

RESOLUTION RECOMMENDING THAT THE HOUSE OF REPRESENTATIVES FIND CHRISTOPHER WRAY, DIRECTOR, U.S. FEDERAL BUREAU OF INVESTIGATION, IN CONTEMPT OF CONGRESS FOR REFUSAL TO COMPLY WITH A SUBPOENA DULY ISSUED BY THE COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY.

**REPORT**

of the

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

HOUSE OF REPRESENTATIVES

together with

\_\_\_\_\_ **VIEWS**

The form of the resolution that the Committee on Oversight and Accountability would recommend to the U.S. House of Representatives for citing Christopher Wray, Director, Federal Bureau of Investigation, for contempt of Congress pursuant to this report is as follows:

*Resolved*, That Christopher Wray, Director, Federal Bureau of Investigation, shall be found 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 Oversight and Accountability, detailing the refusal of Christopher Wray, Director, Federal Bureau of Investigation, to produce documents to the Committee on Oversight and Accountability as directed by subpoena, to the United States Attorney for the District of Columbia, to the end that Director Wray be proceeded against in the manner and form provided by law.

*Resolved*, That the Speaker of the House is authorized to take all appropriate action to enforce the subpoena.

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## I. EXECUTIVE SUMMARY

Federal Bureau of Investigation (FBI) Director Christopher Wray willfully failed to comply with a subpoena issued by the Committee on Oversight and Accountability relating to the Committee’s investigation of public corruption and influence peddling. The subpoena required the production of:

[a]ll FD-1023 forms, including within any open, closed, or restricted access case files, created or modified in June 2020, containing the term “Biden,” including all accompanying attachments and documents to those FD-1023 forms.<sup>1</sup>

This document subpoena was capturing a document—a specific FD-1023 form—describing an alleged criminal scheme involving then-Vice President Biden and a foreign national relating to the exchange of money for certain actions. Director Wray and his staff have refused to produce any documents responsive to this subpoena to the Committee. Director Wray’s unwillingness to comply with the subpoena has interfered with the Committee’s investigation.

Having exhausted all available options for obtaining compliance, the Chairman of the Committee on Oversight and Accountability recommends that the House of Representatives find Director Wray in contempt for his failure to comply with the subpoena issued to him.

## II. AUTHORITY AND PURPOSE

An important corollary to the powers expressly granted to Congress by the Constitution is the responsibility to perform rigorous oversight of the Executive Branch. The U.S. Supreme Court has recognized this congressional power and responsibility on numerous occasions. For example, in *McGrain v. Daugherty*, the Court held:

[T]he power of inquiry – with process to enforce it – is an essential and appropriate auxiliary to the legislative function. . . . A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change, and where the legislative body does not itself possess the requisite information – which not infrequently is true – recourse must be had to others who do possess it.<sup>2</sup>

Further, in *Watkins v. United States*, Chief Justice Earl Warren wrote for the majority: The power of Congress to conduct investigations is inherent in the legislative process. That power is broad.”<sup>3</sup>

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<sup>1</sup> Letter and subpoena from Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Hon. Christopher Wray, Director, Federal Bureau of Investigation (May 3, 2023), schedule to subpoena; <https://oversight.house.gov/wp-content/uploads/2023/05/Comer-Subpoena-cover-letter-and-Wray-Subpoena-050322.pdf>.

<sup>2</sup> *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927).

<sup>3</sup> *Watkins v. United States*, 354 U.S. 178, 1887 (1957).

The Legislative Reorganization Act of 1946,<sup>4</sup> which directed House and Senate Committees to “exercise continuous watchfulness” over Executive Branch programs under their jurisdiction, and the Legislative Reorganization Act of 1970,<sup>5</sup> which authorized committees to “review and study, on a continuing basis, the application, administration, and execution” of laws, codified the powers of Congress.

The Committee on Oversight and Accountability is a standing committee of the House of Representatives, duly established pursuant to the rules of the House of Representatives, which are adopted pursuant to the Rulemaking Clause of the U.S. Constitution.<sup>6</sup> House Rule X grants to the Committee broad jurisdiction over federal “[g]overnment management” and reform, including the “[o]verall economy, efficiency, and management of government operations and activities.”<sup>7</sup> House Rule X further grants the Committee broad oversight jurisdiction, including authority to “conduct investigations of any matter without regard to clause 1, 2, 3, or this clause [of House Rule X] conferring jurisdiction over the matter to another standing committee.”<sup>8</sup>

House Rule XI specifically authorizes the Committee to “require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of books, records, correspondence, memoranda, papers, and documents as it considers necessary.”<sup>9</sup> The rule further provides that the “power to authorize and issue subpoenas” may be delegated to the Committee chairman.<sup>10</sup> The subpoena discussed in this report was issued pursuant to this authority.

