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11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE DISTRICT OF ARIZONA**

13 Dr. Michael P. Ward, et al.,  
14 Plaintiffs,  
15 v.  
16 Bennie G. Thompson, et al.,  
17 Defendants.

Case No. 3:22-cv-08015-DJH

**CONGRESSIONAL DEFENDANTS'  
MOTION TO DISMISS**

Assigned to: Judge Diane Humetewa

18  
19 Defendants the Honorable Bennie G. Thompson and the United States House Select  
20 Committee to Investigate the January 6th Attack on the United States Capitol (collectively,  
21 the Congressional Defendants) respectfully move for an order dismissing Plaintiffs Michael  
22 and Kelli Ward's Complaint (Feb. 1, 2022) (ECF 1). For the reasons set forth in the  
23 accompanying Memorandum of Law, the Wards' Complaint should be dismissed with  
24 prejudice.  
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26 Dated: August 8, 2022  
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Respectfully submitted,

*/s/ Douglas N. Letter*

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*Exxon Corp. v. FTC*,  
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*Keener v. Congress*,  
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*Lane v. Peña*,  
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27 *United States v. Rostenkowski*,  
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19 167 Cong. Rec. H7814-15 (daily ed. Dec. 14, 2021) ..... 12

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23 H. Res. 6, 116th Cong. (2019) ..... 10

24 H. Res. 24, 110th Cong. (2007) ..... 10

25 H. Res. 437, 109th Cong. (2005) ..... 9

26 H. Res. 503, 117th Cong. (2021) ..... 2, 3, 4, 5, 8, 9, 10, 13

27 Rules of the U.S. House of Representatives, 117th Cong. (2021) ..... 8, 9, 13, 14

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Other Authorities

Black’s Law Dictionary (11th ed. 2019)..... 10

Brahm Resnik, *'Stop the counting': Records show Trump and allies pressured top  
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Republican Party of Arizona (@AZGOP), Twitter (Dec. 2, 2020),  
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*Trump’s Full Speech at D.C. Rally on Jan. 6*, Wall St. J.,  
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Case No. 3:22-cv-08015-DJH

**MEMORANDUM OF LAW IN  
SUPPORT OF CONGRESSIONAL  
DEFENDANTS’ MOTION TO  
DISMISS**

Assigned to: Judge Diane Humetewa

18  
19 **INTRODUCTION**

20 In this lawsuit, Plaintiffs Michael and Kelli Ward seek to prevent a validly constituted  
21 Congressional committee from “investigating the single most deadly attack on the Capitol by  
22 domestic forces” and evaluating the need for legislation to “ensur[e] the safe and  
23 uninterrupted conduct of [Congress’s] constitutionally assigned business.” *Trump v.*  
24 *Thompson*, 20 F.4th 10, 35 (D.C. Cir. 2021), *inj. denied*, 142 S. Ct. 680 (2022), *cert. denied*,  
25 142 S. Ct. 1350 (2022).

26 Their Complaint provides no valid reason for interference with the Select  
27 Committee’s critical investigation. The claims by the Wards against the Congressional  
28 Defendants are barred by the doctrine of sovereign immunity. And, the Wards’ various



1 claims fail on their merits. *First*, the Wards are wrong that the Select Committee lacks a  
2 legitimate legislative purpose or is invalidly constituted. Every court that has considered  
3 these arguments has rejected them. *Second*, the Wards’ First Amendment rights are not  
4 violated by the subpoena. *Third*, neither Arizona state law nor the federal Health  
5 Insurance Portability and Accountability Act (“HIPAA”) shields from the Select  
6 Committee the information encompassed by the subpoena.

7 In short, the Complaint presses a variety of flawed legal claims to thwart the Select  
8 Committee’s efforts to understand fully, and to prevent a recurrence of, the events of  
9 January 6th. This Court should dismiss the Complaint in its entirety.

## 10 BACKGROUND

### 11 A. The January 6th Attack

12 On January 6, 2021, rioters seeking to stop the peaceful transfer of power following  
13 the 2020 Presidential election launched a violent assault on the United States Capitol.  
14 H. Res. 503, 117th Cong. (2021). These rioters impeded the constitutionally-mandated  
15 counting of electoral college votes transmitted from the states, which reflected the results  
16 of the 2020 presidential election. *See* U.S. Const., Amend. XII. President Trump  
17 “attempt[ed] to obstruct” this count by, in part, directing the assembled crowd of  
18 supporters to the Capitol to pressure Vice President Pence and the federal legislators to  
19 reject the certified results of the election.<sup>1</sup> “The rampage left multiple people dead, injured  
20 more than 140 people, and inflicted millions of dollars in damage to the Capitol.” *Trump*  
21 *v. Thompson*, 20 F.4th at 15.

22 Dr. Kelli Ward participated in multiple aspects of these attempts to interfere with  
23 the electoral count on January 6th. She told officials in Maricopa County to stop counting  
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28 <sup>1</sup> *Eastman v. Thompson*, No. 22-99, 2022 WL 894256, at \*20-21 (C.D. Cal. Mar. 28, 2022); *See, e.g., Trump’s Full Speech at D.C. Rally on Jan. 6*, Wall St. J., at 14:35-15:47, <https://perma.cc/JGJ3-APMD>.

