

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ROGER J. STONE, JR
1045 NE 13th Ave, Apt 101
Fort Lauderdale, FL 33304

DRAKE VENTURES, LLC
1045 NE 13th Ave, Apt 101
Fort Lauderdale, FL 33304

Plaintiffs,

v.

ADAM B. SCHIFF, in his official
capacity as a member of the United States House of
Representatives
Rayburn House Office Building, Suite 2309
U.S. House of Representatives Washington, D.C.
20515
Telephone: (202) 225-4176

and

NANCY PELOSI, in her official capacity as
Speaker of the United States House of
Representatives.
Office of the Speaker.
The U.S. Capitol. Suite H-232,
U.S. House of Representatives Washington, D.C.
20515
Telephone: (202) 225-0100

and

BENNIE G. THOMPSON, in his official capacity as
Chair of the Select Committee to Investigate the
January 6th Attack on the United States Capitol.
Rayburn House Office Building Suite 2466
U.S. House of Representatives Washington, D.C.
20515
Telephone: (202) 225-5876

and

Civil Case No. _____

ELIZABETH L. CHENEY, in her official capacity as a member of the United States House of Representatives.

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20515
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and

JAMIE B. RASKIN, in his official capacity as a member of the United States House of Representatives;

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and

SUSAN E. LOFGREN, in her official capacity as a member of the United States House of Representatives

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and

ELAINE G. LURIA, in her official capacity as a member of the United States House of Representatives.

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and

PETER R. AGUILAR, in his official capacity as a member of the United States House of Representatives

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and

STEPHANIE MURPHY, in her official capacity as a member of the United States House of Representatives
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and

ADAM D. KINZINGER, in his official capacity as a member of the United States House of Representatives.

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and

SELECT COMMITTEE TO INVESTIGATE THE
JANUARY 6TH ATTACK ON THE UNITED
STATES CAPITOL

Longworth House Office Building
Washington, DC 20515

Telephone: (202) 225-7800

and

AT&T MOBILITY, INC.
General Counsel and Executive
Vice President

1025 Lenox Park Blvd NE
Atlanta, GA 30319

Telephone: (888) 722-1787

Defendants

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
AGAINST UNLAWFUL SUBPOENA FOR PLAINTIFF'S TELEPHONE RECORDS**

Plaintiff Roger J. Stone, Jr. at all times relevant herein is a private citizen and a resident of Fort Lauderdale, Florida. Plaintiff Drake Ventures, LLC is a private limited liability company domiciled in Delaware with its principal place of business in Fort Lauderdale, FL. They sue for declaratory judgment pursuant to Rule 57 of the Federal Rules of Civil Procedure ("FRCP") and 28 U.S.C. §2201, *et seq.*, for an injunction and pursuant to 18 U.S.C. § 2702, against the Congressional Defendants for issuing an unlawful and overbroad subpoena to Defendant AT&T for Plaintiffs' telephone records and against Defendant AT&T to enjoin them from turning over the phone records to the Congressional Defendants in violation of the Stored Communications Act and the First and Fourth Amendments.

INTRODUCTION

1. **PLAINTIFF ROGER J. STONE, JR.** (hereinafter "Stone"), is a well-known conservative political pundit and consultant. Stone has appeared at hundreds, if not thousands of political rallies with millions of participants. Not a single one turned violent.

2. Stone was not at the Ellipse Rally on January 6, 2021, at which President Donald J. Trump spoke. In fact, Stone never left the grounds of his hotel on January 6, 2021, with the exception of going to the airport that evening

3. **PLAINTIFF DRAKE VENTURES, LLC.**, (hereinafter "Drake") is a limited liability company through which Stone provides consulting services. Drake has two members, Roger Stone & Nydia Stone.

4. On or about February 10, 2022, Stone through Drake received a notice from AT&T that the Select Committee had subpoenaed AT&T for nine categories of information associated with

Stone's personal cell phone number, including IP addresses, devices, billing addresses, account changes, a list of contacts, call session times, and dozens to hundreds of other data points or metadata from November 1, 2020 (three days *before* the election and around five days before the outcome of the election was known) to January 31, 2021 and which did not contain any provision for protection of attorney client privilege Stone may have with his counsel or other information protected by the First and Fourth Amendments. See Exhibit 1.

5. The AT&T notice further stated that unless AT&T receives a court document challenging the subpoena by February 22, 2022, AT&T is compelled to comply with the subpoena

6. On February 21, 2022, Stone and Drake, through his counsel, via facsimile, sent AT&T a letter requesting a courtesy extension of time to consult with Plaintiffs and copied the Select Committee staff counsel. See Exhibit 2.

7. On February 21, 2022, Senior Investigative Counsel for the Select Committee called undersigned counsel, Smith and offered an extension until February 25, 2022.

8. On February 21, 2022, a representative from AT&T emailed counsel for Stone and Drake and stated that they had received communication from the counsel to the Select Committee and agreed to an extension for Stone and Drake to file such a suit or to join an existing one by February 25, 2022.

9. On information and belief, AT&T has sent similar communications to dozens of subscribers and is continuing to send to other subscribers, subpoenas from the Select Committee similar to the one Stone and Drake received in all material respects and who similarly object to the invasion of their privacy but do not have the resources to file a court action challenging the subpoena's validity on the grounds that Select Committee is unlawfully constituted and that in any event, the production of cell phone records to the Select Committee violate the Stored

Communications Act and the First and Fourth Amendment.

10. The data sought is not pertinent to the investigation and sweeps up privileged communications between Stone and clergy and Stone and his respective attorneys.

PARTIES

11. Plaintiff Roger J. Stone, Jr. at all times relevant herein is a private citizen and a resident of Fort Lauderdale, Florida.

12. Drake Ventures, LLC is a private limited liability company domiciled in Delaware with its principal place of business in Fort Lauderdale, FL.

13. Defendant Nancy Pelosi (“Speaker Pelosi”) is a Democrat member of the U.S. House of Representatives and Speaker of the House.

14. Defendant Bennie G. Thompson (“Chairman Thompson”) is a Democrat member of the U.S. House of Representatives and Chairman of the Select Committee to Investigate the January 6th Attack on the United States Capitol. Subpoenas challenged herein were issued with his authority as Chair.

15. Defendant Elizabeth L. Cheney is a Republican member of the U.S. House of Representatives and members of the Select Committee to Investigate the January 6th Attack on the United States Capitol.

16. Defendant Adam B. Schiff is a Democrat member of the U.S. House of Representatives and members of the Select Committee to Investigate the January 6th Attack on the United States Capitol.

17. Defendant Jamie B. Raskin is a Democrat member of the U.S. House of Representatives and members of the Select Committee to Investigate the January 6th Attack on the United States Capitol.

18. Defendant Susan E. Lofgren is a Democrat member of the U.S. House of Representatives and members of the Select Committee to Investigate the January 6th Attack on the United States Capitol.

19. Defendant Elaine G. Luria is a Democrat member of the U.S. House of Representatives and members of the Select Committee to Investigate the January 6th Attack on the United States Capitol

20. Defendant Peter R. Aguilar is a Democrat member of the U.S. House of Representatives and members of the Select Committee to Investigate the January 6th Attack on the United States Capitol.

21. Defendant Stephanie Murphy is a Democrat member of the U.S. House of Representatives and members of the Select Committee to Investigate the January 6th Attack on the United States Capitol.

22. Defendant Adam D. Kinzinger is a Republican member of the U.S. House of Representatives and members of the Select Committee to Investigate the January 6th Attack on the United States Capitol.

23. Defendant Select Committee to Investigate the January 6th Attack on the United States Capitol (the “Select Committee”) is a select committee created by House Resolution 503 (“H. Res. 503”) passed by the U.S. House of Representatives on June 30, 2021.

24. Defendant AT&T MOBILITY, INC. has been subpoenaed to provide subscriber data about Stone and Drake to the Select Committee in its role as providing telecommunications services to its “subscriber” (customer or user) Mr. Stone and Drake.

JURISDICTION AND VENUE

25. This Court has subject matter jurisdiction, pursuant to 28 U.S.C. § 1331, because this

action arises under the Constitution and laws of the United States.

26. This Court has personal jurisdiction over Speaker Pelosi because she sponsored H. Res. 503 and oversaw its passage in the House. She also approved and ratified the issuance of the Stone and AT&T Subpoenas from Washington, D.C.

27. This Court has personal jurisdiction over Chairman Thompson because he presides over the Select Committee and issued the Stone and AT&T Subpoena from his office address in Washington, D.C.

28. This court has personal jurisdiction over Elizabeth L. Cheney, Adam B. Schiff, Jamie B. Raskin, Susan E. Lofgren, Elaine G. Luria, Peter R. Aguilar, Stephanie Murphy, Adam D. Kinzinger because they serve as members of the Select Committee that issued the Stone and AT&T Subpoenas from Washington, D.C.

29. This Court has personal jurisdiction over the Select Committee because it is located and operates in Washington, D.C. Mr. Stone was compelled to appear there, in-person, without the option of secure remote video options afforded to Members of the Select Committee, during the pandemic.

30. This Court has personal jurisdiction over the AT&T Defendant because it operates continuously and generally in the District of Columbia, including but not limited to installation and operation of physical technical equipment such as cell towers for the conduct of telecommunication services to subscribers like Drake and Mr. Stone. The AT&T Defendants knew that they might be held to answer in the District of Columbia including but not limited to their business goals and promises of providing telecommunication services to subscribers throughout the country.