The Committee’s investigation of the President’s role in his family members’ and business associates’ foreign and domestic business practices is being undertaken pursuant to the authority delegated to the Committee under House Rule X.

The Committee is considering legislation aimed at deficiencies in the current legal framework regarding disclosure of financial interests related to Vice Presidents and Presidents (and the family members thereof)—deficiencies that may place American national security at risk. The Committee is seeking meaningful reforms to government ethics and disclosure laws that will provide necessary transparency into a Vice President’s or a President’s (and their immediate family members’) income, assets, and financial relationship with foreign and domestic companies. Public corruption, influence peddling, federal ethics/financial disclosures regulations, and national security matters are directly within the purview of the Committee’s oversight authorities.

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<sup>4</sup> Pub. L. 79-601, House Rule XI(q)(2), 60 Stat. 828 (Aug. 2, 1946).

<sup>5</sup> Pub. L. 91-510, 84 Stat. 1140 (Oct. 26, 1970).

<sup>6</sup> U.S. CONST., art I, § 5, clause 2.

<sup>7</sup> House Rule X, clause (1)(n).

<sup>8</sup> House Rule X, clause (4)(c)(2).

<sup>9</sup> House Rule XI, clause (2)(m)(1)(B).

<sup>10</sup> House Rule XI, clause (2)(m)(3)(A)(1).

### **III. BACKGROUND**

#### **A. Legislative Purpose**

As the Committee continues to pursue its investigation, it is concerned about the national security implications of a President's or Vice President's immediate family members receiving millions of dollars from foreign nationals or companies without any oversight. Current financial disclosure laws and regulations do not require non-dependent family members to provide any information to the public. The Committee is seeking meaningful reforms to government ethics and disclosure laws that will provide necessary transparency into a President's or Vice President's immediate family members' income, assets, and financial relationships with companies. The Committee intends to develop legislation that would strengthen reporting requirements related to certain foreign transactions involving senior elected officials' family members and implement financial disclosure laws that shed light on ownership of opaque corporate entities. Moreover, to prevent financial transactions from being structured in a way to evade disclosure, the Committee is examining whether certain reporting requirements, including any new reporting requirements for senior elected officials' family members, should extend for a period of time after a President or Vice President leaves office.

The Committee also seeks to strengthen the Bank Secrecy Act and anti-money laundering laws by analyzing whether financial institutions have the available tools and support from federal agencies to thwart illegal money laundering and foreign corruption activity. The Committee is evaluating whether Suspicious Activity Reports (SARs) generated by personal and corporate bank accounts associated with a President's or Vice President's immediate family members should undergo a more rigorous banking compliance process, receive an expedited review by law enforcement, and be disclosed to Congress, under certain circumstances, given the potential corruption and risks to our national security.

The Committee aims to draft legislation that provides more transparency to the American people, deters foreign interests from attempting to obtain influence over and access to the highest levels of the federal government by entering into business deals with Presidential or Vice-Presidential family members, discourages such family members from profiting from their relative's public service, and ensures the nation is safe from our foreign adversaries.

Without having custody of the FD-1023 form—the document the Committee's subpoena captures—the Committee cannot assess whether the allegations in the document pose a national security risk. Because of the FBI's refusal to cooperate with our investigation, the Committee cannot use the allegations in the FD-1023 form to evaluate whether anyone from the Biden family received payments from the foreign national, how much those payments entailed, if they were made, and what, if any, companies (including shell companies) were used to make such payments. Since the document was redacted, the Committee cannot interview the individuals involved, request documents from them or their companies, and corroborate or disprove the confidential human source's (CHS) statements. This evidence would be highly relevant in developing legislation to strengthen financial disclosure requirements regarding foreign transactions involving senior elected officials' family members and implement financial disclosure laws that shed light on ownership of opaque corporate entities. The FBI's delay in

acknowledging the existence of the FD-1023 form and refusal to allow the Committee to possess it directly impacted the Committee's ability to investigate influence peddling and corruption.

## **B. The Initiation of the Committee's Investigation**

In 2022, then-Committee Republicans began an investigation into the actions Big Tech companies took prior to the 2020 presidential election to limit access to information that was unfavorable to Joe Biden. Fair and free elections are a cornerstone of the Republic. Committee Republicans were concerned large social media companies may seek to manipulate or influence Americans' voting preferences by limiting the information available to them or shutting them out of the public discourse.

While seeking information about the increasing control social media platforms exercise over American dialogue and information sharing, Committee Republicans sought answers about a particular story that became the target of social media platforms' efforts to censor information: the October 2020 reporting by the *New York Post* on the recovery and contents of a laptop previously belonging to Hunter Biden, the President's son. Reporting on the contents of the laptop raised concerns about Biden family members and associates using their access to Joe Biden—and his various positions at the highest levels of government for over four decades—to enrich themselves and generate business opportunities. A review of a complete copy of this laptop raised questions about why the *New York Post* story was so hastily and forcefully suppressed by social media platforms such as Facebook and Twitter.

