

H. Res. \_\_

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

June     , 2024

Whereas Article I, Section 5 of the United States Constitution provides that “[e]ach House may determine the rules of its proceedings;”

Whereas H. Res. 503, entitled “Establishing the Select Committee to Investigate the January 6 Attack on the United States Capitol” was passed by the House of Representatives on June 30, 2021;

Whereas Section 2 of H. Res. 503 established a Committee to be composed of 13 members, “5 of whom shall be appointed after consultation with the minority leader;”

Whereas on July 1, 2021, the Select Committee to Investigate the January 6th Attack on the United States Capitol (“Select Committee”) was actually established by former Speaker Pelosi with a complement of only 9 members and these 9 were chosen without consultation with the minority leader (then-Representative Kevin McCarthy);

Whereas Section 5 of H. Res. 503 applied Rule XI of the Rules of the House of Representatives to the Select Committee;

Whereas the Rules of the House of Representatives for the One Hundred Seventeenth Congress are available in Committee Print RCP 117-24;

Whereas Section 5(c)(4) of H. Res. 503 provided that the Chair of the Select Committee was empowered to issue subpoenas pursuant to Clause 2(m) of Rule XI in order to investigate January 6, 2021, including subpoenas for the purpose of taking depositions;

Whereas Section 5(c)(6)(A) of H. Res. 503 provided that the Chair of the Select Committee was required to consult with the Ranking Minority Member of the Select Committee for the purpose of ordering the taking of depositions, but no Ranking Minority Member was ever designated or properly appointed to the Select Committee;

Whereas former Representative Elizabeth Cheney was designated “Vice Chair” of the Select Committee solely to give the appearance, but not the reality, that the Select

Committee possessed a validly appointed and designated Ranking Member selected by the then-minority party conference;

Whereas the One Hundred Seventeenth Congress also issued regulations for the use of deposition authority, which provided for consultation with the minority member that did not exist for the Select Committee, negating the validity of any subpoenas issued in violation of the relevant rules;

Whereas the deposition rules also required equal time for questions be afforded to minority counsel, which did not exist because no Ranking Minority Member existed to designate such minority counsel, which noncompliance with the governing rules rendered all depositions of the Select Committee invalid;

Whereas the deposition rules also required the Ranking Minority Member be consulted about the release of transcripts, another provision that could not be and was not be complied with because there was no Ranking Minority Member designated for the Select Committee;

Whereas the deposition rules governing the Select Committee required copies of certain provisions concerning deposition authority to be provided to witnesses on pain of the witnesses not being required to testify;

Whereas witness Stephen K. Bannon, as one example, was not provided copies of the relevant deposition rules, and whereas possibly other targets or Select Committee witnesses were similarly deprived of this procedural right as well;

Whereas Section 5(c)(6)(A) of H. Res. 503 required compliance with Section 3(b)(1) of H. Res. 8, One Hundred Seventeenth Congress;

Whereas Section 5(c)(6)(B) of H. Res. 503 required depositions to be governed by the procedures submitted by the Chair of the Rules Committee for printing in the Congressional Record on January 4, 2021;

Whereas Section 5(c)(8) of H. Res. 503 required the Chair of the Select Committee to consult with the Ranking Minority Member before allowing questioning by Members of the Select Committee for more than five minutes as though pursuant to Clause 2(j)(2)(B) of Rule XI, but there was no validly appointed and designated Ranking Minority Member for the Select Committee;

Whereas Section 5(c)(8) of H. Res. 503 permitted Select Committee staff to question a witness only in accord with Clause 2(j)(2)(C) of Rule XI;

Whereas Section 5(c)(10) of H. Res. 503 applied Paragraphs (f)(1) through (f)(12) of Clause 4 of Rule XI to the Select Committee;

Whereas Section 7(b)(1) of H. Res. 503 provided that the records of the Select Committee were to be sent to what the House presumed would be a standing committee of the House (such as Administration, Oversight, and/or Judiciary) once the Select Committee terminated, but some records were only sent to the White House, moving material beyond Congress's unilateral power to retrieve them;

Whereas Rule XI Clause (e)(2)(A) of the House Rules One Hundred Seventeenth Congress provides that all records of committees are property of the House, yet the Select Committee transmitted some of its records to the Biden White House, which retains exclusive control of them;

Whereas the Supreme Court of the United States has recognized that actions by any committee that are inconsistent with the procedures authorized by the full House is *ultra vires* and therefore legally invalid, *see Kilbourn v. Thompson*, 103 U.S. 168, 196 (1880);

Whereas the Select Committee touted that it taken more than 1,000 depositions but has only publicly released a small subset thereof numbering in the two-hundreds;

Whereas the Select Committee destroyed video and/or audio tapes of its depositions to extent that cherry-picked snippets of those tapes were not used during televised hearings conducted by the Select Committee;

Whereas all votes of the Select Committee that the House is currently aware of were unanimous, further making a mockery of the 8-5 balance requirement fixed for the Select Committee's composition;

Whereas the Select Committee's publicly televised hearings (both during afternoons and during prime time) were highly scripted affairs that the Select Committee admitted they worked to prepare using a former network news executive using Hollywood production techniques was not calculated to elucidate disputed issues but to tell a one-sided politicized story;

Whereas the Select Committee ran roughshod over President Trump's executive privilege, in some instances receiving extensive correspondence on that topic but purporting to have Chair Bennie Thompson overrule objections based on executive and other applicable privileges within hours, giving rise to the inference

that the Select Committee and its staff would not have accepted any invocations of privilege other than that of the Fifth Amendment;

Whereas some of the Select Committee's subpoenas were not sent for the purpose of eliciting information that would allow the drafting of new legislation but rather for improper purposes, in violation of *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031-32 (2020), such as making an example out of some witnesses, harassing them, or to generate a record that could be used by the Executive Branch to engage in law enforcement activities

Now, therefore be it

*Resolved*, That the House of Representatives—

- (1) finds that all of the subpoenas issued by the Select Committee were invalid, principally because that committee's composition was not in accord with H. Res. 503, but also because of the other violations of law entered into by the Select Committee as set forth above, *see generally Christoffel v. United States*, 338 U.S. 84, 90 (1949); *Exxon Corp. v. FTC*, 489 F.2d 582, 592 (D.C. Cir. 1978);
- (2) finds in particular subpoenas issued by the Select Committee to Stephen K. Bannon and Peter K. Navarro are invalid because the committee's composition was invalid, for the other reasons set forth above (especially including that these subpoenas gave insufficient attentiveness to the important doctrine of executive privilege as wielded by a coequal branch of government);
- (3) finds all depositions taken by the Select Committee to have been invalid because there was no Ranking Minority Member, because the committee was not established with the proper composition, and for the other reasons set forth above;
- (4) calls on the federal courts to recognize the invalidity of the Select Committee subpoenas;
- (5) strongly condemns the lawless, showboating manner in which the Select Committee proceeded during its existence;
- (6) strongly condemns the Select Committee attempting to keep part of its work shielded from scrutiny by shipping it to the Biden White House;

(7) rejects the many tools the Select Committee used to violate the Due Process rights of its targets and witnesses, including not just former Trump Administration officials, but also public and private lawyers, and private citizens; and

(8) directs the General Counsel of the House of Representatives, through the Bipartisan Legal Advisory Group, to file motions or *amicus* briefs with federal courts of the United States, including the Supreme Court of the United States, to ensure that this Resolution and the House's legal and factual conclusions, as the originating authority for the Select Committee's subpoenas, depositions, hearings, and other operations, are placed before and made known to those courts.

Committee on Administration

Committee on Oversight

Committee on the Judiciary

Attest: