

House Calendar No. 78

118TH CONGRESS }
2d Session } HOUSE OF REPRESENTATIVES { REPORT
118-527

RESOLUTION RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES
FIND UNITED STATES ATTORNEY GENERAL MERRICK B. GARLAND IN
CONTEMPT OF CONGRESS FOR REFUSAL TO COMPLY WITH A SUBPOENA
DULY ISSUED BY THE COMMITTEE ON THE JUDICIARY

MAY 24, 2024.—Referred to the House Calendar and ordered to be printed

Mr. JORDAN, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

The Committee on the Judiciary, having considered this Report, reports favorably thereon and recommends that the Report be approved.

The form of the Resolution that the Committee on the Judiciary would recommend to the House of Representatives citing Merrick B. Garland, Attorney General, U.S. Department of Justice, for contempt of Congress pursuant to this Report is as follows:

Resolved, That Merrick B. Garland, Attorney General, U.S. Department of Justice, shall be found to be in contempt of Congress for failure to comply with a congressional subpoena.

Resolved, That pursuant to 2 U.S.C. §§ 192 and 194, the Speaker of the House of Representatives shall certify the report of the Committee on the Judiciary, detailing the refusal of Merrick B. Garland, Attorney General, U.S. Department of Justice, to produce documents, records, and materials to the Committee on the Judiciary as directed by subpoena, to the United States Attorney for the District of Columbia, to the end that Attorney General Merrick B. Garland be proceeded against in the manner and form provided by law.

Resolved, That the Speaker of the House shall otherwise take all appropriate action to enforce the subpoena.

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Executive Summary

In the weeks following the February 5, 2024, release of Special Counsel Robert K. Hur’s report, the three House Committees conducting an impeachment inquiry to determine whether to draft articles of impeachment against President Joseph R. Biden¹ engaged with the Department of Justice to obtain a limited set of documents and records related to the report. After the Department declined to provide the Committees with the relevant documents and records, the Committee on the Judiciary (“Judiciary Committee”) and the Committee on Oversight and Accountability (“Oversight Committee”) issued identical subpoenas on February 27, 2024, to Attorney General Merrick B. Garland compelling production of four specific categories of documents and records, including audio and video recordings of Special Counsel Hur’s interviews with President Biden and his ghostwriter, Mark Zwonitzer.² The Judiciary Committee subpoenaed these materials for several reasons—including to determine whether sufficient grounds exist to draft articles of impeachment against President Biden for consideration by the full House of Representatives and to determine if legislation is needed to codify procedures governing the Department’s special counsel investigations or to strengthen the Department’s commitment to impartial justice. To date, the Department has refused to produce the audio recordings.

During Special Counsel Hur’s investigation, his team uncovered evidence that President Biden “willfully retained and disclosed classified materials after his vice presidency when he was a private citizen.”³ Special Counsel Hur found that then-Vice President Biden had “strong motivations” to flout the rules for properly handling classified materials.⁴ In particular, Special Counsel Hur observed that “months before leaving office” as vice president, President Biden decided to write a book for “an advance of \$8 million.”⁵ The classified materials retained by President Biden were an “invaluable resource that he consulted liberally” while writing his book so that he could give his ghostwriter “raw material . . . detailing meetings and events that would be of interest to prospective readers and buyers of his book.”⁶ Additionally, Special Counsel Hur observed that President Biden viewed the classified materials “as an irreplaceable contemporaneous record of some of the most

¹H.R. Res. 918, 118th Cong. (2023).

²Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Hon. Merrick B. Garland, Att’y Gen., U.S. Dep’t of Justice (Feb. 27, 2024) (hereinafter “Subpoena Letter”).

³REPORT ON THE INVESTIGATION INTO UNAUTHORIZED REMOVAL, RETENTION, AND DISCLOSURE OF CLASSIFIED DOCUMENTS DISCOVERED AT LOCATIONS INCLUDING THE PENN BIDEN CENTER AND THE DELAWARE PRIVATE RESIDENCE OF PRESIDENT JOSEPH R. BIDEN, JR., SPECIAL COUNSEL ROBERT K. HUR, U.S. DEP’T OF JUSTICE AT 1 (Feb. 2024) (hereinafter “Hur Report”).

⁴*Id.* at 231.

⁵*Id.* at 141, 231.

⁶*Id.* at 231.

important moments of his vice presidency[,]” which “was valuable to him for many reasons, including to help defend his record and buttress his legacy as a world leader.”⁷ Despite this evidence, Special Counsel Hur ultimately concluded that no criminal charges were warranted.⁸

President Biden has vehemently denied the findings in Special Counsel Hur’s report and he and his legal team have attempted to frame Special Counsel Hur’s mention of President Biden’s poor memory as “gratuitous.”⁹ Yet during his testimony before the Committee, Special Counsel Hur stated that, “[t]he evidence and the President himself put his memory squarely at issue.”¹⁰ In his report, Special Counsel Hur noted that, during both his and Zwonitzer’s interviews with President Biden, the president’s “memory was significantly limited,” and he “struggle[ed] to remember events and strain[ed] at times to read and relay his own [handwriting].”¹¹ Special Counsel Hur also observed that President Biden “did not remember when he was vice president,” “for[got] when his [vice presidential] term ended,” and “did not remember, even within several years, when his son Beau died.”¹²

The Department continues to withhold key material responsive to the subpoenas from the Judiciary and Oversight Committees—specifically the audio recordings of Special Counsel Hur’s interviews with President Biden and Zwonitzer. Its failure to fully comply with the Committees’ subpoenas has hindered the House’s ability to adequately conduct oversight over Special Counsel Hur regarding his investigative findings and the President’s retention and disclosure of classified materials and impeded the Committees’ impeachment inquiry.

Authority and Purpose

The Constitution vests the House of Representatives with the “sole Power of Impeachment”¹³ and provides that the “President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”¹⁴ As the U.S. Court of Appeals for the District of Columbia Circuit has stated, “[t]o level the grave accusation that a President may have committed ‘Treason, Bribery, or other high Crimes and Misdemeanors,’ U.S. Const. art. II, §4, the House must be appropriately in-

⁷*Id.* at 231–32.

⁸*Id.* at 345.

⁹Rebecca Beitsch, et al., *Special counsel overstepped mandate with ‘gratuitous’ Biden slams, say ex-DOJ Dems*, THE HILL (Feb. 12, 2024) (“When the inevitable conclusion is that the facts and the evidence don’t support any charges,” said Ian Sams, a spokesman for the White House’s special counsel office, “you’re left to wonder why this report spends time making gratuitous and inappropriate criticisms of the president.”); see Letter from Mr. Richard Sauber, Special Counsel to the President, The White House, and Mr. Bob Bauer, Personal Counsel to Joseph R. Biden, Jr., to Mr. Bradley Weinsheimer, Assoc. Deputy Att’y Gen., U.S. Dep’t of Justice at 2–3 (Feb. 12, 2024) (“This is the very definition of a derogatory comment”. . . .).

¹⁰Hearing on the Report of Special Counsel Robert Hur: Hearing Before the H. Comm. on the Judiciary, 118th Cong. 17 (2024) (statement of Special Counsel Robert K. Hur, U.S. Dep’t of Justice) (hereinafter “Hearing on Hur Report”).

¹¹Hur Report, *supra* note 3, at 207.

¹²*Id.* at 207–08.

¹³U.S. CONST. art. I, §2, cl. 5.

¹⁴*Id.* art. II, §4.

formed.”¹⁵ Congress’s authority to access information during an impeachment investigation is broader in certain instances than in a purely legislative investigation,¹⁶ a fact that the executive branch traditionally has recognized.¹⁷ Investigating and collecting all relevant evidence is the traditional means by which the House begins an impeachment inquiry.¹⁸ Indeed, conducting an impeachment inquiry without all pertinent evidence would be an affront to the Constitution and irreparably damage public faith in the impeachment process.¹⁹

On September 27, 2023, pursuant to the directive of the Speaker, the Chairs of three House Committees (the Judiciary, Oversight, and Ways and Means Committees) released a memorandum setting forth the justification for and scope of the inquiry into whether sufficient grounds exist to draft articles of impeachment against President Biden.²⁰ On December 13, 2023, the House of Representatives adopted House Resolution 918, directing these three Committees to continue the ongoing impeachment inquiry.²¹ By approving House Resolution 918, the House also adopted House Resolution 917,²² which provided that “[t]he authority provided by clause 2(m) of rule XI of the Rules of the House of Representatives to the Chairs of the Committees . . . included, from the beginning of the existing House of Representatives impeachment inquiry . . . and continues to include, so long as the impeachment inquiry is ongoing, the authority to issue subpoenas on behalf of such Committees for the purpose of furthering the impeachment inquiry.”²³

¹⁵*Comm. on Judiciary of U.S. House of Representatives v. McGahn*, 968 F.3d 755, 765 (D.C. Cir. 2020) (en banc).

¹⁶TODD GARVEY, CONG. RSCH. SERV.: LEGAL SIDEBAR, LSB11083, IMPEACHMENT INVESTIGATIONS, PART II: ACCESS, at 1 (2023) (“[T]here is reason to believe that invocation of the impeachment power could improve the committees’ legal claims of access to certain types of evidence relevant to the allegations of misconduct against President Biden.”). See also *In re Application of Comm. on Judiciary*, 414 F. Supp. 3d 129, 176 (D.D.C. 2019) (“[D]enying [the House Judiciary Committee] evidence relevant to an impeachment inquiry could pose constitutional problems.”), *aff’d*, 951 F.3d 589 (D.C. Cir. 2020), *vacated and remanded sub nom. on other grounds, DOJ v. House Comm. on the Judiciary*, 142 S. Ct. 46 (2021); *In re Request for Access to Grand Jury Materials*, 833 F.2d 1438, 1445 (11th Cir. 1987) (concluding that “limit[ing] the investigatory power of the House in impeachment proceedings . . . would clearly violate separation of powers principles”).

¹⁷See GARVEY, *supra* note 16 (“As a historical matter, all three branches have suggested that the House possesses a robust right of access to information when it is investigating for impeachment purposes.”); Jonathan David Schaub, *The Executive’s Privilege*, 70 DUKE L.J. 1, 87 (2020) (“[P]residents and others have recognized throughout the history of the country that their ability to withhold information from Congress disappears in the context of impeachment.”).

¹⁸See, e.g., H.R. Rep. No. 116–346, at 28 (2019) (“Here, consistent with historical practice, the House divided its impeachment inquiry into two phases, first collecting evidence and then bringing that evidence before the Judiciary Committee for its consideration of articles of impeachment.”); H.R. Rep. No. 111–427, at 7 (2010) (“[T]he impeachment inquiry was referred by the Committee on the Judiciary to a Task Force on Judicial Impeachment . . . , comprised of 12 Committee Members, to conduct the investigation.”). See also *Hearing on the Basis for the Impeachment Inquiry of President Joseph R. Biden: Before the H. Comm. on Oversight & Accountability*, 118th Cong. (Sept. 28, 2023) (statement of Jonathan Turley, Professor, The George Washington University Law School); Memorandum from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, and Rep. Jason Smith, Chairman, H. Comm. on Ways & Means, to Members of the H. Comm. on the Judiciary, H. Comm. on Oversight & Accountability, and H. Comm. on Ways & Means (Sept. 27, 2023) (hereinafter “Sept. 27 Memo”).

¹⁹See *In re Application of Comm. on Judiciary*, 414 F. Supp. 3d at 176 (“Impeachment based on anything less than all relevant evidence would compromise the public’s faith in the process.”); *In re Request for Access to Grand Jury Materials*, 833 F.2d at 1445 (“Public confidence in a procedure as political and public as impeachment is an important consideration justifying disclosure.”); *In re Report and Recommendation of June 5, 1972 Grand Jury*, 370 F. Supp. 1219, 1230 (D.D.C. 1974) (“It would be difficult to conceive of a more compelling need than that of this country for an unswervingly fair [impeachment] inquiry based on all the pertinent information.”).

²⁰Sept. 27 Memo, *supra* note 18.

²¹H.R. Res. 918, 118th Cong. (2023).

²²H.R. Res. 917, 118th Cong. (2023).

²³*Id.*

The subpoenas issued to the Department by the Judiciary and Oversight Committees are part of the House’s impeachment inquiry. As explained in detail below, the requested documents and materials are necessary to determine whether sufficient grounds exist to draft articles of impeachment against President Biden.

However, the impeachment inquiry is not the only purpose underlying the Committee’s subpoena; it was also issued pursuant to the Committee’s authority to conduct legislative oversight.²⁴ Article I of the Constitution vests in Congress a “broad” and “indispensable” power to conduct oversight and investigations that “encompasses inquiries into the administration of existing laws, studies of proposed laws, and surveys in our social, economic or political system for the purpose of enabling Congress to remedy them.”²⁵ Pursuant to the Rules of the House of Representatives, the Committee on the Judiciary is authorized to conduct oversight of the Department and of criminal justice matters in the United States to inform potential legislative reforms.²⁶

To further the Committee’s constitutionally mandated oversight and legislative duties, the Committee must ensure compliance with duly authorized congressional subpoenas. The information that the Committee requires, and the Department is in possession of, is necessary for the Committee to consider potential legislative reforms to the Department and its use of special counsels to conduct investigations of current and former Presidents of the United States. These potential legislative reforms may include, among other things, codifying certain procedures governing the Department’s special counsel investigations to better ensure that the Department pursues impartial justice. The circumstances of Special Counsel Hur’s investigative findings and President Biden’s public denial of these findings demonstrate why such potential legislative reforms may be necessary.

