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May 24, 2022

VIA EMAIL (c/o John.Wood2@mail.house.gov)

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

Re: Subpoena to Representative Scott Perry

Dear Mr. Chairman:

We are writing on behalf of our client, Representative Scott Perry, regarding the unprecedented subpoena the Select Committee has issued for his attendance at a deposition this Thursday, May 26. As explained below, the Committee is without authority to issue the subpoena, and we respectfully request that it be immediately withdrawn.

As you know, by letter of December 20, 2021, the Committee invited Mr. Perry, with attendant public fanfare, to appear for an interview about discussions he had in the weeks before January 6, 2021, regarding President Trump's appointees at the Justice Department. There was nothing improper about those discussions and Mr. Perry saw no reason to submit to questioning by the Democrat members that Ms. Pelosi appointed to the Committee. Mr. Perry did not then, nor does he now, recognize the legitimacy of a committee that is operating in contravention of its own rules and those of the House of Representatives, and which is committed to scoring political points, rather than focusing on the troublemakers who broke into the Capitol, and demanding answers from the Speaker concerning her failure to provide the security that would have prevented the problems that occurred.

On May 12, 2022, almost five months after Mr. Perry declined the Committee's invitation, we learned from media reports that it had issued a subpoena for his compelled attendance for a deposition. That same day, Douglas Letter, General Counsel to the House of Representatives, emailed Mr. Perry's Chief of Staff and informed her of the subpoena and offered to accept service on Mr. Perry's behalf. This was highly unusual, and we believe a clear conflict of interest, since Mr. Letter has no standing to accept service for Mr. Perry or any other Member of Congress of a subpoena issued by a House committee. Mr. Perry responded that

evening by declining Mr. Letter's offer and directing that he and the Committee forward the subpoena to my co-counsel, John Irving. That was May 12, nearly two weeks ago.

After hearing nothing for four days, Mr. Irving sent an email to Mr. Letter on May 16, with copy to Committee counsel, stating again that Mr. Perry had authorized him to accept service of the subpoena. Mr. Letter replied with a simple "thank you," but neither he nor Committee counsel forwarded the subpoena to Mr. Irving. Having heard nothing further from the Committee, we assumed that it wisely had second thoughts about taking the unprecedented step of issuing a subpoena to a Member of Congress, especially in view of the aggressively partisan level to which the Committee has unfortunately devolved.

Yesterday, we received an email from Committee counsel advising that the Committee is planning to hold the deposition this Thursday – two days from now – but it "recognizes that Rep. Perry has other important demands on his time and would like to be respectful of that." Counsel asked that we let the Committee know as soon as possible if Mr. Perry has a scheduling issue or for some reason does not plan to appear for the deposition.

Perhaps realizing that the Committee had never served the subpoena, Committee counsel forwarded a copy to Mr. Irving and me yesterday. The subpoena states only that the deposition will be held on May 26 at 2:00 PM (somewhere) in the United States Capitol Building or by video teleconference and includes no description of the subjects of inquiry except by reference to the December 20, 2021, letter. This is an unacceptable way to request the deposition of a Member of Congress, even if the subpoena were not otherwise defective.

The subpoena is invalid for a number of reasons but, most fundamentally, it was issued by a committee that is operating in violation of its own authorizing legislation. House Resolution 503, Section (2)(a) states that "[t]he Speaker shall appoint 13 Members to the Select Committee, 5 of whom shall be appointed after consultation with the minority leader." The Speaker failed to comply with this foundational requirement. The Committee has only nine members, after the Speaker refused to seat the five members selected by the Minority Leader and instead appointed two nominal Republicans of her own choosing.^{1/} This failure to comply with the resolution that authorized the Committee renders its actions, including those pertaining to the issuance of deposition subpoenas, invalid.

