

ONE HUNDRED EIGHTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

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September 27, 2024

Ms. Kate Sawyer Keane  
Elias Law Group LLP  
250 Massachusetts Avenue NW, Suite 400  
Washington, DC 20001

Dear Ms. Keane:

On August 28, 2024, the Committee on the Judiciary issued your client, Michael Nellis, a subpoena for two categories of documents relating to the Committee's oversight of the Manhattan District Attorney's political prosecution of President Trump.<sup>1</sup> On the subpoena's return date, September 13, 2024, you sent a letter on Mr. Nellis's behalf outlining your objections to the subpoena.<sup>2</sup> These objections mirror concerns that your client has raised, and the Committee has addressed, in previous correspondence.<sup>3</sup> The objections to the subpoena are unfounded and unpersuasive, and do not excuse your client's noncompliance with the subpoena. The Committee writes to overrule your objections and to provide Mr. Nellis a final opportunity to comply with the subpoena.

Separately, recent campaign filings by the Harris campaign appear to contradict statements Mr. Nellis previously made to the Committee, and he has failed to certify those statements. This information raises the prospect that he has made false statements to the Committee, which are subject to criminal penalties under Section 1001 of Title 18 of the United States Code.

### **The Committee is entitled to the subpoenaed information.**

Your September 13 letter first asserted a general objection challenging the legislative purpose underlying the Committee's subpoena, arguing that you "object[ ] to the subpoena in its entirety" because you believe "that the subpoena does not further any valid legislative purpose

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<sup>1</sup> Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Mr. Michael Nellis (Aug. 28, 2024) (Aug. 28 Letter).

<sup>2</sup> Letter from Kate Sawyer Kean et al., Counsel to Mike Nellis, to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Sept. 13, 2024) (September 13 Letter). The subpoena required compliance by 9:00 a.m. on September 13; however, your counsel did not transmit her letter until 4:46 p.m.

<sup>3</sup> *Id.*; Letter from Michael Nellis to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Aug. 13, 2024); Letter from Michael Nellis to Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary (Aug. 23, 2024).

. . . .”<sup>4</sup> As a general matter, Congress’s authority to conduct investigations is a critical aspect of the legislative process.<sup>5</sup> This power allows Congress to conduct “inquiries concerning the administration of existing laws,” as well as studies of proposed laws, and “includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them.”<sup>6</sup> The Supreme Court has described the congressional power of inquiry as “broad” and “indispensable[.]”<sup>7</sup> and noted that without such power, Congress would not be able to “legislate wisely or effectively.”<sup>8</sup>

The Supreme Court has explained that Congress’s “power of inquiry—with [the] process to enforce it—is an *essential* and *appropriate* auxiliary to the legislative function.”<sup>9</sup> To that end, a congressional subpoena is valid if it is “related to, and in furtherance of, a legitimate task of the Congress.”<sup>10</sup> The subpoena must serve a “valid legislative purpose,”<sup>11</sup> and concern a subject on which “legislation could be had.”<sup>12</sup> Therefore, “evaluating a congressional subpoena is strictly limited to determining only whether the subpoena is ‘plainly incompetent or irrelevant to any lawful purpose . . . in the discharge of [the Committee’s] duties.’”<sup>13</sup>

The Committee’s subpoena easily meets this standard and clearly serves a valid legislative purpose. Early last year, a federal district court denied District Attorney Alvin Bragg’s attempt to block—after making a similar argument—the enforcement of the Committee’s subpoena in this same investigation. The court held that the Committee’s subpoena “was issued with a ‘valid legislative purpose’ in connection with the ‘broad’ and ‘indispensable’ congressional power to ‘conduct investigations.’”<sup>14</sup> As the court explained:

Jordan and the Committee have identified several valid legislative purposes underlying the subpoena. . . . [The Committee] identif[ies] the possibility of legislative reforms to insulate current and former presidents from state prosecutions, such as by removing criminal actions filed against them from state to federal court. Congress, of course, has authority to consider, and to investigate, this potential legislative reform. And Congress also has authority to investigate legislative reforms to prevent local prosecutions that could potentially interfere with federal elections.<sup>15</sup>

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<sup>4</sup> September 13 Letter, *supra* note 2.

<sup>5</sup> *Watkins v. U.S.*, 354 U.S. 178, 187 (1957).

<sup>6</sup> *Id.* at 187.

<sup>7</sup> *Id.* at 187, 215.

<sup>8</sup> *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927).

<sup>9</sup> *Id.* at 174 (emphasis added).

