



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

March 21, 2024

The Honorable Jim Jordan
Chair, House Committee on the Judiciary
2056 Rayburn House Office Building
Washington, DC 20515

The Honorable James Comer
Chair, House Committee on Oversight and Accountability
2410 Rayburn House Office Building
Washington, DC 20515

Re: The Consequences of Illegitimate Congressional Oversight

Dear Chairman Jordan and Chairman Comer,

Over a year ago, my organization, Citizens for Responsibility and Ethics in Washington (CREW), wrote to Congress urging leadership to adopt an oversight agenda that was focused on working with both Democrats and Republicans to root out corruption and strengthen our democracy.¹ Today, I write to you in response to your committees' activities over the last year, which in some cases has not only failed to bring effective oversight but has caused or is poised to cause real harm to the American people.

Congress has the 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.² Indeed, the House Committee on Oversight and Accountability and the House Judiciary Committee both have a critical role to play in serving as checks on executive power.³ However, when oversight is misused for partisan aims, we know that it can chill the exercise of lawful activities in both government and civil society, whether such an effect is intended or accidental. Your committee's oversight activities have done just that and, in the process, have caused real-world harm. Below are just a few examples of how your illegitimate oversight has harmed the well-being of Americans across the country.

1. Precipitated the shutdown of critical disinformation research centers.

¹ CREW, Letter to House Leadership on Oversight Priorities, Jan. 18 2023, https://www.citizensforethics.org/wp-content/uploads/2023/01/Letter_-_Oversight-Priorities-in-118th-Session.pdf.

² Cong. Rsch. Serv., Congressional Oversight Manual (2021), <https://crsreports.congress.gov/product/pdf/RL/RL30240>; *McGrain v. Daugherty*, 273 U.S. 135 (1927).

³ 118 House Rule X, https://cha.house.gov/_cache/files/5/3/5361f9f8-24bc-4fbc-ac97-3d79fd689602/1F09ADA16E45C9E7B67F147DCF176D95.118-rules-01102023.pdf.

March 21, 2024

2

The spread of misinformation and disinformation online poses a clear and present danger to the public interest and our democracy. We have seen this to be true repeatedly, including with regard to voter suppression,⁴ tragic and avoidable deaths during COVID-19,⁵ and the violent attack on the capitol on January 6th, 2021.⁶ It is easier and cheaper today to spread convincing misinformation than ever before due to the growth and development of artificial intelligence tools. With approximately 83 national elections taking place across the globe in 2024, the fight against disinformation is more important than ever.⁷

Although institutions that study and identify misinformation play a crucial role in limiting its spread, your committees have relentlessly and baselessly probed their work and have disrupted their efforts to ensure Americans, and all global citizens, have access to accurate information. Indeed, the House Judiciary Committee's spate of letters and subpoenas to at least three universities requesting documents dating back to 2015 has created a chilling effect on disinformation research, leading research centers like the Stanford Internet Observatory to incur nearly one million dollars in legal fees and others to reconsider continuing their efforts to monitor disinformation.⁸

The long-term consequences of your efforts to stymie disinformation research are still playing out, but it's clear they do not constitute legitimate oversight. Unlike legitimate oversight of government spending at research institutions to ferret out waste and corruption, efforts aimed at limiting academic freedom and stifling research into disinformation likely violate the First Amendment.⁹

2. Contributed to loss of education and to educator shortages by interfering in the education system.

⁴ Common Cause, *As a Matter of Fact: The Harms Caused by Election Disinformation Report*, Oct. 2021, <https://www.commoncause.org/resource/as-a-matter-of-fact-the-harms-caused-by-election-disinformation-report/>.

⁵ Alistair Coleman, *'Hundreds dead' because of Covid-19 misinformation*, BBC (August 12th, 2020), <https://www.bbc.com/news/world-53755067>.

⁶ Cat Zakrzewski, Cristiano Lima-Strong and Drew Harwell, *What the Jan. 6 probe found out about social media, but didn't report*, Washington Post (Jan. 17, 2023), <https://www.washingtonpost.com/technology/2023/01/17/jan6-committee-report-social-media/>.

⁷ Tiffany Hsu, Stuart A. Thompson and Steven Lee Myers, *Elections and Disinformation Are Colliding Like Never Before in 2024*, New York Times (Jan. 9, 2024), <https://www.nytimes.com/2024/01/09/business/media/election-disinformation-2024.html>.

