No. 22A350

IN THE

Supreme Court of the United States

MICHAEL WARD, *ET AL.*, *Applicants*,
v.
BENNIE G. THOMPSON, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE UNITED STATES HOUSE SELECT COMMITTEE TO INVESTIGATE THE JANUARY 6TH ATTACK ON THE UNITED STATES CAPITOL,
ET AL., *Respondents*.

On Emergency Application for Stay of an Order of
the United States Court of Appeals for the Ninth Circuit

Motion of America's Future, Free Speech Coalition, Free Speech Defense and Education Fund, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund for Leave to File Attached Brief *Amicus Curiae* in Support of Applicants; for Leave to File without 10-Days Notice; and for Leave to File in Paper Format

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October 28, 2022

Amici curiae America's Future, Free Speech Coalition, Free Speech Defense and Education Fund, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund respectfully move for leave to file the attached *amicus* brief in support of Applicants' Emergency Application for Stay; to file in unbound format on 8.5-by-11-inch paper; and to the extent leave is required, to file without 10 days' advance notice to the parties of *amici*'s intent to file. This motion and brief are being filed before the court-ordered deadline of 5:00 pm, October 28, 2022, for the Committee to respond to the application.

Movants have sought consent to the filing of an *amicus* brief in support of the emergency application for stay. Counsel for applicant has consented and counsel for respondents takes no position on the *amicus* brief.

Although this Court's Rules do not expressly provide for *amicus* briefs in support of or in opposition to an application for stay, this Court previously has allowed them. *See*, *e.g.*, *Trump v. International Refugee Assistance Project*, 137 S. Ct. 2327 (June 27, 2017).

Amici organizations have a deep interest in protecting the constitutional checks and balances established in the U.S. Constitution.

In light of the expedited nature of this proceeding, *amici* respectfully request leave to file in unbound format on 8.5-by-11-inch paper and, to the extent leave is required, to file the brief without 10 days' advance notice to the parties of *amici*'s intent to file.

Therefore, *amici* respectfully request leave to file an *amicus* brief in support of the application for stay of the administrative action and in support of the petition for certiorari.

Respectfully submitted,

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On Emergency Application for Stay of an Order of
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Brief *Amicus Curiae* of America's Future, Free Speech Coalition, Free Speech Defense and Education Fund, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund in Support of Applicants

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October 28, 2022

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INTEREST OF THE *AMICI CURIAE*[1]

America's Future, Free Speech Coalition, Free Speech Defense and Education Fund, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund are nonprofit educational and legal organizations, exempt from federal income tax under Internal Revenue Code sections 501(c)(3) or 501(c)(4). *Amici* were established, *inter alia*, for the purpose of participating in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and defending human and civil rights secured by law.

STATEMENT OF THE CASE

Congressman Bennie G. Thompson, as Chairman of the House Select Committee to Investigate the January 6th Attack on the United States Capitol ("the Committee"), issued a subpoena to T-Mobile for, *inter alia*, telephone and text message records of Dr. Kelli Ward, Chairwoman of the Arizona Republican Party ("the Subpoena"). By letter dated January 24, 2022, T-Mobile advised Dr. Ward of the Subpoena (Application, Exhibit F), causing her to file a motion to quash in district court supported by two declarations (Application, Exhibits D and E) which was denied on September 22, 2022 (Application, Exhibit B). The district court also denied Dr. Ward's motion for an injunction pending appeal (Application, Exhibit C). The district court's decision was

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[1] It is hereby certified that counsel for Applicants and for Respondents have either consented to or take no position on the filing of this brief; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

affirmed by a split panel of the Ninth Circuit (Application, Exhibit A). The matter comes before this Court on an Emergency Application for Stay and Injunction filed on Monday, October 24, and Justice Kagan's order for a response to be filed by 5:00 p.m., on Friday, October 28.

STATEMENT

These *amici* are nonprofit organizations which regularly participate in the process by which public policy is formed throughout the nation. Although the Applicant in the case before the Court is the head of a state political party, the decision that will be reached by this Court will have significant impact on many nonprofit organizations throughout the nation. The *amici* nonprofits know first-hand the way in which such subpoenas chill political participation.[2] Efforts by government officials to learn the identity of those engaged Americans with different views strike at the heart of such nonprofit organizations. Such intrusive government tactics are designed to, and do, discourage donors from giving to nonprofits, impair efforts to recruit and retain members, and cause those who work in association with nonprofits on their programs to rethink their involvement.

