

Congress of the United States

House of Representatives

SELECT SUBCOMMITTEE ON THE CORONAVIRUS PANDEMIC

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May 23, 2023

Mr. Michael Bromwich
Counsel for the American Federation of Teachers
Steptoe & Johnson, LLP
1330 Connecticut Ave., NW
Washington, D.C. 20036

Dear Mr. Bromwich:

Pursuant to H. Res. 5, the Select Subcommittee on the Coronavirus Pandemic (Select Subcommittee) is authorized to investigate “the societal impact of decisions to close schools, how the decisions were made and whether there is evidence of widespread learning loss or other negative effects as a result of these decisions” and “executive branch policies, deliberations, decisions, activities, and internal and external communications related to the coronavirus pandemic.”¹

As part of this work, the Select Subcommittee is investigating whether non-governmental groups exercised undue influence of on U.S. Centers for Disease Control and Prevention’s (CDC) scientific guidance.² The Select Subcommittee will follow the facts and make legislative recommendations regarding CDC organizational structure and, if necessary, changes to the process of agency guidance drafting, editing, and publication process.³

As you stated in your April 19, 2023, letter and as the President of the American Federation of Teachers (AFT), Ms. Randi Weingarten, testified on April 26, 2023, the CDC consulted AFT leadership on the CDC’s February 2021 “Operational Strategy for K-12 Schools through Phased Prevention” (Operational Strategy).⁴ For that reason, and as outlined below, the Select Subcommittee has worked in good faith with your clients to obtain information necessary to further our legitimate legislative inquiry. Despite our continued and repeated reasonable accommodations, AFT continues to frustrate the Select Subcommittee’s investigation. Unless an agreement can be reached soon, we will be forced to consider the use of compulsory process.

¹ H. Res. 5 § 4(a)(2023).

² See Letter from Hon. Brad Wenstrup, Chairman, Select Subcomm. on the Coronavirus Pandemic, H. Comm. on Oversight & Accountability, to Randi Weingarten, Pres., American Fed. of Teachers (Mar. 28, 2023) [Hereinafter “March 28 Letter”].

³ See generally Letter from Hon. Cathy McMorris Rodgers, et. al., Chair, H. Comm. on Energy & Commerce, to Rochelle Walensky, M.D., M.P.H., Dir., U.S. Cents. for Disease Control & Prevention (May 5, 2023).

⁴ Letter from Mr. Michael R. Bromwich, Counsel for the American Federation of Teachers to Hon. Brad R. Wenstrup, Chairman, Select Subcomm. on the Coronavirus Pandemic, H. Comm. on Oversight & Accountability & Hon. Raul Ruiz, Ranking Member, Select Subcomm. on the Coronavirus Pandemic, H. Comm. on Oversight & Accountability (Apr. 19, 2023) [Hereinafter “April 19 Letter”].

I. The Select Subcommittee has been reasonable and sought to accommodate AFT's concerns at every step in the oversight process.

On March 28, 2023, the Select Subcommittee requested documents and information from the CDC and the 15 non-governmental groups it knows the CDC consulted regarding the Operational Strategy, including AFT.⁵ Specifically, the Select Subcommittee requested documents including “[a]ll documents and communications between or among AFT employees and any employee of the CDC ... regarding the Operational Strategy.” The letter also requested transcribed interviews with five AFT officials, including Ms. Weingarten and AFT Senior Director for Health Issues Ms. Kelly Trautner Nedrow.⁶

On April 19, 2023, you responded to the Select Subcommittee’s letter,⁷ and, several days later, produced AFT documents with an assurance that the production comprised “the entirety of the AFT’s responsive documents.”⁸ On April 26, 2023, Ms. Weingarten testified before the Select Subcommittee. Ms. Weingarten appeared voluntarily at the hearing and you, as her counsel, placed no conditions on her testimony. In fact, you did not seek (and did not receive) any assurances regarding the Select Subcommittee’s pending interview requests or future document productions in exchange for Ms. Weingarten’s voluntary cooperation.

At the hearing, the Select Subcommittee learned for the first time that Ms. Weingarten had been communicating with the Biden Transition Team on school closures and had a direct line to CDC Director Rochelle Walensky.⁹ Any of these communications that were responsive to the Select Subcommittee’s March 28 letter were not part of AFT’s initial production.

