

CAUSE NO. _____

SIDNEY K. POWELL, ESQ.,

Plaintiff,

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IN THE DISTRICT COURT

v.

VERIZON COMMUNICATIONS, INC.,

Defendant.

DALLAS COUNTY, TEXAS
68th

_____ JUDICIAL DISTRICT

ORIGINAL PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Sidney K. Powell, Esq., through undersigned counsel, files her original petition and shows unto the Court as follows:

PARTIES

1. Plaintiff Sidney J. Powell, Esq. (“Plaintiff”) is an adult resident of the State of Texas, residing in Dallas, Dallas County, Texas. Plaintiff is an attorney licensed to practice in the State of Texas and a member of the Texas Bar, with her principal office for the practice of law located in Dallas.

2. Defendant Verizon Communications Inc. (“Verizon”) is a Delaware corporation with its principal place of business in New York, New York. The Secretary of State is the agent for service of process on Verizon because: (i) engages in business in Texas; (ii) does not have a registered agent for service of process in Texas; (iii) does not maintain a regular place of business in Texas; and (iv) this suit arises from Verizon providing cell phone service to Plaintiff who is a resident of Dallas County Texas.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to because it involves a dispute over involves a dispute over the release of phone records that involve the attorney-client privilege.

4. Venue is proper in Dallas County pursuant to Civ.Prac. & Rem.Code § 1502(a)(1) because a substantial part of the events giving rise to these claims occurred in Dallas County, including the issuance of the phone numbers at issue to Plaintiff, and many of the communications that are the subject of the subpoena and sending the bills for service.

DISCOVERY-CONTROL PLAN

5. Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4 and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169.

FACTS

6. Plaintiff is an attorney and former federal prosecutor whose efforts have been instrumental in bringing to light the many questions, concerns and irregularities surrounding the November 2020 Presidential election.

7. On January 6, 2021, a large group of protestors in Washington, D.C., entered the United States Capitol, breached security, and disrupted the counting of the Electoral College votes until order was restored. The United States Department of Justice has arrested and charged more than 725 individuals in connection with the events of January 6th. Ms. Powell had no involvement in the events of January 6th yet the DOJ is seeking records that contain attorney client privileges held by numerous clients.

8. As a result of these events, on June 28, 2021, Speaker Nancy Pelosi introduced House Resolution 503 (“H. Res. 503”), “Establishing the Select Committee to Investigate the January 6th Attack on the United States Capitol.” Two days later, the House passed H. Res. 503.

9. H. Res. 503 instructs the Speaker of the House to appoint thirteen Members to the Select Committee and to designate one Member to serve as chair of the Select Committee. *See* H. Res. 503, Section 2. Speaker Pelosi appointed and designated Rep. Bennie Thompson (D-MS 2nd Dis.) to serve as Chairman of the Select Committee.

10. H. Res 503 Section 3 establishes the Select Committee for three purposes:

(i) To investigate and report upon the facts, circumstances, and causes relating to the January 6, 2021, domestic terrorist attack upon the United States Capitol Complex (hereafter referred to as the “domestic terrorist attack on the Capitol”) and relating to the interference with the peaceful transfer of power, including facts and causes relating to the preparedness and response of the United States Capitol Police and other Federal, State, and local law enforcement agencies in the National Capital Region and other instrumentalities of government, as well as the influencing factors that fomented such an attack on American representative democracy while engaged in a constitutional process.

(ii) To examine and evaluate evidence developed by relevant Federal, State, and local governmental agencies regarding the facts and circumstances surrounding the domestic terrorist attack on the Capitol and targeted violence and domestic terrorism relevant to such terrorist attack.

(iii) To build upon the investigations of other entities and avoid unnecessary duplication of efforts by reviewing the investigations, findings, conclusions, and recommendations of other executive branch, congressional, or independent bipartisan or nonpartisan commission investigations into the domestic terrorist attack on the Capitol, including investigations into influencing factors related to such attack.