1 ballots,<sup>2</sup> and promoted inaccurate allegations of election interference by Dominion Voting  
 2 Systems.<sup>3</sup> Although the Governor of Arizona had certified that Joseph Biden won the  
 3 election in Arizona and that the Biden electors would represent the state of Arizona, Dr.  
 4 Kelli Ward (while serving as the Chair of the Arizona Republican Party, Compl. Ex. B ¶ 8,  
 5 ECF 1-2), and other Trump electors nevertheless convened as Arizona’s purported  
 6 electors, voted, and sent a set of unauthorized Electoral College votes to Congress that she  
 7 misdescribed as “represent[ing] the legal votes of Arizona[.]”<sup>4</sup> Privately, she reportedly  
 8 expressed concern about the legality of this effort to representatives of President Trump.<sup>5</sup>  
 9 Nevertheless, while Congress was recessed due to the mob’s violence and attack on the  
 10 Capitol, Dr. Ward continued to advocate for overturning the results of the election.<sup>6</sup> And  
 11 in the wake of January 6th, Dr. Ward continued to falsely maintain that the illegitimate  
 12 document purporting to transmit Electoral College votes for Donald Trump contained “the  
 13 rightful & true Presidential electors for 2020.”<sup>7</sup>

14 **B. The Select Committee’s Creation And Subpoena For Plaintiffs’ Records**

15 In response to the unprecedented January 6th attack, the House of Representatives  
 16 adopted House Resolution 503, “[e]stablish[ing] the Select Committee to Investigate the  
 17 January 6th Attack on the United States Capitol” (“Select Committee”). H. Res. 503 § 1.  
 18 This resolution authorizes the Select Committee to (1) “investigate the facts,  
 19 circumstances, and causes relating to the domestic terrorist attack on the Capitol” and

20 \_\_\_\_\_  
 21 <sup>2</sup> Brahm Resnik, *‘Stop the counting’: Records show Trump and allies pressured top*  
 22 *Maricopa County officials over election results*, 12NEWS (July 2, 2021), <https://perma.cc/AY9D-DQJZ> (quoting Ms. Ward’s text messages).

23 <sup>3</sup> See Republican Party of Arizona (@AZGOP), Twitter (Dec. 2, 2020), <https://perma.cc/A6X3-LPGL>.

24 <sup>4</sup> Dr. Kelli Ward (@kelliwardaz), Twitter (Dec. 14, 2020), <https://perma.cc/8PPS-H5CZ>.

25 <sup>5</sup> See Maggie Haberman & Luke Broadwater, *Arizona Officials Warned Fake*  
 26 *Electors Plan Could ‘Appear Treasonous’*, N.Y. Times (Aug. 2, 2022), <https://perma.cc/67E8-CHCU>.

27 <sup>6</sup> Dr. Kelli Ward (@kelliwardaz), Twitter (Jan. 6, 2021), <https://perma.cc/587H-GGZU>.

28 <sup>7</sup> Dr. Kelli Ward (@kelliwardaz), Twitter (Jan. 12, 2022), <https://perma.cc/5B8S-B6P5> (replying to a comment on her original tweet).

1 relating to the interference with the peaceful transition of power”; (2) “identify, review,  
2 and evaluate the causes of and the lessons learned from the domestic terrorist attack on the  
3 Capitol;” and (3) “issue a final report to the House containing such findings, conclusions,  
4 and recommendations for corrective measures ... as it may deem necessary.” *Id.* §§ 3(1),  
5 4(a)(1)-(3).

6 In furtherance of its duty to “investigate the facts, circumstances, and causes” of the  
7 January 6th attack, the Select Committee has issued subpoenas to various entities,  
8 including to T-Mobile USA, Inc. (“T-Mobile”), for call detail records relating to Ms.  
9 Ward’s account (Compl. Ex. A at 2, ECF 1-1).<sup>8</sup>

### 10 STANDARD OF REVIEW

11 To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1), a  
12 plaintiff has the burden of establishing this Court’s jurisdiction. *See Lujan v. Defs. of*  
13 *Wildlife*, 504 U.S. 555, 561 (1992). In determining whether it has jurisdiction, the Court  
14 “must take all of the factual allegations in the complaint as true,” and are “are not bound to  
15 accept as true a legal conclusion couched as a factual allegation.” *Ashcroft v. Iqbal*, 556  
16 U.S. 662, 678 (2009) (internal citation and quotation marks omitted).

17 “Moreover, the court need not limit itself to the allegations of the complaint ... .  
18 Rather, the court, where necessary, may consider the complaint supplemented by  
19 undisputed facts along with the court’s resolution of disputed facts to determine whether it  
20 has jurisdiction over the case.” *Sadowski v. Bush*, 293 F. Supp. 2d 15, 17 (D.D.C. 2003),  
21 *dismissed as moot*, No. 03-5189, 2004 WL 547605 (D.C. Cir. Mar. 17, 2004).

22 To survive a motion to dismiss under Rule 12(b)(6), a plaintiff must allege  
23 “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its  
24

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25  
26 <sup>8</sup> According to the representations in Dr. Ward’s Affidavit, (Compl. Ex. B ¶ 17),  
27 Dr. Michael Ward and two children have phone numbers associated with the account that  
28 was the subject of the Subpoena. To the extent call detail records for those phone numbers  
are considered covered by the Subpoena, the Select Committee has voluntarily withdrawn  
such a demand and has notified T-Mobile accordingly. Therefore, in addition to requiring  
dismissal for the reasons stated in this memorandum, Dr. M. Ward’s claims are also moot.