After reviewing the contents of the laptop, the investigation expanded to include discussions with knowledgeable whistleblowers and formal requests for additional documents and communications relevant to our inquiry from both the federal government and private entities.

As the investigation developed, it became clear that President Biden's family members and their business associates were engaged in activities that indicated influence peddling and even public corruption. Through a review of SARs made available to the Committee by the Department of the Treasury (Treasury) and subpoenaed bank records, the Committee uncovered a pattern of money being transferred from foreign nationals through various companies to Biden family members and their business associates.

## **C. Suspicious Activity Reports**

The Committee learned various financial institutions generated SARs in connection with Biden family members and their business associates. Financial institutions submit SARs to the Financial Crimes Enforcement Network within Treasury when customers engage in a range of activities outside the normal course of business, including large, suspicious transactions that may indicate criminal activity. During the 117th Congress, Committee Republicans requested from Treasury all copies of SARs related to certain Biden family members and their business associates. Treasury initially refused to provide the Committee access to the SARs. Treasury finally provided access to certain SARs after the Committee noticed a transcribed interview to

discuss Treasury’s refusal to cooperate with the Committee. The Committee has reviewed thousands of pages of SARs relevant to its investigation.

#### **D. Subpoenas for Bank Records**

The Committee has issued subpoenas to four banks tailored to specific individuals and companies that engaged in business activities with Biden family members and their business associates. Records obtained pursuant to these subpoenas have provided the Committee with unique and particularized information critical to its investigation of a systemic failure to protect against potential malign foreign interactions with family members of U.S. senior elected officials. The bank records obtained through these subpoenas have revealed a pattern that foreign nationals and foreign companies appear to have sought access and influence by engaging in lucrative business relationships with Biden family members and their business associates, including while President Biden served as Vice President from 2009 to 2017.

#### **E. March 16, 2023 First Bank Records Memorandum**

On March 16, 2023, Committee staff sent to Committee Members a memorandum: “New Evidence Resulting from the Oversight Committee’s Investigation into the Biden Family’s Influence Peddling and Business Schemes” (First Bank Records Memorandum).<sup>11</sup> The Committee had subpoenaed a bank for unique and particularized information critical to the Committee’s investigation, connected to three Biden family business associates. The First Bank Records Memorandum revealed that one of Biden family business associates, Mr. John Robinson Walker (Rob Walker), transferred over \$1.3 million in payments to Biden family members and their companies between 2015 and 2017, which he received from foreign companies and foreign nationals. The Rob Walker accounts made payments while then-Vice President Biden held public office.

#### **F. May 10, 2023 Second Bank Records Memorandum**

On May 10, 2023, Committee staff sent to Committee Members the “Second Bank Records Memorandum from the Oversight Committee’s Investigation into the Biden Family’s Influence Peddling and Business Schemes” (Second Bank Records Memorandum).<sup>12</sup> The Committee had subpoenaed three additional banks and received thousands of records in response. The Committee’s bank subpoenas were tailored to specific individuals and companies that engaged in business activities with Biden family members and their business associates.

Through the Second Bank Records Memorandum, the Committee released several new findings. First, Biden family members and business associates created a web of over twenty companies—most of which were limited liability companies formed *during* Joe Biden’s vice

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<sup>11</sup> Memorandum (Mar. 16, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: New Evidence Resulting from the Oversight Committee’s Investigation into the Biden Family’s Influence Peddling and Business Schemes.

<sup>12</sup> Memorandum (May 10, 2023), H. Comm. on Oversight & Accountability. From Maj. Comm. staff to Comm. Members. Re: Second Bank Records Memorandum from the Oversight Committee’s Investigation into the Biden Family’s Influence Peddling and Business Schemes.

presidency. Bank records showed the Biden family, their business associates, and their companies received *over* \$10 million from foreign nationals' companies. The Committee has identified payments to Biden family members from foreign companies while Joe Biden served as Vice President and after he left public office. Despite creating many companies after Vice President Biden took office, the Biden family used business associates' companies to receive millions of dollars from foreign companies. After foreign companies sent money to business associates' companies, the Biden family received incremental payments over time to different bank accounts. These complicated financial transactions appear to be meant to conceal the source of the funds and reduce the conspicuousness of the total amounts made into the Biden bank accounts.

#### **G. Whistleblower Disclosures Reveal the Existence of a FD-1023 Form**

Through legally protected, highly credible, unclassified whistleblower disclosures, the Committee learned about the existence of an FBI FD-1023 form that describes an alleged criminal scheme involving then-Vice President Biden and a foreign national relating to the exchange of money for certain actions. According to the whistleblower disclosures, the FBI and Department of Justice (DOJ) have been in possession of the document. The allegations followed the pattern established in the Committee's ongoing investigation into the President's family and business associates. In light of the severity of the allegations and the Committee's ongoing investigation, the Chairman issued a subpoena to Director Wray for documents to capture the FD-1023 form at issue.