<sup>10</sup> *Watkins*, 354 U.S. at 187.

<sup>11</sup> *Quinn v. U.S.*, 349 U.S. 155, 161 (1955).

<sup>12</sup> *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 506 (1975).

<sup>13</sup> *Bragg v. Jordan*, 669 F.Supp.3d 257, 267-68 (2023) (quoting *McPhaul v. U.S.*, 364 U.S. 372, 381 (1960)).

<sup>14</sup> *Id.* at 261.

<sup>15</sup> *Id.* at 268 (internal citations omitted).

The Committee has repeatedly articulated to Mr. Nellis the legislative purpose underlying the subpoena. As set forth in our letter accompanying the subpoena, “[t]he requested material will inform the House’s consideration of whether to move forward with legislation, informed by the Committee’s oversight, which, if adopted, would remedy politically motivated local prosecutions by allowing a current or former president to remove the case to a more neutral forum in federal court.”<sup>16</sup>

One element of this oversight is the potential for bias in trial-level local courts.<sup>17</sup> Here, for example, the Committee is aware of evidence of potential bias and conflicts of interest concerning Loren Merchan’s—Judge Merchan’s daughter—work on behalf of President Trump’s political adversaries and the possible financial benefit that Ms. Merchan and Authentic Campaigns received from the prosecution and conviction of President Trump. If Authentic Campaigns or any of its employees, agents, or representatives provide services to President Trump’s political adversaries, and Authentic Campaigns stands to benefit financially from President Trump’s criminal trial, it creates—at a minimum—the appearance that Judge Merchan may make decisions during the trial for improper reasons. While you claim that neither “Authentic nor Ms. Merchan benefits financially from any decisions made in former President Trump’s judicial proceedings” and that Authentic is not compensated based on how much its clients fundraise,<sup>18</sup> a business’s bottom line is impacted by both its clients’ satisfaction with its services and its clients’ ultimate success. Or, to put it another way, the more money that Authentic Campaigns’ clients fundraise and the more that Authentic Campaigns’ clients win elections, the better off Authentic Campaigns will be financially in the future. Thus, to the extent that Judge Merchan’s rulings increase the success of Authentic Campaigns’ clients’ fundraising efforts and their chances of winning elections, his decisions contribute to Authentic Campaigns’ benefit. Accordingly, the Committee subpoenaed a narrow set of materials regarding Authentic Campaigns’ work that concerns the prosecution of President Trump and any communications Authentic Campaigns had with Judge Merchan or any of his employees. These documents will help the House to examine the extent of biases and conflicts of interest as it evaluates whether legislation is necessary to permit current and former presidents to remove a criminal proceeding to a more neutral forum in federal court.

Moreover, contrary to your complaint that the subpoena is “harassing” because it is a “politically motivated attempt to undertake a fishing expedition,”<sup>19</sup> the Committee, as explained above, is focused on examining potential legislative reforms to vindicate an important federal interest: ensuring that current and former Presidents of the United States are treated fairly in local and state criminal courts. In any case, given that courts are “required to presume that a congressional committee’s stated legislative object is ‘the real object,’” it is certainly not up to the recipients of congressional subpoenas to question them “on the basis of the motives which spurred the exercise of that power.”<sup>20</sup>

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<sup>16</sup> Aug. 28 letter, *supra* note 1.

<sup>17</sup> See Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, et al. to Alvin L. Bragg, Jr., District Att’y, N.Y. Co. (Mar. 25, 2023).

<sup>18</sup> September 13 Letter, *supra* note 2, at 2.

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Bragg v. Jordan*, 669 F.Supp.3d 257, 269 (2023) (quoting *Barenblatt v. United States*, 360 U.S. 109, 132 (1959)).

Finally, you have objected on the basis that the Committee does not need to subpoena Authentic Campaigns because the information is available from other sources.<sup>21</sup> This objection misses the mark. Courts defer to Congress on how to conduct an investigation and, here, the Committee has found it necessary to subpoena Authentic Campaigns for material needed for this investigation.<sup>22</sup> While other sources may offer insight, at a generic level, as to whether Authentic Campaigns performed certain services for certain individuals, there is no substitute for the documents that the Committee directly seeks from Authentic Campaigns. In fact, even if the information that the Committee seeks is available elsewhere, those sources would all be second-hand information and not the best available evidence, which would be from Authentic Campaigns itself. Indeed, this is why the Committee also requires certifications under oath that the responses given by Authentic Campaigns are truthful; such certifications could not be applied to second-hand sources and the Committee would have no way of knowing if the information relayed by these other sources about Authentic Campaigns is accurate.

