



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

February 9, 2023

The Honorable Jim Jordan
Chair, House Judiciary Committee, Subcommittee on Weaponization of the Federal
Government
Room 2056, Rayburn House Office Building
Washington, DC 20515

The Honorable Stacey Plaskett
Ranking Member, House Subcommittee on Weaponization of the Federal Government
Room 2059, Rayburn House Office Building
Washington, DC 20515

Dear Chairman Jordan and Ranking Member Plaskett,

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 Investigation (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.

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.”³ This clause not only enables, but foresees, an overreach of congressional power permitting the committee to interfere with the justice system for political gain.

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-adequately-addressing-domestic-terrorism-threat>.

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

³ *Id.*

The U.S. Constitution establishes three branches of government, each with distinct authorities and functions.⁴ 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 system.⁵ 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.⁶ 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.”⁷ 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.⁸ Cooper noted that sharing such information would lead Congress to become, “in a sense, a partner in the investigation.”⁹ The Justice Department recently confirmed this concern in a letter to Chairman Jordan when, responding to requests for documents, it explained that the Department must “avoid even a perception that our efforts are influenced by anything but the law and the facts.”¹⁰

Legitimate congressional oversight of federal agencies is crucial. But interfering in ongoing investigations 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. Rather than interfere with legitimate ongoing investigations and prosecutions, CREW proposes that the subcommittee use its authority to investigate actual instances of government weaponization which have undermined our democracy.

1. Using federal agencies and resources to overturn the 2020 presidential election

Perhaps the most egregious example of weaponization of the federal government was Donald Trump’s attempt to marshal the federal government’s resources to overturn the 2020 presidential election. The January 6th Select Committee’s investigation revealed that Trump repeatedly attempted to push Department of Justice officials to endorse bogus claims of election fraud, considered ordering the military to seize voting machines, and in concert with other government officials

⁴ Cong. Rsch. Serv., *Separation of Powers: An Overview* (2016), <https://crsreports.congress.gov/product/pdf/R/R44334>.

⁵ Cong. Rsch. Serv., *Congressional Oversight Manual* (2021), <https://crsreports.congress.gov/product/pdf/RL/RL30240>; *McGrain v. Daugherty*, 273 U.S. 135 (1927).

⁶ 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>.

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

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

⁹ *Id.*

¹⁰ Zachary Cohen et al., *Justice Department tells Jim Jordan it won't share information about ongoing investigations*, CNN (Jan. 20, 2023), <https://www.cnn.com/2023/01/20/politics/justice-department-jim-jordan/index.html>.

used the power of his office to intimidate state election officials in the hopes of pressuring them to overturn the legitimate election results in their states.¹¹

Trump weaponized the federal government in an attempt to keep himself in power. In doing so, he exposed and exploited vulnerabilities in our system. The subcommittee should investigate these efforts to subvert the rule of law and propose reforms that will safeguard our institutions from the weaponization Trump spearheaded.

2. Direct interference in prosecutions and investigations

The first value listed on the Department of Justice's website is independence and impartiality, with the Department striving to "earn the public's trust by following the facts and the law wherever they may lead, without prejudice or improper influence."¹² Yet, while president, Donald Trump and his allies exerted significant improper influence on the Department, helping allies and confidants skirt the law and protect Trump himself from accountability. Specifically, Trump directly interfered in prosecutions of his friends and allies, pressuring his compliant attorneys general to drop charges against former Trump National Security Advisor Michael Flynn after he had already plead guilty twice to lying to investigators and to undercut the sentencing recommendations of career prosecutors in cases like that brought against Trump campaign advisor Roger Stone.¹³ Moreover, Trump also encouraged investigations of perceived enemies and fired inspectors general whom he perceived to be a threat.¹⁴

Politicization - or in extreme cases personal control - of law enforcement and criminal prosecutions are a hallmark of authoritarian regimes. Presidents of both parties have historically recognized that protecting even-handed enforcement is crucial to democracy and the rule of law, and that is why the Department's first value is independence and impartiality. The actions outlined above undermine that value, weaponize the Department for political aims, and illustrate a blatant disregard for the separation of powers and the independence of federal agencies. The subcommittee should investigate how and when the White House has directly interfered in ongoing criminal investigations and prosecutions, and propose ways to curtail those abuses.