### **IV. DIRECTOR WRAY FAILED TO PRODUCE DOCUMENTS RESPONSIVE TO THE SUBPOENA**

Director Wray has willfully failed to comply with the subpoena for documents. Further, Director Wray and his staff have stated that they will not produce the documents and comply with the legal obligation imposed by the Committee's subpoena.

#### **A. The FBI's Accommodations Did Not Satisfy the Subpoena**

The FBI's accommodations did not satisfy the subpoena, and the FBI has demonstrated a pattern of bad faith negotiations during this process. The Committee issued the subpoena on May 3, 2023. The FBI failed to acknowledge the existence of the FD-1023 form until May 31, 2023. On June 2, 2023, the FBI permitted Committee staff an *in camera* review of the redacted document, but the Committee was not permitted to retain a copy or take notes on the FD-1023 form. On June 5, 2023, the FBI allowed for a second *in camera* review of the redacted FD-1023 form for Chairman Comer and Ranking Member Raskin. Again, the Committee could not retain the relevant document or take notes on the FD-1023 form.

The FD-1023 form contains a significant amount of highly relevant information to the Committee's investigation. The details of the allegations span meetings and conversations that occurred over several years. The allegations in the FD-1023 form are complex; detail business ventures; reference large payment amounts and the reasons why the foreign national is financially involved with Joe Biden and Hunter Biden; and discuss the financial complexity of the alleged scheme. No one was permitted to take notes regarding the substance of the FD-1023



form. In addition to only reviewing the FD-1023 form *in camera*, the FBI redacted portions of the document, including the names of the participants referenced in the document (other than Joe Biden and Hunter Biden), who are potentially witnesses in the Committee’s investigation.

If the Committee possessed the unredacted FD-1023 form, it could attempt to identify the financial transactions through SARs at the Treasury. The Committee may be able to subpoena relevant bank accounts, interview pertinent witnesses, and corroborate the CHS’s statements with evidence already in the Committee’s possession. These investigative steps have been stifled by the FBI’s refusal to allow the Committee to maintain possession of the FD-1023 form that is being withheld by Director Wray.

### **B. May 3, 2023 Subpoena**

On May 3, 2023, the Committee sent a letter to the FBI regarding legally protected, highly credible, unclassified whistleblower disclosures.<sup>13</sup> The whistleblower disclosures indicated that the FBI and DOJ are in possession of an FD-1023 form describing an alleged criminal scheme involving then-Vice President Biden and a foreign national relating to the exchange of money for certain actions.<sup>14</sup> The subpoena return date was May 10, 2023.<sup>15</sup>

### **C. May 10, 2023 Letter from the FBI**

On May 10, 2023—the subpoena return date—the FBI sent the Committee a letter describing background information and programmatic issues related to CHS reporting.<sup>16</sup> However, the FBI’s response did not include the FD-1023 form, failed to address whether the FBI possessed documents responsive to the Committee’s subpoena, and proposed no accommodations that would allow Committee staff to view the FD-1023 form.<sup>17</sup> Instead, the FBI offered “to coordinate with [Committee] staff to discuss whether and how we can accommodate your request without violating our law enforcement and national security obligations.”<sup>18, 19</sup>

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<sup>13</sup> *Supra*, fn. 1.

<sup>14</sup> Letter from Hon. Charles E. Grassley, Ranking Member, S. Comm. on the Budget, & Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Hon. Merrick Garland, Attorney General, U.S. Dep’t of Justice, & Hon. Christopher Wray, Director, Federal Bureau of Investigation (May 3, 2023); <https://oversight.house.gov/wp-content/uploads/2023/05/Grassley-Comer-letter.pdf>.

<sup>15</sup> *Supra*, fn. 1.

<sup>16</sup> Letter from Christopher Dunham, Acting Assistant Director, FBI Office of Congressional Affairs, to Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability (May 10, 2023).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> The FBI’s May 10, 2023 letter cited to *Roviaro v. United States*, 353 U.S. 52, 60 (1957), for the proposition that courts “recognize[] the importance of maintaining the protection of the identities of confidential human sources.” See FBI Letter (May 10, 2023). The FBI’s reliance upon *Roviaro* is misplaced. *First*, the Committee’s subpoena does not request the identity of the CHS who provided the information in the FD-1023 form. *Second*, *Roviaro* addresses a *private citizen’s* request for a CHS’s identity, not a subpoena from a congressional Committee. *Third*, the FBI omitted that the *Roviaro* Court held the lower court *erred* in not disclosing the identity of the CHS. *Finally*, district courts routinely order federal prosecutors to disclose information regarding a CHS with safeguards when the evidence is used for impeachment or is materially exculpatory (*e.g.*, *Giglio v. United States*, 405 U.S. 150 (1972); *Brady v. United States*, 397 U.S. 742 (1970)). Nevertheless, Committee counsel recommended FBI redact portions

#### **D. May 15, 2023 Meeting**

Following receipt of the FBI's letter, on May 10, 2023, Committee counsel asked for an in-person meeting as part of the accommodations process, requesting to meet on Thursday, May 11 or Friday, May 12. FBI staff agreed to meet on Monday, May 15. On May 15, 2023, Committee counsel went to FBI Headquarters for an in-person meeting.