Background on the Investigation

According to the report of Special Counsel Robert K. Hur, in November 2022, Patrick Moore, one of President Biden’s personal attorneys, discovered 44 pages of documents “classified up to the Top Secret level” stemming from his tenure as Vice President at President Biden’s office in Washington, D.C., located at the Penn Biden Center.²⁷ Moore notified his colleague Bob Bauer, who then notified White House Counsel Stuart Delery.²⁸ The same day, the White House Counsel’s Office passed the information along to the National Archives and Records Administration (NARA), which re-

²⁴ See Rules of the U.S. House of Representatives, R. XI, cl. 2(m)(1) (2023) (providing that “a committee or subcommittee is authorized . . . (B) to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary”); Rules of the H. Comm. on Oversight & Accountability, R. 12(g) (“The Chair of the Committee shall . . . [a]uthorize and issue subpoenas as provided in House Rule XI, clause 2(m), in the conduct of any investigation or activity or series of investigations or activities within the jurisdiction of the Committee.”); Rules of the H. Comm. on the Judiciary, R. IV(a) (“A subpoena may be authorized and issued by the Chair, in accordance with clause 2(m) of rule XI of the House of Representatives, in the conduct of any investigation or activity or series of investigations or activities within the jurisdiction of the Committee, following consultation with the Ranking Minority Member.”).

²⁵ *Watkins v. United States*, 354 U.S. 178, 187, 215 (1957).

²⁶ Rules of the U.S. House of Representatives, R. X, cl. 1(l) (2023).

²⁷ Hur Report, *supra* note 3, at 19 (The classification marks on the documents “dat[ed] back to [President Biden]’s vice presidency”).

²⁸ *Id.*

trieved the documents, and referred the case to the Department and Federal Bureau of Investigation (FBI).²⁹ Additionally, between December 2022 and January 2023, Bauer, Moore, and another Biden personal counsel, Jennifer Miller, discovered additional classified materials, also from his tenure as Vice President, in the garage, basement den, and office of President Biden’s personal residence in Wilmington, Delaware.³⁰ Between January and June 2023, FBI agents located additional materials with classification markings at the Morris Library and Biden Institute at the University of Delaware.³¹

After receiving notification from NARA of the discovery of classified documents at the Penn Biden Center, on November 14, 2022, Attorney General Garland assigned John Lausch, then the U.S. Attorney for the Northern District of Illinois, to lead an investigation into President Biden’s retention of classified materials and “assess whether the Attorney General should appoint a special counsel to investigate the matter.”³² After further discoveries of classified material at President Biden’s home and the University of Delaware, Lausch determined that the appointment of a special counsel was necessary.³³

Accordingly, on January 12, 2023, Attorney General Garland appointed Robert K. Hur to serve as special counsel to investigate whether President Biden unlawfully retained classified information when he left office after the vice presidency.³⁴ During his investigation, Special Counsel Hur conducted 173 interviews of 147 witnesses, including President Biden himself and his memoir ghostwriter, Mark Zwonitzer.³⁵ Special Counsel Hur collected over seven million documents, including e-mails, text messages, photographs, videos, toll records, and other materials from both classified and unclassified sources.³⁶ On February 8, 2024, Attorney General Garland released Special Counsel Hur’s 375-page report, which concluded that although there was evidence that President Biden had “willfully retained and disclosed classified materials” as a private citizen,³⁷ criminal charges were not warranted because, among other things, President Biden is an “elderly man with a poor memory.”³⁸

As a part of the Committees’ inquiry into whether sufficient grounds exist to draft articles of impeachment against President Biden, the Committees have sought information regarding President Biden’s mishandling of classified information.³⁹ The Committees have sought this information to determine whether President Biden willfully retained classified information and documents related to, among other places, Ukraine to assist his family’s busi-

²⁹ *Id.*

³⁰ *Id.* at 24–25.

³¹ *Id.* at 28.

³² *Id.* at 21.

³³ *Id.* at 26.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 29.

³⁷ *Id.* at 1.

³⁸ *Id.* at 220.

³⁹ See Subpoena Letter, *supra* note 2; Letter from Rep. Jamie Comer, Chairman, H. Comm. on Oversight & Accountability; Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary; Jason Smith, Chairman, H. Comm. on Ways & Means, to Merrick Garland, Att’y Gen., Dep’t of Justice (Feb. 12, 2024) (hereinafter “Feb. 12 Letter”); Letter from Rep. Jamie Comer, Chairman, H. Comm. on Oversight & Accountability, to Robert K. Hur, Special Counsel, Dep’t of Justice (Oct. 16, 2023).

ness dealings or to enrich his family.⁴⁰ Doing so would be an abuse of his office of public trust.

Evidence gathered during the Committees’ impeachment inquiry raises the prospect that President Biden willfully retained classified information relating to his family’s business dealings in Ukraine. Then-Vice President Biden served as the “point man” for the Obama Administration’s anti-corruption efforts in Ukraine at the same time that his son, Hunter Biden, served on the board of a notoriously corrupt Ukrainian energy company.⁴¹ By 2015, Ukrainian prosecutors had opened an “unlawful enrichment” investigation into Burisma and its owner, Mykola Zlochevsky.⁴² Shortly thereafter, Mr. Zlochevsky and other Burisma executives approached Hunter Biden, informed him that the investigations placed significant pressure on the company, and asked Hunter Biden if he could help alleviate such pressure.⁴³ Testimony provided to the Committees shows that Hunter Biden subsequently “called D.C.”⁴⁴ After this phone call, in November and December 2015, Vice President Biden purportedly took official actions concerning Ukraine—including meeting with Ukrainian Prime Minister Arseniy Yatsenyuk—and conditioning the United States’s \$1 billion loan “to fight corruption” on the firing of Prosecutor General Shokin.⁴⁵ Withholding the loan guarantee on this condition was contrary to the overwhelming consensus of the Obama Administration.⁴⁶

Special Counsel Hur’s report shows that at least two documents, identified in the report as “A9” and “A10,” which were made available to the Committees *in camera*, concerned President Biden’s 2015 interactions with the Ukrainian government.⁴⁷ According to Special Counsel Hur, document “A9” was “a [t]elephone [c]all [s]heet setting forth the purpose of and talking points for a call with Ukrainian Prime Minister Yatsenyuk,” and document “A10” was a “document in the format of a transcript documenting the substance of a December 11, 2015[,] call between [Vice President] Biden and Ukrainian Prime Minister Yatsenyuk.”⁴⁸ Given that Hunter Biden’s business dealings in Ukraine were still active when Joe Biden left the vice presidency, President Biden’s retention of these classified documents raises questions about whether he purposefully took them when he left office in order to benefit his family.

There is also the prospect that President Biden in general willfully retained classified documents in order to enrich himself and his family. President Biden’s 2017 memoir, *Promise Me, Dad*, discussed, among other things, President Biden’s thoughts on foreign

⁴⁰ *Id.*

⁴¹ Alan Cullison, *Bidens in Ukraine: An Explainer*, WALL ST. J. (Sept. 22, 2019).

⁴² Paul Sonne, et al., *The gas tycoon and the vice president’s son: The story of Hunter Biden’s foray into Ukraine*, WASH. POST (Sept. 28, 2019).

⁴³ Transcribed Interview of Mr. Devon Archer at 33–34 (July 31, 2023) (on file with Committee).

⁴⁴ *Id.* at 36.

⁴⁵ Glenn Kessler, *Inside VP Biden’s linking of a loan to a Ukraine prosecutor’s ouster*, WASH. POST (Sept. 15, 2023).

⁴⁶ *See id.* (“On the plane, according to a person who participated in the conversation, Biden ‘called an audible’—he changed the plan.”).

⁴⁷ Hur Report, *supra* note 4, at A–2.

⁴⁸ *Id.*

policy.⁴⁹ While working with Zwonitzer on his memoir, President Biden read from classified materials “verbatim,” and such classified materials included notes on matters of foreign policy, “meeting notes summariz[ing] the actions and views of U.S. military leaders and CIA director relating to a foreign country,” “notebook entries related to many classified meetings, including National Security Council meetings, CIA briefings, Department of Defense briefings, and other meetings and briefings with foreign policy officials.”⁵⁰ Notably, Special Counsel Hur’s report found that President Biden received an advance of \$8 million to produce a memoir.⁵¹ To the extent that President Biden willfully took classified information when he left office in order to help him write a book and make a large amount of money for himself and his family, that could constitute an abuse of his office of public trust.

On February 12, 2024, approximately four days after the release of Special Counsel Hur’s report, the Chairs of the Judiciary Committee, the Oversight Committee, and the Committee on Ways and Means sent a letter to Attorney General Garland requesting four categories of documents and records: (1) all documents and communications, including audio and video recordings, related to the Special Counsel’s interview of President Biden; (2) all documents and communications, including audio and video recordings, relating to the Special Counsel’s interview of Zwonitzer; (3) the documents identified as “A9” and “A10” in Appendix A of Special Counsel Hur’s report, which relate to President Biden’s December 11, 2015, call with then-Ukrainian Prime Minister Arseniy Yatsenyuk; and (4) all communications between or among representatives of the Department, including the Office of the Special Counsel, the Executive Office of the President, and President Biden’s personal counsel referring or relating to Special Counsel Hur’s report.⁵²

On February 16, 2024, the Department responded to the Committees’ February 12 letter but failed to produce any of the requested material—stating, instead, that it was “working to gather and process” responsive documents.⁵³ The Department offered no timeframe or commitment for the production of requested documents and information.⁵⁴ Accordingly, on February 27, 2024, the Judiciary Committee and the Oversight Committee issued identical subpoenas to Attorney General Garland compelling the production of the four categories of materials:

1. All documents and communications, including audio and video recordings, related to Special Counsel Robert Hur’s interview of President Joseph R. Biden, Jr.;
2. All documents and communications, including audio and video recordings, related to Special Counsel Hur’s interview of Mr. Mark Zwonitzer;
3. The documents identified as “A9” and “A10” in Appendix A of Special Counsel Hur’s report, which relate to President Biden’s December 11, 2015 call with then-Ukrainian Prime Minister Arseniy Yatsenyuk; and

⁴⁹ See, e.g., *id.* at 97.

⁵⁰ *Id.* at 97–106.

⁵¹ *Id.*

⁵² Feb. 12 Letter, *supra* note 39.

⁵³ Letter from Asst. Attorney Gen. Carlos Felipe Uriarte, U.S. Dep’t of Justice, to Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, et al. (Feb. 16, 2024).

⁵⁴ *Id.*

4. All communications between or among representatives of the Department of Justice, including the Office of the Special Counsel, the Executive Office of the President, and President Biden’s personal counsel referring or relating to Special Counsel Hur’s report.⁵⁵

The subpoenas set a return date of March 7, 2024. On that date, the Department produced an incomplete set of documents comprising only correspondence exchanged between President Biden’s legal counsel and the Department, along with an offer to review two classified documents *in camera*.⁵⁶ Two days later, the Committees notified the Department that its initial production in response to the subpoenas was inadequate.⁵⁷ In this letter, the Committees specifically noted that the Department had failed to produce unredacted transcripts and audio recordings of Special Counsel Hur’s interviews of President Biden or Zwonitzer.⁵⁸ Because Special Counsel Hur was scheduled to testify in front of the Judiciary Committee on March 12, 2024, the Committees offered to accept a production of all materials responsive to the Committees’ subpoenas by March 11, 2024, at 3:00 p.m.⁵⁹ The Department failed to comply with the Committees’ revised deadline,⁶⁰ and instead informed the Committees that an “interagency review” for classified and confidential information was pending.⁶¹

On March 12, 2024, a little more than two hours before Special Counsel Hur’s scheduled testimony in front of the Judiciary Committee, the Department produced to the Committees two redacted transcripts of Special Counsel Hur’s interviews with President Biden.⁶² Significantly, the Department failed to produce the audio recordings of the interviews. In its letter accompanying the two redacted transcripts, which was transmitted to the Committees at 7:45 a.m., the Department represented to the Committees that it had just completed the “standard interagency review process” earlier that morning, thereby allowing the material to be released.⁶³ Despite the Department’s representation, however, it was apparent

⁵⁵ Subpoena Letter, *supra* note 2.

⁵⁶ Letter from Hon. Carlos F. Uriarte, Assistant Att’y Gen., Office of Legislative Affairs, U.S. Dep’t of Justice, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Mar. 7, 2024); Letter from Hon. Carlos F. Uriarte, Assistant Att’y Gen., Office of Legislative Affairs, U.S. Dep’t of Justice, to Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability (Mar. 7, 2024); DOJ–HJC–HUR–0000001–0000032.