**The subpoena is appropriately tailored to inform the potential legislative reforms.**

You have also objected to the subpoena on the basis that it is overbroad.<sup>23</sup> This objection lacks merit. The items in the Committee’s subpoena are narrowly tailored to one core focus of the Committee’s oversight. The materials will inform the Committee’s consideration of whether bias and conflicts of interest are inherent in Judge Merchan’s role overseeing the politicized prosecution of President Trump, especially due to his daughter’s “work on behalf of President Trump’s political adversaries and the possible financial benefit that Ms. Merchan and Authentic Campaigns received from the prosecution and conviction of President Trump.”<sup>24</sup> In addition, the scope of the subpoenaed material is limited in time, covering only the period of April 1, 2023, to present. The Committee specifically limited the temporal scope to narrowly examine Authentic Campaigns’ work—and therefore potential conflicts of interest—during the time in which Judge Merchan was involved in President Trump’s trial.

You argued that the subpoena’s first request “seeks *all* documents and communications relating to any work performed by Authentic . . . .”<sup>25</sup> This assertion is inaccurate. The subpoena makes clear that it is limited to documents and communications “refer[ring] to the indictment, prosecution, or conviction of President Donald J. Trump . . . .”<sup>26</sup> By its very terms, the subpoena is limited in scope to material relating to the indictment, prosecution, or conviction of President Trump, and not to work performed by Authentic Campaigns on unrelated topics. The subpoena, again, is narrowly tailored to advance the Committee’s oversight, as discussed above, and not to inquire generally about Authentic Campaigns’ work on other matters. While you complain that the subpoena does not differentiate between “whether such work was performed for one of

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<sup>21</sup> September 13 Letter, *supra* note 2, at 3.

<sup>22</sup> *Barenblatt*, 360 U.S. at 132 (“So long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power.”).

<sup>23</sup> September 13 Letter, *supra* note 2, at 4.

<sup>24</sup> Aug. 28 letter, *supra* note 1.

<sup>25</sup> September 13 Letter, *supra* note 2, at 4.

<sup>26</sup> Aug. 28 letter, *supra* note 1.

former President Trump’s ‘political adversaries,’”<sup>27</sup> the Committee is interested in pursuing the facts wherever they may lead. As such, the investigation requires a clear picture of the total body of work Authentic Campaigns has done referring to the indictment, prosecution, or conviction of President Trump during the relevant time period.

Moreover, throughout the course of the Committee’s engagement with Authentic Campaigns, the Committee sought to minimize any burden on the company so as to facilitate its compliance with our oversight. The Committee narrowed the number of items in the subpoena from its initial requests for information, based on representations Mr. Nellis made to the Committee. However, despite acknowledging that documents exist that are responsive to the Committee’s subpoena, Authentic Campaigns has refused to produce this material. Authentic Campaigns has also not asserted privilege for any of these documents.

### **The subpoena does not violate the First Amendment.**

Finally, you have objected to the subpoena on First Amendment grounds—in particular, that the requested “materials are protected from disclosure by the First Amendment to the U.S. Constitution.”<sup>28</sup> To the extent your objection is based on the First Amendment’s right to free association, that right does not extend to “commercial relationships” and “commercial transactions” that are the subject of the Committee’s subpoena.<sup>29</sup> As a federal court in *Bean LLC v. John Doe Bank* explained:

[C]ommercial transactions do not give rise to associational rights, even where the subjects of those transactions are protected by the First Amendment. Indeed, courts have uniformly held that the kind of commercial relationships [the plaintiff] seeks to shield from governmental inquiry here are not protected as associational rights under the First Amendment.<sup>30</sup>

Simply put, the material that the Committee seeks—documents “relating to any work performed by Authentic Campaigns that refers to the indictment, prosecution, or conviction or President Donald J. Trump”<sup>31</sup>—are not protected by the First Amendment’s right to free association.

In any case, your blanket and cursory assertion of some sort of First Amendment protection for the materials requested by the subpoena is plainly insufficient. Courts are clear that any First Amendment associational privilege “is qualified, not absolute; therefore, it cannot be used as a blanket bar to discovery.”<sup>32</sup> Indeed, “the law generally disfavors blanket assertions of privilege,”<sup>33</sup> and a “person who withholds otherwise discoverable material or testimony based

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<sup>27</sup> September 13 Letter, *supra* note 2, at 4.

<sup>28</sup> *Id.* at 4.

