

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

---

IN RE SUBPOENA OF JAMES COMEY BY	)	
AUTHORITY OF THE HOUSE OF	)	
REPRESENTATIVES OF THE CONGRESS OF THE	)	Case No. 18-mc-174-TNM
UNITED STATES OF AMERICA	)	
	)	

---

**RESPONSE OF THE COMMITTEE ON THE JUDICIARY OF THE U.S. HOUSE OF  
REPRESENTATIVES IN OPPOSITION TO JAMES B. COMEY’S MOTION TO  
QUASH AND MOTION FOR A STAY**

THOMAS G. HUNGAR  
*General Counsel*  
TODD B. TATELMAN  
*Deputy General Counsel*  
KIMBERLY HAMM  
*Associate General Counsel*

OFFICE OF GENERAL COUNSEL  
U.S. HOUSE OF REPRESENTATIVES  
219 Cannon House Office Building  
Washington, D.C. 20515  
(202) 225-9700 (telephone)  
Thomas.Hungar@mail.house.gov

*Counsel for the Committee on the Judiciary of the  
U.S. House of Representatives*

November 30, 2018

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

INTRODUCTION ..... 1

BACKGROUND ..... 2

ARGUMENT ..... 4

I. THE MOTION TO QUASH IS PROCEDURALLY DEFECTIVE ..... 4

II. THE SPEECH OR DEBATE CLAUSE PRECLUDES THE RELIEF SOUGHT BY MR. COMEY ..... 6

    A. The Speech or Debate Clause Immunizes Legislative Acts From Judicial Review..... 6

    B. The Issuance of Congressional Subpoenas Is A “Legislative Act” Within the Scope Of The Speech Or Debate Clause. .... 7

    C. The Subpoena To Mr. Comey Is Absolutely Protected By The Clause. .... 9

III. THE RULEMAKING CLAUSE PRECLUDES THIS ACTION ..... 13

IV. IN ANY EVENT, THE COMMITTEE’S SUBPOENA IS VALID ..... 15

    A. The Committee’s Subpoena Seeks Information In Furtherance Of A Valid Legislative Purpose..... 15

    B. The Committee’s Subpoena Is Fully In Accordance With House And Committee Rules ..... 17

V. THE COMMITTEE’S SUBPOENA ADVANCES THE PUBLIC INTEREST ..... 18

CONCLUSION..... 20

**TABLE OF AUTHORITIES**

**Cases**

*Barr v. Matteo*,  
360 U.S. 564 (1959).....7

*Boron Oil v. Downie*,  
873 F.2d 67 (4th Cir. 1989) .....5

*Brown & Williamson Tobacco Corp. v. Williams*,  
62 F.3d 408 (D.C. Cir. 1995).....9

*Clark v. Library of Congress*,  
750 F.2d 89 (D.C. Cir. 1984).....5

*Comm. on Judiciary v. Miers*,  
558 F. Supp. 2d 53 (D.D.C. 2008).....2, 18

*Consumers Union of U.S., Inc. v. Periodical Correspondent’ s Ass’ n*,  
515 F.2d 1341 (D.C. Cir. 1975).....14

*Doe v. McMillan*,  
412 U.S. 306 (1973).....7, 9

*\*Eastland v. U.S. Servicemen’s Fund*,  
421 U.S. 491 (1975).....1, 6, 7, 8, 9, 10, 11, 12, 13, 16

*\*Exxon Corp. v. FTC*,  
589 F.2d 582 (D.C. Cir. 1978).....19

*Gravel v. United States*,  
408 U.S. 606 (1972).....6

*Harrington v. Bush*,  
553 F.2d 190 (D.C. Cir. 1977).....15

*Helstoski v. Meanor*,  
442 U.S. 500 (1979).....6, 7, 12

*Hutcheson v. United States*,  
369 U.S. 599 (1962).....13

*Ishler v. Internal Revenue*,  
237 F. App’x 394 (11th Cir. 2007).....5

*Jackson v. United States*,  
751 F.3d 712 (6th Cir. 2014) .....5

*Keener v. Congress*,  
467 F.2d 952 (5th Cir. 1972) .....5

*Kilbourn v. Thompson*,  
103 U.S. 168 (1880).....7

*Landis v. N. Am. Co.*,  
299 U.S. 248 (1936).....5

*McGrain v. Daugherty*,  
273 U.S. 135, (1927).....8, 11, 19

*Miller v. Transam. Press, Inc.*,  
709 F.2d 524 (9th Cir. 1983) .....9

*MINPECO, S.A. v. Conticommodity Servs., Inc.*,  
844 F.2d 856 (D.C. Cir. 1988).....9

*NLRB v. Canning*,  
134 S. Ct. 2550, 2574 (2014).....14

*Porteous v. Baron*,  
729 F. Supp. 2d 158 (D.D.C. 2010) .....9

*Rangel v. Boehner*,  
20 F. Supp. 3d 148 (D.D.C. 2013).....14

*Rhines v. Walker*,  
544 U.S. 269 (2005).....5

*Rockefeller v. Bingaman*,  
234 F. App’x 852 (10th Cir. 2007) .....5

*Tenney v. Bradhove*,  
341 U.S. 367 (1951).....9, 10 ,12

*\*United States v. Ballin*,  
144 U.S. 1 (1892).....14, 17

*United States v. Biaggi*,  
853 F.2d 89 (2d Cir. 1988).....10, 11

<i>United States v. Dowdy</i> , 479 F.2d 213 (4th Cir. 1973) .....	11
<i>United States v. Helstoski</i> , 442 U.S. 477 (1979).....	6, 7, 12
<i>United States v. Johnson</i> , 383 U.S. 169 (1966).....	7, 8
<i>United States v. King</i> , 395 U.S. 1 (1969).....	6
<i>United States v. Peoples Temple of the Disciples of Christ</i> , 515 F. Supp. 246 (D.D.C. 1981).....	9
<i>United States v. Rostenkowski</i> , 59 F.3d 1291 (D.C. Cir. 1995).....	17
<i>United States v. Sherwood</i> , 312 U.S. 584 (1941).....	5
<i>Watkins v. United States</i> , 354 U.S. 178 (1957).....	1, 12
<b><u>Constitution, Statutes, and Federal Rules</u></b>	
U.S. Const. art. I, § 5, cl. 2.....	13
U.S. Const. art. I, § 6, cl. 1.....	6, 7
Fed. R. Civ. P. 3.....	4
Fed. R. Civ. P. 8(a) .....	4
<b><u>Legislative Sources</u></b>	
*H. Res. 5, § 3(b)(1) (115th Cong. 2017).....	14
Rules of the U.S. House of Representatives (115th Cong.)	
Rule X, cl. 1(l).....	2
Rule X, cl. 2(d).....	2

**Other Sources**

Press Release, H. Comm. on the Judiciary, *Goodlatte, Gowdy Open Investigation into Decisions Made by DOJ in 2016* (Oct. 24, 2017) .....3

Statement of James B. Comey, Director, Fed. Bureau of Investigation, Hearing on Oversight of the Federal Bureau of Investigation Before the H. Comm. on the Judiciary (Oct. 22, 2015).....2

James Comey (@Comey), Twitter, <https://twitter.com/Comey> .....17

## INTRODUCTION

Without even bothering to cite controlling adverse authority or follow the most basic procedural requirements for initiating a new civil action, Mr. Comey brazenly demands that this Court issue an order quashing a congressional subpoena directed to him – a request for relief so extraordinary and frivolous that, as far as undersigned counsel is aware, no district court in the history of the Republic has ever granted such a request. Although one would not know it from reading Mr. Comey’s papers, the Supreme Court has spoken unequivocally on this question: “the Speech or Debate Clause provides complete immunity ... for issuance of this subpoena.” *Eastland v. U. S. Servicemen’s Fund*, 421 U.S. 491, 507 (1975). Mr. Comey cannot evade the Supreme Court’s squarely controlling precedent by failing to cite it.

Putting aside the procedural and constitutional infirmities of Mr. Comey’s ill-conceived litigation, Mr. Comey has identified no colorable basis to object to his deposition. Instead, he wishes to dictate the terms of his appearance by demanding a public hearing. “It is unquestionably the duty of all citizens” – including Mr. Comey – “to cooperate with the Congress,” and it is his “unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees and to testify fully with respect to matters within the province of proper investigation.” *Watkins v. United States*, 354 U.S. 178, 187-88 (1957). Try as he might, Mr. Comey may not condition his cooperation with a congressional investigation on the presence of television cameras. No other witness involved in this investigation has made such a grandiose demand, and this Court should not countenance Mr. Comey’s temerity in attempting to dictate the terms on which he will deign to comply with his constitutional obligations.

## BACKGROUND

The House Committee on the Judiciary (“Committee”) has been a standing committee of the U.S. House of Representatives since 1813. It is vested with the authority, among other things, to oversee the administration of justice within the federal courts, administrative agencies, and federal law enforcement entities. House Rule X, cl. 1(l). The Committee’s Oversight Plan for the 115th Congress, adopted pursuant to House Rule X, cl. 2(d), includes “review [of] the mission and operations of all agencies and programs within its jurisdiction as it prepares to reauthorize components of the Department[] of Justice,” as well as oversight and investigative activities into the Department of Justice (“DOJ”), “including all Department components and agencies.” Comm. on the Judiciary Authorization and Oversight Plan at 13 (Feb. 15, 2017).<sup>1</sup> With respect to the FBI specifically, the Committee’s “leadership” and “support” play an important role in ensuring the Bureau meets its mission. *See* Statement of James B. Comey, Director, Fed. Bureau of Investigation, Hearing on Oversight of the Federal Bureau of Investigation Before the H. Comm. on the Judiciary (Oct. 22, 2015).<sup>2</sup>

Partisanship at DOJ has long been a concern of Congress. Indeed, the last Committee subpoena that was the subject of litigation involved concerns that “partisan political considerations at the Department of Justice ... undermined the fair and impartial administration of the federal criminal justice system.” Comm. Mot. for Partial Summ. J. (ECF 14) at 1, *Comm. on Judiciary v. Miers*, 558 F. Supp. 2d 53 (D.D.C. 2008) (No. 08-cv-409). Nearly a decade later, Congress has been forced to confront those concerns again. Specifically, in the months leading

---

<sup>1</sup> Available at [https://judiciary.house.gov/wp-content/uploads/2013/07/1551\\_001.pdf](https://judiciary.house.gov/wp-content/uploads/2013/07/1551_001.pdf).

<sup>2</sup> Available at <https://judiciary.house.gov/wp-content/uploads/2016/02/FBI05.doc.pdf>.

up to the 2016 presidential election, DOJ engaged in several actions that are a matter of intense public interest and debate, including:

- The “FBI’s decision to publicly announce the investigation into Secretary Clinton’s handling of classified information but not to publicly announce the investigation into campaign associates of then-candidate Donald Trump”;
- The “FBI’s decision to notify Congress by formal letter of the status of the investigation both in October and November of 2016”;
- The “FBI’s decision to appropriate full decision making in respect to charging or not charging Secretary Clinton to the FBI rather than the DOJ”; and
- The “FBI’s timeline in respect to charging decisions.”

See Press Release, H. Comm. on the Judiciary, *Goodlatte, Gowdy Open Investigation into Decisions Made by DOJ in 2016* (Oct. 24, 2017).<sup>3</sup>

Consistent with the Committee’s Oversight Plan and its jurisdiction under House Rules, on October 24, 2017, the Committee opened a joint investigation with the House Committee on Oversight and Government Reform (“OGR”) into these 2016 actions by DOJ and the FBI. Somers Decl. ¶ 3. As part of this joint investigation, the Committee has interviewed or deposed 16 witnesses and reviewed numerous records. Somers Decl. ¶ 5. Now that the Committee has largely concluded the interviews of lower-level FBI personnel, it is imperative that the Committee speak with Mr. Comey, the former FBI Director, to conclude its investigation and report its findings to the American people by the close of the 115th Congress. Somers Decl. ¶¶ 6-9.

On September 10, 2018, Committee staff contacted Mr. Comey’s counsel to request an interview, at which time counsel was informed about the scope of the investigation. On September 21, 2018, Chairmen Goodlatte and Gowdy reiterated their request by letter to Mr.

---

<sup>3</sup> Available at <https://judiciary.house.gov/press-release/goodlatte-gowdy-open-investigation-decisions-made-doj-2016/>.

Comey's counsel. Somers Decl. ¶ 10. Counsel indicated that Mr. Comey would not agree to an interview and demanded a hearing instead. Somers Decl. ¶ 11. On November 16, the Committee informed counsel that Mr. Comey must appear for a deposition. Somers Decl. ¶ 12. Following further discussions between the parties, the Committee informed Mr. Comey's counsel that the deposition date would be the week of December 3. *Id.* This date was chosen to accommodate a personal commitment of Mr. Comey. *Id.* The subpoena was formally issued by the Committee on November 21. Somers Decl. ¶ 13.

Unfortunately, Mr. Comey has refused to cooperate with the Committee's investigation unless it accedes to his unreasonable and baseless attempt to dictate the procedures to be followed by the Committee. Specifically, Mr. Comey objects to his appearance at a "closed-door deposition," insisting that he prefers to appear at a public hearing. *See* Mot. to Quash at 1-2. For this reason, he has filed the instant motions to quash and stay his pending deposition.

## **ARGUMENT**

### **I. THE MOTION TO QUASH IS PROCEDURALLY DEFECTIVE**

Mr. Comey's motion to quash suffers from numerous procedural defects that compel its summary denial.

First, Mr. Comey's filing fails to comport with Rule 3 of the Federal Rules of Civil Procedure, which requires that civil actions be "commenced by filing a complaint with the court." Fed. R. Civ. P. 3. Relatedly, Mr. Comey has failed to satisfy the requirements of Rule 8, as his papers do not contain a "short and plain statement of the grounds for the court's jurisdiction," or a "short and plain statement of the claims showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(1), (2). Mr. Comey appears to be operating on the misguided assumption that he need not comply with the requirements for commencing a civil action because he is challenging a subpoena, but the subpoena he is attempting to quash is not a grand

jury or civil discovery subpoena issued under the authority of the Court; rather, it is a congressional subpoena issued under the constitutional authority of a separate and co-equal branch of government. Given the absence of any statute, rule, or other provision of law authorizing this form of proceeding or establishing the jurisdiction of this Court over a congressional subpoena, Mr. Comey's motion is entirely improper and baseless.<sup>4</sup>

In addition, Mr. Comey's motion to quash is barred by the doctrine of sovereign immunity. "The United States, as sovereign, is immune from suit save as it consents to be sued, and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." *United States v. Sherwood*, 312 U.S. 584, 586 (1941) (citations omitted); *see also Jackson v. United States*, 751 F.3d 712, 716 (6th Cir. 2014). This immunity extends to the House and Senate as institutions, as well as their component parts such as congressional committees. *See Rockefeller v. Bingaman*, 234 F. App'x 852, 855 (10th Cir. 2007) ("[S]overeign immunity forecloses [Plaintiff's] claims against the House of Representatives and Senate as institutions, and [against an individual Representative and Senator] as individuals acting in their official capacities." (quotation marks and citation omitted)); *Keener v. Congress*, 467 F.2d 952, 953 (5th Cir. 1972) (per curiam) (similar).<sup>5</sup>

---

<sup>4</sup> For this same reason, Mr. Comey's reliance on *Rhines v. Walker*, 544 U.S. 269 (2005) and *Landis v. N. Am. Co.*, 299 U.S. 248 (1936) are misplaced. *See* Mot. to Stay at 1-2. Both of those cases involved judicial authority over judicial processes, and not the entirely distinct question as to whether the courts may intrude into the constitutional processes of the Legislative Branch.

<sup>5</sup> These same principles also shield federal officials, including congressional Members and staff, when sued in their official capacities. *See, e.g., Ishler v. Internal Revenue*, 237 F. App'x 394, 397 (11th Cir. 2007) ("[T]he protection of sovereign immunity also generally extends to the employees of those agencies sued in their official capacities."); *Boron Oil Co. v. Downie*, 873 F.2d 67, 69 (4th Cir. 1989) ("[A]n action seeking specific relief against a federal official, acting within the scope of his delegated authority, is an action against the United States, subject to governmental privilege of immunity."); *Clark v. Library of Congress*, 750 F.2d 89, 102-04 (D.C.

Here, if Mr. Comey had actually filed a complaint and attempted to assert a cause of action, it would necessarily be against the congressional committee that issued the subpoena in question. Sovereign immunity precludes the exercise of jurisdiction, absent an “unequivocally expressed” waiver of that immunity. *United States v. King*, 395 U.S. 1, 4 (1969). As Mr. Comey has failed to and cannot identify any such waiver of that immunity, much less an “unequivocally expressed” one, his motion to quash must be dismissed.

## **II. THE SPEECH OR DEBATE CLAUSE PRECLUDES THE RELIEF SOUGHT BY MR. COMEY**

This Court lacks jurisdiction to grant the relief sought by Mr. Comey because the Committee’s issuance of the challenged subpoena constitutes a legislative act absolutely protected against litigation challenge by the Speech or Debate Clause, U.S. Const. art. I, § 6, cl.

1. As the Supreme Court explained in *Eastland v. U.S. Servicemen’s Fund*, “the Speech or Debate Clause provides complete immunity for ... issuance of this subpoena.” 421 U.S. at 507.

### **A. The Speech or Debate Clause Immunizes Legislative Acts From Judicial Review.**

“The purpose of the [Speech or Debate] Clause is to insure that the legislative function the Constitution allocates to Congress may be performed *independently* .... [T]he ‘central role’ of the Clause is to ‘prevent intimidation of legislators by the Executive and accountability before a possibly hostile judiciary.’” *Eastland*, 421 U.S. at 502 (emphasis added) (quoting *Gravel v. United States*, 408 U.S. 606, 617 (1972)); *see also United States v. Helstoski*, 442 U.S. 477, 491 (1979) (“This Court has reiterated the central importance of the Clause for preventing intrusion by [the] Executive and Judiciary into the legislative sphere.”). “In the American governmental structure the [C]lause serves the additional function of reinforcing the separation of powers so

---

Cir. 1984) (sovereign immunity bars suit for money damages against Library of Congress official acting in official capacity)

deliberately established by the Founders.” *United States v. Johnson*, 383 U.S. 169, 178 (1966); *see also Helstoski*, 442 U.S. at 491 (“[The] purpose [of the Clause] was to preserve the constitutional structure of separate, coequal, and independent branches of government.”).

Because “the guarantees of th[e Speech or Debate] Clause are vitally important to our system of government,” they “are entitled to be treated by the courts with the sensitivity that such important values require.” *Helstoski v. Meanor*, 442 U.S. 500, 506 (1979). Accordingly, the Supreme Court has repeatedly, and “[w]ithout exception, ... read the Speech or Debate Clause broadly to effectuate its purposes.” *Eastland*, 421 U.S. at 501; *see also Doe v. McMillan*, 412 U.S. 306, 311 (1973); *Gravel*, 408 U.S. at 617-18; *Johnson*, 383 U.S. at 179; *Kilbourn v. Thompson*, 103 U.S. 168, 204 (1880).

The Speech or Debate Clause provides, *inter alia*, immunity from prosecutions or civil lawsuits with respect to any and all actions “within the ‘legislative sphere.’” *McMillan*, 412 U.S. at 312-13 (quoting *Gravel*, 408 U.S. at 624-25). The Supreme Court has stated unequivocally that when the challenged “the actions of the [congressional defendants] fall within the ‘sphere of legitimate legislative activity,’” they “‘shall not be questioned in any other Place’ about those activities since the prohibitions of the Speech or Debate Clause are absolute.” *Eastland*, 421 U.S. at 501 (quoting *McMillan*, 412 U.S. at 312-13 and U.S. Const. art. I, § 6, cl. 1); *see also id.* at 503, 509 n.16; 509-10; *Gravel*, 408 U.S. at 623 n.14; *Barr v. Matteo*, 360 U.S. 564, 569 (1959).

**B. The Issuance Of Congressional Subpoenas Is A “Legislative Act” Within The Scope Of The Speech Or Debate Clause.**

Activities “within the ‘legislative sphere,’” *McMillan*, 412 U.S. at 312-13 (quoting *Gravel*, 408 U.S. at 624-25), include all activities that are

an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.

*Gravel*, 408 U.S. at 625; *accord Eastland*, 421 U.S. at 504.

The concept of “legislative activity” has been broadly construed to include much more than merely words spoken in debate. The “cases have plainly not taken a literalistic approach in applying the privilege. ... Committee reports, resolutions, and the act of voting are equally covered[.]” *Gravel*, 408 U.S. at 617. Of particular relevance here, the Supreme Court has unambiguously held that the “power to investigate and to do so through compulsory process” is activity within the legislative sphere. *Eastland*, 421 U.S. at 504. This is so because “[a] legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change.” *Id.* (quoting *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927)).

Thus, “[i]ssuance of subpoenas such as the one in question here has long been held to be a legitimate use by Congress of its power to investigate.” *Eastland*, 421 U.S. at 504. Moreover, “[i]t also has been held that the subpoena power may be exercised by a committee acting, as here, on behalf of one of the Houses.” *Id.* at 505. Accordingly, a committee’s “issuance of a subpoena pursuant to an authorized investigation is ... an indispensable ingredient of lawmaking,” *id.*, and the Speech or Debate Clause therefore precludes litigation challenges to such subpoenas. *See id.* at 507 (Committee’s “Members are immune because the issuance of the subpoena is ‘essential to legislating’”).