¹¹ Eric Tucker And Farnoush Amiri, *Hearing: Trump told Justice Dept. to call election 'corrupt'*, Associated Press (June 23, 2022),

<https://apnews.com/article/capitol-siege-elections-donald-trump-campaigns-presidential-4e7e68e2ff57aadd96d09c873a43a317>; Betsy Woodruff Swan, *Read the never-issued Trump order that would have seized voting machines*, Politico (Jan. 21, 2022),

<https://www.politico.com/news/2022/01/21/read-the-never-issued-trump-order-that-would-have-seized-voting-machines-527572>.

¹² <https://www.justice.gov/about>

¹³ Noah Bookbinder, *Decoding the "Select Subcommittee on Weaponization of the Federal Government"*, Just Security (Jan. 23, 2023),

<https://www.justsecurity.org/84869/decoding-the-select-subcommittee-on-weaponization-of-the-federal-governmnet>.

¹⁴ Melissa Quinn, *The internal watchdogs Trump has fired or replaced*, CBS (May 19, 2020),

<https://www.cbsnews.com/news/trump-inspectors-general-internal-watchdogs-fired-list>.

3. Covert surveillance

Politically motivated surveillance is not new – the federal government has a long history of using covert surveillance tactics to target communities of color and suppress freedom of speech. As the “Church Committee” revealed in its 1975 investigation, the FBI targeted Black leaders like Dr. Martin Luther King through COINTELPRO, the infamous civil rights-era surveillance campaign.¹⁵ And in the wake of 9/11, the FBI surveilled Muslim Americans communities using their religious beliefs alone as the basis for suspicion of terrorist activity.¹⁶

More recently, CREW obtained records that reveal that in 2020, the Drug Enforcement Agency approved at least 51 requests from state, local, and federal law enforcement agencies to conduct covert surveillance during racial justice protests.¹⁷ These surveillance efforts indicate a stark difference between federal law enforcement’s preparation for racial justice protests and their failures to prepare for the white nationalist attack on the capitol on January 6th.

As technologies advance, the issue of unchecked surveillance by law enforcement grows even more important. The subcommittee should investigate how and when the federal government has weaponized its surveillance power for political gain, and propose legislation to curtail this power.

4. Abuse of pardon power

Article II, Section 2 of the U.S. Constitution provides that the president “shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.”¹⁸ Presidential pardons have often been controversial, particularly when the recipients are connected to the president.

While president, Donald Trump engaged in an unprecedented use and dangling of pardons to relieve some of his personal and political allies from judicial accountability.¹⁹ His public statements about pardons appeared to influence the actions of several associates who were under investigation including Roger Stone,

¹⁵ Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, U.S. Senate Historical Office,

<https://www.senate.gov/about/powers-procedures/investigations/church-committee.htm>.

¹⁶ Faiza Patel, *Ending the ‘National Security’ Excuse for Racial and Religious Profiling*, Brennan Center for Justice (July 22, 2021),

<https://www.brennancenter.org/our-work/analysis-opinion/ending-national-security-excuse-racial-and-religious-profiling>.

¹⁷ Rebecca Jacobs and Hajar Hammado, *DEA approved more than 50 requests for covert surveillance of racial justice protests last summer*, CREW (Oct. 5, 2021),

<https://www.citizensforethics.org/reports-investigations/crew-investigations/dea-approved-more-than-50-requests-for-covert-surveillance-of-racial-justice-protests-last-summer>.

¹⁸ U.S. Const. art. II, § 2.

¹⁹ Greg Sarget, *Trump is ‘joking’ about pardons? How is this a defense?*, Washington Post (Aug. 29, 2019),

<https://www.washingtonpost.com/opinions/2019/08/29/trump-is-joking-about-pardons-how-is-this-defense>.

Paul Manafort, and Michael Flynn.²⁰ Each was convicted of or admitted to federal crimes, and in each case, the possibility of a pardon appears to have influenced the person's willingness to cooperate with investigators.²¹

The subcommittee should investigate the use of the pardon power and recommend ways to bring transparency to this closed-door process. It should also discuss legislation or a constitutional amendment to prohibit self-pardons, such as those introduced by Rep. Al Green and Rep. Jamie Raskin.²²

5. Federal intervention in Washington, DC

The absence of D.C. statehood undermines our democracy not only by disenfranchising over 700,000 residents, but also by granting the federal government unchecked authority over local agencies. In D.C., the federal government controls the national guard, and the president has some authority over local police in certain emergency situations.²³ In 2020, President Trump abused this authority and wasted government resources by sending 1,000 federal police officers, military troops, and military helicopters to obstruct a peaceful protest and advance his political agenda.²⁴ The Trump Administration also reportedly considered taking control of the D.C. police force.²⁵

The subcommittee should investigate the weaponization of the federal government to override local authority. Absent D.C. statehood, the subcommittee should explore legislative avenues to prevent a president from abusing their authority over D.C. agencies for political gain.