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[2] A government subpoena directed to a nonprofit organization was recently quashed. In a case involving the constitutionality of an Alabama law restricting so-called transgender surgical and chemical interventions with minors, the U.S. Department of Justice issued subpoenas to two nonparty nonprofits, including Eagle Forum of Alabama, demanding a wide range of documents, including their contacts with legislators and others leading up to the law's enactment. On October 24, 2022, the district court quashed the subpoena for exceeding the scope of discovery. *Boe, et al. v. Marshall, et al.,* Case No. 2:22-cv-184-LCB (Oct. 24, 2022). (These *amici* filed an *amicus* brief urging the district to quash that subpoena on Sept. 20, 2022.)

Although the Emergency Application focuses on the First Amendment violations,[3] the Subpoena is also objectionable under the Fourth Amendment as a modern-day general warrant. Historically known as "writs of assistance," the royal government authorized government agents to issue dragnet warrants against colonists to allow those agents to wholesale search the "persons, houses, papers and effects" of colonists of those suspected of some wrongdoing. James Otis termed "writs of assistance" as "the worst instrument of arbitrary power … that ever was found in an English law book [placing] the liberty of every man in the hands of every petty officer."[4]

This Application seeks to protect enduring constitutional principles which transcend the politics of the moment. How this Court rules on the Application will also have consequences well beyond the effort of a Democrat-dominated Committee to subpoena the political contacts of a Republican Party official. The November 2022 election could moot the matter of this Subpoena, but the threat posed is not just capable of repetition, but likely to be repeated in the future.

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[3] A First Amendment violation not focused on in the Emergency Application is the right of the people to petition their government — including seeking fair elections, because "the whole concept of representation depends upon the ability of the people to make their wishes known to their representatives." *See Eastern R.R. Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 137 (1961).

[4] James Otis, "Speech before the Superior Court of Massachusetts on the Writs of Assistance" (1761). *See also Stanford v. Texas*, 379 U.S. 476, 481 (1965).

SUMMARY OF ARGUMENT

These *amici* focus their brief on the First Amendment chilling effect of such subpoenas and the absence of a valid predicate for the Subpoena to T-Mobile. Having issued scores of subpoenas and conducted many interviews, Respondents must see the disruptive effect that this investigation has on persons targeted by the Committee, many of whom are guilty of no wrongdoing. Thus, they must see, but refuse to admit, the chilling effect these subpoenas have on their political opponents, particularly when directed to individuals deeply involved in political party committees and nonprofit organizations who reasonably dispute and push back against the Committee's "most secure election in history" narrative. It is always tempting for government to use the power it possesses to undermine opposition, but the courts have been sensitive to guarding against the "chilling effect" of such actions on the exercise of First Amendment rights. This is yet another occasion where the courts have a duty to protect individual Americans from government abuses.

Here, there is no suggestion that Dr. Ward violated any law on January 6, but only that she took the Fifth Amendment when the Committee sought her deposition. However, there is good reason to believe that this Congressional committee is working in league with the Department of Justice to develop criminal cases. This deprives persons subpoenaed of protections to which they are entitled. Under the circumstances here, that choice to exercise a constitutional right provides no foundation for the subpoena of Dr. Ward's contacts.

ARGUMENT

I. THE SUBPOENA IMPOSES A CHILLING EFFECT ON THE EXERCISE OF FIRST AMENDMENT ACTIVITIES.

The Application filed by Dr. Kelli Ward to enjoin temporarily the enforcement of the Subpoena issued to her by the Select Committee to Investigate the January 6th Attack on the United States Capitol presents issues of profound significance regarding the exercise of First Amendment freedoms of speech, expressive association, and the press. The threat to those freedoms posed by the Subpoena is as concerning as the threat posed by the legislative subpoenas of the McCarthy era. The Court noted the threat in *Watkins v. United States*, 354 U.S. 178 (1947):