31. Venue is proper under 28 U.S.C. § 1391(b) as a substantial part of the events giving rise to the claim occurred in Washington, DC.

COUNT I: THE AT&T SUBPOENA IS NOT VALIDLY ISSUED BY A DULY AUTHORIZED COMMITTEE AND THUS WAS *ULTRA VIRES*.

32. The composition of the House Select Committee to Investigate the January 6th Attack on the United States Capitol is governed by Section 2 of H. Res. 503. Section 2(a) states “Appointment Of Members.—The Speaker shall appoint 13 Members to the Select Committee, 5 of whom shall be appointed after consultation with the minority leader.” H. Res. 503 117th Cong. (2021).

33. Speaker Pelosi has appointed only nine members to the Select Committee: seven Democrats and two Republicans. None of these members was appointed from the selection of five GOP Congresspersons put forth by Republican Minority Leader Kevin McCarthy.

34. Authorized congressional committees have subpoena authority implied by Article I of the Constitution. *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927). The Select Committee, however, is not an authorized congressional committee because it fails to comport with its own authorizing resolution, House Resolution 503.

35. Congress’ failure to act in accordance with its own rules is judicially cognizable. *Yellin v. United States*, 374 U.S. 109, 114 (1963). This is particularly significant where a person’s fundamental rights are involved.

36. Speaker Pelosi failed to appoint members consistent with the authorizing resolution of the Select Committee. Pelosi has appointed only nine members of Congress to serve on the Select Committee; whereas the authorizing resolution instructs the Speaker “shall” appoint thirteen members. H. Res. 503 § 2(a), 117th Cong. (2021).

37. Further, of those nine members Speaker Pelosi has appointed, none of them was appointed after consultation with the minority member, as is required by the authorizing resolution. H. Res. 503 § 2(a), 117th Cong. (2021).

38. Thus, the Select Committee as it currently stands—and stood at the time it issued the AT&T subpoena in question—has no authority to conduct business because it is not a duly constituted Select Committee. Chairman Thompson’s subpoenas are invalid and unenforceable.

COUNT II: THE AT&T SUBPOENA IS OVERLY BROAD AND BEYOND THE SCOPE OF THE COMMITTEE’S JURISDICTION.

39. H. Res. 503 was voted along partisan lines and is overly broad, addressing even the coronavirus pandemic, but it is not unlimited in scope. The AT&T Subpoena dates are a violation of the authorizing resolution that created the Select Committee.

40. H. Res. 503 establishes three “functions” of the Select Committee: (1) to “investigate the facts, circumstances, and causes relating to the domestic terrorist attack on the Capitol”; (2) to “identify, review, and evaluate the causes of and the lessons learned from the domestic terrorist attack on the Capitol”; and (3) to “issue a final report to the House containing such findings, conclusions, and recommendations for corrective measures described in subsection (c) as it may deem necessary.”

41. Subsection (c) of Section 4 describes three categories of “corrective measures”: “changes in law, policy, procedures, rules, or regulations that could be taken” (1) “to prevent future acts of violence, domestic terrorism, and domestic violent extremism, including acts targeted at American democratic institutions”; (2) “to improve the security posture of the United States Capitol Complex while preserving accessibility of the Capitol Complex for all Americans”; and (3) “to strengthen the security and resilience of the United States and American

democratic institutions against violence, domestic terrorism, and domestic violent extremism.”

42. In August, the Select Committee demanded records from fifteen different social media companies, including Facebook, Reddit, Twitter, and YouTube. *See* Press Release, Bennie G. Thompson, Chairman, Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Select Committee Demands Records related to January 6th Attack from Social Media Companies (Aug. 27, 2021). The subpoenas directed these companies to produce all internal company policies and actions taken relating to “misinformation” about the 2020 election, efforts to interfere with the 2020 election or electoral results, violent domestic extremists, foreign interference with the 2020 election, and more.

43. The Select Committee has also issued preservation of records orders and subpoenas to major banking corporations and telecommunication companies. Witnesses are treated as targets and receive no notice from the Select Committee or many of these services that hundreds of millions of Americans used to participate in both commerce and the marketplace of ideas.

44. The AT&T subpoena issued by the Select Committee on February 9, 2022, instructs AT&T to produce subscriber information and mobile phone data associated with Stone’s personal mobile phone number. *See* Exhibit 1. The subscriber information requested includes subscriber names and contact information, authorized users, time of service provided, account changes, associated IP addresses, and other metadata. The mobile phone data requested could include all calls, text messages, and other records of communications associated with that phone number. This data can be used for historic mobile site analysis. The AT&T subpoena requested all of Mr. Stone’s personal mobile phone data for three months: from November 1, 2020, and January 31, 2021.