^{1/} See Mabinty Quarshie, "Pelosi rejects GOP picks Jordan, Banks on Jan 6 committee; McCarthy threatens to pull out," *USA Today*, July 21, 2021 (<https://www.usatoday.com/story/news/politics/2021/07/21/pelosi-rejects-republicans-banks-jordan-jan-6-select-committee/8042839002/>); Daniel Diaz and Melanie Zanora, "Pelosi appoints Kinzinger to 1/6 House select committee," *CNN*, July 25, 2021 (<https://www.cnn.com/2021/07/25/politics/nancy-pelosi-adam-kinzinger-house-select-committee-mccarthy-republicans/index.html>).

Additionally, the Committee failed to follow its own rules in issuing the subpoena to Mr. Perry. Both House Resolutions 503 and 8 require consultation with the ranking minority member before the Committee may issue a subpoena.

Resolution 503, Section 5(c), provides in pertinent part that:

(4) The chair of the Select Committee may authorize and issue subpoenas pursuant to clause 2(m) of rule XI in the investigation and study conducted pursuant to Sections 3 ["Purposes"] and 4 ["Functions"] of this resolution, including for the purpose of taking depositions.

(6)(A) The chair of the Select 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 Select Committee, in the same manner as a standing committee pursuant to section 3(b)(1) of House Resolution 8, One Hundred Seventeenth Congress.

(Emphasis provided).

House Resolution 8, Section 3(b)(1), states that the chair of a standing committee "*upon consultation with the ranking minority member of such committee*, may order the taking of depositions, including pursuant to subpoena, by a member or counsel of such committee." (Emphasis provided).

Because of the manner in which the Speaker chose the members of the Committee, it has no "ranking minority member" and, thus, the consultation required by House Resolutions 503 and 8 has not occurred and cannot occur. Any subpoena issued by the Committee without the required consultation is violative of the House Resolutions and is therefore invalid.

Moreover, none of the provisions of House Resolution 503, or the House Rules more generally, authorizes the Select Committee to issue a subpoena for the deposition of a sitting Member of Congress.^{2/} Indeed, we do not know of any committee that has issued a subpoena to a sitting Member with the exception of the House and Senate Ethics Committees. The Ethics Committees are, of course, distinguishable from the Select Committee in that their sole purpose is to investigate violations of the ethics rules and laws by Members, staff, and others within the legislative body. Both committees are comprised of an equal number of majority and minority members and are subject to the rules of their respective houses, as well as their own committee

^{2/} To the extent that Rule XI Clause 2(m)(3)(D) provides that subpoenas for testimony "may be issued to any person or entity, whether governmental, public, or private, within the United States," there is no indication it is intended to apply to Members of Congress, who are not included in the list of specific individuals included in that paragraph. In any event, Clause 2(m)(3)(D) is modified by H. Res. 503, just as the rest of Clause 2(m) is modified by that provision.

rules. House Rule XI Clause 3, for example, establishes the rules for the House Ethics Committee (as distinct from Clause 2, which applies to standing committees and, in part and by reference in H. Res. 503, to the Select Committee). Clause 3(m)(1)(A) requires the House Ethics Committee to create rules to establish an investigative subcommittee with equal representation from the majority and minority, and Clause 3(o)(1) authorizes subpoenas “only when authorized by an affirmative vote of a majority of the members of the subcommittee.” If the House of Representatives had intended Rule XI Clause 2 to authorize subpoenas to Members of Congress, it would have included safeguards and protections similar to those contained in Clause 3.