⁵⁷ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Hon. Merrick B. Garland, Att’y Gen., U.S. Dep’t of Justice (Mar. 9, 2024) (hereinafter “Mar. 9 Letter.”).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Letter from Hon. Carlos F. Uriarte, Assistant Att’y Gen., Office of Legislative Affairs, U.S. Dep’t of Justice, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Mar. 12, 2024); Letter from Hon. Carlos F. Uriarte, Assistant Att’y Gen., Office of Legislative Affairs, U.S. Dep’t of Justice, to Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability (Mar. 12, 2024) (collectively “March 12 Letters”).

⁶¹ Letter from Hon. Merrick Garland, Att’y Gen., U.S. Dep’t of Justice, to Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. Jason Smith, Chairman, H. Comm. on Ways and Means at 2 (Feb. 16, 2024); Email from Office Staff, Office of Legislative Affairs, U.S. Dep’t of Justice, to Comm. Staff, H. Comm. on the Judiciary (Mar. 11, 2024, 3:12 p.m.).

⁶² Email from Office Staff, Office of Legislative Affairs, Dep’t of Justice, to Comm. Staff, H. Comm. on the Judiciary (Mar. 12, 2024, 7:43 a.m.) (hereinafter “DOJ OLA 7:43 a.m. Email”); Email from Office Staff, Office of Legislative Affairs, Dep’t of Justice, to Comm. Staff, H. Comm. on the Judiciary (Mar. 12, 2024, 7:44 a.m.); Email from Office Staff, Office of Legislative Affairs, Dep’t of Justice, to Comm. Staff, H. Comm. on the Judiciary (Mar. 12, 2024, 7:45 a.m.); DOJ–HJC–HUR–0000033–0000290.

⁶³ March 12 Letters, *supra* note 60.

that several news outlets had received and reviewed the transcripts before they were produced to the Committees.⁶⁴

The Committees next wrote to Attorney General Garland on March 25, 2024, regarding the Department’s continued withholding of material responsive to the Committees’ subpoenas, particularly the audio recordings of Special Counsel Hur’s interviews with President Biden and the transcripts and audio recordings of Special Counsel Hur’s interviews with Zwonitzer.⁶⁵ The letter again reminded Attorney General Garland about the legal obligations imposed upon him by the Committees’ subpoenas and directed him to produce all responsive materials no later than 12:00 p.m. on April 8, 2024 to avoid further action on this matter, including the invocation of contempt of Congress proceedings.⁶⁶

The Department replied on April 8, 2024, but again flouted the Committees’ subpoenas, choosing instead to produce only the transcripts of Special Counsel Hur’s two interviews with Zwonitzer, but not the audio recordings.⁶⁷ In a letter to the Committees, the Department explained why it decided to withhold the audio recordings—not because of any applicable legal privilege, but instead based on the Department’s unfounded accusations regarding the Committees’ motives and its self-interested determination that the audio recordings were “cumulative” of other material already produced.⁶⁸ Rather than engaging with the Committees and addressing their articulated reasons for seeking the audio recordings, the Department took it upon itself to dictate to the Committees what materials fulfilled the House’s informational needs.⁶⁹

The Committees addressed the Department’s excuses for failing to comply with the subpoenas in a subsequent letter to Attorney General Garland dated April 15, 2024, writing that his response to the subpoenas suggests he is “withholding records for partisan purposes and to avoid political embarrassment for President Biden.”⁷⁰ In that letter, the Committees rejected the Department’s unsupported assertion that the audio recordings were “cumulative,” explaining how audio recordings are materially distinct from written transcripts and reminding the Attorney General that federal courts have held that Congress requires “*all* relevant evidence” in an impeachment inquiry.⁷¹ The Committees also pointed out that the Department has asserted no constitutional or legal privilege shielding the disclosure of the audio recordings and that any applicable privilege had been waived by the release of the written transcripts to the media.⁷² The Committees also rejected the Department’s un-

⁶⁴ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Hon. Merrick B. Garland, Att’y Gen., U.S. Dep’t of Justice (Apr. 15, 2024) (hereinafter “Apr. 15 Letter”); DOJ OLA 7:43 a.m. Email, *supra* note 53; Mark Swanson, *Rep. Jordan to Newsmax: WH Sat on Biden-Hur Transcripts*, NEWSMAX (Mar. 12, 2024).

⁶⁵ Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Hon. Merrick B. Garland, Att’y Gen., U.S. Dep’t of Justice (Mar. 25, 2024).

⁶⁶ *Id.*

⁶⁷ Letter from Hon. Carlos F. Uriarte, Assistant Att’y Gen., U.S. Dep’t of Justice, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability (Apr. 8, 2024) (hereinafter “Apr. 8 Letter”); DOJ-HJC-HUR-0000291-556.

⁶⁸ Apr. 8 Letter, *supra* note 67.

⁶⁹ *Id.*

⁷⁰ Apr. 15 Letter, *supra* note 64.

⁷¹ *Id.* at 2–3.

⁷² *Id.* at 3.

supported speculation about the Committees’ motives for obtaining the audio recordings, explaining their evidentiary value and highlighting the Department’s hypocritical insistence on a standard of compliance here that it would never allow for a private party.⁷³ The Committees offered the Department until April 25 to produce the withheld materials or else they would consider invoking contempt of Congress proceedings.⁷⁴

The Department again refused to comply. On April 25, 2024, the Department responded to the Committees’ letter and argued, among other things, that the Committees “have not articulated a legitimate congressional need to obtain audio recordings from Mr. Hur’s investigation[,]” and that releasing the audio recordings “would harm law enforcement and the evenhanded administration of justice” because it “would compound the likelihood that future prosecutors will be unable to secure th[e] level of cooperation” that was important to Special Counsel Hur’s investigation.⁷⁵

The Attorney General’s Failure to Produce the Subpoenaed Records Warrants Contempt

The Committees have articulated the impeachment and legislative purpose for their subpoenas to the Attorney General. The Department, at the Attorney General’s direction, continues to withhold relevant records that have been subpoenaed—despite the Committee’s repeated attempts to explain the valid basis for seeking the records.

In the two months since the Committees’ initial requests to the Department, and following the release of Special Counsel Hur’s report, the Department has produced only five letters from President Biden’s White House and personal counsel to the Department, one letter from the Department to President Biden’s White House and personal counsel, redacted transcripts of Special Counsel Hur’s two interviews with President Biden, and redacted transcripts of Special Counsel Hur’s two interviews with Zwonitzer. Additionally, the Department has made available two classified documents *in camera* to the Committees.

The Department’s production of letters and redacted transcripts do not relieve it of its obligation to produce all responsive records, including the audio recordings of Special Counsel Hur’s interviews with President Biden and Zwonitzer.⁷⁶ During his “dozens of hours of interviews with Zwonitzer,” President Biden “read from notebook entries related to many classified briefings” along with “foreign policy issues in Ukraine, Central America, and Iraq. . . .”⁷⁷ Further, the boxes of documents discovered in President Biden’s personal possession included classified materials regarding foreign policy issues in, among other places, Ukraine, China, Iraq, Afghanistan, Pakistan, and Egypt.⁷⁸ In his interviews with Special Counsel Hur, President Biden discussed some of these and other foreign policy issues as well as the retention and handling of the documents con-

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Letter from Hon. Carlos F. Uriarte, Assistant Att’y Gen., U.S. Dep’t of Justice, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability (Apr. 25, 2024).

⁷⁶ Subpoena Letter, *supra* note 2; Mar. 9 Letter, *supra* note 57.

⁷⁷ Hur Report, *supra* note 4, at 97, 106.

⁷⁸ *Id.* at A-1-22.

taining some of this classified information.⁷⁹ Similarly, Zwonitzer discussed President Biden’s description and recollection of these issues during his interviews with Special Counsel Hur.⁸⁰ Although the Department has produced transcripts of President Biden’s and Zwonitzer’s interviews with Special Counsel Hur, it has failed to produce the audio recordings of the interviews.

The audio recordings of Special Counsel Hur’s interviews of President Biden and Zwonitzer are of superior evidentiary value regarding the specific issues the Committees are investigating. While the text of the Department-created transcripts purport to reflect the words uttered during these interviews, they do not reflect important verbal context, such as tone or tenor, or nonverbal context, such as pauses or pace of delivery. For instance, when interviewed, a subject’s pauses and inflections can provide indications of a witness’s ability to recall events,⁸¹ or whether the individual is intentionally giving evasive or nonresponsive testimony to investigators. The verbal nuances in President Biden’s answers about his mishandling of classified information would assist the Committees’ inquiry into whether he abused his office of public trust for his family’s financial gain.

This verbal nuance is also important to the Committees’ legislative oversight investigation. Special Counsel Hur concluded that although there was evidence that President Biden’s conduct satisfied the elements of willfully retaining classified information, justice would not be served by indicting President Biden because he would appear to a jury to be a “sympathetic, well-meaning elderly man with a poor memory.”⁸² President Biden’s personal attorneys and the White House Counsel’s office have contested Special Counsel Hur’s assessment.⁸³ However, Special Counsel Hur stood by his assessment during his sworn testimony before the Judiciary Committee.⁸⁴ The transcripts provided to the Committee are insufficient to arbitrate this dispute as to President Biden’s mental state, an issue which goes directly to his culpability and whether Special Counsel Hur appropriately pursued justice by declining to bring an indictment.

This is especially important because while Special Counsel Hur declined to bring charges against President Biden, at the same time, the Department, through another Special Counsel’s office, is prosecuting a former President and declared candidate for that office for allegedly mishandling classified information.⁸⁵ The Committee must assess whether Special Counsel Hur’s declination decision, which was based on President Biden’s poor mental state, was consistent with the Department’s commitment to impartial justice

⁷⁹ See Recorded Interview Between Special Counsel Robert K. Hur, et al., and President Joseph R. Biden, Jr., at 132–36, DOJ–HJC–HUR–0000164–68 (Oct. 8, 2023); see Recorded Interview Between Special Counsel Robert K. Hur, et al., and President Joseph R. Biden, Jr., at 31–32, 49–54, DOJ–HJC–HUR–0000222–23, 240–45 (Oct. 9, 2023).

⁸⁰ See Recorded Interview Between Special Counsel Robert K. Hur, et al., and Mr. Mark Zwonitzer at 123–27, DOJ–HJC–HUR–0000413–17 (July 31, 2023); see Recorded Interview Between Special Counsel Robert K. Hur, et al., and Mr. Mark Zwonitzer at 42–47, DOJ–HJC–HUR–0000518–23 (Jan. 4, 2024).

⁸¹ Hur Report, *supra* note 3, at 6.

⁸² *Id.* at 219.

⁸³ Betsy Woodruff Swan, *White House lawyers wrote Garland slamming Hur’s report before its’ release*, POLITICO (Feb. 15, 2024).

⁸⁴ Hearing on Hur Report, *supra* note 10, at 18 (“My assessment in the report about the relevance of the President’s memory was necessary and accurate and fair.”).

⁸⁵ Katherine Faulders, et al., *Timeline: Special counsel’s investigation into Trump’s handling of classified documents*, ABC NEWS (Apr. 5, 2024).

or whether legislative reforms are necessary regarding Special Counsel investigations because they are not leading to impartial outcomes. The transcripts produced by the Department, due to their inherent limitations, are not sufficient for that purpose.

In short, the audio recordings would offer unique and important information to advance the Committees' impeachment inquiry and inform the Judiciary Committee as to the need for legislative reforms to the operations of the Department or the conduct of Special Counsel investigations. Moreover, contrary to the Department's assertion that the audio recordings are "cumulative" of the transcripts, an audio recording is the best evidence of a witness interview. Where audio recordings and transcripts diverge, because of "inflection in a speaker's voice or by inaccuracies in the transcript," the audio recordings, not the transcripts, control.⁸⁶ Such a divergence does occur and, in fact, it occurred very recently with President Biden. A video and audio recording taken of President Biden's speech on April 24, 2024, reflects him reading a teleprompter instruction to pause, saying: "Imagine what we could do next. Four more years, *pause*."⁸⁷ However, the official White House transcript of that same speech initially did not reflect that President Biden uttered the word "pause."⁸⁸ In this case, the video and audio recording is the best evidence of the words that President Biden actually spoke.

While the Department has claimed that production of the audio recordings of Special Counsel Hur's interviews with President Biden and Zwonitzer to the Committees is not necessary because "any information in [the audio] files that is relevant to the Committees' stated purposes is cumulative of the information" produced in the provided transcripts, the Department's own actions cut against this view.⁸⁹ During Watergate, for example, the Department subpoenaed audio recordings of conversations between President Nixon and his advisors. Although the President publicly released more than 1,200 pages of edited transcripts of these conversations after the subpoena was issued, the Department maintained the subpoena for the audio recordings. In *United States v. Nixon*, the Supreme Court rejected President Nixon's attempt to quash that subpoena.⁹⁰ The Department has relied upon this decision repeatedly

⁸⁶ Don Zupanec, *Using Transcripts of Recordings as a Demonstrative Aid*, 23 No. 7 FED. LITIGATOR 13 (July 2008) ("The tape recording is evidence for you to consider. The transcript, however, is not evidence."). See, e.g., *United States v. Hogan*, No. 2:06-CR-10, 2008 WL 2074112, at *1 (E.D. Tenn. May 14, 2008) ("[T]his Court will instruct the jury as to the limited use of the transcripts, as the transcripts are not the evidence but the audio recordings are the actual evidence.").

