. Res. 917, 118th Cong. (2023).

¹⁷ *Id.*

¹⁸ See H.R. Res. 493, 118th Cong. (2023); H.R. Res. 652, 118th Cong. (2023).

¹⁹ January 12 Letter, *supra* note 1, at 5-7.

²⁰ OLC opinions are “deeply deferential to the President and to presidential actions.” Adoree Kim, *The Partiality Norm: Systematic Deference in the Office of Legal Counsel*, 103 CORNELL L. REV. 757, 760 (2018).

²¹ House Committees’ Authority to Investigate for Impeachment, 44 Op. O.L.C. 1, 48 (Jan. 19, 2020).

²² See H.R. Rep. No. 118-___, at 15-16 (2024); H. COMM. ON THE JUDICIARY ET AL., 118TH CONG., THE JUSTICE DEPARTMENT’S DEVIATIONS FROM STANDARD PROCESS IN ITS INVESTIGATION OF HUNTER BIDEN, at 77 (2023); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Abbe D. Lowell, Partner, Winston & Strawn LLP (Dec. 1, 2023); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Abbe D. Lowell, Partner, Winston & Strawn LLP (Nov. 8, 2023); Memorandum from Rep. Jim

a “token” invocation of a legislative purpose. In addition, the legislative oversight investigation at issue here began many months prior to the beginning of the impeachment inquiry, and the fundamental legislative purposes of that investigation have remained consistent throughout this active investigation,²³ a fact that dramatically distinguishes this matter from the one addressed in the OLC opinion.

Even if the Committees had not thoroughly described our legislative purpose as we did, courts “are bound to presume that the action of the legislative body was with a legitimate object, if it is capable of being so construed[.]”²⁴ Indeed, as the U.S. District Court for the Southern District of New York recently explained:

The Court is required to presume that a congressional committee’s stated legislative object is the real object. . . . It is not a court’s function to invalidate a congressional investigation that serves a legislative purpose. Indeed, the Supreme Court has instructed that so long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power. Whatever motives may underlie the Committee’s subpoena, its inquiry may fairly be deemed within its province.²⁵

Simply put, the Committees have more than adequately explained the legislative purpose to support our subpoenas to Mr. Biden.

For all these reasons, there is no legal basis on which Mr. Biden could lawfully disregard the Committees’ deposition subpoenas. His conduct toward the House has been contemptuous.

Jordan, Chairman, H. Comm. on the Judiciary, Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, and Rep. Jason Smith, Chairman, H. Comm. on Ways & Means, to Members of the H. Comm. on the Judiciary, H. Comm. on Oversight & Accountability, and H. Comm. on Ways & Means, at 5 (Sept. 27, 2023); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al., to Merrick Garland, Att’y Gen., U.S. Dep’t of Just. (July 21, 2023).

²³ See H.R. Rep. No. 118- ___, at 15-16 (2024); H. COMM. ON THE JUDICIARY ET AL., 118TH CONG., THE JUSTICE DEPARTMENT’S DEVIATIONS FROM STANDARD PROCESS IN ITS INVESTIGATION OF HUNTER BIDEN, at 77 (2023); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Abbe D. Lowell, Partner, Winston & Strawn LLP (Dec. 1, 2023); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Abbe D. Lowell, Partner, Winston & Strawn LLP (Nov. 8, 2023); Memorandum from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, and Rep. Jason Smith, Chairman, H. Comm. on Ways & Means, to Members of the H. Comm. on the Judiciary, H. Comm. on Oversight & Accountability, and H. Comm. on Ways & Means, at 5 (Sept. 27, 2023); Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al., to Merrick Garland, Att’y Gen., U.S. Dep’t of Just. (July 21, 2023).

²⁴ *McGrain v. Daugherty*, 273 U.S. 135, 178 (1927) (internal quotation marks omitted). See also *United States v. Orman*, 207 F.2d 148, 157 (3d Cir. 1953) (“[W]hen the general subject of investigation is one concerning which Congress can legislate, and when the information sought might aid the congressional consideration, a legitimate legislative purpose must be presumed.”); *Ward v. Thompson*, 630 F.Supp.3d 1140, 1150 (D. Ariz. 2022) (“The Court’s review of whether an investigative act has a valid legislative purpose is deferential.”).

²⁵ *Bragg v. Jordan*, 2023 WL 2999971, at *7 (S.D.N.Y. 2023) (internal quotation marks and citations omitted).

Mr. Abbe D. Lowell

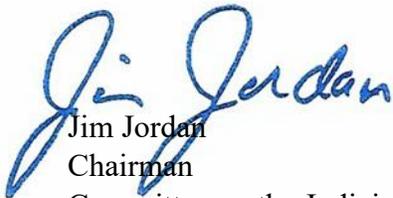
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His defiance of the subpoenas has been willful and flagrant. His demands to testify only in a public setting are, as we have explained, inconsistent with the practice of these Committees in this matter as well as the practice of congressional Committees in recent Congresses. While we welcome Mr. Biden's public testimony at the appropriate time, he must appear for a deposition that conforms to the House Rules and the rules and practices of the Committees, just like every other witness before the Committees.²⁶

The Committees welcome Mr. Biden's newfound willingness to testify in a deposition setting under subpoena. Although the Committee's subpoenas are lawful and remain legally enforceable, as an accommodation to Mr. Biden and at your request, we are prepared to issue subpoenas compelling Mr. Biden's appearance at a deposition on a new date in the coming weeks. To be clear, the issuance of these subpoenas does not in any way suggest or imply that the Committees believe the assertions in your January 12 letter to have any merit. Our willingness to issue these subpoenas is rooted entirely in our interest in obtaining Mr. Biden's testimony as expeditiously as possible.

Sincerely,



Jim Jordan
Chairman
Committee on the Judiciary



James Comer
Chairman
Committee on Oversight and Accountability

cc: The Honorable Jerrold L. Nadler, Ranking Member
Committee on the Judiciary

The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability

²⁶ For this reason, the Committees cannot accept the so-called "hybrid process" you propose. See January 12 Letter, *supra* note 1, at 8 n.33.