⁸ Andrea Bernstein, *Republican Rep. Jim Jordan Issues Sweeping Information Requests to Universities Researching Disinformation*, ProPublica (Mar. 22, 2023), <https://www.propublica.org/article/jim-jordan-disinformation-subpoena-universities>;

Naomi Nix, Cat Zakrzewski and Joseph Menn, *Misinformation research is buckling under GOP legal attacks*, Washington Post (Sept. 25, 2023), <https://www.washingtonpost.com/technology/2023/09/23/online-misinformation-jim-jordan/>.

⁹ Ryan Quinn, *Misinformation Research Plows Ahead—but So Do Political Detractors*, Inside Higher Ed (Dec. 4, 2023), <https://www.insidehighered.com/news/faculty-issues/academic-freedom/2023/12/04/misinformation-research-plows-ahead-so-do>.

March 21, 2024

3

A strong democracy is sustained by an educated and informed electorate. Under the facade of oversight, your committees have turned schools into culture war battlegrounds, making it harder for educators to carry out this democratic mission.

At the start of 2023, the House Judiciary Committee subpoenaed the Federal Bureau of Investigation (FBI), demanding documents to investigate the FBI's alleged victimization of parents at school board meetings for their political beliefs.¹⁰ These subpoenas spread a harmful and false narrative that Attorney General Merrick Garland wrote a memo to the Department of Justice allowing it to "spy on parents."¹¹ In reality, the memo in question calls attention to a rise in harassment and threats of violence towards educators and advises law enforcement agencies to set up meetings to discuss how to address threats of violence in schools.¹² As a Reuters investigation revealed, death threats to school board members are a significant issue across the country.¹³ These threats should be met with bipartisan concern, not attempts to politicize federal agencies and interfere in their efforts to keep students and parents safe from violence.

At the same time that the Judiciary Committee spread this false narrative of government interference in the education of children, the Oversight Committee advanced a bill that would do just that: the so-called Parents Bill of Rights Act (H.R. 5).¹⁴ In reality, the bill does not increase parents' rights. Instead, it details rights that are for the most part already afforded to parents at the local level, while targeting public school teachers and making it easier for parents to ban books under the guise of protecting their children.¹⁵

These efforts mirror similar campaigns at the state level, most notably that of Governor Ron DeSantis, who has engaged in a concerted campaign to remake the education system in his ideological image.¹⁶ The cumulative impact of these types of efforts across the country has included widespread book bans ranging from the graphic novel *Maus*¹⁷ to

¹⁰ Jordain Carney and Kyle Cheney, *Jordan fires off first subpoenas against Biden admin*, Politico (Feb. 3, 2023), <https://www.politico.com/news/2023/02/03/jim-jordan-subpoena-biden-administration-00081179>.

¹¹ @Jim_Jordan, Twitter (Apr. 18, 2022, 1:06 PM), https://twitter.com/Jim_Jordan/status/1516100814502252548.

¹² Memorandum from Att'y Gen. Garland on Partnership Among Federal, State, Local, Tribal and Territorial Law Enforcement to Address Threats Against School Administrators, Board Members, Teachers, and Staff (Oct. 4, 2021), <https://www.justice.gov/ag/page/file/1438986/download>.

¹³ Gabriella Borter, Joseph Ax and Joseph Tanfani, *School boards get death threats amid rage over race, gender, mask policies*, Reuters (Feb. 15, 2022), <https://www.reuters.com/investigates/special-report/usa-education-threats>.

¹⁴ H.R. 5, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/5>.

¹⁵ Libby Stanford, *Teachers Say a New Parents' Bill of Rights Doesn't Solve Schools' Problems*, EducationWeek (Mar. 7, 2023),

<https://www.edweek.org/leadership/teachers-say-a-new-parents-bill-of-rights-doesnt-solve-schools-problems/2023/03>.

¹⁶ Jocelyn Gecker, *How Ron DeSantis used Florida schools to become a culture warrior*, Associated Press (Aug. 23, 2023),

<https://apnews.com/article/ron-desantis-education-gop-debate-723e18d19912b97696f3ad2c9d77e099>.

¹⁷ Pen America Index Of School Book Bans – 2022-2023. Pen America, <https://pen.org/2023-banned-book-list/>.