⁸⁷ See Anders Hagstrom, *Biden appears to read script instructions out loud in latest teleprompter gaffe: 'Four more years, pause'*, FOX NEWS (Apr. 24, 2024).

⁸⁸ See The White House, Remarks by President Biden at the North America's Building Trades Union National Legislative Conference (Apr. 24, 2024), <https://web.archive.org/web/20240425002537/https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/04/24/remarks-by-president-biden-at-the-north-americas-building-trades-unions-national-legislative-conference/> ("Folks, imagine what we can do next. Four . . . more years (inaudible)."). The White House subsequently updated the transcript after public attention on the omission. The White House, Remarks by President Biden at the North America's Building Trades Union National Legislative Conference (Apr. 24, 2024), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2024/04/24/remarks-by-president-biden-at-the-north-americas-building-trades-unions-national-legislative-conference/>.

⁸⁹ Apr. 8 Letter, *supra* note 67, at 4.

⁹⁰ *U.S. v. Nixon*, 418 U.S. 683 (1974).

in support of its own subpoenas,⁹¹ and its own actions demonstrate that it understands that audio recordings are not simply cumulative of transcripts produced by a party that is itself under investigation.

On May 16, 2024, a mere two hours before the start of the Committee’s meeting to consider a resolution holding the Attorney General in contempt of Congress, letters from both Mr. Edward N. Siskel, Counsel to President Joe Biden, and the Justice Department arrived, informing the Committee that the President has asserted executive privilege over certain documents and materials covered by the subpoena.⁹² The Committee has numerous concerns about the validity of this assertion, including:

1. The President has waived executive privilege by releasing the contents of his interview with Special Counsel Hur to the media and public on or around March 11, 2024;
2. The assertion of privilege is three months late and, therefore, is not valid. To have been timely, any privilege should have been asserted by March 7, 2024, the subpoena return date; and
3. Even if the privilege were valid, which is it not, it certainly has been overcome here, as: (i) the Committee has demonstrated a sufficient need for the audio recordings as they are likely to contain evidence important to the Committee’s inquiry, and (ii) the audio recordings sought cannot be obtained any other way. The audio recordings are uniquely in the possession of the Justice Department.

Further, President Biden has already waived any potential assertion of executive privilege over the information discussed in his interviews with Special Counsel Hur. This conclusion is consistent with *U.S. v. Mitchell*, which rejected a presidential claim of privilege over audio recordings involving, as here, “portions of subpoenaed recordings which the President has caused to be reduced to transcript form and published.”⁹³ *Mitchell* concluded that “the privilege claimed [was] non-existent since the conversations are . . . no longer confidential.”⁹⁴ Moreover, the Justice Department could have taken steps to protect the confidentiality of the transcripts, but failed to do so when they released them to the press prior to providing them to the Committee.

In Mr. Siskel’s letter to the Committee, the President did not set forth any valid reasons for invoking executive privilege. Instead, Mr. Siskel stated that the President “has a duty to safeguard the integrity and independence of Executive Branch law enforcement functions and protect them from undue partisan influence that could weaken those functions in the future.”⁹⁵ Mr. Siskel also stated that “the Attorney General has warned that the disclosure of materials like these audio recordings risks harming future law en-

⁹¹ See, e.g., *United States v. Hussain*, No. CR 16–462 (CRB), 2018 WL 6695574 at *2–*3 (Nov. 25, 2018) (citing *Nixon* in opposition to a criminal defendant’s motion to quash the Department’s subpoena).

⁹² Letter from Mr. Edward N. Siskel, Counsel to the President, to Rep. Jim Jordan, Chairman, H. Comm. On the Judiciary, et al. (May 16, 2024) [hereinafter “Siskel Letter”]; Letter from Asst. Atty Gen. Carlose Felipe Uriarte, U.S. Dep’t of Justice, to Rep. Jim Jordan, Chairman, H. Comm. On the Judiciary, and Rep. James Comer, Chairman, H. Comm. On Oversight & Accountability (May 16, 2024).

⁹³ See *U.S. v. Mitchell*, 377 F. Supp. 1326, 1330 (D.D.C. 1974) (citing *Nixon v. Sirica*, 487 F.2d 700, 718 (D.C. Cir. 1973)).

⁹⁴ See *id.*

⁹⁵ Siskel Letter, *supra* note 92, at 2.

forcement investigations by making it less likely that witnesses in high-profile investigations will voluntarily cooperate.”⁹⁶ Both of these arguments have already been evaluated and overruled by the Committee.⁹⁷

Without these audio recordings, the Committee’s important legislative work will continue to be stymied. The audio recordings are necessary to evaluate what government reform is necessary within the Justice Department to avoid the problems uncovered by the investigation in the future.

The President has now asserted executive privilege. This assertion, however, does not change the fact that Attorney General Merrick B. Garland is in contempt of Congress today for failing to turn over lawfully subpoenaed materials.

The Constitution does not permit the executive branch to dictate to Congress how to proceed with an impeachment inquiry or to conduct its oversight.⁹⁸ Rather, “congressional committees have significant discretion in how they approach an investigation[,]”⁹⁹ and, in the context of an impeachment inquiry, federal courts emphasize that Congress must possess all pertinent evidence.¹⁰⁰ The Committees are engaged in an inquiry to assess whether to draft articles of impeachment against President Biden, who is the head of the executive branch of the federal government. The Committees are under no obligation to rely exclusively on transcripts created, refined, and produced by executive agencies subordinate to the President, especially when, as here, there exists superior evidence—audio recordings—that would ensure an accurate and complete record of the interviews. The Department’s refusal to produce the audio recordings amounts to a demand that the Committees trust that the Department-curated interview transcripts are accurate and complete, despite recent evidence of an executive branch entity manipulating a transcript of the President’s statements and only fixing the error after being caught.

Conclusion

Special Counsel Hur’s report makes clear, despite its conclusion that criminal charges are not warranted, that President Biden willfully and unlawfully retained classified materials while he was a private citizen. The Committees subpoenaed Attorney General Garland to produce documents and materials responsive to four specific requests concerning Special Counsel Hur’s investigation on Feb-

⁹⁶ *Id.*

⁹⁷ See Letter from Rep. Jim Jordan, Chairman, H. Comm. On the Judiciary, et al., to Hon. Merrick B. Garland, Att’y Gen., U.S. Dep’t of Justice (April 15, 2024).

⁹⁸ See Linda D. Jellum, “Which Is to be Master,” *the Judiciary or the Legislature? When Statutory Directives Violate Separation of Powers*, 56 UCLA L. REV. 837, 884 (2009) (“Each branch of government deserves the autonomy necessary to carry out its functions within the constitutional scheme, and each branch should enjoy a protected sphere of control over its internal affairs. No branch should be able to regulate the inner workings of any other branch. Rather, each branch must be master in its own house.”) (cleaned up).

⁹⁹ TODD GARVEY, CONG. RSCH. SERV., COMMITTEE DISCRETION IN OBTAINING WITNESS TESTIMONY 2 (2023).

¹⁰⁰ See *In re Application of Comm. on Judiciary*, 414 F. Supp. 3d 129, 176 (D.D.C. 2019) (“Impeachment based on anything less than all relevant evidence would compromise the public’s faith in the process.”), *aff’d*, 951 F.3d 589 (D.C. Cir. 2020), *vacated and remanded sub nom. on other grounds DOJ v. House Comm. on the Judiciary*, 142 S. Ct. 46 (2021); *In re Request for Access to Grand Jury Materials*, 833 F.2d 1438, 1445 (11th Cir. 1987) (“Public confidence in a procedure as political and public as impeachment is an important consideration justifying disclosure.”); *In re Report and Recommendation of June 5, 1972 Grand Jury*, 370 F. Supp. 1219, 1230 (D.D.C. 1974) (“It would be difficult to conceive of a more compelling need than that of this country for an unswervingly fair [impeachment] inquiry based on all the pertinent information.”).

bruary 27, 2024. To date, despite numerous requests from the Committees for certain audio recordings responsive to the subpoena, and a specific warning that failure to produce the audio recordings would result in contempt proceedings, Attorney General Garland has failed to do so. Attorney General Garland's willful refusal to comply with the Committees' subpoenas constitutes contempt of Congress and warrants referral to the appropriate United States Attorney's Office for prosecution as prescribed by law.

Committee Consideration

On May 16, 2024, the Committee met in open session and ordered the report favorably reported to the House with an amendment in the nature of a substitute by a recorded vote of 18 to 15, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House rule XIII, the Committee states that the following recorded votes occurred during the Committee's consideration of the Report:

1. Vote on Amendment #1 to the Report ANS offered by Mr. Nadler—failed 8 ayes to 17 nays.
2. Vote on Amendment #2 to the Report ANS offered by Mr. Johnson—failed 5 ayes to 12 nays.
3. Vote on Amendment #3 to the Report ANS offered by Ms. Dean—failed 5 ayes to 12 nays.
4. Vote on Amendment #4 to the Report ANS offered by Mr. Johnson—failed 5 ayes to 12 nays.
5. Vote on Amendment #5 to the Report ANS offered by Ms. Dean—failed 5 ayes to 12 nays.
6. Vote on Amendment #6 to the Report ANS offered by Mr. Ivey—failed 8 ayes to 9 nays.
7. Vote on Amendment #7 to the Report ANS offered by Mr. Swalwell—failed 9 ayes to 12 nays.
8. Vote on Amendment #8 to the Report ANS offered by Ms. Scanlon—failed 9 ayes to 12 nays.
9. Vote on Amendment #9 to the Report ANS offered by Mr. Armstrong—passed 15 ayes to 11 nays.
10. Vote on favorably reporting the Report, as amended—passed 18 ayes to 15 nays.

COMMITTEE ON THE JUDICIARY
 118th CONGRESS
 24-19
 ROLL CALL

Date: 5/16/24

Vote on: Nadler Amendment #1 to Contempt Report ANJ Roll Call #: 1

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)			
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)			
MR. McCLINTOCK (CA)		✓		MR. JOHNSON (GA)	✓		
MR. TIFFANY (WI)		✓		MR. SCHIFF (CA)	✓		
MR. MASSIE (KY)		✓		MR. SWALWELL (CA)	✓		
MR. ROY (TX)		✓		MR. LIEU (CA)			
MR. BISHOP (NC)				MS. JAYAPAL (WA)			
MS. SPARTZ (IN)				MR. CORREA (CA)			
MR. FITZGERALD (WI)		✓		MS. SCANLON (PA)	✓		
MR. BENTZ (OR)		✓		MR. NEGUSE (CO)			
MR. CLINE (VA)		✓		MS. McBATH (GA)			
MR. ARMSTRONG (ND)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓		MS. BALINT (VT)			
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)		✓					
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)		✓					
VACANT							

Roll Call Totals: Ayes: 8 Nays: 17 Present: X
 Passed: _____ Failed: _____

COMMITTEE ON THE JUDICIARY
 118th CONGRESS
 24-19
 ROLL CALL

Date: 5/14/21

Vote on: Johnson Amndt #12 to Contempt Report ANS Roll Call #: 2

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)				MS. LOFGREN (CA)			
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)			
MR. McCLINTOCK (CA)		✓		MR. JOHNSON (GA)	✓		
MR. TIFFANY (WI)		✓		MR. SCHIFF (CA)			
MR. MASSIE (KY)		✓		MR. SWALWELL (CA)			
MR. ROY (TX)				MR. LIEU (CA)			
MR. BISHOP (NC)				MS. JAYAPAL (WA)			
MS. SPARTZ (IN)		✓		MR. CORREA (CA)			
MR. FITZGERALD (WI)		✓		MS. SCANLON (PA)			
MR. BENTZ (OR)		✓		MR. NEGUSE (CO)			
MR. CLINE (VA)				MS. McBATH (GA)			
MR. ARMSTRONG (ND)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)			
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)				MS. BALINT (VT)			
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)							
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)							
VACANT							

Roll Call Totals: Ayes: 5 Nays: 12 Present: X
 Passed: _____ Failed: _____

COMMITTEE ON THE JUDICIARY
 118th CONGRESS
 24-19
 ROLL CALL

Date: 5/10/24

Vote on: *Dean Amndt #3 to Contempt Report ANS* Roll Call #: 3

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>				MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)			
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)			
MR. McCLINTOCK (CA)				MR. JOHNSON (GA)	✓		
MR. TIFFANY (WI)		✓		MR. SCHIFF (CA)			
MR. MASSIE (KY)				MR. SWALWELL (CA)			
MR. ROY (TX)		✓		MR. LIEU (CA)			
MR. BISHOP (NC)				MS. JAYAPAL (WA)			
MS. SPARTZ (IN)		✓		MR. CORREA (CA)			
MR. FITZGERALD (WI)		✓		MS. SCANLON (PA)			
MR. BENTZ (OR)		✓		MR. NEGUSE (CO)			
MR. CLINE (VA)		✓		MS. McBATH (GA)			
MR. ARMSTRONG (ND)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)				MS. ROSS (NC)			
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓		MS. BALINT (VT)	✓		
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)							
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)							
VACANT							