The Clause also bars any “inquiry into ... the motivation for [legislative] acts.” *United States v. Brewster*, 408 U.S. 501, 512 (1972); *see also Johnson*, 383 U.S. at 180, 184-85 (such

inquiry “necessarily contravenes the ... Clause”). Thus, the Clause is not abrogated by allegations that a Legislative Branch official acted unlawfully or with an unworthy purpose. *See, e.g., McMillan*, 412 U.S. at 312-13 (Clause applies to all legislative activities “even though the[] conduct, if performed in other than legislative contexts, would in itself be unconstitutional or otherwise contrary to criminal or civil statutes”); *Tenney v. Brandhove*, 341 U.S. 367, 377 (1951); *Porteous v. Baron*, 729 F. Supp. 2d 158, 166 (D.D.C. 2010).

Finally, this Circuit has consistently held that once the “legislative process” test is met, that is “the end of the matter.” *See MINPECO, S.A. v. Conticommodity Servs., Inc.*, 844 F.2d 856, 861 (D.C. Cir. 1988); *see also Brown & Williamson Tobacco Corp. v. Williams*, 62 F.3d 408, 418-19 (D.C. Cir. 1995) (“Once the legislative-act test is met, ... the privilege is absolute.” (quoting *Miller v. Transam. Press, Inc.*, 709 F.2d 524, 529 (9th Cir. 1983))); *United States v. Peoples Temple of the Disciples of Christ*, 515 F. Supp. 246, 249 (D.D.C. 1981) (“The Supreme Court has rarely spoken with greater clarity. Once it is determined ... that [the congressional individual or entity’s] actions fall within the ‘legitimate legislative sphere, judicial inquiry is at an end.’”).

### **C. The Subpoena To Mr. Comey Is Absolutely Protected By The Clause.**

Mr. Comey’s motion to quash is squarely foreclosed by binding Supreme Court precedent, specifically *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491 (1975). *Eastland* involved an investigation of various activities of the United States’ Serviceman’s Fund, Inc. (“USSF”) to determine whether they were potentially harmful to the morale of the U.S. Armed Forces. *Id.* at 493. As a part of the investigation, a congressional committee issued a subpoena to USSF’s bank seeking all records involving its accounts. *Id.* at 494. USSF and two of its members brought an action against the Chairman, Members, and Chief Counsel of the committee

to enjoin implementation of the subpoena on First Amendment grounds. *Id.* at 495. The Supreme Court squarely and unequivocally rejected the notion that a congressional subpoena is subject to a motion to quash. *See id.* at 512.

In determining that the issuance of a congressional subpoena is a legislative act and, therefore, absolutely privileged under the Speech or Debate Clause, the *Eastland* Court explained that “the power to investigate is inherent in the power to make laws” and “[i]ssuance of subpoenas... [is] a legitimate use by Congress of its power to investigate.” *Id.* at 504 (citation omitted). Accordingly, the Court concluded that “the Speech or Debate Clause provides complete immunity for the Members for issuance of this subpoena.” *Id.* at 507.

*Eastland* also confirms the exceedingly limited role of the judiciary in determining whether a congressional committee’s issuance of a subpoena involves legislative matters protected by the Speech or Debate Clause. “The courts should not go beyond the narrow confines of determining that a committee’s inquiry may fairly be deemed within its province.” *Id.* at 506 (quoting *Tenney*, 341 U.S. at 378); *see also United States v. Biaggi*, 853 F.2d 89, 103 (2d Cir. 1988). The *Eastland* Court made clear that the only permissible judicial inquiry was a deferential assessment of whether “the investigation upon which the [Committee] had embarked concerned a subject on which ‘legislation could be had.’” 421 U.S. at 506. Finally, *Eastland* “illustrates vividly the harm that judicial interference may cause.” *Id.* at 511. The Speech or Debate Clause “was written to prevent the need to be confronted by such ‘questioning’ and to forbid invocation of judicial power to challenge the wisdom of Congress’ use of its investigative authority.” *Id.*

Here, there can be no question that the subpoena to Mr. Comey was issued in furtherance of the Committee’s investigation concerning “a subject on which ‘legislation could be had.’” *Id.*

at 506. Indeed, Mr. Comey concedes as much, admitting that “the FBI and DOJ are appropriately subject to congressional oversight” and that “the subject matters of the Joint Committees’ Investigation are appropriate subjects of a proper investigation.” Mot. to Quash at 4. That admission should be the end of the matter, because it conclusively establishes that the Committee’s subpoena relates to a subject on which legislation could be had and is thus immune from challenge by virtue of the Speech or Debate Clause.

In any event, Mr. Comey was correct to volunteer these fatal concessions. The Committee has broad legislative jurisdiction over federal law enforcement agencies and activities, and could devise legislation relating directly to the subject matter of this investigation. Indeed, various legislative proposals have been proposed in recent Congresses to address aspects of the issues raised by this investigation, including but not limited to reforms of national security laws such as the Foreign Intelligence Surveillance Act, as well as modifications to laws governing the FBI’s investigative procedures. Somers Decl.¶ 4. To effectively consider such legislative proposals, the Committee must gather information so that it can make informed decisions about the need for legislative action and, where appropriate, the content of such legislation. This information-gathering lies at the very heart of the “sphere of legitimate legislative activity,” *Eastland*, 421 U.S. at 503. *See, e.g., id.* at 504 (“The power to investigate ... plainly falls within that definition [of legitimate legislative activity].”); *Biaggi*, 853 F.2d at 103; *United States v. Dowdy*, 479 F.2d 213, 224 (4th Cir. 1973).<sup>6</sup>

---

<sup>6</sup> Congressional investigative activities need not result in the passage of legislation in order to enjoy the full protection of the Speech or Debate Clause. Information-gathering in furtherance of possible legislation is protected whenever the subject of the inquiry is “one ‘on which legislation could be had,’” *Eastland*, 421 U.S. at 504 n.15 (quoting *McGrain*, 273 U.S. at 177), regardless of whether legislation is actually produced, *see id.* at 509 (“Nor is the legitimacy of a congressional inquiry to be defined by what it produces. The very nature of the investigative function – like any research – is that it takes the searchers up some ‘blind alleys’ and into

Mr. Comey's baseless allegations that Committee Members are improperly "leaking" witness testimony for the purpose of gaining "partisan advantage," Mot. to Quash at 6, 8, provide no basis for evasion of the absolute immunity afforded by the Speech or Debate Clause. As discussed above, the Speech or Debate Clause bars judicial "inquiry into ... the motivation for [legislative] acts." *Helstoski*, 442 U.S. at 489. Claims of "unworthy purpose do[] not destroy the privilege." *Tenney*, 341 U.S. at 377. Were mere allegations such as Mr. Comey's sufficient to abrogate the absolute privilege afforded by the Clause, then, as the Court in *Eastland* observed, "the Clause simply would not provide the protection historically undergirding it." *Eastland*, 421 U.S. at 509.

In fact, under *Eastland*, even a claim that "the purpose of the subpoena was to 'harass, chill, punish and deter' [witnesses] in the exercise of their First Amendment rights" does not override the absolute protections of the Speech or Debate Clause. 421 U.S. at 509. Expressly rejecting the "theory ... that once it is alleged that First Amendment rights may be infringed by congressional action the Judiciary may intervene to protect those rights," the Supreme Court held that any such "approach ... ignores the absolute nature of the speech or debate protection and our cases which have broadly construed that protection." *Id.* at 509-10 (footnote omitted).

Finally, Mr. Comey errs in relying on contempt cases such as *Watkins v. United States*, 354 U.S. 178 (1957). *See* Mot. to Quash at 5-6. Those cases involved prosecutions brought by the Executive Branch in federal court against recalcitrant witnesses charged with contempt of Congress; they did not implicate the Speech or Debate Clause at all, since no relief was sought against any congressional parties. Accordingly, they are entirely inapposite.

---

nonproductive enterprises. To be a valid legislative inquiry there need be no predictable end result.").

Indeed, the *Eastland* Court held that “[d]ifferent problems were presented [in those cases] from those here,” because “those cases did not involve attempts by private parties to impede congressional action where the Speech or Debate Clause was raised by Congress by way of defense.” 421 U.S. at 509 n.16. As the Court explained, in contempt cases it may be appropriate to “balanc[e] First Amendment rights against public interests,” but “[w]here we are presented with an attempt to interfere with an ongoing activity by Congress, and that activity is found to be within the legitimate legislative sphere, balancing plays no part.” *Id.* Instead, because “[t]he speech or debate protection provides an absolute immunity from judicial interference” in this context, any “[c]ollateral harm which may occur in the course of a legitimate legislative inquiry does not allow us to force the inquiry to ‘grind to a halt.’” *Id.* (quoting *Hutcheson v. United States*, 369 U.S. 599, 618 (1962)).

Accordingly, because the issuance of the subpoena was a legitimate legislative act, the Committee is absolutely immune from suit and the motion to quash must be dismissed.

### **III. THE RULEMAKING CLAUSE PRECLUDES THIS ACTION**

As noted above, Mr. Comey expressly concedes the validity of both the Committee’s oversight authority and the subject matter of its investigation. Mot. to Quash at 4. In addition, he claims that he has no objection to providing to the Committee the information that it seeks. *Id.* Accordingly, it appears that his only objection to the subpoena reduces to his disagreement with the specific procedures that the Committee has elected to use to obtain his testimony; namely, a deposition as opposed to testimony in a public hearing. In addition to being precluded by the Speech or Debate Clause for all the reasons set forth above, this objection fails for an additional, independently sufficient reason.

Pursuant to the Constitution’s Rulemaking Clause, “[e]ach House [of Congress] may determine the Rules of its Proceedings.” U.S. Const. art. I, § 5, cl. 2. In accordance with that

express and exclusive constitutional grant of authority, the House of Representatives has delegated the power to conduct depositions to its standing committees, including the Committee on the Judiciary. *See* H. Res. 5, § 3(b)(1) (115th Cong. 2017) (“[T]he chair of a standing committee ... upon consultation with the ranking minority member of such committee, may order the taking of depositions, including pursuant to subpoena, by a member or counsel of such committee.”).

The Rulemaking Clause is a “broad grant of authority,” *Consumers Union of U.S., Inc. v. Periodical Correspondents’ Ass’n*, 515 F.2d 1341, 1343 (D.C. Cir. 1975), and “a classic example of a demonstrable textual commitment to another branch of government.” *Rangel v. Boehner*, 20 F. Supp. 3d 148, 168-69 (D.D.C. 2013), *affirmed on other grounds*, 785 F.3d 19 (D.C. Cir. 2015); *see also NLRB v. Canning*, 134 S. Ct. 2550, 2574 (2014) (noting “the Constitution’s broad delegation of authority to the Senate to determine how and when to conduct its business”). Accordingly, the rules adopted by the House are constrained only by constitutional prohibitions, and are otherwise “absolute and beyond the challenge of any other body or tribunal.” *United States v. Ballin*, 144 U.S. 1, 5 (1892).