> Abuses of the investigative process may imperceptibly lead to abridgement of protected freedoms. The mere summoning of a witness and compelling him to testify, against his will, about his beliefs, expressions or associations is a measure of government interference. And when those forced revelations concern matters that are unorthodox, unpopular, or even hateful to the general public, the reaction in the life of the witness may be disastrous.... Those who are identified by witnesses and thereby placed in the same glare of publicity are equally subject to public stigma, scorn and obloquy. Beyond that, there is the more subtle and immeasurable effect upon those who tend to adhere to the most orthodox and uncontroversial views and associations in order to avoid a similar fate at some future time. [*Id.* at 197-98.]

By its mere issuance, the Subpoena had a chilling effect on Dr. Ward and those with whom she has associated for the purpose of advancing shared political beliefs. *Id.* It is important to acknowledge that "chill" in this context does not mean a physical change in condition, such as reducing a measurable temperature. Rather, it means a subjective response to a perceived threat that discourages the exercise of a

constitutional right. *Cf. Community Service Broadcasting of Mid-America, Inc. v. FCC*, 598 F.2d 1102, 1118 (D.C. Cir. 1978) (*en banc*). Such a chilling effect need only be "likely" to justify preliminary relief. *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). The violation of a First Amendment right constitutes an immediate and irreparable injury if relief is not granted. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020).

The highly publicized statements of the Director of National Intelligence, the Secretary of Homeland Security, and Attorney General Merrick Garland have threatened investigation and possible prosecution of citizens who express doubt about the legitimacy of the 2020 presidential election.[5] The principal focus of the Committee has been identifying any individual or group remotely involved in planning or participating in the events at the Capitol on January 6, 2021, which resulted in enlarging that target group to include anyone who questioned the legitimacy of the 2020 presidential election. The Committee has issued many dozens of subpoenas for that purpose.[6] Meanwhile, the Department of Justice has been pursuing the same

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[5] Office of the Director of National Intelligence, "Domestic Violent Extremism Poses Heightened Threat in 2021," (Mar. 1, 2021); U.S. Dep't of Justice, "Federal Law Constraints on Post-Election 'Audits,'" (July 28, 2021); Dep't of Homeland Security, Office of the Chief Security Officer, "Domestic Violent Extremism Internal Review: Observations, Findings, and Recommendations," (Mar. 11, 2022).

[6] *See* https://en.wikipedia.org/wiki/United_States_House_Select_Committee_on_the-January_6_Attack/.

objective in what Attorney General Garland has described as "the most wide-ranging investigation in [the Department's] history."[7]

The effect of the Subpoena, particularly in light of the public threats made by executive officials, on Dr. Ward and those who have communicated with her, as well as those who might consider doing so in the future, is to discourage them from exercising their freedom of speech and expressive association. The phone records sought by the Subpoena can be used to identify individuals who shared Dr. Ward's concern that the 2020 presidential election was influenced by election fraud. Those individuals may reasonably assume that they will be investigated by the Committee, as the panel majority suggested the Committee would be prepared to do to discover details of the communications with Dr. Ward. Order dated October 22, 2022, at 7. They also would reasonably fear that, once identified as "election deniers," they would be subject to investigation by the Department of Justice with the burdens and expenses that usually accompany that process. The individuals whose telephone communications with Dr. Ward would be made available to the Committee would immediately feel the chilling effect of the Subpoena. They will be reluctant to continue communicating with Dr. Ward and with others who share Dr. Ward's political positions. This is the very effect that the Court has sought to restrict since its decision in *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958). The recent decision in *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373 (2021) reaffirmed the Court's

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[7] *See* K. Dilanian & C. Siemaszko, "Merrick Garland calls Justice Department's Jan. 6 probe the 'most wide-ranging' investigation in its history," NBC News (July 26, 2022).

position that "[r]egardless of the type of association, compelled disclosure requirements are reviewed under exacting scrutiny." *Id.* at 2383.