March 21, 2024

4

encyclopedias,¹⁸ as well as the stripping of Black and LGBTQ+ history and scholarship from public school curricula, all at the expense of teachers and students.¹⁹ As one teacher told the Washington Post, “I never imagined being this restricted. I used to be trusted. Now I feel handcuffed.”²⁰ The targeting of educators by federal and state politicians has had real-world impacts, with research showing that teacher shortages grew by 35% in the 2022-2023 school year, coinciding with the growth of attacks on educators and book bans.²¹

3. Interfered in ongoing investigations, damaging public trust in the justice system and contributing to an environment of intimidation.

In November 2023, we wrote to you to express concern about your letter to D.C. Attorney General Brian Schwalb regarding a potential investigation into Leonard Leo and organizations with which he is affiliated.²² As we stated then, Congress has authority to conduct oversight of the executive branch and the local Washington D.C. government, but this authority cannot be used to interfere in ongoing investigations and thereby undermine the independence of our justice system.²³ That is why, historically, Congress has not interfered with pending investigations.

In the rare instances in which Congress has requested materials from attorneys general pertaining to ongoing investigations, attorneys general have refused to provide them.²⁴ 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.”²⁵ 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

¹⁸ Shauneen Miranda, *Florida school book bans hit dictionaries*, Axios (Jan. 12, 2024), <https://www.axios.com/2024/01/11/florida-book-ban-schools-lawsuit>.

¹⁹ Libby Stanford, *Teachers Say a New Parents’ Bill of Rights Doesn’t Solve Schools’ Problems*, EducationWeek (Mar. 7, 2023), <https://www.edweek.org/leadership/teachers-say-a-new-parents-bill-of-rights-doesnt-solve-schools-problems/2023/03>; Hayes Brown, *School board book bans on LGBTQ issues and race are hurting, not helping, students*, MSNBC (Nov. 11, 2021),

<https://www.msnbc.com/opinion/school-board-book-bans-lgbtq-issues-race-are-hurting-not-n1283691>.

²⁰ Reshma Kirpalani and Hannah Natanson, *The lives upended by Florida’s school book wars*, Washington Post (Dec. 21, 2023),

<https://www.washingtonpost.com/education/2023/12/21/florida-school-book-bans-escambia-county/>.

²¹ Moriah Balingit, *Teacher shortages have gotten worse. Here’s how schools are coping*, Washington Post (Aug. 24, 2023), <https://www.washingtonpost.com/education/2023/08/24/teacher-shortages-pipeline-college-licenses/>.

²² CREW, Letter to Chairmen Jordan and Comer on Committee Involvement in Reported D.C. Investigation into Leonard Leo, Nov. 15, 2023, <https://www.citizensforethics.org/wp-content/uploads/2023/11/Letter-to-Reps-Comer-and-Jordan-DC-leonard-leo-investigation.pdf>.

²³ Cong. Rsch. Serv., Congressional Oversight Manual (2021), <https://crsreports.congress.gov/product/pdf/RL/RL30240>; *McGrain v. Daugherty*, 273 U.S. 135 (1927), D.C. Code §§ 1-201.01-1-207.71.

²⁴ 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>.

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

March 21, 2024

5

about an ongoing investigation would lead Congress to become, “in a sense, a partner in the investigation.”²⁶

Citing similar legal reasoning, the D.C. Attorney General’s office has also rejected attempts by Congress to interfere in investigations, joining over a dozen states in both 2016 and 2017 opposing a congressional committee’s attempt to obtain information about an ongoing investigation of ExxonMobil.²⁷

Despite these well-established constraints, the Judiciary Committee is currently running at least three ongoing investigations into pending criminal matters: the D.C. Attorney General’s investigation into Leonard Leo, Fulton County District Attorney Fani Willis’s investigation into Donald Trump’s attempt to influence Georgia election officials, and Special Counsel Jack Smith’s investigation into attempts to overturn the 2020 election.²⁸ These congressional inquiries are an unprecedented interference into pending criminal investigations and an illegitimate use of Congress’s oversight power. Moreover, they have contributed to an environment in which extremists who seek to influence the courts are given the dangerous impression that our justice system can be swayed by intimidation tactics and threats of violence. Five days after Chairman Jordan launched his probe into Jack Smith’s investigation of President Trump, Smith was the target of an attempted swatting, an increasingly common and dangerous method by which to intimidate public officials.²⁹ Certainly, this was not the intention of your letter nor was it a direct result of it; however, the spreading of unsubstantiated accusations and the discrediting of government officials contributes to an environment in which the use of extreme tactics against political adversaries is normalized.³⁰

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

²⁷ Attorney General Racine Joins Multistate Effort Seeking End to Congressional Interference with States’ Exxon Investigation, Office of the Attorney General for the District of Columbia, Aug. 15, 2016, <https://oag.dc.gov/release/attorney-general-racine-joins-multistate-effort>; Attorney General Racine and Colleagues from 14 States Urge End to Congressional Interference with Exxon Investigation, Office of the Attorney General for the District of Columbia, March 1, 2017, <https://oag.dc.gov/release/attorney-general-racine-and-colleagues-14-states>.