Under these precedents, the Committee’s decision to utilize its deposition procedures to obtain testimony from Mr. Comey is one that the Constitution specifically vests exclusively in the Legislative Branch and with which the courts have no authority to interfere at the behest of private parties. As the Supreme Court has emphasized, “all matters of method are open to the determination of the house, and it is no impeachment of the rule to say that some other way would be better, more accurate, or even more just.” *Ballin*, 144 U.S. at 5. The Rulemaking Clause establishes a “specific constitutional ... status” for congressional rules, and “[i]n deference to the fundamental constitutional principle of separation of powers, the judiciary must

take special care to avoid intruding into a constitutionally delineated prerogative of the Legislative Branch.” *Harrington v. Bush*, 553 F.2d 190, 214 (D.C. Cir. 1977).

For all the foregoing reasons, therefore, Mr. Comey’s motion to quash should be dismissed.

#### **IV. IN ANY EVENT, THE COMMITTEE’S SUBPOENA IS VALID**

##### **A. The Committee’s Subpoena Seeks Information In Furtherance Of A Valid Legislative Purpose.**

Mr. Comey cannot seriously contend that the Committee, with broad oversight and legislative responsibility over DOJ and the FBI, lacks a valid legislative purpose in examining the actions of those agencies in the run-up to the 2016 election. Mr. Comey may disagree with the focus of the Committee’s investigation and he may disagree with the views of the individual Members of the Committee, but he cannot dispute the authority of the Committee to conduct oversight into DOJ and the FBI. In fact, he concedes, as noted above, that “the subject matters of the Joint Committees’ Investigation are appropriate subjects of a proper investigation.” Mot. to Quash at 4.

Mr. Comey instead claims that the Committee’s “closed interview condition” (i.e., a deposition – a routine discovery device expressly authorized by a vote of the full House pursuant to its constitutional rulemaking authority) portends a nefarious purpose because there have been, he warns, “leaks” of “secret testimony,” as well as an attempt by elected political officers to secure “partisan advantage.” Mot. to Quash at 6, 8. Simply put, Mr. Comey attempts to convert what he views as a distasteful discovery device into an improper legislative purpose.

As an initial matter, deposition testimony is not “secret,” because there is no overarching requirement of confidentiality for Committee depositions in the House Rules, House deposition procedures, or Committee rules. Mr. Comey is free to discuss any of his non-classified

deposition testimony publicly, as are the Committee Members. In addition, Mr. Comey may not avoid his deposition obligation by attacking the motives of the Committee Members. That is because “in determining the legitimacy of a congressional act,” the courts “do not look to the motives alleged to have prompted it.” *Eastland*, 421 U.S. at 508. The Supreme Court has expressly warned against the danger of courts interfering in congressional investigations on the basis of allegations like those advanced by Mr. Comey: “If the mere allegation that a valid legislative act was undertaken for an unworthy purpose would lift the protection of the Clause, then the Clause simply would not provide the protection historically undergirding it.” *Id.* at 508-09. Mr. Comey is free to publicly denounce the allegedly “partisan” motivations of elected officials, but he cannot thereby empower the Judicial Branch to interfere with a constitutionally authorized congressional investigation.

Finally, Mr. Comey’s concern that other witnesses have been “unfairly prejudiced” by “leaks and related comments” without the “full scope” of the testimony known to the public certainly makes no sense in Mr. Comey’s case. Mot. to Quash at 8. The Committee has made clear to Mr. Comey’s counsel that it will promptly provide him with a copy of Mr. Comey’s deposition transcript as soon as it is available. Somers Decl. ¶ 14. The Committee anticipates providing the transcript within 24 hours after the conclusion of the deposition, an accommodation that has been offered to other witnesses also. Somers Decl. ¶ 14. Mr. Comey is free to publicly release the deposition transcript upon its receipt. Mr. Comey is also free to immediately disclose his testimony after he leaves the deposition room. If the American people are clamoring for the “full scope of [his] testimony,” as Mr. Comey contends, Mot. to Quash at 4, he may use his considerable public platform and media contacts to disclose that testimony and provide any allegedly necessary context for the “false political narrative” he fears. *See* Mot. to

Stay at 3; *see also* James Comey (@Comey), Twitter, <https://twitter.com/Comey> (1.12 million followers for @Comey account) (last visited Nov. 30, 2018).

**B. The Committee’s Subpoena Is Fully In Accordance With House And Committee Rules.**

Mr. Comey curiously claims, without citation to any apposite authority, that “secret interviews” are a violation of House Rules. Mot. to Quash at 8-9. Mr. Comey’s entire argument rests on what can only be characterized as an intentional misreading of House Rules and procedures, conflating the Rules governing hearings with the procedures governing depositions. *See Somers Decl.* ¶ 15. As an initial matter, House committees regularly conduct closed interviews of witnesses. With respect to depositions specifically, as discussed in Part III, the House has delegated “the taking of depositions, including pursuant to subpoena,” to its standing committees and that such depositions “shall be subject to regulations issued by the chair of the Committee on Rules.” H. Res. 5, § 3(b), 115th Cong. (2017). The regulations issued by the Committee on Rules provide that depositions are closed to the public. *See Somers Decl. Ex. H* at ¶ 3 (“Observers ... may not attend.”).<sup>7</sup>

Even if there were any doubt about the question as to whether a House committee’s deposition must be conducted in public like a hearing and not a deposition (and there is truly no ambiguity on this point), as explained above, courts lack the authority to second-guess the Committee’s interpretation and implementation of its own rules. *See*, 144 U.S. at 5; *see also United States v. Rostenkowski*, 59 F.3d 1291, 1306 (D.C. Cir. 1995) (“[T]he Rulemaking Clause of Article I clearly reserves to each House of the Congress the authority to make its own rules, and judicial interpretation of an ambiguous House Rule runs the risk of the court intruding into

---

<sup>7</sup> The regulations further provide that transcripts shall be made available to witnesses; witnesses may propose changes to transcripts; and that the release of transcripts shall occur on consultation with the minority or by committee vote, as necessary. *Somers Decl. Ex. H* at ¶¶ 8, 10.

the sphere of influence reserved to the legislative branch under the Constitution.”). Here, the Committee has determined that its deposition will be conducted like most depositions – in private. Mr. Comey’s belief that the Committee must interpret the House Rules and regulations differently is both non-justiciable and wrong.

#### **V. THE COMMITTEE’S SUBPOENA SERVES THE PUBLIC INTEREST**

For the reasons explained above, this Court lacks jurisdiction to grant Mr. Comey relief, including a stay his deposition.<sup>8</sup> In any event, it is patently absurd to suggest that Mr. Comey will suffer “significant prejudice” where he is free to discuss his testimony in public and the Committee will, as discussed above, provide him with a full transcript of his testimony within 24 hours.

The public interest strongly compels denial of Mr. Comey’s attempt to interfere with the impending conclusion of this important congressional investigation. Over the past thirteen months, the Committee has conducted an exhaustive review of the actions of DOJ and the FBI. The Committee has interviewed numerous officials and carefully reviewed a large number of records from the Executive Branch. Somers Decl. ¶ 5. To complete its investigation and prepare its public report, the Committee now seeks to interview Mr. Comey, who was the Director of the FBI during the entire time period encompassed by its investigation. Somers Decl. ¶ 9. This interview could not realistically have occurred at an earlier stage of the investigation, because the

---

<sup>8</sup> Mr. Comey cites *Comm. on the Judiciary v. Miers*, 542 F.3d 909 (D.C. Cir. 2008), for the proposition that courts may stay enforcement of congressional subpoenas, but that case is wholly inapposite, as the Speech or Debate Clause was inapplicable there because the Committee had itself chosen to invoke the jurisdiction of the federal courts to address the Executive Branch’s refusal to comply with a subpoena. Moreover, that case involved an inter-branch clash implicating substantial separation-of-powers concerns under the Constitution that the court of appeals deemed sufficient to justify the extraordinary relief of a stay. Here, by contrast, the Executive Branch is not a party to the case, and the only separation-of-powers principles at stake here compel judicial non-interference with an ongoing congressional investigation.

Committee’s investigative work to this point was in anticipation of, and preparation for, its interview of the highest-ranking official at the FBI, namely, Mr. Comey. Somers Decl. ¶ 6.

If Mr. Comey’s deposition were to be stayed, it would have a profound impact on the Committee’s investigation and prevent the Committee from providing a full accounting of DOJ’s actions in 2016. The Committee intends to issue a joint report (together with OGR) before the end of the 115th Congress – i.e., in *a few short weeks*. Somers Decl. ¶ 9. The Committee cannot reasonably complete its assessment of the 2016 actions of DOJ and the FBI without the testimony of Mr. Comey. Somers Decl. ¶ 9. Mr. Comey seeks to frustrate the Committee’s completion of its legislative report by demanding (unlike every other former government official involved in the investigation) a public hearing, which requires an enormous amount of staff and Member time and is a decision vested in the sole and unreviewable discretion of the Committee. At bottom, Mr. Comey seeks to obstruct this congressional investigation by preventing the Committee from issuing its final report.

The D.C. Circuit has squarely held that there is a “clear public interest in maximizing the effectiveness of the investigatory powers of Congress[.]” because “the investigatory power is one that the courts have long perceived as essential to the successful discharge of the legislative responsibilities of Congress[.]” *Exxon Corp. v. FTC*, 589 F.2d 582, 594 (D.C. Cir. 1978) (citing *McGrain*, 273 U.S. at 177). Interference with the Committee’s exercise of its constitutional power of inquiry would directly harm the Committee’s compelling interest in expeditious completion of this investigation, which involves matters of pressing national importance. “For this court on a continuing basis to mandate an enforced delay on the legitimate investigations of Congress” based on nothing more than Mr. Comey’s baseless “leak” concerns “could seriously

impede the vital investigatory powers of Congress and would be of highly questionable constitutionality.” *Exxon*, 589 F.2d at 588.

### CONCLUSION

Mr. Comey’s procedurally defective, jurisdictionally improper, constitutionally infirm, and patently frivolous request for an order staying or quashing the Committee’s subpoena should be denied.

Respectfully submitted,

/s/ Thomas G. Hungar

THOMAS G. HUNGAR (DC Bar #447783)

*General Counsel*

TODD B. TATELMAN (VA Bar #66008)

*Deputy General Counsel*

KIMBERLY HAMM (DC Bar #1020989)

*Associate General Counsel*

OFFICE OF GENERAL COUNSEL  
U.S. HOUSE OF REPRESENTATIVES  
219 Cannon House Office Building  
Washington, D.C. 20515  
(202) 225-9700 (telephone)  
(202) 226-1360 (facsimile)  
Thomas.Hungar@mail.house.gov

*Counsel for the Committee on the Judiciary  
of the U.S. House of Representatives*

November 30, 2018

**CERTIFICATE OF SERVICE**

I certify that on November 30, 2018, I filed the foregoing document by the court's CM/ECF system, which I understand caused it to be served on all registered parties.

