



CITIZENS FOR  
RESPONSIBILITY &  
ETHICS IN WASHINGTON

September 3, 2021

Omar Ashmawy  
Staff Director and Chief Counsel  
Office of Congressional Ethics  
U.S. House of Representatives  
PO Box 895  
Washington, DC 20515-0895

Re: Request for Investigation of House Minority Leader Kevin McCarthy and Rep. Marjorie Taylor Greene

Dear Mr. Ashmawy:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Congressional Ethics (“OCE”) investigate whether House Minority Leader Kevin McCarthy and Rep. Marjorie Taylor Greene violated House rules by threatening to retaliate against telecommunications and social media companies that comply with legal requests for documents and for preservation of records issued by the Select Committee to Investigate the January 6th Attack on the United States Capitol (“Select Committee”).

The Select Committee recently issued document demands to 15 social media and telecommunications companies and requested that 35 companies preserve phone records and other information regarding the January 6 attack. In response, Rep. McCarthy issued a statement threatening that “a Republican majority will not forget” and will hold the companies “fully accountable under the law” if they comply with the requests, which Rep. McCarthy claimed would be a violation of federal law. Rep. Greene similarly stated in a television interview that if the companies “go along with this, they will be shut down and that’s a promise.”

House rules require members to uphold the laws of the United States and to conduct themselves at all times in a manner that reflects creditably on the House. The threats of Reps. McCarthy and Greene do neither. Threatening retaliation for complying with legally valid document demands and preservation requests appears to violate 18 U.S.C. § 1505, which prohibits obstructing congressional investigations, and does not reflect creditably on the House.

## **Factual Background**

On January 6, 2021, a mob violently breached the Capitol in an attempt to stop the formal certification of Joe Biden's election as the next president. The insurrection and attack were preceded by weeks of so-called "Stop the Steal" rallies and increasingly strident rhetoric from then-President Trump and key supporters, including members of Congress, espousing the lie that Trump had won the election and calling for the election to be reversed. The insurrection immediately followed a rally on the Ellipse at which then-President Donald Trump urged supporters to "fight much harder," told them "we're going to walk down to the Capitol" and said they need to "show strength" and "be strong" to "take back our country."<sup>1</sup> Members and members-elect of the House, including Rep. Greene, spoke at some of the rallies,<sup>2</sup> and members may have coordinated with protesters and helped plan efforts to pressure Congress not to certify the election.<sup>3</sup> As President Trump's supporters swarmed the Capitol, forcing both houses of Congress to stop the process of certifying the election, members of Congress, including Rep. McCarthy, were in contact with President Trump.<sup>4</sup> The insurrection resulted in multiple deaths, hundreds of assaults on law enforcement officers, near misses for members of Congress, and a disruption of this country's foundation as a representative democracy defined by the peaceful transition of power to a degree unmatched since the Civil War.<sup>5</sup>

On June 30, 2021, the House passed a resolution establishing the Select Committee to investigate "the facts, circumstances, and causes relating to the January 6, 2021, domestic terrorist attack upon the United States Capitol Complex."<sup>6</sup> Under the resolution, the chair of the Select Committee is authorized to issue subpoenas under Clause 2(m) of House Rule XI in the course of the investigation, including subpoenas for the production of documents and records as it considers necessary.<sup>7</sup> On August 27, 2021, Select Committee Chairman Bennie G. Thompson issued document demands to 15 social media companies for a range of records related to "the spread of misinformation, efforts to overturn the 2020 election or prevent the certification of the results, domestic violent extremism, and foreign influence in the 2020 election."<sup>8</sup>

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<sup>1</sup> Catie Edmondson and Luke Broadwater, Before Capitol Riot, Republican Lawmakers Fanned the Flames, *New York Times*, Jan. 11, 2021, <https://nyti.ms/3kO8Xfd>; Brian Naylor, Read Trump's Jan. 6 Speech, A Key Part Of Impeachment Trial, *NPR*, Feb. 10, 2021, <https://n.pr/3DRtoRp>.