Following the hearing, the Select Subcommittee transmitted a follow up request for just three categories of documents in light of the new information learned at the hearing and requested Ms. Nedrow’s availability for the previously requested transcribed interview.¹⁰ On May 5, 2023, AFT responded, acknowledging that one of the follow up document requests was proper but declining to fully comply with the Select Subcommittee’s requests.¹¹ On May 10, 2023, Select Subcommittee staff initiated a call with AFT counsel to foster ongoing dialogue and engage in negotiations regarding the production of additional documents and scheduling of interviews.

⁵ March 28 Letter, *supra* note 2.

⁶ March 28 Letter, *supra* note 2.

⁷ April 19 Letter, *supra* note 4.

⁸ E-Mail from Counsel for the American Fed. of Teachers, to Select Subcomm. on the Coronavirus Pandemic Staff (Apr. 24, 2023).

⁹ *The Consequences of School Closures, Part 2: The President of the American Federation of Teachers, Ms. Randi Weingarten: Hearing Before Select Subcomm. on the Coronavirus Pandemic*, 118th Cong. (Apr. 26, 2023).

¹⁰ Letter from Hon. Brad Wenstrup, Chairman, Select Subcomm. on the Coronavirus Pandemic, H. Comm. on Oversight & Accountability, to Randi Weingarten, Pres., American Fed. of Teachers (May 4, 2023) [Hereinafter “May 4 Letter”]

¹¹ Letter from Michael Bromwich, Counsel for the American Fed. of Teachers, to Hon. Brad Wenstrup, Chairman, Select Subcomm. on the Coronavirus Pandemic, H. Comm. on Oversight & Accountability, & Hon. Raul Ruiz, Ranking Member, Select Subcomm. on the Coronavirus Pandemic, H. Comm. on Oversight & Accountability (May 5, 2023). [Hereinafter “May 5 Letter”]

II. AFT's objections to the Select Subcommittee's investigation are not valid.

In both its May 5 letter and on the May 10 phone call, AFT expressed its opposition to making anyone available other than Ms. Nedrow, asserting for the first time that the Select Subcommittee is somehow precluded from obtaining additional transcribed interviews from Ms. Weingarten and other AFT officials in light of Ms. Weingarten's public testimony.¹² Of course, there is nothing in the House's Rules, federal statute, or any court decision that precludes the Select Subcommittee from scheduling later transcribed interviews of a hearing witness (or other personnel employed by the same organization as a hearing witness). The Select Subcommittee may sequence its investigative steps in whatever manner it sees fit. Even a cursory review or understanding of congressional investigations makes that clear.¹³ Importantly, the Select Subcommittee never offered to withdraw any document or transcribed interview requests in exchange for Ms. Weingarten's testimony at a public hearing and counsel did not seek to make this a condition of any voluntary public testimony. We respectfully request that you reconsider your refusal to allow AFT personnel to speak with the Select Subcommittee.

During the May 10 phone call and in a May 10 email, you raised various objections, including that: one request was "inappropriate"; certain requests were overbroad and implicated unspecified privacy interests; and the requests were "well beyond the original framing contained in the March 28 letter."¹⁴ These are not proper objections to a congressional investigation. As you know, Congress' oversight authority is "broad" and "indispensable."¹⁵ The only limit placed on this authority is a valid legislative purpose.¹⁶ Congressional investigators are not precluded from seeking follow up records should new information come to light, nor are they limited to unilateral relevance determinations made by a witness.¹⁷

Here, the Select Subcommittee's authorizing resolution directs it to investigate, among other things, "the societal impact of decisions to close schools, how the decisions were made and whether there is evidence of widespread learning loss or other negative effects as a result of these

¹² May 5 Letter, *supra* note 11; E-Mail from Counsel for the American Fed. of Teachers, to Select Subcomm. on the Coronavirus Pandemic Staff (May 10, 2023).