/s/ Kimberly Hamm  
Kimberly Hamm

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

IN RE SUBPOENA OF JAMES COMEY BY  
AUTHORITY OF THE HOUSE OF  
REPRESENTATIVES OF THE CONGRESS OF THE  
UNITED STATES OF AMERICA

---

)  
)  
) Case No. 18-mc-174-TNM  
)  
)  
)  
)

**DECLARATION OF ZACHARY N. SOMERS**

I, Zachary N. Somers, pursuant to the provisions of 28 U.S.C. § 1746 declare and say:

1. I currently serve as the General Counsel and Parliamentarian to the Committee on Judiciary of the U.S. House of Representatives (the “Committee”). The Committee’s Chairman, the Honorable Bob Goodlatte, appointed me to this role in December 2015. In this capacity, I provide legal oversight of Committee matters, including the Committee’s joint investigation with the Committee on Oversight and Government Reform (“OGR”) into decisions made and not made by the U.S. Department of Justice (“DOJ”) and the Federal Bureau of Investigation (“FBI”) regarding the 2016 presidential election. In addition, I advise on and interpret the Committee’s rules, procedures, and practices regarding the conduct of all Committee business. The facts set forth in this Declaration are based upon my personal knowledge.

2. House Resolution 5, approved by the full House on January 3, 2017, and adopting the Rules of the House of Representatives for the 115th Congress, grants the Committee broad oversight over “[c]riminal law enforcement and criminalization,” House Rule X.1(1)(7), including federal law enforcement agencies and the federal criminal laws, such as the Espionage Act, that those agencies enforce, as well as laws, such as the Foreign Intelligence Surveillance Act (“FISA”), that govern the conduct of those agencies.

3. In an exercise of its oversight jurisdiction over DOJ and the FBI, on October 24, 2017, the Committee, in conjunction with OGR, publicly announced the opening of a joint investigation into decisions made by DOJ and the FBI in 2016. In the press release announcing the investigation, the Committee announced several key questions the investigation seeks to answer. A true and correct copy of the press release is attached as Exhibit A. As the release states, these questions include, but are not limited to: (1) the “FBI’s decision to publicly announce the investigation into Secretary Clinton’s handling of classified information but not to publicly announce the investigation into campaign associates of then-candidate Donald Trump”; (2) the “FBI’s decision to notify Congress by formal letter of the status of the investigation both in October and November of 2016”; (3) the “FBI’s decision to appropriate full decision making in respect to charging or not charging Secretary Clinton to the FBI rather than the DOJ”; and (4) the “FBI’s timeline in respect to charging decisions.” Moreover, the press release states that “[t]he Committees will review these decisions and others to better understand the reasoning behind how certain conclusions were drawn. Congress has a constitutional duty to preserve the integrity of our justice system by ensuring transparency and accountability of actions taken.”

4. Several legislative proposals have been introduced in recent Congresses to address aspects of the issues raised by this investigation, including but not limited to reforms of national security laws such as the Espionage Act and FISA (“FISA”). *See* H.R. 5235, 115th Cong. (2018); H.R. 4478, 115th Cong. (2017); H.R. 6034, 114th Cong. (2016); H.R. 5706, 114th Cong. (2016).

5. As this investigation has progressed and testimony and documents have been obtained, it has focused on determining (1) what factors, evidence, and legal analysis went into the decision made by Mr. Comey to recommend against charging Secretary Clinton with

violating the Espionage Act or related laws and DOJ's decision to accept that recommendation, and (2) what factors, evidence, and legal analysis went into the decision to open an investigation into alleged ties between the Trump Campaign and Russia. To date the Committee has interviewed or deposed 16 persons and carefully reviewed thousands of documents.

6. Based on documents reviewed by the Committee, transcribed interviews of witnesses from both DOJ and the FBI, Mr. Comey's own public statements and congressional testimony, and extensive media reporting, the Committee has formed a reasonable belief that Mr. Comey has information highly relevant to the Committee's investigation that can most effectively be learned through a transcribed interview or, absent Mr. Comey's voluntary cooperation, a compelled deposition. The Committee reasonably sought to interview Mr. Comey after it had concluded reviewing certain documents and after it interviewed lower-ranking DOJ and FBI officials in order to ensure that the interview of Mr. Comey was as efficient and productive as possible.

7. Specifically, among other things, as it relates to oversight into the handling of the Secretary Clinton email investigation, the Committee has learned that it was Mr. Comey himself who ultimately made the decision and was the primary author of the press statement announcing the decision and rationale against charging Secretary Clinton with violating the Espionage Act and related federal criminal laws. Additionally, documents and testimony have revealed that Mr. Comey was regularly briefed on the progress of the email investigation and was engaged in, or at least aware of, many of the key decisions made during the course of the investigation.

8. In addition, although the Committee has been denied access to many of the documents that relate to the investigation into alleged ties between the Trump Campaign and Russia, testimony and documents that the Committee has reviewed indicate the Mr. Comey was

also personally involved with that investigation and that he was briefed on and signed off on the Carter Page FISA application, which is a key aspect of the Committee's investigation into DOJ's and FBI's handling of this matter. Furthermore, Mr. Comey authored a series of memos that relate to the Russia investigation and his conversations with the President regarding the investigation. Mr. Comey is in the best position to answer the Committee's questions regarding those memos. Finally, documents reviewed by the Committee demonstrate that there may have been a difference of opinion regarding investigative steps and charging decisions between Mr. Comey and other senior officials at the FBI, including then-Deputy FBI Director Andrew McCabe, that the Committee needs Mr. Comey's testimony to fully explore.

9. Moreover, as the Director of the FBI during the Secretary Clinton email investigation and the initiation and early to mid-stages of the investigation into alleged ties between the Trump Campaign and Russia, Mr. Comey's testimony is important for the Committee to receive as it seeks to develop a full and accurate understanding of key elements of the FBI's conduct of two of its most important and high profile investigations in recent years. The Committee intends to issue a joint report with OGR before the end of this Congress summarizing the results of the investigation and providing legislative recommendations. The Committee will not be able to fully conclude the investigation without Mr. Comey's testimony.

10. Accordingly, after being informed by the FBI that Mr. Comey was represented by David Kelley, Committee staff reached out to Mr. Kelley, on September 10, 2018, by email and telephone to try to arrange a voluntary, transcribed interview with Mr. Comey. A true and correct copy of the correspondence is attached as Exhibit B. In addition, on September 21, 2018, Chairman Goodlatte and OGR Chairman Gowdy wrote Mr. Kelley requesting that former

Director Comey promptly appear for a transcribed interview. A true and correct copy of the correspondence is attached as Exhibit C.

11. On October 1, 2018, Mr. Kelley responded to that letter with his own letter informing the Chairmen that Mr. Comey was declining their request for a transcribed interview, but that Mr. Comey would be willing to appear at a public hearing. A true and correct copy of the correspondence is attached as Exhibit D.

12. Committee staff informed Mr. Kelley by email, on November 16, 2018, that, based on Mr. Comey's refusal to appear for a transcribed interview, the Committee would be issuing a subpoena for Mr. Comey's appearance at a deposition and asked Mr. Kelley if he would accept service of a subpoena on Mr. Comey's behalf. Mr. Kelley informed Committee staff that he would accept service of such a subpoena. Committee staff had a telephone call with Mr. Kelley on November 16 to discuss the proposed deposition date of November 29. At that time, Committee staff learned that Mr. Comey had a personal commitment on that date. For that reason, Committee staff then advised Mr. Kelley by email that a subpoena for the week of December 3 was being prepared. A true and correct copy of the correspondence is attached as Exhibit E.

13. On November 21, 2018, Committee staff electronically served Mr. Kelley with a subpoena for Mr. Comey's appearance at a deposition on December 3, 2018, in the Rayburn House Office Building. A true and correct copy of the subpoena and correspondence is attached as Exhibit F.

14. In a good-faith attempt to accommodate Mr. Comey's stated concern about the deposition being conducted behind closed doors, Committee staff advised Mr. Kelley that it proposed to make the transcript of the deposition available to the public as soon as the

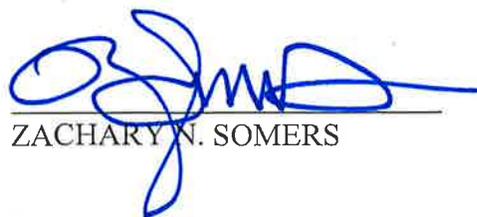
Committee received it. A true and correct copy of the correspondence is attached as Exhibit G. I estimate that a transcript will be made available to Mr. Comey approximately 24 hours after the conclusion of his deposition, and the Committee has made a similar accommodation on a similar timeframe to another witness in this investigation. Transcripts of all other transcribed interviews and depositions in this investigation have yet to be released publicly.

15. Nothing in the Rules of the House or the Committee Rules requires that investigative depositions be conducted in public. To the contrary, the 115th Congress Staff Deposition Authority Procedures adopted by the House provide that “[o]nly members, committee staff designated by the chair or ranking minority member, an official reporter, the witness, and the witness’s counsel are permitted to attend” such depositions, except that in the case of a joint investigation, additional staff from committees participating in the joint investigation may also be designated to attend. A true and correct copy of the 115th Congress Staff Deposition Authority Procedures is attached as Exhibit H; *see also* Ex. I (H. Res. 5, § 3(b)) (authorizing staff deposition authority, a true and correct copy is attached).

16. Nothing in the Rules of the House or the Committee Rules precludes Committee Members or witnesses from disclosing publicly any non-classified information that was discussed in an interview or deposition conducted as part of the Committee’s investigation into decisions made and not made by DOJ and the FBI regarding the 2016 presidential election.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 30th day of November 2018, in Washington, D.C.

  
ZACHARY N. SOMERS

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

---

IN RE SUBPOENA OF JAMES COMEY BY )  
AUTHORITY OF THE HOUSE OF ) Case No. 1:18-mc-00174-TNM  
REPRESENTATIVES OF THE CONGRESS OF THE )  
UNITED STATES OF AMERICA )

---

**EXHIBIT A**



House of Representatives  
**Judiciary Committee**  
Chairman Bob Goodlatte

PRESS RELEASE (PRESS-RELEASES) | OCTOBER 24, 2017

# Goodlatte, Gowdy Open Investigation into Decisions Made by DOJ in 2016

**Washington, DC** – Today, House Judiciary Committee Chairman Bob Goodlatte (R-Va.) and House Oversight and Government Reform Committee Chairman Trey Gowdy (R-S.C.) released the following statement after opening a joint investigation into decisions made by the Department of Justice in 2016.