²⁸ Press Release, Chairmen Jordan and Comer Launch Inquiry into D.C. Attorney General’s Politically Motivated Investigation of Leonard Leo (Oct. 30, 2023), <https://judiciary.house.gov/media/press-releases/chairmen-jordan-and-comer-launch-inquiry-dc-attorney-generals-politically>; Press Release, Chairman Jordan and Rep. Loudermilk Launch Inquiry into Fani Willis Colluding with January 6 Committee (Dec. 5, 2023), <https://judiciary.house.gov/media/press-releases/chairman-jordan-and-rep-loudermilk-launch-inquiry-fani-willis-colluding>; Press Release, Chairmen Jordan and Biggs Demand Information About Jack Smith’s Politicized Investigation of President Trump (Dec. 20, 2023), <https://judiciary.house.gov/media/press-releases/chairmen-jordan-and-biggs-demand-information-about-jack-smiths-politicized>.

²⁹ Michael Kosnar and Zoë Richards, *Special counsel Jack Smith was targeted by attempted swatting on Christmas Day*, NBC (Jan. 8, 2024), <https://www.nbcnews.com/politics/politics-news/special-counsel-jack-smith-was-targeted-attempted-swatting-christmas-d-rcna132964>.

³⁰ Barbara McQuade, *Swatting and the Dangerous Rise of Political Violence*, New York Times (Jan. 23, 2024), <https://www.nytimes.com/2024/01/23/opinion/swatting-political-violence.html>.

4. Further endangered Americans' financial safety nets in the face of natural disasters.

A rising number of American homeowners now face the dual threats of climate and financial disaster. Raging wildfires in California, devastating hurricanes in Florida, and catastrophic floods in Louisiana have led prominent insurance companies such as State Farm, Allstate and AAA to severely limit coverage in high-risk areas and even entire states.³¹ In other areas of the country, including in your home states of Kentucky³² and Ohio,³³ insurance costs are surging. Although homeowners and businesses in climate disaster zones carry the brunt of this burden right now, insurance rates are expected to rise across the country to incorporate these risks.³⁴

This crisis has led state regulators to reevaluate how to assess climate risk and ensure the future availability of insurance and the financial stability of the insurance industry. To help preserve the affordability and availability of insurance, many insurers have committed to reducing their own carbon emissions and have encouraged the public sector and other businesses to do the same. Rather than celebrate the efforts of private businesses to stabilize rates, your committees have chosen to attack these efforts. In a series of letters and document requests, both committees have launched inquiries into companies that have made commitments to reduce emissions, with particular attention to the Net-Zero Insurance Alliance (NZIA).³⁵ Under the guise of oversight, these inquiries have made the dubious claim that these companies are violating antitrust laws by working together to address climate change. As legal and climate experts have made clear, the use of antitrust law here is disingenuous at best. Rather, these congressional inquiries appear to be a

³¹ Aimee Picchi, *Homes in parts of the U.S. are "essentially uninsurable" due to rising climate change risks*, CBS (Sept. 30, 2023),

<https://www.cbsnews.com/news/insurance-policy-california-florida-uninsurable-climate-change-first-street/>.

³² Stan Ingold, *Climate change could impact home insurance in Kentucky*, WEKU (Oct. 18, 2023),

<https://www.weku.org/the-commonwealth/2023-10-18/climate-change-could-impact-home-insurance-in-kentucky>; Casey Tolan, *We thought we were safe: Kentucky disaster shows how US is ill-prepared and under-insured for devastating floods*, CNN (Aug. 15, 2022),

<https://www.cnn.com/2022/08/15/us/fema-kentucky-flood-insurance-climate-change-invs/index.html>.

³³ Mark Williams, *Some Ohio homeowners to see big jumps in flood insurance premiums*, Columbus Dispatch (Feb. 22, 2021),

<https://www.dispatch.com/story/business/2021/02/22/ohio-flood-insurance-rates-jump-according-first-street-foundation-data/4495245001/>.