¹³ For example, in March 2017, the Oversight Committee received hearing testimony from the Transportation Security Administration's Acting Administrator/Deputy Administrator and in September 2018, the witness appeared for a transcribed interview. See <https://oversight.house.gov/hearing/transparency-at-tsa/> and <https://oversight.house.gov/wp-content/uploads/2018/09/TSA-Report.pdf>. Similarly, in May 2013, the Oversight Committee received hearing testimony from a former IRS Commissioner and in December 2013, the witness appeared for a transcribed interview. See <https://oversight.house.gov/hearing/the-irs-targeting-americans-for-their-political-beliefs/> and <https://oversight.house.gov/wp-content/uploads/2014/12/December-2014-IRS-Report.pdf> at 44.

¹⁴ May 10 E-Mail, *supra* note 12.

¹⁵ *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (citing *Watkins v. U.S.*, 354 U. S. 178, 187, 215 (1957)).

¹⁶ *Id.* at 12.

¹⁷ See *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 509 (1975) ("The very nature of the investigative function—like any research—is that it takes the searchers up some 'blind alleys' and into nonproductive enterprises. To be a valid legislative inquiry there need be no predictable end result.); *Bean LLC v. John Doe Bank*, 291 F. Supp. 3d 34, 45 (D.D.C. 2018) ("[I]t is manifestly impracticable to leave to the subject of the investigation alone the determination of what information may or may not be probative of the matters being investigated." (quoting *Senate Select Comm. on Ethics v. Packwood*, 845 F. Supp. 17, 21 (D.D.C. 1994)).

decisions.”¹⁸ The Select Subcommittee is also empowered to make legislative recommendations.¹⁹ Such recommendations could include legislation relating to transparency and disclosures as well as ethical lobbying disclosures—all subjects over which the full Committee on Oversight and Accountability has primary jurisdiction.²⁰

III. The Select Subcommittee seeks three categories of narrowly drawn and easily identifiable documents and previously requested transcribed interviews.

As noted above, in response to Ms. Weingarten’s April 26 testimony, on May 4, 2023, the Select Subcommittee made three new requests for documents and information. In an effort to prioritize documents, the Select Subcommittee is willing to narrow those pending requests by limiting the time period and scope. As amended, we request the following documents and information as soon as possible, but no later than May 30, 2023.

1. All documents and communications between Ms. Weingarten or the American Federation of Teachers and the Biden Transition Team regarding COVID-19 between November 3, 2020 and January 20, 2021.
2. All phone records, including calls and text messages, between Ms. Weingarten and U.S. Centers for Disease Control and Prevention Director Rochelle Walensky regarding COVID-19 or school closures or openings between January 20, 2021 and March 1, 2021.
3. All phone records, including calls and text messages, between Ms. Weingarten and any member of the Executive Office of the President regarding COVID-19 or school closures or openings between January 20, 2021 and March 1, 2021.

Although the nature of the purported privacy interests is not clear, the Select Subcommittee is willing to consider reasonable redactions in an effort to encourage voluntary compliance with these requests.

The Select Subcommittee also renews its requests for transcribed interviews of four AFT employees. Following is a proposed schedule:

- | | |
|--------------------------------------|---|
| 1. Ms. Kelly Trautner Nedrow: | June 12, 2023 (as requested by AFT) ²¹ |
| 2. Ms. Jane Meroney: | June 19, 2023 |
| 3. Ms. Marla Ucelli-Kashyap: | June 26, 2023 |
| 4. Ms. Beth Antunez: | July 7, 2023 |

¹⁸ H. Res. 5.

¹⁹ *Id.*

²⁰ House Rule X.

²¹ See E-Mail from Counsel for the American Fed. of Teachers, to Select Subcomm. on the Coronavirus Pandemic Staff (May 3, 2023) (“Unfortunately, that won’t work for us. Her calendar and mine are very bad that week and the two subsequent weeks. We can do June 12, 13, or 14. Let us know which of those dates works for you. The 12th is best for me.”).

Mr. Michael Bromwich

May 23, 2023

Page 5

As an additional accommodation, with respect to Ms. Weingarten, we are willing to pause our request for her interview at this time, without waiving any rights to seek her interview or testimony at a future date if needed.

Thank you for your prompt attention to this important matter.

Sincerely,



Brad Wenstrup, D.P.M.

Chairman

Select Subcommittee on the Coronavirus Pandemic

cc: The Honorable Raul Ruiz, M.D., Ranking Member
Select Subcommittee on the Coronavirus Pandemic