1 face.” *Ashcroft*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570  
2 (2007)).

### 3 ARGUMENT

4 This Court lacks subject matter jurisdiction to consider the Wards’ claims against  
5 the Select Committee and Chairman Thompson because those claims are barred by the  
6 doctrine of sovereign immunity. In any event, all of the Wards’ claims are meritless.  
7 Indeed, many of the Wards’ arguments have been correctly rejected by multiple federal  
8 courts, and the Wards offer no valid reason for this Court to hold differently. The Wards’  
9 Complaint should be dismissed.

#### 10 I. This Court Lacks Subject Matter Jurisdiction

11 This suit is barred by the doctrine of sovereign immunity because “the United  
12 States may not be sued without its consent and ... the existence of consent is a prerequisite  
13 for jurisdiction.” *United States v. Mitchell*, 463 U.S. 206, 212 (1983). That protection  
14 applies to Congress as well. *See Keener v. Congress*, 467 F.2d 952, 953 (5th Cir. 1972);  
15 *McLean v. United States*, 566 F.3d 391, 401 (4th Cir. 2009). Accordingly, sovereign  
16 immunity “forecloses ... claims against the House of Representatives and Senate as  
17 institutions, and Representative[s] ... and Senator[s] ... as individuals acting in their official  
18 capacities.” *Rockefeller v. Bingaman*, 234 F. App’x 852, 855 (10th Cir. 2007).

19 Plaintiffs like the Wards seeking to sue the Federal Government bear the burden of  
20 identifying an applicable waiver of sovereign immunity that is “unequivocally expressed  
21 in statutory text.” *Lane v. Peña*, 518 U.S. 187, 192 (1996) (waiver “will not be implied”).  
22 The Complaint here does not and cannot point to any such waiver. Nor can the Select  
23 Committee’s actions be considered *ultra vires*; after all, the Select Committee’s  
24 investigation, and attendant subpoenas, were clearly and expressly authorized by the full  
25 House and are consistent with its standing rules. *See* H. Res 503 §§ 3(1), 5(c). Because no  
26 waiver of sovereign immunity applies, the claims against the Congressional Defendants  
27 must be dismissed.

28

## 1 II. The Complaint Fails To State A Claim

2 Even if the Wards could overcome the jurisdictional bar of sovereign immunity,  
3 their Complaint does not state a claim on which relief can be granted. *First*, the D.C.  
4 Circuit has correctly held that the Select Committee has a valid legislative purpose, and  
5 that purpose undoubtedly encompasses the subpoena to T-Mobile at issue here. Further,  
6 the Select Committee is validly constituted, as other courts have uniformly held, and the  
7 subpoena to T-Mobile complies with the applicable House rules and the Select  
8 Committee’s authorizing resolution. *Second*, the Wards’ First Amendment claim fails.  
9 *Third*, health privacy statutes, including HIPAA, do not shield the information that the  
10 subpoena seeks. This suit should therefore be dismissed.

### 11 A. The Select Committee Has A Valid Legislative Purpose And The 12 Subpoena Complies With House Rules

13 1. As the D.C. Circuit recently held, “the January 6th Committee plainly has a  
14 valid legislative purpose and its inquiry concern[s] a subject on which legislation could be  
15 had.” *Trump v. Thompson*, 20 F.4th at 41 (alteration in original) (internal quotation marks  
16 and citation omitted). In reaching this holding, the D.C. Circuit described “Congress’s  
17 uniquely vital interest in studying the January 6th attack on itself to formulate remedial  
18 legislation and to safeguard its constitutional and legislative operations.” *Id.* at 17.  
19 Applying the D.C Circuit’s decision in *Trump v. Thompson*, four other courts have rejected  
20 similar arguments that subpoenas issued by the Select Committee lacked a legitimate  
21 legislative purpose. *See* Oral Arg. Tr. at 119:19-121:4, *United States v. Bannon*, No. 21-  
22 670 (D.D.C. June 15, 2022); *Republican Nat’l Comm. (“RNC”) v. Pelosi*, No. 22-659,  
23 2022 WL 1294509, at \*16-19 (D.D.C. May 1, 2022); Oral Arg. Tr. at 34, *Budowich v.*  
24 *Pelosi*, No. 21-3366 (D.D.C. Jan. 20, 2022), ECF 27; Order Den. Pl.’s Mot. for Prelim. Inj.  
25 at 10, *Eastman v. Thompson*, No. 22-CV-00099 (C.D. Cal. Jan. 25, 2022), ECF 43. No  
26 court has ruled otherwise.

27 Nonetheless, the Wards repeatedly insist that the Select Committee’s subpoena does  
28 not serve a valid legislative purpose, arguing that the subpoena “appears to facially serve

1 the purpose of law enforcement” and “is being used as a general power of inquiry.”  
 2 Compl. ¶¶ 43-44. But the Select Committee is not criminally investigating the Wards or  
 3 anyone else—nor is the Select Committee, by investigating the January 6th attack, trying  
 4 to “expose [information] for the sake of exposure.” Compl. ¶ 45. Indeed, the D.C. Circuit  
 5 rejected this very argument noting that “[t]he mere prospect that misconduct might be  
 6 exposed does not make the [Select] Committee’s request prosecutorial. Missteps and  
 7 misbehavior are common fodder for legislation.” *Trump v. Thompson*, 20 F.4th at 42. The  
 8 Wards’ Complaint offers no sound reason for this Court to reach a different conclusion.<sup>9</sup>  
 9 And Dr. Kelli Ward’s extensive efforts at overturning the Presidential election, *see supra*  
 10 at 2-3, provide ample basis for issuing the subpoena.