During the in-person meeting, the FBI did not produce the FD-1023 form. Most troubling, the FBI staff stated they were *not authorized* to disclose whether the FD-1023 form exists. Notwithstanding the FBI's lack of cooperation, Committee counsel reiterated the legislative purpose of the subpoena, set forth the Committee's national security concerns, and discussed certain safeguards and accommodations that are routinely used in federal disclosures to protect the CHS identities. In lieu of producing any documents responsive to the subpoena, FBI staff proposed a second meeting with different FBI employees to provide a briefing regarding CHS reporting. Committee counsel agreed to the second meeting but called into question whether the FBI was acting in good faith given its refusal to even acknowledge the existence of the FD-1023 form at issue.

#### **E. May 16, 2023 Request for Phone Call**

On May 16, 2023, Chairman Comer and Senator Grassley, through staff, requested a phone call with Director Wray to discuss the FD-1023 form. This phone call did not take place until May 31, 2023.

#### **F. May 19, 2023 Letter from Chairman Comer**

On May 19, 2023, Chairman Comer sent Director Wray a letter emphasizing the FBI's delay in producing a single unclassified FD-1023 form was unacceptable.<sup>20</sup> The Committee had already offered a reasonable accommodation to address the FBI's stated confidentiality concerns<sup>21</sup> but the FBI refused to meaningfully engage in discussions about how the Committee could obtain the information it needed. Instead, it sought to change the subject by offering to provide the Committee with information it did not request. Notwithstanding these difficulties, the Committee committed to continuing to participate in the accommodations process in the hopes that the FBI would change course and begin discussing accommodations that would meet the Committee's needs.<sup>22</sup>

#### **G. May 22, 2023 Briefing from the FBI**

On May 22, 2023, FBI staff and Committee counsel held a second meeting. During the meeting, FBI staff provided general information regarding its CHS program. Similar to the May

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of the FD-1023 form that would reveal the CHS's identity as a reasonable accommodation to ameliorate this concern.

<sup>20</sup> Letter from Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Hon. Christopher Wray, Director, Federal Bureau of Investigation (May 19, 2023).

<sup>21</sup> *Supra*, fn. 19.

<sup>22</sup> *Supra*, fn. 20.

15 meeting, FBI staff again was not authorized to acknowledge the existence of the FD-1023 form. There was only one substantive comment regarding the subpoena. Despite the Committee’s subpoena being narrowly tailored to one month—June 2020—FBI staff indicated that the search terms were broad because there were many responsive documents for “Biden” in its CHS database for that month. While that new information was alarming, Committee counsel offered to limit its subpoena to be even more precise.

#### **H. May 24, 2023 Letter from Chairman Comer**

On May 24, 2023, Chairman Comer sent a letter to Director Wray again reiterating that the FBI must comply with the Committee’s subpoena.<sup>23</sup> The FBI’s refusal to produce this single unclassified document was obstructionist. Nevertheless, to narrow the breadth of the subpoena, the Committee provided additional terms based on unclassified and legally protected whistleblower disclosures that may have been referenced in the FD-1023 form: “June 30, 2020” and “five million.” These terms related to the date on the FD-1023 form and its reference to the amount of money the foreign national allegedly paid to receive the desired policy outcome. Given the large number of FD-1023 forms with the word “Biden” in June 2020, these terms were intended to assist the FBI in identifying the specific FD-1023 form at issue. Despite the FBI’s unreasonable delay, the Committee allowed FBI six more days to produce the FD-1023 form. If the FBI did not produce the document, the Committee would initiate contempt of Congress proceedings.

