

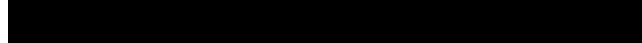


One Hundred Seventeenth Congress

Select Committee to Investigate the January 6th Attack on the United States Capitol

November 9, 2021

Mr. Stanley E. Woodward, Jr.



Dear Mr. Woodward:

The Select Committee to Investigate the January 6th Attack (“Select Committee”) is in receipt of your November 5, 2021, letter regarding the subpoena for documents and testimony served on your client, Daniel J. Scavino, Jr. (the “subpoena”). The letter represents that while you are still reviewing Mr. Scavino’s records, you believe that “any records responsive to the Committee’s subpoena to Mr. Scavino are records that would have been generated or otherwise received in his official capacity” and archived by the National Archives and Records Administration. You then assert that Mr. Scavino is therefore unable to provide the documents because President Donald J. Trump is contesting the release of documents and has instructed Mr. Scavino to “not produce any documents concerning [his] official duties in response to the Subpoena.”

You have since communicated to Select Committee staff on November 7, 2021, that you are not currently aware of any responsive documents that fall outside the scope of President Trump’s assertion of executive privilege, but that your review is ongoing. You further represented that Mr. Scavino is still considering whether he can provide deposition testimony regarding any topics outside of a claim of executive privilege.

Mr. Scavino was originally served his subpoena on October 8, 2021, and was required to provide documents by October 21 and appear for testimony on October 28. At your request, the Select Committee has twice extended the deadlines for production and testimony, ultimately demanding documents by November 5 and testimony on November 12.

First, regarding documents, you suggest that Mr. Scavino has some responsive documents that you are declining to produce pursuant to instruction from President Trump. If Mr. Scavino has responsive documents that he believes are covered by an applicable privilege, please provide a privilege log that specifically identifies each document and each privilege that he believes applies, so that the Select Committee can evaluate whether any additional actions are appropriate. Categorical claims of executive privilege are improper, and any claim of executive privilege must be asserted narrowly and specifically. *See, e.g., In re Sealed Case (Espy)*, 121 F.3d 729 (D.C. Cir. 1997); *Comm. on Oversight & Gov’t Reform v. Holder*, No. 12-cv-1332, 2014 WL 12662665, at *2 (D.D.C. Aug. 20, 2014) (rejecting a “blanket” executive-privilege claim over subpoenaed documents). We also note that the Select Committee has subpoenaed all communications including those conducted on Mr. Scavino’s personal social media or other accounts and with outside parties

whose inclusion in a communication with Mr. Scavino would mean that no executive privilege claim can be applicable to such communications.

Second, with respect to Mr. Scavino's deposition, the Select Committee appreciates your apparent willingness to work with us to identify areas of inquiry that are clearly outside any claim of executive privilege. To that end, we will provide further information about the topics we intend to develop with Mr. Scavino during the deposition. You indicated that you intend to meet with your client on November 10, 2021, to discuss whether Mr. Scavino will testify as to any of the below topics. Though the Select Committee reserves the right to question Mr. Scavino about other topics, at present, the Select Committee plans to question Mr. Scavino about his knowledge, actions, and communications, including communications involving Mr. Trump and others, with respect to the following:

- (1) Campaign-related activities, including efforts to count, not count, or audit votes, as well as discussions about election-related matters with state and local officials.
- (2) Meetings or other communications involving people who did not work for the United States government regarding efforts to overturn the results of the 2020 election. This includes, but is not limited to, an Oval Office meeting on December 18, at which Mr. Trump, Michael Flynn, Patrick Byrne, and others reportedly discussed campaign-related steps that Mr. Trump purportedly could take to change the outcome of the November 2020 election and remain in office for a second term, such as seizing voting machines, litigating, and appointing a special counsel. It also includes communications with organizers of the January 6 rally like Amy Kremer of Women for America First.
- (3) Advance knowledge of, and any preparations for, the possibility of violence during rallies and/or protests in Washington, D.C. related to the 2020 election results.
- (4) Meetings or communications regarding campaign-related planning and activities at the Willard Hotel, planning and preparation for Mr. Trump's speech at the Ellipse, Mr. Trump and other White House officials' actions and communications during and after the attack on the U.S. Capitol, including contact with members of Congress, law enforcement, the Department of Defense, and other federal agencies to address or respond to the attack.
- (5) Mr. Scavino's roles and responsibilities in the White House, and, if applicable, the 2020 Trump campaign.
- (6) Messaging to or from the White House, Trump reelection campaign, party officials, and others about purported fraud, irregularities, or malfeasance in the November 2020 election. This includes, but is not limited to, Mr. Trump's and others frequent use of the "Stop the Steal" slogan, even after lawsuits, investigations, public reporting, discussions with agency heads, and internally created documents revealed that there had not been widespread election fraud.
- (7) Messaging to or from Mr. Scavino's personal social media, email, or phone regarding any of the topics discussed herein in this list of 18 items.