11. H. Res. 503 Section 4 establishes three “functions” of the Select Committee: (1) to “investigate the facts, circumstances, and causes relating to the domestic terror attack on the Capitol”; (2) to “identify, review, and evaluate the causes of and the lessons learned from the domestic terrorist attack on the Capitol”; and (3) to “issue a final report to the House containing such findings, conclusions, and recommendations for corrective measures described in subsection (c) as it may deem necessary.”

12. Subsection (c) of Section 4 describes three categories of “corrective measures”: “changes in law, policy procedure, rules, or regulations that could be taken” (1) “to prevent future acts of violence, domestic terrorism, and domestic violent extremism, including acts targeted at American democratic institutions”; (2) “to improve the security posture of the United States Capitol Complex while preserving accessibility of the Capitol Complex for all

Americans”; and (3) “to strengthen the security and resilience of the United States American democratic institutions against violence, domestic terrorism, and domestic violent extremism.”

13. H. Res. 503 Section 5(c)(4) authorizes the Chair of the Select Committee to “issue subpoenas pursuant to clause 2(m) of Rule XI [*subpoena power*] in the investigation and study conducted pursuant to sections 3 and 4 of this resolution.”

14. On February 1, 2022, Chairman Thompson, on behalf of the Select Committee, issued a subpoena to Defendant Verizon seeking records concerning phone numbers purportedly listed in “Section B, below.”

15. On February 4, 2022, Defendant Verizon wrote Plaintiff to advise that it “ha[d] received a subpoena requiring the production of certain records associated with the phone number referenced above” (identifying two numbers assigned to Plaintiff) and attaching “[a] copy of the subpoena,” but excluding “Section B, which identifies the phone number referenced above but also those of other Verizon subscribers.”

16. In other words, nowhere within the copy of the Select Committee’s subpoena provided to Plaintiff is Plaintiff’s identity, or any other customer whose records are sought, disclosed. A copy of the subpoena provided to Plaintiff by Verizon is attached hereto as Exhibit A.

17. The Select Committee’s subpoena instructs Defendant Verizon to produce subscriber information and cell phone data associated with Plaintiff’s personal cell phone. The subscriber information requested includes subscriber names and contact information, authorized users, time of service provided, account changes, associated IP addresses, and other metadata. The cell phone data requested could include all calls, text messages, and other records of communications associated with the phone number. This data can be used for historic cell site analysis. The subpoena seeks this information from November 1, 2020, through January 31, 2021.

18. Plaintiff is a licensed and practicing attorney. She uses the phone numbers for which the information is sought to communicate with and about her clients, and those communications are protected by, *inter alia*, the attorney-client privilege and work product doctrine.

COUNT I (Declaratory Relief)

19. Plaintiff repeats, realleges, and incorporates the allegations in paragraphs 1 through 18 as if set forth herein.

20. Congress’s broad “power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.” *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927). Accordingly, Congress and its duly authorized committees may issue a subpoena where the information sought “is related to, and in furtherance of, a legitimate task of Congress,” *Watkins v. United States*, 354 U.S. 178, 187 (1957), and the subpoena serves a “valid legislative purpose.” *Quinn v. United States*, 349 U.S. 155, 161 (1955). At the same time, because Congress’s subpoena power “is justified as an adjunct to the legislative process, it is subject to several limitations,” *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031 (2020), limitations which stem directly from the Constitution. *Kilbourn v. Thompson*, 103 U.S. 168, 182-89 (1880).

21. Specifically, the Constitution permits Congress to enact only certain kinds of legislation, *see, e.g.*, U.S. Const. art. I, § 8, and while Congress’s power to investigate “is justified as an adjunct to the legislative process, it is subject to several limitations.” *Mazars*, 140 S. Ct. at 2031. These limitations include that Congress may not issue a subpoena for the purposes of “law enforcement” because “those powers are assigned under our Constitution to the Executive and the Judiciary,” *Quinn*, 349 U.S. at 161, or to “try” someone “of any crime or wrongdoing,” *McGrain*, 273 U.S. at 179; nor does Congress have any “general power to inquire into private affairs and compel disclosure,” *McGrain*, 273 U.S. at 173-74, or the “power to expose for the sake of exposure,” *Watkins*, 354 U.S. at 200. Also importantly, Congressional investigations “conducted solely for the personal aggrandizement of the investigators or to

‘punish’ those investigated are indefensible.” *Watkins*, 354 U.S. at 187, *Mazars*, 140 S. Ct. at 2032. Additionally, as the Supreme Court has recognized: “[t]he Bill of Rights s applicable to [congressional] investigations as to all forms of government action,” and the Select Committee may not “abridge[. . . the First Amendment freedoms of speech, press, religion, or political belief and association” in the name of advancing its investigation. *Watkins*, 354 U.S. at 188. *See also United States v. Rumely*, 345 U.S. 41, 46-47 (1953).