#### **I. May 30, 2023 Letter from the FBI**

On May 30, 2023, Director Wray did not produce the FD-1023 form. Instead, the FBI sent a letter to the Committee, again describing background information and programmatic issues related to CHS reporting.<sup>24</sup> The FBI continued to not acknowledge the existence of the FD-1023 form that the Committee was seeking. Instead, it stated that “we have identified additional information that we are prepared to offer the Committee as an extraordinary accommodation.”<sup>25</sup> In its letter, the FBI did not explain anything about the information only that the FBI is “committed to providing [Chairman Comer] access to this information.”<sup>26</sup>

#### **J. May 31, 2023 Phone Call with Director Wray**

On May 31, 2023, Chairman Comer, Senator Chuck Grassley, and Director Wray participated in a phone call. For the first time, the FBI acknowledged the existence of the FD-1023 form. During the phone call, Director Wray offered to provide Chairman Comer a review of the FD-1023 form with a briefing. He refused, however, to agree to allowing Chairman Comer to keep the document. Chairman Comer emphasized that—to avoid contempt—the Committee needed to retain a copy of the FD-1023 form.

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<sup>23</sup> Letter from Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability, to Hon. Christopher Wray, Director, Federal Bureau of Investigation (May 24, 2023).

<sup>24</sup> Letter from Christopher Dunham, Acting Assistant Director, FBI Office of Congressional Affairs, to Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability (May 30, 2023).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

At the end of the phone call, Director Wray committed that his staff would contact Chairman Comer's staff to set up a time for the following day, June 1, 2023, for Chairman Comer to review the FD-1023 form and receive the briefing. FBI staff contacted Committee staff that evening about a meeting for the next afternoon, but Chairman Comer was unavailable because of travel during that time. Committee staff agreed to meet on June 5, 2023.

**K. June 1, 2023 Letter from the FBI**

During the back-and-forth via email to schedule the *in camera* review and briefing, the FBI sent a letter to Chairman Comer. This was the first letter in which the FBI acknowledged that it had “an FD-1023 form document that we believe to be responsive to [Chairman Comer’s] subpoena.”<sup>27</sup> The FBI also stated it was “willing to bring the document to a secured space at the U.S. Capitol today, June 1, to facilitate your review . . . and receive the contextual briefing.”<sup>28</sup> Committee staff had already explained that Chairman Comer was unavailable in the afternoon of June 1, 2023 and was working to find a time on Monday, June 5 for the review and briefing.

**L. June 2, 2023 *In Camera* Review of the FD-1023 Form and Briefing**

On June 2, 2023, the FBI allowed for an *in camera* review of the redacted FD-1023 form and briefing at FBI Headquarters. One staff from majority and minority attended.

**M. June 5, 2023 *In Camera* Review of the FD-1023 Form and Briefing**

On June 5, 2023, FBI staff allowed Chairman Comer and Ranking Member Raskin an *in camera* review of the FD-1023 form. Two staff from majority and minority attended. The FBI also briefed Chairman Comer, Ranking Member Raskin, and staff allegedly regarding some of the context regarding the FD-1023 form, but the FBI was either unable or unwilling to answer many of Chairman Comer’s and his staff’s questions. Several times, the FBI refused to answer because the information in the form was being used in an “ongoing investigation.”

On the same date, the FBI sent Chairman Comer a letter describing its accommodations and asserted “the FBI has met its accommodations obligations . . . .”<sup>29</sup> However, the FBI did not allow Chairman Comer or Ranking Member Raskin to keep possession of the FD-1023 form.

**N. Director Wray has Failed to Produce Documents Responsive to the Subpoena**

In response to the Committee’s subpoena, Director Wray failed to produce the FD-1023 form to the Committee.

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<sup>27</sup> Letter from Christopher Dunham, Acting Assistant Director, FBI Office of Congressional Affairs, to Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability (June 1, 2023).

<sup>28</sup> *Id.*

<sup>29</sup> Letter from Christopher Dunham, Acting Assistant Director, FBI Office of Congressional Affairs, to Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability (June 5, 2023).

## V. PERSPECTIVES ON CONTEMPT

Contempt proceedings in Congress date back over 215 years. These proceedings provide Congress a valuable mechanism for adjudicating its interests. Congressional history is replete with examples of the pursuit of contempt proceedings by House committees when faced with strident resistance to their constitutional authority to exercise investigative power.

Within the past 25 years the Committee on Oversight and Accountability has undertaken or prepared for contempt proceedings on multiple occasions. In 1998, Chairman Dan Burton held a vote recommending contempt for Attorney General Janet Reno based on her failure to comply with a subpoena issued in connection with the Committee's investigation into campaign finance law violations.<sup>30</sup> On August 7, 1998, the Committee held Attorney General Reno in contempt by a vote of 24 to 18.<sup>31</sup>

During the 110th Congress, Chairman Henry Waxman threatened and scheduled contempt proceedings against several administration officials.<sup>32</sup> Contempt reports were drafted against Attorney General Michael B. Mukasey, Stephen L. Johnson, Administrator of the U.S. Environmental Protection Agency, and Susan E. Dudley, Administrator of the Office of Information and Regulatory Affairs. Business meetings to consider these drafts were scheduled.<sup>33</sup> Former Attorney General Mukasey's draft contempt report charged him with failing to produce documents in connection to the Committee's investigation of the release of classified information. According to their draft contempt reports, Administrators Johnson and Dudley failed to cooperate with the Committee's lengthy investigation into California's petition for a waiver to regulate greenhouse gas emissions from motor vehicles and the revision of the national ambient air quality standards for ozone.