Roll Call Totals: Ayes: 5 Nays: 12 Present: 11
 Passed: _____ Failed: _____

COMMITTEE ON THE JUDICIARY

Date: 9/10/20

118th CONGRESS

24-19

ROLL CALL

Vote on: Johnson Amndt #4 to Contempt Report AHS Roll Call #: 4

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)			
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)			
MR. McCLINTOCK (CA)				MR. JOHNSON (GA)	✓		
MR. TIFFANY (WI)		✓		MR. SCHIFF (CA)			
MR. MASSIE (KY)				MR. SWALWELL (CA)			
MR. ROY (TX)		✓		MR. LIEU (CA)			
MR. BISHOP (NC)				MS. JAYAPAL (WA)			
MS. SPARTZ (IN)		✓		MR. CORREA (CA)			
MR. FITZGERALD (WI)				MS. SCANLON (PA)			
MR. BENTZ (OR)		✓		MR. NEGUSE (CO)			
MR. CLINE (VA)		✓		MS. McBATH (GA)			
MR. ARMSTRONG (ND)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)				MS. ROSS (NC)			
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓		MS. BALINT (VT)	✓		
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)							
MS. LEE (FL)							
MR. HUNT (TX)							
MR. FRY (SC)							
VACANT							

Roll Call Totals: Ayes: 5 Nays: 12 Present: X Failed: _____

COMMITTEE ON THE JUDICIARY
 118th CONGRESS
 24-19
 ROLL CALL

Date: 5/10/21

Vote on: Dean Amndt #5 to Contempt Report ANS

Roll Call #: 5

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)			
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)			
MR. McCLINTOCK (CA)				MR. JOHNSON (GA)	✓		
MR. TIFFANY (WI)		✓		MR. SCHIFF (CA)			
MR. MASSIE (KY)				MR. SWALWELL (CA)			
MR. ROY (TX)		✓		MR. LIEU (CA)			
MR. BISHOP (NC)				MS. JAYAPAL (WA)			
MS. SPARTZ (IN)		✓		MR. CORREA (CA)			
MR. FITZGERALD (WI)				MS. SCANLON (PA)			
MR. BENTZ (OR)		✓		MR. NEGUSE (CO)			
MR. CLINE (VA)		✓		MS. McBATH (GA)			
MR. ARMSTRONG (ND)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)				MS. ROSS (NC)			
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)				MS. BALINT (VT)	✓		
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)							
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)							
VACANT							

Roll Call Totals: Ayes: 5 Nays: 12 Present: X Failed: _____

COMMITTEE ON THE JUDICIARY

118th CONGRESS

24-19

ROLL CALL

Date: 5/16/21

Vote on: Ivey Amndt #6 to Contempt Report ANS

Roll Call #: 6

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>	✓		
MR. ISSA (CA)				MS. LOFGREN (CA)			
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)	✓		
MR. McCLINTOCK (CA)		✓		MR. JOHNSON (GA)	✓		
MR. TIFFANY (WI)		✓		MR. SCHIFF (CA)			
MR. MASSIE (KY)		✓		MR. SWALWELL (CA)	✓		
MR. ROY (TX)		✓		MR. LIEU (CA)			
MR. BISHOP (NC)				MS. JAYAPAL (WA)			
MS. SPARTZ (IN)				MR. CORREA (CA)			
MR. FITZGERALD (WI)				MS. SCANLON (PA)	✓		
MR. BENTZ (OR)		✓		MR. NEGUSE (CO)			
MR. CLINE (VA)		✓		MS. McBATH (GA)			
MR. ARMSTRONG (ND)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)				MS. ROSS (NC)			
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)				MR. IVEY (MD)	✓		
MR. KILEY (CA)				MS. BALINT (VT)	✓		
MS. HAGEMAN (WY)							
MR. MORAN (TX)							
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)							
VACANT							

Roll Call Totals: Ayes: 8 Nays: 9 Present: X Failed: X

COMMITTEE ON THE JUDICIARY
 118th CONGRESS
 24-19
 ROLL CALL

Date: 5/16/24

Vote on: Swalwell Amndt #7 to Contempt Report ANS Roll Call #: 7

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>		✓		MR. NADLER (NY) <i>Ranking Member</i>			
MR. ISSA (CA)				MS. LOFGREN (CA)	✓		
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)	✓		
MR. McCLINTOCK (CA)				MR. JOHNSON (GA)	✓		
MR. TIFFANY (WI)		✓		MR. SCHIFF (CA)	✓		
MR. MASSIE (KY)		✓		MR. SWALWELL (CA)	✓		
MR. ROY (TX)		✓		MR. LIEU (CA)			
MR. BISHOP (NC)				MS. JAYAPAL (WA)			
MS. SPARTZ (IN)				MR. CORREA (CA)			
MR. FITZGERALD (WI)				MS. SCANLON (PA)	✓		
MR. BENTZ (OR)		✓		MR. NEGUSE (CO)			
MR. CLINE (VA)		✓		MS. McBATH (GA)			
MR. ARMSTRONG (ND)		✓		MS. DEAN (PA)			
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)	✓		
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)				MR. IVEY (MD)	✓		
MR. KILEY (CA)				MS. BALINT (VT)	✓		
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)							
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)		✓					
VACANT							

Roll Call Totals: Ayes: 9 Nays: 12 Present: X
 Passed: _____ Failed: _____

COMMITTEE ON THE JUDICIARY
118th CONGRESS
24-19
ROLL CALL

Date: 5/16/24

Vote on: Scanlon Amndt to Contempt Report ANS
#8

Roll Call #: 8

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>				MR. NADLER (NY) <i>Ranking Member</i>			
MR. ISSA (CA)				MS. LOFGREN (CA)	✓		
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)	✓		
MR. McCLINTOCK (CA)				MR. JOHNSON (GA)	✓		
MR. TIFFANY (WI)		✓		MR. SCHIFF (CA)	✓		
MR. MASSIE (KY)		✓		MR. SWALWELL (CA)	✓		
MR. ROY (TX)		✓		MR. LIEU (CA)			
MR. BISHOP (NC)		✓		MS. JAYAPAL (WA)			
MS. SPARTZ (IN)				MR. CORREA (CA)			
MR. FITZGERALD (WI)		✓		MS. SCANLON (PA)	✓		
MR. BENTZ (OR)		✓		MR. NEGUSE (CO)			
MR. CLINE (VA)		✓		MS. McBATH (GA)			
MR. ARMSTRONG (ND)		✓		MS. DEAN (PA)			
MR. GOODEN (TX)		✓		MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)	✓		
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)				MR. IVEY (MD)	✓		
MR. KILEY (CA)				MS. BALINT (VT)	✓		
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)							
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)							
VACANT							

Roll Call Totals: Ayes: 9 Nays: 12 Present: X Failed: X

COMMITTEE ON THE JUDICIARY
118th CONGRESS
24-19
ROLL CALL

Date: 5/10/24

Vote on: *Armstrong Amndt #9 to Contempt Report ANS* Roll Call #: 9

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>	✓			MR. NADLER (NY) <i>Ranking Member</i>			
MR. ISSA (CA)	✓			MS. LOFGREN (CA)		✓	
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)		✓	
MR. McCLINTOCK (CA)				MR. JOHNSON (GA)		✓	
MR. TIFFANY (WI)	✓			MR. SCHIFF (CA)		✓	
MR. MASSIE (KY)				MR. SWALWELL (CA)		✓	
MR. ROY (TX)	✓			MR. LIEU (CA)		✓	
MR. BISHOP (NC)				MS. JAYAPAL (WA)		✓	
MS. SPARTZ (IN)				MR. CORREA (CA)		✓	
MR. FITZGERALD (WI)	✓			MS. SCANLON (PA)		✓	
MR. BENTZ (OR)				MR. NEGUSE (CO)			
MR. CLINE (VA)	✓			MS. McBATH (GA)		✓	
MR. ARMSTRONG (ND)	✓			MS. DEAN (PA)			
MR. GOODEN (TX)	✓			MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)	✓			MS. ROSS (NC)			
MR. NEHLS (TX)	✓			MS. BUSH (MO)			
MR. MOORE (AL)	✓			MR. IVEY (MD)			
MR. KILEY (CA)	✓			MS. BALINT (VT)		✓	
MS. HAGEMAN (WY)	✓						
MR. MORAN (TX)							
MS. LEE (FL)	✓						
MR. HUNT (TX)							
MR. FRY (SC)	✓						
VACANT							

Roll Call Totals: Ayes: 15 Nays: 11 Present: _____
 Passed: X Failed: _____

COMMITTEE ON THE JUDICIARY
118th CONGRESS
24-19
ROLL CALL

Date: 5/16/29

Vote on: *Final passage of the Contempt Report, as amended* Roll Call #: 10

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) <i>Chairman</i>	✓			MR. NADLER (NY) <i>Ranking Member</i>		✓	
MR. ISSA (CA)	✓			MS. LOFGREN (CA)		✓	
MR. GAETZ (FL)				MS. JACKSON LEE (TX)			
MR. BIGGS (AZ)				MR. COHEN (TN)		✓	
MR. McCLINTOCK (CA)				MR. JOHNSON (GA)		✓	
MR. TIFFANY (WI)	✓			MR. SCHIFF (CA)		✓	
MR. MASSIE (KY)	✓			MR. SWALWELL (CA)		✓	
MR. ROY (TX)	✓			MR. LIEU (CA)		✓	
MR. BISHOP (NC)	✓			MS. JAYAPAL (WA)		✓	
MS. SPARTZ (IN)	✓			MR. CORREA (CA)		✓	
MR. FITZGERALD (WI)	✓			MS. SCANLON (PA)		✓	
MR. BENTZ (OR)				MR. NEGUSE (CO)			
MR. CLINE (VA)	✓			MS. McBATH (GA)		✓	
MR. ARMSTRONG (ND)	✓			MS. DEAN (PA)			
MR. GOODEN (TX)	✓			MS. ESCOBAR (TX)		✓	
MR. VAN DREW (NJ)	✓			MS. ROSS (NC)		✓	
MR. NEHLS (TX)	✓			MS. BUSH (MO)		✓	
MR. MOORE (AL)	✓			MR. IVEY (MD)			
MR. KILEY (CA)	✓			MS. BALINT (VT)		✓	
MS. HAGEMAN (WY)	✓						
MR. MORAN (TX)							
MS. LEE (FL)	✓						
MR. HUNT (TX)							
MR. FRY (SC)	✓						
VACANT							

Roll Call Totals: Ayes: 18 Nays: 15 Present: _____
Passed: X Failed: _____

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

The Committee finds the requirements of clause 3(c)(2) of rule XIII and section 308(a) of the *Congressional Budget Act of 1974*, and the requirements of clause 3(c)(3) of rule XIII and section 402 of the *Congressional Budget Act of 1974*, to be inapplicable to this Report. Accordingly, the Committee did not request or receive a cost estimate from the Congressional Budget Office and makes no findings as to the budgetary impacts of this Report or costs incurred to carry out the Report.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of this Report establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, this Report is to enforce the Committee's authority to subpoena and obtain testimony related to determining whether sufficient grounds exist to impeach President Joseph Robinette Biden Jr., and legislative reforms to the Department of Justice and its use of a special counsel to conduct investigations of current and former Presidents of the United States.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, this Report does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House Rule XXI.

Dissenting Views

I. INTRODUCTION

The Majority is clearly disappointed that Special Counsel Robert Hur declined to bring charges against President Biden, the latest blow in a long line of apparent disappointments. After spending more than twenty million taxpayer dollars on a weaponization subcommittee going nowhere, after conducting dozens of witness interviews, and after reviewing millions of pages of documents, the Majority has failed to find even a shred of evidence of wrongdoing by the President. Their impeachment investigation fizzled out before they could even clearly articulate a charge. A total lack of policy accomplishments only compounds their obvious frustration as we approach the last months of this do-nothing Republican Congress.

Against this backdrop of failure, the Majority makes one, last-ditch effort to make it look at least like a member of President

Biden’s cabinet did something wrong. To be clear, the contempt citation the Majority recommends against U.S. Attorney General Merrick Garland is an absolute farce.

The Attorney General and the Department of Justice have provided the Committee with all the information it requires to conduct any legitimate oversight activity. The only discrepancy between what the Majority requested and what the Department has produced is a set of audio files—recordings of the interviews the Special Counsel conducted with President Biden and his ghost writer. The Majority has never demonstrated a legitimate reason for obtaining these audio files and certainly cannot justify a contempt citation on this ground alone.

For a start, the Department of Justice has long since produced written transcripts of these interviews. The Department has also expressed serious and legitimate concern that releasing the audio files would have a chilling effect on high-profile witnesses in future criminal investigations. To that end, the President, in consultation with the Attorney General, has claimed Executive Privilege over the remaining audio files.

It seems painfully obvious that the Majority wants these recordings because they hope to find something they can use to embarrass President Biden. They have certainly amplified manipulated audio and video evidence for political purposes in the past. The only surprise is that—after so many of their members have admitted that their single motivation is to provide political cover for Donald Trump—the Majority still feels the need to hide behind a half-hearted interest in “vocal tone, pace, inflections, verbal nuance, and other idiosyncrasies.” What a sham.

This contempt proceeding is a political stunt and nothing more. It should be roundly defeated.