11       **2.** The Complaint also alleges that the Select Committee was not validly formed  
 12 and lacked authority to issue the subpoena to T-Mobile for the Wards’ records. *See*  
 13 Compl. ¶¶ 74-91. Those contentions are wrong as a matter of law.

14       Through this claim, the Wards demand that this Court override the actions of the  
 15 House and its Speaker for assertedly not following the Select Committee’s authorizing  
 16 resolution or House Rules violates Constitutional separation of powers principles. The  
 17 Constitution’s Rulemaking Clause states that “[e]ach House may determine the Rules of its  
 18 Proceedings.” U.S. Const., Art. I, § 5, cl. 2. As the D.C. Circuit has explained, the Clause

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19       <sup>9</sup> The Complaint makes a single, passing reference to executive privilege as a  
 20 ground upon which the Select Committee’s subpoena is invalid. *See* Compl. ¶ 36.  
 21 However, the Wards are not the holder of executive privilege and, therefore, cannot assert  
 22 it. Executive privilege “belongs to the Government and must be asserted by it,” and there  
 23 must be a “formal claim of privilege, lodged by the head of the department which has  
 24 control over the matter, after actual personal consideration by that officer.” *United States*  
 25 *v. Reynolds*, 345 U.S. 1, 7-8 (1953); *see also* Presidential Memorandum, Procedures  
 26 Governing Responses to Congressional Requests for Information 2-3 (Nov. 4, 1982),  
 27 <https://perma.cc/6B6N-FZ89> (“If the President decides to invoke executive privilege, the  
 28 Department Head shall advise the requesting Congressional body that the claim of  
 executive privilege is being made with the specific approval of the President.”). Because  
 the Wards haven’t alleged that President Trump even attempted to invoke executive  
 privilege regarding their telephone records and because they lack any legitimate claim to  
 executive privilege even if he had, the privilege cannot be relied upon as a basis to  
 challenge the Select Committee’s subpoena.

1 “‘clearly reserves to each House of the Congress the authority to make its own rules,’ and  
2 ... interpreting a congressional rule ‘differently than would the Congress itself’ is  
3 tantamount to ‘making the Rules—a power that the Rulemaking Clause reserves to each  
4 House alone.’” *Barker v. Conroy*, 921 F.3d 1118, 1130 (D.C. Cir. 2019) (quoting *United*  
5 *States v. Rostenkowski*, 59 F.3d 1291, 1306-07 (D.C. Cir. 1995)); *see also Rangel v.*  
6 *Boehner*, 20 F. Supp. 3d 148, 167 (D.D.C. 2013). Indeed, it is a “startlingly unattractive  
7 idea, given [courts’] respect for a coequal branch of government, for [a federal court] to  
8 tell the Speaker” whom to appoint to committees. *Vander Jagt v. O’Neill*, 699 F.2d 1166,  
9 1176 (D.C. Cir. 1982) (internal quotation marks omitted).

10 In addition, the arguments advanced by the Wards ignore the presumption of  
11 regularity due Congress. *See Barry v. U.S. ex rel. Cunningham*, 279 U.S. 597, 619 (1929)  
12 (“The presumption in favor of regularity ... cannot be denied to the proceedings of the  
13 houses of Congress, when acting upon matters within their constitutional authority.”).  
14 None of the allegations in the Complaint comes close to demonstrating the “clear evidence  
15 to the contrary,” *United States v. Chem. Found., Inc.*, 272 U.S. 1, 14-15 (1926), required to  
16 overcome that presumption.

17 Regardless, the various challenges to the Select Committee’s composition and  
18 issuance of the subpoena are deeply flawed. *First*, the Complaint contends that Speaker  
19 Pelosi’s appointment of nine instead of thirteen Members to the Select Committee, and  
20 appointment of Members different from those recommended by the Minority Leader, was  
21 contrary to the Select Committee’s authorizing resolution. *See* Compl. ¶¶ 76-78. That  
22 claim is incorrect.

23 By way of background, the House has four different kinds of committees, each of  
24 which is established and governed by various House Rules, statutes, and House  
25 resolutions, or on an *ad hoc* basis. *See, e.g.*, Rule X, Rules of the U.S. House of  
26 Representatives, 117th Cong. (2021) (“House Rules”) (rules governing “standing”  
27 Committees); 26 U.S.C. §§ 8001-05 (establishing the Joint Committee on Taxation); H.  
28 Res. 503 § 1 (establishing the Select Committee); 165 Cong. Rec. H1216 (daily ed. Jan.

1 25, 2019) (appointment of conferees for H.J. Res. 31). The House rules and procedures  
2 governing appointments to these four distinct types of committees vary. Significantly,  
3 under House rules, the Speaker appoints Members for all select committees, including the  
4 one at issue here. *See* House Rule I.11 (“[t]he Speaker shall appoint all select, joint, and  
5 conference committees ordered by the House.”). And, by unanimous consent, on January  
6 4, 2021, the House expressly authorized the Speaker to “make appointments authorized by  
7 law or by the House.” 167 Cong. Rec. H37 (daily ed. Jan. 4, 2021) (statement of Rep.  
8 Hoyer).