- (8) White House officials' understanding of purported election-related fraud, irregularities, or malfeasance in the November 2020 election.
- (9) Efforts to pressure federal agencies, including the Department of Justice, to take actions to challenge the results of the presidential election, advance allegations of voter fraud, interfere with Congress's count of the Electoral College vote, or otherwise overturn President Biden's certified victory. This includes, but is not limited to, Mr. Trump and others' efforts to use the Department of Justice to investigate alleged election-related conduct, file lawsuits, propose that state legislatures take election-related actions, or replace senior leadership. It also includes similar efforts at other agencies such as the Department of Homeland Security, the Department of Defense, and, among others, the Cybersecurity and Infrastructure Security Agency.
- (10) Efforts to pressure state and local officials and entities, including state attorneys general, state legislators, and state legislatures, to take actions to challenge the results of the presidential election, advance unsubstantiated allegations of voter fraud, interfere with Congress's count of the Electoral College vote, de-certify state election results, appoint alternate slates of electors, or otherwise overturn President Biden's certified victory. This includes, but is not limited to, an Oval Office meeting that reportedly occurred with legislators from Michigan, as well as a January 2, 2021, call with, among others, state officials, members of Congress, and Mr. Trump.
- (11) Theories and strategies regarding Congress and the Vice President's (as President of the Senate) roles and responsibilities when counting the Electoral College vote. This includes, but is not limited to, the theories and/or understandings of John Eastman, Mark Martin, former Vice President Pence, and others.
- (12) Efforts to pressure former Vice President Pence, members of his staff, and members of Congress to delay or prevent certification of the Electoral College vote. This includes, but is not limited to, meetings between, or including, the former Vice President, Mr. Trump, John Eastman, members of Congress, and others.
- (13) Communications and meetings with members of Congress about the November 2020 election, purported election fraud, actual or proposed election-related litigation, and election-related rallies and/or protests. This includes, but is not limited to, a December 21, 2021, meeting involving Mr. Trump, members of his legal team, and members of the House and Senate, during which attendees discussed objecting to the November 2020 election's certified Electoral College votes as part of an apparent fight "against mounting evidence of voter fraud."
- (14) Efforts by federal officials, including White House staff, Mr. Trump, the Trump reelection campaign, and members of Congress to plan or organize rallies and/or protests in Washington, D.C. related to the 2020 election results, including, but not limited to, the January 6 rally on the Ellipse. This includes, but is not limited to, Mr.

Scavino's planned appearance as a speaker at the rally and his communications with outside parties regarding that appearance.

- (15) The possibility of invoking martial law, the Insurrection Act, or the 25th Amendment based on election-related issues or the events in the days leading up to, and including, January 6.
- (16) Mr. Scavino's activities in generating social media content and monitoring social media for President Trump, including, but not limited to, his monitoring of social media sites like Reddit, Twitter, Facebook, Gab, and theDonald.win. This includes, but is not limited to, Mr. Scavino's knowledge of far-right memes, coded language, and whether or how some domestic violent extremist groups such as the Proud Boys interpreted messages from President Trump and other officials.
- (17) The preservation or destruction of any information relating to the facts, circumstances, and causes relating to the attack of January 6th, including any such information that may have been stored, generated, or destroyed on personal electronic devices.
- (18) Documents and information, including the location of such documents and information, that are responsive to the Select Committee's subpoena. This includes, but is not limited to, information stored on electronic devices that Mr. Scavino uses and has used.

As our investigation continues, we may develop additional information about the above-described areas or identify additional subjects about which we will seek information from your client.

We believe that these topics either do not implicate any cognizable claim of executive privilege or raise issues for which the Select Committee's need for the information is sufficiently compelling that it overcomes any such claim. To that end, **please provide your input on the topics that the Select Committee has reiterated by way of this letter no later than Thursday, November 11.** If there are areas listed above that you agree implicate no executive or other privilege, please identify those areas. Conversely, please articulate which privilege you believe applies to each area and how it is implicated. Our hope is that this process will sharpen our differences on privilege issues and allow us to develop unobjectionable areas promptly.

Mr. Scavino's deposition, scheduled for November 12, can proceed with a clearer understanding of our respective positions on these topics, and we can move one step closer towards the resolution of outstanding issues.

Finally, it is worth emphasizing an additional point specifically addressed in the pending litigation involving the National Archives. The incumbent President is responsible for guarding executive privilege, not former officials. *See Dellums v. Powell*, 561 F.2d 242, 247 (D.C. Cir. 1977); *see also Nixon v. GSA*, 433 U.S. 425, 449 (1977) (even the one residual privilege that a former president might assert, the communications privilege, exists "for the benefit of the Republic," rather than for the former "President as an individual"). With respect to the Select Committee's work, the incumbent President has expressly declined to assert executive privilege on a number of subjects on which the Select Committee has sought testimony or documents. *See*

Mr. Stanley Woodward
Page 5

Trump v. Thompson, Case No. 1:21-cv-2769 (TSC), Doc. 21 (brief for the NARA defendants); *see also* Doc. 21-1 (Declaration of B. John Laster).

The accommodations process regarding potential claims of executive privilege is a process engaged in between the Executive Branch and the Legislative Branch. *See Trump v. Mazars USA LLP*, 140 S. Ct. 2019, 2030-31 (2020). Mr. Scavino represents neither. Nevertheless, we have in good faith considered your concerns and have proposed a course of action that reflects both that consideration and the Select Committee's urgent need for information.

Our hope is that this description of topics allows us to narrow the list of potentially disputed issues and move forward with Mr. Scavino's deposition.

Sincerely,

A handwritten signature in blue ink that reads "Bennie G. Thompson". The signature is written in a cursive style with a prominent initial "B" and a long, sweeping underline.

Bennie G. Thompson
Chairman