The means chosen by the Committee to obtain the requested information must be narrowly tailored to the Committee's asserted interest. 141 S. Ct. at 2383-84. The sweeping scope of the Subpoena's demand for all phone records for the period November 1, 2020 through January 31, 2021 does not satisfy the narrow tailoring requirement. "[A] substantial relation to an important interest is not enough to save a disclosure regime that is insufficiently tailored." *Id.* at 2384. The limitation of the Subpoena to metadata does not save the Subpoena under the narrow tailoring test because the Subpoena's dragnet effect pulls in a massive amount of data that the Committee can use as a first step in identifying individuals who have communicated with Dr. Ward and who may be investigated further in a second step to determine the content of their discussions with Dr. Ward. By any reasonable standard, this constitutes an abuse of legislative prerogative.

The Committee's assertion of its interest in investigating the events of January 6, 2021, and its influencing factors cannot be accepted as a blanket justification for issuing the Subpoena that overrides the interests of Dr. Ward and her associates in protecting their First Amendment rights. The particular means chosen to pursue the Committee's interests must be weighed against the interests of preserving constitutional freedoms. *Trump v. Deutsch Bank AG*, 943 F.3d 627, 664-66, 675-78 (2d Cir. 2019). That balancing process cannot mean that judges' value preferences should determine the outcome of the balancing test. The Committee's competing interests

should be expressed, to the extent possible, in terms that can be measured objectively. Here, the marginal interest in gathering a massive volume of records of private communications through the issuance and enforcement of the Subpoena, in light of the enormous amount of personal data already collected by the hundreds of other subpoenas, is what must be weighed against the interests of Dr. Ward and her associates in protecting their freedom of association. The erosion of First Amendment freedoms by the Committee's unprecedented pursuit of private communications and the chilling effect of its blunderbuss approach to gathering information must be considered as a factor in applying the balancing test. A legislative interest in investigating a particular subject cannot serve as a justification for every action taken in pursuit of that interest. Simply waving the Committee's general interest in investigating the January 6, 2021, events should not determine the result.

The decision on the Application will necessarily affect a broader range of United States citizens than the members of the Arizona Republican Party. In fact, Dr. Ward's phone communications likely involve individuals other than Arizona Republicans. As the *Watkins* Court observed, a legislative subpoena can have a significant chilling effect on the citizenry at large.

II. DR. WARD'S INVOCATION OF THE FIFTH AMENDMENT PROVIDES NO BASIS FOR THE COURT TO FIND THAT AN IMPORTANT GOVERNMENT INTEREST THAT UNDERGIRDS THE SUBPOENA.

A. There Was No Legitimate Basis for Targeting Dr. Ward.

While the First Amendment protections that stand in the way of the Committee obtaining Dr. Ward's contact list are of great importance, they are wholly irrelevant unless the Committee first establishes a solid predicate for targeting Dr. Ward. Without that solid predicate for an investigation, the constitutional issues are never reached because the Subpoena would be just part of a massive fishing expedition — really, a type of impermissible general warrant.

The circuit court first asserts an "important government interest in investigating the causes of the January 6 attack and protecting future elections from similar threats." Exhibit A, at 6. However that "government interest" provides no reason whatsoever to investigate Dr. Ward. Then, the court asserts "Ward participated in a scheme to send spurious electoral votes to Congress, a scheme that the Committee describes as "a key part" of the "effort to overturn the election" that culminated on January 6. *Id*. Other than the Committee's use of the words "scheme" and "spurious," there is no reason to believe that those persons who sought to use the constitutional process to challenge the seating of electors were engaged in an illegal activity. If that was the test, the large component of the leadership of the Democrat party that challenged the election of Donald Trump in 2016 (including Hillary Clinton) were also.[8]

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[8] *See* V.D. Hanson, "Who Denies Election Results?" *American Greatness* (Oct. 19, 2022).

On its third point, the court states "When the Committee sought to question her about those activities, she invoked the Fifth Amendment and refused to answer." *Id.* at 7. From that, it draws the "inference" that her "conduct during the period in question went beyond simple discussions with her political associates...." *Id.* at 7. The reason that a person might choose to assert the Fifth Amendment in response to Committee questions requires an understanding of the nature of the Committee's investigation.

B. The Committee Has Demonstrated No Interest in Investigating Its Legislative Charge Regarding Whether the 2020 Election Was Conducted Properly.

