



THE WHITE HOUSE
WASHINGTON

June 25, 2024

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Jordan:

I write regarding your March 22, 2024, subpoena to Mark Zwonitzer and now threats to hold him in contempt of Congress. You have subpoenaed Mr. Zwonitzer for six broad categories of documents and materials, including transcripts and audio recordings of all conversations he had with President Biden years ago during the process of writing the President's memoir about the death of his son, Beau, *Promise Me, Dad*.

It is my understanding that Mr. Zwonitzer's attorney has written to the Committee numerous times explaining why your extensive and intrusive demands raise numerous constitutional concerns and likely exceed the limits of Congress's legislative oversight authority. I also understand that Mr. Zwonitzer's attorney has repeatedly urged you to engage with the Executive Branch to fulfill any informational needs that you may have.

In subpoenaing this information, the Committee claims to be focused on the treatment of classified information, but that was already thoroughly investigated by Special Counsel Hur—including scrutiny of the very materials that you seek from Mr. Zwonitzer. The results are publicly available in his exhaustive report, and he testified for hours about it in front of the Committee. As the Committee must surely be aware, it is not legitimate oversight to seek to re-investigate that closed matter. Indeed, in conducting legislative oversight, Congress may not “issue a subpoena for the purpose of ‘law enforcement,’ because ‘those powers are assigned under our Constitution to the Executive and the Judiciary.’”¹ Furthermore, if you were sincerely interested in examining the handling of classified information, you would engage with the Executive Branch, not a private citizen with no authority related to classified information.

Instead of taking that approach, the Committee has chosen to harass and intimidate a private citizen—even scheduling a Committee meeting later this week to try to refer Mr. Zwonitzer to the House of Representatives for contempt of Congress. Members of the Committee have gone so far as to demand that Mr. Zwonitzer be criminally prosecuted, despite the Special Counsel—a former U.S. Attorney and Justice Department official previously

¹ *Trump v. Mazars USA, LLP*, 591 U.S. 848, 863 (2020) (quoting *Quinn v. United States*, 349 U.S. 155, 161 (1955)).

appointed by former President Trump—declining such action after an investigation that lasted more than a year.²

The Committee’s actions are an obvious example of the very weaponization of government for political purposes that you claim to decry. Putting a private citizen in your political crosshairs and threatening him with criminal prosecution, simply because you refuse to engage with the Executive Branch, is out of bounds.

With respect to the material you seek from Mr. Zwonitzer, there are significant Executive Branch interests at stake. Mr. Zwonitzer is not in a position to adjudicate those interests, which is why he has repeatedly asked you to engage with the Executive Branch. So far, you have not.

The Supreme Court recently made clear that congressional attempts to seek the personal information of the sitting President raise “significant separation of powers issues.”³ Because of the “close connection between the Office of the President and its occupant,” congressional demands for the private information of the President “implicate the relationship between the branches” and “may aim to harass the President or render him ‘complaisan[t] to the humors of the Legislature.’”⁴ The Supreme Court further stressed that these “separation of powers concerns are no less palpable” when “the subpoenas [are] issued to third parties” because “[c]ongressional demands for the President’s information present an interbranch conflict no matter where the information is held.”⁵

In addition, it is my understanding that the Committee’s sweeping subpoena encompasses information—such as details about confidential and non-public conversations among senior presidential advisors—that Congress, the Executive Branch, and the Supreme Court have long protected against unwarranted disclosure in order to safeguard the “complete candor and objectivity” of presidential advisors.⁶ In fact, in the Committee’s May 6, 2024, letter to Mr. Zwonitzer, by focusing on the treatment of classified information, the Committee appears to admit that its requests do indeed implicate constitutional separation of powers interests.⁷ To state the obvious, the Executive Branch cannot assess how to accommodate the Committee’s stated interests while protecting any applicable Executive Branch confidentiality interests if the Committee refuses to engage with us.

² See, e.g., *The Report of Special Counsel Robert K. Hur*, Hearing before the H. Comm. on the Judiciary, 118th Cong. (Mar. 12, 2024) (Remarks of Rep. Gaetz).

³ *Mazars*, 591 U.S. at 866.

⁴ *Id.* at 868 (quoting Federalist No. 71).

⁵ *Id.*

⁶ *United States v. Nixon*, 418 U.S. 683, 706 (1974); see also Presidential Records Act of 1978, 44 U.S.C. §§ 2201-2209.

⁷ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mr. Louis Freeman, at 3 (May 6, 2024) (“the information sought here relates to the disclosure of classified information, which, by definition, is in no way *personal* information”).

Given these facts, the Committee must drop its baseless intimidation campaign against a private citizen. By subpoenaing Mr. Zwonitzer for this information, instead of engaging with the Executive Branch, the Committee is transparently attempting to “sidestep [its] constitutional requirements.”⁸ Following the longstanding and constitutionally mandated accommodation process between the branches is the only proper course of action here.

Mr. Zwonitzer is not authorized to produce to Congress any of the President’s information absent a resolution of the weighty constitutional issues between the Executive and Legislative Branches.⁹ The Committee should engage with the Executive Branch to resolve this “interbranch conflict,” according to the longstanding accommodation process, consistent with how courts have advised the branches to resolve such disputes.¹⁰ Refusing to do so would expose a contempt for the rule of law and the Constitution.

The Executive Branch is ready and willing to engage in good faith with the Committee in response to its purported interest in this matter. Please do not hesitate to contact me if you have any questions or would like to discuss this matter.

Sincerely,



Edward N. Siskel
Counsel to the President

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

⁸ *Mazars*, 591 U.S. at 868.

⁹ Letter from Edward N. Siskel, Counsel to the President, to Louis Freeman, Esq., Counsel for Mark Zwonitzer (June 25, 2024).

¹⁰ *Mazars*, 591 U.S. at 868; see *United States v. AT&T*, 567 F.2d 121, 127 (D.C. Cir. 1977).