



THE WHITE HOUSE
WASHINGTON

June 25, 2024

Mr. Louis M. Freeman, Esq.
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75 Maiden Ln., Rm. 907
New York, NY 10038-4664

Dear Mr. Freeman:

I write regarding the March 22, 2024, subpoena issued to your client, Mark Zwonitzer, by the Committee on the Judiciary of the House of Representatives and the recent announcement that the Committee has scheduled a vote to refer your client to the House for contempt of Congress.¹ The subpoena seeks six broad categories of documents and materials from Mr. Zwonitzer relating to his past work as a writing assistant for President Biden, including transcripts and audio recordings of all conversations between Mr. Zwonitzer and then-Vice President Biden. I understand you have written to the Committee more than once to explain why the Committee's extensive demands raise numerous constitutional concerns and may exceed the limits of Congress's legislative oversight authority.² Moreover, your May 20 letter informed the Committee that "the Department [of Justice] continues to have possession, custody, and control of th[e] files" at issue and requested that the Committee engage with the Department to fulfill its informational needs in a manner consistent with the sensitivity of the information at issue.³

As you noted in your letters to the Committee, the Supreme Court recently made clear that congressional attempts to seek the personal information of the sitting President raise "significant separation of powers issues."⁴ 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.'"⁵ The fact that the Committee's subpoena is addressed to your client, rather than the Executive Branch, does not alter these principles. The Supreme Court made clear in *Mazars* that these "separation of powers concerns are no less palpable" when "the subpoenas [are] issued to third parties" because "[c]ongressional

¹ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mark Zwonitzer (Mar. 22, 2024) (attaching subpoena).

² Letter from Louis M. Freeman, Counsel for Mark Zwonitzer, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Apr. 12, 2024); Letter from Louis M. Freeman, Counsel for Mark Zwonitzer, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (May 20, 2024) ("May 20 Freeman Letter").

³ May 20 Freeman Letter at 1.

⁴ *Trump v. Mazars USA, LLP*, 591 U.S. 848, 866 (2020).

⁵ *Id.* at 868 (quoting Federalist No. 71)

demands for the President’s information present an interbranch conflict no matter where the information is held.”⁶

The Committee’s subpoena seeks broad swaths of personal information that President Biden provided to your client in confidence as part of the process for writing his memoirs. The vast majority of this information is private. The Committee’s subpoena is therefore a “congressional subpoena[] for the President’s information,” which “unavoidably pit[s] the political branches against one another.”⁷ Unfortunately, the Committee has thrust your client into the middle of this interbranch conflict.

In its most recent letter to you, the Committee disclaims any interest in the President’s personal information but instead claims that “the information sought here relates to the disclosure of classified information, which, by definition, is in no way *personal* information about the President.”⁸ In doing so, the Committee seeks to avoid the analysis required by *Mazars*—and the invalidity of its subpoena that would unavoidably result under such analysis. The Committee’s claim is, of course, impossible to square with the extreme breadth of the subpoena’s information demands. But even assuming the Committee is sincere in narrowing its demands, such narrowing does nothing to relieve the significant separation-of-powers concerns inherent in the Committee’s subpoena. Indeed, it only heightens those concerns, and your client has no authority to resolve the separation-of-powers concerns at issue.

In addition, we understand that some of the materials the Committee seeks may include 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.⁹ Because these types of confidential information, to the extent they are present in the materials responsive to the Committee’s subpoena, implicate longstanding Executive Branch confidentiality interests and separation-of-powers concerns when disclosed to Congress or to the public, the Committee’s recent letter makes clear that its subpoena is potentially *more* problematic than the subpoenas at issue in *Mazars*. The Supreme Court made clear in *Mazars* that the congressional subpoenas at issue there sought only “nonprivileged, private information, which by definition does not implicate sensitive Executive Branch” information.¹⁰ But the Committee’s letter admits precisely the opposite here—that its requests do in fact implicate these interests.

Traditionally, when these types of interests are at stake, the Legislative and Executive Branches engage in the longstanding accommodation process, pursuant to which “each branch [must] take cognizance of an implicit constitutional mandate to seek optimal accommodation

⁶ *Id.*

⁷ *Id.* at 866.

⁸ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mr. Louis Freeman, at 3 (May 6, 2024).

⁹ *United States v. Nixon*, 418 U.S. 683, 706 (1974); *see also* Presidential Records Act of 1978, 44 U.S.C. §§ 2201-2209.

¹⁰ *Mazars*, 591 U.S. at 864.

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through a realistic evaluation of the needs of the conflicting branches in the particular fact situation.”¹¹ In this way, disputes between Congress and the Executive Branch are resolved through a “tradition of negotiation and compromise.”¹² By demanding your client provide this information, instead of engaging with the Executive Branch, the Committee is attempting to “sidestep [its] constitutional requirements.”¹³

I write to you to ensure you are aware that the Committee’s subpoena implicates these “weighty concerns regarding the separation of powers” and longstanding Executive Branch confidentiality interests.¹⁴ Your client is not authorized to provide any of the President’s information until it has been reviewed for Executive Branch confidentiality concerns and a resolution of these constitutional issues between the two branches has been reached. 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.¹⁵

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

¹¹ *United States v. AT&T*, 567 F.2d 121, 127 (D.C. Cir. 1977).

¹² *Mazars*, 591 U.S. at 861.

¹³ *Id.* at 868.

¹⁴ *Id.* at 869.

¹⁵ *Id.* at 868; *see AT&T*, 567 F.2d at 127.