*“Our justice system is represented by a blind-folded woman holding a set of scales. Those scales do not tip to the right or the left; they do not recognize wealth, power, or social status. The impartiality of our justice system is the bedrock of our republic and our fellow citizens must have confidence in its objectivity, independence, and evenhandedness. The law is the most equalizing force in this country. No entity or individual is exempt from oversight.*”

*“Decisions made by the Department of Justice in 2016 have led to a host of outstanding questions that must be answered. These include, but are not limited to:*

- *FBI's decision to publicly announce the investigation into Secretary Clinton's handling of classified information but not to publicly announce the investigation into campaign associates of then-candidate Donald Trump;*
- *FBI's decision to notify Congress by formal letter of the status of the investigation both in October and November of 2016;*
- *FBI's decision to appropriate full decision making in respect to charging or not charging Secretary Clinton to the FBI rather than the DOJ;*
- *FBI's timeline in respect to charging decisions.*

*"The Committees will review these decisions and others to better understand the reasoning behind how certain conclusions were drawn. Congress has a constitutional duty to preserve the integrity of our justice system by ensuring transparency and accountability of actions taken."*

###

2138 Rayburn House Office Bldg  
Washington, DC 20515  
202.225.3951

Minority Site (<https://democrats-judiciary.house.gov/>)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

---

IN RE SUBPOENA OF JAMES COMEY BY )  
AUTHORITY OF THE HOUSE OF ) Case No. 1:18-mc-00174-TNM  
REPRESENTATIVES OF THE CONGRESS OF THE )  
UNITED STATES OF AMERICA )

---

**EXHIBIT B**

**Baker, Arthur**

---

**From:** Baker, Arthur  
**Sent:** Monday, September 10, 2018 12:58 PM  
**To:** 'david.kelley@dechert.com'  
**Subject:** Request to interview James Comey- House Judiciary Committee

Mr. Kelley,

I am counsel to the Committee on the Judiciary (Majority staff) of the United States House of Representatives. As you may know, the Committee on the Judiciary and the Committee on Oversight and Government Reform are conducting oversight of the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) and their investigation, subsequent recommendation of no prosecution, and related matters concerning former Secretary of State Hillary Clinton's handling of classified materials, her use of private email servers, and other matters concerning the 2016 election. It is our understanding that you represent Mr. James Comey, formerly the Director of the Federal Bureau of Investigation. We would like to interview Mr. Comey concerning the matters we are investigating. In that regard, could you please advise me when you could present Mr. Comey for an interview at the House Judiciary Committee in Washington DC? I can discuss this matter further at your convenience. Thank you.

Arthur Baker  
Investigative Counsel  
[Arthur.Baker@mail.house.gov](mailto:Arthur.Baker@mail.house.gov)  
202-225-5727

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

---

IN RE SUBPOENA OF JAMES COMEY BY )  
AUTHORITY OF THE HOUSE OF ) Case No. 1:18-mc-00174-TNM  
REPRESENTATIVES OF THE CONGRESS OF THE )  
UNITED STATES OF AMERICA )

---

**EXHIBIT C**

**Baker, Arthur**

---

**From:** Baker, Arthur  
**Sent:** Friday, September 21, 2018 6:05 PM  
**To:** 'david.kelley@dechert.com'  
**Subject:** James Comey  
**Attachments:** Comey Request.pdf

Mr. Kelley,  
Following up on our previous telephone call and email requesting to interview Mr. Comey.

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

September 21, 2018

Mr. David N. Kelley, Esq.  
Dechert, LLP  
1095 Avenue of the Americas  
New York City, NY 10036-6797

Dear Mr. Kelley:

The House Committees on the Judiciary and the House Committee on Oversight and Government Reform are investigating decisions made and not made during the 2016 election by the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI).

As part of this investigation, the Committees need to interview your client, former FBI Director James Comey. We request you promptly make Mr. Comey available for a transcribed interview.

Please contact Arthur Baker of the Committee on the Judiciary staff at (202)-225-5727 to make arrangements, or if you have any questions. Thank you for your attention to this matter.

Sincerely,



Bob Goodlatte  
Chairman  
Committee on the Judiciary



Trey Gowdy  
Chairman  
Committee on Oversight &  
Government Reform

cc: The Honorable Jerrold Nadler  
Ranking Member, Committee on the Judiciary

The Honorable Elijah Cummings  
Ranking Member, Committee on Oversight and Government Reform

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

---

IN RE SUBPOENA OF JAMES COMEY BY )  
AUTHORITY OF THE HOUSE OF ) Case No. 1:18-mc-00174-TNM  
REPRESENTATIVES OF THE CONGRESS OF THE )  
UNITED STATES OF AMERICA )

---

**EXHIBIT D**

**Baker, Arthur**

---

**From:** Kelley, David <David.Kelley@dechert.com>  
**Sent:** Monday, October 01, 2018 12:20 PM  
**To:** Baker, Arthur  
**Cc:** Grooms, Susanne Sachsman; Hiller, Aaron  
**Subject:** RE: James Comey  
**Attachments:** Letter to US Congress \_ House of Representative.pdf

Please see the attached correspondence. Happy to discuss at your convenience.

**David N. Kelley**  
Partner

**Dechert LLP**  
1095 Avenue of the Americas  
New York, NY 10036-6797  
+1 212 698 3580  
+1 212 698 3599 Fax  
[david.kelley@dechert.com](mailto:david.kelley@dechert.com)  
[www.dechert.com](http://www.dechert.com)

**From:** Baker, Arthur [<mailto:Arthur.Baker@mail.house.gov>]  
**Sent:** Friday, September 21, 2018 6:05 PM  
**To:** Kelley, David <[David.Kelley@dechert.com](mailto:David.Kelley@dechert.com)>  
**Subject:** James Comey

Mr. Kelley,  
Following up on our previous telephone call and email requesting to interview Mr. Comey.

---

This e-mail is from Dechert LLP, a law firm, and may contain information that is confidential or privileged. If you are not the intended recipient, do not read, copy or distribute the e-mail or any attachments. Instead, please notify the sender and delete the e-mail and any attachments. Thank you.

Dechert  
LLP

Three Bryant Park  
1095 Avenue of the Americas  
New York, NY 10036-6797  
+1 212 698 3500 Main  
+1 212 698 3599 Fax  
www.dechert.com

---

DAVID N. KELLEY

david.kelley@dechert.com  
+1 212 698 3580 Direct  
+1 212 698 0460 Fax

October 1, 2018

Congress of the United States  
House of Representatives  
Washington, DC 20515

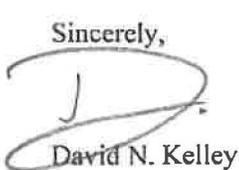
Dear Representatives Goodlatte and Gowdy:

I write on behalf of my client, former FBI Director James B. Comey, and in response to your letter to me dated September 21, 2018, in which you, on behalf of the House Committee on the Judiciary and the Committee on Oversight and Government Reform, request a transcribed, closed door interview of Mr. Comey. We understand from your correspondence that your committees are jointly investigating "decisions made and not made during the 2016 election by the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI)."

Mr. Comey respectfully declines your request for a private interview. He would, however, welcome the opportunity to testify at a public hearing. Given that Mr. Comey no longer has a security clearance, we do not anticipate the public setting to present concerns about the disclosure of classified information. Moreover, we also expect that, because any information about which you may inquire was acquired by Mr. Comey while he was in the employ of the FBI, you will obtain in advance the necessary approvals from the FBI for Mr. Comey to disclose FBI information that may be responsive to your examination.

Because Mr. Comey has a variety of commitments in the coming months, please contact me as soon as possible to schedule a hearing date.

Sincerely,

  
David N. Kelley



cc: The Honorable Jerrold Nadler  
Ranking Member, Committee on the Judiciary

The Honorable Elijah Cummings  
Ranking Member, Committee on Oversight and Government Reform

4846796

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

---

IN RE SUBPOENA OF JAMES COMEY BY )  
AUTHORITY OF THE HOUSE OF ) Case No. 1:18-mc-00174-TNM  
REPRESENTATIVES OF THE CONGRESS OF THE )  
UNITED STATES OF AMERICA )

---

**EXHIBIT E**

## Baker, Arthur

---

**From:** Baker, Arthur  
**Sent:** Monday, November 19, 2018 12:10 PM  
**To:** Kelley, David  
**Subject:** RE: James Comey

Mr. Kelley, as a follow-up, it appears that since Mr. Comey has personal matters to attend to on November 29<sup>th</sup>, a subpoena for the week of the Dec 3<sup>rd</sup> is being processed. Thank you

---

**From:** Baker, Arthur  
**Sent:** Sunday, November 18, 2018 12:12 PM  
**To:** Kelley, David  
**Subject:** Re: James Comey

Hi Mr Kelley. Sorry for the Sunday intrusion, but I wanted to let you know that in the event of litigation, the Committee would be represented by Tom Hungar, the House General Counsel. Thank you and enjoy the remainder of the weekend

Arthur Baker

Sent from my iPhone

On Nov 16, 2018, at 6:40 PM, Kelley, David <[David.Kelley@dechert.com](mailto:David.Kelley@dechert.com)> wrote:

I am authorized to accept service thanks. Electronically will do. As I indicated on the phone let me know if you or someone else will be representing the committee in the likely event we litigate the subpoena.

**David N. Kelley**  
Partner

**Dechert LLP**  
1095 Avenue of the Americas  
New York, NY 10036-6797  
+1 212 698 3580  
+1 212 698 3599 Fax  
david.kelley@dechert.com  
www.dechert.com

On Nov 16, 2018, at 4:35 PM, Baker, Arthur <[Arthur.Baker@mail.house.gov](mailto:Arthur.Baker@mail.house.gov)> wrote:

Mr. Kelley,

Regarding your letter of October 1, 2018 informing Representatives Goodlatte and Gowdy of former Director Comey's declination of a private interview, the House Judiciary Committee has determined that it is necessary to subpoena Director Comey. This will be for an *interview* before the Judiciary Committee and the Committee on Oversight and Government Reform. As you know, these Committees have been investigating decisions made and not made during the 2016 election by the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI).

***Please advise me ASAP if you will accept service of the subpoena on behalf of your client.*** Thank you

Arthur Baker

[Arthur.Baker@mail.house.gov](mailto:Arthur.Baker@mail.house.gov)

202-225-5727

---

This e-mail is from Dechert LLP, a law firm, and may contain information that is confidential or privileged. If you are not the intended recipient, do not read, copy or distribute the e-mail or any attachments. Instead, please notify the sender and delete the e-mail and any attachments. Thank you.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

---

IN RE SUBPOENA OF JAMES COMEY BY )  
AUTHORITY OF THE HOUSE OF ) Case No. 1:18-mc-00174-TNM  
REPRESENTATIVES OF THE CONGRESS OF THE )  
UNITED STATES OF AMERICA )

---

**EXHIBIT F**

**Baker, Arthur**

---

**From:** Baker, Arthur  
**Sent:** Wednesday, November 21, 2018 4:47 PM  
**To:** 'Kelley, David'  
**Cc:** Somers, Zachary  
**Subject:** RE: James Comey  
**Attachments:** Comey Subpoena signed w proof of service.pdf

Mr. Kelley, per our previous discussions and emails, please find attached a subpoena for Mr. Comey, requiring his appearance for a deposition at the Rayburn House Office Building, Room 2138, on December 3, 2018, at 10:00 a.m. Thank you

---

**From:** Kelley, David [<mailto:David.Kelley@dechert.com>]  
**Sent:** Friday, November 16, 2018 6:40 PM  
**To:** Baker, Arthur  
**Subject:** Re: James Comey

I am authorized to accept service thanks. Electronically will do. As I indicated on the phone let me know if you or someone else will be representing the committee in the likely event we litigate the subpoena.