II. BACKGROUND

On January 12, 2023, Attorney General Merrick Garland appointed Robert Hur, formerly the Trump-appointed U.S. Attorney for the District of Maryland, as Special Counsel charged with investigating President Biden’s handling of classified documents.¹ Hur focused on five categories of documents: (1) documents related to Afghanistan, in particular a handwritten memo from then-Vice President Biden to President Obama dated November 28, 2009, detailing his concerns about deploying additional troops to the country;² (2) personal notebooks from the President’s time as Vice President;³ (3) certain documents found at the Penn Biden Center, including documents related to negotiations about the Iran nuclear deal;⁴ (4) documents found at the University of Delaware dating to the President’s time as a senator;⁵ and (5) other documents found in the President’s Delaware home, including briefing binders from

¹Press Release, *Appointment of Robert K. Hur as Special Counsel*, U.S. DEP’T OF JUSTICE (Jan. 12, 2023), <https://www.justice.gov/d9/2023-01/Order.Appointment%20of%20Robert%20Hur.11223%20%28002%29.pdf>.

²Special Counsel Robert K. Hur, *Report on the Investigation Into Unauthorized Removal, Retention, and Disclosure of Classified Documents Discovered at Locations Including the Penn Biden Center and the Delaware Private Residence of President Joseph R. Biden, Jr.*, U.S. DEP’T OF JUSTICE at 145–48 (Feb. 8, 2024), <https://www.justice.gov/storage/report-from-special-counsel-robert-k-hur-february-2024.pdf> [Hereinafter Hur Report].

³*Id.* at 2–3.

⁴*Id.* at 256–311.

⁵*Id.* at 312–25.

trips that the President took while he was vice president.⁶ Over the course of Hur's 15-month probe, his investigators conducted 173 interviews of 147 witnesses and reviewed more than seven million documents. Hur submitted his 345-page final report to Attorney General Garland on February 5, 2024, and Garland publicly released it in full on February 8, 2024.

The Hur Report exonerates President Biden of any prosecutable charges. Specifically, to be charged with the unauthorized retention of national defense information under the Espionage Act, the government must show that "(1) the defendant had unauthorized possession of a document, writing or note; (2) the document, writing, or note related to the national defense; and (3) the defendant willfully retained the document, writing, or note and failed to deliver it to an employee or officer entitled to receive it."⁷ Hur found that there was no evidence that the President willfully retained classified information. He also found that the President likely did not know certain information was classified and that he likely believed he was permitted to retain certain documents as personal records. Hur's report also distinguished Biden's conduct from that of President Trump.⁸

On February 7, 2024, the Attorney General notified the Committee that Special Counsel Hur had concluded his investigation.⁹ The following day, the Attorney General produced the entire unredacted report to Congress and made it available to the public.¹⁰ Four days later, Chairman Jordan, along with House Oversight Chairman James Comer, and House Ways & Means Chairman Jason Smith wrote to the Attorney General and demanded that he produce to the Committees:

1. All documents and communications, including audio and video recordings, related to the Special Counsel's interview of President Biden;
2. All documents and communications, including audio and video recordings, related to the Special Counsel's interview of Mark Zwonitzer;
3. The documents identified as "A9" and "A10" in Appendix A of Mr. Hur's report, which relate to President Biden's December 11, 2015 call with then-Ukrainian Prime Minister Arseniy Yatsenyuk; and
4. All communications between or among representatives of the Department of Justice, including the Office of the Special Counsel, the Executive Office of the President, and President Biden's personal counsel referring or relating to Mr. Hur's report.¹¹

On February 16, 2024, the Department of Justice responded noting that "[s]everal of the materials listed in your February 12 letter require review for classification and protection of national defense information" and informed the Members that "the Department will conduct a review to assess confidentiality interests and will share

⁶*Id.* at 326–33.

⁷*Id.* at 178 (citation omitted).

⁸*Id.* at 10–11, 250.

⁹Letter from the Hon. Merrick B. Garland, Att'y Gen., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al. (Feb. 7, 2024).

¹⁰*See* Letter from the Hon. Merrick B. Garland, Att'y Gen., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al. (Feb. 8, 2024).

¹¹Letter from the Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, et al. to the Hon. Merrick Garland, Att'y Gen. (Feb. 12, 2024).

materials with Executive Branch entities with equities in the content of the materials to determine whether those other entities will assert any confidentiality interests of their own.”¹²

On February 27, 2024, the Chairmen Jordan and Comer responded to the DOJ by issuing a subpoena for the requested documents, claiming that the Department “offered no timeframe by which it expected to make productions” or “any commitment that it would produce all of the material requested.”¹³

The DOJ responded to the subpoena on March 7, 2024, with two productions requested by the Committees: (1) the documents identified as “A9” and “A10” in Appendix A of the Hur Report, and (2) communications between the DOJ and the Executive Office of the President or President Biden’s personal counsel related to Special Counsel Hur’s report.¹⁴ The DOJ also expressed disappointment that the Committee chose to serve a subpoena “less than three weeks after Mr. Hur’s report was transmitted to Congress and only seven business days after the Department made clear it was working expeditiously to respond in good faith to congressional requests” and said that the subpoena was “premature and unnecessary given the amount of information the committee has already received and the Department’s proactive efforts to prepare for responding to congressional requests on this matter.”¹⁵

On March 9, 2024, the Chairmen Jordan and Comer wrote yet another letter to the Attorney General claiming that the DOJ had yet to fully comply with their subpoenas.¹⁶ On March 12, before Special Counsel Hur was set to testify before the Judiciary Committee, the DOJ produced the transcripts of Special Counsel Hur’s interview of President Biden.¹⁷

On March 25, 2024, Chairmen Jordan and Comer once again notified the DOJ that their compliance with the subpoena was deficient and requested that the Department provide audio recordings of Special Counsel Hur’s interview of President Biden and transcripts and audio recordings of Special Counsel Hur’s interview of President Biden’s ghostwriter, Mark Zwonitzer.¹⁸

On April 8, 2024, the DOJ provided the transcripts of Special Counsel Hur’s interviews of ghostwriter Mark Zwonitzer, which took place on July 31, 2023 and January 4, 2024.¹⁹ The DOJ’s cover letter notes that the Committees have responded to the Department’s productions with “escalation and threats of criminal

¹² Letter from Carlos Felip Uriarte, Asst. Att’y Gen., to the Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, et al. (Feb. 16, 2024).

¹³ Letter from the Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, & the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, to the Hon. Merrick B. Garland, Att’y Gen. (Feb. 27, 2024), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-02-27%20JDJ%20to%20DOJ%20re%20subpoena.pdf>.

¹⁴ See Letter from Carlos Felip Uriarte, Asst. Att’y Gen., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary (Mar. 7, 2024).

¹⁵ *Id.* at 2.

¹⁶ Letter from the Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, & the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, to the Hon. Merrick B. Garland, Att’y Gen. (Mar. 9, 2024).

¹⁷ See Letter from Carlos Felip Uriarte, Asst. Att’y Gen., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary (Mar. 12, 2024).

¹⁸ Letter from the Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, & the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, to the Hon. Merrick B. Garland, Att’y Gen. (Mar. 25, 2024).

¹⁹ See Letter from Carlos Felip Uriarte, Asst. Att’y Gen., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary & the Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability (Apr. 8, 2024).

contempt.”²⁰ Further, the DOJ wrote, “We are therefore concerned that the Committees are disappointed not because you didn’t receive information, but because you did. We urge the Committees to avoid conflict rather than seek it.”²¹ The Committees responded on April 15, 2024, claiming that the DOJ’s “response to the subpoenas remains inadequate, suggesting that you are withholding records for partisan purposes and to avoid political embarrassment for President Biden.”²²

On May 16, 2024, the Department responded again to the Committee’s requests, including the February 27, 2024, subpoena, to inform the Committees “that the President has asserted executive privilege over the requested audio recordings and is making a protective assertion of privilege over any remaining materials responsive to the subpoenas that have not already been produced.”²³ In an accompanying letter, the Attorney General explained that the Department has a vested interest in protecting “materials related to a closed criminal investigation where disclosure is likely to damage future law enforcement efforts,” which “is the case here.”²⁴ The Attorney General further expressed concern that producing audio recordings to the Committees “would raise an unacceptable risk of undermining the Department’s ability to conduct similar high-profile criminal investigations—in particular, investigations where the voluntary cooperation of White House officials is exceedingly important.”²⁵ Further, the Attorney General explained that the Committees’ “articulated need for the audio recordings is insufficient to meet any potentially applicable standard,” and that the audio recordings will “not reveal any information relevant to the Committees’ stated needs that is not available in the transcripts and other documents that are already in the Committees’ possession.”²⁶ The Attorney General requested that the President make a protective assertion of executive privilege.²⁷

On May 16, 2024, the White House also wrote to the Committees explaining that “the President’s longstanding commitment to protecting the integrity, effectiveness, and independence of the Department of Justice and its law enforcement investigations” caused his assertion of executive privilege.²⁸ The White House noted the obvious partisan motivations behind the Committees’ actions, writing, “[t]he absence of a legitimate need for the audio recordings lays bare your likely goal—to chop them up, distort them, and use them for partisan political purposes.”²⁹

²⁰ Letter from Carlos Felip Uriarte, Asst. Att’y Gen., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary & the Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability at 1 (Apr. 8, 2024).

²¹ *Id.*

²² Letter from the Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, & the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary, to the Hon. Merrick B. Garland, Att’y Gen. at 1 (Apr. 15, 2024).

²³ Letter from Hon. Carlos F. Uriarte, Assistant Att’y Gen., U.S. Dep’t of Justice, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability at 1 (May 16, 2024).

²⁴ Letter from the Hon. Merrick B. Garland, Att’y Gen. to The President at 1 (May 15, 2024).

²⁵ *Id.* at 3–4.

²⁶ *Id.* at 3, 9.

²⁷ *Id.* at 11.

²⁸ Letter from Edward N. Siskel, Counsel to the President, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, and Rep. James Comer, Chairman, H. Comm. on Oversight & Accountability at 1 (May 16, 2024).

²⁹ *Id.* at 2.

III. CONCERNS

A. THE MAJORITY MISREPRESENTS THE FACTUAL RECORD

As a threshold matter, the Majority severely misrepresents the record throughout its report in numerous material respects. It is undisputed that Republican-appointed Special Counsel Hur exonerated President Biden. Hur found insufficient evidence to prove beyond a reasonable doubt that President Biden willfully retained any of the classified documents, and in some cases that the documents themselves were not even classified. The Majority's shameful portrayal of President Biden as senile or "incompetent" is also false and not supported by the special counsel's own record. President Biden's age was not a material aspect of Hur's decision to decline prosecution, contrary to assertions by members of the Majority. Finally, the report ignores clear historical context provided by the special counsel regarding President Biden's retention and use of his notebook, which other Presidents have done.

1. *President Biden was Cleared from any Criminal Charges*

Special Counsel Hur focused on five categories of documents in the investigation: (1) documents related to Afghanistan, in particular a handwritten memo from then-Vice President Biden to President Obama dated November 28, 2009, detailing his concerns about deploying additional troops to the country;³⁰ (2) personal notebooks from the President's time as Vice President;³¹ (3) certain documents found at the Penn Biden Center, including documents related to negotiations about the Iran nuclear deal;³² (4) documents found at the University of Delaware dating to the President's time as a senator;³³ and (5) other documents found in the President's Delaware home, including briefing binders from trips that the President took while he was vice president.³⁴ With respect to each category of documents, Hur found that there was no evidence that the President willfully retained any classified information, and in some cases found that the information was not actually classified.

a. *Afghanistan Documents*

After leaving the vice presidency in 2017, now-President Biden retained folders of documents related to the 2009 troop surge in Afghanistan, including a handwritten memo he drafted opposing the surge and documents supporting that position. Hur determined that "the evidence falls short of establishing . . . beyond a reasonable doubt" that Biden willfully retained these classified documents.³⁵

During a February 16, 2017, recorded interview with the ghostwriter for his book, *Promise Me*, Biden said that he had just found classified material "downstairs," and the context indicated that those documents might relate to foreign policy in Afghanistan.³⁶ At the time of the interview, Biden was in a rental home in Virginia.

³⁰*Id.* at 145–148.

³¹*Id.* at 2–3.

³²*Id.* at 256–311.

³³*Id.* at 312–325.

³⁴*Id.* at 326–333.

³⁵*Id.* at 204.

³⁶*Id.* at 108.

The FBI ultimately recovered the Afghanistan documents from Biden's Delaware residence in 2022, while Biden was the sitting president and thus authorized to have classified documents in his residence. Special Counsel Hur determined that because Biden was permitted to have classified documents in his residence in 2022, the only possible charges related to the Afghanistan documents would have had to have come from Biden willfully possessing them in Virginia in 2017.