9 The Wards’ attack on the composition of the Select Committee fails. House  
10 Resolution 503 states that “[t]he Speaker shall appoint 13 Members to the Select  
11 Committee, 5 of whom shall be appointed after consultation with the minority leader.”  
12 H. Res. 503 § 2(a). The plain language of the resolution does not require that *all* thirteen  
13 Members be appointed for the Select Committee to function, and the Congressional  
14 Defendants are aware of no rule or law providing that the authorization to appoint thirteen  
15 Members required that the Speaker appoint that precise number.

16 Indeed, the House’s interpretation of its rules is strongly informed by prior practice,  
17 and precedent supports a House select committee operating with fewer than its full  
18 allotment of Members. Specifically, in the 109th Congress, the House created the Select  
19 Committee to Investigate the Preparation for and Response to Hurricane Katrina, which  
20 allowed for twenty members, using language substantially similar to the Resolution here.  
21 *See* H. Res. 437, 109th Cong. § 2(a) (2005) (“The select committee shall be composed of  
22 20 members appointed by the Speaker[.]”). Then-House Speaker Dennis Hastert  
23 appointed only eleven Members, all of whom were from the then-majority Republican  
24 Party. *See* H. Rep. No. 109-377, at ii (2006) (listing Members). Notably, that select  
25 committee likewise issued subpoenas. *See id.* at 23. This precedent strongly supports the  
26 Speaker’s actions here.

27 Moreover, House Resolution 503 contemplates the possibility of “vacancies” but  
28 provides no specific timeline for filling them. *See* H. Res. 503 § 2(c). Nor does House



1 Resolution 503 provide that the Select Committee would become invalid, or that it must  
2 suspend all action, should a vacancy occur—even though, by definition, it would have  
3 fewer than thirteen members. *See id.* In short, the Speaker’s appointment of nine  
4 Members to the Select Committee is fully consistent with House Resolution 503. *See infra*  
5 at 12-13.

6 Likewise, contrary to the Wards’ suggestion, *see* Compl. ¶ 78, the Select  
7 Committee’s composition complies with the authorizing resolution’s requirement that  
8 Members be chosen “after consultation with the minority leader.” H. Res. 503 § 2(a). The  
9 plain language of the resolution does not, for example, authorize the Minority Leader to  
10 directly appoint a certain number of Members, nor does it require that appointments be  
11 made “upon the recommendation” of the Minority Leader. Instead, the resolution provides  
12 the Speaker with the broader authority to simply “consult[.]” with the Minority Leader  
13 regarding the appointment of minority party Members. *See United Keetoowah Band of*  
14 *Cherokee Indians in Okla. v. FCC*, 933 F.3d 728, 750 (D.C. Cir. 2019) (“Consultation”  
15 means to “seek[] advice or information of” (internal quotation marks omitted));  
16 *Consultation*, Black’s Law Dictionary (11th ed. 2019) (defining “consultation” as “[t]he  
17 act of asking the advice or opinion of someone”). The Minority Leader’s refusal to consult  
18 further after the Speaker declined to appoint two of his recommendations does not alter the  
19 authority under House Resolution 503. Neither the Speaker nor the full House has  
20 interpreted House Resolution 503 to allow the Minority Leader to unilaterally frustrate the  
21 operation of the Select Committee. Indeed, no reasonable interpretation of House  
22 Resolution 503 would so allow.

23 Had the House intended a binding role for the Minority Leader, it could have  
24 provided for such a requirement, as it has in the past. *See* H. Res. 6, 116th Cong.  
25 § 104(f)(1)(B) (2019) (Select Committee on the Climate Crisis requirement that a portion  
26 of the Members be appointed by the Speaker “on the recommendation of the Minority  
27 Leader”); *id.* § 201(b)(3) (same requirement for Select Committee on the Modernization of  
28 Congress). Similarly, had the House wished to delegate appointment power directly to the

1 Minority Leader, it could have done so. *See, e.g.*, H. Res. 24, 110th Cong. § 2(a) (2007)  
2 (creating the House Democracy Assistance Commission and allowing nine Members to  
3 “be appointed by the Minority Leader of the House of Representatives”).

4 Here, House Resolution 503 was followed: the Minority Leader *was* consulted. The  
5 fact that the Speaker—using the authority provided to her by the House Rules; the January  
6 4, 2021, Order of the House; and House Resolution 503—indicated she would only  
7 appoint three of his initial five selections, and that the Minority Leader subsequently  
8 withdrew his recommendations, does not make the Select Committee improperly  
9 constituted, nor does it invalidate any of its actions.

10 It is thus no surprise that every district court to have considered challenges to the  
11 Select Committee’s composition has rejected them. As a district court recently explained  
12 in *RNC v. Pelosi*, “the House views the Select Committee to be duly constituted and  
13 empowered to act under its authorizing resolution, even though the Select Committee has  
14 only nine members. This understanding is reflected by the House’s adoption of the Select  
15 Committee’s recommendations to find witnesses in contempt of Congress for their refusals  
16 to comply with Select Committee subpoenas.” 2022 WL 1294509, at \*15. Indeed, the full  
17 House affirmatively ratified the relevant actions of the Select Committee in the face of  
18 challenges on the House floor identical to the challenges raised by the Wards’ here.