45. The breadth and invasiveness of the AT&T subpoena also gives the appearance of a

criminal investigation, not a legislative fact-finding mission. It seeks private data used to track an individual person's communications and location, information that would bear on an investigation into that individual, not on potential legislation to be passed by Congress. It also requests this data for a period more than two months prior to January 6, and indeed *several days before the November 3 election*, the ostensible focus of the Select Committee's supposed legislative recommendations.

COUNT III: THE AT&T SUBPOENA VIOLATES THE FOURTH AMENDMENT

46. The AT&T Subpoena instructs AT&T to produce subscriber information and mobile phone data associated with the phone number(s) used by Mr. Stone.

47. The subscriber information requested includes subscriber names and contact information, authorized users, time of service provided, account changes, associated IP addresses, session times, and other metadata.

48. The mobile phone data requested includes all calls, text messages, and other records of communications associated with that phone number.

49. This data can be used for historic mobile site analysis.

50. The requested data arbitrarily covers four full months: November 1, 2020 through January 31, 2021.

51. Mr. Stone has a reasonable expectation of privacy in his personal mobile phone and data. He remains a private citizen who has never served in government. He has reasonable expectations of privacy and is under no required record keeping regulations like government officials or government employees.

52. The Fourth Amendment enumerates the right of private individuals to be free from unreasonable search and seizure by the government into their persons, houses, papers, and

effects. It also protects a person's reasonable privacy expectations. *Katz v. United States*, 389 U.S. 347, 351 (1967).

53. The fact that a third party at least temporarily stores a person's mobile phone data does not alter his expectation or its reasonableness. *Carpenter v. United States*, 138 S. Ct. 2206, 2217 (2018).

54. The Fourth Amendment restricts the ability of the Select Committee to issue sweeping subpoenas untethered from any valid legislative purpose. See *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 196 (1946).

55. If the government, including the Select Committee, seeks to obtain documents or data protected by the Fourth Amendment, it must be obtained by consent or otherwise authorized by law. Neither Mr. Stone nor Drake has provided his consent for AT&T to produce his mobile phone data to the Select Committee. And for the reasons discussed *infra*, the Select Committee's subpoenas are invalid.

56. A congressional subpoena must be reasonable. An all-encompassing subpoena for personal, nonofficial documents falls outside the scope of Congress' legitimate legislative power. See *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2040 (2020).

57. The Select Committee's subpoena to both AT&T and Mr. Stone are so broad and indefinite as to exceed the lawfully authorized purpose of the Select Committee. See *McPhaul v. United States*, 364 U.S. 372, 381 (1960). The subpoena to AT&T, in particular, contains no limitations seeking to preserve applicable privileges or prevent violations of constitutional rights.

58. For the Select Committee to subpoena AT&T for all Mr. Stone's personal mobile phone data over the course of three months is entirely unreasonable. Such a request is so broad both temporally and with respect to the collected data, that the Select Committee exceeds any lawfully

authorized purpose.

59. As the subpoena in question exceeds the lawfully authorized purpose of the Select Committee, full compliance with such subpoenas would violate Mr. Stone's Fourth Amendment protection against unlawful search and seizure. The subpoena is thus invalid and unenforceable.

**COUNT IV: THE SELECT COMMITTEE IS A FEDERAL GOVERNMENT BODY
ACTIVELY ABRIDGING MR. STONE'S FIRST AMENDMENT RIGHTS AND
SETTING A CHILLING EFFECT ON THOSE RIGHTS**

60. Stone understands that this court must work to balance the competing interests between individual privacy and public interests.

61. There cannot be public interests—none that have a legislative remedy that would prevent a future attack at the Capitol—in probing Stone's interactions post January 6th.

62. That is a duty not reserved for Congress. *See, e.g. Barenblatt v. United States*, 360 U.S. 109, 112 (1959), *Watkins v. United States*, 354 U.S. 178, 197 (1957), *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539 (1963).

63. Because the Select Committee is issuing subpoenas for third-party information, and without notice, there is no one to contest or object (rights afforded to witnesses producing documents and testimony) on the grounds of pertinency and forcing the Select Committee, as it is constitutionally required to do (*Deutch v. United States*, 367 U.S. 456, 467-68 (1961)), to establish a nexus between the information sought and a subject of overriding and compelling public interest.

64. The Select Committee has not provided clarity in what or why they're seeking broad phone records. The opportunity to request clarity and object is established precedent (*Watkins*, 354 U.S. at 214-15).

65. Some colleagues, business prospects, former clients, and associates have not spoken to

Mr. Stone or ceased communication with him because of public reports that his phone records would be obtained. This has harmed his ability to effectively exercise his First Amendment rights and conduct his business.

66. Mr. Stone used his personal mobile device to engage in protected advocacy and other speech, including privileged speech with his attorney(s) and clergy.