³⁴ Leslie Kaufman, *US Home Insurance 'Bubble' Closer to Popping as Climate Risks Mount*, Bloomberg (Sept. 20, 2023),

<https://www.bloomberg.com/news/articles/2023-09-20/us-home-insurance-bubble-closer-to-popping-as-climate-risks-mount>.

³⁵ Press Release, Judiciary Committee Expands ESG Inquiry to BlackRock, Vanguard, State Street, Glasgow Financial Alliance for Net Zero, and Net Zero Asset Managers (July 6, 2023),

<https://judiciary.house.gov/media/press-releases/judiciary-committee-expands-esg-inquiry-blackrock-vanguard-state-street>; Press Release, Comer Investigates Risk of U.S. Taxpayer Funds Supporting UN Climate Agenda (Aug. 1, 2023),

<https://oversight.house.gov/release/comer-investigates-risk-of-u-s-taxpayer-funds-supporting-un-climate-agenda%ef%bf%bc/>.

March 21, 2024

7

political campaign to eliminate any climate-conscious policy-making in government or the private sector.³⁶

The ultimate consequence of this congressional pressure campaign is that insurers are not only backing out of covering areas prone to climate disaster, but many are also withdrawing from alliances like NZIA which aim to reduce the likelihood that these disasters will occur in the first place.³⁷ According to the Glasgow Financial Alliance for Net Zero, “[t]hese political attacks are now interfering with insurers’ independent efforts to price climate risk, which will harm policyholders, main street investors and local economies.”³⁸

The full cost of these attacks remains to be seen, but if the insurance industry crashes in the face of the climate crisis, the government – and in turn the American taxpayers – will likely have to foot the bill.³⁹ Your committees’ “oversight” of climate-conscious companies thereby leaves insurers, regulators and all Americans not only less prepared to meet the ever-growing danger of extreme weather but also more likely to have to pay larger payouts in the long term as climate disasters increase in severity.

Instead of pursuing this illegitimate oversight agenda, your committees should work on bipartisan reforms such as improving oversight of the Bureau of Prisons, investigating the Department of Defense for potential violations of the Emoluments Clause, and mandating that the White House disclose information about official visits to the White House and other locations frequented by the president.⁴⁰ The harms described above represent just a snapshot of how your committees’ so-called oversight efforts have had ripple effects across society. Congressional oversight should be used to uncover corruption, tackle financial waste and make the government run better – not for illegitimate, politically motivated attacks. We urge you to consider the impact your initiatives have beyond the walls of Congress and to finish the 118th session with the public interest in mind.

³⁶ Tommy Wilkes, Alexander Hübner and Tom Sims, *Insurers flee climate alliance after ESG backlash in the U.S.*, Reuters (May 26, 2023), <https://www.reuters.com/business/allianz-decides-leave-net-zero-insurance-alliance-2023-05-25/>.

³⁷ *Id.*

³⁸ Tommy Wilkes, *More insurers desert net-zero alliance as U.N. climate group sounds alarm*, Reuters (May 30, 2023), <https://www.reuters.com/sustainability/political-attacks-are-damaging-insurers-climate-efforts-gfanx-2023-05-26/>.

³⁹ Frances Schwartzkopff, *Governments Increasingly Will Foot Bill for Climate Risks as Insurers Exit: Report*, Insurance Journal (Nov. 22, 2023), <https://www.insurancejournal.com/news/international/2023/11/22/749399.htm/>.

⁴⁰ CREW, Testimony Submitted to the Record, “Hearing on Oversight of the Federal Bureau of Prisons,” Nov. 7, 2023), <https://www.citizensforethics.org/wp-content/uploads/2023/11/CREW-Prison-Oversight-Statement-for-the-Record-HJ-Subcommittee-1.pdf>; CREW, Letter to House Leadership on Oversight Priorities, Jan. 18 2023, https://www.citizensforethics.org/wp-content/uploads/2023/01/Letter_-_Oversight-Priorities-in-118th-Session.pdf.

March 21, 2024

8

Sincerely,

A handwritten signature in blue ink, appearing to read "Noah Bookbinder". The signature is stylized and cursive.

Noah Bookbinder
President and Chief Executive Officer

cc:

The Honorable Jerrold L. Nadler, Ranking Member Committee on the Judiciary

The Honorable Jamie Raskin, Ranking Member Committee on Oversight and Accountability