19 For example, when the full House debated the resolutions recommending referral of  
20 Stephen Bannon, Mark Meadows, Peter Navarro, and Daniel Scavino, Jr. for contempt of  
21 Congress for failure to comply with Select Committee subpoenas, several Members of  
22 Congress raised the argument about the composition of the Select Committee.<sup>10</sup> The full

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24 <sup>10</sup> *See, e.g.*, 167 Cong. Rec. H7793 (daily ed. Dec. 14, 2021) (“This committee is  
25 illegitimate. ... It has violated its own rules of creation and it says they want to find out  
26 this massive truth here about what happened on January 6. ... You can’t do that. And that  
27 is what they are doing today.” (statement of Rep. Biggs)); *id.* at H7786 (“the committee  
28 has zero members appointed in consultation with Leader McCarthy” and “it doesn’t have  
13 members.” (statement of Rep. Banks)); *see also* 167 Cong. Rec. H5760 (daily ed. Oct.  
21, 2021) (“the subpoenas that have so far been issued do not ask for information that  
would meet any legitimate legislative purpose.” (statement of Rep. Banks)); 168 Cong.

1 House nonetheless approved the Select Committee’s referrals of those four individuals for  
2 contempt of Congress.<sup>11</sup> The House’s ratification of the referrals reinforces that the  
3 Wards’ objections to the Select Committee’s composition fail.

4 In rejecting the argument that House rules mandated that the Speaker appoint  
5 thirteen Members to the Select Committee, the *RNC* court further explained that the fact  
6 “that [House Resolution 503 § 2(a)] states that Speaker Pelosi ‘shall’ appoint thirteen  
7 members to the Select Committee is not conclusive as to whether thirteen members are  
8 required for it to lawfully operate.” 2022 WL 1294509, at \*15. The court concluded that  
9 if it accepted the challenge to the Select Committee’s composition, it “would be  
10 ‘interpret[ing] the Rule differently than ... the [House] itself’ and ‘would effectively be  
11 making the Rules—a power that the Rulemaking Clause reserves to each House alone.’”  
12 *Id.* (alteration in original) (quoting *Rostenkowski*, 59 F.3d at 1306-07).

13 Three other district courts have rejected substantially similar challenges to the  
14 composition of the Select Committee. In *Budowich v. Pelosi*, the court determined that it  
15 must “defer to Congress in the manner of interpreting its rules,” and that it would be  
16 “usurping Congressional authority” to hold that the Select Committee was not validly  
17 composed. Oral Arg. Tr. at 34, *Budowich*, ECF 27. Shortly thereafter, Judge Carter of the  
18 Central District of California likewise recognized the deference owed to the Speaker, the  
19 full House, and the Select Committee in interpreting a House resolution. As Judge Carter  
20 explained, “[a] court may interpret internal congressional rules only when such  
21 interpretation ‘requires no resolution of ambiguities.’” Order at 9 & n.12, *Eastman*, ECF  
22 43 (quoting *United States v. Durenberger*, 48 F.3d 1239, 1244 (D.C. Cir. 1995)). Most  
23 recently, in denying Stephen Bannon’s motion to dismiss his indictment for contempt of  
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25 Rec. H4217 (daily ed. Apr. 6, 2022) (challenging the Select Committee’s means of  
26 operation during the full House debate over the contempt resolution relating to Peter  
27 Navarro and Daniel Scavino, Jr.).

28 <sup>11</sup> See, e.g., 167 Cong. Rec. H7814-15 (daily ed. Dec. 14, 2021) (vote on H. Res.  
851, Meadows); 167 Cong. Rec. H5768-69 (daily ed. Oct. 21, 2021) (vote on H. Res. 730,  
Bannon); 168 Cong. Rec. H4371-79 (daily ed. Apr. 6, 2022) (vote on H. Res. 1037,  
Navarro and Scavino).

1 Congress, a district court rejected his challenge to the composition of the Select  
2 Committee. The court recognized that it “must give great weight to the interpretation of  
3 those House members charged with implementing the [authorizing] resolution and to the  
4 House itself,” and “there would be potential separation of powers issues, should this or any  
5 court reject a congressional interpretation of its own rule.” Oral Arg. Tr. at 115:7-24,  
6 *Bannon*, No. 21-670.

7 *Second*, the Wards claim that the subpoena was improperly issued because it was  
8 not issued at a meeting of the Select Committee at which a majority, or quorum, of the  
9 Select Committee Members were present. *See* Compl. ¶¶ 74-91. This argument  
10 misunderstands and misapplies the applicable House Rules.

11 The Wards incorrectly rely on the House Rule requiring that a “measure ... may not  
12 be reported by a committee unless a majority of the committee is actually present.” *Id.* ¶  
13 79 (citing House Rule XI.2(h)(1)). The term “measure” does not encompass a committee  
14 subpoena. Rather it is a synonym for a bill, resolution, or report, which is consistent with  
15 its use in the Legislative Reorganization Act of 1946, from which this requirement  
16 originated. *See* Pub. L. No. 79-601, § 133(d), 60 Stat. 812, 831 (1946). This rule is  
17 inapplicable to the issuance of subpoenas because a separate quorum requirement is found  
18 in House Rule XI.2(m)(3)(A).