22. Thus, to ensure that a Congressional inquiry meets a “valid legislative purpose,” an inquiring committee must define “with the same degree of explicitness and clarity that the Due Process Clause requires in the expression of any element of a criminal offense” its “jurisdictional pertinency” so as to avoid the “vice for vagueness.” *Watkins*, 354 U.S. at 206-09. *See also id.* at 206 (“When the definition of jurisdictional pertinency is as uncertain and wavering as in the case of the Un-American Activities Committee, it becomes extremely difficult for the Committee to limit its inquiries to statutory pertinency.”).

23. The Select Committee has not demonstrated a “valid legislative purpose” justifying its need for a subpoena of private citizen data: the subscriber information as well as connection records and records of session times and durations sought by its February 1, 2022 subpoena to Defendant Verizon. Consequently, the Select Committee cannot establish sufficient jurisdictional pertinence justifying the breadth of the Verizon subpoena’s demand for private citizen data. It has not, because it cannot.

24. House Counsel Douglas Letter summarized the purported purpose of the Select Committee as follows:

[W]e need to figure out what was the atmosphere that brought . . . about [the events of January 6, including] the many attempts that were made before the election to try to build the nature of mistrust about the election itself, which goes to undermine our democracy, so that if President Trump did lose he would be able to say that his is unfair and to generate lots of anger and rage that led to January 6.

See H’ng T., *Trump v. Thompson*, No. 21-cv-002769 (Nov. 4, 2021).

25. Further, through its Members, the House Committee has embraced the role of an inquisitorial tribunal seeking evidence of criminal activity. By way of example, on December 23, 2021, Chairman Thompson told *The Washington Post* the Select Committee was investigating whether President Trump’s actions on January 6, 2021, “warrant[s] a [criminal] referral.”¹ Similarly, Rep. Elaine Luria (D-VA 2nd Dis.) told *CNN*: “[T]hat’s exactly why we’re conducting this investigation to find out all the facts, . . . and . . . hold people accountable who are responsible.”² And Rep. Liz Cheney (R-WY At-Large) told *Rolling Stone*: “We must know what happened here at the Capitol. We must *also* know what happened *every* minute of that day in the White House—*every phone call*, every conversation, every meeting leading up to, during, and after the attack.”³

26. Accordingly, lacking any “valid legislative purpose” to seek the subscriber information as well as connection records and records of session times and durations sought by its February 1, 2022 subpoena to Defendant Verizon, the Select Committee’s subpoena is unenforceable and this Court should issue an Order holding the subpoena ultra vires, unlawful, and unenforceable.

COUNT II (Declaratory Relief)

¹ Tom Hamburger, Jacqueline Alemany, Josh Dawsey, and Matt Zapposky, Thompson Says Jan. 6 Committee Focused on Trump’s Hours of Silence During Attack, Weighing Criminal Referrals, *The Washington Post* (Dec. 23, 2021), available at https://www.washingtonpost.com/politics/january-6-thompson-trump/2021/12/23/36318a92-6384-11ec-a7e8-3a8455b71fad_story.html.

² Zachary Cohen and Annie Grayer, January 6 Committee Says it Would Make Criminal Referrals if ‘Appropriate,’ but that Could be a Long Way Off, *CNN* (Dec. 21, 2021), available at <https://www.cnn.com/2021/12/21/politics/january-6-committee-criminal-referrals/index.html>.

³ Peter Wade, Cheney: Investigate Trump’s ‘Every Call, Every Conversation, Every Meeting’ on Jan. 6, *Rolling Stone* (July 27, 2021), available at <https://www.rollingstone.com/politics/politics-news/cheney-investigate-trump-capitol-attack-communications-1203084/>.