Hur concluded that he could not prove that Biden willfully possessed these documents:

(1) Biden could have found the classified documents in Virginia in 2017 and forgotten them soon after, because finding classified documents so soon after leaving the vice presidency "may not have been something he found memorable. Mr. Biden, after all, had seen classified documents nearly every day for the previous eight years."³⁷

(2) There was "no definitive evidence" that the classified Afghanistan documents were stored in Biden's Virginia home.³⁸ Specifically, Hur determined that other than the ghostwriter recording, there was "no witness, photo, text message, or other evidence [that] establishes that the documents were ever stored in Virginia."³⁹

(3) Biden might have been referring to a folder containing documents which were marked classified in 2009, but "there are serious questions about whether those particular documents remain sensitive today, or when Mr. Biden met with [the ghostwriter] in 2017."⁴⁰ With respect to the handwritten memo in particular, Hur noted that Biden "said he did not consider the memo classified when he discussed it with his ghostwriter," and that "the memo concerned deliberations from more than seven years earlier about the Afghanistan troop surge, and in the intervening years those deliberations had been widely discussed in public, so Mr. Biden could have reasonably expected that the memo's contents became less sensitive over time."⁴¹

Hur also noted that it would be difficult for prosecutors to win a case based on the Afghanistan documents because it could be hard to prove that "the documents still contain sensitive national defense information" and because at trial he would present credibly to a jury.

b. President Biden's Personal Notebooks

As vice president, Biden regularly took handwritten notes in notebooks during briefings, including during classified briefings.⁴² After leaving office, he kept these notebooks with him at his residence.⁴³ Hur determined that he would not be able to prove beyond a reasonable doubt that Biden willfully retained the classified information in the notebooks.

³⁷*Id.* at 205.

³⁸*Id.* at 211.

³⁹*Id.*

⁴⁰*Id.* at 216.

⁴¹*Id.* at 221.

⁴²*Id.* at 53.

⁴³*Id.*

Specifically, Hur found that Biden “thought his notebooks were his personal property and that he was allowed to take them home after his vice presidency, even if they contained classified information.” Hur noted that Biden “was emphatic, declaring that his notebooks are ‘my property,’ and that ‘every president before me has done the exact same thing.’”⁴⁴ Hur noted that “at least one former president,” Ronald Reagan, “and the Department of Justice also have concluded that a former president may keep handwritten notes even if they contain classified information.”⁴⁵ As a result, “[m]ost jurors would likely find this precedent and Mr. Biden’s claimed reliance on it . . . to be compelling evidence that Mr. Biden did not act willfully.”⁴⁶

c. Penn Biden Center Documents, University of Delaware Documents, and other Documents Found in Biden’s Residence

The FBI also recovered marked classified documents from Biden’s time as vice president at the Penn Biden Center and in his Delaware residence, and documents from Biden’s time as senator in papers at the University of Delaware. In each case, the special counsel determined that Biden did not willfully retain the documents and that they were likely brought to their respective locations by mistake.⁴⁷ In reaching these conclusions, the special counsel referred to “the numerous previous instances in which marked classified documents have been discovered intermixed with the personal papers of former Executive Branch officials and members of Congress.”⁴⁸

2. President Biden was in Command and the Record Does Not Support the Majority’s Accusation of Memory or Age-Related Issues

The Majority has doubled down on its partisan strategy to portray and attack President Biden as being elderly or having memory issues based on superfluous dicta in the report. The Majority has, for example, repeatedly accused President Biden of not being able to recall the date of his son Beau’s death. To be clear, Special Counsel Hur’s reference to President Biden’s age and memory was not only wildly inappropriate, but it was unsupported by the actual record. The transcript of Mr. Biden’s interview clearly shows he *did* recall the date. In the interview transcripts, President Biden clearly recalled the date of his son’s death, saying: “what month did Beau die? Oh God, May 30.”⁴⁹ The special counsel’s decision to make this deeply personal and emotional response from the President part of his report was completely out of bounds and wrong. The Majority’s effort to exploit this response for partisan political gain is dishonest and shameful.

The transcript shows that President Biden was in clear command of his cognitive functions and that he was able to recall items with specific detail during 5 hours of interview when an international

⁴⁴*Id.* at 232.

⁴⁵*Id.* at 239.

⁴⁶*Id.* at 240–41.

⁴⁷*Id.* at 12.

⁴⁸*Id.*

⁴⁹Interview with President Joseph R. Biden, Jr. at Day 1, p. 82 (October 8, 2023) (on file with Committee).

crisis was unfolding in the Middle East.⁵⁰ In fact, Special Counsel Hur himself remarked that the president had a “photographic understanding and recall” in response to certain questions.⁵¹ President Biden was also able to provide detailed and vivid responses regarding events that occurred over 15 years ago including detailed discussions of debates regarding Afghanistan policy.⁵² He was able to provide detailed descriptions of how the Naval Observatory was laid out and his office.⁵³ He was able to provide detailed explanations of the layout of his Wilmington home.⁵⁴ Hur observed: “[W]e expect the evidence of Mr. Biden’s state of mind to be compelling,” pointing to his “clear, forceful testimony.”⁵⁵

3. *The Majority’s Accusations Regarding President Biden’s Notebooks Ignore the Clear Findings and Historical Context as Described in the Hur Report*

The Majority’s report repeatedly references the executive summary of Special Counsel Hur’s report, which claims that the investigation “uncovered evidence that Biden willfully retained and disclosed classified materials after his vice presidency when he was a private citizen” including “notebooks containing Mr. Biden’s handwritten entries about issues of national security and foreign policy.”⁵⁶ However, the Majority ignores Hur’s determination that the evidence would not “meet the government’s burden at trial, particularly the requirement to prove that Mr. Biden intended to do something the law forbids.”⁵⁷

Hur’s investigation clearly shows that President Biden “believed he was allowed to keep the notebooks in his home”⁵⁸ and explains that “this view finds some support in historical practice.”⁵⁹ According to Hur’s report, “the clearest example is President Reagan, who left the White House in 1989 with eight years’ worth of handwritten diaries, which he appears to have kept at his California home even though they contained Top Secret information.”⁶⁰

Like President Biden’s notebooks, Reagan’s diaries were used as a source for several books and were read aloud in the den of his home after leaving office. According to Hur’s report, Reagan’s diaries “served as sources for at least three publications that Mr. Reagan or his representatives authorized: (1) *An American Life*, Mr. Reagan’s autobiography published in 1990; (2) *Dutch*, a biography authored by Edmund Morris and published in 1999; and (3) *The Reagan Diaries*, a collection of the diaries themselves first published in 2007 after Mr. Reagan’s death.”⁶¹ Hur’s report also acknowledges that *An American Life* includes “dozens of verbatim

⁵⁰The day of the interview, October 8, 2023, was the day after the horrific and deadly Hamas-led attack on Israel. Mr. Hur at the beginning of the interview remarked: “. . . Well Mr. President, I do want to take an additional minute and thank you for being here and making this time for us. I know there’s a lot of other things in the world going on that demand your attention.” *Id.* at Day 1, p. 3. President Biden subsequently acknowledged that he had “just got off the phone with Bibi Netanyahu.” *Id.*

⁵¹*Id.* at Day 1, pp. 47, 92.

⁵²*Id.* at Day 2, pp. 18–19, 49–50.

⁵³*Id.* at Day 1, pp. 31–32, 32–33.

⁵⁴*Id.* at Day 1, pp. 42–45.

⁵⁵Hur Rept. *supra* at 233.

⁵⁶*Id.* at 1.

⁵⁷*Id.* at 8.

⁵⁸*Id.*

⁵⁹*Id.* at 9.

⁶⁰*Id.*

⁶¹*Id.* at 197.

quotations from Mr. Reagan’s diaries”⁶² and acknowledges that “[f]or several years after their return to California, the Reagans would often sit together in their den after dinner, reading aloud from their diaries and reminiscing about their White House years.”⁶³

4. *The Majority Falsely Alleges that President Biden’s Age was a Material Reason for Special Counsel’s Exoneration*

The Majority’s Report falsely claims that the special counsel found President Biden to have met the elements of a crime, but that justice would not be served because of his age and memory.⁶⁴ During the committee markup, Members even peddled blatant falsehoods that the special counsel found President Trump “incompetent” to stand trial.⁶⁵ Nowhere in the report did Special Counsel Hur write anything even close to these false accusations. As explained above, Special Counsel Hur exonerated President Biden for each of the categories of documents for reasons because there lacked evidence beyond a reasonable doubt that he had willfully retained any classified documents. President Biden’s memory is not an element of any crime that Special Counsel Hur was charged with investigating.

B. THE MAJORITY HAS NOT ARTICULATED A LEGITIMATE BASIS TO OVERCOME A VALID ASSERTION OF EXECUTIVE PRIVILEGE TO PROTECT SENSITIVE LAW ENFORCEMENT MATERIALS

As more fully explained in the Attorney General’s May 15, 2024 letter to the Committees, the President has affirmatively asserted Executive Privilege over the audio recording of the special counsel’s interviews. The Attorney General explained that producing those recordings “would raise an unacceptable risk of undermining the Department’s ability to conduct similar high-profile criminal investigations—in particular, investigations where the voluntary cooperation of White House officials is exceedingly important.”⁶⁶ When Executive Privilege is invoked, Congress, a separate and co-equal branch of government, must overcome the privilege by demonstrating a legitimate need.⁶⁷

The Majority has offered no valid explanation for why it needs these audio recordings, particularly when it has received copies of transcripts for both interviews. The Majority’s main argument is that the recordings are of “superior evidentiary value regarding the specific issues the Committees are investigating.”⁶⁸ While Repub-

⁶²*Id.*

⁶³*Id.* at 196; *See also*: Ronald Reagan, *THE REAGAN DIARIES* x (Douglas Brinkley ed., First Harper Perennial ed. 2009).

⁶⁴*See, e.g.*, Garland Contempt Report at 13.

⁶⁵For example, Rep. Van Drew stated at the May 7, 2024 Committee Markup: “Because if our commander-in-chief is so incompetent that he cannot stand trial, he is not fit to stand trial, then he is too incompetent, for God’s sake, to be the leader of the most powerful nation on the face of the earth.” Rep. Nehls stated: “I want everybody to understand we’re either saying that our current President is cognitively impaired, incompetent, unable to stand trial even though he broke the law.” Rep. Bentz commented: “It just seems to me that Mr. Hur was saying that we don’t exonerate. What we are going to do is say that, that the President is an older gentleman who is incompetent, and we don’t think we can get a conviction. Therefore, we are not going to prosecute.”

⁶⁶Letter from Att’y Gen. Garland to Committees, *supra* n. 24 at 3.

⁶⁷As described in the letter from the Attorney General, the Committees did not meet any of the potential applicable standards to overcome an assertion of Executive Privilege. *See id.* at 7, n. 2.

⁶⁸*Id.* at 12.

licans acknowledge possession of the transcripts, they complain that those documents “do not reflect important verbal context, such as tone or tenor, or nonverbal context, such as pauses or pace of delivery.”⁶⁹ The Majority’s Report explains:

For instance, when interviewed, a subject’s pauses and inflections can provide indications of a witness’s ability to recall events, or whether the individual is intentionally giving evasive or nonresponsive testimony to investigators. The verbal nuances in President Biden’s answers about his mishandling of classified information would assist the Committee’s inquiry into whether he abused his office of public trust for his family’s financial gain.⁷⁰

These strained arguments are part of the Majority’s continuing efforts to rewrite Special Counsel Hur’s report and have nothing to do with any legitimate purpose. Notably, Hur personally attended and conducted the interview with President Biden, and evaluated each of these elements himself before determining that President Biden could not be charged with a crime. By contrast, Congress is not a law enforcement agency, and there is no legitimate reason why Members of Congress would need to evaluate “tone or tenor, or nonverbal context” to second guess Special Counsel Hur’s exercise of prosecutorial discretion. Moreover, producing the audio files risks having a chilling effect on future witnesses’ willingness to participate in voluntary interviews and/or to be recorded.⁷¹

Likewise, the Majority claims that they need access to the audio files as part of their “impeachment inquiry.”⁷² But as Special Counsel Hur notes in his report, the laws on handling classified material do not apply to a sitting president or vice president.⁷³ Accordingly, even if Hur had determined that there was criminal conduct at issue here—which he did not—it would have pertained to the time *before* Biden was elected president. As perennial Republican witness and legal scholar Jonathan Turley noted when he testified before the House Oversight Committee last year:

The use of pre-office conduct [in impeachment proceedings] remains controversial and should be approached with great circumspection and abundant caution. Absent continuing misconduct in office, even criminal acts that occur in private life should not be the subject of an inquiry. If that were the case, the House could launch investigations for any crime committed by an individual as a private citizen before taking office. It would convert impeachment into a rationalization for subjecting officials to limitless inquiries.⁷⁴

⁶⁹*Id.* 12–13 (citation omitted).

⁷⁰*Id.* at 12–13.

⁷¹Letter from Carlos Felip Uriarte, Asst. Att’y Gen., to the Hon. Jim Jordan, Chairman, H. Comm. on the Judiciary & the Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability at 4–5 (Apr. 8, 2024); Letter from Att’y Gen. Garland to Committees, *supra* n. 24 at 3.

⁷²*E.g.*, Garland Contempt Report at 13.

⁷³Hur Report *supra* n. 2, at 15.