19 Furthermore, the Wards misapply House Rule XI.2(m) regarding the issuance of  
20 subpoenas. While noting that the Rule states that subpoenas may be issued “only when  
21 authorized by the committee or subcommittee, a majority being present,” *see* Compl. ¶ 82,  
22 they omit the next sentence, which provides an alternative method for issuance: “The  
23 power to authorize and issue subpoenas under subparagraph (1)(B) may be delegated to  
24 the chair of the committee under such rules and under such limitations as the committee  
25 may prescribe.” House Rule XI.2(m)(3)(A)(i). Compounding this error, the Wards  
26 incorrectly assert that “H. Res. 503 did not change the requirement of House Rule XI,  
27 clause 2(m) that a majority of the issuing committee be present to authorize issuance of  
28 any subpoena.” Compl. ¶ 83. In fact, House Resolution 503 expressly invokes the

1 provision of Rule XI.2(m)(3)(A)(i) by stating that the “chair of the Select Committee may  
2 authorize and issue subpoenas pursuant to clause 2(m) of [House] rule XI[.]” H. Res. 503  
3 § 5(c)(4). Because House Resolution 503 specifically delegates to the Chairman of the  
4 Select Committee the power to authorize and issue subpoenas, it is consistent with House  
5 Rule XI.2(m)(3)(A)(i) and does not require either a meeting or the presence of a quorum.

6 In short, there is no basis for this Court to substitute the Wards’ interpretation of the  
7 Select Committee’s authorizing resolution for the House’s view; indeed, such a  
8 determination would be impermissibly “tantamount to ‘making the [House] Rules.’”  
9 *Barker*, 921 F.3d at 1130 (emphasis omitted) (quoting *Rostenkowski*, 59 F.3d at 1306-07);  
10 *see also* Oral Arg. Tr. at 33-34, *Budowich*, ECF 27; Order at 9 & n.12, *Eastman*, ECF 43;  
11 *Vander Jagt*, 699 F.2d at 1175. The Select Committee and its subpoena are valid.

#### 12 **B. The Complaint Fails To State A First Amendment Claim**

13 The Complaint alleges that the subpoena violates the Wards’ rights under the First  
14 Amendment. Compl. ¶¶ 46-59. The Wards suggest that this Court must subject the  
15 subpoena to “exacting scrutiny” because “political associational rights are at stake.” *Id.*  
16 ¶ 50.

17 To the contrary, the subpoena does not implicate any “associational” activities of  
18 the Wards or their associates. The subpoena does not seek the content of any  
19 communications. Rather, the subpoena seeks “subscriber information” and “connection  
20 records and records of session times and durations.” Compl. Ex. A. Subscriber  
21 information is limited to information about the user of the account, associated phone  
22 numbers, and other identifying numbers. “Connection records” and “records of session  
23 times and durations” simply refer to records of the date and time, duration, and sender and  
24 recipient of any call, text message, or other communication.<sup>12</sup> None of this data reveals  
25 any speech or associational rights protected by the First Amendment.

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26  
27 <sup>12</sup> Connection Records and Records of Session Times and Durations are defined in  
28 the subpoena as: “All call, message (SMS & MMS), Internet Protocol (‘IP’), and data-  
connection detail records associated with the Phone Numbers, including all phone

1 Further, even if the Wards’ First Amendment claim were subject to a balancing test,  
 2 such balancing would favor the Select Committee’s crucial investigation. The Wards’  
 3 conclusory assertions that the subpoena “provides the [Select] Committee with the means  
 4 to chill the First Amendment associational rights” of the Wards’ and “the entire  
 5 Republican Party in Arizona,” Compl. ¶ 52—and that the violation of Wards’ First  
 6 Amendment rights “would lead to substantial and serious injury and harassment,” *id.* ¶  
 7 54—are far too amorphous to be actionable. Courts require considerably more specificity  
 8 than the Wards allege. *See Brock v. Loc. 375, Plumbers Int’l Union of Am., AFL-CIO*, 860  
 9 F.2d 346, 350 n.1 (9th Cir. 1988) (reviewing cases and concluding that courts have  
 10 “emphasized in each of those decisions ... the need for objective and articulable facts,  
 11 which go beyond broad allegations or subjective fears ... . [A] merely subjective fear of  
 12 future reprisals is an insufficient showing of infringement of associational rights”).<sup>13</sup>

13 Even if the Wards were able to substantiate a legitimate interest implicated by the  
 14 subpoena, which they cannot, it would be greatly outweighed by the Select Committee’s  
 15 overwhelming interest here. The Select Committee’s subpoena seeks records relevant to  
 16 determining the root causes of the January 6th insurrection against Congress, a “violent  
 17 attack[] on the seat of our nation’s government” that resulted in the “deaths of several law  
 18 enforcement officers” and “deepened public distrust in our political process.” *Eastman v.*  
 19 *Thompson*, -- F. Supp. 3d --, 2022 WL 894256, at \*27 (C.D. Cal. Mar. 28, 2022). This is a  
 20 paradigmatic example of the governmental interest in the “free functioning of our national  
 21 institutions.” *Buckley v. Valeo*, 424 U.S. 1, 66 (1976) (citation omitted), and as discussed  
 22 above, *see supra* at 2-3, Dr. Kelli Ward played a role in the events leading up to that day.

23 \_\_\_\_\_  
 24 numbers, IP addresses, or devices that communicated with the Phone Number via  
 25 delivered and undelivered inbound, outbound, and routed calls, messages, voicemail, and  
 26 data connections.” Compl. Ex. A. Contrary to the Complaint, *see id.* ¶ 52, the subpoena  
 does not seek “file names of attachments.”