<sup>2</sup> Edmondson and Broadwater, *New York Times*, Jan. 11, 2021; Isabela Dias, Lawmakers Who Attended the President's Pre-Riot Rally Are Going to Feel Fundraising Pain, *Mother Jones*, Jan. 14, 2021, <https://bit.ly/3yFI6Hg>.

<sup>3</sup> Ronn Blitzer, GOP lawmakers distance themselves from Capitol protest organizer after claim they helped plan march, *Fox News*, Jan. 13, 2021, <https://fxn.ws/3thSS5u>; Edmondson and Broadwater, *New York Times*, Jan. 11, 2021.

<sup>4</sup> Felicia Sonmez and Christiano Lima, Rep. McCarthy threatens tech and telecom firms that comply with Jan. 6 committee's request, *Washington Post*, Sept. 1, 2021, <https://wapo.st/3DQPun5>; Tara Palmeri, About Jim Jordan's other Jan. 6 call with Trump, *Politico*, Aug. 29, 2021, <https://politi.co/3jG5hwa>; What McCarthy and Trump have said about their Jan. 6 call, *Washington Post*, Aug. 2, 2021, <https://wapo.st/2WNNuup>.

<sup>5</sup> Marc Fisher, Meagan Flynn, Jessica Contrera, and Carol D. Leonnig, The Four-hour insurrection, *Washington Post*, Jan. 7, 2021, <https://wapo.st/3kNVbJt>.

<sup>6</sup> H. Res. 503, § 3 (passed June 30, 2021).

<sup>7</sup> H. Res. 503, § 5(c)(4); House Rule XI, § 2(m)(1).

<sup>8</sup> Press Release, Select Committee Demands Records Related to January 6th Attack From Social Media Companies, Select Committee to Investigate the January 6th Attack on the United States Capitol, Aug. 27, 2021, <https://bit.ly/3naO0mD>.

The Select Committee subsequently also issued a request to 35 telecommunications, email, and social media companies to preserve records related to the January 6 attack and the “Stop the Steal” rally that preceded it.<sup>9</sup> The request reportedly covered phone records of members of Congress who the Select Committee believe played some role in the rally, including Rep. Greene, as well as the records of former President Trump.<sup>10</sup> According to one news report, the Select Committee also requested preservation of Rep. McCarthy’s records.<sup>11</sup>

On August 31, 2021, Rep. McCarthy issued a statement addressing the Select Committee’s document demands and preservation requests. He stated:

Adam Schiff, Bennie Thompson, and Nancy Pelosi’s attempts to strong-arm private companies to turn over individuals’ private data would put every American with a phone or computer in the crosshairs of a surveillance state run by Democrat politicians. If these companies comply with the Democrat order to turn over private information, they are in violation of federal law and subject to losing their ability to operate in the United States. If companies still choose to violate federal law, a Republican majority will not forget and will stand with Americans to hold them fully accountable under the law.<sup>12</sup>

Rep. McCarthy did not identify what law he believes the companies would violate by complying with the requests.<sup>13</sup>

On the same day, Rep. Greene made a similar threat in an interview on Fox News, stating:

[T]hese cell phone companies, these telecommunications companies, they better not play with these Democrats because Republicans are coming back into the majority in 2022 and we will take this very serious. . . . [T]hese telecommunications companies, if they go along with this they will be shut down and that’s a promise.<sup>14</sup>

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<sup>9</sup> See, e.g., Ryan Nobles, Zachary Cohen, Annie Grayer, and Whitney Wild, January 6 committee to ask telecommunications companies to preserve phone records of members of Congress who participated in ‘Stop the Steal’ rally, CNN, Aug. 30, 2021, <https://cnn.it/38ASsNS>; Rebecca Shabad, Garrett Haake, and Haley Talbot, Jan. 6 committee to ask phone companies for Republican lawmakers’ records, NBC News, Aug. 30, 2021, <https://nbcnews.to/2YgrhGd>.