67. All of these associational and expressive activities are protected by the First Amendment. *See Buckley v. Valeo*, 424 U.S. 1, 64 (1976); *Black Panther Party v. Smith*, 661 F.2d 1243, 1267 (D.C. Cir. 1981); *Am. Fed'n of Lab. & Cong. of Indus. Organizations v. Fed. Election Comm'n*, 333 F.3d 168, 179 (D.C. Cir. 2003); *NAACP v. Alabama*, 357 U.S. 440 (1958).

68. The information sought from AT&T by the Select Committee would also intrude on Stone's rights to freedom of association as protected by the First Amendment of the U.S. Constitution. *See, e.g., NAACP v. Alabama*, 357 U.S. 449, 462 (1958).

69. Stone's First Amendment rights and future 2022 & 2024 election cycle activities are and will be injured by Committee's far-reaching general warrant a/k/a AT&T Subpoena.

70. There was no evidence suggesting that Plaintiff, and upon information and belief there is no evidence from any witness, participated in or planned to organize an attack on the Capitol. There was no evidence suggesting that Plaintiff, and upon information and belief there is no evidence from any witness, participated in or planned to organize an attack on the Capitol. In fact, senior FBI officials have testified that their investigation found no criminal wrongdoing on the speakers and organizers, such as Plaintiff, and their respective organizations. *See <https://www.reuters.com/world/us/exclusive-fbi-finds-scant-evidence-us-capitol-attack-was-coordinated-sources-2021-08-20/>*

71. The Select Committee is probing Plaintiff because of his political beliefs and work

covered by the First Amendment. The Committee should be very deliberate and precise about inquiries as Plaintiff has already experienced a chilling effect on his First Amendment activities (losing work and closing a bank account due to the Committee's inquiries). Sweeping up communications from whole periods of time, and leaking that to the press, further injures Plaintiff's First Amendment activities.

72. There is no reason to believe that the full record of personal and political contacts of each Plaintiff, extending for nearly two months before January 6th (long before it was even a remote possibility) and continuing for a month afterwards, is necessary to supplement their fulsome explanation of the events of January 6th and preceding to it.

73. Instead, the Select Committee's Subpoena will yield data that will be used to populate a massive database of the personal friends and political associates of not just Plaintiffs, but everyone who has had any connection with the belief in election integrity, government skepticism, other political associations or vendors who worked with Plaintiff. By analyzing data patterns in phone numbers, call session times, text messages, and geolocation data, investigators can build a permanent nationwide model of intimate political associations and networks within the conservative movement that has relevance

74. Such phone database It is far beyond "legislating" to deal with Capitol security or preventing another breach of the Capitol or any other federal building such as the Supreme Court where pro-abortion activists charged the Supreme Court building last Spring and where Senator Schumer, on the steps of the Supreme Court, while it was hearing an abortion case, threatened Justices Kavanaugh and Gorsuch by turning to the Court and shouted, "you won't know what hit you" if the Justices ruled against the pro- abortion position. *See National Review, "Schumer to Gorsuch and Kavanaugh: Nice Little Court Ya Got There, Hate to See Anything Happen to It ..."*

(March 5, 2020). See <https://www.nationalreview.com/2020/03/chuck-schumer-attack-on-supreme-court-despicable/>

75. The billions of data points yielded can recreate not just intimate relationships, but also locations and movements, creating a virtual CAT-scan of the Select Committee's political opposition, likely, as reported, including even their own colleagues in the House of Representatives.

76. It is significant that the AT&T Subpoena uniformly asks for three months of phone records for a large number of people, some of whom touch upon the Committee's inquiry for only a few days. The AT&T Subpoena asks for data predating the origin of the idea of the January 6th event by a month and a half.

77. Plaintiff's personal account information, and the complete record of his private phone and text contacts with all of their political and personal acquaintances for three months, is not pertinent to any inquiry into what happened on January 6, or its causes. Instead, it is an impermissible attempt to harass the Plaintiffs, identify their close colleagues, and potentially subject even those individuals and their carriers to subpoenas. Not only does this chill communication among these friends and political associates, it builds an opposition research file for the 2022 and 2024 election cycle for the single party that comprises, staffs, and controls the Select Committee.

78. Plaintiff has already experienced financial losses, opportunity losses, and other sufferings related to his 2022 and 2024 election work because of the Committee's extended non-January 6th probe into his work.

79. Even if it had a valid reason to seek protected information, the Select Committee has put in place no safeguards to protect Mr. Stone's rights.

80. The Select Committee has a well-documented history of leaking to at least one news outlet in particular. That news outlet has been hostile to Mr. Stone and is privy to documents the public does not have access to. The distribution of committee materials or characterizing them is prohibited for staff or Members to do by law.