In 2012, the Committee initiated contempt proceedings against former Attorney General Eric Holder for refusing to comply with a subpoena for documents and communications related to the Fast and Furious gunwalking program.<sup>34</sup> President Obama eventually asserted executive privilege over a portion of the documents that Holder was withholding.<sup>35</sup> The Committee held Holder in contempt and on June 28, 2012,<sup>36</sup> seventeen House Democrats crossed party lines to rebuke President Obama's claim of executive privilege by supporting H.Res. 711.<sup>37</sup> The House then considered and passed H. Res. 706 authorizing a civil lawsuit to compel production of the

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<sup>30</sup> David E. Rosenbaum, *Panel Votes to Charge Reno With Contempt of Congress*, N.Y. TIMES (Aug. 7, 1998).

<sup>31</sup> *Id.*

<sup>32</sup> Laurie Kellman, *Waxman Threatens Mukasey With Contempt Over Leak*, U.S.A. TODAY (July 8, 2008); Richard Simon, *White House Says No to Congress' EPA Subpoena*, L.A. TIMES (June 21, 2008).

<sup>33</sup> Press Release, Rep. Henry Waxman, *Chairman Waxman Warns Attorney General of Scheduled Contempt Vote* (July 8, 2008) <http://oversight-archive.waxman.house.gov/story.asp?ID=2067> (last visited Feb. 22, 2012); Press Release, Rep. Henry Waxman, *Chairman Waxman Schedules Contempt Vote* (June 13, 2008) <http://oversight-archive.waxman.house.gov/story.asp?ID=2012> (last visited Feb. 22, 2012).

<sup>34</sup> H. Rept. 112-546 (2012).

<sup>35</sup> Letter from James Cole, Deputy U.S. Atty. Gen., to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (June 20, 2012).

<sup>36</sup> H. Comm. on Oversight & Gov't Reform, Resolution Recommending That the House of Representatives Find Eric H. Holder, Jr. Atty. Gen., U.S. Dept. of Justice, In Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Comm. on Oversight & Gov't Reform., 112th Cong. (2012) (H. Rept. 112-546).

<sup>37</sup> H. Res. 711, 112th Cong. (2012).

required materials.<sup>38</sup> Twenty-one House Democrats crossed party lines in support of authorizing the civil litigation.

The resolution contained a criminal contempt citation, and it authorized a lawsuit for the purpose of compelling production of the Department's communications about how to respond to the congressional investigation of Fast and Furious, among other subpoenaed documents. On January 19, 2016, the U.S. District Court for the District of Columbia ruled in favor of the Committee and required DOJ to produce the documents at the heart of the litigation.<sup>39</sup> The Court ruled that the Committee's need for the documents outweighed the DOJ's need to protect itself from such limited harm.

In 2014, the Committee<sup>40</sup> and subsequently the House<sup>41</sup> held IRS official Lois G. Lerner in contempt for refusing to comply with a testimonial subpoena relating to her role in the Internal Revenue Service's targeting scandal, where certain tax-exempt applicants were afforded extra scrutiny.<sup>42</sup>

In 2019, the Committee moved to hold Attorney General Bill Barr<sup>43</sup> and Secretary of Commerce Wilbur Ross<sup>44</sup> in contempt related to the 2020 Decennial Census.<sup>45</sup> The Committee had issued subpoenas for documents on April 2, 2019. It held the Committee markup to hold them in contempt on June 12, 2019.<sup>46</sup> The House passed the resolutions to hold both Barr and Ross in contempt on July 17, 2019.<sup>47</sup>

## VI. CONCLUSION

Director Wray's actions impeded and caused meaningful delays to the Committee's ability to perform its Constitutional oversight duties. As Director Wray and his staff have willfully failed to comply with the Committee's subpoena, it is necessary to enforce the subpoena.<sup>48</sup>

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<sup>38</sup> H. Res. 706, 112th Cong. (2012).

<sup>39</sup> *Comm. On Oversight and Gov't Reform v. Lynch*, No. 12-1332 (ABJ), slip opinion at 32 (D.D.C. Jan. 19, 2016).

<sup>40</sup> H. Comm. on Oversight & Gov't Reform, Resolution Recommending That the House of Representatives Find Lois G. Lerner, Former Director, Exempt Organizations, Internal Revenue Service, In Contempt of Congress for Refusal to Comply with a Subpoena Duly Issued by the Comm. on Oversight & Gov't Reform., 113th Cong. (2014) (H. Rept. 113-415).

<sup>41</sup> H. Res. 574, 113th Cong. (2014).