⁷⁴*The Basis for an Impeachment Inquiry of President Joseph R. Biden, Jr.: Hearing Before the H. Comm. on Oversight Accountability*, 118th Cong. (Sep. 28, 2023) (written statement of Jonathan Turley at 31), <https://docs.house.gov/meetings/GO/GO00/20230928/116415/HHRG-118-GO00-Wstate-TurleyP-20230928.pdf>.

The Majority incorrectly cites Supreme Court case *United States v. Nixon* as precedent for their demand that DOJ hand them audio recordings that they already have transcripts for. The *Nixon* case is a starkly different scenario and not on point to the matter of contempt before this Committee. In *Nixon*, the dispute was over whether a special prosecutor, pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure, was able to defeat a Motion to Quash of a Grand Jury subpoena seeking tape recordings and documents relating to the President's conversations with aides and advisers. The Court held:

We conclude that when the ground for asserting privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice. The generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial.⁷⁵

Here, Congress is not investigating or prosecuting a criminal case pursuant to Rule 17(c) of the Federal Rules. Moreover, the tapes in *Nixon* memorialized the actual commission of a crime. Eighteen and a half minutes of those tapes were deleted, meaning that eighteen and a half minutes of a crime were not available to investigators. By contrast, the files the Majority seeks are of interviews conducted by the Special Counsel. Transcripts of the interviews have already been produced and there are no allegations that any portions of the interviews have been deleted.

Perhaps more fatal to their claim, the Majority has also been unable to articulate exactly how the audio files would aid any of their so-called stated purposes of inquiry. For example, the Majority has generally claimed it desires to ascertain whether President Biden “willfully retained classified information and documents . . . to assist his family’s business dealings or to enrich his family” or whether there were any scope limitations placed on the interviews by the attorneys. Seemingly absent is any explanation for how important “verbal context” such as “tone or tenor, or nonverbal context, such as pauses or pace of delivery” would provide the Majority with any information not otherwise available in the transcript or other sources.

The Majority has also charged that it is interested in determining whether there should be reforms to the special counsel regulations to ensure impartial justice or whether there should be policy changes regarding the return of presidential documents. Again, there is no explanation for how the “tone or tenor, or nonverbal context, such as pauses or pace of delivery” would assist the Committees in either of these policy determinations. Moreover, the Majority was able to secure the entire unredacted transcript of the special counsel report, 5 hours of testimony by the special counsel himself, and all the additional information requested (including transcripts of the interview). Finally, the Majority suggests it needs to ensure the accuracy of the transcript. The transcript was prepared by the special counsel’s office for criminal proceedings where

⁷⁵ *United States v. Nixon*, 418 U.S. 683, 713 (U.S. 1974).

accuracy was of paramount importance. The Majority has no reason to believe that inaccuracies exist between the audio and transcribed versions.

C. WAIVER

The Majority also wrongly claims that the Executive Branch waived its ability to claim privilege by producing the transcript of Special Counsel Hur’s interviews with President Biden and Mr. Zwonitzer. As the Attorney General explained in his letter to the President, “audio recordings have distinct features and law enforcement uses, which implicate privacy interests and risks of misuse to a greater degree than transcripts, and disclosure to Congress of the recordings would have a chilling effect on future cooperation in similar investigations.”⁷⁶

Finally, the Majority discounts that the Department has released transcripts in good faith as part of the accommodations practice. The Attorney General has expressed concern that finding waiver here would “incentivize less Executive Branch cooperation and broader privilege assertions.”⁷⁷ The Minority is similarly concerned that a finding of waiver here risks seriously damaging the accommodation process going forward.

D. THE DEPARTMENT PROVIDED THE MAJORITY ALL THE INFORMATION IT ASKED FOR—THE TRUE INTENTION OF THE MAJORITY IN SEEKING THE AUDIO IS TO AID DONALD TRUMP

As established above, the Majority’s justifications for overcoming the claim of privilege are both pretextual and insufficient. In reality, the Department took extraordinary measures to provide the Majority with all the information it asked for. Within two days of Special Counsel Hur’s submitted report, the Department released an unredacted copy to Congress. Shortly thereafter, the Department also agreed to allow Mr. Hur to testify before the Committee, which he did for over five hours at a March 12, 2024, hearing. In response to the Majority’s Subpoena, the Department: (1) made available the classified documents listed as A9 and A10 in the appendix of the report; (2) provided communications between the Department and the Executive Office of the President and President Biden’s personal counsel regarding Special Counsel Hur’s report; (3) produced the transcripts of President Biden’s voluntary interview with Special Counsel Hur; and (4) produced the transcripts of Mr. Zwonitzer’s voluntary interviews with Special Counsel Hur.

The Majority is truly interested in the audio recordings because they believe it will provide them with an opportunity to embarrass President Joe Biden in the months leading up to an election—a justification which falls far short of the Executive Branch interests expressed by the White House and the Attorney General.

The Majority’s unwillingness to respect these interests is particularly ironic when members of the Majority, including the Chairman himself, have previously protested similar invasions of presidential privacy. Notably, Chairman Jordan expressed “grave concern” about protecting President Trump’s privacy when Congress issued a subpoena to Mazars for his tax records. Specifically, in an April

⁷⁶Letter from the Hon. Merrick B. Garland, Att’y Gen. to The President, *supra* n. 24, at 7.

⁷⁷*Id.*

15, 2019 Memorandum, the Chairman, then serving as Ranking Member of the House Oversight and Government Reform Committee, wrote:

I have concerns that if Chairman Cummings obtains highly sensitive, personal information about the President's finances, he will selectively release the information publicly in a misleading fashion to create a false narrative for partisan political gain.⁷⁸

Mr. Jordan proceeded to argue that the “partisan” request for Mr. Trump’s tax records was not a responsible use of the Committee’s oversight power. He argued:

The Supreme Court has cautioned that Congress does not have ‘general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress.’”⁷⁹ He also added, “Quite simply, Chairman Cummings seems to be seeking this sensitive, personal information in a pursuit to satisfy his preconceived and unsupported conclusions.⁸⁰

Later in that same Memorandum, he stated:

The Democrat obsession with the President and his family is gravely dangerous and counterproductive to the work of our Committee. The American people can now see that Democrats’ pursuit of the truth is clouded by their obsession with attacking the President and the First Family. None of our actions would be necessary if not for Chairman Cummings’s decision to pursue reckless, partisan investigations designed to attack the President and his family.⁸¹

Moreover, while the Majority has argued that the Committee needs audio files from the Department because they “are the best evidence of witness interviews,” the Majority has refused to release even basic transcripts to the American people from nearly all the 120 transcribed interviews the Committee has taken to date. The Majority has also refused to provide audio and video copies of the transcribed interviews to the Minority. The reason is self-evident—the Majority does not care about the “best evidence” of a witness interview when it might contradict or disprove its cherry-picked and manipulated Committee reports or out-of-context sound bites leaked to the media for partisan political gain.

E. AMENDMENTS

During the markup of this report, various amendments were offered to correct or provide context to the highly partisan language of the report, which were all defeated on party lines.

I offered an amendment to reflect the assertion of Executive Privilege by the President based on his substantial interest in protecting sensitive law enforcement investigation files.

⁷⁸ Republican Staff Memorandum, *Chairman Cummings’s Unprecedented Subpoena of Mazars USA LLP*, H. COMM. ON OVERSIGHT AND REFORM (April 15, 2019), <https://oversight.house.gov/wp-content/uploads/2019/04/2019-04-15-JDJ-to-EEC-re-Mazars-Subpoena.pdf>.

⁷⁹ *Id.* (citing *Watkins v. United States*, 354 U.S. 178, 187 (1957)).

⁸⁰ *Id.*

⁸¹ *Id.*

Representative Johnson (D-GA) introduced an amendment highlighting disturbing public gaffes by Republican presidential candidate Donald Trump, which draw serious concerns about his mental competency. Because the Majority has fixated on their so-called need to evaluate President Biden’s age and memory, it is only appropriate to juxtapose President Trump at a recent rally praising a fictional character from the film *Silence of the Lambs*: “The late, great Hannibal Lecter, he’s such a wonderful man.” The record should be clear that the Majority’s report does not appear to be concerned when a presidential candidate shows serious signs of cognitive impairment if his name is Donald Trump.

Representative Dean (D-PA) offered an amendment to demonstrate the Majority’s proclivity to push false narratives to malign their perceived political enemies with the assistance of manipulated audio. The Amendment pointed out that this is the true reason for the Majority’s fervent actions to obtain the audio tape and not because they are legitimately interested in the President’s “vocal tone, pace, inflections, verbal nuance, and other idiosyncrasies.” The Amendment also pointed out the devastating effects of these shameful tactics, by telling the story of Ms. Nina Jankowicz, who appeared for a deposition before the committee last year.⁸² Years earlier, Ms. Jankowicz had participated in an hour-long roundtable in which she was asked about a nascent Twitter program through which users could add context to misleading tweets. In the full video, she explained what the program was and criticized it. After Ms. Jankowicz was appointed to a position at DHS, the Chairman retweeted a sliced-and-diced one minute clip of her comments which made it sound like she endorsed the program and mocked President Trump’s Twitter followers. In reality, she did neither of these things. But the Chairman tweeted this video with, quote, “1984” as the sole caption, a reference to George Orwell’s novel. The Chairman’s tweet was subsequently amplified by others, and Ms. Jankowicz faced serious threats, including death threats hurled at her while she was in her third trimester of pregnancy.⁸³

Representative Johnson offered an amendment showing that MAGA Republicans have spent \$20 million on a committee investigating conspiracy theories that has yielded nothing. This is true despite holding 10 hearings before the Select Weaponization of the Federal Government—six of which have been on the same topic—120 transcribed depositions and depositions, 555 hours of staff and witness time in these transcribed interviews and depositions, more than 60 subpoenas to executive branch agencies and private entities, and the solicitation of over 3,000,000 pages of documents from agencies and private entities. Even after all this activity, MAGA Republicans have failed in its efforts to find any impeachable offense committed by President Biden or misconduct in his administration. This has not stopped right wing media, however, from excoriating the Committee for not doing enough this Congress. This Amendment was offered to add context and accuracy to the report

⁸² Deposition of Nina Jankowicz (Apr. 10, 2023), [https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Jankowicz%20Transcript Redacted.pdf](https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/Jankowicz%20Transcript%20Redacted.pdf).

⁸³ *Id.*; Heidi Przybyla, ‘A surreal experience’: Former Biden ‘disinfo’ chief details harassment, POLITICO (Mar. 8, 2023), <https://www.politico.com/news/2023/03/08/former-biden-disinfo-chief-details-harassment-00085981>.

by adding additional backdrop about this protracted and over the top investigation.

Representative Dean offered an amendment proving that President Biden did in fact remember the date of his son Beau's death during the interview with Special Counsel Hur. This amendment sought to set the record straight and point out that Hur's remarks on that exchange were inaccurate, grotesque, and gratuitous. The Majority's efforts to repeat that mischaracterization for political ends is even more distasteful.

Representative Ivey (D-MD) introduced an amendment to provide factual accuracy to the record regarding the stark differences between former President Trump's criminal mishandling of documents versus the circumstances that led to a special counsel investigation into President Biden. Special Counsel Hur noted there were material distinctions between the two scenarios. Hur noted there are "serious aggravating facts" in the Trump case.⁸⁴ "Most notably, after being given multiple chances to return classified documents and avoid prosecution, Mr. Trump allegedly did the opposite. According to the indictment, he not only refused to return the documents for many months, but he also obstructed justice by enlisting others to destroy evidence and then to lie about it."⁸⁵ "In contrast, Mr. Biden turned in classified documents to the National Archives and the Department of Justice, consented to the search of multiple locations including his homes, sat for a voluntary interview, and in other ways cooperated with the investigation."⁸⁶ The amendment was offered to illustrate that, unlike President Biden, Donald Trump intentionally and flagrantly took and concealed highly classified documents. Mr. Trump's actions are extremely serious and warrant the 32 counts of Willful Retention of National Defense Information, Conspiracy to Obstruct Justice, and Making False Statements brought against him. The Majority's efforts to conflate the two cases is morally bankrupt and dishonest. It is, in fact, the Majority that seeks to discredit and undermine the fair administration of justice.

Representative Swalwell (D-CA) introduced an amendment stating that no Member may be permitted to hold any other person in contempt of congress unless they themselves have provided the testimony that has been required of them regarding their participation in the planning and execution of the events that took place at the Capitol on January 6, 2021. The purpose of the Amendment was to show the irony that at least two committee members of Majority have been asked to comply with a subpoena related to January 6.

Representative Scanlon (D-PA) introduced an amendment pointing out that the Majority has no legitimate purpose in furthering their impeachment inquiry because impeachment is not available. As Special Counsel Hur noted specifically in his report, the laws on handling classified material do not apply to a sitting president or vice president. Accordingly, even if Hur had determined that there was criminal conduct at issue here—which he did not—it would have pertained to the time before Biden was elected president. The Majority's perennial witness and legal scholar Jonathan

⁸⁴ Hur Report, *supra* n. 2, at 11.

⁸⁵ *Id.*

⁸⁶ *Id.*

Turley confirmed when he testified before the House Oversight Committee last year that “even criminal acts that occur in private life should not be the subject of an impeachment.”

JERROLD NADLER,
Ranking Member.

○