81. The AT&T subpoena is also a clear effort to chill the speech of the Select Committee Members' political adversaries.

82. Mr. Stone is a prominent political pundit and consultant; an unelected Republican who has never sought governmental office.

83. Mr. Stone reasonably fears this is payback for his beliefs and lawful campaign activity that is being lumped in with illegal acts; and before a body that is not permitted to do either such thing.

84. Allowing an entirely partisan select committee of Congress to subpoena the personal mobile phone data of prominent activists and legal permit holders would have a massive chilling effect on current and future activists' associational and free speech rights.

85. Danielle Brian, the Chair of the Project on Government Oversight (POGO) submitted a letter to Committee Chairman Thompson on October 5, 2021, expressing grave concerns about the subpoenas impact on First Amendment freedoms,, stating in part:

Indeed, we at POGO were the subject of overreaching subpoenas in the 1990s, including subpoenas for my home phone records, in an effort to identify whistleblowers who had exposed the oil and gas industry's fraud in underpaying royalties.⁵

If similar efforts to target and malign government critics or marginalized communities are attempted in the future, it is vital they cannot weaponize the vast array of private digital information that exists in modern society, or collect such information to harm or chill expression by religious minorities, political dissidents, or whistleblowers. The actions the committee takes in the coming weeks may set important precedent for how congressional demands for records are used going forward.

<https://www.pogo.org/letter/2021/10/letter-to-january-6-committee-supporting-careful-use-of-subpoena-authority/>

86. The Select Committee's asserted interest is insufficient and its alternative means of obtaining this information are too obvious to justify such a drastic chilling of speech.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask the Court to enter judgment in their favor and against Defendants and to order the following relief:

- a. A declaratory judgment that the AT&T Subpoena is ultra vires, unlawful, and unenforceable;
- b. A declaratory judgment that the AT&T Subpoena, in part or in whole, serves no valid legislative purpose and exceeds the Select Committee's Constitutional authority;
- c. A declaratory judgment that compliance with the AT&T Subpoena would violate the Stored Communications Act;
- d. A declaratory judgment that the AT&T Subpoena violates Mr. Stone's Fourth Amendment rights;
- e. A declaratory judgment that the AT&T Subpoena violates Mr. Stone's First Amendment and Due Process rights;
- f. An injunction prohibiting AT&T from producing any phone data to the Select Committee and that any data submitted be returned to the Plaintiff if produced.
- g. An injunction prohibiting the Committee from using any phone data submitted by AT&T the Select Committee and that any data submitted be returned to the

Plaintiff if produced or destroyed.

- h. In the alternative, an order modifying the AT&T Subpoena to seek only unprivileged information, in a specified date range (ex. January 1, 2021 09:00 AM to January 6, 2021 18:00 PM), that does not infringe on Mr. Stone's constitutional rights;
- i. An injunction quashing the AT&T Subpoena and prohibiting their enforcement by Defendants;
- j. An injunction prohibiting Defendants from imposing sanctions for noncompliance with the AT&T Subpoena;
- k. An injunction prohibiting Defendants from inspecting, using, maintaining, or disclosing any information obtained as a result of the AT&T Subpoena;
- l. An award in favor of Plaintiffs for his reasonable expenses, including attorneys' fees and costs, incurred as a result of the AT&T Subpoena; and
- m. Any and all other relief that the Court deems just and proper.

Dated: February 24, 2022

Respectfully submitted,

ROGER J. STONE, JR.
DRAKE VENTURES, LLC,
By undersigned counsel

/s/Robert C. Buschel

Robert C. Buschel
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Global Legal Demand Center

11760 US Highway 1, STE 300
North Palm Beach, FL 33408

February 9, 2022

BY OVERNIGHT AND ELECTRONIC MAIL

DRAKE VENTURES LLC
1045 NE 13TH AVE APT 101
FT LAUDERDALE, FL 33304
[REDACTED]

Re: Notice of Subpoena for Records

Account Number: [REDACTED]

File Number: [REDACTED]

Dear Valued AT&T Customer:

The AT&T Global Legal Demand Center responds to subpoenas addressed to AT&T companies ("AT&T"). We have received the enclosed congressional subpoena directing AT&T to disclose information about you, your account, or one or more phone numbers associated with you. Your phone number [REDACTED] is listed on a confidential attachment to the subpoena. As a courtesy, we are sending this notice to your address on file to enable you to contest the subpoena if you wish to do so.

You may contest the subpoena in accordance with applicable law. You may also request that the congressional committee responsible for issuing the subpoena withdraw or modify the subpoena voluntarily, by contacting the committee at Select_Clerks@mail.house.gov. AT&T does not give legal advice to its customers or make filings on their behalf. If you need assistance or have further questions, we recommend that you consult an attorney of your choice. If you are not represented by an attorney and do not wish to retain counsel at this time, you may discuss the subpoena directly with the congressional committee responsible for issuing the subpoena.