<sup>42</sup> See H. Comm. on Oversight & Gov't Reform, Staff Report: The Internal Revenue Services' Targeting of Conservative Tax-Exempt Applicants: Report of Findings for the 113th Congress, 113th Cong. (Dec. 23, 2014).

<sup>43</sup> H.R. 497 116th Cong. (2019).

<sup>44</sup> *Id.*

<sup>45</sup> H. Comm. on Oversight & Reform, Resolution Recommending That the House of Representatives Find William P. Barr, Jr. Atty. Gen., U.S. Dept. of Justice, and Wilbur L. Ross, Jr., Sec. of Commerce, In Contempt of Congress for Refusal to Comply with a Subpoenas Duly Issued by the Comm. on Oversight & Reform., 116th Cong. (2019) (H. Rept. 116-125).

<sup>46</sup> *Id.*

<sup>47</sup> Andrew Desiderio, *House Holds William Barr, Wilbur Ross in Criminal Contempt of Congress*, POLITICO (July 17, 2019).

<sup>48</sup> 2 U.S.C. §§ 192, 194 are the enforcement provisions for congressional subpoenas. Section 192 states in pertinent part, "Every person who having summoned . . . to produce papers upon any matter under inquiry [by a standing House committee], willfully makes default . . . shall be deemed guilty of a misdemeanor, punishable by a fine of not

## **VII. RULES REQUIREMENTS**

### **COMMITTEE CONSIDERATION**

On [date], 2023, the Committee met in open session and ordered the contempt Report favorably reported with [or without] an amendment, by a roll call vote of [\_\_ to \_\_], a quorum being present.

### **COMMITTEE VOTES**

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of the contempt Report:

### **LIST OF RELATED COMMITTEE HEARINGS**

In accordance with House Rule XIII, clause 3(c)(6), (1) The following hearing was used to develop or consider this contempt Report:

On April 26, 2023, the Subcommittee on Health Care and Financial Services held a hearing titled "China in our Backyard: How Chinese Money Laundering Organizations Enrich the Cartels" with Christopher Urben, former Assistant Special Agent in Charge, Special Operations Division, U.S. Drug Enforcement Administration; Anthony Ruggiero, Senior Director and Senior Fellow, Foundation for Defense of Democracies; and Channing Mavrellis, Illicit Trade Director, Global Financial Integrity.

(2) The following related hearing was held:

On February 8, 2023, the Committee held a hearing titled "Protecting Speech from Government Interference and Social Media Bias, Part 1: Twitter's Role in Suppressing the Biden Laptop Story" with Vijaya Gadde, former Chief Legal Officer, Twitter; James Baker, former Deputy General Counsel, Twitter; Yoel Roth, former Global Head of Trust and Safety, Twitter; and Annika Collier Navaroli, former senior expert on Twitter's U.S. safety policy team.

### **OVERSIGHT FINDINGS AND RECOMMENDATION OF THE COMMITTEE**

In compliance with clause 3(c)(1) of Rule XIII and clause (2)(b)(1) of Rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the Background and descriptive portions of this contempt Report.

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more than \$1,000 nor less than \$100 and imprisonment . . ."; Section 194 states it is "the duty of the . . . Speaker of the House . . . to certify . . . [the matter] to the appropriate United States Attorney, whose duty it shall be to bring the matter before the grand jury for its action."

## **GENERAL PERFORMANCE GOALS AND OBJECTIVES**

In accordance with clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, the Committee's performance goals or objectives of this contempt Report is to enforce the Committee's authority to subpoena and obtain documents related to the FD-1023 form that describing an alleged criminal scheme involving then-Vice President Biden and a foreign national relating to the exchange of money for certain actions.

## **APPLICATION OF LAW TO THE LEGISLATIVE BRANCH**

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this Report to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This Report does not relate to employment or access to public services and accommodations in the legislative branch.

## **DUPLICATION OF FEDERAL PROGRAMS**

In accordance with clause 3(c)(5) of Rule XIII no provision of this Report establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## **DISCLOSURE OF DIRECTED RULE MAKINGS**

This Report does not direct the completion of any specific rule makings within the meaning of section 551 of title 5, U.S.C.

## **FEDERAL ADVISORY COMMITTEE ACT STATEMENT**

The Committee finds that this Report does not direct the establishment of advisory committees within the definition of Section 5(b) of the appendix to title 5, U.S.C.

## **EARMARK IDENTIFICATION**

This Report does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of Rule XXI of the House of Representatives.

## **COMMITTEE COST ESTIMATE AND NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE**

The Committee finds that clauses 3(c)(3) and 3(d) of Rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, are inapplicable to this Report. Therefore, 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.



**CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED**

The requirements of clause 3(e) of rule XIII of the Rules of the House of Representatives do not apply since this Report makes no changes in any existing federal statute.