**David N. Kelley**  
Partner

**Dechert LLP**  
1095 Avenue of the Americas  
New York, NY 10036-6797  
+1 212 698 3580  
+1 212 698 3599 Fax  
 david.kelley@dechert.com  
 www.dechert.com

On Nov 16, 2018, at 4:35 PM, Baker, Arthur <[Arthur.Baker@mail.house.gov](mailto:Arthur.Baker@mail.house.gov)> wrote:

Mr. Kelley,

Regarding your letter of October 1, 2018 informing Representatives Goodlatte and Gowdy of former Director Comey's declination of a private interview, the House Judiciary Committee has determined that it is necessary to subpoena Director Comey. This will be for an *interview* before the Judiciary Committee and the Committee on Oversight and Government Reform. As you know, these Committees have been investigating decisions made and not made during the 2016 election by the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI).

***Please advise me ASAP if you will accept service of the subpoena on behalf of your client.*** Thank you

Arthur Baker  
[Arthur.Baker@mail.house.gov](mailto:Arthur.Baker@mail.house.gov)  
202-225-5727

This e-mail is from Dechert LLP, a law firm, and may contain information that is confidential or privileged. If you are not the intended recipient, do not read, copy or distribute the e-mail or any attachments. Instead, please notify the sender and delete the e-mail and any attachments. Thank you.

### SUBPOENA

#### BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To James Comey, Former Director of the Federal Bureau of Investigation

You are hereby commanded to be and appear before the  
Committee on the Judiciary

of the House of Representatives of the United States at the place, date, and time specified below.

- to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: \_\_\_\_\_  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

- to testify at a deposition touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: 2138 Rayburn House Office Building  
Date: December 3, 2018 Time: 10:00 a.m.

- to testify at a hearing touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: \_\_\_\_\_  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

To any authorized staff member or the U.S. Marshals Service

\_\_\_\_\_ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at  
the city of Washington, D.C. this 21st day of November, 2018.

Bob Goodlatte  
Chairman or Authorized Member

Attest:

Karen P. Haas  
Clerk

**PROOF OF SERVICE**

---

Subpoena for

James Comey, Former Director of the Federal Bureau of Investigation

Address c/o David N. Kelley, Dechert LLP, 1095 Avenue of the Americas, New York, NY 10036

---

before the Committee on the Judiciary

---

*U.S. House of Representatives  
115th Congress*

---

Served by (print name) Arthur Baker

Title Chief Investigative Counsel

Manner of service Electronic delivery

---

Date 11/21/2018

Signature of Server /s Arthur Baker

Address 2138 Rayburn House Office Building

Washington, D.C. 20515

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

---

IN RE SUBPOENA OF JAMES COMEY BY )  
AUTHORITY OF THE HOUSE OF ) Case No. 1:18-mc-00174-TNM  
REPRESENTATIVES OF THE CONGRESS OF THE )  
UNITED STATES OF AMERICA )

---

**EXHIBIT G**

**Hamm, Kimberly**

---

**Subject:** FW: Mr. Comey

---

**From:** Baker, Arthur  
**Sent:** Wednesday, November 28, 2018 4:03 PM  
**To:** 'Kelley, David'  
**Subject:** Mr. Comey

Mr. Kelley,

Per our recent telephone call, the Committee proposes to your client the idea of proceeding with the private interview/deposition format, *but* releasing the transcripts of that as soon as they are available. This would address transparency concerns. Additionally, controls on information prior to the transcript release would be addressed. I understand that Mr. Comey may be unavailable for consultation today, but I look forward to your response. Thank you

Arthur Baker  
202-226-6503

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

---

IN RE SUBPOENA OF JAMES COMEY BY )  
AUTHORITY OF THE HOUSE OF ) Case No. 1:18-mc-00174-TNM  
REPRESENTATIVES OF THE CONGRESS OF THE )  
UNITED STATES OF AMERICA )

---

**EXHIBIT H**

H536

CONGRESSIONAL RECORD—HOUSE

January 13, 2017

office as a Member of the new 115th Congress of the United States and given that next week we will watch President-elect Trump also take the oath of office, I want to share a few thoughts on the deep importance of this constitutional duty that we share.

Mr. Speaker, as you are aware, last week on Capitol Hill was marked by a day of celebration. It was a day of renewal of friendships, even between people who have deep, deep disagreements in this body. Families and guests all gathered to share in the moment's excitement and meaning, and Members of Congress congratulated one another on their recent victories. We all took a reprieve from the intensity of the policy debate for just a moment. But amidst all of that swirl of activity, the day was set apart by the oath of office.

Mr. Speaker, the oath lays down a clear marker of the serious obligations ahead for all of us. In our day and time, we no longer are deeply connected to this concept of oath. We see it in the courtroom when somebody is required to tell the truth. We will see it again next week when President-elect Trump is sworn in. But we rarely take the time to reflect on its deeper meaning.

We see it more like an old tradition, a nostalgic option that we exercise out of deference to our history. However, the oath is much, much more. It is a solemn declaration. It is a pause, the start of sacred duty.

By taking an oath, you effectively hold your very self at ransom. You commit, at the deepest levels, that you will perform the tasks ahead of you to the best of your ability.

The oath is the ultimate test and measure of integrity. If you violate it, you tear at the center of your being, to the detriment of not only yourself but to the community, to those you are sworn to serve. This is a very high bar, indeed, Mr. Speaker.

I am reminded of the words of Sir Thomas More, who was the Lord High Chancellor of England during the 16th century. He strove to live a life worthy of excellence in public service. But in the end, he was put to death by the very state that he sought to so nobly serve.

In an earlier reflection on the idea of oath, Sir Thomas More had this to say:

"When a man takes an oath, he's holding his own self in his own hands like water, and if he opens his fingers then, he needn't hope to find himself again."

Mr. Speaker, throughout that wonderful day last week of our swearing in here in the body, I was reflecting personally on a singular word. That word is replenishment.

Our American system of governance has an extraordinary capacity to replenish itself with new ideas, new people, and refreshed perspectives. Our political system starts with the belief that political power is derived from each person's dignity.

By voting, citizens invest that very power in the Representatives that are

sent here to make judgments on their behalf. But, of course, to earn that right in the first place, the Representative must make his case to the people. In spite of the drama, in spite of the raucous nature of elections—and we have just come through one—the fact that America goes through this cycle of constant replenishment is truly an extraordinary gift.

Mr. Speaker, as I stood in the center aisle right here last week, I raised my right hand. I raised it right along with everyone else who is a Member of this new 115th Congress, and I took that oath of office.

Mr. Speaker, I just think it is worthwhile to read these powerful words:

"I do solemnly swear, or affirm, that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God."

Mr. Speaker, indeed, this is a very high bar. This is a sacred duty. This is a solemn task. It sets this body and our system of governance apart by forcing each of us who have been given this extraordinary privilege of taking on the heavy mantle and weighty responsibility of making decisions on behalf of this great country, and to do so to the best of our ability, having put our very self, the integrity of what it means to be a person, on the line to uphold that commitment.

Mr. Speaker, I yield back the balance of my time.

#### 115TH CONGRESS STAFF DEPOSITION AUTHORITY PROCEDURES

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON RULES,

WASHINGTON, DC, JANUARY 13, 2017.

Hon. PAUL D. RYAN,  
*Speaker, House of Representatives,*  
*Washington, DC.*

MR. SPEAKER: Pursuant to section 3(b)(2) of House Resolution 5, 115th Congress, I hereby submit the following regulations regarding the conduct of depositions by committee and select committee staff for printing in the Congressional Record.

Sincerely,

PETE SESSIONS,  
*Chairman, Committee on Rules.*

#### 115TH CONGRESS STAFF DEPOSITION AUTHORITY PROCEDURES

1. Notices for the taking of depositions shall specify the date, time, and place of examination (if other than within the committee offices). Depositions shall be taken under oath administered by a member or a person otherwise authorized to administer oaths.

2. Consultation with the ranking minority member shall include three days notice before any deposition is taken. All members of the committee shall also receive three days notice that a deposition will be taken. For purposes of these procedures, a day shall not include Saturdays, Sundays, or legal holidays except when the House is in session on such a day.

3. Witnesses may be accompanied at a deposition by personal, nongovernmental coun-

sel to advise them of their rights. Only members, committee staff designated by the chair or ranking minority member, an official reporter, the witness, and the witness's counsel are permitted to attend. The chair of the committee that noticed the deposition may designate that deposition as part of a joint investigation between committees. If such a designation is made, the chair and ranking minority member of the committee that provided notice of such deposition may each also designate up to two committee staff from committees designated as part of the joint investigation to attend the deposition after consultation with the chair or ranking minority member of the designated committees. Observers or counsel for other persons, including counsel for government agencies, may not attend.

4. If member attendance is required, the deposition will stand in recess for any period in which a member is not present.

5. A deposition shall be conducted by any member or staff attorney designated by the chair or ranking minority member. When depositions are conducted by committee staff attorneys, there shall be no more than two committee staff attorneys permitted to question a witness per round. One of the committee staff attorneys shall be designated by the chair and the other by the ranking minority member per round. Other committee staff members designated by the chair or ranking minority member, including designated staff from additional committees in the case of a joint investigation, may attend, but may not question the witness.

6. Deposition questions shall be propounded in rounds. The length of each round shall be determined by the chair after consultation with the ranking minority member, shall not exceed 90 minutes per side, and shall provide equal time to the majority and the minority. In each round, a member or committee staff attorney designated by the chair shall ask questions first, and the member or committee staff attorney designated by the ranking minority member shall ask questions second.

7. Only the witness or the witness's personal counsel may make objections during a deposition. Objections must be stated concisely and in a non-argumentative and non-suggestive manner. A committee may punish counsel who violate these requirements by censure, and by suspension or exclusion, either generally or in a particular investigation, from further representation of clients before the committee. A committee may also cite the counsel to the House for contempt. If the witness raises an objection, the deposition will proceed, and testimony taken is subject to any objection. The witness may refuse to answer a question only to preserve a testimonial privilege. When the witness has objected and refused to answer a question to preserve a testimonial privilege, the chair of the committee may rule on any such objection after the deposition has recessed. If the chair overrules any such objection and thereby orders a witness to answer any question to which a testimonial privilege objection was lodged, such ruling shall be filed with the clerk of the committee and shall be provided to the members and the witness no less than three days before the reconvened deposition. If the witness or a member of the committee chooses to appeal the ruling of the chair, such appeal must be made within three days, in writing, and shall be preserved for committee consideration. A deponent who refuses to answer a question after being directed to answer by the chair in writing may be subject to sanction, except that no sanctions may be imposed if the ruling of the chair is reversed on appeal.