AT&T plans to respond to this subpoena on February 23, 2022. If we receive a copy of your filing contesting the subpoena by February 22, 2022, AT&T will respond to the subpoena in accordance with the subsequent ruling of the court. Required documentation should be faxed to the AT&T Global Legal Demand Center (fax number 888-938-4715) with the above-referenced AT&T File No. on the transmittal.

We hope you will find this courtesy notice helpful.

Thank you for choosing AT&T.

Sincerely,

Global Legal Demand Center

SUBPOENA

**BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE
CONGRESS OF THE UNITED STATES OF AMERICA**

To AT&T

You are hereby commanded to be and appear before the
Select Committee to Investigate the January 6th Attack on the United States Capitol

of the House of Representatives of the United States at the place, date, and time specified below.

- to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 1540A Longworth House Office Building, Washington, DC 20515
Date: February 15, 2022 Time: 10:00 a.m.

- to testify at a deposition** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____
Date: _____ Time _____

- to testify at a hearing** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____
Date: _____ Time _____

To any authorized staff member or the United States Marshals Service
_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at
the city of Washington, D.C. this 1st day of February, 2022.

Bennie Thompson
Chairman or Authorized Member

Attest.
[Signature]
Clerk

AT&T
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SCHEDULE

In accordance with the attached definitions and instructions, you, AT&T, are hereby required to produce the documents and records ("Records") listed in Section A, below, **for the time period November 1, 2020, to January 31, 2021**, concerning the phone numbers listed in Section B, below (the "Phone Numbers"). This schedule does not call for the production of the content of any communications or location information.

Please email the records to **SELECT_CLERKS@MAIL.HOUSE.GOV** or, in the alternative, send them by mail to 1540A Longworth House Office Building, Washington, DC 20515, care of Jacob Nelson, Select Committee to Investigate the January 6th Attack on the U.S. Capitol.

Section A – Records to Be Produced for Each Phone Number

1. Subscriber Information: All subscriber information for the Phone Number, including:
 - a. Name, subscriber name, physical address, billing address, e-mail address, and any other address and contact information;
 - b. All authorized users on the associated account;
 - c. All phone numbers associated with the account;
 - d. Length of service (including start date) and types of service utilized;
 - e. Telephone or instrument numbers (including MAC addresses), Electronic Serial Numbers ("ESN"), Mobile Electronic Identity Numbers ("MEIN") Mobile Equipment Identifier ("MED"), Mobile Identification Numbers ("MIN"), Subscriber Identity Modules ("SIM"), Mobile Subscriber Integrated Services Digital Network Number ("MSISDN"), International Mobile Subscriber Identifiers ("IMSI"), or International Mobile Equipment Identities ("IMEI") associated with the accounts;
 - f. Activation date and termination date of each device associated with the account;
 - g. Any and all number and/or account number changes prior to and after the account was activated;
 - h. Other subscriber numbers or identities (including temporarily assigned network addresses and registration Internet Protocol ("IP") addresses); and
2. Connection Records and Records of Session Times and Durations: All call, message (SMS & MMS), Internet Protocol ("IP"), and data-connection detail records associated with the Phone Numbers, including all phone numbers, IP addresses, or devices that communicated with the Phone Number via delivered and undelivered inbound, outbound, and routed calls, messages, voicemail, and data connections.

DOCUMENT PRODUCTION DEFINITIONS AND INSTRUCTIONS

1. In complying with this request, produce all responsive documents, regardless of classification level, that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Select Committee to Investigate the January 6th Attack on the United States Capitol ("Committee").
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in a protected electronic form (i.e., password protected CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions. With specific reference to classified material, you will coordinate with the Committee's Security Officer to arrange for the appropriate transfer of such information to the Committee. This includes, but is not necessarily limited to: a) identifying the classification level of the responsive document(s); and b) coordinating for the appropriate transfer of any classified responsive document(s).
5. Electronic document productions should be prepared according to the following standards:
 - a. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - b. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME,
SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE,
ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE,
FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED,
DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER,
NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
9. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
10. The pendency of or potential for litigation shall not be a basis to withhold any information.
11. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
12. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
13. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production, as well as a date certain as to when full production will be satisfied.
14. In the event that a document is withheld on any basis, provide a log containing the following information concerning any such document: (a) the reason it is being withheld, including, if applicable, the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the withholding.
15. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control. Additionally, identify where the responsive document can now be found including name, location, and contact information of the entity or entities now in possession of the responsive document(s).
16. If a date or other descriptive detail set forth in this request referring to a document

is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

17. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
18. All documents shall be Bates-stamped sequentially and produced sequentially.
19. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of classification level, how recorded, or how stored/displayed (e.g. on a social media platform) and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, computer or mobile device screenshots/screen captures, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, through a social media or online platform, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term "including" shall be construed broadly to mean "including, but not limited to."
5. The term "Company" means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; (b) the individual's business or personal address and phone number; and (c) any and all known aliases.
7. The term "related to" or "referring or relating to," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term "employee" means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, assignee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term "individual" means all natural persons and all persons or entities acting on their behalf.