27 <sup>13</sup> *See also Buckley v. Valeo*, 424 U.S. 1, 74 (1976) (associational injury requires  
 28 demonstrating “a reasonable probability that the compelled disclosure ... will subject them  
 to threats, harassment, or reprisals from either Government officials or private parties”);  
*see also Doe No. 1 v. Reed*, 561 U.S. 186, 200 (2010); *Senate Permanent Subcomm. v.*  
*Ferrer*, 199 F. Supp. 3d 125, 143 (D.D.C. 2016), *aff’d*, 856 F.3d 1080 (D.C. Cir. 2017).

1 Any balancing of “the competing private and public interests at stake” thus plainly favors  
2 the Select Committee. *Barenblatt v. United States*, 360 U.S. 109, 126 (1959); *see* Order at  
3 12-13, *Eastman*, ECF 43 (rejecting plaintiff’s First Amendment claim); *Ferrer*, 199 F.  
4 Supp. 3d at 138-43 (same).

5 **C. Neither Arizona State Privilege Protections Nor HIPAA Apply**

6 Lastly, the Complaint alleges that the information sought from T-Mobile violates  
7 Arizona state law prohibiting disclosure of medical and payment records in criminal and  
8 civil matters as well as HIPAA. *See* Compl. ¶¶ 60-73. Both claims are incorrect.

9 *First*, regarding Arizona state law, the Supremacy Clause of the U.S. Constitution,  
10 U.S. Const., Art. VI, cl. 2, precludes a state or local government from imposing restrictions  
11 on an entity of the Federal Government (such as the Select Committee) because doing so  
12 may interfere with the execution of the entity’s federal functions. *See, e.g., Mayo v.*  
13 *United States*, 319 U.S. 441, 445 (1943) (“A corollary to [the Supremacy Clause] is that  
14 the activities of the Federal Government are free from regulation by any state.”).  
15 Accordingly, the Arizona state law cited in the Complaint cannot regulate components of  
16 the Federal Government.

17 Moreover, a Congressional subpoena is not part of either a “criminal matter” or a  
18 “civil matter.” Rather, it is issued pursuant to Congress’s constitutional power to conduct  
19 investigations “upon which legislation could be had.” *See supra* at 6-7. Thus, by their  
20 plain language, neither of the Arizona statutes cited applies to the Select Committee’s  
21 subpoena to T-Mobile.

22 *Second*, HIPAA does not apply to the Select Committee. Regulations promulgated  
23 under HIPAA require only that “covered entit[ies]” maintain certain medical records in  
24 confidence. 45 C.F.R. § 164.502. HIPAA’s disclosure restrictions do not apply to this  
25 subpoena because neither the entity from which the records were sought—T-Mobile, a  
26 telecommunications carrier—nor the Select Committee or its Members fit within HIPAA’s  
27 definition of “covered entity.” 45 C.F.R. § 160.103.

28

1 A “covered entity” under the HIPAA regulations is defined as a “health plan,” a  
2 “health care clearinghouse,” or a “health care provider who transmits any health  
3 information in electronic form in connection with a transaction covered by” the HIPAA  
4 regulations. 45 C.F.R. § 160.103 (further defining “health care provider” as (1) hospitals,  
5 nursing, and rehabilitation facilities; (2) providers of “medical or health services;” and (3)  
6 any other person “who furnishes, bills, or is paid for health care in the normal course of  
7 business”). *Id.* T-Mobile does not fit this definition, nor does any Congressional entity or  
8 person.

9 Even if the source of the information were a health care provider rather than T-  
10 Mobile, the call detail records would not be covered under HIPAA because they do not  
11 contain “health information” as defined by the regulations, *see* 45 C.F.R. § 160.103, and  
12 they are not transactions covered by the regulations, *see, e.g.*, 42 U.S.C. § 1320d-2(a)(2);  
13 45 C.F.R. § 160.103; *see also* 45 C.F.R. §§ 162.1101-162.1901 (providing definitions of  
14 all covered transactions except “first report of injury” and “health claims attachments”).

15 *Finally*, to the extent the Wards’ concern is public disclosure, the D.C. Circuit has  
16 recognized that “disclosure to Congress d[oes] not constitute ‘public disclosure’” and that  
17 extensive deference is afforded to Congress to act responsibly with any information that it  
18 does obtain. *Exxon Corp. v. FTC*, 589 F.2d 582, 586 (D.C. Cir. 1978) (citation omitted);  
19 *see also id.* at 593 (“[T]he separation of powers demands that the courts do little to  
20 interfere with how the Congress deals with this information[.]”). Here, there is no reason  
21 to expect, and the Wards have provided none, that any personal medical information will  
22 be disclosed publicly by the Select Committee, which is investigating Dr. Kelli Ward’s  
23 role in attempting to overturn the 2020 Presidential election, not her or her husband’s roles  
24 as health care providers.

## 25 CONCLUSION

26 For all the reasons stated above, the Complaint should be dismissed.  
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Respectfully submitted,

/s/ Douglas N. Letter  
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August 8, 2022

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 8, 2022, I caused the foregoing document to be filed via the CM/ECF system for the U.S. District Court for the District of Arizona, which I understand caused a copy to be served on all registered parties.

*/s/ Douglas N. Letter* \_\_\_\_\_  
Douglas N. Letter