January 13, 2017

## CONGRESSIONAL RECORD—HOUSE

H537

8. Committee chairs shall ensure that the testimony is either transcribed or electronically recorded or both. If a witness's testimony is transcribed, the witness or the witness's counsel shall be afforded an opportunity to review a copy. No later than five days after a transcript is made available to the witness, the witness may submit suggested changes to the chair. Committee staff may make any typographical and technical changes. Substantive changes, modifications, clarifications, or amendments to the deposition transcript submitted by the witness must be accompanied by a letter signed by the witness requesting the changes and a statement of the witness's reasons for each proposed change. Any substantive changes, modifications, clarifications, or amendments shall be included as an appendix to the transcript conditioned upon the witness signing the transcript.

9. The individual administering the oath, if other than a member, shall certify on the transcript that the witness was duly sworn. The transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall be filed, together with any electronic recording, with the clerk of the committee in Washington, DC. Depositions shall be considered to have been taken in Washington, DC, as well as the location actually taken once filed there with the clerk of the committee for the committee's use. The chair and the ranking minority member shall be provided with a copy of the transcripts of the deposition at the same time.

10. The chair and ranking minority member shall consult regarding the release of deposition transcripts and recordings. If either objects in writing to a proposed release of a deposition transcript or recording, or a portion thereof, the matter shall be promptly referred to the committee for resolution.

11. A witness shall not be required to testify unless the witness has been provided with a copy of Rule XI of the Rules of the House of Representatives and these procedures.

## PUBLICATION OF COMMITTEE RULES

### RULES OF THE COMMITTEE ON ARMED SERVICES FOR THE 115TH CONGRESS

Mr. THORNBERRY. Mr. Speaker, I respectfully submit the Rules of the Committee on Armed Services for the 115th Congress, as adopted by the committee on January 12, 2017.

#### RULE 1. GENERAL PROVISIONS

(a) The Rules of the House of Representatives are the rules of the Committee on Armed Services (hereinafter referred to in these rules as the "Committee") and its subcommittees so far as applicable.

(b) Pursuant to clause 2(a)(2) of rule XI of the Rules of the House of Representatives, the Committee's rules shall be publicly available in electronic form and published in the Congressional Record not later than 30 days after the chair of the committee is elected in each odd-numbered year.

#### RULE 2. FULL COMMITTEE MEETING DATE

(a) The Committee shall meet every Wednesday at 10:00 a.m., when the House of Representatives is in session, and at such other times as may be fixed by the Chairman of the Committee (hereinafter referred to as the "Chairman"), or by written request of members of the Committee pursuant to clause 2(c) of rule XI of the Rules of the House of Representatives.

(b) A Wednesday meeting of the Committee may be dispensed with by the Chairman, but

such action may be reversed by a written request of a majority of the members of the Committee.

#### RULE 3. SUBCOMMITTEE MEETING DATES

Each subcommittee is authorized to meet, hold hearings, receive evidence, and report to the Committee on all matters referred to it. Insofar as possible, meetings of the Committee and its subcommittees shall not conflict. A subcommittee Chairman shall set meeting dates after consultation with the Chairman, other subcommittee Chairmen, and the Ranking Minority Member of the subcommittee with a view toward avoiding, whenever possible, simultaneous scheduling of Committee and subcommittee meetings or hearings.

#### RULE 4. JURISDICTION AND MEMBERSHIP OF COMMITTEE AND SUBCOMMITTEES

##### (a) Jurisdiction

(1) The Committee retains jurisdiction of all subjects listed in clause 1(c) and clause 3(b) of rule X of the Rules of the House of Representatives and retains exclusive jurisdiction for: defense policy generally, ongoing military operations, the organization and reform of the Department of Defense and Department of Energy, counter-drug programs, security and humanitarian assistance (except special operations-related activities) of the Department of Defense, acquisition and industrial base policy, technology transfer and export controls, joint interoperability, detainee affairs and policy, force protection policy and inter-agency reform as it pertains to the Department of Defense and the nuclear weapons programs of the Department of Energy. In addition the committee will be responsible for intelligence policy (including coordination of military intelligence programs), national intelligence programs, and Department of Defense elements that are part of the Intelligence Community. While subcommittees are provided jurisdictional responsibilities in subparagraph (2), the Committee retains the right to exercise oversight and legislative jurisdiction over all subjects within its purview under rule X of the Rules of the House of Representatives.

(2) The Committee shall be organized to consist of seven standing subcommittees with the following jurisdictions:

Subcommittee on Tactical Air and Land Forces: All Army, Air Force and Marine Corps acquisition programs (except Marine Corps amphibious assault vehicle programs, strategic missiles, space, lift programs, special operations, science and technology programs, and information technology accounts) and the associated weapons systems sustainment. In addition, the subcommittee will be responsible for Navy and Marine Corps aviation programs and the associated weapons systems sustainment, National Guard and Army, Air Force and Marine Corps Reserve modernization, and ammunition programs.

Subcommittee on Military Personnel: Military personnel policy, Reserve Component integration and employment issues, military health care, military education, and POW/MIA issues. In addition, the subcommittee will be responsible for Morale, Welfare and Recreation issues and programs.

Subcommittee on Readiness: Military readiness, training, logistics and maintenance issues and programs. In addition, the subcommittee will be responsible for all military construction, depot policy, civilian personnel policy, environmental policy, installations and family housing issues, including the base closure process, and energy policy and programs of the Department of Defense.

Subcommittee on Seapower and Projection Forces: Navy acquisition programs, Naval Reserve equipment, and Marine Corps am-

phibious assault vehicle programs (except strategic weapons, space, special operations, science and technology programs), and information technology programs), deep strike bombers and related systems, lift programs, seaborne unmanned aerial systems and the associated weapons systems sustainment. In addition, the subcommittee will be responsible for Maritime programs under the jurisdiction of the Committee as delineated in paragraphs 5 and 9 of clause 1(c) of rule X of the Rules of the House of Representatives.

Subcommittee on Strategic Forces: Strategic weapons (except deep strike bombers and related systems), space programs (including national intelligence space programs), ballistic missile defense, the associated weapons systems sustainment, and Department of Energy national security programs.

Subcommittee on Emerging Threats and Capabilities: Defense-wide and joint enabling activities and programs to include: Special Operations Forces; counter-proliferation and counter-terrorism programs and initiatives; science and technology policy and programs; information technology programs; homeland defense and Department of Defense related consequence management programs; related intelligence support; and other enabling programs and activities to include cyber operations, strategic communications, and information operations; and the Cooperative Threat Reduction program.

Subcommittee on Oversight and Investigations: Any matter within the jurisdiction of the Committee, subject to the concurrence of the Chairman of the Committee and, as appropriate, affected subcommittee chairmen. The subcommittee shall have no legislative jurisdiction.

##### (b) Membership of the Subcommittees

(1) Subcommittee memberships, with the exception of membership on the Subcommittee on Oversight and Investigations, shall be filled in accordance with the rules of the Majority party's conference and the Minority party's caucus, respectively.

(2) The Chairman and Ranking Minority Member of the Subcommittee on Oversight and Investigations shall be filled in accordance with the rules of the Majority party's conference and the Minority party's caucus, respectively. Consistent with the party ratios established by the Majority party, all other Majority members of the subcommittee shall be appointed by the Chairman of the Committee, and all other Minority members shall be appointed by the Ranking Minority Member of the Committee.

(3) The Chairman of the Committee and Ranking Minority Member thereof may sit as ex officio members of all subcommittees. Ex officio members shall not vote in subcommittee hearings or meetings or be taken into consideration for the purpose of determining the ratio of the subcommittees or establishing a quorum at subcommittee hearings or meetings.

(4) A member of the Committee who is not a member of a particular subcommittee may sit with the subcommittee and participate during any of its hearings but shall not have authority to vote, cannot be counted for the purpose of achieving a quorum, and cannot raise a point of order at the hearing.

#### RULE 5. COMMITTEE PANELS AND TASK FORCES

##### (a) Committee Panels

(1) The Chairman may designate a panel of the Committee consisting of members of the Committee to inquire into and take testimony on a matter or matters that fall within the jurisdiction of more than one subcommittee and to report to the Committee.

(2) No panel appointed by the Chairman shall continue in existence for more than six months after the appointment. A panel so

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

---

IN RE SUBPOENA OF JAMES COMEY BY )  
AUTHORITY OF THE HOUSE OF ) Case No. 1:18-mc-00174-TNM  
REPRESENTATIVES OF THE CONGRESS OF THE )  
UNITED STATES OF AMERICA )

---

**EXHIBIT I**

## H. Res. 5

### *In the House of Representatives, U. S.,*

*January 3, 2017.*

*Resolved,* That the Rules of the House of Representatives of the One Hundred Fourteenth Congress, including applicable provisions of law or concurrent resolution that constituted rules of the House at the end of the One Hundred Fourteenth Congress, are adopted as the Rules of the House of Representatives of the One Hundred Fifteenth Congress, with amendments to the standing rules as provided in section 2, and with other orders as provided in sections 3, 4, and 5.

#### **SEC. 2. CHANGES TO THE STANDING RULES.**

##### (a) DECORUM.—

(1) In clause 3 of rule II, add the following new paragraph:

“(g)(1) The Sergeant-at-Arms is authorized and directed to impose a fine against a Member, Delegate, or the Resident Commissioner for the use of an electronic device for still photography or for audio or visual recording or broadcasting in contravention of clause 5 of rule

practicable) how the amendment proposes to change current law, showing by appropriate typographical devices the omissions and insertions proposed.

“(b) If a committee reports a bill or joint resolution, before the bill or joint resolution may be considered with text different from the text reported, there shall be made available on a publicly available website of the House a document that shows, by appropriate typographical devices, the differences between the text of the bill or joint resolution as proposed to be considered and the text of the bill or joint resolution as reported.”.

(t) APPOINTMENT OF CHAIR.—Clause 1 of rule XVIII is amended by inserting “, Delegate, or the Resident Commissioner” after “Member”.

**SEC. 3. SEPARATE ORDERS.**

(a) HOLMAN RULE.—During the first session of the One Hundred Fifteenth Congress, any reference in clause 2 of rule XXI to a provision or amendment that retrenches expenditures by a reduction of amounts of money covered by the bill shall be construed as applying to any provision or amendment (offered after the bill has been read for amendment) that retrenches expenditures by—

- (1) the reduction of amounts of money in the bill;
- (2) the reduction of the number and salary of the officers of the United States; or

(3) the reduction of the compensation of any person paid out of the Treasury of the United States.

(b) STAFF DEPOSITION AUTHORITY.—

(1) During the One Hundred Fifteenth Congress, the chair of a standing committee (other than the Committee on House Administration or the Committee on Rules), and the chair of the Permanent Select Committee on Intelligence, upon consultation with the ranking minority member of such committee, may order the taking of depositions, including pursuant to subpoena, by a member or counsel of such committee.

(2) Depositions taken under the authority prescribed in this subsection shall be subject to regulations issued by the chair of the Committee on Rules and printed in the Congressional Record.

(3) At least one member of the committee shall be present at each deposition taken under the authority prescribed in this subsection, unless—

(A) the witness to be deposed agrees in writing to waive this requirement; or

(B) the committee authorizes the taking of a specified deposition without the presence of a member during a specified period, provided that the House is not in session on the day of the deposition.