The Committee claims its role is to "investigate and report upon the facts, circumstances, and causes relating to the January 6, 2021 ... attack upon the United States Capitol Complex ... as well as the influencing factors that fomented such an attack."[9] Yet the Committee has pointedly refused to consider any evidence that does not support its preconceived notions. The Committee has refused to consider any of the credible evidence demonstrating that election laws were broken in swing states, at the behest of courts and election officials in support of the prevailing candidate. The Committee has no interest in whether those election violations may have changed the outcome of the election, or at least created a very reasonable belief on the part of supporters of the losing candidate that the outcome was corrupted. Any possibility

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[9] House Select Committee to Investigate the January 6 Attack on the United States Capitol.

that these election law violations could have provided a spark for the events of January 6 has been wholly unreviewed by the Committee.

The Committee has based its investigation on the preconceived conclusion that Donald Trump's claims of election irregularities were "baseless" and "false claims."[10] Yet the indisputable historical record proves that numerous state election officials in swing states defied state election laws relating to absentee balloting, likely leading to an inaccurate vote count.

The bipartisan 2005 report of the Commission on Federal Election Reform, chaired by former President Jimmy Carter and former Secretary of State James Baker III, concluded that "[a]bsentee ballots remain the largest source of potential voter fraud."[11] The Department of Justice's own Manual on Federal Prosecution of Election Offenses illustrates the same concerns about mail-in vote fraud.[12] That DOJ Manual reflects the Department's experience: "Absentee ballots are particularly susceptible to fraudulent abuse because, by definition, they are marked and cast outside the presence of election officials and the structured environment of a polling place." *Id.*

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[10] *See, e.g.*, Z. Cohen, A. Grayer & R. Nobles, "Here's what the January 6 committee has revealed through its 6 hearings," *CNN* (July 11, 2022).

[11] J. Lott, "Opinion: Heed Jimmy Carter on the Danger of Mail-In Voting," *Wall Street Journal* (Apr. 10, 2020).

[12] *See* U.S. Dep't of Justice, Federal Prosecution of Election Offenses (8th ed. Dec. 2017) at 28-29 ("DOJ Manual").

C. The Committee Is Conducting a Criminal, Not Legislative Investigation.

The Committee has made clear from the start its intent to run what amounts to a criminal investigation, assuming that every claim of election law violations was fraudulent. Based on that assumption, the Committee made clear that among other areas of investigation, "the panel has focused on whether violations of federal wire fraud laws occurred when individuals raised funds by promoting the idea that the election was stolen while knowing the claims were false."[13]

Despite the fact that the Constitution's Separation of Powers exclusively assigns the prosecutorial function to the Executive Branch, not the Legislative, the Committee has trumpeted its determination to seize executive law enforcement power.

As early as March 8, 2022, the Committee was alleging in court filings that it had a "good-faith basis" to believe that Trump and his supporters had "engaged in a criminal conspiracy to defraud the United States...."[14] "The 221-page filing marks the committee's most formal effort to link former President Donald Trump to a federal crime."[15]

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[13] J. Dawsey, J. Alemany, and T. Hamburger, "Inside the Jan. 6 committee's effort to trace every dollar raised and spent based on Trump's false election claims," *Washington Post* (Mar. 8, 2022).

[14] Defendants' Brief, *Eastman v. Thompson*, Case 8:22-cv-00099, p. 42 (C.D. Cal. 2022).

[15] E. Tucker, F. Amiri and M. Jalonick, "Trump Engaged In 'Criminal Conspiracy' Says Jan. 6 Committee," *Huffington Post* (Mar. 2, 2022).

The *New York Times* detailed the extent of the Committee's unlawful criminal investigation:

> [A]s the committee and its dozens of investigators issue subpoenas for documents, phone records and bank records, **the panel is closely looking for evidence of criminality that the Justice Department might not have unearthed**....
>
> [G]iven that the Jan. 6 committee's staff is led by a ... pair of former U.S. attorneys, any recommendation they make would most likely be taken seriously by federal prosecutors.
>
> Investigators are **looking into whether a range of crimes were committed**, including whether there was wire fraud by Republicans who raised millions of dollars by promoting assertions that the 2020 presidential election was stolen..... As investigators scrutinize these fund-raising efforts, they are examining **whether any campaign finance laws or regulations governing how nonprofits may spend their money were broken.**[16]

These issues would seem to have little to do with legislative review of the causes of the protest at the Capitol, and everything to do with investigating to support the Department of Justice's filing of criminal charges. "Evidence gathered **by the committee** could be crucial **in the Justice Department's criminal investigation** of the riot and any plan to subvert the outcome of the election."[17] Comments from Committee members make this intent all too clear.