<sup>10</sup> Nobles, Cohen, Grayer, and Wild, CNN, Aug. 30, 2021; Shabad, Haake, and Talbot, NBC News, Aug. 30, 2021. The Select Committee declined to confirm which individuals were included in the preservation request. Dave Clarke and Felicia Sonmez, House Jan. 6 committee asks telecom companies to retain phone records related to Capitol attack as it ramps up investigation, Washington Post, Aug. 30, 2021, <https://wapo.st/3jDMcvh>.

<sup>11</sup> Ryan Nobles, Annie Grayer, Zachary Cohen, and Whitney Wild, Kevin McCarthy among GOP lawmakers whose phone records January 6 select committee asks to be preserved, CNN, Sept. 2, 2021, <https://cnn.it/2WOODL2>.

<sup>12</sup> Kevin McCarthy (@GOPLeader), Twitter (Aug. 31, 2021), <https://twitter.com/GOPLeader/status/1432820807684739073?s=20>. Ryan Nobles and Anne Grayer, McCarthy warns telecom and social media companies that comply with January 6 committee records requests, CNN, Sept. 1, 2021, <https://cnn.it/3zIEchW>.

<sup>13</sup> *Id.*

<sup>14</sup> Rush transcript, Tucker: Whenever you think we’ve reached peak insanity, Biden doubles-down, Fox News, Aug. 31, 2021, <https://fxn.ws/38CtVrG>.

### **Potential Violations**

The Code of Ethics for Government Service provides that any person in government service should: “Uphold the Constitution, laws and legal regulations of the United States and of all governments therein and never be a party to their evasion.”<sup>15</sup> The Code applies to members of the House and “charges may be brought against Members of the House for violating” it.<sup>16</sup> House Rule 23 further requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”<sup>17</sup> This ethics standard is “the most comprehensive provision” of the code, and was adopted to deal with “flagrant” violations of the law that reflect on “Congress as a whole” and that might otherwise go unpunished.<sup>18</sup>

Under 18 U.S.C. § 1505, it is crime for anyone to “corruptly . . . influence[], obstruct[], or impede[] or endeavor[] to influence, obstruct, or impede . . . the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress.” Section 1505 has “been given a broad and all-inclusive meaning”<sup>19</sup> meant to encompass “the variety of corrupt methods by which the proper administration of justice may be impeded or thwarted, a variety limited only by the imagination of the criminally inclined.”<sup>20</sup>

There is no question that the threats of Reps. McCarthy and Greene to telecommunications and social media companies relate to an “investigation . . . being had” by a committee of Congress. It is equally clear that the threats are an “endeavor[] to influence, obstruct, or impede” the Select Committee’s investigation. Rep. McCarthy’s statement that a future Republican majority “will not forget” and would “hold them fully accountable under the law” directly threatened the companies with reprisals if they comply with the Select Committee’s legally authorized requests for records and information. Rep. Greene was even more candid, threatening that the companies “will be shut down and that’s a promise” if they “go along with this.” Stopping the companies from complying with the requests and providing information the Select Committee is seeking for its investigation unquestionably is their goal in making the threats of retaliation. And the companies reasonably may be concerned that if the Republicans gain control of the House – likely with Rep. McCarthy as Speaker – they would be subject to serious consequences for complying.

The threats of Reps. McCarthy and Greene also were made “corruptly” under the statute. Section 1505 requires that a person act with the requisite corrupt intent – “knowingly and dishonestly” or “with an improper motive.”<sup>21</sup> An act is corrupt if it done

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<sup>15</sup> 72 Stat., Part 2, B12, H. Con. Res. 175, 85th Cong. (adopted July 11, 1958).

<sup>16</sup> House Comm. on Standards of Official Conduct, House Ethics Manual, at 20 (110th Cong., 2d Sess., 2008 ed.) (citing House Comm. on Standards of Official Conduct, In the Matter of Representative James A. Traficant, Jr., H. Rep. 107-594, 107th Cong., 2d Sess., Vols. I-VI (July 19, 2002)); *see also* House Comm. on Standards of Official Conduct, In the Matter of Representative Charles B. Rangel, H. Rep. 111-661, 111th Cong., 2d Sess., Statement of Alleged Violation (adopted June 17, 2010); 156 Cong. Rec. H7899 (Dec. 2, 2010) (censure of Rep. Rangel).