The procedures set forth by the House Regulations for the taking of depositions also demonstrate that the Committee is functioning outside the parameters contemplated by House Resolution 503. Where a deposition is to be conducted by Committee counsel, the House Regulation requires one counsel to be designated by the chair and the other by the ranking majority member.^{3/} Because the Select Committee has no ranking minority member, it is unable to satisfy these requirements for the issuance of a subpoena or for the taking of depositions. The Special Committee's failure to follow its own rules renders its subpoena to Mr. Perry unenforceable.^{4/}

It also is far from clear, and the Committee has provided no explanation, how the subpoena or Mr. Perry's testimony would further any valid legislative purpose. *See Watkins*, 354 U.S. 178, 187 (1957); *Quinn v. United States*, 349 U.S. 155, 161 (1955). While we acknowledge that Congress has broad authority to investigate, that authority is not without limitation and must be ancillary to a legislative function. It may not be exercised for a law enforcement purpose, to expose for the sake of exposure, or simply to punish those being investigated. *See McGrain v. Daugherty*, 273 U.S. 135, 179 (1927); *Watkins*, 354 U.S. at 200; *Quinn*, 349 U.S. at 161; *Trump v. Mazars USA LLP*, 140 S.Ct. 2019, 2032 (2020).

The “Purposes” and “Functions” of the Select Committee in Sections 3 and 4 of House Resolution 503 are exceptionally broad and include “the facts, circumstances, and causes relating to” the attack on the Capitol, as well as “the influencing factors” that “fomented” and “contributed” to that attack. In an apparent effort to tie the broad scope of the Committee's investigation to a legitimate legislative purpose, Section 4(c) anticipates proposed “corrective measures” that “may include changes in law, policy, procedures, rules, or regulations.” Even assuming that may suffice as justification for the core of the Committee's investigation, it is

^{3/} 117th Congress Regulations for Use of Deposition Authority provides for equal rounds of questioning by the majority and minority. 2 Cong. Rec. H41 at 6 (Jan. 4, 2021). (“Deposition questions shall be propounded in rounds... In each round, the member(s) or committee counsel shall ask questions first, and the member(s) or committee counsel *designated by the ranking minority member* shall ask questions second.”) (Emphasis provided).

^{4/} *See Yellin v. United States*, 374 U.S. 109 (1963) (reversing criminal contempt of congress conviction where a committee failed to follow its own rules); *United States v. Reinecke*, 524 F.2d 435 (D.C. Cir. 1975).

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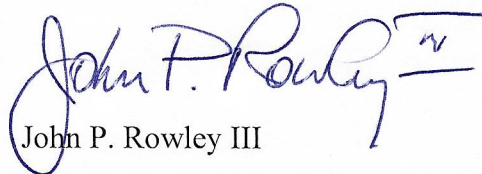
difficult to see how discussions between Mr. Perry and former President Trump about Executive Branch political appointments at the Department of Justice can possibly advance a legitimate legislative purpose.

Mr. Perry has the greatest respect for our American constitutional republic and the House of Representatives in which he has the privilege and honor of serving. He has a long history of public service to our Nation – not in the least of which by serving our Nation in Iraq as an Aviation Battalion Commander and flying over 44 combat missions, as a Brigadier General with almost 40 years of military service, and as an elected Member of Congress representing Pennsylvania's 4th and 10th Congressional Districts. He has condemned in the strongest possible terms the violence that occurred at the United States Capitol on January 6th. He cannot, however, in good conscience comply with an improper subpoena issued by a Select Committee that is not duly constituted, has failed to follow its own rules, and that, shockingly, is abusing its authority to target members of the opposite political party.

With due respect to you, Mr. Chairman, Mr. Perry declines to appear for deposition on May 26 and requests that you withdraw the subpoena.

Very truly yours,

JPROWLEYLAW PLLC

A handwritten signature in blue ink that reads "John P. Rowley III". The signature is stylized with a large "J" and "R". There is a small "III" written at the end of the signature.

John P. Rowley III

cc: John F. Wood, Esq., Senior Investigative Counsel & Of Counsel to the Vice Chair, Select Committee to Investigate the January 6th Attack on the United States Capitol (via email)
Daniel George, Esq., Senior Investigative Counsel (via email)
Douglas N. Letter, Esq., General Counsel, U.S. House of Representatives (via email)

John Irving, Esq., Co-counsel for Rep. Scott Perry