27. Plaintiff repeats, realleges, and incorporates the allegations in paragraphs 1 through 26 as if set forth herein.

28. Subject to specifically enumerated exceptions not applicable here, the Stored Communications Act provides that “a person or entity providing electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage to that service.” 18 U.S.C. § 2702(a)(1).

29. The Stored Communications Act further provides that an electronic service provider – such as Verizon – “shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications ...) to any governmental entity.” 18 U.S.C. § 2702(a)(3).

30. The exceptions for disclosures found in 18 U.S.C. § 2702(c) do not apply to the Congressional subpoena at issue in this case.

31. Similarly, the Telecommunications Act of 1996 protects the confidentiality of “customer proprietary network information,” which includes, *inter alia*, phone logs and location information, “[e]xcept as provided by law or with approval of a customer.” 47 U.S.C. § 222.

32. The subscriber information as well as connection records and records of session times and durations sought by the Select Committee’s February 1, 2022, subpoena to Defendant Verizon necessarily seeks the “contents of a communication while in electronic storage,” or, in the alternative, because neither Plaintiff nor any law authorize the disclosure of these records, the Select Committee’s February 1, 2022 subpoena is unenforceable and this Court should issue an Order holding the subpoena ultra vires, unlawful, and unenforceable.

COUNT III (Preservation of Privileges)

33. Plaintiff repeats, realleges, and incorporates the allegations in paragraphs 1 through 32 as if set forth herein.

34. As a licensed attorney, Plaintiff has an ethical duty and right to protect communications rendered in her role as an attorney and which may contain or reveal attorney-client privileged information, work product, or information that may contain or reveal any other applicable privilege.

35. Plaintiff uses and has used the phone numbers that are subject to the subpoena to communicate with clients and with others in connection with her legal representation of clients having nothing to do with the Select Committee's investigation.

36. The February 1, 2022 subpoena would force Verizon to reveal attorney-client and work product protected information without an opportunity for Plaintiff to assert applicable privileges and protect against prohibited disclosure.

37. Enforcement of the February 1, 2022 subpoena without Plaintiff having an opportunity to review the proposed disclosure and assert applicable privileges violates Fed. R. Evid. 501 and Texas Rule of Evidence 503.

COUNT IV (First Amendment)

38. Plaintiff repeats, realleges, and incorporates the allegations in paragraphs 1 through 37 as if set forth herein.

39. The Supreme Court has long recognized the First Amendment right of the people to associate freely for expressive purposes, and that the compelled disclosure of affiliation with advocacy groups may chill or refrain that associative conduct. *See, e.g., NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958).

40. The government's effort to compel disclosure of associative conduct must be reviewed with exacting scrutiny, meaning the government must show that its action is narrowly tailored to meet a sufficiently important government interest to justify compelling the disclosure. *Americans for Prosperity Found. V. Bonta*, 141 S. Ct. 2373 (2021).

41. The February 1, 2022 subpoena is neither narrowly tailored nor does it advance a sufficiently important governmental interest to permit its enforcement.

42. Simply put, no governmental interest could be sufficiently important to permit it to delve through every phone call placed or received by Plaintiff over a three-month period.

43. The February 1, 2022 subpoena is an invalid attempt to infringe Plaintiff's First Amendment rights and it should not be enforced.

COUNT V (Fourth Amendment)

44. Plaintiff repeats, realleges, and incorporates the allegations in paragraphs 1 through 43 as if set forth herein.

45. The Fourth Amendment guarantees the right of the people to free from unreasonable searches and seizures, as well as guaranteeing a person's reasonable expectation of privacy from governmental intrusion. *See, e.g., Katz v. United States*, 389 U.S. 347 (1967).

46. Congress has no general or inherent authority to issue subpoenas to pry into private affairs or to seek information untethered to any valid legislative purpose. *McGrain*, 273 U.S. at 173-74.

47. The February 1, 2022 subpoena has no valid legislative purpose is an unreasonable and unlawful invasion of Plaintiff's right to be free from unreasonable searches and seizures and her right to privacy. The subpoena is invalid and thus unenforceable.