<sup>17</sup> Rule 23, cl. 1.

<sup>18</sup> House Ethics Manual, at 12-13.

<sup>19</sup> *U.S. v. Rainey*, 757 F.3d 234, 245 (5th Cir. 2014).

<sup>20</sup> *U.S. v. Griffin*, 589 F.2d 200, 206-07 (5th Cir. 1979).

<sup>21</sup> *U.S. v. Richardson*, 676 F.3d 491, 508 (5th Cir. 2012); *U.S. v. Gordon*, 710 F.3d 1124, 1151 (10th Cir. 2013).

with an intent to obtain an “improper advantage for [one]self or someone else, inconsistent with official duty and the rights of others.”<sup>22</sup> In other words, “[a]n act is done corruptly if it’s done voluntarily and intentionally to bring about either an unlawful result or a lawful result by some unlawful method, with a hope or expectation of either financial gain or other benefit to oneself or a benefit of another person.”<sup>23</sup>

Reps. McCarthy’s and Greene’s threats were made with the intent to obstruct the investigative requests made by the Select Committee that were the due and proper exercise of the committee’s legal authority under the House resolution that created it and House rules empowering the committee to obtain documents and records – an “unlawful result.” Nor does there appear to be any legal bar to the companies turning over the records to Congress, although the Select Committee may later need to issue subpoenas for certain information.<sup>24</sup> Their threats were even more corrupt because they appear to be intended to improperly and unlawfully deny the Select Committee information about members of their party and quite possibly themselves. All of the House members included in the preservation request, according to news reports, are Republicans in the caucus led by Rep. McCarthy and in most cases allegedly involved in the Stop the Steal rally. Importantly, those reportedly include Rep. Greene and Rep. McCarthy themselves, which means both of them appeared to be seeking not just a generalized political benefit, but a specific personal benefit to shield themselves from inquiry.

Accordingly, Rep. McCarthy and Rep. Greene appear to have violated 18 U.S.C. § 1505, and thus to have violated House rules: the Code of Ethics for Government Service, which prohibits legal violations like this apparent violation of 18 U.S.C. § 1505, and House Rule 23, since surely a violation of federal criminal obstruction laws is conduct that does not reflect creditably on the House.

### **Conclusion**

The Select Committee is tasked with investigating what is arguably the most serious domestic attack on our democratic form of government since the Civil War. To do its job, the committee was given the legal authority to collect documents and records about the insurrection, the conduct that incited that insurrection, and the planning that went into it. Minority Leader McCarthy and Rep. Greene are transparently trying to thwart the Select Committee by illegally threatening telecommunications, email, and social media companies with reprisals if they comply with the committee’s proper and lawful documents demands and retention requests. Blatant obstruction of the House’s ability to investigate this attack on our democracy, if left unaddressed, would gut Congress’s core oversight powers and leave our country still more vulnerable to future attack. This dangerous and unprecedented conduct must not be allowed to stand. The OCE should therefore commence an immediate investigation into this conduct, and forward this matter to the House Ethics Committee for appropriate action.

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<sup>22</sup> *U.S. v. Pasha*, 797 F.3d 1122, 1132 (D.C. Cir. 2015) (citing Ballentine’s Law Dictionary 276 (3d ed. 1969)); see also *U.S. v. Aguilar*, 515 U.S. 593, 616-17 (1995) (Scalia, J., concurring in part and dissenting in part) (characterizing this definition as the “longstanding and well-accepted meaning” of “corruptly”).

<sup>23</sup> *Id.*

<sup>24</sup> Amber Phillips, *What federal law is Kevin McCarthy citing when he threatens telecom firms?*, *Washington Post*, Sept. 2, 2021, <https://wapo.st/2YoLR7t>.

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I am aware that the False Statements Act, 18 U.S.C. § 1001, applies to information submitted to the Office of Congressional Ethics.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a long horizontal flourish extending to the right.

Noah Bookbinder  
President