GRANT J. SMITH
ATTORNEY-AT-LAW

Grant J. Smith, Esq.
gsmith@strategysmith.com
Direct Dial - 954.328.9064

February 21, 2022

VIA FAX DELIVERY (888.938.4715)

AT&T Global Demand Center
11760 US Highway 1
Suite 300
North Palm Beach, FL 33408

Re: Request for Subpoena Extension - Acct# 839015639 - File#3323168.010

To Whom It May Concern:

Please be advised I represent Drake Ventures, LLC., in the above referenced matter.

The Congressional subpoena attached to your letter is dated February 1, 2022. The letter to my client from AT&T is dated February 9, 2022. Because of travel schedules, my client only saw the letter for the first time on February 20, 2022, and immediately sent it to me for review.

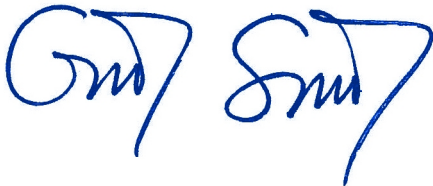
Until my client has determined the proper course of action for them, Drake Ventures does not authorize the transfer to the Select Committee of its ‘confidential phone records information.’ 18 U.S.C. § 1039(b) (making it a crime to transfer ‘confidential phone records information . . . without prior authorization from the customer to whom such confidential phone records information relates’) and 47 U.S.C. § 222(c)(1) (similar prohibition).

In order to facilitate a considerate review by my client, I hereby request an additional ten (10) days to consider the proper course of action and asks that you take no action to send anything to the Select Committee on February 23^d.

I am sending this to you the only way you have provided which is by fax, but I have also taken the opportunity to copy my client’s contacts at the Select Committee.

Since the timeframes are so tight, the courtesy of an immediate response is requested.

Respectfully submitted,



Grant J. Smith, Esq.

cc: Select Committee

NOTICE OF DESIGNATION OF RELATED CIVIL CASES PENDING
IN THIS OR ANY OTHER UNITED STATES COURTCivil Action No. _____
(To be supplied by the Clerk)NOTICE TO PARTIES:

Pursuant to Rule 40.5(b)(2), you are required to prepare and submit this form at the time of filing any civil action which is related to any pending cases or which involves the same parties and relates to the same subject matter of any dismissed related cases. This form must be prepared in sufficient quantity to provide one copy for the Clerk's records, one copy for the Judge to whom the cases is assigned and one copy for each defendant, so that you must prepare 3 copies for a one defendant case, 4 copies for a two defendant case, etc.

NOTICE TO DEFENDANT:

Rule 40.5(b)(2) of this Court requires that you serve upon the plaintiff and file with your first responsive pleading or motion any objection you have to the related case designation.

NOTICE TO ALL COUNSEL

Rule 40.5(b)(3) of this Court requires that as soon as an attorney for a party becomes aware of the existence of a related case or cases, such attorney shall immediately notify, in writing, the Judges on whose calendars the cases appear and shall serve such notice on counsel for all other parties.

The plaintiff, defendant or counsel must complete the following:

I. RELATIONSHIP OF NEW CASE TO PENDING RELATED CASE(S).

A new case is deemed related to a case pending in this or another U.S. Court if the new case: [Check appropriate box(es) below.]

- (a) relates to common property
- (b) involves common issues of fact
- (c) grows out of the same event or transaction
- (d) involves the validity or infringement of the same patent
- (e) is filed by the same pro se litigant

2. RELATIONSHIP OF NEW CASE TO DISMISSED RELATED CASE(ES)

A new case is deemed related to a case dismissed, with or without prejudice, in this or any other U.S. Court, if the new case involves the same parties and same subject matter.

Check box if new case is related to a dismissed case:

3. NAME THE UNITED STATES COURT IN WHICH THE RELATED CASE IS FILED (IF OTHER THAN THIS COURT):

4. CAPTION AND CASE NUMBER OF RELATED CASE(E-S). IF MORE ROOM IS NEED PLEASE USE OTHER SIDE.

v.

C.A. No.

/s/ **Robert C. Buschel**

DATE

Signature of Plaintiff/Defendant (or counsel)

Related Cases Continued:

Mitchell v US House Select Committee 22-cv-00250

Alexander v Pelosi 21-cv-03308

Eastman v Thompson 21-cv-03273