<sup>29</sup> *Bean LLC v. John Doe Bank*, 291 F. Supp. 3d 34, 46 (D.D.C. 2018).

<sup>30</sup> *Id.*

<sup>31</sup> Aug. 28 letter, *supra* note 1.

<sup>32</sup> *See, e.g., Wilkinson v. FBI*, 111 F.R.D. 432, 436 (C.D. Cal. 1986).

<sup>33</sup> *Goldberg v. Amgen, Inc.*, 123 F. Supp. 3d 9, 22 (D.D.C. 2015).

upon a claim of privilege bears the burden of demonstrating that the privilege applies and that withholding is excused.”<sup>34</sup> As a result, to the extent that you believe that the production of specific documents would infringe on the First Amendment, you must object on a document-by-document basis so that the Committee can fully evaluate and consider your objections.

The Committee’s subpoena imposes legal obligations upon Mr. Nellis to comply and produce responsive materials. Having considered and overruled the objections you have raised, the Committee expects your client’s full compliance with the subpoena no later than 9:00 a.m. on October 11, 2024. If Mr. Nellis fails to comply, the Committee may be forced to consider taking further enforcement actions.

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Furthermore, it has recently come to the Committee’s attention that Mr. Nellis’s responses to the Committee’s earlier voluntary requests may contain false and/or misleading information. On August 1, 2024, we requested that Authentic Campaigns voluntarily provide “[a]ll contracts and invoices referring or relating to work performed by Authentic Campaigns for or on behalf of the Biden for President campaign, the Harris for President campaign, or the Democratic National Committee for the period January 1, 2023, to the present.”<sup>35</sup> In response to this request, on August 13, Mr. Nellis asserted that “Authentic has not had a contract to perform any services for the Harris for President campaign” and that the work performed in 2019 for the Harris for President campaign was “the extent of the work Authentic has done for the entities named in [the Committee’s] letter.”<sup>36</sup> You repeated this assertion in your September 13 letter, stating that Authentic Campaigns “has not been a party to any contract to perform any services for the Harris for President Campaign . . . .”<sup>37</sup>

However, according to Federal Election Commission filings reproduced below, the Harris for President campaign made a \$468 disbursement to Authentic Campaigns on July 30, 2024, for “Website Hosting” services.<sup>38</sup>

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<sup>34</sup> *In re Slack*, 768 F. Supp. 2d 189, 193 (D.D.C. 2011).

<sup>35</sup> Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Ms. Loren Merchan, President, Authentic Campaigns Inc. (Aug. 1, 2024).

<sup>36</sup> Letter from Michael Nellis to Rep. Jim Jordan, H. Comm. on the Judiciary (Aug. 13, 2024).

<sup>37</sup> September 13 Letter, *supra* note 2, at 2.

<sup>38</sup> Harris for President Disbursements, FED. ELECTION COMM’N (last visited Sept. 13, 2024); *see also* Letter from Rep. Elise Stefanik to the N.Y. State Comm. on Judicial Conduct (Sept. 6, 2024).

Full Name (Last, First, Middle Initial) <b>B. Authentic Campaigns Inc</b>			Date of Disbursement M M / D D / Y Y Y Y 07 / 30 / 2024		
Mailing Address 5832 N Rockwell St			FEC Identification Number C		
City Chicago		State IL	Zip Code 60659-4902		
Purpose of Disbursement Website Hosting			Transaction ID : 500217616 Amount of Each Disbursement this Period 468.00		
Candidate Name			Memo Item		
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President		Disbursement For: 2024 <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼			
State: District:					

A reasonable person would expect a contract or invoice to exist in Authentic Campaigns' possession to support a payment from the Harris for President campaign for "Website Hosting" services. This new information therefore appears to contradict Mr. Nellis's prior representations to the Committee. Indeed, his repeated representations that no such records exist, coupled with his refusal to certify under oath the representations in his August 13 and August 23 letters, as well as your September 13 letter, were true,<sup>39</sup> raises the prospect that his representations to the Committee were not accurate. As such, we invite you and your client to supplement these assertions to the Committee and show cause why the Committee should not conclude that Mr. Nellis knowingly provided false and/or misleading information to the Committee.<sup>40</sup> Please provide this supplemental response as soon as possible but no later than 9:00 a.m. on October 11, 2024.

Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan  
Chairman

cc: The Honorable Jerrold L. Nadler, Ranking Member

<sup>39</sup> Aug. 28 letter, *supra* note 1.

<sup>40</sup> 18 U.S.C. § 1001.