Former federal prosecutor Glenn Kirschner detailed in a June MSNBC piece the reasons he believes the Committee and the Department are working in concert. Kirschner notes that federal prosecutors must issue Miranda warnings to potential

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[16] L. Broadwater, "The Jan. 6 Committee's Consideration of a Criminal Referral, Explained," *New York Times* (Jan. 3, 2022) (emphasis added).

[17] "Jan. 6 committee may make criminal referral on witness tampering," *Reuters* (July 2, 2022) (emphasis added).

criminal subjects. "However, there is no requirement that the Jan. 6 committee administer such warnings to witnesses."[18] Kirschner notes that this makes it less likely that "the witness invokes their right against self-incrimination and declines to testify." *Id*. As a result, "[t]he Jan. 6 committee has developed incriminating evidence that would not have been developed had the DOJ gone first." *Id*.

Congressional committees are required to provide few if any of the constitutional and due process protections that any person accused of a crime is entitled to in an Article III court. There are obvious reasons to collaborate in such a manner, as a Congressional investigation could evade statutory and procedural barriers imposed on the U.S. Department of Justice. Allowing the Committee to conduct what should be the Department's investigation, and compel potentially incriminating testimony, without the constitutional protections the Department would be forced to observe if conducting its own investigation, is a far greater "threat to the republic" than any actions of a few hundred protestors on any given day. The actions of the Committee and the Department trample on numerous constitutional guarantees.

The Constitution protects the right to make political statements that are disfavored by the majority. **"If there is a bedrock principle underlying the First Amendment**, it is that the **government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable**." *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (emphasis added). Yet the Committee

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[18] G. Kirschner, "Why the 'investigative sloth' of the DOJ's Jan. 6 inquiry could be a smart play," *MSNBC* (June 8, 2022).

operates under no meaningful Constitutional constraint, and has made clear that it views allegations of election irregularities in 2020 to be punishable criminal behavior. Rep. Liz Cheney argued:

> that the threat to democracy was still occurring due to people believing false election claims that President Joe Biden "stole" it from former President Donald Trump.... "Unfortunately, too many in my own party are embracing that former president, are looking the other way, are minimizing the danger," she continued. "That's how democracies die...."[19]

The Committee has insisted that those who question the 2020 election are lying:

> The Jan. 6 committee has argued for months in the run-up to public hearings that at the center of its investigation is the Big Lie told by the 45th president: that he, and not his opponent Joe Biden, won the presidential election. Donald Trump's insistence that he won was tied to the baseless claim that widespread voter fraud in that year's race for the White House was so prevalent it overturned his victory.[20]

As CNN reported, "[Committee] members are in wide agreement that Trump **committed a crime when he pushed conspiracies** about the 2020 election."[21] In effect, the Committee, the Department, and the FBI appear to have worked together to criminalize dissent.

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[19] E. Fike, "Cheney: Threat To Democracy Continues If People Believe False Election Claims," *Cowboy State Daily* (Jan. 6, 2022).

[20] B. Buchman, "Jan. 6 committee hearing to show how Trump's Big Lie took shape," *Daily Kos* (June 13, 2022).

[21] K. Liptak, M. Rimmer and A. Pellish, "Cheney says January 6 committee could make multiple criminal referrals, including of Trump," *CNN* (July 3, 2022) (emphasis added).

For these reasons, persons targeted by the Committee for investigation would have been well advised to consider asserting Fifth Amendment protections without triggering any presumption that the person was engaged in illegal behavior.

CONCLUSION

These *amici* urge this Court to stay the ruling of the Ninth Circuit, enjoining T-Mobile from compliance with the Committee's Subpoena.

Respectfully submitted,

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