6. Making the federal government into a for-profit enterprise

The federal government should not be transformed into a money-making machine for its office-holders, but former President Trump did just that. Records obtained by CREW indicate that as of May 2022, the Secret Service spent nearly \$2 million of

²⁰ Noah Bookbinder, *Decoding the "Select Subcommittee on Weaponization of the Federal Government"*, Just Security (Jan. 23, 2023), <https://www.justsecurity.org/84869/decoding-the-select-subcommittee-on-weaponization-of-the-federal-government/>.

²¹ Jennifer Ahearn, et al., *What Democracy Looks Like* 32 (2020), <https://www.citizensforethics.org/reports-investigations/crew-reports/democracy-reform-blueprint-accountable-inclusive-ethical-government/>.

²² H.J. Res. 13, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/house-joint-resolution/13>; *Amendment To The Amendment In The Nature Of A Substitute To H.R. 7694 Offered By Mr. Raskin Of Maryland*, <https://docs.house.gov/meetings/IU/IU00/20200723/110931/BILLS-116-7695-R000606-Amdt-2.pdf>.

²³ Peter Hermann, et al., *Trump administration considered taking control of D.C. police force to quell protests*, Washington Post (June 2, 2020), https://www.washingtonpost.com/local/public-safety/dc-police-takeover-george-floyd/2020/06/02/856a9744-a4da-11ea-bb20-ebf0921f3bbd_story.html.

²⁴ Niambi M. Carter, *D.C. is the one city where Trump can indulge his police and military fantasies*, Washington Post (June 5, 2020), <https://www.washingtonpost.com/outlook/2020/06/05/dc-is-one-city-where-trump-can-indulge-his-police-military-fantasies/>.

²⁵ Peter Hermann, et al., *Trump administration considered taking control of D.C. police force to quell protests*, Washington Post (June 2, 2020).

taxpayer money at Trump properties, which Trump visited nearly 550 times while in office.²⁶ In doing so, Trump ensured that the Secret Service had to pay for the right to protect the President.

Trump's unprecedented decision not to divest from his business interests likely led political operatives to spend money at his properties in the hope of gaining favors. A recent investigation by CREW revealed that when the Waldorf Astoria replaced the Trump International Hotel in Washington, DC, GOP political spending, which had been considerable, became negligible.²⁷ From June 2018 to the 2018 midterm elections, Republicans spent \$876,000 at the Trump Hotel. In contrast, Republican operatives and candidates spent less than \$2,000 at the Waldorf Astoria in the same five month window in 2022.²⁸ This sharp decrease in political spending suggests that political operatives, special interest groups, and foreign governments may have spent money at Trump's hotel not because of its location (as they claimed), but rather to influence the President and curry favors with his administration.

The subcommittee should investigate this misuse of federal office for monetary gain and use its findings to advance legislation that will address presidential conflicts of interest.

We remain fundamentally concerned with the framing and broad scope of this subcommittee's mandate. However, should it proceed, the subcommittee should use its oversight power to investigate actual examples of weaponization such as the ones we detailed above, rather than interfere with the independence and impartiality of our justice system.

Sincerely,



Noah Bookbinder
President and Chief Executive Officer

²⁶ Jordan Libowitz and Caitlin Moniz, *The Secret Service spent nearly \$2 million at Trump properties*, CREW (May 23, 2022), <https://www.citizensforethics.org/reports-investigations/crew-investigations/the-secret-service-spent-nearly-2-million-at-trump-properties/>.

²⁷ Rebecca Jacobs, *Trump sold his DC hotel. GOP spending disappeared*, CREW (Jan. 19, 2023), <https://www.citizensforethics.org/reports-investigations/crew-investigations/trump-sold-his-dc-hotel-gop-spending-disappeared/>.

²⁸ *Id.*