COUNT VI (Injunctive Relief)

48. Plaintiff repeats, realleges, and incorporates the allegations in paragraphs 1 through 47 as if set forth herein.

49. Because the Select Committee's February 1, 2022 subpoena to Verizon is ultra vires, unlawful, and unenforceable, in that it lacks any "valid legislative purpose" to seek the subscriber information as well as connection records and records of session times and durations,

or is otherwise precluded from disclosing such records, Plaintiff is likely to succeed on the merits of this action.

50. Should this Court not prevent the disclosure of Plaintiff's subscriber information as well as connection records and records of session times and durations, Plaintiff is likely to suffer irreparable harm.

51. The balance of the equities weigh in Plaintiff's favor and the public interest favors against disclosure so as to prevent the unwarranted intrusion into the affairs of the public absent the requisite "valid legislative purpose" of any Congressional subpoena.

52. Accordingly, this Court should issue an Order enjoining Defendant Verizon from producing Plaintiff's records pursuant to the Select Committee's February 1, 2022, subpoena.

WHEREFORE, Plaintiff requests that the Court provide relief as follows:

- (i) A declaratory judgment holding that the Select Committee's February 1, 2022 subpoena is ultra vires, unlawful, and unenforceable;
- (ii) An injunction prohibiting Defendant Verizon from providing Plaintiff's records to the Select Committee pursuant to its February 1, 2022 subpoena; and
- (iii) Such further relief as this court deems just and proper.

Respectfully submitted,

BOB HOLMES LAWYER, PLLC

By: /s/ Robert H. Holmes
Robert H. Holmes
State Bar No. 09908400

P.O. Box 601603
Dallas, Texas 75360-1603
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COUNSEL FOR PLAINTIFF

EXHIBIT “A”



VERIZON SECURITY SUBPOENA COMPLIANCE
180 WASHINGTON VALLEY ROAD
BEDMINSTER NJ 07921
Phone: 888-483-2600 Fax: 325-949-6916

February 4, 2022

SIDNEY POWELL
3831 TURTLE CREEK BLVD APT 5B
DALLAS, TX, 75219-4495

Verizon Case #: 22134582
Docket / File #: House Subcommittee 02 01 22
Phone Number: 214-998-3200

Dear Customer,

This is to notify you that Verizon has received a subpoena requiring the production of certain records associated with the phone number referenced above. According to our records, you are the subscriber of that phone number.

A copy of the subpoena is attached. Section B, which identifies the phone number referenced above but also those of other Verizon subscribers, has been excluded.

Any questions you have should be directed to the party who issued the subpoena.

Please be advised that unless Verizon receives a court document from you challenging the subpoena by February 21, 2022, Verizon is compelled to comply with the subpoena. Copies of any court documents challenging the subpoena can be sent to Verizon via fax number 325-949-6916.

Very truly yours,

VERIZON SECURITY SUBPOENA COMPLIANCE

Enclosure



VERIZON SECURITY SUBPOENA COMPLIANCE
180 WASHINGTON VALLEY ROAD
BEDMINSTER NJ 07921
Phone: 888-483-2600 Fax: 325-949-6916

February 4, 2022

SIDNEY POWELL
3831 TURTLE CREEK BLVD APT 5B
DALLAS, TX, 75219-4495

Verizon Case #: 22134582
Docket / File #: House Subcommittee 02 01 22
Phone Number: 214-707-1775

Dear Customer,

This is to notify you that Verizon has received a subpoena requiring the production of certain records associated with the phone number referenced above. According to our records, you are the subscriber of that phone number.

A copy of the subpoena is attached. Section B, which identifies the phone number referenced above but also those of other Verizon subscribers, has been excluded.

Any questions you have should be directed to the party who issued the subpoena.

Please be advised that unless Verizon receives a court document from you challenging the subpoena by February 21, 2022, Verizon is compelled to comply with the subpoena. Copies of any court documents challenging the subpoena can be sent to Verizon via fax number 325-949-6916.

Very truly yours,

VERIZON SECURITY SUBPOENA COMPLIANCE

Enclosure

