



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

January 25, 2023

The Honorable Kevin McCarthy
Speaker, U.S. House of Representatives
2468 Rayburn House Office Building
Washington, DC 20515

Dear Speaker McCarthy,

At a time when domestic violent extremism and threats to the homeland are rising, an impartial and independent Department of Justice (DOJ) and Federal Bureau of Investigations (FBI) are essential to advance accountability, justice, and safety.¹ My organization, Citizens for Responsibility and Ethics in Washington (CREW), is writing to you today to express our concerns that the new Select Subcommittee on Weaponization of the Federal Government is poised to undermine the credibility and the work of these institutions. I am also concerned about the potential for the subcommittee to interfere in national security investigations and prosecutions, as well as about the conflicts of interests of its potential members.

The resolution establishing the subcommittee grants its members broad, unconstrained powers. It includes blanket clauses, such as the authority to investigate “any other issues related to the violation of the civil liberties of citizens of the United States” and “any other matter relating to information collected pursuant to the investigation conducted under this paragraph at any time during the One Hundred Eighteenth Congress.”² These open-ended provisions create opportunities for members of the subcommittee to misuse their authority for partisan, political attacks. Perhaps most concerning, however, is that the resolution authorizes the subcommittee to investigate “ongoing criminal investigations.” This clause not only enables, but foresees, an overreach of congressional power permitting the committee to interfere with the justice system for political gain.

The U.S. Constitution establishes three branches of government, each with distinct authorities and functions.³ While Congress does have the important and appropriate authority to conduct oversight of the executive branch and its agencies, as implied in the U.S. Constitution and confirmed on several occasions by the Supreme Court, this authority is not intended to be used in a way that interferes with the independence of our criminal justice

¹ Press Release, Senator Gary Peters, Peters Investigative Report Shows DHS and FBI Are Not Adequately Addressing Domestic Terrorism Threat (Nov. 16, 2022), <https://www.hsgac.senate.gov/media/majority-media/peters-investigative-report-shows-dhs-and-fbi-are-not-a-dequately-addressing-domestic-terrorism-threat>.

² H.Res. 12, 118th (2023), <https://www.congress.gov/bill/118th-congress/house-resolution/12>.

³ Cong. Rsch. Serv., Separation of Powers: An Overview (2016), <https://crsreports.congress.gov/product/pdf/R/R44334>.

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system.⁴ That is why, historically, Congress has not interfered with pending investigations. In the rare instances in which Congress has requested materials pertaining to ongoing criminal investigations, the DOJ has refused to provide them.⁵ In 1941, Attorney General Robert H. Jackson denied requests for FBI and DOJ documents on the basis that their disclosure could “seriously prejudice law enforcement.”⁶ In 1986, Assistant Attorney General for the Office of Legal Counsel (OLC) Charles J. Cooper issued an opinion citing Jackson and emphasizing that providing confidential information about an ongoing criminal investigation to Congress would enable Members to influence the prosecution.⁷ Cooper noted that sharing such information would lead Congress to become, “in a sense, a partner in the investigation.”⁸

Granting the subcommittee the authority to interrogate ongoing criminal investigations threatens the very integrity of our government institutions. This predicament is made even more troublesome by the evident conflicts of interest of the subcommittee's potential members. In particular, Representative Scott Perry has emerged as a likely member.⁹ Rep. Perry was repeatedly cited in the Select Committee to Investigate the January 6th Attack hearings and final report.¹⁰ Among other things, Rep. Perry put pressure on Justice Department officials to investigate unsubstantiated allegations of voter fraud in Pennsylvania, including by calling and emailing Acting Deputy Attorney General Richard Donaghue.¹¹ Rep. Perry voted against the certification of electoral votes on January 6, 2021--even after that day's violence had occurred. Moreover, he reportedly later sought a pardon from Trump for his role in the January 6th.¹² In August 2022, the FBI, pursuant to a court-authorized warrant, seized Rep. Perry's cell phone seemingly as part of their investigation into efforts to overturn the 2020 presidential election.¹³

Rep. Perry's attempts to discredit the 2020 presidential election results and pressure the Department of Justice to endorse bogus claims of election fraud contributed to laying the groundwork for the insurrection on January 6, 2021. These actions create a clear conflict

⁴ Cong. Rsch. Serv., Congressional Oversight Manual (2021), <https://crsreports.congress.gov/product/pdf/RL/RL30240>; *McGrain v. Daugherty*, 273 U.S. 135 (1927).

⁵ Brad Miller, *No, Oversight Power Does Not Let Congress Ride Shotgun in Criminal Investigations*, Verdict (May 25, 2018), <https://verdict.justia.com/2018/05/25/no-oversight-power-does-not-let-congress-ride-shotgun-in-criminal-investigations>.

⁶ 40 Op. Att'y Gen. 45 (1941), <https://www.justice.gov/ola/page/file/1090506/download>.

⁷ 10 Op. O.L.C. 68, 76-77 (1986), <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/linder.pdf>.

⁸ *Id.*

⁹ Tal Axelrod, *Perry won't recuse himself from possible GOP investigation of Jan. 6 probe investigating him*, ABC (Jan. 8, 2023), <https://abcnews.go.com/Politics/perry-declines-commit-recusing-investigating-jan-6-probe/story?id=9628897>.

¹⁰ H. Rept. 117-663, Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol, 117th Cong. (2022), <https://www.govinfo.gov/app/details/GPO-I6-REPORT/>.

¹¹ S. Rept., *How the Former President and His Allies Pressured DOJ to Overturn the 2020 Election*, 117th Cong. (2021), <https://www.judiciary.senate.gov/imo/media/doc/Interim%20Staff%20Report%20FINAL.pdf>

¹² Lauren Frias and Erin Snodgrass, *Here are all the people who sought preemptive pardons from Donald Trump after the Capitol riot, per January 6 committee witnesses*, Business Insider (June 28, 2022), <https://www.businessinsider.com/trump-preemptive-pardon-requests-capitol-attack-2022-6#rep-andy-biggs-of-arizona-3>.

¹³ Perry Stein, *FBI takes Rep. Scott Perry's phone as part of fake-electoral investigation*, Washington Post (Aug. 10, 2022), <https://www.washingtonpost.com/national-security/2022/08/09/rep-scott-perry-says-fbi-seized-his-phone-while-he-was-traveling/>

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of interest: Rep. Perry should not be permitted to investigate the agencies which may be in the process of investigating him and others associated with him. If he did so, he would be acting on matters in which he has a clear personal interest—the very definition of a conflict of interest. Nonetheless, Rep. Perry has refused to recuse himself from serving on the subcommittee.¹⁴

Legitimate congressional oversight of federal agencies like the Department of Justice and FBI is crucial. But what is being conceived of here is not legitimate oversight; it is itself a weaponization of Congress's oversight power that threatens to undermine our justice system and the American people's faith in it. We urge you to reevaluate the overreaching authority granted to this subcommittee. Should this ill-conceived committee nonetheless move forward, we urge you not to include on it Members for whom its agenda poses a clear and troubling conflict of interest.

Sincerely,



Noah Bookbinder
President and Chief Executive Officer

¹⁴ Tal Axelrod, *Perry won't recuse himself from possible GOP investigation of Jan. 6 probe investigating him*, ABC (Jan. 8, 2023), <https://abcnews.go.com/Politics/perry-declines-commit-recusing-investigating-jan-6-probe/story?id=9628897>.